

The complex negotiations on the human right to food

«The birth of a zebra»

Negotiations to establish a set of Voluntary Guidelines on the human right to food, held under the auspices of FAO, were successfully completed in autumn 2004, with all 174 FAO member countries signing the final document. However, the negotiations proved to be far from straightforward, as many countries were anxious about the legally binding nature of the Guidelines. In spite of this, those involved managed to reach a compromise that was acceptable to all parties and yet retain the rights-based character of the Guidelines, thus enabling them to be adopted within a relatively short space of time.

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The creation of the Voluntary Guidelines on the right to food can be compared to the birth of a zebra, with the black stripes of emerging international law already showing through against the background of «soft law». This is the image human rights expert Professor Eibe Riedel (University of Mannheim/Germany) used in a workshop on the right to food in order to describe the complicated process by which the norms of international law come into being. The human right to food is set down in Article 2 of the International Covenant on Economic, Social and Cultural Rights (ESC Covenant), while the Universal Declaration of Human Rights speaks of the right to an (adequate) standard of living «including food». Customary law can be generated by the existence of concrete guidelines indicating how this right should be guaranteed – namely, by means of various measures including land reform, food security, women’s rights and much more besides. Customary international law results from a consistent practice of states followed out of a sense of legal obligation. This commitment may find expression in resolutions or guidelines, which perhaps explains why many states had such great difficulty during the process of negotiating the Guidelines.

White lines or black? Aspects of a zebra

Finally brought to a successful completion almost two years ago, the two-year long negotiations held under the auspices of the Food and Agriculture Organization of the United Nations (FAO) generated considerable controversy. Fundamental differences regarding legal dogma and ideology emerged on a regular basis between FAO member states, different specialist disciplines and even among the individual delegates. Disagreements over strategy existed even among those who were passionate proponents of the Guidelines: while the «pragmatists» referred to the Guidelines merely as being a practical tool for developing food security strategies,

committed human rights activists saw such wording as a potential brake on the progress they hoped would be made on the legal front.

To return to the image of the zebra, there was a clash between black and white, and depending on the given standpoint in the debate, it was either the white or the black stripes that could be seen. Some delegations, for example, wanted to distinguish in the introduction – for good reason – between those states that were signatories to the ESC Covenant and those that had not ratified the Covenant, while others hoped that non-signatories to the Covenant might yet be drawn into a legal commitment by more open forms of wording.

The starting point in all the debates was always the issue of legally-binding force. Those in favour (including Germany, Switzerland and Norway in particular, with Austria and Brazil to some extent as well) found themselves in opposition to states such as the USA, the United Kingdom and Ireland, which generally had a more sceptical attitude towards the rights enshrined in the ESC Covenant. Sweden, too, often followed a rather restrictive line, although this was on the grounds of legal dogma. From the German perspective, the resistance shown on the part of the United Kingdom and Sweden in particular stood in contradiction to the con-



Photo: FAO

tractual obligation to «progressively realize» the right to food. Both countries, unlike the USA, are already bound to the Social Covenant as signatory states. References in the Guidelines to non-governmental actors also met with reservations for a considerable time.

Negotiations in Rome and Brussels

The Inter-Governmental Working Group (IGWG) met from autumn 2003 onwards in three one-week sessions as well as in an additional working meeting and a Friends of the Chair meeting. A secretariat in Rome, headed by Professor Saeed Noori, the Iranian Permanent Representative at FAO, had responsibility for coordinating this work. In parallel, the EU Council's FAO/Agri coordination group met in Brussels roughly every six weeks for consultations. Perhaps because of the interdisciplinarity and complexity of the material being addressed by the IGWG, its first few meetings were largely limited to reading declarations of intent and formal comments.

Eventually, in a meeting at the start of 2004, the group finally managed to reduce a 130-page document containing contributions from more than 30 country groups and individual states to one of just 28 pages. In spring 2004 the first real negotiations began.

By July 2004 agreement had been reached on about 95 percent of the text. The key remaining points of disagreement were:

Meeting of the Inter-Governmental Working Group at FAO headquarters in Rome: 95 states and 30 international organizations and NGOs participated in the negotiations.



- the G77 demand that the «international dimension» (supporting the human right to food by means of trade concessions, development assistance for capacity building and food security) should be anchored not just in the form of a general «chapeau» but in the form of a Guideline;
- the refusal of the USA to accept certain bans associated with the international law of war (Geneva Conventions and Additional Protocols) with regard to goals that have a food-related component;
- the G77 refusal to adopt further statements on the rule of law and human rights defenders (pushed by the EU in particular) in addition to the two Guidelines on the rule of law and legal parameters.

With regard to the first problem area, the German argument was clear: the principal responsibility for realizing the human right to food lies with national governments. Despite the commitment to «international cooperation» mentioned in the ESC Covenant, it was important that the primary duty of the state should not be undermined. In other words, the safeguarding of human rights must not be made dependent on the amount of development assistance a country receives.

The increasing sense of disappointment felt by the G77 states over on the inflexible attitude – as they saw it – of the OECD countries stemmed not least from the fact that the Guidelines were regarded to an ever greater extent as a further concession to the industrialized countries, with more and more conditions being attached to them, largely in the form of reporting requirements (human rights, food strategies, etc.). The expectation was that, in return for this, there would be a «reward» in the form of statements about international assistance commitments and trade concessions. This was somewhat surprising, given that the initial initiative for the Guidelines had emerged from Latin America (from Venezuela in particular). On the other hand, the arguments coming from the developing countries were understandable insofar as food security can no longer be a matter for national governments alone, given the unbalanced nature of world trade in agricultural products. This made it very hard to explain the categori-

cal position of some EU partners who wished to prevent all references to existing compromises already reached in other forums (UNCTAD XI, ECOSOC HLS, WTO Doha Round).

The first two of the three problem areas mentioned above seemed least capable of being resolved in the FAO context, given the global political situation in the summer of 2004 (Iraq, Doha Round). The situation was made more difficult by the fact that, unlike in other negotiations, there was no ambitious host government present to apply the crucial political pressure at the last minute, for the IGWG met exclusively under the auspices of FAO. Furthermore, none of the delegations felt that they were under any kind of urgent political or economic pressure to act.

The final sprint

Once the WTO framework agreement on agriculture had been reached in August 2004, and after the Iranian chairman of the IGWG had applied gentle pressure to

The Guidelines highlight that successful efforts to reduce hunger need to be backed up by further development of global trade rules and by appropriate initiatives in debt cancellation, development cooperation and international human rights policy.

the dissenting delegations, a remarkable dynamic got underway. First, on the sidelines of a meeting of the FAO Committee on World Food Security, the delegation from the International Committee of the Red Cross took on a mediating role in forging a compromise between the USA and the Middle East with regard to international humanitarian law, invoking the text of the First Additional Protocol of the Geneva Convention. Then the Netherlands, which then held the EU Council presidency, indicated for its part that it would accept a few brief international commitments as Guideline 18, thereby prompting movement on the part of the G77, led by the active Brazilian delegation. Now, at least, the Guidelines show clearly that all efforts towards reducing hunger and chronic malnutrition must be backed up by the further development of global

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The human rights-based approach on which the Guidelines are based should be mainstreamed in development cooperation.

trade rules and by appropriate initiatives in debt cancellation, development cooperation and international human rights policy as well as the involvement of civil society organizations. Finally, as the text was being tightened up all round, the G77 even accepted the paragraph in Guideline 1 about human rights defenders.

Successful German input

While joint action on the part of all 23 EU member states can help to strengthen a political initiative in the context of the EU, the Union is equally capable of acting as a brake if not everyone pulls together. Unfortunately, the joint positions represented by the EU were not only of the lowest common denominator type, they also seemed to be influenced by the «ESC skeptics». Germany had deliberately held back for tactical reasons during the prior consultations within the EU, in order not to endanger the entire process. This is because the number of states actively committed to championing the human right to food could be counted on the fingers of one hand, while the sceptics always managed to obtain their obstructive majorities relatively easily.

Given this background, it is true to say that the most successful German input to the negotiations was to introduce the issue of the implementation of law (institutions, judiciary, human rights education), along with the adoption of General Comment 12, formulated in 1999 by the committee on Economic, Social and Cultural Rights (ESC Committee). The state-

ments put out by the ESC Committee had given the right to food a form in which it could be operationalized for the first time. It was any reference to General Comment 12 that the delegations sceptical to ESC had wanted to prevent. In the end, negotiators managed to find a form of words that represented a meaningful compromise given the interests of both Covenant states and non-Covenant states. This wording means that Covenant states' obligations under international law have not been weakened and that non-Covenant states are committed to more than they were before on the basis of the Guidelines («States have obligations under relevant international instruments [...] Notably, States Parties to the ICESCR – International Covenant on Economic, Social and Cultural Rights – have the obligation to respect, promote and protect and to take appropriate steps...»).

Cooperating with civil society organizations

The negotiations in Rome usually involved 300 participants (95 states, 30 international organizations and non-governmental organizations). The work done by the non-governmental organizations (NGOs) beforehand as well as the activities they organized in parallel to the negotiations took on considerable significance at the negotiating table itself. In Germany, a «core group» consisting of representatives from government ministries and NGOs met on a regular basis to agree on how to proceed. In Rome, too, Germany

spoke out successfully for the right of civil society groups to have the right to speak and play an active role in the talks. Often, NGOs such as FIAN and other like-minded delegations would feed one another relevant lines.

The challenge of mainstreaming

The particular challenge posed by the «right to food» process was that it was the first time states had attempted to mainstream human rights outside the context of the relevant Geneva institutions. This is exactly what the Vienna World Conference on Human Rights in 1993 had intended. At least half of all the critical points voiced during the negotiations in Rome claimed that «inappropriate forums» were addressing questions of human rights, and that this was a reason for concern. However, the decision to mainstream human rights was taken precisely so that they would be addressed in forums not accustomed to dealing with them so far: human rights should be addressed outside Geneva, in the fields where they are most blatantly violated. From now on, organizations such as FAO will increasingly have to breathe life into the rights-based approach and integrate it into their project policy.

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