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UNDERSTANDING MODERN HISTORY OF INTERNATIONAL FOOD
LAW IS KEY TO BUILDING A MORE RESILIENT AND IMPROVED
GLOBAL FOOD SYSTEM
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Michael T. Roberts

I. Introduction¹

This article advocates the need for a history of the development of modern international food law and suggests an analytical approach to complement the chronicling of events. Comprehension of this history will help elucidate the evolution of a complicated modern global food system, including its resiliency and vulnerability as demonstrated by Covid-19, thereby providing valuable context for change in the system where needed.² This essay makes the case for such a history in three parts. First, it briefly demonstrates the need for a historical perspective through a critical examination of a journal article that speaks to Covid-19 food security in a historical context. Second, it suggests possible legal frameworks for historical analysis, including the tensions and convergence between these frameworks. Third, it presents a perspective on how to contextualize this history as well as ensure its relevancy to important contemporary and future issues, including resiliency, public health, and sustainability. For example, one consideration is that the development of international food law is as much about paths not taken as paths taken, which in turn may open discussion today about alternative paths for future governance in the global food system.

II. Need for Historical Perspective

Literature on the impact of Covid-19 on food-security resiliency in food systems is starting to emerge.³ Because the beginnings of international

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² This author is critical of the term “food system” as there is nothing system-like about the journey of food to the consumer’s plate, and the term belies the complexity of this journey, the myriad of laws that govern food, and the agencies that enforce the laws. Most references to “food system” really involve a food supply chain. However, the term is used in this article because it is replete in food policy literature and there appears to be no other term in usage to describe the remarkably complicated process by which food is produced and finally consumed. This author does recommend a “food systems thinking approach” to solving complicated problems arising from the modern food system. See MICHAEL T. ROBERTS, RESNICK CTR. FOR FOOD LAW & POLICY, PUB. LAW RESEARCH PAPER NO. 20-02, A ‘FOOD SYSTEMS THINKING’ ROADMAP FOR POLICYMAKERS AND RETAILERS TO SAVE THE ECOSYSTEM BY SAVING THE ENDANGERED HONEY PRODUCER FROM THE DEVASTATING CONSEQUENCES OF HONEY FRAUD (2019), *available at* https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3466477.

³ The Resnick Center in conjunction with the UCLA School of Law Library has developed a library guide that provides resources on the intersection of Covid-19 and food law and policy

food law are not widely and fully understood, this scholarship may oversimplify how change is made when recommending policy changes in the modern global food system. An example of this gap in historical research is an otherwise excellent scholarly article by Jennifer Clapp and William G. Moseley, titled *This food crisis is different: COVID-19 and the fragility of the neoliberal food security order*, and published in *The Journal of Peasant Studies* (2022).⁴

Clapp and Moseley start by acknowledging that some see the global food system as “incredibly resilient” during Covid-19 and “see no need to make major changes to policy direction beyond provision of emergency safety nets.”⁵ The article refers to a May 2020 editorial in the *Economist*: “The sophistication of the system, and the foresight of the players within it . . . , has meant that, so far, it has held up to covid-19’s impacts on both supply and demand by dexterously swapping sources and rerouting supply chains.”⁶

Clapp and Moseley reject this upbeat view “by situating the impact of the COVID-19 pandemic on the global food system within a broader historical context in order to draw lessons for appropriate policy responses.”⁷ Clapp and Moseley argue that policy responses to past food and economic crises – in each of the decades from the 1960s to the 1990s – “played a prominent role in shaping the current global food system in ways that have created vulnerabilities to the COVID-19 food crisis, which, as we outline, is markedly different from past crises.”⁸ This “shaping” is described as follows:

Policy responses to previous episodes of crisis in food systems over the past 70 years have encouraged the rise of a global food system based on principles of industrial production, specialization and global trade that is progressively taking place via complex global food supply chains dominated by large private sector corporations.⁹

The authors argue that the legacies left by these past policies created vulnerabilities in the face of the present crisis, which is characterized by three interlocking dynamics: “disruptions to global food supply

for scholars, researchers, and officials. See *COVID-19 and Food Law: Home*, UCLA HUGH & HAZEL DARLING L. LIBR., <https://libguides.law.ucla.edu/Covid-19andFoodLaw> (last updated Apr. 30, 2021).

⁴ Jennifer Clapp & William G. Moseley, *This Food Crisis is Different: COVID-19 and the Fragility of the Neoliberal Food Security Order*, 47 J. PEASANT STUD. 1393, 1393–95 (2020), available at <https://www.tandfonline.com/doi/full/10.1080/03066150.2020.1823838>.

⁵ *Id.* at 1394.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.* at 1395.

chains, the loss of income and livelihoods due to the global economic recession,¹⁰ and uneven food price trends unleashed by a set of complex factors.”¹¹ Noting other threats to food systems “waiting in the wings: the climate crisis, extreme weather events, conflict, economic nationalism and rising trade protectionism, and the collapse of multilateralism,”¹² the article concludes that this same policy response has addressed Covid-19 and that the “pandemic marks an inflection point and signals the need for policies that seek fundamental transformations to food systems.”¹³

Even if the authors correctly refute the notion made in the Economist that the modern global food system has been resilient during Covid-19, their attribution of vulnerabilities simply to policy responses to past disruptions misses the historical entrenchment of food policies in legal frameworks that help govern the global system. These policies that the authors criticize – industrial production, specialization, global trade, and complex global food supply chains – and their countervailing policies – food security and human rights – are rooted in debates over the role of global governance and policy formations by national governments starting in the 1930s. These policies were eventually formalized into legal frameworks and institutions that govern to a degree today’s modern food system. Responses to previous disruptions – famines or pandemics – may have accelerated the speed and degree to which these policies shaped the global food system, but these policies are embedded in choices made nearly a century ago by powers that reflect values and ideas about society and the role of food in society. If fundamental change is going to occur to make food systems more resilient, sustainable, healthier, fairer and more equitable, then a reckoning of these policies and the legal frameworks that they buttress must be had.

¹⁰ Scholars also point to the link between Covid-19 and increased migration as a challenge to food insecurity across countries. See Michael D. Smith & Dennis Wesselbaum, *Covid-19, Food Insecurity, and Migration*, 150 J. NUTRITION 2855, 2856 (2020) (drawing on the example of the Spanish flu (1918-1920) and famines in Europe from 1550 to 1700 and later centuries). The United Nation’s Food and Agriculture Organization (FAO) has also published on Covid-19’s impact on the migration of agriculture laborers, further implicating food security in many countries. Food & Agric. Org. of the United Nations [FAO], *Migrant Workers and the COVID-19 Pandemic* (Apr. 7, 2020), <http://www.fao.org/3/ca8559en/CA8559EN.pdf>.

¹¹ Clapp & Moseley, *supra* note 4, at 1393.

¹² *Id.* at 1408.

¹³ *Id.* at 1395.

III. The Global Organization of Food

A. Role of Law in the Global Food System

The legal frameworks used in the governance of food are evident in formal international legal disputes over biotechnology,¹⁴ hormones in beef,¹⁵ animal welfare,¹⁶ and country of origin labeling.¹⁷ Tensions in the application of these legal frameworks are reflected in multilateral disputes in trade negotiations, or political pressure on such issues as geographical indicators,¹⁸ taxes on sugary sweetened beverages,¹⁹ animal drugs,²⁰ and climate change and meat production.²¹ Convergence in the application of these legal frameworks can occur where, for example, nutrition and food security are coupled as the “right to food” campaign expands to mean “right to adequate

¹⁴ See Panel Report, *European Communities – Measures Affecting the Approval and Marketing of Biotech Products*, WTO Doc. WT/DS291/R, WT/DS292/R, & WT/DS293/R (Sept. 29, 2006) (adopted Nov. 21, 2006) (in 2003, the United States, Canada, and Argentina filed a complaint against the EC to the WTO on the ground that the EC violated provisions of the Agreement on the Application of Sanitary Phytosanitary Measures (SPS Agreement) by imposing a moratorium on approving the import of GMO food products).

¹⁵ See Appellate Body Report, *EC Measures Concerning Meat and Meat Products (Hormones)*, WTO Doc. WT/DS26/AB/R (Jan. 16, 1998) (in 1995, the United States and Canada took WTO action against the European Union’s hormone prohibition in 1995, alleging that the European Commission ban violated the SPS Agreement).

¹⁶ See Panel Report, *United States – Measures Concerning the Importation, Marketing and Sale of Tuna and Tuna Products*, WTO Doc. WT/DS381/RW (Sept. 15, 2011) (Mexico claimed that labeling provisions in the United States under the Dolphin Protection Consumer Information Act violated the Technical Barriers to Trade Agreement (TBT Agreement)).

¹⁷ See Panel Report, *United States – Certain Country of Origin Labeling (COOL) Requirements*, WTO Doc. WT/DS384/R, WT/DS386/R (Nov. 18, 2011) (Canada and Mexico requested WTO for a panel on grounds that Country-of-origin labeling (COOL) labeling requirements passed in the United States 2002 and 2008 Farm Bills).

¹⁸ See generally MICHAEL T. ROBERTS, *FOOD LAW IN THE UNITED STATES* 284–87 (2016) (summarizing the tensions between the EU and the US over geographical indicators protection).

¹⁹ See Press Release, Office of the U.S. Trade Representative, United States Requests WTO Panel Against Mexico Over Beverage Taxes (June 22, 2004), https://ustr.gov/archive/Document_Library/Press_Releases/2004/June/US_Requests_WTO_Panel_Against_Mexico_Over_Beverage_Taxes.html [hereinafter Press Release on Beverage Taxes] (asserting that the Mexican bottling industry began to substitute HFCS for cane sugar).

²⁰ See ROBERTS, *supra* note 18, at 187–89 (describing an international food safety controversy over a controversial veterinary drug ractopamine hydrochloride).

²¹ See Paula Arcari, *Normalised, Human-centric Discourses of Meat and Animals in Climate Change, Sustainability and Food Security Literature*, 34 *AGRIC. & HUM. VALUES* 69, 69–75 (2017).

food”²² or where trade – often maligned as part of the modern industrial food complex – is also touted as a cornerstone for food security.²³

These legal frameworks also have a role in the shaping of international governing institutions. The institutional beginnings of these legal frameworks were evident in the founding of the now Rome-based United Nations Food and Agriculture Organization (FAO) in 1945, the first and the largest of seventeen specialized UN agencies, employing 3,400 employees world-wide.²⁴ The legal frameworks also intersect with the World Trade Organization (WTO) and the World Health Organization (WHO).

B. International Food Law Frameworks

(1) Nutrition: Coupling of Concepts

Professor John Black of Harvard University in the *American Economic Review* (1943) credited the emerging knowledge of nutrition in the 1930s leading to what he coined the “international food movement.”²⁵ This movement was preceded by scientific and political developments during and after the First World War that “enabled scientists to define and measure hunger in objective and universal ways” and facilitated the discovery of vitamins and the importance of minerals, augmenting the term “hunger” into a new term – “malnutrition.”²⁶ Focus on malnutrition paved the way for a public health benchmark that considered the quality of diet and health.²⁷

The nutrition work by the League of Nations combined with both the severe hunger and a commitment to global development that followed on the heels of World War II led to the organization of food.²⁸ The focal point of this organization was a US-sponsored UN Food Conference held in Hot

²² See Wenonah Hauter, *The Limits of International Human Rights Law and the Role of Food Sovereignty in Protecting People from Further Trade Liberalization Under the Doha Round Negotiations*, 40 VAND. J. TRANSNAT'L L. 1071, 1083–85 (2007).

²³ See Food & Agric. Org. of the United Nations [FAO], *Trade Reforms and Food Security: Conceptualizing the Linkages*, at 5–8 (2003), available at <http://www.fao.org/3/y4671e/y4671e.pdf>.

²⁴ See *UN System*, UNITED NATIONS, <https://www.un.org/en/about-us/un-system> (last visited Mar. 29, 2021); see *Food and Agriculture Organization (FAO)*, WELT HUNGER HILFE, <https://www.welthungerhilfe.org/about-us/partners/institutional-donors/fao-food-and-agriculture-organization-of-the-un/> (last updated Nov. 5, 2020).

²⁵ John D. Black, *The International Food Movement*, 33 AM. ECON. REV. 792 (1943).

²⁶ PATRICIA CLAVIN, *SECURING THE WORLD ECONOMY: THE REINVENTION OF THE LEAGUE OF NATIONS 1920-1946*, at 165 (2013).

²⁷ *Id.*

²⁸ *Id.* at 294–96.

Springs, Virginia, from May 18 to June 3, 1943.²⁹ A confluence of events sparked this conference, including a 1942 report prepared for the UN's program for Freedom from Want of Food by Frank L. McDougall,³⁰ and President Franklin D. Roosevelt's "adoption of agriculture and nutrition as an essential topic on which the United Nations might score an early and easy success"³¹ The Hot Springs conference sparked a chain of events that eventually led to the development of the FAO.³²

This coupling of agriculture and nutrition was a hallmark to the early development of the FAO and has evolved over the years with the emergence of obesity and diabetes as a global concern.³³ The Codex Alimentarius Commission – the central part of the Joint FAO/WHO Standards Program – has in recent years set guidelines for the following types of nutrition labeling: Nutrient Declaration: Nutrition Declaration, Nutrition Reference Values, Quantitative declaration on ingredients (QUID), Nutrient Claims and Health Claims.³⁴ Even more recently, the international regulation of nutrition is emerging as a priority for FAO and other international institutions, as evidenced by the development of FAO's Zero Hunger program, which aims to eliminate all forms of malnutrition, including hunger, obesity, and vitamin deficiencies by a multitude of tools.³⁵ Included in the Zero Hunger advisory committee notes is a recommended policy and legal framework to eradicate hunger and malnutrition, including a review of policies and legislations in support of food access, promotion of "pro-poor and gender-sensitive policies and legislation," and improved access to healthy food.³⁶

²⁹ *Id.* at 294–95.

³⁰ Conventional history holds that Eleanor Roosevelt was impressed enough by McDougall's report to invite him to discuss his ideas over dinner with President Roosevelt. *Id.* at 295–96. McDougall has been described as "a man whose life's work was to link together the themes of international security, trade, the quality of rural life, and health." *Id.* at 165.

³¹ *Id.* at 295–96.

³² *Id.* at 296.

³³ World Health Org. [WHO], *Obesity and Overweight* (2003), <https://www.who.int/dietphysicalactivity/media/en/gsf Obesity.pdf> (stating that "[o]besity has reached epidemic proportions globally").

³⁴ See Joint Food & Agric. Org. of the United Nations [FAO]/ World Health Org. [WHO] Codex Alimentarius Comm'n, *Guidelines on Nutrition Labelling*, CAC/GL 2-1985 (2017), http://www.fao.org/fao-who-codexalimentarius/sh-proxy/en/?lnk=1&url=https%253A%252F%252Fworkspace.fao.org%252Fsites%252Fcodex%252Fstandards%252FCXG%2B2-1985%252FCXG_002e.pdf.

³⁵ See *World Hunger is Still Not Going Down after Three Years and Obesity is Still Growing – UN Report*, FOOD & AGRIC. ORG. UNITED NATIONS (July 15, 2019), <http://www.fao.org/news/story/en/item/1200484/icode/>.

³⁶ THE UNITED NATIONS SEC'Y-GEN.'S HIGH-LEVEL TASK FORCE ON GLOB. FOOD & NUTRITION SEC., ZERO HUNGER CHALLENGE ADVISORY NOTES 24 (Nov. 2015), <https://www.un.org/es/issues/food/taskforce/pdf/HLTF%20-%20ZHC%20Advisory%20Notes.pdf>.

(2) Market Stability: Path Not Taken

A seminal moment early on for the FAO was a dispute over the question of how best to stabilize world food markets, especially in times of disruption. As the first Director General of the FAO, John Boyd Orr, a renowned Scottish nutritionist, proposed a World Food Board that would give the FAO sufficient executive powers to meet the emergency of the world food crisis.³⁷ This power would have allowed for the World Food Board to buy, hold, and sell stocks of agricultural commodities in order to stabilize food prices and keep famine reserves.³⁸ The United States and the United Kingdom – the two power brokers over the UN at the time – rejected the idea of a World Food Board, which triggered Orr’s resignation from the FAO.³⁹ The United States and the United Kingdom believed that Orr’s proposal conflicted with their trade agendas.⁴⁰

Orr’s statement captures the tension between the principles of market stability and food security from trade:

food, a primary necessity of life, had to be treated differently from other goods like motor cars which were not vital. Food for the world should be considered like a clean and adequate water supply for a town, paid for by the whole community in proportion to income. Mr. [William] Clayton [US Under Secretary of State] wanted food brought under the I.T.O. which regarded trade as an end in itself. I wanted trade in food to be an exception to other forms of trade, being directed to providing an adequate supply for the people.⁴¹

The FAO attempted other international food schemes, such as the International Commodity Clearing House (1949) and the World Food Reserve (1954), but was unsuccessful.⁴² Orr’s vision of a world food board or global entity to regulate market stability became a path not taken by the global food governance community.⁴³ The notion suggested by Orr, however – that food should be treated differently from other goods like motor cars –

³⁷ See D. JOHN SHAW, *WORLD FOOD SECURITY: A HISTORY SINCE 1945*, at 15–31 (2007).

³⁸ *Id.* at 24–28.

³⁹ LORD BOYD ORR, *AS I RECALL* 191–92 (MacGibbon & Kee Ltd. 1966).

⁴⁰ *Id.* at 193–94.

⁴¹ *Id.* at 173.

⁴² SHAW, *supra* note 37, at 34–37.

⁴³ See generally *id.* at 15–57.

remains a viable concept that has threaded its way through food movements that seek to shape policy.⁴⁴

(3) Free Trade and Standards: the Dominant Framework

The free trade legal framework in the global food system not only governs the trade of food but also shapes food safety and labeling regulations in WTO-member countries throughout the world. This legal framework rests on legal instruments and agreements, along with standards-making processes. “The foundational agreement in trade is the General Agreement on Tariffs and Trade of 1947 (GATT). GATT was an international agreement that created a multi-lateral trading system and established rules among participating nations to assure the efficient international trade of goods, including food products.”⁴⁵ According to its preamble, the purpose of GATT was the “substantial reduction of tariffs and other trade barriers and to the elimination of preferences, on a reciprocal and mutually advantageous basis.”⁴⁶

For a period of time after the establishment of GATT, it appeared that this agreement would only indirectly regulate agriculture trade.⁴⁷ Exceptions to GATT provisions were made that primarily benefitted the US and the EEC, allowing them to implement domestic systems of farm support and supply control.⁴⁸ In 1958, the influential Haberler Report, commissioned by experts commissioned by the GATT, put development on the GATT agenda and targeted Western countries’ agricultural support programs by characterizing them as protectionist.⁴⁹ Over the years, the US and Western countries were viewed as hypocrites for strongly supporting a global liberal trade agenda but at the same time insisting on protecting their agricultural sectors through subsidies and quotas.⁵⁰

Moving forward, in 1986, the very important Uruguay Round of trade negotiations commenced, ending in 1994.⁵¹ This round of multi-lateral trade negotiations generated the Agreement on Sanitary and Phytosanitary

⁴⁴ See José Luis Vivero-Pol, *Food as Commons or Commodity? Exploring the Links Between Normative Valuations and Agency in Food Transition*, 9 SUSTAINABILITY 442 (2017), available at <https://www.mdpi.com/2071-1050/9/3/442/htm>.

⁴⁵ ROBERTS, *supra* note 18, at 58.

⁴⁶ General Agreement on Tariffs and Trade, Oct. 30, 1947, preamble, 61 Stat. A5, 55 U.N.T.S. 188.

⁴⁷ See Michael Fakhri, *A History of Food Security and Agriculture in International Trade Law, 1945-2017*, in EUROPEAN YEARBOOK OF INTERNATIONAL ECONOMIC LAW: NEW VOICES, NEW PERSPECTIVES 55, 64 (John D. Haskell & Akbar Rasulov eds., 2020).

⁴⁸ *Id.* at 64.

⁴⁹ *Id.* at 66.

⁵⁰ *Id.* at 65.

⁵¹ ROBERTS, *supra* note 18, at 58.

Measures (SPS) and the Agreement on Technical Barriers to Trade (TBT).⁵² These multinational agreements rely on Codex, created in 1963, to harmonize and publish two types of standards that affect food: safety standards (SPS standards) and technical standards (includes non-SPS standards, such as labeling requirements) (TBT).⁵³ The ostensible purpose of standard making by Codex is to protect the health of consumers and ensure fair trade.⁵⁴ The WTO also relies on Codex standards to help it apply the SPS and the TBT in trade disputes: “[n]ational food standards that comply with Codex standards will be deemed to comply with the SPS Agreement and not in breach of GATT.”⁵⁵ In essence, these Codex standards influence the construction of national standards where member countries strive to comply WTO obligations and in some cases, especially for developing countries, are adopted in whole for national legislation of food.⁵⁶

Enabled by this legal framework, global agri-food trade continues to expand and is considered by some to be an integral part of the industrialization of modern food and the driver of economic growth in the agriculture and food sectors and as a buffer to major disruptions.⁵⁷ Others hold food trade and industrialization responsible for volatility, especially for developing countries.⁵⁸ Trade is also blamed for marginalizing the next legal framework – food security.

(4) Food Security: Rights and Norms

Although free trade is the dominant legal framework for governing the international market, food security is arguably the lead governing framework for addressing global food system norms and rights. The evolving definition of food security is instructive. At the time of the 1974 World Food Conference in Rome, food security was understood to apply at the national level, with a state being food secure when there was sufficient food to “sustain a steady expansion of food consumption and to offset fluctuations in

⁵² *Id.*

⁵³ See *The WTO and the FAO/WHO Codex Alimentarius*, WORLD TRADE ORG., https://www.wto.org/english/thewto_e/coher_e/wto_codex_e.htm (last visited Apr. 9, 2021).

⁵⁴ See *Codex and the International Food Trade*, FOOD & AGRIC. ORG. UNITED NATIONS, <http://www.fao.org/3/w9114e/W9114e06.htm> (last visited Apr. 9, 2021).

⁵⁵ ROBERTS, *supra* note 18, at 29 (citing Agreement on the Application of Sanitary and Phytosanitary Measures arts. 2–3, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, 1867 U.N.T.S. 493).

⁵⁶ See *Food Safety*, U.S. DEP’T STATE, <https://www.state.gov/agricultural-policy/food-safety/> (last visited Apr. 9, 2021).

⁵⁷ *The World’s Food System Has so far Weathered the Challenge of Covid-19*, THE ECONOMIST (May 9, 2020), <https://www.economist.com/briefing/2020/05/09/the-worlds-food-system-has-so-far-weathered-the-challenge-of-covid-19>.

⁵⁸ LIZZIE COLLINGHAM, *THE TASTE OF WAR: WORLD WAR II AND THE BATTLE FOR FOOD 3* (2013).

production and prices.”⁵⁹ A 1986 World Bank report “Poverty and Hunger” focused on the temporal dynamics of food security – for example, temporary food insecurity caused by natural disasters and conflict – by addressing the “access by all people at all times to enough food for an active and healthy life.”⁶⁰ The World Food Summit of 1996 changed the emphasis of food security from nations to individuals by defining food security as existing “when all people, at all times, have...access to sufficient, safe and nutritious food to...[maintain] an active and healthy life.”⁶¹ This definition raised the question to what extent does “an active, healthy life” refer to food availability, food safety, or nutrition adequacy? The widely accepted World Food Summit (1996) definition reinforces the multidimensional nature of food security and includes food access, availability, food use and stability. Consistent with this mission, FAO has been actively addressing food-security concerns rendered by Covid-19 by implementing a number of tools to support policy analyses and assessment of the impact of Covid-19 on food and agriculture.⁶²

The human rights approach to food security was first recognized in the UN Declaration of Human Rights in 1948.⁶³ In 1996, the formal adoption of the Right to Adequate Food marked a milestone achievement by World Food Summit delegates, pointing the way towards the possibility of a rights based approach to food security.⁶⁴ In 2004, a set of voluntary guidelines supporting the progressive realization of the right to adequate food in the context of national food security was elaborated by an Intergovernmental

⁵⁹ Food & Agric. Org. of the United Nations [FAO], *Policy Brief: Food Security*, at 1 (June 2006), http://www.fao.org/fileadmin/templates/faoitaly/documents/pdf/pdf_Food_Security_Concept_Note.pdf.

⁶⁰ WORLD BANK, *POVERTY AND HUNGER: ISSUES AND OPTIONS FOR FOOD SECURITY IN DEVELOPING COUNTRIES*, at v (1986), *available at* <http://documents1.worldbank.org/curated/pt/166331467990005748/pdf/multi-page.pdf>.

⁶¹ Food & Agric. Org. of the United Nations [FAO], *Rome Declaration on World Food Security and World Food Summit Plan of Action: World Food Summit*, art. 1, FAO(063)/F688 (Nov. 13–17, 1996) [hereinafter *World Food Summit*], *available at* <http://www.fao.org/3/w3613e/w3613e00.htm>.

⁶² See *Novel Coronavirus (COVID-19)*, FOOD & AGRIC. ORG. UNITED NATIONS, <http://www.fao.org/2019-ncov/en/> (last visited May 15, 2021).

⁶³ Asbjørn Eide, *The Human Right to Adequate Food and Freedom from Hunger*, in *THE RIGHT TO FOOD IN THEORY AND PRACTICE* (1998), <http://www.fao.org/3/w9990e/w9990e03.htm#>.

⁶⁴ *World Food Summit*, *supra* note 62, at arts. 13, 61.

Working Group under the auspices of the FAO.⁶⁵ Numerous countries today have the right to food enshrined in their constitution.⁶⁶

IV. Perspective

Framing an emerging area of law is no easy task. The need to frame international food law in order to understand its impact and potential became evident to this author while framing US food law in all of its dimensions in the publication of a treatise, *Food Law in the United States*⁶⁷ (Cambridge 2016). Fortunately, this opportunity has materialized in the form of an upcoming *Research Handbook on International Food Law*⁶⁸ (Edward Elgar), comprising chapter contributions from over thirty scholars from around the world, organized and edited by this author. As in the case of the treatise, the framing of an emerging, unwieldy area of law is marked by investigations into the past to understand its journey and development.

This author posits the reflections below to provide context to the development of a chronological history of modern international food law and historical perspective to efforts to improve the resiliency, performance, humanity, and stewardship of the global food system.

A. Limits of International Food Law

The goal in framing international food law is not to suggest that there is a coherent, overarching framework grounded in international law. Reference to international food law frameworks in this essay is simply intended to demonstrate the application of law and legal proceedings in support of defined policies to the governance of food worldwide. This perspective will help present the development of the history of modern international food law as a fluid process where food policies and their underlying ideas, values, and social forces are debated and contested by national governments and pioneers in the international food space starting in the late 1930s and early 1940s. The results of these contestations are formalized in legal frameworks that conflict and converge at times with each

⁶⁵ Food & Agric. Org. of the United Nations [FAO], *Intergovernmental Working Group for the Elaboration of a Set of Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security*, at 1–12, IGWG FTFG 2/2 (Oct. 27–29, 2003), available at <http://www.fao.org/3/j0492E/j0492E.pdf>.

⁶⁶ Legal Office, Food & Agric. Org. of the United Nations, *Implementation of the Right to Food in National Legislation*, in *THE RIGHT TO FOOD IN THEORY AND PRACTICE* (1998), <http://www.fao.org/3/w9990e/w9990e11.htm#>.

⁶⁷ ROBERTS, *supra* note 18.

⁶⁸ RESEARCH HANDBOOK ON INTERNATIONAL FOOD LAW (Edward Elgar Publishing, forthcoming).

other and provide a level of governance to the global food system that could very well expand in future years.

B. Principles and Norms

The effect of international principles at play in the global food system that have or may yet emerge into norms and custom as the basis of international law⁶⁹ provides a rich source of historical reflection and perspective on the evolution of current regulation. For example, amongst Robert Boyd Orr's contributions was advancement of the notion of "international cooperation," as the means "to ensure peace and argued for the creation of a supra-national government based on international law."⁷⁰ The norm of a constructed international cooperation has expanded and emerged as a primary strategy in the international regulation of food safety in recent years, as evidenced in the development of global best practices, public-private partnerships, and harmonization of rules and standards.⁷¹ Also, recently, in the wake of Covid-19, there has been increasing attention to the role of international cooperation to improve resiliency and sustainability, and to prepare for climate change.⁷² How this principle of cooperation in the future contributes to the governance of the global food system is anyone's guess, but understanding its historical role in international food law and policy can provide perspective and prompt new ideas.

⁶⁹ See generally KAROL WOLFKE, CUSTOM IN PRESENT INTERNATIONAL LAW (Martinus Nijhoff Publishers, 2d rev. ed. 1993).

⁷⁰ Lord Boyd Orr, NOBEL PEACE CTR., <https://peaceprizelaureates.nobelpeacecenter.org/en/laureate/1949-john-boyd-orr> (last visited May 16, 2021).

⁷¹ For example, the Global Food Safety Initiative (GFSI), established in 2000 as a private sector initiative, has created the Global Regulatory Affairs Working Group, which is mandated to "actively engage governments in recognizing and accepting GFSI benchmarked schemes," and to integrate GFSI with requirements set under the Sanitary and Phytosanitary (SPS) Agreement of the WTO, and by Codex. Paul Verbruggen & Tetty Havinga, *Transnational Business Governance Interactions in Food Safety Regulation: Exploring the Promises and Risks of Enrolment*, in TRANSNATIONAL BUSINESS GOVERNANCE INTERACTIONS 28, 30 (Stephan Wood et al. eds., Edward Elgar Publishing 2019).

⁷² See *Innovation Key to Feed the World in Times of Pandemics and Climate Change*, FOOD & AGRIC. ORG. UNITED NATIONS (Jan. 22, 2021), <http://www.fao.org/news/story/en/item/1370579/icode/> (summarizing address from FAO Director-General QU Dongyu); see Wiebe Draijer & Gilbert Fossoun Hounbo, *Can Collective Action Cure What's Ailing Our Food System?*, WORLD ECON. F. (Jan. 22, 2020), <https://www.weforum.org/agenda/2020/01/food-action-alliance-smallholders-agriculture-collective-cure/>.

C. Historical Context is Vital

These legal frameworks can best be understood within the context of the time period in which they were originally formulated. Factors during this time period that influence their development include the formulation and use of international law, the global political and economic dynamic, the idea of cooperation amongst countries, the emergence of global civil society, transnational social movements, and the world-wide quest for peace and security. This context will help scholars evaluate how new policies might take root in legal frameworks moving forward. For example, such an understanding might prompt questions about how to reconcile free trade and the industrialization of food to food security and climate change concerns and prompt re-evaluation of how these legal frameworks operate in a world that is different than a society emerging from the dark shadows of the second World War.

D. Missed Opportunities

Determining the missed opportunities for law to have played in the governance of the modern global food system is important to consider in developing this history. The most apparent missed opportunity is the formation of a world food board, proposed and pushed by Orr. It is interesting and perhaps instructive, for example, to consider what would have been the course of international food law if the proposed world food board had been accepted. Would the modern global food system been more or less resilient to pandemics, famines, and climate change? Would the global food system have been more equitable for producers around the world? How would have the world food board have co-existed with the free-trade legal framework?

E. Impact on National Food Regulation

There is no question that international law and governance has affected national regulation of food. “Codex standards are used as benchmarks for national food regulatory policy around the world, particularly in developing countries.”⁷³ In developed countries, contestations over national policies that conflict with international rules has shaped national regulation of food. For example, the enactment and then disengagement by the US Congress in country of origin of labeling of meat during the Obama administration was due directly to pressure from the WTO.⁷⁴ It is also interesting to consider how

⁷³ *Food Safety*, *supra* note 57.

⁷⁴ See JOEL L. GREENE, CONG. RESEARCH SERV., RS22955, COUNTRY-OF-ORIGIN LABELING FOR FOODS AND THE WTO TRADE DISPUTE ON MEAT LABELING 1–9, 15–16, 27–28 (2015), available at <https://fas.org/sgp/crs/misc/RS22955.pdf>.

international food law has shaped the process by which national food regulation has developed, including incorporating the assessment of risk, science evaluation, and the precautionary principle in food safety regulation.

F. Additional Legal Frameworks

Underscoring the continuing fluidity of the development of international food law is the emergence of additional international food law frameworks. Some of these frameworks may reside outside the food sector, but provide significant intersection, such as with international environmental law, international intellectual property law, and animal welfare.

G. Specialized Agencies

It is both interesting and instructive to think of the contributions of international food law to society outside the food sector. For example, how does the history of the FAO as the first of the UN specialized agencies contribute to understanding the role and significance of specialized agencies within the UN in general and the role of law and governance in the shaping of these agencies? How has food law and governance helped shape the WTO, WHO, and Codex?

V. Conclusion

This author has previously asserted that modern food law follows a “notion articulated by legal historian Lawrence M. Friedman...that modern law mirrors society and moves with its times so that it is always new.”⁷⁵ Although Professor Friedman was speaking specifically to modern law in the United States,⁷⁶ it does appear that modern international food law has developed in a series of adaptations, starting with what Professor Black referred to as the “international food movement”⁷⁷ in the 1930s. This adaptation has been aided by an evolution of legal frameworks and the development of legal tools by institutions such as the FAO, Codex, and WTO. The role of law administered and extended in these legal frameworks can best be understood by understanding the history of these adaptations. This understanding will yield a sharper how improvements can be made and how law can be instrumental in changes that will result in a more resilient,

⁷⁵ ROBERTS, *supra* note 18, at 2.

⁷⁶ *Id.*

⁷⁷ Black, *supra* note 25.

sustainable, secure, equitable, and healthy food system for the benefit of eaters and the planet.