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**Both Feast & Famine: The Historical Legitimacy of the**  
**Right to Food in Addressing Overnutrition**

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# Both Feast & Famine: The Historical Legitimacy of the Right to Food in Addressing Overnutrition

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## **Abstract**

Hunger and obesity might initially appear fundamentally opposite conditions. Per Olivier de Schutter, then UN Special Rapporteur on the Right to Food, in his 2011 report to the UN Human Rights Council, they are both manifestations of malnutrition resulting from the failure to realize the Right to Food. This marked the first high-profile description of overnutrition as a counterpart to undernutrition in the context of the Right to Food. This paper argues that this interpretation is both logical and has historical legitimacy. A review of the history of both the Right to Food and concepts of nutrition at the international level underscores that malnutrition has a broader meaning than simply minimum caloric intake. Earlier interpretations of the right emphasizing starvation and chronic hunger have reflected the predominant concerns of their times. Today, those concerns have shifted; more people worldwide are obese than are underweight, and more deaths worldwide are linked to overnutrition than undernutrition. This rise in mortality is accompanied by growing understanding that overnutrition, like undernutrition, is heavily influenced by factors under state rather than individual control. In turn, the emerging double burden of overnutrition and undernutrition in many communities underscores the fact that these two serious concerns are both facets of the same underlying issue. By demonstrating the legitimacy of addressing overnutrition from a Right to Food perspective, it is hoped that this paper will highlight a potentially useful advocacy tool for promoting effective legal and policy solutions to a serious global issue.

Keywords: Right to Food; malnutrition; human rights; overnutrition; obesity

## Both Feast & Famine: The Historical Legitimacy of the Right to Food in Addressing Overnutrition and Obesity

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### **Biography**

Adam (PhD Student, University of Ottawa) works at the intersection of health, human rights and globalization. He holds a JD from the University of Victoria, an MA in Global Development Studies from Queen's University, and won the Outstanding Student Award in his LL.M (Health Law) from the University of Washington. He has collaborated with organizations like Treatment Action Campaign (TAC), the Pacific Islands AIDS Foundation (PIAF), Avocats sans frontières Canada (ASFC), and the Institute for Justice & Democracy in Haiti (IJDH). His doctoral research focuses on legal interventions around diet-linked noncommunicable disease in a global context.

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## Table of Contents

<b>Abstract.....</b>	<b>1</b>
<b>Introduction .....</b>	<b>4</b>
<b>Establishing the Legitimacy of Overnutrition .....</b>	<b>5</b>
<b>The Right to Food .....</b>	<b>6</b>
<b>The Early History of Food.....</b>	<b>7</b>
<b>The Emerging Understanding of Nutrition .....</b>	<b>10</b>
<b>The League of Nations and Nutrition .....</b>	<b>13</b>
<b>The Right to Food, the UDHR, and the FAO Conference of 1943.....</b>	<b>14</b>
<b>Food and the Geneva Conventions.....</b>	<b>17</b>
<b>The Right to Food and the ICESCR .....</b>	<b>19</b>
<b>World Hunger &amp; Nutrition .....</b>	<b>20</b>
<b>Early Steps in Clarifying the Right to Food.....</b>	<b>22</b>
<b>Post-Cold War Shifts .....</b>	<b>24</b>
<b>CESCR General Comment on the Right to Food .....</b>	<b>27</b>
<b>The Right to Food in the New Millennium .....</b>	<b>30</b>
<b>Olivier de Schutter .....</b>	<b>35</b>
<b>Global Expansion.....</b>	<b>38</b>
<b>Conclusion: Human Rights and the Right to Food.....</b>	<b>41</b>
<b>Works Cited .....</b>	<b>43</b>

## Introduction

In 2011, United Nations Special Rapporteur on the Right to Food Olivier de Schutter submitted a report to the UN Human Rights Council highlighting the concept that overnutrition (excess calorie intake) is merely a different dimension of malnutrition alongside both undernutrition (insufficient calorie intake) and specific nutrient deficiencies, all of which must be addressed in realizing the Right to Food.<sup>1</sup> While in retrospect a simple and entirely logical interpretation of the Right, this “groundbreaking”<sup>2</sup> report addressed one of the last big gaps in the normative content of the Right to Food: the harms caused by too much, rather than too little.

Applying the Right to Food to problems of overnutrition provides a potentially useful tool for addressing an issue of increasing global importance. Acceptance of the Right to Food is itself already widespread, and “the idea of the human right to food as a legal framework to address inequalities in the global food system has become increasingly mainstreamed at the level of political discourse and public policy”.<sup>3</sup> Similarly, considerable progress has been made in combatting the issues hitherto most closely associated with it: hunger and undernutrition. Although this success cannot be attributed solely to hunger and undernutrition being framed as a human rights issue, this framework has ensured a high political profile that has in turn spurred concrete action at the international level. For instance, even though the Millennium Development Goal of reducing the proportion of underweight children under five years of age by 50% between

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<sup>1</sup> O. de Schutter, *Report submitted by the Special Rapporteur on the right to food*, Olivier de Schutter, UNHRC, 19<sup>th</sup> Sess., UN Doc. A/HRC/19/59 (2011) [Hereinafter *de Schutter Report*].

<sup>2</sup> A. Duger, “Obesity, NCDs, and the Right to Food”, Blog Post, *Health & Hum Rts* (10 April 2012) online: Health & Human Rights < <http://www.hhrjournal.org/2012/04/10/obesity-ncds-and-the-right-to-food/>>.

<sup>3</sup> J. Clapp, A.A. Desmarais & M.E. Margulis, “Progress on the right to food” (2015) 2 *Can. Food Stud.* 39.

1990 and 2015 was not met, the global decrease was nonetheless a not inconsiderable 44%.<sup>4</sup>

By contrast, over same 25-year period, global rates of overweight and obesity, together with associated health conditions like diabetes mellitus, hypertension and heart disease have skyrocketed in all but the poorest countries. Today, there are more people worldwide who are obese – not simply overweight – than are underweight.<sup>5</sup> Furthermore, excess weight is linked to more deaths worldwide than underweight.<sup>6</sup> Nonetheless, even though overnutrition is as inextricably linked to food as undernutrition, the Right to Food has only been furtively applied to this emerging issue. The goal of this paper is to highlight the Right to Food as a logical, legitimate, and potentially useful tool in combatting the rapidly growing threat overnutrition poses to global health and well-being.

### **Establishing the Legitimacy of Overnutrition**

In order for the Right to Food to be viewed as a viable tool, it is crucial to establish the legitimacy of de Schutter’s interpretation. Through examining historical conceptions of what constitutes adequate food, this paper will demonstrate that overnutrition falls squarely within the scope of the Right to Food. In doing so, it will show that minimum caloric intake has never been the sole focus of what is deemed adequate food within the international human rights system. Instead, the prevailing emphasis within interpretations of the Right to Food has been guided by perceptions of

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<sup>4</sup> World Health Organization, *Health in 2015: from MDGs, Millennium Development Goals to SDGs, Sustainable Development Goals* (Geneva: WHO, 2015) at 5.

<sup>5</sup> NCD Risk Factor Collaboration, “Trends in adult body-mass index in 200 countries from 1975 to 2014: a pooled analysis of 1698 population-based measurement studies with 19·2 million participants” (2016) 387 *Lancet* 1377.

<sup>6</sup> World Health Organization, *Obesity and overweight*, Fact Sheet 311, (2015) WHO online: <<http://www.who.int/mediacentre/factsheets/fs311/en/>>

the most pressing needs of the population at the time; now that overnutrition is an increasingly serious global threat, it is this aspect of adequate food that deserves more attention.

### **The Right to Food**

The Right to Food itself is firmly established in international law. A key element in this regard is its inclusion in the *Universal Declaration of Human Rights* (UDHR):

#### Article 25

- 1) Everyone 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 necessary social services, 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.<sup>7</sup>

The UDHR establishes that food is considered one component of an adequate standard of living. As discussed below, the precise question of what constitutes adequacy is not explicitly answered, although under the UDHR it is directly linked to health and well-being. The issue of adequacy was in turn differentiated from the issue of freedom from hunger when the Right to Food was subsequently clarified and codified in the *International Covenant on Economic, Social and Cultural Rights* (ICESCR):

#### Article 11

- 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

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<sup>7</sup> *Universal Declaration of Human Rights*, GA Res. 217 (III) UN GAOR, 3d Sess., Supp. No.13, UN Doc. A/810 (1948).

- distribution of food by making full use of technical and scientific knowledge, by disseminating 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.<sup>8</sup>

There are currently 164 State Parties to the ICESCR.<sup>9</sup> Some commentators have gone so far as to argue that the Right to Food has become so entrenched in international law that it has become customary international law, binding upon even those States without relevant domestic laws or binding international commitments.<sup>10</sup> However, such entrenchment also implicates the precise normative content of the Right to Food; consequently, others have argued that even though there is today considerably more clarity around the scope of the right than at the time of its inclusion in the UDHR or ICESCR, only the most clearly defined facets of the right, such as “the right to be free from hunger” have achieved customary international law status.<sup>11</sup> As seen below, the historical context confirms the importance of nutrition in defining adequate food; in turn, the absence of overt acceptance of overnutrition within the context of the right seems to be primarily an artifact of it not being a particularly high profile human rights concern until recently.

### **The Early History of Food**

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<sup>8</sup> *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, Can. T.S. 1976 No. 46, 993 U.N.T.S. 3 (entered into force 3 January 1976).

<sup>9</sup> United Nations Office of the High Commission for Human Rights, *Status of Ratification tool*, online: <<http://indicators.ohchr.org>>.

<sup>10</sup> A.P. Kearns III, "The Right to Food Exists Via Customary International Law" (1998) 22 *Suffolk Transnat'l L.Rev* 223.

<sup>11</sup> S. Narula, "The right to food: holding global actors accountable under international law" (2006) 44 *Columbia J Transnat Law* 691.

In order to demonstrate what makes up the Right to Food, it is necessary to weave together a number of historical threads relating to humankind's relationship with food, as well as our scientific and legal understanding of that relationship. It is important to keep in mind, however, that food has always been linked to health and well-being.

Accessing adequate food has arguably been the greatest driver of human activity. Nomads once travelled to where foods were available, shifting their camps based on the seasons or following migrating prey; only as humans shifted from hunting and gathering to fixed agriculture did permanent settlements evolve. For a vast portion of this history, chronic hunger, punctuated with more drastic famine, has been the most pressing burden. In fact, this history of food scarcity has played a key biological role in overnutrition and related health concerns. Humans have evolved specifically to cope with times of shortage, whereas abundance is a novel achievement, particularly in evolutionary terms. We are wired to eat foods high in energy, such as fats and sugars, whenever they are available, and to store any excess energy for times of need. The idea of the “thrifty gene” that would process energy efficiently and convert any excess into fat, conveying an advantage throughout millennia when food was scarce but a liability in times of plenty, dates back over fifty years<sup>12</sup> although it too has evolved over time.<sup>13</sup> Indeed, we now know we are built in such a way that the two conditions can be directly related within a single individual; undernutrition in utero has been linked to predisposition towards obesity later in life.<sup>14</sup>

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<sup>12</sup> J.V. Neel, “Diabetes mellitus a 'thrifty' genotype rendered detrimental by 'progress'?” (1962) 14 *Am J Hum Genet* 352.

<sup>13</sup> J.R. Speakman, “Thrifty genes for obesity, an attractive but flawed idea, and an alternative perspective: the ‘drifty gene’ hypothesis” (2008) 32 *Int. J. Obesity* 1611.

<sup>14</sup> A.C. Ravelli *et al.*, “Obesity at the age of 50 y in men and women exposed to famine prenatally” (1999) 70 *Am J Clin Nutr* 811.

As societies developed, so too did rules to govern them. Food was central to legal relationships; for instance, a farmer might pay a percentage of his crop to the landowner in exchange for access to the land. As governments grew larger and more complex, questions of access to food remained important. In Imperial China, governments recognized the sometimes competing needs of traders and consumers, as well as unpredictable disasters that might affect the food supply; consequently “food price equalization and stabilization schemes as well as public grain policies have therefore been discussed and implemented with varying results in China for nearly 4000 years”.<sup>15</sup> Indeed, legitimacy of governments often rested heavily on their ability to manage food supplies effectively – as failure could lead to, among other concerns, violent insurrection. Such principles continue into the modern day; in 2008, for instance, the United Nations warned that food shortages and resulting protests threatened to destabilize governments.<sup>16</sup> For the vast majority of our ancestors, focused on getting enough food to survive, overnutrition was less a concern than a distant aspiration. Thus, while diseases of overnutrition were not unknown, they were also associated with wealth. Gout, a painful joint condition associated with a rich diet, was known as “the disease of kings”; only in the modern day has it become one of the common folk.<sup>17</sup>

Towards the end of the 18<sup>th</sup> Century, Thomas Malthus famously predicted that the exponential rate of population growth would inevitably outpace the linear rate of growth of food production.<sup>18</sup> Around the time Malthus was writing, however, globalization – in a

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<sup>15</sup> P. Spitz, “The right to food in historical perspective” (1985) 10 Food Pol. 307.

<sup>16</sup> D. Adam, “Food price rises threaten global security – UN” The Guardian (9 April 2008) online <<http://www.theguardian.com/environment/2008/apr/09/food.unitednations>>.

<sup>17</sup> M.E. Zychowicz, “Gout: no longer the disease of kings” (2011) 30 Orthopedic nursing 322.

<sup>18</sup> T.R. Malthus, *An Essay on the Principle of Population as It Affects the Future Improvement of Society, with Remarks on the Speculations of Mr. Godwin, M. Condorcet, and Other Writers* (J. Johnson: London, 1798).

harbinger of things to come – was drastically changing nutrition, at least in Europe. New World plants such as potatoes and maize produced far more food per acre than previous crops; leaders like Frederick the Great of Prussia and Nicholas I of Russia in turn promoted them as a cure for hunger.<sup>19</sup> Although these dietary shifts were not without wrinkles – the Irish potato famine aptly illustrated the risks of reliance on a single food source, even a nutritious one – they helped fuel Europe’s population boom, which would in turn propel urbanization and industrialization.

### **The Emerging Understanding of Nutrition**

By the end of the 18<sup>th</sup> Century, the British physician James Lind had provided some of the first experimental evidence of the links between specific foods and health by demonstrating the effectiveness of citrus fruits in warding off scurvy, leading in turn to policy changes in the Royal Navy.<sup>20</sup> It was the 19<sup>th</sup> century, however, which marked the beginning of a broader scientific/medical understanding of health and diet, as well as recognition of the relationship between an adequate diet and other social issues. As an example of the former, we have François Magendie’s experiments with dogs, which demonstrated animals could not survive on a single substance, such as sugar, for more than a short period of time; of the latter, Louis René Villermé was an early pioneer in highlighting differences in mortality between rich and poor, and in calling for reforms to protect the poor from the high price of food.<sup>21</sup> Over the next decades, scientists developed an understanding of the basic components of an adequate diet, including proteins,

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<sup>19</sup> W.L. Langer, "American Foods and Europe's Population Growth 1750-1850" (1975) 8 J Soc His 51.

<sup>20</sup> S.R. Bown, *Scurvy: How a Surgeon, a Mariner, and a Gentleman Solved the Greatest Medical Mystery of the Age of Sale* (Chichester: Summerdale Publishers, 2003).

<sup>21</sup> R.D. Semba, "Nutrition and Development: A Historical Perspective" in R. D. Semba & M. W. Bloem, eds., *Nutrition and Health: Nutrition and Health in Developing Countries*, 2nd ed. (Totowa: Humana Press, 2008) [hereinafter Semba, *Historical Perspective*].

carbohydrates, and fats. Such discoveries in turn drew more attention to issues of nutrition at the population level. For instance, the British establishment was shocked by the revelation – in a report by the bluntly named Inter-Departmental Committee on Physical Deterioration – that roughly half the men reporting for military service at the time of the Boer War were rejected on medical grounds, the majority attributed to malnutrition.<sup>22</sup> A modern parallel to the British experience can be seen a century later as the American armed forces now find obesity a barrier to finding appropriate recruits.<sup>23</sup>

By the early years of the 20<sup>th</sup> Century, it was clear that calories alone were insufficient for health and well-being. At the same time, laws also began to play a role in addressing food quality as part of a broader growth in public health understanding. For instance, in 1906, U.S. President Theodore Roosevelt signed into law both the *Pure Food and Drug Act*<sup>24</sup> and the *Federal Meat Inspection Act*.<sup>25</sup> Such laws were fueled in part by the popularity of works like journalist Upton Sinclair's *The Jungle*, which publicized horrendous conditions in the meat-packing industry.<sup>26</sup> Nutritional science advanced as well. By 1912, Casimir Funk had coined the term “vitamine” and suggested that conditions like beriberi, scurvy and pellagra were the result of specific nutritional deficiencies.<sup>27</sup> International recognition of the importance of this kind of work is demonstrated by the 1929 Nobel Prize for Medicine, jointly awarded to Christiaan

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<sup>22</sup> U.K., *Inter-Departmental Committee on Physical Deterioration. Report of the Inter-Departmental Committee on Physical Deterioration* (London: Wyman, 1904).

<sup>23</sup> J. Cawley & J.C. Maclean, “Unfit for Service: The Implications of Rising Obesity for U.S. Military Recruitment” (2010) (Nat’l Bureau of Econ. Research, Working Paper No. 16408).

<sup>24</sup> U.S., *Pure Food and Drug Act*, Ch. 3915, 34 Stat. 768 (1906).

<sup>25</sup> U.S., *Federal Meat Inspection Act*, Ch. 3913, 34 Stat. 674 (1906).

<sup>26</sup> U. Sinclair, *The Jungle* (Mineola, NY: Dover Publications, 2001).

<sup>27</sup> C. Funk, “The etiology of the deficiency diseases. Beri-beri, polyneuritis in birds, epidemic dropsy, scurvy, experimental scurvy in animals, infantile scurvy, ship beri-beri, pellagra” (1912) 20 J State Med 341.

Eijkman and Frederick Gowland Hopkins for their pioneering work on vitamins and related deficiencies.<sup>28</sup>

By the 1930s, vitamin D – synonymous with a spoonful of cod liver oil – was considered a key public health intervention.<sup>29</sup> Illustrating once more the links between nutrition, health and wealth, a 1932 UK parliamentary debate over the taxation of cod liver oil emphasized that an increase in price would “have a deleterious effect upon the health of the population, involving particularly the well-being of the children of the poorer classes”.<sup>30</sup> At the same time, there was also an understanding that excess weight could be unhealthy, even if overconsumption was viewed largely as a matter of personal choice. The well-known physician William Osler noted not only links between diet and conditions like diabetes, but also that obesity in children “is very often associated with careless habits in eating and lack of proper control on the part of parents.”<sup>31</sup> In 1928, as part of a lengthy public lecture on diet and nutrition, including upon the relatively recent concept of vitamins, the British physician George Newman noted that “strict and persistent moderation in diet tends to longevity, and excess tends to early mortality”.<sup>32</sup> With this in mind, and ever mindful of their profit margins, by the 1930s insurance companies in the United States were already using excess weight to determine risk.<sup>33</sup> It would still be some time, however, before others paid similar attention to quantifying the consequences of overconsumption.

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<sup>28</sup> "The Nobel Prize in Physiology or Medicine 1929". *Nobelprize.org*. Nobel Media AB 2014. Web. 16 Dec 2015 online: <[http://www.nobelprize.org/nobel\\_prizes/medicine/laureates/1929/](http://www.nobelprize.org/nobel_prizes/medicine/laureates/1929/)>.

<sup>29</sup> R.D. Semba, “Vitamin A as “anti-infective” therapy, 1920–1940” (1999) 129 *J Nutr* 783.

<sup>30</sup> “Parliamentary Intelligence: Ottawa and cod-liver oil” (1932) 2 *Lancet* 978.

<sup>31</sup> W. Osler & T. McRae, *The Principles & Practice of Medicine* 9<sup>th</sup> ed. (New York: D. Appleton & Co.; 1921) at 441.

<sup>32</sup> G. Newman, “The Hastings Popular Lecture on the Foundations of National Health” (1928) *Supp. BMJ* 93.

<sup>33</sup> B. Caballero, “The Global Epidemic of Obesity: An Overview” (2007) 29 *Epid Rev* 1.

## The League of Nations and Nutrition

Although not explicitly framed as a Right to Food, rules relating to adequate food also began to emerge in international law in the first half of the 20<sup>th</sup> Century. For instance, the *Convention Relative to the Treatment of Prisoners of War* of 1929 states that the “food ration of prisoners of war shall be equivalent in quantity and quality to that of the depot troops”.<sup>34</sup> In 1925, the League of Nations – precursor to the United Nations – initiated a study of public health standards for the manufacture and sale of food products; the following year, they began to turn their attention towards nutrition.<sup>35</sup> By the mid-1930s, a large-scale project was underway, seeking to establish nutrition standards that would allow for international comparisons.<sup>36</sup> In conducting this work, the Health Committee of the League of Nations focused upon three main sets of questions:

- 1) What are the nutritional needs of the human being? How can they be recognized? How can it be determined whether they are being satisfied?
- 2) What resources are available to meet nutritional requirements?
- 3) How best to utilise the resources available in order to meet these requirements?<sup>37</sup>

Many of the Committee’s findings around nutrition remain relevant today. So too does the conclusion that “the general problem of nutrition as it presents itself to-day is that of harmonising economic and public health development”<sup>38</sup> though now it carries with it further implications. In terms of substantive research, much of the Committee’s work focused upon establishing appropriate caloric intake. For instance, they determined a requirement of 2400 calories per day for an “adult, male or female, living an ordinary

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<sup>34</sup> *Convention relative to the Treatment of Prisoners of War*. Geneva, 27 July 1929 at Art 11.

<sup>35</sup> Technical Commission of the Health Committee of the League of Nations, *The Problem of Nutrition Volume II: Report on the Physiological Bases of Nutrition* (Geneva: League of Nations, 1936). Economic and Financial 1936.II.B.4 at 3 [hereinafter League of Nations].

<sup>36</sup> *Ibid.*, League of Nations at 4.

<sup>37</sup> *Ibid.*, League of Nations at 4.

<sup>38</sup> *Ibid.*, League of Nations at 5.

everyday life in a temperate climate and not engaged in manual work”.<sup>39</sup> For individuals engaged in manual labour, in four categories from “light” to “very hard” work, the Committee recommended an escalating series of increased caloric allowances.<sup>40</sup>

However, the question of other nutritional needs is also present throughout their work, with the Commission stating that it “recognises the fact that the deficiencies of modern diets are usually in the protective foods (foods rich in minerals and vitamins) rather than in more strictly energy-bearing foods (rich in calories)”.<sup>41</sup> Many of the comments they make would be recognizable to a nutritionist today:

Of energy-giving foods, unmilled cereals are not rich in protective nutrients and the more they are refined the less is their protective power. Many fats, especially when refined, possess little or no protective constituents. Refined sugar is of value only as a source of energy; it is entirely devoid of minerals and vitamins.<sup>42</sup>

Of particular resonance to modern policy makers is their comment that the “increasing habit in certain countries of large sugar consumption tends to lessen the amount of protective foods in the diet and is to be regarded with concern”.<sup>43</sup> It would, however, be many years before this issue became a priority once more.

### **The Right to Food, the UDHR, and the FAO Conference of 1943**

The *travaux préparatoires*<sup>44</sup> for the UDHR ultimately suggest that the drafters did not spend much time debating the precise details of what constituted adequate food. Indeed, although various drafts contained in the *travaux* contain alternate references to

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<sup>39</sup> *Ibid.*, League of Nations at 13.

<sup>40</sup> *Ibid.*, League of Nations at 13.

<sup>41</sup> *Ibid.*, League of Nations at 16.

<sup>42</sup> *Ibid.*, League of Nations at 17.

<sup>43</sup> *Ibid.*, League of Nations at 17.

<sup>44</sup> See W.A.Schabas, ed., *The Universal Declaration of Human Rights: The Travaux Préparatoires* (Cambridge: Cambridge University Press, 2013) [hereinafter *Travaux*].

“nutrition” and to “good food”<sup>45</sup>, there is no discussion as to the specific intent, if any, of these alternate wordings. Instead, the drafting process emphasizes the role of food as a component of a standard of living adequate for health and well-being; the most contentious debate around food is over whether it is implicit within such a standard, or needs to be explicitly listed.<sup>46</sup> Such an interpretation of food as a component of an adequate standard of living is in keeping with another document referred to directly in the UDHR drafting process, the 1944 *Declaration of Philadelphia* by the International Labour Organization (ILO), which highlights the need for “the provision of adequate nutrition, housing and facilities for recreation and culture”.<sup>47</sup>

At the same time, there are reasons to believe that the normative content of “adequate food” is not debated in part because this question had already been addressed elsewhere. Indeed, the most explicit reference to nutrition in the *travaux* comes in a lengthy commentary from the Panamanian delegation, who note that “[n]utrition policies have developed very rapidly since 1936”<sup>48</sup> – a likely nod to the work of the League of Nations – before pointing to references to nutrition within the Panamanian Constitution.

This contribution by the Panamanian delegation is also one source of direct reference to another collaborative international effort the drafters of the UDHR were almost certainly aware of in any case. This is the United Nations Conference on Food and Agriculture, an event that took place even before the UN itself was formally created. This 1943 Conference laid the foundations for the creation of the Food and Agriculture Organization of the United Nations (FAO). As will be seen, the FAO would play an

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<sup>45</sup> See e.g., June 4/1947 draft in *ibid.*, *Travaux* at 287.

<sup>46</sup> See particularly Summary Record of the Seventy-First Meeting, 14 June 1948 in *ibid.*, *Travaux* at 1871.

<sup>47</sup> International Labour Organization, *Declaration of Philadelphia* 26<sup>th</sup> Sess., (1944) Art III(i).

<sup>48</sup> See Delegation of Panama Submission, in *Travaux, supra*, at 29.

increasingly large role in defining the Right to Food. This is unsurprisingly; the inaugural director of the FAO was John Boyd Orr, known for his influential work linking income and diet in England in the 1930s, with a focus on chronic malnutrition.<sup>49</sup> A report he had published had drawn worldwide attention for its finding that only half the population of England had an adequate diet, while a sizeable proportion of the remainder received enough carbohydrates and fats but insufficient vitamins and minerals, and the poorest diets were inadequate in all respects.<sup>50</sup>

One very clear link between the Conference and the UDHR is the reference in the Conference proceedings to the goal of “freedom from want of food.”<sup>51</sup> This connects the Conference directly with its convener, U.S. President Franklin Roosevelt, who had originated the “freedom from want” concept in his 1941 State of the Union Address, better known as the “Four Freedoms” speech.<sup>52</sup> Roosevelt expanded upon this idea further in his 1944 State of the Union Address, in which he proposed a “second Bill of Rights” that would explicitly include the “right to earn enough to provide adequate food”<sup>53</sup> Today, the connection between insufficient incomes and inadequate nutrition – both overnutrition and undernutrition – is well established. After his death, it was his wife Eleanor Roosevelt who served as the first Chairman of the United Nations Commission on Human Rights, in which capacity she oversaw the drafting of the UDHR.

The remainder of the text emerging from the 1943 Conference goes considerably

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<sup>49</sup> J.B. Orr, *Food health and income: report on a survey of the adequacy of diet in relation to income* (London: Macmillan, 1936).

<sup>50</sup> Semba, *Historical Perspective*, *supra* note 19 at 19.

<sup>51</sup> “United Nations Conference on Food and Agriculture: Text of the Final Act” (1943) 37 Am. J. Int. Law 159 [hereinafter: Conference of 1943] at Art I.

<sup>52</sup> F.D. Roosevelt, “The Four Freedoms” (Speech delivered 6 January, 1941) online: <<http://americanrhetoric.com/speeches/fdrthefourfreedom.htm>>.

<sup>53</sup> F.D. Roosevelt, “The Economic Bill of Rights” (Speech delivered 11 January, 1944) online <[http://www.fdrlibrary.marist.edu/archives/address\\_text.html](http://www.fdrlibrary.marist.edu/archives/address_text.html)>.

further than the UDHR in examining the meaning of adequate food, a term it uses repeatedly. It differentiates between hunger and malnutrition, while explicitly accepting the premise that “the first cause of hunger and malnutrition is poverty”.<sup>54</sup> It considers specific nutrient deficiencies as well as more generalized malnutrition,<sup>55</sup> while acknowledging that simple prevention of malnutrition may fall short of promoting health and well-being.<sup>56</sup> It also highlights the need for dietary standards based on scientific evidence.<sup>57</sup> Consequently, although the drafting procedure of the UDHR itself does not give much insight into the precise character of the Right to Food, it is clear the drafters were operating within an environment where the understanding of adequate food at the international level had an explicit nutritional component going beyond simply a minimal caloric intake.

### **Food and the Geneva Conventions**

Before moving to the expansion and codification of the Right to Food in the ICESCR, it is worth examining another high level conversation around food’s place in the international legal framework occurring at much the same time as the drafting of the UDHR. This conversation occurred within the framework of another key post-war expansion of international law, the updated Geneva Conventions. The Geneva Conventions are important in the context of the Right to Food as a whole, particularly in the lengths they go to in order to create a positive obligation upon an occupying power to “bring in the necessary foodstuffs... if the resources of the occupied territory are

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<sup>54</sup> *Supra*, note 43, Conference of 1943 at Art XXIV.

<sup>55</sup> *Ibid.*, Conference of 1943 at Art V.

<sup>56</sup> *Ibid.*, Conference of 1943 at Art VI.

<sup>57</sup> *Ibid.*, Conference of 1943 at Art IX.

inadequate”.<sup>58</sup> Food’s inclusion in the Conventions also underscores its importance, given that, as Narula notes, even the Right to Life is looked at differently in wartime under certain conditions.<sup>59</sup>

Furthermore, the Geneva Conventions also provide more direct guidance regarding the definition of adequate food. In terms of quantifying that right, most crucial is the first paragraph of Article 89 of the *Convention (IV) relative to the Protection of Civilian Persons in Time of War*: “Daily food rations for internees shall be sufficient in quantity, quality and variety to keep internees in a good state of health and prevent the development of nutritional deficiencies. Account shall also be taken of the customary diet of the internees.”<sup>60</sup> Similarly, the fourth paragraph specifies that “Expectant and nursing mothers and children under fifteen years of age, shall be given additional food, in proportion to their physiological needs.”<sup>61</sup>

The 1958 commentary by the International Committee of the Red Cross on the drafting of this Article demonstrates that, in contrast to the UDHR, “Government Experts who met in 1947 at the instance of the International Committee of the Red Cross gave detailed consideration to the provision of food for prisoners of war and civilian internees.”<sup>62</sup> The commentary notes that reference to “the calorific value of the food” was considered, but ultimately rejected because of difficulties in fixing a value suitable for all possible conditions, opting instead for a general wording that left the detaining power some leeway, provided that the health of internees was regularly checked, and that

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<sup>58</sup> *Convention (IV) relative to the Protection of Civilian Persons in Time of War*. Geneva, 12 August 1949 [hereinafter *Convention (IV)*] at Art. 55.

<sup>59</sup> Narula, *supra* note 10 at 765.

<sup>60</sup> *Ibid.*, *Convention (IV)* at Art. 89.

<sup>61</sup> *Ibid.*, *Convention (IV)* at Art. 89.

<sup>62</sup> O.Uhler & H. Coursier, *Commentary on the Geneva Conventions of 12 August 1949* Vol.IV (International Committee of the Red Cross: Geneva, 1958) at 392.

the ration was determined by the actual needs of the detainees.<sup>63</sup> Even though the Geneva Conventions apply only in particular circumstances, the emphasis placed upon nutrition, particularly in the context of a positive obligation of the State to provide adequate food, highlights international understanding of this issue at the time the UDHR was crafted.

### **The Right to Food and the ICESCR**

The next step in the development of the Right to Food is its codification in the ICESCR. This was a lengthy process, lasting from the early 1950s until the final product was presented in 1966. As with the UDHR, food is once again part of a package necessary for an adequate standard of living, and once again it was debated whether the contents of that package were implicit before deciding they should be specifically listed.<sup>64</sup> In this case, discussions in the *travaux* demonstrate that it was ultimately decided food and clothing should be listed before housing, on the reasoning that the need for food and clothing came first in countries with a rural economy, particularly less developed nations.<sup>65</sup> In addition to appearing in the broader context of an adequate standard of living, the word “adequate” was also repeated before the word food to indicate that components such as food and clothing needed to be maintained at a certain level.<sup>66</sup>

Overshadowing the codification of adequate food was the detailing of another component of the Right to Food: The right to be free from hunger. This was a late addition. For unclear reasons, the FAO did not participate in initial stages of the drafting

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<sup>63</sup> *Ibid.*, Uhler at 392.

<sup>64</sup> P. Alston, “International Law and the Human Right to Food” in P. Alston & K. Tomasevki, eds., *The Right to Food* (Utrecht: Martinus Nijhoff Publishers; 1984) 9 at 30.

<sup>65</sup> M.C.R. Craven, *The International Covenant on Economic, Social and Cultural Rights – A Perspective on its Development* (Oxford: Clarendon Press, 1995) 290 at 291.

<sup>66</sup> *Ibid.*, Craven at 291.

process.<sup>67</sup> However, in 1960, the FAO initiated its own Freedom from Hunger Campaign. As part of this campaign, the Director-General of the FAO suggested in 1963 that the reference to adequate food within the context of an adequate standard of living was too general and that hunger needed to be addressed directly, putting forward a draft text to this effect.<sup>68</sup> Some confusion has arisen from the precise wording of Article 11(2), particularly given that the “fundamental right of everyone to be free from hunger” is the only right in either the ICESCR or the *International Covenant on Civil and Political Rights* (ICCPR) to be referred to as “fundamental.” Nonetheless, Craven indicates that there is nothing in the *travaux* to suggest it be afforded any particular pre-eminence. He concludes that “[in] the absence of explanation, it is to be assumed that the drafters did not intend to invest in the word ‘fundamental’ any particular legal significance”.<sup>69</sup>

### **World Hunger & Nutrition**

Hunger would nonetheless dominate discussion around the Right to Food for the next few decades. During this time, hunger frequently appears to be the primary, if not only, focus of the right. This is readily apparent in high profile events such as the first World Food Conference in 1974. This Conference, set against the backdrop of the famine in Bangladesh, led to the *Universal Declaration on the Eradication of Hunger and Malnutrition*. Given the context, it seems that statements in that Declaration like “Every man, woman and child has the inalienable right to be free from hunger and malnutrition in order to develop fully and maintain their physical and mental faculties”<sup>70</sup> are written

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<sup>67</sup> Alston, *supra* note 60 at 30.

<sup>68</sup> Craven, *supra* note 61 at 291.

<sup>69</sup> *Ibid.*, Craven at 291.

<sup>70</sup> *Universal Declaration on the Eradication of Hunger and Malnutrition* Adopted on 16 November 1974 by the World Food Conference convened under General Assembly resolution 3180 (XXVIII) of 17 December 1973; and endorsed by General Assembly resolution 3348 (XXIX) of 17 December 1974 Art 1.

with undernutrition, not overnutrition, in mind. At the same time, hunger and malnutrition remain separate considerations, and concerns about developing and maintaining physical and mental faculties could just as easily apply to overnutrition.

As the focus on hunger suggests, overnutrition was not a high-profile issue at the time, even as its prevalence began to increase in some parts of the world. For instance, in the United Kingdom, wartime rationing continued for a number of years post-war, only for rations to lift at the same time purchasing power increased, a perfect recipe for indulgent consumption.<sup>71</sup> By 1968, one commentator expressed amazement that “obesity is hardly ever mentioned in the writings of sociologists, and not at all in the literature on social deviance” given the author’s own observations of its appearance in the popular media.<sup>72</sup> While such discussions might have existed in the media, however, they did not make it to the international policy table.

Nonetheless, even as law and human rights focused on hunger, crucial developments in nutrition and public health were taking shape. In 1971, Abdel Omran proposed his model of the epidemiological transition, in which societies move from a burden of infectious disease to one of chronic non-communicable disease.<sup>73</sup> This model explicitly acknowledges the lifestyle diseases associated with overnutrition, occurring far along the transition. Other changes in scientific understanding led to shifts in long-held policy around nutrition in the context of undernutrition. For instance, by the early 1970s, it became apparent that kwashiorkor – a condition caused by severe dietary deprivation

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<sup>71</sup> M. Kirby, “Too Much of a Good Thing? Society, Affluence and Obesity in Britain, 1940-1970” (2012) 18 *eSharp* 44.

<sup>72</sup> W.J.Cahnman, “The Stigma of Obesity” (1968) 9 *J. Sociological Q.*, at 283.

<sup>73</sup> A. Omran, “The epidemiological transition: A theory of the epidemiology of population change” (1971) 83:4 *Milbank Q* 731.

first described in 1935<sup>74</sup> – was not caused solely by a lack of protein as had been thought; longstanding efforts focusing on “closing the protein gap” were roundly criticized as not grounded in evidence.<sup>75</sup>

Finally, by the late 1970s, nutrition reappeared prominently on the international human rights agenda. In 1979, the *Convention on the Elimination of All Forms of Discrimination Against Women* (CEDAW) was adopted; it contains an obligation for States to ensure “adequate nutrition during pregnancy and lactation”.<sup>76</sup> This was followed by the WHO’s *International Code of Marketing of Breast-milk Substitutes* in 1981, which also focuses on appropriate nutrition rather than simply hunger.<sup>77</sup> Although the Code itself is non-binding, over 100 countries have implemented at least some of its provisions in domestic law.<sup>78</sup> Today, further highlighting how undernutrition and overnutrition are different manifestations of the same issue of malnutrition, there is evidence that breastfeeding decreases the chance of obesity.<sup>79</sup> It was also around this same time – though its significance has only been recognized in retrospect – that obesity in the United States began to increase dramatically.<sup>80</sup>

### **Early Steps in Clarifying the Right to Food**

In 1984, the same year the high-profile charity single “Do They Know it’s Christmas?” reminded listeners to “feed the world”, there were not one but two high

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<sup>74</sup> C. Williams, "Kwashiorkor" (1935) 226 *Lancet* 1151.

<sup>75</sup> D.S. McLaren, “The great protein fiasco” (1974) 2 *Lancet* 93.

<sup>76</sup> *Convention on the Elimination of All Forms of Discrimination against Women*, 18 December 1979, 1249 UNTS 193 [at Art. 12(2)].

<sup>77</sup> World Health Organization, *International Code of Marketing of Breast-milk Substitutes* (Geneva: WHO, 1981).

<sup>78</sup> UNICEF, “National Implementation of the International Code of Marketing of Breastmilk Substitutes” (2011) online: <[http://www.unicef.org/nutrition/files/State\\_of\\_the\\_Code\\_by\\_Country\\_April2011.pdf](http://www.unicef.org/nutrition/files/State_of_the_Code_by_Country_April2011.pdf)>.

<sup>79</sup> J. Yang *et al.*, “The association between breastfeeding and childhood obesity: a meta-analysis” (2014) 14 *BMC Pub. Health* 1267.

<sup>80</sup> P.T. von Hippel & R.W. Nahhas, "Extending the History of Child Obesity in the United States: The Fels Longitudinal Study, Birth Years 1930-1993" (2013) 21 *Obesity* 2153.

profile international attempts to conduct a thorough examination of the Right to Food, each resulting in a volume of scholarly analysis. The first was led by Asbjorn Eide, who was also in the midst of compiling the first UN report on the Right to Food.<sup>81</sup> The other was put together by Philip Alston and Katarina Tomasevski. Alston sums up the state of knowledge on the Right to Food at the time as follows:

It is paradoxical, but hardly surprisingly, that the right to food has been endorsed more often and with greater unanimity and urgency than most other human rights, while at the same time being violated more comprehensively and systematically than probably any other right. What is perhaps more surprising is that the widespread violation of the right to food in practice has been accompanied and even facilitated by the almost total neglect, for all practical intents and purposes, of its theoretical, normative and institutional aspects.<sup>82</sup>

While both the Eide and Alston works provide considerable insight into the Right to Food, and are invaluable resources in exploring other aspects of the Right, neither ever tackles the issue of overnutrition. Nonetheless, neither ever explicitly excludes it from the ambit of the Right to Food either. A similar evaluation can be made of the first official UN Report on the Right to Food, which emerged in 1987 after four years of work by Eide.<sup>83</sup> In this particular case, the omission of overnutrition would become all the more obvious in light of Eide's follow-up report a decade later. Despite this omission, however, Eide's report makes a vital contribution to the field of international human rights as a whole, as this report was the first to employ the respect/protect/fulfill framework. This framework has subsequently been widely adopted in the analysis of government human rights obligations.

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<sup>81</sup> A. Eide *et al.*, eds., *The right to food as a human right* (Tokyo: UNU Press, 1984).

<sup>82</sup> Alston, *supra* note 60 at 9.

<sup>83</sup> A. Eide, (1987). *The Right to Adequate Food as a Human Right*. Report to the UN Sub-Commission for the Prevention of Discrimination and Protection of Minorities. Study Series in Human Rights, No. 1. UN, Geneva and New York.

In the specific context of food, it can be described as follows. The Duty to Respect is one of non-interference; it requires States to refrain from measures that would interfere negatively with existing access to adequate food. The Duty to Protect requires States to ensure that third parties do not deprive individuals of their access. In turn, the Duty to Fulfill is a positive obligation that requires States to progressively take measures to allow individuals to realize their right to food. This framework would be further elaborated upon in CESCR General Comment 12 on the Right to Food a decade later.

### **Post-Cold War Shifts**

The end of the Cold War marked a dramatic shift in the geopolitical landscape. It also led to changes in development aid and humanitarianism, opening the door to multilateral collaboration and allowing human rights to become a primary consideration in food aid.<sup>84</sup> More broadly, growing democratization led to increased action by both governments and individual citizens in pursuit of rights like the Right to Food.<sup>85</sup> It was in the midst of this period of transition that the *Convention on the Rights of the Child* (CRC) entered into force in 1990.<sup>86</sup> It highlights nutrition through creating State obligations “to combat disease and malnutrition...through the provision of adequate nutritious foods”<sup>87</sup> as well as to provide education<sup>88</sup> and any necessary state assistance “particularly with regard to nutrition”.<sup>89</sup>

At the same time, even as it was acknowledged that obesity was rising in the US and Europe, it was “heresy to talk about an impending pandemic of obesity across the

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<sup>84</sup> T.J. Marchione, "The right to food in the post-Cold War era" (1996) 21 Food Pol. 83.

<sup>85</sup> L. Haddad & A. Oshaug, "How does the human rights perspective help to shape the food and nutrition policy research agenda?" (1998) 23 Food Pol. 329.

<sup>86</sup> Convention on the Rights of the Child, 20 November 1989, 1577 UNTS 3[hereinafter *CRC*].

<sup>87</sup> *Ibid.*, *CRC* at Art. 24(2)(c).

<sup>88</sup> *Ibid.*, *CRC* at Art. 24(2)(e).

<sup>89</sup> *Ibid.*, *CRC* at Art. 27(3).

globe”.<sup>90</sup> In a rare examination of the issue, a 1989 review of scientific research conducted prior to that time suggested overnutrition and related conditions in the developing world would be a problem concentrated in the economic elite.<sup>91</sup> Even in wealthy countries where changes were being observed throughout the population, rising levels of overnutrition were not treated as a human rights issue. In Craven’s examination of Human Rights Committee country reviews from the same period, he notes that “beyond the requirement that States disseminate knowledge of the principles of nutrition, the Committee has not developed an understanding of the manner in which the right to food applies to wealthy States with well-developed social security systems”.<sup>92</sup> However, that knowledge dissemination requirement, arising under ICESCR 11(2)(a), was itself acted upon, with Craven noting that “Members of the Committee have taken up such educational questions particularly with regard to developed countries, where problems often relate to overconsumption”.<sup>93</sup> This focus on education where overconsumption (leading to overnutrition) was being recognized suggests a prevailing approach that placed emphasis on personal responsibility rather than state failure. Nonetheless, it is notable that “problems” related to overconsumption were being noted in a human rights context.

Furthermore, it is clear that the notion of linking overnutrition and undernutrition as related concerns existed in international policy, even if the link was under-recognized, particularly in the human rights context. For instance, in 1992, a joint FAO/WHO

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<sup>90</sup> B.M. Popkin, L.S. Adair, & S.W. Ng, "Now and Then: The Global Nutrition Transition: The Pandemic of Obesity in Developing Countries" (2012) 70 *Nutr Rev.* 3 [hereinafter Popkin, *Now and Then*] at 3.

<sup>91</sup> J. Sobal & A.J. Stunkard, “Socioeconomic status and obesity: a review of the literature” (1989) 105 *Psych Bull* 260.

<sup>92</sup> Craven, *supra* note 61 at 313.

<sup>93</sup> *Ibid.*, Craven at 321.

conference summary document recognized that “[n]utritional problems broadly fall into two categories: those due to insufficient intake relative to needs and infections, and those due to an excessive or unbalanced intake of food or particular dietary components”.<sup>94</sup> In 1993, Barry Popkin made a crucial contribution to the study of nutrition and public health when he built upon the foundations of Omran’s epidemiological transition to propose the nutrition transition.<sup>95</sup> In this model, as populations undergo the nutrition transition they move from traditional diets high in fibre and staple grains towards one higher in animal-sourced products like meat, and, increasingly, processed foods high in salt, fats and sugar. This shift in many populations around the world towards a diet resembling a wealthy Western country, one high in processed foods and sweetened beverages, would become known, somewhat irreverently, as “Coca-colonization”.<sup>96</sup> In turn, the nutrition transition remains intimately linked to the epidemiological transition in terms of the chronic diseases related to overnutrition.

Nonetheless, the next high profile international gathering on food, the World Food Summit of 1996, did not tackle overconsumption. That said, the *Rome Declaration on World Food Security* that emerged from the Summit did spur further clarification of the normative content of the Right to Food:

**Objective 7.4:**

To clarify the content of the right to adequate food and the fundamental right of everyone to be free from hunger, as stated in the International Covenant on Economic, Social and Cultural Rights and other relevant international and regional instruments, and to give particular attention to

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<sup>94</sup> Food and Agriculture Organization of the United Nations/World Health Organization, International Conference on Nutrition - Major issues for nutrition strategies. (1992) PREPCOM/ICN/92/INF/5 at 17.

<sup>95</sup> B.M. Popkin, "Nutritional Patterns and Transitions" (1993) 19:1 Popul Dev Rev 138.

<sup>96</sup> T. Leatherman & A. Goodman, "Coca-colonization of diets in the Yucatan". (2005) 61 Soc Sci & Med 833.

implementation and full and progressive realization of this right as a means of achieving food security for all.<sup>97</sup>

This call led directly to the most detailed examination of the Right to Food within the UN system – albeit one from which overconsumption was still strangely absent.

### **CESCR General Comment on the Right to Food**

In General Comment 12, the Committee on Economic, Social and Cultural Rights outlines the normative content of the Right to Food under ICESCR Article 11 as follows:

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, proteins and other specific nutrients. 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 as provided for in paragraph 2 of article 11, even in times of natural or other disasters.<sup>98</sup>

Having highlighted the need for a broad definition that does not stop with a “minimum package”, the CESCR also directly broaches the question of defining “adequacy”, reaching the following conclusion:

The Committee considers that the core content of the right to adequate food implies:

The availability of food in a quantity and quality sufficient to satisfy the dietary needs of individuals, free from adverse substances, and acceptable within a given culture;

The accessibility of such food in ways that are sustainable and that do not interfere with the enjoyment of other human rights.<sup>99</sup>

Given the state of knowledge at the time, at least in the field of public health, it is a

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<sup>97</sup> Food and Agriculture Organization of the United Nations, *Rome Declaration on World Food Security* (1996) World Food Summit, 13-17 of November 1996, Rome, Italy.

<sup>98</sup> Committee on Economic, Social & Cultural Rights, General Comment No. 12: The Right to Adequate Food (Art. 11) Adopted at the Twentieth Session of the Committee on Economic, Social and Cultural Rights, on 12 May 1999 (Contained in Document E/C.12/1999/5) [hereinafter CESCR General Comment] at para.6.

<sup>99</sup> *Ibid.*, CESCR General Comment at para.8.

little bit strange that overconsumption and resulting chronic diseases are not addressed in what remains the most comprehensive assessment of the Right to Food. At the same time, nothing in General Comment 12 explicitly precludes applicability of the comment to overnutrition. Indeed, perhaps even more so than with previous commentaries, the applicability to overnutrition seems rather obvious. Consider the guidance provided on the concept of dietary needs:

*Dietary needs* implies that the diet as a whole contains a mix of nutrients for physical and mental growth, development and maintenance, and physical activity that are in compliance with human physiological needs at all stages throughout the life cycle and according to gender and occupation. Measures may therefore need to be taken to maintain, adapt or strengthen dietary diversity and appropriate consumption and feeding patterns, including breastfeeding, while ensuring that changes in availability and access to food supply as a minimum do not negatively affect dietary composition and intake.<sup>100</sup>

Interestingly, despite its failure to directly address overnutrition, General Comment 12 was followed almost immediately by a report that does explicitly raise the topic. This Updated Report was submitted by Asbjorn Eide, author of the original 1987 report on the Right to Food. According to Eide:

This final report highlights some of the most significant major new concerns and ways of understanding the causes of malnutrition as they have emerged since my study was submitted in 1987. Scientific evidence and practical experience over the last decade have converged on a much more integrated picture than we were able to draw in 1987. Only by understanding the nature and complexity of the problems stemming from the non-fulfillment of the right to adequate food, can we interpret this right more fully and identify the corresponding national and international obligations of States.<sup>101</sup>

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<sup>100</sup> *Ibid.*, CESCR General Comment at para.9.

<sup>101</sup> A.Eide, The right to adequate food and to be free from hunger. Updated study on the right to food, submitted by Mr. Asbjorn Eide in accordance with Sub-Commission decision 1998/106 E/CN.4/Sub.2/1999/12 [hereinafter Eide *Update*] at para 16.

Unsurprisingly, some of these “major new concerns” and the “much more integrated picture” that results relate directly to overnutrition. It is clear from Eide’s account that these truly had not been considerations in his prior work:

Findings and theories put forward during the present decade suggest that foetal and young-infant malnutrition may in fact "programme" an individual for susceptibility to nutrition-related chronic diseases in later life, such as heart diseases, obesity and diabetes. It is ironic that these diseases, which were thought to be caused by "over-eating" in the industrialized world, are now sweeping the poor world with unprecedented speed. They imply disability, disease and death much earlier than expected for people who survived the critical years of childhood in poor societies. Furthermore, the risk factors which add to the biological programming effects are themselves frequently related to poverty, for example, certain fat and sugary foods are known to produce "cheap energy".<sup>102</sup>

Similarly, it is also worth noting that in Eide’s account, the term “overnutrition” merits quotation marks, whereas the term undernutrition does not, suggesting the novelty of the term itself, at least to him:

It is also clear from what has been said about the life-cycle approach that the picture we used to have of hunger, malnutrition and ill-health being caused by inadequate food intake - undernutrition in developing countries and "overnutrition" in the rich countries - has changed, and dramatically so. We find all the major nutrition-related diseases in most countries, and spread among social classes at that. This has led to the expression "the double burden of disease" to describe what poor societies now are experiencing. The typical diseases found in developing societies - above all infectious diseases which in combination with undernutrition lead to high mortality, especially among children - continue to take their toll and drain poor health budgets; in addition, the new diseases add to the drain in terms of early disability or loss of breadwinners.<sup>103</sup>

Particularly given the significance of the author and his historical connection to the normative content of the Right to Food, it is clear that Eide’s report goes a considerable ways towards explicitly bringing overnutrition into the fold. At the same time, as shown

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<sup>102</sup> *Ibid.*, Eide *Update* at para 21.

<sup>103</sup> *Ibid.*, Eide *Update* at para 27.

in the earlier excerpt, Eide displays a certain uneasiness grappling with “overeating” in the “industrialized world” alongside “disability, disease and death much earlier than expected” in “the poor world”, despite the fact overnutrition is the factor unifying them. Perhaps this reflects discomfort around his initial omission of these factors, or maybe the speed with which the issue of overnutrition had emerged as a global one. Nonetheless, at the turn of the new millennium, this remained the closest anyone had come to explicitly linking these issues in a human rights context.

### **The Right to Food in the New Millennium**

The new millennium began with the appointment of Jean Ziegler as the first Special Rapporteur on the Right to Food. Over his eight-year tenure, Zeigler submitted seven reports to the Human Rights Council, and a further eight to the UN General Assembly. None of these reports address overnutrition or overconsumption; only in his final report to the General Assembly is obesity touched upon, in a single paragraph where he notes that:

He is particularly concerned about corporate marketing practices and corporate lobbying that are contributing directly both to forms of malnutrition and forms of obesity. He believes that Governments and civil society should make all possible efforts to counteract industry lobbying, which has increasingly become stronger in those forums where standards aimed at contributing to the protection of the right to food are discussed and adopted.<sup>104</sup>

In 2002, an oddly named follow-up meeting, the World Food Summit: five years later (WFS:fyl) was held. Overall, its outcomes suggested little had changed since the 1996 Summit, at least in terms of recognizing overnutrition. However, much as the

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<sup>104</sup> J. Zeigler, Report of the Special Rapporteur on the right to food Aug 22 2007 A/62/289 at 5.

previous summit had sparked CESCRC Comment 12, the resulting Declaration initiated the request for the FAO to develop voluntary guidelines on the Right to Food.<sup>105</sup>

Before turning to those guidelines, it is worth examining other perspectives on overnutrition emerging at the international level around the same time. In this regard, the World Health Organization's 2002 report *Reducing Risks, Promoting Healthy Life* is probably the closest thing to a turning point that can be identified at the highest levels of international health policy. This shift in thinking is highlighted in the introductory message from WHO Director General Gro Harlem Brundtland. She describes how "one of the largest research projects WHO has ever undertaken" has provided "an intriguing – and alarming – insight into current causes of disease and death and the factors underlying them".<sup>106</sup> She continues:

The rapidly growing epidemic of noncommunicable diseases, already responsible for some 60% of world deaths, is clearly related to changes in global dietary patterns and increased consumption of industrially processed fatty, salty and sugary foods. In the slums of today's megacities, we are seeing noncommunicable diseases caused by unhealthy diets and habits, side by side with undernutrition.<sup>107</sup>

This report goes on to highlight the emerging burden of overconsumption, resulting overnutrition, and related diseases on a massive scale. Although the report is a call to action, it is interesting to note it does not directly invoke human rights.

In terms of prompt responses to that call to action, it is unfortunate that the strongest WHO document – a collaboration with the FAO released the same year entitled the *Joint WHO/FAO Expert Consultation on Diet, Nutrition and the Prevention of Chronic Diseases* – is prefaced with the disclaimer that "[t]his report contains the

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<sup>105</sup> Declaration of the World Food Summit: five years later (Rome: FAO, 2002), Art 10.

<sup>106</sup> World Health Organization, *Reducing Risks, Promoting Healthy Life* (Geneva: WHO, 2002) [hereinafter *Reducing Risks*] at 3.

<sup>107</sup> *Ibid.*, *Reducing Risks* at 4.

collective views of an international group of experts and does not necessarily represent the decisions or the stated policy of the World Health Organization or of the Food and Agriculture Organization of the United Nations”.<sup>108</sup> When official documents guiding the responses of both organizations emerged, neither would be so bold. For its part, the Joint Consultation states:

Governments throughout the world have developed strategies to eradicate malnutrition, a term traditionally used synonymously with undernutrition. However, the growing problems of nutritional imbalance, overweight and obesity, together with their implications for the development of diabetes, cardiovascular problems and other diet-related noncommunicable diseases, are now at least as pressing. This applies especially to developing countries undergoing the nutrition transition; such countries bear a double burden of both overnutrition, as well as undernutrition and infectious diseases.<sup>109</sup>

A few pages later, it brings the Right to Food into the conversation:

[T]he issue of nutrient-dense foods versus energy-dense/nutrient-poor foods is critical as it concerns the balance between providing essential nourishment and maintaining a healthy weight. The quality of the fat and carbohydrate supplied also plays a key role. The following are all important: increasing access --- especially of low-income communities --- to a supply of nutrient-dense fresh foods; regulations that support this; facilitating access to high-quality diets through food pricing policies; nutrition labels to inform consumers, in particular about the appropriate use of health/nutrition claims. The provision of safe and nutritious food is now recognized not only as a human need but also as a basic right.<sup>110</sup>

This approach is considerably more ambitious than the one on display in the subsequent *WHO Global Strategy on Diet, Physical Activity and Health* in 2004.<sup>111</sup> This Global Strategy, while non-binding, remains probably the highest profile global policy response to overnutrition. No human rights, let alone the Right to Food, are explicitly

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<sup>108</sup> World Health Organization & Food and Agriculture Organization of the United Nations, *Joint WHO/FAO Expert Consultation on Diet, Nutrition and the Prevention of Chronic Diseases* WHO technical report series 916 (Geneva: WHO, 2002) [hereinafter *Joint Expert Consultation*] at coveragepage.

<sup>109</sup> *Ibid.*, *Joint Expert Consultation* at 136.

<sup>110</sup> *Ibid.*, *Joint Expert Consultation* at 139.

<sup>111</sup> World Health Organization, *Global strategy on Diet, Physical Activity and Health*. (2004) Resolution WHA57.17 [hereinafter *Global Strategy*].

considered in the Strategy. At the same time, the Strategy does reconcile the concepts of undernutrition and overnutrition, making reference to “all aspects of nutrition (for example, both overnutrition and undernutrition, micronutrient deficiency and excess consumption of certain nutrients)”,<sup>112</sup> while indicating that overnutrition and undernutrition both reflect unbalanced diets.<sup>113</sup> Thus, the underlying idea that overnutrition and undernutrition both reflect aspects of adequate nutrition became the official interpretation adopted at the highest level of health policy in the international system.

The FAO *Voluntary Guidelines to support the progressive realization of the right to adequate food in the context of national food security* similarly fall short of what might have been. Nonetheless, these Guidelines, also released in 2004, still marked an advance for the Right to Food. As noted in the forward by the Director-General of the FAO, the Voluntary Guidelines “represent a step towards integrating human rights into the work of agencies dealing with food.”<sup>114</sup> Important too is the fact they “represent the first attempt by governments to interpret an economic, social and cultural right and to recommend actions to be undertaken for its realization”; following negotiations between civil society and governments, the Voluntary Guidelines were adopted unanimously by all FAO member states.<sup>115</sup>

In a follow-up analysis of the Voluntary Guidelines a decade later, Lambek argues that they have been crucial in establishing a functioning framework for the Right

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<sup>112</sup> *Ibid.* *Global Strategy* at Principle 27.

<sup>113</sup> *Ibid.* *Global Strategy* at Principle 39.

<sup>114</sup> Food and Agriculture Organization of the United Nations, *Voluntary Guidelines to support the progressive realization of the right to adequate food in the context of national food security* (Rome: FAO, 2005) [hereinafter *Voluntary Guidelines*] at iii.

<sup>115</sup> *Ibid.*, *Voluntary Guidelines* at IV.

to Food: “The unanimous adoption of the Guidelines, as well as the fact that their language was negotiated directly by governments, has been key both to their legitimacy and as an important step in the paradigm shift”.<sup>116</sup> These views are echoed by Mowbray: “Although the Guidelines do not establish legally binding obligations, they are nonetheless authoritative, as an expression of the intentions of the 187 member states of the FAO.”<sup>117</sup>

Both scholars focus on other aspects of the Right to Food, but these observations must by extension carry over to the smaller-scale advance for explicit recognition of overnutrition within the Voluntary Guidelines, with the suggestion that “States are encouraged to take steps, in particular through education, information and labelling regulations, to prevent overconsumption and unbalanced diets that may lead to malnutrition, obesity and degenerative diseases.”<sup>118</sup> Although this guideline reflects a continuing bias towards prioritizing education over other systemic concerns in the response to overnutrition, and despite the fact it is a single reference in a considerably longer document, it does both explicitly place obesity and overconsumption within the context of malnutrition, and suggest a State response. Consequently, while greatly underemphasized in comparison to its practical impact on health and well-being, overnutrition was finally placed explicitly within a Right to Food framework at a high level of international policy. In other words, the stage was set; it would take the de Schutter report to shine a spotlight on the issue.

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<sup>116</sup> N.Lambek, “10 years of the right to adequate food guidelines: Progress, obstacles and the way ahead.” (2014) online: <[http://www.fian.org/fileadmin/media/publications/10yearGuidelines\\_CivilSociety\\_SynthesisPaper\\_en\\_01.pdf](http://www.fian.org/fileadmin/media/publications/10yearGuidelines_CivilSociety_SynthesisPaper_en_01.pdf)>.

<sup>117</sup> J. Mowbray, “The Right to Food and the International Economic System: An Assessment of the Rights Based Approach to the Problem of World Hunger” (2007) 20 *Leiden J. Int. Law* 545 at 552.

<sup>118</sup> *Voluntary Guidelines supra* note 109 at Guideline 10.2.

## Olivier de Schutter

Oliver de Schutter succeeded Zeigler as Special Rapporteur on the Right to Food in 2008. The landmark importance of his 2011 report was outlined at the outset of this paper. At the same time, it is also evident that this report was not the sole driver of these changes; for instance, a 2010 fact sheet on the Right to Adequate Food published by the Office of the High Commissioner on Human Rights already notes “Food that is energy-dense and low-nutrient, which can contribute to obesity and other illnesses, could be another example of inadequate food”.<sup>119</sup>

Indeed, the 2011 Report does not appear out of the blue. Obesity is mentioned briefly in the report on his 2009 mission to Brazil.<sup>120</sup> However, it only becomes a key focus of his reports on Mexico<sup>121</sup> and South Africa<sup>122</sup>, both of which are middle-income rather than wealthy countries, and both of which were visited in the summer of 2011. He cites his experiences there as examples of observing the nutrition transition in action.<sup>123</sup> Indeed, he could hardly have picked better countries in which to do so. Mexico’s transition is among the best studied; between 1990 and 2010, it experienced one of the largest increases in obesity, diabetes, and related diseases in the world.<sup>124</sup> South Africa, a country with an explicit constitutional right to “sufficient” food, is also facing an increasing double burden of undernutrition and overnutrition; despite having one of the

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<sup>119</sup> Office of the United Nations High Commissioner for Human Rights, Fact Sheet No.34 The Right to Adequate Food. (United Nations: Geneva, 2010) at 3.

<sup>120</sup> O. de Schutter, *Report ‘Mission to Brazil’* [A/HRC/13/33/Add.6], March 2010

<sup>121</sup> O. de Schutter, *Report ‘Mission to Mexico’* A/HRC/19/59/Add.2 17 Jan 2012.

<sup>122</sup> O. de Schutter, *Report ‘Mission to South Africa’* A/HRC/19/59/Add.3 13 Jan 2012.

<sup>123</sup> *De Schutter Report*, *supra* note 1 at para 33.

<sup>124</sup> Popkin, *Now and Then*, *supra* note 86 at 11.

highest rates of obesity in Africa, the latter burden has attracted comparatively little policy attention.<sup>125</sup>

In turn, his first explicit public reference to overnutrition and undernutrition appears in a 2011 press release just before the UN High Level Meeting on Non-communicable Diseases held in September of that year. As the press release notes, this was only the second such meeting ever devoted solely to a single health concern; the other such meeting had focused on HIV. In the release, he highlights the growing burden of diet-linked disease, and states:

If we are serious about tackling the rise of cancer and heart disease, we need to make ambitious, binding commitments to tackle one of the root causes – the food that we eat. The World Health Organization's (WHO) 2004 Global Strategy on Diet, Physical Activity and Health must be translated into concrete action: it is unacceptable that when lives are at stake, we go no further than soft, promotional measures that ultimately rely on consumer choice, without addressing the supply side of the food chain.<sup>126</sup>

Unfortunately, the outcomes of the High Level Meeting did not result in binding commitments along the lines of those sought by de Schutter. Instead, the resulting Political Declaration never gets much more concrete than “call[ing] upon the private sector, where appropriate, to... consider producing and promoting more food products consistent with a healthy diet”.<sup>127</sup> Similarly, the Right to Food is never acknowledged, although the Right to Health is referenced.<sup>128</sup>

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<sup>125</sup> D. Stupar *et al.*, “The nutrition transition and the human right to adequate food for adolescents in the Cape Town metropolitan area: Implications for nutrition policy” (2012) 37 Food Pol. 199.

<sup>126</sup> Office of the High Commissioner for Human Rights, Press Release “UN food expert: ‘Chance to crack down on bad diets must not be missed’” (16 Sept 2011) online: [http://www.srfood.org/images/stories/pdf/press\\_releases/20110916\\_nutrition-statement-pr\\_en.pdf](http://www.srfood.org/images/stories/pdf/press_releases/20110916_nutrition-statement-pr_en.pdf).

<sup>127</sup> United Nations General Assembly. Political Declaration of the High-level Meeting of the General Assembly on the Prevention and Control of Non-communicable Diseases A/RES/66/2 24 Jan 2012 [hereinafter *Political Declaration*] at Art. 44.

<sup>128</sup> *Ibid.*, *Political Declaration* at Art.5.

Even though the High Level Meeting yielded comparatively little in terms of tangible outcomes, de Schutter continued to highlight nutrition and obesity, including in his mission to Canada.<sup>129</sup> An entire section of his resulting report is focused upon obesity, and in a departure from earlier engagements with the Right to Food in a wealthy country context, he calls for government action extending well beyond education campaigns. He was poorly received by the Canadian Government, with Immigration Minister Jason Kenney stating “It would be our hope that the contributions we make to the United Nations are used to help starving people in developing countries, not to give lectures to wealthy and developed countries like Canada. And I think this is a discredit to the United Nations.”<sup>130</sup> Kenney’s statement serves as an example of how, among other obstacles, the Right to Food was (and indeed is) still largely associated with undernutrition in poorer countries rather than overnutrition in wealthy ones in the minds of many high-level policymakers, even as the links between over and undernutrition become more apparent.

In 2014, de Schutter’s mandate expired. The following paragraph from his final report highlights many of the issues he was considering in the context of nutrition, once again tying together a wide spectrum of concerns under the common banner of malnutrition:

Calorie intake alone, moreover, says little about nutritional status. Lack of care or inadequate feeding practices for infants, as well as poor health care or water and sanitation, also play a major role. As detailed by the Special Rapporteur [ref. omitted], even when food intake is sufficient, inadequate diets can result in micronutrient deficiencies such as a lack of iodine, of vitamin A or of iron, to mention only the deficiencies that are the most common in large parts of the developing world. Globally, over 165 million children are stunted – so malnourished that they do not reach their full physical and cognitive potential – and 2 billion people globally lack vitamins and minerals essential for good

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<sup>129</sup> O. de Schutter, *Report ‘Mission to Canada’* A/HRC/22/50/Add.1 24 Dec 2012.

<sup>130</sup> L. Payton, “UN official sparks debate over Canadian food security” CBC News (16 May 2012) online: <<http://www.cbc.ca/news/politics/un-official-sparks-debate-over-canadian-food-security-1.1130281>>.

health. Too little has been done to ensure adequate nutrition, despite the proven long-term impacts of adequate nutrition during pregnancy and before a child's second birthday, both in low-income countries where undernutrition is the major concern<sup>5</sup> and in middle- and high-income countries.<sup>6</sup> Moreover, inadequate diets are a major contributing factor to the increase of non-communicable diseases occurring now in all regions of the world. Worldwide, the prevalence of obesity doubled between 1980 and 2008. By 2008, 1.4 billion adults were overweight, including 400 million who were obese and therefore at heightened risk of type 2 diabetes, heart disease or gastrointestinal cancers.<sup>131</sup>

Although de Schutter has moved on, thus far his successor, Hilal Elver, seems to be maintaining an interest in overnutrition. For instance, in a Preliminary Report on her country visit to the Philippines, Elver notes that “[although] the Filipino economy has shown impressive growth in recent years, access to adequate and nutritious food continues to be a challenge across most of the country both in terms of under and over nutrition”.<sup>132</sup> Hopefully this is reflective of growing acceptance at the highest levels of the international human rights system of the idea that all forms of malnutrition, from undernutrition to overnutrition, threaten the right to food.

### **Global Expansion**

On the basis of both the evidence of nutrition's historical role as fundamental to what constitutes adequate food, and of historical shifts in how access to food affects health and well-being, the notion of including overnutrition alongside undernutrition on the malnutrition spectrum no longer seems so revolutionary. Instead, it seems rather obvious. Such a perspective, treating overnutrition and undernutrition as facets of the same problem, is now expressed matter-of-factly in high-profile advocacy documents like

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<sup>131</sup> O. de Schutter. *Report of the Special Rapporteur on the right to food, Olivier De Schutter Final report: The transformative potential of the right to food* A/HRC/25/57 Jan 24, 2014.

<sup>132</sup> H.Elver, Press Release “Preliminary Observations and Recommendations Special Rapporteur on the right to food on her mission to the Philippines 20 -27 February 2015” (27 Feb 2015) online: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15619&LangID=E>.

the 2016 Global Nutrition Report from the International Food Policy Research Institute.<sup>133</sup> Much like in the story of Goldilocks and the Three Bears, there are inadequate bowls of porridge on either side of the one that is just right. Although it is impossible to demonstrate with certainty why this idea took so long to explicitly emerge in a human rights context, it was likely at least partially a matter of where key actors were focused. When compared with the life-or-death struggles of those on the brink of starvation, the longer-term harms of overnutrition could easily seem what is now pejoratively termed a “First World Problem,” even if it is becoming abundantly clear it is a concern almost everywhere. Consuming too much was a failure of the person, not the state. As a result, whereas the term “neglected diseases” had traditionally referred to infectious diseases that affected developing countries while being ignored by global policymakers, public health commentators began to refer to neglected chronic diseases, well known in the West but overlooked in the developing world.<sup>134</sup>

However, as overconsumption increased among the most vulnerable, it became apparent that the causes of overnutrition and undernutrition were systemic rather than personal failings. The 1989 prediction that overnutrition would be a problem only for the elites in developing countries has been proven woefully incorrect. Current evidence suggests that when matched to income, body mass increases to a certain point, after which it plateaus, then eventually declines.<sup>135</sup> This reflects why diet-linked chronic disease increases as countries develop and incomes rise, but becomes concentrated within

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<sup>133</sup> International Food Policy Research Institute, *Global Nutrition Report 2016 From Promise to Impact Ending Malnutrition by 2030* (Washington, DC: International Food Policy Research Institute, 2016).

<sup>134</sup> See for example R. Beaglehole & D. Yach, “Globalisation and the prevention and control of non-communicable disease: the neglected chronic diseases of adults” (2003) 362 *Lancet* 903.

<sup>135</sup> M. Ezzati *et al.*, “Rethinking the ‘diseases of affluence’ paradigm: Global patterns of nutritional risks in relation to economic development” (2005) 2 *PLOS Med* e133.

poorer communities in wealthy countries. It also appears that women are more vulnerable to this shift than men, placing a further burden on an already disadvantaged group.<sup>136</sup> Other studies show that indigenous people may also face particular problems as a result of the nutrition transition.<sup>137</sup> At the same time, the transition can occur for different communities at different rates, even within the same country; consequently, countries may face a double burden of both overnutrition and undernutrition that threatens to overwhelm health resources.<sup>138</sup> Similarly, both may overlap with specific nutritional deficits, as cheap and accessible calories may lack essential vitamins and minerals. This leads to difficult questions about how best to address undernutrition without promoting overnutrition.<sup>139</sup> As Diller puts it:

A focus on nutrition rather than food recognizes this new reality and is capable of incorporating the possibility that protection from certain foods and the promotion of the consumption of certain foods over others may be as important to human health and well-being as the provision of a minimum level of food.<sup>140</sup>

A further illustration of the intertwined nature of undernutrition and overnutrition is visible in how many of the other ongoing debates around the Right to Food have similarly profound implications for both. Consider global agriculture and food production. Just as the FAO was first intended to promote agricultural production in order to prevent hunger and undernutrition, one of the main contributors to overnutrition is overproduction of products like corn – and by extension the high fructose syrup found in

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<sup>136</sup> C.A. Monteiro *et al.*, “Socioeconomic status and obesity in adult populations of developing countries: a review.” (2004) 82 Bull WHO 940.

<sup>137</sup> See for example S. Damman, W.B. Eide & H.V. Kuhnlein, “Indigenous peoples’ nutrition transition in a right to food perspective” (2008) 33 Food Pol. 135.

<sup>138</sup> E. Tzioumis & L.S. Adair, “Childhood dual burden of under- and overnutrition in low- and middle-income countries: a critical review” (2014) 35:2 Food Nutr Bull 230.

<sup>139</sup> See for example J.L. Leroy *et al.*, “Cash and in-kind transfers in poor rural communities in Mexico increase household fruit, vegetable, and micronutrient consumption but also lead to excess energy consumption” (2010) 140 J Nutr 612.

<sup>140</sup> P.A. Diller, “Combating Obesity with a Right to Nutrition” (2013) 101 Georgetown Law J. 969.

an increasing array of consumer products – due in part to government subsidies.<sup>141</sup> Similarly, the long-brewing issue of the extent of State responsibility for the effects of their actions on the Right to Food of those living elsewhere<sup>142</sup> has implications whether Monsanto is restricting access to seeds for subsistence farmers, or Coca-Cola is investing in a newly open economy after a new trade agreement. Some commentators even view highlighting nutrition within the Right to Food as a tactical issue, driven by the view that corresponding attempts to restrict the Right to Food to “adequate calories” promotes the idea that hunger and undernutrition can be addressed through the full liberalization of international trade, to the benefit of transnational corporations.<sup>143</sup> This is only a small illustration of how many of the same issues, and the same struggles, will affect both these two connected facets of malnutrition.

### **Conclusion: Human Rights and the Right to Food**

As stated at the beginning, the purpose of this paper is to highlight the Right to Food as a potentially effective tool to combat the growing threat of overnutrition. By contrast, the intent is not to suggest human rights should be the sole advocacy tool, or that such an approach is without drawbacks.<sup>144</sup> Nonetheless, human rights have proven to be a powerful advocacy tool to promote change, and to hold governments accountable for their obligations to respect, protect and fulfill those rights. They serve as a counterbalance against other legal frameworks, such as the existing and proposed bilateral and multilateral trade agreements that promote conditions leading to

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<sup>141</sup> L.S.Elinder, "Obesity, hunger, and agriculture: the damaging role of subsidies" (2005) *BMJ* 1331 at 1333.

<sup>142</sup> Narula, *supra* note 10 at 719.

<sup>143</sup> F.L.S. Valente, "Towards the Full Realization of the Human Right to Adequate Food and Nutrition" (2014) 57 *Development* 155 at 156.

<sup>144</sup> See for example D.Kennedy, "The International Human Rights Movement: Part of the Problem?" (2002) *Eur. HRL Rev.* 245.

overnutrition. While overnutrition implicates many other rights, including the Right to Health and the Right to Life, the Right to Food offers the advantage of focusing on food itself, without requiring an intermediate step to establish a human rights issue. By talking about the adequacy of soft drinks as a food, for instance, it is not necessary to take the additional step of demonstrating the particular negative health effects of soft drinks amongst all things consumed as part of a broader diet. The Right to Food is not the solution on its own. But given that no country – rich or poor, developed or developing – has ever successfully reversed the obesity epidemic arising from overnutrition,<sup>145</sup> those trying to fix the problem may well benefit from having another tool in the toolbox. The history of the Right to Food demonstrates that the inclusion of overnutrition is not simply an advocate’s whim; instead, it shows this is a tool that may be wielded with legitimacy.

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<sup>145</sup> C.A. Roberto et al, “Patchy progress on obesity prevention: emerging examples, entrenched barriers, and new thinking” (2015) 385 *Lancet* 2400.

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