

Starvation as a Method of Warfare— Conditions for Regulation by Convention

I. Alternatives

To what extent is starvation a permissible method of warfare? In the context of international law, this question can be discussed on the basis of one of five alternatives. The first two imply that starvation as a method of warfare should be sanctioned either generally (alt. 1) or generally forbidden (alt. 2). However, there would be some justification for calling an advocate of alternative 1 a “hardboiled cynic” and an advocate of alternative 2 a “blue-eyed idealist.”

A third solution is indicated by the American, *Mudge* (pp. 265–268). He recommends a definition of the expression “starvation as a means of warfare” which the starvation of a civilian population would be permissible by international law, only when it causes capitulation or is reasonably calculated to do so (alt. 3).¹ The main objection to this proposed definition is that it is too flexible, leaving too much scope for arbitrary implementation.

A fourth solution would be to preserve the distinction drawn by international law between combatants and the civilian population. Here we have the principle of “military necessity” (“Kriegsraison”), sanctioning the starvation of combatants, and the fundamental principles of international humanitarian law prohibiting the starvation of a civilian population (alt. 4).

However, it has been observed by *Mudge* and other experts on international law, especially Anglo-American lawyers, that in a modern war, be it total (*e.g.*, World War II) or predominantly characterized by guerrilla warfare (*e.g.*, the conflicts in Algeria and Indochina), it is extremely difficult in practice to maintain a distinction between combatants and civil-

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¹*Mudge* notes (p. 236) that *Webster* (3rd ed., Springfield 1963) gives three different senses of the active verb “to starve somebody”: “to kill with hunger, to deprive of nourishment, to cause to capitulate by or as if by depriving of nourishment.”

ian population. At all events, the boundary between the two is generally indistinct.

The present article will begin with a brief summary of current international law (section II). This will be followed by an analysis of alternatives 3 and 4. Since both these alternatives are open to serious objections,² a way out of the *cul-de-sac* will also be discussed (alt. 5). This final alternative is based on the conviction that certain specific points of international law are in need of revision (post, section III). The argument leads on to a preliminary draft of convention articles (section IV).

II. Is Starvation Sanctioned as a Method of Warfare?

1. General

It is a tragic fact that, notwithstanding all the efforts of the United Nations, states are still continually resorting to war as a means of resolving disputes between them.³ In doing so, they are tempted to resort to starvation. On July 7, 1969, in other words at the time of the Nigerian conflict (1967-70), British Foreign Secretary *Michael Stewart* remarked in the House of Commons: "We must accept that, in the whole history of warfare, any nation which has been in a position to starve its enemy out has done so" (Hansard vol. 786 No. 143 c. 953).

We must therefore consider, on the basis of current conventions and of the principles of humanity and military necessity, whether starvation as a method of warfare is compatible with the laws of war (*jus in bello*). These laws distinguish between combatants and the civilian population.

2. Combatants

Current international law sanctions the starving out of combatants with a view to forcing them to capitulate. Experts are unanimous on this point (the Finlander, *Castrén* p. 197 and the American, *Greenspan* pp. 316-317).

²Alternatives 1 and 2 would not appear to require any closer consideration. Alt. 1 would imply a retrograde development contrary to the fundamental rules of existing conventions, while alt. 2 would appear to be unrealistic.

³Contrary to the General Treaty for the Renunciation of War, signed in Paris on August 27, 1928, and to Article 2:4 of the United Nations Charter: "All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the purposes of the United Nations." In a doctoral thesis (pp. 60-63) published in 1971, the Swedish political scientist *Goldmann* notes that during the period 1945-67, 23 international wars took place involving a total of 65 belligerents. Of these wars, nineteen were fought in Asia or North Africa. Cf. *Greenspan*, pp. 20-22.

3. *Civilian Population*

The legitimacy of starving a civilian population to bring about capitulation has been asserted not only by various statesmen, such as *Bismarck* (*vid.* Garner 1920 Vol. II p. 337), but also by a series of Anglo-American experts on international law, *e.g.*, *Garner* (*cf.*, *supra*), *Lauterpacht* (B.Y.I.L. 1952 p. 374) and *Nurick* (A.J.I.L. 1945 p. 696). On many occasions this has been the position adopted by the maritime powers, Great Britain and the United States of America.

The Soviet Union takes a contrary view. Similarly *Mertens* (pp. 192-193), and certain Red Cross experts have contended that a blockade aimed exclusively at the civilian population must be regarded as incompatible with the general rules of humanitarian law and human rights.

The deliberate starvation of an ethnic group is prohibited by the 1948 Genocide Convention, in which "genocide" is taken to mean the intentional annihilation, in whole or in part, of an ethnic group by means of certain acts enumerated in Article II. One of these acts is defined in Article II c as "Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part."⁴

The legal position is apparently disputed. Unequivocal rules of international law would therefore be welcomed.

III. Should Starvation be Prohibited as a Method of Warfare?

1. *Combatants*

A prohibition by convention, of the starvation of combatants would not appear to be an urgent necessity. Such a prohibition would hardly be feasible. In a suitable context—*e.g.*, the preamble to additional protocols to the 1949 Geneva Conventions—it might be possible to affirm that the only legitimate object which States should endeavour to accomplish during war is to weaken the military forces of the enemy. The aim is to win the war, not to cause suffering which is unnecessary for its successful prosecution.

⁴In a Bill (1951 No. 71, p. 5) for the Swedish ratification of the 1948 Paris Convention on the Prevention and Punishment of the Crime of Genocide, the form of action quoted here is said to comprise "such actions as subjecting the group to a system of rationing concerning essential foodstuffs making it impossible for the members of the group to subsist for any considerable period of time" . . . *Cf. Mudge* p. 265. By December 1971, the Genocide Convention had been ratified or subscribed to by 75 states, including Sweden, together with the Great Powers France, the Soviet Union, Great Britain and the Federal Republic of Germany. On the other hand it has not been ratified by the United States. The difficulties of prosecuting infringements of this Convention, in the absence of an international criminal court (*cf.* art. V-IX), have been emphasized, *e.g.* by SCHWARZENBERGER (*THE YEAR BOOK OF WORLD AFFAIRS* 1968 pp. 197-198).

It follows that the object of starving out combatants is to force a capitulation and not to starve them to death.

Far more important and pressing is the need to protect the civilian population from the use of starvation as a method of warfare. No doubt most people of today, with the memory of various commercial blockades, *e.g.*, the German siege 1941–43 of Leningrad still fresh in their minds, will feel that this is difficult to achieve. During the 900-day siege of Leningrad more than a million Russians died of starvation (*Wykes* p. 144). But the civilian population does not always have to suffer. General Giap's siege of the French troops in the Vietnamese mountain stronghold of Dien Bien Phu during the spring of 1954 is said to have been exclusively directed against combatants. Other instances of sieges mainly involving combatants are provided by Blitzkrieg operations, successfully carried out by Napoleon, Moltke and other war-lords.

"Dehydration" was also one of the methods of warfare employed by Alexander the Great in his war against the great King of Persia, Darius III, and the Persian fleet in the years 334–332 B.C. *Arrianos* (pp. 40, 50–51)⁵ writes that initially the quality and numbers of Darius' forces were far superior to those of Alexander. His crossing of the Hellespont was for that reason something of a gamble. Moreover, the Persians had made plans to "burn the growing crops nor spare the cities. In this manner lack of food would make it impossible for Alexander to remain in the country."

The strategy adopted by Alexander was unconventional to say the least. After besieging Miletos he disposed of his own fleet, which was too small in any case to defeat the Persians'. Instead, he occupied a river estuary near Miletos, where the Persian ships were in the habit of taking on drinking water. Before very long, *Arrianos* continues, lack of water and food compelled the "barbarians" to sail away from Miletos without having accomplished anything. During his subsequent campaigns, first in the east and then—after his victory at Issus—in the south, against Egypt, Alexander occupied one harbour after another. Gradually the once powerful Persian fleet had to be disbanded and Alexander became master of the eastern Mediterranean without having fought a single naval battle.

The method of warfare employed by Alexander was predominantly a question of tactics. Although effective it was not unreasonably cruel, particularly if one compares it with many other techniques. Its aim was to defeat the opponent as simply as possible and the spearthrust was exclusively directed against combatants.

⁵In the Swedish translator's presentation of the Greek *Arrianos*' biography of Alexander the Great, we are told that this work is one of our main sources on the career of this intrepid commander. *Arrianos*, who was born around 100 A.D., relies on documents from Alexander's own time, written by such initiated observers as Ptolemy, one of Alexander's leading generals.

2. *Civilian Population: Starvation Should Be Sanctioned only When it Causes Capitulation or Is Reasonably Calculated to do so (alt. 3)*

Mudge (pp. 266–268) recommends that starvation be defined as a lawful means of warfare “only when it causes or is reasonably calculated to cause capitulation.” In other words, he wishes “to preclude deprivation of nourishment or killing from hunger where there is no military effect, *i.e.*, the causation of capitulation, or no reasonable expectation that there will be such a military effect.” A definition of this kind, he says, would enable international law “adequately (to) deal with starvation in the Biafran war without rejecting traditional views.”⁶

Mudge surmises that the definition thus proposed would have less effect in Europe than in Africa. “Where human starvation is accepted as a fact of life even in peace-time, it is even less reasonable to calculate that starvation as a means of warfare will cause the government of the starved population to capitulate.” This would appear to be a correct conclusion. But is not the outcome also greatly influenced by many other factors, for instance by general perseverance of a population and by the power of a government over the population? *Olsson* (p. 252) has the following to say concerning the siege of Leningrad:

One condition for the survival of the City was the placid calculation by its leaders that approximately one-third of the population must succumb: so-called “dependents”—nonemployable persons other than children—were placed in a rationing class where they could hardly be expected to survive.

The actual definition is subject to serious objections. Like Article 23 of the Civilian Convention, it allows far too much scope for the discretion of the blockading power. Also it leaves the field open for uncertain assessments. Thus, how could it be “reasonably calculated” that Leningrad would not surrender, but that Biafra would?

There are obvious risks involved in a flexible definition of this kind. Evidently it would sanction any starvation of the civilian population of a state, which results in the surrender of that state. But if this result is not

⁶The essay by Mudge—entitled “Starvation as a Means of Warfare,” published in January 1970 in “*The International Lawyer*,” and the only extensive study of its kind to have appeared in recent years to the knowledge of the present writer—is a well-documented, interesting and wide-ranging analysis, thus constituting an excellent re-examination of the subject “in light of the Biafran situation” (p. 232). The article would appear to have been written in 1969 and to have been influenced profoundly by the disastrous famine then afflicting Biafra, which did not capitulate until January 12, 1970. This explains why Mudge has devoted as many as 15 of the 40 pages of his essay to the Nigerian conflict. On the other hand, he does not have a single word to say concerning the armed conflict in Vietnam, which has been in progress since 1960. This is somewhat surprising in view of the fact that cultivated land with growing crops in Vietnam has been sprayed with herbicides (*Bunn* p. 409, *Johnstone* p. 714 and *Meyrowitz* 1967 pp. 189–190).

achieved until after *several years'* commercial blockade of an entire nation or, let us assume, an entire continent, then in view of the chronological aspect one is justified in querying whether such a method of warfare reflects a reasonable relation between the laws of war and military necessity.⁷ Does this hypothetical example present acceptable proportions between means and ends? Would it not be more apt, in the light of *existing* international law (which includes the United Nations Conventions on Human Rights), to characterize such a method of warfare as prohibited?

3. Civilian Population

All Starvation Should Be Prohibited (alt. 4)

Powerful humanitarian arguments can be put forward in favour of alt. 4, which also presents a technical advantage.⁸

This alternative, however, presupposes that war is waged in a form which is no longer self-evident, namely, with the clear distinction asserted around the turn of the century between combatants and civilian population. Following the advent of total war, this boundary—one of the foundations of international humanitarian law—has become increasingly vague. *Lauterpacht* (B.Y.I.L. 1952 p. 364) maintains that in most respects the distinction has become “a hollow phrase,” while *Schwarzenberger* (1968 Vol. 2 pp. 157–159) is still more resigned.

The same trend toward an elimination of the boundary between combatants and the civilian population distinguishes modern guerrilla warfare, itself a challenge to the law of nations, “*défi au droit de la guerre*” (*Meyrowitz* 1971 p. 57). According to *Mao Tse-tung* (pp. 52, 70, 134, 158), a guerrilla soldier must be able to move freely and unimpeded among the

⁷*Downey* (p. 254) suggests the following definition: “Military necessity is an urgent need, admitting of no delay, for the taking by a commander of measures, which are indispensable for forcing *as quickly as possible* (author’s italics) the complete surrender of the enemy by means of regulated violence, and which are not forbidden by the laws and customs of war.” Cf. the definition in the U.S. Army Field Manual 1956, sections 22–23. A number of older experts on international law—e.g. *Spaight* (pp. 133–139) and *Stowell* (p. 785)—show a cynical tendency to over-emphasize military necessity at the expense of humanitarian aspects. Both *Castrén* (pp. 65–66) and *Downey* (pp. 251–262) point out, however, that genuine or alleged military necessity does not justify deviations from current international law. This was expressly affirmed in a series of trials for war crimes after World War II, including the cases against Wilhelm List, *et al.* (War Crime Reports vol. 8 p. 66) and Wilhelm von Leeb, *et al.* (War Crime Reports vol. 12 pp. 93–94, 123).

⁸It should be natural to apply and obey a rule based on a clear demarcation. This argument is usually put forward in defence of international frontiers along rivers, mountain ranges, etc. *Johnstone* (p. 716) expresses the same idea when, referring to the 1925 Geneva Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare, he says that “a line should be drawn at a clearly definable point on the scale between no gas use and total gas use.” By December 1971 the 1925 Geneva Protocol had been ratified by 34 states in all, Sweden included, but not by the U.S.A., and had been subscribed to by a total of 52 states.

civilian population "like a fish in water." It is the civilian population which, in every sense of the term, "sustains" the guerrilla soldier.

Nurick (pp. 683, 696), who has made an exhaustive analysis of developments, refers to military necessity and the practice of states: "the customary practice of nations does constitute evidence of international law." Again and again he points out the importance of new rules of international law on the subject, taking into consideration the nature of war and the practice of belligerents. He says that "no purpose would be served if the next Convention on the Rules of War adopts a set of rules which in practice would be meaningless."

On the other hand the International Committee of the Red Cross (document III, 1971, p. 13), referring among other things to military manuals, contends that the distinction between combatants and civilians still remains a reality of international law. The obligation of respecting this distinction is emphasized by the Secretary General of the United Nations (Report 1970 A/8052, p. 16). A similar point of view is adopted by *Castrén* (p. 174) and the American, *Moore*. The latter has made the following noteworthy statement on p. XI of the foreword of one of his works (published in 1924 but still relevant on matter of principle):

It is hard to believe that the world is prepared to concede that, in the next war, first and legitimate measure of the belligerent forces will be to bomb or otherwise destroy producers of foodstuff and other contributory classes heretofore considered as non-combatant; and yet if the distinction between combatants and non-combatants has ceased to exist, such a measure would be legally justified and strategically correct . . . No one contributes more to this essential military gesture than the grower of grain . . . The most dangerous fighter is the tiller of the soil. It is, however, gratifying to reflect upon the fact that there is not a single government today that is either accepting or supporting such a theory.

The discussion reviewed here would appear to warrant two conclusions. The first of these is that an express prohibition by convention in line with art. 4 can hardly be termed altogether realistic. Can one reasonably expect a belligerent completely to avoid starving out the enemy civilian population in connection with siege and blockade? And these means of warfare are both sanctioned by existing international law.

The second conclusion is that the majority of nations nonetheless affirm the fundamental convention rules concerning respect for the distinction between combatants and the civilian population.

Furthermore, we have every reason to bear in mind that "the wind of change" to which Harold Macmillan once referred, has constantly swept across the world. A case in point is the changed attitude toward the use of torture, infliction of severe physical or mental pain with a view of ex-

tracting confessions or testimony. Well into modern times this remained a lawful means of evidence, already sanctioned by Roman law. However, the use of torture was prohibited by the majority of European nations under the influence of the ideas of the Enlightenment.⁹ Today we regard torture as both a degrading and inefficient method. Although it is still practised, surely nobody would question the validity of the prohibition of torture contained in the 1949 Geneva Conventions.

“The wind of change” is still blowing, perhaps more violently than ever in these days of the “birth pangs of the world community.” Also in view of the UN Conventions on Human Rights, we should be open to second thoughts on the issues regarding starvation of civilian populations. An express prohibition *may* be a viable proposition. It should at least be investigated. It would be well in line with the main principles of international humanitarian law. Both the UN Secretary General (his report 1970 doc. A/8052 p. 18) and the International Committee of the Red Cross (Basic Texts 1972 pp. 22, 42) recommend convention provisions in this direction.

4. Civilian Population— Certain Rules Should Be Adopted (alt. 5)

This alternative is based on the conviction that the governments of practically all states in the world are fully aware of the horrors of modern war, and therefore desirous of rendering warfare as humane as possible. The positive attitude was already evident in 1949, as witness the four Red Cross Conventions then adopted in Geneva relative to the Protection of the Victims of War. One difficulty is raised by the notorious anxiety of the great powers to retain their freedom of action combined with differing values and modes of thought in different corners of the world. One is nonetheless disposed to believe in the possibility of widespread support for certain convention provisions.

a) PROHIBITION OF THE DESTRUCTION OF OBJECTS INDISPENSABLE TO THE SURVIVAL OF THE CIVILIAN POPULATION

The governments of most states should by now be prepared to forbid the destruction in the course of an armed conflict of objects which are indispensable to the survival of the civilian population. Proposals for reforms

⁹In Sweden torture was abolished by King Gustaf III by a Royal Patent of August 27, 1772, ordering the destruction of the “Rose Chamber” and other “Torture Chambers,” together with all instruments of torture: “all such instruments as have no foundation in law but are nonetheless inimical to liberty, humanity itself and all justice and which could be abused in the exercise of violence and tyranny against free subjects . . .”

to this effect have been put forward in many quarters: by the Institute of International Law through its 1969 Edinburgh resolution and in 1971 both by the International Committee of the Red Cross in connection with the first session of its Geneva Conference of Government Experts on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts and, during this initial session, by government experts from five states (the United Arab Republic, Mexico, the Netherlands, Switzerland and Sweden).

Certain states can be expected to object to a prohibition of this kind on the ground that it would be difficult to observe in practice and also that it would impose limitations on the freedom of action of a belligerent. However, there are powerful arguments of a generally preventive and humanitarian nature which can be put forward in favour of the prohibition. Moreover, it is contrary to all reason and, in this age of population explosion with its attendant spectre of world starvation and environmental impoverishment, unpardonable to destroy any portion, no matter how small, of the earth's limited resources of foodstuffs, cultivable land, etc.¹⁰

b) PROHIBITION OF THE USE OF BIOLOGICAL AND CHEMICAL WEAPONS

Another urgent requirement with a view to the survival of the civilian population, concerns the general acceptance of existing bans on the use by belligerents of weapons particularly endangering food production. These bans refer, *e.g.*, to the use of herbicides, and the dissemination of infectious animal and plant diseases.

¹⁰Statistics quoted by *Falk* (pp. 514-515) and *Palmstierna* (pp. 13, 19) show that the population of the world is doubling at an increasing rate. In round figures it was 0,5 billion in 1650, 1 billion in 1850, 2 billion in 1930 and 3,6 billion in 1970. It is now being doubled approximately every thirty-five years. If this trend continues, then according to statistical predictions, the world population will increase as follows:

	to	6	billion	by	2000
	"	12	"	"	2035
	"	24	"	"	2070
	"	40	"	"	2105

In 1969 it was estimated that 10,000 people die every day in the developing countries, from diseases due to malnutrition. One should also note that it is in these very countries that population is expected to rise most dramatically: from 2 billion in 1960 to over 3 billion in 1980, and upwards of 4,5 billion in 2000. *Falk* (p. 518) writes that "the continuation of these reproductive habits for many more decades is almost certain to result in national, regional, and possibly global catastrophe." Formerly, population growth was restrained by epidemics (*e.g.* the Black Death during the mid-fourteenth century), war and famine. In our own interests—if mankind is to survive—we must now try to limit population increase and with it world starvation by peaceful means. This can be done by means of birth control measures combined with active environmental protection and a better utilization and more even distribution of the limited resources of the globe.

c) REVIEW OF THE CONCEPT OF CONTRABAND OF WAR

In a review of the concept of contraband of war, two solutions may be considered with regard to foodstuffs.

One of these solutions—foodstuffs may be treated as conditional contraband of war—is based on the unratified London Declaration of 1909 Concerning the Laws of Maritime War (Art. 24, 33–36), and accords with the basic idea of many of the reforms that have now been proposed, namely that during blockade and siege a belligerent shall be duty bound to allow free passage for food consignments exclusively intended for the civilian population.

The second solution—whereby foodstuffs may not be declared contraband of war (*cf.*, *Lauterpacht* 1952 Vol. 11 p. 805)—can be justified on the following grounds. If one concedes, in accordance with the London Declaration, that foodstuffs may be treated as conditional contraband of war, experiences from both world wars testifies that one thereby paves the way to increasingly severe restrictions of food supplies. The solution whereby foodstuffs may not be declared contraband of war at all is considerably more far-reaching. A radical proposal of this kind would presumably meet with vehement opposition in certain quarters but would nonetheless appear to be of greater practical worth than the first solution. Also it is clearly in line with the purpose of a regulation by convention, which would aim at limiting the use of starvation as a method of warfare.

This question is also a matter of obvious interest to neutral states, for whom the task of arranging food supplies for their populations during an international war is both vital and difficult. Every neutral state, negotiating for safe conduct for import deliveries, should therefore welcome a convention provision aimed at unimpeded transport of foodstuffs.

d) FREE PASSAGE FOR CERTAIN RELIEF CONSIGNMENTS

Blockade, like siege, is a permissible method of warfare. As nations become more and more dependent on the mutual exchange of commodities, the effects of blockade on the civilian population are tending to become more and more disastrous. Here it will be sufficient to recall the starvation that occurred during the two world wars and during the Nigerian conflict. During these three conflicts it proved extremely difficult to obtain free passage for international aid consignments.

The root cause of these difficulties lies in the problem of total war, but to a certain extent they are also attributable to three distressing lacunae in existing international law. Firstly, Art. 23 of the Civilian Convention envisages relief supplies of foodstuffs, not to the entire civilian population but only to the most “vulnerable” groups (“children under fifteen, ex-

pectant mothers and maternity cases"). Secondly, the phrasing of Art. 23 allows far too much scope for the discretionary assessment of the blockading power. Thirdly, Art. 23 applies only to international armed conflicts (and not, *e.g.*, to civil wars).

An extension of the scope of Art. 23 is thus urgently needed. In other words, we should work for the adoption of convention articles assuring to the entire civilian population, relief consignments of essential foodstuffs during blockade and siege in any kind of armed conflict.¹¹

The militarily justifiable demands of the blockading or besieging power for guarantees against abuse—*e.g.*, through the relief consignments being delivered to combatants on the opposite side—can be met by means of a clause providing for strict control at all stages of the distribution process. This control should in the first instance be entrusted to a Protecting Power, "to a neutral Power, to the International Committee of the Red Cross or to any other impartial humanitarian body" (Civilian Convention Art. 61).

This prescription of control is designed to dispel any misgivings that may be entertained by such traditional maritime powers as Great Britain and the United States. During the 1949 Diplomatic Conference in Geneva, these states insisted on guarantees against the abuse of the right of free passage through a commercial blockade. Relief consignments were not to result indirectly in primary advantages to the enemy's war effort ("Final Record of the Diplomatic Conference of Geneva of 1949" II A pp. 635-637, 763-764, 819-820).

Here again one can emphasize the powerful humanitarian considerations in favour of all civilian populations being spared from starvation as far as possible. It is therefore to be hoped that Great Britain and the United States are in principle disposed to accede to this proposal for free passage (*cf. Lauterpacht B.Y.I.L.* 1952 pp. 376, 379). In the years 1970-72 this has been put forward by the Secretary General of the United Nations, and by the International Committee of the Red Cross, and also by government experts from a number of countries.

An attempt has been made to elucidate this alternative in a later section (IV), containing a preliminary draft of convention articles, based on the

¹¹In an occupied territory it is the duty of the Occupying Power, to the best of its ability, to ensure the food and medical supplies of the population (Civilian Convention Art. 55). If the population of that occupied territory is inadequately supplied, "the Occupying Power shall agree to relief schemes on behalf of said population, and shall facilitate them by all the means at its disposal." Such schemes, which may be undertaken either by States or by impartial humanitarian organizations such as the International Committee of the Red Cross, shall consist, in particular, of the provisions of consignments of foodstuffs, medical supplies and clothing.—All Contracting Parties shall permit the free passage of these consignments and shall guarantee their protection." (Art. 59)

reforms proposed in recent years. This draft is to be regarded as a further contribution to the discussion of the matter.

5. *Is Alternative 5 Meaningful?*

One plausible objection to alternative 5 is that it goes too far, that it is "unrealistic." To this one can rejoin that the proposal has emerged from a review of different means of warfare (siege, blockade etc.). Other objections which lie very near at hand can be expressed in questions of the following kind: Can rules of international law which we know from experience are violated over and over again, honestly be said to serve any useful purpose? And is it not pointless to regulate one method of warfare (starvation) so long as other, far more effective methods (*e.g.*, aerial warfare) are left unregulated?

This would seem to be a telling argument. It overlooks, however, the fact that the laws and customs of war are predominantly based on humanitarian principles. With this in mind, the unflinching prevention of cruelty, the saving of human lives and the preservation of human dignity must stand forth as an urgent necessity. The nations concerned have established these principles¹² because the prevention of unnecessary suffering is a matter of mutual concern to them. Considerations of this kind, coupled with the instinct of self-preservation and the fear of reprisals, also serve to explain the "balance of terror." Moreover it will be recalled that poison gas was not used during World War II in spite of the preparations made for doing so (*Bunn* p. 386, n. 57), and that no nation has resorted to nuclear weapons since the bombing of Hiroshima and Nagasaki in August 1945. The same interests speak for the greatest possible protection of the civilian population — not least within the context of the articles proposed here.

Greenspan (p. 22) rightly observes that "a regulated war is a lesser evil than an unregulated war." At the same time, more than one expert on international law is profoundly pessimistic on this point. *Schwarzenberger* ("The Year Book of World Affairs" 1968 p. 213) comes under this category. He does not discount the possibility of the nuclear weapon powers, in case of need, abandoning all restraint:

to forsake civilisation and accept the consequences of mechanised and de-personalised warfare or, in other words, mid-twentieth century barbarism in its most destructive form. These are the real obstacles in the paths of would-be reformers on the lines of Nuremberg and Geneva.

¹²In "Martens Clause" the High Contracting Parties refer to "the principles of the law of nations, derived from usages established among civilized peoples, from the laws of humanity, and from the dictates of the public conscience." "Martens Clause" is the declaration in the preamble to the 1907 Hague Conventions, named after Geheirat de Martens, one of the three Russian delegates at the 1907 Hague Conference.

But passivity and sighs of resignation solve no problems.¹³ In the words of the Swedish poet *Gustaf Fröding*, it is our task "not like barbarians to cower in fear and madness neath hard strokes of fate."

Any human being who is faced with a dangerous predicament will try to save himself, as in the case of a pedestrian leaping out of the way of an oncoming car. This cannot be called escapism. By the same token it is meaningful to put forward proposals for rules of international law attuned to contemporary requirements. *Lauterpacht* (B.Y.I.L. 1952 p. 379) has indicated a "signpost" for the review of the laws of war. Revision, he writes, should refer "not to existing law but to more compelling considerations of humanity, of the survival of civilization, and of the sanctity of the individual human being."

IV. Draft Convention Articles

(Applying to any armed conflict except where specified to the contrary.)

1. General

It is proposed that additional protocols to the 1949 Geneva Conventions be made to include provisions concerning the protection of the civilian population from starvation.

A preliminary draft of provisions to this effect is given below (items 2-5). It is assumed here that additional protocols will include:

- a) a preamble stating the following: according to the St. Petersburg Declaration of 1868, the only legitimate object of war is to weaken the military forces of the enemy. Cf. Basic Texts p. 5.
- b) provisions regarding the purpose of the protocols, their applicability, interpretation etc.
- c) definitions of the terms "civilian population," "military objectives" and "non-military objectives."¹⁴ Should possibly a definition of the term "starvation" be found desirable, a suitable basis may be found in Art. II of the 1948 Genocide Convention together with the reform proposals mentioned here (*vid.*, sections II 3 and III 4).

2. Prohibition of the Destruction of Objects Indispensable to the Survival of the Civilian Population

(*Vid.*, 1971 Geneva expert draft Aft. 13. Cf. Basic Texts p. 17 Art. 48.)

Objects which are indispensable to the survival of the civilian popu-

¹³From this point of view it seems somewhat regrettable that the International Law Commission has not been able to devote more attention to the question of respect for human rights in armed conflicts (*Castrén* p. 7, *Greenspan* p. 21, *Lauterpacht* B.Y.I.L. 1952 p. 360 and *Schwarzenberger* "The Year Book of World Affairs" 1968 pp. 198-201). It is all the more encouraging that so much attention has been paid to the subject by the International Committee of the Red Cross and the Secretary General of the United Nations.

¹⁴Concerning these definitions, *vid.*, 1971 Geneva expert draft Art. 5 and 11. Cf., ICRC's Basic Texts pp. 15-16 Art. 41-44.

lation, such as foodstuffs and food producing areas, crops, cattle, water resources and constructions designed for the regulation of such resources must never be subjected to attacks directly launched against them, nor be attacked by way of reprisals.¹⁵

3. *Prohibition of the Use of Biological and Chemical Weapons*

(*Vid.*, 1925 Geneva Protocol. Basic Texts Art. 30 "Means of Combat" should be amplified.)

The use in armed conflicts of any chemical or biological agents of warfare against man, animals and plants is expressly prohibited.

4. *Revision of the Concept of Contraband of War*

(*Cf.*, Basic Texts pp. 15-16. The section entitled "General Provisions.")

Three alternatives are put forward here for discussion:

- a. Foodstuffs may be treated as contraband of war under the name of conditional contraband.
- b. Foodstuffs may not be declared contraband of war.
- c. Additional protocols contain no provisions on this point.

5. *Free Passage for Certain Relief Consignments*

a. GENERAL PROVISIONS CONCERNING RELIEF ACTIONS

(*Vid.*, 1971 Geneva expert draft Art. 30. *Cf.*, Basic Texts p. 22 Art. 64 and p. 42 Art. 30.)

Relief actions. The parties to a conflict shall exercise their authority in such a way as to facilitate actions aiming at assistance and aid, including medical supplies, essential foodstuffs and other material vital to the survival of the civilian population. The offer of such assistance shall not be regarded as an unfriendly act, especially when coming from impartial international organizations.

b. FREE PASSAGE

(Civilian Convention Art. 23)

International armed conflict. (*Vid.*, Basic Texts p. 22 Art. 65. The final words of the first paragraph "of another . . . its enemy" constitute one rewording.)

¹⁵There are advocates of the idea of a prohibition according to Art. 13 of the expert draft also applying to a nation's own armed forces, *i.e.*, covering scorched earth tactics. In this case the final words "by way of reprisals" could be followed by "or destroyed by pre-emptive action" (*cf.*, Basic Texts p. 17 Art. 48:2). However, there are several objections to this idea. Scorched earth tactics must be permissible on the part of the defending side. No state is prepared to supply an invading enemy with foodstuffs, fuel, harbours, airfields, bridges, etc. Subject to certain conditions, Swedish law sanctions the destruction, in time of war or when war is imminent, of "property of such a nature that the enemy's possession thereof would significantly enhance his war effort." Before deciding in favour of destruction, the authority concerned must pay due regard to the conditions of its own civilian population.

The High Contracting Parties shall grant free passage to relief consignments destined exclusively to the civilian population of another High Contracting Party, even if the latter is its enemy.

These Parties shall have the right to prescribe the technical arrangements for the conveyance of relief. They may not, in any way whatsoever, divert relief consignments from their proper destination, nor delay their conveyance. They have the right to be reasonably satisfied, through the Protecting Power, its substitute, or an impartial humanitarian organization, that these consignments are used exclusively for the relief of the needy civilian population.

Armed conflict not being of an international character. (Vid., Basic Texts p. 42 Art. 31.)

In cases of blockade or siege, the Parties to the conflict, or any High Contracting Party concerned, shall allow the free passage of all consignments of essential foodstuffs, clothing, medical and hospital stores and shelter facilities, intended only for civilians.

The Parties to the conflict, or any High Contracting Party concerned, shall have the right to prescribe the technical arrangements under which the passage of relief supplies shall be allowed. They shall in no way whatsoever divert relief consignments from the purpose for which they are intended or delay the forwarding of such consignments.

The Parties to the conflict, or any High Contracting Party concerned, may make such permission conditional on the distribution only to the persons benefited thereby being made under the supervision of an impartial humanitarian body.

V. Summary

Starvation is an ancient method of warfare. Its aim may be to destroy crops and other food resources *within* a state (*e.g.*, by means of devastation or herbicide spraying), or to cut off supplies of food *from outside* (*e.g.*, by blockade or siege).

Starvation as a method of warfare has been studied by the present writer in the light of existing international law and practice in armed conflicts and also in the context of certain proposals for reforms put forward in the years 1969–72. The result of the study is presented in this article, which shows that opinions are divided concerning the permissibility of starving civilian populations. Unambiguous rules of international law would therefore be welcome. Regulation by means of convention should relate to concrete situations. These can vary considerably in different parts of the world, and in relation to the outward framework of the conflict (its nature and scope, the resources of the belligerents, etc.).

According to one alternative (referred to here as *alt. 3*) the starvation of a civilian population would be permissible only when such an action causes capitulation or is reasonably calculated to do so. This alternative is rejected here, above all because it affords too much scope for discretionary decisions and uncertain assessments.

Another alternative which has been studied is for all starvation of civilian populations to be prohibited (*alt. 4*). A prohibition of this kind presupposes that one can still speak in terms of a distinction between combatants and civilian population. The transition to total war and to guerrilla warfare renders this distinction—one of the foundations of international humanitarian law—increasingly vague. On the other hand there is a great deal to suggest that distinction between combatants and civilian population still remains a reality of international law. Thus an express prohibition of starvation could nonetheless be a viable proposition.

The analysis leads, however, to the recommendation of a “package” containing certain rules (*alt. 5*). It is proposed that this comprise, firstly, a prohibition of the destruction of objects indispensable to the survival of the civilian population and, secondly, general acceptance of existing bans on the use by belligerents of weapons particularly endangering food production as implied in the prohibition of the use of biological and chemical weapons. A revision of the concept of contraband of war is also recommended. Finally, convention articles are proposed which in any form of armed conflict would guarantee the entire civilian population essential food supplies during a blockade or siege.

Alternative 5 is elucidated by means of a preliminary draft of convention articles. This draft is based on a review of the reform proposals and is intended as a contribution for discussion. The values at stake, which constitute the fundamental motives of alternative 5, are “compelling considerations of humanity, of the survival of civilization, and of the sanctity of the individual human being.”

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See also, Schwarzenberger Vol. 2 1968.

Abbreviation

A.F.D.I. *Annuaire Français de Droit International* (Paris)

A.J.I.L. *The American Journal of International Law* (Washington, D.C.)

alt. alternative

Basic Texts. *vid.* Bibliography, ad Red Cross Documents

B.Y.I.L. *The British Yearbook of International Law* (London)

Civilian Convention. *The 1949 Geneva Convention Relative to the Protection of Civilian Persons in Time of War.* By 1971 the 1949 Geneva Conventions (four in number) had been ratified or subscribed to by 127 states, including Sweden and the United States.

I.C.R.C. *International Committee of the Red Cross*

Land Warfare Regulations. *The 1907 Hague Regulations Concerning the Laws and Customs of War on Land.* By 1971 the Hague Convention (No. IV) Concerning the Laws and Customs of War on Land together with its appurtenant Regulations had been ratified or subscribed to by 44 nations, including Sweden and the United States.

R.B.D.I. *Revue Belge de Droit International.* Brussels.

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1971 Geneva expert draft. *vid.* Bibliography, ad Red Cross Documents.