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# SIEGE WARFARE AND THE PROHIBITION OF INTENTIONAL STARVATION OF CIVILIANS: THE CONVERGENCE OF IHL AND BUDDHIST ETHICS

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## ABSTRACT

Sieges and threatening the besieged population with starvation are methods of warfare as old as civilisation. While sieges are not explicitly prohibited under international humanitarian law (IHL), the starvation of civilians as a method of warfare has been prohibited since the Geneva Conventions of 1949 and the Additional Protocols of 1977. This article discusses whether Buddhist ethics can contribute towards and enhance the existing IHL guidance on the subject. Buddhist texts and philosophy clearly declare that one must avoid actions that cause suffering to oneself or others, and that this principle of ‘no-harm’ (*ahimsā*) is applicable even during a war. The *Jātaka* stories of the past births of the Buddha and other figures illustrate wrong action and its karmic consequences. The article analyses two *Jātaka* stories: the *Ummagga Jātaka* (no. 546) which describes a potential siege and the tactics used by the *Bodhisattva* (Buddha-to-be) Mahosadha to avoid it, and the *Asātarūpa Jātaka* (no. 100) which provides a moral judgement on the actual use of siege warfare in the former births of Suppavāsā and her son, the *arhat* (enlightened saint) Sivali. The narratives are useful for discussion and teaching of IHL, particularly in Buddhist societies, as they not only emphasise responsibility for ones’ own actions but also provide psychological hope for spiritual progress based on the concept of intention.

**KEYWORDS** IHL; siege warfare; starvation; advisers’ responsibility; *Asātarūpa Jātaka*; *Ummagga Jātaka*; Sivali

## The convergence between IHL and Buddhism

It is generally recognised that Buddhism as a whole is directed towards the minimising of suffering of oneself and others and the extension of compassion to all beings, including ‘enemies’ in a time of war. The concept of *ahimsā* or doing no harm or injury and the first precept of not taking life cannot be reconciled with violence and killing in war. The *Dhammapada* also states in many verses the admonition not to commit violence against others and not to encourage violence. For example:

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*The ultimate objective isn’t putting a villain in jail but making the infliction of starvation so morally toxic that it is unthinkable.* (Alex de Waal 2019)

*Dhammapada* verse 129: All tremble at force, of death are all afraid. Likening others to oneself, kill not nor cause to kill.

*Dhammapada* verse 405: Him I call a *brahmana* [a holy man], who has laid aside the use of force towards all beings, the perturbed as well as the unperturbed (*arhats*),<sup>1</sup> and who does not kill or cause others to kill.<sup>2</sup>

Although verse 405 specifically addresses the behaviour of monks and nuns rather than laypeople,<sup>3</sup> the verses of the *Dhammapada*, where they can be applied generally, can also be taken as admonitions to laity. Furthermore, they could be applicable for any situation: whether there is peace or war, it does not change the principle of non-harm. Buddhism does not specify that emergencies or war may be used as situations where exceptions or waivers to the prohibitions on violence and killing can be applied.

Some may argue that this universal guidance to avoid harm means that Buddhism has no relevance for wartime, but only applies during peace.<sup>4</sup> It can also be argued that it is *initiating* of warfare that is prohibited according to Buddhism, thus aligning with the prohibition of the 'crime of aggression'<sup>5</sup> and the current United Nations Charter framework for the regulation of the use of force. However, there is also no absolute prohibition of self-defence in Buddhism, and it could be argued that the Buddhist restrictions on self-defence by a nation are similar to the framework of the international law on self-defence or current *jus ad bellum* rules, as well as the international law on the peaceful settlement of disputes.

Regarding decision-making in a situation of ongoing war, the *jus in bello* (laws in war) or international humanitarian law (hereinafter IHL) rules come into play. It can be assumed that Buddhism, while being against the imposition of suffering and taking of life, recognises that when a conflict is underway there arises a need to minimise suffering, for example by avoiding collateral civilian deaths. Buddhism would therefore have something to say about the ethics of and *karmic* consequences of killing or causing harm – as a soldier or a commander of armed forces and also for civilian decision makers and advisors.

It is where the debate becomes technical and legalistic that the convergence between Buddhist ethics and IHL can become important for focusing on the core values of underlying both and the choice of action. This study considers how Buddhism could contribute, by focusing on a specific issue in IHL – siege during armed conflict. Buddhist writings, specifically those *Jātaka* stories that are relevant to situations of siege during armed conflict, are explored in order to discover to what extent they offer support to the existing core concepts of IHL and how Buddhist ethics could contribute towards the balancing of humanitarian values and military necessity in a difficult situation.

## Introducing siege warfare, blockade and starvation in historical context

Today, the terms 'siege' and 'starvation' are likely to raise images of ancient and medieval warfare, with citizens behind stone city walls facing a prolonged campaign by invading armies. However, these methods are not entirely absent from modern warfare, as we can hear of similar issues on news reports of current conflicts. The recent and continuing humanitarian tragedies in the non-international and internationalised conflicts occurring in Yemen, Syria and South Sudan show that there is a need to revisit and strengthen the implementation of relevant IHL. There is thus a need to discuss the legality of siege and blockade in light of the principles and obligations in modern IHL, which have been developed in relation to the prohibition of starvation as a method of warfare.

According to commentary by experts on behalf of the International Committee of the Red Cross (ICRC), 'siege' is defined as: 'encircling an enemy location, cutting off those inside from any communication in order to bring about their surrender'.<sup>6</sup>

A term connected to siege is 'blockade', which is defined as consisting of 'disrupting the maritime trade of a country or one of its coastal provinces'.<sup>7</sup> The tactic of blockade by its very nature usually fails to apply the crucial IHL principle of distinction, i.e. between legitimate and illegitimate targets. To do so, those using the tactic would need to differentiate between military and civilian supplies, whereas a blockade will usually often affect food and medicine as well as the military objectives of preventing access to fuel and military supplies. While a blockade is not *per se* illegal, it is still subject to limits in terms of what a state is allowed to accomplish. According to the *San Remo Manual*, a blockade where the sole objective is the intentional starvation of civilians is prohibited.<sup>8</sup> Furthermore, the principle of proportionality must be applied to the commencement and the continuation of a blockade. In the context of the laws of war both on land and at sea, it could therefore be argued that siege and blockade can be conducted within the framework of IHL, if there is continued access to food, water and medicine for the civilian population and there is therefore a balancing of military necessity with humanity.

With regard to the term 'starvation', it has been stated by IHL experts that: 'The term "starvation" means the action of subjecting people to famine, i.e., extreme and general scarcity of food'.<sup>9</sup> They further explain: '*To use it as a method of warfare would be to provoke it deliberately, causing the population to suffer hunger, particularly by depriving it of its sources of food or of supplies*' [emphasis added].<sup>10</sup>

Starvation has been used as a political tactic of suppression, in occupied or colonised territories, and does not necessarily have to be connected to a situation of siege in wartime (de Waal 2017). The ‘*An Gorta Mor*’ (Irish for ‘great hunger’) in 1840s Ireland (see Kelly 2012; Coogan 2013), the ‘*Holodomor*’ – Ukrainian for ‘murder by starvation’, as Stalin’s starvation of Ukraine during 1932–1934 is now called (see Wolny 2017; Graziosi, Hajda, and Hryn 2013) and the Bengal famine of 1943 (see Mukerjee 2018) can be identified as such ‘political famines’. They were the direct result of political decision-making to deprive populations of existing food supplies in order to divert agricultural lands and available food to imperial or occupying powers. This article, however, will focus not on these types of famines, but on the use of starvation tactics associated with siege warfare or blockade.

Siege and starvation tactics were tragically part of the suffering of civilians in beleaguered cities during World War II. The Nazi’s *Hungerplan* was a planned tactic of starvation against civilians and prisoners of war that was to be implemented in occupied territories, particularly the Soviet Union (Gerhard 2015). At this time, the starving of a population by besieging a city was not clearly prohibited under the laws of war. In the High Command Case, *The United States of America v. Wilhelm von Leeb, et al.*, a US post-war military commission stated that laying siege and ‘cutting off every source of sustenance’ was not unlawful under the laws of war at the time and therefore they acquitted German Field Marshall Wilhelm von Leeb for his role in the siege of Leningrad during September 1941–January 1944, where starvation killed at least half a million Russian civilians.<sup>11</sup> The judgement explicitly stated that:

The propriety of attempting to reduce it [the population of Leningrad] by starvation is not questioned ... We might wish the law were otherwise, but we must administer it as we find it. Consequently, we hold no criminality attaches on this charge.<sup>12</sup>

The scale of the starvation at Leningrad has been highlighted by Michael Walzer, stating that ‘[m]ore civilians died in the siege of Leningrad than the modernist infernos of Hamburg, Dresden, Tokyo, Hiroshima and Nagasaki taken together’ (Walzer 2015, 160). Thus, starvation is as much a part of the horrors of modern warfare as firebombing and the use of nuclear weapons. Even the victorious allies of World War II used starvation tactics against enemy civilians. The US blockade of Japan in 1945 was code-named ‘Operation Starvation’. It was carried out by an aerial mining campaign dropping mines into harbours to prevent imports of food and fuel (Mason 2002). The extent of the suffering and starvation of Japanese civilians due to this blockade is not clear, as there are conflicting statistics, and Japan in any event surrendered before many months had passed.

The use of siege and starvation as tactics of war seem to be increasing again, observing the massive ongoing humanitarian crisis in the war in Yemen, the starvation used in South Sudan, the use of siege methods against cities in Syria and, recently, in the conflict with 'Islamic State' forces in Iraq (Todman 2017; de Waal 2009; Ferguson 2018). While aid agencies struggle with the practical aspects of providing adequate aid to civilians in such dire situations, academics and policymakers grapple with the legality of these methods at an intellectual level. For example, Susan Power has considered whether the starvation of civilians during siege warfare can be prosecuted as a war crime, focusing on the situation in Syria. She concludes that the deliberate denial of food and other conditions of life with the intent to cause death will amount to wilful killing under grave breaches of IHL (Power 2016; see also Mikos-Skuza 2018). De Waal goes further and describes intentional starvation as a method of war as 'new atrocity famines' which should be compared to the crime of genocide (de Waal 2018).

The situation in Yemen has also been dire, with aid agencies reporting large numbers of Yemenis suffering from starvation and related disease – apparently more than the number killed in battle or air raids. In 2014, the United Nations (UN) Security Council approved and extended an arms embargo relating to certain parties to the conflict within Yemen, particularly affecting the Red Sea port of al-Hoedaida.<sup>13</sup> It is stated that this embargo should not negatively impact humanitarian assistance and food supplies. Parties to the conflict agreed to redeploy their forces from Hodeidah, as agreed in the December 2018 Stockholm Agreement, in order for vital humanitarian food aid to reach Yemeni civilians.<sup>14</sup> The United Nations Mission to Support the Hodeidah Agreement (UNMHA) has been working on this issue since then, with the Security Council adopting Resolution 2534 on 14 July 2020, extending the mandate of the UNMHA until 15 July 2021. The involvement of Saudi Arabia (with support from the United States and the United Kingdom) and allegedly Iran, in the Yemeni conflict, has unfortunately overshadowed the needs of the civilians facing humanitarian crisis and starvation in the country, and allegedly muted the United Nations Security Council response to the problem. Yemen is being supported with food aid from the World Food Programme (WFP), which apparently feeds more than 10 million people per month, but the distribution of this aid is a fragile mechanism.<sup>15</sup> In October and November 2020, the UN Security Council and the UN Secretary General again made a statement on the dangers of famine in Yemen.<sup>16</sup>

In the context of the Syrian conflict, the United Nations Security Council in 2014, 'recalling that starvation of civilians as a method of combat is prohibited by international humanitarian law', called for an immediate lifting of all 'siege of populated areas' and demanded 'that all parties allow the delivery of humanitarian assistance ... and enable the

rapid, safe and unhindered evacuation of all civilians who wish to leave'.<sup>17</sup> Again in 2015, the UN Security Council recalled with concern the legal obligation of parties under IHL with regard to 'the use of starvation of civilians as a method of combat, including by the besiegement of populated areas ...'.<sup>18</sup> In 2018, an important resolution on conflict-related food insecurity was adopted unanimously by the 15-member Security Council.<sup>19</sup> This Resolution 2417 (2018) emphasised the relationship between armed conflict and conflict-induced food insecurity and the threat of famine and 'strongly condemned' the use of starvation of civilians as a method of warfare and the unlawful denial of humanitarian access as violations of IHL.<sup>20</sup> The same resolution stated, in paragraph 10, that the Security Council 'strongly urged' states to investigate and take action against those responsible for the use of starvation as a method of warfare 'with a view to reinforcing preventive measures' and 'ensuring accountability'.

The Food and Agriculture Organization of the United Nations (FAO) has also commented in support of Resolution 2417, adding that the number of people affected by hunger has been rising in recent years, although there had been a decrease in the previous decade. It identified armed conflict as the 'main driver of this reversal'.<sup>21</sup> FAO and WFP informed the UN Security Council in a recent joint report that food insecurity is currently a major issue for 16 countries – namely, Afghanistan, Burundi, the Central African Republic, the Democratic Republic of the Congo, Guinea-Bissau, Haiti, Iraq, Lebanon regarding Syrian refugees, Liberia, Mali, Somalia, South Sudan, Sudan, Syrian Arab Republic, Ukraine and Yemen – plus the transboundary Lake Chad Basin area.<sup>22</sup> As can be seen from this list, the majority are affected by ongoing armed conflict. Currently, there are no South Asian or Eastern Asian countries on this list; however, Afghanistan, a South-Central Asian Muslim country with a rich Buddhist heritage, is included.

### The IHL prohibition on the starvation of civilians

The starvation of civilians gradually came to be recognised as an act against the laws and customs of war only during the last 100 years. The Lieber Code, one of the earliest of modern IHL documents, did not prohibit starvation as a method of warfare. In fact, Article 18 of the 1863 Lieber Code even states that:

When a commander of a besieged place expels the non-combatants, in order to lessen the number of those who consume his stock of provisions, it is lawful, though an extreme measure, to drive them back, so as to hasten on the surrender.

This implies that strategies that could cause starvation of non-combatants were considered unfortunate but not illegal.<sup>23</sup> It should be noted however, that the principle of proportionality should apply to arguments for either mitigation or prohibition of such strategies. Modern IHL in fact goes further than just the application of proportionality, to explicitly identify a prohibition of starvation of civilians in treaty and customary law.

The first document that can be cited in support of the principle of prohibiting starvation as a method of warfare is dated after the First World War, when the 1919 Report of the Commission on Responsibility listed 'deliberate starvation of civilians' as a violation of the laws and customs of war and furthermore recommended that it be considered a criminal offence that should be prosecuted by courts.<sup>24</sup> Yet it is only in the post-World War II context that starvation of civilians became explicitly prohibited in IHL under the Additional Protocols, which built upon some of the provisions already in Geneva Convention IV of 1949.<sup>25</sup> The Geneva Convention IV on the treatment of civilians did not in itself specifically prohibit sieges, but only specified measures that can mitigate its effects. Article 54(1) of Additional Protocol I explicitly prohibits starvation as a method of warfare and Article 14 of Additional Protocol II includes the wording of Article 54(2), that '[S]tarvation of civilians as a method of warfare is prohibited'. Article 14 of Additional Protocol II states further (similar to the wording of Article 54(2) of Protocol I) that:

It is therefore 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.

The ICRC Commentary of 1987 specifically mentions that this article is a simplified version of Article 54 of Additional Protocol I.<sup>26</sup> It also explains that the objective of this provision 'is to prohibit the deliberate provocation of such a situation [of starvation] and to preserve the means of subsistence of the civilian population'.<sup>27</sup> The commentary also clarifies that the prohibition on using starvation against civilians is a non-derogable rule<sup>28</sup> (since no mention was made of imperative military necessity) meaning that there can be no exceptions to the rule.<sup>29</sup> Intentionally starving a civilian population would always be prohibited. However, the use of both siege and blockade as methods of warfare could remain legitimate if they are directed exclusively against combatants.<sup>30</sup> The incidental effect of starvation of civilians, where the intention of the siege or blockade is directed towards combatants, is something that could occur and yet not be considered a violation of IHL. Concerning humanitarian assistance to civilians, the ICRC Commentary adds that 'the possibility of refusing a relief action or relief consignments is not a matter of discretion; such refusals should thus remain exceptional'.<sup>31</sup>

According to the ICRC study on customary international law, Customary Rule 53 states that the use of starvation of the civilian population as a method of warfare is prohibited in customary international law as applicable for both international armed conflict and non-international armed conflict.<sup>32</sup> Thus, starvation tactics against combatants are not covered by this and are therefore not prohibited under customary international law, in either form of conflict.

In terms of individual and command responsibility for using starvation tactics, it is notable that the *original* Article 8(2)(b)(xxv) of the Statute of the International Criminal Court (ICC) of 1998, provided that 'intentionally using starvation of civilians as a method of warfare' is a war crime only in international armed conflicts and not in non-international armed conflicts.<sup>33</sup> This was changed by an Amendment in 2019, which recognised that starvation is a war crime for non-international armed conflict as well.<sup>34</sup> Currently there are only five ratifications for this agreement (Andorra, Croatia, Netherlands, New Zealand and Norway) but it is possible that there will be other states following suit soon, as this appears to be a relatively uncontroversial amendment. There has as yet been no prosecution in the ICC on this particular type of violation. However, there is the example of *Prosecutor v Perisic and Others*, a judgement of the District Court of Zadar, Croatia under the Croatian Penal Code, which cites Article 14 of Additional Protocol II.<sup>35</sup>

In terms of academic responses, there are critiques of a strict IHL standard from the perspective of military strategy. Yoram Dinstein has critiqued the Additional Protocols' prohibitions as making it unfeasible to carry siege out lawfully despite it being a valuable military tactic (Dinstein 1991, 150–151). Sean Watts agrees with Dinstein insofar as current IHL 'greatly constrains siege operations as classically conceived and executed' (Watts 2014, 20). But Watts is less critical of the IHL framework than Dinstein, and notes that there appears to be an encouragement of evacuation of civilians during a siege (under Additional Protocol I in particular) in order to be more humane – which is a framework that allows for a balancing of military necessity and humanity. In a 2019 Chatham House briefing, Emanuela-Chiara Gillard comments that the achievement of the military objectives of the siege can be delayed if IHL is complied with, and also concludes that parties to a conflict should strive to conclude agreements to evacuate civilians and the wounded and sick (Gillard 2019). Gillard suggests that the interpretation of the standard in Article 54 of Additional Protocol I prohibits only the deliberate starvation of civilians, with the principle of proportionality applicable in situations where starvation of civilians is not the purpose of the siege but is foreseeable and incidentally occurring. An academic blog post by Gloria Gaggioli also questions whether the IHL principle of proportionality should be applied for the restriction of sieges causing incidental starvation, rather than a complete prohibition of all sieges (Gaggioli 2019). Beth Van Schaack, former Deputy to the US Ambassador-at-Large for War Crimes Issues in the US State Department,

acknowledges the difficulty for a commander to carry out a siege that is both successful and lawful, but supports the approach that treats deliberate starvation of civilians as a war crime (Van Schaack 2016). Thus, there appears to be some academic debate raised as to whether there should be a total prohibition of siege warfare, since in practice a siege could violate the IHL prohibition on starvation of civilians more often than not, or whether sieges could still be carried out legitimately with humanitarian assistance provided to the besieged.

The current IHL standard does not need to be the only measure by which to approach siege and starvation. Ruwanthika Gunaratne, former IHL expert to the United Nations Security Council Panels of Experts concerning Yemen (2016 to 2018) and Sudan (2014 to 2016), argues that there should be a separate designation criterion concerning actions that *contribute to* the starvation of the civilian population but do not reach the IHL threshold; and notes that the UN sanctions regime has examples of instances where ‘obstructions to the delivery and distribution of humanitarian assistance’ have been viewed as standalone criteria independently of the IHL criterion of intentional starvation as a method of warfare (Gunaratne 2018, 2019). The position of ICRC experts as expressed in the Commentary on Article 14 of Protocol II notes that legality is not the only measure of response to the situation of starvation:

It should be noted that even if starvation were not subject to an official legal prohibition, it is nowadays no longer an acceptable phenomenon, irrespective of how it arises (natural disaster or induced by man). Increasingly public opinion and public conscience have forced governments to face their responsibilities and prompted the international community to organize relief actions, which are never sufficient in view of the scale of the problem worldwide.<sup>36</sup>

The above highlights the role of conscience in responding to the phenomenon of starvation, whether caused intentionally as a method of warfare or due to other reasons. The ICRC experts’ position also recalls the language of the Martens Clause, that where there are gaps in the law, people ought to still be protected by the principle of humanity and by public conscience.<sup>37</sup> It is to this gap of action and response to suffering, that religion, particularly Buddhism, can make an important contribution.

### **Buddhist *Jātaka* stories involving siege and starvation of civilians**

Buddhist tradition and philosophy recognise the complexity of life and actions taken by people in difficult circumstances. Since there are consequences to one’s actions, one must show ‘skilfulness’ in making decisions and taking action. Here the Buddhist concepts of *kusala* (skilful or wholesome) and *akusala* (unskilful or unwholesome) come into play.<sup>38</sup> The core of

Buddhism is indeed this, as stated in verse 183 of the *Dhammapada*: ‘Not to do evil, to cultivate “merit” (*kusalassa upasampadā*), to purify one’s mind – this is the Teaching of the Buddhas’.<sup>39</sup>

Something that is unskillful is grounded in negative motivations based on greed, hatred or delusion – three root unskillful mental states, according to Buddhism. Skillful actions are those based on the opposite of these vices. In deciding whether or not to engage in siege warfare, *kusala* or skillful/wholesome decision-making, avoiding negative *karma*, can be useful to discuss.

Buddhist *Jātaka* stories describe the effects of past lives and *karma* (action), elucidating the consequences of both *kusala* and *akusala* action, and are thus well suited to consideration of ethical issues. The *Jātaka* stories identify and develop Buddhist ethics through application to practical situations. These situations are described as incidents from the past lives of the Buddha, and at times include past lives of other historical figures. It could be said that the stories have a ‘case study approach’ to teaching the application of Buddhist ethics. Set in the past, they mostly refer to people and animals in broader situations, and therefore often offer us a Buddhist view of life beyond the specific context of Buddhist monastic ethics. Moreover, as Peter Harvey has noted: ‘The idea of the cycle of rebirth also provides a perspective on life which is supportive of sympathy and respect for other beings. Within the round of rebirths, all beings are part of the same cycle of lives’ (Harvey 2000, 29).

The *Jātaka* stories are framed in terms of different times and spaces. The ‘present’ in the stories is the monastic settlement (usually in Jetavana or at Sāvattihī) where the Buddha responds to some event or problem in the present by reflecting on a similar event in the past. The ‘past’ or former birth stories refer to a past king, city and kingdom, most often referring to the King Brahmadata of Bārānasī or Kāsī (Roy 1996). It can be argued that this framing of the stories, which crosses into both monastic and secular spaces, and the distancing in terms of time allows for the laity of any time period to apply the ethical principles raised in the story narrative to any suitably appropriate secular political, historical or legal context.

It is relevant to note at this point the observations by Oskar von Hinüber, commenting on the creation of monastic rules in the Theravāda Buddhist tradition, that

... rules are derived from experience and based on the practical need to avoid certain forms of behavior in future. This means at the same time that the cause for a rule is always due to the wrong behavior of a certain person. (von Hinüber 1995, 22)

This practical aspect is similar to IHL, which was created in response to unconscionable behaviour with a view towards preventing its repetition in the future. The importance of Buddhist *Jātaka* stories, which are used in teaching rules, ethics and behaviour to both Buddhist clergy and laity, is that there is often a description of situations in which rules, ethics or expected behaviour were not followed, and the consequences that ensued. These consequences occur according to disciplinary procedures under monastic law, the application of the (secular) 'law of the land' or the operation of 'karmic law'.

The *Jātaka* stories often highlight the *karmic* consequences more than the possibility of punishment under monastic procedures or the 'law of the land'. However, there is no exclusion of the possibility of the 'law of the land' making an attempt to implement the standards of morality depicted in the stories. This adaptation to the given environment, consideration of existing frameworks and responsiveness to new events and behaviours means that we find a correspondence between Buddhism and IHL in terms of process, where IHL seeks to respond to new means and methods of warfare. In this space between the existing law and moral law of *karma*, Buddhism and IHL, with their similar processes, may be able to come together to strengthen the convergences in law and practice. Let me now turn to specific *Jātakas* as examples. In *Jātaka*, the Buddha-to-be or *Bodhisattva* is often the hero or main protagonist displaying a particular virtue that he must perfect on his route to Buddhahood (although in some stories he is a minor character observing the action, or even a bad character whose behaviour is transformed in the story).

### The *Ummagga Jātaka* (no. 546)

There is a well-known, detailed description of a siege in the *Ummagga Jātaka* (also known as the *Mahosadha Jātaka*), a story whose hero exemplifies the virtue of wisdom. It describes the siege of the city of Mithilā by King Chulani Brahmadata of Pañcāla and 101 allied princes. The hero of the story is the *Bodhisattva* Mahosadha, the Chief Advisor to the King Vedeha of Mithilā. The *Jātaka* describes Mithilā as being besieged on all sides by a massive army, 'as it were by stars on all sides'.<sup>40</sup>

In this disheartening situation, Mahosadha responds by telling the people of the city to 'drink deep, sing and dance and make merry, shout and cheer and snap their fingers'.<sup>41</sup> The besieging armies cannot enter the city and are given the impression by the apparent merriment within that there is more than sufficient food. Mahosadha uses common sense to store rice paddy and firewood in preparation for siege and clever stratagems through spies and misinformation to convince those who have besieged his city that the food and firewood stores are so large that they cannot easily succeed in starving

the population, thereby compelling them to abandon their plan. Even the plan to cut off water supplies to the city is undermined when Mahosadha uses misinformation to suggest that there are very deep ponds and wells within the city.

Finally, the advisor to King Chulani Brahmadatta, the Brahmin Kevatta, suggests a *Dhamma-Yuddha* ('Battle of the Dhamma', 'Battle of Righteousness') by the two advisors or sages Mahosadha and Kevatta, instead of a battle by armies to overcome Mithila. As is to be expected, the *Bodhisattva* (Buddha-to-be), i.e. Mahosadha, succeeds over the Brahmin and the country is defended by wisdom instead of warfare. As pointed out by A. T. Ariyaratne, the *Ummagga Jātaka* portrays how 'Pandith Mahaushada conducted the war on behalf of King Vedeha against King Chulani and won the war without any bloodshed' (Ariyaratne 2003, 11). This method has also been referred to generally as a victory through *Dhamma* without any actual violent war.

The fear of hardship caused by prolonged siege is the context for this part of the *Jātaka* story, but siege warfare itself is not criticised specifically. It is the cleverness of Mahosadha in avoiding the siege that is highlighted. Why is siege warfare not criticised in the *Ummagga Jātaka*? To begin with, the reader or listener enters into the story from the point of view of the defender of the city and the besieged population, not of the attacker in the context of a siege. It does not become necessary to comment on the legality or morality of *using* siege and starvation methods, if the story is from the view of defending a location and its population.

Siege and starvation tactics were historically used in ancient India and not prohibited by Hindu ethics of war. Kaushik Roy points out, 'vedic and epic India did not generate any discussion of the military ethics of siege warfare' (Roy 2012, 38). Roy explains this conclusion by arguing that restraint in warfare develops only where there is adequate motivation for limiting the lethality of siege warfare by establishing elaborate rules and regulations, and that 'Aryans', as he identifies the purveyors of the Sanskrit culture of Hinduism, were originally pastoralist and so not motivated to develop such restrictions in warfare against urbanised enemy populations. The *Arthasāstra*, the third-century BCE treatise on governance by Kauṭilya, which gives us a strong indication of acceptable warfare strategies, elaborates the 'Strategic Means to Capture a Fortress' in Chapter IV ('The Operation of a Siege and Storming a Fort'), Book XIII. Intrigue, spies, winning over the enemy's people, siege and assault are listed as the five means to capture a fort. Siege operations would begin when the enemy king was in a weakened state and low on supplies. It is mentioned in particular by Kauṭilya that 'Reduction (of the enemy) must precede a siege ... When a people resist the attempt of the conqueror, then he may destroy their stores, crops, and granaries, and

trade'.<sup>42</sup> It is further elaborated in Book XIII that destruction of agricultural produce and standing crops will result in the country being denuded of its people, a clear support for the general use of starvation as a method of warfare.

These methods are similar to the advice given by the Brahmin Kevatta to King Chulani Brahmadata in the *Ummagga Jātaka*. Kevatta is a character who is described as unrighteous and also the object of derision and ridicule, and identified as a previous birth of Devadatta, the cousin of the Buddha who represents rivalry and jealousy of the Buddha's power. These tactics described in the *Arthaśāstra* are, moreover, all *offensive* tactics advocating the use of starvation, and the complete opposite of Mahosadha's *defensive* tactics of using spies and misinformation to mislead the besieging armies and defend the people. The *Ummagga Jātaka* places the *Bodhisattva* as a defender in a military context and thereby evokes the sympathies of the Buddhist reader or listener with the people of Mithila, subtly criticising the use of siege warfare.

We can also see siege warfare in early Buddhist art. There is a highly detailed relief on the Sanchi *stūpa*, the building of which goes back to the emperor Ashoka in the third century BCE. It shows the Mallas defending their city of Kuśīnagara against besieging armies, an event that took place during the fifth century BCE. It is relevant that this siege took place in the context of a dispute between Buddhist kingdoms over the relics of the Buddha, who according to legend had attained his *mahā-parinibbāna* (final *nibbāna* at death) at Kuśīnagara, with the Mallas hosting his funeral, as described in the *Mahāparinibbāna Sutta*. The modern site of Kuśīnagara is an important pilgrimage site for Buddhists around 2500 years later, reclaimed as a Buddhist site in the modern period. The war over the relics of the Buddha depicted in the Sanchi relief occurred when seven other claimants to the relics were ready to wage war with Kuśīnagara, but it is recorded that the Brahmin Droṇa successfully argued for a non-violent and peaceful sharing of the relics equally among the kingdoms, reflecting the kind of advice the Buddha himself would have offered (Singh 2017, 260–261).

There is no specific prohibition of siege or starvation as a method of warfare with regard to *jus in bello* to be ascertained from this story depicted in the Sanchi *stūpa*, as it seems that the war is averted by application of Buddhist principles of peaceful settlement of disputes at the early stage of the conflict. The use of this story depicted at Sanchi is usually seen as being in support of Ashoka's position for a peaceful handover of the dispersed relics for common worship during his own era.<sup>43</sup> It could also have reminded the kingdoms of the previous war for the relics, and the suffering that would be the consequence of siege

warfare. Thus, it is necessary to see whether there is a more direct *Jātaka* or other Buddhist story that supports the prohibition of siege and/or starvation in a *jus in bello* context.

### The *Asātarūpa Jātaka* (no. 100)<sup>44</sup>

We can find a more telling discussion of the ethics of conducting siege warfare in the *Asātarūpa Jātaka*. This offers a better source for considering a Buddhist approach to the principles and rules of IHL and international criminal law than did the *Ummagga Jātaka*. The *Asātarūpa Jātaka* offers an explanation of the birth of the monk Sīvali, an important and highly respected disciple of the Buddha, and in so doing provides a rare Buddhist story on methods of war and *karmic* consequences for decisions by military leaders and their advisors.

The story begins during the time of the Buddha, with the impending delivery of a son by Suppavāsā, who was a daughter to the King of Koliya. Her pregnancy is described as being of seven years' duration with a labour of seven days, during which she is said to have sent her husband to the Buddha to tell of her agony and ask for his blessing. A healthy child is born, who speaks seven days after his birth to the elder Sāriputta, describing his seven-year suffering in his mother's womb. In later life Sīvali became an *arhat*, an enlightened saint, and was considered most wise and fortunate, but his difficult breach birth ('stuck crossways in the womb'<sup>45</sup>) was a matter for discussion by his fellow monks. The Buddha, told of this discussion by other monks, decides to relate the past life story of Sīvali and Suppavāsā.

In this past life story, the Buddha is the deceased king of the city of Bārānasī, who was killed during an invasion by the King of Kosol, Suppavāsā is the queen of Bārānasī and Sivali is her son, the young prince in exile. The young prince returns and camps with his army, sending a message demanding surrender or battle, to which the King of Kosol replies that he is ready to fight. The mother of the prince advises a siege of the city instead of open battle. Her argument is that surrounding the city and waiting until supplies of food, water and firewood are gone, and people are starving, would result in capturing the city without a battle. The prince follows his mother's advice and after suffering a seven-day siege, the people of Bārānasī decide to behead the conquering King of Kosol and open the gates of the city, and the prince regains his kingdom. It is for the advice and carrying out of the siege, respectively, causing suffering for the people of the city, that Suppavāsā and Sīvali suffer in their future lifetime.

There are many fascinating elements to this *Jātaka* story. Is it significant that the suffering people are not 'the enemy' but the prince's own people, or is that irrelevant? It certainly raises the issue of non-international armed conflict where the impact of starvation is on citizens of one's own country,

and is therefore closer to the situations in Yemen, Syria and South Sudan. There is of course an international aspect to the conflict between Bārānasī and Kosol, and there is clearly internationalisation of the conflicts in Yemen and Syria.

The choices before the prince of Bārānasī are (1) to risk the lives of himself and his soldiers in battle or (2) to follow the advice of his mother to put pressure on the people of the city. From a military commander's point of view, if the military objective is to gain control of a city, town or area of territory, the military strategy would include how to achieve the objective with minimal casualties to one's soldiers. As Sean Watts notes:

It is not surprising, then, that throughout history commanders have declined to advance into urban areas, resorting instead to encirclement and siege to reduce enemy resistance or provoke surrender. Even for numerically and technically superior forces, sieges may be tactically and strategically compelled. *Siege operations are often necessary to avoid the high attacking-force casualty rates associated with urban combat . . .* (Watts 2014, emphasis added)

IHL is usually described as an attempt to balance military necessity with humanity. Military necessity would support siege warfare as a strategy or tactic that may avoid battle and save lives of soldiers, but the conceptualisation of 'humanity' in IHL does not encompass a decision of military commanders to save lives of soldiers over causing civilian suffering and death. Modern humanitarian law appears to prioritise the protection of the lives of civilians over the lives of soldiers in such a situation, which would be a dilemma for the decision makers.

Kum Kum Roy, examining concepts of justice in the *Jātakas*, reminds us that they are more than mere folktales, but often present complex problematic issues in terms of conflicting interests (Roy 1996, 27). This is clear in the choice faced by the young prince; in avoiding outright bloodshed that could result in casualties of not only his soldiers but also his own citizens within the besieged city, he chooses instead to apply starvation tactics during a siege, that would affect only the civilians. One may question whether the prince made the better choice or not, but in terms of Buddhist ethics, perhaps the answer is that there is no right choice as such in war – only different methods and different *karmic* consequences to match.

The *Asātarūpa Jātaka* concerns a relatively short seven-day siege. Could this story be used and applied in the context of very complex, long-term conflict situations? We are familiar with international and non-international armed conflicts that continue for many years – often referred to as 'protracted conflicts'. Since it is ultimately the suffering of the people who are trapped that is highlighted in both the *Jātaka* story and in IHL generally, it could be

argued that the length of the siege (or blockade, or even of sanctions) does not matter in terms of evaluating the decision-making of the attacking forces' commanders and their advisors in terms of IHL.

The story plays a role in developing empathy with the trapped people, who are, significantly, the prince's own subjects. They are not an 'enemy' but only a people caught between two alternative rulers. It is interesting that the people are forced into action themselves, to execute the King of Kosol who is in control of the city and open the doors to their own prince. They too are caught in a difficult situation where they have to choose between two evils – their own suffering or to kill another human being. In terms of Buddhist ethics, there is no justification for killing. The *Jātaka* is silent regarding any moral judgement on the people and there is an implied justification, but not necessarily a Buddhist justification, of necessity being suggested. The *Jātaka* does not address the *karmic* consequences for their choice, since the story focuses only on the past lives of Sivali and Suppavāsā and their sufferings in their current life.

### The responsibility of commanders and advisors

The text of the *Asātarūpa Jātaka* is particularly interesting to analyse, since there is significant moral blame of both the prince, who is later reborn as Sivali, and of the queen, who is later reborn as Suppavāsā. The difficult and unrealistically long pregnancy and the agony of labour pains that Suppavāsā is subjected to seem to be given slightly more significance in the amount of text describing her suffering,<sup>46</sup> as compared to the single short sentence where the infant Sivali describes his suffering in the womb. Yet it is Sivali's uterine 'confinement' that closely matches the restriction of movement of the besieged people. The text clearly communicates both the pain of pregnancy and childbirth and the claustrophobia of a foetus struggling to be born, and thereby also the fear and suffering of besieged people. What can be more evocative than these particular images of a helpless mother and foetus? In the story, the monks who know of Sivali's difficult birth question 'How great must have been the pains of mother and child! Of what deeds were their pains the fruit?' (Chalmers 1895).

It is also notable that both the *Asātarūpa Jātaka* and the *Ummagga Jātaka* feature advisors to kings and princes. In the *Ummagga Jātaka* past life story, the King Chūlani Brahmadatta is advised by the wise queen mother Talathā Devī as well as the Brahmin Kevatta. There is even a passage in the *Ummagga Jātaka* which praises Talathā Devī for her wisdom in judicial matters. Both these *Jātaka* stories make it clear that while good advice is a worthy and valuable service, there is *karmic* responsibility for wrongdoing as an advisor when it leads to a ruler or military commander violating norms of ethics or morality. Although civilian advisors are usually not perceived by the general

public as being potential violators of modern IHL (compared to military officers and soldiers), the *Asātarūpa Jātaka* story highlights the role of those who are 'behind the scenes' in military decision-making. Likewise, IHL in fact covers not only military personnel but also civilian personnel, and the gender of the accused does not have any significance with regard to the criminal charges that can ensue due to violations of IHL.

While the story of the siege in the *Asātarūpa Jātaka* is almost unrealistically short, being described as only seven days in duration, the *karmic* consequences are unrealistically long, with Sivali trapped in the womb for seven days' labour and the pregnancy of Suppavāsā being of seven years' duration. It could be explored whether this pattern of 'sevens' suggests a gradation in terms of *karmic* responsibility. The prince, who may have carried out the actions with perhaps little thought other than following advice, suffers in a later birth, but suffers less pain and for a shorter time period than the queen, who has implicitly thought through the use of the method and advises the course of action.<sup>47</sup>

According to the ICC Statute of 1998, Article 25(3)a–c, individual criminal responsibility can arise if an individual commits a crime individually or jointly; 'orders, solicits or induces the commission of such a crime'; 'aids, abets or otherwise assists in its commission or its attempted commission, including providing the means for its commission'; or 'in any other way contributes to the commission or attempted commission of such a crime by a group of persons acting with a common purpose'. As can be seen, this refers to not only the person who commands the carrying out of a crime against international law, but also those involved in the decision-making, and this can include civilian advisors.

Although an example not of IHL violations (war crimes), but of crimes against humanity,<sup>48</sup> the arrest warrant issued in 2012 for Simone Gbagbo as an indirect co-perpetrator on charges of four counts of crimes against humanity, allegedly committed during post-election violence in Côte d'Ivoire in 2010–2011, is an interesting case in point.<sup>49</sup> Mrs Gbagbo was the wife of Laurent Gbagbo, formerly President of Côte d'Ivoire, and the ICC prosecutor stated that there was sufficient evidence of a plan that led to the commission of the alleged crimes that was prepared by Mr Gbagbo *and his inner circle, including Mrs Gbagbo*. Thus, close associates, advisors and even family members who give advice leading to the planning and carrying out of offences against international law can be held criminally responsible in the ICC. Domestic courts can also choose to follow this standard in their criminal law. Simone Gbagbo was never handed over to the ICC, but in 2015 she was sentenced to 20 years in jail for crimes against humanity in the domestic courts of the Côte d'Ivoire. She was later pardoned under a general amnesty in 2018 after serving three years of a 20-year sentence in her own country. A similar situation could occur if there was a real-life incident comparable to the

*Asātarūpa Jātaka*, of planning the starvation of civilians during wartime, where civilian advisors to military commanders could be held liable for war crimes in either international or domestic courts.

It should be noted that soldiers and commanders can be both morally and legally obliged to *protect* people's access to food. A useful example is Section 23(1) the *Army Act No. 17 of 1949* of Sri Lanka. According to this legal provision, if the President of Sri Lanka finds any action or threats to deprive the people of Sri Lanka or a substantial portion of them of 'the essentials of life by interfering with the supply and distribution of food, water, fuel ...' he may order all or any members of the armed forces to 'perform such duties of a *non-military nature* as he may consider necessary for the maintenance of supplies and services essential to the life of the community' (emphasis added). This provision applies to both peacetime and wartime situations.

It would be an interesting follow-up to the analysis presented in this article if a quantitative study or series of key interviews was carried out on whether actual military decision-making in a predominantly Buddhist country such as Sri Lanka is influenced by religious-cultural attitudes concerning provision of food and water to civilians. Anecdotal evidence from conversations the author has had with various Sri Lankan military officers suggests that the Buddhist ethics of providing food and water to all actually did play a positive role, especially during and after May 2009 in the aftermath of the 30-year civil war in Sri Lanka, when the military had to provide food, water and shelter to displaced populations. Contrary views, such as those of Gordon Weiss and A. R. Sriskanda Rajah, claim that the Sri Lankan government *deliberately* underestimated the numbers of the non-combatant civilian populations who had moved from their homes elsewhere and accompanied the withdrawal of Liberation Tigers of Tamil Eelam (LTTE) cadres<sup>50</sup> to the jungles of the Vanni region during the last stages of the war (Sriskanda Rajah 2017, 123, 128; Weiss 2011). They allege that this was done in order to reduce the amount of humanitarian aid delivered and use starvation as a tactic against the combined civilian and combatant populations surrounded by Sri Lankan armed forces.<sup>51</sup>

During the 30-year Sri Lankan conflict, free public services, including healthcare and education, had been provided by the Sri Lankan government to all parts of the country, including the Northern and Eastern Provinces where many areas were at various times controlled by the LTTE. However, the strategy and logistics of supplying food and medicines to civilian human shields in a jungle area where the concluding battles of an armed conflict were playing out was clearly an immense challenge at many levels. Commanders and advisers in this situation were facing a comparable dilemma to the one faced by the Prince of Bārānasī and his mother (Sīvali

and Suppavāsā in their past lives), in order to win back their kingdom and their subjects while simultaneously considering the lives of both their soldiers and civilians.

It would be interesting to present the *Asātarūpa Jātaka* to military officers or civilians learning IHL, and to discuss the difficult tactical and strategic choices involved in balancing military necessity with humanity in a situation where civilians and combatants are restricted to an area without access to food and clean water, such as during the last stages of the war in Sri Lanka. Discussion of the *karmic* consequences of actions during war may be distressing to Buddhist officers if they feel that they will suffer from bad karmic results in this life or in their next rebirth regardless of their intention, so it is important to stress that *intention* to cause harm is part of the karmic equation, and is therefore relevant in Buddhism (as it is in criminal law). It may also be useful from a psychological point of view to recall how the story of Sivali is described in relation to verse 414 of the *Dhammapada* (*Sivalitthera Vatthu* in *Brāhmaṇavagga*). It is mentioned there that he became an *arhat* ‘as soon as his head was shaved’ and was foremost among all the monks in terms of receiving offerings of food and shelter. The Buddha states in verse 414, referring to Sivali:

Him I call a *brāhmaṇa*, who, having traversed this dangerous swamp (of passion), this difficult road (of moral defilements), the ocean of life (*samsāra*) and the darkness of ignorance (*moha*), and having crossed the fourfold Flood, has reached the other shore (*nibbana*); who practices Tranquility and Insight Meditation, who is free from craving and from doubt, who clings to nothing and remains in perfect peace.<sup>52</sup>

Sivali had to face the *karmic* consequences during his early life in the womb for the choices that had been made in a former life, but his life was otherwise considered fortunate and blessed as he had, through a journey of many lifetimes, overcome and finally attained the status of *arhat*. In this manner, the psychological impact of the story of Sivali as a whole could be seen as (and used for) setting a very strict standard of conduct (in terms of IHL) while also offering hope for Buddhists who want eventually to liberate themselves from *samsāra* and attain *nibbāna*.

## Conclusions

The *Ummagga Jātaka* (no. 546) describes a potential siege and the tactics used by the *Bodhisattva* Mahosadha to avoid it, but the *Asātarūpa Jātaka* (no. 100) has a clearer moral judgement on the actual use of siege warfare and the accompanying starvation of civilians as an *akusala* action based on unwholesome mental states, with negative repercussions in the form of karmic consequences. In this *Jātaka*, Suppavāsā faces the karmic

consequences for the advice she gave to her son Sivali in a former birth to wage siege warfare, just as Sivali faces the karmic consequences of acting upon it. The *arhat* Sivali in his former birth was a usurped prince attempting to regain his city from a conqueror, and the besieged population were his own people. The story shows that people are individually responsible for the suffering they inflict and will themselves suffer the consequences for this, which has parallels in some respects with the principle of individual responsibility in modern international criminal law for violations of IHL. It can be presented that the *Asātarūpa Jātaka* strongly supports the total prohibition of siege warfare that results in starvation, and that it upholds individual and command responsibility for war crimes, including to the extent that civilian advisors who suggest or endorse such a strategy must face the consequences for doing so.

The ethical and moral responsibility for causing suffering to civilians through the use of siege warfare can be highlighted through sharing of religious stories like the *Asātarūpa Jātaka*. As Kum Kum Roy states, ‘the Jatakas were meant to be disseminated – they were not regarded as the exclusive preserve of specialists’ (Roy 1996, 23). Roy adds that the stories came from ‘a pool of popular lore’, and were alternatively used in both Buddhist teaching and secular oral traditions, ‘and could thus flow into and out of a variety of narrative contexts’ (Roy 1996, 37).

Can the Buddhist ethics expressed in these narratives be presented and taught alongside humanitarian law training for both civilians and the military to strengthen good practice and prevent IHL violations? For countries with a Buddhist cultural background, there is a strong argument for making reference to Buddhist religious texts and literature, as well as cultural practices, in the dissemination of IHL. It is possible that making these links could strengthen the application of IHL rules and principles, especially considering here the very real concern of soldiers, commanders and military advisors who are practising Buddhists regarding the *karmic* consequences of their actions. Buddhism does not provide a waiver for actions that cause harm to other living beings during war. But Buddhist ethics can support decision-making that mitigates suffering during war as far as possible, and stops the cycle of violence from continuing. The avoidance of actions that cause starvation during armed conflict, and the provision of humanitarian assistance to civilians, are examples of such ethical decisions.

Using the *Asātarūpa Jātaka* in the context of discussions on IHL raises a number of interesting questions. Firstly, can there be a role for Buddhist ethics to support the further development of the law of war concerning siege and blockade – specifically, the total prohibition of strategies and methods of war that result (even incidentally) in mass starvation, lack of access to water, medicine and sanitation for the civilian population?

Secondly, should Buddhist ethics be used to generate scholarly support for individual criminal liability for decision makers, whether military or civilian, who adopt such methods in international or non-international armed conflicts? It should also be noted that, even if individual criminal liability is not established and criminal punishment is thereby avoided, Buddhists understand that the *karmic* consequences of one's actions cannot be escaped. In this way, discussion of personal responsibility for Buddhists could have a deterrent effect and prevent future violations. In this manner, dialogue on IHL and Buddhist ethics can provoke constructive conversation in Asia and beyond, and Buddhist ethics may even provide the stimulus for reassessing the law concerning siege as a method of warfare under IHL.

As noted by Carolyn Evans in her assessment of references to religion by judges of the International Court of Justice (especially Judge Weeramantry of Sri Lanka, who has used Sri Lankan Buddhist values and principles in his judgements), it is possible to 'use religion in a way that bolsters the standing of norms developed within the international legal system' (Evans 2005, 18). However, as Evans also correctly comments, it is not suitable to use references to religion where it clashes with norms of international law, since religion is not recognised as a source of international law as such. Evans also warns that using religion can be a double-edged sword where there may be other passages in religious texts that encourage the violation of modern international law.<sup>53</sup> However, it can be argued that being a double-edged sword in this sense is not the case for Buddhist texts, and it is particularly not the case with regard to siege warfare and starvation of civilians, as depicted by the *Asātarūpa Jātaka*. The Buddhist ethics of 'not doing harm' combined with this specific story of consequences for wrongdoing are useful for dissemination and discussion of IHL, as well as the further development of the law in this area.

## Notes

1. An *arhat* is the term given for one who gains enlightenment through the teaching of a Buddha, whereas a Buddha rediscovers the truth for themselves and then teaches it to help others.
2. Translation by the Buddha Dharma Education Association Inc., available online at <https://www.buddhanet.net/>.
3. Verse 129 is included in the *Dañḍavagga*, with the commentary referring to an incident in the Jetavana monastery, when the Buddha reprimanded a group of *bhikkhus* (monks) who had beaten up another group of *bhikkhus*. He then laid down the disciplinary rule forbidding *bhikkhus* to beat others. Verse 405 is included in the *Brāhmaṇavagga*, and concerns the story of a *bhikkhu* (monk) from Jetavana who was beaten severely by a layperson due to a misunderstanding, but who did not retaliate or show anger. The Buddha confirms that this *bhikkhu* has shown the qualities of an *arhat*.
4. See further discussion on this point in the article in this volume authored by Prof. Asanga Tilakaratne.

5. See further, for the development of this concept, Article 10 of The Covenant of the League of Nations of 1919 and the Kellogg–Briand Pact of 1928, where aggressive war as an instrument of national policy was deplored. Individual criminal liability under international law for the crime of aggression was first included in the Charter of the International Military Tribunal at Nuremberg in its Article 6(a) and repeated in Article 5(a) of the Charter for the International Military Tribunal at Tokyo. The amended Article 8 *bis* (1) defines the crime of aggression for the Statute of the International Criminal Court (operational from 2018).
6. International Committee of the Red Cross (Pilloud et al. 1987), *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949*, Article 14 of Additional Protocol II: Protection of Objects Indispensable to the Survival of the Civilian Population, para. 4797.
7. International Committee of the Red Cross (Pilloud et al. 1987), *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949*, Article 14 of Additional Protocol II: Protection of Objects Indispensable to the Survival of the Civilian Population, para. 4797. For naval blockade see further the *San Remo Manual on International Law Applicable to Armed Conflicts at Sea*, 12 June 1994, Art 102. For aerial blockage see the *Manual on International Law Relating to Air and Missile Warfare*, 15 May 2009, Art 157a.
8. See *San Remo Manual on International Law Applicable to Armed Conflicts at Sea*, 12 June 1994, Art 102:  

‘The declaration or establishment of a blockade is prohibited if: (a) it has the sole purpose of starving the civilian population or denying it other objects essential for its survival; or (b) the damage to the civilian population is, or may be expected to be, excessive in relation to the concrete and direct military advantage anticipated from the blockade’.
9. International Committee of the Red Cross (Pilloud et al. 1987), *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949*, Article 14 of Protocol II: Protection of Objects Indispensable to the Survival of the Civilian Population, para. 4791.
10. International Committee of the Red Cross (Pilloud et al. 1987), *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949*, Article 54 of Protocol I: Protection of Objects Indispensable to the Survival of the Civilian Population, para. 2089.
11. See the High Command Case, *The United States of America v. Wilhelm von Leeb* 12 LRTWC 1 at 59 (1948). Also available in United Nations War Crimes Commission, *Law Reports of Trials of War Criminals, Volume XII: The German High Command Trial, Case No 72: von Leeb*, 1949, available online, [https://www.loc.gov/rr/frd/Military\\_Law/pdf/Law-Reports\\_Vol-12.pdf](https://www.loc.gov/rr/frd/Military_Law/pdf/Law-Reports_Vol-12.pdf).
12. See the High Command Case, *The United States of America v. Wilhelm von Leeb* 12 LRTWC 1 at 59 (1948). Also available in United Nations War Crimes Commission, *Law Reports of Trials of War Criminals, Volume XII: The German High Command Trial, Case No 72: von Leeb*, 1949, available online, [https://www.loc.gov/rr/frd/Military\\_Law/pdf/Law-Reports\\_Vol-12.pdf](https://www.loc.gov/rr/frd/Military_Law/pdf/Law-Reports_Vol-12.pdf).
13. Security Council Resolution 2140, 26 February 2014, supporting the implementation of the National Dialogue outcomes, reaffirming the need for the full and timely implementation of the political transition, and establishing a sanctions regime under Chapter VII of the United Nations Charter, S/RES/2140 (2014). See also Security Council Resolution 2511, 25 February 2020, renewing the sanctions against Yemen imposed by Security Council Resolution 2140 (2014) until

26 February 2021 and extension of the mandate of the Panel of Experts until 28 March 2021, S/RES/2511 (2020); and Security Council Resolution 2534, 14 July 2020, extending until 15 July 2021 the mandate of the United Nations Mission to support the Hodeidah Agreement (UNMHA), S/RES/2534 (2020).

14. United Nations Security Council Press Release, 'Parties to Conflict in Yemen Have Accepted Plan for Redeployment of Forces from Hodeidah Port, Special Envoy Tells Security Council', SC/13780, 8512TH Meeting, 15 April 2019, <https://www.un.org/press/en/2019/sc13780.doc.htm>.
15. See 'Yemen's Houthis and WFP Dispute Aid Control as Millions Starve', 4 June 2019, <https://www.reuters.com/article/us-yemen-security-wfp/yemens-houthis-and-wfp-dispute-aid-control-as-millions-starve-idUSKCN1T51YO>.
16. UN, 'Security Council Press Statement on Yemen', 17 October 2020, <https://ocesgy.unmissions.org/security-council-press-statement-yemen-1>; UN, 'Statement by The Secretary-General – On Yemen', 20 November 2020, <https://ocesgy.unmissions.org/statement-secretary-general-%E2%80%93-yemen>.
17. Security Council Resolution 2139 (2014), adopted by the Security Council at its 7116th meeting, on 22 February 2014, S/RES/2139 (2014).
18. Security Council Resolution 2258 (2015), adopted by the Security Council at its 7595th meeting, on 22 December 2015, S/RES/2258 (2015).
19. Security Council Resolution 2417 (2018), adopted by the Security Council at its 8267th meeting, on 24 May 2018, S/RES/2417 (2018).
20. Ibid, Security Council Resolution 2417 (2018), paras. 5 and 6.
21. FAO/WFP (2018), FAO Hails UN Security Council Resolution on Hunger and Conflict, 24 May 2018, Rome, <http://www.fao.org/news/story/en/item/1135838/icode/>.
22. FAO/WFP (2018), 'Monitoring Food Security in Countries with Conflict Situations: A Joint FAO/WFP Update for the United Nations Security Council', January 2018, Issue No. 3, <http://www.fao.org/3/I8386EN/i8386en.pdf>.
23. Note that these phrases from The Lieber Code were also referred to in the High Command Case, *The United States of America v. Wilhelm von Leeb* 12 LRTWC 1 at 59 (1948); see notes 11 and 12 above.
24. Paris Peace Conference (1919–1920), *Commission on the Responsibility of the Authors of the War and on Enforcement of Penalties: Violation of the Laws and Customs of War*, [https://archive.org/stream/violationoflawsc00pariuoft/violationoflawsc00pariuoft\\_djvu.txt](https://archive.org/stream/violationoflawsc00pariuoft/violationoflawsc00pariuoft_djvu.txt).
25. Note also the general 'humane treatment' standard included in Common Article 3 and Article 27 of Geneva Convention IV, which can be used in argumentation that denial of food or other humanitarian assistance would be a violation of the humane treatment standard.
26. International Committee of the Red Cross (Pilloud et al. 1987), *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949*, Article 14 of Additional Protocol II: Protection of Objects Indispensable to the Survival of the Civilian Population, para. 4792.
27. International Committee of the Red Cross (Pilloud et al. 1987), *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949*, Article 14 of Additional Protocol II: Protection of Objects Indispensable to the Survival of the Civilian Population, para. 4791.

28. In the context of a state's legal obligations, this is a term that refers to a rule or right that cannot be limited or suspended under any circumstance, or where no exception to the application of the rule can be applied.
29. International Committee of the Red Cross (Pilloud et al. 1987), *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949*, Article 14 of Additional Protocol II: Protection of Objects Indispensable to the Survival of the Civilian Population, para. 4795.
30. International Committee of the Red Cross (Pilloud et al. 1987), *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949*, para. 4795.
31. International Committee of the Red Cross (Pilloud et al. 1987), *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949*, para. 2808.
32. See [https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1\\_cha\\_chapter17\\_rule53#Fn\\_5496F01F\\_00014](https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_cha_chapter17_rule53#Fn_5496F01F_00014).
33. Article 8(2)(b)(xxv) of the Statute of the International Criminal Court (ICC): 'Intentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including willfully impeding relief supplies as provided for under the Geneva Convention'.
34. Amendment to Article 8 of the Rome Statute of the International Criminal Court, Intentionally Using Starvation of Civilians, 6 December 2019, C.N.394.2020. TREATIES-XVIII.10.g., <https://treaties.un.org/doc/Publication/CN/2020/CN.394.2020-Eng.pdf>.
35. *The Prosecutor v Perisic and others*, District Court in Zadar, Croatia (Hrvatska), case number K. 74/96, 24 April 1997, available at <http://www.internationalcrimesdatabase.org/Case/1053>. The Court in *Perisic and others* convicted 19 officers of the Yugoslav People's Army (JNA) *in absentia* for the siege of the city of Zadar, 'which caused the death of at least 30 civilians and the destruction of significant parts of the city – including facilities and objects of large economic and cultural significance – without any military necessity to do so'.  
See further ICRC Customary International Law Database, 'Customary Rule 53. The Use of Starvation of the Civilian Population as a Method of Warfare Is Prohibited', [https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1\\_cha\\_chapter17\\_rule53#Fn\\_5496F01F\\_00014](https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_cha_chapter17_rule53#Fn_5496F01F_00014).
36. International Committee of the Red Cross (Pilloud et al. 1987), *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949*, Article 14 of Additional Protocol II: Protection of Objects Indispensable to the Survival of the Civilian Population, para. 4799.
37. The 'Martens Clause' refers to the language expressed originally in the preamble to the 1899 Hague Convention (II) with respect to the laws and customs of war on land, and which has been used in later IHL documents and convention provisions:  
'Until a more complete code of the laws of war is issued, the High Contracting Parties think it right to declare that in cases not included in the Regulations adopted by them, populations and belligerents remain under the protection and empire of the principles of international law, as they result from the usages established between civilized nations, from the laws of humanity and the requirements of the public conscience'.

It is named after Fyodor Fyodorovich Martens (1845–1909), the Russian delegate at the Hague Peace Conferences 1899, whose declaration was used to draft the above paragraph.

38. See further Bhikkhu Thich Nhat-Tu, 'Kusala and Akusala as Criteria of Buddhist Ethics', <http://www.buddhivihara.org/kusala-and-akusala-as-criteria-of-buddhist-ethics/>. See also Premasiri (1976), discussing the concepts of *punna* and *kusala*; and Harvey (2010).
39. This is the first of the three verses that make up the *Ānandatthera-paha Vatthu* (which is included in the *Buddha-vagga*), where the Buddha responds to the question of Ānanda *Thera*, who asked what the fundamental instructions are, and whether they are the same instructions given by all Buddhas.  
Peter Harvey's comment on this article is useful to include here, as he pointed out that 'Merit is the usual (though still problematic) translation of *puñña*, the power of an action to bring pleasant karmic results. *Kusala* is about the wholesome and wise nature of the action itself, and its motivating roots'.
40. E. B. Cowell and W. H. D. Rouse, 1907, translation, *The Jātaka*, Vol. VI, first published by Cambridge University Press in 1895, <http://www.sacred-texts.com/bud/j6/j6012.htm>.
41. E. B. Cowell and W. H. D. Rouse, 1907, translation, *The Jātaka*, Vol. VI, first published by Cambridge University Press in 1895, <http://www.sacred-texts.com/bud/j6/j6012.htm>.
42. Kautilya, *The Arthashastra*, 'Strategic Means to Capture a Fortress' in Chapter IV ('The Operation of a Siege and Storming a Fort'), Book XIII.
43. See, further, the interesting analysis by Strong (1989) that refers to narratives in the *Aśokāvadāna* and *Mahāvamsa* that link the spiritual and political dimensions of the distribution of the Buddha's relics.
44. Also referred to in some texts as the *Aghātarūpa Jātaka* (see the Sinhala translation available through the University of Sri Jayawardenapura, Sri Lanka, available at <https://www.sjp.ac.lk/buddhism/download-buddhist-555-jathaka-katha-free-pdf/>), and referred to in some collections as *Jātaka* Story No. 99 (see Obeyesekera 2014). However, these may be errors, as the majority of texts and collections appear to refer to the spellings and numbering I choose to refer to in this article.
45. Obeyesekera (2014, 393).
46. A similar admonition to a woman giving wrong advice to a male is the story of Eve in the Bible, where the Judeo-Christian God punishes Eve for advising Adam to eat the fruit of the tree of knowledge, stating 'I will greatly multiply thy sorrow and thy conception; in sorrow thou shalt bring forth children' (Genesis 3:16 – King James Version).

The karmic result of the wrong advice given by a woman is suffering in labour and childbirth (and also being subject to a husband), but Adam's punishment is that he must toil ('labour') in order to live. This is similar to Suppavāsā being *karmically* punished in the form of difficult labour for the wrong advice given to her son in a previous birth.

See further, for reference to unrealistically long pregnancies in Buddhist stories, Tatelman (1996). In his thesis, Tatelman discusses a Nepali Buddhist narrative that appears to have been added to the original story of *Yashodharā* (the wife of the Buddha), which chronicles *Yashodharā*'s 'six-year pregnancy' and other tribulations.

47. Note that there is some commentary on the consequences of actions. In the Dhammapada Commentary (Buddhaghosa) it is stated as follows:

‘A certain countryman buys a comb of honey for a thousand pieces of money and presents it to the Buddha [Vipassī]. In a later existence as King of Benares, he lays siege to a certain city for seven years and seven months. His mother, learning that he has blockaded the four principal gates of the city and left the lesser gates open, sends word to him to close the lesser gates and blockade the city completely. The king does so. On the seventh day the residents of the besieged city kill their king, and hand over the kingdom to the invader. Because Sivali in his previous existence as a king besieged this city, he was reborn in hell, and because he closed the lesser gates, he remained in the womb of his mother for seven days and seven months and seven years; because in his previous existence as a countryman he gave the comb of honey to the Buddha, he reached the pinnacle of gain and honor’ (103–104).

‘Sivali remained in the womb of his mother for seven days and seven months and seven years for no other reason than that in a previous existence he once blockaded a city and reduced the inhabitants to starvation’ (33).

Burlingame, E. W., 1921, *Buddhist Legends; Translated from the Dhammapada Commentary*, Harvard University Press. [http://www.columbia.edu/cu/lweb/digital/collections/cul/texts/ldpd\\_6072311\\_001/ldpd\\_6072311\\_001.pdf](http://www.columbia.edu/cu/lweb/digital/collections/cul/texts/ldpd_6072311_001/ldpd_6072311_001.pdf).

48. It should also be noted that starvation of a population during ‘peacetime’ can be considered a crime against humanity, since the ICC Statute provisions defining crimes against humanity are open-ended, and a widespread or systematic attack directed against any civilian population falls under its definition and covers, respectively:

Article 7(1)(b): ‘Extermination’ – (defined in 7(2)(b) as ‘the intentional infliction of conditions of life, *inter alia* the deprivation of access to food and medicine, calculated to bring about the destruction of part of a population’.

Article 7(1)(k): ‘Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health’.

49. *The Prosecutor v. Simone Gbagbo*, ICC-02/11-01/12, <https://www.icc-cpi.int/cdi/simone-gbagbo>.
50. The Liberation Tigers of Tamil Eelam was a separatist armed group which has also been categorised as a terrorist organisation, particularly in light of its use of suicide attacks, targeting of civilians, ethnic cleansing, assassinations of political opponents and critics, and use of child soldiers. Allegations of war crimes have been made against both sides during the war, with a comparably small number of domestic criminal investigations and convictions carried out in response to the allegations.
51. Weiss was the UN spokesman in Sri Lanka during the final months of the war.
52. Translated by Daw Mya Tin, 1986, *The Dhammapada: Verses and Stories*, Burma Tipitaka Association Rangoon, Burma, <https://www.tipitaka.net/tipitaka/dhp/verseload.php?verse=414>.
53. Evans (2005, 20) citing M. Khadduri, 1955, *War and Peace in the Law of Islam*, that ‘jihadists are permitted to besiege enemy cities’ and contaminate water sources.

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