FOREIGN DEBT AND THE RIGHT TO FOOD

Olivier De Schutter

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Institute for Interdisciplinary Research in Legal sciences (JUR-I)
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ABSTRACT

This paper assesses the impact of the foreign debt on the ability of low-income, food-deficit countries to realize the right to food. It first describes how the fragility of the global food system can be attributed to the role that foreign debt has played in shaping the agricultural policies of poor countries, especially since the 1980s, perpetuating the international division of labour that these countries inherit from the colonial period. In many of these countries, agriculture has been understood as an extractive enterprise: it has been seen as a means to ensure a steady flow of cheap raw commodities to industrialized countries, and it has been developed with that purpose in mind despite the highly problematic impacts - from the agronomic and the environmental point of view - of monocultures, typical of export-led agriculture. It then turns to the reactions to the global food price crisis of 2008. It shows that heavily indebted poor countries often had little choice in designing their responses to the crisis and, in particular, in reinvesting in agriculture, but to favor the arrival of private investment, since they were unable to finance agricultural development through their own resources. While this choice is fully understandable, it makes it more difficult for them to reinvest in agriculture in ways that are sustainable and effectively contribute to reducing rural poverty. Finally, the third section of the paper examines the significance of these developments for the assessment of the legal obligations of lenders and borrowers under the International Covenant on Economic, Social and Cultural Rights (ICESCR), the most important human rights instrument protecting the right to food.

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Introduction

For all those working around food security and the right to food, the memories of the global food price crisis of 2008 are still vivid. The shape of the crisis can be read from the FAO's extended Food Price Index. Rather like a seismograph recording seismic waves, the Food Price Index records the changes since 1990 in the real price of food (adjusted against inflation), based on a basket of the major food commodities.[1] Between 2000 and 2005, the index increased moderately at a rate of 1.3 per cent per year. The rate of increase then reached 15 per cent in 2006. It continued to climb in 2007 and 2008, resulting in a peak in June 2008: the index at that point was at 224, more than double the baseline (100) of 1990. The high food and oil prices in 2007/2008, the World Bank warned at the time, may have increased the number of people living in extreme poverty by between 130 and 150 million.[2] In order to cope with the price increases, the poorest families, who spend most of their income on food, were often led to distress sales, including sales of productive assets such as land or tools, thereby making recovery less likely and increasing the risk of falling into chronic poverty. They removed children, especially girls, from schools. Many had to cut back on meals and switched to less varied and less nutritive diets.[3] The world was stunned: it was suddenly discovering that food supplies were fragile, and that the much-vaunted growth of agricultural productivity since the 1950s, remarkable though as it was, did not provide an absolute protection against price shocks.

The immediate causes of the crisis were easy enough to understand. Certain weather-related events in 2005 and 2006 led to worse-than-expected harvests in certain major cereal-exporting countries.[4] The resulting price impacts were magnified by export restrictions put in place, in a matter of weeks, by a significant number of countries,[5] who panicked that the prices of staples could continue to increase. The priority for these countries was to protect their population from future price spikes - just as other countries decided to resort to panic buying, further worsening the situation. The feverishness of the agricultural markets was increased by financial speculation: the growing role of investment banks and hedge funds in the market of financial 'derivatives' from agricultural commodities, in the form of futures contracts, options or swaps, significantly worsened volatility on the spot markets.[6] A perfect storm formed, leading to 'food riots' in dozens of countries. In Haiti, one government fell; many others were shaken.

Had they been acting in isolation, the factors mentioned above would probably have resulted in only minor impacts on the volatility of commodity prices. But other background causes should be taken into account, which explain the magnitude of the crisis they led to. And it is here that the question of the debt appears to play a decisive role. In what follows, I first describe how the fragility of the food system can be attributed to the role that foreign debt has played in shaping the agricultural policies of poor

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[1] The index is based on the weighted average of a total of 55 commodity price quotations falling into six groups (meat, dairy, cereals, oils and fats, and sugar)

[2] World Bank, *Global Economic Prospects. Commodities at the Crossroads* (2009) 96, based on evidence available until 30 November 2008.

[3] World Bank, 'Rising Food and Fuel Prices: Addressing the Risk to Future Generations', (12 October 2008).

[4] *See* Kenneth Baltzer, Henriki Hansen and Kim M. Lind, 'A Note on the Causes and Consequences of the Rapidly Increasing International Food Prices' (May 2008), 2 (noting in 2008 that '[t]he current high wheat prices are mainly caused by three consecutive years (2005–2007) of weather-induced harvest shortfalls in some of the most important exporting regions, Australia, Europe, Former Soviet Union and North America, at a time where wheat stocks are historically low.').

[5] According to one count, 29 countries resorted to export bans or restrictions, including in the form of export tariffs, in the Spring of 2008 (Todd Benson, Nicholas Minot, John. Pender, Miguel Robles, Joachim von Braun, 'Global Food Crises: Monitoring and Assessing Impact to Inform Policy Responses' (International Food Policy Research Institute (IFPRI) Food Policy Report No. 19, September 2008); another study estimates the number at 20 (World Bank, *Global Economic Prospects. Commodities at the Crossroads* (2009), 123).

[6] See generally Olivier De Schutter, Special Rapporteur on the Right to Food, 'Food Commodities Speculation and Food Price Crises: Regulation to Reduce the Risks of Price Volatility' (Special Rapporteur on the Right to Food Briefing Note No. 2, September 2010).

countries, especially since the 1980s, perpetuating the international division of labour that these countries inherit from the colonial period. In many of these countries, agriculture has been understood as an extractive enterprise: it has been seen as a means to ensure a steady flow of cheap raw commodities to industrialized countries, and it has been developed with that purpose in mind despite the highly problematic impacts - from the agronomic and the environmental point of view - of monocultures, typical of export-led agriculture. I then turn to the reactions to the global food price crisis of 2008, in order to show that heavily indebted poor countries often had little choice in designing their responses to the crisis and, in particular, in reinvesting in agriculture, but to favor the arrival of private investment, since they were unable to finance agricultural development through their own resources. This choice is fully understandable. It makes it more difficult for them, however, to reinvest in agriculture in ways that are sustainable and effectively contribute to reducing rural poverty. In a third section, I examine the significance of these developments for the assessment of the legal obligations of lenders and borrowers under the International Covenant on Economic, Social and Cultural Rights (ICESCR),[7] the most important human rights instrument protecting the right to food.

1. Export-led agriculture and the extractive economy

Part of the background factors that explain the magnitude of the food price crisis of 2007-2008 is the general direction of agricultural development in the poorest countries of the planet, particularly in Sub-Saharan Africa, since the 1960s. Over the past fifty years, agricultural policies in these countries went through two phases that are significantly different from one another. But despite the major shifts that took place, there is one major element of continuity: throughout this period, agriculture has been encouraged to contribute not to the production of food for local communities, but to feeding cities and to the export of raw agricultural products in order to improve the balance of payments of the countries concerned - and thus to allow them to pay back a foreign debt. Debts are underwritten in hard currency, usually in US dollars. You do not repay them by producing cassava, sorghum or sweet potato for the local markets: you repay them, if you can at all, by producing tobacco, coffee and cocoa, and by exporting to the high-value markets of the Organization for Economic Cooperation and Development (OECD) countries. The tragedy of African agriculture during the past half-century at least has been that it was coerced into replicating these colonial patterns of trade and production.

Agricultural development: from State-led to market-based

This developed in phases. The 1960s and 1970s were characterized by a strong state-led type of agricultural development. Governments were eager to provide urban populations with affordable food, or to export raw commodities in order to finance import substitution policies.[8] Farmers were grouped into state-led cooperatives; they were often told what to grow and how to do it; and they were obliged, or strongly encouraged, to sell at prices fixed by the state. In exchange, the producers were supported by (sometimes erratic) extension services. They were provided with certain basic inputs and publicly funded agricultural research gave them access to quality seeds.[9] But these farmers and producers were also often the captives of a predatory state that used them for its own purposes. In order to buy political support from the cities and to build its nascent industries—what the British economist Michael Lipton

[7] International Covenant on Economic, Social and Cultural Rights, UNGA Res 2200A (16 December 1966).

[8] Import substitution policies refer to policies that largely underdeveloped countries, particularly in Latin America, pursued in order to increase production of industrial products and decrease imports. They typically included high tariffs and quotas against imports as well as subsidies for domestic producers. For agricultural producers in these countries, it often meant having to sell at low prices (as a form of subsidy to the urban populations), or having to export in order for the government to have access to foreign currencies, while at the same time, raising the costs to farmers of the inputs they needed to import (machinery and fertilizers). See, e.g., Jeffry A Frieden, *Global Capitalism. Its Fall and Rise in the Twentieth Century* (W.W. Norton 2010) 302-306; Ha-Joon Chang, *Bad Samaritans: Rich Nations, Poor Policies, and the Threat to the Developing World Secrets* (Random House 2007) 22-23.

[9] *See* Johan FM Swinnen, Anneleen Vandeplas and Miet Maertens, 'Liberalization, Endogenous Institutions, and Growth: A Comparative Analysis of Agricultural Reforms in Africa, Asia and Europe' (2010) 24 The World Bank Econ. Rev. 412, 418-19. On seeds specifically, see, e.g., Jagtar S Dhiman et al., 'Improved Seeds and Green Revolution' (2010) J. of New Seeds, 65 (describing the role of the Punjab Agricultural University in the development of improved varieties/hybrids of crops, and in the supply of these varieties to farmers).

famously described as the “urban bias”[10]— governments typically paid very low prices for the crops produced, thus producing massive rural poverty and accelerating rural migration.[11] Many state institutions were characterized by corruption, political clientelism, and mismanagement.[12]

It is against this background that we can understand the nature of the changes that took place in the 1980s, with the introduction of structural adjustment policies in a number of developing countries. These policies followed the near-collapse of countries in the developing world after they found out, following a decade of spending on development projects, that it would be far more expensive to borrow to finance industrialization and that their debt had become unsustainable. These countries had been encouraged to borrow at low interest rates in the 1970s, a period during which Western banks were eager to lend OPEC's "petrodollars" and liquidities were plentiful. In the Fall of 1979, they suddenly woke up to face much higher interest rates after Paul Volcker, the new head of the United States Federal Reserve appointed by President Jimmy Carter in August of that year, decided that high interest rates were the only way to tame inflation. In the course of just three years, between 1979 and 1982, the short-term interest rates of the Federal Reserve rose from about 10 per cent to 15 and even to 20 per cent. In addition, non-oil exporting developing countries were further fragilized by the second oil shock of 1979-1980, combined with a severe recession in OECD countries that made it more difficult for them to export. The Western banks which had been so generously lending money in the past started to worry that the most heavily indebted developing countries might not be able to reimburse their loans, which had become far more costly to refinance. For a time, they stopped lending, making the situation of indebted countries even more precarious. One after another, these countries turned to the International Monetary Fund, realizing that they would manage to regain the trust of financial markets only by negotiating with the IMF a plan to "adjust" their economy.[13]

The structural adjustment policies that were imposed on heavily indebted poor countries aimed, in general, to create the macro-economic conditions that would allow them to achieve a better balance of public budgets. In the agricultural sector, they were premised on the idea that the farmers henceforth should respond to the price signals from the market. Public interventions, like the establishment of commodity boards buying the crops at certain predefined prices, were condemned as market distortions. Agriculture should be freed from state interference; the private sector, it was hoped, would take over, investing where investments were needed and encouraging the production of crops that markets wanted.[14] The 1982 edition of the World Bank's flagship *World Development Report* provided a

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[10] Michael Lipton, *Why Poor People Stay Poor: A Study of Urban Bias in World Development* (Harvard University Press 1977).

[11] *See, e.g.*, Frieden (n 8) 353, noting that "the industrial bias against agriculture worsened rural poverty in societies that were heavily rural"); and Martin Meredith, *The State of Africa: A History of Fifty Years of Independence* (Free Press 2006) 279-80. The author notes that, following independence, governments in Africa

> . . . were determined to keep down urban costs for fear of political protest. Governments thus paid low prices for food crops to provide urban consumers with cheap food. They also maintained overvalued exchange rates to reduce both the cost of food imports, like wheat, corn and rice favoured by the urban elite, and the cost of other goods they cherished—like cars, household appliances and fashionable attire. The effect was to penalise farmers at every turn. Farm exporters lost income; food producers found it difficult to compete against subsidised imports. Many farmers obtained less than half of the real value of their crops. In some cases, farmers were not paid enough even to cover their costs of production; cocoa producers in Ghana and sisal growers in Tanzania were two examples. . . . [R]ice growers in Mali were paid by the government 63 francs for a kilo of rice that cost them 80 francs to produce..

[12] For a strong indictment of these policies, see Robert H Bates, *Markets and States in Tropical Africa* (Cambridge Univ. Press, 1981); *see also* Anne O Krueger, Maurice Schiff and Alberto Valdés, *The Political Economy of Agricultural Pricing Policy* (World Bank and John Hopkins Univ. Press, 1991); World Bank, *World Development Report 1983* (World Bank and Oxford Univ. Press, 1983); Anne O Krueger, Maurice Schiff and Alberto Valdés, ‘Agricultural Incentives in Developing Countries: Measuring the Effect of Sectoral and Economywide Policies’, (1988) 2 World Bank Econ. Rev. 255–72; Anne O. Krueger, 'Government Failures in Development' (1990) 4 J. Econ. Persp. 9–23 (1990) (denouncing the naïveté of the often idealized view of the State among development economists). The comparative studies coordinated by Krueger, Schiff, and Valdés review the distortions in agricultural subsidies that, in many developing countries, negatively impacted farmers in the 1960s and 1970s, until into the mid-1980s.

[13] See, e.g., Frieden (n 8) 372-375; and David Harvey, *A Brief History of Neoliberalism* (Oxford Univ. Press, 2005), 23-30.

[14] For a detailed study of this liberalization process, see, e.g., Swinnen et al. (n 9) 420-421. The price and market liberalization followed prescriptions of the World Bank: *see, e.g.*, World Bank, *Sub-Saharan Africa: From Crisis to Sustainable Growth* (1989) 91, 96 (noting that flexible prices will incentivize farmers to follow the signals of the market and switch to crops for which there is a demand and which will fetch higher prices; and advocating the removal of subsidies on inputs, which 'only encourages waste').

diagnosis that was largely shared across the development community. It started by noting that, all too often, developing country governments had been sacrificing the interests of farmers against those of urban consumers: "In the pursuit of goals other than agriculture's development, developing-country planners have often tilted their pricing policy against agriculture and paid a heavy price in lost agricultural growth". Yet, it continued, "[i]ncentives to farmers to invest and produce is a key stimulant to agricultural growth". Policymakers should therefore focus on recreating such incentives, and this can best be achieved by "adjust[ing] domestic policies and [by building] a trading system in which comparative advantage can play a greater role in production. Faster progress on this front is clearly desirable to enlarge the developing countries' access to markets and, in the long run, to ensure that the world's agricultural resources are more efficiently used to increase per capita supplies of food".[15] In other terms, the diagnosis was about state capture of agricultural development and the medicine prescribed was liberalization. This meant in fact more trade-oriented production: greater specialization of each country or region in the production of a narrow range of commodities suited for export and the development of global supply chains.

The impacts on agriculture of adjustment policies were mixed at best. Certain assessments of adjustment lending concluded that the rural poor benefited.[16] Most commentators agree, however, that the removal of subsidies from agricultural producers and the dismantling of extension services were shocks with which many smaller farmers were unable to cope.[17] In 2010, writing with the benefit of hindsight, Howard Stein concluded his retrospective look into the impacts of structural adjustment in Sub-Saharan Africa by noting the strong dualization of farming which it exarcebated. It may have benefited farmers that have enough land to mortgage (and thus had access to credit) and were well connected to markets. But it provided neither solutions nor "incentives" to many others, including the vast majority of small-scale farmers producing not tradables, but food crops:

> The market approach to agriculture has exacerbated poverty in rural areas and likely contributed to worsening income equality. . . . Richer farmers have access to credit, storage, and transportation. In contrast, poor farmers were penalized in the new system due to the removal of fertilizer subsidy, a lack of infrastructural support and access to extension and few marketing and storage options. Poor farmers are also less able to bargain effectively with private traders or use transportation or storage capacities to improve the timing and location of their sales.[18]

Trade liberalization, one key component of the structural adjustment policies imposed on heavily indebted developing countries during the 1980s and 1990s, further worsened the resulting segmentation between different categories of farmers. In Africa in particular, agricultural development efforts focused largely on export-led agriculture. The priority has been to increase the production of cash crops for global markets, with a view, especially, to enter the high-value markets of OECD countries: as a result of the gradual removal of barriers (both tariff and non-tariff) to the trade of agricultural products, many

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15 *World Development Report 1982* (World Bank and Oxford Univ. Press., 1982) 4.

16 See, e.g., Lawrence H. Summers & Lant H. Pritchett, 'The Structural-Adjustment Debate' (1993) 83 Am. Econ. Rev. 383, 385 ("Elimination of the bias against tradables, agricultural products in particular, raises output prices and rural wages which benefits the rural poor. Elimination of the bias in favor of capital-intensive import substitutes moves the economy onto a more labor-intensive development path, raising unskilled wages. The relative price changes help the poor generally, though they lower incomes of relatively more concentrated and visible groups" (citing Maurice Schiff & Alberto Valdes, *The Plundering of Agriculture in Developing Countries* (World Bank, 1992))). In this well-known paper, Summers and Pritchett summarize and debate the findings of the World Bank Review of Adjustment Lending. *See* World Bank, Country Econ. Dep't, Policy and Research Series No. 22, Adjustment Lending and Mobilization of Private and Public Resources for Growth (1992).

17 For assessments, see Kidane Mengisteab and B. Ikubolajeh Logan (eds.), *Beyond Economic Liberalization in Africa: Structural Adjustments and the Alternatives* (Zed Books, 1995); Aderanti Adepoju (ed.), *The Impact of Structural Adjustment on the Population of Africa* (James Currey, 1989); Simon Commander (ed.), *Structural Adjustment & Agriculture: Theory & Practice in Africa & Latin America* (Overseas Development Institute, 1989); Jane Harrigan and Paul Mosley, 'Evaluating the Impact of World Bank Structural Adjustment Lending: 1980–87' (1991) *Journal of Development Studies* 27, 63-94.

18 *See* Howard Stein, 'World Bank Agricultural Policies, Poverty and Income Inequality in Sub-Saharan Africa' (2010) *Cambridge J. Regions Econ. & Soc'y* 1, 9. Stein concludes that:

> The market approach to agriculture has exacerbated poverty in rural areas and likely contributed to worsening income equality. . . . Richer farmers have access to credit, storage, and transportation. In contrast, poor farmers were penalized in the new system due to the removal of fertilizer subsidy, a lack of infrastructural support and access to extension and few marketing and storage options. Poor farmers are also less able to bargain effectively with private traders or use transportation or storage capacities to improve the timing and location of their sales.

Id.

developing countries started designing their investment policies to support the production of crops (such as cocoa, coffee, cotton, tobacco, or cashew nuts, for instance) that could allow them to have access to hard currencies and thus to reimburse their foreign debt. This guided their choice of infrastructures (which ports to build, which roads to maintain, which storage facilities to establish), their choice as to which farmers to support (those producing for global supply chains rather than those growing food for local communities) and their decisions as to which types of production to encourage, with the associated agronomic consequences: the large-scale, more highly capitalized and mechanised forms of production were prioritized, whereas small-scale (or "family") farming was comparatively neglected.

Morevoer, as these countries were encouraged to lower import tariffs, this led to the dumping of agricultural products from OECD countries, at often highly subsidized prices, on the local markets, in many instances directly competing with the local farmers.[19] Since, in contrast to the larger, more capitalized producers, the small-scale farmers were unable to adapt—and in particular, to shift to the production of crops aligned with the price signals of the market—the net result of the policies of the 1980s was that inequality and poverty in the rural areas further increased.[20] The 'competition' that resulted was particularly unfair: the governments of the least developed countries (LDCs) were often unable to support their producers exposed to the dumping of agricultural products from Organization for Economic Cooperation and Development (OECD) countries, who sold various products, at often highly subsidised prices, on the domestic markets of LDCs.[21] Small-scale farmers were especially hard hit. In contrast to middle-size or larger farmers, they could not switch to producing cash crops for export markets and thereby adapt to the new international division of labour that was being encouraged by trade liberalisation. The smaller production units were also less competitive, since they were not in a position to achieve significant economies of scale. Finally, they were unable to overcome the non-tariff barriers, including both public and private standards, impeding access to the high-value markets of OECD countries.[22]

Agricultural development and the right to food: the extractive economy

The developments of the 1980s and 1990s are relevant in three ways to understand the global food price crisis of 2007-2008. First, the structural adjustment programmes of the earlier two decades (the general approach of which is largely replicated in the "poverty reduction strategy documents" or similar strategy documents currently adopted by developing countries) have generally weakened if not the agricultural sector as such, at least the ability for poor countries to feed themselves. While a limited number of large farms survived, or even succeeded rather well, in the new environement, in part thanks to their ability to connect to global supply chains and to reach global markets, the vast majority of small-scale farmers in the poorest countries were relegated to subsistence agriculture, with neither the incentives nor the possibility to produce beyond what was needed to feed their families. Some took up work on large plantations. Many others migrated to cities, on a seasonal or more permanent basis, in search of better opportunities: rural-to-urban migration accounted for at least half of all urban growth in Africa during the 1960s and 1970s and about 25 percent of urban growth in the 1980s and 1990s.[23]

Secondly, the deepening of the international division of labour -- and the specialization of countries in a narrow range of commodity crops for the production of which they have a comparative advantage - may have increased efficiency in production, therefore, but it also fragilized the situation of many poor countries, which gradually become more, not less, dependent on imports for their own

[19] *See* David Hallam, *The State of Agricultural Commodity Markets: 2009* (Food and Agricultural organization, 2009).
[20] Comparing the data available for nineteen Sub-Saharan African countries for the period 1980–2000, Stein concluded that "nearly 75 % of all countries witnessed a worsening of income distribution with an overall mean decline for the total sample of 14% to around 50." Stein, *supra* note 18, at 2. He notes that the increase in inequality particularly affected the rural poor—small-scale farmers who suffer structural disadvantages in the agricultural markets. *Id.*
[21] See FAO, 'The State of Agricultural Commodity Markets: 2009' (FAO, 2009).
[22] For a review of these obstacles and what would be required to overcome them, see Alew F. McCalla and John Nash (eds.), *Reforming Agricultural Trade for Developing Countries, Key Issues for a Pro-Development Outcome of the Doha Round* (Washington, D.C.: World Bank, 2007), vol. 1; see also *Report of the Special Rapporteur on the Right to Food, Olivier De Schutter: Mission to the World Trade Organisation* (4 February 2009) UN Doc A/HRC/10/5/Add.2.
[23] The major study on rural-urban migration is Keith Griffin, *The Political Economy of Agrarian Change: An Essay on the Green Revolution* (Palgrave Macmillan, 1974).

consumption. The low-income countries' dependence on food imports grew significantly throughout the 1990s. In particular, though many of the Least Developed Countries (LDCs) are still primarily agricultural, they export a narrow range of commodities and therefore find themselves highly vulnerable to price shocks on international markets for these products—in large part because they have to repay their foreign loans in hard currency.[24] Their food bills have soared as a result of population growth and a lack of investment in local agricultural production and food processing to meet local needs.[25] This should come neither as a surprise nor even as a disappointment. Such an outcome, after all, is what trade is all about: rather than encouraging each country to be able to support itself, in order to strengthen its resilience to external shocks, it creates interdependencies between countries, which - though a source of resilience in its own right vis-à-vis internal shocks - can increase their vulnerability. When the food index spiralled out of control in the Spring of 2008, however, it became clear that their dependency on food imports was unsustainable: in a context of increasingly high and volatile prices, their reliance on imports turned out to be a huge liability.

Thirdly, the encouragement of export-led agriculture also had important, albeit often overlooked, agronomic consequences. The major commodity buyers linking suppliers to the global markets require large volumes of uniform products. Indeed, it is not unusual that they direct their suppliers - the farmers whom they source the raw materials from - as to what to grow, providing them with the seeds and other inputs that these farmers are expected to use. This encourages the extension of monocultures and thus to a significant loss of agrobiodiversity[26] and accelerated soil erosion. In many regions, the overuse of chemical fertilizers polluted freshwater, increasing its phosphorus content and leading to a flow of phosphorus to the oceans.[27] Perhaps the most potentially devastating impact of industrial modes of agricultural production typical of export-led agriculture stem from their contribution to increased greenhouse gas emissions.[28]

These environmental dimensions shed further light on how developments in the 1980s and 1990s led up to the 2007-2008 global food price crisis. First, the industrial production of food requires huge amounts of energy. The high dependence of agricultural production on fossil energies results in the food and energy markets being merged in ways that increase the volatility of agricultural markets. Indeed, although the price of oil responds more to geopolitical factors and to short-term speculation than to the "fundamentals" of supply and demand, any rise of the price of oil leads to a corresponding rise in the cost of producing food, making it difficult for producers to respond to sudden price increases of

[24] U.N. Conference on Trade and Development, The Least Developed Countries Report 2010: Towards a New International Development Architecture for LDCs, at IV, 8, U.N. Doc. UNCTAD/LDC/2010, U.N. Sales No. E.10.II.D.5 (2010).

[25] *Id.*

[26] The First FAO Report on the *State of the World's Plant Genetic Resources*, based on more than 150 country reports, prepared for the International Technical Conference on Plant Genetic Resources held in Leipzig, Germany, 17-23 June 1996, concluded that 'the main cause of genetic erosion in crops (...) is the replacement of local varieties by improved or exotic varieties and species. As old varieties in farmers' fields are replaced by newer ones, genetic erosion frequently occurs because the genes and gene complexes found in the diverse farmers' varieties are not contained in toto in the modern variety. In addition, the sheer number of varieties is often reduced when commercial varieties are introduced into traditional farming systems' (Food and Agriculture Organization of the United Nations, *The State of the World's Plant Genetic Resources for Food and Agriculture* (FAO, 1997) 33). This was confirmed in the updated report, published in 2010 (*Second Report on the State of the World's Plant Genetic Resources for Food and Agriculture* (FAO, 2010) 15-16).

[27] Phosphate and nitrogen water pollution is the main cause of eutrophication, the human-induced augmentation of natural fertilization processes which spurs algae growth that absorbs the dissolved oxygen required to sustain fish stocks. See H.W. Paerl and J. Huisman, 'Climate change: links to global expansion of harmful cyanobacteria' (2012) 46 *Water Research* 1349-63; Michael F. Chislock, Enrique Doster, Rachel A. Zitomer, and Alan E. Wilson, 'Eutrophication: Causes, Consequences, and Controls in Aquatic Ecosystems' (2013) Nature Education Knowledge 4(4),10.

[28] Together, field-level practices represent approximately 15 per cent of total man-made greenhouse gas emissions, in the form of nitrous oxide (N_2O) from the use of organic and inorganic nitrogen fertilizers, methane (CH_4) from flooded rice fields and livestock, and carbon dioxide (CO_2) from the loss of soil organic carbon in croplands and, due to intensified grazing, on pastures. In addition, the production of fertilizers, herbicides and pesticides, the tillage, irrigation and fertilization, and the transport, packaging and conservation of food require considerable amounts of energy, resulting in an additional 15 to 17 per cent of total man-made greenhouse gas emissions attributable to food systems. See High-level Panel of Experts on Food Security and Nutrition, *Food Security and Climate Change*, HLPE Report No. 3 (Committee on World Food Security, Rome, June 2012); and Sonja J. Vermeulen, Bruce M. Campbell, and John S.I. Ingram, 'Climate Change and Food Systems' (2012) 37 *Ann. Rev. Environ. Resour.*. 195-222.

agricultural commodities by boosting production.[29] Higher oil prices in the years 2005-2008 also accelerated the move towards renewable fuels for transport, leading since the mid-2000s to a higher demand for agrofuel feedstock—particularly maize, soybean, rapeseed and palm oil. This has created a surge in the demand for grain and more competition for cropland between food, feed for livestock and fuel.[30] The links between the food and energy markets was further strengthened as a result because biofuels production has pro-cyclical effects: the higher the prices of oil, the more it becomes profitable to increase the processing of plants into energy, at the very same time that agricultural production is more expensive due to increased input prices. Second, and more importantly, the industrial production of food - as it has been stimulated in particular in export-led agriculture - now appears as a serious threat to the continued productivity growth in agriculture.

The various liabilities linked to climate changes, soil degradation and biodiversity loss are by now well understood. In the 1950s and 1960s, however, when the current food systems took their current shape and the "Green Revolution" in agriculture was taking place, there was little concern for the preservation of natural resources or the risks of increased competition over resources: only after the publication in 1972 of the report to The Club of Rome on *The Limits to Growth* were policymakers and the general public made aware of the ecological boundaries we were facing.[31] Today however, these limits are fully acknowledged and the diagnosis is widely shared: food systems cannot continue to ignore their dependency on fragile ecosystems and on increasingly scarce resources. Yet, the need to pay back sovereign debt and accept trade liberalization as a conditionality for having access to financial markets, leaves heavily indebted poor countries with little choice but to continue along this path. Naomi Klein rightly recalls that "extractivism", designating the removal of raw materials from the earth, has a history closely connected with the domination of colonial powers: the raw materials are "usually for export to traditional colonial powers, where 'value' was added".[32] And it is the very opposite of a relationship to Nature that recognizes our interdependence with the ecosystems, and the need to nurture and sustain our resource base: "Extractivism is a non-reciprocal, dominance-based relationship with the earth, one purely of taking. It is the opposite of stewardship, which involves taking but also taking care that regeneration and future life continues".[33]

Foreign debt and the shape of agricultural development

Low levels of stock, poor harvests, stronger links between the food and energy markets, uncertainties resulting from repeated climate shocks and made worse by financial speculation: in 2007-2008, the various factors listed above combined to create a climate in which the market actors, states included, came to fear that the markets could not be trusted to ensure a steady supply of foodstuffs at affordable prices, because of the inability of agricultural producers to respond swiftly to higher prices and to the rise in demand for agricultural commodities.

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[29] Research from the World Bank indicates that a ten percent rise in crude oil prices translates into a 1.7% increase in agricultural commodity prices. *See* John Baffes, 'Oil Spills on Other Commodities' (World Bank Policy Research Working Paper No. 4333, August 2007), 6.

[30] See e.g., Donald Mitchell, 'A Note on Rising Food Prices' (World Bank Policy Research Working Paper No. 4682, July 2008), 16. Mitchell notes:

> The increase in internationally traded food prices from January 2002 to June 2008 was caused by a confluence of factors, but the most important was the large increase in biofuels production from grains and oilseeds in the U.S. and EU. Without these increases, global wheat and maize stocks would not have declined appreciably and price increases due to other factors would have been moderate. Land use changes in wheat exporting countries in response to increased plantings of oilseeds for biodiesel production limited expansion of wheat production that could have otherwise prevented the large declines in global wheat stocks and the resulting rise in wheat prices.

Ibid. Mitchell estimates that, because mandates and subsidies encouraging biofuels production and consumption in the United States and in the European Union have increased competition for land and water between energy and food (thereby encouraging speculation and export bans as stocks declined), up to seventy-five percent of the food price rise of 2007–2008 can in fact be traced back to these policies. *Ibid.* 17.

[31] Donella H. Meadows, Dennis l. Meadows, Jorgen Randers, William W. Behrens III, *The Limits to Growth. A report for the Club of Rome's project on the predicament of mankind* (Potomoc Associates, 1972).

[32] Naomi Klein, *This Changes Everything. Capitalism v. the Climate* (Penguin Books, 2015 (orig. Simon & Schuster: New York, 2014)) 169.

[33] Id.

These various liabilities can all be traced back to the question of foreign debt. In the 1960s and 1970s, in order to improve their trade balance and afford the technologies that would allow them to industrialize - as well as to feed the cities - many governments in Sub-Saharan Africa favored a certain class of farmers and categories of crops: those who benefited were not the poorest farmers producing food for their local communities, but the larger production units who could feed the cities and, even better, export in global markets. Later, when the debt crisis unfolded in the early 1980s and the era of structural adjustment began, only the most competitive farmers managed to survive, against the background of a structural decline of farmgate prices. Any support the state could still afford to provide went to export-oriented agriculture, since only by exporting in global markets could states hope to reassure their creditors and to reimburse, in part at least, public debts that had suddenly grown out of control. The result, however, was a growing dependency of these countries on food imports to meet local needs. When the food prices started their sharp increase in 2006-2008, these countries were caught in a trap: they discovered that in addition to being poor and heavily indebted, they had become food-deficient. Their situation had in fact become unsustainable. Their agricultural economy had turned into an extractive industry: their agronomic practices were literally mining the soil from its nutrients and this extractivism had a distinctly post-colonial pattern.

II. The reinvestment in agriculture and the scramble for resources

The high levels of debt of poor countries also decisively shaped the post-crisis reactions. The world leaders were quick to draw the conclusions from the global food price crisis. In July 2009, a year within the crisis, the G-8 countries, together with a number of partners, joined to discuss food security at a session convened in L'Aquila under the Italian presidency of the G-8. The meeting took place in a context in which the food prices, though they had declined since their peak in June 2008, remained high and volatile, in particular as a result of insufficient investments in agricultural development in poor, net-food-importing countries. Against that background, the G-8 leaders and their partners pledged to "partner with vulnerable countries and regions to help them develop and implement their own food security strategies and together substantially increase sustained commitments of financial and technical assistance to invest in those strategies".[34] In adopting the L'Aquila Food Security Initiative (AFSI), they committed to "substantially increasing aid to agriculture and food security, including through multi-year resource commitments", announcing pledges amounting to a total of USD 20 billion for the period 2009-2012 in support of a "coordinated, comprehensive strategy focused on sustainable agriculture development, while keeping a strong commitment to ensure adequate emergency food aid assistance".[35] But how was this to be achieved?

After the global food price crisis: reinvesting in agriculture

There was general agreement that it was urgent to reinvest in agriculture in order to allow poor, net food-importing countries to reduce their dependency on food imports. Moreover, following the debt crisis that unfolded in the 1980s, LDCs were unable to support their small-scale farmers. Official development assistance (ODA) also moved away from agriculture, which donors did not see as offering a strong potential for development. In 2008, the World Bank reported that the share of ODA resources devoted to agriculture declined from 18 per cent in 1979 to 3.5 per cent in 2004 and that it declined in absolute terms from $8 billion (in 2004 US$) in 1984 to $3.4 billion in 2004.[36] According to other (converging) estimates, "ODA support to agriculture reached a peak of about $23 billion (2009 constant US$) in the

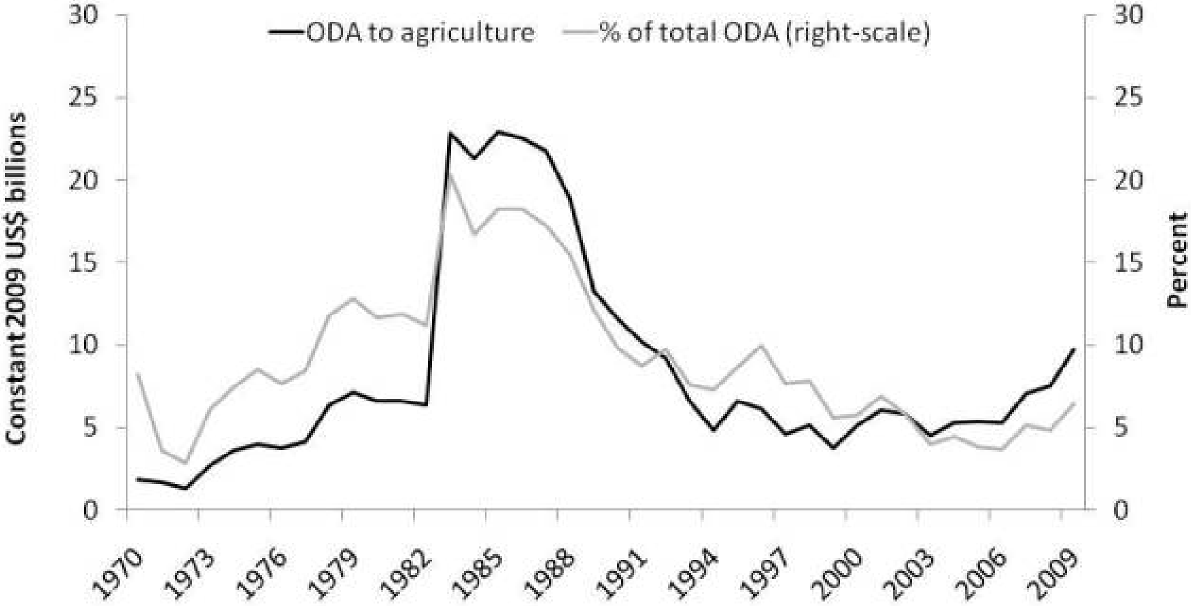
[34] L'Aquila Joint Statement on Global Food Security, para. 3.

[35] L'Aquila Joint Statement on Global Food Security, para. 12. In addition to the Heads of State or Governments of the G-8 countries, the session was joined by Algeria, Angola, Australia, Brazil, Denmark, Egypt, Ethiopia, India, Indonesia, Libya (Presidency of the African Union), Mexico, The Netherlands, Nigeria, People's Republic of China, Republic of Korea, Senegal, Spain, South Africa, Turkey, Commission of the African Union, FAO, IEA, IFAD, ILO, IMF, OECD, the Secretary General's UN High Level Task Force on the Global Food Security Crisis, WFP, The World Bank and the WTO. In addition, though they did not attend the session, the L'Aquila Food Security Initiative was joined by the Alliance for a Green Revolution in Africa (AGRA), Bioversity/Consultative Group on International Agricultural Research (CGIAR), the Global Donor Platform for Rural Development and the Global Forum on Agricultural Research (GFAR).

[36] World Bank, *World Development Report 2008: Agriculture for Development* (Washington, D.C.: World Bank, 2007), p. 41.

mid-1980s, and then declined to approximately $5 billion in the mid-2000s, before climbing back up to almost $10 billion in 2009. Similarly, the share of agriculture in total ODA declined from 18 percent to 4 percent between the mid-1980s and mid-2000s, but grew to 6 percent in 2009"[37] (fig. 1).

Fig. 1. The decline in official development assistance going to agriculture (1970-2009)



Source: Fan and Breisinger, based on 2011 OECD statistics (Organisation for Economic Cooperation and Development, 2011: Development Assistance Committee online database – Official bilateral commitments by sector).

While, as a result of the structural adjustment policies discussed above, public support to agriculture declined significantly between the mid-1980s and throughout the 1990s, it was hoped that private investors would fill in the gaps. They did not. As a result of the huge subsidies provided to OECD producers by their governments,[38] overproduction was massive and the prices of raw agricultural commodities on the international markets fell structurally since they had last peaked in 1973 and 1979.[39] The private sector was not interested in entering a sector that was perceived as being in decline.[40] It was this trend that the L'Aquila Food Security Initiative sought to reverse.

But could governments effectively deliver on their promises? The figure announced in L'Aquila, later raised to 22 billion USD, is difficult to monitor, in part because only a portion of the pledged amount is "new money", the remainder taking the form of already committed funds that were to be redirected (or, less charitably put, repackaged) to serve food security and nutrition. Despite these limitations, the assessment presented by the G-8 three years later, at the end of the financing period covered, presented a mixed picture. The Camp David Accountability Report, released in May 2012,

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[37] Shenggen Fan and Clemens Breisinger, 'Development Assistance and Investment in Agriculture: Promises and Facts' (2011) *Zeitschrift des ITAS zur Technikfolgenabschätzung*, Nr. 2, 20., S. 20-28.

[38] Government support to farmers in OECD countries was $258 billion in 2007, just before the crisis of 2008, representing twenty-three percent of total farm receipts in these countries. Organization for Economic Cooperation and Development (OECD), *Agricultural Policies in OECD Countries: At a Glance* (OECD, 2008), p. 9; Kym Anderson, Will Martin and Dominique van der Mensbrugghe, 'Doha Merchandise Trade Reform: What is at Stake for Developing Countries?' (2006) 20 *World Bank Economic Review* 169-95 (estimating that developed-country agricultural policies cost developing countries $17 billion per year, a cost equivalent to five times the recent levels of ODA to agriculture).

[39] See FAO, 'The State of Agricultural Commodity Markets: 2009' (n 9) 12.

[40] As Hafez Ghanem notes: 'Because global production levels are technically sufficient and because world food prices have long been low and stable, investment in agriculture has been steadily declining since the 1970s. As a result, the rate of growth of agricultural capital stock (ACS) in the world fell from 1.1 percent in 1975–1990 to 0.50 percent in 1991–2007'. Hafez Ghanem, 'World Food Security and Investment in Agriculture' (2009) *International Economics Bulletin* (17 September).

noted that: "Nearly half of the G-8 members have made rapid progress in disbursing their financial commitments and have fully disbursed their pledges. However, despite the substantial increases in public-sector funding from the G-8, other AFSI donors, multilateral development institutions and developing countries themselves, national agriculture investment plans are still underfunded by about half". Then came the bottom line :

> While in some cases public financing could more directly support the investment needs identified in national agriculture investment plans, in almost every case the private-sector elements of these national plans are disproportionately underfunded. This suggests the urgent need to actively attract private investment to the priorities identified in national agriculture investment plans.[41]

Another trap was closing on the poor countries concerned. After the removal of all state support to the farming sector in the 1980s and 1990s, which resulted in a situation in which only agricultural producers who could export on global markets were able to do more than survive, private investors were called in to seize the opportunity.

The private sector to the rescue: the *New Alliance for Food Security and Nutrition*

The G-8-sponsored *New Alliance for Food Security and Nutrition* is the clearest expression of this shift. Once it was recognized that African governments alone - public investment in poor countries combined with official development assistance - would not suffice to compensate for under-investment in agriculture since the early 1980s, the conclusion was obvious: there was a need to establish the legal and policy frameworks that would facilitate the arrival of private investors in African countries to boost further agricultural production. The New Alliance was announced at the G-8 Summit convened in Camp David on 18-19 May 2012. The Summit brought together the leaders of the United Kingdom, Canada, France, Germany, Italy, Japan and Russia, under the Presidency of the United States. The Camp David declaration included a statement praising African governments for committing to "increase public investments in agriculture and to adopt the governance and policy reforms necessary to accelerate sustainable agricultural productivity growth, attain greater gains in nutrition, and unlock sustainable and inclusive country-led growth" through the African Union's Comprehensive Africa Agriculture Development Program (CAADP).[42] It continued:

> Building on this progress, and working with our African and other international partners, today we commit to launch a *New Alliance for Food Security and Nutrition* to accelerate the flow of private capital to African agriculture, take to scale new technologies and other innovations that can increase sustainable agricultural productivity, and reduce the risk borne by vulnerable economies and communities. This *New Alliance* will lift 50 million people out of poverty over the next decade, and be guided by a collective commitment to invest in credible, comprehensive and country-owned plans, develop new tools to mobilize private capital, spur and scale innovation, and manage risk; and engage and leverage the capacity of private sector partners – from women and smallholder farmers, entrepreneurs to domestic and international companies.

The New Alliance can be described as an attempt to mobilize the private sector into investing in food security and nutrition, in order to compensate for the inability of public budgets to make up for the financing gap. To this end, the ten participating countries[43] negotiate country cooperation frameworks (CCFs), setting out a number of commitments to facilitate private investment in the areas concerned. Such cooperation frameworks typically: (i) bring together the various strategies adopted by the country in support of agricultural development, food security and nutrition, forming the national implementation framework of the African Union's Comprehensive Africa Agriculture Development Programme (CAADP); (ii) list commitments made by the concerned government ; (iii) list pledges from donor

[41] Camp David Accountability Report, May 2012, 4.
[42] The CAADP was launched at the African Union's Assembly Second Ordinary Session convened in Maputo on 10-12 July 2003, as part of the African Union's New Partnership for Africa's Development (NEPAD) initiative. Initially launched for ten years, it was renewed in 2014, following a review initiated in 2012, in the form of the ***Sustaining CAADP Momentum Results Framework - Next Decade of CAADP 2015-2025.*** CAADP encourages a peer review of processes that are negotiated at country and regional level to stimulate investment in agriculture.
[43] These are Burkina Faso, Benin, Côte d'Ivoire, Ethiopia, Ghana, Malawi, Mozambique, Nigeria, Senegal and Tanzania.

countries in order to ensure predictable support to these programmes ; and (iv) list pledges from companies, both domestic and foreign, to contribute to the national strategies put in place by their investments.

The commitments of the ten governments concerned are relatively uniform across countries. They included the establishment of a *business-friendly environment* by infrastructure improvements (in irrigation of land and rural feedroads, as well as port infrastructures), tax reforms and better access to finance, as well as a removal of fiscal, regulatory and administrative barriers to marketing of products and trade, greater transparency and stability in trade policy (to facilitate export of agricultural commodities) and regulatory reform in the area of seeds to strengthen intellectual property rights of plant breeders and to establish a seed catalogue where such catalogue has not been established; improving *access to inputs for farmers* (by the production, distribution and use of improved seed, fertilizer, pesticides and farming implements, ensuring in particular that women farmers benefit) and clarifying rights to land and water; finally, the adoption of *specific nutrition-based policies* (such as biofortification, fortification, nutrition policies and malnutrition treatment).

But it is the private sector component of the CCFs that is both the most original and the most significant. For the ten countries concerned by the New Alliance, 180 companies pledged in their "Letters of Intent (LoIs)" to invest a total of USD 8 billion in agriculture.[44] An analysis of the letters of intent shows that, whereas some Africa-based companies play an important role in the NAFSN, two companies are significantly leading: the Swiss seed company Syngenta and the Norwegian fertilizer company Yara International (who pledged 500 million USD and 1.5 billion USD respectively). This pattern explains why many observers consider the NAFSN to be a Trojan horse for Western multinational firms, eager to expand their markets by taking part in the relaunching of African agriculture - but imposing, in the process, their own views of the trajectory to be followed and of the associated agronomic and economic choices.

The push for agricultural development to be accelerated in Sub-Saharan Africa thanks to the arrival of private investment is largely based on the comparison between the situation of those countries and South Asian countries. South Asia managed to increase its agricultural production per capita spectacularly since the mid-1960s through the 'Green Revolution' - a process combining the use of new, so called "high-yielding" varieties of plants, large-scale irrigation, mechanisation of farming, and the use of external inputs.[45] In contrast, no such process took place in Africa. This is largely due to the absence of political will. But it is also because of the lack of resources that would have allowed African governments to invest in rural infrastructures and support farmers to help them effectuate this techological shift.

Might an initiative such as the New Alliance overcome this obstacle? A major difference between the "Green Revolution" of the 1960s and 1970s and the new revolution that is being launched on the African continent today, concerns the role of the state. In the earlier Green Revolution, the state took center stage - training farmers, financing agricultural research to produce new seed varieties that were distributed freely or were heavily subsidized and combining purely technological advances with economic policies (particularly price support policies and price stabilization mechanisms through the use of marketing boards) that were intended to support farmers' ability to undergo the shift to a more highly capitalized type of agriculture. Partly as a result of the growing suspicion of the state's involvement in the economy (particularly the "price-distorting" impacts thereof, as discussed above), and partly because of the lack of state resources, the approach we witness today differs significantly from the earlier one: it is now private investment that is guiding the process of agricultural transformation and it is agrifood companies, not states, that are the central actors in food systems.

Indeed, the main objective of the New Alliance is to ensure adequate linkages between public programmes and private investment in a process of *mutual alignment* -- so that private investors contribute to the national plans on investment in agriculture and so that public investments and regulatory reform create a business-friendly environment, encouraging private companies to enter the

[44] Though private investors were slow at delivering at first (only USD 60 million were invested in 2012 on the basis of the LoIs), about USD 1.1 billion investments had been made by the end of 2013.

[45] See Norman Borlaug and Christopher Dowswell, *The Green Revolution: An Unfinished Agenda*, CFS Distinguished Lectures Series, 30th session of the Committee on World Food Security, 20-23 September 2004; Robert E. Evenson and Douglas Gollin, 'Assessing the Impact of the Green Revolution, 1960 to 2000' (2003) 300 *Science* 758-762.

agrifood sector. To a large extent, whether the New Alliance on Food Security and Nutrition will make a positive contribution to the alleviation of hunger and malnutrition in the participating countries shall depend on how such alignment is achieved. Shall the commitments made by the parties involved - the government concerned, the international community and the private sector - be aligned with the local needs as they have been identified in fully participatory processes, with a focus on the most marginalized food producers and taking into account the specific needs of women? Or shall the New Alliance's insistence on facilitating the role of the private sector (as private investment is increasingly seen as a substitute for the inability of governments to make the required budgetary commitments towards the relaunching of agriculture) instead divert scarce public resources away from rural poverty reduction and rural development to benefit "growth corridors" aimed primarily at export-oriented agriculture, in which middle-size and large-size agricultural producers are given priority? Will private investment be aligned with local priorities, or will local priorities be tailored to suit the needs of private investors?

These questions are essential in understanding how the various strategies deployed to attract foreign investement shall support, or instead threaten, the right to adequate food. The mission I led in Malawi in July 2013 in my official capacity as Special Rapporteur on the right to food may serve as an illustration. The visit took place just weeks after the then President Joyce Banda announced at the "Nutrition for Growth" summit in London that the country had joined the New Alliance for Food Security and Nutrition. I therefore felt compelled to emphasize in my recommendations to the government that the pending reform of legislation on land tenure (the Land Bill) "should provide for adequate protection against land grabbing in the context of agricultural investments, such as those foreseen under the Green Belt Initiative [a major plan to expand the area under irrigation, from 90,000 hectares to 400,000 hectares] and the New Alliance for Food Security and Nutrition".[46] The report presented to the Human Rights Council explained why the reforms that were announced as Malawi joined the New Alliance were perceived by many as a threat:

> One of the commitments of the Government under the latter framework is to release 200,000 hectares of land to investors, "after conducting a survey to identify idle land and crop suitability under both customary [tenure] and leasehold" (Country Cooperation Framework to Support the New Alliance for Food Security and Nutrition in Malawi (2013) 6). The Special Rapporteur welcomes in this regard the commitment under New Alliance for Food Security and Nutrition cooperation framework to comply with the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security, endorsed in May 2012 by the Committee on World Food Security. He notes in this regard that the Guidelines refer to equitable access to land and recommend the adoption of ceiling laws, considering the positive impacts of equitable access to land on food security. This should guide the future allocation of the estimated 2.4 million hectares of under-utilized land in the country. He recommends that the surveys to identify available land be done using participatory means. In order to ensure adequate security of tenure for rural communities, the new legislative framework should include safeguards against excessive powers of traditional chiefs to agree to land acquisitions against the will of their communities.[47]

How natural resources should be exploited, by whom, and for the benefit of which interests, has been at the heart of international law since it originated in attempts to justify, or to regulate, the colonial conquest.[48] Occupation by colonial powers or the conclusion of unequal treaties were not the only tools to ensure that resource-rich but cash-poor countries could be exploited in the service of the interests of more advanced (initially: European) countries, however. Private investment always played a key role in this regard. In 1926, looking back at the functions of companies such as the British East India Company or the Dutch East India Company, M.F. Lindley commented:

> Formed in most cases, at all events from the point of view of the shareholders, for the purpose of earning dividends, these corporations have proved to be the instruments by which enormous areas have been brought under the dominion of the States under whose auspices they were created, and in this way they have been utilised by all the important colonizing Powers. The special field of their operation has been

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[46] Report of the Special Rapporteur on the right to food to the 25th session of the Human Rights Council, Annex: Mission to Malawi (12-22 July 2013), A/HRC/25/57/Add.1 (15 Jan. 2014), para. 51.
[47] Id.
[48] See in particular Antony Anghie, *Imperialism, Sovereignty and the Making of International Law* (Cambridge Univ. Press, 2005).

territory which the State creating them was not at the time prepared to administer directly, but which offered good prospects from the point of view of trade or industrial exploitation.[49]

Four centuries after the British East India Company was chartered, and two centuries after this company reached the apex of its influence in the early nineteenth century, foreign debt fuels very much the kind of fears that Lindley was expressing. By making it impossible for poor countries to finance their development, and thus by making them dependent on the arrival of private investment, the noose debt puts on poor countries may imply that their resources shall be exploited not to serve local needs and priorities, but those of the private interests involved or of the states in which they are domiciled.

Private investment and the capture of resources: the rise of "land grabs"

Better perhaps than theoretical considerations, the global phenomenon of "land-grabbing", denounced since the global food price crisis by a range of non-governmental organizations, illustrates the risk.[50] Recent years have witnessed a significant increase in large-scale acquisitions or leases of farmland. Developing countries with weak governance and poor accountability of governments are particularly targeted. Between 2000 and 2015, over 1073 large-scale land deals (defined as an area of at least 200 hectares) were concluded, covering in total almost 40 million hectares: this is more than six times the size of Sri Lanka (6.5 million hectares), significantly more than the total landmass of the United Kingdom (28 million hectares), and more than twice the total arable land of France (18 million hectares).[51] The vast majority of these deals have concerned Africa (457 documented deals) and, within Africa, Eastern and Western Africa (229 and 137 deals respectively). Southeast Asia (316 deals) and, to some extent, Latin America (167 deals) are also affected by this wave of land investments.[52] The regions most impacted by the recent wave of investments in farmland are those where land suitable for cultivation and water are abundant, workforce cheap and access to the global markets relatively easy. The investors are either the local elites or, increasingly, foreign investment funds or agribusiness corporations. They also include the governments of cash-rich, yet resource-poor, countries seeking to outsource food production in order to ensure a stable and reliable supply of food for their populations.

Of course, the recent wave of large-scale acquisitions or leases of farmland is not entirely unprecedented—but the speed at which the phenomenon has been developing recently and its overall scope are. In addition, the significance of the current tide is different from what has been seen in the past. In many cases, rather than investing in countries that present certain comparative advantages in agriculture in order to supply the international markets at the most competitive conditions, current lessees or buyers of land most often seek to ensure direct access to a stable supply of agricultural commodities in order to circumvent the international markets which have become increasingly unreliable. A global market for land and water rights is thus rapidly taking shape.[53] The burden of foreign

[49] Mark F. Lindley, *The Acquisition and Government of Backward Territory in International Law* (London: Longman, Green & Co., 1926), p. 91.

[50] See in detail Olivier De Schutter, 'The Green Rush: The Race for Farmland and the Rights of Land Users' (2011) 52(2) *Harvard International Law Journal* 503-559.

[51] The Global Observatory of the Land Matrix Project is coordinated by the International Land Coalition, the Centre de recherche internationale en coopération agronomique pour le développement (CIRAD), the Centre for Development and Environment (CDE) at the University of Bern, the Hamburg-based German Institute for Global and Area Studies (GIGA), and the Deutsche Gesellschaft für Internationale Zusammenarbeit GmbH (GIZ). The data referred to here are those presented by the Land Matrix Project on 24 October 2015. *See* http://www.landmatrix.org/en/.

[52] The target countries that top the list are Indonesia (125 deals), Cambodia (104 deals), Mozambique (79 deals), Ethiopia (61 deals), and the People's Democratic Republic of Lao (55 deals). Focusing on the amount of land involved, rather than on the number of deals in target countries, six countries top the list: more than 4 million hectares of deals have been concluded in South Sudan, followed closely by Papua New Guinea with 3.7 million hectares and Indonesia with 3.6 million hectares. The Democratic Republic of Congo (2.7 million hectares), the Congo, and Mozambique (both approximately 2.1 million) are only slightly behind.

[53] A wide range of studies has been published on the potential benefits, risks, and challenges involved in the increase of large-scale investments in land for agricultural production. *See* Sappho Haralambous, Harold Liversage, and Monica Romano, 'The growing demand for land: Risks and opportunities for smallholder farmers', International Fund for Agricultural Development [hereinafter IFAD] Discussion Paper, (February 2009), *available at* http://www.ifad.org/events/gc/32/roundtables/2.pdf; Lorenzo Cotula, Sonja Vermeulen, Rebeca Leonard, and James Keeley, "Land grab or development opportunity? Agricultural investment and international land deals in Africa," International Institute for Environment and Development [hereinafter IIED],

debt makes it difficult for the target countries to resist the pressure to cede land to foreign investors, in the hope both of making a short-term gain and of attracting investors that could develop the local infrastructure - roads, storage facilities, and irrigation schemes - and connect local agricultural production to the global markets.

Malawi is a case in point. Despite having benefited from both the Heavily Indebted Poor Countries (HIPC) Initiative and the Multilateral Debt Relief Initiative (MDRI) in 2005-2006, the country's debt rose significantly in the period that followed: it stood at 26.7 per cent of GDP in 2007, but had already increased to about 50 per cent of GDP at the time of the mission I conducted as Special Rapporteur on the right to food; at the time of writing (June 2017), it stands at 54.3 per cent (and 33.1 per cent for the external debt alone).[54] Although, to be fair, the servicing of the debt is much higher for domestic rather than foreign debt (since the latter is under highly concessional terms), it is difficult for a country under such conditions to resist the appeal of foreign investors filling the financing gap - despite the potential impacts on the population and despite the risk that, as a result, the exploitation of the country's natural resources may not in fact benefit the local population.

Channelling private sector investment towards meeting development needs

Though it involves only ten countries from Sub-Saharan Africa, the New Alliance on Food Security and Nutrition - and the increased risks of fuelling land grabs it entails - does provide an illustration for a broader issue, which is how much states can effectively ensure that private investment flows shall contribute to human development and local food security and be aligned with national priorities. The question has major implications for poor heavily indebted countries, since these countries are highly dependent on inflows of private capital for their development. The Sustainable Development Goals, adopted in September 2015 as part of the Global Development Agenda 2030,[55] include a Goal 17 relating to foreign direct investment and to the contribution of investment to growth.[56] Yet, whereas increased levels of FDI flows to developing countries (least-developed countries in particular) can make a contribution to the fulfilment of human rights in general and to the right to food in particular, whether or not they shall have such a positive impact depends on the nature of the strategies deployed to attract FDI. Already in 2006, referring to MDG8 on a global partnership for development, the Working Group on the Right to Development stated that the right to development "implies that foreign direct investment (FDI) should contribute to local and national development in a responsible manner, that is, in ways that are conducive to social development, protect the environment, and respect the rule of law and fiscal obligations in the host countries. The principles underlying the right to development, ... further imply that all parties involved, i.e. investors and recipient countries, have responsibilities to ensure that profit considerations do not result in crowding out human rights protection. The impact of FDI should,

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Food and Agriculture Organization of the United Nations [hereinafter FAO] and IFAD, (June 2009), *available at* http://pubs.iied.org/12561IIED.html (based on a detailed examination of land deals in Sudan, Ethiopia, Madagascar, Mozambique, and Tanzania); Klaus Deininger and Derek Byerlee et al., *Rising global interest in farmland: Can it yield sustainable and equitable benefits?* (World Bank, 2010); Deutsche Gesellschaft für Technische Zusammenarbeit [hereinafter GTZ], *Foreign direct investment (FDI) in land in developing countries* (December 2009) *available at* http://www2.gtz.de/dokumente/bib-2010/gtz2010-0478en-foreign-direct-investment-food-security.pdf; Michael Kugelman and Susan L. Levenstein (eds) *Land grab? The race for the world's farmland*, Woodrow Wilson International Center for Scholars, (2009), *available at* http://www.wilsoncenter.org/topics/pubs/ASIA_090629_Land%20Grab_rpt.pdf; Howard Mann and Carin Smaller, 'Foreign land purchases for agriculture: What impact on sustainable development?', *Sustainable Development Innovation Briefs*, Issue 8 (January 2010); Center for Human Rights and Global Justice, *Foreign land deals and human rights: case studies on agricultural and biofuel Investment* (New York: NYU School of Law, 2010) (providing an in-depth study of four cases in Tanzania, Southern Sudan, Pakistan, and Mali).

[54] See International Monetary Fund, *Malawi -- Ninth Review under the Extended Credit Facility Arrangement and Request for Waivers for Nonobservance of Performance Criteria -- Debt Sustainability Analysis*, 7 June 2017 (available at: https://www.imf.org/external/pubs/ft/dsa/pdf/2017/dsacr17183.pdf).

[55] A/RES/70/1.

[56] Target 17.1 is to "Strengthen domestic resource mobilization, including through international support to developing countries, to improve domestic capacity for tax and other revenue collection". Target 17.3 is to "Mobilize additional financial resources for developing countries from multiple sources", the associated indicator (17.3.1) referring to levels of foreign direct investment . Target 17.5 is to "Adopt and implement investment promotion regimes for least developed countries".

therefore, be taken into account when evaluating progress in Goal 8 in the context of the right to development".[57]

It is, therefore, key to ensure that the environment under which private investors operate supports, rather than undermines, the realization of human rights and the right to development: increasing FDI cannot be an end in itself, but only a means to an end. A recent publication by the South Centre highlighted, for instance, that a number of myths surround FDI and its contribution to capital accumulation, technological progress and growth. As summarized by that publication :

> First, FDI is more about transfer and exercise of control than movement of capital. It does not always involve flows of financial capital (movements of funds through foreign exchange markets) or real capital (imports of machinery and equipment for the installation of productive capacity). Second, only the so-called greenfield investment makes a direct contribution to productive capacity and involves cross-border movement of capital goods, but it is not easy to identify from reported statistics what proportion of FDI consists of such investment as opposed to transfer of ownership of existing assets. Third, what is commonly reported as FDI contains speculative and volatile components. Fourth, the longer-term impact of FDI on the balance of payments is often negative even in countries highly successful in attracting export-oriented FDI. Finally, positive technological spillovers from FDI are not automatic but call for targeted policies of the kind that most investment agreements prohibit.[58]

The impacts of FDI on growth depend to a significant extent on local conditions, that may or may not allow a country to benefit in terms of sustainable growth from the arrival of FDI.[59] Moreover, some of the strategies that are currently used to attract FDI are in fact self-defeating. There is ample evidence for instance that "tax holidays" or even, more generally, legal protections granted to investors, have little or no impact on the ability of the country to attract investment, but may significantly reduce domestic policy space.[60] The major determinants of foreign direct investment (FDI) are economic factors such as market size and trade openness, as measured by exports and imports in relation to total GDP.[61] For other variables there is less consensus in the literature. The studies do find in general, however, that political and economic factors such as market size, skilled labor and trade policies are more important for the locational decision of foreign investment than the legal structure for protection of investors' rights and the ability to avoid double taxation by double-taxation treaties.[62]

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[57] Report of the Working Group on the Right to Development. 7th session (conclusions) E/CN.4/2006/26, para. 59.

[58] Yilmaz Akyüz, *Foreign Direct Investment, Investment Agreements and Economic Development: Myths and Realities* (South Centre Research Paper 63)(October 2015) (abstract).

[59] See, for instance, Laura Alfaro, Areendam Chanda, Sebnem Kalemli-Ozcan, and Selin Sayek, 'FDI and Economic Growth, The Role of Local Financial Markets' (2004) 64 *Journal of International Economics* 113-134 (showing that that only countries with well-developed financial markets gain significantly from FDI in terms of their growth rates) ; or Eduardo Borensztein, Jose De Gregorio, and Jong-Wha. Lee, 'How Does Foreign Direct Investment Affect Economic Growth?' (1998) 45 *Journal of International Economics* 115-135 (emphasizing the role of human capital in maximizing the growth potential of the arrival of FDI).

[60] For a more systematic treatment, see Olivier De Schutter, Johan F. Swinnen and Jan Wouters, 'Introduction: Foreign Direct Investment and Human Development', in O. De Schutter et al. (eds), *Foreign Direct Investment and Human Development. The Law and Economics of International Investment Agreements* (Routledge, 2012) 1-24. On the notion of "policy space", see Jörg Mayer, 'Policy Space: What, For What, and Where? (2009) 27 Development Policy Review 373-95 (originally presented as UNCTAD Discussion Paper No. 191, UN Doc. UNCTAD/OSG/DP/2008/6 (October 2008)). Mayer distinguishes "*de jure* sovereignty, which involves the formal authority of national policy-makers over policy instruments, and *de facto* control, which involves the ability of national policy-makers to effectively influence specific targets through the skilful use of policy instruments' and he defines national policy space as "the combination of *de jure* policy sovereignty and *de facto* national policy autonomy" (376). This notion was pioneered by Richard N. Cooper, *The Economics of Interdependence: Economic Policy in the Atlantic Community* (McGraw Hill for the Council on Foreign Relations, 1968). See also Mary Hallward-Driemeier, *Do Bilateral Investment Treaties Attract FDI? Only a bit...and they could bite* (World Bank Policy Research Paper WPS 3121, World Bank, 2003).

[61] A greater emphasis has been placed in recent years on the latter determinant as a result of globalization and the development of global supply chains. Even in this regard, however, the relationship is by no means automatic, as illustrated by the situation of Sub-Saharan African countries that are very open to trade but that nevertheless are generally not able to attract FDI.

[62] The economic empirical literature confirms the suspicion expressed by some in the legal literature (M. Sornarajah, 'State responsibility and bilateral investment treaties' (1986) 20 *Journal of World Trade Law* 79–98; Jason Webb Jackee, 'Do Bilateral Investment Treaties Promote Foreign Direct Investment? Some Hints from Alternative Evidence' (2011) 51 *Virginia Journal of International Law* 397): there is weak evidence that the conclusion of investment agreements guaranteeing extensive rights to investors has more than a marginal impact on FDI inflows, and where it does seem to have some effect, it is mostly as a

In other terms, while countries that are heavily indebted may be tempted to seek to attract private investment at all costs in order to finance development, such a strategy may ultimately prove problematic and reduce, rather than enhance, their ability to realize human rights. Indeed, if there is one way through which supplementary resources could be raised for development, it is by raising the taxes owed by foreign corporations operating in the country, or by closing loopholes, such as price transfer mechanisms, allowing such corporations to escape local taxes, if not entirely, at least to a very large extent. However, states (particularly LDCs) currently fear resorting to this strategy because they are concerned that investors will not be attracted to the country if they impose excessively high requirements. For the same reason, these states routinely enter into investment agreements that prohibit "performance requirements", although such requirements imposed on investors could significantly strengthen the links with the local economy and thus support local development efforts. In contrast with the country strategies that seem dominant today, reading SDG 17 in the light of the requirements of human rights requires shaping an international environment in which countries would face fewer incentives to resort to beggar-thy-neighbour policies in order to attract foreign investors. Improved international assistance and cooperation for the regulation of investors has a major play to in this regard. It is to this international dimension that the next section turns.

3. Alleviating the burden of the foreign debt: international cooperation in the service of human rights

In reviewing the human rights records of states parties to the various United Nations human rights treaties, the human rights treaty bodies established under these treaties have regularly been confronted with the argument that the burden of foreign debt or of macroeconomic adjustment programmes imposed by international financial institutions as a condition for the continued receipt of loans impose major obstacles to the ability of states to comply with their human rights obligations, particularly as regards the realization of economic, social and cultural rights.[63] Conversely, some countries reported an improvement after they managed to reimburse their debt[64] or benefited from debt relief measures, for instance under the Heavily Indebted Poor Countries initiative, allowing them to increase the budgets dedicated to social sectors.[65]

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substitute for poor institutional quality, particularly in Sub-Saharan African countries or in transition economies swiftly moving towards open market policies.

[63] See, for example, the reports submitted to the Committee on the Rights of the Child, in chronological order, by the Central African Republic (CRC/C/11/Add.18 (1998)), by Honduras (CRC/C/65/Add.2 (1998), paras. 35-36 and 124 ("the economic contraction resulting from reforms of the economic system and the payment of a crushing external debt, considerably reduces the possibilities for priority attention to human development")), by Suriname (CRC/C/28/Add.11 (1998)), by Mozambique (CRC/C/41/Add.11 (2001), para. 8 ("a heavy foreign debt service burden, which has delayed much-needed investment in the social area to provide the majority of Mozambicans"), by Madagascar (CRC/C/70/Add.18 (2003), para. 67), by Zambia (CRC/C/11/Add.25 (2002), para. 16 ("The burden of servicing a huge external debt has taken a heavy toll on the national budget, and severely shrunk resources available for development")), by Sri Lanka (CRC/C/70/Add.17 (2002), paras. 128 and 144), by Nepal (CRC/C/65/Add.30 (2004), paras. 36 and 37 ("Debt servicing already claims about 14 per cent of the total budget and its impact adversely affects public investments and expenditure in the social sector, and, in particular, the provision of basic social services")), by Ecuador (CRC/C/65/Add.28 (2004), para. 53), by Kenya (CRC/C/KEN/2 (2006), para. 30 ("large allocations for debt servicing, salaries and other recurrent costs in the Government budget have crowded out spending on social services")); the reports submitted to the Committee on Economic, Social and Cultural Rights by Soudan ((E/1990/5/Add.41)(1998), para. 64), by Morocco ((E/1990/6/Add.20) (1999), para. 209), by Algeria ((E/1990/6/Add.26) (2000), paras. 59-61), by Benin ((E/1990/5/Add.48), para. 35), by Ecuador (E/1990/6/Add.36) (2002), para. 309 ("The constraints imposed by the adjustment policies implemented by Governments in order to achieve a balanced budget have had an impact on the lowest income groups. In recent years, they have accelerated demographic changes in Ecuador in the shape of migration from the countryside to the cities, resulting in extremely fast growth of marginal urban areas forming belts of poverty,...")); or by Kenya ((E/C.12/KEN/1)(2007), para. 90 ("Although the structural adjustment programmes were presented as the panacea to underdevelopment and poverty in the country, the cut in public expenditure in key social sectors have had a devastating effect on the enjoyment of socio-economic rights in general and the right to adequate standard of living in particular")).

[64] See, for instance, the report submitted by Egypt to the Committee on Economic, Social and Cultural Rights (E/1990/5/Add.38) (1998), para. 8.

[65] See, for instance, the combined third to fifth reports of States parties due in 2012 submitted by the Democratic Republic of Congo in 2016 (CRC/C/COD/3-5) (24 June 2016), para. 25 ("In 2010, external debt relief for the Democratic Republic of the Congo was approved to the level of US$ 13 billion, that is to say approximately 90 per cent; this has made it possible to redirect the resources earmarked for debt payment to social welfare measures and stabilization of the macroeconomic framework").

This has led the Committee on Economic, Social and Cultural Rights to express the view whereby "adjustment programmes [imposed on indebted countries as a condition for receiving further loans] will often be unavoidable and that these will frequently involve a major element of austerity", where such programmes are adopted they typically:

> ... endeavour to protect the most basic economic, social and cultural rights become more, rather than less, urgent. States parties to the Covenant, as well as the relevant United Nations agencies, should thus make a particular effort to ensure that such protection is, to the maximum extent possible, built-in to programmes and policies designed to promote adjustment. Such an approach, which is sometimes referred to as "adjustment with a human face" or as promoting "the human dimension of development" requires that the goal of protecting the rights of the poor and vulnerable should become a basic objective of economic adjustment. Similarly, international measures to deal with the debt crisis should take full account of the need to protect economic, social and cultural rights through, *inter alia*, international cooperation. In many situations, this might point to the need for major debt relief initiatives.[66]

The Committee on Economic, Social and Cultural Rights, as well as other human rights treaty bodies, have regularly noted that the burden of the reimbursement of foreign debt, as well as the implementation of structural adjustment programmes (or poverty reduction strategy papers premised on similar macro-economic considerations) might seriously impede the ability of the states concerned to realize economic, social and cultural rights.[67] In a typical formulation, the Committee on Economic, Social and Cultural Rights noted that the efforts of Honduras to comply with its obligations under the International Covenant on Economic, Social and Cultural Rights "are impeded by the fact that it is classified as a highly indebted poor country and that up to 40 per cent of its annual national budget is allocated to foreign debt servicing" and acknowledged that "the structural adjustment policies in the state party have negatively affected the enjoyment of economic, social and cultural rights by the population, especially the vulnerable and marginalized groups of society".[68]

On 24 June 2016, the Committee on Economic, Social and Cultural Rights adopted a Statement titled "Public Debt, Austerity Measures and the International Covenant on Economic, Social and Cultural Rights".[69] The statement examines in particular the duties under the Covenant of states parties as lenders. The Committee remarked that "States parties to the Covenant would be acting in violation of their obligations if they were to delegate powers to [international organisations providing loans] and to allow such powers to be exercised without ensuring that they do not infringe on human rights. Similarly, they would be acting in breach of their obligations if they were to exercise their voting rights within such agencies without taking such rights into account".[70] When states provide bilateral loans, they should keep in mind the prohibition imposed under international law of "coercing other states into violating their own obligations under either the Covenant or under other rules of international law."[71] Therefore,

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[66] Committee on Economic, Social and Cultural Rights, General Comment No. 2 : International technical assistance measures (Art. 22 of the Covenant) (E/1990/23 (2 Feb. 1990)), para. 9.

[67] See, for instance, the Concluding Observations adopted by the Committee on the Rights of the Child on Tanzania in 2001 ((CRC/C/15/Add.156) (2001), para. 9 (noting "the impact of the structural adjustment programme, high external debt payments, and increasing levels of unemployment and poverty within the State party")), on Niger in 2002 ((CRC/C/15/Add.179) (2002), para. 8 (recommending that Niger "ensure the effective implementation of the Poverty Reduction Strategy Paper, paying special attention to the possible negative short-term impact of structural adjustment on the social rights of children")), or on Burkina Faso in 2002 ((CRC/C/15/Add.193) (2002), para. 16 (recommending that Burkina Faso "Undertake a study on the impact of structural adjustment programmes on the right of children to social services")); or the Concluding Observations adopted by the Committee on Economic, Social and Cultural Rights on Zambia in 2005 ((E/C.12/1/Add.106) (2005), para. 48); CRC/C/Add.207 (Sri Lanka); CRC/C/15/Add.197 (Republic of Korea); CRC/C/15/Add.193 (Burkina Faso); CRC/C/15/Add.190 (Sudan); CRC/C/15/Add.186 (Netherlands/Netherlands Antilles); CRC/C/15/Add.179 (Niger); CRC/C/15/Add.174 (Malawi); CRC/C/15/Add.172 (Mozambique); CRC/C/15/Add.160 (Kenya); CRC/C/15/Add.152 (Turkey); CRC/C/15/Add.138 (Central African Republic); CRC/C/15/Add.130 (Suriname); CRC/C/Add.124 (Georgia); and CRC/C/15/Add.115 (India). See also Human Rights Council, Consolidation of findings of the high-level task force on the implementation of the right to development, 25 March 2010, A/HRC/15/WG.2/TF/2/Add.1, para. 54.

[68] E/C.12/1/Add.57 (2001), paras. 9-10.

[69] Committee on Economic, Social and Cultural Rights, Public Debt, Austerity Measures and the International Covenant on Economic, Social and Cultural Rights (24 June 2016) (E/C.12/2016/1).

[70] *Id.*, para. 9.

[71] *Id.*, para. 11 (referring to International Law Commission, *Draft Articles on the Responsibility of States for Internationally Wrongful Acts*, cited above, Art. 18; and to Committee on Economic, Social and Cultural Rights, General Comment No. 8

the Committee concluded: "Both as lenders in bilateral loans and as members of international organisations providing financial assistance, all states should [...] ensure that they do not impose on borrowing states obligations that would lead the latter to adopt retrogressive measures in violation of their obligations under the Covenant."[72]

This may sound radical; yet it is not new. The Vienna Declaration and Programme of Action adopted on 25 June 1993 by the World Conference on Human Rights calls upon the international community to "make all efforts to help alleviate the external debt burden of developing countries, in order to supplement the efforts of the Governments of such countries to attain the full realization of the economic, social and cultural rights of their people".[73] In 2000, the Millennium Declaration also included a call on industrialized countries to "implement the enhanced programme of debt relief for heavily indebted poor countries without further delay and to agree to cancel all official bilateral debts of those countries in return for making demonstrable commitments to poverty reduction".[74] It included a pledge to "deal comprehensively and effectively with the debt problems of low- and middle-income developing countries through various national and international measures designed to make their debt sustainable in the long term".[75] Building on the 2002 Monterrey Consensus[76] and the 2008 Doha Declaration, the Addis Ababa Action Agenda recognizes "the need to assist developing countries in attaining long-term debt sustainability through coordinated policies aimed at fostering debt financing, debt relief, debt restructuring and sound debt management, as appropriate".[77] It also includes a pledge to "continue to support the remaining HIPC-eligible countries that are working to complete the HIPC process" and "on a case-by-case basis" to "explore initiatives to support non-HIPC countries with sound economic policies to enable them to address the issue of debt sustainability".[78] It acknowledges that while "maintaining sustainable debt levels is the responsibility of the borrowing countries", "lenders also have a responsibility to lend in a way that does not undermine a country's debt sustainability".[79]

For the realization of the right to food, alleviating foreign debt is essential for two reasons. First, national strategies for the realization of the right to food, as recommended by the Committee on Economic, Social and Cultural Rights,[80] may be costly to implement. The imposition on a range of poor and heavily indebted countries of structural adjustment programmes in the 1980s and 1990s, premised on the idea that these countries should decrease the ratio of their public debt-to-GDP in order to reassure their creditors, illustrates the enormous impacts that could result from the removal of public policies that seek to support the realization of the right to food - in the areas of rural development, support to farmers, or price stabilization measures such as through the operation of commodity boards. The prioritization

(1997): The relationship between economic sanctions and respect for economic, social and cultural rights, E/1998/22, para. 51).

[72] *Id.*, para. 11. The position expressed by the Committee in this recent statement was largely foreshadowed in earlier statements by the same body, in particular in the General Comment No. 18: The right to work (E/C.12/GC/186 (2005)), where it had already made it clear that "To comply with their international obligations in relation to article 6, States parties should endeavour to promote the right to work in other countries as well as in bilateral and multilateral negotiations. In negotiations with international financial institutions, States parties should ensure protection of the right to work of their population. States parties that are members of international financial institutions, in particular the International Monetary Fund, the World Bank and regional development banks, should pay greater attention to the protection of the right to work in influencing the lending policies, credit agreements, structural adjustment programmes and international measures of these institutions. The strategies, programmes and policies adopted by States parties under structural adjustment programmes should not interfere with their core obligations in relation to the right to work and impact negatively on the right to work of women, young persons and the disadvantaged and marginalized individuals and groups" (para. 30).

[73] Committee on Economic, Social and Cultural Rights, Public Debt, Austerity Measures and the International Covenant on Economic, Social and Cultural Rights (24 June 2016) (E/C.12/2016/1), para. 12.

[74] Id., para. 15.

[75] Id., para. 16.

[76] Report of the International Conference on Financing for Development, Monterrey, Mexico, 18-22 March 2002 (A/CONF.198/11), chapter 1, resolution 1, annex, paras. 47-51.

[77] Adopted at the Third International Conference on Financing for Development (Addis Ababa, Ethiopia, 13–16 July 2015) and endorsed by the General Assembly in its resolution 69/313 of 27 July 2015 (para. 97).

[78] Id.

[79] Id.

[80] See Committee on Economic, Social and Cultural Rights, General Comment No. 12 (1999): The right to adequate food (article 11) (E/C.12/1999/5), paras. 21-26; see also guideline 3 of the Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security, adopted in November 2004 by the FAO Council at its 127nd session.

of the servicing of foreign debt, insofar as it reduces the ability of the state to invest in such programmes, could significantly exacerbate food security and affect the enjoyment of the right to food. Secondly, foreign debt makes heavily indebted countries highly dependent on the arrival of foreign capital to finance their development policies, particularly at a time when, as a result of "aid fatigue" or due to the economic crisis affecting traditional donors, levels of official development assistance tend to decrease. The consequence is that investment shall serve the priorities of the private investors, rather than the development needs of the countries concerned. This will influence the choice of what to grow; of which infrastructures to be built or maintained; and of which markets and supply chains to be developed. The two channels through which the level of foreign debt impedes the realization of the right to food are of course connected: the higher the debt burden, the less the state shall be able to make the investments required to improve local food security, and the more its development choices shall be made dependent on the priorities private investors set for themselves.

4. Conclusion

In July 2015, the Addis Ababa Action Agenda noted "the importance of debt restructurings being timely, orderly, effective, fair and negotiated in good faith" and that "successful debt restructurings enhance the ability of countries to achieve sustainable development and the sustainable development goals."[81] Two months later, consistent with this call, the UN General Assembly adopted resolution 69/319, declaring that sovereign debt restructuring processes should be guided by nine Basic Principles, including the right to sovereign debt restructuring, good faith, transparency, equitable treatment, sovereign immunity, legitimacy, sustainability and the principle of majority restructuring. The resolution was adopted by a vote of 136 in favour and 6 against, with 41 abstentions. The Independent Expert on the effects of foreign debt and human rights expressed the view that the nine Basic Principles "reflect customary law and general principles of international law to a large extent and, as such, are legally binding".[82]

The international community also expressed in the Addis Ababa Action Agenda its concern at "the ability of non-cooperative minority bondholders to disrupt the will of the large majority of bondholders who accept a restructuring of a debt-crisis country's obligations" and encouraged governments to adopt legislation to counter such actions by the so-called "vulture funds".[83] Progress has been made on this front too. Some creditor states, including EU member states and the members of the Club of Paris, pledged not to sell their claims on highly-indebted poor countries (HIPCs) to creditors unwilling to provide debt relief, and two countries (the United Kingdom and Belgium) adopted legislation specifically aimed at combating the abusive practices of vulture funds.[84] The Advisory Committee of the Human Rights Council, in a report requested by resolution 27/30 of the Human Rights Council, recommends that states enact legislation aimed at curtailing the predatory activities of vulture funds within their jurisdiction, (i) covering both HIPCs and other countries; (ii) applying to commercial creditors that refuse to negotiate any restructuring of the debt ; (iii) prohibiting the filing of claims that are manifestly disproportionate to the amount initially paid to purchase the sovereign debt.[85] It also recommends that states refuse to "give effect to foreign judgments or conduct enforcement procedures in favour of vulture funds that are pursuing a disproportionate profit", i.e., granting claims that are in excess of the discounted price originally paid for the bonds.[86] This is consistent with, and clarifies the implications of, the call included in Human Rights Council resolution 27/30, that states "consider implementing legal frameworks to curtail predatory vulture fund activities within their jurisdictions".[87]

These advances are essential if the right to food is to be given a chance to be enjoyed by all. In the very last paragraph of General Comment No. 12, which the Committee on Economic, Social and Cultural Rights adopted in 1999 following up on a request of the 1996 World Food Summit - and this

[81] Addis Ababa Action Agenda, para. 98.
[82] "Restructuring of sovereign debt: UN expert stresses GA Principles are binding", press release, New York, 10 September 2015.
[83] Addis Ababa Action Agenda, para. 100.
[84] See Report of the Human Rights Council Advisory Committee on the activities of vulture funds and the impact on human rights (A/HRC/33/54) (20 July 2016).
[85] Id., para. 87(a).
[86] Id., para. 87(b).
[87] A/RES/37/30, para. 2. The resolution was adopted dopted by a recorded vote of 33 to 5, with 9 abstentions.

may be seen as the true founding moment of the right to food in international law - the Committee notes that:

> The international financial institutions, notably the International Monetary Fund (IMF) and the World Bank, should pay greater attention to the protection of the right to food in their lending policies and credit agreements and in international measures to deal with the debt crisis. Care should be taken, in line with the Committee's General Comment No. 2, paragraph 9[[88]], in any structural adjustment programme to ensure that the right to food is protected.

Almost twenty years have passed since this pronouncement. It is high time that the message be heard at last.

[88] The paragraph was quoted above: see text corresponding to n 66.