

# Challenges to implementation of humanitarian access norms in the Sahel

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## Abstract

*While the rules of international humanitarian law (IHL) on humanitarian access are clear, implementing them at the national level can become challenging. To ensure full respect for those rules, States must strike a balance between preserving the security of the civilian population and humanitarian organizations and ensuring that people have access to goods and services that enable the full enjoyment of their rights. This article seeks to show how the IHL rules governing humanitarian access apply in the context of the Sahel region of Africa. First, it describes the multiplicity of armed actors that are present in the Sahel and the humanitarian situation in this region. Next, it addresses the legal framework applicable to humanitarian access under IHL applicable in non-international armed conflicts. The article then examines the measures that have been taken by the States of the Sahel to protect the civilian population and humanitarian organizations, such as the resort to declaration of states of emergency and to armed escorts. It is shown that these measures can hinder the delivery of impartial humanitarian assistance. Finally, the article describes some creative solutions that have been put forward by Sahelian States to facilitate humanitarian access. Examples of these include the creation of coordination mechanisms to foster dialogue on humanitarian access where all concerned actors are invited to participate; the adoption of domestic legal*

\* The views expressed in this article do not necessarily reflect the point of view of the ICRC. The author would like to thank Jelena Nikolic, Nour Zaynab Assaf and Nicolas Von Arx for their valuable comments. This article was written when the author was Operational Legal Adviser at the Delegation of the ICRC in Niger. In memoriam Tanguy De Blauwe.

*frameworks related to humanitarian access through which this access is proclaimed and its violation sanctioned; and the recognition of humanitarian exemptions in counterterrorism laws.*

**Keywords:** humanitarian access, the Sahel, international humanitarian law, Kampala Convention, internally displaced persons, state of emergency, armed escorts, international human rights law, humanitarian assistance, humanitarian exemptions.

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## Introduction

From the objective and purpose of international humanitarian law (IHL), one may deduce that all parties to an armed conflict are under an obligation to ensure that the essential needs of the population in areas under their control are met.<sup>1</sup> Currently, it is particularly difficult to achieve this in the Sahel region of Africa, on account of factors that include a worsening of the humanitarian consequences of the armed conflicts in the region, the financial limitations of the region's countries, and logistical and geographical constraints. Climate change—the effects of which are being acutely felt in the Sahel—and the COVID-19 pandemic are exacerbating these difficulties.

States and armed groups must therefore allow neutral and impartial humanitarian actors to access areas where people are in need. However, the deteriorating security situation in the Sahel, together with the presence of large numbers of armed actors (State and non-State), is having a negative effect on basic public services for civilians, aid provision by humanitarian organizations, and the access and security of those organizations' staff.

The presence of multiple armed actors has saturated the Sahel and poses a real challenge for States and humanitarians aiming to help the civilian population deal with the consequences of armed conflict in the region—the exponential increase in the number of internally displaced persons (IDPs) and refugees being the most glaring example. The needs of the population are growing, and yet the humanitarian space seems to be shrinking.

This situation has led States to take measures to protect their territories, people and property, such as declaring a state of emergency or requiring humanitarian organizations to accept armed escorts. These measures have made it more difficult to apply the rules of IHL relating to humanitarian access—namely, the obligation to protect and respect personnel and objects used in humanitarian relief operations, access by victims of armed conflict to such relief, and the freedom of movement of humanitarian personnel.

1 International Committee of the Red Cross (ICRC), *International Humanitarian Law and the Challenges of Contemporary Armed Conflicts*, Geneva, 31 October 2015, p. 27, available at: [www.icrc.org/en/document/international-humanitarian-law-and-challenges-contemporary-armed-conflicts](http://www.icrc.org/en/document/international-humanitarian-law-and-challenges-contemporary-armed-conflicts) (all internet references were accessed in March 2022).

States in the Sahel region must therefore strike a balance between ensuring the protection of all those on their territory, on the one hand, and allowing free access for humanitarian aid, on the other. There is a need for pragmatic solutions that reconcile these two objectives.

This article seeks to show how the IHL rules governing humanitarian access apply in the context of the Sahel. From a description of the actors involved, we will see that there are a myriad of parties active in the region, including armed and security forces, non-State armed groups, and humanitarian and development agencies. This poses particular challenges regarding coordination between States and humanitarian organizations. We shall then describe the humanitarian situation in the region and review the legal regime relating to humanitarian access. Finally, we shall see that the legal responses of States can sometimes impede access and sometimes facilitate it, thus demonstrating the tensions and dilemmas that must be resolved regarding the preservation of security and the provision of humanitarian assistance to everyone in need.

## The multiplicity of armed actors in the Sahel

States have reacted to the proliferation of armed groups<sup>2</sup> in the Sahel<sup>3</sup> over the past decade by setting up military groupings to pool their forces and respond to the new security threat. The two main military groupings are the Multinational Joint Task Force, based on the armed forces of the States bordering the Lake Chad Basin,<sup>4</sup> and the G5 Sahel Joint Force,<sup>5</sup> composed of five Sahelian States. France has launched Operation Barkhane, with the aim of supporting the armed forces of the countries of the Sahel-Saharan strip and strengthening the coordination of international military resources.<sup>6</sup> Operation Barkhane and the G5 Sahel Joint

2 According to the European Council on Foreign Relations, there were sixteen armed groups in Mali in 2019. See Andrew Lebovich, “Mapping Armed Groups in the Sahel and Mali”, European Council on Foreign Relations, available at: [https://ecfr.eu/special/sahel\\_mapping#introduction](https://ecfr.eu/special/sahel_mapping#introduction). Some of these groups had the capacity to operate on the territory of several States at once, particularly in the tri-border region between Burkina Faso, Mali and Niger. A similar situation exists in the Lake Chad Basin region, where some armed groups have the capacity to conduct military operations on the territories of several States in the region, including Chad, Niger and Nigeria, plus Cameroon.

3 The “Sahel”, in the geographical sense, includes all the territory of the States that are crossed by the Sahel-Saharan strip, from Senegal to Eritrea. This article only examines humanitarian access in the Central Sahel zone, which covers parts of Burkina Faso, Mali and Niger, plus the Lake Chad Basin region, Chad and Nigeria.

4 Cameroon, Chad, Niger and Nigeria. This force was created by the member States of the Lake Chad Basin Commission. Benin is also contributing troops. The mandate of this force is authorized and renewed by the Peace and Security Council of the African Union. That mandate was renewed until 31 January 2022 by a communiqué of the Peace and Security Council of the African Union dated 18 January 2021 (Communiqué PSC/PR/COMM.(CMLXXIII)).

5 The G5 member States are Burkina Faso, Chad, Mauritania, Niger and Nigeria. The G5 Sahel was established by the Convention Establishing the G5 Sahel, signed in Nouakchott on 19 December 2014. The G5 Sahel Joint Force was established in 2017.

6 Operation Barkhane was launched on 1 August 2014. It covers all the member States of the G5 Sahel, but France has announced that it will withdraw progressively from the territory of Mali in 2022. See Ministère

Force have set up a joint command centre to further the latter aim.<sup>7</sup> In a political declaration dated 27 March 2020, a number of European States created the Takuba Task Force, composed of special forces personnel, which was to be placed under the command of the operational commander of Operation Barkhane.<sup>8</sup> This increased European military presence and closer coordination with the G5 Sahel Joint Force was decided at the Pau Summit,<sup>9</sup> held on 13 January 2020, which brought together the heads of State of the G5 Sahel member countries plus France. This summit also led to the establishment of the Sahel Coalition, which aims to strengthen strategic and political cooperation in the region between all European Union (EU) member States and those of the G5 Sahel.<sup>10</sup> Other political alliances have emerged to contribute to the stabilization and development of the Sahel region, including the Sahel Alliance and the Security and Stability Partnership in the Sahel.<sup>11</sup>

The United Nations Multidimensional Integrated Stabilization Mission in Mali (MINUSMA), established by United Nations (UN) Security Council Resolution 2100, has been operating in the country since 2013.<sup>12</sup> MINUSMA is supporting the G5 Sahel Joint Force by providing logistical and financial support in several areas.<sup>13</sup> European States and the United States also have national contingents in the Sahelian States; the role of these contingents is to provide training and equipment to the defence and security forces of the region's

des Armées, "Opération Barkhane", available at: [www.defense.gouv.fr/operations/bande-sahelo-saharienne/operation-barkhane](http://www.defense.gouv.fr/operations/bande-sahelo-saharienne/operation-barkhane).

- 7 État-Major des Armées, "Barkhane: Le Mécanisme de Commandement Conjoint, pierre angulaire de la coordination entre la force conjointe du G5 Sahel et la force Barkhane", 4 June 2020, available at: <https://archives.defense.gouv.fr/operations/afrique/bande-sahelo-saharienne/operation-barkhane/brevets/barkhane-le-mecanisme-de-commandement-conjoint-pierre-angulaire-de-la-coordination-entre-la-force-conjointe-du-g5-sahel-et-la-force-barkhane>.
- 8 Government of Sweden *et al.*, "Task Force *Takuba*: Political Statement by the Governments of Belgium, the Czech Republic, Denmark, Estonia, France, Germany, Mali, Niger, the Netherlands, Norway, Portugal, Sweden and the United Kingdom", available at: [www.government.se/495ef1/globalassets/government/dokument/forsvarsdepartementet/2020/political-statement-task-force-takuba.pdf](http://www.government.se/495ef1/globalassets/government/dokument/forsvarsdepartementet/2020/political-statement-task-force-takuba.pdf).
- 9 Pau Summit, "Déclaration conjointe des Chefs d'État", 13 January 2020, available at: [www.elysee.fr/emmanuel-macron/2020/01/13/sommet-de-pau-declaration-conjointe-des-chefs-detat](http://www.elysee.fr/emmanuel-macron/2020/01/13/sommet-de-pau-declaration-conjointe-des-chefs-detat). The Pau Summit was followed by the Nouakchott Summit of 30 June 2020, at which the six heads of State met to take stock of the roadmap agreed upon at the Pau Summit. Nouakchott Summit, "Communiqué final du sommet de Nouakchott pour le suivi de la feuille de route de Pau", 30 June 2020, available at: [www.g5sahel.org/communiqué-final-du-sommet-de-nouakchott-pour-le-suivi-de-la-feuille-de-route-du-sommet-de-pau/](http://www.g5sahel.org/communiqué-final-du-sommet-de-nouakchott-pour-le-suivi-de-la-feuille-de-route-du-sommet-de-pau/).
- 10 The Sahel Coalition aims to combat armed terrorist groups, strengthen the capacity of the armed forces of the States in the region, support the return of the State and administrations to the territory, and assist in development. See European Council, "Joint Declaration of the Members of the European Council with the Member States of the G5 Sahel", 28 April 2020, available at: [www.consilium.europa.eu/en/press/press-releases/2020/04/28/joint-declaration-of-the-members-of-the-european-council-with-the-member-states-of-the-g5-sahel/](http://www.consilium.europa.eu/en/press/press-releases/2020/04/28/joint-declaration-of-the-members-of-the-european-council-with-the-member-states-of-the-g5-sahel/).
- 11 European Council, "Sahel Partnership Action Plan", 2019, available at: [www.consilium.europa.eu/media/40533/sahel-partnership-action-plan.pdf](http://www.consilium.europa.eu/media/40533/sahel-partnership-action-plan.pdf).
- 12 UNSC Res. 2100, 25 April 2013, available at: <http://unscr.com/en/resolutions/2100>.
- 13 *Joint Force of the Group of Five for the Sahel: Report of the Secretary-General*, UN Doc. S/2020/1074, 2 November 2020, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N20/286/22/pdf/N2028622.pdf>.

countries.<sup>14</sup> The EU has three military and security cooperation missions, two in Mali and one in Niger.<sup>15</sup> Their mandate is to enhance the capacity of the armed and security forces of these two countries and the G5 Sahel Joint Force. Some authors have used the expression “security bottleneck”<sup>16</sup> to describe the proliferation of foreign armed and security forces in the Sahel. In 2019 there were 35,823 military, police and civilian personnel participating in national and multinational external and counterterrorism operations in the Sahel and Lake Chad region, according to the Stockholm International Peace Research Institute (SIPRI).<sup>17</sup> At the end of 2020, the possibility of deploying the Economic Community of West African States (ECOWAS) Stand-By Force to the Sahel had been under consideration for several months.<sup>18</sup>

The proliferation of armed groups in the Sahel is linked to several factors, such as the struggles of independence movements in northern Mali and the situation in Libya. But there is also the interaction between these factors and other complex phenomena such as tensions between nomadic herding communities and sedentary farmers, particularly in the tri-border region between Burkina Faso, Mali and Niger.<sup>19</sup> Some of these groups are calling for an independent Tuareg State in northern Mali, while others are more influenced by pan-Islamic movements and claim to be part of either Al-Qaeda or the so-called Islamic State group.<sup>20</sup> Such

- 14 According to the Belgian Ministry of Defence, there was a contingent of about 100 Belgian soldiers in Niger in 2020, whose mission was to train the defence and security forces of Niger. See Belgian Ministry of Defence, “Notre mission: Niger”, available at: [www.mil.be/fr/nos-missions/niger/](http://www.mil.be/fr/nos-missions/niger/). Italy has also set up a military mission to support the armed and security forces in Niger (MISIN), and Germany was present in several Sahelian countries. See Bernardo Venturi and Nana Alassane Toure, *Out of the Security Deadlock: Challenges and Choices in the Sahel*, 8 June 2020, pp. 24–25, available at: [www.iai.it/en/publicazioni/out-security-deadlock-challenges-and-choices-sahel](http://www.iai.it/en/publicazioni/out-security-deadlock-challenges-and-choices-sahel). The United States completed construction of an air base in Agadez, Niger, in 2020.
- 15 The European Union Training Mission in Mali (EUTM) is a training mission for the Malian armed forces, established in 2013 as part of the EU’s Common Security and Defence Policy. See EUTM, “Factsheet”, available at: <https://eutmmali.eu/factsheet/>. The European Union Capacity Mission (EUCAP) Sahel Mali is a civilian mission of the EU that was launched in 2015 to support the Malian security forces (police, gendarmerie and national guard). See EUCAP Sahel Mali, “About EUCAP Sahel Mali”, available at: [www.eeas.europa.eu/node/410662\\_fr?s=331#10107](http://www.eeas.europa.eu/node/410662_fr?s=331#10107). EUCAP Sahel Niger is an EU civilian mission created in 2012 to support Niger in the fight against terrorism and organized crime. See EUCAP Sahel Niger, “Partnership for Security in the Sahel”, fact sheet, available at: <https://eucap-sahel.eu/wp-content/uploads/2020/10/EUCAP-Sahel-Niger-Factsheet-EN-low-resolution.pdf>.
- 16 International Crisis Group, *Finding the Right Role for the G5 Sahel Joint Force*, Africa Report No. 258, 12 December 2017, available at: [www.crisisgroup.org/africa/west-africa/burkina-faso/258-force-du-g5-sahel-trouver-sa-place-dans-lembouteillage-securitaire](http://www.crisisgroup.org/africa/west-africa/burkina-faso/258-force-du-g5-sahel-trouver-sa-place-dans-lembouteillage-securitaire).
- 17 SIPRI, *SIPRI Yearbook 2020: Armaments, Disarmament and International Security*, 2020.
- 18 ECOWAS, “Communiqué final de la session extraordinaire de la Conférence des Chefs d’État et de Gouvernement sur le Terrorisme”, Ouagadougou, 14 September 2019, available at: <https://ecowas.int/communique-final-de-la-session-extraordinaire-de-la-conference-des-chefs-detat-et-de-gouvernement-de-la-communauté-economique-des-etats-de-lafrique-de-louest-cedeao-sur-le/?lang=fr>.
- 19 On the historical evolution of the various rebellions in Mali and Niger and the peace initiatives that are under way, see Yvan Guichaoua and Matthieu Pellerin, *Making Peace, Building the State: Relations between Central Government and the Sahelian Peripheries in Niger and Mali*, Études de l’IRSEM No. 51, March 2018, available at: [www.irsem.fr/data/files/irsem/documents/document/file/2442/Etude\\_IRSEM\\_n51\\_2018.pdf](http://www.irsem.fr/data/files/irsem/documents/document/file/2442/Etude_IRSEM_n51_2018.pdf).
- 20 On the various alliances between these groups and their affiliation with Al-Qaeda or the Islamic State group, see Matthieu Pellerin, *Armed Violence in the Sahara: Are We Moving From Jihadism to*

groups include the National Movement for the Liberation of Azawad, the Movement for the Salvation of Azawad, the Imghad Tuareg Self-Defence Group and Allies, the Movement for Oneness and Jihad in West Africa, Ansar Dine, the Support Group for Islam and Muslims, Al-Qaeda in the Islamic Maghreb, Islamic State in the Greater Sahara, and Ansar ul Islam.<sup>21</sup> Various splinter groups from the Group of the People of Sunnah for Preaching and Jihad<sup>22</sup> are operating or exercising an influence in the Sahelian part of the Lake Chad Basin region.

Armed conflicts in the central Sahel and the Sahelian part of the Lake Chad region involve protracted fighting between States and armed groups and are usually regional.<sup>23</sup> These conflicts are taking place on the territories of multiple States, which are fighting those groups—generally together.<sup>24</sup> Some armed conflicts involve armed groups fighting each other. These armed groups may also join forces to fight against certain States or other armed groups and hence satisfy the criteria for non-international armed conflicts regarding intensity of violence.<sup>25</sup> Such groups have demonstrated their ability to organize themselves and to conduct military operations on the territories of several States at once. Thus, these conflicts all meet the criteria set out in international law for non-international armed conflicts—that armed groups be sufficiently organized and that they engage in protracted confrontations that reach a minimum threshold of intensity, either against States or among themselves.<sup>26</sup>

*Insurgency?*, Études de l'IFRI, November 2019, available at: [www.ifri.org/en/publications/etudes-de-lifri/armed-violence-sahara-are-we-moving-jihadism-insurgency](http://www.ifri.org/en/publications/etudes-de-lifri/armed-violence-sahara-are-we-moving-jihadism-insurgency).

- 21 On the emergence of these groups in Mali and the expansion of their actions to the Liptako Gourma region, see International Crisis Group, *The Niger-Mali Border: Subordinating Military Action to a Political Strategy*, Africa Report No. 261, 12 June 2018, available at: [www.crisisgroup.org/africa/west-africa/mali/261-frontiere-niger-mali-mettre-loutil-militaire-au-service-dune-approche-politique](http://www.crisisgroup.org/africa/west-africa/mali/261-frontiere-niger-mali-mettre-loutil-militaire-au-service-dune-approche-politique).
- 22 This is a translation of the Arabic name of the group Jama'atu Ahlis-Sunnah'awati Wal Jihad, also commonly known as Boko Haram—a name rejected by the group itself. On the emergence of this group, see Marc-Antoine Pérouse de Montclos, *L'Afrique: Nouvelle frontière du djihad?*, La Découverte, Paris, 2018.
- 23 The existence of armed conflict in the Sahel has been affirmed in several recent UN reports: *Children and Armed Conflict: Report of the Secretary-General*, UN Doc. A/74/845–S/2020/525, 9 June 2020, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N20/117/04/pdf/N2011704.pdf>; *Children and Armed Conflict in Mali: Report of the Secretary-General*, UN Doc. S/2020/1105, 11 November 2020, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N20/307/85/pdf/N2030785.pdf>. The Geneva Academy of International Humanitarian Law and Human Rights has set up a portal to provide an independent and impartial classification of armed conflicts in the world. See its evaluation of the situations of violence in Burkina Faso, Chad, Mali and Niger, available at: [www.rulac.org](http://www.rulac.org).
- 24 The UN Secretary-General noted in his report on children in armed conflict in Nigeria that “[r]egions in countries bordering north-east Nigeria, namely the Far North Region of Cameroon, the Diffa Region of the Niger and the Lac Province of Chad, were also affected by persistent armed assaults by the armed group” see *Children and Armed Conflict in Nigeria: Report of the Secretary-General*, UN Doc. S/2020/652, 6 July 2020, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N20/172/67/pdf/N2017267.pdf>.
- 25 According to a recent interpretation, military action by multiple armed groups fighting together against a common adversary can be aggregated and thus reach the threshold of intensity required to classify a situation of violence as a non-international armed conflict. See Jelena Nikolic, Thomas de Saint Maurice and Tristan Ferraro, “Aggregated Intensity: Classifying Coalitions of Non-State Armed Groups”, *Humanitarian Law and Policy Blog*, 7 October 2020, available at: <https://blogs.icrc.org/law-and-policy/2020/10/07/aggregated-intensity-classifying-coalitions-non-state-armed-groups/>.
- 26 The ICRC defines non-international armed conflict as follows: “Non-international armed conflicts are protracted armed confrontations occurring between governmental armed forces and the forces of one or more armed groups, or between such groups arising on the territory of a State [party to the Geneva

The participation of State and non-State actors in acts of collective violence, or their mere presence in the Sahel, does not automatically make them a party to an armed conflict. To conclude that a non-international armed conflict exists, one must verify in each case that the above two conditions posed by IHL are satisfied. The International Committee of the Red Cross (ICRC) carries out this exercise, analyzing each situation of violence on a case-by-case basis. This allows it to identify the legal basis on which it will base its efforts to protect and assist those in need of its humanitarian action. The ICRC communicates its assessment of the situation bilaterally and confidentially to the parties to the conflict, but it may also decide not to do so, if that would be in the interests of the victims of a conflict.<sup>27</sup> Finally, the organization may decide to communicate publicly on a particular situation.<sup>28</sup>

## The humanitarian situation in the Sahel

Armed conflicts have severely affected civilians in certain countries of the Sahel. A Ministerial Roundtable on the Central Sahel, held in Copenhagen on 20 October 2020 and organized by Denmark, Germany, the EU and the UN, concluded that

Africa's Central Sahel is among the world's fastest growing humanitarian crises. The scale and severity of humanitarian needs in the three countries are unprecedented, with 13.4 million people affected by forced displacement, food insecurity and reduced access to essential basic services.<sup>29</sup>

The UN Office for the Coordination of Humanitarian Affairs (OCHA) estimated that the number of IDPs in the Central Sahel region rose from 70,000 to 1.6 million between 2018 and 2020.<sup>30</sup> Food insecurity was affecting 7.4 million.<sup>31</sup> The worsening situation of the civilian population was also having a major impact in

Conventions]. This armed confrontation must reach a minimum level of *intensity* and the parties involved in the conflict must show a *minimum of organisation*". See ICRC, *How Is the Term "Armed Conflict" Defined in International Humanitarian Law?*, Geneva, 17 March 2008, available at: [www.icrc.org/en/doc/resources/documents/article/other/armed-conflict-article-170308.htm](http://www.icrc.org/en/doc/resources/documents/article/other/armed-conflict-article-170308.htm) (emphasis in original).

- 27 Sylvain Vité, "Typology of Armed Conflicts in International Humanitarian Law: Legal Concepts and Actual Situations", *International Review of the Red Cross*, Vol. 91, No. 876, 2009, available at: <https://international-review.icrc.org/articles/typology-armed-conflicts-international-humanitarian-law-legal-concepts-and-actual>. See also ICRC, "Internal Conflicts or Other Situations of Violence – What is the Difference for Victims?", 10 December 2012, available at: [www.icrc.org/en/doc/resources/documents/interview/2012/12-10-niac-non-international-armed-conflict.htm](http://www.icrc.org/en/doc/resources/documents/interview/2012/12-10-niac-non-international-armed-conflict.htm).
- 28 For a recent example, see ICRC, "Colombia: Five Armed Conflicts – What's Happening?", 30 January 2019, available at: [www.icrc.org/en/document/colombia-five-armed-conflicts-whats-happening](http://www.icrc.org/en/document/colombia-five-armed-conflicts-whats-happening).
- 29 The three countries concerned are Burkina Faso, Mali and Niger. UN Office for the Coordination of Humanitarian Affairs (OCHA), "Virtual Ministerial Roundtable on the Humanitarian Crisis in the Central Sahel: Co-Chairs' Summary", available at: [www.unocha.org/sites/unocha/files/Central%20Sahel%20Ministerial%20Round%20Table%20-%20Co-chairs%20summary\\_Final.pdf](http://www.unocha.org/sites/unocha/files/Central%20Sahel%20Ministerial%20Round%20Table%20-%20Co-chairs%20summary_Final.pdf).
- 30 OCHA, "Central Sahel Crisis: Key Figures as of 15 October 2020", 15 October 2020, available at: [www.unocha.org/sites/unocha/files/Central%20Sahel%20facts\\_figures\\_20201015.pdf](http://www.unocha.org/sites/unocha/files/Central%20Sahel%20facts_figures_20201015.pdf).
- 31 See the document prepared by OCHA for the ministerial round table on the Central Sahel: OCHA, *Central Sahel: Revised Needs and Requirement Overview*, October 2020, available at: [www.unocha.org/sites/unocha/files/RNRO%20CentralSahel%20Oct%202020\\_EN%20Web.pdf](http://www.unocha.org/sites/unocha/files/RNRO%20CentralSahel%20Oct%202020_EN%20Web.pdf).



the Sahelian part of the Lake Chad Basin region, where some 2.7 million people had fled their homes, including 2.4 million IDPs and 292,000 Nigerian refugees.<sup>32</sup> These population displacements were closely linked to increased hostilities between armed groups and between armed groups and State armed and security forces. These armed conflicts are said to have claimed the lives of several thousand people among the defence and security forces, armed groups and the civilian population.<sup>33</sup> According to the UN Office for West Africa and the Sahel, more than 4,000 deaths from violence were reported in 2019, up from 770 deaths in 2016.<sup>34</sup> At least 4,660 people died in the Central Sahel during the first half of 2020, according to an estimate by the Armed Conflict Location and Event Data Project.<sup>35</sup>

One of the many consequences of the increase in violence is that access to education for children has been severely affected. For example, attacks on schools and teachers are reported to have resulted in the closure of more than 4,000 schools in the Central Sahel between 2016 and 2020.<sup>36</sup> Children are also subject to recruitment by armed actors.<sup>37</sup>

In addition to the humanitarian consequences of armed conflict, the Sahel is experiencing the effects of climate change, forming what the ICRC has described as an “explosive mix”.<sup>38</sup> In a 2020 report addressing the combined effects of armed conflict, climate and environmental crisis, the ICRC concluded that “[c]ountries in situations of armed conflict are disproportionately affected by climate variability and extremes. This is in part because of their geographical location, but mostly because conflicts and their consequences limit the adaptive capacity of people, systems and institutions.”<sup>39</sup>

The civilian populations of the Sahel region are suffering from the consequences and cumulative effects of armed conflict and climate change, the

32 *Activities of the United Nations Office for West Africa and the Sahel: Report of the Secretary-General*, UN Doc. S/2020/585, 24 June 2020, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N20/151/70/pdf/N2015170.pdf?OpenElement>.

33 The UN Secretary-General noted in a report to the Security Council that armed groups had attacked the armed and security forces in Burkina Faso, Chad, Mali and Niger. See *Joint Force of the Group of Five for the Sahel: Report of the Secretary-General*, UN Doc. S/2020/373, 8 May 2020, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N20/107/01/pdf/N2010701.pdf>.

34 “‘Unprecedented Terrorist Violence’ in West Africa, Sahel Region”, *UN News*, 8 January 2020, available at: <https://news.un.org/en/story/2020/01/1054981>.

35 ICRC, “Central Sahel: Spike in Violence Leads to Higher Deaths, More than 1 Million Fleeing Homes”, 14 September 2020, available at: [www.icrc.org/en/document/central-sahel-spike-violence-leads-higher-deaths-more-1-million-fleeing-homes](http://www.icrc.org/en/document/central-sahel-spike-violence-leads-higher-deaths-more-1-million-fleeing-homes).

36 UNICEF, *The Crisis in Central Sahel: Advocacy Brief*, October 2020, available at: [www.unicef.org/wca/reports/central-sahel-crisis](http://www.unicef.org/wca/reports/central-sahel-crisis).

37 *Children and Armed Conflict in Mali*, above note 23. Another report by the Secretary-General mentions recruitment of children by armed groups in Cameroon, Chad, Nigeria and Niger. See *Children and Armed Conflict in Nigeria*, above note 24.

38 ICRC, “Mali-Niger: Climate Change and Conflict Make an Explosive Mix in the Sahel”, 22 January 2019, available at: [www.icrc.org/en/document/mali-niger-climate-change-and-conflict-make-explosive-mix-sahel](http://www.icrc.org/en/document/mali-niger-climate-change-and-conflict-make-explosive-mix-sahel).

39 ICRC, *When Rain Turns to Dust: Understanding and Responding to the Combined Impact of Armed Conflicts and the Climate and Environment Crisis on People’s Lives*, Geneva, 2020, p. 8, available at: <https://shop.icrc.org/when-rain-turns-to-dust-pdf-en.html>.



latter being particularly pronounced in that region, with temperatures rising one and a half times faster than in the rest of the world.<sup>40</sup> Apart from the direct links between climate change and armed conflict, other forms of confrontation also have an impact on the natural environment. Tensions have been noted in the Sahel between different communities, especially sedentary farmers and nomadic herders, regarding the use of land.<sup>41</sup> The arrival of the COVID-19 pandemic in March 2020 exacerbated this already very difficult situation, resulting in a “triple crisis”.<sup>42</sup>

## The legal framework applicable to humanitarian access in non-international armed conflicts

The above description of the effects of non-international armed conflicts in the Sahel shows the need to provide humanitarian aid for the victims of these conflicts and for the civilian population in general.<sup>43</sup> The rules of IHL relating to humanitarian assistance and humanitarian access in this type of armed conflict are therefore applicable. Although IHL contains no explicit, specific provisions regarding the obligation to ensure the well-being of the population, except in situations of occupation,<sup>44</sup> the ICRC considers that the obligation to meet the basic needs of the population can be inferred from the object and purpose of IHL.<sup>45</sup> In addition, many treaty and customary provisions refer to specific obligations on all parties to a conflict – both States and armed groups – to respond to the need for humanitarian assistance and to provide relief to the victims of such conflicts, including the wounded, the sick, detainees and the affected population in general.<sup>46</sup> If parties to an armed conflict are materially

40 As early as 2010, the Organisation for Economic Co-operation and Development predicted that the Sahel would experience a very significant rise in temperature of between 3 and 4 degrees depending on the region: “the greatest warming (~4 degrees) occurs over land and in particular in the western side of the Sahel”. Philipp Heinrigs, *Security Implications of Climate Change in the Sahel Region: Policy Considerations*, Sahel and West Africa Club Secretariat, 2010, p. 13, available at: [www.oecd.org/swac/publications/swacpublicationsanddocumentsbytopic.htm](http://www.oecd.org/swac/publications/swacpublicationsanddocumentsbytopic.htm).

41 International Crisis Group, *The Central Sahel: Scene of New Climate Wars?*, Africa Briefing No. 154, 24 April 2020, available at: [www.crisisgroup.org/africa/sahel/b154-le-sahel-central-theatre-des-nouvelles-guerres-climatiques](http://www.crisisgroup.org/africa/sahel/b154-le-sahel-central-theatre-des-nouvelles-guerres-climatiques).

42 ICRC, “Niger: Vivre entre insécurité, changement climatique et Covid-19”, 10 September 2020, available at: [www.icrc.org/fr/document/niger-vivre-entre-insecurite-changement-climatique-et-covid-19](http://www.icrc.org/fr/document/niger-vivre-entre-insecurite-changement-climatique-et-covid-19).

43 Jean-Marie Henckaerts and Louise Doswald-Beck (eds), *Customary International Humanitarian Law*, Vol. 1: *Rules*, Cambridge University Press, Cambridge, 2005 (ICRC Customary Law Study), available at: [https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1\\_rul](https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul). For a detailed description of the regime applicable to humanitarian assistance and humanitarian access, see Felix Schwendimann, “The Legal Framework of Humanitarian Access in Armed Conflict”, *International Review of the Red Cross*, Vol. 92, No. 884, 2011, available at: <https://international-review.icrc.org/articles/legal-framework-humanitarian-access-armed-conflict>.

44 Tristan Ferraro, *Relief Schemes and the Delivery of Humanitarian Activities in Situations of AC: The ICRC’s Perspective*, San Remo Round Table, 2017, p. 2, available at: [www.iuhl.org/wp-content/uploads/2018/03/RT-2017-FERRARO.pdf](http://www.iuhl.org/wp-content/uploads/2018/03/RT-2017-FERRARO.pdf).

45 ICRC, above note 1, p. 27.

46 See Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War of 12 August 1949, 75 UNTS 287 (entered into force 21 October 1950) (GC IV), Art. 23 on the sending of food and medicine, Art. 55 on the provision of food and medical supplies to the population, and Art. 81 on the

unable to provide the required assistance, then they must consider in good faith offers of services made by impartial humanitarian organizations and allow those organizations access to the persons concerned.<sup>47</sup>

In non-international armed conflicts, Article 3 common to the four Geneva Conventions provides that “an impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict”. According to the ICRC’s 2016 Commentary on common Article 3, an organization qualifies as impartial if it offers humanitarian services without adverse distinction based on gender, race, nationality, religion or opinion. The only possible distinction is that of giving priority to the most urgent cases of distress.<sup>48</sup> The humanitarian services in question include protection and assistance activities that seek to “preserve the life, security, dignity and physical and mental well-being of persons affected by the conflict, or that seek to restore that well-being if it has been infringed upon”.<sup>49</sup> Apart from impartiality, which is specifically mentioned in common Article 3, the ICRC attaches great importance to its action being guided by the principles of humanity, neutrality and independence, which are at the heart of its mission<sup>50</sup> and are among the

maintenance of civilian internees. Regarding the evacuation of the wounded, sick, shipwrecked and dead, see Geneva Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of 12 August 1949, 75 UNTS 31 (entered into force 21 October 1950), Art. 15(1); Geneva Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea of 12 August 1949, 75 UNTS 85 (entered into force 21 October 1950), Art. 18(1); and GC IV, Art. 16(2). Regarding detained persons, see Geneva Convention (III) relative to the Treatment of Prisoners of War of 12 August 1949, 75 UNTS 135 (entered into force 21 October 1950), Arts 25–32, 125. Rule 118 of the ICRC Customary Law Study, above note 43, on the provision of basic necessities to persons deprived of their liberty, states that “[p]ersons deprived of their liberty must be provided with adequate food, water, clothing, shelter and medical attention”. Rule 131 on the treatment of displaced persons states that “[i]n case of displacement, all possible measures must be taken in order that the civilians concerned are received under satisfactory conditions of shelter, hygiene, health, safety and nutrition and that members of the same family are not separated”.

47 The ICRC has produced a Q&A and glossary summarizing the rules that apply to humanitarian access in all armed conflicts, whether international or non-international. It identifies the following six main rules: “1. Each party to an armed conflict bears the primary obligation to meet the needs of the population under its control. 2. Impartial humanitarian organizations have a right to offer their services in order to carry out humanitarian activities, in particular when the needs of the population affected by the armed conflict are not fulfilled. 3. Impartial humanitarian activities undertaken in situations of armed conflict are subject to the consent of the parties to the conflict concerned. Under IHL, parties to the conflict must consent to such activities when the needs of the population under their control are not met. 4. Once impartial humanitarian relief operations have been agreed to, the parties to the armed conflict as well as States which are not a party to the armed conflict must allow and facilitate the rapid and unimpeded passage of these relief schemes, subject to their right of control. 5. The parties to the conflict must ensure the freedom of movement of authorized humanitarian relief personnel essential to the exercise of their functions. Only in cases of imperative military necessity may their movements be temporarily restricted. 6. Humanitarian relief personnel, and objects used for humanitarian relief operations, must be respected and protected.” ICRC, “ICRC Q&A and Lexicon on Humanitarian Access”, *International Review of the Red Cross*, Vol. 96, No. 893, 2015, available at: <https://international-review.icrc.org/articles/icrc-qa-and-lexicon-humanitarian-access>.

48 ICRC, *Commentary on the First Geneva Convention: Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field*, 2nd ed., Geneva, 2016 (ICRC Commentary on GC I), para. 794, available at: <https://ihl-databases.icrc.org/ihl/full/GCI-commentary>.

49 *Ibid.*, para. 812.

50 The ICRC defines its mission as follows: “The International Committee of the Red Cross ... is an impartial, neutral and independent organization whose exclusively humanitarian mission is to protect the lives and dignity of victims of armed conflict and other situations of violence and to provide them

## Fundamental Principles of the International Red Cross and Red Crescent Movement (the Movement).<sup>51</sup>

Examining an offer of services in good faith implies that a State may not refuse consent on arbitrary grounds. A refusal of services would be arbitrary if the State concerned were unwilling or unable to address basic humanitarian needs.<sup>52</sup> This is a major development in the right to humanitarian assistance, reflected in the new Commentaries on the Geneva Conventions.<sup>53</sup>

Once an offer of services has been accepted, States must facilitate the passage of humanitarian personnel and relief goods, and the freedom of movement of humanitarian workers, while retaining a right of control and the possibility of restricting such passage in cases of imperative military necessity.<sup>54</sup> Taking account of imperative military necessity implies that relief operations should not interfere with military operations, “lest the safety of humanitarian relief personnel be endangered”.<sup>55</sup> However, any restriction based on military necessity can only be limited and temporary.<sup>56</sup>

Other obligations related to respect for international human rights law underpin the right to humanitarian assistance and the correlative obligation of States to undertake concrete responses. This is the case with regard to the right to

with assistance.” ICRC, *The ICRC: Its Mission and Work*, Geneva, March 2009, p. 4, available at: <https://shop.icrc.org/the-icrc-its-mission-and-work-pdf-en.html>.

- 51 The Statutes of the International Red Cross and Red Crescent Movement, adopted in 1986 at the 25th International Conference of the Red Cross and Red Crescent in Geneva, set out in their preamble the seven Fundamental Principles of the Movement, namely humanity, impartiality, neutrality, independence, voluntary service, unity and universality.
- 52 ICRC Commentary on GC I, above note 48, para. 834.
- 53 Lindsey Cameron, Eve La Haye, Heike Niebergall-Lackner, Bruno Demeyere and Jean-Marie Henckaerts, “The Updated Commentary on the First Geneva Convention – a New Tool for Generating Respect for International Humanitarian Law”, *International Review of the Red Cross*, Vol. 97, No. 900, 2016, p. 1219, available at: <https://international-review.icrc.org/articles/updated-commentary-first-geneva-convention-new-tool-generating-respect-international>.
- 54 For a more in-depth study of the rules on humanitarian access and assistance, see Ruth Abril Stoffels, “Legal Regulation of Humanitarian Assistance in Armed Conflict: Achievements and Gaps”, *International Review of the Red Cross*, Vol. 86, No. 855, 2004; available at: [www.icrc.org/en/doc/assets/files/other/irrc\\_855\\_stoffels.pdf](http://www.icrc.org/en/doc/assets/files/other/irrc_855_stoffels.pdf); Emanuela-Chiara Gillard, “The Law Regulating Cross-Border Relief Operations”, *International Review of the Red Cross*, Vol. 95, No. 890, 2013, available at: <https://international-review.icrc.org/articles/law-regulating-cross-border-relief-operations>; Françoise Bouchet-Saulnier, “Consent to Humanitarian Access: An Obligation Triggered by Territorial Control, not States’ Rights”, *International Review of the Red Cross*, Vol. 96, No. 893, 2015, available at: <https://international-review.icrc.org/articles/consent-humanitarian-access-obligation-triggered-territorial-control-not-states-rights>; Dapo Akande and Emanuela-Chiara Gillard, *Oxford Guidance on the Law Relating to Humanitarian Relief Operations in Situations of Armed Conflict*, OCHA and Oxford Institute for Ethics, Law and Armed Conflicts, 26 October 2016, available at: [www.unocha.org/publication/oxford-guidance-law-relating-humanitarian-relief-operations-situations-armed-conflict](http://www.unocha.org/publication/oxford-guidance-law-relating-humanitarian-relief-operations-situations-armed-conflict).
- 55 See the exception included in Rule 56 of the ICRC Customary Law Study, above note 43, relating to freedom of movement of humanitarian relief personnel. The concept of imperative military necessity was introduced in Protocol Additional (I) to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts, 1125 UNTS 3, 8 June 1977 (entered into force 7 December 1978), in connection with the tasks performed by civilian civil defence organizations (Art. 62) and personnel participating in relief actions (Art. 71). In both cases, duties, activities and travel may be restricted only for reasons of imperative military necessity. According to Article 71, such restrictions may only be temporary.
- 56 *Ibid.*

life, which is not subject to any derogation, even in times of armed conflict,<sup>57</sup> and which includes “the entitlement of individuals to be free from acts and omissions that are intended or may be expected to cause their unnatural or premature death, as well as to enjoy a life with dignity”.<sup>58</sup> States are even subject to a “heightened duty” to protect the right to life in liberty-restricting State-run facilities, including refugee and IDP camps.<sup>59</sup> They must make every effort to ensure that the basic needs of affected people are met, including the right to adequate food.<sup>60</sup> The Committee on Economic, Social and Cultural Rights has stated that “[v]iolations of the right to food can occur through the direct action of States or other entities insufficiently regulated by States. These include ... the prevention of access to humanitarian food aid in internal conflicts or other emergency situations.”<sup>61</sup> It has been recognized that “forcibly displaced persons need access to water and sanitation ... for their survival, but also to be able to live in dignity”.<sup>62</sup> The right to health care is also protected by both IHL and international human rights law, in a complementary manner.<sup>63</sup>

The African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention) sets out the scope of humanitarian assistance.<sup>64</sup> Such assistance must include water, shelter, medical care, sanitation, education and any other necessary social services. The Convention specifies that this assistance may be extended to local and host communities.<sup>65</sup> It also makes specific provisions for assistance to be provided to people with special needs, including separated and unaccompanied children, women, the elderly, people with disabilities and those with communicable diseases.<sup>66</sup> States Parties must also take special measures to address the reproductive and sexual health of displaced women and provide appropriate psychosocial support to victims of sexual abuse.<sup>67</sup> To facilitate implementation of

57 Human Rights Committee, General Comment No. 36, “Article 6: Right to Life”, UN Doc. CCPR/C/GC/36, 3 September 2019, para. 2, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/261/15/pdf/G1926115.pdf>.

58 *Ibid.*, para. 3.

59 *Ibid.*, para. 25.

60 Committee on Economic, Social and Cultural Rights, General Comment No. 12, “The Right to Adequate Food (Art. 11)”, UN Doc. E/C.12/1999/5, 12 May 1999, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G99/420/12/pdf/G9942012.pdf>.

61 *Ibid.*, para. 19.

62 *Report of the Special Rapporteur on the Human Rights to Safe Drinking Water and Sanitation: Note by the Secretariat*, UN Doc. A/HRC/39/55, 3 August 2018, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/239/64/pdf/G1823964.pdf>.

63 Alexander Breitetger, “The Legal Framework Applicable to Insecurity and Violence Affecting the Delivery of Health Care in Armed Conflicts and Other Emergencies”, *International Review of the Red Cross*, Vol. 95, No. 889, 2013, available at: <https://international-review.icrc.org/articles/legal-framework-applicable-insecurity-and-violence-affecting-delivery-health-care-armed>.

64 African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention), 23 October 2009 (entered into force 6 December 2012), available at: <https://au.int/en/treaties/african-union-convention-protection-and-assistance-internally-displaced-persons-africa>.

65 *Ibid.*, Art. 9(2)(b).

66 *Ibid.*, Art. 9(2)(c).

67 *Ibid.*, Art. 9(2)(d).

the Convention, the African Union has adopted a model law that specifies the scope of States' obligations regarding humanitarian assistance.<sup>68</sup>

However, State services responsible for humanitarian aid, local administrations and humanitarian organizations operating in the Sahel are encountering difficulties in carrying out their activities in accordance with the rules on humanitarian access outlined above. These difficulties stem from the many obstacles and challenges in the region. The areas where people in need are located are often difficult to reach because of their remoteness, the quality of the roads, the climatic conditions or the lack of security. Furthermore, the States of the Sahel region are in a situation of development and poverty that limits their ability to provide sufficient humanitarian aid to these populations, which are in dire need.<sup>69</sup>

## State measures that may impede access to humanitarian assistance in the Sahel

One of the greatest dilemmas facing States in the Sahel region today is how to ensure the security of their territory and the people within it, while at the same time guaranteeing access to the national and international humanitarian organizations which they have authorized to operate there. State authorities must also protect those organizations. States are required to respond to the needs of affected populations but do not always have the means to do so. Furthermore, they must protect organizations bringing relief to these populations<sup>70</sup> while at the same time facilitating their access to the areas where the civilian population is located.<sup>71</sup>

Resolving this dilemma is not easy, as both government aid agencies and humanitarian organizations have been subject to attacks that have endangered their operations in the Sahel region or rendered those operations impossible. In Mali, for example, MINUSMA reported that the number of attacks on

68 Model Law for the Implementation of the African Union Convention for the Protection of and Assistance to Internally Displaced Persons in Africa, 2018, available at: <https://www.refworld.org/cgi-bin/texis/vtx/rwmain?docid=5aeb398e4>.

69 The Sahel countries occupied the following places in the Human Development Index (covering 189 countries and published by the United Nations Development Programme (UNDP)) as of 2020: Burkina Faso: 182; Chad: 187; Mali: 184; Niger: 189. See UNDP, *Human Development Report 2020: The Next Frontier: Human Development and the Anthropocene*, New York, 2020, available at: <http://hdr.undp.org/sites/default/files/hdr2020.pdf>.

70 Rule 31 of the ICRC Customary Law Study, above note 43, on the safety of medical relief personnel, states that "humanitarian relief personnel must be respected and protected". This protection also covers relief goods. Rule 32, on humanitarian relief objects, states that "objects used for humanitarian relief operations must be respected and protected".

71 Rule 55 of the ICRC Customary Law Study, above note 43, on access to humanitarian relief for civilians in need, states: "The parties to the conflict must allow and facilitate rapid and unimpeded passage of humanitarian relief for civilians in need, which is impartial in character and conducted without any adverse distinction, subject to their right of control." Rule 56, on freedom of movement of humanitarian relief personnel, states: "The parties to the conflict must ensure the freedom of movement of authorized humanitarian relief personnel essential to the exercise of their functions. Only in case of imperative military necessity may their movements be temporarily restricted."

humanitarian organizations has increased exponentially, making the delivery of humanitarian assistance difficult.<sup>72</sup> In other countries in the region, members of humanitarian organizations have been abducted or murdered,<sup>73</sup> while these organizations' facilities have also been attacked<sup>74</sup> and their vehicles seized, with the risk of armed actors using them for military purposes.<sup>75</sup>

Faced with the worsening security situation in the Sahel, States have taken a number of steps to try to mitigate the situation. We shall examine two of these here: the declaration of a state of emergency and the imposition of armed escorts on humanitarian missions. These measures are relevant to the present analysis as they may restrict the access of the civilian population to humanitarian assistance and the ability of humanitarian organizations to provide it.

## State of emergency

One way to limit the risks to the population is to declare a state of emergency in certain areas. By declaring a state of emergency, States limit the exercise of freedoms and give themselves greater powers of control. Certain States have also recently declared a state of emergency with the aim of limiting the spread of COVID-19. Security and health factors therefore overlap and can make it more difficult for the people affected to obtain goods and services.

For example, certain Sahelian countries have had to declare a state of emergency in the regions most affected by armed conflicts, which then allows them to take concrete measures that restrict the freedom of movement of people and goods.<sup>76</sup> Restrictions on freedom of movement have the most direct impact on humanitarian assistance, as they may put large areas out of reach of humanitarian agencies and government services. For instance, prohibiting the use

72 MINUSMA, *Note on Trends of Human Rights Violations and Abuses in Mali, 1 April–30 June 2020*, 30 August 2020, p. 4, para. 8, available at: [www.ohchr.org/Documents/Countries/ML/quaterly\\_note\\_on\\_human\\_rights\\_trends\\_april-june\\_2020\\_EN.pdf](http://www.ohchr.org/Documents/Countries/ML/quaterly_note_on_human_rights_trends_april-june_2020_EN.pdf).

73 “Cinq humanitaires enlevés et assassinés par des djihadistes au Nigeria”, *Le Temps*, 23 July 2020, available at: [www.letemps.ch/monde/cinq-humanitaires-enlevés-assassinés-djihadistes-nigeria](http://www.letemps.ch/monde/cinq-humanitaires-enlevés-assassinés-djihadistes-nigeria); ICRC, “Nigeria: ICRC Condemns Midwife’s Murder, Appeals to Abductors to Spare 2 Other Health Care Workers”, 17 September 2018, available at: [www.icrc.org/en/document/nigeria-icrc-condemns-midwives-murder-appeals-abductors-spare-two-other-healthcare-workers](http://www.icrc.org/en/document/nigeria-icrc-condemns-midwives-murder-appeals-abductors-spare-two-other-healthcare-workers).

74 Médecins Sans Frontières (MSF), “MSF Teams Forced to Leave Mainé Soroa after Two Years”, 9 August 2019, available at: [www.msf.org/msf-teams-forced-leave-mainé-soroa-after-two-years-niger](http://www.msf.org/msf-teams-forced-leave-mainé-soroa-after-two-years-niger).

75 Government of Niger, “Communiqué du Ministère de l’Intérieur relatif à l’attaque de la prison de haute sécurité de Koutoukalé”, 15 May 2019, available at: [www.gouv.ne/index.php/1154-communiqué-du-ministère-de-l-interieur-relatif-a-l-attaque-de-la-prison-de-haute-securite-de-koutoukale](http://www.gouv.ne/index.php/1154-communiqué-du-ministère-de-l-interieur-relatif-a-l-attaque-de-la-prison-de-haute-securite-de-koutoukale).

76 On 14 May 2019, the Burkina Faso National Assembly adopted Law No. 023-2019/AN Regulating the State of Siege and the State of Emergency in Burkina Faso. That law makes it possible to “prohibit the movement of persons or vehicles throughout [Burkina Faso’s] territorial jurisdiction or in specific places and at times set by order” (Art. 13, author’s translation). In Niger, the state of emergency has regularly been extended since 2015 on the basis of Law No. 98-24 of 11 August 1998, which stipulates the state of emergency’s conditions. A state of emergency was first declared in the Diffa region by Decree No. 2015 073/PRN/PN/MDN/MISPD/ACR/MJ of 10 February 2015, and was later extended to the Tillabéry and Tahoua regions. The state of emergency also makes it possible to prohibit travel in any vehicle. In Mali, the state of emergency has regularly been extended under Law No. 2017-055 on the State of Siege and the State of Emergency, 6 November 2017.



of motorcycles – which are often the only means of transport – can make it very difficult to obtain basic necessities, sell agricultural products on markets or obtain health care. This measure has been taken to reduce the operational capacity of armed groups that use motorcycle attacks, especially in border areas. Other examples include closing markets or prohibiting the sale of certain products, such as fish or chili peppers, as armed groups are using the profits from these ventures to fund their activities.<sup>77</sup>

The UN Human Rights Committee and the UN Committee Against Torture have highlighted the negative effects of prolonged movement restrictions in the Sahel.<sup>78</sup> The COVID-19 pandemic has forced Sahelian States to impose additional restrictions on movement, making it even more difficult to provide basic services. However, these States have made exceptions for the activities of humanitarian organizations.<sup>79</sup> States of emergency and exceptional measures related to the fight against COVID-19 that restrict certain rights, such as the right to freedom of movement, must not endanger the full application of IHL or the right to humanitarian access in order to bring relief to the victims of armed conflict.<sup>80</sup>

The Human Rights Committee has specified that in order for a State to make use of the derogations permitted under a state of emergency, two conditions must be satisfied: the situation “must amount to a public emergency which threatens the life of the nation”, and “the State party must have officially proclaimed a state of emergency”.<sup>81</sup> Derogation from certain human rights through the declaration of a state of emergency as provided for under the International Covenant on Civil and Political Rights (ICCPR) must also be proportional, and strictly limited to the situation that underlies it. In addition, its duration and geographic scope must be specified. The Human Rights Committee has also noted that the ICCPR requires that “no measure derogating from the provisions of the Covenant may be inconsistent with the State party’s other

77 This is particularly the case in the tri-border area between Burkina Faso, Mali and Niger and on the border between Nigeria and Niger. Fishing on Lake Chad was banned because armed groups were taking part of the proceeds from the sale of fish.

78 *Concluding Observations on the Initial Report of the Niger*, UN Doc. CAT/C/NER/CO/1, 20 December 2019, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/350/39/pdf/G1935039.pdf>; *Concluding Observations on the Second Periodic Report of the Niger*, UN Doc. CCPR/C/NER/CO/2, 16 May 2019, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/139/70/pdf/G1913970.pdf>.

79 For Burkina Faso, see Decree No. 2020-0271/PM/MDNAC/MATDC/MSECU/MS/MTMUSR concerning the Temporary Restriction of Freedom under the Special Measures to Reduce the Spread of COVID-19, 15 April 2020. The decree closed airports but allowed flights “for humanitarian purposes”. Similarly, in Niger, despite the border closure, measures were taken to allow for “humanitarian flights”. See Republic of Niger and UN Niger, *Procédures opérationnelles standards pour la gestion des voyageurs des vols régionaux débarquant à Niamey en République du Niger dans le contexte de la pandémie Covid-19*, June 2020.

80 See ICRC, *Les règles du DIH sur l'accès humanitaire et le Covid-19*, Geneva, 8 April 2020; ICRC, “COVID-19 and International Humanitarian Law”, available at: [www.icrc.org/ru/download/file/116784/covid-19\\_and\\_ihl.pdf](http://www.icrc.org/ru/download/file/116784/covid-19_and_ihl.pdf).

81 Human Rights Committee, General Comment No. 29, “States of Emergency (Article 4)”, UN Doc. CCPR/C/21/Rev.1/Add.11, 31 August 2001, para. 2, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G01/444/70/pdf/G0144470.pdf>.



obligations under international law, particularly the rules of international humanitarian law”.<sup>82</sup> Furthermore, the Committee has pointed out that during armed conflict, the rules of IHL help to prevent the abuse of a State’s emergency powers and that States may in no circumstances invoke Article 4 of the ICCPR as justification for acting in violation of humanitarian law.<sup>83</sup> The Committee has therefore recognized that IHL continues to apply and can harmoniously complement the derogated rules of international human rights law. It has been recognized that “[c]omplementarity and mutual influence inform the interaction between international humanitarian law and international human rights law in most cases”.<sup>84</sup> Indeed, unlike international human rights law, “unless expressly foreseen in the relevant treaty provisions, the rules and principles of IHL cannot be derogated from”.<sup>85</sup> It therefore follows that if States justifiably use a state of emergency to suspend freedom of movement in part of their territory in order to respond to the dangers caused by armed conflict, this suspension should not jeopardize the provision of humanitarian assistance and the related freedom of movement of humanitarian personnel, or impede it through the imposition of armed escorts.

## Armed escorts

In response to the dangers and serious incidents that humanitarian organizations have experienced in the field, the States of the Sahel region have taken administrative measures to ensure their security, such as armed escorts.<sup>86</sup> The imposition of armed escorts on humanitarian actors often provokes contrasting reactions among them. Some organizations may agree to use them under certain conditions, while others refuse them outright. The Inter-Agency Standing Committee (IASC), for example, has produced non-binding guidelines on the use of armed escorts during humanitarian operations which state that “[a]s a general rule, humanitarian convoys will not use armed escorts”.<sup>87</sup> It is worth recalling some of the arguments that have been put forward to show why the use of armed

82 *Ibid.*, para. 9.

83 *Ibid.*, paras 3, 11.

84 Cordula Droege, “Elective Affinities? Human Rights and Humanitarian Law”, *International Review of the Red Cross*, Vol. 90, No. 871, 2008, available at: <https://international-review.icrc.org/articles/elective-affinities-human-rights-and-humanitarian-law>.

85 Nils Melzer, *International Humanitarian Law: A Comprehensive Introduction*, ICRC, Geneva, November 2019, p. 28, available at: <https://shop.icrc.org/international-humanitarian-law-a-comprehensive-introduction-pdf-en.html>.

86 In Niger, the use of armed escorts is governed by several regulatory texts, such as Decree No. 2019-115/MFP/RA/MF Establishing Travel Allowances for Contractual and Auxiliary Civil Servants of the State’s Administrations and Public Establishments, 1 March 2019; Letter 008535/MAE/C/IA/NE/SG, 2 September 2020, stipulating that “movements outside built-up areas are only permitted with an authorized escort” (author’s translation); and Joint Order 2019/042/MDN/MI/SP/D/AR, 19 April 2013, which sets the allowances applicable to the escorts of humanitarian organizations, UN agencies, NGOs, State bodies, embassies, private companies, enterprises and banks.

87 IASC, *IASC Non-Binding Guidelines on the Use of Armed Escorts for Humanitarian Convoys*, 27 February 2013, p. 3, available at: [www.unocha.org/sites/unocha/files/Armed%20Escort%20Guidelines%20-%20Final.pdf](http://www.unocha.org/sites/unocha/files/Armed%20Escort%20Guidelines%20-%20Final.pdf).

escorts provided by the State – and which are therefore composed, more often than not, of elements of the armed and security forces – seems to have more disadvantages than advantages for impartial humanitarian organizations.

The ICRC and the International Federation of Red Cross and Red Crescent Societies (IFRC), during a workshop on the use of armed protection and humanitarian assistance, identified as a general principle that the use of armed protection conflicts with the principles of humanity, independence, impartiality and neutrality. On the basis of this, they concluded that as a rule, the components of the Movement should not use armed escorts.<sup>88</sup> This prohibition was confirmed by Resolution 9 of the 1995 Council of Delegates of the International Red Cross and Red Crescent Movement, which reiterates “the basic principle that the components of the Movement do not use armed protection”.<sup>89</sup> This was reaffirmed at the 2005 Council of Delegates in Seoul.<sup>90</sup>

Respect for a neutral, impartial and independent humanitarian space is essential if the ICRC and the Movement are to carry out their humanitarian mission. The Fundamental Principle of neutrality states that “the Movement may not take sides in hostilities or engage at any time in controversies of a political, racial, religious or ideological nature”.<sup>91</sup> Neutrality is a means to an end, not an end in itself. It is a tool used to ensure access for concrete action in all situations.<sup>92</sup> This concrete action must be guided by the Fundamental Principle of humanity, which aims to “prevent and alleviate human suffering wherever it may be found” and “to protect life and health and to ensure respect for the human being”,<sup>93</sup> and by that of impartiality, which prohibits any form of discrimination in the provision of humanitarian assistance and, as we have seen, implies the prioritization of the most urgent needs. For the ICRC, the Fundamental Principle of independence implies that its humanitarian action is distinct, and perceived as such, from any political or military interest.<sup>94</sup>

88 The components of the Movement are the ICRC, the IFRC and the National Red Cross and Red Crescent Societies of States Parties to the Geneva Conventions. See ICRC and IFRC, *Report on the Use of Armed Protection for Humanitarian Assistance*, 2 December 1995, available at: [www.icrc.org/en/doc/resources/documents/report/57jneg.htm](http://www.icrc.org/en/doc/resources/documents/report/57jneg.htm).

89 “Resolutions of the Council of Delegates”, *International Review of the Red Cross*, Vol. 36, No. 310, 1996, Resolution 9, available at: <https://international-review.icrc.org/articles/resolutions-council-delegates-4>.

90 Council of Delegates, *Guidance Document on Relations between the Components of the Movement and Military Bodies*, Seoul, 2005, Resolution 7, available at: [www.icrc.org/en/doc/resources/documents/resolution/council-of-delegates-resolutions-181105.htm](http://www.icrc.org/en/doc/resources/documents/resolution/council-of-delegates-resolutions-181105.htm). See in particular the Annex to this resolution, “Relations between the Movement’s Components and Military Bodies on the Latter’s National Territory”, point 7, “Use of Escorts and Armed Protection”: “The components of the Movement may not resort to armed protection.” The only possible exceptions are defined in Resolution 9 of the 1995 Council of Delegates: see ICRC and IFRC, *Handbook of the International Red Cross and Red Crescent Movement*, 14th ed., 2008, available at: <https://shop.icrc.org/handbook-of-the-international-red-cross-and-red-crescent-movement-pdf-en.html>.

91 Statutes of the International Red Cross and Red Crescent Movement, above note 51, preamble.

92 Pierre Krähenbühl, “The ICRC’s Approach to Contemporary Security Challenges: A Future for Independent and Neutral Humanitarian Action”, *International Review of the Red Cross*, Vol. 86, No. 855, 2004, p. 511, available at: <https://international-review.icrc.org/fr/articles/icrcs-approach-contemporary-security-challenges-future-independent-and-neutral>.

93 See Statutes of the International Red Cross and Red Crescent Movement, above note 51, preamble.

94 P. Krähenbühl, above note 92, p. 511.

On the basis of these Fundamental Principles, therefore, the ICRC must respect, but also ensure respect for, humanitarian space in the Sahel.<sup>95</sup> To properly carry out its strictly humanitarian mission, it must be able to maintain a bilateral and confidential dialogue with all parties involved in armed conflicts, whether they be States or non-State armed groups. To do so it must have unhindered access, both so that it can provide protection and assistance to the victims of armed conflicts and so that it can conduct prevention activities, reminding the parties to armed conflicts of their obligations under IHL. In a statement on humanitarian space in the Sahel, the ICRC pointed out that influencing parties to armed conflict in such a way that they fulfil their obligations and respect humanitarian space is a never-ending task:

To constantly seek influence with the parties to the conflict or their supporters, to use persuasion to convince each side to guarantee humanitarian space, to constantly remind them of the obligation to ‘respect and ensure respect for’ international humanitarian law ‘in all circumstances’ ... these are the tasks – sometimes Sisyphean – that the ICRC must accomplish wherever there are victims.<sup>96</sup>

The imposition of armed escorts on humanitarian missions in the field does not therefore appear compatible with the principles that should guide humanitarian action. It also seems difficult to reconcile such a measure with the obligation to respect and protect humanitarian personnel and relief objects, as provided for in customary IHL.<sup>97</sup> The respect and protection due to humanitarian personnel and relief objects does not mean that an armed escort must be provided. The notion of protection and respect for humanitarian personnel in Rule 31 of the ICRC Customary Law Study is linked to the practice of States party to Additional Protocol I to the Geneva Conventions and Article 71 of that Protocol, on personnel participating in relief actions. The ICRC’s Commentary on Article 71 leaves the decision as to whether or not a humanitarian mission should be provided with an armed escort to the discretion of those who might benefit from it.<sup>98</sup>

Apart from the incompatibility between humanitarian action according to the Movement’s Fundamental Principles and armed protection, some organizations have put forward other arguments. In particular, the fact that armed forces come under attack during a conflict means that their presence may expose members of humanitarian missions to unnecessary danger, rather than protect them.<sup>99</sup> In the specific context of the Sahel, several humanitarian organizations that participated

95 ICRC, “Sahel: Respecter et faire respecter l’espace humanitaire”, 20 November 2019, available at: [www.icrc.org/fr/document/sahel-respecter-et-faire-respecter-lespace-humanitaire](http://www.icrc.org/fr/document/sahel-respecter-et-faire-respecter-lespace-humanitaire).

96 *Ibid.* (author’s translation).

97 ICRC Customary Law Study, above note 43, Rule 31 on the protection of humanitarian relief personnel and Rule 32 on the protection of relief objects.

98 Yves Sandoz, Christophe Swinarski and Bruno Zimmerman (eds), *Commentary on the Additional Protocols*, ICRC, Geneva, 1987, paras 2887–2888, available at: <https://tinyurl.com/44x5zcm>.

99 MSF observes in a report that “humanitarians may be attacked if they are identified as part of the enemy to fight. The use of armed escorts by humanitarians and the use of vehicles not clearly identified as military, both observed in Mali, can increase the likelihood of such attacks.” Alejandro Pozo Marin, *Perilous*

in the preparatory work for the Virtual Ministerial Roundtable on the Central Sahel recommended that the States of the region “explicitly commit to not forcing humanitarians to use armed escorts and to respect the principle of ‘last resort’ as defined within the Humanitarian Coordination bodies in accordance with humanitarian principles and in particular neutrality and independence”.<sup>100</sup>

Two factors must be reconciled: the obligation to protect relief personnel and the assets needed to provide assistance, on the one hand, and unhindered access by relief personnel to areas where civilians affected by armed conflict are located, on the other. To see how this might be achieved, we need to review the initiatives that the States of the Sahel region have taken.

## Measures to facilitate humanitarian access in the Sahel

Action is being taken to ensure better coordination between State authorities and humanitarians in the interests of improved access. Furthermore, legislative measures have been taken to support humanitarian access.

### Dialogue on humanitarian access between civilian and military authorities and impartial humanitarian organizations

Open dialogue and coordination between all involved in protecting and helping the victims of armed conflict are necessary to ensure quality humanitarian access and to meet the needs of the civilian population. This is all the more crucial in the Sahel, where there is not only a wide variety of arms bearers but also a wide variety of humanitarian organizations.<sup>101</sup> It is therefore important to identify the dialogue mechanisms that are used in the Sahel to constructively discuss issues related to humanitarian access on the ground. One should note the important role of civil–military dialogue mechanisms that bring together the humanitarian country teams—composed of UN humanitarian agencies and non-governmental humanitarian organizations—and the national and foreign military forces involved. These fora allow an exchange of views on the mandates of humanitarian organizations, the nature of their operations and their priority areas of intervention. The military forces explain their operational situation on the

*Terrain: Humanitarian Action at Risk in Mali*, MSF, May 2017, p. 4, available at: <https://arhp.msf.es/sites/default/files/Case-Study-03-Mali-EN.pdf>.

100 OCHA, *Responding to Humanitarian Challenges in a Long-Term Perspective in the Central Sahel: Track 3: Humanitarian Principles, Humanitarian Space and Civil-Military Coordination*, 2020, available at: [www.unocha.org/sites/unocha/files/Track%203%20Humanitarian%20Principles%20EN\\_0.pdf](http://www.unocha.org/sites/unocha/files/Track%203%20Humanitarian%20Principles%20EN_0.pdf).

101 For example, in Niger in 2020 there were forty organizations participating in the humanitarian response plan in Tillabéry, thirty-one in Diffa and twenty-six in Tahoua. See OCHA, *Lancement conjoint du Plan de Soutien et du Plan de Réponse Humanitaire du Niger (PS/PRH 2020)*, 24 February 2020, p. 13, available at: [www.humanitarianresponse.info/sites/www.humanitarianresponse.info/files/documents/files/ner\\_fh\\_presentation\\_ps\\_prh\\_2020\\_27\\_02\\_2020.pdf](http://www.humanitarianresponse.info/sites/www.humanitarianresponse.info/files/documents/files/ner_fh_presentation_ps_prh_2020_27_02_2020.pdf).

ground, which then makes it possible to identify geographic areas where access could prove problematic for security reasons.<sup>102</sup>

However, the issue of humanitarian access as such remains the exclusive competence of each State, and the civil–military coordination meetings are primarily fora for the exchange of information, with no decision-making powers. Furthermore, the rules of IHL relating to humanitarian access in the field allow the parties to an armed conflict to temporarily restrict the freedom of movement of humanitarian relief personnel in the event of imperative military necessity, and they retain the right to verify the content and destination of relief supplies.<sup>103</sup>

The prime minister of Niger has set up a high-level committee on access to advance dialogue and decision-making in this area. Its members consist of the relevant ministries and the humanitarian country team,<sup>104</sup> and high-level dialogue on humanitarian access has already taken place within this framework.<sup>105</sup> It would be useful for the other Sahel States to follow this example. Such a body should be the primary forum in which all concerned can establish clear rules on humanitarian access. In particular, this would include national civilian and military authorities, the UN system, impartial humanitarian non-governmental organizations and the various components of the Movement. Dialogue at the national level must be accompanied by dialogue at the regional and local levels, as local civilian and military authorities and humanitarian organizations have much more detailed knowledge of the security environment—which is most often dynamic and changing—and of the humanitarian assistance needs of the population.

One must draw a distinction between mechanisms for dialogue between humanitarian organizations and armed forces, on the one hand, and civil–military action conducted by the armed forces in parallel with their combat activities, on the other. Operation Barkhane carries out a variety of activities in this area, such as renovating schools, donating school equipment and supporting

102 In preparation for the Ministerial Roundtable on the Central Sahel, documents on civil–military coordination were produced for each of the countries concerned. For Burkina Faso, see OCHA, *Principes humanitaires, accès et coordination civilo-militaire: Analyse de la crise et recommandations des organisations humanitaires et de développement au Burkina Faso*, September 2020, pp. 5, 6, available at: [www.unocha.org/sites/unocha/files/Acces\\_notes%20uniformisées\\_vf-20201013\\_Disclaimer.pdf](http://www.unocha.org/sites/unocha/files/Acces_notes%20uniformisées_vf-20201013_Disclaimer.pdf). For Mali, see OCHA, *Les principes humanitaires et la relation civilo-militaire: Diagnostique et recommandations des organisations humanitaires et de développement au Mali*, August 2020, pp. 5–7, available at: [www.unocha.org/sites/unocha/files/Principes%20Humanitaires%20et%20Relation%20Civillo-Militaire\\_Legal%20Notice.pdf](http://www.unocha.org/sites/unocha/files/Principes%20Humanitaires%20et%20Relation%20Civillo-Militaire_Legal%20Notice.pdf). For Niger, see OCHA, *Humanitarian Access and Civil-Military Coordination: Reaffirming Respect for Humanitarian Principles and Humanitarian Space and Strengthening Civil-Military Coordination*, 11 October 2020, pp. 6, 7, available at: [www.unocha.org/sites/unocha/files/201019%20Niger%20T3%20final%20English%20Version.pdf](http://www.unocha.org/sites/unocha/files/201019%20Niger%20T3%20final%20English%20Version.pdf).

103 See ICRC Customary Law Study, above note 43, Rule 55 on access to humanitarian relief for civilians in need and Rule 56 on freedom of movement of humanitarian relief personnel.

104 The main donor States and the EU are taking part in this dialogue. The ICRC participates as an observer: see OCHA, *Humanitarian Access and Civil-Military Coordination*, above note 102.

105 Government of Niger, “Le Premier ministre en visite à Kouré: SE. Brigi Rafini rend hommage aux 8 victimes de l’attaque terroriste du 9 août et préside un dialogue de haut niveau sur l’accès humanitaire au Niger”, 24 August 2020, available at: [www.lesahel.org/le-premier-ministre-en-visite-a-koure-se-brigi-rafini-rend-hommage-aux-8-victimes-de-lattaque-terroriste-du-9-aout-et-preside-un-dialogue-de-haut-niveau-sur-lacces-humanitaire-au-nig/](http://www.lesahel.org/le-premier-ministre-en-visite-a-koure-se-brigi-rafini-rend-hommage-aux-8-victimes-de-lattaque-terroriste-du-9-aout-et-preside-un-dialogue-de-haut-niveau-sur-lacces-humanitaire-au-nig/).

improvements to health centre infrastructure.<sup>106</sup> Similarly, MINUSMA is running quick-impact projects to improve access to basic health services and water, the use of pastoral and agricultural resources and the economic resilience of conflict-affected households.<sup>107</sup> These activities are in every way similar to those that impartial humanitarian organizations may carry out. During the Ministerial Roundtable on the Central Sahel held on 20 October 2020, humanitarian organizations – which engage in dialogue with the armed forces through the coordination mechanisms just described – emphasized the importance of their not taking part in these civil–military activities. They explained that there was a risk of confusion between the mandates of humanitarians and the military, fuelled by the existence of these activities. They also reiterated that in order to maintain the distinction between humanitarian and military actors, it was crucial for the former not to be associated with the latter and to avoid using the infrastructure, equipment or escorts of security or military actors.<sup>108</sup> It has also been pointed out very clearly that the “blending of aid work with military goals can put at risk humanitarian actors, who, in the eyes of insurgents are seen to be in cahoots with the ‘invading’ foreign military powers”.<sup>109</sup>

### Legislative measures to facilitate humanitarian access

One of the best ways to ensure compliance with IHL rules on humanitarian access is to take national measures to ensure their implementation. It is interesting to note that the Kampala Convention has established humanitarian access for IDPs and host populations as a general obligation of States Parties.<sup>110</sup> In particular, States must allow the rapid and unimpeded passage of all relief consignments, equipment and personnel to IDPs.<sup>111</sup> The Convention also establishes clear

106 See Ministère des Armées, “Barkhane: Destins croisés des adjudants Mathieu et Nicolas, des actions civilo-militaires”, 30 December 2020, available at: <https://archives.defense.gouv.fr/operations/afrique/bande-sahelo-saharienne/operation-barkhane/breves/barkhane-destins-croises-des-adjudants-mathieu-et-nicolas-des-actions-civilo-militaires>; Ministère des Armées, “Barkhane: Jumelée à Gao (Mali), la ville de Thionville achemine ses dons grâce aux soldats de Barkhane”, 7 October 2020, available at: <https://archives.defense.gouv.fr/operations/afrique/bande-sahelo-saharienne/operation-barkhane/breves/barkhane-jumelée-a-gao-mali-la-ville-de-thionville-achemine-ses-dons-grâce-aux-soldats-de-barkhane>; Ministère des Armées, “Barkhane: Nouvelles infrastructures inaugurées au centre de santé communautaire du quartier de Djidara (Gao)”, 18 August 2020, available at: <https://archives.defense.gouv.fr/operations/afrique/bande-sahelo-saharienne/operation-barkhane/breves/barkhane-nouvelles-infrastructures-inaugurees-au-centre-de-sante-communautaire-du-quartier-de-djidara-gao>.

107 See MINUSMA, *QIPs Overview: Mali*, September 2020, available at: [https://minusma.unmissions.org/sites/default/files/2013-2020\\_qips\\_overview\\_en\\_0.pdf](https://minusma.unmissions.org/sites/default/files/2013-2020_qips_overview_en_0.pdf).

108 See the preparatory document concerning Burkina Faso, Mali and Niger presented at the Ministerial Roundtable on the Central Sahel: OCHA, above note 100.

109 Jamie A. Williamson, “Using Humanitarian Aid to ‘Win Hearts and Minds’: A Costly Failure?”, *International Review of the Red Cross*, Vol. 93, No. 884, 2011, available at: <https://international-review.icrc.org/articles/using-humanitarian-aid-win-hearts-and-minds-costly-failure>.

110 Article 3(1)(j) of the Kampala Convention states that “States Parties undertake to respect and ensure respect for this Convention, and in particular to ... [e]nsure assistance to internally displaced persons by meeting their basic needs as well as allowing and facilitating rapid and unimpeded access by humanitarian organizations and personnel”.

111 Kampala Convention, Art. 5(7).

obligations on armed groups by prohibiting them from “[h]ampering the provision of protection and assistance to internally displaced persons under any circumstances” and from “[i]mpeding humanitarian assistance and passage of all relief consignments, equipment and personnel to internally displaced persons”.<sup>112</sup> Further, the Kampala Convention calls on States to take legislative measures to give effect to the Convention in their domestic systems.<sup>113</sup>

In the particular context of the Sahel, Niger was the first State to adopt a specific law to implement the obligations of the Kampala Convention, thereby creating a domestic legal regime for humanitarian access. Law No. 2018-74 on the Protection and Assistance of Internally Displaced Persons sets out a number of specific provisions related to access. Article 22 of the law provides that

[w]ithin the framework of international cooperation, the State ensures unimpeded and rapid access of humanitarian personnel to internally displaced persons. The State ensures that humanitarian aid is not diverted. It ensures respect for and protection of humanitarian personnel, means of transport, objects and any products necessary for humanitarian assistance” (author’s translation).

To strengthen protection for humanitarian personnel and to guarantee that they have access to victims, the law also sets out criminal sanctions for attacking humanitarian personnel and for obstructing the unimpeded passage of humanitarian aid or its rapid and unimpeded distribution to IDPs.<sup>114</sup> Article 26 of the law created an institutional framework to ensure its implementation, in particular a Comité de Coordination Nationale de Protection et d’Assistance aux Personnes Déplacées Internes, which brings together the relevant ministries and national and international humanitarian agencies.

The development of national legal frameworks for humanitarian access should be an opportunity to address and clarify the thorny issue of the relationship between humanitarian access rules and national counterterrorism legislation. It is not uncommon for impartial humanitarian organizations to have to negotiate humanitarian access to the civilian population not only with States,

<sup>112</sup> *Ibid.*, Arts 7(5)(b), 7(5)(g).

<sup>113</sup> *Ibid.*, Arts 3(2)(a), 14(4).

<sup>114</sup> Law No. 2018-74 on the Protection and Assistance of Internally Displaced Persons, 10 December 2018, Art. 33, states: “Whoever attacks humanitarian personnel in the exercise or during the exercise of their aid, protection and assistance activities, [or] harms or perpetrates any form of violence against humanitarian personnel ... shall be punished by imprisonment of six months to five years and a fine of 500,000 to 5 million francs” (author’s translation). Article 35 of the law states: “Anyone who: (1) hinders the rights of internally displaced persons to live in satisfactory conditions of dignity, security, sanitation, food, water, health and shelter, in particular; (2) separates family members for reasons other than protection and assistance as defined in this Act; (3) prevents the free passage of humanitarian aid and its rapid and free distribution to internally displaced persons; (4) attacks or carries out other acts of violence against persons in charge of humanitarian aid, their means of transport or stocks for the assistance of IDPs; (5) violates the civilian or humanitarian character of sites hosting internally displaced persons; (6) misuses, confiscates or diverts humanitarian aid intended for internally displaced persons shall be punished by imprisonment for a term of five years to less than ten years and a fine of 2 million francs” (author’s translation).



but also with organized armed groups. They must be able to engage in dialogue with these groups on respect for IHL and the humanitarian situation of the civilian population, without suffering legal consequences under national legislation on the fight against terrorism. In a report to the International Conference of the Red Cross and Red Crescent in 2019, the ICRC pointed out that “[i]n legal terms, counterterrorism measures impeding principled humanitarian action are incompatible with the letter and spirit of IHL”.<sup>115</sup> During the preparatory work for the Ministerial Roundtable on the Central Sahel, several humanitarian organizations operating in the Sahel expressed the need for national legal frameworks to make it clear that the action they undertake in accordance with the principles of neutrality, impartiality and independence do not fall under national provisions on terrorism. They noted that “[t]he space for dialogue on humanitarian access with all parties to the conflict, although clarified by IHL, lacks clarity within national law”.<sup>116</sup>

One solution that preserves both the legitimate right of States to take counterterrorism measures and the access of impartial humanitarian organizations is the use of humanitarian exemptions. Their purpose is to “exclude from the scope of application of counterterrorism measures exclusively humanitarian activities undertaken by impartial humanitarian organizations such as the ICRC”.<sup>117</sup> Chad has already embarked on this path; the 2018 Law on the Repression of Acts of Terrorism in the Republic of Chad states in its Article 1(3) that “no provision of this law may be interpreted as derogating from international humanitarian law and international human rights law”. Article 1(4) stipulates that “activities of an exclusively humanitarian and impartial nature carried out by neutral and impartial humanitarian organizations are excluded from the scope of this law”.<sup>118</sup> Other States in the Sahel region should be inspired by these initiatives to clarify the legal framework for humanitarian access.

## Conclusion

This article has shown that while the rules of IHL on humanitarian access are clear, implementing them at the national level is challenging in the particular context of the Sahel. States must strike a balance between preserving security and ensuring that people have access to goods and services that enable the full enjoyment of their rights. Excessive firmness in the application of movement restrictions could deprive the population of goods essential to their survival. On the other hand,

115 ICRC, *International Humanitarian Law and the Challenges of Contemporary Armed Conflicts*, Geneva, November 2019, p. 60, available at: [www.icrc.org/en/publication/4427-international-humanitarian-law-and-challenges-contemporary-armed-conflicts](http://www.icrc.org/en/publication/4427-international-humanitarian-law-and-challenges-contemporary-armed-conflicts).

116 OCHA, *Humanitarian Access and Civil-Military Coordination*, above note 102, pp. 11, 12.

117 ICRC, above note 115, p. 60.

118 Law No. 003/PR/2020 on the Repression of Acts of Terrorism in the Republic of Chad, adopted by the National Assembly on 28 April 2020 and promulgated by the President of the Republic on 20 May 2020, Art. 1(3–4) (author’s translation).

excessive inertia could endanger the lives of humanitarian workers and the civilian population.

In the face of armed conflict, the Sahel States must find pragmatic solutions to the dilemmas posed by legitimate security considerations: the protection of all, the work of impartial humanitarian organizations and the ever-increasing needs of a civilian population suffering the effects of armed conflict. States may be torn between all of these elements and take measures that either facilitate humanitarian access or impede it.

Experience shows that strong coordination mechanisms involving State, military and civilian authorities and impartial humanitarian organizations can foster productive dialogue on humanitarian access. This dialogue must be constant and must remain as close as possible to the realities on the ground and to situations in the Sahel, which are never static but are rather in a constant state of flux. For example, it is important to avoid banning access to certain areas indefinitely when the situation may have changed and the factors that fully justified a ban may have disappeared. Dialogue on coordination must lead to the establishment of a clear and precise system for notifying the movements of humanitarian organizations in the field. This system must enable humanitarian organizations to enter their areas of operation with up-to-date and reliable information on the security situation. Humanitarian organizations must communicate openly on the objectives of their operations in the field, their mandates, the complementarity between them and their respect for the principles of humanity, impartiality, neutrality and independence, in order to ensure that the authorities clearly understand the services they are offering.

Developing national legal frameworks for humanitarian access will help States fulfil their obligations under IHL and provide humanitarian actors with clear guidelines. By adopting the Kampala Convention, the States of Africa have helped strengthen IHL as it applies to respect for and protection of humanitarian organizations and humanitarian access. The laws of Chad and Niger presented here are valuable tools that will help to promote improved humanitarian access and hence promote respect for a neutral, impartial and independent humanitarian space.