

Self-Governance by Humanitarian Non-State Actors in Health and Nutrition Relief

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In the provision of humanitarian health assistance in a post disaster context, critical concerns such as local ownership, financial and political transparency and humane implementation are central.¹ Given that poor quality or unsuitable health assistance can have grossly negative consequences such as ‘increased morbidity, mortality, and disability,’² increasingly, humanitarian agencies are recognizing the need for a common set of standards and guiding principles for humanitarian health assistance. This includes consideration of provision of quality health services in addition to other core issues such as cooperation and coordination between various institutions and sectors.³ The central argument postulated in this paper is that despite the absence of a proper global enforcement mechanism of the obligation to provide quality humanitarian assistance in health and nutrition, emerging self-governing mechanisms, such as the Sphere Humanitarian Charter provides a useful mechanism for self-regulation and action by civil society organizations. Such self-regulatory mechanisms contribute to the development of international customary law with regard to an emerging responsibility to provide effective humanitarian assistance.

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¹ Nicholas Banatvala and Anthony B Zwi, ‘Public Health and Humanitarian Interventions: Developing the Evidence Base’ (2000) 321 *British Medical Journal* 101–105, 101.

² Nicholas Banatvala and Anthony B Zwi, ‘Public Health and Humanitarian Interventions: Developing the Evidence Base’ (2000) 321 *British Medical Journal* 101–105, 102.

³ Nicholas Banatvala and Anthony B Zwi, ‘Public Health and Humanitarian Interventions: Developing the Evidence Base’ (2000) 321 *British Medical Journal* 101–105, 103.

Introduction: Accountability and Efficiency in Global Context

While at present, states bear primary responsibility in the implementation of humanitarian relief in the health and nutrition sector, in recent years, members of the international community have recognized the need for greater accountability and standard-setting in humanitarian health service delivery. This gap-filling mechanism of international self-regulatory entities reflects insights of new governance literature of the emerging role of the state as facilitator of humanitarian action.

Following an introduction, this paper will 1) examine the theoretical foundations of a human rights approach to humanitarian ‘legal’ obligations. It will then examine how 2) the Sphere Humanitarian Charter applies this approach in its work in health and nutrition relief. Next it will examine 3) international and national legal frameworks of accountability in assessing health and nutrition relief work. Finally it will conclude with policy recommendations on coordinating humanitarian assistance and institutional collaboration.

The Sphere Project was initiated in 1987 by non-governmental organizations as a way of establishing a universal self-regulatory mechanism that would contribute to accountability and efficiency in the delivery of humanitarian relief in critical areas such as health and nutrition. The Sphere Humanitarian Charter and Minimum Standards have been developed as a comprehensive guide for humanitarian agencies in the delivery of humanitarian relief.

The Sphere Project is a significant mechanism for self-managed regulation.⁴ It was an initiative of several NGOs and the International Red Cross and Red Crescent movement commencing in 1997.⁵ The objective of the founding NGOs was to ensure accountability in the provision of

⁴ Lola Gostelow, ‘The Sphere Project: The Implications of Making Humanitarian Principles and Codes Work’ (1999) *Disasters* 23(4) 316-325, 317.

⁵ Sphere Project, *Humanitarian Charter and Minimum Standards in Humanitarian Response* (3rd edn Sphere Project 2011) 4 <<http://www.sphereproject.org/resources/download-publications/?search=1&keywords=&language=English&category=22>> accessed 10 May 2013.

humanitarian assistance, in addition to improving the quality of aid.⁶ The Sphere Project is built on the philosophy that victims of humanitarian crisis ‘have a right to life with dignity and, therefore, a right to assistance; and second, that all possible steps should be taken to alleviate human suffering arising out of disaster or conflict.’⁷ Based on that philosophy, the Sphere Humanitarian Charter establishes minimum standards on humanitarian assistance for food security and nutrition, and health, amongst other areas.⁸ The standards espoused under the Humanitarian Charter essentially set out the minimum conditions in humanitarian assistance programs for purposes of ensuring that the victims ‘survive and recover in stable conditions and with dignity.’⁹ The general structure of the Humanitarian Charter is that minimum standards are prescribed in the delivery of critical forms of humanitarian assistance such as food and health aid, in addition to the inclusion of key indicators and guidance notes to enable humanitarian agencies monitor and evaluate their compliance with the standards.¹⁰

Globalization has implications for the regulation and governance of humanitarian aid, the relationship between non-state and state actors, and the interplay between international and local participants. As Heydebrand observes, ‘[g]lobalisation and its local manifestations are perceived and experienced differently depending on where and how one comes into contact with it and whether one observes it from the core or the periphery, from above or below.’¹¹

⁶ Sphere Project, *Humanitarian Charter and Minimum Standards in Humanitarian Response* (3rd edn Sphere Project 2011) 4 <<http://www.sphereproject.org/resources/download-publications/?search=1&keywords=&language=English&category=22>> accessed 10 May 2013.

⁷ Sphere Project, *Humanitarian Charter and Minimum Standards in Humanitarian Response* (3rd edn Sphere Project 2011) 4 <<http://www.sphereproject.org/resources/download-publications/?search=1&keywords=&language=English&category=22>> accessed 10 May 2013.

⁸ Sphere Project, *Humanitarian Charter and Minimum Standards in Humanitarian Response* (3rd edn Sphere Project 2011) 4 <<http://www.sphereproject.org/resources/download-publications/?search=1&keywords=&language=English&category=22>> accessed 10 May 2013.

⁹ Sphere Project, *Humanitarian Charter and Minimum Standards in Humanitarian Response* (3rd edn Sphere Project 2011) 5 <<http://www.sphereproject.org/resources/download-publications/?search=1&keywords=&language=English&category=22>> accessed 10 May 2013.

¹⁰ Charlotte Dufour, Véronique de Geoffroy, Hugues Maury and François Grünewald, ‘Rights, Standards and Quality in a Complex Humanitarian Space: Is Sphere the Right Tool?’ (2004) 28(2) *Disasters* 124–141, 125.

¹¹ Wolf Heydebrand, ‘From Globalisation of Law to Law under Globalisation’ in David Nelken and Johannes Feest (eds), *Adapting Legal Cultures* (Hart Publishing, Oxford 2001) 117-137, 118.

The development of the Sphere Project and the growing influence of its Humanitarian Charter within the humanitarian civil society organizations as a self-regulation mechanism is evidence of the emerging trend of global self-regulation. Heydebrand notes that:

Governance is defined as the existence of “regulatory mechanisms in a sphere of activity which function effectively even though they are not endowed with formal authority”... Common to most of these mechanisms is the possible transformation and replacement of law by non-legal and non-governmental practices and procedures. A central challenge here is the need to rethink regulation and the emergence of quasi-legal, regulatory mechanisms at the global level...¹²

The Sphere Humanitarian Charter establishes a regulatory and accountability policy framework through input from a network of global NGO's.¹³ It demonstrates the role of such organizations in advancing accountability and quality in global humanitarian assistance activities. A significant contribution of the Sphere Humanitarian Charter, despite lack of binding legal authority, is that it constitutes a core policy document for self-regulation, accountability and minimum standards benchmarking by various civil society organizations and other humanitarian agencies. The standards enumerated in the Charter are critical technical guidelines that have been developed through the collective practical and on the ground experiences of the various humanitarian agencies that have participated in the Project.¹⁴ The standards are based on the need to enhance the accountability of humanitarian assistance agencies and generally improve the effectiveness of aid.¹⁵ The Sphere Humanitarian Charter has, in recent years, become one of the important

¹² Wolf Heydebrand, 'From Globalisation of Law to Law under Globalisation' in David Nelken and Johannes Feest (eds), *Adapting Legal Cultures* (Hart Publishing, Oxford 2001) 117-137, 120.

¹³ Marci Van Dyke and Ronald Waldman, 'The Sphere Project Evaluation Report' *Mailman School of Public Health, Columbia University* (January 2004) 7
<http://www.unscn.org/layout/modules/resources/files/Evaluation_report.pdf> accessed 25 August 2013.

¹⁴ Max R O'Donnell, Dimitri Bacos and Michael L Bennish, 'Nutritional Response to the 1998 Bangladesh Flood Disaster: Sphere Minimum Standards in Disaster Response' (2002) 26(3) *Disasters* 229-241, 232.

¹⁵ Marci Van Dyke and Ronald Waldman, 'The Sphere Project Evaluation Report' *Mailman School of Public Health, Columbia University* (January 2004) 4
<http://www.unscn.org/layout/modules/resources/files/Evaluation_report.pdf> accessed 25 August 2013.

regulators of humanitarian assistance in various disaster settings.¹⁶ It originated from discussions among NGOs with the objective that it would provide a practical set of standards and that the success of the Project would not be disrupted by interagency rivalry.¹⁷ It arose out of a historical necessity for codes and standards for humanitarian assistance delivery.¹⁸

The suffering witnessed during the catastrophic 1994 Rwanda genocide influenced the desire to develop the Sphere standards due to the widespread feeling across the humanitarian agencies that there was need for accountability and benchmarks.¹⁹ In the aftermath of the Rwanda genocide, there was a concerted effort to determine the factors that contributed to the failure of humanitarian aid, in addition to addressing issues of accountability.²⁰ The outcome of such concerns within humanitarian agencies was the Humanitarian Charter and Minimum Standards Handbook²¹ under the Sphere Project.

The Sphere Project Board comprises of 18 organizations, which include International Medical Corps, International Federation of Red Cross and Red Crescent Societies, *Aktion Deutschland Hilft*, *Office Africain pour le Développement et la Coopération*, Sphere India, ACT Alliance/Norwegian Church Aid, CARE International, *Caritas Internationalis*, InterAction, International Council of Voluntary Agencies, World Vision International, Lutheran World Federation/DanChurchAid, Oxfam International, Plan International, Policy Action Group on Emergency Response, RedR International, Save the Children and the Salvation Army.²²

¹⁶ Marci Van Dyke and Ronald Waldman, 'The Sphere Project Evaluation Report' *Mailman School of Public Health, Columbia University* (January 2004) 4
<http://www.unscn.org/layout/modules/resources/files/Evaluation_report.pdf> accessed 25 August 2013.

¹⁷ Peter Walker and Susan Purdin, 'Birthing Sphere' (2004) 28(2) *Disasters* 100–111, 102.

¹⁸ Peter Walker and Susan Purdin, 'Birthing Sphere' (2004) 28(2) *Disasters* 100–111, 101.

¹⁹ Lotus McDougal and Jennifer Bear, 'Revisiting Sphere: New Standards of Service Delivery for New Trends in Protracted Displacement' (2011) 35(1) *Disasters* 87–101, 90. See also, Jacqui Tong, 'Questionable Accountability: MSF and Sphere in 2003' (2004) 28(2) *Disasters* 176–189, 176; Marci Van Dyke and Ronald Waldman, 'The Sphere Project Evaluation Report' *Mailman School of Public Health, Columbia University* (January 2004) 4

²⁰ Jacqui Tong, 'Questionable Accountability: MSF and Sphere in 2003' (2004) 28(2) *Disasters* 176–189, 176.

²¹ Jacqui Tong, 'Questionable Accountability: MSF and Sphere in 2003' (2004) 28(2) *Disasters* 176–189, 176.

²² Sphere Project, 'Board Organizations' <<http://www.sphereproject.org/sphere/en/about/governance/board-member-organizations/>> accessed 22 October 2013.

There have been other efforts aimed at ensuring efficiency and accountability in the provision of humanitarian assistance.²³ In addition to the Sphere Humanitarian Charter, there is the Humanitarian Accountability Project (HAP) which commenced as the Humanitarian Ombudsman Project. The Ombudsman project, conducted under the auspices of the British Red Cross, was initiated in the 1997 World Disasters Forum, with the objective of determining the viability of the establishment of an office that would be responsible for maintaining accountability in humanitarian assistance.²⁴ The humanitarian catastrophe caused by the 1994 Rwanda genocide generated unprecedented concerns regarding the efficacy and accountability of relief agencies, and therefore, helped generate international consensus to address those issues.²⁵ In particular, the failure of international actors to help prevent or effectively respond to the Rwanda genocide explicitly demonstrated that humanitarian agencies could also cause harm through omissions, by failing to act on their promises of protection and assistance.²⁶

In the aftermath of the genocide, the Joint Evaluation of the International Response to the Rwandan Genocide was established, and it recommended that organizations should improve their accountability by strengthening oversight mechanisms.²⁷ The recommendations would lead to the launch of the Humanitarian Ombudsman Project in 1997.²⁸ The Ombudsman Project promoted the push for the observance of key standards and codes of conduct in humanitarian assistance.²⁹ The Ombudsman Project eventually evolved into the Humanitarian Accountability Project.³⁰ The Humanitarian Accountability Partnership is a coalition of humanitarian agencies that have the objective of promoting accountability to the beneficiaries of relief through

²³ Lola Gostelow, 'The Sphere Project: The Implications of Making Humanitarian Principles and Codes Work' (1999) *Disasters* 23(4) 316-325, 316.

²⁴ Lola Gostelow, 'The Sphere Project: The Implications of Making Humanitarian Principles and Codes Work' (1999) *Disasters* 23(4) 316-325, 316.

²⁵ Humanitarian Accountability Partnership, 'The History of HAP' <<http://www.hapinternational.org/who-we-are/about-us/the-history-of-hap.aspx>> accessed 30 October 2013.

²⁶ Humanitarian Accountability Partnership, 'The History of HAP' <<http://www.hapinternational.org/who-we-are/about-us/the-history-of-hap.aspx>> accessed 30 October 2013.

²⁷ Humanitarian Accountability Partnership, 'The History of HAP' <<http://www.hapinternational.org/who-we-are/about-us/the-history-of-hap.aspx>> accessed 30 October 2013.

²⁸ Humanitarian Accountability Partnership, 'The History of HAP' <<http://www.hapinternational.org/who-we-are/about-us/the-history-of-hap.aspx>> accessed 30 October 2013.

²⁹ Lola Gostelow, 'The Sphere Project: The Implications of Making Humanitarian Principles and Codes Work' (1999) *Disasters* 23(4) 316-325, 316.

³⁰ Humanitarian Accountability Partnership, 'The History of HAP' <<http://www.hapinternational.org/who-we-are/about-us/the-history-of-hap.aspx>> accessed 30 October 2013.

standards of accountability and quality implemented through mechanisms such as certification.³¹ It is an institution through which beneficiaries and recipients of humanitarian aid can speak out regarding any grievances that they may have against relief agencies.³² The Ombudsman Project, currently the Humanitarian Accountability Partnership, has however been criticized for appearing to excuse ‘both the local authorities and the international community for deficiencies in providing for people’s welfare by shifting the focus and responsibility for a population’s welfare on to NGOs.’³³

The objective of the Sphere Project is to promote accountability and effectiveness in the provision of humanitarian assistance by civil society organizations and donors.³⁴ The Sphere Charter includes a common set of criteria for the evaluation of humanitarian programs.³⁵ The Humanitarian Charter can be an important benchmark tool for use in advocacy aimed at civil society organizations, states and other participants for purposes of enhancing levels of service in humanitarian aid.³⁶ It still reaffirms the role of the state, as the entity that bears the primary responsibility for the realization of the relevant humanitarian and human rights entitlements by its nationals.³⁷ That way, the Charter reaffirms the view that a state should not obstruct the provision of humanitarian assistance by both local and international agencies where it is either unable or unwilling to provide the basic necessities to its citizens.

³¹ Humanitarian Accountability Partnership, ‘About Us’ <<http://www.hapinternational.org/who-we-are/about-us.aspx>> accessed 30 October 2013.

³² Jacqui Tong, ‘Questionable Accountability: MSF and Sphere in 2003’ (2004) 28(2) *Disasters* 176–189, 176.

³³ Jacqui Tong, ‘Questionable Accountability: MSF and Sphere in 2003’ (2004) 28(2) *Disasters* 176–189, 186.

³⁴ Lola Gostelow, ‘The Sphere Project: The Implications of Making Humanitarian Principles and Codes Work’ (1999) *Disasters* 23(4) 316–325, 318.

³⁵ Lola Gostelow, ‘The Sphere Project: The Implications of Making Humanitarian Principles and Codes Work’ (1999) *Disasters* 23(4) 316–325, 318.

³⁶ Lola Gostelow, ‘The Sphere Project: The Implications of Making Humanitarian Principles and Codes Work’ (1999) *Disasters* 23(4) 316–325, 318.

³⁷ Lola Gostelow, ‘The Sphere Project: The Implications of Making Humanitarian Principles and Codes Work’ (1999) *Disasters* 23(4) 316–325, 318.

Part I: A Human Rights Approach to Humanitarian ‘Legal’ Obligations

The Sphere Charter states that its standards and principles are premised on rights based approach to humanitarian assistance.³⁸ It states that each of the minimum standards are premised on the ‘principle that disaster-affected populations have the right to life with dignity.’³⁹ The Charter emphasizes the view that ‘people affected by disaster or conflict have a right to receive protection and assistance to ensure the basic conditions for life with dignity.’⁴⁰ The Humanitarian Charter also states that its principles reflect obligations under international law, which have evolved from the elementary principle of a common humanity, and are universal in nature.⁴¹ Commentators have endorsed the view that the Sphere Humanitarian Charter is based on international human rights and humanitarian law, including treaties and principles of the international legal system. For instance, it has been postulated that the Humanitarian Charter reflects an international human rights framework for issues relating to disaster management, public health and gender studies.⁴²

In particular, the Charter affirms the view that its principles originate from ‘rights to protection and assistance reflected in the provisions of international humanitarian law, human rights and refugee law.’⁴³ The Charter outlines the rights that victims affected by humanitarian catastrophes

³⁸ Sphere Project, *Humanitarian Charter and Minimum Standards in Humanitarian Response* (3rd edn Sphere Project 2011) 6 <<http://www.sphereproject.org/resources/download-publications/?search=1&keywords=&language=English&category=22>> accessed 10 May 2013.

³⁹ Sphere Project, *Humanitarian Charter and Minimum Standards in Humanitarian Response* (3rd edn Sphere Project 2011) 7 <<http://www.sphereproject.org/resources/download-publications/?search=1&keywords=&language=English&category=22>> accessed 10 May 2013.

⁴⁰ Sphere Project, *Humanitarian Charter and Minimum Standards in Humanitarian Response* (3rd edn Sphere Project 2011) 20 <<http://www.sphereproject.org/resources/download-publications/?search=1&keywords=&language=English&category=22>> accessed 10 May 2013.

⁴¹ Sphere Project, *Humanitarian Charter and Minimum Standards in Humanitarian Response* (3rd edn Sphere Project 2011) 20 <<http://www.sphereproject.org/resources/download-publications/?search=1&keywords=&language=English&category=22>> accessed 10 May 2013.

⁴² Max R O’Donnell, Dimitri Bacos and Michael L Bennis, ‘Nutritional Response to the 1998 Bangladesh Flood Disaster: Sphere Minimum Standards in Disaster Response’ (2002) 26(3) *Disasters* 229–241, 238.

⁴³ Sphere Project, *Humanitarian Charter and Minimum Standards in Humanitarian Response* (3rd edn Sphere Project 2011) 21 <<http://www.sphereproject.org/resources/download-publications/?search=1&keywords=&language=English&category=22>> accessed 10 May 2013. The humanitarian Charter summarizes core legal principles that may be drawn from international instruments such as the Universal Declaration of Human Rights, the Geneva Conventions (on International Humanitarian Law) and the 1951

are entitled to as including the right to life with dignity, to receive humanitarian assistance, and to protection and security.⁴⁴ According to the Humanitarian Charter, the right to good health and adequate food are protected by international law and form part of the right to life with dignity, which essentially translates to the right to receive humanitarian assistance.⁴⁵

It has also been suggested that the Sphere Humanitarian Charter may contribute to the formation of international customary law with regard to ‘the rights of beneficiaries to a specific quality of response in humanitarian disaster while connecting these rights to universal principles of human dignity...’⁴⁶ However, the development of the non-legal norms and standards stipulated under the Sphere Charter into rules of international customary law would require acceptability and endorsement by states, in the form of state practice and *opinio juris*.⁴⁷ In addition, standards enshrined in the Charter can contribute to the conclusion of treaties or adoption of resolutions by states. Standards and norms by civil society organizations are important, since besides being mechanisms for self-regulation, they can contribute to the making and implementation of international law when states are compelled to adopt them as treaties or ‘soft law’ resolutions. For instance, in 1859, Henry Dunant’s efforts to provide humanitarian assistance to the wounded soldiers in the battle of Solferino, by mobilizing local women, eventually led to the establishment of the International Committee of the Red Cross (ICRC).⁴⁸ The ICRC, despite it not being an intergovernmental organization, has made significant contributions to the development of international humanitarian law, and vigorously encourages its implementation by governments

Convention on the Status of Refugees. Marci Van Dyke and Ronald Waldman, ‘The Sphere Project Evaluation Report’ *Mailman School of Public Health, Columbia University* (January 2004) 8

⁴⁴ Sphere Project, *Humanitarian Charter and Minimum Standards in Humanitarian Response* (3rd edn Sphere Project 2011) 21 <<http://www.sphereproject.org/resources/download-publications/?search=1&keywords=&language=English&category=22>> accessed 10 May 2013.

⁴⁵ Sphere Project, *Humanitarian Charter and Minimum Standards in Humanitarian Response* (3rd edn Sphere Project 2011) 22 <<http://www.sphereproject.org/resources/download-publications/?search=1&keywords=&language=English&category=22>> accessed 10 May 2013.

⁴⁶ Max R O’Donnell, Dimitri Bacos and Michael L Bennis, ‘Nutritional Response to the 1998 Bangladesh Flood Disaster: Sphere Minimum Standards in Disaster Response’ (2002) 26(3) *Disasters* 229–241, 238–239.

⁴⁷ The International Court of Justice (ICJ) has reaffirmed that the formation of international customary law is dependent on both state practice and *opinio juris*. See: *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v United States of America)* (Merits) [1986] ICJ Rep 14 paragraph 207; *North Sea Continental Shelf (Federal Republic of Germany v Denmark; Federal Republic of Germany v Netherlands)* (Judgment) [1969] ICJ Rep 3 paragraph 77.

⁴⁸ Peter Walker and Susan Purdin, ‘Birthing Sphere’ (2004) 28(2) *Disasters* 100–111, 101.

and parties to armed conflicts.⁴⁹ The ICRC was established in 1863, and in 1864, influenced states into adopting the first Geneva Convention, which ‘introduced a unified emblem for the medical services’ and ‘obliged armies to care for wounded soldiers, whatever side they were on...’,⁵⁰

Some of the obligations endorsed in the Sphere Humanitarian Charter are certainly part of current treaty provisions and customary international law, but the issue of the existence of a right to humanitarian assistance, and the enforcement mechanisms of most obligations, are certainly not well defined within the international legal system. The 1949 Geneva Conventions and the 1977 and 2005 Additional Protocols’ are important sources of international humanitarian law.⁵¹ With respect to food and nutrition aid, the 2012 Food Assistance Convention, which entered into force in 2013, has been ratified by Canada, Switzerland, United States, Austria, Denmark, European Union, Japan and Finland.⁵² Further, a 2005 study by the ICRC opined that failure to consent to the provision of humanitarian relief which ends up threatening the survival of the civilian population, or contributes to severe starvation, may amount to a violation of customary international law.⁵³ Further, while international humanitarian obligations are often primarily state duties, international agencies may have subsidiary responsibilities. For instance, while the primary responsibility to ensure the right to food lies with the state, it is also a shared

⁴⁹ International Committee of the Red Cross, ‘History of the ICRC’ (29 October 2010) <<http://www.icrc.org/eng/who-we-are/history/overview-section-history-icrc.htm>> accessed 10 November 2013.

⁵⁰ International Committee of the Red Cross, ‘History of the ICRC’ (29 October 2010) <<http://www.icrc.org/eng/who-we-are/history/overview-section-history-icrc.htm>> accessed 10 November 2013.

⁵¹ Leonard Blazeby and David Fisher, Promoting International Humanitarian Law and International Disaster Response Laws, Rules and Principles within the Commonwealth (2010) 36(4) *Commonwealth Law Bulletin* 709-715, 709. See: Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (First Geneva Convention) (adopted 12 August 1949) 75 UNTS 31; Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (Second Geneva Convention) (adopted 12 August 1949) 75 UNTS 85; Geneva Convention Relative to the Treatment of Prisoners of War (Third Geneva Convention) (adopted 12 August 1949) 75 UNTS 135; Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention) (adopted 12 August 1949) 75 UNTS 287; Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) (adopted 8 June 1977) 1125 UNTS 3; Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II) (adopted 8 June 1977) 1125 UNTS 609.

⁵² Food Assistance Convention, ‘About FAC’ <http://www.foodassistanceconvention.org/en/about_fac/about.aspx> accessed 10 May 2013.

⁵³ Rebecca Barber, ‘Facilitating Humanitarian Assistance in International Humanitarian and Human Rights Law’ (2009) 91 (874) *International Review of the Red Cross* 371-397, 372.

obligation.⁵⁴ Besides the state, individuals and non-state institutions also have a responsibility to protect and ensure realization of the right to food.⁵⁵

However, the existence of various forms of obligations, and international legal instruments, aimed at ensuring the fulfillment of certain social, humanitarian and economic rights such as those relating to food and health, does not translate to a single unified form of a legal right in the context of a ‘right to humanitarian assistance.’ As Kerchove and Ost opine, a legal system comprises of ‘properties that are not reducible to those characterizing its elements.’⁵⁶ Dufour *et al* observe that while ‘a right to assist which stipulates the duties of authorities and parties to a conflict in order to enable the delivery of relief services, and which lays out the responsibilities of humanitarian agencies’ exists in international law, there is serious doubt that a right to assistance currently subsists in positive law.⁵⁷

Despite the lack of a well-defined right to humanitarian assistance in international law, the Humanitarian Charter is based on a rights based approach to humanitarian aid.⁵⁸ The human rights approach under the Humanitarian Charter is, however, enhanced by the existence of the right to assist, which civil society organisation can base their actions when they intervene in disaster stricken states. The human rights approach is helpful in promoting humanitarian assistance as it revises the traditional foundations of relief in a fundamental way.⁵⁹ Under the Humanitarian Charter, the provision of high quality humanitarian relief is reconceived from an act of kindness to that of a responsibility.⁶⁰ The language of obligations, as opposed to kindness

⁵⁴ Jean Drèze, ‘Democracy and the Right to Food’ in Philip Alston and Mary Robinson (eds), *Human Rights and Development: Towards Mutual Reinforcement* (Oxford University Press, New York 2005) 45-64, 55-56.

⁵⁵ Jean Drèze, ‘Democracy and the Right to Food’ in Philip Alston and Mary Robinson (eds), *Human Rights and Development: Towards Mutual Reinforcement* (Oxford University Press, New York 2005) 45-64, 56.

⁵⁶ Michel van de Kerchove and François Ost, *Legal System between Order and Disorder* (Iain Stewart tr, Oxford University Press, Oxford 1994) 10.

⁵⁷ Charlotte Dufour, Véronique de Geoffroy, Hugues Maury and François Grünewald, ‘Rights, Standards and Quality in a Complex Humanitarian Space: Is Sphere the Right Tool?’ (2004) 28(2) *Disasters* 124–141, 130.

⁵⁸ Sphere Project, *Humanitarian Charter and Minimum Standards in Humanitarian Response* (3rd edn Sphere Project 2011) 6 <<http://www.sphereproject.org/resources/download-publications/?search=1&keywords=&language=English&category=22>> accessed 10 May 2013.

⁵⁹ Charlotte Dufour, Véronique de Geoffroy, Hugues Maury and François Grünewald, ‘Rights, Standards and Quality in a Complex Humanitarian Space: Is Sphere the Right Tool?’ (2004) 28(2) *Disasters* 124–141, 126.

⁶⁰ Charlotte Dufour, Véronique de Geoffroy, Hugues Maury and François Grünewald, ‘Rights, Standards and Quality in a Complex Humanitarian Space: Is Sphere the Right Tool?’ (2004) 28(2) *Disasters* 124–141, 126.

and concern, is likely to help muster the political and moral will to act by various agencies. As Evans points out, actions that involve ‘taking difficult political action’ often require robust and intelligent advancement of good arguments.⁶¹ Van Dyke and Waldman instructively observe that:

...the adoption of a rights-based approach to humanitarian assistance represents a fundamental and drastic revision of the philosophy underlying emergency relief that prevailed prior to 1994...Instead, the Sphere Project sees international disaster response as an obligation, incurred by those who can help, to ensure that the rights of affected individuals and populations are respected and accorded. In other words, it is a bold and unequivocal assertion that providing relief to those made vulnerable by disaster is more than a good thing to do – it is an implementation of the law.⁶²

Theoretically, the obligation to eliminate disparities in access to health may be justified on the basis of a social justice approach.⁶³ Concerns about access to critical necessities such as food and health are issues related to the realization of social justice, which is an integral element of the human rights regime.⁶⁴ That fact strengthens the place of humanitarian action under international law. The social justice approach is essentially a method of emphasizing ‘the moral imperative of eliminating glaring social inequality within societies and structurally-imbedded patterns of international support for those inequalities.’⁶⁵

⁶¹ Gareth Evans, ‘From Humanitarian Intervention to the Responsibility to Protect’ (2006) 24(3) *Wisconsin International Law Journal* 703-722, 721.

⁶² Marci Van Dyke and Ronald Waldman, ‘The Sphere Project Evaluation Report’ *Mailman School of Public Health, Columbia University* (January 2004) 7
<http://www.unscn.org/layout/modules/resources/files/Evaluation_report.pdf> accessed 25 August 2013.

⁶³ Stephen P Marks, ‘The Human Rights Framework for Development: Seven Approaches’ in Arjun Sengupta, Archana Negi and Moushumi Basu (eds), *Reflections on the Right to Development* (Sage Publications, New Delhi 2005) 23-60, 29.

⁶⁴ Stephen P Marks, ‘The Human Rights Framework for Development: Seven Approaches’ in Arjun Sengupta, Archana Negi and Moushumi Basu (eds), *Reflections on the Right to Development* (Sage Publications, New Delhi 2005) 23-60, 29.

⁶⁵ Stephen P Marks, ‘The Human Rights Framework for Development: Seven Approaches’ in Arjun Sengupta, Archana Negi and Moushumi Basu (eds), *Reflections on the Right to Development* (Sage Publications, New Delhi 2005) 23-60, 31.

Despite the fact that the various rights that the Sphere Charter draws from in developing its principles and minimum standards are found in international legal instruments, most of those rights have serious justiciability and enforcement challenges. In particular, rights associated with access to good health and food are part of the social and economic rights which have serious enforcement problems even with regard to the state, the entity that is often deemed to have *primary* responsibility for the realization of such entitlements. Therefore, it becomes even harder to enforce such ‘obligations’ upon other entities that may be deemed to have secondary or subsidiary responsibility, such as intergovernmental and non-governmental organizations. In addition, it has even been argued that rights that are not justiciable cannot be regarded as having legal force. This is because some states refuse to consent to humanitarian assistance, or deny humanitarian agencies entry into disaster affected areas, or obstruct their activities, without suffering any sanctions.

Some lawyers, especially positivist ones, have argued that ‘rights’ that ‘are not legally enforceable...cannot be regarded as human rights’ and should, therefore, be viewed ‘as social aspirations or statements of objectives.’⁶⁶ Sengupta is opposed to such perceptions, and argues that such opinions result from reducing human rights to strict legal rights only.⁶⁷ He opines that ‘[h]uman rights precede law and are derived not from law but from the concept of human dignity. There is nothing in principle to prevent a right being an internationally recognised human right even if it is not individually justiciable.’⁶⁸ It is, therefore, correct to argue that rights are not always ‘legal instruments for individuals (though they can be, if governments codify them into law) but duties for governments, international agencies, and other actors to take concrete measures on behalf of individuals, or to restructure institutions so that the rights can be fulfilled more effectively.’⁶⁹

⁶⁶ Arjun Sengupta, ‘On the Theory and Practice of the Right to Development’ in Arjun Sengupta, Archana Negi and Moushumi Basu (eds), *Reflections on the Right to Development* (Sage Publications, New Delhi 2005) 61- 109, 76-77.

⁶⁷ Arjun Sengupta, ‘On the Theory and Practice of the Right to Development’ in Arjun Sengupta, Archana Negi and Moushumi Basu (eds), *Reflections on the Right to Development* (Sage Publications, New Delhi 2005) 61- 109, 77.

⁶⁸ Arjun Sengupta, ‘On the Theory and Practice of the Right to Development’ in Arjun Sengupta, Archana Negi and Moushumi Basu (eds), *Reflections on the Right to Development* (Sage Publications, New Delhi 2005) 61- 109, 77.

⁶⁹ Varun Gauri, ‘Social Rights and Economics: Claims to Health Care and Education in Developing Countries’ in Philip Alston and Mary Robinson (eds), *Human Rights and Development: Towards Mutual Reinforcement* (Oxford University Press, New York 2005) 65 – 83, 72.

Besides the question of justiciability, some rights are complex since they involve a holistic set of requirements in order to be satisfied effectively. For instance, nutrition is certainly an aspect of the right to food. However, it is the link of such aspects as nutrition that make the right to food a complicated one. Jean Drèze notes that:

Ideally, the right to food should be seen as a right to ‘nutrition’...However, good nutrition itself depends in complex ways on a wide range of inputs: not just adequate food intake but also clean water, basic health care, good hygiene, and so on. Even if we confine our attention to food intake, the constituents of good nutrition are a matter of debate among nutritionists.⁷⁰

In sum, the significance of the Sphere Project is that it links certain obligations arising from international human rights and humanitarian instruments with the role of civil society, and establishes, for the first time, globally applicable standards for the provision of humanitarian assistance by various agencies.⁷¹ In particular, it establishes minimum standards of conduct and accountability within humanitarian civil society organizations by linking them to existing and evolving obligations.

⁷⁰ Jean Drèze, ‘Democracy and the Right to Food’ in Philip Alston and Mary Robinson (eds), *Human Rights and Development: Towards Mutual Reinforcement* (Oxford University Press, New York 2005) 45-64, 55.

⁷¹ Lola Gostelow, ‘The Sphere Project: The Implications of Making Humanitarian Principles and Codes Work’ (1999) *Disasters* 23(4) 316-325, 317-318.

Part II: Emerging Global Standards for Health and Nutrition Relief

Health and nutrition issues are inherently interrelated. Due to the fact that most humanitarian crises often lead to disturbances in food production and delivery, the issue of food aid is critical.⁷² Disasters affect the nutrition status of victims, which in turn will affect their health status.⁷³ Nutrition problems arise from food production and distribution disruptions, which often occur during humanitarian crises leading to malnutrition.⁷⁴ Questions of governance and regulation in the provision of health and nutrition aid are critical. This is due to the fact that relief assistance in humanitarian crises is often ineffective in reaching victims due to poor organization.⁷⁵ That ineffectiveness in the provision of humanitarian aid compels institutions involved in relief aid to improve their accountability not only to their financiers but also to the beneficiaries.⁷⁶ Improving accountability is one of the core concerns of the Sphere Project.⁷⁷

In an attempt to drill down to specific operational benchmarks for health and nutrition recovery, the Sphere Humanitarian Charter comprehensively provides minimum standards, evaluation indicators, and guidance notes, on fundamental issues such as food security, nutrition assessment, micronutrient deficiencies and management of malnutrition.⁷⁸ The Charter also includes important monitoring and evaluation tools such as checklists for food security and livelihoods assessment, seed security assessments, nutrition assessments, measurement of acute nutrition, measurement of the influence of micronutrient deficiencies on public health, and a

⁷² Kathy Mangones, 'Alternative Food Aid Strategies and Local Capacity Building in Haiti' in Ian Smillie (ed), *Patronage or Partnership: Local Capacity Building in Humanitarian Crises* (Kumarian Press, Ottawa 2001) 51-76, 51.

⁷³ Max R O'Donnell, Dimitri Bacos and Michael L Bennish, 'Nutritional Response to the 1998 Bangladesh Flood Disaster: Sphere Minimum Standards in Disaster Response' (2002) 26(3) *Disasters* 229-241, 230.

⁷⁴ Max R O'Donnell, Dimitri Bacos and Michael L Bennish, 'Nutritional Response to the 1998 Bangladesh Flood Disaster: Sphere Minimum Standards in Disaster Response' (2002) 26(3) *Disasters* 229-241, 230.

⁷⁵ Max R O'Donnell, Dimitri Bacos and Michael L Bennish, 'Nutritional Response to the 1998 Bangladesh Flood Disaster: Sphere Minimum Standards in Disaster Response' (2002) 26(3) *Disasters* 229-241, 231.

⁷⁶ Max R O'Donnell, Dimitri Bacos and Michael L Bennish, 'Nutritional Response to the 1998 Bangladesh Flood Disaster: Sphere Minimum Standards in Disaster Response' (2002) 26(3) *Disasters* 229-241, 231.

⁷⁷ Max R O'Donnell, Dimitri Bacos and Michael L Bennish, 'Nutritional Response to the 1998 Bangladesh Flood Disaster: Sphere Minimum Standards in Disaster Response' (2002) 26(3) *Disasters* 229-241, 231.

⁷⁸ Sphere Project, *Humanitarian Charter and Minimum Standards in Humanitarian Response* (3rd edn Sphere Project 2011) 140-238 <<http://www.sphereproject.org/resources/download-publications/?search=1&keywords=&language=English&category=22>> accessed 10 May 2013.

nutrients requirement sample.⁷⁹ It also provides guidance on the management of health systems and effective provision of essential health services, which include control of communicable and non-communicable diseases, reproductive health, management of injuries, childrens healthcare and mental health.⁸⁰ The Humanitarian Charter exhaustively provides minimum standards, appraisal indicators and guidance notes in critical areas of health relief.⁸¹ Important health assistance evaluation and quality analysis guidelines and instruments are also provided, for instance, a health assessment checklist, sample surveillance reporting forms on various medical conditions, mortality and morbidity, and formulas for calculating core health indicators.⁸²

Local Participation in Health and Nutrition Relief

The importance of local community involvement in the design and implementation of relief efforts is now well understood. However, it is still often the case that challenges remain hampering effective engagement of local institutions such as religious bodies, professional groups, government agencies, community organizations and NGOs in relief efforts.⁸³ From a historical perspective, relief efforts have been implemented from the top down, with activities focused on decisions and actions taken by external “experts”⁸⁴ and a disproportionate reliance on foreign skills and resources, with external consultants, especially those from the donor’s country, being granted privileged treatment.⁸⁵ However, despite the occasional necessity of international

⁷⁹ Sphere Project, *Humanitarian Charter and Minimum Standards in Humanitarian Response* (3rd edn Sphere Project 2011) 214-230 <<http://www.sphereproject.org/resources/download-publications/?search=1&keywords=&language=English&category=22>> accessed 10 May 2013.

⁸⁰ Sphere Project, *Humanitarian Charter and Minimum Standards in Humanitarian Response* (3rd edn Sphere Project 2011) 288-354 <<http://www.sphereproject.org/resources/download-publications/?search=1&keywords=&language=English&category=22>> accessed 10 May 2013.

⁸¹ Sphere Project, *Humanitarian Charter and Minimum Standards in Humanitarian Response* (3rd edn Sphere Project 2011) 288- 354 <<http://www.sphereproject.org/resources/download-publications/?search=1&keywords=&language=English&category=22>> accessed 10 May 2013.

⁸² Sphere Project, *Humanitarian Charter and Minimum Standards in Humanitarian Response* (3rd edn Sphere Project 2011) 338-347 <<http://www.sphereproject.org/resources/download-publications/?search=1&keywords=&language=English&category=22>> accessed 10 May 2013.

⁸³ Ian Smillie, ‘Capacity Building and the Humanitarian Enterprise’ in Ian Smillie (ed), *Patronage or Partnership: Local Capacity Building in Humanitarian Crises* (Kumarian Press, Ottawa 2001) 7-23, 7.

⁸⁴ Katrina M Allen, ‘Community-Based Disaster Preparedness and Climate Adaptation: Local Capacity Building in the Philippines’ (2006)30(1) *Disasters* 81–101, 82-83.

⁸⁵ Wolfgang Fengler and Homi Kharas, ‘Overview: Delivering Aid Differently’ in Wolfgang Fengler and Homi Kharas (eds), *Delivering Aid Differently: Lessons from the Field* (Brookings Institution, Washington DC 2010) 1-41, 7.

skills and resources, excessive external reliance can stifle local capacity and hamper the local development of the healthcare sector.⁸⁶ A large influx of international medical and paramedical staff often weakens local capacities, while parallel health projects and *ad hoc* recruitment of medical workers, can cause the state health care system to decline.⁸⁷ One of the suggested alternatives to ensure the strengthening of local capacities is to work with local health professionals (including the government staff) and pay their salaries directly by international aid agencies.⁸⁸

There has been an emphasis on the need for ‘community-based approaches’ that are more helpful in addressing the root causes of disaster vulnerability rather than mere short term responses.⁸⁹ Local resources and skills need to be incorporated in humanitarian assistance projects in order to promote long term solutions and improve efficacy. In most humanitarian crisis, initial and immediate response as well as long-term support comes from local entities and individuals, who provide critical assistance without outside support.⁹⁰ If proper relationships and connections with external institutions did not exist prior to the humanitarian catastrophe, initiatives of external entities are often short lived or even frustrated.⁹¹

The Sphere Charter’s standards and principles are based on a ‘people-centred’ approach to humanitarian assistance.⁹² That implies the commitment by Sphere to develop a humanitarian assistance policy framework that considers local institutions as core participants in the provision

⁸⁶ Wolfgang Fengler and Homi Kharas, ‘Overview: Delivering Aid Differently’ in Wolfgang Fengler and Homi Kharas (eds), *Delivering Aid Differently: Lessons from the Field* (Brookings Institution, Washington DC 2010) 1-41, 7.

⁸⁷ A Paganini, ‘National Health Workers in Crises: A Neglected Asset’ *World Health Organization* (2003) 18 *Health in Emergencies* 1.

⁸⁸ A Paganini, ‘National Health Workers in Crises: A Neglected Asset’ *World Health Organization* (2003) 18 *Health in Emergencies* 1.

⁸⁹ Katrina M Allen, ‘Community-Based Disaster Preparedness and Climate Adaptation: Local Capacity Building in the Philippines’ (2006)30(1) *Disasters* 81–101, 82-83.

⁹⁰ Larry Minear, *The Humanitarian Enterprise: Dilemmas and Discoveries* (Kumarian Press, Bloomfield 2002) 59. There is need to enhance the capacity of local institutions since most ‘immediate search-and-rescue’ activities are often undertaken by the local community as external assistance takes time before arrival. Rita Jalali, ‘Civil Society and the State: Turkey after the Earthquake’ (2002) 26(2) *Disasters* 120–139, 122.

⁹¹ Larry Minear, *The Humanitarian Enterprise: Dilemmas and Discoveries* (Kumarian Press, Bloomfield 2002) 59.

⁹² Sphere Project, *Humanitarian Charter and Minimum Standards in Humanitarian Response* (3rd edn Sphere Project 2011) 6 <<http://www.sphereproject.org/resources/download-publications/?search=1&keywords=&language=English&category=22>> accessed 10 May 2013.

of aid. The Sphere Humanitarian Charter is, therefore, a tool for promoting local participation in relief activities undertaken by external and international actors. The Humanitarian Charter states that its minimum standards are grounded in a 'rights-based and people-centred approach to humanitarian response.'⁹³ In particular, the Charter stresses that its principles and standards are premised on the necessity of incorporating local authorities and community members in decision making processes.⁹⁴ The Charter provides that:

Disaster preparedness requires that actors – governments, humanitarian agencies, local civil society organisations, communities and individuals – have the capacities, relationships and knowledge to prepare for and respond effectively to disaster or conflict. Before and during a response, they should start taking actions that will improve preparedness and reduce risk for the future. They should be prepared, at least, to meet the Sphere minimum standards during a future disaster.⁹⁵

For purposes of promoting timely and decisive response to humanitarian crises, local capacities must be strengthened.⁹⁶ While indigenous and local institutions are critical in initial responses to a humanitarian disaster, external aid at times is necessary especially in the case of a major calamity.⁹⁷ However, response to a humanitarian crisis requires that local capacities be strengthened for long term success. A humanitarian assistance project cannot be deemed to have succeeded where, despite a high survival rate, local medical staff and institutions are not equipped with independent capacity to respond to future calamities.⁹⁸ However, despite evidence of the necessity of incorporating local resources and skills in relief efforts, there are often

⁹³ Sphere Project, *Humanitarian Charter and Minimum Standards in Humanitarian Response* (3rd edn Sphere Project 2011) 6 <<http://www.sphereproject.org/resources/download-publications/?search=1&keywords=&language=English&category=22>> accessed 10 May 2013.

⁹⁴ Sphere Project, *Humanitarian Charter and Minimum Standards in Humanitarian Response* (3rd edn Sphere Project 2011) 6 <<http://www.sphereproject.org/resources/download-publications/?search=1&keywords=&language=English&category=22>> accessed 10 May 2013.

⁹⁵ Sphere Project, *Humanitarian Charter and Minimum Standards in Humanitarian Response* (3rd edn Sphere Project 2011) 10 <<http://www.sphereproject.org/resources/download-publications/?search=1&keywords=&language=English&category=22>> accessed 10 May 2013.

⁹⁶ Larry Minear, *The Humanitarian Enterprise: Dilemmas and Discoveries* (Kumarian Press, Bloomfield 2002) 65.

⁹⁷ Larry Minear, *The Humanitarian Enterprise: Dilemmas and Discoveries* (Kumarian Press, Bloomfield 2002) 70.

⁹⁸ Larry Minear, *The Humanitarian Enterprise: Dilemmas and Discoveries* (Kumarian Press, Bloomfield 2002) 70.

difficulties in effective integration of local participants in humanitarian activities of external agencies.⁹⁹ Even where local participants are integrated into humanitarian projects, ‘the relationship is more often one of patronage than partnership. For a local organization, the task is more often about following the instructions of others than about meeting its own objectives.’¹⁰⁰

Participation...cannot be equated with empowerment—taking part in flawed systems merely perpetuates existing patterns of injustice. In order to advance the common good, individuals must possess both the capacity to assess the strengths and weaknesses of existing social structures and the freedom to choose between participating in those structures, working to reform them, or endeavoring to build new ones.¹⁰¹

Community based approaches to the provision of relief provide an effective mechanism for the communication of needs and ideas in a ‘bottom up’ framework.¹⁰² Such an approach has the advantage of strengthening the capacity of the locally affected population to cope and adapt to crises. It strengthens existing local knowledge, enhances local resources, and refines the adaptive capacities of the community.¹⁰³ An example of a successful community based relief efforts was the housing reconstruction program in Aceh, Indonesia after the 2004 tsunami which centered on applying local expertise and decision making to identifying resource priorities.¹⁰⁴

Various strategies and methods have been postulated as a way of incorporating local participation in humanitarian activities, especially through community based forums. Such forums provide venues in which critical training and dissemination of technical knowledge on

⁹⁹ Ian Smillie, ‘Introduction’ in Ian Smillie (ed), *Patronage or Partnership: Local Capacity Building in Humanitarian Crises* (Kumarian Press, Bloomfield 2001) 1-5, 1.

¹⁰⁰ Ian Smillie, ‘Introduction’ in Ian Smillie (ed), *Patronage or Partnership: Local Capacity Building in Humanitarian Crises* (Kumarian Press, Bloomfield 2001) 1-5, 1.

¹⁰¹ Entire document found on BIC website --> <http://www.bic.org/statements/empowerment-mechanism-social-transformation>

¹⁰² Katrina M Allen, ‘Community-Based Disaster Preparedness and Climate Adaptation: Local Capacity Building in the Philippines’ (2006)30(1) *Disasters* 81–101, 83.

¹⁰³ Katrina M Allen, ‘Community-Based Disaster Preparedness and Climate Adaptation: Local Capacity Building in the Philippines’ (2006)30(1) *Disasters* 81–101, 83.

¹⁰⁴ Wolfgang Fengler and Homi Kharas, ‘Overview: Delivering Aid Differently’ in Wolfgang Fengler and Homi Kharas (eds), *Delivering Aid Differently: Lessons from the Field* (Brookings Institution, Washington DC 2010)1-41, 7.

disaster prevention and management is provided.¹⁰⁵ Forums can be organized to raise awareness of existing local hazards and risk factors.¹⁰⁶ In addition, local skills and resources can be mobilized through community-based forums, and strategies can be devised for strengthening local adaptation capacities.¹⁰⁷

Some suggestions have been put forward to strengthen local capacity in relief efforts.¹⁰⁸ Scholars have proposed that the “bidding war” among foreign organizations that inflates local salaries and drains leadership from indigenous institutions...’ must end.¹⁰⁹ Program strategy and coordination should include indigenous institutions as full partners¹¹⁰ and external actors should devise other informal ways to reach out to and incorporate local institutions and leaders.¹¹¹

In addition, external agencies should identify local social networks and community groups and build into the ‘community-based and self-help initiatives’ as a way of promoting local capacity.¹¹² Relief agencies should create mechanisms under which the beneficiaries of relief can provide feedback and influence the conduct of humanitarian activities by the creation of systems that are efficient and transparent.¹¹³ Meetings and discussions with beneficiaries of relief require balanced representation.¹¹⁴ The beneficiaries of humanitarian assistance should be provided with

¹⁰⁵ Katrina M Allen, ‘Community-Based Disaster Preparedness and Climate Adaptation: Local Capacity Building in the Philippines’ (2006)30(1) *Disasters* 81–101, 86.

¹⁰⁶ Katrina M Allen, ‘Community-Based Disaster Preparedness and Climate Adaptation: Local Capacity Building in the Philippines’ (2006)30(1) *Disasters* 81–101, 86.

¹⁰⁷ Katrina M Allen, ‘Community-Based Disaster Preparedness and Climate Adaptation: Local Capacity Building in the Philippines’ (2006)30(1) *Disasters* 81–101, 87.

¹⁰⁸ Larry Minear, *The Humanitarian Enterprise: Dilemmas and Discoveries* (Kumarian Press, Bloomfield 2002) 69.

¹⁰⁹ Larry Minear, *The Humanitarian Enterprise: Dilemmas and Discoveries* (Kumarian Press, Bloomfield 2002) 69.

¹¹⁰ Larry Minear, *The Humanitarian Enterprise: Dilemmas and Discoveries* (Kumarian Press, Bloomfield 2002) 69.

¹¹¹ Larry Minear, *The Humanitarian Enterprise: Dilemmas and Discoveries* (Kumarian Press, Bloomfield 2002) 69.

¹¹² Sphere Project, *Humanitarian Charter and Minimum Standards in Humanitarian Response* (3rd edn Sphere Project 2011) 55 <<http://www.sphereproject.org/resources/download-publications/?search=1&keywords=&language=English&category=22>> accessed 10 May 2013.

¹¹³ Sphere Project, *Humanitarian Charter and Minimum Standards in Humanitarian Response* (3rd edn Sphere Project 2011) 55 <<http://www.sphereproject.org/resources/download-publications/?search=1&keywords=&language=English&category=22>> accessed 10 May 2013.

¹¹⁴ Sphere Project, *Humanitarian Charter and Minimum Standards in Humanitarian Response* (3rd edn Sphere Project 2011) 55 <<http://www.sphereproject.org/resources/download-publications/?search=1&keywords=&language=English&category=22>> accessed 10 May 2013.

adequate information in a language and format that they understand.¹¹⁵ The information should include the activities and projects of the humanitarian agency, and its obligations to the affected community.¹¹⁶ The humanitarian agency should facilitate community meetings and information sharing sessions by assisting them access to appropriate and safe venues.¹¹⁷ Agencies should create a complaints systems that permits affected populations to lodge complaints in a safe and easy manner, and ensure that responses are provided and action taken in a timely and transparent way.¹¹⁸ As a way of promoting local economy and enhancing recovery by the community, efforts should be made to utilize, where possible, local labour and environmentally sustainable materials.¹¹⁹ Progressive local cultural and religious practices should be taken into account and humanitarian agencies should design programs that accommodate and uphold them.¹²⁰ As the humanitarian project progresses, there should be concerted efforts to increase the beneficiary community ownership of the various programs and their decision making power.¹²¹

Key indicators can be useful in evaluating whether local participation is present.¹²² Measures such as local capacity, feedback mechanisms, information sharing, accessible and safe spaces, right to complain, culturally appropriate practices and representative participation are among the

¹¹⁵ Sphere Project, *Humanitarian Charter and Minimum Standards in Humanitarian Response* (3rd edn Sphere Project 2011) 55 <<http://www.sphereproject.org/resources/download-publications/?search=1&keywords=&language=English&category=22>> accessed 10 May 2013.

¹¹⁶ Sphere Project, *Humanitarian Charter and Minimum Standards in Humanitarian Response* (3rd edn Sphere Project 2011) 55 <<http://www.sphereproject.org/resources/download-publications/?search=1&keywords=&language=English&category=22>> accessed 10 May 2013.

¹¹⁷ Sphere Project, *Humanitarian Charter and Minimum Standards in Humanitarian Response* (3rd edn Sphere Project 2011) 55 <<http://www.sphereproject.org/resources/download-publications/?search=1&keywords=&language=English&category=22>> accessed 10 May 2013.

¹¹⁸ Sphere Project, *Humanitarian Charter and Minimum Standards in Humanitarian Response* (3rd edn Sphere Project 2011) 55 <<http://www.sphereproject.org/resources/download-publications/?search=1&keywords=&language=English&category=22>> accessed 10 May 2013.

¹¹⁹ Sphere Project, *Humanitarian Charter and Minimum Standards in Humanitarian Response* (3rd edn Sphere Project 2011) 55 <<http://www.sphereproject.org/resources/download-publications/?search=1&keywords=&language=English&category=22>> accessed 10 May 2013.

¹²⁰ Sphere Project, *Humanitarian Charter and Minimum Standards in Humanitarian Response* (3rd edn Sphere Project 2011) 55 <<http://www.sphereproject.org/resources/download-publications/?search=1&keywords=&language=English&category=22>> accessed 10 May 2013.

¹²¹ Sphere Project, *Humanitarian Charter and Minimum Standards in Humanitarian Response* (3rd edn Sphere Project 2011) 56 <<http://www.sphereproject.org/resources/download-publications/?search=1&keywords=&language=English&category=22>> accessed 10 May 2013.

¹²² Sphere Project, *Humanitarian Charter and Minimum Standards in Humanitarian Response* (3rd edn Sphere Project 2011) 56 <<http://www.sphereproject.org/resources/download-publications/?search=1&keywords=&language=English&category=22>> accessed 10 May 2013.

indicators that can be tracked¹²³ with the aim of institutionalizing a culture of partnership between external and local participants in humanitarian relief.

¹²³ Sphere Project, *Humanitarian Charter and Minimum Standards in Humanitarian Response* (3rd edn Sphere Project 2011) 56-57. <<http://www.sphereproject.org/resources/download-publications/?search=1&keywords=&language=English&category=22>> accessed 10 May 2013.

Part III: Coordinating International and National Legal Frameworks of Accountability

There can be tensions between the objectives and activities of civil society organizations and those of the state government, leading to obstruction or suspicion of humanitarian activities. Minear cites the example of Mozambique where, in the mid of the 1990s there was evidence of donors, who, rather than promote a progressive and good relationship between the government agencies and civil society organizations, attempted to weaken the government.¹²⁴ The domestic government can respond to such ‘unwanted’ activities by resorting to measures intended to frustrate such agencies, and render the provision of humanitarian assistance virtually impossible. Some of the measures may include the adoption of legislation that restricts the activities of domestic and foreign civil society organizations, failure to guarantee the security of external humanitarian staff, visa and state entry restrictions, and excessive accountability and reporting requirements.

Partnership between states and civil society organizations is necessary for effective humanitarian assistance. As has been observed, state-civil society collaboration is essential, and the most effective relief efforts are characterized by strong governmental partnerships.¹²⁵ Civil society organizations have, in reality, multiple roles in times of humanitarian crisis, including acting as an avenue through which the needs and concerns of affected populations can be publicized. They can also act as an intermediary between state agencies and victims of disaster.¹²⁶ However, civil society organizations cannot perform the fundamental functions of the government, therefore, they should respect the role of the state and operate in a manner that does not antagonize government agencies, or undermine progressive state policies.

The Sphere Humanitarian Charter has the objective of promoting a progressive collaboration between state and non-state humanitarian agencies, in order to establish the requisite synergy that can promote effective and quality humanitarian assistance. In particular, the Humanitarian

¹²⁴ Larry Minear, *The Humanitarian Enterprise: Dilemmas and Discoveries* (Kumarian Press, Bloomfield 2002) 64.

¹²⁵ Rita Jalali, ‘Civil Society and the State: Turkey after the Earthquake’ (2002) 26(2) *Disasters* 120–139, 124.

¹²⁶ Rita Jalali, ‘Civil Society and the State: Turkey after the Earthquake’ (2002) 26(2) *Disasters* 120–139, 123.

Charter emphasizes the necessity of both ‘state and non-state actors to respect the impartial, independent and non-partisan role of humanitarian agencies and to facilitate their work by removing unnecessary legal and practical barriers, providing for their safety and allowing timely and consistent access to affected populations.’¹²⁷

In addition, the Humanitarian Charter makes some specific recommendations to governments of states affected by humanitarian crisis. First, it calls upon states to respect the impartial and independent activities of non-state humanitarian agencies.¹²⁸ Second, states are requested to facilitate timely humanitarian action by simplifying the procedures for issuance of entry, exit and transit visas.¹²⁹ Third, governments are requested to ensure timely flow of relief materials and information, without the application taxes, fees, licences *etc.*¹³⁰ Fourth, the Humanitarian Charter acknowledges that ultimately, the primary obligation to coordinate and plan relief efforts is the responsibility of the state, and therefore calls upon governments to provide planning services and coordinate disaster information effectively.¹³¹

As discussed, the Humanitarian Charter designates the primary role of co-ordination of humanitarian aid on the government,¹³² which forms the basis for sectorial and institutional collaboration. The Charter, however, recognizes that in circumstances where the state is the cause of the humanitarian crisis, or is unwilling or unable to provide coordination services, then

¹²⁷ Sphere Project, *Humanitarian Charter and Minimum Standards in Humanitarian Response* (3rd edn Sphere Project 2011) 21 <<http://www.sphereproject.org/resources/download-publications/?search=1&keywords=&language=English&category=22>> accessed 10 May 2013.

¹²⁸ Sphere Project, *Humanitarian Charter and Minimum Standards in Humanitarian Response* (3rd edn Sphere Project 2011) 373 <<http://www.sphereproject.org/resources/download-publications/?search=1&keywords=&language=English&category=22>> accessed 10 May 2013.

¹²⁹ Sphere Project, *Humanitarian Charter and Minimum Standards in Humanitarian Response* (3rd edn Sphere Project 2011) 373 <<http://www.sphereproject.org/resources/download-publications/?search=1&keywords=&language=English&category=22>> accessed 10 May 2013.

¹³⁰ Sphere Project, *Humanitarian Charter and Minimum Standards in Humanitarian Response* (3rd edn Sphere Project 2011) 373-374 <<http://www.sphereproject.org/resources/download-publications/?search=1&keywords=&language=English&category=22>> accessed 10 May 2013.

¹³¹ Sphere Project, *Humanitarian Charter and Minimum Standards in Humanitarian Response* (3rd edn Sphere Project 2011) 374 <<http://www.sphereproject.org/resources/download-publications/?search=1&keywords=&language=English&category=22>> accessed 10 May 2013.

¹³² Sphere Project, *Humanitarian Charter and Minimum Standards in Humanitarian Response* (3rd edn Sphere Project 2011) 60 <<http://www.sphereproject.org/resources/download-publications/?search=1&keywords=&language=English&category=22>> accessed 10 May 2013.

alternative mechanisms are necessary.¹³³ To fill that gap, the Charter proposes that humanitarian institutions can rely on the primary coordination services of a lead agency, in addition to seeking leadership from resourcefully endowed and acceptable intergovernmental organizations such as the United Nations.¹³⁴

With regard to the necessity of civil society organizations acting in a non-political and unbiased manner, the Humanitarian Charter generally deems agencies operating within its minimum standards as also acting under the principle of *impartiality*. In particular, civil society organizations are obligated to act in accordance with the principle of impartiality, which the Charter defines as comprising the responsibility to provide assistance solely on the basis of the intensity of the need.¹³⁵ In addition, the Charter links the principle of impartiality to that of non-discrimination, which requires that no victim of humanitarian disaster should be denied assistance on the basis of political views, social origin, nationality, race, gender *etc.*¹³⁶ In sum, a civil society organization that pushes for certain political agendas, or provides assistance in a discriminatory manner, is acting in a manner inconsistent with the Sphere Humanitarian Charter.

There is a distinction between the principle of neutrality and that of impartiality. Neutrality requires that agencies providing humanitarian assistance not favour any section of the population, such as providing support to one of the parties in an armed conflict situation.¹³⁷ In addition, the principle requires that humanitarian actors refrain from engaging in ideological,

¹³³ Sphere Project, *Humanitarian Charter and Minimum Standards in Humanitarian Response* (3rd edn Sphere Project 2011) 60 <<http://www.sphereproject.org/resources/download-publications/?search=1&keywords=&language=English&category=22>> accessed 10 May 2013.

¹³⁴ Sphere Project, *Humanitarian Charter and Minimum Standards in Humanitarian Response* (3rd edn Sphere Project 2011) 60 <<http://www.sphereproject.org/resources/download-publications/?search=1&keywords=&language=English&category=22>> accessed 10 May 2013.

¹³⁵ Sphere Project, *Humanitarian Charter and Minimum Standards in Humanitarian Response* (3rd edn Sphere Project 2011) 22 <<http://www.sphereproject.org/resources/download-publications/?search=1&keywords=&language=English&category=22>> accessed 10 May 2013.

¹³⁶ Sphere Project, *Humanitarian Charter and Minimum Standards in Humanitarian Response* (3rd edn Sphere Project 2011) 22 <<http://www.sphereproject.org/resources/download-publications/?search=1&keywords=&language=English&category=22>> accessed 10 May 2013.

¹³⁷ Neil Greet, 'ADF Experience on Humanitarian Operations: A New Idea?' *Security Challenges* (2008) 4(2) 45-61, 46; Office for the Coordination of Humanitarian Affairs, 'OCHA on Message: Humanitarian Principles' <https://ochanet.unocha.org/p/Documents/OOM-humanitarianprinciples_eng_June12.pdf> accessed 14 May 2013.

political, religious or racial disputes within the states in which they provide assistance.¹³⁸ On the other hand, the impartiality principle implies that there should be no distinction based on political views, nationality, race, class, religion, gender *etc* in the provision of humanitarian assistance.¹³⁹ Impartiality requires that humanitarian aid be provided solely on the basis of need, with the most serious cases being granted priority.¹⁴⁰

A semblance of the form of impartiality that the Humanitarian Charter outlines may be the approach that the International Federation of the Red Cross and United Nations agencies adopt. For instance, Chandler observes as follows with regard to relief efforts during the Yugoslavia humanitarian crisis at the turn of the 21st century:

In Serbia, European Union humanitarian aid programs operated on the highly selective basis of providing fuel and provisions to opposition-run municipalities while applying strict sanctions to the rest of the country. The UN Office for the Coordination of Humanitarian Affairs in Belgrade and the International Federation of the Red Cross challenged this approach by arguing that aid should be given on the basis of need and irrespective of political party affiliation.¹⁴¹

Throughout the Humanitarian Charter, despite silence on the principle of neutrality, the principle of impartiality and the various minimum standards limit the freedom of civil society organizations to make political choices. For instance, it limits the liberty of humanitarian agencies to do what has been referred to as making ‘judgements about what is right and just, about whose capacities are built, and which local groups are favored.’¹⁴² Therefore, Charter

¹³⁸ Fiona Fox, ‘New Humanitarianism: Does it Provide a Moral Banner for the 21st Century?’ (2001) 25(4) *Disasters* 275–289, 277; Office for the Coordination of Humanitarian Affairs, ‘OCHA on Message: Humanitarian Principles’ <https://ochanet.unocha.org/p/Documents/OOM-humanitarianprinciples_eng_June12.pdf> accessed 14 May 2013.

¹³⁹ Office for the Coordination of Humanitarian Affairs, ‘OCHA on Message: Humanitarian Principles’ <https://ochanet.unocha.org/p/Documents/OOM-humanitarianprinciples_eng_June12.pdf> accessed 14 May 2013.

¹⁴⁰ Office for the Coordination of Humanitarian Affairs, ‘OCHA on Message: Humanitarian Principles’ <https://ochanet.unocha.org/p/Documents/OOM-humanitarianprinciples_eng_June12.pdf> accessed 14 May 2013.

¹⁴¹ David G Chandler, ‘The Road to Military Humanitarianism: How the Human Rights NGOs Shaped a New Humanitarian Agenda’ (2001) 23(3) *Human Rights Quarterly* 678-700, 700.

¹⁴² David G Chandler, ‘The Road to Military Humanitarianism: How the Human Rights NGOs Shaped a New Humanitarian Agenda’ (2001) 23(3) *Human Rights Quarterly* 678-700, 700.

replaces the idea of humanitarian assistance as ‘a lever for strategic aims drawn up and acted upon by external agencies’ to that of ‘an expression of empathy with common humanity’ without any form of discrimination.¹⁴³

Conclusion: Coordinating Humanitarian Assistance and Institutional Collaboration

Humanitarian assistance involves institutional and sectorial co-operation, and requires coordination between international and local participants. For instance, humanitarian assistance during the 1998 Bangladeshi flooding crisis involved approximately ‘163 local, national and international NGOs who distributed relief items including food aid’ and other forms of assistance such as medication to about 2.4 million victims.¹⁴⁴ Due to the number of participants in the provision of humanitarian relief including state and non-state actors, coordination of assistance activities was problematic. For instance, China, India, Turkey, South Korea, the Americas, Brazil, Venezuela have all established large aid programs in recent years.¹⁴⁵ They are essentially becoming part of ‘a landscape that has already expanded to include thousands of international NGOs and perhaps hundreds of thousands of community-based and civil society organizations in developing countries themselves.’¹⁴⁶ Fengler and Kharas, while highlighting the problem of coordination of developmental aid, observe:

...developmental aid, because it is fragmented into small projects, is uncoordinated and unreliable. These characteristics lead to waste and inefficiency. But problems of poverty remain deep rooted, and many individuals, countries, and agencies are eager and willing to contribute to the task of global development. Bringing these new players into the existing aid architecture is a critical new task. Efforts to expand the traditional model of centrally planned aid do not seem to be

¹⁴³ David G Chandler, ‘The Road to Military Humanitarianism: How the Human Rights NGOs Shaped a New Humanitarian Agenda’ (2001) 23(3) *Human Rights Quarterly* 678-700, 700.

¹⁴⁴ Max R O’Donnell, Dimitri Bacos and Michael L Bennish, ‘Nutritional Response to the 1998 Bangladesh Flood Disaster: Sphere Minimum Standards in Disaster Response’ (2002) 26(3) *Disasters* 229–241, 230.

¹⁴⁵ Wolfgang Fengler and Homi Kharas, ‘Overview: Delivering Aid Differently’ in Wolfgang Fengler and Homi Kharas (eds), *Delivering Aid Differently: Lessons from the Field* (Brookings Institution, Washington DC 2010) 1-41, 6.

¹⁴⁶ Wolfgang Fengler and Homi Kharas, ‘Overview: Delivering Aid Differently’ in Wolfgang Fengler and Homi Kharas (eds), *Delivering Aid Differently: Lessons from the Field* (Brookings Institution, Washington DC 2010) 1-41, 6.

working, although some successes are evident. A new model is needed, with changes that are commensurate with the size of the problem.¹⁴⁷

Despite the challenges of collaboration and co-ordination, it has been observed that the obligation to promote and realize human rights creates, in a sense, a duty for international co-operation. This is due to the fact that:

The international human rights normative framework has all along recognised the universality of the obligation to help realise human rights. Although the State has the primary obligation to take appropriate steps towards realising the human rights of all those living within its jurisdiction, outsiders have an obligation too because it is humanity as a whole that has conferred human rights on each other.¹⁴⁸

In the preceding discussions, we have pointed out that the Sphere Charter requires the integration of local participants such as community groups in humanitarian assistance by external agencies. We have observed that the Sphere Charter provides a framework through which local participation may be transformed from patronage to partnership. In addition, we have discussed the Charter's focus on the host government as the bearer of the primary responsibility for ensuring coordination of humanitarian assistance.¹⁴⁹ That implies that the host government bears the primary responsibility to create an effective framework for collaboration between various institutions and agencies involved in humanitarian aid. However, the Charter still recognizes that in some circumstances, such as in situations where the host government is the author of the crisis, is unable or unwilling to provide co-ordination services, humanitarian agencies require

¹⁴⁷ Wolfgang Fengler and Homi Kharas, 'Overview: Delivering Aid Differently' in Wolfgang Fengler and Homi Kharas (eds), *Delivering Aid Differently: Lessons from the Field* (Brookings Institution, Washington DC 2010) 1-41, 39.

¹⁴⁸ Siddiqur Rahman Osmani, 'An Essay on the Human Rights Approach to Development' in Arjun Sengupta, Archana Negi and Moushumi Basu (eds), *Reflections on the Right to Development* (Sage Publications, New Delhi 2005) 110-126, 124.

¹⁴⁹ Sphere Project, *Humanitarian Charter and Minimum Standards in Humanitarian Response* (3rd edn Sphere Project 2011) 60 <<http://www.sphereproject.org/resources/download-publications/?search=1&keywords=&language=English&category=22>> accessed 10 May 2013.

alternative coordination mechanisms.¹⁵⁰ In such circumstances, the Charter implies that a lead agency can provide primary coordination services, while the United Nations, which has the benefit of resources and legitimacy, can also provide leadership.¹⁵¹

With regard to the primary role of the host government to provide coordination and planning services, an instructive illustration is the critical role that the Indonesian Government provided during the 2004 Indian Ocean tsunami. It has been observed that during and after the tsunami tragedy, donors from across the world provided billions of dollars to assist affected populations recover in locations such as the Province of Aceh.¹⁵² It has also been noted that the Indonesian Government effectively kept track of the various activities that were being undertaken by an approximated 500 agencies by establishing a novel coordinating institution.¹⁵³ The Government's 'coordination efforts helped identify gaps in funding, and a multiyear trust fund improved predictability of aid flows reaching the people of Aceh.'¹⁵⁴

The Sphere Charter provides a helpful model of self-regulation for guiding interagency collaboration and a widely recognized policy tool with regard to humanitarian guidelines and standards.¹⁵⁵ Subsequent revisions and improvements of the Sphere Humanitarian Charter Handbook, since its first publication in 2000, has been the result of broad consultation across

¹⁵⁰ Sphere Project, *Humanitarian Charter and Minimum Standards in Humanitarian Response* (3rd edn Sphere Project 2011) 60 <<http://www.sphereproject.org/resources/download-publications/?search=1&keywords=&language=English&category=22>> accessed 10 May 2013.

¹⁵¹ Sphere Project, *Humanitarian Charter and Minimum Standards in Humanitarian Response* (3rd edn Sphere Project 2011) 60 <<http://www.sphereproject.org/resources/download-publications/?search=1&keywords=&language=English&category=22>> accessed 10 May 2013.

¹⁵² Wolfgang Fengler and Homi Kharas, 'Overview: Delivering Aid Differently' in Wolfgang Fengler and Homi Kharas (eds), *Delivering Aid Differently: Lessons from the Field* (Brookings Institution, Washington DC 2010) 1-41, 2.

¹⁵³ Wolfgang Fengler and Homi Kharas, 'Overview: Delivering Aid Differently' in Wolfgang Fengler and Homi Kharas (eds), *Delivering Aid Differently: Lessons from the Field* (Brookings Institution, Washington DC 2010) 1-41, 2.

¹⁵⁴ Wolfgang Fengler and Homi Kharas, 'Overview: Delivering Aid Differently' in Wolfgang Fengler and Homi Kharas (eds), *Delivering Aid Differently: Lessons from the Field* (Brookings Institution, Washington DC 2010) 1-41, 2.

¹⁵⁵ Sphere Project, *Humanitarian Charter and Minimum Standards in Humanitarian Response* (3rd edn Sphere Project 2011) 5 <<http://www.sphereproject.org/resources/download-publications/?search=1&keywords=&language=English&category=22>> accessed 10 May 2013.

various sectors, which has involved various civil society organizations, United Nations institutions, individuals and other relevant agencies.¹⁵⁶

While there have been other mechanisms aimed at addressing the issue of co-ordination and collaboration in the provision of humanitarian relief including the 2005 Paris Declaration on Aid Effectiveness¹⁵⁷ which affirms the need for humanitarian donors to align their objectives with the host state's objectives, and to utilize its systems in the delivery of aid,¹⁵⁸ however, with regard to health and nutrition relief, it seems that the Sphere Humanitarian Charter provides the most comprehensive coordination mechanism that addresses the roles of both the host government and civil society organizations. This is due to the fact that it also includes, comprehensively, other relevant issues such as local participation and minimum standards in the provision of humanitarian assistance.

¹⁵⁶ Sphere Project, *Humanitarian Charter and Minimum Standards in Humanitarian Response* (3rd edn Sphere Project 2011) 5 <<http://www.sphereproject.org/resources/download-publications/?search=1&keywords=&language=English&category=22>> accessed 10 May 2013.

¹⁵⁷ Wolfgang Fengler and Homi Kharas, 'Overview: Delivering Aid Differently' in Wolfgang Fengler and Homi Kharas (eds), *Delivering Aid Differently: Lessons from the Field* (Brookings Institution, Washington DC 2010) 1-41, 20.

¹⁵⁸ Wolfgang Fengler and Homi Kharas, 'Overview: Delivering Aid Differently' in Wolfgang Fengler and Homi Kharas (eds), *Delivering Aid Differently: Lessons from the Field* (Brookings Institution, Washington DC 2010) 1-41, 20-21. See: Paris Declaration on Aid Effectiveness (2005) and the Accra Agenda for Action (2008) <<http://www.oecd.org/dac/effectiveness/43911948.pdf>> accessed 20 October 2013.

BIBLIOGRAPHY

TREATIES AND OTHER INTERNATIONAL INSTRUMENTS

- Food Assistance Convention, 'About FAC' http://www.foodassistanceconvention.org/en/about_fac/about.aspx accessed 10 May 2013.
- Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (First Geneva Convention) (adopted 12 August 1949) 75 UNTS 31.
- Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (Second Geneva Convention) (adopted 12 August 1949) 75 UNTS 85.
- Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention) (adopted 12 August 1949) 75 UNTS 287.
- Geneva Convention Relative to the Treatment of Prisoners of War (Third Geneva Convention) (adopted 12 August 1949) 75 UNTS 135.
- Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) (adopted 8 June 1977) 1125 UNTS 3.
- Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II) (adopted 8 June 1977) 1125 UNTS 609.

CASES

- Military and Paramilitary Activities in and against Nicaragua (Nicaragua v United States of America)* (Merits) [1986] ICJ Rep 14.
- North Sea Continental Shelf (Federal Republic of Germany v Denmark; Federal Republic of Germany v Netherlands)* (Judgment) [1969] ICJ Rep 3.

BOOKS

- Larry Minear, *The Humanitarian Enterprise: Dilemmas and Discoveries* (Kumarian Press, Bloomfield 2002).
- Michel van de Kerchove and François Ost, *Legal System between Order and Disorder* (Iain Stewart tr, Oxford University Press, Oxford 1994).

BOOK CHAPTERS

- Arjun Sengupta, 'On the Theory and Practice of the Right to Development' in Arjun Sengupta, Archana Negi and Moushumi Basu (eds), *Reflections on the Right to Development* (Sage Publications, New Delhi 2005) 61-109.
- Bard A Andreassen, 'Development and the Human Rights Responsibilities of Non-State Actors' in Bard A Andreassen and Stephen P Marks (eds), *Development as a Human Right: Legal, Political, and Economic Dimensions* (Harvard School of Public Health/Harvard University Press, Cambridge 2006) 119- 139.
- Ian Smillie, 'Capacity Building and the Humanitarian Enterprise' in Ian Smillie (ed), *Patronage or Partnership: Local Capacity Building in Humanitarian Crises* (Kumarian Press, Ottawa 2001) 7-23.
- Ian Smillie, 'Introduction' in Ian Smillie (ed), *Patronage or Partnership: Local Capacity Building in Humanitarian Crises* (Kumarian Press, Bloomfield 2001) 1-5.
- Jean Drèze, 'Democracy and the Right to Food' in Philip Alston and Mary Robinson (eds), *Human Rights and Development: Towards Mutual Reinforcement* (Oxford University Press, New York 2005) 45-64.
- Kathy Mangones, 'Alternative Food Aid Strategies and Local Capacity Building in Haiti' in Ian Smillie (ed), *Patronage or Partnership: Local Capacity Building in Humanitarian Crises* (Kumarian Press, Ottawa 2001) 51-76.
- Siddiqur Rahman Osmani, 'An Essay on the Human Rights Approach to Development' in Arjun Sengupta, Archana Negi and Moushumi Basu (eds), *Reflections on the Right to Development* (Sage Publications, New Delhi 2005) 110-126.
- Stephen P Marks, 'The Human Rights Framework for Development: Seven Approaches' in Arjun Sengupta, Archana Negi and Moushumi Basu (eds), *Reflections on the Right to Development* (Sage Publications, New Delhi 2005) 23-60.
- Varun Gauri, 'Social Rights and Economics: Claims to Health Care and Education in Developing Countries' in

- Philip Alston and Mary Robinson (eds), *Human Rights and Development: Towards Mutual Reinforcement* (Oxford University Press, New York 2005) 65 – 83.
- Wolf Heydebrand, 'From Globalisation of Law to Law under Globalisation' in David Nelken and Johannes Feest (eds), *Adapting Legal Cultures* (Hart Publishing, Oxford 2001) 117-137.
- Wolfgang Fengler and Homi Kharas, 'Overview: Delivering Aid Differently' in Wolfgang Fengler and Homi Kharas (eds), *Delivering Aid Differently: Lessons from the Field* (Brookings Institution, Washington DC 2010) 1-41.

JOURNAL ARTICLES

- Charlotte Dufour, Véronique de Geoffroy, Hugues Maury and François Grünewald, 'Rights, Standards and Quality in a Complex Humanitarian Space: Is Sphere the Right Tool?' (2004) 28(2) *Disasters* 124–141.
- David G Chandler, 'The Road to Military Humanitarianism: How the Human Rights NGOs Shaped a New Humanitarian Agenda' (2001) 23(3) *Human Rights Quarterly* 678-700.
- Emmanuel M Luna, 'Disaster Mitigation and Preparedness: The Case of NGOs in the Philippines' (2001) 25(3) *Disasters* 216–226.
- Fiona Fox, 'New Humanitarianism: Does it Provide a Moral Banner for the 21st Century?' (2001) 25(4) *Disasters* 275–289.
- Gareth Evans, 'From Humanitarian Intervention to the Responsibility to Protect' (2006) 24(3) *Wisconsin International Law Journal* 703-722.
- Jacqui Tong, 'Questionable Accountability: MSF and Sphere in 2003' (2004) 28(2) *Disasters* 176–189.
- Katrina M Allen, 'Community-Based Disaster Preparedness and Climate Adaptation: Local Capacity Building in the Philippines' (2006) 30(1) *Disasters* 81–101.
- Leonard Blazeby and David Fisher, 'Promoting International Humanitarian Law and International Disaster Response Laws, Rules and Principles within the Commonwealth' (2010) 36(4) *Commonwealth Law Bulletin* 709-715.
- Lola Gostelow, 'The Sphere Project: The Implications of Making Humanitarian Principles and Codes Work' (1999) *Disasters* 23(4) 316-325.
- Lotus McDougal and Jennifer Bear, 'Revisiting Sphere: New Standards of Service Delivery for New Trends in Protracted Displacement' (2011) 35(1) *Disasters* 87–101.
- Max R O'Donnell, Dimitri Bacos and Michael L Bennish, 'Nutritional Response to the 1998 Bangladesh Flood Disaster: Sphere Minimum Standards in Disaster Response' (2002) 26(3) *Disasters* 229–241.
- Neil Greet, 'ADF Experience on Humanitarian Operations: A New Idea?' *Security Challenges* (2008) 4(2) 45-61.
- Nicholas Banatvala and Anthony B Zwi, 'Public Health and Humanitarian Interventions: Developing the Evidence Base' (2000) 321 *British Medical Journal* 101–105.
- Peter Walker and Susan Purdin, 'Birthing Sphere' (2004) 28(2) *Disasters* 100 –111.
- Rebecca Barber, 'Facilitating Humanitarian Assistance in International Humanitarian and Human Rights Law' (2009) 91 (874) *International Review of the Red Cross* 371-397.
- Rita Jalali, 'Civil Society and the State: Turkey after the Earthquake' (2002) 26(2) *Disasters* 120–139.

OTHERS

- A Paganini, 'National Health Workers in Crises: A Neglected Asset' *World Health Organization* (2003) 18 *Health in Emergencies* 1.
- Humanitarian Accountability Partnership, 'About Us' <<http://www.hapinternational.org/who-we-are/about-us.aspx>> accessed 30 October 2013.
- Humanitarian Accountability Partnership, 'The History of HAP' <<http://www.hapinternational.org/who-we-are/about-us/the-history-of-hap.aspx>> accessed 30 October 2013.
- International Committee of the Red Cross, 'History of the ICRC' (29 October 2010) <<http://www.icrc.org/eng/who-we-are/history/overview-section-history-icrc.htm>> accessed 10 November 2013.
- Marci Van Dyke and Ronald Waldman, 'The Sphere Project Evaluation Report' *Mailman School of Public Health, Columbia University* (January 2004) 4
- Office for the Coordination of Humanitarian Affairs, 'OCHA on Message: Humanitarian Principles' <https://ochanet.unocha.org/p/Documents/OOM-humanitarianprinciples_eng_June12.pdf> accessed 14 May 2013.
- Sphere Project, 'Board Organizations' <<http://www.sphereproject.org/sphere/en/about/governance/board-member-organizations/>> accessed 22 October 2013.

Sphere Project, *Humanitarian Charter and Minimum Standards in Humanitarian Response* (3rd edn Sphere Project 2011) 4 <<http://www.sphereproject.org/resources/download-publications/?search=1&keywords=&language=English&category=22>> accessed 10 May 2013.