



**International Federation
of Red Cross and Red Crescent Societies**

THE REGULATORY FRAMEWORK FOR DISASTER RESPONSE ESTABLISHED WITHIN THE
EUROPEAN UNION: A FOCUS ON HUMANITARIAN AID AND CIVIL PROTECTION

IDRL PROGRAMME

Austrian Red Cross & IDRL Programme

Dr. Georg Potyka (ARC), Dr. Katrien Beeckman (IFRC)

TABLE OF CONTENTS

1. **INTRODUCTION**
 - 1.1. Main differences between humanitarian aid and civil protection activities

2. **LEGAL BASIS & INSTITUTIONAL MECHANISMS OF DISASTER RESPONSE WITHIN THE EU**
 - 2.1. **Development cooperation as the legal basis for humanitarian aid outside the EU**
 - 2.1.1. Legal basis within the EU Treaties
 - 2.1.2. EU humanitarian aid regulatory and institutional framework

 - 2.2. **Civil protection within and outside the EU**
 - 2.2.1. Absence of a specific legal basis in the EU Treaties
 - 2.2.2. EU civil protection regulatory and institutional framework

 - 2.3. **IDRL ANALYSIS OF THE REGULATORY FRAMEWORK OF EU DISASTER RESPONSE**

 - 2.4. **The EU humanitarian aid regulatory framework**
 - 2.4.1. Council Regulation (EC) No 1257/96 of 20 June 1996 concerning humanitarian aid
 - 3.1.1.1. *Access to disaster-affected victims*
 - 3.1.1.2. *Regulation of humanitarian aid operations through setting out general principles*
 - 3.1.1.3. *Coordination commitments and obligations*
 - 2.4.2. Framework Partnership Agreements with International organisations and Humanitarian organisations
 - 3.1.2.1. *Objectives and content of Framework Partnership Agreements*
 - 3.1.2.2. *Fundamental principles of humanitarian aid operations contained in Framework Partnership Agreements*
 - 3.1.2.3. *Formal selection criteria for the selection of Partner NGOs*

 - 2.5. **The EU civil protection regulatory framework: Council Decision of 23 October 2001, 2001/792/EC, Euratom establishing a Community civil protection Mechanism**
 - 3.2.1. Respective obligations of the affected Member State, the States Participating in the Mechanism and the Commission
 - 3.2.2. Requests for and decisions to engage in civil protection assistance
 - 3.2.3. Coordination and direction of civil protection assistance under the Mechanism
 - 3.2.4. Costs of assistance provided by the participating States.
 - 3.2.5. Compensation for damage
 - 3.2.6. Specific assistance for isolated and outermost regions

3. **EMERGING TRENDS AND CONCLUDING REMARKS**
 - 4.1. **Emerging trends:**
 - 4.1.1. The Commission 2006 Proposal for a recast of the 2001 Council Decision establishing the civil protection Mechanism
 - 4.1.2. The January 2006 Note of the EU presidency
 - 4.1.3. The Barnier report
 - 4.2. **Executive summary**

1. INTRODUCTION

The International Disaster Response Laws, Rules and Principles (IDRL) Programme looks at the international, regional and national regulatory frameworks pertaining to international response to non-armed conflict disasters, *ie* response provided by international actors such as, foreign Governments, UN and other international organisations, NGOs and the Red Cross/Red Crescent family. Its overall goal is to analyse and promote awareness, implementation and improvement of the existing IDRL framework, starting from the premise that legal preparedness for disasters is crucial in ensuring the speedy and efficient delivery of aid to disaster-affected victims.

IDRL focuses in particular on four areas: access, facilitation, coordination and regulation. In the context of access, it examines the process by which international aid may reach a disaster-affected country. Issues such as requests for and offers of international assistance, as well as exchange of information concerning the disaster, fall within the realm of access. *Facilitation* of international aid pertains to how IDRL removes or minimises legal and administrative obstacles which generally slow down or impede the delivery of humanitarian aid. As such, it covers entry of personnel, import of goods and equipment, and acquisition of legal status to operate within the affected country. Facilitation equally includes the issue of legal facilities or privileges and immunities which enable international actors to carry out their humanitarian mandate without excessive constraints. Third, IDRL examines how laws, rules and principles ensure effective *coordination* first, between international actors providing relief themselves, and secondly, between international and domestic authorities' response, bearing in mind that the primary responsibility and role to address the disaster is entrusted to the latter under international law.¹ Finally, IDRL analyses *regulation* of international aid so as to ensure its quality, relevance and accountability towards both beneficiaries and donors.

The present paper looks at the regional regulatory framework for disaster response which has been developed within the European Union. Within this context, it focuses on two areas: humanitarian aid and civil protection. The regional framework in both areas is of specific relevance to IDRL in a number of aspects. First, within the area of humanitarian aid, the EU today is the largest provider of international aid, accounting for 55% of the total aid, 30% of which comes from ECHO, now the Directorate General for Humanitarian Aid, and 25% directly from the EU Member States. Being a major donor, it has allowed the European Commission to regulate the delivery of Community funded aid by its implementing partners, through the development of what can be considered a "*code of good donorship*" and the adoption of selection criteria for engaging in partnerships with NGOs. Within the area of civil protection, which is delivered by the Member States' teams, the European Union has set up a strong coordination framework, in which the Commission facilitates exchange of information, communication and mobilisation of assessment and coordination experts.

Before turning to the separate frameworks which have been developed in each of these two areas, it is noteworthy to mention that a tripartite agreement was signed in 2004 between the European Commission, representing both humanitarian aid and civil protection, and UNOCHA. The agreement applies to a situation where the three parties engage in simultaneous interventions in a non EU disaster-affected country, with the overall goal being to cooperate

¹ It is also explicitly spelled out in the regional disaster response framework set up by the European Union. Initially, the two institutions exchanged letters concerning their cooperation in the framework of disaster response in case of simultaneous interventions in a country affected by a disaster. This exchange was formally approved by Commission Decision 2005/160/EC of 27 October 2004. Official Journal L 052, 25/02/2005, p. 00420043 (Text with EEA relevance).

efficiently, maximise the use of available resources and avoid unnecessary duplication of effort. The Agreement provides for joint standard operating procedures for coordination in disaster response, covering both the preparedness phase, as well as the response phase at headquarters level and in the field.²

Two important principles drawing the overall framework of disaster response are clearly spelled out in the 2004 tripartite agreement. The first one pertains to the primary responsibility of the affected State to provide protection and assistance to its citizens in times of disasters, with the need for the international community to be prepared and able to assist, when relief needs are beyond the response capacity of the domestic authorities. The second one proclaims the right of victims of natural disasters to international humanitarian assistance where their own authorities prove unable to provide effective relief.

The present paper sets out the following structure. This introductory Part 1 concludes with an analysis of the main differences between humanitarian aid and civil protection activities. Part 2 briefly looks at the legal basis for both fields of activities within the EU Treaties, lists the main legal instruments adopted within each framework, before describing the institutional body or instrument set up respectively in humanitarian aid and civil protection. Part 3 contains a more in depth analysis of how both frameworks are of particular relevance to IDRL and its four areas of focus: access, facilitation, coordination and regulation. Finally Part 4 briefly comments on emerging trends, *albeit* still in a phase of discussion, before providing an executive summary.

The background research of the present study was initiated by the Austrian Red Cross, and further developed in close collaboration with the IDRL Programme. Both authors wish to express their gratitude to the European Commission, and in particular to Susan Hay, Richard Lewartowski, Leonor Nieto and Isabelle Coombs from ECHO IV, Peter Billing and Joana Deka from DG Environment IV, and Laurent Gallissot from Relex for precious input given during the researchers' visit to the Commission in April and subsequent phone interviews. They also wish to thank Elise Baudot and Dr. Bernhard Schneider, legal counsels of respectively the IFRC and the Austrian Red Cross, for their support. Finally, they are grateful to Arnaud Meffre of the French Red Cross and Frédéric Casier of the French-speaking Belgian Red Cross for their input in an earlier version of the draft, and Doris Schippfer from the Austrian Red Cross for her assistance.

1.1. Main differences between humanitarian aid and civil protection activities

The term "humanitarian aid" within the EU framework covers assistance, relief and protection operations to help people in *third countries* (*ie* outside the territory of the EU): victims of natural disasters, man-made crises, such as wars and outbreaks of fighting, or exceptional situations comparable to natural or man-made disasters.³ The main aim pursued by Community humanitarian aid, is *to save and preserve life during emergencies and their immediate aftermath and natural disasters that have entailed major loss of life, physical, psychological or social suffering or material damage.*⁴ Humanitarian assistance is spelled out as necessarily of a temporary nature, *ie* for the time needed to meet the humanitarian requirements resulting from

² *Ibid.*

³ Article 1 of Council Regulation (EC) No 1257/96 of 20 June 1996 concerning humanitarian aid to be analysed below, 2.2. (Official Journal L 163, 2.7.1996, p.1; Art. 17 (3) adapted to the procedural provision of Council Decision 1999/468/EC by Annex II, item 23, of Regulation (EC) No 1882/2003, O.J. L 284, 31.10.2003, P.1)

⁴ Council Regulation (EC) No 1257/96 of 20 June 1996 concerning humanitarian aid, Article 2 (a).

the emergencies covered. Notwithstanding, it includes operations to prepare for risks or prevent disasters,⁵ as well as short-term rehabilitation and reconstruction work.⁶

Whereas in contrast with humanitarian aid, EC civil protection assistance can be provided both within and outside the territory of the EU, the time-related scope of civil protection is significantly narrower than that of humanitarian assistance. It only pertains to the *immediate relief* in the first hours and days of a disaster, sometimes several weeks. It typically includes search and rescue, emergency medical assistance, fire fighting, temporary shelter, food and water. Depending on the nature of the disaster, it often also encompasses technical types of assistance, such as fire fighting aircraft (in case of forest fires), pumping capacity (floods), ships to combat pollution (oil spills) and detection and decontamination facilities (chemical, biological or nuclear incidents).⁷

Also, civil protection assistance has a wider scope in terms of the consequences it seeks to address. In addition to their humanitarian impact covered by Community humanitarian aid, civil protection can also address the environmental consequences of disasters as well as their impact on cultural heritage.

Finally, implementation of activities in both fields differs, as will be discussed below. Whereas Community humanitarian aid is provided through humanitarian partner organisations, civil protection assistance relies on teams, experts, assets and equipment provided by the Member States participating in the Civil Protection Mechanism.

⁵ *Ibid.*, *in fine*.

⁶ *Ibid.*, Article 2, (d).

⁷ Communication from the Commission to the Council on Improving the Community Civil Protection Mechanism f 20.04.2005, COM (2005) 137 final, p. 3.

2. LEGAL BASIS AND INSTITUTIONAL MECHANISMS OF DISASTER RESPONSE WITHIN THE EU

This part of the paper sets out the legal basis of EU humanitarian aid (2.1.) and civil protection (2.2.) within the EU Treaties, *in casu* the 1957 Treaty establishing the European Economic Community. It lists the legal instruments which are of importance within the framework set up for each field of EC activity, and briefly describes the institutional body set up for managing and ensuring the coordination of EC humanitarian aid to third countries and the instrument adopted for facilitating civil protection assistance provided under the Mechanism.

For a general, succinct explanation of the EU institutional framework, containing its decision-making bodies and the different types of decisions which these can take, refer to annex I.

2.1. Development cooperation as the legal basis for humanitarian aid outside the EU

2.1.1. Legal basis within the EU Treaties

The term "humanitarian aid" is not explicitly mentioned in the European Union Treaties. However, the regulatory framework on development cooperation, which constitutes an official policy of the European Communities, the first pillar of the EU, offers a specific legal basis for the EU to engage in humanitarian aid *outside* its territory.

The legal basis for EU humanitarian aid is today's Article 177 of Title XX of the Treaty establishing the European Economic Community as amended by the 2002 Treaty of Nice. This article defines the Community's policy in the sphere of development cooperation. The power to adopt the measures necessary to further the objectives pursued by EU development cooperation, is conferred upon the European Council (art. 179). Hence, any decision to change the overall framework concerning humanitarian aid would require the Council to take a decision by qualified majority on a proposal of the Commission, and in close collaboration with the European Parliament.⁸

2.1.2. EU humanitarian aid regulatory and institutional framework

The European Union (at that time the European Economic Community) has provided humanitarian aid since its inception in 1957. Since the end of the 1980s, humanitarian assistance was provided on an increased scale to more than 30 countries and became a key element of the EU's international presence. After the end of the Cold War, there was an increased need for humanitarian action in many parts of the world. At that time the EU's humanitarian aid policy was somewhat fragmented. To make the system respond more effectively, the EU approach to humanitarian aid was made more systematic through the setting up of a unitary and coherent decision-making centre to ensure the administration and coordination of humanitarian aid.

As such, ECHO, now the Directorate General for Humanitarian Aid, was set up on 1 April 1992. ECHO is the service of the European Commission responsible for managing humanitarian

⁸ Article 251 establishes the decision-making procedure. Since the Treaty of Nice, the co-decision procedure ensures that the European Parliament plays a greater role in defining humanitarian aid activities than was previously the case.

assistance to third countries. Its main mission is to *fund the co-ordinated delivery of Community humanitarian aid*.⁹

ECHO is no longer directly operational in implementing the humanitarian aid decisions it takes. Since the end of the nineties, EC humanitarian assistance is delivered to the beneficiaries through Community funded programmes and projects which are *designed and implemented by its partners*. ECHO partners are over 200 non-governmental organisations established within the European Economic Area, international organisations, principally the UN and the Red Cross/Red Crescent family. Humanitarian assistance provided includes notably the provision of food, water and sanitation, shelter and health services, short-term rehabilitation and reconstruction work, actions to protect victims from fighting and operations to ensure preparedness for risks of natural calamities in disaster-prone areas.

ECHO has its headquarters in Brussels with over 200 staff members aided by some 100 experts in the field. Field experts, however, are not EU officials, but contracted for a determined period by the EU on the basis of their humanitarian expertise. Generally speaking, EU field experts have followed training conducted by other humanitarian aid agencies, such as the UNDAC training within the UN System or the FACT and BTC training within the Red Cross/Red Crescent Movement. EU experts in the field are responsible for conducting needs assessment, liaising with the implementing partners, and monitoring Community-funded humanitarian aid operations.

EU humanitarian aid implementing partners are solely responsible for the co-ordination and execution of all contracted activities in the field. ECHO does not intervene to facilitate the delivery of humanitarian aid by its partners. It is incumbent upon the latter to take the necessary measures related to the entry of relief personnel into the territory of the receiving country, the import of relief goods and equipment, the acquisition of legal status and potential legal facilities allowing them to effectively carry out their humanitarian mandate.

The major legal instrument within the EU humanitarian regulatory framework is the Council Regulation (EC) No 1257/96 concerning humanitarian aid. It defines the objectives and general principles of humanitarian aid and sets out the procedures for the implementation of humanitarian aid, as well as humanitarian operations.

2.2. Civil protection

2.2.1. Absence of a specific legal basis in the EU Treaties

In contrast with EU humanitarian aid which finds a specific legal basis in development cooperation enshrined as an official policy of the European Community, there is no such specific legal basis for civil protection in the EU Treaties.¹⁰ Notwithstanding, article 3 (1) (u) of

⁹ See Preamble to the Framework Partnership Agreements with International Organisations and NGOs, 3.1.2.. Pursuant to article 3 of Council Regulation (EC) No 1257/96 of 20 June 1996 concerning humanitarian aid, community aid may be used to finance the purchase and delivery of any product or equipment needed for the implementation of humanitarian operations, including the construction of housing or shelter for the victims, the costs associated with the outside staff, expatriate or local, employed for those operations, the storage, international or national transport, logistics and distribution of relief and any other action aimed at facilitating or obtaining freedom of access for aid recipients. It may also be used to finance: preparatory or feasibility studies, operations to monitor humanitarian projects, small-scale training schemes, public awareness and information campaigns aimed at increasing understanding of humanitarian issues, measures to strengthen the Community's coordination with the Member States, other donor countries IO, NGOs, etc. (article 4).

¹⁰ It is only mentioned in article 3 (1) (u) of the Treaty establishing the European Community, according to which activities of the Community are to include measures in the sphere of civil protection.

the EC Treaty mentions that activities of the Community are to include measures in the sphere of civil protection. Consequently, all civil protection-related decisions *which are necessary to attain the official objectives of the European Communities* are to be taken with the *unanimity of the Council*.¹¹ It is hence, more difficult to develop the legal framework in the area of civil protection than is the case in the context of humanitarian aid where a qualified majority of the Council suffices.¹²

In contrast with humanitarian aid activities which were developed by the EC since 1957, EU disaster response activities in the field of civil protection only started from 1985 onwards. Decisions on EU disaster relief within the civil protection regulatory framework do not provide for direct action by the Community itself.¹³ Rather, they seek to facilitate *cooperation* and coordination among EU Member States when engaging in civil protection activities.

2.2.2. EU civil protection regulatory and institutional framework

Within the EU civil protection regulatory framework, different legal instruments and frameworks are currently co-existing, which might all be integrated into one unified civil protection system, if the proposed Council Decision submitted by the Commission, to be discussed in Part 4, were to be adopted.

The first framework is the 1999 Civil Protection Action Programme within the European Communities, established by Council Decision 1999/847/EC of 9 December 1999. This is a Community action programme to supplement the Member States' civil protection efforts at all levels and to facilitate cooperation, exchange of experience and mutual assistance between Member States.¹⁴ Hence its scope pertains to civil protection activities *within* the EU. The Civil Action Programme provides funding for activities that aim at preventive action and preparedness. It will expire at the end of 2006.

A second particular Community framework has been adopted for cooperation in the field of accidental or deliberate man-made marine pollution by Decision N° 2850/2000/EC of the European Parliament and of the Council of 20 December 2002.

Finally, the most important and far-reaching framework is the Civil Protection Mechanism setting the framework for action within and outside the EU.¹⁵ The Civil Protection Mechanism was set up in 2001 by Council Decision 2001/792/EC to facilitate reinforced cooperation between Member States in the event of major emergencies, or the imminent threat thereof, which cause or are capable of causing trans-boundary effects or which may result in a call for assistance

¹¹ According to Article 308 of the EC Treaty, "*If action by the Community should prove necessary to attain, in the course of the operation of the common market, one of the objectives of the Community, and this Treaty has not provided the necessary powers, the Council shall, acting unanimously on a proposal from the Commission and after consulting the European Parliament, take the appropriate measures.*" Since civil protection assistance can also be needed in the event of radiological emergencies, the decision-making procedure enshrined in article 203 of the Euratom Treaty is also applicable. The latter reads, "*If action by the Community should be necessary to attain one of the objectives of the Community and this Treaty has not provided the necessary powers, the Council shall, acting unanimously on a proposal from the Commission and after consulting the Assembly, take the appropriate measures.*"

¹² As such, a positive outcome of current Commission proposals under examination by the Council, such as the Recast Civil Protection Mechanism to be analysed below, is not to be taken for automatic.

¹³ This would be different if the proposed Council Decision were to be adopted, cf. Part 4.

¹⁴ Council Decision of 9 December 1999 (1999/847/EC, Official Journal L 327/53 of 21.12.1999). The Civil Protection Action Programme provides funding of activities that aim at preventive action, preparedness and an effective response. Whereas, the programme was originally established for the period 1 January 2000 to 31 December 2004, it has been extended until December 2006 by Council Decision 2005/12/EC of 20.12.2004 (Official Journal L 6 P.7 of 8.1.2005).

¹⁵ Official Journal L 332, 28.12.2000, p.1.

from the Mechanism.¹⁶ Natural, technological, radiological or environmental disasters, including accidental marine pollution,¹⁷ occurring *inside or outside* the European Union are envisaged here.

This Decision, in contrast with the 1999 one concerning the Civil Action Programme, has no financial nature. Rather, it sets up a cooperation Mechanism which is intended to enhance preparedness, faster mobilisation of civil protection response, and improved coordination of civil protection assistance interventions of participating Member States. Mobilised civil protection response seeks to ensure better protection, primarily of people but also of the environment and property, including cultural heritage.

Today, the Mechanism coordinates 30 European countries' assistance to disaster-stricken countries, inside or outside the EU. The 30 participating states are the EU-25, Bulgaria, Romania, Liechtenstein, Norway and Iceland. Since its origin, it has provided assistance to a broad range of disasters including, the 2003 and 2004 forest fires in France and Portugal, the 2004 explosion in Asuncion, the December 2004 tsunami, 2005 Hurricane Katrina and South Asia earthquake, and flood assistance to Algeria, the Czech Republic, Slovakia, Hungary, Bulgaria and Romania in 2006.

The institutional instrument which has been set up by the Community Civil Protection Mechanism is the MIC or Monitoring and Information Centre, based in the European Commission in Brussels. It is supported by the CECIS or Common Emergency Communication and Information System, an IT application linking the MIC with participating States.¹⁸ In contrast to ECHO, the MIC is not a donor or funding body. It serves the purpose of facilitating the 30 States participating in the Mechanism to assist each other in the event of an emergency. In fact, to be functional, the MIC relies on the assets of its Participating States, such as search and rescue equipment, emergency health services, temporary shelter and sanitation equipment. The MIC is accessible 24 hours a day and essentially operates as a clearing house. Its day-to-day activities include regularly updating the information provided by the participating States on their intervention teams and experts which can be dispatched or called upon to serve on the site of an emergency. It equally pools information provided by participating States on medical resources and stocks which might be available for intervention in the event of a major emergency. This information is compiled in databases and made available through the CECIS. Communication and sharing of information between the MIC and the national civil protection contact points are enabled through the CECIS.

Part 3 will now analyse the IDRL-relevant aspects enshrined in both EC frameworks relating to humanitarian aid (3.1) and civil protection assistance (3.2.).

¹⁶ Council Decision 2001/792/EC, establishing a Community Mechanism to facilitate reinforced cooperation in civil protection assistance interventions of 23 October 2001, Euratom, Official Journal L 297/7 of 15.11.2001. As acknowledged in its Preamble, this Decision further builds first, on the non-binding resolution of the Council and of the representatives of the Governments of the Member States meeting with the Council of 8 July 1991 on improving mutual aid between Member States in the event of natural or technological disasters. Official Journal C 198, 27.7.1991, p.1. Secondly, it further builds on the UN Economic Commission for Europe Convention on the Transboundary Effects of Industrial Accidents containing provisions on matters such as prevention, emergency preparedness, public information and participation, industrial accident notification systems, response and mutual assistance, which was approved by the Community by Council Decision 98/685/EC and entered into force on 19 April 2000.

¹⁷ This Council Decision covers actions against marine pollution both under the title of civil protection in the narrower sense as well as actions with humanitarian aid character. In cases of civil protection properly speaking, the EC is free to act according to the Decision in question or according to Decision N° 2850/2000/EC of the European Parliament and the Council.

¹⁸ Established by article 4 of Commission Decision of 29 December 2003 laying down the rules for the implementation of Council Decision 2001/792/EC, 2004/277/EC, Euratom, Official Journal L87/20 v. 25.3.2004).

3. ANALYSIS OF THE REGULATORY FRAMEWORK OF EU DISASTER RESPONSE

3.1. The EU humanitarian aid regulatory framework

Council Regulation (EC) No 1257/96 concerning humanitarian aid (hereafter “1996 Council Regulation concerning humanitarian aid”) sets out a regulatory framework that defines the objectives and general principles of humanitarian aid, as well as the procedures for the implementation of humanitarian aid and humanitarian operations (3.1.1.). From an IDRL perspective, it is particularly relevant in the areas of: access to the disaster-affected victims (3.1.1.1), regulation of humanitarian aid operations implemented by ECHO partners through the setting out of general principles (3.1.1.2), and coordination seeking to enhance the effectiveness of humanitarian aid operations (3.1.1.3).

ECHO has developed Framework Partnerships Agreement (FPAs) with its different types of partners implementing EC funded humanitarian aid (3.1.2.1.). Two kinds of FPAs exist: one for international organisations and one for NGOs. The FPA with the UN System is based on the FPA for international organisations. It has been slightly amended to fit in within the overall Financial Administrative Framework Agreement (FAFA), which concerns all areas of collaboration between the Commission and the UN, and as such widely exceeds the area of disaster response.¹⁹ Three FPAs have been set up with the Red Cross/Red Crescent family: two FPAs for international organisations respectively with the ICRC and IFRC, and an FPA for NGOs with Red Cross/Red Crescent National Societies.

Framework Partnership Agreements reiterate and further refine the general principles contained in the 1996 Regulation concerning humanitarian aid, while at the same time spelling out new fundamental ones (3.1.2.2). The Framework Partnership Agreement with NGOs sets out a detailed partner selection procedure with a view to engaging in a long-term quality co-operation relationship with ECHO (3.1.2.3.).

3.1.1. Council Regulation (EC) No 1257/96 of 20 June 1996

3.1.1.1. Access to disaster-affected victims

In its preamble, the 1996 Council Regulation concerning humanitarian aid affirms the right of people in distress, victims of natural disasters, wars and outbreaks of fighting, *to international humanitarian assistance where their own authorities prove unable to provide effective relief.*²⁰ Article 2 (b) of the Regulation spells out as one of the principle objectives of humanitarian aid operations, *"to provide the necessary assistance and relief to people affected by longer-lasting crises arising, in particular, from outbreaks of fighting or wars, ..., especially where their own governments prove unable to help or there is a vacuum of power ."*

¹⁹ The agreement sets out a framework for the UN and the Commission to enhance their cooperation including programmatic partnership. It pertains to UN actions (and proposals) for which EC financing is provided. The FAFA provides that financial transactions and statements are subject to auditing procedures of the UN, with a possibility for the Commission to carry out checks.

²⁰ This principle is reiterated in the Preamble of Framework Partnership Agreements with IO and NGOs; 3.1.2.2..

According to the Preamble, humanitarian assistance equally encompasses action aimed at facilitating or obtaining freedom of access to victims and the free flow of such assistance. Ensuring that aid is *accessible* to those for whom it is intended, by all logistical means available, and by protecting humanitarian goods and personnel, is also spelled out as a specific objective of humanitarian aid (article 2 (c)).

3.1.1.2. Regulation of humanitarian aid operations through setting out general principles

The 1996 Council Regulation on humanitarian aid spells out general principles with which ECHO, in its allocation of funding, as well as its implementing partners in their humanitarian aid operations in the field must comply.

The principle of non-discrimination, according to which humanitarian assistance is offered to victims without discrimination on the grounds of race, religion, sex, age, nationality or political affiliation, is affirmed in its Preamble and incorporated in article one's definition of humanitarian aid.²¹ This provision further stipulates that *vulnerable people, especially those in developing countries, shall receive priority*.

A second general principle affirmed throughout the Regulation is that of impartiality. With regard to financial aid allocating decisions taken by ECHO the preamble spells out that these must be taken impartially and solely according to the victims' needs and interests. There are hence no criteria or conditions for the distribution of aid to people, which is non-refundable.²² The impartiality principle is equally to be observed by implementing partners delivering EC funded aid in the field. As such, impartiality in the implementation of humanitarian assistance is highlighted as an explicit criterion determining the suitability of NGOs for Community funding as will be seen below.

A third principle indirectly reflected in the Council Regulation is the need to provide a link between emergency relief and development, through rehabilitation and reconstruction operations.²³ Carrying out short-term rehabilitation and reconstruction work, especially on infrastructure and equipment with a view to facilitating the arrival of relief, preventing the impact of the crisis from worsening and *starting to help those affected regain a minimum level of self-sufficiency, taking long-term development objectives into account where possible*, is enshrined as another objective of humanitarian aid (article 2 (d)). In this context, it is essential to *work in close association with local structures*. The ability and readiness of NGOs to work with basic communities in an affected third country is furthermore another explicit criterion determining their suitability for Community funding.

Finally, EU humanitarian aid is committed to contributing to the overall effectiveness of international aid. In this context, the need for internal and external coordination is underlined, as will be discussed under 3.1.1.3.

²¹ See introduction, 1.1.

²² <http://europa.eu.int/scadplus/leg/en/lvb/r10000.htm>

²³ A specific Council Regulation (EC) No 2258/96 of 22 November 1996 on rehabilitation and reconstruction operations in developing countries was adopted underlining the third principle. Official Journal L 306, 28/11/1996 P. 1-4. It is based on the Communication of the Commission to the Council and European Parliament on linking relief, rehabilitation and development of 1996, COM (96)0153 C4-0265/96 (Official Journal C 085, 17/03/1997 P.0181). This Council Regulation specifies that the Community shall carry out rehabilitation and reconstruction operations if developing countries have suffered serious damage following war, civil disorder or natural disaster, provided these are "of limited duration" and "launched as quickly as possible". Rehabilitation and reconstruction operations "must progressively take over from humanitarian action and pave the way for the resumption of medium-term and long-term development aid." The main emphasis of this Regulation lies on relief work subsequent to the first emergency and on relief work after an armed conflict.

3.1.1.3. Coordination commitments and obligations

The need for coordination of EC humanitarian aid is threefold. First within the EU, humanitarian aid to disasters is carried out both at the Member States' level and within the framework set up by the European Commission through ECHO. In order to guarantee and enhance the effectiveness and consistence of Community and national humanitarian aid systems, Article 10 of the Council Regulation asks the Commission to take any measure necessary to promote close coordination between its own activities and those of the Member States, both at decision-making level and on the ground, and in particular, to operate a system for exchange of information.

Secondly, coordination is needed between the EC humanitarian aid financed operations and the domestic response efforts undertaken by a disaster-affected country. In this context, the Preamble underlines the necessity for the Community to endeavour to cooperate and coordinate its action with that of the receiving third country.

Finally, the need for coordination between international actors responding to a disaster is highlighted. As such, article 10 of the Council Regulation spells out the obligation of the Commission to ensure that humanitarian operations financed by the Community are coordinated and consistent with those of international organisations and agencies, in particular those which form part of the UN system.

3.1.2. Framework Partnership Agreements with International organisations and Humanitarian organisations

3.1.2.1. Objectives and content of Framework Partnership Agreements

As seen above, ECHO is no longer operational in implementing the humanitarian aid decisions it takes in the field. Rather, it acts as a major donor for humanitarian assistance to disasters and relies on implementing partners, such as over 200 NGOs, the UN and the Red Cross/Red Crescent family. Hence, Framework Partnership Agreements, to be concluded by ECHO and the implementing partner, constitute an essential basis of its work.

FPAs draw the legal, administrative and strategic framework which should enable its partners to deliver aid in a relevant, effective and rapid manner. They clarify the relationship between the Commission and its partners, and establish the latter's rights and obligations when executing humanitarian aid operations. Ownership of the humanitarian aid operation is vested in the partner, which is the beneficiary of the Community financial contribution. FPAs have their legal basis in the 1996 Council Regulation concerning humanitarian aid, the provisions of which are to be complied with.

FPAs express ECHO's commitment to transparency and accountability for the use of Community funds, not only for its own management but also for the results of the operations funded. However, FPAs with international organisations (hereafter "IO") differ from those with

NGOs.²⁴ Major differences relate to the substantive provisions of each FPA, the settlement of disputes,²⁵ and the fact that international organisations generally follow their own procurement procedures and can present proposals under Multi-Donor Agreement.

The substantive provisions in the FPA with international organisations²⁶ pertain to monitoring and evaluation of programmes and projects funded by ECHO; (narrative and financial) reporting to the Commission; eligible direct and indirect costs for Community financing;²⁷ contracting; procurement of goods, works and services; payment schedules; bank interest and other financial issues; visibility of the EU for its funding;²⁸ settlement of disputes and entry into force and termination of the FPA.

The substantive provisions in the FPA with NGOs, in contrast, explicitly formulate eligibility and selection criteria for partnership. They equally explicitly set out general principles with which humanitarian aid distribution and operations are to comply, which in the FPA with international organisations are only mentioned in the Preamble. The FPA with NGOs furthermore contain rules on evaluation, audit and settlement of disputes.

Both FPAs contain 5 annexes. Operation proposals and the related estimated budgets must be presented on the standard forms annexed to the FPA (Annexes I and II). Once approved by the Commission, they must be confirmed by means of a financial agreement drafted by the Commission and signed by both Parties. It is called "grant agreement" for NGOs and "contribution agreement" for IOs. This financial agreement follows the standard agreement annexed to the FPA (Annex III). Annex IV of the FPA establishes the general conditions that will apply to the financial agreement for implementing humanitarian operations. It spells out, among others, obligations regarding information, financial and narrative reports, liability,²⁹ visibility of ECHO, ownership of results and assets,³⁰ auditing,³¹ evaluation the operation³² and contracting and procurement.³³ It also contains financial provisions detailing which costs are eligible for

²⁴ The latter remains valid until the end of December 2007 and may be carried over tacitly for a further maximum period of another year. It may be terminated by the Commission with 60 days notice, by the Humanitarian Organisation with 30 days notice (Article 25).

²⁵ While disputes with International Organisations are to be settled by arbitration in accordance with the Permanent Court of Arbitration Optional Rules for Arbitration involving international Organisations, disputes with humanitarian organisations are to be settled in accordance with Belgian law by the Court of First Instance of the European Communities and by the Court of Justice of the European Communities.

²⁶ These provisions are found in Annex IV of the FPA with NGOs, which establishes the general conditions that will apply to the grant agreement for implementing humanitarian operations.

²⁷ The former include for instance cost of staff assigned to the Action, travel and subsistence costs, purchase costs for equipment and goods and services directly attributable to the Action (transport, storage and distributing, rent of equipment, etc.), costs of consumables and supplies. Eligible indirect costs are a fixed percentage of direct eligible costs, not exceeding 7%.

²⁸ For instance by displaying the European logo.

²⁹ The partner shall have sole responsibility for complying with any legal obligations incumbent to it and shall assume sole liability towards third parties, including liability for damage or injury of any kind sustained by them while the operation is being carried out.

³⁰ Equipment, vehicles and supplies purchased in the course of an Operation co-financed by the European Community shall be transferred to local authorities or partners of the Humanitarian Organisation (excluding local contractors) or to the final recipients of the Operation by the end of the implementing period of the agreement (article 7).

³¹ The Commission may have an audit of the use made of the grant carried out either directly by its own staff or by any other qualified outside body of its choice. Where appropriate, the audit findings may lead to recovery decisions of the Commission.

³² The Commission shall undertake evaluations of Operations financed by the Community (article 8). The partner shall equally undertake evaluations *ex post* and *ex ante* and inform ECHO of their results. Representatives of the European Commission shall be invited to participate in the main monitoring and in the evaluation missions relating to the performance of an Operation undertaken by the partner.

³³ Annex V to the FPA which contains the rules and procedures that apply to all contracts awarded by ECHO's partners for building, supplies, work ad services in the context of humanitarian operations. Among others, they underline that child labour is "not to be exploited" and that 'basic social rights and working conditions' are to be respected by candidates and tenders" in article 1.3.3. Procurement contracts shall follow a pre-set form. Participation

funding³⁴ and how payments are made. Grant and contribution agreements must comply with the general principles contained in FPAs.

3.1.2.2. Fundamental principles of humanitarian aid operations contained in Framework Partnership Agreements³⁵

The principles enshrined in FPAs form the basis of a Code of Good Donorship which ECHO promotes and respects *vis-à-vis* its implementing partners and beneficiaries.

The current FPAs' preamble reiterates the right of victims of natural disasters to international humanitarian assistance when their own authorities prove unable to provide effective relief. ECHO considers as its first duty towards its major stakeholders, the victims, to ensure that aid is delivered in the most *relevant*, effective and rapid manner. Relevance of aid is a new condition, not found in the 1996 Council Regulation concerning humanitarian aid.

Secondly, action of signatory organisations must comply with the four fundamental humanitarian principles of *humanity, impartiality, neutrality³⁶ and independence*. It is noteworthy that the latter three were not previously spelled out in the 1996 Council Regulation concerning humanitarian aid. According to article 17 of the FPA with NGOs, *humanity* means focusing on saving and preserving human lives and relieving suffering. *Impartiality* means that the implementation of operations solely respond to identified needs, without discrimination of any kind between or within affected populations. *Independence* implies the autonomy of the humanitarian objectives with regard to political, economic, military or other objectives that motivate actors in the regions where a humanitarian aid operation is carried out.

Article 17 on essential procedures for the implementation of humanitarian operations, highlights more principles.³⁷ The first pertains to the *need for humanitarian aid to be of quality*, which "implies a clear focus on the beneficiaries".³⁸ The quality principle hence leads to a second, also explicitly spelled out principle, that of *participation of beneficiaries in the formulation, implementation and evaluation of humanitarian aid operations*. A third principle, *albeit* formulated indirectly, pertains to the need for humanitarian aid to be culturally adequate. Article 17 c) reads, "signatory organisations will endeavour to base humanitarian aid operations on local capacities, *respecting the culture, the structure and the customs of the communities* and of the countries..."³⁹ This is to be achieved in respect of a fourth principle, jointly spelled out in article 17 c): *observance of fundamental rights of the person*. The principle of necessary establishment of a linkage between relief, rehabilitation and development, already contained in the 1996 Council Regulation is restated. Finally, the need to *base humanitarian aid operations*

in tendering procedures shall be open to all persons coming within the scope of the Treaties and (...) to all such natural and legal persons who are nationals of the beneficiary third countries or any other third country expressly mentioned. All supplies purchased under a supply contract must originate in the Community or in an eligible country, *ie* the beneficiary third country as defined under Article 2, Annex V Rules and Procedures. Finally, the Commission requires that contracting authorities, tenders and candidates observe the highest ethical standard during the procuring and execution of contracts (1.3.2.).

³⁴ Contributions in kind made by the Humanitarian Organisation may not be considered as co-financing nor as eligible costs.

³⁵ Spelled out explicitly in articles 16 and 17 of the FPA with NGOs.

³⁶ Neutrality is armed conflict related, it means that humanitarian operations must not favour any side in a conflict wherever they are carried out.

³⁷ Deduced from an analysis of the article by the author.

³⁸ Article 17 further comments, "*Priority shall be given to analysis of the beneficiaries' situation given the circumstances and context of intervention, including assessments of the different needs, capacities and roles that might exist for men and women within the given situation and its cultural context.*"

³⁹ Emphasis added.

on local capacities and to co-operate to the strengthening of capacities of communities affected in order to prevent, prepare for, reduce and respond to future humanitarian crises, is enshrined.

3.1.2.3. Formal selection criteria for the selection of Partner NGOs and for awarding grants

The FPA with NGOs aims at establishing a long-term co-operation relationship between ECHO and the NGO signatories of the FPA. The signature of the FPA is based on a selection procedure and on a commitment to make the humanitarian aid financed by the Community more effective.⁴⁰

The eligibility criteria listed in the FPA are identical with those enshrined in article 7.1. of the 1996 Regulation on humanitarian aid: an organisation must be a non-profit-making autonomous organisation with its headquarters in the EEA.⁴¹ The eight explicitly mentioned criteria determining suitability are equally identical with article 7.2. of the 1996 Council Regulation. As such, among others, account is taken of: the NGO's readiness to *take part in the coordination system* set up for a humanitarian operation (e); its ability and readiness to *work with humanitarian agencies and the basic communities in the third countries concerned* (f) and its *impartiality* in the implementation of humanitarian aid (g).⁴²

After verification of their compliance with established eligibility and suitability criteria, the signature of the FPA is open to all humanitarian NGOs which adhere to the values, principles and objectives enshrined in the FPA. In addition to the fundamental principles discussed under 3.1.2.2., the FPA with NGOs emphasises that transparency and accountability towards the stakeholders is essential in order to engage in quality partnerships with NGOs. To this end, and as a complement to legal and statutory provisions, *partners must support and adhere to voluntary codes of good practices or charters*. To the same end, partners must provide *fair working conditions to humanitarian workers*, including volunteers.⁴³ Signatory NGOs must equally be committed to *promoting the understanding of humanitarian values* and must picture victims as dignified human beings in information, visibility and advertising activities.

Applicant NGOs undergo a pre-screening procedure, the Commission verifies information with the national authorities of the organisation's country of registration. Compliance by signatory NGOs with the selection criteria is assessed annually. In case of non-compliance, the FPA is terminated.

⁴⁰ The Commission will support capacity building initiatives and other activities that aim to improve the quality of its partners (Article 5.1. b) Implementation of Partnership).

⁴¹ Article 7.1. stipulates two conditions : (a) be non-profit-making autonomous organizations in a Member State of the Community under the laws in force in that Member State; (b) have their main headquarters in a Member State of the Community or in the third countries in receipt of Community aid. These headquarters must be the effective decision-making centre for all operations financed under this Regulation. Exceptionally, the headquarters may be in a third donor country.

⁴² The other criteria being: (a) *its administrative and financial management capacities;*

(b) *its technical and logistical capacity in relation to the planned operation;*

(c) *its experience in the field of humanitarian aid;*

(d) the results of previous operations carried out by the organization concerned, and in particular those financed by the Community;

(h) where appropriate, its previous experience in the third country involved in the humanitarian operation concerned.

⁴³ Article 5.1. c) adds, "*with special attention to their safety in the field and to the extent possible, to their professional development*". The promotion of a learning culture based on the evaluation of humanitarian operations and in sharing and disseminating lessons learned and best practices, is also an essential commitment needed for engaging in quality partnerships (article 5.1. d)).

3.2. The EU civil protection regulatory framework: Council Decision of 23 October 2001, 2001/792/EC, Euratom

From an IDRL perspective, the EU civil protection regulatory framework currently set out by Council Decision of 23 October 2001, 2001/792/EC, Euratom (hereafter “2001 Council Decision establishing the civil protection Mechanism”) is particularly interesting with regard to its detailed provisions on respective obligations of an affected Member State, the States Participating in the Mechanism, and the Commission (3.2.1.), requests for civil protection assistance (3.2.2.) and coordination of civil protection assistance under the Mechanism (3.2.3.).⁴⁴

Facilitation of civil protection interventions is covered in the EU civil protection regulatory framework to a significantly lesser extent. In fact, explicit mention of it is only made in the Commission Decision of 29 December 2003 laying down the rules for the implementation of the 2001 Council Decision establishing the civil protection Mechanism.⁴⁵ It stipulates, in article 29, para. 11 that “(T)he requesting State shall facilitate border crossings for the interventions and ensure logistical support”.

Finally, of equal importance to IDRL, the Commission Decision of 29 December 2003 spells out how costs of assistance provided by the Participating States are to be born (3.2.4.), and sets procedures pertaining to the compensation for incurred damage (3.2.5.).

The 2001 Council Decision establishing the civil protection Mechanism does not affect the reciprocal rights and obligations of the Member States under bilateral or multilateral treaties, which relate to the matters covered.

3.2.1. Respective obligations of an affected Member State, the States participating in the Mechanism and the Commission

With regard to major emergencies occurring or likely to occur *within* the Community, an *obligation to notify* without delay other Member States which may be affected by the emergency is incumbent upon an affected Member State. If a possible request for assistance through the MIC can be anticipated, the affected Member State must equally notify the Commission through the CECIS.

States participating in the Mechanism must take *preparatory measures* and enhance their capability for effective response in the event of a major emergency. This is to be achieved, first, by identifying in advance available or potential intervention teams ready to be dispatched by them within 12 hours following a request for assistance. Secondly, a participating state is to select experts which can join assessment and/or coordination teams sent out by the Community. Third, it must provide information on available medical resources. Participating States must equally consider the possibility of providing other support, such as specialised personnel and equipment to deal with a particular emergency, and of calling upon resources which may be provided by NGOs and other relevant entities.

The Commission has, among others, the obligation to establish the capacity to mobilise and dispatch small teams of experts responsible for the assessment of the emergency situation, and

⁴⁴ With a view to improving coordination of civil protection assistance intervention through establishing a *common language for the coordination* and ensuring enhanced compatibility and complementarity between the Participating States' intervention teams, the Commission sets up a training programme.

⁴⁵ 2004/277/EC, Euratom, Official Journal of the European Union, L 87/20, 25.3.2004.

facilitating, where necessary, coordination of assistance operations on site. It is also responsible for setting up a training and lessons learned programme, as well as taking measures to facilitate transport of resources for assistance intervention. Notwithstanding, the operability of the system is dependent on the participating Member States sending their intervention teams and experts.

3.2.2. Requests for and decisions to engage in civil protection assistance

Requests for assistance should be as specific as possible. They should provide relevant information concerning the disaster and in particular, the location of it, specific needs and the support requested.⁴⁶ If assistance is required through the Community Mechanism, a formal request must be addressed to the MIC.

Where an emergency occurs *within* the Community, the affected Member State can choose to request assistance *either directly* from other Member States, *or* from the other Member States *through the MIC*. When assistance is requested from the Mechanism, the MIC will notify this request to the Member States' national contact points, which then get back to the MIC with the information whether they are or not in a position to render the assistance required. Where assistance is requested directly, the solicited Member State replies directly to the requesting country.⁴⁷ In both cases, the scope and terms of potential assistance should be indicated.

When assistance is requested from the Mechanism, the selection and dispatch procedures differ according to whether intervention teams, on the one side, or technical, assessment and/or coordination experts,⁴⁸ on the other side, are concerned. With regard to the former, the requesting State, after being informed by the MIC of possible assistance from Member States, selects the desired intervention teams and means. It then informs the MIC of its decision, which notifies in its turn the national contact points. Upon this notification, the selected participating States dispatch their intervention teams and assets, keeping the MIC regularly informed. With regard to requests for experts, the MIC contacts the participating States to see whether they are willing and able to provide individual experts. The MIC makes the selection itself, after consultation with the requesting state. It then informs the concerned States of the selection, contacts the experts and dispatches them. As such, in contrast with intervention teams which remain under the authority of the sending State, experts are sent out under a Community contract and benefit from legal status and facilities enjoyed by the Community in the receiving State.

Where a major emergency occurs *in a third country*, a request for assistance is required, as clearly spelled out in article 6 of Council Decision 2001/792/EC.⁴⁹ In case of potential response by the Mechanism outside the community, any decision is to be taken in close consultation with the Member State holding the Presidency of the Council of the European Union. The same selection and dispatch procedure applies as for requests of assistance within the Community. Civil protection assistance interventions conducted within the framework of the Mechanism can either be conducted as an autonomous assistance intervention or as a contribution to an intervention led by an IO.

⁴⁶ Article 29, para. 3 of Commission Decision of 29 December 2003 laying down rules for the implementation of Council Decision 2001/792/EC, Euratom.

⁴⁷ The Commission proposal for a recast of the current Council Decision (Part 4), will in this case, if adopted, lay a new obligation upon a requested Member State. After directly informing a requesting Member State of its ability to render the assistance required, it will have to inform the MIC accordingly (article 8).

⁴⁸ Their respective tasks are defined in Article 16 of the Commission Decision of 29 December 2003.

⁴⁹ Notwithstanding, the Commission decision of 2003 foresees the possibility for the Commission, through the MIC, to inform the third country of potential Community assistance if needed.

3.2.3. Coordination and direction of civil protection assistance under the Mechanism

Where an emergency occurs *within the Community*, the affected Member State which has requested assistance from the Mechanism, is responsible for directing and co-ordinating the contributions received through the Mechanism.⁵⁰ Its authorities lay down guidelines and can, if necessary, define the limits of the tasks entrusted to intervention teams. Details of their execution however are to be left to the person in charge appointed by the Member State rendering assistance. Article 5.4 of the Council Decision establishing the civil protection Mechanism, provides a possibility for coordination by the participating Member States. In fact, the affected Member State may ask the Member States' intervention teams to direct the intervention on its behalf. Nevertheless, there is no transfer of coordination powers to the Commission. The assessment and/or coordination experts sent by the Commission *facilitate* coordination between the intervention teams.

In case of an emergency taking place *outside the Community*, the coordination of civil protection assistance interventions conducted within the framework of the Mechanism *is ensured by the Member state entrusted with the Presidency of the Council of the European Union*. The decision to select and dispatch assessment or coordination experts is taken in close consultation with the Presidency. Civil protection assistance operations outside the EU may either be conducted as an autonomous assistance intervention or as a contribution to an intervention led by an IO. In the latter case, close coordination is ensured with UN OCHA (Office for the Coordination of Humanitarian Affairs), which is mandated to ensure the overall coordination of international relief efforts.

3.2.4. Costs of assistance provided by the participating States

By virtue of article 35 of the Commission Decision of 29 December 2003 which lays down the rules for the implementation of the 2001 Council Decision establishing the civil protection Mechanism, *costs are to be born by the State requesting assistance unless agreed otherwise*. The Participating State providing assistance may also offer its assistance entirely or partially free of charge and waive all or part of the reimbursement of costs at any time. The requesting state has the obligation to house and feed the assisting teams, unless agreed otherwise.⁵¹ Costs for dispatching individual experts are born by the Commission.

3.2.5. Compensation for damage

Article 36 of the Commission Decision of 29 December 2003 states that the requesting State shall refrain from making any requests for compensation from participating States for damage caused to its property or service staff, unless it is proven to be the result of fraud or serious misconduct. In the event of damage suffered by third parties as the result of assistance interventions, the requesting State and the participating State providing assistance shall cooperate to facilitate compensation of such damage.

3.2.6. Specific assistance for isolated and outermost regions

⁵⁰ If necessary *and* appropriate, experts can liaise with the competent authorities of the requesting Member State.

⁵¹ Provision is nevertheless made that assisting teams shall be initially logistically independent and self-sufficient for a reasonable period.

The Preamble of the 2001 Council Decision establishing the civil protection Mechanism makes note of the particular needs for assistance of isolated and outermost regions as well as some other areas of the Community owing to their geography, terrain and social and economic circumstances, which have an adverse effect, hampering the deployment of assistance.

This statement in the Preamble was followed up by another legal instrument, albeit of non-binding character as a statement of intention, which is the Council Resolution 2003/C 24/03 on special civil protection assistance to outermost and isolated regions, to insular regions, to regions which are not easily accessible, and to sparsely populated regions, in the European Union. This Resolution calls for efforts at the level of the Community to ensure “that its citizens living in or visiting outermost, isolated, insular, remote or sparsely populated regions enjoy a level of safety similar to that existing in other areas of the Union”. This is to be achieved by joint projects geared at the identification of common risks, a more uniform approach to risk assessment and appropriate warning systems and land use planning, planning for emergencies, communications in emergency management, specialised intervention teams in Member States with outermost, isolated, insular, remote or sparsely populated areas, and campaigns on self-protection measures for visitors.

4. EMERGING TRENDS AND CONCLUDING REMARKS

4.1. Emerging trends

4.1.1. The Commission 2006 Proposal for a recast of the 2001 Council Decision establishing the civil protection Mechanism

In the aftermath of the tsunami, the EU conducted a lessons learned assessment of its tsunami operations. In this context, major recommendations proposed by the Commission pertained for instance to the need to reinforce EU civil protection capacity (especially in the fields of transport of civil protection assets), needs assessment and on the spot coordination. The EU response to the tsunami had also revealed sharp differences in the civil protection approaches between the Member States⁵² and the consequent need for a better concerted response from the EU. In light of this, the Commission presented on 26 January 2006 a Proposal for a Council Decision establishing a Community civil protection Mechanism.⁵³ The proposal, if adopted, would integrate existing EU legal instruments in the field of civil protection.⁵⁴ For it to become effective, the Council Decision will need to be supplemented by a Financial Instrument, currently also in the stage of a proposal for a Council Regulation.⁵⁵

The proposal has the aspiration of strengthening the existing civil protection Mechanism and to provide a legal basis for additional (autonomous) EU action in the area of civil protection

⁵² Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions. Improving the Community Civil Protection Mechanism, of 20.4.2005, on which the Commission’s Proposal to the Council is based, p. 8.

⁵³ The technique proposed is a recast of the Council Decision 2001/792/EC, Euratom currently in force, which would incorporate in a single text both the substantive amendments made to the 2001 Council Decision, as well as the unchanged provisions thereof.

⁵⁴ Discussed above, 2.2.2.

⁵⁵ Proposal for a Council Regulation establishing a Rapid Response and Preparedness Instrument for major emergencies (presented by the Commission) COM(2005) 113 final, 2005/0052 (CNS), SEC(2005) 349.

assistance.⁵⁶ It does however not yet go as far as creating a permanent European civil protection force, which would draw on Member States' civil protection teams, kept on standby at the European level to respond rapidly to emergencies. The Commission comments in its explanatory memorandum, "(A)lthough this option presents various advantages, in particular relating to speed, effectiveness, visibility and coordination, it is nevertheless considered to be unrealistic at this stage of the Mechanism's development because of the financial implications and the administrative and management challenges it entails."⁵⁷

The proposal first of all enhances the scope of emergencies to be covered, by including explicitly acts of terrorism (proposed article 1.2). Secondly, it enlarges the preparedness-related obligations incumbent upon Member States participating in the Mechanism, as well as the response-related tasks and autonomy of the Commission. As such, it proposes a trend to move from the voluntary system of mutual assistance characterizing the civil protection system today towards more Community led intervention. Some of the major proposed changes would create a capability of the Commission to 1) engage in logistical support, 2) mobilise additional assistance that is not otherwise available under the Mechanism, as well as 3) mobilise additional transport means when national transport is not available, insufficient or not able to deliver effectively. The latter, as observed in the EU tsunami response, can slow down or impede the provision of assistance by some Member States. It is qualified by the Commission in its Explanatory memorandum to the Proposal as the "single most important problem undermining the effectiveness of European civil protection assistance interventions".⁵⁸ Another proposed change pertains to the progressive development of a European rapid reaction capability. This is to be achieved for instance, through the constitution of a database containing information on Member States' availability of military means and the development of Member States' civil protection modules.⁵⁹ Finally, of particular IDRL relevance, a change in the coordination rules of EC civil protection intervention in third countries is submitted. First, the proposal distinguishes political from operational coordination. Secondly, with regard to political coordination, it foresees a possibility for the State holding EU presidency to request another Member State, or the Commission, to take responsibility in whole or in part for it. With regard to operational coordination at headquarters, the proposal would entrust the Commission with it, still in consultation with the EU presidency. On site, the Commission (again in consultation with the EU presidency), would be able to automatically dispatch needs assessment and coordination teams (rather than individual experts) to ensure operational coordination (rather than facilitating, as is currently the case).

4.1.2. The January 2006 Note of the EU presidency

A second attempt to move towards effective cooperation *within* the EU in case of emergency is the Note of the Presidency No 5228/06 of 13 January 2006. It proposes an integrated EU arrangement for crisis management with cross border effects, with a view to facilitating *on the*

⁵⁶ The Proposal builds upon the Commission's earlier communication COM (2005) 137 of 20.04.2005 and the Council's conclusions thereto of 18.7.2005.

⁵⁷ Explanatory memorandum, SEC(2006)113, p. 4.

⁵⁸ Explanatory memorandum, p. 7. It further explains, "*The reasons are many and varied. Not all civil protection authorities of the Member States own aerial transport means on which they can rely at all times. In some cases, no procedures exist to use national military means for the transport of civil protection assistance. Arranging commercial aircraft is often cumbersome and time-consuming. Member States may be competing for the same means. Moreover, the transport costs are in some cases disproportionate to the financial value of the assistance.*"

⁵⁹ These would be specific, predefined arrangements of Member States' civil protection resources, consisting of equipment, personnel or a combination thereof, which are fully interoperable, deployable at very short notice and equipped to either perform support functions or to meet priority needs arising from emergencies. Modules could be developed by one or several Member States working together. States are asked to work towards the development of these intervention modules (article 3.3)

spot co-operation of Member States and proposes concrete schemes of action in specific situations. By June 2006, the EU Presidency will draw up a manual setting out the *modus operandi* between Member States' emergency response structures and EU institutions. In addition, a survey of existing EU networks and instruments, in order to assist or help coordinate Member States' relief efforts, as well as a survey of existing bilateral and multilateral regional agreements and arrangements will be submitted.

4.1.3. The Barnier report

The report recently submitted by former French foreign minister and ex-commissioner Barnier, which is to be discussed at the EU leaders' top in June, contains significantly more radical proposals moving towards a permanent civil protection force, called "Europe Aid". Europe Aid in the eyes of Barnier would be a multinational rescue team able to react promptly to disasters. It would have a command centre in Brussels and a training centre. The professionals employed by Member States would be sent to disaster areas under both their own national flag and the EU's flag. The relief team would consist of around 5000 experts including fire-fighters, technicians and medics and could be launched by 2010. The project would be covered by an annual budget of up to 100 million euro. Secondly, the Barnier report contains a proposal to progressively integrate EU civil protection with humanitarian aid in third countries, starting with the nomination of a single commissioner in 2009.

Whereas the above-mentioned proposals will certainly spark off a lot of political debate and media attention, it is so far premature to draw any conclusions for the future of disaster response, in particular civil protection, within the EU. As a matter of fact, the way towards potential adoption for the proposed recast, and positive receipt of the Barnier report, is paved with lengthy negotiations between the Member States in the Council. It is therefore equally premature for the Commission to adopt a position today on the potential changes tomorrow.

4.2. Executive summary

The International Disaster Response Laws, Rules and Principles (IDRL) Programme looks at the international, regional and national regulatory frameworks pertaining to international response to non-armed conflict disasters, *ie* response provided by international actors such as, foreign Governments, UN and other international organisations, NGOs and the Red Cross/Red Crescent family. It focuses in particular on four areas: access, facilitation, coordination and regulation of international aid, as explained in the study's introduction.

The present study makes an IDRL analysis of the regional regulatory framework for disaster response that has been developed within two fields of activity of the European Union: humanitarian aid and civil protection.

Whereas separate regulatory frameworks have been set up within both fields of activity, a common tripartite agreement was nevertheless adopted in 2004 with UNOCHA.⁶⁰ Two important principles drawing the overall framework of disaster response are clearly spelled out in it. The first one pertains to the primary responsibility of the affected State to provide protection and assistance to its citizens in times of disasters, with the need for the international community to

⁶⁰ Cf. the Exchange of Letters concerning their cooperation in the framework of disaster response in case of simultaneous interventions in a country affected by a disaster. This exchange was formally approved by Commission Decision 2005/160/EC of 27 October 2004. See introduction of the paper.

be prepared and able to assist, when relief needs are beyond the response capacity of the domestic authorities. The second one proclaims the right of victims of natural disasters to international humanitarian assistance where their own authorities prove unable to provide effective relief.

Within the area of *humanitarian aid to third countries*, the EU does not directly deliver it but actually funds humanitarian aid programmes, projects and operations implemented by its partners. Today, the EU is the largest provider of international aid, accounting for 55% of the total aid, 30% of which comes from ECHO (now the Directorate General for Humanitarian Aid), the body set up to manage Community humanitarian aid, and 25% directly from the EU Member States. Being a major donor, the European Commission has been in a position to regulate the delivery of Community funded aid by its implementing partners, through the development of what can be considered a "*code of good donorship*" and the adoption of selection criteria for NGO partnerships.

The main legal instruments for humanitarian aid constitute the Council Regulation (EC) No 1257/96 of 20 June 1996 concerning humanitarian aid and the Framework Partnerships Agreements (FPAs) developed with international organisations and NGOs. Through FPAs, which are based in the Council Regulation, ECHO engages in long-term quality co-operation with its aid implementing partners. FPAs express ECHO's commitment to transparency and accountability for the use of Community funds, not only for its own management, but also for the results of the operations funded.

The Council Regulation concerning humanitarian aid spells out the fundamental principles with which all humanitarian aid operations must comply. These are further refined in the FPAs. The principles enshrined are: 1) the principle of non-discrimination; 2) the principles of impartiality, independence, neutrality and humanity; the need for humanitarian aid: 3) to be of quality, 4) to involve participation of beneficiaries in the formulation, implementation and evaluation of humanitarian aid operations, 5) to respect the culture, structure and customs of communities, 6) to observe the fundamental rights of beneficiaries, 7) to be based on local capacities, and finally 8) to establish a linkage between relief, rehabilitation and development. Compliance with these principles is monitored. In addition to the above-mentioned fundamental principles, the FPA with NGOs emphasises that transparency and accountability towards the beneficiaries is essential in order to engage in quality partnerships with ECHO. To this end, NGO partners must support and adhere to voluntary codes of good practices or charters, provide fair working conditions to humanitarian workers (including volunteers), be committed to *promoting the understanding of humanitarian values*, and picture victims as dignified human beings in information, visibility and advertising activities.

The humanitarian aid framework also spells out clear commitments and obligations in the field of coordination at a threefold level. First, the Council Regulation asks the Commission to take any measures necessary to promote close coordination between its own activities and those of the Member States, both at the decision-making level and on the ground. Secondly, the Commission must endeavour to cooperate and coordinate its action with that of the receiving third country.⁶¹ Third, the Commission has the obligation to ensure that its financed operations are coordinated and consistent with those of international organisations and operations, in particular with those which form part of the UN. The willingness of potential partner NGOs to take part in the coordination system set up for a humanitarian operation is furthermore a criterion for assessing the suitability of eligible NGOs to become a partner.

⁶¹ Preamble of 1996 Council Regulation, cf. 3.1.1.3 of the paper.

Within the context of *civil protection*, the most important legal instrument is the Council Decision 2001/792/EC to facilitate reinforced cooperation between Member States in the event of a major emergency.

In contrast with humanitarian aid, civil protection activities take place both *within and outside the EU territory* and are delivered by the Member States' intervention teams. As such, they are not supported by a Community financial instrument. Within this context, the Community has established a civil protection Mechanism which facilitates exchange of information, communication and coordination between the States participating in the Mechanism. The adopted facilitating instrument is the MIC or the Monitoring and Information Centre.

The regulatory framework for civil protection activities sets out the respective obligations of the affected Member State, the States participating in the Mechanism and the Commission. Of particular IDRL relevance are the detailed provisions concerning requests for civil protection assistance from the Mechanism. First, within the Community, an affected Member State can request assistance either directly from other Member States or indirectly from them through the MIC. As such, the Community's civil protection Mechanism can only be activated through a formal request to the MIC. Requests should be as specific as possible and, for instance, provide information on the location of the disaster, the specific needs of the affected state and the support requested.

The civil protection framework is also important because it enshrines specific rules on coordination. Together with the direction of civil protection contributions received through the Mechanism, coordination is entrusted to the affected Member State when a disaster occurs within the EU territory, and to the Member State entrusted with the presidency of the Council when the Mechanism responds to a disaster outside the EU. Civil protection assistance operations outside the EU may either be conducted as an autonomous assistance intervention or as a contribution to an intervention led by an international organisation. In the latter case, close coordination is ensured with UN OCHA.⁶²

Finally, from an IDRL perspective, the regulatory framework on the Community's civil protection activities contains interesting provisions on facilitation of the intervention by the Mechanism within the EU, costs of assistance provided by states participating in the Mechanism, and compensation for damage.

At present, proposals are being submitted to strengthen the civil protection Mechanism and to supplement it with a financial instrument,⁶³ as well as to integrate humanitarian aid and civil protection in an ulterior stage.⁶⁴ Whereas these proposals will certainly spark off a lot of political debate and media attention, it is so far too early to draw any conclusions for the future of disaster response framework established by the EU. As a matter of fact, the way towards potential adoption for the proposed recast, and positive receipt of the Barnier report, is paved with lengthy negotiations between the Member States in the Council. It is therefore equally premature for the Commission to adopt a position today on the potential changes tomorrow.

⁶² Cf. the tripartite agreement between the Commission, covering both humanitarian aid and civil protection and UNOCHA providing for standard operating procedures for ensuring coordination of their activities when intervening simultaneously outside the EU territory.

⁶³ Cf. the recast proposal of Council Decision 2001/792/EC establishing a community Mechanism to facilitate reinforced cooperation in civil protection assistance interventions (4.1. of the paper).

⁶⁴ Cf. the Barnier study with its recommendations (4.1. *in fine* of the paper).

Annex. Terms and definitions

In the study, the term “*European Union (EU)*” is used whenever reference is made to the totality of the Member States, their territories and their institutions, while the term “*European Community (EC)*” shall be used whenever the provisions of the *Treaty establishing the European Community* as amended by the Treaty of Nice constitute the basis of action.⁶⁵

The decision making bodies of the EC that are competent to take or initiate actions in the field of disaster relief are

- the Parliament (Art. 189-201), consisting of the representatives of the peoples of the Member States, elected by direct universal suffrage (Art. 190),
- the Council (Art. 202-210), consisting of representatives of the Member States (Art. 203) and
- the Commission (Art. 211-219), with Members independent in the performance of their duties (Art. 213 par.2) and nominated by the Council (Art. 214 par.2).

Decision of the abovementioned bodies can be

- regulations; a regulation shall have general application and be binding in its entirety and directly applicable in all Member States;
- directives; a directive shall be binding, as to the result to be achieved, upon each member State to which it is addressed, but shall leave to the national authorities the choice of form and methods;
- decisions; a decision shall be binding in its entirety upon those to whom it is addressed;
- recommendations and opinions issued by the mentioned bodies; they shall have no binding force (Art. 249).
- Resolutions by the abovementioned bodies may be an instrument to promote and fulfil the policies of the EU and its Member States, although they are not mentioned in Art. 249 and therefore not binding; they thus have the same character as recommendations and opinions.

In the field of activities to be discussed in the paper, only regulations and decisions are of practical relevance; relevant directives have not been identified.

⁶⁵ Consolidated version of the Treaty, Official Journal C 325, 24 December 2002