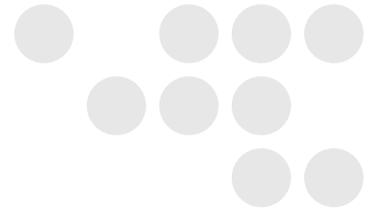


WEBINAR REPORT / INCLUSIVE CITIZENSHIP PROJECT 2021

Starvation as a method of war affecting vulnerable communities in Syria and Yemen

Editors: Cecilie Hellestveit and Sareta Ashraph





Preface

In recent years, the proliferation of civil war in the Middle East and Africa have brought back an ancient scourge of war – the use of starvation of the civilian population as a method of combat. In 2018 the Security Council unanimously passed resolution 2417, strongly condemning starvation of civilians as a method of war. A year later the states parties to the Rome Statute of the International Criminal Court voted to extend deliberate starvation of civilians as a war crime to apply to non-international armed conflicts. These acts reflect increasing concerns about intentional use of starvation in ongoing civil wars. They also testify to a shared willingness to act in order to prevent and punish what is now recognized as an international crime. In the same vein the Nobel Peace Committee awarded the 2020 Nobel Peace Prize to the World Food Programme (WFP), emphasizing the organization’s “strong contribution towards mobilising UN Member States to combat the use of hunger as a weapon of war”.¹

Examples of starvation and intentional deprivation of access to food and humanitarian aid have been rife in the wars in Syria and Yemen. Year-long sieges, blockades, destruction of food-producing infrastructure and denial of access to humanitarian aid have all contributed to bringing starvation of civilian populations back as a deliberate strategy of war in armed conflict. In Syria and Yemen, starvation has served as a way to leverage civilian suffering in order to pressure enemy parties into concessions or to alter conflict dynamics for military or political gain.

In connection with the Nobel Prize awarding ceremony in Oslo in December 2020 and in preparation for Norway taking up a seat at the UN Security Council in January 2021, the Inclusive Citizenship project at the Norwegian Centre for Holocaust and Minority Studies (HL-senteret) and the Norwegian Academy of International Law (NAIL) co-organized an international expert webinar on starvation as a weapon of war on Monday 7 December 2020. The webinar brought together international experts to discuss the return of starvation as a method of war, using Yemen and Syria as case studies and bases for comparison. The objective was to compare how deliberate strategies to starve and otherwise deprive civilians of food disproportionately affected and continues to affect vulnerable communities in Syria and Yemen. The webinar also addresses measures available in terms of prevention, enforcement and accountability in order to bring this scourge of war to a halt. This report gives a recount of the expert-interventions and discussions of the seminar.

The Inclusive Citizenship-project (www.inclusive-citizenship.no) is managed by Ingvill Plesner at HL-senteret and supported financially by the Norwegian Ministry of Foreign Affairs, which enabled the organization of the webinar. This support also helped finance the editing of this webinar report.

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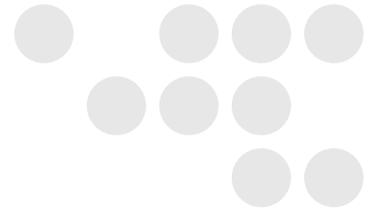


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Executive summary

The seminar focused on the conflicts in Syria and Yemen as case-studies and bases for comparison, examining how starvation as a method of war disproportionately targets or affects vulnerable communities, and discussing measures for prevention, enforcement and accountability for starvation as a method of war.

While starvation is a common effect of war, the issue at hand is starvation as an instrument of war. Whereas starvation of enemy belligerents during hostilities is not prohibited, starvation of the civilian population as a method of combat is a war crime.

There is also a faultline between interstate conflict and civil wars. In interstate conflict there is an explicit treaty-based duty to allow humanitarians access to civilian populations. The corresponding duty in non-international law is implicit and weaker. Absent orders from the UN Security Council, any humanitarian access must hence be negotiated. Despite the recent inclusion of starvation as a war crime in such conflicts into the Rome Statute, the protection under international law remains weaker in the type of conflicts that we have in Syria and Yemen.

“While starvation is a common effect of war, the issue at hand is starvation as an instrument of war”

While Yemen was more vulnerable to food shortages than Syria due to pre-war policies, both countries experienced a combination of sieges, blockades, sanction regimes and deprivation of objects indispensable for survival. Martha Mundy explained how a combination of pre-war conditions and war-dynamics had contributed to the dire situation in Yemen. Charles Garraway drew attention to three specific areas to explain the starvation taking place in Yemen: Restrictions by the Saudi-led coalition in support of UN sanctions, the direct effect of hostilities through air and ground attacks, and lastly, the blocking of humanitarian aid and economic measures. However, these facts do not automatically mean that starvation is the result of a deliberate strategy.

Sareta Ashraph highlighted how starvation developed during the Syrian civil war. In the surrender and starve strategy, starvation came in a basket of other violations, making it hard to single out starvation among a myriad of causes of death. However, the most vulnerable were impacted first by starvation. Ashraph also noted that the sieges have been a remarkably effective strategy for the Syrian regime.

Charles Garraway warned against taking the law as a guide to the dire situation in Yemen, because the law does not really capture the essence of the suffering in this situation. All participants agreed that the pattern of starvation in both Syria and Yemen could not be reduced to sectarian motives. They also echoed the statement by the chair of the GEE, Kamel Jendoubi, that “civilians in Yemen are not starving, they are being starved by the parties to the conflict.”

Starvation in Yemen is a result of a combination of access restrictions operated by the Saudi-led coalition, ostensibly in support of UN sanctions, the non-military actions of the parties themselves on the ground, and a direct effect of the hostilities. The air and ground attacks impacting on such things as markets, irrigation and water supply systems and agriculture reduces access of the population to essential commodities, and the indiscriminate use of landmines has also affected access to agricultural land.

Sareta Ashraph emphasized the fact that despite international outcry, there was no action taken to break the sieges. The sieges forced surrender, leaving civilians in Syria dead and injured in their wake. “Sieges were a remarkably effective strategy for the government in the conflict in Syria. I have little doubt that this fact will be remembered by the Syrian and other regimes in the future”, Ashraph noted. Leila Zimmerman explained how the legal case for use of starvation in Yarmouk is being built. Difficulties in proving the intentional element, has led to broadening the perspective beyond the war crime of starvation.

Martha Mundy drew attention to how the UN “gave a green light” to the policy in resolution 2216 (2015), but also to what she calls degradation of citizenship through war, also in Western countries.

Charles Garraway concluded that inadequacies of the law in this case is essentially an argument in favor of bringing the war in Yemen to a halt. The desperate need of the Yemeni people now is peace.

Overview of the issues

Starvation as a method of war and vulnerable communities in Syria and Yemen

Cecilie Hellestveit

The topic at hand is starvation in situations of armed conflict. It is not starvation as an effect of war, but rather starvation as an instrument of war. More specifically, it concerns deliberate strategies to leverage access to food and means of subsistence as a method of war. While the moral underpinnings are simple and straightforward, facts, laws and avenues for enforcement linked to starvation as a weapon of war are complex. Two distinctions are important to keep in mind in this regard.

First, starvation of enemy belligerents must be kept separate from starvation of the civilian population. During conduct of hostilities, the destruction or obstruction of food supply lines to the enemy belligerent is a common method of warfare. It is not prohibited to use sieges or blockades to weaken enemy belligerents or to pressure them into concessions or surrender. Food and other chains of subsistence are not specifically protected in an armed conflict, and may be attacked.² Importantly, conduct aimed at the starvation of enemy belligerents during conduct of hostilities is not prohibited.

However, the civilian population supporting the enemy belligerents or living under the control of the enemy belligerents enjoys protection from direct attack. The civilian population cannot be directly targeted with means or methods of war.³ In addition, the civilian population must be protected against the general effects of hostilities.⁴ It is strictly prohibited under international law to deprive the civilian population of means of subsistence necessary for their survival in order to weaken or pressure the enemy belligerent into concessions or surrender.⁵ Starvation of the civilian population as a method of warfare is a war crime.⁶

Second, starvation in civil war is more complex than starvation in interstate armed conflict.

Starvation of the civilian population is a war crime irrespective of the type of armed conflict. Nevertheless, the topic is considerably more complex in terms of facts and law in civil war and internationalized civil war than in interstate armed conflict. When two or more states engage each other in hostile military operations,

it is prohibited to starve the civilian population of the enemy state.⁷ The prohibition on starvation of the civilian population is accompanied by a corresponding treaty right for neutral third-party states or impartial humanitarian organizations to access the civilian population with means of subsistence without adverse distinction.⁸ A belligerent state can deny such access only temporarily and for lawful purposes. In interstate armed conflicts there is a right for impartial third parties to access civilian populations with humanitarian assistance.

If we switch to civil wars, food and humanitarian aid serve a different function. The prerogative to control and distribute humanitarian aid on a state's territory remains with the formal sovereign government, and control over these resources is an integral part of the conflict. Legitimacy among the civilian population relies on the ability to provide services, and belligerents will seek to serve their own while depriving the enemy of the same ability. Although starvation of civilians as a method of combat is prohibited, food, subsistence and humanitarian aid are nevertheless integral parts of the armed conflict in civil war.⁹ Consequently, there is no corresponding treaty-based duty to provide access to impartial third parties in these conflicts. Humanitarian organizations are therefore forced to negotiate access. The UN Security Council alone has the authority to demand access in these situations.

In Syria, starvation in besieged areas began in 2013. In Yemen, a combination of destruction of infrastructure, blockades and economic warfare have caused widespread starvation since 2017. The situations in Syria and Yemen share a set of similarities. Both countries are experiencing long-lasting civil wars. In Syria, peaceful protests called for the fall of the Assad government but were met with a brutal crackdown by the state, and the country descended into civil war. In the early years of the conflict, there were significant defections from the Syrian armed forces into opposition armed groups, then operating under the umbrella of the Free Syrian Army.

In Yemen, the conflict escalated when a political effort to change the regime caused divisions in the armed forces, political parties and state entities, and groups linked to different political factions vied for control throughout the country. Both conflicts are marked by considerable foreign military involvement on all sides, and radical jihadi groups are taking advantage of the multi-faceted wars. An important commonality in relation to starvation is that both Syria and Yemen are home to wars of attrition with high levels of belligerent fragmentation, and extensive international belligerent participation.

Case studies: Yemen and Syria

The subject of this session was starvation as a deliberate war strategy and how it affects vulnerable groups in Syria and Yemen, with an emphasis on similarities and differences.

Martha Mundy – Yemen

The concept of starvation in this context is taken to mean an active process entailing the wilful denial and destruction of objects indispensable for survival (OIS). With respect to the nature of the war in Yemen, it is not generally understood to what extent Saudi Arabia, largely backed by the major Western powers (US, UK and France), has overseen security policy in Yemen for decades, notably throughout the rule of the late Ali Abdullah Saleh (in power from 1978 to 2012, killed in 2017). It should be remembered that Saudi Arabia was involved in armed conflict with the Houthi movement in 2009 as part of a series of major conflicts between them and Saleh, Muhsin al-Ahmar (presently Hadi's vice-president) as field commander, in the early years of this century. Hence, in the transition from Saleh's rule from 2011 through the GCC initiative with the UN Special Representative Ben Omar, these same powers suspended the Yemeni constitution at the stroke of a pen and sought to manage the political transition. In September 2014, this guided process was subverted as the Houthi movement (with support from large parts of the army) took over control in the city of Sanaa.

The international character of the current war in Yemen is important to keep in mind. For the first time in decades, the direction of the political path of Yemen slipped from control – not of the UN Special Representative who oversaw the drafting and signing of the Peace and National Partnership accord in September 2014 – but of Saudi Arabia, the GCC and Western patrons more widely. Essentially this marked the beginning of a march to war on the part of those outside forces that led to the commencement of aerial bombardment in late March 2015 and the dismissal/resignation of the UN Special Envoy Ben Omar. It is this long and continuing involvement by outside powers in Yemen's political affairs that makes the conflict an international one. The legal spin put upon it in UNSC resolution 2216 of April 2015 – which was never seriously revised – has cast the conflict as one between the Hadi government and the 'Houthi rebels' in Sanaa.

This also played a role in the history of agricultural and social policy that led to Yemen being highly dependent on food imports. The country already had high levels of malnutrition and poor health provision before the war, and thus was vulnerable to starvation due to blockade and economic war. Major modern famines (compare Utsa Patnaik on the Bengal famine) derive from people being unable to purchase food as opposed to mere shortages of food. Thus, the economic war, consisting of blockades of the seaports and airports, relocation of the central bank to Aden, and non-payment of salaries to state employees from autumn 2016, is itself known to be starving an increasingly destitute population.

By contrast, the war in Syria also involves outside forces from Turkey and the West backing rebels against the government in Damascus, but Syria had not been subject to the same long-term dictation by the Gulf or the West in terms of internal political agendas before the war. Thus, the period of neo-liberal agrarian policies in Syria, now increasingly reversed by Damascus, lasted only one decade, and not four decades as was the case in Yemen. As explained in the 2018 report of the Commission of Inquiry on the Syrian Arab Republic, sieges of particular towns and sub-regions (by the government or by the rebels) have been a bigger issue during the war than country-wide starvation. Regarding the reference in the report to rebels besieging 'shiite' towns; to avoid confusion with the Twelver Shiites of Iran and southern Lebanon, it is better to identify them as Alawite (the historical political judgement of the late Musa Sadr notwithstanding). Likewise, in the case of Yemen, the Zaidis (and the Houthis as a Zaidi movement) are not Twelver Shiites (to be put in the same basket as Iran and southern Lebanon); they are from the 4th Imam Zaid with a jurisprudence very distinct from that of the Twelvers.



To return to the comparison with Syria, in the case of Yemen, one has a parallel with the sieges in Syria in the city of Ta'izz where the city is divided – and blockades on OIS are enforced – by both sides.

In the Yemen war, displacement has been primarily internal – save for the Yemeni elite who moved to Cairo, Amman or Canada – and not to neighboring countries, as is the case in Syria. Saudi Arabia is controlling the borders of Yemen, and the multiple reports by Lise Grande, UN Secretary General Resident Coordinator for Yemen, and of the UN Office for the Coordination of Humanitarian Affairs, predict that Yemen could see the first major famine of the 21st century. The UNOCHA report of November 2020 writes of roughly a quarter of million deaths, over half of which are due to deprivation of OIS and not to military causes directly. The blind eye turned to the continuing restrictions imposed by Saudi Arabia on ships entering the major port of al-Hudayda in spite of clearance by the UNVIM (UN verification and inspection mechanism) – itself only established a year into the war – again reflects the West's protection of its GCC clients. This is an issue which the Group of Eminent Experts has logged in its reports to no effect.

At present Syria is under ever-increasing economic pressure, not only because of restrictions on the flow of grain from the Kurdish zone and the American-controlled zone in the Jazira, representing the bread basket of Syria, but also because of the collapse of the Lebanese banks. In early November the president stated that Syrian businessmen held between USD 20 and 42 billion to cover imports into Syria, none of which they can access. Thus, food insecurity is likely to increase through economic means on a scale that is unprecedented in the country's history.

In Yemen, ships are being detained for several months. Consequently, the merchants and the Yemen National Oil Company who own the cargo/goods are charged penalties by the vessel carriers for this delay. The coalition is using these detained vessels as bargaining chips and releasing a few at a time, depending on negotiations or in retaliation for attacks by Ansar Allah / the Houthis. Last June, 22 ships carrying fuel were detained, now they are down to 11. The penalty charge for these 11 vessels is approximately USD 30 million.

Charles Garraway

I am honored to be invited to take part in this webinar today and to pay tribute to the work of the World Food Programme, whose work I had the privilege of seeing first-hand during a visit to Yemen. Indeed, the Group of Eminent Experts had the pleasure of sampling their hospitality during a stay on one of their ships in Aden harbor, followed by a voyage across to Djibouti.

First, I must make a disclaimer. It is now a year since I had to resign as a member of the Group of Eminent Experts although I have obviously kept in touch with Yemen and with the Group itself. We all became close friends. However, I no longer have the close contact with the situation that I would have if I had continued to be a member. It follows that I cannot speak for the Group, and my remarks are therefore made in a personal capacity.

“Inadequacies of the law in this case is essentially an argument in favor of bringing the war in Yemen to a halt. The desperate need of the Yemeni people now is peace.”

One of the key purposes of this webinar is to look at “how deliberate strategies of starvation disproportionately target or affect vulnerable communities”. Yemen may be an example of how fact and law are uneasy bedfellows. On the law, I will be looking at international humanitarian law and international criminal law. Human rights law may offer greater possibilities but fewer methods of enforcement. I will be dividing my presentation in two in accordance with the program. First I will be looking at what is happening and second I will try to apply the law to those facts in order to look at a way forward.

First the facts. Is there starvation? The answer to that is clearly yes, as numerous UN and other studies have revealed. I have witnessed it myself on my own visit to Yemen. Whilst I won't go into statistics – they are too depressingly well known – we do need to clarify what we mean by “starvation”. I take a broad view here. We are talking about more than food and water. We are talking about all objects indispensable to the survival of the civilian population. This will include medicines and – particularly at the present time – access to vaccinations.

Is the starvation a consequence of the armed conflict? Again, I think there can only be one answer here. Yemen, though a poor country, was capable of preventing starvation without the conflict, even if it might have

needed foreign assistance to do so. The conflict has directly contributed to the situation.

Why is starvation happening? Here the situation is more complex as there are many factors. I would divide them into three specific areas.

First, there are the access restrictions operated by the Saudi-led coalition, ostensibly in support of UN sanctions. I include in this the closure of air hubs, particularly Sana'a airport. This has made it almost impossible for those in the north in urgent need of medical treatment that is unavailable in Yemen to leave the country. The delays to shipping caused by these restrictions have led to a dramatic rise in costs to add to the insurance difficulties, so that there is a large reduction in the number of ships even attempting to reach Yemen. In addition, there are the siege-like tactics adopted by the Houthis, particularly in relation to Taizz.

Second, there is the direct effect of the hostilities. By this I mean air and ground attacks impacting on such things as markets, irrigation and water supply systems and agriculture generally. Health services have been badly affected too. The destruction of the offloading cranes at Hudaydah in August 2015 had an obvious impact on supplies. Fishing too has been impacted by attacks on fishing boats in the Red Sea. In effect, it matters not whether these attacks deliberately target these objects or whether the damage is the result of attacks on military objectives.

The simple fact is that the damage has been caused and the effect has been that the population's access to essential commodities has been even further reduced.

The indiscriminate use by the Houthis of landmines has also affected access to agricultural land.

Third, there are the non-military actions of the parties themselves on the ground. There have been extensive allegations, including by the World Food Programme itself, that the Houthis are delaying and diverting aid – but this is only one area of concern. Questions have been raised in respect of the government of Yemen in relation to delays in the granting of visas and access for humanitarian personnel.

Even where food is available, it often is economically out of reach of those in need. The destruction of the economy both by the conflict and by the movement of the Central Bank to Aden with the failure to pay salaries to many state employees is a key factor here. Currency depreciation and rampant inflation have followed. One report even went so far as to say: “Many of the limiting economic and logistical factors are driven not so much by the violent nature of the war but by political decisions being made by parties to the conflict.” (CRP, 2019, para.800).

Is all this preventable? Of course. All parties to the conflict must bear responsibility for this humanitarian tragedy. As Kamel Jendoubi, the Chair of the Group of Eminent Experts, said to the Security Council on 3 December, “Civilians in Yemen are not starving, they are being starved by the parties to the conflict.” A person dealing in logic would now argue that, if there is preventable starvation and the parties are not taking the necessary steps, this must mean that there is a deliberate strategy of starvation. But here we must turn to examine the law, and that will be for the next section.



Sareta Ashraph - Syria

I served as the legal analyst on the Commission of Inquiry on the Syrian Arab Republic from 2012 until the end of 2016. Since that time, I've remained actively involved in case-building efforts directed towards achieving accountability for crimes committed in Syria. I am speaking today in my personal capacity.

I wanted to talk about the use of starvation as a weapon of war in Syria. Starvation has been used since the beginning of the conflict. Technically speaking, it was in use even prior to the armed conflict which began in about February 2012 following just under a year of civil unrest. During the unrest, we saw small-scale instances of sieges, of deprivation of food, in Rif Damascus, but these tended to be relatively short-lived.

The “surrender or starve” strategy used by the Syrian government really came to the fore in the summer of 2012 and continued into 2013. In 2013 the Syrian government imposed what would become the longest siege in recent history in Eastern Ghouta in Rif Damascus. It would last five years before armed groups in Eastern Ghouta surrendered.

During that time, the civilian population were not only starved but also suffered indiscriminate bombardments and a chemical weapons attack (in August 2013). In many ways, the experience of civilians besieged in Eastern Ghouta – though perhaps less remarked upon than the crimes and violations of IHL seen in, for example Aleppo – put the idea of a rules-based international order into question.

“Sieges were a remarkably effective strategy for the government in the conflict in Syria. I have little doubt that this fact will be remembered by the Syrian and other regimes in the future”

We then witnessed the use of sieges across Aleppo and in Homs, and areas such as Yarmouk and Madaya (both in Rif Damascus). Physicians for Human Rights, in a 2016 report, stated that 65 people had died of malnutrition and starvation in Madaya between June 2015, when the siege started, and July 2016. In relation to the Madaya siege imposed by the Syrian government, there was significant advocacy around starvation, with Ban Ki-Moon, then UN Secretary General stating unequivocally “Let me be clear, the use of starvation as a weapon of war is a war crime”.

Then US Secretary of State John Kerry, who was involved in the Geneva peace negotiations, was very blunt: “People are dying; children are suffering not as an accident of war, but as the consequence of an intentional tactic – surrender or starve – and that tactic is directly contrary to the law of war.”

We do not know the numbers; there has never been accurate counting of the Syrians who died due to starvation. The reason is that it is quite hard to pick out that from a myriad of other causes of death, particularly inside the besieged areas where it was very difficult for information to seep out and nearly impossible (if not entirely impossible) for any monitors to get in. What we do know is that – at least with regard to the “surrender or starve” strategy, largely employed by the Syrian government – starvation came in a basket of other violations.

Areas besieged by the Syrian government were first encircled by government armed forces, often assisted by militia. The government then cut off medical and food supplies to those areas, while launching massive aerial bombardments, sometimes supplemented by ground-to-ground fire such as through the use of mortars.

Many of these bombardments appeared to be indiscriminate; others clearly targeted hospitals and medical infrastructure, water sources, food markets and so on – which is to say they targeted the infrastructure and services that make life possible.

It was a coordinated strategy to destroy the fabric of civilian life and destroy all that would allow people to survive, and in this way break down the support for the opposition. There was clearly also a punitive element: the attempt to break the civilian support for the opposition didn't work in the early years, and yet the sieges continued, sometimes for years on end.

What we saw was that the most vulnerable were impacted first. This included children, people with chronic illnesses and the elderly. As the sieges went on, we saw reports from Yarmouk, where we saw people being reduced to eating grass and cats. Survivors of these places recall living in what were effectively open-air prisons, eating leaves to survive.

It is also important to understand that, despite international outcry, there was no action taken to break the sieges. The sieges continued until they forced a surrender, leaving civilians dead and injured in their wake. They were a remarkably effective strategy for the government in the conflict. I have little doubt that this fact will be remembered by the Syrian and other regimes in the future.



Mariana Karkoutly

I will share with you some of the results from the analysis we have been working on over the past months in order to build criminal cases. Lately we have been focusing on starvation as a tool of war in different areas in Syria, particularly Eastern Damascus and Yarmouk, where most cases of starvation happened during the siege from 2013-2014.

Starvation was one of several tools of a strategy to deprive civilians of dignity, even before it deprived them of life. In Yarmouk, starvation was used against the civilian population. In addition to starvation, no medication was allowed in for a long time. Some needed to eat cats and dogs to survive. An imam had to legitimize eating cats and dogs in times of emergency through a fatwa. Yarmouk is not an agricultural area nor an industrial area, and there were no facilities for food production. There was also very little water.

The situation for pregnant women and infants was very difficult, leading to the deaths of young infants. Civilians were also forced to eat plants that were indigestible, and women were often forced to exchange sexual favors in order to receive food. People are still recovering from both the physical and psychological effects of the starvation.

There were a lot of different armed groups in Yarmouk, and also a lot of civilians. The siege had other consequences: ISIS started to give food to people who were being starved here, and this is how they managed to gain support.

In south Damascus people were being invited to leave the besieged area, and when they gathered at the exit points, massacres took place, notably at Ali Wahsh checkpoint. A number of people were also detained at these checkpoints. Starvation was only one of many methods used. The sieges were then combined with bombings and even the use of chemical weapons, such as occurred in Eastern Ghouta.

Whenever there was some food, the price of food was very high. So starvation was also a result of class, because some people could afford food while others could not. The lack of proper food also created secondary health issues, sometimes with a deadly outcome. The medication situation was dire, and people would resort to taking expired medication. Those who died from starvation in Yarmouk were primarily the elderly and young children. We found 130 persons who died from starvation in Yarmouk.

Q&A Session

Responding to a question from the chair concerning the primary victims of these strategies in Yemen, **Martha Mundy** said: I am not on the ground, and the UN does not do the kind of breakdown necessary for analyzing the details. The Houthis made considerable alliances and are currently moving towards Marib through alliances with local tribes. Yemen has a huge tradition for that kind of alliance. To my mind, there is this dream that by making the population miserable, they will rise against their rulers. It doesn't really happen in this way when the scale is this huge. The scale is ten times larger than Gaza. This is big. The victims are the rural poor. They cannot access the food as they do not have the means to pay.

To my understanding, it is not a particular group per se that has been targeted. The populations of the Northern Republic, including Tihama – poor rural populations – have been suffering massively because of the military operations along the coast. Yemen has historical differences. There was never any land reform in Tihama, and there has been economic exploitation. There is also a movement (Abna at-Tihama, Sons of Tihama) to try to fight against some of this. But these are historical, regional and cultural differences rather than ethnic or sectarian.

Sada has been so heavily bombed. All statistics suggested that these were also relatively poor areas prior to the war. What was the deeper level of these fights? What was driving the Houthis in this war against Saleh? It is important in Yemen that we do not ethnicize it in a simple way, as the West loves to do. It is a historical and class injustice that also gets played out when you have major impoverishment and starvation.

Charles Garraway: This is not just a binary conflict, but much deeper. There are secessionist movements in the South as well. Playing the devil's advocate here, we have made a huge jump from the facts to looking for strategies and motives behind the strategies. We first have to decide: is there a strategy? And then ask what is the strategy?

As a lawyer, I have to look more carefully at the law. That is a very difficult question to answer. If we take an analogy from targeting: just because something has been struck, it doesn't tell you that it was a target, or what the proportionality analysis was, or what the acceptable collateral damage under the law is, or what precautions in attack have been taken. As a lawyer, I am slightly worried about concentrating too much on the law here, because the fact is, it is the ordinary people of Yemen who are suffering. And it doesn't matter whether there is a strategy or in particular whether things are being targeted or not. The facts on the ground are such that this is a humanitarian

tragedy. And it is the ordinary people, not the persons sitting in the palaces, whether in Riyadh, Aden or Sanaa, but it is the ordinary people who are suffering here.

Mariana Karkoutly: People living in the besieged villages in Syria had sympathies towards the opposition. There were certain measures that were committed for sectarian motives, but this is not the overall general picture. Yarmouk was a Palestinian area, but eventually belonged to many different sects. The regime targeted areas that were considered sympathetic to the opposition as collective punishment. This was the plan from the beginning, speaking as a Syrian living there during that time.

In Damascus and Homs areas were besieged as collective punishment. In Yarmouk many civilians were not affiliated with the opposition but were still victims. A witness from Eastern Ghouta stated that ISIS started to become more powerful after the chemical attack in 2013. Civilians started losing hope. In Yarmouk many witnesses stated that ISIS members were eating and were able to go to the checkpoints and hospitals. That gives you the larger picture of a collective punishment directed against the civilians.

A question from Tobias Kohler, (NRC) concerned the situation when parties deny that there is a need for humanitarian relief schemes, and who in such situations have the onus to prove that there are needs.

Mariana Karkoutly noted that in fact humanitarian aid was sent to these areas, but covered only 10-20% of the actual need. Charles Garraway responded that although the framing of the question was legal, the answer is not legal, because this is where the law breaks down. The law is made by states, and states look after their own interests. Additional Protocol II, Article 18 on relief supplies says that they "shall be undertaken subject to the consent of the HCP concerned." We can say to our heart's content that that consent cannot be rationally denied but that is the strict law: consent is needed. Then you have to decide when the State is acting irrationally." You have to find a court or the UNSC to decide this. Then you are back into politics. And this is where law and politics collide.

Policy discussion

The subject of this session was how indications of starvation as a deliberate strategy may be effectively addressed through prevention, enforcement and accountability mechanisms.

Sareta Ashraph

The siege practice in Syria has been subject to a number of UN resolutions calling on parties to lift sieges, authorizing the delivery of aid, decrying the use of starvation particularly of civilians as a method of combat, in UN SR 2258. None of those have proven to be effective in relation to Syria. We have had a number of sieges in Syria in recent years that have gone unpunished, and that have been, honestly speaking, relatively successful as a method of warfare in that it became impossible for people to survive, and it ended up with a surrender to the government. The surrender allowed the civilian population to survive, although many did not.

Under IHL, sieges per se are not unlawful, but in urban areas it is very unlikely that the imposition of sieges can be both lawful and successful. You need to show that you are only besieging the military objectives inside the area, and not the civilians. In Syria, the government showed no compunction about the clear starvation of their own civilians. This is what happens when a culture of impunity takes root.

Leila Zimmermann

I will talk about opportunities for accountability, discussing avenues for criminal accountability for the use of starvation in Syria. I will explain how we have been building the case for use of starvation in Yarmouk, and highlighting the challenges we have been facing in trying to seek accountability for starvation. We identified the area with the highest number of deaths by starvation, and this was Yarmouk. Only a few of these deaths were caused directly by malnutrition alone, and death was normally caused in conjunction with other issues, such as access to medical care. It is difficult to kill somebody through deprivation of food alone. Those who died were often vulnerable, elderly, young children and those who were already weakened as they were not receiving appropriate care under siege.

We decided that it may be better to broaden the case to include the wilful imposition of conditions of life that cause death, including the denial of access to medical care, maybe in conjunction with the bombing of medical care structures and food and water sources.

Then there is the question of where to bring the case. There are actually very few avenues for criminal accountability for crimes committed in Syria. Syria is not a state party to the ICC; and attempts in the UNSC to refer the situation to the ICC have been vetoed. Consequently, cases are being tried under universal jurisdiction under national authorities, mostly in Germany, and mostly targeting low-level officials. But with the chemical



weapons case building in Germany, there may be scope for more ambitious cases, such as a case on the use of starvation. Some national jurisdictions have criminalized deliberate starvation of civilians as a war crime in both international and non-international armed conflicts, such as the Netherlands, Germany, France and Austria.

The deliberate use of starvation against civilians can also be prosecuted as crimes against humanity or war crimes. It may fall under murder, extermination or other inhuman acts – depending on the circumstances of the starvation. Murder or extermination may be the most realistic, but it would not reflect the systematic nature and scope. Another challenge for the crime against humanity of extermination would be to prove the mens rea, the mental element, showing that the Syrian authorities imposed living conditions in calculated awareness that such conditions would cause mass death in the ordinary course of events. The final challenge, although starvation and sieges and their effects may be easy to document, is attaching criminal responsibility to individuals. This is particularly so where the checkpoint enforcing the sieges controlled by militias is not officially part of the army. Hence the effective control by the regime over these groups must be proven. These groups are often designed with the precise intention to avoid such linkage and to create layers of ambiguity.

In terms of criminal accountability, it appears that universal jurisdiction is the main avenue for criminal accountability to punish the use of starvation in Syria, which exemplifies the absence of effective mechanisms to enforce and prevent conduct that are supposedly internationally prohibited, especially when the perpetrator is a state actor.

In practice, although universal jurisdiction is the most convenient legal avenue, it is one that may be limited in time, should national authorities eventually decide to normalize their relationship with the regime and stop taking on such cases, especially those relating to the criminal conduct committed in a widespread and /or systematic manner. It also fails if identified perpetrators simply avoid coming to these countries. That means that we need to be able to take advantage of the existing window while thinking ahead about potential future mechanism(s) which would be able to address such crimes.

It is especially important for more complex crimes like the deliberate use of starvation against civilians, because there are often those which significantly affect certain communities, for instance the sick, children, or pregnant women. Not addressing them reinforces existing issues of invisibility and impunity of certain conduct.

Martha Mundy

The role of the UN Security Council in Syria is very different from Yemen, given the line-up of forces in Syria vis-a-vis Yemen. I think that the UNSC basically gave the green light in Yemen in resolution 2216, and that a revision of this resolution would have a substantial impact. In the Syrian case, to the contrary, the Syrian government is a very different creature. But since I am not a legal expert, my remarks are more directed towards what the citizens and civil society may do.

In terms of instruments, there has been considerable mobilization by civil society, by organizations such as Amnesty International, Muwatina, etc. In the US there have also been major votes in Congress to stop arm sales, overridden by presidential veto. In the UK and France labor unions and civil society organizations have conducted campaign against the arms trade. But in all three countries, impunity continues and there is an inability to stop arms sales and technical support both to Saudi-Arabia and to the Emirates. At issue is degradation of citizenship through war. In Yemen, an ancient political culture, as Ben Omar said in his resignation speech, the Yemeni were negotiating among themselves until the bombardment started. But it also entails degradation of citizenship in the Western states.

I want to pose a rhetorical question: what does it mean when citizens and elected representatives cannot stop their governments (and their ruling classes) from selling arms and providing technical training and support to the belligerents? What does this mean for the citizens of the West? In terms of policy, but also for international criminal law. The prosecution of the Syrian leadership, Bashar al-Assad, or whoever of the heads of the 20 security forces of the regime, is one thing but we must also consider ways of holding Western leaders to account for their role in both these conflicts, but most egregiously in Yemen.

As an academic, I think that degradation is also at issue in terms of knowledge, where deceit, manipulation of the media, and suppression of information and knowledge, as shown by Andrew Feinstein's fat book *Shadow World – Inside the Global Arms Trade*, are all too common. I leave this to the lawyers; we academics can at best contribute to knowledge production, not prosecution.

Charles Garraway

I very much agree with what Martha has said. Although I am here as a lawyer, I will be the devil's advocate and point out the weaknesses of the law in these circumstances. I return to my main point - international law is made by states, and they look after their own interests. In the following I will look at international humanitarian law, and then move to international criminal law.

The first sentence of Article 14 of Additional Protocol II, which deals with non-international armed conflict, says: "Starvation of civilians as a method of combat is prohibited." It goes on to describe what cannot be attacked.

"It is therefore prohibited to attack, destroy, remove or render useless, for that purpose, objects indispensable to the survival of the civilian population, such as foodstuffs, agricultural areas for the production of foodstuffs, crops, livestock, drinking water installations and supplies and irrigation works."

It is often said that a treaty is a disagreement reduced to writing. I would suggest that the Additional Protocols were no exception. First let us look at what it does not say. It does not say that starvation of civilians is prohibited. It is starvation as a method of combat that is prohibited. So what is a method of combat? The official ICRC Commentary states "when it is used as a weapon to destroy the civilian population." But what does this in turn mean? I would suggest that it requires some form of deliberate policy. The fact of starvation in itself is not sufficient - there needs to be an extra element.

Now let us look at what international criminal law has to say, and I will examine the Rome Statute. The crime of starvation was not originally included in those crimes applicable in non-international armed conflict. Indeed, there was some disagreement even about its inclusion in international armed conflict because of concerns about the legitimate military tactics of blockade and siege. However, it has now been included and reads:

"Intentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including willfully impeding relief supplies."

It is a very restrictive provision. It requires intention to starve civilians as a method of warfare. This is strengthened by the second Element of the crime:

"The perpetrator intended to starve civilians as a method of warfare." Furthermore, the text limits how starvation can be applied by limiting it to the deprivation "of objects indispensable to their survival, including willfully impeding relief supplies."

When one applies this law to the facts of the Yemen situation, the problems start to arise. Whilst it is clear that starvation is happening and that no side is doing much to prevent it, is it being used as a "method of combat/warfare" and if so by whom? Does the Houthi obstruction of aid supplies amount to a method of warfare? I am not sure it does. It is even harder to see how some of the other contributory factors such as the economic elements can be seen as a "method of warfare". But what of the access restrictions imposed by the Saudi-led coalition? Even here, these are ostensibly to enforce the sanctions imposed by UN Security Council Resolution 2216. It could, and undoubtedly would, be argued that starvation is a secondary effect of this and not the primary aim. In the same way, in war one has to accept that there will be collateral damage within the principle of proportionality. But that whilst such damage may be inevitable, it is not in itself necessarily illegal provided the objects damaged are not the subject of the attack.

And this brings us to the subject of proportionality. The GEE, in their detailed examination of this subject to be found in their Conference Room Paper of 3 September 2019, did not feel able to say conclusively that starvation was being used as a method of warfare within the meaning of either Additional Protocol II or the Rome Statute, though they expressed concerns. However, they found that, in relation to proportionality, "no possible military advantage could justify such sustained and extreme suffering by millions of people" (para. 778). Yet there is a difficulty in law even here. Does the principle of proportionality apply in such circumstances? In treaty law, proportionality applies to "attacks" (Arts. 51 and 57 AP I). Attacks are defined as "acts of violence against the

adversary, whether in offence or in defence” (Art 49(1) AP I). Is an embargo an “attack” within this definition? Here the GEE fell back on the law of the sea and in particular the San Remo Manual on Naval Warfare. When dealing with “blockade” under Rule 102, the Manual states:

“The declaration or establishment of a blockade is prohibited if:

(a) it has the sole purpose of starving the civilian population or denying it other objects essential for its survival; or

(b) the damage to the civilian population is, or may be expected to be, excessive in relation to the concrete and direct military advantage anticipated from the blockade.”

This clearly applies the principle of proportionality to blockades and, by analogy, to embargoes such as that applied in Yemen. It follows that, whether one is looking at a violation of international humanitarian law or a crime

under international criminal law, the situation is far from clear cut. I was therefore delighted to hear from Leila that they are pursuing a broader strategy for prosecution in the Syrian context.

The effect of all this is that law is a blunt instrument. It does not necessarily provide a clear answer to all questions. States have deliberately, I would suggest, left it ambiguous in many places. In Yemen, starvation is a preventable tragedy. However, it may be that those who advocate to mitigate it will need to look beyond law in itself for a solution. What is undoubtedly clear is that there can be no real answer without a cessation of hostilities. And I agree with Martha here that we need to put pressure on the parties by secondary means, particularly by seeking to restrict the supply of arms. Already, efforts are being made to do this and, in some ways, this may offer greater success.

I ask myself a question. If I were a Yemeni civilian struggling to survive, what is more important to me at the present time? Is it the moral satisfaction of seeing individuals appear in front of a criminal court for war crimes or is it a cessation of hostilities and the uninterrupted supply of aid, leading to food on the table and treatment for cholera and Covid? Put that way there is no argument. I am not saying that accountability should not follow, but we need to keep our eyes on what is the desperate need of the Yemeni people at this precise moment – and that is peace.



Q&A session

The Chair invited all participants of the webinar to come forward with questions to the panelists.

Martha Mundy responded to a question from Henrik Syse (Nobel Committee) concerning the work of the World Food Programme: “I have been puzzled about the biometric program of the WFP. Alex de Waal had the basic reaction that yes, there is always diversion in situations of humanitarian provisions in situations of real conflict, from everything he could find, it wasn’t exceptionally great in Yemen. Given the sensitivity about knowledge about the population in Yemen, this is a very sensitive issue. It is unclear to me why the biometrics became such a stumbling block. It would be an advantage if third parties could understand better what is at stake there, how normal the demand is. Ansar Allah and Sana are very sensitive about this, in part for legitimate reasons. It would certainly help the outside world to take positions concerning this issue.”

Sareta Ashraph responded to a question by Kristoffer Liden (PRIO) concerning the use of starvation as a method of war in humanitarian negotiations: “In respect of Syria in terms of humanitarian negotiations, we did see in the Geneva negotiations the issue of the starve or surrender strategy being raised. In the case of Syria, I would separate the use of sieges from the issue of cross-border aid, which is a continuing topic of debate in the UNSC. The border crossings and the linked denial of aid is a huge issue in Syria. In areas where there has been little to no access to humanitarian aid, there has been a massively adverse impact on civilians, but we are not seeing the starvation that was documented in the sieges of Madaya and Yarmouk, for example.

With respect to the “surrender or starve” strategy, it has been incredibly maligned in the media. It has been a subject of discussions at the highest diplomatic levels. It has also been incredibly successful for the Syrian regime. There is little reason for the regime not to continue to seek military and political advantage by leveraging food and other objects indispensable for survivors. Turning back to possible starvation as a result of a lack of humanitarian access, there is the challenge of documentation, to be frank, as many humanitarian groups rely on the government to allow them access to the territory. So it limits the amount of information they can give and the level of criticism they can give, for understandable reasons. In some ways, this restates Charles’ question: what’s more important; gathering evidence for future accountability (by no means guaranteed) or getting aid to those who need it, as best one can? There isn’t a ton of pressure coming from these agencies on the ground. Political pressure from civil society, from international entities and from states

has not made an impression on the Syrian government, largely because they have strong backers with the Russian Federation. China, although not a backer, is also not willing to allow any more robust measures authorized by the UN Security Council. So there hasn’t been viable action, apart from statements, and it is difficult to find points of leverage on the ground to allow humanitarian aid to pass.

I should say that in addition to sieges by the Syrian government, we have seen small sieges by some anti-government armed groups of isolated villages, such as Foya in Idlib and by ISIS in areas of Deir al-Zour in the east, but none of these have been as successful because of the size of the government armed forces, their ability to encircle areas, and of course their ability to bombard besieged areas from the air, which has exacerbated sieges by bombing water, medical and food sources within the besieged areas. There has not been a successful approach to tackling the issue of humanitarian access to besieged areas. And as I said, the sieges have largely been successful. So not a good message in terms of impunity for the sieges.

The Chair invited all panelists to share their recommendations for what European countries, and Norway in particular, should seek to do in order to contribute to the effort of bringing the scourge to a halt.

Leila Zimmermann: We should use the existing avenues of universal jurisdiction to push for more ambitious cases than those limited to detention or members of armed groups. We are beginning to see this trend with the complaint in Germany on the use of chemical weapons, and which we are hoping to do with starvation. Now in the future, I am still hoping that there will be broader avenues to treat the more complex crimes committed in Syria more systematically. And I would put on the table that I don’t think that criminal justice is the only type of justice that we should be looking for. We need to be exploring different avenues. Mariana has mentioned the potential for having a people’s tribunals. It is time to think where do we go from here at this moment in terms of opportunities.

Sareta Ashraph: In relation to Syria, we have only seen a few instances of accountability, mainly in Sweden and Germany, mainly in relation to detention center abuses, which are relatively easier to prove. There has been less focus on violation of rules of conduct of hostilities, of which the deliberate use of starvation against civilians as a method of war would be one. What we are seeing however, is a huge documentation effort of what occurred during the sieges, what was previously hidden from view by the siege itself. It has been quite well documented through witnesses, victims and lawyers. However, it is difficult to make the linkage, because starvation as a method of

war relies on a coordinated plan of action in terms of checkpoints, bombardments, etc., so it can be difficult to track perpetrators because they come from a number of different agencies.

The other point I would like to emphasize is that for much of the Syrian conflict, the war crime of starvation wasn't recognized or codified as a crime in a non-international armed conflict. It became recognized as a crime under the Rome Statute in 2019, but it does not have retroactive effect, so it will only apply moving forward. So in Syria we are looking at a basket of other crimes, for instance extermination or other inhumane acts as crimes against humanity. Even if the evidence, the perpetrator and the jurisdiction were there, you would still find that a more creative approach would have to be taken in relation to bringing those charges into the court room. I expect to see European countries leading the way in both empowering their own war crimes units to be active on these cases, and also in continuing to fund accountability-driven documentation efforts by civil society and by the Syria Mechanism. Hopefully in the future we will see more cases linked to starvation of civilian as a method of conflict. However, in Syria it is more likely to be indicted under other crimes.

What the Syrian conflict has exposed, however, is the UNSC's inability to fulfil its role in maintaining international peace and security as a result of the veto power of the P5 – and in the case of Syria specifically – of Russia and China. I would like to see a more pointed discussion of UNSC failures in this regard but I am not naïve enough to imagine there will be any serious discussion of removing the UNSC veto power from the P5, in general or specifically in relation to its use in situations of mass atrocity. I would hope Member States, including Norway, will look into innovative methods – for example General Assembly resolutions – to find ways of enforcing international law, of making a meaningful effort to maintain international peace and security, despite what is – in the case of Syria – the clear obstacle posed by the P5 veto in the UNSC.

Martha Mundy: It is high time that the UNSC produce another serious resolution regarding the Yemen conflict. That is conceivable in two stages. One is the low-hanging fruit, i.e. the blockades by the coalition, closing of the airports, cleaning up of the ships. Bring all to the table simultaneously, which would make a great impact. One of the reasons that resolution 2216 sailed through was that the Chinese voted for it. Only the Russians abstained. There were other allies that made wonderful statements concerning support for other parties in the war, and to have a serious ceasefire. So Norway could do that. The Chinese have begun to issue statements – although they are fantastically careful – about their business in the Gulf,

but it does seem that the Yemen situation is so awful that there is some movement there. So with China, Russia and Bolivia from the global South and a sensible European participation, you may first be able to take on the low-hanging fruit and then do something much more serious towards calling for a ceasefire. It is clearly necessary to look back carefully at the whole history of the Hadi regime, designated as legitimate. The idea that Ansar Allah and everybody else should simply put down their arms and walk away, was clearly not going to be.

Charles Garraway: I would also suggest that there must be far greater coordination between UN Geneva and UN New York. One of the problems with the GEE was that we were kept at arm's length from the panel of experts in NY, and from Martin Griffith, which inevitably leads to overlap, misunderstandings and disagreements, and the risk of crossing over. We tried to brief the UNSC, and it was only in 2019 that we went there, and we did so against the advice of the Office of the High Commissioner for Human Rights. We went on our own, paid for by charities and NGOs. In fact, we were unable to brief the UNSC, and had to have a private meeting in the UK Mission. This year the GEE was able to brief the UNSC but there must still be far greater coordination between UN New York and UN Geneva.

On a final note, the most important of all, however, is publicity. Yemen is the forgotten war. It is still the forgotten war. And we need to bring to light what is actually happening there, or nothing will change. The pressure will not be mounted on states, and the WFP themselves will not be able continue with the important work that they are doing.



Attachment 1: BIO of panelists, chair and facilitator

Cecilie Hellestveit is a Norwegian academic and researcher of international law and armed conflict. She wrote her doctoral dissertation on international law, civil war and conduct of hostilities. She is co-founder and fellow at the Norwegian Academy of International Law (NAIL) and is a special advisor to the Norwegian Institution for Human Rights. In 2020 she co-authored "The laws of armed conflict" (Scandinavian University Press). Hellestveit has previously written a book on the war in Syria (2017), and is finalizing a book on the war in Yemen.

Charles Garraway is Professor and fellow at the Human Rights Centre, University of Essex. He served for 30 years as a legal officer in the UK Army Legal Services, as criminal prosecutor and then adviser in the law of armed conflict and operational law. Garraway has published extensively on the laws of armed conflict, notably he co-authored the San Remo manual on the laws of armed conflict in non-international armed conflict – a major work of reference. Garraway served from 2016-2019 as a member of The Group of Eminent International and Regional Experts on Yemen.

Martha Mundy is Professor Emerita at London School of Economic and Political Science, at the department of anthropology. She is a specialist on the Arab World, anthropology of law and the state, kinship and family and comparative sociology of agrarian systems. Her first major fieldwork was conducted the 1970s in North Yemen. In recent years, Martha has worked in agrarian history and the contemporary crisis of agriculture in the Arab East.

Sareta Ashraph is a senior legal consultant on case-building efforts for crimes committed in Iraq and Syria. In 2017, Sareta was part of the start-up team of the International, Impartial and Independent Mechanism for Syria (IIIM). She is a Visiting Fellow at the Blavatnik School of Government at the University of Oxford, and co-editor of *The Syrian War: Between Justice and Political Reality* (Cambridge University Press, 2020). From May 2012 to November 2016, Ashraph served as the Chief Legal Analyst on the Independent International Commission of Inquiry on the Syrian Arab Republic.

Mariana Karkoutly is a Syrian lawyer, with MA from Alice-Salomon Hochschule mental health of refugees, and an Syrian lawyer, with an MA from Alice-Salomon Hochschule and an MA thesis from Humboldt is on the process of Justice in Syria - a critical reflection on the usage of universal jurisdiction.

Leila Zimmermann is a Swiss-Syrian legal researcher with experience in advocacy, strategic litigation, and documentation of human rights violations. She is a legal investigator with the Centre for Justice and Accountability (CJA) supporting the development of case-files regarding international crimes committed in Syria, including one pertaining to the use of starvation.

Ingvill Thorson Plesner (PhD) is senior researcher at HL-senteret and manager of the Inclusive Citizenship project. She has published books and articles on the human rights of minorities, non-discrimination and conditions for co-existence across ethnic and religious divides.

Selected relevant publications

By Martha Mundy:

Empire of information: The War on Yemen and its Agricultural Sector, Memo, London School of Economics, 2017. Analyses of Coalition aerial bombardment of OIS objects as logged by Yemeni extension officers of the Ministry of Agriculture (2015-16) across the lines of the country.

Strategies of the Coalition in the Yemen War, Report, The Fletcher School, Tuft University. 2018. The results from two data sets (the Yemen Data Project from September 2016 and the Sanaa Ministry of Fish Wealth for fishing 2017).

Humanitarian Challenges and the Targeting of Civilian Infrastructure in the Yemen War, co-authored with Jeannie Sowers and Erika Weinthal in *International Affairs*,

2021, doubly controlled data sets, suggesting that food production has been systematically targeted by aerial bombardment.

By Sareta Ashraph:

Independent International Commission of Inquiry on the Syrian Arab Republic: *Sieges as a Weapon of War: Encircle, Starve, Surrender, Evacuate* 2018.

By Charles Garraway:

Group of Eminent International and Regional Experts on Yemen: *Situation of human rights in Yemen, including violations and abuses since September 2014*, 2018.

References

1. www.nobelprize.org/prizes/peace/2020/press-release/
2. See Additional Protocol I to the four Geneva Conventions (API), Article XX.
3. Additional Protocol I, XXX; Additional Protocol II, Article 13(3).
4. Additional Protocol I, Article XXX. (48)
5. See Fourth Geneva Convention, Article XXX; AP,I Article XX; and Additional Protocol II to the four Geneva Conventions, Article XX.
6. Rome Statute for the International Criminal Court (ICC Statute), Article 8.
7. Additional Protocol I, Article 54(1).
8. Fourth Geneva Convention, Article 23; TPI, Article 70(2), customary law.
9. Additional Protocol II, Article 14.

Attachment 1:

Detailed program of the seminar - 7 December 2020 at 14-16 hrs.

Starvation as a method of war in Yemen and Syria

Session 1. 14:00 - 14:15

Introduction

Welcome: Dr. Ingwill Plesner, *Project manager, Inclusive Citizenship project, HL-senteret*

Short introduction: Starvation and deprivation of food as a method of war. Overview of the issues. Dr. Cecilie Hellestveit, *chair, Fellow, Norwegian Academy of International Law (NAIL)*

A very brief introduction, with focus on the following:

- Starvation as an effect of war versus starvation as an instrument of war
- Patterns of armed conflict today, how civil wars are particularly exposed to this phenomenon
- Starvation of combatants versus starvation of the civilian population
- Starvation as a method of war in interstate war, civil war and internationalized civil war – different exposures
- Why we have selected the cases of Yemen and Syria and our eminent panel

Session 2. 14:15 - 15:15

Case-studies: Yemen and Syria

Topic: Starvation as a deliberate strategy of war in Syria and Yemen

Explanatory: How has it played out: patterns, indications, anecdotal evidence

Analysis: What are some of the effects of this trend, and how /to what extent has it affected vulnerable communities?

Comparison: Similarities and differences between the use of starvation as a method of war in Syria and Yemen

Introduction by each panelist

- **Prof. Martha Mundy**, London School of Economics. (Yemen)
- **Prof. Charles Garraway**, The UN Human Rights Council's Panel of Experts on Yemen (Yemen)
- **Mariana Karkoutly**, CJA (Syria)
- **Sareta Ashraph**, Chief legal analyst, Commission of Inquiry on Syria 2012-2016 (Syria)

Particular challenges that may be raised in the discussion

- **Lawful / unlawful:** How to distinguish between lawful attacks on military objectives, lawful sieges and blockades on the one hand, and attacks and measures that (may) amount to unlawful use of starvation on the other.
- **Prerogatives of "the Government" versus duties:** How to delineate the prerogative of the sovereign government to distribute services, including food (e.g., Additional Protocol 10), versus the duty NOT to impede humanitarian aid to civilian populations either supporting the insurgents or living under insurgent control. Where are we today on this issue?
- **Legitimate sanctions and ulterior motives:** How to handle the disturbing conflation of legitimate enforcement of UN sanctions on the one hand (to contain the conflict or a party) and illegitimate ulterior motives by enforcers of the sanctions (for political/military advantages with unlawful effects) on the other.

Session 3. 15:15 - 16:00

Policy discussion

Topic: Challenges and opportunities for prevention, enforcement and accountability. How can indications of starvation as a deliberate strategy be effectively addressed through prevention, enforcement and accountability mechanisms

Explanatory: What instruments are at the disposal of states, international organizations, civil society and humanitarian organizations to address this scourge, in terms of prevention, enforcement and accountability. How do these instruments work in Syria and Yemen?

Analysis: What are the main challenges for these instruments to have the desired effects? How do the cases of Syria and Yemen illustrate the shortcomings of our instruments and other challenges for prevention, enforcement and accountability?

Policy: What can be done in order to strengthen the instruments and their effects for the purpose of halting the use of starvation as a method of war. Are there other ways to approach this issue? How can exposed vulnerable communities be protected in ways that are acceptable to warring parties?

Introduction by each panelist

- **Leila Zimmermann**, CJA (Syria)
- **Sareta Ashraph**, Chief legal analyst, Commission of Inquiry on Syria 2012-2016 (Syria)
- **Prof. Martha Mundy**, London School of Economics. (Yemen)
- **Prof. Charles Garraway**, The UN Human Rights Council's Panel of Experts on Yemen (Yemen)

Particular challenges that may be raised in the discussion

- **UN Security Council:** what power can this body be expected to use in this area, given the intractable issues involved and the current climate at the Council?
- **Fact-finding:** How can fact-finding work effectively with these sensitive questions? If access is provided, will bold conclusions lead to subsequent denial of access? And how effective/authoritative can bold conclusions be without access?
- **Accountability:** The inclusion of starvation of the civilian population as a war crime in NIACs in the ICC-Statute strengthens the legal basis for prosecution. However, it does not remove the underlying challenges of prosecuting individuals for this particular crime. How realistic are the expectations that we will see prosecutions for this crime when the legal processes and accountability mechanisms for the Syrian and Yemen-wars eventually get going?