

COUNCIL MONITOR

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COUNCIL UPDATE – RIGHT TO FOOD HUMAN RIGHTS COUNCIL, 10TH SESSION 9-10 MARCH 2009

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Overview

On Monday 9 and Tuesday 10 March, Mr Olivier de Schutter, the Special Rapporteur on the right to food, presented his first two reports to the Human Right Council (the Council). His research on the contribution of development cooperation, food aid and international trade on the right to food was warmly welcomed by member States and triggered an active dialogue. More than 35 States, one national human rights institution (NHRI) and eleven NGOs took the floor to express their views on the reports.

Item 3 - Special Rapporteur on the Right to Food

Presentation of the report

In a very committed statement, the Special Rapporteur on the right to food, Mr Olivier De Schutter, presented a summary of his report on ‘the role of development cooperation and food aid in realizing the right to adequate food: moving from charity to obligation’ and an addendum related to his mission to the World Trade Organization (WTO) on 25 June 2008.¹ In his report, he emphasised how a human rights based approach, if incorporated in development cooperation and food aid, has the potential to improve the realisation of the right to food. According to the Special Rapporteur, this would imply a change from a charity approach to one based on State obligations to implement this right. It would also require a shift from bilateral relations between donor States and partners to a triangular relationship in which the beneficiaries of these policies play an active role. Recalling the shortcomings of the current system of development cooperation and food aid, he makes suggestions on how to reorient them. This would mainly involve implementing the principles of the Paris Declaration from 2005² and the Accra Agenda for Action³ in light of a human-right based approach, and reforming the procedure before the Food Aid

¹ A/HRC/10/5 and Add.2 available at <http://www2.ohchr.org/english/bodies/hrcouncil/10session/reports.htm>.

² The commitments contained in the Paris Declaration on Aid Effectiveness focus on the principles of ownership, alignment, harmonisation, managing for results and mutual accountability.

³ It provides that countries and donors will “ensure that their respective development policies and programmes are designed and implemented in ways consistent with their agreed international commitments on gender equality, human rights, disability and environmental sustainability”.

Committee.⁴ He focuses on State obligations related to the right to food under international conventions and nationally. Finally, he highlights the need for States to increase their contributions, assess the need on the ground including through particular attention to vulnerable groups, and include the right to food in their national policies.

In the addendum to his report, the Special Rapporteur analyses how trade in agricultural commodities can be made compatible with the obligations of States in international law to respect, protect and fulfil the right to food. The Special Rapporteur highlights that trade can work for development and human rights if States reorient their negotiation approach. He underscores that national parliaments and civil society should also be a part of these negotiations. Among the suggestions put forward to achieve these goals, he particularly underlined that WTO member States should define their position in trade negotiations in accordance with national strategies for the realisation of the right to food. He also recommends that States control market power in the global supply chains including through regulating the activities of private actors, retain the freedom to take safeguard measures in accordance with the principle of ‘special and differential treatment’ and that especially developing States limit excessive reliance on international trade. Finally, the Special Rapporteur called upon the Council to appeal to States and the WTO to improve the realisation of the right to food.

Interactive Dialogue

The **WTO, as a concerned party**, reiterated that trade is not more than a tool to ensure an adequate standard of living for everyone as stated by the Special Rapporteur in his presentation. Although the WTO representative shared the view of the Special Rapporteur that, at national level, trade should be a part of sound financial, social and structural policies fulfilling the need of the population, he stressed that the WTO Agreement on Agriculture is flexible enough to allow that. He also pointed out that States could still have recourse to the WTO’s dispute settlement mechanism.

It is rare that specialised agencies and other intergovernmental organisations intervene in the Council’s debates. Often, the Council considers thematic issues in their absence, and thereby foregoes the existing knowledge in other parts of the UN system. Although the participation of the WTO is undoubtedly mainly determined by the visit of the Special Rapporteur, it could also be an indication of the recognition that the Council could make a contribution to its own work. In the past, discussions on the right to food and international trade have tended to be quite polarised, as the former Special Rapporteur had levelled quite principled and general criticism against the WTO. The more nuanced approach taken by the new Special Rapporteur could contribute to moving the discussion forward, initially by highlighting the substantive links between the human rights and trade arena.

The relatively positive discussion that followed showed the importance that States attach to the right to food, particularly in the context of the world food crisis. The Special Rapporteur was commended for his work and most States agreed that development cooperation and food aid play a vital role in enhancing the realisation of the right to food. The comments and questions roughly revolved around the following ideas:

The obligations of States to **fulfil their commitments and to not reduce their food aid** dominated States’ intervention.⁵ In this regard, Switzerland regretted that too much focus was placed on State obligations and not enough on the role of UN agencies and recipient States. The Czech Republic, on behalf of the European Union (EU), asked the Special Rapporteur to elaborate how this obligation to provide food aid is created, showing that there is no universal acceptance of State obligations to guarantee the right to food in third countries. Some States stressed that aid should not be subjected commercial considerations or political interests, which was also a demand in the Special Rapporteur’s report.⁶ India, however, added that recipient States should also be held to account, as

⁴ Under the Food Aid Convention adopted in 1967 States undertook the commitments to provide certain quantities of food aid.

⁵ Islamic Republic of Iran, Egypt on behalf of the African Group, Pakistan on behalf of the OIC, Venezuela, Cameroon, Bangladesh, India,

⁶ Cuba, Philippines,

each State bears the primary obligation to guarantee the right to food for its people. Some States emphasised the need for supporting agriculture in developing countries, including through investments in infrastructure.⁷

States also underlined the importance of **assessing the need of beneficiaries**, to ensure the provision of appropriate aid in each State.⁸ The Czech Republic (on behalf of the EU) enquired what could be done to increase the participation and ownership of the targeted communities and the role of parliaments and civil society in this regard.

Another issue triggering much debate was the **impact of trade negotiations** on the right to food. In this regard, Brazil strongly opposed the Special Rapporteur's report, and claimed his analysis 'seems to be suffering from critical problems of balance and selective use of information'. Brazil said that the report of the Special Rapporteur on the WTO 'fails to properly incorporate key negotiating interests of developing countries'. Much of the discussion touched on the role of the international trading system in guaranteeing – or not – the right to food. While being a useful and interesting debate, however, it also showed the limitations the Council faces when moving into interdisciplinary fields. Often, knowhow of the additional dimensions, in this case international trade negotiations, are lacking among delegations. The Council, in order to usefully add a human rights dimension to problems such as the negotiations on agriculture within the WTO, needs to find a way to remedy this knowledge gap. In this vein, Mauritius stated that further detailed studies are necessary to clarify the concrete application of human rights in relation to international trade, and in particular on the right to food with respect to the WTO Agreement on Agriculture. New Zealand wished that the addendum would highlight the distinction between achieving food self-sufficiency and ensuring the food security more clearly. It stressed that trade, in addition to sound national policies can serve to realise food security.

Some comments were made in relation to the Special Rapporteur's recommendation that **global supply chains** needed to be better controlled. This included the question by Slovenia on measures States would have to take to implement the Special Rapporteur's recommendation to 'adequately regulate private actors over which the State may exercise an influence, in discharge of their obligation to protect the right to food'.

Slovenia also enquired about how States could promote and protect human rights in **specific situations**, and highlighted the case of Zimbabwe. It asked the Special Rapporteur how he intends to this and other situations. In his replies, Mr de Schutter said that he had sent communications to the Government, but was still waiting for a response.

NGOs were the last to take the floor, and unfortunately only after the Special Rapporteur had already left. They added to the debate in term of substantive suggestions and describing situations of lack of food on the ground,⁹ underlined the need for a human-rights based approach to be included in development cooperation and food aid, and for international trade to fully realise the right to food. Other concrete suggestions included encouragements to States to ratify the Optional Protocol to the Covenant on Economic, Social and Cultural Rights (CESCR),¹⁰ the importance to recognise the specificity of agricultural products as opposed to other commodities,¹¹ and the role of civil society in enhancing the right to food.¹²

Responses by the Special Rapporteur

Due to a significant delay in the Council's programme of work, the Special Rapporteur was forced to respond to comments before all States, let alone NHRIs and NGOs, were able to speak. Accordingly, he was not able to hear comments by these important stakeholders and could only respond to a fraction of all questions and comments.

⁷ Italy, Luxembourg, New Zealand, India.

⁸ Russian Federation, Iran, Italy, India

⁹ Asian Legal resource Centre, Federal Coalition of Iraqi Women, Interfaith International.

¹⁰ Joint statement : Foodfirst Information And Action Network - FIAN - , Europe Third World Centre.

¹¹ General Federation of Iraqi Women.

¹² Interfaith International.

In his reply, the Special Rapporteur mainly justified the recurrent reference to donor States as a central part of his approach, since this was the main part of the criticisms raised. He again emphasised the obligation for States to abide by their commitments to ensure predictability and planning of food aid and stressed again that food aid should not be based on political and commercial interests.

In response to the question about private actors asked by Slovenia, the Special Rapporteur explained that commodity buyers and large food retailers develop buying policies that could be highly detrimental to the right to food. He added that he is working closely on that with the Special Representative of the Secretary General on transnational corporations and other business enterprises to shed more light on these complex relationships.

Regarding his mission to the WTO, he stressed that while the report does not focus on subsidies, he has taken these into account in his report. He denied Brazil's assumption that the right to food would be better realised by increasing international trade. Instead, he reiterated his view expressed in the report that food security will be better ensured by conducting impact assessment at the national level and ensuring that trade policies fit into national strategies on food security, than by liberalising trade.

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