



## **Human Rights Law Clinic Papers 2019**

### **How has the right to food in times of armed conflict been interpreted by the Human Rights Bodies?**

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## Contents

*i. Table of Cases*

*ii. Table of Legal Instruments*

*iii. List of Abbreviations*

1. Introduction

2. Background

3. The Right to Food in International Human Rights Law

3.1. The right to food under human rights bodies

3.2. Does a right to food exist within the right to life and freedom from torture?

*3.2.1 The right to life*

*3.2.2 Freedom from torture*

3.3. Does the right to food exist under customary international law?

3.4. Does the right to food apply extraterritorially?

4. The Scope of State Obligations

4.1. How can States respect the right to food?

4.2. How can States protect the right to food?

4.3. How can States take steps to fulfil the right to food?

5. Conclusion

## ***i. Table of Cases***

### *International cases*

*Ashurov v. Tajikistan* (20 March 2007) UN Doc CCPR/C/89/D/1348/2005

*Armed Activities on the Territory of the Congo (Democratic Republic of Congo v Uganda)* [2005] ICJ Rep. 168

*Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* (Advisory Opinion) [2004] ICJ Rep. 136

*Legality of the Threat or Use of Nuclear Weapons (Advisory Opinion)*, [1996] ICJ Rep. 226

*North Sea Shelf Cases (Federal Republic of Germany v Denmark), (Federal Republic of Germany v The Netherlands)* [1969] ICJ Rep. 3

*Prosecutor v Anto Furundzija*, IT-95-17/1-T, 10 December 1998 (ICTY)

*Prosecutor v Zejnir Delalic (The Celebici case)* IT-96-21-T, 20 February 2001 (ICTY)

### *African cases*

*SERAC v Nigeria* (27 October 2011) ACHPR 155/96

*Sudan Human Rights Organisation & Centre on Housing Rights and Evictions (COHRE) v Sudan* AComHPR Comm no 279/03-296/05 (27 May 2009)

### *American cases*

*Pacheco Teruel et al. v Honduras* IACtHR Series C No 241 (27 April 2002)

*Yakye Axa Indigenous Community v Paraguay Merits, Reparations and Costs* IACtHR Series C no 125 (17 June 2005)

### *European cases*

*Al-Skeini et al v United Kingdom* App no 55721/07 (ECtHR 7 July 2011)

*Banković and others v Belgium and others* App no 52207/99 (ECtHR 12 December 2001)

*Loizidou v Turkey* App no 15318/89 (ECtHR 18 December 1996)

*Rezmives and Others v Romania* App no 61467/12 (ECtHR 25 April 2017)

### *Domestic cases*

*G v An Bord Uchtala* (1980) IR 32

*People's Union for Civil Liberties (PUCL) v. Union of India & Others* (1997) 1 SCC 301

*Sesana Sethboga and Others v Attorney General* (12 December 2006) Misca No 52 of 2002,  
ILDC 665 (BW 2006)

## ***ii. Table of Legal Instruments***

Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador) (Adopted 17 November 1988) OAS Treaty Series 69

African Charter on Human and Peoples' Rights (adopted 27 June 1981, entered into force 21 October 1986) (1982) 21 ILM 58 (African Charter)

American Convention on Human Rights (Adopted 22 November 1969, entry into force 18 July 1978) OAS Treaty Series 36

American Declaration of the Rights and Duties of Man, OAS Res XXX adopted by the Ninth International Conference of American States (1948)

Charter of the United Nations (Signed 26 June 1945, entry into force 24 October 1945) 1 UNTS XVI

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (adopted 10 December 1984, entry into force 26 June 1987) UNTS 1465

Convention on the Elimination of All Forms of Discrimination against Women (Adopted 18 December 1979, entry into force 3 September 1981) 1249 UNTS 13

Convention on the Rights of the Child (Adopted 20 November 1989, entry into force 2 September 1990) 1577 UNTS 3

European Social Charter

International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR) International Covenant on Economic, Social and Cultural Rights

International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entry into force 3 January 1976) 993 UNTS 3

Optional Protocol to the International Covenant on Economic Social and Cultural Rights (adopted 10 December 2008, entry into force 5 May 2013) A/RES/63/117

Statute of the International Court of Justice (Adopted 24 October 1945) 33 UNTS 993

Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A(III) (UDHR)

### ***iii. List of Abbreviations***

ACHR – American Convention on Human Rights

AComHPR – African Commission on Human and People's Rights

ACtHPR – African Court on Human and People's Rights

CAT – Committee against Torture

CEDAW – Convention on the Elimination of All Forms of Discrimination against Women

CESCR – Committee on Economic Social and Cultural Rights

CCPR – Human Rights Committee

CP – Civil and Political

CPR – Civil and political right

CRC – Convention on the Rights of the Child

ECHR – European Convention on Human Rights

ECtHR – European Court of Human Rights

ESC – Economic, social and cultural

ESCR – Economic, social and cultural right

ETO – Extraterritorial Obligation

EU – European Union

FAO – Food and Agriculture Organisation of the United Nations

GC – General Comments

GC6 – CCPR General Comment no. 6 (The right to life)

GC12 – CESCR General Comment no. 12 (The right to adequate food)

GC14 – CESCR General Comment no. 14 (The right to the highest attainable standard of health)

GC15 – CESCR General Comment no. 15 (The right to water)

HRC – Human Rights Council

IACHR – Inter American Commission on Human Rights

IACtHR – Inter-American Court of Human Rights

ICCPR – International Covenant on Civil and Political Rights

ICESCR – International Covenant on Economic, Social and Cultural Rights

ICJ – International Court of Justice

ICRC – International Committee of the Red Cross

ICTY – International Criminal Tribunal for the Former Yugoslavia

IHL – International Humanitarian Law

IHRL – International Human Rights Law

ILO – International Labour Organisation

IO – International organisation

MAI – Ministry of Agriculture and Irrigation

NATO – North Atlantic Treaty Organisation

NGO – Non-governmental organization

OHCHR – Office of the United Nations High Commissioner for Human Rights

OP-ICESCR – Optional Protocol on ICESCR

OUP – Oxford University Press

OXFAM – Oxford Committee for Famine Relief

SDG – Sustainable Development Goals

UDHR – Universal Declaration on Human Rights

UN – United Nations

UNCAT – United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

UNGA – United Nations General Assembly

UNTC – United Nations Treaty Collection

WFP – World Food Programme



## 1. Introduction

This memorandum will address the issue of the right to food during armed conflict. We will prove that the two branch disciplines of international law, namely IHRL and IHL, are complementary rather than mutually exclusive. Consequently, we will demonstrate that since those two disciplines are complementary, there should be no difference between the application of the law during armed and non-armed conflict in relation to the right to food. Via exploring a range of international law principles including ESCRs, customary international law, the right to life, freedom from torture, and extraterritoriality, we will argue that the right to food should be equally protected in armed conflict as well as peacetime situations.

In international law, the right to food derives from the right to an adequate standard of living.<sup>1</sup> Severe human rights violations often occur in situations of armed conflict, including loss of life and human suffering.<sup>2</sup> Even though ‘the right to food has been endorsed more often and with greater unanimity and urgency than most other human rights,’ it is at the same time ‘being violated more comprehensively and systematically than any other right.’<sup>3</sup> In line with the main argument of the memorandum, the right to food during armed conflict is violated on numerous grounds: lack of respect towards ESCRs and the unwillingness of national governments to implement the right to food in domestic law. Fundamentally, the reason why starvation has not been eradicated completely is for a range of factors, but the most serious one is that it would create political opposition and civilian dissatisfaction with government.<sup>4</sup>

This work will be a doctrinal and socio-legal analysis of the right to food under IHRL that will be divided into two sections. Section one places the right to food during armed conflict within the framework of four different principles of international law. It will be demonstrated how the right to food exists not only within the rights framework of ICESCR, but also how it should exist within other principles, including customary international law, the right to life, freedom from torture and extraterritoriality. Section two assesses State conduct through the obligations to respect, protect and fulfil the right to food in armed conflict.

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<sup>1</sup> Ilias Bantekas and Lutz Oette, *International Human Rights Law and Practice* (Cambridge University Press 2013) 400.

<sup>2</sup> Waseem Ahmad Qureshi, ‘Untangling the Complicated Relationship between International Humanitarian Law and International Human Rights Law in Armed Conflict’ (2018) 6(1) *Penn State Journal of Law & International Affairs* 204, 225.

<sup>3</sup> Philip Alston and Katarina Tomasevski, *The Right to Food* (first published 1984, Springer) 9.

<sup>4</sup> Alex de Waal, ‘Ending Mass Atrocities and Ending Famine’ (2015) 386(10003) *The Lancet Medical Journal* 1528.

## 2. Background

According to 'The State of Food Security and Nutrition in the World' report, there were 821 million undernourished people in the world in 2017.<sup>5</sup> Considering this worrying data, IOs are taking further steps to combat this issue: immediately after eradicating poverty, the end of hunger is one of the UN's major 2030 SDGs.<sup>6</sup> Many famines do not exist due to the shortage of food in the world, but due to the lack of access to food resources.<sup>7</sup> According to the FAO, one of the major factors towards deteriorating food availability is armed conflict.<sup>8</sup> IHL accounts for the fact that food can become a weapon in times of armed conflict and thus 'prohibits destruction of crops and goods, requisition of objects and use of famine as a method of warfare.'<sup>9</sup>

When it comes to international law in armed conflict, it is of utmost importance to identify the main differences between IHL and IHRL. Despite it being unclear in its foundations and application,<sup>10</sup> the concept of *lex specialis* has been used by some international bodies to establish a preferential order for two regimes that apply to the same issue but with different consequences.<sup>11</sup> IHRL has more permanence, compelling States to protect the dignity and freedom of human beings progressively,<sup>12</sup> whilst IHL represents the codes and practices that govern an armed conflict and immediate relief situations.<sup>13</sup> Additionally, there are no limitations permitted under IHL,<sup>14</sup> but certain emergency situations could enable States to derogate from their human rights obligations. Nonetheless, IHRL offers more extensive jurisprudence and legal protection compared to IHL. Finally, with regards to food and starvation, IHRL distinguishes the right to food from the right to be fed.<sup>15</sup> Whilst the former entitles the right to

<sup>5</sup> FAO, 'The State of Food Security and Nutrition in the World: Building Climate Resilience for Food Security and Nutrition' 2 <<http://www.fao.org/3/i9553en/i9553en.pdf>> accessed 26 March 2019.

<sup>6</sup> UN Statistics Division, 'Goal 2: End hunger, achieve food security and improved nutrition and promote sustainable agriculture' <<https://unstats.un.org/sdgs/report/2016/goal-02/>> accessed 6 March 2019.

<sup>7</sup> World Hunger Education Service '2018 World Hunger and Poverty Facts and Statistics' (WHES, 2018) <<https://www.worldhunger.org/world-hunger-and-poverty-facts-and-statistics/?fbclid=IwAR3A98NTBIH9BZpqofG-c7L1U4hhKYVi-iy-RoqJ4OkOzhYpSkZsIXvIcEs>> accessed 6 March 2019.

<sup>8</sup> Office of the High Commissioner for Human Rights, 'The Right to Adequate Food' 4 <<https://www.ohchr.org/Documents/Publications/FactSheet34en.pdf>> accessed 6 March 2019.

<sup>9</sup> Francois Bouchet-Saulnier, *The Practical Guide to Humanitarian Law* (Rowman & Littlefield 2002) 104.

<sup>10</sup> Louise Doswald-Beck, *Human Rights in Times of Conflict and Terrorism* (OUP, 2011) 106.

<sup>11</sup> Marco Sassoli and Laura Olson, 'The relationship between international humanitarian law and human rights law where it matters: admissible killing and internment of fighters in non-international armed conflicts' (2008) 90(871) *International Review of Red Cross* 600, 603.

<sup>12</sup> Sandesh Sivakumaran, 'International Humanitarian Law' in Daniel Moeckli, Sangeeta Shah and Sandesh Sivakumaran (eds) *International Human Rights Law Third Edition* (OUP 2018) 505.

<sup>13</sup> Sassoli and Olson (n 11) 622.

<sup>14</sup> Manisuli Ssenyojo, 'Economic Social and Cultural Rights: An Examination of State Obligations' in Sarah Joseph and Adam McBeth (eds), *Research Handbook on International Human Rights Law* (Elgar 2010) 66-67.

<sup>15</sup> OHCHR (n 8) accessed 6 March 2019, 4.

feed oneself in dignity, the latter causes dependency on government and State relief handing food directly to those in need.<sup>16</sup>

Despite various differences mentioned in the previous paragraph, it is generally accepted that IHL and IHRL can apply concurrently during armed conflict.<sup>17</sup> This was acknowledged by the UN during the International Conference on Human Rights in Tehran in 1968.<sup>18</sup> Human rights bodies generally adopt a complementary approach because the two branches of international law often draw from the same conclusions with regards to numerous human rights violations.<sup>19</sup> Substantively, they share similar contents, aims and legal grounds for the protection of individuals and their human dignity. Initially, the stance on whether the two branches of international law are complementary was unclear. On the one hand, according to Common Article 2 of the 1949 Geneva Convention, IHRL applies to both war and peace situations.<sup>20</sup> On the other hand, European Union Guidelines stipulate that 'IHL is applicable in time of armed conflict and occupation.'<sup>21</sup> In the *Legality of the Threat of Use of Nuclear Weapons*,<sup>22</sup> the following statement was made: 'the test of what is an arbitrary deprivation of life... falls to be determined by the applicable *lex specialis*, namely, the law applicable in armed conflict.'<sup>23</sup> Following the case in question, it was difficult to establish if this meant that IHRL had to be interpreted in view of IHL, or if this meant that only IHL was applicable.<sup>24</sup> However, after the *Palestinian Wall Advisory Opinion*,<sup>25</sup> the prevailing view of legal scholars and practitioners became the complementary approach.<sup>26</sup> Focusing on the area of armed conflict, Article 42 of 1907 Hague Regulations confirmed that the acts of the occupying power violate both IHRL and IHL.<sup>27</sup> Additionally, in the subsequent case regarding the Ugandan occupation in Congo, ICJ repeatedly referred to paragraph 106 of the *Palestinian Wall* judgment and affirmed the view that 'both branches of international law, namely IHRL and IHL, would have to be taken into consideration.'<sup>28</sup> Finally, despite covering different jurisdictions, the judgments of the ICTY

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<sup>16</sup> *ibid* 4-5.

<sup>17</sup> Nicholas Tsagourias and Alasdair Morrison, *International Humanitarian Law: Cases, Materials and Commentary* (Cambridge University Press 2018) 55.

<sup>18</sup> Louise Doswald-Beck and Sylvain Vite, *International Humanitarian Law and Human Rights Law* (1993) 1(1) *International Review of the Red Cross* 94, 112.

<sup>19</sup> Some examples include torture, rape and deliberate killing; see Sassoli and Olson (n 11) 600.

<sup>20</sup> Sivakumaran (n 12) 505.

<sup>21</sup> European Union Guidelines on Promoting Compliance with International Humanitarian Law [2005] OJ C327/04 para 12.

<sup>22</sup> *Legality of the Threat or Use of Nuclear Weapons (Advisory Opinion)* [1996] ICJ Rep. 226.

<sup>23</sup> *ibid* para 25.

<sup>24</sup> Doswald-Beck (n 10) 107.

<sup>25</sup> *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (Advisory Opinion)* [2004] ICJ Rep. 136 (*Palestinian wall*).

<sup>26</sup> Doswald-Beck (n 10) 107.

<sup>27</sup> Yoram Dinstein, 'Belligerent Occupation and Human Rights' (1978) 8(1) *Israel Yearbook of Human Rights* 142.

<sup>28</sup> *Armed Activities on the Territory of the Congo (Democratic Republic of Congo v Uganda)* [2005] ICJ Rep. 168, para 216.

in the *Furundzija*<sup>29</sup> and *Celebici*<sup>30</sup> cases confirmed that the respect for human dignity is the underpinning mechanism of both IHRL and IHL.<sup>31</sup> According to Giacca, the complementary approach can help the harmonisation of the whole spectrum of human rights norms.<sup>32</sup> In its Concluding Observations on Israel, the CESCR has demonstrated that ‘the applicability of rules of IHL does not by itself impede the application of the Covenant or the accountability of the State under Article 2(1) for the actions of its authorities.’<sup>33</sup> Therefore, the two regimes can be viewed as coherent and mutually reinforcing and leading to the same results in relation to armed conflict and peacetime situations.<sup>34</sup>

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<sup>29</sup> *Prosecutor v Anto Furundzija*, IT-95-17/1-T, 10 December 1998 (ICTY) para 183.

<sup>30</sup> *Prosecutor v Zejnil Delalic (The Celebici case)* IT-96-21-T, 20 February 2001 (ICTY) para 200.

<sup>31</sup> Theodore Meron, ‘The Humanization of Humanitarian Law’ (2000) 94(2) *The American Journal of International Law* 239, 267.

<sup>32</sup> Gilles Giacca, *Economic, Social and Cultural Rights in Armed Conflict* (OUP 2014) 78.

<sup>33</sup> CESCR, *Concluding Observations: Israel*, UN Doc E/C.12/1/Add.90 (23 May 2003) para 31.

<sup>34</sup> Agnieszka Szpak, ‘International Humanitarian Law and International Human Rights Law before ICTY - Contradictory or Complementary Legal Systems?’ (2014) *Conference of the International Journal of Arts & Sciences* 303, 306.

### 3. The Right to Food in International Human Rights Law

#### 3.1 The right to food under human rights bodies

In a report submitted to the UNGA in 2017, the current Special Rapporteur on the right to food, affirmed the notion that IHRL applies during conflict situations.<sup>35</sup> With this in mind, we must assess the current legislation, and consider its strengths and limitations.

The right to food exists in multiple international human rights mechanisms; CEDAW and CRC both contain provisions ensuring rights holders can access food to meet their needs.<sup>36</sup> However, the most comprehensive human rights treaty that considers the universal right to food is ICESCR. Article 11(1) of ICESCR identifies that individuals have right to food through the right to an adequate standard of living.<sup>37</sup> The character of this Article is inherently designed to prevent States from enacting any form of legislation that would place rights holders at risk.<sup>38</sup> This was further elaborated in GC12, which sought to clarify the right to food as to comprehend the obstacles to its realisation.<sup>39</sup> GC12 has some key elements that apply to armed conflict situations: the right to food has both immediate and long-term aspects<sup>40</sup> and violations can occur when a State Party has failed to meet the minimum essential levels required for individuals to be free from hunger.<sup>41</sup> GC12 also indicates that it is insufficient for State Parties to claim that they cannot fulfil obligations through resource constraints, the burden of proof is on the State to prove that they have taken every measure to prioritise satisfaction of the right to food, whether by taking appropriate measures or seeking assistance.<sup>42</sup> Doswald-Beck noted, however, that GC12 only addresses the right to food within the scope of food aid.<sup>43</sup> It should also identify that actions in an armed conflict with the intention to starve populations are prohibited under IHL customary laws 53 and 54.<sup>44</sup>

To an extent, the regional human rights bodies are a more suitable expression from which to file complaints of a human rights violation to the right to food. Unlike the UN, the regional

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<sup>35</sup> UNGA 'Interim report of the Special Rapporteur on the right to food' (21 July 2017) A/72/188 para 46.

<sup>36</sup> Convention on the Elimination of All Forms of Discrimination against Women (Adopted 18 December 1979, entry into force 3 September 1981) 1249 UNTS 13, Article 12; Convention on the Rights of the Child (Adopted 20 November 1989, entry into force 2 September 1990) 1577 UNTS 3, Article 27.

<sup>37</sup> International Covenant on Economic Social and Cultural Rights (Adopted 16 December 1966, entry into force 3 January 1976) 993 UNTS 3 (ICESCR);

<sup>38</sup> Giacca (n 32) 53.

<sup>39</sup> CESCR 'General Comment no.12: The Right to Food' (12 May 1999) E/C.12/1999/5 paras 1-3.

<sup>40</sup> *ibid* para 16.

<sup>41</sup> *ibid* para 17.

<sup>42</sup> *ibid*.

<sup>43</sup> Doswald-Beck (n 10) 480.

<sup>44</sup> *ibid* 481.

bodies contain their own court systems which can hand down judgments on the admissibility of a violation, and demand the State makes reparations. The downside, however, is that the right to food is far less developed in these regional bodies. The ECHR makes no formal reference to ESCRs, and the right to food is not explicitly mentioned in the European Social Charter. This is because the ECHR primarily frames human rights violations within CP rights. The ECtHR as a result has little to no case law on the right to food.

On the other hand, the Inter-American and African human rights systems are far more proactive with regards to the right to food. In the IACtHR's case of *Yakye Axa*,<sup>45</sup> Judge Ramon Fogel determined that the right to food is inherent in the right to life, and drew from the ACHR, the CESCRs GC12 as well as the Additional Protocol to the American Convention on Human Rights.<sup>46</sup> Article 12(1) of which states that 'everyone has the right to adequate nutrition which guarantees the possibility of enjoying the highest level of physical, emotional and intellectual development.'<sup>47</sup> Whilst this can be useful in identifying the IACHRs stance on the right to food, there is little reference beyond this in situations where violations could occur in armed conflict, *Yakye Axa* concerned indigenous rights. There are a few examples given by the AComHPR which imply the role of the right to food as existing within a broader sense. In *SERAC*,<sup>48</sup> the court determined that the right to food was implicit in the Articles 4, 16 and 22 of the African Charter on Human and Peoples' Rights, outlining life, health and economic development respectively.<sup>49</sup> In response to the Darfur crisis, the AComHPR determined in *Sudan Human Rights Organisation & Centre on Housing Rights and Evictions*,<sup>50</sup> livestock and farms, as well as poisoning of water sources' amounted to violations of Article 16.<sup>51</sup> Likewise, the AComHPR found that the State Party was not acting diligently to protect the lives of the civilian population and were thus in violation of Article 4.<sup>52</sup>

As we have demonstrated above, the right to food in armed conflict is complicated by a lack of consistency between the different monitoring bodies. This is a consequence of the human

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<sup>45</sup> *Yakye Axa Indigenous Community v Paraguay. Merits, Reparations and Costs* Inter-American Court of Human Rights Series C no 125 (17 June 2005).

<sup>46</sup> *Yakye Axa Indigenous Community v Paraguay. Merits, Reparations and Costs*, partly consenting and partly dissenting opinion of Judge Ramon Fogel, Inter-American Court of Human Rights Series C no 125 (17 June 2005) para 28.

<sup>47</sup> Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador) (Adopted 17 November 1988) OAS Treaty Series 69, Article 12(1).

<sup>48</sup> Social and Economic Rights Action Center (SERAC) and Center for Economic and Social Rights (CESR) v Nigeria AComHPR 155/96 (27 October 2001)

<sup>49</sup> *ibid* para 64; see also African Charter on Human and Peoples' Rights (adopted 27 June 1981, entered into force 21 October 1986) (1982) 21 ILM 58 (African Charter) Articles 16 and 22.

<sup>50</sup> *Sudan Human Rights Organisation & Centre on Housing Rights and Evictions (COHRE) v Sudan Comm AComHPR 279/03-296/05* (27 May 2009)

<sup>51</sup> *ibid* para 212.

<sup>52</sup> *ibid* para 168.

rights mechanisms not clarifying the scope of the right to food. We will then expand the right to food through other principles of international law. This will be explored in the following subsections.

### 3.2 Does a right to food exist within the right to life and freedom from torture?

The right to food is often considered interdependent with and essential to the realization of other human rights such as the right to life and freedom from torture.<sup>53</sup> It will be demonstrated how the interrelatedness of those rights broadens the notion of the right to food during armed conflict and places it beyond the scope of ESCRs and into CPRs. Framing the right to food within these two principles emphasises its unique dynamic and provides wider protection for victims.

#### *3.2.1 The right to life*

The right to food is the only right that qualifies as ‘fundamental’ under both ICESCR and ICCPR.<sup>54</sup> While the former explicitly contains the right to food, the latter implies there is a right to food as part of the right to life under Article 6 of ICCPR.<sup>55</sup> The right to life is ‘a supreme human right’,<sup>56</sup> but the reality is that lives are lost during armed conflict. The question is whether IHRL can prevent arbitrary deprivation of life. Systematic attack against a civilian population resulting into murders are considered to be crimes against humanity, and coupled with wilful killing, a war crime.<sup>57</sup> The reason why the right to life and right to food are intrinsically connected is because when people are not able to feed themselves, they often face the risk of death by starvation, malnutrition or resulting illnesses. Consequently, it can be assumed that lack of food, puts human lives at stake.<sup>58</sup>

One issue with the right to life is that there is limited jurisprudence from judicial bodies that have applied a broader interpretation of the right to food.<sup>59</sup> The Supreme Court of India was the first judicial body to consider the right to food from the perspective of the right to life. Since

<sup>53</sup> Mathilde Cohen, ‘The Right to Food’ *Max Planck Encyclopedia of Comparative Constitutional Law* (OUP 2017) 1.

<sup>54</sup> Food and Agriculture Organization of the United Nations, ‘The Right to Food Guidelines: Information Papers and Case Studies’ <[http://www.fao.org/docs/eims/upload/214344/rfg\\_eng\\_draft\\_03.pdf](http://www.fao.org/docs/eims/upload/214344/rfg_eng_draft_03.pdf)> accessed 27 March 2019 104; CCPR ‘General Comment no.36: Article 6 (the Right to Life)’ (30 November 2018) CCPR/C/GC/36 para 26; this supplants the previous identification of malnutrition in ‘General Comment no.6: Article 6 (the Right to life) (30 April 1982) para 5.

<sup>55</sup> FAO (n 54) 104.

<sup>56</sup> CCPR, General Comment 6, HRI/GEN/1/Rev.9 (Vol I) 176, para 1.

<sup>57</sup> Nigel Rodley, ‘Integrity of the Person’ in Daniel Moeckli, Sangeeta Shah and Sandesh Sivakumaran (eds), *International Human Rights Law Third Edition* (OUP 2018) 176.

<sup>58</sup> OHCHR (n 8) 5.

<sup>59</sup> Irene Galtung, ‘A Jus Cogens Approach’ 9 <[https://www.transcend.org/tup/files/TUP18-part2-Irene-Galtung\\_A-Jus-Cogens-Approach.pdf](https://www.transcend.org/tup/files/TUP18-part2-Irene-Galtung_A-Jus-Cogens-Approach.pdf)> accessed 27 March 2019.

the landmark decision in the *PUCL*<sup>60</sup> case in 2001, jurisprudence on the right to life includes the right to food.<sup>61</sup> The Court found that poor government management of food supplies resulted in multiple civilian deaths from starvation.<sup>62</sup> It was concluded that State powers should interpret the right to food in light of the right to life, providing it with justiciability under the Constitution of India.<sup>63</sup> Moreover, in the Irish case of *G v An Bord Uchtala*,<sup>64</sup> courts referred to the right to life as necessarily implying ‘the right to maintain life at a proper human standard in matters of food, clothing and habitation.’<sup>65</sup>

During emergencies, and in particular during armed conflict, States must not only refrain from deliberate killings, but also take appropriate measures to ensure that food is reaching the hands of those in need.<sup>66</sup> However, there has been a significant gap connecting the right to life and the right to food in armed conflict. Whilst the GCs of certain treaty bodies have implicated that there is a connection, these are predominantly aspirational and there is an absence of a specific legal stance on the issue.

### 3.2.2 Freedom from torture

Unlike the notion of the right to life, prohibition of torture is a rule of *jus cogens*, making it explicitly unlawful under any circumstances. According to Article 1 of UNCAT, torture is ‘the intentional infliction of severe pain or suffering, for a specific purpose (such as obtaining information, punishment, or mentally breaking the civilian population) by, or with the consent of, State authorities.’<sup>67</sup> In order to qualify as torture, Courts have suggested that certain criteria must be met, namely, acts or omissions at the extreme end of the pain-inducing spectrum, whether mental or physical suffering is inflicted.<sup>68</sup> It has been estimated that deprivation of food is used as a torture technique in numerous countries - China, Turkmenistan, Sudan, Russia, Zimbabwe, Mozambique, and Palestine,<sup>69</sup> where political and military tensions exist.<sup>70</sup> In relation to the right to food during armed conflict in particular, there are two possible angles

<sup>60</sup> People’s Union for Civil Liberties (PUCL) v. Union of India & Others (1997) 1 SCC 301.

<sup>61</sup> Christophe Golay and Melik Ozden, ‘The Right to Food: A Fundamental Human Right Affirmed by the United Nations and Recognised in Regional Treaties and Numerous National Constitutions’ 19-20 <<https://www.cetim.ch/legacy/en/documents/Br-alim-A4-an.pdf>> accessed 25 March 2019.

<sup>62</sup> Bantekas and Oette (n 1) 402.

<sup>63</sup> Shareen Hertel, ‘Hungry for Justice: Social Mobilization of the Right to Food in India’ (2014) 46(1) Development and Change 72, 75.

<sup>64</sup> *G v An Bord Uchtala* (1980) IR 32.

<sup>65</sup> *ibid* para 69.

<sup>66</sup> Irene Galtung (n 59).

<sup>67</sup> United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (adopted 10 December 1984, entry into force 26 June 1987) UNTS 1465, Article 1.

<sup>68</sup> Gail Miller, ‘Defining Torture’ (18 March 2005) <<https://cardozo.yu.edu/sites/default/files/Defining%20Torture.pdf>> accessed 24 April 2019.

<sup>69</sup> Danish Institute against Torture, ‘Deprivation of Food’ <<https://dignity.dk/en/dignitys-work/health-team/torture-methods/deprivation-of-food/>> accessed 26 April 2019

<sup>70</sup> *Ibid.*



to look at, namely, access to food in aerial bombardment in civilian areas and prison or detainee conditions. They will both be discussed in turn.

De Waal has made the connection between airstrikes in Yemen targeting civilian areas and food supplies and the right to food.<sup>71</sup> He has pinned down certain military actions to deliberate political atrocities and active infliction of genocide.<sup>72</sup> According to Martha Mundy's report on Yemen, the Saudi coalition often targets food production and distribution areas with the purpose of destroying agriculture, fisheries and food supplies.<sup>73</sup> In an unofficial interview, a Saudi diplomat responded that 'once we control them, we will feed them' - suggesting intentional starvation of civilian population in Yemen with the final aim of breaking locals' spirit and subjecting them to Saudi power.<sup>74</sup> Unfortunately, efforts by NGOs such as OXFAM, Amnesty International and ILO have not been enough to lessen the implications of that phenomenon. In their study from September 2016, MAI's estimates have suggested that such strikes are on the rise indicating already established pattern contrary to international law.<sup>75</sup> We can therefore see that there is a strong bond between civilian starvation and torture techniques.

The law of armed conflict also concerns the treatment of prisoners and detainees. In Botswana, for example, the High Court noted the existence of the right to food through the constitutional right to be free from torture.<sup>76</sup> Furthermore, the UN Committee against Torture identified that a lack of adequate nutrition or limited access to food in prison conditions can amount to inhuman and degrading treatment.<sup>77</sup> It does not matter if the violation is persistent or incidental, it can still lead to deficits in cognitive functions, impairing short-term memory and triggering depression.<sup>78</sup> Denial of food and water, including being given rotten and fouled food,<sup>79</sup> is considered to be violating the right to food under IHRL.<sup>80</sup> In the *Pacheco*<sup>81</sup> case, the

<sup>71</sup> Jane Ferguson, 'Is Intentional Starvation the Future of War' *The New Yorker* (11 July 2018) <<https://www.newyorker.com/news/news-desk/is-yemen-intentional-starvation-the-future-of-war>> accessed 8 March 2019.

<sup>72</sup> de Waal (n 4) 1528.

<sup>73</sup> Martha Mundy, 'The Strategies of the Coalition in the Yemen War: Aerial Bombardment and Food War' <<https://sites.tufts.edu/wpf/files/2018/10/Strategies-of-Coalition-in-Yemen-War-Final-20181005-1.pdf>> accessed 16 April 2019.

<sup>74</sup> *ibid.*

<sup>75</sup> *ibid.*

<sup>76</sup> *Sesana Sethboga and Others v Attorney General* (12 December 2006) Misca No 52 of 2002, ILDC 665 (BW 2006).

<sup>77</sup> UNCAT Consideration of Reports Submitted by States Parties under Article 19 of the Convention (10 November 2004) CAT/C/CR/33/1, para 6 (h).

<sup>78</sup> Danish Institute against Torture (n 69)

<sup>79</sup> *Rezmives and Others v Romania App no 61467/12* (ECtHR 25 April 2017)

<sup>80</sup> Medical Foundation for the Care of Victims of Torture, 'Freedom from Torture Submission to the UN Human Rights Committee - List of Issues for the 5th Periodic Review of Sri Lanka' 5 <[https://www.freedomfromtorture.org/sites/default/files/documents/freedom\\_from\\_torture\\_submission\\_for\\_sri\\_lanka\\_list\\_of\\_issues\\_20.12.13.pdf](https://www.freedomfromtorture.org/sites/default/files/documents/freedom_from_torture_submission_for_sri_lanka_list_of_issues_20.12.13.pdf)> accessed 27 March 2019.

<sup>81</sup> *Pacheco Teruel et al. v Honduras* IACtHR Series C No 241 (27 April 2012).

IACtHR decided that States must ensure that detention conditions are satisfactory, namely, provide access to ventilation, bedding, food, clothing and medical care.<sup>82</sup> Finally, it was further reiterated in *Ashurov*<sup>83</sup> that there is an established link between torture and the right to food in prison conditions during armed conflict.<sup>84</sup>

With the evidence gathered above, elements of CPRs should be taken into consideration with regards to starvation. It is not enough to frame the right to food simply falling within the scope of ESCRs, but also connecting it to other principles of international law.

### 3.3. Does the right to food exist under customary international law?

As we have seen above, ICESCR is one of the most widespread legal documents addressing the right to food, nonetheless, some States have abstained from ratifying it. Meron noted that ‘when it comes to human rights or humanitarian conventions, the gap between the norms stated and the actual practice tends to be especially wide.’<sup>85</sup> To an extent, this issue can be alleviated by locating the right to food within the framework of customary international law.<sup>86</sup> Under Rule 53 of the ICRC Customary IHL Database, starvation as a method of warfare is strictly prohibited.<sup>87</sup> The Rule has also been incorporated in various military manuals irrespective of the international or non-international nature of the conflict itself.<sup>88</sup> Unlike other international law principles, States cannot choose to reverse or derogate from custom either by treaty or practice.<sup>89</sup> These customary laws are so fundamental that they are considered to be binding on all nations regardless of whether a State has consented.<sup>90</sup> According to ICJ in the *North Sea Shelf*<sup>91</sup> case, customary international law appears as a result of general and consistent practice of States when followed from a sense of legal obligation (*opinio juris*).<sup>92</sup>

According to Elver:

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<sup>82</sup> *ibid* paras 37-41.

<sup>83</sup> *Ashurov v. Tajikistan* (20 March 2007) UN Doc CCPR/C/89/D/1348/2005.

<sup>84</sup> *ibid* para 2.2 and 6.2.

<sup>85</sup> Theodor Meron, ‘The Geneva Conventions as Customary Law’ (1987) 81(2) *American Journal of International Law* 348, 363.

<sup>86</sup> Smita Narula, ‘The Right to Food: Holding Global Actors Accountable under International Law’ (2006) 44(3) *Columbia Journal of Transnational Law* 691, 753.

<sup>87</sup> ICRC Customary IHL Database, ‘Rule 53: Starvation as a Method of Warfare’ <[https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1\\_rul\\_rule53](https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule53)> accessed 26 March 2019

<sup>88</sup> Mark Lattimer, ‘Can Incidental Starvation of Civilians be Lawful under IHL?’ <<https://www.ejiltalk.org/can-incident-starvation-of-civilians-be-lawful-under-ihl/>> accessed 26 March 2019

<sup>89</sup> Sevrine Knuchel, ‘State Immunity and the Promise of Jus Cogens’ (2011) 9 *Northwestern Journal of International Human Rights* 149, 153.

<sup>90</sup> David Weissbrodt and Cheryl Heilman, ‘Defining Torture and Cruel, Inhuman and Degrading Treatment’ (2011) 29 *Law and Inequality Journal* 343, 362.

<sup>91</sup> *North Sea Shelf Cases (Federal Republic of Germany v Denmark)*, (*Federal Republic of Germany v The Netherlands*) [1969] ICJ Rep 3, para 77

<sup>92</sup> Weissbrodt (n 90) 361.

Freedom from hunger is accepted as part of customary international law [...] it is an international crime to intentionally block access to food, food aid, and to destroy production of food. Such acts as crimes against humanity, or war crimes.<sup>93</sup>

Although evidence suggests that certain legal norms can fall under customary international law, the two prerequisite components for it are difficult to establish.<sup>94</sup> In reality, the legal academia has not written much about the right to food under customary law and consequently the information that can be found is limited in scope.<sup>95</sup> As a statement of general application, treaties and normative instruments are typically used to demonstrate the existence of customary laws. Under Article 38(1) of the ICJ Statute, there are multiple sources of international law: treaties, custom, general principles of law and judicial decisions and teachings of the 'most highly qualified publicists of the various nations.'<sup>96</sup> The right to food during armed conflict has evolved into customary international law through different sources of international law. These will be outlined in the following paragraphs.

First, some legal scholars adopt the view that the as the right to food features in the UDHR it is a customary law by virtue.<sup>97</sup> Despite not being a legally binding document, there is strong evidence indicating that UDHR promotes values and morals that are inherent to the legal structure of modern society and that those values are intended to be universally observed.<sup>98</sup> The right to food also exists in numerous Human Rights Council Resolutions which add greater authoritative weight to the argument of customary international law.<sup>99</sup> UDHR is also a foundational document giving rise to ICESCR and ICCPR which are both legally binding instruments.<sup>100</sup> The fact that Article 11(1) of ICESCR addresses the right to food in particular, demonstrates intention on the part of the lawmakers to be bound by the norm. Thus, supporting the view that the right to food can qualify as a customary law reiterated in Article 25 of UDHR.

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<sup>93</sup> Hilal Elver, 'States must act now to fulfil famine victims' right to food' <<https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=22278&LangID=E>> accessed 16 March 2019.

<sup>94</sup> Christine Chinkin, 'Sources' in Daniel Moeckli, Sangeeta Shah and Sandesh Sivakumaran (eds), *International Human Rights Law Third Edition* (OUP 2018) 70-71.

<sup>95</sup> Narula (n 86) 69.

<sup>96</sup> Article 38(1) ICJ Statute.

<sup>97</sup> Anthony Paul III Kearns, 'The Right to Food Exists via Customary International Law' (1998) 22(1) *Suffolk Transnational Law Review* 223, 232.

<sup>98</sup> John Dugard, 'The Influence of the Universal Declaration as Law' (2009) 24(1) *Maryland Journal of International Law* 85.

<sup>99</sup> UN Human Rights Council Resolution on the Right to Food (27 March 2008) UN Doc A/HRC/7/14.

<sup>100</sup> Chinkin (n 94) 80.

Second, despite not being legally binding, UN Resolutions are seen as an important indicator of State practice. Depending on their content, they can also provide *opinio juris* for becoming a treaty or custom.<sup>101</sup> The fact that Resolutions have been pronounced by the UN, which is an authoritative and pluralistic body of law, gives them legitimacy to be consulted in case there is a gap in the legal order. Moreover, UN Resolutions have been used as means of interpretation of already existing treaty law. As a result, a resolution that has been adopted by consensus, containing normative language and offering follow-up procedures can be essential indicators for consent to be bound by the resolution as part of customary international law.<sup>102</sup> Of particular interest and importance are the UNGA Resolutions due to the fact that they can incorporate a range of views and actions from all State Parties.<sup>103</sup> These Resolutions have expanded the scope of IHRL and have provided aspirations and goals for State and non-State actors.<sup>104</sup>

In relation to the right to food during armed conflict, Resolution 57/226 reaffirms that 'food should not be used as an instrument of political or economic pressure.'<sup>105</sup> Moreover, the Resolution states that 'the right belongs to all individuals to access safe and nutritious food, consistent with the right to adequate food and the fundamental right of everyone to be free from hunger.'<sup>106</sup> Similar statements are made in Resolution 58/186 affirming the values in the previous Resolution.<sup>107</sup> To conclude, both documents demonstrate the willingness of government and monitoring bodies to implement existing rules and further strengthen values regulating the right to food during armed conflict. With reference to the obligation to refrain from endangering food security, the Resolutions aim to promote food stability on a larger scale.

Third, under Article 38(1)(d) of the ICJ Statute, certain reports, qualifying as 'teachings of the most highly qualified publicists', can be considered 'subsidiary means for the determination of rules of law' and consequently show evidence for international custom. Such works are often based on thorough research and well-founded analysis and try to bring up examples of State practice and *opinio juris*. Independent expert reports and commentaries usually attempt to establish that their consistency is enough for the founding of a new rule or custom. One such example are the Maastricht Guidelines.<sup>108</sup> These guidelines are a response to the critique that 'socioeconomic rights do not [provide] the guidance that [the] rule of law should.'<sup>109</sup> Based on

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<sup>101</sup> Narula (n 86) 73.

<sup>102</sup> Chinkin (n 94) 81.

<sup>103</sup> Narula (n 86) 74.

<sup>104</sup> Chinkin (n 94) 80.

<sup>105</sup> UNGA Resolution on the Right to Food (2002) UN Doc A/RES/57/226.

<sup>106</sup> *ibid* para 2.

<sup>107</sup> UNGA Resolution on the Human Rights and Mass Exoduses (2003) A/58/186.

<sup>108</sup> Ebenezer Durojaye, 'The Viability of the Maastricht Principles on Extraterritorial Obligations of States on Socioeconomic Rights in Advancing Socioeconomic Rights in Developing Countries' (2014) 5(15) *Mediterranean Journal of Social Sciences* 67.

<sup>109</sup> Paul O'Connell, 'The Death of Socio-Economic Rights' (2011) 74(4) *The Modern Law Review* 532, 533.

legal research conducted over extensive periods of time by experts in international law, these principles are built to aid the interpretation and implementation of ICESCR norms.<sup>110</sup> They seek a lasting solution to ongoing problems of misinterpretation and dysfunction of certain legal rules contained in ICESCR. Given the fact that the principles work together with a legally authoritative document and that they are intended to bind and clarify the existing law, the Maastricht Guidelines can be considered as source of customary law.

### 3.4 To what extent does right to food in armed conflict exist extraterritorially?

Giacca identified that one of the most controversial elements to the interplay between IHRL and IHL is the principle of extraterritoriality. Some have expressed the view that IHRL does not apply extraterritorially,<sup>111</sup> which suggests that States do not have IHRL obligations within the borders in other States during IACs.

Theoretically, human rights bodies should recognise that there is an extraterritorial scope to the right to food. Article 11(2) of ICESCR indicates that the duty holders to right to food are usually allocated to the home governments.<sup>112</sup> Yet there is no specific circumscription for States only holding duties within their own jurisdiction or territory.<sup>113</sup> Instead, Article 11(2) of ICESCR requests States to take steps both 'individually' and 'through international cooperation' to improve the production and equitable distribution of food worldwide.<sup>114</sup> This indicates that there is a progressive character to the extraterritorial right to food. The question which remains is whether these obligations also contain immediate protections.<sup>115</sup> In GC15, the CESCR insisted that States are required to respect the right to an adequate standard of living.<sup>116</sup> This was echoed by the former Special Rapporteur on the right to food, who also argued that States are required to respect, protect and fulfil the rights of people in other countries.<sup>117</sup> The extraterritoriality of ESCRs was further elaborated in the Maastricht Guidelines.<sup>118</sup> Interestingly, the Guidelines state that parties can be held accountable for acts

<sup>110</sup> Oliver de Shutter, Asbjorn Eide, Ashfaq Khalfan, Marcos Orellana, Margot Solomon and Ian Seiderman, 'Commentary to the Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights' (2012) 34(4) Human Rights Quarterly 1.

<sup>111</sup> Giacca (n 32) 165.

<sup>112</sup> Laura Niada, 'Hunger and International Law: The Far-Reaching Scope of the Human Right to Food' (2006) 22(1) Connecticut Journal of International Law 130, 153.

<sup>113</sup> *ibid*; see also Sarah Joseph and Sam Dipnall, 'Scope of Application' in Daniel Moeckli, Sangeeta Shah and Sandesh Sivakumaran (eds) *International Human Rights Law 3rd Edition* (OUP 2018) 126.

<sup>114</sup> ICESCR, Article 11(2); this is also echoed in General Comment 12.

<sup>115</sup> Sigrun Skogly, 'Extraterritoriality: rights without obligations?' in Joseph, Sarah and McBeth, Adam (eds) *Research Handbook on Human Rights Law* (Edward Elgar Publishing 2010) 75.

<sup>116</sup> CESCR General Comment No. 15: The Right to Water (20 January 2003) E/C.12/2002/11

<sup>117</sup> Jean Ziegler, 'The Right to Food: Report of the Special Rapporteur on the Right to Food' (24 January 2005) UN Doc E/CN.4/2005/47, para 48.

<sup>118</sup> Whilst the Maastricht Principles are not legally binding, the OHCHR has acknowledged that documents such as the Maastricht principles are significant as they can serve as guidance for human rights implementation; see

or omissions which have 'foreseeable effects on the enjoyment of economic, social and cultural rights, whether within or outside its territory'.<sup>119</sup>

Nonetheless, whilst extraterritoriality can be identified as existing in human rights law, this does not reflect the nature of State practice. One of the major obstacles to identifying a State committing extraterritorial violations is the question of jurisdiction. Traditionally, jurisdiction was defined by sovereign territory in international law.<sup>120</sup> Proponents of this view include the United States, who stated in its *travaux préparatoires* to the ICCPR that CP obligations should only apply to individuals within its own territory.<sup>121</sup> This would indicate that some States do not recognise their obligations towards the wellbeing of another State's individuals. Conversely, some States do consider themselves as having extraterritorial obligations, but only on their terms. Turkey stated in its ratification of ICESCR that it would only recognise the ESCR of countries with which it has 'diplomatic relations'.<sup>122</sup> Needless to say, States do not have a consensus on their extraterritorial obligations.<sup>123</sup> How do human rights bodies then challenge this notion?

Human rights bodies have taken a broad interpretation of the notion of jurisdiction. In the *Palestinian Wall Advisory Opinion*, the ICJ determined that whilst the majority of ICESCR rights are territorial, it cannot be excluded that covenant rights apply in situations where the State has 'effective control'.<sup>124</sup> However, this definition has been met with complications. For example, the ECtHR has interpreted effective control as requiring a physical presence. This can be found in the *Loizidou*<sup>125</sup> case, where the Court declared the admissibility of Turkish human rights violations in Northern Cyprus. With 30,000 military personnel occupying the region, it could be demonstrated that military activity had direct influence on the area.<sup>126</sup> Conversely, this physical presence proved to be problematic for attacks made by a party from outside of the territory. *Banković*<sup>127</sup> is cited as an example of this shortcoming. The ECtHR concluded that the destruction of a radio station during the Yugoslav wars was inadmissible

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OHCHR, 'international law' <<https://www.ohchr.org/EN/ProfessionalInterest/Pages/InternationalLaw.aspx>> accessed 17 April 2019.

<sup>119</sup> Maastricht Principles On Extraterritorial Obligations of States in the Area of Economic Social and Cultural Rights (2013) para 9(b).

<sup>120</sup> Cedric Ryngaert, 'The Concept of Jurisdiction in International Law' in Alexander Orakhelashvili (ed) *Research Handbook on Jurisdiction and Immunities in International Law* (Elgar 2015) 51.

<sup>121</sup> 'Compilation of the comments of Governments on the draft International Covenant on Human Rights and on the proposed additional articles: memorandum by the secretary general' (22 March 1950) E/CN.4/365

<sup>122</sup> 'Declarations and Reservations of ICESCR: Turkey' (UNTC) <[https://treaties.un.org/pages/viewdetails.aspx?chapter=4&lang=en&mtdsg\\_no=iv-3&src=treaty#EndDec](https://treaties.un.org/pages/viewdetails.aspx?chapter=4&lang=en&mtdsg_no=iv-3&src=treaty#EndDec)> accessed 17 April 2019.

<sup>123</sup> Giacca (n 32) 134.

<sup>124</sup> *Palestinian wall* (n 25) para 112.

<sup>125</sup> *Loizidou v Turkey app no. 15318/89* (ECtHR 18 December 1996)

<sup>126</sup> *ibid* paras 16 and 52.

<sup>127</sup> *Banković and others v Belgium and others App no. 52207/99* (ECtHR 12 December 2001)

because the attack came from a NATO aircraft. The claimants could not prove that the offending party had effective control over the area.<sup>128</sup> The definition of jurisdiction made by the ECtHR has some glaring issues. If a State Party attacks a source of food and justifies that there is a military benefit to attacking the supply, there is little accountability of extraterritorial human rights violations. Extraterritorial attacks with direct consequences on civilian suffering should be taken into greater consideration as a war crime. Milanovic proposed that a possible alternative to this is to not tie jurisdiction within the scope of territory, but to individuals being affected by a State actor.<sup>129</sup> This is not a perfect alternative, but it would substantively alter the perspective towards cases such as *Banković*.

Finally, it would be prudent to reiterate to States that human rights law applies at all times, and that they should regulate the conduct of their agents especially in other countries.

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<sup>128</sup> *ibid* para 75.

<sup>129</sup> Marko Milanovic, *Extraterritorial Application of Human Rights Treaties: Law, Principles, and Policy* (OUP 2011) 119.

## 4. The Scope of State Obligations

It is undeniable that in an armed conflict, there are significant challenges to sustaining human rights obligations. These obligations have been traditionally outlined by a tripartite terminology of the duties to respect, protect and fulfil.<sup>130</sup> However, these duties remain underexplored.<sup>131</sup> Doswald-Beck only identifies one violation in GC12, which is the denial of humanitarian assistance.<sup>132</sup> Considering that GC14 offers a more comprehensive outline of these duties through the right to health,<sup>133</sup> the obligations to the right to food should be expanded as well. As there is limited jurisprudence from complaints submitted to the CESCR through OP-ICESCR, we will contemplate fact-finding missions, NGO reports and Concluding Observations to States affected by armed conflict.

### 4.1 How can States respect the right to food?

The duty to respect the right to food requires Parties to not interfere or obstruct an individual accessing adequate nutrition.<sup>134</sup> As Doswald-Beck has indicated, the duty to respect applies to all rules that prohibit attacks on protected persons, objects and places.<sup>135</sup> Food being used to apply political or economic pressure of civilian populations should be considered as a violation of their ESCRs.<sup>136</sup> As reiterated by the Special Rapporteur, 'States have an obligation to refrain from interfering with individuals' enjoyment of their [...] right to food.'<sup>137</sup>

One example of a failure to respect the right to food in armed conflict is discriminatory food distribution. In its latest Concluding Observations of the Central African Republic, the CESCR were concerned by the government's strategies to provide access to food, water, accommodation and healthcare, which did not reach disabled persons.<sup>138</sup> Subsequently, they recommended the State Party to coordinate a strategy 'without delay [...] to guarantee respect for the human rights of displaced persons.'<sup>139</sup>

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<sup>130</sup> CESCR General Comment 12: The Right to Adequate Food (Article 11) (12 May 1995) E/C.12/1999/5 (General Comment 12) para 15.

<sup>131</sup> Manisuli Ssenyonjo 'Reflections on state obligations with respect to economic, social and cultural rights in international human rights law' (2011) 15(6) *The International Journal of Human Rights* 969, 971.

<sup>132</sup> Doswald-Beck, 480.

<sup>133</sup> CESCR General Comment 14: The Right to the Highest Attainable Standard of Health (Article 12) E/C.12/2000/4 paras 34-37.

<sup>134</sup> ESCR Net, 'Claiming ESCR at the United Nations: A manual on utilizing the OP-ICESCR in strategic litigation' (March 2014) (ESCR Manual) 13.

<sup>135</sup> Doswald-Beck 475.

<sup>136</sup> See General Comment 12 (n 39).

<sup>137</sup> Special Rapporteur Interim Report para 53.

<sup>138</sup> CESCR 'Concluding observations concerning the initial report of the Central African Republic' (4 May 2018) E/C.12/CAF/CO/1 para 11.

<sup>139</sup> *ibid* para 12.



What is less clear is whether the GC12 addresses a State Party failing to respect the right to food by mass starvation of civilians.<sup>140</sup> One such example which could apply is siege warfare. The Syrian crisis led to nearly 38% of the population being unable to meet the basic need for food.<sup>141</sup> The Syrian Government can hold some responsibility for this as it actively pursued a strategy of forcing surrender through starvation sieges.<sup>142</sup> Over 400,000 civilians have been estimated to have been subjected to these sieges, and are in a vulnerable situation.<sup>143</sup> In their fact-finding missions, the OHCHR and the Special Rapporteur on the Right to Food have acknowledged reports of Government forces actively destroying bakeries in besieged towns.<sup>144</sup> This is clearly a violation under IHL, where the targeting of objects necessary for the survival of the civilian is strictly prohibited.<sup>145</sup> Some States have refused to accept this prohibition if they deem tactics such as sieges necessary to attain a military objective. The United Kingdom, for example, considers starvation in sieges to be an incidental consequence and not a source of intent.<sup>146</sup> The problem with such arguments, however, is that it denies responsibility of how civilians in an enemy territory are treated.<sup>147</sup> Regardless of this, it fails to respect their right to food as denial of accessibility is the fundamental purpose of a siege.

Failing to respect the right to food could also be found in the UN's fact-finding mission on Kuwait. The Special Rapporteur identified two incidents that could be seen in violation to Article 11 ICESCR. The first being the Iraqi forces refusal to allow food to be taken into the Philippine Embassy<sup>148</sup> and insufficient nutrition for deportees to Iraq.<sup>149</sup> Whilst the Rapporteur identified that there was severe destruction of infrastructure and private property, he only framed this within IHL.<sup>150</sup> Doswald-Beck asserted that ICESCR could have been used in this

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<sup>140</sup> Doswald-Beck (n 10) 481.

<sup>141</sup> Human Appeal, 'Hunger as a Weapon of War: How Food Insecurity Has Exacerbated in Syria and Yemen' (15 March 2018) 14.

<sup>142</sup> Independent International Commission of Inquiry on the Syrian Arab Republic 'Sieges as a Weapon of War: Encircle, starve, surrender, evacuate' (26 May 2018) para 1.

<sup>143</sup> Martin Chulov, 'Starvation in Syria remains weapon of war despite partial ceasefire' (*Guardian*, 8 April 2016) <https://www.theguardian.com/world/2016/apr/08/starvation-in-syria-remains-weapon-of-war-despite-partial-ceasefire> accessed 15 March 2019.

<sup>144</sup> OHCHR 'Living under siege: The Syrian Arab republic' (February 2014) <<https://www.ohchr.org/en/countries/menaregion/pages/syindex.aspx>> accessed 29 March 2019, 8; Special Rapporteur Interim Report para 28.

<sup>145</sup> ICRC 'Customary IHL Database: Rules 53 and 54' <[https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1\\_rul](https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul)> accessed 30 April 2019.

<sup>146</sup> Ministry of Defence *Joint Service Manual on the Law of Armed Conflict* (2004) JSP 383, 5.27.2.

<sup>147</sup> Lattimer (n 88).

<sup>148</sup> ECOSOC, 'Report on the situation of human rights in Kuwait under Iraqi occupation prepared by Mr. Walter Kälin, Special Rapporteur of the Commission on Human Rights, in accordance with Commission resolution 1991/67' (16 January 1992) UN Doc E/CN.4/1992/26 (Kälin) para 222.

<sup>149</sup> *ibid* para 223.

<sup>150</sup> *ibid* para 234-235.

scenario.<sup>151</sup> Thus, it could be determined that the duty to respect the right to food applies in armed conflict, but it needs clearer definition.

#### 4.2 How can States protect the right to food?

The duty to protect requires States to maintain that other groups do not prevent human rights abuses against their citizens.<sup>152</sup> This has been interpreted to mean that States should prevent third parties from interfering with the enjoyment of rights.<sup>153</sup> Third parties are defined as ‘individuals, groups, corporations and other entities as well as agents acting under their authority.’<sup>154</sup> This duty to protect does not change in times of armed conflict.<sup>155</sup> In its Concluding Observations of the Democratic Republic of the Congo, the CESCR determined that, despite the armed conflict situation in the country, it was crucial that illegal exploitation of the natural resources by foreign companies was prevented by the government.<sup>156</sup> It was essential that the party ensured security in its territory and protected its civilians with the respect to the rule of law.<sup>157</sup>

Nonetheless, the definition of third parties including ‘other entities’ could also apply to any group including other States or non-State actors. The implications of this in the context of armed conflicts are compelling, as it would suggest that a State Party is required to protect access to the right to food to the best of their ability from enemy combatants. One demonstration of this could be found in the CESCR’s recent Concluding Observations on Cameroon. Terrorist attacks by Boko Haram in the far north, compounded with an internal conflict in the North-West and South-West regions have created a severe security crisis.<sup>158</sup> Food instability has occurred as a consequence of farmers being unable to go back to their homes.<sup>159</sup> The CESCR urged Cameroon to adopt a comprehensive strategy to ensure the right to adequate food and to combat hunger and chronic malnutrition, particularly in rural areas and the far north.<sup>160</sup> The CESCR indicated that the Cameroonian government had a

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<sup>151</sup> Doswald-Beck (n 10) 487.

<sup>152</sup> ESCR Manual (n 134) 14.

<sup>153</sup> General Comment 14 para 35; General Comment 15 para 23.

<sup>154</sup> General Comment 15 para 23.

<sup>155</sup> Eibe Reidel, ‘Economic, Social and Cultural Rights’ in Clapham, Andrew and Gaeta, Paola (eds) *The Oxford Handbook of International Law in Armed Conflict* (OUP 2014) 451-452.

<sup>156</sup> CESCR ‘Concluding observations of the Committee on Economic, Social and Cultural Rights: Democratic Republic of the Congo’ (16 December 2009) E/C.12/COD/CO/4 para 6.

<sup>157</sup> *ibid.*

<sup>158</sup> FAO ‘Monitoring food security in countries with conflict situations: A joint FAO/WFP update for the United Nations Security Council’ (January 2019) CA3113EN/1/01.19, 14.

<sup>159</sup> Henry Kam Kah, ‘Boko Haram is Losing, but so is Food Production’: *Conflict and Food Insecurity in Nigeria and Cameroon* (2017) 42(3) *Africa Development* 177, 183-186.

<sup>160</sup> CESCR ‘Concluding observations concerning the fourth quarterly report period of Cameroon’ (8 March 2019) E/C.12/CMR/CO/4, para 51.

positive obligation to implement measures that would combat the issues caused by Boko Haram.

One of the primary issues with the duty to protect, however, is that it reflects the State-centric nature of international law.<sup>161</sup> States are more reluctant to claim responsibility for their actions if they are unable to control a territory affected by insurgent forces. Conversely, many States would refuse to acknowledge these non-State groups through the paradigm of international law, amid concerns it provides them with legitimacy.<sup>162</sup> The duty to protect demonstrates the limitations of IHRL as it frames the right to food as being solely the responsibility of States, as opposed to non-State armed groups in armed conflict. A further appreciation that non-State actors commit human rights offences could strengthen the right to food, although challenges may arise as to how this accountability is implemented.

#### 4.3 How can States fulfil the right to food?

The duty to fulfil is divided by the obligations to States to facilitate and provide ESCRs.<sup>163</sup> It can be inferred that during an armed conflict, human rights bodies acknowledge that State Parties are limited by their availability of resources to meet their duties to human rights obligations. Despite this, it remains important for States to seek any possible means to supply food to those most affected by food deprivation. Likewise, State Parties must prove that they have taken a comprehensive strategy to meet ESCR standards.<sup>164</sup>

The situation in Afghanistan serves as a profound example of the importance of long-term rights protection in armed conflicts. In 1990, the Afghanistan State report to the CESCR claimed that they were unable to fulfil their full realization of ESCRs due to the 'ongoing civil strife'.<sup>165</sup> The CESCR took the approach that it had to do everything in its power to fulfil its obligation to the ICESCR.<sup>166</sup> This was followed in the next reporting cycle in 2010. In its Concluding Observations, the CESCR, whilst aware that Afghanistan had made some progress in policies, were concerned that the government had failed to effectively implement them. It emphasised that 'an inter-ministerial policy and strategy [...] to address food security

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<sup>161</sup> Robert McCorquodale, 'Non-state actors and international human rights law' in Sarah Joseph and Adam McBeth (eds) *Research Handbook on International Human Rights Law* (Elgar 2010) 97.

<sup>162</sup> Sandesh Sivakumaran, *The Law of Non-International Armed Conflict* (OUP 2012) 3.

<sup>163</sup> ESCR Manual 14.

<sup>164</sup> *ibid.*

<sup>165</sup> Reidel (n 155) 449.

<sup>166</sup> *ibid.*

and malnutrition [...] should be envisaged.<sup>167</sup> In both reporting cycles, the CESCR did not draw the connection between ESCRs violations and the armed conflict except in very specific situations relating to the treatment of women and children.<sup>168</sup> Whilst this can be an indication of the Committee not differentiating between peacetime and armed conflict, it remains ambiguous.

Nonetheless, one of primary issues with the duty to fulfil is that it is more difficult to determine whether the State has breached IHRL in armed conflict within this obligation. As Giacca noted, it is a difficult line to draw between inability and unwillingness.<sup>169</sup> A State could always fall back on the defence that they cannot realise the full enjoyment of rights through policy. Regardless of this, States can still be found in violation if they fall under the minimum core of human rights, as indicated by Kälin in his report on Kuwait.<sup>170</sup>

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<sup>167</sup> CESCR 'Consideration of reports submitted by States parties under articles 16 and 17 of the Covenant: Concluding observations of the Committee on Economic Social and Cultural Rights' (7 June 2010) *E/C.12/AFG/CO/2-4*, para 37.

<sup>168</sup> Reidel (n 155) 449.

<sup>169</sup> Giacca (n 32) 45.

<sup>170</sup> Kälin (n 148) para 52.

## 5. Conclusion

From what we have identified throughout this memorandum, how human rights bodies address the right to food in armed conflict needs further clarification. From our research, we believe that recent developments demonstrate a complementarity between IHL and IHRL.<sup>171</sup> This parallelism and growing convergence can enrich the two disciplines and allow each to contribute to the other.<sup>172</sup> The right to food can thus receive greater protection due to its broader recognition by the two branches.

However, the right to food is not simply a single right in of itself, it exists in multiple forms throughout various principles of IHRL. As we have demonstrated, the right to food formally exists through IHRL mechanisms, however right to food violations during armed conflict can also be perceived from different angles. From our research we propose the following recommendations to GRC:

First, whilst it is feasible to submit a complaint of the right to food under OP-ICESCR, there are significant challenges in the context of armed conflict. For one, OP-ICESCR is limited by its relative infancy to other protocols as well as a lack of ratifying parties. GRC could advise litigants to consider those States which are party to OP-ICESCR for right to food violations during armed conflict, but further expansion into other mechanisms could be useful. Second, the right to food in armed conflict shouldn't be solely understood as an ESCR. Utilising food as a weapon through means such as forced starvation cannot be explored without appreciating the right to life and freedom from torture. Thus, applying the right to food within the framework of a CPR can widen protection by bringing complaints against perpetrators to other bodies, such as the CCPR and CAT, as well as regional bodies including the ECtHR, IACtHR and ACTHPR. Third, the right to food is fundamental in customary international law. It is beneficial to recognise the right to food in this way because some States have not taken any action to ratify human rights treaties, appreciating the right to food in this context expands consideration for litigations against parties during armed conflict. The right to food also applies extraterritorially, but when identifying who is accountable, litigants should be mindful of the complications human rights bodies have had considering jurisdiction. Finally, litigants can use the human rights obligations of respect, protect and fulfil to understand the various forms of violations that can be employed during armed conflict, the concluding observations of CESCR

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<sup>171</sup> Daniel Bethlehem, Sandesh Sivakumaran, Noam Lubell and Philip Leach, 'Classification of Conflicts: The Way Forward' 10  
<<https://www.chathamhouse.org/sites/default/files/public/Research/International%20Law/011012summary.pdf>>  
accessed 25 April 2019.

<sup>172</sup> Meron (n 31) 266.

can aid in framing how they have already been applied. Nonetheless, the scope remains limited and focused on certain aspects.<sup>173</sup> This is something which GRC can consider.

Word Count: 6486

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<sup>173</sup> Reidel (n 155) 449.

## **Bibliography**

### Primary Sources

#### UN General Comments

CCPR General Comment no.6: Article 6 (the Right to life) (30 April 1982)

– – General Comment No. 31: on Article 2 of the Covenant: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant (26 May 2004) CCPR/C/21/Rev.1/Add.13

– – General Comment no.36: Article 6 (the Right to Life) (30 November 2018) CCPR/C/GC/36 para 26

CESCR General Comment 3: The Nature of States Parties' Obligations (Art. 2, Para. 1, of the Covenant) (14 December 1990) E/1991/23

– – General Comment 12: The Right to Adequate Food (Article 11) (12 May 1995) E/C.12/1999/5

– – General Comment 14: The Right to the Highest Attainable Standard of Health (Article 12) E/C.12/2000/4

– – General Comment 15: The Right to Water (20 January 2003) E/C.12/2002/11

#### Concluding Observations

CESCR Concluding observations concerning the initial report of the Central African Republic' (4 May 2018) E/C.12/CAF/CO/1

– – Concluding observations concerning the fourth quarterly report period of Cameroon' (8 March 2019) E/C.12/CMR/CO/4

– – Consideration of reports submitted by States parties under Articles 16 and 17 of the Covenant: Concluding observations of the Committee on Economic Social and Cultural Rights' (7 June 2010) E/C.12/AFG/CO/2-4

– – Concluding observations of the Committee on Economic, Social and Cultural Rights: Colombia' (6 December 2001) E/C.12/1/Add.74

– – Concluding Observations: Israel, UN Doc E/C.12/1/Add.90 (23 May 2003)

#### OAU documents

'Resolution on the Right to Food and Food Insecurity in Africa' (2017) ACHPR/Res. 374 (LX) 2017

#### Other Reports and Law manuals

Declarations and Reservations of ICESCR (UNTC)  
<[https://treaties.un.org/pages/viewdetails.aspx?chapter=4&lang=en&mtdsg\\_no=iv-3&src=treaty#EndDec](https://treaties.un.org/pages/viewdetails.aspx?chapter=4&lang=en&mtdsg_no=iv-3&src=treaty#EndDec)>

ECOSOC 'Report on the situation of human rights in Kuwait under Iraqi occupation prepared by Mr. Walter Kälin, Special Rapporteur of the Commission on Human Rights, in accordance with Commission resolution 1991/67' (16 January 1992) UN Doc E/CN.4/1992/26 (Kälin)

ESCR Net, 'Claiming ESCR at the United Nations: A manual on utilizing the OP-ICESCR in strategic litigation' (March 2014)

European Union Guidelines on Promoting Compliance with International Humanitarian Law [2005] OJ C327/04

Human Appeal 'Hunger as a Weapon of War: How Food Insecurity Has Exacerbated in Syria and Yemen' (15 March 2018)

Independent International Commission of Inquiry on the Syrian Arab Republic 'Sieges as a Weapon of War: Encircle, starve, surrender, evacuate' (26 May 2018)

Maastricht Principles On Extraterritorial Obligations of States in the Area of Economic Social and Cultural Rights (2013)

Ministry of Defence *Joint Service Manual on the Law of Armed Conflict* (2004) JSP 383

UNCAT Consideration of Reports Submitted by States Parties under Article 19 of the Convention (10 November 2004) CAT/C/CR/33/1

UNGA 'Interim report of the Special Rapporteur on the right to food' (21 July 2017) A/72/188

– – UNGA Resolution on the Right to Food (2002) UN Doc A/RES/57/226

– – Resolution on the Human Rights and Mass Exoduses (2003) A/58/186



– – Report of the UN Special Rapporteur on summary and arbitrary executions, E/CN.4/1983/16 (31 January 1983)

UN Human Rights Council Resolution on the Right to Food (27 March 2008) UN Doc A/HRC/7/14

Ziegler J, 'The Right to Food: Report of the Special Rapporteur on the Right to Food' (24 January 2005) UN Doc E/CN.4/2005/47

## Secondary Sources

### Books

Alston P and Tomasevski K, *The Right to Food* (Springer 1984)

Bantekas I, and Oette L, *International Human Rights Law and Practice* (Cambridge University Press 2013)

Bouchet-Saulnier F, *The Practical Guide to Humanitarian Law* (Rowman & Littlefield 2002)

Chinkin C, 'Sources' in Moeckli D, Shah S and Sivakumaran S (eds) *International Human Rights Law Third Edition* (OUP 2018)

Cohen M, 'The Right to Food' Max Planck Encyclopedia of Comparative Constitutional Law (2017)

Dipnall S, 'Scope of Application' in Moeckli D, Shah S, and Sivakumaran S (eds) *International Human Rights Law 3rd Edition* (OUP 2018)

Doswald-Beck L, *Human Rights in Times of Conflict and Terrorism* (OUP 2011)

Giacca G, *Economic, Social and Cultural Rights in Armed Conflict* (OUP 2014)

Joseph S, and McBeth A, *Research Handbook on International Human Rights Law* (Elgar 2010)

Marks S and Clapham A, *International Human Rights Lexicon* (OUP 2005)

McCorquodale R, 'Non-state actors and international human rights law' in Sarah Joseph and Adam McBeth (eds) *Research Handbook on International Human Rights Law* (Elgar 2010)

Milanovic M, *Extraterritorial Application of Human Rights Treaties: Law, Principles, and Policy* (OUP 2011)

Rodley N, 'Integrity of the Person' in Moeckli D, Shah S and Sivakumaran S (eds) *International Human Rights Law Third Edition* (OUP 2018)

Ryngaert C 'The Concept of Jurisdiction in International Law' in Orakhelashvili A (ed) *Research Handbook on Jurisdiction and Immunities in International Law* (Elgar 2015)

Sivakumaran S 'International Humanitarian Law' in Moeckli D, Shah S, and Sivakumaran S (eds) *International Human Rights Law 3rd Edition* (OUP 2018)

Ssenyonjo M, 'Economic Social and Cultural Rights: An Examination of State Obligations' in Joseph S and McBeth A (eds), *Research Handbook on International Human Rights Law* (Elgar 2010)

Reidel E, 'Economic, Social and Cultural Rights' in Clapham A and Gaeta P (eds) *The Oxford Handbook of International Law in Armed Conflict*' (OUP 2014)

Saul S, Kinley D and Mowbray J, *The International Covenant on Economic Social and Cultural Rights: Commentary, Cases and Materials* (OUP 2014)

Sivakumaran S, *The Law of Non-International Armed Conflict* (OUP 2012)

Skogly S, 'Extraterritoriality: rights without obligations?' in Joseph, Sarah and McBeth, Adam (eds) *Research Handbook on Human Rights Law* (Elgar 2010)

Tsagourias N and Morrison A, *International Humanitarian Law: Cases, Materials and Commentary* (Cambridge 2018)

#### Journal articles

Beenher L, Berti B and Jackson M, 'The Strategic Logic of Sieges in Counterinsurgencies' (2017) 47(2) *Parameters* 77

Birchfield L and Corsi J, 'The Right to Life is the Right to Food: *People's Union for Civil Liberties v. Union of India and Others*' (2010) 17(3) *Human Rights Brief* 16

Bonner D, 'Ireland v UK' (1978) 27(4) *The International and Comparative Law Quarterly* 297

de Shutter O, Eide A, Khalfan A, Orellana M, Solomon M, and Seiderman I, 'Commentary to the Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights' (2012) 34(4) *HRQ* 1

de Waal A, 'Ending Mass Atrocities and Ending Famine' (2015) 386(10003) *The Lancet Medical Journal* 1528

Dinstein Y, 'Belligerent Occupation and Human Rights' (1978) 8(1) *Israel Yearbook of Human Rights* 142

Dugard J, 'The Influence of the Universal Declaration as Law' (2009) 24(1) *Maryland Journal of International Law* 85

Doswald-Beck L and Vite S, 'International Humanitarian Law and Human Rights Law' (1993) 1(1) *International Review of the Red Cross* 94

Durojaye E, 'The Viability of the Maastricht Principles on Extraterritorial Obligations of States on Socioeconomic Rights in Advancing Socioeconomic Rights in Developing Countries' (2014) 5(15) *Mediterranean Journal of Social Sciences* 67

Hertel S, 'Hungry for Justice: Social Mobilization of the Right to Food in India' (2014) 46(1) *Development and Change* 72

Kam Kah H, 'Boko Haram is Losing, but so is Food Production': Conflict and Food Insecurity in Nigeria and Cameroon' (2017) 42(3) *Africa Development* 177

Kearns III AP, 'The Right to Food Exists via Customary International Law' (1998) 22(1) *Suffolk Transnational Law Review* 223

Knuchel S, 'State Immunity and the Promise of Jus Cogens' (2011) 9 *Northwestern Journal of International Human Rights* 149

Meron T, 'The Geneva Conventions as Customary Law' (1987) 81(2) *American Journal of International Law* 348

– – ‘The Humanization of Humanitarian Law’ (2000) 94(2) *The American Journal of International Law* 239

Mottershaw E, ‘Economic, Social and Cultural Rights in Armed Conflict: International Human Rights Law and International Humanitarian Law’ (2008) 12 *IJHR* 449

Narula S, ‘The Right to Food: Holding Global Actors Accountable under International Law’ (2006) 44(3) *Columbia Journal of Transnational Law* 691

Niada L, ‘Hunger and International Law: The Far-Reaching Scope of the Human Right to Food’ (2006) 22(1) *Connecticut Journal of International Law* 130

O’Connell P, ‘The Death of SocioEconomic Rights’ (2011) 74(4) *The Modern Law Review* 532

Qureshi W, ‘Untangling the Complicated Relationship between International Humanitarian Law and International Human Rights Law in Armed Conflict’ (2018) 6(1) *Penn State Journal of Law & International Affairs* 204

Sassoli M and Olson L, ‘The relationship between international humanitarian law and human rights law where it matters: admissible killing and internment of fighters in non-international armed conflicts’ (2008) 90(871) *International Review of Red Cross* 600

Ssenyonjo M, ‘Reflections on state obligations with respect to economic, social and cultural rights in international human rights law’ (2011) 15(6) *The International Journal of Human Rights* 969

Simmons B, ‘Should States Ratify Protocol? Process and Consequences of the Optional Protocol of the ICESCR’ (2009) 27(1) *Nordic Journal of Human Rights* 64

Stajcic N, ‘Understanding Culture: Food as Means of Communication’ (2013) 28(1) *Hemispheres. Studies on Cultures and Societies* 5

Szpak A, ‘International Humanitarian Law and International Human Rights Law before ICTY - Contradictory or Complementary Legal Systems?’ (2014) *Conference of the International Journal of Arts & Sciences* 303

Weissbrodt D and Heilman C, 'Defining Torture and Cruel, Inhuman and Degrading Treatment' (2011) 29 *Law and Inequality Journal* 343

### Online Sources

Bethlehem D, Sivakumaran D, Lubell N and Leach P, 'Classification of Conflicts: The Way Forward' 10  
<<https://www.chathamhouse.org/sites/default/files/public/Research/International%20Law/011012summary.pdf>>

Danish Institute against Torture, 'Dignity Factsheet Collection: Deprivation of Food' <[https://dignity.dk/wp-content/uploads/fact\\_sheet\\_deprivation\\_of\\_food\\_9.pdf](https://dignity.dk/wp-content/uploads/fact_sheet_deprivation_of_food_9.pdf)>

Ferguson J, 'Is Intentional Starvation the Future of War' *The New Yorker* (11 July 2018) <<https://www.newyorker.com/news/news-desk/is-yemen-intentional-starvation-the-future-of-war>>

Chulov M, 'Starvation in Syria remains weapon of war despite partial ceasefire' (*Guardian*, 8 April 2016) <https://www.theguardian.com/world/2016/apr/08/starvation-in-syria-remains-weapon-of-war-despite-partial-ceasefire>>

Council of Europe, 'Prohibition of Torture: Article 3' <<https://www.coe.int/en/web/echr-toolkit/interdiction-de-la-torture>>

Elver H, 'States must act now to fulfil famine victims' right to food' <<https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=22278&LangID=E>>

Food Security Information Network 'Global Report on Food crises 2018' <<http://www.fsincop.net/resource-centre/detail/en/c/1110460/>>

Food and Agriculture Organization of the United Nations, 'The Right to Food Guidelines: Information Papers and Case Studies' <[http://www.fao.org/docs/eims/upload/214344/rtfg\\_eng\\_draft\\_03.pdf](http://www.fao.org/docs/eims/upload/214344/rtfg_eng_draft_03.pdf)>

Food and Agriculture Organisation of the United Nations, 'The Right to Food within the International Framework of Human Rights and Country Constitutions' 4 <<http://www.fao.org/3/a-i3448e.pdf>>

Food and Agriculture Organisation of the United Nations, 'The State of Food Security and Nutrition in the World: Building Climate Resilience for Food Security and Nutrition' 2 <<http://www.fao.org/3/i9553en/i9553en.pdf>>

Galtung I, 'A Jus Cogens Approach' 9 <[https://www.transcend.org/tup/files/TUP18-part2-Irene-Galtung\\_A-Jus-Cogens-Approach.pdf](https://www.transcend.org/tup/files/TUP18-part2-Irene-Galtung_A-Jus-Cogens-Approach.pdf)>

Golay C, and Ozden M, 'The Right to Food: A Fundamental Human Right Affirmed by the United Nations and Recognised in Regional Treaties and Numerous National Constitutions' 19-20 <<https://www.cetim.ch/legacy/en/documents/Br-alim-A4-an.pdf>>

ICRC Customary IHL Database, 'Rule 53: Starvation as a Method of Warfare' <[https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1\\_rul\\_rule53](https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule53)>

– – 'Customary IHL Database: Rules 53 and 54' <[https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1\\_rul](https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul)>

Lattimer M, 'Can Incidental Starvation of Civilians be Lawful under IHL?' (EJIL Talk! March 26 2019) <<https://www.ejiltalk.org/can-incident-starvation-of-civilians-be-lawful-under-ihl/>>

Medical Foundation for the Care of Victims of Torture, 'Freedom from Torture Submission to the UN Human Rights Committee - List of Issues for the 5th Periodic Review of Sri Lanka' 5 <[https://www.freedomfromtorture.org/sites/default/files/documents/freedom\\_from\\_torture\\_submission\\_for\\_sri\\_lanka\\_list\\_of\\_issues\\_20.12.13.pdf](https://www.freedomfromtorture.org/sites/default/files/documents/freedom_from_torture_submission_for_sri_lanka_list_of_issues_20.12.13.pdf)>

Miller G, 'Defining Torture' (18 March 2005) <<https://cardozo.yu.edu/sites/default/files/Defining%20Torture.pdf>>

Mundy M, 'The Strategies of the Coalition in the Yemen War: Aerial Bombardment and Food War' <<https://sites.tufts.edu/wpf/files/2018/10/Strategies-of-Coalition-in-Yemen-War-Final-20181005-1.pdf>>

Office of the High Commissioner for Human Rights 'Living under siege: The Syrian Arab republic' (February 2014)  
<<https://www.ohchr.org/en/countries/menaregion/pages/syindex.aspx>>

Office of the High Commissioner for Human Rights, 'The Right to Adequate Food: Factsheet 34.' <<https://www.ohchr.org/Documents/Publications/FactSheet34en.pdf>>

UN Statistics Division, 'Goal 2: End hunger, achieve food security and improved nutrition and promote sustainable agriculture' <<https://unstats.un.org/sdgs/report/2016/goal-02/>>

World Hunger Education Service '2018 World Hunger and Poverty Facts and Statistics' (WHES, 2018) <<https://www.worldhunger.org/world-hunger-and-poverty-facts-and-statistics/?fbclid=IwAR3A98NTBIH9BZpqofG-c7L1U4hhKYVi-iy-RoqJ4OkOzhYpSkZslXvIcEs>>