

# Right to Food, Food Security and Accountability of International Financial Institutions

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## I. Introduction

On World Food Day—May 22, 2008—the United Nation Special Rapporteur on the Right to Food delivered an alarming message.<sup>1</sup> The price of food was causing a crisis; it was driving one hundred million more people into extreme poverty. Today, 925 million people go hungry<sup>2</sup> due to the soaring prices of food commodities, which rose fifty two percent between 2007 and 2008. Additionally, fertilizer prices have nearly doubled over the past year.<sup>3</sup> Hunger is not rooted in the scarcity of food production but rather in the “lack of purchasing power for those in need.”<sup>4</sup> As Olivier De Schutter underscores, “The violation on a daily basis of the right to food for hundreds of millions of people worldwide has its roots in an outdated and inadequate production system, rather than an actual quantity of food available.”<sup>5</sup>

The financial crisis brings an even darker future for the fight against hunger. During the thirty-fourth session of the Food and Agriculture Organization’s (“FAO”) Committee on World Food Security, Director General Jacques Diouf warned against the temptation for states to move toward protectionism and away from commitments to international development aid.<sup>6</sup>

Classical economic theory predicts that trade liberalization is an effective tool to enhance development. This prediction rests on the idea that economic growth is not a zero-sum game (i.e., economic growth in one country does not result in economic shrinkage in another). Thus, classical economic theory suggests that the most efficient way to increase food production is to concentrate it in certain regions in order to maximize productivity.<sup>7</sup> However, this “trickle down paradigm” is flawed. In reality, the trickle down effect only takes place between countries at roughly equal stages of economic development.<sup>8</sup>

Most importantly, trade barriers distort the market: free trade has never been truly free.<sup>9</sup> Rich countries, through their control of International Financial Institutions (“IFI”), have pushed developing countries to liberalize trade;<sup>10</sup> however, rich countries have continued to subsidize their own agricultural commodities, thereby restricting developing countries from accessing their markets.<sup>11</sup> This has eroded food production in developing countries, and they have become dependant on rich countries for basic food commodities.<sup>12</sup> Lobbyists on the international trading scene have further exacerbated inequalities between poor and rich countries.<sup>13</sup>

The Special Rapporteur on the Right to Food has

underpinned the relevance of the right-based approach to food.<sup>14</sup> The added value of this approach is that it introduces the notion of responsibility for violations of the right to food.<sup>15</sup>

This article posits that the dependence of developed countries on food imports and aid from rich countries violates the right of individuals, not only the right to food but the emerging rights to food security and food sovereignty. This paper will subsequently demonstrate how IFIs both endorsed and actively participated in flawed and unfair trade liberalization that exacerbated hunger and poverty in developing countries. Finally, upholding the right-based approach, this paper will discuss the right to food and international law.

## II. Right to Food and Food Security

### A. *The Right to Food*

#### 1. *The Right to Food under International Human Rights Law*

The concept of the right to food is longstanding. Indeed, both Articles 55 and 56 of the U.N. Charter state that all Member States “take joint and separate action” in cooperation with the U.N. to achieve higher standards of living, economic progress, and development.<sup>16</sup> Additionally, the Universal Declaration on Human Rights states that “everyone has the right to a standard of living adequate for the health and well being of himself and of his family, including food”<sup>17</sup> This broad approach toward the right to food clearly puts it beyond a right to merely be free from hunger.<sup>18</sup>

The right was subsequently codified<sup>19</sup> in 1966 in the International Covenant on Economic, Social and Cultural Rights (“Covenant”).<sup>20</sup> Article 11 encompasses a right to adequate food<sup>21</sup> and a right to be free from hunger.<sup>22</sup> The Committee’s General Comment 12 affirms that a minimum core obligation is “to take the necessary action to mitigate and alleviate hunger as provided in the second paragraph.”<sup>23</sup> In other words, the right to be free from hunger constitutes a core obligation that states must respect “even in times of natural or other disaster.”<sup>24</sup>

The right to adequate food is a relative standard while the right to be free from hunger is absolute.<sup>25</sup> The latter is the only absolute right in the Covenant; in addition, it is the only right for which the Covenant twice mentions international cooperation to achieve it.<sup>26</sup> A debate exists on whether the central position of the right to food in the Covenant grants it certain characteristics that pertain to jus cogens norms that bind states to recognize this right, regardless of their ratification of the Covenant.<sup>27</sup> Article 11 suggests that the right to be free from hunger opens the path to its recognition as a customary international law.<sup>28</sup> Other regional human rights instruments include the right to food, such as the Inter-American Convention on Economic, Social and Cultural Rights<sup>29</sup> and the Arabic Charter.<sup>30</sup> Article 16 of the African Charter

on Human and People’s Rights has also been interpreted to include the right to food.<sup>31</sup>

### 2. *The Normative Content of the Right to Food*

The Committee on Economic Social and Cultural Rights in the General Comment 12 developed the normative content of Article 11,<sup>32</sup> which emphasizes that the right to food encompasses both food availability (in quantity and quality) and accessibility.<sup>33</sup> Accessibility includes physical accessibility and economic accessibility.<sup>34</sup> Article 11 obligates states “to take steps to achieve progressively the full realization of the right to adequate food.” A state is also under the imperative obligation to “ensure that everyone under its jurisdiction accesses the minimum essential food” to free himself/herself from hunger.<sup>35</sup> Member States must “respect” the right to access adequate food,<sup>36</sup> “protect” their populations from impingement of access to food, and “fulfill” their obligation in providing such an access when access to food is made impossible.<sup>37</sup>

### B. *A Right to Food Security*

#### 1. *What Is Food Security?*

Although “ensuring humanity’s freedom from hunger” has been a basic purpose of the U.N. Food and Agriculture Organization (“FAO”), the concept of food security as such has appeared in international discussions only since the 1970s, after a rash of famines and problems with international grain shortage.<sup>38</sup> Nonetheless, the concept has undergone tremendous development that culminated in the World Food Summit in Rome in 1996. In fact, the Rome Declaration on World Food Security defined food security, stating “[f]ood security exists when all people, at all times, have physical and economic access to sufficient, safe and nutritious food to meet their dietary needs and preferences for an active and healthy life.”<sup>39</sup> Thus, the pillars of food security are: availability, stability of supply, access and utilization.<sup>40</sup>

The Declaration of the High Level Conference of World Food Security in Rome on June 5, 2008 reiterated the drive toward achieving food security, stipulating that states “will strive to ensure that food, agricultural trade and overall trade policies are conducive to fostering food security for all.”<sup>41</sup> Note that these declarations have no normative value as such, and therefore, are only evidence of some aspiration on the part of states. In that respect, food security is more generally perceived as “a definition of a goal,” whereas the right to food “focuses on the obligations of states and on allowing people who are negatively affected to use legal remedies to get their right implemented.”<sup>42</sup> In other words, it does not create a right on its own.

## 2. Food Security and the Right to Food

The concept of food security may nonetheless draw normative enforceability from the right to food. Indeed, terms related to food security permeate throughout Article 11 of the International Covenant as well as General Comment 12. Article 11 sets out states' obligation to "improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge ... in such a way to achieve the most efficient development and utilization of natural resources."<sup>43</sup> It further provides that a state should take measures "to ensure an equitable distribution of world food supplies."<sup>44</sup> The General Comment 12 also emphasizes that accessibility to food should be secured "in ways that are sustainable"<sup>45</sup> and that sustainability is "intrinsically linked to the notion of adequate food or food security."<sup>46</sup> The Committee also stresses that "the obligation to fulfill means that 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."<sup>47</sup> Most significantly, the General Comment indicates that "the right to adequate food is realized when every man, woman and child, alone or in community with others, has physical and economic access at all times to adequate food or means for its procurement."<sup>48</sup> The notions of physical and economic access echo the definition of food security from the Rome Declaration on World Food Security.<sup>49</sup>

Therefore, the General Comment makes it clear that "the right to food is not simply the right to be fed, but the right to feed oneself."<sup>50</sup> Moreover, "the concept of the right to food encompasses all the elements of food security and grounds them in human rights, and the obligation and accountability of states to ensure this right."<sup>51</sup> Thus, disputing that food security has become a core element to achieve the right to food is difficult. Indeed, in his recommendations to India, the Special Rapporteur on the Right to Food specifically discussed how India should conduct food security programs in order to comply with its obligations.<sup>52</sup> States must undertake policies and programs to achieve food security as part of their obligation to "fulfill" the right to food of their populations, and more precisely, to facilitate this obligation.

## 3. The Right-Based Approach to Food Security

In 2004, the Committee on World Food Security adopted the Voluntary Guidelines, which took a right-based approach toward food security.<sup>53</sup> It emphasized that food security is "an outcome of the realization of existing rights,"<sup>54</sup> such as the right to transparent and accountable government, the right to participate in public affairs, freedom of expression, and most importantly, the right to food. This approach underscores the "universal, inter-dependant, indivisible and inter-related" nature of human rights, including civil and political, economic,

social, and cultural rights. This approach suggests that the right to food may also be a way of achieving food security, which implies that the concept of food security has two aspects. As a core element of the right to food, food security holds a normative value, while the Voluntary Guidelines describe it as an aspiration that may be achieved by enforcing the right to food. In either case, both concepts are interrelated.

## 4. Food Security and Food Sovereignty

IFIs imposed commercial liberalization on developing countries. The concept of food sovereignty emerged in reaction to the persistence of hunger that commercial liberalization created.<sup>55</sup> NGOs such as Via Campesina first outlined this process, and the Special Rapporteur on the Right to Food later endorsed their interpretation:

Food sovereignty is the right of the peoples to define their own food and agriculture; to protect and regulate domestic agriculture production and trade in order to achieve sustainable development objectives; to determine the extent to which they want to be self-reliant; [and] to restrict dumping of products in their markets"<sup>56</sup>

It defines "food sovereignty" as the primacy of the right of people and communities to food and food production above trade concerns.<sup>57</sup> This focus on the local community opposes the globalization process and modern model of development.<sup>58</sup> The 2007 Declaration of Nyéléni on Food Sovereignty also emphasizes "healthy and culturally appropriate food produced through ecologically sound and sustainable methods."<sup>59</sup>

The proponents of food sovereignty consider it a political aspiration for fighting against unfair trade liberalism.<sup>60</sup> However, the Nyéléni Declaration ("Declaration") promoted "a world where food sovereignty is considered a basic human right."<sup>61</sup> Although the Declaration did not create a new right as such, examining to what extent principles of food sovereignty pertain to the scope of the right to food is worthwhile. For example, would a right to food sovereignty be a right to not only to feed oneself, but also to choose how to feed oneself?

Food sovereignty does not focus on the amount of food people are able to access but rather how people access it.<sup>62</sup> It also promotes a form of access that respects human dignity.<sup>63</sup> In that respect, food sovereignty parallels the principle of "strengthening people's access to and utilization of resources and means to ensure their livelihood" from General Comment 12.

Instead of extending the scope of the right to food, food sovereignty provides an alternative way to achieve access to food, namely through participation of local communities. Additionally, the General Comment states that when implementing the right to food at the national level, "the formulation and implementation of national strategies for

the right to food requires full compliance with the principle of accountability, transparency, people's participation, decentralization.<sup>64</sup> It further indicates that "appropriate institutional mechanism should be devised to secure a representative process towards the formulation of a strategy, drawing on all available domestic expertise relevant to food and nutrition."<sup>65</sup> In other words, the Committee stresses the paramount importance of including local communities in decision-making. This approach agrees with the concept of food sovereignty and the idea that people should oversee their own food and agriculture.

The Special Rapporteur on the Right to Food has said that the time has come to look at "alternatives that may better ensure the right to food" and that "food sovereignty offers an alternative vision that puts food security first and treats trade as a means to an end, rather than as an end in itself."<sup>66</sup> He has further contended that if "trade rules threaten the right to food, then those trade rules should be challenged on the basis of human rights law" and "the right to food therefore provides an important legal basis for the fight for food sovereignty."<sup>67</sup> Consequently, food sovereignty is undeniably in line with the concept of food security, which the normative scope of the right to food contains.

Notwithstanding the many declarations and instrument underpinning the paramount place of food security in fighting hunger, the current world food crisis demonstrates that these good intentions have yielded few real improvements. The failure of states in fulfilling their obligation to alleviate hunger undeniably amounts to a violation of the right to food. The Special Rapporteur on the Right to Food underscored that "the profound internal contradictions within the international community" hinders the realization of the right to food.<sup>68</sup> On the one hand, United Nations agencies emphasize social justice and promote the right to food, while on the other hand, international institutions such as the World Trade Organization ("WTO"), the World Bank ("WB") and the International Monetary Fund ("IMF") refuse to recognize the mere existence of a human right to food and impose on the most vulnerable states principles of trade liberalization, "a model which in many cases produces greater inequalities."<sup>69</sup>

### III. Impact of IFIs on Food Security

#### A. *The Premises of the World Bank and IMF*

The Bretton Woods Conference in July 1944 established the World Bank and the IMF.<sup>70</sup> The original purpose of the World Bank was to establish the reconstruction of Europe after World War II and "to encourage the development of productive facilities and resources in less developed countries."<sup>71</sup> Meanwhile, the IMF's function was to "promote international monetary co-operation through permanent institutions."<sup>72</sup> Both institutions gained great importance after

the first oil shock of 1973 that forced developing countries to acquire foreign debts.<sup>73</sup> Since then, the World Bank and IMF have been criticized for their structural adjustment programs and policies that have negatively affected economic and social rights of developing countries, including the right to food.

#### B. *The Structural Adjustment Programs*

##### 1. *Background of the Structural Adjustment Programs*

The IMF and World Bank introduced the Structural Adjustment Lending Program in the 1980s.<sup>74</sup> Countries could borrow money if they agreed to undergo extensive economic reforms.<sup>75</sup> These reforms reflected the neoliberal agenda of the time: privatization, abolition of subsidies, devaluation of overvalued currencies, price deregulation, liberalization of investment markets, tax cuts, strict control of labor, reduction of public expenditures, and downsizing government.<sup>76</sup> Rhetorically, these conditions were focused on the need of developing countries to implement a "package of market-oriented structural adjustments that were said to mimic those in developed countries."<sup>77</sup> The World Bank justified these conditions as a path toward sustainable growth, even if these conditions might bring short-term microeconomic crisis.<sup>78</sup>

##### 2. *Failure of Structural Adjustment to Alleviate Poverty and Hunger*

Numerous studies have demonstrated that "conditionality" is not effective in alleviating poverty and hunger,<sup>79</sup> as it tends to improve the balance of payments but may have a negative impact on growth and income distribution.<sup>80</sup> The Special Rapporteur on the right to food reached the same conclusion after his two missions to Niger, where he found that the current crisis was the result of both unfavorable economic trends and structural shortcomings.<sup>81</sup> The Special Rapporteur emphasized that "the market-based paradigm of development largely imposed by the IMF and the World Bank has been harmful to food security for the most vulnerable."<sup>82</sup> He further elaborated that "privatization of Government support services ... had limited access to essential extension services, exacerbating food insecurity amongst small-scale farmers and pastoralists."<sup>83</sup> Thus, the IMF and World Bank's trend to impose "self-destructive interventionist policies" upon developing countries was "inherently opposed to policy interventions aimed at achieving social equity."<sup>84</sup>

Conditionality failed to take into account several factors that led to the impoverishment of developing countries. First, the unbalanced liberalization produced "balance of payments pressures widening trade deficits across much of the developing world."<sup>85</sup> Second, trade negotiations are inherently unequal, as developing countries do not have much bargaining power and accept the conditions without asking anything in

return.<sup>86</sup> Third, conditionality created a “one system, two rules” approach whereby, unlike developing countries, rich countries were not keen on liberalizing their markets and did not have to do so.<sup>87</sup> Consequently, the industrialized world’s trade barriers reduced the income of developing countries by about twice as much as they received in aid.<sup>88</sup> Finally, there was a distortion between the poverty reduction programs of the IMF and World Bank, and the obvious disregard of the institutions for consequences of such programs on poor people’s lives.<sup>89</sup> For instance, the reforms that the IMF and World Bank imposed are “very often poorly planned and sequenced, without attention to insuring that inputs remain accessible and affordable to farmers.”<sup>90</sup> Consequently, the structural adjustment programs had crippling effects on many poor countries, making them increasingly dependant on rich countries,<sup>91</sup> which ultimately led to greater impoverishment and marginalization of local communities.<sup>92</sup>

### *C. Toward a New Path?*

In November 1999, in response to growing criticism of the Structural Adjustment Program of the IMF and World Bank, the IMF closed down the Enhanced Structural Adjustment Facility and replaced it with the Poverty Reduction Growth Facility (PRGF), with the objective of making poverty reduction a cornerstone of its lending.<sup>93</sup> In the same vein, in 2007, the World Bank announced plans to reduce interest rates on its loans and relabeled its structural adjustment loans as “anti-poverty loans” and “development policy support” loans.<sup>94</sup> But those changes have appeared to be largely cosmetic.<sup>95</sup> In reality a report by the European Network on Debt and Development stated that unlike the IMF’s assertion that the Washington Consensus no longer influenced its conditionality, the Fund continues to make heavy use of highly sensitive conditions, such as privatization and trade liberalization.<sup>96</sup> The charge lies in the fact that these conditions are now non-binding, but usually perceived as required by loan recipients.<sup>97</sup> Similarly, a United Nations Development Program (UNPD) review concluded that the macroeconomic prescriptions from the Poverty Reduction Strategy Papers<sup>98</sup> were largely similar to earlier stabilization policies emphasizing liberalization.<sup>99</sup> Despite the weakening influence of both institutions, due to their loss of legitimacy after the Argentine crisis, many small indebted countries in Africa are still heavily dependant on IMF and World Bank loans and subject to their strictures.<sup>100</sup> The flaws of IMF and World Bank policies once again appeared when Malawi reacted to a crisis in its domestic corn crop and impending famine by reinstating fertilizer subsidies that the World Bank had pressed to slash. As a result, now Malawi is not only feeding its own population but also exporting hundred-thousands of tons of corn to Zimbabwe.<sup>101</sup> In light of the constant and continuous crippling effect of IMF and World Bank policies on impoverished countries, a growing

concern has emerged within civil society as well as the United Nations for rendering these institutions accountable for their policies.<sup>102</sup>

## **IV. International Responsibilities and Accountability of the IMF and the World Bank**

### *A. Responsibilities under International Law*

The Secretary General of the U.N. has stated, “[t]here is no question today that international organizations such as the World Bank and the IMF have legal personality under international law.”<sup>103</sup> The corollary of the international personality is the ability to engage in international wrongful acts.<sup>104</sup> On this sole basis, the Special Rapporteur on the Right to Food asserted that the IMF and World Bank were under the obligation to respect, protect and support the right to food.<sup>105</sup> Alternatively, the IMF and World Bank have denied existence of such obligations, arguing that their mandate and Articles of Agreement with the U.N. exempted them from enforcing human rights. They assert that their limited functional international personality prevents them from being responsible for matters that fall outside their mandate.<sup>106</sup>

In response to these arguments, commentators have argued that, although Bretton Woods created the IMF and World Bank independently from the U.N., since they are now U.N. agencies, the objectives of the U.N. Charter and its human rights obligations should bind them.<sup>107</sup> Additionally, a literal interpretation of the World Bank Articles that excludes “political concerns” is inconsistent with international law as “the Bank does not operate in a legal vacuum” and its Articles are not above international law.<sup>108</sup> This contention is in line with the International Court of Justice’s position regarding interpretation of international treaties and agreements.<sup>109</sup>

Moreover, the fact that activities of the IMF and World Bank directly and indirectly implicate a wide range of human rights issues suggests that their duties should address such issues.<sup>110</sup> In fact, nothing in the Articles of these two institutions prevents them from taking human rights issues into consideration.<sup>111</sup> Therefore, under norms of international law, there is no excuse for these institutions to resist integration of human rights considerations into their activities.

### *B. International Responsibility of the IMF and World Bank with Respect to the Right to Food*

The fact that the Bretton Woods institutions must respect human rights under international law does not ipso facto mean that they may be held responsible for violations of the right to food. The International Covenant on Economic, Social and Cultural Rights (“Covenant”) binds neither the IMF nor the World Bank, given that the Covenant applies only to states.<sup>112</sup> Finally, Article 24 of the Covenant states, “nothing

in the present Covenant shall be interpreted as impairing the provisions of the constitutions of the specialized agencies which define the respective responsibilities of the specialized agencies in regard to the matters dealt with in the present Covenant,” which may be interpreted to exclude applicability of the Covenant to the IMF and World Bank.<sup>113</sup> Admittedly, the IMF and World Bank may be nonetheless bound by the right to food via the U.N. Charter, but these obligations are arguably too vague to create any real binding obligations.<sup>114</sup> Overall, most commentators agree that the Covenant is not directly applicable to the IMF and World Bank, unless it reflects customary international law.<sup>115</sup>

### *1. Direct Effect of the Right to Food: Custom*

The right to food will be directly binding on the IMF and World Bank if it pertains to customary international law. The Universal Declaration of Human Rights in its entirety has become customary international law, and its reference to the right to food gives this right a customary character.<sup>116</sup> Authors like Kearns even went as far as considering the right to food a peremptory norm of *jus cogens* because of “the multiple international documents that explicitly and implicitly grant the right to food and accepting this right as a norm of international law.”<sup>117</sup> However, according to Smita Narula, “the conclusion that the right to food is a norm of customary international law solely by virtue of its inclusion in the UDHR is misguided” as it “essentially ignores historical developments and contemporary articulations of customary human rights law.”<sup>118</sup> Instead, she argues that there are sufficient state practice and *opinio juris* today to demonstrate existence of the right to food as a customary international law.<sup>119</sup> At the very least, the right to be free from hunger has undeniably acquired the status of customary international law,<sup>120</sup> since in addition to being present in many international instruments, the Covenant clearly states that the right to be free from hunger is absolute and fundamental.<sup>121</sup>

Furthermore, the Millennium Goals support the fundamental and absolute nature of the right to food.<sup>122</sup> The Goals aim to halve world poverty and hunger by 2015. Consequently, the IMF and World Bank have the direct “minimum obligation to refrain from promoting policies or projects that negatively impact the right to food” (obligation to respect) as well as having positive obligations to “protect” this right by ensuring that partners do not violate the right to food in implementation of common projects and to support governments in the “fulfillment” of the right to food.<sup>123</sup> By the same token, the Committee on Economic Social and Cultural Rights started infusing the idea that the IMF and World Bank should directly enhance the respect of economic, social and cultural rights, which include the right to food.<sup>124</sup>

### *2. Indirect Effect: Accountability via State Members*

Most of the member states to the IMF and World Bank are parties to the Covenant, and eschewing their international human rights obligation due to IMF and World Bank programs would be contradictory. The Tilburg Guiding Principles clearly indicate that because “the World Bank and IMF are governed by their members states, when representatives determine the policies of the two IFIs, they are bound by their state’s international obligations.”<sup>125</sup> In other words, when the IMF or World Bank disregards or violates the human rights of its member states, it reflects the failure of these members to abide by their own human rights obligations.<sup>126</sup>

The European Court of Human Rights has repeatedly held that the human rights responsibilities of member states continue even after the transfer of competences to international organizations.<sup>127</sup> Most importantly, “under the equivalent protection doctrine, state responsibility for state acts within IFI organs would require them to ensure that decisions . . . offer protection that is comparable to the human rights standards by which a given member state is bound.”<sup>128</sup> Thus, a state may be held responsible for acts of international organizations to which it is a party, notwithstanding the fact that the violations are not occurring within its jurisdiction. This analysis is in line with the concept of extraterritorial obligations as developed by the Committee on Economic, Social and Cultural Rights.

General Comment 12 indicates clearly that states must fulfill their obligations with respect to the right to food in the domestic sphere, as well as when “entering into agreements with other States or with International Organizations.”<sup>129</sup> Additionally, the Committee emphasizes that in order to comply with their obligations, states “should refrain at all times from food embargoes or similar measures which endanger conditions for food production and access to food in other countries.” This is another indicia that states have human rights obligations beyond their borders and population. The former Rapporteur on the Right to Food, Jean Ziegler,<sup>130</sup> expanded the notion of extraterritorial obligations, emphasizing that human rights obligations cannot simply stop at territorial borders.<sup>131</sup>

The Covenant does not contain any territorial or jurisdictional limitations.<sup>132</sup> The notion of extraterritorial obligations may be interpreted in either a restrictive or a broad way.<sup>133</sup> According to the restrictive interpretation, a state must respect its human rights obligations. The Committee in its General Comment 31 (which indicates that “a State Party must respect and ensure the rights laid down in the Covenant to anyone within the power or effective control of that State Party, even if not situated within the territory of the State Party”) seems to support this interpretation.<sup>134</sup>

In several instances, the European Court on Human Rights found that the determinative criteria to establishing extra-territorial obligations were the “effective control.”<sup>135</sup> However,

such an interpretation extensively limits the extraterritorial obligations, and such situations of “effective control” usually arise during armed conflicts.<sup>136</sup> Consequently, such an interpretation is not appropriate in cases of violation of the right to food, since “the majority of extraterritorial violations of the right to food under globalization are committed outside these limited scenarios.”<sup>137</sup>

Conversely, Jean Ziegler suggests that extraterritorial obligations may be premised on the obligation of international cooperation that Article 2(1) and Article 11 of the Covenant enshrine.<sup>138</sup> The General Comment 12 demonstrates that the obligation of international cooperation includes state obligations to “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>139</sup> Therefore, the general obligation to cooperate broadens the territorial applicability of the right to food.

The corollary of finding member states accountable for IMF and/or World Bank policies that violate human rights obligations of member states indicates that these two organizations should not undermine a state’s duty to fulfill its international obligations nor facilitate or assist violations of a state’s obligations.<sup>140</sup> In that respect, the draft articles on International Responsibility of International Organization are relevant and emphasize that international organizations may be held directly accountable for directing or controlling,<sup>141</sup> coercing<sup>142</sup> and adopting a decision binding on their member states that will result in an internationally wrongful acts.<sup>143</sup> Thus, the IMF and World Bank must ensure that their “policies and operations account for and respect the obligations of [their] Members under ratified human rights conventions, regional as well as universal, and other sources of law binding on them.”<sup>144</sup>

## V. Conclusion

Economic, social, and cultural rights have benefited from great normative developments and are now encompassing well-defined rights that should be used to tackle the unprecedented food crisis. In that regard, the right to food—which comprises an obligation to food security, and to a certain extent, food sovereignty—has become a tool to hold the responsible to account. However, IFIs still operate as if they are in a vacuum and promote policies that cause impoverishment of poor communities. But the obligation to halt hunger has become more than a mere aspiration; it is now part of customary international law and is therefore binding on the IMF and World Bank. Furthermore, these institutions are inheriting from their states parties extraterritorial obligations to “respect,” “protect,” and “fulfill” the right to food and must act accordingly.

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1 Statement of the Special Rapporteur on the Right to Food at the Special Session of the Human Rights Council, May 22, 2008, available at <http://www.unhchr.ch/hurricane/hurricane.nsf/view01/2904ED0B36CAA59FC1257451002D7597?opendocument>.

2 *Id.*

3 Press Release, FAO, *Soaring process add 75 million people to global hunger rolls*, Sept. 18, 2008, available at <http://www.fao.org/newsroom/en/news/2008/1000923/index.html>.

4 Press Release, Olivier De Schutter, *New U.N. Special Rapporteur on Right to Food Calls for Special Session of Human Rights Council*, New York and Geneva, May 2, 2008 (emphasizing that the world currently produces enough food and that famines are not caused by a drop of food availability but rather by a sudden shift in the entitlement set of certain part of the population who cannot afford food), available at <http://www.unhchr.ch/hurricane/hurricane.nsf/view01/BC54DEAD8AED3B95C125743D0051778A?opendocument>.

5 *See supra* note 1.

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