

## **POLICY AND LEGAL FRAMEWORKS OF USING ARMED FORCES FOR DOMESTIC DISASTER RESPONSE AND RELIEF**

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**Abstract:** This article reviews roles of military forces in Europe in support of civilian authorities in crises caused by natural or manmade incidents and disasters. These roles are shaped by five trends – some in effect since the end of the Cold war, others more recent. These are: transition from civil defence to civil protection; expanding non-combat roles of the armed forces; cooperation with an increasing number of actors; respective proliferation of modes of contribution; and searching ways to contribute to the resilience of both states and local communities. The authors elaborate and provide examples for these five trends and conclude by highlighting some enduring characteristics of the military contributions.

**Keywords:** crisis management, disaster response, security and defence policy, military support, civ-mil coordination, militarism.

### **Introduction**

The effective preparation for and responding to natural or man-made disasters requires involvement of a variety of stakeholders. Often the military is expected to and in fact contributes response efforts, and in some cases is at the forefront of response and relief operations.

This study reviews this portion of the so-called ‘internal roles of the armed forces’ that relates to crisis situations emerging as a result of natural or man-made disasters. It addresses the evolution of policies and legal frameworks for providing valuable support of armed forces to civilian authorities in such crises.

The term ‘*support to civilian authorities*’ (SCA) refers to normative requirements of the national armed forces to contribute to the civil protection against natural and other disasters, as well as to the process by which local authorities can request military assistance from the central government in times of emergency. It also relates to the regulations and procedures for sending the country’s military personnel abroad to provide emergency support in cases of natural or other disasters.

The countries subject of our study<sup>1</sup> represent variety of historical traditions, constitutional arrangements and/or legal provisions that determine mechanisms of using armed forces' personnel and equipment for emergency response, rescue and relief. In this diversity some countries continue to view all military functions within the concept of the 'total defence,' while others have moved more quickly towards separation of civil protection from national defence.

The common characteristic throughout the cases studied is that countries tend to expand the functions beyond mere defence in an attempt to make the national military more relevant to the widening spectrum of security threats and the citizens' demands. Most countries, and especially the members of NATO, EU, and other European countries, have determined three basic roles of the armed forces: (1) defence (collective/national), (2) contribution to international peace and stability and (3) support to the civil authorities and the population in cases of emergencies.

For the relevant understanding of the third role, it is important to underline that it is as important as the other two, but the core military capabilities are usually built around the first and, to some extent, to the second role. In most cases the military is seen as 'the last resort' with a supporting role to civilian authorities for responding to crises of natural or technogenic origin.

The practice, however, very much depends on additional factors such as maturity of the civil society (level of volunteerism), decentralisation of the state power, size of the country and the military, and most of all, on the frequency, scope and destructiveness of the natural and man-made disasters.

The international contribution by military personnel and assets in providing emergency support is also on the increase. Efforts within EU and NATO have an inspiring effect on national preparations in three main dimensions: strengthening regional cooperation (cross-border missions), increasing the distance of engagement from the national territory (across Europe and beyond), and strengthening military-specific niche capabilities for rapid response, rescue and recovery operations (the latter are examined in the follow-up article by the authors in this volume).

### **Policy of Using Military for Domestic Disaster Response and Relief**

The authentic idea<sup>2</sup> of having 'armed power' in the hands of the ruler involved a dual purpose, i.e. to protect the ruler from both external and internal threats. One of the remarkable Indian philosophers – Chanakya (under the pseudonym Kautilya) in his work "Arthashastra – the Science of Polity" explained about 2 300 years ago this aspect of governance in the following way:

The king and the kingdom are the primary elements of the state. The troubles of the king might be either external or internal. Internal troubles are more serious than external troubles, which are like a danger arising from lurking snake.<sup>3</sup>

Some authors see that "...in the public mind, there is an association between disaster relief and military involvement; indeed, there is often an expectation that military units will assist the civilian population in the immediate aftermath of large-scale emergencies" and find earliest recorded cases in the times of Alexander the Great.<sup>4</sup>

The term "support to civilian authorities" belongs to the modern times, but is not really new in defence policy analysis. It is related to the time of splitting security of the state on external and internal and the relevant separation of the armed powers into 'military' and 'police.' To provide support to civilian authorities usually means to respond to their request to use military force for law enforcement purposes when the capacity of local police or militia have not been sufficient to maintain the political status quo. In this context, the regimes "made distinction between using the army for internal and external security duties."<sup>5</sup>

Post-World War II Europe adopted what was conceivably most wide-ranging use of the military in civil affairs. It is important to recognise the influence this had both on military doctrines of civil involvement and on development of the international relief system and the approaches that relief agencies have used since then. While the involvement of the military in relief operations has some impressive examples, such as the 1948-49 Berlin airlift, a specific military function between the 'war time' and 'peace time' has been established in both NATO and Warsaw Pact countries – the 'civil defence.' On one hand, this has been the mechanism to engage the huge capacity of the armed forces in support of civil authorities and local population in any emergency. The term 'defence' in this case is more related to 'protection' and 'support' than to the wartime defence of the nation.

On the other hand, 'civil defence' has been seen as an instrument to dilute the boundary between long peace life and the potentially rapid transition to war in public psychological and organisational aspects. Despite the formal differences between the Cold War communist states and the Western nations, in both the defence against military aggression has been seen as 'traditional' role of the armed forces, while all other roles have been qualified as 'non-traditional' or 'supporting' roles.<sup>6</sup>

Since the end of the Cold War, the wider application of the concept of 'comprehensive security' has led to expansion of the non-traditional roles in both the external and internal domain. At the international arena, these are the variety of peace operations, some of them at the brink of a real war (the so called peace-making), military humanitarian missions including for post-conflict, natural disasters and pandemics support, as well as different forms of military partnerships and confidence and securi-

ty building measures. Later, to the list was added the fight against international terrorism and related military interventions, along with engagements under the policy of ‘responsibility to protect.’<sup>7</sup>

Internally, there is a trend of expanding the non-military roles of the national armed forces. A DCAF-sponsored study underlines that “Governments and societies have been contemplating the appropriateness of newly defined or previously mainly secondary purposes for their armed forces, which extend beyond their core role of national defence.”<sup>8</sup> The authors of that study identify the following groups of internal military roles:

- Law enforcement-related tasks: Public order; Counterterrorism; Border control; Drug enforcement; Law enforcement; Crime investigation; Support for major public events; Building and personnel security; Cyber operations; Intelligence gathering;
- Disaster assistance-related tasks: Domestic catastrophe response; Disaster relief;
- Environmental assistance-related tasks: Environmental protection;
- Cross-over tasks: Search and rescue; Training; Monitoring; Equipment and facility provision; Miscellaneous maritime activities; Scientific research;
- Miscellaneous community assistance: Examples include colour guard for parades; harvest support.

If one takes the disaster assistance role in focus, then again two general cases are identified. The use of military forces, or personnel and assets for international aid in cases of natural or man-made disasters is expanding in scope and form. In the first case, the engagement of military is necessary to provide security and vital service support to traditional humanitarian actors, for example the provision of transportation, theatre communications, air-evacuation, etc. In the second case, the militaries have been assigned a major role in extremely dangerous humanitarian situations, such as the case of Ebola pandemics in Western Africa. The primary objective of humanitarian support and aid is to save lives, alleviate suffering, and maintain human dignity.

The trend of expanding military roles in international disaster response, relief and humanitarian operations is not supported unanimously. According to Charles-Antoine Hofmann and Laura Hudson from the British Red Cross:

Humanitarian actors view these developments with a wary eye. In the US, the NGO consortium InterAction has raised concerns about the newly established US Command for Africa (AFRICOM), whose tasks include supporting humanitarian assistance. Growing interest within the European Union in deploying civil defence

and military assets outside EU territory has prompted similar concerns. Critics of the military's involvement in relief claim that it is inefficient, inappropriate, inadequate and expensive, contrary to humanitarian principles and driven by political imperatives rather than humanitarian need.<sup>9</sup>

As a result of such concerns, the international aspect of the military activities and the related impact on civil-military relations is fairly well studied and codified in terms of case-specific codes of conduct and field manuals.<sup>10</sup>

The use of military for internal emergency response is the less controversial compared to all other forms of internal use of military as it meets the highest public demands about 'the role of the state in cases of people in trouble' and has indisputable political value. There is no country that explicitly restricts the use of armed forces in domestic emergencies. Just the opposite, as a rule, support to civil authorities is defined as one of the core doctrinal roles of the national military. Obviously, the countries within the scope of this study avoid the formula of 'civil defence' (the dominant idea of which is during the peacetime to make the population better prepared for war) towards 'civil protection' (with focus on the protection of the life and health of the people and their property as their constitutional citizen right).

'Civil protection' is defined as an effort at all levels of government and private actors to protect people, infrastructure, the functioning of central and local administration from hazards of a natural and man-made character. The determination of the respective military roles depends largely on a country's specific traditions, available emergency response capacities, national culture on volunteering and securing life and property, political-administrative organisation of the state, etc.

Despite the recent development, one principle is clearly followed in Europe: the country's system of civil protection is civilian-based and dominated while the military has only a supporting role. The military could be neither the key factor for prevention and resilience, nor are they completely able to restore damaged technical and social infrastructure. Armed forces have a supportive role set in law, policy, and practice. The responsibility for response and for command in an emergency is for the civil authorities. Based on the international experience, the conceptual construct of the military involvement in civil protection may include:

- Legally defined rules of military operations at home;
- Military support provided upon the request of a civil authority, for concrete aims/ operation (there might be a few exceptions to this rule);
- The military provide what is required and what is possible;
- They operate under civil direction and management, remaining within their military chain of command;

- Military engagement is limited in time and should not lead towards building civil dependence on the military presence;
- All military operations are funded or reimbursed by the state budget or other sources.

However, even these principles of military involvement are under pressure. The first reason is the growing number of large and extremely dangerous disasters in which the military capabilities are used as first response. A second reason is the expanding list of new issues recently seen as threatening the civil domain, e.g. threats to cyber security, vulnerabilities of critical infrastructures, potential terrorist use of chemical, biological, or radiological agents, massive illegal immigration, etc. And third, there are various ‘institutional’ factors driving the growing interest of the military in responding to disasters: assisting relief efforts can improve the military’s image and provide training opportunities, and may also be a way for the military to diversify their role at a time when armed forces throughout the European countries are experiencing budget cuts. With an increase in the incidence of natural disasters, national militaries can be expected to play a bigger role – particularly in large-scale disasters, where the capacity of civil authorities may be stretched.

From the military point of view, in the nations covered by the study, the conceptualisation of their ‘new’ roles, also in cases of emergency, is dominantly politically driven. Theoretically, even pacifists would probably admit that no one can respond as quickly and efficiently to a major disaster at home as the military. The proliferation of roles, different and distanced from those related to ‘national defence’ (deterrence, defence, offence), is related to doctrinal changes, additional equipment (not always relevant to the classical military roles), and new training (including in case-specific rules of engagement). When all these developments are well funded and gradually applied, the military experience the change as relevant to their culture and working style. When the addition of new military roles is limited to the approval of a doctrinal text, then the military face significant challenges with regard to motivation, legal arrangements of their activity and, most of all, the development of relevant capabilities.

Another important conceptual issue is generated by the fact that the engagement of (the European) military in emergencies at home is much more common, compared to their use in military combat operations at home or on European soil. The peacetime military air policing, maritime patrolling, combat training, etc. are not so ‘visible’ as is their support to civil authorities is. This tendency is building a sense of politically and publicly driven rearrangement of the doctrinal military roles, despite that very rarely they are prioritised as ‘first,’ ‘second,’ ‘third’ role/mission, etc. Such thinking may affect the development of military capabilities (for example, obtaining specialised, emergency-relevant equipment instead of equipment required for combat roles),

operations planning (any major disaster response requires deliberate planning and relevant training), ability to communicate and work with local authorities in cases when they are under existential threats and stress. The recent military engagements in emergency response operations (including ground, urban, air, and maritime search and rescue) already require country-specific land, naval and air capabilities, planning and training.

At the same time, any serious military preparations to support the civil authorities in emergencies raise scepticism whether this signals a ‘creeping militarism’<sup>11</sup> into the civilian culture and erodes the traditional civil democratic presumption that prevents authorities from using the military in home affairs in a manner, that makes society dependent on them. However, such discussions only demonstrate how important is the nation-specific, so-called disaster sub-culture and tradition. It represents the historical adaptations that societies made in order to cope with disasters. Those nations, that have developed within society self-sufficient capacity to survive in major disasters (including wars) are more prone to rely on civilian-based disaster management than on distanced state agencies; they see the military support as valuable, but mostly in cases of specific incidents (as CBRN threats <sup>12</sup>) and in providing immediate and large-scale logistic support (sheltering, transportation, water supply, etc.).

Nations that have less consolidated civilian capacity and have experienced failure in coping with severe disasters usually tend to follow more agency-based approach to disaster management; they view the military as a real asset that have been built on public expenditures and, consequently, have to be used to the maximum of their capacity. Although broadly applying international best practices in building a modern disaster management system, such nations tend to compensate internal civilian deficits by improvising with additional military roles. Therefore, it needs to be emphasised that successful implementation of best practices requires not only gathering comprehensive information for the formal side of other nations’ experience, but also understanding the respective organisational culture.

Obviously, the concepts and policies of using armed forces for civil protection in disasters and manmade incidents vary within the framework presented above, and they have been rapidly evolving since the end of the Cold war. Reflecting this tendency, a 2008 Venice Commission report underlines that, in the case of disaster response and relief operations, there are constitutions that explicitly regulate the use of the military, as those of Germany, Switzerland, and others. In other states, such as Denmark, even in the absence of specific constitutional provisions delineating the military’s role in domestic crisis situations, the Minister of Defence is authorised to instruct the armed forces to provide humanitarian assistance at home. Other legal systems authorise armed forces to take part in mitigating the effects of natural disasters and extraor-

dinary threats to the environment, and to participate in search and rescue missions. Poland, Italy and Spain are among the countries with such legal acts. In the United Kingdom, the armed forces have the same powers and obligations as any citizen, to provide support when the civil power requires assistance in battling a disaster. Finally, some states, such as Spain, have special units within the armed forces to perform these assistance tasks.<sup>13</sup>

As a general trend, the modern national security concepts, part of which is disaster management, are expanding not only in scope. There is an obvious tendency of mixing the traditional focus on the attributes of the state (sovereignty, independence, territorial integrity) with securing the functions that are vital to the society. Achieving a consolidated goal of providing “safety of population, security of society, sovereignty of state,”<sup>14</sup> requires a set of innovative decisions, including redrafting institutional roles (including those of the military), building a new framework for reinforcing the local authorities by the state, achieving a higher level of interagency collaboration, planning and multiagency operations, implementation of the concept of resilience, and systematic efforts to develop relevant civil security culture.

### **Legal Framework of Using Armed Forces for Domestic Disaster Response and Relief**

Provision of support to civilian authorities in natural and manmade disasters is a non-armed mission for the national military. From a societal point view, such support is vital and it should be provided in any case of any need. From a legal point of view, the domestic use of armed forces may raise constitutional concerns and debates, depending on the country-specific constitutional paradigm, security culture, and historical experience.<sup>15</sup>

The core issues at stake are the principle of non-domestic use of armed forces and the delimitation of jurisdiction among various governmental agencies. By definition, any use of armed forces for domestic civil protection should respect the protection of the democratic fundamental values and political liberties. In practice, the policy of securing society can easily harm the freedom of citizens; likewise, the priority of liberal democratic traditions can create obstacles to undertaking effective security measures.

In order to overcome these obstacles, some nations have decided to introduce specific texts in basic laws and thus to establish the chain of responsibilities and command in exceptional circumstances, other than war. Other countries have introduced specific parliamentary acts to provide a framework, mandate and decision-making procedures on domestic use of armed forces and the respective operations. Usually, these are emergency management laws, or laws about the status of the national military or, in some cases, the police. In some countries included in the study, such decisions are mandated to the executive power under parliamentary control. No matter what the



case is, the norms on using armed forces respect relevant international norms or standards, in particular the principle of democratic control over domestic operations of the military.

### ***International Norms and Standards***

There are no international regulations addressing specifically the roles of armed forces. Nevertheless, several intergovernmental organisations have adopted documents, which include provisions for or limitations on the role of armed forces in terms of permissible and non-permissible operations.

The most widely recognised source of detailed international norms on missions and roles of armed forces is the OSCE's *Code of Conduct on Politico-Military Aspects of Security*.<sup>16</sup> The Code stipulates that while each State is free to choose its own security arrangements, they must be in accordance with international law and OSCE Commitments (Art. 10). With regard to the internal security, the armed forces missions need to be in conformity with constitutional procedures, under the effective control of constitutional authorities and subject to the rule of law (Art. 36).

In 2005, the Parliamentary Assembly of the Council of Europe adopted *Recommendation 1713/2005* that called upon Council of Europe Member States to adhere to the principles of democratic oversight of the security sector, including intelligence services, police, border guards and the armed forces. With regard to the armed forces, the Recommendation stipulates that, "National security is the armed forces' main duty. This essential function must not be diluted by assigning auxiliary tasks to the armed forces, save in exceptional circumstances."<sup>17</sup>

Solidarity is one of the normative, institutional, and psychological pillars of the European Union. In accordance with the Solidarity Clause of the Treaty of Lisbon (2009, Title VII),<sup>18</sup> the Union and its Member States act jointly in the spirit of solidarity if another Member State is a subject of a terrorist attack or a victim of a natural or manmade disaster and, as a result, requests assistance (Art. 188R). First, the Union shall mobilise all the instruments at its disposal, including the military resources made available by the member states. Secondly, the other member states shall provide assistance upon the request of the political authorities of a Member State. Thus, the obligation for mutual assistance is one of the engines of the collective security within the Union and its Common Foreign and Security Policy. In accordance with this obligation, any member country not only has the opportunity to receive aid and assistance in case of a serious security threat or emergency, but also should take obligations to establish capabilities to provide and receive assistance. The EU's Crisis Co-ordination Arrangements (CCA) have been designed for situations in which a crisis is so far-reaching or politically significant that, to manage it, the co-ordination of

EU measures is required and the regular decision-making procedures of the Council cannot be employed, for example due to time pressure.<sup>19</sup> The CCA guarantee the EU's joint situational picture and determine how the EU bodies and Member States co-operate in a situation where two or more Member States face a disaster or an emergency situation (including terrorism-related situations). The presidency of the EU activates the coordination mechanisms after negotiating with the Member State(s) involved. Being the contact point for the Crisis Co-ordination Arrangements, concrete measures are taken by the Situation Centre (SitCen) of the Council.<sup>20</sup>

NATO has established procedures for Cooperation for Disaster Assistance in Peacetime since 1953, but it has been applicable only between the member countries.<sup>21</sup> In December 1992, the North Atlantic Council agreed that, upon a request to provide disaster assistance by a relevant international organisation, NATO should be ready to employ these procedures also in case of a disaster outside NATO's boundaries. Consequently, the NATO Policy on Disaster Assistance in Peacetime was revised, and the following modalities for assistance to NATO-member countries have been agreed:<sup>22</sup>

- If a country outside the Alliance requires assistance, arrangements normally would be a matter between the assisting member country and the stricken country. However, the assisting member country, having obtained information on the requirements of the stricken country, should communicate this information and information on the assistance given to the member countries and the Secretary General through the Alliance-wide communications systems; and
- Similarly, an international organisation acting with the consent of a stricken country outside the Alliance may contact the Secretary General requesting assistance. In such cases the Secretary General will activate the necessary elements of the International Staff to take steps to urgently promote the necessary assistance. The Civil Emergency Planning (CEP) of NATO also aims to support the core functions of the Alliance.

In addition to the Oslo Guidelines, the United Nations Office for the Coordination of Humanitarian Affairs (OCHA) provides an extensive reference guide for members of UNDAC teams before and during a mission to a disaster or emergency that presents, *inter alia*, principles and mechanisms of coordination of military and civilian assets.<sup>23</sup>

### ***Constitutionally Determined Disaster Response and Relief Missions of the Military***

Throughout the countries under review, there are different forms of constitutional arrangements of military engagements in domestic disaster response. Some—Germany,

Italy, Poland, The Netherlands, Austria and others—regulate the overall internal security and protection roles of the military.

However, the examples bellow illustrate that other constitutions directly prescribe some supporting disaster management roles to the military and even determine the types and scale of disasters in the response to which they might be engaged. In some cases, the constitutional courts (or relevant institutions) have made decisions that expand or clarify the range on military domestic arrangements.

The following examples support this statement.

The Constitution (The Basic Law) of Germany and its interpretations in the last decade are illustrative of the recent trend towards expansion of the domestic roles of the military. It provides regulations on how assistance during disasters shall be provided to the local authorities. Article 35 (2) stipulates that “in order to respond to a grave accident or a natural disaster, a *Land* may call for the assistance of Police Forces of other *Länder* or of personnel and facilities of other administrative authorities, of the Armed Forces, or of the Federal Border Police.” The same article, paragraph (3) is even more concrete, determining that “If *the natural disaster* or accident endangers the territory of more than one *Land*, the Federal Government, insofar as is necessary to combat the danger, may instruct the Land governments to place police forces at the disposal of other *Länder*, and may deploy units of the Federal Border Police or *the Armed Forces* to support the police. In this context, the measures taken by the Federal Government shall be rescinded at any time at the demand of the *Bundesrat*, and in any event as soon as the danger is removed.”<sup>24</sup> The further interpretation of this article and its overall paradigm illustrates the observation made earlier in this report that under the pressure of the on-going expansion of unexpected threats and growing number of disasters of natural and manmade origin the nations and their judiciary elites are willing to emancipate from the Twentieth century legal frameworks and expand the use of national military. According to Justus Leicht, in 2012, six years after ruling that the use of the military for domestic purposes was unconstitutional, the Supreme Court has allowed the use of weapons during army deployments inside Germany. The court interpreted Art. 35 (quoted above) to permit the armed forces to intervene in any case involving “damage of catastrophic dimensions.”<sup>25</sup>

In Poland, the Constitution determines the role of the armed forces in a ‘conservative’ manner: “The Armed Forces of the Republic of Poland shall safeguard the independence and territorial integrity of the State, and shall ensure the security and inviolability of its borders” (Art. 26, 1).<sup>26</sup> However, the Constitutional Court (*Trybunał Konstytucyjny*) in 2000 has decided that such definition does not exclude that the armed forces may have important role for the internal security, “although their involvement here might turn out to be of an auxiliary character.”<sup>27</sup> Article 3(1a) of the

Defence Act, added in 1997, stipulates that the armed forces may take part in combatting the effects of natural disasters and extraordinary threats to the environment, and in search and rescue missions.<sup>28</sup> Further, the Statute on the Deployment of Polish Armed Forces Abroad permits the forces to take part in rescue, search and humanitarian missions.<sup>29</sup>

Italy follows a policy of comprehensive use of armed forces and Carabinieri for domestic security and protection purposes, the basic law stipulates just, “The defence of the country is a sacred duty for every citizen.”<sup>30</sup> The armed forces are expected to guarantee their support to the national civil protection service in all emergencies. The military is ready to intervene in cases of disaster, always under military command, but under the overall responsibility and coordination of the civilian authority in charge of the rescue operations. For that reason, a number of military personnel are permanently deployed within the Department of Civil Protection. They are responsible for planning and operations in specific fields such as air operations in case of forest fires and maritime operations in case of emergencies at sea.

As in Poland and Italy, the Constitution of The Netherlands defines the armed forces roles so broadly that the text hardly places any limitations on the use of the military: Article 97 declares that “1. There shall be armed forces for the defence and protection of the interests of the Kingdom, and in order to maintain and promote the international legal order.”<sup>31</sup> Based on this legal set-up, it is the Minister of Defence who, elaborating the constitutional text, sets out the main tasks of the Dutch armed forces in the following way:<sup>32</sup>

- Protecting Dutch and Allied territory, including the Caribbean parts of the Kingdom;
- Promoting stability and the international rule of law;
- Supporting civil authorities in upholding the law and providing disaster relief and humanitarian assistance, both nationally and internationally.

According to the Defence Doctrine “this list is not hierarchical: the tasks are equal and must be executable at all times. The likelihood that a certain task will need to be executed may vary considerably over time.”<sup>33</sup> Within such a legal framework, the Dutch armed forces have a comprehensive role in the national civil protection policy and operations in cases of shortfalls in the capacities of civil organisations. The core military domestic operations include emergency relief, search and rescue, along with security and enforcement of public order. The Defence Doctrine explains that “In doing so, the armed forces have developed into a structural security partner to the police, fire service and medical services in accidents and disasters. In principle, the whole of the armed forces is available for this third main task, which also includes a number of routine activities, such as explosive ordnance disposal, coastguard opera-

tions in the North Sea, ...” (Art. 3.4.3). The core principle in providing military assistance to the civilian authorities in cases of natural and manmade disasters is that it always has to be a civil authority’s request for support (usually, by the chairman of the security region), addressed to the key horizontal emergency co-ordinator – the Minister of Security and Justice, who will then investigate the way the support shall be provided. If there is no other civil agency available and capable to provide the required support, then it could be addressed to the Minister of Defence and the CHOD can then act on the Minister’s behalf in deciding whether to provide military assistance (Art. 3.5.2).

The Austrian Federal Constitution subscribes to the concept of “universal national defence. Its task is to preserve the Federal territory’s outside independence as well as its inviolability and its unity, especially as regards the maintenance and defence of permanent neutrality.”<sup>34</sup> The military defence of Austria is conducted on the principles of a militia system, while in addition to the typical defence mission the federal military are obliged “to render assistance in the case of natural catastrophes and disasters of exceptional magnitude.”<sup>35</sup> The same article, paragraph 5, provides opportunity for the military, acting on a decision the Minister of Defence (as determined in the Defence Law), to undertake interventions on its own initiative for the purposes of civil protection against natural and other disasters and catastrophes. Such interventions are “... admissible only if circumstances outside their control have put it beyond capacity of the competent officials to effect intervention by the military and irreparable damage the community at large would arise from a further wait...” (Art. 79, para. 5).<sup>36</sup> Under these constitutional arrangements of the internal tasks, the Austrian Armed Forces furthermore have to:

- Protect the constitutionally established institutions and the democratic freedoms of the population;
- Maintain order and security inside the country;
- Render assistance in the case of natural catastrophes and disasters of exceptional magnitude.<sup>37</sup>

It can be inferred from these legal arrangements, that the legislator has left the determination of what means ‘exceptional magnitude’ to the executive decision-maker. From a legal point of view, experts like G. Nolte, H. Krieger, H. Prantl, and R. Gaier assume that such lack of clarity may lead to irrelevant use of the armed forces for domestic purposes.<sup>38</sup> However, from the point of view of civil protection policy, such ‘freedom’ provides options for more relevant decisions as the assessment of ‘exceptional magnitude’ is set in a local context: in one area, ‘exceptional’ could be an event with much smaller magnitude than that of another area, but the danger for the people could be similar.

The Constitution of Croatia provides legal ground for domestic disaster response mission of the armed forces: “In the circumstances provided by Articles 17 and 100 of the Constitution, the armed forces may, if the nature of jeopardy demands so, be used as assistance to police and other governmental bodies.”<sup>39</sup> According to the same article “The armed forces of the Republic of Croatia may also be deployed to assist fire fighting and rescue operations and surveillance and protection of the rights of the Republic of Croatia at sea.”<sup>40</sup> The other related key Croatian legal acts on military roles in cases of disaster response and relief—the *Protection and Rescue Act* and the *Law on Defence*—provide the legal framework reflecting the principle that the military participates in protection and rescue activities if called upon by competent authorities, in cases where the available civilian protection and rescue resources are not sufficient. The capacity of the armed forces is seen as supporting and their operations in protection and rescue should be coordinated with the Ministry of Internal Affairs and Administration.<sup>41</sup>

### ***Domestic Military Missions Defined by Laws and Other Acts***

In almost all countries subject of this review, the armed forces provide support to the civilian authorities and the population in response to a range of natural and manmade disasters. The arrangements are either expressly permitting (through constitutional provisions, statutes or governmental acts) or not explicitly prohibiting performance of these tasks by the military. The focus of the legal acts is usually on manmade and natural disasters, including biological disasters. The type of activities of the armed forces in case of disasters can be relief operations in cases of natural disaster and humanitarian catastrophes, or assistance in case of biological disasters.

From a legal point of view, the armed forces are part of the executive structures of the state. Respectively, the roles of armed forces in safeguarding national security and defence are decided either through constitutional arrangements, by specific laws (commonly laws on defence, on the armed forces, or on emergency management/disaster protection) or by executive decisions.

In most of the countries under review, the constitutional arrangements on deploying the armed forces are relatively frugal. In practice, such arrangements actually provide a wide range of opportunities to the members of parliaments to regulate the domestic use of armed forces for everything they view as important and relevant. These regulations could be in the form of specific defence or emergency laws, parliamentary decisions, or approval of executive documents such as security strategy, military strategy, crisis management concept, or defence (military) doctrine. Any parliamentary decision should be in line with the constitution and, obviously, not be challenged by the Constitutional Court. As the legal experts Nolte and Krieger explain, in such legal environment it is less clear whether any law or another Parliamentary act is in

accordance with the constitutions and provokes “significant and very diverse debate” on the limits of employing the of military, militarisation of societies, the spirit of the constitution, respect of democratic freedoms, etc.<sup>42</sup>

A number of examples of evolving roles of the armed forces in the domestic affairs and emergencies:

In France, no pertinent constitutional or parliamentary act determines the role of the national military in domestic affairs. However, the Defence White Paper (issued by the President in 2013) declares, “the engagement of the armed forces to support homeland security and civil security in the event of a major crisis could involve up to 10,000 personnel from the land forces, together with appropriate resources provided by the navy and the air force.”<sup>43</sup> The White Paper also determines the National Gendarmerie, as an armed force under the operational control of the Ministry of Interior, to be able to “... respond rapidly to crisis situations or natural disasters, and it can therefore be deployed alongside the armed forces.”<sup>44</sup> As a recent development in France, the national-level of domestic crisis management is consolidated in the General Secretariat for Defence and National Security and the Inter-ministerial Crisis Centre (under the leadership of the Prime-Minister). Providing thus civilian and political control, the armed forces will act in a crisis situation at the request of the civilian authority, under military command, to support or supplement the internal security forces (police and gendarmerie, fire brigade and civilian security organisations).<sup>45</sup>

In Denmark, there are no specific constitutional provisions to delineate the military’s role in domestic crisis situations. Article 7 of the Defence Act, however, stipulates that “the Defence Forces, according to the specified decision of the Minister of Defence and after negotiations with other ministers involved, be allowed to undertake other tasks.”<sup>46</sup> Thus, the military can support the Police and the Danish Emergency Management Agency if a serious accident or a catastrophe should strike Denmark.<sup>47</sup> This article introduces the interpretation that despite the existence of particularly explained tasks,<sup>48</sup> the armed forces under direct executive decision may take action within the domestic civil protection domain. The Danish concept of ‘total defence’ actually means *collective emergency preparedness* with the aim “to ensure an efficient and coordinated effort by its combined resources in connection with crises, catastrophes, or other major incidents. The purpose is to maintain vital public functions and to protect the lives and properties of the population.”<sup>49</sup> This means that the Minister of Defence is authorised to develop and use military capabilities in order to reduce the civil society’s vulnerability and to increase its robustness so that society is able better to resist potential new challenges and risks. The capacities for emergency management, including those of the Defence Forces, are expected therefore to be continuously adjusted in keeping up with societal developments. This allows the

Minister of Defence to determine tasks of the Ministry of Defence, in addition to the once defined by Law, as the following:

- Monitoring of maritime traffic and maritime environment;
- Rescue services and handling of pollution at sea;
- Assistance to the police;
- Fire and rescue services in regard at both national and municipal levels.<sup>50</sup>

Likewise, in Belgium no constitutional or other legal prescriptions exist in relation to the provision of military support to civil authorities in domestic emergencies, but the armed forces might be used in exceptional cases when civilian capacity is not sufficient. According to the Ministerial Circular NPU-1 of 26 October 2006, whenever civilian means are exhausted, military support can be considered and requested through the competent authority. In case of a municipal level of emergency, an agreement by the governor is compulsory.<sup>51</sup>

The language of Spain's Constitution of 1978<sup>52</sup> clearly distinguishes the armed forces from the forces of public order, i.e. the Civil Guard and the Police, which had been treated as part of the armed forces under the applicable organic law of the Franco regime. Article 8 of the democratic constitution states that "1. The Armed Forces, consisting of the army, the navy, and the air force, have as their mission the guarantee of the sovereignty and independence of Spain, the defence of its territorial integrity, and the constitutional order."<sup>53</sup> Article 30 provides ground for co-operation between the military and the civil protection system in cases of natural and manmade disasters. It stipulates that citizens have the right and the duty to 'defend Spain' through a military or civilian service, and further that the "duties of citizens in the event of serious risk, catastrophe or public calamity may be regulated by law."<sup>54</sup> In response to the new constitutional requirements, the 1980 *Organic Act on National Defence* stipulated that the Government shall arrange the contribution of whatever kind of resource that is necessary (human, material, etc., public or private), defined the concept of *civil defence*, and stated that the Armed Forces will cooperate at the request of civil authorities. An amendment of the same act in 1984 introduced the concept of *civil protection* and thus integrated the wartime civil defence with the peacetime civil protection functions. In this line of developments, a Royal Decree of 1996 established a new structure of the Ministry of Defence and defined the functions of the Defence Policy Directorate in relation to civil preparedness, civil emergency planning and the armed forces contribution to disaster relief operations. As a result, the role of the Spanish military for the civil protection has grown significantly not only from legal, but also from operational point of view. The establishment of special military formation (see Chapter 3.2) for provision of support to the civilian authorities in cases of emergencies has been the next step in the same direction. However, since 1984 le-



gal regulations have been introduced to place decision making on domestic emergencies under full civilian control and to make the military only an operational body.

In the Swedish Constitution, the national military is treated as “an instrument of the Government”<sup>55</sup> serving the purpose of “the defence of the Kingdom” and states that “The Government may deploy the armed forces of the Realm in accordance with international law to meet an armed attack against the Realm or to prevent a violation of its territory.”<sup>56</sup> However, as this statement relates more to the “external defence” and is linked to the Art. 51 of the UN Charter, an important role for determining the internal mission of the armed forces in support to the civil authorities in cases of emergencies is provided by the *Ordinance on Logistic and Material Support of the Armed Forces to Civil Authorities*.<sup>57</sup>

Finland’s Ministry of Defence and the Armed Forces role in disaster response and relief has been legally designated as the function of “supporting the other authorities.” According to the Government’s 2010 *Security Strategy for Society*, “these functions comprise executive assistance, participation in disaster response and support to an authority in providing assistance to another state.”<sup>58</sup> The Strategy requires the armed forces to develop and maintain readiness to provide support to the civilian authorities with the following key capabilities:

- “Area surveillance capability;
- Field communication systems;
- Search and oil spill recovery readiness on land and at sea;
- Intelligence, analysis and decontamination of CBRNE;
- Fire fighting;
- Rescue and clearing;
- Clearing of explosives;
- Building of temporary bridges and roads;
- First aid and evacuation;
- Land, sea and air transports;
- SAR by helicopters;
- Guarding duties;
- Accommodation and maintenance services; and
- Expert assistance.”<sup>59</sup>

In the UK, the military tasking is determined at the doctrinal level <sup>60</sup> under the following four generic headings: “Standing Home Commitments,” “Standing Strategic,” “Standing Overseas Commitments,” and “Contingent Operations Overseas.” The

Standing Home Commitments tasks encompass the inter-department efforts to provide security and sovereignty at home. The military role in these efforts encompasses four military tasks, including “MT 2.1: *Military Aid to Civil Authorities*”:

Military Aid to Civil Authorities (MACA) covers the provision of military support to the civil power, OGDs (Other Government Departments) and the community at large. This support is provided on an emergency basis and fielded from irreducible spare capacity. Specialist capabilities are provided when requested by OGDs, including routine Explosive Ordnance Disposal (EOD), partially funded by the Home Office, and a major contribution to the Search and Rescue (SAR) cover for the UK. It also includes support to the maintenance of Government in times of crisis and conflict.<sup>61</sup>

Defence contributes to the UK resilience through the provision of a number of guaranteed niche capabilities and a process of augmenting civil authorities and structures when civilian capacity is overwhelmed. The Ministry of Defence augments the capacity of civilian agencies responding to specific requests for a planned response or to a crisis. This means that augmentation by the military is not guaranteed and depends on the complex assessment of a concrete situation. MACA is subdivided into Military Aid to the Civil Community, Military Aid to the Civil Power and Military Aid to other Government Departments. In practice, military capabilities, generated for the implementation of other domestic military tasks as *Integrity of UK Waters* and *Integrity of UK Space* are routinely employed in support of the local civil authorities.

The Irish Defence Forces have the role of aiding the Civil Power, which in practice means to assist, when requested, An Garda Síochána [the police force of Ireland], who have primary responsibility for maintaining law and order, including the protection of the internal security of the State.<sup>62</sup> They also participate in multinational peace support, crisis management and humanitarian relief operations in support of the United Nations. From time to time, the Irish Defence Forces may be tasked to conduct search and rescue; air ambulance service; assistance on the occasion of natural or other disasters; assistance in connection with the maintenance of essential services; assistance in combating oil pollution at sea.<sup>63</sup> For example, in response to the 2004 Indian Ocean Tsunami, from January till March 2005 the Defence Forces deployed a team of specialist logistic officers to the United Nations Joint Logistics Centre in Sri Lanka and performed tasks in relation to road and transport assessments, gathering, compiling and disseminating information for all UN Agencies, foreign military and international non-governmental organisations.<sup>64</sup>

The Kingdom of Norway’s Constitution does not specify internal roles of the armed forces. According to Article 25 of the Constitution, the control of the armed forces is among the King’s prerogatives, in principle meaning that the Parliament (*Stortinget*)

may not give directions as to how this authority shall be exercised. This power is in practice exercised by the Government and, within the Government, by the Minister of Defence. However, since the introduction of the principle of parliamentarism in 1884 (implying that the Government is depending on the continuing support of the Parliament), the Defence Minister is constitutionally and politically responsible to the Parliament for all activities carried out by the Ministry, by the armed forces as a whole and by other subordinated departments. Furthermore, the Government needs the authorisation of the Parliament to pass any new acts regarding the armed forces, as well as for the defence budget. The loose formulation of the purpose of the armed forces to defend Norwegian territory, people and interests provides a room for flexible interpretation.<sup>65</sup> Consequently, the main principle for crisis management is *the principle of responsibility*, which states that each ministry and government agency has a responsibility for internal security within its own field. In order to prevent unhealthy competition or gaps in assigned responsibility, the Ministry of Justice and Police provides horizontal co-ordination through the Directorate of Civil Protection and Emergency Planning. Norway's core emergency management organisation – the Civil Defence—is subordinated to the Ministry of Justice and the Police. Its current purpose is mainly to provide support activities in civil emergencies during peacetime, whereas previously its most important task was to protect against the dangers of war. Norway has no paramilitary or internal security forces. However, the Civil Defence personnel are uniformed and under the protection of relevant Geneva Conventions.

The core tasks of the Norwegian military are to provide military defence and contribute to international peacekeeping missions. One of the nine tasks of the military, elaborated in the long-term defence plan,<sup>66</sup> is to “contribute to the safeguarding of public safety and other central social tasks.”<sup>67</sup> The long-term defence plan also requires “the size and equipment of individual elements shall take into account the requirement to provide support to the civil community.”<sup>68</sup> In this context, an extensive civil-military cooperation has been established between the Ministry of Defence and the Directorate of Civil Protection and Emergency Planning within the Ministry of Justice and the Police.

The Romanian Armed Forces' mission is “to guarantee the state sovereignty, independence and unity, territorial integrity and constitutional democracy.”<sup>69</sup> Their contribution to the national disaster response and relief preparations is based on deliberate and contingency plans that are co-ordinated by the civil emergency management authorities (under the control of the Minister of the Interior). The implementation of those plans and all necessary rapid reaction measures is organised and commanded by the Chief of the General Staff under the leadership of the Minister of Defence. All direct military engagements are co-ordinated with the Governmental Commission for Disaster Relief.

Like in the Romanian case, the Constitution of Bulgaria determines a ‘classical’ role of the armed forces: “The armed forces shall guarantee the sovereignty, security and independence of the country and shall defend its territorial integrity.”<sup>70</sup> The Law on Defence and Armed Forces adds to defence and defence preparedness activities “... 9. Maintaining and using armed forces in disasters; 10. Participation in containing and/or mitigating the consequences of disasters.”<sup>71</sup> The White Paper of Defence of 2010, as well as previous versions, elaborates a third mission of the armed forces “Contribution to the national security in peacetime,” that includes “maintaining capabilities of early warning for potential risks and threats; activities for control of the air and maritime space; operations for containing and neutralising terrorist, extremist and crime groups; protection of strategic sites; protection and support to the population in natural disasters, accidents, and environmental catastrophes; neutralising unexploded ordnance; provision of humanitarian assistance; contribution to migration control; rescue and evacuation activities; assistance, when necessary, to other state bodies, organisations, and local authorities, for preventing and overcoming the consequences of terrorist attacks, natural disasters, ecological and industrial catastrophes, and dangerous dissemination of infectious diseases.”<sup>72</sup> From policy point of view, the involvement of military capabilities and assets is formally seen as last resort, only in cases when the available civilian capacity is overwhelmed. In practice, however, the military are called to support disaster response fairly often, e.g. for aerial surveillance and reconnaissance, search and rescue from the air, provision of heavy transport vehicles in snow storms and heavy icing, etc.

According to the *Armed Forces Law* (2002), the Slovak military may be tasked to provide support to civilian authorities in emergency situations and in cases of introduction of state of emergency, to perform air search and rescue operations, and to provide air medical transport.<sup>73</sup>

Although the system of protection against natural and other disasters in Slovenia is separated from the defence system and is non-military in nature, the Slovenian armed forces can also participate in protection, rescue and relief tasks in cases, where available civilian forces and resources are insufficient. Among the examples is the participation of the airborne unit with helicopters in mountain rescue operations and the contribution to fighting forest fires. The participation of the armed forces has to be approved by the Minister of Defence on the initiative of the Civil Protection Commander of the Republic of Slovenia.<sup>74</sup>

The Constitution of the Czech Republic stipulates that the government shall decide on dispatching Czech military forces outside the territory of the Czech Republic for “... c) participation in rescue operations in case of natural, industrial and ecological disasters,”<sup>75</sup> but does not regulate the internal use of the armed forces for similar pur-

poses. However, since the basic law does not constrain the use of the military in such cases, the *Military Strategy of the Czech Republic* (2012) determines the mission of the military in support of the civil authorities in emergency situations in the following manner: “The Armed Forces of the Czech Republic may support national civilian authorities on the state’s territory in the framework of the Integrated Rescue System (IRS), particularly in the consequence management of large-scale natural disasters and industrial or environmental incidents. In cases when the internal security and security of citizens are under serious threat, the Ministry of Defence may assign forces and assets in order to support and reinforce the Police of the Czech Republic (PCR). To that effect, forces are assigned to the extent necessary and subject to their availability. In principle, the entirety of the Armed Forces of the Czech Republic, including the Armed Forces’ Active Reserve Force, may be used in support of the IRS and PCR.”<sup>76</sup>

In Estonia, the *Estonian Defence Forces Organisation Act* (2009) determines the function of the Defence Forces as “... 4) participation in the resolution of a state of emergency and an emergency situation and in ensuring the security on the basis of and pursuant to the procedure provided by law.”<sup>77</sup> The Law also explicitly states that such assistance could be provided only if the police forces are not able to operate or their capacity is insufficient. The internal military mission of support should be performed without using direct coercion in any form.<sup>78</sup>

The legal arrangements on the domestic use of the armed forces of Latvia are defined by the *National Armed Forces Law* (1999).<sup>79</sup> Accordingly, the national Armed Forces should provide support to “[...] 2) the system of civil protection – in preventive and reactive measures, in measures for the elimination of consequences caused by emergency situations, as well as rescue and search operations.”<sup>80</sup> Another article of the Law provides details on the military ‘measures’ that might be undertaken by the armed forces in the following way: “[...] 3) destroy explosive devices; 4) perform coast guard functions, co-ordinate and perform human search and rescue operations at sea, eliminate the effects of accidents occurred at sea, participate in ecological surveillance and control of the navigation regime.”<sup>81</sup> And at the ‘highest’ level, one of fundamental tasks of the armed forces is determined as “the participation in the prevention of situations that constitute a threat to the State in accordance with the procedures specified in regulatory enactments.”<sup>82</sup> Paragraph 2 of the same article makes an open statement that “[...] the units (sub-units) of the National Armed Forces may become involved in the performance of other tasks not provided for in this Law by an order of the Cabinet.”<sup>83</sup>

In Lithuania, the *Law on the Organisation of the National Defence System and Military Service* stipulates that “1. The principal tasks of the Army in peacetime shall be:

[...] in the cases specified by the law, to provide assistance to other state and municipal institutions.”<sup>84</sup> In the elaboration of functions of the paramilitary volunteer force, the Law determines one other function as, “training of volunteer servicemen, preparation of elements of the Volunteer Forces for defence within their own territory and for the performance of joint defence tasks, protection of the defence infrastructure and strategic objects, assistance in the event of natural disasters and calamities.”<sup>85</sup>

In Portugal, the key civil protection role is dedicated to the National Republican Guard (NRG) – a formation with military status and organisation (similar to Carabinieri and Gendarmerie), which operates under the Minister of Interior’s control in any situation except war or military crisis. Among others, one of the NRG’s principal missions is to “aid and protect the citizens as well as defend and preserve the goods which are found to be in a dangerous situation, due to causes originating from human actions or acts of nature.”<sup>86</sup> Performing this mission, civilian organisations and the military cooperate in the following areas:

- Forest fire-related activities (prevention, fire-fighting support and post-fire activities);
- Reinforcement of civil personnel in health and medical emergencies;
- Search and rescue;
- Logistical support for operations;
- Infrastructure rehabilitation;
- Terrestrial, aerial and maritime reconnaissance activities.<sup>87</sup>

In terms of organisation, the NRG is built into three hierarchical levels, with 20 district commands, 128 detachments and 534 units. It has also a reserve unit, organised and prepared, among others, for K-9 intervention,<sup>88</sup> search and rescue, and explosive ordnance disposal and underground security.<sup>89</sup> The NRG has a total staff of 24 736 military and 1 111 civilians, who carry out their missions throughout 94 percent of the national territory accounting for 53,8 percent of the population.<sup>90</sup>

Greece and Turkey are between the few countries covered by the study assigning a lesser role of the armed forces in disaster response and relief, as prescribed in legislation. In practice, the military contribution in both countries is essential in a variety of cases, but respective decisions are made ad-hoc, via legal or governmental acts. In the aftermath of the August 1999 earthquake, the Turkish Armed Forces made the decision to form a battalion-size search and rescue unit subordinate to Special Forces Command with the intent to better cope with large-scale natural disasters. The special unit is called ‘Natural Disasters Search and Rescue Battalion’ (see Chapter **Error! Reference source not found.** below). Logistics support in crises is provided through a number of sources, including private logistics providers, non-governmental

logistics providers and military logistics support. The Turkish Armed Forces, for example, maintain logistics support coordination centres to ensure timely response in the event of emergencies. During the Lake Van earthquake in 2011, military aircrafts were made available for delivering SAR forces and other rescue workers, equipment and aid (e.g., blankets, tents, etc.). Military support is anticipated in all provincial plans for all emergency situations, as foreseen in the relevant regulations.

In Israel, the Home Front Command operates in various emergency situations, specialising in civilian protection to save lives. In emergencies, this Command operates to its fullest capabilities, using all its resources in order to instruct the civilian population on how to cope with the threats facing Israel. The Home Front Command operates search and rescue missions in Israel and around the world, aiding in rescue and recovery from incidents such as terror attacks, floods, conflagrations, etc.<sup>91</sup>

### **Conclusion: Impact on Civil-Military Relations**

This review indicates a tendency to expand not so much the ‘domestic roles’ of the national military, but the ways in which the armed forces contribute to immediate disaster response, rescue and relief operations. The provision of military support to civil authorities and the people takes place in a specific context of the civil-military relations. As the UK Disaster Relief Operations Doctrine<sup>92</sup> explains, natural and manmade disasters and catastrophes are source of humanitarian crises: if not addressed rapidly and effectively, they can deteriorate quickly and bring significant and comprehensive political, social, economic and security effects.

The studies of Katzenstein (1996)<sup>93</sup> and Hofstede (2010)<sup>94</sup> argue that democratic nations, that have developed a culture of securing people’s life and property, have a better capacity to survive an emergency with less damage; they are socially more coherent and politically stable. These studies plead that nations least able to withstand the effects of natural disaster, or at greatest risk to manmade disaster, are also prone to political instability, civil disorder and unrest.

From this standpoint, the use of military in domestic emergency operations should be timely and effective. However, any military engagement should stay within the framework of the established principles of the democratic civil-military relations<sup>95</sup> and should not challenge the human rights and citizen freedoms. The following points might be considered:

- *Decisions concerning armed forces always remain in civilian hands and, if force is used, it is commensurate with the concrete disaster response and relief needs.* The application of this principle guarantees that the use of military is a component of the (civilian) government’s crisis management policy, and not on a military initiative.

- *Any military engagement is based on political guidance and follows the requirements of transparency and accountability.* The Minister of Defence is the principle agent on behalf of the Government, who has full command authority over the military contingent and its operations. The minister is obliged to provide timely and detailed information on the character of military engagement and the results. He/she is responsible for the performance of the military both politically (to the public and the Parliament) and legally (for the issued executive orders).
- *The operational chain of command is led by a civilian authority.* Governments build national crisis management systems that are headed by a political body and are supported by a civilian permanent administration. The principle of civilian leadership is spread throughout all levels of the systems (national, regional and local). Civilians determine the tasks and character of any military operation within the affected area, while the militaries maintain their internal chain of command.
- *The role of military in domestic emergency operations is defined under the principles of subsidiarity and proportionality.* This principle has different meaning, depending on the design of the national crisis management system. When the military have special units for disaster response, search and rescue, and relief they receive concrete and, in some cases, primary role, depending on the nature of the emergency. When the military provide general support or assets, then their role is strictly supportive and proportional.
- *The operational chain of command is led by a civilian authority.* Governments build national crisis management systems that are headed by a political body and are supported by a civilian permanent administration. The principle of civilian leadership is spread throughout all levels of the systems (national, regional and local). Civilians determine the tasks and character of any military operation within the affected area, while the militaries maintain their internal chain of command.
- *The role of military in domestic emergency operations is defined under the principles of subsidiarity and proportionality.* This principle has different meaning, depending on the design of the national crisis management system. When the military have special units for disaster response, search and rescue, and relief they receive concrete and, in some cases, primary role, depending on the nature of the emergency. When the military provide general support or assets, then their role is strictly supportive and proportional.
- *Any military engagement is seen as temporary.* The highest value of the military is their high readiness and rapid reaction, but their core role is defence



and military security. The governments avoid challenging this role with prolonged engagement in disaster relief operations.

- *The military role and operations are professionally prepared and the equipment they use is relevant to the missions.* Generally, the governments' position is that major disasters cannot be handled successfully without adequate preparation. In most of the cases under study that includes: case specific legal arrangements; equipment, relevant to the role; military specific and inter-agency training; co-ordinated planning; integrated alert system; and joint reporting mechanism. The military leadership is responsible to determine which military formation should be prepared and engaged in a disaster response mission and what are the relevant operational requirements (as the practice confirms, the military engagements are costly as the military equipment is often much more expensive than any civilian equipment).

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- <sup>7</sup> See the section “Responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity,” in 2005 World Summit Outcome, UN General Assembly Resolution A/RES/60/1, 24 October 2005, available for download at [www.un.org/en/preventgenocide/adviser/responsibility.shtml](http://www.un.org/en/preventgenocide/adviser/responsibility.shtml).
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- <sup>28</sup> *Ibid.*, p. 37.
- <sup>29</sup> *Ibid.*, p. 38.
- <sup>30</sup> Constitution of the Italian Republic (Roma: Senato della Repubblica, n.a), Art. 52.
- <sup>31</sup> See the English language translation of the Constitution of the Kingdom of the Netherlands 2008, available at [www.legislationline.org/documents/section/constitutions/country/12](http://www.legislationline.org/documents/section/constitutions/country/12).
- <sup>32</sup> See, for example, *In the Interest of the Netherlands* (The Netherlands' Ministry of Defence, October 2013), p. 12.
- <sup>33</sup> Netherlands Defence Doctrine (The Hague: Ministerie van Defensie, 2013), available in English at <http://www.defensie.nl/documenten/publicaties/2013/11/20/defence-doctrine-en>.
- <sup>34</sup> Federal Constitutional Law, Art. 9a(1). See Austrian Federal Constitutional Laws (selection), p. 10.
- <sup>35</sup> *Ibid.*, Art. 79, para. 2.
- <sup>36</sup> *Ibid.*, pp. 92-93.
- <sup>37</sup> Tasks of the Austrian Armed Forces, Official website of the Austrian Armed Forces at [www.bundesheer.at/English/forces/tasks.shtml](http://www.bundesheer.at/English/forces/tasks.shtml).
- <sup>38</sup> E.g. see Georg Nolte, ed., *European Military Law Systems* (Berlin: Der Gruyter Recht, 2003).
- <sup>39</sup> The Constitution of the Republic of Croatia, Art. 7, In: The Constitution of the Republic of Croatia (Consolidated text 2001).
- <sup>40</sup> See the translation on the website of the Croatian Parliament, at <https://www.sabor.hr/Default.aspx?art=2407>.
- <sup>41</sup> *Protection and Rescue Act*, Art. 8, available in Croatian at <http://www.duzs.hr/page.aspx?PageID=604>.
- <sup>42</sup> Georg Nolte and Heike Krieger, “European Military Law Systems: General Comparative Report,” in Georg Nolte, ed., *European Military Law Systems* (Berlin: De Gruyter Recht, 2003).

- <sup>43</sup> *French White Paper on Defence and National Security*, foreword by François Hollande, President of the French Republic (2013), p. 86.
- <sup>44</sup> *Ibid.*, p. 92.
- <sup>45</sup> *Ibid.*, p. 104.
- <sup>46</sup> Jørgen Albræk Jensen, "Military Law in Denmark," in Georg Nolte, ed., *European Military Law Systems*, p. 239.
- <sup>47</sup> *Fact and Figures about the Danish Armed Forces* (Copenhagen: Ministry of Defence, February 2011), p. 5.
- <sup>48</sup> The Defence Act of 2011 defines the purpose of the Danish armed forces as follows: to prevent conflicts and war; to uphold Denmark's sovereignty and protect the nation's continued existence and integrity; and to promote peaceful development in the world with respect for human rights. *Ibid.*, p. 3.
- <sup>49</sup> Collective emergency preparedness, Copenhagen: Ministry of Defence, last update 5 January 2015, available at <http://www.fmn.dk/eng/allabout/Pages/Collectiveemergencypreparedness.aspx>.
- <sup>50</sup> Responsibilities of the Ministry, Copenhagen: Ministry of Defence, last update 16 January 2015, available at <http://www.fmn.dk/eng/Aboutus/organisation/Pages/Responsibilitiesoftheambit.aspx>.
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- <sup>52</sup> Constitution passed by the Cortes Generales in plenary meetings of the Congress of Deputies and the Senate, and ratified by referendum of the Spanish people in 1978.
- <sup>53</sup> *Ibid.*, Section 8.
- <sup>54</sup> *Ibid.*, Section 30.
- <sup>55</sup> The Swedish Constitution consists of four fundamental laws: the Instrument of Government, the Act of Succession, the Freedom of the Press Act, and the Fundamental Law on Freedom of Expression.
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- <sup>57</sup> See, for example, Kim Eduard Lioe, *Armed Forces in Law Enforcement Operations? The German and European Perspective* (Heidelberg: Springer, 2011), p. 114.
- <sup>58</sup> Security Strategy for Society, Government Resolution 16.12.2010, p. 28.
- <sup>59</sup> *Ibid.*, article 2.4.2 'Strategic Tasks,' p. 28.
- <sup>60</sup> Operations in the UK: The Defence Contribution to Resilience, Joint Doctrine Publication 02, Second edition (September 2007), p. 1-4.
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- <sup>63</sup> *Ibid.*, p. 14.
- <sup>64</sup> Defence Forces Annual Report 2005 (Defence Forces Ireland, 2006).
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- <sup>67</sup> Norwegian Ministry of Defence, *Norwegian Defence 2013. Facts and Figures*.
- <sup>68</sup> *Ibid.*, p. 4.
- <sup>69</sup> Constitution of the Republic of Romania, Art. 117 (1), available at <http://www.cdep.ro/pls/dic/site.page?id=371>.
- <sup>70</sup> Constitution of the Republic of Bulgaria, 1991, Art. 9, available at [www.parliament.bg/en/const](http://www.parliament.bg/en/const)
- <sup>71</sup> Law on Defence and the Armed Forces of the Republic of Bulgaria, Article 6(2).
- <sup>72</sup> White paper on Defence and the Armed Forces of the Republic of Bulgaria, 2010, pp. 21-22, available at [http://mod.bg/bg/doc/drugi/20101130\\_WP\\_BG.pdf](http://mod.bg/bg/doc/drugi/20101130_WP_BG.pdf).
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- <sup>74</sup> European Commission, "Slovenia - Disaster management structure," in *Vademecum – Civil protection*, available at [http://ec.europa.eu/echo/files/civil\\_protection/vademecum/si/2-si-1.html#stak](http://ec.europa.eu/echo/files/civil_protection/vademecum/si/2-si-1.html#stak).
- <sup>75</sup> Constitution of the Czech Republic (16 December 1992), Art. 43(4)c.
- <sup>76</sup> The Defence Strategy of the Czech Republic: A Responsible State and a Reliable Ally, Prague: 2012, Art. 28, p. 9.
- <sup>77</sup> Estonian Defence Forces Organisation Act, passed 19 June 2008, Art. 3(1), point 4.
- <sup>78</sup> *Ibid.*, Article 3(4).
- <sup>79</sup> National Armed Forces Law, Latvia, 1999, available at [http://vvc.gov.lv/export/sites/default/docs/LRTA/Likumi/National\\_Armed\\_Forces\\_Law.doc](http://vvc.gov.lv/export/sites/default/docs/LRTA/Likumi/National_Armed_Forces_Law.doc)
- <sup>80</sup> *Ibid.*, Section 6<sup>1</sup>, para. 7, point 2.
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