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# **CRISIS MANAGEMENT FROM A LEGAL PERSPECTIVE; FINNISH CRISIS MANAGEMENT FRAMEWORK WITHIN THE EU**

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CMC Finland Working Papers analyse civilian contributions to peace operations and include recommendations for developing practical capabilities and improving effectiveness.

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## Introduction

This paper approaches crisis management from a legal perspective. It identifies the legal framework that governs Finland's participation in international and comprehensive crisis management, with a particular focus on EU operations.<sup>1</sup> Briefly, a legal framework refers to a set of laws and regulations that govern the rights and responsibilities of certain actors in a particular matter or setting. Therefore, the legal framework under scrutiny comprises the legal basis regulating and governing crisis management action and participation as set by the State of Finland and the European Union. It should be noted that this paper focuses on personnel sent by Finland and thus excludes personnel directly employed to operations.<sup>2</sup>

Understanding the legal dimension of comprehensive crisis management is essential as legislation impacts governance, monitoring and the content of crisis management operations. Laws reflect the policy decisions made while also governing actions to come. For instance, regarding EU's civilian and military missions it has been identified that 'the longstanding detachment of civilian and military interventions from each other remains an unresolved issue.'<sup>3</sup> While there are political, institutional and structural reasons behind this, the legal dimension may also play its role. In this regard, understanding the legal framework is crucial as it can offer insights into who has the influence to impact and govern the reconstruction process.

Traditionally armed conflicts have been examined from a rather militaristic point of view. This has resulted in the fact that the law of war has also developed a binary understanding of states in war and peace.<sup>4</sup> This development is further reflected in legal research, which has often had a strong focus on armed conflict, international humanitarian law and the laws of just war. Thankfully today, the binary understanding is broadly contested as the understandings of 'war' and 'peace' have altered and the evolution or duration of conflict is considered to be more complex in nature to say the least. Yet, when it comes to crisis management, there seems to be more research, and general public interest, in military crisis management over other dimensions.<sup>5</sup> Even though there are fewer studies on civilian crisis management, its role is important. Especially in Finland, experts like to refer to 'comprehensive crisis management', which refers to efforts of approaching crisis management in an inclusive manner, including both civilian and military dimensions.<sup>6</sup> This is a worthy development as there are situations where "the law of war" and the "law of peace" apply simultaneously.<sup>7</sup>

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1 The regulatory governance of EU operations is essentially different from that of e.g. the UN.

2 This paper does not include analysis of the additional legislations applicable to them.

3 Karjalainen and Savoranta (2021)

4 Stahn (2007) 922

5 See for example: Gill and Fleck (2016); Geneva Academy (2021)

6 This is part of a so-called triple nexus approach that includes humanitarian aid, development cooperation and peacebuilding.

7 Stahn (2007) 922

In recent years, experts in all areas of international crisis management have highlighted the role of local ownership in international crisis management. After what happened in Afghanistan, the international community showed even more interest in enhancing their actions to ensure that ongoing international initiatives do not end in a similar manner. Currently, the international focus has turned somewhat from the Middle East towards Africa. For example, over the past decade, the international crisis management community, and especially the EU, has been increasing its presence in the Sahel region.<sup>8</sup> In this regard, ensuring that local authorities are in the driver's seat is crucial in order to guarantee a stable and sustainable peace.

Therefore, to gain an understanding of the latest regulatory developments in the context of international crisis management, the context of this paper is the Republic of Mali (henceforth: Mali). Mali offers an interesting case study for a number of reasons, such as (1) many of the current international initiatives have been present in Mali for around a decade; (2) there are currently various international and transnational actors involved in and impacting the ongoing crisis management operations, such as the EU, the UN, the AU and ECOWAS; (3) Mali's central location in the Sahel region is geopolitically important as it has a crucial and influential role in the stability of the whole region; (4) both Finland and the EU have had a growing political interest in the Sahel region in recent years; and (5) they both have plans and strategies for future crisis management action in the region as well.<sup>9</sup> Finland sends experts to three different crisis management operations in Mali: the EU's civilian mission EUCAP Sahel Mali, the EU's military mission EUTM Mali, and the UN's integrated operation MINUSMA. As this paper is focused on the European and Finnish legal frameworks, the two EU operations are of relevance.

## The Finnish Legal Framework for Crisis Management

The Finnish legal framework on crisis management is influenced by the internal political and legal order. Like all domestic legislation, the Finnish national legislation is one of a kind, especially when it comes to crisis management. In fact, not many other states have clear or indeed any domestic legislation on crisis management beyond possible bilateral agreements between the sending state and the intervening external actor, such as the EU, or between the external party and the hosting state (the state where the operation takes place).<sup>10</sup> This section identifies the main legal framework governing Finnish participation in international crisis management, starting from the constitution.

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8 Africa- and Sahel-specific strategies have evolved both in Finland and at the EU level. The newest EU mission was launched in Mozambique in October 2021.

9 ZIF (2022)

10 Most legal agreements on crisis management usually comprise bilateral agreements between the sending state or the hosting state and the external actor(s). It is rarer to find direct agreements between states/governments.

The legal basis for Finland's participation in international crisis management operations derives from the very first Article of the Constitution of Finland (731/1991), which sets out that Finland shall participate in international collaboration.<sup>11</sup> The constitution remains silent on the specificities of the expected participation, but it does make direct reference to military crisis management in its 58<sup>th</sup> Article. Interestingly, the constitution does not mention civilian crisis management at all, which reveals that military crisis management evolved, or gained official recognition, before civilian crisis management. In this paper, both of these dimensions are looked at in order to understand how Finland approaches crisis management in general, what differences exist between civilian and military dimensions, and how they match Finland's aims at enhancing comprehensive crisis management from a legal point of view.

We shall first take a look at Finland's participation in military crisis management. Complementing the constitution, the *Act on the Defence Forces* (551/2007) states that one of the statutory tasks of the Finnish Defence Forces is to provide support to other authorities and to participate in international military crisis management and military tasks in international crisis management.<sup>12</sup> This means that the defence forces are legally bound to participate in military crisis management. While the *Act on Defence Forces* only states the requirement to participate, the particularities are stated in the *Act on Military Crisis Management* (211/2006). This act addresses Finland's participation in international military crisis management, and lays down the provisions on the status, rights and responsibilities of participating military personnel.<sup>13</sup> The content is mainly focused on the status of personnel (e.g. soldiers) in service during the contract, but it also defines the role of various authorities in organisation and decision-making relating to military crisis management. The *Act on Military Crisis Management* is complemented by the *Decree of the Ministry of Defence on the Terms and Conditions of the Competency Requirements and Employment Relationships of Military Personnel Participating in Crisis Management*, which clarifies the specificities of the employment relationship between employed personnel and the State of Finland, including pay grades, compensation and health care.<sup>14</sup>

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11 Suomen perustuslaki (731/1991) Article 1

12 Laki Puolustusvoimista (551/2007) Article 2

13 Laki sotilaallisesta kriisinhallinnasta (211/2006)

14 Puolustusministeriön asetus sotilaallisen kriisinhallintahenkilöstön pätevyysvaatimuksista ja palvelussuhteen ehdoista (254/2006)



Even though civilian crisis management is not mentioned in the constitution, it too is regulated. The civilian crisis management legislation rests strongly on one particular act, the *Act on the Civilian Personnel Participating in Crisis Management* (1287/2004, henceforth ‘the Act on Civilian Crisis Management’).<sup>15</sup> The act addresses Finland’s participation in international civilian crisis management and rescue operations, lays down the provisions on the status, rights and responsibilities of civilian personnel,<sup>16</sup> and defines the roles and responsibilities of the Crisis Management Centre Finland (CMC Finland).<sup>17</sup> Similarly to the legal framework on military crisis management, the *Act on Civilian Crisis Management* is complemented by the *Decree of the Ministry of the Interior on the Terms and Conditions of the Employment Relationships of Civilian Personnel Participating in Crisis Management* (1388/2018), which clarifies the specificities of the employment relationship.<sup>18</sup> Additionally, the *Act on Public Officials in Central Government* (750/1994) is noteworthy – it is applied in cases where the *Act on Civilian Crisis Management* does not regulate the particular matter.<sup>19</sup>

Thus, the Finnish legal framework on crisis management is clearly divided into two: civilian participation and military participation. Despite the differentiation between civilian and military crisis management, both dimensions address the recruitment process and the recruited crisis management personnel’s status, rights and obligations under Finnish law and in relation to the State of Finland. Neither dimension is directly addressed in the content or activities of the operations, even if both acts have an indirect impact on the substance of those operations. For example, the way in which the personnel are recruited, who is included, and to what extent they are engaged have an impact on the content and the know-how of the operations abroad.

What is particularly interesting in the Finnish legal framework on crisis management, however, is that the legal framework is divided into two depending on the type of crisis management at hand – civilian or military. Concerning participation in the EU’s crisis management, whether the legal framework for civilian or military crisis management is applied depends on the EU operation one is being sent to rather than on the content of the position within the operation. In other words, if the position one applies for is part of the EU’s civilian missions, the sending body is CMC Finland and the *Act on the Civilian Personnel Participating in Crisis Management* (2004/1287) is applied. If it is a military mission, then the sending body is the Finnish Defence Forces, and the *Act on the Military Crisis Management* is applied.

15 Laki siviilihenkilöiden osallistumisesta kriisinhallintaan (1287/2004)

16 Note that other people not directly participating in civilian crisis management operations, such as CMC Finland personnel, are governed by the Act on Public Officials in Central Government (750/1994)

17 Since its entry into force, the act has been amended six times, the latest amendment coming into force in May 2022.

18 Sisäministeriön asetus kriisinhallintaan osallistuvan siviilihenkilön palvelussuhteen ehdoista (1388/2018)

19 Valtion virkamieslaki (750/1994)

To summarise, the Finnish legal framework is mainly focused on determining the provisions of Finland's participation in crisis management and the status of the crisis management personnel. It includes articles on the training of such personnel and defines the organisation and responsibilities of different participating authorities. The legal framework differentiates between civilian and military participation, but it does not address in detail the actions that can be taken during such participation, except concerning limitations to the use of force, and it remains rather open on what kinds of missions Finland is allowed to participate in in the first place.<sup>20</sup> Active engagement and cooperation in comprehensive crisis management by the relevant authorities is highly encouraged and necessary since, from the legal point of view, civilian and military crisis management are strongly separated within the Finnish legal system.

## The EU's Legal Framework for Crisis Management

The EU has a rather substantial and complex legal system containing several legislative documents guiding the functioning of crisis management. These regulations define decision- and policy-making at the EU level, the roles of different bodies and institutions, and the operationalisation and functioning of the missions in the field. Concerning crisis management, and to put it very broadly, the EU's legal framework is focused on three core issues: 1) the legal basis for EU's common policy on foreign, security and defence issues; 2) the different roles and responsibilities of various EU units and agencies concerning crisis management; and 3) what the specific crisis management missions are designed and allowed to do. Additionally, there are some regulations concerning the recruitment process and the contracts of top-level positions. The next sections explain more closely these various types of EU law.

### EU Treaties

The most general provision and the main legal basis related to who is allowed to make decisions on crisis management within the EU can be found in the EU's basic treaties: the Treaty on European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU).<sup>21</sup> All legislative processes and every legal act made by the EU are defined or have their legal basis in the treaties.<sup>22</sup> These core treaties are thus the highest

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20 The *Act on Military Crisis Management* does identify the possible external actors to which Finland is allowed to send personnel.

21 Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union [2016] OJ C 202

22 Usually mentioned at the very beginning of the legislative document.



level of legislation directing the governance of the EU and its member states (EUMS).<sup>23</sup>

The TEU and the TFEU set the basis for all EU foreign and security policy as well, including crisis management missions. They focus on determining how and to what extent the EU may engage in crisis management. The TFEU defines the EU's competencies and the basics for external action. For instance, the legal basis for the EU to enter into international agreements is noted in Articles 216–217 TFEU. It also states that these kinds of agreements are binding on all EUMS.<sup>24</sup> The TFEU specifies that the EU's Common Security and Defence Policy (CSDP) falls into the area of special competencies. This means that the European Commission and the European Parliament's involvement in decision-making and legislative procedures is limited, and that the European Council and the Council of the European Union (i.e. the institutions representing the EUMS) define the CSDP policy in general. This is not surprising considering that the Common Foreign and Security Policy (CFSP) structure as a whole is one of the most intergovernmental dimensions of the EU.

Complementing the TFEU, the TEU confirms that the EU has the competence to define and implement a common foreign and security policy,<sup>25</sup> and Article 218 of the TEU explains the procedure on how to do it. The TEU also has an entire section dedicated to external action – Title V. It lists both the general and specific provisions and principles of both the CFSP and the CSDP. First, the general provisions acknowledge the role of international law, including the rule of law, public international law, the UN Charter, human rights, the Helsinki Final Act and the Charter of Paris. Article 21 specifies on what grounds the EU's external action can be justified. Additionally, the specific provisions highlight that the CFSP is subject to specific rules and procedures.<sup>26</sup> They also pose restrictions on EUMS that must refrain from any action that is contrary to the EU's interests.<sup>27</sup> Articles 42 and 43 of the TEU define the role of the CSDP; the CSDP is an integral part of the CFSP as it provides the EU with an operational capacity, i.e. the civilian and military assets and capabilities that can be used for peacekeeping, conflict prevention and strengthening international security. They also state that the EU's goal is common defence and that the EUMS should have permanent structured cooperation

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23 Throughout the history of the EU, the treaties have been amended various times. These amendments are usually referred to by the name of the city in which the amendment has been signed. The first reference to CM is in the Maastricht Treaty (1992), which is often considered the first sign of increasing development towards common security among the EUMSs. The following amendment, the Treaty of Amsterdam, incorporated the so-called Petersberg tasks into the EU as it included peacekeeping and peacemaking and defined the type of military action the EU is allowed to take in crisis management. However, the Treaty of Lisbon (2007) introduced a far more comprehensive framework and specified the general and specific principles applicable to EU-led crisis management.

24 Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union [2016] OJ C 202

25 Art 2(4) TEU

26 Chapter 2 and Art 24 TEU

27 and consult the Council and the other EUMS before they undertake any action that might impact the EU's interests. See Arts 24–32 TEU.

among themselves. However, Article 329 of the TEU notes that if the EUMS ‘wish to establish enhanced cooperation between themselves within the framework of the common foreign and security policy’, they need to address the Council. Furthermore, Article 220 of the TEU specifies the legal basis for the EU’s relations with international organisations and third countries, such as states hosting crisis management missions. An interesting observation, however, is that the EU treaties do not seem to differentiate between civilian and military crisis management; crisis management is addressed as an umbrella term for all possible crisis management action.

## Council Decisions

While the Treaties address the EU’s competence and aims regarding crisis management, the Council Decisions address the role and actions of the main institutions involved. For instance, Decision 2010/427/EU specifies that within the EU, all crisis management-related matters fall under the direction of the European External Action Service (EEAS), which is an autonomous EU body. In other words, the EEAS, together with the High Representative/Vice President, covers the EU’s foreign policy action including CSDP, which governs the defence, military and civilian crisis management aspects of EU policy. Council Decisions also determine the planning and conduct arrangements of the CSDP mission.<sup>28</sup> In fact, the mission-specific decisions taken by the Council are perhaps the most interesting legal decisions concerning crisis management, as they offer insights into both the steering and the operational levels of crisis management.

While the treaties do not make a distinction between civil and military dimensions, the Council Decisions have a clear division in this regard. This is particularly notable from the organisation of the EEAS units as well as from the mission mandates that offer information on the missions’ internal structures. Mission mandates in general detail the main tasks and objectives, the chains of command, political control, financial arrangements and the launch process of the missions.<sup>29</sup>

As this paper uses Mali as a case of example, there are two EU mandates of relevance: the mandate of the EU’s civilian capacity-building mission EUCAP Sahel Mali (EUCAP), and the mandate of the EU’s military training mission EUTM Mali (EUTM). Both mandates make reference to the EU’s integrated approach to and increased cooperation in crisis management, which goes hand in hand with the idea of comprehensive crisis management. However, whether the operation is classified as military or civilian has an impact on the monitoring EEAS units.<sup>30</sup> Both the EUTM and the EUCAP mandates clarify the chain of command and structure outside of the mission’s operational level and for both missions, the political control and strategic direction remains with the

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28 Council Decision (EU) 2017/971

29 The missions are launched by a separate legal document; for EUCAP Sahel Mali Council Decision 2015/76/CFSP, and for EUTM Mali Council Decision 2013/87/CFSP.

30 EUCAP Mandate Art 2 (4) and EUTM Mandate 1 (6)

Political and Security Committee (PSC). However, the closer to the operational level one moves, the clearer the separation becomes. The Military Planning and Conduct Capability (MPCC) is responsible for EUTM's operational control, while the Civilian Planning and Conduct Capability (CPCC) is responsible for EUCAP's. For the EUTM, it is also specified that the EU Military Committee (EUMC) monitors its military direction, while the counterpart for the civilian operations is the Committee for Civilian Aspects of Crisis Management (CIVCOM).

On top of differences in the monitoring units, the mission mandates have other differences as well. Some of the EUTM mandate's articles, for example, specify issues related to the military that are absent from the EUCAP mandate. Similarly, the EUCAP mandate has entire articles that are absent from the EUTM mandate; these articles address the Head of Mission's role, issues relating to the security of the mission and personnel, watch-keeping capability, legal arrangements, and the legal basis and main functioning of the Regional Advisory Coordination Cell (RACC). Thus, in spite of remarkable similarities, the mandates vary depending on their categorisation as civilian or military.

## Other Legal Acts

On top of the Treaties and various Council Decisions, there are also other types of legal acts that impact crisis management, such as legal acts that regulate the participation and assistance of third parties to the missions.<sup>31</sup> Maybe most interesting, however, are the Status of the Mission Agreements (SOMA) or Status of the Forces Agreements (SOFA).<sup>32</sup> While the mission mandates broadly explain the general operationalities of the mission, these bilateral agreements between the EU and the hosting state on the status of the mandate/forces offer more in-depth information on the rights and responsibilities of the missions, vis-a-vis to the host state. The SOMA and SOFA outline the privileges, immunities and liabilities applicable to the mission's staff and facilities. They also define the geographic territory of the mission, give permission for border crossing and movement within the territory, and specify the relationship between the mission and the local state. While the differences in mandates are to some extent explained by the fact that one consists mainly of soldiers and the other of civilians, at the level of the SOMA and SOFA this differentiation becomes blurred.

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31 Council Decision 2013/87/CFSP; PSC Decision 2013/696/CFSP; PSC Decision 2013/697/CFSP; PSC Decision 2014/285/CFSP; PSC Decision 2014/894/CFSP; PSC Decision 2015/874/CFSP; PSC Decision 2015/1916/CFSP (EUCAP Sahel Mali/3/2015); PSC Decision 2015/1917/CFSP (EUCAP Sahel Mali/4/2015)

32 The term SOMA is often used in relation to missions with civilian dimension while the term SOFA is more common among missions that include military personnel (military forces).

Interestingly, the EUCAP SOMA and the EUTM SOFA have a lot of similarities. In fact, they have seven articles that have exactly the same content,<sup>33</sup> and two additional articles that are almost identical.<sup>34</sup> The main difference emanates from the fact that military missions usually have soldiers as personnel while civilian missions have civilian personnel. The biggest differences concern visa regulations, customs documentation and inspections. EUTM personnel are exempt from all of them while EUCAP personnel have some restrictions and particularities addressed to them. There are also smaller conceptual differences, e.g. the EUCAP SOMA refers to ‘staff’ and ‘enforcement action’, while the EUTM SOFA refers to ‘personnel’ and ‘measures of execution’. The EUCAP SOMA was drafted after the EUTM’s SOFA, which might explain both some of the similarities as well as the smaller conceptual differences and specifications in the language of the legislation. This might also explain some of the articles and paragraphs that are only present in the EUCAP SOMA, despite both mandates being regularly renewed.<sup>35</sup>

An interesting observation is that the mandates and the SOMAs state the goals, functions and status of the mission yet they do not explain by what means these should be carried out. For example, it is not specified what the content or style of the training provided is. It is also not specified how the missions aim to enhance cooperation and integration between each other. These particularities are usually specified in Terms of Reference or the Operation Plan (OPLAN) which, partly due to security reasons, are not accessible to the public. Due to the lack of access to these documents, it is hard to provide any analysis on the content. It is also difficult for the public to follow the progress or hold their representatives accountable for shortcomings, as they remain dependent on the missions to provide this information voluntarily and periodically. This fact can create freedom, flexibility and opportunities for personnel to influence the missions’ content, which can be both a risk and an opportunity. This has also been argued to partially explain why many EU missions tend to self-extend.<sup>36</sup> In this regard, the OPLANs of the EUCAP and the EUTM would offer interesting information on the operational details, functions and the needs of the host state.

## Local Agency and International Law

Many discussions on the impact of comprehensive crisis management have highlighted the importance of one particular principle – local ownership. In crisis management, local ownership usually refers to the operational level of the host state. Within the international community, the prevailing notion of local ownership refers to when locals

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33 Namely the following articles: general provisions; criminal jurisdiction; change to facilities; communications; claims for death, injury, damage and loss; liaison and disputes; implementing arrangements.

34 Namely the following articles: privileges and immunities; deceased personnel.

35 Mandates are usually made for two years, after which they need to be renewed and can therefore be amended over the years.

36 Karjalainen and Savolainen (2021)

are expected to take ownership, i.e. carry out internationally designed initiatives.<sup>37</sup> First of all, it should be noted that within the host state there are various dimensions of local: local elites, national governments, cultural leaders, civil society organisations, etc. The operations should thus think of how these different levels can be engaged. Secondly, the word *ownership* carries a connotation of power relations (one owning and other subjecting); it might be better understood as local agency. Here, agency does not refer to the legal concept of agency (when a person or an actor has the legal authority to act for another). Rather, it is understood as a social science term referring to an agent's capability to influence and operate on a given issue or social structure. Therefore, it is maybe more apt to describe the local population's ability to both participate and impact on these crisis management operations. The following chapter approaches the above defined legal frameworks through the lens of local agency, focusing on the Malian perspective. We shall look at who has agency in and according to the mission mandates and the SOMAs.

As explained above, the mandates and the SOMAs specify the rights and obligations of the missions and their personnel, and they explain in detail what they are allowed to do within the territory of Mali. They also reveal the role of the Malian government in the governance of these operations. The SOMAs grant the sending states extraterritorial jurisdiction, which means that the sending states have a right to exercise criminal jurisdiction and disciplinary powers outside of their own state borders within the territory of the host state concerning the sent personnel. In fact, the sending states are allowed to exercise all of their legitimate criminal-jurisdiction and disciplinary powers in the Malian territory.<sup>38</sup> Extraterritorial jurisdiction is not unheard of, yet the extent to which it is granted here is rather exceptional.

Furthermore, Mali grants the EU missions a status that exempts the EU from almost all legal responsibility and grants the personnel a very broad, almost diplomatic status. For example, both the EUCAP SOMA and the EUTM SOFA state that their personnel 'shall enjoy immunity from criminal proceedings in the Host State under all circumstances', except if waived by the sending state or the EU body concerned.<sup>39</sup> The same applies to civil and administrative proceedings when 'committed in the exercise of their official functions'.<sup>40</sup> This means that the agency for taking legal action is transferred from Mali to the EU and the sending states. Fortunately, the SOMAs do specify that laws and regulations of the Host State shall be respected.

While the EU missions and their personnel have wide immunities and privileges in Mali, they can be held accountable by the relevant EU body or the sending state, depending on the case and situation at hand. For example, Article 6 of both mandates mentions that personnel immunity from jurisdiction in Mali 'does not exempt them

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37 Hancock & Mitchell (2018) 21

38 Art 8 of both SOMAs

39 EUCAP SOMA art 6(4) and EUTM SOMA Art 6(3)

40 Except if EU mission personnel initiates proceeding that result in a counterclaim against them. Source: EUCAP SOMA Art 6(5) and EUTM SOMA Art 6(4)

from jurisdiction in the respective Sending States'. This means that the sending state can judge a case concerning its own nationals and its own legislation, even if they are exempt from the local, i.e. Malian, legal responsibility. However, this also reveals an underlying power relation between the EU/EUMS and Mali; in cases where EU mission personnel breach legal obligations, Mali is dependent on the European actors for accountability.

Article 7 in both the SOMA and the SOFA is also interesting in this regard, as it specifies how the locally employed personnel are treated differently in the legislation than the rest of the mission personnel. It states that locally employed personnel enjoy the missions' privileges and immunities *only* to the extent admitted by the host state, which is Mali.<sup>41</sup> In this regard, Mali has agency over Malian citizens, even though it is also specified that Mali should not use this power in a manner that interferes with the missions.

When trying to understand the extent of local agency and participation in the regulatory governance of civilian crisis management, the legislation of the host state should not be forgotten. Mali does not seem to have any specific domestic laws regulating international crisis management within its borders, nor does it have laws addressing who is allowed to launch such missions within its territory. This is not unheard of as not many, if any, states have these kinds of laws, since state sovereignty is traditionally considered a universal principle of global (legal) order. Domestic laws of such nature would confront this idea by assuming foreign actors will invade the state territory. This is why such operations are usually, though not always, based on bilateral agreements such as SOMAs, which include the operations' rights and obligations in occasional and exceptional cases.

Additionally, it should be noted that this paper has mainly focused on the Finnish and European legal frameworks from a regulatory governance point of view. The domestic and regional legal frameworks are not the only legislations that impact on crisis management; on top of Finland and the EU's legal frameworks there are numerous other legal frameworks, such as public and private international laws impacting the everyday functioning of crisis management operation. What usually gets less attention are international laws, perhaps as they are sometimes considered distant or of secondary nature to domestic laws. However, there are various international treaties that both the EU and its member states have signed, and which are applicable in post-conflict crisis management settings. For example, the EU member states individually are all parties to the UN, which means they have consented to the UN Charter and the UN's legal framework. Another framework of relevance is the International Human Rights Law that comprises, for instance, the Universal Declaration of Human Rights (UDHR 1948), the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), and the Conventions on Genocide (1948), Racial Discrimination (1965), Discrimination Against Women (1979), Torture (1984) and the Rights of the Child (1989).<sup>42</sup> Furthermore, private international law,

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41 Art 7 of both SOMAs

42 ICRC (2003)



e.g. between missions and external contractors, constrains the actions of the missions and has an impact on their governance. This kind of legal pluralism should not be disregarded. These international frameworks should thus be kept in mind when addressing crisis management issues, as they define some of the overarching rules on human rights and the use of armed force, for instance.

## Conclusion

As explained above, Finland's participation in EU-led crisis management is regulated by a plurality of laws and legal systems. The above analysis has given a peek into the legal environment and framework that applies to EU-led crisis management. To recap, the legal framework of crisis management comprises:

- Legal basis for taking crisis management action abroad
- Regulation on the recruitment and deployment of personnel, including the appropriate and responsible authorities
- Command and control of the missions, including the contracts of the Heads of Missions
- Legal status and rights of the mission during the operation, including restrictions on use of force
- Legal contracts and responsibility of states and other actors involved

It has been argued that in Finland, the distinction between civilian and military crisis management is particularly clear. There are two separate laws regulating Finland's crisis management participation and actions, and two main local authorities responsible for organising it. As the laws stand separate, the collective and comprehensive approach to crisis management, from a legal point of view, is strongly dependent on active and willing engagement between the main authorities involved in international crisis management, such as CMC Finland and the Finnish Defence Forces. The Ministry of Foreign Affairs of Finland is also included in the political steering of both civilian and military crisis management.

In the EU, the separation between civilian and military is also evident, although not on all levels of jurisdiction. Interestingly, the EU treaties do not differentiate between civilian and military crisis management, but the closer to the operational level we move the clearer the distinction becomes. In other words, the EU distinguishes between civilian and military operation depending on whether the mission encompasses and is engaging with mainly military actors or mainly civilian actors (e.g. police forces, border control, civil society organisations). The distinction is best visible from the organisational structure of the EEAS (the monitoring units) and from the mission mandates and SOMAs that grant the personnel differing rights and obligations, depending on the type of the mission.

While Finnish national legislation is strongly focused on the recruitment process, the EU has not regulated this to the same extent. This might partially be due to the EUMS being responsible for providing the majority of the personnel in general.<sup>43</sup> There is one directive that regulates certain work contracts, subcontracts and contract documentation by contracting parties in the field of defence and security, yet this directive is not concerned with the general recruitment of the mission personnel.<sup>44</sup> Additionally, the particular contracts of the top-tier positions in CSDP missions, such as the Head of Missions, the Mission or Force Commanders and the Special Representative of the EU for the Sahel, are regulated through PSC Decisions.<sup>45</sup> The contracts of seconded personnel are regulated at the national level, as explained above.

Local ownership, or local agency as this paper argued for, is often portrayed as essential for comprehensive approaches to crisis management, yet from a legal point of view it seems to have a rather minimal role in the EU's legal framework on crisis management. Lack of local agency in the creation and modification of the mandates includes a risk of the EU determining the agenda while expecting the locals to implement it; a concern that often surfaces in discussions on failures to execute local ownership.<sup>46</sup> The question arises: how can Mali have sufficient local agency in crisis management within its own territory if most of the decision-making and governing powers relating to crisis management operations remain with external parties such as the EU? Even if not specified in law, it is good to keep in mind that many operations are based on an invitation by the host state, and that local agency may well be ensured in the planning and execution of the missions, i.e. in the form of civil society engagement.

Having explained some of the generalities relating to Finland and the EU's legal frameworks on crisis management, it is evident that both Finland and the EU have a clear distinction between military and civilian crisis management in their legal frameworks. In fact, as the first national law directly addressing civilian crisis management in Finland entered into force no later than 2004, it seems that the Finnish legal framework reflects the EU custom of differentiating between civilian and military crisis management, and not the other way around. Overall, the analysis performed for this paper confirms that the 'differing mandates of civilian and military CSDP and their capability gaps make a true integrated approach in the field difficult', especially from a legal point of view.<sup>47</sup>

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43 As mentioned in the introduction, the missions also employ personnel directly themselves, in which cases there are additional legislations that regulate their rights and participation.

44 Directive 2009/81/EC

45 PSC Decision 2021/58/CFSP (EUCAP Sahel Mali/1/2021); PSC Decision 2021/1083 (EUTM Mali/1/2021); Council Decision 2021/1011/CFSP

46 Poopuu (2020) p. 266

47 Karjalainen ja Savoranta (2021) p. 12

## Abbreviations

AU	African Union
CFSP	Common Foreign and Security Policy (EU)
CivOP	Civilian Operations Commander
CIVCOM	Committee for Civilian Aspects of Crisis Management
CM	Crisis Management
CPCC	Civilian Planning and Conduct Capability (CSDP)
CSDP	Common Security and Defence Policy (EU)
EP	European Parliament
EU	European Union
EEAS	European External Action Service (EU)
EUCAP Sahel Mali	EU's civilian CSDP mission to Mali (capacity building)
EUTM Mali	EU's military CSDP mission to Mali (training mission)
HoM	Head of Mission
MPCC	Military Planning and Conduct Capability (CSDP)
OSCE	Organization for Security and Co-operation in Europe
PSC	Political and Security Committee (EU/CSDP)
SOFA	Status of the Forces Agreement
SOMA	Status of the Mission Agreement
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
UN	The United Nations

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