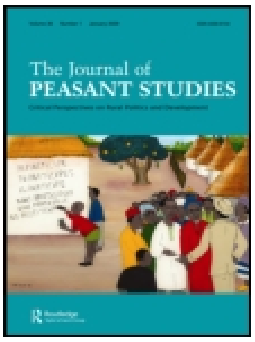

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How not to think of land-grabbing: three critiques of large-scale investments in farmland

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Large-scale investments in farmland have been criticized, chiefly, because of questions about the capacity of the countries targeted by these land deals to effectively manage these investments in order to ensure that they contribute to rural development and poverty alleviation. This article questions the idea that this is the only or even the main problem raised by such investments. If weak governance were the only problem, then appropriate regulation—and incentives to manage such investments correctly—would indeed be a solution. However the real concern behind the development of large-scale investments in farmland is that giving land away to investors, having better access to capital to 'develop', implies huge opportunity costs, as it will result in a type of farming that will have much less powerful poverty-reducing impacts, than if access to land and water were improved for the local farming communities; that it directs agriculture towards crops for export markets, increasing the vulnerability to price shocks of the target countries; and that even where titling schemes seek to protect land users from eviction, it accelerates the development of a market for land rights with potentially destructive effects on the livelihoods, both of the current land users that will face increased commercial pressure on land, and of groups depending on the commons—grazing and fishing grounds, and forests. The article maps these various levels of critiques. It concludes that we need to do more than impose a discipline on land-grabbing: we need a real alternative to this kind of investment in land.

Keywords: investment; rural development; property rights; access to land

Introduction

In the international discussion surrounding the phenomenon referred to as 'land-grabbing'—the acquisition or long-term lease of large areas of land by investors—a core issue will be whether or not this development can be regulated at the regional or international level, and if so, how. This contribution seeks to advance the discussion by placing the phenomenon against its historical background, in order to identify both how it forms the continuation of past practices and which dimensions deserve to be seen as novel. It then discusses three perspectives from which the current wave of investments in farmland can be critically examined. Under one approach, the benefits of small-scale farming, by mostly family-owned production units, are contrasted to the expansion of large-scale, highly capitalized types of farming. A second approach questions the capacity of the countries targeted by these land deals, many of which suffer from problems of governance, to effectively manage these investments in order to ensure that they contribute to rural development and poverty alleviation: the argument here is that, even where large-scale investments in farmland

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might appear desirable in theory—in the presence of 'underutilized' land that cannot be developed without the import of capital—it may be impossible in practice to ensure that they will lead to 'win-win-win' situations in which all stakeholders concerned gain. Finally, a third approach further deepens the critique by questioning whether the very transformations that the increase of investment in agriculture will bring about are desirable. Large-scale investments in farmland will constitute a powerful incentive towards the development of a market for land rights as a means to improve security of tenure, and the ease with which rights over land can change hands. It will also encourage a shift towards a more export-led type of agriculture. Both of these evolutions are problematic once agriculture is placed in the broader context of rural development and poverty alleviation.

Current attempts to 'regulate' large-scale investment in farmland are misleading insofar as they presuppose that such investments can be desirable under certain conditions, provided they are well managed. This paper argues that, by making such a presupposition, we underestimate the opportunity costs involved in giving away farmland that is considered 'idle' to promote a type of farming that will have much less powerful poverty-reducing impacts than if access to land and water were democratized for the local farming communities. We overestimate the capacity of the governance structures in the host countries. In addition, we also pay too little attention to the risks of encouraging a commodification of land in the name of improving security of tenure, as well as a further dependence of agriculture-based countries on international markets in the name of local food security, which may have serious negative consequences in the long term. The reinvestment in agriculture, triggered by the 2008 food price crisis, is essential to improving the livelihoods of the rural poor in the global South. However, in a context of ecological, food, and energy crises, the most pressing issue regarding reinvestment is not how much, but how: what we need is not to regulate land-grabbing as if this were inevitable, but to put forward an alternative program for agricultural investment.

The question of land-grabbing in historical perspective

For many years following the independences in Asia and then Africa, the state sought to enlist agriculture in support of import substitution policies that were meant to achieve rapid industrialisation. The most immediate result of these policies was, in a significant number of countries, more inequality between farmers, and more rural poverty (Bates 1981, Schiff and Valdes 1992); and the primary objective itself, to diversify economies and ensure that the 'periphery' would join the 'center', often failed. The adjustment policies of the 1980s and 1990s represented a significant shift away from that era (World Bank 1983). Instead of being squeezed for the sake of feeding the cities, agriculture was largely abandoned: the state institutions that were directing its development were dismantled, and the support given to farmers removed. Prices, not governmental decrees or five-year plans, were henceforth to guide farmers in their decisions about what to sow, and whom to sell to; private investment was to replace public spending; and the removal of barriers to trade and investment would ensure a prosperous future for the farmers who would adapt to this new environment (Commander 1989, Summers *et al.* 1992). Some agricultural producers managed to thrive in this new environment, suddenly subjected to the shock of liberalization. Many however did not, and in a context of structurally declining prices of agricultural commodities on international markets, private investors showed little interest in this sector, with the exception of certain tropical commodities. Even the proportion of official development assistance (ODA) going to agriculture significantly declined.[1] The result at the turn of the century is well known: rural poverty on a large scale, a wide segment of the farming population relegated to subsistence agriculture, and governments that have become almost irrelevant to the lives of many small-scale farmers.

The new rush towards farmland opens a new chapter in the difficult relationships between small-scale farmers and attempts to integrate them into the larger economy. It developed in two phases (De Schutter 2011). First, in recent years, agrifood companies increasingly sought to strengthen vertical integration of the global supply chains. Their objective was both to ensure a better security of supply, and to respond to the requirements of their food industry clients by better enforcing compliance with standards related to food safety (Reardon and Berdegué 2002, Reardon *et al.* 2009): while these objectives were sometimes achieved through the use of explicit contracts (long-term arrangements with producers) or techniques such as preferred supplier lists, the acquisition of land for the development of large-scale plantations became increasingly popular. Foreign direct investment in agriculture began to rise as a result: according to the United Nations Conference on Trade and Development, it went from an average of 600 million USD annually in the 1990s, to an average of 3 billion USD in the period 2005–2007 (UNCTAD 2009). Second, the global food price crisis of 2007–2008 convinced many governments and private commodity buyers that international markets would be less reliable and more volatile in the future, and that these markets could not be trusted to provide a stable supply of food commodities: in order to achieve food security or stability of supply, buying farmland—outsourcing food production—was seen as more interesting than buying on the international markets. The acquisition of farmland became popular among certain governments worried about their future ability to feed themselves.[2] However it also became a favorite way for investment funds to hedge their assets against inflation, particularly in a context in which the stock markets remained unreliable and were providing at best low returns on investment.

Two aspects of the recent rush to farmland deserve to be highlighted, because they go a long way towards explaining the difficulty of regulating it. First, in this process, the interests of a number of low-income or relatively cash-strapped, agriculture-based countries, particularly in Sub-Saharan Africa, came to converge with the interests of major food-importing capital-exporting countries, such as the Gulf countries. As the combined result of demographic growth, of low import tariffs, and of the lack of investment in agriculture, a number of poor countries which previously were self-sufficient in food had become net-food-importing in the

[1]In 2008, the World Bank reported that the share of agriculture in ODA declined from 18 percent in 1979 to 3.5 percent in 2004, and that it declined in absolute terms from 8 billion USD (in 2004 dollars) in 1984 to 3.4 billion in 2004 (World Bank 2007, 41).

[2]While many observers have seen the acquisition or lease by governments of farmland abroad as making the current wave of investments in farmland a new phenomenon, it is in fact far from being unprecedented: Japan has been outsourcing the production of food for many years and its overseas holdings are estimated to represent three times the size of its domestic arable land; China, which must feed 22 percent of the the earth's population with only nine percent of its arable land, has been leasing or buying land abroad since the 1990s, in countries such as Cuba or Mexico. By 2000, investments in cash and food crops had become an integral part of China's development policy (IFPRI 2009, Deutsche Gesellschaft für Technische Zusammenarbeit (GTZ) 2009, 13).

1980s. The global food price crisis of 2007–2008 revealed to these countries how that position was unsustainable, however, since it subjected them to price shocks that, in the future—particularly as a result of weather-related events related to climate change—would become at once more frequent, less predictable, and worse in their price impacts on agricultural markets. These countries concluded that they should urgently reinvest in agriculture—develop communication routes and storage facilities, irrigation, and large-scale, mechanized plantations, in order to improve their food security by becoming more self-sufficient in food. At the same time, some rich or relatively better-off countries, lacking the farmland and water required to produce enough to cover their own needs, found that their interest was in outsourcing food production: in order not to have to depend on the international markets, they reasoned, they should acquire land abroad and produce for themselves. Both of these groups of countries were the most severely impacted by the high prices of 2007–2008. Both concluded that they should limit their dependence on international markets in order to improve their long-term food security. Both, too, have an interest in shielding the deals they conclude from public scrutiny, to ensure that they are as mutually beneficial as possible, even if they do not necessarily benefit the local communities most directly affected by the investment.

Of course, the interests of both groups of countries do not overlap perfectly. The 'targets' of the recent rush in farmland are mostly poor, agriculture-based countries, many of which are in Sub-Saharan Africa (World Bank 2010a, 36)—these countries have an interest in increasing food production to improve their local food security. The investing countries on the other hand, which aim to acquire land, directly or through sovereign wealth funds or publicly-owned enterprises, primarily seek to produce food in order to import the production, and thus to satisfy the growing demand of their own populations. However, while the convergence of interests is not complete, it is significant enough to allow for transactions to be concluded. This is the case especially if we consider the mixed motives that the 'target' countries may have in attracting foreign investors. They may have in mind, of course, improving the food security of their own populations. But they may also seek to increase their revenues from exports, in which case they will see in a positive light the fact that most, or all, of the production achieved thanks to the arrival of the investor shall be shipped abroad. Less avowable motives can also play a role, since—in the absence of transparent use of the revenues from the investment—some governmental elites could capture most of the short-term benefits from the arrival of investors, or receive bribes to consent to ceding land away.

A second aspect of the current phenomenon is what might be called its speculative dimension—the fact that it is driven by investors attracted by what now appears to be a new and rapidly expanding market of land and water rights, the result of an accelerated commodification of natural resources that are increasingly treated as mere economic assets in a process that Karl Polanyi first noticed, and denounced, three-quarters of a century ago (Polanyi 1944). What is noteworthy here is not only that, as Mann and Smaller (2010, 1–2) remark:

> the new investment strategy is more strongly driven by food, water and energy security than a notion of comparative advantage in the large scale production of indigenous crops for global markets, which has been more characteristic of foreign-owned plantations since the end of the colonial era. The current land purchase and lease arrangements are largely about shifting land and water uses from local farming to

> essentially long-distance farming to meet home state food and energy needs. It is, in pratice, purchasing food production facilities.

Indeed, rather than to link local production to the global markets, the goal of these new investments is to ensure a stability of supply for investors, whether public or private: they aim, not to serve the international markets, but rather to circumvent them, by tightening the control of investors from the place of production to the end consumer. '[T]he growing scale of this practice today', these commentators note:

> combined with the increasing economic and environmental concerns that are motivating this surge, are creating a new dynamic of global importance. It is no longer just the crops that are commodities: rather it is the land and water for agriculture themselves that are increasingly becoming commodified, with a global market in land and water rights being created.

The result is the emergence of a new bubble, as investors converge towards this new market, sometimes with little understanding of the long-term prospects or even in the absence of any solid development project. For instance, based on press reports, the World Bank (2010a, xiv) notes that 'investors expressed interest in 42 million ha of land globally in less than a year [between 1 October 2008 and 31 August 2009]', a considerable figure which represents double the size of France's farmland and two-fifths of all the farmland of the European Union. But the actual implementation lags behind quite significantly: according to the Bank:

> almost 30 percent are still in an exploratory stage (that is, they have not obtained government approval); 18 percent have been approved but have not started yet; more than 30 percent are at initial development stages; and only 21 percent have initiated begun actual farming, often on a scale much smaller than intended. (World Bank 2010a, 36)

This suggests that the current race towards farmland is driven, in part at least, by a perception among investors that this is a promising way to secure assets, and that acquisition of farmland is a trend they should espouse in order not to arrive too late on the market: mere speculation, as opposed to the desire to implement an investment strategy based on a robust economic analysis of the viability of certain projects, seems to be playing a significant role.

In this context, the pressure on the target developing countries, and their temptation to sell out land to foreign investors, are both considerable. Yet, whether they are governments worried about the future food security of their own populations and the unreliability of global markets, or private investors, particularly investment funds and transnational corporations, speculating on the rise of the price of farmland or seeking to ensure a stable supply of crops, the interests of these investors differ significantly from those of the local populations concerned. How can the groups directly affected by the arrival of foreign investment in the form of large-scale leases or acquisitions of farmland be protected?

In my capacity as the United Nations Special Rapporteur on the right to food, I presented to the Human Rights Council a set of minimum principles and measures to address the human rights challenge of large-scale land acquisitions and leases (UN Special Rapporteur on the right to food 2009b). The principles (which I shall refer to henceforth as the 'Minimum Human Rights Principles') set out the minimum obligations that states must meet, based on existing human rights instruments.

Their presentation was based on the consideration that it was necessary to clarify the human rights implications of land-related investments, in order to make it clear that governments had obligations they could not simply ignore for the sake of attracting capital.[3] Another prominent document that has been released at the international level is a set of seven 'Principles for Responsible Agricultural Investment that Respect Rights, Livelihood and Resources' proposed by the Food and Agriculture Organisation of the United Nations (FAO), the International Fund for Agricultural Development (IFAD), the United Nations Conference on Trade and Development (UNCTAD), and the World Bank Group.[4] Currently, the principles proposed are that: (1) existing rights to land and associated natural resources are recognized and respected; (2) investments do not jeopardize food security but rather strengthen it; (3) processes for accessing land and making associated investments are transparent, monitored, and ensure accountability by all stakeholders, thereby improving the business, legal, and regulatory environment; (4) all those materially affected are consulted and agreements from consultations are recorded and enforced; (5) projects are economically viable, respect the rule of law, reflect industry best practice, and result in durable shared value; (6) investments generate desirable social and distributional impacts and do not increase vulnerability; (7) environmental impacts are quantified and measures are taken to encourage sustainable resource use while minimizing and mitigating negative impacts.

The Principles for Responsible Agricultural Investment are based on a lucid understanding of the risks entailed by the current wave of investments in land. But they have attracted criticism from two separate sides: some of the governments most directly concerned, whether as buyers of land or as sellers, complained that these principles were developed following a non-inclusive process; conversely, many grassroots organizations, particularly those representing small farmers, denounced the fact that the principles were legitimizing deals that should be unacceptable in principle, and that they would merely constitute a check-list unable, by itself, to slow down a trend they see as destroying peasantry in the global South (The Global Campaign for Agrarian Reform 2010). In addition, both constituencies may have reasons to suspect the presentation by the World Bank of such a set of principles when the International Finance Corporation, part of the World Bank Group, and the Foreign Investment Advisory Service have a consistent record of encouraging developing countries to favor inward foreign investment by cutting down administrative requirements and consultations that might slow down or restrict investments (Oakland Institute 2010). Indeed, it is precisely the lack of sufficient screening of investors and of the viability and sustainability of the investment projects that justify the formulation of the RAI Principles in the first place.

[3]See Report of the Special Rapporteur on the right to food, Large-scale land acquisitions and leases: a set of Minimum Principles and Measures to Address the Human Rights Challenge, UN doc. A/HRC/13/33/Add.2 (22 December 2009). In resolution 13/4 adopted on 14 April 2010 at its thirteenth session (A/HRC/RES/13/4), the Human Rights Council 'takes note with appreciation' of the document (para. 35).

[4]These Principles, often referred to as the 'RAI (responsible agricultural investment) Principles', were released initially on 25 January 2010. They were subsequently presented at the annual meeting of the World Bank held in Washington, DC, on 25–27 April 2010, and at a side-event to the High-level segment of the 65th General Assembly of the United Nations, on 24 September 2010. See, for the text of the Principles as well as a range of reactions, www.responsibleagroinvestment.org/rai/node/256 [Accessed 25 October 2010].

At its thirty-sixth annual session held in Rome in October 2010, the Committee on World Food Security (CFS), 'taking note of the ongoing process of developing Principles for Responsible Agricultural Investments that Respect Rights, Livelihoods and Resources (RAI)', decided, 'in line with its role, [...] to start an inclusive process of consideration of the principles within the CFS' (CFS 2010, para. 26, ii). It remains an open question how the RAI Principles will be linked to the development of a set of Voluntary Guidelines on the Responsible Governance of Tenure of Land and Other Natural Resources, a draft of which should be discussed within an open-ended working group of the CFS during the spring of 2011.[5] Since the Committee on World Food Security, a FAO committee that was significantly reformed at the end of 2009 in order to improve the global governance of food security,[6] includes among its participants all member states of the FAO, as well as international agencies, the private sector and non-governmental organizations, the existing ambiguities shall have to be dissipated in the next few months, through a process that should allow finding a consensus across a large range of actors with very different agendas, interests, and constituencies. The following sections seek to contribute to this debate by mapping the various perspectives from which large-scale investments in farmland have been critically examined, and by highlighting the limitations of the current attempts to regulate them.

The first critique: reframing the debate on land-grabbing

Whatever the final form in which they are codified and their relationship to the broader Voluntary Guidelines on the Responsible Governance of Tenure of Land and other Natural Resources, the future attempts at the regulation of large-scale investments in farmland shall take as their departure point the Principles for Responsible Agricultural Investment and the Minimum Principles and Measures to address the human rights challenge of large-scale land acquisitions and leases, which I have set out in my capacity as the UN Special Rapporteur on the right to food. While these two sets of principles present certain superficial similarities, they also present a number of major differences. One first, major difference between the two approaches concerns the way the debate is framed.

The question of opportunity costs

As stated in the report presenting the Minimum Human Rights Principles to the Human Rights Council, these are *minimum* principles in the sense that 'a large-scale investment in land will not necessarily be justified even though it may comply with

[5]The Voluntary Guidelines on the Responsible Governance of Tenure of Land and Other Natural Resources are currently being developed through a process coordinated by the FAO Secretariat (Land Tenure and Management Unit) and including IFAD, UN-Habitat and the World Bank, as well as civil society organizations such as IPC (International NGO/CSO Planning Committee for Food Sovereignty). The process includes regional workshops, expert meetings and civil society workshops (FAO 2009b). A first draft of the guidelines is expected to be presented in early 2011.

[6]See CFS 2009 (describing the reformed CFS, at para. 4, as 'the foremost inclusive international and intergovernmental platform for a broad range of committed stakeholders to work together in a coordinated manner and in support of country-led processes towards the elimination of hunger and ensuring food security and nutrition for all human beings').

the various principles listed'.[7] Indeed, the Minimum Human Rights Principles contain a number of provisos that should ensure that any investment leading to changes being made to rights over land will only be a last resort, where no other investment model can be better conducive of human rights, in particular the right to adequate food. Thus, these principles call for governments to carefully examine the opportunity costs involved in ceding land to an investor (principle 1);[8] to examine alternatives to agreements that have an impact on land tenure (principle 4); and to perform a participatory impact assessment prior to the conclusion of such agreements (principle 9). The Minimum Human Rights Principles note that in the vast majority of cases:

> the benefits of the investment (in terms of creation of infrastructure, marketing opportunities, and access to credit) could be achieved—and work for the benefit of both the investor and the producer—by the use of other business models such as contract farming, without any change being made to the rights over the land. Such alternatives should be explored prior to any shift in rights over the land. Unless such alternatives are prioritized, the development of large-scale land acquisitions or leases will result in nothing less than an agrarian counter-reform; such a consequence would be completely unacceptable and run directly counter to the realization of the right to food, further marginalizing the communities that depend on access to land for their livelihoods.[9]

In my view, this is key, because it recognizes the opportunity costs involved when land considered 'underutilized' or 'vacant' is given away to investors for the development of large-scale plantations, instead of being distributed in order to strengthen access to land and water of local farming households. Such a choice should be assessed in the light of the fact that today, of the approximately one billion people considered food insecure,[10] about half are in households living from subsistence agriculture. These families are often unable to feed themselves because the plot of land they cultivate is too small, and because they are relegated to soils that are arid, hilly, or without irrigation, as they compete against larger productive units for access to land and water (UN Millennium Project 2005, 6). These very poor small-scale farmers are, in their vast majority, net food buyers. Whether because small-scale farming has become non-viable in the absence of other sources of revenues for these households, or because they were expelled from the land in the absence of effective security of tenure, many of them migrate to the cities. Others become agricultural workers on large-scale plantations, on a seasonal or on a semi-permanent or permanent basis. As waged laborers, they are often paid lower than

[7]Minimum Human Rights Principles, para. 9.
[8]Principle 1 of the Minimum Human Rights Principles state: 'In considering whether or not to conclude an agreement with an investor, the host government should always balance the advantages of entering into such an agreement against the opportunity costs involved, in particular when other uses could be made of the land available, which could be more conducive to the long-term needs of the local population concerned and the full realization of their human rights'.
[9]Minimum Human Rights Principles, para. 9.
[10]At the time of writing (November 2010), the latest figures available indicated that the number of food insecure people in the world was 925 million (FAO 2009a, 11), up from 1.023 million in 2009 (see FAO 2010).

subsistence wages, and are left often without any social or legal protection.[11] Because the wages on plantations are typically on a piece-rate basis, migrant and seasonal workers often need their children to work in order to achieve a living wage, and women especially tend to be accompanied by children in the fields: the result is that about 70 percent of child labor in the world is in agriculture, representing approximately 132 million girls and boys aged five to 14 (FAO-ILO-IUF 2005).

These small-scale producers, gradually turned into landless or quasi-landless agricultural workers, are direct victims of the increasing pressures on land. As the rural population grows, the plots cultivated are smaller per capita or per household (UN Special Rapporteur on the right to food 2010). In Eastern and Southern Africa, which are among the regions most affected by land-grabbing, cultivated land per capita has halved over the last generation and, in a number of countries, the average cultivated area now amounts to less than 0.3 hectares per capita (IFAD 2008, para. 17). The phenomenon is compounded by the losses of farmland due to the development of large infrastructure projects and of the expansion of urban areas, as well as to erosion and soil depletion: it has been estimated that 'globally, 5–10 million hectares of agricultural land are being lost annually to severe degradation' (IFAD 2008, para. 17), and although this is probably an overestimation, it is undeniable that arable land has been shrinking globally over the years.

There exists a lively debate about whether or not there exists reserves of available farmland in the world that can allow to meet growing demand for farmland. Recent studies show, for instance, that while 26 million hectares of arable land can be reclaimed in Eastern European countries where large farms were dismantled after the fall of the Soviet Union, this represents only between one and three years of the total annual increase of demand for land at present.[12] However, these worldwide estimates are only very tangentially related to the reality of the pressures on land that current landusers are subjected to, when they are situated on the best land closest to communication routes and compete with other demands. These pressures on land have an impact on the ability of small-scale farmers to achieve decent levels of income from farming, since they are routinely under the threat of being evicted from their land and, with increased speculation on the price of farmland, are often priced out of the markets for land rights. But artisanal fishers, pastoralists or agro-pastoralists are now facing threats similar to those facing smallholders: as land becomes increasingly scarce, they too increasingly risk being fenced off from the fishing and grazing grounds which they were able to rely upon for generations. And the precarious position of indigenous peoples or of forest dwelling populations may be attributed in particular to the increased pressure on the forests on which they depend for their livelihoods.

[11]Approximately 450 million people are employed as agricultural workers on plantations. Of these, it is estimated that 200 million are food insecure (FAO-ILO-IUF 2005, ILO 2008, UN Special Rapporteur on the right to food 2009a, paras. 10–27).

[12]A recent study of worldwide availability of land for food crops concludes that the additional total land demand is currently of 9.5 to 26.4 million hectares per year. This is the combined result of a number of factors, including the expansion of cultivated land required to keep up with population growth (which accounts for an increase of 2.7 to 4.9 million hectares annually), the expansion of energy crops (at least 1.5 to 3.9 million hectares per year), a limited expansion of pasture land (from 0 to 5 million hectares per year), and progress of urbanization (from 1.6 to 3.3 million hectares per year), industrial forestries (1.9 to 3.6 million hectares per year), and protected areas (from 0.9 to 2.7 million hectares per year) (Lambin and Meyfroidt 2011).

Once we consider the situation of these different groups—threatened, in various ways, by these increased pressures on land—the limits of the current framing of the debate on the need to regulate large-scale investments in farmland become clear. Two limitations in particular deserve notice. First, as illustrated by the Principles on Responsible Agricultural Investment, the debate has focused hitherto on the pros and cons of the acquisition or long-term lease of farmland by an investor, taking into account both the 'opportunities'—ranging from the creation of on- and off-farm employment, to the improvement of irrigation or communication infrastructures, and of access to markets—and the 'risks'—particularly of local communities losing access to the land and water resources on which they depend for their livelihoods—*in comparison to the situation existing before the arrival of that investor*. However, we should not ask simply whether such investments represent an improvement from the *statu quo ante*, i.e. from a situation in which land is considered underutilized due to the lack of investment. Using such a baseline is introducing a bias in the debate, particularly against the background of years of underinvestment in, and neglect of, agriculture. We should ask instead whether such land could not be used more productively, in ways that are both more equitable and more environmentally sustainable, by agrarian reform—including, but not limited to, the distribution of land to smallholders.

It is neither possible nor necessary here to present a detailed argument about agrarian reform (among major contributions, see Banerjee *et al.* 1998, Griffin *et al.* 2002, El-Ghonemy 2003, Borras *et al.* 2007, Penciakova 2010). It is worth noting however that the international community has recognized the contribution more equitable access to land could make to the reduction of rural poverty, particularly at the International Conference on Agrarian Reform and Rural Development (ICARRD) of the Food and Agriculture Organization of the United Nations (FAO), convened in Porto Alegre in March 2006. The Final Declaration adopted by the ICARRD contains a number of principles, among which is the promotion of a national and inclusive dialogue to ensure significant progress on agrarian reform and rural development and the establishment of appropriate agrarian reform 'mainly in areas with strong social disparities, poverty and food insecurity, as a means to broaden sustainable access to and control over land and related resources' (ICARRD 2006, Art 29, pp. 7–9). The argument in favor of agrarian reform is not limited to questions of social equity. It is also an argument based on productivity gains. Indeed, there is widespread evidence that a more equitable distribution of land can lead to an increase in overall levels of production: as land is transferred to family farms, idle lands of large estates are brought into production (Palmer *et al.* 2009, 31); and there exists in general an inverse farm–size productivity relationship, at least beyond certain plot sizes (Banerjee 1999, 1–5, Borras *et al.* 2007, 1).

Three scenarios

The current framing of the debate on large-scale acquisitions or leases of land is biased in a second way. This debate has focused hitherto on the impacts of such large-scale investments in land for the current land users. In contrast, comparatively little attention has been paid to the situation of the small farmers who shall be facing an increased degree of competition in their markets as a result of the expansion of large-scale plantations—farmers who could be affected not because they could be deprived of access to land or other resources on which they depend, but because of the transmission belt of prices. Preferring investments that are sustainable and equitable—'win-win-win' deals—to investments that are irresponsible is easy. However only in perfectly segmented markets could such investments, and the type of production they may lead to, remain without any impacts on the situation of other agricultural producers who compete with the large-scale plantations that external investors shall develop. Once we take this into account, the choice appears to be, broadly, between three competing scenarios (De Schutter 2011).

Call the first scenario the *transition* scenario. Under this scenario, the development of large agro-industrial estates, made possible by the arrival of external investors, is seen as an opportunity to effectuate a shift towards types of agricultural production that are highly mechanized and capital intensive, producing large volumes through monocropping schemes, and competitive on regional and international markets. This scenario will be the preferred one for those who do not believe that small-scale farming has a future and that, as one commentator put it, all countries should focus on developing large agro-industrial estates following the model of the Brazilian farm (for a characteristic and influential exposition of that view, see Collier 2008). Most actors do not take this scenario seriously, and for good reason: the displacement of small-scale farmers from the lands they depend on would further worsen the situation of a group, representing between 1.5 and 2 billion people worldwide, which is already marginalized, and which represents up to half of the people who are too poor to feed themselves; in the absence of an industry and a services sector that can absorb what would amount to a huge surplus labor coming from the rural areas, encouraging this is a recipe for disaster.[13]

Instead, most commentators favor another scenario, which I call the *coexistence* scenario. This refers to the possibility of combining the arrival of investors and the creation of large-scale plantations developed by these investors with the protection of existing land-users, including in particular small-scale farmers. It is this scenario that is at least implicitly envisaged by current attempts to 'discipline' large-scale investments in land. Indeed, such attempts take as their departure point the apparently non-controversial position that, while the existing rights of land users should be fully respected, which requires that they be clearly delineated, there remain large areas of 'underutilized' land: in a number of regions, particularly in Sub-Saharan Africa, there is room for expansion of cultivated areas beyond the existing areas, because (so the argument goes) the ratio of land that is potentially suitable for rainfed agriculture to what is in fact cultivated is large, and because the population density is low.[14] The arrival of investors to develop hitherto 'idle' land, under this approach, is fully compatible with respecting the rights of current land users,

[13]More than one billion people today—one in six people, and 43 percent of the population in developing countries—already live in slums. By 2030, when the global population will have reached the mark of eight billion, that figure will increase to one in three individuals (UN Habitat 2009). The vast majority of these urban poor have access to no social protection of any kind.

[14]In its September 2010 report on *Rising Global Interest in Farmland*, the World Bank uses a 25 persons/km^2 cutoff (a level at which there are 20 ha available for each household) to draw the conclusion that 'the seven countries with the largest amount of land available (Sudan, Brazil, Australia, Russia, Argentina, Mozambique, and Democratic Republic of the Congo, in that order) account for 224 million ha, or more than half of global availability' (World Bank, 2010a, 55). The suggestion here is that at low levels of population density, large-scale investments in land are appropriate, and 'voluntary land transfers that make everybody better off are possible' (55).

provided these rights are adequately protected. But there are three major difficulties with this position.

A first difficulty is that concepts such as 'underutilized' or 'available' land 'tend to reflect an assessment of the productivity rather than existence of resource uses', and therefore they are 'often applied not to unoccupied lands, but to lands used in ways that are not perceived as "productive" by government' (Cotula *et al.* 2009, 62). This, Borras and Franco (2010b, 516) have noted elsewhere, is an example of what Scott describes as the 'simplication' that social practices related to land undergo when these practices are made to fit the requirements of state regulation and administration (Scott 1998, 27). Notions such as 'reserve land' that are the result of such administrative simplification also are easily manipulated in contexts where the rights of the local land users are unclear, and where the administration of land management is weak or non-existent. Recent reports have provided ample demonstration of the dangers involved, particularly since many of the new investments in land take place in weak governance countries (see, for example, the case studies on Tanzania, Southern Sudan, and Pakistan, discussed in Center for Human Rights and Global Justice 2010).

While this first difficulty is well known and broadly acknowledged, a second difficulty is, in comparison, widely overlooked. It stems from the organization of the coexistence between smaller and larger production units. The development of large estates may increase the competition between large-scale plantations and small-scale farmers, if they target the same markets, in a context that is highly unequal. Due to their difficulties having access to credit, small-scale farmers are generally poorly mechanized. They therefore tend to substitute family labor to capital and rely on labor-intensive techniques, to make the maximum use of the little land available. They are typically much more productive per hectare.[15] However they only manage to survive because the family workforce is not remunerated, and because the incomes of the farmers are very low—indeed, the labor-intensivity of the family farm is in partly due to the fact that labor is cheap or available almost for free, with very low opportunity costs in the absence of alternative employment in the rural areas. In contrast, large-scale plantations rely on machinery, and more generally on a more highly capitalized system of production. This allows them to produce large volumes at a relatively low cost, thanks to the economies of scale they achieve. In general, they have a higher productivity per active laborer, although their productivity per hectare is lower. These plantations are champions of the low-cost food economy that is developing today. They are competitive, perhaps, but part of their success is attributable to the fact that the price of food does not reflect the social and environmental costs resulting from their operations, and particularly from the impacts on the soils and the climate of their modes of production. In contrast, small-scale farms are much more resource efficient (Altieri and Koohafkan 2008). However they are rewarded neither for the environmental services they provide, nor for their contribution to rural development and to the reduction of rural poverty.

This raises questions about the viability of the scenario of a 'coexistence' between large-scale plantations and small farms. Where the two types of productive units are competitors on the same markets, there is a risk that small farms will either be driven out, or will only subsist at the expense of smallholders living under conditions of

[15]On the inverse farm size–productivity relationship and scale effects in agriculture, see (Banerjee 1999, 1–5), Borras *et al.* (2007, 1), Rosset (1999), Barrett (1993), and Feder (1985).

extreme poverty. This outcome is not necessarily unavoidable, however. First, the two markets can remain relatively segmented, for instance by stipulating that all the produce of the plantations developed by investors shall be shipped abroad. A delicate balance may have to be struck here between the need to ensure food security in the home country (including by adequate food availability), and protecting the local small-scale producers from what might otherwise be seen as a form of 'internal dumping'. For this purpose, flexibility clauses may have to be built into the investment agreements providing that a certain minimum percentage of the crops produced shall be sold on local markets, and that this percentage may increase, in proportions to be agreed in advance, if the prices of food commodities on international markets reach certain levels (see Principle 8 of the Minimum Human Rights Principles).

Where competition between the two types of production units cannot be entirely avoided, the handicaps of small farms – particularly, the impossibility of achieving economies of scale for the acquisition of machinery, or in the processing, packaging and marketing stages of production – can be compensated, in part at least, by appropriate contracting schemes or institutional innovations. For instance, the development of rental markets for machinery allows small farmers to use machinery without having to purchase it. Cooperatives provide the possibility for them to join their efforts to build small processing facilities, to package or to sell their crops, and thus to climb up the value chain and capture a larger proportion of the end value of their produce. If well managed, contract farming can also allow some of these advantages to be captured by small farmers.

Agency problems and transaction costs should not be underestimated, however, and on average, larger production units retain certain competitive advantages over smaller-scale farms (Banerjee *et al.* 1998). That also explains why, considered in a dynamic perspective, the development of a market for property rights over land tends to lead to more concentration of land, a factor which is further discussed below. Therefore, in addition to facilitating such institutions, affirmative action might have to be developed in order to support small-scale farming. Otherwise—in the absence of specific types of support being given to small-scale, family-owned farms—the coexistence scenario will likely be short-lived: it will simply be a slow-motion path to the transition towards a rural economy dominated by large production units, in which small-scale farming will be marginalized and subordinated to the large production units and in which further rural migration will be encouraged.

This is by no means unavoidable. Instead, a third scenario could be explored, in which governments seek to channel agricultural investment into the support of small-scale farming. This, it should be emphasized, is not equivalent to the status quo, or to preserving subsistence agriculture—with low productivity, and few possibilities for the farmer to climb his or her way out of poverty. Nor is it a way of saying that investments in agriculture, and particularly the arrival of foreign investors, should be shunned: rather, it is a way of ensuring that investment will be directed towards ends that are most poverty-reducing.

Few would question that investments are needed in order to support agriculture in developing countries, particularly in Sub-Saharan Africa where, as seen above, it has been almost entirely neglected for too many years, resulting in significantly lower productivity than in other regions. Indeed, investments in agriculture are particularly effective at alleviating poverty. Cross-country comparisons show that GDP growth originating in agriculture is at least twice as effective in reducing poverty as GDP growth originating outside agriculture (Alston *et al.* 2002, World Bank 2007, 6). If we also take into account not only its own growth performance but also its indirect impact on growth in other sectors, agriculture is significantly more effective in reducing poverty among the poorest of the poor—those living below a US$1-per-day PPP poverty line; recent research has shown that it is 3.2 times more effective at reducing the number of very poor people in low-income and resource-rich countries, at least in the absence of strong inequality (Christiaensen *et al.* 2010). But while investments are needed, the impacts on the local economy vary widely depending on the kind of investment made. At present, the vast majority of foreign investments in agriculture go to the creation of large plantations (Hoffmann 2010, 15). Yet, the multiplier effects of increased incomes for farmers and farm workers—that stimulate demand for goods and services from local sellers and service-providers—are significantly higher when growth is triggered by higher incomes for smallholders: when large estates increase their revenue, most of it is spent on imported inputs and machinery, and much less trickles down to local traders. In contrast, the poverty-reducing potential of investing in smallholders is considerable.

Small-scale farmers can be helped by investments upstream and downstream in the production process itself, focusing on the provision of public goods that can improve productivity and access to markets, and on institutional innovations that can strengthen the position of small-scale farmers and allow them to obtain a better revenue for their produce. The establishment of farmers' cooperatives could be encouraged to ensure that farmers can achieve certain economies of scale and move up the value chain into processing, packaging, and marketing of their crops. Even contract farming can provide benefits, at least under certain conditions. At best, in such a scheme, the buyer has a reliable source of supply, the farmers have a reliable buyer for their crops, and the land rights are left untouched. The outside investor thus provides various kinds of support that allow small-scale farmers to increase their levels of productivity and manage the risks involved in the production of cash crops, and a long-term relationship develops between the parties (Key and Runsten 1999, Songwe and Deininger 2009). There are also risks, of course, inherent in such a business model. Contract farming can lead to transferring all the risks to the producer, and to the creation of a dependency towards the buyer that weakens the bargaining position of the farmer or leads her to owe debts to the buyer that she will never be able to repay. The shift to the production of cash crops may also increase vulnerability to shocks as it makes the farmer's household more dependent on the market prices of food commodities. If properly managed, however, certain forms of contract farming can provide important benefits to the farmers, allowing them to be supported by investments without depriving them of access to their land, particularly where the buyer negotiates with farmers' cooperatives or collectives. In Mali, a company supported with Dutch capital, Mali Biocarburant SA (MBSA), has teamed up with local farmers' cooperatives for the production of biodiesel from jatropha, buying only the land necessary for building the small processing plant to produce biodiesel from jatropha; the cooperatives have an equity stake in the joint venture with MBSA; since jatropha is intercropped with maize, the production of food crops and of energy crops are increased simultaneously, reducing the threat that the development of cash crops may otherwise imply for local food security. Thus, the jatropha itself is produced by the farmers on their own land, with support from MBSA that includes technical assistance and access to inputs (Center for Human

Rights and Global Justice 2010, 83–104). This example shows how foreign investment can serve to improve livelihoods if it serves to build solutions that are designed in a way that is participatory and that supports local farmers and strengthens their production systems, rather than substituting another mode of production for their own.

However this is not the approach followed in the RAI Principles. That approach is based instead on the implicit postulate that a co-existence between large-scale agro-industrial production units and small-scale farming can be successfully managed. This, however, is only one of the possible scenarios for the future reinvestment in agriculture. It is also an inherently unstable one: considering the terms of the competition between large-scale and small-scale farms, in the absence of perfectly segmented markets, the risk is that the small farms will lose out. Moreover, an approach based on these different scenarios further reinforces the argument about the need to consider the opportunity costs involved in promoting large-scale plantations by creating conditions favorable to the arrival of investment in agriculture. For, if it is to be successful, the third scenario envisaged—one that would support small-scale farming not only to make it viable, but even to make it desirable and thus to maximize the poverty-reducing impacts of growth in agriculture—should include means to strengthen an equitable access to land. Of course, in order for the redistribution of land to be sustainable, the beneficiaries must also be supported by comprehensive rural development policies: it has been estimated that improving access to credit, access to markets, and rural extension, can account for 60–70 percent of the total costs of a land reform, thus exceeding the costs of acquiring and transferring the land (Palmer *et al.* 2009, 31). The failure of a number of land reforms in the past—particularly in Latin America, when compared to the Asian reforms—has been attributed to the fact that failed reforms have focused on access to land solely, neglecting rural development policies (Deininger 2003, 146). The argument about opportunity costs associated with the development of large-scale acquisitions or leases of land, however, is a modest one, and it does not depend on the desirability of agrarian reform in the abstract: it simply requires that we ask whether investment in agriculture can best contribute both to food security and to rural development by taking the form of large-scale plantations or by supporting small-scale farmers' ability to produce more and better, in particular by improving their access to the available natural resources. In order to make fully informed choices, governments need to be presented with the full range of the options before them. Even in countries where there is suitable land available and where there are important yield gaps—countries, in other words, where the case for large-scale investments in land is strongest—it remains an open question whether large-scale investments in farmland are the most desirable option once we take as the benchmark the need to improve the situation of the rural poor. Governments should therefore carefully weigh the opportunity costs involved in dedicating land considered to be underutilized or 'idle' to large-scale plantations owned or leased by domestic or foreign investors, instead of promoting a more equitable access to land.

The second critique: the governance gap

The approach above has been to compare the impacts resulting from the development of large-scale plantations, with their associated social and environmental costs and their comparatively low multiplier effects on the local economies and contribution to the reduction of rural poverty, with those that might result from the strengthening of small-scale farming, by increased levels of support to family farms, including by improved access to land and water. A second perspective from which the current wave of investments in farmland can be critically examined takes instead as a departure point the risks posed by the arrival of investors offering to develop agricultural land, *even where the development of large-scale plantations by a foreign investor appears the most desirable option*—where, for instance, land is indeed 'underutilized' and abundant, with no hidden underemployment in the region concerned that could be better absorbed by agrarian reform schemes. This approach, which is complementary to the first, asks whether the risks involved can be addressed by appropriate regulatory or policy measures so as to ensure that they will not outweigh the expected benefits.

It is in order to ensure that the risks do not materialize and that the benefits to the local communities are maximized that a number of proposals have been made in recent months that aim at regulating—or, at least, monitoring—land deals. Yet, there remains a considerable gap between the existing institutional and governance conditions in host states and the framework that should be established in order for large-scale investments in land to truly benefit local communities. This is not to say that no theoretical argument could be made in favor of large-scale investments in farmland. In its detailed study of the recent wave of large-scale acquisitions or leases of farmland in a range of countries—including a review of large land transfers during 2004–2009 in 14 countries that were subject to specific scrutiny[16]—the World Bank concluded that in spite of the important risks involved, 'if projects were economically viable and existing rights enjoyed recognition and protection, local land owners could benefit significantly'. It identified:

> four main channels through which benefits can materialize: (i) provision of public goods and social services, often through community development funds into which part or all of the compensation for land is deposited; (ii) job generation and indirect employment due to the project; (iii) access to technology and markets for existing smallholder producers; and (iv) payment of taxes to local or central government. (World Bank 2010a, 51)

However, for these benefits to accrue to the local communities and to outweigh the risks, a number of conditions must be created. Three major obstacles in particular must be overcome.

A first obstacle is that poor agriculture-based countries who seek to attract foreign capital in order to develop their infrastructures are competing for the arrival of direct investment. This results in a tendency to lower the level of requirements imposed on investors, whether these relate to the compensations owed, to the creation of employment, or to the payment of taxes. The development of regional frameworks defining how the rights of land users should be protected, how local communities should be consulted and involved in co-designing the investment project, and which business models should be explored in order to ensure that they benefit from the arrival of the investment, could significantly strengthen the bargaining position of host countries, and avoid the temptation of these countries

[16]These countries were Cambodia, D.R. Congo, Ethiopia, Indonesia, Liberia, Lao PDR, Mozambique, Nigeria, Pakistan, Paraguay, Peru, Sudan, Ukraine, and Zambia.

resorting to beggar-thy-neighbor strategies to attract investors. It is encouraging in this regard that the African Union has endorsed the Land Policy Initiative developed by the African Union Commission (AU), the United Nations Economic Commission for Africa (ECA), and the African Development Bank (AfDB) as a set of guidelines for use by member states in formulating land policy (African Union 2009, 1–3). Quite apart from the content of the AU's Land Policy Initiative, which itself contains encouraging elements,[17] it is the démarche itself that is worth noting.
The more the protection of land users and the regulatory framework to be imposed on investors in farmland are defined at the regional or international level, in multilateral settings, the less there is a risk that the balance between the duties of the host state and those of the investor will be skewed in favor of the latter as a result of the respective bargaining positions of both parties.

A second obstacle resides in the weak capacity of host states to manage the investments in farmland and appropriately regulate the wide-ranging impacts such investments may produce. A strengthening of this capacity is urgently needed, and it goes beyond measures aimed at addressing corruption among those negotiating the land deals with the foreign investors. It extends to (i) the mapping of land available for development by foreign investors; (ii) the strengthening of security of tenure, in order to protect land users from eviction and to map existing rights over land, both individual and collective; (iii) the development of an appropriate legal framework to ensure that social and environmental standards are formulated in legislation and that the existing regulations are effectively enforced and compliance monitored; (iv) the establishment of appropriate processes for consultation with the local communities, to ensure that the principle of free, prior, and informed consent is complied with whenever shifts of land use are implied and that these communities benefit from the investment; (v) the screening of the investors and the analysis of the economic and technical viability of the project, as well as the negotiation of contractual agreements and the subsquent monitoring of compliance with such agreements; and (vi) the establishment of legitimate and legally valid dispute-resolution mechanisms, accessible to all, in order to resolve disputes in a fair and expeditious manner. The resources and expertise required for all these functions of governmental institutions

[17]This Framework emphasizes that, as part of their land policies, states should explicitly address the issues of land-grabbing by elites, foreign states, and agribusiness (sections 2.3. and 2.7.3.), and take into account environmental factors such as climate change, environmental degradation from mining, and the need for sustainable farming practices (sections 2.7.2., 3.4.3. and 3.5.). It recognizes that ineffective land governance can be due to corruption, patronage, and under-developed land administration systems (section 3.6.). It encourages special protections for the land rights of women and minority groups, and the involvement of vulnerable groups at all stages of the policymaking process to ensure their needs are not overlooked (section 4.1.). The Framework reiterates the need to clarify property rights in agriculture (section 3.2.2.) and to promote the development of land rights transfer systems and markets (sections 3.3.2. and 3.3.3.). However, taking into account the risks associated with the reliance on a Western-based concept of property rights resulting in the commodification of land and in the privatization of common resources on which certain groups rely, it also notes that, 'Colonial legacies which tended to denigrate indigenous land rights systems and suppress and sabotage their evolution and which ignored community land administration structures must now give way to new and innovative policies including the provision of statutory frameworks for the documentation and codification of informal land rights regimes', and is encouraged by the fact that 'a number of African countries including Ethiopia, Southern Sudan, Ghana and the pastoral communities of the Sahel are already moving in this direction' (section 3.1.3.).

to be discharged adequately are considerable. In addition, as the race towards farmland is accelerating, time is the most important limiting factor.

A third obstacle stems from the fact that the agreements between foreign investors and host states are not negotiated in a vacuum. In fact, the pre-existing obligations of host countries may preclude the adoption of a number of the measures that would be required in order to ensure that the benefits from large-scale investments in farmland outweigh the risks involved, and that investments in farmland serve the development goals of the host countries. In particular, many of these host countries are bound by investment treaties that include a prohibition on performance requirements. They may therefore be unable to impose on investors' conditions related to the restriction of exports (or, conversely, to the restriction of sales of products on the host state's territory), to the creation of employment, or to the establishment of a joint venture with domestic participation, for instance in order to ensure that local farmers' cooperatives have a stake in the investment (on the restrictions on performance requirements contained in investment treaties, see Newcombe and Paradell 2009, chap. 8, UNCTAD 2003, and Peterson 2004, 33–5). Such prohibitions may apply even apart from the situations where performance requirements are imposed only on foreign investors and thus may be denounced as violating the principle of national treatment.[18] For instance, the Agreement on Trade-Related Investment Measures (TRIMs)[19] may be interpreted to exclude any performance requirement imposed on foreign investors that constitutes a form of export control, since any measure restricting the 'exportation or sale for export by an enterprise of products, whether specified in terms of particular products, in terms of volume or value of products, or in terms of a proportion of volume or value of its local production', shall be considered to be in violation of GATT Article XI, para. 1.[20] While export requirements (imposed in order to protect the local markets) or requirements to establish a joint venture with domestic participation or to create certain levels of employment may not be in violation of the WTO rules, they may be prohibited (and indeed, often are prohibited) under regional free trade agreements containing investment-related measures or under bilateral investment agreements, at least when applied as a condition for the establishment, acquisition, expansion, management, conduct, or operation of a covered investment (as opposed to when imposed as a condition for the receipt or continued receipt of certain advantages). For instance, the 2002 Association Agreement between the European Community and Chile[21] restricts joint venture requirements; the 1993 North American Free

[18]On the interaction between performance requirements and national treatment, see Sornarajah (2010, 342). On the application of the principle of national treatment to investment, see Article 2 of the Agreement on Trade-Related Investment Measures (TRIMs Agreement), see Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations (GATT 1994), signed on 15 April 1994 in Marrakech, Morocco, at Annex IA-7 (Agreement on Trade-Related Investment Measures).

[19]See Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations (GATT 1994), signed on 15 April 1994 in Marrakech, Morocco, at Annex IA-7 (Agreement on Trade-Related Investment Measures).

[20]See item 2, (c), of the Illustrative list of TRIMs that are prohibited, annexed to the TRIMs Agreement.

[21]Agreement establishing an association between the European Community and its member states, of the one part, and the Republic of Chile, of the other part, OJ L 352 of 30 December 2002.

Trade Agreement (NAFTA) forbids domestic equity requirements;[22] and the 2004 United States Model Bilateral Investment Treaty includes a prohibition on imposing certain levels of exports on investors of the other party or restricting sales on the host party's territory to certain levels related to the levels of exports or to foreign exchange earnings.[23]

No attempt to 'regulate' or to 'discipline' large-scale investments in farmland can ignore the reality of these obstacles. For the moment, there still is no strong regional or international approach to regulating large-scale investments in land, despite the promising advances made by the African Union; the institutional and governance frameworks in host states remain weak and generally ill-equipped to adequately protect the rights of land users whose livelihoods may be threatened by the arrival of investors offering to develop agricultural land; and there has been no effort to improve the consistency between the measures to be adopted to regulate foreign direct investment in agriculture to the constraints of international investment regimes. Considered separately, each of these obstacles is therefore important, but taken together, these obstacles appear almost insuperable, at least for the foreseeable future. Yet, it is clear that they should be removed before large-scale investments in farmland are allowed to proceed further, considering their considerable implications for access to land and water of the local communities. Once investors shall have been allowed to acquire farmland or lease it for long terms, bringing about improvements will be made more difficult: although to do so will be even more urgent, as the risk is that these investors will be able to veto any change that will deprive them of certain gains or disappoint their expectations. The price of wanting to go too fast, in that sense, may be paralysis: reforms should precede the opening up to investment into farmland, because later may be too late.

While the first critique of large-scale investments in farmland and of current attempts at regulating them offers to reframe the debate by pointing at the opportunity costs involved in allocating land to the expansion of large-scale plantations, the second critique is, in a way, *internal* to such attempts: it shows how unrealistic it is, in the current context, to presuppose that the countries targeted by these investments will have the capacity to manage them effectively and in the interest of the local communities. Our third critique is, in a way, even more radical: it questions whether the efforts aimed at improving security of tenure in order to

[22]See North American Free Trade Agreement, 32 I.L.M. 289 (1993) (table of contents, preamble, parts I-III) and 32 I.L.M. 605 (1993), entered into force on 1 January 1994, Art. 1102(4) (stating that no party may 'impose on an investor of another Party a requirement that a minimum level of equity in an enterprise in the territory of the Party be held by its nationals, other than nominal qualifying shares for directors or incorporators of corporations').

[23]Article 8 of the 2004 United States Model Bilateral Investment Treaty provides that 'Neither Party may, in connection with the establishment, acquisition, expansion, management, conduct, operation, or sale or other disposition of an investment of an investor of a Party or of a non-Party in its territory, impose or enforce any requirement or enforce any commitment or undertaking: (a) to export a given level or percentage of goods or services; [...] (e) to restrict sales of goods or services in its territory that such investment produces or supplies by relating such sales in any way to the volume or value of its exports or foreign exchange earnings', although each of the parties may make 'the receipt or continued receipt of an advantage, in connection with an investment in its territory of an investor of a Party or of a non-Party, on compliance with a requirement to locate production, supply a service, train or employ workers, construct or expand particular facilities, or carry out research and development, in its territory' (article 3, a). See http://www.state.gov/e/eeb/ifd/bit/ [Accessed 15 November 2010].

protect the rights of land users and their access to resources always have benevolent impacts; and whether the greater integration of agriculture-based countries into the global markets (which is usually seen as one benefit that could be expected from the arrival of investment in farmland) is in fact desirable. It is to this third critique that the next section turns.

The third critique: ensuring security of tenure and guaranteeing national food security

Ensuring security of tenure

Part of the debate on land-grabbing concerns the protection of land users (De Schutter 2011). Remarkably, a consensus now seems to be emerging not only about the need to protect security of tenure, but also about the limitations inherent to an approach based on a transposition of the Western understanding of property rights over land to address this. The Minimum Human Rights Principles take as their departure point the standards that have been developed under international human rights law to protect land users from evictions. These standards benefit primarily those who permanently use the land, but lack a legal title and are therefore left without remedies in cases of eviction.[24] In particular, the Basic Principles and Guidelines on Development-based Evictions and Displacement presented in 2007 by the former Special Rapporteur on the right to adequate housing provide that:

> [i]n order to secure a maximum degree of effective legal protection against the practice of forced evictions for all persons under their jurisdiction, States should take immediate measures aimed at conferring legal security of tenure upon those persons, households and communities currently lacking such protection, including all those who do not have formal titles to home and land. (para. 25)

While security of tenure is therefore emphasized, these standards do not present titling schemes—and the creation of a market for property rights over land—as necessarily the best method to achieve such security of tenure. Indeed, the two ought to be carefully distinguished. Both as a protection from evictions and in order to encourage land-related investments and thus productivity, security of tenure is vital for land users.[25] However, whether this will be best achieved through a classic

[24]See, in particular, CESCR (1997), and UN Special Rapporteur on the right to adequate housing 2007. The Basic Principles and Guidelines on Development-based Evictions and Displacement presented by the Special Rapporteur on the right to adequate housing provide a practical tool to assist states and agencies in developing policies, legislation, procedures, and preventive measures to ensure that forced evictions do not take place, and to provide effective remedies to those whose human rights have been violated, should prevention fail. They are based on the principle that no eviction shall take place unless '(a) authorized by law; (b) carried out in accordance with international human rights law; (c) undertaken solely for the purpose of promoting the general welfare; (d) reasonable and proportional; (e) regulated so as to ensure full and fair compensation and rehabilitation; and (f) carried out in accordance with the [Guidelines]' (para. 21). They provide detailed guidance to states and agencies about which steps need to be taken prior to evictions, during evictions, and after evictions in order to minimize the negative impacts of evictions on human rights.

[25]That is not to say that there is an automatic link between security of tenure and improved productivity at field level. Although, in principle, security of tenure encourages land-related investments and thus productivity gains (Deininger 2003, 115–6, Deininger and Jin 2006a, World Bank 2007, 138), empirical studies show that improved infrastructures and access to markets matter at least as much than titling schemes (Place and Migot-Adholla 1998, Ouedraogo *et al.* 1996).

understanding of proprty rights, including the alienability of rights over land, remains contested. For about two decades, the World Bank and particularly its private sector lending arm, the International Finance Corporation, have been advocating titling as a means to improve the business climate and to attract investors (Muir and Shen 2005, World Bank 2004a, 40, World Bank 2004b, 78). The core argument is one that is linked to a capitalized view of agriculture. In the line with the work of the Peruvian economist Hernando de Soto, individual titling, combined with the establishment of cadastres, or land registries, is promoted as a means to facilitate and secure transactions related to land, and thus to favor integration into the market (de Soto 2000); once property is legally recognized, it can be alienated or mortgaged in order to allow the beneficiaries to leave agriculture or to obtain cash to make the necessary investments on the land. Land, it is supposed, would go to those who can use it most productively, and economic growth would therefore be promoted by the emergence of a market for land rights. Based on the view that such growth is key to address rural poverty and food insecurity, the World Bank has recommended formal titling as a precondition of the modernization of agriculture, and it has engaged in widespread promotion of land markets and the abandonment of communal/collective tenure as less compatible with a market-based system (Toulmin and Quan 2000, 38). However, a number of problems have been associated with titling schemes where this has been attempted. Some of these problems are limited to their implementation. Others stem from the very idea of creating a market for property rights on land.

The implementation of titling schemes

Titling schemes have been associated historically with the capture of the process by the local elites, sometimes acting with the complicity of corrupt officials; or, where fees are collected, it has been unaffordable for cash-strapped farmers, who will be unable to benefit. Insofar as titling is based on the recognition of formal ownership rather than on land users' rights, it may confirm the unequal distribution of land, and result in practice in a counter-agrarian reform: this will be the case, in particular, in countries where a small landed elite owns most of the land available, having inherited it from the unequal agrarian structure of the colonial era when settlers used the cadastre and land registry to take land from indigenous people, as has been the case in much of Africa (Borras and Franco 2010a, 19). Furthermore, instead of increasing legal certainty, individual titling could become a source of conflict and legal insecurity if it conflicts with customary rules regarding tenure, for instance as regards the communal ownership of land. Indeed, titling schemes in a number of instances amount to a privatization of what were previously communal lands, on which groups relying for their livelihoods on the commons—pastoralists, fishers, or indigenous peoples depending on access to the forests for hunting and gathering purposes—depend (Bruce *et al.* 2008, 126–8).

The development of a market for land rights

But, at a more fundamental level, it is the creation of a market for property rights over land itself that may produce a series of undesirable consequences. There are two primary justifications for the establishment of such a market, which partially contradict one another. A first argument is that a market for land rights will facilitate land reallocation towards the more efficient landusers, thus providing an exit route from agriculture for the rural households for whom farming is not profitable enough. The World Bank notes, thus, that 'secure and unambiguous property rights [...] allow markets to transfer land to more productive uses and users' (World Bank 2007, 138). That is in line with one major postulate of the law and economics school, according to which markets are the best means of allocating resources efficiently (Coase 1960). However, in the real world, land sales do not favor those who need land the most, nor do they lead to land being allocated to those who can use it most efficiently: instead, they favor those who have access to capital and whose ability to purchase land is greatest (Nyamu Musembi 2007). Small farmers face structural disadvantages in the land markets, particularly in developing countries. Whether or not they can use their land as a collateral, they generally have a worse credit rating than large landowners, and in order to have access to credit, they typically must borrow from local money lenders, who charge high and usurious interest rates; furthermore, the price of land is generally higher per unit for smaller surfaces than for large estates (Andrea Cornia 1985, 515). In addition, in the current context in which land is becoming increasingly scarce, the creation of a market for land rights can encourage speculation in land, and the poorest farmers could easily be priced out. Small farmers can be forced to resort to distress sales, particularly if they have fallen in debt as a result of an occasional bad harvest.

It should therefore come as no surprise that, historically, the creation of a market facilitating sales of land has led to reconcentration of land unless strong support is given to small-scale farmers, particularly in order to allow them to have access to capital: as acknowleged by Klaus Deininger, a lead economist at the World Bank, in the absence of such support, 'the purchase market does not operate as a mechanism of land access for labor-abundant, capital-constrained households' (Deininger 2003, 114). Historical examples abound. In Mexico, elites and investors took advantage of smallholders' precarious position to rent or purchase their land on unfavorable terms (Assies 2008, 55). In Guatemala, the emphasis on land titling without corresponding technical assistance or access to capital increased the vulnerability of indigenous people to land grabbing, allowing wealthy elites and foreign investors to pressure smallholders into selling the most productive and mineral rich land (Gauster and Isakson 2007). In Chile, a number of studies have shown that the land reform only marginally improved the situation of smallholders, favoring instead well-financed entrepreneurs, coming from outside the world of agriculture, who purchased the land from the original beneficiaries, and who subsquentely led the Chilean export boom—a trend that was replicated in a number of Central American countries in the 1970s and 1980s (Carter *et al.* 1996, Jarvis 1989).

A second justification for a market for land rights is based, not on the idea that it will facilitate exit from agriculture for the least efficient producers (efficiency being understood as price efficiency, or competitiveness, rather than as resource efficiency), but on the opposite idea that it should favor the ability for land users to obtain credit to make productivity-enhancing investments on land, since they will be able to use their land as a collateral. It is this idea of course which is most directly derived from de Soto's view, according to which insufficiently clearly demarcated property rights are an obstacle to market integration: even the farmers holding the smallest plots of land, in this view, should be seen as entrepreneurs whose access to the capital markets should be facilitated by the commodification of their main asset—the land which they use. But this justification too is derived from textbook economics, rather than from the lives of the very poor. First, where private lenders have extended credit to small farmers based on grants of title, they have done so at terms highly unfavorable to smallholders, or have simply ignored smallholders in favor of commercial farmers (Courville and Patel 2006). In addition, poor farming households in fact often appear reluctant to mortgage their land in order to gain access to credit, because land is for them a lifeline: an essential social safety net where none other is available (Woodruff 2001, Palacio 2006, 18–19, Field and Torero 2006).

For all these reasons, there is now a broad consensus about a fundamental opposition between two concepts of security of tenure—the one oriented towards the marketability of land, and the other oriented towards broadening the entitlements of the groups concerned in order to ensure more secure livelihoods. The strengthening of property rights should therefore not be confused with the broader aim of strengthening of security of tenure, and thus of the livelihoods of those who depend on the land for their food security. While security of tenure and recognition of rights over land may correspond to a strong demand, as illustrated by a number of country experiences, the same cannot be said of individual titling and alienability of land. On the contrary, limiting land sales can protect smallholders from being pressured to cede their land; it can also protect use rights over communal land, and preserve communal forms of land management (Bruce *et al.* 2008). Indeed, security of tenure may be threatened by state encroachment, but it may also be the result of market mechanisms, if the development of property rights results in the marketability of land rights without appropriate safeguards (Assies 2009). Contrary to the Coasean postulate, it can be doubted whether individual titling always leads to a better—i.e. more productive—use of the land: where, following titling, land is taken out of production in order to be held as an investment by speculators, this results in decreased productivity as well as in an increase in landlessness among the rural poor (Atwood 2009, 663–664, referring to Bruce 1986). The 2004 EU Land Policy Guidelines conclude that 'land titling is not always the best way of increasing land tenure security, and nor does it automatically lead to greater investment and productivity'.

There are alternatives to individual titling. Elsewhere, I have advocated the adoption of anti-eviction laws combined with the registration of use rights based on customary forms of tenure, allowing the emergence of a market for rental rights, as constituting a more pro-poor option than titling schemes implying the markete-ability of land rights (UN Special Rapporteur on the right to food 2010). The resulting security of tenure is crucial in order to protect the beneficiaries from encroachment on their lands and the natural resources concerned, and it is seen as highly legitimate in the eyes of the beneficiaries. However, registration of use rights based on customary forms of tenure does not lead to more commodification of land. Typically, neither the individual members or households, nor the communities as such through their representatives, can dispose of the land, for instance by selling it. Yet, the formal legal recognition of customary rights provides effective security. It does favor long-term investments on the land. It may also facilitate access to credit, since lenders (although they will not be able to take possession of the land in cases of default) can be assured of the long term viability of the investments they help to finance. The emergence of rental markets can improve access to land particularly for land-scarce and labor-abundant households with little education (for the example of India, see Deininger *et al.* 2006b).

Ensuring food security

Apart from the threats that large-scale acquisitions or leases of farmland create for land users whose rights over land are insecure, another major concern that these investments have raised is that investors will replace food crops by cash crops, producing either non-food commodities—for instance, energy crops—or exporting all or most of the production abroad, thus worsening the situation of food availability in the host country. Governments, it has been said, should implement policies that prioritize domestic and local food supplies and should consider forbidding foreign investors from exporting food during an acute national food crisis in the host country (IFPRI 2009, 3), maintaining in force any existing policies restricting food exports in times of domestic food crises without caving to pressure from investors. It has also been suggested that the governments of host countries may wish to include requirements that the land ceded to the foreign investor be used productively since, when an investor does not use land productively or effectively, it prohibits other, potentially more productive, uses. This could be done by applying penalties for non-use, by requiring work plans in the initial negotiating phase, by taxing land, or by a combination of those options. Taxing land may be especially effective in discouraging speculative land hoarding, because it is less costly to enforce and thus easier to implement than other options (Songwe and Deininger 2009, 4).

While this undoubtedly constitutes a legitimate concern, it remains based on an incomplete diagnosis. Rural poverty may increase as a result of the incomes of certain households falling after certain shocks, for instance following the dumping of agricultural products on the local markets by more competitive producers, leading to more food insecurity *even though overall levels of production may be rising*: experience has proven that improved food availability may be combined with greater poverty and inequality, particularly if disparity in incomes increases within the rural areas.[26] Principle 8 of the Minimum Human Rights Principles refers to both of these contrasted risks, including the risk of what might be referred to as 'internal dumping'—and which is simply a version, in the specific context of agricultural investment, of the classic problem of foreign direct investment crowding out domestic producers. It states:

> In order to ensure that they will not increase food insecurity for the local population, particularly as the result of increased dependence on international markets or food aid in a context of higher prices for agricultural commodities, investment agreements with net food-importing countries should include a clause providing that a certain minimum percentage of the crops produced shall be sold on local markets, and that this percentage may increase, in proportions to be agreed in advance, if the prices of food commodities on international markets reach certain levels. Appropriate support schemes may also have to be put in place to increase the productivity of local farmers, in order to ensure that they will not suffer income losses as a result of low-priced produce arriving on the local markets, which has been produced under more competitive conditions on the large-scale plantations developed by foreign investors. (UN Special Rapporteur on the right to food 2009b)

[26]That, arguably, is one lesson that can be drawn from the 'Green Revolution' of the 1950s in Latin America and of the 1960s and 1970s in South Asia: see Holt-Giménez and Patel (2009, 26–37), Weis (2007, 107–9), Freebairn (1995).

The Principles for Responsible Agricultural Investment anticipate that investment agreements could include 'call options', 'which can prevent exit of unacceptably large food volumes from the country when specific market conditions occur' (World Bank 2010b, 7). In contrast, they appear less sensitive to the risk of 'internal dumping', although they do refer to the desirability of encouraging investors to set up community storage programs that reduce post-harvest losses and price volatility, and encourage:

> improving the people's ability to purchase food by making inputs and technology more available so that yields rise, by creating a better local market, or by better linking them to more profitable distant markets, or by generating downstream employment in packing sheds, processing operations, or ancillary services such as handling, transport or marketing. (World Bank 2010b, 7)

Yet, despite these precautions, the RAI Principles primarily emphasize that 'food security does not necessarily mean food self-sufficiency ... In the final analysis', they note:

> exploiting a country's comparative advantages in particular kinds of economic activity (whether agricultural or not), and within agriculture, specializing in products where there is competitive advantage (whether raw, processed or manufactured, and whether edible or not) may make a greater contribution to national food security than focusing on (e.g.) primary production of staple grains where national yields are below par. Yet there can still be winners and losers on the regional or local level which must be dealt with. (World Bank 2010b, 7)

How this should be done remains unaddressed. Although this silence can be explained by the fact that retraining programmes, redistributive policies or social protection schemes—all of which should protect the 'losers' from the increased specialization of countries into certain lines of production—fall outside what the Principles aim to address, it may nevertheless be asked whether countries should be encouraged to attract foreign investors in order to develop certain types of production with negative impacts on certain groups of the population (whether these groups are competing for resources against these investors, or whether they are competing for markets), without this dimension being addressed more explicitly prior to the investment being implemented.

This poses a fundamental question about large-scale investments in farmland and the direction in which they are driving agricultural development. Today, a consensus has emerged both about the need for countries to better shield themselves from the volatility of prices on international markets by limiting their excessive dependence on these markets in order to achieve food security, and about the need to reinvest in support of small-scale farming, because of the powerful poverty-reducing impacts of such investments. The priority of low-income, food-deficit countries should be to feed themselves, rather than having to buy their food from abroad or, of course, to rely on food aid; and to combat rural poverty by ensuring that the incomes of rural households increase. However that is precisely *not* what shall happen if the production increases achieved by developing farmland are shipped abroad, and if that production is done moreover through large-scale plantations, which will worsen, rather than improve, the situation of those who most need to be supported—small-scale farmers and other marginalized groups in rural areas.

Conclusion

Over sixty years ago, Karl Polanyi warned in these terms about the dangers associated with treating land, labor, and money, as mere commodities to be traded on the market:

> To allow the market mechanism to be the sole director of the fate of human beings and their natural environment, indeed, even of the amount and use of purchasing power, would result in the demolition of society. For the alleged commodity 'labor power' cannot be shoved about, used indiscriminately, or even left unused, without affecting also the human individual who happens to be the bearer of this peculiar commodity ... Robbed of the protective covering of cultural institutions, human beings would perish from the effects of social exposure; they would die as the victims of acute social dislocation through vice, perversion, crime, and starvation. Nature would be reduced to its elements, neighborhoods and landscapes defiled, rivers polluted, military safety jeopardized, the power to produce food and raw materials destroyed. Finally, the market administration of purchashing power would periodically liquidate business enterprise, for shortages and surfeits of money would prove as disastrous to business and floods and droughts in primitive society ... But no society could stand the effects of such a system of crude fictions even for the shortest stretch of time unless its human and natural substance as well as its business organization was protected against the ravages of this satanic mill. (Polanyi 1944, 73)

It is this point that we have now reached: we have forgotten the cultural significance of land, and we reduce land to its productive elements—we treat it as a commodity, when it means social status and a lifeline for the poorest rural households. The commodification of land, which the global phenomenon of land-grabbing is accelerating, entails risks that go far beyond what the current proposals for regulating it seem willing to recognize. Since both the investors and the governments in host countries have every incentive to shield the deals they negotiate from outside scrutiny, voluntary approaches to discipline land-grabbing are bound to fail. What is required is to insist on governments complying fully with their human rights obligations, including those related to the right to food, and to the right of all peoples to freely dispose of their natural wealth and resources and not to be deprived of their means of subsistence. Because they ignore human rights, the Principles on Responsible Agricultural Investment neglect the essential dimension of accountability.

There is also a clear tension between ceding land to investors for the creation of large plantations, and the objective of redistributing land and ensuring more equitable access to land, something governments have repeatedly committed to, most recently at the 2006 International Conference on Agrarian Reform and Rural Development (ICARRD). The Principles on Responsible Agricultural Investment fail to provide an alternative to what they acknowledge may produce seriously disruptive effects on the livelihoods of those concerned. They are, on the other hand, quite detailed on a number of points. However being detailed is not an excuse for being without a vision. One is reminded of a comment made in these pages by Derek Hall, who remarked on the 'aversion to thinking about the future of "agrarian transition" in the World Development Report 2008, that it 'represents, perhaps, a characteristic tension in neoliberal policymaking: the combination of extremely detailed prescriptions for how life should be organised today with a resistance to any visions of the future that might seem too much like "planning" (Hall 2009, 608).

What we need now is a vision that goes beyond disciplining land deals and providing policymakers with a checklist of how to destroy the global peasantry responsibly. If it is to be truly responsible, agricultural investment must be investment that benefits the poor in the South, rather than leading to a transfer of resources to the rich in the North. It must be investment that truly reduces hunger and malnutrition, rather than aggravating them. It is my belief that we have been moving both too slowly and too fast: too slowly, because a phenomenon—the increase of commercial pressures and speculation over land—has been developing on a very broad scale without the international community acting in a truly coordinated way to guide this development; and yet too fast, because we have focused on how to promote responsible investment, when investment can only be seen in a much wider context, and as one small part of a much broader strategy. What we need is to think beyond the debate about access to land as it has been framed, increasingly narrowly, in recent years.

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