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**برنامج الأغذية  
العالمي**

11 January 2016

Mr. George Korontzis  
Secretary  
International Law Commission

Protection of persons in the event of disasters survey  
c/o Secretary of the International Law Commission  
405 E 42<sup>nd</sup> Street  
Rm. DC2-0570  
United Nations  
New York, NY 10017  
USA

Dear Mr. Korontzis,

I refer to your letter addressed to me of 24 October 2014 concerning the draft articles on the protection of persons in the event of disasters (the “Draft Articles”) and the commentaries adopted on first reading by the International Law Commission at its 66<sup>th</sup> session.

WFP wishes to provide comments and observations on the Draft Articles.

WFP welcomes the Draft Articles as it shares their inherent objective – the protection of persons in the event of disasters. WFP especially welcomes the real progress that the Draft Articles could make in advancing the development of rules in this area as well as in the field of disaster prevention and relief assistance. Of particular interest to WFP are provisions concerning the prevention of disasters (draft articles 10 and 11); the responsibility of the affected State to seek assistance where its national response capacity is exceeded (draft article 13); and the conditions for the provisions of assistance (draft article 15).

Other provisions, such as the duty to protect relief personnel, equipment and goods (draft article 18); the duty to cooperate (draft articles 8, 9, 10, and 11); the facilitation of external assistance (draft article 17); and the question of termination of external assistance (draft article 19) are also relevant to WFP’s operations.

WFP welcomes the possibility that the Draft Articles may become a treaty in the area of disaster response. The existence of a treaty in this area would be particularly useful in countries where WFP has not concluded a host agreement or where it has not been able to address comprehensively the aspects covered by the Draft Articles. WFP takes note of article 20, which clarifies that the Draft Articles do not derogate from the application of bilateral host agreements concluded between UN

organizations and an affected State. Also in this context, WFP is hopeful that negotiations with state actors will benefit from the existence of a legal framework for assistance and that this will allow “assisting Actors”, as defined in the Draft Articles, to focus negotiations with affected States more specifically on what is needed to reduce the risk of emergencies and respond to them.

WFP considers that the inclusion of universal international obligations in draft articles 10 and 11 on prevention of disasters, including disaster risk reduction, may facilitate WFP’s work insofar as it would prompt States to adopt domestic disaster prevention regulation, hence increasing the likelihood that robust systems are already in place when disaster strikes. This, in turn, will benefit the ability of assisting Actors to respond effectively at the early onset of emergencies. WFP also notes the technical comment made during the Expert Meeting on the ILC’s Draft Articles on the Protection of Persons in the Event of Disasters, held at Roma Tre University on 8-9 June 2015 (the “Rome Experts’ Meeting”) in relation to the scope, *ratione materiae*, of the Draft Articles. WFP would submit for consideration whether the Articles concerning the scope and purpose of the Draft Articles could benefit from a clarifying reference to prevention and disaster risk reduction.

Further, WFP welcomes the inclusion of draft article 13 concerning the responsibility of the affected State to seek assistance when its national response capacity is exceeded, which could create an international legal obligation for States. In this respect, and together with draft article 14 regarding consent, WFP welcomes the ongoing debate on whether an implicit request for, or an implicit acceptance of, international assistance by the affected State could be assumed in certain extreme cases and, if so, what the conditions would need to be satisfied.

Regarding the conditions for the provision of assistance that are listed in draft articles 14 and 15, WFP appreciates their objective of achieving the protection of affected persons while respecting the sovereignty of the affected state.

We note that the order and sequence of draft articles 14, 15 and 16 does not reflect the normal chronology of events where a disaster occurs. Specifically, the article concerning the right to offer assistance (draft article 16) is placed after the article concerning consent to be provided by the affected State (draft article 14) and the article on conditions for the provision of external assistance (draft article 15). However, in a disaster scenario offers of assistance would frequently precede the affected State’s consent to them. It may be advisable to consider changing the order of these articles to align them to the normal sequence of events. The significance of the aforementioned re-arrangement articles goes beyond a mere question of form. The current order could be interpreted as implying that offers of assistance should be adapted to conditions set by the affected State, which could pose operational and other problems, for example as conditions that an affected State may impose prior to receiving offers of assistance could fail to take into account the existing capabilities of the assisting Actors or the level of support that these actors are able to provide. It accordingly would be advisable to place draft article 16 before draft article 14.

Also, in relation to draft article 15, WFP welcomes the debate on ways to make the conditions and limitations of draft article 15 more operationally-driven through references in the commentary to the Draft Articles to soft-law instruments . The reference to documents – such as the IASC Guidelines or the Sphere Project – that are widely recognized by humanitarian actors as constituting good practice could mitigate undesirable consequences that might otherwise follow adoption of domestic requirements that ignore these standards.

The duty to protect relief personnel, equipment, and goods included in draft article 18 is especially welcome and could provide significant protection additional to that set forth in the Convention on the Safety of United Nations and Associated Personnel.

WFP further welcomes the discussion proposed by participants in the Rome Experts' Meeting with regard to the inclusion of a preamble and final clauses to the Draft Articles.

Finally, WFP would welcome further discussion, as referenced at the Rome Experts' Meeting, with regard to the adoption of common international standards through either the development of additional technical annexes concerning detailed aspects of relief assistance or through establishment of a specific technical body comprising experts of State parties or a Secretariat whose responsibility is to perform additional tasks related to the development of technical standards.

We hope that these comments and observations are of assistance to the Special Rapporteur in preparation for the consideration of the draft articles by the Commission on second reading and would welcome further information and opportunities to consult on the Draft Articles as the ILC's work on them continues.

Yours sincerely,



Bartolomeo Migone  
General Counsel, World Food Programme