

FOREIGN MILITARY AND CIVIL DEFENCE ASSETS
IN SUPPORT OF HUMANITARIAN EMERGENCY OPERATIONS:

WHAT IS LAST RESORT ?

The principle of 'last resort' has often been misunderstood. The '*Oslo Guidelines*'¹, '*MCDA Guidelines*'² and the '*IASC Reference Paper*'³ describe 'last resort' as a situation when:

- ▶ *a specific capability or asset requirement that cannot be met with available civilian assets has been identified; and*
- ▶ *foreign military and civil defence assets would help meet the requirement and provide unique advantages in terms of capability, availability, and timeliness; and*
- ▶ *foreign military and civil defence assets would complement civilian capabilities.*

¹ Guidelines on the Use of Foreign Military and Civil Defence Assets in Disaster Relief, Rev. 1.1, Nov. 2007.

² Guidelines on the Use of Military and Civil Defence Assets to Support United Nations Humanitarian Activities in Complex Emergencies, Rev. 1, Jan. 2006.

³ Civil-Military Relationship in Complex Emergencies: An IASC Reference Paper, June 2004.

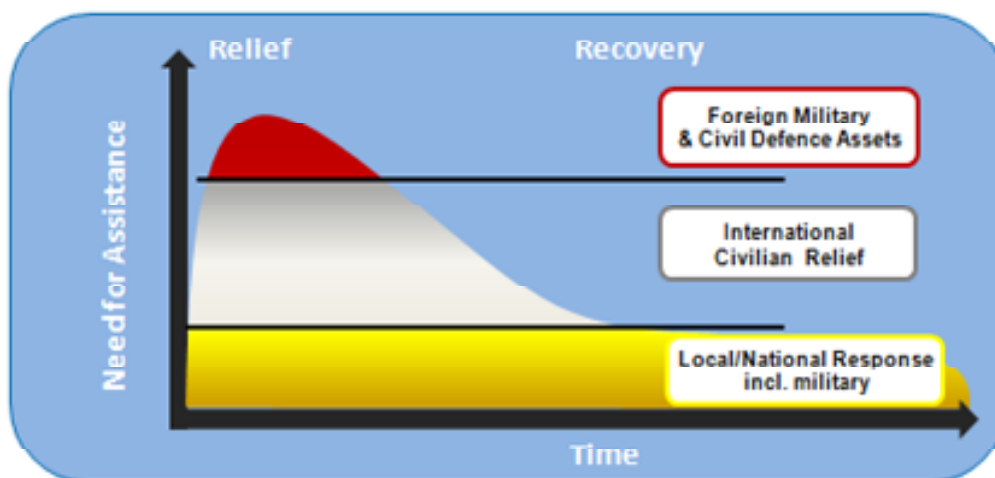
CONCEPT

This implies that ‘last resort’ is a *temporary situation*. When the specific requirement no longer exists or when comparable civilian assets become available to meet the requirement and, therefore, foreign military and civil defence assets no longer provide unique advantages, the situation of ‘last resort’ ceases to exist and these assets should be phased out and activities should be handed back over to civilian actors at an early opportunity. Even if a situation of ‘last resort’ is determined to exist, the use of foreign military and civil defence assets should under no circumstances undermine the actual or perceived neutrality, impartiality or operational independence of humanitarian actors, nor jeopardise current or future access to affected populations in need of humanitarian assistance.

The Standing Coordinating Group which drafted the 1994 ‘Oslo Guidelines’ established the principle of ‘complementarity’, which was included under ‘Principles and Conditions’ (para 20): “Military and civil defence assets should be seen as a tool *complementing existing relief mechanisms* in order to provide *specific support to specific requirements*, in response to the acknowledged “humanitarian gap” between the disaster needs that the relief community is being asked to satisfy and the resources available to meet them.”

The Drafting and Review Committees of the 2003 ‘MCDA Guidelines’ considered a variety of terms to describe the above conditions, in the context of complex emergencies. The Group finally agreed by consensus on the term *‘last resort’*, using *‘complementarity’* as one of the terms to define the principle. The ‘complementarity’ term and definition were kept intact in the 2006 updated ‘Oslo Guidelines’ (para 24). This language also remains in the ‘last resort’ definition (para 5) of the 2007 revision of the ‘Oslo Guidelines’, which also recognised the use of foreign (civilian) civil protection assets.

A specific capacity to meet specific requirements



DESCRIPTION

Foreign military and civil defence assets, when requested and used appropriately as a last resort, can significantly increase the capacity and capabilities of the overall relief effort, particularly when the scale of the natural, technological or environmental (sudden onset) disaster or complex emergency is overwhelming and there is a high demand for assistance to meet a critical humanitarian need and there is no comparable civilian alternative. Foreign military and civil defence assets refer to both “things and persons” - personnel, equipment, supplies and services, provided by foreign States’ military and/or civil defence organisations in support of humanitarian response to sudden onset disasters and complex emergencies, with the consent of, and in principle at the request by, the affected State(s). Foreign military and civil defence assets should be **complementary to and not in replacement of** national emergency response mechanisms, which often include military and/or civil defence forces. They should be provided at no cost to humanitarian budgets of Member States or humanitarian organisations. Further, their use as a last resort should never be justified merely based on monetary cost. The argument that they are “assets for free” is often misleading, as they can come at a significant cost.

As further referenced under “Common Confusions”, in some national and regional contexts, the government(s) of the affected State(s), as the primary authority for response to disasters on their territory, will decide to use their military or civil defence units as “first” or primary responders, exercising sovereignty within their domestic jurisdiction.

International Humanitarian Law (IHL) contains principles that provide a strong rationale for adhering to the ‘last resort’ concept, also as a practical *modus operandi* to legally protect both military and humanitarian aid workers, as well as affected and local populations. Particularly important is the **distinction** between combatants and non-combatants (civilians) and between military and non-military targets. Under IHL, the civilian population or individuals may not be the object of attack. It is also prohibited to attack military objectives if that would cause disproportionate harm to civilians or civilian objects. The **‘IASC Reference Paper on Civil-Military Relationship in Complex Emergencies’** identifies fundamental humanitarian principles and concepts that must be upheld by the humanitarian community when coordinating with the military. It also provides key practical considerations to address challenges to humanitarian aid workers, including those related to the application of IHL and humanitarian principles and concepts.

Problems arise when relief operations are used or misused for political or military purposes. These actions are often misrepresented as “humanitarian” although they are not characterised by the core principles of humanity, neutrality and impartiality. They complicate the delivery of humanitarian assistance and, regardless of their good intentions, are frequently undertaken without regard to sustainable humanitarian or

development action. It is therefore important to make a *clear distinction* between what is sometimes referred to as military “humanitarian intervention”, or armed intervention for alleged “humanitarian” purposes, and military *support* to humanitarian emergency operations *in response to* a humanitarian request for foreign military and civil defence assets, as a last resort.

WHEN AND HOW

In any international humanitarian operation, priority should always be given to the use of civilian assets in responding to needs, but it is also necessary to plan for the possibility that foreign military and civil defence assets may be required.

Civil-military coordination is a shared responsibility of the humanitarian and military actors, and it may take place in various levels of intensity and form. Where cooperation is not appropriate, opportune or possible, or if there are no common goals to pursue, the relationship may be best described as one of *co-existence*, with focus on minimizing competition and conflict in order to enable the different actors to work in the same geographical area with minimum disruption to each other’s activities. When there is a common goal and agreed strategy, and all parties accept to work together, *cooperation* may become possible, and coordination should focus on improving the effectiveness and efficiency of the combined efforts to serve humanitarian objectives. Experience has shown that when major natural, technological or environmental disasters occur in non-conflict environments, the use of foreign military and civil defence assets is generally readily accepted as less controversial and can even be essential. A list of risk balancing and interest weighing points is included in the ‘MCDA Guidelines’ to guide the decision for requests for foreign military and civil defence assets by the humanitarian community.

The humanitarian imperative – to save lives and alleviate suffering - dictates that all available necessary resources are to be used when required. A *consultative civil-military dialogue* should be established *at the onset* of an emergency, in order to assure appropriate military support to enable the most effective humanitarian response to identified needs, if and when the decision is made to request foreign military and civil defence assets. The principles of *neutrality, impartiality and operational independence* enable humanitarian actors to reach those in need and thus dictate that humanitarian operations are to avoid being, or being perceived as political activities and should remain *civilian in character*. The ‘Oslo’ and ‘MCDA’ Guidelines and the ‘IASC Reference Paper’ seek to balance these principles by reverting to the use of foreign military and civil defence assets as a ‘last resort’ and limiting their use to a clear supporting and temporary role, preferably with a focus on *infrastructure support* (e.g. repair of bridges and roads, airfield operation) and *indirect assistance* (e.g. transporting

relief items, providing water sources, clearing mines), rather than *direct assistance* (e.g. handing out relief items).

In certain conflict situations, any foreign military and civil defence assets, whether or not provided by parties to an on-going military operation, could be perceived as being associated with a military operation. In order to preserve the neutrality, impartiality and operational independence of humanitarian action, *all realistic civilian alternatives must be explored* and the principle of *complementarity* upheld before using foreign military and civil defence assets to support humanitarian operations. If there is a humanitarian gap, the humanitarian imperative must be applied with all possible resources being utilised efficiently and decisively. As a matter of principle, the military and civil defence assets of belligerent actors or of units that find themselves actively engaged in combat shall not be used to support humanitarian activities.

When foreign military and civil defence assets are used to fill specific capability gaps that have been identified in a humanitarian operation, this should be done *only in response to a specific request* from the affected State(s) or the Resident Coordinator (RC) / Humanitarian Coordinator (HC) / Humanitarian Country Team (HCT) in coordination with the host country, through established request procedures. Each State has the responsibility first and foremost to take care of affected populations on its territory. Hence, *the affected State has the primary role* in the initiation, organisation, coordination and implementation of humanitarian assistance, and may decline the use of foreign military and civil defence assets.

The provision of a safe and secure environment by foreign military, while respecting the humanitarian principles of neutrality, impartiality and operational independence, is a challenging task in a complex emergency setting. Therefore, a *clear distinction* should be made between military actors carrying out security tasks and those providing support to any humanitarian relief operation in a high risk environment. The *civilian nature* of any humanitarian operation must be ensured at all times.

COMMON CONFUSIONS

‘Last resort’ refers to the use of *foreign* military or civil defence assets in support of humanitarian operations carried out by humanitarian organisations under civilian control. It is not to be confused with:



First Responders

In many States, national military or civil defence units are part of or even leading national responses to disasters and crises on their territory. Affected States have the responsibility to use whatever means at their disposal to respond to the needs of their citizens. Their militaries and/or civil defence units can often be the most appropriately equipped and best positioned to respond. The ‘Oslo Guidelines’ and ‘MCDA Guidelines’ and, therefore, the principle of ‘last resort’ are not intended to apply in the case of national militaries and/or civil defence units responding to a disaster or crisis within its own territory. Affected States may, nonetheless, find some of the principles and concepts provided in these Guidelines useful in managing the use of those assets.

Bilateral Assistance

Many requests for assistance by States, civilian or military, start as bilateral requests, often at the regional or “neighbouring” level, with (in some cases pre-existing) agreements between the affected and assisting States on the type of assistance. The ‘Oslo’ and ‘MCDA’ Guidelines and ‘IASC Reference Paper’ are not intended to apply to such direct support from one State to another occurring outside the humanitarian umbrella. In such circumstances, however, the assisting State(s) and the affected State(s) are encouraged to use the principles and procedures provided therein.

IASC Cluster Approach Concept of “Provider of Last Resort”

While the IASC cluster approach concept of ‘provider of last resort’ is clearly distinct from the ‘last resort’ principle in the context of the use of foreign military and civil defence assets, confusion often arises when speaking about the ‘IASC concept of last resort’ in general terms. The IASC ‘provider of last resort’ concept is related to the cluster approach and represents a commitment of respective cluster leads to act as ‘providers of last resort’ to ensure adequate and appropriate response to humanitarian needs wherever there are critical gaps in the humanitarian response.

Stabilisation and Reconstruction Missions by Military Actors

The use of military troops and assets as a tool for development, or so-called stabilisation and reconstruction activities, and as a key component of counter insurgency (COIN) strategies, compromises the humanitarian notion of ‘last resort’ if not managed carefully and effectively. Similarly, the use of military troops and assets for the provision of relief aid for the purposes of winning the sympathy of the population (“winning hearts and minds”) might compromise humanitarian access and the safety of humanitarian workers, and otherwise hamper humanitarian operations.

DIALOGUE AND CONSULTATION

In order to ensure the safety and security of local populations and of humanitarian actors, and to ensure access to people in need of humanitarian assistance, *lines of communication* between humanitarian actors and Member States and their military and civil defence units, must be maintained at the *strategic, operational and tactical levels*. OCHA has a mandate to lead this coordination function, providing information and advice, facilitating *information flow and exchange*, and establishing appropriate *liaison*, where and when necessary, between humanitarian and military and civil defence actors. In certain operational circumstances, OCHA may hand over responsibility for a specific civil-military coordination activity to the appropriate humanitarian or civilian agency.

While remaining consistent with and supporting the coordination function and communication lines established by OCHA on common humanitarian issues, some humanitarian agencies will in some situations need to maintain direct lines of coordination with military and civil defence actors at the strategic, operational and tactical levels to facilitate major components of humanitarian operations (e.g. cluster leads with major operational responsibilities, such as logistics). Should direct interaction be necessary for specific civil-military coordination activities, the responsible humanitarian agency will keep OCHA/CMCS informed of all arrangements in a timely manner.

Any considerations to utilise foreign military and civil defence assets to support humanitarian operations should ideally be developed in *consultation* with the Emergency Relief Coordinator (ERC), through OCHA's Civil-Military Coordination Section (CMCS), and in *coordination* with the appropriate Resident / Humanitarian Coordinator(s) (RC/HC) and their Humanitarian Country Team(s) (HCT). Should a requirement arise for foreign military and civil defence assets to support humanitarian operations, OCHA, on behalf of the host country / RC / HC / HCT, will communicate the requirement to Member States and assist them in the *appropriate use* of any foreign military and civil defence assets that they may provide *in response to the request*.

In some past instances, there has been pressure on the humanitarian community to use foreign military and civil defence assets "offered" by individual assisting States. The decision to use such assets to support operations under the humanitarian umbrella must lie with the humanitarian organisation, based on host nation consent. The humanitarian community is working towards presenting a consistently common and *coherent humanitarian position*, with a view towards ensuring more predictable and appropriate deployment and use of foreign military and civil defence assets. OCHA also calls on Member States to adopt a *demand-driven* ("pull"), rather than supply-driven ("push"), approach to deployment of foreign military and civil defence assets.

KEEP IN MIND THAT...

- ▶ Preparation and planning for the possible use of foreign military and civil defence assets to support humanitarian relief operations must *not create an expectation* of actual requests or deployments thereof.
- ▶ Whether in a natural, technological or environmental (sudden onset) disaster or complex emergency setting (or a combination thereof), the decision to use foreign military and civil defence assets affects all of the actors, has political consequences, and can *impact* the perceived neutrality, impartiality and operational independence of the humanitarian assistance effort.
- ▶ Requests for foreign military and civil defence assets to support humanitarian emergency operations are initiated on the ground by the Resident / Humanitarian Coordinator, based on *identified needs* by the Humanitarian Country / Inter-Agency Standing Committee Teams, on behalf of the host nation based on their request. OCHA's Civil-Military Coordination Section (CMCS) in Geneva is the focal point for dissemination of and follow-up on requests for foreign military and civil defence assets to Member States. Where these assets may already be available in country, the UN-CMCoord structure on the ground will coordinate requests and employment of the foreign military and civil defence assets with CMCS Geneva.
- ▶ Member States are strongly encouraged to *consult* with the ERC through established OCHA channels when considering deploying foreign military and civil defence assets to support humanitarian emergency operations.
- ▶ A large number of Member States, international, regional, non-governmental and humanitarian organisations participating in the '*Consultative Group on the Use of MCDA*' developed the 'Oslo Guidelines' and the 'MCDA Guidelines', endorsed by the wider Group. The 'MCDA Consultative Group' is the main international forum for updates and revisions of these Guidelines as well as dialogue and inter-action on the predictable and appropriate use of foreign military and civil defence assets. These Guidelines are consistent with Red Cross/Red Crescent Movement and major NGO guidance documents.

OCHA's Civil-Military Coordination Section is available for further information or queries at cmcs@un.org, or visit the CMCS website at <http://ochaonline.un.org/cmcs>