

FOOD AID TO CONFLICT AFFECTED POPULATIONS

WFP EMERGENCY OPERATION - THE CASE OF EASTERN UKRAINE *

by *Gianfranco Tamburelli**

ABSTRACT

The increase in the number of areas where humanitarian emergencies are brought about by armed conflicts, and the enduring nature of these situations, call for research aimed at clarifying the international legal framework for food-aid operations, taking into account the developments and practices in the fields of human rights, humanitarian law, environmental law, and cooperation for sustainable development.

In this article, therefore, the Author analyses the general problems of food aid in conflict areas, with a focus on a concrete situation, namely the crisis in Eastern Ukraine. The dramatic situation faced by some Ukrainian regions - where, since the spring of 2014, the World Food Programme (WFP), various other international organizations, the EU and some National Development Cooperations have been operating - underlines, in fact, the importance of reaching a clear understanding of all the different regulatory levels in the field of food aid security and safety.

The Author, after an essential consideration of the international and national legal framework, of the de facto situation in Eastern Ukraine, and of the response of the Kyiv Government, analyses in particular the WFP Emergency Operation. He underlines that the WFP has reaffirmed in this specific context its commitment to neutrality and, among other observations, highlights the priority

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given to in-kind food aid, and the fact that food is procured in local markets, while the Ukrainian legal system is still far from international standards in the field of food safety.

The article goes on to illustrate the main issues of food aid in Eastern Ukraine, focussing on those of a legal nature or those whose solution might be favoured through the adoption of legal measures. According to the Author, there are a number of widely shared guiding principles in this field, but the international legal framework remains incomplete, while the Food Assistance Convention, which recently entered into force, has not yet been ratified by various States (Italy among them), and is not yet considered an act of reference, thus effectively providing little help. Furthermore, access to the conflict regions remains limited as a result of security challenges. In effect, in spite of the fact that the UN Security Council has called on all Parties to “ensure safe access, delivery, storage, and distribution of humanitarian assistance to those in need, on the basis of an international mechanism”, the UN agencies, as well as other humanitarian actors, have no access to some of the rebel-controlled areas.

In its conclusions, the article contains some further observations and provisional general recommendations. In particular, according to the Author, the current international legal framework, and especially the Food Assistance Convention, presents various weak points when it comes to facing the problems of conflict affected areas. The Convention was, in fact, elaborated as a donor state instrument, and does not contain general rules on access to conflict areas, nor on monitoring mechanisms. The “lesson” learned from the Eastern Ukraine case, however, is precisely that of the prime importance of ad hoc recognized rules on access to conflict areas, and of reliable mechanisms to monitor how food aid is effectively used.

Considering that it is not possible to establish such general rules without a large consensus within the international community, including that of potentially interested receiving or transitory non-donor states, he believes that a new international treaty should be negotiated, possibly under the umbrella of the WFP and other UN international bodies which have relevant food aid functions and activity.

The Eastern Ukraine case also shows that food quality principles and regulations receive little attention when it comes to food aid in conflict areas. This is a further reason why the launching of new treaty rules, rather than an attempt to restyle old ones, would be the better solution.

SUMMARY: 1. Introduction. - 2. The International Legal Framework. - 3. International Bodies: The World Food Programme (WFP). - 4. Food Aid in Ukraine. - 4. Food Safety in Ukraine. - 6. Crisis in Eastern Ukraine. - 7. Government Response. - 8. WFP Emergency Operation (EMOP). - 9. Main issues. - 10. Conclusions.

1. Introduction

Little, or practically no, consideration has been given in scientific literature, to the legal issues related to food aid in areas of armed conflict and there is a lack of any systemic study on applicable principles, standards, guidelines, and their horizontal (different sectors of law) and vertical (different legal levels / systems) intersection. The studies and reports of international bodies with functions in this field are focused mainly on the different economic and social contexts in which they operate, and on the analysis of risk factors; when dealing with legal issues, they usually treat them in a sectoral manner, with regard to specific issues.

However, the increasing number of areas where humanitarian emergency is determined by armed conflicts, and the enduring nature of these situations, would make it very useful to carry out some research aimed at clarifying the international legal framework for food-aid operations, taking into account the developments and practices in the fields of human rights, humanitarian law, environmental law, and cooperation for sustainable development.

The findings of this research should also allow a better evaluation of the EU food aid legal framework and related programmes, and is the preliminary to an analysis of the complex context in which the development cooperation of donor States, in particular EU member States (Italy among them) operate, as well as of the rules and effective praxis followed by international and national non-governmental organizations (NGOs), private associations and foundations.

The critical situation faced by some regions of Eastern Ukraine¹ - where, since the spring of 2014, the World Food Programme (WFP), various other international organizations, the EU and some National Development Cooperations (the Italian Development Cooperation included), have been operating - underlines the importance of reaching a clear understanding of all the different regulatory levels (international, EU, and national) in the field of food aid security and safety.

In fact, an analysis of the general problems of food aid in conflict areas seems very timely, and of potential value in improving and rendering more effective the efforts of the international community. On the other hand, the focus on a concrete situation, such as the crisis in Eastern

¹ The *Ukrainian Crisis* began in November 2013, when the Ukrainian Government decided to suspend the signing of the *Association Agreement* with the EU. In March 2014, the Crimea declared its independence; referendum on the autonomy of the Eastern Regions were held in May. See MENON, R, RUMER, E., *Conflict in Ukraine. The Unwinding of the Post-Cold War Order*, Massachusetts Institute of Technology, 2015; DI RIENZO, E., *Il conflitto russo-ucraino: geopolitica del nuovo (dis)ordine mondiale ?* Rubbettino, 2015.

“The armed conflict that escalated between the government forces and armed groups since April 2014 in Donbas region (Donetsk and Luhansk oblasts) has resulted in displacement, deterioration of the humanitarian situation, and disruption of critical infrastructure (gas, power and water supply). Access to basic services (like health and market) has been affected”, see WFP Ukraine, *Food Security Assessment*, January 2015.

Ukraine, might be enlightening for an assessment of the various regulatory systems in force in terms of consistency, completeness, effectiveness and efficiency.

In carrying out this analysis, we will try to highlight the question of whether, and to what extent, food quality principles and regulations have emerged in a sector traditionally centred on food security.

2. *The International Legal Framework*

The international legal framework for food aid comprises some principles and standards affirmed in numerous acts of soft law, and a few internationally binding treaties. With regard to the former, the most important and widely recognized are the *Codex Alimentarius* adopted by the Food and Agriculture Organization (FAO) in 2006, the *UN Millennium Declaration*, and the *Standard HACCP - hazard analysis and critical control points*.

The *Codex Alimentarius* is a set of rules and regulations drawn up and updated by a Commission established in 1963 by the FAO and the World Health Organization (WHO) with the primary purpose of protecting the health of consumers and ensuring the fairness of international trade². The *Codex* is recognized by the World Trade Organization - WTO as an international reference document for the resolution of disputes concerning food safety and consumer protection.

The *Millennium Declaration* has become one of the most recurrent reference act for national and international, public and private bodies carrying out food aid³. It clearly prioritizes the eradication of extreme poverty and hunger among its *Development Goals*⁴.

The *HACCP* is a systematic approach aimed at preventing the dangers of food contamination⁵. It lays down seven principles: carrying out of a hazard analysis, identification of

² The World Health Assembly approved the establishment of the Joint FAO/WHO *Food Standards Programme* with the *Codex Alimentarius Commission* as its principal organ in May 1963; the Commission held its first session in Rome from 25th June to 3rd July 1963 (<http://www.codexalimentarius.org/codex-home/en/>).

³ The evolution of international environmental law has progressively encompassed the theme of poverty eradication. Since the 1992 UN *Rio Conference on Environment and Development* (UNCED), combating poverty has become one of the fundamental objectives of international cooperation for sustainable development (see Agenda 21, Chapter 3) (<http://www.unep.org/Documents.Multilingual/Default.asp?DocumentID=52&ArticleID=51>).

⁴ “We will spare no effort to free our fellow men, women and children from the abject and dehumanizing conditions of extreme poverty, to which more than a billion of them are currently subjected. We are committed to making the right to development a reality for everyone and to freeing the entire human race from want”, *UN Millennium Declaration, III - Development and poverty eradication* (<http://www.un.org/millennium/declaration/ares552e.htm>).

⁵ The *HACCP* protocol, designed in the '60s in the United States, was introduced in Europe with the EEC Directive no. 43/93, which provides for the mandatory application by all food

critical control points, establishment of critical limits for each critical control point, establishment of critical control point monitoring requirements, establishment of corrective actions, establishment of procedures for ensuring the HACCP system is working as intended, establishment of record keeping procedures. These principles are now included in the international standard ISO 22000, which is a complete food safety and quality management system⁶.

Moving to internationally binding treaties, we must mention, in the field of human rights, the 1966 *UN International Covenant Economic, Social and Cultural Rights* (Article 11)⁷. The right to adequate food affirmed by the Covenant and in various subsequent international acts⁸ maintains, in our opinion, a definitely key importance.

We may note that the Committee on Economic, Social and Cultural Rights (CESCR), which monitors implementation of the Covenant, in its 1999 *General Comment* underlined the essential role of international cooperation for the fulfilling of the right to adequate food, and affirmed that States parties should take steps to provide the necessary aid when required⁹. In particular, States have both a joint and an individual responsibility, “to cooperate in providing disaster relief and humanitarian assistance in times of emergency, including assistance to refugees and internally displaced persons”. This applies to areas of armed conflict, such as that currently existing in Eastern Ukraine, recognized by the UN and the WFP as an emergency situation, requiring assistance to internally displaced people (IDPs) and refugees.

The Committee has also declared some basic principles which should inspire the activity of states and international organizations: “Food aid should, as far as possible, be provided in ways which do not adversely affect local producers and local markets, and should be organized in ways

business operators. This legislation was replaced by EC Regulation no. 852/2004, which came into force on 1.1.2006. The EEC Directive 43/93 was implemented in Italy by Legislative Decree no. 155/1997, then repealed by Decree no. 193/2007 laying down sanctions for non-compliance with EC Regulation 852/2004.

⁶ The ISO 22000 family contains a number of standards each focusing on different aspects of food safety management (<http://www.iso.org/iso/home/standards/management-standards/iso22000.htm>).

⁷ See also the *Optional Protocol to the International Covenant on Economic, Social and Cultural Rights* (<http://www.ohchr.org/EN/ProfessionalInterest/Pages/OPCESCR.aspx>).

⁸ See, in particular, the 1996 *Rome Declaration on World Food Security*, which reaffirms “the right of everyone to have access to safe and nutritious food, consistent with the right to adequate food and the fundamental right of everyone to be free from hunger” (<http://www.fao.org/docrep/003/w3613e/w3613e00.HTM>).

⁹ “In implementing this commitment, States parties should take steps to respect the enjoyment of the right to food in other countries, to protect that right, to facilitate access to food and to provide the necessary aid when required”, *General Comment no. 12: The Right to Adequate Food* (Article 11), adopted at the XX Session of the CESCR, 12th May 1999, E/C.12/1999/5.

that facilitate the return to food self-reliance of the beneficiaries. Such aid should be based on the needs of the intended beneficiaries. Products included in international food trade or aid programmes must be safe and culturally acceptable to the recipient population”.

These principles have been progressively incorporated into the treaties specifically devoted to food aid / food assistance. The first *Food Aid Convention*, established on 5th December 1994 and amended on 13th March 1995, was brought into force in July 1995, as a constituent instrument of the 1995 *International Grains Agreement*. It was forged between 23 States with the aim of using grain surpluses to combat hunger in developing countries¹⁰.

After a few years, it was replaced by a new *Food Aid Convention*, finalised on 13th April 1999 and brought into force on 1st July 1999¹¹. The objective of the new Convention was to contribute to world food security and to improve the ability of the international community to respond to emergency food situations and other food needs of developing countries (Article 1, *Objectives*). Donors pledged to provide annually specified minimum amounts or values of food aid in the form of grains and other eligible products. It is worth noting that the Convention stated: “All products provided as food aid shall meet international quality standards” (Article III, *Quantities and quality*, j).

The 1999 Food Aid Convention was replaced by the *Food Assistance Convention*, adopted on 25th April 2012 at London and entered into force on 1st January 2013¹². Parties to the Convention are 13 States¹³ and the European Union. The 2012 Convention expands the traditional focus of the previous agreements to a broader toolbox of eligible activities and products, including cash and vouchers, and products intended for the protection of livelihoods. It also provides an important set of guiding principles for the Parties to follow in implementing their food assistance programmes.

The aim of the Convention is that of improving “the effectiveness, efficiency, and quality of food assistance in preserving the lives and alleviating the suffering of the most vulnerable populations, especially in *emergency situations*, by strengthening international cooperation and

¹⁰ C. von OPPLEN-BRONIKOWSKI, *Moving from Food Aid to Food Assistance*, in *Rural 21*, March 2011, p. 32 (http://www.rural21.com/fileadmin/_migrated/content_uploads/rural_2011_3_04.pdf).

¹¹ The Food Aid Committee established under the 1995 *Food Aid Convention* decided to open the Convention for renegotiation following the Recommendations that WTO Ministers adopted in December 1996 at their Singapore Conference in respect of Least-Developed and Net Food-Importing Developing Countries (<http://www.foodaidconvention.org/Pdf/convention/iga1995.pdf>).

¹² Text at <http://www.foodassistanceconvention.org/convention/FoodAssistance.pdf>.

¹³ Australia, Austria, Canada, Denmark, Finland, Japan, Luxemburg, Russian Federation, Slovenia, Spain, Sweden, Switzerland, USA. Article 12 (*Signature and ratification, acceptance, or approval*) opened the Convention to signature from 36 States. Italy, which is among the States mentioned by the Article, has not signed neither ratified the Convention (https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XIX-48&chapter=19&lang=en).

coordination” (*Preamble*, 2° al.). The Parties have agreed to make an annual commitment in monetary value of food assistance (“minimum annual commitment”), fixed in accordance with their own laws and regulations (*Article 5, Commitment*), and have established a Committee which provides a forum of discussion and may adopt, by consensus, rules to ensure that the provisions of the Convention are properly implemented (*Article 7 - Food Assistance Committee*)¹⁴.

It is a framework Convention which reaffirms the primary responsibility of States for their own national food security, and recognize that the Parties themselves have their own policies regarding food assistance in emergency and non-emergency situations.

Another important treaty, to which Ukraine is a party, is the WTO *Agreement on the Application of Sanitary and Phytosanitary Measures* (SPS Agreement)¹⁵. The SPS Agreement allows countries to set their own standards, based on scientific studies¹⁶. These standards should be applied only to the extent necessary to protect human, animal or plant life or health, and they should not arbitrarily or unjustifiably discriminate between countries where identical or similar conditions prevail.

However, member countries are encouraged to use international standards, guidelines and recommendations where they exist and, for food safety, reference is made (*Annex A, Definitions, 3. International standards, guidelines and recommendations, a*) to the standards, guidelines and recommendations established by the Codex Alimentarius Commission relating to food additives, veterinary drug and pesticide residues, contaminants, methods of analysis and sampling, and codes and guidelines of hygienic practice.

We may underline that the implementation of the food aid principles stated in the above mentioned acts requires an in-depth analysis of the concrete cultural, social and economic context of each given activity, and the adoption of flexible rules and procedures, so designed as to incorporate the various and evolving findings of that analysis.

¹⁴ On 15th February 2013 the Committee convened for its 1st formal Session at the Secretariat of the International Grains Council (ICG), acting as its initial Secretariat, see *Summary Record of the 1st Session of the Food Assistance Committee*, London, FAC1_SR (http://www.foodassistanceconvention.org/downloads/sumrec/fac1_sr.pdf).

¹⁵ Text at https://www.wto.org/english/tratop_e/sps_e/spsagr_e.htm.

¹⁶ Article 4 (*Equivalence*) of the SPS Agreement states: “1. Members shall accept the sanitary or phytosanitary measures of other Members as equivalent, even if these measures differ from their own or from those used by other Members trading in the same product, if the exporting Member objectively demonstrates to the importing Member that its measures achieve the importing Member's appropriate level of sanitary or phytosanitary protection 2. Members shall, upon request, enter into consultations with the aim of achieving bilateral and multilateral agreements on recognition of the equivalence of specified sanitary or phytosanitary measures”.

3. *International Bodies: The World Food Programme (WFP)*

The FAO, the WFP, and the International Fund for Agricultural Development (IFAD) are the main international organizations with overseeing food safety among their statutory functions. But several other organizations deal with the right to food and the fight against hunger: the WHO, the WTO, the World Bank, the United Nations Development Programme (UNDP), the United Nations Environment Programme (UNEP), the United Nations High Commissioner for Refugees (UNHCR), the United Nations Children Fund (UNICEF)¹⁷.

In this first analysis however, we will focus only on the WFP, which might be considered the food aid arm of the UN system¹⁸. The WFP has the task of promoting world food security and is committed to the values and principles of the UN Charter and the Millennium Declaration. Therefore, according to the *Mission Statement* adopted by its governing body in December 1994, policies governing the use of food aid must be oriented towards the objective of eradicating hunger and poverty, and the ultimate objective should be the elimination of the need for food aid.

A WFP core policy is to save lives in refugee and other emergency situations, as stated in its Strategic Objective 1: “Save Lives and Protect Livelihoods in Emergencies”¹⁹.

When providing food assistance and other support in response to humanitarian needs, the WFP adheres to the following fundamental humanitarian principles: *humanity* (prevention and alleviation of human suffering wherever it is found and response with food assistance when appropriate); *neutrality* (the WFP will not take sides in a conflict and will not engage in controversies of a political, racial, religious or ideological nature; food assistance will not be provided to active combatants); *impartiality* (assistance guided solely by need and not

¹⁷ See GRADONI, L., *La spettacolarizzazione della lotta alla fame ovvero l'impotenza delle organizzazioni internazionali di fronte alla sfida della sicurezza alimentare mondiale*, in “Il futuro delle organizzazioni internazionali - Prospettive giuridiche”, SIDI 19, 2015, pp. 237-279.

¹⁸ The WFP works closely with the UN Department of Humanitarian Affairs, UNHCR, other relevant agencies and NGOs in the response to emergencies and humanitarian crises. The WFP also collaborates closely with the Rome-based UN food and agriculture agencies, FAO and IFAD, especially in using food aid for achieving household food security. The WFP forges effective partnerships of action with the World Bank and the International Monetary Fund, regional bodies and institutions, bilateral donors and NGOs in support of economic and social development, see *Mission Statement* (<https://www.wfp.org/about/mission-statement>).

¹⁹ The WFP pursues four Strategic Objectives based on the Millennium Development Goals and reaffirmed in the WFP's Mission Statement: “*i*) Save lives and protect livelihoods in emergencies; *ii*) Support or restore food security and nutrition and establish or rebuild livelihoods in fragile settings and following emergencies; *iii*) Reduce risk and enable people, communities and countries to meet their own food and nutrition needs; and *iv*) Reduce under nutrition and break the intergenerational cycle of hunger”, see WFP *Strategic Plan* (2014-2017), WFP/EB.A/2013/5-A/1, 8th May 2013, (<http://documents.wfp.org/stellent/groups/public/documents/eb/wfpdoc062522.pdf>).

discriminatory in terms of ethnic origin, nationality, political opinion, gender, race or religion; assistance targeted at those most at risk, following a sound assessment that considers the different needs and vulnerabilities of women, men and children); *operational independence* (the WFP will provide assistance in a manner that is operationally independent of the political, economic, military or other objectives that any actor may hold with regard to areas where such assistance is being provided)²⁰.

With regard to the principles of humanity and impartiality, we might observe that the WFP has elaborated a *protection approach*, integrating into its food assistance activities concern for the protection of the beneficiaries, which means that these activities must be carried out in ways that promote the safety, dignity and integrity of the people receiving assistance. Furthermore, the WFP is committed to ensuring that its assistance programmes are designed and implemented on the basis of broad participation. This seems to be consistent with human rights-based programming, and a ‘right to food’ approach²¹.

As for the principles of neutrality and operational independence, it seems important to highlight that the WFP is committed to not using food assistance, at any time or under any circumstances, as a means of applying political or economic pressure.

The emergency operations of the WFP cover three main kinds of crises: *sudden disasters*: natural disasters which affect food access and/or cause population displacement, and which require special UN coordination procedures; *slow-onset disasters*: these are usually droughts and crop failures; *complex emergencies*: these can involve conflict, widespread social and economic disruption and large population displacement and usually involve UN coordination.

When there is an emergency, the WFP establishes - working with the UN Emergency Assessment Teams - how much food assistance is needed and the best way to deliver it to the hungry. On the basis of this assessment, a detailed plan of action and budget are drawn up. To cover

²⁰ See also *Humanitarian Principles*, WFP/EB.A/2004/5-C. The humanitarian principles of humanity, impartiality and neutrality were endorsed in the UN General Assembly Resolution no. 46/182, adopted in 1991. The fourth principle of independence was added in 2004 under Resolution no. 58/114.

²¹ “Food alone is insufficient for a hungry or starving person, and providing other basic needs - water and sanitation, basic health, etc. - has always been a part of the humanitarian package. For many years, however, even in situations of conflict and complex emergencies, the natural disaster model of assistance prevailed, wherein the shortfalls of a commodity were calculated and the international community endeavoured to fill the gap. Today, recognizing the limitations of a traditional natural disaster approach, the aid community deploys a much wider array of tools and interventions aimed at supporting the integrity, or the wholeness, of a person affected by an emergency”, see CRAWFORD, N., PATTUGALAN, G., DALE, K.. *Protection and Food Assistance Programmes: Promoting Safety, Dignity and More Effective Hunger Outcomes in Humanitarian Crises*, in *Revolution: From Food Aid to Food Assistance 232 - Thematic Areas*, pp. 231-254.

immediate needs, the WFP Country Director in the country affected can borrow up to US \$ 500,000 from the WFP's Immediate Response Account (IRA). The use of the IRA funds is usually limited to the initial three months of an operation.

However, many disaster-hit communities need help for longer than three months. In such cases, the Country Director draws up an Emergency Operation or EMOP before making an appeal to the international community for funds and food aid. EMOPs can assist populations in need either by food distribution or by other projects. These are funded primarily by targeted donor contributions in response to a WFP appeal. EMOPs usually last for between 3 and 12 months. If further assistance is required, the WFP prepares a Protracted Relief and Recovery Operation²².

In the following paragraphs, we will analyse the Ukrainian legal framework for food aid and food safety and the concrete situation in eastern regions, with the aim of evaluating the WFP operations both in terms of their correspondence to the above-mentioned principle of neutrality, and in terms of the effectiveness of food aid activities to Eastern Ukraine's conflict affected population, while at the same time bearing in mind food safety legal issues.

4. *Food aid in Ukraine*

Thanks to the abundance of fertile soil, Ukraine has a long history in the agricultural and food processing industries and consequently has not in the past had need of external intervention. However, it has some legislation on humanitarian aid, which essentially consists of the 1997 *Law on Charity and Charitable Organizations*²³, replaced in 2012 by Law no. 5073-VI²⁴, and the 1999 *Law on Humanitarian Aid*²⁵.

The 1997 *Law on Charity and Charitable Organizations* included, among the principal directions regarding charity and charitable activities, the aiding of victims of calamities, ecological, technological or other disasters, social conflicts, accidents, and purges, as well as refugees (Article 4, *Basic trends in charity and charitable activities*).

It also contained rules on *International Charity* (Chapter 5). In particular, its Article 27 (*Charity on the part of foreign subjects, stateless persons, foreign and international organisations in Ukraine*) affirmed that "Foreign subjects, stateless persons, foreign and international organisations in Ukraine shall have the right to conduct charitable activities. One form of such charity shall be humanitarian and other material aid ..".

²² http://documents.wfp.org/stellent/groups/public/documents/manual_guide_proced/wfp251080.pdf.

²³ <http://blacksea.bcnl.org/en/articles/33-ukraine-law-on-charity-and-charitable-institutions.html>.

²⁴ http://www.toleranz.org.ua/pdf/en/Law_about_charity.pdf.

²⁵ <http://www.ifrc.org/docs/idrl/541EN.pdf>.

The subsequent 2012 *Law on Charity and Charitable Organizations* indicates the “prevention of natural and technogenic catastrophic crashes and liquidation of their consequences, the help injured with catastrophic crashes, armed conflicts and accidents, and also to refugees and persons who are in difficult vital circumstances” among the 14 spheres of charity (Article 3, 4)²⁶.

The 1999 *Law on Humanitarian Aid* (currently under revision) defines legal, organizational and social bases for the receipt, donation, official registration, distribution and control of the planned use of humanitarian aid, and encourages the publicity and transparency of this process. Humanitarian assistance is a kind of charity and should be given in correspondence to the circumstances, the objective requirements, and the consent of the recipients.

In accordance with Article 3 (*Bases for carrying out humanitarian aid and readdressing it*), the basis for the beginning of the procedure of recognition of an aid as humanitarian, is the donor’s written proposal for the provision. The cause for the implementation of humanitarian aid is the written consent of the recipient of humanitarian aid to receive it. Humanitarian aid in the form of undertaking work, providing services, or money, or in kind, which is donated, imported, and sent into Ukraine is exempt from tax (Article 6, *Taxation of humanitarian aid*)²⁷.

Interestingly, Article 9 (*Procedure of importation of goods into the customs territory of Ukraine*) states that: “Only such goods of humanitarian aid shall be allowed to be imported into the customs territory of Ukraine which, satisfying the corresponding needs of the grantees of humanitarian aid in Ukraine, do not cause a threat to the life and health of natural persons-grantees of humanitarian aid and to the environment of Ukraine”.

5. Food safety in Ukraine

Passing to the food safety sector, as already noted, in 2008 Ukraine - becoming a WTO member - signed the *SPS Agreement*, which allows countries to continue to use their national food safety standards, only encouraging the application of standards set by the Codex Alimentarius Commission.

²⁶ The other spheres of charity are the following: education; health care; ecology, environmental protection and protection of animals; guardianship and care, legal representation and legal assistance; social protection, social security, social services and overcoming of poverty; culture and art, protection of cultural heritage; science and scientific research; sport and physical culture; human and civil rights and fundamental freedoms; the development of local communities; the development of international cooperation; stimulation of economic growth and economic development of Ukraine and its individual regions and competitiveness of Ukraine; promotion of national, regional, local and international programs aimed at improving the socio-economic situation in Ukraine.

²⁷ In accordance with the paragraphs 1 and 4 of the Article 287 of the 2012 *Customs Code of Ukraine* (<http://sfs.gov.ua/data/files/10977.pdf>).

At the national level, the basic rules are stated in the 1997 *Law on Quality and Safety of Food Products and Food Raw Materials*, amended by Law n. 2681-III of 13th September 2001, and Law n. 191-IV of 24th October 2002²⁸. This Law governs the relationships between bodies of executive power, producers, suppliers and consumers during the development, production, importation, procurement, supply, storage, transportation, sale, use, consumption and utilization of food products and food raw materials.

The basic grounds of the state policy are: priority of protection and improvement of human health, and recognition of the human right to quality and safety of food products and food raw materials; establishment of guarantees for safety of human health during production, importation, transportation, storage, sale, use, consumption, utilization or destruction (ensuring proper protection of environment) of food products and food raw materials - state control and supervision (Article 3).

With regard to food safety standards, according to this law, Ukrainian food producers have to apply those developed in the framework of the GOST (gosudarstvennyy standart = state standard) system developed by the government of the Soviet Union as part of its national standardization strategy. The GOST system differs significantly from EU food safety standards.

The Ukrainian food safety control system also differs from the respective EU system, because it is based on the testing the end-products by state agencies, while the EU system is based on the primary responsibility of ‘producers’.

The Law however states the ‘obligation’ of subjects involved in entrepreneurial activity “to take measures related to the step-by-step introduction of the HACCP international system at food industry enterprises” (Article 20).

The Chapter (VI) devoted to *International Cooperation* states that international cooperation in the sphere of ensuring quality and safety of food products, food raw materials and accompanying materials must be conducted through: participation in the work of international organizations; conclusion of international agreements, including agreements on mutual recognition of assessment of conformity of food products to quality and safety requirements (certification); harmonization of state standards, norms and rules with international standards, norms and rules establishing requirements for quality and safety of food products, food raw materials and accompanying materials, as well as testing methods; information exchange with trade partners on measures taken in Ukraine for ensuring quality and safety of food products, food raw materials and accompanying materials (Article 23).

²⁸ [http://www.izvoznookno.si/Dokumenti/Export%20of%20Food%20to%20Ukraine%202012\(1\).pdf](http://www.izvoznookno.si/Dokumenti/Export%20of%20Food%20to%20Ukraine%202012(1).pdf).

Of increasing importance, then, are the treaties between the EU and Ukraine. The 1998 *Partnership and Cooperation Agreement* ²⁹ foresaw the approximation of Ukrainian food safety standards to the respective EU standards (Article 60)³⁰. Ukraine was to adopt the principle of the primary responsibility of ‘producers’.

In spite of the SPS and the PCA commitments, regulatory convergence with EU and international food standards hasn’t made much progress, because the threat to the health of Ukraine’s citizens from poor food safety standards is underestimated, and adaptation would imply high domestic costs. It has been observed that until 2012 food safety regulation in Ukraine was characterized by “a great deal of inertia, both with respect to the meeting of standards as well as with regard to the food control system”³¹. Only an estimated 1% of the 20,000 food enterprises in Ukraine had implemented HACCP.

The adoption of the new *EU - Ukraine Association Agreement*, which replaces the 1994 *Partnership and Cooperation Agreement* and includes a *Deep and Comprehensive Free Trade Agreement (DCFTA)*³², and the increased policy conditionality attached by the EU to regulatory reforms in the food sector, might have a positive effect on Ukraine’s convergence with EU safety regulations³³.

The Agreement, aims to deepen political and economic relations between the EU and Ukraine, and to gradually integrate Ukraine into the EU internal market. The DCFTA³⁴ re-affirms

²⁹ <http://ec.europa.eu/world/agreements/downloadFile.do?fullText=yes&treatyTransId=659>.

³⁰ Article 60, *Agriculture and the agro-industrial sector*: “... the Parties shall also aim at the gradual approximation of Ukrainian standards to Community technical regulations concerning industrial and agricultural food products including sanitary and phytosanitary standards”.

³¹ LANGBEIN, J., *Food Safety - Shallow Transnationalization of Public and Private Actors*, in *Transnationalization and Regulatory Change in the EU’s Eastern Neighbourhood, Ukraine between Brussels and Moscow*, UACES Contemporary European Studies, Routledge, 2015, pp. 124-147.

³² The *Association Agreement* was signed by the EU and Ukraine on 27th June 2014 and the provisional application of some important parts started on 1st November, while the provisional application of the *DCFTA* has been delayed until 1st January 2016, in order to facilitate the overall efforts towards a peace process. See VAN DER LOO, P., VAN ELSUWEGE, P., PETROV, R., *The EU - Ukraine Association Agreement: Assessment of an Innovative Legal Instrument*, European University Institute, EU Working Papers, 9, 2014; and PETROV, R., *Association Agreements with Ukraine, Moldova and Georgia through the Lens of Consistency*, report presented at the International Workshop on: “The EU and Its Values in Its Neighbourhood - Contestation and Consistency”, Pisa, 3rd October 2014.

³³ See LANGBEIN, J., *Food Safety - Shallow Transnationalization of Public and Private Actors*, cit.

³⁴ See Articles 59 - 74 of Chapter 4 on *Sanitary and Phytosanitary Measures* of Section 1 (*Common provisions*), Chapter 1 (*National treatment and marked access for goods*) of Title IV (*Trade and trade related matters*).

the rights and obligations of the EU and Ukraine under the SPS Agreement (Article 60, *Multilateral obligations*).

The agreed objective is to facilitate trade in commodities covered by sanitary and phytosanitary measures, whilst safeguarding human, animal and plant life or health, by, inter alia, approximating Ukraine's laws to those of the EU; and further implementing the principles of the SPS Agreement (Article 59 - *Objective*).

In this context, the EU-funded Project: *Improvement of Food Safety Control System in Ukraine* (IFSSU)³⁵ appears to be of great interest. With a budget of almost € 3.8 million, the IFSSU will help to harmonize the sector Ukrainian legislation with corresponding legislation of the EU, establishing and implementing a regulatory framework that will facilitate the production of safe food and animal feed. The aim of the Project is to improve the system ensuring safe food “from farm to fork”, increasing the confidence of Ukrainian consumers in the safety of Ukrainian products, and eventually increasing the opportunities for the exportation of Ukrainian products to the EU and wider global markets³⁶. The latter point would benefit from a deeper analysis. In fact, the costs for meeting international and EU food safety standards (and for applying EU food control system) are high for both Ukrainian firms and the State³⁷.

6. *Situation in Eastern Ukraine*

The fighting in the summer months of 2014 had a significant impact on the economy, the functioning of basic services, and security in Eastern Ukraine, primarily in the cities of Luhansk and Donetsk (Donbass region). Industrial and agricultural production and processing were disrupted, affecting both income (cash availability) and local supply chains.

While many remained, thousands of families fled from their homes at short notice, often without any means for the journey³⁸. As of 3rd October 2014 it was estimated that there were some

³⁵ EuropeAid/133816/C/SER/UA, *Prior information notice* 20/12/2012, *Contract notice* 31/07/2013, *Award* 3/04/2014.

³⁶ According to Mr. Andrew Rasbash, Counsellor Minister and Head of Operations for the EU Delegation to Ukraine, “*There are huge opportunities for Ukrainian businesses to export more products to the EU*”.

³⁷ “Convergence has also large implications for the socio-economic development since the application of more demanding standards can force some firms to leave the market”, cfr. LANGBEIN, J., *Food Safety - Shallow Transnationalization of Public and Private Actors*, cit., p. 124.

³⁸ 426,995 people fled to neighbouring countries. Approximately half of IDPs live in private housing and the other half stay in ill-equipped collective housing, managed by the government, private sector or civil society. Most housing arrangements are summer camps which is not a sustainable solution during the winter months, considering the extreme weather conditions. See OCHA *Situation Report* - 3rd October 2014.

379,059 IDPs (including, according to the Government of Ukraine, about 17,000 from Crimea)³⁹. Unfortunately, the need for assistance of those conflict affected populations who remained in the separatist areas has not yet been entirely quantified or addressed.

The three neighbouring *oblasts* of Dnipropetrovsk, Kharkiv and Zaporizhia have also been affected by the conflict as they received the bulk of the IDPs⁴⁰.

Despite a fragile ceasefire announced on 5th September 2014⁴¹ - and reaffirmed in the “Package of measures for the Implementation of the Minsk Agreements”, adopted and signed on 12th February 2015⁴² - artillery, tank and small arms exchanges continue on a daily basis and civilians continue to die. In our opinion, this situation might be considered as a new *frozen conflict*⁴³.

Immediate assistance to IDPs was initially provided by the civil society, national foundations and NGOs, soon, however, reaching breaking point and becoming no longer sustainable⁴⁴.

³⁹ Due to the lack of a centralized or consistent registration system, the actual number of IDPs is likely to be two or three times higher, see UNCHR, *Report on the Situation of Human Rights in Ukraine*, UN GA A/HRC/27/75, 19th September 2014.

⁴⁰ The total combined population of all five conflict affected *oblasts* is 14.4 million, of which 85-89 % live in urban areas. 5.1 million people live in the conflict affected areas, see OCHA *Situation Report*, 3 October 2014.

⁴¹ On 5th September 2014, representatives of Ukraine, the Donetsk People’s Republic, the Lugansk People’s Republic, and the Russian Federation signed the Minsk Protocol to halt the war in the Donbass region of Ukraine (<http://mfa.gov.ua/en/news-feeds/foreign-offices-news/27596-protocol-on-the-results-of-consultations-of-the-trilateral-contact-group-minsk-05092014>).

⁴² UN Security Council *Resolution 2202*, adopted on 17th February 2015, *Annex I, Package of Measures for the Implementation of the Minsk Agreements*.

⁴³ On “frozen conflicts” in post-soviet republics, see JAAP ORA, *Frozen Conflicts and the EU - A Search for a Positive Agenda*, in *Estonian Ministry of Foreign Affairs Yearbook*, 2006, pp. 50-58; KAPITONENKO, M., *Resolving Post-Soviet “Frozen Conflicts”: Is Regional Integration Helpful ?*, in *Caucasian Review of International Affairs*, 3, winter 2009, pp. 37-44; RONZITTI, N., *Il conflitto del Nagorno-Karabakh e il diritto internazionale*, Torino, 2014.

With regard to the Crimea status, see DE SENA, P., GRADONI, L., *Crimea: le ragioni del torto (russo) e il torto delle ragioni (occidentali)*, <http://www.sidi-isil.org/sidiblog/?p=773>, 21st March 2014; VILLANI, U., *L’Unione europea e le Nazioni Unite di fronte alla crisi della Crimea*, in *SudinEuropa*, May 2014.

On the Donbass situation, see SCERESINI, A., GIROFFI, L., *Ucraina - La guerra che non c’è*, Milan, 2015; MILETITCH, N., *Ukraine's 'frozen conflict' has gone on for one year*, Business Insider UK, Politics, 4th April 2015 (<http://uk.businessinsider.com/afp-from-rebellion-to-stalemate-a-year-of-war-in-east-ukraine-2015-4?r=US&IR=T>); JENS MALLING, J., *Ukraine’s impossible future. The value of a frozen conflict*, *Le Monde diplomatique*, March 2015 (<http://mondediplo.com/2015/03/04transnistria>).

⁴⁴ Most of the displaced left their homes with limited or no resources, and many are unable to access their bank accounts, social entitlements, or savings once displaced and therefore fully dependant on external support for basic needs, including food.

Meeting the growing needs of the conflict affected population is a challenge for the Government as a result of budgetary restrictions and the lack of ad hoc legislation on support to IDPs, as well as the financial demands on the military front⁴⁵. Notwithstanding this situation, the Government has not adopted any declaration of a humanitarian crisis, but - as we will illustrate - has appealed to the international community for gap-filling humanitarian support, especially during the winter months.

7. Government response

The State Emergency Services (SES), which leads the Inter-agency Coordination Unit for IDPs, together with the Ministry of Social Policy (MoSP), is the designated authority for coordinating humanitarian assistance in Ukraine, humanitarian aid from the international community included. Under its mandate, the SES is directly responsible for civil protection in emergency situations and deals principally with life-saving and rescue activities.

Since early July 2014, the SES has coordinated and implemented humanitarian response operations in the country related to the conflict in the east. However, the capacity of the SES at regional and local levels is limited. In addition, it does not have its own resources to provide the humanitarian aid to IDPs and the affected population and, therefore, seeks to mobilize resources from other ministries/government agencies.

But compounding structural and financial limitations, and the lack of ad hoc legislation on IDPs, pose some barriers to allocating necessary resources from various ministries to meet the needs of the affected population. As a consequence, the assistance provided by the authorities is sporadic and lacks a systematic approach, limited to the provision of some temporary accommodation and transportation of IDPs from the railway stations to collective centres.

Recognising the unmet humanitarian needs, the Government launched an appeal to the humanitarian community for humanitarian assistance on 12th September 2014. In addition, on 2nd October 2014 the WFP received a letter from the Ukrainian Embassy in Italy requesting humanitarian, financial and technical support from the WFP⁴⁶.

On the other hand, on 1st December 2014, the Government issued a decree to cease financial services and access to social benefits in areas that are not under its control. Following that, the National Bank of Ukraine closed its branches and ceased its operations in non-Government controlled areas, further complicating access to cash and liquidity for conflict-affected people.

⁴⁵ OCHA *Situation Report*, 3 October 2014.

⁴⁶ The Government's appeal amounts to US \$ 200 million for humanitarian assistance, including food, while the overall recovery package amounts to US \$ 1.6 billion.

It is worth noting that in July 2015 the Ministry of Social Policy of Ukraine, the Crimea SOS Project, and the International Organization Stabilization Support Services launched a joint Project to support IDPs⁴⁷. It provides a programme of advisers for IDPs within the Ministry of Social Policy in Central, Eastern, Southern and Western Ukraine. Advisers at the central level will act as a channel of communication to convey the problems of IDPs at the regional level to higher levels, providing support to their colleagues in the Ministry in responding to requests from IDPs, representatives of NGOs and representatives of vulnerable groups. At the regional level, advisers will operate as a local contact point for IDPs and facilitate the exchange of information between the Social Policy Ministry and regions, which have the task of solving, together with police and local councils, the issues of the accommodation of IDPs.

8. *UN Response - the WFP*

The UN Country Team (UNCT) in Ukraine, comprising amongst others, UNHCR, UNICEF, WHO, IOM (International Organization for Migration) and UNDP, has been active in the country since the mid-1990s, mainly focusing on development assistance.

Following the crisis, the Office for Coordination of Humanitarian Affairs (OCHA) has established its presence in the country and has taken up the humanitarian coordination role⁴⁸. The key element of the coordination is harmonizing preliminary and ad hoc assessments to establish the numbers and needs of displaced individuals. One of the seven sectors set up deals with Food Security and Nutrition.

The UN has also established the Ukraine Humanitarian Country Team (HCT) to ensure that the activities of humanitarian actors are coordinated, and that humanitarian action in-country is principled, timely, effective and efficient, and contributes to longer-term recovery.

The WFP set up its office in Ukraine in March 2014 to assess and monitor emerging food security needs through an immediate response preparedness activity⁴⁹. It has been operating in close cooperation with the UNCT and chairs, together with UNICEF, the Food Security and Nutrition sector. In addition, it participates in four major coordination mechanisms: a) the EU / ECHO

⁴⁷ Information and Communication Department, Secretariat, Cabinet of Ministers of Ukraine, 24th July 2015 (http://www.kmu.gov.ua/control/en/publish/article?art_id=248361832&cat_id=244314975).

⁴⁸ The following sectors have been set up: education; food security and nutrition; health (with subsector on mental health and psycho-social support); livelihoods and early recovery; protection (with child-protection and human rights/rule of law subsectors); shelter and non-food items; water, sanitation and hygiene.

⁴⁹ The WFP in Ukraine operates under the UN Department for Safety and Security (UNDSS) security system (based on Security Risk Assessment, Minimum Operational Safety Standards - MOSS are put in place to mitigate any threats to UN staff, including WFP). The Office is supported by the Regional Bureau, and is operating through a UNDP service level agreement.

(European Commission's Humanitarian Aid and Civil Protection Department) Information Sharing Meeting, which brings together all humanitarian actors to update on plans and activities on a weekly basis; *b*) the Disaster Management Team, a bi-weekly coordination meeting chaired by the Resident Coordinator, and mainly attended by heads of agencies; and *c*) regular UN inter-sector meetings led by the OCHA and attended by sector lead agencies.

Following the request from the SES, the WFP launched an Immediate Response EMOP (IR-EMOP) for the period 15th August to 14th November 2014, valued at US \$ 1.4 million, to provide life-saving, time-critical food assistance to the most vulnerable groups amongst the IDPs, returnees, host families and those trapped in conflict hotspots, mainly controlled by anti-government entities⁵⁰.

The WFP's intervention strategy varies in different geographical areas among the various population groups, depending on security and on who is primarily in control of the area (*i.e.*, Government of Ukraine or anti-government groups). Focusing on the five conflict-affected eastern *oblasts*, the following three main contexts have been identified posing different challenges to food security: *context A* - calm areas, accessible, fully controlled by the Government of Ukraine, no fighting or destruction; food supplies consistent and regular, markets and prices stable; *context B* - tense areas, formerly sites of active conflict but currently controlled by the Government, some home and infrastructure destruction; improvement to regular supplies, quick recovery of markets; and *context C* - areas under active conflict, poor humanitarian access, ongoing infrastructure and market destruction/disruption.

The recommended intervention modalities for each context are as follows: context A - cash or vouchers; context B - cash or vouchers, and/or in-kind food according to the specifics of market/supply chains functioning and security in each location; context C - primarily in-kind food unless financial infrastructure as well as market/supply chains are restored (depending on security situation and safe humanitarian access)⁵¹. In substance, cash or vouchers are the preferred intervention modalities, to be used wherever feasible. In-kind food is distributed where vouchers are unsafe or inappropriate because supplies are unreliable.

IR-EMOP targeted 28,000 IDPs with a mixture of food and vouchers in the five eastern *oblasts*. Distributions of either in-kind food parcels, or food vouchers started in the first week of

⁵⁰ WFP *Launches Emergency Operation To Feed People Affected by Violence in East Ukraine*, WFP, <http://www.wfp.org/news/news-release/wfp-launches-emergency-operation-feed-people-affected-violence-east-ukraine>, 12th September 2014. "10,000 daily rations, enough to feed 2,000 people for five days, were distributed ...", see OCHA *Situation Report*, 3rd October 2014.

⁵¹ WFP, *Emergency Assistance to Civilians Affected by the Conflict in Eastern Ukraine, Emergency Operation Ukraine 200765, Operation Document* (http://one.wfp.org/operations/current_operations/project_docs/200765.pdf), 2014.

September. The mostly ready-to-eat food parcels for 18,000 individuals, valued at US \$ 291,112, were locally - procured. They were distributed in transit centres and public shelters in Donetsk and Luhansk. The total value of the food vouchers, for 10,000 IDPs, has been valued at approximately US \$ 450,000.

The WFP has been acting in close cooperation with the International Committee of the Red Cross (ICRC), as well as working together with three NGOs. In particular, for in-kind distributions, the WFP, in coordination with the SES, has been working with the Ukrainian Red Cross Society (URCS) and the Adventist Development and Relief Agency (ADRA). The assisted have been mainly IDPs with serious medical conditions, pregnant women, nursing mothers, the elderly and large, vulnerable families⁵². The voucher modality has been carried out through the NGO “People in Need” (PIN)⁵³.

The Emergency Operation (EMOP) was built on IR-EMOP. The initial planning period of the EMOP was six months, from 1st November 2014 to 30th April 2015. The Operational Plan was aimed at providing food assistance to 120,000 amongst the most vulnerable IDPs, returnees, host families and those trapped in conflict hotspots, for the most part controlled by anti-government entities: 40,000 people were assisted with a one-off in-kind food distribution in insecure areas, while 80,000 people received three rounds of cash and vouchers assistance in calmer and more secure IDP hosting areas.

The Ukraine EMOP intends to contribute to the Millennium Development Goal 1, and is aligned with the WFP Strategic Plan (2014-2017) Strategic Objective 1: *Save Lives and Protect Livelihoods in Emergencies* by addressing the urgent food and nutrition needs of vulnerable people. The WFP has prioritized assistance to the food insecure people in the five conflict-affected *oblasts*, in both government and rebel held areas, as these are the most affected by the conflict and by population movement. In fact, it has been estimated that at least one million people living in the five affected oblasts are vulnerable to food insecurity, and, out of the total 380,000 registered IDPs, about 240,000 are placed in these oblasts.

The WFP have been working closely with the MoSP, UNHCR, as well as with NGO partners to identify the most vulnerable localities and individuals. Priority has been given to the vulnerable IDPs who have been completely cut off from the regular safety nets of the MoSP and thus cannot access their social benefits once displaced (often temporarily). Preference has been given to the elderly, the chronically ill, pregnant and lactating women, single-headed households, households

⁵² In cooperation with local partners, WFP has distributed food boxes containing ready-to-eat canned food such as meat, fish, vegetables as well as biscuits, jam and tea.

⁵³ The C&V value is approximately US \$ 45 per person per month, which is based on the standard food basket consumption patterns during the winter months.

with children aged 6-24 months, households with more than three children and those eligible for government social benefits but unable to receive them as a result of the crisis.

One round of locally-procured immediate response rations was distributed to 40,000 people to address the immediate food needs of those with limited to no food access/supply (mostly context C). Three rounds of C&V were used to address short-term food needs in more secure IDP-hosting areas (mostly context A and B)⁵⁴.

The EMOP was extended by 2 months, taking it up to the end of June 2015, maintaining food needs as a priority concern. Given that the supply and quality of food were dwindling, the WFP considered the provision of in-kind food assistance as the most appropriate delivery mechanism in non-Government controlled areas and planned to increase the number of rations from 40,000 to 108,000⁵⁵.

The WFP also decided to establish itself in the east of the country by opening new offices.

It is now aiming to reach 387,000 additional people, thus scaling up its activity in Eastern Ukraine to provide 500,000 conflict-affected people in the region with food assistance until the end of the year (period July - December 2015)⁵⁶. This is almost triple the number of people the food agency has been reaching since November 2014⁵⁷.

With the expansion of its assistance, the WFP will carry out food distribution in three additional regions: Kharkivska, Dnipropetrovsk and Zaporizhzhya. The WFP will continue to support IDPs in government-controlled areas through cash and voucher transfers and people in non-government controlled areas through food rations.

⁵⁴ Security constraints are one factor in the decision to provide a single distribution of a full in-kind basket for one month. The distributions takes place if and when it is safe to do so. Security conditions are more stable in the areas where the cash and voucher component has to be implemented and therefore repeated access to the same beneficiaries for multiple voucher disbursements is expected.

⁵⁵ Under the period from November 2014 to June 2015 WFP has been providing food assistance to 190,000 people. Of this total, 110,000 have received one-off assistance in the form of locally procured food parcels to meet urgent, life-saving needs; 80,000 people have received help in the form of three rounds of cash and voucher assistance, *Ukraine. Current Issues and What the WFP is Doing*, at <http://www.wfp.org/countries/ukraine>.

⁵⁶ “The ongoing conflict has taken its toll on tens of thousands of people who are in desperate need of help” said WFP Head of Office in Ukraine, Giancarlo Stopponi; “They are either trapped by the conflict or have fled their homes and are now living in difficult conditions” .. “We are doing everything we can to deliver food assistance to as many people as possible ..”, see *WFP scales up food assistance in eastern Ukraine*, <http://www.wfp.org/news/news-release/wfp-scales-food-assistance-eastern-ukraine>, 1st July 2015.

⁵⁷ The WFP urgently needs US \$ 30.3 million to continue to provide assistance through December 2015.

Furthermore, in this new phase of the operation, they will be supporting people in schools, orphanages, hospitals and other institutions in non-government controlled areas, as well as providing supplementary food to prevent and combat malnutrition among children under age two, who are identified as most at risk.

In conclusion, available reports and data confirm that the WFP's operation in Ukraine is a 'gap filling' response, aligned with the Government's plans and the UN Response Plan.

It must also be underlined that the WFP has reaffirmed its commitment to neutrality and has declared that accountability to affected populations remains a guiding principle of its action.

9. *Main issues*

Following the analysis carried out in the preceding paragraphs, it seems useful to make some observations on the main issues of food aid in Eastern Ukraine, with a focus on those of a legal nature or whose solution might be favoured through the adoption of legal measures. A first issue certainly is that of *coordination among the various actors* on the scene; on paper, there are - as noted - a number of coordinating activities, but there is some evidence that mechanisms and procedures are weak, and do not ensure an effective coordination. The *Food Assistance Convention* does not alleviate the problem, because it does not establish any mechanism of coordination between donor States, on the one hand, and the WFP and the other international bodies, on the other hand.

Another issue is that of *funding*; the planned expanded assistance, and the implementation of the upgraded EMOP depend on the effective mobilization of new funding. In this regard, it is worth mentioning the fact that in 2014 Russia donated an extra US \$ 5 million to the WFP Foundation which was allocated for funding costs related to humanitarian aid to the Ukrainian people⁵⁸.

A third central issue is that there are a number of widely shared guiding principles, but *the international legal framework remains incomplete*, while the *Food Assistance Convention* recently entered into force has not yet been ratified by various States (Italy among them), and is not yet considered an act of reference, thus remaining of little help in facing the very complex legal and political situation characterizing conflict areas.

⁵⁸ Russia also contributed US \$ 1 million to the International Red Cross for nutritional intervention for Ukraine, see *Narrative Report on Food Assistance by members of the Food Assistance Convention, Annual Report 2014*, 3rd July 2015 (<http://www.foodassistanceconvention.org/downloads/sumrec/fac2014nr.pdf>).

Fourth, the relevant Ukrainian laws do not contain adequate *provisions on foreign food aid on Ukrainian territory*. This is among the main reasons for the cumbersome nature of the administrative procedures for food aid activities⁵⁹.

Fifth, the *need for assistance of conflict affected populations* who have remained in the separatist areas is not yet entirely quantified. This makes it difficult to assess ongoing food aid under the efficacy parameter.

Furthermore, this is closely connected, *access to the conflict regions* remains limited as a result of security challenges⁶⁰. Notwithstanding the UN Security Council has called all Parties to “Ensure safe access, delivery, storage, and distribution of humanitarian assistance to those in need, on the basis of an international mechanism”⁶¹, the UN agencies, as well as other humanitarian actors like the ICRC, the URCS⁶², and Medicines Sans Frontiers do not have access to some of the rebel-controlled areas. For this reason, the *Budget Revision* adopted by the WFP has increased the level of other direct operational costs (ODOC) to enable the expansion of its operations in areas not controlled by the Government⁶³.

However, according to official data, three-quarters of all the food distributed by the WFP has been provided in areas outside government control⁶⁴. But, and this is another important issue, there is certainly a lack of any reliable *mechanism of monitoring of what, in effect, is achieved by food aid international cooperation, and how it is achieved*⁶⁵.

⁵⁹ To mitigate that, WFP is working with the Government of Ukraine through a Letter of Understanding.

⁶⁰ The issues related to the access of humanitarian food aid in eastern Ukraine are here considered only for their implications on the efficacy of current activities, not as eventual violations of the right to adequate food. In fact, “violations of the right to food can occur through the direct action of States or other entities insufficiently regulated by States. These include: ... the prevention of access to humanitarian food aid in internal conflicts or other emergency situations”, see *General Comment*, cit., *supra*.

⁶¹ UN Security Council *Resolution 2202 (2015) Annex I, Package of Measures for the Implementation of the Minsk Agreements*, cit.

⁶² The URCS had active branches in all *oblasts* of the country supported by almost 60,000 volunteers. The former URCS members working in the rebel-held areas are active under the self-proclaimed authorities in Donbas.

⁶³ “While there is an urgent need to provide food assistance in the non-Government controlled areas, operations are challenging due to inconsistent access and insecurity ..”, Ukraine EMOP 200765 B/R no. 1 (<http://documents.wfp.org/stellent/groups/internal/documents/projects/wfp271487.pdf>).

⁶⁴ *Ukraine. Current issues and what WFP is doing*, at <http://www.wfp.org/countries/ukraine>.

⁶⁵ That is even more evident in case of food aid from NGOs and private associations / foundations, see SCERESINI, A., GIROFFI, L., *Ucraina - La guerra che non c'è* (Chapter 13, *Convoglio umanitario*), pp. 128-136.

This seems to be of great importance considering the priority of in-kind food aid in the eastern regions, and the fact that the WFP is procuring food in local markets, while the Ukrainian legal system is still far from the international (and the EU) *standards in the field of food safety*.

10. Conclusions

Moving now to some final observations and provisional general recommendations, we may say that the UN response has been slow and limited because of the absence of a trigger for a humanitarian response (*i.e.*, a declaration of a humanitarian crisis by the Government), but now the WFP, other international organizations, donor States⁶⁶, and NGOs are quite active in Eastern Ukraine.

The WFP is really trying to respect the principles of neutrality and operational independence, as is indirectly demonstrated by Russian funding, and directly confirmed by its decision to open its own offices in the conflict affected areas, dialoguing with current local authorities.

However, the WFP Operational Plan is aimed - as noted - at providing food assistance to 120,000 amongst the most vulnerable people, and it is consistently upgrading, but the completeness of food aid operation relies on the assumption that the remaining needs - not yet entirely evaluated - will be met by civil societies, NGOs and private foundations. This does not seem a proper approach to the issue. *The current needs of conflict affected populations should be fully evaluated and food aid means - whatever their financial sources (those from civil society included) - should also be fully evaluated and commensurate with the assessed needs;* this appears to be the only method which would guarantee completeness of food aid, and would also favour its impartiality. *This might be pursued through the strengthening and improvement of current coordination mechanisms, but - in our opinion - requires the definition of new procedures at the treaty level.*

Furthermore, we have noted the difficulties of access to the conflict areas, as well as the lack of effective monitoring mechanisms, which make it difficult to assess the effectiveness and efficiency of food aid.

In this regard, we may observe that **the current international legal framework, and in particular the Food Assistance Convention, present various weak points when it comes to**

⁶⁶ Among the donor States, Italy ordered the disbursement of EUR 200,000 for projects to be implemented through multilateral channels, in particular the International Red Cross and the UNHCR. The funding for the Red Cross will support the emergency plan in the country for 2015, with distribution of food, hygiene kits, medical supplies and construction materials for the displaced and other humanitarian initiatives and protection human rights. The contribution to the UNHCR will support the activities of the distribution of essential goods to the internally displaced (http://www.ambkiev.esteri.it/Ambasciata_Kiev/Menu/I_rapporti_bilaterali/Cooperazione_allo_sviluppo/).

conflict affected areas. In fact, the Convention was elaborated as a donor state instrument, and does not contain general rules on access to conflict areas, nor on monitoring mechanisms. On the contrary, the “lesson” learned from the Eastern Ukraine case is precisely that of the prime importance of ad hoc recognized rules on access to conflict areas, and of reliable mechanisms to monitor on how food aid is effectively used.

Considering that it is not possible to establish such general rules without a large consensus in the international community, including that of potentially interested receiving or transitory non-donor states, in our opinion *a new international treaty should be negotiated, possibly under the umbrella of the WFP and the other UN international bodies which have relevant food aid functions and activity.* The possible accession to or ratification of the Food Assistance Convention by a larger number of States doesn’t, in fact, seem to be of great importance.

The current restricted circle of the Parties to the Convention also contradicts both the rule according to which a request of the interested state is necessary to the launching of a food aid cooperation activity, and the principle of participation, which states that food aid must be carried out in the interest of beneficiaries and with a full involvement of all stakeholders.

Finally, with regard to food aid safety, we have noted how, within a highly volatile military and political context, the WFP maintains operational flexibility and provide food assistance through a mixture of locally-procured in-kind food and cash and vouchers. Given that Ukraine is a major food producer, the WFP procures the food parcels locally. The operation simply follows the standard WFP procurement procedures.

Therefore, also taking into account the analysis of activity reports, it seems that the Eastern Ukraine case shows that **food quality principles and regulations receive little attention when it comes to food aid in conflict areas.** The complexity of the context, the weakness of the international legal framework, and the lack of clear rules on issues such as access to relevant areas and monitoring, push food aid quality issues into the background. This is a further reason why we feel that it would be better to launch a new convention, rather than to seek improvements, through amendments or annexes, to the existing one.