

# THE ROLE OF LAW & POLICY IN CONFRONTING CONFLICT-INDUCED HUNGER

10 & 11 November 2021

## Event Report

OXFORD INSTITUTE FOR  
ETHICS, LAW AND  
ARMED CONFLICT



## BACKGROUND

On November 10th and 11th, 2021, the Oxford Institute for Ethics, Law and Armed Conflict (ELAC) and the World Food Programme (WFP) jointly held a virtual workshop on the topic “The Role of Law and Policy in Confronting Conflict-Induced Hunger”. A range of academics, UN Agencies, representatives from national governments and civil society participated in the two-day event.

In 2020 there were between 720 and 811 million hungry people in the world, while conflict and insecurity were the key drivers of acute hunger for 99 out of 155 million people. Since the passage of Resolution 2417 in May 2018, which recognizes the link between conflict and hunger, the world has seen increasing levels of both severe and chronic food insecurity as well as conflict in an alarming number of countries.

This topic was explored in a series of articles on ‘Starvation in International Law,’ published in a special issue of the Journal of International Criminal Justice (JICJ or ‘Journal’) in 2019, spearheaded by the Oxford Institute for Ethics, Law and Armed Conflict and the World Food Programme. Since then, the COVID-19 pandemic has had a compounding effect on pre-existing vulnerabilities, risks and needs. It has pushed Governments to take tough and expensive measures to protect their nationals, leading to further decreases in overseas resourcing.

Against this backdrop of increasing food insecurity, there is a new political imperative to give greater attention to situations where there is a risk of famine and to continue to build upon the foundations of the conflict-induced hunger agenda laid by United Nations Security Council (UNSC) Resolution 2417.

Given these and other relevant developments, it was an opportune moment to reconvene the legal experts that contributed to the Journal in addition to a wider group of practitioners and policy experts to consider the role of law and policy in confronting conflict-induced hunger. The workshop aimed to elucidate concrete opportunities for multilateral action including through the application of UNSC Resolution 2417.

To adequately address these pressing issues, the workshop was divided thematically into two days, with two focused sessions in each day. The first day focused on the legal side of this issue, while the second day focused more on the operational realities (with WFP used as an example) and the possibilities of state and multilateral action in preventing famines. The sessions were comprised of presentations and comments by discussants, followed by open discussions.

### DAY 1 – 10 NOVEMBER 2021

#### *‘International Law against Starvation: Rules and Avenues for preventing Conflict Induced Food Insecurity’*

This session focused on exploring international law around hunger and raising awareness about the potential role that international law has to play in the effort to counter conflict-induced food insecurity. It considered how the relevant rules of international law could be interpreted and implemented in a more effective way, to ensure accountability for States and individuals and contribute to the prevention of famine.

The opening remarks were given by **Professor Dapo Akande (Oxford University) and Valerie Guarnieri, the Assistant Executive Director of the World Food Programme**. Their remarks underlined the need and prescience of this event, given the various humanitarian crises around the world and the confluence of conflict, climate and covid driving hunger around the world. The opening remarks also gave some background to the Oxford/WFP partnership, noting that it has now existed for several years. The

partnership started in 2019, when the Oxford Institute for Ethics, Law and Armed Conflict and the WFP co-convoked — together with the *Journal of International Criminal Justice* — an in-person workshop in Oxford to address starvation through the lenses of international law. The 2021 workshop built on the 2019 event and continued the WFP/Oxford partnership.

## Session 1 – Presentation 1

### ‘An overview of the international legal framework on starvation’

**Antonio Coco, Lecturer in Law, University of Essex**, delivered the first presentation of the event, setting the scene for the day’s discussion by providing an overview of the international legal framework on starvation. He began his presentation with a reminder: the international

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*“We should ask ourselves - should we work within the existing legal framework or seek to create new laws and rules?”*

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legal framework on starvation we must understand is a wide one – we need to make a choice on what areas we want to focus on.

It is difficult to contour the international legal framework on starvation. Starvation is a **multifaceted phenomenon**, difficult to capture with common legal definitions. There are open questions as to when starvation is prohibited by international law, for instance whether the rule protects only civilians; or whether it concerns only the deprivation of food or also of other objects indispensable to survival, and which ones.

International humanitarian law (IHL) establishes a rule prohibiting **starvation as a method of warfare**, which is reflected in Article 54 of Additional Protocol I (AP I) to the Geneva Conventions and can be deemed to reflect customary international law. However, there are

doubts as to whether the prohibition only captures purposeful starvation or whether it also includes starvation which is the incidental effect of other strategies or methods of warfare.

Arguably, there are some conducts which are prohibited even when starvation is only foreseeable (and not intended): for example, Article 54(3) AP I suggests that it is **unlawful to attack objects indispensable to the survival** of the civilian population, even if used in direct support of military action, this may be expected to leave the civilian population without adequate food or water, in a way that will cause its starvation. But this rule offers a relatively narrow protection.

Doubts on the contours of the rules raise questions as to the adequacy of existing humanitarian law with regards to the use of starvation and the effect of starvation in armed conflict.

Regardless of the nuances of the rule, we should also ask what duties do arise for other states in the international community when the prohibition of starvation is violated. All states have a **duty to ensure respect for IHL** and must act to comply with it. Moreover, he concluded, we should ask whether the prohibition of starvation has amounts to a **peremptory norm** of international law? If this is the case, then serious breaches of the rule would imply a duty not to render aid or assistance in maintaining the situation and a duty to cooperate to bring the situation to an end.

## Session 1 – Presentation 2

## ‘States’ obligations to prevent hunger, in particular, under international human rights law’

**Simone Hutter, Project Manager International Cooperation, Fairtrade Max Havelaar Foundation, Switzerland**, delivered the second presentation in which she sought to provide some more information to the question Antonio Coco had raised in the first presentation: what are states’ obligations to prevent hunger?

The presentation focused on the right to food in armed conflict, as well as the interplay between human rights law and IHL.

One of the main sources articulating state’s obligations to prevent hunger is the right to food as enshrined in **Article 11 of the International Covenant on Economic, Social and Cultural rights (ICESCR)**, which comprises the right to adequate food and right to be free from hunger.

Within this framework, states must **respect** the right to food of human beings under their jurisdiction (i.e. refrain from taking measures

that prevent access to food), **protect** the right (i.e. prevent violations committed by third/private parties) and **fulfil** it (i.e. they must facilitate access to food and provide access to food directly if people cannot feed themselves - e.g. through humanitarian assistance). This requires long term measures that must be established prior to a crisis.

The obligation of states to prevent hunger must be read in light of **Article 2 of ICESCR**, which outlines that the realization of economic, social and cultural rights — including the goal of ending hunger — must be achieved progressively and to the maximum of the state’s available resources. It was noted that this idea may weaken the language of Article 11.

Hutter concluded by noting that, in armed conflict, it is important to distinguish whether a state is unable or unwilling to facilitate access to or provide food.

### Session 1 – Open Discussion

Following the first two presentations, the event opened up to questions and discussion from all participants. The discussion began with a question around **what states are obligated to do with regard to providing food and prevention starvation, under international law**. One participant pointed to a FAO conclusion in 2003, which said that a legally binding obligation to provide international food aid is not widely recognized by states, although some donor countries consider it a moral duty to do so. Others replied, saying that there are now broad interpretations of the jurisdictional reach of international human rights law, which could mean that a state that has control over the enjoyment of the right to food by specific groups of individuals would have obligations in that respect. Others suggested linking this to a "core minimum" of food to be made available, based on the data on food availability and on calories per person collected by FAO.

In particular, **obligations outside of traditional stipulations and understandings** were discussed. One participant asked if our thinking on starvation only exists in the context of IHL, or if it would also apply to peacetime starvation. This is particularly relevant for states bordering a conflict situation, which are not actually involved in the conflict, but may experience starvation due to the spillover effects of the conflict. Participants discussed how and if international law could be strengthened to protect people in situations like this. The duty to prevent transboundary harm was mentioned as a possible legal avenue to address cross-border effects of armed conflicts, even though an innovative interpretation of the relevant rules would be necessary. Participants also discussed what are the legal obligations for humanitarian agencies, which are essentially playing the role of a state in providing food. Whether humanitarian organizations

and other private parties — as opposed to states only — have obligations under international law (and international human rights law in particular) was noted as an area that requires further clarification.

Participants also discussed the **possible interplay between IHL and international human rights law**. Participants noted that from a human rights perspective, the motivation behind a violation would not be relevant, as it would only be necessary to determine if a state was unable or unwilling to prevent starvation. This distinction also includes considerations about the long term relationship between the two bodies of law, as human rights law is applicable at all times, even before armed conflict, and can thus play a role in preventing conflict or reducing its harmful effects in the first place.

Participants noted that case law and scholars have indicated that the basic principles of IHL constitute peremptory norms of international law (**jus cogens**), pointing to ICJ Advisory Opinion on the legality of nuclear weapons in support of this idea. It was noted that the International Law Commission went in the same direction, and that the prohibition of starvation may then already be regarded as jus cogens, in combination with other obligations discussed previously. However, participants also raised the fact that if the prohibition of starvation is a jus cogens norm, it could have tangible effects in other areas of international law, especially with regards to starvation in times of peace. It was noted that clarifying the legal framework and distinguishing the various rules related to starvation and conflict-related hunger is politically important, especially if they have to be referred to in a Security Council resolution, to clearly outline states' obligations.

To conclude, moderator Dapo Akande noted that there were four distinct categories of IHL rules that were relevant to this discussion on conflict-related hunger:

1. The basic principle that a party to an armed conflict can only attack lawful military objectives, as well as other basic treaty and customary obligations (e.g. the rules on precautions, on proportionality, or those related to forced displacement, etc...). Violation of these rules may result in starvation.
2. The general prohibition to use starvation as a method of warfare.
3. Obligation against attacking or rendering useless objects that are indispensable for the survival of the civilian population.
4. Rules relating to humanitarian access and relief operations.

With regards to these and other possible legal obligations mentioned throughout the debate, Akande said that we need to separate out these different categories of obligations, noting that debates on some would not apply to others, and that this would be a useful approach for advocacy efforts.

## Session 2 – Presentation 1

### ‘Strategies for ensuring individual responsibility for mass starvation’

**Catriona Murdoch, Senior Legal Consultant, Global Rights Compliance**, started her presentation saying that it has been 2 years since she and her colleagues had written their JICJ article on this topic, and that there have been significant developments since then which have enhanced prospects for accountability broadly,

as well as on individual criminal responsibility specifically. These developments can roughly be put into 4 categories:

#### *i. The Rome Statute*

There is no international case law on starvation as a method of warfare. However, **the Rome**

**Statute Amendment** (December 2009) has changed the legal landscape, adding a war crime of starvation in non-international armed conflict. Like UNSC Resolution 2417, the Rome Statute has the potential to be norm-setting and can change public perspectives, but we still face challenges in terms of its ratification. Moreover, the amendment would not apply retroactively.

National criminal tribunals could also prosecute starvation – for example, Croatia, Germany, France, Netherlands and South Korea criminalise starvation in their national law. Even for states who do not, there are a number of other crimes which can help ensure that the criminality of starvation practices is captured in its entirety.

#### *ii. Investigations*

Murdoch explained that Global Rights Compliance has applied their understanding of the law on conflict-related hunger to a yearlong **investigation in Yemen**. While they didn't identify perpetrators, they tracked and analysed incidents like attacks on objects indispensable to survival.

In doing so, establishing the attackers' intent proved problematic. One particularly thorny area were attacks on water facilities – which is a hallmark of the conflict. In some cases these may have been attacked as a lawful military target.

#### *iii. Language*

There has been a change in this area but despite improvements there remains an urgent need to improve the literacy around starvation violations, which are **not labelled properly** among the relevant actors. Resort to the correct

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*“Language is inherently linked to strategies needed to prosecute starvation and it is our work to identify and accurately label the crime.”*

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terminology may solidify when prosecutors will begin to use this language routinely. In this respect, and considering the various definitions of the crime, it must be noted that proving the relevant mental element of starvation beyond reasonable doubt is a formidable task. However, several tools can be used to improve the situation.

#### *iv. Tools*

She informed participants that there is a **starvation training manual** (also available in Arabic), which has been used in trainings and updated with regards to open-source investigation.

She concluded saying that there are now better tools that investigators have at their disposal, but that they could be well more utilised.

## Session 2 – Presentation 2

### ‘Security Council Resolution 2417: what action can be taken?’

**Salvatore Zappalà, Professor of International Law, University of Catania**, continued the discussion by focusing his presentation on what concrete actions can be taken around UNSC Resolution 2417, especially on the synthesis between the political and legal dimensions of the Resolution. He began by saying that by looking at Resolution in its entirety and knowing some of the difficulty in its earlier negotiation it was clear that this was a resolution that required lots of

political work and the Resolution was not immediately acceptable to many states.

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*“If we move away from a fatalistic attitude to starvation and move more towards the logic of the Resolution, then we can make progress.”*

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Echoing Catriona Murdoch's earlier point, Zappalà noted the importance and **normative power of language** in UNSC Resolution 2417. It is very difficult for the UN to agree on new language, and this becomes extremely difficult when it has to do with the Security Council. UNSC Resolution 2417 is interesting not only because it was the first of its kind but also because it was adopted unanimously. This points to the need to merge politics and law, as states should feel stronger commitment and feel obligation to strengthen measures to prevent starvation.

In UNSC 2417, this agreed language gives a powerful message and helps to make steps in the right direction and to improve the situation. However, this requires the political determination to follow up on what's been promised.

The Resolution also provides a **mechanism to report to the Security Council**. He wondered if there could be stronger mechanisms around the Resolution and posited that this could come with time, noting that there is a strengthening of the early warning mechanisms.

To push forward on the Resolution's goals, there needs to be a **call to strengthen member state commitment**. Civil society should put pressure towards honouring these commitments.

Zappalà also noted that all member states should enact **domestic legislation** to ensure compliance with Resolution 2417, including by putting indirect obligations on actors such as businesses. Even if there is not an obligation in Resolution 2417 to do so, there can be domestic legislation criminalizing relevant conduct. With regards to criminalization and prosecution, this is a step that can be made going forward (and independent from the Resolution). States can do more, given that there is political consensus for them to do more.

He concluded by noting that there remains a point of frustration. Under IHL, at times activities that may lead to starvation of the civilian population may not be necessarily unlawful. However, the Resolution narrows the political possibility of invoking these circumstances.

## Session 2 – Open Discussion

Rebecca Richards (WFP) opened and moderated the discussion following these two presentations.

The issue of **approaching starvation from the criminal justice perspective** was discussed in depth by participants. Some participants asked if criminalizing starvation would make it more difficult for humanitarian organisations to engage with parties to a conflict. Opinions on this question diverged, with some saying they did not believe criminalisation would complicate the issue to a degree which is detrimental, pointing to the Geneva Call's 'Deed of Commitment' engagement with NSAGs as an example of how productive relations could be held between humanitarian actors and parties to a conflict. Other participants pointed out the benefit of using the framework of state responsibility instead of that of individual criminal responsibility: while the latter revolves around the question of intention and guilt, in the former it would be up to the state to clarify why its conduct was not wrongful.

The possibility of **working through the International Criminal Court** on this issue was also raised, with specific reference to the amendment to the Rome Statute, which could provide an incentive to enact domestic legislation on starvation as a war crime as well as broader legislative measures to prevent conflict-related hunger. The importance of also pursuing compliance and/or implementation of Resolution 2417 at a local or national level was also raised, but it was noted that there was not much progress currently on this. Other participants issued a note of caution in conflating IHL and international criminal law (ICL), saying that trying to be too creative with ICL to try and prosecute guilty parties could damage IHL as a whole.

The issue of addressing the **complex interaction of sexual and gender-based violence and starvation** was also raised and highlighted by several participants as an important component of this debate, which is often left out whilst it merits further consideration.

One participant spoke of the need to **ground this conversation in the operational realities faced by humanitarian organisations**, saying that Resolution 2417 was not put together due to a paucity of law, but because of a paucity of action. It was noted that humanitarian organisations need the resources to be able to bring to life the spirit of the Resolution, especially in taking preventative action.

## DAY 2 – 11 NOVEMBER 2021

### *‘Maintaining the momentum in the conflict and hunger agenda: State and multi-lateral action in preventing famine’*

After Day 1 focused largely on the legal framework surrounding UNSC Resolution 2417 and international legal efforts to prevent famine and starvation as a method of warfare, Day 2 sought to ground the discussion in the challenges, realities and opportunities facing efforts to implement UNSC Resolution 2417.

It explored this issue by first dealing with the dynamics inside the UNSC and questioned whether our collective efforts should be limited to the UNSC or instead be broadened to other means and actors. Building on a study authored by Emanuela-Chiara Gillard at the University of Oxford, Session 1 started by zooming in on the state of play after UNSC Resolution 2417. The early findings of the research carried out by the team at Fordham University then aimed to examine perceptions and understandings of the substance and value of UNSC Resolution 2417 as a policy resource and tool, as well as the role of capacity-building, particularly within or across regional organizations, to identify new entry points from which to leverage holistic approaches to preventing and mitigating conflict-driven food insecurity.

The second session, then — drawing on the presentation of independent researcher Hugo Slim from the University of Oxford and on some testimonies of World Food Programme’s Country Directors from relevant areas — explored the role of Resolution 2417 in practice, the initiatives required to best prevent famine and the challenges and opportunities involved in the reinvigoration of the conflict and hunger agenda. WFP was taken as a case study to explore the role, relevance and possibilities around UNSC Resolution 2417 among humanitarian practitioners.

The opening remarks were again given by **Professor Dapo Akande (Oxford University)** and **Valerie Guarnieri, the Assistant Executive Director of the World Food Programme**. Guarnieri pointed out that, despite the greater awareness of the issue, and high-level commitment to finding ways of preventing famine and mobilizing support, the situation on the ground has worsened and is projected to deteriorate further. Only with timely evidence-generation, dissemination and advocacy efforts, used strategically to mobilize relevant actors across a variety of sectors and at different levels can we hope to secure the necessary political will and accountability (including to implement UNSC Resolution 2417). If this is then matched with a coherent and complementary response that addresses not only the symptoms but also the structural drivers and root causes of food crises, then we can not only prevent famine, but also reduce and end hunger. Valerie Guarnieri also informed participants of some steps WFP was taking to realize this, by committing WFP to implementing the Resolution in WFP’s new strategic plan, and the development of a Famine Mitigation and Prevention Compact at WFP’s Annual Partnership Consultation.

## Session 1 – Presentation 1



## **‘Maintaining the Momentum in the Conflict-Induced Hunger Agenda: the State of Play, Some Policy Challenges, and Suggestions for Next Steps’**

The first presentation of the day was based on an academic paper prepared by **Emanuela Chiara Gillard, Senior Research Fellow, Blavatnik School of Government, University of Oxford**, focusing on the context, current situation, challenges and possible next step for Resolution 2417 in the UN Security Council specifically, three years after it was adopted.

She began by saying that while Resolution 2417 is a necessary and important part of the **tool kit for preventing and responding to conflict-induced hunger**, at field level, governments and armed groups are not aware of the Resolution. It is not the Resolution itself that will change things at field level, so we need to look at how the Resolution can act as a catalyst for action.

The Resolution has some inherent **limitations**: it does not create new legal obligations; there are no specific mechanisms associated with it, not even to put items on the agenda; it cannot be invoked as a basis for responsibility.

We should therefore have false **expectations** about what has been or can be done pursuant to the Resolution. Gillard’s paper takes stock of what has been done to implement the Resolution at different levels. She argues that we need to look at Security Council dynamics and intra-UN agencies dynamics, which are fundamental to devise the next steps at the UNSC level to advance this agenda.

### ***i. Thematic implementation of the Resolution – what has happened so far:***

The perspective of the Resolution among UNSC members has changed over time. The Resolution was passed unanimously in 2018, but by 2020 this gave way to a divergence of views on whether and how the UNSC should engage on the Resolution. This was seen at a meeting convened by the Dominican Republic on the Resolution in April 2020. Division increased even further, as UNSC members could agree on a

Presidential Statement in April 2020, but this was not possible a year later in March 2021 in a meeting chaired by the US.

One point of contention is the **interplay with climate change**, which remains extremely divisive. Russia opposed conflict-induced hunger as a thematic issue and India said the UNSC should only consider it in specific contexts where it could endanger international security. Unilateral sanctions have also complicated the situation, as opponents to the Resolution have portrayed it as a violations of state sovereignty.

### ***ii. Procedural implementation – what has happened so far:***

From the procedural side, implementation of the Resolution has also faced opposition in the UNSC. A suggestion to implement a focal point on the Resolution was rejected by the Council. Two annual reports from the Secretary General were also rejected.

On this basis, Gillard concluded that it seems like there is not much room to advance this on thematic discussions, due to current Security Council dynamics. Instead, it is important to advance the agenda in a country-specific manner, but it is also important to keep this discussion alive in the Security Council.

### ***iii. Country Specific Implementation at the UNSC level***

One key step in this regard is bringing situations of conflict-induced hunger to the attention of the Council. There are three types of reporting that can achieve this:

- ***UNSG reporting on country specific situations*** (almost none of them included anything relevant to the Resolution). The Department for Peace Operations (DPKO) or the Department of Political and Peacebuilding Affairs

(DPPA) should be in charge of these reports.

- **Annual Civilian protection reports.** The first two include 2 paragraphs on conflict-induced hunger; the most recent one has 5 paragraphs out of a 16 page report.
- **Early warning reports.**

We need to look at the value added of reports, as most situations of food insecurity are already on the council agenda. They do serve a purpose as they are official UNSC documents — what has an intrinsic value. For reporting to be as effective as possible we need to present the situations and suggest useful steps the UNSC can take. She noted that while many of the findings are confidential, the recommendations were addressed to all member states, so there is perhaps a value in presenting them publicly.

However, we are faced with an overarching institutional problem: **the absence of clear ownership** of this topic in New York or at the policy level. While Resolution 2417 falls within the ‘protection of civilians’ agenda item, on which the Office of Coordination of Humanitarian Affairs (OCHA) takes the lead,

OCHA is not the UN agency most concerned with food security. Gillard further noted that the UN continues to work in a siloed way, which has led to a failure to share information. Without tasking from the Secretary General, agencies may continue to feel no ownership.

Gillard then gave participants a note of caution as to the role of the UNSC in access negotiations. She reminded participants that the UNSC is an inherently political body, but access negotiations are humanitarian in nature. She gave a further note of caution about using sanctions, due to the adverse impact they can have on humanitarian action, and can end up causing more impediments to the delivery of humanitarian assistance.

She concluded by saying that we must appreciate the **limits of the UNSC** due to its mandate. Some UNSC members are extremely wary of considering items other than those that are a threat to international peace and security. UNSC Resolution 2417 is not going to be a way of putting a situation on the council’s agenda per se and there are limits to the concrete measures that the UNSC will take. Ultimately, Resolution 2417 gives awareness to the issue, but does not change the law or create a standing mechanism.

## Session 1 – Presentation 2

### ‘More Than Just a NY Game: Catalysing multilateral understandings and capacity-building in implementing Resolution 2417’

The second presentation was delivered by three academics from **Fordham University, Brendan Cahill, Melissa Labonte and Anjali Dayal**, who are conducting ongoing research in collaboration with the government of Ireland regarding the implementation of Resolution 2417. The **Executive Director of Fordham’s Institute of International Affairs, Brendan Cahill**, introduced their work and said that this workshop is crucial for how their work develops and encouraged participants to meet regularly on this issue.

Their approach is based on 4 pillars in offering recommendations for operationalizing Resolution 2417:

#### i. Perceptions and Perspectives

**Melissa Labonte** informed participants that throughout their outreach to partners implementing Resolution 2417, some patterns emerged.

There was significant variability in perceptions and understanding of Resolution 2417 and the value of certain actors. Furthermore, there was scepticism of the Resolution and its use in a polarized Security Council. If left unaddressed,

these gaps could risk Resolution 2417 being reduced to a niche issue.

She asked: if the Resolution is to become more effective, how can academia facilitate its understanding to depoliticize it?

## ii. Capacity Building

Labonte further noted that engaging in and facilitating capacity building is as important as the substance of the Resolution, especially where variation in knowledge and operational capacities is greatest.

She sought feedback and insights from participants on what parameters should guide capacity building efforts.

In particular, it would be useful to engage in a process aimed at sensitizing key actors to the goals of the Resolution and encouraging them to commit to it.

Moreover, it would be helpful to understand and conceive capacity-building efforts in light of the humanitarian-development-peace (HDP) nexus.

## iii. Regional Organisations

**Anjali K. Daval** then pointed to the potential for involving regional organisations more in the implementation of Resolution 2417, saying that relevant initiatives could be more acceptable in the eyes of the local actors if introduced and implemented by regional bodies.

An added value of devolving away from UNSC to a more regional focus is that it could help get away from the politicization currently hampering efforts in the UNSC.

## iv. Data and Reporting

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*“We could help repair the siloing effect of this work by enabling fuller agency among global south actors, while identifying changes needed on capacity needs..”*

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There is a need to explore different methods of data collection and reporting, such as conflict and mass atrocity modelling vs. food security modelling.

There is a significant gap between what we know, what is happening on the ground and the way in which the UNSC addresses these issues.

Daval concluded the presentation by asking two questions for the consideration of participants:

- Do regional organizations represent a more effective vehicle for implementing Resolution 2417 on the ground?
- How can we use conflict and mass atrocity modelling in data collection and reporting on food security?

## Session 1 – Open Discussion

Brian Lander (WFP) then opened the floor for a general discussion on the previous two presentations.

The discussion began with a key issue being highlighted, i.e. that Resolution 2417 set up a reporting practice to the UNSC when the risk of conflict-induced famine and widespread food insecurity in armed conflict contexts occurs, but there is no mechanism establishing any kind of action against those who are causing or contributing to that food insecurity.

Participants noted the difficulty in ‘**using the stick**’, i.e. threatening some sort of sanction, to ensure compliance with Resolution 2417. Several participants noted that if there was no accountability or punitive measures, then states facilitating or contributing to conflict-induced hunger would have little incentive to change their behaviour. Lack of action would erode the credibility and value of the Resolution. Others pointed to the inherent complexity in assigning blame, beyond just establishing intention and burden of proof. The example of Afghanistan was put forward to demonstrate the complications with the Resolution: could Resolution 2417 be invoked against Western countries for freezing assets in

Afghanistan, if this resulted in starvation? Participants asked themselves how can Resolution 2417 be used effectively to induce compliance with international law and to counter conflict-induced hunger more broadly.

This was recognized as a particularly important point, as other participants shared that some states (especially developing ones) seem to perceive that the Resolution could be used against them, as a pretext for other states to violate their sovereignty and interfere in their affairs. On this point, participants agreed on the need for an **onboarding programme for UN member states**, to frame and explain the objectives and measures stipulated in the Resolution to combat this perception. There was general agreement from participants that **implementation at the regional level** could be a good idea, as it would be closer to the affected states and people and could help frame the Resolution in a more palatable way.

Other participants expressed further concerns about using Resolution 2417 as a basis to threaten sanctions, saying that it could result in further collateral damage. Overall, more work needs to be done to learn about the specific contexts and causes of food insecurity with more granularity. Some participants suggested that we need to look at persuasion, quiet diplomacy and regional mechanisms to take this forward, as there is too much politization in the UNSC.

Participants also noted **the need for a loud, independent voice on Resolution 2417** that is not bound up in the need to be on the ground, as humanitarian actors instead are. If the Resolution is to be used as a basis for sanctions, it would be important to have a neutral arbiter to decide when this would be appropriate.

Other participants raised the possibility of using other resolutions with more buy-in to pursue compliance with Resolution 2417, such as through the resolution on the protection on objects indispensable for life.

Reflecting on the two presentations, participants noted that — given the UNSC dynamics and the complexity and sensitivity of the issue — the international community might have to bring the agenda forward slowly. Whilst efforts in this respect should not be overly ambitious, complacency that the work cannot be done should also be avoided.

## Session 2 – Presentation 1

### Country-specific experiences and challenges

The second session of Day 2 sought to ground the discussion in the operational realities of

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*“We have tried to work around the spirit and not the letter of Resolution 2417, as the Resolution’s letter often lets us down.”*

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humanitarian organizations working on the ground, and what Resolution 2417 meant in practice to humanitarian actors. This session focused especially on the role of work of WFP in

this regard and began with the interventions of **three senior WFP staff members**.

**The first speaker** began his presentation by saying:

First there is the issue of terminology and language in the Resolution. While it is very clear that starvation was caused by belligerents in armed conflict, the violence they see (although organized and deliberate) does not squarely fit into the definition of armed conflict necessary for the application of IHL — or at least is not presented as such. Instead, the terms of ‘communal’ or ‘intercommunal’ violence have

been used. However, national and international instrumentalization of localized violence should mean that the situation is covered by Resolution 2417, and there must be some accountability. International organisations at times imply that it is not possible for intercommunal violence to cause famine. Therefore, the world didn't recognize the famine for what it was until it happened, and international institutions were only able to act when official designations were called.

In terms of what can be done to make Resolution 2417 more useful at the country level, they said that if proof of starvation was so important for pushing forward at the UNSC level, it should not be humanitarian practitioners who are tasked with providing such proof. They noted the need for an independent expert to advise the UNSC on situations relevant for the Resolution. In particular, they asked why the Special Rapporteur on the right to food was not looking into Resolution 2417.

**The second speaker** began their presentation pointing out the importance of context and geopolitics with regards to the implementation of the Resolution in a particular context. The speaker noted that a range of factors — including climate, conflict, COVID and economic

shocks — can combine to create a disastrous humanitarian situation. They raised the difficulty in deciding who is accountable under Resolution 2417 in such a difficult context and whose agenda might this feed into. Finally, they concluded their presentation by asking whether we should research more into starvation as a consequence of geopolitics.

**The third speaker** began their presentation by emphasizing the need for pragmatism among humanitarians on this issue. They said that while humanitarians are willing to play a role in the implementation of Resolution 2417, they need to be pragmatic in how they can move. If humanitarians are not seen as impartial and neutral, they are limited in what they can do.

They noted that linking humanitarian access to the resolution of political problems makes it difficult for WFP to fulfil its primary role. While WFP wants to support efforts to implement UNSC Resolution 2417, it must be very careful to find the right balance. They stated that there are others better placed to carry out analytical work on this theme, especially with the aim of calling out actors who engage in or facilitate famine and starvation. Overall, we need a more unified approach on the political side.

## Session 2 – Presentation 1

### 'The role of WFP policy engagement in preventing famine and fostering peace'

The final presentation of the event featured academic **Hugo Slim, Senior Research Fellow, Blavatnik School of Government, University of Oxford**, presenting some of the findings of his paper examining WFP policy engagement, as well as recommendations to WFP for improving in the future. Although his paper went into greater detail, his presentation focused on 4 aspects:

#### i. **The question of local traction for Resolution 2417**

While Resolution 2417 is well-known and considered to be very important at the headquarters in New York, Rome and Geneva, it is not the same at the local level. To address this, WFP could engage in a 5-year strategy to **build greater understanding** and respect for Resolution 2417. This could entail the dissemination of Resolution 2417 and the explanation of its implications, so that related domestic legislation could be enacted.

He further stated that he is not in agreement with the narrative of a constant tension between operations and advocacy expressed by other speakers, since many actors behave in a normatively significant way doing their operations.

**ii. Is Resolution 1325 a possible model for developing a movement around Resolution 2417?**

Hugo Slim next raised the possibility of using the implementation of UNSC Resolution 1325 as a model to follow, as this Resolution was one of the few that gained traction and momentum, given that it was championed by the international women's movement. Reflecting on this, he asked whether WFP could do something similar and sponsor **anti-famine contracts, as part of a social movement which is distinct from diplomacy and legal advocacy**. He noted that this approach could work well in certain settings and especially with climate-related hunger, even though he questioned whether these anti-famine contracts would hold while in war.

To truly implement UNSC Resolution 2417, it could also be useful to push for a social and global movement around the Resolution — similarly to what Hugo Slim had done in the past for the ICRC. One option to achieve this could be to co-found a coalition from which WFP could then distance itself once it has achieved momentum.

**iii. War and climate**

Hugo Slim then provided some reflection on the nature of conflict-driven famine and posited what the **future drivers of famine** might be. He considered whether Resolution 2417 might look less relevant in 10 years, when perhaps climate may become a bigger driver of hunger. For this reason, he advised WFP not to focus exclusively on conflict-induced hunger when it comes to diplomacy, advocacy and operational efforts.

He suggested to balance implementation of Resolution 2417 with norm-building, new rights and laws to protect and guarantee food security around climate — mitigation, adaptation, loss and damage agenda. In his view, the best approach would be to engage on both fronts: conflict and climate as drivers of famine and starvation.

**iv. Peace and WFP**

Hugo Slim then reflected on WFP's role with regards to peace: WFP won the Nobel Peace Prize in 2020, but peace is nowhere in WFP's mandate. To make any progress in this area, WFP needs to really define what their peace policy is.

He observed that WFP seems to be most comfortable with peace at the local level ('everyday peace') and noted that WFP would be best place to engage in **pragmatic facilitation** and maintenance of peace through food assistance and markets and by creating relative zone of peacefulness. However, he issued a note of caution saying that WFP will not be able to make the difference for peace at the macro-political level.

## Session 2 – Open Discussion

**Dapo Akande** then opened the floor to a general debate and discussion.

In response to Hugo Slim's presentation, participants asked for more information on **the role WFP could play in making normative concepts real in the social movements model**, noting that WFP did not have a treaty-based mandate like other examples he cited. Slim responded that it is possible to find a voice without having a formal treaty and, furthermore, WFP could join a relevant treaty.

Several participants agreed with Slim's point that WFP should not put all its eggs in one basket on Resolution 2417 and asked how international climate law might related to the work of WFP. The importance of early warning measures and anticipatory action around climate factors was noted, along with the fact that climate and conflict layer and interact to drive hunger and famine. The issue of climate-induced conflict was also raised.

The issue of **accountability** was again raised and discussed, with diverging opinions. Some participants again sounded a note of caution on using Resolution 2417 as a basis for threatening or imposing sanctions, noting that hunger does not always occur when someone has violated the law. Instead, they asserted, we need to shift away from looking at this exclusively through the lens of violations and punishing, to assisting with compliance or acknowledging that there is not always a violation.

Others responded to this, saying that famine and starvation is usually the result of some violation of international law, but it different rules may be in play, so requiring different forms of action and advocacy. Another participant reminded that the focus of the discussion is on conflict-induced famine, and therefore we do need to talk about accountability, especially with a view to **anticipating and preventing further violations**.

Participants also asked why the UN Special Rapporteur on the Right to food was not more involved in the implementation of the Resolution and pointed to the need for some sort of arbiter or global support that can be call upon to ensure or bolster accountability. One participant pointed out that the Famine Review Committee and the Integrated Food Security Phase Classification (IPC) fill this role to a degree, but others replied by noting that governments often failed to endorse famine declarations by these bodies until it was already too late.

### KEY TAKEAWAYS FROM THE WORKSHOP

The 2-day discussion on the role of law and policy in preventing conflict-induced hunger pointed out a series of challenges and open questions, which are reported below. Avenues for further action, suggested by participants to the workshop, are also listed.

#### Key Challenges:

1. Delineating and properly defining legal obligations with regards to famine and starvation in various branches of international law — including most notably international humanitarian law, international human rights law and international criminal law.
2. For humanitarian actors, managing the tension between speaking out against conflict-induced hunger and the possible impact that doing so might have on their primary objective to dispense humanitarian aid.
3. Ensuring that Security Council Resolution 2417 is applied equally and consistently, overcoming political difficulties and finding appropriate resources and mechanisms to highlight violations.
4. Countering the lack of political will to act promptly within the Security Council and other international organizations before situations of concern deteriorate into full crises, partly due to the fact that early warnings and calls for preventative action are routinely being ignored.
5. Navigating the political dynamics inside the Security Council and countering the perception of some UN member states that the Resolution could be used to violate their sovereignty and interfere in their affairs.
6. Finding the proper balance in complex situations, in which inaction may undermine the goals of Resolution 2417, but any action may put humanitarian actors and people in need at risk.
7. Redressing the absence of clear ownership of this topic in New York and at the policy level.

**Key Questions:**

1. Should further initiatives be taken, in terms of thematic action in the Security Council?
2. Do obligations to prevent starvation also apply during peace time?
3. What are the obligations of actors other than states — e.g., humanitarian organizations, private companies, non-state armed groups?
4. Who in the UN system should take ownership over the agenda and report to the Security Council?
5. What is the right balance between sanctions and other measures to address violations of the law?
6. What are the implications for humanitarian actors when sanctions are being used? When should sanctions be resorted to?
7. Should we approach the problem of conflict-induced hunger at a granular level, case by case?
8. What can regional actors do?
9. What changes when situations of violence driving famine do not rise to the level of an armed conflict?
10. What institution or entity could be a leading and independent voice to bring situations of concern to the Security Council's attention and suggest avenues for action? Would the UN Special Rapporteur on the Right to Food be best placed to take on this role?
11. What sort of anticipatory or preventative action can be taken in this context?
12. What will the nature of famine be in 10 years, and how will climate change affect that?

**Possibilities for Action**

1. Shifting away from the language of violations and sanctions, towards more frequent resort to the language of assisting with compliance and building capacity.
2. Investing in engagement with regional bodies to promote understanding and acceptance of Security Council Resolution 2417.
3. Creating an onboarding programme for UN member states to promote understanding and outline steps that can be taken to implement Resolution 2417.
4. Linking Resolution 2417 to other Security Council resolutions with more traction or momentum.
5. Using climate change and environmental law as an entry point to gather consensus and momentum.
6. Cooperating with the International Criminal Court, in light also of the recent amendment to the Rome Statute related to the war crime of starvation in non-international armed conflict, to incentivize compliance with international law.
7. Using reporting in a more effective way to highlight situations of concern and push for early and appropriate action, through: biannual reports to the Security Council from WFP and FAO; UN Secretary General reporting on country-specific situations; Annual Civilian protection reports; and the Early Warning Report.
8. Resorting to anti-famine contracts to create a social movement around this issue.