The responsibility for violating international humanitarian law by starving civilians during wars: Gaza as a case study

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Abstract: The fundamental problem lies in the inadequacy of international accountability mechanisms and the continued impunity despite the clear legal basis for criminalizing starvation as a war crime. The weakness of political will within the United Nations system, especially in light of the use of the veto power, has deepened the gap between legal texts and practical application. Therefore, this study aims to explore ways to activate international accountability by supporting the jurisdiction of the International Criminal Court, strengthening the principle of universal jurisdiction, and developing more effective monitoring mechanisms that ensure respect for the rules of international humanitarian law and the protection of the rights of Palestinian civilians.

key words: Starvation, international humanitarian law, war crime, International Criminal Court, impunity, principle of universal jurisdiction.

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1. INTRODUCTION

International humanitarian law is the supreme framework that seeks to protect human life during armed conflict, recognizing it as the core value of the international legal system. It aims to mitigate the tragedies of war and its impact on civilians and civilian objects. However, the current international landscape highlights the erosion of the effectiveness of these rules in asymmetrical conflicts, where military and civilian targets become intertwined, and weapons are used to achieve political objectives far removed from the dictates of military necessity. The Israeli aggression against the Gaza Strip following the events of October 7, 2013, stands out as one of the most dangerous contemporary examples that revealed the fragility of the international protection system. The Strip was subjected to a comprehensive siege that affected all aspects of life, including food, water, fuel, and medicine, in flagrant violation of the fundamental humanitarian principles that form the basis of international humanitarian law.

The systematic starvation policy practiced by the occupying authorities against the population of Gaza has become a clear manifestation of the use of "starvation as a method of warfare," a conduct that constitutes a war crime according to Article 54 of Additional Protocol I of 1977 and Article 8(2)(b)(25) of the Rome Statute of the International Criminal Court, which criminalizes the deliberate deprivation of civilians of essential materials necessary for their survival. Furthermore, Article 55 of the Fourth Geneva Convention of 1949 affirms the obligation of the

occupying power to ensure the supply of food and medical supplies to the population, and Article 33 prohibits collective punishment.

Therefore, the siege imposed on the Gaza Strip cannot be described as a legitimate military measure, but rather constitutes a systematic means of collective punishment and starvation, violating the principle of distinction between military and civilian targets and the principle of proportionality, and thus holds the occupying power directly responsible under international law. The importance of this study lies in its integration of legal, humanitarian, and political dimensions. Starvation as a method of warfare not only constitutes a legal violation but also represents a blatant challenge to the global conscience and the values of justice upon which the international system is founded. Furthermore, the continuation of sieges without accountability perpetuates a policy of impunity and undermines public confidence in the effectiveness of international law as a tool for ensuring peace and justice. The study gains added significance given the humanitarian and political consequences of the continued use of starvation as a weapon of war, and the widespread suffering it inflicts on civilians, children, and women, violating the values upon which our shared humanity is based.

Based on the above, the following central question emerges: **How can international mechanisms be activated to ensure international accountability for violations of international humanitarian**

law regarding the starvation of civilians during wars?

This main question encompasses a number of sub-questions, the most important of which is:

1- What is the conceptual and legal framework for the concept of starvation as a method of warfare in international humanitarian law? 2. What are the aspects of the occupying power's responsibility according to the rules of international state responsibility?

3. How can the siege imposed on the Gaza Strip be classified in light of these rules?

4. How effective are international judicial mechanisms in prosecuting the perpetrators of this crime?

5. How can the international legal system be reformed to enhance the protection of civilians in similar conflicts?

To answer this main problem and its sub-questions, and to give this study an academic and scientific character, the legal analytical method was adopted through the analysis of relevant international texts (the Geneva Conventions, Additional Protocols, and the Rome Statute) and

their comparison with the realities on the ground in the Gaza Strip. The descriptive and critical method was also employed to assess the effectiveness of international accountability mechanisms in light of the political reality and to explore ways to develop them in a manner that strengthens the principle of no impunity. To address this plan, the study was divided into two sections.

The first section examines the starvation of civilians during wars as a violation of international humanitarian law. It will cover the conceptual and legal framework of starvation, the legal classification of the blockade imposed on Gaza, and the legal basis for Israel's responsibility as an occupying power under the Geneva Conventions and the principles of international humanitarian law.

The second section addresses mechanisms for international accountability for the crime of starvation. It examines the rules of international responsibility for states and individuals according to the International Law Commission's 2001 draft and the Rome Statute, analyzing the political and legal challenges that hinder the implementation of international accountability and proposing ways to overcome them.

Section One: Starvation of Civilians During Wars: A Violation of International Humanitarian Law

Starvation is one of the most serious prohibited methods in armed conflicts, as it constitutes a flagrant violation of the human right to life and human dignity. It inflicts harm on civilians collectively, exceeding all limits of military necessity. In the Palestinian case, particularly after the events of October 2023, the Israeli siege imposed on the Gaza Strip has become a clear example of starvation as a method of warfare, representing a grave violation of the rules of international humanitarian law, the Geneva Conventions, and Additional Protocol I of 1977.

Requirement One: The Conceptual and Legal Framework of Starvation as a Method of Warfare

The first requirement: Starvation as a method of war has become one of the most prominent violations that threaten the essence of international humanitarian law[1], as it represents the deprivation of the civilian population of the basic necessities of life on the one hand, and on the other hand, an illegitimate means of military pressure[2]. Contemporary international law considers the protection of civilians during armed conflicts an absolute obligation that may not be violated under any security or military pretext.

Starvation as a method of warfare has become one of the most prominent violations threatening the core of international humanitarian law. It

represents, on the one hand, the deprivation of the civilian population of the basic necessities of life[3], and on the other hand, an illegitimate means of military pressure. Contemporary international law considers the protection of civilians [4]during armed conflicts an absolute obligation that cannot be violated under any security or military pretext.

Section 1: The legal concept of starvation as a method of warfare: Starvation in armed conflicts is defined as "the deliberate deprivation of the civilian population of food or the means necessary for their survival." The International Committee of the Red Cross indicates that starvation constitutes a war crime as it is used as a means of weakening the enemy through the suffering of civilians. Intentional starvation is distinguished from incidental suffering resulting from military operations, as the former requires that the deprivation be directed and intentional against civilians[5].

First: The International Legal Framework for Starvation as a Method of Warfare:

1- **Within the Treaty** Framework: The 1949 Geneva Conventions and their 1977 Additional Protocols prohibit the use of starvation as a method of warfare. Article 54/1 of Additional Protocol I states that "the use of starvation against the civilian population as a method of warfare is prohibited."[6] The same article, in its second paragraph, also prohibits attacking, destroying, or

rendering useless objects indispensable to the survival of civilians, such as food and water[7].

In non-international armed conflicts, Article 14 of Additional Protocol II enshrines the same principle, emphasizing that civilians may not be starved under any circumstances[8]. The UN Security Council, in its Resolution 2417 of 2018, affirmed that the use of starvation as a method of warfare constitutes a grave violation of international law and may constitute a war crime[9].

2. Within the customary framework: The International Committee of the Red Cross (ICRC) has incorporated a clear rule within international humanitarian law stating that "the use of starvation against the civilian population as a method of warfare is prohibited."[10] Rules 53 and 54 of the Customary Law Database include provisions prohibiting attacks on or the destruction of objects essential to the survival of civilians[11].

3. Within the international criminal framework: The Rome Statute of the International Criminal Court of 1998 criminalizes the use of starvation as a weapon of war in international conflicts under Article 8(2)(b)(25), which considers it a war crime if civilians are deliberately deprived of the materials necessary for their survival or if aid is obstructed from reaching them[12].

In this context, the issue of criminal intent arises. Some legal scholars argue that the crime requires proof of direct intent to starve civilians, while others maintain that prior knowledge of the possibility of starvation is sufficient to establish responsibility[13].

Second: The Legal Nature of Starvation as a Method of Warfare:

An examination of international texts reveals that starvation is not merely a violation of human rights, but a fully-fledged war crime if three essential elements are present:

1- The physical act: depriving civilians of the means necessary for survival.

2- Criminal intent: deliberately directing the deprivation against civilians or knowing that the action will result in such deprivation.

3- The result: causing widespread human suffering or mass starvation[14].

The protection of civilians during armed conflicts is a peremptory norm (jus cogens) and an absolute principle of international humanitarian law that may not be violated under any circumstances. This obligates all parties to the conflict, whether states or non-state armed groups, to review any military actions that may lead to the deprivation of civilians of food, water, or medicine. Any violation of this norm can lead to international legal accountability.

Second Requirement: The Legal Characterization of the Blockade Imposed on the Gaza Strip and the International Responsibility of the Israeli Occupation Power.

In light of international legal rules prohibiting the use of starvation as a method of warfare, a complex legal dilemma arises concerning the nature of the blockade imposed on the Gaza Strip, which has led to dire humanitarian conditions that numerous human rights reports indicate may amount to the systematic starvation of the civilian population.

The central question is whether the occupying power's responsibility in this context is merely moral and humanitarian, or whether it constitutes an international legal responsibility that warrants accountability under the provisions of international humanitarian law.

Accordingly, this section seeks to analyze the legal classification of the blockade imposed on the Gaza Strip and to identify the legal basis for Israel's international responsibility for its consequences.

Section 1: The Legal Classification of the Blockade Imposed on Gaza: In international humanitarian law, a blockade is defined as a military[15] or security measure taken by a state or a party to an armed conflict to restrict the movement of people, goods, or services to and from a specific area in order to subjugate it politically or

militarily. This measure is considered legitimate in principle if it is not directed against the civilian population and does not deprive them of the means of survival.

However, the blockade imposed on the Gaza Strip differs in its nature and implementation. Israel maintains effective control over all airspace, territorial waters, and land crossings, and imposes severe restrictions on the movement of goods, including food, medicine, fuel, and building materials. Since 2007, this has resulted in a sharp deterioration in the living and humanitarian conditions of the civilian[16] population, with rising poverty and unemployment rates and a decline in healthcare and basic services. This situation raises legal questions about whether the blockade aims to achieve legitimate security objectives or constitutes a collective punishment measure in violation of international humanitarian law[17].

First: The Legal Status of the Conflict in the Gaza Strip: Legal scholars and international organizations have differing opinions regarding the legal status of the Gaza Strip, which has influenced the determination of the legal framework applicable to the blockade.

1- The first viewpoint: This view holds that the Gaza Strip remains under Israeli occupation despite the direct military withdrawal in 2005. This is based on the continued effective control over the borders, crossings, and maritime and

airspace.[18] According to this view, the provisions of the Fourth Geneva Convention of 1949 apply, particularly Articles 55 and 59, which obligate the occupying power to guarantee the supply of food and medicine to the civilian population and prohibit it from obstructing humanitarian aid or using it as a means of political or military pressure.

2- **The second approach**: This view holds that the situation in Gaza does not constitute an occupation in the traditional legal sense, but rather falls under the category of a non-international armed conflict or a mixed conflict subject to the provisions of international humanitarian law[19]. According to this approach, a military blockade is not prohibited in itself, but it becomes illegal if it results in the starvation of civilians or deprives them of the necessities of survival, based on the peremptory norms contained in the two Additional Protocols of 1977.

Regardless of the precise legal characterization of the situation, fundamental humanitarian rules remain applicable in all circumstances, particularly those prohibiting the use of starvation as a method of warfare or targeting objects essential to the survival of civilians[20].

Second: The use of the blockade as a method of deliberate starvation: Recent human rights reports indicate that the blockade imposed on the Gaza Strip has exceeded the scope of legitimate military

measures and has become a systematic tool for punishing and pressuring the civilian population. The continued restrictions on the entry of food, fuel, and medicine, as well as the prevention of movement and work, have led to widespread deprivation of basic resources for life.

From the perspective of international humanitarian law, if the purpose or inevitable result of a siege is to weaken civilians by depriving them of food, water, or healthcare, this constitutes starvation as a method of warfare, a practice prohibited under Article 54 of Additional Protocol I of 1977 and Article 14 of Additional Protocol II[21].

From the perspective of international criminal law, proving the intent to use a siege to achieve deliberate starvation is the essential element of the crime. Criminal intent must be established by demonstrating that the perpetrator was aware of the consequences of their actions and continued to implement them despite knowing their catastrophic effects. Many experts have affirmed that the continuation of a siege despite prior knowledge of its humanitarian consequences is sufficient to establish international responsibility for using starvation as a weapon of war.

Section Two: The International Responsibility of the Israeli Occupation Power: From the perspective of international law, the Gaza Strip is considered occupied territory. Israel bears direct

legal obligations under the Fourth Geneva Convention of 1949 and the Hague Convention of 1907, which obligate the occupying power to protect civilians and ensure their basic needs. These obligations include[22]:

- Providing food, medicine, and the basic necessities for survival[23].
- Ensuring unimpeded access for humanitarian aid when the civilian population is at risk of starvation.

These obligations are absolute, and no military or security justifications may be invoked to circumvent them, as the protection of civilians constitutes a cornerstone of international humanitarian law.

First: Elements of International Responsibility in the Case of the Gaza Strip: The elements of international responsibility in the Palestinian situation (the Gaza Strip) can be summarized as follows[24]:

1- Existence of a Legal Obligation: Israel, as the occupying power, bears a legal duty to protect civilians in the Gaza Strip.

2- Breach of the Obligation: This is clearly evident in the prevention of food entry or the disruption of water and electricity infrastructure, which exposes civilians to the risk of starvation. 3. Causation: The direct link between the measures taken (the blockade and restrictions on crossings)

and the result, which is the deprivation of the necessities of life.

4. Intent and Knowledge of the Consequence: Prior knowledge that the continuation of the blockade will lead to the deprivation of civilians of essential resources, which establishes international responsibility.

However, legal debate arises regarding the dismissal of responsibility in certain cases, such as the claim that the blockade is for legitimate security reasons or that starvation was a byproduct of military operations and not a direct intention. In this context, the principle of protecting civilians from starvation remains absolute, but proving direct intent or knowledge of the catastrophic consequences remains a crucial element for establishing responsibility.

Second: The Implications of Israel's International Responsibility.

1- At the Civil Level: Israel remains obligated to immediately cease its violations and compensate civilians for the damages resulting from the deprivation, even if it attempts to justify the blockade with security arguments[25].

2- At the Criminal Level: If it is proven that the blockade has led to the deliberate starvation of the civilian population in Gaza, individual criminal responsibility remains, and responsible leaders can be prosecuted before the International Criminal Court or national courts[26].

In cases where responsibility is sought to be waived, international law requires specific and legitimate justifications, such as extreme military emergencies necessitated by genuine security imperatives. In the case of the Gaza Strip, most experts believe that the continuation of the blockade for years, with its devastating impact on the civilian population, does not constitute a legal justification for waiving international responsibility.

Therefore, Israel remains internationally responsible for the catastrophic humanitarian consequences of the blockade.

Section Two: Mechanisms for International Accountability for the Crime of Starvation in Wars

The principle of international accountability is a fundamental pillar of the contemporary international legal system. It aims to ensure that perpetrators of grave violations, particularly those affecting fundamental human rights such as the right to life and food, do not escape punishment. According to international humanitarian law, starvation is considered one of the most serious crimes that can be committed during armed conflicts, constituting a flagrant violation of the International Criminal Court's jurisdiction. Given the siege and systematic starvation of the civilian population in the Gaza Strip, the need arises to examine international legal mechanisms capable

of holding perpetrators of this crime accountable and activating the tools of international justice.

This study aims to analyze the practical framework for activating international accountability mechanisms for the crime of starvation committed in the Gaza Strip, in light of the rules established in international humanitarian law and the Rome Statute.

It discusses the effectiveness of this system in achieving justice and holding perpetrators of grave violations against civilians accountable, by addressing the legal rules of international responsibility in the first section and the political and legal challenges and prospects for overcoming them in the second section.

First Section: General Rules of International Responsibility for the Crime of Starvation

The international responsibility of a state or individuals for wrongful acts is based on established rules of international law, particularly those contained in the 2001 Draft of the International Law Commission on the Responsibility of States for Internationally Wrongful Acts, as well as the 1998 Rome Statute of the International Criminal Court.

Section 1: International Responsibility for the Crime of Starvation:

The 2001 Draft of the International Law Commission stipulates that any act or omission by a state that constitutes a breach of an international

obligation is internationally wrongful, and the state bears legal responsibility[27] for it.

Applying this principle to the situation of starvation in the Gaza Strip, it can be argued that the imposition of a comprehensive blockade by the occupying power, which deprives civilians of basic food supplies, constitutes a breach of its obligations under the Fourth Geneva Convention of 1949, particularly Articles 55 and 59, which obligate the occupying power to ensure the supply of food to the civilian population.[28]

Furthermore, the policy of starvation also constitutes a violation of the right to food, as enshrined in Article 11 of the 1966 International Covenant on Economic, Social and Cultural Rights. This entails a dual international responsibility: responsibility for the violation of human rights and responsibility for breaching international human rights obligations[29].

Section Two: Criminal Responsibility for the Crime of Starvation:

At the individual level, the Rome Statute establishes the criminal responsibility of any person who commits the war crime of deliberately starving civilians as a method of warfare.[30]

Accordingly, military and political decision-makers in the State of Israel who impose or oversee starvation policies may be prosecuted before the International Criminal Court, whether as direct perpetrators or as commanding officers,

according to the principle of "command responsibility" stipulated in Article 28 of the same Statute.[31]

This principle reinforces the established rule in international criminal law that official status or political position does not exempt its holder from responsibility; rather, it increases it if it is proven that they were aware of the crimes and failed to take the necessary measures to prevent them or punish the perpetrators.

Second Requirement: Political and Legal Challenges in Activating International Accountability.

Despite the clarity of international legal texts that criminalize the policy of starvation and consider it a war crime, their practical application in the Palestinian situation faces multifaceted obstacles, ranging from legal impediments of an institutional nature to political ones related to the balance of power within [the region/region]. In the international system, these obstacles not only undermine justice but also contribute to the perpetuation of a culture of impunity, making the accountability of those responsible for the starvation of Gaza a complex issue that transcends purely legal considerations.

Section 1: Legal and Political Challenges Facing the Implementation of International Accountability:

The process of implementing international accountability for the starvation of Gaza faces a range of complex obstacles, from fundamental legal difficulties to significant political impediments. Despite the clarity of international legal texts that criminalize starvation and define the responsibility of states and individuals, the practical application of these rules faces structural limitations. Furthermore, political considerations and international pressure play a pivotal role in determining the effectiveness of legal and political challenges. Therefore, studying these legal and political challenges is a necessary step to understand the reasons that prevent the translation of international law into effective protection for civilians in armed conflicts.

1- Legal Challenges: Legal challenges are among the most significant obstacles hindering the effectiveness of international accountability mechanisms in addressing the crime of starvation. Practical experience reveals a clear gap between international legal texts and their actual application. Despite the development of the international criminal justice system, structural difficulties persist, preventing the prosecution of perpetrators of this crime before international courts.[32]

One of the most prominent of these challenges is the lack of universal jurisdiction of the International Criminal Court in all cases. While

the State of Palestine acceded to the Rome Statute in 2015, granting the Court preliminary jurisdiction over crimes committed in the Palestinian territories, debate continues regarding the extent of the Court's territorial and personal jurisdiction within the occupied territories, particularly given the objections of some major powers to recognizing the legal status of the State of Palestine before the Court.

International efforts to gather evidence related to starvation crimes also face field and technical difficulties due to the ongoing conflict and the blockade imposed on the Gaza Strip. This complicates documentation and investigation processes and weakens the possibility of submitting complete legal files that meet the required procedural standards to the International Criminal Court.[33] This problem reflects the most significant practical challenge in translating legal obligations into concrete judicial practices.

2- **Political Challenges**: Political challenges are no less serious than legal ones. The political structure of the international system represents one of the fundamental factors hindering international responsibility,[34] especially when violations involve entities with broad international influence or diplomatic protection from major powers.

The most prominent of these challenges lies in the political pressure exerted by major powers, which use their tools within the international system—most notably the veto power in the UN Security Council—to shield their allies from referral to the International Criminal Court or from responsibility. This selective use of the veto empties the principle of international justice of its substance and transforms the Court into a political instrument subject to power dynamics, rather than a symbol of the rule of international law.

Furthermore, the double standards in the application of international law are among the most prominent flaws in the contemporary international system. Rules of justice are rigorously applied to some conflicts, while being overlooked in others where grave violations are committed against civilians.[35] This double standard undermines the credibility of the international legal system and reinforces the selectivity and political discrimination in the prosecution of international crimes, making responsibilityfor the crime of starvation in the Gaza Strip contingent on the balance of interests rather than the requirements of justice.

Section Two: Measures to Activate International Responsibilityfor the Crime of Starvation

To overcome these challenges, it is proposed to adopt a multi-level approach that includes:

1- Activating the complementary jurisdiction of the International Criminal Court by supporting Palestinian national investigations and developing their legal and institutional capacities to document starvation crimes.

2- Utilizing universal jurisdiction in some European countries to prosecute those responsible for the crime of starvation, based on the universal nature of crimes against humanity and war crimes.

3- Strengthening cooperation between international and regional human rights organizations to gather evidence and document violations professionally in a manner that supports judicial proceedings.

4- Activating international diplomatic and media pressure to strengthen political will towards the principle of no impunity.

5- Reforming the working mechanisms of the Security Council to limit the misuse of the veto in cases referred to the International Criminal Court.

Conclusion:

In conclusion, it is advisable to present the findings of our study on the use of starvation as a method of warfare in the Gaza Strip, focusing on the responsibility of the Israeli occupying power and mechanisms for international responsibility.

We will also offer some practical suggestions that could contribute to overcoming the current legal and political obstacles hindering the implementation of international responsibilityfor the crime of starvation in the Gaza Strip. Findings:

1- Starvation as a method of warfare is one of the most serious violations of international humanitarian law, as it directly infringes upon the right to life and human dignity. International treaties, customary law, and criminal jurisprudence have unanimously prohibited it, holding criminal responsibility for anyone who uses it or orders its use.

2- The siege imposed on the Gaza Strip has dual characteristics. On the one hand, it is a declared military tool, and on the other hand, it is a systematic punitive measure against civilians. This makes it incompatible with the essence of international humanitarian law. Whether the Strip is considered occupied or besieged within an armed conflict, the protection of civilians from starvation remains an absolute legal obligation that cannot be disregarded. Justifying it on the grounds of security or military necessities.

3- International legal rules provide a solid basis for responsibilityfor the crime of starvation, whether in terms of state international

responsibility or individual criminal responsibility. However, activating these rules faces complex political and legal obstacles related to the nature of the international system.

4- The legal and political challenges facing international responsibilityfor the crime of starvation in Gaza do not stem from a weakness in legal rules, but rather from the absence of international political will and the dominance of geopolitical interests over international justice.

Recommendations: To address this deficiency and activate mechanisms for international responsibilityfor the crime of starvation in the Gaza Strip, we recommend the following:

1- Strengthening international political will by mobilizing global public opinion and civil society organizations to pressure influential states in the UN Security Council to ensure they do not use their veto power in cases referred to the International Criminal Court.

2- Activating the complementarity jurisdiction of the International Criminal Court by supporting the Palestinian judiciary in documenting starvation crimes and submitting comprehensive legal files to the Court.

3- - Establishing an international non-governmental legal alliance that brings together experts and human rights organizations to unify legal and diplomatic efforts in documenting and pursuing international crimes against the Palestinian people.

4- Encouraging states that adhere to the principle of universal jurisdiction to open independent investigations into those responsible for policies of starvation against the Palestinian people, thereby strengthening the deterrent effect of international law.

5- Adopting an international human rights media strategy that highlights the crime of starvation as a systematic war crime, not merely a humanitarian consequence, thereby reshaping global awareness of its legal nature.

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