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Accounting for Hunger: An Introduction to the Issues

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APPROXIMATELY ONE BILLION people will be hungry in 2011, up from 923 million at the beginning of 2008, 854 million in 2005 and 820 million in 1996.[1] Almost all of these people whose calorie intake is too low to meet their basic physiological needs are located in developing countries—about 98%, according to the UN Food and Agriculture Organization (FAO). In these countries, at least 2.5 billion individuals today lack the essential micronutrients that are needed to lead a healthy and active life.[2] Deficiencies of vitamin A and zinc still rank among the leading causes of death through disease in developing countries, where, together, these deficiencies in newborn children and infants account for 9% of under-five deaths.[3] Between one-fifth and one-quarter of child deaths can be attributed to low birthweight and childhood underweight.[4]

[1] See Food & Agriculture Organization of the UN (FAO), 'The State of Food Insecurity in the World: Economic Crises—Impacts and Lessons Learned' (2009) 11 (estimating number of hungry people at 1.02 billion). In 2010, the figure was considered to be slightly lower, thanks to the recovery of the global economy after the financial and economic crisis of 2008 and 2009 (see (FAO), 'The State of Food Insecurity in the World: Economic Crises—Addressing Food Insecurity in Protracted Crises' (2010) 9). However, at the end of 2010, the figure is probably above the mark of one billion because of the impacts of the food price spikes of all staple foods except rice.

[2] One-third of the 8.8 million child deaths worldwide is attributable to malnutrition. RE Black, LH Allen, ZA Bhutta, LE Caulfield, M de Onis, M Ezzati, C Mathers and J Rivera, 'Maternal and Child Undernutrition: Global and Regional Exposures and Health Consequences' (2008) 371 *Lancet* 243.

[3] Ibid, 253.

[4] It was estimated in 2004 that 35% of child deaths could be attributed to childhood underweight and maternal low body-mass index leading to intrauterine growth restriction and low birthweight. See SM Fishman, LE Caulfield, M de Onis, et al, 'Childhood and Maternal Underweight' in M Ezzati et al (eds), *Comparative Quantification of Health Risks: Global and Regional Burden of Disease Attributable to Selected Major Risk Factors* (Geneva, World Health Organization, 2004) 39–161. The figure would now be around 22%, as the prevalence of stunting has declined in most regions. See Black, above n 2, 254.

But hunger is not a natural disaster. It is a legacy of choices made in the past. It stems from a series of decisions that, in retrospect, appear short-sighted, and were based on a wrong diagnosis of the causes of hunger, leading to incorrect prescriptions to remedy it. The single most important proximate cause of structural hunger today is that developing countries have either not invested sufficiently in agriculture or have invested in the wrong kind of agriculture, with little impact on the reduction in rural poverty. In fact, for almost 30 years, starting in the early 1980s, neither the private sector nor governments were interested in investing in agriculture. Under the structural adjustment policies that were launched at the time, the public sector in developing countries was drastically downsized: extension services were dismantled, public research in agriculture limited, and support to farmers in developing countries significantly reduced.[5] As an indicator of this lack of investment, public spending in 14 agriculture-based countries, including 12 countries of sub-Saharan Africa, decreased on average from 6.9% of gross domestic product (GDP) in 1980 to 4% in 2004, although the share of agriculture in those countries' GDP remained roughly constant during those years and although 70–80% of the population of those countries depend on the agricultural sector.[6] Official development assistance (ODA) also moved away from agriculture, which was not seen as offering a strong potential for development. In 2008, for example, the World Bank reported that the share of agriculture in ODA declined from 18% in 1979 to 3.5% in 2004, and that it declined in absolute terms from 8 billion USD (in 2004 dollars) in 1984 to 3.4 billion in 2004.[7]

As the state and donors retreated from agriculture, it was hoped that private investors would enter the sector, filling in the financing gaps. But they did not. Rather, as a result of both the huge subsidies provided by the governments of Organisation for Economic Co-operation and Development (OECD) countries to their producers and the growth of highly competitive types of agriculture in certain developing countries, overproduction of basic food commodities was massive, creating a structural decline in the prices of raw agricultural commodities on the international markets. In addition, despite the entry into force in 1995 of the Agreement on Agriculture as part of the agreements establishing the World Trade Organization (WTO), producers in many developing countries continued to face acute barriers in their access to the high-value markets of OECD countries, including the tariffs imposed by those countries as well

[5] For an assessment of the impact of structural adjustment policies on agriculture, see S Commander (ed), *Structural Adjustment and Agriculture: Theory & Practice in Africa & Latin America* (London, Overseas Development Institute, 1989).

[6] World Bank, 'World Development Report 2008: Agriculture for Development' (2007), table 1.3, 41 (WDR 2008). The share of agriculture in total GDP remained stable throughout the period, at an average of 28.9% for the 14 countries concerned.

[7] Ibid, 41.

as non-tariff barriers such as public and private standards. With the exception of certain tropical commodities, the private sector therefore had limited interest in investing in agriculture in developing countries, where it would confront highly unequal competition from producers located elsewhere. The result was that many low-income countries, particularly in sub-Saharan Africa, increasingly specialised in the production of a narrow range of raw agricultural commodities, rendering them highly vulnerable to price changes on the international markets both as regards their export revenues and as regards their food security at home. The situation was exacerbated by a lack of diversification of the economies of the least-developed countries (LDCs). For those countries, the poorest in the developing world, the pattern according to which the international division of labour was organised during the colonial era—with the colonies supplying the centre with raw materials and buying processed foods and manufactured goods produced by the colonial power—was not questioned: instead, it was further reinforced by the push towards export-led agriculture.[8]

In one respect at least, this is now changing. Within the past few years, agri-food companies have begun to view an increase in direct investment in agriculture as a means to lower their costs and ensure the long-term viability of their supplies. As commodity buyers grow larger and more concentrated, they seek to respond to the requirements of their food industry clients through increased vertical coordination, tightening their control over suppliers. Foreign direct investment in agriculture has begun to increase as a result: according to the UN Conference on Trade and Development, it went from an average of 600 million USD annually in the 1990s to an average of 3 billion in 2005–07.[9] More recently, the global food price crisis of 2007–08 led both governments and private investors to realise that the era of low and decreasing prices for agricultural commodities may be coming to an end; that suitable farmland and freshwater might in the future become scarce commodities; and that, as the growth in demand for agricultural commodities is gradually outpacing the ability for the supply side to respond, investing in agriculture might be highly profitable and of strategic importance for the future stability of agricultural supplies.[10]

But simply increasing food production to meet future needs, although

[8] See H-J Chang, *Kicking Away the Ladder: Development Strategy in Historical Perspective* (London, Anthem Press, 2002); H-J Chang, *Bad Samaritan: The Guilty Secrets of Rich Nations & the Threat to Global Prosperity* (London, Random House, 2007); ES Reinert, *How Rich Countries Got Rich and Why Poor Countries Stay Poor* (London, Constable, 2007).

[9] UN Conference on Trade and Development, 'World Investment Report 2009: Transnational Corporations, Agricultural Production and Development' (2009).

[10] On the impacts of the global food price crisis of 2007–08 on policymakers and the private sector, see J Clapp and MJ Cohen (eds), *The Global Food Crisis. Governance Challenges and Opportunities* (Waterloo, ON, Wilfrid Laurier University Press, 2009).

necessary, is not sufficient. It will not enable significant progress in combating hunger and malnutrition unless doing so is combined with higher incomes for the poorest—particularly small-scale farmers and agricultural workers in developing countries. As a result of the past history that was briefly sketched above, many poor countries have been caught in a vicious cycle, in which poverty in the rural areas accelerates rural flight, leading to the expansion of the number of people living in sub-standard conditions at the outskirts of the large cities. More than one in six people—43% of the population in developing countries—already live in slums; by 2030, while the global population will have increased from the current 6.9 billion to an estimated 8.3 billion,[11] it is estimated that the number of people living in slums will have grown to one in three individuals.[12] Accordingly, governments and other actors have sought to increase food production to ensure the provision of low-priced food that is affordable to the urban poor. This solution, however, not only pitted the interests of farmers and agricultural workers against those of the urban populations in low-income countries. It also made importing subsidised foods dumped on the international markets look like a desirable option for many governments, despite the heightened vulnerability this creates due to increasingly volatile prices and the impacts on local food producers. And the narrow focus on increasing food supplies encouraged the development of modes of production that perhaps fit the requirements of the dominant low-cost food economy, but which result in considerable social and environmental externalities that are not accounted for in the price of food. This is the impasse that we now face.

In the remainder of this introductory chapter, we describe the conviction that has animated us in preparing this collection of essays. We then review the contents of the book, providing context and perspective for each chapter. In order to do so, we briefly recall the main changes that the global food systems have experienced in recent years, and the dilemmas that they now confront as they are being reshaped.

[11] During the twentieth century, world population increased from 1.65 billion to 6 billion, and experienced the highest rate of population growth (averaging 2.04% per year) during the late 1960s. The largest annual increase in world population (86 million) took place in the late 1980s. The rate of population growth is currently around 1.2% per year, and the annual increase is now approximately 75 million. Over the next generation, the fastest increases in population will take place in Africa: the population of the continent, now at one billion, increases by about 24 million people each year, and it will have doubled by 2050. See UN Population Division, 'The World at Six Billion', UN document ESA/P/WP.154 (12 October 1999).

[12] See UN Habitat, 'The Challenge of Slums: Global Report on Human Settlements 2003' (2003).

SUPPORTING THE ABILITY OF DEVELOPING COUNTRIES TO FEED THEMSELVES

We are convinced that moving from a vicious to a virtuous cycle is possible. We can significantly improve agricultural productivity where it has been stagnant, and thus raise production where it needs most to be raised—in poor, food-deficit countries—while at the same time increasing the incomes of small farmers and preserving ecosystems. This would slow down the trend towards urbanisation in those countries, which places on the public services of those countries a stress with which they are often unable to cope. It would contribute to rural development, with important multiplier effects on the other sectors of local economies if the benefits are spread across a large number of rural poor rather than concentrated in the hands of a few large landowners.[13] And it would preserve the ability of the generation following ours to meet its own needs. To achieve this, however, pouring money into agriculture will not be sufficient: what matters most will be to create the conditions that will allow small-scale farmers to be rewarded for their work. Improving the viability of small-scale farming should go hand in hand with improving the protection of the rights of agricultural wage workers, including their right to a living wage. There are 450 million of these workers—often former peasants who became landless or quasi-landless—globally, and a significant number of them receive wages too low to feed themselves adequately; this is one reason why large plantations have been able

[13] The question of linkages between agriculture and the other sectors of the economy has been a classic theme of economic literature since the early 1960s. See, eg BF Johnston and JW Mellor, 'The Role of Agriculture in Economic Development' (1961) 4 *The American Economic Review* 566. The argument that growth in agriculture can benefit other sectors is sometimes based on the view that it will increase demand for inputs and lead to growth in agro-processing activities, respectively upstream and downstream of the production process on the farm. However, since most agricultural inputs and machinery are imported, and since crops can be sold abroad as raw commodities, whether such a 'production' linkage will occur depends on the organisation of the commodity chain in the country concerned. A far more significant linkage results from the fact that increased incomes in rural areas will raise demand for locally traded goods or services: recent research estimates this 'consumption' linkage to be typically four to five times more important than the 'production' linkage. L Christiaensen, L Demery and J Kuhl, 'The (Evolving) Role of Agriculture in Poverty Reduction—an Empirical Perspective' [2011] *Journal of Development Economics* forthcoming; originally published as World Bank Policy Research Working Paper No 4013 (2006). This linkage—in fact a Keynesian argument—is particularly likely where agricultural growth is widely spread across large segments of a very poor population. It presupposes, of course, that the rural population will buy locally produced goods and locally provided services, and that supply can meet this increase in demand. See C Delgado, J Hopkins and VA Kelly, 'Agricultural Growth Linkages in Sub-Saharan Africa', International Food Policy Research Institute Research Report 107 (Washington, DC, 1998). The important implication is that the diversification of the economy—the strengthening of the industry and the services sectors—must precede the growth of a market for manufactured products and services by the increase of incomes in rural areas: you do not accelerate a process that has not been launched.

to achieve a level of competitiveness that allowed them to capture an increasingly share of markets, as well as the land and water on which farming depends, in many regions relegating smaller farmers to the more hilly and arid soils.

How can this be done? The reason why increasing the overall levels of production will not suffice to combat global hunger is because hunger is the result of poverty and not of inadequate aggregate volumes of food production. The lessons drawn from the path-breaking study by Amartya Sen on twentieth-century famines can be extended, in this regard, to more structural types of hunger.[14] Indeed, the number of the hungry has risen at the same time that the levels of cereals production are breaking record after record on a worldwide basis. For instance, in 2009, the figures of global hunger hovered around all-time high levels, yet cereals harvests that year only modestly fell short of the record high levels of 2008, when 2287 million tons were produced.[15] The number of hungry people has thus continued to increase despite the fact that, on average, increases in annual grain production have consistently exceeded demographic growth.[16]

To successfully combat hunger, therefore, we must not focus only on improving supply. Instead, we must take as our departure point an identification of the obstacles faced by those who are victims of hunger. And we must recognise this basic fact: the majority of the hungry live in rural areas and either depend on small-scale farming for their subsistence or are employed in sub-standard conditions on large plantations. In total, at least 1.5 billion individuals depend on small-scale farming for their livelihoods. They live mostly from subsistence agriculture on less than two hectares of land.[17] Among them, a significant proportion, most of who are net buyers of food, are hungry. The unfair competition between these independent farmers and larger production units results in an underclass of waged agricultural workers being exploited and more farmers being driven off their land.[18] It is by supporting these victims of hunger that we can hope to achieve durable victories against hunger.

[14] See AK Sen, *Poverty and Famines. An Essay on Entitlement and Deprivation* (Oxford, Oxford University Press, 1981).

[15] O De Schutter, UN Special Rapporteur on the Right to Food, 'Seed Policies and the Right to Food: Enhancing Agrobiodiversity, Encouraging Innovation', 2, delivered to the General Assembly, UN document A/64/170 (2009).

[16] See Annie Shattuck and Eric Holt-Giménez, 'Moving from Food Crisis to Food Sovereignty' (2010) 13 *Yale Human Rights & Development Law Journal* 421, 422: 'Over the last twenty years, food production has risen steadily at over 2% a year. Meanwhile, over the same period, population growth has slowed to 1.09% per year, with an average growth rate of 1.2%' (internal citations omitted).

[17] WDR 2008, above n 6, at 3.

[18] It is estimated that smallholders represent approximately half of the one billion hungry people in the world, and that waged agricutural workers represent one fifth of victims of hunger. See UN Millennium Project, 'Halving Hunger: It Can be Done, Summary Version of the Report of the Task Force on Hunger' (2005) 6.

This book is guided by a sense of urgency. It is time now to descend from the lofty heights of the commodity prices on the international markets to the situation of those who work in the fields or survive from petty trade on the outskirts of cities. Poor farmers do not sell on the Chicago Board of Trade; poor consumers buy their bag of rice from the local market, not from the commodities exchanges; and the wages of agricultural workers does not rise with commodity prices. By ignoring that perspective on hunger, we fail to see the political economy problems that arise in the food production and distribution chains. We see hunger as a problem of supply and demand, when it is primarily a problem of a lack of access to productive resources such as land and water, of unscrupulous employers and traders, of an increasingly concentrated input providers sector or of insufficient safety nets to support the poor. Too much attention has been paid in the past to addressing the mismatch between supply and demand on the international markets—as if global hunger were the result of physical scarcity at the aggregate level—while too little attention has been paid both to the imbalances of power in the food systems and to the failure of the international economic environment to support efforts aimed at improving the ability of small-scale farmers in developing countries to feed themselves, their families and their communities. These are the core intuitions at the basis of the two parts of the book.

PART I: ADDRESSING POWER IMBALANCES IN THE FOOD SYSTEMS

The Changing Nature of Food Supply Chains

In part I of the book, it is this shift of perspective that we seek to achieve. We note, first, that the recent increase in direct investment in agriculture, referred to above, is part of a larger transformation of the global supply chains in the agrifood sector.[19] Commodity buyers today are larger and more concentrated than previously: for example, according to some estimates, the five largest traders in grains (Cargill, Bunge, Archer Daniels Midland (ADM), Glencore and Dreyfus) control 75% of international trade in grains. These actors seek to respond to the requirements of their food industry clients by increasing vertical coordination and

[19] See in particular T Reardon and JA Berdegué, 'The Rapid Rise of Supermarkets in Latin America: Challenges and Opportunities for Development'(2002) 20(4) *Development Policy Review* 317; T Reardon et al, 'Supermarkets and Horticultural Development in Mexico: Synthesis of Findings and Recommendations to USADI and GOM', Report submitted by MSU to USAID/Mexico and USDA/Washington (August 2007); T Reardon et al, 'Agrifood Industry Transformation and Small Farmers in Developing Countries' (2009) 37 *World Development* 1717.

tightening their control over suppliers, while wholesalers and retailers seek to secure stability of supply either by the acquisition of production units or, more often, by the use of explicit contracts (long-term arrangements with producers) or techniques such as preferred supplier lists. The processing industry is also rapidly consolidating, after an initial period during the 1980s and early 1990s during which parastatal large-scale processors were dismantled. This sector is increasingly globalised and dominated by large transnational corporations; even at the domestic level, it was common for private monopolies to replace public monopolies during the privatisations of the 1980s and 1990s in the import–export sector.[20] The retail sector has also witnessed increased multi-nationalisation. Global retailers and fast food chains are now expanding to reach China, India, Russia, Vietnam and, increasingly, Southern and Eastern Africa, and retailers are diversifying from processed foods to semi-processed foods and, increasingly, fresh produce, replacing the more traditional food markets.

In this process of expansion and consolidation, the procurement system too has been modernised. In addition to public standards, private standards imposed by retailers have gained increased importance: these private standards now include not only requirements related to food safety, but also social and environmental requirements included in codes of conduct.[21] Procurement is also increasingly centralised, as the procurement shed (the area from which companies source) expands from national to regional and global networks.

The result is that concentration in the food production and distribution chains has been significantly increasing.[22] The resulting market structure gives buyers considerable bargaining strength over their suppliers, with potentially severe implications for the welfare both of producers and consumers. The intergovernmental initiatives that currently exist

[20] J Ziegler, C Golay, C Mahon and SA Way, *The Fight for the Right to Food: Lessons Learned* (Basingstoke: Palgrave Macmillan, 2011) 71.

[21] On compliance with social and environmental standards as a condition of access to global markets, see in particular S Ponte, *Standards, Trade and Equity: Lessons from the Speciality Coffee Industry* (Copenhagen, Centre for Development Research, 2002).

[22] For example, in the Brazilian soybean market, there are roughly 200,000 farmers attempting to sell to five main commodity traders. Three large transnational commodity buyers (ADM, Cargill and Barry Callebaut) dominate the Ivorian cocoa industry. Food processors sometimes also achieve the same degree of concentration: in 1996, two transnational food and beverage companies, Nestlé and Parmalat, shared 53% of the Brazilian dairy processing market, driving off a large number of cooperatives that were led to sell their facilities to those companies. For these and other examples, see P Gibbon, 'The Commodity Question: New Thinking on Old Problems, Human Development Report Office', Occasional Paper 2005/13; B Vorley, 'Food Inc: Corporate Concentration From Farm to Consumer' (UK Food Group, 2003); M Anderson, 'A Question of Governance: To Protect Agribusiness Profits or the Right to Food?' (Agribusiness Action Initiatives, 2009); A Sheldon and R Sterling, 'Estimating the Extent of Imperfect Competition in the Food Industry: What Have We Learned?' (2003) 54(1) *Journal of Agricultural Economics 89*.

to encourage companies to act responsibly are unable to tackle this structural dimension.[23] Concentration in buying markets is particularly worrying, even more so than concentration in selling markets, because dominance in buying markets can be achieved with a relatively smaller market share: for instance, the UK Groceries Market Investigation concluded in 2000 that retail grocers with as little as 8% of the total retail market have substantial buyer power over sellers.

The bargaining power of buyers and retailers is strengthened by a number of factors.[24] In respect of food processors and commodity purchasers, buyer power increases if the geographic selling market is very narrow and if the options for the producer are limited as a result. This may occur if the transport infrastructure is weak or if the agricultural product concerned is extremely perishable. For example, a poultry farmer cannot sell to any processing plants outside a particular radius of his farm, because live poultry may not be viably transported over large distances. This strengthens the bargaining position of poultry processing plants in the area over their suppliers, especially if, as is usually the case, there are a number of poultry farmers in the area. In addition, this gives such processing plants an incentive to engage in tacit collusion to locate their plants at suitable distances from each other, in order to wield greater power over poultry farmers.[25]

Similarly, buyer power may be further strengthened if farmers may not turn their resources to the production of other agricultural goods, or exit the market, except at very great expense. Coffee is a prime example of such low production substitutability: the land on which coffee is cultivated is generally very hilly and located at high altitudes, making it difficult for farmers to grow anything else. Thus, when the price of coffee falls below a profitable level, farmers often do not have the option to cultivate other crops. Instead, they produce even more coffee in an attempt to bring in income in the short-term, thereby depressing coffee prices even further.[26] Entering this 'productivity trap' is not irrational: coffee farmers have to pay for their basic necessities, and they therefore cannot afford to exit the market even temporarily.

As for retailers, buyer power arises from the fact that suppliers need large networks of outlets in order to take advantage of economies of

[23] For example, in their current version as last revised in 2000, the OECD Guidelines for Multinational Enterprises have no provision on fair prices to be paid to producers, or on a living wage for workers. Therefore, quite apart from the uneven performance of the mechanisms established to monitor compliance with these guidelines, they are clearly insufficient to ensure that the outcomes of relationships in the food chain will be more equitable.

[24] We gratefully acknowledge the assistance of Aravind Ganesh in the preparation of the following paragraphs.

[25] P Carstensen, 'Buyer Power, Competition Policy and Antitrust: the competitive effects of discrimination among suppliers' (2008) 53 *Antitrust Bulletin* 271, 306.

[26] See R Patel, *Stuffed and Starved* (London, Portobello, 2007) 8–11.

scale, meaning that retailers controlling large swathes of outlets generally obtain very strong bargaining positions. This bargaining strength is enhanced if the market concerned does not possess a strong wholesale sector that could counterbalance retailer power. The pressure that retailers place on wholesalers and food manufacturers ultimately bears upon farmers: food processors and wholesalers who find their profit margins squeezed by the demands of retailers will resort to demanding increasingly lower prices of the farmers from whom they purchase their inputs.

Due to the deeply unequal bargaining positions of food producers and consumers on the one hand, and buyers and retailers on the other hand, the latter can continue to pay relatively low prices for crops even when the prices increase on regional or international markets, and they can continue to charge high prices to consumers even if prices fall on those markets. This explains the fact that, despite the burst of the commodities market bubble in July 2008, which led to lower prices until the new price spike of the fourth quarter of 2010, food prices have consistently remained high on the local markets in many developing countries. Indeed, in a number of these countries, prices were higher in July 2009 than they were a year earlier,[27] and they have continued to remain at high levels.[28] Because certain traders occupy dominant positions in these countries and because competition regimes are non-existent or ineffective, those traders often feel no pressure to allow consumers to benefit from the falling prices on international markets.

In OECD countries, although the revenues of farmers can increase as prices on regional or international markets rise, the revenues of food processors and retailers generally increase in even larger proportions. For example, while in the 1950s farmers in the United States received 40–50% of the food dollar, today they receive around 20%.[29] The situation of smallholders in developing countries is more fragile still. Often, in the absence of proper storage facilities, they have no choice but to sell their crops during the harvest period, when the prices are lowest, even if they then have to buy food, later in the year, at much higher prices.[30] To the

[27] See O De Schutter, 'Crisis into Opportunity: Reinforcing Multilateralism', UN document A/HRC/12/31 (September 2009) ¶ 5; FEWSNET (Famine Early Warning Network), 'Price Watch: Urban Food Markets' (USAID, October 2009).

[28] See I Ortiz, J Chai and M Cummins, 'Return of the Food Crisis: The Threat to Poor Households and Policies to Safeguard a Recovery for All', UNICEF Social and Economic Policy Working Paper (January 2011).

[29] University of Georgia College of Agriculture and Environmental Sciences, 'Changes in US Agriculture from the 1950s to the 1990s' (2008).

[30] On the importance of the price variations across seasons for the livelihoods of the poor in developing countries, see in particular R Chambers, R Longhurst and A Pacey, *Seasonal Dimensions to Rural Poverty* (London, Pinter/Totowa, NJ, Allanheld Osmun, 1981); A Ferro-Luzzi and F Branca, 'Nutritional Seasonality: the Dimensions of the Problem' in S Ulijaszek and S Strickland (eds), *Seasonality and Human Ecology* (Cambridge, Cambridge

extent that they do not market their produce themselves, they also often face a very limited number of buyers who can store the food, process it and sell it to the end consumer. The first obstacle can be overcome by the expansion of storage facilities in rural areas, at the local level, or by mechanisms such as warrantage, through which a farmer can place crops in a warehouse at harvest time, using it as a collateral to obtain a loan, which is redeemed during the lean season, at which time the farmer can sell the crops at higher prices. The second obstacle has to do with excessive concentration at certain segments of the food chain, which constitutes an important market failure in the food system.

The vast majority of smallholders produce crops for local consumption. Here, the main answer is to improve information about prices, allowing producers to improve their bargaining position vis-à-vis buyers; to improve infrastructure, in order to allow them to transport more easily their crops to markets, where they can obtain better prices from other buyers; and to encourage the formation of strong cooperatives, both in order to allow farmers to achieve economies of scale in the storage, transportation, processing and marketing of food, and in order to strengthen their bargaining position.

Smallholders wishing to have access to the high-value markets of industrialised countries face distinct problems. In many cases, they have been left out from the potential benefits of the development of global supply chains. While these supply chains have developed at a rapid pace, linking an increasing number of food producers to the international markets, the development of local, national and regional food systems has lagged behind in most poor countries. In poor countries, these markets have not commanded quite the same degree of attention from governments. Because producers exporting their crops were a source of revenue for the state—both in export duties and in foreign currency—they have benefited from some levels of public support, whereas food producers supplying the local markets have been almost entirely neglected until recently. As a result of this imbalance, farmers often must choose between serving the low-value local markets, without appropriate support from the state, or linking to the high-value export markets, in which they face both powerful competitors from other countries and large agribusiness companies whose bargaining power is far more significant than their own. The position of small-scale farmers in linking to export markets is particularly weak since commodity buyers generally prefer sourcing from large producers, both because of the lower transaction costs involved and because larger producers have easier access to capital and thus to non-land farm assets such as storage, greenhouses and

University Press, 1993); and S Devereux, B Vaitla and S Hauenstein Swan, *Seasons of Hunger: Fighting cycles of quiet starvation among the world's rural poor* (Action Against Hunger/Pluto Press, London, 2008).

irrigation systems. Small farmers can only compensate for this disadvantage by their lower labour costs (provided there is some substitutability between capital and labour, which depends on the crops concerned) or if buyers view them as a less risky sourcing option, given that larger farmers have more market options and thus can be less reliable.[31] Small-scale farmers therefore pay a high entry fee into global supply chains: due to the structural obstacles they face, they can only compete by paying low wages to those working on the farm, who are often family members. In addition, entering into such agreements often locks them into a situation of high dependency towards the buyer, especially when they commit to sell exclusively to one buyer. The resulting lack of real choice or alternatives for farmers in developing countries—particularly the smaller farmers—significantly weakens their position as sellers of crops.

The consolidation of the agrifood industry has also led to a number of practices that may be particularly detrimental to producers. For instance, a dominant buyer may demand from sellers a discount from the market price that reflects the savings made by the seller due to increased production. Such a 'discount' may be an explicit reduction in price, or it may come in the form of passing on to the seller certain costs associated with functions normally carried out by the buyer, such as the grading of livestock or stocking of shelves. This effectively means that the dominant buyer alone captures the savings or an inequitably large proportion thereof, which cannot then be passed on to other buyers. This puts non-dominant buyers at a competitive disadvantage in the downstream market, leading to the dominant buyers also becoming dominant on the selling markets.[32] This can also lead to increased concentration on the producer side, as smallholders are pushed out of the market because only large suppliers enjoying economies of scale are able either to afford such volume discounts or to resist dominant buyer demands for them. Another practice that can harm producers is to adjust the terms of supply. Of the 52 practices investigated by the UK Competition Commission in the Groceries Market Investigation, 26 were concerned with 'practices that have the potential to create uncertainty for suppliers regarding their revenues or costs as a result of the transfer of excessive risks or unexpected costs to suppliers'.[33] For

[31] See, eg JM Codron et al, 'Supermarkets in Low-Income Mediterranean Countries: Impacts on Horticulture Systems' (2004) 22 *Development Policy Review* 587.

[32] See PW Dobson and R Inderst, 'Differential Buyer Power and the Waterbed Effect: Do Strong Buyers Benefit or Harm Consumers?' (2007) 28 *European Competition Law Review* 393.

[33] UK Competition Commission, Groceries Market Investigation, ¶9.52, 166–67.

example, flexibility and 'just in time' supply is increasingly required.[34] Other similar practices have also been documented.[35]

Reforming the Food Supply Chains

These are some of the issues addressed by the contributions collected in part I of the book. Chapter 2, written by Kaitlin Cordes, examines the ways in which agribusiness transnational corporations (TNCs) can affect the right to food through the various relations they entertain with the other actors in the food chain. Agribusiness TNCs have exceptional power within the global food system, as subsectors have become progressively more concentrated, thus enabling agribusiness TNCs to affect nearly every aspect of the global food system. Agribusiness TNCs influence decisions over which food is grown in various locations, how land is used, which seeds are used and whether they can be saved, how water is allocated and what research is undertaken. They also directly and indirectly employ a significant amount of the global population and, given their market power, influence the prices paid to farmers and farmworkers at the lowest end of the agribusiness chain. Cordes examines the impact of two different sectors of the food industry on the right to food: the food processing sector, which trades in commodities and also processes and manufactures the food that much of the world eats, and the biotechnology sector, which produces the seeds, agrochemicals and other inputs that are used in most global agriculture production. She first addresses the influence of the food processing industry on the right to food. In particular, she looks at the market power of commodity traders, which enables them to influence the prices paid to producers around the world. She also looks at the influence of food and beverage companies, using the examples of the beverage industry's impact on the right to water and the influence of food companies over prices and conditions in the cocoa industry. The chapter then discusses the impact of biotechnology companies, examining the influence of those companies on access to resources and the right to food, especially through intellectual property rights regimes. Cordes concludes with recommendations for agribusiness TNCs, governments, and policymakers focused on improving the impact of agribusiness TNCs on the right to food.

In chapter 3, Margaret Cowan expands our understanding of the influence of private actors within the global food system by focusing

[34] T Lang, 'Food Industrialisation and Food Power: Implications for Food Governance' (2003) 21 *Development Policy Review* 555.

[35] ActionAid, 'Who Pays?'. See also Collateral Damage (Banana Link, 2006) (describing how price pressures from UK retailers have forced banana producers to cut wages, replace permanent labourers with temporary contract workers and suppress trade union rights).

on the role of global retailers in the food distribution system and their impact on smallholder farmers. The transformation of food retail and rapid supermarket consolidation have had dramatic impacts on access to food. Although the buying practices of powerful retailers have increased their capacity to deliver affordable, high-quality food to consumers, the same practices have also reinforced low wages and payments to those who produce our food. Cowan first documents the rise of supermarkets in industrialised and developing countries. She then examines the modernisation of procurement systems, including flexible production and 'just in time' delivery, the creation of private standards, and the rise of 'preferred supplier' relationships, and addresses the impact of such systems on consumers. Currently, food retailers often enjoy retailer buyer power, which allows them to purchase from suppliers at more favourable terms than would be expected under competitive conditions. This, in turn, means that food retailers often pay lower prices and pass risks to vulnerable smallholder farmers. US and EU antitrust and competition laws have been inadequately tailored to the realities of modern food retailer practices and their anticompetitive effects. Given this environment, it is important to improve smallholder access to global supply chains in a way that increases smallholder security. This will require coordinated efforts of public and private bodies, including providing smallholders with access to resources, improving domestic infrastructure, and coordinating agricultural policies and marketing initiatives at the regional level. Cowan concludes her contribution by exploring government policies that can increase smallholder security and examining the role that private sector and non-governmental organisations can play to support smallholders.

Imbalances in power pose real problems in the current development of food chains, and governments should prioritise remedying those imbalances, for instance by better use of competition regimes and by supporting farmers' organisations where they are weak. Similar imbalances also exist as a result of the increased competition for natural resources, particularly farmland and water. Since 2009–10, the issue of large-scale acquisitions or leases of farmland in developing countries—what non-governmental organisations refer to as 'land-grabbing'—has attracted an enormous amount of attention, commensurate with the scope of the phenomenon: based on press reports, the World Bank notes, for instance, that 'investors expressed interest in 56 million ha of land globally in less than a year [between 1 October 2008 and 31 August 2009]', which represents double the size of France's farmland and two-fifths of all farmland in the EU.[36] Although this race towards farmland can be

[36] World Bank, 'Rising Global Interest in Farmland: Can It Yield Sustainable and Equitable Benefits?' (September 2010) xxxii. It is important to note that this figure refers to the projects reported, though the actual implementation lags behind quite significantly.

explained by a number of drivers,[37] it can be described generally as an attempt by both public investors (directly or through sovereign wealth funds or publicly owned companies) and private investors to secure access to land, in order to meet the food and energy needs of cash-rich but resource-poor countries.[38] As noted by Mann and Smaller, this results in 'shifting land and water uses from local farming to essentially long-distance farming to meet home state food and energy needs',[39] thus allowing investors to circumvent the international markets and creating

> a new dynamic of global importance. It is no longer just the crops that are commodities: rather it is the land and water for agriculture themselves that are increasingly becoming commodified, with a global market in land and water rights being created.[40]

The choice of major advanced economies to favour the switch to biofuels in transport through blending mandates and subsidies has been a significant factor behind this global rush towards farmland.[41] Many observers note that these policies have significantly increased the risk that poor farmers will be evicted from their land.[42] Indeed, an inventory presented

According to the Bank, almost 30% are still in an exploratory stage (that is, they have not obtained government approval); 18% have been approved but have not started yet; more than 30% are at initial development stages; and only 21% have initiated actual farming, often on a scale much smaller than intended. Ibid, 36.

[37] On these various drivers, see, eg listed in chronological order of publication, International Fund for Agricultural Development (IFAD), 'The Growing Demand for Land: Risks and Opportunities for Smallholder Farmers', a discussion paper prepared for the Roundtable organised during the thirty-second session of IFAD's Governing Council (18 February 2009); L Cotula, S Vermeulen, R Leonard and J Keeley, *Land Grab or Development Opportunity?* (London/Rome, IIED, FAO and IFAD, 2009) 62 (based on detailed examination of land deals in Sudan, Ethiopia, Madagascar, Mozambique and Tanzania); Deutsche Gesellschaft für Technische Zusammenarbeit (GTZ), 'Foreign Direct Investment (FDI) in Land in Developing Countries', German Federal Ministry for Economic Cooperation and Development, Eschborn, December 2009; M Kugelman and SL Levenstein (eds), *Land Grab? The Race for the World's Farmland* (Washington, DC, Woodrow Wilson International Center for Scholars, 2009); A-C Gerlach and P Liu, 'Resource-Seeking Foreign Direct Investment in African Agriculture: A Review of Country Case Studies', FAO Commodity and Trade Policy Research Working Paper No 31 (September 2010); World Bank, ibid.

[38] For a discussion of the impacts on the rights of land users, see O De Schutter, 'The Green Rush: The Race Towards Farmland and the Rights of Land Users' (2011) 52(2) *Harvard International Law Journal* (forthcoming).

[39] H Mann and C Smaller, 'Foreign Land Purchases for Agriculture: What Impact on Sustainable Development?', Sustainable Development Innovation Briefs, United Nations Department of Economics Social Affairs, no 8 (New York, January 2010) 1–2.

[40] Ibid. See also Gerlach and Liu, above n 37, 5: '[T]his new trend differs from more traditional forms of international investment in the agro-food sector which were mainly targeting markets. Through the new investment forms, investors seek to gain access to natural resources, in particular land and water'.

[41] It should be noted, however, that energy from biomass can serve a number of uses, of which transport is only a minor part. See FAO, 'The State of Food and Agriculture 2008. Biofuels: Prospects, Risks and Opportunities' (Rome, 2008) 11.

[42] See UN Energy, 'Sustainable Bioenergy: A Framework for Decision Makers' (New York, 2007) 24; FAO, ibid, 83: 'Expansion of biofuel production will, in many cases, lead

by the World Bank in April 2010, which listed 389 large-scale acquisitions or long-term leases of land in 80 countries, noted that while 37% of the so-called investment projects are meant to produce food (crops and livestock), agrofuels account for 35% of such projects.[43] More recently, in what remains the largest survey conducted to date on large-scale investments in land, the World Bank reviewed 405 projects with commodity data. The review showed that 37% of these projects focus on food crops, 21% on industrial or cash crops and 21% on biofuels, with the remainder distributed among conservation and game reserves, livestock and plantation forestry in order, inter alia, to capture carbon credits.[44] Energy crops thus represent a significant driver in this overall trend towards large-scale acquisitions or leases of farmland.

In chapter 4, Ann Sofie Cloots examines the impacts on the right to food of this competition between food and fuel for arable lands. This chapter explains the reasons behind the biofuels boom, the subsequent debate over their value and impact, and their place in the international trade regime. Cloots notes that, although many people have pointed to biofuels as an important solution to address climate change, the environmental gains of switching to such fuels are mixed. She then addresses the multiple potential impacts of expanded production of crops for fuel from the perspective of the right to food, the most obvious of which is the potential for rising food prices due to competition over arable land. In addition, increased biofuels production could lead to deforestation and negative effects on biodiversity, the concentration of economic power through intellectual property rights, water pollution, and an increased use of fertilisers and pesticides to grow crops for biofuels. On the other hand, the increased use of biofuels has the potential to create more employment opportunities at many stages along the supply chain. Biofuels could also contribute to improving local energy supplies and could drive development in rural areas that traditionally lack affordable energy options. After discussing these potential impacts, Cloots evaluates biofuels from the perspective of the right to food. In doing so, she examines states' obligations to respect, protect and fulfil the right to food, as well as the responsibilities of companies regarding the right to food. She concludes that, although domestic policies are important, the

to greater competition for land. For smallholder farmers, women farmers and/or pastoralists, who may have weak land-tenure rights, this could lead to displacement'. L Cotula, N Dyer and S Vermeulen, *Fuelling Exclusion? The Biofuel Boom and Poor People's Access to Land* (London, International Institute for Environment and Development (IIED) and the FAO, 2009); R Smolker et al, 'The Real Cost of Agrofuels: Impacts on Food, Forests, Peoples and the Climate' (Global Forest Coalition and Global Justice Ecology Project, 2008).

[43] The figures are from presentations made by the World Bank, most recently at its annual conference held in Washington, DC on 24–25 April 2010. See 'The World Bank in the Hot Seat' [May 2010] *GRAIN*.

[44] See World Bank, above n 36, 51.

problems raised by biofuels cannot be resolved by countries in isolation. She thus argues for the creation of a transnational framework to address the impacts of biofuels production.

PART II: TRADE AND AID: AN ENABLING INTERNATIONAL ENVIRONMENT

The Dependency of Poor Developing Countries on the International Markets

Part II of the book addresses what might be called the addiction of poor developing countries to cheap food dumped on international markets. It examines how this addiction has been encouraged by a perverse system of international trade and the misguided use of food aid. And it explores potential solutions to overcome the burden of this dependency. Since the 1980s, the 49 least-developed countries have shifted from being net food exporters to being net food importers, and their food bills have significantly increased as a result. The FAO estimates that their food bills have risen from 45 to 70% of those countries' total merchandise exports, placing them in a particularly vulnerable situation as the international markets become less reliable and as prices of food commodities will be subjected to more frequent spikes than in the past, particularly as a result of weather-related events linked to climate change.[45] While part of this shift can be explained by the persistent strong demographic growth in these countries, the major factor leading to this situation was the lowering of import tariffs during the 1980s as part of the structural adjustment imposed on these countries as a condition for being able to continue to borrow on international markets. At the time, the poor countries were encouraged to specialise into a limited range of tropical commodities, and to increase their dependence on international markets to feed their populations. Food on international markets would remain cheap and abundant, they were led to believe, as it was heavily subsidised by OECD countries' governments, and it thus made more sense to purchase food under such conditions than to produce it themselves. The result was that the fast-growing urban populations in least-developed countries increasingly consumed imported (often processed) foods, instead of buying locally produced (and fresher) foods. Instead of links being strengthened between the countryside and the cities, these worlds grew apart from each other. This created more rural poverty, and more inequality in the rural areas: deprived of access to markets, local farmers produced no

[45] Statement by the FAO at the WTO Ministerial Conference, fifth session, Cancún, Mexico, 10–14 September 2003, WTO document WT/MIN(03)/ST/61.

more than they could consume themselves or sell locally, except for the few larger producers who entered the global commodity chains.

The resulting shortfalls in production in poor countries, which rendered them vulnerable to price shocks on international markets and to regular balance-of-payments problems, can hardly be said to be compensated by the delivery of food aid. There are important distinctions to be made, of course, between the three distinct modalities under which food aid is provided. It is now well acknowledged that the shipment of donor-country-sourced commodities (ie food transfers) is only justified in the relatively exceptional case where there is a lack of food availability in the region concerned, and that cash-based food aid, allowing food transfers paid for by donor funding in so-called 'triangular' purchases, are otherwise a highly preferable option. Moreover, where the local producers can meet local demand and where the need for food aid stems from an insufficient purchasing power for the poorest segment of the population, aid should take the form of vouchers or cash transfers, enabling recipients to obtain food from the local market.[46] However, questions still regularly surface about how to combine emergency responses—which have gained significantly in importance over the past 20 years as a proportion of the total food aid provided—with the need to promote local food markets and food security in food-aid-recipient countries. And, although there is a growing consensus on the desirability of providing greater flexibility, including through the use of locally and regionally procured food transfers and cash or voucher transfers, and on the importance of food aid being provided with a clear exit strategy in order to avoid dependency, these commitments remain unfulfilled in practice.

Emergency measures in any case are not a substitute for more structural measures to secure longer-term food supply, particularly through support for agriculture in developing countries. Yet, in the choice of such measures, conflicts may emerge between short-term and long-term considerations. Developing countries have been critical of the distortions resulting from the agricultural subsidies benefiting producers from developed countries, particularly in the EU, the US and Japan. In a much-publicised report presented in 2005, the UN Development Programme (UNDP) noted: 'When it comes to world agricultural trade, market success is determined not by comparative advantage, but by comparative access to subsidies—an area in which producers in poor

[46] See O De Schutter, 'The Role of Development Cooperation and Food Aid in Realizing the Right to Adequate Food: Moving from Charity to Obligation', UN document A/HRC/10/005 (March 2009). The report includes a number of recommendations concerning the reform of the Food Aid Convention, which is still under discussion at the time of writing. See also, in particular, CB Barrett and DG Maxwell, *Food Aid after Fifty Years: Recasting its Role* (London and New York, Routledge, 2005); FAO, 'The State of Food and Agriculture 2006. Food Aid for Food Security?' (Rome, 2006.)

countries are unable to compete'.[47] Developed countries' subsidies to their agricultural producers were estimated at the time to amount to 350 billion USD per year. This, in turn, the UNDP noted in the same report, represents a loss of 34 billion USD per year for developing countries, whose producers are confronted with the dumping of heavily subsidised agricultural products on the world markets; this sum did not even include the dynamic and spillover effects on communities that depend on the agricultural sector for investment and employment. Many therefore see the recent increase in the prices of food commodities as an opportunity to finally end this massive distortion of trade, by making it easier for developed states to justify lowering the level of support to their farmers.

Things are not so simple, however. There exist significant differences between different groups of developing countries on this issue. The Cairns Group (Argentina, Brazil, Chile, Colombia, Costa Rica, Indonesia, Malaysia, the Philippines, South Africa, Thailand and Uruguay) have a strong comparative advantage in agriculture and would clearly benefit from the removal, or at least the lowering, of the trade-distorting subsidies of developed countries. In contrast, other developing countries are net food-importing countries, and their populations would, in general and in the short term, be hurt by the inflationary impact of the removal of subsidies, aggravating the negative impact on food security of the current peak in food prices.[48] In addition, due to the lack of investment in agriculture for many years, many farmers from this second group of countries might not be able to benefit from the removal of trade-distorting agricultural subsidies, or from the resulting increase in prices on the international markets. What is needed, therefore, is to plan a transition. We need to move from a situation in which the poorest developing countries depend on the availability of cheap food on the international markets to feed themselves—on average, the LDCs import 20% of the food that they consume—to a situation in which the local food systems are strengthened, and links between local food producers and urban consumers are rebuilt.

[47] UNDP, 'Human Development Report 2005: International Cooperation at a Crossroads: Aid, Trade and Security in an Unequal World', 130.

[48] See A Panagariya, 'Agricultural Liberalisation and the Least Developed Countries: Six Fallacies' [2005] *World Economy: Global Trade Policy* 1277. See also J Stiglitz and A Charlton, *Fair Trade for All: How Trade Can Promote Development* (Oxford, Oxford University Press, 2005) 233. See chapter 5 for more on this.

Limiting the Dependency

These are the issues discussed by the chapters collected in part II of this volume. In chapter 5, Olivier De Schutter examines whether trade liberalisation in agricultural commodities can provide a solution to the problem of global hunger. The Preamble of the Marrakech Agreement establishing the WTO recognises that, far from being an end in itself, the encouragement of trade by the establishment of a rules-based system of international trade and by the gradual lowering of barriers to trade should serve the ends of human development. De Schutter argues that, if this objective is to be fulfilled, and if trade is to contribute to the realisation of the right to adequate food, the regime of international trade needs to recognise the specificity of agricultural products, rather than to treat them as any other commodities. It should also allow more flexibility to developing countries, particularly in order to shield their agricultural producers from the competition from industrialised countries' farmers.

For countries that have a competitive agricultural sector, the expansion of international trade in agricultural commodities can have a growth-enhancing effect and improve their trade balance. However, this chapter notes that these benefits should be balanced against other potential impacts on the right to food, and it documents three such potential impacts. First, the development of global supply chains results in an increased dependency on international trade, for both net food-exporting countries and for net food-importing countries. This may lead to a loss of export revenues for agricultural exporters when the prices of export commodities go down, as well as to threats to local producers when low-priced imports arrive on the domestic markets, against which these producers may be unable to compete. Conversely, when prices rise, the dependency of low-income net food-importing countries on food imports can lead to balance-of-payments problems against which the mechanisms currently established within the WTO have failed to protect them. Secondly, the expansion of global supply chains increases the role of large transnational corporations in the agrifood sector, vis-à-vis both producers and consumers. As already noted above, this creates a potential for abuses of market power in increasingly concentrated global food supply chains and may increase the divide of domestic farming sectors between subsistence farming on the one hand and export agriculture in cash crops on the other. Thirdly, the expansion of trade in agricultural commodities has potential impacts on the environment and on human health and nutrition, impacts that usually receive little attention in international trade discussions, despite their close relationship to the right to adequate food. Trade liberalisation in agricultural commodities is thus far from constituting an unmitigated good, particularly for the LDCs whose agricultural sectors have been severely hurt

by dumping practices in the past, and which should prioritise regaining their ability to feed themselves—in other words, managing a transition towards less trade rather than more trade.

Chapter 6, by Jennifer Mersing, considers the key question highlighted above: how to phase out rich country agricultural subsidies without increasing hunger in the developing world? Rich country agricultural subsidies, including export subsidies and domestic support schemes, can dramatically affect agricultural producers in developing countries. Mersing describes this impact in the context of the 2007–08 food price crisis and increased hunger in developing countries; she contends that the underlying factors for that crisis remain and will contribute to increased food prices again in the near future. Although the current multilateral framework for international trade has led to some changes in the composition of rich countries' subsidies, they continue to have a distorting affect on the global agricultural market. They can also undercut producers in developing countries. Indeed, many developing countries have been pushing for a reduction in agricultural subsidies in rich countries. For developing countries that have a comparative advantage in the production of agricultural products, reducing those distorting subsidies, combined with strengthening their own agricultural sectors, could lead to numerous positive outcomes. However, as noted above, phasing out such subsidies will not benefit everyone in all developing countries. In countries that are net food importers, doing so may lead to increased food costs for consumers. Thus, while reducing or removing agricultural subsidies in rich countries is important for many developing countries, efforts must be undertaken simultaneously to protect vulnerable populations in developing countries from a potential increased risk of hunger. Mersing provides recommendations for actions that governments in both developed and developing countries could take to phase out distorting agricultural subsidies without increasing global hunger.

In chapter 7, Boyan Konstantinov explores the potential for invoking the right to food in the WTO dispute settlement process. The author begins the discussion by tracing the development of the contemporary definition of the right to food, the history of trade liberalisation and negotiations within the WTO related to agriculture. Although international trade can have a substantial impact on human rights, the WTO is often seen as failing to address human rights issues. This includes a failure to address concerns related to the right to food, despite the impact of developed countries' subsidies and dumping practices. While some scholars contend that the WTO is not authorised to address human rights, others argue that the system should be changed to be more sensitive to human rights issues. Even if the WTO wished to address human rights issues, however, it has limited ability to do so, because its

decisions are generally the result of complex multilateral negotiations. Konstantinov highlights several potential opportunities for invoking human rights within the WTO system. One of the best options is to raise human rights concerns in dispute settlement procedures. Those procedures allow adjudicating bodies to make decisions that bind the concerned parties, regardless of whether they consent. To date, there have not been any dispute settlement cases based on human rights considerations. Moreover, it is unclear how WTO adjudicating bodies would address them. Despite this uncertainty, it is possible that human rights or right-to-food considerations could be invoked in the dispute settlement procedures. Konstantinov explores this possibility, and then analyses the advantages and disadvantages attached to invoking the right to food in dispute settlement procedures.

Chapter 8, by Loreto Ferrer Moreu, discusses how food aid should be undertaken to ensure that states fulfil their obligations towards the right to food. Effective food aid requires accountability at both the national and international levels. Ferrer Moreu examines the current international framework of food aid, and identifies three trends in food aid: the consolidation of a human-rights-based approach to food aid, the revitalisation of the obligation to cooperate and the emergence of the concept of food security as it relates to food aid. She emphasises the distinctions to be made between the three traditional categories of food aid: programme food aid, project food aid and emergency food aid. Each type of food aid has different goals, and not all are primarily driven by efforts to feed the hungry. Ferrer Moreu analyses the implementation of food aid programmes, projects and emergency assistance, and highlights problems that arise with each type of food aid. One overarching problem is the lack of political will to implement international agreements effectively. The author argues that food aid is often not an appropriate solution. There are, however, certain circumstances in which food aid is useful. These include short-term humanitarian assistance, the provision of longer-term safety nets for asset protection, and limited, targeted and efficient development interventions for asset building among chronically poor or vulnerable populations. Moreover, if local markets are functioning well, then food aid should not be used; rather, cash transfers or employment creation efforts would be better solutions to address local needs. If local markets are not functioning well, then food for food aid should be purchased in nearby markets—primarily through local purchases or triangular transactions. Ferrer Moreu concludes by providing other suggestions on better ways to approach food aid. She also points to the concept of food sovereignty as a guiding framework that enables states to address the root causes of hunger while fulfilling their obligations regarding the right to food.

Like in part I of the book, the authors in this part have framed their

analyses using the human right to adequate food as their departure point. The realisation of the right to adequate food should not only guide the efforts that states make at the domestic level; it should also direct the development of a more equitable multilateral trading system, as well as the reform of food aid. While the right to adequate food is recognised under Article 25 of the Universal Declaration of Human Rights,[49] Article 28 of the Declaration states that 'everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized'. This provision is certainly one of the most underestimated clauses of the Declaration. It recognises the co-dependency of national and international measures in the fulfilment of human rights. The right to adequate food can only be fully realised by states within a multilateral trading system that enables them to pursue policies aimed at realising the right to food. Such a system should not only refrain from imposing obligations that directly infringe upon the right to food, but should also ensure that all states have the policy space they require to take measures that contribute to the progressive realisation of the right to food under their jurisdiction, and that they are able to use it. As stated by the Committee on Economic, Social and Cultural Rights, the body of independent experts that monitors compliance with the International Covenant on Economic, Social and Cultural Rights,[50] this instrument requires that they 'move as expeditiously as possible towards that goal' by making 'full use of the maximum available resources'.[51]

The obligation to move towards the realisation of the right to food must be facilitated, not impeded, by the organisation of the multilateral trade regime. Indeed, Article 11(2) of the Covenant itself, which recognises the 'fundamental right of everyone to be free from hunger', also requires states to adopt, 'individually and through international cooperation, the measures, including specific programmes, which are needed, 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'. It thus refers to food imports (and the corresponding exports) as a means to ensure the fundamental right to be free from hunger. The drafters of the Covenant thus seemed to assume that the right to food may require that food will have to travel from

[49] GA Res. 217 A (III), UN document A/810 (1948), 71.

[50] Adopted on 16 December 1966, GA Res. 2200(XXII), UN GAOR, 21st session, Supp No 16, US document A/6316 (1966), 993 UNTS 3. The right to adequate food is referred to under Art 11 of the International Covenant on Economic, Social and Cultural Rights. There are also references to the human right to food in Arts 24 and 27 of the Convention on the Rights of the Child, and in the International Convention on the Elimination of All Forms of Discrimination against Women (Art 12(2)).

[51] UN Committee on Economic, Social and Cultural Rights, General Comment No 12 (1999), 'The Right to Adequate Food (Art 11)', UN document E/C.12/1999/5, ¶ 9.

regions that have a surplus to regions that have a deficit in food. Yet, for the reasons already explained above, the relationship between the right to food and trade in agricultural commodities should be examined without presuming that hunger or malnutrition are necessarily the result of a lack of food availability. We therefore need to shift the perspective from aggregate values—from the benefits of trade for the country as a whole—to the impacts of trade on the most vulnerable and food insecure. Just as increases in production in any one country are not sufficient to combat hunger if, in that country, a group of the population lacks the purchasing power to buy the food that is available on the markets,[52] the expansion of volumes of traded goods is not an answer to hunger if it leads, not to poverty reduction and decreasing inequalities, but to the further marginalisation of those who are not benefiting from trade and may instead be made more vulnerable by trade liberalisation.

This volume highlights current problems within the global food system and seeks to explain how reforms at both the domestic level and the international level are crucial in order to address global hunger effectively. Approaches that are based on the right to food and focused on the accountability of domestic and transnational actors, as well as trade and aid regimes overall, are the best way forward for improving individual food security and ensuring that governments meet their obligations to protect, respect and fulfil the right to food. This collection of essays therefore explores the ways in which food is produced and distributed; it examines the trade and aid regimes that shape global food distribution; and it sees accountability as key in order to improve the right to food around the world. The authors are not in agreement on all issues, and specific policy prescriptions made in different chapters may therefore conflict with one another,[53] but they share a common conviction that the current organisation of the food system is unsustainable, and that it is in urgent need of repair. Their effort is a contribution towards that goal.

[52] AK Sen, above n 14. See also J Drèze and AK Sen, *Hunger and Public Action* (Oxford, Oxford University Press, 1989).

[53] The authors were all participants in a seminar on 'Globalization and Human Rights' directed by Olivier De Schutter at Columbia University School of Law during the spring of 2008. All the chapters originated from that seminar, except for chapter 5. They were subsequently revised, and updated in 2011.