



An Agricultural Law Research Article

A Recipe for Change: Towards an Integrated Approach to Food under International Law

by

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Originally published in PACE INTERNATIONAL LAW REVIEW
15 PACE INT'L L. REV. 1 (2003)

A RECIPE FOR CHANGE: TOWARDS AN INTEGRATED APPROACH TO FOOD UNDER INTERNATIONAL LAW

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Human endeavor and achievement depends on the fundamental ability to satisfy basic human needs: food, water, shelter and security. Without satisfaction of basic needs, self-fulfillment, political aspirations, and legal rights and responsibilities are empty concepts. Given the clear objective of satisfying basic human rights and human needs in the *United Nations Charter*,¹ one would imagine that the development of international law would reflect a primary focus on the issue of food. Yet this is clearly not the case. Only one international treaty² exists which has food as its sole subject matter. Where other treaties touch upon the issue, their objectives rarely include specific reference to this most fundamental human need. Even among the many non-legal international initiatives that do consider the issue more directly, there are few, if any, common principles relating to the treatment of food by the international community.

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¹ U.N. Charter art. 1, para. 3, 55-56. See *infra* text accompanying note 17.

² The Food Aid Convention, *opened for signature* Mar. 6, 1980, 32 U.S.T. 5751. See discussion *infra* part II.

This paper suggests an integrated approach³ to the treatment of food under international law. In Part I, a brief overview of salient facts concerning the world food situation is presented. Part II examines, in some detail, the wide array of international food obligations arising from three separate spheres of international law: international human rights, international humanitarian assistance and international trade. Part III analyzes the theoretical bases of each separate sphere of food law. The final Part of the paper concludes that the segregated approach must be rationalized into an integrated approach to food under international law. Part IV, therefore, explores the common ground among the various spheres of food law and suggests certain principles that must be at the heart of an integrated approach to international food issues. This integrated approach must be embraced if the international community is to seriously attempt to resolve the problems of global hunger thereby avoiding the devastating consequences associated with a failure to so act.

I. FOOD⁴ ON THE WORLD'S TABLE

The causes, effects and dimensions of global hunger have long been debated and documented elsewhere.⁵ In recent times,

³ See discussion *infra* part IV.

⁴ Besides the obvious physiological function of food, food has specific symbolic, cultural and economic roles. For an interesting discussion of these roles, see Raymond F. Hopkins, *Food Security, Policy Options and the Evolution of State Responsibility*, in *FOOD, THE STATE, AND INTERNATIONAL POLITICAL ECONOMY* 3, 6-11 (F. LaMond Tullis and W. Ladd Hollist eds., 1986).

⁵ Causes frequently cited for world hunger include: (a) domestic concerns - poverty, poor production and distribution infrastructure, civil strife, corruption, discrimination, overpopulation and an absence of political will to acknowledge and actively pursue the fulfillment of basic human needs; (b) international concerns - poor and unfair distribution systems, international debt, lack of political will by developed states to change trade and aid policies, and domination of food trade by transnational corporations; and (c) environmental concerns such as soil degradation and adverse weather conditions. See, e.g., JOHN WARNOCK, *THE POLITICS OF HUNGER* (1987); DAVID GRIGG, *THE WORLD FOOD PROBLEM 1950-1980* (1985); FRANCES MOORE LAPPE AND JOSEPH COLLINS, *WORLD HUNGER TEN MYTHS* (1979); AMARTYA SEN, *POVERTY AND FAMINES: AN ESSAY ON ENTITLEMENT AND DEPRIVATION* (1981); SUSAN GEORGE, *HOW THE OTHER HALF DIES: THE REAL REASONS FOR WORLD HUNGER* (1977). For a specific account of food problems arising because of transnational concentrations in cereal distribution, see RICHARD GILMORE, *A POOR HARVEST: THE CLASH OF POLICIES AND INTERESTS IN THE GRAIN TRADE* (1982); DAN MORGAN, *MERCHANTS OF GRAIN* (1979).

the international community has become more acutely aware of the problem due to widespread international media attention during severe food crises. In the past two decades, the world has been gripped by at least five food crises. The first was the world food crisis of 1973-74, when international food reserves dropped to alarmingly low levels due, in large part, to crop failures in the Soviet Union. The second was the mid-1980's Ethiopian famines. Finally, in the past three years, three food crises arising from armed conflicts in the Persian Gulf, Somalia, and the republics of the former Yugoslavia have occurred.

Despite natural or man-made disaster, enough food is produced worldwide to adequately nourish every human on the planet. Moreover, the world's peoples continue to improve their capacity to produce food.⁶ Both developed and developing countries⁷ have significantly increased food production over the past decade. In the developed world, increases between 1980 and 1990 production were in the order of more than 10%, while increases in the developing world were more dramatic, reaching almost 40% for the same period.⁸ Food production at 1990 levels, if equally distributed to the world population, would provide every individual on earth with a daily caloric intake of over 2700,⁹ a level well in excess of the 2000 calories recommended by world health officials as the basic minimum level of nutrition.¹⁰

⁶ Unless otherwise noted, statistics in this paper are for the 1990 calendar year and from the FOOD & AGRICULTURE ORGANIZATION, 1990 PRODUCTION YEAR BOOK 44 (1991).

⁷ *Id.* The definition and classifications of developing and developed countries are those of the Food and Agriculture Organization of the United Nations. Developed countries include approximately 40 countries in North America, Europe and the Oceanic, as well as the states of the former U.S.S.R., Israel, Japan and South Africa. Developing countries include all other states of the world in Africa, Latin America and the Near & Far East and total over 150 states in all. *Id.* at xvii-xviii.

⁸ *Id.* This impressive increase is, however, somewhat deceiving as much of it was achieved in the Far East. Increases for different regions of the developing world are as follows: Far East 47%, Africa 29%, Near East 28%, Latin America 25%, Others 20%. *Id.* at 40.

⁹ *Id.* at 238.

¹⁰ *International Conference on Nutrition: Development of World Health and Nutrition*, 1992: *Hearings on S. 102-21 Before the Select Committee on Hunger House of Representatives*, 102d Cong., 2nd Sess. 4 (1992). There has been much discussion and disagreement as to the appropriate measure of the basic minimum level of nutrition necessary for human existence. Besides the measure of daily ca-

Great inequities exist, however, when one examines food production, distribution and consumption patterns throughout the world. While developing countries produce over 50% of the world's food, the same countries consume only 40% of it.¹¹ It is shocking that there exists a net flow of food from South to North when developing countries make up approximately 75% of the world population. As a result, the average daily caloric intake per capita in developing countries remains at 2474, while it has risen to 3415 in developed countries.¹² In fact, eight countries, Burundi, Comoros, Mozambique, Rwanda, Sierra Leone, Somalia, Bolivia and Bangladesh¹³ do not, even on a national average, meet the basic 2000 daily calorie standard.

The hungry are not, however, fully represented by national statistics. Increasing numbers of the world's population, even in developed countries, do not have access to food sufficient to meet their basic needs. While estimates vary widely,¹⁴ probably a billion people do not get enough to eat on a daily basis.

II. SEPARATE SPHERES - FOOD RULES IN INTERNATIONAL LAW

One might assume, when faced with a problem of such magnitude, that the international community would respond with initiatives to combat and alleviate the hardships caused by insufficient access to food among so many of the world's inhabitants. One response might be a legal one because:

[L]aw is relevant to the problem of hunger and securing food for hungry people. . . . [I]t is *through law* that we structure both the various mechanisms to respond to hunger in a crisis and the means to assist people with pursuit of a development policy aimed at achieving food self-sufficiency.¹⁵

loric intake, other measures such as a function of basic basal metabolic rate have also been used as basic nutritional standards. See WARNOCK, *supra* note 5, at 5-9.

¹¹ FOOD & AGRICULTURE ORGANIZATION, *supra* note 5, at 64; see also HUMAN DEVELOPMENT REPORT, U. N. DEVELOPMENT PROGRAMME, — Sess., Agenda Item —, at 35, U.N. Doc. — (1992).

¹² FOOD & AGRICULTURE ORGANIZATION, *supra* note 6, at 238.

¹³ *Id.* at 237.

¹⁴ There is a large discrepancy in estimates of the total number of the world's hungry. For a discussion of the differences in estimates. See Philip Alston, *International Law and the Human Right to Food*, in THE RIGHT TO FOOD 9, 10 (Philip Alston and Katarina Tomasevski eds., 1984).

¹⁵ Goler T. Butcher, *The Relationship of Law to the Hunger Problem*, 30 How. L.J. 193 (1987).

Of course, the international legal system faces formidable obstacles at times. These include a lack of political consensus among states, political opposition by powerful states to initiatives perceived not to be in their interests, and the shields of state sovereignty and non-intervention in national affairs. Still, in the face of such obstacles, the concern to satisfy basic human needs was, and remains today, at the heart of our post-World War II international legal system.¹⁶

The United Nations Charter, the "constitution" for the new international system, contains the groundwork for all current international food rules. Article 55 reads:

With a view to the creation of conditions of stability and well-being which are necessary for the peaceful and friendly relations among nations . . . the United Nations shall promote:

- a. higher standards of living, full employment, and conditions of economic and social progress and development;
- b. solutions of international economic, social, health, and related problems; . . . and
- c. universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion."¹⁷

While food is never explicitly mentioned in any of paragraphs (a), (b) or (c) of Article 55, each paragraph can be interpreted to treat the issue of food. "Higher standards of living" assumes that subsistence or sub-subsistence standards of living are to be eliminated so that the daily tasks of survival permit time for other development. Implicit in "solutions to international health problems" is the need to find a solution to starvation, the

¹⁶ U.S. President Roosevelt, as early as 1941 in his "Four Freedoms" speech, outlined a new international system based on four freedoms: freedom from want, freedom from fear, freedom of worship and freedom of speech and expression. Franklin D. Roosevelt, *The Annual Message to Congress January 6, 1941*, in 9 PUBLIC PAPERS AND ADDRESS OF FRANKLIN D. ROOSEVELT, at 672 (S. Rosenman ed., 1941).

¹⁷ U.N. Charter art. 55. Related to Article 55, is Article 1 paragraph 3, which states that one of the purposes of the United Nations is "[t]o achieve international cooperation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion . . ." U.N. Charter art. 1 para. 3. Article 56 states that "[a]ll Members pledge themselves to take joint and separate action in cooperation with the Organization for the achievement of the purposes set forth in Article 55." U.N. Charter art. 56.

most basic and ancient of human problems. As well, "universal respect for human rights," as we shall see in the next section, must include rights relating to securing the basic physical necessities of life.

While lacking specificity, Article 55, along with Articles 1(3) and 56, have provided the impetus for the development of international legal initiatives affecting food. These initiatives, however, have wandered off in three very separate directions: human rights, humanitarian assistance and international trade. The law which has been generated by each will be examined below.

A. *Human Rights Initiatives*¹⁸

Voluminous literature has grown up around the concept of the "right to food"¹⁹ in international law. Commentators, such as Alston,²⁰ maintain that the basis of this right is clearly discernable from several international instruments. Others contend that the right to food, as a legal construct, does not exist, nor is it likely that one can be established.²¹ The majority of commentators, however, appear to agree that "under international law there is currently found, minimally, a treaty right conjoined with a customary right to be free from hunger."²² The

¹⁸ Only instruments that have the right to food as their primary focus will be examined in this section. As a result, other instruments which might refer implicitly to the right to food will not be examined. For a very complete list of such documents see, *THE RIGHT TO FOOD: GUIDE THROUGH APPLICABLE INTERNATIONAL LAW* (Katarina Tomasevski ed., 1987).

¹⁹ See generally, *FOOD AS A HUMAN RIGHT* (Asbjorn Eide et al. eds., 1984); *THE RIGHT TO FOOD* (Philip Alston & Katarina Tomasevski eds., 1984); Symposium, *International Law and World Hunger*, 70 *IOWA L. REV.* 1183 (1985); Symposium, *World Food Day Food and Law Conference: The Legal Faces of the Hunger Problem*, 30 *HOW. L.J.* 193 (1987); Symposium, *The Global Food Regime in the 1990s: Efficiency, Stability and Equity*, 1 *TRANSNAT'L L. & CONTEMP. PROBS.* 313 (1991). For an important study by Asbjorn Eide see U.N. CENTRE FOR HUMAN RIGHTS, *RIGHT TO ADEQUATE FOOD AS A HUMAN*, U.N. Sales No. E.89.XIV.2 (1989)[hereinafter UNCHR].

²⁰ Alston, *supra* note 14, at 9.

²¹ Robert L. Bard, *The Right to Food*, 70 *IOWA L. REV.* 1279, 1289 (1987); Meinhard Hilf, *The Right to Food in National and International Law*, in *REFORMING THE INTERNATIONAL ECONOMIC ORDER* 125 (Thomas O. Tübingen & Ernst-Ulrich Petersmann eds., (1987)).

²² Henry J. Richardson, *The International Human Rights Response*, 30 *HOW. L.J.* 233, 248 (1987).

following international documents appear to aptly support this view.

1. *Universal Declaration of Human Rights*²³

The first instrument to recognize the right to food was the *Universal Declaration of Human Rights* adopted by the United Nations General Assembly in 1948. Its principal function was to enumerate and explain the human rights content of the *United Nations Charter* contained in Article 55.²⁴

Article 25(1) of the Declaration directly refers to food stating, "everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services" Alston argues that the wording of Article 25(1), though referring to a range of other economic and social rights, goes beyond a right only to be free from hunger such that "the amount of food to which every human being has a right is that which is adequate for his health and well-being and not merely for his bare survival."²⁵

2. *Covenant on Economic, Social and Cultural Rights*

To give direct legal effect to the provisions of the *Universal Declaration*, two treaties were concluded, the *International Covenant on Economic, Social and Cultural Rights* (CESCR)²⁶ and the *International Covenant on Civil and Political Rights* (CCPR).²⁷ Article 11 of the CESCR establishes states' obliga-

²³ *Universal Declaration of Human Rights*, G.A. Res. 217(III), U.N. Doc. A/RES/217, at 71 (1948).

²⁴ Alston, *supra* note 14, at 21.

²⁵ Alston, *supra* note 14, at 22.

²⁶ *International Covenant on Economic, Social and Cultural Rights*, G.A. Res. 2200A, U.N. GAOR, 21st Sess., Annex, Supp. No. 16 at 49, 1496th plen. mtg., U.N. Doc. A/6316 (1966). The CESCR was adopted by the United Nations General Assembly in 1966 and signed by member states that same year. It came into force in 1976. The CESCR has been in force in Canada since 19 August 1976, but has not yet been ratified in the United States. As of July 31, 1992, 115 states had ratified the CESCR.

²⁷ *International Covenant on Economic, Social and Cultural Rights*, G.A. Res. 2200A, U.N. GAOR, 21st Sess., Annex, Supp. No. 16 at 52, 1496th plen. mtg., U.N. Doc. A/6316 (1966). The CCPR was adopted by the United Nations General Assembly in 1966 and signed by member states that same year. It came into force in 1976. The CCPR has been in force in Canada since 1976 and since 1992 in the United States. As of July 31, 1992, 112 states had ratified the CCPR. Although the

tion to acknowledge the universal right to food and to conduct their affairs accordingly:

- (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 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 programs, 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. (emphasis added).*²⁸

From the wording used in Article 25(1) of the Declaration and that used in Article 11 of the CESCPR, it has been argued that the right to food is actually a multi-levelled concept. Alston calls the right to food a "shorthand expression encompassing two separate norms in Article 11 . . . the right to adequate food [in Article 11(1) and] . . . 'the right of everyone to be free from hunger' [in Article 11(2)]."²⁹ Tomasevski makes the distinction that the right to food contains an absolute and relative standard. The absolute one, and the one encompassed by international minimum standards, is the fundamental right of eve-

CCPR contains two articles that have been used to argue the existence of a right to food (Article 1 - right to self-determination and Article 6 - right to life), they will not be examined in this paper. For a discussion of these articles in the right to food context, see Alston, *supra* note 14, at 22-25; Hilf, *supra* note 21, at 142-3; and UNCHR, *supra* note 19, at 19.

²⁸ *International Covenant on Economic, Social and Cultural Rights*, *supra* note 26.

²⁹ Alston, *supra* note 14, at 32.

ryone to be free from hunger. The relative one, which is more difficult to spell out as an international minimum standard, is the right to adequate food. Ultimately however, both standards form one component of the right of everyone to an adequate standard of living.³⁰

Still, others have concluded that the right to food should be structured in terms of different levels of obligation.

Freedom from hunger was suggested as the minimum norm, which should immediately be realized for everybody; the right to food, which should take account of both the quantity and quality of food, would be the intermediary norm; and the right to adequate food, as the full norm, would include the requirement of a culturally satisfactory food pattern, while affirming the full enjoyment of human rights in its proclamation and realization.³¹

Whatever the characterization of the right to food, it seems beyond question that the right to food, at least in its most basic form, is "the fundamental right of everyone to be free from hunger."³² This right is a part of conventional law by virtue of Article 11 of the CESCR.

Whether the right is part of customary law is more contentious. While U.N.G.A. resolutions are not in themselves legally binding, it can be argued that the Declaration is an authoritative interpretation of the U.N. Charter Articles 1(3), 55 and 56 and is indicative of state practice among UN member states. This position is buttressed by the recurring reference by states to the Declaration as if it had binding legal effect. On this basis, at least the minimum content of the right to food - freedom from hunger - may now be part of customary international law.

However, if existence and content of the right to food seem contentious, its implementation and monitoring are even more so. As Alston puts it:

³⁰ Tomasevski, *supra* note 18, at XVIII.

³¹ Rene Guldenmund, *SIM Right too [sic] Food Conference: A Synthesis of the Discussion*, in *THE RIGHT TO FOOD* 215, 218 (Philip Alston and Katarina Tomasevski eds. 1984).

³² The primary importance of the right to food is underscored by the fact that the drafters of both the CESCR and the CCPR have qualified only one right in either treaty as "fundamental". That right is the one to be free from hunger set forth in Art. 11(2) of the CESCR. *Supra* note 26, at 50.

It is paradoxical, but hardly surprising, that the right to food has been endorsed more often and with greater unanimity and urgency than most other human rights, while at the same time being violated more comprehensively and systematically than probably any other right.³³

Numerous schemes of implementation have been suggested. The model which has come to dominate the literature suggests that states must, at the state level, observe a duty to respect, to protect and to fulfil. The duty to respect encompasses the responsibility on the state not to interfere with individuals or groups taking care of their own needs. The obligation to protect requires the state to counteract or prevent activities or processes which negatively affect food security. The duty to fulfil requires states to assist or provide people with food.³⁴

Monitoring the implementation of the right to food has been difficult given the debate over the existence and content of the right and its mode of implementation. At the international level, some commentators have put the job at the feet of the FAO.³⁵ However, since the new Committee on Economic, Social and Cultural Rights has been established,³⁶ monitoring will be done mostly by this body through the examination and comment upon mandatory reports provided to the Committee by States Parties to the CESC. ³⁷ Still, as Eide points out, monitoring is difficult due to (a) the vagueness of the obligations flowing from economic and cultural rights; (b) unsatisfactory guidance to states parties on reporting methods; (c) non-involvement of non-governmental organizations in monitoring economic, social and cultural rights; (d) inadequate co-operation

³³ Alston, *supra* note, 14 at 9.

³⁴ UNCHR, *supra*, note 18 at 29, 34-7. See also, Philip Alston and Asbjorn Eide, *Advancing the Right to Food in International Law* in Eide, Eide & Goonatilake *et al.*, *supra* note 19, at 249.

³⁵ Julianne Cartwright Traylor, *FAO and the Right to Food* in Eide, Eide & Goonatilake *et al.*, *supra* note 19, at 187-90.

³⁶ Prior to the formation of the Committee on Economic, Social and Cultural Rights, a Working Group of Government Experts on the Implementation of the CESC of ECOSOC (the United Nations Economic and Social Council) was charged with a similar function. See Gert Westerveen, *Towards a System for Supervising States' Compliance with the Right to Food* in Alston and Tomasevski, *supra* note 13, at 119. See also Philip Alston, *The Committee on Economic, Social and Cultural Rights* in Philip Alston, ed., *THE UNITED NATIONS AND HUMAN RIGHTS* 473 (1992).

³⁷ UNCHR, *supra* note 19, at 51-3.

with the specialized agencies; and (e) the limited time and capacity available to the Committee.³⁸

3. *Other Peacetime Initiatives*

Other peacetime initiatives also point to evolving norms supporting the right to food in international law. Conventional legal obligations to provide food to refugees, at least to the same level as that provided to nationals, can be gleaned from the *Convention Relating to the Status of Refugees*.³⁹ Customary norms invoking the right to food can also be found in the United Nations *Declaration on the Rights of the Child*⁴⁰ or in documents drawn up in response to world food problems such as the *Universal Declaration on the Eradication of Hunger and Malnutrition*,⁴¹ *Food and Agricultural Problems*⁴² and the *World Food Compact*.⁴³

³⁸ *Id.* at 53-4.

³⁹ Signed at Geneva on July 28, 1951, 189 U.N.T.S. 150. Art. 23 states that "[t]he Contracting States shall accord to refugees lawfully staying in their territory the same treatment with respect to public relief and assistance as is accorded to their nationals." *Id.* at 168.

⁴⁰ G.A. Res. 1386, U.N. GAOR, 14th Sess., (1959). Principle 4 states "[t]he child shall have the right to adequate nutrition . . ." and Principle 8 says "[t]he child shall in all circumstances be among the first to receive protection and relief." *Id.*

⁴¹ Declaration of the World Food Conference, 16th plenary meeting (16 November 1974). Paragraph 1 of which states "Every man, woman and child has the inalienable right to be free from hunger and malnutrition in order to develop fully and maintain their physical and mental faculties." *Id.* para. 1. Paragraph 4 states: "It is the responsibility of each State concerned, in accordance with its sovereign judgement and internal legislation, to remove the obstacles to food production and to provide proper incentives to agricultural producers." *Id.* para. 4.

⁴² G.A. Res. 166, U.N. GAOR, 39th Sess., (1984). "The General Assembly . . . (6) *Reaffirms* that the right to food is a universal human right which should be guaranteed to all people, and, in that context, believes in the general principle that food should not be used as an instrument of political pressure . . ." *Id.* at 2.

⁴³ *Report of the Conference of FAO, World Food Security Compact*, Food and Agriculture Organization, 23d Sess., (1985). Part II of the General Principles states:

- (1) World food security is a common responsibility of mankind. The ultimate objective is to ensure that all people at all times are in a position to produce or procure the basic food they need.
- (2) Achievement of the 'fundamental right of everyone to be free from hunger' depends ultimately on the abolition of poverty. But the hungry cannot wait. The search for world food security must include immediate steps to help the distressed, as well as longer-term measures to bring about economic and social progress. No one can remain indifferent to the fate of those whose daily food is insecure.
- (3) The achievement of food security should be an integral objective of economic

B. *Humanitarian Assistance Initiatives During Armed Conflict*

The imperative to provide humanitarian assistance in the form of food aid to the poor and the disaster-stricken is a deep-seated value in most religious and secular traditions.⁴⁴ However, over the past 50 years, obligations to observe laws of humanitarian assistance have been primarily limited to situations involving armed conflict.

Under conventional international law, it is well established that the rules of warfare prohibit states from interfering with civilian food supplies or with humanitarian assistance supplied during international or, in some cases, internal conflicts.⁴⁵ The food supply of prisoners of war is also protected under international law.

1. *Geneva Conventions and Other Conventional Law*

The *Geneva Conventions* and accompanying *Protocols* explicitly outline instances where the systematic obstruction or denial of food supplies to peoples during armed conflict is prohibited. In the case of international conflicts, the *Geneva Conventions* are explicit in their protection of food supplies for prisoners of war,⁴⁶ vulnerable persons such as children and ex-

and social plans. Action should be aimed at three specific goals: attaining desirable levels of food production, increasing the stability of food supply, and ensuring access to food supplies on the part of those in need. (4) Food should not be used as a means of exerting political pressure. *Id.*

⁴⁴ See, e.g., Proverbs 22:9 (stating be generous and share your food with the poor and you will be blessed for it). *Id.* A similar secular position is stated in a recent FAO document as follows: "The individual is called upon not only to work for his own food security and that of his family, but also to recognize that he has a sacred obligation to concern himself with food security of those less fortunate than himself. Failure to provide succor when it is needed is a betrayal of man's duty to his fellow men." *Supra* note 43, at Part V.

⁴⁵ See *infra* notes 45-48 and accompanying text.

⁴⁶ Geneva Convention Relative to the Treatment of Prisoners of War, Aug. 12, 1949, arts. 20, 26, JEAN DE PREUX, COMMENTARY: GENEVA CONVENTION III 173 (1960). Article 20 states that "the Detaining Power shall supply prisoners of war who are being evacuated with sufficient food and potable water . . ." *Id.* art. 20. Article 26 states that "the basic daily food rations shall be sufficient in quantity, quality and variety to keep prisoners of war in good health and to prevent loss of weight or the development of nutritional deficiencies . . . collective disciplinary measures affecting food are prohibited." *Id.* art. 26

pectant mothers⁴⁷ and the civilian population generally,⁴⁸ especially where a state is under occupation.⁴⁹ With respect to non-international conflicts, signatories to *Protocol II* of the *Geneva Conventions* are under a similar obligation not to interfere with civilian food supplies or domestic production or to use starvation as a means of warfare.⁵⁰ However, during non-international conflicts, in direct contrast to obligations arising in international conflicts, a state is not obliged to accept and facili-

⁴⁷ Geneva Convention Relative to the Protection of Civilian Persons in Time of War, Aug. 12, 1949, art. 23, JEAN S. PICTET, COMMENTARY: GENEVA CONVENTION IV 177 (1958). Article 23 outlines that "each High Contracting Party shall . . . permit the free passage of all consignments of essential foodstuffs, clothing and tonics intended for children under fifteen, expectant mothers and maternity cases [of another High Contracting party, even if the latter is its adversary]." *Id.*

⁴⁸ Protocol Relating to the Protection of Victims of International Armed Conflicts, June 8, 1977, arts. 54, 70, 1125 U.N.T.S. 3. Article 54 states that "(1) Starvation of civilians as a method of warfare is prohibited; [and] (2) It is prohibited to attack, destroy, remove or render useless objects indispensable to the survival of the civilian population, such as foodstuffs, agricultural areas for the production of foodstuffs . . ." *Id.* art. 54. Article 70 states that "the Parties to the conflict and each High Contracting Party shall allow and facilitate rapid and unimpeded passage of all relief consignments, equipment and personnel . . . even if such assistance is destined for the civilian population of the adverse Party." *Id.* art. 70.

⁴⁹ Geneva Convention Relative to the Protection of Civilian Persons in Time of War, Aug. 12, 1949, arts. 55, 59, JEAN S. PICTET, COMMENTARY: GENEVA CONVENTION IV 309 (1958). Article 55 states that "the Occupying Power has the duty of ensuring the food . . . supplies of the population; it should . . . bring in the necessary foodstuffs . . . if the resources of the occupied territory are inadequate." *Id.* art. 55. Article 59, states:

[i]f the whole or a part of the population of an occupied territory is inadequately supplied, the Occupying Power shall agree to relief schemes on behalf of the said population, and shall facilitate them by all the means at its disposal. Such schemes, which may be undertaken either by States or by impartial humanitarian organizations. . . shall consist. . . of consignments of foodstuffs, medical supplies and clothing. All Contracting Parties shall permit the free passage of these consignments and shall guarantee their protection. *Id.* art. 59.

⁵⁰ Protocol Relating to the Protection of Victims of Non-international Armed Conflicts, Aug. 12, 1949, arts. 14, 18, 1125 U.N.T.S. 3. Article 14 like Article 54 of Protocol I, states that starvation of civilians and destruction of agricultural production is prohibited. Article 18 states:

relief . . . organizations, may offer their services for the performance of their traditional functions in relation to the victims of armed conflict . . . If the civilian population is suffering undue hardship owing to a lack of the supplies essential for its survival, such as foodstuffs. . . relief actions for the civilian population which are of an exclusively humanitarian and impartial nature and which are conducted without any adverse distinction shall be undertaken subject to the consent of the High Contracting Party concerned. *Id.* art. 18.

tate international humanitarian assistance within its borders without its consent⁵¹ unless, of course, a state is so ordered by the United Nations Security Council.⁵²

Other conventions⁵³ accent the obligations imposed by the Geneva Conventions (Protocol II) in non-international conflicts. Both the Convention on the Prevention and Punishment of the Crime of Genocide⁵⁴ and the Convention on the Suppression and Punishment of the Crime of Apartheid⁵⁵ implicitly prevent the use of starvation as a means of "deliberately inflicting on a group conditions calculated to bring about its physical destruction." While neither of these conventions has near universal ac-

⁵¹ *Id.* art. 18.

⁵² For examples of such orders, binding on member states of the United Nations by virtue of Article 25 of the U.N. Charter, see discussion *infra* part II.B.2.

⁵³ As well as conventions, some other international instruments originating in the United Nations General Assembly express the United Nations' concern for securing access to food during armed conflict. These documents have not yet become international treaties. See Declaration on the Protection of Women and Children in Emergency and Armed Conflict, Dec. 14, 1974, G.A. Res. 3318 (XXIX), para 6, which states:

women and children belonging to the civilian population and finding themselves in circumstances of emergency and armed conflict in the struggle for peace, self-determination, national liberation and independence, or who live in occupied territories, shall not be deprived of shelter, food, medical aid or other inalienable rights, in accordance with the provisions of the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Declaration of the Rights of the Child or other instruments of international law. *Id.*

⁵⁴ Convention on the Prevention and Punishment of the Crime of Genocide, G.A. Res. 2670, U.N. GAOR, 3rd Sess., U.N. Doc. A/810 (1948). Article I states that "[t]he Contracting Parties confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and to punish." *Id.* art. II states: "genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such: . . . (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part" *Id.*

⁵⁵ Convention on the Suppression and Punishment of the Crime of Apartheid, G.A. Res. 3068, U.N. GAOR, 28th Sess., Supp. No. 30, at 75, U.N. Doc. A/9030 (1974). Article I states that "[t]he states parties to the present Convention declare that apartheid is a crime against humanity . . . [and] declare criminal those organizations, institutions and individuals committing the crime of apartheid." *Id.* Article II defines the crime of apartheid as to include "the following inhuman acts committed for the purpose of establishing and maintaining domination by one racial group of persons over any other racial group of persons and systematically oppressing them: . . . (b) Deliberate imposition on a racial group or groups of living conditions calculated to cause its or their physical destruction in whole or in part" *Id.*

ceptance, they, along with the Geneva Conventions, point to consistent state practice and *opinio juris* prohibiting the use of food as a weapon of warfare. The conventions are indications of customary international law with respect to the positive obligation of providing food aid to vulnerable populations during armed conflict.

2. *Initiatives of the United Nations Security Council*

International custom now suggests that, independent of the Geneva Conventions, there exists an obligation under international law to refrain from interfering with food aid destined for destitute domestic populations, populations which are threatened because of deliberate, discriminatory, and destructive actions on the part of a national government. Further evidence of this custom is found in several recent resolutions of the Security Council.⁵⁶

During each of the three armed conflicts in which the United Nations has intervened since the thawing of the Cold War, Security Council Resolutions have contained provisions relating to the delivery of international humanitarian assistance including food aid.⁵⁷

In response to the threat posed by each of the situations in the Persian Gulf, Somalia and the former Yugoslavia, the Security Council has made very clear statements regarding international obligations concerning humanitarian assistance and, hence, food aid. First, the deliberate impeding of the delivery of food essential for the civilian population is a violation of international humanitarian law which brings with it state and individual responsibility.⁵⁸ Second, as a positive obligation, a state must provide access and facilitate the work of international hu-

⁵⁶ See *infra* notes 58-60 and accompanying text.

⁵⁷ The Gulf Crisis, U.N. SCOR, 2982d mtg., U.N. Doc. S/RES/688 (1991); Somalia, U.N. SCOR, 3145th mtg., U.N. Doc. S/RES/794 (1992); Former Yugoslavia, U.N. SCOR, 3106th mtg., U.N. Doc. S/RES/770 (1992); and U.N. SCOR, 3137th mtg., U.N. Doc. S/RES/787 (1992).

⁵⁸ U.N. Security Council Resolution states, "[t]he Security Council . . . (5) Strongly condemns all violations of international humanitarian law occurring in Somalia, including in particular the deliberate impeding of the delivery of food and medical supplies essential for the survival of the civilian population, and affirms that those who commit or order the commission of such acts will be held individually responsible in respect of such acts . . ." U.N. Doc. S/RES/794 *supra* note 57 at 3.

manitarian organizations working within that state's borders.⁵⁹ Third, the Security Council will endorse first cooperative, and then forceful, efforts of the international community to assist in the delivery of international humanitarian assistance.⁶⁰

U.N. Security Council Resolution states, "[t]he Security Council . . . (7) Condemns all violations of international humanitarian law, including . . . the deliberate impeding of the delivery of food and medical supplies to the civilian population of the Republic of Bosnia and Herzegovina, and reaffirms that those that commit or order the commission of such acts will be held individually responsible in respect of such acts." U.N. Doc. S/RES/787 *supra* note 57, at 3.

⁵⁹ U.N. Security Council Resolution states, "[t]he Security Council . . . (3) Insists that Iraq allow immediate access by international humanitarian organizations to all those in need of assistance in all parts of Iraq and to make available all necessary facilities for their operations." U.N. Doc. S/RES/688 *supra* note 57, at 2.

U.N. Security Council Resolution states, "[t]he Security Council . . . (2) Demands that all parties, movements and factions in Somalia take all measures necessary to facilitate the efforts of the United Nations, its specialized agencies and humanitarian organizations to provide urgent humanitarian assistance to the affected population in Somalia." U.N. Doc. S/RES/794 *supra* note 57, at 3.

U.N. Security Council Resolution states, "[t]he Security Council . . . (3) Demands that unimpeded and continuous access to all camps, prisons and detention centres be granted immediately to the International Committee of the Red Cross and other relevant humanitarian organizations and that all detainees therein receive humane treatment, including adequate food, shelter and medical care" U.N. Doc. S/RES/770 *supra* note 57, at 3.

⁶⁰ U.N. Security Council Resolution states, "[t]he Security Council . . . (10) Acting under Chapter VII of the Charter of the United Nations, authorizes the Secretary-General and the Member States . . . to use all necessary means to establish as soon as possible a secure environment for humanitarian relief operations in Somalia" U.N. Doc. S/RES/ 794 *supra* note 57, at 3.

U.N. Security Council Resolution states, "[t]he Security Council . . . Recognizing that the situation in Bosnia and Herzegovina constitutes a threat to international peace and security and the provision of humanitarian assistance in Bosnia and Herzegovina is an important element in the Council's effort to restore international peace and security in the area . . . (2) Calls upon States to take nationally or through regional agencies or arrangements all measures necessary to facilitate in coordination with the United Nations the delivery by relevant United Nations humanitarian organizations and others of humanitarian assistance to Sarajevo and wherever needed in other parts of Bosnia and Herzegovina." U.N. Doc. S/RES/770 *supra* note 57, at 2.

U.N. Security Council Resolution states, "[t]he Security Council . . . (18) Calls upon all parties and others concerned to cooperate fully with the humanitarian agencies and with the United Nations Protection Force to ensure the safe delivery of humanitarian assistance to those in need of it." U.N. Doc. S/RES/787 *supra* note 57, at 5.

C. *Peacetime Food Aid*⁶¹ - *The Food Aid Convention*

While there is no customary international legal obligation to provide food aid in peacetime,⁶² many states do provide food aid during peacetime on either a bilateral or multilateral basis.⁶³ States clearly have made it a practice to provide needy countries with food aid in a variety of circumstances and for a variety of reasons. The international food aid regime has been governed not by international institutions but by the norms and practices of donor states.⁶⁴ In the past, food aid usually occurred so as to permit the donor to dispose of surplus agricultural production. As well, donors usually wish to exercise a good deal of control over the granting and, often, the distribution of food aid to achieve specific political and economic goals. During the Cold War period for instance, developing countries holding strategic geographic locations would be "courted with food aid" or sometimes subtly encouraged to "do the right thing" with the withdrawal of food aid as the threat if they did not. Thus, the developed nations' carrot-stick approach to food aid has influenced the social, political and economic development of developing nations. Even today, this pressure, perhaps more

⁶¹ In 1988-89, total governmental food aid accounted for 8% of total Official Development Assistance. Food aid deliveries, for the same period, consisted of cereals (11.1 million tons), vegetable oil and fats (0.5 million tons), dairy products (0.2 million tons), pulses (0.2 million tons), and other commodities (0.1 million tons). As far as end use of food aid was concerned, 55% of food aid went to programme food aid, while 18% went to emergency relief, with the remaining 27% going to project food aid. The distinction between programme food aid and project food aid is that the latter is directed to a specific development project or objective such as agricultural development, nutritional development or food security reserves. THE WORLD BANK, 1990 WORLD DEVELOPMENT REPORT, at 128 (1990); Raymond F. Talbot, *The Four World Food Agencies in Rome as Political Institutions: Towards 2000*, 1 TRANSNAT'L L. & CONTEMP. PROBS. 341, 388 (1991).

⁶² For an argument that there is an international legal obligation to assist famine victims as part of the right to food, see Dinah Shelton, *The Duty to Assist Famine Victims*, 70 IOWA L. REV. 1309 (1985).

⁶³ However, even if one considers the largest food aid commodity - cereals - only 5% are exchanged between states on less than ordinary commercial terms. Raymond F. Talbot, *The Four World Food Agencies in Rome as Political Institutions: Toward 2000*, 1 TRANSNAT'L L. & CONTEMP. PROBS. 341, 388 (1991).

⁶⁴ Raymond F. Hopkins, *Reform in the International Food Aid Regime: The Role of Consensual Knowledge*, 46 INT'L ORG. 225 (1992); Donald Puchala and Raymond F. Hopkins, *International Regimes: Lessons From Inductive Analysis*, 36 INT'L ORG. 245, 259-69 (1982); and RAYMOND F. HOPKINS AND DONALD PUCHALA, *GLOBAL FOOD INTERDEPENDENCE: CHALLENGE TO AMERICAN FOREIGN POLICY* (1980).

subtle, exists and remains a compelling reason why the overwhelming majority of food aid still proceeds through bilateral, rather than multilateral, channels.⁶⁵

In 1967, several states entered into an international agreement to undertake food aid as an obligation under international law. With the conclusion of the Food Aid Convention (FAC),⁶⁶ eighteen states agreed to supply a minimum of food aid to countries in need. Since that time, four other states have become signatories to the FAC which was renewed in 1971, 1980, 1986 and most recently in 1992.⁶⁷

The FAC obliges signatory states to make available, in cash or kind, food aid that can be distributed bilaterally or through multilateral agencies like the World Food Programme. The basic objectives of the FAC remain unchanged after 25 years. They are to: (1) carry out a food aid programme with the help of contributions from developed countries for the benefit of developing countries; (2) attempt to share the burden of food aid among developed countries; (3) improve prospects for the commercial wheat trade by siphoning off surpluses to consumers unlikely to make commercial purchases; and (4) assist developing countries, principally Argentina, by requiring donors to buy some of their food aid from developing countries.⁶⁸ While the Food Aid Convention has obvious (some would argue overwhelming) commercial objectives⁶⁹ as well as altruistic ones, it

⁶⁵ In 1988-89, 65.3% of governmental non-commercial food exchanges were bilateral with the remainder of governmental food aid being conducted through multilateral agencies. If one includes food aid conducted by all organizations, governmental and non-governmental, then the breakdown for developing countries' net aid receipts in 1987 was 64% bilateral, 22% multilateral and 14% non-governmental. WORLD BANK, 1990 WORLD DEVELOPMENT REPORT 128 (1990).

⁶⁶ Food Aid Convention, *opened for signature*, Mar. 6, 1980, 32 U.S.T. 5751.

⁶⁷ The Food Aid Convention has been extended several times, most recently until June 30, 1995. Twenty-three states, including the European Community, are parties to the present convention. Interview with Mr. Woodhams, Member of the International Wheat Council Secretariat (July 1993).

⁶⁸ The Food Aid Convention, *supra* note 66; *see also* ROBERT L. BARD, FOOD AID AND INTERNATIONAL AGRICULTURAL TRADE 28 (1972).

⁶⁹ The scheme was, from the outset, principally oriented to the orderly disposal of surplus grains stocks in such a manner as to avoid unwanted market disruptions and to have all rich western countries participate more evenly to distribute the financial consequences of giving away national surplus production. This type of orderly disposal of surpluses was built upon existing "soft law" obligations of the FAO's Principles of Surplus Disposal. *See* Bard, *supra* note 68 at 114. For a review of FAO's principles *see* Bard, *supra* note 68, at 92-97.

has undeniably established legal obligations for the provision of peacetime food aid over the past quarter century.

D. *International Trade Initiatives*

Agricultural products account for almost 1/10 of world trade.⁷⁰ However, international trade initiatives never specifically address food issues.⁷¹ The principle which underlies most international trade treaties is that food is simply "another commodity," subject to the same rules of trade as any other commodity. While the General Agreement on Tariffs and Trade and International Commodity Agreements, over the past half century, have introduced some rules in the area of the international food trade, they have been only marginally concerned with promulgating rules for a more equitable or more efficient food trade.

1. *Food, Free Trade and the General Agreement on Tariffs and Trade (GATT)*

In 1948, 23 states joined together to form the GATT, which has become the largest and most comprehensive international trading organization in the world.⁷² Under the GATT,⁷³ states

⁷⁰ 9.0% in 1988 and 8.8% in 1989. DEPARTMENT OF ECONOMIC AND SOCIAL DEVELOPMENT, STATISTICAL YEARBOOK 940 & 942 (37TH ED. 1992).

⁷¹ One exception is the Codex Alimentarius Commission, Code of Ethics for International Trade in Food, Doc. No. CAC/RCP/20-1979/1980. While this document is a non-binding instrument of a little known international organization, its contents are noteworthy. Article 4.1 of the Code states that "International trade in food should be conducted on the principle that all consumers are entitled to safe, sound and wholesome food and to protection from unfair trade practices." This principle, however, is not the cornerstone of any international trade treaty.

⁷² Actually "the GATT" may refer to three related entities. These include the international treaty (Final Act Adopted at the Conclusion of the Second Session of the Preparatory Committee of the United Nations Conference on Trade and Employment, Oct. 30, 1947, 55 U.N.T.S. 188) and its implementing protocol (Protocol of Provisional Application of the General Agreement on Tariffs and Trade, Oct. 30, 1947, 55 U.N.T.S. 308). The GATT document contains specific international obligations relating to international trade. The term "GATT" can be used in a second sense to refer to the international organization which is responsible for the administration and operation of the international agreement, although the official name of the organization is the "Contracting Parties" to the General Agreement on Tariffs and Trade, Oct. 30, 1947, 55 U.N.T.S. 194. Finally, when used in the phrase "GATT negotiations", it refers to the international body conducting, and the process involving, negotiations leading to new GATT rules which have been commenced under the initiative of the Contracting Parties.

agreed to limit their individual state sovereignty in matters relating to trade by agreeing to specific trade disciplines in order to obtain benefits which could not otherwise be attained by a single state acting alone.

The GATT contains rules for tariff reduction,⁷⁴ non-discrimination,⁷⁵ and the elimination of existing non-tariff barriers to trade.⁷⁶ As well, the GATT provides an international framework which permits member states, known as contracting parties, to bring disputes before a central dispute resolution body.⁷⁷

The economic and political philosophy underlying the GATT is that of free market maximization through freer trade in all internationally traded goods.⁷⁸ The theory, embraced by large and small countries alike, has been made operative primarily by the efforts of the most economically powerful states who consequently set most of the agenda and rules of the GATT.⁷⁹ The GATT has been relatively successful in reducing tariff and non-tariff barriers for many industrial products, but its record for agricultural products has been abysmal. From the

⁷³ For an excellent history of the formation of the GATT, see John H. Jackson, *World Trade and the Law of the GATT* 35-57 (1969); DANIEL JOUANNEAU, *LE GATT* 5-37 (1980) ROBERT E. HUDEC, *THE GATT LEGAL SYSTEM AND WORLD TRADE DIPLOMACY PART I* (1975); and Karin Kock, *International Trade Policy and the GATT* 1947-67 1-94 (1969).

⁷⁴ THE CONTRACTING PARTIES TO THE GENERAL AGREEMENT ON TARIFFS AND TRADE, BASIC INSTRUMENTS AND SELECTED DOCUMENTS ART. II (VOL. IV 1969) [hereinafter GATT].

⁷⁵ Art. I, the most-favored nation clause, prohibits discrimination as among competing importing states while Art. III, the national treatment clause, prohibits discrimination as between domestic and imported products in the domestic market of a GATT contracting party. GATT, *supra* note 74, at 2.

⁷⁶ Part II of the GATT, especially Art. III (national treatment), Art. XI (general prohibition on use of quotas or licenses), and Art. XVI (limited prohibitions on the use of subsidies). GATT, *supra* note 74, at 6, 17, 26.

⁷⁷ Art. XXII (GATT Working Party consultations) and XXIII (GATT Panels decisions regarding nullification or impairment of a GATT benefit of a contracting party). Both process yield reports which must be adopted by the CONTRACTING PARTIES of GATT, which is, therefore, the final arbiter of disputes. GATT, *supra* note 74.

⁷⁸ Freer trade in services as well as goods is one of the goals of the current round of GATT negotiations. Numerous obstacles, the most important being trade in agricultural products, has prevented the early conclusion of the round which was originally scheduled to be completed by December 1990.

⁷⁹ As of February 1993, there were 105 member states in GATT with 112 states participating in the Uruguay Round of GATT negotiations. *Dunkel: Complete Package Cannot Be Concluded By Early March*, 96 FOCUS GATT NEWSLETTER, Jan.-Feb., 1993 at 8.

outset, western developed states refused to surrender sovereignty over national agricultural policy to GATT disciplines.⁸⁰ The GATT provided, in its original text, four fundamental exceptions for agricultural products which effectively eviscerated the GATT's impact on agricultural trade. Under Article VI(7), primary commodities are exempted, under the appropriate circumstances, from another state's imposition of anti-dumping and countervailing duties.⁸¹ Article XI provides a special exception for agricultural products from the general prohibition against the use of quantitative restrictions. It is this Article, for instance, which permits supply management and restricted access schemes for domestic agriculture programs. Article XVI permits export subsidies for primary products⁸² where such subsidies do not result in a contracting party obtaining "more than an equitable share of world export trade in that product."⁸³ Finally, Article XX(b) provides that any measure may be imposed by a contracting party which is necessary to protect "human, animal or plant life or health." Each of these provisions can be used as another weapon in the arsenal of states to protect national agriculture from the effects of freer trade in agricultural products.⁸⁴

⁸⁰ T.K. WARLEY, *Western Trade in Agricultural Products*, in INTERNATIONAL ECONOMIC RELATIONS OF THE WESTERN WORLD 1959-1971, 1 POLITICS AND TRADE 343 (Andrew Schonfield, ed., 1976).

⁸¹ Primary commodities are not subject to dumping or countervailing duties if a system for the stabilization of the domestic price of the primary commodity results, at times, in the sale of the commodity for export at a price lower than the comparable price charged for the like commodity to buyers in the domestic market. This is in contrast to other goods which are subject to the standard test under which duties may be levied if the export price of a good is inferior to the normal domestic price of the same good, at any time.

⁸² Export subsidies for industrial products are prohibited by this GATT article.

⁸³ Art. XVI § B(3). GATT, *supra* note 74, at 26. An attempt to clarify this section was made in GATT, "The Agreement on the Interpretation and Application of Articles VI, XVI and XXIII." THE CONTRACTING PARTIES TO THE GENERAL AGREEMENT ON TARIFFS AND TRADE, BASIC INSTRUMENTS AND SELECTED DOCUMENTS, 26TH SUPPLEMENT 56, 68-69 (1980).

⁸⁴ Perhaps the best known example of a charge that Article XX(b) was being used as a barrier to trade was by the U.S. against the E.C. concerning U.S. beef containing growth hormones blocked from entering the E.C. For the European view that health concerns overrode free trade objectives in this case, see C. CASPARI AND E. NEVILLE-ROLFE, *THE FUTURE OF EUROPEAN AGRICULTURE: TRADE, TECHNOLOGY AND THE ENVIRONMENT* 32-33 (1989).

Further deterioration in GATT discipline with respect to trade in agricultural products occurred in the period 1951-1955. In 1951, the United States blatantly violated GATT rules regarding import restrictions by introducing import restrictions on certain agricultural products.⁸⁵ The United States, in 1955, then successfully sought a special waiver from the CONTRACTING PARTIES to legitimate its non-conforming activities.⁸⁶ The waiver has been blamed for continuing international unwillingness to comply with GATT, especially with respect to trade in agricultural products.⁸⁷

Despite the deadlock over agriculture at the Uruguay Round, some encouraging trends are apparent from the otherwise rather bleak GATT picture.⁸⁸ Contracting parties now use, and respect, the GATT dispute resolution system more frequently. As well, there is significant compliance with GATT panel decisions. Since 1970, 14 panel reports have found violations of GATT provisions concerning quantitative restrictions on agricultural products. In almost every case, the offending national law has then been repealed or amended to accord with GATT disciplines.⁸⁹

Even so, GATT rules which could have permitted fairer and more disciplined international trade in agricultural products have not materialized. Subject to the will of the powerful, rather than to the rule of law, fairer and more efficient food trading rules have simply not developed.

⁸⁵ Due to high domestic support prices, agricultural imports threatened to flood the U.S. market in the early 1950s. In order to stem the influx, U.S. Congress in 1951 passed laws to impose fees and quotas on incoming agricultural products. The Netherlands complained to GATT, and was authorized by the GATT to impose trade restrictions on the U.S, but it did not.

⁸⁶ In 1955, the CONTRACTING PARTIES granted the U.S. a waiver of unlimited duration from GATT obligations so as to legalize their import quotas already in force and any further action the U.S. would take. See Jackson, *supra*, note 69 at 710; JOHN W. EVANS, *THE KENNEDY ROUND IN AMERICAN TRADE POLICY: THE TWILIGHT OF THE GATT?* 73 (1971).

⁸⁷ Jonathan Carlson, *Hunger, Agricultural Trade Liberalization and Soft International Law: Addressing the Legal Dimensions of a Political Problem* 70 *IOWA L. REV.* 1187, 1192 (1985).

⁸⁸ Donald E. Buckingham, *The International Trade Crisis in Agriculture: The Need for a Rule-Oriented Solution* in DONALD E. BUCKINGHAM AND KEN NORMAN, *EDS., LAW, AGRICULTURE AND THE FARM CRISIS* 97 (1992).

⁸⁹ Donald E. Buckingham, *Our Daily Bread: An Evaluation of International Regulation of the World Wheat Trade* 70 (1990)(graduate thesis completed at University of Cambridge).

2. *Managed Food Trade and International Commodity Agreements (ICAs)*

As early as the turn of the century, states came together to attempt to manage international trade in food on a commodity by commodity basis.⁹⁰ In the 1920s, international conferences were held to examine how trade in primary commodities could be managed.⁹¹ By 1931, an international sugar agreement had come into force, followed by one for wheat and another for tea in 1933.⁹² In the late 1940s, states proposing an International Trade Organization (ITO) negotiated for a comprehensive scheme to manage trade through market controls on production and export of commodities, including food.⁹³

When it became evident, in 1951, that the ITO Charter would never be ratified, all that remained were individual commodity agreements such as the *International Wheat Agreement*⁹⁴ and the *International Sugar Agreement*.⁹⁵ However, the principles contained in the ITO Charter were adopted as a "general guide" in intergovernmental consultations or action with respect to commodity problems.⁹⁶ Later, other ICAs were concluded for coffee, tea, cocoa, olive oil and citrus fruit.⁹⁷

Most of the early ICAs attempted to guarantee a certain level of commodity prices for producers. This was achieved by

⁹⁰ In 1902, states concluded the *Brussels Convention* to regulate sugar beet and sugar production and marketing. See ERVIN ERNST, *INTERNATIONAL COMMODITY AGREEMENTS* 33 (1982). Others argue that commodity agreements did not really develop until after the First World War and were not common until the 1930s. See B.S. CHIMNI, *INTERNATIONAL COMMODITY AGREEMENTS: A LEGAL STUDY* 18 (1987).

⁹¹ In 1927, Rome was the venue for the first International Wheat Conference convened under the auspices of the International Institute of Agriculture. See Cino Vitta, *La Cooperation Internationale en Matière D'Agriculture*, 56 *RECUEIL DE COURS* 305 (1936).

⁹² Ernst, *supra* note 90, at 44.

⁹³ Ernst, *supra* note 90, at 56-8.

⁹⁴ Concluded in 1949.

⁹⁵ Opened for signature Dec. 1, 1958, 10 U.S.T. 2189, T.I.A.S. No. 4389, 385 U.N.T.S. 137.

⁹⁶ Chimni, *supra* note 90, at 23.

⁹⁷ International commodity agreements have not been limited to food products but also include natural resources. These resource-related agreements may be formal treaties such as was the case with the now defunct *International Tin Agreement* or non-legal arrangements like the producer cartels (Organization of Petroleum Exporting Countries (OPEC)) or producer groups like the International Copper Study Group.

controlling supply and prices through buffer stocks, production limits and quota schemes. Benefits accrued to primary commodity producers without regard to North-South issues.

In the 1960s and 1970s, a new objective was envisioned for ICAs. They could be used, it was proposed, to encourage development among developing nations.

[D]eveloped countries shall progressively reduce every trade barrier that hinder or obstruct the import of the exports of the developing countries [D]eveloped countries [shall] cooperate in initiating and implementing measures designed to increase and stabilize the primary commodity export earnings of the developing countries.⁹⁸

New hope for comprehensive managed commodity trade came from The New International Economic Order (NIEO) movement.⁹⁹ In its "constitution",¹⁰⁰ the NIEO embraced the idea of long-term multilateral commodity agreements "to promote the regular flow and access of all commercial goods traded at stable, remunerative and equitable prices, thus contributing to the equitable development of the world economy, taking into account, in particular, the interests of the developing countries."¹⁰¹

While enthusiasm for the NIEO has waned considerably, the desire for a comprehensive managed commodity trade remains alive with an initiative sponsored by the United Nations Conference on Trade and Development (UNCTAD). UNCTAD's initiative for an Integrated Programme for Commodities¹⁰² establishes a Common Fund for Commodities which consists of two accounts. The first account is intended to serve as a source of finance for International Commodity Organizations (ICOs) established under international commodity agreements that

⁹⁸ Ernst, *supra* note 90, at 69-70.

⁹⁹ Declaration on the Establishment of a New International Economic Order, U.N.G.A. Res. 3201 (S-VI), adopted on May 1, 1974. For an interesting discussion of how commodity agreement negotiations should be conducted so as to conform to NIEO principles, see Chimni, *supra* note 90, at 74-7, 245.

¹⁰⁰ *The Charter of Economic Rights and Duties of States*, U.N.G.A. Res. 3281, 29th Sess., (Dec. 12, 1974).

¹⁰¹ *Id.* art. 6.

¹⁰² The Integrated Programme arose out of UNCTAD IV in Nairobi in 1976. According to the resolutions adopted in Nairobi, ICAs should be concluded for the following agricultural products: bananas, cocoa, coffee, meat, sugar, tea, and vegetable oils, including olive oil and oil seeds. See Ernst, *supra* note 90, at 85.

contain buffer-stocking provisions while the second account is to help finance commodity measures other than stocking such as research and development, quality and productivity improvement, and market development.¹⁰³

ICAs, however, have achieved very modest success in stabilizing commodity prices. Chimni maintains that ICAs should promote international cooperation, but such cooperation has failed to materialize in the marketplace. While this is a laudable objective and one which some commodity agreements have marginally achieved over the past few decades, the impact of food rules flowing from commodity agreements has been severely limited, especially given the narrow band of foodstuffs they tend to cover.¹⁰⁴

III. EXPLORING THEORETICAL BASES OF THE SEPARATE SPHERES OF FOOD RULES

The development of international legal rules concerning food has been sporadic at best. It is clear from the above discussion examining the separate development of different areas of international law that, while the common international problem of hunger continues to exist, no common principles necessary for the resolution of the problem exist. Each domain of international law has adopted its own analysis and objectives to arrive at its own treatment of food. Such a disjointed attack on such grave international problems is not, however, unique to the problem of food.¹⁰⁵ Before an integrated approach to the

¹⁰³ *The Common Fund for Commodities Becomes Operational*, 254 UNCTAD BULLETIN, July-Aug., 1989, at 7. The treaty establishing the Common Fund for Commodities came into force in July 1989, but as neither the International Cocoa Organization nor the International Rubber Organization, the only two ICAs with buffer stocks, have elected to be associated with the fund, the first account is inoperative. The second account is more active. Together the two accounts contain currently over \$500 million. For a detailed examination of the Common Fund, see Chimni, *supra* note 90, at 216.

¹⁰⁴ While many commodity agreements have had supply, or price control mechanisms, only the *International Cocoa Agreement* currently contains price mechanisms to even out market fluctuations so as to provide more equitable trading conditions between producers and consumers. See Ernst, *supra* note 90, at 124.

¹⁰⁵ This same weakness has been identified recently by the United Nations Development Programme with respect to almost any international initiative involving economic decisions. "The existing framework of global governance is weak, *ad hoc* and unpredictable, with international economic decision-making dispersed over numerous institutions and forums, mostly dominated by the rich countries,

treatment of food is possible under international law, it is necessary to analyze the operating philosophy of each sphere of international law already dealing with the problem.

A. *The Natural Law Response*¹⁰⁶ - *the Rights Analysis*

The right to food movement argues for international rules placing an obligation on states, both at the national and international levels, to respect, protect and fulfil households' access to food. Jurisprudentially speaking, the movement proceeds from natural law theories concerning the absolute and inherent dignity of individuals. According to this position, rights accrue to individuals and abrogation of these rights by the state are not legally permitted. If they are derogated, the state's conduct is unacceptable, at least morally speaking. The role of law then, is to generate legislation, both nationally and internationally, which will transform the moral obligation into a legal one. The assumption is that a legal obligation will meet with fuller compliance because of the greater clarity of the obligation, the greater pressure to conform to the dictates of the obligation and the possibility, at least, that non-observance of the obligation by a state will have some negative impact on it (that is, international political repercussions or legal enforcement).

A difficulty with the natural law or rights-based perspective is that the approach identifies the ultimate objective of a fairer, more peaceful world community where individuals are able to develop without fear or want. However, the approach is incapable of achieving the objective because of insufficient political will. The rights analysis recognizes that food is not just another commodity to be bought and sold like steel beams or micro-chips. However as Bard comments:

the supporters of the existence of a legally recognized international right to food fail to recognize that the establishment of a right to food requires a prior political decision to that effect . . . [N]o fruitful dialogue about a right to food is possible between

leaving developing countries powerless and vulnerable, HUMAN DEVELOPMENT REPORT, U. N. DEVELOPMENT PROGRAMME, — Sess., Agenda Item —, at 74, U.N. Doc.— (1992).

¹⁰⁶ See J.L. BRIERLY, *THE LAW OF NATIONS* 49 (6th ed. 1963).

those who disagree about the role of consent as to the essential rule of recognition in international law.¹⁰⁷

B. *The Positive Law Response*¹⁰⁸ - *the Commercial Analysis*

Both the notion of the "role of consent" and the "rule of recognition" are intimately associated with theories of positive law.¹⁰⁹ The food rules which have been established through trade initiatives (and, to a large degree, the peacetime food aid initiatives which have spun off from trade initiatives) have been based on consent. The objective in the cases of the GATT, ICAs and the FAC has always been that states should agree as to how trade should be conducted. If food could be included, so be it. Otherwise, food would be treated like any other commodity or not at all.

The great failing of the GATT with respect to food has been that states have refused to include it in negotiations for freer trade due to their reluctance to give up sovereignty over national agriculture policy. This, in turn, has prevented states from agreeing to enter into international agreements to bring discipline to international trading in agricultural products. As a result, the billions spent annually on production and export subsidies in agriculture¹¹⁰ have had devastating effects on world food production, distribution and consumption. First, many farm support programs in developed countries effectively block third world products from penetrating developed country markets. Second, developed country farm programs often encourage excess production which must be disposed of on world markets. This surplus disposal, marketed with the aid of export subsidies or on concessional terms, artificially depresses international prices, destabilizes domestic markets of food recipient

¹⁰⁷ Bard, *supra* note 21, at 1280-1281.

¹⁰⁸ For a classical definition of positive law in the context of international law, see BRIERLY, *supra* note 106, at 451.

¹⁰⁹ For a discussion on the "rule of recognition" in positive law theory, see H.L.A. HART, *THE CONCEPT OF LAW* 92-107, 245-247 (1961).

¹¹⁰ There is much debate as to the exact figure spent annually on subsidies in agriculture. One set of figures often cited are those of the OECD expressed in terms of producer subsidy equivalents (PSEs) and consumer subsidy equivalents (CSEs). In 1992, agricultural subsidies in OECD countries equalled \$US 179.5 billion for PSEs and \$US 138.3 billion for CSEs. ORGANIZATION OF ECONOMIC CO-OPERATION AND DEVELOPMENT, *Agricultural Policies, Markets and Trade* 11 (1993).

states and leads to loss of demand for locally produced food, leading eventually to the deterioration of the agricultural infrastructure in developing countries.¹¹¹

Thus, lack of consensus on bringing discipline to the international agricultural trade results in poor resource allocation in developed countries (a disproportionate expenditure on agriculture)¹¹² and, in developing countries, it causes losses in export earnings (necessary to service international debt), in agricultural productivity and, eventually, in achieving national food security.¹¹³ Effectively, the GATT has contributed to the developing world's effective exclusion from the bulk of international agriculture trade.¹¹⁴

The FAC and the ICAs have also adopted aspects of the commercial analysis. The former is grounded in the agreement between developed states as to how to equitably distribute and dispose of agricultural surpluses. ICAs initially attempted to maximize producer returns for specific commodities. Yet the notion that food was a special commodity requiring special non-commercial considerations in some cases has never figured into ICA philosophy. Moreover, as the ICAs gradually recognized a role other than a commercial one under the NIEO and UNCTAD, and arguably became more associated with natural law rights analysis, use of ICAs as a trade agreement has fallen off considerably.

C. *The Emotive Response - International Crisis Management*

To be fair, the FAC and other peacetime food aid initiatives are not simply crass commercial agreements without any notion of the altruistic aspect of food aid. The human response to as-

¹¹¹ Carlson, *supra* note 87, at 1208-1220.

¹¹² For example, approximately 2/3 of the entire EC budget is used to support its Common Agricultural Policy, a policy whose effect is to encourage over-production and international surplus disposal. FRANCIS SNYDER, *LAW OF THE COMMON AGRICULTURAL POLICY* 4 (1985). Significant expenditures exist in the other major developed states as well. ORGANIZATION OF ECONOMIC CO-OPERATION AND DEVELOPMENT, *supra* note 110.

¹¹³ See Carlson, *supra* note 87, at 1211-1220.

¹¹⁴ For example, developing countries, which account for approximately 75% of the world's population, accounted for only 30-33% of world trade in agricultural commodities during the early 1980's. N. Islam, *Agriculture in GATT Negotiations and Developing Countries in WORLD AGRICULTURAL TRADE: BUILDING A CONSENSUS* 169, 170 (W. Miner & D. Hathaway eds., 1988).

sist the needy and disaster-stricken runs deep, but the international community usually must be shocked into action. The emotive response which combines the notion of "we must act" and "we agree to act", is best exemplified in international food rules concerning humanitarian assistance during armed conflict, although the same comments might apply to some peacetime initiatives.

The emotive response generated by the atrocities of war which led to the adoption of the *Geneva Conventions*, their *Protocols* and the recent resolutions of the Security Council reviewed in Part II, demonstrate that the international community is capable of generating the political will to act in response to human suffering. The international food obligations outlined in these initiatives extend well beyond the negative obligation to refrain from interfering with food supplies. They extend to positive obligations to assist in the provision of food or to facilitate the distribution of food aid.

The spirit of international concern is clearly felt in the emotive response of humanitarian assistance. Acts of international humanitarian assistance identify needs and act so as to alleviate pain and suffering. States agree (positive law) to act to prevent the deterioration of the human condition and the dignity of individuals (natural law). Is it possible that both the rights approach and the commercial approach have failed to produce significant advancements because the former identifies the need, but cannot convince the international community to act, while the latter acts to satisfy states' individual interests without identifying the necessity for, and benefit of, more comprehensive international food rules? Surely a more integrated approach, a blending of the rights approach and the commercial approach should be explored, if the international community is to make any progress in resolving the world food situation.

IV. TOWARDS AN INTEGRATED APPROACH TO FOOD UNDER INTERNATIONAL LAW

A. *Establishing Common Ground*

The political reality of the world food situation as observed by one commentator is thus:

The constituency of the starving and malnourished has usually only been able to exert sufficient political pressure in times of the direst emergency. In ordinary times the voices which are muted by hunger are simply not heard in the corridors of power.¹¹⁵

Put another way, rarely does the issue of treating food as a basic need of survival, guaranteed by law, bubble up to the surface of national or international agendas of well-fed, developed states. The right to food movement, advocating on behalf of the hungry, argues that there is a moral imperative to make the right to food part of international law while political actors in the economically strong states are rather more concerned with whether they can obtain the consent of other states to new rules of international trade in food products.¹¹⁶

What is missing from the separate spheres of international activity addressing food is a sense of common purpose and shared principles. The segregated approach has failed, not because the issues raised were not important, but because the two camps - the rights group and the commercial group - see no reason to support one another. In fact, at times they fail to acknowledge even a link in the subject matter covered. One camp says the right to food is fundamental, the other, that food is merely another commodity. Only in the neutral middle ground of humanitarian assistance during armed conflict has there ever been any consensus for action.

Nevertheless, there is a very important link between the natural law rights analysis and the positive law commercial analysis. It is elegantly and fundamentally simple. Food is basic to all human activity. Without food, there is no possibility for commerce, nor for human existence. Food, quite literally, is the very fuel of commerce, while at the very core of human existence. There is a commercial interest in consenting to the right to food. In the medium and long-term, recognition and implementation of a right to food even, in its barest incarnation as

¹¹⁵ Alston, *supra* note 14, at 60.

¹¹⁶ This applies equally to international trade and finance. For a sharp criticism of the IMF's role in eroding a right to food, see Philip Alston, *The International Monetary Fund and the Right to Food*, 30 *How. L.J.* 473 (1987). For a practical example of IMF and World Bank demands to adopt free market agricultural policies (even when developed states will not) as a condition for international assistance, see *[Zimbabwe] Farmers Complain of Double Standard*, *THE [SASKATOON] WESTERN PRODUCER* 15 (Aug. 27, 1992).

a freedom from hunger, will minimize the devastating consequences which await the international community if the right is not recognized. The international community can either plan for a regime which recognizes the right to food with gradual implementation, or it can wait until crises begin to force the emotive response of the international community. Three potential crises await us if we do not act soon.

1. *The International Economy*

Three fourths of the world's population is currently being marginalized by current international trading and financial patterns. Agricultural production in developing countries is stymied by developed countries' agricultural policies. International financial institutions now draw more money out of the South than they provide. International debt is choking developing countries' demand for imports and boomerangs back to attack developed state economies.¹¹⁷ With the collapse of socialism, the opportunity for a free market economy has enormous potential, but effective demand cannot come from hungry people.

Healthy, well-educated people who can participate in the planning and execution of development programs will not only raise their own standards of living. They will promote their country's economic growth.¹¹⁸

We are at a crossroads. The current trend of economic stagnation can continue with increased protectionism and shortsighted domestic and international policies that ignore the fact that basic health and access to food are primary building blocks to a healthy world economy. Or, the world economy can be revitalized by an international system which attempts to integrate peoples who are now marginalized by rebuilding international structures of trade and aid.

¹¹⁷ SUSAN GEORGE, *THE DEBT BOOMERANG: HOW THIRD WORLD DEBT HARMS US ALL 1* (1992). She maintains that the debt boomerang affects not only the developed world's economy but also its environment, the health of its youth (drug abuse), its employment and immigration patterns as well as international peace and security.

¹¹⁸ UNITED NATIONS DEVELOPMENT PROGRAMME, *supra* note 105, at 81.

2. *International Peace and Security*

As the memories of the two world wars fade, the role of hunger in creating conditions for unrest may be forgotten. Yet, the current activities of the Security Council continue to underline the importance of the link between food, peace and security. Security Council Resolution 770 aptly capsulates the link:

The Security Council . . . recogniz[es] that the situation in Bosnia and Herzegovina constitutes a threat to international peace and security and the provision of humanitarian assistance in Bosnia and Herzegovina is an important element in the Council's effort to restore international peace and security in the area . . .¹¹⁹

The self-interest of all states demands that international peace and security not be threatened because of food shortages. Although there is enough food to go around, hungry nations have little to lose if they challenge a world order which guarantees their eventual destruction.

3. *The Environment*

Environmental concerns and the search for a sustainable agriculture, both in the developing and developed world, highlight the need for international cooperation to solve world problems. While the world still manages to produce enough food (if it was evenly distributed) to feed itself, there is growing concern that increasing world population, coupled with increasing environmental degradation will soon reverse this trend.

Sustainable development, a concept pivotal in the Brundtland Report,¹²⁰ has catapulted the concept of human needs (including food) to the forefront of the environment and development debate. Sustainable development contains "the concept of 'needs', in particular the essential needs of the world's poor, to which overriding priority should be given."¹²¹ The impact of sustainable development on food issues has been to focus attention not only on how the world feeds itself, but how it will continue to feed itself for future genera-

¹¹⁹ U.N. SCOR, 47th Sess., 3106th mtg. at 1, U.N. Doc. S/Res/770 (1992).

¹²⁰ "Sustainable development is development that meets the needs of the present without compromising the ability of future generations to meet their own needs." WORLD COMMISSION ON ENVIRONMENT: OUR COMMON FUTURE 8 (1987).

¹²¹ *Id.* at 43.

tions. New emphasis on food security, sustainable agriculture and degradation of the resource base caused the Brundtland Report to call for a redirection of government intervention, a global perspective on solving food problems, a new stewardship of the resource base, and "the systematic promotion of equity in food production and distribution."¹²²

B. *Agreeing on Common Principles Concerning Food*

Production increases need to be coupled with adequate and reasonably distributed food stocks for the domestic, not just the international market; improved rural employment, not massive worker dislocation; rising nutritional standards among the poor; and reduced political conflict. We can no longer afford to deal with the complex dynamics of food production and distribution through ad hoc policies that, while politically acceptable in the short term, undermine the whole development effort in the long term.¹²³

The *ad hoc* policies of the separate spheres of international law must be superseded by common principles recognized by the international community which can be forged into an integrated approach to food in international law and international relations. We have seen that there is common ground between those who see the problem through either the rights or the commercial analysis. Communication between the two approaches is possible. Collaboration between the two to formulate new shared principles and a common approach is essential. Perhaps, it is necessary that there be some cataclysmic event which necessitates an international "crise de conscience" such that food issues are forced into the forefront of international dialogue. Such a crisis may well be unavoidable given current trends in the economy, the environment and peace and security. In much the same way that environmental concerns have pushed their way into almost every aspect of international negotiations, so too must the concern for food issues be seen as fundamental to international organization.

Specific common principles concerning food must begin to permeate international consensus and be incorporated into in-

¹²² *Id.* at 141.

¹²³ F. LAMOND TULLIS AND W. LADD HOLLIST, *FOOD, THE STATE AND INTERNATIONAL POLITICAL ECONOMY*, xviii.

ternational legal obligations. These common principles might include the following:

- (1) Food is the basic requirement for human life and survival. It is a unique and special commodity and must be recognized as such in every international agreement affecting access to, production of, or trading in food. Prior to new international obligations being undertaken, states must study the impact of such obligations on their own and other states' capacity to produce, trade and consume food.
- (2) Access to food by groups which cannot meet daily nutritional requirements must not be worsened by the likely impact of any new international obligation.
- (3) New international obligations must not encourage or demand nations to undertake programs which discourage or render it impossible to sustain and enhance basic self-sufficiency in the production of primary food products.
- (4) Except in the case of protecting the enhancement of basic self-sufficiency in the production of primary food products, new international obligations must not create regimes which adversely affect trading opportunities for agricultural products.

While the tenor of some of these principles may ring of the NIEO, it is important to note that the principles are very narrow in that they relate only to the access to, the production of and the trading in *primary* food products as relating to *basic* self-sufficiency. Each of the principles needs, of course, further refinement and elaboration. Yet only through the adoption of such principles by the international community can we move forward. A code of principles acceptable to most nations must be developed by which food concerns can be brought as legitimate concerns to any international negotiating table. If access to, production of, or trading in, primary food products is likely to be affected, then these principles must be considered and appropriate measures be taken to ensure their application. These principles, while very general, are clear. Food has a unique status in the survival of the human species and deserves special attention so that the world food situation stabilizes and eventually improves. If it does not, all international structures are endangered.

C. *Coordinating International Activities in the Development of International Food Rules*

One final responsibility remains: who will bell the cat? The international community seems content enough to work in its segregated spheres of international law and leave the rest to the politics of state interest. How should the above principles be injected into international discourse? Two approaches must be undertaken simultaneously. First, individuals (academics, activists, community leaders) and NGOs must advocate for greater concern for food issues both at the state and at the international level. They will need to speak the language of the rights analysis, as well as that of the commercial analysis, in whose longer-term interests the food issue becomes important. Second, governments and intergovernmental organizations must espouse the challenges of this new approach to food under international law.

Who among the current intergovernmental organizations should take on the task of advocacy? Should it be shared among several existing organizations? Should a new body be formed? Currently, no international body is charged with the progressive development of international standards concerning food. There are several organizations, however, that have food issues as a major part of their mandate.¹²⁴ In my opinion, we do not need more.¹²⁵ It appears to me that food issues lie most directly with the FAO's mandate and it is from there that the major coordinating effort for an integrated approach to food in international law should come.¹²⁶

¹²⁴ FAO (1947), World Food Programme (1961), World Food Conference (1974), World Food Council (1974) and most recently the U.N. Committee of the Economic, Social and Cultural Rights (1987). For detailed information on these organizations, see generally, ROBERT N. WELLS, JR., *PEACE BY PIECES: UNITED NATIONS AGENCIES AND THEIR ROLES* 40-64 (1991); A. LEROY BENNETT, *INTERNATIONAL ORGANIZATIONS* 312-314 (3d ed. 1984); THOMAS BUERGENTHAL, *INTERNATIONAL HUMAN RIGHTS IN A NUTSHELL* §§ 2-9 (1988).

¹²⁵ I do not advocate a Development Security Council as suggested by the UNITED NATIONS DEVELOPMENT PROGRAMME, *supra* note 105, at 79, 82-83. In my view, food issues would simply get lost among the many other issues such a council would be asked to oversee and develop.

¹²⁶ A. Eide has suggested a smaller role for specialized agencies like the FAO, calling only for a working group on the issue of the right to food. See *FOOD AS A HUMAN RIGHT* 57, (Asbjorn Eide et al. eds. 1984). Given the FAO's expertise and the historical involvement in all food issues in the UN system, Eide's suggestions are far too limiting for the FAO.

The FAO, with extensive experience in food issues, could move to create a legal instrument from its recent *World Food Security Compact*¹²⁷ in much the same way the CESCPR and CCPR were developed from the *Universal Declaration of Human Rights*. An International Food Covenant would embody the principles of the Compact and those enumerated above. As well, such a covenant could establish a basic juridical framework under which all international law concerning food issues must be developed. Such an initiative undertaken by the FAO,¹²⁸ would require a change from its usual activities as it has rarely been a drafter and advocate of international legislative initiatives. The FAO would have to be diligent in seeking widespread international support for the initiative, both from developed and developing nations. A covenant such as this would achieve a common purpose for all concerned - preservation of the most fundamental of human rights and promotion of the economy, protection of the environment and an insurance policy against political destabilization threatening international peace and security.

This recipe for change, a recognition that the old segregated system of food rules has yielded little and an integrated one sharing common principles and an international infrastructure should replace it, holds new hope for resolving world problems relating to food. It is an idealistic but essential agenda for change and for the reduction of human suffering. The defeatist position advocated by many, that there is little we can do, does not provide a constructive way forward. "[E]xcessive realism (defeatism) is more destructive in the long term than what may presently be dismissed as naive idealism. Whereas the former ensure the maintenance of the *status quo*, the latter at least points to a better future."¹²⁹

¹²⁷ See *World Food Security Compact*, *supra* note 41 and accompanying text. The Compact can be found in Tomasevski, *supra* note 19, at 224.

¹²⁸ For commentaries on the role of the FAO in ending world hunger and advancing the right to food, see Roger Sorenson, *Role of FAO in Ending World Hunger* 30 *How. L.J.* 387 (1987); Julianne Cartwright Traylor, *FAO and the Right to Food in FOOD AS A HUMAN RIGHT* 187 (Asbjorn Eide et al. eds. 1984). For a review of the operational strengths and weaknesses of the FAO in light of the other three major world food agencies (WFP, WFC, IFAD) see Talbot, *supra* note 63.

¹²⁹ ALSTON, *supra* note 14, at 61.

As media attention continues to challenge our collective consciences by exposing international economic, environmental and security problems, the world community must acknowledge food's special place in international law and international life. The world community must act and it must act now.