

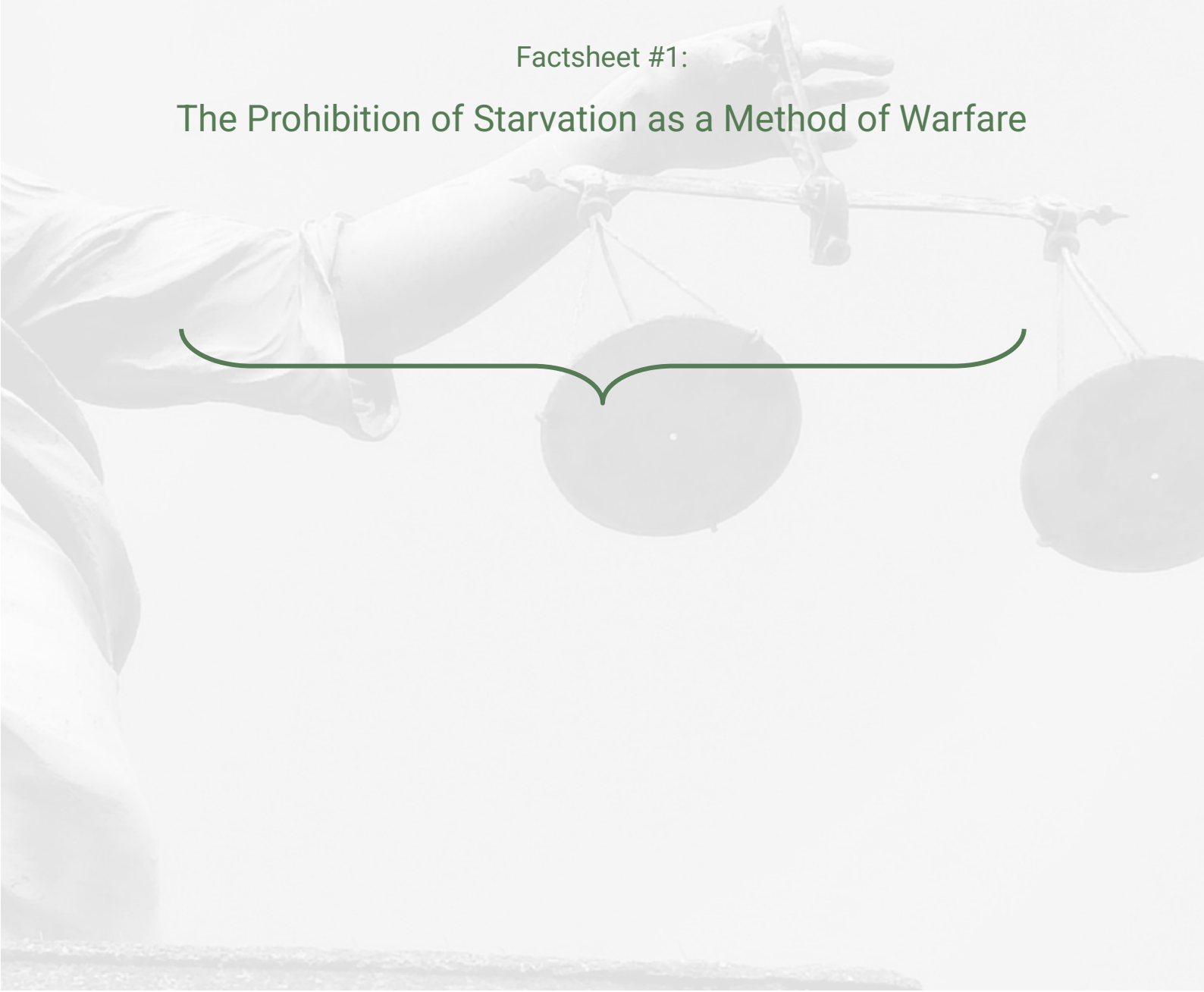


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Factsheet #1:

The Prohibition of Starvation as a Method of Warfare



The Prohibition of Starvation as a Method of Warfare

This Factsheet provides an overview of the prohibition of intentional starvation of civilians as method of warfare under international law.

It considers two important bodies of public international law:

- International humanitarian law (IHL): the body of law that defines the rules for parties to armed conflict which, for humanitarian reasons, seeks to limit the effects of armed conflict on civilians; and
- International criminal law (ICL): the body of law that seeks to prohibit the commission of serious atrocities and hold perpetrators to account for their individual criminal responsibility.

IHL and ICL are closely related. Understanding the parameters of the IHL prohibition on starvation can help inform the way in which starvation crimes should be interpreted under ICL and why ratification of the starvation amendment to the Rome Statute of the International Criminal Court (ICC) is so important.

International Humanitarian Law

The starvation of the civilian population as a method of warfare is a serious violation of the laws and customs of war. This conduct has been prohibited under IHL since the adoption of two Additional Protocols (AP) to the Geneva Conventions.

The prohibition applies to warring parties in both international armed conflicts (IAC) and non-international armed conflicts (NIAC), by virtue of Article 54 of AP I and Article 14 of AP II, respectively. The prohibition is so widely accepted that it has gained customary IHL status as reflected in Rules 53 and 54 of the ICRC's Customary International Humanitarian Law Database. This means that all parties to armed conflict, both States and organized armed groups, are obliged to respect it, even if they have not signed the Geneva Conventions or Additional Protocols.

Deprivation of Objects Indispensable to Survival

Under international law, the concept of starvation is broader than suffering or death resulting from a lack of food. 'Starvation' refers to the process of deprivation that occurs when parties to a conflict impede the capacity of civilians to access the means of sustaining life. While death often results, the insidious nature of starvation is reflected in the breadth of the suffering it inflicts on victims when deprived of objects indispensable to the survival of the civilian population (OIS).

Under the relevant provisions of the AP, it is prohibited for belligerents to attack, destroy, remove or render useless OIS. Deprivation can take many forms as positive acts and omissions, in addition to those listed in AP I and AP II. Examples include the destruction of agricultural areas or water infrastructure, the intimidation or arrest of aid workers, the diversion of humanitarian aid; the destruction of humanitarian relief supplies; and the denial of humanitarian access to aid to the population in need.

Objects Indispensable to Survival of the Civilian Population

OIS is an open-ended concept. Since there has been a dearth of litigation concerning breaches of the prohibition on deliberate starvation, its limits, if any, are yet to be seen. Nevertheless, IHL does provide for an indication of the types of objects likely to qualify as OIS.

- Perpetually and universally indispensable items, such as crops, livestock and agricultural areas used for the production of foodstuffs; drinking water installations/supplies and irrigation works; and medical supplies;
- Objects that are specifically indispensable in particular contexts. For example:
 - Climate and weather conditions may lead to clothing, shelter, electricity, and/or fuel becoming indispensable to the survival of the civilian population;
 - Nursing mothers, the infirm and the elderly may have fundamental needs for medical supplies and nutritional content to ensure their survival.

Exceptions to the Prohibition:

The prohibition is constructed to ensure legitimate military activities are not impugned. As a result, the following exceptions are recognized to the prohibition under IHL:

- Targeting and depriving combatants or fighters of OIS;
- Targeting OIS that is used exclusively for the sustenance of the opposing forces;
- Targeting OIS that have both civilian and military use, so long as the attack is not expected to cause the starvation of the civilians or force their movement.

International Criminal Law

The ICC is the first and only international tribunal with express jurisdiction over the crime of deliberate starvation.

Article 8(2)(b)(xxxv) of the Rome Statute of the ICC criminalises starvation as a war crime in IAC. Article 8(2)(e)(xix) was added by an amendment in 2019 to extend the ICC's jurisdiction to the war crime of starvation in NIAC. These provisions prohibit, as a method of warfare, the intentional starvation of the civilian population by depriving them of objects indispensable to their survival, including by wilfully impeding relief supplies.

Some states have incorporated similar war crimes provisions into their domestic laws.¹ To ensure perpetrators of the war crime of intentional starvation of civilians can be investigated and held responsible for their crimes, it is important that states adopt similar domestic provisions criminalising starvation. Moreover, it is crucial that States Parties to the Rome Statute of the ICC ratify the starvation amendment to Article 8(2)(e).²

Elements of the War Crime of Intentional Starvation of Civilians

The war crime of intentional starvation has several elements which must be proven for an individual to be held criminally liable for their conduct. These comprise contextual, physical and intent elements:

Contextual elements:

Two contextual elements must be satisfied to prove any war crime proscribed by the Rome Statute, including the intentional starvation of civilians:

- That the conduct took place in the context of and was associated with an IAC or NIAC.
- That the perpetrator was aware of factual circumstances that established the existence of an armed conflict.

Physical Elements (*actus reus*):

The ICC must be satisfied that the perpetrator deprived civilians of OIS.

OIS can be construed in line with Articles 54 of AP I and Article 14 of AP II, given the war crime of intentional starvation seeks to criminalise the corresponding violations of IHL.

Generally, any conduct that restricts civilians' use of OIS would be considered as a deprivation. This includes wilfully impeding relief supplies as well as acts such as attacking, destroying, damaging or removing such objects or rendering them useless. It would also include omissions, such as refusing to take measures to ensure civilians' access to OIS.

It is not necessary that civilians die from starvation for the war crime to be proven. In fact, the only essential act and consequence of the offence is the deprivation of OIS from civilians.

Intent Elements (*mens rea*):

There are two mental elements necessary to prove an individual's conduct was criminal:

- The perpetrator must have intentionally deprived civilians of OIS. This requires the court to find beyond reasonable doubt that the perpetrator:

¹ See Annex D to GRC's **Guidebook: Ratifying and Implementing the Starvation Amendment to the Rome Statute**, available at <https://starvationaccountability.org/publications/ratification-guidebook>.

² The starvation amendment inserts the new crime of intentional starvation of civilians in NIAC as a war crime as Article 8(2)(e)(xix) of the Rome Statute.

- Either desired to commit the act of deprivation (direct intent) or was aware that their conduct would deprive civilians of OIS in the ordinary course of events (indirect intent); and
- Knew the objects were indispensable to the survival of the civilian victims.
- Intended to starve civilians as a method of warfare, meaning that they meant to cause the civilian population to starve (i.e., direct intent) or was aware that starvation of the civilian population would occur in the course of events (i.e., indirect intent). While this entails that the perpetrators must have an intention to bring about the outcome of starvation, it is not necessary for the intention to starve civilians to be the sole intent. This means that a crime is committed if the requisite intent elements are proven, even if an individual perpetrator was pursuing other lawful (or unlawful) goals.

Further Reading

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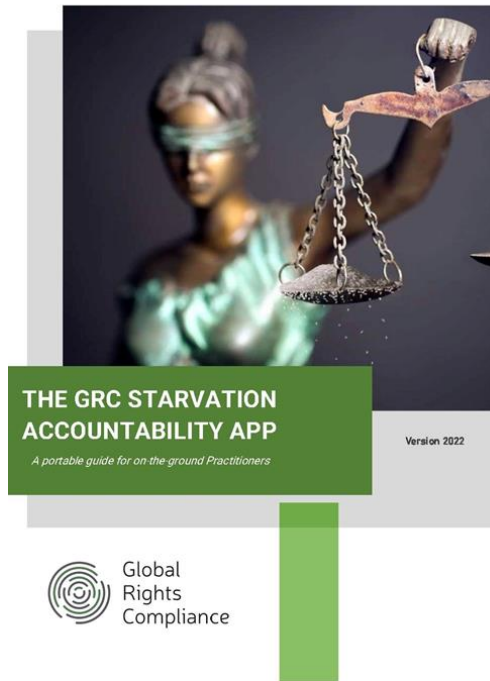
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