
Guest editorial: Food (in)security and international law

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After steadily declining for more than a decade, world hunger is now on the rise. The United Nations (UN) Sustainable Development Goals (SDGs) number 2, which aims for a world free of hunger by 2030, is unlikely to be met. According to recent estimates, 735 million people, that is roughly 10% of the world's population, suffer from hunger (Food and Agricultural Organization, 2023). In 2022, 2.4 billion people faced severe food insecurity, an alarming 394 million people more than in 2019 [1]. Extreme hunger and malnutrition have multiple causes; including climate change, politically motivated restrictions to food access, gender discrimination, poor government planning and support, corruption, transportation, complex regulation, lack of regulatory capacity, and State sanctions.

In the past few years, food production and access to food have been used as political instruments. Before the world fully recovered from the COVID-19 pandemic, it was indeed pushed into yet another crisis: the Russia–Ukraine war. The conflict greatly impacted the production and transportation of grains grown in the black sea region. In reaction, several countries introduced public stockholding measures and, in certain cases, economic coercive instruments such as air and sea blockades. According to the Food and Agriculture Organization (FAO), prolonged disruption of exports from Ukraine and Russia could increase the number of undernourished people to the extent of 8 to 13 million in a year alone (Glauber and Laborde Debucquet, 2023). At the time we write these introductory remarks, conflicts in other geographies further jeopardize food security. In Sudan, 20 million people are food insecure while the World Food Programme (WFP) estimates that 5 million people are displaced both inside and outside the country [2][3].

Whilst political instability and conflicts gravely impact food production and supply, climate change becomes yet another great concern. Food security is being increasingly impacted by climate change–related episodes and disasters. Changes in weather patterns, unseasonal rains and regularity of droughts are already creating major stress on agricultural production and output. According to the Intergovernmental Panel on Climate Change (IPCC), these developments are projected to adversely impact the four key pillars of food security: availability, accessibility, stability and utilisation [4]. The increasing occurrences of extreme climate events are disrupting global supply chains, especially in low-income countries. In addition, the increase in food and energy prices produce significant adverse effects both for developing and developed countries.

These distressing realities however hide a complex paradox: there is more than enough food produced in the world to feed everyone on the planet. But food, or enough and nutritious food, is not always accessible. According to the FAO, “food security” exists when “all people, at all times, have physical, social and economic access to sufficient, safe and nutritious food that meets their dietary needs and food preferences for an active and healthy life”. The FAO also uses the Prevalence of Undernourishment to estimate hunger. Irrespective of the methodologies or benchmarks, hunger's indicators point out that there are complex and challenging bottlenecks including, to name a few, government interventions, transportation and distribution, inadequate storing and warehousing facilities, corruption and pilferage, in ensuring access to food for the needy.

A large percentage of the global population depends on imported food. Nearly 1.3 billion people rely entirely on imported food. This dependency is not caused by changes in eating habits or the wish to increase food variety, but a simple mean to fight against the threat of



starvation [5]. Countries will increasingly depend upon international trade to feed their population. By 2050, 50% of humanity could rely on international trade to feed itself. North Africa, the Middle East and Central America are likely to be more dependent on international trade to meet their food security needs.

Hence, open trade and interconnectedness are essential to address food security. The underlying economic logic is apparently simple: those with plenty of food will share (or trade) with those that are in need. But the reality is more complex. Despite the unavoidable dependency on international trade in meeting food security, States use protectionist measures to restrict the trade of food. In reaction to the slightest indication of supply chain disruption or tightening food markets, States often rush to impose export prohibitions, export duties or other types of restrictions to ensure domestic food availability. This urge for self-preservation stems from the fear that dependency on international trade can be risky and that nations need to be self-reliant and prudent against the vagaries of exporting countries. Not surprisingly, the number of States resorting to such trade restrictive measures have only increased during the pandemic and the recent Russia–Ukraine war. The appropriate response could have been to promote more liberal import and export policies for agricultural products, and not restrict trade. As former WTO Deputy Director General, Anabel Gonzales, noted, “[w]e are no longer in a world where restricting the import of ingredient X or Y would any way benefit a country” [6]. Therefore, according to an open trade logic, there is a pressing need to ensure that restrictions, if any, remain temporary and are not applied for extended periods of time.

But are the rules of the international trading system capable of addressing food (in) security? The GATT was negotiated more than 75 years ago and the provisions of the WTO Agreement on Agriculture (AoA) agreed to almost 30 years ago, they both fail to recognise the importance of food security and the right to food as a human right. Certain provisions of the GATT and the AoA indeed propose tight disciplines on the use of quantitative restrictions, voluntary export or import restraints and minimum price requirements, but they do not provide a holistic regime for addressing food (in)security. Integral to the discussion on food (in)security is the conundrum of the use of domestic support measures for agricultural production. While the disciplines of the AoA tightly regulate the provision of export subsidies and domestic support for agricultural production, several developing countries consider that economic incentives for production is a prerequisite for ensuring long-term food security. There is considerable merit in the argument that without the existence of a stable market that guarantees a reasonable return to farming activities, the farmers or producers have no real incentives to stay invested in agriculture. In other words, the market conditions for agricultural products are not uniform across countries and the ability of farmers or producers to withstand various shocks is vastly dissimilar. Farming is not only concerned with food production, but also a conscious engagement with landscape, heritage and culture. The need for international trade and investment regimes to acknowledge these specificities is crucial.

The suitability of international investment rules to participate in food security is also very much questioned. Over the past two decades, foreign investors have acquired approximately 90 million hectares of land for agriculture. Although intensified agriculture performed by these foreign investors could increase crop production, this production is or will be destined to exportation hence reducing access to nutritious food locally while depleting the soil (Müller *et al.*, 2021). These rather worrying tendencies have largely been exposed since the early 2010s with the work of the UN Special Rapporteur on the Right to Food [7].

Another related challenge will be to strike a balance between free trade and fair trade in agriculture. Given the political sensitivity of domestic agricultural reforms and the reality of

subsistence farming, free trade agriculture may be a distant goal, or perhaps, not even a feasible concept that should be treated as a goal. The original expectation was that the removal of trade distorting support would encourage the most competitive producers and countries to engage more vigorously in agriculture and ensure affordable food supplies. However, some of the large subsidisers (such as the EU or the USA) [8] of the agricultural sector have already sheltered their subsidies in the existing disciplines of the WTO, while the new subsidisers (emerging and developing countries) believe that greater policy space is required for them to support their populations. The overwhelming resistance to agriculture reforms, both in the developed and the developing world, has now cast serious doubts on the political feasibility of free market and trade policies in the agriculture sector.

On a more positive note, market access and domestic support are just two dimensions of this complex puzzle. Trade agreements can play a significant role in other less contentious areas of agricultural trade. Modern trade agreements have attempted to address food (in) security through dedicated chapters. One of the recent additions to the free trade agreement template is, for example, a dedicated chapter on the promotion of sustainable food systems. At the WTO, the importance of this objective was also highlighted in Geneva Twelfth Ministerial Conference with the Ministerial Declaration on *Responding to Modern Sanitary and Phytosanitary Challenges*. The Declaration highlighted the importance of the Agreement on the Application of Sanitary and Phytosanitary Measures in supporting sustainable agricultural growth and agricultural practices that aid in addressing climate change and global food insecurity. The Twelfth Ministerial Conference brought forth other important outcomes on food security and sustainable food practices. Firstly, the *Ministerial Declaration on the Emergency Response to Food Insecurity* (World Trade Organization, 2022a) reinforced members' commitment to take concrete steps to improve the functioning and long-term resilience of global markets for food and agriculture. Second, the *Ministerial Decision on the Exemption of WFP Food Purchases from Export Prohibitions or Restrictions* (World Trade Organization, 2022b) requires members to not impose export prohibitions or restrictions on foodstuffs purchased for non-commercial humanitarian purposes by the WFP in view of currently rising hunger levels. Third, the Ministerial Decision on the Agreement on Fisheries Subsidies represents a historic milestone in the promotion of sustainability by prohibiting harmful fisheries subsidies that have depleted the world's fish stocks.

Bringing food security to the centre of the international law discourse

Although several instruments recognise and reiterate the right to food as a human right under international law, the right to food is still missing from most economic and trade treaties. The right to food as a human right is comprehensively addressed in general international instruments such as the International Covenant on Economic, Social and Cultural Rights (ICESCR). The article 11.1 of the ICESCR recognises the right of everyone to an adequate standard of living, which includes access to “adequate food, clothing and housing, and to the continuous improvement of living conditions”. The Declaration of Nyéléni, signed in 2007, introduced the concept of “food sovereignty”. Food sovereignty, according to the Declaration, is the right of peoples to healthy and culturally appropriate food produced through ecologically sound and sustainable methods, and their right to define their own food and agriculture systems. We cannot insist enough on the cultural and ecological aspects of this approach to food sovereignty, which at time, conflicts with free trade objectives.

In this regard, the UN 2030 Agenda for Sustainable Development provides a vision and roadmap for a healthier, more just and equal world – a world without poverty, hunger and malnutrition. SDGs, especially meeting the targets of ending both hunger (SDG Target 2.1)

and all forms of malnutrition (SDG Target 2.2) by 2030 are key instruments for establishing the right to food as a human right under international law. In addition, other SDGs such as SDG 10 (Reduced Inequalities) and SDG 12 (Responsible Consumption and Production) highlight the importance of addressing food (in)security. Finally, the UN Special Rapporteur on the right to food originally established by the Commission on Human Rights in April 2000 by the Resolution 2000/10 and extended by the Human Rights Council in 2007 participates to the same objectives.

Addressing food (in)security: from techniques to rules

Addressing food (in)security will then require a multi-prong strategy. From a scientific perspective, working towards food security and food sovereignty requires using state-of-the-art technologies, scientific knowledge of agricultural systems and nutrition to improve the methods of production, conservation and distribution of food. Agricultural innovation becomes imperative to increase productivity and secure the global food supply. For instance, farm automation, including automated harvesters, drones, autonomous tractors, seeding and weeding can help bring together agricultural machinery, computer systems, electronics, chemical sensors and data management to reduce labour time, promote higher yields and efficient use of resources. Similarly, indoor vertical farming, through hydroponics or aeroponics, enables producers to get healthier and bigger yields by controlling variables such as light, temperature, water and sometimes, carbon dioxide levels. Providing alternate forms or analogues could also play a key role in addressing food security. From a rules-based perspective, the realisation of the right to food as a human right will require more co-ordination between the disciplines of international law and a form of prioritisation between trade objectives.

The issue of food (in)security is pressing and complex, as it is multifaceted and at the crossroads between disciplines and areas of international trade law and policy. The South Asia International Economic Law Network (SAIELN) Third Biennial Conference, which took place in Kochi (India), in December 2022, discussed some of the above challenges and proposed possible solutions to reach a world free from hunger and implement the right to food as a human right. This Special Issue of the *Journal of International Trade Law and Policy* benefits from these initial discussions in bringing a large variety of viewpoints and expertise. It also gives the floor to an upcoming generation of scholars, some from the Global South and/or working on development issues. The Special Issue proposes a polysemous reading of the question of food (in)security in international trade, investment and development law, as well as interdisciplinary insights from political sciences and economics. It offers a coherent vision that is one based on common principles of general international law.

In addressing the impact of climate change on the right to food in the East African Community, *Violla Nabawanda* shows that inadequate political perspective, legislation and socio-economic complexities increase the risk of food insecurity while failing to mitigate climate change impact.

State policies and government interventions are also addressed by *Krishna Bhattacharya* and *Mahima Ahuja* in an examination of public stockholding and how minimum support price and subsidies can become a double-edged sword exposing governments to WTO violations.

A complementary approach is brought by *Intan Soeparna* in the analysis of WTO fisheries subsidies and their impact on food security in Indonesia. In combining sustainability with security, the paper stresses subsidies disciplines' adaptability.

In focusing on India's practice and vision of public stockholding, *Shajahan Ahamed Ashiq* demonstrates how Indian policies need to adapt to the complex reality of a country where 50% of employment is still provided by farming and 1.3 billion people need to be fed.

A large number of countries, unlike India, are still not food sufficient. *Clarisse Delaville* stresses the lack of international regulation for food assistance in using the prism of a "regime complex" analysing partially overlapping and non-hierarchical regimes.

The complexity of norms is also addressed by *Mohd Shahir Omar, Muhammad Fakhru Yussuf and Cheng Jack Kie*, in their research on food safety certification in Malaysia and its effect on competitiveness and sustainability.

In studying how gender-differentiated role obligations, constraints and dependencies affect food security dynamics across peri-urban and rural areas, *Rajeshwari Dasgupta* explains how period of crisis such as the COVID-19 pandemic have disproportionately exacerbated hardships for female populations. In analysing unilateral economic sanctions under the WTO, *Ronjini Ray and Jamshed Siddiqui* have highlighted the potential threat to food security posed by such sanctions, both for country targeted by the sanction and third countries.

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Notes

1. See UN SDGs www.un.org/sustainabledevelopment/hunger/
2. See www.wfp.org/countries/sudan
3. See as the December 2022 Report of the UN Rapporteur on the Right to Food, "Conflict and the Right to Food", www.ohchr.org/en/documents/thematic-reports/ahrc5240-conflict-and-right-food-report-special-rapporteur-right-food
4. Mbow, Cheikh, Cynthia E. Rosenzweig, Luis G. Barioni, Tim G. Benton, Mario Herrero, Murukesan Krishnapillai, Alexander C. Ruane et al. *Food security*. No. GSFC-E-DAA-TN78913. IPCC, 2020, www.ipcc.ch/site/assets/uploads/sites/4/2020/02/SRCCL-Chapter-5.pdf
5. DDG Wolff: Reliance on international trade for food security likely to grow, www.wto.org/english/news_e/news20_e/ddgaw_30apr20_e.htm
6. WTO Agri-Food Business Day: First Roundtable; Five Highlights and a Quote!, www.wto.org/english/tratop_e/agric_e/agri-food_dec22_e.htm
7. See Large-scale land acquisitions and leases: a set of minimum principles and measures to address the human rights challenge, A/HRC/13/33/Add.2, 28 December 2009; <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G09/177/97/PDF/G0917797.pdf?OpenElement>
8. [] notes that both the USA and EU to have AMS entitlements of US\$19bn and €72bn, respectively. See *Bhattacharya and Ahuja (2023)*.

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- World Trade Organization (2022a), WT/MIN (22)/28; WT/L/1139, 22 June, available at: www.wto.org/english/thewto_e/minist_e/mc12_e/mc12_e.htm
- World Trade Organization (2022b), WT/MIN (22)/29; WT/L/1140, 22 June, available at: <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/WT/MIN22/29.pdf&Open=True>

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