

**The EU Civil Protection Mechanism:
instrument of response in the event of a disaster**

*El Mecanismo europeo de Protección Civil:
instrumento de reacción en caso de desastre*

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Recepción: Septiembre 2016
Aceptación: Noviembre 2016

ABSTRACT

At present there is no universal and comprehensive legally binding set of regulations to properly govern the international response to large-scale disasters. In particular, the international legal framework does not clarify neither whether the affected State has an obligation to seek for assistance when the scale of the disaster clearly extends beyond its capacities nor whether third States are obliged to offer and provide assistance beyond that provided by NGOs and international organizations. Against this background, it is noteworthy the increasing interest of the Union in disaster management issues and in particular in civil protection matters. Purpose of the present contribution is to investigate how the functioning of the new EU Civil Protection Mechanism and its interaction with the content of Article 222 TFEU – that introduces an obligation on Member States to assist each other in case of a disaster – could influence the action of EU Member States in the event of serious events.

Keywords: Disaster; assistance; civil protection; solidarity; European Union.

JEL classification: K3; K32; K33.

RESUMEN

Actualmente no existe un conjunto universal de reglamentos jurídicamente vinculantes que adecuadamente regulen la respuesta internacional a los desastres en gran escala. Sobre todo, el marco jurídico internacional no aclara ni si el Estado afectado tiene la obligación de pedir asistencia cuando la magnitud de la catástrofe supera sus capacidades de respuesta, ni si terceros Estados están obligados a ofrecer y prestar asistencia previa solicitud. En este contexto, cabe señalar el creciente interés de la Unión Europea en materia de gestión de desastres y en asuntos de protección civil. El presente trabajo propone un análisis del funcionamiento del nuevo Mecanismo europeo de Protección Civil y su interacción con el contenido del Artículo 222 TFUE que introduce una obligación de los Estados partes de ayudarse mutuamente en caso de grave catástrofe. El objetivo final será la evaluación de la influencia de estos instrumentos en la acción de los Estados partes y de la posibilidad de crear obligaciones específicas de respuesta.

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Palabras clave: Desastre; asistencia; protección civil; solidaridad; Unión Europea.

Clasificación JEL: K3; K32; K33.



1. INTRODUCTION

The growing number of disasters and their humanitarian impact has prompted the need for a framework that addresses the responsibilities of States and other international actors in disaster settings in order to guarantee humanitarian assistance to the affected population. Indeed, unlike armed conflicts, at present there is no universal and comprehensive legally binding set of regulations to govern the international response to large-scale disasters. Hence, the so-called International Disaster Response Law (IDRL), that is a *corpus* of international rules and standards describing the role of States and other relevant actors in the response to (and recovery from) natural or man-made disasters, as well as in the area of disaster management¹, remains an issue pertaining more to soft law or conventional law than to international customary law.

Mostly, international law on disaster management relies on many sectors or areas of international law², as well as on “soft law” instruments, such as resolutions, declarations, codes, models, and guidelines³. Furthermore, in recent decades, a number of universal, regional, and even bilateral treaties related to disaster response have been adopted, but according to two different trends.

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On one hand, *ad hoc* rules were included to prescribe the specific duties for States in the event of a natural or man-made disaster in several universal treaties which regulate general issues, such as the transport of goods by sea or air, customs, health regulations, human rights, waste management and especially the protection of the environment. On the other hand, sectoral multilateral treaties have been concluded to deal with only very specific issues related to disaster management or to categories of actors intervening in emergency situations⁴. At regional (and sub-regional) level there are numerous treaties regulating, in a comprehensive manner, all the relevant issues related to disaster prevention, mitigation, management and early recovery⁵. More recently, the international community assisted to an impressive accumulation of bilateral treaties regulating disaster management. Their content ranges from mere generic commitments to cooperation in researching fields of common interest, to more detailed rules concerning rights and duties of States when a major natural or man-made disaster occurs (De Guttry, 2012; 33-38)⁶.

It is thus evident that international law on disaster relief appears characterized by a high level of fragmentation (IFRC, 2007). Moreover, a closer investigation of the various treaties makes it clear that they are far from being coherent and coordinated with reference to their geographical and material scope of application, thereby limiting the effectiveness of the response to the suffering of disaster-affected populations. Indeed, uncoordinated responses may lead to duplication, confusion, increased expenses, inefficient use of resources, inappropriate aid and sometimes

may fatally result in disaster affected persons not receiving the right aid at the right time and delivered in the right way (Fischer, 2003; 24-44). For example, the IFRC has noted that during major disaster operations in 2004 - 2005 all around the world massive amounts of unneeded and inappropriate aid were brought in (Reinecke, 2010; 143-163; Hoffman, 2000). International actors failed to sufficiently communicate, gather and share information about what each other would supply and what was needed, resulting in mountains of used and unsuitable clothing, expired medications, duplicative and unnecessary field hospitals, culturally unacceptable food and other inappropriate items.

Furthermore, current international law instruments fail to properly regulate the role of the State responding to large-scale disasters and that of the other States of the international community. According to international law, disaster response falls within the jurisdiction of the State in whose territory the catastrophic event has occurred and national authorities remain the first and foremost to take care of the victims. Hence, the affected State has the primary role in the initiation, organization, coordination, and implementation of humanitarian assistance within its territory (Adinolfi, 2005). Even though there has been an increasing trend for self-management in many recent disasters, sometimes it is not easy for the State to react to a severe catastrophe by its own resources. If the magnitude and duration of the emergency go beyond the response capacity of the country, international cooperation to address emergency situations and to strengthen the response capacity of affected countries is thus of great importance. But, at present, the international legal framework does not clarify neither on which occasion the affected State might have an obligation to seek for assistance nor whether third States are obliged to offer and provide assistance beyond that provided by NGOs and other international organizations.

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Ultimately, it is evident that the interaction between State sovereignty in dealing with the consequences of a disaster and the need to guarantee humanitarian assistance to the victims is a thorny issue to be addressed. The chance to find a solution to these doubts glimpsed in the work undertaken by the International Law Commission (ILC) on the “Protection of Individuals in the Event of Disasters” that has been adopted on second reading on 3 June 2016⁷. On August 2016, the Commission decided, in accordance with article 23 of its statute⁸, to recommend to the General Assembly the elaboration of a Convention on the basis of the draft articles on the protection of persons in the event of disasters. Such Articles introduce, *inter alia*, an analysis of the obligations of the affected State and of the international community to rescue people from more serious consequences of a disaster, thus including a duty to cooperate⁹. Therefore, the Draft Articles could represent an important contribution to the development of a *corpus iuris* applicable in case of disasters, either as a tool for the determination of rules of law or, possibly, as a formal source of international law.



However, despite the desire of many, the ILC could not include neither a clear duty to offer assistance, that remains a right of the State¹⁰, nor a strong duty to seek for assistance that remains subjected to the principle of State consent¹¹. In addition, it remains to be seen whether such a project will receive support from States within the General Assembly without being changed radically and getting bogged down in sterile debates.

Against this (uncertain) international background, it appears interesting to move towards the European Union's legal system, which by its nature is an *unicum* in the international arena in terms of transfer of sovereignty by Member States and solidarity required between them. In particular, since the EU legislative framework overlaps and fully complements that of Member States, it is remarkable to explore the competences gradually conferred on the Union as for the response to disasters, with particular attention to the competence on civil protection that now is embedded within the Lisbon Treaty.

The following paragraphs will thus be dedicated to the evolution of the interest of the Union in disaster management issues and to the analysis of Article 196 TFEU and Article 222 TFEU concerning respectively the competence of the Union in civil protection matters and the obligation to assist Member States in case of a disaster (§ 2). Afterwards, it will be illustrated the functioning of the EU Civil Protection Mechanism established the Council Decision 1313/2013/EU as operational instrument able to provide a more coordinate response to disasters (§ 3). Finally, it will be explored whether the functioning of the Mechanism and its interaction with the content of Article 222 TFEU are able – directly or indirectly – to create an obligation on Member States to assist each other when affected by a disaster (§ 4), without, however, taking into account the opportunity to establish a duty to seek for assistance. Indeed, in line with the international law perspective, it is currently quite difficult to prove the existence of such a duty within the EU legal framework.

2. THE EU RESPONSE TO DISASTERS: CIVIL PROTECTION AND SOLIDARITY

The interest in the European Union as a crisis manager has grown intensely during the last years. Among the worst crises that originated in Europe (geographically identified) and in other continents, it is appropriate to recall the disaster in a chemical industrial plant in Seveso (Italy) in 1976; the Chernobyl nuclear plant disaster in 1986; the outbreak of BSE (“mad cow disease”) in 1996; the flooding in Central Europe in 2002; the outbreak of Severe Acute Respiratory Syndrome (SARS) in 2003; the Avian flu; the eruption under the glacier of Eyjafjallajökull (Iceland) in 2010 and the recent Ebola virus outbreak in Africa. Against this situation, the early task of the European Community was to face internal and external threats in order to

secure the economic system. More recently, areas of concern for Europe have grown considerably due to added tasks that used to fall within the domain of the States, such as the protection of fundamental rights (Boin, Ekengren and Rhinard, 2006; 15). Furthermore, the increase of large-scale natural or man-made disasters reminded individual governments that often they do not recognise national borders. Such a keen awareness about the plight of disaster victims has drawn the attention to the importance of common appropriate legal rules and structures for disaster prevention, mitigation and response in order to strengthen national crisis management capabilities (Larsson, 2009; 18-19).

At national level, each Member State may rely on different instruments of intervention (e.g. NGOs, local police forces, voluntary associations) capable of working on prevention and mobilizing and coordinating all national resources to provide useful assistance to the population in case of emergency. In particular, during the last decades civil protection structures have been created and reinforced to deliver governmental aid in the immediate aftermath of a disaster through in-kind assistance, deployment of specially-equipped teams, assessment and coordination by experts sent to the field. Civil protection is thus a competence that relates to governments (local or national depending on the case) and that has a great potential in terms of response to disasters not only occurring within the national territory but also in other countries. However, as already anticipated in the introduction of the present work, although welcomed, external interventions may lead to duplication, confusion, increased expenses, and inefficient use of resources if not properly coordinated. At a time when it was way ahead to reach such a conclusion, the Seveso disaster first and the Chernobyl accident later (Åhman and Nilsson, 2009; 85) urged Member States of the then European Community (EC), in particular Italy and France, to invoke a concrete cooperation and integration also in the field of civil protection, by proposing the establishment of a supranational coordinated structure able to respond – in a subsidiary way – to serious disasters occurring within or outside the EC territory upon request of any affected State (Kotzur, 2012; 267-268).

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2.1. From the idea to the establishment of a Community Civil Protection Mechanism

In April 1985, the European Commission – DG Environment hosted the first meeting on civil protection and, under the Italian Presidency impulse, on May 2 and 3 the Italian Minister of Civil Protection Giuseppe Zamberletti invited the other European Ministers for an informal summit in Rome. On this occasion, for the first time Member States agreed to coordinate their national civil protection capacities in the case of major natural disasters laying the foundations for Community cooperation in this field.



At first, the general interest was more oriented to the effects of natural disasters; a curious choice given that the Seveso accident was an industrial disaster. However, the 1986 explosion of the Chernobyl nuclear plant confirmed the potentially devastating effects of technological disasters. As a consequence, Member States became more sensitive towards possible man-made disasters able to cause damages to the environment, to people as well as to trade, and pledged to elaborate a even more combined response to whatever kind of calamity at European level. Therefore, between 1985 and 1994, studies and research programmes as well as a variety of policy instruments have been put into place thereby leading to the establishment of operational tools for the preparedness of those involved in civil protection and response in the event of a disaster.

The initial agenda on civil protection focused on managing large-scale natural disasters in order to protect environmental, human and commercial interests of the EC and thus limited its scope just to the Community territory. Hence, the responsibility for the European Community's activities in this area was given to the European Commission's Directorate-General for Environment that was the most appropriate DG to operate. Actually, such a decision was taken by going beyond the EC Treaties which at that time did not mention civil protection within the competences of the Community. As a result, the lack of a clear legal basis in the EC Treaties made difficult to adopt binding acts and therefore all the legal tools used were weak and non-binding (i.e. declarations and resolutions)¹². But, step by step the interest in this field became more relevant up to the creation of a first comprehensive system capable to face different kinds of calamities.

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The earliest timid step towards the recognition of a communitarian competence in civil protection resulted from the entry into force of the Treaty of Maastricht, adopted in 1992, which extended the objectives of the Community and dropped the solely economic label to open the way to political integration by generating the European Union (hereinafter EU)¹³. As well known, such a Treaty introduced a new institutional structure composed of three "pillars", and a broader umbrella, new policies and forms of cooperation were created¹⁴. In particular, Article 3 of the Maastricht Treaty listed the activities that the Community was empowered to carry out for the purposes set out in Article 2 of the Treaty on the European Community (TEC)¹⁵, by including, *inter alia*, "a policy in the sphere of the environment" and "measures in the sphere of energy, civil protection and tourism".

The success of the first-ever inclusion of the area of civil protection within the Treaty should be, however, reassessed in the light of some evident limits. First of all, the provision was not accompanied by other specific Articles articulating what kind of measures the EU could take and which should be its objectives¹⁶. Moreover, without clarifying how and through which binding acts these measures could be implemented, such a reference did not constitute in itself a legal basis for the

adoption of measures in this field, thus leaving the new Community competence “hanging in the air” (Gestri, 2012; 108)¹⁷. As a result, action on civil protection could be pursued just according to the flexibility clause (Article 308 TEC, today Article 352 TFEU) read in conjunction with Article 3b of the Maastricht Treaty¹⁸ or to the legal bases offered by provisions concerning other European policies, such as those on environment protection. Indeed, among the objectives of the environmental policy, Article 174 included “promoting measures at international level to deal with regional or worldwide environmental problems”¹⁹.

Despite such shortcomings, upon a proposal by the European Commission, on 1997 the Council adopted a Decision establishing a Community Action Programme in the field of civil protection²⁰. The main objective was to support and complement Member States’ activities at the national and sub-national levels through different cooperation projects with particular reference to preparedness activities, dissemination of information and public awareness as for the occurrence of natural and technological disasters. Indeed, the Council considered that Community cooperation in the field of civil protection could help achieve the purposes of the Treaty by promoting solidarity among Member States, raising the quality of life and contributing to preserving and protecting the environment. In addition, in accordance with the principle of subsidiarity, major cooperation could support and supplement national policies in the field of civil protection making them more effective and reducing the loss of human life, injuries as well as economic and environmental damages.

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Encouraged by the success of the Action Programme and by the devastating earthquakes in Turkey and Greece in 1999, on 29 September 2000 the Commission proposed the adoption of a Decision establishing a Community Mechanism for the coordination of civil protection intervention in the event of emergencies²¹. After the positive opinion of the European Parliament delivered on 14 June 2001 and those of the Economic and Social Committee and the Committee of the Regions, on 23 October 2001 the Council adopted the Decision 2001/792/EC launching the first Mechanism to facilitate reinforced cooperation between the Community and the Member States in the area of civil protection in the event of major emergencies²². As legal basis, it was chosen to rely on Article 308 of the Treaty establishing the European Community and Article 203 of the Treaty establishing the European Atomic Energy Community, thus overcoming the necessity to resort to the Treaty provisions on environment protection by demonstrating the increasing interest in regulating an issue that went beyond EC environmental policy.

The Community Civil Protection Mechanism (hereinafter CPM) has represented a milestone in the progressive development of Community cooperation in disaster response by including a number of relevant issues. First of all, it was an operational



instrument aimed at fostering the mobilisation of assistance in case of disaster and at improving preparedness of the authorities of the participating States in collaboration with the Community institutions. The key element for the functioning of the CPM was the establishment of a Monitoring and Information Center (MIC) with its headquarters in Bruxelles that constituted an essential hub for communications between Member States. Moreover, the participating States had the opportunity to have access to an IT platform, the Common Emergency Communication and information Centre (CECIS) that ensured a fast and secure exchange of information between the MIC and the contact points of the Member States. In case of a disaster, the CECIS allowed the launch of assistance activities by the participating States to the affected State, while the MIC operated as centre for the dissemination of data and for early warning about imminent disasters.

Besides, it is noteworthy that the Decision did not limit its scope to those events occurring within the Community, but extended the procedure of monitoring and activation also to circumstances occurring in third countries by entrusting the Presidency of the Council of the European Union with the duty to ensure the coordination of the interventions. Hence, whether a State did not have sufficient resources to tackle the situation, it could request assistance directly to EC Member States or to the Commission through the MIC which would have forwarded the request to the Member States' contact points, by facilitating the mobilisation of teams and experts as well as by collecting validated information on the emergency. The CPM became a key tool in ensuring immediate and coordinated response from Member States to the most serious disasters occurring both inside and outside the Community, including the flooding in Eastern Europe (2002), the Prestige accident (2002) and the devastating tsunami in Southeast Asia (2004). Starting from this last event, the European institutions decided to subject the CPM to a review process in order to reinforce it thus leading to the adoption of the Decision 2007/779/CE²³ which amended some substantial points of the 2001 Decision. In addition, also in 2007, the Council adopt a second measure that has proved essential for the subsequent development of the CPM that is the Decision 2007/162 /CE of 5 March 2007 establishing a Civil Protection Financial Instrument²⁴. It provided the necessary support in the field of prevention and preparedness as well as response by funding cooperation projects on disaster risk reduction and early warning, exercises, exchanges of modules and experts. Hence, despite the period of reflection followed to the failure of the entry into force of the Constitution for Europe, the dialogue on the improvement of the Civil Protection Mechanism did not stop and on occasion of the 2007 IGC in Lisbon, it was decided to indicate civil protection as formal objective of the Union and to provide a specific legal basis into primary law.

2.2 The Lisbon Treaty and the new dispositions on disaster response

The Treaty of Lisbon, while not including all the changes envisaged in the unsuccessful Constitutional Treaty of 2004, provides for some far-reaching

developments, including the abolition of the pillar structure and the introduction of a number of institutional and substantive innovations. Among these novelties, it shall be firstly underscored that the current EU legal framework provides a specific disposition concerning the response to disasters, that is the so-called “solidarity clause” enshrined in Article 222 TFEU. It requires both the Union and its Member States to act jointly “in a spirit of solidarity” and to assist another Member State when it is object of a terrorist attack or a natural or man-made disaster.

The idea of introducing a solidarity clause was first articulated in the European Convention, which prepared the 2003 draft Treaty establishing a Constitution for Europe, notably in its Working Group VIII ‘Defence’. Originally, the solidarity clause was, therefore, intended as a sort of complement to the mutual defence clause, now enshrined in Article 42(7) TEU. So, a first version of the clause only dealt with terrorist attacks, but the scope of the provision was subsequently broadened, by virtue of an initiative of the chairman of the Working Group, Michel Barnier, referring also to unintentional disasters. Moreover, Article 222 addresses itself both to the EU and to its Member States thus showing its supranational character and making it more than an intergovernmental obligation. Indeed, the nature of the solidarity illustrated in Article 222 TFEU does not mark a moral rule or a general principle but a categorical duty that must be practiced by the Union – by deploying EU’s own institutional tools, mechanisms, and resources that that may operate in a coherent, coordinated and effective way – and by all and not some Member States.

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Article 222 represents a unique provision that does not exist in other international instrument of institutionalised cooperation concerning disaster response, albeit “solidarity” and “cooperation” are essential principles within the framework of the United Nations. The legal instrument that implements Article 222 TFEU, that is the Council Decision 2014/415, has been adopted only in very recent times and, as explained later, at present its legal implications and practices on cooperation in disaster response are far from being clear. Therefore, the actual relevance of the solidarity clause and its real impact may be assessed just in a long-term perspective that takes into account its implementation in the practice.

Besides providing a disposition concerning the necessity to act according to a spirit of solidarity when a disaster strikes, the Lisbon Treaty has introduced also a formal legal basis for civil protection as competence of the Union. More specifically, civil protection is firstly mentioned in Article 6 TFEU concerning supporting competences where the Union supports, co-ordinates or supplements the actions of the Member States. As well known, although the Union may adopt legislative acts on such issues, the complementary nature of these competences prevents the EU institutions from harmonising national legislation of the Member States that continue to exercise their prerogatives in these areas. From a substantive point of view, such



orientation essentially reflects the practice that developed in *subiecta materia* prior to the Lisbon Treaty which does not intend to replace nor radically transform national systems. Despite this, the content of the detailed definition of the objectives and the scope of the new EU competence regarding civil protection represents a noteworthy landmark for the development of the topic and it is spelled out in Article 196 TFEU that states as follows:

1. The Union shall encourage cooperation between Member States in order to improve the effectiveness of systems for preventing and protecting against natural or man-made disasters. Union action shall aim to:

- (a) Support and complement Member States' action at national, regional and local level in risk prevention, in preparing their civil-protection personnel and in responding to natural or man-made disasters within the Union;
- (b) Promote swift, effective operational cooperation within the Union between national civil-protection services;
- (c) Promote consistency in international civil-protection work.

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2. The European Parliament and the Council, acting in accordance with the ordinary legislative procedure shall establish the measures necessary to help achieve the objectives referred to in paragraph 1, excluding any harmonisation of the laws and regulations of the Member States.

To start with, the provision refers, *ratione materiae*, both to natural and man-made disasters, even if a more specific definition is left to secondary legislation. In line with the orientation of the legal doctrine and with the practice consolidated over time, it has thus clearly recognised the complex nature of emergencies, that may have both a natural and a anthropogenic origin.

Another positive element to be indicated is the broad scope of the new competence as for the range of actions to be carried out by the Union. It covers not only the phases of preparedness and response but also that of prevention which should be reinforced in the light of a more comprehensive approach to disaster management both within and outside the European Union (Casolari, 2012). Of certain relevance is the reference to the objective of supporting and complementing Member States' action at all levels, and particularly the explicit mention of the responsibility of regional and local authorities.

Finally, paragraph 2 of Article 196 specifies the crucial innovation deriving from the provision of an explicit legal basis for the area of civil protection that is the opportunity to enact measures in this field according to the ordinary legislative

procedure, envisaged by Article 294 TFEU. As a consequence, legislative acts have to be adopted upon a proposal from the Commission, in co-decision by the European Parliament and the Council that votes by qualified majority. The new decision-making process is a crucial step forward in comparison to the pre-existing legal framework where the legislative acts were adopted according to the flexibility clause requiring the unanimous voting within the Council and the mere consultation of the European Parliament. The procedure provided for in the Treaty encompasses a strengthened legislative role for the European Parliament and undoubtedly facilitates further advances in the EU Civil Protection Mechanism (Gestri, 2012). Besides, the legal acts adopted under such a procedure shall have a legislative nature, in conformity with Article 289(3) TFEU. Clearly, since the issue at stake falls within the supporting competences and any harmonisation of Member States' is excluded, the adoption of Regulations and Directives is rather improbable, while the legal acts most favourable are Decisions in accordance with Article 288 TFEU (Cremona, 2011).

3. THE NEW EU CIVIL PROTECTION MECHANISM: A WAY FORWARD IN DISASTER RESPONSE

The accurate study of the 2006 Report on “An European Civil Protection Force” addressed by Michel Barnier and the changes brought by the Lisbon Treaty triggered the Commission to adopt new initiatives on civil protection from an operational and legal point of view. In 2010, it published a Communication entitled “Towards a stronger European disaster response: the role of civil protection and humanitarian assistance”²⁵ that initiated a review of the existing legal framework in consultation with the interested parties. Hence, on December 2011 the Commission submitted the proposal for a decision on the establishment of a Union Civil Protection Mechanism that was definitely adopted on 17 December 2013 by the Council and the Parliament (Decision 1313/2013/EU) thus marking the latest step of the “institutionalization” of EU civil protection. Then, on 16 October 2014 the implementing Decision 2014/762/EU on the functioning of the EU Civil Protection Mechanism was adopted²⁶.

In line with the previous developments, the Decision 1313/2013/EU confers a rather broad scope of application to the new Union Civil Protection Mechanism (hereafter “Mechanism” or “UCPM”) that can be potentially activated for any serious natural or man-made disaster that affects – alternatively – people, the environment or cultural heritage, within or outside the EU (Article 4). This means that the Mechanism finds application also in cases of exclusive danger to the environment or to cultural heritage regardless of the presence of human victims. As a matter of fact, Article 1(2) specifies that the list of the events covered comprises also “terrorist attacks,



technological, radiological or environmental disasters, marine pollution and acute health emergencies” Given the more far-reaching scope, the EU civil protection policy was merged with humanitarian aid policy into one Directorate General (ECHO) under the responsibility of a single Commissioner for “International Cooperation, Humanitarian Aids and Crisis Response”.

The actions pursued by the Mechanism have been improved in comparison to the previous system and now relate to all the different aspects of protection civil, by encompassing prevention and preparedness – on which the 2013 EU Civil Protection legislation places a greater emphasis –, immediate response and recovery.

As for prevention and preparedness, the Mechanism focuses on the elaboration of national risk assessments and risk management plans, on the preparation of reference scenarios, on the mapping existing capacities and developing contingency, as well as on the promotion of sharing disaster information. Moreover, it provides participating countries with the opportunity to train their civil protection teams by exchanging best practices and enhancing their ability and effectiveness in responding to disasters.

At operational level, civil protection assistance consists of capacities of the participating States, such as relief items, expertise, intervention teams and specific equipment. Experts are also deployed under the Mechanism for needs assessment and coordination with the local authorities and international organisations. The operational hub of the Mechanism is the Emergency Response Coordination Centre (ERCC) which has substituted the MIC. Its main task is to monitor emergencies around the globe 24/7, and coordinate the response of the participating countries to the Mechanism in case of a major crisis upon request of any country in the world, as well as of the UN and its agencies and certain international organisations.

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As for the procedure of activation of the Mechanism in the phase of response, Article 15 and Article 16 of the 2013 Decision regulate respectively the situations occurring within and outside the Union. In both cases the affected State may request assistance through the ERCC for the deployment of assistance resources and the States participating in the Mechanism may choose freely whether and to what extent to give their contribution. Once decided, they shall inform the ERCC of their decision through the CECIS, indicating the scope and terms of any assistance to be rendered. It is worth pointing out that the Decision 1313/2013 has extended the opportunity to participate in the Mechanism to non-EU Member States. In particular, Article 28 includes the European Free Trade Association (EFTA) countries which are members of the European Economic Area (EEA) and other European countries when agreements and procedures so provide, as well as acceding, candidate and potential candidates. Currently, apart from all the EU Member States (including UK), Iceland, Montenegro, Norway, Serbia, the former Yugoslav Republic of Macedonia and Turkey take part in the UCPM.

The major innovation introduced in the current Mechanism in comparison to the previous ones is, however, the establishment of the European Emergency Response Capacity (EERC) that is a voluntary pool of pre-committed resources from the countries participating in the EU Civil Protection Mechanism. Indeed, one of the shortcomings of the Community Civil Protection Mechanism previously in force was that it was limited to facilitate the deployment of the ad hoc resources put at disposal by the participating States according to an occasional logic: offers were made from time to time and in a totally spontaneous way. The lack of a preventive organization of the European response created thus a certain level of improvisation and uncertainty that did not render the Mechanism completely effective. As a consequence, in order to make the European response to disasters more predictable, better planned, and coordinated thereby overcoming the inefficient system based on ad hoc offers of assistance from the participating States, it was proposed to combine the classical Mechanism of coordination of national efforts to the EERC which includes modules (i.e. for water depuration, surgical units, medical evacuation procedures, aerial and ground forest fire fighting, flood containment, heavy urban search and rescue), teams of technical and practical support and experts in different fields.

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According to the 2013 Decision, it is the responsibility of the Commission to regularly define and review the EERC capability objectives, namely to establish the types and the number of the means which should be available for the mobilization. Moreover, the implementing Decision 2014/762/EU establishes ad hoc requirements as for capacity, functioning and self-sufficiency of the modules. Hence, both participating States and the Commission are requested to work closely together to develop quality criteria and a certification process for the different teams, thus ensuring that all the teams meet high quality and interoperability standards and can effectively work together in the field. In return for commitment to the voluntary pool, participating States can benefit from EU financial support, such as the co-financing up to 85% for the transport of teams deployed from the EERC, the 100% cover for certification costs (trainings, exercises and workshops) and up to 100% of eligible costs for the so-called “adaptation costs”, that are those costs necessary to upgrade existing national response capacities according to international standards. Once selected, the pre-committed modules, technical assistance and support teams, other response capacities and experts shall be registered in a designated section of the CECIS database in order to be immediately available when the situation calls for it.

The European Emergency Response Capacity was formally launched on 17 October 2014 and so far ten EU Member States have committed their response capacities: Belgium, the Czech Republic, Finland, France, Germany, Luxembourg, Poland, Spain, Sweden, and the Netherlands. At the time of writing, these countries have made available eighteen response units, including for example the so-called “urban



search and rescue” teams, specialised medical air evacuation capacity, water purification equipment, high capacity pumping units, and forest fire fighting teams. Further capacities from Member States (flood containment, labs for environmental emergencies, marine pollution to name some) are in the process of being registered²⁷. Moreover, on occasion of the outbreak of the Ebola virus disease, the European Union has set up the European Medical Corps as part of the voluntary pool for mobilising medical and public health experts and teams for preparedness or response operations inside and outside the EU in case of health emergencies²⁸.

In May 2014, the EU Civil Protection Mechanism was activated in response to the devastating floods in Bosnia and Herzegovina and Serbia, that to date represents the largest EU response operation with assistance offered by 23 participating countries. In July 2014, the Mechanism was called to action by the World Health Organization to help contain the outbreak of the Ebola virus disease thereby enabling the rapid and coordinated deployment of emergency supplies and experts offered by the participating States. For its part, the ERCC managed a system of medical evacuations for international health professionals working in the affected countries²⁹.

In 2015, the EU Civil Protection Mechanism was activated for 26 emergencies including the earthquake in Nepal, the forest fires in Greece and the European refugee crisis³⁰. In response to the Nepal earthquake in April 2015, an EU Civil Protection team was deployed for assessment and coordination in the immediate aftermath of the disaster and the participating States delivered assistance through the UCPM, including medical teams, search and rescue teams and emergency supplies such as shelters, beds, blankets, clothes, medical equipment and medicines. In July 2015, Greece requested assistance through the Mechanism in fighting dozens of forest fires and the EU co-financed the transport of assistance to Greece. During the second half of 2015, Hungary, Serbia, Slovenia, Croatia and Greece requested assistance through the Mechanism in response to the increased influx of migrants and refugees under the coordination of the ERCC. Indeed, despite the humanitarian crisis due to the massive migration inflows cannot be ranked amongst the “classical” emergencies that may fall within the scope of application of the Decision 1313/2013, its transnational and serious character has made it necessary to resort to the UCPM, whose deployment is still on the ground. On this occasion, many participating States responded by providing winterised family tents, accommodation containers, beds, blankets and sleeping bags as well as sanitary containers, raincoats, first aid kits and other much-needed material to respond to the basic needs of the most vulnerable. Especially this last case, even if with some limits, demonstrates the increasing relevance of the EU Civil Protection Mechanism on which requesting States progressively rely on thereby making it a vehicle of dialogue and cooperation between States in the event of major crisis.

4. THE EU CIVIL PROTECTION MECHANISM AND SOLIDARITY CLAUSE: TOOLS INTRODUCING AN OBLIGATION TO PROVIDE ASSISTANCE?

The developments and the results achieved in the field of civil protection in response to events occurring within and outside the Union have given an important impulse to more integrated, coordinated and thus effective interventions in disaster relief. However, the general attitude of the new Civil Protection Mechanism to overcome the intergovernmental logic in favour of a supranational one and its interaction with the Solidarity Clause may contribute also to create a set of obligations on Member States in responding to disasters. One could ask how an operational instrument such as the UCPM may provide for obligations that are not established neither in the legal basis (Article 196 TFEU) upon which Decision 1313/2013 is founded nor in the text of the legislative act at stake. Actually, from a theoretical and practical point of view, the issues related to pooling and sharing of sovereignty as well as to show solidarity in situations of emergency may become of the utmost importance for EU crisis management thus leading to a *de facto* and indirect downsizing of State discretion in providing assistance. Moreover, it should not be underestimated the introduction in primary law of a specific disposition clearly laying down an obligation to offer assistance to Member States affected by disasters.

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4.1. The EU Civil Protection Mechanism in shaping an obligation to provide assistance

The brief overview previously given reports that the final decision about the deployment of response resources belongs to the participating States that are not obliged to do so. Moreover, also the EERC, despite being a strategic way to respond more effectively to disasters, is permeated by a voluntary character both in the phase of establishment and in that of deployment. Indeed, participating States have the power to decide whether or not pre-commit a number of resources. It is a key issue that has been discussed at length during the debates on the adoption of the Decision 1313/2013 when, under pressure of some countries, it was decided to cut the level of commitment required in relation to the inclusion of national resources to the pool. As proof of that, the Decision repeats more than once that the identification of the means to be committed must be carried out on a voluntary basis, without creating a specific obligation. Furthermore, Article 11 of Decision 1313/2013 is in a hurry to set “[t]he *ultimate* decision on [the] deployment [of the response capacities] shall be taken by the Member States which registered the response capacity concerned” [emphasis added].

In order to further specify this point, Article 11(7) of the 2013 Decision adds that “when domestic emergencies, force majeure or, in exceptional cases, serious reasons prevent a Member State from making those response capacities available in a specific disaster, that Member State shall inform the Commission as soon as possible by



referring to this Article”. Therefore, Member States keep the right to deny assistance in case of domestic emergencies, *force majeure* or, in exceptional cases, serious reasons. As a consequence, it seems that voluntariness is particularly strong in this phase and that, despite they are pre-committed and directly at disposal, such automaticity is not clearly established. The EU Civil Protection Mechanism thus operates according to the traditional logic of State consent. But, at least as for the EERC, from a legal point of view a certain room of manoeuvre exists.

First of all, it is worth highlighting the wording of the first sentence of Article 11 of the Decision 1313/2013 setting out that “response capacities that Member States make available for the EERC shall be available for response operations under the Union Mechanism following a request for assistance through the ERCC”. The use of “shall” suggests that once made available, the response capacities must be used to help the requesting State: it is not an option, but an obligation which directly comes from the real nature of the voluntary pool. It is voluntary because States may decide to put at disposal or not their resources, but once the EERC is established it must work out.

In other words, there is not only a pre-commitment of resources but also a pre-existing commitment to intervene made by States participating in the pool. In this perspective, it is not a coincidence that, as for the buffer capacities registered in the voluntary pool, their domestic use in the State that co-financed the availability of the capacities is subjected to some limits. Indeed, prior to the domestic use, the ERCC shall be consulted to confirm that: (i) there is no simultaneous or imminent extraordinary disaster that may lead to a request for deployment of the buffer capacity; and (ii) the domestic use does not unduly hinder the rapid access of other Member States in the event new extraordinary disasters arise (Article 25 of the implementing Decision). These two options, while supporting solidarity, counter that vision which places singular national interests over the global ones and confirm the orientation to progressively create a duty to offer assistance in dialogue with the principle of State consent. The limited voluntariness in the operational phase is not, then, affected by those exceptions – emergencies, *force majeure* or, in exceptional cases, serious reasons – specified in Article 11 of Decision 1313/2013. On the contrary, the reference itself to those exceptions render the offer of assistance in the framework of the voluntary pool an obligation which apply to all the participating Member States. Indeed, if we look at the provisions of international law and in particular to the 2001 Articles on Responsibility of States for Internationally Wrongful Acts, they represent genuine and formal derogations to an international obligation³¹.

According to Article 23 of the Articles, *force majeure* is recognised as one of the circumstances precluding wrongfulness of those conducts that would not otherwise be in conformity with international obligations. In particular, it defines “force

majeure” as the occurrence of an irresistible force or of an unforeseen event, beyond the control of the State, making it materially impossible in the circumstances to perform the obligation. The provision, then, points out two circumstances where the justification of the *force majeure* cannot operate, that are when (a) the situation of *force majeure* is due, either alone or in combination with other factors, to the conduct of the State invoking it; or (b) the State has assumed the risk of that situation occurring.

In defining the notion of “force majeure”, the European Court of Justice has always been very rigorous and, although Member States had more than once invoked such an excuse to justify their failure to fulfil EU obligations, the ECJ has regularly rejected pleas of force majeure clearly far from the deeper meaning of such a notion. Moreover, it has consistently ruled that “a Member State may not plead provisions, practices or circumstances existing in its internal legal system in order to justify a failure to comply with obligations”.³² The ECJ did however agree that *force majeure* could be invoked in “circumstances beyond the control of the person claiming *force majeure*, which are abnormal and unforeseeable and of which the consequences could not have been avoided despite the exercise of all due care”.³³

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As for the other two exceptions, that are emergency and other serious reasons, it can be appropriate to equate them to the notion of “state of necessity”, included in the 2001 Articles of the ILC. Article 25 establishes that “necessity” precludes the wrongfulness of an act when “(a) is the only way for the State to safeguard an essential interest against a grave and imminent peril; and (b) does not seriously impair an essential interest of the State or States towards which the obligation exists, or of the international community as a whole”. For what concerns EU law, the concept of necessity does not hold an independent character, but has often seen in relation to that of public and social security of the State, that is, by definition, linked to the national dimension of sovereignty.

Returning to the EERC, it is clear that all the circumstances described claim that the burden of proof is up to the national authorities. This means that, in case of refusal to put at disposal their pre-committed assets in the voluntary pool, they shall demonstrate the existence of imperative circumstances preventing their deployment. In addition, in a context of major integration among States and judicial/political review exercised by the EU institutions, such justifications appear weakened and the cases in which it is possible to invoke force majeure, emergency and other serious reasons are quite rare.

Therefore, despite it is not clearly stated in secondary EU law sources, the functioning of the EERC and the letter both of the Decision 1313/2013 and of the implementing Decision 2014/762 suggest that, once the States join the voluntary pool, they seem to be subjected to an obligation to offer assistance. However, such a



conclusion is not completely satisfactory since, beyond the voluntary pool, the UCPM as a whole does not seem to provide a clear obligation to offer assistance thus leaving the final decision to national governments. The Solidarity Clause – read in conjunction with Article 196 TFEU – might be a source of development and an additional guarantee of success of the Civil Protection Mechanism in better responding to crises.

4.2. The Solidarity Clause: a complementary (effective) source of obligations?

Article 222 TFEU does not address exhaustively the duties of EU Member States when another is object of a terrorist attack or of a disaster, and neither the implementing Decision 2014/415 may be helpful seen that it regulates just the implementation of the clause from the Union. Despite this, an accurate reading of the provision makes it possible to derive some precise and unequivocal States' obligations. Before starting analysing the content of the clause, it is necessary to stress that its scope of application is limited to events occurring within the territory of EU Member States, thus not affecting the relationship with third countries.

The solidarity clause requires Member States to act jointly with the Union in order to assist another State that is affected by a disaster by merging all the instruments that are at disposal at national and supranational level. On occasion of the debates concerning the scope of the clause, some Member States stressed the need to increase the threshold of application of Article 222 TFEU so that it could be invoked just after having exploited all the possibilities offered by existing means and tools at national and Union level; currently, this is also the overall interpretation conferred to the clause. These resources include the EU Civil Protection Mechanism that, however, is at the same time one of the modalities to give effect and proper execution to such obligation. Moreover, the ERCC acts as the central 24/7 contact point also in the event that an EU country activates the solidarity clause or when the EU Presidency activates the Integrated Political Crisis Response (IPCR) arrangements thus ensuring coordination with other EU services and bodies for the EU's response. As a consequence, there is no doubt that a connection between the solidarity clause and the UCPM is established because of, *inter alia*, the ERCC that plays a relevant role in the phase of implementation of both the instruments. Moreover, recital 4 of Decision 1313/2013 reports that the Union Mechanism should also contribute to the implementation of Article 222 by making available its resources and capabilities as necessary.

As a result, the activation of the solidarity clause could challenge the full States' discretion in providing assistance through the UCPM thereby creating a correspondent obligation on Member States when a crisis clearly needs a stronger intervention. Therefore, those States that did not answer to the request of assistance from the affected State or that did not put at disposal sufficient resources in the first phase of deployment of the Mechanism would be obliged to intervene within the

framework of activation of the solidarity clause. Providing for assistance constitutes, therefore, a formal obligation on all EU Member States and not just a concept operating in the political dimension. Furthermore, it appears even more relevant that Article 222 TFEU is under the jurisdiction of the European Court of Justice that potentially could be asked to give interpretations of its own on the correct scope of application of the clause or to assess the compliance with the deriving obligations by both the Union and Member States.

In the present analysis is, however, appropriate to underscore that the enthusiastic evaluation of the solidarity clause may result mitigated by the softer language used in the Declaration n. 37 attached to the Lisbon Treaty that states as follows:

“Without prejudice to the measures adopted by the Union to comply with its solidarity obligation towards a Member State which is the object of a terrorist attack or the victim of natural or man-made disaster, none of the provisions of Article 222 is intended to affect the right of another Member State to choose the most appropriate means to comply with its own solidarity obligation towards that Member State.”

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Despite such a declaration seems to be a compromise between national governments thus having more a political than a legal value, according to Article 31 of the Vienna Convention on the law of Treaties³⁴ it is part of that “context” that should be use for the interpretation in good faith of the Treaty itself, and thus deserves some comments.

The general language used by the Declaration leads to an interpretation of Article 222 TFEU according to which each Member State, in the presence of a formal request from another one, is invested with a legal obligation to provide assistance, but keeps the right to choose those measures deemed appropriate. In exercising this choice, the State in question is, however, obliged to act in good faith and in a spirit of sincere cooperation as prescribed in Article 4(3) TEU. In other words, States keep the freedom to decide how to show solidarity but there is doubt that some solidarity has to be shown thus limiting their discretion in choosing the most appropriate and favourable instruments of response. A different interpretation could be in contrast with the principle of the *effet utile* and result in an unmotivated breach of an obligation because of arbitrary denial of assistance (Hilpold, 2015). Moreover, since the implementation of the solidarity clause could imply also the deployment of military assets, it shall be underscored that the necessity to include such a declaration could represent a way to preserve the status of those Member States that follow a policy of military neutrality, rather than to limit the activation of the UCPM as well as of other civilian assets.



Notwithstanding the overall theoretical positive value of Article 222 TFEU and the contribution that it could render in terms of obligations on Member States to provide assistance, practice shows that the reality is quite different. Indeed, the provision does not contain any unequivocal detail on the procedure thus leaving it open to different interpretations as regards its scope, the possible measures to be decided, what circumstances shall be covered and the respective areas of competence of the Member States and the Union, as well as of the other subjects involved (Jeller-Noeller , 2011). Besides, the geographical scope of application of the clause is limited to the territory of Member States, thus excluding the opportunity to establish an obligation to intervene outside the Union.

So far the solidarity clause has never been clearly activated, despite the occurrence of a number of favourable opportunities including and terrorist attacks in Europe as well as the intensive migratory flows towards Europe. The lack of a concrete application and the still existing reluctance of States to invoke it risk turning the content of Article 222 TFEU an empty letter and solely a political stance, having therefore a scarce legal value in terms of real obligations on Member States.

5. CONCLUSIONS

The elaboration of a clear legal framework concerning disasters is far from being reached and a lot of issues remain uncertain. Indeed, as happened for international humanitarian law, the path to establish a clear set of obligations on States in contexts of natural or man-made disasters – that occur generally in peacetime, save in exceptional cases – seems to be challenging given the traditional hesitation of States to limit their sovereignty in favour of external interventions.

Against this unenthusiastic background, the contribution of the European Union could be decisive and open the way to a new perspective in relation to disaster response. Indeed, in the course of the last years, there has been a growing interest in enhancing cooperation within the Union in the field of disaster relief in order to give proper protection to people, environment and cultural heritage. In particular, the EU institutions and Member States have focused on the necessity to find some common ground in the elaboration of new operational instruments in the area of civil protection that has always been strictly connected to and managed by national authorities. Hence, after a number of debates among Member States, the Lisbon Treaty has formally recognised a competence on civil protection thus providing the Union institutions with the appropriate legal basis according to which elaborating a new European Civil Protection Mechanism.

It has not only marked the beginning of an European strategy operating in all the phases of disaster management – prevention, preparedness and response – but also

projected it towards a more supranational rather than national perspective. Indeed, the Commission currently keeps a role that goes beyond that of facilitating the collaboration between Member States: it sets the targets to be achieved as well as the amount of necessary assets and resources, it proceeds to the certification and registration in the voluntary pool of national resources and, together with the Member States, identify any weaknesses in the system to be improved. Moreover, it manages the instruments of financial assistance to develop and allocate new resources for the European operations.

Besides enhancing the system of cooperation in disaster response that produces more integrated and coordinated interventions in disaster relief, the analysis carry out in the present work has addressed the opportunity that the functioning of the new Civil Protection Mechanism can create a sort of obligation to put at disposal States' resources in favour of affected States in the event of a disaster. Whether it can only be an indirect deduction realised by reading analytically the content of secondary law, primary law introduces a concrete obligation to assist in case of a disaster. It is undoubted that the solidarity clause represents one of the most remarkable innovations of the Treaty of Lisbon and that, from a practical point of view; it has a potentially very broad scope and can trigger the Union action through a wide range of different EU instruments, including the UCPM that could be strengthened.

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National governments shall thus consider their solidarity obligations more carefully and respect them by virtue of the principle of *bona fide* that is central in treaty law (Myrdal – Rhinard, 2013). That represents a breakthrough in comparison to the current and still uncertain legal framework governing disaster relief at international level. Despite this, it would be necessary to launch a new debate on such the opportunity to further enhance cooperation in civil protection issues trying to clearly downsizing the voluntary nature of intervention and to close the loopholes still existing. In this way, the opportunity to glimpse some sort of obligations to offer assistance would not remain a simple legal evaluation, but could turn in an effective reality. For this purpose, those States which have a strong ambition to deepen the cooperation in this area may use the wording of the solidarity clause as a political instrument able to trigger formal declarations of the European institutions and enhance the collective response to large-scale crises.



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¹ For a complete list of disaster-related agreements, see the UN Treaty Collection (<http://treaties.un.org/>); the International Federation of Red Cross website (<http://www.ifrc.org/en/what-we-do/idrl/publication/>).

² It is relevant to underline the strong relationship between international disaster response law and some other branches of public international law that contribute to shape its form and substance. In particular, International Humanitarian Law stipulates how persons in need of assistance are to be treated and it is also the basis of the fundamental principles governing humanitarian assistance, namely humanity, impartiality and neutrality. However, humanitarian law applies when a natural disaster strikes during the course of an armed conflict, but its coverage concerning humanitarian assistance is not applicable to other non-conflict situations. International Human Rights Law, as a corpus of basic rules applying to all situations, provides a catalogue of binding rights. International Environmental Law and International Law on Health contribute to the avoidance of health emergencies and environmental harm, by stating State obligations regarding public health and environmental protection.

³ There is a significant number of non-binding documents dealing with various aspects of IDRL and adopted by International Organisations, the IFRC, NGOs, groups of experts and technical bodies. It is appropriate to recall some examples of soft law instruments such as the Declarations of principles on cooperation in case of disasters, the Code of Conduct for the International Red Cross and Red Crescent Movement and Non-Governmental Organizations in Disaster Relief, 1995 and the International Federation of the Red Cross, Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance, 2007.

⁴ Sectoral multilateral treaties contain norms concerning the prevention of and response to certain specific kinds of disasters, such as Convention on the Early Notification of a Nuclear Accident and the Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency (both 26 September 1986) and the International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties (29 November 1969). Besides, they can include norms concerning specific aspects of disaster assistance, like the



Convention on the Provision of Telecommunication Resources for Disaster Mitigation and Relief Operations (18 June 1998).

⁵ Regional and sub-regional agreements and arrangements have been concluded in different continents and have a similar structure. In many cases, *ad hoc* institutional mechanisms and bodies have been established to foster co-operation and to implement the provisions of the treaties. Among them, it is useful to recall the Agreement for Cooperation in Dealing with Pollution of the North Sea by Oil and other Harmful Substances (13 September 1983), the Agreement Establishing the Caribbean Disaster Emergency Response Agency (26 February 1991), the Inter-American Convention to Facilitate Disaster Assistance (7 June 1991), the Agreement among the Governments of the Participating States of the Black Sea Economic Cooperation (BSEC) on collaboration in Emergency Assistance and Emergency Response to natural and man-made Disaster (15 April 1998), the ASEAN Agreement on Disaster Management and Emergency Response (26 July 2005).

⁶ Among bilateral treaties it is appropriate to include the Agreement between the Republic of Austria and the Republic of Hungary on mutual assistance in the event of disasters and serious accidents (26 April 1996), the Agreement between the Government of the Republic of South Africa and the Government of the Republic of Namibia, regarding the Coordination of Search and Rescue Services (8 September 2000), the Agreement between the Republic of Italy and the Republic of France concerning cross-border co-operation in case emergencies occurring in mountainous areas (19 March 2007).

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⁷ See, International Law Commission, *Draft Articles on the protection of persons in the event of disasters 2016*, (A/71/10).

⁸ See, UN General Assembly, *Statute of the International Law Commission*, Resolution 174 (II) of 21 November 1947, as amended by resolutions 485 (V) of 12 December 1950, 984 (X) of 3 December 1955, 985 (X) of 3 December 1955 and 36/39 of 18 November 1981.

⁹ International Law Commission, *Draft Articles on the protection of persons in the event of disasters 2016*, Article 7: “In the application of the present draft articles, States shall, as appropriate, cooperate among themselves, with the United Nations, with the components of the Red Cross and Red Crescent Movement, and with other assisting actors”.

¹⁰ *Ibid.*, Article 16: “In responding to disasters, States, the United Nations and other potential assisting actors may address an offer of assistance to the affected State”.

¹¹ *Ibid.*, Article 13: “When an affected State determines that a disaster exceeds its national response capacity, it has the duty to seek assistance from among other States, the United Nations and other potential assisting actors, as appropriate” and Article 14: “1. The provision of external assistance requires the consent of the affected State. 2. Consent to external assistance shall not be withheld or withdrawn arbitrarily. 3. When a good faith offer of assistance is extended in accordance with the present draft articles, the affected State shall, whenever possible, make known its decision regarding the offer in a timely manner.”

¹² See, Resolution of the Council and the Representatives of the Governments of the Member States, meeting within the Council of 25 June 1987 on the introduction of Community Cooperation on Civil Protection (87/C 176/01); Council Resolution 89/C 44/03 on the new developments in Community cooperation on civil protection; Council Resolution 90/C 315/01

on Community cooperation on civil protection; Council Resolution 91/C 198/01 on improving mutual aid between Member States in the event of natural or technological disaster.

¹³ See, Treaty establishing the European Economic Community (Maastricht Treaty), 7 February 1992.

¹⁴ The first pillar corresponded to the three Communities: the European Community, the European Atomic Energy Community (Euratom) and the former European Coal and Steel Community (ECSC). The second pillar was devoted to the common foreign and security policy, which came under Title V of the Treaty on European Union. The third pillar was devoted to police and judicial cooperation in criminal matters, which came under Title VI of the Treaty on European Union.

¹⁵ See, Treaty of Maastricht, Article 2: “The Community shall have as its task, by establishing a common market and an economic and monetary union and by implementing the common policies or activities referred to in Articles 3 and 3a, to promote throughout the Community a harmonious and balanced development of economic activities, sustainable and non-inflationary growth respecting the environment, a high degree of convergence of economic performance, a high level of employment and of social protection, the raising of the standard of living and quality of life, and economic and social cohesion and solidarity among Member States”.

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¹⁶ See, Treaty of Maastricht, Art. 3 (k)(t).

¹⁷ In the European Convention, there was a general feeling that “it was an anomaly to have subject matters mentioned in TEC Article 3 without having any corresponding Treaty article setting out the policy objectives and the competence”, Final report of Working Group V on Complementary Competencies, CONV 375/1/02, 4 November 2002, p. 15.

¹⁸ See, Art. 3B of the Maastricht Treaty: “The Community shall act within the limits of the powers conferred upon it by this Treaty and of the objectives assigned to it therein. In areas which do not fall within its exclusive competence, the Community shall take action, in accordance with the principle of subsidiarity, only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale or effects of the proposed action, be better achieved by the Community. Any action by the Community shall not go beyond what is necessary to achieve the objectives of this Treaty”.

¹⁹ Indeed a number of measures having a bearing on disaster management and response were adopted under the legal bases offered by the Treaty provisions concerning other policies, such as environmental protection (Article 174 TEC) and health safety or by the Euratom Treaty as regards nuclear safety.

²⁰ See, Council Decision of 19 December 1997 establishing a Community action programme in the field of civil protection, *OJ L 8, 14.1.1998*.

²¹ See, European Commission, Proposal for a Council Decision establishing a Community mechanism for the coordination of civil protection intervention in the event of emergencies (2001/C 531 E/17), *COM(2000) 593 final 2000/0248(CNS)*, 29 September 2000.

²² See, Council Decision establishing a Community mechanism to facilitate reinforced cooperation in civil protection assistance interventions (2001/792/EC, Euratom), *OJ L/297/7 15.11.2001*, Article 1.



- ²³ See, Council Decision of 8 November 2007 establishing a Community Civil Protection Mechanism (2007/779/EC, Euratom), OJ L 314, 1.12.2007.
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- ³² See, ECJ, Case C-280/83 *Commission v. Italy* [1984] ECR 2361, par. 4; Case C-326/97 *Commission v. Belgium* [1998], ECR I-6107.
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