EU Crisis Management – A Humanitarian Perspective

BRIEFING PAPER
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Contents

List of Acronyms

CIMIC – Civil-Military Cooperation
CPU – Conflict Prevention Unit (DG RELEX)
CFSP – Common Foreign and Security Policy
DG – Directorate General (usually referring to the European Commission)
ECHO – European Commission Humanitarian Aid Office
ESDP – European Security Defence Policy
EU – European Union
EUMC – European Union Military Committee
EUMS – European Union Military Staff
NGO – Non-Governmental Organisation
PSC – Political and Security Committee
RRF – Rapid Reaction Force
RRM – Rapid Reaction Mechanism
TEU – Treaty on European Union
VOICE – Voluntary Organisations in Cooperation in Emergencies
WEU – Western European Union (collective defence organisation)

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The many developments that have taken place within the EU's Common Foreign and Security Policy are changing the way the EU can respond to crisis situations in third countries. New crisis management capabilities which include humanitarian tasks in their mandates can at best be complementary to humanitarian aid as delivered by ECHO. At worst, they can threaten or undermine the apolitical nature of EU humanitarian aid.

Introduction

VOICE has the essential overriding mission to foster links among humanitarian aid NGOs and facilitate contacts with the European Union. In 2002 VOICE produced a first briefing on EU crisis management, which the present paper follows up and reevaluates. VOICE seeks to contribute to its members' understanding of the EU structures for crisis response and to continue the analysis of how these developments may affect the humanitarian community in the future.

Due to the potential for overlap in humanitarian activities, new crisis management capabilities under the CFSP could affect the functioning of ECHO and its NGO partners. Whereas ECHO is currently the main outlet for EU humanitarian assistance, a new EU military force as well as new civilian agencies have evolved to handle crisis situations in a coordinated manner. There is a need to explore the compatibility of these new actors working alongside NGOs in field operations, especially given the difference of mandates between the military and NGOs.

This paper will attempt to:

- Give an overview of ECHO and EU crisis management capabilities
- Raise awareness among humanitarian actors and draw their attention to the possible implications of new crisis management mechanisms for EU humanitarian aid – in particular the risk of politicisation of aid.

Part I of the Briefing describes the different EU crisis response tools in detail, and is followed by a table summarizing the different mechanisms, their activities, mandates, and control structures. Part II considers the possible impacts of the development of these tools and how they interact, looks at new factors that could upset the balance among them, and outlines the risks for EU humanitarian aid as we know it today.

➢ **PART I**

Background

EU Humanitarian Assistance: ECHO

The European Community Humanitarian Aid Office (ECHO) has been the EU's main actor in emergency situations since 1992. ECHO is a service of the European Commission which provides apolitical emergency relief and humanitarian assistance to victims of natural disasters or armed conflict in countries outside the EU.[1] ECHO relief is administered to victims of natural or man-made crises solely on the basis of need and level of distress, without political discrimination, employing the principles of neutrality and impartiality in assisting all victims of emergencies in conformity with international humanitarian law. ECHO implements its mandate through partner organisations: European NGOs, which undertake approximately 60% of the activities; the United Nations, responsible for about 25%; and the Red Cross family (15%). This partnership approach ensures a flexibility of programming and optimises the direct delivery of aid.

CFSP and the development of Crisis Management Capabilities

The 1993 Maastricht Treaty marked an important step for European integration by establishing the European Union and, within its 3-pillar structure, the Common Foreign and Security Policy (CFSP).

The Union is structured in three pillars:
- pillar I consists of the European Communities, with the internal market and the common policies of the European Commission;
- pillar II includes the Council and CFSP; and
- pillar III provides the framework for co-operation in the field of Justice and Home Affairs.

Pillars I and II offer the framework for intergovernmental co-operation with the possibility to use the common institutions, by associating the Commission and consulting the European Parliament. The Council, as the co-legislator with Parliament, watches over the three pillars. The essential difference between pillar I (Community method) and pillars II and III is that for pillar I activities (including humanitarian aid) the Commission has the right of initiative, whereas in pillars II and III the work is more inter-governmental in nature, with the Council taking the lead.

The establishment of the CFSP provided means for the EU to deal with political, security, and military instability in third countries. Its aims are to safeguard the common values and fundamental interests of the Member States, strengthen the security of the Union, preserve peace and international security, promote international cooperation, and develop democracy.[2] Maastricht also provided for the "progressive framing

> "The common foreign and security policy shall include all questions relating to the security of the Union … Questions referred to in this Article shall include humanitarian and rescue tasks, peacekeeping tasks and tasks of combat forces in crisis management, including peacemaking."
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> *Title V (Common Foreign and Security Policy), Article 17.1-2 (as amended by the Nice Treaty), Treaty on European Union (consolidated text), Official Journal C 325 of 24 December 2002*

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[1] Council Regulation (EC), No 1257/96, 20 June 1996.
[2] Treaty on European Union (Maastricht treaty) Article J.1; in the 2002 Consolidated TEU (post-Nice), see Article 11.

of a common defence policy which might in time lead to a common defence."[3] The CFSP was revised in the Amsterdam (1997) and Nice (2001) Treaties. The Amsterdam Treaty introduced the new office of a High Representative (HR) for CFSP, permitting the EU to implement policy decisions. Amsterdam also made possible the integration of the Western European Union (WEU) collective defence organisation[4] into the EU, bringing crisis management responsibilities with it.

At the Cologne Summit in June of 1999, the EU leaders formulated the basis for the European Security and Defence Policy (ESDP) as part of the CFSP. They called for the EU to have a capacity for military action, backed by credible military forces, the means to decide to use them, and the readiness to do so in response to international crises.[5]

The heightened role of the military in humanitarian interventions throughout the 1990s, in areas such as the Balkans, most likely influenced the EU's decision to pursue the development of a military force. In these political crises, the distinctions between traditional military operations and humanitarian action were blurred. The situation led the EU to develop crisis response tools that could be readily deployable for emergency response and conflict prevention.

These crisis management capabilities were institutionalized in the Amsterdam Treaty where the so-called "Petersberg Tasks,"[6] originally assigned to the WEU, came under the competence of the CFSP. These Tasks include humanitarian and rescue tasks, peacekeeping tasks and tasks of combat forces in crisis management, including peacemaking. These tasks would later be assigned to an EU-wide military force, known as the Rapid Reaction Force (RRF) (see below).

Tools for Crisis Management under Pillar I

DG External Relations (RELEX): RRM
Soon after the adoption of the Amsterdam Treaty, the Helsinki Council of December 1999 stressed the importance of non-military crisis management capabilities, in addition to the development of new military capabilities in the form of the RRF, to assume the responsibilities across the full range of conflict prevention and crisis management tasks. In 2001, with a view to increasing the flexibility and balance of civilian and military assets in crisis situations, a Council Regulation established the Rapid Reaction Mechanism (RRM)[7] as a civilian counterpart to the Rapid Reaction Force. It is designed to provide rapid civilian stabilisation of crises while plans for long-term assistance and reconstruction are underway. Its purpose is to enable the EU to re-establish or safeguard the normal conditions that underpin existing EU policies and programmes, including assistance and cooperation to third countries.

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[3] TEU Art. J.4; see Article 17.1 in the 2002 Consolidated TEU. See also the Petersberg Declaration, Western European Union Council of Ministers, Bonn, 19 June 1992, paragraph II.4.
[4] For details on the WEU, see www.weu.int.
[5] European Council (Cologne) Presidency Conclusions, 3-4 June 1999 (Annex III: European Council Declaration on Strengthening the Common European Policy on Security and Defence).
[6] Consolidated TEU, Article 17.2.
[7] See Council Regulation (EC) No 381/2001 of 26 February 2001 creating a rapid-reaction mechanism.

While designed as a complement to the RRF, it is important to note that the RRM is not part of the CFSP/ESDP in pillar II, but is placed under the direction of the Commission, in pillar I. The RRM is managed by the Unit for Conflict Prevention and Crisis Management (CPU) of DG External Relations within the Commission. (NB: at present, the CPU also provides the link between all relevant Commission services and the Council in crisis management matters.) RRM can act in the immediate six months after a crisis and its scope, defined by a long list of other Community instruments, may include human rights work, election monitoring, institution building, media support, border management, humanitarian missions, police training and the provision of police equipment, civil emergency assistance, rehabilitation, reconstruction, pacification, resettlement and mediation.[8]

The range of activities RRM can engage in may complement or follow up the immediate humanitarian relief which may be provided by ECHO. However, the Regulation establishing RRM characterizes the relationship as one of mutual exclusivity, meaning that RRM funds cannot go towards humanitarian activities covered by the 1996 ECHO regulation. According to the Regulation, the Commission maintains the final say in determining whether combined action between the two entities would be most beneficial in a specific crisis situation: "In such cases, close coordination shall be established in order to ensure maximum coherence."[9] As an example of RRM activities, in Afghanistan, the RRM provided funds to support the functioning of the interim authority, for mine clearance and for public broadcasting and for the rehabilitation of essential public infrastructure (through ISAF–the International Security and Assistance Force). Thus far there has been relatively little participation of NGOs in RRM missions, and it remains an area that could be further explored by NGOs in the future, since according to the 2001 Regulation, NGOs are eligible to implement the RRM.

Concerning funding, the RRM budget for 2002 was €25 million, about 5% compared to ECHO's €442 million. The Commission adopted 5 financing decisions under the RRM in 2001 amounting to €19.98 million, and 8 in 2002 amounting to €23.52 million.[10] In addition to its normal budget, the RRM has the possibility to draw from the Emergency Aid Reserve, a fund set aside for emergency operations which could not be foreseen when a budget was established. ECHO is also able to draw on this reserve fund for important and unforeseen emergencies which its normal budget has not taken account of – such as in Iraq in the spring of 2003. ECHO still retains the first priority in applying for the emergency reserve, although we may see the RRM resorting to this fund in the future, given that its budget is considerably smaller than that of ECHO. Another issue arises over the flexibility of RRM funds. The CPU might like the same flexibility that ECHO has, with an immediate release of funds in order to be able to provide assistance as soon as possible when emergencies strike.

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[8] "Council adopts Rapid Reaction Mechanism Commission now in position to intervene fast in civilian crisis management", Commission Press Release IP/01/255, Brussels, 26 February 2001.
[9] Council Regulation (EC), No 381/2001, 26 February 2001.
[10] "Information note on the Rapid Reaction Mechanism supporting the European Union's Policy Objectives in Conflict prevention and Crisis Management", European Commission External Relations Directorate General, Directorate CFSP, Conflict Prevention, crisis management and ACP political issues (April 2003).

DG Environment – Civil Protection Mechanism

A new mechanism within DG Environment (Civil Protection Unit), known as the Community Coordination Mechanism or Civil Protection Mechanism ("Community mechanism to facilitate reinforced cooperation in civil protection assistance interventions"), was established in 2001 to provide, on request, support in the event of major emergencies (natural, technological, radiological or environmental accidents) and to facilitate the co-ordination of assistance of intervention provided by the Member States and the Community. The Civil Protection Mechanism can be activated to assist countries *both inside and outside the EU*.[11]

While in the past Member States have often assisted in disaster relief in countries outside the EU, this regulation formalizes coordination of the interventions at the Community level. It is a real cross-pillar instrument, encouraging cooperation between the Commission and the Member States. The Civil Protection Mechanism can also be activated in the framework of pillar II in the context of EU crisis management. A Joint Declaration by the Council and the Commission on the use of the Community Civil Protection Mechanism in EU crisis management, based on recital 12 of the Civil Protection Regulation and on the Seville European Council Conclusions, was adopted in June 2003. For disasters/crises that occur outside the EU, ECHO also contributes through its early crisis warning mechanism/procedure, operational on a 24-hour basis since 1992 for immediate response to humanitarian needs.

Both civil protection and humanitarian aid have a vocation of prevention and relief of human suffering. Several emergency scenarios in which civil protection and humanitarian aid may be called to intervene have been identified[12] and taken into account to improve co-operation and co-ordination between the Commission's civil protection and humanitarian aid instruments. Nevertheless, although each draws upon a separate but closely-related field of expertise, there are substantial differences in the way civil protection and humanitarian aid resources are mobilised.

As a humanitarian actor, ECHO's mandate focuses on providing non-discriminatory, apolitical humanitarian emergency assistance based on the needs of beneficiaries, through professional aid agencies including UN bodies, the Red Cross family and NGOs. The EU Civil Protection Mechanism is based on the Member States' nationally-organised structures, established mainly to tackle internal emergencies. Moreover, the use of the Civil Protection Mechanism outside the EU is based on request from the third country affected by an emergency, while ECHO's humanitarian assistance is directly provided to the people in distress regardless of any request from the affected country and, indeed, often against its wish.

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[11] Council Decision of 23 October 2001 establishing a Community mechanism to facilitate reinforced cooperation in civil protection assistance interventions (2001/792/EC, Euratom). See Article 6.
[12] "Responding to Göteborg targets: civil protection capabilities in EU civilian crisis management. Commission's non-paper regarding the interplay between the civil protection and humanitarian assistance in crisis situation" Brussels, 3 May 2002.
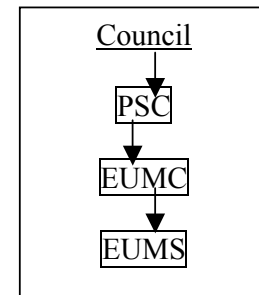
Crisis Management under Pillar II – CFSP

Interdependence between Pillars I and II is continually expanding in the EU's approach to crisis management capabilities; this is no surprise given that the Treaty on European Union stipulates that the European Commission is to be *fully associated* with the work carried out in the CFSP field.[13] Council structures for crisis management run parallel to the Commission's capabilities in ECHO, DG Environment, and the RRM, and new tools for the Council to use in response to crisis situations in third countries have also been developed. This essentially means that the EU Member States can act together under the CFSP to respond to international crises when their political will allows it.

In December 2001, the Nice European Council established a number of structures within the Council to coordinate work under the CFSP. The Nice Treaty enshrined the establishment of the permanent Political and Security Committee (PSC)[14], made up of ambassadorial representatives of the Member States and charged with monitoring the international situation, as well as with the political control and strategic direction of crisis response operations.

For military operations, the PSC is supported by the Military Committee (EUMC), which provides advice and recommendations on all military matters and is responsible for the military direction of all military activities within the EU framework. The Military Committee is made up of the Member States' Chiefs of Defence (CHOD).

Working under the EUMC is the Military Staff (EUMS), made up of military experts seconded by the Member States to the General Secretariat of the Council (DG E – external relations). EUMS provides military expertise and determines the conduct and implementation of any EU-led crisis operation: it performs early warning and situation assessments of crises, as well as the strategic planning for the Petersberg Tasks, including the identification of national and multinational European forces. The EUMS is responsible for implementing policies and decisions as directed by the Military Committee. It is also charged with defining and establishing cooperation between civilian and military bodies (CIMIC) in crisis management operations.

The Council's initial goals for crisis management were to create the Rapid Reaction Force as well as civilian bodies to stabilize society including police, rule of law, civilian administration, and civil protection. Specific directorates within the Council Secretariat were also created to ensure appropriate political expertise, including a Police Unit and a Joint Situation Centre.

EU Military Capability: RRF
The Helsinki European Council in December 1999 set as the headline goal the development of the Rapid Reaction Force (RRF), which involved the voluntary cooperation of Member States to develop EU military assets to a given level by 2003. The resulting RRF, a 60,000 man military force deployable within 60 days and

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[13] Article 27, TEU.
[14] Article 25, Treaty on European Union.

sustainable for up to one year, was designed with a view to carrying out the Petersberg Tasks. In practice, this allows the RRF to act in situations ranging from natural disaster relief, to humanitarian food aid, to intensive military operations. The first EU-led Military Operation, Concordia, took place from March to December 2003 in the former Yugoslav Republic Of Macedonia (fYROM).

Bound to the Petersberg Tasks, it is clear that the RRF, under the authority of political leaders in the Council, will be a new actor in administering disaster and humanitarian relief, possibly in conjunction with military operations. Due to good communication and a careful distinction of roles, the deployment of the EU military operation Artemis to the Bunia airport (Democratic Republic of Congo) on a very limited mandate from June to September 2003 was successful both in terms of the stabilisation mission and of cooperation with the EU's civilian humanitarian actors already present in the area. In general however, military forces that take an active humanitarian role in emergency situations present serious challenges for NGOs, their mandates, and the effectiveness of their humanitarian missions.

CIMIC
CIMIC stands for civil-military cooperation, and is a concept designed to facilitate relations between the military and civilians – including civilian relief actors in a crisis situation. Within the EU, the EUMS is responsible for planning and implementing CIMIC on the political and strategic level, including coordinating the planning, communication, information exchange, separation of mandates and long-term goals, and the transition of responsibilities between military and civilian actors in crisis situations. EUMS is ultimately responsible for the development of the procedural roles for the civilian and military capacities.

The EU CIMIC Conference held in June 2002 was the first time the EU brought together internal and external civilian and military actors for an open dialogue on CIMIC. It was an attempt to define the functions between civilian and military actors in crisis situations and the guiding principles behind them. The EUMS aims eventually to establish an EU CIMIC framework that would guide cooperation in any crisis management operation.

The second EU CIMIC Conference in June 2003 aimed more at the operational and tactical level than at the politico-military strategic and conceptual level as in 2002, and was much less successful in creating a context for real exchange between civilian and military actors. Instead, the meeting gave the impression that the 'hearts and minds' tactic, including humanitarian and rehabilitation work, is almost synonymous with CIMIC among many of the EU Member States' military staffs.

A draft document entitled "Civil-military Cooperation concept for EU-led Crisis Management Operations: Cooperation with relevant external civil humanitarian organisations – Generic Guidelines" was presented at the 2003 EU CIMIC Conference as a starting point for further consultation with NGOs and the UN on a definitive set of guidelines. In November 2003, after receiving comments on this document from the UN OCHA, ECHO, VOICE and the Council General Secretariat, EUMS decided to explore a new medium/long term approach for the CIMIC in EU.

Civilian Aspects of Crisis Management
The Feira European Council in June 2000 defined four priority areas for developing the civilian aspects of crisis management under the CFSP: police, strengthening of the rule of law, strengthening civilian administration, and civil protection. These areas will employ common training modules to build teams of personnel. By November 2002, the teambuilding targets in the four priority areas had been exceeded through the voluntary commitments of the Member States. The European Commission has participated actively in developing the concrete targets, through capacity-building, creating networks of training institutions, and identifying priorities, also playing a central role in the civil protection area.

Relating to police, the Member States have committed themselves to identifying a force of 5,000 policemen to be available for civilian crisis management. The group would focus on local capacity building in countries dealing with or recovering from crises. It could also take part in the monitoring, mentoring, and inspection of the local police forces. The Commission has recently adopted a number of programmes to support police training and infrastructure in various countries: Guatemala, El Salvador, South Africa, and Algeria. In January 2003, the European Union Police Mission (EUPM) in Bosnia and Herzegovina became the first ESDP civilian crisis management operation. December 2003 saw the EU Police Mission Proxima replacing the first-ever EU military mission Concordia in Macedonia.

The target area in the rule of law area seeks to identify 200 readily available experts to be called upon to act as part of the EU civilian crisis response team in areas such as human rights and election monitoring. According to past experience in human rights monitoring, the EU has found that common training modules are the best means for building this capacity. The EU will focus on strengthening cooperation between existing Member States training programmes, in which they have already committed themselves to providing sufficient volunteers through roster-based recruiting.

The EU is identifying areas of civil administration that can be crucial to the rebuilding of civil society and community structures in beneficiary countries. It involves substantial support to the strengthening of the most essential functions of a public administration in order to ensure that the key public services can be delivered. Civil administration targets include training programmes like those currently evolving in the rule of law sector. The development of these training programmes in both categories could perhaps include the relevant rosters, resources, expertise, and personnel from NGOs or ECHO.

Civil protection is administered separately from the previous three priority areas. Combined with the existing Community Coordination Mechanism described earlier, it is also managed by the Civil Protection Unit of the Commission's DG Environment. This Community mechanism can contribute to the Union's overall non-military response to crises in third countries under the CFSP[15], as well as responding to requests for emergency response within the Union. This international mandate, including short-term emergency relief, leads to potential for overlap with the activities carried out by humanitarian NGOs in disaster situations. While the objective of this new scheme is to improve interventions in case of disasters throughout Europe

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[15] DG Environment web page: http://www.europa.eu.int/comm/environment/civil/prote/cp12_en.htm

through a better coordination of means and the strengthening of communication and training capacities, it is not yet clear how the Community Mechanism's intervention teams will function next to NGOs in the field.

At the Göteborg Council of June 2001, civil protection was defined as the provision of assistance to humanitarian actors in covering the immediate survival and protection needs of affected populations.[16] The goals for civil protection were expanded under the Swedish Presidency to include a pool of 100 experts on 24-hour call to form 10-strong assessment teams, an intervention team of 2,000 deployable at short notice, and supplementary resources from relevant NGOs to be deployed within 2 weeks. Highly specialized civil protection teams are being developed with skills which may include search and rescue, high-tech logistical capability, sniffer dogs, fire-fighting, engineering, industrial or chemical decontamination, as well as the standard emergency response capability of food, health, water, displaced persons, etc. As part of the civil protection mechanism, in October 2001 the Commission set up an EU Civil Protection Monitoring and Information Centre which is operational on a 24-hour basis. How this monitoring centre coordinates with other 24-hour monitoring services in the EU institutions is not yet clear to outsiders.

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[16] See Presidency Report to the Göteborg European Council on European Security and Defence Policy, Annex III, Göteborg European Council (15-16 June) Presidency Conclusions.

Table: EU Crisis Response at a glance

Mech-anism	Pillar I (European Commission; Community Policies)			Pillar II (Council of the European Union; CFSP, ESDP)		
				Military Aspects of Crisis Management		
	Humanitarian Aid	RRM (Rapid Reaction Mechanism)	Civil Protection Mechanism	RRF (Rapid Reaction Force)	EU CIMIC (Civil-Military Cooperation)	Civilian Aspects of Crisis Management
Mandate	Council Regulation (EC) No 1257/96 of 20 June 1996 concerning humanitarian aid	Council Regulation (EC) No 381/2001 of 26 February 2001 creating a rapid-reaction mechanism	Council Decision of 23 October 2001 establishing a Community mechanism to facilitate reinforced cooperation in civil protection assistance interventions (2001/792/EC, Euratom)	EU Joint Action, Title V, Treaty on European Union (Presidency Conclusions Helsinki European Council, 10 and 11 December 1999)	Under Development References: CIMIC Concept for EU-led crisis management operations; NATO CIMIC Doctrine	(Presidency Conclusions, Feira European Council, 19 and 20 June 2000)
Activities (Examples)	● emergency relief ● humanitarian de-mining ● health services and water supply ● emergency rehabilitation and reconstruction ● disaster preparedness ● services to refugee populations	● technical assessment and fact finding missions in crisis. ● projects (up to six months) in Mediation and Reconciliation; rule of law and civilian administration; Rehabilitation and reconstruction; Civil Society development; High level policy advice; Demobilisation, disarmament and reintegration ● the first phase of longer term relief, rehabilitation and reconstruction programmes	● search and rescue ● fire-fighting ● specialised medical and forensic services ● evacuation ● environmental pollution ● emergency relief ● Co-ordination and development of Member State resources for crisis management operations (incl. training) ● Capacity building in third countries ● Monitoring	● humanitarian and rescue tasks ● peacekeeping tasks ● tasks of combat forces in crisis management, including peacemaking.	● ensures effective response to crisis by employing all necessary instruments from the full range of civilian and military instruments available within the EU ● co-ordination between all actors, both civil and military, at all levels, both in Brussels and in the field, and at all phases of the management of the crisis, from the routine phase to the post-crisis phase. ● co-ordination with civil and military actors external to the EU.	● police ● strengthening of the rule of law ● strengthening civilian administration, and ● civil protection
EU Control	ECHO	Conflict Prevention Unit, DG Relex	Civil Protection Unit, DG Environment	PSC, EUMC, EUMS	CIMIC and Information Operation Branch, EUMS	Committee for Civilian Aspects of Crisis Management (CIVCOM); EC - DG Environment Civil Protection Unit (for Civil Protection only)
Where it works	third countries	third countries	inside the EU as well as in third countries	no geographical limits	no geographical limits	no geographical limits

> ➤ *PART II*
Analysis of the Implications

ECHO is now accompanied by many EU actors in emergency assistance and crisis response. These relatively new political actors may pose the most direct risks to ECHO in the areas of cooperation in field operations, EU financing of future crisis management, and ultimately, the potential for politicisation of humanitarian aid.

Possible implications for EU Humanitarian Aid
As discussed above, ECHO is politically neutral and administers aid on the basis of need. The new actors described above are mainly political mechanisms that give the EU the capacity to intervene directly in crises. While their peacekeeping tasks cannot and would not be pursued through ECHO, the problem lies in the lack of distinction or separation between the roles of the political and the humanitarian actors. The EU's crisis management (Petersberg) tasks include a range of activities from military operations to providing humanitarian support. The RRM will work to stabilize civilian aspects of society through election monitoring, etc., but its regulation also stipulates that its interventions can be combined with ECHO action. If all of these instruments are political tools employed for political ends, then why do their legal mandates include humanitarian aid?

Through the CFSP, the Council is able to take political and military actions in crisis response. The EU has created the new crisis management tools with the aim of developing full capabilities to handle complex peacekeeping missions such as those recently undertaken in FYROM (Former Yugoslav Republic of Macedonia) and Bunia, DRC. However, certain crisis management capabilities have also been given a mandate to perform humanitarian aid, despite the fact that there can be no impartiality if the Council chooses in which crises to intervene based on political considerations. Can ECHO's mandate to provide impartial humanitarian aid survive the European Commission's imperative to be *fully associated* with the work carried out in the CFSP field?

Without a clear separation of roles that gives full responsibility for humanitarian aid to ECHO, EU humanitarian assistance could become yet another tool of the CFSP, to be used if there are political or strategic priorities at stake, rather than strictly based on needs. The humanitarian community has begun to perceive the possible emergence of a two-tiered system in which principled humanitarian actors are responsible for low-visibility crises, while political actors perform "humanitarian" tasks in areas with a strategic, political or security interest[17]. Hopefully the EU will not go in this direction.

The new mechanisms also pose a risk to the EU's financing of humanitarian aid through ECHO. ECHO may, some day, face competition from RRM for the use of the emergency reserve. The civil protection capabilities of the CFSP administered from DG Environment could also have the potential to draw money away: where a civil protection mission meets the requirements of the 1996 Humanitarian Aid Regulation, it is eligible for financing from the humanitarian assistance budget. With a

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[17] See for example "The Future of Humanitarian Action: Implications of Iraq and Other Recent Crises", an Issues Note for a Brainstorming Workshop organised by the Feinstein International Famine Center, The Friedman School of Nutrition Science and Policy, Tufts University, Boston, USA, 9 October 2003.

multiplicity of actors, the EU will need to commit much larger amounts for crisis response if it is to prevent the money being spread too thin.

If the EU increasingly chooses to act through CFSP mechanisms, its reliance on ECHO stands to diminish. ECHO could in this way become a side actor, rather than the main EU source of effective and impartial humanitarian relief. The role of European civil society actors (accounting for many of ECHO's implementing partners) in delivering EU humanitarian aid may equally be reduced.

NGO Concerns
Humanitarian aid NGOs may face the challenge of operating alongside the EU's military or civilian political actors in future EU crisis management interventions. The RRM operates with a mandate to bring political stabilisation to a crisis, and cannot perform activities covered by ECHO. But the Commission may choose to maximize support to a country by combining actions of both ECHO and RRM, under close coordination. This means that NGOs implementing ECHO projects might be asked to act in humanitarian crises under the same flag as, and together with, a politically-oriented body. At a time when European NGOs are increasingly seen as using humanitarian aid to promote Western values in beneficiary countries, further ambiguity about their political motives is undesirable.

If operating beside the RRM poses challenges to the neutrality and impartiality of NGO mandates, the RRF creates further difficulties. The potential for military involvement in humanitarian aid as part of the Petersberg Tasks presents clear challenges to NGO neutrality, international humanitarian law, the safety and security of aid workers, their ability to gain the trust of the population and to access and assist all victims of a crisis. This paper will not go deeply into the larger question of military involvement in humanitarian aid, but it is worth arguing that a clear definition of roles and mandates in crises where the military and humanitarian NGOs are both active could minimize the threats to the impartiality and field security of NGOs and other humanitarian actors.

Finally, recruitment of civil protection and other crisis management teams may in some cases create competition with the NGO sector for specialized emergency skills. Losses in terms of EU funding priorities, clarity of mandates, beneficiary perceptions, and expert personnel, could all seriously draw away from the effectiveness of humanitarian NGOs.

The Future European Constitution

Within the current legal framework as described above, where the impartiality of aid is enshrined in the 1996 ECHO regulation with recognition in the regulations of later instruments, risks for EU humanitarian aid exist nonetheless. These risks are sharpened with the process of creating a Constitution for Europe. The work of the Convention on the Future of Europe has resulted in a draft constitution that gives

separate mention to humanitarian aid[18], and thus a legal basis much stronger than the 1996 regulation.

However, the stipulations of the article on humanitarian aid are less than ideal. Article III-223 situates humanitarian aid operations in the Union's overall framework for external action, where, for the sake of coherence, it shares objectives with CFSP and trade policy, and so loses part of its distinct character. It mentions the humanitarian law principles of impartiality and non-discrimination, but failed initially to refer also to the principle of neutrality. However, this reference was added in the text put before the European Council in December 2003. Finally, it calls for the establishment of a "European Voluntary Humanitarian Aid Corps", which directly threatens the professionalism in aid delivery that ECHO has so far required from its implementing partners, including NGOs. This may in fact create yet another EU actor whose mandate and role in crises will have to be settled.

Other stipulations in the draft Constitution are equally worrying. Article III-210 under the section on Common Security and Defence Policy defines crisis management operations by listing the Petersberg Tasks – including, of course, humanitarian and rescue tasks. However, it also states that "All these tasks may contribute to the fight against terrorism, including by supporting third countries in combating terrorism in their territories." The idea that humanitarian operations will be put to use in the highly political fight against terrorism goes directly against the basic principles of international humanitarian law, and risks undermining its existence altogether.

Discussion of the EU's current legal framework are limited by the unknown dimensions of the future Treaty. While the RRM is not mentioned as such in the draft, Article I-40, on the implementation of tasks for peace-keeping, conflict prevention and strengthening international security, states that with regard to both civil and military assets, "The performance of these tasks shall be undertaken using capabilities provided by the Member States" – not the Union through the Commission. An article establishing the legal framework for civil protection (Article III-184) refers only to actions within the Union, and Article I-16 describes civil protection as an area where the Union can support, coordinate or complement the Member States, but has no competence of its own. The number and weight of the European Commissioners has yet to be determined at this printing, leaving no way of knowing whether the current responsibility for Development and Humanitarian Aid will remain with a single, voting Commissioner. Given the likelihood that the new Constitution will result in a dramatic restructuring of the pillar system, especially with regard to CFSP and the respective competences of the Council and the Commission, the future position of European humanitarian aid remains to be seen.

Conclusion

The drafting of a European Constitution is an opportunity to sort out the various new and more traditional tools for responding to crises in third countries – both in strategic and in politically unimportant areas. If the EU does not actively resist transferring

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[18] Humanitarian aid is mentioned in Article III-223 of the final text of the draft Treaty establishing a Constitution for Europe, as submitted to the European Council in Rome on 18 July 2003 (CONV 850/03).

ECHO's duties into the domain of the CFSP, the future of humanitarian aid will rest with the political decisions of the Council, rather than as a response to the needs of people affected by specific crises.

The dangers of this politicisation of humanitarian aid have become even more apparent with the EU's reaction to the crisis in Iraq in spring 2003. When faced with such a divisive issue as preemptive military strike, the only common policy that could attain the consensus of all fifteen EU member states was the provision of humanitarian aid to the Iraqi people. If the magnitude of the CFSP revolves around taking the lowest common denominator for a common action, humanitarian aid is likely to be the only measure all the member states can agree on in any controversial political crisis.

With humanitarian assistance in the hands of CFSP, the ability of the EU to deliver impartial humanitarian relief would stand in grave jeopardy. It is crucial for the EU to guarantee that ECHO retains full responsibility for humanitarian aid while the tools of the CFSP are employed as explicit political or military responses distinct from humanitarian action.

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