

HUNGER AND THE LAW: FREEDOM FROM HUNGER AS A FREESTANDING RIGHT

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I. INTRODUCTION	656
II. WHAT IS HUNGER?	657
A. <i>The Scope of Global Hunger</i>	659
B. <i>Manifestations of Hunger</i>	660
C. <i>Controversy: Causes of Hunger</i>	662
D. <i>Consensus: A World without Hunger</i>	671
III. THE RIGHT TO FOOD AND THE POLITICS OF HUNGER.....	677
A. <i>Human Rights in Overcoming Hunger</i>	678
B. <i>Hunger is a Human Right Violation</i>	682
C. <i>Justiciability of the Right to Food</i>	688
IV. REINTERPRETING THE RIGHT TO FOOD.....	692
A. <i>Interpreting Human Rights</i>	693
V. TWO DISTINCT RIGHTS	695
A. <i>Different Roots</i>	698
B. <i>Different Normative Content</i>	701
C. <i>Different Beneficiaries</i>	708
D. <i>Different Obligations</i>	710
VI. CONCLUSION.....	712

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I. INTRODUCTION

We live in the age of rights. This is also the age of unprecedented economic prosperity (recent economic downturns notwithstanding). Such general characterizations, however, mask cruel irony of massive deprivation. For hundreds of millions, both human rights and prosperity are no more than myths. For them, life is still “nasty, brutish, and short.”¹ Nothing better epitomizes the irony besetting the unprecedented global prosperity and the hypocrisy of human rights discourse than the state of global hunger. The world produces more food than is needed to feed every person on the planet.² Yet, around a billion people go hungry every day.³ Few things are more scandalous. But this is also a question of law. The *fundamental* right of everyone to be free from hunger has been sanctioned in legally binding human rights instruments and numerous declarations.⁴ Although this is often forgotten, hunger represents arguably the most comprehensive human right violation in the world today.

The prevailing ideological bias against socioeconomic rights largely explains the total neglect of the pervasive violation of the right to food. Yet, there is also a degree of conceptual uncertainty. Conventionally, freedom from hunger is viewed as a component of the broader right to adequate food, with just more urgency attached to the obligation correlating to the former. This Article seeks to challenge that view. It argues that, while it is obvious that both rights relate to food, they are substantially different, and should be treated as such. Technically, treating the *fundamental* right to be free from hunger as a separate norm imposing *unconditional* and *immediate* obligations is warranted

1. 2 THOMAS HOBBS, LEVIATHAN 102 (G.A.J. Rogers & Karl Schuhmann eds., Thoemmes Continuum 2003) (1651).

2. U.N. WORLD FOOD PROGRAMME (WFP), WORLD HUNGER SERIES 2007: HUNGER AND HEALTH 22 (2007) [hereinafter WORLD HUNGER SERIES].

3. FOOD & AGRIC. ORG. (FAO), THE STATE OF FOOD INSECURITY IN THE WORLD 2009, at 4, 11 (2009) [hereinafter THE STATE OF FOOD INSECURITY IN THE WORLD 2009]; FAO, THE STATE OF FOOD INSECURITY IN THE WORLD 2013, at 48 (2013) [hereinafter THE STATE OF FOOD INSECURITY IN THE WORLD 2013].

4. *E.g.*, FAO, *Rome Declaration on World Food Security*, World Food Summit (Nov. 13–17, 1996), available at <http://www.fao.org/docrep/003/W3613E/W3613E00.htm>.

by the text and spirit of pertinent treaty provisions. Practically, such understanding, it is argued here, extricates the right from contingencies upon which the progressive realization of the broader right to adequate food is predicated.

The Article is structured as follows. The next Part will briefly sketch the scale and manifestations of hunger, and explore its root causes. This Part further details the prevailing consensus that a world without hunger is not a utopia. Building on such analysis, Part three demonstrates why hunger is a political rather than a technical problem. The argument here is that hunger subsists not for lack of resources or technical knowhow to end the tragedy, but for lack of political will to do so. Part three also highlights why hunger constitutes a flagrant human right violation. It is argued here that hunger is commonly viewed as an unfortunate fact of life rather than as a human right violation, in part because the orthodox understanding of freedom from hunger just as component of the progressively realizable right to adequate food rather than as a freestanding right conceals the urgency and unconditional nature of the obligation it imposes. Against this backdrop, Part four advocates a reinterpretation of the right to food. It argues that, contrary to the conventional understanding, the right to food, contained in Article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) actually embraces two distinct rights: the right to be free from hunger and the right to adequate food. The last Part details textual, normative, and pragmatic grounds that warrant treating freedom from hunger as a freestanding right, distinct from the broader right to adequate food.

II. WHAT IS HUNGER?

Probing the concept of hunger is by no means dwelling on the obvious. Although much about hunger is obvious, there is also conceptual disagreement on what it is, precisely.⁵ The term

5. *E.g.*, FRANCES MOORE LAPPÉ ET AL., *WORLD HUNGER: TWELVE MYTHS* 1–3 (2d ed. 1998) (demonstrating that the fact that hunger has multiple causes and manifestations leads to different conceptualization of the problem—for example, hunger results from lack of food, but “hunger” may also be described in terms of emotions like powerlessness, insecurity, humiliation, and the grief of watching loved ones die in

lacks proper scientific definition.⁶ The thorniest controversy, however, relates to the question of what causes hunger and why it is allowed to persist. Disagreement on the diagnosis of the problem leads to disagreements in its possible remedies. For example, Thomas Malthus and his followers believe hunger is a *natural* tragedy that occurs when human reproduction outpaces food production.⁷ The answer is thus limiting population growth, lest famine itself will ensure population-nature equilibrium. According to Karl Marx, however, hunger is a question of class *exploitation*, not of overpopulation.⁸ Thus, exploitative capitalism, not nature, is to blame.⁹ Without dismissing either Malthus or Marx altogether, Amartya Sen rejects their approaches attributing hunger to a single monolithic cause. According to Sen, one has to look deeper and examine every factor that shapes individuals' ability to acquire adequate food.¹⁰ For George Kent, hunger is a form of violence for which human society (as opposed to nature) is responsible.¹¹ Some

agony).

6. Traditionally, hunger is defined primarily in terms of dietary energy deficiency computed based on average daily calorie intake. THE STATE OF FOOD INSECURITY IN THE WORLD 2013, *supra* note 3, at 50. According to the United Nations Food and Agriculture Organization (FAO), the "average minimum energy requirement per person is 1800 kcal per day." *Id.* at 27. The global daily per capita calorie intake in 2002–2003 was 2798 kcal. STATISTICS DIVISION, FOOD & AGRIC. ORG., FOOD AND AGRICULTURE STATISTICS GLOBAL OUTLOOK (June 2006), *available at* http://faostat.fao.org/portals/_faostat/documents/pdf/world.pdf.

7. 3 THOMAS ROBERT MALTHUS, AN ESSAY ON THE PRINCIPLE OF POPULATION 65 (5th ed., London, W. Clowes 1817) (noting that poverty and disease are natural forces that check human population and keep it within the limits of available means of subsistence "if we multiply too fast").

8. *See* 1 KARL MARX, CAPITAL: A CRITIQUE OF POLITICAL ECONOMY 525 (Frederick Engels ed., Charles H. Kerr & Co. 1909) (1867) (positing that the wealth of a nation "depends upon making hunger permanent among the working class").

9. *Id.* at 522–25.

10. AMARTYA SEN, DEVELOPMENT AS FREEDOM 162 (1999).

11. GEORGE KENT, THE POLITICAL ECONOMY OF HUNGER: THE SILENT HOLOCAUST 24 (1984) ("The earth's productive capacities are more than sufficient to provide adequate nutrition for every person, so it cannot be argued that malnutrition is somehow . . . inevitable. Since malnutrition generally means the suffering of unnecessary and avoidable injury or death, it can be viewed as resulting from a form of violence. The violence of hunger is slow and indirect . . . It is due not so much to specific actions of individual persons as to the social structure in which individuals are embedded.").

commentators even attach grave and individual criminal responsibility in some cases of famine.¹² Others conceptualize hunger differently. Before turning to these rather controversial issues, let us briefly look into the scale of the problem and its different manifestations.

A. *The Scope of Global Hunger*

Scholars describe endemic hunger as “the Silent Holocaust.”¹³ Strikingly, without taking into account other age groups, an estimated six million children under the age of five perish each year from hunger.¹⁴ This figure parallels the number of Holocaust victims.¹⁵ Only a small percentage of these victims are killed by an outbreak of famine or other types of dramatic collapse of food supply that makes news headlines. The overwhelming majority of them die of the synergistic effects of hunger and malnutrition.¹⁶ That means two things. First, even during times when there is no famine in the world, endemic hunger causes mortality of catastrophic proportions. Second, the victims succumb mainly unnoticed.¹⁷ Hence, scholars have described endemic hunger as silent holocaust.

12. *E.g.*, David Marcus, *Famine Crimes in International Law*, 97 AM. J. INT’L L. 245, 247 (2003) (arguing for the formal criminalization of faminogenic behavior as crimes against humanity in cases where governments either engender famine or deliberately use hunger as a tool).

13. KENT, *supra* note 11, at 27.

14. WORLD HUNGER SERIES, *supra* note 2, at 64. Millions of others who survive are stunted, are weakened, or have their overall physical and mental growth impaired, such that they are often condemned to lag behind in their studies and other activities that shape their future career and life opportunities. *Id.* at 19–23.

15. KENT, *supra* note 11, at 26–27 (reporting the Holocaust killed an estimated six million people).

16. WORLD HUNGER SERIES, *supra* note 2, at 64. Most victims of hunger may not simply starve to death; instead, hunger and malnutrition kill people by increasing their vulnerability to otherwise nonfatal infectious diseases. *Id.* In the case of children, for example, undernutrition is the synergistic cause for sixty-one percent of deaths from diarrhea, fifty-seven percent of deaths from malaria, and fifty-two percent of deaths from pneumonia—the three major child killers. *Id.* These deaths can be prevented just by availing children of proper nutrition. *Id.* at 64–65.

17. For example, on September 11, 2001, 2,973 people were murdered in the terrorist attacks in the United States, and what happened on that fateful day has dramatically changed political rhetoric and practice not only in the United States, but also around the world. JAMES VERNON, *HUNGER: A MODERN HISTORY* 1 (Harvard

However, the parallel between hunger and the Holocaust is not just about figures. It is about dispelling the perception that hunger is a natural tragedy. It is about highlighting that hunger is, indeed, “a form of violence.”¹⁸ It is about shifting the burden of responsibility from the draught, the flood, locusts, rodents and other traditional causes of harvest failure to human society.¹⁹ It is about challenging the international community’s tolerance of hunger.

B. Manifestations of Hunger

“Hunger occurs in three different forms: acute, chronic, and hidden.”²⁰ Acute hunger results from a sudden exposure to starvation as a result of famine, war or any other disaster.²¹ It is responsible for about ten percent of human suffering from starvation.²² The overwhelming ninety percent of victims suffer from chronic hunger, which refers to a prolonged lack of food sufficient in quantity and quality to lead an active life.²³ The last form of hunger, “hidden hunger,” refers to a disease caused

University Press 2007); INT’L COUNCIL ON HUMAN RIGHTS POLICY, HUMAN RIGHTS AFTER SEPTEMBER 11, at 2–7 (2002). But few are even aware of the fact that twelve times more lives, an estimated 35,000, were killed by preventable hunger on that same day alone, as on every other day. VERNON, *supra*, at 1.

18. KENT, *supra* note 11, at 24.

19. PEDRO SANCHEZ ET AL., U.N. MILLENNIUM PROJECT, HALVING HUNGER: IT CAN BE DONE 27–28 (2005) (explaining that, historically, hunger and famines occur following a decline of food production as a result of draught, flood, crop blight, depredation of locusts, rodents and other natural disasters). While some natural factors are still responsible for harvest failures in poor countries, it cannot be said that they are inevitable. *See id.* at 143–44 (discussing management of vulnerability to natural disasters).

20. *Id.* at 2.

21. *Id.* Acute hunger typically occurs during famines—mass starvation typically accompanied by significant mortality—or other cases of sudden collapse in food supply triggered by natural or human disasters. *Id.*

22. *Id.*

23. SANCHEZ ET AL., *supra* note 19, at 2. Note, however, that although chronic hunger is typically defined as a lack of food sufficient in quantity and quality, it is calculated based on average daily calories intake (macronutrients) and thus it does not sufficiently reflect dietary quality as micronutrients are not taken into account. *Id.*; *see* THE STATE OF FOOD INSECURITY IN THE WORLD 2013, *supra* note 3, at 46–50 (explaining three major critiques of how hunger is defined). In other words, the so-called hidden hunger is not taken into account in the computation of global hunger.

by deficiency of essential micronutrients, i.e. vitamins or minerals.²⁴ It occurs regardless of whether the victim has access to sufficient quantity of food, as it may be as much a problem of getting the right food as it is of getting enough. Hidden hunger resulting from a decline in food consumption has remarkably different characteristics than hunger resulting from disproportionate nutrient intake.²⁵ Lumping the two together does little justice to our diagnosis of the problem.²⁶ Thus, for the purpose of this Article, the scope of the term hunger does not cover nutritional problems unrelated to lack of access to sufficient food.

Acute hunger and chronic hunger, on the other hand, are substantially similar problems triggered by similar causes and with fundamentally similar solutions. This is not to say that acute hunger (which typically strikes during famines or other disasters) and chronic (regular/endemic) hunger are one and the

24. SANCHEZ ET AL., *supra* note 19, at 2. The concept of ‘hidden hunger’ lacks precision. It generally refers to *malnutrition or micronutrient deficiency*, which may be caused by inadequate or unbalanced food intake or even poor absorption of consumed food. *Hunger Portal*, FAO, <http://www.fao.org/hunger/en/> (last visited Apr. 15, 2014). Its typical victims are those who are forced to survive on inadequate diets, eating almost the same thing every day. *See id.* (defining “food insecurity”). However, contrary to popular perception, even those who appear overfed might actually be suffering from hidden hunger. *The Developing World’s New Burden: Obesity*, FOOD & AGRIC. ORG., <http://www.fao.org/FOCUS/E/obesity/obes1.htm> (last visited Apr. 15, 2014).

25. The United Nations Health Organization (WHO) estimates that 1.6 billion people suffer from iron deficiency alone. WORLDWIDE PREVALENCE OF ANAEMIA 1993–2005: WHO GLOBAL DATABASE ON ANAEMIA 7 (Bruno de Benoist et al. eds., 2008), available at http://www.who.int/vmnis/database/anaemia/anaemia_data_status_t2/en/index.html. The gravity of the problem is thus obvious. However, it is not generally considered as hunger proper. Even the FAO does not include hidden hunger in its estimation of world hunger. *See THE STATE OF FOOD INSECURITY IN THE WORLD 2013*, *supra* note 3, at 46–50 (defining hunger terms used in its calculations). Likewise, the U.N. Millennium Project, after stating that there are three forms of hunger—acute, chronic and hidden—states that chronic hunger accounts for approximately ninety percent of the world’s hungry and acute hunger for the roughly ten percent remaining, thus leaving no place for hidden hunger. SANCHEZ ET AL., *supra* note 19, at 2.

26. If we define hunger as a lack of access to food, micronutrient deficiency may or may not qualify to be hunger. *THE STATE OF FOOD INSECURITY IN THE WORLD 2013*, *supra* note 3, at 46. A person may have access to sufficient food, but may not take proper blend of micronutrients, and may as a consequence suffer from micronutrient deficiency. *Id.* at 49. That is a problem. *Id.* at 47–49. But it is a different problem with entirely different solution than one resulting from lack of access to food. *Id.*

same. According to the Integrated Food Security Phase Classification (IPC), a food security measure used by the United Nations and other relief agencies, famine exists when at least twenty percent of households in a given area face extreme food shortages, acute malnutrition rates (a daily intake short of 2,100 kilocalories) exceed thirty percent, and death rates exceed two persons per day per 10,000 persons.²⁷ It is thus obvious that famine is more violent than regular hunger, which debilitates slowly. However, this is more about *how* the problem manifests rather than *what* it essentially is. Of course, how famine strikes makes it extraordinarily severe. Generally, however, acute starvation and chronic hunger are just two different manifestations of essentially the same problem: people not having enough to eat. Time and space are essentially the only factors that distinguish acute hunger from regular hunger. Temporally, acute hunger results from a dramatic collapse in access to food, while chronic hunger results from lack of access to adequate food over a longer period.²⁸ It is the time factor which makes famine more violent compared to the rather subtle endemic hunger that cripples slowly. Spatially, acute hunger occurs in designable geography stricken by famine or other kind of disaster, whereas endemic hunger is just ubiquitous.²⁹ This makes famine glaringly visible compared to endemic hunger. This should not, however, disguise the fact that chronic hunger is the graver tragedy that claims many times more lives in the world today than acute hunger.

C. Controversy: Causes of Hunger

“The first rule of life is that it shall continue. Everything else, without exception, is subordinate to this rule. In our

27. IPC GLOBAL PARTNERS, INTEGRATED FOOD SECURITY PHASE CLASSIFICATION TECHNICAL MANUAL, VERSION 1.1, at 1, 4 (2008), *available at* <http://www.fao.org/docrep/010/i0275e/i0275e.pdf>.

28. See THE STATE OF FOOD INSECURITY IN THE WORLD 2013, *supra* note 3, at 49–50 (discussing hunger in terms of ability to access food). “In analysing starvation in general, it is important to make clear distinction between . . . (1) *lowness of the typical level* of food consumption; (2) *declining trend* of food consumption; and (3) *sudden collapse* of the level of food consumption.” AMARTYA SEN, POVERTY AND FAMINES: AN ESSAY ON ENTITLEMENT AND DEPRIVATION 40–41 (1981).

29. KENT, *supra* note 11, at 12; SANCHEZ ET AL., *supra* note 19, at 2.

species . . . this means two things: there must be *enough food* and there must be a *limitation of numbers*,” argues Ronald Seavoy.³⁰ This view represents the traditional conception of hunger based on the Malthusian food *versus* number of mouths calculus.³¹ It was a conventional assumption of scholars that famines strike when there is either food depletion as a result of natural causes, such as draught, flood, crop blight, depredation of locusts, rodents, and epidemics, as well as human causes, such as war, or when there is an overpopulation where the amount of food produced in a region, a country or the world is simply not enough.³² Accordingly, hunger prevention was regarded entirely as a technical issue of maintaining proper *food to population* balance, be it by increasing food production or controlling population growth.³³ Indeed, famines, one of the gravest calamities, have kept human life exceedingly harsh and precarious.³⁴ Hence, apocalypticism based on a mathematical relationship between food supply and population is apprehensible. However, that assumption has now been decidedly refuted on both theoretical and empirical counts.³⁵ Population has never outstripped the earth’s carrying capacity. Importantly, we live in a world of unprecedented opulence and abundance, which makes the Malthusian theory largely

30. RONALD E. SEAVOY, *FAMINE IN PEASANT SOCIETIES* 1 (1986) (emphasis added). One may contend the need for limitation of numbers, as Seavoy believes. *Id.* There is also nothing unique about ‘our species,’ as food is the first need of humans and beasts alike. *Id.*; THOMAS ROBERT MALTHUS, *AN ESSAY ON THE PRINCIPLE OF POPULATION* 19–20 (Philip Appleman ed., 2d ed. 2004). But it is an immutable rule of nature that food is the absolute necessity of survival. *Id.* at 19.

31. SEAVOY, *supra* note 30, at 2. For Malthus, “population, when unchecked, increases in a geometrical ratio.” MALTHUS, *supra* note 30, at 21. On the other hand, food production only increases in an arithmetic ratio. *Id.* Hence, the power of population is overwhelmingly greater than the supportive capacity of the earth. SEAVOY, *supra* note 30, at 7.

32. SEAVOY, *supra* note 30, at 1–8.

33. *See id.* at 1–4 (explaining Malthus’s population to food ratio).

34. *See generally* WORLD HEALTH ORG. ET AL., *CLIMATE CHANGE AND HUMAN HEALTH* 9–10 (A.J. McMichael et al. eds., 2003) (providing a brief historical overview of various catastrophes of famine). It is clear, therefore, Malthusian theory offers some explanation about human struggle in much of its history.

35. *See generally* SEN, *supra* note 28, at 39–44 (discussing food consumption and availability in various countries during famine threats).

irrelevant.³⁶ As a matter of fact, there is more food in the world than necessary to feed every individual on the planet.³⁷

Critics of Malthus did not, however, need empirical evidence of surplus food production to expose the flaws of his theory. Perhaps the most relentless assault came from Marx, who dismissed Malthus's explanation of hunger as an absurd apology for the status quo.³⁸ For Marx, exploitative capitalism, not nature, is to blame for mass poverty and hunger.³⁹ He turned the equation from *population versus nature* into one of *class exploitation* and wealth accumulation by the capitalist elite.⁴⁰

In his classic *Poverty and Famines*, Sen argues that “[s]tarvation is the characteristic of some people not *having*

36. Global aggregate gross domestic product (GDP) based on purchasing power parity (PPP) has leaped from around \$4 trillion in 1970 to a staggering \$62 trillion in 2010. WORLD ECON. OUTLOOK DATABASE, INT'L MONETARY FUND (Apr. 1999), <http://www.imf.org/external/pubs/ft/weo/1999/01/data/w1.csv>. In comparison, the world population has only a little more than doubled over this period. See U.N. Dep't of Econ. & Soc. Affairs, Population Div., *World Population to 2300*, at 4, U.N. Doc. ST/ESA/SER.A/236 (2004) (projecting world population growth rate from 1950–2050). Yet, there are more hungry people in the world today than there were forty years ago. THE STATE OF FOOD INSECURITY IN THE WORLD 2009, *supra* note 3, at 4.

37. WORLD HUNGER SERIES, *supra* note 2, at 22. In 2009, for example, the global cereal production was 2.257 billion tonnes. FAO/GIEWS GLOBAL WATCH GLOBAL CEREAL SUPPLY AND DEMAND UPDATE, 1 (Sept. 1, 2010), *available at* http://www.fao.org/giews/english/shortnews/GlobalSD_update_01092010.pdf. This makes a global food per capita of over 3000 kilograms of cereal per year for every one of the world's estimated seven billion people. See *id.* (reporting on world cereal production). Without considering animal products, vegetables and fruits that we consume, the amount of global cereal output is enough to feed the world. See *id.* (reporting on world cereal production).

38. See MARX, *supra* note 8, at 789, 792. According to Marx (who by no means was an admirer of Malthus, as he calls him a “master in plagiarism,” among others things), Malthus tried to explain poverty and overpopulation by reference to “eternal laws of nature, rather than by the historical laws of capitalist production” simply because it was a good apology for the ruling classes, whom he served. *Id.*

39. See *id.* at 523–25. For Marx, capitalists believe that “hunger is not only a peaceable, silent, unremitted pressure, but [also] the most natural motive to industry and labor” that “making hunger permanent among the working class” ensures “that there may always be some to fulfill the most servile, the most sordid, and the most ignoble offices in the community.” *Id.* at 525–26.

40. See *id.* at 546 (“They are dying of hunger. That is the simple and terrible fact. There are 40,000 of them . . . in one quarter of this wonderful metropolis [London] . . . packed next door to the most enormous accumulation of wealth the world ever saw . . .”).

enough food to eat. It is not the characteristic of there *being* not enough food to eat. While the latter can be a cause of the former, it is but one of the many *possible* causes.”⁴¹ Without dismissing the technical element altogether, Sen refutes Malthusian theory by demonstrating the social and political dimensions of famines and starvation.⁴² Viewing hunger as a race between population and food supply masks “the realities that determine who can command how much food.”⁴³ Sen’s diagnosis of the major famines that occurred in the twentieth century compellingly corroborates that famine may strike even without any decline in the aggregate food availability. Famines in Bengal, Bangladesh, Ethiopia, the Sahel region, and elsewhere were more results of distributional disparity rather than of a dramatic dearth in aggregate food supply.⁴⁴ It should be noted, however, that Marx had already demonstrated that famine kills “poor devils only.”⁴⁵ In fact, it has always been known that maldistribution is often the main cause of hunger. In 1516, Thomas More wrote:

41. SEN, *supra* note 28, at 1.

42. See Amartya Sen, *Fertility and Coercion*, 63 U. CHI. L. REV. 1035, 1035–36 (1996) (noting that “[i]t took the world population millions of years to reach the first billion, then 123 years to get to the second, 33 years to the third, 14 years to the fourth, and 13 years to the fifth billion, with an estimate of the United Nations that the sixth billion will materialize in only 11 years . . . [in view of this pace] it would be foolish to dismiss the concern about the potential for excessive growth of population . . .”). Compare MARX, *supra* note 8, at 791–93 (dismissing Malthusian concern about overpopulation), with Sen, *supra*, at 1035–36 (warning that the fact that Malthus’s diagnosis of overpopulation was fallacious does not warrant a conclusion that overpopulation would never be an issue).

43. SEN, *supra* note 28, at 150.

44. See *id.* at 57–153 (explaining the causes of the Bengal, Ethiopian, Sahel, and Bangladesh famines). Sen rebuts, for example, the official explanation of the great Bengal famine of 1943 as a result of crop failure by demonstrating that although “1943 was not a very good year in terms of crop availability, it was not by any means a disastrous year either. The current supply for 1943 was only about 5 per cent lower than the average of the preceding five years. It was, in fact, 13 per cent *higher* than in 1941, and there was, of course, no famine in 1941.” *Id.* at 58. The FAO also acknowledges that “some 2 or 3 million people died [during the Bengal famine] not because food was in short supply but because the price of food was beyond the reach of the poor.” *Hunger Spans Three Milleniums*, FOOD & AGRIC. ORG. (Oct. 16, 1996), <http://www.fao.org/focus/elwfday/WFHun-e.htm>.

45. MARX, *supra* note 8, at 581 (“The Irish famine . . . killed more than 1,000,000 people, but it killed poor devils only. To the wealth of the country it did not the slightest damage.”).

Consider any year that has been so unfruitful that many thousands have died of hunger; and yet if at the end of that year a survey was made of the granaries of all the rich men that have hoarded up the corn, it would be found that there was enough among them to have prevented all that consumption of men that perished in misery; and that if it had been distributed among them, none would have felt the terrible effects of that scarcity.⁴⁶

Indeed, hungry revolutionaries needed no sophisticated explanation to realize that hunger was more a structural problem of socio-political nature than a question of per capita food availability. We know that the question of bread has been at the heart of many of the major revolutions in history, from the French Revolution to the more recent ones that toppled governments in the Arab world.⁴⁷ We also know that it is not just lack of bread that moves revolutionaries. It is rather the lack of bread for them, while their rulers and beneficiaries of the status quo live in blinding abundance. Differently put, it is not just deprivation that stirs revolutionaries; it is rather the conviction that they are suffering from structural injustices of socio-political nature that circumscribe their ability to command enough food.

Therefore, while Sen's entitlement approach may have revolutionized the scholarship in the field, it seems quite unrevolutionary for revolutionaries themselves.⁴⁸ The ingenuity

46. SIR THOMAS MORE, *UTOPIA*, reprinted in *IDEAL EMPIRES AND REPUBLICS* 127, 230 (M. Walter Dunne 1901).

47. P. Spitz, *The Right to Food for Peoples and for the People: a Historical Perspective*, in *THE RIGHT TO FOOD* 169, 170–78 (P. Alston & K. Tomasevski eds., 1984). The French Revolution is distinctively significant to understand claims for food. *Id.* at 170. The leading mottos of the revolution, '*Liberté, égalité, and fraternité*,' affirm the interdependence and common roots of political liberties and socioeconomic rights. *Id.* Although human rights language had yet a long way to crystalize, it was recognized that without subsistence rights, freedom loses its relevance. *Id.* at 174–75. Accordingly, the declaration was invoked against those who exacerbated the plight of the poor, such as grain speculators. *Id.* at 175. Jacques Roux, a priest, is said to have lamented: "Freedom is only a ghost when one class can starve another class with impunity." *Id.*

48. It is commonly reckoned that Sen's entitlement approach has turned the Malthusian conception of starvation as a problem of food availability on its head. *E.g.*, Stephen Devereux, *Sen's Entitlement Approach: Critiques and Counter-critiques*, 29

of Sen's approach is not so much in bringing the issue of distribution into the equation; it is rather in its departure from the tradition of viewing hunger as a result of a single monolithic cause. Sen anatomizes the problem of hunger and details its economic, social, political, and ethical facets. For Malthus, hunger was natural. For Marx, it was political. Yet, both attributed hunger to a single principal cause. For Sen, by contrast, hunger is not tied to a single variable, rather it is tied to "the functioning of the entire economy and—even more broadly—the operation of the political and social arrangements that can, directly or indirectly, influence people's ability to acquire food"⁴⁹

1. *Why do People Starve?*

The question of why people are hungry must be distinguished from that of why hunger persists. The answer to the first one is relatively straightforward: people starve because they are too poor to command enough food.⁵⁰ Of course, poverty does not offer a foundational explanation to hunger; it begs the question of why people are so poor in the first place. We know

OXFORD DEV. STUD. 245, 246 (2001). While Sen has demonstrated the distributional dimensions of the problem of starvation more powerfully than perhaps any other scholar, it is worth noting that the problem of distribution was never hidden. See World Food Conference, Rome, Nov. 5–16, 1974, Conference on Policies and Programmes to Improve Nutrition, ¶ 2 (recognizing that "malnutrition is closely linked to widespread poverty and inadequate social and institutional structures . . . and that increased agricultural production and increased [national] incomes alone may not by themselves lead to improved nutrition . . . [and that] a more just and equitable distribution of food and incomes is essential, among nations and as well as within countries . . .").

49. SEN, *supra* note 10, at 162. Unlike Malthus or Marx, Sen does not concern himself with vague (or even misleading) issues of per capita food availability or class questions in his diagnosis of the problem of hunger, but rather looks at every factor that shapes individuals' ability to acquire adequate food. *Id.* at 161–63. The operation of political and economic arrangements, trade, active functioning of political parties, nongovernmental organizations that sustain and facilitate informed public discussion, and a number of other factors may affect individual's ability to feed themselves. *Id.* at 162.

50. *Id.* at 161. Poverty is the main source of hunger. WORLD FOOD PROGRAM, WORLD HUNGER SERIES: HUNGER AND MARKETS 19 (2009). Of course, even people who are not otherwise poor may starve as a result of sudden collapse of food supply during extraordinary times, such as wars or natural disasters. *What Causes Hunger?*, WORLD FOOD PROGRAM, <http://www.wfp.org/hunger/causes> (last visited Apr. 15, 2014).

that poverty is not inevitable. We also know that no society's resources are insufficient to extricate people from abject poverty and starvation.⁵¹ Indeed, too often, resource constraint is not even among the primary causes of poverty and hunger in the world today.⁵² Endemic hunger rages unabated, killing millions each year, not because the problem is invincible, but because its victims find themselves in socioeconomic circumstances that rob them of the ability to defy it.⁵³ The fact that hunger is predominantly a rural phenomenon means that its victims are not only socially and economically marginalized, but also are often geographically removed from the scene of political decision making. Powerlessness, be it in the lack of control over productive resources such as land, or in decision making processes at local, national or international levels explains much of the problem.⁵⁴ Since the starved are powerless and their voices too muted to be heard, they are often ignored, if not

51. LAPPÉ ET AL., *supra* note 5, at 1. It is not resource-poor countries such as Japan or Singapore that are starving. *See also* Luther Tweeten, *The Economics of Global Food Security*, 21 REV. AGRIC. ECON. 473, 476 (1999) ("Nations like Japan and Singapore can have high living standards and food security without being rich in natural resources."). As FAO's reports show, the overwhelming majority of the world's undernourished people live in countries that are endowed with resources, including abundant fertile land and suitable climate. *See* THE STATE OF FOOD INSECURITY IN THE WORLD 2013, *supra* note 3, at tbl.1 (reporting the majority of undernourished people in the world live in Sub-Saharan Africa, Southern Asia, and Eastern Asia); John Dixon et al., *Farming Systems and Poverty: Improving Farmer's Livelihoods in a Changing World* 29, 169–70, 217, 221 (Malcolm Hall ed., 2001) (discussing resources and cultivated land in Sub-Saharan Africa, Southern Asia and Eastern Asia).

52. For example, few countries are endowed with more resources than the Democratic Republic of Congo (DRC). *See* JOHN ULIMWENGU ET AL., INTERNATIONAL FOOD POLICY RESEARCH INSTITUTE DISCUSSION PAPER NO. 01154, RESOURCE-RICH YET MALNOURISHED: ANALYSIS OF THE DEMAND FOR FOOD NUTRIENTS IN THE DEMOCRATIC REPUBLIC OF CONGO, at v (2012) (pointing out that the Democratic Republic Congo (DRC) has the capacity and potential to become the "breadbasket of the entire African Continent."). Yet, the DRC was the most hunger-affected country in the world with an appalling sixty-nine percent of its population undernourished in 2010. FAO, THE STATE OF FOOD INSECURITY IN THE WORLD 2010, 14 (2010).

53. *Global Hunger*, GLOBAL FOOD BANKING NETWORK, http://www.foodbanking.org/site/PageServer?pagename=about_hunger#note2.

54. *E.g.*, LAPPÉ ET AL., *supra* note 5, at 3–5. *See also* U.N. Human Rights Council, Advisory Comm., *Peasant Farmers and the Right to Food: a History of Discrimination and Exploitation*, U.N. Doc. A/HRC/AC/3/CRP.5 (Aug. 4, 2009) (prepared by Jean Ziegler) (describing the exploitation of peasants in particular).

blamed, by those holding political and economic power.⁵⁵ Their suffering is conveniently ignored not only by policy makers, but also by the media, human rights bodies, and other actors at global, national, and local levels. The extent of ideological bias against socioeconomic rights in general, and the right to food in particular, is so bewildering that a state may now expect stronger international outcry and condemnation for detaining a journalist than for letting thousands perish from preventable starvation. It is not considered appalling when a state spends billions of dollars on nuclear weapons, while millions of its citizens are starving.

By contrast, hunger persists clearly because it is allowed to do so. There is no mystery as to how to eradicate hunger. It cannot be stressed enough that shortage of food supply is not the reason why around a billion people suffer from hunger every day.⁵⁶ In fact, surplus food disposal has been troubling some industrialized countries for decades now.⁵⁷ Food overproduction generated by generous subsidies in rich nations is even regarded as the “real illness of international trade in agricultural products.”⁵⁸ As a consequence, discouraging food production now

55. See generally VERNON, *supra* note 17, at 2–3 (explaining that less than two hundred years ago the hungry were figures of opprobrium and disgust, not sympathy: “[t]heir hunger, and their vulnerability to acts of nature or providence, illustrated only their lack of industry and moral fiber.”).

56. LAPPÉ ET AL., *supra* note 5, at 8–11. There are, of course, legitimate concerns regarding long-term global food security. It is estimated, for example, that climate change alone could expose an additional six hundred million people to hunger by 2080. KEVIN WATKINS, U.N. Development Program, HUMAN DEVELOPMENT REPORT, FIGHTING CLIMATE CHANGE: HUMAN SOLIDARITY IN A DIVIDED WORLD 90 (2007). Future predictions notwithstanding, however, it must be accentuated that the present global aggregate food production far exceeds the world’s food need. See LAPPÉ ET AL., *supra* note 5, at 8 (“Increases in food production during the past thirty-five years have outstripped the world’s unprecedented population growth by about sixteen percent.”).

57. See KEVIN WATKINS, AGRICULTURAL TRADE AND FOOD SECURITY 8–9 (1996) (detailing the problem of surplus food disposal in the mid-1980s). The ‘problem’ of surplus food disposal has been center stage in farm policy debates in the United States and Europe since the mid-1970s, while global hunger has not shown any sign of decrement. *Id.* The debate spurred possible solutions to the problem, including disposing of food in the sea or dumping it into the third world countries in the form of aid or cheap sale. *Id.* at 9.

58. Mel Annald, *Why Antidumping Law is Good for Agriculture*, in INTERNATIONAL AGRICULTURAL TRADE DISPUTES: CASE STUDIES IN NORTH AMERICA 63, 64 (Andrew

figures as a goal under the Agreement on Agriculture (AoA) of the World Trade Organization (WTO). Blue box subsidies under the AoA come with a condition to limit production; that is, government support measures that involve direct payments are permitted on the condition that recipient farmers limit food production.⁵⁹ The concern here is that unconditional government support would lead to overproduction of food, which, in turn, may distort world trade in food products. Clearly, ensuring global food security by boosting production is not at the top of global agricultural policy. The reason is clear: global food insecurity (in sense of dearth in aggregate food supply) is not a genuine problem in the world today.

Even within nations, hunger is mainly unrelated to dearth of aggregate food supply. The United States is, for instance, one of those nations hit by the “problem of surplus production” since the 1960s.⁶⁰ Ironically, however, the U.S. Department of Agriculture reports that over ten percent of U.S. households face food insecurity year after year.⁶¹ In India, almost a third of the population suffers from chronic hunger.⁶² Yet, India produces around fifty million tons of surplus food grain annually.⁶³ The reality in many other nations is similar. Thus, while abundant

Schmitz et al., 2005).

59. SARAH JOSEPH, *BLAME IT ON THE WTO?: A HUMAN RIGHTS CRITIQUE* 186 (2011) (describing blue box supports as amber box subsidiaries coupled with a condition of production reduction). Subsidies under the WTO are identified by “boxes” that reflect traffic light colors: green (permitted), amber (slow down or reduction), and red (prohibited). *Domestic Support: Amber, Blue and Green Boxes*, WORLD TRADE ORG., http://www.wto.org/English/tratop_e/agric_e/negs_bkgrnd13_boxes_e.htm (last visited Apr. 15, 2014). The AoA deviates from the “traffic rule” approach in two respects: it has no red box per se (although support exceeding “amber box” commitment levels is prohibited); instead, it introduces “a blue box” for subsidies that are tied to programs that limit production. *Id.* Blue box supports are basically amber box subsidies coupled with a condition of production reduction. *Id.*

60. Hugh Campbell, *Let Us Eat Cake? Historically Reframing the Problem of World Hunger and Its Purported Solutions*, in *FOOD SYSTEMS FAILURE: THE GLOBAL FOOD CRISIS AND THE FUTURE OF AGRICULTURE* 35 (Christopher Rosin et al. eds., 2012).

61. MARK NORD ET AL., UNITED STATES DEP’T AGRIC., *HOUSEHOLD FOOD SECURITY IN THE UNITED STATES* 4 (2007).

62. Dan Banik, *Democracy and the Politics of Hunger*, in *FOOD AND HUMAN RIGHTS IN DEVELOPMENT: LEGAL AND INSTITUTIONAL DIMENSIONS AND SELECTED TOPICS VOLUME I* 43 (Wenche Barth Eide & Uwe Kracht 2005).

63. *Id.*

food supply does not necessarily guarantee household food security, a genuine commitment to eradicate hunger requires embracing structural changes, including reconsidering existing policies that make the rich richer and the poor poorer, making technological transfers, and empowering people at all levels, among others. Yet, the rich and the powerful are unwilling to embrace such fundamental changes to the status quo, as it conflicts with their short term interests. Those who have the power to put an end to hunger (both at national and international levels) find their priority interests elsewhere than ending hunger.⁶⁴

D. Consensus: A World without Hunger

Three different explanations of the cause of hunger have been discussed: Malthusianism, Marxism, and Sen's entitlement failure theory. The three "schools of thought" attribute hunger to radically different causes, and consequently prescribe different solutions. Yet, there is a striking consensus among them on the possibility of eradicating hunger. Even Malthus, who otherwise believed that hunger was a natural tragedy, was nonetheless convinced that the problem was not insurmountable.⁶⁵ As a clergyman, Malthus considered evils such as hunger as "instruments employed by the Deity in admonishing us to avoid any mode of conduct which is not suited to our being."⁶⁶ Conversely, however, he also believed that hunger could be prevented by avoiding such unrighteous conducts as "multiply[ing] too fast."⁶⁷ While all creatures are "impelled by a powerful instinct to the increase of their species," he maintained that man is endowed with superior reasoning faculty to foresee the consequences of his action and thus limit the number of his

64. KENT, *supra* note 11, at 98–99 ("Thus it is a matter of priorities. People do want hunger to end, but people want other things as well, and those other things are regarded as more important.").

65. See Joseph J. Sprengler, *The World's Hunger: Malthus, 1948*, 23 PROC. ACAD. POL. SCI. 53, 53–54 (1949) (noting that Malthus believed the problem of hunger caused by an unsustainable population could be solved by "moral restraint" and deferring marriage until the spouses could fully support their children).

66. MALTHUS, *supra* note 7, at 126.

67. *Id.*

offspring.⁶⁸ Ultimately, humanity, not nature, is to blame for the persistence of hunger. And of course, in Marx's communism, wealth is so abundant that hunger will not be an issue.⁶⁹ It is also Sen's conviction that famine prevention is "extremely easy."⁷⁰ In short, there is a consensus that a world without hunger is not a utopia.

1. *Much Promise; Too Little Action*

There is near universal consensus that there is a possibility of eradicating hunger from the face of the earth (after all surplus food is produced). Such consensus reverberates not just in academic circles, but also in the political arena.⁷¹ Countless resolutions, declarations, targets, programs of action, and rhetoric have been made in an attempt to make hunger history. There is nothing unrealistic in the attempt, given the availability of resources and technical capacity.⁷² However, the political will to translate rhetoric into reality is glaringly lacking.⁷³ For example, a resolution by the 1974 World Food

68. *Id.* at 23.

69. "In a higher phase of communist society . . . the springs of co-operative wealth flow more abundantly . . . and society inscribe on its banners: From each according to his ability, to each according to his needs!" KARL MARX, CRITIQUE OF THE GOTHA PROGRAMME 11 (Progress Publishers 1970) (1875).

70. SEN, *supra* note 10, at 51.

71. FAO, THE WORLD FOOD SUMMIT FIVE YEARS LATER: MOBILIZING THE POLITICAL WILL AND RESOURCES TO BANISH WORLD HUNGER 40 (2001).

72. Special Rapporteur of the Comm'n on Human Rights on the Rights on the Right to Food, *The Right to Food*, ¶¶ 2–3, U.N. Doc. A/59/385 (Sept. 24, 2004) (by Jean Ziegler) ("Hunger is not inevitable. Nor is it acceptable. We live in a world that is . . . entirely capable of eradicating hunger. There is no secret as to how to eradicate hunger, there is no need for new technologies, there is simply need for political commitment to challenge existing policies that make the rich richer and the poor poorer.").

73. FAO, THE STATE OF FOOD INSECURITY IN THE WORLD: ERADICATING WORLD HUNGER – TAKING STOCK TEN YEARS AFTER THE WORLD FOOD SUMMIT 4 (2006) ("We have emphasized first and foremost that reducing hunger is no longer a question of means in the hands of the global community The knowledge and the resources to reduce hunger are there. What is lacking is sufficient political will to mobilize those resources to the benefit of the hungry."); *see also* JOHN R. BUTTERFLY & JACK SHEPHERD, HUNGER: THE BIOLOGY AND POLITICS OF HUNGER 19 (2010) (arguing that lack of political will is the catalytic cause of the subsistence of hunger). Unanimous political declarations should not be mistaken for political will. FAO, THE RIGHT TO FOOD: GUIDE ON

Conference, asserted that, by 1984, “no child [would] go to bed hungry, no family [would] fear for its next day’s bread, and no human being’s future and capacities [would] be stunted by malnutrition.”⁷⁴ It would be superfluous to state that hunger did not go away by 1984. In fact, the grim reality remains that more people are now uncertain about their next meal than in 1974.⁷⁵ In some regions, the rise in the number of malnourished people is substantial. In Africa, for instance, the number of malnourished has increased from around 88 million in 1970 to over 200 million in 1999–2001.⁷⁶ The increase in the number of malnourished happened despite the fact that the world is astoundingly more opulent, produces surplus food, and is equipped with advanced scientific and technical knowledge necessary to increase food production possibilities.⁷⁷

LEGISLATING FOR THE RIGHT TO FOOD 64 (2009).

74. Henry Kissinger, Secretary of State, Address to the World Food Conference (Nov. 5, 1974). The much-quoted statement was first made by then U.S. Secretary of State, Henry Kissinger, and was subsequently incorporated into the first Resolution adopted by the Conference. *Id.*; World Food Conference, Rome, Nov. 5–16, 1974, Report of the World Food Conference, 4, U.N. Doc. E/CONF.65/20. The World Food Conference was convened pursuant to U.N. General Assembly Resolution 3180 (XXVIII) of 17 December 1973, with a view to “develop[] ways and means whereby the international community as a whole would take specific action to resolve the world food problem within the broader context of development and international economic cooperation.” Universal Declaration on the Eradication of Hunger and Malnutrition, G.A. Res. 3348, U.N. Doc. E/CONF.64/20 (Nov. 16, 1974). The Conference adopted the Universal Declaration on the Eradication of Hunger and Malnutrition and some twenty resolutions, which were endorsed by General Assembly Resolution 3348 (XXIX) of 17 Dec 1974. World Food Conference, G.A. Resolution 3348 (XXIX), ¶ 3, U.N. Doc. A/RES/3348 (XXIX) (Dec. 17, 1974).

75. See THE STATE OF FOOD INSECURITY IN THE WORLD 2009, *supra* note 3, at 11 (demonstrating that while there has been some reduction in terms of the percentage of hungry people, the number of hungry people hit a record high in 2009).

76. FAO, THE STATE OF FOOD INSECURITY IN THE WORLD: MONITORING PROGRESS TOWARDS THE WORLD FOOD SUMMIT AND MILLENNIUM DEVELOPMENT GOALS 5–6 (2003).

77. See Keith Schneider, *Scientific Advances Lead to Era of Food Surplus Around the World*, N.Y. TIMES, Sept. 9, 1986, <http://www.nytimes.com/1986/09/09/science/scientific-advances-lead-to-era-of-food-surplus-around-world.html> (“Scientific and technical advances in agriculture have yielded an era in which harvests are now outpacing population growth, resulting in unprecedented food abundance.”); see also *Cutting Food Waste to Feed the World*, FOOD & AGRIC. ORG., <http://www.fao.org/news/story/en/item/74192/icode/> (last visited Apr. 15, 2014) (“Total per capita food production for human consumption is about 900kgs in rich countries, almost twice the 400kg a year produced in the poorest regions.”).

It is worth noting that aggregate economic growth, as traditionally gauged based on a given country's gross domestic product (GDP), conceals more than it reveals about poverty reduction and the actual lives of people.⁷⁸ Global economic growth over the last few decades has been nothing short of spectacular. Yet, empirical studies show that such aggregate economic growth does not correlate with any meaningful reduction of global poverty or hunger.⁷⁹ According to the World Bank, for example, the number of people living in absolute poverty in the developing world declined from 1.5 billion in 1981 to 1.1 billion in 2001.⁸⁰ Over the same period, China has lifted half a billion people out of absolute poverty.⁸¹ That means, if one excludes China, there was no decline in absolute poverty and associated human suffering in the developing world over that period.⁸² These facts not only corroborate that international commitments to tackle global hunger have been a complete failure, but that the prevailing global economic policies focusing on economic figures rather than the actual lives of people are profoundly flawed.⁸³ We live in a world where the number of

78. AMARTYA SEN, RESOURCES, VALUES AND DEVELOPMENT 497 (1984) ("Perhaps the most important thematic deficiency of traditional development economics is its concentration on national product, aggregate income and total supply on particular goods rather than on 'entitlements' of people and the 'capabilities' these entitlements generate. Ultimately, the process of economic development has to be concerned with what people can or cannot do, e.g. whether they can live long, escape avoidable morbidity, be well nourished, be able to read and write and communicate, take part in literary and scientific pursuits, and so forth.")

79. Martin Ravallion, *Economic Growth and Poverty Reduction: Do Poor Countries Need to Worry About Inequality?*, in THE POOREST AND HUNGRY: ASSESSMENTS, ANALYSES, AND ACTIONS 182 (JOACHIM VON BRAUN ET AL., 2009) ("Indeed, among the countries with the highest levels of inequality, poverty incidence tends to be quite unresponsive to economic growth.")

80. Press Release, Dramatic Decline in Global Poverty, But Progress Uneven (Apr. 23, 2004), available at <http://go.worldbank.org/84RMEOWD20>.

81. *Poverty: Not Always With Us*, ECONOMIST, June 1, 2013, <http://www.economist.com/news/briefing/21578643-world-has-astonishing-chance-take-billion-people-out-extreme-poverty-2030-not>.

82. POVERTY REDUCTION & ECON. MGMT. DEP'T, WORLD BANK, FROM POOR AREA TO POOR PEOPLE: CHINA'S EVOLVING POVERTY REDUCTION AGENDA—AN ASSESSMENT OF POVERTY AND INEQUALITY IN CHINA 6 (2009).

83. Recent estimates show that the top two percent of adult individuals own over half of the global wealth, with the richest one percent alone claiming about forty percent

billionaires and the number of hungry people grow simultaneously.⁸⁴

Heads of states assembled at the 1996 World Food Summit in Rome, and once declared their “anger” at the state of global hunger.⁸⁵ They found it “intolerable” that more than eight hundred million people did not have enough food.⁸⁶ It was also acknowledged that access to food, not availability, was the real conundrum.⁸⁷ Of course, by mid-1980s, surplus food disposal

of it. James B. Davies et al., *The World Distribution of Household Wealth* 7 (U.N. Univ. World Inst. for Dev. Econ. Research, Discussion Paper No. 2008/03, 2008). The bottom half of the world population, by contrast, gets just one percent of the global wealth. *Id.*

84. See Poverty Reduction and Equity Group, FOOD PRICE WATCH (World Bank, Washington D.C.), Apr. 2011, at 1 (explaining that the recent food price hike has plunged around forty-four million more people into extreme poverty in 2010 alone, adding to the 1.2 billion people who already live below poverty line of \$1.25 a day); F.H.G. Ferreira et al., Rising Food Prices and Household Welfare: Evidence from Brazil in 2008 (Policy Research Working Paper 5652, 2011) (explaining that increases in food price can lead to hunger and deprivation); Robert Frank, *Millionaire Population Bounces Back to Pre-Crisis Peak*, WALL ST. J., June 11, 2010, available at <http://blogs.wsj.com/wealth/2010/06/10/millionaire-population-bounces-back-to-pre-crisis-peak/> (the number of millionaires has grown by a remarkable fourteen percent between 2008 and 2009 (the share of the top 0.5% households alone jumping from 19% to 21% of the world’s wealth, while the share of 83% of the world’s households declined from 14% to 13%)).

85. See Boutros Boutros-Ghali, Sec. Gen. of the U.N., Inaugural Address at the World Food Summit (Nov. 13, 1996) (“It is totally unacceptable to see certain parts of the world staggering under an abundance of food, while other parts lack essential foodstuffs.”). Because the issue cuts across various spheres of contemporary international law, a wide range of international institutions involved in food production, innovation, trade, and distribution play a role in the realization of the right to food. Accordingly, leaders of International Monetary Fund (IMF), International Labor Organization (ILO), World Trade Organization (WTO), United Nations Environment Programme (UNEP), United Nations Population Fund (UNFPA), World Meteorological Organization (WMO), United Nations Industrial Development Organization (UNIDO), International Atomic Energy Agency (IAEA), and others attended the 1996 World Food Summit. Report of the World Food Summit, 13–17 Nov. 1996 (WFS 96/REP), pt. one, app., available at <http://www.fao.org/docrep/003/w3548e/w3548e00.htm>.

86. Boutros-Ghali, *supra* note 85. As a result, the World Food Summit concluded with the adoption of the Rome Declaration on the World Food Security and the World Food Summit Plan of Action. Monitoring Progress Since the World Food Summit, FOOD & AGRIC. ORG., http://www.fao.org/monitoringprogress/summit_en.html (last visited Apr. 15, 2014).

87. *Rome Declaration on World Food Security*, *supra* note 4, ¶ 3 (emphasis added) (“Food supplies have increased substantially . . . [yet] constraints on *access to food* and continuing inadequacy of household and national incomes to purchase food . . . prevent basic food needs from being fulfilled.”); see also U.N. Econ. & Soc. Council, *Substantive*

had already become a major problem for rich countries, sinking food prices.⁸⁸ But there was little stocktaking about the near total failure of the previous target. It was simply considered too ambitious to be met, and this time the pledge was toned down from eradicating hunger within a decade to halving it within two decades.⁸⁹ But again, as the appalling statistics demonstrates, virtually no progress has been made to meet even the reduced goal. As we approach the target year of 2015, more people go hungry than in 1996.⁹⁰ Generally, commitments to overcome hunger have been ignored completely. Concrete follow-up mechanisms are absent, and of course, these commitments are nonbinding.

However, commitments and declarations are never in short supply. In Rome, world leaders once again reaffirmed “the right of everyone to have access to safe and nutritious food, consistent with the right to adequate food and the fundamental right of everyone to be free from hunger.”⁹¹ What they were not so sure about was what the declaration exactly meant. Nearly half a century since the adoption of the Universal Declaration of Human Rights (UDHR), and two decades after the coming into force of the ICESCR, the U.N. High Commissioner for Human

Issues Arising in the Implementation of the International Covenant on Economic, Social and Cultural Rights: General Comment 12, ¶ 5, U.N. Doc. E/C.12/1999/5 (May 12, 1999) [hereinafter *General Comment No. 12*] (“Fundamentally, the roots of the problem of hunger and malnutrition are not lack of food, but lack of access to available food . . .”). Indeed, the problem of distribution was recognized even during the 1974 Food Conference (held against the political backdrop of the New International Economic Order initiatives). World Food Conference, Nov. 13–17, 1996, *World Food Summit Plan of Action* ¶ 36.

88. See WATKINS, *supra* note 57, at 8–15 (noting that by the 1980s world food prices had fallen below their lowest point in twenty years in the United States and United Kingdom).

89. *Rome Declaration on World Food Security*, *supra* note 4, ¶ 2 (“We pledge our political will and our common and national commitment to achieving food security for all and to an on-going effort to eradicate hunger in all countries, with an immediate view to reducing the number of undernourished people to half their present level no later than 2015.”).

90. Special Rapporteur on the Right to Food, *supra* note 72, ¶ 2 (“Hunger has increased, rather than decreased since 1996. 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 Developed Goals.”).

91. *Rome Declaration on World Food Security*, *supra* note 4.

Rights was called upon to clarify what a right to adequate food and a fundamental right to be free from hunger meant.⁹² However, conceptual vagueness of the right to food is not the main reason for total neglect commitments to eradicate hunger.

III. THE RIGHT TO FOOD AND THE POLITICS OF HUNGER

It is beyond dispute now that hunger is a question of some people not having enough food, rather than there not being enough food.⁹³ Millions lack the means to command enough food because they lack power and influence in the design of institutions and policies at local, national or global levels. Existing policies and institutions have not shown sufficient sensitivity and responsiveness to their plight because they are designed for other purposes. It is not simply that policies designed by the powerful have for some reason failed to combat the scourge of hunger; it is rather that the political will to do so does not exist in the first place.⁹⁴ That is for a reason. Although everyone may sympathize with victims of hunger, not everyone is willing to embrace structural changes to the status quo. Indeed, the first step in tackling global hunger would be to acknowledge the existence of deep conflict of interests both at national and global levels between those who benefit from the status quo and those who are encumbered by the prevailing system.⁹⁵ Unarguably, the technical knowhow and the resources

92. *World Food Summit Plan of Action*, *supra* note 87, ¶ 61.

93. See FAO, *THE STATE OF FOOD INSECURITY IN THE WORLD 1999*, 28 (1999) (stating that hunger is a result of the inability of the poor to have access to the food that is available in the mainstream market economy). Although food is physically available, it is still economically inaccessible for the very poor. *THE STATE OF FOOD INSECURITY IN THE WORLD 2013*, *supra* note 3, at 18.

94. Philip Alston, *International Law and the Human Right to Food*, in *THE RIGHT TO FOOD* 9, 60 (P. Alston & K. Tomasevski eds., 1984) (“[N]o amount of posturing by statesmen and bureaucrats and no amount of academic debate and dissection of the ‘technical’ issues can conceal the fact that the eradication of hunger and malnutrition has **not**, in practice, been a priority concern of the vast majority of governments. The political will has clearly been absent.”).

95. Spitz, *supra* note 47, at 169 (“To recognize economic rights is to recognize the existence of conflicts of interest both between and within nations between those who have and always want more and those who have not. For these reasons the adoption of legal instruments to enforce economic rights is opposed by those countries and social groups which take advantage of the status quo.”).

necessary to stamp out hunger are available, albeit not to everyone.⁹⁶ What is grievously lacking is the political will to do so, which effectively cancels out emphatic and repeated declarations by world leaders to eradicate hunger. Hunger is thus mainly a political problem. The question now is this: what values can human rights add in tackling hunger?

A. Human Rights in Overcoming Hunger

Once it is acknowledged that hunger is more political than it is technical, it seems axiomatic that human rights provide a distinctive possibility to tackle the problem.⁹⁷ First, the human rights approach uncovers and underscores the moral dimension of the problem.⁹⁸ And no theory or value embodies higher moral authority. The right to food provides a “rallying point” to animate public opinion and reshape the modus operandi of institutions at national and global levels.⁹⁹ Famine in this era of unprecedented economic prosperity is unacceptable. Disturbing images of pot-bellied children dying in agony that appear on television screens during famine outbreaks triggers public outrage. As a consequence, when cases of mass starvation unfold, governments usually try to hide the problem.¹⁰⁰ Even

96. See Mark Koba, *A Hungry World: Lots of Food, in too Few Places*, CNBC (July 22, 2013), <http://www.cnbc.com/id/100893540> (“We have two or three times the amount of food right now that is needed to feed the number of people in the world.”).

97. See generally GEORGE KENT, *FREEDOM FROM WANT: THE HUMAN RIGHT TO ADEQUATE FOOD* 25–26 (2005) (discussing the political causes to hunger and malnutrition and adequate food as a human right). Human rights possess constitutive value and must be protected regardless of instrumental considerations. See *id.* (discussing the historical foundations of human rights in constitutions and related documents). In addition, however, not only does human rights protection make people better economic actors, but also promotes institutional transparency, accountability and efficiency, among other things. Needless to state, the need for the protection of human rights does not hinge upon their instrumental role. Human rights possess constitutive value and must be protected regardless of instrumental considerations.

98. Alston, *supra* note 94, at 61.

99. *Id.* at 62 (“[I]n the final analysis, appropriate policies will be adopted not as a result of technocratic altruism but only in response to widespread and insistent popular outrage. For that reason . . . the right to food . . . [acts] as a mobilizing force, as a rallying point, through which people themselves are encouraged to assert their rights by making use of all appropriate legal and extra-legal means.”).

100. See Kurt Jonassohn, *Defining the Perpetrator Seeking Proof of Intent*, 1993

when the situation gets out of hand, they would still try to downgrade the problem by not calling it a famine.¹⁰¹ The word famine is a political taboo also. Those in power detest the word famine, and normally deny its existence, even as they plead for food handouts.¹⁰² The reason is obvious: famines are now considered a dismal failure—not just economically but also politically. In today’s world, misrule is seen as a *sine qua non* for famine.¹⁰³ Since political correctness discourages using the term famine, even aid agencies often have trouble calling obvious cases of famine a famine.¹⁰⁴ The kind of popular outcry and media scrutiny seen in times of famine is, however,

MIGS Occasional Paper 1, available at <http://migs.concordia.ca/occpapers/defining.html> (“The perpetrators of genocides often attempt to hide their deeds under the cover of war or a natural catastrophe such as a famine ca[used by drought.”); see also Robert Marquand, *North Korea’s Hidden Labor Camps Exposed*, CHRISTIAN SCI. MONITOR (May 21, 2013), <http://www.csmonitor.com/World/Asia-Pacific/2013/0521/North-Korea-s-hidden-labor-camps-exposed> (reporting that satellite photos have uncovered a Gulag system that North Korea has always fiercely denied).

101. Christine Kinealy, *A DEATH-DEALING FAMINE: THE GREAT HUNGER IN IRELAND 1–2* (1997) (illustrating an example of refusal to use the word “famine”). History is replete with governments calling clear cases of famine ‘not a famine’. For example, it is documented that during the great Irish famine, officials chose to use substitute terms such as ‘distress’, ‘destitution’, ‘dearth of provisions’, ‘calamity’, and the like, rather than famine. *Id.* at 1.

102. Alemayehu Mariam, *How Zenawi ‘Weaponizes’ Famine in Ethiopia*, IN DEPTH NEWS (Aug. 17, 2011), <http://www.indepthnews.info/index.php/global-issues/356-how-zenawi-weaponizes-famine-in-ethiopia> (discussing the Ethiopian leader’s dismissal of famine in his country despite reports of starvation and famine situations by relief agencies).

103. See Marcus, *supra* note 12, at 252 (“Dozens of governments, representing all forms of political organization other than genuine democracies, have deliberately created or manipulated famine.”).

104. See generally *WFP Marks 50 Years of Fighting Hunger in Sudan*, WORLD FOOD PROGRAMME (Nov. 21, 2013), <http://www.wfp.org/news/news-release/wfp-marks-50-years-fighting-hunger-sudan> (avoiding the use of famine despite being one of WFP’s largest and most complex operations). Cases of acute starvation that seem to satisfy the IPC’s definition of famine continue to occur in many parts of the world, and occurred more recently in Afghanistan, Bangladesh, Darfur/Sudan, Ethiopia, Malawi, and Niger. IPC GLOBAL PARTNERS, *supra* note 27; Desta Andargie, *Dictators and the “Not a Famine” Syndrome* (Feb. 16, 2012), <http://ethiomeia.com/broad/3513.html>. Yet, it was for the first time in decades that the U.N. Office for the Coordination of Humanitarian Affairs (OCHA) declared famine in Somalia on July 20, 2011. See *UN Declares Famine in Two Regions of Southern Somalia*, U.N. NEWS CENTRE (July 20, 2011), <http://www.un.org/apps/news/story.asp?NewsID=39086>.

conspicuously absent when it comes to chronic hunger.¹⁰⁵ Unlike famine, regular hunger amidst plenty is often condoned, and is rarely considered a political failure. It cannot be stressed enough that chronic hunger is not only fundamentally similar to famine, but also claims more lives than famine.¹⁰⁶ The fact that chronic hunger is ubiquitous and that its victims are spread across time and space, or that their death is agonizingly slow does not mean that the problem deserves less attention.

Second, freedom from hunger amidst plenty constitutes a fundamental question of justice.¹⁰⁷ Once it is conceded that hunger is easily preventable, it should be clear that those who are responsible but have failed to prevent the tragedy must be held to account.¹⁰⁸ This is a question of life or death for millions, after all.

Third, the human rights approach helps refute a common, but mistaken, assumption that hunger is just an inevitable fact of life or that it is just an issue in the realm of ethics and morality, not of law. Unarguably, everyone has a legal right to be free from hunger. As will be discussed below, state parties to the ICESCR have the obligation to ensure that no one suffers from starvation.¹⁰⁹ Hunger is thus a clear contravention of that right. Hunger becomes a humanitarian issue rather than a human rights violation only if the state concerned demonstrates that it has made every effort, used all the resources at its

105. Spitz, *supra* note 47, at 7 (“[H]unger [is] by far the most flagrant and widespread of all serious human rights abuses. Yet, for the most part, it is a problem which has to date been perceived by most (well-fed) policy-makers, academics, human rights activists and others as a painful but inevitable fact of ‘life,’ rather than as an abrogation of all that the concept of human rights stands for.”).

106. *World Hunger Facts*, FREEDOM FROM HUNGER, <https://www.freedomfromhunger.org/world-hunger-facts> (last visited Apr. 15, 2014).

107. Hunger subsists, not because of shortage of food supply, but because the food available is not fairly distributed. And the question of distribution is intrinsically inseparable from the idea of justice. In fact, fairness in the distribution of resources and opportunities is the centerpiece of theories of justice throughout the history of political philosophy. “To ask whether a society is just is to ask how it distributes the things we prize—income and wealth, duties and rights, powers and opportunities, offices and honors.” See MICHAEL J. SANDEL, *WHAT’S THE RIGHT THING TO DO?* 19 (2009).

108. See generally KENT, *supra* note 11, at 24–27 (describing hunger as a type of violence that is far more devastating than war or the Holocaust).

109. *Infra* note 149 and accompanying text.

disposal, and unsuccessfully sought international support to meet the challenge.¹¹⁰

Fourth, the human rights approach likewise dispels another misleading assumption that tackling hunger is predicated on onerous obligations involving redistribution of income and wealth. The right to food is not ordinarily a right to be fed. It is the right of everyone to feed herself and her family in dignity through a set of alternative means, such as production, employment, trade, et cetera.¹¹¹ Apart from situations where individuals or groups are unable to feed themselves (where the right to be free from hunger comes into picture), the State's role is normally limited to respecting, protecting, and facilitating the realization of the right.¹¹² Thus, the right to food is not primarily a question of income or food redistribution—it is a question of freedom: the freedom to provide for one's own.¹¹³ It is about a right not to have one's ability to command food worsened, directly or indirectly, by anyone or anything.

Fifth, human rights provide a powerful framework to examine and expose the chasm between rhetoric and practice. It helps to underscore how emphatic declarations to eradicate

110. *General Comment No. 12*, *supra* note 87, ¶ 17.

111. KENT, *supra* note 97, at 46 (“Human rights are mainly about upholding human dignity, not about meeting physiological needs. Dignity does not come from being fed. It comes from providing for oneself. In any well-structured society, the objective is to move toward conditions under which all people can provide for themselves.”).

112. *General Comment No. 12*, *supra* note 87, ¶ 15.

113. See generally *Rome Declaration on World Food Security*, *supra* note 4 (mentioning the right to food and the right to be free from hunger, and incorporating “free” and “freedom” several times throughout the declaration’s discussion of the right to food). One of the major obstacles to the realization of the right to food is the distorted and ideologically informed assumption that if the hungry have the right to food then someone must have the obligation to provide that food. See *General Comment No. 12*, *supra* note 87, ¶ 15 (“[W]hen an individual or group is unable, for reasons beyond their control, to enjoy the right to adequate food by the means at their disposal, States have the obligation to fulfill (provide) that right directly.”). However, the right to adequate food does not presuppose transfer of food or other resources. Nor can it be met with simple transfer of food. Only the right to be free from hunger, which this Article argues, is a separate right, involves direct transfer of food or the means to acquire food for the right holders are unable to sustain themselves due to old age, sickness, natural disaster, joblessness, et cetera.

hunger are in practice abrogated by the overt lack of political will to address the problem.

Sixth, it is simply consistent with the original postwar vision of a peaceful and prosperous world, and provides a comprehensive framework to realize that vision. Finally, while countless political declarations to eradicate hunger have gone unmet, there is near complete lack of accountability. Upholding human rights helps plug such accountability gap.¹¹⁴

B. Hunger is a Human Right Violation

It is colossal injustice that around 16,000 children under the age of five die each day from hunger and malnutrition, while a third of food produced globally is lost or wasted.¹¹⁵ Yet, freedom from hunger is not a mere moral claim. Nor is it a slogan. It is a question of law. It is a *fundamental* legal right of everyone under international law. The fact that it is constantly and comprehensively violated does not diminish its legal validity. Thus, although this is often understated, hunger represents a flagrant human right violation.¹¹⁶

The most direct legal recognition of this right is found under Article 11.2 of the ICESCR.¹¹⁷ It is *fundamental* because hunger

114. Smita Narula, *The Right to Food: Holding Global Actors Accountable Under International Law*, 44 COLUM. J. TRANSNAT'L L. 691, 693 (2006) ("The foundational paradigm of international human rights law is the accountability of sovereign states for ensuring the rights of individuals living within their jurisdiction.").

115. See JENNY GUSTAVSSON ET AL., GLOBAL FOOD LOSSES AND FOOD WASTE: EXTENT, CAUSES AND PREVENTION 4 (2011).

116. Spitz, *supra* note 47, at 7; *General Comment No. 12, supra* note 87, ¶¶ 19–20.

117. The full text of Article 11 of the ICESCR states:

1. The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.

2. The States Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international co-operation, the measures, including specific programmes, which are needed:

- a. To improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating

imperils all other human rights, including the right to life.¹¹⁸ In other words, freedom from hunger is a fundamental human right, not just because food is the most basic necessity of life, but also because starvation effectively neutralizes the full range of other human rights. A right is fundamental if the violation of that right defeats the whole object of human rights protection. In other words, the protection of fundamental rights is a necessary condition for the enjoyment of all other rights.¹¹⁹ Food is a necessary condition for survival and hence for the enjoyment of any human right. It would thus be hypocritical to preach about the sanctity of life, while millions are perishing from starvation in a world awash with surplus food. What does protection from physical assault mean, only for one to die from starvation? Hunger is not just as fatal as physical violence, but also takes many times more lives than all forms of physical violence combined. In fact, hunger and malnutrition claim more lives than any other single cause, and threaten more lives worldwide than AIDS, malaria and tuberculosis combined.¹²⁰ It

knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources;

b. Taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need.

International Covenant on Economic, Social and Cultural Rights, G.A. Res. 2200 (XXI) A, U.N. Doc. A/6546, art. 11 (Dec. 16, 1966).

118. *General Comment No. 12*, *supra* note 87, ¶ 1. Prioritizing human rights, implying hierarchy, is problematic. HENRY SHUE, *SUBSISTENCE, AFFLUENCE, AND U.S. FOREIGN POLICY* 7 (2d ed. 1996) (noting the issues with prioritization, but arguing a possible method to resolve those issues). However, if prioritization is at all necessary, then it must be based on the most intrinsic needs of human beings. *See id.* at 18–20 (suggesting basic rights include a right to sustenance, and basic rights should come before, or be prioritized over, other rights). Biologically, food comes before everything else simply because it is a prerequisite for survival.

119. *See* SHUE, *supra* note 118, at 24 (“No one can fully, if at all, enjoy any right that is supposedly protected by society if he or she lacks the essentials for a reasonably healthy and active life . . . The resulting damage or death can at least as decisively prevent the enjoyment of any right as can the effects of security violations.”).

120. *Hunger*, WORLD FOOD PROGRAMME, <http://www.wfp.org/hunger/stats> (last visited Apr. 15, 2014). For example, of an estimated fifty-seven million deaths in 2002, over eighteen million were caused by nutritional deficiencies and other poverty-related causes. *See* WORLD HEALTH ORGANIZATION, *THE WORLD HEALTH REPORT 2003*, at

is interesting to note that a violation of the right to food—a socioeconomic right—may simultaneously constitute a violation of the right to life and other civil and political rights. It is in cognizance of this interdependence that the U.N. Committee on Civil and Political Rights (CCPR) reaffirmed that the right to life requires states not only to refrain from killing or just protecting the physical security of individuals, but also to “adopt positive measures,” including those aimed at eliminating malnutrition.¹²¹

1. *Defining Violations: Immediate Obligations versus Progressive Realization*

The right to adequate food, like other human rights, corresponds to three levels of obligations: the obligation to *respect*, to *protect* and to *fulfill* (which, in turn, embraces the obligations to *facilitate* and to *provide*).¹²² This shows that the traditional categorization of civil and political rights as negative rights, and socioeconomic rights as positive entitlements, is arbitrary, even misleading.¹²³ Liberty-oriented civil and political

154–59 (2003). That means about 50,000 people die each day from poverty-related diseases, more than half of this figure, directly from hunger and malnutrition, although deaths from starvation are often difficult to distinguish from those from opportunistic diseases.

121. United Nations, Human Rights Committee, General Comment No. 6: Article 6 (Right to Life), ¶ 5, U.N. Doc. HRI/GEN/1/Rev.9 (Vol. I) (Apr. 30, 1982).

122. *General Comment No. 12*, *supra* note 87, ¶ 15.

123. *See infra* notes 131–32 and accompanying text. “All human rights are universal, indivisible and interdependent and interrelated” is the official position of the United Nations. *See* World Conference on Human Rights, June 14–25, 1993, *Vienna Declaration and Programme of Action*, ¶ 5, U.N. Doc. A/CONF.157/23 (July 12, 1993) (“All human rights are universal, indivisible and interdependent and interrelated.”). These attributes of human rights are implicit in the U.N. Charter, and the 1948 Universal Declaration of Human Rights (UDHR) embraces nearly the entire range of human rights and fundamental freedoms in one consolidated text. *See generally* U.N. Charter preamble, art. 1, para. 3 (requiring respect for fundamental human rights); Universal Declaration of Human Rights, G.A. Res. 217 A(III), U.N. Doc. A/RES/217(III) (Dec. 10, 1948) (affirming the presence of and respect for fundamental human rights). Over the years, States have also reiterated the indivisibility and interdependence of all human rights. In reality, however, there prevails an unmistakable bias against socioeconomic rights. For example, the First Optional Protocol to the ICCPR (which establishes individual complaint mechanism) came into force in 1976 and has 113 States parties and 35 signatories. Optional Protocol to the Int’l Covenant on Civil and Political

rights or the so-called “first generation rights” are often considered “negative rights,” while socioeconomic rights, or “second generation rights,” are regarded as “positive entitlements.”¹²⁴ Such categorization, however, conceals the fact that civil and political rights also entail positive entitlements (say, protection), while socioeconomic rights primarily impose negative obligations.¹²⁵ If, say, the right to food is primarily about feeding oneself in dignity, the principal obligation corresponding to it is negative—the obligation to *respect*. Accordingly, the right to food is violated if, for example, a state impedes an individual’s access to her means of subsistence.¹²⁶ The obligation to *protect*, on the other hand, requires states to take positive measures to ensure that the enjoyment of the right is not impeded by third parties.¹²⁷ Failure to protect individuals from arbitrary dismissal by private employers may thus amount to a violation of the right to food.¹²⁸ “The obligation to *fulfill (facilitate)* means the State must pro-actively engage in activities intended to strengthen people’s access to and utilization of resources and means to ensure their livelihood,

Rights, G.A. Res. 2200 (XXI) A, U.N. Doc. A/RES/2200(XXI) (Dec. 16, 1966). By contrast, the Optional Protocol to the ICESCR was adopted only on December 10, 2008 (60th anniversary of the UDHR) and has just 36 signatories and 3 parties (Ecuador, Mongolia and Spain) as of May 2013. Optional Protocol to the Int’l Covenant on Econ., Social & Cultural Rights, G.A. Res. 63/117, U.N. Doc. A/RES/63/117 (Dec. 10, 2008).

124. See generally Jin-Xue Fan, *On the Two Sides of Human Rights*, 9 INT’L LEGAL THEORY 79 (2003) (discussing negative and positive rights).

125. See *id.* at 84–85. Civil and political rights, such as the right to life or assembly, are often regarded as imposing negative obligations. *Id.* at 84. That is, X’s right to life imposes upon states parties (and everyone else) the obligation to refrain from killing X. Clearly, however, it is not enough for X’s state to refrain from murdering X; it must also provide protection. Hence, all civil and political rights, like socioeconomic rights, impose negative as well as positive obligation at least as regards states—the primary duty bearers of human rights. *Id.*

126. See *infra* note 161.

127. *General Comment No. 12, supra* note 87, ¶ 15.

128. See generally Int’l Comm’n Jurists (ICJ), *Maastricht Guidelines on Violations of Economic, Social and Cultural Rights* ¶ 6, Jan. 26, 1997 [hereinafter *Maastricht Guidelines*]. Unlawful job dismissal is not, of course, merely a violation of the right to food. It also has far-reaching moral and psychosocial effect, and compromises the individual’s other freedoms. See generally SEN, *supra* note 28, at 14–23 (discussing the definition of poverty as an issue of ethical, relative, and inequality problems).

including food security.”¹²⁹ In this case, a violation of the right to food occurs if a state, for example, fails to endeavor to improve methods of food production and distribution.¹³⁰ These three obligations are immediate and more or less apply to all kinds of human rights.¹³¹ In all of these situations, the right holder provides her own food; the state has just to respect, provide protection from third party threats, and ensure enabling socioeconomic and political environment for the enjoyment of the right. However, whenever individuals are unable, “for reasons beyond their control, to enjoy the right to adequate food by the means at their disposal, States have the obligation to *fulfill (provide)* that right directly.”¹³² In this case, violation of the right to food occurs when individuals or groups simply starve (involuntarily) and the state fails to provide them with food. That is why hunger constitutes a *prima facie* violation of the right to food.¹³³

Failure to meet any of the above obligations constitutes a violation of the right to food unless the state concerned proves that it has made every effort to meet its obligations.¹³⁴ The burden of proof lies on the state, and it is heavy. A state must prove not only the lack of sufficient food grain in its granary or funds in its coffers, but also that “it has unsuccessfully sought to obtain international support to ensure the availability and accessibility of the necessary food.”¹³⁵ Of course, this is not the easiest thing to do. First, even in countries where hunger is rampant, there is usually surplus food.¹³⁶ Second, even though states are obliged under the Covenant to devote available resources to the realization of socioeconomic rights,¹³⁷ most

129. *General Comment No. 12, supra* note 87, ¶ 15.

130. International Covenant on Economic, Social and Cultural Rights, G.A. Res. 2200 (XXI) A, U.N. Doc. A/6546, ¶ 15 (Dec. 16, 1966).

131. *Maastricht Guidelines, supra* note 128.

132. *General Comment No. 12, supra* note 87, ¶ 15.

133. *Id.* ¶ 17; *Maastricht Guidelines, supra* note 128, ¶ 9.

134. *General Comment No. 12, supra* note 87, ¶ 17.

135. *Id.*

136. *See Koba, supra* note 96 (outlining the large amount of hungry people despite the world having two to three times enough food to feed the entire world population).

137. International Covenant on Economic, Social and Cultural Rights, G.A. Res. 2200 (XXI) A, U.N. Doc. A/6546, art. 2 (Dec. 16, 1966). A realistic understanding of the

states, including some of the most food-insecure ones, devote a shocking proportion of their GDP rather for military purposes.¹³⁸

The three obligations above apply at the international level, as well.¹³⁹ International obligations, with respect to the realization of the right to food, are not primarily about food transfers. The obligations call primarily for suitable international socioeconomic order and cooperation structures, as sanctioned by the U.N. Charter, the UDHR, ICESCR, and other instruments.¹⁴⁰ In regards to the fundamental right to be free from hunger, Article 11.2 of the ICESCR is explicit that States *shall* take necessary measures, individually and collectively, including cooperating in improving methods of food production and disseminating technical and scientific knowledge, as well as ensuring equitable distribution of food.¹⁴¹ In reality, of course,

right to adequate standard of living must acknowledge that satisfactory realization of the right may take time and is, crucially, subject to availability of resources. That should not, however, conceal the fact that each State Party to the ICESCR has the obligation to take steps, individually and through cooperation, expeditiously and to the maximum of its available resources towards achieving the progressive realization of the right. *Id.*

138. See *The SIPRI Military Expenditure Database: Eritrea*, STOCKHOLM INT'L PEACE RES. INST., <http://milexdata.sipri.org/result.php4> (last visited Apr. 15, 2014) (reporting that the world military expenditure in 2010 was around \$1.7 trillion, and has increased by over fifty per cent over the last decade alone). Eritrea, one of the poorest countries in the world spends around twenty per cent of its GDP for military purposes, while oil rich Saudi Arabia follows with eleven per cent. *Id.*

139. See *General Comment No. 12, supra* note 87, ¶¶ 36–41 (“In the spirit of article 56 of the Charter of the United Nations, the specific provisions contained in articles 11, 2.1, and 23 of the Covenant [ICESCR] and the Rome Declaration of the World Food Summit, States parties should recognize the essential role of international cooperation and comply with their commitment to take joint and separate action to achieve the full realization of the right to adequate food. In implementing this commitment, 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.”).

140. Universal Declaration of Human Rights, G.A. Res. 217 A(III), U.N. Doc. A/RES/217(III), art. 28 (Dec. 10, 1948) [hereinafter UDHR] (“Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.”).

141. International Covenant on Economic, Social and Cultural Rights, art. 11, Jan. 3, 1976, 993 U.N.T.S. 3 [hereinafter ICESCR]. Unlike subparagraph 1, which is both programmatic and predicated by free consent, subparagraph 2 is formulated in unequivocal terms. *Id.*

international cooperation involving meaningful transfer of agricultural technology is virtually nonexistent. In fact, monopolizing scientific knowledge is the norm. Thus, in as much as overproduction and surplus disposal has become a problem for some industrialized nations, underproduction associated with lack of agricultural technology remains a perennial problem in poor nations. That agricultural labor productivity in “the least developed countries” (LDCs) is less than one percent that of developed nations explains it all.¹⁴²

C. Justiciability of the Right to Food

Underlying the classical dichotomy between civil and political rights on the one hand and socioeconomic rights on the other is the unwarranted assumption that rights under the latter category are not justiciable. Such claims must now be laid to rest. First, the two categories of rights are inextricably interdependent. As regards those who are agonizing from starvation, freedom of speech or assembly is a hollow, if not fraudulent, rhetoric.¹⁴³ Second, the assumption that civil and political rights correspond to negative obligations, while socioeconomic rights impose positive obligations is fallacious. As noted above, the right to food imposes the obligation to respect in much the same way as freedom of expression does. All human rights impose negative as well as affirmative obligations.¹⁴⁴ Finally, such an assumption flies in the face of the steady, albeit slow, jurisprudence at national, regional, and international levels, evidencing that violations of socioeconomic rights are amenable to judicial determination.¹⁴⁵

142. See United Nations Conference on Trade and Development, Geneva, Switz., 2006, *The Least Developed Countries Report 2006: Developing Productive Capacities*, 137, U.N. Doc. UNCTAD/LDC/2006 (comparing agricultural productivity levels in developed and undeveloped countries).

143. SHUE, *supra* note 118, at 27 (“To claim to guarantee people a right that they are in fact unable to exercise is fraudulent, like furnishing people with meal tickets but providing no food.”).

144. See *generally* Special Rapporteur on the Right to Adequate Food as a Human Right, Comm’n on Human Rights, U.N. Doc E/CN.4/Sub.2/1987/23 (July 7, 1987) (by Asbjorn Eide) (noting requirements of both abstention and action).

145. See CHRISTOPHE GOLAY, *THE RIGHT TO FOOD AND ACCESS TO JUSTICE: EXAMPLE AT THE NATIONAL, REGIONAL AND INTERNATIONAL LEVELS*, 8 (2009) (noting

Court cases on the subject are extremely limited, even though the right to food is probably violated more comprehensively than any other right.¹⁴⁶ Still, there are some striking precedents, both at national and international levels, reaffirming the justiciability of the right. In South Africa, the justiciability of socioeconomic rights is beyond question. In the so-called *Nevirapine* case, the Constitutional Court left no doubts when it declared: “The question . . . is not whether socio-economic rights are justiciable. Clearly they are.”¹⁴⁷ The Indian Supreme Court has likewise affirmed a constitutional right to food even in the absence of explicit reference in the text of the constitution.¹⁴⁸ In a similar vein, the Swiss Federal Court has affirmed a right to minimum conditions of life; including “the guarantee of all basic human needs, such as food . . .” to protect people from being reduced to beggars, which the court deemed “a condition unworthy of being called human.”¹⁴⁹ Interestingly, the case was brought by illegal immigrants.¹⁵⁰ Yet, the court still held that they nonetheless have an inherent right to food.¹⁵¹

The justiciability of the right to food has also been affirmed, albeit somewhat indirectly, by the International Court of Justice (ICJ). In the *Israel Wall* case, the ICJ concluded that, by

slow movement toward allowing victims of human rights violations access to justice).

146. See Press Release, Food and Agric. Org. of the U.N., More People Than Ever are Victims of Hunger (June 2009). That is despite the fact that the right to food is explicitly recognized in the constitutions of at least twenty three countries. See LIDIJA KNUTH & MARGARET VIDAR, CONSTITUTIONAL AND LEGAL PROTECTION OF THE RIGHT TO FOOD AROUND THE WORLD 14 (2011).

147. *Minister of Health v. Treatment Action Campaign* 2002 (5) SA 721 (CC) at 19 ¶ 25 (S. Afr.).

148. Lauren Birchfield & Jessica Corsi, *Between Starvation and Globalization: Realizing the Right to Food in India*, 31 MICH. J. INT'L L. 691, 693 (2010). The Indian constitution does not explicitly address the right to food. The absence of explicit constitutional provision did not, however, deter the Indian Supreme Court from affirming a constitutional right to food. *Id.* at 713.

149. Special Rapporteur on the Right to Food, *The Right to Food*, ¶ 58, Comm'n on Human Rights, U.N. Doc. E/CN.4/2002/25 (Jan. 10, 2002) (by Jean Ziegler).

150. See GOLAY, *supra* note 145, at 58 (explaining that the case was brought by Stateless Czech refugees in Switzerland who were unable to work because they did not have work permit).

151. *Id.*

curtailing the freedom of movement of the inhabitants (i.e. Palestinians), the construction of the wall by the state of Israel violates, among others, the right to adequate standard of living as proclaimed under the ICESCR and other instruments.¹⁵² Unarguably, the right to food is central to the right to adequate standard of living under the ICESCR. The interdependence between socioeconomic rights and liberty-oriented rights (freedom of movement in this case) is at the heart of this case. This should be a final answer to those who contend that socioeconomic rights impose only progressively realizable positive obligations.¹⁵³

In a pending case before the ICJ, Ecuador alleges that an “aerial spraying of toxic herbicides” by Colombia in areas bordering the two countries violates the right to food and health of its people living in the area, among others.¹⁵⁴ Traditionally, extraterritorial obligations to the right to food are seen in terms of what a state is obliged to do towards people outside of its borders. The outcome of this case should be interesting, as it concerns what a state should refrain from doing *vis-à-vis* the right to food of people outside of its territories. It would also be significant in our understanding of the impact of transboundary environmental damages on the right to food.

152. Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, 2004 I.C.J. 136, ¶ 134 (July 9) (“[T]he construction of the wall and its associated regime impede the liberty of movement of the inhabitants of the Occupied Palestinian Territory . . . as guaranteed under Article 12, paragraph 1, of the International Covenant on Civil and Political Rights. They also impede the exercise by the persons concerned of the right to work, to health, to education and to an adequate standard of living as proclaimed in the International Covenant on Economic, Social and Cultural Rights and in the United Nations Convention on the Rights of the Child.”).

153. The ICJ was called on to give its opinion by the U.N. General Assembly Resolution ES-10/14 (Dec. 8, 2003) primarily on the legal consequences arising from the construction of the wall. *Id.* at 136, 139. The Court began by identifying pertinent legal rights that are impeded by the construction of the wall, including “the right to an adequate standard of living, such as adequate food, clothing and housing and the right ‘to be free from hunger’” under Article 11 of the ICESCR. *Id.* This makes a classic example of how the right to food is violated by a State’s failure to honor its negative obligations, i.e. obligation to respect.

154. See *Aerial Herbicide Spraying (Ecuador v. Colom.)*, 2008 I.C.J. 46, ¶¶ 169–70 (Mar. 31) (alleging particularly substantial damages to Ecuador’s means of subsistence).

In sum, the right to food is a justiciable legal right. Yet, hunger is widely considered just as a cruel fact of life, not a flagrant human right violation that shall be accounted for. This is attributable mainly to the longstanding ideological bias against socioeconomic rights in general and the right to food in particular.¹⁵⁵ With such ideological bias coupled with the lack of concrete accountability structures, what remains is a paradigmatic problem of human rights in general and socioeconomic rights in particular, which ensures that the right to food remains one of the most neglected human rights. Although the right to food is a legal right under positive international law, it has practically been neglected so completely that the adoption of Voluntary Guidelines by the FAO Council is now considered as groundbreaking.¹⁵⁶ An apparent lack of

155. See Press Release, Comm'n on Human Rights, Commission Adopts Eight Resolutions on Economic, Social, and Cultural Rights, U.N. Press Release HR/CN/1088 (Apr. 16, 2004) (noting that the United States continues to maintain hostile attitude towards socioeconomic rights because it is the only nation in the developed world that has not ratified the ICESCR).

156. Special Rapporteur on Economic, Social and Cultural Rights, *The Right to Food*, Comm'n on Human Rights, U.N. Doc. E/CN.4/2005/47 ¶¶ 28–30 (Jan. 24, 2005) (by Jean Ziegler). That is in spite of the fact that the right to adequate food has been recognized as a legal right under international law at least since the coming into force of the ICESCR in 1976. International Covenant on Economic, Social and Cultural Rights, G.A. Res. 2200 (XXI) A, U.N. Doc. A/RES/2200(XXI)A, at 50 (Dec. 16, 1966). States have time and again declared their commitments to end hunger and realize everyone's right to food. See Special Rapporteur on Economic, Social and Cultural Rights, *supra*, at 19 (noting governments' commitments to the right to adequate food made at the World Food Summits in 1996 and 2002, and in the Millennium Declaration). In practice, however, fighting hunger has never figured as a political priority for States. See *id.* at 5, 13–15 (noting the need for political commitment to challenge solutions to hunger, and how some policies can be undone). Although there is nothing particularly ambiguous about the right to food, world leaders at the 1996 World Food Summit required clarification on the content of the right to adequate food. *Id.* at 10. In response, the U.N. Committee on Economic, Social and Cultural Rights adopted in 1999 General Comment No. 12, which provided the most authoritative expert interpretation on the right to food. FAO, VOLUNTARY GUIDELINES TO SUPPORT THE PROGRESSIVE REALIZATION OF THE RIGHT TO ADEQUATE FOOD IN THE CONTEXT OF NATIONAL FOOD SECURITY 1 (2004). Again, at the 2002 World Food Summit, World leaders invited the FAO Council to establish an Intergovernmental Working Group (IGWG) with a mandate to devise a set of voluntary guidelines that would assist States' "efforts to achieve the progressive realization of the right to adequate food in the context of national food security." *Id.* at 1–2. Accordingly, the Voluntary Guidelines developed by IGWG were finally adopted by the FAO Council in November 2004. *Id.* at iii. Although the Guidelines are legally nonbinding, they can be

clarity, particularly with regard to the precise obligations correlating to the right to food, seems to have contributed to the problem. Thus, it is next in order to explore the normative content of the right to food and what definite obligations it correlates to.

IV. REINTERPRETING THE RIGHT TO FOOD

The *right to food* actually refers to two distinct rights entrenched under Article 11 of the ICESCR.¹⁵⁷ The first one is the right to adequate food, which is subsumed under the broader right to *adequate standard of living*, whereas the second is the *fundamental* right of everyone to be free from hunger. While the right to adequate food is an entitlement under human rights law, protection from hunger has well-established standing in other branches of international law as well. It imposes an *immediate* and *unconditional* obligation upon States to provide right holders, whether they are infants or adults, ordinary indigents or convicted criminals, refugees or prisoners of war (POWs), with adequate food.¹⁵⁸ Conventionally, however, the right to adequate food and the right to be free from hunger are viewed as essentially one and the same, except that more urgency is required with respect to obligations correlating to the latter.¹⁵⁹

a useful practical tool for the realization of the right to food on conditions that there is political will. *Id.* at 2. Yet, lack of political will rather than normative ambiguity, being the main problem, what difference such Voluntary Guidelines could make is not terribly clear. So far, there has been no meaningful shift from the “business as usual” tradition.

157. The right to food is recognized under different international human rights instruments. However, Art 11 of the ICESCR is the most direct and explicit codification of the right. *See* ICESCR, *supra* note 141, art. 11 (discussing right to food).

158. While individuals may be deprived of their liberty for various reasons, they are still entitled to food, for it is an absolute necessity for survival. In this sense, freedom from hunger has the characteristics of nonderogable right referred to under Article 4 of the International Covenant on Civil and Political Rights (ICCPR). International Covenant on Civil and Political Rights, art. 4, Dec. 19, 1976, 999 U.N.T.S. 172.

159. The U.N. Committee on Economic, Social and Cultural Rights states: “The right to adequate food will have to be realized progressively. However, States have a core obligation to take the necessary action to *mitigate* and *alleviate* hunger . . .” Failure of the State to satisfy “the minimum essential level required to be free from hunger” *may* constitute a violation of the Covenant, only if that is attributable to unwillingness rather than inability on the part of the State. In short, freedom from hunger is not considered

In what follows, this Article will argue that the right to be free from hunger and the right to adequate food are two separate norms and should be treated as such. It is argued here that the right to food needs to be reinterpreted and understood in a way that highlights the distinction between the two rights it represents. This Article will attempt to establish textual, normative, and practical grounds that warrant treating freedom from hunger as a freestanding legal right, distinct from the broader right to adequate food (which itself is a sub norm of an even broader right to adequate standard of living).

A. *Interpreting Human Rights*

Before delving into analyzing pertinent legal provisions, a few words about the rules of interpretation are in order. According to Article 31 of the Vienna Convention on the Law of Treaties (VCLT), a treaty has to be interpreted in *good faith* in accordance with three important criteria: the text, context, and its object and purpose.¹⁶⁰ Only after such interpretation still leaves ambiguity or otherwise leads to an absurd result may recourse be had to supplementary means of interpretation, particularly the preparatory work and circumstances of the conclusion of the treaty.¹⁶¹ This rule is widely regarded as a codification of rules of customary international law.¹⁶²

The peculiarity of human rights treaties must also be stressed. While entering into traditional reciprocal treaties is an attribute of sovereignty, state obligations to do or refrain from doing a particular act does not constitute a relinquishment of sovereignty.¹⁶³ From the reciprocal nature of classic

as unconditional right, but as one contingent upon the State's ability. *See General Comment No. 12, supra* note 87, ¶¶ 6, 17 (emphasis added).

160. Vienna Convention on the Law of Treaties, May 23, 1969, 1155 U.N.T.S. 331 [hereinafter VCLT]. For more on this, see ANTHONY AUST, *MODERN TREATY LAW AND PRACTICE* 184–206 (2000).

161. VCLT, *supra* note 160, art. 32.

162. Territorial Dispute (Libyan Arab Jamahiriya v. Chad), Judgment, 1994 I.C.J. 6, ¶ 41 (Feb. 3).

163. S.S. Wimbledon (U.K., Fr., Italy, Japan v. Ger.), 1923 P.C.I.J. (ser. A) No.1, at 25 (Aug. 17) (“The Court declines to see in the conclusion of any Treaty by which a States undertakes . . . an abandonment of its sovereignty. No doubt any convention . . . places a restriction upon the exercise of the sovereign rights But the right of entering into

international treaties, it follows that a “material breach” of obligations by a state party results in the loss of its rights under that treaty.¹⁶⁴ Human rights treaties are distinct from those treaties. First, human rights treaties do not involve reciprocity in the strict sense.¹⁶⁵ Human rights obligations are generally owed towards human beings, not states. If states hold legal interest in the protection of human rights, that is not because they are entitled to human right claims as such, but because human rights impose obligations *erga omnes*. The reason is that human rights do not stem from states’ sovereignty, but rather from a universal conception of humanity that transcends the immediate self-interest of states.¹⁶⁶ Therefore, human rights cannot be objects of a reciprocal exchange of rights and obligations between states. On the contrary, human rights treaties are, historically and normatively, meant to circumscribe the legitimate powers of the state first and foremost.¹⁶⁷ In other words, while all other treaties are manifestations of state sovereignty, human rights treaties operate as checks on the traditional sovereign powers of states. Accordingly, while

international engagements is an attribute of State sovereignty.”).

164. VCLT, *supra* note 160, art. 60.

165. *Sawhoyamaxa Indigenous Community v. Paraguay*, Merits, Reparations and Costs, Judgment Inter-Am. Ct. H.R. (ser. C) No. 146, ¶ 140 (Mar. 29, 2006) (stating that the Inter-American Court on Human Rights affirms: “a multilateral treaty on human rights . . . stands in a class of its own and . . . generates rights for individual human beings and does not depend entirely on reciprocity among States.”).

166. Robert Howse, *Sovereignty, Lost and Found*, in REDEFINING SOVEREIGNTY IN INTERNATIONAL LAW 61, 74 (Wenhua Shan et al. eds., 2008).

167. See ANTONIO CASSESE, INTERNATIONAL LAW 248–49 (2001) (discussing limits to domestic power of a State when the State “tramples upon his rights in a manner which outrages the conscience of mankind.”). The foundational paradigm of international human rights law is the protection of the individual from tyranny of sovereign states and abuses by other actors. *Id.* As such it imposes an irredeemable limitation on state sovereignty. *Id.* It should be kept in mind that while States were traditionally the “sole and exclusive” subjects of international law and enjoyed unfettered sovereign power within their jurisdictions, it was the abuse of State sovereignty that made the protection of certain inalienable human rights a top priority in the aftermath of World War II. *Id.* Whereas traditional humanitarian law had rules prohibiting abuses of enemy population, it did not contain similar rules with respect to a state’s own population. *Id.* at 248. This weakness was tragically exposed in the aftermath of the war when it was found that the atrocities committed by the Nazis against their own people were not actually covered by positive rules of international law. *Id.*

ordinary reciprocal treaties between states ought to be interpreted in a manner that is less restrictive to states sovereignty, human rights treaties must be interpreted in a manner that provides the most effective protection.¹⁶⁸

V. TWO DISTINCT RIGHTS

As pointed out already, Article 11 embraces two substantially different rights. Article 11.1 recognizes “the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.”¹⁶⁹ To that end, “States Parties *will* take appropriate steps to ensure . . . international co-operation based on free consent.”¹⁷⁰ By contrast, Article 11.2 proclaims that “States Parties . . . recognizing the *fundamental* right of everyone to be free from hunger, *shall* take, individually and through international co-operation” necessary measures to fulfill the right.¹⁷¹ From the text of Article 11, two points are unmistakable. First, while the “right to adequate food” is a sub-norm within the broader “right to adequate standard of living,” the right to be free from hunger stands as a separate norm. Also, logically, freedom from hunger (a survival right) has little to do with the right to adequate standard of living. Second, unlike the obligation under the first sub-article, which is predicated on free consent, the obligation incumbent upon States under Article 11.2, i.e. correlating to the fundamental right to be free from hunger, is stated in stronger (command) terms.¹⁷²

168. VCLT, *supra* note 160, art. 31 (suggesting that if a treaty is to be interpreted in accordance with its object and purpose, and that the object of human rights treaties is to protect and promote human rights, it follows that human rights treaties must be interpreted in a way that provides effective protection).

169. ICESCR, *supra* note 141, art. 11.

170. *Id.* (emphasis added).

171. *Id.* (emphasis added).

172. ICESCR, *supra* note 141, art. 11 (emphasis added) (regarding the realization of the right to adequate standard of living, including food, “States Parties *will* take appropriate steps . . . , recognizing to this effect the essential importance of international co-operation based on *free consent*,” and when it comes to ensuring freedom from hunger, “States . . . *shall* take . . . measures, including specific programmes . . .”).

Despite such apparent textual distinction between the two sub-articles, however, the right to be free from hunger is hardly considered as a right separate from the broader right to adequate food. At times the two rights are even used interchangeably. In a commissioned study to the Commonwealth Secretariat, for example, Ian Brownlie commented that the right to food enshrined in the ICESCR represents just as an entitlement to a minimum daily nutritional intake (which is necessary to keep the right holder free from hunger).¹⁷³

The U.N. Committee on Economic, Social and Cultural Rights (the Committee) rejects such narrow interpretation of the right to food, restricting entitlements to minimum package of calories.¹⁷⁴ Yet, it is implicit from the title of General Comment No. 12 that the Committee believes that Article 11 of the ICESCR comprises of a single right; i.e. the right to adequate food (subsuming the right to be free from hunger), rather than two distinct rights. That is, according to the Committee, the right to be free from hunger is not a freestanding norm, but rather a component of the broader right to adequate food.¹⁷⁵ Still, the Committee believes that the right (even as a sub-norm) imposes a more urgent (and somewhat distinct) obligation than

173. See IAN BROWNLIE, THE HUMAN RIGHT TO FOOD: STUDY PREPARED FOR THE COMMONWEALTH SECRETARIAT 1 (1987) (“The formal recognition of the right to food (or the right of everyone to be free from hunger and malnutrition) . . . is intended to be interpreted as a right to a *minimum* daily nutritional intake.”).

174. *General Comment No. 12*, *supra* note 87, ¶ 6.

175. *Id.* ¶¶ 7–8. The Committee’s interpretation of the term *adequate* in the right to adequate food is reminiscent of the view that freedom from hunger is just an integral part of the broader right to adequate food. According to the Committee, the concept of *adequacy* implies not only that the food available must be sufficient to satisfy the dietary needs of individuals and be free from adverse substances, but also that it be culturally appropriate. *Id.* ¶ 8. It must also be sustainably accessible, and be consistent with the enjoyment of other human rights. *Id.* That the food available must be sufficient to satisfy the dietary needs, be free from adverse substance and culturally appropriate concern primarily the fulfillment of freedom from hunger. In fact, the origin of such requirements is to be found in humanitarian law (the fundamental goal of which is to maintain minimum standards of humanity, including protection from starvation, rather to ensure enjoyment of adequate living standards as such). See, e.g., Geneva Convention Relative to the Treatment of Prisoners of War art. 26, Aug. 12, 1949, 6 U.S.T. 3316, 75 U.N.T.S. 135. On the other hand, sustainable access to food and consistency with the enjoyment of other human rights are characteristics that go beyond freedom from hunger.

the broader right to adequate food.¹⁷⁶ The Committee further notes that where individuals are unable to enjoy the right to adequate food, such measures shall involve direct food provision or other forms of support.¹⁷⁷ Even prior to the adoption of General Comment No. 12, the right to be free from hunger was viewed just as a component, albeit the core minimum, of the broader right to adequate food.¹⁷⁸

Contrary to orthodox understanding, however, it is obvious that the right to be free from hunger and the right to adequate food are as distinct as existence and living are. The former concerns the most basic and immediate physiological need—the need for survival—while the latter refers to one’s entitlement to progressively improve her nutritional wellbeing. Being a fundamental survival right, the right to be free from hunger entitles the right holder to an immediate and unconditional provision of minimum package of calories. By contrast, the right to adequate food does not imply food provision by the state, and is subject to progressive realization. State obligations associated with it are both conditional and of long-term character. As such, people who get a daily nutrition of 1,800 kilocalories may be considered to be free from hunger, but they may not necessarily be enjoying adequate food (which is a characteristic of having adequate standard of living).¹⁷⁹ It is clear, therefore, that the fundamental right to be free from hunger is distinct from the broader right to adequate food—distinct in its roots, in its normative content, in its intended beneficiaries, in the obligation it imposes as well as the mechanisms for its implementation.¹⁸⁰

176. *General Comment No. 12, supra* note 87, ¶¶ 1, 6 (explaining that while the right to adequate food shall be realized progressively, States have a core obligation to take “more immediate and urgent steps” to ensure that everyone is free from hunger).

177. *Id.* ¶ 15.

178. *E.g.*, Comm. on Econ., Social and Cultural Rights, Rep. on the 16th and 17th Sess., Apr. 28–May 16, 1997 and Nov. 17–Dec. 5, 1997, ¶ 476, U.N. Doc. E/C.12/1997/10, Supp. No. 2 (1998).

179. THE STATE OF FOOD INSECURITY IN THE WORLD 2013, *supra* note 3, at 50.

180. *See* Alston, *supra* note 94, at 31–32 (noting that for an effective realization of any human rights norm, four issues need to be clearly identified; namely, the content of the norm, its subjects/beneficiaries, its duty holders, and the tools to ensure compliance).

A. Different Roots

The right to adequate food is a relative concept in the domain of human rights law. The language of human rights entered into political and intellectual discourse only after World War II. In other words, the right to adequate food is a post-World War II concept. By contrast, freedom from hunger and the obligation to support those unable to feed themselves can be traced back to ancient ethical and religious traditions.¹⁸¹ Indeed, it is woven into the very fabric of social existence and cooperation. Although food provision remained primarily the concern for households and kinship groups throughout the greater part of human history, state obligation to ensure its peoples' food security has been recognized since antiquity.¹⁸² Confucius, for example, placed food at the top of the list of eight government responsibilities.¹⁸³ In the Babylonian Code of Hammurabi, a master could make any claims against his shepherd only after he paid the shepherd his full wage.¹⁸⁴ The 1793 French Constitution proclaimed: "public relief is a sacred debt. Society owes maintenance to unfortunate citizens, either in procuring work for them or in providing the means of existence for those who are unable to labor."¹⁸⁵ Indeed, the obligation to feed the hungry is embedded in the social relations of every society and tradition.

181. MICHELINE R. ISHAY, *THE HISTORY OF HUMAN RIGHTS: FROM ANCIENT TIMES TO THE GLOBALIZATION ERA* 19 (2004) ("While human rights force us to think about universality in political and economic terms, they benefit from such portrayals of universal brotherly love as one finds in Micah (the Hebrew Bible), Paul (the New Testament), the Buddha, and others, also, in a different way from the detached universal love of the Stoics, like Epictetus, and advocates like Plato, Aristotle, and Cicero.")

182. See Spitz, *supra* note 47, at 171 (suggesting that while the rights language is relatively new, protecting every member from starvation has always been an implicit obligation of societies, for that meant protecting life).

183. MILES M. DAWSON, *THE ETHICS OF CONFUCIUS* 179 (1915). Confucius himself is said to have taken charge of the public granary. See Spitz, *supra* note 47, at 171. This parallels Joseph's biblical granary in Judeo-Christian history. *Genesis* 41:47-57.

184. See ISHAY, *supra* note 181, at 35-36.

185. 1793 CONST. art. 21 (Fr.) translated in *Liberty, Equality, Fraternity: Exploring the French Revolution*, GEORGE MASON UNIV., <http://chnm.gmu.edu/revolution/d/297/> (last visited Apr. 15, 2014).

Owing to the difference in the importance of what is at stake, freedom from hunger and the right to adequate food have different standing in international law. Clearly, both are now rights under human rights law. However, the right to adequate food owes its legal value to modern human rights instruments, while freedom from hunger is considered as an “elementary consideration of humanity”¹⁸⁶ and has been recognized independently of and prior to the development of modern human rights law. In other words, while freedom from hunger is now a *fundamental* human right, the obligation to feed those not in a position to feed themselves was recognized in other branches of international law even prior to the development of modern human rights law.

In the realm of international humanitarian law, protecting POWs as well as civilians from starvation has historically been considered as a common standard of humanity. Under the Geneva Conventions, now widely regarded to be part of customary international law, states are bound to provide POWs and protected persons with food sufficient in quantity and quality.¹⁸⁷ It should be noted that it is not because POWs are different from civilians that they deserve access to food; rather it is because they have become similar. Once individuals are taken prisoners, the distinction between combatants and civilians mainly ceases to exist.¹⁸⁸ The crucial factor here is rather that

186. Vincent Chetail, *The Contribution of the International Court of Justice to International Humanitarian Law*, 85 INT'L REV. RED CROSS 235, 235 (2003), available at http://www.icrc.org/eng/assets/files/other/irrc_850_chetail.pdf.

187. Geneva Convention Relative to the Treatment of Prisoners of War arts. 20, 26, Aug. 12, 1949, 6 U.S.T. 3316, 75 U.N.T.S. 135 (“The Detaining Power shall provide prisoners of war . . . with sufficient food The basic daily food rations shall be sufficient in quantity, quality and variety to keep prisoners of war in good health and to prevent loss of weight or the development of nutritional deficiencies. Account shall also be taken of the habitual diet of the prisoners Collective disciplinary measures affecting food are prohibited.”); see also Geneva Convention Relative to the Protection of Civilian Persons in Time of War arts. 23, 50, 55, 89, Aug. 12, 1949, 6 U.S.T. 3516, 75 U.N.T.S. 287.

188. JEAN JACK ROUSSEAU, *THE SOCIAL CONTRACT* 8 (G.D.H. Cole trans., 1762) (emphasis added) (“The object of the war being the destruction of the hostile State, the other side has a right to kill its defenders, while they are bearing arms; but *as soon as they lay them down and surrender, they cease to be enemies or instruments of the enemy, and become again once more merely men, whose life no one has any right to take.*”).

as prisoners, they are not in a position to provide their own food; hence, providing them with food is an elementary consideration of humanity. Of course, POWs are unable to provide their own food because they are in captivity, while civilians in the wider world are hungry because of harvest failure, lack of job, and so on. Thus, it might be argued that unlike POWs who may otherwise starve (without their captors providing them with food), civilians are at liberty to provide their own food by their own. Such argument, however, runs into two problems. First, the obligation to provide food under humanitarian law is not limited to protected persons or POWs but extends to the entire civilian population under occupation.¹⁸⁹ Hence, the obligation to provide food does not presuppose a loss of physical liberty in the strict sense. Second, and crucially, those whose harvest has failed or who have involuntarily lost their job cannot be said to have substantive freedom to provide their own food. It is not out of choice that millions of people are starving.

The question now is whether such norms of international humanitarian law are applicable in peace time. In regards to obligations emanating from “elementary considerations of humanity,” the ICJ has answered the question affirmatively in one of its earliest cases. In *Corfu Channel*, it emphatically affirmed that obligations emanating from elementary considerations of humanity are “even more exacting in peace than in war.”¹⁹⁰ The Court also stressed that elementary considerations of humanity apply regardless of conventional obligations.¹⁹¹ The second issue is whether peacetime starvation constitutes a violation of “elementary considerations of humanity.” In order to answer this question one needs to first understand what elementary considerations of humanity represent. We do not find the concept defined anywhere in international law. In fact, whether the principle belongs to the

189. See Geneva Convention Relative to the Protection of Civilian Persons in Time of War art. 55, Aug. 12, 1949, 6 U.S.T. 3516, 75 U.N.T.S. 287. (“To the fullest extent of the means available to it, the Occupying Power has the duty of ensuring the food and medical supplies of the population; it should, in particular, bring in the necessary foodstuffs . . . if the resources of the occupied territory are inadequate.”).

190. *Corfu Channel* (U.K. v. Alb.), Judgment, 1949 I.C.J. 15, at 22 (Apr. 9).

191. *Id.*

realm of “soft law,” falling beyond the formal sources on international law laid out under Article 38.1 of the ICJ Statute or is a general principle of law is a subject of debate. Yet, if at all elementary considerations of humanity generate rights and obligations, it is difficult to imagine anything that is more elementary than food and few things stir humanity more powerfully than the lack of it.

Apart from humanitarian law, there is an impressive body of international conventions, resolutions and declarations that require provisions of food for those who are not in a position to feed themselves such as victims of disasters, refugees, prisoners, the elderly, the unemployed, and so on. Therefore, unlike the right to adequate food, there is no doubt that freedom from hunger is not confined to the human rights regime.

B. Different Normative Content

Article 11 represents the most important codification of the right to food, also enshrined under Article 25 of the UDHR, but the two provisions are formulated slightly differently. Article 25.1 of the UDHR proclaims that: “[e]veryone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care . . . and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood *in circumstances beyond his control*.”¹⁹² Two bundles of rights are recognized here: the right to *adequate standard of living* and the right to *security*. In the first case, the right holder is in command of his own livelihood, and provides for himself and his family. The obligations incumbent upon states are thus to *respect, protect, and facilitate* the enjoyment of the right. In the latter case, however, the right holder is unable to fulfill his needs that it has to be provided by duty holders. It is now about survival, not about adequate standard of living in

192. Universal Declaration of Human Rights, G.A. Res. 217 A(III), art. 25(1), U.N. Doc. A/RES/60/1 (Sept. 16, 2005) (emphasis added). By predicating claims for food assistance on inability to command food for reasons beyond one’s control, Article 25 of the UDHR makes it clear that the realization of everyone’s right to adequate food does not require government provision. Whereas most people provide for themselves, assisting only those facing economic predicament is neither impractical nor exceedingly onerous.

dignity anymore.¹⁹³ The right to an adequate standard of living has been incorporated almost verbatim into Article 11.1 of the ICESCR.¹⁹⁴ The second right (to security) is not, however, explicit under Article 11—instead, a “new” fundamental right to be free from hunger is enshrined under Article 11.2.¹⁹⁵ Clearly, security is a broader concept than freedom from hunger; thus, the two rights are not coextensive.¹⁹⁶ It is unarguable, however, that freedom from hunger is central to the right to security under Article 25.1 of the UDHR. Article 11.2 of the ICESCR is, therefore, a partial codification of the right to security enshrined in the last prong of Article 25.1 of the UDHR.¹⁹⁷ While different

193. Adequate standard of living may be a relative concept, but at the minimum it is one in which a person controls the means to satisfy his and his family's basic needs in dignity. Universal Declaration of Human Rights, G.A. Res. 217 A(III), art. 25(1), U.N. Doc. A/RES/60/1 (Sept. 16, 2005). Once one's security is hinged on provisions from the state, it is about survival, not anymore about adequate standard of living. Note that the concept of adequacy under Article 11 refers to the overall quality of life (standard of living), rather than the satisfaction of minimum dietary needs. International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, S. Treaty Doc. No. 95-19, 6 I.L.M. 360 (1967), 993 U.N.T.S. 3.

194. International Covenant on Economic, Social and Cultural Rights art. 11(1), Dec. 16, 1966, S. Treaty Doc. No. 95-19, 6 I.L.M. 360 (1967), 993 U.N.T.S. 3 (recognizing the standard of living).

195. International Covenant on Economic, Social and Cultural Rights art. 11(1), Dec. 16, 1966, S. Treaty Doc. No. 95-19, 6 I.L.M. 360 (1967), 993 U.N.T.S. 3. The incorporation of a specific right to be free from hunger into Article 11 is credited to FAO's contribution during the drafting process. See *THE RIGHT TO FOOD* 30–31 (P. Alston & K. Tomasevski eds., 1987) (discussing the multiple attempts of FAO to add freedom from hunger in the Universal Declaration of Human Rights).

196. See Universal Declaration of Human Rights, G.A. Res. 217 A(III), art. 25(1), U.N. Doc. A/RES/60/1 (Sept. 16, 2005). The right to security under Art 25 of the UDHR is much broader than just freedom from hunger, as it encompasses security with respect to shelter, clothing, medical care, and other basic needs). *Id.*

197. Universal Declaration of Human Rights, G.A. Res. 217 A(III), art. 25(1), U.N. Doc. A/RES/60/1 (Sept. 16, 2005); see also International Covenant on Economic, Social and Cultural Rights art. 11(1), Dec. 16, 1966, S. Treaty Doc. No. 95-19, 6 I.L.M. 360 (1967), 993 U.N.T.S. 3 (codifying freedom from hunger, which is part of the broader right to security). The right to social security recognized in Article 22 of the UDHR and Article 9 of the ICESCR appears slightly different from the right to security. See, e.g., Comm. on Econ., Social, and Cultural Rights, *General Comment No. 19: The Right to Social Security*, Nov. 5–23, 2007, U.N. Doc. E/C.12/GC/19, 39th Sess. (Feb. 4 2008) (explaining that while social security embraces a variety schemes, including contributory social insurance, the right to security concerns assistances to groups of people who are faced with difficulties to assist themselves).

in scope, both provisions seek to ensure minimum entitlements for the same groups of beneficiaries—those who are, for reasons beyond their control, unable to sustain themselves.

As indicated already, the right to adequate food (in contradistinction to freedom from hunger) is a sub-norm of a broader right to adequate standard of living recognized under Article 11.1 of the ICESCR.¹⁹⁸ Thus its realization naturally calls for a socioeconomic order that is conducive for everyone to provide her own food in dignity. It is about an entitlement to: access to resources, such as land and water; a right to work; a right not to have one's ability to feed oneself worsened, and so on.¹⁹⁹ Thus, while states have a crucial role in the realization of the right to adequate food, the right holder wins her own livelihood, and the state's role is but secondary. It is limited to respecting, protecting and facilitating the progressive realization of the right. By contrast, obligations corresponding to the *fundamental* right to be free from hunger involve direct provision. Now, the concern is about people who find themselves in circumstances that render them unable to support themselves; hence, duty holders are required to fulfill the right to be free from hunger directly.

To make matters abundantly clear, let us consider the following scenario. Assume that a victim of natural disaster starves for reasons beyond her control. It has been argued above that hunger constitutes a *prima facie* human right violation. But what is the nature of the right violated in this context? Do we say the victim's fundamental right to be free from hunger has been violated or simply that the victim's right to adequate food has been violated and that the duty holders failed to discharge

198. International Covenant on Economic, Social and Cultural Rights art. 11(1), Dec. 16, 1966, S. Treaty Doc. No. 95-19, 6 I.L.M. 360 (1967), 993 U.N.T.S. 3.

199. See, e.g., Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, 2004 I.C.J. 136, ¶ 134 (July 9) (discussing how restrictions on civil liberties neutralize one's ability to command adequate food). One's ability to feed herself is determined not only by her individual conditions but also by the prevailing socioeconomic and political environment under which she lives. Her right to provide food for herself and her family may thus be worsened in a myriad ways, such as a result of direct government legislation or international agreements that manifestly diminish individual's command over food, restriction of civil liberties, and so on. *Id.*

their core obligations?²⁰⁰ According to General Comment No. 12, the latter understanding should be correct since the fundamental right to be free from hunger does not exist as a freestanding right, but as a component of the broader right to adequate food.²⁰¹ However, the former understanding may be correct. To start, there is not any indication from the text of Article 11 of the ICESCR that freedom from hunger is an adjunct to the right to adequate food. To the contrary, while the right to adequate food is itself stated as a sub-norm of the right to adequate standard of living, freedom from hunger is enshrined as a fundamental right in a separate sub-article.²⁰² Also, as pointed out already, the duty to protect those unable to feed themselves has been recognized independently of the development of modern human rights system. Indeed, food provisions to those who are unable to feed themselves, such as victims of disaster, prisoners, paupers, et cetera, seems to have little, if any, to do with the realization of the right to adequate food. It rather represents the fulfillment of the right to be free from hunger. By contrast, the right to adequate food, as the Committee observes, is about the right to feed oneself in dignity.²⁰³

200. See Comm. on Econ., Social, and Cultural Rights, *General Comment No. 3: The Nature of States Parties' Obligations*, art. 10, U.N. Doc. E/1991/23 (Dec. 14, 1990) (elaborating on the concept of 'core obligations' as referring to states' obligations to satisfy individual's right to minimal essential levels of food, primary healthcare, shelter and housing, and education, the nonfulfillment of which could be considered as a *prima facie* violation of the Covenant).

201. *General Comment No. 12*, *supra* note 87, ¶ 1. The Committee's interpretation of the right to adequate food is in line with prevailing consensus among commentators—while the right to adequate food is generally to be realized progressively, it contains within it an absolute minimum obligation to keep everyone free from hunger. See Wenche Barth Eide and Uwe Kracht, *The Right to Adequate Food in Human Rights Instruments: Legal Norms and Interpretations*, in *FOOD AND HUMAN RIGHTS IN DEVELOPMENT: LEGAL AND INSTITUTIONAL DIMENSIONS AND SELECTED TOPICS* 102 (Wenche Barth Eide and Uwe & Uwe Kracht eds., 2005).

202. International Covenant on Economic, Social and Cultural Rights art. 11(1), (2), Dec. 16, 1966, S. Treaty Doc. No. 95-19, 6 I.L.M. 360 (1967), 993 U.N.T.S. 3.

203. *General Comment No. 12*, *supra* note 87, ¶ 4 (“The Committee affirms that the right to adequate food is indivisibly linked to the inherent dignity of the human person and is indispensable for the fulfilment of other human rights enshrined in the International Bill of Human Rights.”).

The reason why freedom from hunger is commonly lumped with the broader right to adequate food, despite the glaring textual and normative differences, is not clear. Interestingly, there is a consensus among commentators that freedom from hunger correlates to a more urgent and somewhat distinct obligation than the right to adequate food. What is not immediately clear is how one can draw distinction between two obligations without there being a distinction between the norms imposing those obligations. There is very limited commentary on the issue. Generally, emphasizing the obligations norms impose, rather than emphasizing the norms themselves, is not an uncommon tradition in international law.²⁰⁴ Still, the normative difference between freedom from hunger and the right to adequate food has not gone totally unnoticed. Alston, for example, observes the marked difference between the two norms.²⁰⁵ Yet, he believes that adopting the right to adequate food as a principal norm encompassing freedom from hunger is more fitting from normative and practical points of view.²⁰⁶ Such interpretation, Alston maintains, is in keeping with the broad formulation of the right under the UDHR.²⁰⁷ From a practical point of view, he argues, it “facilitates the adoption of a

204. Rain Liivoja, *The Scope of the Supremacy Clause of the United Nations Charter*, 57 INT'L & COMP. L.Q. 583, 584 (2008) (suggesting that in international law, especially in relation to determining conflicts or erecting normative hierarchy, it is common to emphasize the obligations norms impose, rather than focusing on the norms as such). For example, Article 103 of the U.N. Charter does not directly proclaim that the Charter prevails over other treaties, but obligations under the Charter prevail over those under other treaties. *Id.*

205. See Alston, *supra* note 94, at 40–45 (emphasizing the contrast between the right to food and the right to be free from hunger in ICESCR Art 11 (1) and (2)).

206. See *id.* at 32–33.

207. *Id.* (“[W]hile . . . there is a substantial difference between the two norms [i.e. the right to adequate food and the right to be free from hunger], with the first being much broader than the second . . . the term ‘right to adequate food’ is the appropriate overall one since there is no indication that paragraph 2 was intended by drafters or by States . . . to restrict or narrow the scope of the right proclaimed in paragraph 1. Moreover, if the paragraph 2 formulation was taken in isolation as the definitive statement of the right, the Covenant would constitute not an elaboration and codification of the Universal Declaration as intended, but a considerable reduction in scope of the right proclaimed in 1948.”).

maximalist approach.”²⁰⁸ The reason appears that compared to freedom from hunger, which may be satisfied through the provision of minimum package of calories, adopting the right to adequate food as an overarching norm is practically desirable as it highlights the progressive and maximalist nature of the obligation.²⁰⁹ The Committee’s emphasis that the right to adequate food shall not be interpreted restrictively in terms of minimum daily calorie intakes suggests similar concern.²¹⁰

It is possible, however, that the contrary interpretation is normatively more coherent and practically more effective. As discussed previously, separate treatment of the two rights appears more consistent with the relevant provision of the UDHR. From a practical point of view, treating the right to be free from hunger as a separate norm imposing *unconditional* and *immediate* obligations extricates the right from much of the artificial ambiguities often associated with the progressive realization of the right to adequate food.²¹¹ For example, since the notion of *adequate* is a relative concept, the question of when someone is said to be enjoying adequate food may not have precise answer.²¹² Nor can the amount of resources necessary

208. *Id.* at 33. The idea here is that since freedom from hunger may be satisfied by the provision of minimum nutrition, the far-reaching scope of the right to adequate food may be compromised. *Id.*

209. *Id.*

210. *General Comment No. 12, supra* note 87, ¶ 6 (“The right to adequate food is realized when every man, woman and child, alone or in community with others, have physical and economic access at all times to adequate food or means for its procurement. The *right to adequate food* shall therefore not be interpreted in a narrow or restrictive sense which equates it with a minimum package of calories . . .”).

211. The right to food is often regarded as vague, aspirational, programmatic, expensive, or even utopian, but separate treatment of freedom from hunger dispels these assumptions. International Covenant on Economic, Social and Cultural Rights art. 11(2), Dec. 16, 1966, S. Treaty Doc. No. 95-19, 6 I.L.M. 360 (1967), 993 U.N.T.S. 3. Clearly, freedom from hunger is not vague. *General Comment No. 12, supra* note 87, ¶ 6. It is a fundamental right with precise obligations (provision of quantified minimum daily calories). *Id.* Also, it cannot naturally be programmatic because starvation is fatal, and no right is of any use for the dead. And, of course, protecting everyone from hunger is no utopia because we know that hunger could be stamped out with the resources already available. *Hunger: What Can Be Done?*, U.N. RES. FOR SPEAKERS ON GLOBAL ISSUES, <http://www.un.org/en/globalissues/briefingpapers/food/whatcanbedone.shtml> (last visited Apr. 15, 2014).

212. The term *adequate* in “the right to adequate food” carries a different, broader

for the realization of the right to adequate food be quantified with mathematical precision. By contrast, freedom from hunger is relatively easy to determine. As is the amount of resources (food) required to keep everyone free from hunger.²¹³ That is the reason that world leaders agreed in 1974²¹⁴ to eradicate hunger within a decade, which by no means was unrealistic. What would have been unrealistic is if they had declared an intention to fully realize the right of everyone to adequate standard of living, including adequate food. Accordingly, while lack of resource might explain the insufficient realization of the right to adequate food, it can hardly be an excuse for the violation of freedom from hunger. And, of course, such interpretation does not narrow the scope of the right to adequate food.

From the text of Article 11.2, it is clear that the fundamental right to be free from hunger is a separate right, distinct from the right to adequate standard of living (and hence the right to adequate food).²¹⁵ It is not obvious, therefore, why different rights stated separately should be lumped together. It must also be noted that while freedom from hunger is qualified as a *fundamental* right under Article 11.2, it is not clear if that qualification applies to the broader right to adequate food. If a fundamental right is understood as one that is so essential, both for its own sake and for the enjoyment of other rights, it seems fitting that freedom from hunger is qualified as such. Hunger is

meaning than, for example, in “food of nutritional value *adequate* for health and strength” under Article 20(1) of the U.N. Standard Minimum Rules for the Treatment of Prisoners. U.N. Standard Minimum Rules for Treatment of Prisoners, approved July 31, 1957, E.S.C. Res. 663(c), U.N. ESCOR, 24th Sess., Supp. No. 1, U.N. Doc. E/3048 (1957), amended May 13, 1977, E.S.C. Res. 2076, U.N. ESCOR, 62nd Sess., Supp. No. 1, U.N. Doc. E/5988, at 4 (1977).

213. See *Calorie Calculator*, MAYO CLINIC, <http://www.mayoclinic.org/calorie-calculator/itt-20084939> (last visited Apr. 15, 2014) (suggesting the required calorie intake can be calculated based on factors such as age, height, weight, and sex). The goal here is not so much about ensuring that everyone enjoys adequate standard of living, including adequate food, but about protecting them from hunger; i.e. to meet minimum nutritional requirements. *General Comment No. 12*, *supra* note 87, ¶ 6.

214. World Food Conference, Nov. 5–16, 1974, *Communication from the Commission to the Council World Food Conference*, ¶ 6, U.N. Doc. Sec (74) 4955 final (Dec. 9, 1974).

215. International Covenant on Economic, Social and Cultural Rights art. 11(2), Dec. 16, 1966, S. Treaty Doc. No. 95-19, 6 I.L.M. 360 (1967), 993 U.N.T.S. 3.

not just incapacitating, it is fatal. Whereas freedom from hunger is a necessary condition for survival and the enjoyment of all other rights, the enjoyment of any right does not and should not hinge upon the sufficient realization of the right to adequate food.

C. *Different Beneficiaries*

A clear understanding of the beneficiaries of Article 11.2 dispels major misconceptions about the right to food. First, there is a question of whether states have a right to claims under Article 11 of the ICESCR. Two arguments have been advanced to show that Article 11 of the ICESCR entitles states, albeit indirectly, to certain claims. The first is based on the idea that the obligation of states to ensure equitable distribution of food through international cooperation can only be fulfilled through the agency of the state. In other words, a state facing food shortage has a right to claim assistance “as a corollary of the duty of all States” with food surplus to cooperate.²¹⁶ However, seeking international aid in case of food shortage seems to be more of an obligation rather than a right.²¹⁷ Indeed, such obligation is coincidental (rather than corollary) to the obligations of other states to assist. The other argument maintains that individuals are merely beneficiaries, not subjects, of a right under international law, in the sense of having *locus standi* to invoke the right (before an international body).²¹⁸ This argument is obviously based on an obsolete idea of states as the sole subjects of international law.²¹⁹ The

216. Laura Niada, *Hunger and International Law: The Far-Reaching Scope of The Human Right to Food*, 22 CONN. J. INT'L L. 131, 153 (2006). It is argued that the requirement of “international cooperation” aimed at “ensuring equitable distribution” is possible only through a State-to-State intercourse. *Id.*

217. See *General Comment No. 12*, *supra* note 87, ¶ 17 (“[T]he Covenant, which obliges a State party to take the necessary steps to the maximum of its available resources . . .”).

218. Emanuela-Chiara Gillard, *Reparation for Violations of International Humanitarian Law*, 85 INT'L REV. RED CROSS 529, 536–37 (2003); Louis B. Sohn, *The International Law: Protection of the Rights of Individuals Rather than States*, 32 AM. U. L. REV. 1, 9 (1982).

219. Although states remain to be the principal subjects of international law, intergovernmental organizations, international organizations, and even individuals are

unanimous adoption of the Optional Protocol to the ICESCR in December 2008 makes it clear that individuals are the subjects of the right to food.²²⁰

Crucially, for its detractors, the right to food is vague, aspirational, and exorbitantly expensive (that may overburden or disrupt economies). That fear is based on an assumption that the right to food entitles a citizen to sit back and ask his government to feed him.²²¹ Needless to state, that assumption is erroneous. The right to food is not primarily about a right to be fed; it is about a right to provide one's own food in dignity through a set of alternative means, such as production, employment, trade, et cetera. This presupposes that those who produce their own food have access to productive resources, while others have the means to purchase adequate food from the market.²²² We must remember that the right to work and get opportunity to gain a living by one's work is the first substantive individual right in the ICESCR.²²³ In fact, the right to adequate standards of living, which embraces the right to adequate food, is inherently incapable of being satisfied through charity. Yet, even with an ideal socioeconomic order, there will still be the sick, the old, the very young, the prisoner, the unemployed, the victim of natural disaster, and other groups who may be unable to provide their own food. Only these groups may invoke Article 11.2, and providing food for these groups is neither insuperable nor disruptive to economies.

now subjects of international law. Gillard, *supra* note 218, at 536–37; Sohn, *supra* note 218, at 61–64.

220. See Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, G.A. Res. 8/2, U.N. Doc. A/RES/63/117 (Dec. 10, 2008). The very object of optional protocols to the two Covenants is to enable individuals to invoke their rights before international bodies. *Id.*

221. JOHN HOSPERS, AN INTRODUCTION TO PHILOSOPHICAL ANALYSIS 266 (4th ed., 1997) (“If I have a right to food, others cannot honor that right without providing me the food.”).

222. *Rome Declaration on World Food Security*, *supra* note 4.

223. International Covenant on Economic, Social and Cultural Rights art. 6, Dec. 16, 1966, S. Treaty Doc. No. 95-19, 6 I.L.M. 360 (1967), 993 U.N.T.S. 3.

D. Different Obligations

The right to adequate food and freedom from hunger corresponds to substantially different obligations. The right to adequate food is the right of everyone at all times.²²⁴ The obligation of states in relation to this right is thus “to take steps to achieve *progressively* the full realization of the right.”²²⁵ At least four points need particular emphasis here. One, states owe this obligation to everyone (since everyone has a right to adequate food). Two, the obligation is both *conditional* and of *long-term* character. States’ obligation to take necessary steps towards the realization of the right to adequate food is subject to the availability of resources. That is obviously because it is practically impossible to fulfill everyone’s right to adequate food straight away. It is not even obvious if it is at all possible to precisely determine what an adequate standard of food is, or when everyone’s right to adequate food is said to be fully realized.²²⁶ Three, the right to adequate food under Article 11.1 is stated as a subset of the overarching right to adequate standard of living. From the text, it is unequivocal that the concept of *adequacy* relates to the overall quality of life

224. *Id.* art. 11. In the *Israel Wall* case discussed above, for example, the ICJ concluded that by curtailing the freedom of movement, the construction of the wall by the state of Israel violates, among others, the right to adequate standard of living (which embraces the right to adequate food) of inhabitants. Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, 2004 I.C.J. 136, ¶¶ 191–92 (July 9). It was not necessary to show that the inhabitants went hungry. *Id.* The violation of the right to adequate food does not presuppose the violation of freedom from hunger. *Id.* In other words, the right to adequate food can be invoked by anyone who has reason to believe that her ability to acquire food has been compromised regardless of whether she faces a threat of hunger.

225. *General Comment No. 12, supra* note 87, ¶ 14 (emphasis added).

226. See BLACK’S LAW DICTIONARY 40 (7th ed. 1999) (defining “adequate” as “legally sufficient” which is an ambiguous description making it hard to determine what level of nutrition amounts to adequate standard of food). Not only do people have different dietary choices, depending on their cultural and religious background or ethical views, but even an individual’s dietary preferences do change over time. SEN, *supra* note 28, at 12. Further, even in terms of quantity, there is an element of arbitrariness in the determination of the amount of “adequate” calories. WORLD HUNGER SERIES, *supra* note 2. For example, growing in stature is common for human beings (at least in the developed world), which changes their calorie intake needs. *Id.* People with bigger statures are thus likely to require more calories than what may be considered to be adequate by people in poor communities. SEN, *supra* note 28, at 12.

(standard of living, including food) as opposed to an entitlement to a given package of calories.²²⁷ Accordingly, the full realization of the right to adequate food can only be assessed in the context of the overall enhancement of living standards. It is also practically and normatively impossible for everyone's right to adequate food to be realized through direct government intervention alone.²²⁸ The realization of the right to adequate food primarily hinges upon the effort and enterprise of right holders themselves. State obligation in this regard is limited to respecting, protecting, and facilitating the realization of the right. Finally, state obligations towards the realization of the right to adequate food may encompass a broad spectrum of measures that affect individuals' ability to command adequate food. It may range from direct measures aimed at improving food production and distribution (through research and technology transfers) to tackling a myriad of factors that militate against the realization of the right, such as institutional ineptitude, corruption, political instability, structural inequality, lopsided international treaties, and similar handicaps that conspire to ensure the persistence of the problem.²²⁹

227. International Covenant on Economic, Social and Cultural Rights art. 11, Dec. 16, 1966, S. Treaty Doc. No. 95-19, 6 I.L.M. 360 (1967), 993 U.N.T.S. 3.

228. See LORENZO COTULA & MARGARET VIDAR, FAO LEGISLATIVE STUDY 77: THE RIGHT TO ADEQUATE FOOD IN EMERGENCIES 24–27 (2002) (suggesting that the states have the obligation to progressively implement the right to adequate food, but the right is primarily to be realized by right holders themselves). As noted earlier, the right to adequate food is indivisibly linked to the *inherent dignity* of the human person. International Covenant on Economic, Social and Cultural Rights Preamble, Dec. 16, 1966, S. Treaty Doc. No. 95-19, 6 I.L.M. 360 (1967), 993 U.N.T.S. 3. It is thus normatively inconsistent with dependence on state provisions. From practical point of view, it is impossible for any government to provide adequate food for everyone.

229. See, e.g., WORLD BANK, WORLD DEVELOPMENT REPORT 2008: AGRICULTURE FOR DEVELOPMENT 1–4 (2008), available at <http://siteresources.worldbank.org/INTWDR2008/Resources/2795087-1192111580172/WDRover2008-ENG.pdf> (suggesting that factors hindering the realization of the right to food are too many, and vary from country to country, depending on political organization and governance, technological advancement, resources endowment, and a number of other factors). According to the World Bank, for example, in agriculture-based countries, where the overwhelming majority of people depend on agriculture, poverty is predominantly rural. *Id.* at 1. Thus, hunger has much to do with productive inefficiency associated with lack of technology and agricultural inputs. *Id.* at 14. In urbanized countries, by contrast, poverty is an urban phenomenon. *Id.* at 4. In these nations, hunger is mainly a result of gross

By contrast, the right to be free from hunger can be invoked only by those who are unable to feed themselves.²³⁰ This is not the right of everyone; it is the right of the hungry. Unlike the right to adequate food, which can be invoked by anyone at any time, freedom from hunger can be invoked only where the right holder is either suffering from or is threatened by starvation for reasons beyond her control. In such circumstances, the obligation on states is *unconditional* and *immediate*. It is unconditional because states can easily meet this obligation. For one, most people acquire their own food by themselves, as they naturally should. States are called upon to protect only those unable to establish access to sufficient food. Two, this should mostly be a transient problem, and in a world awash with surplus food, ensuring minimum provisions for the hungry should by no means be a formidable burden. While time and resources may be needed for the sufficient realization of the right to adequate food, there is no excuse for the violation of the right to be free from hunger. Importantly, the obligation associated with freedom from hunger is immediate because for those suffering from starvation, survival is at stake. Lastly, the obligation correlating to freedom from hunger inevitably involves fulfilling the right directly.

VI. CONCLUSION

Throughout the greater part of history, starvation has been the biggest tragedy afflicting humanity, and the struggle for food emblemized humanity's struggle for survival. Today, food production has become much easier. Yet, and this is tragic, hunger continues to rage unabated, claiming millions of lives each year. Emphatic declarations to eradicate hunger are canceled out by the manifest lack of political will to tackle the problem. As far as eradicating hunger is concerned, the *status quo* is nothing short of an abysmal failure. To declare that everyone has a fundamental right to be free from hunger while

disparities in income and wealth distribution.

230. *General Comment No. 12, supra* note 87, ¶ 15. Indeed, for someone who enjoys adequate standard of living, and hence adequate food, freedom from hunger is not an issue, save in the case of emergency. *Id.*

2014]

HUNGER AND THE LAW

713

completely neglecting the appalling scale of starvation and death amidst plenty is an affront not just to victims but also to the idea of human rights itself.

The near-complete absence of accountability is a striking feature of global hunger. Since state accountability is the central paradigm of human rights law, there is little argument on the vitality of upholding the fundamental right to be free from hunger in tackling this global tragedy. Conceptual clarity on what it means to have a right to be free from hunger, and what precise obligations that right correlates to is, however, essential. Traditionally, freedom from hunger is regarded as a component of an overarching right to adequate food.

This Article has advanced an account of freedom from hunger that departs from the orthodox understanding. The account offered here treats the right to be free from hunger as a freestanding right, distinct from the right to adequate food. The argument presented here is buttressed by the text and spirit of pertinent treaty provisions. This Article has also advanced normative and practical arguments that warrant treating the right to be free from hunger as a freestanding right, imposing *immediate* and *unconditional* obligation, as opposed to treating it as a sub-norm of the progressively realizable right to adequate food, which itself is a component of an even broader right to adequate standard of living.