

The Right to Food and the International Economic System: An Assessment of the Rights-Based Approach to the Problem of World Hunger

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Abstract

This article considers the effectiveness of rights-based approaches to the problem of world hunger. Given that inadequate food supply may be the result of complex, structural problems outside the control of particular states and authorities, can advocacy based on the right to food significantly improve world food security? To answer this question, this article considers one particular structural factor which contributes to world hunger, namely the operation of the international economic system. It concludes that, at both a theoretical and a practical level, human rights discourse is ill-suited to achieve the fundamental structural change to this system necessary to improve food security. This represents a significant limitation on the effectiveness of the right to food. As a result, an alternative legal approach is suggested, namely using a legal principle of ‘food sovereignty’ to ensure that the international system as a whole operates to support the food needs of its population.

Key words

food security; food sovereignty; human rights discourse; international economic system; international trade law; right to food

I. INTRODUCTION

In 1996 the World Food Summit adopted a Plan of Action designed to reduce by half, by 2015, the number of starving people in the world. One particular element of this Plan involved utilizing the right to food as a means of addressing world hunger. The Summit therefore affirmed ‘the right to adequate food and the fundamental right of everyone to be free from hunger’¹ and committed state signatories to ‘clarify the content of the right to adequate food and . . . to give particular attention to implementation and full and progressive realization of this right as a means of achieving food security for all’.²

In the decade that has followed, this call for a ‘right to food’-based approach to world hunger has been taken up with enthusiasm. Within the UN system, the

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1. 1996 Rome Declaration on World Food Security and World Food Summit Plan of Action, available at <http://www.fao.org/docrep/003/w3613e/w3613e00.htm>.
2. *Ibid.*, Objective 7.4.

Committee on Economic, Social and Cultural Rights has issued General Comment 12, clarifying the content of the right to food.³ The Commission on Human Rights (now the Human Rights Council) has appointed a Special Rapporteur on the Right to Food.⁴ The General Assembly has adopted several resolutions on the right to food.⁵ And under the auspices of the Food and Agriculture Organization (FAO), governments have agreed to a set of ‘voluntary guidelines’ on the right to food.⁶ At the same time non-governmental organizations (NGOs) addressing issues of hunger, malnutrition, and poverty have embraced the language of the ‘right to food’ as a means of articulating their claims.⁷

In this article I consider the effectiveness of this rights-based approach to the problem of world hunger. Given that inadequate food supply may be the result of complex, structural problems, outside the control of particular states and authorities, is a rights-based approach really able to improve world food security? I seek to answer this question by considering one particular structural factor which contributes to world hunger, namely the operation of the international economic system. I argue that the right to food, as currently articulated and employed, is ill-suited to achieve the fundamental structural change to this system necessary to improve the supply of food to needy individuals and countries. I conclude that this represents a significant limitation on the effectiveness of the right to food in addressing world hunger.

The first part of this article analyses the operation of the international economic system and demonstrates the ways in which the operation of this system can contribute to the problem of world hunger. I then turn to consider the possibilities and limitations of using a rights-based approach to bring about change in this system. I briefly review theoretical concerns regarding the use of human rights discourse in general, and then examine the operation of the ‘right to food’ approach in practice. I conclude that theoretical concerns regarding the use of human rights language in this context are well-founded, and that in practice there are significant problems associated with using the right to food to challenge international economic arrangements. In the final part of the article I consider alternative approaches to the issue of hunger which may be able to tackle the structural issues inherent in the international economic regime. I tentatively suggest one possible approach, namely using a legal principle of ‘food sovereignty’ to ensure that the international system as a whole operates to support the food needs of its population.

2. TERMS AND SCOPE

I should first say something about the scope of this article and outline the sense in which I will be using certain key terms, in particular, ‘hunger’. Hunger takes many

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3. Committee on Economic, Social and Cultural Rights, General Comment 12: The Right to Adequate Food (Art. 11), UN Doc. E/C.12/1999/5 (1999).
 4. See the Commission on Human Rights Resolution 2000/10 on the Right to Food, UN Doc. E/CN.4/RES/2000/10 (2000).
 5. See, e.g., UN Docs. A/RES/56/155 (2001); A/RES/57/226 (2003); and A/RES/58/186 (2004).
 6. 2004 FAO Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security.
 7. See section 4.2.3, *infra*.

forms and occurs in many contexts. In this article, however, I focus on hunger in the form of long-term, systemic food shortages in developing countries. This means that I do not focus on other forms of hunger, including, in particular, hunger within developed countries and short-term hunger crises brought about by emergency situations such as war or civil conflict. For this reason I often refer to the problem of 'world hunger' to suggest the international and systemic dimensions of the hunger issues I am addressing.

In exploring the problem of world hunger I frequently highlight differences between developed and developing countries. At times I also adopt the terminology of the global 'North' and 'South', and of the first and third worlds, to draw out particular aspects or contexts of the differences between these groups of countries. For most purposes, however, the three sets of terminology can be considered largely interchangeable.

Throughout this article I also use the term 'food security' to describe a state of freedom from hunger. In this I follow the standard practice of international organizations and NGOs. In general terms, food security refers to the situation where individuals have an adequate supply of food for their needs and that supply is reasonably secure. In other words, individuals in a state of food security are not vulnerable to hunger.

Perhaps the key term in this article, however, is 'the international economic system'. In discussing how this 'system' contributes to world hunger, I seek primarily to draw attention to how injustice within the international trade regime adversely affects the food security of developing countries. In particular, I focus on the role of international trade law in facilitating or producing such injustice. In considering how the system of international trade produces such effects, however, it is necessary to consider not only the relevant trade rules, but also the broader economic ideas and theories which inform them. It is also necessary to consider the background against which these rules developed, and the wider economic context within which they operate. Since my analysis therefore not only focuses on trade rules but also considers economic phenomena more generally, I have chosen to use the term 'international economic system' to describe the subject of this article. In using the word 'system' to describe these diverse phenomena, however, I do not necessarily seek to imply that they form part of a coherent and unified whole. Rather, I simply outline how these different elements, which may loosely be grouped together under the description 'economic', may interact to contribute to world hunger.

3. WORLD HUNGER AND THE INTERNATIONAL ECONOMIC SYSTEM

3.1. The causes of hunger are structural

It is well established that there is more than enough food produced in the world to feed the present population many times over.⁸ It therefore follows that the continued existence of hunger must result from unequal distribution of this food. In other words, hunger is caused by inequality of access to food.

8. See, e.g., F. Moore Lappe, J. Collins, and P. Rosset, *World Hunger: 12 Myths* (1998), 8.

People access food in one of two ways: by producing the food themselves or by buying it in the market.⁹ If they cannot do either of these, they will go hungry. The extent to which people can produce food themselves, or can buy it in the market, is largely a function of their economic and social situation. If they are landless and poor, they will experience extreme difficulties in obtaining access to food. The root causes of hunger are therefore poverty and inequality: inequality in access to land and other productive resources, inequality in wealth, and inequality in power.¹⁰

Poverty and inequality result from various complex, interdependent, structural factors; from economic, political, and social power structures which privilege some individuals at the expense of others. To make a real difference in the fight against world hunger, a rights-based approach must be able to attack and change these structures.

One such structure is the international economic system. As I consider more closely in the next subsection, while international trade and related economic phenomena can raise living standards and lead to greater economic prosperity, they can also increase inequalities both between and within countries. In this way the economic system can affect the ability of poor countries as a whole, and of the poor within those countries, to access food. To be effective, a rights-based approach to world hunger must therefore be able to effect change in this system.

3.2. One structural factor: the international economic system

A detailed analysis of the impact of the international economic system on food security is beyond the scope of this article. In this section I seek simply to summarize the key points to emerge from the now significant literature establishing a connection between the economic system and world hunger. In doing so, I seek to draw out two basic theses. The first is that the international economic system can have an adverse impact on food security. The second is that this results, at least in part, from deep, structural features of the system, rather than particular actions of individual players within it.

In focusing on the international economic system in this way, I do not seek to obscure the ultimate responsibility of states for ensuring that all their people receive an adequate supply of food. Further, I accept that steps taken by states alone can be sufficient to ensure that no one within their borders goes hungry. However, I argue that the international economic system is still a major contributor to world hunger, in that it affects the flow of food to, and within, developing countries. Further, it circumscribes the policy options available to domestic decision-makers and affects the incentive structure within which domestic decisions are made.

In the discussion which follows, I first consider how colonialism, and trade policies and practices which developed in the colonial context, set the scene for current world trade arrangements. I then discuss the content of those arrangements themselves, as embodied, in particular, in the World Trade Organization (WTO) agreements. I then turn to consider the broader economic ideas and theories which

9. A. Sen, *Development as Freedom* (1999), 161.

10. See generally A. Sen, *Poverty and Famines: An Essay on Entitlement and Deprivation* (1981).

inform those rules, and the general economic environment within which those rules are implemented. In this context I consider several features of the current international economic order, in particular the significance of international financial institutions, transnational corporations, and development programmes.

3.2.1. *The colonial context*

In his book *The Hunger Machine*, Jon Bennett tells ‘the story of how the developing world was *incorporated* into the capitalist economy of the North’, as follows.¹¹ After discovery of the ‘New World’, Europeans sought to take advantage of the significant primary and natural resources of the newly colonized countries of the ‘South’, by extracting commodities from their fertile, rich environments for profit. These raw materials were sent to the ‘North’, where many were processed to produce higher-value industrial goods. As the increasing supply of raw materials from the South allowed European manufacturers to expand their production, they looked to the large, and as yet unsupplied, markets of the South to absorb the excess. The import of these products into the South, and the restrictions on domestic production which accompanied them, depressed local production of manufactured goods.

This colonial system fundamentally distorted the economies of the South. To a large extent only the export sector developed, and this sector was primarily geared to producing only one or two basic commodities.¹² These commodities would be exported to the North, where they would be processed and re-exported to the South as more expensive, and profitable, industrial goods. As a result, by the time these countries became *politically* independent, they had become *economically* dependent, and so remained locked into an economic system designed to extract their wealth and resources, and draw these to the industrial countries of the North.¹³

Of course, this version of events is an oversimplification. And yet it is largely true that the economies of many countries of the global South are focused on the production of one or two basic commodities for export,¹⁴ and that prices on world markets for many of these commodities are often low and unstable relative to prices for the industrial goods generally produced in the developed world.¹⁵ Further, it largely remains the case that developing countries are unable to break

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11. J. Bennett, *The Hunger Machine: The Politics of Food* (1987), 108. The brief overview which follows is a summary of the description at 108–16.
 12. According to Gonzalez, ‘[b]y the latter part of the nineteenth century, places as diverse as Malaysia (rubber producer), India (cotton producer), Egypt (cotton producer), Argentina (beef and wheat producer), Ghana (cocoa producer), and Cuba (sugar producer) had become specialized in the production of one or more export crops for European (and later US) markets’: C. G. Gonzalez, ‘Trade Liberalization, Food Security, and the Environment: The Neoliberal Threat to Sustainable Rural Development’, (2004) 14 *Transnational Law and Contemporary Problems* 419, at 434.
 13. Gonzalez speaks of ‘the imposition of export-oriented crop production as a means of transferring wealth from the colonized “periphery” to the colonizing “core”’: *ibid.*, at 433.
 14. A phenomenon which the United Nations Conference on Trade and Development (UNCTAD) has termed ‘commodity dependence’: UNCTAD, *Development and Globalization: Facts and Figures* (2004), 80. See also Gonzalez, *supra* note 12, at 434.
 15. See, e.g., M. Ritchie and K. Dawkins, ‘WTO Food and Agriculture Rules: Sustainable Agriculture and the Human Right to Food’, (2000) 9 *Minnesota Journal of Global Trade* 9, at 12. According to UNCTAD, the price index of agricultural commodities relative to the price index of manufactured goods dropped by 50 per cent from 1984 to 2002, while price instability in commodity markets increased: UNCTAD, *supra* note 14, at 80–4.

free of this system, by adding value to the basic commodities they produce, because their economies are not geared towards manufacturing and processing, and because developed countries impose significant trade barriers on the import of manufactured goods.¹⁶

In this way the colonial period established a trading system which generally served to increase inequalities between North and South. This would not necessarily have affected the South's food situation, if the South had continued to grow its own food. But available land in the South was increasingly used for the production of commodities for export, rather than the production of food for domestic consumption.¹⁷ Rather than retaining self-sufficiency in food, countries of the South were encouraged to 'import their food security',¹⁸ leaving their food supply at the mercy of global markets in which they were inherently unequal, poorer, players. This severely affected the food security of these countries.¹⁹

Incorporation into the global trading system also tended to increase inequalities *within* the countries of the South. Since the economies of the South were geared towards the production of a limited number of commodities for export, this encouraged large-scale production, which in turn encouraged the concentration of landholding in the hands of elites.²⁰ Large landowners able to produce significant volumes of export commodities tended to prosper at the expense of smaller farmers. And as landowners saw the commercial benefits of using larger tracts of land for lucrative export crops, a number of smaller peasants and tenant farmers were turned off their land and were therefore unable to grow food to feed themselves.²¹ This significantly affected the food security of the poor in these countries.

3.2.2. *World trade rules*

The structures of economic dependency and inequality created under colonialism are reinforced and perpetuated by various aspects of the current world trade rules, set out in the World Trade Organization (WTO) agreements. These agreements lay down the rules of the multilateral trading system and effectively institutionalize the historically developed system, along with the inequalities inherent in it. This is because, in very general terms, these agreements encourage trade liberalization, but accept existing arrangements as the basis from which such liberalization is to occur.

The agreement of most significance from a food security perspective is the Agreement on Agriculture (AoA), which promotes the liberalization of trade in agricultural

16. UNCTAD, *supra* note 14, at 80.

17. Gonzalez, *supra* note 12, at 435.

18. Ritchie and Dawkins, *supra* note 15, at 12.

19. For example, between 1875 and 1900, a period during which India experienced several severe famines, Indian grain exports to Britain were raised from 3 million to 10 million tons annually. At the same time the price of grain dropped significantly, reducing the purchasing power of producers and contributing to the effects of famine: M. Davis, *Late Victorian Holocausts: El Niño Famines and the Making of the Third World* (2001), 299.

20. See, e.g., Gonzalez, *supra* note 12, at 436. Of course, these sorts of causal links between land concentration and international trade are controversial and difficult to establish. Nonetheless, it remains the case that the incorporation of countries of the global South into the world trade system was accompanied by a process of concentration of landholding and increasing inequality.

21. *Ibid.*, at 436–7.

commodities, including foodstuffs.²² This agreement is significant both because it specifically addresses the issue of trade in food and because agricultural commodities are the primary export of many developing countries.

The AoA requires the progressive reduction of barriers to agricultural trade from the level at which they were set in 1986–8.²³ More specifically, it requires states to reduce barriers to agricultural imports, to reduce export subsidies in favour of domestic farmers, and not to increase support for domestic agriculture. These measures can increase inequality between developed and developing countries, and threaten food security in developing countries, in several ways. The requirement to reduce trade barriers from the level at which they were set in 1986–8 allows developed countries, particularly those in the European Union and the United States, to protect their agricultural markets to a greater degree than can developing countries. This is because these developed countries have traditionally maintained higher levels of protectionism in respect of these markets, an arrangement which causes developing countries to ‘lose approximately [US]\$35 billion a year as a consequence of declining market share for agricultural products’.²⁴

Other aspects of the AoA also allow developed countries to maintain high levels of protection for their farming industries. The AoA rules specifically exclude certain types of support commonly used by developed countries from the scope of the ‘progressive reduction’ obligation. In particular, certain export and domestic subsidies are explicitly permitted, allowing developed-country agricultural products to be ‘dumped’ on world markets at prices which may even be below their costs of production.²⁵ This increases price volatility and drives prices down, affecting the income of developing countries. In addition, developed countries have demonstrated an ability to evade the AoA’s market-access obligations through techniques such as selective tariff reduction – that is, making large tariff reductions on products not produced domestically, in order to meet reduction quotas, while maintaining high tariffs on imports that compete with domestic products.²⁶

By providing institutional support to these unequal arrangements, the AoA can increase inequality between developed and developing countries. At the same time, the liberalization obligations which the AoA imposes on developing countries can significantly affect food security in the developing world. When developing countries lower tariff barriers, food imports become cheaper relative to domestic production. This lowers food prices, depresses local production, and renders these countries increasingly reliant on food imports for their food security.²⁷

22. The discussion which follows gives only the briefest of overviews of the effect of this agreement on food security. For a more detailed analysis see C. G. Gonzalez, ‘Institutionalizing Inequality: The WTO Agreement on Agriculture, Food Security and Developing Countries’, (2002) 27 *Columbia Journal of Environmental Law* 433.

23. See, e.g., in relation to domestic subsidies, Annex 3 of the AoA, especially paras. 9 and 11. For further details, see generally Gonzalez, *supra* note 22, at 452–9.

24. Gonzalez, *supra* note 22, at 448.

25. See generally Ritchie and Dawkins, *supra* note 15, at 10–25.

26. See generally Gonzalez, *supra* note 22, at 459–68.

27. *Ibid.*, at 474.

Meanwhile, requiring developing countries to reduce domestic subsidies can lead to an increase in domestic food prices. This may make it difficult for the poor to purchase food. Further, reduction of subsidies on agricultural inputs can put smaller farmers out of business.²⁸ This results in increased concentration of landholding, to the benefit of large agricultural enterprises, and threatens 'key agricultural sectors' which are important for 'economic development, employment, food supply and poverty alleviation'.²⁹ These effects are compounded by the fact that the AoA rules lead to an increasing emphasis on export production, and the use of land to produce export crops, rather than food for domestic consumption.³⁰

While these factors render it increasingly difficult for the poor to access food, and for smaller farmers simply to survive, liberalization requires the removal of subsidized food programmes and income-support safety nets. This affects the ability of developing countries to protect the most vulnerable members of their communities.³¹

In all these ways the AoA tends to increase inequalities between developed and developing countries, and within developing countries themselves, and affects the food security of the poor within the developing world. But the AoA is not the only WTO agreement to produce such effects. The Agreement on Trade-Related Intellectual Property Rights (TRIPs) also raises concerns from a food security perspective.³² TRIPs requires states to protect intellectual property as part of the international trade regime. This includes not only traditional forms of intellectual property, but also genetic materials and plant varieties. The particular concern here is that intellectual property rights, and particularly patent rights, may be used to restrict farmers' access to seeds. Where seeds are protected by patents, the biotechnology and agribusiness companies which supply those seeds could prevent farmers from engaging in traditional practices of saving, replanting, or sharing seed. As a result, farmers may be required to purchase new seeds every year. This process tends to increase the profits of agribusiness companies at the expense of the poorest farmers' access to seeds. In this way, TRIPs can increase inequality and put the poorest people in developing societies at risk of hunger.³³ There are also concerns that TRIPs allows for 'biopiracy', that is, for biotechnology companies to patent traditional plant varieties.³⁴ The effect of such 'biopiracy' is to threaten further the ability of farmers to access seeds.

Food-related concerns have also been raised regarding other WTO agreements.³⁵ At the heart of concerns about all these agreements, however, is the fact that they treat food as a commodity.³⁶ As a result, these agreements tend to ignore other

28. Ibid.

29. Ibid., at 477.

30. Ibid., at 478.

31. Ritchie and Dawkins, *supra* note 15, at 29.

32. For a detailed analysis of the impact of TRIPs on food security in developing countries see P. Straub, 'Farmers in the IP Wrench: How Patents on Gene-Modified Crops Violate the Right to Food in Developing Countries', (2006) 29 *Hastings International and Comparative Law Review* 187.

33. Gonzalez, *supra* note 12, at 462.

34. In 2001, for example, the US company RiceTec Inc. was granted a patent for basmati rice: L. Harding, 'India Outraged as US Company Wins Patents on Rice', *Guardian*, 23 August 2001, available at <http://www.guardian.co.uk/international/story/0,541040,00.html>.

35. Particularly the Agreement on the Application of Sanitary and Phytosanitary Measures.

36. S. Marks and A. Clapham, *International Human Rights Lexicon* (2005), 177.

dimensions of food, such as its necessity for life and health, or its importance as an element of culture.³⁷ In encouraging the liberalization of trade in food, these agreements explicitly favour distribution of food by 'the market', in accordance with the laws of supply and demand. From a food security perspective, this is problematic, because the market does not respond to needs, but to money. The danger is therefore that food, like all other commodities, will generally flow towards the wealthy, who are able to pay, and away from the poor, who are unable to express their needs in monetary terms.³⁸ In this way the WTO agreements entrench structures of trade which are likely to affect adversely food security in developing countries.

3.2.3. *General economic principles and the role of international financial institutions*

The principles of free trade and liberalization enshrined in the WTO agreements were not formulated in a vacuum. Rather, they can be seen to reflect a general international economic 'consensus' which emphasizes neoliberal economic policies of free markets and free trade.³⁹ Of course, there is no true 'consensus' on economic policy at the international level: a variety of different views and policy positions exist. Nonetheless there is a broad agreement among bodies which are powerful in the international economic field as to the general appropriateness of neoliberal approaches to economic management. The WTO is one such body. Others include, most notably, international financial institutions, such as the World Bank and the International Monetary Fund (IMF).⁴⁰

In general terms, the dominance of neoliberal economic thought within the international system raises several concerns from a food security perspective.⁴¹ The first is that, as noted previously, the operation of a free market in respect of food means that food generally flows towards those who can pay for it and away from those who cannot. This leaves the poor, particularly those in developing countries, vulnerable to hunger. Further, the market is blind to the social costs of economic transactions, and therefore does nothing to discourage practices which increase the vulnerability to hunger of the poorest members of society. Finally, the operation of the market can lead to a greater concentration of economic power: since the market responds to money, individuals with greater capital to invest may be able to take advantage of the market to accumulate more.⁴² In this way the market system can widen inequalities between rich and poor, which, as we have seen, contribute

37. See M. Echols, *Food Safety and the WTO: The Interplay of Culture, Science and Technology* (2001), for a detailed analysis of how the WTO agreements, and particularly the Agreement on the Application of Sanitary and Phytosanitary Measures, focus on the economic aspect of food at the expense of cultural and security aspects.

38. Thus the FAO noted, when expressing concern that food 'must be accessible to all, not only those with purchasing power in the market', that 'demand for food is not fully captured in market-based transactions': FAO, *Trade Reforms and Food Security: Conceptualizing the Linkages* (2003), 118.

39. The idea of an international economic 'consensus' can be traced at least to Williamson's coinage of the term 'Washington consensus': J. Williamson, *Latin American Adjustment: How Much Has Happened?* (1990), ch. 2. Now, of course, the talk is of a 'post-Washington consensus': see J. E. Stiglitz, 'More Instruments and Broader Goals: Moving towards the Post-Washington Consensus', in H. Chang (ed.), *Joseph Stiglitz and the World Bank: The Rebel Within* (2001), 17.

40. See generally J. Gathii, 'Human Rights, the World Bank and the Washington Consensus: 1949–1999', (2000) 94 *American Society of International Law Proceedings* 144.

41. Moore Lappe et al., *supra* note 8, at 99–102.

42. Bennett, *supra* note 11, at 117–19.

to hunger. In short, as a report of the UN Sub-commission on the Promotion and Protection of Human Rights summarizes,

Today's economic and financial systems are organized in such a way as to act as pumps that suck up the output of the labour of the toiling masses and transfer it, in the form of wealth and power, to a privileged minority.⁴³

Turning to consider the work of the World Bank and IMF more particularly, there is widespread concern that the liberalization agenda pursued by these institutions leads to greater inequalities between rich and poor, both within and between countries.⁴⁴ In particular, structural adjustment programmes, which the IMF imposes on developing countries as a condition for granting loans, have been comprehensively criticized. These programmes essentially require rapid liberalization of developing economies: 'currency devaluations, reductions in state spending, privatization of public enterprises, and removal of tariff and non-tariff barriers to imports'.⁴⁵ These measures have a direct and significant impact on food security in developing countries. Opening developing markets to the forces of foreign capital can increase inequality and poverty, as outlined above. At the same time, eliminating government food subsidies and other public spending removes safety nets needed to support the poor in times of crisis. Thus, according to the UN Special Rapporteur on the Right to Food,

The strong advocacy pursued by the World Bank and IMF for the drastic reduction of public spending, the privatization of public enterprises, trade liberalization and the flexibilization of financial, labour and land markets has had negative impacts on the right to food and other economic, social and cultural rights. . . . In Zambia, after a programme of rapid structural adjustment was introduced in the 1990s, an evaluation made by the IMF itself recognized that the liberalization in agriculture had caused hardship for poor Zambians, with maize consumption falling by 20 per cent between 1990 and 1997 as the poorest could not afford enough to eat.⁴⁶

3.2.4. *The power of transnational corporations*

A further feature of the current international economic environment is the power of transnational corporations. As noted earlier, the rules of world trade tend to work to the advantage of large conglomerates and to the detriment of small farmers.⁴⁷ The big winners from this process are the transnational corporations, which have the size and power to take advantage of the 'global marketplace'. They are able to achieve economies of scale, and to relocate wherever inputs are cheaper. They have the power to force down the prices farmers receive for their products, forcing smaller farmers out of business and taking over their market share.

43. Sub-commission on the Promotion and Protection of Human Rights, the Realization of Economic, Social and Cultural Rights: The Question of Transnational Corporations, UN Doc. E/CN.4/Sub.2/1998/6 (1986), para. 1.

44. See, e.g., B. Ghazi, *The IMF, World Bank Group and the Question of Human Rights* (2005). See also the Sixth Report of the Special Rapporteur on the Right to Food, UN Doc. E/CN.4/2006/44 (2006), para. 39.

45. Gonzalez, *supra* note 22, at 447.

46. Fifth Report of the Special Rapporteur on the Right to Food to the General Assembly, UN Doc. A/60/350 (2005), para. 42.

47. See section 3.2.2, *infra*. See also Gonzalez, *supra* note 22, at 478.

As a result, these corporations are dominant players in the field of world trade, and in international agricultural markets in particular. They effectively control world markets in key commodities.⁴⁸ They also dominate markets for agricultural inputs, such as seeds and fertilizer.⁴⁹ In this way, transnational corporations are increasingly achieving vertical control of all steps in the 'food chain'.⁵⁰

In very simplistic terms this is a concern because the purpose of these corporations is to make a profit for their shareholders, not to ensure that the hungry get fed. So, for example, while transnational corporations acquire control over vast tracts of the best land in developing countries, they use the land to grow profitable commodities for export, rather than staples for local consumption. And the land available for smaller farmers to grow local food supplies is diminished. At the same time, these corporations are able to use their economic power, and the fact that they can easily shift their operations if inputs become cheaper elsewhere, to force down wages for workers and prices paid to farmers for crops. This directly affects the ability of these, the poorest people in developing societies, to purchase food in the marketplace.⁵¹

3.2.5. *Aid and development programmes*

The final issue on which I wish briefly to comment is the effect of aid and development programmes. Insofar as they seek to encourage economic development, particularly of the poorest countries, these programmes influence the international economic environment and therefore form part of the general international economic system.

Aid and development programmes, which may be operated by governments, international organizations, private foundations, or charitable groups, are now widespread. In spite of their honourable intentions, however, there is evidence that these programmes can increase inequalities, both between and within countries. The key point here seems to be the fact that, in focusing on economic development, such programmes often take poor countries further down the road of neoliberal economic policy, which can lead, as we have seen, to greater inequalities between rich and poor.⁵²

More generally, development programmes tend to involve large-scale projects, such as the construction of dams, roads, and central storage facilities. They also frequently consider modern, Western technology to be the key to development.⁵³ Both these features tend to favour those in a position of economic advantage: large development projects may provide work for construction companies and improved

48. According to the FAO, 82 per cent of corn exporting is concentrated in three companies, and 60 per cent of terminal grain-handling facilities are owned by four companies: FAO, *Trade Reforms and Food Security*, *supra* note 38, at 120.

49. One company, Monsanto, controls 91 per cent of the global market in genetically modified seed: Sixth Report of the Special Rapporteur on the Right to Food, *supra* note 44, para. 47.

50. FAO, *Trade Reforms and Food Security*, *supra* note 38, at 119.

51. For a detailed analysis of these consequences of the activity of transnational corporations in the third world, see D. Kowalewski, 'Transnational Corporations and the Third World's Right to Eat: The Caribbean', (1981) 3 (4) *Human Rights Quarterly* 45, which specifically considers the activities of transnational corporations in the Caribbean.

52. See, e.g., the articles in W. Sachs (ed.), *The Development Dictionary* (1992).

53. See Moore Lappe et al., *supra* note 8, at 138–43.

facilities for those who can pay to access them, but may have little benefit for the poor farmer who grows barely enough food for subsistence on her small plot of land.⁵⁴ Similarly, the well-intentioned introduction of new food-production technology, such as genetically modified seeds, pesticides and fertilizers, is only of benefit to those who can afford it, and its introduction often ensures that those who *cannot* fall further behind in the economic ‘race’. More worryingly, aid and development programmes can also be used to further the interests of (developed country) donors directly, as in the case of food aid used to create new markets for US grain exports. This may ultimately affect local production and food security.⁵⁵

3.2.6. Conclusion

The international trade system, as developed in colonial times and reinforced by the current trade rules, together with the economic context within which those rules operate, has a fundamental effect on food security. It distorts the economies of developing countries such that they are generally geared to producing commodities for export rather than basic foods for domestic consumption. In this way it reduces the ability of the developing world to feed itself. At the same time, this system increases inequality between developed and developing countries, increasing the poverty of the ‘third world’, and decreasing its ability to purchase adequate food supplies for its population, particularly in times of crisis. International economic arrangements can also increase inequalities *within* developing countries and, in particular, render the poor poorer and peasants landless, and remove government support which would otherwise protect these groups from starvation. In all these ways, the international economic system contributes to world hunger.

There are three key points to note about this phenomenon. The first is that the effects identified in the previous paragraph are the result of deep, structural problems inherent in the international economic system and the relative structure of the economies of the ‘North’ and ‘South’. They are not simply the product of the operation of particular rules or particular incidents. They are inherent in the system itself, having developed with the system over a long period of time.

Second, this system is not controlled by states. Although states and governments play a role in the regulation of the system, its operation is also influenced by various non-state actors, including international organizations, transnational corporations, private business, development foundations, and aid agencies. Further, it is clear that these non-state actors are coming to play a greater and greater role in the operation of the system, while states and governments are correspondingly losing control over both the international system and their own economies.⁵⁶

54. In fact, large development projects may displace poor farmers from their land, further affecting their ability to feed themselves. This was the case with the construction of the Kedung Ombo dam in Indonesia, which ‘involved the displacement of nearly 12,000 people who lost their land and their means of subsistence as a result’: Fifth Report of the Special Rapporteur on the Right to Food to the General Assembly, *supra* note 46, para. 41. The Kedung Ombo dam project was financed by a World Bank loan.

55. Moore Lappe et al., *supra* note 8, at 134.

56. For an analysis of these developments see, e.g., Dermot McCann, ‘Small States in Globalizing Markets: The End of National Economic Sovereignty?’, (2001) 34 *New York University Journal of International Law and Politics* 281. Of course, there are many different accounts of the influence of non-state actors on international affairs,

Third, the effects produced by the international economic system are often not the result of individual actions by particular actors, but of interactions between these actors in a sort of diffuse ‘web’ of economic influence. There is no clear cause and effect between the actions of a particular actor and hunger in the third world. Similarly there is no identifiable forum in which decision-making regarding the overall operation of the international economic system takes place. Rather, the system demonstrates what might be termed a ‘network effect’: its operation results from the *interactions between* different actors.⁵⁷

Keeping these three key points in mind, I now turn to consider whether a rights-based approach is able to effect the change to the international economic system required to alleviate world hunger.

4. ‘RIGHT TO FOOD’ DISCOURSE AND ITS LIMITATIONS

4.1. Human rights discourse and its limitations: the theory

The successes of the international human rights regime are well documented and widely acknowledged. At the same time, however, there is an increasing body of literature which raises concerns about the language of human rights. This literature questions different aspects of human rights discourse and suggests that limitations inherent in this discourse may restrict the ability of the human rights movement to effect positive social change.⁵⁸ Several of the concerns raised in this literature have implications for the ability of human rights to effect change in an international economic system characterized by the three key features identified above: deep, structural flaws, the significant influence of non-state actors, and the interrelationship of causal factors.

First, there is concern that the state-centric nature of international human rights law limits its effectiveness.⁵⁹ Since human rights law focuses on *state* responsibility for rights violations, it may not be a particularly effective tool with which to challenge the activities of non-state actors.⁶⁰ Further, foregrounding the role of the

and different views of how this influence is exercised. Two notable works addressing this issue are those of Anne-Marie Slaughter (A. Slaughter, *A New World Order* (2005)) and Robert Keohane and Joseph Nye (R. O. Keohane and J. S. Nye, *Power and Interdependence* (2000)).

57. The idea of ‘network effects’ has been developed in various academic disciplines, and there is now an extensive literature attached to the concept, most notably in the fields of economics (see, e.g., M. L. Katz and C. Shapiro, ‘Systems Competition and Network Effects’, (1994) 8(2) *Journal of Economic Perspectives* 93) and sociology (see, e.g., B. Wellmann and S. D. Berkowitz (eds.), *Social Structures: A Network Approach* (1988)).

58. For an excellent summary of the concerns raised by this body of literature, see D. Kennedy, ‘The International Human Rights Movement: Part of the Problem?’, (2001) *European Human Rights Law Review* 245. A revised version of this article has subsequently appeared as a chapter in D. Kennedy, *The Dark Sides of Virtue: Reassessing International Humanitarianism* (2004).

59. See, e.g., Kennedy, ‘The International Human Rights Movement’, *supra* note 58, at 255–6.

60. *Ibid.*, at 252. Thus stated, this argument is of course overly simplistic. In particular, it fails to take account of developments within international law which have, with some success, sought to create a basis for extending human rights obligations to non-state actors. For a recent work considering these developments and suggesting ways in which the debate about human rights obligations of non-state actors can be moved forward, see A. Clapham, *Human Rights Obligations of Non-State Actors* (2006). Specifically in relation to the right to food, see S. Narula, ‘The Right to Food: Holding Global Actors Accountable under International Law’, (2006) 44 *Columbia Journal of Transnational Law* 691. Ultimately, however, the effectiveness of these efforts has been somewhat limited; see section 4.2.2, *infra*.

state in relation to human rights violations tends to obscure the role of the *economy* in producing injustice.⁶¹ As a result, human rights discourse may be ill-suited to attacking existing relations of power and wealth, and to achieving redistributive change.⁶² It has also been argued that various features of rights discourse render human rights liable to co-optation by powerful economic interests, and that the language of rights can function to sustain the neoliberal economic system and the inequalities inherent in it.⁶³

A further concern is that the concept of human rights ‘views the problem and the solution too narrowly’.⁶⁴ In focusing on individual violations, human rights analyses may miss the broader, structural features of problems.⁶⁵ Similarly, human rights may not provide a framework for understanding and addressing harms produced as a result of interactions between different actors, or as an unintended consequence of well-meaning measures.⁶⁶ As a result, it has been argued, the vocabulary of human rights tends not to suggest ways of formulating remedies in complex cases, where it is unclear how entrenched inequalities and injustice can best be overcome.⁶⁷

Finally, concerns have been raised that the human rights system reduces abstract ideals of justice and human dignity to purely legal devices, the textual and institutional limits of which can be exploited to resist change.⁶⁸ Legal ‘fixes’ become a substitute for practical action. Rights violations are understood in legal and technical terms which, many argue, ‘sanitize’ suffering and neutralize resistance to unjust practices.⁶⁹ In this way, ‘the potential energy of the idea [of human rights] has been dissipated’.⁷⁰

If these concerns are well founded, it would seem that human rights discourse is ill-suited to effecting structural change in the international economy, to acting against non-state actors, and to addressing effects produced by interactions between different actors. This suggests that a rights-based approach, focusing on the right to food, may not be an effective strategy for achieving the change to the international economic system necessary to fight hunger. To determine whether this is indeed the case, I turn now to consider the way in which ‘right to food’ discourse is employed in practice.

4.2. ‘Right to food’ discourse and its limitations in practice

In order to assess how theoretical concerns regarding the use of human rights discourse play out in practice, I now consider the way in which human rights

61. See generally Kennedy, ‘The International Human Rights Movement’, *supra* note 58, at 252.

62. See, e.g., *ibid.*, at 252–3; and M. Tushnet, ‘An Essay on Rights’, (1984) 62 *Texas Law Review* 1363, 1392–4.

63. In broad terms, this criticism can be traced to Marx: K. Marx, *On the Jewish Question* (1843). More contemporary works making this argument include M. Wa Mutua, ‘Hope and Despair for a New South Africa: The Limits of Rights Discourse’, (1997) 10 *Harvard Human Rights Journal* 63; U. Baxi, *The Future of Human Rights* (2002), especially at 132–66; and J. T. Gathii, ‘Retelling Good Governance Narratives on Africa’s Economic and Political Predicaments: Continuities and Discontinuities in Legal Outcomes between Markets and States’, (2000) 45 *Villanova Law Review* 971.

64. Kennedy, ‘The International Human Rights Movement’, *supra* note 58, at 252.

65. *Ibid.*, at 252–3.

66. See Marks and Clapham, *supra* note 36, at 192.

67. See, e.g., Tony Evans’s criticism of the ‘problem-solving’ approach of human rights: T. Evans, *The Politics of Human Rights* (2001), 49.

68. Kennedy, ‘The International Human Rights Movement’, *supra* note 58, at 261.

69. *Ibid.*, at 266; Baxi, *supra* note 63, (vii).

70. P. Allott, *Eunomia: A New Order for a New World* (1990), 288.

language is used by bodies adopting a rights-based approach to the problem of hunger. I propose to analyse key texts in which relevant bodies utilize the concept of the right to food in order to determine the extent to which the language employed in those texts displays the problematic characteristics of rights discourse identified in the theoretical literature. From this I hope to draw conclusions as to the ability of a rights-based approach to challenge structural features of the international economic system. To keep this discussion within manageable limits, I focus on three texts, each the product of a different group within what might be termed the 'right to food' movement. The first text is the result of negotiations on the right to food at the intergovernmental level; the second was produced within the UN human rights system; and the third represents the work of a prominent NGO in this area. In this way, the discussion below aims to consider a representative sample of how relevant bodies use the right to food.

4.2.1. *The FAO Voluntary Guidelines*

In 2004 the FAO Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security (the Guidelines) were adopted by the Council of the FAO.⁷¹ The Guidelines, which were developed by an intergovernmental working group established for that purpose, are designed 'to provide practical guidance to States in their implementation of the progressive realization of the right to food in the context of national food security'.⁷² Although the Guidelines do not establish legally binding obligations,⁷³ they are nonetheless authoritative, as an expression of the intentions of the 187 member states of the FAO.

The Guidelines contain many positive and progressive recommendations regarding the implementation of the right to food, including recommendations in relation to aspects of the international economic system.⁷⁴ Overall, however, the framework which the Guidelines establish for discussing food issues seems likely to constrain, rather than enhance, efforts to challenge features of the international economic system which contribute to world hunger. There are several reasons for this.

First, the Guidelines focus on state obligations with respect to the right to food and emphasize the importance of national food security. The focus is therefore on the national and not the international level. By focusing primarily on the actions which *states* can take to overcome hunger, the Guidelines render largely invisible the effects of the international economic system. In particular, the Guidelines obscure the way in which international economic factors can constrain the ability of states to guarantee the food needs of their populations. At the same time, the focus on the state obscures the effect which non-state actors may have on food security.⁷⁵

71. FAO Voluntary Guidelines, *supra* note 6.

72. *Ibid.*, at para. 6 of the Preface.

73. *Ibid.*, at para. 9 of the Preface.

74. See, for example, *ibid.*, Guideline 15.1, which provides that international food aid should not disrupt local production and should avoid the creation of dependency. See also Guideline 19, and Section III of the Guidelines, which addresses 'International Measures, Actions and Commitments'.

75. Of course, it is important not to make too much of this point: the fact that these guidelines focus on the right to food at the national level does not mean that guidelines on the right to food at the international level might not also be developed. However, there is a concern that, since the Guidelines are the foremost

Second, to the extent that the Guidelines do consider economic factors in relation to the right to food, they take current economic structures and neoliberal economic policies as given, rather than as open to contestation and change. In fact, the Guidelines support the economic status quo by characterizing the market as a mechanism for distributing food and fighting hunger. Guideline 4 focuses entirely on 'Market Systems' and requires states to 'improve the functioning of their markets' to better ensure food security.⁷⁶ Although the Guidelines also suggest the establishment of safety nets to protect the very poor,⁷⁷ this is clearly exceptional, and not intended to challenge the supremacy of the market. In a similar vein, the Guidelines emphasize the importance of international trade: 'States should promote international trade as one of the effective instruments for development, as expanded international trade could open opportunities to reduce hunger and poverty in many of the developing countries'.⁷⁸ And although the Guidelines urge states to renegotiate trade commitments to provide special treatment for developing countries, they also confirm that any action taken to realize the right to food must comply with the WTO agreements.⁷⁹ In this way, the Guidelines treat 'the market', and the international trade system which is its embodiment at the international level, as mechanisms for addressing the right to food, and render any negative effect that these institutions may have on food security beyond the scope of discussion. In this, we can clearly see the tendency of human rights to support the economic status quo.

The extent to which the language of human rights can be employed in support of existing economic arrangements and to resist redistributive change is suggested by the Guidelines' focus on civil and political rights as tools for realizing the right to food.⁸⁰ Guideline 1 deals entirely with 'democracy, good governance, human rights and the rule of law', and notes that states should promote freedom of expression, freedom of information, freedom of the press, and freedom of association to enhance progressive realization of the right to food.⁸¹ While this in itself is very positive, it needs to be considered in the light of the fact that discussion of economic and social rights which may be relevant to the fight against hunger, such as labour rights, is noticeably absent from the Guidelines.⁸² As a result, the Guidelines as a whole tend to emphasize political and regulatory reforms, rather than redistributive change, as a means of addressing hunger.⁸³ The focus on the concept of 'good governance' is

intergovernmental agreement on the content of the right to food, the approach which they adopt will influence thinking about the right to food generally, and thus focus efforts on the right to food at the national level.

76. FAO Voluntary Guidelines, *supra* note 6, Guideline 4.1.

77. *Ibid.*, Guideline 4.9.

78. *Ibid.*, Section III, para. 7.

79. See, e.g., *ibid.*, Guidelines 4.4 and 8.5.

80. See generally *ibid.*, para. 19 of the Preface, and Guideline 1.

81. *Ibid.*, Guideline 1.2.

82. Where such rights are mentioned, it is largely incidental; see, e.g., *ibid.*, Guideline 8.8.

83. The Guidelines do consider economic aspects of the hunger problem, noting the need for individuals to have 'access to employment, productive resources and appropriate services' (*ibid.*, Guideline 2.4) and 'to earn a fair return from their labour' (Guideline 2.5), and even canvassing the possibility of land reform (Guidelines 2.5 and 8.10). However, suggestions for state action in these areas are not formulated in the language of rights, and treat the possibility of redistributive change very tentatively. As regards land reform, for example, Guideline 8.5 provides that 'As appropriate, States should consider establishing legal and other policy mechanisms,

also of concern here, in the light of criticisms that this term co-opts the language of human rights in support of the project of economic liberalization.⁸⁴ We may worry that, by supporting 'good governance', the Guidelines legitimate the liberalization project and the economic policies which underlie it. At the same time, the granting of limited civil and political rights may function to 'neutralize' resistance to these policies. We are reminded of Gathii's concern that human rights and democracy can function as

instruments of legitimation that permit groups that lose out in the economic reform process to press their claims to the allocation of resources and the distribution of output, even when the economic system is being shut out from addressing these claims.⁸⁵

A further concern is that the Guidelines place particular emphasis on legal and technical measures to secure the right to food: strategies,⁸⁶ monitoring, indicators, benchmarks,⁸⁷ legal provisions, and administrative remedies.⁸⁸ The worry here is that the Guidelines render legal and technical steps a substitute for practical action, encouraging cosmetic changes which will not attack the underlying inequalities of power and wealth which lead to hunger. Providing people with 'legal assistance to better assert the progressive realization of the right to food'⁸⁹ becomes a substitute for changing the structures which prevent these people from receiving adequate food. This is particularly the case as legal and technical language tends to 'sanitize' the suffering associated with hunger, depriving it of the emotional power which should animate and drive initiatives to overcome it. Take, for example, the requirement for states to 'establish Food Insecurity and Vulnerability Information and Mapping Systems (FIVIMS), in order to identify groups and households particularly vulnerable to food insecurity'.⁹⁰ The technical language associated with formulating the problem of hunger in human rights terms tends to characterize starvation as a policy issue rather than a humanitarian crisis, thereby defusing the impetus for practical change to prevent it.

Overall, then, the Guidelines foreground the role of the state and the need for legal, political, and technical reforms. They therefore tend to background the effects of the international economic system, the role of non-state actors, and the need for redistributive change. In this way the Guidelines may constrain moves to challenge the international economic system.

consistent with their international human rights obligations and in accordance with the rule of law, that advance land reform'. This formulation is rather weak, and itself suggests that civil and political rights, such as the right to property, may be used to resist claims for redistributive change.

84. See Gathii, *supra* note 40. The Guidelines themselves explicitly characterize good governance as linked to an economic agenda, as 'an essential factor in sustained economic growth' (Guidelines, *supra* note 6, Guideline 1.3).

85. Gathii, *supra* note 40, at 146.

86. See Guidelines, *supra* note 6, Guideline 3.

87. See *ibid.*, Guideline 17.

88. See *ibid.*, Guideline 7.

89. *Ibid.*, Guideline 1.5.

90. *Ibid.*, Guideline 13.1.

4.2.2. *Report of the Special Rapporteur on the Right to Food*

In 2000 the UN Commission on Human Rights appointed a Special Rapporteur on the Right to Food. Since his appointment the Special Rapporteur has prepared annual reports on the right to food for the Commission on Human Rights.⁹¹ The latest of these⁹² was issued in March 2006, and it is this report which I analyse here.⁹³

In earlier reports the Special Rapporteur identified the role of the international economic system and non-state actors in world hunger.⁹⁴ However, he found that there were conceptual limitations on rendering non-state actors accountable under human rights law, and on rendering state actors accountable for human rights violations occurring outside their own borders. He therefore sought, through his work, to develop a 'conceptual framework that details the specific obligations of Governments, but also of other powerful public and private actors'⁹⁵ with respect to the right to food. In his latest report, drawing on moves within the broader human rights community to extend the scope of human rights obligations, the Special Rapporteur 'extend[s] the traditional boundaries of human rights'⁹⁶ and articulates a framework for making all actors involved in the international economic system accountable for the right to food.

In imposing human rights obligations on non-state actors, the Special Rapporteur's framework overcomes a major limitation on the use of rights discourse. And yet the Special Rapporteur does not entirely succeed in creating a basis for using the right to food to challenge features of the international economic system. In the first place, the extent to which non-state actors can be made effectively accountable under human rights law is still questionable. Transnational corporations, for example, are made accountable primarily through 'soft law' instruments such as the Norms on the Responsibilities of Transnational Corporations,⁹⁷ the status and enforcement of which is unclear.⁹⁸ And while international organizations may be subject to human rights obligations as a result of having international legal personality, the precise scope and content of these obligations, together with issues of how they will be enforced, remains to be fully articulated. Of course, it is possible that further work will be done to develop the conceptual framework of human rights, to clarify these issues and render such entities more accountable. But this in itself raises a second concern, namely that these efforts draw attention and resources away from practical moves to address the problem of hunger. Focusing on the conceptual

91. And, since 2001, for the UN General Assembly.

92. As at the time of writing.

93. Sixth Report of the Special Rapporteur on the Right to Food, *supra* note 44.

94. See, e.g., Second Report of the Special Rapporteur on the Right to Food to the General Assembly, UN Doc. A/57/356 (2002), in which the Special Rapporteur argued that the failure to make significant progress towards reducing hunger 'has its roots in the failure to question the current market-fundamentalist model and emphasis on trade-based food security' (para. 44), and noted that to overcome hunger it will be 'fundamental to consider the obligations and responsibilities of non-State actors, including international organizations and private actors' (para. 14).

95. Sixth Report of the Special Rapporteur on the Right to Food, *supra* note 44, para. 19.

96. *Ibid.*, para. 20.

97. Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights, UN Doc. E/CN.4/Sub.2/2003/12/Rev.2 (2003).

98. The Special Rapporteur himself has acknowledged these limitations; see, e.g., Third Report of the Special Rapporteur on the Right to Food to the General Assembly, UN Doc. A/58/330 (2003), para. 51.

problem of how to extend the scope of the right to food can divert attention from the real problem of hunger itself. And it can sideline strategies to address the causes of hunger directly, such as attacking the international economic structures which cause hunger in the first place.

Further, it is often unclear from the report exactly what steps state and non-state actors should take to avoid violating the right to food through involvement in the international economic system. While the Special Rapporteur notes that 'equitable trade rules would enable all countries to realize the right to food',⁹⁹ he fails to articulate a corresponding obligation on the part of the relevant actors to ensure that this is achieved. And while he states that 'policies such as export subsidies for agriculture may . . . have negative effects when production is exported to agrarian-based developing economies',¹⁰⁰ he stops short of saying that developed countries should cut export subsidies on agriculture. In fact, throughout the report, while the Special Rapporteur is able to identify the structural problems with the international economic system which contribute to hunger, he experiences difficulties in transforming these into concrete obligations on the part of state and non-state actors.¹⁰¹

This deficiency in the report can be attributed to limitations inherent in rights discourse itself. The human rights system tends to concern itself with direct effects: with how a 'violinist' inflicts harm on a 'victim'.¹⁰² Thus the Special Rapporteur can state with confidence that states 'should refrain at all times from implementing policies with *foreseeable negative effects* on the right to food of people living in other countries'.¹⁰³ But within the international economic system, effects are often produced *indirectly*, as a result of interactions between different actors; and negative effects can result from measures intended to produce positive results, such as aid programmes. Human rights discourse does not provide a way of attributing responsibility, or formulating obligations, in these situations. Further, while rights discourse assumes a clear remedy in the case of human rights violations, there is no obvious remedy to the 'problem' of the international economic system. Thus the Special Rapporteur cannot formulate a specific human rights obligation which will deliver 'equitable trade rules', because it is simply unclear how the entrenched inequalities and injustice in the current trading system can best be overcome. And no amount of human rights talk will suggest how to start the complex process of restructuring the economies of developing countries, distorted through years of colonialism so that they focus primarily on the export production of basic commodities.

In short, the Special Rapporteur may have made human rights obligations applicable to non-state actors and to the extraterritorial effects of state action. But

99. Sixth Report of the Special Rapporteur on the Right to Food, *supra* note 44, para. 37.

100. *Ibid.*, para. 35.

101. Where he does formulate such obligations, they are generally vague, as with the WTO obligation to 'take due account of the human rights obligations of its members and . . . advise against the adoption of trade policies that may have negative impacts on the right to food' (Sixth Report of the Special Rapporteur on the Right to Food, *supra* note 44, para. 43).

102. Kennedy, 'The International Human Rights Movement', *supra* note 58, at 254.

103. Sixth Report of the Special Rapporteur on the Right to Food, *supra* note 44, para. 35 (emphasis added).

he remains largely unable to give these obligations any content which would enable them to be used to achieve structural change of the international economic system.

4.2.3. *The FoodFirst Information and Action Network annual report*

The FoodFirst Information and Action Network (FIAN) is a prominent NGO associated with the right to food. What distinguishes FIAN from some other NGOs addressing issues of hunger and poverty is the extent to which the organization defines itself around, and centres its activities on, the right to food. FIAN describes itself as 'defending the right to food worldwide', and the language of 'right to food' correspondingly features prominently in descriptions of its activities.¹⁰⁴ Analysing FIAN's work can therefore provide useful insights into the way in which NGOs utilize the right to food. To focus this discussion I limit myself to considering FIAN's latest¹⁰⁵ annual report, which summarizes its activities in the year 2004.¹⁰⁶

In the context of this article what is relevant about FIAN's annual report is that it appears to suggest that FIAN does not seek to address, in any meaningful way, the need for structural change in the international economic system. The international economic system is mentioned only incidentally in the report, as a background factor which causes particular violations of the right to food. None of FIAN's actions or lobbying activities focuses specifically on the way in which this system contributes to hunger. This is interesting, given that the need for reform to international trade and economic systems features prominently in the rhetoric and work of other NGOs in this area.¹⁰⁷ In making this observation, I am in no way criticizing FIAN or suggesting that this is a deficiency in its work. What I am suggesting is that using the right to food as the basis for its campaigning has directed FIAN in particular directions, namely towards remedies for hunger at the individual and national levels and away from problems at the international level, including structural features of the economic system. Several features of FIAN's annual report support this conclusion.

First, the report places considerable emphasis on the legal dimension of the right to food. The report repeatedly comments on the adoption of the FAO Voluntary Guidelines, celebrating this development on the basis that 'it will now be very hard for anybody to dispute the legal status of the right to food'.¹⁰⁸ Characterizing legal developments as progress, regardless of their practical implementation, can be problematic. When the FIAN secretary general notes that FIAN will work to ensure 'that ESC-rights [economic, social and cultural rights] and the right to food in particular are understood and clarified even better'¹⁰⁹ in future, we might question

104. See generally <http://www.fian.org>.

105. As at the time of writing.

106. FIAN, *Annual Report 2004* (2005).

107. See, e.g., Oxfam's 'Make Trade Fair' campaign (available at <http://www.oxfam.org/en/programs/campaigns/maketradefair/index.htm>); and the work of Food First (see generally <http://www.foodfirst.org>).

108. FIAN, *supra* note 106, at 3.

109. *Ibid.*, at 4.

whether efforts to clarify the content of the right to food are drawing attention away from practical issues, including reform of the international system.

Second, the report indicates that FIAN's work focuses largely on addressing particular violations of the right to food. 'Intervention work is the heart-piece of FIAN's work on violations of the right to feed oneself',¹¹⁰ and the report lists a total of 86 specific cases in which FIAN has intervened. These range from a case in the Philippines, where 'overvaluation of land awarded under [an] agrarian reform program is preventing 243 farmers beneficiaries to feed [*sic*] themselves adequately',¹¹¹ to one in Uganda where '392 peasant families were evicted from their land . . . to make way for a coffee plantation'.¹¹² FIAN's fact-finding missions also focus on individual, local issues, for example the effect of agrarian reform in Brazil.¹¹³ 'The objective of fact-finding missions is to identify and document cases of human rights violations and to interact at the local level for a resolution'.¹¹⁴ This focus on individual violations makes FIAN incredibly successful in achieving change at the grass-roots level. However, the narrowing of focus inherent in this approach can detract attention from the broader issues in question. By focusing on the specific, immediate causes of an individual violation, this approach can obscure the broader, structural causes of hunger generally, including the role of the international economic system. It can also lead to a focus on direct causes of hunger, rather than indirect ones. Thus the report notes that aspects of the international economic system contribute to the current agrarian crisis, and yet FIAN's work does not address these ultimate causes of hunger, but only the more immediate or direct cause, namely the need for agrarian reform in particular countries.¹¹⁵

Third, focusing on legal obligations and individual violations inevitably directs FIAN's work towards state responsibilities. FIAN's work is focused at the local and national levels,¹¹⁶ seeking to 'hold state authorities accountable for imminent or ongoing human rights violations'¹¹⁷ and to 'put pressure on governments to fulfil their legal duty towards the victims'.¹¹⁸ Although FIAN acknowledges that the actions of transnational corporations and other non-state actors contribute to violations of the right to food, its primary response is to seek to make states accountable for these actions. Thus, in seeking to address the actions of a German corporation in Mexico, FIAN argued for the creation of 'a human rights system that would make states accountable for the violation of human rights that their authorities condone or actively pursue in other countries'.¹¹⁹ Focusing on states in this way tends to obscure the role of the economy in relation to hunger together with the role of

110. *Ibid.*, at 8.

111. *Ibid.*, at 8.

112. *Ibid.*, at 9.

113. *Ibid.*, at 13.

114. *Ibid.*, at 13.

115. *Ibid.*, at 19–21.

116. See generally *ibid.*, at 5–12.

117. *Ibid.*, at 8.

118. *Ibid.*, at 13.

119. *Ibid.*, at 17.

non-state actors. FIAN's work is therefore directed away from problems within the international economic system and back to the level of the state.

In this way, focusing on the right to food appears to have pushed FIAN's work in a particular direction, namely towards legal measures, towards direct state responsibilities, and towards remedies at the individual and national levels. And it has directed FIAN away from the international level, and from the structural problems of the international economic system in particular.

4.2.4. *Conclusion*

The analysis of these texts suggests that many of the theoretical limitations of rights discourse, identified in the relevant literature, function in practice to limit the effectiveness of the right to food in challenging international economic structures. In each text the language used displays certain of those characteristics which function to limit the effectiveness of rights discourse in achieving structural, redistributive change. In particular, the texts demonstrate an emphasis on the state rather than the economy, on public rather than private actors, on legal rather than practical measures, on direct rather than indirect causes, on political reforms rather than redistributive change, and on individual violations rather than systemic problems. Using the right to food as the basis for efforts to address world hunger thus seems to direct those efforts towards certain issues and away from others. In particular, it seems to constrain efforts to address entrenched inequalities and injustices inherent in the international economic system.

5. A POSSIBLE ALTERNATIVE

Thus far I have sought to demonstrate the difficulties and limitations associated with using a rights-based approach to the problem of world hunger. I have argued that, at both a theoretical and a practical level, certain limitations internal to human rights discourse constrain its ability to address one of the structural causes of world hunger, namely the operation of the international economic system. This, I conclude, seriously limits the effectiveness of a 'right to food' approach.

In making this argument I do not seek to deny the achievements of human rights discourse in general or of the right to food in particular. I acknowledge the huge symbolic significance of the right to food, and the importance of declaring adequate food to be a human right, not a matter of chance: the existence of such a right emphasizes the entitlements of the hungry and provides a political tool to assist in articulating claims to food.¹²⁰ I also acknowledge that the right to food has been successfully employed by many organizations, like FIAN, in addressing particular instances of hunger. It has made states accountable for the food needs of their populations, and has been a valuable instrument for challenging national policies which affect the hungry. But while the right to food may function effectively to achieve these sorts of change, it does not function effectively to change the

120. As Philip Alston has argued: see P. Alston, 'International Law and the Human Right to Food', in P. Alston and K. Tomasevski (eds.), *The Right to Food* (1984), 9 at 61.

operation of the international economic system. Of course, this is not to say that the right to food could not be rethought and rearticulated to overcome some of the limitations inherent in the present operation of the right. However, given that the problems which I have identified stem from deep, structural features of rights discourse generally, we might question whether this is feasible.

What alternative approach, then, can be imagined, which would be more effective in addressing the operation of the international economic system? One approach, of course, would be to abandon legal principles altogether and seek simply to articulate claims to food in political terms. Certainly it is true that major change in general, and redistributive change in particular, is often more effectively accomplished in the political, rather than the legal, arena.

But is there no role for law in the battle against world hunger? In her book *The Riddle of All Constitutions*,¹²¹ Susan Marks identifies various problems associated with the ‘emerging norm of democratic governance’, and with the related concept of a human right to democracy. In critiquing these concepts, however, Marks does not abandon the emancipatory project of increasing democratic participation. Rather, she proposes an alternative means of pursuing this project, namely a ‘principle of democratic inclusion’. This principle would function in international law in the same way as principles such as sovereign equality of states and non-interference in domestic affairs: ‘to guide the elaboration, application, and invocation of international law’.¹²² It ‘might serve to reshape . . . established international legal norms . . . weaving into the fabric of international law . . . a bias in favour of inclusory political communities’.¹²³

I suggest that a similar legal principle could be developed to ‘weave a bias into the fabric of international law’ in favour of what the NGO movement has termed ‘food sovereignty’.¹²⁴ The concept of food sovereignty was developed in response to concern that international rules, and particularly trade rules, were taking control over food policies away from national governments and local communities, with disastrous consequences. As a result, the concept of food sovereignty seeks to reclaim ‘national and individual sovereignty over food security policy’,¹²⁵ by ensuring the ability of ‘peoples, communities, and countries to define their own agricultural, labor, fishing, food and land policies’.¹²⁶ The principle of food sovereignty would allow individual countries to determine the extent to which they want to be self-reliant in food, and allow them to take measures to protect domestic production and restrict dumping of foreign products on their markets. It would also seek to ensure that individuals and communities have greater control over their own food security, for example by ensuring fair access to productive resources.

121. S. Marks, *The Riddle of All Constitutions: International Law, Democracy, and the Critique of Ideology* (2000).

122. *Ibid.*, at 111.

123. *Ibid.*

124. For a discussion of food sovereignty, see the Fourth Report of the Special Rapporteur on the Right to Food, UN Doc. E/CN.4/2004/10 (2004), paras. 24–34.

125. *Ibid.*, para 27.

126. *Ibid.*, para 25.

While the right to food emphasizes the *outcome* to be achieved, namely that all individuals have 'adequate food', food sovereignty emphasizes instead the *process* whereby decisions relating to food are to be made. From a food sovereignty perspective, what is important is that food policy is determined through a democratic process, such that those affected by food policy decisions have control over those decisions. The specific implications of food sovereignty are therefore not fixed, but fall to be elaborated in particular contexts by those directly affected. In this way, food sovereignty does not necessarily imply any particular outcome. It does not require that countries or communities should be totally self-sufficient in food. Nor does it require centralization of ownership. It simply requires the democratization of decision-making processes relating to food. In this way a principle of food sovereignty would empower countries and individuals to challenge aspects of the international economic system which affect their food security. And in this way such a principle may provide a more effective basis than the right to food for changing that system.

Of course, within international law the concept of sovereignty comes with a lot of baggage. This could limit the effectiveness of a principle of food sovereignty. Since sovereignty is associated primarily with states, use of the term in relation to food may reinforce the centrality of the state with respect to food security, rather than allowing for increased attention on the international economic system. On the other hand, however, the fact that sovereignty is already an established concept within international law may mean that a principle of food sovereignty would be more readily accepted into the legal framework. In any event, a principle of food sovereignty would have the advantage of operating at a wider and deeper level than the right to food, creating a general 'bias' within international law in favour of food security. By operating at the level of international law in general, rather than of international human rights law in particular, the principle of food sovereignty would be directly applicable to international economic law and policy. It could therefore influence the 'elaboration, application and invocation' of international economic law in favour of food security.

6. CONCLUSION

'Hunger is not a scourge but a scandal'.¹²⁷ In today's world, characterized by previously unimagined affluence and prosperity, it is unconscionable that 24,000 people should die from hunger each day.¹²⁸ It is tempting to assert the right to food as a solution to this problem and to draw on the power of human rights discourse to overcome world hunger. However, this rights-based approach may not be the best means of addressing the structural causes of hunger. In particular, in this article I have argued that this approach is unable to address one such structural cause, namely

127. S. George, *How the Other Half Dies: The Real Reasons for World Hunger* (1976), 23.

128. This statistic, quoted on The Hunger Site (<http://www.thehungersite.com>) is derived from FAO statistics, such as those given in the FAO *State of Food Insecurity in the World* reports. The 2006 report indicates that there are 854 million undernourished people worldwide: see FAO, *State of Food Insecurity in the World 2006* (2006), 8.

the operation of the international economic system. The effects of the international economic system on food security are the result of structural features of the system, and are produced largely by non-state actors and as a result of interactions between actors in a 'network' of economic influence. At both a theoretical and a practical level, human rights discourse is ill-suited to address these three features of the operation of the international economic system. I therefore propose that alternative strategies need to be considered to effect change in this system. One such alternative strategy may be a legal principle of food sovereignty. However, there will be many others. The challenge is to find them and employ them to change the international economic system. For until this structural cause of hunger is addressed, there can be no genuine, long-term progress towards eliminating world hunger.