

Susanna Villani

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the EU in the Field of International
Disaster Response

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The Multifaceted Contribution of the EU in the Field of International Disaster Response

by

Susanna Villani*

Abstract

In recent times, imperatives of humanity and solidarity have led to increasing international interventions in order to assist the victims of severe disasters. In this context, the EU has progressively become a global disaster manager, by creating specific arrangements and strategies for effectively responding to overseas emergencies, thus coexisting with the policies of the Member States. The influence exercised by the EU in the field of disaster response at international level should be evaluated from an operational and a normative point of view. One of the most relevant instruments the Union can rely on for providing in-kind assistance to the victims of severe emergencies occurring in third countries is the Union Civil Protection Mechanism. As demonstrated during the 2014 Ebola outbreak, this instrument is part of the EU's external identity, capable of creating synergies with other international subjects involved in the phase of response, as well as of positively impacting on the overall reaction to overwhelming disasters. The weight of the EU as a global actor in the field of disaster response can also be assessed through its contribution to the work of the International Law Commission (ILC) in the elaboration of the Draft Articles on the "Protection of persons in the event of a disaster". In this regard, the EU legal order has been source of inspiration for the ILC. However, the EU has yet to acquire an autonomous role in significantly shaping the substantive parameters of the international legal system in the field of disaster relief.

Keywords: Disaster response; Civil protection; Global actor; Ebola outbreak; International Law Commission; Normative power

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The Multifaceted Contribution of the EU in the Field of International Disaster Response

I. Introduction

Disasters in their broad meaning – which includes natural, man-made and health emergencies – have always played an important role in Human history, as the eruption of Vesuvius in 79 A.D., the plague during the Middle Ages, the recent tsunami in Asia or the earthquake in Nepal. However, recent imperatives of humanity and solidarity have prompted massive international interventions to assist the victims of disasters. Indeed, when events of great magnitude and humanitarian impact occur, the response capacity of the affected State, which has the primary role in the initiation, organization, coordination, and implementation of humanitarian assistance on its territory, could be insufficient. International cooperation in view of addressing emergency situations and strengthening of the response resources of affected countries is thus of great importance. Consequently, effective coordination among different responders and international actors is decisive to the successful preparation for a response to crises and severe disasters.

Given the development of interacting and cooperative mechanisms, as well as the increase of a clear international legal framework concerning disaster response, the present work is intended to focus on the contribution the European Union (EU) has made, and is still making, regarding the management of the so-called ‘global emergencies’ caused by severe disasters as special scope for intervention in its external projection. Indeed, although States have, as part of their external policy, long-established consolidated instruments capable of intervening in support of third countries, since the mid-1990s, the EU has progressively become a ‘global disaster manager’, through the creation of specific arrangements and strategies for effective response to overseas emergencies. The Lisbon Treaty has contributed to the consolidating of the EU’s role in this field by entrusting it with the duty to assist “*in a spirit of solidarity*” those Member States affected by a disaster (Article 222 TFEU) as well as, in a broader perspective, with the responsibility to define and pursue common policies and actions “*to assist populations, countries and regions confronting natural or man-made disasters*” (Article 21, par. 2(g) TEU). To this end, primary law now includes both a specific provision dealing

with humanitarian assistance (Article 214 TFEU) as shared competence and a formal legal basis for civil protection (Article 196 TFEU) as supporting competence¹.

The entire international impact of the activation of these two EU instruments operating in the field of disaster response has to be merged with the necessity to foster synergies with the objectives and strategic priorities of other international organizations and bodies operating in events of emergency. Such awareness is made apparent in the general obligations reported in Article 21(1) TEU, by virtue of which the EU is required to “*develop relations and build partnerships with third countries, and international, regional or global organisations which share the principles (...) and promote multilateral solutions to common problems, in particular in the framework of the United Nations*”. The above-mentioned awareness is also made apparent in Article 208(2) TFEU, which requires that the EU and its Member States take into account the objectives approved at the UN and other competent International Organisations. Evidently, the EU external projection on the issue of disaster relief could be analysed from different points of view. However, the present work will be limited to a two-pronged investigation aimed at evaluating the EU’s influence on an international level from an operational and a normative point of view.

The first section will provide a study of one of the most relevant instruments the EU can rely on in order to provide in-kind assistance to the victims of severe disasters occurring within the Union or in third countries, that is the Union Civil Protection Mechanism established, in its present form, by Article 196 TFEU.

Although this Mechanism is intended to serve as grounds for assistance provided to Member States as well, for the purposes of the present work, the focus will be put on its specificities in relation to its the external dimension only. Moreover, for evaluating the extent to which the Mechanism ensures convergence with the interventions of other International Organisations and bodies in contexts of disaster and whether it can be an added value for the work of other international subjects, the joined reaction of the EU and some International Organisations in the 2014 Ebola outbreak will be examined.

The second section of the work will be dedicated to a perspective *de lege ferenda*, by focusing on the kind of contribution that the EU is giving to the development of the so-called International Disaster Response Law (IDRL). Indeed, an attentive reading of Article 21(1) TEU cannot disregard the wording of Article 3(5) TEU. By virtue of the latter, the Union has the task of promoting and upholding the progressive development of International law. To promote “*multilateral solutions to common problems*” also means to be involved in the process of codification and advancement of International law. It is thus clear that the perception

¹ GESTRI Marco, *La risposta alle catastrofi nell’Unione europea: protezione civile e clausola di solidarietà*, in Gestri Marco (ed), *Disastri, protezione civile e diritto: nuove prospettive nell’Unione europea e in ambito penale*, Milano, Giuffrè (2016), pp. 3-62.

and the weight of the EU as a global actor can be analysed from this point of view. Consequently, after a brief analysis of the work of the ILC for the elaboration of a Project of Draft Articles on the “*Protection of persons in the event of a disaster*”, our analysis will focus on the EU’s position in view of determining whether it can be presented both as a source of inspiration for the elaboration of the Draft Articles and a key normative power.

II. The EU in international disaster response: an active actor at operational level

Throughout the decades, the EU has witnessed different events and has seen its role crisis manager grow. Among the worst crises that originated in Europe and in other continents, we may cite the chemical industrial plant in Seveso, Italy in 1976, the Chernobyl nuclear plant 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, the Fukushima accident in 2011, the Ebola virus outbreak in Africa in 2014, the Nepal earthquake in 2015 and the more recent hurricanes in the Caribbean. Against these situations, the EU has progressively attempted to manage disasters affecting Member States as well as overseas emergencies by developing internally and internationally-oriented tools and efficient capacities in order to respond to a variety of policies and mandates. Even if the main mechanisms have been established a few decades ago, the Lisbon Treaty seems to have led to the attainment of positive effects as it provided a new legal framework for the implementation of EU disaster response policies, aimed at facing emergencies affecting third States as well as global emergencies². Indeed, while including a specific provision on humanitarian assistance (Article 214 TFEU)³, the Lisbon Treaty also includes a legal basis for civil protection (Article 196 TFEU). The said Treaty thus went beyond the idea that financial assistance is at the centre of disaster response as an immediate and a more concrete form of solidarity.

The European countries have a long tradition of concern for disaster relief and, at a 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 as well as on mobilizing and coordinating all national resources in order to provide useful assistance to the population in cases of emergency. In particular, throughout the last decades, civil protection structures have been created and reinforced in view of delivering governmental aid in the immediate aftermath of a disaster. This aid took the shape of in-kind assistance, the deployment of specially equipped teams and experts on-the-field assessment and coordination. Civil protection is thus a competence that relates, *in primis*, to national governments

² GESTRI Marco, *EU Disaster Response Law: Principles and Instruments*, in De Guttry Andrea, Gestri Marco, Venturini Gabriella (eds), “International Disaster Response Law”, The Hague, Springer (2012), pp. 105-128.

³ VAN ELSUWEGE Peter, ORBIE Jan, *The EU’s Humanitarian Aid Policy after Lisbon: Implications of a New Treaty Basis*, in Govaere Inge, Poli Sara (eds), “EU Management of Global Emergencies”, Leiden, Brill-Nijhoff (2014), pp. 21-46.

having a great potential in terms of response to disasters occurring, not only within the national territory, but also in other countries. The EU's power in the area of civil protection is, however, a relatively new issue.

The first Civil Protection Mechanism was established in 2001⁴ by resorting to the Treaty provisions on environment protection, and it was then improved through the adoption of the Council Decision establishing a Civil Protection Financial Instrument in 2007⁵. However, the functioning of the system was limited, namely because of the absence of specific Treaty provisions on a clear set of powers assigned to the European Commission. The enshrinement of the new competence of the EU in civil protection issues within primary law has, hence, allowed the EU to act within the legislative framework by adopting Council Decision 1313/2013⁶. The said Decision marked the latest step of the 'institutionalization' of EU Civil Protection Mechanism (hereafter 'Mechanism' or 'UCPM') to be deployed both within and outside the Union's territory in order to provide for in-kind assistance to the victims of an emergency.

A. The EU Civil Protection Mechanism as instrument of in-kind assistance

The inclusion of Article 196 TFEU in the Lisbon Treaty incited the Commission to adopt new initiatives on civil protection from an operational and a legal point of view, in order to promote swift, effective operational cooperation between national civil protection services, as well as consistency in international civil protection work.

In 2010, the Commission published a Communication entitled "*Towards a stronger European disaster response: the role of civil protection and humanitarian assistance*"⁷. This Communication urged a review of the existing legal framework in consultation with the interested parties. 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). Subsequently, on 16 October 2014, the implementing Decision 2014/762 on the functioning of the EU Civil Protection Mechanism was adopted⁸.

⁴ Council Decision No. 2001/792/EC, Euratom of 23 October 2001 establishing a Community mechanism to facilitate reinforced cooperation in civil protection assistance interventions [2001], OJ L 297/7.

⁵ Council Decision No. 2007/162/EC, Euratom of 5 March 2007 establishing a Civil Protection Financial Instrument [2007], OJ L 71/9.

⁶ Decision No. 1313/2013/EU of the European Parliament and of the Council of 17 December 2013 on a Union Civil Protection Mechanism [2013], OJ L 347/924.

⁷ Communication from the Commission to the European Parliament and the Council, "*Towards a stronger European disaster response: the role of civil protection and humanitarian assistance*", COM/2010/0600 final.

⁸ Commission implementing Decision 2014/762/EU of 16 October 2014 laying down rules for the implementation of Decision No 1313/2013/EU of the European Parliament and of the Council on a Union Civil Protection Mechanism and repealing Commission Decisions 2004/277/EC, Euratom and 2007/606/EC, Euratom [2014], OJ L 320/1.

Decision 1313/2013 extends 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 candidates⁹. Moreover, Decision 1313/2013 sets out a rather broad scope of application to the new Mechanism both from a temporal and material point of view.

The actions pursued by the Mechanism have been improved *ratione temporis* by covering the entire so-called ‘disaster management cycle’ which includes activities of prevention, preparedness, immediate response and recovery. In particular, Decision 1313/2013 seeks to focus on prevention and preparedness measures by proposing the elaboration of national risk assessments and risk management plans, the preparation of reference scenarios, the mapping of existing capacities and developing contingency, as well as the promotion of sharing disaster information. Moreover, the Mechanism 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.

As for the specific situations where the UCPM can be activated, Article 4 of Decision 1313/2013 encompasses any serious natural or man-made disaster that affects – alternatively – people, the environment or cultural heritage, in or outside the EU. In fact, by labelling the concept of ‘disaster’ as synonymous to the terms ‘emergency’ and ‘crisis’, the Mechanism can be activated in “*any situation which has or may have a severe impact on people, the environment, or property, including cultural heritage*”¹⁰. Article 1(2) of Decision 1313/2013 specifies that the list of the events covered comprises also “*terrorist attacks, technological, radiological or environmental disasters, marine pollution and acute health emergencies*”. Moreover, practice has shown that the Mechanism has been also activated in situations of conflict and civil wars. It thus became complementary to the humanitarian aid instrument as regards its scope of application: while the latter focuses mainly on financial assistance, the Mechanism ensures an immediate operative response¹¹.

This complementarity, combined with the requirement for coherence of actions and the need to comply with the humanitarian principles of humanity, impartiality, neutrality and

⁹ Current participant States comprise all EU Member States plus Norway, Iceland, Montenegro, Serbia, the former Yugoslav Republic of Macedonia and Turkey.

¹⁰ Art. 4.1 of Decision 1313/2013 of the European Parliament and of the Council on a Union Civil Protection Mechanism [2013], OJ L 347/924.

¹¹ For example, the EU Civil Protection Mechanism has been activated during the Ukrainian crisis. Moreover, it has to be recalled that most of third countries that have received assistance through the Civil Protection Mechanism (in particular, Guinea, Liberia, Nigeria, Sierra Leone, South Sudan) are also destination of EU humanitarian aid. CASOLARI Federico, *The External Dimension of the EU Disaster Response*, in De Guttry Andrea, Gestri Marco, Venturini Gabriella (eds), “International Disaster Response Law”, The Hague, Springer (2012), pp.129–154.

independence, has led the Commission to merge the EU civil protection policy with humanitarian aid policy into a single Directorate General (ECHO), under the responsibility of a single Commissioner for International Cooperation, Humanitarian Aids and Crisis Response¹².

Regarding the procedure of activation of the Mechanism in the phase of response, Article 15 and Article 16 of the Decision 1313/2013 regulate respectively the situations occurring within and outside the Union. Although the wording of these provisions is similar, a major involvement of other international actors is clearly expected under Article 16. As for this Article, the UCPM can be called in for work after having received the written requests for assistance from affected countries or from the UN, its agencies and relevant International Organisations indicated in Annex VIII of the implementing Decision 2014/762¹³. The UCPM can also be called in for work from an EU Member State, for support in providing consular assistance to EU citizens affected by disasters outside the Union. Without delay, the Commission informs the Member States of the full requests for assistance in order to promptly determine whether they are in a position to render the assistance required according to their resources. If so, they inform the Emergency Response Coordination Centre (ERCC) which ensures the coordination of the response offered through the Mechanism. For its part, the affected country communicates to the ERCC the type of assistance accepted, that will be deployed under the operational coordination of the United Nations Office for the Coordination of Humanitarian Affairs (OCHA).

The above-mentioned brief description of the functioning of the Mechanism allows to stress the dual objective of the latter: to strengthen the cooperation between the Union and the participating States, on the one hand and to facilitate the coordination on the ground in order to improve the effectiveness of systems for preventing, preparing for and responding to natural and man-made disasters, on the other hand.

It cannot be denied that the Mechanism relies on a State-centric perspective: suffice it to say that the participating States are free to choose if and to what extent to give their contribution thus leaving little room to the Union as an independent actor. Moreover, it does not reflect neither a compulsory character in its early activation nor a clear duty to provide for assistance in favour of the affected State. Rather, the provision of in-kind assistance remains in the hands of the States' rights, thereby limiting the effectiveness of the Mechanism. However, a deeper analysis suggests that, in the future, it could become more than a simple instrument of coordination and support for States.

¹² CREMONA Marise, *The EU and global emergencies: competence and instruments*, in Antoniadis et al (eds), "The European Union and global emergencies. A Law and Policy Analysis", Oxford and Portland, Hart Publishing (2011), pp.11–31.

¹³ Annex VIII of the implementing Decision 2014/762 includes an exhaustive list of three organisations that are the International Organisation for Migration (IOM), the International Federation of Red Cross and Red Crescent Societies (IFRC) and the Organisation for the Prohibition of Chemical Weapons (OPCW).

Once the Mechanism is deployed, it has to be seen as a single system coordinated by a hub (the ERCC) located in Bruxelles and managed by the Commission. It is, moreover, worth noting that the content of Decision 1313/2013 reflects most of the changes brought by the Lisbon Treaty from an institutional point of view. The Decision's provisions confer prominent tasks to the Commission and, for external interventions, to the High Representative. Indeed, especially when the UCPM must be deployed outside the Union, many operational and diplomatic issues arise, so that the representative of the Union and the responsible body for ensuring (vertical) consistency across different areas of external relations, shall be involved to guarantee major coordination and cooperation with other EU instruments and international actors. In this regard, it is not a coincidence that the title of Article 16 of the Decision 1313/2013 is "*Promoting consistency in the response to disasters outside the Union*".

As regards the institutional dynamics, the European Commission now plays a stronger role, as it is asked to support consistency throughout the whole cycle of the delivery of assistance. In particular, the Commission is required to maintain relations and a constant dialogue with the Member States' contact points, with the affected country as well as with OCHA and other relevant actors¹⁴. For its part, the European External Action Service (EEAS) and the High Representative should foster consistency between the civil protection operations and the overall Union relations with the affected country, thus playing a role of prevalently political nature alongside that of the participating States. In addition, the EU delegations, which are now part of the EEAS structure, can provide for the liaison between the forces for crisis response and the diplomatic missions of third countries and Member States. The major involvement of such institutions within the framework of the Mechanism represents an important innovation of the existing framework, insofar as it suggests that the overall coordination of the civil protection assistance could be exercised in the future by the EEAS thereby further shaping the EU's external legal identity and its credibility as international actor in disaster relief. In this regard, however, there is to acknowledge that the political activity performed by the EU institutions in this phase might not comply with the principle of neutrality which must be observed when the Mechanism is activated. In effect, as it is also true in the field of humanitarian aid policy¹⁵, the requirement to apply the international humanitarian principles and the EU's aspiration to become a smart foreign policy actor are two objectives difficult to reconcile. Testament to this is, for example, the reaction to the Ukrainian crisis from 2014. On the occasion of this crisis, UCPM was activated and a team

¹⁴ Art. 16(2) of the Decision 1313/2013 of the European Parliament and of the Council on a Union Civil Protection Mechanism [2013], OJ L 347/924.

¹⁵ VERSLUYS Helen, *European Union Humanitarian Aid: Lifesaver or Political Tool?*, in Orbie Jan (ed), "Europe's Global Role: External Policies of the European Union", Ashgate (2008), pp. 100-101. In this regard, it has to be stressed that the establishment of the European Voluntary Humanitarian Aid Corps (EVHC) *ex* Article 214(5) TFEU has been deeply criticised by the NGO community which fears that this initiative may be used as a promotional tool to increase the visibility of the EU's humanitarian actions thus conflicting with the humanitarian imperative to provide aid on a needs-based approach and with the principle of independence from political, economic, military or other objectives.

of experts from seven EU Member States was deployed to support the Ukrainian government in improving emergency risk management, strengthen chemical accident prevention and preparedness, assist the government in developing Host Nation Support procedures and establishing the necessary coordination mechanisms in case of Civil Protection Assistance in Ukraine¹⁶. Hence, notwithstanding the initial neutral approach essentially aimed at protecting the affected people, it cannot be denied that through the intervention in this specific case, the Mechanism has become a tool of crisis management.

Moreover, the major innovation introduced in the current Mechanism must be stressed, namely the establishment of the European Emergency Response Capacity (EERC). It is a ‘voluntary pool’ from the participating countries of pre-committed resources including 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. To this end, both participating States and the Commission are requested to work closely together in order to establish a number of specific quality criteria 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 the commitment to the voluntary pool, participating States can benefit from EU’s financial support, such as the co-financing up to 85% for the transport of teams deployed from the EERC, the 100% covering of certification costs (trainings, exercises and workshops) and up to 100% of eligible costs for the so-called ‘adaptation costs’ i.e. costs necessary to upgrade existing national response capacities according to international standards.

Once selected, the pre-committed modules, support teams and other response capacities and experts shall be registered and kept on standby in order to be immediately available when the situation calls for it. In doing so, the EERC has the merit of making the European response to disasters more predictable, better planned, and coordinated thereby overcoming the system based on *ad hoc* offers of assistance from the participating States. In addition, a different reading of the structure of the EERC makes it clear that it has all the elements to be considered an actual expression of the “*European Civil Protection Force*” proposed by Micheal Barnier in 2006¹⁷. To date, the European Emergency Response Capacity, formally launched on 17 October 2014, has involved ten EU Member States which have registered response units including urban search and rescue teams, specialised medical air evacuation capacity, water purification equipment, high capacity pumping units and forest fire fighting teams¹⁸. Further capacities from Member States, such as flood containment, labs for environmental emergencies, marine pollution are in the process of being registered. Whenever

¹⁶ ECHO Factsheet – Ukraine, March 2016, available at http://ec.europa.eu/echo/files/aid/countries/factsheets/ukraine_en.pdf (consulted on 25 September 2017).

¹⁷ BARNIER Michel, *Report for a European civil protection force: Europe aid*, May 2006.

¹⁸ Since its launch, ten countries have committed their response capacities within the EERC: Belgium, the Czech Republic, Finland, France, Germany, Luxembourg, Poland, Spain, Sweden, and the Netherlands.

the development of a strong response capacity at Union level was sought, it could represent a first step towards the construction of a real and unique *European* instrument of assistance that complemented the States' resources and had the capacity of intervening in an autonomous way as an 'operating arm' of the Union, in addition to the humanitarian aid, as financial instrument of assistance.

Finally, the functioning of the Mechanism seems to improve the positive synergies with other international subjects involved in the phase of response, thus increasing the weight of the Union as global actor and reinforcing the convergence of the reciprocal objectives and priorities. In fact, the wording of Decision 1313/2013 makes clear the intention to foster not only a hierarchical but also a horizontal relationship with the relevant international actors intervening in the event of a disaster. In particular, it cannot be neglected the reference to international subjects as potential triggers of the Mechanism thereby marking a significant innovation in comparison to the traditional perspective where just the affected country is entitled to make a formal request of assistance. This changeover, in part determined by the memory of what happened in Haiti in 2010¹⁹, comes from the necessity to recognise the crucial role that international actors other than States may have in making decisions in the immediate aftermath of a disaster when the central government of the affected State is unable to seek for assistance. Furthermore, the Mechanism is intended to become a cooperation hub not only at a European level, but also at an international level, through the conclusion of bilateral and multilateral agreements. Suffice it to say that Article 28(3) of the Decision 1313/2013 provides that "*international or regional organisations may cooperate in activities under the Union Mechanism*". More specifically, Article 27(2) of the implementing Decision 2014/762 opens the participation to training courses also to experts belonging to the United Nations and its agencies, and to International Organisations. Consequently, what really raises is the intention to make the Mechanism a real operational instrument to be used by the Union and to be put in the hands of other relevant International Organisations for preparing and responding to any kind of emergency. In January 2017, the European Court of Auditors published its Special Report on the Union Civil Protection Mechanism²⁰ in which the EU's civil protection response is qualified as "*well-coordinated*" and respectful of the UN leading role. In particular, the reaction to the Ebola outbreak has shown that the EU Civil Protection Mechanism served as decisive tool to convey increasing positive relations between the EU institutions and other international actors and, therefore, to guarantee consistency among initiatives coping with such overwhelming emergencies.

¹⁹ In 2010, Haiti, already very closed to the political collapsed, experienced a seven-point earthquake causing, moreover, severe damages to the vital infrastructures necessary to respond to the disaster, including all hospitals in the capital, air, sea, and land transport facilities, and communication systems. In this case, a stronger involvement of the international actors other than the State in taking decisions would have allowed a more immediate response.

²⁰ *European Court of Auditors - Special Report no. 33/2016: Union Civil Protection Mechanism: the coordination of responses to disasters outside the EU has been broadly effective*, [2017], OJ C 19/3.

B. In search of the effectiveness of the EU Civil Protection Mechanism in practice: the Ebola outbreak

The Ebola outbreak, the worst epidemic crisis in central Africa to date, began in late 2013 in Guinea but was notified by the national authorities to the World Health Organization (hereinafter WHO) only in March 2014. The outbreak soon spread in Liberia and Sierra Leone and went out of control, by reaching the coasts of Europe and the United States. As of 30 November 2014, WHO reported more than 17000 confirmed, probable, and suspected cases of Ebola and more than 6000 reported deaths. Considering the direness of the situation, WHO responded to the outbreak by acknowledging that Ebola fell within the scope of the International Health Regulations (IHR)²¹, the unique international legal instrument directly aimed at controlling the international spread of diseases. On the grounds of Articles 12 and 15 of the IHR, on 8 August 2014 the WHO's Director-General declared Ebola a "*public health emergency of international concern*" and issued "*temporary recommendations*" addressed partly to the affected countries and partly to third States with the aim of preventing a further spread of the disease. The seriousness of this epidemic was confirmed when in September 2014, the Security Council unanimously enforced Resolution no. 2177/2014, in which it is stated that "*the unprecedented extent of the Ebola outbreak in Africa constituted a threat to international peace and security*"²². The spread of the virus represented an extraordinary event thereby requiring a coordinated international response. Hence, the first-ever UN emergency health mission was deployed i.e. the UN Mission for Ebola Emergency Response (UN-MEER), with the main objective of scaling up the response on the ground²³.

Against this background, the EU was active in the phase of response to the health emergency since the beginning, by allocating about €2 billion, including funding from the Member States. For its part, the European Commission made available close to €870 million for emergency measures and longer-term support. In particular, the Department of Civil Protection and Humanitarian Aid funded activities of humanitarian assistance, development aid and medical research, by collaborating with humanitarian partner organizations in the field, such as Doctors without Borders, the International Federation of Red Cross and Red Crescent, Save the Children, as well as UN Agencies as the World Food Programme and

²¹ The International Health Regulations, which entered into force on 15 June 2007, are an international legal instrument binding on 196 countries, including all the Member States of WHO. They are aimed to help the international community prevent and respond to acute public health risks that have the potential to cross borders and threaten people worldwide. The Regulations require countries to report certain disease outbreaks and public health events to WHO. In addition, this instrument defines rights and obligations of countries to report public health events and establish a number of procedures that WHO must follow in its work to uphold global public health security.

²² UN Security Council, S/RES/2177 [2014].

²³ The UNMEER mission was closed on 31 July 2015. For further details on the interaction between different international actors during the Ebola emergency, ACCONCI Pia, *The Reaction to the Ebola Epidemic within the United Nations Framework: What Next for the World Health Organization?*, Max Planck Yearbook of United Nations Law Online (2014), pp. 405-424; CASOLARI Federico, *La reazione alla diffusione del virus Ebola: verso un nuovo paradigma nella governance internazionale delle pandemie?*, in Tronconi Livio Pietro (ed), "Unione europea e diritto alla tutela della salute: problematiche giuridiche comparate", Santarcangelo di Romagna, Maggioli Editore (2016), pp. 177-206.

UNICEF. At a scientific level, an Ebola research programme was launched, with a total budget of nearly €240 million in order to tackle a wide range of challenges including vaccine development, diagnostic tests and treatments²⁴.

The contribution of the EU was not, however, limited to such a massive financial contribution. In October an Ebola Task Force was established by bringing together Member States, all the Commission services, the European External Action Service, including the EU Delegations in the affected countries, representatives of the UN, the Red Cross and several NGOs. The Commissioner for Humanitarian Aid and Crisis Management Christos Stylianides was appointed as EU Ebola Coordinator. The Task Force met daily, hosted by the ERCC assuming the role of a response hub and an information exchange platform amongst the involved subjects²⁵. Indeed, according to the procedure set out in Article 16 of the Decision 1313/2013, in July 2014 the UCPM was called to action by the WHO to help contain the outbreak of the Ebola virus disease. This enabled to complement the interventions of humanitarian aid by a rapid and coordinated deployment of emergency supplies and experts offered by the participating States, which, in addition to providing assistance by virtue of bilateral agreements with the affected countries or through the International Humanitarian Partnership, provided equipment in large volumes thanks to the facilitating role of the Mechanism. In this regard, it is remarkable to note the use of a Dutch naval vessel that delivered 5,000 tons of assistance from nine Member States – including ambulances, trucks, mobile hospitals and protective equipment – in a joint European effort with the support of the ERCC. Other Member States intensified their assistance through the Mechanism. For example, in Sierra Leone, the United Kingdom provided massive assistance, including isolation units and non-food items. France sent medical supply and personnel in Guinea. Germany deployed an air bridge as well as personnel and equipment. Belgium made available a laboratory and sent vehicles and equipment. Sweden and Denmark dispatched teams and logistics support as well as equipment. Austria, the Czech Republic, Finland, Hungary, the Netherlands, Romania, Slovakia and Norway (as participating State) sent equipment or other forms of support²⁶.

For its part, the EU as single actor guaranteed a safe evacuation system (so-called ‘madevac’) for all international relief workers and medical staff, by involving the ERCC together with the Directorate-General for Health and Food Safety and Member States. Specifically, the ERCC played an important role as clearing house, answering any question coming from the

²⁴ *The European Union's response to Ebola emergency*, MEMO/14/2464, available at http://europa.eu/rapid/press-release_MEMO-14-2464_it.htm (consulted on 15 June 2017).

²⁵ *Annual Report on the European Union's Humanitarian Aid and Civil Protection Policies and their Implementation in 2014*, COM (2015)578, p. 13.

²⁶ *European Commission – Factsheet, In-kind assistance via EU CP Mechanism and bilaterally by Member States to Ebola affected countries as of 25 February 2015*.

stakeholders at the various stages of the evacuation process and ensuring departures towards equipped hospitals in Europe within 48 hours.

From an operational point of view, the EU ‘madevac system’ was completed by the air assets made available through the ‘voluntary pool’. Such a far-reaching health emergency has, hence, represented the first ever occasion for the deployment of assets belonging to the European Emergency Response Capacity. Moreover, despite a number of shortcomings that have affected the overall reaction of the international community, the collaboration within the Ebola Task Force represents an example of effective coordination in the field, as well as of convergence of objectives and priorities of the actors operating in the emergency context. However, the contribution of the EU in the management of health emergencies did not stop with the declaration of the affected States as Ebola-free.

Although the response to the Ebola outbreak has been classified as the most intense international logistical operation of the last decades, the overall reaction was also too slow and, initially, weak in terms of resources deployed because of the lack of preparedness in mounting a response on such a monumental scale. In particular, the general exposition of the WHO’s action to fundamental weaknesses in activating, leading and coordinating an effective international response to the threat, triggered the urgency for a WHO reform. During the 2016 World Health Assembly, the States participating in the Assembly as well as the EU approved a plan formally establishing the WHO Health Emergencies Programme. The latter included, *inter alia*, the launching of a prequalified, fully trained and on standby global health emergency workforce. The EU revealed its interest in effectively participating in the establishment of such a new instrument by making available the European Medical Corps (EMC) launched in February 2016, as an asset of the European Emergency Response Capacity. These corps are designed to have their own public health²⁷ and medical coordination experts²⁸, mobile bio-safety laboratories²⁹, medical evacuation planes³⁰ and logistical support teams³¹ in order to ensure a faster and more predictable response³². From a systemic perspective, the inclusion of the European Medical Corps within the Global Health Emergency Workforce is extremely relevant for the EU as a global actor in disaster relief. First,

²⁷ Public Health Teams may be deployed to assess the situation and analyse the public health risk, to assess needs, to advice on measures to be taken, or to carry out specific tasks (i.e. vaccination campaigns, training). They are formed in an *ad-hoc* way by experts from various participating States and from the European Centre for Disease Prevention and Control.

²⁸ Medical assessment and coordination experts are needed to support the overall coordination structures and processes put in place by the host country or by the UN/WHO in support of the host country government.

²⁹ Mobile bio-safety laboratories were developed and deployed during the Ebola outbreak response, such as the B-Life Lab. Some of them have received EU funding thereby remaining available, as part of the EMC, for future missions. Apart from Belgium, that committed its B-Life Lab, also Germany has made available the mobile laboratory developed by the Bernhard Nocht Institute for Tropical Medicine.

³⁰ Medical evacuation capacities are key for mobilising humanitarian and medical workers to go to areas affected by diseases or other disasters. Since evacuation capacities were initially a bottleneck during the Ebola response, the EU has developed a specific Medical Evacuation system for international humanitarian workers, in close partnership with the WHO, Member States, and private organisations. In particular, Luxembourg was among the first EU Member States to commit specialised planes to the EMC.

³¹ So far, logistic teams have been committed by Germany, Finland, the Netherlands and Sweden.

³² European Commission, *European Medical Corps - ECHO Factsheet* (2016), available at http://ec.europa.eu/echo/files/aid/countries/factsheets/thematic/European_Medical_Corps_en.pdf (consulted on 10 May 2017).

it can help guarantee and improve coherence in the international response to future health crises by operating under the helm of the WHO. Second, it represents a step forward in the implementation of the 2010 Council Conclusions on the EU role on Global Health which requires the Union to be committed in upholding the WHO's leadership, not only from a normative, but also from a technical and an operational point of view³³. At the same time, it can be an instrument for increasing the weight of the Union within the international scenario, by playing a decisive operational role and further influencing WHO's policy making³⁴.

III. The EU in international disaster response: an active actor at normative level

The practical difficulties encountered by the international community in managing and responding to the Ebola outbreak have been clear in other occasions, such as in the aftermath of the earthquake and the hurricane which hit Haiti in 2010 and 2016 respectively. In addition to the objective of technical and practical hitches of intervening in a very complex situation from a humanitarian point of view, the limited effectiveness of the response depended also on the fact that, from a legal point of view, there is currently no universal and comprehensive, legally binding set of regulations to govern the international response to large-scale disasters. In fact, the *corpus* of international rules and standards describing the role of States and other relevant actors in disasters relief is still an issue pertaining more to soft law – by means of resolutions, declarations, codes, models, and guidelines – or conventional law than to international customary law³⁵. Moreover, a closer investigation of the existing legal instruments makes it clear that they are far from being coherent and coordinated with reference to their geographical and material scope of application, thereby leading – in practical terms – to duplication, confusion, increased expenses, inefficient use of resources and inappropriate aid³⁶.

The growing number of disasters and their humanitarian impact have, however, progressively prompted the need for a framework that addressed the responsibilities of States and of other international actors in disaster settings in order to guarantee humanitarian assistance to the affected population. After the launching of the International Disaster Response Laws, Rules, and Principles (IDRL) Programme by the International Federation of Red Cross and Red Crescent (IFRC) in 2001, the UN General Assembly encouraged its use as

³³ *Council Conclusions on the EU role on Global Health*, 3011th Foreign Affairs Council meeting Brussels, 10 May 2010, point 12.

³⁴ BURCI Gian Luca, *The European Union and the World Health Organization: Interactions and Collaboration from a Governance and Policy Perspective*, in Kaddous Christine (ed), "The European Union in International Organisations and Global Governance", Hart Publishing (2015), pp. 155-174.

³⁵ DE GUTTRY Andrea, *Surveying the Law*, in De Guttery Andrea, Gestri Marco, Venturini Gabriella (eds), "International Disaster Response Law", The Hague, Springer (2012), pp. 3-44.

³⁶ International Federation of Red Cross and Red Crescent (IFRC), *Law and Legal Issues in International Disaster Response: A Desk Study*, Geneva, 2007.

means able to improve the international cooperation in disaster relief³⁷. The first proposal to study the topic was recommended to the attention of the International Law Commission (hereinafter ILC) in 2006 which, one year later, included the issue within the category “*new developments in international law and pressing concerns of the international community as a whole*”³⁸ by appointing Mr. Eduardo Valencia-Ospina as Special Rapporteur³⁹. After about ten years of work, in August 2016, the Commission completed on second reading a full set of eighteen draft articles (DAs) with a commentary on the “*Protection of persons in the event of disasters*”. It recommended to the UN General Assembly the elaboration of a convention based on the draft articles thereof.

A. The work of the ILC on the Protection of Persons in the event of a disaster between *lex lata* and *lex ferenda*

The plan of the ILC was to elaborate a set of provisions establishing a legal framework for the conduct of international disaster relief activities by clarifying the core legal principles and concepts and thereby creating a legal ‘space’ in which such disaster relief work could take place on a secure footing in order to “*facilitate an adequate and effective response to disasters that meets the essential needs of the persons concerned, with full respect for their rights*” (DA 2).

The *ratione materiae* scope was initially focused on natural disasters and on the natural components of broader emergencies thus excluding man-made disasters. It was quickly acknowledged, however, that such a clear-cut distinction was not logically and practically justifiable. As observed by the Special Rapporteur Valencia-Ospina, calamitous events cannot be caused by a unique factor and the need for protection can be said to be equally strong in all disaster situations⁴⁰. He, therefore, proposed to widen the scope of analysis and to define the notion of ‘disaster’ as “*a calamitous event or series of events resulting in widespread loss of life, great human suffering and distress, mass displacement, or large-scale material or environmental damage, thereby seriously disrupting the functioning of society*”⁴¹. Such a definition marks the necessity to establish a legal framework which was built around individuals as the final purpose of the DAs. Indeed, although the above-reported definition rightly comprises calamitous events that provoke destruction or loss of goods or property and the deterioration of the environment, the focus is always on the protection of persons as members of a community

³⁷ UN General Assembly, *Strengthening of the coordination of emergency humanitarian assistance of the United Nations*, UN Doc. A/RES/63/139, 5 March 2009; *International cooperation on humanitarian assistance in the field of natural disasters, from relief to development*, UN Doc. A/RES/63/141, 10 March 2009; *Strengthening emergency relief, rehabilitation, reconstruction and prevention in the aftermath of the Indian Ocean tsunami disaster*, UN Doc. A/RES/63/137, 3 March 2009.

³⁸ International Law Commission - *Report of the Work of its fifty-eighth Session*, UN Doc. A/61/10 [2006], Annex C, para.1.

³⁹ International Law Commission - *Report of the Work of its sixty-second Session*, Supplement No. 10, UN Doc. A/62/10 [2010], para. 375.

⁴⁰ International Law Commission - *Preliminary report on the protection of persons in the event of disasters*, UN Doc. A/CN.4/598 [2008], para. 49.

⁴¹ International Law Commission - *Report on the Work of Its Sixty-Eighth Session*, UN Doc. A/71/10 [2016], Article 3(a). For a comment on the definition of ‘disaster’ used by the ILC, BARTOLINI Giulio, *La Definizione Di Disastro Nel Progetto Di Articoli Della Commissione Del Diritto Internazionale*, Rivista di Diritto Internazionale (2015), pp. 184-191.

and ‘rights-holders’⁴². According to the definition, what makes a disaster eligible for international assistance is – in any case – its impact on the population, regardless of the number of registered deaths. Moreover, it is evident that the final version of the DAs is inspired by a Human Rights-based approach as it places human dignity as the key humanitarian principles of humanity, neutrality and impartiality as guiding principles both for any action to be taken in the context of the provision of relief, and in the ongoing evolution of laws addressing disaster response (DAs 4-6).

After the illustration of the principles to be respected in disaster response, the project contains an additional set of provisions (DAs 7-17) that address legal relations among the affected States and assisting actors. The first and foremost duty enshrined in the work of the ILC is that to cooperate (DA 8) in order to ensure the maximum – not mere – effectiveness of international intervention⁴³. As stressed by the Commission, this duty is well established as a principle of International Law and can be found in numerous international instruments, including the Charter of the United Nations and the Declaration of Principles of International Law concerning Friendly Relations and Cooperation among States. Cooperation can also be extended to disaster risk reduction activities, an area expressly covered by DA 9 which identifies the obligation for “*each State (...) to reduce the risk of disasters by taking appropriate measures*”, thus requiring States to act primarily at the domestic level “*to prevent, mitigate, and prepare for disasters*”.

The ILC then had to tackle the delicate issue of disaster response i.e. the balance between the necessity to ensure full protection of the victims of a disaster according to the value of solidarity in international relations, on the one hand and the guarantee of the respect of the principles of national sovereignty and non-intervention, on the other hand⁴⁴. In particular, it was necessary to clarify the rights and duties of the States that receive international assistance as well as of those entities in the position to assist them. Therefore, in line with the respect of the fundamental principle of sovereignty, the DAs provide that the affected State has the foremost duty to ensure the protection of persons and the provision of disaster relief assistance in its territory, or in a territory under its jurisdiction or control (DA 10). Whenever a disaster manifestly exceeds its national response capacity, the said State has the duty to seek assistance from other States, the United Nations, and other potential assisting actors (DA 11). These shall expeditiously give due consideration to the request and inform the affected State of their reply (DA 12). For their part, States, the United Nations and

⁴² ZORZI GIUSTINIANI Flavia, *The Works of the International Law Commission on ‘Protection of Persons in the Event of Disasters’. A Critical Appraisal*, in DE GUTTRY Andrea, GESTRI Marco, VENTURINI Gabriella (eds), “International Disaster Response Law”, The Hague, Springer (2012), pp. 65-84, p. 70.

⁴³ International Law Commission - *Draft Articles on the protection of persons in the event of disasters adopted by the Commission on first reading*, UN Doc. A/69/10 [2014], Chapter V.

⁴⁴ HEATH Benton, *Disasters, Relief, and Neglect: the Duty to Accept Humanitarian Assistance and the Work of the International Law Commission*, JILP (2011), pp. 419-477.

other assisting actors may previously formulate offers of assistance, but their actual provision requires the consent of the affected State as well as the full compliance with International Law and the national law of the affected State (DA 14). In case of external assistance, national authorities have to adopt the necessary measures in order to facilitate the prompt and effective provision of external assistance as well as to protect the relief personnel and the equipment and goods present in the territory (DA 17). Clearly, as recalled in the final articles of the draft project, full respect of other applicable rules of International Law – namely Customary International Law and Treaty Law – as well as a sharp separation from International Humanitarian Law must be guaranteed.

It follows from this brief description that the ILC – bearing in mind the need to identify a new set of rules within an extremely fragmented international legal framework – decided to include elements of both progressive development and codification of the law. The intention to settle provisions which reflected both *lex lata* and *lex ferenda* on sensitive issues such as international cooperation, State sovereignty and the principle of non-intervention, prompted the ILC to involve a wide range of actors which could give their own contribution as potentially intervening entities. Upon the adoption of the draft articles on first reading in 2014, the Commission decided, in accordance with Articles 16 to 21 of its Statute⁴⁵, to transmit them, through the Secretary-General, to Governments, competent International Organizations, the International Committee of the Red Cross (ICRC) and the IFRC for comments and observations to be submitted to the Secretary-General by 1 January 2016. The Commission also welcomed comments and observations from the United Nations, including OCHA and the United Nations Office for Disaster Risk Reduction. The involvement of International Organisations in the drafting process was a significant aspect in the work of the ILC on this project. Indeed, while States are the main actors involved in voicing opinions on topics of International Law, it is less common for organisations to be engaged within such a traditional international body⁴⁶. In this context, the EU – which could be deeply impacted by the final version of the draft articles – had the opportunity to give an input to the work of the ILC thus implementing the provision of Article 3(5) TEU which entrusts the Union with the task of contributing, *inter alia*, to the shaping of International Law⁴⁷.

⁴⁵ UN General Assembly, *Statute of the International Law Commission* [1947].

⁴⁶ HEATH Benton, *Disasters, Relief, and Neglect: the Duty to Accept Humanitarian Assistance and the Work of the International Law Commission*, JILP (2011), pp. 418-477, p. 424.

⁴⁷ In a similar vein, the EU has been decisive on occasion of ILC's project on the responsibility of the International Organisations. McARDLE Scarlett, CARDWELL Paul James, *EU external representation and the International Law Commission: An increasingly significant international role for the European Union?*, BLOCKMANS Steven, WESSEL A. Remses (eds), "Principle s and practices of EU external representation" (2012), The Hague, CLEER Working Papers, pp. 83-101.

B. The EU during the works of the ILC: source of inspiration and key normative power?

Since the very beginning of its work, the ILC and the Special Rapporteur have taken note of various points made by the EU and have more than once referred to the complex and structured legal framework which characterises the so-called European disaster response law. From a *de lege lata* perspective, the ILC thus used the EU legal framework and policy in the process of codification of existing rules because of containing extremely progressive provisions and forming part of current regional State practice.

First, both the Special Rapporteur and the ILC have put special emphasis on the instruments the EU may rely on as a key actor in the delivery of emergency relief to victims of man-made and natural disasters, namely humanitarian assistance and the UCPM. Mr. Valencia-Ospina stressed on several occasions that the EU humanitarian aid sets a good example of a common vision in the delivery of financial assistance to third countries according to the principles of non-discrimination, impartiality and independence from political considerations⁴⁸. Similarly, the establishment of the Mechanism, providing in-kind assistance both within and outside the Union, represents a leading model for fostering integration and cooperation between the participating States⁴⁹. In a broader perspective, such specific instruments combined with the content of Article 222 TFEU (the so-called ‘solidarity clause’), consolidate the existence of a duty to cooperate based on the value of international solidarity⁵⁰. Furthermore, in the eyes of the Special Rapporteur, the EU legislation regulating humanitarian aid and civil protection interventions supports the balance between the need for international cooperation – in both prevention and response – on the one hand and the need to safeguard national sovereignty, on the other hand⁵¹. In particular, the residual nature of international humanitarian assistance and the duty of the affected State to ensure the protection of persons and the provision of disaster relief and assistance on its territory have been expressly recognized in the European Consensus on Humanitarian Aid as well as in EU legislation, in particular the Council Decision establishing a Civil Protection Financial Instrument⁵². Moreover, while enshrining the operational dimension of the duty to cooperate both between States and with International Organisations, the functioning of the Mechanism has to follow a number of rules prescribing the respect of the mentioned humanitarian principles, as well as the affected State sovereignty. By celebrating the theoretical alignment between the guiding principles and procedures that serve as basis to the EU law instruments and the content of the draft articles, the Special Rapporteur marked the level

⁴⁸ International Law Commission - *Third report of the Special Rapporteur on the protection of persons in the event of disasters*, UN Doc. A/CN.4/629 [2010], point 30.

⁴⁹ International Law Commission - *Fifth report of the Special Rapporteur, on the protection of persons in the event of disasters*, UN Doc. A/CN.4/652 [2012], point 11.

⁵⁰ International Law Commission - *Sixth report of the Special Rapporteur on the protection of persons in the event of disasters*, UN Doc. A/CN.4/662 [2013], para. 103.

⁵¹ International Law Commission - *Report on the work of its sixty-third and sixty-fourth sessions*, UN Doc. A/C.6/67/SR.18 [2013], para. 69.

⁵² International Law Commission - *Report on the work of its sixty-third session*, UN Doc. A/C.6/66/SR.21 [2011], para. 54-56.

of coherence between EU law and International Law without, however, considering the above-mentioned critical elements that undermine the compliance with the humanitarian principles.

Second, the EU legislation and policies helped in including the prevention phase in the *ratione temporis* scope of application of the draft articles. Indeed, as underscored by the ILC, by broadening the activities to be pursued within the framework of the UCPM, the Union has developed an ‘integrated approach’ to disaster management, by adding to response measures the identification of prevention and preparedness strategies, thus reinforcing the notion of disaster risk reduction (DRR). In this regard, besides the number of normative activities carried out at EU level which reflect – *inter alia* – the 2005 Hyogo Framework for Action 2005–2015⁵³ as well as the initiative known as Global Platform for Disaster Risk Reduction⁵⁴, the Special Rapporteur made explicit reference to the EU Civil Protection Mechanism. More specifically, he underlined its contribution to settle a ‘culture of prevention’ and “*to enhance the Union’s state of preparedness to respond to disasters*” by including the development of reference scenarios for the main types of disaster, the development of contingency plans in Member States and that of pre-committed civil protection assets⁵⁵.

Accordingly, the EU represented a crucial point of reference for the ILC as a source of inspiration for the normative elaboration of the articles on the Protection of persons in the event of a disaster. However, it is interesting to go further in assessing whether the EU also emerged as an active actor, capable of orienting the debates and instigating important changes in the positions of the States. As reported by some scholars, the EU usually does not show a strong innovative and proactive leadership within both the ILC and the UNGA Sixth Committee. Rather, it behaves as mouthpiece of the EU Members which retain the right to make individual statements and to contribute to International Law in an autonomous way, while attempting to be in alignment with Union law⁵⁶.

The EU’s involvement in the process of elaboration of the draft articles began with the support of the ILC’s efforts and the proposition of its own perspectives through an attempt to speak with one voice. Indeed, in light of the changes brought by the Lisbon Treaty, the Legal Service of the European Commission has been primarily responsible for providing

⁵³ *Hyogo Framework for Action 2005–2015: Building the Resilience of Nations and Communities to Disasters*, A/CONF.206/6 [2005]. Now the Hyogo Framework has been replaced by the Sendai Framework for Disaster Risk Reduction 2015–2030 that, in terms of scope, is the first major agreement of the post-2015 development agenda, with seven targets and four priorities for action in the field of DRR, *Sendai Framework for Disaster Risk Reduction 2015–2030*, A/CONF.224/CRP.1 [2015].

⁵⁴ The Global Platform for Disaster Risk Reduction is a biennial forum for information exchange, discussion of latest developments, knowledge and partnership-building across sectors, with the goal of improving implementation of disaster risk reduction through better communication and coordination amongst stakeholders. Its core function is to enable governments, NGOs, scientists, practitioners, and UN organizations to share experience and formulate strategic guidance for the implementation of the Hyogo Framework for Action and the Sendai Framework.

⁵⁵ International Law Commission - *Sixth report of the Special Rapporteur on the protection of persons in the event of disasters*, UN Doc. A/CN.4/662 [2013], para. 101–108.

⁵⁶ WOUTERS Jan, HERMEZ Marta, *The EU’s Contribution to ‘the Strict Observance and the Development of International Law’ at the UNGA Sixth Committee*, in BLAVOUKOS Spyros, BOURANTONIS Dimitrios (eds), “The EU in UN Politics. Actors, Processes and Performances”, Palgrave Studies in European Union Politics (2017), pp. 147–163, p. 153.

comments to the ILC as well as to the Sixth Committee of the UN General Assembly on behalf of the EU, and of some candidate countries. However, in contributing to the shaping and development of International Law in *subiecta materia*, the EU has not been particularly decisive from a substantive point of view thereby limiting its potential to act as an independent actor. Instead, it chose to follow the traditional self-congratulatory stance by pointing out its comprehensive orientation to deal with situations of emergencies and playing into the hands of Member States.

In this regard, the EU delegation has, for instance, suggested a widening of the type of assistance to be provided to the affected State by calling for the inclusion of a reference also to military assets and personnel to be used as a last resort, when civilian alternatives are exhausted. In fact, *ab origine*, the concept of ‘relief personnel’ excluded military staff, namely because of the fear of creating a potential link with the so-called ‘humanitarian interventions’, whereas situations of armed conflict, as further element in the definition of ‘disaster’, have been explicitly left out from the material scope of application of the draft articles⁵⁷. Encompassing military assets could translate to the jeopardizing of such certainty. However, the EU pushed for their mainstreaming by referring to the content of the Guidelines on The Use of Foreign Military and Civil Defence Assets in Disaster Relief (also known as the ‘Oslo Guidelines’) and to those on the use of Military and Civil Defence Assets to Support UN Humanitarian Activities in Complex Emergencies.

Besides following the above-mentioned soft law instruments which clearly have much more impact on the States than on the Union, the EU proposal to envisage military assets was driven by another factor: to underline and celebrate its commitment in the field of disaster response through the combined deployment of civilian and military resources as part of the Civil Protection Mechanism. Indeed, along the lines of national legislations⁵⁸, Decision 1313/2013 – albeit relying mainly on civilian means – includes military assets as instruments of last resort by acknowledging their potential contribution to the provision of security as well as of logistical and medical support when acting outside the Union⁵⁹. However, by recalling that the resources of the UCPM are put at disposal by the EU Members and that the EU does not have its own capacities, one can argue that the final result of this emphasis was not that of underlining a distinction between the EU and other assisting actors traditionally relying just on civilian personnel. On the contrary, it was to reinforce the position of States for which a combination of civilian and military personnel is more pertinent in the phase of delivery of assistance.

⁵⁷ International Law Commission – *Report of the sixty-eight session on the protection of persons in the event of disasters*, UN Doc. A/71/10 [2016], para. 62.

⁵⁸ From the institutional and legal point of view, the armed forces are generally part and components of the National Service of Civil Protection. The military is ready to intervene in case of disaster, always under military command, but under the overall responsibility and coordination of the civilian authority in charge of the rescue operations.

⁵⁹ See, Decision No 1313/2013/EU of the European Parliament and of the Council on a Union Civil Protection Mechanism, Article 9, para. 5.

This notwithstanding, it cannot be neglected that the EU delegation has instigated at least one important change in the original ILC project by pushing forward the debate on the role played by the regional organisations in the event of a disaster. Indeed, the EU delegation insisted on and finally obtained the expansion of the *ratione personae* scope of application of the Draft Articles and the explicit inclusion of the expression ‘other assisting actors’ to identify those international bodies offering assistance in the aftermath of a disaster, alongside States. Therefore, regional organisations found their contribution officially recognised⁶⁰. As shown by the response to the Ebola outbreak, the key feature of the activity in the field of disaster relief assistance very often lies in the intervention of intergovernmental and non-governmental organisations, thereby requiring effective cooperation (and coordination) not only among States, but also between competent intergovernmental and non-governmental organizations. Moreover, the EU stressed the necessity to include a clear mention to regional organisations in the Draft Articles or in the commentaries. The ILC as well as the Special Rapporteur originally were not keen on incorporating a strong reference to subjects other than States. Indeed, the initial idea was to provide a set of rules that were addressed to States, as main actors of international relations capable to put at disposal national resources as well as long-established and developed instruments. However, it was soon acknowledged that International and Regional Organisations as prominent as the EU could play a crucial role by serving as effective bridges between the international and national systems. Furthermore, a regional entity can provide a suitable forum for building trust and familiarity which is not possible on a global scale, as well as for developing innovative and effective forms of collaboration in prevention, preparedness and risk management actions with specific and effective instruments of response. Even though regional mechanisms may not only respond more quickly than international ones, their intervention may also be politically more acceptable, thus facilitating the efficient implementation and enforcement of the Draft Articles thereof. In this case, the positive example set by the EU’s actions and best practices combined with an autonomous normative leadership have led to the enrichment of the Draft Articles, as they now cover and impose obligations to intergovernmental, non-governmental and regional organisations.

IV. Concluding remarks: evaluating the international actorness of the EU in disaster response

The frequency and intensity of natural and man-made disasters have increased dramatically over the recent decades thus making them – alongside other serious situations such as conflicts and terrorist attacks – cause of pain and humanitarian crises. Even though only a small number of large disasters caught the attention of the media and public opinion, there is growing awareness of the potentially devastating consequences of the increase in frequency

⁶⁰ International Law Commission - *Forth report of the Special Rapporteur on the protection of persons in the event of disasters*, UN Doc. A/CN.4/643 [2011], para. 105.

and scope of disasters, especially for those areas most vulnerable to climate change and environmental stress. Consequently, in recent years, national budgets for emergency response, disaster preparedness, and mitigation, as well as the activities of international agencies and NGOs directly involved have experienced rapid growth.

In this context, the EU has made the response to situations of emergency one of the priorities of its external projection, thus showing a great potential in contributing to the emergence of a broader and more sensitive attitude towards the creation of legal and operational instruments capable to be activated in an effective and prompt manner. In particular, the international vocation of the Union to respond to overseas emergencies is substantiated by a number of elements that can be captured by the analysis carried out on the EU Civil Protection Mechanism. From a theoretical point of view, there is no doubt that the setting of an European Emergency Response Capacity is the symbol of the EU intention to assert itself as a global actor in disaster relief: while EERC can enable a faster, better coordinated and more effective response to emergencies, it embodies the EU aspiration to act like a single body by designating the Commission as responsible for defining common quality requirements for the capacities to be committed. The practice also shows that the EU is working to gain a leading role in the field of disaster response. As demonstrated by the response to the Ebola outbreak, the Mechanism is becoming an indispensable instrument for third countries coping with overwhelming disasters. Suffice it to say that it has been activated more by third countries than by Member States. For example, in 2015, the UCPM was deployed in 26 situations of emergency, including in the aftermath of the earthquake in Nepal, where an EU Civil Protection team was used for assessment and coordination purposes as well as for delivering in-kind assistance in terms of medical teams, search and rescue teams and emergency supplies such as shelters, beds, blankets, clothes, medical equipment and medicines. Moreover, winter clothing and blankets were provided in crisis-hit Ukraine; food and medicine were made available in Syria and its neighbouring countries⁶¹. Against this positive background, one of the main challenges of the Mechanism will be to reconcile the EU's aspiration to become a global actor in disaster relief with its commitment to respect the principles of humanitarian assistance and in particular the principle of neutrality, in order to avoid being blatantly in contradiction. The risk is, indeed, that EU policies in humanitarian aid and civil protection, and other crisis management responses are not distinguished from one another and are, therefore, perceived as part of the same EU comprehensive strategy to face a specific crisis.

The growing EU presence in international scenarios is complemented by the positive synergies created with other international bodies and actors, *in primis* the UN and the most relevant NGOs. In addition, it should be noted that an increasing number of third and

⁶¹ For further details, see *ECHO Factsheet on EU Civil Protection*, published on October 2016, available at http://ec.europa.eu/echo/files/aid/countries/factsheets/thematic/civil_protection_en.pdf (consulted on 29 May 2017).

neighbour countries is developing forms of associated partnerships with the Commission to cooperate on disaster management under the Mechanism. Such interplay with international actors and third States, which composes and enriches the global role of the EU in disaster response, is arguably bound to become source of reciprocal influence both from practical and normative points of view. In particular, the establishment of other examples of EU Emergency Response Capacities like the European Medical Corps to be put at disposal of the international community could represent the starting point for the UCPM to become an 'international hub' for the identification of minimum standards and best practices as well as the provision of operational field coordination support. It is, however, undeniable that there is still a long way towards the implementation of the Barnier's project to create a unique European Civil Protection Force, which would lead to further evaluations on the legal responsibility resulting from the EU's external activities in the field of disaster response.

The second part of the analysis suggested that the EU's contribution in the field of disaster response is not limited to a 'mere' operational function but is progressively extending also to the normative one. As underlined, the EU has contributed, mainly in a passive way, to the reflection on how to best codify and progressively develop this area of International Law, which should steer the international community in its assistance to persons affected by man-made and natural disasters. Although far from substantially bearing on the development of International Law, the EU tried to operate as normative power by voicing its opinions without contradicting those of its Member States. This effort is due to the predominately consensual nature of the UN bodies involved and the different areas of concern: while national delegations were more attentive to establishing a clear legal framework with reference to rights and duties of States, the EU pleaded in favour of the role that Regional Organisations could have in this field, thus stressing the separation of the EU as international actor from its Member States. The elaboration of the Draft Articles on the Protection of Persons in the event of a disaster could represent an important contribution to the development of a *corpus iuris* applicable in cases of disasters, either as a tool for the determination of rules of law or, possibly, as a formal source of International Law. Therefore, the inputs given to the ILC have become for the EU a way to start making a dent on International Law and maybe in acquiring a stronger negotiating position for future debates on these issues.

To conclude, both the establishment of operational instruments such as the EU Civil Protection Mechanism as well as the strong involvement in the works of the ILC say a lot about the EU's external projection in the field of disaster relief. They clearly reveal that the Union is still a creature of International Law relying on its Member States and that it has not yet fully become a leader bringing substantive innovations in the elaboration of International Law. Nonetheless, encouraged by the changes brought by the Lisbon Treaty, it is moving

beyond its being just a close coalition of States. As demonstrated by the growing presence of the EU in important international gatherings, it is progressively acquiring, as an independent actor, more power and influence in shaping the parameters of the international legal system in the field of disaster relief. Moreover, by joining its Member States and other International Organizations in the effort to manage emergencies and crises, the EU is taking possession of a separate role and identity which is progressively allowing it to be taken more seriously by actors and institutions that have traditionally been resistant to the influence of non-State actors.

* * *

List of abbreviations

DA(s)	Draft Article(s)
DRR	Disaster Risk Reduction
EMC	European Medical Corps
ECHO	Directorate-General for European Civil Protection and Humanitarian Aid Operations
EEAS	European External Action Service
EERC	European Emergency Response Capacity
ERCC	Emergency Response Coordination Centre
EU	European Union
ICRC	International Committee of the Red Cross
IDRL	International Disaster Response Law
IFRC	International Federation of Red Cross and Red Crescent
ILC	International Law Commission
OCHA	United Nations Office for the Coordination of Humanitarian Affairs
TFEU	Treaty on the functioning of the European Union
TEU	Treaty on the European Union
UCPM	Union Civil Protection Mechanism
UN	United Nations
WHO	World Health Organisation

Bibliography

Books and articles

ACCONCI Pia, *The Reaction to the Ebola Epidemic within the United Nations Framework: What Next for the World Health Organization?*, Max Planck Yearbook of United Nations Law Online (2014), pp. 405–424.

BARNIER Michel, *Report for a European civil protection force: Europe aid*, May 2006.

BARTOLINI Giulio, *La Definizione Di Disastro Nel Progetto Di Articoli Della Commissione Del Diritto Internazionale*, Rivista di Diritto Internazionale (2015), pp. 184-191.

BURCI Gian Luca, *The European Union and the World Health Organization: Interactions and Collaboration from a Governance and Policy Perspective*, in Kaddous Christine (ed), “The European Union in International Organisations and Global Governance”, Hart Publishing [2015], pp. 155-174.

CASOLARI Federico, *The External Dimension of the EU Disaster Response*, in De Guttry Andrea, Gestri Marco, Venturini Gabriella (eds), “International Disaster Response Law”, The Hague, Springer (2012), pp.129–154.

CASOLARI Federico, *La reazione alla diffusione del virus Ebola: verso un nuovo paradigma nella governance internazionale delle pandemie?*, in Tronconi Livio Pietro (ed), “Unione europea e diritto alla tutela della salute: problematiche giuridiche comparate”, Santarcangelo di Romagna, Maggioli Editore (2016), pp. 177–206.

CREMONA Marise, *The EU and global emergencies: competence and instruments*, in Antoniadis et al (eds), “The European Union and global emergencies. A Law and Policy Analysis”, Oxford and Portland, Hart Publishing (2011), pp.11–31.

DE GUTTRY Andrea, *Surveying the Law*, in De Guttry Andrea, Gestri Marco, Venturini Gabriella (eds), “International Disaster Response Law”, The Hague, Springer (2012), pp. 3-44.

GESTRI Marco, *EU Disaster Response Law: Principles and Instruments*, in De Guttry Andrea, Gestri Marco, Venturini Gabriella (eds), “International Disaster Response Law”, The Hague, Springer (2012), pp. 105-128.

GESTRI Marco, *La risposta alle catastrofi nell’Unione europea: protezione civile e clausola di solidarietà*, in Gestri Marco (ed), Disastri, protezione civile e diritto: nuove prospettive nell’Unione europea e in ambito penale, Milano, Giuffrè (2016), pp. 3-62.

HEATH Benton, *Disasters, Relief, and Neglect: the Duty to Accept Humanitarian Assistance and the Work of the International Law Commission*, JILP (2011), pp. 419-477.

McARDLE Scarlett, CARDWELL Paul James, *EU external representation and the International Law Commission: An increasingly significant international role for the European Union?*, in Blockmans Steven, WESSEL Remses (eds), "Principles and practices of EU external representation", The Hague, CLEER Working Papers (2012), pp. 83-101.

PONTIROLI Andrea, DERDERIAN Katherine, PONTTHIEU Aurelie, *Losing Principles in the Search for Coherence? A Field-Based Viewpoint on the EU and Humanitarian Aid*, <https://sites.tufts.edu/jha/archives/2010>.

VAN ELSUWEGE Peter, ORBIE Jan, *The EU's Humanitarian Aid Policy after Lisbon: Implications of a New Treaty Basis*, in Govaere Inge, Poli Sara (eds), "EU Management of Global Emergencies", Leiden, Brill-Nijhoff (2014), pp. 21-46.

VERSLUYS Helen, *European Union Humanitarian Aid: Lifesaver or Political Tool?*, in Orbie Jan (ed), "Europe's Global Role: External Policies of the European Union", Ashgate (2008), pp. 91-116.

WOUTERS Jan, HERMEZ Marta, *The EU's Contribution to 'the Strict Observance and the Development of International Law' at the UNGA Sixth Committee*, in Blavoukos Spyros, Bourantonis Dimitrios (eds), "The EU in UN Politics. Actors, Processes and Performances", Palgrave Studies in European Union Politics (2017), pp. 147-163.

ZORZI GIUSTINIANI Flavia, *The Works of the International Law Commission on 'Protection of Persons in the Event of Disasters'. A Critical Appraisal*, in De Guttry Andrea, Gestri Marco, Venturini Gabriella (eds), "International Disaster Response Law", The Hague, Springer (2012), pp. 65-84.

EU acts

Binding acts

Council Regulation No. 1257/96 of 20 June 1996 concerning humanitarian aid [1996], OJ L 163.

Commission implementing Decision No. 2014/762/EU of 16 October 2014 laying down rules for the implementation of Decision No 1313/2013/EU of the European Parliament and of the Council on a Union Civil Protection Mechanism and repealing Commission Decisions 2004/277/EC, Euratom and 2007/606/EC, Euratom [2014], OJ L 320/1.

Council Decision No. 2001/792/EC, Euratom of 23 October 2001 establishing a Community mechanism to facilitate reinforced cooperation in civil protection assistance interventions [2001], OJ L 297/7.

Council Decision No. 2007/162/EC, Euratom of 5 March 2007 establishing a Civil Protection Financial Instrument [2007], OJ L 71/9.

Decision No. 1313/2013/EU of the European Parliament and of the Council of 17 December 2013 on a Union Civil Protection Mechanism [2013], OJ L 347/924.

Non-binding acts

Annual Report on the European Union's Humanitarian Aid and Civil Protection Policies and their Implementation in 2014, COM (2015)578, p. 13.

Council Conclusions on the EU role on Global Health, 3011th Foreign Affairs Council meeting Brussels, 10 May 2010, point 12.

Communication from the Commission to the European Parliament and the Council, “*Towards a stronger European disaster response: the role of civil protection and humanitarian assistance*”, COM/2010/0600 final.

ECHO Factsheet on EU Civil Protection, published on October 2016.

European Commission – Factsheet, In-kind assistance via EU CP Mechanism and bilaterally by Member States to Ebola affected countries as of 25 February 2015.

European Commission – The European Union's response to Ebola emergency, MEMO/14/2464.

European Court of Auditors – Special Report no. 33/2016: Union Civil Protection Mechanism: the coordination of responses to disasters outside the EU has been broadly effective, [2017], OJ C 19/3.

Joint Statement by the Council and the Representatives of the Governments of the Member States meeting within the Council, the European Parliament and the European Commission, *The European Consensus on Humanitarian Aid*, [2008], OJ C 25.

International acts

Hyogo Framework for Action 2005–2015: Building the Resilience of Nations and Communities to Disasters, A/CONF.206/6 [2005].

International Federation of Red Cross and Red Crescent (IFRC), *Law and Legal Issues in International Disaster Response: A Desk Study*, Geneva, (2007).

International Law Commission - *Report of the Work of its fifty-eighth Session*, UN Doc. A/61/10 [2006].

International Law Commission - *Preliminary report on the protection of persons in the event of disasters*, UN Doc. A/CN.4/598 [2008].

International Law Commission - *Third report of the Special Rapporteur on the protection of persons in the event of disasters*, UN Doc. A/CN.4/629 [2010].

International Law Commission - *Report of the Work of its sixty-second Session, Supplement No. 10*, UN Doc. A/62/10 [2010].

International Law Commission - *Forth report of the Special Rapporteur on the protection of persons in the event of disasters*, UN Doc. A/CN.4/643 [2011].

International Law Commission - *Report on the work of its sixty-third session*, UN Doc. A/C.6/66/SR.21 [2011].

International Law Commission - *Fifth report of the Special Rapporteur, on the protection of persons in the event of disasters*, UN Doc. A/CN. 4/652 [2012].

International Law Commission - *Sixth report of the Special Rapporteur on the protection of persons in the event of disasters*, UN Doc. A/CN.4/662 [2013].

International Law Commission - *Report on the work of its sixty-third and sixty-fourth sessions*, UN Doc. A/C.6/67/SR.18 [2013].

International Law Commission - *Draft Articles on the protection of persons in the event of disasters adopted by the Commission on first reading*, UN Doc. A/69/10 [2014].

International Law Commission - *Report on the Work of Its Sixty-Eighth Session*, UN Doc. A/71/10 [2016].

Sendai Framework for Disaster Risk Reduction 2015-2030, A/CONF.224/CRP.1 [2015].

UN General Assembly, *Statute of the International Law Commission* [1947].

UN General Assembly, *Strengthening of the coordination of emergency humanitarian assistance of the United Nations*, UN Doc. A/RES/63/139 [2009].

UN General Assembly, *International cooperation on humanitarian assistance in the field of natural disasters, from relief to development*, UN Doc. A/RES/63/141 [2009].

UN General Assembly, *Strengthening emergency relief, rehabilitation, reconstruction and prevention in the aftermath of the Indian Ocean tsunami disaster*, UN Doc. A/RES/63/137 [2009].

UN Security Council, S/RES/2177 [2014].



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