

## **Sovereignty as a challenge to food supply security**

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### **Introduction**

This article addresses the following question: to what extent sovereignty can constitute an obstacle to food supply security?

Food supply security is important to realize international peace and security, but sovereignty as a complete independence and full jurisdiction may be seen as an obstacle to food supply security. Hence, the purpose of this article is to clarify the relation between sovereignty and food supply security and put some guidelines concerning this relation. This can contribute in realizing the global goal concerning the right of everyone to have adequate food.

#### **A- Food supply security**

Food security is currently defined as access by all people at all times to the food needed for a healthy and active life<sup>(2)</sup>. Food insecurity is understood as the reverse; where some people at some or all times do not have access to adequate food and therefore cannot lead a healthy and active life<sup>(3)</sup>.

Food security means ensuring that:

- supply of sufficient food is available throughout the state (food supply);
- everyone within the state in need of food has the capacity to obtain it for a healthy and productive life (food safety).

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(2) FAO, *The right to food in theory and practice*, Rome, 1998, p. 32.

(3) Asbjorn Eide, *The right to adequate food and to be free from hunger*, updated study on the right to food, submitted in accordance with Sub-Commission decision 1998/106, E/CN.4/Sub.2/ 1999/12, para 60-62.

Thus, food security includes food supply and food safety. Food supply security is related to providing food continuously and without interruption, so everyone has access to food.

Every state must take the necessary measures to ensure supply of food for everyone under its jurisdiction. At the same time it is understood that achieving food supply security must be done in conformity with respecting of state sovereignty.

### **B- Sovereignty**

In discussing the relationship between food supply security and sovereignty, one must define sovereignty. According to international law, sovereignty can be defined as the legal jurisdiction of the state over its territory and people, unimpeded by external intervention from other states. In this view, state is the basic entity of the international system.

Sovereignty includes some normative factors; the most important of which is non-intervention in the internal affairs. This means that every state is independent in regulating its affairs; however, the new technological developments have undermined the ability of states to regulate their own affairs solely. Thus, states agree to share authority in order to preserve their control in the face of these global changes.

This article is organized in three main chapters. The first chapter examines the relation between food supply security and sovereignty in peacetime, the second chapter examines this relation in time of armed conflict and the third chapter deals with the United Nations Security Council interventions to allow humanitarian assistance which includes food supply.

### **I. Food supply security and sovereignty in peacetime**

The state has the primary duty to take care of its citizens and has the main role in providing food supply to them. Also, international community, through international cooperation, has an important role in providing food to people in other states. Thus, food supply security may be presented through:

A- State obligations relating food supply;

B- the role of international cooperation relating food supply.

Whatever it is provided by the state or through the international cooperation, food supply must be provided in conformity with the realization of the human right to food and the principle of state sovereignty.

#### **A- State obligations relating food supply**

Under international human rights law, every human being has a right to adequate food. Each state has a legal obligation to take steps in order to progressively realize this right, individually and through international assistance and cooperation, and to the maximum of its available resources.

#### **The right to adequate food**

The right to adequate food is a fundamental human right recognized by international law in several human rights conventions, namely: the Universal Declaration of Human Rights (art. 25); the International Covenant on Economic, Social and Cultural Rights (art. 11(1)); the Convention on the Elimination of all Forms of Discrimination Against Women (art. 12(2)); the Convention on the Rights of the Child (arts. 24(2)(c) and 27); and, at the regional level, the Protocol of San Salvador (art. 12).

Moreover, article 11(2) of the International Covenant on Economic, Social and Cultural Rights guarantees the right to be free from hunger<sup>(4)</sup>.

It may be argued that the right to adequate food, at least in its basic shape of the right to freedom from hunger, is part of customary international law. Indeed, the right to be free from hunger is directly linked to the right to life, which is one of the most widely recognized human rights<sup>(5)</sup>.

The Committee on Economic, Social and Cultural Rights,<sup>(6)</sup> in its General Comment No. 12 on the right to adequate food<sup>(7)</sup>, states that "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."<sup>(8)</sup> This definition of the right to adequate food is very close to the definition of food security stipulated in the first

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- (4) A distinction must be made between the right to adequate food and the right to be free from hunger. The latter grants the minimum daily nutritional intake ensuring survival, without the "sufficiency" standard entailed by the right to adequate food.
  - (5) It is generally accepted that some fundamental human rights are recognized under customary international law and are thus binding for all states, irrespective of whether they have ratified human rights treaties.
  - (6) The Committee on Economic, Social and Cultural Rights (CESCR) is the body established by the International Covenant on Economic, Social and Cultural Rights to monitor compliance by States parties with its provisions. In carrying out this task, the Committee formulates general comments, which are authoritative interpretations of rights under the Covenant. Their purpose is to assist States parties in fulfilling their reporting obligations and to provide greater interpretative clarity as to the intent, meaning and content of the Covenant. Mary Robinson, *The Right to Food: Achievements and Challenges*, World Food Summit: Five Years Later, Rome, Italy, 10-13 June 2002, para 13.
  - (7) General Comment No. 12 "the right to adequate food" was adopted by the Committee on Economic, Social and Cultural Rights (12 May 1999). (E/C.12/1999/5).
  - (8) *Ibid.* para 6.

paragraph of the World Food Summit Plan of Action which states "Food security exists when all people, at all times, have physical and economic access to sufficient, safe and nutritious food to meet their dietary needs and food preferences for an active and healthy life."<sup>(9)</sup> Thus, the corollary of the right to food is food security<sup>(10)</sup>. The existence of this right gives rise to obligations for states according to international human rights conventions; particularly under the International Covenant on Economic, Social and Cultural Rights (ICESCR) which deals more comprehensively than any other instrument with this right.

#### Article 11 of ICESCR

Article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) states: "1. The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent. 2. The States Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international co-operation, the

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(9) World Food Summit Plan of Action, Rome, 13 November 1996, para. 1.

(10) Jean Ziegler (the Special Rapporteur on the right to food) defined the right to food as follows: "the right to food is the right to have regular, permanent and free access, either directly or by means of financial purchases, to quantitatively and qualitatively adequate and sufficient food corresponding to the cultural traditions of the people to which the consumer belongs, and which ensures a physical and mental, individual and collective, fulfilling and dignified life free of fear." Jean Ziegler, *The right to food*, Commission on Human Rights, E/CN.4/2001/53, (7 February 2001), para 14.

measures, including specific programmes, which are needed: (a) To improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating 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>(11)</sup>

Under ICESCR, the legal obligations of States parties are set out in article 2 (1) which states that "Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures." Thus, the principal obligation is to take steps to achieve *progressively* the full realization of the right to adequate food. This imposes an obligation to move as expeditiously as possible towards that goal. Every State is obliged to ensure for everyone under its jurisdiction access to the minimum essential food which is sufficient, nutritionally adequate and safe, to ensure their freedom from hunger.<sup>(12)</sup>

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(11) International Covenant on Economic, Social and Cultural Rights Adopted by the General Assembly of the United Nations on 16 December 1966. G.A. res. 2200A (XXI), 21 U.N.GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966), United Nations, Treaty Series, vol. 993, p. 3, entered into force on 3 January 1976, in accordance with article 27. The covenant is ratified by 142 states.

(12) The Committee on Economic, Social and Cultural Rights states that "The term "progressive realization" is often used to describe the intent of this =

The Committee on Economic, Social and Cultural Rights considers the right to adequate food imposes three levels of obligations on States parties: the obligations to *respect*, to *protect* and to *fulfil*. The obligation to *respect* existing access to adequate food requires States parties not to take any measures that result in preventing such access. The obligation to *protect* requires measures by the State to ensure that enterprises or individuals do not deprive individuals of their access to adequate food.<sup>(13)</sup> The obligation to *fulfil* has a particular importance to food supply security.

#### **The obligation to fulfil**

The obligation to *fulfil* incorporates both an obligation to *facilitate* and an obligation to *provide*. The obligation to *fulfil* (*facilitate*) means the State must pro-actively engage in activities intended to strengthen people's access to and utilization of resources and means to ensure their livelihood, including food security. The obligation to provide is more relevant to food supply.

#### **The obligation to provide**

The obligation to provide entails that the State, as a last resort, must provide food. This means that "whenever an individual or group is unable, for reasons beyond their control, to enjoy the right

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= phrase. The concept of progressive realization constitutes a recognition of the fact that full realization of all economic, social and cultural rights will generally not be able to be achieved in a short period of time. In this sense the obligation differs significantly from that contained in article 2 of the International Covenant on Civil and Political Rights which embodies an immediate obligation to respect and ensure all of the relevant rights. Nevertheless, the fact that realization over time, or in other words progressively, is foreseen under the Covenant should not be misinterpreted as depriving the obligation of all meaningful content. Committee on Economic, Social and Cultural Rights, "General Comment No.3: The nature of States parties obligations (Art. 2, par.1), 14 December 1990, para. 9.

(13) General Comment No.12, para. 15.

to adequate food by the means at their disposal, States have the obligation to *fulfil (provide)* that right directly. This obligation also applies for persons who are victims of natural or other disasters."<sup>(14)</sup>

The State which claims that it is unable to fulfil its obligation for reasons beyond its control (e.g. resource constraints) has to demonstrate that it has done everything in its power to ensure access to food, including appealing for support from the international community. In the words of the CESCR, "The obligation to provide entails that a State claiming that it is unable to carry out its obligation for reasons beyond its control therefore has the burden of proving that this is the case and that it has unsuccessfully sought to obtain international support to ensure the availability and accessibility of the necessary food"<sup>(15)</sup>

Thus, if a State is unable to directly fulfil its obligation to provide food, it has a duty to request the assistance of the international community and give the humanitarian agencies access to victims suffering of denial of access to food.

#### **Access to victims**

As we mentioned before, if a State fails to ensure the satisfaction of, at the very least, the minimum essential level required to be free from hunger, it has to appeal for food aid. In this regard, The United Nations General Assembly adopted several resolutions<sup>(16)</sup> call upon the affected states to facilitate the work of

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(14) Ibid.

(15) Ibid. para. 17.

(16) See: The General Assembly Resolutions: A/RES/43/131 (8 December 1988) and A/RES/45/100 (14 December 1990) titled Humanitarian assistance to victims of natural disasters and similar emergency situations. Also A/RES/46/182(19 December 1991) titled Strengthening of the coordination of humanitarian emergency assistance of the United Nations.

humanitarian agencies and grant them access to victims so they can be able to provide food. The General Assembly, Reaffirming the sovereignty of affected States and their primary role in the initiation, organization, co-ordination and implementation of humanitarian assistance within their respective territories<sup>(17)</sup>, invites all States in need of such assistance to facilitate the work of these organizations in implementing humanitarian assistance, in particular the supply of food, medicines and health care, for which access to victims is essential."<sup>(18)</sup> As a result of respecting sovereignty of affected States, access to victims to supply food and other humanitarian assistance is subject to consent of the state.<sup>(19)</sup>

#### **State Consent**

The General Assembly decided that "The sovereignty, territorial integrity and national unity of States must be fully respected in accordance with the Charter of the United Nations. In this context, humanitarian assistance should be provided with the consent of the affected country and in principle on the basis of an appeal by the affected country."<sup>(20)</sup> This means that external food

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(17) A/RES/43/131, para. 2, A/RES/45/100, para. 2, A/RES/46/182, para. 3.

(18) A/RES/43/131, para. 4, A/RES/45/100, para. 4, A/RES/46/182, para. 6.

(19) See: Lorenzo Cotula and Margaret Vidar. *The right to adequate food in emergencies*. FAO, Legislative Study. No. 77, pp. 20-46.

(20) A/RES/46/182, para. 3. Also World Food Summit Plan of Action, para 43 states that "National and international relief operations are often the only solution for hungry people facing immediate starvation, and should continue to be a priority and be provided in an impartial and apolitical manner, with due respect to national sovereignty and in accordance with the Charter of the United Nations and the guiding principles of the UN General Assembly (UNGA) Resolution 46/182. However, emergency food assistance cannot be a basis for sustainable food security. Conflict prevention and resolution, and stepped up rehabilitation and development promotion activities, which prevent recurrence of and reduce vulnerability to food emergencies, are essential elements of food security. Emergency preparedness is a central element for minimizing the negative effects of food emergencies and famines."

aid is to be provided upon request by the State affect or at least with its consent. Consequently, it is not allowed to the assisting state or organization to send food to the population of a State without getting its earlier consent.

The consent of the State is required for legal and practical considerations. The legal consideration is respecting of the principle of state sovereignty which demands the absence of external influences on internal affairs. The practical consideration is the protection and efficiency of food supply operations undertaken by the humanitarian organizations or foreign states. Without the consent of the state, these operations will face many difficulties and the lives of humanitarian personnel will be in danger; as what had happened with the United Nations operation in Somalia. .

If the State gives its consent, it will be under an obligation to cooperate and to ensure the safety and security of humanitarian personnel. For example, the 1994 Convention on the Safety of United Nations and Associated Personnel states that "United Nations and associated personnel, their equipment and premises shall not be made the object of attack or of any action that prevents them from discharging their mandate. States Parties shall take all appropriate measures to ensure the safety and security of United Nations and associated personnel"<sup>(21)</sup> A murder, kidnapping or other attack upon the person or liberty of any United Nations or associated personnel constitute crimes punishable by appropriate penalties under the national law of the states parties to the convention.<sup>(22)</sup>

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(21) The 1994 Convention on the Safety of United Nations and Associated Personnel, article 7 para. 1 and 2.

(22) Ibid. art. 9.

The consent of the State is not an absolute right and sovereignty cannot be a basis to starve the population. Therefore, the consent is restricted by state obligations concerning the right to food. A state that respects the right to food of the people living in its territory should ensure that every individual has permanent access at all times to sufficient and adequate food, and should refrain from taking measures liable to deprive anyone of such access. When a State is unable to guarantee the population's right to food, it has a duty to make an appeal for international food aid. States which refuse to make such appeal or deliberately delay in making it are violating its obligations concerning the right to food under international human rights conventions; particularly the International Covenant on Economic, Social and Cultural Rights. In this regard, the Committee on Economic, Social and Cultural Rights includes among the violations of the right to food "the prevention of access to humanitarian food aid."<sup>(23)</sup> This leads us to the conclusion that the State cannot arbitrarily refuse to give its consent when it is unable or unwilling to provide food. Moreover, the prevention of access to food aid may constitute, in certain circumstances; in particular when threatens the lives of the population, a crime punishable under international criminal law; such as genocide.

#### **B- The role of international cooperation relating food supply**

Every State has the primary responsibility to feed the population in its territory, however, if it is unable to do that, it has to request the international assistance and cooperation. Therefore,

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(23): General Comment No.12, para. 19.

international cooperation plays a supplementary role to the state which its populations suffering of food insecurity.<sup>(24)</sup>

The idea of international cooperation is contained in some international provisions<sup>(25)</sup>; as follows:

- According to article 2 (1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR), each State Party to the Covenant undertakes to take steps, individually and through international assistance and co-operation, with a view to achieving progressively the full realization of the rights [including the right to food] recognized in the Covenant. Also, article 11 of (ICESCR) states that "The States Parties will take appropriate steps to ensure the realization of [the right to food], recognizing to this effect the essential importance of international co-operation based on free consent." It adds that the States Parties to the Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international co-operation, the necessary measures

- The UN General Assembly Resolution 46/182 (para. 5) states that "The magnitude and duration of many emergencies may be beyond the response capacity of many affected countries. International cooperation to address emergency situations and to

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(24) See: Philip Alston, *International Law and the Right to Food*. United Nations Press, Tokyo, 1984, pp. 170-173.

(25) Article 55 of the Charter of the United Nations states that "With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote ... c. universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion." Article 56 states "All Members pledge themselves to take joint and separate action in co-operation with the Organization for the achievement of the purposes set forth in Article 55."

strengthen the response capacity of affected countries is thus of great importance."

- The Universal Declaration on the Eradication of Hunger and Malnutrition<sup>(26)</sup> states that the eradication of hunger is a common objective of all the countries of the international community, especially of the developed countries and others in a position to help. As it is the common responsibility of the entire international community to ensure the availability at all times of adequate world supplies of basic food-stuffs by way of appropriate reserves, including emergency reserves, all countries should co-operate in the establishment of an effective system of world food security.

**According to these provisions:**

States should recognize the essential role of international cooperation and comply with their commitment to take joint and separate action to achieve the full realization of the right to adequate food. The international cooperation demands the following:

1- States should facilitate access to food in countries other than their own. In this regard, The UN General Assembly "Urges States in proximity to areas of natural disasters and similar emergency situations, particularly in the case of regions that are difficult to reach, to participate closely with the affected countries in international efforts with a view to facilitating, to the extent possible, the transit of humanitarian assistance [including food

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(26) The 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, paras 1, 2 and 12.

supply]”<sup>(27)</sup> Also, creditor states be supposed to adopt substantial debt relief measures to minimize the problem of debt servicing for poor countries. This may facilitate the realization of the right to food for people in developing countries.

2- States should respect the enjoyment of the right to food in other countries; this demands that states should at all times refrain from using food as a weapon or as an instrument of political and economic pressure. Also, States parties should refrain at all times from food embargoes or similar measures which endanger conditions for food production and access to food in other countries.<sup>(28)</sup>

To a large extent, embargo restricts the sovereignty of the state, as every state has the right to trade or not to trade with whomever it deems fit. Embargo strictly limits the ability of the State enclosed to import food easily. It also limits imports of technology for the modernization of agriculture. These factors substantially raise the cost of food. Without the embargo, the cost of imported food and imports would be much lower, and government funds could be invested in productive development.

Indeed, embargo constitutes a clear violation of international law and endangers food supply security. In Cuba, The United States embargo, combined with the pressure on other countries not to do business with Cuba, has seriously damaged the Cuban economy. The blockade violates human rights, including the right to food, and

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(27) A/RES/43/131, para. 6, A/RES/45/100, para.7, A/RES/46/182, para. 7.

(28) General Comment No.12, para. 37.

the sanctions are directed not only against Cuba,<sup>(29)</sup> but also against other States through the foreign companies with which Cuba trades. In Iraq, the sanctions were the most comprehensive total sanctions that have ever been imposed on a country. The number of deaths, directly attributable to the sanctions, estimates range from half a million to a million and a half, with the majority of the dead being children.

Therefore, States participating in economic sanctions<sup>(30)</sup> should ensure that they do not lead to the deprivation of necessary food for the population<sup>(31)</sup>

3- States should protect the right to food in other countries; this demands they should ensure that food supply security is given

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(29) In 1960, the United States of America imposed unilateral trade embargo against Cuba. In 1996, the Government of the United States reinforced these economic sanctions by adopting the Helms-Burton Act. Under this Act, economic sanctions are imposed not only on Cuba, but on all foreign companies which have commercial dealings with Cuba. See: Marc Bossuyt, The adverse consequences of economic sanctions on the enjoyment of human rights, E/CN.4/Sub.2/2000/33, 21 June 2000, paras. 58-100.

(30) During the 1990s the Security Council has imposed sanctions in relation to South Africa, Iraq/Kuwait, parts of the former Yugoslavia, Somalia, the Libyan Arab Jamahiriya, Liberia, Haiti, Angola, Rwanda and the Sudan.

(31) Committee on Economic, Social and Cultural Rights, in its General Comment 8, states that "While the impact of sanctions varies from one case to another, the Committee is aware that they almost always have a dramatic impact on the rights recognized in the Covenant. Thus, for example, they often cause significant disruption in the distribution of food". General Comment 8, the relationship between economic sanctions and respect for economic, social and cultural rights, U.N. Doc. E/C.12/1997/8 (1997), para. 3. Also, Jean Ziegler (the Special Rapporteur on the right to food) stated "the Security Council, in subjecting the Iraqi people to a harsh economic embargo since 1991, is in clear violation of its obligation to respect the right to food of people in Iraq." Jean Ziegler, The right to food, Report submitted in accordance with Commission on Human Rights, resolution 2001/25, E/CN.4/2002/58, 10 January 2002, para. 123.

due attention in international trade agreements. In this regard, a special attention should be paid to the impact of international trade on the food situation of poor countries. Developed states substantially provide agricultural subsidies; this presents a vital support for export and leads to decrease of food prices on the world market. Hence, the developing states can import food with low price but at the same time this will result in reducing and discouraging domestic food production. Moreover, the protectionist agricultural policies in developed states hinder access to their markets for developing states.

4- States are encouraged to provide the necessary food aid when required. Indeed, international cooperation directs states towards a moral duty on states to provide food to needy people in other states. But this does not mean that States are under a legal obligation to provide food aid. Thus, the state whose population needs food can not enforce the other states to provide food. In fact, the previous provisions are not legally binding<sup>(32)</sup> so we cannot talk about a legally binding obligation to provide external food aid under international law except if states obliged themselves; by binding instrument, to provide external food aid.<sup>(33)</sup> A clear

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(32) Binding resolutions are those adopted by the United Nations Security Council under Chapter VII of the UN Charter (action with respect to threats to the peace, breaches of the peace and acts of aggression).

(33) The Committee on Economic, Social and Cultural Rights states that "Food aid should, as far as possible, be provided in ways which do not adversely affect local producers and local markets, and should be organized in ways that facilitate the return to food self-reliance of the beneficiaries. Such aid should be based on the needs of the intended beneficiaries. Products included in international food trade or aid programmes must be safe and culturally acceptable to the recipient population." General Comment No.12, para. 39.

example of this instrument is the Food Aid Convention<sup>(34)</sup> in which "Members agree to provide food aid to developing countries or the cash equivalent thereof in the minimum annual amounts."<sup>(35)</sup>

**To sum up, in realizing food supply in peacetime, there are some restrictions on sovereignty of the State, as follows:**

**a) Regarding the State's obligation to provide food to its population:**

1 - States have a core obligation to take the necessary action to mitigate and alleviate hunger. To do that, State should develop a national strategy to ensure food security for all.

2 - When the affected States is unable to provide sufficient food to the victims placed under its jurisdiction, it has to seek assistance from states and international organizations.

3- Food aid is subject to the consent of the state; however, a State cannot arbitrarily refuse to give its consent to food aid. Refusals must be justified by valid reasons. The possibility to refuse food aid is strictly limited to cases where this aid does not meet the criteria of being humanitarian, impartial or non-discriminatory.

4- If a state gives its consent to external food supply, the State should permit the humanitarian personnel full and free access to victims and ensure the freedom of movement and protection of these persons. Attacks against personnel are a grave violation of international law.

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(34) Food Aid Convention, London, 13 April 1999. The states parties to the convention are: Argentina, Australia, Canada, European Community and its member States, Japan, Norway, Switzerland and United States of America.

(35) Food Aid Convention, art III (a).

**b) Regarding providing food aid to other states**

1- States and international organizations have the right to offer food aid to victims in the affected State subject to the consent of this state. But, this does not mean that the assisting states or organizations are under legal obligation to provide food.

2- States must facilitate the rapid transit of food supply to needy people. They must also take into account their international legal obligations regarding the right to food when entering into agreements with other States or with international organizations.

3- It is not allowed to the assisting states and international organizations to interfere in the internal affairs of the affected States. If states and organizations consider the refusal of an offer of food or access to victims may lead to a grave humanitarian catastrophe, they may call upon the UN bodies dealing with humanitarian issues and other competent universal or regional organizations to consider taking appropriate measures in accordance with international law.

**II. Food supply security and sovereignty in time of armed conflict**

Food supply is essential both in peacetime and during armed conflicts. Armed conflicts invariably cause food insecurity and make food supply difficult. Therefore the existence of guarantees for the free passage of food becomes very essential for the survival of the civilian population. In this regard, international humanitarian law<sup>(36)</sup> includes important provisions organizing food supply. These

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(36) International humanitarian law is principally consisting of the four Geneva Conventions of 1949 and the two additional Protocols of 1977. The Geneva Conventions have been ratified by almost all states and the two additional Protocols have been ratified by the vast majority of states.

provisions aim to ensure that persons or groups not taking or no longer taking part in the hostilities are not denied food or access to food through:

- A) facilitating the free passage of food supply;
- B) prohibiting certain behaviour led to prevention of food supply.

It must be noted that, according to the non-reciprocal character of international humanitarian law, a state is not exempted from its obligations in relation to food supply, even if another party does not respect its obligations.<sup>(37)</sup>

#### **A) The free passage of food supply**

In armed conflicts, certain provisions of international humanitarian law explicitly affirms that States have an obligation to grant free passage to humanitarian relief [including food] and to facilitate the work of humanitarian agencies and the distribution of food aid. Since food supply, in many cases, is only possible through the territory of another state; particularly neighbor state, therefore, the provisions for the free passage of relief not only oblige the parties to conflicts, but also oblige neutral states and neighboring states. These provisions are as follows:

*1- regarding international armed conflicts*, States are required to allow free passage of food supply for people in need, even if those people belong to the adversary State. Article 23 of the Fourth Geneva Convention<sup>(38)</sup> states that "Each High Contracting Party shall allow the free passage of all consignments of medical and

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(37) See: Monika Sandvik-Nylund, *Caught in conflicts*, Institute for Human Rights, Abo Akademi University, Turku, Abo, Finland, 1998; Jelena Pelic, *The right to food in situations of armed conflict: The legal framework*, International Review of the Red Cross, 2001, No. 844, pp. 1097-1110.

(38) Geneva Convention relative to the Protection of Civilian Persons in Time of War, 75 U.N.T.S. 287, entered into force Oct. 21, 1950.

hospital stores and objects necessary for religious worship intended only for civilians of another High Contracting Party, even if the latter is its adversary. It shall likewise permit the free passage of all consignments of essential foodstuffs, clothing and tonics intended for children under fifteen, expectant mothers and maternity cases." Also article 70 (2) of the Additional Protocol I<sup>(39)</sup> states that "The Parties to the conflict and each High Contracting Party shall allow and facilitate rapid and unimpeded passage of all relief consignments, equipment and personnel provided in accordance with this Section, even if such assistance is destined for the civilian population of the adverse Party."

These articles clearly state that free passage shall be granted even if the beneficiaries are subjects of an adversary party. They also include obligations for neighboring states to allow free passage of relief items. The obligation to allow and to facilitate the rapid and unimpeded passage of consignments leads to prohibiting seizure, harassment, delays and unnecessary formalities.

2- *Regarding non-international armed conflicts*, Article 18 (2) of the Additional Protocol II<sup>(40)</sup> states that "If the civilian population is suffering undue hardship owing to a lack of the supplies essential for its survival, such as foodstuffs and medical supplies, relief actions for the civilian population which are of an exclusively humanitarian and impartial nature and which are conducted without any adverse distinction shall be undertaken subject to the consent of

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(39) Protocol Additional to the Geneva Conventions of 12 August 1949. Relating to the Protection of Victims of International Armed Conflicts (Protocol I), 1125 U.N.T.S. 3, entered into force Dec. 7, 1978.

(40) Protocol Additional to the Geneva Conventions of 12 August 1949. Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 1125 U.N.T.S. 609, entered into force Dec. 7, 1978.

subject to the consent of the High Contracting Party concerned." Also article 3 common to the Geneva Conventions states that an "impartial humanitarian body, such as the International Committee of the Red Cross (ICRC), may offer its services to the Party of the conflict". These articles contain the right of humanitarian organizations to offer relief supplies.

3- *Regarding occupied territories*, Article 59(3) of the Fourth Geneva Convention states that "All Contracting Parties shall permit the free passage of these consignments and shall guarantee their protection." The principle of free passage means that relief consignments for the population of an occupied territory must be allowed to pass through the blockade; they cannot under any circumstances be declared war contraband or be seized as such by those enforcing the blockade.<sup>(41)</sup> The importance of this article can be realized if a moment's thought is given to the Israel's closure and siege policies imposed throughout the Palestinian territories. These policies cause a denial of access to food and hinder the efforts of international humanitarian agencies; such as the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), to provide the essential supplies of food.<sup>(42)</sup>

*According to these provisions, states have the following duties:*<sup>(43)</sup>

- allow and facilitate rapid and unimpeded passage of all relief consignments (including food supply), equipment and personnel,

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(41) International Committee of the Red Cross, Commentary, Geneva Convention relative to the Protection of Civilian Persons in Time of War, Geneva, 1958, p. 322.

(42) It is important to note that The Security Council has on several occasions declared that the fourth Geneva Convention is applicable to the territories occupied by Israel.

(43) States also have obligations to grant access to food to specified categories of persons; as prisoners of war (articles 20, 26, 28 and 46 of the third Geneva Convention) and detainees (articles 87 and 89 of the Fourth Geneva Convention).

even if such assistance is destined for the civilian population of the adverse Party.

- encourage and facilitate effective international co-ordination of the relief actions.

- refrain from diverting relief consignments from the purpose for which they are intended or delaying their forwarding.

- protect relief consignments and facilitate their rapid distribution.

- respect and protect humanitarian personnel.<sup>(44)</sup>

#### **External supply of food**

Each State has the main responsibility to provide food supplies for civilians residing in its territory. Any external supply of food is therefore complementing the efforts undertaken by the party controlling the territory. Hence, external supply of food, from foreign states or humanitarian agencies, can be provided whenever the basic needs of the civilian population, including food, are not fulfilled and an impartial humanitarian organization provides such supply.

It must be mentioned that, according to international law, external supply of food is not regarded as unfriendly acts; as mentioned in article 70 (1) of Additional Protocol I which states that "Offers of such relief shall not be regarded as interference in the armed conflict or as unfriendly acts". This was also recognized by the International Court of Justice, which states that "There can be no doubt that the provision of strictly humanitarian aid to persons or forces in another country, whatever their political

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(44) Additional Protocol I, Art 70.

affiliations or objectives, cannot be regarded as unlawful intervention, or as in any way contrary to international law."<sup>(45)</sup>

International humanitarian law clearly requires the need to gain the approval of the parties concerned for free passage of external food supply.

#### **State approval and the free passage of food supply**

In all the articles that directly related to the supply of food, reference is made to the need to obtain the agreement or consent of the parties concerned. This approval is extremely important because it is, in many cases, the only way for the populations who are suffering to obtain the supplies essential for their survival.

#### *1- International armed conflicts*

Article 23 (2) of the Fourth Geneva Convention states that "The obligation of a High Contracting Party to allow the free passage of the consignments indicated in the preceding paragraph is subject to the condition that this Party is satisfied that there are no serious reasons for fearing:

(a) That the consignments may be diverted from their destination;

(b) That the control may not be effective; or

(c) That a definite advantage may accrue to the military efforts or economy of the enemy through the substitution of the above-mentioned consignments for goods which would otherwise be provided or produced by the enemy or through the release of such material, services or facilities as would otherwise be required

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(45) International Court of Justice, *Nicaragua v. United States of America* (case concerning the military and paramilitary activities in and against Nicaragua), Judgment of 27 June 1986, para. 242.

for the production of such goods." This article makes the free passage is subject to some conditions, but this does not mean that the states concerned have an unlimited freedom to prevent the free passage of essential supplies. On the contrary, states should allow the free passage of supplies intended for civilians, if there are no serious reasons for fearing.

Also article 70 (1) of the Additional Protocol I states that "If the civilian population of any territory under the control of a Party to the conflict, other than occupied territory, is not adequately provided with the supplies mentioned in Article 69, relief actions which are humanitarian and impartial in character and conducted without any adverse distinction shall be undertaken, subject to the agreement of the Parties concerned in such relief actions." This article demands explicitly the requirement of the agreement of the Parties concerned. It reveals a greater concern for state sovereignty; since it requires the agreement of the state before any relief actions. It states that humanitarian and impartial relief action "shall be undertaken". This wording limits the discretion of Parties concerned, which can refuse their agreement only for valid reasons, not for arbitrary reasons. The valid reasons of refusal would be if the humanitarian action cannot be considered as impartial, entirely humanitarian and non-discriminatory. Hence, the passage of food is subject to the agreement of the Parties concerned, but this agreement is expected and a State cannot refuse aid, except in exceptional conditions.

### *2- Non-international armed conflicts*

Article 18 (2) of the Additional Protocol II states that "If the civilian population is suffering undue hardship owing to a lack of

the supplies essential for its survival, such as foodstuffs and medical supplies, relief actions for the civilian population which are of an exclusively humanitarian and impartial nature and which are conducted without any adverse distinction shall be undertaken subject to the consent of the High Contracting Party concerned." This article affirms the principle that relief actions shall be undertaken if the civilian population is suffering due to lack of food and medical supplies.<sup>(46)</sup> The requirement of consent is expressed by the wording "relief actions ... shall be undertaken subject to the consent".<sup>(47)</sup> This wording constitutes a strong limitation of the discretionary power of the State.<sup>(48)</sup> In the words of the ICRC "the fact that consent is required does not mean that the decision is left to the discretion of the parties. If the survival of the population is threatened and a humanitarian organization fulfilling the required conditions of impartiality and non-discrimination is able to remedy this situation, relief actions must take place. In fact, they are the only way of combating starvation when local resources have been exhausted. The authorities responsible for safeguarding the population in the whole of the territory of the state cannot refuse such relief without good grounds."<sup>(49)</sup>

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(46) It is interesting to note that art 18 gives the government an advantage over a rebel party since only the consent of the government is required, even if the relief action is directed at rebel controlled areas.

(47) The wording 'subject to the consent' used in article 18 (2) of Additional Protocol II slightly differs from 'subject to the agreement' used in Article 70 (1) of Additional Protocol I. The words are synonymous. However, the agreement may require a formal procedure to be taken before relief actions, but the consent is less formal in which only permission is granted.

(48) In cases when it is difficult to determine which are the authorities concerned, consent is to be supposed.

(49) International Committee of the Red Cross, *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949*, Geneva-Dordrecht, 1987, para 4885.

### *3- Occupied territories*

Article 55 (1) of the Fourth Geneva Convention explicitly mentions the obligation to provide food supply; Article 55 (1) reads as follows: "To the fullest extent of the means available to it, the Occupying Power has the duty of ensuring the food and medical supplies of the population; it should, in particular, bring in the necessary foodstuffs, medical stores and other articles if the resources of the occupied territory are inadequate." According to this article, the occupying power has a definite responsibility to provide to the population food supply. The occupying power is not relieved of its responsibility even if external relief actions are undertaken.

Article 59 (1 and 2) of the Fourth Geneva Convention states that "If the whole or part of the population of an occupied territory is inadequately supplied, the Occupying Power shall agree to relief schemes on behalf of the said population, and shall facilitate them by all the means at its disposal. Such schemes, which may be undertaken either by States or by impartial humanitarian organizations such as the International Committee of the Red Cross, shall consist, in particular, of the provision of consignments of foodstuffs, medical supplies and clothing."

The wording 'shall agree' indicates some degree of agreement but it does not explicitly mention the requirement of consent. Comparing with the international and non-international conflicts, the requirement of consent is less strict in occupied territories, whereas the consent required for the free passage in international conflicts and in internal conflicts is expressed more clearly.

It should be noted that the sovereignty on the occupied territories does not transfer to the occupying power. Therefore, the requirement of consent is less explicit and almost laying down a duty to agree to relief supplies, including food supply.

The obligation of the occupying power to allow the free passage is thereby unconditional. This obligation was further strengthened by article 69 of Protocol I which states that relief actions shall be implemented without delay.

**B) Prohibiting certain behaviour led to prevention of food supply.**

In order to forbid using food as a weapon to terrorize civilian populations, international humanitarian law limits the freedom of the parties to choose methods and means of warfare. In this context, sovereignty of the state is restricted by international humanitarian law that prohibits certain behaviour led to prevention of food supply; such as the starvation of civilians as a method of warfare, the destruction of crops, foodstuffs, water and other objects that are essential to the survival of civilian populations, and the prohibition of forced displacement.

*1- Prohibition of starvation*

The starvation of civilians as a method of warfare is prohibited in both international and non-international armed conflict.<sup>(50)</sup> That prohibition is violated not only when denial of access to food causes death, but also when the population suffers hunger because of deprivation of food supply. Refusal of external food supply would be equivalent to a violation of the prohibiting of starvation as the population would be left deliberately to die of hunger without any measures being taken.

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(50) Additional Protocol I, art. 54 (1) and Additional Protocol II, art. 14.

Under the Rome Statute of the International Criminal Court (ICC), intentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival is considered a war crime in international armed conflict.<sup>(51)</sup> Moreover, the intentional deprivation of access to food could constitute, under specific circumstances, genocide or a crime against humanity.

*2- Prohibition of the destruction of crops, foodstuffs, water and other objects that are essential to the survival of civilian populations*

A party to the conflict cannot “attack, destroy, remove or render useless objects indispensable to the survival of the civilian population, such as foodstuffs, agricultural areas for the production of foodstuffs, crops, livestock, drinking water installations and supplies and irrigation works, for the specific purpose of denying them for their sustenance value to the civilian population or to the adverse Party, whatever the motive, whether in order to starve out civilians, to cause them to move away or for any other motive”<sup>(52)</sup> Objects indispensable to the survival of the civilian population “shall not be made the object of reprisals”<sup>(53)</sup> These articles oblige the parties to the conflict not to deprive civilians of access to food.

*3- Prohibition of forced displacement*

Forced displacement is prohibited under article 49 of the Fourth Geneva Convention which states that “Individual or mass forcible transfers, as well as deportations of protected persons from occupied territory to the territory of the Occupying Power or to that

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(51) ICC Statute, art. 8(2) (b)(xxv).

(52) Additional Protocol I, art. 54 (2) and Additional Protocol II, art. 14.

(53) Additional Protocol I, art. 54(4).

of any other country, occupied or not, are prohibited, regardless of their motive. Nevertheless, the Occupying Power may undertake total or partial evacuation of a given area if the security of the population or imperative military reasons do demand. Such evacuations may not involve the displacement of protected persons outside the bounds of the occupied territory except when for material reasons it is impossible to avoid such displacement. Persons thus evacuated shall be transferred back to their homes as soon as hostilities in the area in question have ceased."

Unlawful displacement constitutes a war crime under the Rome Statute of the International Criminal Court in both international and non-international armed conflict.

**To summarize, the following points can be laid down:**

- The parties to the armed conflict have the primary role in supplying food to the civilian population living on the territory they control. If food supply is not granted, states, including parties to the conflict, must allow the free passage of food supply intended for civilians. They also must not resort to any behaviour led to the prevention of food supply.

- The passage of food supply in international and non international armed conflicts requires the consent of the Parties concerned. This requirement is less strict in occupied territories. The requirement of the consent of the state is consistent with respecting of the principle of state sovereignty; since sovereign state is understood as a form of political rule based on territory and immunity from outside interference.

- The discretion of the State in refusing consent is restricted by several principles of international law; such as, external supply

of food is not regarded as unfriendly acts; refusals could amount to deliberate starvation of civilians, war crime, genocide or a crime against humanity, punishable under international law.

- As the obligations of humanitarian law are owed to the entire international community, all states have a legal interest to ensure respect for the humanitarian law. Thus, if a state violates the rules relating the free passage of food supply, the other states are to react to such violations by resorting to the means available under public international law.

### **III. The Security Council interventions and food supply security**

The United Nations and its Member States are obliged to act in accordance with principles laid down in The United Nations Charter. Article 2/1 of the Charter declares that the Organization is based on the principle of the sovereign equality of the Members States. This principle is accompanied by the principle non-intervention in domestic affairs (2/7), according to which "Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII." It mentioned that the principle of non-intervention in domestic jurisdiction shall not prejudice the application of enforcement measures by the Security Council under Chapter VII. This can be relevant to food supply security.

Food supply may be addressed by the United Nations Security Council. This can be happened if a refusal to accept food supply or to allow access to the victims leads to a threat to international peace

and security.<sup>(54)</sup> Indeed, in recent years, the Security Council has intervened under Chapter VII of the UN Charter on issues concerning humanitarian assistance; considering humanitarian crises and mass violations of human rights as a threat to international peace and security.<sup>(55)</sup> For example, the Security Council Resolution 794 (1992) determined "that the magnitude of the human tragedy caused by the conflict in Somalia, further exacerbated by the obstacles being created to the distribution of humanitarian assistance, constitutes a threat to international peace and security."<sup>(56)</sup> After having determined the existence of a threat to (or a breach of) peace, the Security Council can decide what measures can be taken to maintain or restore international peace and security.<sup>(57)</sup>

### **Intervention by the Security Council to provide food**

Since 1991, the Security Council has adopted several resolutions on issues relating to humanitarian assistance including food supply. Some of these resolutions explicitly referred to Chapter VII. In these resolutions, the Security Council called to allow humanitarian assistance which includes food supply and, in

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(54) One of the Purposes of the United Nations is "To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace." (UN Charter, art 1/1).

(55) According to art. 24 of the Charter, the Security Council is accorded the primary responsibility of maintaining international peace and security.

(56) Security Council Resolution 794 (3 December 1992).

(57) Article 39 of The United Nations Charter states "The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security."

some cases, authorized armed force "for the safety of delivery of humanitarian assistance."<sup>(58)</sup>

An important resolution in this regard is the Security Council Resolution 688 (1991) "reaffirming the commitment of all Member States to the sovereignty, territorial integrity and political independence of Iraq and of all States in the area", insisted that "Iraq allow immediate access by international humanitarian organizations to all those in need of assistance in all parts of Iraq"<sup>(59)</sup> Also, the Security Council Resolution 1258 (1999), concerning the civil war in the Democratic Republic of Congo, calls for "safe and unhindered access for humanitarian assistance to those in need in the Democratic Republic of Congo and urges all parties to the conflict to guarantee the safety and security of United Nations and humanitarian personnel and to respect strictly the relevant provisions of international humanitarian law."<sup>(60)</sup> In the case of Bosnia and Herzegovina, the Security Council condemns "all violations of international humanitarian law, including in particular the practice of "ethnic cleansing" and the deliberate impeding of the delivery of food and medical supplies to the civilian populations of the Republic of Bosnia and Herzegovina and reaffirms that those commit or order the commission of such acts will be individually responsible in respect of such acts."<sup>(61)</sup>

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(58) The cases in which the Security Council considered denial of humanitarian assistance as " a threat to international peace and security" include Iraq (1991), Bosnia and Herzegovina (1992-1995), Somalia (1992-1993), Rwanda (1994), Albania (1997), Kosovo (1998-1999), East Timor (1999) and Sierra Leone (1999-2000).

(59) Security Council Resolution 688 (5 April 1991), the preamble and para 3.

(60) Security Council Resolution 1258 ( 6 August 1999), para. 11.

(61) Security Council Resolution 787 (16 November 1992), para. 7.

In some exceptional cases, the Security Council specifically authorized States or international organizations "to use all necessary means", including military action, to give humanitarian agencies access to persons in need. For example, the Security Council Resolution 794 (1992) authorized the Un Secretary-General and all Member States "to use all necessary means to establish as soon as possible a secure environment for humanitarian relief operations in Somalia."

#### **Intervention by States to provide food**

The intervention of the Security Council under chapter VII creates a legal obligation for States to grant humanitarian agencies access to victims. For example, the Security Council Resolution 787 (1992) "calls upon all parties and others concerned to cooperate fully with humanitarian agencies and with the United Nations Protection Force to ensure the safe delivery of humanitarian assistance to those in need of it, and reiterates its demand that all parties and others concerned take the necessary measures to ensure the safety of United Nations and other personnel engaged in the delivery of humanitarian assistance."<sup>(62)</sup> However, violations of this obligation do not entitle automatically other States or international organizations to intervene and provide food without getting consent of the affected State, unless the Security Council specifically authorizes these States or international organizations to intervene.

**It can be concluded that** the situation in which a State does not permit food supply into its territory or starves its population does not constitute a threat to the peace or a breach of the peace as

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(62) Security Council Resolution 787 (16 November 1992), para. 18

such. However, the Security Council can determine that there is a threat to the peace and can decide what action should be taken. Indeed, recent history has shown instances where the Security Council was overriding sovereignty to provide humanitarian assistance (including food supply). States have the obligation to assist the Security Council in its functions; but, this does not give states any claim to intervene in other states to provide food.

### **Conclusion**

The state has the primary duty to ensure supply of food for everyone under its jurisdiction. According to the principle of sovereignty, the State has the full power concerning its own food supply security.

Foreign States and international organizations should respect sovereignty of the state; this demands that they should refrain from food embargoes or economic sanctions which endanger conditions for food supply. They also should ensure that food supply security is given due attention in international trade agreements.

In situations where the civilian population is suffering owing to the lack of food supply and when no other means are available to meet their urgent needs, the state has to appeal for external food supply.

The current relationship between state sovereignty and external food supply should be evolved in a balanced way, as follows:

a- Respect for state sovereignty demands that food supply is to be provided upon request by the state or at least with its consent. This is important since states are obviously not willing to leave the

door open for international humanitarian agencies to supply food to their own populations, without the consent of the state concerned.

b- Sovereignty of the state should not be interpreted in a way which is against the obligations of the state relating human rights; particularly the right to life and the right to food. Therefore, if external food supply is the only way to ensure the survival of the population, the consent of the state is expected and a State cannot refuse this external food supply, except in exceptional conditions.