"Those with the Guns Are the Last to Starve"

Five Questions to Tom Dannenbaum

Tom Dannenbaum & Maxim Bönnemann

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A "war without limits": As the renewed blockade of the Gaza Strip enters its second month, numerous international aid organisations and the UN have raised alarm, warning that hunger is spreading and essential medicines are lacking. As a consequence, malnutrition, disease, and other preventable conditions are likely to surge – especially among children. The renewed denial of necessary relief action brings one particularly devastating method of warfare back into focus: the starvation of the civilian population.

We spoke with Tom Dannenbaum, a leading global expert on this issue, about the destructive nature of starvation as a method of warfare and how international law relates to the situation in Gaza.

1. Since March 2, 2025, Israel has once again barred all food and humanitarian aid from entering the Gaza Strip, marking the longest total blockade of all relief action into Gaza since the beginning of the war. Over the course of the previous year of conflict, Gaza was already repeatedly brought to the brink of famine. Now, with the blockade entering its second month, an increasing number of aid agencies and UN officials are once again sounding the alarm. What is the impact of this blockade on the civilian population?

Before the ceasefire, in addition to causing large-scale death and injury, Israel's military operations displaced almost everyone in Gaza (often multiple times) and destroyed or damaged a significant proportion of the territory's agricultural, medical, residential, and water infrastructure. Simultaneously, severe restrictions on humanitarian access brought the population to the brink of famine on multiple occasions, as you mentioned.

Following six weeks of expanded humanitarian access during the first phase of the ceasefire, Israel abruptly stopped allowing aid in on March 2nd. No commercial or humanitarian supplies have entered since. Meanwhile, Israel has resumed intense military operations, causing more death, injury, and displacement, as well as further incapacitating or damaging humanitarian and medical operations. All of this is necessary context for assessing the three key impacts of the current policy.

First, renewed deprivation is causing precipitous humanitarian deterioration. UN-run bakeries in Gaza have closed operations. Approximately 60,000 children are thought to be suffering from malnutrition. It is estimated that 91% of households are experiencing water insecurity. As head of UN OCHA Tom Fletcher relayed earlier this week, "we are being deliberately blocked from saving lives in Gaza, and so civilians are dying."

Second, deprivation-induced vulnerability is exposing Palestinians to further harms and crimes. In addition to greater susceptibility to disease and complications from injuries, the population is more vulnerable to being criminally displaced from its territory. US and Israeli leaders have discussed the prospective transfer of Palestinians out of Gaza as "voluntary." However, at the ICC, deportation or transfer qualifies as "forcible", and thus criminal, where it involves "taking advantage of a coercive environment", such as a context of prolonged and widespread deprivation.

Third, intensifying and continuing deprivation threatens the social fabric within Gaza. This impact, which was discernible in earlier iterations of the siege, appears to be returning, amidst reports of increased looting and a breakdown in order. In addition to characterizing the wrong of starvation methods, creating these conditions also violates Israel's duty as an occu-

pying power to act with vigilance to restore public order and safety in Gaza.

Finally, the fact that each of these impacts is identifiable in the short term should not obscure their reverberation into the future. What can be seen today are only the most immediate and observable impacts.

2. Impeding access to humanitarian relief to starve civilians as a method of warfare appears to be making a disturbing comeback. Reports indicate that the Syrian regime used such strategies against civilians, and Russian forces also employed a tactic of encirclement starvation in Mariupol in its war against Ukraine. In a recent journal article, you describe siege starvation as a "war crime of societal torture". What makes starvation as a method of warfare particularly dangerous – or, to speak in moral terms – what constitutes the categorical wrongfulness of this method?

The motivation for that article was twofold. First, I felt compelled to respond to a framing according to which the deprivation of a civilian population is (implicitly) easier to justify than a kinetic attack against the same population. Second, given the expressive function of criminal law, it is important to be able to explain what makes a prohibited act criminally wrongful. To my mind, the starvation war crime had not been substantiated in those terms.

Regarding the first point, it is clearly unlawful, and indeed criminal, to direct an attack against a civilian population. Claiming that such an attack has the purpose of eliminating combatants within that population is no defense, even if those combatants are not easily identified and distinguished from the population. In direct tension with that legal axiom, some argue that it could be permissible to deprive precisely the same population of objects indispensable to its survival, as long as this is done for the purpose of squeezing the combatants within that population into capitulation or defeat. This divergence is difficult to reconcile with the "basic rule" of international humanitarian law, which requires that parties distinguish between combatants and the civilian population in "all military operations," not only in their attacks.

In response, it is sometimes suggested that, in contrast to the instantaneous impact of a kinetic attack, the *graduality* of deprivation's impact allows for harm mitigation prior to mass starvation, whether by civilians exiting a besieged area or the encircled adversary capitulating. I disagree. Starvation methods' wrongfulness inheres not in their final outcome (which may or may not be avoided in any given instance), but in the process of deprivation – a process more normatively reminiscent of torture than it is of killing. Far from mitigating, graduality is a constitutive feature of that torturous wrong.

Characteristically, torture does not merely raise the cost of upholding a particular commitment. It inflicts severe pain or suffering that becomes the victim's entire world, tearing against even those commitments for which they would in principle sacrifice everything. It is designed to break the will. Similarly, deprivation does not simply raise the cost of adversary non-capitulation or (for civilians) of declining to leave an encircled zone or failing to rise up against a political authority. Instead, and much like the totalizing suffering of torture, the gradual escalation of hunger, thirst, and disease becomes the entire world of besieged communities. Even if the goal is to squeeze combatants, any "mitigation" of civilian harm is achieved only through first breaking civilians' will to stay or resist. Meanwhile, the biological imperative to find relief from the suffering of escalating hunger and thirst tears against the fundamental human capacities for solidarity, friendship, and love. Communities are left broken. Given that those with the guns are foreseeably the last to starve, this individually and societally torturous harm is all-but guaranteed to tear at the civilian population before any meaningful direct pressure on combatants.

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3. Let us turn to international law: Starvation as a method of warfare is prohibited by international humanitarian law and a war crime under international criminal law. And yet, starvation alone – as a widespread outcome of armed conflict – does not automatically constitute a violation of these rules. What is the difference between regrettable but lawful starvation among a civilian population and its use as a method of warfare? Could any of the justifications put forward by the Israeli government regarding the (renewed) siege withstand scrutiny under international law?

It is possible for widespread acute food insecurity to occur in the absence of deliberate acts of deprivation and despite the willingness of all parties to grant and facilitate humanitarian access. That, however, is plainly not the scenario in relation to Gaza, where access to essentials is being deliberately manipulated.

Based on a composite analysis of the underlying international humanitarian law on starvation of civilians as a method of warfare and the concept of "intent" in the International Criminal Court framework, I understand the intentional starvation of civilians as a method of warfare to include eitherof the two following alternatives:

- Engaging in the deliberate deprivation of objects indispensable to survival *for the purpose of denying the sustenance value of those objects to civilians or to a civilian population* (including with the ultimate goal of starving combatants within that population). Importantly, to your question, this form of intent can attach before it is certain that civilians will be reduced to a state of starvation.

or:

- Engaging in the deliberate deprivation of objects indispensable to survival for other reasons, when done in the *knowledge that this deprivation is virtually certain to leave civilians in a state of starvation*. This form of intent can attach even if civilian sustenance denial is not the purpose.

Israel's primary justification for the renewed siege has been that the amount of aid that entered during the ceasefire was sufficient to preclude a return to mass starvation. If this were empirically accurate, it would be relevant to the second form of the crime, while leaving open whether the first form is applicable. However, with the siege now in its sixth week and humanitarians crying out for access, the credibility of that empirical claim is increasingly difficult to sustain.

In any event, Israeli leaders have been unabashed about their hope to use the siege to exercise leverage – explicitly describing opening the "gates of hell" to coerce Gazan civilians to overthrow Hamas and overtly blocking aid and withholding the electricity needed for desalination to push Hamas into concessions. This clearly entails the deprivation of indispensable objects for their sustenance value, thereby implicating the first form of the war crime. It also suggests that those driv-

ing this policy do not in fact believe that existing stockpiles in Gaza are sufficient. If they were, there would be no coercive effect.

A final argument invoked on Israel's behalf invokes a caveat to the obligations codified in article 23 of Geneva Convention IV to assert that it can impede access if it believes the aid will be diverted to Hamas or otherwise serve to benefit the group. There are three problems with this argument. First, humanitarian organizations have repeatedly denied any such large-scale diversion in Gaza. Second, given Israel's obligations under the law of belligerent occupation, it has no discretion to deny aid on that basis, even under the terms of Geneva Convention IV. Rather, as specified in articles 55 and 59 of that treaty, it has a primary obligation to ensure the food and medical supply of the population and, if those supplies are inadequate to the population's needs, a secondary obligation to agree to and facilitate relief schemes without discretionary caveat. Third, even assuming Israel lacks duties under the law of occupation, the prohibition of starvation of civilians as a method of warfare, which came into customary effect decades after the Geneva Conventions, does not permit deprivation directed at a civilian population on the basis that, if permitted, some of the aid may reach an adversary group. The caveat to article 23 of the Fourth Convention is internal; it cannot authorize what other rules of international humanitarian law prohibit.

4. You just pointed out the *coercive nature* of the deprivation, that is, the strategy to coerce Gazan civilians into overthrowing Hamas. I would like to delve a bit deeper into the relationship between this coercive nature and intent. The prohibition of civilian starvation also plays a central role in the arrest warrants issued by the International Criminal Court (ICC) against Netanyahu and Gallant. Here too, the crucial issue is the question of intent. Article 8(2)(b)(xxv) of the ICC Statute prohibits the intentional use of starvation of civilians as a method of warfare. Can you elaborate a bit more on the extent to which the coercive nature of deprivation in Gaza meets that threshold?

There is no international precedent for a prosecution under article 8(2)(b)(xxv). In that jurisprudential vacuum, there is some debate regarding how to interpret the *mens rea* of the crime. However, as I noted in the previous answer, my view is that intent can be established either in a direct form (where there is purposive sustenance denial, directed at a civilian population) or in an oblique form (where acts of deprivation are virtually certain to cause civilian starvation).

Here, it is important to reiterate that a civilian population does not lose its civilian character in virtue of the presence of combatants within it. If the population is composed predominantly of civilians, it qualifies as a civilian population at the aggregate level. Equally, it is essential not to confuse intentional direction with ultimate purpose. Deprivation may properly be characterized as directed intentionally at a civilian population, even if the ultimate purpose of the operation is to starve out or coerce the combatants within that population. In such a scenario, sustenance denial directed at the population as a whole is the necessary predicate purpose to the effort to starve out or coerce the embedded combatants.

Given the humanitarian access in the first six weeks of the ceasefire, the renewed siege of 2 March did not immediately entail a virtual certainty of mass starvation. However, a strong case can be made that it *has* entailed deliberate sustenance denial.

The deprivation was, and continues to be, overtly coercive. In his initial announcement of the renewed siege, Benjamin Netanyahu clearly framed humanitarian access to an overwhelmingly civilian population as a bargaining chip in negotiations with Hamas. Specifically, he articulated the rationale for the deprivation as such: "There will be no free lunch. If Hamas thinks that it will be possible to continue the ceasefire or benefit from the terms of the first stage, without us receiving hostages, it is sorely mistaken." Defense Minister Yisrael Katz has spoken of the "gates of hell" opening, while Energy Minister Eli Cohen justified cutting off electricity on the grounds that it would undermine a key desalination plant. The coercive effect of denying aid and undermining desalination

relies upon denying the sustenance value of the things that are being blocked or undermined: humanitarian aid and desalinated water. Those are quintessential objects indispensable to survival. The deprivation of these essentials is directed at a population that is overwhelmingly composed of civilians and thus unambiguously civilian in aggregate. In short, the threshold for direct intent is met.

As the situation has deteriorated, the certainty that further obstruction will lead to civilian starvation is returning. However, given the presence of purposive sustenance denial, that certainty is not necessary for criminal liability to attach.

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5. The devastating consequences this renewed denial of relief action has caused in Gaza may also be relevant in the ongoing case concerning Genocide, pending before the International Court of Justice. What does blocking humanitarian relief mean in this context? How does starvation as a method of warfare relate to these allegations?

The definition of genocide codified in the Genocide Convention includes five underlying acts. Among them is the infliction of "conditions of life calculated to bring about [a protected group's] physical destruction in whole or in part." This overlaps substantially with the starvation war crime. However, to qualify as genocide, those conditions of life must be inflicted for the purpose of destroying the group, in whole or in part, as such.

The widespread deprivation of food, water, medical provisions, and other essentials can clearly satisfy the threshold of destructive "conditions of life." Indeed, in the press release regarding the ICC arrest warrants for Netanyahu and Gallant, the Court's Pre-Trial Chamber found that "there are reasonable grounds to believe that the lack of food, water, electricity and fuel, and specific medical supplies, created conditions of life calculated to bring about the destruction of part of the civilian population in Gaza." In that context, the Chamber was evaluating the issue as part of a crimes against humanity analysis. However, precisely the same analysis would be relevant to evaluating whether the corollary underlying act of genocide can be established.

A powerful case can be made that the situation in Gaza has surpassed the threshold of destructive conditions of life. The key question regarding whether this will ultimately affect the decision of the ICJ on the merits is whether South Africa can establish that this has occurred or is occurring with genocidal intent.

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Editor's Pick

by EVA MARIA BREDLER



What did you dream about last night? Charlotte Beradt, a Berlin-based journalist, would likely have

wanted to know. She collected dreams in Germany between 1933 and 1939. Regardless of age or background – "dressmaker, neighbour, aunt, milkman, friend" – the dreamers dream alike. They reveal elements of "the origins of totalitarianism", long before Beradt's close friend Hannah Arendt had described them. What struck me most was the sober elegance with which Beradt documented the nightmarish visions in her book "The Third Reich of Dreams" – and how little the dreams from the earliest days of the Nazi regime differed from those recorded just before the outbreak of the war. As one dreamer recalled as early as 1933: "I awoke with the feeling that our existence was being changed. In my conscious time I felt that we could escape the worst, but my subconscious knew better."

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The Week on Verfassungsblog

summarised by EVA MARIA BREDLER

The Union and the SPD have reached an agreement: 144 pages full of promises, titled "Responsibility for Germany". Big words, as you would expect. After all, coalition agreements are not legally binding but politically motivated promises, meant to establish trust. But what exactly is trust? I asked a friend (who happens to be a trainee clinical psychologist): "It's like a dance," she said. "At first, you have to find the rhythm, make the first moves, maybe stumble. But you trust the lead. And the clearer and more reliable the lead, the more you trust and can let go, dancing as one."

But when the executive lead is too abrupt, you become distrustful. That is what happened, for instance, when the Berlin Immigration Office expelled three EU citizens due to crimes allegedly linked to an occupation at Berlin's Free University. THOMAS OBERHÄUSER (GER) explains why these **expulsions** are likely unlawful, regardless of whether the accusations are true, and compares it to the executive (dance) style of the Trump administration.

This very administration is known for trampling around recklessly with its countless unlawful executive orders. Now, Trump has signed an order that allegedly aims to restructure the **U.S. election administration**, but in fact excludes certain groups of people from voting by, for example, requiring proof of citizenship. JOSHUA SELLERS (ENG) dissects the executive order.

At least, Trump's administration finally admitted to a mistake: transferring **Abrego Garcia** to a high-security prison in El Salvador known for human rights violations was a "administrative error". Yet, before the U.S. Supreme Court, the government still insists that there is nothing a federal court can do about it. The irony: This argument assumes that the president – who loves to present himself as a great dealmaker – is, in fact, a lousy negotiator, explains MICHAEL C. DORF (ENG).

In contrast, the German executive has shown tact. The Rhineland-Palatinate Constitutional Court now confirmed that in protecting the constitution, the state prime minister and government can take a stand against anti-constitutional parties in their public communication. This redefinition and limitation of the **neutrality obligation** could prove important in the fight against the AfD, says ANTJE VON UNGERN-STERNBERG (GER).

But sometimes, the executive lacks tact – and the judiciary's sense of rhythm goes unnoticed. This is exactly what we saw with **Marine Le Pen**, who, after her conviction – and her consequent ban from presidential candidacy, effective immediately – has been railing against "the system". Is Le Pen's "political death" at the hands of overzealous judges the end of democracy? In her updated contribution, CHARLOTTE SCHMITT-LEONARDY (ENG) breaks down the so-called "scandal", traces the events of the past week, and paints possible scenarios for Le Pen.

CAMILLE AYNÈS and ELEONORA BOTTINI (ENG) detect in the judgment an unusual degree of judicial creativity, in line with the idea of militant democracy, and the backlash it has provoked against the judiciary as a cause for concern.

We can witness a similar dance in Bosnia and Herzegovina, where the State Court sentenced the President of the **Republic of Srpska** Milorad Dodik to one year in prison and banned him from public office for six years. Unlike in France, this is not just about

executive and judicial power – but about the power dynamic between Bosnia and Herzegovina and the Republic of Srpska: Who leads, and who follows? Dodik is accused of violating the Dayton Peace Agreement. In response, he presented a new constitution that openly challenges the Court's authority. MILOŠ DAVIDOVIĆ and MAJA SAHADŽIĆ (ENG) dive into the complex institutional and procedural dance for power.

RENA HÄNEL (ENG) explains how Dodik uses the new constitution not only to avoid prosecution but to attack **Bosnia and Herzegovina**'s constitutional order and institutions.

Meanwhile, Hungary's Prime Minister **Viktor Orbán** has launched an attack on another institution: the International Criminal Court. Orbán invited Netanyahu for a state visit despite an arrest warrant from the ICC, alongside announcing Hungary's withdrawal from the Court, calling it "politically biased". PETER VAN ELSUWEGE (ENG) argues that Orbán's move weakens the EU's credibility and suggests how it should respond.

The EU's "Orbán problem" is nothing new, given his block of military aid to Ukraine and weakening of sanctions against Russia, all while pushing an illiberal agenda at home. The Commission should initiate a new procedure under Article 7(2) TEU, focusing on breaches of solidarity and threats to the Union's security, suggests LUKE DIMITRIOS SPIEKER (ENG).

Speaking of sanctions: In February 2022, a coalition of states – including all G7 economies – froze approximately $300 billion of **Russian state assets**. With the possibility of EU sanctions ending, the debate now focuses on whether Russia's central bank assets should be placed in a separate fund to use the money for reparations and protect it from Russia's reach. ANTON MOISEIENKO (ENG) evaluates this idea under state responsibility law.

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Eyes Everywhere: Surveillance and Data Retention under the EU Charter

(edited by Erik Tuchtfeld, Isabella Risini, and Jakob Gašperin Wischhoff)

In "La Quadrature Du Net II", the CJEU significantly lowered standards for mass data retention under the EU Charter, prioritizing security over privacy. This edited volume explores how this shift may affect EU citizens' protection of fundamental rights and substantially redefine the surveillance and data retention framework for public and private agents.

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Karlsruhe has also opted for creative financial solutions: The Federal Constitutional Court recently ruled that the solidarity surcharge (***Solidaritätszuschlag***) – an additional tax in Germany introduced in 1991 to help finance the costs of reunification – is constitutional. The Court reserved the right to review fiscal policy, while Judge Wallrabenstein expressed her own reservations in her dissenting opinion. For SEBASTIAN HUHNHOLZ (GER), both the decision and the dissent highlight a fundamental dilemma in Germany's financial constitutional policy: its over-constitutionalised character makes it resistant to global changes, which can lead to the adoption of constitutionally creative but ultimately problematic solutions.

Creativity may also be problematic in the case of "**deepfakes**". Because these pose various risks, an artist collective has now called for a general ban. JANNIS LENNARTZ (GER) shows that the fear of deepfakes is part of a long tradition of technology-critical artists and argues that an outright ban could violate artistic freedom.

EU law is also attempting to regulate AI. From 2 August 2025, providers of "General Purpose AI" models will face extensive obligations under the **AI Act**. To prove compliance, providers can rely on a "Code of Practice," currently being drafted by over 1000 stakeholders under the leadership of the AI Office. MARTIN EBERS (ENG) examines how the Code of Practice could undermine the AI Act and bypass democratic procedures.

Democratic procedures are also bypassed in development policy, especially due to a lack of transparency. SOFIE-MARIE TERREY (GER) explains what this has to do with the Freedom of Information Act (***Informationsfreiheitsgesetz***) – and its reform as promised in the coalition agreement.

A lack of transparency can also prevent liability of public officials. In Germany, several cases of racist comments in police group chats have made the news recently. The new **working definition of racism** from the Expert Council on Anti-Racism, though created for administrative purposes, could clarify the legal assessment of such "confidential racism", as ANDREAS NITSCHKE (GER) shows.

Confidential spaces were at issue in the Hessian State Court, but in the online world: The Court has ruled that the provisions of the **Hessian Assembly Freedom Act** and the law on the buffer zone around the Hessian Parliament were largely compatible with the Hessian Constitution. BEREND KOLL (GER) argues that the decision does not meet the strict standards of the Hessian Constitution.

Finally, we continued our symposium on "**Intellectual Property and the Human Right to a Healthy Environment**" (EN). JASPER KROMMENDIJK analyses the human right to a healthy environment from the perspective of EU law, especially as we see a similar human rights turn at the CJEU. LUISA NETTO explores the link between recognising this human right and the rather vague and inconsistent legal invocation of future generations in this context. NATALIA KOBYLARZ explains why recognising the right to a healthy environment could strengthen the human rights framework for environmental protection under the European Convention on Human Rights, and OTTO SPIJKERS examines its status under customary international law.

Trust is, in the end, a dance between leadership and surrender, caution and courage, responsibility and freedom. How much freedom will remain, given the responsibility promised by the new coalition? We shall see.

At least this Friday we can still dance; next week, Good Friday will bring the dance ban. And we, too, will hold our feet still next Friday – you'll find the next newsletter in your inbox on 25 April. Rest well and dance in between.

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Take care and all the best!

Yours,

the Verfassungsblog Team

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