

Check against delivery



**Statement by Mr. Olivier De Schutter
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[Mr./ Ms.] Chairperson,
Distinguished delegates, ladies and gentlemen,

The situation of hunger in the world is alarming. The prices of food commodities on international markets have been going down since they reached a peak in June 2008, when the level of real food prices were 64 percent above their levels of 2002. But prices on domestic markets remain at historically high levels. In many countries, particularly developing net-food-importing countries, the brutal increase in prices in 2007 and the first half of 2008 has left severe marks on the poorest households. These families have reduced the quantity of the food they consume. They have switched to poorer diets, often lacking the necessary micronutrients children require for their development. They have cut back on schooling and on health care, leading to irreparable damage to the health and education of millions of children. They may have sold productive assets – land or tools – which will take time to restore.¹ As a result of this crisis, over 100 million more people have been driven into extreme poverty. At least 925 million people are hungry in the world today : they were 848 million in the period 2003-5. Progress towards the realization of the first Millennium Development Goal has been reversed, in all regions.

But there is hope in this crisis. Indeed, if the right choices are made now, this shock may even prove salutary, for it provides governments and international agencies with an opportunity to learn from what happened. What this crisis has demonstrated is that the fight against hunger in the world should not be confused with a fight to boost volumes of production, nor even with attempts to lower global prices by any means. Of course, demand for agricultural commodities is increasing, and climate change threatens the ability of entire regions to feed themselves: this is a challenge we must meet. And high prices impact severely on the poorest, for whom they constitute a regressive tax – since it is they who spend the largest proportion of their family budgets on food. Yet, the real challenge lies elsewhere : not just in increasing volumes produced, but in ensuring that this increased production will raise the incomes of those who need it most – smallholders hardly capable of living off their crops, landless labourers, pastoralists and fisherfolk; not just in maintaining prices at affordable levels, but in reducing the gap between farm-gate prices and prices paid by the consumer, so that relieving the poor from the impact of high prices does not occur at the detriment of small-hold producers, who constitute the majority of the food insecure in the world today.

Since I assumed my mandate on 1 May 2008, I have taken a number of initiatives to urge that, in the search for answers at international and national level, international agencies and governments are guided by the human right to adequate food. Grounding the search for solutions to the global food crisis in the right to food, means first of all that governments will have to devise such solutions taking into account the needs of those who are most vulnerable : public initiatives should ensure that such solutions will benefit them, rather than simply increase the quantity of agricultural commodities available for those who can pay. Solutions can be found that answer the needs of small-hold farmers and of the urban poor alike: these two groups should not be seen as having opposed interests, but as having to be helped by twin-track strategies. Smallholders should be helped by reinforcing their ability to produce while at the same time protecting them from the consequences of the volatility of international prices and the risks of unfair competition from agricultural producers of industrialized countries who are massively supported by taxpayers' money ; by

¹ See, for a recent appraisal, The World Bank, Human Development Network (HDN), Poverty Reduction and Economic Management (PREM) Network, *Rising food and fuel prices : addressing the risks to future generations*, 12 October 2008.

strengthening their ability to negotiate prices with the large agri-business firms which impose their prices on those who produce ; and by facilitating more environmentally friendly forms of agricultural production, by the use of inputs less dependent on the price of oil or on the expectations of companies holding patents on plant varieties. The urban poor should be helped by social safety nets, and cash-for-work or food-for-work programmes, which increase their purchasing power and help them to cope with periods of higher prices. And both these groups need to be protected from the volatility of international prices- : public interventions through storage of food reserves, public procurement and distribution, on the one hand, the protection of local producers from dumped agricultural products from abroad on the other hand, should better insulate the evolutions on the domestic markets from the unpredictability and, often, irrationality of the global markets. In my first report to the Human Rights Council on this crisis, which I presented to the Council last month, I have also suggested that we support the efforts of national governments to expand existing social safety nets, or to establish such safety nets, by insuring States against the fiscal impacts of external or internal shocks – such as sudden changes in the relative prices of commodities or bad harvests –, through the establishment of a global reinsurance fund at international level.

The daily and massive denial of the right to food has its source, not in an insufficient quantity of food produced, but in a system of production whose limits have now become clear. The temptation of return to business as usual is as strong today as it has been when, in the past, we have been confronted to similar crises: this means more food, and lower prices; but it also means unsustainable inequalities both between and within countries, with the impoverished countryside providing cheap food to the cities, and massive rural flight as a result. That temptation must be resisted. Instead, a new system should be put in place, building on the ruins of the old. We should take the human right to adequate food as a compass, guiding us in this enterprise. The institutional implications of recognizing the right to food, as a human right asserted in international law, may offer a decisive contribution to combating hunger, by favoring the establishment of recourse mechanisms against governments neglecting/ignoring their obligations towards the right to food, by strengthening the rights of land-users or the rights of women to have equal access to productive resources, or by affirming the responsibilities of companies to respect the right to food. We should uphold the right to food now: this is the first step towards making it real.

Distinguished delegates,

The right to food requires a coordination of initiatives at the international and at the national level. The report which is presented to you today is based on the idea that such initiatives should be mutually supportive : in the absence of an enabling international environment, governments often will be unable to realize the right to food at national level ; but without reforms at national level, including in particular programmes protecting and supporting smallholders and social programmes for the poor, the right to food will continue to be violated, however much international trade is reformed and however much progress is made in the fields of food aid and development co-operation.

My work programme for the mandate reflects this interdependency, since it focuses on the global governance issues related to the guarantee of food security, while also identifying which measures national governments should take in order to protect and fulfill the right to food under their jurisdiction, in a changing international environment. In March 2009, at the 10th session of the Human Rights Council, I shall present a report focused on food aid.

Although it has been declining in volume terms over the last few years,² international food aid currently provides about 10 million tonnes of commodities a year to some 200 million people in need, with an estimated total cost of 2 billion USD. But the practice of tying food aid remains widespread, resulting in roughly a third of the global food aid budget, or some 600 million USD, being spent in donor countries and never reaching beneficiaries.³ In addition, the responses to the soaring food prices have highlighted the difficulties of combining emergency responses⁴ with the need to promote developing country food markets and food security in food aid recipient countries. While there is a consensus on the need to switch from aid-in-kind to aid through cash transfers allowing procurement from local or regional markets, and on the importance of food aid being provided with a clear exit strategy in order to avoid dependency, these commitments remain unfulfilled in practice. I hope to contribute to identifying solutions to these problems.

The revision of the 1967 Food Aid Convention (FAC), most recently renewed in 1999,⁵ offers a unique opportunity to redefine the parameters of how food aid should be conceived in order to contribute, other than as a humanitarian gesture, to the realization of the right to food. The FAC – which may be renamed Food Assistance Convention – has been criticized on a number of grounds in recent years.⁶ First, the commitments of States under the Convention, as specified under the FAC's Rules of Procedure, are calculated by converting non-wheat food aid into wheat equivalent, creating an incentive for States to provide aid when the prices are lowest on international markets – in other terms, the aid all too often is counter-cyclical : it is lowest when the prices are high and when aid, therefore, is most needed. This only accentuates one of the most disturbing features of food aid in general – that it declines as prices increase –, which reflects its historical origins as a means to dispose of surplus production and the budgetary process in the United States, which is the world's most important food aid donor. Second, the current definition of commitments does not take into account the need to ensure adequate provision of micro-nutrients, although micronutrient malnutrition is currently more widespread than protein-energy malnutrition. Third, under the FAC, transport costs may only be taken into account for the deliveries of the donor itself, and not, for instance, for commodities sent by countries nearer to where aid is delivered, although this solution may be in many cases the most efficient. Fourth, the governance of the FAC is sometimes considered deficient, since there is no evaluation of its impact and no adequate monitoring of the compliance by its members with their commitments, and since neither recipient countries nor non-governmental organisations are represented within the Food Aid Committee. I will review possible solutions to the difficulties that have been identified over the years, and examine the need for a better coordination between the FAC and other elements of the global governance structures of international food aid. The aim of any future reforms should be to ensure predictability of food assistance; to avoid the risks of counter-cyclical aid being provided, or of aid disrupting local or regional production; to strengthen

² Since 1999, the overall amount of food aid has decreased from 15M to 6.9MT in 2006 and 5.9MT in 2007. This is a continuation of a broader trend : in the 1960s, food aid represented 20 percent of total bilateral official development assistance ; it represented approximately 5 percent in 2005 (Christopher B. Barrett and Daniel G. Maxwell, *Food Aid after Fifty Years : Recasting its Role*, London and New York, Routledge, 2005).

³ See FAO, *The State of Food Aid and Agriculture 2006*, Rome, January 2007 ; OECD, *The development effectiveness of food aid : does tying matter ?*, Paris, 2006.

⁴ Over 60 per cent of food aid is used for emergencies. This proportion has remained stable over the years.

⁵ The signatories are currently Argentina, Australia, Canada, Japan, Norway, Switzerland, the United States, the European Union and its member States. The FAC was extended, at its 97th Session on 6 June 2008 for one year - until 30 June 2009.

⁶ See, inter alia, John Hoddinott and Marc J. Cohen, *The Food Aid Convention : background, context and issues*, IFPRI, 2006.

the links between short-term aid in emergency situations and long-term food security; and to improve accountability and participation at both the donors' and the recipients' ends.

At the March session of the Human Rights Council, I will also present the report based on my mission to the World Trade Organisation. The report will be based on my dialogue with the secretariat of the Organisation ; on bilateral consultations held with a number of Ambassadors to the WTO ; and on expert consultations. The purpose of the report will not be to make a case for, or against, free trade in agricultural commodities. It will be to identify which measures, adopted at international level (particularly in the future shape of agreements concluded within the WTO framework) and at national level, could ensure that trade in agriculture contributes to the enjoyment of the right to food. This is an objective distinct from that of ensuring that more food is produced, or that the volume of trade in food commodities increases. The objective is, rather, that the incomes of those who are hungry increase, allowing them to purchase food in adequate quantities and of adequate quality; and that the resilience of States in a context of increasingly volatile prices be improved so they can ensure the basic rights of their citizens/population.

Because of the impact of trade policies on the enjoyment of the right to food, it is axiomatic that States should assess the impact on this right of any commitment they make through the conclusion of trade agreements, and that national parliaments and civil society organizations play an active role in monitoring international negotiations in this field. Such assessments must examine both the impact of imports – the result of the lowering of tariff barriers – on the various groups of the population, and the impact which can be expected from improved access to export markets. Seeking to achieve food security through more imports may lead to increased vulnerability, in the absence of adequate safeguard measures. Since they are expected to protect the right to food against the impact of volatile prices on international markets, States should be allowed to protect the sources of revenue of smallholders against import surges, and they should be encouraged to develop, in parallel, safety nets for the poorest segments of the population, who cannot afford the higher prices on domestic markets which may result from the imposition of tariffs. The protection of the right to food also requires that, when prices increase brutally on the international markets, net-food-importing developing countries be helped to cope with these increases. This in turn calls for measures at both the international and national levels. Such flexibilities and insurance mechanisms are essential complementary mechanisms to the lowering of import tariffs in the search for improved food security. As regards the opportunities created by an improved access to markets, it needs to be carefully examined how the existing supply side constraints can be addressed⁷ ; who will in fact benefit from such opportunities – and, in particular, whether they will not further accentuate the dualization of the farming sector, taking into account also the standards requirements smallholders have difficulties complying with ; and the impact of trade liberalization on the concentration of power in the production and distribution of food of commodity traders, food processors, and global retailers, which capture an increasing portion of the market value of food commodities, leading to widen the gap between farmgate prices and the prices paid by consumers. Finally, increased trade liberalization encourages the production of cash crops for exports, at the expense of food crops to supply local markets :

⁷ See, for example, United Nations Conference on Trade and Development, *Economic Development in Africa, 2008 – Export Performance Following Trade Liberalization : Some Patterns and Policy Perspectives* (by S. Gayi, J. Nkurunziza and M. Halle), September 2008, chapter 2 (noting that African agriculture did not benefit from trade liberalization due to the lack of complementary policies, including the subsidization of inputs, the insurance provided in earlier periods by marketing boards, and more generally, an active role of the public sector, which should be increased in the absence of a sufficiently developed private sector).

not only does this create a dependency on the prices of international markets, it also leads to agro-industrial forms of agricultural production, which may not be sustainable either environmentally or socially.

Food is not a commodity like any other. In many developing countries, its production constitutes the main means of livelihood for the majority of the population, and particularly for many of the poorest: the average revenues of rural households remain considerably lower than those of urban households in all developing regions. It would therefore be irresponsible to encourage trade liberalization in food if this led to threaten those livelihoods. In addition, the prices of food commodities are inherently volatile, due in particular to the impact of weather-related events – a phenomenon which climate change will further worsen – and to the inelasticity of supply, which responds only slowly to price signals. This constitutes the main justification for the establishment of mechanisms insulating domestic markets from the evolution of prices on international markets.

I intend to focus my report to this Assembly at its next session in 2009 on the question of intellectual property rights in agriculture. The Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPs) requires WTO Members to adopt wide-ranging minimum standards of intellectual property protection in a number of areas, including copyright, trademarks, patents and plant variety protection. Increased protection of intellectual property rights on plant varieties and seeds means increased monopoly power for those who detain such rights, and of course, increased dependency and higher prices for those who use such inputs.⁸ A particular source of concern is that a number of developing countries have been pressured to adopt legislation compliant with the 1991 version of the International Convention for the Protection of New Varieties of Plants (UPOV Convention), in particular as part of trade agreements they have concluded⁹ or as a result of pressures brought to bear on them through the ‘technical assistance’ provided to them – a particularly disturbing development since the aim of UPOV-1991 is to grant and protect breeders’ rights under a regime which ensures a significantly higher level of protection than under previous versions of the Convention, and makes selling and exchanging seeds of protected varieties illegal.¹⁰ They have also been discouraged from making use of the ‘sui generis’ flexibility for the promotion of food security by facilitating access to genetic resources for agriculture, for instance through an ‘access and benefit sharing’ regime.¹¹

The extension of patents to plant varieties which is currently being encouraged accelerates the ‘verticalisation’ of the food production chain, as agricultural producers become dependent on the prices set by companies for the seeds on which these companies have patents, and are denied the traditional right to sell and exchange seeds among themselves, as well as to save part of their crops in order to retain seeds for the next planting season – either as a

⁸ Geoff Tansey and Tasmin Rajotte, *The Future Control of Food: A Guide to International Negotiations and Rules on Intellectual Property, Biodiversity and Food Security*, London: Earthscan, 2008.

⁹ GRAIN, *Bilateral Trade Agreements Imposing TRIPS-plus Intellectual Property Rights on Biodiversity in Developing Countries*, March 2008, http://www.grain.org/rights_files/TRIPS-plus-march-2008.pdf. See, eg, Article 17.1 (3) of the U.S.A.-Chile Free Trade Agreement (providing that each party shall ratify or accede to the 1991 UPOV Convention by 1 January 2009).

¹⁰ *International Convention for the Protection of New Varieties of Plants, of December 2, 1961, as revised at Geneva on November 10, 1972, and on October 23, 1978, and on March 19, 1991.*

¹¹ See Philippe Cullet, ‘Intellectual Property Rights and Food Security in the South’, *Journal of World Intellectual Property*, vol. 7/3 (2004), p. 261; and Commission on Intellectual Property Rights (United Kingdom), *Integrating Intellectual Property Rights and Development Policy – Final Report (12 September 2002)*, chap. 3.

consequence of the protection of patents¹² or by the use of ‘technology use agreements’ by companies selling seeds. The International Covenant on Economic, Social and Cultural Rights recognizes the right of everyone to ‘enjoy the benefits of scientific progress and its applications’ (Art. 15(1)(b)), and the Committee on Economic, Social and Cultural Rights takes the view that ‘the private interests of authors should not be unduly favoured and the public interest in enjoying broad access to their productions should be given due consideration. [...] Ultimately, intellectual property is a social product and has a social function. States parties thus have a duty to prevent unreasonably high costs for access to [...] plant seeds or other means of food production [...]’.¹³ Clearly, the impact on agriculture resulting from the extension of intellectual property rights to plant varieties, plants or seeds, may put this balance in jeopardy and must thus be considered from a right to food perspective.

Distinguished delegates,

These are only some of the issues I intend to address in my future reports. Other issues include, in particular, the responsibilities of the agribusiness sector in the realization of the right to food, and the impact of climate change on the right to food – and how human rights can guide the identification of mitigation and adaptation strategies. In my monitoring of the reactions of national governments to the global food crisis – which I will pursue in accordance with the mandate given to me by the Human Rights Council, I will also continue advocating in favor of the development of national strategies, including framework laws, implementing the right to food, and in favor of strengthening rights related to the use of land and women’s rights. We may not be able to end hunger by legislative initiatives. But just like our inability to eradicate crime should not be a pretext for removing homicide from the criminal code, the fact that hunger is widespread does not mean that we should not provide remedies to victims, improve the accountability of governments, and strengthen the rights of those who are most vulnerable – including land-users threatened with forced eviction from the land they cultivate, or women who, although they work in the fields, may in many cases be unable to inherit the right to cultivate the same land following the death of their husbands.

Empowering those who are threatened by food insecurity is urgent. And the reform of the global food system on which they depend is urgent. Market-driven solutions have shown their limits. Such solutions create vulnerabilities to sudden changes in prices at both the household and the country levels. At the household level, the market-driven solutions pursued in recent years endanger, not only the ability of smallholders to earn a decent living from their crops and to feed themselves, but also the ability of net food buyers to cope with prices which undergo sudden increases. At country level, both countries which have prioritized cash crops for exports, in order to earn foreign currency, and countries which are dependent on imports to feed their populations, are now discovering that their position may not be sustainable in the long term. Governments must accept that they have a responsibility to work towards solutions which stabilize the prices of food commodities, and to regulate international trade in order to ensure that it does not jeopardize food security. Achieving these aims will be greatly facilitated by grounding our efforts in the right to food. It is my intention, in the fulfillment of my mandate, to help guide these efforts in this direction.

¹² See, eg, *Monsanto Canada Inc. v. Schmeiser* [2004] 1 S.C.R. 902.

¹³ General Comment No. 17 (2005), UN doc. E/C.12/GC/17 (12 January 2006), para. 35.