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MAN-MADE FAMINES: A CRIME AGAINST HUMANITY. A CRITIQUE TO THE CURRENT GAPS IN THE INTERNATIONAL LEGAL FRAMEWORK

Abstract: There is a gap in the current legal framework that might result in the infringement of the human right to food and it is given by the lack of criminalisation of intentionally caused famines. Man-made famines should be recognised as crimes against humanity because after analysing the APs and the Rome Statute, we observe that they only mention starvation episodes, and several other behaviours and situations that would end with a famine are not considered at all. We are referring here to cases when a state has the capacity to predict a famine-related disaster and the resources to minimize its impact but it fails to mitigate the effects and to mobilize a response.

Compared with starvation, famines are events that have much more severe repercussions for larger areas, larger social groups or even whole countries. Furthermore, they usually cover a much longer period of time such as seasons or even years. Moreover, the perpetrators have to be major players such as governments, organisations or groups with sufficient economic or military power.

Finally, famines may be achieved through military actions, policies and other political actions influencing and altering the normal social processes connected to the production of food.

Keywords: crimes against humanity, famine, human rights

1. Introduction

In this article, we will deal with gaps in the current legal framework when it comes to protecting the famine-vulnerable groups of our society from man-made famines in times of armed conflict and peace. Starting from an analysis of the Additional Protocols and the Rome Statute, we will explain why we believe that such a framework has limited scope and insufficient coverage. We will also point out what we believe are the substantial differences between starvation and famine, and we will then consider why it is important to recognize man-made famines as crimes against humanity. This analysis will also include some of the most significant considerations and opinions of several authors who have contributed towards defining the crime of man-made famine and who have called for the international liability of those who committed this. A few notable examples of historical famines will also be provided, together with commentary. Furthermore, we will establish a hierarchy of degrees according to which a famine can be considered as a crime or not. We will also carry out an analysis of the different ways a famine can be achieved (e.g. political actions, socio-economic actions or military actions).

We would like to specify that although there are many situations and actions that may be classified both as crimes against humanity and as genocide, the dynamics of the latter has been left out of our analysis and we are simply pointing out historical famines where genocide has been the specific objective from the beginning. This is because even if genocide and famine overlap, the former may be carried out through a wide range of actions, with famine being just one of the many.

2. Background. The current legal framework and its gaps

Starvation as a method of warfare is forbidden under Additional Protocol I. Indeed, the first paragraph of Article 54 of the 1977 additional protocol I states that ‘starvation of civilians as a method of warfare is prohibited.’ According to the second paragraph of the same article,

it is prohibited to attack, destroy, remove or render useless 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, for the specific purpose of denying them for their sustenance value to the civilian population or to the adverse Party, whatever the motive, whether in order to starve out civilians, to cause them to move away, or for any other motive.¹

The article refers to starvation as a method of warfare, a weapon to annihilate or weaken the population, and the principle has been considered as applicable both in occupied territories and in territories that are not occupied. It should be noted that the verbs ‘attack’, ‘destroy’, ‘remove’ and ‘render useless’ are used in order to cover all possibilities, including pollution by chemical or other agents. It is also worth pointing out that the article uses the expression ‘such as’ to show that the list of protected objects is merely illustrative.

Paragraph 3 specifies that

the prohibitions in paragraph 2 shall not apply to such of the objects covered by it as are used by an adverse Party as sustenance solely for the members of its armed forces; or (b) if not as sustenance, then in direct support of military action, provided, however, that in no event shall actions against these objects be taken which may be expected to leave the civilian population with such inadequate food or water as to cause its starvation or force its movement.

Paragraph 4 adds that ‘these objects shall not be made the object of reprisals’. Finally, paragraph 5 of Article 54 states that

in recognition of the vital requirements of any Party to the conflict in the defence of its national territory against invasion, derogation from the prohibitions contained in paragraph 2 may be made by a Party to the conflict within such territory under its own control where required by imperative military necessity.

As a consequence, an occupying army that is withdrawing may carry out destructions to slow down the advance of enemy troops if military operations render it absolutely necessary. However, it may not destroy indispensable objects such as supplies of foodstuffs, crops ripe for harvesting and drinking water reservoirs. This is because any scorched

¹ Protocol I Additional to the 1949 Geneva Conventions and relating to the Protection of Victims of International Armed Conflicts, 1977. <https://ihl-databases.icrc.org/ihl/INTRO/470>, accessed 21 June 2021.

earth policy carried out by an occupying power must not affect objects indispensable to the survival of the civilian population.²

Nevertheless, in the case of an imperative military necessity, a belligerent power may in an extreme case even destroy objects indispensable to the survival of the civilian population in that part of its own territory that is under its own control, but it may not do so in the part of its territory which is under enemy control.³

Starvation is also prohibited under article 14 of the 1977 additional Protocol II named ‘protection of objects indispensable to the survival of the civilian population’. Accordingly,

starvation of civilians as a method of combat is prohibited. 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.⁴

The object of this provision is to preserve the means of subsistence of the civilian population. It was noted that this article might be considered as a simplified version of the above-mentioned Article 54, and the term ‘starvation’ is intended here as the action of subjecting people to a severe and general scarcity of food.⁵ It is also interesting to notice that this article uses the expression ‘method of combat’, while in Protocol I, the Conference preferred to choose the expression ‘methods and means of warfare’. For some this was chosen because the word ‘combat’ could receive a narrower interpretation than the word ‘warfare’.⁶ Additionally, by using the word ‘therefore’, certain acts are emphasized, but the list is not exhaustive and, as indicated by the words ‘such as’, the list of protected objects is only illustrative. We have to consider that perhaps an exhaustive list might well have resulted in potential omissions or in making an arbitrary choice of object. Furthermore, the text does not distinguish between objects

² Pilloud, Sandoz, De Preux, Zimmermann, *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions*, 658.

³ Pilloud, Sandoz, De Preux, Zimmermann, *ibid.*, 659.

⁴ Protocol II Additional to the 1949 Geneva Conventions and relating to the Protection of Victims of Non-International Armed Conflicts, 1977, <https://www.ohchr.org/EN/ProfessionalInterest/Pages/ProtocolII.aspx>, accessed 28 June 2021.

⁵ Pilloud, Sandoz, De Preux, Zimmermann, *Commentary*, 1456.

⁶ Pilloud, Sandoz, De Preux, Zimmermann, *Commentary*, 1458.

intended for the armed forces and those intended for civilians. It should also be noted that sometimes depriving the civilian population of objects necessary to its survival results in such a population moving elsewhere as it has no other choice. In these cases, starvation might be considered as equivalent to the use of force.

Starvation of civilians is also prohibited under the Rome Statute, Article 8, paragraph 2 point b(xxv):

intentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including willingly fully intending relief supplies as provided for under the Geneva Conventions.⁷

Overall, in these articles, the level of protection guaranteed to the potential victims of starvation appears sufficient as far as wartime is concerned and the list of the potential starvation-connected situations that can occur during wartime presents itself as comprehensive enough.

Nevertheless, although the concept of starvation is mentioned in Protocols I and II of the Geneva Conventions and in the Rome Statute, another concept, the concept of famine, is not mentioned at all in the above-mentioned articles, and as a consequence, the current legal framework presents itself with a limited scope and an insufficient coverage. The APSs consider several starvation-connected circumstances and actions that happen during armed conflicts, such as the destruction of crops or livestock and the removal or destruction of the means of production, however the APs do not consider a long list of other actions, behaviours and situations that would end with a famine. Among these are those situations in which negligence and apathy on the part of the state result in failure to respond to the crisis and worsens the effects of the famine. We are referring here to cases when a state has the capacity to predict a famine-related disaster and to act in order to minimize its impact, but it fails to mitigate the catastrophic effects. We are also referring to cases when a government has the resources needed to mobilize a response to famine and yet fails to respond in an adequate and timely manner.

As a result, we believe that there are several reasons to consider starvation and famine as different crimes and that the absence of the latter constitutes a serious gap in the current framework. Moreover, we

⁷ Rome Statute of the International Criminal Court, 17 July 1998 <https://www.icc-cpi.int/resource-library/documents/rs-eng.pdf>, accessed 28 June 2021.

hold that the concept itself deserves its own explicit mention because of the substantial difference between famine and starvation. If, for instance, a government takes such actions that cause a famine on purpose for political reasons or intentionally worsens the consequences of an on-going famine, then there is a chance that this would not be classified as starvation and punished as such.

3. The differences between starvation and famine and the Rome Statute flaws

There are three significant differences between famine and starvation. The first difference concerns the victims: the concept of starvation encompasses small number of individuals such as a limited group of civilians in a limited area, or small groups of prisoners, while a famine is a much wider phenomenon that has severe repercussions for a large area and/or a larger group or even a whole country.

The second difference concerns the period of time: starvation may occur during a limited number of days, while a famine usually covers a much broader period of time – such as a season, several seasons or even years.

The third difference regards the perpetrators: starvation may be carried out by minor groups such as a small military unit, while the perpetrator of an intentional famine must be a major player such as a government, a country, a party or a group that has a sufficient power, whether economic and/or military, and the capabilities to do so. As a result, it is possible that certain actions may end up being unpunished because they are not straightforward enough to be considered as starvation.

The introduction of the new crime of man-made famine seems indeed even more necessary if we consider that starvation itself is mentioned in the APs only with regards to armed conflicts and not with regards to periods of peacetime as well (namely, a period of time when there is not an on-going open conflict in a certain country). As a matter of fact, Protocol I explicitly talks about ‘a method of warfare’, while the Protocol II refers to ‘a method of combat’. Hence, we realise that even the concept of starvation itself has not been considered properly. Likewise when we consider the Rome Statute, we notice that starvation is considered only with regards to armed conflicts (and for some reason, only with regards to international armed conflicts) as the Statute explicitly mentions ‘a method of warfare’. These gaps seem to be apparently without rational legal basis and seriously

limit the ability of the APs and of the Rome Statute to enable effective prosecution and achieve accountability for the crime of induced famine. As a matter of fact most man-made famines occur today during periods of peace and the victims are denied access to international justice under the current APs and the Rome Statute.⁸

Therefore, the criminalisation of peace-time intentional man-made famines would increase the mentioned ability of the APs and of the Rome Statute to enable effective prosecution.

For the sake of our analysis, it is worth asking ourselves if there is a reason why the Rome Statute does not criminalize intentional starvation in internal armed conflicts. Rogier Bartels considered it an accidental omission, and he noted that ‘in 1998, there was no good reason to omit starvation as a NIAC war crime. This appears to have been the result of an unfortunate oversight’.⁹ D’Alessandra and Gillett have expressed a different opinion, stating that not regarding starvation as a NIAC crime might have been a kind of sacrificial lamb in order to maintain a delicate compromise in the final draft.¹⁰

Whatever the reason, it is a matter of fact that the drafts for the ICC Statute prepared in the lead-up to Rome included starvation as a NIAC crime. Moreover, the draft agreed upon by the 1998 Preparatory Committee also included the wording of the current IAC crime and had the option to include the same language as a NIAC war crime. As Bartels noticed:

The discussions in Rome took place on the basis of a draft that included a proposal to include the NIAC starvation war crime. No specific discussion took place as to the inclusion of starvation as a NIAC war crime – at least, not one that was considered as warranting reflection in the official records.¹¹

⁸ Murdoch, Jordash, ‘Clarifying the Contours of the Crime of Starvation’, <https://www.ejiltalk.org/clarifying-the-contours-of-the-crime-of-starvation/>, accessed 7 July 2021.

⁹ Bartels, ‘Time to fix the Rome Statute and add the crime of starvation in non-international armed conflicts!’ <https://www.ejiltalk.org/time-to-fix-the-rome-statute-and-add-the-crime-of-starvation-in-non-international-armed-conflicts/>, accessed 7 July 2021.

¹⁰ See D’Alessandra, Gillett, ‘The War Crime of Starvation in Non-International Armed Conflict’, pp. 815-847.

¹¹ Bartels, ‘Time to fix the Rome Statute’.

Although many delegations were actually in support of the inclusion of starvation as a NIAC crime, for some reason, the final version of the Rome Statute that was adopted in 1998 did not include the crime of starvation in Article 8.

On top of all that, intentional famine should be specifically and separately considered as a different war crime and crime against humanity. Therefore, there are several reasons to elaborate and approve a text that contains and criminalises the concept of man-made famine, both during war and peacetime.

Given the current situation, if for example a government takes such political actions that cause a famine for political reasons, then there is a chance that this would not be classified as starvation and punished as such. This is because the APs and the Rome Statute do not consider a long list of actions, behaviours and situations that would end with a famine. Among these are those situations in which negligence and apathy on the part of the state results in failure to respond to the crisis and worsens the effects of the famine. We are referring here to cases when a state has the capacity to predict a famine-related disaster and to act in order to minimize its impact, but it fails to mitigate the catastrophic effects. The same applies to those previously mentioned cases when a government has the resources needed to mobilize a response to famine and yet fails to respond in an adequate and timely manner. A significant example of famine provoked by human negligence would be The Great Chinese Famine during the so-called 'Great Leap Forward', particularly, the important role of the government decisional mistakes in the Great Famine that occurred during the years 1959-1961. Furthermore, we are referring here also to cases when a government delays responses based on considerations of race, ethnicity, class, religion or and cases when a famine directly results from deliberate state policies with foreseeable results.

Subsequently, by introducing such a new kind of crime, the civilian population would be granted a stronger legal protection. We refer, in this case, to that part of a civilian population that is more exposed to famines effects, namely the poorest and disadvantaged people in a society who have, as a matter of fact, less economic and social means to survive a prolonged famine. For instance, farmers are often one of the most exposed social classes due to their being more susceptible to suffering because of events related to food production and distribution.

4. The role of customary law and positive obligations

Before we continue with considering the doctrinal approach to famines, for the sake of our analysis it is worth specifying that the right to food has been considered by some authors as part of customary international law because of its inclusion in the UDHR, the substance of which can now be viewed as customary law in its entirety.¹²

Buckingham argues that the UDHR is an authoritative interpretation of U.N. Charter Articles 1(3), 55 and 56 and that it has binding legal effect.¹³ Kearns also argues that all rights contained in the UDHR 'have acquired customary international law status and that, as a consequence, the right to food has achieved *jus cogens* status'.¹⁴

For Narula, the right to food is made of two separate but related rights: the right to adequate food and the right to be free from hunger, and 'while the right to adequate food is a relative standard, the right to be free from hunger is absolute and fundamental'. He argues that the right to adequate food, intended as a sustainable access to food in a quantity and quality sufficient to satisfy personal needs, may not yet be part of customary law, but, on the other hand, the right to be free from hunger has achieved this status.¹⁵ Moreover, for the same author:

A plethora of treaties, resolutions, and declarations at the international level, and a growing number of constitutional and judicial interpretations at the domestic level, evince the evolution of the right to food into a customary norm. It could nevertheless be argued that recognition of the right to food as a legal right with corresponding legal obligations is nowhere near universal and that conclusions regarding its status as custom are premature.¹⁶

But do states have a positive obligation to prevent starvation? Indeed, they are obliged to prevent hunger and malnutrition. It is worth mentioning here what is stated by The Committee on Economic, Social and Cultural

¹² Sohn, 'The Human Rights Law of the Charter', 133.

¹³ Buckingham, *A Recipe for Change: Towards an Integrated Approach to Food Under International Law*, 6.

¹⁴ Kearns, *The Right to Food Exists Via Customary International Law*, 1998.

¹⁵ Narula, 'The Right To Food: Holding Global Actors Accountable Under International Law', 75.

¹⁶ Narula, *ibid.*, 83.

Rights. In its Comments, the Committee declared that state parties to the CESCR have a core obligation to ensure the satisfaction of minimum essential levels of each of the rights enunciated in the ICESCR (International Covenant on Economic, Social and Cultural Rights), including the right to health. These core obligations include obligations such as to ensure access to the minimum essential food that is nutritionally adequate and safe and to ensure freedom from hunger to everyone.¹⁷

Equally important is part 2, Article 2 of the ICESCR. This article is also relevant when it comes to the positive obligations of state entities, as it affirms that ‘each state party to the present Covenant undertakes to take steps, individually and through international assistance and cooperation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures’.¹⁸ Furthermore, part 3, Article 11 of the ICESCR affirms that ‘the states parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international cooperation, the measures, including specific programmes, which are needed:

- a. To improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources;
- b. Taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need’.¹⁹

¹⁷ CESCR, General Comment n° 14, E/C.12/2000/4, at paragraph 43.

¹⁸ International Covenant on Economic, Social and Cultural Rights, 1966, part II, Article 2.

¹⁹ International Covenant on Economic, Social and Cultural Rights, 1966, part III, Article 11.

5. Doctrinal approach to famines

There has been a lot of analysis in the literature about the mentioned gaps in the current legal framework. The clear pattern among them has been the necessity of creating a mechanism of liability for the actors of the international law who have been responsible for having created, prolonged or worsened the effects of a famine. The urgent need to prosecute the perpetrators of famine that have allowed famines to unfold or worsen has been felt among several authors.

Jlath Vincent Jappah and Danielle Taana Smith stand out for coining the term 'state sponsored famine'. They view famine not just as a nature-induced phenomenon, but also as a 'wilfully orchestrated' state policy. Fein gives us a more detailed description of the famine process when he argues that:

A crime of famine occurred when governments or individuals who occupy high positions of command deliberately engaged in faminogenic acts as a form of political weaponry against a particular social class, ethnic, racial or religious group. State negligence and the implementation of wilfully orchestrated plans or policies that cause widespread death should be criminalised.²⁰

About famine criminalisation, Jappah and Smith argue that 'if atrocities committed during the war and other human rights violations are criminal, then it stands to reason that politically induced famine as a mean to annihilate a group should also be criminalised'. Among the many that called for a stronger reaction within the international community, Edkins stands out for stating that governments should be held responsible and subject to sanctions for allowing famines to occur.²¹ Howe and Devereux, on the other hand, have noted 'the lack of agreement on the definition of famine makes it difficult to achieve the criminalization of famine and the accountability for violations of the right to food'.²² These two authors have also spotted one of the main issues that remains unsolved. They point out that the level of mortality that needs to occur before a food crisis is considered as a famine is still a very controversial and unresolved point.

²⁰ Fein, *Human rights and wrongs: Slavery, Terror and Genocide*, 3.

²¹ See generally Edkins, 'Whose hunger? Concepts of famine, practices of aid'.

²² See Howe, Devereux, 'Famine intensity and magnitude scales: A proposal for an instrumental definition of famine'.

According to Howe and Devereux, ‘governments and agencies with national responsibilities for famine prevention have often exploited the ambiguities in the term to contest whether a famine has occurred, thereby evading even limited accountability for their actions’.²³ Alex de Waal adds:

(...) starvation crimes do not refer to a legal category as such but draws together a range of crimes under different provisions of international criminal law. Starvation crimes perpetrated on a sufficient scale and over a sufficient length can definitely cause a famine.²⁴

In the general trend of calling for criminalisation of man-made famines, Green and Ward take a firm position. They affirm that:

Famine should be viewed as state crime when ensuring human rights violations result from all those acts of state deviance that exacerbate the impact of famine and other natural disasters on vulnerable population, including practices of political corruption, government negligence and post disaster cover ups.²⁵

For Vincent Jappah and Danielle Smith, ‘accountability for acts of state deviance which includes institutionalized famine should be highly encouraged.’ These authors contributed greatly to the subject by analysing cases where a famine was not caused by a state, but the state itself intentionally worsens the effect of a famine or does nothing to stop it. They state that:

A crime of famine occurs when a state has the capacity to predict a famine related disaster and to act in order to minimize its impact but it fails to mitigate the catastrophic effects or hide relevant information from humanitarian agencies and donors and it blocks humanitarian corridors. Negligence or apathy on the part of the state that results in its failure to respond to the crisis can be considered criminal, based on its technological capacity for early identification and early response, its level of mobilization of resources and its prioritization of the situation.²⁶

²³ Jappah, Smith, *State Sponsored Famine: Conceptualizing Politically Induced Famine as a Crime Against Humanity*, 28.

²⁴ De Waal, *Seventh Annual Overseas Development Institute*, Lecture given in London, 6 December 2018.

²⁵ Jappah, Smith, *State Sponsored Famine*, 29.

²⁶ Jappah, Smith, *ibid.*, 21.

We surely have to recognise, then, the great merit of placing stress on the role of negligence and apathy (which has been partly neglected by several other authors who have focused on different aspects and dynamics of famines). In these cases, negligence and apathy could materialise in the form of short-sighted economic actions, economic mismanagements and radical agricultural changes imposed by governments.

As a result, for the same authors:

Culpability exists if a government has the technological capacity to predict famine and yet fails to do so, if a government has the resources needed to mobilize a response to famine and yet fails to respond in an adequate and timely manner, if a government delays responses based on considerations of race, ethnicity, class, religion and other factors or if famine directly results from deliberate state policies with foreseeable results.²⁷

A rather significant example of famine provoked by human negligence would be The Great Chinese Famine during the so-called Great Leap Forward with the important role of the government decisional mistakes in the Great Famine that occurred during the years 1959-1961.²⁸

For Bruce Gilley, the Chinese famine should be classified as a crime against humanity, and many CCP politicians, in particular, Zhilou Enlai and Hu Yaobang could easily 'be censored for their role in backing Mao in the policies that caused the famine'.²⁹

For De Waal:

it was incumbent upon the government of the PRC to make its leaders at all levels accept accountability for their mistakes and to introduce a greater institutional openness and transparency and to transfer regulatory power over food into the hands of famine vulnerable farmers, returning to them the prerogative of provisioning themselves before the state.³⁰

²⁷ Jappah, Smith, *ibid.*, 25.

²⁸ For an in-depth analysis of this subject: Becker, *Hungry Ghosts: Mao's Secret Famine*, A Holt Paperback.

²⁹ Gilley, *China's Democratic Future: How It Will Happen And Where It Will Lead*, 2221.

³⁰ See De Waal, *Famine Crimes: Politics and the Disaster Relief Industry in Africa*.

In the analysis of Dijkman and Van Leeuwen, ‘the most effective way to prevent future famines is to strengthen the global accountability mechanism.’³¹

According to Fein, a famine can serve as a strategic mean to decimate particular social groups. Fein states that in many occasions: ‘it is not an unwanted consequence but rather a deliberate and organised means or carrying out the state policies’.³² Marcus adds ‘since famines are often functionally equivalent to genocide it makes no moral or legal sense not to extend the protection of international law to famine-prone population’.³³

The way courts and tribunals have avoided addressing the issue for so long has been firmly criticised by De Falco, who writes ‘courts and tribunals have avoided addressing the culpability of individuals who cause mass famines for too long especially now that humankind has entered an era where such tragedies are entirely avoidable’.³⁴

6. Marcus’s degrees

But is it really possible to distinguish and classify the different possible cases of famine? We believe that, although it may be difficult, it is possible to achieve an acceptable classification of the different kinds of famines that can occur. This is precisely the distinction created by David Marcus and considered in detail by Alex de Waal. As a matter of fact, Marcus distinguishes between four different degrees of famine crimes.³⁵ He states that:

A first degree famine crime is committed when somebody knowingly creates, inflicts or prolongs conditions that result in or contribute to the starvation of a significant number of persons. So the first degree is committed by someone determined to exterminate a population through famine.³⁶

³¹ See Dijkman, Van Leeuwen, *An Economic History of Famine Resilience*.

³² Fein, *Human Rights*, 3.

³³ Rubin, *Contemporary Famine Analysis*, 82.

³⁴ Rubin, *ibid.*, 82.

³⁵ De Waal, *Mass Starvation: The History and Future of Famine*, 183.

³⁶ Marcus, *Famine Crimes in International Law*, 247.

As to that we may comment that a notable example of this degree is the Holodomor, where Stalin clearly realised he intensified the starvation in Ukraine as an act of persecution. A further example is the genocide of the Herero in Namibia that occurred between 1904 and 1908, in the German colony of Namibia.³⁷

A second degree famine crime is committed by:

(...) a person recklessly ignoring evidence that his or her policies are creating, inflicting or prolonging the starvation of a significant number of persons. So the second degree is committed by an official recklessly pursuing policies that have already proven their faminogenic tendencies.³⁸

This is probably the largest group of famine crimes so far. Notable examples of this degree being the 1943 Bengal famine,³⁹ the 2011 Somali famine and the North Korean famine in the 1990s. According to Stephan Haggard and Marcus Noland, 'the state culpability in that vast misery elevates the North Korean famine to a crime against humanity.'⁴⁰

For Marcus, the third degree of famine crime is when public authorities are indifferent: 'their policies may not be the principal cause of famine, but they do little or nothing to alleviate hunger.'⁴¹

An example of this could be the 1984-1985 famine in Sudan, when the president, Jaafar Nimeiri, chose to deny the crisis and refused to ask for international assistance. The relief workers sent there noticed that the situation, which was already desperate, was made worse by the Sudanese Government that took a very long time to recognise how serious the situation was and how much the drought affected the country. The relief workers also described how the government failed to coordinate the relief program. As a matter of fact, Nimeiry's Government did not publicly

³⁷ Schaller, Moses, *From Conquest to Genocide: Colonial Rule in German Southwest Africa and German East Africa, Empire, Colony Genocide: Conquest, Occupation, and Subaltern Resistance in World History*, 296

³⁸ Marcus, *Famine Crimes*, 247.

³⁹ For an in-depth analysis of this subject: Uppal J. N., *Bengal famine of 1943: A Man-Made Tragedy*.

⁴⁰ Haggard, Noland, *Famine in North Korea: Markets, Aid and Reform*, 209.

⁴¹ De Waal, *Mass Starvation*, 183.

acknowledge the degree of the shortage and famine affecting the Sudanese population.⁴²

Finally, for Marcus, the fourth degree is the one with the lack of political responsibility. This happens when ‘incapable or incapacitated authorities, faced with food crises caused by external factors (climatic or economic) are unable to respond effectively to needs.’⁴³ Examples of this case may be the 1972-1973 Indian famine.

We honestly believe that criminalisation should be claimed only for the first two degrees. About the third it may be very difficult to prove the responsibility of an authority. As to the fourth degree it clearly lacks the elements that suggest a responsibility. Maybe it would be useful to consider a separate category of crime for those cases such as the failure to provide assistance.

It is worth mentioning that in this article, every time we talk about responsibility, we refer rather to individual responsibility than to state responsibility. Indeed, we believe that in most of the analysed cases of famine caused by human action, it is possible to isolate the main perpetrators within a larger group, organisation, government or institution who caused or perhaps worsened the effects of a famine. On several occasions they are those who sit high in the state hierarchy, those who took the decisions that ended in a famine and those who have the necessary decisional, political and economic power to cause a famine.

7. A possible definition of famine and its features

But what are the characteristics of a man made famine? Is it possible to come to a more specific definition of the crime?

We believe that a possible definition could be ‘the will of producing an extended and disruptive phenomenon of famine’. That may be achieved through:

⁴² Miller, ‘Up to 4 million in Sudan said to face starvation,’ *The New York Times*, 13 January 1985.

⁴³ De Waal, *Mass Starvation*, 183.

7.1. Political actions

In this category we could include parliamentary or regional laws, governmental decrees and, in general, every policy and action taken by a central government or a ministry that purposely ends with influencing and altering the normal economic and social processes connected to the production and conservation of food supplies.

For David Marcus, ‘in many cases, famines occurred alongside war crimes such as massacres, linked fundamentally by disregard for the value of human life and tactically by the violent pursuit of political and military goals.’ Of course, if we take as an example dictatorships or autocracies, it is possible that certain decisions taken by the central authority will not result in a law or an official and public decision, but rather in a series of secret actions carried out with discretion. An egregious example of this category is the Holodomor.⁴⁴

For Rubin:

(...) the political processes related to famine could be characterized by neglect when famine is not considered as the decision making process. It could also be an accident or political processes aimed at other property goals. It could also be caused by a deliberate trade-off between famine prevention and other political goals. Political processes could create famines as means to achieve other political priorities.⁴⁵

The same author clearly hits the mark when he affirms that a political analysis of famine:

(...) should focus directly on key political actors, and famines should not be analysed as shortages, but as a result of politics. And although famine is a disaster from a humanitarian perspective, it is not always a disaster from a political perspective because the famine may be the outcome of political processes and power struggles, and famines themselves are inherently political in much the same manner as genocides and pogroms.⁴⁶

⁴⁴ For an in-depth analysis of this subject: Bas Dianda, *Political Routes to Starvation: Why Does Famine Kill?*

⁴⁵ Rubin, *Contemporary Famine Analysis*, 85.

⁴⁶ Rubin, *ibid.*, 84.

7.2. Military actions purposely directed to cause a famine such as a naval blockade with the aim of blocking the food supply

In many regimes, the political actions often come with military actions as a way to enforce certain decisions. A notable example of this category is, in our opinion, the naval blockade of Yemen by Saudi Arabian warships during the Yemeni Civil War.⁴⁷ The Blockade started in 2015 as the result of a military intervention launched by Saudi Arabia in March to influence the result of the Yemeni Civil War and to back president Hadi's government. The blockade provoked a severe food shortage, and in November 2018, a report by Save the Children estimated that 85,000 children under the age of five have died from starvation.⁴⁸ It was also reported that Saudi Arabia purposely targeted means of food production and distribution in Yemen by bombing farms,⁴⁹ fishing boats, ports,⁵⁰ food storages and food factories in order to aggravate the famine. Because of these actions, the UN accused the Saudi coalition of committing war crimes and having no concern for human life.⁵¹

Another significant example that we can include in this category is the 1921-1922 famine in Tatarstan. Serbyn noted that 'this famine was not caused by drought and crop failures, but by the policies of the Soviet

⁴⁷ Borger, 'Saudi-led naval blockade leaves 20 m Yemenis facing humanitarian disaster',. See also Zheng, 'Unlawful Blockaded as Crime Against Humanity' <https://www.asil.org/insights/volume/22/issue/5/unlawful-blockades-crimes-against-humanity>, accessed 7 July 2021.

⁴⁸ Gebrekidan, Saul, 'Saudi de facto blockade starves Yemen of food and medicine' <https://www.reuters.com/investigates/special-report/yemen-saudi-blockade/>, accessed 7 July 2021.

⁴⁹ Fisk, 'Saudi Arabia deliberately targeted impoverished Yemen's farms and agricultural industry' <https://www.independent.co.uk/news/world/middle-east/saudi-arabia-s-bombing-yemeni-farmland-disgraceful-breach-geneva-conventions-a7376576.html>, accessed 7 July 2021.

⁵⁰ Colville, 'Over 100 civilians killed in a month, including fishermen, refugees, as Yemen conflict reaches two-year mark' <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21444&LangID=E>, accessed 7 July 2021.

⁵¹ Lederer 'UN experts say Saudi coalition violated international humanitarian law in Yemen attack' <https://www.independent.co.uk/news/world/middle-east/un-saudi-arabia-yemen-air-strikes-violated-international-law-a7372936.html>, accessed 7 July 2021.

state'. He describes it as the first man-made famine in the Soviet Union.⁵² Because of the role of the Soviet Government in the Famine, in 2008, the All-Russian Tatar Social Center asked the United Nations to condemn the 1921-1922 Tatarstan famine as a genocide perpetrated against the Tatars.⁵³

7.3. Socioeconomic choices that have the precise aim of inducing a famine

This category may present quite the same features as the political actions, but it may be advisable to consider them separately. Indeed, we might include in this group economic policies that have the subtle aim of creating a famine.

A significant example related to this category is the North Korean famine that occurred between 1994 and 1998. About it, the United Nations Human Rights Council stated that 'the death of large numbers of people does not have to be the goal pursued by the perpetrators for a criminal intent requirement to be satisfied (UN Human Rights Council 2014: 324).' With regard to the famine, the UN Commission, during the UN Human Rights Council 2014: 339, stated that:

(...) for the crime of extermination to take place, it is sufficient that the perpetrators deprive the population of necessary food in calculated awareness that these conditions will cause mass deaths in the ordinary course of events.⁵⁴

The Commission also found out that the members of the party had committed crimes against humanity by implementing actions, decisions and policies that led to mass starvation, death by starvation and grave mental and physical injury (UN Human Rights Council 2014: 33). According to the commission the UN needed to ensure that those most responsible for the crimes against humanity in North Korea are held accountable.

According to Rubin:

⁵² Serbyn, 'The first man-made famine in Soviet Union 1921-1923', *The Ukrainian Weekly*, 6 December 1988.

⁵³ Globe, 'Tatar Nationalists ask UN to condemn 1921 famine as genocide' https://www.azer.com/aiweb/categories/caucasus_crisis/index/cc_articles/goble/goble_2008/goble_1108/goble_1105_tataristan.html, accessed 7 July 2021.

⁵⁴ UN Human Rights Council 2014: 339.

contemporary famines should not be framed as technical problems that can necessarily be solved through international measures. Famines are to be traced to political acts of either premeditated carelessness or tactics. Uncovering these political processes is necessary in order to allow for the enforcement of humanitarian accountability.⁵⁵

7.4. Geopolitical actions directed to hit the agriculture of a country or a region. In this category we could also include actions taken by another country or more countries together – such as embargoes and the boycotting of exports.

About the perpetrators, they may be not only be national governments and federal state governments, but also a public institutions, private organisations or military and paramilitary groups. In general, they can be any group, organisation or institution that has enough social and economic power to create a famine if it desires to do so.

However, should short-sighted economic actions, economic mismanagement, radical agricultural changes imposed by governments and negligence be held accountable? A interesting notable example of this kind, and one we have mentioned before, is The Great Chinese Famine during the ‘Great Leap Forward’ and the role of the government decisional mistakes in the Great Famine during the years 1959-1961.⁵⁶ For Bruce Gilley, this famine should be classified as a crime against humanity and most CCP politicians ‘could be censored for their role in backing Mao in the policies that caused the famine.’⁵⁷

For De Waal:

(...) it was incumbent upon the government of the PRC to make its leaders at all levels accept accountability for their mistakes and to introduce a greater institutional openness and transparency and to transfer regulatory power over food into the hands of famine vulnerable farmers, returning to them the prerogative of provisioning themselves before the state.⁵⁸

⁵⁵ Rubin, *Contemporary Famine Analysis*, 83-84.

⁵⁶ For an in-depth analysis of this subject: Becker, *Hungry Ghosts*.

⁵⁷ Gilley, *China’s Democratic Future*, 221.

⁵⁸ De Waal, *Famine Crimes*. For an in-depth analysis of the subject: Thaxton, *Catastrophe and Contention in Rural China: Mao’s Great Leap Forward Famine Famine and the Origins of Righteous Resistance in Da Fo Village*.

The 1975-1979 famine that occurred in Cambodia and which killed more than a million civilians also presents similar characteristics. Several important leaders of the Khmer Rouge have publicly denied their responsibility or blamed others when accused of having intentionally caused mass starvation. They have claimed that the starvation that occurred during the Khmer Rouge period happened because of a combination of bad harvests, drought, ingenuous mistakes and some kind of supposed foreign interference. It is important to notice that because of the civil war, Cambodia was already dangerously close to the edge of a famine when the Khmer Rouge came to power. Despite that, the first act of the regime was to order the forced evacuation of the capital and to expel all foreigners, including humanitarian food aid organizations, from the country.

Another action of the Khmer Rouge that led to more severe famine conditions was the mass forced mass-movement of population to the Northwest Zone in 1976. That zone of Cambodia was the country's area with the highest agricultural productivity, and the regime decided that it needed additional forces to achieve the assigned rice production targets, thus it ordered the forced transfer of 500,000 to 800,000 people into it. Unfortunately, the whole area lacked the capacity to house and feed them and that worsened the famine mortality among the people of the Northwest Zone.⁵⁹

Maggie Black observed that, when mass famine could be avoided in Cambodia simply by leaving the civilian population to its own devices, Khmer Rouge implemented policies that led to the starvation of Cambodia's population.⁶⁰ It has been noticed that it is indeed hard to believe that the regime ignored what was happening in the countryside. At some point, evidence and reports of mass famine and starvation must have made it impossible for the leaders to keep ignoring what was going on and the possible, although unlikely, initial negligence of the government officials must have changed for actual knowledge that their policies provoked a severe famine. Despite that, the regime continued to enforce policies of forced labour, bans on private food production and consumption of food, as well as state expropriation of rice for export.⁶¹

For De Falco, it is clear that:

⁵⁹ See De Falco, 'Justice and Starvation in Cambodia: The Khmer Rouge Famine'.

⁶⁰ Black, *The Children and the Nations*, chapter 16.

⁶¹ De Falco, 'Justice and Starvation'.

The Khmer Rouge leaders, at some point after becoming aware that the civilians under their authority were dying of starvation, chose to prioritize the revolutionary goals over the survival of the civilian population.⁶²

According to De Falco the actions of the leading members or the communist party in Cambodia can clearly be prosecuted as crimes against humanity. He points to several pieces of evidence that strongly suggest that party leaders were well aware of the deadly famine that was about to happen. Yet ‘they actively implemented policies that further worsened it and they used the famine as a primary mean to control the population.’⁶³

Could the result of a military action without a specific aim of provoking a famine be considered in scope? Also how could the result of a political action without a specific aim of provoking a famine be considered in scope? Answering those questions is surely not an easy task and the rejoinder may vary according to the single case we take into consideration. However, the four degrees of famine crime set up by David Marcus might be an extremely valuable starting point for assessing a specific single case. On the other hand, what the UN Commission stated (2014: 339) is a fundamental milestone that has been achieved in the area.

As we said, according to Article 8 of the Rome Statute as it currently stands, to be a crime, perpetrators must intend to starve civilians as a method of warfare. But, once again, what if they did not intend to do so, yet they are still accountable for the great negligence that led to famine?

For example, during the Sudan famine in 1984-1985, the Sudanese Government did not have a designated ministry to take care of the relief effort so those efforts were scattered, duplicated, and inefficient – and this is despite a previous record of famines in the nation. The government had also incorrectly assumed that the United States would bail out the Sudanese government by sending more than a million tons of wheat to Sudan. This was an assumption that was wrong and that would reveal fatal.⁶⁴

About the role of negligence in a famine, Scandlyn criticises ‘the hegemonic view of famines as disasters caused by natural forces and processes beyond humans or governmental control.’⁶⁵

⁶² De Falco, ‘Justice and Starvation’.

⁶³ Rubin, *Contemporary Famine Analysis*, 83.

⁶⁴ Miller, ‘Up to 4 million in Sudan’.

⁶⁵ Scandlyn, Simon, Thomas, Brett, *Theoretical framing of world views, values, and structural dimensions of disasters*, 45.

He states that on many occasions, famines are caused by 'inadequate enforcement of building codes and the lack of investment in warning systems and disaster planning which result in suffering from higher casualties and costs than others when disasters occur.'⁶⁶ So for this author, if the claims of negligence are confirmed, then these practices constitute a violation of international human rights.⁶⁷

Another remarkable historical example to be considered with regard to the criminality of famine is the 2005 Niger famine. Khalif and Doornbos assert that during the Niger famine in 2005, the government and other business actors exported food commodities to neighbouring countries with higher purchasing power.⁶⁸ About this case, Keenan argues that:

(...) the president of Niger at the time made it extremely difficult for the international community to intervene by denying the existence of famine in his country which made it more difficult for the WFP to solicit funds from donors. Consequently just as government practices can cause famine a corner can also prolong and worsen a famine by ignoring it once it has started.⁶⁹

Yet one more valuable instance is the previously mentioned North Korean example, where, during the 1994-1998 famine, despite the scarcity of basic food supplies, the regime continued to implement faminogenic policies that resulted in widespread starvation of its people and did so with the full awareness of the impact of such policies.⁷⁰

As far as the accountability for those cases is concerned, Aloyo affirms that:

The Rome Statute has the jurisdiction to try leaders for actions and policies that will cause foreseeable and avoidable widespread or systematic violations of some type of human rights to civilians, even if the leaders do not intend the harms.⁷¹

As previously mentioned, the crime of induce-famine should, therefore, include actions taken during international wars, civil wars when

⁶⁶ Scandlyn, Simon, Thomas, and Brett, *ibid.*, 45.

⁶⁷ Jappah, Smith, *State Sponsored Famine*, 22.

⁶⁸ Khalif, Doornbos, 'The Somali region in Ethiopia: A neglected human rights tragedy,' 73-94.

⁶⁹ Keenan, 'Famine in Niger is not all that it appears', 104-105.

⁷⁰ Jappah, Smith, *State Sponsored Famine*, 23.

⁷¹ Rubin, *Contemporary Famine Analysis*, 83.

it is considered as a war crime and during peace when considered as crime against humanity.⁷²

Unfortunately, the lack of precedent also means that the practical contours of the crime are not yet clear. Deliberately destroying food aid may be obviously criminal behaviour, but the criminality of blockades and economic restrictions in wartime are not so sharply defined. About this, Murdoch confirms that ‘the lack of road-testing of the crime has meant that prosecutors are naturally nervous about charging something so novel and untested, especially given the current ICC record of failed prosecutions.’

Moreover, it is not always easy to spot differences between man-made famines and natural famines. Sankey notes that:

(...) subsistence harms (including famines) are frequently perpetrated through direct human agency but because mass starvation has traditionally been associated with natural disasters perpetrators have been able to portray deaths as simply resulting from natural disasters it from the unforeseen consequences of other forms or violence.⁷³

8. Latest developments

It seems that despite the critics and complaints in the literature, despite having managed to recognise the different patterns and dynamics of man-made famines, despite having produced excellent definitions of the problem and its dynamics, authors have failed to propose a significant remedy to the issues analysed. Even the great work of Marcus and his degrees of famine does not translate in a productive proposal of a new text or draft. There is, hence, an urgent need for a constructive solution that is able to overcome the present gaps.

Nevertheless, a positive signal was eventually given in 2017, after a report to the general assembly committee dealing with social humanitarian and cultural issue, known as the Third Committee. Herein, Hilal Elver, the UN Special Rapporteur on the right to food has told to journalists in New York that ‘if the famine comes from deliberate action of the state or other players using food as a weapon or war, it is an international crime.’⁷⁴ Hilal

⁷² De Waal, *Famine Crimes*.

⁷³ Rubin, *Contemporary Famine Analysis*, 83.

⁷⁴ UN News 23/10/2017.

also urged governments to focus on peace processes and long-term policies that break the cycle of recurring famines and she noted that the most serious cases of man-made famine could be referred to the International Criminal Court (ICC), but said in the press conference that this has never been done.⁷⁵

Undoubtedly another step forward was taken in 2018 when at the UNHRC 39th Session, an experts panel discussed the important distinction between famines and the international law crime of using starvation as a method of warfare, as well as the connection between conflict-induced hunger and the same crime. Panellists also discussed whether the current legal framework and its gaps are sufficient to prosecute individuals for international crimes of starvation and other challenges to accountability. In the same session, the Special Rapporteur also presented a video keynote named Mass Starvation: Analysis and Accountability for the International Crime of Starvation.

9. Conclusion

To conclude, famines have been largely used as an evil mechanism of domination and there are sufficient elements to believe that it will probably still be used in such a way for some time until those actions are criminalised. Still, we may say that there is hope that in the close future, international organisations will move to take the necessary steps and that intentional man-made famines will be recognised as international crimes.

This might come about as an amendment to the existing Protocols or as a new distinct Protocol.

It may include both situations when there is a clear determination and will to exterminate a population or part of it through famine; situations when there are behaviours that worsen and exacerbate an already on-going famine; and situations when the perpetrators recklessly pursue policies and choices that have already proven to have faminogenic tendencies in the past and ignore all the evidences that their policies are creating a famine. In order to guarantee the widest protection possible, the amendment draft

⁷⁵ Elver, 'Famine can be a war crime and should be prosecuted,' <https://modernndiplomacy.eu/2017/10/25/famine-can-be-a-war-crime-and-should-be-prosecuted/>, accessed 2 July 2021.

should cover both actions taken in times of war and actions taken in times of peace.

From a legal point of view, we may qualify intentional man-made famines as crimes against humanity. We know that those crimes are specific crimes committed in the context of a large-scale attack upon civilians and may be committed against nationals of any state, including that state's own nationals. Like every other crime against humanity, famines originate not from simple isolated and sporadic events, but from more widespread and systematic practices that are part of governmental or other powerful entities' policies.

Finally, it is worth reporting here a couple of considerations made by two authors about the possible collateral effects that such an amendment could cause. Marcus argues that an attempt to codify famine as a crime may push some potential donor states to refuse to provide aid to starving populations with the excuse that doing it would mean helping criminal governments.

De Waal also argues that criminalization of famine 'would further hinder humanitarian operations.'⁷⁶

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⁷⁶ De Waal, *On famine crimes and tragedies*, 372.

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