# INTERS☉S

# HUMANITARIAN CONGRESS: RESEARCH PAPERS

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# SATELLITES FOR HUMANITARIAN AID: WHICH IMPACT ON HUMANITARIAN ACCESS?

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## 1. Introduction

The space sector is in expansion and the use of satellites is spreading also to commercial and humanitarian activities. On the one hand, satellites have great potential to favour humanitarian access by bridging crucial data gaps and by improving aid delivery's accuracy, timeliness and safety. On the other hand, elevated costs and other barriers to their diffusion preclude satellites' availability to many humanitarian organizations and populations in need, thus engendering imbalances and discriminations. Moreover, important actors in the satellite sector may pursue interests that diverge from humanitarian ones and risk to hamper humanitarian activities. To evaluate satellites' impact on humanitarian access, it is necessary to inquiry on who uses them, how and for what. To this end, this article provides a critical review of the literature and relies on insights from interviews with relevant actors, suggesting that satellites may favour humanitarian access if they do not accentuate or engender discrimination against certain humanitarian workers and people in need, and if their humanitarian use is clearly separated from the military one.

## 2. Making Room in Space

The 21st century is sometimes told to be the beginning of a post-Cold war "New Space" age.[1] Small and nanosatellites have revolutionized the space industry by providing an option for cost-effective space launches and by undertaking several specific tasks. SmallSats are spacecraft with a mass less than 180 kilograms, while nanosatellites are miniature satellites which are often in the standardized form of CubeSats, measuring 10x10x10 cm and weighing less than 1.33 kg. The size and weight of these satellites make them much cheaper to assemble and launch than traditional satellites. CubeSats can cost a few thousand dollars; SmallSats may be one hundred times more expensive, which is in any case much less than the multi-million or billion-dollar cost of a large satellite. Small satellites can be launched from a variety of platforms, including through a rideshare multiple launch service[2], where many small satellites can be accommodated, thereby "piggybacking" on a same rocket and share the costs of the launch. Moreover, despite their small size they can be equipped with more sophisticated technology than traditional satellites, like high-resolution cameras and sensors, thus bringing forth custom-built solutions. Such a possibility for reduced costs and time of satellites' development and deployment turned the space in a very profitable economic sector, expanding the demand and attracting many public and private investors. According to the report "Expanding frontiers" issued by PwC and the UK Space Agency in 2023, over $47bn of private capital has been invested across the global space sector since 2015, growing on average 21% per year.[3]

The Small and CubeSat revolution both benefitted traditional space actors and made room in space for some new ones. On the one hand, traditional space entrepreneurs – namely, governments and national space agencies of certain states – diversified their systems, in such a way to make "more difficult for adversaries to knock down huge swathes of capability all at once".[4] On the other hand, small satellites increased both the number of space-capable actors within

states and the overall amount of states with space capabilities. Since small satellites are easier to design, construct, and launch than conventional satellites, they are no longer exclusively employed by governments and the military, but also by the commercial sector, universities, small country space agencies, scientific organizations, start-ups, amateurs, and NGOs. Some CubeSats, launched by universities or private firms, have even been a country's first satellites.[5] This enlargement of the arena of satellites' producers and users is commonly referred to as "democratization of space".[6] It could bring several advantages for science and society[7], not only promoting exploratory, high-risk space research, but also improving human conditions on Earth. Among other things, in fact, satellites are also deemed to facilitate humanitarian aid and to help restore good conditions of life in territories disrupted by disasters or conflicts.

This paper questions whether satellites do indeed favour humanitarian access. The answer to such question is all but obvious and more in-depth analysis is needed to grasp the impact of satellites' democratization in the humanitarian sector. While the next paragraph underlines some circumstances in which satellite technologies can favour humanitarian access, the subsequent paragraphs invite to problematize such an optimistic view, highlighting some problems engendered by an indiscriminate application of satellite technologies to humanitarian activities.

A preliminary clarification of some key terms is warranted in order to better circumscribe this paper's problematique. First, when speaking about satellites technologies in this context we refer to the final products of satellite data gathering and management. Data gathering is performed by three types of satellite technology.[8]

- Earth Observation (EO) is the gathering of information about the physical, chemical, and biological systems of the planet via remote-sensing technologies. Remote sensing can be performed using not only images taken by optical sensors, but also those derived by radars. Optical sensors measure solar light reflected from the Earth's surface in the visible spectrum to produce easily interpretable images, similar to what human eyes see. Nevertheless, optical images are obstructed by darkness and clouds, while radar sensors provide images by emitting microwaves from an antenna towards a surface and by recording the intensity and delay of reflected waves. The lengths of these waves are much longer than those of visible light, making the sensors functional in all lighting conditions and able to penetrate through cloudsand dust.[9]

- Global Navigation Satellite Systems (GNSS) are constellations of satellites providing positioning, navigation, and timing (PNT) signals from space. PNT signals are broadcast from a GNSS from space. These signals can be augmented by ground stations to improve accuracy.

- Satellite Communications (SatComms) provide voice and data/internet connectivity in regions that are not covered by terrestrial mobile networks or where such networks are not stable.

Then, satellite data management is indispensable in rendering satellite data intelligible and available when needed. Data streams deriving from satellites have to be refined and archived in order to extract valuable information from them. "Satellite data management" encompasses several different operations: image processing, detection, data integration and interpretation, platform and cloud services. On-demand cloud infrastructure enables all data analysis and product generation to be implemented in the cloud instead of the user's desktop. As for satellite applications, cloud providers allow users to conduct analyses that would otherwise require enormous resources to access, download, store, and

[1] Del Canto Viterale, Francisco. 2023. *"Transitioning to a New Space Age in the 21st Century: A Systemic-Level Approach"* Systems. 11(5): 232.

[2] To see more: https://www.esa.int/ESA_Multimedia/Images/2019/04/Rideshare_multiple_launch_service (last access: 27/08/2023)

[3] PwC, UK Space Agency. 16 May 2023. *"Expanding frontiers: The down to earth guide to investing in space"*. Available at: https://www.strategyand.pwc.com/uk/en/insights/expanding-frontiers-down-to-earth-guide-to-investing- in-space.html (last access: 27/08/2023)

[4] Malisuwan, S. and Kanchanarat, B. 2022. *"Small Satellites for Low-Cost Space Access: Launch, Deployment, Integration, and In-Space Logistics"*. American Journal of Industrial and Business Management 12(10): 122.

[5] *Ivi.*

[6] Baiocchi, Dave, and Welser, William. 2015. *"The Democratization of Space:* New Actors Need New Rules." *Foreign Affairs.* 94(3): 100.

[7] Novak, A., Schuett, A., Parker, A., Bowser, A., Newbury, E. M. H., Goguichvili, S. Feb 7, 2022. *"The Rise of Cubesats: Opportunities and Challenges"*. Wilson Center. Available at: https://www.wilsoncenter.org/blog-post/rise- cubesats-opportunities-and-challenges (last access: 22/07/23)

[8] The following definitions are mainly derived from the report: CaribouSpace and UKAid. August 2022. *"Beyond Borders: Satellite Applications for Humanitarian Emergencies"*, p.5. Available at: https://space- economy.esa.int/article/177/beyond-borders-satellite-applications-for-humanitarian-emergencies (last access: 27/08/23).

[9] To see more: https://www.esa.int/SPECIALS/Eduspace_Global_IT/SEMLT0G64RH_0.html (last access: 27/08/23)

analyze. Therefore, behind the word "satellites" there is a myriad of correlated technologies handled by different actors that need to be taken into account. Secondly, one needs to clarify what humanitarian access is. Humanitarian access is not explicitly defined in International Humanitarian Law (IHL), where it is understood as a precondition for effective humanitarian assistance. On the one hand, defining humanitarian access may not be an exclusive prerogative of IHL since the issue of humanitarian access emerges when any population is in need, for reasons that encompass but are not limited to an armed conflict, as it is the case with natural disasters. On the other hand, constraints to humanitarian access are frequently engendered by a lack of familiarity – on the part of states, non-state armed groups, and humanitarian relief organizations – with the existing legal framework[10] and implicitness does not help. Moreover, humanitarian access as a precondition for assistance has also to do with an institutional enabling environment which would be better developed in presence of shared definitions. For this reason, competent authorities have struggled to define it. UNGA resolution 46/182 describes it as a principled and negotiated endeavour, whereby humanitarians access people in crisis-affected areas and provide them with emergency assistance in accordance with the principles of humanity, neutrality, impartiality and independence.[11] Respect for these normative principles facilitates concrete negotiations with state and non-state entities to reach people in need. To further support everyday negotiations for humanitarian access, the United Nations Office for the Coordination of Humanitarian Affairs (OCHA) develops tools and provides guidance, such as the Access Monitoring and Reporting Framework. The focus of such definition on humanitarian operators' behaviour is helpful to the extent that it identifies a subject susceptible to act in accordance, and therefore responsible for compliance, with established principles and top-down guidance. Nevertheless, such approach ignores other relevant aspects of humanitarian access – like the endeavour of population in need and the empowering/depowering effects that deployment of humanitarian assistance can have on them. A more comprehensive conception is that of the Global Protection Working Group, according to which "humanitarian access should be understood both from the perspective of the affected population having access to protection and assistance, as well as the humanitarian actors having access to those requiring assistance and protection".[12] Instead of treating populations in need as mere passive recipients of material aid, such definition properly values their agency and their ability to promote their own rights. Therefore, the interpretation of humanitarian access as a two-way process will be adopted in the following as it highlights the relevance of assisted persons' capacities to receive humanitarian aid.

The terminological clarification above reveals an intricate reality, where technological knowledge and capacities are unevenly distributed among a wide variety of actors, and coordination between providers, users and beneficiaries represents a remarkable challenge.

## 3. Methodology

This research is based on the collection and scrutiny of information coming from two main sources: the state-of-the-art literature on satellite technology and humanitarianism; and interviews with key informants. The literature review encompasses both the scientific literature and the grey literature, namely reports. The articles I consulted belonged mainly to the critical humanitarian studies and critical remote sensing studies strands of research. Reports are issued from state development agencies, international organizations and private research centers, so to grasp the point of view of both public and private actors on satellites' potential for facilitating humanitarian activities and, therefore, humanitarian access. Almost all those actors have their own satellites and issue annual reports to monitor their performance. Enriched with first-hand and up-to-date data, such reports are indispensable to understand the state of the art with regards to satellite services. Nevertheless, reports are usually focused on specific devices and lack a

comparative perspective. Therefore, even if some reports specifically examine the potentials of satellite technology for the humanitarian sector, they usually fail considering all the alternative tools (also non-satellite ones) that humanitarian operators actually take into account while deciding how to conduct and coordinate their activities. This bias highlights the need to complement reports from the supply-side actors with interviews with humanitarian operators that practically decide which tools best fit their contingent needs. Between July and September 2023, I held four interviews: with a humanitarian NGO's male officer working as ICT coordinator; with two officers, a male and a female, from a humanitarian NGO specialized in ship recognition models through satellite imagery; with a male manager from a spaceflight services company. During the interviews with some members of NGOs that operate in diverse settings and with different organizational models, many obstacles arose with regards to the use of satellite technologies. The array of technical difficulties emerging from reports was compound by problems deriving from the costs and conditions imposed by providers. I am aware that my institutional anchorage, non-technical profile and age may have influenced the information released during the interviews. Presenting myself as a young student of international security studies and being part of a project promoted by INTERSOS and the Sant'Anna School of Advanced Studies may have inhibited my interlocutors from delving deeply into the technical aspects of satellite technologies and from expressing critical opinions on humanitarian NGOs and academic institutions. This research makes use of some examples that illustrate the employment of satellite technologies in humanitarian contexts. Although the analysis is mainly conceptual, still concrete examples are very helpful in as much as they serve as useful illustrations of the research's findings. This work has no ambition to offer a generalizable understanding of neither the world of satellite technologies nor of humanitarian work nor a conjunction of the two, but simply attempts to problematize the way in which satellite applications can impact on humanitarian activities, namely regarding the problem of access.

## 4. Satellites for Good: Benefits to the Humanitarian Sector

According to the United Nations Office for Outer Space Affairs (UNOOSA), space-based technologies provide unique contributions to the international humanitarian system.[13] Protracted crises and large-scale population displacements require up-to-date information in many facets of humanitarian action support, from mission planning, resource deployment and monitoring, to nutrition and vaccination campaigns, camp plotting, damage assessment, etc. Yet such crucial data are often in short supply, even more so in conflict environments and fragile states. Satellites can exactly fill such data gaps and strengthen humanitarian action in all phases of crises management. In fact, not only gathering information is useful to disaster response, but also some predictive measures can be undertaken on the basis of data made available by satellites. For example, earth observations can be particularly powerful in supporting response activities, identifying damaged critical infrastructures or IDPs. Satellite-generated data can also serve predictive analytics for slow- developing crises, such as foreseeing weak crop yields months before the harvest season. Apart from potentially being a good solution, data derived from satellites are sometimes the only ones, as it is often the case in remote or conflict areas. To grasp a more precise idea of satellites' potential for humanitarian action, it is worth examining the specific functions that can be performed by different satellite technologies.

### 4.1 Satellites for Good: Benefits to the Humanitarian Sector

For what concerns EO, the uptake of geospatial technologies within the humanitarian aid sector happened at an unprecedented rate over the last decade.[14] Geohumanitarian action, meaning the integrated usage of Earth observation and geoinformatics in support to planning and deploying of humanitarian aid, is a field where this technology can tap

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[10]  Schwendimann, Felix. 2011. *"The legal framework of humanitarian access in armed conflict. International Review of the Red Cross"*. 93. 994.

[11]  Available at: https://www.unocha.org/humanitarian-access. (last access: 01/09/23).

[12]  Global Protection Cluster Working Group (PCWG), *"Handbook for the Protection of Internally Displaced Persons"*. Geneva: Global PCWG, December 2007. Available at: http://www.humanitarianreform.org. (last access: 03/08/23).

[13]  See: https://www.unoosa.org/oosa/en/benefits-of-space/humanitarian-assistance.html (last access: 28/08/23).

[14]  Lang, S., Füreder, P., Rogenhofer, E. 2018. *"Earth observation for humanitarian operations"*. In C. Al-Ekabi & S. Ferretti (Eds.), Yearbook on Space policy 2016 *"Space for sustainable development"*. Berlin: Springer. 217– 229.

its full potential.[15] Compared to conventional field mapping, remote sensing is less time-consuming and can be conducted remotely and with the help of algorithms that automatically detect relevant features. Since a single high-quality map normally requires at least 6-8 hours of work if created manually[16], humanitarian operators usually prefer relying on satellite images made available by well-reputed providers, first of all the UN OCHA.[17] In the following paragraph, an example will be provided of how EO may be the only way to assess a situation of humanitarian crisis and to promote humanitarian access.

A concrete example may help clarify things. Due to the inaccessibility of wide areas of Nigeria to field surveys, the situation of cropland in the country could only be estimated by using geospatial analyses. Since the beginning of the Boko Haram insurgency, in conjunction with volatile climate conditions, the country has lived a situation of severe food insecurity. The cultivation of crops and breeding of livestock have been remarkably disrupted.[18] For this reason, in 2020 the World Food Programme requested the support of the Copernicus Emergency Management Service to assess the agricultural and food security situation of 57 Local Government Areas in the country[19]. Copernicus is the Earth Observation component of the European Union's space programme and the Copernicus Emergency Management Service (CEMS) provides geospatial products and analyses based on satellite imagery before, during and after a crisis occurs. Some of its performances are on-demand and can be activated by the Emergency Response Coordination Centre of the European Commission (ERCC), any local, regional, national entity/organisation dealing with disaster management, from countries participating in the EU Civil Protection Mechanism, and in the rest of the world through the EU Delegations, but also United Nations bodies such as the World Food Programme, as well as non-governmental organizations. In the case of Nigeria, the CEMS Risk and Recovery Mapping component provided an analysis of crop change between the two reference years of 2010 and 2019. Change detection of crop areas was performed using Normalized Difference Vegetation Index (NDVI) composite raster based on high resolution imagery data. NDVI is an indicator of the greenness of the biomes. Even though it is not a physical property of the vegetation cover, it is measured using the spectral reflectance in the near infrared and red wavebands, and it is it widely used for ecosystems monitoring as it indicates the presence of photosynthetic activity.[20] Compared to surrounding natural vegetation, cropland in Nigeria was identified by its high changes of NDVI values between the different phases of the vegetation period: photosynthetic activities of crops are low during the ploughing and sowing period, increase during the growing phase until reaching a maximum value right before the harvest. Once harvested, NDVI values should decrease drastically.[21] Therefore, CEMS Risk and Recovery Mapping service assessed cropland change, using high-resolution multispectral satellite imagery. Crop change status was then assigned per populated site, thus obtaining statistics on the portions of population affected by crop change across different periods.[22] The results of such analysis were then integrated by the WFP in the Cadre Harmonisé[23] and used to inform humanitarian response mechanisms, including strategic decision-making related in hard-to- reach areas.

## 4.2 Global Navigation Satellite Systems

GNSS is widely used for goods' distribution and tracking, as well as for the safety of field staff location. For example, up to date approximately 2 600 ICRC field vehicles have installed satellite tracking equipment[24] and custom satellite mobile apps are increasingly available on app stores for humanitarian operators on the ground. In case of lost people or vehicles, GNSS can help with search and rescue (SAR) operations. For instance, EU's GNSS Galileo has a service dedicated to that, which includes also a Return Link Service (RLS) that provides an automatic acknowledgement message back to the user informing them that their request for help has been received. Galileo has steadily increased its scope, being deployed to provide safety of life (SOL) navigation services to aviation, maritime and land-based users over most of Europe.[25] PNT satellite technology is also employed for geo-tagging of relevant infrastructures. The democratization of digital mapping through smartphones has proven to be very useful in this sense. In fact, geo-tagged texts, pictures and videos help assessing the impact of the damages both from the humanitarian and financial (e.g. documentation for cost claims such as insurances) perspectives. Humanitarians can use smartphones to 'map' data and crowdsource information fundamental to situational awareness, such as logging of waypoints at the start and end of damaged road sections.[26] The usefulness of GNSS applications makes them more and more popular also for humanitarian purposes. According to the European Union Agency for the Space Programme (EUSPA) 2023 report, a significant increase in annual shipments of GNSS receivers is foreseen with more than 10 billion GNSS devices that will be operational by 2031[27].

## 4.3 Satellite Communications

Finally, SatComms are not a new entry in the humanitarian sector, satellite phones being a common tool for humanitarian aid delivery. The phones are especially useful in remote areas, where traditional cellular networks are often unreliable or non-existent or when a secure backup for other communication is absolutely needed.[28] Satellite phones provide a reliable connection that can be used to coordinate relief efforts and provide support to those in need. Unlike some other satellite-based technologies, using satellite phones is quite easy and does not usually require any specific training, thus favoring employment by non-technical personnel. Satellite communications systems provide connectivity to users equipped with compatible terminals to transmit and/or receive data/voice with another user or a system located in another area. Making possible two-way communication, SatComms are likely to promote humanitarian access as a two-way process, allowing also people in distress to express their own needs for more effective and need-based humanitarian aid. This, in turn, facilitates the respect of human rights – also those of vulnerable groups – in humanitarian aid. In fact, one of the most important factors determining the discrimination of vulnerable people in disaster response is the paucity of data on who needs what, where, and why. Since they promote the possibility of feedback on humanitarian aid, SatComms can help carrying on monitoring and evaluation activities.[29]

However, examining the functioning of specific technologies is not enough to account for all the advantages apported by SAT technologies in comparison with how humanitarian aid operations were deployed before satellites' introduction. In a comparative and incremental perspective, satellites apport some improvements to humanitarian activities, most notably by:

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[15] Stefan Lang et al. 2020. "Earth observation tools and services to increase the effectiveness of humanitarian assistance", European Journal of Remote Sensing, 53(2), 67-85.

[16] Information available at: https://innovation.wfp.org/project/humanitarian-topographic-atlas (last access: 28/07/23).

[17] Interview with humanitarian NGO officer, done remotely, July 2023.

[18] Information available at: https://emergency.copernicus.eu/mapping/ems/crop-change-detection-conflict-affected- areas-nigeria-2021 (last access: 28/08/23).

[19] Information available at: https://emergency.copernicus.eu/mapping/list-of-components/EMSN063 (last access: 28/08/23).

[20] Information available at: https://land.copernicus.eu/global/products/ndvi (last access: 28/08/23).

[21] Information available at: https://data.jrc.ec.europa.eu/dataset/d3550b3d-3499-43d2-8a96-5cd09fa19b28 (last access: 28/08/23).

[22] Information available at: http://www.copernicus.eu/en/news/news/observer-saving-lives-and-helping-most- vulnerable-how-copernicus-supports-humanitarian , p. 7. (last access: 28/08/23).

[23] "The Cadre Harmonisé is a unifying tool that helps to produce relevant, consensual, rigorous, and transparent analyses of current and projected food and nutrition situations". To see more: https://www.ipcinfo.org/ch (last access: 28/08/23).

[24] Zhou, Wen. 2023. "War, law and outer space: pathways to reduce the human cost of military space operations", ICRC blogs: Humanitarian Law & Policy, p.2. Available at: https://blogs.icrc.org/law-and-policy/2023/08/15/war-law-outer- space-reduce-human-cost-of-military-space-operations/ (last access: 28/07/23).

[25] Information available at: https://www.rheagroup.com/the-role-of-satellites-in-supporting-humanitarian-aid/ (last access: 28/08/23).

[26] EUSPA. 2023. "Report on Emergency Management and Humanitarian Aid", p. 56. Available at : https://www.gsc- europa.eu/sites/default/files/sites/all/files/report_on_emergency_management_humanitarian_aid_user_needs_and_requi rements.pdf (last access: 28/07/23).

[27] Ivi, p. 9.

[28] Interview with humanitarian NGO officer, done remotely, July 2023.

[29] Bizzarri, Mariangela. 2012. "Protection of Vulnerable Groups in Natural and Man-Made Disasters", in A. de Guttry et al. (eds.), International Disaster Response Law. 382.

- Increasing predictability: Satellite technologies mitigate uncertainty through objective analytical tools that can predict outcomes, especially for low pace evolving events. The analysis of a large amount of satellite data, processed through certain methods (deductive, inductive or mixed) enshrined in specific algorithms, allows the prediction of patterns that are repeated over time in what are called series of events.[30]

  Protecting staff through remote management: Satellites make sometimes possible to remotely evaluate situations on the ground before the deployment of humanitarian activities, making humanitarian aid less vulnerable to volatile environments and promoting safety of humanitarian staff.[31]

- Automatizing and speeding up tasks: Satellites gather information in a timely, repeatable and cost-efficient manner, supporting continuous situational awareness and better decision- making.

- Promoting transparency: Methods to collect and process data are standardized and allow for more transparency and accountability across stakeholders. Satellites can also monitor and verify outcomes, providing regular feedback to humanitarians.

Nevertheless, such a description of the positive impact of SAT technology on humanitarian activities risks being too abstract for two reasons. First, it presupposes humanitarian organizations to be inseparable units, without explaining who exactly is benefited and who may be damaged within humanitarian organizations by the changes introduced by satellites. Secondly, it fails to consider that satellites – as any technological innovation – are not exogenous variables but are developed and adopted by specific entities according to their own interests. Therefore, careful considerations of these two conditions is needed to answer the research question.

## 5. **Winners and Losers:** SAT Technology as a "Difference Multiplier"

Who is concretely affected by the changes apported by SAT technologies? Who uses satellite data and for what? Neither a description of what satellites can do, nor a comparative analysis of satellite- enabled performances with the status quo ante can explain the changes that satellites can bring forth in the relationships among humanitarian workers, as well as among beneficiaries. Until now, we have considered only the impact of satellites on the performances of ideal-typical "humanitarian workers" and "people in need", as if they were internally cohesive groups. Nevertheless, both are indeed internally heterogeneous groups composed of distinct populations and organizations. Moreover, each population and organization is made of people with different roles and capabilities. Since humanitarian access is about real people's lives, only considering these two concrete distinctions we can better grasp the effect of satellites on humanitarian access in terms of the "relational output" they produce. Therefore, the impact of SAT technologies can be further analyzed by considering these other two levels of specification. The first is the one in which satellites are available for some humanitarian organizations (or for some populations in need), but not for others. The second is the one in which satellites are available for some actors within the same humanitarian organization (or the same population in need), but not for others. Each of the two scenarios is twofold and, therefore, the cases to be considered are four.

The first case is when a satellite technology is sold on the market and proposed to a plethora of humanitarian organizations. Although there are several free services made available by public national and international institutions, many humanitarian NGOs may prefer buying private services, and procurement of satellite services for humanitarian organizations is a frontier in expansion for some private providers.[32] In fact, relying only on open access data of public

providers requires total adaptability of one's own activities to the timing and modalities of the public programme at stake, while private providers offer solutions that are more tailored on NGO's specific needs with regards to the quality of images, the area of coverage and the frequency of the service. Moreover, NGOs might want to be independent from existing governmental and international programmes and conduct unhindered operations. As a result, many humanitarian NGOs now acquire agreements and data access permissions, even if offered at reduced rates, from private providers who make no clear distinction between humanitarian and non-humanitarian clients.[33] Consequently, the cost of satellite services remains relatively high.[34] Moreover, small humanitarian NGOs mainly stipulate contracts not directly with SatComms providers, but with local providers to which the set up of SatComms hardware is delegated.[35] Intermediairies may, in turn, raise the price of the service. This is why, for many NGOs, the use of SatComms and other satellite applications is strictly limited to emergencies. Thus, economic barriers persist, impacting the accessibility of satellite technologies for humanitarian organizations, particularly those that are small and located in economically disadvantaged regions, especially in the global South. Beyond economic constraints, there are also non-economic obstacles related to the knowledge and proficiency required for effective utilization of satellite technologies and the interpretation of satellite data. In fact, small and local NGOs, unlike their larger and international counterparts, do not usually possess dedicated training programs for satellite technologies.[36] Moreover, even when free training initiatives are available, they are mainly addressed to governmental organizations. For example, in 2020 the United Nations Satellite Centre (UNOSAT), which is part of the United Nations Institute for Training and Research (UNITAR), delivered 16 learning-related events, 6 of which were web-based and 10 of which took place face-to-face (4 in the Pacific, 4 in Africa, 2 in Asia), to 471 beneficiaries consisting mostly of government officials.[37] Consequently, although free satellite services and training opportunities exist worldwide, local humanitarian NGOs may still remain excluded from reaping their benefits. Such economic and educational constraints risk hindering the localization turn in the humanitarian sector, intended as the empowerment of local responders in affected countries to lead and deliver humanitarian aid. Local NGOs are often attributed the role of first responders when reacting to a humanitarian crisis and are considered more effective due to their proximity to the geographical and sociocultural reality of the target population. Nevertheless, in practice they are subject to numerous structural barriers which constrain their space in the economy of aid.[38] Expensive and hard-to-manage satellite services may not subvert the subordination of local responders, and excluding local NGOs from the satellite revolution in the humanitarian sector for economic and training constraints means impeding localization.

The second case is when a satellite technology is made available for humanitarian purposes, but it is not straightforward that all populations in need around the world will take advantage of it. In fact, deployment of SAT technologies only in some war or disaster settings - and not in others – may exacerbate issues of double standards and unequal repartition of humanitarian aid. Some crises attract more than others the attention of the media, donor governments, organizations, and the public. The "CNN effect" and the political priorities of donors drive aid allocation, much more than the number of people affected by the conflicts or the levels of mortality.[39] For example, unlike people suffering from other conflict around the world, Ukrainians benefitted from Elon Musk's SpaceX free access to its Starlink internet service, suspended from the payment of fees. Following this initiative, many tech companies have offered support in the form of internet connectivity to Ukrainians: for example, Airalo, a US-based eSIM company, ensures refugees and their families are kept connected wherever they, offering free SIM cards with internet in any country in the world for

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[30] Guida, Emilio. 2021. "The use of satellites in humanitarian contexts", NCHS paper, 4.

[31] Interview with humanitarian NGO officer, done remotely, July 2023.

[32] Interview with member of a satellite provider, done remotely, September 2023.

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[33] Interview with member of a satellite provider, done remotely, September 2023.

[34] Interview with humanitarian NGO officer, done remotely, July 2023.

[35] Interview with humanitarian NGO officer, done remotely, August 2023.

[36] Interview with humanitarian NGO officer, done remotely, July 2023.

[37] Information available at: https://unitar.org/about/news-stories/news/unosat-2020-year-review (last access: 11/10/23).

[38] Richmond, Oliver P., "Beyond local ownership in the architecture of international peacebuilding", Ethnopolitics 11(4), pp. 354-375.

[39] Colombo, Sandro. "Are death and suffering in Ukraine different than in Yemen, Afghanistan or Ethiopia? Double standards in humanitarian assistance". Epidemiologia & Prevenzione. 46(3). 130.-375.

Ukrainians.[40]

Not only the deployment of satellite technologies may be subject to the logic of double standards, but it might also apport visibility to some crises to the detriment of others. Satellites usually facilitate the observation and collection of information on conflict and disaster settings, potentially creating the perception that those settings are more manageable in comparison to others. Such perception might influence the allocation of humanitarian aid to areas where satellite technologies are employed, possibly disadvantaging other regions in need of assistance.

The third case is the one in which the introduction of satellite technologies in the activities of a humanitarian NGO facilitates the work of some humanitarians to the detriment of others, producing discriminations within the organization itself. Since SAT technologies usually require technical expertise, humanitarian workers with such competences can be advantaged compared to others. In fact, a division of tasks can be conducted on the basis of such skills, bringing to an uneven distribution of risk. Since tasks in the field are usually riskier than those remotely fulfillable, remote management can secure some humanitarian staff but not all of it. Indeed, it can simply transfer security risk from non-local to local staff or sub-contractors, where non-local staff is usually the most trained and prepared.

The fourth case is the one in which, when assisting a certain population in need by means of SAT technologies, such technologies can be useful in providing assistance to some people – but not others - to express their needs, as well as in detecting only some specific needs. Not all vulnerable people are able to access and use satellite technologies in the same way. For example, although satellite phones are not difficult to use even for very young people, they may still be out of reach for ill people or the elderly, thus producing discriminations even between vulnerable groups. Moreover, not all specific needs are easier to detect thanks to satellite technologies. For instance, while earth observations can signal damaged infrastructures and indirectly point to the needs of disabled people, it is more difficult to deduct psychological needs by satellite data.

To sum up, any assessment on the impact of SAT technologies on humanitarian access cannot prescind from the acknowledgment of imbalances – caused or reproduced by satellites - between and within the groups involved in emergencies. Such evaluation of the "relational output" of satellites reveals that some humanitarian organizations and disrupted populations have more chances to benefit from satellites than others. Moreover, some specific humanitarian workers and persons in need may take advantage of them to the detriment of others. Therefore, SAT technology highlights existing differences and produces new ones, thus working as a "difference multiplier". Without denying all the qualities of satellite applications as described in the previous paragraph, still it is necessary to consider that someone could be excluded from those benefits. Although satellites might in principle favor humanitarian access, most disadvantaged humanitarian workers and people in need may still remain excluded and existing differences be exacerbated. Therefore, the problem of humanitarian access through satellites includes that of "access to access", namely the problem of unequal access to technologies that might favour access to humanitarian aid.

## 6. Orbiting the world of interests behind SAT technology

The second issue regarding the use of SAT technologies to enhance humanitarian action, and access in particular, is that satellites should not be conceived as inert, neutral artifacts, since they are produced and adopted by specific actors and therefore convey an array of diverging interests. Among those actors, the military deserves great attention as one of the main producers and users of space technologies. The relevance of military actors and interests in this field has remarkable implications, such as the risk of delays and obstacles to the spread of SAT technology also in the civil and humanitarian sector, or the issue of dual use, which runs the risk of undermining the key principles of humanitarian action, such as discrimination, neutrality and impartiality. Moreover, when using satellites, even aid providers may inadvertently uphold interests other than purely providing relief.

### 6.1 Barriers to diffusion

Although a democratization of space technologies is currently ongoing, still openness and availability of satellite data is limited. Governmental and international agencies have sometimes access to satellite data in an exclusive or preferential way. According to a study conducted by UKAid, 42% of satellite services are only for government-type users, while much lower usage is recorded by first responders to emergencies and by the affected public[41]. Some obstacles to the diffusion of SAT technologies to the humanitarian sector could be linked to the relevance of the military in the development and use of such technologies.

In the early stages of space technologies development, the primary focus of the two most active states in this domain – USA and URSS – was military, with military satellite launches accounting for three- quarters of the total during the Cold War[42] and many key satellite applications, like the GPS[43], being developed in military environments. Nowadays, the military still plays an important role in the development of space capabilities. In China, the management of both civil and military space activities is entrusted to a single structure under military control. In other countries, the link between civil and military programs takes place at the level of the board of directors of civil space agencies, where a place is reserved for a representative of the armed forces, as is the case, for example, in France for CNES and in Italy for ASI.[44] Therefore, SAT technology is still frequently developed by taking account, first and foremost, military purposes, and the average time gap that exists between military and commercial use of such technologies is of five to ten years.[45] Moreover, the transfer to civil uses may require significant additional investments in R&D.[46]

Today, although the percentage of exclusively military satellites has decreased, due to increasing commercial satellites, military use of space has not. In fact, some dual-use satellites are used by the military or carry military payloads.[47] To date, armed forces have used space systems in a range of applications, such as navigation of military aircraft, precision targeting and weapon systems, advance warnings of missile attacks, surveillance, and reconnaissance.[48] Space is increasingly militarized and perceived as an "operational domain"[49] and the use of the outer space for predominantly peaceful purposes seems quite far. The relevance of the military in both the development and exploitation of satellites may explain the delays and barriers to the spread of SAT technologies in the humanitarian sector and, therefore, their employment to favour humanitarian access. As long as cutting-edge satellite technologies primarily remain within the military domain before being gradually disseminated to the humanitarian sector, it is likely that humanitarian employment of these technologies will persistently carry the risk of dual use.

### 6.2 Dual use

Military entrepreneurship in the space sector alongside the commercial one brings forth the issue of dual use. Satellites

40  Information available at: https://www.dw.com/en/tech-firms-provide-free-internet-for-ukrainians/a-6136446 (last access: 12/08/23).

41  Note 7, p. 61, figure 17.

42  Aoki, Setsuko. 2017. "Law and military uses of outer space". In R. Jakhu & P. Dempsey (Eds.), *Routledge handbook of space law*. New York, NY: Routledge. 197.

43  For a brief history, see: https://aerospace.org/article/brief-history-gps (last access: 19/08/23).

44  Available at: https://www.ispionline.it/en/publication/new-space-race-risks-and-opportunities-32060 (last access: 23/08/23).

45  Note 29, p.6.

46  Molas-Gallart, J. 1997. "Which way to go? Defence technology and the diversity of 'dual-use' technology transfer". *Research Policy*, 26(3). 372.

47  Khan, A. R., 2017. "Space wars: Dual-use satellites". *Rutgers Journal of Law and Public Policy*, 14 (314). 5.

48  Note 23.

49  See: Hanneke Weitering, *New U.S. Space Command Will Launch Next Week, VP Pence Says, SPACE.COM* (Aug. 20, 2019), available at: https://www.space.com/space-command-launches-august-2019.html (last access: 09/08/23).

can be operated by the military to provide services to civilians, and be operated by civilian or commercial actors to carry out military functions, since militaries can sometimes outsource certain services, particularly for satellite communications and remote sensing. Dual use allows for exploitation for both military and civilian/humanitarian purposes and can give rise to some legal problems. Dual use is not exclusive to SAT technologies: not only the issue is already addressed by international law for some terrestrial infrastructures (e.g. power plants)[50], but also other satellite enabling services are susceptible to dual use. For example, several states have already expressed concerns[51] about enabling services that are developed for objectives of an entirely benign nature— such as on-orbit servicing and refueling, or active debris removal —that could nevertheless be repurposed to harm other space objects because of their characteristics and capabilities, such as robotic arms, harpoons or lasers[52]. Those worries go hand in hand with the increasing development of counterspace capabilities to target dual use space objects.[53]

First, it is necessary to explore what "dual use" means in different contexts. The term is often used in arms control and disarmament discourse, where it denotes objects and technologies that can - even only hypothetically - be used for both military and nonmilitary applications. To this extent, dual use is a synonym of "dual capable". From an international humanitarian law perspective, "dual use" holds a different meaning. An object that is used for both military and civilian purposes could be lawfully targeted if it is considered to be a "military objective", provided that conditions enshrined in article 52(2) of AP I are met. According to such article, which reflects customary international law[54], an object's qualification as military objective is determined by its nature, location, use, or purpose and its total or partial destruction, capture or neutralization must offer a definite military advantage. When conducting such assessment, there is no such a thing as a dual-use object, as dual use cannot imply dual status: an object is either a military objective—which could be lawfully attacked—or it is not.[55] The criterion of "use"[56], in this context, refers to objects that are actively being used for a military function at the relevant time, rather than having a potential military use.

Therefore, in IHL the category of "dual use objects" is a descriptive category with no direct normative implications on the status of objects. In fact, it does not contradict the dualistic system enshrined in the principle of distinction, as it merely remarks the possibility that objects can "transit" from one category to another according to their contingent use. In principle, according to IHL, any person or object can change status, but "dual use" objects are named as such because the only shifting parameter that makes the difference in a status assessment is that of use. For example, the nature (technical), location (in orbit), and purpose (e.g. observing a portion of earth surface) of a satellite are less telling of its legal status than its actual use. *Ceteris paribus*, actual use makes the difference. Therefore, actors are asked to carefully consider contingent uses when conducting their assessments on such objects. Nevertheless, a use is contingent inasmuch as it is referred to one specific situation. While traditional technologies usually pertain only to one context at a time, this is not true for satellites. In fact, since they are placed in space, they can be employed in more than one context at a time and, within each context, play either a military or a non-military function. For example, it is possible that a satellite constellation providing data communication has simultaneously a civilian use in a site and a military use in another site many kilometers away but still within its area of coverage. Satellites do not pose problems with regards to their status according to the principle of distinction, but they demand complex targetability assessments in the respect of proportionality rules. In fact, according to such rules all foreseeable incidental harm to civilians and

civilian objects in outer space and on earth must be considered, including the consequences for civilians of impairing the dual use space object's civilian use. To sum up, if in a certain context they serve military functions, satellites can be considered military objectives, but they can be legitimately targeted only if careful consideration is given to civilian uses in other contexts where they are operative at the same time, according to the proportionality principle. On the one hand, this makes it very difficult to justify targeting of satellites. On the other hand, it is also difficult to demonstrate the exclusive non-military use of satellites. This entails two remarkable risks for humanitarian organizations relying on SAT technologies.

The first one is that their satellites may be attacked and damaged. This implies losing all benefits aported by satellites and involving civilians as eventual collateral damages, thus worsening humanitarian crises and overloading humanitarian activities. According to some authors[57], one way could be that of identifying space systems serving specifically protected persons and objects by means of registration. The special protection accorded by IHL to humanitarian personnel and objects applies in all circumstances, including when armies carry out military operations against space systems which are necessary for humanitarian activities.[58] If a space object is serving specifically protected persons and objects or is exclusively dedicated to civilian use, the state of registry should register it as such, clearly indicating its protected status under IHL under the voice "general function of the space object", according to Article IV(I)(e) of the "Convention on Registration of Objects Launched into Outer Space".[59] Nevertheless, exclusive civilian or humanitarian use of satellites is not only practically difficult to verify, but also impossible to state a priori its applications in wartime and discretion is always left to the commander. In fact, the actual use referred to in article 52(2) AP I may not coincide with the "general function" of the Convention. However, it should be noted that in case of doubt, Article 53(3) of Additional Protocol I provides that an object shall be presumed to be civilian and therefore protected from legitimate targeting. How this rule will apply to satellites where identification is so problematic given the preponderance of nonvisual data raises many practical issues. For all such difficulties, it is hard to totally preserve benefits aported by dual use satellites involved in humanitarian aid against any military operation.

The second risk is compromising humanitarian workers' reputation and impairing their activities. If the same tools are used for both humanitarian and military actions, humanitarian operators' neutrality could be questioned. According to the definition provided by the ICRC, neutrality means not to take sides in hostilities or engage at any time in controversies.[60] Humanitarian workers can be deemed to favour a party to a conflict if it takes advantage of structures and technologies that are set up for humanitarian aid. Of course, when humanitarian organizations intentionally share their assets with one party to a conflict, they could be accused of violating neutrality. But what about unintentionally sharing satellites services? In fact, especially private satellite operators can sell their products to whomever they want and can have a very heterogeneous range of clients including both humanitarian NGOs and militaries. Here the problem is neither that of a contingent diversion of civil objects for military purposes, nor that of destruction, theft and looting of objects used for humanitarian relief by warring parties. Indeed, the problem is that of services employed for humanitarian relief operations being simultaneously and legitimately used also by the military. Although military organizations usually have much higher budget than humanitarian ones and, therefore, can buy more and better services and do not need to rely on satellite data occasionally produced for the humanitarian sector, it is not impossible that commercial satellite providers sell their images and data to as many buyers as they can to maximise their profit. The United Nations Office for the Coordination of Humanitarian Affairs (OCHA) has already issued guidelines for

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[50]  Shue H. Wippman D. 2002. "Limiting Attacks on Dual-Use Facilities Performing Indispensable Civilian Functions", *Cornell International Law Journal*, 35(7). 558-579.

[51]  UNGA/RES/76/77, 13/07/21, available at: https://documents-dds- ny.un.org/doc/UNDOC/GEN/N21/118/94/PDF/N2111894.pdf?OpenElement (last access: 09/08/23). 197.

[52]  Almudena Azcárate Ortega. June 5, 2023. "Not a Rose by Any Other Name: Dual-Use and Dual-Purpose Space Systems", *Lawfare*. Available at : https://www.lawfaremedia.org/article/not-a-rose-by-any-other-name-dual-use-and- dual-purpose-space-systems (last access: 09/08/23).

[53]  See: Secure World Foundation, "2023 Global Counterspace Capabilities Report". Available at: https://swfound.org/counterspace/ (last access: 09/08/23).

[54]  Rule 8, ICRC, IHL database. Available at: https://ihl-databases.icrc.org/en/customary-ihl/v1/rule8 (last access: 09/08/23).

[55]  Note 48.

[56]  Commentary 1987, API Commentary, para. 2022.

[57]  Note 23.

[58]  Article 71(2) Additional Protocol I; Article 18(2) Additional Protocol II; Rule 31, ICRC Customary IHL Study.

[59]  Annex to UNGA/RES/29_3235E.

[60]  See: https://www.icrc.org/sites/default/files/topic/file_plus_list/4046- the_fundamental_principles_of_the_international_red_cross_and_red_crescent_movement.pdf or https://www.icrc.org/en/doc/resources/documents/article/other/57jncv.htm (last access: 02/09/23).

private companies to distinguish clearly between their commercial and humanitarian activities [61], but such recommendations have remained widely unattended as prices for humanitarians are as high as for any other customer and, therefore, humanitarian activities are still used by private providers for commercial gain. The lack of transparency on the interplay between satellite operators, military clients and humanitarian clients can seriously compromise the security and reputation of the latter. Moreover, it is hard for humanitarian workers to obtain information about the other activities of their providers. Many small humanitarian NGOs do not stipulate contracts with the actual satellite operators directly, but with local sub vendors who set up hardware.[62] Therefore, even if some NGOs require their suppliers to meet some admissibility criteria, such a screening is conducted on intermediators and not on the big satellite providers. Non-neutrality can, in some circumstances, provide an excuse for warring parties to turn down offers of relief. In fact, doubts on the capacities of providing "assistance in a principled manner" can constitute a ground for withholding consent to the deployment of humanitarian aid[63] and, therefore, significantly hamper humanitarian access.

### 6.2.1 **Starlink**

To illustrate the above contentions, the use of Starlink during the ongoing war in Ukraine well displays the dilemmas linked to dual use satellite technologies. Starlink is Elon Musk's company Space X internet access service provided through low-altitude satellites. Since 2019, Mr. Musk has sent SpaceX rockets into space nearly every week that deliver dozens of sofa-size satellites into orbit. The satellites communicate with terminals on Earth, so they can beam high-speed internet to nearly every corner of the planet. Today, more than 4,500 Starlink satellites are in the skies, accounting for more than 50 percent of all active satellites.[64] Starlink services are contracted directly with Space X, allowing to bypass governmental control: activists in Iran and Turkey have sought to use the service as a hedge against government controls. Nevertheless, such technology has also attracted the interest of the military: The U.S. Defense Department is a big Starlink customer, while other militaries, such as in Japan, are testing the technology. Starlink use during the war in Ukraine revealed many of the problems related to the dual use of such technologies. On February 2022 Starlink responded by activating country-wide service, and the first shipment of terminals for a country-wide service to Ukraine were activated as a response to requests by the Minister of Digital Transformation of Ukraine directly to Elon Musk[65], to replace Internet services destroyed during the war. Since then, Starlink's internet access has been used for both military and civilian/humanitarian purposes. On the one hand, it became indispensable to coordinate drone attacks[66] and intelligence gathering. On the other hand, civilians are also heavily using the technology "to keep in touch with the outside world and tell loved ones that they are alive".[67] The official positions of the company regarding this double use have been unclear. For example, the charitable intentions behind the first donation of terminals for humanitarian purpose seemed to crawl down when, in October 2022, Musk announced that SpaceX could no longer bear the costs and asked the Pentagon to take over as financers[68]. SpaceX warned the Pentagon that unless the US military contributes tens of millions of dollars per month, it may cease funding the service in Ukraine. According to a letter reported by the CNN[69] and then confirmed by the NYTimes, the company estimated the cost at nearly $400

million over 12 months. The fact of asking a military institution to be the official contractor with SpaceX slipped the perception on the neutrality of the company and on the actual uses of its technology. Nevertheless, on February 8, 2023 Gwynne Shotwell, President of Starlink, announced that the company had taken measures to prevent the use of Starlink service to control combat drones, affirming that Starlink was "never meant to be weaponized"[70], as the contract was intended for humanitarian purposes such as "providing broadband internet to hospitals, banks and families affected by Russia's invasion"[71]. Such fears were probably fed by several statements made by Russia that it could target US commercial satellites deployed in Ukraine, although Starlink was not explicitly mentioned[72]. Russia has the capability to target satellites kinetically, as demonstrated by its direct-ascent anti-satellite mission (DA-ASAT) in November 2021.[73] Probably for fear of accuses by Russia, in September 2023, Musk acknowledged to have refused the request for activation of the service in Crimea for military purposes.[74] The lack of transparency by the side of the satellite operator about the military and humanitarian uses of its technology arose the issue of its targetability. The Starlink constellation is a lawful military objective but, as for Russia targeting it, a kinetic attack levied against an entire constellation would be of such a scale that it is difficult to imagine the attack would not run afoul of the principle of proportionality.[75] In fact, kinetic attacks against space objects risk causing far more debris than many other space activities, which might damage or destroy in an unpredictable manner other space objects. All feasible precautions must be taken to avoid, and in any event to minimize, incidental civilian harm, including by choosing, whenever feasible, a non-debris producing alternative when planning an attack against a military objective in space. However, jamming, sproofing or destroying terminals on Earth are still viable options. Moreover, Ukraine's military use of Starlink has indirectly delegitimized claims that the service is fundamental for humanitarian operations. Although Russia has not yet contested Stralink's humanitarian uses, some others have. Last September, Musk's detractor Iam Brenner posted on X that "the idea that starlink was being used for humanitarian purposes was always a fiction"[76], indirectly accusing humanitarian workers in Ukraine which are using Starlink of being partial, if not liars. Therefore, the case of Starlink concretely demonstrates that dual use satellites are susceptible to be attacked and can impair the credibility of humanitarian activities.

## 7. **Conclusion**

The application of satellite technologies to humanitarian activities is an outcome of a relatively recent "democratization of space", and it has to be assessed whether satellites do favour humanitarian access as a two-way process. On the one hand, satellites have great potential to favour humanitarian access by bridging crucial data gaps and by improving aid deliverance's accuracy, timeliness and safety. On the other hand, satellites are not yet available to everyone, and their uneven accessibility can engender imbalances among and even within different humanitarian organizations and populations in need. In fact, it affects especially local humanitarian NGOs and workers, thus hampering the localization turn, while it also gives visibility only to some humanitarian crises and to some vulnerable people's specific needs, to the detriment of others. Moreover, satellite technologies are developed and used by specific actors to pursue their interests, that can diverge from that of purely proving relief. Potential dual use – both military and humanitarian - of satellite technologies constitutes a risk for humanitarians, as it allows for satellite services that are critical for

[61]  Private sector actors' "collaborative efforts with the humanitarian community to alleviate human suffering should not be used for commercial gain". Principle 7, "Guiding Principles for Public-Private Collaboration for Humanitarian Action", UNOCHA, World Economic Forum, 2007

[62]  Interview with humanitarian NGO officer, done remotely, July 2023.

[63]  Akande D. and Gillard E.C. 2016. "Arbitrary Withholding of Consent to Humanitarian Relief Operations in Armed Conflict". Available at: https://iow.eui.eu/wp-content/uploads/sites/20/2016/12/Akande-Gillard_ILS_Nov_2016-1-1.pdf (last access: 01/09/23).

[64]  Available at: https://www.nytimes.com/interactive/2023/07/28/business/starlink.html (last access: 10/10/23).

[65]  Available at: "@elonmusk while you try to colonize Mars — Russia try to occupy Ukraine! While your rockets successfully land from space — Russian rockets attack Ukrainian civil people! We ask you to provide Ukraine with Starlink stations and to address sane Russians to stand". Twitter. February 26, 2022.

[66]  Available at: "Specialist Ukrainian drone unit picks off invading Russian forces as they sleep". The Times. ISSN 0140-0460. Archived May 9, 2022.

[67]  Available at: "How Elon Musk's Starlink satellite internet keeps Ukraine online". The Kyiv Independent. September 3, 2022.

[68]  "operation has cost SpaceX $80 million and will exceed $100 million by the end of the year". Available at: https://twitter.com/elonmusk/status/1578433482757271552 (last access: 30/08/23).

[69]  Available at: https://edition.cnn.com/2022/10/13/politics/elon-musk-spacex-starlink-ukraine/index.html (last access: 30/08/23).

[70]  Available at: https://www.reuters.com/business/aerospace-defense/spacex-curbed-ukraines-use-starlink-internet-drones-company-president-2023-02-09/ (last access: 30/08/23).

[71]  ibidem

[72]  Available at: https://www.wsj.com/articles/russia-says-it-could-target-u-s-commercial-satellites-in-ukraine-war- 11666882614 (last access: 03/09/23).

[73]  Available at: https://www.spacecom.mil/Newsroom/News/Article-Display/Article/2842957/russian-direct-ascent- anti-satellite-missile-test-creates-significant-long-last/ (last access: 03/09/23).

[74]  Available at: https://edition.cnn.com/2023/09/10/europe/ukraine-starlink-not-active-crimea-intl-hnk/index.html (last access: 10/10/23).

[75]  Available at: https://lieber.westpoint.edu/can-starlink-satellites-be-lawfully- targeted/#:~:text=The%20civilian%20use%20of%20Starlink,obligation%20to%20take%20 precautionary%20measures. (last access: 03/09/23).

[76]  Available at: https://twitter.com/ianbremmer/status/1700526367446544709 (last access: 11/10/23).

humanitarian activities to be targeted and damaged, as well as it may undermine the neutrality of humanitarian organizations. The analysis conducted until now highlighted two problematic aspects in the use of satellite technologies for humanitarian action, that can hamper widespread and stable humanitarian access: the problem of discrimination, both on the side of humanitarian organizations and on that of people in need, and that of distinction of uses, actors and scopes. To conclude, satellites may favour humanitarian access only if the conditions of non-discrimination and of distinction are met.

To mitigate unequal availability of satellites and promote clear distinction of their uses, more efforts in space regulation and in international cooperation may be needs. In the case of satellites, humanitarian access is truly a multi-way process, since the positive impact of satellites on the deployment of humanitarian assistance does not depend only on the capacities of humanitarian workers and people in need to use them, but also on the enabling international cooperation. The analysis presented in this paper is not exhaustive of all the challenges that humanitarians face in adopting space technologies, and further research on them and on the means to overcome such difficulties is needed.

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# THE DENIAL OF ACCESS OF HUMANITARIAN ASSISTANCE IN THE YEMENI CONFLICT: STARVATION AS A METHOD OF WARFARE

## Nadia **Bamoshmoosh**

In the landscape of contemporary armed conflicts, where the boundaries of international law are tested and the dignity of civilians hang in the balance, the Yemeni conflict emerges as a complex yet compelling case study. This article embarks on a journey to analyze the crime of starvation within the context of the Yemeni conflict. The inquiry, however, is not merely a matter of academic curiosity; rather, it is a response to the need to unravel the legal and political intricacies surrounding this atrocious violation of International Human Rights Law ("IHRL"), International Criminal Law ("ICL") and International Humanitarian Law ("IHL"). Furthermore, this article attempts to reignite discourse and awareness about the conflict in the Arab Peninsula, which has regrettably been consigned to the periphery of global attention and often gained the title of the "forgotten war[1]". Methodologically, the approach of this article is grounded in a legal-political framework, with insights of humanitarian nature coming from sources of different NGOs and international organizations and from interviews of activists and Yemeni organizations[2]. On the one hand, an overview of the national and international laws governing the prohibition of starvation and the relevant substantial data on the Yemeni situation in this regard will elucidate the culpability of the actors involved in the perpetration of this crime. On the other hand, the political landscape of the war is a fundamental starting point to understand the reasons behind the aggressive behaviors of the conflicting parties, which are almost always at the expense of the civilian population.

However, it is important to be aware of the inherent limitations of this article. In fact, in spite of the war spanning nearly a decade[5], Yemen remains a conflict zone marked by restricted access to relevant sources and actors, logistical challenges, decreasing funding of humanitarian assistance and the ever- present risk of intensification of conflicts. This, along with the inadequate international focus on the conflict, inevitably impacts any attempt to provide a fully comprehensive legal and political analysis of the crime of starvation and its implications in the country.

Moreover, Yemen, despite being officially recognized as a single nation, is deeply divided along regional, political and ideological lines[3]. These divisions are not only a reflection of the complex dynamics at play, but they also present challenges in ascertaining the responsibility for the crime of starvation as different actors have varying degrees of control and influence in different areas of the country. Therefore, since the political-legal framework is not in favor of Yemeni civilians, this article concludes by encouraging research on the conflict and the crime of starvation in Yemen and by focusing, for the moment, on improving the very needed humanitarian assistance.

# 1. Introduction to the Yemeni conflict and its political and legal framework

## 1.1 History and politics of the Yemeni conflict

In 2011, the Arab Spring swept through the MENA countries, including Yemen, the poorest nation in the region, where demonstrations erupted against President Ali Abdullah Saleh, who had ruled for over thirty years. After months of peaceful protests, Saleh was removed from the presidency in 2012, succeeded by Abdrabbuh Mansur Hadi. Hadi's election offered hope, especially after he initiated the National Dialogue Conference ("NDC") to reconcile the Yemeni crisis. The NDC gathered all the political factions, tribes, and groups[4], and the process was overseen by the UN Special Envoy Jamal Benomar[5]. It concluded in January 2014, establishing an outcome document[6] and a draft for a new constitution, creating a roadmap for Yemen's transition towards democracy and human rights. However, the Houthi rebels, a Shia[7] group which was initially part of the NDC, kidnapped President Hadi's office director[8], sparking their ascent to power. In 2014, they started conquering many parts of the North of the country until they seized the capital Sana'a, leading to an armed conflict[9] and forcing Hadi to flee to Aden, a city in the Southern part of Yemen. Concurrently, a coalition of States led by Saudi Arabia[10] was formed to support and restore the formal Yemeni government chaired by Hadi. Not long after, the Houthis started to be supported by Iran, which provided the Shia rebels with weapons[11].

Subsequently, in the South of Yemen, the Southern Transitional Council ("STC") emerged; few months later further fragmentation arose, forcing Hadi and his government to flee to Riyadh in Saudi Arabia[12]. At the same time, Al-Qaeda in the Arabian Peninsula gained power, catching the US government's attention, which has been proved to have supported and provided intelligence to the Saudi-led coalition and to local tribes fighting Al-Qaeda[13]. Today, the conflict in Yemen is persisting, although with less intensity. At least 377 thousand people have been killed[14], among whom 226 thousand Yemenis died as a result of an ongoing famine, starvation and lack of healthcare facilities[15]. In April 2022, the

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1  J. S. BACHMAN, E. BRITO RUIZ, *The Geopolitics of Human Suffering: A Comparative Study of Media Coverage of The Conflicts in Yemen and Ukraine*, in *Third World Quarterly*, 2023, p. 1 ff.; M. ABDULKADER, *The Forgotten War*, in *Journal of Global Faultiness*, 2023, p. 45 ff.

2  Valuable insights and information were gathered through interviews with local activists, human rights defenders, employees at relevant organizations and various firsthand resources (webinars and FDGs) originating from the organizations working inside and outside Yemen. These supplementary resources have significantly enriched the content presented herein. Notably, the three main organizations consulted during the research process were Mwatana for Human Rights, Peace Track Initiative and Yemen Policy Center. Moreover, Nadia Alsakkaf, former Yemeni minister of information, has been interviewed by the author of the article.

3  N. AL BIDH, *Pandemonium in Yemen: A Historical Analysis of Yemen's Socio-Political State*, in *Journal of South Asian and Middle Eastern Studies*, 2022, p. 84 ff.

4  It should be noted that from a sociological point of view, Yemen is characterized by a tribal system, in which leaders of clans and factions are sometimes more important than State officials. In Yemen tribal and social law, U'rf, is an important component of the Yemeni law. So, to have success the NDC had to take into account the major Yemeni tribes and include them in the transitional political processes. See: M. BRANDT, *Tribes and Politics in Yemen: A History of the Houthi Conflict*, London, 2017.

5  The Office of the Special Envoy of the Secretary-General for Yemen (OSESGY) was appointed by the UN Secretary- General in 2012 with UN Security Council Resolution 2014 (2011). The special envoy exercises his good offices to: facilitate Yemen's transition, provide support to other transition steps, work closely with the members of the Security Council, enable the resumption of a peaceful, inclusive and orderly Yemeni-led transition. The Special Envoy has also facilitated rounds of consultations to obtain a negotiated settlement to end the conflict, including direct talks in Switzerland in June and December 2015, in Kuwait from April to August 2016, in Stockholm in December 2018 and in Riyadh in April 2022. Until now, the appointed special envoys on Yemen have been Jamal Benomar, Ismail Ould Cheikh Ahmed, Martin Griffiths and lastly Hans Grundberg. See: < https://osesgy.unmissions.org/ >.

6  مؤتمر الحوار الوطني الشامل (NATIONAL DIALOGUE CONFERENCE), وثيقة الحوار الوطني الشامل (*Comprehensive National Dialogue Conference Document*), Sana'a, 2014.

7  Islam is divided in at least two branches, Sunni Islam and Shia Islam. The majority of Muslim believers are Sunnis, while Shia followers constitute around 10-15% of the Muslim population all over the world. In Yemen, Shias are around 35% of the population.

8  See: L. SABIN, *Yemen President's Office director Ahmed Awad bin Mubarak Kidnapped by Suspected Shia Rebels*, available at: < https://www.independent.co.uk/news/world/middle-east/yemen-president-s-office-director-ahmed-awad- bin-mubarak-kidnapped-by-suspected-shia-rebels-9985030.html >.

9  Armed conflict officially began with the "battle of Sana'a" which started on the 9th September 2014, available at: < https://ww w.hrw.org/news/2014/09/14/yemen-lethal-force-against-houthi-protesters >.

10  The coalition, initiated with the "Operative Decisive Storm", was formed by Saudi Arabia, the United Arab Emirates, Egypt, Jordan, Kuwait, Morocco, Qatar and Sudan. See: S. ARRAF, *The Armed Conflict in Yemen: A Complicated Mosaic*, Geneva, 2017; INTERNATIONAL COMMISSION OF JURISTS, *Bearing the Brunt of War in Yemen: International Law Violations and Their Impact on the Civilian Population – a Briefing Paper*, Geneva, 2018.

11  T. JUNEAU, *Iran's Policy Towards the Houthis in Yemen: A Limited Return on a Modest Investment*, in *International Affairs*, 2016, p. 647 ff.

12  P. SALISBURY, *Yemen's Southern Transitional Council: A Delicate Balancing Act*, in ispionline.it, 2021, available at: < https://www.ispionline.it/it/pubblicazione/yemens-southern-transitional-council-delicate-balancing-act-29793 >.

13  In February 2021, US president Joe Biden announced an end to US support for Saudi-led offensive operations in Yemen, although the United States continue to sell and send weapons to the countries involved in the conflict. See UN continues to send and sell weapons to countries in the region as a response to Houthis' attacks. See: A. SHELINE, *The Yemen War in Numbers: Saudi Escalation and US Complicity*, in Quincy Institute for Responsible Statecraft no. 22, 2022, p. 1 ff.

14  As of August 2023. See the Global Conflict Tracker, available at: https://www.cfr.org/global-conflict-tracker/conflict/war-yemen.

15  See the Global Conflict Tracker, available at: https://www.cfr.org/global-conflict-tracker/conflict/war-yemen.

warrying parties, except for the Houthis, gathered in Riyadh for peace talks and finally agreed on a temporary truce[16] which has been implicitly accepted by the Houthis, even if internal disturbances and violent clashes are still occurring in the country. The Riyadh peace talks also concluded with the replacement of President Hadi with a Presidential Leadership Council of eight members.

In April 2023, significant events transpired: the rapprochement between Iran and Saudi Arabia, mediated by China, has raised hopes of a political settlement to end the conflict in Yemen. The re- establishment of diplomatic relations between the two regional powers could potentially accelerate the peace process. In fact, on the 14th September 2023, for the first time in history, a Houthi delegation flied to Riyadh for a five-days Omani-mediated round of talks to discuss future political agreements[17]. This could potentially mark a pivotal moment in bringing the war to a conclusion, although it is necessary that all the parties of the conflict are involved in the peace discussions. Moreover, there is the risk that political agreement is reached but the needs of the Yemeni civilians is not taken into account; therefore, it is fundamental that the Yemeni population is a priority during the peace discussions.

This brief overview clearly demonstrates the Yemeni war is very complex; and, considering the heterogeneity of the parties involved, one of the first legal inquiries revolves around the nature of the armed conflict. This is a recurrent and important issue, since it has direct repercussions on the laws applicable, especially under IHL and ICL.

## 1.1 History and politics of the Yemeni conflict

Under IHL, while the customary rules applicable for all conflicts are the same regardless of their nature, to apply the relevant treaties a classification is needed. Under IHL[18], there are two types[19] of armed conflicts, to be identified in order to determine the applicable rules: international armed conflicts ("IACs") and non-international armed conflicts ("NIACs"). IACs occur when one or more States resort to the use of force against another State[20]; in contradistinction, NIACs occur when there is "protracted armed violence between governmental authorities and organized armed groups or between such groups[21]". Specifically, for NIACs, there are two requirements: the non-State armed group should have a certain level of organization and the hostilities much reach a certain level of intensity. There is also a third form of armed conflict, which however is not a proper legal category, and it is the one of internationalized non-international armed conflict. If internationalized internal armed conflicts were officially recognized as a legal category, the Yemeni war would align with the parameters of this classification[22].

To give a very general indication, on the one hand, in IACs the four Geneva Conventions ("GC") and Additional Protocol I ("API") apply; on the other hand, during NIACs Common Article 3 to the Geneva Conventions and Additional Protocol II ("APII") are relevant.

[16] A. EL YAAKOUBI, *UN presses Yemen warring parties for six-month truce extension, in reuters.com*, 2022; "Yemen peace talks give little hope for displaced civilians", available at: < https://www.aljazeera.com/news/2022/4/1/yemen-peace-talks-give-little-hope-for-displaced-civilians >; نيملل ةدحتملا ممألا ماعلا نيمألا صاخلا ثوعبملا بتكم (OSESGY), قافتا ةندهلا (*agreements on the truce*), Riyadh, 2022.

[17] Yemen's Houthis heading to Riyadh for ceasefire talks with Saudi Arabia, 14th September, Al-Jazeera, available at: < https://www.aljazeera.com/news/2023/9/14/yemens-houthi-rebels-heading-to-riyadh-for-talks-with-saudi-officials >.

[18] F. SPARANGA, *Classificare i conflitti: le principali analisi del 2020, in IRIAD review – studi sulla pace e sui conflitti*, 2021, p. 4 ss; V. SYLVAIN, *Typology of Armed Conflicts in International Humanitarian Law: Legal Concepts and Actual Situations, in International Review of the Red Cross*, 2009, p. 69 ss..

[19] In reality International Humanitarian Law identifies two other categories of armed conflict: occupation when a State exercises an unauthorized effective control over a territory on which it has no sovereignty; internal disturbances, which if when the fighting does not meet the threshold of non-international armed conflict.

[20] To be more precise, an armed conflict between a State and an international organization is also classified as an IAC. Wars of national liberation, in which peoples are fighting against colonial domination and alien occupation and against racist regimes in the exercise of their right of self-determination, are classified as IACs under certain conditions (See Article 1, paragraph 4, and Article 96, paragraph 3, of Additional Protocol I). For further information on the applicability of definitionof IACs ans NIACs under IHL, see: V. SYLVAIN, *Typology of Armed Conflicts in International Humanitarian Law: Legal Concepts and Actual Situations*, cit. supra note 18.

[21] INTERNATIONAL CRIMINAL TRIBUNAL FOR YUGOSLAVIA, appeal judgment 2 October 1995, *Prosecutor v. Dusko Tadić*, IT-94-1-A, 1995 para. 70

[22] See: < https://casebook.icrc.org/a_to_z/glossary/internationalized-internal-armed-conflict >.

International jurisprudence has clarified that international and non-international armed conflicts may co-exist on the same territory[23], which is in fact the case for Yemen. Moreover, there is part of the International Criminal Law jurisprudence which is relevant for the discourse on the distinction between NIACs and IACS also under IHL. In fact, in the Tadić case, the International Criminal Tribunal for former Yugoslavia highlighted the growing irrelevance of the legal distinction between IACs and NIACs[24]. Moreover, the tribunal suggested that in case there are different ongoing IACs and NIACs with foreign interventions happening in the same territory, the whole situation should be considered as an international armed conflict, potentially "upgrading" a non-State armed group to a State level. Nevertheless, the States practice and legal doctrine firmly disagreed, so every conflict should be considered autonomously.

In Yemen there are multiple armed conflicts taking place: the conflict between the internationally recognized government ("IRG") and the Houthis[25]; clashes between the IRG and the Al-Qaeda in the Arabian Peninsula[26]; fights between non-State armed groups in the Yemeni territory[27]; and, conflicts between the STC and the IRG situated in Riyadh[28]. The two requirements of a NIAC[29], the intensity of hostility[30] and the level of organization[31] of the non-State armed groups, are fulfilled in all these conflicts. In fact, the conflicts have all been categorized by the UN Human Rights Council[32] and international non-governmental organizations, such as Amnesty International[33] and Human Rights Watch[34], as NIACs[35].

It is true that there have been interventions by other States, but the official interventions, particularly the Saudi Arabian and US intervention, have occurred upon request of the ousted IRG, excluding for the moment an international armed conflict between the intervening State and the territorial State[36]. Considering the new trends of NIACs, which often have international actors involved, some experts argue that the four Geneva Conventions and API should ideally be applied to an outside intervention, even if the government consent is obtained[37]. However, this concept still does not

[23] INTERNATIONAL COURT OF JUSTICE, judgement 27 June 1986, *Military and paramilitary activities in and against Nicaragua (Nicaragua v. United States of America)*, case no. 520, in ICJ Reports, 1986, para. 219.

[24] E. CRAWFORD, *Unequal Before the Law: The Case for the Elimination of the Distinction between International and non-International Armed Conflicts*, in *Leiden Journal of International Law*, 2007, p. 441 ff.

[25] A. BELLAL, *The War Report: Armed Conflicts in 2018*, Geneva, 2019.

[26] *Ibid.*

[27] *Ibid.*

[28] *Ibid.*

[29] See the International Criminal Tribunal for Former Yugoslavia in the *Tadić* case: *The test applied by the Appeals Chamber to the existence of an armed conflict for the purposes of the rules contained in Common Article 3 focuses on two aspects of a conflict; the intensity of the conflict and the organization of the parties to the conflict. In an armed conflict of an internal or mixed character, these closely related criteria are used solely for the purpose, as a minimum, of distinguishing an armed conflict from banditry, unorganized and short-lived insurrections, or terrorist activities, which are not subject to international humanitarian law.. Factors relevant to this determination are addressed in the Commentary to Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces"*. ICTY – TRIAL CHAMBER, judgement 7 May 1997, *Prosecutor v. Tadić*, case no. IT-94-1-T, in ICJ Reports, 1997, para. 562.

[30] Indicators of the threshold of violence have been given by the International Criminal Tribunal for Former Yugoslavia: *"the number, duration and intensity of individual confrontations; the type of weapons and other military equipment used; the number and calibre of munitions fired; the number of persons and type of forces partaking in the fighting; the number of casualties; the extent of material destruction; and the number of civilians fleeing combat zones. The involvement of the UN Security Council may also be a reflection of the intensity of a conflict"*. ICTY – TRIAL CHAMBER, judgement 3 April 2008, *Prosecutor v. Haradinaj*, case no. IT-04-84-T, in *ICJ Reports*, 2008, para. 49.

[31] Indicators of the organization of the non-State armed groups have been given by the International Criminal Tribunal for Former Yugoslavia: *"indicative factors include the existence of a command structure and disciplinary rules and mechanisms within the group; the existence of a headquarters; the fact that the group controls a certain territory; the ability of the group to gain access to weapons, other military equipment, recruits and military training; its ability to plan, coordinate and carry out military operations, including troop movements and logistics; its ability to define a unified military strategy and use military tactics; and its ability to speak with one voice and negotiate and conclude agreements such as cease-fire or peace accords"*. ICTY – TRIAL CHAMBER, judgement 3 April 2008, *Prosecutor v. Haradinaj*, case no. IT-04-84-T, in ICJ Reports, 2008, para. 60.

[32] UN HUMAN RIGHTS COUNCIL, *Report of the Detailed Findings of the Group of Eminent International and Regional Experts on Yemen*, New York, forty-second session 9-27 September 2019, UN Doc. A/HRC/42/CRP.1.

[33] Available at: < https://www.amnesty.org/en/location/middle-east-and-north-africa/yemen/report-yemen/ >.

[34] HUMAN RIGHTS WATCH, *Questions and Answers: the conflict in Yemen and international law*, New York, 2015, available at: < https://www.hrw.org/news/2015/04/06/q-conflict-yemen-and-international-law >.

[35] There isn't to date a categorization of the Yemeni armed conflict as a NIAC by any international tribunal.

[36] See: ICRC, *Commentary on the First Geneva Convention*: article 2, Geneva, 2016, paras. 257-263.

[37] M. SASSÒLI, *Armed Conflict in Yemen; An Illustration of the Pertinence and Deficiencies of Existing IHL Rule*, in *Iranian Journal of International and Comparative Law*, 2023, p. 100 ff.

align with State practice[38].

So, on the basis that the Yemeni conflict is a conflict not of international character, the relevant applicable IHL is, besides customary international humanitarian law which should be implemented by all States and non-State armed groups in every context[39], Common Article 3 to the Geneva Conventions concerning the minimum provisions to be applied in a NIAC[40] and the Additional Protocol II relating to the protection of victims of non-international armed conflicts[41]. Yemen and all the States belonging to the Saudi -led coalition are parties to the Geneva Conventions and its Additional Protocol II, so they are bound by them. In addition, Article 1(1) of APII provides for the obligation to implement the Protocol also by "armed forces and dissident armed forces or other organized armed groups which, under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations and to implement this Protocol". The requirements set in Article 1(1) APII are met at least by one non- State armed group, the Houthis, which today exercise control over a meaningful part of the Yemeni territory[42].

Notably, the provisions governing the conduct of hostilities between combatants which are contained in Additional Protocol I to the Geneva Conventions relating to the protection of victims in international armed conflicts are also applied in NIACs[43] as customary international law. These provisions aim to temper military action with limitations and reduce human suffering, particularly of civilians. Among the main principles governing the execution of attacks are distinction[44], precaution and proportionality.

The occurrence of the armed conflicts in Yemen does not preclude the responsibility of the Yemeni State for the breaches of international obligations in its territory, which can either derive from treaties, including the ones of IHL, or customary international law. The IRG should also control and induce the non-State armed groups to comply with customary International Humanitarian Law.

On their side, non-State actors are not legally responsible for the breaches of international law[45] except for IHL (considering that they lack legal personality[46]). However, considering the impact that non-State actors have in conflict, particularly the Houthis and the STC, civil society organizations and human rights advocates call for improving non-

State armed groups' compliance[47] with human rights treaties[48] and not only customary international law. The legal premises to do so are present: indeed, Common Article 3 of the Geneva Conventions fixes accountability on individuals responsible for violating the article, which included individuals acting on behalf of non-State actors. In addition, APII gives some rules, which are not customary yet, that provide for obligations for a better protection of victims of internal conflict[49] also by non-State actors. For now, there has not been enough discussion on the topic, but further studies and potential jurisprudential application of Common Article 3 and the Additional Protocol II could support the view that non-State actors are bound to comply with human rights and humanitarian treaty rules[50].

## 2. Starvation as a method of warfare under IHL, ICL and IHRL

For centuries, mass starvation has been used in times of war, oppressions and disturbances and was seen as a natural phenomenon or a side-effect of armed conflict[51]. The deprivation of civilians from access to food and water happened for different purposes and reasons: the most obvious reason is the use of starvation as a method of warfare, but denying food could have also been a punishment or a sanction for a given population[52] or it could have as a goal the complete extermination of the given population[53]. However, starting from the Lieber Code in 1863[54] and with the development of IHL, starvation started to be more and more outlawed until the adoption of the four Geneva Conventions and their Additional Protocols[55] which explicitly prohibit starvation as a method of warfare and assure the protection of civilians during armed conflicts. In 1998, the Rome Statute also acknowledge the use of starvation as an unlawful method of warfare, potentially constituting a war crime in IACs[56].

### 2.1 International Humanitarian Law

Before mentioning the relevant IHL provisions in relation to the crime of starvation, it is important to remember that as parties to a NIAC, the different Yemeni armed forces (i.e., the IRG and the STC), the Saudi-led coalition, the UAE forces, ideally Al-Qaeda and the Ansar Allah group (i.e., the Houthis) are bound by Common Article 3 to the Geneva Conventions[57].

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[38]  *Ibid.*

[39]  Examples include violence to life and person, widespread and systematic sexual violence, torture and prosecution. Moreover, certain serious violations of customary IHL amount to war crimes when committed with the requisite of mental element, as it has been stated by the International Criminal Tribunal for former Yugoslavia and the International Criminal Court. See also the customary international humanitarian law database, available at: < https://ihl- databases.icrc.org/customary-ihl/eng/doc s/home >.

[40]  Common Article 3 to the Geneva Conventions: *"In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:*
*(1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed ' hors de combat ' by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, color, religion or faith, sex, birth or wealth, or any other similar criteria. To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons: (a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;(b) taking of hostages; (c) outrages upon personal dignity, in particular humiliating and degrading treatment; indispensable by civilized peoples. (d) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.*
*(2) The wounded and sick shall be collected and cared for.*
*An impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict. The Parties to the conflict should further endeavor to bring into force, by means of special agreements, all or part of the other provisions of the present Convention. The application of the preceding provisions shall not affect the legal status of the Parties to the conflict".*

[41]  It should be importantly noted, however, that a more complete overview of international law applicable in armed conflict has already been given in the first chapter of this thesis. So, to better understand what branches of international law are applied, see the previous chapters.

[42]  INTERNATIONAL COMMISSION OF JURISTS, *Bearing the Brunt of War in Yemen: International Law Violations and Their Impact on the Civilian Population – A Briefing Paper*, cit. supra note 10.

[43]  *Ibid.*

[44]  Distinction means that *"the parties to the conflict shall at all times distinguish between the civilian population and combatants"*, as Article 48 of Additional Protocol I to the Geneva Conventions states.

[45]  M. SASSÒLI, Y. SHANI, *Should the Obligations of States and Armed Groups Under International Humanitarian Law Really Be Equal?*, in International Review of the Red Cross Review, 2011, p. 424 ff.

[46]  O. JURASZ, *The Istanbul Convention: A New Chapter in Preventing and Combating Violence Against Women*, in Australian Law Journal, 2015, p. 89 ff.

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[47]  E.C. GILLARD, *Promoting Compliance with International Humanitarian Law*, London, 2016.

[48]  C. O'ROURKE, *Women's Rights in Armed Conflict Under International Law*, Cambridge, 2020.

[49]  N. RONZITTI, *Diritto Internazionale dei conflitti armati*, Torino, 2017.

[50]  No further notes on this latter issue will be discussed, as it is beyond the scope of this article. For further information on this topic, see: N. RONZITTI, *Diritto internazionale dei conflitti armati*, cit. supra note 49.

[51]  B. CONLEY, A. DE WAAL, *The Purposes of Starvation – Historical and Contemporary Uses, in Journal of International Criminal Justice*, 2019, p. 699 ff.

[52]  A. BARAM, *The Effect of Iraqi Sanctions: Pitfalls and Responsibility, in The Middle East Journal*, 2000, p. 194 ff.

[53]  S. ROSENBERG, *Genocide is a Process, Not an Event, in Genocide Studies and Prevention*, 2012, p. 16 ff.

[54]  Art. 17 of the Lieber Code states that "It is lawful to starve the hostile belligerent, armed or unarmed, so that it leads to the speedier subjection of the enemy". This article has been interpreted in the sense that while it is lawful to starve belligerents, it is unlawful to starve civilians.

[55]  Already the Hague Conventions of 1899 and 1097 contained provisions related to the protection of non-combatants, providing for the minimization of unnecessary suffering. While not explicitly using the term "starvation", the provisions of the Hague Conventions would indirectly prohibit actions that would lead to the deprivation of food and essential supplies for civilians. Article 23 of the Hague Convention of 1907 states: "It is forbidden to destroy the enemy's property, unless such destruction be imperatively demanded by the necessities of the war". This is a key provision related to this issue

[56]  As will be explained later, in 2019, the Rome Statute was amendment so that today starvation as a method of warfare constitutes a war crime also in NIACs.

[57]  Common Article 3 to the Geneva Conventions: *"1. In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:*
*(1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed ' hors de combat ' by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, color, religion or faith, sex, birth or wealth, or any other similar criteria. To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons: (a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture; (b) taking of hostages; (c) outrages upon personal dignity, in particular humiliating and degrading treatment; (d) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.*
*(2) The wounded and sick shall be collected and cared for.*
*2. An impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict.*
*3. The Parties to the conflict should further endeavor to bring into force, by means of special agreements, all or part of the other provisions of the present Convention.*
*4. The application of the preceding provisions shall not affect the legal status of the Parties to the conflict".*

In addition, APII, which, however has a more restrictive scope that Common Article 3[58], is to be applied in NIACs when specific criteria are satisfied. In fact, Article 1 of APII states that the Protocol, without modifying the conditions of Common Article 3, is applied to all armed conflicts which "take place in the territory of a High Contracting Party between its armed forces and dissident armed forces or other organized armed groups which, under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations and to implement this Protocol". Considering that the Houthis control a large portion of the Yemeni territory and are able to carry out military operations[59], there is no doubt that the threshold set by APII, which is higher than the one of common article 3, is met, Therefore, the Protocol is applicable to the Yemeni non- international armed conflicts in which the Houthis are involved. Finally, norms that reflect customary international law are to be applied in the Yemeni context, even if the theoretically pertain to IACs.

So, in connection to the crime of starvation, there are at least four articles in the Geneva Conventions and Additional Protocols that worth being mentioned: Article 14 APII and Article 54 API, relating to the prohibition of starvation as a method of warfare; and Articles 18 APII and 70 API relating to relief actions[60]. Considering that the Yemeni conflict consists in a series of non-international armed conflicts, one could argue that the articles of API is not relevant. This is true; nonetheless, their mention is valuable as they reflect customary international law[61] that could potentially influence future developments in NIAC law. Additionally, understanding the principles of Articles 54 and 70 API helps in the interpretation of the relevant provisions found in APII.

The provisions relating to the prohibition of starvation as a method of warfare are Article 14 APII and Article 54 API, with the former article being a "simplified version" of the latter[62]. Both articles start with an important statement: "Starvation of civilians as a method of combat is prohibited". Subsequently, it is "prohibited to attack, destroy, remove or render useless, for that purpose, objects indispensable to the survival of the civilian population, such as foodstuffs, agricultural areas for the production of foodstuffs, crops, livestock, drinking water installations and supplies and irrigation works". Then, while Article 18 APII ends with these two statements, Article 54 API specifies that the prohibition does not apply when the objects indispensable for the survival ("OIS") are used for other purposes than the ones to serve the civilian population and that OIS cannot be made objects of reprisals.

With regards to Articles 14 APII and 54 APII, two points should be made. The first one is that the list of objects indispensable to the survival of civilians that could be damaged, destroyed etc., in second statement of the two articles are a non-exhaustive list63. While it is true that starvation is, obviously, the central point of the first statement, the OIS extend beyond the mere deprivation of food and nourishment. This is suggested by the title of both articles, "protection of objects indispensable to the survival of the civilian population", which indicate the wider breadth of coverage[64].

The second point relates to whether the prohibition requires that the party engaged in the conduct has or does not have to act with the specific intent to cause starvation. This is an important question for the Yemeni conflict: for example, as will be elaborated upon later, the Saudi-led coalition has imposed a *de facto aerial*, land and maritime blockade on the

Yemeni territory to weaken the Houthis' position. While the specific intention of the coalition may not have been to induce starvation, the ultimate result is that Yemenis are starving also because of this blockade[65]. An answer to this inquiry could potentially involve the Saudi-coalition's responsibility under IHL.

While the general prohibition of starvation requires the element of the specific purpose to cause famine among the civilian population[66], there are other more specific rules directed at reducing food insecurity that do not necessitate such purpose. The most important case relates to the situation in which starvation is an indirect consequence of attacking non-civilian objects or civilian objects used for military purposes. For example, Article 54(3) API[67] suggests that attacks and related actions against OIS used in direct support of military action may not be taken if they are expected to leave the civilians with inadequate food or water. This article states that, in substance, starvation of combatants is not prohibited, but it should take into account the food security of civilians[68]. Going back to the example of the Saudi-led coalition's blockade, while this is an attack against the Houthis, it de facto targets civilians in an indiscriminate and disproportionate way, causing starvation of civilians[69]. In this case, there is not a specific purpose to cause famine against the civilians (the target of the attack is the Ansar Allah group), but the crime of starvation happens in any case. And, while it can be argued that the blockade did not have the specific purpose of causing starvation among the civilian population, Articles 14 APII and Article 54 API could potentially be relevant to invoke the responsibility of the States which are part of the coalition.

Alongside with the direct prohibition of intentional starvation of civilians as a method of warfare, the Geneva Conventions and Additional Protocols provide an obligation to allow 'timely and unimpeded passage of humanitarian goods and consignments[70]. Irrespective of the nature and intensity of hostilities, all parties to a conflict are under the legal obligation to allow and facilitate the passage of humanitarian aid[71]. In a sense, this obligation to guarantee relief actions is complementary to the prohibition of starvation of civilians. These articles emphasize the fundamental principles of humanity, impartiality, neutrality and independence in the delivery of humanitarian actions during armed conflict. Parties to the conflict should agree and facilitate the relief actions, and any interference with the humanitarian assistance efforts constitutes a breach of international humanitarian law.

In the context of NIACs, the distribution of aid under IHL is a more delicate activity compared to IACs; the sensitivity of the delivery relief actions is reflected in Article 18 APII, which only relates to non-international conflicts. Indeed, IHL has had for decades a State-centric approach[72], which transpires in the whole Additional Protocol II. In particular, Article 18 APII is rather equivocal[73], when it states that relief actions "of an exclusively humanitarian and impartial nature and which are conducted without any adverse distinction, shall be undertaken subject to the consent of the High Contracting party consent". The provision is based on the principle that States are responsible for organizing relief[74], although in NIACs this can be impossible. For example, how can the IRG, a government which is not residing in its own

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[58] J. PEJC, *The Protective Scope of Common Article 3: More Than Meets the Eye, in International Review of the Red Cross and Red Crescent*, 2011, p. 881 ff.

[59] MWATANA FOR HUMAN RIGHTS, GLOBAL RIGHTS COMPLIANCE, *Starvation Makers. The Use of Starvation by Warrying Parties in Yemen*, Sana'a, 2021.

[60] In the IV GC, Article 23 deals with the consignment of medical supplies, food and clothing. This provision, despite being customary international law, is appliable only in the context of IACs, which is not the case for the Yemeni conflict. 61 See the ICRC database on customary IHL, rules 53 and 55.

[61] It should be importantly noted, however, that a more complete overview of international law applicable in armed conflict has already been given in the first chapter of this thesis. So, to better understand what branches of international law are applied, see the previous chapters.

[62] Ibid: "*While there are striking differences in the ways in which the AP I and AP II prohibitions are drafted—the AP I version being much longer and of a seemingly more complex construction—it may be that these differences were not necessarily intended to create substantial differences to the substantive obligations imposed on parties. In general, the drafters of AP II were cautious about creating and assigning rights to non-State armed groups, and drafted the AP II obligations and prohibitions accordingly*". See also: ICRC, Commentary to Additional Protocol II Article 14, para. 4794.

[63] F. D'ALESSANDRA, M. GILLET, *The War Crime of Starvation in Non-International Armed Conflict, in Journal of International Criminal Justice*, 2019, p. 815 ff.

[64] *Ibid.*

[65] K. BECKERLE, Hiding Behind the Coalition: Failure to Credibly Investigate and Provide Redress for Unlawful Attacks in Yemen, in hrw.org, 2018, available at: < https://www.hrw.org/report/2018/08/24/hiding-behind-coalition/failure- credibly-investigate-and-provide-redress-unlawful >.

[66] See ICRC Commentary to the Geneva Conventions and Additional Protocols.

[67] Which, we repeat for the sake of clarity, should be appliable for the Yemeni NIAC as it reflects customary international law even if it's an article relating to the protection of victims in IACs.

[68] The article also reflects the general IHL principles of proportionality and distinction, so that civilians do not starve as a consequence of an indiscriminate attack. See: J. CROWE, K. WESTON-SCHEUBER, E. ELGAR, *General Principles of International Humanitarian Law*, Cheltenham and Northampton, 2013.

[69] M. SASSÒLI, *Armed Conflict in Yemen; An Illustration of the Pertinence and Deficiencies of Existing IHL Rule*, see supra note 37.

[70] F. D'ALESSANDRA, M. GILLET, *The War Crime of Starvation in Non-International Armed Conflict*, in *Journal of International Criminal Justice*, 2019, p. 815 ff.

[71] This legal obligation is even stricter in cases of occupied territories, where the occupying party has the obligation to ensure the food and medical supplies for the population (art. 55 GC IV). This, however, is not the case for the Yemeni armed conflict.

[72] F. LATTANZI, *Humanitarian Assistance*, in A. CLAPHAM, P. GAETA, M. SASSÒLI (eds.), *The 1949 Geneva Conventions: A Commentary*, Oxford, 2015, p. 250 ff.

[73] F. D'ALESSANDRA, M. GILLET, *The War Crime of Starvation in Non-International Armed Conflict*, in *Journal of International Criminal Justice*, 2019, p. 815 ff.

[74] Y. SANDOZ, C. SWINARSKI AND B. ZIMMERMANN (eds), *Commentary to the Additional Protocols of 8 June 1977 to the Geneva Conventions of 1949*, Geneva, 2020.

country, facilitate relief actions in the Houthi-controlled areas, against which the IRG itself is fighting?

Nevertheless, all parties to the conflict (even non-State actors) may be held responsible for the violation of Article 18 APII and customary international law where they arbitrarily withhold their consent for the delivery of relief operations[75] or fail to comply with the obligation to allow and facilitate the rapid and unimpeded passage of humanitarian relief.[76]

Articles 14 and 18 APII should be interpreted together, because they all derive from the general principle of humane treatment of all persons not participating in hostilities laid in Common Article 3 to the Geneva Conventions[77]. Article 18 APII (and the relevant customary international law) does not explicitly fit in with the case of starvation as a method of warfare; in fact, Article 14 APII does not mention the obstruction of humanitarian assistance. At the same time, this conduct may meet the definition of starvation as a method of warfare under Article 14 APII when the obstruction is carried out for the purpose of starving the civilian population[78].

## 2.2 International Criminal Law

Yemen is not a party to the Rome Statute, nor are the States which are part of the Saudi-led coalition (except for Jordan). Nevertheless, it is important to acknowledge the Rome Statute for at least two reasons. The first one is that ICL may complement IHL[79] in providing to researchers and practitioners a comprehensive understanding of what is starvation of civilians as a method of warfare and how it should be dealt with. The second reason is that the prosecution of individuals for the war crime of starvation of civilians may occur even if Yemen does not adhere the Rome Statute, either directly through a referral by the UN Security Council[80] to the International Criminal Court ("ICC") or indirectly through the implementation of universal[81] or extraterritorial jurisdiction, in which most likely the Rome Statute framework and ICL will be considered[82].

Under ICL, starvation as a method of warfare is considered a war crime. In 2019, the Assembly of State parties to the International Criminal Court addressed the critical gap in the Rome Statute's Article 8 concerning war crimes, by amending the Statute to include as a war crime starvation as a method of warfare also for NIACs[83]. Before the 2019 amendment, starvation as a method of warfare was considered a war crime only for IACs. This amendment was an important step in addressing the legal disparities between IACS and NIACs under ICL; at the same time, the modification aligned the Rome Statute with IHL and relevant customary international law[84].

ICL requires three elements to establish the offence of war crimes: the contextual elements (i.e., the conduct took place in the context of and linked to an armed conflict and the perpetrator was aware of the factual circumstances that established the existence of the armed conflict itself); the mental element or *mens rea*; and the physical element or *actus reus*. With regards to starvation the actus reus would be the deprivation of civilians of OIS and the mens rea would be the intention of the perpetration to starve civilians as a method of warfare. Similar to what has been discussed for Article 14 APII, the intent is an important factor to identify the performance of this crime; in addition, in this case, the intent/*mens rea* is a constituting element of the crime. For the *actus reus*, while the crime requires the deprivation of OIS as both a conduct and a consequence, the crime does not seem to require proof of result[85] (although the actual starvation of civilians is important at the sentencing stage when determining the reparations that the victims need[86]). This is apparent when reading of 8(2)(e)(xix) of the Rome Statute as well as the Elements of Crime[87]. The terminology used in Article 8 refers to the intention to bring about a consequence, but remains silent on the proof of result; therefore, in this instance, proof of actual starvation of civilians is not required[88].

## 2.3 National Law and International Human Rights Law

At a national level, Yemen's legislation does not have ad hoc laws for the prohibition of starvation of civilians. This is comprehensible, given that the Yemeni institutions, which were already fragile before the conflict, struggle to effectively operate in the country and embrace pertinent norms to apply in favor of the civilian population. However, a brief mention of the Yemeni constitution and the relevant norms in terms of application of International Human Rights Law should be made.

The 2015 Constitution, the Dustur, which was the result of the NDC process, has not been implemented yet, as the war broke out blocking all democratic institutions and the Houthis are not willing to sign it[89]. This means that the old Dustur of 1991 is in force. However, if implemented at any time, the new Constitution could set the basis for a fast advancement of human rights[90]. The new Constitution could potentially change the legal asset of Yemeni institutions, considering that the old Dustur, despite affirming the importance of human rights, contains only one article on the implementation of IHRL[91]. On the contrary, the new Constitution is definitely more attentive to the respect of human rights: there isn't a dedicate article on the right to food *per se*; however, there are two articles dedicated to the right to health (Articles 32 and 55), which can be interpreted in an extensive way and include the right to adequate food and water.

Now, with regards to the international mechanisms on human rights, the right to adequate food, water and freedom from starvation are fundamental international human rights, often related to the right to life[92]. Indeed, they are included (either explicitly or implicitly) in different human rights treaties[93]. Yemen is party to many of these international human rights treaties which deal with the right to food. As a UN member State, Yemen adheres to the UN Charter and the

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[75]  D. AKANDE, E.C. GILLARD, *Oxford Guidance on the Law Relating to Humanitarian Relief Operations in Situations of Armed Conflict*, Oxford, 2016.

[76]  *Ibid.*

[77]  MWATANA FOR HUMAN RIGHTS, GLOBAL RIGHTS COMPLIANCE, *Starvation Makers. The Use of Starvation by Warrying Parties in Yemen*, cit. supra note 59.

[78]  *Ibid.*

[79]  F. G. PINTO, T*he International Committee of the Red Cross and the International Criminal Court: Turning international humanitarian law into a two-headed snake?*, in *International Review of the Red Cross*, p. 745 ff.

[80]  Article 13(b) of the Rome Statute.

[81]  INTERNATIONAL COMMITTEE OF THE RED CROSS ADVISORY SERVICE ON INTERNATIONAL HUMANITARIAN LAW, Universal Jurisdiction Over War Crimes, Geneva, 2014. In 2021, the group of eminent experts on Yemen also stated: "third States are encouraged to use all potential forms of jurisdiction, including universal jurisdiction". See: UN HUMAN RIGHTS COUNCIL, *Report of the Group of Eminent International and Regional Experts on Yemen, Geneva, forty-eight session 13 September-1 October 2021*, UN Doc. A/HRC/48/20, para. 82.

[82]  In reality, the International Criminal Court could also have jurisdiction over the Yemeni territory and citizens if Yemen made a declaration accepting the jurisdiction of the court (art. 12 Rome Statute).

[83]  The amendment to the Rome Statute came a few months after UNSC Resolution no. 2417, in which the Council drew attention to the link between armed conflict and conflict-induced food insecurity and strongly condemned the use of starvation of civilians in all armed conflicts, regardless of the nature and type of hostilities.

[84]  T. DANNENBAUM; A Landmark Report on Starvation as a Method of Warfare, in justsecurity.org, 2020, available at: < https://www.justsecurity.org/73350/a-landmark-report-on-starvation-as-a-method-of-warfare/#:~:text=The%20ICC %20Sta tute%20provisions%20for,)(e)(xix)) >.

[85]  O. TRIFFTERER, K. AMBOS (eds.), *The Rome Statute of the International Criminal Court: A Commentary*, London, 2022.

[86]  A. CASSESE, P. GAETA (eds.), *Cassese's International Criminal Law*, Oxford, 2013.

[87]  GLOBAL RIGHTS COMPLIANCE, WORLD PEACE FOUNDATION, *The Crime of Starvation and Methods of Prosecution and Accountability – Accountability for Mass Starvation: Testing the Limits of the Law*, The Hague, 2019.

[88]  *Ibid.*

[89]  In order to enter in force, the Constitution needs to be signed by all the parties of the National Dialogue Conference. The only signature missing is the one of the Houthis.

[90]  P. WILLIAMS, T. SOMMADOSSI, A. MUJAIS, *A legal Perspective on Yemen's Attempted Transition from a Unitary to a Federal System of Government, in Utrecht Journal of International and European Law*, 2017, p. 4 ff.

[91]  Article 5 of the 1991 Constitution: *"The State shall abide by the United Nations Charter, the Universal Declaration of Human Rights, the Charter of the League of Arab States and the generally accepted norms of international law"*.

[92]  OHCHR, *Fact Sheet no. 34 – The Right to Adequate Food*, Geneva, 2010.

[93]  Universal Declaration on the Eradication of Malnutrition and Hunger; Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), Articles 12(2) and14(2)(h); Convention on the Rights of Persons with Disabilities, Articles 25(f) and 28(1); Convention on the Rights of the Child (CRC), Articles 24(2)(c) and 27; Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador), Article 12; African Charter on the Rights and Welfare of the Child, Article 14(2)(c); Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, Article 15; Arab Charter, Articles 38 and 39(2)(e).

International Declaration of Human Rights, in which Article 25 states the right of adequate standard of living for the health and well-being everyone, including food. Moreover, Yemen has ratified the International Covenant on Economic, Social and Cultural Rights and its Article 11 on the right to adequate standards of living, but it has not accepted the individual complaints procedure of the conventions. It should be noted that some States involved in the Yemeni conflict, most notably Saudi Arabia, are not parties to the ICESCR, so, unless the covenants' provisions correspond to customary international law[94], they are not binding them.[95] Yemen has also ratified the Convention on the Discrimination of All Forms of Discrimination against Women, the Convention on the Rights of Persons with Disabilities, the Convention on the Rights of the Child and the Arab Charter on Human and People's Rights.

Yemen has also ratified the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, accepting the complaint inquiry procedure of the Convention initiated by the UN Committee against torture. So, if the UN Committee against Torture receives reliable information of serious or systematic violations of the treaty by Yemen, it could undertake an inquiry. To date, this has not happened yet. The conduct starvation as a method of war crime should be considered as an inhuman or degrading treatment; therefore, Yemeni citizens could hypothetically be protected by the Convention against Torture.

In general, there are three different obligations imposed on State parties when they apply the human right to food, namely the right to respect, protect and fulfil[96]. The violation of these three obligations can occur through either a direct action (i.e., intentional starvation and deprivation from food) or through the omission or failure of the State to take the necessary measures that derive from these obligations[97].

Considering the context of the Yemeni conflict, a doubt arises on whether these above-mentioned rights impose a legal obligation on non-State actors. This issue is out of the scope of this article, but it is worth mentioning that, although there is a lot of debate on this matter, non-State armed group may be also be held responsible for violations of human rights treaty where they exercise de facto control over territory and population[98]; this might be the case for the Houthis in Northern Yemen.

## 3. The situation on starvation in Yemen

Unlike other neighboring countries and other places around the world, the famine and starvation in Yemen is not caused by climate phenomena or a particularly unfriendly environment. Despite slowly becoming a territory in which climate change[99] is producing its effects, Yemen is still the Arabia Felix, the green and fertile land that the Romans would talk about[100]. Nevertheless, the potential of the Yemeni territory and its resources are completely being mismanaged to the point that today 17.3 million Yemenis are food insecure[101] out of a population of 33 million people. The rate of malnutrition is one of the highest in the world and almost one third of families have gaps in their diet[102]. Starvation in Yemen is not a recent livelihood issue for the country; before the conflict almost 45% of the population was already food insecure[103]. This was due to a series of factors, mainly related to the political and economic crisis and instability Yemen has been facing since its independence in the 1960s. The ongoing war has simply been the coup de grace for Yemeni civilians. In fact, the conflicting parties, aware of the already fragile condition of the population[104], might have taken advantage of it[105]. During the conflict, starvation has systematically been used as a method of warfare by all warrying parties. In September 2021, Mwatana for Human Rights[106], one of the very few Yemeni NGOs which are still operating in the Houthi-controlled areas of the country, published an extensive report[107] on the use of starvation by the Saudi-led coalition and by the Ansar Allah group. This paper, which gathered the efforts of many civil society and community-based organizations[108], provided a meticulous description of how the two opposing parties have taken advantage of the fragility of civilians with regards to food insecurity in the territories of their concern. Naturally, in situations where civilians become the victims of abuses and attacks, it is the most vulnerable categories of the population, such as women[109] and children, who bear the brunt of these assaults. While the goal of utilizing starvation as a method of warfare was the same for the Saudi-led coalition and the Houthis[110], the approaches employed to deprive civilians have varied depending on the capabilities and available resources of the parties carrying out this abuse of human dignity.

One the one hand, it has been extensively proven that the Saudi-led coalition had carried out airstrikes and military attacks on civilian agricultural infrastructures and water facilities[111] with the specific purpose of denying civilians the access to food and water in order to achieve their goals in the area and harm the Houthis. In 2018, anthropologist professor Martha Mundy reported an off-record reply of a Saudi diplomat to a question about threatened starvation: "once we control them, we will feed them[112]": this statement denoted how much civilians didn't have any relevance when it came to achieving political agendas for the war. Moreover, the de facto naval, land and aerial blockade imposed by the Saudi-led coalition since 2016 on Yemen has severely restricted the flow of food to civilians and fundamental humanitarian assistance on which today 70% of the Yemeni population relies to survive[113].

With regards in particular to the naval blockade, the prohibition of starvation as a method of warfare does not prohibit per se the imposition of the naval blockade itself, as long as the purpose is to achieve a military objective and not to starve the civilian population. This principle is present in the San Remo Manual on International Law Applicable to Armed Conflict at Sea[114]. However, the 2016 blockade's biggest consequence has been the starvation, more than the

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95   Nevertheless, even in the absence of the applicability of international human rights law to non-state armed groups, IHL and ICL remain applicable. In this case, as already seen, the prohibition of starvation is a complementary norm to the right to food in armed conflict; therefore, Saudi Arabia is bound by this obligation at an international level.

96   MWATANA FOR HUMAN RIGHTS, GLOBAL RIGHTS COMPLIANCE, *Starvation Makers. The Use of Starvation by Warrying Parties in Yemen,* cit. supra note 59.

97   *Ibid.* See also the Committee on Economic, Social and Cultural Rights in General Comment No. 12 which defined the obligations that States must fulfill in order to implement the right to adequate food at the national level.

98   For further information on the topic, see: M. DARAGH, *Non-State Armed groups and Peace Agreements: Examining Legal Capacity and the Emergence of Customary Rules,* in M. WELLER, M. RETTER, A. VARGA, *International Law and Peace Settlements,* Cambridge, 2021, p. 187 ff.; A. BERKES, *The Human Rights Obligations of non-State Actors,* in A. BERKES International Human Rights Law Beyond State Territorial Control, Cambridge, 2021, p. 149 ff.

99   For further information on the effects of climate change in Yemen, see: R.A. PRINCE, *Climate Change Risks and Opportunities in Yemen* (K4D Helpdesk Report), in Institute of Development Studies, 2022, available at: < https://opendocs.ids.ac.uk/opendocs/bitstream/handle/20.500.12413/17584/1168_Climate%20change%20 risks%20and_%20opportunities%20in%20Yemen.pdf?sequence=1&isAllowed=y >. See also the Stockholm International Peace Research Institute's Fact Sheet on Climate Change and Security in Yemen (June 2023): < https://www.sipri.org/sites/default/files/2023-06/2023_sipri-nupi_fact_sheet_yemen_june.pdf >.

100   J. RETSÖ, *When Did Yemen Become "Arabia Felix"?,* in *Proceedings of the Seminar for Arabian Studies,* 2003, Vol. 33, Papers from at the thirty-sixth meeting of the Seminar for Arabian Studies held in London, 18-20 July 2002, 2003, p. 229 ff.

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101   WFP estimates, available at: < https://www.wfp.org/emergencies/yemen-emergency >

102   *Ibid.*

103   WFP, *Comprehensive Food Security Survey,* Rome and Sana'a, 2012.

104   For further information, see WFP estimates, available at: < https://www.wfp.org/emergencies/yemen-emergency >.

105   See *supra* note 2.

106   See Mwatana For Human Rights' Website available at: < https://www.mwatana.org/en/home >..

107   MWATANA FOR HUMAN RIGHTS, GLOBAL RIGHTS COMPLIANCE, *Starvation Makers. The Use of Starvation by Warrying Parties in Yemen,* cit. *supra* note 59.

108   See *supra* note 2.

109   PEACE TRACK INITIATIVE AND WOMEN'S INTERNATIONAL LEAGUE FOR PEACE AND FREEDOM, *Joint Submission to UN Committee on the Elimination of Discrimination Against Women,* 2021.

110   M. HUSAIN, *Starvation as a Method of Warfare, in Research Society of International Law* (rsilpak.org), 2021.

111   MWATANA FOR HUMAN RIGHTS, GLOBAL RIGHTS COMPLIANCE, *Starvation Makers. The Use of Starvation by Warrying Parties in Yemen,* cit. *supra* note 59.

112   M. MUNDY, *The Strategies of the Coalition in the Yemen War: aerial bombardment and food war, in wordpeacefoundation.org,* 2018, available at: < https://sites.tufts.edu/wpf/files/2018/10/Strategies-of-Coalition-in- Yemen-War-Final-20181005-1.pdf >.

113   UNOCHA resources, available at: < https://www.unocha.org/yemen >.

114   The San Remo Manual on International Law Applicable to Armed Conflict at Sea is a document that provides a comprehensive overview of the rules and principles of IHL as they apply to naval warfare and conflicts at sea. The manual was prepared by a group of legal and naval experts at the International Institute of Humanitarian Law in San Remo, Italy. The San Remo Manual is a respected and influential document, but it is not a legally binding treaty itself. See: L. DOSWALD-BECK (ed.), San Remo Manual on International Law Applicable to Armed Conflict at Sea, Cambridge, 1995.

weakening of the Houthi groups. To comprehend the gravity of the blockade, the World Organization Against Torture has defined it as a 'torture in slow motion[115].

On the other hand, the Houthis have put restrictions on humanitarian access, in blatant violation of Article 18 APII, relating to relief societies and relief actions, which is legally binding for the Ansar Allah group. Concurrently, there is documentation and proof of the use of landmines to purposely impede the access to agricultural areas and objects indispensable for the survival[116].

In addition, both parties have similarly resorted to the deliberate and disproportionate destruction of OIS, which is one of the primary causes of starvation and related diseases in Yemen[117]. Numerous reports from organizations and entities like the World Peace Foundation[118], Global Legal Action Network[119], Yemen Data project[120], the UN Group of Eminent Experts on Yemen[121] and the Yemeni Ministry of Agriculture and Irrigation[122] have demonstrated both parties' responsibility for the destruction of OIS in the country. Apart from the clear moral condemnation and rejection of these actions, they are also in violation of Article 14 APII and 54 API[123].

In essence, "Yemen is not starving; Yemen is being starved[124]". While problems related to food production or distribution are significant factors, mass starvation in Yemen is related to all these actions that intentionally harm a population's ability to survive[125]. Of course, as previously discussed, many of these operations are prohibited under international law. Nevertheless, they still take place in Yemen, in spite of the diminishing intensity of armed conflicts and the prospect of peace agreements in the near future. And what is even more frustrating, is that it is all happening in front of a less and less engaged international community, which is aiming at ending conflict without properly acknowledging the well-being of the civilian population[126].

Another issue pertaining to starvation is the diminishment of humanitarian aid. The 2023 Humanitarian Response Plan[127] for Yemen required $4.34 billion to secure food and OIS to 17 million food insecure Yemenis in the country. However, following a trend that has been going on for more than two years, funding from donors has diminished in Yemen. The largest emergency response in Yemen is the one of the World Food Program ("WFP"), which aims to provide food aid to approximately 15 million people[128]. However, in August 2023, the WFP has suspended its

emergency program's projected plan, having secured roughly 28 percent of the necessary funds[129] (about $ 1.05 billion). The declining funding did not affect only the WFP and other UN agencies which operate in Yemen, but it affected all other humanitarian players on the ground[130]. For the first time in eleven years, the International Committee of the Red Cross (ICRC) faced funding shortages in Yemen's operations: in a statement, the general director of ICRC stated that "this is a worrying development which, if not reversed, will undermine the progress of neutral and impartial humanitarian action[131]".

Donors' funding in the humanitarian assistance world has decreased for everyone. Despite that, there are a series of more specific factors that led to the decrease of humanitarian pledging in Yemen. The first factor revolves around the global crises and conflicts that are casting the Yemeni conflict and food crisis in the shadow. Foremost among the conflicts is the war in Ukraine, which erupted in February 2022 and added millions of individuals to the target population that the UN Assistance Program serves[132]. The Russian-Ukrainian war not only caused further competition between humanitarian organizations to obtain the necessary money for the implementation of their projects, but it also gathered a lot of Western media attention[133] which unfortunately placed other conflicts around the world in the background. The Russian-Ukrainian war has further exacerbated the food insecurity crisis in Yemen, as an estimated 46% of the wheat was imported from Russia and Ukraine[134].

The second important factor is the sequential crises that are emerging at a global level[135]: ranging from the COVID-19 pandemic to the so-called migrant "crisis" that Europe is experiencing, Yemen has deeply suffered as it lost its priority status among international donors[136].

A third factor which indirectly affected Yemen's situation concerns the growing challenges of the humanitarian aid system. For instance, donors are decreasing their funding because of cases of lacking transparency[137] of the budget of humanitarian organizations. There is also a growing sense of disillusionment among donors who keep funding continuing humanitarian crises that last decades without significant traces of improvement[138].

Finally, Yemen has sadly experienced targeting of humanitarian operators in the country. In addition to the impediment of humanitarian aid and actions in the country by the conflicting parties, humanitarian workers and infrastructures have been victims of targeted attacks[139]. Most recently, in July 2023, WFP staff member Moayad Hameidi was shot and killed in Taizz governorate, complicating the already delicate position of WFP in Yemen.

[115] WORLD ORGANIZATION AGAINST TORTURE, *Torture in Slow Motion – The Economic Blockade on Yemen and Its Grave Humanitarian Consequences*, Brussels and Tunis, 2022.

[116] GROUP OF EMINENT INTERNATIONAL AND REGIONAL EXPERTS ON YEMEN, *Situation of Human Rights in Yemen, including violations and abuses since September 2014*, 13 September 2021, A/HRC/48/20.

[117] L. GRAHAM, *Pathways to Accountability for Starvation Crimes in Yemen, in Case Western Reserve Journal of International Law*, 2021, p. 401 ff.

[118] *Ibid.*

[119] *Ibid.*

[120] *Ibid.*

[121] GROUP OF EMINENT INTERNATIONAL AND REGIONAL EXPERTS ON YEMEN, *Situation of Human Rights in Yemen, including violations and abuses since September 2014*, cit. supra note 116.

[122] See Yemeni Ministry of Agriculture and Irrigation's Website, available at: < https://www.agriculture.gov.ye/?lng= english >.

[123] A. CLAPHAM, P. GAETA, M. SASSÒLI, *The 1949 Geneva Conventions – A Commentary*, cit. supra note 72.

[124] S. PERLO-FREEMAN, *Yemen is not starving, Yemen is being starved*, in newint.org, 9 March 2021, available at: < https://newint.org/features/2021/03/09/yemen-not-starving-yemen-being-starved >; ;: M. ABDULKADER, *The Forgotten War*, cit. supra note 1.

[125] M. ABDULKADER, The Forgotten War, cit. supra note 1.

[126] While acknowledging that the rapprochement between the Houthis and the Saudis can be the "real deal" in ending the war for good, the risk is that recent talks and roundtables that have happened in the last year will end in Saudi forces pulling out handing over the country to the Houthis who will be left fighting and eventually divide from the STC, causing further abuses of human rights. In a recent interview, Abubakr Al-Shamahi, Middle East and North Africa Editor with al Jazeera Digital and former researcher at the San'a Center for Strategic Studies, stated: *"For lots of Yemenis, the idea of the Houthis ruling over them is akin to the Taliban ruling over Afghanistan for many Afghans. It's just something that they do not want"*. Full interview here, available at: < https://www.aljazeera.com/program/start-here/2023/5/11/is-the-war-in-yemen-about-to-end-start-here >.

[127] < https://reliefweb.int/report/yemen/yemen-humanitarian-response-plan-2023-january-2023-enar >.

[128] See WFP's page on Yemen: < https://www.wfp.org/emergencies/yemen-emergency >.

[129] EMIRATES POLICY CENTER, *Yemen's Declining Aid Funding: Choices for the Global Community*, in epc.ae, 4 September 2023, available at: < https://epc.ae/en/details/featured/yemen-s-declining-aid-funding-choices-for-the-global-community#:~:text=Reducing%20humanitarian%20funding%20has%20been,58%20percent%20in%20its%20funding. >.

[130] The Norwegian Refugee Council admitted the Yemen activities are being implemented from the remining funding the NGO has received in the past; similarly, INTERSOS and other NGOs working in the country stated that Yemen pledging fall far short of what is needed to help Yemenis survive, available at: < https://www.intersos.org/en/yemen-pledging-falls- far-short-of-what-is-needed-to-help-yemeni-people-survive/ >.

[131] Available at: < https://www.wfp.org/emergencies/yemen-emergency >.

[132] EMIRATES POLICY CENTER, *Yemen's Declining Aid Funding: Choices for the Global Community*, cit. supra note 129.

[133] J. S. BACHMAN, E. BRITO RUIZ, *The Geopolitics of Human Suffering: A Comparative Study of Media Coverage of the Conflicts in Yemen and Ukraine*, cit. supra note 1.

[134] F. BAHASHWAN, *The Impact of the Russian-Ukrainian War on Yemen*, in wilsoncenter.org, 2022.

[135] N. PEUTZ, D. FASSIN, M. FOURCADE (Eds.), *Crisis as a pre-existing condition: Yemen between Cholera, Coronavirus and Starvation, in Pandemic Exposures: Economy and Society in the Time of Coronavirus*, Chicago, 2021, pp. 295 ff.

[136] For example, in 2023, the United Kingdom has reallocated a fourth of its aid budget to accommodate incoming migrants and asylum seekers at its borders. EMIRATES POLICY CENTER, *Yemen's Declining Aid Funding: Choices for the Global Community*, cit. supra note 129.

[137] E. M. GABER, M. FENTTIMAN, *From Food to Cash Assistance: Rethinking Humanitarian Aid in Yemen, in International Journal of Humanitarian Action*, 2022, p. 1 ss.

[138] *Ibid.*

[139] J. SOWERS, E. WEINTHAL, *Humanitarian Challenges and Targeting of Civilian Infrastructure in the Yemeni War*, in *International Affairs*, 2021, p. 157 ff.

## 4. The issues relating to the application of the international legal framework and alternative avenues and recommendations to prevent and combat starvation

After giving a general overview of the international laws on the prohibition of mass starvation and after giving a brief analysis on the situation on the ground, it clearly appears that there is a huge implementation and accountability gap for the laws and norms that should protect Yemeni citizens.

There are many ways in which national and international stakeholders could advocate to fill this gap and obtain effective justice for the Yemeni population; writing entire books would probably not be enough to give a fully comprehensive examination of these possibilities. In the context of the Yemeni armed conflict, there has been, in particular, a lot of debate among academics[140] and researchers with regards to the determination and identification of the perpetrators of the starvation of the population to invoke States' (and ideally non-State actors) responsibility and/or accountability for the violation of international obligations on the one hand, and individual criminal responsibility for the violation of International Criminal Law on the other hand.

This process should ideally take place at an international level, considering that the Yemeni tribunals and institutions are unable and/or unwilling to effectively and efficiently prosecute the violation of the prohibition of mass starvation as a method of warfare. In 2020, Mwatana for Human Rights stated that "courts in Yemen are at best ineffective against warring parties and, at worst, captured by those same parties[141]". Other national courts, belonging to the Saudi-led coalition's States or to Iran, would probably be even less impactful in prosecuting mass starvation, as for all of these States there are significant concerns[142] by NGOs and international institutions when it comes to the implementation of IHL, ICL and IHRL.

In any case, at an international level significant issues arise.

First of all, invoking State responsibility in front of the only international court which can adopt binding decision, the International Court of Justice ("ICJ"), is very unlikely, as Yemen would never accept the jurisdiction of the court. The primary purpose of the ICJ is to address conflicts that may arise between countries, rather than address State responsibility for IHL violation or individual criminal responsibility[143]. The countries that could be involved in front of the ICJ for a dispute concerning Yemen would be Iran and the States of the Saudi-led coalition. However, it is important to mention that the ICJ has usually been reluctant to address politically contentious disputes,[144] which would be the case if Yemen, or any other country involved in the conflict, appeared in front of the Court.

Moreover, the ICJ jurisdiction over a case concerning States' action in Yemen is not easy to determine, since the Court

has no compulsory jurisdiction, unless States have accepted the jurisdiction of the court for the given case or have recognized the Court's judgments' legally binding power through a compromissory clause[145]. There is no evidence that Yemen or any other State involved in the conflict (i.e., Iran and the States of the Saudi-led coalition) are willing to accept the ICJ jurisdiction for any dispute concerning the Yemeni civil war[146].

Eventually, even if there is theoretically an ICJ judgment which is legally binding, the issue of enforcement would remain a significant concern[147]. The only body that can enforce the ICJ's decision is the UN Security Council. However, the Council often reflects the political interests of the five permanent members[148], also in relation to the Yemeni war. As a consequence, so far, at least one of the permanent members has always impeded any legally binding Resolution concerning Yemen[149] through the adoption of the veto power[150].

Secondly, Yemen has not accepted the individual complaints procedures of any international human rights treaty monitoring bodies, except for the one of the Convention on the Rights of People with Disabilities. Similarly, Yemen has implicitly accepted[151] the inquiry procedure only for the Convention against Torture and the Convention on the Rights of People with Disabilities. In any case, the decisions of treaty monitoring bodies are not per se legally binding; therefore, enforcement gaps are likely to happen.

Thirdly, when dealing with the enforcement procedures[152] of IHL, some weaknesses and deficiencies emerge. IHL is indeed grounded in a principle of reciprocity between armed actors, but there isn't an effective monitoring body that can guarantee the respect of the rules: this poses a grave challenge to guaranteeing human rights in conflict. There are mainly three enforcement procedures that attend IHL, according to the Geneva Conventions and the Additional Protocols: 'protecting powers'[153], 'international fact-finding commissions'[154] and prosecutions[155]. These procedures, however, necessitate a strong political will and a readiness from all the parties of the conflict to dialogue between them. This is for sure a limitation to an effective mechanism that could determine and prosecute violations IHL[156].

Finally, with regards to ICL, Yemen is not party to the Rome Statute; so, as stated above, unless there is a direct

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[140]  L. GRAHAM, *Pathways to Accountability for Starvation Crimes in Yemen*, cit. *supra* note 117.; A. VADAPALLI, *Justice Without Power: Yemen and the Global Legal System, in Michigan Law Review*, 2023, p. 811 ff; A. M. KIMBALL, A. JUMAAN, *Yemen: The Challenge of Delivering Aid in an Active Conflict Zone, in Global Security: Health, Science and Policy*, 2020, p. 65 ff.

[141]  MWATANA FOR HUMAN RIGHTS, *UN Human Rights Council: Prioritize Yemen Accountability and Redress*, Sana'a, 2020.

[142]  See: AMNESTY INTERNATIONAL, Saudi Arabia 2022, in amnesty.org, 2022, available at: < https://www.amnesty.org/en/loca tion/middle-east-and-north-africa/saudi-arabia/report-saudi-arabia/ >; UN HUMAN RIGHTS COUNCIL, Report of the Special Rapprteur on the Independence of Judges and Lawyers, UN Doc. /HRC/29/26/ Add.2, 5 May 2015, paras. 33 and 48-62; S. MOINIPOUR, The Islamic Republic of Iran's Export of Human Rights Violations through Proxies: Yemen and the Case of the Bahá'ís. Religion & Human Rights, in Religion and Human Rights – An International Journal, 2022, p. 65 ff.

[143]  A. VADAPALLI, *Justice Without Power: Yemen and the Global Legal System*, cit. *supra* note 140.

[144]  *Ibid.* See also: P. H.F. BEKKER C. J. BORGEN, World Court Rejects Yugoslav Requests to Enjoin Ten NATO Members from Bombing Yugoslavia, in American Society of International Law, 1999, available at: < https://www.a sil.org/insights/volume/4/issue/4/world-court-rejects-yugoslav-requests-enjoin-ten-nato-members-bombing >.

145 See Article 36 of the Statute of the ICJ. The compromissory clause, also known as the "optional clause" refers to the situation in which States accept the jurisdiction of the ICJ as a means of resolving disputes. By including the compromissory clause in their declarations or agreements, States accept the ICJ jurisdiction and agree to abide by its decision in cases brough before the court.

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[145]  See Article 36 of the Statute of the ICJ. The compromissory clause, also known as the "optional clause" refers to the situation in which States accept the jurisdiction of the ICJ as a means of resolving disputes. By including the compromissory clause in their declarations or agreements, States accept the ICJ jurisdiction and agree to abide by its decision in cases brough before the court.

[146]  T. TZIMAS, *Legal Evaluation of the Saudi-Led Intervention in Yemen: Consensual Intervention in Cases of Contested Authority and Fragmented States, in Heidelberg Journal of International Law*, 2018, p. 147 ff.

[147]  W. A. QURESHI, *The Crisis in Yemen: Armed Conflict and International Law, in North Carolina Journal of International Law, 2020, p. 227 ff.; A. VADAPALLI, Justice Without Power: Yemen and the Global Legal System*, cit. supra note 140.

[148]  J. TRAHAN, *Existing Legal Limits to Security Council Veto Power in the Face of Atrocity Crimes*, Cambridge, 2020.

[149]   See, for example, Russia's veto in 2018 on draft Resolution which would have applied sanctions on Yemen for the violations of IHL and IHRL. UN Security Council 8190th meeting, *The Situation in the Middle East*, 26 February 2018, New York S/PV.8190, available at: < https://documents-dds-ny.un.org/doc/UNDOC/GEN/N 18/051/93/PDF/N1 805193.pdf?OpenElement >.

[150]  See Article 27 of the UN Charter.

[151]  Merely by ratifying the convention.

[152]  C. O'ROURKE, *Women's Rights in Armed Conflict Under International Law*, cit. supra note 48, p. 85.

[153]  Art. 8 of GC I: "

154 Art. 90 of Additional Protocol to GC: *"The present Convention shall be applied with the cooperation and under the scrutiny of the Protecting Powers whose duty it is to safeguard the interests of the Parties to the conflict [...]"*

[154]  Art. 90 of Additional Protocol to GC: *"An International Fact-Finding Commission consisting of fifteen members of high moral standing and acknowledged impartiality shall be established [...].*

*The Commission shall be competent to: (i) enquire into any facts alleged to be a grave breach as defined in the Conventions and this Protocol or other serious violation of the Conventions or of this Protocol; (ii) facilitate, through its good offices, the restoration of an attitude of respect for the Conventions and this Protocol.*

*In other situations, the Commission shall institute an enquiry at the request of a Party to the conflict only with the consent of the other Party or Parties concerned".*

[155]  C. O'ROURKE, *Women's Rights in Armed Conflict Under International Law*, cit. *supra* note 48, p. 85.

[156]  A. CASSESE, *Current Challenges in International Humanitarian Law*, in A. CLAPHAM, P. GAETA (ed.), *The Oxford handbook of Law in Armed Conflict*, Oxford and New York, 2014, p. 3 ss.

referral by the UN Security Council[157] to the ICC or unless Yemen or other States involved make a declaration under Article 12(3) of the Rome Statute accepting the jurisdiction of the ICC, the Rome Statute cannot be implemented in the context of the Yemeni armed conflict. Considering that the ICC does not have jurisdiction on international crimes committed in Yemen, a solution could be universal jurisdiction. Universal jurisdiction is a legal concept that allows States or international organizations to claim criminal jurisdiction for international crimes committed by any person regardless of his or her nationality, place of commission or any other link to the prosecuting entity. The principle of jurisdiction is a "reserve tool", meaning that it is conditioned by the existence of the subsidiarity principle which requires that the universal jurisdiction can be practiced only if the judicial system in the home-country to the crimes "is unable or unwilling to investigate and prosecute". This certainly is in line with the situation of Yemen[158].

The resort to the universal jurisdiction has been proposed various times by the UN Group of Eminent Regional and International Experts on Yemen in their various reports. For example, in 2019, the experts stated:

> "States, individually and collectively, must take effective measures to put an end to international law violations in Yemen and ensure the accountability of perpetrators. The UN Security Council should call on the parties to the conflict to lift all blockades and sieges against the civilian population and refer the situation in Yemen to the International Criminal Court. While the internationally recognized government of Yemen and the States belonging to the Saudi Arabia- led coalition have a primary duty to investigate and prosecute alleged perpetrators of crimes under international law committed in Yemen, third States should consider exercising universal jurisdiction and prosecuting alleged perpetrators that are present on their territory or otherwise under their jurisdiction[159]".

In any case, when focusing on legal aspects and studying the international protection of civilians against starving as a method of warfare from international law's perspective, politics and international relations are extremely relevant and can impact on the application of law[160]. It is true that in the last decades international law has contributed to the protection of civilians in the context armed conflicts; however, there are evident issues and inadequacies, which are often correlated to the political unwillingness to address specific issues. Any law is as strong as the political will to implement it. Especially in contexts of armed conflict, political interests of States or of non-State armed groups dominate the scene and need to be taken in account. For example, when it comes to universal jurisdiction, this can lead to critical decisions which are expected to reflect a State's position regarding another State[161]. There is a great possibility that this legal tool is politically motivated. Therefore, the politicization of universal jurisdiction can function as an impetus or impediment to justice.

So, given this situation, does that mean that there is little to no possibility for Yemen to effectively obtain justice? The answer is not easy. Nevertheless, hope and efforts to end starvation for the Yemeni people should continue. Considering that the national or international legal pathway[162] and the possibility of transitional justice[163] in Yemen are

not concretely feasible at the moment, research, advocacy and the improvement of humanitarian efforts can and should be key elements in combating and ending famine in the country.

## 4.1 Research, Documentation and Advocacy

The importance of conducting research and documenting the mass starvation in Yemen, which remains a largely unspoken crisis, cannot be overstated. In a world where countless crises compete for attention, the silent suffering of millions in Yemen cannot be ignored. Research and documentation, inside and outside the country, serve as the eyes and ears of the global community. Not only there would be a benefit from the point of media attention that Yemen could get, but research is often linked to advocacy and policy influencing/making and is the constituent element of informed decision-making. The more engagement with the issue of starvation in Yemen there is, the more original and innovative solutions to contrast starvation can be put forward by stakeholders and practitioners. Research and documentations are also powerful tools for accountability; when, in due course, judicial and extra-judicial mechanisms will be set up to invoke individuals and other actors' responsibility for the crime of starvation as a weapon of warfare. The research carried out until then will be used as evidence to hopefully bring justice to the victims.

At the UN level, the revival of the mandate of the Group of Eminent Experts, which was terminated in October 2021[164], after the UN Human Rights Council voted, would re-establish a mechanism to monitor the human rights situation in Yemen and ensure accountability for abuses. At the moment, there are no alternative mechanisms, further creating a justice gap for the population.

Attention should be drawn to training and providing local actors with the essential tools to effectively document and research about this topic without putting themselves at risk. From the outside, humanitarian and human rights organizations should support the research of people who are living in the country, by providing, for example, useful technological and digital tools and skills. In fact, in Yemen only around 27 percent of the residents have access to internet and only one percent of the population has fast internet connection[165]. In the age of social medias and information, internet is an essential mean to promote awareness in conflict-affected countries.

In a context like the Yemeni one, where the mere fact of spreading the voice of voiceless people outside the country can sometimes save lives (through a simple online donation, for example), research and documentation are not mere academic exercises: they are lifelines and beacons of hope.

## 4.2 Improvement of Humanitarian Efforts

Improvement of humanitarian efforts is a very extensive topic which is open to a wide range of interpretations. To simplify and condense the information, this article will consider only on three elements, namely the securement of additional funding, the need to adapt to changing situation and importance of enhancing local responses.

It is important to secure additional funding. This objective can be accomplished through various strategies. Stemming from research, the raise of global awareness about the severity of the Yemeni context can increase the involvement of donors, coming from both the public and private sector. Moreover, ensuring full transparency and maximum efficiency of the use of funding can alleviate food insecurity for many people.

At the same time, it is important that humanitarian intervention speedily adapts to the changing situations. Humanitarian

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[157] This is highly unlikely given that permanent members of the UN Security Council have assisted the Saudi-led coalition either by selling weapons or giving to them logistical support, which have contributed to the mass starvation of the Yemeni population. See: YEMEN ACCOUNTABILITY PROJECT, *Aiding and Abetting: Holding States, Corporations and Individuals Responsible for War Crimes in Yemen*, 2020, available at: < https://case.edu/law/sites/case.edu.law/files/2020- 10/FINAL%20 YAP%20AIDING%20ABETTING%20WHITE%20PAPER%20%20%282%29.pdf >.

[158] A. VADAPALLI, *Justice Without Power: Yemen and the Global Legal System*, cit. *supra* note 140.

[159] HUMAN RIGHTS COUNCIL, *Report of the detailed findings of the Group of Eminent International and Regional experts on Yemen, Geneva, forty-second session 9–27 September 2019*, UN Doc. A/HRC/42/CRP.1.

[160] A. COJOCARU, *Legal Impediments to the Prosecution of War Crimes in Internationalized Armed Conflicts: The Case of Yemen*, Oslo, 2019.

[161] B. BROOMHALL, *Universal Jurisdiction: Myths, Realities, and Prospects: Towards the Development of an Effective System of Universal Jurisdiction for Crimes under International Law*, in *New England Law Review*, 1993, p. 399 ss.

[162] After the adoption of the UNSC Resolution 2417 which condemned the use of starvation as a method of warfare, some argued that an ad hoc tribunal could be put in place to prosecute this war crime. For example, see: A. VADAPALLI, *Justice Without Power: Yemen and the Global Legal System*, cit. *supra* note 140.

[163] Civil society organizations, activists and researches have been calling for a transitional justice system in Yemen, since long before the conflict, but they have always been ignored. However, see S. PHILBRIK YADAV, *Yemen in the Shadow of Transition: Pursuing Justice Amid War*, Oxford, 2023.

[164] See Group of Eminent Experts on Yemen relating to the refusal of the Human Rights Council to renew their mandate, available at: < https://www.ohchr.org/en/press-releases/2021/10/statement-group-experts-yemen-hrc-rejection- resolution-renew-their-mandate >.

[165] Available at: < https://www.worlddata.info/asia/yem en/telecommunication.php#:~:text=Yemen%20is%20lagging%20behind%20i n,than%20256%20kbit%2Fs) >.

interventions should, for example, carefully follow up the movement of internally displaced persons ("IDPs") in the country and update their actions accordingly. In Yemen, in less than four years, the number of IDPs more than doubled[166]. While the movement of IDPs was more frenetic in the past, since people were trying to escape from conflict and famine, the situation is slowly stabilizing as there are fewer active fights in the country[167]. Nevertheless, humanitarian interventions should follow the movement of people to provide food and supplies to as more beneficiaries as possible. Following the trends of IDPs would also be helpful in preventing other livelihood, health and protection concerns, such as the spread of infectious diseases among the population[168].

Adapting the humanitarian intervention to the ongoing situation also means to recognize that the Yemeni context is not experiencing an emergency humanitarian crisis which is temporary[169]. Therefore, since the challenges will most likely continue in the short and medium-term future, plans for humanitarian intervention should be as flexible as possible to sudden changes.

Finally, one of the great challenges of humanitarian operations is the one of localization and the elevation of local responses[170]. Including national organization in funding and coordination systems at a country level encourages a "whole-of-society" approach, which results in more efficient and punctual replies[171]. Eventually, international non-governmental organizations and other international institutions are not akin to remain for a long time in one specific country and might leave after the end of their projects. On the other hand, local organizations belong to Yemen, they have the same or similar cultural and religious sensitivity and they are closer to the population in need to whom they feel connected.

Local responses are also more impactful in training and facing some behaviors of the populations[172]. For example, local organizations better understand the rationale behind specific negative coping mechanisms that starving families put in place. And while an expat iNGO staff member may not have the capacity and cultural sensitivity to efficiently teach, for instance, to a family that taking children away from school so that they work and buy food is counter-productive[173], a local activist is more likely to reach the same family and connect with the members better.

## 5. Conclusion

In Yemen, a nation gripped by the tumultuous intersection of regional, political, and ideological interests, the responsibility for the crime of starvation remains enigmatic. The Yemeni conflict serves as a testament to the intricacies of modern-day warfare, where the essence of humanity is tested amidst the chaos of conflict. This complex situation becomes increasingly challenging to untangle, as actors exercise varying degrees of control over a fractured land and sudden crises may arise and worsen food insecurity in the country. Yet, Yemen is experiencing a historical political moment. The country now stands at a crossroads: a future of peace agreements is conceivable, yet so is the possibility of a second chapter of conflict, where the actors involved may change, but the specter of famine and disruption is still there.

In these crucial times, it's imperative that all efforts aimed at promoting peace prioritize the welfare of the millions of Yemenis who endure starvation. Yemen's journey towards peace shouldn't be a mere transition from conflict to a negative peace that sacrifices the well-being of its people and leaves future actors grappling with its consequences.

Instead, the focus must be on a positive peace, one that fosters a sustainable environment for the nation. There are many doubts and fears that the rapprochement between the conflicting parties will vanish in a few months; this is why, for the moment, great priority should also be given to strengthen humanitarian efforts to further protect civilians[174]. However, while it is undeniable that the current political and legal framework concerning the prohibition of starvation in Yemen does not serve the best interests of its citizens, hope and unwavering dedication to the glorious Arabia Felix should always endure.

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[166] See Internal Displacement Monitoring Center Website, available at: < https://www.internal-displacement.org countries/yemen >.

[167] See *supra* note 2.

[168] A. ALHADHERI S. ALAM S, AHMED, M. ALSABRI. The Crisis, Disasters and Catastrophes Afflicting Yemen and its People, in Frontiers in Emergency Medicine, 2023, available at: < https://fem.tums.ac.ir/index.php/fem/article/view/1171/438 >.

[169] EMIRATES POLICY CENTER, *Yemen's Declining Aid Funding: Choices for the Global Community*, cit. *supra* note 129.

[170] L. FRENNESSON, J. KEMBRO, H. DE VRIES, M. JAHRE, L. VAN WASSENHOVE, *International Humanitarian Organizations' perspectives on localization efforts*, in *International Journal of Disaster Risk Reduction*, 2022, p. 1 ff.

[171] See Global Compact on Refugees Website, available at: < https://globalcompactrefugees.org/good-practices/social- cohesion-ensuring-protection-through-whole-society-approach >.

[172] L. FRENNESSON, J. KEMBRO, H. DE VRIES, M. JAHRE, L. VAN WASSENHOVE, *International Humanitarian Organizations' perspectives on localization efforts*, cit. *supra* note 170.

[173] See *supra* note 2.

[174] See *supra* note 2.

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# HUMANITARIAN ACCESS IN CIVIL WARS: LESSONS LEARNED FROM PRACTITIONERS IN NORTH-WEST SYRIA

Teresa **Rasella**

## 1. Introduction

Humanitarian access, understood as "access by humanitarian organisations to those in need of humanitarian assistance and protection, and access by those in need to the goods and services essential for their survival",[1] represents the necessary precondition to effectively address the needs of those that have to bear the life-threatening consequences of armed conflict.

In the last decades, the increase in non-international armed conflicts (NIAC) has presented humanitarian actors with specific challenges in accessing the affected population. Addressing such issues has now become crucial, in order to better shape the humanitarian response in present and future civil wars.

As the current research landscape has not systematically addressed this theme, this paper aims to fill the gap by considering one of the most intricate NIAC of current times: the Syrian civil war. After twelve years, the critical state in which the country still lies, with more than 15.3 million of people in need[2] and a highly fragmented territory, is a case in point of the legal, bureaucratic and operational burdens humanitarians face in accessing civilians in civil wars.

The focus of this work will be on humanitarian access in North-West Syria (NWS), and will build on qualitative research interviews conducted during field work in Gaziantep with NGO, UN and consultancy agency's representatives, shedding light on the perspective of those that face daily the access constraints of contexts such as NWS. With the frontline stable since 2019, the efforts by local governance actors to build a stable governance framework, and recent developments at the United Nations Security Council (UNSC) to allow for the cross-border passage of aid, the humanitarian response in NWS provides significant lessons learned for accessing those affected by NIACs.

## 2. Literature Review

Current literature on civil wars, humanitarian access and its legal implications shows significant gaps in comprehensively addressing the peculiar problems such contexts face, and in identifying means to respond more effectively.

Firstly, research considering humanitarian response and civil conflicts has mainly focused on pinpointing the impact aid can have on conflict dynamics. For various scholars, aid prolongs civil wars as it reduces the cost of fighting for rebels by: providing resources which are then exploited through aid diversion[3] and looting,[4] creating protected spaces - for instance through the creation of refugee camps in neighbouring countries - [5] and creating an economic interest over the prolonging of the war. Narang arrives at the same conclusion through a different explanation: aid provision

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[1] Rep. *Humanitarian Access in Situations of Armed Conflict - Field Manual 1.0. Federal Department of Foreign Affairs* - Conféderation suisse, 2011.

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increases uncertainty over the adversary's strength, and as such lengthens the war effort.[6] Others have tried to contrast these considerations, for instance Lyall's analysis of US-AID programmes in Afghanistan, showed an overall reduction in Taliban violence where such projects were conducted.[7] Martin and McMurry have looked at the duration of ceasefires, showing how aid has a stabilizing effect when opposition groups have uncontested territorial control, whereas when such control is disputed, aid becomes a threat to ceasefires' stability.[8] Finally, Shesterinina has mapped the various actors that interact with humanitarians in civil conflicts, creating a distinct social system that shapes humanitarian response and its impact.[9]

The Syrian case has been central in many analyses of this strand of literature on civil conflict and aid, which stands as proof of its relevance. Similarly to Martin and McMurry, Carnegie et al. have questioned if aid can support rebel's legitimacy claims, concluding that such effect is present, but only in uncontested areas, while in contested ones, aid could impair the creation of a credible governance system and, finally, prolong conflict.[10] Another research, based on the Syrian war, considers aid imbalances in government and opposition-held areas as a threat to post-war prospects.[11]

Secondly, research on humanitarian access has delved into some specific issues, as the role of local organisations in securing access,[12] or by building a typology of access denial by States,[13] but peculiar issues encountered in civil wars have not yet been addressed.

The third and most innovative literature concerning access in NIAC comes from legal studies, which have aimed at dissecting the crucial issue of territorial control by Non-State Armed Groups (NSAG). What are the legal obligations of these groups? Can they provide consent to international assistance? Is their consent enough, or is also State consent necessary? Various documents aim at clarifying the international law framework around humanitarian access,[14] while others try to provide innovative answers to these questions. Lane suggests that the strategic use of ceasefire agreements, by imposing human rights obligations, could be a means to enhance the responsibility of NSAG.[15] Regarding the issue consent, central in the Syrian case, Matyas and Vanhullebusch try to find new solutions: the first, by suggesting a new reasoning based on agency law to affirm the possibility to provide aid in absence of State consent, without undermining its sovereignty claims,[16] and the second, trying to bring together State-centric and humanitarian perspectives by hinting at an "interdependent exercise of the right to strategic consent" by all parties.[17]

In conclusion, while promising literature is trying to answer to central legal issues around access in civil war contexts such as that of Syria, more systematic understanding of the complex challenges faced by humanitarians in civil war contexts, and possible responses, is still lacking.

## 3. Methodology

This research is a qualitative analysis based on the survey of the literature conducted, heavily relying on reports and analysis by major organisations specialized in humanitarian assistance, and on ten interviews with practitioners working in NWS.

Five interviews were conducted in person in Gaziantep, the main hub of remote management for NWS, while five were done online, two times because the respondents were based in NWS. Eight interviewees were current or former employees of local NGOs, one the chief of a consultancy organisation for humanitarian and development programming,[18] and one UN staff member specialized in access issues.[19] The choice of participants was done by submitting the questionnaire to a variety of organisations, and then by following a snowball methodology once the first interviews were done.

The interviews were loosely structured and composed of a set of fourteen questions, divided into three major parts: presentation of the organisation and its programmes, humanitarian access constraints and solutions, earthquake response and impact on access, leaving in the end space for final remarks and to suggest further possible interviewees. A slightly different set of questions was proposed to the UN worker, in light of the different typology of operations conducted by UN agencies.

Some limitations found during the research process include the widespread practice of non-disclosure agreements, due to which many potential participants in the research had to decline, and the lack of direct access on the ground in NWS, having to rely in eight out of ten cases on personnel conducting remote-management activities. In addition, interviews were conducted before the decision of the UN to strike a deal with Assad to ensure cross-border operations, therefore specific questions on its future implications were not addressed, although it could have provided further useful insights.

Another major shortcoming of this paper is its focus on addressing the concerns of humanitarian workers while leaving the voices of those directly affected by the conflict, the population of NWS, silent. Adding the perspective of those receiving aid, understanding their perception of what humanitarian access is, what are the main obstacles and possible solutions, would represent a meaningful and necessary addition to further studies on the topic.

The study has focused only on the access constraints in NWS due to time constraints and difficulties in providing the same level of in-depth analysis for the three main areas of control in Syria (NWS, North-East Syria and regime-controlled areas). For this reason, further studies with a "Whole of Syria" approach, aimed at highlighting differences in humanitarian access limitations and solutions in the various territories, would be necessary to give a more complete picture.

Nevertheless, NWS remains a compelling case, from which meaningful insights can be drawn. First, a quick overview of the Syrian civil war, the major players involved in the humanitarian response and their coordination system will be

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[18]  Interview #3.

[19]  Interview #6.

provided. Then, delving into the topic of humanitarian access, the main constraints identified by interviewees, as well as possible solutions, will be analysed. The response to the catastrophic earthquake that devastated NWS in 2023 is then discussed to highlight both the inadequacy of the humanitarian response and its potential impact on humanitarian access practices. Finally, drawing from what is presented, some lessons learned will be provided to possibly enhance access to civilians in civil war contexts.

## 4. The Syrian War, Twelve Years On

The conflict in Syria has been unfolding since the 2011 Arab Spring. In these twelve years, a variety of actors, grievances and interests have fed into what started as a popular uprising against the authoritarian regime of Bashar al-Assad, with devastating effects for the civilian population. More than 350 thousand Syrians have died,[20] and more than 14 million have been displaced[21] since 2011.

The atrocities committed by the Syrian government towards its own population, the rise and fall of ISIS, the presence of various opposition groups, and the interventions of foreign powers, as the US, Iran, Türkiye and Russia, have made Syria an ever-complex scenario, in which civilians have had to bear the costs. The governance system of Syria has been progressively disrupted, fragmenting the territory and subjecting the population to the control of different actors, while depriving them of their livelihoods and forcing them to flee.
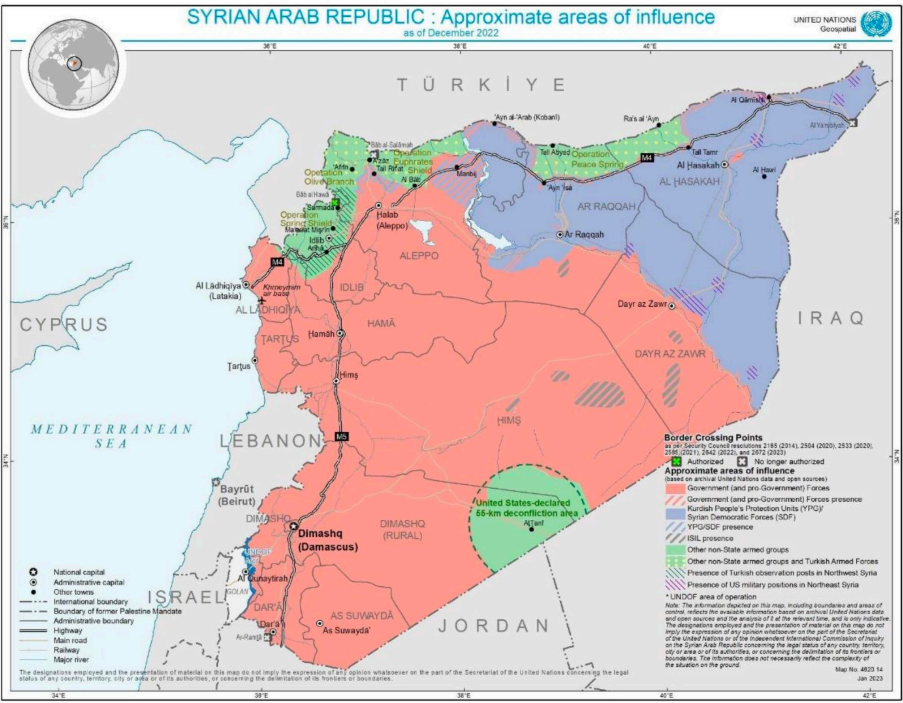


Figure - Approximate Areas of Influence as of December 2022, OHCHR

In 2020, Türkiye and Russia reached the Idlib agreement, a ceasefire after which hostilities have decreased - although never stopped - and frontlines have stabilized. As of 2023, there are three major areas of control in Syria: the North-West, the North-East and regime-held areas. Around 70% of the territory is under government control, while in the North-East the Kurdish-led Autonomous Administration of North and East Syria (AANES) has affirmed its presence.

North-West Syria has a population of 4.5 million, of which 4.1 million are considered people in need, 2.9 million are IDPs and 2 million live in camps.[22] Many Syrians from areas under Assad's authority have been displaced there throughout the years. NWS is considered the last stronghold of the Syrian opposition, but it is in itself a territorially divided area. The two major regions are the ones of Idlib and Northern Aleppo, controlled respectively by the Syrian Salvation Government (SSG) and the Syrian Interim Government (SIG).

The SSG controls the greater Idlib area, comprising half of the Idlib governorate and part of the Aleppo and Lattakia one, where most people in need are located. The armed group Hay'at Tahrir al- Sham (HTS), former Al-Nusra front, took control over the territory and in 2017 created its civilian branch, the SSG, which has provided for an overall strong and generally accepted form of governance.[23]

In 2016 and 2018 through Operations Olive Branch and Euphrates Shield, Türkiye gained control of the area between Idlib and Manbij, also known as Northern Aleppo. Nowadays, Türkiye retains a degree of control over the territory while formally the SIG governs the area, sided by the Syrian National Army (SNA). Overall, the Northern Aleppo area is considered to have a more fragmented and unclear form of governance compared to SSG one, with the presence of various smaller armed groups comprised under the SNA umbrella.

This already complex scenario has been recently struck by an unprecedented natural disaster: two earthquakes at 7.8 and 7.7 magnitude affected southern Türkiye, NWS and some regime-controlled areas on the 6th of February 2023, followed by several aftershocks. In NWS, OCHA has reported more than 4,500 deaths, 10,400 injured people and at least 10,600 affected buildings, of which around 1,800 were completely destroyed.[24]

The fragmentation of the Syrian territory as a whole and of NWS itself, with contrasting legitimacy and resource-control claims by local authorities, and the devastating impact of the earthquake, are key to understanding current practices and challenges of humanitarian access, as well as the overlapping crisis the civilian population has to face.

## 5. The Governance of Humanitarian Aid in North-West Syria

Different actors shape the humanitarian response in NWS. Humanitarian organisations face specific challenges based on their mandate, especially considering the difference between the United Nations and its agencies and international or local NGOs. However, "humanitarian actors are not isolated from but are both constituted by and constitutive of the interactions between the internal and external actors engaged in contemporary civil wars".[25] Therefore, it is also necessary to consider the various de facto authorities, and how they manage aid through various institutions and procedures. Finally, these actors interact, collaborate and negotiate with one another through various formal and informal coordination mechanisms, representing a crucial part of the governance of humanitarian access in NWS.

[20] Rep. *Civilian Deaths in the Syrian Arab Republic*. United Nations High Commissioner for Human Rights, 2022.

[21] "Syria Refugee Crisis Explained." UNHCR, March 14, 2023. https://www.unrefugees.org/news/syria-refugee-crisis- explained/#:~:text=After%20over%20a%20decade%20of,homes%20in%20search%20of%20safety

[22] Rep. *North-West Syria: Situation Report* (13 September 2023). OCHA, 2023.

[23] Keser, Ahmet, and Fareed Fakhoury. "Hay'at Tahrir al-Sham (HTS) from an Insurgent Group to a Local Authority: Emergence, Development and Social Support Base." *Studies in Conflict & Terrorism*, 2022, 1–21. https://doi.org/10.1080/1057610x.2022.2082833.

[24] Rep. *North-West Syria: Situation Report* (28 April 2023). OCHA, 2023.

[25] Shesterinina, Anastasia. "Identifying Contemporary Civil Wars' Effects on Humanitarian Needs, Responses & Outcomes." *Daedalus* 152, no. 2 (2023): 24–37. https://doi.org/10.1162/daed_a_01990

## 5.1 Actors Involved

This first analysis of the actors involved in aid delivery focuses on those closer to the implementation of projects, who negotiate daily over humanitarian access, namely the UN and its agencies, NGOs and local authorities. Other actors in this process, such as donors and third-States from which aid is delivered, will be addressed in other sections of this work as less salient for the purpose of this first assessment.

### 5.1.1 The United Nations System

The United Nations has faced significant challenges since the beginning of the conflict to access rebel-held areas, which then crystallized as the NWS territory.

Initially, the Damascus government did not give the United Nations consent to operate there. For this reason, since 2014 the UN started to operate cross-border thanks to an innovative Resolution of the UN Security Council (UNSC): Resolution 2165,[26] which allowed to overcome the lack of State consent.

The initial decision allowed the use of four border crossings: Bab al-Salam and Bab al-Hawa (from Türkiye), Al Yarubiyah (from Iraq) and Al-Ramtha (from Jordan), and it has been systematically renewed every 6 to 12 months up until 2020, where Russia's veto led to the renewal only of the Bab al-Hawa crossing point.[27] Every year since then, when the resolution expired, massive advocacy and diplomatic efforts have been made to support what has been called a lifeline.

Indeed, in NWS the UN and its agencies (UNICEF, WFP, WHO, UNFPA and IOM) operate only through this cross-border mechanism. They do not directly implement their projects inside NWS nor have offices there, but they manage the logistics, supply and management of cross-border convoys, today mainly from the hub of Gaziantep, to then coordinate with implementing partners on the ground for the delivery. Only after the earthquake, UN staff has finally entered the NWS territory. Since July 2014, more than 59 thousand trucks have crossed into Syria thanks to this mechanism.[28]

The most recent cross-border Resolution has expired on 10 July 2023, and negotiations for its renewal have failed at the UNSC level due to Russia's veto, leading to a halt of UN operations. On the 9 August, the UN announced a deal with the Syrian government to reopen the Bab al-Hawa crossing for six months and to maintain the ones of Bab Al-Salam and Al Ra'ee, opened for emergency earthquake relief, for three more. This new paradigm based on Assad's consent will be further investigated, as it could have far-reaching effects on the future of Syria and its people.

While cross-border operations are the most relevant UN intervention in NWS, the UN also manages the passage of cross-line convoys, from regime-held areas into NWS, by liaising between local authorities in NWS and in Damascus, with the full involvement of military entities that need to demilitarize where convoys pass.[29] This is a rare procedure, as the regime has generally tried to divert aid from the north-west: in 2022 only nine convoys have used this route.[30]

Another important UN actor in NWS is OCHA, which manages high-level humanitarian access negotiations. It has direct lines of communication with de facto authorities in NWS and coordinates with them for other UN agencies and NGOs.

The UN has therefore a pivotal and ramified role in humanitarian assistance in NWS, although its humanitarian access is subjected to the political will of either UNSC's permanent members or, with the most recent evolution, of the Syrian regime itself.

### 5.1.2 Non-Governmental Organisations

Non-governmental organisations work both cross-border and inside NWS, directly implementing their projects. They have often their headquarters in third countries, mostly in southern Türkiye but some also in Jordan, and are legally registered there. NGOs then conduct their operations either through the UN border crossing mechanisms or through commercial lines that do not rely on the UNSC resolution. Indeed, NGOs have shown to be more flexible in what regards the requirement of State consent to access NWS, as they were operating through commercial lines even before the passing of the Resolution and interviewees affirmed how they would continue to do so in case the mechanism is halted.[31]

The humanitarian landscape in NWS presents a variety of both international and local Syrian NGOs, which gives the possibility to create virtuous synergies through different expertise and perspectives. International NGOs (INGOs) have usually higher technical and financial resources and can collaborate with local NGOs that from their side have the necessary contextual knowledge and local acceptance. Therefore, NGOs represent a vital actor in ensuring humanitarian access in NWS, especially as they are the only ones implementing projects on the ground.

### 5.1.3 De Facto Authorities

Both UN Agencies and NGOs need to work closely with the de facto authorities for the delivery of aid. Differences and similarities can be found in the SSG and SIG areas in what regards the management of humanitarian assistance.

In both areas, interviews report how the involvement of armed groups is limited,[32] and liaising with them is not necessary to ensure access. Some coordination is done with police forces only in the case of severe security concerns.[33] Also at the UN level, the Civil-Military Cooperation (CIMIC) department is limited, as they also mainly interact with the civilian administrations for the provision of aid. The civilian administrations are the ones more involved in humanitarian aid, in particular the Local Councils (LCs), whose approval is necessary to implement projects both under the SSG and the SIG.

In Idlib, NGO workers affirmed how to implement a project, organisations need to refer first with a "NGO Office", part of the Ministry of development and humanitarian affairs, to get approval to operate, and then with LCs to implement.[34] This "NGO office" is a new institution, proof of the willingness of the SSG to exert more supervision over aid delivery. Before the creation of the SSG, HTS itself ran an NGO office, which was considered corrupt and prone to aid diversion, while nowadays the system is considered to run smoothly.[35]

[26] UNSC Resolution 2165/2014, S/RES/2165 (14 July 2014).

[27] UNSC Resolution 2504/2020, S/RES/2504 (10 January 2020) – Excluded Al-Ramtha and Al-Yarubiyah. UNSC Resolution 2533/2020, S/RES/2533 (13 July 2020) – Excluded Bab al-Salam.

[28] "Northwest Syria: Cross Border Operation from Türkiye to Northwest Syria (1 - 31 August 2023) - Syrian Arab Republic." OCHA, August 23, 2023. https://reliefweb.int/report/syrian-arab-republic/northwest-syria-cross-border- operation-turkiye-northwest-syria-1-31-august-2023

[29] Interview #6.

[30] Othman Agha, Munqeth. "The Humanitarian Response in Post-Earthquake Syria: An Urgent Need for Depoliticisation." IAI *Commentaries*, no. 14 (2023).

[31] Interviews #6, 8,10.

[32] Interview #9.

[33] Interviews #5, 6.

[34] Interviews #1, 4, 5, 6, 7, 10.

[35] Schellhammer, Lena. "Breaking the Silence - Lessons from Humanitarian Access Negotiations under Counter- Terrorism Legislation in North-Western Syria." *Centre for Humanitarian Action*, 2021.

In Northern Aleppo, the governance structure is weaker than the one of SSG due to the presence of different armed groups and Türkiye's influence. Indeed, LCs are sided in the coordination of relief by AFAD (part of the Turkish Ministry of interior affairs) and the Turkish Red Crescent.[36] In addition, NGOs need authorization from Turkish authorities responsible for a certain area inside NWS: to operate in Afrin from Hatay, in Jarablus from Gaziantep, for A'zaz from Kilis, and for Tell Abyad from Şanlıurfa.[37] The role Türkiye maintains in aid delivery proves its willingness to keep a degree of control over NGOs' operations and the provision of basic goods.

Overall, local authorities have tried in the years to develop systems for a more ordered delivery of aid. Given the aid-dependent situation of NWS, for local governments ensuring a rapid and orderly delivery of humanitarian projects is a crucial way of supporting their legitimacy and maintaining a basic level of welfare of the population.

## 5.2 Humanitarian Coordination Mechanisms

The analysed actors have implemented different methods to coordinate between them for the delivery of aid. As will be further shown, their successes and shortcomings are considered one of the key elements that can influence humanitarian access in NWS.

To coordinate between NGOs and the UN system, the response is structured around the Syria Cross- Border Humanitarian Liaison Group. In this framework, a Cluster System and a series of Working Groups (WGs) specific for cross-border operations have been implemented in Gaziantep, separate from the UN coordination mechanism in regime-held areas. For humanitarian access, OCHA leads the Humanitarian Access WG which, according to interviewees, consists of monthly meetings where access incidents are reported, and concerted action is coordinated.[38] UN offices in Amman also have a role, as they conduct analysis for the Whole of Syria, informing also OCHA's action in the north- west.

Among NGOs, various networks have been created to enhance their operations and strengthen advocacy efforts, such as the NWS NGO forum, created in 2012 and representing both Syrian and International NGOs, and the Syrian NGO Alliance, inclusive also of civil society organisations. Inside NWS, NGOs coordinate with each other mainly through informal methods of coordination, strongly based on personal connections.

In the interaction with local authorities, there are different layers of coordination by humanitarian actors. At the highest level, OCHA negotiates access with representatives of de facto authorities and armed groups. OCHA then coordinates with NGOs that, from their side, interact with local councils and authorities through different channels.

NGO workers report the importance of bilateral, informal methods of coordination on the field and camp-management level for a smooth implementation of projects. They also draft memorandum of understanding or agreements with LCs to agree on the implementation of certain projects. As affirmed by Schellhammer, in Idlib "permission of movement, vehicle registration, documentation and ID cards are negotiated on the local level at checkpoints, whereas with the head of local councils and/or head of camp management the scope of the project, including the targeting locations and beneficiaries will be negotiated. On high-level, as mentioned before, the general policy, taxation and aid diversion will be addressed".[39]

When attempting to get access to vulnerable groups in NWS, organisations must deal with the complex scenario outlined, with multiple actors and levels of coordination, which - as will be further analysed - brings about both major opportunities and obstacles.

## 6 Access in North-West Syria: a Complex Web of Restrictions

Taking into account these preliminary contextual remarks, thanks to the interviews conducted, it is possible to highlight the main humanitarian access constraints faced by humanitarian practitioners in NWS.

The responses collected have sketched a very broad consideration of possible challenges to humanitarian access, looking not only at the movement restrictions, but at all aspects that impair the effectiveness of aid delivery and the responsiveness to people's needs. These burdens have been categorized into four major strands: security, legal, coordination and operational constraints. Nevertheless, all elements are strongly interconnected and feed into the web of restrictions Syrians face every day while trying to secure access to goods and services necessary for their survival.

## 6.1 Security Issues

Despite the general cooling down of hostilities since 2020, security concerns still affect the daily lives of Syrians and aid providers: shelling, air strikes and targeted killings are recorded, both in Idlib and Northern Aleppo. In August 2023 alone, 12 killings of civilians have been reported in NWS.[40] Moreover, unexploded ordnances remain a serious concern in all the country. As a consequence of hostilities, infrastructures in NWS have been heavily damaged and represent another obstacle in reaching vulnerable communities.

Eight interviewees out of ten[41] have cited security issues as major obstacles to reach those in need, as aid agencies have had to withdraw or suspend activities in areas more at risk, disrupting their projects.

For instance, the frontline area south of the M4 highway is among the ones most targeted by the attacks. Two NGO workers have reported how, despite having observed high needs in the particularly crowded area, due to insecurity conditions no comprehensive needs assessment has ever been conducted, and it is particularly arduous for organisations to carry out projects, despite local authorities are encouraging them to do so.[42]

The widespread insecurity that still haunts North-West Syria is therefore both a source of additional needs for the population, which bears the major consequences of these attacks, and of severe access constraints for humanitarian workers, thus exacerbating the consequences of the conflict.

## 6.2 Legal Issues

Providing aid in NWS comes with significant legal obstacles and restrictions, which all stem from the control of the territory by NSAG, that creates a grey area in international law.

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[36] Interviews #5, 7, 10.

[37] Interview #4.

[38] Interview #5, 6, 8, 9.

[39] Schellhammer, Lena. "Breaking the Silence - Lessons from Humanitarian Access Negotiations under Counter- Terrorism Legislation in North-Western Syria." *Centre for Humanitarian Action*, 2021.

[40] Rep. *North-West Syria: Situation Report* (13 September 2023). OCHA, 2023.

[41] Interviews #1, 2, 4, 5, 7, 8, 9, 10.

[42] Interviews #7, 10.

For UN agencies and NGOs working with them, their action finds its legal grounding in the UNSC Resolution on cross-border aid, and as such it has been hanging by a thread every time the Resolution had to be renewed, creating widespread insecurity over the aid structure in NWS as a whole. Moreover, two restrictive systems, aimed at avoiding supporting terrorist groups and undermine the Syrian State, create hurdles in delivering aid, namely: the counter-terrorism regulations and the sanctions regime.

Aid providers have to navigate the realm of these complex legal and bureaucratic restrictions, that can severely limit or delay their access to those in need. However, during interviews these access obstacles were rarely mentioned,[43] given the fact that many participants from NGOs rarely collaborated with the UN in their projects, and as such are subjected to less scrutiny over their operations.

### 6.2.1 The cross-border resolution

With Resolution 2165 of July 2014, for the first time the requirement of State consent to aid operations was overridden by a UNSC Resolution. While it has represented a major breakthrough to secure humanitarian access in NWS, overcoming Assad's objective of impeding aid delivery in the area, interviewees have given more nuanced consideration of its legacy.

The high degree of politicization the Resolution has been subjected to, with the progressive diminishing of the cross-border passages and its scope limited in time, have created a situation of widespread uncertainty, where every six months a possible disruption of operations has made any long-term programming impossible. According to some interviewees, this has exacerbated aid dependency, impeding early recovery activities and maintaining a perpetual state of emergency while creating "lazy communities".[44] Moreover, securing the passing of the Resolution has diverted significant efforts by advocacy groups and aid providers, having to advocate every six months to sustain what has been called a lifeline.

The UN have also had to create contingency plans in the event the Resolution did not pass, and act accordingly. For instance, in preparation of the recent expiration of the Resolution, the UN has had to pre-position relief items inside the NWS border to ensure the supply chain for three to four months, and created a plan for the various scenarios that could have presented themselves.[45]

Subjecting humanitarian access in NWS to a UNSC Resolution has therefore been a double-edged sword: while ensuring the short-term delivery of aid, it has impeded the creation of more sustainable aid delivery systems, subjecting the survival of Syrians to the political will of States. The recent shift in policy, based on the consent of Assad, could further impair humanitarian access, subjecting it to the political will of a leader that has disrupted those communities in the first place.

### 6.2.2 Sanctions regimes and counterterrorism regulations

On top of the cross-border resolution and its legal and operational implications, working in NWS is made more complex by international anti-terrorism regulation and sanctions regimes.

The most relevant sanctions regimes in place are those of the UN,[46] US and EU.[47] The US sanctions regime is the broader, comprising both an almost complete embargo on trade and, especially following the 2019 Caesar Syria Civilian Protection Act, sanctions on third-country individuals and institutions engaging with the Syrian government and some Syrian entities. Sanctions regimes generally foresee specific procedures to ensure the passage of humanitarian relief. For instance, under the US system, the export of food and basic medical supplies and the conduction of certain activities by NGOs is covered by a general licence that does not require prior authorisation, and a specific licence can be given for entities engaging in activities which are generally prohibited.

In Idlib, the situation is further complicated by the territorial control of HTS, which is designated as a terrorist group by the Damascus government, Türkiye and the United States. Counterterrorism measures include the restriction of funds to these groups, also through further sanctions, and measures that consider a criminal offence to support in different forms such entities. At the UN level, such regulations mainly stem from UNSC Resolution 1373 of 2001 on counterterrorism,[48] which did not include a designed list of groups. This brings up one of the key nodes of humanitarian access in civil wars: how to negotiate and conduct humanitarian relief when entities considered as terrorist have effective control over parts of the territory?

Despite different provisions aim at safeguarding humanitarian aid in these contexts, interviewees have reported various detrimental effects of the multi-layered legal implications of these regimes over humanitarian access.

In the first place, complying to these norms represent a major bureaucratic burden for NGOs.[49] Donors require multiple screenings and background checks to provide funding to those areas. Organisations are therefore forced to divert a significant amount of already scarce resources to conduct these analyses. In addition, these processes can significantly lengthen projects' approval and implementation, thus making operations untimely and, potentially, no longer appropriate for the context for which they were initially designed.

Then, an overall "chilling effect"[50] is reported: banks, financial institutions, donors and aid agencies themselves restrict their humanitarian actions due to fear of violating such a complex legal regime of limitations. De-risking leads to a reduction of projects and services, especially observed by interviewees for early recovery activities, as they could be considered as part of efforts for the "reconstruction of Syria", prohibited by both the EU and US sanctions regime.[51] Moreover, according to one interviewee, donors often push to have more activities in Northern Aleppo than in the Idlib area due to the legal burdens of working in HTS controlled territories, despite needs assessments would point in the contrary direction.[52]

Finally, despite not mentioned by interviewees, Schellhammer has observed how NGOs sometimes negotiate with HTS representatives, but in a clandestine manner not to risk backlash from such interactions, creating a "culture of silence" between NGOs, that overall weakens their negotiating position in efforts to secure access.[53]

While counterterrorism regulations and sanctions regimes are key means for the international community to respond to the grave breaches of international law by the Syrian regime and the threat of terrorism, the access constraints they

43  Interviews #3, 4.

44  Interview #10.

45  Interview #6.

39  Schellhammer, Lena. "Breaking the Silence - Lessons from Humanitarian Access Negotiations under Counter- Terrorism Legislation in North-Western Syria." *Centre for Humanitarian Action*, 2021.

46  UNSC Resolution 2254/2015, S/RES/2254 (18 December 2015). UNSC Resolution 2199/2015, S/RES/2199 (12 February 2015).

47  Council Regulation (EU) 36/2012, No 442/2011 (18 January 2012). Council Decision 2013/255/CFSP (31 May 2013).

48  UNSC Resolution 1373/2001, S/RES/1373 (28 September 2001)

49  Interviews #3, 4.

50  Leclerc, Gabija. Rep. Impact of Sanctions on the Humanitarian Situation in Syria. European Parliamentary Research Service, 2023.

51  Interview #10.

52  Interviews #9.

53  Schellhammer, Lena. "Breaking the Silence - Lessons from Humanitarian Access Negotiations under Counter- Terrorism Legislation in North-Western Syria." *Centre for Humanitarian Action*, 2021.

pose for humanitarian actors need to be addressed in their complexity: Syrians and those working to support them should not be punished for the regime's actions.

## 6.3 Coordination Issues

One of the most recurrent aspects interviewees have highlighted when describing access constraints is the lack of effective coordination, with different actors and on various levels.

### 6.3.1 Humanitarian Organisations

The major issue in the coordination between humanitarian actors, underlined by four interviewees, is the remote management from Türkiye.[54] Indeed, the Cluster system is based in Gaziantep, while inside NWS a real comprehensive coordination system is absent and, according to one NGO worker, its creation has been actively hindered by the Cluster system to avoid duplication.[55] This creates a poor information-sharing environment, which in turn hampers effective humanitarian access, for a variety of reasons.

Interviewees highlight how who sits in those meetings is often considered unsuited for the position, considering that they do not have daily experience of developments inside NWS. Secondly, this form of management puts all risks on local NGO workers, which could underreport the access incidents encountered to preserve their livelihoods, as the reporting of issues as aid diversion could lead to the closing of projects.[56] In this direction interviewees have also critiqued the work of the Humanitarian Access Working Group: it is considered a more reactive than proactive instrument, as through the monthly meetings conducted in Gaziantep it provides consistent reporting and shares good practices, but hardly intervenes in possible day-to-day access issues faced by NGOs.[57]

Finally, another identified problem that stems in the way of proper access coordination mechanism is the competition for funding between NGOs. As donors' funds are scarce, interviews report how NGO focus less on effectively responding to peoples' needs, and more on securing the (financial) future of their organisation.[58] For instance, participants report how many participate in Cluster meetings and working groups not to ensure proper coordination, but because it is necessary to access certain donors.[59]

Despite the multiple coordination systems the humanitarian community has established in NWS to secure humanitarian access and effective programming, the system is far from perfect and still stands in the way of substantive change.

### 6.3.2 Donors

Arrangements between donors and aid agencies are also considered ineffective in securing survival means to people in need.

In the first place, the humanitarian response in NWS is severely underfunded. For the Whole of Syria, in 2022 only 52% of the requested funds for the humanitarian response in the country were pledged, and, as of September 2023, numbers have plummeted to 28%, with only USD 1,55 billion out of USD 5,41 required.[60] Cross border operations of UN agencies and NGOs are financed mainly through a specific country-based pooled fund, the Syria Cross-border Humanitarian Fund (SCHF), created in 2014 and to which, in 2022, States contributed USD 117.7 million.[61] Overall, funds in NWS are considered unable to cover all needs, in particular seen the shrinking that has occurred after the Ukrainian crisis. For instance, the WFP has announced that it will be forced to scale down its operations in the country due to lack of adequate funds, seen also the augmentation of costs of food ratios.[62]

In the second place, donors can dictate humanitarian programming to both NGOs and local authorities, as the survival of the population in NWS is dependent on aid. However, interviewees find that donors' agenda do not always align with the realization of the humanitarian imperative but consider also donors' own interests and reputation. As an example, one NGO worker observed that projects for children with disabilities are scarce, and he traced this back to the fact that within a certain budget, by targeting children with disabilities the number of beneficiaries is lower, due to the higher resources needed for each child. Thus, in his view donors prefer projects with a higher number of beneficiaries, to increase the donor's visibility, than those that are most needed by communities.[63] Moreover, as one interviewee noted, the scarcity of funds not only limits the possible projects conducted, but also distorts the work of NGOs, that have to compete to secure these scarce resources, aiming at pleasing donors more than at really addressing the population's necessities, in what he called "project mania".[64]

In the third place, in order to abide by counterterrorism and sanctions regimes, as already mentioned, donors require stringent and lengthy bureaucratic procedures, especially to operate in the Idlib area. This can create operational issues, as projects can take months to be approved, possibly loosing their relevance.

For these reasons, while all the humanitarian response in NWS is dependent on donors, changes are needed in their policies to ensure more effective and meaningful programming.

### 6.3.3 De Facto Authorities

Interviewees affirm how de facto authorities have overall favoured more than hampered humanitarian access in NWS, and how, one approval of operations is granted, there are no severe restrictions of movement inside the territory.[65] Indeed, local authorities are aware of their dependency on humanitarian operations to fulfil the basic needs of their population, to inject money in the struggling local economy and to maintain a degree of legitimacy over their own government. As an example, they encourage NGOs to work in underserved areas, such as the frontline, in spite of higher security concerns.[66]

The two areas of NWS face different constraints in the delivery of aid. In Northern Aleppo, the main issues identified by interviewees are the fragmentation of local actors, the lack of standard procedures in the interaction with local councils

54    Interviews #3, 7, 8, 10.

55    Interview #10.

56    Schellhammer, Lena. "Breaking the Silence - Lessons from Humanitarian Access Negotiations under Counter- Terrorism Legislation in North-Western Syria." *Centre for Humanitarian Action*, 2021.

57    Interviews #8, 9.

58    Interview #7.

59    Interviews #1.

60    "Syrian Arab Republic Humanitarian Response Plan 2023", OCHA, 2023. https://fts.unocha.org/plans/1114/summary.

61    Rep. *Syria Cross-Border Humanitarian Fund - 2022 Annual Report.* OCHA, 2022.

62    "WFP Forced to Scale down Operations in Syria, as Donors Gather in Brussels Ahead of a Major Conference: World Food Programme." World Food Programme, June 13, 2023. https://www.wfp.org/news/wfp-forced-scale-down- operations-syria-donors-gather-brussels-ahead-major-conference.

63    Interview #10.

64    Interview #10.

65    Interview #6.

66    Interviews #5.

and the burdens created by the need to liaise also with Turkish authorities. In Idlib, coordination is easier as there is only one authority with clearer procedures - although one interviewee also stressed the burden of the various levels of coordination[67] - but the analysed counterterrorism measures entail higher requirements and less flexibility from donors to get project approval than in Northern Aleppo.

In addition, aid diversion and corruption cases are also recorded in both areas: four participants[68] in the study have witnessed how authorities have put pressure on their operations, for instance to serve certain communities or to hire certain people.

Moreover, according to respondents, some specific types of projects face more obstacles than others.[69] While activities aimed at fulfilling basic needs and providing commodities are welcomed, mental health, educational and peacebuilding ones are considered not necessary and thus less supported. In some cases, some activities are considered a challenge to their own authority: one NGO worker underlined how human rights monitoring activities could uncover violations by local authorities themselves, and therefore are obstructed and/or unauthorized.[70]

From the interviews, particular concerns were raised on local government's obstruction of education activities. A representative of an NGO specialized in this sector said how in Northern Aleppo, NGOs are only authorised to pay teachers' salaries, but cannot intervene on the school curriculum. According to the interviewee, this is due to the authorities' desire to spread the use of the Turkish curriculum in schools.[71] Another study participant expressed concerns over a potential strengthening of SSG's interference in their education activities, which in his opinion would increase censorship and the appointment of non-technical staff.[72]

If local authorities are generally supportive and tend to ensure humanitarian access, they still try to manipulate as much as they can aid delivery to support their stances. However, as one interviewee noted, it is important to remember that "we have to balance what is perceived as an obstruction by humanitarian partners, with what is considered a normal coordination by authorities".[73]

### 6.3.4 Host Governments: Türkiye

Aside from the already examined control Türkiye has on Northern Aleppo, the Turkish government has also a degree of influence over humanitarian access in its role as host country to organisations working cross-border from Gaziantep and Hatay. While analysing Turkish practices of border governance with Syria would require an examination of its own, it is possible to pinpoint its main areas of influence.

In the first place, interviewers have reported how the Turkish government has a certain degree of control over cross border operations through the Ministry of Customs and Trade, as it can limit access to those areas or impose bureaucratic burdens and additional security protocols.[74] In addition, most organisations working cross-border in NWS are registered in Türkiye, thus they are subject to Turkish law and need to obtain its permit to operate. However, it has been witnessed how Türkiye has become progressively hostile towards NGOs registered there. Especially during the

State of Emergency established after the failed coup d'état of July 2016, Turkish authorities have suppressed NGOs action by closing down organisations, conducting frequent police visits to their HQs to check work permits,[75] not renewing NGO's permits to operate in the country and finally deporting their Syrian workers, under the justification of being a threat to national security.[76] The most notable case is that of Mercy Corps, an American NGO which was working cross border and was forced to close by Turkish authorities, to then move their base to Amman, Jordan.

Finally, Türkiye has some degree of control on the coordination mechanisms in place as, as mentioned, they are carried out mainly in Gaziantep. For instance, one interviewee underlined how Türkiye usually requests the names of participants to these meetings, to maintain some type of oversight.[77]

Overall, issues related to coordination with Türkiye as host government were mentioned by five participants,[78] and therefore need to be considered to understand the complexity and challenges of access in remote management settings.

## 6.4 Operational Issues

During interviews, other access issues related to operational constraints were reported, which would not fit in the previously analysed categories: the economic situation, the lack of proper identification documents in NWS, and the recruitment of staff.

A first element is the economic deterioration in Syria: not only it exacerbates needs, but it also poses significant problems to humanitarian organisations. In NWS since some years the Turkish Lira has been adopted as a currency seen the devaluation of the Syrian pound, but the current inflation in Türkiye has further complicated the scenario. For NGOs, issues arise in conducting accurate budgeting, as prices fluctuate rapidly, and in the carrying out of specific activities such as cash voucher ones, shrinking the possibilities of implementing effective projects.[79]

Another issue that stems from the conflict scenario highlighted by interviewees, considering also the large IDP population which makes up the most of NWS, is the lack of personal documents.[80] This creates challenges to aid workers that face difficulties in conducting needs assessment and in identifying beneficiaries. Despite de facto authorities have tried to respond to this issue by creating so-called "population centres", a truly effective solution to this issue is still to be found.

Finally, interviewees have reported challenges in the recruitment of staff, on various levels.[81] The humanitarian industry distorts the local labour market, impeding local authorities and more local NGOs to retain talents. As an example, one interviewee reports that salaries for humanitarian workers of international organisations in NWS can be around ten times higher than what local councils can offer, also for low-skilled positions as drivers or cleaners.[82] Thus, workers shift to higher paying jobs: from local authorities to local NGOs, then international NGOs or UN agencies inside the country, to then becoming international staff in other contexts. For instance, one respondent noted how

[67] Interviews #5.
[68] Interviews #4, 5, 7, 8.
[69] Interviews #4, 9, 10.
[70] Interview #4.
[71] Interview #4.
[72] Interviews #10.
[73] Interviews #6.
[74] Interviews # 2, 8, 9.

[75] Longton, Ross. "Turkey Pushing out Ngos." Middle East Institute, June 15, 2017. https://www.mei.edu/publications/turkey-pushing-out-western-ngos.
[76] Boztaş, Özge. "Shrinking Humanitarian Space in Turkey: The Government of Turkey's Agency in Shaping the Operations of Humanitarian NGOs in Turkey." METU Studies in Development, no. 46 (2019): 153–74. Zoeteweij-Turhan, Margarite Helena. "Turkey: Between Hospitality and Hostility." Forced Migration Review, no. 57 (2018): 55-56.
[77] Interview #10.
[78] Interviews #2, 4, 8, 9, 10.
[79] IInterviews #1, 9, 10.
[80] Interviews #6, 8.
[81] Interviews #3, 8.
[82] Interviews #3.

many Syrians have now worked in the Ukrainian crisis.[83] This creates operational issues for local NGOs and authorities and is a clear impediment to create a sustainable humanitarian action, which needs to be addressed.

Concluding this assessment of challenges to humanitarian access in NWS, this research paints an ever complex scenario of obstacles humanitarians have to face to deliver life-saving assistance to Syrians in Idlib and Northern Aleppo. Without pretending to be exhaustive, this analysis now allows us to outline what possible solutions are being or could be put implemented to enhance access to civilians in need.

# 7 Improving Humanitarian Access in North-West Syria

In order to face the multifaceted challenges humanitarian actors face in NWS, interviewees have highlighted their current practices to cope with these issues, as well as new ideas and ways forward.

## 7.1 Mitigating Security Challenges

Considering that in conflict areas security risks related to hostilities are inevitable, NGOs have put in place some coping mechanism to ensure the security of their workers and the safe delivery of assistance.

As in many similar scenarios, organisations appoint security focal points, develop adequate risk management procedures and adapt projects to emerging security challenges, trying to secure access to vulnerable populations.[84] NGOs also conduct background checks of potential employees to avoid any implications with armed groups. At the highest levels, one NGO worker responsible for security management reported how there are lines of communication with belligerent parties, to let them know which facilities and routes are used by humanitarians, in order to avoid them being a target.[85]

Moreover, study participants underlined how a crucial element to ensure security and safety is community acceptance: being welcomed by the local population represents a protective presence for NGOs, and also one of the means to ensure access.[86]

Finally, the security challenges of civil wars show similar patterns to those of internationalized conflicts, and the means to respond given by interviewees are not so different from internationally recognized good practices. However, the focus on the local community is notable and present under different lenses throughout interviewees, showing its centrality for workers in NWS.

## 7.2 Overcoming Legal Constraints

To overcome the legal stalemates the international community is facing in Syria, that stand at the core of humanitarian access issues, new and creative approaches are required, capable of having as main focus the survival of the population and not the interests of States.

### 7.2.1 A new paradigm for cross-border operations

Three alternatives to the cross-border mechanism and its analysed shortcomings have been mentioned during interviews: a halting of UN cross border operations with complete handover to NGOs, the continuation of UN activities without the support of a UNSC Resolution, or a new system based on Assad's consent.

In the first case, the lack of a Resolution with the withdrawal of the UN would require NGOs to completely take over aid delivery. Despite it is commonly agreed that the disruption of the cross- border mechanism would represent the end of an era, interviewees had different opinions on this scenario.

Some affirmed how giving control back only to NGOs would have positive effects. One interviewee stated that before the Resolution, NGOs were having fewer burdens in accessing NWS.[87] Indeed, many NGO workers highlighted how their operations would not be affected in case the UN mechanism stops.[88] One respondent also said that cross-border UN-aid has created aid dependent communities, and that its termination could represent a wake-up call for the Syrian society.[89] He affirmed how it could put the focus back on early recovery and empowerment of the private sector.

Nevertheless, the majority agrees that halting UN operations would represent a major loss in terms of humanitarian access, exacerbating the needs of an already vulnerable population.[90] According to one respondent, NWS would become "a new Gaza", and the challenges that would arise are multifaceted.[91]

It is unlikely that NGOs will be able to fully replace UN operations due to limited capacities, and without the legal support given by the UNSC Resolution it is possible that INGOs would also withdraw, not to risk backlashes in other contexts. Five out of ten respondents[92] underlined how the sector more at risk is that of nutrition, as contingency planning has shown how no organisation could fully replace the supply chain of the WFP: in July 2023, around 273 thousand people received assistance in the nutrition sector through Bab al-Hawa.[93] Moreover, one interviewee expressed concerns that Türkiye would impose commercial taxes on humanitarian operations in this scenario, further hampering NGO's operations.[94]

The funding of projects would also represent a major challenge. The Syria Cross-border humanitarian fund will likely no longer be operative, and donations by States would be withdrawn. The UK has recently led the creation of an alternative mechanism, the INSAF, which was mentioned by two interviewees:[95] a pooled fund managed by a private company, the Adam Smith International Company, which could substitute the SCBHF in the event of non-renewal. Despite interviews have shown some potential constructive elements of a new system without UN intervention, evidence shows how it still represents a lifeline that will unlikely be replaced.

As for the second option, the UN would continue to operate in NWS even without the backing of a UNSC Resolution, despite the lack of State consent.

Many practitioners and scholars affirm how this should have been the UN posture from the start, and that the 2014

[83] Interview #3.

[84] Interviews #1, 6.

[85] Interviews #5.

[86] Interviews # 1, 4, 5, 10.

[87] Interviews #4.

[88] Interviews #3, 4, 8, 10.

[89] Interview #10.

[90] Interviews #1, 4, 5, 6, 7, 8, 9, 10.

[91] IInterviews #4.

[92] Interviews #4, 5, 6, 8, 9.

[93] "Northwest Syria: Cross Border Operation from Türkiye to Northwest Syria (1 - 31 August 2023) - Syrian Arab Republic." OCHA, August 23, 2023. https://reliefweb.int/report/syrian-arab-republic/northwest-syria-cross-border- operation-turkiye-northwest-syria-1-31-august-2023.

[94] Interviews #9.

[94] Interviews #8, 10.

Resolution should not have existed in the first place. Indeed, a letter by a coalition of legal experts in April 2014, before the Resolution was passed, affirmed that there were no legal barriers to cross-border delivery, and that the UN was using an "overly cautious interpretation of IHL".[96] Aligned with this stance, the UN worker interviewed mentioned how the Resolution is considered a "bizarre" one.[97]

However, an NGO's security manager highlighted how shifting posture now, nine years after the first cross border Resolution, could create significant problems, and that the issue should have been tackled differently before. He stressed the possibility that humanitarians could be targeted, emphasizing how the list of humanitarian facilities shared between belligerents could be exploited for this means.[98]

Therefore, while the legal dilemma of operating in areas under rebel control without the consent of the central State,[99] remains open and has seen a flourishing of researches on the matter,[100] in NWS the possibility of such shift at this point remains limited.

A third solution to overcome the hurdles the UNSC Resolution has created, is the one recently adopted by the UN for the continuation of cross-border activities: reaching an agreement with the Syrian Government, making an authorization by the UNSC unnecessary.

On the 9th of August 2023, the UN communicated to have reached a deal with Assad for the delivery of aid, without providing significant details.[101] Only some weeks before, the UN worker part of the study considered such agreement unforeseeable, due to the unacceptable conditions Assad had brought to the negotiating table, and the need to involve all authorities, including de facto ones, for an effective delivery of aid.[102]

In this new phase, for Syrians their basic means of survival are now once again at the mercy of a regime that forcibly displaced and disrupted their lives in the first place. 42 Syrian NGOs and 13 NGO networks signed a joint statement on the 31st of August denouncing the dangerous nature of such agreement, affirming how "by effectively handing over control to the Syrian regime, this arrangement marks a new era of fear, instability, insecurity, and a threat to the future of principled, cross-border assistance.".[103]

At the time the interviews were conducted, this decision was still not in place, but some interviewees presented some considerations over this possibility. According to them, arriving at an agreement with the regime would represent a first step towards normalization and its regaining of full administrative control over the territory. Aid diversion cases would become common, and the Syrian Red Crescent would oversee aid delivery as it already does in regime-held areas.[104] Those that have moved to NWS to escape the regime, would be again submitted to its control, with the dangers it entails. One interviewee also highlighted how for the regime, shifting the humanitarian community present in Gaziantep to Damascus would also represent a significant source of wealth.[105]

While in the short term, reaching an agreement with the regime can secure the vital channels of aid delivered by the UN, in the long term it could imply significant disruptions in access and forever shape the future of Syria as the regime pleases. Therefore, it will be critical to keep high the attention on upcoming developments in NWS, considering access not only as reaching those in need in immediate terms, but also as means to develop sustainable and just systems of aid delivery.

In civil wars, the territorial control by NSAG is the original sin from which legal constraints to humanitarian access stem from. Developing new practices and legal perspective that prioritize meeting people's needs over satisfying the sovereignty claims of regimes which undermine the basic human rights of their own population, has now become an imperative to ensure the credibility of an international community ostensibly aimed at ensuring global peace.

### 7.2.2 Improving flexibility over regulatory frameworks

While sanctions regimes and counterterrorism regulations remain important instruments of the international community, their impact on humanitarian operations needs to be mitigated, and the measures currently in place seem not to be enough.

Regarding sanctions, an important step forward has been UNSC Resolution 2664 of December 2022,[106] enforcing a humanitarian exemption for which aid actors can conduct their activities without prior authorizations in situations where sanctions regimes are in place. Although the Resolution only applies to sanctions adopted at the UNSC level, it could create momentum around the need to impose sanctions that do not hamper the survival of the most vulnerable. Indeed, the sanctions' regime in Syria is considered a means to contrast the brutality of the Damascus government and should not be withdrawn, but it requires easier procedures to ensure timely aid delivery.

Concerning counterterrorism regulations, international law experts stress how these regulations do not prohibit contacts with such groups,[107] as in the case of humanitarian negotiations conducted by OCHA with the SSG. The UNSC has also stepped in with Resolution 2462 (2019), affirming how counterterrorism measures must comply with other international law obligations, and that effects on humanitarian assistance have to be considered.[108] Examining the interviews conducted, the circulation of these concepts is still poor as they were not mentioned. Developing more awareness on these ideas, both between NGOs and with donors, could be a means to contrast the "chilling effect" of these rules, allowing for more flexibility and contrasting the phenomenon of "secret" negotiations between NGOs and de facto authorities.

In the case of NWS, another way forward to ensure access despite sanctions and anti-terrorism regime is the creation of stronger civilian governments, detached from armed groups. The creation of the SSG by HTS went in this direction, however, interviewees underline how there is still a grey area on the relations between the two entities, creating further uncertainty.[109] A clearer division between the two could be a means to circumvent the negative effects of sanctions and counterterrorism measures, to better reach the population in need.

In both regulatory frameworks, advocating to donors for more rapid approval of projects and more flexibility is necessary. Concerted action by various organisations, highlighting the daily hurdles they encounter in ensuring compliance with

[96] "There Is No Legal Barrier to Un Cross-Border Operations in Syria." The Guardian, April 28, 2014. https://www.theguardian.com/world/2014/apr/28/no-legal-barrier-un-cross-border-syria.

[97] Interviews #6.

[98] Interviews #5.

[99] The requirement of the "High Contracting Party"'s consent to relief operations is affirmed in art. 18.2 of Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non- International Armed Conflicts (Protocol II). The protocol, however, has not been signed by the Syrian Arab Republic.

[100] See "Literature Review" chapter.

[101] "UN: Deal Reached with Syria to Reopen Main Border Crossing from Türkiye I UN News." United Nations, August 9, 2023. https://news.un.org/en/story/2023/08/1139577.

[102] Interviews #6.

[103] "Joint Statement - The Position of The Syrian Non-Governmental Organizations Regarding the Recent Developments on the Cross-Border Humanitarian Assistance", August 31, 2023. https://snhr.org/wp-content/uploads/2023/09/Joint- Statetment-Cross-border-Assistance-1.pdf.

[104] Interviews #5, 6, 10.

[105] Interviews #10.

[106] UNSC Resolution 2664/2022, S/RES/2664 (9 December 2022).

[107] Diakonia Center for International Law, "Counterterrorism measures relevant to humanitarian action in Syria", (2021).

[108] UNSC Resolution 2462/2019, S/RES/2462 (28 March 2019).

[109] Interviews #3, 10.

the standards requested, could represent a possible way to improve access not only in NWS, but also in other civil war contexts facing similar issues. As will be further shown, the earthquake response has proven how more effective processes are attainable, what is often missing is the willingness to shift to more risk-taking positions.

## 7.3 Improving Coordination Mechanism

As many of the challenges for effective access regard coordination, also most of the identified solutions concern how various stakeholders can better operate together.

### 7.3.1 Humanitarian Organisations

Within the humanitarian realm, one the main solutions envisaged by interviewees to enhance access and coordination is to create coordination systems inside NWS, not having to rely on remote management.[110] According to one interviewee, some clusters have started to discuss the creation of sublevels of coordination on the field in different sectors and governorates.[111] As will be further argued, the earthquake response and the entry of UN personnel and donors into NWS could represent a significant push in this direction.

Other initiatives brought forward regard the organisations of capacity building activities for the coordination mechanisms themselves, as the Clusters, to improve their ability to deliver.[112] Increase transparency and information sharing is also considered a need for local NGOs, especially in their interaction with UN agencies and INGOs.

Finally, one interviewee hinted at the need to start collaborating with NGOs working in regime held areas.113 This is something commonly frowned upon, considered as a form of treason, but initiating a dialogue could represent a means to develop a more united Syrian society, going beyond territorial fragmentation.

### 7.3.2 - Donors

Concerning donors, interviewees affirm how they need to be more responsive, considering the populations' needs above all other interest, which not always has been the case.[114]

Notably, one responded said that their organisation aims at developing new fundraising techniques, especially by pointing at new and more independent donors.115 Some examples are foundations, that are considered to be more flexible and allow organisations to better design and implement their projects.

### 7.3.3 - De Facto Authorities

In the coordination with de facto authorities, the humanitarian community, including IOs, NGOs and donors, has significant leverage as they provide for essential services. Therefore, through negotiations, phenomena as aid diversion can be effectively contrasted.

For instance, one respondent noted how in Idlib, as the coordination system between OCHA and SSG strengthened, aid diversion cases diminished and how some members of local councils were fired following NGOs' complaints.[116] Another notable example is the case of the suspension of all cross border operations by the US and UK aid departments in 2018, in response to HTS' request for a form of taxation over cross border deliveries.[117] After some months, local authorities affirmed how they will no longer require such taxation, and so operations were started again. The crucial role humanitarians have for de facto authorities must be taken into consideration during humanitarian access negotiations. Conducting concerted advocacy strategies could therefore be a successful means to drive change and enhance operations.

Some other suggestions regard the establishment of open lines of communication and regular meetings with authorities, to ensure more efficient and timely coordination.[118] Another element that is considered crucial for this end is for authorities to maintain their civilian administration separate from armed groups, in order to avoid the possible implications of being associated with such entities, as already mentioned.

Another idea to increase access is the implementation of capacity building projects for local authorities.[119] Indeed, providing trainings on topics as protection, international law and human rights can circulate this knowledge in the community, representing a stepping stone for more durable change. These activities are already implemented by OCHA, UNICEF and NGOs, although they are not always easily approved due to the aforementioned legal burdens.

### 7.3.4 Host Governments: Türkiye

Possible means to improve the coordination with the host government have not been proposed by interviewees. However, it is possible to note how as a coping mechanism some organisations have moved to other host States, such as Jordan, despite this can make the coordination of aid inside NWS more difficult.

In conclusion, improving coordination mechanisms at all levels is considered by practitioners one of the most important ways to ensure humanitarian access to the population in NWS. Hence, it can be asserted how in civil war contexts proper knowledge of the various stakeholders and of the possibilities effective collaboration can hold, needs to be considered an essential approach to ensure humanitarian access.

## 7.4 New Ways Forward: Localisation and Sustainable Interventions

Localisation was a recurring theme in the majority of interviews conducted to identify strategies for ensuring humanitarian access.[120] The term has been used in two main meanings: to be accepted by the local population and to build up local resources.

Firstly, local acceptance is considered crucial to ensure access to vulnerable communities. According to six interviewees,[121] organisations need to build strong local partnerships by strengthening ties with community leaders and civil society organisations, which have stronger contextual knowledge, can better recognize the needs of the

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[110]  Interviews #1, 3, 8, 10.

[111]  Interviews #8.

[112]  Interviews #4.

[113]  Interview #10.

[114]  Interviews #3, 4, 6, 9, 10.

[115]  Interviews #4.

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[116]  Interviews #5.

[117]  Parker, Ben. "US and UK Halt Key Syria Aid Shipments over Extremist 'Taxes.'" The New Humanitarian, October 2, 2018. https://www.thenewhumanitarian.org/news/2018/10/02/us-and-uk-halt-key-syria-aid-shipments-over-extremist- taxes.

[118]  Interviews #5.

[119]  Interviews #3.

[120]  Interviews #1, 2, 3, 4, 5, 9, 10.

[121]  Interviews #1, 2, 3, 5, 9, 10.

affected population and can ease the carrying out of relief operations.

A respondent affirmed how to achieve this, it is necessary to have offices on the ground, which can enhance both acceptance of the organisation and its ability to respond.[122] However, another has also pointed to the centralization of more sensitive decisions, such as the recruitment of personnel or the identification of beneficiaries, to headquarters outside the country, to mitigate corruption, risks for local staff and to better ensure their acceptance.[123] Recruitment policies are also considered important in creating a cooperative environment with the local community, for instance by ensuring through appropriate screening of the staff.[124]

Secondly, capacity building of local actors is considered pivotal to ensure sustainable action, to make actors more autonomous and to achieve substantial change. Different approaches were suggested by interviewees. Recruitment policies that aim at gradually replacing internationals with local staff are deemed to significantly enhance the capacities of nationals.[125] The direct involvement of local communities into projects is also considered a means to achieve stronger societies. One organisation has mentioned the example of its work in the protection field, where creating community-based child protection teams improved the capacities to identify vulnerable kids.[126] Another interviewee pointed at a blind spot in capacity building activities: local authorities.[127] Although already-mentioned difficulties associated with engaging with local authorities are present, the respondent stated that this would be a significant step toward ending aid dependency.

Despite the already present international commitments to enhance localisation and community-based approaches, such as the Grand Bargain,[128] an interviewee observes how such international pledges struggle to translate into any practical implications.[129] The representative of a consultancy agency has seen how localisation lacks a clear common understanding and long term vision among all actors, with projects still considered to be mainly imposed from above.[130] According to the interviews, transforming localisation from empty words into real action would definitely improve the capacity of the Syrian society to see basic needs met.

During the interviews, another common theme was brought up together with localisation: the need to consider not only everyday challenges of humanitarian access, but to address long-standing issues that have made the humanitarian response in NWS unsustainable.

Indeed, NGO workers stress the necessity to exit from emergency programming:[131] after more than ten years of hostilities, there is the need to transition from IDP camps to dignified shelter, from food baskets to support to the private sector, finally reducing aid dependency. Only with this new perspective, humanitarian access, in the sense of "access by those in need to the goods and services essential for their survival",[132] can truly be realized. The prospect of early recovery and resilience- oriented programming was welcomed by study participants as a means to achieve this.[133]

Several obstacles can impair such process: the limited time frame cross border resolutions have had so far, the condemnation of projects for the reconstruction of Syria before a political solution is found, and the impediments of localisations cited before. Nevertheless, the interviews prove the drive from local NGOs towards these new forms of interventions. It is to see if donors and other actors involved will follow.

The recurrence of these unsolicited inputs from interviews shows the pressing nature of such requests. In protracted civil war contexts, as the Syrian war has now become, emergency programming needs to be complemented by other ways of working, capable of giving back to civilians their dignity and hope for a different future, exiting the aid dependency trap by effectively giving back agency and centrality to the local population.

## 8 The 2023 Earthquake: a Wake-Up Call for The Humanitarian Community

The severe earthquake that struck NWS and Southern Türkiye in February 2023 exposed the already existing critical flaws of the humanitarian aid system in NWS, while also presenting some relevant repercussions on humanitarian access.

### 8.1 The Earthquake Response: a Humanitarian Failure

"We have so far failed the people in north-west Syria. They rightly feel abandoned. Looking for international help that hasn't arrived."[134]

This was the tweet of the Under-Secretary-General for Humanitarian Affairs and Emergency Relief Coordinator, Martin Griffiths, on the 12th of February 2023, one week after the devastating earthquake that killed more than 4,500 people in Syria[135] and 50 thousand[136] in Türkiye. The international humanitarian community has indeed failed to deliver life-saving aid to the Syrian population, and the roots of this failure can be found in the already analysed weaknesses of the humanitarian system in NWS.

The initial response was led by local communities and NGOs, despite the fact that workers of local NGOs were themselves affected by the disaster. The two interviewees based in NWS recalled that they were coordinating the humanitarian response from their car, as their houses and offices were not safe, while at the same time having to attend to the needs of their families.[137] Indeed, many staff members of humanitarian organisations were dead or injured, while others had to take care of their close ones before attending to others. This was also one of the causes of late international response, as UN agencies and NGOs working cross border have their headquarters mostly in the Hatay and Gaziantep regions, which were also heavily hit by the earthquake and hence had to deal with the consequences there before being able to operate for NWS.

One of the major and highly concerning failures of humanitarian assistance in the aftermath of the disaster was the lack of search and rescue teams coming from other countries. In a situation where every hour matters to find people alive under the debris, the humanitarian system failed. No country wanted to send their Search and Rescue teams in

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[122] Interviews #10.

[123] Interviews #8.

[124] Interviews #5.

[125] Interview #3.

[126] Interviews #10.

[127] Interviews #3.

[128] The Grand Bargain is an agreement reached in 2016 at the World Humanitarian Summit, establishing an agreement between major donors and humanitarian organisations.

[129] Interviews #10.

[130] Interviews #3.

[131] Interviews #3, 8, 9, 10.

[132] Rep. *Humanitarian Access in Situations of Armed Conflict - Field Manual 1.0* . Federal Department of Foreign Affairs - Conféderation suisse, 2011.

[133] Interviews #4, 9, 10.

[134] Griffiths, Martin. "Martin Griffiths - X Account." Twitter, February 12, 2023. https://twitter.com/UNReliefChief/status/1624701773557469184.

[135] Rep. *North-West Syria: Situation Report (28 April 2023)*. OCHA, 2023.

[136] Rep. *Türkiye: 2023 Earthquakes Situation Report No. 17, as of 6 May 2023*. OCHA, 2023.

[137] Interviews #7, 8.

areas under the control of NSAG, due to possible legal implications.[138] The Syrian White Helmets were therefore left alone to conduct these lifesaving activities. The number of lives this decision has costed cannot be counted.

The shortcomings of coordination systems were also brought to light: both NGOs and UN mechanism did not have adequate contingency planning for such disasters, nor at the NGO neither at the UN level. According to respondents, the clusters were also not responding properly, especially in some sectors. Coordination was mainly done through rapid communication means such as whatsapp or skype, but overall it has been considered inadequate by practitioners.[139]

In addition, the supply chain of goods was severely undermined, while needs of non-food items and shelter were skyrocketing. Bab-al Hawa was also reported to not function after the disaster, due to infrastructure damage and unavailability of border-crossing's workers. Local procurement was reportedly difficult, seen the shortage of necessary goods and the immediate price rise of those available.[140] Interviewees reported how bureaucratic procedures further hampered the access to critical items.[141]

These ramified causes have had as consequence one of the most evident humanitarian catastrophes of recent times, showcasing the concerning unpreparedness of the international community in responding to large-scale disasters in civil war contexts, and its inability to find innovative, effective solutions even when hundreds were trapped under the rubbles.

## 8.2 The Aftermath of the Disaster: Repercussions for Humanitarian Access

One respondent was sceptical that the earthquake would bring about changes for the humanitarian community and said that substantially nothing has changed.[142] Nevertheless, it is possible to note some shifts in practices of humanitarian access.

Seen the blockage of Bab al-Hawa, the Syrian regime authorised the UN to use two new border crossings from Türkiye, Bab al-Salameh and Bab al-Rai. In total, from February to August, 3,896 trucks have been delivered from Türkiye by the UN.[143] While this was welcomed as a means to ensure access in critical times, it can also be considered the first step that led the UN to the analysed - and potentially dangerous - decision to operate cross-border through Assad's consent.

Another important shift regards the entering of UN staff and donors inside NWS through an agreement with Damascus, arriving at 203 missions from February to August 2023.[144] These missions could represent a push for the creation of coordination systems inside NWS, as the UN - according to interviews - also witnessed the need to have more presence on the ground, not relying only on third party reporting.[145] UN agencies different from OCHA have also taken a more active role in negotiating with local authorities, which could change the channels through which access is secured. One interviewee critiqued this shift in UN action, saying that directly accessing NWS should and could have been done before, and that the UN decided to change positioning only following the public opinion's outrage against its lack of action.[146]

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[138] Interviews #6.

[139] Interviews #4, 7, 8, 9.

[140] Interview #8.

[141] Interviews #8, 10.

[142] Interview #1.

[143] Rep. *North-West Syria: Situation Report (13 September 2023)*. OCHA, 2023.

[144] *Ibidem.*

[145] Interviews #6, 8.

[146] Interviews #8.

Funding opportunities also increased and were easier to access following the disaster. The US and the EU eased their sanctions for transactions related to earthquake relief for six months, to allow speed delivery of aid. Donors also generally shown more flexibility in regard to counterterrorism and sanctions regimes, showing that it is something possible when the political will is present. Additional funds were allocated into NWS, however their adequacy to respond to all needs and their sustainability is questioned.

According to one interviewee, the earthquake could represent the push towards localisation, that many NGOs have called for.[147] Indeed, Syrian organisations have shown their capacity to respond in times of crisis, in a faster and cost-efficient manner. Empowering such efforts, providing them with additional and direct funds, could represent a means for Syrians to gradually exit aid dependency.

Finally, another effect of the earthquake has been the "disaster diplomacy" Assad has been pursuing to normalize ties with other countries: receiving aid into Damascus, talking with foreign ministries and allowing the cross-border passages in the north are means to accrue political gains over the shoulders of Syrians that have lost everything, again.

The devastating effects of yet another catastrophe affecting Syrians in the North-West have re- traumatised a population affected by more than a decade of conflict, forcibly displaced, stranded in makeshift camps and still not secured access to basic means of survival. While the earthquake has shown the faults of the humanitarian system in NWS, this moment should be considered as an opportunity to build back better the response, securing humanitarian access to all. Moreover, the international community should question its plan of action in the event of disasters in civil war contexts: the territorial control by NSAG should not impair rescue teams to deliver timely assistance, or for humanitarian organisations to receive and deliver adequate support.

From this tragedy, many lessons need to be learned.

## 9 Access in Civil Wars: Lessons Learned from North-West Syria

Civil wars present distinct challenges to humanitarian actors. In particular, the presence of NSAG impairs the humanitarian aid mechanism by confronting actors with a legal and operational system unprepared to respond.

Analysing the access constraints and possible turning points in NWS through the voices of those that strive daily to ensure that the basic needs of Syrians are met, sheds light on possible lessons learned that can be instrumental in other civil war contexts.

The majority of humanitarian access constraints in NWS, being them legal or of coordination, stem from the territorial control of non-State groups. NWS shows how State-centric paradigms still prevail above others focused on concepts such as human security or the responsibility to protect, even in catastrophic situations as a devastating earthquake.

The issuing of the cross-border Resolution, which was initially hailed as a powerful tool to overcome stalemates by despotic States, and that has indeed managed to provide a lifeline for thousands of Syrians in NWS, has also shown its shortcomings, finally leading the UN to retrace its steps and strike a deal with the Syrian government. As central governments in civil wars have in their best interest to undermine the well-being of the population in rebel-held territories, humanitarian access cannot be sought through it. This calls the international community to reflect on the

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[147] Interview #1.

requirement of State consent to access those areas for the provision of life-saving goods, bearing in mind the needs of the most vulnerable over those of the State system.

The earthquake response has proven how dangerous this paradigm can be. In a situation of severe distress, no State has taken the "risk" of deploying their search and rescue teams, leaving an already vulnerable community to cope on its own. A crucial lesson learned from this tragedy would be to develop contingency plans in all civil war contexts, to be prepared in the event of a natural disaster and make sure that risk-adverse decisions do not impair life-saving assistance to be deployed in all areas, both under State and non-State control.

Moreover, delivering aid in civil wars forces organisations to navigate a complex scheme of regulations that third countries enforce to cut ties with authoritarian governments and terrorist groups. In NWS, this has created a web of legal norms that disincentivize different actors, from bank to donors, from NGOs to private foundations, to operate in the area to avoid possible backlash. This is also the case in other countries in similar situations, creating bureaucratic hurdles that can significantly limit humanitarian access.

To untie this knot, in civil wars pledges and regulations to ensure that humanitarian relief is not subject to these restrictions must be matched by a deconstruction of the fear surrounding operations in these areas through different means, such as providing clear guidelines to donors and NGOs, establishing easier due diligence procedures or more effective joint advocacy efforts. The flexibility shown by actors during the earthquake relief on these regulations proved that it is possible to do so.

Aside from the central State, another pivotal actor that relief organisations need to deal with to ensure access in civil war are de facto authorities. Understanding their goals, capabilities and internal organisation can be key to achieve successful humanitarian negotiations and deliver aid to those in need. As in the case of NWS, when civil conflicts are protracted, armed groups (or foreign powers, as Türkiye in Northern Aleppo) often aim at establishing civilian governments in the areas they

control to strengthen their legitimacy claims. In these cases, humanitarian organisations are crucial to maintain the survival of these fragile systems. Thus, humanitarians need to understand their role in these dynamics and use it as a bargaining chip to ensure access to the most vulnerable. To do so, it is important that NGOs and IOs effectively coordinate, joining forces to strengthen their positioning and ensure their claims are heard.

Regarding coordination, the case of the Cluster system headed in Türkiye and the many complaints brought forward by interviewees, show how in rebel-held areas it is necessary to have methods of coordination where operations are conducted, and not only in remote management arrangements. Despite the challenges that can arise to do so in NIACs, both in security and legal terms, this objective should be prioritized to enhance access management capabilities.

The issue of remote management is strictly linked to localisation. Interviews have clearly highlighted how being accepted by the local community is pivotal to secure access to those in need, as well as to ensure the security of humanitarian actors and better understand the context. In civil war situations, where social ties can be strained by hostilities, this is ever more important and should be sought from the ignition of humanitarian activities.

Finally, in situations of protracted civil conflict such as Syria, emergency responses must be substituted by longer term prospects and programming. Although the difficulties that these processes can have, they represent the more sustainable way to ensure that communities can meet their basic needs, while building back their lives.

Policymakers should take into account the numerous challenges raised during the interviews in order to enable more effective access to life-saving aid in a world beset by civil wars. While many irredeemable errors have been made in NWS, and paradigm shifts are still strongly needed, the international community should now ensure that such mistakes do not occur again, neither in Syria nor in other contexts.

## 10 Conclusions

North-West Syria remains nowadays one of the most complex scenarios, an ongoing humanitarian catastrophe, where people already grappling with the effect of a twelve-year-old conflict are currently dealing with an unprecedented natural disaster. Ensuring humanitarian access to this population is a challenge on many fronts and brings to the surface the blind spots of the international community in responding to non-international armed conflicts.

While NWS as a case study has shown on many occasions the failure of the international community to effectively deliver aid, it can represent a starting point to develop new practices in civil war situations. Establishing new legal pathways to operate in rebel-held areas, conducting strategic negotiations with all actors involved, improving coordination through a focus on local entities, having more flexibility from donors and effectively implementing localisation policies can be good starting points to improve access to local populations in NIACs.

This study does not claim to be comprehensive of all the issues that can arise during aid delivery in an ever-complex setting as NWS, however, it hopes that, by giving practitioners a voice, it has contributed to ideas for improving humanitarian access in Syria and elsewhere.

Finally, while humanitarian assistance is critical to ensure life-saving assistance, political solutions capable of addressing the voices of those whose lives have been destroyed by the Syrian government and bringing peace to the country are the only ones that constitute real, durable solutions to the population's needs. The recent spike in anti-Assad protests across Syria, twelve years after the Arab Spring, is the living testimony that the Syrian people will not settle nor rest, until justice will be served.

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# ACCESSING THE INACCESSIBLE: ASSEMBLING HUMANITARIAN ACCESS IN SOMALIA

Marta **Cavallaro** & Vincenzo **Poti**

Somalia has historically been the theater of a set of complex challenges, including decades of political instability that is currently intertwined with instances of terrorism and extremism, the dire effects of climate and environmental change, and significant trends of mass displacement. The country has therefore provided a prominent ground for the emergence of humanitarian challenges and the test of humanitarian approaches and responses. Key among them, humanitarian access continues to represent a puzzle for the humanitarian community working in and on Somalia. For instance, the country has often been described as "hard-to-reach" (IFRC 2018), meaning that its communities "are not receiving essential humanitarian assistance because humanitarian actors (local, national or international) are not adequately present or able to provide adequate assistance to the places where they are located" (IFRC 2018, 1). State fragmentation, violent political contestation, infrastructural gaps and donors' neglect have all contributed to hampering governmental and non-governmental organizations' efforts to provide assistance to people in need in Somalia. Over the years, the humanitarian community has done its best to overcome existing challenges, through the implementation of creative and sometimes daring practical solutions to ensure humanitarian access. While recognizing the importance of experimenting pragmatic solutions to meet pressing needs, we argue that part of the challenges also arises from a tendency to often take as a given and reify Somalia's inaccessibility to humanitarians.

Humanitarian access has been defined by OCHA (2010, 1), the United Nations (UN) agency in charge of coordinating humanitarian affairs, as "humanitarian actors' ability to reach populations affected by crisis, as well as an affected population's ability to access humanitarian assistance and services" and, therefore, as a "a fundamental pre-requisite to effective humanitarian action." Such a definition is often treated as absolute and rarely challenged. furthering the crystallization of certain places as inaccessible or "hard-to-reach". In the conversations we had with humanitarian practitioners in Somalia, that gave rise to this work, we often observed a tendency to recognize access as dynamic and fluid – in the words of one interviewee, as "in a constant state of flux" (FAO). However, this same fluidity was more- often-than-not attributed only to contextual and external factors, and rarely we observed self- awareness and critical reflexivity on the role of logics and criteria that humanitarians themselves attribute to access in constructing a place as (in)accessible.

With this work we aim to call into question the criteria informing the conceptualization – and crystallization – of "hard-to-reach" areas, as well as their effects on the daily practice of accessing. We claim that access, or rather inaccessibility, does not exist in a vacuum; rather, it depends on the underpinning logics and criteria that are attached to access itself, and on the mosaic – and interaction – of human and non-human entities that are involved in gaining access to a certain place. We hope, in this way, to open new creative spaces for humanitarians to rethink what access means.

In particular, contrary to the focus of OCHA's definition on entirely human dynamics among humanitarians, beneficiaries and gatekeepers, we believe that mapping the assemblage sustaining humanitarian access should come as part of an ontological shift to give visibility to the historically omitted role and agency of non-human actors (Latour 2005), too, in shaping humanitarian provision in Somalia. In this view, accounting for the agency of non-human elements becomes particularly important as they can indeed contribute to the identification and enduring conceptualization of certain places as "dangerous" and "hard-to-reach" (Grove 2015). At the same time, by addressing non-human elements, we mean to point out the unintended effects produced by the technopolitical assemblage of humanitarian accessing (Hecht, 2011). Building on these observations, in this work we ask ourselves "What is the assemblage sustaining humanitarian access in Somalia?" To answer this question, explores humanitarian access in Somalia from a technopolitical perspective (Mitchell, 2002). From this point of view, we attempt to shed light on and map the role of both human and non-human agents in the assemblage that makes humanitarian access possible. To answer these questions, we attempted to map the heterogenous assemblage of human and non-human actors that co-produce and shape humanitarian access in the country.

Our analysis is organized as follows. In the first section, we clarify our theoretical framework and our methodology, and we present the study's key finding as a lens to understand what follows. In the second, third, fourth, and fifth section, we further explore the different dimensions of the humanitarian assemblage in Somalia, stemming from our conceptual shift from 'access' to 'accessing'. The sixth section presents our concluding remarks.

## 1. Technopolitics of humanitarian access

This analysis adopts a technopolitical perspective to understand what humanitarian access means in Somalia, and how human and non-human actors are assembled sustaining it. The following paragraph clarifies the new materialist theoretical framework used to analyze the phenomenon, and what we mean when using terms as "assemblage" and "technopolitical" throughout this works. Finally, insights are given on the methodology used to carry out the study.

New materialist approaches in social sciences are characterized by the principle of "generalized symmetry" in considering the ontology of human and non-human actors (Callon 1986). Such principle entails that both human and non-human actors are considered as equally capable of agency, i.e. the capacity of "modifying the state of affairs by making a difference" (Latour 2005, 52). The same principle also implies that reality is the result of a 'coproduction' by human and non-human elements (Callon 1986; Latour and Callon 1992). Such ontological shift allows for recognizing the political materiality embedded in our reality, i.e. the "role of objects in mediating relations of power" without determining them (Pilo' and Jaffe 2020, 9). At the same time, by adopting a critical view of technology, we are capable of recognizing the agency of non-human actors in making human action possible: according to Feenberg (1991, 42), "human beings can only act on a system to which they themselves belong". Objects mediate, enable, and empower: they indeed make a difference. In materializing human programs of action, non-human actors inevitably modify them (Latour 1990). This occurs through assemblages which are here understood as ensembles of political-material connections among humans and non-humans through which the characteristics of each element emerge relationally, and action – here understood as a composition of agencies – is made possible (Gough, 2008).

From this follows that, from a new materialist perspective, humanitarian access is, just like any other field of action, a form of technopolitics, i.e. "an assembly of elements that are both human and non-human, both intentional and not, and in which the intentional or the human is always somewhat overrun by the unintended" (Mitchell 2002, 42), reflecting, in addition, the hierarchies and inequalities of particular social structures (Hecht 2011). Being technopolitics the kind of reality interpretation that an assemblage-based conceptualization of action calls for, our objective is to map the assemblage of humans and non-humans involved in humanitarian access to understand what humanitarian access in the country is and what are the connections sustaining it.

Adopting a new materialist approach enables to overcome reductionist accounts of humanitarian access as something purely human, as the above-cited definition of humanitarian access itself shows. Indeed, the key value of new materialist perspectives is one of comprehensiveness in making visible what often remains silent, i.e. the agency of non-human elements in co-producing and mediating access, and thus allowing for a much more accurate and detailed understanding of the phenomenon.

To carry out this study, we engaged in qualitative data collection through 10 semi-structured interviews with humanitarian practitioners operating in Somalia, which we carried out in September and October 2023. Interviewees were reached via pre-existing personal contacts, while others were approached through snowball sampling, being recruited on the basis of referrals from already identified participants. As for the composition of the sample, 3 interviewees were selected from the IOM Somalia mission, 2 interviewees from the FAO Somalia mission, 1 interviewee from the UNHCR Somalia mission, 2 interviewees from the OCHA Somalia mission, 1 interviewee from the Resident Coordinator Office (RCO) in Somalia, and 1 interviewee was a former UN practitioner currently working for an international NGO operating in the Horn of Africa. All interviews were conducted under conditions of anonymity and confidentiality. Given the homogeneity of the sample, this study reflects the perspective on humanitarian access of a specific community of humanitarian practitioners, mainly belonging to the world of the United Nations (UN). Therefore, findings from this study would not be generalizable to the wider community of humanitarian practitioners active in Somalia.

It is important to acknowledge that our positionality might have influenced, and potentially biased both the framing of the research and the relational dynamics with respondents. In particular, one of us acted as an "insider" of the UN system, as the research was carried out during her internship for one of the UN agencies included in the study, while the other was clearly an "outsider".

For the practitioners interviewed, humanitarian access is a program, a necessary pre-condition to be achieved for the delivery of humanitarian aid, and the ensemble of organizational and professional tasks and resources meant to carry out that same delivery. However, all humanitarian workers interviewed depicted gaining humanitarian access in Somalia as a fundamental constraint and obstacle to their activities, in terms of being able to physically deliver aid; maintaining an ethical conduct reflective of the humanitarian principles of

humanity, impartiality, neutrality, and independence; being efficient in the management of physical and financial resources available; and ensuring the safety of humanitarian personnel. Drawing on interviewees' insights, we argue that "access" cannot only be seen as the goal of reaching an area, as it cannot be delinked from, and it does not exist without, the criteria and logics underpinning its formulation, i.e. an area is to be reached while respecting logics of neoliberal efficiency, risk transfer, risk management, etc. In other words, access does not only mean reaching an area, but it entails doing so in a specific way, according to specific criteria and logics, as following paragraphs demonstrate: it is not only about reaching an area, but it is also about "how" humanitarians do so. And, as emerged in our findings and shown below, access and its bureaucratic criteria may also end up constraining humanitarian action because of those very same logics, - of efficiency, risk, risk-management, risk transfer etc. – informing its formulation as a goal that humanitarians aim to reach to deliver aid that, however, often end up spoiling the goal realization itself. Through our research, what we thus realized is that we were not analyzing access per se, rather the assemblage of human and non-human elements that sustain the process of "accessing" peoples and places in Somalia on a daily basis, while respecting specific logics and criteria. A key finding of this study is thus the distinction between "access" and "accessing".

"Access" refers to the pre-condition to be achieved to deliver aid, while "accessing" is the actual set of connections

informing and shaping the process of gaining access. The key difference between the two concepts is in their "dynamism": while "access" is a goal, "accessing" is an ever-changing assemblage of people, things and their relations that, even unintendedly, shapes the outcome of the original goal (Latour, 1990). "Accessing" is the materialization of the program of gaining access, or, in other words, the process sustained by the heterogeneous assemblage we aim to analyze in our work.

Given that, our work has to be read as a "map" of this assemblage, rather than an effort to trace causal relations. At the same time, describing and interpreting the accessing assemblage in Somalia is a messy process: to trace the whole network comprising relationalities, nodes, human and non-human actors sustaining the process of accessing people and places would be an overly ambitious task. In this sense, the order in which we present and discuss our results is merely the product of our own sensibilities and ideas, but we encourage the reader to take their own path across the assemblage we try to interpret.

## 2. The bunkerized nature of humanitarian action in Somalia

One of the key factors contributing to making humanitarian access in Somalia a constraint to "accessing" is the "bunkerized" nature of the United Nations' presence in the country. In Somalia, United Nations' practitioners work and reside in specific facilities, the so-called UN complexes, placed in areas constructed as low-risk and known as "green zones." Exiting the green zones requires specific permits and, above all, a remarkable amount of financial and logistical resources, to ensure the safety of humanitarian personnel and goods in areas qualified as unprotected or at higher risk.

One interviewee provides a clear example of how the bunkerized nature of the UN humanitarian landscape in Somalia, with its attached logistical and financial constraints, plays a role in the definition of the personal relationships between Somali authorities and

humanitarians. The obstacles to direct physical access to Somali stakeholders deprives humanitarians of a common platform where they can build interpersonal relations and a common ground, as well as discuss "freely" issues at stake, to inform swift and smooth decision-making. The obstacles to direct physical access to Somali stakeholders deprives humanitarians of a common platform where they can build interpersonal relations and a common ground, as well as discuss "freely" issues at stake, to inform swift and smooth decision-making.

> In Somalia, it's a bit different. You know it requires one $7000 just to leave the gate, to leave the Green Zone. And then you are only given 30 minutes to say what you want to say. It's one massive logistical barrier. In Nigeria, we were jointly talking with the Nigerian forces and we could actually begin to pilot early recovery resilience programs. Here, we are still not meeting around a common table to discuss these issues freely. So there's also that lack of personal engagement that hinders our relationship in terms of crisis response. (RCO)

Several explanations were brought forward by interviewees to justify or at least clarify some of the reasons behind the bunkerized nature of UN activities in Somalia. First of all, interviewees referred to the (in)security associated with the Somali context, where al Shabaab has openly declared the UN as an enemy and target of its attacks, often resulting in direct attacks to UN facilities and personnel. Mention was also made to the specific nature of the perceived threat represented by Al Shabaab, often seen as an invisible force that is highly infiltrated in the social and economic fabric of Somali societies and whose actions are therefore hard to predict. In the words of one interviewee,

*In Yemen, you knew who was fighting whom. We knew the sensitivities because the protagonists were clear. Here in Somalia, it is completely different. Al Shabaab is an invisible group. I mean, you don't know who is Al Shabaab. It could be the guy sitting next to you in the car or whatever. It's not clear who's fighting you. (OCHAb)*

Other interviewees pointed out the self-imposed measures and decisions taken by UN agencies when planning their operations, which reinforce the bunkerized character of their work. The two interviewees from FAO shared with us that, when operating in rural areas, FAO practitioners are supposed to remain in a perimeter of 10 kilometres surrounding the main district city, with no possibility to directly access beneficiaries outside this geographical scope. Such self-impositions are often both a result and a reinforcing pattern of bunkerization. Taken with the objective of delivering aid while ensuring the safety of humanitarian personnel, self- imposed measures often end up reinforcing the same bunkerization that prevents accessing in hard-to-reach areas, adding constraints to an already dysfunctional complex.

At the same time, "accessing" in a bunkerized context usually implies additional unintended logistical, financial, and social obstacles in the delivery of aid, in terms both of physically reaching certain areas and peoples and of maintaining an ethical conduct while doing so.

First of all, to ensure the safety of humanitarian personnel and goods in areas often deemed as hard-to-reach, the UN humanitarian landscape often relies on the support and protection of military actors. Some of the interviewees, for instance, cited the necessity to often be escorted by ATMIS personnel, military actors from the national contingents deployed in Somalia,

national armed forces, or at times private security contractors. Two of them (OCHAa, OCHAb) expressed their uneasiness with respect to the implications of such a closer relationship with military actors, in terms of their profile as humanitarians and of the principles of impartiality and neutrality that they are called to respect. At the same time, reference was made to the possibility of generating greater hostility towards humanitarian workers, if associated with military actors, by the conflict's counterpart and, therefore, running the risk of being even more exposed to attacks and instances of targetization. A similar concern was expressed for United Nations Assistance Mission in Somalia (UNSOM), the UN peacekeeping political mission deployed in Somalia that humanitarian actors often liaise with for purposes of information sharing as well as technical and logistical support when operating in the field. In the words of one interviewee:

*People in Somalia are very sensitive towards the UN and the international partners because of history. Historically the conflict in Somalia is framed as one with the Westerners against Somalia. It's because of Black Hawk Down and all this kind of history (...). The mission is seen as a political arm of the Western world, so when we identify with them we get a lot of backlash. For example, if we plan a joint activity with the mission, people say "oh now politics has come into the humanitarian work, (...). I thought you were here to deliver aid and not to play politics with the UN. (OCHAb)*

They then shared with us the public backlash that the OCHA mission in Somalia had to face when UNSOM re-tweeted some tweets of the agency.

*For example, the mission [UNSOM] used to retweet some of our humanitarian posts and we got a very big backlash, until we had to tell the mission to stop retweeting what we tweet, because people said, "Oh okay they [OCHA and UNSOM] are one and the same" (OCHAb)*

Such instances show the power of the unintended in constraining access in Somalia: while the tweets were most likely shared with the purpose of circulating information, they produced an unintended scale of consequences and effects, leading the public to presuppose a political association between OCHA and UNSOM that created a hostile and unwelcoming atmosphere, with the potential to further hinder "accessing".

Secondly, to achieve access in those hard-to-reach areas that, for one reason or another, remain outside the scope of UN workers' direct engagement in the field, humanitarian practitioners often resort to local actors. When speaking of local actors, interviewees mentioned the fundamental role of local NGOs, community leaders, clan elders, and local vendors to negotiate access with actors with whom UN workers cannot directly interact (see, for instance, Al Shabaab itself), and, once access is negotiated and gained, to physically reach those areas that, due to logistical and financial constraints, the UN often deems as inaccessible for its workers. However, the power of the unintended strikes again, as engaging with the locals also comes with specific implications in terms of targeting of beneficiaries, aid diversion and politicization and how this interacts with, again, the principle of humanity and impartiality that humanitarians should abide by. When humanitarians transfer their risks, duties, and responsibilities to local third parties, they unintendedly become dependent on them to carry out their job. By increasingly relying on local actors, they reinforce local power dynamics, exclusionary politics,

and inequalities. Several interviewees expressed their concern for such implications. One stated that:

*Somalia is a very complex environment, largely because of the clan dynamics. For instance, in doing something very simple as delivering aid to a certain community, if you do not consider inter-clan dynamics, you might end up harming the community that you're trying to serve. (...). There's also a lot of exclusionary dynamics, I would say (...). And [there are] also [many difficulties in] just trying to make sure that you're fair, you're neutral, you're impartial. All of that is not very easy. (UNHCR)*

Another one expressed the risk of being manipulated by local elites, who "understand how our system works at a deeply technical level, (...) because we are dealing with a sophistical network capable of disrupting and diverting our assistance" (OCHAa).

The use of satellites further distances humanitarians from the field by virtually reducing the 'remoteness' of certain places (OCHAa), thus facilitating the proliferation of "fortified aid compounds" (Duffield, 2010, 2013), an assemblage sustained by the need for reducing the risk for humanitarians and providing them with a safe environment in which they can uphold required efficiency levels in spite of external volatility and insecurity (Smirl 2008, 2015). Finally, a further implication of the bunkerized nature of the UN humanitarian landscape on Somalia impacting 'accessing' in the country lies in the toll that an overexposure to such environment can have on the mental health of humanitarian personnel, traveling throughout their career from hardship scenarios to hardship scenarios with little time nor opportunity to process traumas and suffering. One of the interviewees kindly shared with us their daily personal struggles to resist on the job:

*You know you lie at night, you go to your bed and say "what am I doing here exactly? What's the point?" Overtime you begin to develop a thick skin maybe. Maybe that's why I am here now. It is traumatizing either way and the impacts remain with you a long time. I mean this humanitarian work is not for the faint hearted it. I have seen colleagues who drink alcohol like fish. You know they tell you in the morning that they just have to drink. It's a coping mechanism. It's a tough thing and you know you see so much suffering sometimes that you really ask yourself... (OCHAb)*

Paradoxically, what is put into place to ensure the – physical – safety of humanitarian workers often ends up undermining

their mental stability and health, by creating an out-of-touch environment where humanitarians are constantly exposed to traumas with little opportunities to live a "normal" life.

## 3. **Logistics of aid delivery**

Inextricably linked with the "bunkerized" nature of humanitarian aid in Somalia, the logistics of humanitarian delivery is part of the "struggle for access" that humanitarians undertake through the process of "accessing." In the UN system, logistics pertains to the "movement of passengers and/or goods from one location to another" ("transport") and the procurement of those same goods: in other words, logistics is that set of norms and practices deemed crucial to access a place and sustained by a wide array of material actors, mainly infrastructural. Based on our interactions with humanitarian practitioners, we have divided, for the sake of clarity, the

logistical component of "accessing" into a series of steps, whose boundaries are way more blurred than it might appear from our interpretation.

First, to access a place means to plan how to do so: it means to "anticipate" and "prepare ahead of time" despite knowing that "you can run into issues out there" on the field (FAO). Therefore, planning implies "remaking" of space and time to make certain practices possible in spite of political, security and technical constraints (and their combinations) and according to a certain level of accepted risk (IOMa). Although often silently (FAO, IOMa, IOMb), an orchestra of material devices and techniques, thus of technologies, constantly sustains and shapes the process of planning. Most prominently, the redefinition of space occurs through images and maps obtained through the use of satellites, while anticipatory knowledge is produced thanks to predictive, computer-based models relying on time series (FAO, NGO). These technical elements, however, interact with 'specific criteria' informing the process of targeting, i.e. in deciding the areas of intervention (FAO). The use of satellites carries a risk of "disassembling things out of local contexts" (Rothe 2017, 9), i.e. essentializing the perceived needs of the people in need and the relationship among people and between people and places, thus shaping the understanding of danger, security and insecurity. Humans and satellites (as well as all the other components of the orbital infrastructures) become co-producers of a geographical knowledge that is inherently partial and positioned. Data collected through satellites are not neutral nor universal, they are rather "integrated with supplementary assumptions" making the collection and interpretation "culture-bound" (Specht 2021, 197), as materiality (in this case, maps and geographical renderings) acquire a peculiar and subjective value by interacting with the social identity of the observers (Paniagua 2023).

In addition, the self-imposed constraints on access (e.g. the previously mentioned 10 km perimeter around the urban centers defining the scope of FAO action in the field) reinforce humanitarians' reliance on the orbital "bird's eye" (IOMb): due to the construction of certain areas as 'insecure' and, more in general, "hard-to-reach", satellites become the only way to produce operative knowledge on certain places (OCHAb). However, as shown, the filter of orbital telescopic lenses makes satellite imagery partial, non-neutral. The coming together of humans and material practices, targeting, thus planning, emerges as a political decision informed by the interaction of partial data filtered by satellite imagery, pre-existing organizational criteria and risk assessment procedures. Targeting thus implies practices of inclusion and exclusion from the humanitarian landscape (NGO).

Crucial to the materialization of the construction of certain areas as hard-to-reach is the crystallization of these political decisions in thematic maps, bending the space and the time of Somalia to make them intelligible to decision-makers.

Colored in shades of a variety of tints, representations of Somalia reorganize the territory to reproduce climatic patterns, risk levels, degrees of neediness, to make decisions possible, to make aid delivery feasible somewhere and 'impossible' elsewhere, or, in the words of our interviewees,

> This map shows the places that are in IPC [Integrated Food Security Phase Classification] 1-2 all the way to 5. The green is minimal IPC 1, yellow IPC 2, usually we provide humanitarian intervention from IPC 3 and above. (...) Then we start the process of selecting the people that we provide assistance to. So we use data from this map to inform programme design and location of programmes and activity. (FAO)

Secondly, in aid logistics, the procurement of goods is equally crucial in making delivery possible as well as equally political insofar as it is constructed as a tradeoff. Relying on the domestic market is considered a form of empowerment for the domestic economy and comes with instances of risk and cost transfer, whereby UN agencies transfer to some "better- equipped" local parties the risks and costs that they would face if engaging directly on the field. Indeed,

> The Somali people are the best business people that I've met or seen [sic]. What we do normally is we transfer the risk of procuring. Procuring, transporting, storing, and distributing. It's also empowering. (...) Logistics has been transferred: (...) if we contract a local trader to buy it, transport it, get it to the people and we only pay the trader for what the beneficiaries have received, we have transferred that risk to the local. (FAO)

And

> The local businesspeople have got a lot of the things you will need. So instead of even flying things you buy from local markets (...) and that really removes the heavy cost of transporting by air and things like that. (IOMc)

Relying on the internal market would not be possible without the rhizomatic mobile money infrastructure sustaining money circulation in Somalia. Some interviewees have claimed such infrastructure allows to deliver (financial) aid "everywhere" and "to everyone" (FAO, UNHCR, IOMc). However, the ubiquitous influence of the local clan system implies the risk of "reinforcing the whole structure of the negative side of the political economy in Somalia" (NGO). Simply put, not 'everyone' receives aid or profits on aid in the same way.

On the contrary, international procurement, while falling short of empowering effect, might seem more neutral. This sense of neutrality appears, nevertheless, ill-founded since the international market network comprises infrastructures (e.g. ports) and borders as well as the political decisions acting with them: interviewees believe aid delivery is profoundly affected by the closure of ports, as the one of Mogadishu (FAO), and borders, in particular the one between Kenya and Somalia (RCO). Even when ports and borders are open, imported goods might be subject to taxation, which is considered detrimental to the delivery of aid (RCO).

Thirdly, problems arise in relation to the actual transportation of humanitarian personnel and material aid to intervention areas. The infrastructural dimension is crucial in assessing the accessibility of intervention zones. The case of Somalia is paradigmatic in this sense. The country, for instance, was ranked last for infrastructural development according to the index produced by the African Development Bank Group[1]. Besides security concerns, accessibility is, therefore, also limited by logistical constraints, raising the cost of aid due to its widespread reliance on air transport (OCHA 2022; Tronc, Grace, and Nahikian 2018).[2] Such logistical and, more in general, physical constraints to access have to be understood as the material component of a broader assemblage sustained also by precise managerial logics that contributes to the construction of Somalia as hard-to-reach (Brassett and Vaughan-Williams 2015).

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[1]  See: https://www.afdb.org/fileadmin/uploads/afdb/Documents/Publications/Economic_Brief_-_The_Africa_Infrastructure_Development_Index.pdf (last access: 12 November 2023)

[2]  See also: https://logcluster.org/blog/towards-more-effective-humanitarian-action-logistics-clusters-response- 2022-drought-crisis (last access: 12 November 2023)

Transport itself can be conceived of as the product of a heterogeneous assemblage of human and non-human actors whose interactions produce largely unpredictable political outcomes. The program of humanitarians is to promote "good circulation" of aid (Aradau and Blanke, 2010): given the volatility of the Somali security environment, such circulation has to be protected. As seen above, the risk of UN means and personnel being targeted prompts the need for military escorts provided by both states and UN contingents and private contractors (FAO, OCHAab), with the attached ethical and practical implications. In relation to the means of transportation,

> We might end up having to use military assets, which means hopefully just black UN UNSOM-UNSOS means and not assets that have been used for kinetic activity. (...) We get to the point - which is a classic MCDA [Multi-Criteria Decision Analysis] point – where we will not let people die because we don't like the helicopter we're using. (...) Right now, we're flying around the black UN helicopters everywhere. We shouldn't be, but we are. (OCHAa)

The problem of transport is twofold inasmuch as it concerns the "who" and the "how". A simple yet potentially problematic, as shown, solution is to transfer this task to local actors: while ensuring a "low profile" (IOMc), this solution is based on a shift of who is responsible for the delivery of aid as well as, once again, on a practice of risk transfer.

'Access' acts as a constraint to 'accessing': as a program of action sustained by naturalized decision criteria, neoliberal logic of efficiency, and techno-politically biased security assessment, access hinders the circulation of aid by creating tradeoffs – of both an ethical and practical nature, e.g. compromising humanitarian values or opting for a less expensive mean of transportation that does not allow to reach 'remote' areas – and jeopardizing the security of the same humanitarians they are meant to protect – e.g. opting for transport by road, despite security risks, because cheaper, as explained below. The goal of 'transport' – to translate goods and personnel from one place to another – changes by interacting with the 'materiality' of 'transporting'.

In a sense, the infrastructure becomes more than just an object: it emerges as an assemblage of facilities, means of transport, logistic and security criteria, and threats to the 'good circulation' that UN agencies aim to protect. Indeed, choosing "how do we transport" is as techno-political as determining "who transports." In the case of ground transportation – the usual first choice (OCHAa) - a crucial element is the presence and state of roads (UNCHR, OCHAb, IOMc). As one of the interviewees puts it,

> You know, many areas are rural and remote. The roads are hardly well-maintained. I think if you just leave Mogadishu, you will hardly get anything. Yesterday I came back from Cairo, I was so excited: I was on a tarmac road! (...) But you drive a few kilometers and there's hardly anything. So, it makes transporting supplies and personnel very difficult, especially when you have these seasons like the rainy season where it becomes impossible. (UNHCR)

Indeed, not only climatic shocks – often hindering logistics in the moments of highest "vulnerability" of the local population – but also seasons can affect the logistics of aid (OCHAa, OCHAb, UNHCR). Moreover, roads' practicability comes together with security issues shaping the infrastructural assemblage and prompting logics of risk (see below). For instance, improvised explosive devices (IED) represent an as constant as unpredictable threat to convoys (OCHAa, IOMc), while Al Shabaab's checkpoints further complicate the scenario through the imposition of tariffs (IOMc). Not least, the absence of "well-established insurance companies in Somalia" as well as problems deriving from international sanctions, force humanitarians to rent cars or rely on local actors, in both cases reinforcing, yet again, social inequalities (OCHAa, IOMc).

Air transport, on the other hand, is not trouble-free. Here, technical elements come together with the criterion of financial efficiency in making 'access' a constraint to aid delivery. In practical terms, fixed wing assets (aircrafts) are the usual choice, while rotary wing ones (helicopters) are less preferred. The main reason is the payload-cost ratio: aircrafts can usually transport bigger payloads at a fraction of the cost of employing helicopters, which, besides, are usually unavailable.[3] The conundrum here is once again related to the 'unpredictable': indeed, aircrafts need mostly dry airstrips, reproducing the unfortunate convergence of limited access and peaks in need for aid that affects ground transportation (OCHAa, IOMc). Moreover, the 'technical' interacts with the 'political' due to occasional airspace restrictions imposed by the Somali government (UNHCR). Thanks to helicopters, every place is, in principle, accessible, but political and financial considerations make their use rarer than it should be to positively affect humanitarian aid (OCHAa). Conceptually, measuring remoteness of a place means taking into account not only the infrastructural and physical features of the route to that place, but also more immaterial features that shape the 'distance' between humanitarian workers and beneficiaries, such as risk acceptance/avoidance, cost-benefits ratio, awareness and legibility of peoples' needs, etc.

Targeting and defining certain places, thus people, as hard-to-reach contribute to the construction of recipients' identities. We argue that deciding who the recipients of aid are is a sociotechnical process in which, once again, pre-existing criteria and policies come together with security and technical constraints. This might end up reinforcing dynamics of exclusion and 'hierarchies of humanity' (Fassin, 2010), thus producing "hard-to-reach people" even in "easy-to-reach places" (NGO), let alone the most vulnerable residing in areas considered inaccessible.

Once the identity of the recipients is determined, the huge reliance on local actors and, more in general, the "acting at a distance" of humanitarian agencies - in situations in which, simply put, UN workers are not physically present to overview and monitor humanitarian action - leads to crystallizing and policing practices: in other words, the intention of delivering aid to specific beneficiaries is reinforced by fixating who the recipients are in order to avoid aid diversion. To counter diversion, humanitarians deploy a range of interlinked technique and devices, mostly facial biometrics collected and verified by implementing partners and satellite mapping and observation (FAO, IOMc), that supposedly help to verify and validate beneficiaries' identity, taking the financial and security load away from UN agencies and diluting it among non-human actors and local implementing partners. However, what is seemingly neutral, if not foolproof - satellites and biometrics, in fact produces a more partial and biased knowledge than it may appear at first sight (RCO). Indeed, the reproduction of reality through satellite imagery can differ from what the eyes on the ground see: it is not about choosing one method over the other, rather about the need to integrate different observations to reproduce reality according to the most accurate data possible (OCHAa). This becomes particularly true when establishing degrees of vulnerability of people in need and assessing the existence of 'hard-to-reach people' who are victims of exclusionary and marginalizing dynamics (NGO).

## 4. 'Rest insured'

Insurance plays a key role in reinforcing and/or changing the configuration of the network sustaining "accessing" in the Somali humanitarian landscape. The high number of incidents involving humanitarians in Somalia is considered a significant constraint to access[4] and, therefore, a 'safety net' is required. Insurance, while not replacing the state in its 'sovereign function' of ensuring security, allows external actors "to operate and individuals to circulate in environments where sovereign forms of security are not consolidated" (Fromm 2023). Entangling with sovereignty spheres, insurance becomes another element of the Somali fragmented security governance.

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[3] One of the interviewees said: "We have one Rotary asset in the country which means they're expensive and only carry 2 tons per time" (Themba)

[4] See: https://reliefweb.int/report/somalia/ocha-somalia-2023-quarter-1-humanitarian-access-overview-31- march-2023 (last access: 12 November 2023)

Insurance is here understood as a "technology of risk" intended to "break down, rearrange, order certain elements of reality" in order to make risk calculable, collective and 'a capital' (Ewald 1991). To calculate the risk, insurance institutions have to recombine data from the past, visions on the present and imaginaries on the future "to order and stabilize" reality according to specific criteria (Ewald 1991; Rose 1999). In addition, insurance logics are entangled with material technologies deployed according to risk-calculation and risk-management strategies (Fromm, 2023).

In Somalia's humanitarian assemblage, insurance works through the dissemination of the very same actuarial techniques it is sustained by, namely risk assessment practices, which in the UN context go by the name of Security and Risk Management (SRM)[5]. Risk assessment, whether conducted by a security officer or the insurance company itself, incorporates the core notion of insurance, indeed risk, and emerges from an understanding of security in probability and impact terms, rather than as the response to a specified threat. Of course, humanitarians working in Somalia are conceived of as exposed to certain threats, whose uncertainty is managed through an assessment of their potential impact and of their probability rather than by directly addressing the threats themselves. SRM is crucial to the construction of access as a constraint, to discerning between the accessible and the inaccessible and, in this sense, it rearticulates the Somali space and time to make humanitarian practices possible. As for time, technologies of risk operate on the present to shape the future on the basis of an often-crystallized past, and Somali humanitarian landscapes unfortunately makes no exception:

> So in Somalia (...) these assumptions about the way that we engage with hard-to-reach areas are never questioned. Of course, it's a highly insecure place. (...) But a lot of the ways that we construct our perspective (...) are based on past assumptions and past decisions. And we don't spend enough time challenging those decisions. (NGO)

Somali space, instead, is re-organized in twelve SRM areas and "each area has its own specific threat mitigation measures" (IOMa). Space is, however, agential in such classification as also infrastructures and climatic conditions are considered when constructing and characterizing each area according to its "risk level" (ibid.). Despite a common system for assessing risk, however, one of the practitioners claimed that "there is absolutely no global sense of risk in organizations and how they approach it" (OCHAa). Under this view, access becomes a constraint because, on the one hand, certain events, although unlikely, are so "feared" that they represent a "deal breaker". Specifically, some events are constructed as 'risky' not because of their inherent nature, but rather because of the logics that underpin humanitarian access, i.e. neoliberal efficiency, risk transfer, etc. This implies the calculation and mitigation of the events' impact and probability. On the other hand, no attention is devoted to remedies to unfortunate events. The interviewee referred here to the absence of adequate first aid training for people in the field and their negligence towards life-saving emergency materials, e.g. tourniquets (OCHAa).

Despite its importance, the norm among interviewed practitioners was arguably to overlook the agency of insurance and insurance logics, partially or totally, which is directly or indirectly affecting humanitarian access. Despite our initial surprise in relation to this finding, we now argue that this was at least foreseeable: indeed, that is exactly how a particular rationality of control, insurance, works, as explored in the literature (Ewald, 1991; Fromm, 2023; Lobo-Guerrero, 2011).

Indeed, insurance works as a "game of chance" that requires the insuring actor to establish a maximum level of risk that it is keen to accept (Ewald, 1991). This is substantiated in two ways. First, by 'socializing' the risk and making it collective, an insurance rationality promotes the dissemination of 'best practices' informed by a persisting logic of self-restraint (ibid.). This supposedly helps to prevent "risky" actions, thus raising the winning odds of the insurance

institution in the 'game' of insurance. Second, insurance rationalities are entangled with silent material technologies deployed according to risk-calculation and risk-management strategies (Fromm, 2023). In the humanitarian assemblage, such technologies can be instruments of monitoring and control (e.g. satellites), or physical separations between the humanitarians and their intervention space as Duffield's (2013) "fortified aid compounds", as shown above. The subtleness and daily nature of this configuration of control makes it not entirely visible to humanitarian practitioners. Insurance's agency thus appears silent most of the time exactly due to its seemingly autonomous, impersonal nature. At the same time, the lack of awareness by practitioners can be also reconducted to the low priority attached to 'terms and conditions' they are confronted with. are confronted with. In the words of the practitioners: are confronted with. In the words of the practitioners:

> [During the induction process] you look at the contract, at the amount of money. A good example is the consent form you gave me. I opened the form, I printed it, and I ticked every box. I simply read where it says, "do you agree?" and I said yes, yes, yes. (...) So if that form said that I have to pay $1,000,0000, now I would be broke (...). So, I think that's also the challenge: that all the time we're also under pressure to do things. (RCO)

However, interviewees became aware of insurance policy agency in accessing Somalia, when us, as external actors, brought the issue to the table, during our interviews. Likewise, such awareness emerges in moments of "breakdown" (Latour, 2005), that is to say when the risk materializes (instances of violence, accidents, etc.). Exemplary in this sense is what one of the interviewees revealed:

> So once (...) something happens, the insurance will come just with a checklist: "Have you done this? Have you done what was required?". If yes, it's fine[6]. (IOMc)

Different approaches to insurance stemmed from these moments of realization of its agency. In some cases, practitioners were stressing how due diligence – indeed a form of self-restraint – is crucial for the well-being of humanitarians themselves, thus welcoming how insurance actually reinforces this sense of self-restraint and self-discipline (IOMa, FAO, IOMc). As one of them put it:

> Insurance is already incorporated in security rules. Let's say you have an accident in a place you don't have security clearance for. For sure you will not get your coverage because you didn't get the security clearance before moving to that place. So, insurance is already incorporated within the security rules in advance, but rules don't say "because of your insurance policy, we will do this and that" (IOMa).

A similar logic is at the core of the interplay between insurance and logistics. Due diligence implies that, when humanitarians are on the field, they have to comply with certain rules under the principle of prevention: for instance, in certain parts of Somalia, like Puntland or Somaliland, they are allowed to move in soft-skinned vehicle (cheaper and more common), while in Southern regions they need an escort as well as armored vehicles to step out the UN base (FAO, OCHAb). In this sense, the risk logic underpinning access makes it a constraint: even at the cost of hampering aid delivery, humanitarians must comply with the rules meant to ensure their safety, at the expense of compensation in case of an accident. This represents a clear shift of responsibility by which insured individuals are the ones now responsible for their own security. While questioning the real effectiveness of due diligence as a security principle, interviewees recognize the capitalization of risk – namely, the fact that, through insurance, risk becomes a capital "against whose loss the insurer offers a guarantee" (Ewald, 1991), thus guaranteeing the possibility of compensation – as a positive aspect of insurance:

[5] See, for instance, https://www.un.org/en/safety-and-security/risk-management

[6] I.e. the claimant will receive compensation for the concretization of the risk that has affected them.

*I think it's God that protects us, you know? (...) But at least, [insurance] gives me a sense of confidence and a feeling that at least somebody has my back (...). In the events something happened... my kids, somebody would [compensate them]. (OCHAb)*

Another type of reaction to the almost sudden recognition of insurance's agency has been more negative. One of the interviewees in particular expressed their concerns with regards to the logic of risk enacted in establishing the accessibility of a place.

*When [a dangerous area is cleared in terms of security] and you're told to go there, if you're not willing to go, then it means that you're not delivering: you have to stay there and deliver. So, sometimes there's a push and (...) my insurance is not really considered at that point. And if you start raising these things, then you'd probably be seen as a troublemaker (...). So people sometimes fear just talking about these things. (UNHCR)*

This means that the shift of responsibility implied by the principle of due diligence also implies that, once an intervention is vetted and declared safe, the personal concerns of the humanitarian worker do not count anymore. On the contrary, they are now policed through mechanisms of shaming, with negative consequences on the quality of aid delivery. In addition, the interviewee identified the mechanism of the checklist as a safety net for security officers:

*If anything happens to me, my family might not be compensated, because now they'll say you didn't do this and that. But if I didn't go, (...) I would have been blacklisted as uncooperative. (UNHCR)*

Although not prevailing, this perception highlights how the capitalization of human life together with the socialization of risk may have detrimental effects on the trust relationship between humanitarian workers and agencies, with potential negative consequences on the quality of the delivery and the overall – both physical and mental – well-being of the operator. Another dysfunctional aspect of the access-insurance assemblage pertains to the distribution of insurance as a good. As a tool that makes practices possible in hostile and unwelcoming environments, insurance is at the core of access, but not every human actor involved in the humanitarian assemblage enjoys it equally. This kind of hierarchical organization of who is ensured and how raises ethical questions particularly when paired with the risk transfer system described above. This unequal system might operate under the assumption that partner actors are not exposed to the same level of risk as UN humanitarians (they may have a 'lower profile'), as well as according to a logic of, once again, shifting responsibility towards the individual in tackling risk. Indeed, while UN agencies' employees' insurance is provided by the UN itself, UN volunteers, local implementing partners, and involved third parties are not subject to the same regime (RCO, FAO, NGO, IOMc).

The same goes for UN interns, who are not covered by the organization's insurance but rather have to provide for their own. While probably not essential for conducting interns' daily tasks, accessing the Somali territory is not permitted to interns due to the clauses of her insurance policy. As in the other cases, access – again, here understood as both the goal of getting somewhere but also as the mode through which this goal has to be reached – is the constraint to "accessing": despite being part of the same assemblage and, hopefully, sharing the same humanitarian goals as well as similar levels of risk, not every actor enjoys the same supposedly facilitating technology, i.e. insurance, in the same manner.

## 5. **Dealing with a hybrid governance assemblage as humanitarians**

As shown in the previous paragraphs, the social and political landscape of humanitarian access in Somalia reveals a complex network of human and non-human interactions involved in the process of 'accessing'. This paragraph will focus on one of the key components, as identified through our research, of the 'accessing' assemblage, namely the hybrid landscape that humanitarian actors co-produce in their attempt to gain access.

Specifically, we use the hybridity proper of the accessing assemblage to contradict some of the most mainstream representations of Somalia as a "fragile," "collapsed" or "weak" state.[7] Thinking in terms of hybridity implies recognizing "the contradictory and often dialectic co- existence of different forms of sociopolitical organizations that have their roots in both non- state indigenous societal structures and introduced state structures" (Boege, Brown, and Clements 2009, 17), while overcoming the privileged monopolistic position that is often prescribed to the state as the only agent providing security (Kraushaar and Lambach 2009). Indeed, our conversations with practitioners interviewed reflected the hybridity proper of the Somali context, thus mirroring many of the criticisms that have been academically moved against representations of state fragility.

First of all, Somali formal authorities were described as highly active and involved in the activities of humanitarians and often capable of steering the state of affairs of the humanitarian provision of aid through their demands, claims of power and control over who enters which territory and on what terms, thereby challenging the notion of silent and passive recipient of aid that is often associated to the state failure attributed to the Somali context.

At the same time, the state-centredness implicit in the notion of state fragility – namely the tendency to assume that, without a state capable of exercising control, chaos and disorder must ensue (Clunan and Trinkunas 2010; Florea 2020; Mampilly 2012) – was challenged by the diverse array of key non-state stakeholders that humanitarians interact with on a daily basis to negotiate and gain access, including UN agencies and UN coordination bodies and mechanisms; international and national NGOs; local actors as community leaders, clan elders, local vendors, gatekeepers, and camp managers; military actors ranging from the African Union Transition Mission in Somalia (ATMIS), the international mission authorized by the African Union, to specific national contingents, private security contractors, local police, and local armed forces; private companies and business communities; and beneficiaries themselves. The tendency to treat the state as the exclusive provider of order and security thus neglects the legitimacy and leadership that may be held by such governance structures and actors at the local level (Bøås and Strazzari 2020).

On another note, several interviewees clarified how negotiating access in Somalia implies facing overlapping levels of authority structures, often competing for power and control. Working in Somalia means liaising with a Federal Government, Member States' regional governments, municipalities, district authorities, and areas of contested statehood like Somaliland. As one interviewee pointed out,

*It's complicated. (...) And, for instance, the Federal [government] wants to be involved in all activities of the states and the states want to be involved in federal activities. And district authorities can be very powerful too. (...) Sometimes we go to the ministers to complain about district authorities, but it can happen that the Minister has no power over the district authority. (...) And so there are so many interlocking actors in the action (FAOa).*

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7   During the years of the Somali civil war, common was the representation of the country as a 'failed state' (Fisher 2019; Rotberg 2002), while Zartman's (1995) formulation of the concept of 'collapsed state' was directly inspired by the Somali case. Later, after the establishment of the Somali Transitional Government and the election of the current Somali Federal Government, Somalia came to be seen as a 'weak state' suffering from the absence of strong public central authority able to exercise control over its whole land and to recover the territories fallen years ago in the hands of extremist groups.

The Somali context thus challenges the use of domestic/foreign as well as national/international polarities, proper of 'state fragility' discourses, which obscure the interaction between actors and processes at different scales (Agnew 1994). These clear-cut distinctions are often Western- based in their nature as they reflect a model of government and governance, the Weberian state, that has hardly ever existed outside Western countries (Boege, Brown, and Clements 2009). For this reason, they hardly apply to the Somali reality, characterized by blurred boundaries between domestic and international, public and private. As emerged during our conversations, the Federal Government of Somalia is not always necessarily the direct counterpart of international actors, on the contrary Federal Member States and local Municipalities are often the ones working side by side with international development and humanitarian agencies.

The messiness increases when considering that each level of authority comes with its own organizational structure and specific set of rules. The same ministries at the regional Member State level might have different areas of jurisdiction and power if compared to the Federal Government at the state level, as well as different technical and operational capacities.

First, the process of 'accessing' changes from one Federal Member State to another, as regional authorities are "not coordinated in a similar manner across the country" (RCO). Secondly, not all of them dispose of the same policy frameworks to allow the UN to effectively engage with the different governments in a comprehensive manner (ibid.). Third, each governmental actor comes with their own understanding of the commitment and scope of action for humanitarian stakeholders in their territory, mediated by "different political, economic, and conflict sensitivities to decision-making" (ibid.), that sometimes do not correspond to the self- perception that humanitarian workers have of their mandate and role. And, fourth, Somali political authorities with whom humanitarian practitioners negotiate access on a regular basis also present high degrees of political hybridity, given the specific importance of clan identity in the Somali context. This can often mediate the type of relationship that humanitarian actors are able to forge with their counterpart, as reflected in the words of one interviewee,

> We should also mention the political aspect of the clan, which is extremely important, because even within the same State, who is the minister you are talking to and from which clan also has its impact. So, also when you deal with formal authorities, clan identity has an impact (FAO).

Such hybridity challenges one key geographical assumption often underpinning 'state fragility' discourses, namely the tendency to consider the state as a fixed unit of sovereignty acting as the only container of society and to think of nationality as the only source of identity (Agnew 1994). As identity is defined exclusively in state-territorial and nationality terms, many political identities proper of the Somali context are usually excluded from any consideration, given the hybridity of their nature and character, which are built around a common sectoral (see, for instance, pastoralist communities), ethnic (such as clan belonging), or regional character, rather than belonging to a specific territorial unit.

Finally, interviews revealed that overlapping levels of governance and competing claims of jurisdiction come not only from Somali authorities, but also from the organizational structure of humanitarian organizations themselves. When interviewees were asked to express their opinion on the quality of the professional relationships among colleagues and humanitarians in

fellow organizations, different points of view emerged. Some spoke of coordination and cooperation in mechanisms of information-sharing, for instance, especially between the security departments of each UN agency. Others spoke of competition dynamics between different organizations with different mandates on paper, but overlapping activities

and claims of power on the field. One interviewee (IOMb), for example, spoke of the relationship between IOM and UNHCR. Both agencies' mandate encompasses the protection and delivery of humanitarian aid to displaced population, however, while the first should be in charge of climate-related displacement, the latter should lead in instances of conflict-related displacement. What happens on a daily basis, on the contrary, sees both agencies competing in the process of 'accessing' and often gaining access and operational jurisdiction due to reasons that go beyond formal mandates, such as a specific historical presence in a given Member State or better relationship with local authorities.

In conclusions, our conversations with interviewed practitioners revealed many of the flaws and empirical inaccuracies of the "state fragility" concept, calling for new framings to better understand the humanitarian assemblage in Somalia. The introduction by Boege, Brown, and Clements (2009) of the concept of hybrid political orders comes in handy. While Western Weberian state models foresee clear-cut divisions between public and private, state and non- state (Kraushaar and Lambach 2009), the concept of hybrid political orders embeds a new perspective where different competing authority structures, sets of rules, claims to power – both formal and informal – co-exist, overlap, and intertwine (Boege, Brown, and Clements 2009), thus better capturing the different ways in which social and political governance is often actually produced (Abrahamsen 2016).

Following our conversations with respondents, we claim that the Somali context proves a fertile ground to observe hybridity as a key feature of the accessing assemblage. What interviewees shared with us was not 'weakness' or 'collapse,' but rather a situation of hybridity and often messiness, featuring state and non-state actors – at the national, regional and local levels – coordinating their action with international humanitarian and development practitioners, governmental and non-governmental, to deliver aid. Different authority structures, with their respective sets of rules, governance mechanisms and power claims (Boege, Brown, and Clements 2009) emerge not only among Somali authorities but also among humanitarians themselves. And, adding a layer of complexity that will be further explored in the following paragraphs, the relations between such actors and governance system, as well as the reality embedding them, appear as socially constituted and mediated by the non-human.

Negotiating access is thus a tentacular process that takes place across the wider spectrum of different governance actors, each carrying their – sometimes overlapping – interests, claims to power, and quest for legitimacy. Accounting for such hybridity allows for a much more accurate description and understanding of the accessing assemblage, as well as all the actors involved in forging humanitarian access and its conditions.

## 6. Conclusions

This work explored humanitarian access in Somalia from a technopolitical perspective Specifically, we began this journey by asking ourselves "What is the assemblage sustaining

humanitarian access in Somalia?" To answer this question, we attempted to map the assemblage of human and non-human actors that co-produce and shape humanitarian access to peoples and places in the country, guided by a new materialist approach. One instance in which this becomes evident is how humanitarian access neoliberal efficiency logics affect the choices of how to transport humanitarian aid and who is tasked with the realization of this movement of people and things: despite the clear benefits brought by the utilization of helicopters to deliver aid (in terms of speed, security, and flexibility of the intervention), the use of rotary wings assets is hindered by their relatively higher cost with respect to fixed wings counterparts and land transportation. This means that humanitarian access logics in terms

of neoliberal efficiency, i.e. gaining access at a sustainable cost for the organization, prevent the smooth realization of the goal itself, namely gaining access to deliver aid. While this might seem paradoxical, the proposed distinction between the goal – "access" – and the action taking place through the assemblage – "accessing" – allows for a more comprehensive understanding of the dynamics at stake by distinguishing the original goal from its – indeed surprisingly different – realization.

To name another example is to speak of the bunkerized nature of humanitarian action in Somalia: since one of the logics of gaining access is to do so by ensuring the safety of humanitarian personnel and goods, humanitarian action in the country increasingly takes place at a distance and from increasingly fortified spaces that hinder direct contact – or again "access" – with people and places. In this case, similarly to what occurs with the logistics of aid, the risk-management logic informing the formulation of the "access" goal is an obstacle to the presence of humanitarians on the field, leading humanitarians to shape the "accessing" assemblage along controversial dynamics of risk-transfer, action at a distance, and its mediation through the decontextualizing lenses of satellites and maps. The picture is made even more complex by the hybridity that characterizes governance dynamics inside the assemblage, that manifests itself in terms of the many overlapping – and often competing – governance structures and authorities, formal and informal, local and international, involved in the negotiation of humanitarian access in the country.

Once the logics and criteria that humanitarians apply to the formulation of access are acknowledged, and the role of the assemblage recognized, it becomes easier to overcome reified conceptualizations of access and crystallized representations of certain areas as objectively "hard-to-reach". As anticipated in our introduction, we hope that this work has shown how access and inaccessibility cannot exist in a vacuum, nor can they be conceptualized as one-size-fits-all or universal notions. One interviewee expressed a sentiment concerning the crystallization of inaccessibility patterns with words surpassing our ability to articulate it:

> "Somalia, of course is a highly insecure place. But a lot of the ways that we construct our perspective on those 'hard-to-reach' areas are based on past assumptions and past decisions. And we don't spend enough time challenging those decisions. Some of the damage is being caused by the way that we work in 'hard-to- reach' areas, it is because of us. We're not some outside force. We're actually part of it." (NGO).

Finally, it is fundamental to underline that, in the everyday "reality" of humanitarian access, all the inaccessibility patterns that we tried to map in this work appear as interlinked and mutually reinforcing, with no specific start nor ending point defining their relationships. The

ensemble of actors, technologies, infrastructures, legal frameworks, dynamics, and patterns shaping the "accessing" assemblage in Somalia is therefore to be thought as a tentacular and murky net of relationalities, shaped by the power of unintended, rather than a linear process defined by cause-effect relationships. The key manifestation of the unintended resides exactly in the emergence of a particular goal – "access" – as a constraint to its own realization: as highlighted here, access has to be, therefore, understood both as humanitarians' program of action and the logics underpinning its formulation.

This conceptualization can represent the cornerstone of a rethinking of the concept of humanitarian access as well as the recognition of the existence of an assemblage of human, but also non-human entities that do play a role in "accessing" peoples and places. Through this analysis, we thus hope to have provided a more comprehensive understanding of humanitarian access to go beyond anthropocentric, Western-based and reductionist accounts currently shaping the debate on the phenomenon.

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## INTERVIEWS

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IOMa. Interview with an IOM practitioner. September 24, 2023.

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