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NOTA DE TRANSMISIÓN

Emisor:	Secretaría General
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Asunto:	Contribución de D. Georges Katiforis, miembro de la Convención: "Los Tratados y la protección de los ciudadanos en caso de accidentes y catástrofes"

El Secretario General de la Convención ha recibido la contribución adjunta de D. Georges Katiforis, miembro de la Convención.

The Treaties¹ and the protection of citizens from accidents and disasters

Overview

The Treaties already deal with the protection of European citizens from accidents and disasters but in an uncoordinated way along the so-called three pillars. Thus in the Treaty establishing the European Communities (first pillar), the issue of protection and safety of European citizens is dealt with in the context of several policies namely:

- Transport (safety of land, sea and air transport);
- Social affairs (improvement of living and working conditions and safety in the workplace);
- Environment (especially major industrial accidents);
- Public health (with health being a matter of national policies);
- Consumer protection;
- Civil protection.

Several issues are also dealt with in the context of other policies i.e.

- Industrial policy and internal market (standardisation of rescue and health equipment, emergency telecommunications, mutual recognition of diplomas of emergency services personnel);
- Agriculture and Regional policy (financial aid after disasters, prevention measures);
- Research and technological development;
- Protection and safety of workers and citizens from ionising radiation (radioprotection) – this is dealt with in the context of the EURATOM Treaty.

Finally, the Treaty on the European Union aims at facilitating the free movement of persons, while ensuring the safety and security of their peoples, by establishing an area of freedom, security and justice (third pillar). This Treaty also aims at the implementation of a common foreign and security policy including the progressive framing of a common defence policy (second pillar).

¹ The Nice Treaty is not considered in this paper.

What has been done

In the context of all EC policy areas mentioned above measures have been adopted ensuring a better protection against accidents and disasters. They include:

- Secondary legislation on the safety of land, sea and air transport, on the safety in the workplace, on major industrial and marine pollution accidents, on consumer protection, on the protection and safety of workers and citizens from ionising radiation (radioprotection), as well as in the field of civil protection².
- Actions in the context of programmes established in the fields of public health and civil protection, as well as in the context of the framework programmes for Research and Development.
- Financial assistance for the reconstruction of devastated areas through the agriculture and regional funds as well as the upcoming solidarity fund for disasters.

However, all action has been conducted in a fragmented way without a global, holistic and systemic approach having the citizen at its centre. This is due to the fact that dealing with the safety and protection of people from accidents and disasters is probably the most complex issue on earth and it involves practically all sectors of society and government.

Actually several Councils deal with the issues mentioned above, under several decision making (co-decision, consultation) and voting (unanimity, qualified majority) procedures, as well under all of the existing Treaties. No central co-ordination is established either at Commission or Council level.

The reasons for further action

Citizens are directly concerned. Protecting people from accidents and disasters concerns all aspects of the everyday life of European citizens. Citizens consider all safety and security related issues very important (employment and financial condition, living and working environment, security from external and internal threats, etc.)³. People are afraid of risks they are not familiar with and feel comforted when they are better informed about decision-making procedures and rationales.

They also associate safety and security of every aspect of their lives with a European model of free but protected life and sustainable development. Such a model is certainly in contradiction with models of more competitive and risky lifestyles linked with uncontrolled depletion of natural resources.

² Mechanism for the co-ordination of interventions (L 297, 15.11.2001, p.7)

³ See Eurobarometers on Environment

Every year 100 million European citizens cross the internal borders for leisure or work⁴. On total two thirds of European citizens (i.e. 250 million) cross the borders over a period of 5 years. 65% of those citizens feel unsafe when in another Member State for various reasons (do not know the risks, do not know the language, signals and signs are different, they feel that the emergency services are not of the same quality as in their country etc.)³. Additionally only one in every five European citizens is aware of the 1-1-2 (the single European emergency call number).

Important economic dimension. Europe faces all types of hazards⁵. However because the European Union is a densely populated, technologically advanced society, the associated risk (i.e. expected losses) is low in terms of human lives but high in terms of economic losses and injuries (especially psychological).

- Studies conducted for similarly developed societies show for example that: 80% of companies having an extended disaster are out of business within five years (U. of Minnesota); that 50% of companies having a disaster without a plan go out of business within two years (IBM); that from companies with a major disaster: 29% will close within two years while 43% never reopen (DATAPRO). After a major disaster an average company will lose at least 25% of the daily revenue in the first six days, while over 40% will be lost if a disaster last up to 24 days (U. of Texas).
- In the Enschede accident (explosion of fireworks factory), the Dutch authorities communicated the following figures: 26 dead, approx. 900 injured, 12.000 psychological consultations over the next 4 years. Similar research shows extremely high psychological problems amongst people having gone through the experience of earthquakes⁶. Injuries and effects of the so-called post-accident/disaster shock disorder translate into great economic/insured losses and put a great burden on the social security systems.
- Additionally, data available from the insurance sector show that at a global level, the economic and insured losses from natural and technological disasters are rising. At present, worldwide economic losses due to natural disasters appear to be doubling every ten years, and have reached almost €1 trillion over the past 15 years. If current trends persist, the *annual* loss amounts will, within the next decade, come close to €150 billion. This could in fact bankrupt the industry⁷.

European and prevention dimension. Although emergency services will always act at local level during accidents or disasters⁸, many elements concerning the different phases of civil protection activities have a European dimension (e.g. standardization) especially in specific sectors (e.g. chemicals, transport, construction, telecommunications, health). As mentioned above an additional element is that 100 million European travellers cross the internal borders every year. Finally, most

⁴ See Eurobarometers on tourism, Eurostat data on business travel, estimation of movements of transborder populations

⁵ For definitions see Annex 1.

⁶ See research by Bergiannakis and ass. (University of Athens)

⁷ See *Climate Change & The Financial Services Industry*: A study by the UNEP FI Climate Change Working Group (available at <http://www.unepfi.net/>).

⁸ Something that has erroneously characterised the sector as being subject to subsidiarity with no need for action at EU level.

of the activity linked with civil protection is especially visible during crises⁵. However, efficiency depends on the work done before the accident or disaster, in view of preventing/mitigating and ensuring preparedness. In fact we can do a lot of things by approaching the issue systemically and by considering the issue as a coordination intensive multidisciplinary activity (orchestra conductor)⁹.

The new Treaty – three possible options

1. Option 1 – no additional mention in the Treaty. This is a minimalist option based on a «Business as usual» approach. However this option cannot be retained in view of the importance of the issue as described above.
2. Option 2 – reinforce the existing wording by adding the safety and security dimension in several points within the new Treaty. A proposal along these lines is included as Annex 3. The following points should be made:
 - a) The term safety (protection from accidents and disasters of natural or technological cause) should be distinguished from the term security (protection from aggression at individual or collective level).
 - b) The reading of the Treaty becomes even more difficult and (for such an important issue which concerns the citizen directly) more inaccessible.
3. Option 3 – simplified generic approach (supported by the author). It provides for the inclusion in the Treaty of the following principles:
 - a) Affirm as an essential objective of the EU Member States the constant improvements of the living and working conditions as well the safety and security of their peoples.
 - b) Clarify the use of the terms safety (protection from accidents and disasters of natural or technological cause) and security (protection from aggression at individual or collective level).
 - c) Declare in the human rights section that citizens of the Union are entitled to the same high quality safety and security standards within the territory of the Member States and that they will receive the same high quality aftercare in case of accident or disaster.
 - d) Include in the areas of activity of the European Union the establishment and implementation of an integrated policy for the protection of citizens from accidents and disasters (or an integrated policy for the improvement of safety and security of citizens). Such a policy should be established and implemented with the participation of all actors involved and of all levels of government.
 - e) Extend the notion of sustainable development by requiring that a high level of environmental and human health protection as well as of safety and security requirements must be integrated into the definition and implementation of all Community policies and activities, in particular with a view to promoting sustainable and safe development.

⁹ See annex 2 for a brief description of the Civil protection system

Annex 1 – Definitions

A hazard¹⁰ is a source of danger, a threatening event or the probability of occurrence of a potentially damaging phenomenon within a given time period and area. We can classify hazards in 4 big families^{11, 12}:

- Natural hazards (avalanches, forest fires, floods, mud and land-slides, tornadoes, storms and snow storms, tidal waves, earthquakes, volcano eruptions, extended periods of drought or high temperatures).
- Technological hazards (fires in buildings and urban areas, dam breaks, chemical, industrial, nuclear, biological risks, terrorist attacks, risks associated with mass transport of people and dangerous substances i.e. major air, sea, road and rail accidents including accidents with chemicals).
- Everyday life hazards (home and leisure accidents, accidents in the workplace, traffic accidents, including special hazards like accidents in high buildings, during major sport events, etc.).
- Hazards associated with armed conflict.

Vulnerability¹ is the degree of loss (from 0 to 100%) resulting from a potentially damaging phenomenon.

Risk¹ is the expected losses (of lives, persons injured, property damaged and economic activity disrupted) due to a particular hazard for a given area and reference period. Based on mathematical calculations, risk is the product of hazard and vulnerability.

Major risks³ are risks having two main characteristics:

- Low frequency, thus society has the tendency to forget them.
- Grave consequences i.e. many victims, important damages of property and environment.

An accident is an unintended and unforeseen event, usually resulting in personal injury or property damage.

An emergency¹³ is a known, time-limited event, easily isolated and described within conventional hypotheses. It implies the intervention of a limited number of services, specialized in particular aspects of the problem, according to codified emergency procedures and with well established roles responsibilities and hierarchies.

A major incident¹⁴ is any emergency that requires the implementation of special arrangements by one or more of the emergency services as well as the health and local authorities.

A disaster¹ is a serious disruption of the functioning of society causing widespread human, material, or environmental losses, which exceed the ability of the affected society to cope using, only its own resources. Disasters are often classified according to their cause (natural or man-made / technological).

A crisis¹⁵ is a major incident or disaster during which the organizations dealing with the critical problems arising from the situation while under extreme external pressures and important internal tensions, are suddenly projected for a long period on the public scene, sometimes one against the other.

Civil Protection is the system of measures, usually run by a governmental agency, to respond to disasters and to prevent and mitigate the consequences of major incidents. Civil Defence usually refers to the system put in place for the protection of the population in wartime¹⁶.

¹⁰ “Disaster Management Glossary”, UN/Department of Humanitarian Assistance, 1992

¹¹ “Vade-mecum of Civil Protection in the European Union”, European Commission, 1999

¹² Site “Prevention Risques Majeurs”, French Ministry of Environment (www.prim.net)

¹³ “Ruptures Créatrices” by P. Lagadec, Les Echos, 2000

¹⁴ “Dealing with Disaster”, Home Office, 3rd edition,

¹⁵ “La Gestion des crises” by P. Lagadec, McGraw Hill, 1991

¹⁶ Definition adapted from the “Disaster Management Glossary”, UN/DHA, 1992

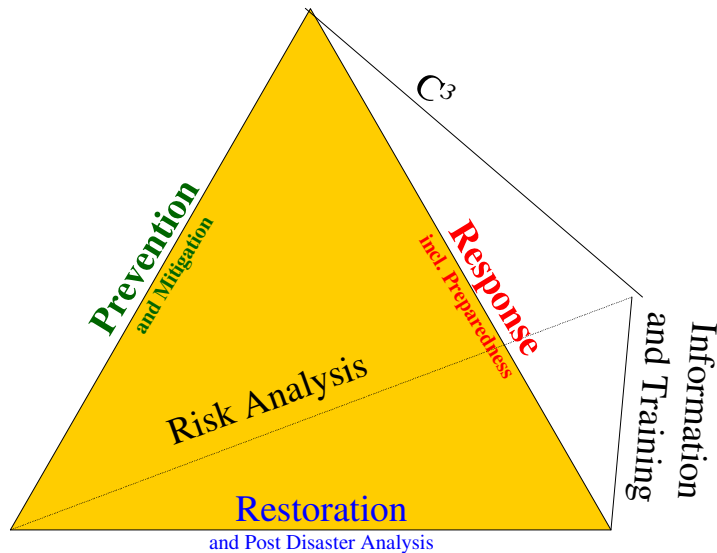
Annex 2 – The Civil Protection system

Civil Protection is a complex system comprising three important phases i.e. Prevention (including mitigation), Intervention (including preparedness) and Restoration (including Post-disaster analysis). Civil Protection is also dependent on three additional horizontal activities i.e. Risk assessment, Command, control and communication (C³) and finally Information and training. These activities concern all three phases described above.

In general the objectives, means, methods and intervening structures may be quite different depending on the phase. Civil Protection is an especially coordination-intensive and collaborative discipline. The Civil Protection system concerns many actors including:

- Authorities of all levels i.e. national, regional, local, legislative, judicial, standardization bodies, forest services, etc.
- Market actors and forces including: urban planners and developers, architects and civil engineers, construction companies, insurers, chemical, nuclear and other high-risk industries, product designers, producers of equipment - fire-detecting and fire-fighting, medical emergencies, telecommunications, risk assessment software - telecommunications and media companies, high-tech companies including satellite producers and operators, producers of Geographic Information Systems etc.
- Rescue and medical workers such as : fire and rescue personnel, emergency doctors and nurses, policemen, armed forces personnel, emergency and disaster managers, etc. including Volunteer NGOs.
- The media and (depending on the nature of the accident or disaster) the judicial authorities.
- The Research and Development community i.e. universities, research centres, specialized firms, etc.
- School children and teachers and all citizens in general.

In several fields the Community has already developed major policy initiatives. They include mainly the following: Environmental protection, Public health, Safety of products, Health and safety at work, Radiation protection, Transport, Chemical accidents, Forest fires, Research and Technological Development, Industrial policy, Internal market, Information society and telecommunications.



Annex 3 – Proposed modifications for Option 2

The main points to be modified include the following (additional text is given in *italics and is highlighted*):

1. Recitals:

- a) Affirm as the essential objective of their efforts the constant improvements of the living and working conditions *as well the safety and security* of their peoples (European Communities Treaty),
- b) Are determined to promote economic and social progress for their peoples, taking into account the principle of sustainable development and within the context of the accomplishment of the internal market and of reinforced cohesion and environmental protection, and to implement policies ensuring that advances in economic integration are accompanied by parallel progress in other fields *especially the safety and security of citizens*, (European Union Treaty)
- c) Are resolved to facilitate the free movement of persons, while ensuring the safety and security of their peoples, by establishing an area of freedom, security, *protection* and justice, in accordance with the provisions of this Treaty, (European Union Treaty)

2. Articles of the European Communities Treaty:

- a) *Article 2*: The Community shall have as its task, by establishing a common market and an economic and monetary union and by implementing common policies or activities referred to in Articles 3 and 4, to promote throughout the Community a harmonious, balanced and sustainable development of economic activities, a high level of employment and of social protection, equality between men and women, sustainable and non inflationary growth, a high degree of competitiveness and convergence of economic performance, a high level of protection and improvement of the quality of the environment, the raising of the standard of living and quality of life, *the safety and security of its citizens* and economic and social cohesion and solidarity among Member States.
- b) *Article 3 (1)*: For the purposes set out in Article 2, the activities of the Community shall include, as provided in this Treaty and in accordance with the timetable set out therein: *(w) an integrated policy for the protection of citizens from accidents and disasters (or an integrated policy for the improvement of safety and security of citizens)*. (2) In all the activities referred to in this Article, the Community shall aim to eliminate inequalities, and to promote equality, between men and women.
- c) *Article 6*: A high level of environmental *and human health¹⁷* protection *as well as of safety and security requirements* must be integrated into the definition and implementation of *all* the Community policies and activities referred to in Article 3, in particular with a view to promoting sustainable *and safe* development.
- d) *Article 11*: *(f) does not reduce the high level of safety and security of citizens.*
- e) *Article 17*: *3. Citizens of the Union are entitled to the same high quality safety and security standards within the territory of the Member States and will receive the same high quality aftercare in case of accident or disaster.*
- f) *Article 39 (4)*: *Comment* – this excludes most of the personnel of emergency services (fire-fighters, emergency doctors and nurses, policemen) as they are in most Member States public servants or assimilated.
- g) *Article 100*: *Comment* – already modified by the Nice Treaty.

¹⁷ Compare with article 152 (1)

- h) *Article 152: Comment* – the modification of this article to ensure that «*Struck by a large-scale accident or disaster, people living or traveling in European Union Member States should receive the same high quality medical care*» should be carefully considered in the light of the creation of a common market for health services¹⁸.
- i) *Article 158: Comment* – reinforcement of this article on the basis of the proposed text for article 17(3) is required (see above).
- j) *Article 174(1 second §):* protecting human health *and ensuring a high level of safety and security for citizens*.
- k) *Article 175: Comment* – already modified by the Nice Treaty.
- l) *Inclusion of an additional Article on safety and security*. This could have a wording similar to the articles 152 (Public Health) or 153 (Consumer Protection) with the additional establishment of a Civil protection committee similar to the Employment committee (article 130) but involving actors from all sectors and disciplines involved with the protection of citizens from accidents and disasters. Proposal:

CIVIL PROTECTION

Article xxx

- (1) *In order to promote the safety and security of citizens, the Community shall contribute to the protection of citizens, property and in so doing environment from accidents and disasters.*
- (2) *Civil protection requirements shall be taken into account in defining and implementing all Community policies and activities in view of ensuring a high level of protection of citizens.*
- (3) *The Community shall contribute to the attainment of the objectives referred to in paragraph 1 through:*
 - (a) *measures adopted pursuant to Article 95 in the context of the completion of the internal market;*
 - (b) *measures which support, supplement and monitor the policy pursued by the Member States.*
- (4) *The Council, acting in accordance with the procedure referred to in Article 251 and after consulting the Economic and Social Committee, and the Committee of the regions shall adopt the measures referred to in paragraph 3(b).*
- (5) *Measures adopted pursuant to paragraph 4 shall not prevent any Member State from maintaining or introducing more stringent protective measures. Such measures must be compatible with this Treaty. The Commission shall be notified of them.*

Article xxx+1

In preparing its policy on civil protection, the Community shall take account of:

- *available scientific and technical data;*
- *conditions in the various regions of the Community;*
- *the potential benefits and costs of action or lack of action;*
- *the economic and social development of the Community as a whole and the balanced development of its regions.*

¹⁸ See work on this subject by the High Level Group on Health and the conclusions of the Disaster Medicine major project conducted in the context of the Civil protection Action programme.

Article xxx+2

(1) Within their respective spheres of competence, the Community and the Member States shall cooperate with third countries and with the competent international organisations. The arrangements for Community cooperation may be the subject of agreements between the Community and the third parties concerned, which shall be negotiated and concluded in accordance with Article 300.

(2) The previous subparagraph shall be without prejudice to Member States' competence to negotiate in international bodies and to conclude international agreements.

Article xxx+3

(1) Without prejudice to certain measures of a Community nature, the Member States shall finance and implement the policy pertaining to civil protection.

(2) Without prejudice to liability for accidents and disasters, if a measure based on the provisions of paragraph 1 involves costs deemed disproportionate for the public authorities of a Member State, the Council shall, in the act adopting that measure, lay down appropriate provisions in the form of:

- temporary derogations, and/or
- financial support from the Solidarity Fund set up pursuant to Article ???.

m) Several other articles of the European Community Treaty referring to safety and security should not be made weaker by modifications that will not promote the idea of reinforcing safety and security of citizens. They include Articles 30, 39(3), 64, 70 to 80, 86, 87(2b), 95, 137, 140 and 133.

3. Articles of the European Union Treaty

- a) Article 2 (fourth §): to maintain and develop the Union as an area of freedom, safety, security and justice, in which the free movement of persons is assured in conjunction with appropriate measures with respect to external border controls, asylum, immigration and the prevention and combating of crime.
- b) Article 17 (2): **Comment** – this article should be better defined in view of the fact that
 - i) It conflicts with the humanitarian missions conducted in the context of the development co-operation policy (under the EC Treaty by the Humanitarian Aid Office – ECHO)
 - ii) The term crisis is not defined and thus prone to misinterpretation.
- c) Article 29: **Comment** – the term safety (protection from accidents and disasters of natural or technological cause) should be distinguished from the term security (protection from aggression at individual or collective level). In this and related articles only the term security should be used.