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## The Impact of The Right to Food on International Trade in The Russia-Ukraine War

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### Abstract

Many discussions about the Right to Food (RTF) and international trade have concluded that international trade has always aided in realizing the RTF. This is reflected in the FAO's 2004 Right to food Guidelines. It emphasized the importance of international trade in promoting global economic growth and food security, as well as the commitment of states under the WTO Agreement on Agriculture to avoid market restrictions and distortions. The narrative has shifted with the advent of the Russian-Ukraine War. Ukraine and Russia supplied a quarter of the world's grain before the war. Russia's blockade of Ukraine's Black Sea ports has prevented the country from realizing its export potential, contributing to a global food crisis, raising food prices, and putting pressure on global trading systems. Despite sanctions that further restricted international trade, Russia remained defiant until the Black Sea Grain Initiative emerged. This article examined the inter-legal links between the RTF and other fundamental rights, making it indispensable in international trade, humanitarian, and maritime law. The doctrinal legal research method is adopted to analyze the legal position and propositions underlying this topic in the context of the Russia-Ukraine war. The author finds that the state's duty to respect, protect, and fulfil the RTF is a powerful tool for ensuring international peace and economic order. The work further draws on the Black Sea Grain Initiative to demonstrate that global trade can be preserved and revitalized by promoting the RTF. In conclusion, the article suggests improving and expanding this initiative while submitting that despite being viewed as a partial solution to risks posed by the war, the humanitarian agreement has provided eternal hope of encouraging states to explore diplomatic channels towards future crises, given their commitment to protecting the RTF and freedom from hunger.

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## Introduction

The Russia-Ukraine War greatly affected international trade. The crisis had a negative impact on food supply chains, with significant repercussions on production, sourcing, manufacturing, processing, and logistics, as well as substantial swings in demand among countries dependent on imports from Ukraine. This has worsened because of the economic sanctions placed against Russia. Therefore, the moment has come to evaluate the states' commitment to respect, fulfil, and preserve the Right to Food (RTF) outside their territorial jurisdiction. This study examines the

interrelationship between the RTF and international trade. It analyzes the present legal stance on the extraterritorial obligations of states to protect social, economic, and cultural rights. In addition, it will look into the unprecedented actions carried out by states during the Russian-Ukraine Conflict, particularly concerning the fulfilment of the RTF.

### **Research Methods**

The method involves doctrinal legal research and factual, referencing substantive legal sources, journals, and reports. This approach is conceptual, analytical, and prescriptive. It observed and analyzed the existing and relevant information (of law and fact) regarding the abstract concept of the RTF and International Trade in relation to the Russia-Ukraine War to derive its conclusions and recommendations.

### **Right to Food (RTF) and International Trade**

As with any other phrase, there is no specific meaning for the Right to Food (RTF). Typically, the definition is supplied in light of national or international instruments establishing the RTF and outlining its characteristics and goals. The Universal Declaration of Human Rights (UDHR), which serves as the cornerstone of contemporary human rights, mentions food as a component of the right to an acceptable standard of living for health and well-being. This was expanded with the adoption of the International Covenant on Economic, Social, and Cultural Rights (ICESCR), recognizing the RTF as a special right that includes freedom from hunger and the right to adequate food. According to Ziegler, the RTF “protects the right of all human beings to live in dignity, free from hunger, food insecurity, and malnutrition. The right to eat is not about charity but rather about ensuring that all individuals can feed themselves with dignity”.<sup>1</sup> The right to adequate food is broader and stricter than the freedom from hunger. While the latter seems immediate and guarantees merely a minimal daily nutritional intake of survival, the former (i.e., the right to adequate food) “goes beyond freedom from hunger

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<sup>1</sup>JeanZeagler, 'RighttoFood '(WaybackMachine,2012)<<https://web.archive.org/web/20120118105225/http://www.righttofood.org/new/html/WhatRighttofood.html>> accessed 21 November 2022.

to include the adequacy requirement (in terms of quality, quantity, safety, and cultural acceptability)".<sup>2</sup>

According to General Comment No. 12 of the Committee on Economic, Social, and Cultural Rights (CESCR), "the right to adequate food is realized when every man, woman, and child, alone or in a community with others, has physical and economic access at all times to adequate food or means for its procurement".<sup>3</sup> This prompted a Special Rapporteur to define the RTF as "the right to have regular, permanent, and unrestricted access, either directly or utilizing 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."<sup>4</sup> In this regard, the leading three elements of RTF have been identified as *Availability* (in terms of functioning distribution of food or processes that can efficiently move food from the production stage to the consumption stage), *Accessibility* (both economic and physical accessibility, the former primarily addressing affordability), and *Adequacy*.<sup>5</sup>

International Trade, on the other hand, is the exchange of capital, goods, and services across international borders or territories due to parties' needs and desires for goods or services.<sup>6</sup> Fakhri described the existing trading system as frequently measured on a national scale by the balance of trade/balance of payments, or on a global scale by volume. The fundamental assumption underlying these calculations was that increasing trade is beneficial. This approach assumes that economic growth and expansion are proportional to the volume of trade and consumption. Everything becomes a commodity

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<sup>2</sup> Lorenzo Cotula and Margaret Vidar, 'The Right to Adequate Food in Emergencies', (FAO Legislative Study, 2022) available at <<https://www.fao.org/3/y4430e/y4430e.pdf>> accessed on 21<sup>st</sup> November 2022.

<sup>3</sup> UN Committee on Economic Social and Cultural Rights (CESCR), 1999

<sup>4</sup> Jean Ziegler 'Promotion and Protection of All Human Rights, Civil, Political, Economic and Cultural Rights, Including the Right to Development', (Human Rights Council, 2008) < A/HRC/7/5 <https://digitallibrary.un.org/record/616943?ln=en>> accessed on 21<sup>st</sup> November, 2022.

<sup>5</sup> Jean Zeagler (n 1); Michael Fakhri, 'The Right to Food in the Context of International Trade Policy' (United Nations General Assembly, 2020) < <https://digitallibrary.un.org/record/3879225?ln=en> > accessed 23 November 2022.

<sup>6</sup> ICC Academy, 'Online Certifications in International Trade & Finance' (ICC Academy, 2022) <<https://www.edumaritime.net/icc-academy>> accessed 23 November 2022.

whose value is determined by its ability to be bought and sold, and trading in foodstuffs is assessed similarly to trading in other items. People and states are valued based on their economic productivity and exchange/trade capacity.<sup>7</sup> He then elaborated on the significance of the international food trade from the perspective of self-sufficiency. He noted that no society could rely only on domestic or local food production to meet national or localized needs for sufficient food. Relying on domestic production puts a nation at risk of sudden incidents such as drought, crop failure, and political instability.<sup>8</sup>

Accordingly, most authors have submitted that international trade offers various benefits, including facilitating the RTF. Fakhri emphasized that international trade is a major factor that must be addressed to enable the complete application of RTF.<sup>9</sup> Zeigler also emphasized that states must fully uphold their commitment to the RTF, which includes protecting and fulfilling this right with respect to people or individuals residing in other territories. This responsibility extends to decisions made within organizations such as the WTO, the IMF, and the World Bank.<sup>10</sup> Karl made a similar argument by tracing the right to adequate and healthy food back to ancient times. While stressing that restrictions in international food trade should be relegated to antiquity, he posits that consumers' nationality has no bearing on their desire for high-quality food and its accessibility.<sup>11</sup>

The submissions above highlight the oversimplification of the relationship between RTF and international trade, although this is more complex than it appears. This problem has been identified in several dimensions. Starting from the earlier submission of this work, RTF as a social and economic right is just one of the elements to achieve the right to an adequate standard of living under the UDHR and ICESCR. Even though the Committee (i.e., CESCR) vide General Comment 12 employed a typology to facilitate the understanding of social, economic, and cultural rights (i.e., obligation to respect, protect,

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<sup>7</sup> Fakhri (n 4).

<sup>8</sup> *ibid.*

<sup>9</sup> *ibid.*

<sup>10</sup> Jean Ziegler (n 3).

<sup>11</sup> Paul M Karl, 'Food Laws and Their Influence on International Trade' (1970) 25 *Food, Drug, Cosmetic Law Journal*, p. 453.

and fulfil), this does not change the fact that the committee has failed to stipulate how the standard of living of the population of a state is to be measured but rather ignores it to the state concerned to adopt its measure.<sup>12</sup> Article 2(1) of the ICESCR only provides that state parties must take progressive measures to realize the rights outlined in the ICESCR in accordance with the resources of each state.<sup>13</sup> This resulted in a significant difference (or incoherence) between states' formal recognition of food as a basic human right that requires more attention for implementation.<sup>14</sup>

Similar complications exist when defining the scope or extent of responsibilities linked to RTF, especially when discussing extraterritoriality. Because the state controls the resources necessary to protect everyone from hunger within its territory, it is easy for it to be held accountable.<sup>15</sup> However, in today's globalized world, more states interact and participate in military operations outside their national borders, creating scenarios that could result in human rights violations. The question of whether a state can be held liable for an alleged violation of human rights (particularly a socioeconomic right such as the RTF) that occurs outside the state's territorial boundary becomes critical.

To answer this question, most writers refer to Article 28 of the UDHR Articles 55 and 56 of the UN Charter, Articles 2(1 and 2), and 11 of ICESCR.<sup>16</sup> The combined provisions recognized states' obligations to promote their own development, contribute to the development of others (particularly poorer states), and perform the critical role of inter-cooperation and assistance in ensuring the realization of socioeconomic and cultural rights without discrimination based on race or nationality, among others. The principle of non-discrimination in the context of race or nationality presumes internal and external boundaries. Olivier stated that these provisions recognize the link between

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<sup>12</sup> Manoj Kumar Sinha, 'Right To Food: International And National Perspectives' (2014) 56 *Journal of the Indian Law Institute*, p. 47.

<sup>13</sup> See also Art.22 of ICESCR.

<sup>14</sup> Jean Ziegler (n 3).

<sup>15</sup> Niru Sharan, 'Right to Food' (2014) 3 *Global Journal of Interdisciplinary Global Sciences*, p. 163.

<sup>16</sup> Cotula and Vidar (n 2); Olivier De Schutter, 'International Trade in Agriculture and the Right to Food' (Geneva office of the Friedrich-Ebert-Stiftung, 2009) <<https://www.europarl.europa.eu/cmsdata/191691/20130715ATT69800EN-original.pdf>> accessed 24 November 2022); Niru Sharan (n 13); FAO Council, 'Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security | Enhanced Reader' (FAO, 2004) <<https://www.fao.org/3/y7937e/y7937e.pdf>> accessed 26 November 2022.

domestic and international measures in achieving human rights, including the RTF. Thus, countries can only completely fulfil this right within a multilateral trading system that permits them to implement policies to achieve it and hold them accountable for violating it.<sup>17</sup>

These commitments and proclamations of international obligation inspired subsequent guidelines, declarations, and resolutions, such as the UNGA, Resolution 41/128 of 1986 on the Right to Development; the World Declaration on Nutrition, 1992; the Vienna Declaration on Human Rights (VDHR), 1993; the Exceptions to the WTO Agreement on Agriculture of 1995; General Assembly Resolution 51/171 of 1996; the Rome Declaration on World Food Security of 1996; the Plan of Action of the World Food Summit of 1996; and more recently, the United Nations Millennium Declaration, 2000, which led to MDGs (now SDGs). Despite the binding nature of the international instruments that gave rise to these declarations, there is still disagreement on whether extraterritorial obligations are mandatory to achieve socioeconomic and cultural rights. The history and state practices of the Covenant have not provided clear answers.<sup>18</sup> This brought us to the controversial advisory opinion on the Construction of a Wall in the Occupied Palestinian Territory.

### **The 2004 ICJ's Advisory Opinion On Extraterritoriality**

The ICJ's Advisory Opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory compounded the problem. The UN General Assembly requested an opinion from the ICJ in December 2003 regarding the legal repercussions of Israel building a wall in Palestinian Territory. Israel disregarded its responsibilities under the ICCPR, ICESCR, and CRC. The Court compared the State's obligations under the ICCPR and ICESCR and made the following remarks.

"The International Covenant on Economic, Social, and Cultural Rights contains no provision for its scope of application. This may be explained by the fact that

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<sup>17</sup> Olivier De Schutter (n 14).

<sup>18</sup> Olivier De Schutter and Others, 'Commentary to the Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights Article' (2012) 34 Human Rights Quarterly, p. 1084.

the Covenant guarantees rights **which are essentially territorial**. However, it is not to be excluded that it applies **both to territories over which a State party has sovereignty and to those over which that State exercises territorial jurisdiction**".<sup>19</sup> (Highlighted Mine)

The Court refers to economic, social, and cultural rights as "essentially territorial" and says they extend to situations where a state only has "territorial jurisdiction," territorial jurisdiction', like an occupation. These words suggest that the Court views economic, social, and cultural rights as requiring total or quasi-sovereign state power (like occupation by Israel) before they can be invoked. While this makes sense in that case, the question remains whether the state needs territorial or effective control over a state before it can fulfil its positive obligations under the ICESCR, particularly the RTF. If a state is not in "territorial control," is it not expected or obliged to respect the right to health or food, such as when it provides medicines or food aid in humanitarian crises or when it imposes an economic blockade on a territory (possibly a territory of another sovereign state), it does not occupy? This area of human rights law remains in flux.

### **Fao Guidelines 2004, Maastricht Guidelines 2011, and Sustainable Development Goals 2015-2013**

Four months after the ICJ's advisory opinion, FAO guidelines were adopted in 2004. The Guidelines have greatly facilitated progress towards achieving RTF in global discussions. Paragraph 4 charges individual states and international organizations to work towards progressively fulfilling the right to adequate food at the domestic level. Paragraphs 6 and 8 recognize that states play a crucial role in promoting international trade as a tool for developing and reducing hangers/poverty in developing countries.<sup>20</sup>

A similar guideline, known as the Maastricht Guidelines of 2011, also came into the limelight. Over 30 experts prepared and endorsed the guideline to clarify

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<sup>19</sup> ICJ Advisory Opinion, 'Legal Consequence of the Constructio of a Wall in the Occupied Palestinian Territory,' ( ICJ Reports, 2004)"mendeley":{"formattedCitation":"<i>Legal Consequence of the Constructio of a Wall in the Occupied Palestinian Territory, Advisory Opinion of ICJ</i> [2004] Int Court Justice Reports 136.","manualFormatting":"(Para. 112, Legal Consequence of the Constructio of a Wall in the Occupied Palestinian Territory, Advisory Opinion of ICJ, 2004 <<https://www.icj-cij.org/public/files/case-related/131/131-20040709-ADV-01-00-EN.pdf> >accessed 23 November,2022

<sup>20</sup> FAO Council (n 14).

states' extraterritorial commitments in economic, social, and cultural rights.<sup>21</sup> These principles were created because states other than those with territorial jurisdiction over the individuals in question increasingly interfere with their human rights. Trade liberalization, investment liberalization, and economic globalization have contributed to this trend. It was also a result of more states taking unilateral measures that may impact human rights outside their borders.<sup>22</sup>

The Guidelines were also followed by the replenishment of MDGs to adopt the 17 SDGs. Goal 2 of the SDGs aims to end hunger, improve nutrition, and promote sustainable agriculture. Goal 17 endorses partnerships for development, strengthening the legal commitment to internationalizing responsibility in this area.

To conclude this section, although the guidelines mentioned appear to have addressed the issue of extraterritoriality, it is not entirely resolved. This is because the guidelines are non-binding soft laws. The Maastricht Guidelines were not created by legislative bodies under international law. According to De Schutter, all States agree upon the extent of responsibility and its specific connotation; one may claim that the interpretation of extraterritoriality on socio-economic and cultural rights under the ICESCR and its Optional Protocol has been widely accepted. However, the extent of responsibility and its specific connotations have never been agreed upon by all states.<sup>23</sup>

Case laws on this issue are in flux and human rights bodies have not always adopted consistent solutions. Because the resolutions and guidelines adopted to fix this situation are non-binding, one cannot prove their effectiveness or measure how much they shape states' behavior. The Russian-Ukraine War and Black Sea Grain Initiative ended this doubt, at least regarding the RTF.

### **The Russia-Ukraine War**

This paper does not examine the political causes of the recent Russian-Ukraine

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<sup>21</sup> Niru Sharan (n 13); De Schutter and others (n 16). See Principles 19, 29, 30 of the Guideline

<sup>22</sup> Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights 2013 (see Principle 19, 29, 30 ); De Schutter and others (n 16).

<sup>23</sup> De Schutter and others (n 16).



conflict. Friction between Russia and Ukraine has existed since 2008.<sup>24</sup> What makes the recent invasion crucial, however, is its enormous influence on the world economy and the global food shortage as a result of unilateral measures taken by belligerent states and the economic sanctions imposed by non-injured states.<sup>25</sup> States, including the United States and most European nations, have labelled Russia's invasion of Ukraine as an unjustifiable act of aggression.<sup>26</sup> For this reason, many countries impose a vast array of economic sanctions against Russia on a large scale.<sup>27</sup>

There has been considerable discussion regarding the legality of these sanctions. Those in favor have claimed that countermeasures are acceptable under customary international law as long as they are necessary and proportionate.<sup>28</sup> The opposing school argued that in addition to the absence of UN mandates and the International Law Commission's lack of legislative authority, only lawful measures are permitted under Articles 48 and 54 of the Draft Article on Responsibility of States for Internationally Wrongful Acts (ARSIWA), which cannot infringe on human rights, citing Article 50

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<sup>24</sup> Anudha Singhai, 'Russia-Ukraine Conflict' (2022) Vol.2 Jus Corpus Law Journal, p. 76.

<sup>25</sup> FAO, 'The Importance of Ukraine and the Russian Federation for Global Agricultural Markets and the Risks Associated with the Current Conflict' (FAO: Information Note, 2022) <[https://www.fao.org/fileadmin/user\\_upload/faoweb/2022/Info-Note-Ukraine-Russian-Federation.pdf](https://www.fao.org/fileadmin/user_upload/faoweb/2022/Info-Note-Ukraine-Russian-Federation.pdf)> accessed 27 November 2022; C Nhemachena and others, 'Russia-Ukraine Conflict: Implications of Disruptions in Global Food Supply Chains for Food Trade in Africa' (AGRA: Policy Brief Regional Food Trade, 2022) <<https://agra.org/wp-content/uploads/2022/04/The-impacts-of-the-Russia-Ukraine-conflict-on-food-prices-food-and-nutrition-security-in-Africa-2.pdf>> accessed 27 November 2022; Congressional Research Service, 'Russia's War on Ukraine: The Economic Impact of Sanctions Impact on Russia's Economy' (CRS Reports, 2022) <<https://crsreports.congress.gov>> 23 November, 2022; OECD, 'The Impacts and Policy Implications of Russia's Aggression against Ukraine on Agricultural Markets' (OECD Policy Responses on the Impacts of the War in Ukraine, 2022) <<https://www.oecd.org/ukraine-hub/policy-responses/the-impacts-and-policy-implications-of-russia-s-aggression-against-ukraine-on-agricultural-markets-0030a4cd/>> accessed 27 November 2022.

<sup>26</sup> European Council of the European Union, 'Impact of Sanctions on the Russian Economy' (Consilium, 2022) <<https://www.consilium.europa.eu/en/infographics/impact-sanctions-russian-economy/>> accessed 27 November 2022; Office of the Spokesperson U.S. Department, 'The Impact of Sanctions and Export Controls on the Russian Federation' (U.S. Department of State, 2022) <<https://www.state.gov/the-impact-of-sanctions-and-export-controls-on-the-russian-federation/>> accessed 27<sup>th</sup> November 2022).

<sup>27</sup> Girish Luthra, 'The Russia-Ukraine Conflict and Sanctions: An Assessment of the Economic and Political Impact' (Observer Research Foundation: Occasional Papers, 2022) <[https://www.orfonline.org/wp-content/uploads/2022/10/ORF\\_OP-374\\_Russia-Ukraine-Conflict-and-Economic-Sanctions.pdf](https://www.orfonline.org/wp-content/uploads/2022/10/ORF_OP-374_Russia-Ukraine-Conflict-and-Economic-Sanctions.pdf)> accessed 27<sup>th</sup> November 2022).

<sup>28</sup> Deniz Baran, 'What Is the International Law on Unilateral Sanctions?: Examining the Case of Unilateral Sanctions Imposed on Russia' (Al Sarq Strategic Research, 2022) <<https://research.sharqforum.org/2022/04/22/unilateral-sanctions/>> accessed 27 November 2022.

ARSIWA.<sup>29</sup> However, according to an OECD report, international sanctions have so far exempted food and fertilizers for humanitarian purposes.<sup>30</sup> The European Council also confirmed when it stated that the sanctions aimed only to weaken “Russia’s ability to finance the war and specifically target the political, military, and economic elite responsible for the invasion. The restrictive measures do not target Russian society.” This is why imposed restrictive measures exclude food, agriculture, health, and pharmacies.<sup>31</sup>

While this seems astonishing, as the European Council demonstrates its commitment to recognizing its extra-territorial obligations towards Russian Society, the sanction has been further criticized on two grounds. First, there are reports of other breaches of human rights that result from sanctions<sup>32</sup>. Second, exclusion has been deemed ineffective due to its repercussions and counter-sanctions. According to the CRS report, companies and consumers in Russia could not access essential goods and services because of sanctions. As a result, foreign firms that are major employers left Russia, causing a shock to the Russian labor market. The Russian government retaliated by prohibiting the export of goods including food.<sup>33</sup> Most international organizations and authors have emphasized that Russia is one of the world’s leading exporters of wheat, barley, and sunflower seeds. Russia is also a major exporter of oil and fertilizers.<sup>34</sup> A halt in any of these factors will undoubtedly affect the global interdependence of food production. A halt in any of these factors will undoubtedly affect the global interdependence of food production. An expert in economic law, Cristiane Derani, cautioned that the legality or illegality of economic sanctions becomes irrelevant when they lead to food insecurity because such

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<sup>29</sup> John JA Burke, ‘Economic Sanctions Against the Russian Federation Are Illegal under Public International Law’ (2015) Vol. 3 Russian Law Journal p.126.

<sup>30</sup> OECD (n 23).

<sup>31</sup> European Council of the European Union (n 24).

<sup>32</sup> Article 19, ‘International: Sanctions against Russia Must Not Undermine Human Rights’ (Article 19 Report, 2022) < <https://www.article19.org/resources/international-sanctions-against-russia-must-not-undermine-human-rights/> > accessed 10 November 2022.

<sup>33</sup> CRS Reports (n 23); OECD (n 23).

<sup>34</sup> FAO (n 23); C Nhemachena and others (n 23).

a situation will be against human rights and automatically viewed as illegal.<sup>35</sup> Luthra shared a similar view when he concluded that:

“Sanctions on Russia came at a time when supply chains had already been tested by the COVID-19 pandemic and China’s zero-COVID policy. While countries around the world hoped for post-COVID-19 economic recovery, the sanctions exacerbated the existing global economic challenges due to elevated inflation (in energy, food, fertilizers, and others), rise in input costs, combination of supply-side and demand-side shocks, tightening global financial conditions, slowdown in trade growth, and continued supply chain disruptions. The primary reason for the high levels of inflation around the world is sanctions against Russia”.<sup>36</sup>

Russia’s blockade of Ukrainian ports has further exacerbated this situation. Ukraine and Russia are major exporters of grains (such as wheat, barley, and corn).<sup>37</sup> All these measures directly affected food export patterns and global food markets. According to Nhemachena et al., several African nations imported substantial quantities of wheat from Russia and Ukraine. Algeria, Nigeria, Egypt, Libya, Morocco, and Tunisia, which rely largely on food imports from Russia and Ukraine, face the greatest risk of not receiving supplies from these two nations.<sup>38</sup> Therefore, the Russia-Ukraine conflict threatens food availability and RTF in countries that rely heavily on their grain and food exports. Neither the United Nations resolution (including the order of provisional measures by the International Court of Justice) nor the economic sanctions imposed by intervening states could prevent Russia from continuing the war. The most practical proposal offered by the key organizations charged with protecting the RTF is to negotiate the opening of Ukrainian ports.<sup>39</sup>

### **The Black Sea Grain Initiative (BSGI)**

The Black Sea Grain Initiative came to address this situation. The Initiative is a collaborative effort by the United Nations and the Republic of Turkey to restore Ukraine’s

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<sup>35</sup> Cristiane Derani, ‘Economic Sanctions in Russia Risk Breaking International Law If They Lead to Global Food Shortages’ (*University of Cambridge*, 2022) < <https://www.cam.ac.uk/stories/food-insecurity> > accessed 27 November 2022).

<sup>36</sup> Girish Luthra (n 25).

<sup>37</sup> FAO (n 23).

<sup>38</sup> C Nhemachena and others (n 23).

<sup>39</sup> OECD (n 23); FAO (n 23).

ability to export food and fertilizer to the rest of the world. Delegates from Ukraine, Russia, the United Nations, and Turkey met in Istanbul to negotiate the establishment of a maritime corridor. On July 22, 2022, they signed a historic agreement formalizing the negotiations.<sup>40</sup>

The initiative's text implies that its subject is safe navigation under maritime law. However, its objective is the right to food, as it seeks to export food and fertilizers from the relevant Ukrainian ports (Odesa, Chornomorsk, and Yuzhny), the navigation of which will be monitored and coordinated by the Joint Coordination Centre (JCC) in Istanbul.<sup>41</sup> This intention was clearly stated by the United Nations Conference on Trade and Development (UNCTAD), which reported the role of the Black Sea Grain Initiative (BSGI) and declared:

“The Initiative remains vital for global food security. The urgent threat of rising world hunger and the cost to human life require urgent response. Amid these difficult and complex challenges, the Black Sea Grain Initiative provides a measure of stability in our global food supply, especially in developing countries. The Initiative has gathered momentum and every day ensures that an increasing number of grains reach the world”.<sup>42</sup>

In essence, the Black Sea Grain Initiative is therefore a negotiation between Russia and Ukraine with the participation of Turkey and the United Nations during the Russian invasion of Ukraine in 2022. It is both regional and inter-governmental efforts to neutralize the adverse effect of the Russian-Ukraine conflict on the global market while promoting food security and preventing hunger worldwide. It is also essential to state that on the 22nd of July, 2022, when the BSGI was signed, the United Nations negotiated a memorandum of understanding with the Russian Federation to ease the export of food and fertilizers to global markets.<sup>43</sup> As a result, the initiative has contributed to the

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<sup>40</sup> ReliefWeb, 'Black Sea Grain Initiative Joint Coordination Centre Factsheet' (ReliefWeb Report, 2022) <<https://reliefweb.int/report/ukraine/black-sea-grain-initiative-joint-coordination-centre-factsheet-12-september-2022> > accessed 27 November 2022; UNCTAD, 'The Black Sea Grain Initiative: What It Is, and Why It's Important for the World' (UNCTAD, 2022) <<https://unctad.org/news/black-sea-grain-initiative-what-it-and-why-its-important-world> > accessed 27 November 2022).

<sup>41</sup> UNCTAD (n 38).

<sup>42</sup> UNCTAD, 'A Trade Hope: The Role of the Black Sea Grain Initiative in Bringing Ukrainian Grain to the World' (United Nations Conference on Trade and Development, 2022) <[https://unctad.org/system/files/official-document/osginf2022d6\\_en.pdf](https://unctad.org/system/files/official-document/osginf2022d6_en.pdf) > accessed 27 November 2022.

<sup>43</sup> *ibid.*

stabilization and subsequent reduction of global food prices, as well as the movement of valuable grain from one of the world's breadbaskets to those in need.<sup>44</sup>

### **What Do The Russia-Ukraine War and the Black Sea Grain Initiative Demonstrate Concerning the RTF?**

This initiative has been termed unprecedented by the United Nations. The unique reasons identified in this study are as follows.

#### **A. RTF can facilitate International Trade**

While most international organizations referred to this initiative as a Beacon of Hope and relief, the UNCTAD has referred to it as 'trade hope' because of its tremendous impact on global trade, particularly food and agricultural trade.<sup>45</sup> When this Initiative was negotiated, sanctions disrupted global supply chains, drove up commodity prices, and hindered global economic growth. The Black Sea region, a hub for global food production and trade, was obstructed, resulting in the closure of ports and oilseed crushing operations for export. Owing to the war, it was uncertain whether Ukraine's crops would be harvested. All commercial shipping operations at ports were suspended. Given the limited number of alternatives, this situation raised concerns. Economic and financial sanctions harmed Russia the export prospects. Increased insurance premiums or lack of war coverage in insurance contracts for vessels sailing into the Black Sea compounded the already high maritime transportation costs, increasing food import prices. Signing the BSGI reopened Ukraine's grain gates to the world, increasing ship departures, and food and grain shipments. As of October 17, 2022, nearly 8 million tons of grain and food have left Ukrainian ports.<sup>46</sup> This proves that even when international law and trade fail, the RTF will thrive.

#### **B. States' extraterritorial obligation on economic, social and cultural rights is practicable and achievable.**

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<sup>44</sup> United Nations, 'Beacon of Hope' (UN, 2022) <<https://www.un.org/en/black-sea-grain-initiative>> accessed 19 October 2022.

<sup>45</sup> *ibid*; UNCTAD (n 40).

<sup>46</sup> UNCTAD (n 40).

As previously noted, RTF is a human right ( socio-economic right) guaranteed by international law. Despite the various resolutions and declarations enacted by the international community, extraterritorial obligations linked to socioeconomic rights have been viewed with considerable skepticism. The Russian-Ukraine Conflict seems to end such doubt, judging by the state's behavior to uphold the right (particularly the right to food) amid the conflict. Apart from the careful imposition of sanctions by the non-injured states to ensure that the RTF of the Russian people is not violated, the parties also signed an initiative demonstrating their commitment to uphold the RTF as an obligation owed to the international community and outside their territorial jurisdiction. This Initiative mitigated the deterioration of the international economy and curtailed the adverse effects that the conflict might have on food availability.

### **C. That RTF is a viable tool of diplomacy**

During a war, countries can attempt to exert pressure on warring factions using diplomatic means, such as confidential discussions, public statements, or legal measures before international courts.<sup>47</sup> Before the imposition of sanctions on Russia, diplomatic efforts to ceasefire between Russia and Ukraine were initiated in Belarus, but three rounds of talks stalled.<sup>48</sup> In addition, the Ukrainian government took legal action against Russia by filing a case in the International Court of Justice. However, before the court considered the merits of the case, Ukraine requested provisional measures. By a majority vote, the ICJ ordered Russia on March 16, 2022, to prevent any military or armed groups it supported from engaging in military operations related to the case before the court.<sup>49</sup>

All the above were blatantly disregarded until the RTF became a viable diplomatic tool. In other words, RTF is a fundamental human right, and as such, it can be used in any conflict situation as a tool of diplomacy. In the context of the Russian-Ukraine war, the RTF has been utilized to pressure the Russian government to comply with international

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<sup>47</sup> Nils Melzer, *International Humanitarian Law A Comprehensive Introduction* (International Committee of the Red Cross (ICRC), 2019) p.90.

<sup>48</sup> Girish Luthra (n 25).

<sup>49</sup> ICJ , 'Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v Russian Federation)' (ICJ Reports, 2022) <<https://www.icj-cij.org/en/case/182/provisional-measures>>accessed 23<sup>rd</sup> November 2022.

law and respect the human rights of people across the world and the Ukrainian people. The international community made it clear that it was willing to use the RTF as a diplomatic tool in this conflict, and the Russian government appeared more inclined to reach a peaceful resolution by signing the BSGI and MOU to facilitate unrestricted access to food and fertilizer exports.

### **What Made This Possible?**

What made this development possible can be considered from legal and political perspectives. The latter relates to public opinion, which is beyond the scope of this study. However, it is important to note that public opinion could lead to additional pressure from the international community, which every state will strive to avoid as much as possible.<sup>50</sup> This study focused on the second scenario in more detail. This is possible because of the multifaceted nature of the right to food, which is closely linked to other human rights, including civil and political rights. Moreover, since the RTF is considered part of customary law, other branches of international law contain applicable criteria for the right to food, such as trade, maritime, and humanitarian laws, making it obligatory for conflicting parties to adhere to the right to food.

According to Cotular and Vidar, all human rights are interconnected and interdependent. Therefore, the RTF is contingent on achieving other rights.<sup>51</sup> In the 1993 Vienna Declaration and Programme of Action, the States declared that “all human rights are universal, indivisible, interdependent, and interrelated.” RTF is closely related to other human rights, including the right to life, health, education, livelihood, property, and freedoms such as expression, information, and association. It is also connected to other economic and social rights such as the right to water, work, social security, welfare, and an adequate standard of living.<sup>52</sup> Most of these

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<sup>50</sup> Melzer (n 45).

<sup>51</sup> Cotula and Vidar (n 2).

<sup>52</sup> Christophe Golay & Melik Özden, ‘The Right to Food: A Fundamental Human Right Affirmed by the United Nations and Recognized in Regional Treaties and Numerous National Constitutions’ (*Part of a series of the Human Rights Programme of the Europe-Third World Centre (CETIM)*, 2006) <<https://web.archive.org/web/20130525221132/http://www.cetim.ch/en/documents/Br-alim-A4-ang.pdf>> accessed 29 November 2022; Cotula and Vidar (n 2).

rights are listed in the Universal Declaration of Human Rights, which is considered a customary law and applies to all states, regardless of their ratification of human rights treaties. The right to food, in particular, is non-derogable even in emergency situations because despite the ICESCR's silence on non-derogability, it strongly connects with the right to life.

Other areas of international law have adopted the concept of the right to food. Even though it is not meant to protect human rights, international humanitarian law also defends RTF by prohibiting starvation as a weapon of war and regulating humanitarian aid activities such as food or food-related aid programs. (See Additional Protocol I, Article 54; Additional Protocol II, Articles 14 of 18 of Additional Protocol II; and Article 59 of the Fourth Geneva Convention).

Similarly, Maritime law is not a human rights law. Both the International Convention for the Safety of Life at Sea, 1974, as amended, (SOLAS) Regulations XI-2/11 and the International Ship and Port Facility Security Code (ISPS Code) referred to as the basis of BSGI only allow for special measures to enhance maritime security which may include "concluding agreement(s) for short international voyages on fixed routes between port facilities in the territory of the parties to the agreement." However, it is submitted that this maritime security could be for any object or motive, including the RTF. For instance, according to the International Maritime Organization on the effect of the Russian-Ukraine Conflict, "approximately 2000 seafarers were stranded aboard 94 vessels in Ukrainian ports at the start of the conflict. Many ships concerned lacked food, fuel, freshwater, and other vital supplies".<sup>53</sup> This initiative paved the way for people in these vessels to access food.

Therefore, it is safe to conclude that the persistent declarations and resolutions on the RTF, its comprehensiveness, and its relevance to humanity have reinforced or enabled State parties to respect, safeguard, and fulfil the RTF concerning their actions.

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<sup>53</sup> IMO, 'Maritime Security and Safety in the Black Sea and Sea of Azov' (IMO, 2022) <<https://www.imo.org/en/MediaCentre/HotTopics/Pages/MaritimeSecurityandSafetyintheBlackSeaandSeaofAzov.aspx>>accessed 29 November 2022).



## Conclusion

In summary, one could say that the RTF resuscitated international trade. This established the need for the RTF to guide and facilitate international trade, but not vice versa. Schutter communicated this clearly when he declared that “the realization of the right to adequate food should guide the establishment of efforts to develop a multilateral trading system”.<sup>54</sup> It was further stressed by Fakhri while criticizing the model adopted by WTO Agreement on Agriculture that “the current trade system treats food security as an exception and commercial transactions as a rule, and leaves out the broader right-to-food perspective. In other words, the existing WTO Agreement on Agriculture has been unable to provide adequate trade results, much less food security outcomes”.<sup>55</sup> Therefore, invites states to advance trade policy from an RTF perspective because, in the opinion of this research, right-to-food is a larger movement than international trade. The primacy of human rights is recognized in the Vienna Declaration and Programme of Action of the World Conference on Human Rights (1993), where all states acknowledged that the promotion and preservation of human rights is “the primary responsibility of governments”.<sup>56</sup> Placing human rights at the center of all inter-governmental initiatives in its normative value will increase the prospect of extraterritorial bindingness across borders.

The behavior of states amid the Russian-Ukraine Conflict is worthy of emulation. The initiative (BSGI) has been viewed by many as a partial solution because it only lasts for 120 days, followed by skepticism about whether Russia will keep its term. What matters is that the humanitarian agreement has provided eternal hope for encouraging states to explore diplomatic channels towards future crises, given their commitment to protecting the RTF and freedom from hunger. Subsequent Agreements could be in the form of hard law, largely enforceable at a tribunal or court delegated with such authority. A treaty (not a declaration, guideline, or resolution) is urgently needed to make anticipatory provisions to prevent future actions that may have a negative effect

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<sup>54</sup> Olivier De Schutter (n 14).

<sup>55</sup> Fakhri (n 4).

<sup>56</sup> Jean Ziegler (n 3).

on RTF. For example, Article 36 of Additional Protocol I. 1977 provides that in employing new weapons, states are obligated to be prohibited under international law. This can also be broadly emulated for treaties regarding RTF.

A similar invention has been made by The UN Committee (CESCR) states in its General Comment No. 8 on the Relationship between Economic Sanctions and Respect for Economic, Social and Cultural Rights (1997) when it declares that “it is essential to distinguish between the basic objective of applying political and economic pressure upon the governing élite of the country to persuade them to conform to international law, and the collateral infliction of suffering upon the most vulnerable groups within the targeted country” (para. 4). This was probably stressed pursuant to Articles 48 and 58 of ARSIWA, but this is not enough, because the bindingness/legal validity of the ILC Draft Articles is still in question, and even if considered binding, the provisions are only related to economic sanctions. This study proposes a somewhat broader provision that regulates and negates all future policies and actions by states that could have an adverse effect on the RTF.

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