



**Economic and Social
Council**

Distr.
GENERAL

E/CN.4/2005/47
24 January 2005

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Sixty-first session
Item 10 of the provisional agenda

ECONOMIC, SOCIAL AND CULTURAL RIGHTS

The right to food

Report of the Special Rapporteur on the right to food, Jean Ziegler*

* This report has been submitted late to take into account the most recent developments in the field of realization of the right to food.

Summary

The Special Rapporteur hereby submits his fifth report to the Commission on Human Rights. His reports on the realization of the right to food in Ethiopia and in Mongolia are contained in addenda.

The report opens with an overview of the current situation of world hunger, reviews the activities of the Special Rapporteur and then addresses current situations of special concern with regard to the right to food, as well as positive initiatives being taken, including the ground-breaking progress that has been made with the adoption of internationally accepted voluntary guidelines. Finally, the report explores the emerging issue of “extraterritorial” responsibilities in relation to the right to food.

The shocking news is that hunger has increased yet again this year. In its 2004 report, the Food and Agriculture Organization of the United Nations (FAO) reports that hunger has increased to 852 million gravely undernourished children, women and men, compared to 842 million last year, despite already warning of a “setback in the war against hunger” in 2003. It is an outrage that more than 6 million small children are killed by hunger-related diseases every year, in a world that is wealthier than ever before and that already produces enough food to feed the world’s population.

The Special Rapporteur is gravely concerned at persistent, man-made violations of the right to food that persist across the world. Current situations of special concern include the Darfur region of the Sudan, the situation in the Democratic People’s Republic of Korea, in Iraq and in the Occupied Palestinian Territories. He is also concerned about widespread hunger and loss of livelihoods caused by natural disasters and the failures to respond fully to the need for aid in situations such as the locust infestations across West Africa. The Special Rapporteur also draws the attention of the Commission to the situations in Ethiopia and in Mongolia, where the fight against hunger and food insecurity is not being won, despite the efforts of those Governments and the international agencies.

In the face of such bad news, the Special Rapporteur also reports on positive initiatives being taken to fight hunger at both the global and local levels. These include the commendable efforts of the Governments of Brazil and France in outlining an impressive plan for innovative financing to fight hunger and poverty. He also reports on the adoption of new internationally accepted voluntary guidelines for the progressive realization of the right to food adopted by the FAO Council in November 2004 and approved by all Governments. These are ground-breaking because they set out an internationally accepted definition of the right to food as well as practical actions to put the right to food into practice.

As part of his mandate to examine “emerging issues” with respect to the right to food, the Special Rapporteur examines current discussions that push the boundaries of human rights beyond their traditional boundaries towards recognizing “extraterritorial” responsibilities towards the right to food. Finally, the report makes a series of conclusions and recommendations.

CONTENTS

	<i>Paragraphs</i>	<i>Page</i>
Introduction	1 - 10	4
I. RECENT ACTIVITIES OF THE SPECIAL RAPPORTEUR	11 - 16	6
II. SITUATIONS OF SPECIAL CONCERN	17 - 22	7
III. INITIATIVES FOR PROGRESS	23 - 26	9
IV. INTERNATIONAL VOLUNTARY GUIDELINES ON THE RIGHT TO FOOD	27 - 33	10
V. EXTRATERRITORIAL OBLIGATIONS OF STATES TO THE RIGHT TO FOOD	34 - 59	12
A. Legal background for extraterritorial obligations	44 - 46	15
B. A typology of extraterritorial obligations	47 - 59	15
VI. CONCLUSIONS AND RECOMMENDATIONS	60	19

Introduction

1. The Special Rapporteur hereby submits his fifth report to the Commission on Human Rights, as requested in Commission resolution 2004/19 and Economic and Social Council decision 2004/252. He also submits for the Commission's attention his reports on the realization of the right to food in Ethiopia and in Mongolia, contained in addenda to this report.
2. It is scandalous that in a world richer than ever before, millions of small children still starve to death. A civilized world would not leave a child to starve to death. Nor leave a child with the physical and mental stunting that results from permanent chronic undernourishment. Yet, these things still happen every day. Every day, more than 17,000 children under the age of 5 die from hunger-related diseases.¹ More than 5 million tiny children will be killed by hunger-related diseases by the end of this year.² And every day, hundreds of millions of children do not get enough to eat to sustain a normal life, leaving them mentally and physically disabled. This is not only immoral. It is illegal according to international human rights law. It violates the right to food, the right to health, and eventually the right to life.
3. The shocking news is that global hunger increased yet again this year. The latest report, *The State of Food Insecurity in the World 2004*, of the Food and Agriculture Organization of the United Nations (FAO) reports that hunger has increased to 852 million gravely undernourished children, women and men, compared to 842 million last year, despite already warning in 2003 of a "setback in the war against hunger". Important recent progress in reducing hunger has been made, but the overall trend is now one of regression, rather than the progressive realization of the right to food. In fact, it appears that hunger has increased every year since the 1996 World Food Summit. This makes a mockery of the promises made by Governments at the World Food Summits held in 1996 and 2002, as well as the promises contained in the Millennium Development Goals. This is not acceptable.
4. The FAO makes both a moral case and an economic case for stepping up the fight against hunger - hunger costs developing countries up to US\$ 500 billion in lost productivity given that hungry men, women and children are mentally and physically incapacitated by hunger and malnutrition, despite the fact that it would cost only US\$ 25 million per year to halve undernourishment in 15 of the world's poorest countries.³ Yet FAO still does not make the case based on human rights.
5. All human beings have the right to live in dignity, free from hunger. The right to food and the right to freedom from hunger are human rights protected under international human rights and humanitarian law. It has been authoritatively defined in general comment No. 12 (1999) of the Committee on Economic, Social and Cultural Rights as follows: "The right to adequate food is realized when every man, woman and child, alone or in community with others, has physical and economic access at all times to adequate food or means for its procurement" (para. 6). The Special Rapporteur, inspired by the general comment, summarizes the definition of the right to food (E/CN.4/2001/53, para. 14) as:

The right to food is the right to have regular, permanent and unrestricted access, either directly or by means of financial purchases, to quantitatively and qualitatively adequate and sufficient food corresponding to the cultural traditions of the people to which the consumer belongs, and which ensures a physical and mental, individual and collective, fulfilling and dignified life free of fear.⁴

6. Hunger is not inevitable. We live in a world that is richer than ever before and that is entirely capable of eradicating hunger. According to the FAO, the planet could already produce enough food to provide 2,100 kcals per person per day to 12 billion people (double the existing world population). There is no secret as to how to eradicate hunger. There is rather a need for political commitment to challenge existing policies, inequities and corruption across the world that are making the poor, poorer and the rich, richer. We need political solutions, rather than complicated technical solutions to hunger. New and expensive technologies, such as genetically modified seeds, will not eradicate hunger. Most people are hungry because they simply do not have access to resources to be able to buy or produce food. Genetically modified seeds would have to be handed out free-of-charge, if they were to have any impact on reducing hunger, otherwise they could have the reverse impact of increasing hunger through further concentrating resources in the hands of the few. There is rather a need to challenge the growing inequities between rich and poor around the world. Widening inequalities will simply result in even greater poverty, as the profits of economic growth will go to the rich. But we should all be concerned about reducing the poverty and marginalization of poor countries and poor peoples which will stabilize the world. As Josué de Castro, the world-renowned Brazilian economist and former President of the FAO Council, wrote metaphorically 50 years ago: “In Brazil, no one sleeps because of hunger. Half because they are hungry and the other half because they are afraid of the hungry.”⁵

7. Today in Brazil, Lula Ignacio da Silva, Brazil’s first-ever President to rise from a peasant family, is seeking to fight hunger and inequality both within Brazil and around the world with his “Zero Hunger” initiative. These efforts are absolutely essential. Yet the efforts and resources spent on the international “Alliance against Hunger” remain pitiful, when compared to the billions of dollars spent on the “War against Terror”. The amount of aid being provided for development and famine relief is falling, as money is redirected towards strengthening national security and the fight against terrorism. Yet the fight against terrorism should incorporate efforts to reduce hunger, poverty and inequality. As Spain’s Prime Minister, José Luis Rodríguez Zapatero, said in his speech on 21 September 2004, at the United Nations, talking about the evil of terror: “The seed of evil cannot take root when it falls on the rock of justice, well-being, freedom and hope; but it can take root if it lands on the soil of injustice, poverty, humiliation and despair.”

8. As development aid falls, there is less available to reduce misery. In Ethiopia, for example, *The Ethiopian Herald* of 26 February 2004 reported that the World Food Programme (WFP) was reducing daily food rations for the 126,000 refugees from the Sudan, Eritrea and Somalia living in Ethiopian refugee camps. For lack of resources, WFP reduced daily food rations by 30 per cent to 1,500 kcals per person per day, which falls drastically under the international minimum standard of 2,100 kcals per person. This will bring higher mortality in the camps, because aid is being redirected towards the War against Terror. This is unacceptable.

9. Yet, eradicating hunger and poverty is not only a question of finding resources. It is also a question of challenging structural injustices and inequities of power that allow human rights abuses to take place. It is also a question of challenging economic inequalities and adopting a principled and fair approach to global economic trade. There are many policies and actions of Governments that have negative impacts on the right to food for people living in other countries. For example, in the arena of international trade, countries of the North, subsidizing agriculture and selling products at below the cost of production, are displacing millions of farmers in the South out of agriculture, when agriculture is their only comparative advantage. There are also more obvious examples, such as unjustified embargoes imposed by one country that affect the lives of millions living in another. It is for this reason that the Special Rapporteur will, in this report, explore the question of extraterritorial obligations to ensure that the actions of one Government do not have adverse effects on people living outside its territorial jurisdiction.

10. In his next report, the Special Rapporteur will address the issue of indigenous peoples and the right to food, in response to the appeals of a number of indigenous organizations.

I. RECENT ACTIVITIES OF THE SPECIAL RAPPORTEUR

11. The work of the Special Rapporteur to fight for the right to food and fulfil his mandate has included many activities over the last year. He has submitted an annual report to the General Assembly (A/59/385), which highlighted special areas of concern in relation to the right to food, and explored the linkages between the right to food and fishing livelihoods around the world. This year he has so far carried out country missions to Ethiopia (February 2004) and to Mongolia (August 2004) to analyse and catalyse efforts towards the realization of the right to adequate food. The reports on these missions serve to underline that the fight against hunger is not currently being won in either Ethiopia or Mongolia, despite the impressive efforts of the Governments and international donors. His next mission will be to Guatemala in early 2005 to analyse the situation of the right to food and learn from the positive work that the Government of Guatemala has been undertaking to strengthen protection of the right to food and fight against hunger. He is also planning to visit India and South Africa as soon as possible and is grateful for the invitations extended to him by these countries.

12. He has also planned a visit to Cuba to assess the situation of the right to food there, including analysing the impact on overall food security of the tightening of the unilateral embargo by the United States against Cuba, including measures introduced by the report of the United States "Commission for Assistance to a Free Cuba".⁶ New measures, including restricting family remittances and visits and restricting development in Cuba, tighten the restrictions of the 1996 Helms-Burton Act which impose sanctions on Cuba and companies dealing with Cuba. While the Government of the United States has now taken steps to allow Cuba to buy food from the United States, the embargo continues to devastate the economy and people's livelihoods. Imported food is expensive, yet the embargo prevents the development and modernization of agriculture in Cuba. Cubans are not suffering from malnourishment for one reason: ensuring access to food has remained a priority of the Government. The Government of the United States has refused to receive the Special Rapporteur.

13. The Special Rapporteur has also made repeated requests to undertake country missions to the Democratic People's Republic of Korea and Myanmar, but has received no response from these Governments. He has also continued to issue urgent appeals and press statements,

individually and jointly with other special rapporteurs, in urgent situations related to the right to adequate food in the Occupied Palestinian Territories, Romania, Zimbabwe, the Democratic People's Republic of Korea and the Sudan. The Special Rapporteur has also written to Governments seeking information on alleged violations of the right to adequate food, including regarding particular cases in India, Myanmar and the Philippines. Replies from the Governments concerned, except for the Governments of India and Romania, were still awaited at the time this report was submitted.

14. As well as monitoring situations of special concern with respect to the right to food, the Special Rapporteur and his team have also engaged in many activities to promote a growing awareness of the right to food. This has included participating in many international meetings with governmental, non-governmental and United Nations organizations. For example, the Special Rapporteur made a presentation at the international symposium "Peace, justice and international law" organized by the Fundación Sistema and the Government of Spain in Salamanca from 23 to 26 June 2004. The symposium was attended by leading figures from the Government of Spain and many permanent representatives to the United Nations.

15. His team also contributed to the international meeting "The right to food and access to justice", held in May 2004 at the University of Fribourg in Switzerland, under the auspices of the Jacques Maritain Institute and financed by the Governments of Switzerland, Germany and Norway. The seminar examined many cases demonstrating the justiciability of the right to adequate food and other economic, social and cultural rights across the world, and was aimed at contributing to the work of the FAO Intergovernmental Working Group in developing voluntary guidelines on the right to food.

16. Efforts have also included meetings with numerous civil society organizations, including those working on specific campaigns on the right to food in India, Spain, France and Germany. The Special Rapporteur and his team have collaborated with ACF France (Action Contre la Faim), including contributing to its publication *Geopolitics of Hunger*. He has also worked with a new international campaign on the right to food established in Spain, which links Spanish NGOs to lobby for the realization of the right to food in Spain and across the world.⁷ He also continues to work with the non-governmental organization FIAN (Foodfirst Information and Action Network) in Germany and around the world in its extremely important work in highlighting violations of the right to food and raising awareness of this right.⁸

II. SITUATIONS OF SPECIAL CONCERN

17. At the time of writing, situations of special concern to the Special Rapporteur include the Darfur region of the Sudan, given reports of continued violations of the right to food by militias with alleged links to the Government of the Sudan, including by destroying, damaging and looting crops, agricultural areas, livestock and drinking water installations, especially in the Jabal Marrah area of Western Darfur and by the forced displacement of up to a million people from their land, and restrictions on the access of humanitarian organizations trying to provide food aid. Recent concerns have also been raised that displaced people will lose their tenure over their land if they remain absent for more than a year, so urgent steps must be taken by the national and international authorities to ensure that displaced people will retain tenure over their land, given that their absence is caused by forced displacement and conflict.

18. The Special Rapporteur is also concerned about the situation in the Democratic People's Republic of Korea, given reports that millions of people continue to suffer from a "silent famine"; people have been publicly executed for "economic crimes", such as stealing crops or cows for food; and that food aid has not always been distributed in accordance with the conditions of non-discrimination and transparency.⁹ He is also concerned at reports that the Government of China has forcibly repatriated people escaping hunger, and that these "refugees from hunger" have been sentenced to severe punishment on their return (see A/59/385). The Special Rapporteur urges the Government of the Democratic People's Republic of Korea to respect the right to food of its population under international human rights law. He also urges the Government of China to stop forcible repatriation and to explore third-country options.

19. The situation of the right to food in Iraq is also of serious concern. According to a study by John Hopkins University,¹⁰ 100,000 more Iraqis died than would have been expected had the invasion not occurred. Most died as a result of the violence, but many others died as a result of the increasingly difficult living conditions, reflected in increasing child mortality levels. More than a quarter of Iraqi children are suffering from chronic undernourishment, and acute malnutrition amongst Iraqi children under the age of 5 has almost doubled from 4 per cent to 7.7 per cent.¹¹ There are also widespread concerns about the continued lack of access to clean drinking water, and alleged violations where water sources have been deliberately cut off by Coalition forces.¹² Recently, a number of NGOs have also become concerned that the priorities of the Coalition administration have included the drafting of new intellectual property rights law in Iraq, which addresses the minutiae of patent law, legalizes genetic engineering in Iraq and sets out provisions for the use of genetically modified seeds.¹³ The Special Rapporteur urges the reconstruction of agriculture and livelihoods in ways that address chronic malnourishment and do not undermine future food security of the Iraqi people.

20. The situation of violations of the right to food in the Occupied Palestinian Territories by the occupying forces also continues to be a concern (see A/59/385). In response to Commission on Human Rights resolution 2004/19, in which the Commission urged not only States, but also private actors, to promote the effective realization of the right to food, the Special Rapporteur wrote to the Caterpillar corporation. He expressed concern that, supplying its specially modified and armed D-9 and D-10 bulldozers to the occupying army, in full knowledge that they will be used to destroy farmland, greenhouses, crops and olive groves as well as water installations, might amount to complicity with violations of the right to adequate food. Both Amnesty International and Human Rights Watch have now launched campaigns regarding the sale of such weaponized bulldozers by Caterpillar.¹⁴ A representative from Human Rights Watch stated that: "Until Israel stops these practices, Caterpillar's continued sales will make the company complicit in human rights abuses."¹⁵ The California-based organization, Jewish Voice for Peace, has also filed a shareholder resolution requesting Caterpillar to review the sales of its equipment where this violated the corporations own Code of Worldwide Business Conduct.¹⁶

21. The Special Rapporteur has focused his efforts on addressing man-made violations of the right to food, in accordance with his mandate, rather than focusing on natural disasters. However, at the same time, he is also monitoring the situation of food insecurity and hunger across the world, particularly famine and food crises, currently in 35 countries around the world, according to FAO.¹⁷ At the time of writing, he is particularly concerned at the impact of the terrible tsunami that has swept through Asia, destroying so many lives and livelihoods. He also remains concerned at the swarms of desert locusts across western Africa that threaten

agricultural production across the Sahel, notably in Mauritania, Mali, Senegal and Niger,¹⁸ and urges developed countries to urgently provide adequate assistance to these countries in order to avoid future famine. Urgent action must be taken by Governments and donors to ensure the right to food of all those affected by natural and man-made disasters. The Special Rapporteur welcomes the proposal made by the United Nations Disaster Relief Coordinator, Jan Egeland, on 11 January 2005 to create an international system of control to ensure transparency in the use of the contributions made by States and NGOs.

22. The Special Rapporteur also calls attention to the situation in Ethiopia and in Mongolia, given regressions in the realization of the right to food, as addressed in his mission reports.

III. INITIATIVES FOR PROGRESS

23. As well as monitoring situations of concern and violations of the right to food in accordance with his mandate, the Special Rapporteur has followed positive developments with respect to the right to food. He is continuing to follow positive initiatives being taken in Brazil, India, Sierra Leone and South Africa and is also following new developments in Guatemala, Honduras, Uganda and Uruguay.

24. He calls attention to particularly important developments in Brazil, which include the Government's initiative to re-establish the National Food and Nutritional Security Council and the proposal to create a framework law to promote the right to food, as well as mechanisms for monitoring violations of the right to food. An international seminar was held in Brazil in December 2004 to discuss the National Framework Law on the right to food, which will significantly advance this process. He also commends the positive initiative of non-governmental organizations to establish a mechanism of national special rapporteurs in Brazil and recommends that other countries study this experience with a view to establishing similar mechanisms to monitor the realization of the right to adequate food.

25. The Special Rapporteur is also impressed by the new campaign to fight hunger and poverty worldwide driven by the Presidents of Brazil and France. An international fund to fight hunger has been proposed and President Chirac has been central in driving the ground-breaking Landau report which proposes innovative financing mechanisms to finance development aid.¹⁹ Many of these mechanisms have been taken up by the Quadripartite Group of France, Brazil, Chile and Spain which has for the first time outlined a plan to finance the global fight against hunger. In a declaration signed by 100 Governments, all agreed that "the greatest scandal is not that hunger exists, but that it persists even when we have the means to eliminate it. It is time to take action". As President Chirac explained, "We should ensure that the world's unprecedented wealth becomes a vehicle for the integration, rather than exclusion, of the most underprivileged."

26. In working with the United Nations agencies to promote the right to food, the Special Rapporteur welcomed the invitation of the Executive Director of WFP to participate in the WFP Global Meeting, held in Dublin from 7 to 10 June 2004. This important meeting, held once every four years, brought together all heads of WFP offices to discuss strategies for strengthening their fight against famine. The Special Rapporteur participated in a panel with

George McGovern and had the opportunity to make a presentation on the progress being made on the issue of the right to food within the United Nations system and among Member States. The Special Rapporteur is deeply impressed by the commitment of WFP and looks forward to collaborating further with WFP on the right to food.

IV. INTERNATIONAL VOLUNTARY GUIDELINES ON THE RIGHT TO FOOD

27. In accordance with the mandate given to him by the Commission on Human Rights, the Special Rapporteur has actively participated in the international initiative to develop a set of internationally accepted voluntary guidelines to support the progressive realization of the right to adequate food in the context of national food security. Although the Special Rapporteur has expressed some serious concerns in his previous reports and contributions to the negotiations,²⁰ he believes that this is an important international initiative that will help raise awareness that the right to food is a human right that must be respected and enforced around the world.

28. The initiative to develop these voluntary guidelines grew out of commitments made by Governments at the two successive World Food Summits. At the World Food Summit in 1996, Governments requested clarification of the meaning of the right to adequate food.²¹ In response, the Committee on Economic, Social and Cultural Rights produced its general comment No. 12, (1999) which defines the right to adequate food and outlines the obligations to respect, protect and fulfil (facilitate and provide) the right to adequate food. At the next World Food Summit, in 2002, Governments reaffirmed the right to food and requested the elaboration of practical guidelines on how to implement the right to adequate food. Since then, Governments have been engaged over the last two years in negotiating these guidelines, under the auspices of FAO in Rome.

29. The Special Rapporteur is encouraged to report that in November 2004, the “Voluntary Guidelines” were adopted by the FAO Council and approved by all Governments. This is an important step, because in adopting the Voluntary Guidelines, Governments have reaffirmed a solid commitment to the right to adequate food and have agreed on an internationally accepted understanding of the right to food. This marks important progress. Indeed, FAO has hailed this effort as a “landmark commitment to human rights” as this signifies universal acceptance of what the right to food means and provides a practical tool that will “empower the poor and hungry to claim their rights”.²²

30. The Voluntary Guidelines are ground-breaking in the sense that they provide an internationally accepted definition of the right to food. The definition adopted by Governments (see paragraphs 16 and 17) closely follows the definition adopted by the Committee on Economic, Social and Cultural Rights. It also follows the interpretation offered by the Committee that States are obliged to *respect, protect* and *fulfil* the right to adequate food, which has important implications for the acceptance of this framework across all economic, social and cultural rights. Paragraph 17 states that:

“... States parties to the International Covenant on Economic, Social and Cultural Rights (ICESCR) have the obligation to respect, promote and protect and to take appropriate steps to achieve progressively the full realization of the right to adequate food. States parties should respect existing access to adequate food by not taking any

measures that result in preventing such access, and should protect the right of everyone to adequate food by taking steps so that enterprises and individuals do not deprive individuals of their access to adequate food. States parties should promote policies intended to contribute to the progressive realization of people's right to adequate food by proactively engaging in activities intended to strengthen people's access to and utilization of resources and means to ensure their livelihood, including food security. States parties should, to the extent that resources permit, establish and maintain safety nets or other assistance to protect those who are unable to provide for themselves."

31. The Guidelines are also ground-breaking in recognizing the international dimension related to the right to food, addressing questions of international trade, food aid and embargoes, for example. This is important because it extends understanding of the right to food beyond the traditional relation between a State and its citizens towards a greater recognition of "extraterritorial" responsibilities (see the next section where this concept is treated in greater detail). This set of guidelines also addresses questions of non-State actors, encouraging direct responsibility for the right to food and improved regulation of markets to ensure food security.

32. The Voluntary Guidelines also show how the right to food can be incorporated into government strategies and institutions. They show how the key human rights principles - non-discrimination, participation, transparency, accountability and access to justice - can be incorporated into a rights-based approach to food security. They also call on States to promote "broad-based economic development that is supportive of their food security policies" (guideline 2.1), to "pursue inclusive, non-discriminatory and sound economic, agriculture, fisheries, forestry, land use, and, as appropriate, land reform policies" (guideline 2.5) and to incorporate the right to food into poverty reduction strategies. They also urge States to "take account of shortcomings of market mechanisms in protecting the environment and public goods" (guideline 4.10) and that, particularly for women (guideline 8.3) and vulnerable groups:

"... States should respect and protect the rights of individuals with respect to resources such as land, water, forests, fisheries, and livestock without any discrimination. Where necessary and appropriate, States should carry out land reforms and other policy reforms consistent with their human rights obligations and in accordance with the rule of law in order to secure efficient and equitable access to land and to strengthen pro-poor growth. Special attention may be given to groups such as pastoralists and indigenous people and their relation to natural resources" (guideline 8.1).

33. The Voluntary Guidelines also call on States to set up mechanisms to inform people of their rights and improve access to justice for the right to food (guideline 7). For the Special Rapporteur, greater recognition of the right to adequate food at the national level and assuring access to justice for all, with priority for the poorest and most vulnerable, would significantly improve the realization of the right to food. The Voluntary Guidelines therefore have the potential to have a positive impact in the struggle for the right to food. However, it is essential that they now be adopted as a practical instrument to guide government policies and programmes in order to have a real impact on hunger and food insecurity in the world.

V. EXTRATERRITORIAL OBLIGATIONS OF STATES TO THE RIGHT TO FOOD

34. In accordance with the mandate accorded to him by the Commission in its resolution 2000/10, the Special Rapporteur is obliged to bring to the attention of the Commission “emerging issues” that are occurring across the world with respect to the right to food. One of the key concerns currently being debated within the international human rights community working on economic, social and cultural rights, is the issue of examining “extraterritorial obligations” in relation to human rights.

35. The gradual emergence of a single integrated world market, the progressive globalization of most commercial, economic and social relations between peoples and the simultaneous emergence of private transnational corporations that often have greater economic and financial power than many States, particularly in the South, means that new issues have to be addressed that challenge the traditional territorial boundaries of human rights. There are three new issues currently being discussed. The first is the human rights responsibilities of non-State actors, such as transnational corporations. The second is examining the human rights responsibilities of multilateral inter-State organizations such as IMF, the World Bank and WTO. The third is the issue of extraterritorial obligations - which refers to the human rights obligations of Governments towards people living outside of its own territory. The underlying principle for all three issues is the promotion of universal human dignity as enshrined in human rights.

36. At its sixtieth session, the Commission on Human Rights examined the first issue - the responsibilities of non-State actors, particularly private transnational corporations, - with respect to human rights. It is increasingly recognized that, given that many non-State actors have become more powerful than States, private corporations should bear some responsibility to respect human rights obligations. This was expressed in the Norms on the responsibilities of transnational corporations and other business enterprises with regard to human rights (E/CN.4/Sub.2/2003/12/Rev.1) that were presented to the Commission. The Special Rapporteur also addressed this issue in his last report (E/CN.4/2004/10) with a chapter on the responsibilities of corporations towards the right to food.

37. The second issue currently being debated relates to the human rights responsibilities of multilateral organizations such as IMF, World Bank and WTO. Given the powerful role that such organizations play in determining economic policies, particularly in countries in the South, these organizations can have an important impact on human rights. There is no doubt, for example, that the programmes of economic reform imposed by IMF and the World Bank on indebted countries have a profound and direct influence on the situation of the right to food and food security in many countries. However, given that these organizations are intergovernmental organizations and that they are effectively directed by Governments to undertake such actions, it is a controversial question whether these organizations can be considered as autonomous legal subjects with obligations under international human rights law. For example, some authors think that WTO is merely a mechanism for negotiation between States and that member Governments are therefore accountable for all the rules and actions of WTO. Others think however, that organizations such as the World Bank and IMF, despite having State Governments on their executive council, still take autonomous actions and that it is important to consider the direct responsibilities of intergovernmental organizations as institutions in themselves.

38. A number of studies by academics and by non-governmental organizations, such as FIAN, have pointed out, for example, that these institutions are bound directly by human rights norms in two ways. Firstly, through customary law under which there are direct obligations to human rights standards²³ and secondly through the responsibility of international cooperation that is enshrined in article 2 (1) of the International Covenant on Economic, Social and Cultural Rights, as well as in article 11 on the right to freedom from hunger.²⁴ Most intergovernmental organizations are also bound to respect the principles of the Charter of the United Nations through their relationship agreements with the United Nations. This issue of the direct obligations of intergovernmental organizations is extremely important and the Special Rapporteur will look at this in greater detail in his next report to the Commission.

39. In this chapter, however, the Special Rapporteur will examine only the third issue which is currently animating debate. This is the issue of extraterritorial obligations in relation to human rights. Although the primary responsibility to ensure human rights will always rest with the national Government, in the current climate of globalization and strong international interdependence, the national Government is not always able to protect its citizens from the impacts of decisions taken in other countries. All countries should therefore ensure that their policies do not contribute to human rights violations in other countries. As S.I. Skogly has stated, the strict territorial application of human rights obligations may now be outdated.²⁵ This issue is becoming increasingly important for the realization of the right to food given that it is now increasingly true that actions taken by one Government may have negative impacts on the right to food of individuals living in other countries. For example, international trade in agriculture is one clear case, as it is widely recognized that subsidies to farmers in developed countries can have negative impacts on farmers and the right to food in developing countries if food products are “dumped” on developing countries (see E/CN.4/2004/10).

40. In a globalized and interdependent world, decisions taken in one country can have very far-reaching effects on other countries. Unfortunately today, there is also an increasing lack of coherence in government policies which can mean for example, that whilst they remain committed to a rights-based approach to development, at the same time, they might engage for example in trade policies that could have negative effects on human rights in other countries. Development policies and programmes are not always well coordinated with trade policies programmes agreed to within the framework of WTO, IMF and the World Bank, which means well-intentioned development policies are often undermined. For example, developed countries might offer development assistance for agricultural development, whilst at the same time, they subsidize their agriculture and sell products at below the cost of production, in ways that can limit the possibilities for agriculture development in developing countries. In the same way, developed countries sometimes provide food aid in ways that undermine local food security, through destroying local production in developing countries. In Switzerland, for example, there is no coordination at all between the Swiss mission to WTO and the Swiss mission to the United Nations, even though the two equally competent ambassadors work in the same building in Geneva. The lack of coordination and coherence, often results in outright contradictions in policies towards development assistance and policies towards WTO. A similar “schizophrenia” persists in the policy-making of most countries. The ILO World Commission on the Social Dimension of Globalization drew the same conclusion in its recent report *A Fair Globalization: Creating Opportunities for All* (2004):

“Global coherence, like good governance, begins at home. We call on Heads of State and Government to adopt the necessary measures, at the national level, to ensure that the positions taken by their representatives in international forums promote a coherent integration of economic and social policies which focus on the well-being and quality of life of people.”²⁶

41. Coherence would be possible by putting human rights at the centre of all government policy and to refrain from policies and programmes that may negatively affect the right to food of people in other countries. This primacy of human rights is recognized in the Declaration and Plan of Action of the World Conference on Human Rights in Vienna (1993), where all States recognized that human rights are “the first responsibility of Governments” (para. 1). This would mean for example, that in establishing trade policies, Governments would have to ensure that these policies would not have negative effects on the right to food of vulnerable people living in other countries.

42. The issue of extraterritorial obligations in relation to human rights has been debated mostly in relation to civil and political rights. Civil and political human rights instruments contain explicit territorial and jurisdictional limitations, and it has therefore been argued that extraterritorial obligations in relation to these rights do not exist at all. However, in spite of these explicit limitations, several monitoring bodies at the international and regional levels have nonetheless affirmed that human rights obligations cannot simply stop at territorial borders. The European Court of Human Rights, for example, held in the *Loizidou v. Turkey* case that “responsibility of Contracting Parties can be involved because of acts of their authorities, whether performed within or outside national boundaries, which produce effects outside their own territory”.²⁷

43. Unlike civil and political rights, the legal instruments on economic, social and cultural rights do not contain any territorial or jurisdictional limitations. On the contrary, there are explicit legal commitments to cooperate for the realization of economic, social and cultural rights of all individuals without limitations. It therefore cannot be argued that extraterritorial obligations towards these rights do not exist at all. Much work is currently being done by academic institutions and non-governmental organizations to better understand the definition and content of these obligations. This includes studies by the International Council on Human Rights Policy,²⁸ FIAN, Bread for the World and the Evangelischer Entwicklungsdienst,²⁹ 3D - Trade - Human Rights - Equitable Economy and Realizing Rights: The Ethical Globalization Initiative,³⁰ and by many academics, including S.I. Skogly,³¹ F. Coomans and M.T. Kamminga.³² The Special Rapporteur will build on these studies, as well as on the work of the Committee on Economic, Social and Cultural Rights³³ and the Sub-Commission for the Promotion and Protection of Human Rights, including the studies by Asbjørn Eide,³⁴ to present the extraterritorial obligations of States in relation to the right to food. This chapter examines the legal background for extraterritorial obligations and then moves on to present a typology of the extraterritorial obligations *to respect, protect, and support the fulfilment of* the right to food. Its objective will not be to suggest that extraterritorial obligations in relation to the right to food are justiciable, but to show that States have responsibilities under international law towards people living in other countries, both through their own actions and through their decisions taken as members of international organizations.³⁵

A. Legal background for extraterritorial obligations

44. Since the creation of the United Nations, States have undertaken to cooperate to promote human rights, including the right to food. By the adoption of the Charter of the United Nations (arts. 55 and 56), the Universal Declaration of Human Rights (arts. 22 and 28), the International Covenant on Economic, Social and Cultural Rights (arts. 2 (1) and 11) and the Convention on the Rights of the Child (arts. 4 and 24 (4)), States have undertaken to cooperate for the full realization of all economic, social and cultural rights, including the right to food. As the Committee on Economic, Social and Cultural Rights has stated, international cooperation is therefore an obligation of all States.³⁶ States which do not have sufficient resources at their disposal to ensure economic, social and cultural rights, including the right to food, have an obligation to seek international support, and States which are in a position to assist others have a obligation to do so.³⁷ The Committee on the Rights on the Child has also stated that “When States ratify the Convention, they take upon themselves obligations not only to implement it within their jurisdiction, but also to contribute, through international cooperation, to global implementation.”³⁸

45. The right to food under the International Covenant on Economic, Social and Cultural Rights contains the most important and clearest commitment to cooperate. By adopting the treaty, States have undertaken to cooperate - without any territorial or jurisdictional limitations - to ensure the realization of the right to food and the fundamental right to be free from hunger (arts. 2, 11 (1) and 11 (2)).³⁹ Taking these commitments into account, the Committee on Economic, Social and Cultural Rights suggested a framework for extraterritorial obligations that mirrors the national obligations established under the right to food to respect, protect and fulfil the right to food of all individuals within its territory and subject to its jurisdiction, stating that:

“States parties should take steps to respect the enjoyment of the right to food in other countries, to protect that right, to facilitate access to food and to provide the necessary aid when required.”⁴⁰

46. In the United Nations Millennium Declaration, as well as in the World Food Summit Declaration and Plan of Action (1996), States have further recognized their collective responsibility and have undertaken to halve, by the year 2015, the proportion of people who suffer from hunger and who are unable to reach or to afford safe drinking water.⁴¹

B. A typology of extraterritorial obligations

47. The Committee on Economic, Social and Cultural Rights and a number of scholars have argued that extraterritorial obligations should be framed in the same tripartite typology as States obligations at the national level, i.e. to respect, protect and fulfil the right to food.⁴² Non-governmental organizations, such as FIAN, Brot für die Welt and the Evangelischer Entwicklungsdienst have adopted the same approach, although they have further clarified that the primary obligation to implement the right to food rests with the home Government, so another Government cannot be obliged to guarantee complete implementation of the right to food in other countries, but only to assist, so a better formulation would be “the obligation to support to fulfil” the right to food in other countries.⁴³ This clarification is important. It

underlines that the principal obligation to guarantee the right to food is incumbent on the national Government, but other States, if they have available resources, have a complementary obligation to help the national State, when it does not have the resources to realize the right to food of its population.

48. From the perspective of the Special Rapporteur, to fully comply with their obligations under the right to food, States must respect, protect and support the fulfilment of the right to food of people living in other territories. The obligation to respect is a minimum obligation which requires States to ensure that their policies and practices do not lead to violations of the right to food in other countries. The obligation to protect requires States to ensure that their own citizens and companies, as well as other third parties subject to their jurisdiction, including transnational corporations, do not violate the right to food in other countries. The obligation to support the fulfilment of the right to food requires States, depending on the availability of resources, to facilitate the realization of the right to food in other countries and to provide the necessary aid when required.

1. The extraterritorial obligation to respect

49. The extraterritorial obligation to respect the right to food requires States to ensure that their policies and practices do not lead to violations of the right to food for people living in other countries. The obligation to respect is a negative obligation which implies that Governments must refrain from taking certain actions that have negative effects on the right to food. This obligation does not require any resources to be provided. It is rather simply the obligation to “do no harm”. It also includes refraining from taking decisions within WTO, IMF or the World Bank that can lead to violations of the right to food in other countries.

50. To respect the right to food, States should refrain from implementing food embargoes which endanger the right to food of individuals in other countries. According to the Committee on Economic, Social and Cultural Rights, States should refrain at all time from food embargoes or similar measures which endanger conditions for food production and access to food in other countries or prevent the supply of water, as well as goods and services essential for securing the right to water.⁴⁴ Food and water should never be used as instruments of political or economic pressure.

51. States should also refrain at all time from policies of which the effects can be foreseen or that they are aware will have negative effects on the right to food. This means for example that Governments should not subsidize agricultural production that will be exported to primarily agrarian developing countries, as it can be seen in advance that the right to food of people living in those countries will be seriously negatively affected as their livelihoods will be destroyed and they will not be able to purchase food, even if the food is cheaper. In Mexico, for example, it is estimated that up to 15 million Mexican farmers and their families (many from indigenous communities) may be displaced from their livelihoods as a result of the North American Free Trade Agreement and competition with subsidized United States maize.⁴⁵

52. States should also refrain from taking decisions within WTO, IMF or the World Bank that can lead to violations of the right to food in other countries. It is evident that decisions taken by a Ministry of Agriculture or a Ministry of Finance within WTO, IMF and the World Bank are acts of the authorities of a State that can produce effects outside their own territory. If these

effects lead to violations of the right to food, then these decisions must be revised. The Special Rapporteur has seen the consequences of some of these decisions during his country missions. In Niger, for example, the structural adjustment programme required by the IMF - such as the privatization of the national veterinary office - had detrimental consequences on the national pastoralist sector and on the right to food of nomad and peasant communities (see E/CN.4/2002/58/Add.1).

2. The extraterritorial obligation to protect

53. The extraterritorial obligation to protect the right to food requires States to ensure that third parties subject to their jurisdiction (such as their own citizens or transnational corporations), do not violate the right to food of people living in other countries. This obligation does not undermine direct obligations that third parties, including transnational corporations, can have in relation to the right to food (see A/58/330 and E/CN.4/2004/10), but rather puts a duty on the State to regulate its corporations and non-State actors in order to protect the inhabitants of other countries.⁴⁶

54. With the increasing monopoly control by transnational corporations over all elements of the food chain, from the production, trade and processing to the marketing and retailing of food, as well as over the majority of water concessions worldwide (see E/CN.4/2004/10, paragraphs 35-52), it is becoming more difficult for less powerful national Governments to regulate transnational corporations working within their territory to respect human rights, making it essential that the often more powerful “home” States engage in adequate regulation. In the process of water privatization, for example, steps should be taken by “home” States to ensure that the policies and activities of transnational corporations respect the right to water of all people in the countries where they are working.⁴⁷

55. Many countries have already made such commitments. For example, in the Guidelines for Multinational Enterprises of the Organisation for Economic Cooperation and Development, OECD member States have already agreed that multinational enterprises of OECD should respect the human rights of those affected by their activities abroad (para. II.2). Other examples to protect human rights, including the right to food, in other countries, include tort laws in Australia, Canada and the United Kingdom of Great Britain and Northern Ireland, under which transnational corporations can be held responsible for complicity in human rights violations abroad. In the United States, the 1789 Alien Tort Claim Act has also provided a legal basis under which any transnational corporations (not only those based in the United States) can be held accountable for complicity with human rights violations in other countries.⁴⁸

3. The obligation to support the fulfilment

56. Governments also have a duty to support the fulfilment of the right to food in poorer countries. Developing States that do not possess the necessary resources for the full realization of the right to food are obliged to actively seek international assistance,⁴⁹ and wealthier States have a responsibility to help. This requires States, depending on the availability of their resources, to cooperate with other countries to support their fulfilment of the right to food.

57. The obligation to support the fulfilment is constituted by both the obligation to *facilitate* and *provide*. The obligation to facilitate realization of the right to food does not necessarily require resources or international aid. It rather requires that all countries should cooperate to provide an enabling environment that allows the realization of the right to food in all countries. As per article 28 of the Universal Declaration of Human Rights, “Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized”. For example, equitable trade rules would enable all countries to realize the right to food, both in their own countries and in other countries. Development cooperation, already undertaken by most wealthier countries, must also help to create an enabling environment.⁵⁰ Most wealthier Governments already recognize their responsibility to facilitate the realization of the right to food in other countries. In the Monterrey Consensus of the International Conference on Financing for Development, in March 2002, States reaffirmed the goal of providing 0.7 per cent of gross national product for development assistance to developing countries and 0.15 to 0.20 per cent to least developed countries.⁵¹ The representative of Japan, for example, made the following statement before the Committee on Economic, Social and Cultural Rights:

“Japan takes the basic position that human rights are a universal value and a legitimate international concern common among all human beings. Japan believes that development assistance should contribute to the promotion and protection of human rights. Examples of Japanese development assistance to promote economic, social, and cultural rights in other countries are as follows: ... (c) Assistance to realize the fundamental right to be free from hunger. A citizen’s fundamental right to be free from hunger can be ensured by stabilizing the agriculture, forestry and fishery industries in a country. From this point of view, Japan emphasizes assistance to develop agriculture and agricultural villages in developing countries through agricultural infrastructure projects such as irrigation and drainage projects, farm products research and test projects, dissemination of information related to cultivation, projects for organizing agricultural villages, and projects for agricultural product distribution. Japan also contributes to famine relief in the form of agricultural development assistance through general grants, marine grants, and disaster-relief grants” (E/1990/6/Add.21, para. 10).

58. To support the fulfilment of the right to food, Governments also have an obligation to *provide*, which means to provide assistance, according to available resources, when individuals are suffering in another country, such as a situation of widespread famine. At the same time, emergency aid must always be provided in ways that do not destroy livelihoods or are incoherent with development objectives in order to avoid negative effects on the longer-term realization of the right to food. Most Governments already recognize a responsibility to provide emergency assistance when this is required to support the fulfilment of the right to food in a situation, such as terrible famine or armed conflict (see E/CN.4/2002/58). The obligation to provide the necessary aid when required is particularly important in the context of disaster relief and humanitarian assistance. This has been recognized by States in the Voluntary Guidelines on the right to adequate food (guideline 16). As the Committee on Economic, Social and Cultural Rights stated:

“States have a joint and individual responsibility, in accordance with the Charter of the United Nations, to cooperate in providing disaster relief and humanitarian assistance in times of emergency, including assistance to refugees and internally displaced persons. Each State should contribute to this task in accordance with its ability.

The role of the World Food Programme (WFP) and the Office of the United Nations High Commissioner for Refugees (UNHCR), and increasingly that of UNICEF and FAO is of particular importance in this respect and should be strengthened. Priority in food aid should be given to the most vulnerable populations.”⁵²

59. At the same time, all States should also ensure that food aid will be provided in accordance with their human rights obligations. Priority should be given to the most vulnerable populations, and human rights principles, including non-discrimination in the distribution of food aid, should be upheld at all time. As the Committee on Economic, Social and Cultural Rights underlined, food aid should also be provided in ways which do not adversely affect local producers and local markets, it should be organized in ways that facilitate the return to food self-reliance of the beneficiaries, and it must be safe and culturally acceptable to the recipient population.⁵³

VI. CONCLUSIONS AND RECOMMENDATIONS

60. **The Special Rapporteur submits the following recommendations:**

(a) **The trend of increasing world hunger and undernourishment must be reversed. Governments must implement their commitments made at the World Food Summits in 1996 and 2002 and their Millennium Declaration commitments. All Governments must take immediate action to guarantee the progressive realization of the right to adequate food, in accordance with their international human rights obligations;**

(b) **Emergency and long-term assistance to countries suffering from the effects of man-made and natural disasters that have exacerbated food insecurity, must be stepped up, particularly in South Asia after the tragedy of the tsunami, without forgetting other disasters around the world. More attention must be paid to the situations of Ethiopia and Mongolia, in accordance with the recommendations outlined in the addenda to this report. The Special Rapporteur supports the proposal made by Jan Egeland, head of OCHA, on 11 January 2005 for the creation of an international system of control to ensure the transparency in the use of the contributions made by States and NGOs;**

(c) **The excellent and very innovative proposal of the Governments of Brazil and France to create a fund to fight against hunger and poverty worldwide, as presented at the fifty-ninth session of the General Assembly, must be fully supported;**

(d) **The Voluntary Guidelines on the right to adequate food, accepted at the international level by Governments, should now be practically implemented and incorporated into government development programmes for food security and poverty reduction. Training for government officials and non-governmental organizations should be organized to raise awareness of the Guidelines and to improve realization of the right to food;**

(e) **The primary responsibility for realizing the right to food rests with national Governments. As stated in general comment No. 12 and the Voluntary Guidelines, Governments must respect, protect and fulfil the right to food of people living within their territories. The progressive realization of the right to food means that levels of food**

security should consistently improve over time. Arbitrary and discriminatory actions that exclude poor people from access to their resources and to adequate food constitute a violation of the right to food. Appropriate remedies for any violations should be instituted and access to justice for all should be ensured;

(f) Governments must recognize their extraterritorial obligations towards the right to food. They should refrain from implementing any policies or programmes that might have negative effects on the right to food of people living outside their territories. Governments should respect, protect and support the fulfilment of the right to food in other countries, including through their decisions taken under their roles within WTO, IMF and the World Bank. Governments should ensure coherence at the national and international levels, by putting human rights at the centre of all government policy;

(g) It is a shame on humanity that we continue to let one child under the age of 5 die every five seconds from hunger or hunger-related diseases. That one person loses their eyesight every four minutes from a lack of vitamin A. And that in a world richer than ever before, the number of people gravely undernourished has increased to 842 million people. It is time to enforce the right to food.

Notes

¹ WFP, 2004 World Hunger Map, Rome.

² FAO, *The State of Food Insecurity in the World 2004*.

³ Ibid.

⁴ This citation should read “unrestricted access”, not “free access”, as this was a mistranslation from French to English in the original report.

⁵ Josué de Castro, *The Geography of Hunger*, New York, 1952.

⁶ See <http://www.state.gov/documents>.

⁷ See <http://www.prosalus.es/derechoAI/deDerecho.asp>.

⁸ See <http://www.fian.org/>.

⁹ Amnesty International, “Starved of rights: human rights and the food crisis in the Democratic People’s Republic of Korea”, 2004.

¹⁰ http://www.jhsph.edu/PublicHealthNews/Press_Releases/PR_2004/Burnham_Iraq.html.

¹¹ <http://www.washingtonpost.com/wp-dyn/articles/A809-2004Nov20.html>.

¹² Campaign Against Sanctions on Iraq, *Denial of Water to Iraqi Cities*, Cambridge, United Kingdom, 2004.

- ¹³ GRAIN and Focus on the Global South, Iraq's new patent law: a declaration of war against farmers, October 2004.
- ¹⁴ See <http://www.hrw.org/english/docs/2004/11/22/isrlpa9711.htm>.
- ¹⁵ Human Rights Watch, Human Rights News New York, 23 November 2004 at <http://www.hrw.org/english/docs/2004/11/22/isrlpa9711.htm>.
- ¹⁶ <http://www.jewishvoiceforpeace.org/press/releases/release112204.html>.
- ¹⁷ http://www.fao.org/documents/show_cdr.asp?url_file=/docrep/007/J2969e/J2969e00.htm.
- ¹⁸ <http://www.fao.org/newsroom/en/news/2004/51709/index.html>.
- ¹⁹ The Landau report commissioned by President Jacques Chirac of France is entitled "New International Financial Contributions for Development" - A report by the working group chaired by Jean-Pierre Landau, September 2004.
- ²⁰ See www.righttofood.org.
- ²¹ Objective 7.4 of the World Food Summit Plan of Action.
- ²² See <http://www.fao.org/newsroom/en/news/2004/51653/index.html>.
- ²³ See Simma, Bruno and Alston, Philip, "The sources of human Rights Law: Custom, Jus Cogens, and General Principles" 12, 1992, *Australian Year Book of International Law*, Schermers, Henry G. and Niels M. Blokker, 1995, *International Institutional Law: Unity within Diversity*, The Hague, Martinus Nijhoff Publishers, third revised edition, pp. 824 and 998, and Skogly, S.I., *The Human Rights Obligations of the World Bank and the IMF*, chapter 4, London, Cavendish, 2001.
- ²⁴ IGOs that are not specialized agencies of the United Nations in accordance with article 63, are still under obligation to respect their member States' obligations under the Charter as recognized in article 103.
- ²⁵ S. Skogly, "The obligation of international assistance and co-operation in the International Covenant on Economic, Social and Cultural Rights", 2003, in M. Bergsmo (ed.), *Human Rights and Criminal Justice for the Downtrodden: Essays in Honour of Asbjørn Eide*, Dordrecht, Kluwer Law International, 2003, pp. 403-420.
- ²⁶ ILO World Commission on the Social Dimension of Globalization, *A Fair Globalization: Creating Opportunities for All*, 2004, para. 539.
- ²⁷ The European Court of Human Rights, *Loizidou* judgement of 23 March 1995, Series A. No. 310, p. 24, para. 62.
- ²⁸ International Council on Human Rights Policy, "Duties sans frontières. Human rights and global social justice", 2003.

²⁹ FIAN, Brot für die Welt and the Evangelischer Entwicklungsdienst, *Extraterritorial State Obligations*, 2004. These organizations also presented a parallel report to the Committee on Economic, Social and Cultural Rights on compliance of Germany with its international obligations. See www.fian.org.

³⁰ 3D-Trade-Human Rights - Equitable Economy and Realizing Rights: The Ethical Globalization Initiative, *US and EU Cotton Production and Export Policies and Their Impact on West and Central Africa: Coming to Grips with International Human Rights Obligations*, 2004.

³¹ S. Skogly 2003, op. cit.

³² F. Coomans and M.T. Kamminga (editors), *Extraterritorial Application of Human Rights Treaties*, 2004.

³³ See general comments Nos. 3, 12 and 15.

³⁴ See E/CN.4/Sub.2/1999/12.

³⁵ As stated by the European Court on Human Rights, human rights obligations do not stop when States are acting as members of international organizations. European Court on Human Rights, *Waite and Kennedy v. Germany*, 1999, para. 67. See also E. Petersmann, "Time for integrating human rights into the law of worldwide organizations. Lessons from European Integration Law for Global Integration Law". Jean Monnet Working Paper 7/01, Jean Monnet Programme Publication, 2001, p. 14.

³⁶ General comment No. 3 of the Committee on Economic, Social and Cultural Rights, para. 14.

³⁷ *Ibid.*, paras. 13-14.

³⁸ Committee on the Rights on the Child, general comment No. 3, para. 7.

³⁹ The Special Rapporteur underlines that States that have signed the Covenant, but not ratified it, have a minimum obligation to refrain from acts which would defeat its object and purpose. See Vienna Convention on the Law of Treaties, article 18.

⁴⁰ General comment No. 12, para. 36.

⁴¹ United Nations Millennium Declaration, paras. 2 and 19.

⁴² General comment No. 12, para. 36 (E/CN.4/Sub.2/1999/12), and para. 131. S. Skogly, 2003, op. cit., pp. 419-420.

⁴³ FIAN, Brot für die Welt and the Evangelischer Entwicklungsdienst, "Documentation in the form of a written report for the United Nations on the effect of German policies on social human rights in the South", www.fian.org.

⁴⁴ Committee on Economic, Social and Cultural Rights, general comment No. 12, para. 37, and general comment No. 15, para. 32.

⁴⁵ Friends of the Earth International, “Sale of the century? Peoples’ food sovereignty, Part 1 - the implications of current trade negotiations”, 2003.
(www.foe.co.uk/resource/reports/qatar_food_sovereignty_1.pdf).

⁴⁶ See note 43 above.

⁴⁷ General comment No. 15, para. 33.

⁴⁸ It applies to customary international law norms, such as the prohibition of slavery, genocide, torture, crimes against humanity and war crimes. *Wiwa v. Royal Dutch Petroleum (Shell)*, *Bowoto v. ChevronTexaco*, *Doe v. Unocal*.

⁴⁹ General comment No. 12, para. 17.

⁵⁰ The Special Rapporteur notes that a 20:20 initiative was discussed during the World Summit for Social Development, in which donor countries would commit themselves to use 20 per cent of the aid for social priority areas, while developing countries would have to spent 20 per cent of their budget for social priority areas.

⁵¹ Only a few countries have achieved the goal of 0.7 per cent, notably the Netherlands, Sweden, Denmark, Norway and Luxembourg. As Matthew Craven rightly stated, “it would be a clear signal ... that a State was not committed to its obligation to assist other States if the amount of aid it provided to other States declined over a number of years”. M. Craven, *The International Covenant on Economic, Social and Cultural Rights. A Perspective on its Development*, 1995, p. 150.

⁵² General comment No. 12, para. 38.

⁵³ General comment No. 12, para. 39.
