

Advocating for a Separate Designation Criterion on Starvation

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June 6, 2018

On May 24, the United Nations Security Council adopted [Resolution 2417 \(2018\)](#) on conflict-related food insecurity. In many ways, the resolution is a welcome first step in drawing attention to conflict-induced food insecurity at a time when the UN is warning of the dire consequences for conflict-affected populations in [South Sudan](#) and [Yemen](#). It is also an extremely important measure to help focus on some of the indirect consequences of conflict: malnutrition, starvation and famine. Yet, as it relates to starvation, the resolution falls short of expectations.

I. Starvation as a Method of Warfare

The resolution included three references to starvation. The Security Council reiterated that “starvation of civilians as a method of warfare may constitute a war crime” and “strongly condemned the use of starvation of civilians as a method of warfare... (as) prohibited by international humanitarian law.” The Council also called for investigations into violations of international humanitarian law related to “the use of starvation of civilians as a method of warfare” in accordance with domestic and international law, with a view to reinforcing preventive measures, ensuring accountability and addressing the grievances of victims.

The Netherlands, a principle sponsor of the resolution, argued that [one of the three main impacts](#) of this resolution is that, “...the Council can consider sanctioning, as appropriate... those that starve civilians.”

Yes. And, no.

Yes, because the Council can impose sanctions, in certain circumstances, on those who starve civilians. But this is in no thanks to this particular resolution, but because of previous country-specific resolutions that have listed violations of international humanitarian law (the law of armed conflict) and impediments to humanitarian access as designation criteria. As long as starvation falls within the criteria set out in the law or occurs as a result of impediments to humanitarian assistance, then those responsible can, in principle, be held to account through sanctions.

It is also possible that situations of starvation that do not fall within the aforesaid criteria or those that take place outside an armed conflict can be considered under the more generic “threats to peace, security, and stability” criterion that is found in many UN sanctions resolutions. Interestingly, Resolution 2417 (2018) does not refer to starvation as a potential threat to peace, security and

stability. The reference to starvation is only in the context of its use as a method of warfare, and this, as argued below, significantly impedes the Council's ability to impose sanctions on those who contribute to or cause starvation.

I. The Need for the Designation Criterion for Starvation Separate from Criterion of International Humanitarian Law

A. International Humanitarian Law and Starvation

Limiting sanctions to situations in which starvation is intentionally imposed significantly limits the Council's sanctions power. In the text of the new resolution, "starvation" and "method of warfare" are inseparable. To use starvation as a method of warfare would be "...to [*provoke it \(starvation\) deliberately*](#), causing the population to suffer hunger, particularly by depriving it of its sources of food or of supplies." The same applies to the war crime of starvation, where one must demonstrate the [*intentional imposition of conditions of starvation*](#) on a population. The different ways in which one can demonstrate intentional starvation is outside the scope of this post, but, suffice it to say that it has been difficult for sanctions investigators to prove that a particular military or commander or an armed group *intentionally* starved a segment or a totality of the civilian population. For example, it is well accepted that a siege or blockade, whether it be of a country or a city within a country, may not in itself be a deliberate provocation of a situation of starvation, [*according to humanitarian law*](#), "as long as *the purpose* is to achieve a military objective and not to starve a civilian population."

There are multiple situations in which starvation may not be an intentional tactic, but may be a desirable, or tolerable side effect of military actions. For example, a belligerent may believe that a starving civilian population allows for the winning of the hearts and minds of people when food assistance is finally allowed in, or when starvation and desperation leads to regime change or weakening of political and military support for the enemy. In other circumstances, those in de facto or de jure control of territory may be negligent when confronted with potential starvation and may fail to adopt timely measures to prevent starvation even in the face of a humanitarian catastrophe. These circumstances offer examples of potentially sanctions-worthy conduct, but may not be examples of starvation being deliberately used as a weapon of war.

This is where Resolution 2417 (2018) could have broken new ground. The Council could have moved beyond limiting itself to contexts in which starvation is used "as a weapon of war" to cover other circumstances of conflict-induced starvation, including as indirect consequences of military actions of parties to conflict. This could have included situations in which lawful military action is being conducted despite clear warnings and indicators that a particular course of action would create or exacerbate starvation, but where the purpose of that action was not to starve the population.

In taking a wider approach, the Security Council could have drawn from international law obligations of parties to the conflict to take measures to [*minimize the deleterious effects of conflict*](#) on civilian populations. It could also have emphasized the importance of precautionary measures and

proportionality assessments when parties undertake attacks against military objectives, when those military operations have significant potential to aggravate food insecurity or contribute to starvation.

Resolution 2417 (2018) does reiterate the international humanitarian law prohibition on direct attacks against objects indispensable to survival of the civilian population. But this may not be sufficient in situations such as Yemen and South Sudan, where parties are using these objects as cover for military operations or where belligerents and civilians share the same objects. For one, the rule that dual use objects may not be attacked [may only apply in international armed conflicts](#) between states. In non-international armed conflicts, [it is doubtful](#), as elaborated by the ICRC, whether international humanitarian law prohibits attacks that are carried out in direct support of military action against such indispensable objects, including when those attacks may be expected to leave the civilian population with sufficiently inadequate food and water so as to cause its starvation. In conclusion, the Security Council would have been more inclusive if it considered a more progressive approach to the issue of starvation than being limited by its relationship to international humanitarian law.

B. Precedence in Moving Beyond International Humanitarian Law

There is no requirement that the Council limit itself to the constraints of international humanitarian law terminology in the context of its sanctions practice. Indeed, when required, the Security Council has capitalized on its status as a political organ, with its own priorities and mandate, to sanction conduct that is not directly prohibited by the law of armed conflict.

For example, despite the UN's acknowledgement that the UN Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO) intervention brigade is a legitimate military target, the Security Council maintains its [sanctions on those involved](#) in, and responsible for, attacking MONUSCO peacekeepers. As Mona Ali Khalil, a former senior legal officer with the UN Office of the Legal Counsel, correctly [states](#), it is entirely within the legal prerogative of the Security Council to continue to impose sanctions on such attacks, "in the same manner that a government can criminalize attacks on its forces even if such forces are legitimate military targets under international humanitarian law."

It is possible to find precedent to support the creation of a separate designation criteria for those whose actions contribute to starvation of the civilian population, independently of any reference to international humanitarian law. In the sanctions regimes devoted to the [Central African Republic](#), the Democratic Republic of the Congo, [Mali](#), [South Sudan](#), [Somalia](#) and [Yemen](#), the Security Council has maintained a separate designation criterion for those obstructing the delivery and distribution of humanitarian assistance and access. This criterion is separate to the designation criteria relating to international humanitarian law. The Panels of [Experts on Yemen](#) and [South Sudan](#) have progressively construed this separate designation criterion to present to the Security Council information on impediments to humanitarian assistance and access, when those impediments may

not necessary also be violations of humanitarian law.

To elaborate, international humanitarian law relating to access provides authorities some leverage to temporarily [control the delivery](#) of humanitarian access and assistance in certain specific circumstances. However, because the designation criteria for impediments to assistance and access is separate from the international humanitarian law violations designation criteria, sanctions investigators have the discretion to provide the Security Council with a full range of information on access impediments.

For example, earlier this year, the Panel of Experts on Yemen [identified the following impediments](#): the delays or refusals that affect timely distribution; confiscation of equipment; interference in the selection of beneficiaries, areas of operation and implementing partners; extortion and demands for payment under threats of violence; issues relating to customs clearance; non-payment of salaries; and visa restrictions for humanitarian workers. If, however, impediments to humanitarian access were qualified with reference to international humanitarian law, one may find it more challenging to present some of the same types of obstructions to the Council to serve as the basis for sanctions. In other words, while they may not necessary be violations of humanitarian law, these impediments are certainly hampering relief operations.

II. The Need for a Designation Criterion for Starvation Separate from the Criterion on Humanitarian Assistance

A. Humanitarian Actors, Sanctions Mechanisms and Humanitarian Assistance

One potential side effect of a more expansive sanctions regime for situations involving the starvation of civilians is the possibility that donors may restrict humanitarian funding based on sanctions reporting, or that sanctions could be imposed on UN collaborators who control the passage of assistance. This risk, in the context of sanctions reporting on humanitarian assistance, has [already contributed to long-standing tensions](#) between humanitarian actors and sanctions investigators. The creation of a designation criteria on starvation independent from humanitarian assistance, along with a Security Council's expressed readiness to consider, where relevant, humanitarian exemptions of the [type maintained in Somalia](#), can alleviate some of these tensions and facilitate a smoother flow of information. It will also enable sanctions investigators to focus on actors who contribute to starvation, independently of whether these actions also constitute obstructions to humanitarian assistance or access.

A separate criterion on starvation also acknowledges that humanitarian assistance alone cannot remedy conflict-induced starvation. For example, starvation can be induced or perpetuated by conflict-related collapse of financial and economic systems. Humanitarian assistance, even with perfect access, cannot sustain economies or provide for entire populations for significant periods of time.

B. Financial Aspects of Conflict-Related Food Insecurity and Starvation

The resolution is prolific on the types of incidents or violations that can contribute to starvation. Yet, it did not adequately address the impact of a conflict on financial and economic systems. The disruption to these systems can cripple economies and contribute to prolonged starvation. It is well accepted that financial factors are contributing to starvation in Yemen. [Food is available](#) in the markets, but people's purchasing power has eroded to a point at which people starve because they simply cannot afford to buy food. The conflict has occasioned the near total collapse of the country's banking and financial system. The UN Panel [reports](#) that restrictions imposed on imports have resulted in significant additional financial costs and delays to importers to the point that many suppliers and freighters are no longer willing to take the risk of entering into transactions with Yemeni importers. In the north of Yemen, black market and revenue collection activities have eroded the foundations of the formal economy and created a liquidity problem. The regular private sector is facing serious conflict-related threats to its existence. The non-payment of public sector salaries has directly contributed to mass food insecurity and starvation for dependents of public servants.

The concern is that when all parties to a conflict contribute to the disruption of vital financial and economic systems, it is far easier to avoid responsibility for the consequences. The disruptive measures, in themselves, do not fall neatly into specific categories of violations, nor are they assistance impediments. Yet, their humanitarian consequences are far reaching, as is the concomitant burden on the donor community. A separate designation criterion can take into account those disruptions to the financial and economic systems that contribute to starvation.

Finally, it would be negligent not to mention that financial systems are also unsettled by unilateral, bilateral or multilateral sanctions. For example, the [Special Rapporteur on Unilateral Sanctions](#) states that in Syria, "over-compliance with (non-UN) sanctions is forcing humanitarian and economic actors to find irregular payment mechanisms which increase costs, add delays, decrease transparency and in some cases make it impossible for businesses to continue." The UN Office for the Coordination of Humanitarian Affairs (OCHA) has long advocated for [humanitarian impact assessments](#) to be undertaken before sanctions regimes are in place and thereafter. It is incumbent on the Security Council to monitor and avoid situations where UN sanctions, in particular, may disrupt financial systems to the extent that they contribute to starvation.

Conclusion

I support a separate designation criterion on starvation. This criterion should ideally facilitate the imposition of sanctions on those individuals and entities that are responsible for, or contribute towards, or otherwise are involved in activities that cause or contribute to the starvation of conflict-affected civilian populations. The belief is that a separate criterion in selected sanctions regimes, for example, South Sudan, Somalia and Yemen, may act as a deterrent and send a powerful message about the Security Council's low tolerance level for starving civilians. Future resolutions could also focus on a sustainable approach to rebuilding conflict-affected economic and financial systems and

infrastructure, not after the conflict has ended, but while the conflict is ongoing. Concerted efforts from member states of the Security Council in this direction may also act as a detriment for parties to repeatedly target the same economic infrastructure.

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