



# THIRD WORLD APPROACHES to INTERNATIONAL LAW *Review*

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*TWAILR: Reflections ~ 70/2024*

## Global Starvation Governance and International Law

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### 1. Introduction

Mass starvation campaigns in Mariupol in 2022, as well as in Sudan and Palestine since 2023, have brought the meaning of starvation and its potential legal consequences to the attention of international lawyers. Starvation, long absent from international courts, has become a judicial matter in two cases concerning allegations against Israel of genocide of the Palestinian people, which are pending before the International Court of Justice (ICJ). It is also relevant in the application for arrest warrants filed by the prosecutor's office of the International Criminal Court (ICC). In 2018 already, the UN Security Council drew attention to the severity of using starvation as a weapon of warfare, calling on states to respect their obligations under International Humanitarian Law (IHL) and to exercise their jurisdiction to prosecute individuals responsible for violating relevant IHL prohibitions.<sup>1</sup>

From a strictly doctrinal viewpoint, the push to affirm the illegality of starvation as a weapon of warfare, and the efforts to hold those responsible for such acts accountable can be considered as progress in international law:<sup>2</sup> while the

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\* Ambizione Fellow, Geneva Graduate Institute. This work was supported by the Swiss National Science Foundation (Grant no. PZ00P1\_216005). I am grateful to Michael Fakhri for inspiration and guidance and to Sarah Luisa Brand and Praggya Surana for critical comments and constructive feedback. Any views expressed here, and any errors that this piece may contain are of course my own. E-Mail: [Lys.Kulamadayil@graduateinstitute.ch](mailto:Lys.Kulamadayil@graduateinstitute.ch).

<sup>1</sup> S/RES/2417 (2018), para. 1.

<sup>2</sup> Progress understood here as put forward by Sandholtz as norm change in accordance with changes in dominant societal values. See Wayne Sandholtz, *Prohibiting Plunder: How Norms Change* (Oxford University Press, 2007).

1863 Lieber Code<sup>3</sup> found starvation of civilians and combatants alike to be a lawful means of warfare, it is now widely accepted that indiscriminate starvation campaigns may amount to violations of *ius cogens*.<sup>4</sup> However, as doctrinal progress is made, how has our understanding of starvation evolved? What do we mean by starvation, and who decides, and by what standards?

This essay invites readers to examine the intricacies of starvation governance. In doing so, it hopes to show how contemporary starvation governance has made a deliberate effort to obscure the intentionality of mass starvation by foregrounding the term 'famine'. Consequently, famine has been redefined as a technical term to describe a material condition, devoid of history and politics. As a result, the term 'famine' is now misleadingly associated with the suffering of a community from prolonged hunger due to misfortune, rather than as a consequence of oppression, dispossession, alienation, or genocidal intent. By sanitising famine from starvation—that is, from the act of creating the material and social conditions of famine—contemporary global starvation governance has regressed from the understanding of famine put forth by eminent famine theorist and Nobel laureate Amartya Sen, as well as from that articulated by the World Food Summit in 1974, which understood famine as a result of alien and colonial domination, foreign occupation, racial discrimination, apartheid, and neo-colonialism, activated, or made worse by political, economic, or ecological crises.<sup>5</sup>

## 2. 'Famine and Starvation' in the Decisions of the ICJ

IHL prohibits the starvation of civilians as a method of warfare.<sup>6</sup> This prohibition has been recognised as a specification of Common Article 3 to the Geneva Conventions.<sup>7</sup> Even though starvation is not explicitly defined in IHL, it contains several provisions related to food, from which an IHL definition of starvation can be extrapolated.<sup>8</sup> Starvation can result from both actions and omissions of those who exercise effective control over civilians or prisoners of war. IHL recognises

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<sup>3</sup> The Lieber Code is considered to be one of the earliest codifications of the laws of war and governed the conduct of the soldiers of the armies of the U.S. Union against those of the Confederacy during the later years of the American civil war.

<sup>4</sup> Yves Sandoz, Christophe Swinarski, and Bruno Zimmermann, eds., *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949* (Geneva: ICRC, 1987), para 4794.

<sup>5</sup> Chapeau para. (c) Universal Declaration on the Eradication of Hunger and Malnutrition.

<sup>6</sup> Art. 54 Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I); Art. 14 Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II); Arts. 23, 55 Convention (IV) relative to the Protection of Civilian Persons in Time of War. Geneva, 12 August 1949, Art. 55 Protocol I

<sup>7</sup> Sandoz, Swinarski, and Zimmermann, *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949*, 4794-95.

<sup>8</sup> For an attempt to define starvation based on international criminal law and human rights law, see Manuel J. Ventura, "Prosecuting Starvation under International Criminal Law: Exploring the Legal Possibilities," *Journal of International Criminal Justice* 17, no. 4 (2019): 783-90.

three forms of starvation. The first is starvation caused by the attack, destruction, or removal of objects indispensable to the survival of the civilian population, including food, means of food production, water, and food infrastructure. The second is starvation through the forced displacement of civilians without the provision of goods and services to meet basic human needs.<sup>9</sup> The third is the restriction and denial of access to humanitarian assistance.<sup>10</sup> IHL conceptualises starvation through these acts, rather than through outcomes. In other words, starvation under IHL is not defined by a threshold of a certain number of hunger-related deaths, but by the act of starving civilians and prisoners of war.<sup>11</sup>

In its provisional orders in the *South Africa v Israel* case, the ICJ effectively recognised it as plausible that all three forms of starvation were deployed by Israel against the inhabitants of Gaza, putting them at immediate risk of suffering 'serious bodily and mental harm' and of being subjected to 'conditions of life calculated to bring about [their] physical destruction'.<sup>12</sup> In conjunction with other measures, the ICJ found a plausible risk for Israel to be violating its obligations under the Genocide Convention. It determined the presence of 'catastrophic living conditions of the Palestinians in the Gaza Strip, particularly given the prolonged and widespread deprivation of food and other basic necessities', based on the imminent risk of famine in Gaza, as identified by the Integrated Food Security Phase Classification (IPC).<sup>13</sup> This is the first instance that the IPC has featured in a decision by an international court. Citing the IPC brief of 18 March 2024, the ICJ established:

'The IPC acute food insecurity analysis conducted in December 2023 warned of a risk that Famine may occur by the end of May 2024 if an immediate cessation of hostilities and sustained access for the provision of essential supplies and services to the population did not take place. Since then, the conditions necessary to prevent Famine have not been met and the latest evidence confirms that Famine is imminent in the northern governorates and projected to occur anytime between mid-March and May 2024.'<sup>14</sup>

So, what is the IPC, how does it understand famine, and how does its understanding relate to that of international humanitarian law?

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<sup>9</sup> Art. 17 Protocol II; Sandoz et al., para. 7481.

<sup>10</sup> Art. 26 Art. 70 Protocol I; Art. 18 Protocol II.

<sup>11</sup> Convention (III) relative to the Treatment of Prisoners of War

<sup>12</sup> Art. II Convention on the Prevention and Punishment of the Crime of Genocide; *South Africa v Israel*, paras 5, 51.

<sup>13</sup> *South Africa v Israel*, para. 18; *Alleged Breaches of Certain International Obligations in respect of the Occupied Palestinian Territory (Nicaragua v. Germany)* para. 22.

<sup>14</sup> *South Africa v Israel*, para. 19.

### 3. Famine and Starvation – Different Words, Different Meanings?

#### 3.1. *IPC and the Science of Famine*

The IPC is a multi-stakeholder initiative that aims to build evidence-based technical consensus among key stakeholders and consolidate wide-ranging evidence to classify the severity and magnitude of hunger through data analysis, for the purposes of informing decision-making and resource allocation.<sup>15</sup> It employs a five-category scale (IPC scale) to measure 'acute food insecurity' caused by shocks (e.g., natural disasters, economic crises, armed conflict), ranging from food security to famine.<sup>16</sup>

The IPC scale's baseline assumption is that in a state of normalcy—namely, phase 1—households do not engage in 'atypical' or 'unsustainable' strategies to meet their dietary needs. In phase 2 (stressed), households must make trade-offs, reallocating their resources towards, for example, dietary diversity.<sup>17</sup> Reaching phase 3 (crisis) typically requires a shock event. In phase 3, households either trade their livelihood assets for food or eat less to preserve those assets. A deterioration from crisis to emergency (phase 4) is registered by the IPC scale when households have no choice but to deplete their livelihood assets for food, consuming less food of lower nutritional value. In numeric terms, this indicates that acute malnutrition rates among the affected community are between 15-30 percent, and 1-2 individuals per 10,000 are dying from starvation and related diseases each day.<sup>18</sup> The IPC clearly states that a community in the emergency phase already requires immediate humanitarian relief, including food aid; however, this phase technically does not qualify as famine. The IPC classifies a situation as famine (phase 5) only when at least 20 percent of the affected community faces extreme food insecurity, at least 30 percent of children under five years old are acutely malnourished, and at least two people per 10,000 inhabitants are dying of starvation each day.

To the IPC, famine is not 'a rhetorical, emotive term' but rather 'a scientific classification based on standards, evidence, and technical consensus'.<sup>19</sup> In line with this aspiration, its classification of famine, as opposed to its other phases of acute food insecurity, is preconditioned on an additional step—the review of the IPC analysis by the Famine Review Committee (FRC), an independent expert

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<sup>15</sup> "IPC Overview and Classification System," IPC, <https://www.ipcinfo.org/ipcinfo-website/ipc-overview-and-classification-system/en/> (accessed 5 August 2024).

<sup>16</sup> The IPC uses a different metric for chronic food insecurity resulting for instance from poverty or prolonged forms of oppression. See "IPC Chronic Food Insecurity Classification," IPC, <https://www.ipcinfo.org/ipcinfo-website/ipc-overview-and-classification-system/ipc-chronic-food-insecurity-classification/en/> (accessed 5 August 2024).

<sup>17</sup> "Know more about the IPC's Acute Food Insecurity Scale with Nicholas Haan," IPC, updated 11 March 2024, [https://www.youtube.com/watch?v=BKELLoj\\_41g](https://www.youtube.com/watch?v=BKELLoj_41g) (accessed 5 August 2024).

<sup>18</sup> For more detail, see *Technical Manual Version 3.1 Evidence and Standards for Better Food Security and Nutrition Decisions*, IPC (2021), 34-39.

<sup>19</sup> "IPC and Famine," IPC, updated June 2013, <https://www.ipcinfo.org/ipcinfo-website/resources/resources-details/en/c/1129202/> (accessed 5 August 2024).

committee made up of four to six members who review findings on famine by the IPC and other technical organisations. The FRC does not collect new data but reviews the IPC's work for scientific rigor and the quality and availability of data evidence.<sup>20</sup> Following this review, which typically lasts two to three weeks, the FRC issues a report.<sup>21</sup>

Importantly, due to the FRC's emphasis on scientific analysis, an essential criterion for determining famine is the availability of sufficient quality data to meet the standards set by the IPC for evidence-based analysis. However, in almost all emergency contexts, the data required for classifying a situation as famine is not available. When available data indicates that a famine is in progress but fails to meet the IPC's scientific standards in quality or quantity, the IPC's technical working group that prepared the analysis and the FRC may classify the situation as 'likely famine'.<sup>22</sup> A classification, which is far more common than a famine classification. For example, due to insufficient data quality and quantity, the conditions in the internally displaced persons camps El-Fasher and Zamzam in Northern Darfur were classified as 'famine-likely' in June and July 2024<sup>23</sup>, while the situation in Gaza was still classified as an IPC phase 4 emergency at that time. In contexts like Gaza, where an occupying power tightly controls the entry of independent observers and where medical personnel is scarce, conditions are almost always too deteriorated and chaotic to support adequate data collection to meet the IPC standard for the finding of famine.

This was the scenario for the IPC's finding on famine in Gaza in March 2024, which the ICJ referenced in the passage cited above.<sup>24</sup> Another crucial feature to note about the FRC is that it is an informal expert body without formal procedural rules for selecting its members or guidelines for determining their qualifications or tenure.<sup>25</sup> Additionally, it is problematic that the IPC's data requirements heavily depend on the cooperation of the conflict party or occupying power, which may have caused the famine in the first place, to allow for adequate

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<sup>20</sup> *Technical Manual*, 89.

<sup>21</sup> "IPC Famine Classification - Special Additional Protocols," IPC, <https://www.ipcinfo.org/ipc-manual-interactive/ipc-acute-food-insecurity-protocols/ipc-famine-classification-special-additional-protocols/en/> (accessed 5 August 2024).

<sup>22</sup> For details, see *Technical Manual*, 85-89.

<sup>23</sup> Famine Review Committee, *Combined Review of: (i) the Famine Early Warning System Network (FEWS NET) IPC Comparable Analysis for the IDP Camps in El Fasher, North Darfur; and (ii) the IPC Sudan Technical Working Group Analysis of Zamzam Camp (North Darfur), Sudan*, IPC (July 2024), 14.

<sup>24</sup> "Emaciated child dies from lack of food and medicine in Gaza," Al Jazeera, updated 4 Mar 2024, <https://www.aljazeera.com/program/newsfeed/2024/3/4/emaciated-child-dies-from-lack-of-food-and-medicine-in-gaza> (accessed 5 August 2024); "Two-month-old Palestinian boy dies of hunger amid Israel's war on Gaza," Al Jazeera, updated 25 February 2024, <https://www.aljazeera.com/news/2024/2/25/two-month-old-palestinian-boy-dies-of-hunger-amid-israels-war-on-gaza> (accessed 5 August 2024).

<sup>25</sup> In its latest constellation, the FRC members are quite complementary to one another in terms of their expertise (e.g, physician, nutritionist, expert for agriculture etc.), but they are not diverse in terms of their identity markers with all of them being male, almost all being white, and the majority being based as U.S. American institutions.

data collection. The IPC acknowledges the paradoxical situation. Data classified as 'reliable' is needed on at least two of three indicators of famine. However, in typical famine situations, social volatility and humanitarian crises often preclude the possibility of collecting high-quality, representative data.<sup>26</sup>

Before examining how the technical understanding of famine relates to starvation under IHL, it is worth noting the context in which the IPC scale was created and its creator. According to the IPC's own account, the scale was developed by Nicholas Haan in 2004. Who is Nicholas Haan? He is a Californian native and resident, an entrepreneur working at the intersection of innovation, technology, and social and environmental challenges. His interest in global development was sparked by his experience as a schoolteacher with the US Peace Corps.<sup>27</sup> Why is his profile of interest? Notably, he is not a nutrition expert, physician, historian, or development economist. He is also not a food systems expert, nor has he ever lived through a famine. In sum, Nicholas Haan is a solution-oriented scientist who seeks to understand famine through the lens of technology rather than history or politics. While there is nothing inherently wrong with this approach, knowing about its creator provides immense explanatory value for the IPC scale.

Before the IPC scale was established in 2004 for the UN Food and Agriculture Organization (FAO) to address the famine in Somalia at that time, the humanitarian and development assistance communities lacked a shared understanding of famine. This absence posed an obstacle to mobilising relief. Additionally, it was unclear which international organisation held primary responsibility for famine response, as both the FAO and the World Food Programme (WFP) were potential candidates. Most importantly, during the famine in Somalia, which was triggered by drought in a so-called "failed state,"<sup>28</sup> the established processes for mobilising international relief in instances of natural disasters—typically initiated by the request of the affected state—were not functional.<sup>29</sup> In light of these conditions, the IPC scale emerged to mobilize global aid through an evidence-based approach geared at empirically demonstrating that there was indeed a need for food aid.

Several key characteristics emerge from this context. First, the IPC scale and its corresponding definition of famine are shaped by technical experts rather

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<sup>26</sup> Unknown, *Understanding the IPC: Q&A*, IPC (Undated).

<sup>27</sup> "Nicholas Haan," LinkedIn, <https://www.linkedin.com/in/nickjhaan/> (accessed 5 August 2024).

<sup>28</sup> The term 'failed state' is used here to refer to a state without an effective governance authority. The shortcomings of this concept, in recognising foreign intervention of in creating governance failures, and the justification this concept has provided for foreign interventions are fully acknowledged. For more on this, see David Chandler, *Empire in Denial: The Politics of State-Building* (London: Pluto Press, 2006).

<sup>29</sup> For more detail on processes of mobilising international disaster relief, see Sandesh Sivakumaran, "Techniques in International Law-Making: Extrapolation, Analogy, Form and the Emergence of an International Law of Disaster Relief," *European Journal of International Law* 28, no. 4 (2017).

than affected communities. Second, the IPC scale serves not only an analytical purpose but also a political and, more specifically, a distributional one. It is not merely a scientific endeavour to define famine; it functions as a tool to support decisions on the allocation of scarce humanitarian resources. As such, its primary audience comprises humanitarian organisations and their donors, which explains why only three of the 19 IPC partner organisations are from the Global South.<sup>30</sup> Finally, given its initial aim to bypass non-operational political means of mobilising disaster relief, the IPC scale intentionally avoids addressing any social or natural causal factors of famine. To justify the delivery of foreign assistance in contexts where governance and social systems have collapsed, it is deliberately sanitised of notions of moral or legal responsibility.<sup>31</sup> Consequently, it was never intended to provide a legal definition of starvation under international law or give it meaning and may, in fact, be ill-suited for that purpose.<sup>32</sup>

Yet, if the IPC scale is not an appropriate instrument for defining starvation legally, what alternative epistemologies of famine and starvation could international legal institutions consider?

### 3.2. *Famine as erasure and genocide*

Beyond the IPC scale, famine and starvation are defined by numerous contextual factors that extend far beyond merely measuring changes in livelihood, food consumption, and mortality. Famine theorists understand famine as the result of catastrophic social relations between unequally endowed groups, exacerbated by natural disasters, dispossession, and armed conflict.<sup>33</sup> While its defining characteristic is always the involuntary severe and prolonged hunger of a community or socially defined group, it encompasses much more. Famine expert Alex de Waal notes that famine is also marked by devastating impoverishment and the complete loss of livelihood. It represents a moment of social breakdown, often preceded or aggravated by forced displacement and distress migration. Mortality rates significantly increase, not only due to the lack of life-sustaining food but also because of violence and disease.<sup>34</sup> The beginnings or ends of famine are rarely clearly identifiable; it occurs in a continuum beginning with the silent violence of malnutrition and undernourishment, continuing to affect the bodies and memories of those who have experienced it. Famine is not a natural occurrence; rather, it

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<sup>30</sup> They are Comité Permanent Inter-États de Lutte Contre la Sécheresse au Sahel (CILSS), the Southern African Development Community (SADC), and the Sistema de la Integración Centroamericana (SICA).

<sup>31</sup> This is in line with the humanitarian principles of neutrality and impartiality. For more, see Unknown, *OCHA on Message: Humanitarian Principles* (OCHA, July 2022).

<sup>32</sup> Tor Krever, "Quantifying Law: legal indicator projects and the reproduction of neoliberal common sense," *Third World Quarterly* 34, no. 1 (2013).

<sup>33</sup> Mike Davis, *Late Victorian Holocausts: El Niño Famines and the Making of the Third World* (Verso, 2002), 20.

<sup>34</sup> Alex De Waal, "Democratic political process and the fight against famine," *IDS Working Paper*, no. 107 (2000): 6.

results from choices that lead to simultaneous failures in food cultivation, supply, and distribution, with no measures in place to alleviate harvest failures or deliver food aid during armed conflict. Thus, natural disasters and armed conflicts serve not as causal factors of famine but as activating ones.

English is one of the few languages that distinguishes between "famine" and "starvation"; yet, even in English, the terms can be used interchangeably despite their differing connotations. Starvation often describes the final stage of famine when emaciated bodies render the suffering visible, and starvation-related deaths become countable.<sup>35</sup> It also conveys a proactive sense: to "subject people to famine"<sup>36</sup> and inflict severe bodily, emotional, and psychological harm or death. In this context, as understood in international law, starvation is defined not by the number of fatalities (outcome) but by the intent of those wielding power and authority over a defined community or social group to starve them. While famine describes the realities of community deterioration and destruction due to hunger, starvation underscores that famine is always the result of human choices and failures. As Amartya Sen observed, the political economy of famine causation involves institutions and organisations exercising their power and authority. It is contingent upon the alienation of rulers from the ruled, as the social and political distance between governors and the governed plays a critical role in the non-prevention of famine, or rather, in the choice to inflict starvation.<sup>37</sup>

#### 4. Conclusion

Where does this leave us regarding famine governance and its relationship to international law? One lesson should be that the IPC famine classifications is just one way to define famine, and not the most fitting way for the purposes of international law. The IPC scale was not designed with the context of an armed conflict in mind, and in fact, the IPC itself recognises that the fog of war hinders data collection that meets the IPC's evidentiary threshold. For the purposes of triggering a violation of international humanitarian law, human rights law or the Genocide convention however, the question if widespread hunger amounts to a famine in the technical sense given to the term by the IPC is irrelevant, as international law has long recognised starvation by its intentionality and not by its degree.<sup>38</sup> Starvation is always intentional and there has never been a famine that could not have been prevented, and no genocide has ever occurred without weaponising hunger. From the elimination of Carthage to colonial starvation

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<sup>35</sup> Rangasami Amrita, "Failure of Exchange Entitlements' Theory of Famine: A Response," *Economic and Political Weekly* 20, no. 42 (1985).

<sup>36</sup> Sandoz, Yves et al., eds. *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949*. Geneva: ICRC, 1987, para. 4791

<sup>37</sup> Amartya Sen, *Development as Freedom* (New York: Alfred A. Knopf, 1999), 170.

<sup>38</sup> Sandoz, Yves et al., para. 2089



campaigns and the Holocaust, genocide is inextricably linked to mass starvation.<sup>39</sup> The technical definition of famine and the obstacles it poses for the legal campaign against mass starvation warrant critical examination before further authority is granted to it by global policy, governance, and international legal institutions.

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<sup>39</sup> Bridget Conley and Alex de Waal, "Genocide, Starvation and Famine," in *The Cambridge World History of Genocide: Volume 1: Genocide in the Ancient, Medieval and Premodern Worlds*, ed. Ben Kiernan, T. M. Lemos, and Tristan S. Taylor, The Cambridge World History of Genocide (Cambridge: Cambridge University Press, 2023).