

# ACCOUNTING FOR MASS STARVATION: TESTING THE LIMITS OF THE LAW

REFLECTIONS ON THE HIGH-LEVEL SIDE EVENT AT THE UNITED NATIONS HUMAN RIGHTS COUNCIL, GENEVA, JOINTLY HOSTED BY THE INTERNATIONAL BAR ASSOCIATION AND GLOBAL RIGHTS COMPLIANCE



ON SEPTEMBER 12 2018, [GLOBAL RIGHTS COMPLIANCE'S](#) ('GRC') MANAGING PARTNER WAYNE JORDASH QC PARTICIPATED IN A [HIGH-LEVEL SIDE EVENT](#) TO THE 39TH SESSION OF THE UNITED NATIONS ('UN') HUMAN RIGHTS COUNCIL ('HRC').

The event, co-hosted by the International Bar Association ('IBA') and GRC, was opened by Her Excellency Monique T G van Daalen, the Permanent Representative of the Kingdom of the Netherlands in Geneva, who delivered a rallying introduction. Her Excellency highlighted that there was not a lack of rules surrounding the prohibition of deliberate starvation, rather that the problems stemmed from those acting with impunity. Her Excellency further suggested that existing and emerging accountability mechanisms should include the crime of starvation in their mandates.

The panel of experts, moderated by Federica D'Alessandra, Executive Director of the Oxford Program on International Peace and Security and Co-Chair of the IBA War Crimes Committee, discussed the importance of the implementation of the landmark [United Nations Security Council Resolution S/RES/2417](#) ('UNSC 2417'), which recognised that the starvation of civilians as a method of warfare can constitute a war crime. Man-made famines associated with conflicts are on the rise, and clearly defining war crimes related to food and hunger is an increasingly urgent task.

The panel discussion focused on the current understanding of the crime of starvation and how to delineate the contours of the offence in practice.

Brian Lander, Deputy Director of the World Food Program (WFP) in Geneva, addressed the dire hunger statistics, in light of the recent [2018 Report](#) issued by the Food Agricultural Organisation ('FAO'). The UN identified four situations of acute food insecurity that could threaten, or are generally defined as famine - in north-eastern Nigeria, Somalia, South Sudan and Yemen. Mr. Lander outlined the incongruity of these situations in light of the large increase in food production in the world.

Many countries are now facing conflict-induced hunger and acute food insecurity, the scale of which is likely to

GLOBAL RIGHTS COMPLIANCE is a niche organisation offering a unique approach to atrocity crimes and other violations of international law. Our "root and branch" philosophy combines innovative full-spectrum accountability strategies, expertise in evidence gathering in conflict setting, and building the capacity of States to implement international humanitarian and human rights standards. Global Rights Compliance is run by Wayne Jordash QC. His career has spanned all of the international courts and tribunals. He is recognised by the Legal 500 UK as "one of the world's leading international criminal lawyers".

THE WORLD PEACE FOUNDATION, an operating foundation affiliated solely with the Fletcher School of Law and Diplomacy at Tufts University, provides intellectual leadership on issues of peace, justice and security. Alex de Waal is the Executive Director of the World Peace Foundation. Considered one of the foremost experts on Sudan and the Horn of Africa, his scholarly work and practice on famines is unparalleled.

threaten peace and security. Increase in besiegement techniques, displacements of civilians and attacks against humanitarian actors during wars exacerbate hunger. The WFP is engaged in addressing the root causes behind famine and war and it participated in the discussion series initiated by the Governments of the Netherlands and Switzerland. The outcome of these meetings was the ["Conflict and hunger: breaking the vicious cycle"](#) Report, published in December 2017 by the Humanitarian Policy Group.

The UN Special Rapporteur on the right to food, Hilal Elver, delivered a keynote video address on the importance of the aftermath of [UNSC 2417](#).

***"While this Resolution signals the urgency of addressing famine, it is necessary to extend the analysis of famine beyond contexts of warfare and advocate policy-related remedies that include criminal accountability to end widespread impunity."***

**- Ms. Hilal Elver**

*UN Special Rapporteur on the right to food*

Ms. Elver addressed the gaps between what is prescribed in the law and the feasibility of its implementation, and called for a coherent formulation of the crime of starvation in an authoritative text, which would greatly contribute to the development of international law and would give States and the international community a clear legal mandate to prevent famine.



**Emanuela-Chiara Gillard**, Research Fellow at the European University Institute, analysed the prohibition of starvation in light of a number of international humanitarian law (IHL) rules. Ms Gillard focused on the different ways starvation can occur through the acts or omissions of the parties to the conflict. In particular, rules related to the obligation to allow access to humanitarian assistance under IHL that are aimed at providing an adequate response to the suffering of the civilian population before starvation can occur. Due to this fundamental role, the UNSC has often linked the denial of access of humanitarian relief to a threat to international peace and security under Chapter VII of the UN Charter. The critical gap in accountability, namely that the Rome Statute presently only criminalises the war crime of starvation in an international armed conflict, and the inconsistency of this provision with customary international law, was discussed.

**Wayne Jordash QC**, Managing Partner of GRC, focused on the core reasons for the lack of past prosecutions and accountability for the crime of starvation. Indeed, at the international criminal level, there is yet to be a prosecution for starvation as a distinct crime. Mr. Jordash analysed the reasons behind this, in light of the jurisprudence of the international tribunals, which mainly focused on direct rather than incidental attacks on the civilian population, a fact that has limited the forensic understanding of the crime of starvation. Mr. Jordash acknowledged that the controversy is complicated when other issues come into play:

***“When military and civilian targets are intermingled, the question of intent is a more complex calculation that requires more detailed and more expert scrutiny. [...] How does one disentangle a lawful siege or blockade that includes a military objective from conduct intended to starve the civilian population?”***

**- Wayne Jordash QC**  
GRC's Managing Partner

Mr. Jordash called for a better understanding of this crime and the development of a more singular definition of the crime of starvation, including an amendment to the Rome Statute to ensure the offence of starvation is a war crime applicable in non-international armed conflicts.

GRC's project with the World Peace Foundation, funded by the Ministry of Foreign Affairs of the Netherlands, was discussed. [“Accounting for mass starvation: Testing the limits of the law”](#), is aimed at identifying how international law may be used to advance the prevention, prohibition and accountability for mass starvation. The objective of the Project is to operationalise [UNSC 2417](#) and promote compliance with international standards. GRC and WPF aim to use [UNSC 2417](#) as a springboard for wide range of activities that aim to expand the understanding of mass starvation and the international tools for response. The project is intended to assist humanitarians, activists, lawyers, journalists, investigators and civilians to disentangle the permissible from the impermissible in international law and advocate for accountability.

For more information visit:  
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**Disclaimer.** The Kingdom of the Netherlands Ministry of Foreign Affairs funds the “Accountability for Mass Starvation: Testing the Limits of the Law” Project implemented by Global Rights Compliance and The World Peace Foundation. The views expressed in it are those of the author(s) and may not coincide with the official position of The Kingdom of the Netherlands.