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

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Background Paper

# CONFLICT-INDUCED HUNGER AND THE SECURITY COUNCIL

## The State of Play Three Years After the Adoption of SCR 2417: Challenges and Opportunities

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## Introduction

In May 2018, as part of its work on the Protection of Civilians agenda item, the Security Council unanimously adopted resolution 2417 (SCR 2417) on conflict-induced food insecurity.<sup>1</sup> This landmark resolution brought together key aspects of the Council's engagement on protection of civilians in armed conflict, seen through the lens of food insecurity. Although the only specific follow up required by SCR 2417 is enhanced reporting, the resolution is nonetheless an extremely important affirmation of the Council's awareness of this dimension of conflicts, including the fact that, in certain circumstances, denial of humanitarian access may constitute a threat to international peace and security – the trigger for Council action.<sup>2</sup>

What has changed in the three years since the adoption of SCR 2417? The international community is better informed about global food insecurity, with new publications such as the FAO-WFP quarterly *Hunger Hotspots* early warning reports on acute food insecurity, that supplement existing materials such as the Food Security Information Network's annual Global Report on Food Crises.

A number of international and domestic initiatives have been launched and appointments made to coordinate responses and mobilize support, including the establishment by the UN Secretary-General of a High-level Task Force on Preventing Famine in March 2021, and the UK's appointment of a Special Envoy for Famine Prevention and Humanitarian Affairs, and launch of a Call to Action to prevent famine. Informal state groupings like the Group of Friends on Conflict and Hunger have been established to maintain the momentum on the topic at the Security Council. Last but not least, in December 2020 WFP was awarded the Nobel Peace Prize in recognition of its efforts to combat hunger, its contribution to bettering conditions for peace in conflict-affected areas, and for acting as a driving force to prevent the use of hunger as a weapon in conflict.

Despite this 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. At the end of 2020, more than 88 million people were suffering from acute hunger due to conflict and instability, a 20% increase in one year. The magnitude and severity of food crises worsened as protracted conflict, the economic fallout of COVID-19 and weather extremes exacerbated pre-existing fragilities.

Supportive states and humanitarian actors have sought ways of 'implementing' or 'operationalising' SCR 2417 to maintain political momentum and to respond to situations of severe conflict-induced hunger. Progress has been mixed. It has been most evident in relation to criminal accountability for starvation, with the adoption in December 2019 of an amendment to the Statute of the International Criminal Court (ICC) to include the crime of using starvation of civilians as a method of warfare in non-international armed conflicts.<sup>3</sup> Beyond this, discussions on next steps in the implementation or operationalisation of SCR 2417 continue.

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<sup>1</sup> SCR 2417, 24 May 2018.

<sup>2</sup> SCR 2417, OP 4.

<sup>3</sup> ICC Assembly of States Parties, Resolution on amendments to article 8 of the Rome Statute of the International Criminal Court, 6 December 2019, ICC-ASP/18/Res.5.

The present Paper seeks to contribute to this endeavour by taking stock of progress made in implementing SCR 2417 at Security Council level from a number of different perspectives:

- thematically;
- in a country-specific manner;
- in mainstreaming conflict-induced hunger in the Council's work; and
- in promoting compliance with the relevant rules of IHL.

It concludes with some reflections on role of the Security Council in engaging with situations of conflict-induced hunger.

With regard to each of these aspects, the Paper raises a number of suggestions and possible questions for discussion at the November 2021 WFP/Oxford workshop.

The Paper focuses on the Security Council, and the analysis and proposals made herein address conflict-induced hunger through the lens of the Security Council's mandate to maintain international peace and security. This is but one point of entry. Progress in the Security Council is complementary to work in other fields, including, most notably, peacebuilding – the topic of Hugo Slim's paper - development and the promotion of human rights in other relevant UN fora in New York and Geneva. In addition to the UN system, regional inter-governmental organisations also have an important role to play that is too often overlooked. These dimensions are beyond the scope of the present Paper, but linkages and synergies must be made between them and the work to advance the conflict-induced hunger agenda at the Security Council. Annex A to the Paper lists some of these other fora.

Ultimately, of course, what matters is the contribution that the Council's engagement on conflict-induced hunger makes to improving the situation on the ground.

## **A. Thematic implementation of 2417**

### **a. Current Security Council dynamics**

A meeting on conflict-induced food insecurity convened by the Dominican Republic during its Council presidency in April 2020 and efforts to adopt a Presidential Statement (PRST), revealed that the unanimity that had existed in the Council in May 2018 had given way to marked divergences of views on whether and, if so how, the Council should engage on conflict-induced hunger.

One key point of disagreement was whether reference should be made to the contribution of climate change to food crises, with Russia and China being most vocally opposed to the Council's engagement on this issue. The impact of unilateral sanctions on food security in specific contexts also complicated the negotiations.<sup>4</sup> Nonetheless, despite these divergences, Council members succeeded in adopting a PRST.

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<sup>4</sup> Security Council Report, What's in Blue, 20 April 2020, [Protection of Civilians from Conflict-Induced Hunger](#), and What's in Blue, 28 April 2020, [Presidential Statement on Conflict-Induced Hunger](#).

This proved impossible one year later at the high-level open debate convened by the US as signature event of its Council presidency in March 2021.<sup>5</sup> The negotiations of the PRST and the views expressed during the debate highlight current areas of division. These relate both to the Council's engagement on the topic, and to procedural dimensions of this area of work.

In terms of the topic more generally, references to the impact of climate change on hunger remained divisive, with elected Council member India adding its voice to China's and Russia's in opposing them. Russia reiterated its opposition to the Council considering conflict-induced hunger as a thematic issue. It cautioned against the Council intervening in the work of other UN bodies better placed to address hunger, and raised concerns that making this an agenda item could lead to interference in states' internal affairs. In a similar vein, India stressed that the Council should only consider conflict-driven hunger in specific contexts where it could threaten international peace and security and thus fall within the scope of the Council's mandate.

From a more procedural point of view, a suggestion to establish a UN 'Focal Point' to support such the implementation of SCR 2417 was rejected, as was the proposal to request the Secretary-General to provide two annual reports on new and emerging areas at risk of conflict-induced food insecurity. China, India and Russia expressed reservations about such reports, considering the existing reporting arrangements sufficient.

#### b. Next steps

These dynamics suggest that at present it is unlikely that any progress will be made in advancing the topic by means of thematic discussions. In any event, in the immediate short term there does not seem to be any obvious next step that the Council could take in thematic terms. Instead, as INGOs and relevant UN agencies, funds and programmes, as well as supportive states agree, the next steps are best suited to giving effect to the relevant elements of SCR 2417 in a country-specific manner.

Despite these challenges, there is need and a desire to keep the conflict-induced hunger thematic agenda (sub)item 'alive' and active periodically in the Council. Doing so sends a strong message that there is awareness of and concern about the topic at highest political levels.

To do this, one or more Council members must 'champion' the topic. The Netherlands and Sweden played this role in the lead up and immediate aftermath of the adoption of SCR 2417. The Dominican Republic did so during its Council membership, with the support of Germany, and when their term ended in December 2020 they passed the *batôn* to Ireland and Niger. The US also supported the agenda earlier in 2021. While having the US on board is positive, it may bring with it political baggage related to the US rather than the topic of conflict-induced hunger.

Champions (and other supportive Council members) can

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<sup>5</sup> Security Council Report, What's in Blue, 18 March 2021, [Negotiations on Conflict and Food Security Draft Presidential Statement](#).

- convene regular (annual) meetings on the topic. These can be Council meetings or open debates.<sup>6</sup> These periodic discussions are valuable in identifying trends and discussing contexts that might not otherwise be brought to the Council's attention;
- host Arria formula meetings on particular dimensions of conflict-induced hunger or in relation to particular contexts.<sup>7</sup> To date no such meetings have been organized;
- contribute to keeping Council members better informed on the topic. For example, since 2019 Council members have held informal meetings at the deputy ambassador level to discuss the bi-annual WFP/FAO report *Monitoring food security in countries with conflict situations—a joint FAO/WFP update for the members of the United Nations Security Council*. The Dominican Republic and Germany initiated the practice, and in 2021 Ireland and Niger have taken over convening these meetings; and
- develop 'products' to assist the Council's systematic and consistent consideration of conflict-related food insecurity in its work.

One such product that could be elaborated relatively simply is a checklist setting out the possible measures the Council could take in relation to food insecurity. This would be similar to the *Security Council Aide Memoire for the Consideration of Issues Pertaining to the Protection of Civilians in Armed Conflict*, but would focus on conflict-induced food insecurity.<sup>8</sup>

### **Possible points for discussion at the WFP/Oxford workshop**

- Do participants agree with this analysis of current Security Council dynamics?
- What are the pros and cons of attempting to adopt thematic resolutions or PRSTs in the immediate future?
- Are there topics that should be addressed by means of thematic Council products (resolutions or PRST)?

### **B. Country-specific Implementation**

One key step in country-specific implementation of SCR 2417 at Security Council level is bringing situations of conflict-induced hunger to the Council's attention. SCR 2417 foresees three types of reporting:

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<sup>6</sup> A Security Council 'meeting' is public but only Council members and invited speakers brief. All UN member states and invited briefers can speak at 'open debates'. The Council holds annual open debates on protection of civilians, children affected by armed conflict, for example. To date the discussions on conflict-induced hunger have been in meeting format, and in Arria formula briefings.

<sup>7</sup> Arria-formula meetings are not formal meetings of the Security Council. They are convened at the initiative of a member or members of the Security Council in order to hear the views of individuals, organizations or institutions on matters within the competence of the Security Council.

<sup>8</sup> <https://poc-aide-memoire.unocha.org/about>. In terms of process, it is OCHA that elaborates the Aide Memoire. For a number of years, the Aide-Memoire it was adopted by the Council in a PRST, but more recently the Council merely acknowledges it.

- the provision of information on the humanitarian situation and response, including on the risk of famine and food insecurity, as part of the Secretary-General's regular reporting on country-specific situations;<sup>9</sup>
- annual briefings on the implementation of SCR 2147 in the Secretary-General's annual reports on the protection of civilians;<sup>10</sup> and
- what have subsequently been referred to as 'early warning reports': swift reporting by the Secretary-General to the Council when the risk of conflict-induced famine and widespread food insecurity in armed conflict contexts arises.<sup>11</sup>

What has been the resort to these different types of reporting in the past three years?

### 1. Secretary-General's reports on country-specific situations

It was not feasible to determine for the purposes of the present Paper whether the first request has been complied with. It is not clear which part of the UN Secretariat should be gathering and submitting this information for the purpose of the drafting of country-specific reports, nor whether in fact whether such information has been included in any such reports to date. While public resources on country-specific situations is available, including the Integrated Food Security Phase Classification, the Famine Early Warning System Network and WFP's Hunger Map,<sup>12</sup> this request to provide information does not appear to have been complied with.

### 2. Secretary-General's protection of civilians reports

The Secretary-General has issued three reports on the protection of civilians since the adoption of SCR 2417. The first two devote two paragraphs to conflict-induced hunger in a 16-page report. The third has a five-paragraph subsection and one recommendation on the topic. While less than ideal, this is not surprising. In addition to reporting on and advancing the protection of civilian agenda, the report must also include annual information on attacks against medical facilities pursuant to SCR 2286, and conflict-induced hunger pursuant to SCR 2417 – all within a word limit that has not been increased since these topics were added. In terms of simple word count it is impossible to do justice to the three topics.

More significantly, an overarching institutional problem is the absence of clear 'ownership' of the conflict-induced hunger file at policy level, and consequently, no clear leadership on it within the UN system. It is OCHA on behalf of the USG for Humanitarian Affairs/Emergency Relief Coordinator that drafts the Secretary-General's protection of civilians report and, consequently, that is the *de facto* lead on the protection of civilians-related agenda and materials. As SCR 2417 falls within the protection of civilians Council agenda item, OCHA also is the *de facto* lead on taking this issue forwards and drafting the relevant reports. However, OCHA is not the UN agency most directly concerned with food security in terms of having the data and

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<sup>9</sup> SCR 2417, OP 11.

<sup>10</sup> SCR 2417, OP 13.

<sup>11</sup> SCR 2417, OP 12. The Council expressed 'its intention to give its full attention to such information provided by the Secretary-General when those situations are brought to its attention'.

<sup>12</sup> <http://www.ipcinfo.org/ipcinfo-website/resources/alerts-archive/en/>; <https://fews.net/>; and <https://hungermap.wfp.org/> respectively.

being aware of challenges. The same challenge also arises in relation to reporting on attacks against healthcare pursuant to Security Council Resolution 2286. In view of the siloed way in which UN agencies, funds and programmes work, this unclear – or misaligned - ownership has led to an unwillingness to share information and to unconvincing leadership at New York level.

While the Security Council may task the Secretary-General with reporting on a particular topic, it is obviously not the Secretary-General himself who prepares the specific reports, nor who endeavours to get a few words on a particular topic included in country-specific reports.<sup>13</sup> Without clearer tasking by the Council – and it is unclear whether it is in fact the Council’s role to task specific agencies – or by the Secretary-General, OCHA and the food agencies - WFP and FAO - are not going to invest time, energy and political goodwill for an agenda item they do not consider fully their ‘own’, or for work for which they will not be credited. Moreover, both OCHA and WFP have concerns that reporting that is too detailed or critical may adversely impact their access and operations on the ground.

### 3. ‘Early warning’ reports/white papers

Resort to the third, and probably the most impactful type of reporting, the ‘early warning’ has also been limited. Since the adoption of SCR 2417, the Emergency Relief Coordinator has alerted the Council to the risk of famine in conflict situations or widespread food insecurity in what it refers to as ‘white papers’ on four occasions.

In July 2018 OCHA submitted a white paper on unprecedented levels of hunger and malnutrition in South Sudan. In response the Council convened closed consultations in August 2018, and in press elements after the meeting demanded that all parties allow unhindered humanitarian access. This was followed up by an expert briefing by OCHA, WFP and FAO in November 2018.

OCHA submitted a second white paper in October 2018, alerting the Council to the renewed risk of famine in Yemen ahead of a Council briefing. The white paper set out five priorities that the Emergency Relief Coordinator called the Council to support to prevent this possibility.

A third paper was submitted in September 2020 on four countries: Yemen, South Sudan, North-eastern Nigeria and the DRC, and a fourth, in May 2021, on the situation in Tigray, Ethiopia.

These papers were issued by Mark Lowcock, who was Emergency Relief Coordinator until July 2021. In view of the extent of food security in certain situations, in 2020 disappointment had been expressed by humanitarian actors and some states that greater resort had not been made to this type of reporting. The two reports submitted since then may have somewhat allayed this. But it was a desire for more systematic reporting that underlay the call for the bi-annual reports in the 2021 draft PRST – which, it will be recalled, was not accepted by Russia and other Council members.

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<sup>13</sup> It is DPKO, the Department for Peace Operations, and DPPA, the Department of Political and Peacebuilding Affairs, that hold the pen in drafting the country-specific reports and so decide what is included. At times humanitarian issues or a narrative that is different to the one they want to project is not included.

The reasons underlying the former Emergency Relief Coordinator's reticence to make more frequent resort to such early warnings are unclear. They could be linked to institutional arrangements, and the unclear 'ownership/leadership' of the conflict-induced hunger file mentioned above. In addition, there is no question that there are clear political dimensions to certain contexts, and there may have been concerns that raising them may have been pointless, if not outright counter-productive.

One further consideration is that many of the current situations of acute food insecurity, including South Sudan, Yemen and the Sahel, already are on the Council's agenda, so information on food insecurity can be provided in the course of the regular humanitarian briefings on these situations, rather than in the form of white papers.

Martin Griffiths assumed the position of Emergency Relief Coordinator in July 2021. He has not issued any white papers yet, and his approach to this form of reporting still needs to be determined.

Security Council members now receive information on conflict induced food insecurity from a variety of sources, including from the bi-annual WFP/FAO updates discussed at deputy-ambassador meetings convened by Ireland and Niger. Participation at these meetings is voluntary and information is shared informally. White papers have an important added value: they are presented to the Council as a whole, and can be considered semi-official documents. This may appear a mere procedural point but in the highly regulated Security Council dynamics it is significant. Information in the white papers is formally brought to the attention of *all* Council members. Information on food insecurity provided during country-specific humanitarian briefings has the same value and status. There is therefore an intrinsic added value in the white papers.

In terms of substance, the first white paper merely presented the food insecurity situation in South Sudan. Subsequent papers also suggested steps that could be taken to address the problems, and were considered more useful. The early warning reports are not an end in themselves, but a way of encouraging the Council to take appropriate measures.

Interestingly, the recommendations made in the second white paper, on Yemen, related to steps that states could take in their individual capacity, rather than measures the Security Council could take, so are clearly of relevance to all UN Member States.<sup>14</sup>

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<sup>14</sup> The calls made in the second white paper on Yemen – which, like all white papers, was not made public – were essentially reiterated in the Emergency Relief Coordinator's public remarks statement to the Security Council on 23 October 2018:

- a cessation of hostilities in and around all the infrastructure and facilities on which the aid operation and commercial importers rely. A humanitarian cease-fire would reflect the obligations of the parties to the conflict to uphold international humanitarian law and to do everything possible to facilitate the delivery of humanitarian assistance.
- Protection of the supply of food and essential goods across the country. Humanitarian and commercial imports must flow into all ports and onwards to their final 7 destinations. This means lifting planned and existing restrictions on imports and keeping the main transport routes open and safe.
- A larger and faster injection of foreign exchange into the economy through the Central Bank, along with expediting credit for traders, and payment of pensioners and civil servants.
- Increased funding and support for the humanitarian operation.
- A call to belligerents to seize this moment to engage fully and openly with the Special Envoy to end the conflict.



In view of this, it is unclear why white papers are not made public, as they are relevant to a far broader group of states than just Council members.

### **Suggestions**

Going forwards, the negotiations of SCR 2417 and the 2020 and 2021 PRSTs have indicated that Council is unwilling to ‘institutionalise’ reporting arrangements further – be it in the form of an annual Secretary-General’s report specifically on conflict-induced hunger, or in regular early warning reports by the Emergency Relief Coordinator.

Consequently, and in addition to the other ways that Council members (and other states) can be apprised of contexts of conflict-induced hunger, arrangements for reporting to the Council should be made as effective as possible. Options include:

- periodic humanitarian briefings by the Emergency Relief Coordinator on situations on the Council’s agenda should include information on conflict-induced hunger, and also practical suggestions for measures that could be taken in relation to the range of factors that contribute to conflict-induced food insecurity in the specific context.
- Early warning white papers, in addition to setting out the situation on the ground, should make specific recommendations for measures that can be taken by the Security Council and by other actors. These recommendations need to address the range of factors that contribute to food insecurity in the particular context, which could be the acts of parties to the conflict but also of third parties, for example by the imposition of sanctions.
- As the recommendations in the white papers are likely to be of relevance to all UN Member States and not just Security Council members, they should be made public.

### **Possible points for discussion at the WFP/Oxford workshop**

- Do participants agree with the analysis of the unclear/‘mis-aligned’ allocation within the UN system of ownership and responsibility for the conflict-induced hunger file at policy level?
- How could institutional arrangements between the relevant agencies and actors, most notably Emergency Relief Coordinator, FAO and WFP, but also other UN agencies funds and programmes and INGOs contributing to a response to conflict-induced hunger, be improved to enhance policy engagement at Security Council level?
- How can reporting arrangements be made more effective?

### **C. Mainstreaming conflict-induced hunger in the Council’s work**

SCR 2417 can also be ‘operationalised’ by mainstreaming references to conflict-induced hunger in the Council’s work.

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<https://reliefweb.int/sites/reliefweb.int/files/resources/20181023%20ERC%20Remarks%20to%20SC%20on%20Yemen.pdf>.

## 1. Promoting compliance with rules of international humanitarian law relevant to conflict-induced hunger

SCR 2417 expressly recognises that compliance with a number of rules of international humanitarian law (IHL) is essential to prevent and minimise conflict-induced hunger. These include

- the rules regulating the conduct of hostilities, including the principles of distinction and proportionality and the obligations to take precautions, all central to safeguard civilian objects necessary for food production and distribution;
- the rules prohibiting or regulating the use of certain weapons, such as antipersonnel mines and cluster munitions, that contaminate areas of land which can thus not be used for farming or grazing;
- the rules regulating method of warfare, including in particular the prohibition of starvation of civilians as a method of warfare, and the prohibition to attack, destroy, remove or render useless objects indispensable to the survival of the civilian population;
- the prohibition of forced displacement; and
- the rules regulating humanitarian relief operations.

There are a range of measures that the Council can – and has taken – to promote compliance with different rules of IHL, and that can also be taken with a particular focus on conflict-induced hunger.

### **Suggestions**

The impact of violations of IHL on food security should be highlighted in all Council discussions on the conduct of hostilities, forced displacement and other rules of IHL. This can be done:

- thematically – for example, during the discussions of the Secretary-General's reports on the protection of civilians;
- in a country-specific manner, when discussing Secretary-General's reports and adopting resolutions and PRSTs. In order to bring this dimension out systematically, questions about the impact on food security should be asked at the meetings of the Informal Expert Group on the Protection of Civilians.<sup>15</sup>

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<sup>15</sup> In 2009 in order to provide Council members with information on key protection concerns in advance of their consideration of a particular context and adoption of resolutions, in addition to that included in the SG country-specific reports the United Kingdom, as 'lead' on protection of civilians on the Council, established an informal Expert Group on the protection of civilians in armed conflict. Chaired by the United Kingdom, the Group meets to discuss protection concerns ahead of negotiations of the authorisation, creation or renewal of the mandates of missions or operations with a protection role – mainly UN peacekeeping operations, and some UN special political missions. On the basis of information collected from UN and other humanitarian and human rights actors operating in the context under review, OCHA presents the key protection concerns, highlighting new developments and providing an update of how the situation has evolved and how protection-related elements of previous resolutions have been implemented. On the basis of the *Security Council Aide Memoire for the Consideration of Issues pertaining to the Protection of Civilians in Armed Conflict*, OCHA suggests possible ways specific protection concerns could be addressed in the forthcoming resolution.

The Expert Group was intentionally established as an informal and interactive forum to facilitate as frank a discussion as possible on the situation on the ground and ways for the Council to enhance protection. Briefing and attendance is at working-level and the Group itself does not generate any

## 2. Humanitarian Access

Humanitarian access plays a central role in preventing and mitigating conflict-induced food insecurity. The Security Council's role in this regard is complex though. IHL contains rules regulating humanitarian relief operations and the Council should – and regularly does – remind belligerents of their obligations in this regard.

Beyond this, the Council's role in actually promoting access in specific situations is more delicate. Access negotiations should be exclusively humanitarian, and too much direct involvement by an eminently political actor such as the Security Council can be counter-productive and risk politicising the negotiations, as the on-going discussions on the cross-border operations into Syria have shown.<sup>16</sup> There is no question that the Security Council's unanimous imposition of cross-border operations in Syria in 2014 brought life-saving assistance to hundreds of thousands of people. Seven years on the situation on the ground and in the Council is extremely different, and the renewal of the arrangements is mired in politics that which risk undermining the humanitarian response to needs that remain significant and are compounded by the COVID-19 pandemic.

The Secretary General's protection of civilians reports in 2009, 2010 and 2012 included an 'access annex'.<sup>17</sup> This annex had been requested by France, and OCHA developed a framework for collecting information on key access impediments. Obtaining information from field agencies proved extremely challenging, and although it contributed more granular information on access problems, and identification of trends, the Annex did not significantly enhance the Council's capacity to improve humanitarian access. It may have contributed to a more advanced understanding by the Council of the range of access impediments.

More recently at a ministerial-level briefing convened by France during its Council presidency in July 2021 on the 'protection of humanitarian space' the Secretary-General announced that he had asked the Emergency Relief Coordinator to appoint a Special Adviser on the preservation of humanitarian space and access, and to strengthen humanitarian negotiations. Little is known at this stage about the precise mandate of this position but is likely to play a significant role in relation to conflict-induced hunger that is due to access constraints.

### **Suggestions**

- As for compliance with IHL more generally, the implications of restrictions of humanitarian access on food-insecurity should be raised systematically, during thematic and country-specific discussions.

### **Possible points for discussion at the WFP/Oxford workshop**

- What else could be done to operationalise and mainstream of conflict-induced hunger considerations across the Council's work?

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documents.

<sup>16</sup> Most recently, Security Council Report, [What's in Blue, Syria: Vote on Cross-Border Humanitarian Access Draft Resolutions](#), 8 July 2021.

<sup>17</sup> S/2009/277, 29 May 2009; S/2010/579, 1 November 2010; and S/2012/376, 22 May 2012.

- What role could the Emergency Relief Coordinator's Special Adviser on Humanitarian Space play in advancing the conflict-induced hunger agenda at policy level and on the ground?

#### **D. Promoting Compliance with IHL**

A further dimension of possible Council engagement on conflict-induced hunger is promoting compliance with the relevant rules of IHL and accountability for violations. This can take various forms, including criminal accountability, the establishment of investigative bodies, and the imposition of sanctions.

##### **1. Individual criminal liability**

As noted above, the most significant development on the regulatory front since the adoption of SCR 2417 has been the amendment of the ICC Statute to establish the war crime of starvation of the civilian population in situations of non-international armed conflict. As of November 2021, six states have ratified the amendment: Andorra, Croatia, the Netherlands, New Zealand, Norway and Portugal.<sup>18</sup>

The ICC Statute foresees the possibility for the Security Council to refer situations to the Court, and the Council has done so on two occasions: in relation to Darfur in 2005 and in relation to Libya in 2011. In theory it would be possible for the Council to do so again with respect to situations where severe food insecurity is caused by acts that amount to war crimes, crimes against humanity or genocide. This is unlikely to happen in the near future. Instead, any criminal investigations and prosecutions are most likely to occur in national systems.

The Security Council's involvement in criminal accountability likely to be limited to references in country-specific resolutions – or future thematic ones – and PRSTs that starvation of civilians may amount to a war crime.

##### **2. Commissions of inquiry**

A step removed from criminal prosecutions, the possibility exists for the Security Council to establish commissions of inquiry or fact-finding missions to consider particular situations.<sup>19</sup> Relevant examples include the Commission of Experts to examine reported violations of international humanitarian law in the former Yugoslavia, the Commission of Experts concerning Rwanda, and the International Commission of Inquiry for Darfur. In recent years it has been the Secretary-General who has established such bodies most frequently rather than the Council.<sup>20</sup>

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<sup>18</sup> [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=XVIII-10-g&chapter=18&clang=\\_en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-10-g&chapter=18&clang=_en)

<sup>19</sup> <https://www.un.org/securitycouncil/content/repertoire/commissions-and-investigative-bodies>.

<sup>20</sup> For example, in 2010, the Secretary-General appointed the Panel of Experts on Accountability in Sri Lanka. He has also established a number of boards of inquiry, including the Board of Inquiry to investigate damage to UN facilities during Operation Protective Edge in Gaza in July-August 2014, and most recently, in 2019, a United Nations Headquarters Board of Inquiry into certain incidents in northwest Syria since 17 September 2018 involving facilities on the United Nations deconfliction list and United Nations supported facilities.

The present Paper focuses on the Security Council however there is also important Human Rights Council practice in this area, including most recently the work of the Group of Eminent Experts in Yemen and the UN Commission on Human Rights in South Sudan. See UN Office for the High Commissioner for Human Rights, *Commissions of Inquiry and Fact-Finding Missions on International Human Rights and Humanitarian Law - Guidance and Practice*, (2015).

### 3. Sanctions

Another means at the Council's disposal for promoting compliance with IHL rather than investigating or prosecuting suspected violations is the imposition of sanctions. The Council has determined that the obstruction of humanitarian activities or of access to humanitarian assistance may constitute a basis for imposing targeted sanctions in relation to a number of recent conflicts. At present, six Security Council sanction regimes explicitly include this ground.<sup>21</sup> To date, sanctions have been actually imposed for obstructing the delivery of humanitarian assistance on three occasions: on Al Shabaab in Somalia; on the anti-Balaka commander in the Central African Republic; and on the President of the Humanitarian Commission of the *Bureau Regional d'Administration et Gestion de Kidal* in Mali.

The imposition of sanctions is strong political statement of the unacceptability of restrictions on humanitarian access, particularly when they lead to severe food insecurity. However, it has become increasingly apparent that sanctions are significantly affecting humanitarian actors' capacity to operate in certain contexts. Sanctions can, in fact, cause or contribute to conflict-related food insecurity. And it is the most vulnerable sectors of civilian populations – those reliant on humanitarian action – that are affected.

It is not just humanitarian actors that must comply with sanction commercial actors, must also do so. To minimize the risk of liability, banks, insurers and other key service and commodity providers have restricted the services they offer to humanitarian actors for operations in countries perceived as 'high risk'.

These tensions are not new. They first came to the fore in 2010 when famine was looming in parts of southern Somalia, including in areas under al-Shabaab control, a group subject to UN financial sanctions. In response to pressure from humanitarian organisations, the Security Council adopted an exception clarifying that the prohibitions in the financial sanctions did not extend to support that may be provided in the course of humanitarian assistance operations. Despite the same challenges arising in these and other contexts, including many where there is severe food insecurity, the Somalia sanctions remain the sole UN regime to include an express exception. Problems could easily be alleviated by the systematic inclusion of a similar express exception for humanitarian action. It is regrettable that UNSC 2417 did not address this dimension of conflict-induced food insecurity. All the more so as the solution lies in the hands of the Council.

In view of this, sanctions are simply not the right tool for changing the behaviour of belligerents that are deliberately causing or contributing to starvation or food insecurity. It is questionable whether their imposition has any effect in modifying this behaviour. But it is clear that sanctions negatively impact humanitarian action, and they may, in fact, impede humanitarian access more than the very behaviour of belligerents they seek to modify.

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<sup>21</sup> These are the sanctions regimes relating to Somalia, the Democratic Republic of the Congo, the Central African Republic (CAR), South Sudan, Yemen and Mali.

### **Possible points for discussion at the WFP/Oxford workshop**

- Has consideration been given to encouraging the Secretary-General to establish commissions of inquiry to investigate particular situations of severe conflict-induced hunger?
- Would such ‘naming and shaming’ change belligerents’ practices or does it risk undermining humanitarian access negotiations?
- Can discussions on SCR 2417 and conflict-related hunger contribute to the endeavours to improve UN sanctions by including safeguards for humanitarian action?

### **E. Appreciating the inherent limitations of Council action on conflict-induced hunger**

It is essential to place the Security Council’s engagement on conflict-induced hunger and the implementation of SCR 2417 within the framework of the Council’s mandate, particularly when looking at possible Council action in specific situations.

The Security Council’s mandate is maintaining ‘international peace and security’ and it can act under Chapter VII of the UN Charter in response to ‘a threat to the peace, breach of the peace or act of aggression’.<sup>22</sup> In the past decades Council practice has gradually expanded the interpretation of what constitutes a threat to international peace and security from more traditional threats of a military nature to include violations of IHL committed against civilians; the HIV/AIDS pandemic, Ebola outbreaks and recently the COVID-19 pandemic; cross-border refugee flows; the illicit trade in, and excessive and destabilizing accumulation of, small arms and light weapons; the proliferation of weapons of mass destruction; drug trafficking and organized crime; and terrorism. SCR 2417 itself suggests that there may be circumstances in which denial humanitarian access in violation of international law, may constitute a threat to international peace and security.<sup>23</sup>

Despite this expansion, certain permanent Council members – Russia most vocally – but also elected members, are extremely wary of considering thematic agenda items or particular situations that they do not consider as amounting to threats to international peace and security.

These concerns also apply in relation to conflict-induced hunger and SCR 2417. Already during the negotiations of the resolutions some states had indicated that the thematic agenda item should not be resorted to put new situations on the Council’s agenda.

These dynamics also played out during the negotiations of the 2021 PRST that could ultimately not be adopted. The US as pen-holder had included specific country situations in the draft. These references were removed before the draft text was presented to the full Council membership following consultations with several members, including the ‘A3 plus one’ - Kenya, Niger, Tunisia, and Saint Vincent and the Grenadines - which apparently could not accept mentioning the situation in Tigray, concerned that consideration of humanitarian crises could be used as a pretext

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<sup>22</sup> Articles 24 and 39 UN Charter.

<sup>23</sup> SCR 2417 (2018), OP 4.

to add conflict situations in Africa to the Council agenda. Similarly, during the March 2021 Council meeting India stressed that the Council should only consider conflict-driven hunger in specific country contexts where it may threaten international peace and security.<sup>24</sup>

The first hurdle that must be overcome for Council action, is placing a situation of conflict-induced hunger on the Council's agenda, and SCR 2417 per se will not do this. There is no such thing as 'invoking SCR 2417'.

Even once a situation is on the Council's agenda there are limits to the concrete measures the Council will take beyond reminding parties of their obligations, or threatening or actually taking measures to promote compliance such as imposing sanctions.

The Council's imposition of cross-border relief operations in Syria in 2014 was unprecedented. The unanimity that existed in 2014 has given way to extremely politicised discussions at each renewal. It is extremely unlikely that Russia and China will agree to a similar arrangement in the near future. Moreover, the facts on the ground in Syria - opposition-controlled areas that could be reached directly from neighbouring states without transiting through areas under government control - do not always exist.

More generally, consideration should also be given to whether the highly politicised limelight of the Security Council is a good venue for delicate humanitarian diplomacy to enhance access.

#### **Possible points for discussion at the WFP/Oxford workshop**

- What are the views of humanitarian actors – UN and INGOs – as to the role of the Security Council in relation to conflict-induced hunger?
- Does the type of behaviour that is leading to the hunger – conduct of hostilities or impediments to humanitarian action – make a difference in this regard?
- Looking beyond the Security Council, what role could third states play?

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<sup>24</sup> Security Council Report, [What's In Blue, Negotiations on Conflict and Food Security Draft Presidential Statement](#), 18 March 2021.

## ANNEX

### **Mapping of fora where conflict-related food-insecurity could be raised**

#### **A. UNITED NATIONS**

##### **1. New York**

- Security Council
- GA Third Committee
- ECOSOC
- Peacebuilding Commission

##### **2. Geneva**

###### **a. Human Rights Council**

An important added dimension is the range of situations the Human Rights Council (HRC) can consider. They are not limited to those on the Security Council's agenda, where there has been a determination by the Council of the existence of a threat to international peace and security. They can therefore include other contexts of armed conflict, and, importantly, situations that do not amount to armed conflict but where severe food-insecurity exists.

###### **i. Thematic mandate holders**

- Special Rapporteur on the Right to Food
- Special Rapporteur on the Negative Impact of Unilateral Coercive Measures on the Enjoyment of Human Rights
- Special Rapporteur on Protection and Promotion of Human Rights and Fundamental Freedoms while Countering Terrorism

###### **ii. Country specific work**

- Various country-specific agenda items (which lead to reports and resolutions) where severe food insecurity is an issue.
- Commissions of inquiry/fact finding missions that have been established in relation to contexts of armed conflict, but also in relation to situations that are not where severe food insecurity exists.

###### **iii. Universal Peer Review Mechanism**

Possibility for HRC members and also NGOs to raise concerns during review of states where severe food insecurity exists.

###### **b. Treaty bodies**

Severe-food insecurity could be addressed in in General Comments, review of country reports, and possibly individual petitions.

#### **B. REGIONAL BODIES**

Conflict-induced food insecurity and its interplay with sanctions and counter-terrorism measures can also be injected as a thematic and country-specific issue into the work of numerous regional inter-governmental organisations. These include the



African Union (AU), the Economic Community of West African States (ECOWAS), the European Union (EU), the Intergovernmental Authority on Development (IGAD), and the Association of Southeast Asian Nations (ASEAN) to name but a few.