

Dear Sir/Madam,

On behalf of the British Red Cross, I am writing in response to the call for evidence published by the Foreign and Commonwealth Office, in relation to the Government's Review of the Balance of Competences between the United Kingdom and the European Union.

By way of background, the British Red Cross is an officially recognised auxiliary to the United Kingdom Government in the humanitarian field, and has special expertise in matters of international law, in particular, international humanitarian law (IHL: also called the law of armed conflict or the law of war). In line with these responsibilities, the British Red Cross supports the UK Government to promote, implement, and where relevant, develop IHL. The British Red Cross also works, as appropriate, with the European Union on such matters, normally through the UK Government and/or with its sister National Red Cross Societies in EU countries, as well as with the International Committee of the Red Cross (ICRC). The European Union has for a number of years considered that promoting respect for IHL, and encouraging its development, fall within its Common Foreign and Security Policy, and IHL activities may also be undertaken under other EU areas of focus, including development co-operation and humanitarian aid. The growing number of operations and missions carried out under the auspices of the European Security and Defence Policy have also encouraged greater EU involvement in IHL matters.

In addition, the British Red Cross has a formal role in civil protection activities, both within and outside the UK. Within the UK, the British Red Cross provides a range of emergency response services in support of the statutory authorities, in line with its above-mentioned role as a humanitarian auxiliary to the UK Government, and within the framework of the Civil Contingencies Act (specifically, those provisions covering voluntary organisations). As a further example, the British Red Cross provides specially trained emotional support staff to accompany FCO consular teams deploying outside of the UK, in order to assist UK nationals abroad. The British Red Cross engages with its sister National Red Cross and National Red Crescent Societies, including those within the EU, and with the International Federation of Red Cross and Red Crescent Societies (IFRC), in order to develop common approaches, where necessary, on matters of civil protection.

The British Red Cross is therefore pleased to provide the following comments in relation to the Call for Evidence initiated by the FCO as part of the Balance of Competences Review, in the context of, firstly, IHL matters, and secondly, civil protection matters. Using the framework of indicative questions set out in the Call for Evidence document, our views on the balance of competences in these two areas are set out below.

1. In what areas of global affairs does the EU add value or deliver impact or not on behalf of the UK?

International humanitarian law

On issues of international humanitarian law, the added value and impact of the EU lies in its ability to lend its collective weight to diplomatic processes aimed at promoting respect for IHL, and encouraging its implementation and development by States. For example, the 2008 Action Plan for the European Consensus on Humanitarian Aid sets out, among other tasks, the EU's intention to undertake "general and case-specific advocacy for the respect of international law, including IHL, human rights law and refugee law through EU policy channels".

The 2009 up-dated EU Guidelines on promoting compliance with IHL help to set out more clearly the EU's role in relation to IHL, in particular regarding third States. The Guidelines encourage systematic reporting on and discussion of IHL compliance by third States (and, where appropriate, non-State actors in third States) within EU bodies, and set out a range of 'means of action' that the EU is able to employ in the

event of non-compliance (these include, among others, political dialogue, démarches and/or public statements and restrictive measures/sanctions).

The EU may also provide valuable assistance in encouraging its Member States (and third States) to support new treaty processes on IHL (such as in relation to the ongoing process of negotiating a global Arms Trade Treaty). Although it is clear that the primary responsibility to develop international humanitarian law lies with individual States, the common diplomatic and promotion efforts of the EU can serve to facilitate greater international participation in these processes.

The EU also supports existing IHL and its effective implementation, including through the work of the International Committee of the Red Cross (ICRC) and of the National Red Cross and Red Crescent Societies. One illustration is the Declaration by the Presidency on behalf of the EU on the Occasion of the 60th Anniversary of the adoption of the four Geneva Conventions of 1949. Such statements of shared values and encouragement are helpful, both among the EU Member States and externally.

The EU has also taken an increasingly active role in relation to the quadrennial International Conference of the Red Cross and Red Crescent, in particular through the adoption of relevant so-called "pledges" on IHL and related matters, both jointly with and separate from EU National Red Cross Societies. Such pledges are also adopted by a number of individual States (including those of the EU), both jointly with and separate from their respective National Red Cross or Red Crescent Society.

Civil protection

The activities of the EU in civil protection are increasingly valued and utilised by the British Red Cross, as well as by other EU National Red Cross Societies. The EU Civil Protection Mechanism offers a facility for sharing information, resources and expertise across EU Member States. The Common Emergency Communication and Information System is an essential information portal. Co-financing of transport will most likely be more important for those EU Member States particularly adversely affected by the ongoing economic crisis.

Exercises organised at the EU level provide cross-border and multi-disciplinary opportunities to participate and observe on significant national, regional and global disaster risks (such as climate change, flooding and pandemic flu). EU training courses allow National Red Cross Societies in the EU (as well as the international Red Cross organisations based in Geneva, including the International Federation of Red Cross and Red Crescent Societies and the International Committee of the Red Cross) the opportunity to attend as a delegate, and/or to deliver key messages about the International Red Cross and Red Crescent Movement, including our Fundamental Principles, humanitarian activities and ways of working.

There is also value in the EU's funding of projects on civil protection matters (for example, research, prevention and preparedness, as well as EU Aid Volunteers), and in the provision of small sums of money to enable organisations like the British Red Cross to work with other organisations across EU borders, in order to share and develop good practice.

2. What are the comparative advantages/disadvantages of working through the EU in the area you wish to comment on, rather than the UK working independently?

International humanitarian law

As indicated above, the comparative advantage of working through the EU is the collective voice it is able to bring on matters of IHL, and its ability to facilitate high level diplomatic engagement on these issues. This being said, the process of seeking agreement across the EU on an approach to a given IHL matter may be challenging, in particular if there are differing views across EU Member States. Such differences

can, at times, lead to a 'watering down' of messages or other initiatives, in order to be able to find a common EU position.

In addition, the EU institutions do not have the military and operational experience of a number of its individual Member States in implementing/applying IHL. Moreover, across EU Member States, there are significant differences in military capability and operational expertise. This means that, on certain IHL matters, it may be more difficult for the EU as a whole to speak with a single credible voice, than individual EU Member States alone.

On a separate point, while it is feasible for relevant organisations to secure funding from EU bodies for IHL-related projects, this can be challenging, given that there is no specific dedicated IHL funding mechanism at the EU level. Therefore while the possibility of additional funding streams to those that may be available at the national level is, of course, welcome, at present it can be somewhat difficult to identify particular funding opportunities for IHL within various EU budget streams.

Civil protection

The training courses organised at the EU level are generally of good quality and are considered to be useful by the individuals attending. However, it is not always clear whether the representatives attending these courses are those who will actually be deployed. Working across EU Member State boundaries is a useful way to establish relationships, to share expertise and to make best use of limited resources. However, as communication tends to flow between the European Commission and EU Member States only, and does not necessarily extend to other relevant organisations within EU Member States (including, for example, organisations like the British Red Cross), the effectiveness and value of such communication within an EU Member State may be limited.

The exchange system for civil protection experts carried out under the Civil Protection Mechanism has, in our view, delivered tangible benefits, both in better training and informing individuals, and equipping them with the capability to work in countries outside of their own.

While, as mentioned above, it is helpful that EU funding is available for civil protection projects, the process of applying for such funding can be time consuming and protracted. While there are real potential benefits in applying for such funding, the benefits may not as yet have been fully realised by organisations within the UK. Relevant UK Government Ministries could perhaps provide greater assistance in publicising such funding opportunities offered by the EU.

3. How effective is the EU at combining its foreign, defence, economic and civil protection policy instruments to deliver best effect in foreign policy? What, if anything, should it do differently?

The British Red Cross is unable to comment on this matter.

4. How effective are the EU's delivery mechanisms? Would any changes make them more effective, and if so, which ones and why?

The British Red Cross is unable to comment on this matter.

5. Would a different division of EU and Member State competence in a particular area produce more effective policies? If so, how and why?

International humanitarian law

In the view of the British Red Cross, there is no need to have a different division of EU and Member State competence in the area of IHL. Such matters are, and should remain, a matter primarily for individual States. The EU is able to play an important supporting role, in particular in disseminating common messages and agreeing joint positions, but ultimately it is the responsibility of individual Member States to develop and implement IHL.

As a practical example of how questions on the division of competence on IHL have been addressed, in 2011, following the adoption of the Lisbon Treaty, there was an issue as to whether the relevant pledges adopted at the EU level at the 31st International Conference of the Red Cross and Red Crescent would be simply EU pledges (that is, sitting with the EU institutions), or alternatively, EU Member State pledges. It is our understanding that they remained pledges of the EU Member States. This would appear to be in keeping with the primary responsibility of individual States on IHL matters.

The above example also reinforces the fact that members of the International Conference of the Red Cross and Red Crescent, in addition to Red Cross and Red Crescent organisations, are the States Parties to the 1949 Geneva Conventions. While the increasing interest of the EU in the International Conference is welcome, it does not qualify as a member in its own right, under the terms set out in the Statutes of the International Red Cross and Red Crescent Movement. It is therefore important that individual EU Member States remain active with respect to the International Conference of the Red Cross and Red Crescent, in line with their membership and responsibilities under the 1949 Geneva Conventions.

6. How might the national interest be served by action being taken in this field at a different level e.g. regional, national, UN, NATO, OECD, G20 – either in addition or as an alternative to action at EU level?

International humanitarian law

Additional actions in the field of IHL are already undertaken at the UN, NATO and, for example, G8 and G20 levels. These are in line with the specific mandates of each organisation or grouping. For example, the UN Security Council has a role to play regarding, among other things, violations of IHL that may be so serious as to warrant the mandating of enforcement action under Chapter VII of the UN Charter. The UN General Assembly makes periodic statements concerning different aspects of IHL, including, for example, through a biennial resolution on the Status of the 1977 Additional Protocols to the 1949 Geneva Conventions and relating to the protection of victims of armed conflicts. Diplomatic groupings such as the G8 and G20 may also make statements or declarations that concern issues of IHL.

NATO Member States, like EU Member States, have specific obligations under IHL when carrying out military actions, both individually and when operating under NATO auspices. Like UN Personnel, NATO personnel are bound by IHL when undertaking military operations in situations of armed conflict.

IHL activities are also undertaken in other associations and groupings of which the UK is part, including, for example, the Commonwealth. The Commonwealth has become increasingly active in relation to IHL, in order to facilitate its promotion and implementation among and within its member countries. As a voluntary association of 54 nations, the great majority of which share a common heritage, legal system (common law) and language (English), the Commonwealth is also able to support and promote newly adopted treaties and other legal initiatives among its membership. For example, Commonwealth Heads of Government meetings (CHOGM) have given such support to the 1997 Ottawa Convention (banning anti-personnel landmines) and to the 1998 Rome Statute of the International Criminal Court.

All of the above actions are complementary. One could say that, on the one hand, the role of the EU in IHL is perhaps similar to that of the UN General Assembly: that is, in putting its collective voice behind diplomatic processes concerning IHL, and encouraging its Member States to implement, promote and develop IHL. However, it is also true that the EU has become increasingly active in agreeing Guidelines

and undertaking concrete initiatives on IHL. It is important to note that the latter are generally agreed between and given primary effect by Member States.

As the EU takes on an increasing role in crisis management operations, there may be a greater element of direct implementation of IHL by personnel acting under EU auspices in situations of armed conflict.

Civil protection

Regarding NATO, there will be suitable actions that it could take in relation to civil protection, in particular as global disaster and emergency risks evolve and escalate. In fact, NATO already undertakes a variety of activities on such matters under the auspices of its Civil Emergency Planning function (and in doing so, co-ordinates with UN-OCHA and the EU accordingly). These activities are certainly, in principle, complementary to civil protection activities at other levels, including the EU. However, it remains important to consider how, and in what circumstances, military capability may appropriately support or replace civilian assets in civil protection.

7. Are there any general points you wish to make, which are not captured above?

International humanitarian law

There is a legitimate diplomatic role for the EU in relation to IHL matters. The dialogue between EU Member States, EU structures and bodies on the one hand, and National Red Cross Societies within the EU on the other hand, on matters of promotion, implementation and application of IHL relevant to EU Member States and the EU, has been continuous and fruitful.

However, the growing interest of the EU in this area has been developed without a clear mandate and in a somewhat ad hoc manner. It is also at times viewed as a sub-set of, or otherwise related to, the EU's role in human rights and rule of law matters. However, IHL is a body of law separate from human rights law, with a particular framework and unique purpose. This important distinction may be more readily understood by individual Member States, who are primarily responsible for the implementation and development of IHL. Consequently, while it would be beneficial for the EU's growing diplomatic role in IHL to be clarified and systematised, in order to take best advantage of its collective strength, at the same time, this role should be understood as supporting the primary responsibilities of Member States in this area.

Civil protection

There would appear to be value in the EU's Monitoring and Information Centre (MIC). The UK has offered and provided aid to EU Member States and elsewhere through the MIC, and it would seem preferable for the UK to continue to play an active role in this regard. In our view, the Civil Protection Mechanism and the MIC will most likely take on greater significance as disaster and other risks intensify and become more global in nature. It would therefore seem useful for the UK Government to enhance its relationship with the different strands of the Civil Protection Mechanism.

An EU approach to risk assessment is of potential value, if it is able to provide data about large scale risks, and provided that the EU and EU Member States are able to agree on the levels of gravity to be applied to certain threats (for example, terrorism). So far as we are aware, most EU Member States have national plans in place to address such risks, but the benefits of sharing such plans across the EU may require further exploration.

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I hope the above comments are clear and of some assistance.

Thank you in advance for considering our remarks and experiences.

Yours faithfully,

Head of International Law
British Red Cross