

# User Guidance and Commentary on the Humanitarian Charter

James Darcy

SphereProject.org/HumanitarianCharter

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By James Darcy \*

# Background: the rationale for the Humanitarian Charter

The Sphere Project represents an attempt by the operational agencies of the international humanitarian community to define common standards for the provision of assistance. The primary motivation behind the project was to enhance the quality and accountability of humanitarian assistance delivered by the international humanitarian system. But while the project has been largely concerned with the performance of humanitarian agencies, this has been accompanied from the beginning by a desire to locate their actions in a wider framework of roles and responsibilities. In other words, Sphere is not just a manual of humanitarian good practice: it is a statement about rights and duties. In many ways, Sphere could be described as a working out of the idea of the 'right to life with dignity' and a 'right to humanitarian assistance', an attempt to articulate the minimum content of these rights and their implications for humanitarian practice.

It is these aspects of Sphere that are covered by the Humanitarian Charter. It sets the role of humanitarian agencies in a wider framework of roles and responsibilities (see "Conceptual framework" below) and articulates the moral and legal basis for the standards that follow. It is based on the belief that the provision of international humanitarian assistance and protection is not simply a charitable act or an expression of solidarity, but an obligation whose origins lie in the principle of humanity and the related humanitarian imperative. We all share a moral duty to assist those affected by disaster and armed conflict, and that duty is reflected (though not always clearly stated) in national and international law and practice.

Ultimately, the Charter is a statement of shared belief by those humanitarian agencies that endorse Sphere. In committing themselves to minimum standards of assistance, agencies recognise that the achievement of those goals is likely to be contingent on a number of factors beyond their control — and for which they have no formal responsibility. But the Charter insists that the humanitarian imperative takes precedence and that in any given situation, the role of humanitarian agencies may be essential for the protection of life and dignity. So, while recognising that their role is by no means unique, the Charter insists on respect for the necessary humanitarian 'space' so that this role can be played effectively.

## **Conceptual framework for the Humanitarian Charter**

The role of humanitarian agencies has to be understood within a wider framework of social, political, legal and moral relationships. In formal, legal terms, this centres on the relationship between the crisis-

<sup>\*</sup> James Darcy was a focal point for the revision of the Humanitarian Charter. This paper was written in March 2011.

affected state and its people. This is partly a matter of the sovereign responsibilities of the state, partly a matter of established international law. But the Charter begins with the social ties that bind people together and cause them to assist their neighbours in times of crisis. The role of civil society institutions is often crucial in this, and the Charter argues that it is in the combination of voluntary and official action that people's best chance lies of receiving the assistance they need.

The role of international humanitarian agencies must be considered in the light of people's own capacities; the role of the relevant governing authorities in assisting them; and the relationship of rights and duties that exists between disaster victims and the governing authorities in a given context. The following diagram illustrates the basic conceptual framework on which both the original and the new Humanitarian Charter are based:



In formal (legal) rights terms, the primary relationship is that on the left-hand side between the individual rights holders and the state as the duty bearer. Those actors in the middle of the diagram above have 'supervening' responsibilities to protect and assist deriving from their mandates, agreements or legal instruments like the UN Charter, human rights instruments or international humanitarian law. The doctrine of state sovereignty means that in practice, almost all intervention by these bodies is at the request of or at least with the consent of the government of the state in question. International NGOs, for their part, have no formal rights or responsibilities in international law other than the right to offer assistance. The state has an obligation to provide humanitarian assistance – and if it cannot (or will not), it is obliged to allow others to do so. But ultimately, the basis for engagement by non-governmental agencies remains a moral rather than a legal one.

# Why the need for a revised Charter?

The basic concepts and quite a lot of the language from the original Charter are retained in the new Charter. The Charter was not revised at the time of the 2004 revision of Sphere, but for the 2011 version it was felt that the time had come to re-write it. There were a number of reasons for this. One was that the link between the Charter and the following Standards was not felt to be clear in the original version, and those links needed to be strengthened. Another was that the original version was felt to be a 'minimalist' text and perhaps too dense to be easily understandable. Many felt that the principles involved needed to be given more explanation.

Perhaps the main reason for wanting to revise the Charter was that thinking and practice (and in some respects the law) had developed somewhat in the intervening ten years, and that the 2011 revision presented an opportunity to capture what was believed to be the current consensus on humanitarian action. Over the past few years, greater emphasis has increasingly been placed on the role of the crisis-affected state and greater recognition has been given to the role of crisis-affected communities themselves as humanitarian actors. These views were shaped in particular by the Asian Tsunami of 2004, the Pakistan/Kashmir earthquake of 2005, Cyclone Nargis in Myanmar (2008), and the Szechuan earthquake in China (2008). With respect to conflict-related crises, the growing engagement of humanitarian agencies in the protection of civilians appeared to warrant a fuller account of the relevant legal frameworks. Likewise, the growing body of norms and practice around internally displaced people and the continuing concern with refugee protection deserved recognition.

The reference group established to review the need for a new Charter in the 2011 version of Sphere agreed that in the light of the factors above, a new draft was warranted. They also felt that the Charter, while being more closely linked to the Standards, should also be readable as a 'stand-alone' document. The new version has been drafted with this in mind.

#### What is new in the revised Charter?

The most significant change to the Charter lies in the fuller articulation of the moral and legal basis for humanitarian action and for the standards that followed. In essence this runs as follows:

On overarching 'moral duty':

*Principle of humanity => Humanitarian imperative* 

On 'moral and legal rights':

*Right to life with dignity => right to humanitarian assistance + right to protection and security* 

The Charter is based on both ethical and legal foundations. We take the moral principle of *humanity* (as defined in the text) to be both universally shared and universally applicable. We also take it to be the primary source and motive for humanitarian action, as also reflected in the 'Fundamental Principles' of the Red Cross and Red Crescent Movement which have been adapted by many others

for their own use. We take the principle of humanity to be more fundamental even than the international legal principles cited, which in many ways derive from it. This interplay between the legal and moral is a feature of the Charter, but we have tried to make the distinction between the two clearer in this draft as well as the connection between them. In particular, the text now reflects the fact that the Common Principles articulated in the Charter are not found as such in international law; they are based on an amalgam of legal and moral elements and have a strong basis in both. The document is in that sense aspirational and a statement of belief rather than a straightforward statement of legal norms.

Clearly it is important to distinguish between matters of moral belief and statements of law, and we have tried to do this more explicitly in the current draft. So why include the moral element? Because this remains the bedrock of humanitarianism. Agencies do not do what they do because the law demands it, and the norms governing the practice of states and their agents go beyond the purely legal. However, we believe that the Charter does not go beyond the realm of accepted moral and legal principles. Rather, it attempts to encapsulate a consensus around minimum moral and legal standards, providing a normative backdrop to the more practical minimum standards that follow.

One significant addition to this edition of the Charter as compared to the previous edition is the inclusion of a companion resource, 'Key Documents that Inform the Sphere Humanitarian Charter'. Previously, the Charter was followed by a one-page list of 'Sources' which were primarily international treaties. The drafters felt that this did not provide a sufficient resource for trainers, or for others who wanted to gain a better understanding of the legal and policy basis of the Charter. Also, given that the revision was aiming to take account of important policy and 'soft law' developments in the field of humanitarian action, as well as of new developments in international treaty law, it was felt that a more extensive list of documents would be more useful. Even so, this list was necessarily highly selective, and concentrated on the universal human rights and vulnerabilities most associated with disaster response, as well as significant documents representing a broad consensus amongst humanitarian actors, including both United Nations and humanitarian agencies.

#### Who is the 'we' that speaks through the Charter?

We have revised the first paragraph to make it clearer who is the subject of the Charter, namely 'we, the humanitarian agencies'. This is then further elaborated as 'local, national and international agencies', based on the understanding that Sphere is intended to be global in application and that its potential subscribers include local and national agencies as well as international ones. Some of those consulted argued for using the term *actor* rather than agency, but after consulting the Sphere Board, we retained the slightly narrower formulation *agency*. This is intended to cover those organisations which have *as a primary purpose* the provision of humanitarian assistance. On this basis, it could include governmental institutions and donor bodies (bilateral and multilateral) as well as UN and non-governmental agencies, but it would not include military or private sector actors who might undertake humanitarian assistance activities as an adjunct to their primary purpose. *Agency* is used here in both a specialised sense and in its more literal sense of 'working on behalf of another'.

Although 'we, the agencies' are the subject of the Charter (that is, the parties making the explicit commitment), the Common Principles are intended as a statement of universal principle to which all could and should subscribe.

#### On the use of key terms

Most of the changes we have made to terminology are relatively minor, but some are more significant. In particular, we have used 'conflict' rather than 'armed conflict', given the restricted definition of the latter in international humanitarian law that entails a certain threshold of violence and other conditions. The intention is to refer to any situation of violent conflict or forcible repression.

We have used of the term '(common) principles' to include all of the various legal and moral principles, including rights and duties. Some argued that it is confusing to use the term 'common principles' in this context and that it risks confusion with the 'fundamental principles' of the Red Cross referred to above. Here, it seems to us that using principles in a wider sense in the Charter is both necessary and justified. The Red Cross principles are for the most part principles of humanitarian action, intended to guide the actions and behaviour of specialised humanitarian agencies. These are of course very important, and the incorporation of the Code of Conduct into the Charter reflects this (many of the principles are contained in the Code). But there is a wider body of humanitarian principles that govern not what agencies do but the actions of states, non-state actors and indeed all members of society. These include the basic principles that underpin the Geneva Conventions such as requirement to observe the distinction between civilians and combatants and the prohibitions on the use of certain kinds of inhumane weapons. Not to include these within the ambit of 'humanitarian principles' (this is after all humanitarian law) seems to us to be a serious distortion. To do so would be to imply that humanitarian principles are solely about what we do as agencies, rather than about the wider rules governing decent human conduct. As we know, much of the need for humanitarian assistance and protection flows from the failure to observe these wider principles. Some of the basic tenets of human rights and refugee law fall in this same category, as does the moral principle of humanity and the humanitarian imperative that flows from it.

A second concern raised by some was that it was confusing to talk of common or core principles and then list a set of rights. In other words, they felt that 'principles' and 'rights' should be distinguished. Partly for the reasons given above, we don't agree. We understand *principles* to be the primary touchstones by which actions should be informed and judged. There is no reason why (say) the right to humanitarian assistance should not be such a principle. Indeed, given the rights basis of Sphere as a whole, it seems appropriate that the three core rights that are articulated in the Charter should head the list of principles.

We have used the term 'non-partisan' rather than 'neutral' in paragraph 3 (*We call upon all state and non-state actors to respect the impartial, independent and non-partisan role of humanitarian agencies...)*. This is in part because not everybody subscribes to the principle of neutrality, and because that principle has a number of different interpretations. The phrase 'non-partisan' echoes the usage in the Red Cross/NGO Code of Conduct and seems to us to encapsulate the non-contentious aspects of the concept of neutrality – i.e., that we will not take sides between warring parties.

## On the 'Our Commitment' section

This section has been substantially revised since the last version. In part, this is because of changes made to the Common Standards section. This part of the Charter, and in particular paragraph 13, is intended to lay the ground for the Common Standards as well as for the sectoral standards that follow. It involves a commitment to 'make every effort' to ensure that people affected by disasters and armed conflict have access to at least the minimum requirements for life with dignity and security. This is a necessary qualification, since clearly there may be limiting factors here beyond the control of agencies. That qualification applies throughout Sphere and particularly in relation to protection, where the ability of agencies to ensure the security of affected populations may be extremely limited and is likely to depend on their ability to influence others. On this point, see also the 'What is Sphere?' section.

# On the scope of the Charter

There were a number of topics that some felt should feature in the Charter but which have either not been included or given only passing reference. These include justice, disaster prevention, environment and civil-military issues. Some of these are covered elsewhere in Sphere, like civil-military relations (see Common Standards). Others, including justice and prevention, were felt to be beyond the ambit of Sphere. Further explanation of this is contained in the opening chapter of the Handbook ('What is Sphere?').

# On the implications of the Charter for practitioners

By its nature, the Charter is more a statement of principles than a guide to action. It sets the basis for the Protection Principles section that follows, as well as for the Core and Minimum Standards. It is intended as the foundation for any intervention on humanitarian grounds, and should help guide decisions about roles and responsibilities as well as providing a basis for humanitarian advocacy. It also provides the core statement of accountability for delivery against the Sphere Standards, although as with the earlier Charter, it does not spell out any particular accountability mechanism – in part because so little consensus exists on this issue. Nevertheless, taken with the Protection Principles and the Standards, it does provide a basis on which agencies can reasonably be held to account for their actions. As such it should be seen as *integral* to compliance with Sphere, not just an introductory chapter to the Standards.

With respect to advocacy, the content relating to the role of the state and of civil society – and the call to non-humanitarian actors to adopt the principles of the Charter – are intended in part to provide a basis for dialogue and consensus with a range of actors as to their respective roles and responsibilities. In that sense, it is intended to help locate international humanitarian action in a much wider frame of reference.