



Facultad de Ciencias Humanas y Sociales  
Grado en Relaciones Internacionales

Trabajo de Fin de Grado

**Starvation as a method of warfare in  
South Sudan:**

Addressing faminogenic practices from international  
organizations' security mechanisms.

Estudiante: Rocío Ruiz-Jiménez Vera

Director: Isabel Maravall Buckwater

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## **Abstract**

This research aims to carry out an investigation regarding starvation as a method of warfare. Taking the conflict in South Sudan as a case study, we will examine how international organizations are dealing with starvation as a method of warfare from their international security mechanisms. The purpose is to illustrate the gap between rhetoric and practice when it comes to International Humanitarian Law compliance and dealing with human security threats.

## **Resumen Ejecutivo**

Este trabajo tiene como objetivo llevar a cabo una investigación sobre el hambre como método de guerra. Tomando el conflicto en Sudán del Sur como un caso de estudio, examinaremos cómo las organizaciones internacionales están lidiando con el hambre como un método de guerra desde sus mecanismos de seguridad internacional. El propósito es ilustrar la brecha entre la retórica y la práctica cuando se trata del cumplimiento del derecho internacional humanitario y amenazas a la seguridad humana.

**Keywords:** Starvation as a method of warfare; International organizations; International security.

**Palabras clave:** Hambre como método de guerra; Organizaciones internacionales; Seguridad internacional.

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## ACRONYMS

ARCSS	Agreement of Resolution of the Conflict South Sudan
AU	African Union
CIHL	Customary International Humanitarian Law
IHL	International Humanitarian Law
IAC	International Armed Conflict
ICC	International Criminal Court
ICRC	International Committee of the Red Cross
IGAD	Intergovernmental Authority on Development
IPC	Integrated Food Security Phase Classification
NIAC	Non-International Armed Conflict
OAU	Organization of African Unity
PSC	Peace and Security Council
R-ARCSS	Revitalized Agreement of Resolution of the Conflict South Sudan
UN	United Nations
UNMISS	United Nations Mission for South Sudan
UNSC	United Nations Security Council

## INTRODUCTION

Under International Humanitarian Law, purposeful famine of civilians in the course of conflict shall amount as a war crime. In both international and non-international conflicts, starvation or the use of faminogenic practices as a method of warfare are prohibited under international public law. This precept has consolidated and has raised increased awareness on the severity of its consequences. However, starvation as a mean of warfare has also become a common manoeuvre in recent and on-going armed conflicts around the world. From Venezuela, Yemen or South Sudan, there are recurrent headlines referring to conflict parties performing military tactics directly or indirectly undermining food security and chances at survival among the non-intervient civilian population.

At a first glance, and without further investigation on the subject, it is common sense to assume that the implementation of this type of military campaigns constitute, not only a violation of human rights but a severe punishable act.

In the course of the past decades, the right to food has undergone a positivization process within domestic and international law. Hence, starvation of civilians as a method of warfare has acquired a status of *ius cogens* norm.

Previous research in the matter has been predominantly performed solely from a legal perspective regarding international humanitarian law. Several academics have dealt with the issue from a juridical scope: from the recent Swiss request to amend the Rome Statute and include starvation of civilians amongst war crimes also in non-international conflicts, to the shortcuts and exceptions to this crime based on military necessity.

Nevertheless, there are various gaps that need to be covered. After a preliminary investigation, we found how, in the context of cooperation between international actors, there is a lack of assessment on how to address starvation of civilians from the scope of international security mechanisms. The aim of this thesis is to conduct a research regarding the response given to this violation of human rights. This investigation opts to provide the reader, not only with a deeper and more detailed approach to starvation as a method of warfare, but also to fill a breach. We will execute a practical analysis of the measures undertaken by international organizations. This practical study will be complemented by a case study. In order to illustrate with a current case how starvation manoeuvres are carried out, how they provoke a reaction by the international security

mechanisms, and what are the measures adopted and their effectiveness, this research will take as an example of study the case of South Sudan.

In regards to the state of the art on the matter, noteworthy efforts have been made in order to explain the linkage between conflict and famine. Multiple reports make a reference to conflict-induced famine but fail to deepened into the use of starvation as a weapon upon such conflicts.

As a starting point for this investigation, we appeal to legal provisions contained in international law and international humanitarian law. Firstly, we encounter the compendium of customary law disclosed by the International Committee of the Red Cross and subsequently being forwarded to the Geneva Conventions and the Rome Statute. After establishing a theoretical framework for the use of famine against civilians in armed conflicts, and establishing the need to address the matter collectively amongst the international panorama, we resort to the resolutions issued by the international organizations involved. In this regard, in order to support this collective response, the United Nations establishes in the preamble of one of its resolutions on South Sudan that:

“Mindful of the provisions of the Charter of the United Nations, conferring on the Security Council primary responsibility for the maintenance of international peace and security, as well as the provisions of the Charter on the role of regional arrangements or agencies in the maintenance of international peace and security, and the need to forge closer cooperation and partnership between the United Nations, other international organizations and the African Union, in the promotion and maintenance of peace, security and stability in Africa;”

However, although it is easy to find condemning statements regarding starvation as a means of warfare in the South Sudanese conflict, or other humanitarian crisis, what is not so simple is to find easily accessible information on how this practice is being carried out. The investigation underwent in the course of this research has had to be meticulous enough to find reports and detailed descriptions on who, when and how starvation of civilians as a military manoeuvre is being provoked amid the South Sudanese conflict.

For the purpose of exemplifying more clearly the problems posed to international organizations regarding this issue, we will take as central study subjects the aforementioned conflict, South Sudan, as well as the roles played by the United Nations, the African Union and the Intergovernmental Authority on Development in the course of the year 2018. To this end, and to ensure the rigour of the research, resolutions adopted

by their international security mechanisms during the course of January 2018 to December 2018, will be presented. To assess their effectiveness, we will take as a reference how have they unfold in the course of the following year attending to the food insecurity data from 2019.

This thesis investigates the question “How are international organizations involved in the South Sudanese conflict responding to starvation as a method of warfare from the perspective of their international security mechanism?”. In order to answer this question and perform a coherent analysis, the thesis will be structured in three chapters. Chapter one will deal with defining international security issues and taking a deeper approach to starvation of civilians in the course of conflict. We will also answer to the question of how starvation qualifies as an issue for international security mechanisms to respond. Chapter two will identify how starvation as a method of warfare is being inflicted in the civilian population in South Sudan and which and why are the international organizations addressing it. Lastly, and followed by pertinent conclusions, chapter three will examine the measures adopted by the international organizations involved. Based on food insecurity data, we will address the deficiencies encountered to perform an effective respond towards ensuring food security among civilians in South Sudan.

# CHAPTER ONE. WARFARE STARVATION OF CIVILIANS AS A THREAT TO INTERNATIONAL PEACE AND SECURITY.

As a starting point, this research will conduct an analysis on the nature of international security and the elements of a threat to international peace and security. The aim is to determine why does starvation as a method of warfare comes to be classified as such threat. We will establish the preliminary bases for faminogenic practices to be criminally punishable by attending to the elements of the crime, its degrees and legal framework. We will demonstrate through deductive reasoning, how the inspiration for identifying threats to peace and security and establishing collective security systems is based on the protection of a system of values and the compliance with human rights.

## 1. International security and peace.

### 1.1. International security concerns

Those who have deepened into de conceptualization of international security, have concluded that its main purposes are, the attempt to protect a system of values, as well as mitigating a hostile force from posing a hazard to integrity or independency<sup>1</sup>. Barry Buzan defines security as “the pursuit of freedom from threat” in order to ensure national integrity and statehood<sup>2</sup>. However, survival is not seen from an individualistic perspective anymore, but rather from a cooperative one. Amid existing international dynamics, state actors acknowledge how these concerns should be addressed collectively as, “lasting peace and security require effective international cooperation”<sup>3</sup>. In this regard, Buzan’s literature introduces illustrative concepts. For his author, a *security complex* refers to “a group of states whose primarily security concerns link together sufficiently closely that

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<sup>1</sup> B. Buzan, *New Patterns of Global Security in the Twenty First Century*, 1999, London, Ed. Cambridge University Press, p. 432.

<sup>2</sup> *Ibid.* p.432-433.

<sup>3</sup> N. Kirsh, Ch.VII Action with Respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression, Article 39. In B. Simma, D. Khan, G. Nolte, A. Paulus, N. Wessendorf (ed.), *The Charter of the United Nations: A Commentary, Volume II (3rd Edition)*, Oxford, Oxford Public International Law, 2012, p.5.

their national securities cannot realistically be considered apart from one another”<sup>4</sup>. These security concerns include a wide arrange of classified subtypes. For the purpose of this research, we will highlight the *economic security concerns*. Economic security concerns allude to a situation of weakness endangering the maintenance of “acceptable levels of welfare”<sup>5</sup> and the “inability to sustain basic needs of the population”<sup>6</sup>. Accordingly, (international) security, is not exclusively understood as the absence of violence but instead embraces ensuring reasonable and adequate levels of welfare within the standards of a system of values. We shall later observe the existence of traditional threats and human security threats.

#### 1.2. International peace: threat to the peace, breach of peace, or act of aggression.

Rekindling Buzan’s security complex definition, collective security systems are perceived as the lack of conflict due to mutual engagement towards common security goals and opt to achieve long-lasting peace and thus stability. The linkage between international security and peace is widely manifested, for example, in the system created under the aegis of the United Nations (UN).

Thereupon, we should take under consideration article 39<sup>7</sup> from the San Francisco Charter. The observance of said article denotes a lack of conceptualization regarding *threat to the peace, breach of the peace, or act of aggression*. The absence of a stringent and exhaustive list of what constitutes a *threat to the peace, breach of the peace, or act of aggression* or granting a constrained definition is intended. Thus, Article 39 bestows upon the United Nations Security Council (hereinafter, UNSC) extensive power and great freedom in its application. Nonetheless, when reviewing the full content of the UN Charter, the concept of international peace is not exclusively used to indicate the absence of violence and organised used of force. UNSC Presidential Note (31 January 1992), states:

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<sup>4</sup> B. Buzan, *People, States and Fear: An Agenda for International Security Studies in the Post-Cold War era.*, 2008.

<sup>5</sup> B. Buzan, *opt cit*, 1999, p. 433.

<sup>6</sup> *Ibid*, p.446.

<sup>7</sup> Article 39 from the San Francisco Charter: *The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security.*

“The absence of war and military conflicts among States does not in itself ensure international peace and security. The non-military sources of instability in the economic, social, humanitarian and ecological fields have become threats to peace and security.”<sup>8 9</sup>

Therefore, security issues are classified in two main concerns: those related to the eradication of violence, classical security threats, (proliferation and arms control, terrorism, internal armed conflicts, piracy) and those which disrupt the maintenance of human security (protection of civilians in armed conflict, violations of human rights, and violations of democratic principles).

## **2. Starvation as a method of warfare.**

Warfare strategies do not solely include direct attacks to military targets but also extent to indirectly undermining chances at survival. Over the course of conflict, food may become a key element for military tactics by, for example, inflicting food deprivation. Nonetheless, it must be emphasised that *ex ante*, starvation still was a lawful practice if it led to a faster subjection of the counterpart<sup>10</sup>, making this statement a relatively recent norm. Notwithstanding, this precept has found its way to consolidation among international law regulations by the means of incorporating such claim<sup>11</sup> through a juridical procedure, acquiring in time, a binding-status within the human rights protection regime. The International Criminal Court’s Rome Statute includes starvation as a method of warfare as a war crime in Article 8 (2) (b) (xxv):

*“intentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including wilfully impeding relief supplies as provided for under the Geneva Conventions;”<sup>12</sup>*

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<sup>8</sup> UNSC Presidential Note (31 January 1992) UN Doc S/23500, p. 3.

<sup>9</sup> Kirsch establishes how: *If the protection of State security was long seen as the core of the UN’s collective security system, the protection of individuals has increasingly emerged as an additional goal. Since the end of World War II, concerns about individual rights have gained importance in the international realm, and their protection was mentioned as a potential ground for the use of enforcement measures as far back as at the San Francisco Conference.* N., Kirsch, opt cit, p.9.

<sup>10</sup> Lieber Code from 1863, declares under article 17 that *“it is lawful to starve the hostile belligerent, armed or unarmed, so that it leads to the speedier subjection of the enemy.”*

<sup>11</sup> That claim being, that starvation as a method of warfare constitutes a violation of human rights.

<sup>12</sup> International Criminal Court, *Rome Statute*, 1998.

## 2.1. Elements

As a criminal offence, and according to Criminal Law standards, faminogenic practices must comply with a sequence of elements. The International Criminal Court (hereinafter, ICC), issued its ICC Elements of Crime, addendum to its Rome Statute. Upon the Elements of Crime compendium, starvation as a method of warfare shall be comprised of the following features: “The perpetrator deprived civilians of objects indispensable to their survival. The perpetrator intended to starve civilians a method of warfare. The conduct took place in the context of and was associated with an (...) armed conflict. The perpetrator was aware of the factual circumstances that established the existence of an armed conflict”.<sup>13</sup>

### 2.1.1. *Actus reus*

*Actus reus* or physical element, refers to the action *per se*; the use of faminogenic tactics in order to deprive civilians of objects indispensable to their survival. Herein surfaces the first peculiarity regarding this crime. The accurate meaning of “starvation” or “to starve” entails a consequence of death. However, the *actus reus* to this war crime refrains from mentioning such outcome. For starvation to comply as a war crime, it is not required for the conduct or action of the perpetrator to result in the death of the targeted community. Therefore, it will be sufficient to prove an intention towards depriving its chances at survival. International Criminal Law does not make a literal use of the concept of starvation, but is instead given a broader meaning. Such decision excludes the complex endeavour of establishing a relation of causality between the actions of the perpetrator and the cause of death of the targets.

### 2.1.2. *Mens rea*

*Mens rea* or the mental element, refers to the intention to starve civilians as a method of warfare. Regarding intentionality, we shall consider article 30 from the same Rome Statute, on the interpretation and scope of reach of “intent”. Hence, in accordance with said precept, “*intent* is established if the person means to engage in the conduct, and that for consequences, intent is established if the person means to cause that consequence or is aware that it will occur in the ordinary course of events”<sup>14</sup>

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<sup>13</sup> International Criminal Court, *Elements of Crime*, 2011, p. 31.

<sup>14</sup> F. D’Alessandra, M. Gillet, *The war crime of starvation in non-international armed conflict*, Blavatnik School of Government, University of Oxford, 2019, p. 23.

Likewise, in relation to intentionality, the perpetrator must be aware of the execution of the facts in a context of armed conflict. This connects with the *chapeau* elements, stated by the ICC: “the conduct took place in the context of and was associated with an international armed conflict” and, “the perpetrator was aware of factual circumstances that established the existence of an armed conflict.”

## 2.2. Degrees

Statements such as “those who deliberately or recklessly starve their own citizens (...)” allude to first-degree and second-degree starvation practices as those actions to be criminalised. According to International Law Doctrine, faminogenic behaviours may be inflicted on four different degrees. The variation between each degree is established by the deviation on *mens rea* and *actus reus*.

Fourth-degree practices constitute the lesser degree. There is lack of intentionality. The government, most easily corrupt, simply lacks the ability to face a food crisis, which consequently causes famine. Third-degree practices are related to indifference. The government opts to refrain from addressing the circumstances<sup>15</sup>. The mismanagement of these situations is not “often characterised by the *mens rea* for criminal responsibility.”<sup>16</sup>

However, second-degree and first-degree practices do. The former refers to reckless policies’ implementation ignoring the evident collateral consequences related to famine and the unwillingness to cease said policies. The latter refers to the intentional extermination of civilian population as a by-product of inflicting faminogenic practices. International criminal liability is found when food deprivation (or starvation<sup>17</sup>), with a possible tendency towards wide-spread death, is used in the course of conflicts as tactical manoeuvre. On both second-degree and first-degree behaviours and regarding their mental element, “recklessness” and “deliberation” entail the key aspect of these crimes, having the international legislator reflected it in that way on its legal framework.

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<sup>15</sup> *Ibid* p. 246.

<sup>16</sup> *Ibid* p. 247.

<sup>17</sup> According to Mudge’s definition: “*Human starvation is an effect, the condition or process of perishing from insufficient food intake, a state of extreme malnutrition, which may be caused either by physical inability to eat or insufficient food supplies. Numerous factors may be the cause of food shortage.*” Mudge, G.A., *Starvation as a means of warfare*. 1970, International Lawyer, p.236.

## 2.3. Legal Framework

### 2.3.1. Treaty Law

The ICC's Rome Statute includes starvation as a method of warfare as a war crime in Article 8 (2) (b) (xxv). However, prior to the ICC Statute, Protocols Additional First and Second to the Geneva Conventions of 12 August 1949 had already contemplated these practices as punishable acts through two separated articles. Both protecting the civilian population despite the nature of the armed conflict.

Protocol Additional to the Geneva Conventions and relating to the protection of victims of international armed conflicts (protocol I) states on Article 54 - "Protection of objects indispensable to survival of the civilian population"

1. *Starvation of civilians as a method of warfare is prohibited.*
2. *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.<sup>18</sup>*

Also, article 14 of Protocol Additional to the Geneva Conventions and relating to the protection of victims of non-international armed conflicts (protocol II) states, on a single paragraph;

*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.<sup>19</sup>*

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<sup>18</sup> Protocol Additional to the Geneva Conventions, 1960, p.43

<sup>19</sup> *Ibid.* p. 94

### 2.3.2. Customary Law

Under Customary International Humanitarian Law (henceforth CIHL), purposeful famine is classified as a punishable act. Rule 53 of the compendium of CIHL norms fostered by the International Committee of the Red Cross prohibits the use of starvation of the civilian population as a method of warfare<sup>20</sup> in both international (IAC) and non-international conflicts (NIAC). Chapter 17, Part III included the use of faminogenic tactics and denying access to humanitarian relief during conflict as a “specific method of warfare”.

Furthermore, this practice has been set forth as a prohibition in other multiple sources, embracing a unanimous and consensual wording: the starvation/to starve civilians is prohibited as a method of warfare<sup>21</sup>. From national military manuals and national legislation to statements and other practices, this idea has been overly rephrased by numerous international actors, must certainly considering it, nowadays, a consolidated precept. Following the analysis of the before-mentioned legal sources, it is determined that starvation may be inflicted, during the course of conflict, through several manoeuvres. On the one hand, the destruction of indispensable objects survival-wise and, on the other hand, the imposition of blockades, embargoes and sieges that affect food and other elements of humanitarian aid’s supply chain. For this reason, regulation regarding faminogenic practices extends to the following rules:

Rules 54 to 56 from the International Committee of the Red Cross’ (on forward, ICRC) CIHL enact other three practices as methods of starvation during warfare;

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<sup>20</sup> International Committee of Red Cross, *Customary International Humanitarian Law*, 2005, Cambridge, Ed. Cambridge Press University. p. 186

<sup>21</sup> Military Manuals: Argentina, *Leyes de Guerra*. Ed. 1989, Estado Mayor Conjunto de las Fuerzas Armadas, aprobado por la Resolución No. 489/89 del Ministerio de Defensa; Benin, *Le Droit de la Guerre*, III fascicules, Forces Armées du Bénin, Ministère de la Défense nationale, 1995, p.12; Israel, *Laws of War in the Battlefield, Manual*, Military Advocate General Headquarters, Military School, 1998, p.35.; Indonesia, *The Basics of International Humanitarian Law*, Legal Division of the Indonesian Armed Forces, 1982, p.56.

National Legislation: Azerbaijan, *Criminal Code* (1999), Article 116(4); Burundi, *Law on Genocide, Crimes against Humanity and War Crimes*, 2003, Article 4(B)(x) and *Penal Code*, 2009, Article 198(2)(26°); Iraq, *Law of the Supreme Iraqi Criminal Court*, 2005, Article 13(2)(Y); Lithuania, *Criminal Code*, 1961, as amended in 1998, Article 336; Republic of Korea, *ICC Act 2007*, Article 13(1)(5).

Other National Practice: Report on the Practice of China, 1997, chapter 4.1, Egypt, the Islamic Republic of Iran, Pakistan, Saudi Arabia, Senegal and Turkey, Letter dated 5 October 1992 to the President of the UN Security Council, UN Doc. S/24620, 6 October 1992; Yemen, Statement before de UN Security Council Committee Established by Resolution 661 (1990), concerning the Situation between Iraq and Kuwait, UN Doc. S/AC.25/SR.2, 22 August 1990, p.6, ICRC, 27th International Conference of the Red Cross and Red Crescent, Res. I (adopted by consensus).

attacking objects indispensable to the survival of the civilian population (rule 54), denying access of humanitarian aid intended for civilians in need, including deliberately impeding humanitarian aid (rule 55), and restricting the freedom of movement of humanitarian relief personnel (rule 56). These other three rules enunciate derived or secondary actions whose execution would also be considered a violation of the core prohibition, rule 53 on starvation as a method of warfare. Thus, the criminalised actions under consideration are, therefore, always aligned with the protection of civilian population during conflict.

Nevertheless, such claims enclose a shortcoming based on the intention for provoking starvation. Causing famine may be lawful if and when its purpose is military and the target is not directly connected to starving civilians. Concerning three warfare tactics: sieges, blockades and embargoes; national military manuals foresee this situation as legitimate<sup>22 23</sup> if the exit of civilians from the territory under sieges and the passage of foodstuffs and humanitarian relief is guaranteed in any of the three cases mentioned. However, practice has shown that this legal gap has implied doubtful application of CIHL with respect to starvation of civilians during conflict and that the application of an effective response to this situation has been compromised.

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<sup>22</sup>Related practice on sieges. International Committee of the Red Cross, Customary International Humanitarian Law Database [https://ihl-databases.icrc.org/customary-ihl/eng/docs/v2\\_rul\\_rule53\\_sectionb](https://ihl-databases.icrc.org/customary-ihl/eng/docs/v2_rul_rule53_sectionb)

<sup>23</sup>Related practice on blockades and embargoes. International Committee of the Red Cross, Customary International Humanitarian Law Database [https://ihl-databases.icrc.org/customary-ihl/eng/docs/v2\\_rul\\_rule53\\_sectionc](https://ihl-databases.icrc.org/customary-ihl/eng/docs/v2_rul_rule53_sectionc)

## **CHAPTER TWO. IDENTIFYING STARVATION AS A METHOD OF WARFARE. CASE STUDY: SOUTH SUDANESE CONFLICT.**

The following chapter aims to set the context in the South Sudanese case. Firstly, we will identify how starvation as a method of warfare is being inflicted amongst the civilian population. The evidence will be presented as extracts from official reports. Secondly, we will acknowledge how the intervenient international organizations have address the issue at stake. However, this research will not deal with deeper historical background regarding the conflict or its belligerent parties.

In regards to the South Sudanese conflict, which began in 2013 in the aftermath of South Sudan's independency, the civilian population has reportedly been a direct target throughout the course of the civil war. The conflict confronts governmental forces, Sudan People's Liberation Movement (SPLM) against opposition group Sudan People's Liberation Movement – in opposition (SPLM – IO), alongside with associated forces.

By the beginning of 2014, the international community had already acknowledged how forced displacement of civilians blatantly endangered their food security. UN Security Council Resolution 2417 (2018) identified this insecurity as a direct consequence of warfare<sup>24</sup> considering said resolution as a “landmark expression” of joint international awareness on the severity of the issue<sup>25</sup>. Making a reference to first and second degree tactics, they observed and established a cause-effect relationship between conflict and systematic widespread death by starvation among civilians.

The United Nations reported on January 1<sup>st</sup> 2018:

*1 million people had been declared food insecure — a 40 per cent increase since the same time the previous year. The country had suffered from famine conditions and overall*

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<sup>24</sup> United Nations Mission in the Republic of South Sudan (UNMISS), (2014). Conflict in South Sudan: A Human Rights Report. United Nations Documents. page 17

<sup>25</sup> United Nations Resolution 2417 (2018) Press release. Retrieved from <https://www.un.org/press/en/2018/sc13354.doc.htm>

*more than 7 million people would require food assistance during the upcoming lean season*<sup>26</sup>

By the time the Security Council issued a Resolution 2417 (May 2018), the United Nations' Human Rights Council had already verified testimonies, data and information about the use of faminogenic practices in the South Sudanese conflict. Several reports on Human Rights violations in South Sudan, dated February-March 2017 to February 2018, identified how civilians were reportedly suffering from “scorched-earth” practices as well as the denial of humanitarian aid access.

## **1. Faminogenic practices in South Sudan**

According to reports from human rights monitoring operations in Southern Sudan, the practice of starvation on civilians as a method of warfare is a proven fact. The methodology followed by the intervenient parties is field-investigation, fact-finding and interviewing witnesses and survivors.

### **1.1. Scorched earth policy**

Among the possible actions constituent of a violation of starvation as a military tactic, we find the scorched-earth policy. We encounter several allusions to this manoeuvre in many different reports<sup>27</sup>. An introductory approach to the concept and elements of the scorched-earth policy will follow to illustrate how it violates the core prohibition of starvation as a method of warfare as well its corollary prohibition regarding attacks against objects indispensable to the survival of the civilian population (CIHL rule 54).

#### *1.1.1. Principles and Exceptions*

The scorched-earth technique in its most basic interpretation involves setting fire to or destroying fields. Consequently, it becomes unfit and sterile for harvesting. The impossibility of cultivation directly diminishes the core support for sustenance for the

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<sup>26</sup> United Nations (2018) *Adopting Resolution 2417 (2018), Security Council Strongly Condemns Starving of Civilians, Unlawfully Denying Humanitarian Access as Warfare Tactics*. United Nations Meetings coverage and press releases. Access 20th march 2019. Retrieved from <https://www.un.org/press/en/2018/sc13354.doc.htm>

<sup>27</sup> See House of Commons Canada Subcommittee on International Human Rights, *Scorched earth: responding to conflict, human rights violations and manmade humanitarian catastrophe in South Sudan*, June 2017. Human Rights Council, *Report of the Commission on Human Rights in South Sudan*, A/HRC/34/63, 2017.

population. However, international humanitarian law provides a more extensive interpretation of this concept. According to international public law, the scorched-earth tactic is practiced by the means of the destruction and devastation of “whole towns, facilities, agriculture, transport routes and general infrastructure in order to deprive (...) of food, shelter, fuel, communications and other valuable resources that may be useful for them”.<sup>28</sup> This wide application of the concept is observed and deduced from the Additional Protocols. These texts refrain from providing an exhaustive definition and list regarding “indispensable objects to the survival of the civilian population”. The survival of civilians is not only translated to water and food, but also by other commodities.

In connection with this, operates the principle distinction<sup>29</sup>. In a nutshell, the principle of distinction requires the differentiation of two elements. On the one hand, to identify the civilian population from combatants. On the other hand, to also differentiate objects of civilian use from those of military use or destination.

The importance of this principle lies in the first exception to these acts. International law lawfully foresees these practices in case of military necessity and on military objectives or targets. However, despite this exception, the legal provisions are rigid. When the objects subjected to a possible attack are not used only for combatants but provide direct support for military campaigns, the prohibition of starvation will operate instead of the exception. The reasoning for this is based on the fact that civilian starvation is foreseeable.<sup>30</sup>

In addition, scorched earth policies include a second exception. This military campaigns are understood as retreating tactics. Parties to a conflict will execute this practice in order to undermine the advancing belligerent opponent. Hence, according to international humanitarian law, scorched earth policies may be lawful when used against a foreign invasion and for the purpose of protecting the national territory. Additional Protocol I recognises “the vital requirements of any Party to the conflict in the defence of

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<sup>28</sup> Max Planck Encyclopedia of Public International Law, A. Schwarz, M. Grigat, *Scorched Earth Policy*, Oxford University press, p.1

<sup>29</sup> See Additional Protocol I to the Geneva Conventions, article 48 I.

<sup>30</sup> International Committee of the Red Cross IHL Database, *Customary International Humanitarian Law. Article 54. Attacks against Objects Indispensable to the Survival of the Civilian Population*. Retrieved from [https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1\\_rul\\_rule54](https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule54)

its national territory against invasion (...) where required by imperative military<sup>31</sup> necessity”.

### *1.1.2. Evidence in South Sudan*

Based on first-hand witnesses, several reports are collecting evidence proving the use of scorched earth policies and starvation as a method of warfare in South Sudan. The United Nations Mission in South Sudan (UNMISS) has undergone exhaustive in-field investigations on human rights compliance. Its “Indiscriminate attacks against civilians in Southern Unity, April-May 2018” includes detailed information on the use of scorched earth policy. As an example, this report features an interview extract from a survivor in Mayendit County. A 75-year-old woman narrated its testimony confirming the unlawful use of scorched earth policy. Without justified military necessity SPLA forces and associates destroyed villages and pillage.

*“Corroborated witness accounts in situ, visits by UNMISS and photographic evidence indicate that the combatants followed a similar modus operandi across multiple villages. After entering into the villages and shooting at civilians, they went directly to steal cattle and loot entire households, including kitchen utensils. (...)*

*Victims and witnesses also narrated that, before leaving the villages, attackers burned entire homestead clusters and food stocks. They sometimes returned to villages after the initial attack, sometimes for three or four consecutive days, to continue with the burning of houses and food stocks, to raid more cows and to kill any remaining civilians, in what an eyewitness described as “hunting for cows and people”<sup>32 33</sup>.*

Additionally, other reports such as The Human Rights Council thirty-fourth session’s Report of the Commission on Human Rights in South Sudan or the Canadian House of Commons Subcommittee on International Human Rights’ “Scorched earth: Responding to conflict, human rights violations and manmade humanitarian catastrophe in South Sudan” collects evidence on this issue. They establish further information on how

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<sup>31</sup> See Additional Protocol I to the Geneva Conventions, article 54 (5).

<sup>32</sup> United Nations Mission in South Sudan, *Indiscriminate attacks against civilians in Southern Unity*, 2018, p.8-9.

<sup>33</sup> The evidence presented in this report is the result from data and evidencia collection from first-hand witnesses.

civilians are lacking the adequate provision of food and access to healthcare, violating their chances at survival.<sup>34 35</sup>

## 1.2. Denying access to humanitarian aid and humanitarian relief personnel

### 1.2.1. *Extension of the rule*

Besides direct scorched earth policies, the South Sudanese civilian population is suffering from impediments to access humanitarian relief. As retrieved from CIHL Rule 55<sup>36</sup> and Rule 56<sup>37</sup>, civilian population in need is entitled to the right to be assisted by impartial humanitarian aid. Deliberately or wilfully impeding relief supplies and restraining the freedom of movement of humanitarian relief personnel also constitute a violation of a corollary prohibition to starvation as a method of warfare.

In accordance with international legal practice, the extension of this precept is given by the scope or interpretation of "impeding" and its wilful or deliberate intention. Thus, the punishability of the actions are limited to actively restraining the access to humanitarian assistance. According to the prevailing precepts, this does not imply that the parties to the conflict cannot exercise control over humanitarian aid destined for the territory. The belligerent parties may exercise some control over the management of this aid. The texts allow for their supervision in terms of content and their involvement in the management and distribution. The prohibition only extends to deliberately preventing effective access by civilians.<sup>38</sup>

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<sup>34</sup> See House of Commons Canada Subcommittee on International Human Rights, *Scorched earth: responding to conflict, human rights violations and manmade humanitarian catastrophe in South Sudan*, June 2017. Human Rights Council, *Report of the Commission on Human Rights in South Sudan*, A/HRC/34/63, 2017.

<sup>35</sup> The mentioned report on famigenic practices and crimes of starvation in South Sudan correspond to a plenary session at the Canadian House of Commons. In June 2017, the House of Commons held their forty-second parliament meeting. During the first session, Human Rights Watch expert researcher for the African Division, Jonathan Pedneault reported to the House of Commons on this matter offering inside evidence. The transcript for the plenary session is available at <https://www.ourcommons.ca/DocumentViewer/en/42-1/SDIR/meeting-52/evidence>

<sup>36</sup> ICRC Customary IHL handbook Rule 55: “*The parties to the conflict must allow and facilitate rapid and unimpeded passage of humanitarian relief for civilians in need, which is impartial in character and conducted without any adverse distinction, subject to their right of control.*”

<sup>37</sup> ICRC Customary IHL handbook Rule 56: “*The parties to the conflict must ensure the freedom of movement of authorized humanitarian relief personnel essential to the exercise of their functions. Only in case of imperative military necessity may their movements be temporarily restricted.*”

<sup>38</sup> International Committee of the Red Cross IHL Database, opt cit. *Article 55*, Access for Humanitarian Relief to Civilians in Need. Retrieved from [https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1\\_rul\\_rule55](https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule55)

### 1.2.2. Evidence in South Sudan

Amid South Sudan's humanitarian crisis, several reports have echoed and acknowledge violations regarding access to humanitarian relief. Human Rights Council's Report of the Commission on Human Rights in South Sudan dated February 23<sup>rd</sup> 2018 denounced how:

*“The humanitarian crisis caused by the conflict deepens as the parties remain totally indifferent to the deliberate suffering of the people of South Sudan. Humanitarian aid has been deliberately blocked from reaching civilians perceived to be from the ‘other side’ or on the basis of ethnicity. Such restrictions are unlawful. People are fleeing as a result, leaving behind ghost towns and unattended crops, further exacerbating the food crisis. Hunger, lack of access to health care and schools are used to break down the other side in this conflict. The rights to life, physical integrity, to adequate food, water, healthcare, adequate accommodation and education are constantly violated.”*<sup>39</sup>

Furthermore, UNMISS “Violations and abuses against civilians in Gbudue and Tambura states (Western Equatoria) report from April to August 2018, also collects detailed information on attacks to humanitarian actors and workers as well as deliberate prevention of humanitarian aid delivery<sup>40</sup>.”

## 2. International Organizations Acting in South Sudan

At first, due to prevailing state-centric patterns from past decades, sovereign states were responsible for acknowledging the punishability of human rights violations and pursuing, implementing and monitoring the compliance of Humanitarian International Law. Regarding starvation as a method of warfare, this fact is reflected in the existence of national legal precepts and practices. However, as noted above, this issue has been categorised as a potential transnational problem, hence, a joint response is foreseeable to be executed.

This is where the role of international organizations comes into play, especially for those who have defined themselves as international human rights protection institutions.

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<sup>39</sup> Human Rights Council, *Report of the Commission on Human Rights in South Sudan*, A/HRC/37/71, 2018, p. 18.

<sup>40</sup> See Human Rights Council, *Report of the Commission on Human Rights in South Sudan*, A/HRC/37/71, 2018.

By raising awareness on now-more-frequent transnational matters, human rights institutions opt to step into position of leadership.

Most violations of human rights occur in a context where state liability is challenging to identify or even non-existent. Therefore, international organizations are positioning themselves as the necessary forum to focus combined efforts from state actors and carry out an effective response. This collective way of dealing with conflict resolution aims to be the mechanism for narrowing the gap between rhetoric and practice when it comes to enforcing the compliance with CIHL<sup>41</sup>.

In regards to those organizations whose *raison d'être* concerns, among other goals, the establishment of a Human Rights Protection Regime<sup>42</sup>, they are expected to address and confront such violations. In the context of starvation of civilians as a method of warfare in the South Sudanese conflict, we shall find the following actors:

## 2.1. Universal International Organizations

### 2.1.1. *United Nations*

As the broadest and most universal forum, and because of having an active network of agencies with these same characteristics, the United Nations is the first reference when it comes to condemning and addressing matters of international security. The United Nations constitutes a global and universal reference to this fact, due to its universality. Given the direct mention towards human rights, peace and security maintenance on its foundational deed: The San Francisco Charter<sup>43</sup>, starvation as a method of warfare qualifies for legitimate manifestation and intervention from the United Nations' organisms.

In connection with the case study covered by this investigation (South Sudan), in 2014, the Security Council of said organization adopted Resolution 2139 (2014) condemning the use of starvation as a method of warfare against civilian population and the denial of humanitarian relief access. According to the United Nations' reflection on the matter, unanimously adopting resolution 2139 (2014), the Council demanded that all

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<sup>41</sup> P. Engstrom, opt cit.. p.19

<sup>42</sup> Founding aims for an international organization, such as human rights protection shall be contained and expressed on its founding deed. In the case of the United Nations see Purposes and Principles given in the San Francisco Charter.

<sup>43</sup> See San Francisco Charter (1945) preamble and article 1.1 <https://treaties.un.org/doc/source/docs/charter-all-lang.pdf>

parties allow delivery of humanitarian assistance, cease depriving civilians of food and medicine indispensable to their survival”<sup>44</sup>. The preamble of said resolution exhibits a condemnatory tone regarding these actions.<sup>45 46</sup> In addition to the conflict that will later be approached, the Security Council has recently issued other resolutions. Resolution 2417 (2018) on Protection of civilians on armed conflicts “*call(s) upon those with the influence over parties to armed conflict, to remind the latter of their obligation to comply with international humanitarian law*”<sup>47</sup>. Moreover, this resolution reiterates the legal framework aforementioned, including in its articles of the following wording: “*underlining that using starvation of civilians as a method of warfare may constitute a war crime,*” also alluding to previous documents such as the Geneva Conventions.<sup>48</sup>

## 2.2. African International Organizations

Joining the work conducted by the United Nations, other international organizations have echoed the seriousness of perpetrating these actions, reaffirming their condemnatory character. In this case, other regional international organizations that have aligned their perspective on the defence of human rights with the line of action set by the United Nations. Concretely, this research will focus its efforts on the African continent where other several organizations have defined a position acknowledging a shared view on the matter with de United Nations regarding starvation of civilians as a method of warfare.

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<sup>44</sup> United Nations Meeting Coverage, *Security Council Unanimously Adopts Resolution 2139 (2014) to Ease Aid Delivery to Syrians, Provide Relief from ‘Chilling Darkness’*, 2014 <https://www.un.org/press/en/2014/sc11292.doc.htm>

<sup>45</sup> The United Nations explain the structure of its Security Council Resolutions stating that “*United Nations resolutions are formal expressions of the opinion or will of United Nations organs. They generally consist of two clearly defined sections: a preamble and an operative part. The preamble generally presents the considerations on the basis of which action is taken, an opinion expressed or a directive given. The operative part states the opinion of the organ or the action to be taken*” <https://www.un.org/securitycouncil/content/resolutions>.

<sup>46</sup> See United Nations Security Council, *Resolution 2139*, 2014.

<sup>47</sup> United Nations News, *UN Security Council condemns starvation of civilians as a war tactic*, 2018 <https://news.un.org/en/story/2018/05/1010731>

<sup>48</sup> “*stressing that responding effectively to humanitarian needs in armed conflict, including the threat of conflict-induced famine and food insecurity in situations of armed conflict, requires respect for international humanitarian law by all parties to conflict, underlining the parties’ obligations related to protecting civilians and civilian objects, meeting the basic needs of the civilian population within their territory or under their effective control, and allowing and facilitating the rapid and unimpeded passage of impartial humanitarian relief to all those in need*”. United Nations Security Council, *Resolution 2417*, 2018, p.2

### 2.2.1. African Union

Within the African panorama, a region subjected to investigation in this paper, there is also a tendency towards adopting human rights protective laws in times of conflict through the recognition of the legitimate and effective application of International Humanitarian Law amongst a generality of countries belonging to different organizations. On the one hand, the African Union (AU), and *ex ante* the Organization for African Unity (OAU), has incorporated the protection of human rights in its founding deed. Although the principle of intervention in member states already operated in case of flagrant violation of International Humanitarian Law<sup>49</sup>, recent statements by this organization support and recall the legislation regarding the protection of civilians during conflict and a need of commitment by the African society.<sup>50</sup>

### 2.2.2. The Intergovernmental Authority on Development

The Intergovernmental Authority on Development (hereinafter, IGAD) recognizes combating widespread famine in its targeted geographical area<sup>51</sup> among its fundamental purposes.<sup>52</sup> Moreover, IGAD has established that, as an international organization, it also positions itself as a Human Rights Institution aligning its objectives and vision with the line set by the United Nations and followed by the African Union.<sup>53</sup> As a matter of fact, the creation of IGAD was sponsored under the aegis of the United Nations, hence, it should be expected from IGAD to comply with UN's peace and security missions. The Agreement on the Cessation of Hostilities, Protection of Civilians and Humanitarian Access issued by this organization, which will be later on reviewed, serves as a mechanism for addressing civilian starvation during conflict as a peace and security issue.

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<sup>49</sup> P. Engstrom, *opt cit*, p.17

<sup>50</sup> See African Union Statement [https://au.int/sites/default/files/speeches/34745-sp-statement\\_by\\_auc\\_chair\\_on\\_whd-km\\_edits\\_20-08-18.pdf](https://au.int/sites/default/files/speeches/34745-sp-statement_by_auc_chair_on_whd-km_edits_20-08-18.pdf)

<sup>51</sup> "Founding member states are Djibouti, Ethiopia, Kenya, Somalia, Sudan and Uganda. After obtaining its independency in 1993, Eritrea became the seventh member. Finally, back in 2011, South Sudan joined the organization as the eighth member state after constituting its separated state from Sudan".

<sup>52</sup> *Ibid* page 2.

<sup>53</sup> In this regard, IGAD reported on 2016 that: "Accordingly, IGAD's vision as defined in both its Regional Strategy and in particular that of Peace and Security Strategy which strives towards "A peaceful, integrated and prosperous IGAD Region that contributes to Africa Union Agenda 2063" reflecting the same spirit and substance of that of the AU which envisions an integrated, prosperous and peaceful Africa." *Ibid*, p.26.

In conclusion, by searching for *prima facie* evidence on any statement on starvation as a method of warfare or any reference to protecting civilians during conflict, it leads to understand that there is a tendency towards addressing the issue in order to make a difference on protection effectiveness and promotion of a Human Rights Regime.

# **CHAPTER THREE. UNITED NATIONS, AFRICAN UNION AND THE INTERGOVERNMENTAL AUTHORITY ON DEVELOPMENT: INTERNATIONAL SECURITY MEASURES IN THE SOUTH SUDANESE CONFLICT.**

In the following chapter, the investigation will take as research subjects three international organizations previously mentioned; United Nations, African Union and the Inter-Governmental Authority on Development, and their collective security mechanisms. We will be focusing on their respective actions regarding starvation of civilians and denying access to humanitarian relief as a method of warfare in the South Sudanese conflict. Forthwith, this research will carry out a three-levelled investigation based on a *scope-of-outreach* criterion, in order to assess their effectiveness on their role as Human Rights Institutions amid said humanitarian crisis. We will identify which measures have been adopted to condemn and ceases the starvation of civilians currently taking place in the South Sudan. Their effectiveness will be later evaluated according to their capability to resume abuses and violations of human rights and we will observe what, if anything, is hindering a more effective response by these three organizations.

This analysis will focus on the efforts made during 2018. Any and all resolutions issued between January 1<sup>st</sup> and December 31<sup>st</sup> 2018 will be subjected to evaluation. To asses any improvement, or lack thereof, as a direct or indirect consequences of these measures, we will take as a reference the food insecurity data from the Integrated Security Phase Classification (IPC) and other official data. We will examine the information for 2019 and try to establish a correlation between.

## **1. Intervient International Organizations**

### **1.1. United Nations: UNSC Resolutions 2406, 2418, 2428**

As mentioned in the previous chapter, The United Nations defines itself as the broadest and most universal forum regarding international security relying on its Security Council. To this end, the San Francisco Charter conferred on the Security Council for interventions on Human Rights violations in accordance to complying with the “Purposes

and Principles”<sup>54</sup> of the San Francisco Charter (article 24, Chapter V, UN Charter<sup>55</sup>). Among the powers vested on the Council for this purpose, we should highlight Chapter VII: Actions with Respect to threats to the peace, breaches of the peace, and acts of aggression. In these articles we find the mechanisms available to the Security Council to deal with problems such as starvation as a mean of warfare. Back to chapter V, article 25 establishes the applicability of the measures adopted by the Security Council, instituting its character as a *ius cogens* rule.

*The Members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter<sup>56</sup>.”*

Resolution 2139 (2014) broadly covers starvation as a method of warfare (for the United Nations community), being applicable to any current conflict. But regarding the case study that concerns us, the violations perpetrated in South Sudan, the UN has issued a series of resolutions involving itself in said humanitarian crisis and intervening in the conflict. However, and before deepening into the resolutions adopted in 2018, we shall briefly highlight the UNSC’s sanctions regime operating until 2018 for South Sudan. Previous resolutions such as Resolution 2206 (2015) imposed a rigid package of sanctions amid the inability of the parties to cease and decrease the hostilities. Main sanctions included assets freeze, arms embargoes and travel bans. This is supported by the work of the Commission on South Sudan, a Panel of Experts and the mandate of the United Nations Mission in South Sudan (UNMISS). Consequently, we will specify the resolutions from the Security Council that, in 2018, were arranged and agreed in relation to this case. We emphasize hereinafter, the three following resolutions:

#### *1.1.1. UNSC Resolution 2406*

The first resolution extends the United Nations Mission in South Sudan, until March 15<sup>th</sup> 2019. Regarding the protection of civilians, this resolution authorizes to execute by any means accessible the subsequent actions: general protection of civilians, creating the

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<sup>54</sup> United Nations Organization, *San Francisco Charter*, article 24.2, 1945.

<sup>55</sup> Article 24: 1. “In order to ensure prompt and effective action by the United Nations, its Members confer on the Security Council primary responsibility for the maintenance of international peace and security, and agree that in carrying out its duties under this responsibility the Security Council acts on their behalf.” 2. In discharging these duties, the Security Council shall act in accordance with the Purposes and Principles of the United Nations. The specific powers granted to the Security Council for the discharge of these duties are laid down in Chapters VI, VII, VIII, and XII.”

<sup>56</sup> United Nations Organization, *San Francisco Charter*, article 25, 1945.

conditions conducive to the delivery of humanitarian assistance, monitoring compliance with human rights, and supporting the implementation on peace agreements.

#### *1.1.2. UNSC Resolution 2418*

Resolution 2418 renews sanctions regarding travel ban and assets freeze according to paragraphs 9 and 12 from previous resolution, Resolution 2206.

#### *1.1.3. UNSC Resolution 2428*

This resolutions, unlike the others, expresses severe distress regarding the threat of starvation as a method of warfare referring to conflict-induced food insecurity and famine. However, the aim of said resolution lays upon reinforcing the sanctions regime mainly regarding arms embargoes, inspections and targeted sanctions. Making a reference to the Khartoum Declaration, which will be later addressed under IGAD's spectrum, calls for effective deployment of humanitarian assistance but delegates said action to South Sudan's leaders in their commitment to their obligation within international law.

- 1.2. African Union: PSC Communiqués PSC/PR/COMM.(DCCLXVIII), PSC/PR/COMM.3(DCCC), PSC/PR/COMM.(DCCCXX).

The universality of the United Nations makes it possible to link and reach a broad scope of issues. However, it occasionally delegates or coordinates the necessary actions with other international organizations. Regarding the conflict in South Sudan, we find evidence of this joint action in documents from both the United Nations and the African Union.

The Protocol Relating to the Establishment of the Peace and Security Council of the African Union aims to follow the example and structure of the United Nations. In the preamble of this document, it makes direct reference to the collective security structure of the UN and can see how the African Union considers a step in the right direction to copy the system already established by the UN and thus forge stronger cooperation. In this regard, we find the need to highlight article 17 on relationship with the United Nations and other Organizations. In a similar wording to the San Francisco Charter, the powers granted to this international security body are included in article 7.1, and in the successive sections of this article declares binding status of all decisions and resolutions adopted for all Member States.

From the institutional work of African Union in 2018, we find the following declarative documents of its activity:

*1.2.1. PSC Communiqué PSC/PR/COMM.(DCCLXVIII)*

At its 768<sup>th</sup> meeting on April 26<sup>th</sup> 2018, the African Union issued a communiqué characterised by its condemning tone and support to international organizations cooperation on the matter. Nevertheless, it lacks of defined measures to adopt and execute. It contemplates the possibility of instituting sanctions to guarantee the application of a peace pact and cease of hostilities, but does not express any substantial provisions.

*1.2.2. PSC Communiqué PSC/PR/COMM.3(DCCC)*

On October 10<sup>th</sup> amid its 800<sup>th</sup> meeting, the African Union Communiqué reassures past declarations. Although it makes authoritarian affirmations and compelling requests that should be carried out by the parties involved, it still does not obtain specific measures.

*1.2.3. PSC Communiqué PSC/PR/COMM.(DCCCXX)*

This communiqué begins by saying that;

“The Peace and Security Council (PSC) of the African Union (AU), at its 820th meeting held on 20 and 24 December 2018 considered the proposal by the Intergovernmental Authority on Development (IGAD) for the Review of the Composition and the Mandate of the Regional Protection Force for South Sudan”<sup>57</sup>,

Even though it recognizes and addresses human rights violations and the use of starvation against civilians based on information gathered during their several field mission in South Sudan; we can ascertain how African Union Peace and Security Council communiqués lack from engagement towards solid self-initiated and self-executed measures towards conflict resolution, cease of human rights violations and determining accountability.

1.3. Intergovernmental Authority on Development: The Khartoum Declaration and the Revitalised Agreement of Resolution of the Conflict in South Sudan

Amid tis investigation, the Intergovernmental Authority on Development is probably the least known international organizations for the general public. IGAD’s Regional

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<sup>57</sup> African Union Peace and Security Council, *Peace and Security Council Communiqué PSC/PR/COMM.(DCCCXX)*, 2018

Strategy defines and enunciates its goals and associated programmes, including: “Conflict Early Warning and Early Response, Preventive Diplomacy and Mediation, Transnational Security Threats, Governance, Democracy, Rule Of Law, and Human Rights, Humanitarian Affairs, Post-Conflict Reconstruction and Development; and Gender Equality and Women’s Empowerment for Peace.”<sup>58</sup>

The Agreement establishing the Intergovernmental Authority on Development (Nairobi, March 21<sup>st</sup> 1996), reiterates its comprise with maintaining peace and international security but, moreover, fostering and contributing to achieve food security among its members.<sup>59</sup>

### *1.3.1. The Khartoum Declaration of Agreement between parties of the conflict of South Sudan*

IGAD, as a regional international organization and therefore closer to the actors, has taken the lead in negotiations and mediation. Under the aegis of IGAD, and prior to this research’s time frame, an Agreement on Cessation of Hostilities, protection of civilians and humanitarian access was signed, following the failed Agreement on the Resolution of the Conflict in the Republic of South Sudan (ARCSS), back in 2015. This agreement, signed in Addis Ababa on December 21<sup>st</sup> 2017, was violated by the parties almost immediately. In this way, and during the year 2018, IGAD focused all its efforts on resuming the cessation of hostilities and achieving a ceasefire.

The Khartoum declaration of Agreement came to being on June 21<sup>st</sup> 2018, six months after the Cessation of Hostilities Agreement and back in the same Addis Ababa. Once again, IGAD reunited the belligerent parties to the South Sudanese conflict. The aim of this reunion was to reigniting peace negotiations and rekindling the cessation of hostilities. The Khartoum Declaration reviewed the Agreement on Cessation of Hostilities, which included explicit prohibitions and measures regarding human rights

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<sup>58</sup> IGAD Regional Strategy, opt cit, p.27

<sup>59</sup> See Principles and Purposes enunciated in the Agreement establishing the Intergovernmental Authority on Development (Nairobi, March 21<sup>st</sup> 1996).

violations and impeding humanitarian relief access.<sup>60 61</sup> In spite of the efforts, the Khartoum declaration also failed.

### *1.3.2. Revitalized Agreement of Resolution of the Conflict South Sudan (R-ARCSS)*

On September 2018, IGAD's 33<sup>rd</sup> Extraordinary Assembly witnessed the signing of a revitalization of the ARCSS. Both parties signed into an agreement that included a whole chapter on humanitarian assistance and reconstruction. This section contained several "agreed principles for humanitarian assistance"<sup>62</sup>.

"Warring Parties, shall ensure: Secure access to civilian populations in need of emergency humanitarian assistance and protection, including establishment of safe humanitarian corridors"<sup>63</sup>.

As presented above, the instructions are vague. Nonetheless, unlike United Nations Resolutions and African Union Communiqués, this measures possess the signature from both sides on its document. However, this has not discouraged or persuade belligerent parties from breaking the ceasefire agreements. Even though it seemed like the reconciliation was moving forward, up until today, both parties continue to violate the cease and decess settlements.

## **2. Food Insecurity Data in South Sudan**

The last section of this chapter will illustrate the available data on food insecurity and famine in South Sudan. In the first instance, there is a need to explain how food insecurity is measured according to the sources. The measure used will be an estimation by number of people who are in danger of conflict-induced starvation. For this purpose, we will take as reference the framework established by the Integrated Food Security Phase

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<sup>60</sup> See The Agreement on Cessation of Hostilities, 2017. Retrieved from: <https://igad.int/attachments/article/1731/1712%2021%20Signed%20CoH%20Agreement.pdf>

<sup>61</sup> See The Khartoum Declaration of Agreement Between parties of the conflict of South Sudan, 2018. Retrieved from: <https://igad.int/attachments/article/1874/Khartoum%20Declaration.pdf>

<sup>62</sup> See The Revitalised Agreement on the Resolution of the CONflict in the Republic of South Sudan, 2018. Retrieved from: <https://www.dropbox.com/s/6dn3477q3f5472d/R-ARCSS.2018-i.pdf?dl=0>

<sup>63</sup> Intergovernmental Authority on Development, *The Revitalised Agreement on the Resolution of the Conflict in the Republic of South Sudan*, 2018, p. 42

Classification<sup>64</sup> (hereinafter IPC). This classification applies a double criteria dividing human communities geographically and socially, as the IPC aims to assess the urgency of each situation in order to respond appropriately. Phases are catalogued into six phases. Food insecurity crisis are catalogued from phase 3 onwards.<sup>65</sup>

The determination of each phase is attempted to be carried out through a data collection and analysis procedures as rigorous and objective as possible. In order to achieve greater transparency, but above all, consistency and coherency, the IPC manual itself, publicly displays the variables taken into account. It explains the relevance of each factor in order to construct each phase. With regard to these factors, it is documented how “while the IPC strives to identify objective and internationally accepted thresholds that correspond to each Phase, some outcomes are more objective than others.”<sup>66</sup> The criteria used to set up each phase combines the results of the following factors: Crude mortality rate, acute malnutrition, stunting,, disease, food access, dietary diversity, water access, civil security, coping strategies, hazards, structural conditions and livelihood assets.

Therewith, in the context of the South Sudanese territory, we must incorporate to this investigation the evolution of the data from 2018 to 2019. According to the relevant sources, we can confirm the following information: According to the data presented by the World Food Program, which is based on the data revealed by IPC, the year 2018 began with a total amount of 5.1 million people suffering from relentless food insecurity<sup>67</sup>. The IPC report examines how, due to prevailing anticipation of the lean season, any improvement occurred post-harvest season may be to no avail by the beginning of 2019. Moreover, the IPC reports do not fail to establish a cause-effect correlation between

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<sup>64</sup> It should be highlighted that the IPC is a globally recognized initiative involving United Nations agencies, as well as NGO's and civil society actors, which contribute to the collection, analysis and authorization of the necessary reports.

<sup>65</sup> Phase 1A and Phase 1B (Generally Food Secure): Usually adequate and stable food access with moderate to low risk of sliding into Phase 3, 4, or 5.

Phase 2 (Moderately/Borderline Food Insecure): Borderline adequate food access with recurrent high risk (due to probable hazard events and high vulnerability) of sliding into Phase 3, 4, or 5.

Phase 3 (Acute Food and Livelihood Crisis): Highly stressed and critical lack of food access with high and above usual malnutrition and accelerated depletion of livelihood assets that, if continued, will slide the population into Phase 4 or 5 and / or likely result in chronic poverty.

Phase 4 (Humanitarian Emergency): Severe lack of food access with excess mortality, very high and increasing malnutrition, and irreversible livelihood asset stripping.

Phase 5 (Famine/Humanitarian Catastrophe): Extreme social upheaval with complete lack of food access and / or other basic needs where mass starvation, death, and displacement are evident.

FAO, *Integrated Food Security Phase Classification, technical manual versión 1.1*, p. 19

<sup>66</sup> *Ibid*, p.22

<sup>67</sup> WFP, *WFP South Sudan Situation Report 20*, 2018, p.1

conflict and famine. Conflict-induced famine is highlighted by stating how “the worsening situation is attributed mainly to the protracted conflict that affected farming activities and the ongoing economic crisis”.<sup>68</sup>

#### 2.1. Food insecurity data from 2018

At the beginning of 2018, an estimated 5.3 million people were declared severely food insecure. This amounted for the 48% of the population facing phase 3 or 4 food crises and humanitarian emergencies. Even though food security seemed to improve from September 2017 to January 2018 due to humanitarian aid and harvest season, there was a 40% increase in population encountering food insecurities compared with 2017.

Throughout the year, data concerning food insecurity experienced slight variations, more related to the harvest season than the implementation of policies and measures. According to the report of the last quarter of 2018, the situation improved due to access to crops. The projections made by this report estimated further improvements because of the post-harvest period between October and December 2018. The total amount of civilians facing crisis phases (phase 3 or over) was likely to decrease down to 4.4 million (43% of the total population). However, these estimations were made taking into consideration the presence of humanitarian assistance. The report assumes in its projections that this aid will be managed and delivered to its recipients.

It should be noted and highlighted, as amid the peace negotiation, an optimistic projection was raised along with this information. A more hopeful scenario was likely to prevail if the R-ARCSS peace agreement could have been sustained and unhindered humanitarian access occurs<sup>69</sup>.

#### 2.2. Food Insecurity data from 2019

Coinciding with the beginning of the year 2019 and with the lack of commitment of the warring parties towards the R-ARCSS, (February 2019’s report and projections) finally indicated a worst-case scenario.

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<sup>68</sup> Integrated Food Security Phase Classification, *South Sudan: Key IPC Findings September 2017 – March 2018*, Report 2017, p.1  
[https://reliefweb.int/sites/reliefweb.int/files/resources/South\\_Sudan\\_KeyMessages\\_Sept2017.pdf](https://reliefweb.int/sites/reliefweb.int/files/resources/South_Sudan_KeyMessages_Sept2017.pdf)

<sup>69</sup> Integrated Food Security Phase Classification, *South Sudan: Key IPC Findings September 2018 – March 2019*, p. 2. Retrieved from:  
[http://www.ipcinfo.org/fileadmin/user\\_upload/ipcinfo/docs/IPC\\_SouthSudan\\_AcuteFI\\_2018Sept\\_March\\_2019.pdf](http://www.ipcinfo.org/fileadmin/user_upload/ipcinfo/docs/IPC_SouthSudan_AcuteFI_2018Sept_March_2019.pdf)

In addition, the ongoing conflict has disrupted undermined chances at survival, restraining households' capability to access food sources, such as wild foods, fish, and livestock products. The economic crisis “significantly reduced the purchasing power of vulnerable households and populations that depend on market purchases of high-priced food.”<sup>70</sup>

Once again, the deviations between the data were due to the harvest seasons, without making any reference to measures implemented by the warring parties to alleviate the economic situation of families and the danger of famine. The reports referring to the year 2019 denounce the need for large-scale humanitarian assistance to guarantee the protection of civilians.<sup>71</sup>

Moreover, the year 2019 registered the worst total figures between both periods, reaching 6.87 million people (60% of the population) facing acute food insecurity (reference to IPC phase 3 and over). The projection of individuals classified within the IPC Phase 5 was estimated at 50,000 people.

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<sup>70</sup> Integrated Food Security Phase Classification, *South Sudan: Acute Food Insecurity and Malnutrition Situation. January 2019 and Projections for February – April 2019 and May – July 2019*, p.1. Retrieved from: <http://www.ipcinfo.org/ipc-country-analysis/details-map/en/c/1151975/>

<sup>71</sup> “Large-scale humanitarian assistance is urgently needed to save lives and protect livelihoods in these counties. Compared to the same time last year, January 2019 food insecurity levels reflect a 13% increase in the population facing acute food insecurity crisis (phase 3) or worse in the post-harvest season.” Integrated Food Security Phase Classification, *South Sudan: Acute Food Insecurity and Malnutrition Situation. January 2019 and Projections for February – April 2019 and May – July 2019*, p. 2 Retrieved from: <http://www.ipcinfo.org/ipc-country-analysis/details-map/en/c/1151975/>

## CONCLUSIONS

The approach of this research is given by an initial motivation: the study of the effectiveness of collective international security mechanisms. In this way, motivation was embodied in a working hypothesis. This prior hypothesis involves assuming that international organizations have difficulty dealing with faminogenic practices as a human security threat. Therefore, to verify this hypothesis, the resolutions of international organizations should be corroborated together with specific information.

In addition, a preliminary investigation showed the lack of work addressing the starvation as a method of warfare from the perspective on international organizations and collective international security. This work has tried to unite both subjects for future lines of research.

Thus, to carry out this research, we have had to jointly assess various disciplines; public international law and human rights, international organizations and collective international security. All of them were necessary to try to answer the initial research question: How are the intervening international organizations addressing and responding to starvation of civilians as a method of warfare in South Sudan? The conclusions to this question are as diverse as the areas studied to answer it.

- i. This study was proposed as a three-levelled investigation based on a *scope-of-outreach* criterion. In the first place, it was understood that the role played by each international organization would go from a more political and generic action to a more practical one according to the scope and geographical proximity of each organization. Thus, the United Nations would have laid the foundations for action and the African Union and IGAD would have been in charge of developing and implementing. However, we find that the measures adopted in the resolutions of the first two are vague. We found that, despite reporting faminogenic practices, they are unable to raise targeted measures. Specifically, in the case of the African Union, it can be stated that its performance has been frankly poor. Its lack of participation in the resolution of the conflict is notorious. So much that entities and experts are already demanding the launch of the delayed hybrid court for the South Sudanese conflict. Little or no progress has been made in this regard, with

- both African Union and IGAD being the most appropriate institutions for holding accountability for the violators.
- ii. This work has served to overview and execute a preliminary study on the feasibility of prosecuting the belligerent parties to the South Sudanese conflict for war crimes in relation to the violation of rules 53, 54 and 55 of the compendium of customary international humanitarian law. Thanks to the contrast work carried out by cross-referencing the elements and extents of these crimes and the detailed reports from in-field humanitarian actors.
  - iii. International organizations still have a difficult journey ahead to assert their authority on member states. Despite the fact that the theoretical precepts impose the authority of the resolutions, the breach between theory and reality is still considerable.
  - iv. Collective international security and its mechanisms are not prepared to deal with human security threats. As discussed in the course of the first chapter, international security distinguishes two types of threats, the former and classical threats or eradication of violence, such as terrorism or the proliferation of chemical weapons. Case studies related to classical threats show how a system of sanctions comprised of assets freeze, arms embargoes and economic sanctions have their effect on these matters. However, when applied to starvation as a method of warfare, these measures result useless. With the completion of this investigation, we conclude how the measures adopted mostly by the United Nations and the African Union aim to eradicate the conflict in South Sudan, as a way to end faminogenic practices. IGAD, despite having played a more active role by achieving steps such as the signing of the aforementioned agreements, has also failed to find the formula to face this issue.
  - v. The study of the starvation as a method of warfare, illustrated with the case of South Sudan, opens the doors to promising future researches. Thanks to the detailed field study carried out by humanitarian agents, we are faced with the opportunity to ask whether it would be possible to develop a package of concrete measures aimed at tackling the phenomenon of starvation as a method of warfare.

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