

Pace University

DigitalCommons@Pace

---

Pace Law Faculty Publications

School of Law

---

2010

## Reclaiming the Right to Food as a Normative Response to the Global Food Crisis

Smita Narula

*Elisabeth Haub School of Law at Pace University*

Follow this and additional works at: <https://digitalcommons.pace.edu/lawfaculty>



Part of the [Food and Drug Law Commons](#), [International Humanitarian Law Commons](#), and the [International Law Commons](#)

---

### Recommended Citation

Smita Narula, Reclaiming the Right to Food as a Normative Response to the Global Food Crisis, 13 Yale Hum. Rts. & Dev. L.J. 403 (2010), <https://digitalcommons.pace.edu/lawfaculty/1126/>

This Article is brought to you for free and open access by the School of Law at DigitalCommons@Pace. It has been accepted for inclusion in Pace Law Faculty Publications by an authorized administrator of DigitalCommons@Pace. For more information, please contact [dheller2@law.pace.edu](mailto:dheller2@law.pace.edu).

# Comment

## Reclaiming the Right to Food as a Normative Response to the Global Food Crisis

Smita Narula†

### I. INTRODUCTION

In 2009, the number of hungry in the world crossed the one billion mark,<sup>1</sup> a dubious milestone that has been attributed in large part to consecutive food and economic crises.<sup>2</sup> Over ninety-eight percent of these individuals live in the developing world.<sup>3</sup> Ironically, a great majority are involved in food production as small-scale independent food producers or agricultural laborers.<sup>4</sup> These facts and figures signal a definitive blow to efforts to reduce global hunger and lift the world's poorest from abject and dehumanizing poverty. They also bring to light the deep imbalance of power in a fundamentally flawed food system.

Responses to the current crisis have emphasized the responsibility of states to realize the right to adequate food, and have called for greater coordination and cooperation between states, civil society organizations, international institutions, and private sector actors. These calls

---

† Associate Professor of Clinical Law and Faculty Director, Center for Human Rights and Global Justice, New York University School of Law. Portions of this Comment rely on the author's earlier publication, *The Right to Food: Holding Global Actors Accountable Under International Law*, 44 COLUM. J. TRANSNAT'L L. 691, 712-713 (2006). The author thanks with appreciation Sylwia Wewiora for her invaluable research assistance.

1. Based on a projection in FOOD & AGRIC. ORG. OF THE U.N. (FAO), *THE STATE OF FOOD INSECURITY IN THE WORLD: ECONOMIC CRISES—IMPACTS AND LESSONS LEARNED* 11 (2009), available at <http://docustore.wfp.org/stellent/groups/public/documents/newsroom/wfp209430.pdf>.

2. *Id.* at 9, 13-30.

3. *Id.* at 11. Of the estimated 1.02 billion, only 15 million live in developed countries.

4. The Special Rapporteur on the right to food, *Report of the Special Rapporteur on the Right to Food*, Olivier De Schutter: *Agribusiness and the Right to Food*, ¶¶ 8, 10-12, delivered at the 13th Session of the Human Rights Council, U.N. Doc. A/HRC/13/33 (Dec. 22, 2009), available at [http://www.srfood.org/images/stories/pdf/officialreports/20100305\\_a-hrc-13-33\\_agribusiness\\_en.pdf](http://www.srfood.org/images/stories/pdf/officialreports/20100305_a-hrc-13-33_agribusiness_en.pdf).

conspicuously fail to attribute specific obligations or responsibilities to global actors that have had a profound and often devastating impact on the right to food, and whose policies and practices were instrumental in facilitating the current food crisis.<sup>5</sup>

Under economic globalization, the power exerted by global actors such as dominant states, international financial institutions (IFIs), and transnational corporations (TNCs), has wreaked havoc on the global food system and has made it increasingly difficult for weaker states to assert full control over policies that are central to their ability to fulfill the right to food. Yet these actors are not given equal consideration in international policy prescriptions, or under international law.

This Comment explores both the urgency and paucity of the “right to food” as a legal and normative framework for addressing the current food crisis. It begins with an articulation of the contours and limits of the right to food under international human rights law, which organizes itself around the obligations of states to individuals in their jurisdiction. It then explores how powerful states, IFIs, and TNCs affect the right to food abroad both directly and indirectly by impeding the ability of states to fulfill their economic and social rights obligations. The Comment concludes by addressing particular doctrinal challenges that are essential to reclaiming the right to food as a relevant normative framework under economic globalization.

## II. THE RIGHT TO FOOD UNDER INTERNATIONAL LAW: CONTOURS AND LIMITS

The right to food has been part of the international human rights regime since its inception. The right first found expression in Article 25 of the Universal Declaration of Human Rights (UDHR), which states that “[e]veryone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food . . . .”<sup>6</sup> The right was subsequently codified by Article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), which encompasses two separate but related norms: the right to adequate food (Article 11(1)) and the right to be free from hunger (article 11(2)).<sup>7</sup>

---

5. See, e.g., Statement of the Madrid High-Level Meeting on Food Security for All, Madrid, Spain, Jan. 27, 2009, available at [http://www.donorplatform.org/component/option,com\\_docman/task,doc\\_download/gid,891](http://www.donorplatform.org/component/option,com_docman/task,doc_download/gid,891) (emphasizing the responsibility of States to realize the right to adequate food and calling for a global partnership of governments, civil society organizations, business, donors, and international agencies to deal with food insecurity).

6. Universal Declaration of Human Rights art. 25(1), G.A. Res. 217A, at 76, U.N. GAOR, 3d Sess., 1st plen. mtg., U.N. Doc. A/810 (Dec. 12, 1948).

7. Philip Alston, *International Law and the Human Right to Food*, in *THE RIGHT TO FOOD* 9, 29 (Philip Alston & Katarina Tomasevski eds., 1984). Article 11 of the ICESCR reads:

1. The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the

The right to adequate food is a “relative” standard. In contrast, the right to be free from hunger is “absolute.”<sup>8</sup> As a minimum core obligation, States Parties must act immediately “to mitigate and alleviate hunger . . . even in times of natural or other disasters.”<sup>9</sup> The Committee on Economic, Social and Cultural Rights (CESCR)<sup>10</sup> has concluded that the “core content” of the right to adequate food implies ensuring:

The availability of food in a quantity and quality sufficient to satisfy the dietary needs of individuals, free from adverse substances, and acceptable within a given culture;

The accessibility of such food in ways that are sustainable and that do not interfere with the enjoyment of other human rights.<sup>11</sup>

While the ICESCR allows for “progressive realization” of the rights contained therein, there are two obligations that apply fully and immediately to all economic, social, and cultural rights irrespective of the availability of resources: the obligation to ensure non-discrimination and

essential importance of international co-operation based on free consent.

2. The States Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international co-operation, the measures, including specific programmes, which are needed:

(a) To improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources;

(b) Taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need.

International Covenant on Economic, Social and Cultural Rights art. 11, G.A. Res. 2200 (XXI), U.N. GAOR, Supp. No. 16, U.N. Doc. A/6316 (Dec. 16, 1966), available at <http://www2.ohchr.org/english/law/pdf/cescr.pdf>.

8. THE RIGHT TO FOOD: GUIDE THROUGH APPLICABLE INTERNATIONAL LAW xviii (Katarina Tomasevski ed., 1987).

9. U.N. Econ. & Soc. Council (ECOSOC), Comm. on Econ. Soc. & Cultural Rights (CESCR), *General Comment No. 12: The Right to Adequate Food*, ¶ 6, U.N. Doc. E/C.12/1999/5 (May 12, 1999), [hereinafter *General Comment No. 12*] available at [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/3d02758c707031d58025677f003b73b9?OpenDocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/3d02758c707031d58025677f003b73b9?OpenDocument).

10. The CESCR, established by virtue of ECOSOC Res. 1985/17, is empowered to carry out the monitoring functions assigned to the ECOSOC in order to ensure states’ compliance with the ICESCR. U.N. ECOSOC Res. 1985/17, Office of the High Commissioner for Human Rights, Review of the Composition, Organization and Administrative Arrangements of the Sessional Working Group of Governmental Experts on the Implementation of the International Covenant on Economic, Social and Cultural Rights (May 28, 1985), available at <http://ap.ohchr.org/documents/E/ECOSOC/resolutions/E-RES-1985-17.doc>.

11. *General Comment No. 12*, *supra* note 9, ¶ 8.

the obligation “to take steps” toward the realization of these rights.<sup>12</sup>

In his study on the right to adequate food as a human right, Asbjørn Eide developed a three-level typology of states’ duties, which is now a widely used framework for analyzing states’ human rights obligations generally.<sup>13</sup> These are: the duty to respect, the duty to protect, and the duty to fulfill or facilitate human rights.<sup>14</sup> The duty to *respect* the right to food is essentially a duty of non-interference with existing access to adequate food. It requires States Parties to refrain from measures that prevent such access. The duty to *protect* the right to food requires States Parties “to ensure that enterprises or individuals do not deprive individuals of their access to adequate food.”<sup>15</sup> The duty to *fulfill* the right to food is a positive obligation that the CESCR has interpreted to include the duty to facilitate and to provide. The duty to *facilitate* implies that

the State must pro-actively engage in activities intended to strengthen people’s access to and utilization of resources and means to ensure their livelihood, including food security . . . . Whenever an individual or group is unable, for reasons beyond their control, to enjoy the right to adequate food by the means at their disposal, States have the obligation to *fulfil (provide)* that right directly.<sup>16</sup>

As articulated above, the normative content of the right to food, and the ensuing obligations of states to those within their territory or jurisdiction, enjoys far greater clarity than when the right was first codified under international human rights law. The recent food and economic crises have also motivated calls for states to put in place appropriate legislation, strategies, and institutional frameworks to progressively realize the right to adequate food,<sup>17</sup> to pursue a rights-based approach to tackling food insecurity, and to protect vulnerable populations from the volatility of food

---

12. ECOSOC, Comm. on Econ., Soc. & Cultural Rights, *General Comment No. 3: The Nature of States Parties’ Obligations*, 5th Sess., ¶¶ 1-2, U.N. Doc. E/1991/23 (1990), available at [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/94bdbaf59b43a424c12563ed0052b664?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/94bdbaf59b43a424c12563ed0052b664?OpenDocument); ECOSOC, Comm. on Econ., Soc. & Cultural Rights, *General Comment No. 20: Non-Discrimination in Economic, Social and Cultural Rights*, ¶ 7, U.N. Doc. E/C.12/GC/20 (July 2, 2009), available at <http://www2.ohchr.org/english/bodies/cescr/docs/gc/E.C.12.GC.20.doc>.

13. ECOSOC, Sub-Comm. on Prevention of Discrimination & Prot. of Minorities, *The New International Economic Order and the Promotion of Human Rights: Report on the Right to Adequate Food as a Human Right*, U.N. Doc. E/CN.4/Sub.2/1987/23 (July 7, 1987) (submitted by Asbjørn Eide).

14. *Id.* at ¶¶ 112-14.

15. *General Comment No. 12*, *supra* note 9, ¶ 15.

16. *Id.*

17. Special Rapporteur on the right to food, *Background Note: Analysis of the World Food Crisis by the U.N. Special Rapporteur on the Right to Food*, Olivier De Schutter, § 1.2, presented to the Human Rights Council (May 2, 2008), available at <http://www.srfood.org/images/stories/pdf/otherdocuments/1-srrtfnoteglobalfoodcrisis-2-5-08.pdf>.

prices on international markets.<sup>18</sup>

Indeed, states occupy a central and critical role in ensuring the right to food and should discharge these obligations in a transparent, accountable, and non-discriminatory manner that ensures the participation of those most affected.<sup>19</sup> Holding these domestic actors accountable is of fundamental importance—not least because it is a means of enabling societies to achieve a more equitable distribution of resources between the country's wealthy elite and majority poor.

Equally important, and far less considered, is the need to hold global actors accountable for the impact of their policies and practices on the right to food. As described below, World Trade Organization- (WTO) led trade liberalization, the inability of host states to regulate effectively the power of TNCs, and burdensome IFI-imposed debt servicing obligations directly affect the right to food and additionally restrict the capacity of states to fashion the very arrangements that are contemplated by the ICESCR and related international instruments.<sup>20</sup>

### III. HOW GLOBAL ACTORS AFFECT THE RIGHT TO FOOD

Between 2007 and 2008, soaring food prices led to a global food crisis that intensified an already rising trend in world hunger,<sup>21</sup> and unleashed food-related social unrest in dozens of countries.<sup>22</sup> A toxic combination of factors led to this crisis in food supply and prices, including insufficient investments in agriculture, climate change, higher fuel costs, the diversion of food crops to biofuels, speculative investment, and an increased demand for more resource-intensive food in emerging market countries.<sup>23</sup> Across the globe, but especially in developing countries, the current economic crisis has kept food prices artificially inflated, has decreased food imports, and has led to a loss of income and employment.<sup>24</sup> The Intergovernmental

---

18. See, e.g., FAO, *supra* note 1; World Summit on Food Security, Nov. 16-18, 2009, *Declaration of the World Summit on Food Security*, 6, WSFS 2009/2 (Nov. 18, 2009) [hereinafter *Declaration of the World Food Summit on Food Security*], available at [ftp://ftp.fao.org/docrep/fao/Meeting/018/k6050e.pdf](http://ftp.fao.org/docrep/fao/Meeting/018/k6050e.pdf). Higher food prices have hurt the poorest the most, and among the poor, have had a particularly devastating impact on women and the landless. FAO, *supra* note 1, at 10. States have established social safety nets to protect vulnerable populations. *Id.* at 41.

19. See U.N. Interagency Workshop on a Human Rights Based Approach in the Context of U.N. Reform, May 2-3, 2003, *The Human Rights Based Approach to Development Cooperation: Towards a Common Understanding Among the UN Agencies*, available at [http://www.crin.org/docs/resources/publications/hrbap/HR\\_common\\_understanding.do](http://www.crin.org/docs/resources/publications/hrbap/HR_common_understanding.do).

20. See, e.g., FAO, VOLUNTARY GUIDELINES TO SUPPORT THE PROGRESSIVE REALIZATION OF THE RIGHT TO ADEQUATE FOOD IN THE CONTEXT OF NATIONAL FOOD SECURITY (2004), available at <http://www.fao.org/docrep/meeting/009/y9825e/y9825e00.htm>.

21. Hunger was on the rise even before the current crises, and has been on the rise since the late 1990s. FAO, *supra* note 1, at 8.

22. Special Rapporteur on the right to food, *supra* note 17, § 2.1.

23. *Id.* § 2.2; see also Bank Information Center, *Amid Food Riots and Shaken Governments IFIs Scramble to Develop a Coherent Response*, May 9, 2008, <http://www.bicusa.org/en/Article.3763.aspx>.

24. FAO, *supra* note 1, at 8-10.

Panel on Climate Change expects that continuing climate change patterns, which have already devastated agricultural production in developing countries through droughts and unpredictable weather patterns, will continue to undermine food security, leading to increased malnutrition, fewer opportunities for poverty reduction, and an even greater reliance on food imports from developed countries.<sup>25</sup>

The roots of the current crisis run deep and implicate a number of global actors. For decades, IFIs such as the International Monetary Fund (IMF) have actively promoted macroeconomic reforms in the Global South that have facilitated the expansion of TNCs and the promotion of free trade. The IMF has also conditioned loans to developing countries on reductions in social spending and retooling production to service international markets, sometimes at great costs to social welfare and domestic markets.<sup>26</sup> A combination of these processes, some of which are detailed below, has contributed to the state of food insecurity in the world today, and has simultaneously undermined the ability of weaker states to assert control over policies that are central to their ability to fulfill the right to food.

IFIs have long been scrutinized for their role in perpetuating food insecurity. Powerful members of the IMF, for example, were charged with dictating the economic policies of weaker states through structural adjustment programs in the 1980s and 1990s that conditioned loans on the forced liberalization of developing country markets.<sup>27</sup> Collectively, these policies have had a significant impact on the social and economic rights of populations in borrowing countries, including the right to food.<sup>28</sup> Countries under structural adjustment were often required to cut government spending on social programs, including social services to feed poor and hungry populations, remove food subsidies, often resulting in substantial price hikes, and remove subsidies from agricultural inputs, such as fertilizer and pesticides, resulting in an increase in input prices and decrease in their use for subsistence crop production. Structural adjustment programs also encouraged countries to focus on the production and export of “cash crops” while foregoing the production of basic food crops.<sup>29</sup> In the aggregate, the net effect of structural adjustment in Africa and in countries in other regions was greater food insecurity, impoverishment, and marginalization of local communities.<sup>30</sup>

---

25. U.N. DEVELOPMENT PROGRAMME (UNDP), HUMAN DEVELOPMENT REPORT 2007/2008: FIGHTING CLIMATE CHANGE: HUMAN SOLIDARITY IN A DIVIDED WORLD 90 (2008), available at <http://hdr.undp.org/en/reports/global/hdr2007-2008/chapters>.

26. Beth Lyon, *Discourse in Development: A Post-Colonial “Agenda” for the United Nations Committee on Economic, Social and Cultural Rights*, 10 AM. U. J. GENDER SOC. POL’Y & L. 535, 556 (2002).

27. JOSEPH E. STIGLITZ, GLOBALIZATION AND ITS DISCONTENTS 9 (2003).

28. See, e.g., Philip Alston, *The International Monetary Fund and the Right to Food*, 30 HOW. L.J. 473 (1987); SIGRUN I. SKOGLY, THE HUMAN RIGHTS OBLIGATIONS OF THE WORLD BANK AND THE INTERNATIONAL MONETARY FUND (2001).

29. Smita Narula, *The Right to Food: Holding Global Actors Accountable Under International Law*, 44 COLUM. J. TRANSNAT’L L. 691, 712-713 (2006) (internal citations omitted).

30. *Id.* at 714.

Following nearly two decades of economic upheavals in borrowing countries, both the World Bank and IMF undertook to reform IFI conditionality and searched for more effective approaches to tackling poverty.<sup>31</sup> Even with these reforms, critics charge that borrowing countries are still required to emphasize macroeconomic considerations, fiscal reform, and privatization, without adequately addressing the impact of these policies on poverty reduction.<sup>32</sup> Like any bank, the IMF should, in principle, be allowed to impose conditions on borrowers that make it more likely that the loan will be repaid. But critics point out that the conditionality imposed by the IMF, and in some cases the World Bank, may reduce the likelihood of repayment.<sup>33</sup> Moreover, in many instances, the problem is not that rulers of borrowing governments have no control vis-à-vis the IMF, but rather that they have no accountability to their own citizens, allowing them to implement only those reforms that favor members of the ruling elite.<sup>34</sup>

International trade liberalization under the WTO regime has also affected food security. The WTO's Agreement on Agriculture, for instance, imposes several restrictions on WTO members in favor of trade liberalization in agriculture.<sup>35</sup> First, under the premise of increasing market access for agricultural products, members must replace quantitative restrictions with tariffs, which they are subsequently bound to reduce. But a lack of enforcement of this subsequent tariff reduction has led to non-compliance and has harmed developing countries seeking viable markets, increasing their dependence on food imports.<sup>36</sup> Second, members must refrain from introducing new forms of domestic support for agricultural production and must reduce current levels of support by certain base percentages. Such an arrangement favors developed countries that already had stable support systems that can be reduced to still-functional levels or that consist of support mechanisms beyond the scope of the Agreement on Agriculture.<sup>37</sup> And third, members must reduce existing export subsidies and refrain from introducing new export subsidies. This again favors developed countries that already had export subsidies in place. As a result,

---

31. *Id.* at 715-16.

32. Independent Expert on the effects of structural adjustment policies and foreign debt on the full enjoyment of all human rights, particularly economic, social and cultural rights, *The Highly Indebted Countries (HIPC) Initiative: A Human Rights Assessment of the Poverty Reduction Strategy Papers (PRSP)*, ¶¶ 24-30, presented at the 57th Session of the Commission on Human Rights, U.N. Doc. E/CN.4/2001/56 (Jan. 18, 2001), available at [http://www.unhchr.ch/huridocda/huridoca.nsf/e06a5300f90fa0238025668700518ca4/d3b348546ad5fb91c1256a110056aca4/\\$FILE/G0110184.pdf](http://www.unhchr.ch/huridocda/huridoca.nsf/e06a5300f90fa0238025668700518ca4/d3b348546ad5fb91c1256a110056aca4/$FILE/G0110184.pdf).

33. STIGLITZ, *supra* note 27, at 44-46.

34. NICHOLAS VAN DE WALLE, *AFRICAN ECONOMIES AND THE POLITICS OF PERMANENT CRISIS*, 1979-1999 48 (2001).

35. Special Rapporteur on the right to food, *Report of the Special Rapporteur on the Right to Food*, Olivier De Schutter, *Addendum: Mission to the World Trade Organization*, ¶ 14, presented to the 10th Session of the Human Rights Council, U.N. Doc. A/HRC/10/5/Add.2 (Feb. 4, 2009), available at <http://www.srfood.org/images/stories/pdf/officialreports/or3-hrc-10-5-add2-advancededitedversion-en.pdf>.

36. *Id.* ¶¶ 10, 23.

37. *Id.* ¶¶ 11, 12.

cheap subsidized products continue to flood domestic markets, displacing local production.<sup>38</sup> Ultimately, the disparate levels of protection and liberalization within developing and developed countries makes illusory the notion of a “level playing field,”<sup>39</sup> and makes it difficult, if not impossible, for developing countries to minimize the negative effects of agricultural trade while maximizing its benefits.<sup>40</sup>

The liberalization of trade and the privatization and deregulation of economies have substantially reduced the state’s influence over the daily economic lives of its citizens. The so-called “decline of the nation-state” has been accompanied by the rise of another powerful actor—the TNC.<sup>41</sup> TNCs are increasingly playing a role in determining the level of food security for populations around the world. As IFI-influenced national economic policies encourage the replacement of diverse crops intended for local consumption with commercial crops intended for export, investment in the agricultural sector by TNCs has, in many instances, had a negative impact on food production.<sup>42</sup> The right to food is also threatened by environmental disasters and water pollution caused by TNCs. In their role as employers, TNCs can also affect the right to food when they fail to pay their workers enough to purchase sufficient food for their families.<sup>43</sup>

Exacerbating these problems is the fact that, in many instances, developing country governments and their ruling elites actually benefit from TNCs’ unregulated behavior to the detriment of the countries’ poorer populations.<sup>44</sup> Privileges accorded to TNCs are also often the result of government corruption and acceptance of bribes by government officials.<sup>45</sup> Moreover, TNCs are not motivated by the same interests as the state. Their fiduciary duty to their shareholders arguably puts profit-seeking ahead of the interests of the local communities in which they operate. A key example, which is also of great relevance to the current food crisis, is the immense impact that TNCs have on the production, trade, processing, marketing, and retailing of food. By virtue of their economic influence and considerable bargaining power, TNCs can, for example, determine the types of food produced, the technologies associated with that production, and the prices at which such resources are made available to local sectors.

---

38. *Id.* ¶ 13.

39. *Id.* ¶ 17.

40. *Id.* ¶ 14.

41. Menno T. Kamminga, *Holding Multinational Corporations Accountable for Human Rights Abuses: A Challenge for the EC*, in *THE EU AND HUMAN RIGHTS* 553 (Philip Alston et al. eds., 1999).

42. JOHN MADELEY, *BIG BUSINESS, POOR PEOPLES: THE IMPACT OF TRANSNATIONAL CORPORATIONS ON THE WORLD’S POOR* 39 (2d ed. 2008).

43. Narula, *supra* note 29, at 722.

44. According to one study, “foreign investment dependence benefits the elite segments of the income-earning population over the poorer eighty percent.” Linda Beer & Terry Boswell, *The Resilience of Dependency Effects in Explaining Income Inequality in the Global Economy: A Cross-National Analysis, 1975–1995*, 8 J. WORLD-SYS. RES. 30, 52 (2002), available at <http://jwsr.ucr.edu/archive/vol8/number1/pdf/jwsr-v8n1-beerboswell.pdf>.

45. STIGLITZ, *supra* note 27, at 71–72.

Increasingly, agribusiness TNCs—including commodity traders<sup>46</sup> and retailers<sup>47</sup>—have exerted power in ways that undermine the right to food.<sup>48</sup> With increasing consolidation in the agribusiness industry, TNCs have also been able to exert control over prices of both agricultural inputs and outputs. High prices for chemical pesticides, fertilizers, and seeds distributed by large TNCs such as Monsanto have raised the cost of agricultural production while the prices paid to farmers for their produce have, in many cases, stagnated or declined; as a result, farmers in developing countries often lose money on the sale of their crops and can barely afford to feed their own families.<sup>49</sup>

IFI-imposed structural adjustment programs and the liberalization of trade in agricultural products have turned a number of food-exporting developing countries into net food-importers over the past twenty years.<sup>50</sup> Low income net food-importing countries were the hardest hit by soaring food prices on the international market.<sup>51</sup> The rising cost of agricultural inputs and climate change have also had a dramatic and negative impact on agricultural production.<sup>52</sup> Insufficient investments in agriculture and the accompanying decline in agricultural production are cited as major causal factors of the food crisis. For years, agriculture has failed to attract foreign direct investment and, as noted above, has been neglected and even undermined by IFI policies.<sup>53</sup>

In response to the recent food crisis, international actors and inter-governmental declarations are now emphasizing the need for greater

---

46. BLOOM ET AL., NEW YORK UNIVERSITY LAW STUDENTS FOR HUMAN RIGHTS, TRANSNATIONAL CORPORATIONS AND THE RIGHT TO FOOD, Part IV.B (2009), available at <http://www.chrgj.org/publications/docs/TNCsandRTF.pdf>.

47. *Id.* at Part V.B.

48. See generally Special Rapporteur on the right to food, *supra* note 4.

49. ACTIONAID INT'L, POWER HUNGRY: SIX REASONS TO REGULATE GLOBAL FOOD CORPORATIONS 11-17 (2005), available at [http://www.actionaid.org.uk/\\_content/documents/power\\_hungry.pdf](http://www.actionaid.org.uk/_content/documents/power_hungry.pdf); Peter O'Driscoll, *Part of the Problem: Trade, Transnational Corporations, and Hunger*, CTR. FOCUS, Mar. 2005, <http://globalpolicy.org/images/pdfs/03problem.pdf>; see also VANDANA SHIVA, *STOLEN HARVEST: THE HIJACKING OF THE GLOBAL FOOD SUPPLY* (2000); BLOOM ET AL., *supra* note 46, Parts III.A-B. Due to increasing concentration in food production and distribution chains, bargaining power has heavily shifted towards commodity buyers, who use their position to buy crops at artificially low prices while keeping food prices high; likewise, a lack of collective bargaining power leaves agricultural workers vulnerable to labor violations. Special Rapporteur on the right to food, *supra* note 4, ¶¶ 8, 10-12.

50. U.N. CONFERENCE ON TRADE & DEV., TACKLING THE GLOBAL FOOD CRISIS, U.N. (June 2008), available at [http://www.unctad.org/en/docs/presspb20081\\_en.pdf](http://www.unctad.org/en/docs/presspb20081_en.pdf); Special Rapporteur on the right to food, *supra* note 17, § 2.2. A great number of African countries fall under this vulnerable category. *Id.*

51. U.N. CONFERENCE ON TRADE & DEV., *supra* note 50.

52. Special Rapporteur on the right to food, *supra* note 17, § 2.2.

53. Special Rapporteur on the right to food, *Large-scale Land Acquisitions and Leases: A Set of Core Principles and Measures to Address the Human Rights Challenge*, § 1, presented to the Human Rights Council of the General Assembly, (June 6, 2009), available at [http://www.srfood.org/images/stories/pdf/otherdocuments/20090611\\_large-scale-land-acquisitions\\_en.pdf](http://www.srfood.org/images/stories/pdf/otherdocuments/20090611_large-scale-land-acquisitions_en.pdf); see also Bank Information Center, *supra* note 23 (stating that IFIs such as the World Bank and IMF had since 1970 promoted the development of export economies to the detriment of investment in agriculture).

investments in agriculture as a means of fighting hunger and driving economic growth and poverty reduction.<sup>54</sup> In 2008, for example, the World Bank announced the “New Deal for Global Food Policy” which combines emergency funding with long-term lending to spur agricultural productivity.<sup>55</sup> The Bank has also encouraged foreign investment in agricultural production. Indeed, the current crises have intensified the global trend of large-scale land acquisitions in developing countries for outsourced agricultural production by state and private investors seeking both food security and financial returns.<sup>56</sup> Additionally, the continued demand for biofuel, despite recent declines in oil prices, has contributed to a boom in large-scale land acquisition for biofuel production.<sup>57</sup> The financial industry—backed by IFIs such as the World Bank, the International Finance Corporation, and the European Bank for Reconstruction and Development—now also sees farmland as a safe investment.<sup>58</sup>

For countries acquiring land abroad to grow staple foods, such investments reduce reliance on international markets and increase food security for investor country populations. These investments also have the potential to reduce poverty in host states—they can, for example, generate employment, encourage the transfer of technology, improve local producers’ access to markets, and increase public revenues from taxation and export duties.<sup>59</sup> While the situation seems mutually beneficial, the focus of such investments is less on agricultural or rural development and more on agribusiness development in host developing countries.<sup>60</sup> In many cases, foreign investors acquire a country’s most fertile and profitable land

---

54. A number of major regional and international meetings resulted in commitments to increased support for agriculture. See *Declaration of the World Summit on Food Security*, *supra* note 18, ¶ 6.

55. Bank Information Center, *supra* note 23. The World Bank Group is projected to increase agriculture funding from \$4.1 billion in FY 2006-2008 to between \$6.2 billion and \$8.3 billion in FY 2010-2012. THE WORLD BANK, IMPLEMENTING AGRICULTURE FOR DEVELOPMENT, WORLD BANK GROUP AGRICULTURE ACTION PLAN: FY 2010-2012, 3 (2009), available at [http://siteresources.worldbank.org/INTARD/Resources/Agriculture\\_Action\\_Plan\\_web.pdf](http://siteresources.worldbank.org/INTARD/Resources/Agriculture_Action_Plan_web.pdf); The World Bank, *Agriculture and Food Security Initiative Gains Momentum at G20, World Bank-IMF meetings*, Oct. 21, 2009, <http://web.worldbank.org/WBSITE/EXTERNAL/NEWS/0,,contentMDK:22359784~pagePK:64257043~piPK:437376~theSitePK:4607,00.html>.

56. GRAIN INTERNATIONAL, SEIZED! THE 2008 LAND GRAB FOR FOOD AND FINANCIAL SECURITY 2 (2008), available at <http://www.grain.org/briefings/?id=212>; see also Vera Songwe & Klaus Deininger, *Foreign Investment in Agricultural Production: Opportunities and Challenges*, 45 THE WORLD BANK: AGRIC. & RURAL DEV. NOTES: LAND POL’Y & ADMIN. 1 (Jan. 2009), available at [http://www.landcoalition.org/pdf/08\\_note45.pdf](http://www.landcoalition.org/pdf/08_note45.pdf); LORENZO COTULA ET AL., FAO, LAND GRAB OR DEVELOPMENT OPPORTUNITY? AGRICULTURAL INVESTMENT AND INTERNATIONAL LAND DEALS IN AFRICA 15 (2009), available at [http://www.ifad.org/pub/land/land\\_grab.pdf](http://www.ifad.org/pub/land/land_grab.pdf). Countries such as China, India, and Gulf States are no longer relying on the market to provide adequate amounts of food for their citizens, and are instead investing in agricultural production around the world. GRAIN INTERNATIONAL, *supra*, at 3. The food industry, for its part, is shifting away from the leasing of, for example, agricultural plants to outright control over farmland itself. *Id.* at 7-9.

57. COTULA ET AL., *supra* note 56, at 54-56.

58. GRAIN INTERNATIONAL, *supra* note 56, at 7-9.

59. Special Rapporteur on the right to food, *supra* note 53, § 1.

60. GRAIN INTERNATIONAL, *supra* note 56, at 6, 10.

in deals that remit few benefits to the local population, thereby undermining food security and sovereignty in the host country.<sup>61</sup> The diminished ability of local producers to procure cultivable land, in turn, effectively negates the purported benefits of increased market access.<sup>62</sup> Though taxation and export duties may serve as a source of revenue for the host state, the transfer of land to foreign investors—many of whom export all that they reap—induces greater reliance on food imports.<sup>63</sup> The lack of consultation with local communities and the impact on local land rights have also been raised as concerns,<sup>64</sup> frustrating the aim of satisfying local employment needs and stripping individuals, including those from indigenous populations,<sup>65</sup> of land. The attendant problems of land acquisition are made more acute by the rising demand for biofuel production,<sup>66</sup> which also has broader implications for food security when arable land is diverted from food to fuel production.<sup>67</sup> The possible benefits of large-scale land acquisition are additionally subverted by the unpredictability of speculative investment, one of the causes of the recent food crisis.<sup>68</sup>

The global power exerted by dominant states, TNCs, and IFIs has led to the entrenchment of policies and practices that have significantly undermined the right to food. Responses to the current food crisis, led in part by these same actors, may also exacerbate already worrisome trends in food production and food security. The remainder of this Comment examines the relevance of the right to food as a normative framework for reining in these actors and their impact on the international food system.

---

61. *Id.* at 9.

62. *Id.*

63. *Id.* at 10.

64. *Id.* at 9-10; *see also* COTULA ET AL., *supra* note 56, at 68, 70-74 (noting many countries' weak community consultation requirements and stating that "[t]here is a general sense among observers that negotiations and agreements occur behind closed doors.").

65. *See* Special Rapporteur on the right to food, *supra* note 53, at 7 (raising the issue of foreign entities evicting indigenous populations from land that may not be readily apparent as unavailable).

66. *Id.* at 4, 9.

67. *See* THE WORLD BANK, WORLD DEVELOPMENT REPORT 2008: AGRICULTURE FOR DEVELOPMENT 8, 70-71 (2007) (noting that competition between food and fuel production exists and observing that demand for agricultural feedstocks for biofuel production induces supply shocks in food items that contribute to increasing global food prices), *available at* [http://siteresources.worldbank.org/INTWDR2008/Resources/WDR\\_00\\_book.pdf](http://siteresources.worldbank.org/INTWDR2008/Resources/WDR_00_book.pdf); *see also* FAO ET AL., PRINCIPLES FOR RESPONSIBLE AGRICULTURAL INVESTMENT THAT RESPECTS RIGHTS, LIVELIHOODS AND RESOURCES (2010), *available at* [http://siteresources.worldbank.org/INTARD/214574-1111138388661/22453321/Principles\\_Extended.pdf](http://siteresources.worldbank.org/INTARD/214574-1111138388661/22453321/Principles_Extended.pdf) (articulating principles to guard against the potential negative impacts of large-scale land acquisitions, including respect for land and resource rights, ensuring food security, transparency, and good governance, consultation with and participation of those materially affected, and responsible agro-enterprise investing that respects the rule of law and that is socially and environmentally sustainable).

68. Songwe & Deininger, *supra* note 56, at 2.

#### IV. RECLAIMING THE RIGHT TO FOOD AS A RELEVANT NORMATIVE FRAMEWORK

Under the ICESCR, States Parties are obligated to take steps to progressively achieve the full realization of the right to food for those within their territory or under their jurisdiction. Implicit in this state-centric approach is the rationale that human rights are the by-product of relationships between governments and the individuals they govern, rather than relationships between global actors and individuals worldwide whose rights are affected by their actions.

As shown above, the right to food is being undermined on an unprecedented scale and across borders by a variety of global actors, none of whom are held to account for the impact of their individual or collective actions. The existing human rights legal framework is ill-equipped to deal with these actors and the effects of their policies abroad: it limits states' obligations to respecting, protecting, and fulfilling the rights of individuals in their territory or under their jurisdiction, and it does not directly address the obligations of IFIs and TNCs. These jurisdictional and state-centric constraints have, to date, undermined effective implementation of the right to food and lead to two doctrinal challenges that are critical to reclaiming the relevance of the right to food as a normative framework in an era of economic globalization. These are: 1) conceptualizing the extraterritorial application of states' human rights obligations vis-à-vis economic, social and cultural (ESC) rights; and 2) establishing means by which IFIs and TNCs may be held accountable via their relationship to powerful states.

With regard to the first challenge, the language of *international cooperation*, as found in ICESCR 2(1) on States' Parties obligations,<sup>69</sup> and also in Article 11 on the right to food,<sup>70</sup> has been read to assert that states have obligations that extend beyond their territory or jurisdiction. In its own guidance on the interpretation of the obligation of international cooperation, the CESCR provides that "States parties should take steps to respect the enjoyment of the right to food in other countries, to protect that right, to facilitate access to food and to provide the necessary aid when required."<sup>71</sup> In international agreements, where relevant, States Parties should ensure that the right to adequate food is given due attention.<sup>72</sup> The Committee looks to the "spirit" of Article 56 of the Charter of the United Nations,<sup>73</sup> specific provisions contained in Articles 11, 21, and 23<sup>74</sup> of the

---

69. Article 2(1) of the ICESCR reads: "Each State Party to the present Covenant undertakes to take steps, individually *and through international assistance and co-operation*, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures." ICESCR, *supra* note 7, art. 2(1) (emphasis added).

70. *See id.* art. 11(1)-(2).

71. *General Comment No. 12*, *supra* note 9, ¶ 36.

72. *Id.* ¶ 37.

73. U.N. Charter art. 56, para. 1.

74. ICESCR, *supra* note 7, art. 23 (stating that international action to achieve the rights

ICESCR, and the Rome Declaration of the World Food Summit<sup>75</sup> in reaching its conclusions.<sup>76</sup>

Though the obligation of international cooperation may broaden the extraterritorial application of the ICESCR, the obligation itself is ill-defined. Taken to its extreme, the obligation could be interpreted as a general call for the transfer of resources and wealth from rich states to poor states. The articulation of the obligation in a manner that includes a duty to fulfill social and economic rights in other countries may also meet with a great deal of political resistance by states that do not wish to cast their aid-giving in terms of legal obligation. Focusing too much on international food aid may also counterproductively undermine the right to food, as food aid can create new dependencies, disrupt local markets, and affect commercial trade patterns.<sup>77</sup>

A more fruitful approach, that is also attuned to the deep imbalance of power inherent in the processes described above, would emphasize the obligations to *respect* and *protect* the right to food extraterritorially, while focusing on the vehicles through which many extraterritorial violations occur—namely, IFIs and TNCs. Ensuring that States Parties' extraterritorial obligations extend to their relationships with these actors may be the most effective means of reclaiming the right to food as a relevant normative and legal framework.

#### V. ADDRESSING IMBALANCES IN THE INTERNATIONAL FOOD SYSTEM: NEXT STEPS

As explored above, international human rights law does not directly address the obligations of IFIs and TNCs. These actors can, however, be held indirectly accountable via powerful states. IFIs (such as the World Bank and the IMF) are essentially multi-state actors; they are comprised of member states. Powerful member states often dictate economic policies in weaker countries that undermine the right to food. Many of these member states have also ratified the ICESCR, and can and should be required to take into account their international human rights treaty obligations when participating in IFIs; this includes a duty to ensure that IFI policies respect and protect the right to food.

International human rights law additionally obligates states to regulate

---

included in the ICESCR includes conventions, recommendations, technical assistance, and regional meetings).

75. See WORLD FOOD SUMMIT, ROME DECLARATION ON WORLD FOOD SECURITY (Nov. 13, 1996), available at <http://www.fao.org/docrep/003/w3613e/w3613e00.HTM>.

76. General Comment No. 12, *supra* note 9, ¶¶ 36, 37; see also General Comment 3, *supra* note 12, ¶ 4 (stating that international obligations should be seen in connection with Articles 1(3), 55, and 56 of the U.N. Charter).

77. Special Rapporteur on the right to food, *The Role of Development Cooperation and Food Aid in Realizing the Right to Adequate Food: Moving From Charity to Obligation*, ¶ 3, presented to the 10th Session of the Human Rights Council, U.N. Doc. A/HRC/10/5 (Feb. 11, 2009), available at <http://www.srfood.org/images/stories/pdf/officialreports/or4-a-hrc-10-5-advanced-edited-version.pdf>.

the behavior of non-state actors, whether individuals or corporations, through the duty to *protect*,<sup>78</sup> though such responsibility normally attaches to the host state. There are, of course, many sound reasons to expect the host state to regulate TNC activity. The host state has primary responsibility for the protection of human rights in its territory or under its jurisdiction, the host state negotiates the terms under which TNCs can operate in the country, and the host state's administrative and judicial machinery can provide a regulatory framework. Economic arrangements between a TNC and the host state may, however, restrict the host state's ability to perform its duties.<sup>79</sup>

As noted above, the need to hold domestic actors accountable for their human rights obligations remains paramount, and under international law, these obligations are quite clear. What remains unclear is the responsibility of the home states that play a considerable role in financing and fashioning an advantageous and deregulated framework for TNCs' operations abroad.

Without insurance, TNC risks may not be covered; without capital, they may not be able to finance their ventures abroad; without trade agreements, they may not be able to do business abroad; and without the home states' political muscle, they may not enjoy such a high degree of deregulation or profit from contracts that are tilted heavily in their favor.<sup>80</sup>

While home states negotiate an advantageous framework and provide other essential services critical to the operation of TNCs abroad, they are not held responsible for the consequences of TNC activities. Yet under the principle of due diligence, as shaped and defined under international law jurisprudence, states are obligated to make a good-faith effort to prevent foreseeable violations by non-state actors over whom they are able to exert some degree of authority.<sup>81</sup> Home states can and should therefore be required to regulate the activities of TNCs that enjoy the state's political and economic backing.

I have elsewhere reconciled the above assertions with the more conservative articulations of state responsibility under international law,

---

78. See The Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, *Protect, Respect and Remedy: a Framework for Business and Human Rights*, ¶ 9, presented to the 8th Session of the Human Rights Council, U.N. Doc. A/HRC/8/5 (Apr. 7, 2008), available at <http://www.reports-and-materials.org/Ruggie-report-7-Apr-2008.pdf> (noting "the State duty to protect against human rights abuses by third parties, including business; the corporate responsibility to respect human rights; and the need for more effective access to remedies.").

79. One example is the "stability" clause that is common to agreements between foreign investors and the host state, which provides that the state will not impose further regulations on the investor that could diminish the profitability of the investment. See Olivier De Schutter, *Transnational Corporations as Instruments of Human Development*, in HUMAN RIGHTS AND DEVELOPMENT: TOWARDS MUTUAL REINFORCEMENT 414-16 (Philip Alston & Mary Robinson eds., 2005).

80. Narula, *supra* note 29, at 764.

81. *Id.* at 764-66.

concluding that the degree of influence and control exerted by powerful states over TNCs and IFIs, respectively, can trigger obligations to regulate the activities of these actors.<sup>82</sup> A serious engagement with these obligations would deliver significant policy results. In the context of IFI policies, respecting and protecting the right to food would mean giving states the policy space they need to fashion appropriate measures and tools to progressively realize the right to food. Soaring food insecurity resulting from successive food and economic crises underscores the need for robust new policies, as well as the space for struggling economies to implement them.

Experts have, for example, called for increased investments in sustainable agriculture in developing countries<sup>83</sup> and greater protections for smallholder farming, including increasing market access and diversifying market concentration to allow smallholders to maintain food security.<sup>84</sup> Agricultural workers, who ironically are among the most food insecure, must also be afforded social protections, especially collective bargaining rights.<sup>85</sup> Relevant IFI policies can and should be shaped to support these calls, rather than undermine them. Here, powerful member states can play a critical and influential role, and in so doing, can uphold their obligation to respect and protect the right to food abroad.

In their dealings with the IMF, powerful states can uphold their obligations by shifting from a standardized and process-oriented approach to a tailored outcomes-oriented approach. Critics have charged that the IMF does not undertake a differential diagnosis specific to country conditions and instead offers standardized advice relating to budget cuts, trade liberalization, and privatization of state-owned enterprises, without due regard to the specific context. The IMF has, for example, overlooked problems related to climate, disease, cultural conditions, and agronomy.<sup>86</sup> A country's performance is also often judged by whether or not it carries out IFI advice and not by whether or not it has achieved particular development objectives, such as poverty reduction.<sup>87</sup>

In the context of the WTO, the multilateral trading system must also enable states to pursue policies aimed at realizing the right to food and must refrain from imposing obligations that undermine this paramount goal. Powerful states could, for example, support policies that help, or at the very least do not harm, developing countries with weakened agricultural sectors. The ongoing Doha Round negotiations on agricultural reform in trade policy—which continue to stall around discussions of the

---

82. *Id.* at 739-66.

83. Special Rapporteur on the right to food, *supra* note 17, § 2.3(b); *Declaration of the World Summit on Food Security*, *supra* note 18, ¶¶ 7.3, 17, 26.

84. Special Rapporteur on the right to food, *supra* note 4, ¶¶ 29-36; *Declaration of the World Summit on Food Security*, *supra* note 18, ¶ 19.

85. Special Rapporteur on the right to food, *supra* note 4, ¶¶ 13-20.

86. JEFFREY SACHS, *THE END OF POVERTY: ECONOMIC POSSIBILITIES FOR OUR TIME* 79-80 (2005).

87. *Id.* at 80.

trade-distorting impacts of developed country support to farmers<sup>88</sup>—present an opportunity to truly level the playing field for developing countries and provide them with greater flexibility to target smallholders, promote rural development, and ensure that food supplies remain stable.<sup>89</sup>

Turning to TNCs, one means of satisfying the due diligence obligation described above is for home states to regulate corporate activity through the enactment of domestic legislation with extraterritorial reach. The proposed legislation could, for example, provide guidelines on respecting and protecting the right to food; include requirements to institute and adhere to codes of conduct; incorporate environmental and labor protections; and sanction violations of these standards with both civil and criminal penalties. To ensure effectiveness, the legislation could also allow for private actions.<sup>90</sup>

The Guidelines for Multinational Enterprises of the Organization for Economic Cooperation and Development, which so far remain voluntary, could serve as a model for an enforceable regulatory framework, since they call on enterprises to “respect the human rights of those affected by their activities consistent with the host government’s international obligations and commitments.”<sup>91</sup> The Guidelines’ broad focus on labor laws, environmental protections, combating bribery, protecting consumer interests, issues related to competition and taxation, and the development of science and technology could also cover the variety of ways in which TNCs affect the right to food.

Considering the highly concentrated nature of the international agribusiness economy, powerful home states could also regulate TNCs through the enactment of stricter domestic and international antitrust legislation.<sup>92</sup> Instead of focusing on the power of sellers—farmers, in this instance—home states should recognize and critically investigate buyer, or agribusiness TNC, power.<sup>93</sup> Additionally, farmers, or civil society organizations acting on their behalf,<sup>94</sup> could be granted private rights of action for antitrust claims.<sup>95</sup> Finally, home states should broaden the

---

88. Special Rapporteur on the right to food, *supra* note 35, ¶ 16.

89. See WORLD TRADE ORG., AGRICULTURE NEGOTIATIONS: THE ISSUES AND WHERE WE ARE NOW 61-67 (2004), available at [http://www.wto.org/english/tratop\\_e/agric\\_e/agnegs\\_bkgnd\\_e.pdf](http://www.wto.org/english/tratop_e/agric_e/agnegs_bkgnd_e.pdf). Income increases, though, are dependent on the very source of food insecurity: trade liberalization.

90. One suggested model for such a regulatory framework, at least in the United States, is a modified version of the Foreign Corrupt Practices Act of 1977 (FCPA), which prohibits foreign bribery and creates record-keeping and accounting requirements for corporations. See Erin L. Borg, Note, *Sharing the Blame for September Eleventh: The Case for a New Law to Regulate the Activities of American Corporations Abroad*, 20 ARIZ. J. INT’L & COMP. L. 607, 639-42 (2003). The FCPA provides civil and criminal penalties for violators but does not provide a private right of action. *Id.*

91. ORG. FOR ECON. COOPERATION & DEV., OECD GUIDELINES FOR MULTINATIONAL ENTERPRISES 14 (2008), available at <http://www.oecd.org/dataoecd/56/36/1922428.pdf>.

92. BLOOM ET AL., *supra* note 46, at 59.

93. *Id.*

94. *Id.* at 60 (citing ACTIONAID INT’L, *supra* note 49).

95. *Id.*

jurisdictional authority of their antitrust laws<sup>96</sup> and encourage the adoption of an international competition policy, with a possible independent investigatory body.<sup>97</sup>

Creating the regulatory frameworks envisioned above may also have costs for the host state. Prescriptions for reining in TNC behavior in host countries regularly come up against the caution that such regulations should not act as a disincentive for the very foreign direct investment that is needed to support economic growth. Though foreign direct investment may help alleviate poverty, it does so more effectively if grounded in positive corporate conduct. Providing a uniformly-enforced regulatory framework may actually encourage foreign investment in developing countries by leveling the business playing field for ethical corporations.<sup>98</sup> Some Western companies have begun to recognize the merits of operating under enforceable standards that apply to all their competitors, rather than voluntary standards that only really affect companies with prominent public profiles.<sup>99</sup> Involving the home state in both normative and practical terms in such regulations could provide an effective means of protecting the right to food where accountability gaps exist.

And finally, it is critical that policy responses to the current crises do not perpetuate the very food insecurity they seek to alleviate. Here, calls for greater investments in agriculture should not give way to problematic large-scale land acquisitions by foreign investors that yield few returns to host populations. Negotiations leading to such investments should be conducted with transparency and with the participation of affected communities.<sup>100</sup> States should protect the land use rights of local communities,<sup>101</sup> negotiate investments that guarantee that local populations benefit from revenues generated by the investment,<sup>102</sup> and ensure that agreements tend to their development<sup>103</sup> and employment needs.<sup>104</sup> For investments in net food-importing countries in particular, the agreement should specify that a minimum percentage of the crops produced must be sold at local markets.<sup>105</sup> Investor states, TNCs, and IFIs<sup>106</sup> all have roles to play in ensuring that such investments truly deliver benefits to local populations while shoring up food security in investor

---

96. *Id.*

97. *Id.* at 60-61.

98. Kenneth Roth, *Rules on Corporate Ethics Could Help, Not Hinder, Multinationals*, FIN. TIMES (U.K.), June 21, 2005, at 19.

99. *Id.*

100. Special Rapporteur on the right to food, *Crisis into Opportunity: Reinforcing Multilateralism*, ¶¶ 21(a)-(b), presented to the 12th Session of the Human Rights Council, A/HRC/12/31 (July 21, 2009), available at [http://www.srfood.org/images/stories/pdf/officialreports/20090917\\_a-hrc-12-31\\_en.pdf](http://www.srfood.org/images/stories/pdf/officialreports/20090917_a-hrc-12-31_en.pdf).

101. *Id.* ¶ 21(c); see also THE WORLD BANK, *supra* note 55, at 17.

102. Special Rapporteur on the right to food, *supra* note 53, § 4.

103. *Id.*

104. Special Rapporteur on the right to food, *supra* note 100, ¶ 21(e).

105. *Id.* ¶ 21(h); see also Special Rapporteur on the right to food, *supra* note 53, §§ 6, 8.

106. See *supra* Part III (discussing the World Bank's role in encouraging foreign investment in agricultural production).

countries. Here, adherence to the U.N. Special Rapporteur on the right to food's "Core Principles and Measures to Address the Human Rights Challenge" of large-scale land investments, and to the "Principles for Responsible Agricultural Investment that Respects Rights, Livelihoods and Resources," promulgated by the World Bank, among others, would prove invaluable.<sup>107</sup>

## VII. CONCLUSION

Between 2008 and 2009, successive food and economic crises pushed an additional one hundred million into poverty and raised the number of food insecure by a staggering eleven percent.<sup>108</sup> A crisis of such global proportions has generated a largely uncoordinated response that by and large still fails to hold global actors accountable. As commitments to ensuring the right to food become more commonplace, the ability to enforce these commitments or to reconcile them with global processes and global actors remains relatively weak.

The current crisis reveals the shortcomings of the right to food as a legal and normative framework for ensuring global food security. But it also presents an opportunity to finally bring global actors within the framework's purview. A rights-based approach—and its attendant emphasis on the principles of transparency, participation, inclusion, and accountability—is critical to effectively tackling today's hunger problems. These principles must apply with equal force to all actors in the international food system.

Normatively, one means of achieving this goal is to address the extraterritorial obligations of states to respect and protect the right to food, and to ensure that these obligations extend to states' relationships with IFIs and TNCs. Though by no means exhaustive, addressing these doctrinal challenges can begin to close the accountability gaps that undermine effective implementation of the right to food and can give the food-insecure greater control over the markets and resources that are essential to meeting their food and livelihood needs.

---

107. See Special Rapporteur on the right to food, *supra* note 53; FAO ET AL., *supra* note 67.

108. FAO, *supra* note 1, at 4, 11.