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Access to Medicines in Times of Conflict: Overlapping Compliance and Accountability Frameworks for Syria

BRIANNE MCGONIGLE LEYH AND MARIE ELSKE GISPEN

Abstract

Syria is currently experiencing the world's largest humanitarian crisis since World War II, and access to medicines for emergency care, pain control, and palliative care remains shockingly restricted in the country. Addressing the dire need for improved access to medicines in Syria from an international law compliance and accountability perspective, this article highlights four complementary legal frameworks: international human rights law, international drug control law, international humanitarian law, and international criminal law. It arrives at two central conclusions. First, all four bodies of law hold clear potential in terms of regulatory—hence compliance—and accountability mechanisms for improving access to medicines in times of conflict, but they are too weak on their own account. Second, the potential for on-the-ground change lies in the mutual reinforcement of these four legal frameworks. This reinforcement, however, remains rhetorical and far from practical. Finally, within this complex picture of complementary international legal frameworks, the article proposes concrete recommendations for a more integrated and mutually reinforcing interpretation and implementation of these areas of law to foster better access to medicines in Syria and elsewhere.

Brianne McGonigle Leyh, MA, JD, PhD, is an associate professor at Utrecht University's Netherlands Institute of Human Rights, Department of International and European Law, Faculty of Law, Economics, and Governance, Utrecht, the Netherlands.

Marie Elske Gispen, LLM, PhD, is a postdoctoral researcher at University of Groningen's Global Health Law Groningen Research Centre, Department of Transboundary Legal Studies, Faculty of Law, Groningen, the Netherlands.

Please address correspondence to Brianne McGonigle Leyh. Email: b.n.mcgonigle@uu.nl.

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Introduction

Syria is currently experiencing the world's largest humanitarian crisis since World War II.[1] Over the last seven years, the world has witnessed the intentional and continuous targeting of the civilian population through bombings and the denial of basic necessities, including food, water, and medicine.[2] According to figures from the European Commission, there are currently an estimated 13.5 million people in need of humanitarian assistance inside Syria, including 4.9 million in difficult-to-reach or besieged areas and 6.1 million internally displaced.[3] The widespread disregard for human rights and humanitarian law has led to an "overwhelming" situation in which the long-term consequences in the area of health care are grave: a shortage of qualified medical personnel and medicines, the destruction and targeting of health infrastructure, and the intentional blocking of humanitarian assistance.[4]

Former Special Rapporteur on the right to health Anand Grover noted in a 2013 report that "conflict affects health not only through direct violence, but also through the breakdown of social structures and health systems, and the lack of availability of underlying determinants of health."[5] Specifically, access to medicine can be affected since both state and non-state armed groups deploy numerous physical barriers for victims (such as travel bans and check points) and for health care providers (such as prohibited access to localities) during times of conflict.

This article addresses how four complementary international legal frameworks could be mutually reinforced to improve (though not necessarily remedy) the situation in Syria concerning access to medicines. After first addressing the dire situation in Syria, the article examines the frameworks of international human rights law, international drug control law, international humanitarian law, and international criminal law. These legal frameworks each have their own areas of focus and attention. While some are primarily focused on state *compliance* with norms and best practices, others are more concerned with ensuring *accountability*. And all are relevant to the topic of access to medicine in times of conflict. Although these areas of law are complementary, the situation in Syria shows more than ever before the clear limits of the law in realizing access to medicines in practice and ensuring state compliance and individual accountability for, in particular, state actors failing to do so. The legal frameworks are therefore separately, and even in conjunction, inadequate to resolve the situation on the ground. Yet there is much that can be done, including formulating a joint general comment, supporting ad hoc humanitarian assistance by promoting the use of simplified procedures, and ensuring greater emphasis on violations of economic, social, and cultural rights violations—in particular right to health violations—within legal frameworks that offer some, albeit minimal, forms of individual criminal accountability.

The situation in Syria

The conflict in Syria began in 2011, after government forces could not quell peaceful protests of the arrest and subsequent torture of a group of teenage boys who, inspired by the Arab Spring, had spray-painted antigovernment slogans on the wall of their school. By 2015, the United Nations (UN) Secretary-General reported that "there is a complete and utter absence of protection of civilians in the Syrian Arab Republic."[6] From the beginning of the conflict, government forces in particular have used extreme and illegal tactics against civilian populations, including barrel bombs, chemical weapons, and the deliberate deprivation of food, water, and health care.[7]

According to a 2015 report on health care in Syria, "civilians as well as healthcare personnel, medical facilities, and ambulances are deliberately and routinely targeted as part of the military strategy of the Syrian Government."[8] Until at least August 2015, no food or other type of humanitarian relief item reached any besieged area through official routes.[9] Even today, humanitarian relief within Syria has been sporadic and repeatedly thwarted by both the government and non-state armed groups.[10] A 2017 report of the Independent International Commission of Inquiry on the Syrian Arab Republic states that

> *[r]epeated bombardments of hospitals and clinics in areas controlled by armed groups destroy vital infrastructure and kill medical personnel. The number of remaining doctors, nurses, and first responders is now so grossly inadequate to meet the needs of the population that many injured civilians die due to lack of access to adequate medical care. In besieged areas, the lack of access to medical supplies, including anaesthetics, surgical equipment, and medication, makes it impossible for hospitals and clinics to provide even the bare minimum care to patients.*[11]

Access to medical supplies and equipment has remained extremely restricted in some areas as a result of insecurity and access constraints imposed by parties to the conflict. In particular, Aleppo, Dar'a, Hama, Idlib, and, most recently, Ghouta have been badly affected.[12] The inquiry commission notes in relation to Aleppo that "even prior to the siege, civilians in eastern Aleppo city lacked sufficient food, medication, and fuel."[13] While the situation for civilians in Syria is dire and unprecedented since World War II, the problem of access to medicine encountered in the Syrian conflict is all too familiar.[14] As with other conflict situations, the main obstacles include physical barriers, political barriers, and direct violence against medical personnel, all of which can severely affect access to health care facilities, goods, and services.[15]

Prior to the conflict, Syria's health care system was comparable with the health care systems of other middle-income countries.[16] Much of the health care system consisted of a government-run public scheme that provided mostly primary care services, with the private sector providing some of the advanced care services. The deteriorating security situation since 2012, leading to the emigration of qualified manpower and experts, has resulted in a shortage of medicine and access to medicine throughout Syria. In many parts of the country, the conflict has turned otherwise manageable chronic diseases into unnecessary terminal conditions because of the unavailability of curative treatment and medicines.[17] At the same time, urgently needed pain control medicines and palliative care also depend on a sufficient health care system and infrastructure. The express targeting of civilians through the deprivation of food, water, and medicines has had a devastating impact. Civilian casualties have long accounted for the largest group of deaths within the conflict. The Secretary-General's 2015 report notes that the "total disregard for human life and dignity remains a defining feature of the Syrian conflict and continues on a daily basis with total impunity."[18] And despite agreements to establish de-escalation zones—and, more recently, a 30-day ceasefire, which would help ensure access to medicines—the guarantees have not been met.[19]

International legal framework in times of conflict

During times of conflict, there are essentially four bodies of international law that govern access to (essential) medicines. The first is international human rights law, which focuses on state responsibility. The second is international drug control law, which regulates the availability of controlled medicines, including morphine for trauma care, palliative care, and pain control, which is particularly needed during armed conflict. The third is international humanitarian law, focusing mainly on state responsibility in times of war but also, to an extent, on the responsibility of non-state armed groups. The fourth is domestic and international criminal law, which focuses on individual criminal responsibility.

All four legal frameworks are complementary and mutually reinforcing. International humanitarian law is often considered *lex specialis*, meaning that as a specialized area of law it would override more general law, such as international human rights law. Nevertheless, human rights law continues to apply in conflict situations. Moreover, international drug control law regulates the conditions on the basis of which governments can secure access to controlled medicines, also in times of conflict.

International human rights law

International human rights law (IHRL) is the body of law designed to promote and protect human dignity and the rights of individuals, largely vis-à-vis

state authorities. IHRL includes treaty-based and charter-based institutions that underpin the importance of access to medicines in times of conflict. Access to medicines falls within the framework of various individual human rights, including, in some cases, the rights to life and to freedom from torture. However, within IHRL's treaty-based system, the right to the highest attainable standard of health—often referred to as the right to health—provides for the most explicit framework on access to medicines.

Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) is the most elaborate provision on health within IHRL.[20] On the basis of this article, states have obligations to prevent, treat, and control diseases and to create "conditions which would assure to all medical service and medical attention in the event of sickness."[21] The the provision of access to medicines fits squarely into these obligations. Article 2 of the covenant notes that obligations incumbent on states are obligations of both conduct and result, the latter of which are subject to progressive realization.[22] The Committee on Economic, Social and Cultural Rights—which monitors compliance with the ICESCR—interprets the concept of progressive realization as requiring states to allocate their maximum available resources and to set specific targets and benchmarks to move as expeditiously as possible toward full realization of rights.[23] At the same time, the committee acknowledges that some aspects of the right to health are considered so vital to protect the dignity and well-being of individuals that prolonging their realization would undermine the *raison d'etre* of the right to health itself.[24] So-called minimum core obligations and obligations of comparable priority therefore fall outside the scope of progressive realization and are subject to priority realization.[25]

There are a range of arguments to make that ensuring access to medicines in times of conflict is part of a set of minimum core obligations of the right to health.[26] This article singles out three grounds supporting the notion that ensuring access to medicines is part of a minimum core obligation subject to priority realization. First, according to the Committee on Economic, Social and Cultural Rights, the core obligation to ensure access to health facilities, goods, and services includes ensuring access to medicines.[27] Second, while access to medicines generally must be secured as a matter of priority under the right to health, those medicines that appear on the World Health Organization's Model List of Essential Medicines should be available in all health systems.[28] Morphine, as an important emergency and pain control medicine in times of conflict, appears on this list. The Committee on Economic, Social and Cultural Rights explicitly refers to essential medicines' availability as a core obligation.[29] Third, as part of their obligation of comparable priority to prevent, treat, and control diseases, states must create "a system of urgent medical care in cases of accidents … [to provide] humanitarian assistance in emergency situations."[30]

According to the Committee on Economic, Social and Cultural Rights, all health facilities, goods, and services, including medicines, should be available, accessible, acceptable, and of good quality. These criteria are often jointly referred to as the AAAQ standard of health care. In relation to access to medicines, this means that medicines should be available in sufficient quantities; physically available in health facilities within reasonable geographic distance to patients; affordable; culturally appropriate; and of sufficient evidence-based quality.[31] The committee explains that "the precise application of [these criteria] will depend on the conditions prevailing in a particular State party."[32]

Since it is largely recognized that IHRL, including the ICESCR, applies in times of conflict, and that ensuring access to medicines is part of the core of the right to health, the question is whether states may adopt retrogressive measures due to scarce resources or derogate from their obligations during temporary and exceptional circumstances, such as armed conflict.[33] Article 2 of the ICESCR requires governments to progressively realize all rights in the covenant, including access to medicines as part of the right to health. As indicated in the Maastricht Guidelines on Violations of Economic, Social and Cultural Rights, governments are not allowed to adopt retrogressive measures aimed at deliberately

reducing the level of rights protections or changing public expenditures such that it would deprive people of at least minimum subsistence rights.[34] Retrogressive measures are allowed, however, when the progressive realization of a right is obstructed due to a permissible limitation (in light of the ICESCR), *force majeure*, or lack of resources.[35] That said, given the deterioration of health systems during conflict, it may be particularly difficult for states to ensure access to medicines as a matter of priority. The Committee on Economic, Social and Cultural Rights seems to accept armed conflict as a factor that influences the availability of resources, which may result in retrogressive measures.[36] However, while article 2 of the ICESCR generally allows for the adoption of retrogressive measures, it is unlikely that the committee would accept such measures "solely based on the existence of an armed conflict and the connected necessity to divert resources towards war efforts."[37] Indeed, the committee holds that any retrogressive measure that conflicts with the core obligations of the right to health results in a breach of the ICESCR.[38]

In terms of limitations, legally most human rights may be limited; only a small selection of rights, such as freedom from torture, may not be limited or derogated from. Article 4 of the ICESCR includes the covenant's general limitation clause, which states that any limitation of a right included in the covenant should be "compatible with the nature of these rights."[39] Given that minimum core obligations are meant to "prevent the nullification" of the rights included in the covenant, one could argue that such rights and obligations can never be limited on the basis of article 4.[40] Indeed, article 4 also reinforces the importance of minimum core obligations as minimum standards of protection that must be guaranteed at all times.

However, in the absence of a specific mention of conflict in articles 2 and 4, it remains somewhat ambiguous what role conflict or war has on the required minimum level of realization of the right to health.[41] This is particularly acute in light of the AAAQ standard of health care that is set as a condition to the realization of the right to health. Despite this uncertainty, the Committee on Economic, Social and Cultural Rights generally emphasizes that those states that struggle or fail to effectively discharge their right to health obligations should seek financial and technical assistance from other countries and international bodies to work toward the full realization of the right to health, including in relation to medicine provision.[42] Finally, unlike other human rights treaties, the ICESCR does not include a derogation clause. In the absence of such a clause, it is difficult to assess whether any degree of derogation would be allowed. Nevertheless, the committee explicitly recognizes the non-derogable nature of minimum core rights, which—as demonstrated above—includes access to medicines.[43] Only in extreme cases where "every effort has been made to use all the resources [at the disposal of the state] in an effort to satisfy, as a matter of priority, minimum core obligations" could the state in question not be considered at fault.[44]

As for Syria, the government has ratified the ICESCR, as well as most other human rights treaties.[45] The country was due for its fifth reporting cycle under the ICESCR in 2006. However, it has not submitted any reports since 1999.[46] It does sporadically participate in the country reporting requirements of other treaty bodies, even during the conflict.[47] Both the Committee against Torture and the Committee on the Elimination of Discrimination against Women have urged the Syrian government to improve access to medical care and services. The Committee against Torture has called on the Syrian government to

> *ensure that all acts in violation of the [Convention against Torture] are brought to a halt; and cease widespread, gross and continued human rights violations of all persons under its jurisdiction, especially systematic denial, in some areas, of the basic requirements of human life, such as food, water and medical care.*[48]

Similarly, the Committee on the Elimination of Discrimination against Women has urged Syria to "ensure that accountability mechanisms are in place in all displacement settings; and provide victims with immediate access to medical services."[49]

Yet, none of the other UN treaty bodies have

specifically expressed outrage or called for compliance or accountability on the topic of access to medicines or humanitarian assistance. Some observers argue that this silence is because Syria did not submit a country report—but regardless, such silence is particularly troubling coming from the Committee on Economic, Social and Cultural Rights since this committee monitors the implementation of the right to health. Even though treaty bodies' general comments include sections on humanitarian assistance, the complexity of rights realization, particularly in the area of health, deserves more focused and dedicated attention within human rights law and international law in general.

Within IHRL's charter-based system, the UN Security Council, General Assembly, and Human Rights Council play the predominant roles in overseeing state compliance with human rights norms and obligations. In 2006, the Human Rights Council adopted the Universal Period Review procedure, which is a process in which a troika of countries assesses the level of human rights protection in a given country. The process involves state reporting, questions, and input from the Office of the United Nations High Commissioner for Human Rights and civil society organizations. Within this Universal Periodic Review system, states have called on Syria to comply with its international legal obligations. For instance, Switzerland urged Syria to allow for unimpeded access to medical care, specifically ambulances and medical teams.[50]

The Human Rights Council also has the ability to hold special sessions on situations of immediate importance that lead to widespread human rights violations. It has done so five times to discuss the situation in Syria.[51] In four of these sessions and in three resulting resolutions, the council raised serious concerns about hindering access to medical treatment, blocking the safe passage of medical supplies, and attacks on health facilities and personnel. While reference to medical supplies is important, explicit reference to access to essential medicines would better reinforce the fact that access to medicines is considered a core aspect of the right to heath.

Other UN charter-based bodies have also produced important reports on health issues in Syria—and some, including the Independent International Commission of Inquiry on the Syrian Arab Republic, have addressed the issues in a more comprehensive manner.[52] For example, the commission has urged the Syrian government to

> *end attacks against humanitarian workers, including medical personnel and first responders, and safeguard the sanctity of hospitals and medical transport … [and] … allow rapid, safe, sustained, unhindered and unconditional access to humanitarian aid, particularly to besieged and hard-to-reach areas.*[53]

Additional IHRL actors, including the UN Special Rapporteur on the right to health, have also spoken out. In August 2016, Dainius Pūras urged all parties to the Syrian conflict to allow unimpeded access to humanitarian relief and to protect the rights of those in besieged and difficult-to-reach areas.[54] Such statements are welcome, but concrete declarations of state obligations from a treaty monitoring body would carry more weight because of the legal obligations attached to the UN treaty body system. Overall, the compliance and accountability mechanisms within IHRL, however, are not very powerful in turning around the health and human rights violations in a multiplayer seven-year conflict.

International drug control law

International drug control law (IDCL) is the field of law that regulates the production, import, export, trade, distribution, and use of harmful substances such as psychotropic and narcotic drugs. Some of the medicines on the World Health Organization's Model List of Essential Medicines, such as morphine, are controlled medicines.[55] Controlled medicines are medicines whose active pharmaceutical ingredient falls within the scope of IDCL, because of its serious abuse potential.

The 1961 Single Convention on Narcotic Drugs regulates the use of morphine for both trauma care and pain control and palliative care.[56] Article 4 of the convention sets out a strict prohibition clause: all production, import, export, trade, distribution,

and use of controlled substances is forbidden except if they are—simply put—produced and used to serve medical and scientific purposes. Medicines for both emergency care and pain control in conflict settings fall within this limitation clause. Articles 17, 19, 20, and 30 set up an advanced licensing and monitoring system that states must adhere to in order to ensure access to medicines under IDCL. On the basis of these articles, states have to manage a separate administration (art. 17), submit annual overviews reflecting the country's estimated need of controlled substances for medical and scientific purposes in the following year (art. 19), submit quarterly statistical returns to account for the use of the same substances (art. 20), and adopt specific trade and distribution requirements. The International Narcotics Control Board is responsible for monitoring implementation of these articles and issuing trade licenses on the basis of the estimates submitted.

Adequate compliance with the licensing and monitoring system implies that states have smooth and well-functioning bureaucracies and health systems and that they have due insight in their country-specific epidemiology.[57] The available guidelines also demonstrate that a high level of capacity is a *conditio sine qua non* for effective compliance.[58] Countries with large remote areas or seriously constrained health systems—in terms of staff and finances—are put in a structurally disadvantaged position to implement and comply with these procedures.[59] This results in countries either refraining from submitting estimates or including insufficient consumption figures in their estimates, which means that consumption will be inadequate.[60]

While there is no provision in the SCND that discharges states of their drug control obligations in times of conflict, the International Narcotics Control Board manages simplified procedures in emergency situations. And in 1996, the World Health Organization adopted model guidelines for the international provision of controlled medicines for emergency care. Both the International Narcotics Control Board and the World Health Organization acknowledge that this issue is often complex, especially if domestic control authorities, who have to report to the International Narcotics Control Board, are malfunctioning due to, among other things, conflict.[61] The simplified procedures reflect a practical solution to support access to controlled medicines for humanitarian assistance whereby suppliers can bypass control authorities in the receiving countries if unavailable, which partly reduces the administration involved. These simplified procedures are in place "when an emergency occurs which results in a disruption of the function of such authorities to issue import authorizations."[62] In other words, only if the Syrian control authorities are no longer capable of fulfilling their control mandate will the simplified procedures apply. If, on first sight—despite a conflict situation—the responsible institution remains capable of fulfilling its obligations, the standard rules seem to apply, which carries the same structural complexities as mentioned before. The result may be that governments formally comply with the IDCL system because they submit the necessary paperwork but the consumption prognosis included in the estimate may be insufficient to the extent that it is inadequate to treat the country's absolute need of controlled medicines. This substantive gap seems apparent in the case of Syria.

Syria submits estimates to the International Narcotics Control Board, including a quantification of morphine, to give effect to its obligations under IDCL.[63] Yet, according to a 2014 study, Syria's morphine consumption figures remain far below par, reflecting only a 5.16% adequacy of consumption.[64] It is unclear whether organizations in Syria are supported by the Syrian government to make use of the simplified procedures because of its current conflict status.

Even though the International Narcotics Control Board flags the importance of access to emergency care in times of conflict and refers to the simplified procedures that it has adopted, it can do more. It calls upon governments to make use of these procedures, and its 2014 report even devotes a special section to the topic.[65] However, when assessing the particular concerns in Syria in this same report, the board stresses only that the conflict in Syria is dangerous in terms of illicit drug

trafficking. It does not stress the importance of the simplified procedures in this context, despite the inadequate medical use of morphine in the country.[66] One may wonder whether the Syrian government is indeed effectively capable of fulfilling its reporting and administrative tasks under IDCL. Hence, the role of the International Narcotics Control Board in fostering access to medicines for emergency care should not just focus on either the simplified procedures in absence of a functioning competent authority or the application of the regular rules, but rather embrace an integrated approach and address the aggravated structural complexities that governments face when estimating need in conflict situations. In doing so, the board should take notice of the human rights standards on access to medicines and take an integrated approach in monitoring progress. Instead, the currently fragmented discussion reflects a priority on law enforcement and control procedures within IDCL over access-to-medicine approaches. The IDCL system is frequently criticized for a one-sided and ineffective focus on harsh law enforcement. As was also concluded in a special edition of this journal on human rights and drug control, human rights are currently not adequately used to guide drug control efforts.[67] The critical health situation in Syria reflects the devastating effect that this one-sided approach has on adequate standards of health care provision, including access to medicines.

International humanitarian law

International humanitarian law (IHL) is the law that regulates the conduct of armed conflict.[68] It seeks to limit the effects of war by protecting persons who are not participating in hostilities and by regulating and restricting the means and methods of warfare.[69] Unlike IHRL, IHL does not protect individuals based solely on the notion of "inherent dignity." Rather, it protects different "statuses," including civilian, medical personnel, combatants, and persons *hors de combat*, within a pragmatic legal framework that balances the principle of humanity with the principle of military necessity.[70]

The two primary sources of IHL are treaty law and custom.[71] With regard to treaty law, IHL consists of the four Geneva Conventions and Additional Protocols I and II. IHL is generally divided between laws that apply to international armed conflicts and laws that apply to non-international armed conflicts, and it binds states and non-state armed groups.

With regard to international conflicts, the provisions of humanitarian assistance—including, for example, access to medicine and the protection of medical personnel—can be found in Geneva Convention IV and Additional Protocol I.[72] During non-international conflicts, the provisions of humanitarian assistance can likewise be found in common article 3 of the Geneva Conventions and Additional Protocol II (which Syria has not ratified).[73] The laws impose an obligation on the parties, whether the state or non-state armed group, to ensure access to necessary medical supplies for the civilian population. Generally, and certainly in the case of Syria, this would include medicines such as pain control medication. While Additional Protocols I and II require the consent of the parties concerned for relief actions, including medicine provision, to take place, such consent must not be refused on arbitrary grounds, and the parties may operate control over the relief provided.[74]

The most authoritative source on customary IHL is the study carried out by the International Committee of the Red Cross on the topic.[75] The committee recognizes that access to humanitarian relief for civilians in need, including medical supplies, is a recognized rule of customary IHL in international and non-international conflicts.[76] With regard to state practice, the obligation to allow and facilitate access to humanitarian relief for civilians in need, including access to medicines, is supported by official statements and actions by states and the UN.[77]

Therefore, regardless of the legal characterization of the conflict, IHL provides a legal framework obliging states and armed groups, under both customary and treaty law, to ensure humanitarian assistance and access to medicines.[78] It usually falls to the authority exercising control over persons or territory to ensure that IHL norms and standards related to humanitarian relief are adhered to.[79]

And, as with IHRL, when states or non-state armed groups fail in these obligations, the international community responds politically and otherwise.

In terms of the current practical potential of IHL to address the access-to-medicine problem in Syria, the UN Security Council has passed a number of resolutions guaranteeing access to humanitarian assistance, including medical and surgical supplies, and hence medicines.[80] The World Health Organization, UNICEF, International Committee of the Red Cross, and others are actively trying to deliver medical aid and provide access to medicines. However, for years, the Syrian government, coupled with the bombings carried out by Russia, continues to hinder the process. The UN Security Council has been made largely ineffective because of Russia's veto power. For a long time, this veto power blocked any attempt to implement no-fly zones, which could have significantly lessoned civilian deaths and provided greater access to medicines. In terms of keeping pressure on Syria to comply with its IHL obligations, one response has been to better document the crimes and look toward a possible future prosecution, either domestically or internationally, for violations of war crimes or crimes against humanity.

International criminal law and documentation of crimes

International criminal law is the body of law prohibiting certain categories of conduct commonly viewed as serious atrocities and holding perpetrators of such conduct criminally accountable for their acts. The core categories of crimes falling under the jurisdiction of international criminal courts include war crimes, crimes against humanity, and genocide.[81] While the International Criminal Court (ICC) was established to investigate and prosecute these crimes, it has only complementary jurisdiction, meaning that states are primarily responsible for prosecuting such crimes.

The ICC's governing provisions provide a solid framework for the criminalization of war crimes related to access to medicines, and many national jurisdictions have adopted similar provisions. There are a number of provisions of the Rome Statute of the ICC that could apply to violations of access to medicines. The first is article 8(2)(a)(iii), which criminalizes the willful causing of great suffering or serious injury to body or health. The second is article 8(2)(b) and (e), which deals with intentionally directing attacks against civilians, civilian objects, hospitals, medical units, and medical staff. Likewise, with regard to crimes against humanity, the crimes of extermination and persecution could be used to prosecute individuals for intentionally depriving individuals of medicine or humanitarian assistance.[82]

There are therefore, in theory, a number of avenues for perusing individual accountability for violations of access to medicines, either under the Rome Statute of the ICC or in domestic criminal systems that may have jurisdiction over the crimes. However, there are also serious limitations. Bringing an individual before the ICC is not an easy process. The ICC prosecutor can begin an investigation only when the court has jurisdiction, including temporal, subject-matter, and territorial or personal jurisdiction. In fact, the ICC has jurisdiction only over alleged crimes committed on the territory of state parties, or by nationals of state parties, and Syria is not a state party to the Rome Statute of the ICC.[83] Alternatively, the court may also obtain jurisdiction over a situation by a referral from the UN Security Council (which has been blocked by Russia), or by a declaration to the court by a non-state party (which Syria is unlikely to do).[84] Moreover, even when jurisdiction exists, the challenges associated with an international prosecution are great. As a result, only a limited number of cases have been pursued to date, covering a small number of jurisdictions around the world. While pursuing domestic prosecutions for war crimes or crimes against humanity are an option, such prosecutions would require a state to have criminalized these acts under national legislation, to have jurisdiction over the alleged perpetrator, and to have the political will to prosecute the cases.

Yet, pressure is growing for some form of individual accountability for serious human rights and humanitarian law violations. Prosecutions would draw much-needed attention to violations of the

right to health—particularly access to medicines—and would provide some form of justice to victims. In response to the inability of the UN Security Council to take action, in late 2016, the General Assembly passed a resolution establishing the International, Impartial and Independent Mechanism to Assist in the Investigation and Prosecution of Those Responsible for the Most Serious Crimes in Syria.[85] This mechanism is mandated to collect, consolidate, investigate, and analyze information about crimes in Syria and to build a case file for prosecution.[86] The idea is to then *share* this information with national, regional, or international courts or tribunals that could exercise jurisdiction. It is the first such mechanism of its kind and, if successful, may pave the way for others like it. It will be important for the new head of the mechanism, Catherine Marchi-Uhel, to focus on collecting information related to violations of access to medicines.

Complementary frameworks: Looking ahead

Within this complex picture of complementary legal frameworks, there are a number of things being done for the situation in Syria. Yet, none have been able to ensure compliance or provide accountability for violations of access to medicines. While this may simply reflect the inherent limitations of law generally, after reflecting on the complementarity of the legal frameworks discussed, looking ahead leads to a dual conclusion.

First, all four bodies of law discussed hold clear potential in terms of regulatory and accountability mechanisms for improving access to medicines in times of conflict, but they are too weak on their own account. The field of IHRL is strong in standard setting and identifying corresponding fundamental rights and obligations but lacks a powerful set of legal accountability measures. It needs to strengthen its existing institutions and make specific and unified points on access to medicines in times of conflict in its treaty monitoring system. The IDCL framework should be used to simplify and foster access to medicines in emergency situations on the ground. International actors such as the International Narcotics Control Board should continue to actively promote the use of these simplified procedures.[87] And, at the same time, the board should take an integrated approach and focus on the structural challenges governments face, particularly in conflict situations. These challenges often hamper their ability to comply with the general rules in IDCL. Finally, there is a strong emphasis on violations of the right to access medicines and medical/relief supplies within the IHL framework, but it too lacks direct accountability structures. Instead, accountability processes fall within domestic criminal processes or the ICL framework, and as shown above, the limitations are clear. The failures of these legal frameworks in terms of compliance and accountability highlight the limits of law operating in highly volatile political environments. And while a legal framework, or a combination of legal frameworks, is clearly not going to solve the crisis in Syria, there are important steps that can be taken to strengthen these frameworks to better ensure compliance and accountability.

Second, the potential for on-the-ground change lies in the mutual reinforcement of the legal frameworks discussed. However, this reinforcement remains rhetorical and far from practical. There is too little synergy or "spillover effect" between these bodies of law, and international institutions should actively reach out to one another to strengthen the applicable law on access to medicine provision in times of conflict. They should also work toward a holistic interpretation and practical application of these four bodies of law in order to support better access to medicines in times of conflict and hold those accountable who are responsible for unlawfully obstructing this access. The newly established International, Impartial and Independent Mechanism to Assist in the Investigation and Prosecution of Those Responsible for the Most Serious Crimes in Syria offers some hope in this regard—but only if greater attention is paid to this topic when building individual case files. Moreover, both IHRL and IDCL should also mutually reinforce each other by, for example, the Committee on Economic, Social

and Cultural Rights and International Narcotics Control Board issuing a joint general comment on the issue. Within IHRL, humanitarian assistance is a crosscutting element of general comments; however, the case of Syria demonstrates that the complexity of health service delivery in times of conflict needs to be addressed at a more holistic level. Although specifically aimed at state accountability, these bodies of law should meanwhile pave the way for humanitarian organizations to deliver on-the-ground care, which requires, for instance, that the International Narcotics Control Board better and actively promote the use of the simplified procedures.

Overall, attention to access to medicines must remain a priority within all compliance and accountability processes and legal frameworks. The international community must act to strengthen these legal frameworks in response to the failures experienced thus far. The promotion of greater linkages between the health sector and legal and political environments, as well as greater collaboration between the various fields and legal frameworks are crucial starting points. The civilians in Syria who have been denied access to medicines deserve better protection.

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