

THE UNITED KINGDOM'S DUTY UNDER
INTERNATIONAL HUMANITARIAN LAW TO
ENSURE THAT ITS HUMANITARIAN AID
GUARANTEES THE RIGHT OF
WOMEN RAPED IN ARMED CONFLICT TO
MEDICAL OUTCOMES THAT ARE NO LESS
FAVORABLE THAN THOSE ACCORDED
MEN, INCLUDING ACCESS TO SAFE
ABORTION

Domestic, International and EU Laws, Policies & Practices
Relevant to the UK

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**Global
Justice Center**

Human Rights Through the Rule of Law

Preface

The duty of the United Kingdom (UK) to respect international law, and in particular international humanitarian law, is firmly rooted in its body of domestic law which implements the Geneva Conventions and its Additional Protocols, and is further supplemented by the laws, regulations, and guidelines of the European Union.

For women raped in armed conflict, abortion is a legal right under international humanitarian law (IHL). Girls and women raped in armed conflict are “protected persons” under the Geneva Conventions and are entitled, as the “wounded and sick,” to “receive to the fullest extent practicable and with the least possible delay, the medical care and attention required by their condition.” This care must also be non-discriminatory. To deny a medical service to pregnant women (abortion), while offering everything needed for victims who are male or who aren’t pregnant, is a violation of this requirement of non-discrimination. Therefore, IHL imposes an absolute and affirmative duty to provide the option of abortion to rape victims in humanitarian aid settings; failing to do so violates the Geneva Conventions, its Additional Protocols, and customary international law.

These protections are further supported by international human rights law. The Committee against Torture and the Human Rights Committee have both declared the denial of abortion to be torture or cruel, inhuman, and degrading treatment in certain situations. Furthermore, under these treaties, which apply concurrently with humanitarian law during armed conflict, State Parties are required to provide the highest standard of rehabilitative care for torture victims, which includes the provision of complete medical services for injuries resulting from torture. In the case of impregnated female rape victims, such care must include the option of abortion.

This compendium contains excerpts from British legislation, policy, and practice which underscore the UK’s commitments to ensure that British funding of organizations provide humanitarian aid to girls and women raped in armed conflict that affords them their full and inalienable rights to medical care under IHL. This requires: (1) access to a complete range of health and life-saving treatments including abortion, and (2) compliance with the tenet of non-discriminatory humanitarian aid for girls and women raped in armed conflict.

The UK is a global leader in providing humanitarian aid and assistance to the victims of armed conflict. The UK should continue to endeavour to comply fully and faithfully with the rights and protections these victims are accorded under IHL.

This compendium serves as the reference document for the following documents produced by the Global Justice Center:

1. A Call for Global Leadership by the United Kingdom to Secure the Inalienable Rights of Girls and Women Raped & Impregnated in Armed Conflict to Non-discriminatory Medical Care including Abortion
(http://globaljusticecenter.net/index.php?option=com_mtree&task=att_download&link_id=111&cf_id=34)
2. The Abortion Policy of the International Committee of the Red Cross: A Call for UK Leadership to Protect the Rights and Lives of Women Impregnated by Rape in Armed Conflict
(http://globaljusticecenter.net/index.php?option=com_mtree&task=att_download&link_id=110&cf_id=34)

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I. SOURCES OF UK LEGAL OBLIGATIONS TO POSITIVELY ENSURE ITS HUMANITARIAN AID FOR PERSONS “WOUNDED AND SICK” IN ARMED CONFLICT, INCLUDING GIRLS AND WOMEN RAPED IN ARMED CONFLICT, IS IN ACCORD WITH THE MEDICAL MANDATES OF INTERNATIONAL HUMANITARIAN AND TORTURE LAW, INCLUDING PROVIDING NECESSARY ABORTIONS

A. UK Domestic Legislation

Geneva Conventions Act, 1957, as amended in 1995 and 1998¹

BACKGROUND: Passed as an Act of Parliament in 1957 and subsequently amended, the Geneva Conventions Act incorporates the obligations arising under the Geneva Conventions and the Additional Protocols into British domestic law. It includes six Schedules, each corresponding to the four Geneva Conventions and the two Additional Protocols. Although these Schedules are not binding, judges undertake statutory interpretation of domestic legislation so that it is compatible with the text of the Schedules where possible. The Schedules affirm that complete medical treatment and protection of the “wounded and sick” is required by international humanitarian law (“IHL”) and that no discrimination or distinction may be made other than for medical needs, which would be undermined by the exclusion and denial of abortion for girls and women raped in armed conflict.

RELEVANT EXCERPT:

Fifth Schedule

Protocol I

Part II: Wounded, Sick and Shipwrecked

Section I – General Protection

Article 8 - Terminology

For the purposes of this Protocol:

(a) “wounded” and “sick” means persons, whether military or civilian, who, because of trauma, disease or other physical or mental disorder or disability, are in need of medical assistance or care and who refrain from any act of hostility. These terms also cover maternity cases, new-born babies and other persons who may be in need of immediate medical assistance or care, such as the infirm or expectant mothers, and who refrain from any act of hostility; . . .

(c) “medical personnel” means those persons assigned, by a Party to the conflict, exclusively to the medical purposes enumerated under sub-paragraph (e) or to the administration of medical units or to the operation or administration of medical transports. Such assignments may be either permanent or temporary. The term includes:

- (i) medical personnel of a Party to the conflict, whether military or civilian, including those described in the First and Second Conventions, and those assigned to civil defence organisations;
- (ii) medical personnel of national Red Cross (Red Crescent, Red Lion and Sun) Societies and other national voluntary aid societies duly recognised and authorised by a Party to the conflict;
- (iii) medical personnel of medical units or medical transports described in Article 9, paragraph 2;

Article 10 – Protection and Care

All the wounded, sick and shipwrecked, to whichever Party they belong, shall be respected and protected.

In all circumstances they shall be treated humanely and shall receive, to the fullest extent practicable and with the least possible delay, the medical care and attention required by their condition. There shall be no distinction among them founded on any grounds other than medical ones.

Article 16 – General Protection of Medical Duties

Under no circumstances shall any person be punished for carrying out medical activities compatible with medical ethics, regardless of the person benefiting therefrom.

Persons engaged in medical activities shall not be compelled to perform acts or to carry out work contrary to the rules of medical ethics or to other medical rules designed for the benefit of the wounded and sick or to the provisions of the Conventions or of this Protocol, or to refrain from performing acts or from carrying out work required by those rules and provisions.

No person engaged in medical activities shall be compelled to give to anyone belonging either to an adverse Party, or to his own Party except as required by the law of the latter Party, any information concerning the wounded and sick who are, or who have been, under his care, if such information would, in his opinion, prove harmful to the patients concerned or to their families. Regulations for the compulsory notification of communicable diseases shall, however, be respected.

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**Fifth Schedule**

**Protocol I**

**Part V: Execution of the Conventions and of this Protocol**

**Section II – Repression of Breaches of the Conventions and of this Protocol**

*Article 85— Repression of Breaches of this Protocol*

The provisions of the Conventions relating to the repression of breaches and grave breaches, supplemented by this Section, shall apply to the repression of breaches and grave breaches of this Protocol [See Articles 49-51 below] . . .

Without prejudice to the application of the Conventions and of this Protocol, grave breaches of these instruments shall be regarded as war crimes.

*Article 86 – Failure to Act*

The High Contracting Parties and the Parties to the conflict shall repress grave breaches, and take measures necessary to suppress all other breaches, of the Conventions or of this Protocol which result from a failure to act when under a duty to do so.

The fact that a breach of the Conventions or of this Protocol was committed by a subordinate does not absolve his superiors from penal or disciplinary responsibility, as the case may be, if they knew, or had information which should have enabled them to conclude in the circumstances at the time, that he was committing or was going to commit such a breach and if they did not take all feasible measures within their power to prevent or repress the breach.

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First Schedule: Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field

Chapter IX – Repression of Abuses and Infractions

Article 49

. . . Each High Contracting Party shall take measures necessary for the suppression of all acts contrary to the provisions of the present Convention other than the grave breaches defined in the following Article. . . .

Article 50

Grave breaches to which the preceding Article relates shall be those involving any of the following acts, if committed against persons or property protected by the Convention: wilful killing, torture or inhuman treatment, including biological experiments, wilfully causing great suffering or serious injury to body or health, and extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly.

Article 51

No High Contracting Party shall be allowed to absolve itself or any other High Contracting Party of any liability incurred by itself or by another High Contracting Party in respect of breaches referred to in the preceding Article.

The Joint Service Manual of the Law of Armed Conflict (2004)²

BACKGROUND: Published in 2004 by the UK Ministry of Defense, the Joint Service Manual is the “first major statement of the British approach to the Law of Armed Conflict since 1958.”³ The Manual is a comprehensive reference collection of the laws of armed conflict that applies to the UK Armed Forces as well as UK departments, such as the Ministry of Defense and the Foreign and Commonwealth Office. According to the Manual itself: “The publication of this Manual should be seen as another step in stating publicly the UK’s interpretation of what the Law of Armed Conflict requires. This Manual will form the basis for training of UK military personnel in this body of law, and will be used widely to inform practical decision making.”⁴ It restates the responsibility of UK entities to abide by IHL principles and the laws of armed conflict on the treatment of the “wounded and sick”—such as the requirement that doctors base treatment decisions and procedures on medical needs alone—found in the Geneva Conventions, its Additional Protocols, and the Geneva Conventions Act of 1957.

RELEVANT EXCERPTS:

Chapter 7: The Wounded, Sick, and Dead and Medical Services Protection and Care of the Wounded and Sick

Paragraph 7.3

The wounded and sick are to be protected and respected. They may not be attacked. They must be treated humanely. They must be provided with medical care. They may not wilfully be left without medical assistance nor exposed to contagious diseases or infection. Priority of treatment is dictated by medical reasons only. Violence and biological experiments are forbidden. **Women must be treated with special respect and no less favourably than men.**

Paragraph 7.3.2

Paragraph 7.3 applies to all wounded and sick, whether United Kingdom, allied or enemy, military or civilian. They are entitled to respect and protection, humane treatment and, to the fullest extent practicable and with the least possible delay, the medical care and attention

required by their condition. It is forbidden, for example, to give the treatment of United Kingdom and allied wounded priority over the treatment of wounded enemy personnel. **The only distinction which is permitted in dealing with the wounded or sick is that founded on real medical need.** There is no absolute obligation on the part of the military medical services to accept civilian wounded and sick – that is to be done only so far as it is practicable to do so. For example, the commander of a field hospital placed to deal with casualties from an impending battle would be entitled to refer non-urgent cases elsewhere, even if the hospital had the capacity to treat them at the time. **Once the treatment of a civilian patient has commenced, however, discrimination against him on other than medical grounds is not permissible.**

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#### **Chapter 7: The Wounded, Sick, and Dead and Medical Services Permitted Medical Treatment**

##### *Paragraph 7.5.1*

In dealing with medical treatment on the basis of real medical need on the part of the patient, the law repeats fundamental medical ethics. The aim is to prevent experiments or unjustified medical operations on persons who are in no position to give their free consent. This protection extends to all those in the hands of an enemy or other party and even to citizens of the detaining power who are interned for reasons related to the armed conflict. . .

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Chapter 7: The Wounded, Sick, and Dead and Medical Services Non-Renunciation of Rights

Paragraph 7.9

The wounded and sick, as well as medical personnel and chaplains, may in no circumstances renounce in whole or in part, the rights secured to them by the Convention or by Additional Protocol I.

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#### **Chapter 7: The Wounded, Sick, and Dead and Medical Services General Protection of Medical Duties**

##### *Paragraph 7.14*

It is forbidden to punish anyone who carries out ‘medical activities compatible with medical ethics regardless of the person benefiting therefrom’.

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Chapter 15: Internal Armed Conflict Provisions of Common Article 3

Paragraph 15.4.1

These provisions do not preclude the application of the relevant national law—except to the extent that a particular rule of national law directly conflicts with any of the provisions of Common Article 3. . .

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**Chapter 15: Internal Armed Conflict**  
**Basic Principles of the Law of Armed Conflict**  
**Treatment of persons in the hands of a party to the conflict**  
**Humane treatment**

*Paragraph 15.30.4*

Outrages on personal dignity include acts such as rape, indecent assault, enforced pregnancy or sterilization, enforced prostitution, and slavery. . . .

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Chapter 15: Internal Armed Conflict
Additional Rules in Protocol II
Wounded, Sick and Shipwrecked
Treatment

Paragraph 15.43

All wounded, sick, and shipwrecked persons, ‘whether or not they have taken part in the armed conflict shall be respected and protected. In all circumstances, they shall be treated humanely and shall receive, to the fullest extent practicable and with the least possible delay, the medical care and attention required by their condition’. The only permitted distinction in their care and treatment is that made on medical grounds.

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**Chapter 15: Internal Armed Conflict**  
**Additional Rules in Protocol II**  
**Wounded, Sick and Shipwrecked**  
**General Protection of Medical Duties**

*Paragraph 15.46*

‘Under no circumstances shall any person be punished for having carried out medical activities compatible with medical ethics, regardless of the person benefiting therefrom.’ This general principle is expanded in three areas.

- a. Persons engaged in medical activities shall neither be compelled to perform acts or to carry out work contrary to, **nor be compelled to refrain from acts required by, the rules of medical ethics or other rules designed for the benefit of the wounded and sick, or the Protocol.**
- b. The professional obligations of persons engaged in medical activities regarding information which they may acquire concerning the wounded and sick under their care shall, subject to national law, be respected. . . .

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Chapter 16: Enforcement of the Law of Armed Conflict
Means of Enforcement

Paragraph 16.1

Enforcement of the law of armed conflict can involve a wide variety of measures. ‘Enforcement’ is taken here to mean action to ensure observance of the law and also action that may be taken

following alleged or actual violations. Action aimed at effective enforcement of the law can include, but is not limited to the following:

- a. Disseminating knowledge of the law within the armed forces, training and equipping forces in accordance with legal requirements, and establishing an effective system for taking legal considerations into account in military planning and decision-making.
- b. Media publicity about alleged violations. This can have a powerful effect and often leads to the taking of other action.
- c. High-level formal inquiries into alleged violations. These inquiries may be conducted by commissions established by individual states, by international commissions established by the United Nations Security Council or other bodies, or by the International Fact-Finding Commission,¹ which has been established for the purpose. The reports of such inquiries often propose specific legal action to deal with violations or to prevent their recurrence.
- d. International legal adjudication of disputes between states concerning the meaning and implementation of the law, for example by the International Court of Justice.
- e. Monitoring of the conduct of parties to an agreement, for example by aerial surveillance by a third party, or by an international presence on the ground, to verify, among other things, that violations of the law do not take place.
- f. Good offices and mediation, for example, by neutral states and intermediaries, including protecting powers and independent humanitarian bodies, with a view to ensuring that belligerents comply with the law of armed conflict.
- g. Administrative controls over the careers of individuals.
- h. Penal and disciplinary measures, such as trials before civil courts or courts-martial or appropriate disciplinary action by commanding officers. Trials may be either within a single state or organized on an international basis.
- i. Measures, which may include economic sanctions, arms embargoes, and various types of military action, taken under the authority of international bodies, including the UN Security Council, against offending states or armed groups.
- j. Demands for compensation in respect of violations.
- k. Reprisals by an aggrieved state.

This chapter concentrates on the formal provisions about enforcement in the relevant treaties and on the enforcement mechanisms of greatest relevance to decision-making by members of the armed forces. However, these need to be seen against the background of the wide variety of enforcement measures indicated above.

Complaints of unlawful acts and omissions alleged to have been committed by individuals or by commanders are an almost inevitable feature of warfare. All sides will be striving to win the battle for public and world opinion and no state can afford to ignore this. Hostile opinion can lead to loss of political goodwill and public support and damage morale amongst the forces concerned. Failure by belligerent governments to investigate and, where appropriate, punish the alleged unlawful acts of members of their armed forces can contribute to the loss of public and world support, leading to isolation for the state involved.

In earlier times, hostages were often taken, given, or exchanged to ensure observance of treaties, armistices, and other agreements. The taking of hostages, whether civilian or military, is now prohibited.

On a practical basis, the compliance with the law by one party can, in itself, be a strong inducement to the adverse party to comply with the law. If one party treats prisoners properly and conducts its operations within legal constraints, the adverse party will have less incentive to breach the law and indeed could be severely disadvantaged, not least through world opinion, by so doing.

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## **Chapter 16: Enforcement of the Law of Armed Conflict Orders and Instructions**

### *Paragraph 16.2*

States are under a general obligation to issue orders and instructions requiring compliance with the law of armed conflict and to take steps to see that those orders and instructions are observed. There is a specific provision in relation to the handling of the wounded, sick, and shipwrecked, extending to a requirement to provide for unforeseen situations ‘in conformity with the general principles’ of the Geneva Conventions 1949. These are that the wounded, sick, and shipwrecked should be cared for and treated without any adverse distinction.

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Chapter 16: Enforcement of the Law of Armed Conflict International Co-operation

Paragraph 16.9

Ensuring respect for the law of armed conflict is a universal responsibility. International co-operation is encouraged by Additional Protocol I, which provides for:

- a. meetings to consider general problems concerning the application of the Geneva Conventions and Additional Protocol I;
- b. exchange of official translations of the protocol as well as any implementing domestic legislation with similar provisions applying in relation to the conventions;
- c. mutual assistance in criminal proceedings brought in respect of grave breaches of the conventions or protocol, including assistance with evidence and extradition;
- d. co-operation, jointly or individually, with the UN in situations of serious violations of the conventions or protocol.

Human Rights Act (1998)⁵

BACKGROUND: In 1998, this Act of Parliament incorporated the European Convention of Human Rights (ECHR) into UK law and expanded the jurisdiction of UK domestic court to hear plaintiffs’ claims for breaches of the ECHR. The Human Rights Act reaffirms the UK’s obligation, as a member of the EU, to make the ECHR supremacy and compatibility with national law and to protect the positive rights such as the right to life, the prohibition of torture, and the right to private and family life. The Act makes it an affirmative duty to assure treatment of each individual comports with these standards, including the policies promulgated in regard to the medical treatment of persons “wounded and sick” in armed conflict whose conditions might inhumanely exacerbated, life placed at risk, and right to privacy and family life deprived by the denial of necessary medical treatment such as abortion.

RELEVANT EXCERPTS:

Legislation

3. Interpretation of legislation.

- (1) So far as it is possible to do so, primary legislation and subordinate legislation must be read and given effect in a way which is compatible with the Convention rights.
- (2) This section—
 - a) applies to primary legislation and subordinate legislation whenever enacted;
 - b) does not affect the validity, continuing operation or enforcement of any incompatible primary legislation; and
 - c) does not affect the validity, continuing operation or enforcement of any incompatible subordinate legislation if (disregarding any possibility of revocation) primary legislation prevents removal of the incompatibility.

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## Schedule 1: The Articles

### Part I: The Convention Rights and Freedoms

#### *Article 2 - Right to Life*

1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.
2. Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than absolutely necessary:
  - a) in defence of any person from unlawful violence;
  - b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
  - c) in action lawfully taken for the purpose of quelling a riot or insurrection.

#### *Article 3 - Prohibition of Torture*

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

#### *Article 8 - Right to respect for private and family life*

1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

## B. European Union Laws and Guidelines

### **The Treaty of Lisbon (2007)<sup>6</sup>**

BACKGROUND: The Treaty of Lisbon, signed in 2007 by EU member states, amends and supplants the Maastricht Treaty and the Rome Treaty (Treaty on the Functioning of the EU), the two foundational EU treaties. The Treaty establishes a direct legal basis for EU member states to provide humanitarian aid in accordance with international humanitarian principles.

RELEVANT EXCERPT:

*Article 188 J(2)*

Humanitarian aid operations shall be conducted in compliance with the principles of international law and with the principles of impartiality, neutrality, and non-discrimination.

### **Council Regulation concerning humanitarian aid, (EC) No 1257/96 (20 June 1996)<sup>7</sup>**

BACKGROUND: Regulation No 1257/96, promulgated by the European Commission, is a legislative act that applies to the provision of humanitarian aid by the EU and its Member States. Article 288 of the Treaty on the Functioning of the EU makes regulations such as this one “binding in [their] entirety and directly applicable in all Member States.”

RELEVANT EXCERPTS:

*Preamble*

. . . Whereas people in distress, victims of natural disasters, wars and outbreaks of fighting, or other comparable exceptional circumstances have a right to international humanitarian assistance where their own authorities prove unable to provide effective relief;

Whereas civilian operations to protect the victims of fighting or of comparable exceptional circumstances are governed by international humanitarian law and should accordingly be considered part of humanitarian action; . . .

*Article 1*

The Community's humanitarian aid shall comprise assistance, relief and protection operations on a **non-discriminatory basis** to help people in third countries, particularly the most vulnerable among them, and as a priority those in developing countries, victims of natural disasters, manmade crises, such as wars and outbreaks of fighting, or exceptional situations or circumstances comparable to natural or man-made disasters . . .

*Article 2*

The principal objectives of the humanitarian aid operations referred to in Article 1 shall be:

- (a) **to save and preserve life** during emergencies and their immediate aftermath and natural disasters that have entailed major loss of life, physical, psychological or social suffering or material damage;

(b) **to provide the necessary assistance** and relief to people affected by longer-lasting crises arising, in particular, from outbreaks of fighting or wars, producing the same effects as those described in subparagraph (a), especially where their own governments prove unable to help or there is a vacuum of power;

COMMENTARY:<sup>8</sup>

The duty on ECHO to uphold IHL for war victims in the Preamble is then operationalized in **Article 2 (g)** of the Regulation: “The principal objectives of the humanitarian aid operations referred to in Article 1 shall be: [...] (g) to support civil operations to the victims of fighting or comparable emergencies, in accordance with current international agreements.”

Further, the phrase, “in accordance with international agreements,” was added by the Council itself, before passing the Regulation. The 1995 Commission’s proposed text of **Article 2 (g)** did not include the phrase “in accordance with international agreements.”

## **Updated European Union guidelines on promoting compliance with International Humanitarian Law (2009)<sup>9</sup>**

BACKGROUND: The EU guidelines for compliance with international humanitarian law were promulgated in 2009 by the Council of the European Union, a legislative body composed of member states’ national ministers. They reflect how the EU promotes compliance with international humanitarian law.

RELEVANT EXCERPTS:

*Paragraph 5*

**States are obliged to comply with the rules of IHL to which they are bound by treaty or which form part of customary international law.** They may also apply to non-State actors. Such compliance is a matter of international concern. In addition, the suffering and destruction caused by violations of IHL render post-conflict settlements more difficult. There is therefore a political, as well as a humanitarian interest, in improving compliance with IHL throughout the world.

*Footnote 2*

**All** EU Member States are Parties to the Geneva Conventions and their Additional Protocols and thus **under the obligation** to abide by their rules.

*Para 15*

Action under this heading includes:

(a) In order to enable effective action, **situations where IHL may apply must be identified without delay.** The responsible EU bodies, including appropriate Council Working Groups, should monitor situations within their areas of responsibility where IHL may be applicable, drawing on advice, as necessary, regarding IHL and its applicability. Where appropriate they **should identify and recommend action to promote compliance with IHL** in accordance with these Guidelines. Consultations and exchange of information with knowledgeable actors, including the ICRC and other relevant organisations such as the UN and regional organisations, should be considered when appropriate. Consideration should also be given, where appropriate, to drawing on the services of the International

Humanitarian Fact-Finding Commission (IHFFC) established under Article 90 of the Additional Protocol I to the Geneva Conventions of 1949, which can assist in promoting respect for IHL through its fact-finding capacity and its good offices function.

## **European Parliament Resolution on equality between women and men in the European Union (13 March 2012)<sup>10</sup>**

BACKGROUND: The European Parliament is a legislative body of the European Union that is comprised of representatives directly elected by the citizens of the EU member states. The following resolution reminds EU member states that implementation of international legal instruments should be made independently of other states' foreign policy positions and should maintain the integrity of the legal obligations and duties imposed.

### RELEVANT EXCERPTS:

#### *Paragraph 47*

Reiterates its position on sexual and reproductive health rights, as stated in its resolutions of 1 February 2010 and 8 February 2011 on equality between women and men in the European Union – 2009 and 2010; expresses concern in this respect about recent funding cuts to family planning and sexual education and also restrictions on access to sexual and reproductive health services in some Member States, in particular pregnancy and maternity protection and safe and legal abortion; stresses that all women must have control over their sexual and reproductive rights including by having access to affordable high-quality contraception;

#### *Paragraph 61*

Reminds the Commission and the Member States of their commitment to implement UN Security Council Resolution 1325 on Women, Peace and Security, and urges the provision of EU humanitarian aid to be made effectively **independent from the restrictions on humanitarian aid imposed by the USA**, in particular by **ensuring access to abortion for women and girls who are victims of rape in armed conflicts**.

## **European Convention on Human Rights<sup>11</sup>**

### RELEVANT EXCERPTS:

#### *Article 2. Right to life*

1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.
2. Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than absolutely necessary:
  - (a) in defence of any person from unlawful violence;
  - (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
  - (c) in action lawfully taken for the purpose of quelling a riot or insurrection.

#### *Article 3. Prohibition of torture*

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

*Article 8. Right to respect for private and family life*

1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

*Article 14. Prohibition of discrimination*

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

## **Protocol No. 12 to the European Convention on Human Rights<sup>12</sup>**

RELEVANT EXCERPTS:

. . . Having regard to the fundamental principle according to which all persons are equal before the law and are entitled to the equal protection of the law;

Being resolved to take further steps to promote the equality of all persons through the collective enforcement of a general prohibition of discrimination by means of the Convention for the Protection of Human Rights and Fundamental Freedoms signed at Rome on 4 November 1950 (hereinafter referred to as “the Convention”);

Reaffirming that the principle of non-discrimination does not prevent States Parties from taking measures in order to promote full and effective equality, provided that there is an objective and reasonable justification for those measures,

Have agreed as follows:

*Article 1. General prohibition of discrimination*

1. The enjoyment of any right set forth by law shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.
2. No one shall be discriminated against by any public authority on any ground such as those mentioned in paragraph 1.

## **Case Law of the European Court of Human Rights Relating to Abortion**

BACKGROUND: Following are the full texts of *Information Notes on the Court’s case-law*, prepared by the European Court of Human Rights (and available on its website), for various cases that consider the issue of abortion within the context of the European Convention on Human Rights.

*R.R. V. POLAND (26 MAY 2011)*<sup>13</sup>

**Article 3**  
**Degrading treatment**  
**Inhuman treatment**

Lack of access to prenatal genetic tests resulting in inability to have an abortion on grounds of foetal abnormality: *violation*

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*Facts* – Following an ultrasound scan performed during the eighteenth week of pregnancy, the applicant was informed of a possible foetal malformation. She immediately expressed her wish to have an abortion if the diagnosis was confirmed. It was recommended she undergo a genetic examination by way of amniocentesis, but it was not until the twenty-third week of pregnancy, after her own doctor and a series of other doctors had repeatedly refused to refer her, that the examination took place. She again unsuccessfully requested an abortion. However, by the time, two weeks later, she received the results confirming that the foetus was suffering from Turner Syndrome, it was too late for her to have an abortion\*. Although unsuccessful in an attempt to have the doctors prosecuted, the applicant was awarded compensation in civil proceedings both for the doctors' failure to perform the genetic tests on time and for their failure to make any record of their refusals to refer her.

*Law* – Article 3: The applicant had repeatedly tried to obtain access to genetic testing which would confirm or dispel the diagnosis of a possible malformation. However, the determination of whether she should have access to genetic testing, as recommended by the doctors, was flawed by procrastination, confusion and a failure to provide her with proper counselling and information. It was undisputed that only genetic tests were able to establish objectively whether the initial diagnosis was correct. It was never argued or shown that genetic testing as such was unavailable for lack of equipment, medical expertise or funding. The domestic legislation unequivocally imposed an obligation on the State in cases of suspicion of genetic disorder or development problems to ensure unimpeded access to prenatal information and testing. It also imposed a general obligation on doctors to give patients all the necessary information on their cases and afforded patients the right to obtain comprehensive information on their health. There had thus been an array of unequivocal legal provisions in force at the relevant time specifying the State's positive obligations towards pregnant women regarding access to information about their own health and the foetus's health.

The applicant had been in a situation of great vulnerability. As a result of the procrastination of the health professionals she had had to endure six weeks of painful uncertainty concerning the health of her foetus, despite the medical staff's legal obligation to properly acknowledge or address her concerns. No regard was had to the temporal aspect of the applicant's predicament and she eventually obtained the results of the tests when it was already too late for her to make an informed decision on whether to continue the pregnancy or to have recourse to legal abortion. The applicant had thus been humiliated and, in the Court's view, her suffering had reached the minimum threshold of severity under Article 3.

*Conclusion:* violation (six votes to one)

**Article 8:** Polish law as applied in the applicant's case did not contain any effective mechanisms which would have enabled the applicant to seek access to a diagnostic service, which was decisive for the possibility of exercising her right to take an informed decision as to whether to seek legal abortion. Consequently, the practical implementation of the domestic law came into a

striking discordance with the theoretical right to a lawful abortion in Poland and the authorities in the applicant's case had failed to comply with their positive obligations to secure her effective respect for her private life.

*Conclusion:* violation (six votes to one).

Article 41: EUR 45,000 in respect of non-pecuniary damage.

\* Under Polish law an abortion on grounds of foetal abnormality is possible only during the first twenty-four weeks of pregnancy.

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*P. AND S. V. POLAND (30 OCTOBER 2012)*¹⁴

Article 8

Article 8-1

Respect for private life

Disclosure of information by public hospital about a pregnant minor who was seeking an abortion after being raped: *violation*

Article 3

Degrading treatment

Inhuman treatment

Harassment of minor by anti-abortion activists as a result of authorities' actions after she had sought an abortion following rape: *violation*

Article 5

Article 5-1

Lawful arrest or detention

Placement of pregnant minor in juvenile shelter to prevent her from seeking abortion following rape: *violation*

Article 8

Positive obligations

Article 8-1

Respect for private life

Medical authorities' failure to provide timely and unhindered access to lawful abortion to a minor who had become pregnant as a result of rape: *violation*

Facts – The applicants were a daughter and her mother. In 2008, at the age of fourteen, the first applicant, P., became pregnant after being raped. In order to have an abortion in accordance with the 1993 Law on Family Planning, she obtained a certificate from the public prosecutor that her pregnancy had resulted from unlawful sexual intercourse. However, on contacting public hospitals in Lublin, the applicants received contradictory information as to the procedure to be followed. Without asking whether she wished to see him one of the doctors took P. to see a Catholic priest who tried to convince her to carry the pregnancy to term and got her to give him her mobile phone number. The second applicant was asked to sign a consent form warning that the abortion could lead to her daughter's death. Ultimately, following an argument with the

second applicant, the head of gynaecology in the Lublin hospital refused to allow an abortion, citing her personal views, and the hospital issued a press release confirming. Articles were published in local and national newspapers and the case was the subject of discussions on the internet.

P. was subsequently admitted to a hospital in Warsaw, where she was informed that the hospital was facing pressure not to perform the abortion and had received numerous e-mails criticising the applicants for their decision. P. also received unsolicited text messages from the priest and others trying to convince her to change her mind. Feeling manipulated and helpless, the applicants left the hospital two days later. They were harassed by anti-abortion activists and eventually taken to a police station, where they were questioned for several hours. On the same day, the police were informed that the Lublin Family Court had ordered P.'s placement in a juvenile shelter as an interim measure in proceedings issued to divest her mother of her parental rights on the grounds that she was pressurising P. into having the abortion. In making that order the court had regard to text messages P. had sent to her friend saying she did not know what to do. Later that day, the police drove P. to Lublin, where she was placed in a juvenile shelter. Suffering from pain, she was taken to hospital the following day, where she stayed for a week. A number of journalists came to see her and tried to talk to her. After complaining to the Ministry of Health, the applicants were eventually taken in secret to Gdańsk, some 500 kilometres from their home, where the abortion was carried out.

The family court proceedings were discontinued eight months later after P. testified that she had not been forced by her mother to have an abortion. Criminal proceedings that had been brought against P. for suspected sexual intercourse with a minor were also discontinued as was the criminal investigation against the alleged perpetrator of the rape.

Law – Article 8

(a) *Access to lawful abortion:* As to the right of doctors to refuse certain services on grounds of conscience, Polish law had acknowledged the need to ensure that doctors were not obliged to carry out services to which they objected, and put in place a mechanism by which such a refusal could be expressed. This mechanism also included elements allowing the right to conscientious objection to be reconciled with the patient's interests, by making it mandatory for refusals to be in writing and included in the patient's medical records and, above all, by imposing an obligation on the doctor to refer the patient to another doctor competent to carry out the same service. However, it had not been shown that these procedural requirements and the applicable laws had been complied with in the instant case. The events surrounding the determination of P.'s access to legal abortion had been marred by procrastination and confusion. The applicants had been given misleading and contradictory information and had not received appropriate and objective medical counselling that had due regard to their views and wishes. No set procedure had been available by which they could have their views heard and properly taken into consideration with a modicum of procedural fairness. The difference in the situation of a pregnant minor and that of her parents did not obviate the need for a procedure for the determination of access to lawful abortion whereby both parties could be heard and their views fully and objectively considered and for a mechanism for counselling and for reconciling conflicting views in the minor's best interests. It had not been shown that the legal setting in Poland had allowed for the second applicant's concerns to be properly addressed in a way that would respect her views and attitudes and balance them in a fair and respectful manner against the interests of her pregnant daughter in the determination of such access.

In this connection, civil litigation did not constitute an effective and accessible procedure since such a remedy was solely of a retroactive and compensatory character. No examples had been given of cases in which the civil courts had acknowledged and afforded redress for damage caused to a pregnant woman by the anguish, anxiety and suffering entailed by her efforts to obtain access to abortion.

Effective access to reliable information on the conditions for having a lawful abortion and the procedures to be followed was directly relevant to the exercise of personal autonomy. The notion of private life within the meaning of Article 8 applied both to decisions to become and not to become a parent. The nature of the issues involved in a woman's decision whether or not to terminate a pregnancy was such that the time factor was of critical importance. The procedures should therefore ensure that such decisions were taken in good time. The uncertainty which had arisen in the instant case had resulted in a striking discordance between the theoretical right to a lawful abortion and the reality of its practical implementation. The authorities had thus failed to comply with their positive obligation to secure to the applicants effective respect for their private life.

Conclusion: violation (six votes to one).

(b) *Disclosure of personal and medical data:* The information made available to the public had been detailed enough for third parties to establish the applicants' whereabouts and contact them, either by mobile phone or personally. P.'s text messages to a friend could reasonably be regarded as a call for assistance, addressed to that friend and possibly also to her close environment, by a vulnerable and distraught teenager in a difficult life situation. By no means could it be equated with an intention to disclose information about her pregnancy, her own or her family's views and feelings to the general public and press. The fact that legal abortion in Poland was a subject of heated debate did not confer on the State a margin of appreciation so wide as to absolve medical staff from their uncontested professional obligations regarding medical secrecy. It had not been argued, let alone shown, that in the present case there were any exceptional circumstances of such a character as to justify a public interest in P.'s health. Accordingly, the disclosure of information about her unwanted pregnancy and the hospital's refusal to carry out an abortion had not pursued a legitimate aim. Furthermore, no provision of domestic law had been cited on the basis of which information about individual patients' health issues, even non-nominate information, could be disclosed to the general public in a press release. P. had been entitled to respect for her privacy regarding her sexual life, whatever concerns or interest her predicament had generated in the local community. The national law expressly recognised the rights of patients to have their medical data protected, and imposed on health professionals an obligation to abstain from disclosing information about their patients' conditions. Likewise, the second applicant had been entitled to the protection of information concerning her family life. Yet, despite that obligation, the Lublin hospital had made information concerning the present case available to the press. The disclosure of information about the applicants' case had therefore been neither lawful nor served a legitimate interest.

Conclusion: violation (unanimously).

Article 5 § 1: The essential purpose of the decision to place P. in the juvenile shelter had been to separate her from her parents, in particular her mother, and to prevent the abortion. By no stretch of the imagination could the detention be considered to have been ordered for educational supervision within the meaning of Article 5 § 1 (d), as the Government had contended. It had been legitimate to try to establish with certainty whether P. had had an

opportunity to reach a free and well-informed decision about having recourse to abortion. However, if the authorities had been concerned that an abortion would be carried out against her will, less drastic measures than locking up a fourteen-year old girl in a situation of considerable vulnerability should have at least been considered. Her detention between 4 and 14 June 2008 had thus not been compatible with Article 5 § 1.

Conclusion: violation (unanimously).

Article 3: It was of a cardinal importance that P. was at the material time only fourteen years old. However, despite her great vulnerability, a prosecutor's certificate confirming that her pregnancy had resulted from unlawful intercourse and medical evidence that she had been subjected to physical force, both she and her mother had been put under considerable pressure on her admission to the Lublin hospital. One of the doctors had made the mother sign a declaration acknowledging that an abortion could lead to her daughter's death. No cogent medical reasons had been put forward to justify the strong terms of that declaration. P. had witnessed the argument between the doctor and the second applicant, whom the doctor had accused of being a bad mother. Information about the case had been relayed by the press, in part as a result of the press release issued by the hospital. P. had received numerous unwanted and intrusive text messages from people she did not know. In the hospital in Warsaw the authorities had failed to protect her from contact from people trying to exert pressure on her. Further, when she requested police protection after being accosted by anti-abortion activists, she was instead arrested and placed in a juvenile shelter. The Court was particularly struck by the fact that the authorities had decided to institute a criminal investigation on charges of unlawful intercourse against P., who should have been considered a victim of sexual abuse. That approach fell short of the requirements inherent in the States' positive obligations to establish and apply effectively a criminal-law system punishing all forms of sexual abuse. Although the investigation against the applicant had ultimately been discontinued, the mere fact that it had been instituted showed a profound lack of understanding of her predicament. No proper regard had been given to her vulnerability and young age and to her views and feelings. The approach of the authorities had been marred by procrastination, confusion and a lack of proper and objective counselling and information. Likewise, the fact that P. had been separated from her mother and deprived of her liberty in breach of Article 5 § 1 had to be taken into consideration. In sum, P. had been treated by the authorities in a deplorable manner and her suffering had reached the minimum threshold of severity under Article 3.

Conclusion: violation (unanimously).

Article 41: EUR 30,000 to the first applicant and EUR 15,000 to the second applicant in respect of non-pecuniary damage.

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*A, B AND C V. IRELAND (16 DECEMBER 2010)*<sup>15</sup>

## **Article 8**

### **Article 8-1**

#### **Respect for private life**

Restrictions on obtaining an abortion in Ireland: *violation; no violation*

*Facts* – Abortion is prohibited under Irish criminal law by sections 58 and 59 of the Offences Against the Person Act 1861. A referendum held in 1983 resulted in the adoption of

Article 40.3.3 of the Irish Constitution (the Eighth Amendment) whereby the State acknowledged the right to life of the unborn and, with due regard to the equal right to life of the mother, guaranteed to respect the mother in national laws. That provision was interpreted by the Supreme Court in its seminal judgment in the *X* case in 1992 as meaning that abortion in Ireland was lawful if there was a real and substantial risk to the life of the mother which could only be avoided by termination of her pregnancy. The Supreme Court stated at the time that it found it regrettable that the legislature had not enacted legislation regulating that constitutionally guaranteed right. A further referendum in 1992 resulted in the Thirteenth and Fourteenth Amendments to the Constitution, which lifted a previously existing ban on travelling abroad for abortion and allowed information about lawfully available abortions abroad to be disseminated in Ireland.

All three applicants were resident in Ireland at the material time, had become pregnant unintentionally and had decided to have an abortion as they considered that their personal circumstances did not permit them to take their pregnancies to term. The first applicant was an unemployed single mother. Her four young children were in foster care and she feared that having another child would jeopardise her chances of regaining custody after sustained efforts on her part to overcome an alcohol-related problem. The second applicant did not wish to become a single parent. Although she had also received medical advice that she was at risk of an ectopic pregnancy, that risk had been discounted before she had the abortion. The third applicant, a cancer patient, was unable to find a doctor willing to advise whether her life would be at risk if she continued to term or how the foetus might have been affected by contraindicated medical tests she had undergone before discovering she was pregnant. As a result of the restrictions in Ireland all three applicants were forced to seek an abortion in a private clinic in England in what they described as an unnecessarily expensive, complicated and traumatic procedure. The first applicant was forced to borrow money from a money lender, while the third applicant, despite being in the early stages of pregnancy, had to wait for eight weeks for a surgical abortion as she could not find a clinic willing to provide a medical abortion (drug-induced miscarriage) to a non-resident because of the need for follow-up. All three applicants experienced complications on their return to Ireland, but were afraid to seek medical advice there because of the restrictions on abortion.

In their applications to the European Court, the first and second applicants complained that they were not entitled to abortion in Ireland as Irish law did not allow abortion for reasons of health and/or well-being, but solely when there was an established risk to the mother's life. The third applicant complained that, although she believed her pregnancy put her life at risk, there was no law or procedure through which she could have established that and so obviate the risk of prosecution if she had an abortion in Ireland.

*Law* – Article 8: While Article 8 could not be interpreted as conferring a right to abortion, the first and second applicants' inability to obtain an abortion in Ireland for reasons of health and/or well-being, and the third applicant's alleged inability to establish her qualification for a lawful abortion in Ireland, came within the scope of their right to respect for their private lives.

(a) *First and second applicants* – Having regard to the broad concept of private life within the meaning of Article 8, including the right to personal autonomy and to physical and psychological integrity, the prohibition of the termination, for reasons of health and/or well-being, of the first and second applicants' pregnancies amounted to an interference with their right to respect for their private lives. That interference was in accordance with the law and pursued the legitimate

aim of the protection of the profound moral values of a majority of the Irish people as reflected in the 1983 referendum.

In view of the acute sensitivity of the moral and ethical issues raised, a broad margin of appreciation was, in principle, to be accorded to the Irish State in determining whether a fair balance had been struck between the protection accorded under Irish law to the right to life of the unborn and the conflicting rights of the first and second applicants to respect for their private lives. Although there was a consensus amongst a substantial majority of the Contracting States towards allowing abortion on broader grounds than those accorded under Irish law, that consensus did not decisively narrow the broad margin of appreciation of the State. Since there was no European consensus on the scientific and legal definition of the beginning of life and since the rights claimed on behalf of the foetus and those of the mother were inextricably interconnected, the margin of appreciation accorded to the State as regards how it protected the unborn necessarily translated into a margin of appreciation as to how it balanced the conflicting rights of the mother.

A choice had emerged from the lengthy, complex and sensitive debate in Ireland as regards the content of its abortion laws. While Irish law prohibited abortion in Ireland for health and well-being reasons, it allowed women the option of seeking an abortion abroad. Legislative measures had been adopted to ensure the provision of information and counselling about the options available, including abortion services abroad, and to ensure any necessary medical treatment both before and after an abortion. The importance of the role of doctors in providing information and their obligation to provide all appropriate medical care, notably post-abortion, was emphasised in the Crisis Prevention Agency's work and documents and in professional medical guidelines. The first two applicants had not demonstrated that they had lacked relevant information or necessary medical care as regards their abortions.

Accordingly, regard being had to the right to lawfully travel abroad for an abortion with access to appropriate information and medical care in Ireland, the prohibition in Ireland of abortion for health and well-being reasons, based on the profound moral views of the Irish people, had not exceeded the State's margin of appreciation. The impugned prohibition had thus struck a fair balance between the first and second applicants' right to respect for their private lives and the rights invoked on behalf of the unborn.

*Conclusion:* no violation in respect of first and second applicants (eleven votes to six).

(b) *The third applicant* – The third applicant's complaint concerned the respondent State's alleged failure to introduce a procedure by which she could have established whether she qualified for a lawful abortion in Ireland on grounds of the risk to her life. She had a rare form of cancer and, on discovering she was pregnant, had feared for her life as she believed that her pregnancy increased the risk of her cancer returning and that she would not obtain treatment in Ireland while pregnant. The Court considered that the establishment of any such relevant risk to her life caused by her pregnancy clearly concerned fundamental values and essential aspects of her right to respect for her private life.

There were a number of concerns regarding the effectiveness of the only non-judicial means of determining such a risk – the ordinary medical consultation process – on which the Government had relied. The first of these was that the ground upon which a woman could seek a lawful abortion in Ireland – a real and substantial risk to life which could only be avoided by a termination of the pregnancy – was expressed in broad terms. No criteria or procedures had been laid down in Irish law governing how that risk was to be measured or determined. Nor was

there any framework in place to resolve, in a legally binding way, differences of opinion between a woman and her doctor or between different doctors. Against this background of substantial uncertainty, it was evident that the criminal provisions of the 1861 Act would constitute a significant chilling factor for both women and doctors in the medical consultation process, with women risking conviction and doctors risking both conviction and disciplinary action.

As to the judicial procedures that had been proposed by the Government, a constitutional action to determine the third applicant's qualification for a lawful abortion in Ireland was not an effective means of protecting her right to respect for her private life. Constitutional courts were not the appropriate fora for the primary determination, which would largely be based on medical evidence, of whether a woman qualified for an abortion and it was inappropriate to require women to take on such complex constitutional proceedings when their underlying constitutional right to an abortion in the case of a qualifying risk to life was not disputable. Nor was it clear how an order requiring doctors to carry out an abortion would be enforced. As to the Government's submission that the third applicant could have made an application under the European Convention on Human Rights Act 2003 for a declaration of incompatibility of the relevant provisions of the 1861 Act and damages, such a declaration placed no legal obligation on the State to amend domestic law and could not form the basis of an obligatory award of monetary compensation.

Consequently, neither the medical consultation nor litigation options constituted effective and accessible procedures that would allow the third applicant to establish her right to a lawful abortion in Ireland. The uncertainty generated by the lack of legislative implementation of Article 40.3.3 of the Constitution and by the lack of effective and accessible procedures to establish a right to an abortion had resulted in a striking discordance between the theoretical right to a lawful abortion in Ireland and the reality of its practical implementation. No convincing explanation had been forthcoming for the failure to implement Article 40.3.3, despite recognition that further legal clarity was required. In sum, the authorities had failed to comply with their positive obligation to secure to the third applicant effective respect for her private life by reason of the absence of any implementing legislative or regulatory regime providing an accessible and effective procedure by which she could have established whether she qualified for a lawful abortion in Ireland.

*Conclusion:* violation in respect of the third applicant (unanimously).

Article 41: EUR 15,000 to the third applicant in respect of non-pecuniary damage.

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*TYSIAC V. POLAND (20 MARCH 20007)*¹⁶

Article 8

Article 8-1

Respect for private life

Refusal to perform a therapeutic abortion despite risks of serious deterioration of the mother's eyesight: *violation*

Facts: The applicant had suffered from severe myopia for many years. On becoming pregnant for the third time she sought medical advice, as she was concerned that her pregnancy might affect her health. The three ophthalmologists she consulted each concluded that, owing to pathological changes in the retina, there would be a serious risk to her eyesight if she carried the pregnancy to

term. However, despite the applicant's requests, they refused to issue a certificate authorising the termination of her pregnancy, as although there was a risk of retinal detachment, it was not a certainty. The applicant also consulted a general practitioner, who issued a certificate stating the risks to which her pregnancy exposed her both on account of the problems in her retina and the consequences of her giving birth again after two previous deliveries by caesarean section. By the second month of her pregnancy, the applicant's myopia had already significantly deteriorated in both eyes. She was examined by the head of the gynaecology and obstetrics department of a public hospital, Dr R.D., who found no medical grounds for performing a therapeutic abortion. The applicant was therefore unable to have her pregnancy terminated and gave birth to her third child by caesarean section. Following the delivery, her eyesight further deteriorated as a result of a retinal haemorrhage. She was also informed that, as the changes to her retina were at a very advanced stage, they could not be corrected by surgery. A panel of doctors concluded that her condition required treatment and daily assistance and declared her to be significantly disabled. The applicant lodged a criminal complaint against Dr R.D., but the investigation was discontinued by the district prosecutor on the ground that there was no causal link between the doctor's decision and the deterioration in the applicant's eyesight, as the haemorrhage had been likely in any event. No disciplinary action was taken against the doctor, as no professional negligence had been established. The applicant, who is raising her three children alone, is now registered as significantly disabled and fears that she will eventually become blind.

Law. Legislation regulating the interruption of pregnancy touched upon the sphere of private life, since, when a woman was pregnant, her private life became closely connected with the developing foetus. There was no need to determine whether the refusal of an abortion amounted to interference, as the circumstances of the case and in particular the nature of the complaint made it more appropriate to examine the case solely from the standpoint of the State's positive obligations to secure the physical integrity of mothers-to-be. Domestic law only permitted abortion if two medical practitioners certified that pregnancy posed a threat to the mother's life or health. A doctor who terminated a pregnancy in breach of the conditions specified in the legislation was guilty of a criminal offence punishable by up to three years' imprisonment. According to the Polish Federation for Women and Family Planning, this tended to deter doctors from issuing a certificate, in particular in the absence of transparent and clearly defined procedures for determining whether the legal conditions for a therapeutic abortion were met in the individual case. For their part, the Government had acknowledged deficiencies in the manner in which the Act had been applied in practice.

The need for procedural safeguards became all the more relevant where a disagreement arose as to whether the preconditions for a legal abortion were satisfied in a given case, either between the pregnant woman and her doctors, or between the doctors themselves. In such situations the applicable legal provisions had to be formulated in such a way as to ensure clarity of the pregnant woman's legal position and to alleviate the chilling effect which the legal prohibition on abortion and the risk of criminal responsibility could have on doctors. Once a legislature had decided to allow abortion, it had to avoid structuring its legal framework in a way that limited its use in practice and establish a procedure whereby an independent and competent body was required to issue a reasoned decision in writing after affording the mother an opportunity to make representations. Such decisions had to be timely so as to limit or prevent damage to the mother's health. An *ex post facto* review of the situation could not fulfil that function. The absence of such preventive procedures in the domestic law could constitute a breach of a State's positive obligations. The applicant was suffering from severe myopia at the material time and feared that

the pregnancy and birth might further endanger her eyesight. In the light of her medical history and the advice she had been given, her fears could not be said to have been irrational.

Although the relevant legislation provided for a relatively quick and simple procedure for taking decisions on therapeutic abortion based on medical considerations, it did not provide for any particular procedural framework to address and resolve disagreement, either between the pregnant woman and her doctors, or between the doctors themselves. While under the general law a doctor could obtain a second opinion, that did not give patients a procedural guarantee that such an opinion would be obtained or the right to contest it in the event of disagreement; nor did it address the more specific issue of a pregnant woman seeking a lawful abortion. Accordingly, it had not been demonstrated that the domestic law, as applied to the applicant's case, contained any effective mechanism capable of determining whether the conditions for obtaining a lawful abortion had been met. That created a situation of prolonged uncertainty as a result of which the applicant had suffered severe distress and anguish about the possible adverse consequences on her health. Nor did the provisions of the civil law of tort afford her an opportunity to uphold her right to respect for her private life, since they only afforded a remedy in damages. Criminal or disciplinary proceedings could not have prevented the damage to her health either. Retrospective measures alone were not sufficient to provide appropriate protection for the physical integrity of individuals in such a vulnerable position as the applicant. In the light of all the circumstances, the Polish State had not complied with its positive obligations to safeguard the applicant's right to respect for her private life.

Conclusion: violation (six votes to one).

Article 41 – EUR 25,000 in respect of non-pecuniary damage

Case Law of the European Court of Human Rights Relating to Torture

BACKGROUND: The European Court of Human Rights (ECtHR) hears claims of alleged breaches of the European Convention on Human Rights (ECHR) against contracting parties. In *Soering v. United Kingdom* (1989),¹⁷ the Court held that extraditing Soering, a German national, to the United States (a non-contracting party) would violate ECHR Article 3's prohibition against torture since the death penalty, to which he would likely be exposed, is considered inhuman and degrading treatment. The holding expands the duty of the UK and contracting states to observe the articles even in relations with non-contracting states and affirms that these obligations supersede any bilateral agreements, even an extradition treaty. The ruling demonstrates the ECtHR's interpretation of member states' obligation under Article 3 of ECHR, particularly in the context of a state's responsibility to shield those individuals within its purview from laws and policies which might expose them to cruel, inhuman, or degrading treatment. Furthermore, the ECtHR has held that withholding abortion service when a woman's life might be in danger constitutes such cruel, inhuman, and degrading treatment and violates Article 3. See *R.R. v. Poland*, Eur. Ct. H.R. 828, ¶¶ 153-162 (2011) (holding that applicant's Article 3 rights were violated due to, inter alia, the vulnerability and humiliation of the applicant).

RELEVANT EXCERPT FROM SOERING V. UNITED KINGDOM:

Paragraph 87

In interpreting the Convention regard must be had to its special character as a treaty for the collective enforcement of human rights and fundamental freedoms. (See *IRELAND V UNITED KINGDOM* 2 EHRR 25, para 239.) Thus, the object and purpose of the convention

as an instrument for the protection of individual human beings require that its provisions be interpreted and applied so as to make its safeguards practical and effective. (See, inter alia *ARTICO V ITALY* 3 EHRR 1, para 33.) In addition, any interpretation of the rights and freedoms guaranteed has to be consistent with 'the general spirit of the Convention, an instrument designed to maintain and promote the ideals and values of a democratic society.' (See *KJELDSEN, BUSK MADSEN AND PEDERSEN V DENMARK* 1 EHRR 711, para 53.)

Paragraph 88

Article 3 makes no provision for exceptions and no derogation from it is permissible under Article 15 in time of war or other national emergency. (See Article 15(2) ECHR) This absolute prohibition on torture and on inhuman or degrading treatment or punishment under the terms of the Convention shows that Article 3 enshrines one of the fundamental values of the democratic societies making up the Council of Europe. It is also to be found in similar terms in other international instruments such as the 1966 International Covenant on Civil and Political rights and the 1969 American Convention on Human Rights and is generally recognised as an internationally accepted standard.

The question remains whether the extradition of a fugitive to another State where he would be subjected or be likely to be subjected to torture or to inhuman or degrading treatment or punishment would itself engage the responsibility of a Contracting State under Article 3. That the abhorrence of torture has such implications is recognised in Article 3 of the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which provides that 'no State Party shall . . . extradite a person where there are substantial grounds for believing that he would be in danger of being subjected to torture.' The fact that a specialised treaty should spell out in detail a specific obligation attaching to the prohibition of torture does not mean that an essentially similar obligation is not already inherent in the general terms of Article 3 of the European Convention. It would hardly be compatible with the underlying values of the Convention, that 'common heritage of political traditions, ideals, freedom and the rule of law' to which the Preamble refers, were a Contracting State knowingly to surrender a fugitive to another State where there were substantial grounds for believing that he would be in danger of being subjected to torture, however heinous the crime allegedly committed. Extradition in such circumstances, while not explicitly referred to in the brief and general wording of Article 3, would plainly be contrary to the spirit and intent of the Article, and in the Court's view this inherent obligation not to extradite also extends to cases in which the fugitive would be faced in the receiving State by a real risk of exposure to inhuman or degrading treatment or punishment proscribed by that Article.

C. EU Policies, Practices & Statements Relevant to Humanitarian Aid and Abortion for Girls and Women Raped in Armed Conflict

European Council Joint Statement: European Consensus on Humanitarian Aid (2008)¹⁸

BACKGROUND: The European Council is comprised of the President of the European Council, President of the European Commission, and the Heads of State of each of the EU member states. Under Article 15 of the amended Maastricht Treaty, the European Council “define[s] the general political directions and priorities” of the EU. The Joint Statement reflects the comprehensive position of the EU and all of its member states on the provision of humanitarian aid and to free such aid from political restrictions, like those imposed on the provision of abortion.

RELEVANT EXCERPTS:

Paragraph 14

Respect for independence means the **autonomy of humanitarian objectives from political, economic, military or other objectives**, and serves to ensure that the sole purpose of humanitarian aid remains to relieve and prevent the suffering of victims of humanitarian crises.

Paragraph 16

The EU will advocate strongly and consistently for the respect of International Law, including International Humanitarian Law, Human Rights Law and Refugee Law. In 2005, the EU adopted Guidelines on promoting compliance with international humanitarian law. The EU is committed to operationalising these Guidelines in its external relations.

Resolution 1212 of the Parliamentary Assembly of the Council of Europe on Rape in Armed Conflict (2000)¹⁹

BACKGROUND: The Council of Europe is an international organization, separate from the European Union, which promulgates policy statements in the name of its member states (which include more European states than the EU). The resolutions are not binding but are evident of the policy directions European leadership has vowed to pursue. This resolution states that the right to an abortion for a raped woman is inalienable and, thus, must be respected, observed, and ensured.

RELEVANT EXCERPTS:

Paragraph 10

The Assembly also invites the governments of member states to: . . .

- iii. recognise the inalienable right of women who have been raped to undergo voluntary termination of pregnancy if they wish, this right arising automatically from the rape;

Parliamentary Questions to European Commission on the Effect of US Abortion Ban on European Commission Aid (May 2012)²⁰ and Answer (July 2012)²¹

BACKGROUND: The purpose of these parliamentary questions to the European Commission was to clarify policy positions on US funding restriction on aid covering medical services in humanitarian situations, specifically the US “no abortion” clause. European Commissioner Georgieva, head of International Cooperation, Humanitarian Aid and Crisis Response, answered the questions, affirming that humanitarian aid should be donated based on principle and need.

TEXT OF PARLIAMENTARY QUESTION:

The United States Agency for International Development (USAID) upholds a ‘no abortion’ clause — covering both abortion information and medical services — which extends to agencies providing humanitarian aid. This prohibition includes the denial of abortion services to women and girls raped and impregnated in armed conflict. The fact that the United States is the world’s largest provider of humanitarian aid has enabled it to define the treatment policy for victims of war rape. This US policy therefore has direct consequences for all humanitarian actions in which USAID is actively or passively involved, and could compromise humanitarian aid projects sponsored by the Commission’s Humanitarian Office (ECHO), the Commission and Member States, as well as jeopardising the EU’s power to shape its own development assistance policy in general.

- Does the Commission believe that this USAID policy has led to the option of safe abortion being withheld from women who have become pregnant as a result of rape as an act of war?
- Does the Commission agree that these women and girls are doubly punished, firstly by being raped and secondly by being denied access to a safe termination of the resulting unwanted pregnancy?
- Does the Commission agree that the EU has a moral obligation to give support to these women and girls, including the option of safe abortion?
- Is the Commission of the opinion that women and girls who are raped in armed conflict are entitled to medical care and attention, as stated in the Geneva Conventions and Additional Protocols(1)? Does this include the option of safe abortion?
- Does the United States’ ‘no abortion’ clause directly or indirectly affect EU and UN humanitarian efforts, since it applies to all US co-sponsored humanitarian activities? Can the Commission indicate what EU funding is affected by the US ‘no abortion’ clause?
- Does the Commission intend to ensure that EU development funding is not subject to the conditions of the US ‘no abortion’ clause?
- Will the Commission raise the matter with the US and urge President Obama to rescind this clause?

TEXT OF PARLIAMENTARY ANSWER:

The Commission took good note of the European Parliament Resolution of 13 March 2012 on equality between women and men in the European Union — 2011, including its paragraph 61.

The Commission provides principled and needs-based humanitarian aid and it is not subject to any restrictions unilaterally imposed by other donors.

Such assistance includes confidential clinical care for survivors of rape and other forms of gender-based violence, as part of the Minimum Initial Service Package of Reproductive Health in Crises. Emergency contraception is also used for rape survivors as part of the Post-Exposure Prophylaxis (PEP). The PEP kit must be given within 72 hours after the incident, meaning that victims must have access to healthcare. Due to logistical and security constraints, quick access to medical care remains a challenge that the Commission continues to address.

Furthermore, the Commission is currently developing new tools to improve gender sensitivity of humanitarian actions including the assessment of proposals, monitoring and evaluation in order to ensure that EU humanitarian aid effectively addresses the specific needs of different gender groups, including victims of rape.

Letters to US President Barack Obama regarding the US Abortion Ban on Humanitarian Aid

BACKGROUND: The “August 12th Campaign” encourages key organizations and individuals around the world to send letters to President Obama, asking that he lift the abortion restrictions on humanitarian aid for girls and women raped in armed conflict with an Executive Order. Following are the texts of three such letters sent to President Obama by the Vice-Presidents of the European Parliament, the European Parliament Working Group on Reproductive Health, and Members of the UK and EU Parliament. Copies of all letters sent to President Obama as part of the August 12th Campaign can be found at <http://globaljusticecenter.net/index.php/our-work/geneva-initiative/august-12th-campaign/u-s-abortion-restrictions/letters-to-president-obama>.

TEXT OF LETTER FROM VICE-PRESIDENTS OF EUROPEAN PARLIAMENT (1 MARCH 2012):²²

Dear President Obama,

We write to you as concerned Vice-Presidents of the European Parliament, who share a common view that ensuring the rights of persons “wounded and sick” in armed conflict under the Geneva Conventions is critical to our international legal order. We echo the concerns of those signatories to the amicus brief filed by the UK and European parliamentarians in the *Hamdan v. Rumsfeld* case, urging the US Supreme Court to apply common Article 3 to review the US military commissions and indeed are some of the same signatories. We applaud the United States’ commitment to advancing global implementation of the laws of war, a key example being your Executive Order revoking the “torture memos” to ensure that the US is in compliance with its obligations under the Geneva Conventions and the Convention Against Torture (CAT).

We urge you to reaffirm this commitment by lifting the US “no abortion” clause put on all US foreign aid, including humanitarian medical aid directed for girls and women raped in conflict. This violates the rights of girls and women impregnated by rape in armed conflict who are “wounded and sick” persons entitled to non-discriminatory and comprehensive medical care, including abortions, under international humanitarian law (IHL). The ongoing and systemic use of rape as a weapon of war is a matter of global concern; ensuring that the laws of war are fully enforced to guarantee the rights of victims of rape in conflict is of paramount importance.

The rights of the “wounded and sick” to comprehensive medical care are guaranteed by common Article 3 of the Geneva Conventions, Articles 10 & 16 of Additional Protocol I, Articles 7 & 10 of Additional Protocol II, Article 14 of the Convention against Torture, and

customary international law. Yet, despite these clear mandates, girls and women impregnated by rape in armed conflict are being routinely denied abortions in humanitarian medical settings. Many believe this is due to the global effect of the US prohibitions. Rape victims are the only category of war victims who are systematically denied their rights to complete medical care.

The failure to provide abortions to rape victims, who are also considered torture victims, can itself constitute torture and/or cruel and inhuman treatment, imposing serious consequences for these victims, including forcing continued pregnancy and dangerous child bearing, suicide, or unsafe abortions. The US prohibition contains no life or rape exceptions.

Although States in armed conflict have the primary obligation to provide care for war victims, common Article 1 of the Geneva Conventions mandates all states to “respect” and “ensure respect” for the Geneva Conventions in all circumstances, including with respect to the provision of humanitarian aid. Further, all states have positive obligations to address violations of the Geneva Conventions.

The European Union's focus on women's rights within the "EU guidelines on violence against women and girls and combating all forms of discrimination against them", which aims at the particular support of female victims.

Additionally, we support the recommendation made by Norway during the Universal Periodic Review of the US at the Human Rights Council in November 2010 that the US “remov[e] blanket abortion restrictions on humanitarian aid covering medical care given women and girls who are raped and impregnated in situations of armed conflict.”

Further, we urge you to issue an executive order explicitly lifting the restrictions on abortion services for victims of war, thereby ensuring that US humanitarian aid relieves human suffering. We note that this is a letter in formation as we are seeking further support from our colleagues in the European Parliament.

Yours sincerely,

Alexander Alvaro, MEP
Vice-President of the European
Parliament

Edward McMillan-Scott, MEP
Vice-President of the European
Parliament

TEXT OF LETTER FROM EUROPEAN PARLIAMENT WORKING GROUP ON REPRODUCTIVE HEALTH (MARCH 2013):²³

Re.: Request to lift the United States abortion restrictions on humanitarian aid

Dear Mr. President,

On behalf of the European Parliament Working Group on Reproductive Health, HIV/AIDS and Development, I urge you to immediately issue an executive order lifting US abortion restrictions on humanitarian aid for girls and women raped in armed conflict.

In the majority of today's armed conflicts the rape of girls and women is used as a strategic means of warfare. According to the United Nations Special Rapporteur on torture and the World Organization against Torture, this practice amounts to torture. Not only can rape in itself amount to torture, the denial of the option of abortion services following rape has been recognized by the United Nations Human Rights Committee as a violation of Article 7 of the International Covenant on Civil and Political Rights. The wounded and sick in armed conflict, as mandated in international humanitarian law, should be guaranteed appropriate and necessary

medical care under the Geneva Conventions, including abortions for girls and women raped in conflict. Unfortunately, these girls and women that are the victim of rape are routinely denied life and health saving abortions, leaving them with the choice of risking an unsafe abortion, suicide, or being forced to bear the child of their rapists.

Rape used as a means of war is often fatal. More than two-thirds of conflict-related rape in the Democratic Republic of Congo (DRC) are gang rapes, most accompanied by debilitating injuries to women, including deliberate HIV infection. One third of the victims of war rape in the DRC are girls under the age of 18, and since many are raped in the context of sexual slavery, they incur the greatest risk of pregnancy.

The United States, together with the European Union, is the largest provider of humanitarian aid. Consequently, the United States abortion clause has a major impact on the availability of abortion services to girls and women who have been raped in armed conflict. This ban on humanitarian aid requires all recipients, including foreign governments, United Nations entities and international NGOs, such as the International Committee of the Red Cross, to pledge not to discuss abortion or provide abortions with United States funds. Due to the reality of how organizations are financed during humanitarian situations, funds from the US are often commingled with funds from other donor countries, including EU member states and EU entities, allowing the US abortion restrictions to impact how our aid is provided. This renders the United States' no abortion clause to be applied even beyond the scope of US funding and leads to the situation that almost no humanitarian aid organization provides these essential services. Unfortunately, previously existing exceptions allowing termination of pregnancies for rape or to save the life of the girl or woman were eliminated.

Furthermore, other major donor countries are increasingly becoming aware of this violation of international humanitarian law and taking action to ensure that girls and women raped in armed conflict are provided with abortion services. For example, the United Kingdom recently stated that “[. . .] where there is a direct conflict between national law and the fundamental obligation on parties to a conflict under Common Article 3 of the Geneva Conventions, the obligation is to comply with Common Article 3. That article provides that those not participating in hostilities should be treated humanely. It prohibits murder, torture, humiliating and degrading treatment and, of course, rape, and requires that the wounded and sick are collected and cared for. The denial of abortion in a situation that is life threatening or causing unbearable suffering to a victim of armed conflict may therefore contravene Common Article 3. Therefore, an abortion may be offered despite being in breach of national law by parties to the conflict or humanitarian organisations providing medical care and assistance.”

The Members of the European Parliament Working Group on Reproductive Health, HIV/AIDS and Development therefore believe that the United States should lift its abortion ban on humanitarian aid for girls and women raped in armed conflict. A clear position on the protection of these girls and women should be taken as this most vulnerable group has suffered enough.

I thank you in advance for your attention and consideration.

With utmost regards,

Sophie in 't Veld (ALDE, The Netherlands)
Member of the European Parliament

Chair of the EPWG

Jean Lambert (Greens/EFA, UK)

Member of the European Parliament
Vice-chair of the EPWG
Norbert Neuser (S&D, Germany)
Member of the European Parliament
Vice-chair of the EPWG

Véronique Mathieu Houillon
(EPP, France)
Member of the European Parliament
Vice-chair of the EPWG

TEXT OF LETTER FROM MEMBERS OF THE UK AND EU PARLIAMENT (1 FEBRUARY 2012):²⁴

Dear President Obama,

We write to you as a concerned group of UK Members of Parliament and members of the European Parliament, who share a common view that ensuring the rights of persons “wounded and sick” in armed conflict under the Geneva Conventions is critical to our international legal order. We echo the concerns of those signatories to the amicus brief filed by the UK and European parliamentarians in the Hamdan v. Rumsfeld case, urging the US Supreme Court to apply common Article 3 to review the US military commissions and indeed are some of the same signatories. We applaud the United States' commitment to advancing global implementation of the laws of war, a key example being your Executive Order revoking the “torture memos” to ensure that the US is in compliance with its obligations under the Geneva Conventions and the Convention Against Torture (CAT).

We urge you to reaffirm this commitment by lifting the US "no abortion" prohibition clause put on all US foreign aid, including humanitarian medical aid directed for girls and women raped in conflict. This violates the rights of girls and women impregnated by rape in armed conflict who are “wounded and sick” persons entitled to non-discriminatory and comprehensive medical care, including abortions, under international humanitarian law (IHL). The ongoing and systemic use of rape as a weapon of war is a matter of global concern; ensuring that the laws of war are fully enforced to guarantee the rights of victims of rape in conflict is of paramount importance.

The rights of the “wounded and sick” to comprehensive medical care are guaranteed by common Article 3 of the Geneva Conventions, Articles 10 & 16 of Additional Protocol I, Articles 7 & 10 of Additional Protocol II, Article 14 of the Convention against Torture, and customary international law. Yet, despite these clear mandates, girls and women impregnated by rape in armed conflict are being routinely denied abortions in humanitarian medical settings, largely due to the global effect of the US prohibitions. They are the only category of war victims who are systematically denied their rights to complete medical care.

The failure to provide abortions to rape victims, who are also considered torture victims, can itself constitute torture and/or cruel and inhuman treatment, imposing serious consequences for these victims, including forcing continued pregnancy and dangerous child bearing, suicide, or unsafe abortions. The US prohibition contains no life or rape exceptions.

Although States in armed conflict have the primary obligation to provide care for war victims, common Article 1 of the Geneva Conventions mandates all states to “respect” and “ensure respect” for the Geneva Conventions in all circumstances, including with respect to the provision of humanitarian aid. Further, all states have positive obligations to address violations of the Geneva Conventions.

The UK is committed to implementing the laws of war and, in particular, to ensuring equal medical care, including abortions for women raped in conflict. The UK Manual of the Law

of Armed Conflict makes clear that (1) all persons “wounded and sick” in armed conflict must be provided with “humane treatment, and, to the fullest extent practicable and with the least possible delay, the medical care and attention required by their condition;” and that (2) “persons engaged in medical activities shall neither be compelled to perform acts or to carry out work contrary to, nor be compelled to refrain from acts required by, the rules of medical ethics, other rules designed for the benefit of the wounded and sick, or the Protocol.” *The Manual is explicit that “women must be treated with special respect and no less favorably than men.”*

Further, the policy and consultations of the UK's Department for International Development (DFID) specifically refers to abortion in the context of armed conflict and recognizes that providing safe abortion services is critical medical care in these contexts: “Women and babies affected by crisis, including conflict and natural disaster, often lack access to essential information and services . . . this includes . . . *access to safe abortion and other care as a response to rape.*”

As UK Members of Parliament, we are concerned about the effect of the US policy on the ability of the UK and other donor countries to fully comply with their own policies and with the laws of war, given the practical reality that donor funds are put together by service providers, including the International Committee of the Red Cross and UN agencies overseeing humanitarian aid. Thus under current practice, the presence of US funds and their policy restrictions undermines other countries commitment to providing humanitarian aid in accordance with non-discrimination policies mandated by the laws of war and medical ethics.

Additionally, we support the recommendation made by Norway during the Universal Periodic Review of the US at the Human Rights Council in November 2010 that the US “remov[e] blanket abortion restrictions on humanitarian aid covering medical care given women and girls who are raped and impregnated in situations of armed conflict.”

Further, we urge you to issue an executive order explicitly lifting the restrictions on abortion services for victims of war, thereby ensuring that US humanitarian aid relieves, rather than perpetuates, human suffering. We note that this is a letter in formation as we are seeking further support from our colleagues in the UK and European Parliaments.

Yours Sincerely,

Tom Brake MP
Member of Parliament for Carshalton and
Wallington
Co Chair of the Liberal Democrat
Parliamentary Party Committee on Home
Affairs, Justice and Equality

Baroness Tonge
Chair UK All Party Parliamentary Group
on Population, Development and
Reproductive Health

Lord Ashdown
Former Leader of The Liberal Democrats
Former UN High Representative for
Bosnia and Herzegovina

Ann Coffey MP
Member of Parliament for Stockport

Baroness Ludford MEP
Member of the European Parliament for
London

Jane Ellison MP
Member of Parliament for Battersea

Heidi Alexander MP
Member of Parliament for Lewisham East

Andrew George MP
Member of Parliament for St Ives

Madeleine Moon MP
Member of Parliament for Bridgend

Lord Tope CBE
Co-Chair of the Liberal Democrat
Parliamentary Party Committee on
Communities and Local Government

Pauline Latham OBE MP
Member of Parliament for Mid
Derbyshire

Jo Swinson MP
Member of Parliament for East
Dunbartonshire
Former member of the Women's policy
working group

Rt Hon Dame Joan Ruddock MP
Member of Parliament for Lewisham
Deptford

Sir Menzies Campbell MP CBE QC
Former Leader of the Liberal Democrats,
Member of Intelligence and Security
Committee
Member of Parliament for North East
Fife

Baroness Greengross
Cross Bench member of The House of
Lords

Debbie Abrahams MP
Member of Parliament for Oldham East
and Saddleworth

Baroness Kinnock of Holy Head
Spokesperson for International
Development
Member of the House of Lords

Baroness Walmsley
Member of the House of Lords

Baroness Thornton
Labour Party Spokeswoman for Equality
House of Lords

Kate Green MP
Shadow Minister for Equalities
Member of Parliament for Stretford and
Urmston

Sir Bob Russell MP
Member of Parliament for Colchester

Baroness Miller of Chilthorne Domer
Member of the Inter-Parliamentary
Union,
Parliamentarians for Nuclear Non-
proliferation and Disarmament (PNND)

Lord Lester of Herne Hill
Member of The House of Lords

Lord Morgan
Cross Bench Member of The House of
Lords

Baroness Falkner of Margravine
Liberal Democrat Co Chair of the
Parliamentary Committee on International
Affairs
Member of the House of Lords

Lilian Greenwood MP
Member of Parliament for Nottingham
South

Lord Faulkner of Worcester
Member of the House of Lords

Lord Richards
Member of the House of Lords

Baroness Coussins
Cross Bench Member of the House of
Lords

Mike Gapes MP
Member of Parliament for Ilford South

Jenny Willmott MP
Member of Parliament for Cardiff Central
Co Chair Liberal Democrat Parliamentary
Party Committee on Work and Pensions

Lord Redesdale
Member of the House of Lords

Baroness Prosser of Battersea
Member of the House of Lords

Luciana Berger MP
Shadow Minister for Climate Change
Member of Parliament for Liverpool
Wavertree

Julian Huppert MP
Member of Parliament for Cambridge

Lyn Brown
Opposition Whip
Member of Parliament for West Ham

Rt Hon Lord Steel Aikwood
Former Presiding officer Scottish
Parliament
Member of the House of Lords

Rt Hon Dr Denis MacShane MP
Member of Parliament for Rotherham
John Hemming MP
Member of Parliament for Birmingham
Yardley

Dame Anne Begg MP
Chair of Work and Pensions select
Committee
Member of the Liaison Committee
Member of Parliament for Aberdeen
South

Lord Judd
Member of the Advisory Board of Centre
for Human Rights
Member of the House of Lords

Lord Puttnam of Queens Gate
Member of the House of Lords

Glenda Jackson MP
Member of the Work and Pensions Select
Committee
Member of Parliament for Hampstead
and Kilburn

**Letter from Sophie in't Veld, Dutch Member of the European Parliament, to
Kristalina Georgieva, Member of the European Commission (27 February
2013)²⁵**

BACKGROUND: Following is a letter sent from Sophie in't Veld, a Dutch Member of the European Parliament, to Kristalina Georgieva, a Member of the European Commission, regarding the European Commission's humanitarian aid policy's compliance with international humanitarian and European law in terms of the right of female war rape victims to abortion.

TEXT OF LETTER:

Subject: Abortions for women raped in armed conflict and the United States nonabortion clause.

Dear Commissioner Georgieva,

I have taken notice of your response of 20th December 2012 on our letter with regard to abortions for women raped in armed conflict and the United States non-abortion clause. In your letter you express your grave concern on the situation of these women and their denial of access to safe abortions, which I highly appreciate. Furthermore, I very much welcome your promise to

raise this issue with the donors in question and I would highly appreciate to be kept informed about any developments.

The situation of the women who are victims of rape in conflict zones is horrific. Our first and overriding duty is to help them, including to ensure the availability of abortion services where needed. This is not a legal issue, but an issue of human dignity. We should not be reticent or timid, but stand up for what is right.

Your response is clear: the European Commission does not take steps to ensure that its humanitarian aid for victims of war rape complies with the non-derogable medical mandates of common Article 3 of the Geneva Convention and its Additional Protocols. “As a needs-based and non-discriminatory donor, the European Commission’s Directorate General for Humanitarian Aid and Civil protection supports the same type of care for victims of rape in armed conflict as to any other victims of rape in any other emergency context.” (Your letter of December 20, p.1, emphasis added)

The Commission’s failure to differentiate between women who fall under the protection of the “wounded and sick” under the Geneva Conventions and women in other emergency contexts violates the Council Regulation concerning Humanitarian Aid under which legal authority ECHO operates, and the updated European Union guidelines on promoting compliance with international humanitarian law (IHL). Let me address those in turn.

I. The Legal Obligations of EU Member States

All EU member states have ratified the Geneva Conventions and its Additional Protocol of 1977, which greatly expanded the medical care rights of persons “wounded and sick” in armed conflict, including women war rape victims. All EU member states, under common Article I of the Geneva Conventions, are obligated to “respect and ensure respect” for the Conventions “in all circumstances,” including in the delivery of humanitarian aid whether directly or through ECHO.

IHL mandates on medical care for persons “wounded and sick” in armed conflict, as set forth in common Article 3 of the Geneva Conventions, Articles 10 and 16 of Additional Protocol I, and Articles 7 and 10 of Additional Protocol II, are absolute and nonderogable. The standard of protection imposed by IHL is radically different from any national or international legal standard of care for victims of other disasters.

First, doctors treating war victims are under an absolute legal duty to provide optimal medical care, guided solely by medical ethics, regardless of any local law, including criminal abortion laws. In turn, IHL provides doctors treating war victims with absolute immunity from any prosecution, including for breaches of national laws: Article 16 of the Additional Protocols I states “Under no circumstances shall any person be punished for carrying out medical activities compatible with medical ethics, regardless of the person benefiting therefrom.” Doctors who breach local abortion law when treating women in the context of a natural disaster, such as a flood, do not have this protection.

Your letter stating that to provide abortions to rape victims in violation of domestic law “. . . would carry the risk of prosecution which would put humanitarian aid at risk” (Your letter of December 20, p.1), omits mention of the fact that for a doctor to fail to provide medical care to a war victim is a serious violation of IHL. That the denial of the full range of medically appropriate care to victims of rape in situations of armed conflict constitutes a violation of their

rights under applicable international law has been affirmed by Norway and, very recently, by the United Kingdom (UK).

In this context, Médecins Sans Frontières (MSF) is clear that it is their duty to include the provision of abortions in their medical package for women and girls impregnated by war rape despite local laws. MSF is the only humanitarian entity which does not take US funding and thus operates freely without restrictions. In countries where abortion is illegal such as the Democratic Republic of Congo (DRC), MSF negotiates the possibility of carrying such services out on a local level, with the head doctors in the health zone, but also with their practitioners.

Any deferral to national law with respect to treating victims, runs, counter to the entire principle of IHL which is to establish universal laws covering wars in all countries and covering all war victims equally. In this context, the only reference to national law in the Additional Protocols of 1977 is in reference to providing certain medical information, which was bitterly opposed by the International Committee of the Red Cross (ICRC), Norway, the UK and others on the ground due to concerns that even this very limited concession to national law might weaken the universality of the medical care standards guaranteed all war victims.

Second, medical care for war victims must be non-discriminatory and to underscore this, the Conventions require that the outcome of care for women be no less favorable than for men. This legal requirement is incompatible with criminal abortion laws.

II. The Duties of ECHO under the Council Regulation Concerning Humanitarian Aid

The Preamble of the Council Regulation concerning humanitarian aid, which gives legal authority to ECHO, recognizes obligations under IHL and requires ECHO to ensure that its humanitarian aid for “victims of fighting” is delivered in accord with international humanitarian law.²⁶

The Preamble makes clear that ECHO’s obligations towards beneficiaries who are war victims are different from those towards victims of other disasters:

“Whereas people in distress, victims of natural disasters, wars and outbreaks of fighting, or other comparable exceptional circumstances have a right to international humanitarian assistance where their own authorities prove unable to provide effective relief;

Whereas civilian operations to protect the victims of fighting or of comparable exceptional circumstances are governed by international humanitarian law and should accordingly be considered part of humanitarian action;”

The duty of ECHO to uphold IHL for war victims in the Preamble is then operationalized in Article 2 (g) of the Regulation “The principal objectives of the humanitarian aid operations referred to in Article 1 shall be:

“... (g) to support civil operations to the victims of fighting or comparable emergencies, in accordance with current international agreements.”

Further, the phrase “in accordance with international agreements” was added by the Council itself, before passing the Regulation. The 1995 Commission’s proposed text of Article 2 (g) did not include the phrase “in accordance with international agreements”.²⁷

III. The Duties of ECHO under the EU Guidelines on Promoting Compliance with IHL

The updated European Union Guidelines on promoting compliance with international humanitarian law (IHL) are a measure of EU determination to “ensure respect” for IHL, in line with the commitment of the EU and its Member States to IHL.

The first operational guideline requires EU entities such as ECHO to identify which situations under their activities are ones in which IHL applies “In order to enable effective action, situations where IHL may apply must be identified without delay. The responsible EU bodies, including appropriate Council Working Groups, should monitor situations within their areas of responsibility where IHL may be applicable, drawing on advice, as necessary, regarding IHL and its applicability”.²⁸ Despite this mandate, the European Commission does not distinguish situations involving armed conflict from other humanitarian disasters, in order to know when ECHO must ensure IHL is followed.

Additionally, the argument that “neither international humanitarian law nor international human rights law explicitly refer to abortion rights” is not relevant here. As Lord Anthony Lester speaking in the House of Lords on January 9, 2013 stated:

“The right at stake in this debate is not a right to abortion; it is the right of everyone “wounded and sick” in armed conflicts, including women, to appropriate and necessary life and health saving medical care. Plastic surgery, blood transfusions, amputations, prostheses, dental treatment and penile reconstruction surgery are all medical care procedures protected by international law when they are needed by persons “wounded and sick” in armed conflict.”²⁹

Finally, not addressed in your response is the fact that denying abortions for girls and women impregnated by raped used as a weapon of war constitutes cruel, inhuman and degrading treatment and can amount to torture. DG ECHO’s funding guidelines on Humanitarian Protection (ECHO 0/1/ML D 2009) are clear that “the prohibition of torture, slavery and degrading or inhuman treatment or punishment...are fundamental rights, which “must be protected at all times, even in conditions of war and emergency”. According to the guidelines these fundamental rights “may never be waived.”

The World Organization against Torture, the largest global network of non-governmental organizations working against torture recently stated in a letter that “To prevent a rape victim from access to abortion is contrary to the absolute prohibition of torture and cruel, inhuman or degrading treatment or punishment”.³⁰ The letter cites to decisions by the Committee against Torture and the Human Rights Committee.

The US abortion ban on foreign aid is of major concern but, of course, a separate issue from states independent duties to uphold the non-derogable rights of women raped in war. The Helms related abortion restrictions have been present in one form or another on US foreign aid since 1973. The “Global Gag Rule” (or Mexico City Policy) rescinded by President Obama were additional abortion restrictions put on top of the Helms restrictions for a small subset of US aid grantees. Under the gag rule, foreign NGOs receiving US foreign aid for family planning were prohibited from engaging in any abortion-related activities, even when using their own private funds. The gag rule affected approximately \$130 million of all US annual foreign aid. By contrast, the Helms-related “no abortion” clause is put on all US foreign aid, for whatever purpose.

Finally, on the MISIP I want to refer to the letter sent to you by the Global Justice Center, a US-based human rights organization, dated August 14, 2012 which states that while the MISIP is an important tool for humanitarian aid providers, it is written to be applicable to all humanitarian crises and accordingly, fails to recognize that women “wounded and sick” in

armed conflict have absolute rights to necessary abortion as part of their rights to nondiscriminatory medical care. It was also laid out very clearly in the letter that while the Commission's humanitarian aid may not be subject to any third party restrictions in theory, in practice the US restrictions do have a significant impact on humanitarian funding given by the EU. The letter listed several examples of humanitarian actors affected by the U.S. Ban such as the UNFPA, COOPI and the ICRC.

In this context I take notice that while you acknowledge that “many die as a consequence” of unsafe abortion there have been no steps taken to ensure that recipients of ECHO funding, such as the ICRC, provide a safe option of terminating a pregnancy to girls and women raped in armed conflict. The ICRC, for example, currently states in its internal guidelines “that its medical staff do not perform abortions.”³¹

Both the UK and Norway take a position radically different from that of ECHO regarding the rights of women raped in armed conflict:

In 2011 the Norwegian Development Agency Norad published a Scoping Paper entitled “Sexual Violence in Conflict and the Role of the Health Sector” which states: “Women who are raped and impregnated in situations of armed conflict have increased rates of maternal mortality and risk of resorting to unsafe methods of abortions. States have an obligation to provide non-discriminatory medical care to the wounded and sick under Common Article 3 of the Geneva Conventions, Additional Protocols I and II, and customary international law. Abortion services and counseling constitute medically appropriate interventions for survivors of rape who have been impregnated.”³²

On January 9, 2013, UK government spokesperson, Baroness Northover, speaking in the House of Lords in a Short Debate, acknowledged that girls and women raped in armed conflict have absolute legal rights to comprehensive medical care, including abortions when medically necessary, under common Article 3 of the Geneva Conventions and that international humanitarian law, not national abortion law is the legal standard to be followed when treating women victims of war rape.³³

Further, Baroness Northover also stated on behalf of the British Government during this debate that “... where there is a direct conflict between national law and the fundamental obligation on parties to a conflict under Common Article 3 of the Geneva Conventions, the obligation is to comply with Common Article 3. That article provides that those not participating in hostilities should be treated humanely. It prohibits murder, torture, humiliating and degrading treatment and, of course, rape, and requires that the wounded and sick are collected and cared for. **The denial of abortion in a situation that is life threatening or causing unbearable suffering to a victim of armed conflict may therefore contravene Common Article 3.** Therefore, an abortion may be offered *despite being in breach of national law* by parties to the conflict or humanitarian organizations providing medical care and assistance.” (Emphasis added).

I urge the European Commission to align itself with the position of the UK and Norway. A girl or woman who needs a life-saving abortion has to trust that her absolute rights under IHL are respected and ensured.

I thank you for your attention in the matter.

Sophie in 't Veld, MEP

D. United Nations Security Council (“SC”) Resolutions

BACKGROUND: The UNSC is a fifteen-member decision making body of the United Nations (“UN”). Decisions, including resolutions, promulgated by the UNSC are binding upon and must be “accept[ed] and carr[ied] out” by all UN member states under Article 25 of the UN Charter. The resolutions below relate to the greater protection of women’s rights and inclusion in global governance and incorporate international humanitarian law and international human rights law. With Resolution 1325 (2000), the Security Council addressed the impact of armed conflict on women and the use of sexual violence in conflict. This was followed by Resolutions 1820 (2008), 1888 (2009), 1889 (2009) and 1960 (2010), which are known collectively as the “Women and Peace and Security” resolutions.

UN Security Council Resolution 1325 (2000)³⁴

RELEVANT EXCERPTS:

Preamble

...Expressing concern that civilians, particularly women and children, account for the vast majority of those adversely affected by armed conflict, including as refugees and internally displaced persons, and increasingly are targeted by combatants and armed elements, and recognizing the consequent impact this has on durable peace and reconciliation,

...Reaffirming also the **need to implement fully international humanitarian and human rights law** that protects the rights of women and girls during and after conflicts . . .

Paragraph 5

Expresses its willingness to incorporate a gender perspective into peacekeeping operations, and urges the Secretary-General to ensure that, where appropriate, field operations include a gender component;

Paragraph 6

Requests the Secretary-General to provide to Member States training guidelines and materials on the protection, rights and the particular needs of women, as well as on the importance of involving women in all peacekeeping and peacebuilding measures, invites Member States to incorporate these elements as well as HIV/AIDS awareness training into their national training programmes for military and civilian police personnel in preparation for deployment, and further requests the Secretary-General to ensure that civilian personnel of peacekeeping operations receive similar training;

Paragraph 9

Calls upon all parties to armed conflict to **respectfully international law** applicable to the rights and protection of women and girls, especially as civilians, in particular the **obligations applicable to them under the Geneva Conventions of 1949 and the Additional Protocols thereto of 1977**, the Refugee Convention of 1951 and the Protocol thereto of 1967, the Convention on the Elimination of All Forms of Discrimination against Women of 1979 and the

Optional Protocol thereto of 1999 and the United Nations Convention on the Rights of the Child of 1989 and the two Optional Protocols thereto of 25 May 2000, and to bear in mind the relevant provisions of the Rome Statute of the International Criminal Court;

Paragraph 10

Calls on all parties to armed conflict to take special measures to protect women and girls from gender-based violence, particularly rape and other forms of sexual abuse, and all other forms of violence in situations of armed conflict;

Paragraph 12

Calls upon all parties to armed conflict to respect the civilian and humanitarian character of refugee camps and settlements, and to take into account the particular needs of women and girls, including in their design, and recalls its resolutions 1208 (1998) of 19 November 1998 and 1296 (2000) of 19 April 2000;

UN Security Council Resolution 1820 (2008)³⁵

RELEVANT EXCERPTS:

Preamble

. . . Reaffirming also the resolve expressed in the 2005 World Summit Outcome Document to eliminate all forms of violence against women and girls, including by ending impunity and by ensuring the protection of civilians, in particular women and girls, during and after armed conflicts, **in accordance with the obligations States have undertaken under international humanitarian law and international human rights law;** . . .

Noting that civilians account for the vast majority of those adversely affected by armed conflict; that women and girls are particularly targeted by the use of sexual violence, including as a tactic of war to humiliate, dominate, instil fear in, disperse and/or forcibly relocate civilian members of a community or ethnic group; and that sexual violence perpetrated in this manner may in some instances persist after the cessation of hostilities;

Paragraph 4

Notes that rape and other forms of sexual violence can constitute a war crime, a crime against humanity, or a constitutive act with respect to genocide, stresses the need for the exclusion of sexual violence crimes from amnesty provisions in the context of conflict resolution processes, and calls upon Member States to comply with their obligations for prosecuting persons responsible for such acts, **to ensure that all victims of sexual violence, particularly women and girls, have equal protection under the law and equal access to justice, and stresses the importance of ending impunity for such acts as part of a comprehensive approach to seeking sustainable peace, justice, truth, and national reconciliation;**

Paragraph 13

Urges all parties concerned, including Member States, United Nations entities and financial institutions, to support the development and strengthening of the capacities of national institutions, in particular of judicial and health systems, and of local civil society networks in order to **provide sustainable assistance to victims of sexual violence in armed conflict and post-conflict situations;**

Paragraph 14

Urges appropriate regional and sub-regional bodies in particular to consider developing and implementing policies, activities, and advocacy for the benefit of women and girls affected by sexual violence in armed conflict;

UN Security Council Resolution 1888 (2009)³⁶

RELEVANT EXCERPTS:

Preamble

Recalling that international humanitarian law affords general protection to women and children as part of the civilian population during armed conflicts and special protection due to the fact that they can be placed particularly at risk, . . .

Stressing the necessity for all States and non-State parties to conflicts to comply fully with their obligations under applicable international law, including the prohibition on all forms of sexual violence, . . .

Paragraph 13

Encourages States, with the support of the international community, to increase access to health care, psychosocial support, legal assistance and socio economic reintegration services for victims of sexual violence, in particular in rural areas;

UN Security Council Resolution 1889 (2009)³⁷

RELEVANT EXCERPTS:

Preamble

Recognizing the particular needs of women and girls in post-conflict situations, including, inter alia, physical security, health services including reproductive and mental health, ways to ensure their livelihoods, land and property rights, employment, as well as their participation in decision-making and post conflict planning, particularly at early stages of post-conflict peacebuilding, . . .

Paragraph 10

Encourages Member States in post-conflict situations, in consultation with civil society, including women's organizations, to specify in detail women and girls' needs and priorities and design concrete strategies, in accordance with their legal systems, to address those needs and priorities, which cover inter alia support for greater physical security and better socio-economic conditions, through education, income generating activities, **access to basic services, in particular health services, including sexual and reproductive health and reproductive rights and mental health**, gender-responsive law enforcement and access to justice, as well as enhancing capacity to engage in public decision-making at all levels;

UN Security Council Resolution 1960 (2010)³⁸

RELEVANT EXCERPTS:

Preamble

Reaffirming the importance for States, with the support of the international community, to **increase access to health care**, psychosocial support, legal assistance, and socio-economic reintegration services **for victims of sexual violence**, in particular in rural areas, and taking into account the specific needs of persons with disabilities, . . .

Paragraph 8

Requests the Secretary General to establish monitoring, analysis and reporting arrangements on conflict-related sexual violence, including rape in situations of armed conflict and post-conflict and other situations relevant to the implementation of resolution 1888 (2009), as appropriate, and taking into account the specificity of each country, that ensure a coherent and coordinated approach at the field-level, and encourages the Secretary-General to engage with United Nations actors, national institutions, civil society organizations, health-care service providers, and women's groups to enhance data collection and analysis of incidents, trends, and patterns of rape and other forms of sexual violence to assist the Council's consideration of appropriate actions, including targeted and graduated measures, while respecting fully the integrity and specificity of the monitoring and reporting mechanism implemented under Security Council resolutions 1612 (2005) and 1882 (2009) on children and armed conflict;

E. International Humanitarian Law

BACKGROUND: The Geneva Conventions, as well as the Additional Protocols of 1977, are the guiding international humanitarian legal principles outlining the treatment of combatants and civilians in times of armed conflict, both international and non-international. There are four Conventions: the first two address the status and treatment of wounded and sick combatants on land and at sea; the third Convention is concerned with the treatment of prisoners of war; and the fourth Convention establishes rules for the protection of civilians during war. The four Conventions share a set of 'common articles,' which all signatories agreed would apply 'as a minimum.'³⁹ Additional Protocol I concerns the protection of victims of international armed conflict and extends the protection to combatants fighting against colonial domination, alien occupation or racist regimes in the exercise of their right to self-determination (wars of national liberation). Additional Protocol II develops and supplements the Geneva Conventions to cover internal armed conflicts between the State and organized armed groups, which exercise such control over a part of the territory as to enable them to carry out sustained and concerted military operations.

Geneva Conventions (1949)⁴⁰

RELEVANT EXCERPTS:

Common Article 1

The High Contracting Parties undertake to respect and to ensure respect for the present Convention in all circumstances.

Common Article 3

In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:

(1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed 'hors de combat' by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, **without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.** To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:

(a) violence to life and person, in particular murder of all kinds, mutilation, **cruel treatment and torture;**

(b) taking of hostages;

(c) outrages upon personal dignity, in particular **humiliating and degrading treatment;**

(d) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.

(2) The **wounded and sick shall be collected and cared for.**

An impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict.

The Parties to the conflict should further endeavour to bring into force, by means of special agreements, all or part of the other provisions of the present Convention.

The application of the preceding provisions shall not affect the legal status of the Parties to the conflict.

Additional Protocol I: Relating to the Protection of Victims of International Armed Conflict (1977)⁴¹

RELEVANT EXCERPTS:

Article 10

Protection and care

1. All the wounded, sick and shipwrecked, to whichever Party they belong, shall be respected and protected.
2. In all circumstances they shall be treated humanely and shall receive, to the fullest extent practicable and with the least possible delay, the medical care and attention required by their condition. There shall be no distinction among them founded on any grounds other than medical ones.

Article 16

General protection of medical duties

1. Under no circumstances shall any person be punished for carrying out medical activities compatible with medical ethics, regardless of the person benefiting therefrom.
2. Persons engaged in medical activities shall not be compelled to perform acts or to carry out work contrary to the rules of medical ethics or to other medical rules designed for the benefit of the wounded and sick or to the provisions of the Conventions or of this Protocol, or to refrain from performing acts or from carrying out work required by those rules and provisions.
3. No person engaged in medical activities shall be compelled to give to anyone belonging either to an adverse Party, or to his own Party except as required by the law of the latter Party, any information concerning the wounded and sick who are, or who have been, under his care, if such information would, in his opinion, prove harmful to the patients concerned or to their families. Regulations for the compulsory notification of communicable diseases shall, however, be respected.

Additional Protocol II: Relating to the Protection of Victims of Non-International Armed Conflicts (1977)⁴²

RELEVANT EXCERPTS:

Article 7

Protection and Care

1. All the wounded, sick and shipwrecked, whether or not they have taken part in the armed conflict, shall be respected and protected.
2. In all circumstances they **shall be treated humanely and shall receive, to the fullest extent practicable and with the least possible delay, the medical care and attention required by their condition.** There shall be **no distinction** among them founded on any grounds other than medical ones.

Article 10

General protection of medical duties

1. Under no circumstances shall any person be punished for having carried out medical activities compatible with medical ethics, regardless of the person benefiting therefrom.
2. **Persons engaged in medical activities shall neither be compelled to perform acts or to carry out work contrary to, nor be compelled to refrain from acts required by, the rules of medical ethics or other rules designed for the benefit of the wounded and sick, or this Protocol.**
3. The professional obligations of persons engaged in medical activities regarding information which they may acquire concerning the wounded and sick under their care shall, subject to national law, be respected.
4. Subject to national law, no person engaged in medical activities may be penalized in anyway for refusing or failing to give information concerning the wounded and sick who are, or who have been, under his care.

International Committee of the Red Cross, Customary Rules of International Humanitarian Law (2005)⁴³

BACKGROUND: Nearly all international humanitarian laws are now considered part of customary international law; those laws which are so fundamental and accepted by the global community that they are binding on all states regardless of any treaty obligations. Customary international law rules were compiled by the International Committee of the Red Cross and published in 2005. The explanations as they appear here have been shortened from their original form. The original text of all the rules, including citations, can be found at http://www.icrc.org/customary-ihl/eng/docs/v1_rul.

RELEVANT EXCERPTS:

Rule 26. Punishing a person for performing medical duties compatible with medical ethics or compelling a person engaged in medical activities to perform acts contrary to medical ethics is prohibited.

Summary

State practice establishes this rule as a norm of customary international law applicable in both international and non-international armed conflicts.

Medical ethics

. . . Violations of this rule inherently constitute violations of the right of the wounded and sick to protection and care (see Rules 110–111) and also of the obligation to respect and protect medical personnel (see Rule 25). . . .

Alleged prosecution of medical personnel has been condemned by States as a violation of international humanitarian law. It has also been condemned by the United Nations. This prohibition is further endorsed by the Council of Europe and the World Medical Association. . . .

In addition to acts contrary to “medical ethics”, both Article 16 of Additional Protocol I and Article 10 of Additional Protocol II prohibit compelling persons engaged in medical activities to perform acts contrary to “other medical rules designed for the benefit of the wounded and sick”. No further specification was found in State practice as to the content of these other rules, over and above the rules of medical ethics. While this wording was added at the Diplomatic Conference leading to the adoption of the Additional Protocols, “no attempt was made to list these various rules”. The spirit of this provision seems to be aimed at a prohibition of “compulsion which might be exerted on medical personnel to conduct themselves in a way that is contrary to their patients’ interests”. In that respect, this rule is a corollary of the fundamental guarantee not to subject anyone to mutilation, medical or scientific experiments or any other medical procedure not indicated by his or her state of health and not consistent with generally accepted medical standards (see Rule 92).

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**Rule 31.** Respect for and protection of humanitarian relief personnel

*Summary*

State practice establishes this rule as a norm of customary international law applicable in both international and non-international armed conflicts. Respect for and protection of humanitarian relief personnel is a corollary of the prohibition of starvation (see Rule 53), as well as the rule that the wounded and sick must be collected and cared for (see Rules 109–110), which are applicable in both international and non-international armed conflicts. The safety and security of humanitarian relief personnel is an indispensable condition for the delivery of humanitarian relief to civilian populations in need threatened with starvation.

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Rule 55. 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.

Summary

State practice establishes this rule as a norm of customary international law applicable in both international and non-international armed conflicts.

Impediment of humanitarian relief

Practice indicates that each party to the conflict must refrain from deliberately impeding the delivery of relief supplies to civilians in need in areas under its control. Under the Statute of the International Criminal Court, “counseling impeding relief supplies” as part of the use of starvation of civilians as a method of warfare is a war crime in international armed conflicts.

Such impediment is also an offence under the legislation of numerous States, some of which applies to both international and non-international armed conflicts. . . .

Right of the civilian population in need to receive humanitarian relief

There is practice which recognizes that a civilian population in need is entitled to receive humanitarian relief essential to its survival, in accordance with international humanitarian law. The Fourth Geneva Convention recognizes the right of protected persons to make application to the protecting powers, the ICRC or a National Red Cross or Red Crescent Society, as well as to any organization that might assist them. The Additional Protocols implicitly recognize the entitlement of a civilian population in need to receive humanitarian relief as they require that relief actions “shall be undertaken” whenever a population is in need. . . .

The 26th International Conference of the Red Cross and Red Crescent in 1995 reasserted “the right of a civilian population in need to benefit from impartial humanitarian relief actions in accordance with international humanitarian law”. In a communication to the press in 1997 concerning the conflict in Zaire, the ICRC appealed to all concerned to “respect the victims’ right to assistance and protection”.

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**Rule 87.** Civilians and persons hors de combat must be treated humanely.

*Summary*

State practice establishes this rule as a norm of customary international law applicable in both international and non-international armed conflicts.

*Definition of humane treatment*

The actual meaning of “humane treatment” is not spelled out, although some texts refer to respect for the “dignity” of a person or the prohibition of “ill-treatment” in this context. The requirement of humane treatment is an overarching concept. It is generally understood that the detailed rules found in international humanitarian law and human rights law give expression to the meaning of “humane treatment”. The rules in Chapters 33–39 contain specific applications of the requirement of humane treatment for certain categories of persons: the wounded, sick and shipwrecked, persons deprived of their liberty, displaced persons, women, children, the elderly, the disabled and infirm. However, these rules do not necessarily express the full meaning of what is meant by humane treatment, as this notion develops over time under the influence of changes in society. This is shown, for example, by the fact that the requirement of humane treatment has been mentioned in international instruments since the mid-19<sup>th</sup> century, but the detailed rules which stem from this requirement have developed since then, and may do so still further.

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Rule 88. Adverse distinction in the application of international humanitarian law based on race, colour, sex, language, religion or belief, political or other opinion, national or social origin, wealth, birth or other status, or on any other similar criteria is prohibited.

Summary

State practice establishes this rule as a norm of customary international law applicable in both international and non-international armed conflicts.

International and non-international armed conflicts

The prohibition of adverse distinction in the treatment of civilians and persons hors de combat is stated in common Article 3 of the Geneva Conventions, as well in the Third and Fourth Geneva Conventions. It is recognized as a fundamental guarantee by Additional Protocols I and II. It is contained in numerous military manuals. It is also supported by official statements and other practice.

The notion of “adverse distinction” implies that while discrimination between persons is prohibited, a distinction may be made to give priority to those in most urgent need of care. In application of this principle, no distinction may be made among the wounded, sick and shipwrecked on any grounds other than medical (see Rule 110). . . .

Article 4(1) of the Covenant provides that measures that derogate from it may not involve “discrimination solely on the ground of race, colour, sex, language, religion or social origin”. . . .

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**Rule 90.** Torture, cruel or inhuman treatment and outrages upon personal dignity, in particular humiliating and degrading treatment, are prohibited.

*Summary*

State practice establishes this rule as a norm of customary international law applicable in both international and non-international armed conflicts.

*Definition of torture*

. . . In its early case-law in the Delalić case and Furundžija case in 1998, the International Criminal Tribunal for the former Yugoslavia considered the definition contained in Article 1 of the Convention against Torture to be part of customary international law applicable in armed conflict. In its subsequent case-law in the Kunarac case in 2001, however, the Tribunal concluded that “the definition of torture under international humanitarian law does not comprise the same elements as the definition of torture generally applied under human rights law”. In particular, the Tribunal held that “the presence of a state official or of any other authority-wielding person in the torture process is not necessary for the offence to be regarded as torture under international humanitarian law”. It defined torture as the intentional infliction, by act or omission, of severe pain or suffering, whether physical or mental, in order to obtain information or a confession, or to punish, intimidate or coerce the victim or a third person, or to discriminate on any ground, against the victim or a third person.

The International Criminal Tribunal for the former Yugoslavia, as well as regional human rights bodies, have held that rape can constitute torture. On the prohibition of rape and other forms of sexual violence, see Rule 93.

*Definition of inhuman treatment*

The term “inhuman treatment” is defined in the Elements of Crimes for the International Criminal Court as the infliction of “severe physical or mental pain or suffering”. The element that distinguishes inhuman treatment from torture is the absence of the requirement that the treatment be inflicted for a specific purpose. The International Criminal Tribunal for the former Yugoslavia has used a wider definition determining that inhuman treatment is that which “causes serious mental or physical suffering or injury or constitutes a serious attack on human dignity”. The element of “a serious attack on human dignity” was not included in the definition of

inhuman treatment under the Elements of Crimes for the International Criminal Court because the war crime of “outrages upon personal dignity” covers such attacks.

In their case-law, human rights bodies apply a definition which is similar to the one used in the Elements of Crimes for the International Criminal Court, stressing the severity of the physical or mental pain or suffering. They have found violations of the prohibition of inhuman treatment in cases of active maltreatment but also in cases of very poor conditions of detention, as well as in cases of solitary confinement. Lack of adequate food, water or medical treatment for detained persons has also been found to amount to inhuman treatment .

*Definition of outrages upon personal dignity, in particular humiliating and degrading treatment*

. . . The notion of “degrading treatment” has been defined by the European Commission of Human Rights as treatment or punishment that “grossly humiliates the victim before others or drives the detainee to act against his/her will or conscience”.

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Rule 92. Mutilation, medical or scientific experiments or any other medical procedure not indicated by the state of health of the person concerned and not consistent with generally accepted medical standards are prohibited.

Summary

State practice establishes this rule as a norm of customary international law applicable in both international and non-international armed conflicts.

International and non-international armed conflicts

. . . Additional Protocol I also prohibits “any medical procedure which is not indicated by the state of health of the person concerned and which is not consistent with generally accepted medical standards” and makes it a grave breach of the Protocol if the medical procedure undertaken seriously endangers the physical or mental health or integrity of the person concerned. Additional Protocol II contains the same prohibition with respect to persons deprived of their liberty for reasons related to the armed conflict. . . .

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**Rule 110.** The wounded, sick and shipwrecked must receive, to the fullest extent practicable and with the least possible delay, the medical care and attention required by their condition. No distinction may be made among them founded on any grounds other than medical ones.

*Summary*

State practice establishes this rule as a norm of customary international law applicable in both international and non-international armed conflicts.

*Interpretation*

The obligation to protect and care for the wounded, sick and shipwrecked is an obligation of means. Each party to the conflict must use its best efforts to provide protection and care for the wounded, sick and shipwrecked, including permitting humanitarian organizations to provide for their protection and care. . . .

In addition, the possibility of calling on the civilian population to assist in the care of the wounded, sick and shipwrecked is recognized in practice. Aid offered by the civilian population

is recognized by the 1864 Geneva Convention, the First Geneva Convention and Additional Protocols I and II. This possibility is also recognized in a number of military manuals.

The rule that no distinction may be made among the wounded, sick and shipwrecked except on medical grounds is often expressed in international humanitarian law as a prohibition of “adverse distinction” (see also Rule 88). This means that a distinction may be made which is beneficial, in particular by treating persons requiring urgent medical attention first, without this being discriminatory treatment between those treated first and those treated afterwards. This principle is set forth in many military manuals. It is also supported by the requirement of respect for medical ethics, as set forth in Additional Protocols I and II (see also Rule 26), to the effect that medical personnel may not be required to give priority to any person, except on medical grounds.

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Rule 134. The specific protection, health and assistance needs of women affected by armed conflict must be respected.

Note

International humanitarian law affords women the same protection as men – be they combatants, civilians or persons hors de combat. All the rules set out in the present study therefore apply equally to men and women without discrimination. However, recognizing their specific needs and vulnerabilities, international humanitarian law grants women a number of further specific protections and rights. The present rule identifies certain of these additional protections and rights.

Summary

State practice establishes this rule as a norm of customary international law applicable in both international and non-international armed conflicts. The practice collected with regard to the specific needs of women is reinforced by and should be viewed in the light of the specific practice relating to the prohibition of sexual violence (see Rule 99) and the obligation to separate women deprived of their liberty from men (see Rule 119), as well as the prominent place of women’s rights in human rights law.

Interpretation

The specific needs of women may differ according to the situation in which they find themselves – at home, in detention or displaced as a result of the conflict – but they must be respected in all situations. Practice contains numerous references to the specific need of women to be protected against all forms of sexual violence, including through separation from men while deprived of liberty (see Rule 119). While the prohibition of sexual violence applies equally to men and women, in practice women are much more affected by sexual violence during armed conflicts (see also commentary to Rule 93).

The 26th International Conference of the Red Cross and Red Crescent indicated other specific needs when it called for measures “to ensure that women victims of conflict receive medical, psychological and social assistance”. Similarly, in 1999, in a report to the UN General Assembly, the Committee on the Elimination of Discrimination against Women required States to ensure that “adequate protection and health services, including trauma treatment and counseling, are provided for women in especially difficult circumstances, such as those trapped in situations of armed conflict”.

Particular care for pregnant women and mothers of young children

One specific example of respect for the specific needs of women is the requirement that pregnant women and mothers of young children, in particular nursing mothers, be treated with particular care. This requirement is found throughout the Fourth Geneva Convention, as well as in Additional Protocol I. These provisions require special care for pregnant women and mothers of young children with regard to the provision of food, clothing, medical assistance, evacuation and transportation. Such requirements are set forth in many military manuals. They are also found in the legislation of some States.

Additional Protocol I provides that the protection and care due to the wounded and sick is also due to maternity cases and “other persons who may be in need of immediate medical assistance or care, such as . . . expectant mothers”. Such persons are thus entitled to the rights identified in Chapter 34, including adequate medical care and priority in treatment based on medical grounds (see Rule 110).

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**Rule 135.** Children affected by armed conflict are entitled to special respect and protection.

[Ed. Note: Rule 135 is particularly important because girls under the age of 18 are being raped and impregnated. The following is the customary international legal definition of children as it appears at the end of Rule 135: “Pursuant to the Convention on the Rights of the Child, ‘a child means every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier’. The Geneva Conventions and Additional Protocols use different age-limits with respect to different protective measures for children, although 15 is the most common.”].

### *Summary*

State practice establishes this rule as a norm of customary international law applicable in both international and non-international armed conflicts.

### *Interpretation*

Practice indicates that the special respect and protection due to children affected by armed conflict includes, in particular:

- protection against all forms of sexual violence (see also Rule 93);
- separation from adults while deprived of liberty, unless they are members of the same family (see also Rule 20);
- access to education, food and health care (see also Rules 55, 118 and 131);
- evacuation from areas of combat for safety reasons (see also Rule 129);
- reunification of unaccompanied children with their families (see also Rules 105 and 131).

The UN Committee on the Rights of the Child recalled that provisions essential for the realization of the rights of children affected by armed conflict include: protection of children within the family environment; ensuring the provision of essential care and assistance; access to food, health care and education; prohibition of torture, abuse or neglect; prohibition of the death penalty; preservation of the child’s cultural environment; protection in situations of deprivation of liberty; and ensuring humanitarian assistance and relief and humanitarian access to children in armed conflict.

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Rule 140. The obligation to respect and ensure respect for international humanitarian law does not depend on reciprocity.

Summary

State practice establishes this rule as a norm of customary international law applicable in both international and non-international armed conflicts. This rule must be distinguished from the concept of reprisals, which is addressed in Chapter 41.

International and non-international armed conflicts

The Geneva Conventions emphasize in common Article 1 that the High Contracting Parties undertake to respect and ensure respect for the Conventions “in all circumstances”. The rules in common Article 3 must also be observed “in all circumstances”. General recognition that respect for treaties of a “humanitarian nature” cannot be dependent on respect by other States parties is found in the Vienna Convention on the Law of Treaties.

The rule that international humanitarian law must be respected even if the adversary does not do so is set forth in many military manuals, some of which are applicable in non-international armed conflicts. . . .

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**Rule 144.** Ensuring Respect for International Humanitarian Law Erga Omnes: States may not encourage violations of international humanitarian law by parties to an armed conflict. They must exert their influence, to the degree possible, to stop violations of international humanitarian law.

*Summary*

State practice establishes this rule as a norm of customary international law applicable in both international and non-international armed conflicts.

*International and non-international armed conflicts*

Common Article 1 of the Geneva Conventions provides that States parties undertake to “ensure respect for the present Convention”. The same provision is repeated in Additional Protocol I in relation to respect for the provisions of that Protocol. Additional Protocol I further provides that in the event of serious violations of the Protocol, States parties undertake to act, jointly or individually, in cooperation with the United Nations and in conformity with the Charter of the United Nations. A similar provision is included in the Second Protocol to the Hague Convention for the Protection of Cultural Property.

Beginning with its commentary on common Article 1 of the Geneva Conventions, the ICRC has repeatedly stated that the obligation to “ensure respect” is not limited to behaviour by parties to a conflict, but includes the requirement that States do all in their power to ensure that international humanitarian law is respected universally. . . .

Practice shows that the obligation of third States to ensure respect for international humanitarian law is not limited to implementing the treaty provision contained in common Article 1 of the Geneva Conventions and Article 1(1) of Additional Protocol I. For example, the ICRC’s appeals in relation to the conflict in Rhodesia/Zimbabwe in 1979 and to the Iran–Iraq War in 1983 and 1984 involved calls to ensure respect for rules not found in the Geneva Conventions but in the

Additional Protocols (bombardment of civilian zones and indiscriminate attacks) and the countries alleged to be committing these violations were not party to the Protocols.[12] It is significant that these appeals were addressed to the international community, that no State objected to them and that several States not party to the Additional Protocols supported them.

In the *Nicaragua case (Merits)* in 1986, the International Court of Justice held that the duty to respect and ensure respect did not derive only from the Geneva Conventions, but “from the general principles of humanitarian law to which the Conventions merely give specific expression”. The Court concluded, therefore, that the United States was “under an obligation not to encourage persons or groups engaged in the conflict in Nicaragua to act in violation of the provisions of Article 3 common to the four 1949 Geneva Conventions”. Similarly, according to the Draft Articles on State Responsibility, “a State which aids or assists another State in the commission of an internationally wrongful act by the latter is internationally responsible for doing so”. In several cases, national courts have rejected claims that this rule would prevent States from deporting persons to countries where violations of common Article 3 of the Geneva Conventions were allegedly occurring.

With respect to any positive obligations imposed by the duty to ensure respect for international humanitarian law, there is agreement that all States have a right to require respect for international humanitarian law by parties to any conflict. The Trial Chamber of the International Criminal Tribunal for the former Yugoslavia stated in its judgements in the *Furundžija* case in 1998 and *Kupreškić* case in 2000 that the norms of international humanitarian law were norms *erga omnes* and therefore all States had a “legal interest” in their observance and consequently a legal entitlement to demand their respect. State practice shows an overwhelming use of (i) diplomatic protest and (ii) collective measures through which States exert their influence, to the degree possible, to try and stop violations of international humanitarian law. . . .

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Rule 149. Responsibility for violations of International Humanitarian Law: A State is responsible for violations of international humanitarian law attributable to it, including:

- a. violations committed by its organs, including its armed forces;
- b. violations committed by persons or entities it empowered to exercise elements of governmental authority;
- c. violations committed by persons or groups acting in fact on its instructions, or under its direction or control; and
- d. violations committed by private persons or groups which it acknowledges and adopts as its own conduct.

Summary

State practice establishes this rule as a norm of customary international law applicable to violations committed in both international and non-international armed conflicts.

State responsibility for violations committed by the organs of a State, including its armed forces

It is a long-standing rule of customary international law, set forth in Article 3 of the 1907 Hague Convention (IV) and repeated in Article 91 of Additional Protocol I, that a State is responsible for “all acts committed by persons forming part of its armed forces”. This rule is an application of the general rule of State responsibility for internationally wrongful acts, whereby a State is

responsible for the behaviour of its organs. The armed forces are considered to be a State organ, like any other entity of the executive, legislative or judicial branch of government. The application of this general rule of attribution of responsibility to international humanitarian law is reflected in the four Geneva Conventions, which specify that State responsibility exists in addition to the requirement to prosecute individuals for grave breaches. The principle that State responsibility exists in addition to individual criminal responsibility is also reaffirmed in the Second Protocol to the Hague Convention for the Protection of Cultural Property. . . .

State responsibility for violations committed by persons or entities empowered to exercise elements of governmental authority

States are also responsible for acts committed by other persons or entities which they have empowered, under their internal law, to exercise elements of governmental authority. This rule is based on the consideration that States can have recourse to para-statal entities in carrying out certain activities instead of letting State organs carry them out, but do not thereby avoid responsibility.

States are responsible for the acts of private firms or individuals that are used by the armed forces to accomplish tasks that are typically those of the armed forces. Examples of such individuals or entities are mercenaries or private military companies.

State responsibility for acts committed in excess of authority or contrary to instructions

A State is responsible for all acts committed by its organs and other persons or entities empowered to act on its behalf, even if such organs or persons exceed their authority or contravene instructions. . . .

State responsibility for violations committed by persons or groups acting in fact on the instructions of, or under the direction or control of, a State.

A State can also be held responsible for the actions of persons or groups which are neither its organs nor entitled, under national law, to exercise governmental authority, if these persons or groups act in fact on the instructions of, or under the direction or control of, that State. . . .

As stated in the commentary on the Draft Articles on State Responsibility, “the legal issues and the factual situation” in the above-mentioned cases before the International Court of Justice and the International Criminal Tribunal for the former Yugoslavia were different and “it is a matter for appreciation in each case whether particular conduct was or was not carried out under the control of a State, to such an extent that the conduct controlled should be attributed to it”. . . .

State responsibility for violations committed by private persons or groups which are acknowledged and adopted by a State as its own conduct.

State practice also indicates that State responsibility for acts committed by private individuals or groups can arise through subsequent acknowledgement and adoption of the acts of these persons or groups. Such acts then become acts of the State, regardless of the fact that the acting person or entity was not, at the time of the commission of the acts, an organ of the State and was not mandated to act on behalf of the State. For example, in the *Priebke case* in 1996, the Military Tribunal of Rome attributed responsibility to Italy for the behaviour of Italian partisans during the Second World War on the basis that it had encouraged their actions and had officially recognized them after the conflict. In the *J. T. case* in 1949, the District Court of The Hague also raised the question of how far a State whose territory had been occupied could be held liable, after liberation, for acts committed by the resistance movement organized with the consent of

the government-in-exile.[33] The International Criminal Tribunal for the former Yugoslavia made the same point in its judgement on appeal in the *Tadić case* in 1999, when it held that a State was responsible for the acts of individuals or groups that were not militarily organized and that could be regarded as *de facto* State organs if the unlawful act had been publicly endorsed or approved *ex post facto* by the State.

Responsibility of armed opposition groups

Armed opposition groups must respect international humanitarian law (see Rule 139) and they must operate under a “responsible command”. It can therefore be argued that they incur responsibility for acts committed by persons forming part of such groups, but the consequences of such responsibility are not clear. . . .

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**Rule 150.** Reparation: A State responsible for violations of international humanitarian law is required to make full reparation for the loss or injury caused.

#### *Summary*

State practice establishes this rule as a norm of customary international law applicable in both international and non-international armed conflicts.

#### *International armed conflicts*

It is a basic rule of international law that reparation is to be made for violations of international law. In the *Chorzów Factory case (Merits)* in 1928, the Permanent Court of International Justice stated that:

It is a principle of international law, and even a general conception of the law, that any breach of an engagement involves an obligation to make reparation . . . Reparation is the indispensable complement of a failure to apply a convention, and there is no necessity for this to be stated in the convention itself.

The Draft Articles on State Responsibility provide that “the responsible State is under an obligation to make full reparation for the injury caused by the internationally wrongful act”.

The duty to make reparation for violations of international humanitarian law is explicitly referred to in the Second Protocol to the Hague Convention for the Protection of Cultural Property. It is also implied in the rule contained in the Geneva Conventions, according to which States cannot absolve themselves or another High Contracting Party of any liability incurred in respect of grave breaches. . . .

- *Reparation sought directly by individuals*

There is an increasing trend in favour of enabling individual victims of violations of international humanitarian law to seek reparation directly from the responsible State. Article 33(2) of the Draft Articles on State Responsibility states that Part II of the Draft Articles (“Content of the international responsibility of a State”) “is without prejudice to any right, arising from the international responsibility of a State, which may accrue directly to any person or entity other than a State”. The commentary on Article 33 furthermore states that:

When an obligation of reparation exists towards a State, reparation does not necessarily accrue to that State’s benefit. For instance, a State’s responsibility for the breach of an obligation under a treaty concerning the protection of human rights may exist towards all the other parties to the

treaty, but the individuals concerned should be regarded as the ultimate beneficiaries and in that sense as the holders of the relevant rights. . . .

Reparation has been provided directly to individuals via different procedures, in particular via mechanisms set up by inter-State agreements, via unilateral State acts such as national legislation or reparation sought by individuals directly before national courts.

*(i) Reparation provided on the basis of inter-State and other agreements.* Under a number of agreements concluded in the aftermath of the Second World War, Germany was obliged to restitute to victims stolen property such as jewellery, precious household goods and other household effects, and cultural property.

A more recent example of restitution to individuals on the basis of an inter-State agreement is the Agreement on Refugees and Displaced Persons annexed to the Dayton Accords which establishes the Commission for Real Property Claims of Displaced Persons and Refugees in Bosnia and Herzegovina and which mandates the Commission to decide on, *inter alia*, claims for return of real property, as well as for compensation for the deprivation of property in the course of hostilities since 1991, which cannot be restored to them. . . .

Another example is the United Nations Compensation Commission (UNCC) established by a UN Security Council resolution, which reviews claims for compensation for direct loss and damage arising “as a result of [Iraq’s] unlawful invasion and occupation of Kuwait” suffered by States, international organizations, corporations and individuals. Although the UNCC deals principally with losses arising from Iraq’s unlawful use of force, awards have also covered violations of international humanitarian law suffered by individuals. For example, the UNCC has awarded compensation to former prisoners of war held by Iraq who had been subjected to ill-treatment in violation of the Third Geneva Convention. . . .

*(iii) Reparation sought in national courts.* The Hague Convention (IV) and Additional Protocol I require that compensation be paid but do not indicate whether only States are recipients or also individuals, nor do they specify the mechanism for reviewing claims for compensation.

Individual claimants before national courts have encountered a number of obstacles in trying to obtain compensation on the basis of Article 3 of Hague Convention (IV), although no court has explicitly ruled out such a possibility under contemporary international law. In the *Shimoda case* in 1963, for example, the Tokyo District Court held that individuals did not have a direct right to compensation under international law, and considerations of sovereign immunity precluded proceedings against another State before Japanese courts. . . .

#### *Non-international armed conflicts*

There is an increasing amount of State practice from all parts of the world that shows that this rule applies to violations of international humanitarian law committed in non-international armed conflicts and attributable to a State. It flows directly from the basic legal principle that a breach of law involves an obligation to make reparation, as well as from the responsibility of a State for violations which are attributable to it (see Rule 149). Practice varies in that it sometimes refers to the duty to make reparations in general terms, and at other times to specific forms of reparation, including restitution, compensation and satisfaction (see *infra*). Some reparation was provided on the basis of a recognition by the government of its responsibility to provide such reparation and sometimes on the basis of its recognition that it ought to make such reparation. . . .

- *Reparation sought from armed opposition groups*

There is some practice to the effect that armed opposition groups are required to provide appropriate reparation for the damage resulting from violations of international humanitarian law. An example is the Comprehensive Agreement on Respect for Human Rights and International Humanitarian Law in the Philippines, which states that “the Parties to the armed conflict shall adhere to and be bound by the generally accepted principles and standards of international humanitarian law” and which provides for indemnification of the victims of violations of international humanitarian law. It is also significant that in 2001 a provincial arm of the ELN in Colombia publicly apologized for the death of three children resulting from an armed attack and the destruction of civilian houses during “an action of war” and expressed its willingness to collaborate in the recuperation of remaining objects. . . .

Even if it can be argued that armed opposition groups incur responsibility for acts committed by persons forming part of such groups (see commentary to Rule 149), the consequences of such responsibility are not clear. In particular, it is unclear to what extent armed opposition groups are under an obligation to make full reparation, even though in many countries victims can bring a civil suit for damages against the offenders (see commentary to Rule 151).

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Rule 156. Definition of War Crimes: Serious violations of international humanitarian law constitute war crimes.

Summary

State practice establishes this rule as a norm of customary international law applicable in both international and non-international armed conflicts.

International and non-international armed conflicts

The Statute of the International Criminal Court defines war crimes as, *inter alia*, “serious violations of the laws and customs applicable in international armed conflict” and “serious violations of the laws and customs applicable in an armed conflict not of an international character”. The Statutes of the International Criminal Tribunals for the former Yugoslavia and for Rwanda and of the Special Court for Sierra Leone and UNTAET Regulation No. 2000/15 for East Timor also provide jurisdiction over “serious” violations of international humanitarian law. In the Delalić case in 2001, in interpreting Article 3 of the Statute of the International Criminal Tribunal for the former Yugoslavia listing the violations of the laws or customs of war over which the Tribunal has jurisdiction, the Appeals Chamber stated that the expression “laws and customs of war” included all laws and customs of war in addition to those listed in the Article. The adjective “serious” in conjunction with “violations” is to be found in the military manuals and legislation of several States. . . .

- *Serious nature of the violation*

A deductive analysis of the actual list of war crimes found in various treaties and other international instruments, as well as in national legislation and case-law, shows that violations are in practice treated as serious, and therefore as war crimes, if they endanger protected persons or objects or if they breach important values.

(i) *The conduct endangers protected persons or objects.* The majority of war crimes involve death, injury, destruction or unlawful taking of property. However, not all acts necessarily have to result in

actual damage to persons or objects in order to amount to war crimes. This became evident when the Elements of Crimes for the International Criminal Court were being drafted. It was decided, for example, that it was enough to launch an attack on civilians or civilian objects, even if something unexpectedly prevented the attack from causing death or serious injury. This could be the case of an attack launched against the civilian population or individual civilians, even though, owing to the failure of the weapon system, the intended target was not hit. The same is the case for subjecting a protected person to medical experiments – actual injury is not required for the act to amount to a war crime; it is enough to endanger the life or health of the person through such an act.

(ii) The conduct breaches important values. Acts may amount to war crimes because they breach important values, even without physically endangering persons or objects directly. These include, for example, abusing dead bodies; subjecting persons to humiliating treatment; making persons undertake work that directly helps the military operations of the enemy; violation of the right to fair trial; and recruiting children under 15 years of age into the armed forces.

The Appeals Chamber of the International Criminal Tribunal for the former Yugoslavia, in the interlocutory appeal in the *Tadić case* in 1995, stated that, in order for an offence to be subject to prosecution before the Tribunal, the “violation must be serious, that is to say, it must constitute a breach of a rule protecting important values, and the breach must involve grave consequences for the victim”. It then went on to illustrate this analysis by indicating that the appropriation of a loaf of bread belonging to a private individual by a combatant in occupied territory would violate Article 46(1) of the Hague Regulations, but would not amount to a “serious” violation of international humanitarian law. As seen from the examples of war crimes referred to above, this does not mean that the breach has to result in death or physical injury, or even the risk thereof, although breaches of rules protecting important values often result in distress and anxiety for the victims.

Violations entailing individual criminal responsibility under international law

In the interlocutory appeal in the *Tadić case* in 1995, the Appeals Chamber of the International Criminal Tribunal for the former Yugoslavia stated that “the violation of the rule [of international humanitarian law] must entail, under customary or conventional law, the individual criminal responsibility of the person breaching the rule”. This approach has been consistently taken by the International Criminal Tribunals for the former Yugoslavia and for Rwanda in their case-law concerning serious violations of international humanitarian law other than grave breaches of the Geneva Conventions. . . .

Violations of customary international law or treaty law

The International Military Tribunal at Nuremberg determined that violations of the Hague Regulations amounted to war crimes because these treaty rules had crystallized into customary law by the time of the Second World War. . . .

Interpretation

Practice provides further specifications with respect to the nature of the conduct constituting a war crime, its perpetrators and their mental state.

(i) Acts or omissions. War crimes can consist of acts or omissions. Examples of the latter include failure to provide a fair trial and failure to provide food or necessary medical care to persons in the power of the adversary. Unlike crimes against humanity, which consist of a “widespread or

systematic” commission of prohibited acts, any serious violation of international humanitarian law constitutes a war crime. This is clear from extensive and consistent case-law from the First World War until the present day.

(ii) *Perpetrators.* Practice in the form of legislation, military manuals and case-law shows that war crimes are violations committed either by members of the armed forces or by civilians against members of the armed forces, civilians or protected objects of the adverse party. National legislation typically does not limit the commission of war crimes to members of the armed forces, but rather indicates the acts that are criminal when committed by any person. Several military manuals contain the same approach. A number of military manuals, as well as some legislation, expressly include the term “civilians” among the persons that can commit war crimes.

(iii) *Mental element.* International case-law has indicated that war crimes are violations that are committed wilfully, i.e., either intentionally (*dolus directus*) or recklessly (*dolus eventualis*). The exact mental element varies depending on the crime concerned.

List of war crimes

War crimes include the following serious violations of international humanitarian law:

(i) Grave breaches of the Geneva Conventions:

In the case of an international armed conflict, any of the following acts committed against persons or property protected under the provisions of the relevant Geneva Convention:

- wilful killing;
- torture or inhuman treatment, including biological experiments;
- wilfully causing great suffering or serious injury to body or health;
- extensive destruction or appropriation of property, not justified by military necessity and carried out unlawfully and wantonly;
- compelling a prisoner of war or other protected person to serve in the forces of a hostile Power;
- wilfully depriving a prisoner of war or other protected person of the rights of a fair and regular trial;
- unlawful deportation or transfer;
- unlawful confinement;
- taking of hostages.

...

This list of grave breaches was included in the Geneva Conventions largely on the basis of crimes pursued after the Second World War by the International Military Tribunals at Nuremberg and at Tokyo and by national courts. The list is repeated in the Statutes of the International Criminal Tribunal for the former Yugoslavia and of the International Criminal Court. It is also reflected in the legislation of many States. The understanding that such violations are war crimes is uncontroversial.

(ii) Other serious violations of international humanitarian law committed during an international armed conflict:

- committing outrages upon personal dignity, in particular, humiliating or degrading treatment and desecration of the dead;

- enforced sterilization;
- compelling the nationals of the adverse party to take part in military operations against their own party;
- killing or wounding a combatant who has surrendered or is otherwise hors de combat;
- declaring that no quarter will be given;
- making improper use of distinctive emblems indicating protected status, resulting in death or serious personal injury;
- making improper use of the flag, the military insignia or uniform of the enemy resulting in death or serious personal injury;
- killing or wounding an adversary by resort to perfidy;
- making medical or religious personnel, medical units or medical transports the object of attack;
- pillage or other taking of property contrary to international humanitarian law;
- destroying property not required by military necessity. . . .
- making the civilian population or individual civilians, not taking a direct part in hostilities, the object of attack;
- launching an attack in the knowledge that such attack will cause incidental loss of civilian life, injury to civilians or damage to civilian objects which would be clearly excessive in relation to the concrete and direct military advantage anticipated;
- making non-defended localities and demilitarized zones the object of attack;
- subjecting persons who are in the power of an adverse party to physical mutilation or to medical or scientific experiments of any kind which are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his or her interest, and which cause death to or seriously endanger the health of such person or persons;
- the transfer by the occupying power of parts of its own civilian population into the territory it occupies or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory;
- making buildings dedicated to religion, education, art, science or charitable purposes or historic monuments the object of attack, provided they are not military objectives. . . .
- slavery and deportation to slave labour;
- collective punishments;
- despoliation of the wounded, sick, shipwrecked or dead;
- attacking or ill-treating a parlementaire or bearer of a flag of truce;
- unjustifiable delay in the repatriation of prisoners of war or civilians;
- the practice of apartheid or other inhuman or degrading practices involving outrages on personal dignity based on racial discrimination;
- launching an indiscriminate attack resulting in loss of life or injury to civilians or damage to civilian objects;
- launching an attack against works or installations containing dangerous forces in the knowledge that such attack will cause excessive incidental loss of civilian life, injury to civilians or damage to civilian objects. . . .

(iii) Serious violations of common Article 3 of the Geneva Conventions:

In the case of an armed conflict not of an international character, any of the following acts committed against persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed *hors de combat* by sickness, wounds, detention or any other cause:

- violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
- committing outrages upon personal dignity, in particular humiliating and degrading treatment;
- taking of hostages;
- the passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court, affording all judicial guarantees which are generally recognized as indispensable.

...

Common Article 3 of the Geneva Conventions has crystallized into customary international law, and the breach of one or more of its provisions has been recognized as amounting to a war crime in the Statutes of the International Criminal Tribunal for Rwanda, of the Special Court for Sierra Leone and of the International Criminal Court, as well as by the International Criminal Tribunal for the former Yugoslavia. Its inclusion in the Statute of the International Criminal Court was largely uncontroversial. It should be pointed out that, although some of the wording is not the same as the equivalent crimes in the grave breaches applicable to international armed conflicts, there is no difference in practice as far as the elements of these crimes is concerned. This is borne out by the Elements of Crimes for the International Criminal Court and by the case-law of the International Criminal Tribunal for the former Yugoslavia.

(iv) Other serious violations of international humanitarian law committed during a non-international armed conflict:

- making the civilian population or individual civilians, not taking a direct part in hostilities, the object of attack;
- pillage;
- committing sexual violence, in particular, rape, sexual slavery, enforced prostitution, enforced sterilization and enforced pregnancy.

Expert Legal Analysis by Prof. Louise Doswald-Beck, Former Head of the Legal Division of the International Committee of the Red Cross, Regarding the Right to Abortion under International Humanitarian Law (April 2013)

BACKGROUND: On April 10, 2013, Prof. Louise Doswald-Beck sent an open letter to US President Barack Obama, urging him to lift US abortion restrictions on humanitarian aid for girls and women raped in armed conflict. Prof. Doswald-Beck is a former head of the Legal Division of the International Committee of the Red Cross (ICRC), and co-author of the 2005 authoritative codification of the customary rules of international humanitarian law. Professor Doswald-Beck's letter details the ways in which omitting an abortion option from medical treatment for female war rape victims violates the protection and care guarantees of the Geneva Conventions and customary international humanitarian law:

- *The denial of abortion violates the medical care guarantees of international humanitarian law (IHL).* The failure to provide abortions as part of medical care for girls and women raped in war violates the categorical care and protection guarantees of IHL, which are “unchanged since 1864.” These include the rights of the “wounded and sick” to all necessary medical care, as required by their condition, under common Article 3 of the Geneva Conventions.
- *The denial of abortion violates the absolute prohibition on gender discrimination under IHL.* The denial of abortions for girls and women impregnated as a result of war rape violates the IHL prohibition on “adverse distinction,” including discrimination based on gender, since boys and men raped in war receive all necessary medical care. Professor Doswald-Beck states that IHL, as well as human rights law, precludes using biological differences to justify less favorable treatment for women and that although the medical treatment for female victims of rape may be different from that of male victims of rape, under IHL, “the outcome for each gender” must be the same.
- *The denial of abortion constitutes torture and cruel treatment in violation of IHL.* Given that pregnancy aggravates the serious, sometimes life-threatening, risks of the injuries from brutal rape perpetrated in armed conflict, the failure to provide abortion violates the prohibition against torture or cruel treatment under common Article 3 of the Geneva Conventions.

Professor Doswald-Beck states that although the parties to a conflict have primary obligations to provide care, all states, including the US, have a duty to “respect and ensure respect” for IHL under common Article 1 of the Geneva Conventions, including in the provision of humanitarian aid to war victims. Accordingly, Professor Doswald-Beck urges President Obama to lift US abortion restrictions on humanitarian aid, which she describes as leading to a “thoroughly inhuman” situation.

TEXT OF LETTER:

Dear President Obama,

I am writing to you as an expert in international humanitarian law (“IHL”) regarding the abortion ban currently attached to US humanitarian aid for woman and girl victims of rape in armed conflict. This abortion ban violates the rights of woman and girl victims of war rape to non-discriminatory, comprehensive and humane medical care under IHL.

My qualifications include almost forty years of work on international humanitarian and human rights law, including as former Head of the International Committee of the Red Cross’s (“ICRC”) Legal Division, and author of numerous books and articles on IHL and related international law regimes.

I was co-author of the ten-year (1995-2005) ICRC study on the customary rules of international humanitarian law.⁴⁴ This study is cited as legal authority by national and international courts, including the Supreme Courts of the United States⁴⁵ and Israel,⁴⁶ and the International Criminal Tribunal for the former Yugoslavia,⁴⁷ as well as in United Nations reports⁴⁸ and by governments.⁴⁹

Women and girls impregnated by rape in armed conflict are entitled to protection and care under IHL. This includes the right of all wounded and sick to the medical care required by their condition, and a right to be free from any cruel treatment.

Common Article 3 of the four 1949 Geneva Conventions sets out the minimum protection to this effect for all conflicts, including non-international ones: “Persons taking no active part in the hostilities, including . . . those placed *hors de combat* by sickness, wounds . . . or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria,” and shall be protected from “cruel treatment and torture.”⁵⁰ It adds that “[t]he wounded and sick shall be collected and cared for.”⁵¹ The ICRC Commentary to this provision specifies that the care to be given to the wounded and sick (that applies here to both military personnel and civilians) “reaffirms, in generalized form, the fundamental principle underlying the original Geneva Convention of 1864” and that “[i]t expresses a categorical imperative which cannot be restricted.”⁵² Article 12 of Geneva Convention I provides that the wounded and sick “shall be respected and protected in all circumstances” and that they “shall not wilfully be left without medical assistance and care.”⁵³ The ICRC Commentary to this provision specifies that “the wounded and sick must be given such medical care as their condition requires. This fundamental principle has remained unchanged since 1864.”⁵⁴

In the case of international armed conflicts, the care to be given to wounded and sick military personnel is covered by Article 12 of Geneva Convention I, and to civilians by Article 16 of Geneva Convention IV, which specifies that “[t]he wounded and sick . . . and expectant mothers, shall be the object of particular protection and respect.”⁵⁵ More detail has been added to this provision by Additional Protocol I (“API”), which repeats the requirement of Geneva Convention I that medical care must be given in accordance with the needs of the patients.⁵⁶ This applies equally to civilian and military wounded and sick, defined as persons in need of medical assistance due to, *inter alia*, trauma or physical or mental disorder.⁵⁷

There can be no doubt that persons who are raped fall into the category of “wounded and sick,” due to the severe mental, and often also physical, trauma suffered. Although the Additional Protocols to the Geneva Conventions are not yet ratified by the United States, the basic requirement to give the necessary medical care to the wounded and sick reflects long-standing customary law.⁵⁸ The ICRC customary international humanitarian law study reflects this point for both international and non-international conflicts: “The wounded, sick and shipwrecked must receive, to the fullest extent practicable and with the least possible delay, the medical care and attention required by their condition. No distinction may be made among them founded on any grounds other than medical ones.”⁵⁹

Exclusion of one medical service, abortion, from the comprehensive medical care provided to the “wounded and sick” in armed conflict, where such service is needed by only one gender, is not only a violation of their right to medical care, but also a violation of the prohibition on “adverse distinction” found in common Article 3, the Additional Protocols to the Geneva Conventions, and customary international law.⁶⁰ While women are accorded unique substantive protections under IHL, the definition of non-discrimination (or “non-adverse distinction”) under IHL is the same as that in major human rights treaties, including CEDAW, and precludes using biological differences between males and females as a rationale for less favourable treatment of females.⁶¹ IHL treaties do not spell out the types of medical treatments that should be given, but only require that they be those necessary for the condition of the patient, without any adverse distinction. As “distinctions on the basis of sex are . . . prohibited only to the extent that they are unfavourable or adverse,”⁶² favourable distinctions are permissible, and indeed required, to ensure the best possible treatment for each person. Thus, under both IHL and human rights law, non-discrimination signifies that the outcome for each

gender must be the same, not that the treatment must be identical. Therefore, as rape can result in additional consequences for women and girls compared to men and boys, most notably pregnancy, these additional consequences necessitate distinct medical care, including the option of abortion.

It is essential to note that pregnancy from war rape—coupled with the other “horrors of war” to which women and girls are subjected⁶³—aggravates the serious, sometimes life-threatening, injuries from the rapes themselves. The use of rape in armed conflict is characterized by a particular degree of viciousness, including gang rape and mutilation with instruments. Studies have shown that “[u]nwanted pregnancy through rape (and gang rape increases the risk of pregnancy) and the conditions imposed by war (malnutrition, anemia, malaria, exposure, stress, infection, disease), increase the risks defined by th[e] baseline maternal mortality rate.”⁶⁴ As one example, in the DRC, a high baseline maternal mortality rate⁶⁵ is compounded by the vulnerable nature of a large proportion of the individuals raped in conflict. According to one study, for instance, one third of DRC rape victims are girls under age 18 and three-quarters of all DRC rape victims are subjected to gang rape.⁶⁶ Studies have shown that “[a]lthough the risks of childbirth are real for any Congolese woman, they are significantly higher for young girls whose bodies are not mature enough for labor and delivery and for women who have serious pelvic injuries and scarring from the physical damage often caused by gang rape.”⁶⁷

In this light, the denial of abortion to women and girls impregnated by war rape additionally violates common Article 3’s prohibition on torture and cruel treatment. According to various human rights bodies, including the Committee against Torture, denial of abortion to women and girls made pregnant by rape can constitute an act of torture or cruel, inhuman and degrading treatment due to its grave physical, psychological and social consequences.⁶⁸ This proposition was most recently confirmed in March 2013 by the UN Special Rapporteur on torture and other cruel, inhuman and degrading treatment or punishment, Juan Mendez, who agreed that the option of abortion must exist in circumstances of rape as part of the effort to “ensure that the torture protection framework is applied in a gender-inclusive manner.”⁶⁹

Despite IHL’s clear requirements, as well as the indisputable health- and life-risking consequences of forced childbirth on one hand and unsafe abortion on the other, raped women and girls in conflict zones are routinely denied the option of abortion. As a result, each of these women and girls faces the cruel choice of carrying to term a potentially life-threatening pregnancy and raising her rapist’s child, undergoing an unsafe abortion, or ending her own life. US humanitarian aid policy presently bears a high degree of responsibility for this illegal, and thoroughly inhuman, situation.

While parties to a conflict have the primary obligation to provide war victims with medical care, all parties to the Geneva Conventions must “respect” and “ensure respect” for IHL⁷⁰ in all circumstances, including in their provision of humanitarian aid. Accordingly, the United States has an obligation to ensure that its humanitarian aid is delivered in ways that fully comply with IHL’s requirements: to treat women and girls impregnated by war rape without discrimination, to provide them with the complete medical care required by their condition and to not subject them to cruel treatment. Furthermore, the U.S. must ensure that the States it supports with humanitarian aid comply with these requirements. In order for the U.S. to “respect” and “ensure respect” for IHL, it needs to remove the abortion prohibition from its humanitarian aid for women and girls made pregnant by war rape. Only in this way will the U.S. ensure that they receive the non-discriminatory, humane and comprehensive medical treatment to which they are entitled.

I greatly admire your efforts to ensure that US treatment of detainees, including at Guantanamo, fully complies with common Article 3 of the Geneva Conventions. In keeping with this spirit, I respectfully request that the same commitment be applied to the US treatment of woman and girl war rape victims.

Thanking you in advance,

Yours sincerely,

Louise Doswald-Beck
Professor of International Law (retired October 2012).

Cc:

John Kerry, Secretary of State
Harold Koh, Legal Advisor, U.S. Department of State
Catherine M. Russell, Ambassador-at-Large for Global Women's Issues
Valerie Jarrett, Chair, White House Council on Women and Girls
Tina Tchen, Executive Director, White House Council on Women and Girls

F. Human Rights Treaty Law

Convention against Torture (1984)⁷¹

BACKGROUND: The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) is the leading treaty condemning and criminalizing torture. It establishes state obligations with regard to torture and makes it clear that no circumstances, including orders from a superior, can justify an act of torture. CAT currently has 151 parties. CAT upholds the right of individuals not to be subjected to pain in suffering, both mental and physical – as would be caused by the omission of medically-necessary abortion services – and prohibits any circumstances where this right can be derogated, such as during war time.

RELEVANT EXCERPTS:

Article 2

1. Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.
2. No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.
3. An order from a superior officer or a public authority may not be invoked as a justification of torture.

Article 5

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences referred to in article 4 in the following cases:
 1. When the offences are committed in any territory under its jurisdiction or on board a ship or aircraft registered in that State;
 2. When the alleged offender is a national of that State;

3. When the victim is a national of that State if that State considers it appropriate.
2. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over such offences in cases where the alleged offender is present in any territory under its jurisdiction and it does not extradite him pursuant to article 8 to any of the States mentioned in paragraph I of this article.
3. This Convention does not exclude any criminal jurisdiction exercised in accordance with internal law.

Article 14

1. Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his dependants shall be entitled to compensation.
2. Nothing in this article shall affect any right of the victim or other persons to compensation which may exist under national law.

International Covenant on Civil and Political Rights (1966)⁷²

BACKGROUND: The International Covenant on Civil and Political Rights (ICCPR) elaborates upon the civil and political rights set out in the Universal Declaration of Human Rights. It also provides for additional rights, such as the rights of detainees, and protection of minorities. The ICCPR has 167 parties. Below are excerpts from the text of the ICCPR.

RELEVANT EXCERPTS:

Article 6

1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.
2. In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgement rendered by a competent court.
3. When deprivation of life constitutes the crime of genocide, it is understood that nothing in this article shall authorize any State Party to the present Covenant to derogate in any way from any obligation assumed under the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide.
4. Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.
5. Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.
6. Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant.

Article 7

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

Human Rights Committee, General Comment No. 28 (2000)⁷³

BACKGROUND: Following is an excerpt from a General Comment of the Human Rights Committee, which is the UN treaty body responsible for interpretation and enforcement of the International Covenant on Civil and Political Rights (ICCPR). This General Comment seeks to clarify, among other things, the content of the ICCPR's prohibition on torture, and draws a connection between this prohibition and the duty to provide safe abortion to women impregnated by rape.

RELEVANT EXCERPTS:

Paragraph 11

To assess compliance with article 7 of the Covenant [the prohibition of torture], as well as with article 24, which mandates special protection for children, the Committee needs to be provided information on national laws and practice with regard to domestic and other types of violence against women, including rape. **It also needs to know whether the State party gives access to safe abortion to women who have become pregnant as a result of rape.** The States parties should also provide the Committee with information on measures to prevent forced abortion or forced sterilization. In States parties where the practice of genital mutilation exists information on its extent and on measures to eliminate it should be provided. The information provided by States parties on all these issues should include measures of protection, including legal remedies, for women whose rights under article 7 have been violated.

Human Rights Committee, *KL. v. Peru* (2005)⁷⁴

BACKGROUND: Following is an excerpt from the Views of the Human Rights Committee, in reference to a Communication that an individual brought against Peru under the International Covenant for Civil and Political Rights (ICCPR) for denying her a therapeutic abortion. The Human Rights Committee found that Peru's actions amounted to a violation of article 7 of the ICCPR, which prohibits torture and cruel, inhuman or degrading treatment or punishment.

RELEVANT EXCERPTS:

Paragraph 6.3

The author also claims that, owing to the refusal of the medical authorities to carry out the therapeutic abortion, she had to endure the distress of seeing her daughter's marked deformities and knowing that she would die very soon. This was an experience which added further pain and distress to that which she had already borne during the period when she was obliged to continue with the pregnancy. The author attaches a psychiatric certificate dated 20 August 2001, which confirms the state of deep depression into which she fell and the severe consequences this caused, taking her age into account. The Committee notes that this situation could have been foreseen, since a hospital doctor had diagnosed anencephaly in the foetus, yet the hospital director refused termination. The omission on the part of the State in not enabling the author to benefit from a therapeutic abortion was, in the Committee's view, the cause of the suffering she experienced. The Committee has pointed out in its General Comment No. 20 that the right set

out in article 7 of the Covenant relates not only to physical pain but also to mental suffering, and that the protection is particularly important in the case of minors. In the absence of any information from the State party in this regard, due weight must be given to the author's complaints. Consequently, the Committee considers that the facts before it reveal a violation of article 7 of the Covenant.

Convention on the Elimination of All Forms of Discrimination against Women (1979)⁷⁵

BACKGROUND: Adopted by the UN in 1979, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) defines what constitutes discrimination against women and sets a framework for national action to end such discrimination. CEDAW was the first international treaty to comprehensively address fundamental rights for women in politics, health care, education, economics, employment, law, property, and marriage and family relations. CEDAW currently has 187 parties. Since CEDAW elevates international obligations to assure women are not discriminated against in any situation – including that of medical care – states and international organizations must assure the lives of girls and women are not jeopardized by assuring access to all necessary medical treatment including abortion. Below are excerpts from the Convention as well as the Recommendations made by the CEDAW Committee, which monitors the implementation and interpretation of the Convention's articles.

RELEVANT EXCERPTS:

Article 1

For the purposes of the present Convention, the term “discrimination against women” shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

Article 2

States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:

- (a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle;
- (b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;
- (c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;
- (d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;
- (e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;

(f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;

(g) To repeal all national penal provisions which constitute discrimination against women.

Article 12

1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning.

2. Notwithstanding the provisions of paragraph 1 of this article, States Parties shall ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation.

Article 15

1. States Parties shall accord to women equality with men before the law. . . .

Committee on the Elimination of Discrimination against Women, General Recommendation No. 19 (1992)⁷⁶

BACKGROUND: Following is an excerpt from a General Recommendation of the Committee on the Elimination of Discrimination against Women, which is the UN treaty body responsible for interpretation and enforcement of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). This General Recommendation seeks to clarify the ways in which CEDAW's articles prohibit violence against women.

RELEVANT EXCERPTS:

General Comments

6. The Convention in article 1 defines discrimination against women. The definition of discrimination includes gender-based violence, that is, violence that is directed against a woman because she is a woman or that affects women disproportionately. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty. Gender-based violence may breach specific provisions of the Convention, regardless of whether those provisions expressly mention violence.

7. Gender-based violence, which impairs or nullifies the enjoyment by women of human rights and fundamental freedoms under general international law or under human rights conventions, is discrimination within the meaning of article 1 of the Convention. These rights and freedoms include:

(a) The right to life;

(b) The right not to be subject to torture or to cruel, inhuman or degrading treatment or punishment;

(c) The right to equal protection according to humanitarian norms in time of international or internal armed conflict; . . .

Article 6

. . . 16. Wars, armed conflicts and the occupation of territories often lead to increased prostitution, trafficking in women and sexual assault of women, which require specific protective and punitive measures.

Article 12

19. States parties are required by article 12 to take measures to ensure equal access to health care. Violence against women puts their health and lives at risk.

Specific recommendation

24. In light of these comments, the Committee on the Elimination of Discrimination against Women recommends that: . . .

(k) States parties should establish or support services for victims of family violence, rape, sexual assault and other forms of gender-based violence, including refuges, specially trained health workers, rehabilitation and counselling; . . .

(m) States parties should ensure that measures are taken to prevent coercion in regard to fertility and reproduction, and to ensure that women are not forced to seek unsafe medical procedures such as illegal abortion because of lack of appropriate services in regard to fertility control; . . .

(t) States parties should take all legal and other measures that are necessary to provide effective protection of women against gender-based violence, including, inter alia: . . .

(iii) Protective measures, including refuges, counselling, rehabilitation and support services for women who are the victims of violence or who are at risk of violence;

Committee on the Elimination of Discrimination against Women, General Recommendation No. 24 (1999)⁷⁷

BACKGROUND: Following is an excerpt from a General Recommendation of the Committee on the Elimination of Discrimination against Women, which is the UN treaty body responsible for interpretation and enforcement of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). This General Recommendation seeks to clarify, among other things, the content of CEDAW's article 12, whose purpose is to "eliminate discrimination against women in the field of health care."

RELEVANT EXCERPTS:

Article 12(1)

. . . 11. Measures to eliminate discrimination against women are considered to be inappropriate if a health care system lacks services to prevent, detect and treat illnesses specific to women. It is discriminatory for a State party to refuse to legally provide for the performance of certain reproductive health services for women. For instance, if health service providers refuse to perform such services based on conscientious objection, measures should be introduced to ensure that women are referred to alternative health providers. . . .

13. The duty of States parties to **ensure, on a basis of equality between men and women, access to health care** services, information and education implies an obligation to respect, protect and fulfil women's rights to health care. States parties have the responsibility to ensure that legislation and executive action and policy comply with these three obligations. They must

also put in place a system which ensures effective judicial action. Failure to do so will constitute a violation of article 12.

14. The obligation to **respect rights** requires States parties to refrain from obstructing action taken by women in pursuit of their health goals. States parties should report on how public and private health care providers meet their duties to respect women's rights to have access to health care. For example, States parties should not restrict women's access to health services or to the clinics that provide those services on the ground that women do not have the authorization of husbands, partners, parents or health authorities, because they are unmarried or because they are women. Other barriers to women's access to appropriate health care include laws that criminalize medical procedures only needed by women and that punish women who undergo those procedures.

15. The obligation to **protect rights** relating to women's health requires States parties, their agents and officials to take action to prevent and impose sanctions for violations of rights by private persons and organizations. Since gender-based violence is a critical health issue for women, States parties should ensure:

(a) The enactment and effective enforcement of laws and the formulation of policies, including health care protocols and hospital procedures to address violence against women and abuse of girl children and the provision of appropriate health services;

(b) Gender-sensitive training to enable health care workers to detect and manage the health consequences of gender-based violence; . . .

Recommendations for government action

. . . 31. States parties should also, in particular: . . .

(c) Prioritize the prevention of unwanted pregnancy through family planning and sex education and reduce maternal mortality rates through safe motherhood services and prenatal assistance. When possible, legislation criminalizing abortion could be amended to remove punitive provisions imposed on women who undergo abortion; . . .

(e) Require all health services to be consistent with the human rights of women, including the rights to autonomy, privacy, confidentiality, informed consent and choice;

Draft Articles on the Laws of State Responsibility (2001)⁷⁸

BACKGROUND: The Draft Articles, promulgated by the International Law Commission in 2001, delineate the international duties of all states and how these states will be held responsible for breaches and acts contrary to such legal obligations. The Draft Articles, though not binding, are regarded as highly persuasive by the UN and have been cited by the International Court of Justice. They affirm that international law supersedes internal law, such that national abortion laws cannot trump international standards of medical care.

RELEVANT EXCERPTS:

Part I: The Internationally Wrongful Act of a State Chapter I: General Principles

Article 1. Responsibility of a State for its internationally wrongful acts

Every internationally wrongful act of a State entails the international responsibility of that State.

Article 2. Elements of an internationally wrongful act of a State

There is an internationally wrongful act of a State when conduct consisting of an action or omission:

- (a) is attributable to the State under international law; and
- (b) constitutes a breach of an international obligation of the State.

Article 3. Characterization of an act of a State as internationally wrongful

The characterization of an act of a State as internationally wrongful is governed by international law. Such characterization is not affected by the characterization of the same act as lawful by internal law.

Commentary on Article 3

. . . (4) ICJ has often referred to and applied the principle. For example, in the *Reparation for Injuries* case, it noted that “[a]s the claim is based on the breach of an international obligation on the part of the Member held responsible . . . the Member cannot contend that this obligation is governed by municipal law”. . . .

Part I: The Internationally Wrongful Act of a State

Chapter II: Attribution of Conduct to a State

Article 4. Conduct of organs of a State

1. The conduct of any State organ shall be considered an act of that State under international law, whether the organ exercises legislative, executive, judicial or any other functions, whatever position it holds in the organization of the State, and whatever its character as an organ of the central Government or of a territorial unit of the State.
2. An organ includes any person or entity which has that status in accordance with the internal law of the State.

Part I: The Internationally Wrongful Act of a State

Chapter III: Breach of an International Obligation

Article 12. Existence of a breach of an international obligation

There is a breach of an international obligation by a State when an act of that State is not in conformity with what is required of it by that obligation, regardless of its origin or character.

Commentary on Article 12

. . . (2) In introducing the notion of a breach of an international obligation, it is necessary again to emphasize the autonomy of international law in accordance with the principle stated in article 3. In the terms of article 12, the breach of an international obligation consists in the disconformity between the conduct required of the State by that obligation and the conduct actually adopted by the State—i.e. between the requirements of international law and the facts of the matter. This can be expressed in different ways. For example, ICJ has used such expressions as “incompatibility with the obligations” of a State, acts “contrary to” or “inconsistent with” a given rule, and “failure to comply with its treaty obligations”. In the *ELSI* case, a Chamber of the Court asked the “question whether the requisition was in conformity with the requirements . . . of the FCN Treaty”. The expression “not in conformity with what is required of it by that obligation” is the most appropriate to indicate what constitutes the essence of a breach of an

international obligation by a State. It allows for the possibility that a breach may exist even if the act of the State is only partly contrary to an international obligation incumbent upon it. In some cases precisely defined conduct is expected from the State concerned; in others the obligation only sets a minimum standard above which the State is free to act. Conduct proscribed by an international obligation may involve an act or an omission or a combination of acts and omissions; it may involve the passage of legislation, or specific administrative or other action in a given case, or even a threat of such action, whether or not the threat is carried out, or a final judicial decision. It may require the provision of facilities, or the taking of precautions or the enforcement of a prohibition. In every case, it is by comparing the conduct in fact engaged in by the State with the conduct legally prescribed by the international obligation that one can determine whether or not there is a breach of that obligation. The phrase “is not in conformity with” is flexible enough to cover the many different ways in which an obligation can be expressed, as well as the various forms which a breach may take.

Part II: Content of the International Responsibility of a State

Chapter I: General Principles

Article 28. Legal consequences of an internationally wrongful act

The international responsibility of a State which is entailed by an internationally wrongful act in accordance with the provisions of Part One involves legal consequences as set out in this Part.

Article 30. Cessation and non-repetition

The State responsible for the internationally wrongful act is under an obligation:

- (a) to cease that act, if it is continuing;
- (b) to offer appropriate assurances and guarantees of non-repetition, if circumstances so require.

Commentary on Article 30

... (11) Assurances or guarantees of non-repetition may be sought by way of satisfaction (e.g. the repeal of the legislation which allowed the breach to occur) and there is thus some overlap between the two in practice. However, they are better treated as an aspect of the continuation and repair of the legal relationship affected by the breach. Where assurances and guarantees of non-repetition are sought by an injured State, the question is essentially the reinforcement of a continuing legal relationship and the focus is on the future, not the past. In addition, assurances and guarantees of non-repetition may be sought by a State other than an injured State in accordance with article 48.

Part II: Content of the International Responsibility of a State

Chapter III: Serious Breaches of Obligations under Peremptory Norms of General International Law

Commentary on Chapter III

... (7) Accordingly, the present articles do not recognize the existence of any distinction between State “crimes” and “delicts” for the purposes of Part One. On the other hand, it is necessary for the articles to reflect that there are certain consequences flowing from the basic concepts of peremptory norms of general international law and obligations to the international community as a whole within the field of State responsibility. Whether or not peremptory norms of general international law and obligations to the international community as a whole are aspects of a single basic idea, there is at the very least substantial overlap between them. The

examples which ICJ has given of obligations towards the international community as a whole all concern obligations which, it is generally accepted, arise under peremptory norms of general international law. Likewise the examples of peremptory norms given by the Commission in its commentary to what became article 53 of the 1969 Vienna Convention involve obligations to the international community as a whole. But there is at least a difference in emphasis. While peremptory norms of general international law focus on the scope and priority to be given to a certain number of fundamental obligations, the focus of obligations to the international community as a whole is essentially on the legal interest of all States in compliance—i.e. in terms of the present articles, in being entitled to invoke the responsibility of any State in breach. Consistently with the difference in their focus, it is appropriate to reflect the consequences of the two concepts in two distinct ways. First, serious breaches of obligations arising under peremptory norms of general international law can attract additional consequences, not only for the responsible State but for all other States. Secondly, all States are entitled to invoke responsibility for breaches of obligations to the international community as a whole. The first of these propositions is the concern of the present chapter; the second is dealt with in article 48.

Article 40. Application of this chapter

1. This chapter applies to the international responsibility which is entailed by a serious breach by a State of an obligation arising under a peremptory norm of general international law.
2. A breach of such an obligation is serious if it involves a gross or systematic failure by the responsible State to fulfil the obligation.

Commentary on Article 40

... (5) Although not specifically listed in the Commission's commentary to article 53 of the 1969 Vienna Convention, the peremptory character of certain other norms seems also to be generally accepted. This applies to the prohibition against torture as defined in article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The peremptory character of this prohibition has been confirmed by decisions of international and national bodies. In the light of the description by ICJ of the basic rules of international humanitarian law applicable in armed conflict as "intransgressible" in character, it would also seem justified to treat these as peremptory. Finally, the obligation to respect the right of self-determination deserves to be mentioned. As the Court noted in the *East Timor* case, "[t]he principle of self-determination ... is one of the essential principles of contemporary international law", which gives rise to an obligation to the international community as a whole to permit and respect its exercise.

Article 41. Particular consequences of a serious breach of an obligation under this chapter

1. States shall cooperate to bring to an end through lawful means any serious breach within the meaning of article 40.
2. No State shall recognize as lawful a situation created by a serious breach within the meaning of article 40, nor render aid or assistance in maintaining that situation.
3. This article is without prejudice to the other consequences referred to in this Part and to such further consequences that a breach to which this chapter applies may entail under international law.

Commentary on Article 41

. . . (2) Pursuant to *paragraph 1* of article 41, States are under a positive duty to cooperate in order to bring to an end serious breaches in the sense of article 40. Because of the diversity of circumstances which could possibly be involved, the provision does not prescribe in detail what form this cooperation should take. Cooperation could be organized in the framework of a competent international organization, in particular the United Nations. However, paragraph 1 also envisages the possibility of non-institutionalized cooperation. . . .

(5) The first of these two obligations refers to the obligation of collective non-recognition by the international community as a whole of the legality of situations resulting directly from serious breaches in the sense of article 40. The obligation applies to “situations” created by these breaches, such as, for example, attempted acquisition of sovereignty over territory through the denial of the right of self-determination of peoples. It not only refers to the formal recognition of these situations, but also prohibits acts which would imply such recognition.

G. International Health Guidelines

World Health Organization, Safe Abortion: Technical and Policy Guidance for Health Systems (2012)⁷⁹

BACKGROUND: From the publication’s Executive Summary: “Over the past two decades, the health evidence, technologies and human rights rationale for providing safe, comprehensive abortion care have evolved greatly. Despite these advances, an estimated 22 million abortions continue to be performed unsafely each year, resulting in the death of an estimated 47 000 women and disabilities for an additional 5 million women. Almost every one of these deaths and disabilities could have been prevented through sexuality education, family planning, and the provision of safe, legal induced abortion and care for complications of abortion. In nearly all developed countries, safe abortions are legally available upon request or under broad social and economic grounds, and services are generally easily accessible and available. In countries where induced abortion is legally highly restricted and/or unavailable, safe abortion has frequently become the privilege of the rich, while poor women have little choice but to resort to unsafe providers, causing deaths and morbidities that become the social and financial responsibility of the public health system.

In view of the need for evidence-based best practices for providing safe abortion care in order to protect the health of women, the World Health Organization (WHO) has updated its 2003 publication, *Safe abortion: technical and policy guidance for health systems.*”

RELEVANT EXCERPTS:

3.3.5.5 Special provisions for women who have suffered rape

Women who are pregnant as a result of rape have a special need for sensitive treatment, and all levels of the health system should be able to offer appropriate care and support. Standards and guidelines for provision of abortion in such cases should be elaborated, and appropriate training given to health-care providers and police. Such standards should not impose unnecessary administrative or judicial procedures such as requiring women to press charges or to identify the rapist. The standards should ideally be part of comprehensive standards and guidelines for the overall management of survivors of rape, covering physical and psychological care, emergency contraception, post-exposure prophylaxis for HIV prevention, treatment for sexually transmitted

infections (STIs) and injuries, collection of forensic evidence, and counselling and follow-up care.

3.3.6 Conscientious objection by health-care providers

Health-care professionals sometimes exempt themselves from abortion care on the basis of conscientious objection to the procedure, while not referring the woman to an abortion provider. Individual health-care providers have a right to conscientious objection to providing abortion, but that right does not entitle them to impede or deny access to lawful abortion services because it delays care for women, putting their health and life at risk. In such cases, health-care providers must refer the woman to a willing and trained provider in the same, or another easily accessible health-care facility, in accordance with national law. Where referral is not possible, the health-care professional who objects, must provide safe abortion to save the woman's life and to prevent serious injury to her health. Women who present with complications from an unsafe or illegal abortion must be treated urgently and respectfully, as any other emergency patient, without punitive, prejudiced or biased behaviours (see also Chapter 4).

Chapter 4: Legal and Policy Considerations

Summary

- Unsafe abortion is one of the four main causes of maternal mortality and morbidity. One of the reasons for unsafe abortion is because safe abortion services are frequently not available, even when they are legal for a variety of indications in almost all countries.
- International, regional and national human rights bodies and courts increasingly recommend decriminalization of abortion, and provision of abortion care, to protect a woman's life and health, and in cases of rape, based on a woman's complaint. Ensuring that laws, even when restrictive, are interpreted and implemented to promote and protect women's health is essential.
- Additional barriers, that may or may not be codified in law, often impede women from reaching the services for which they are eligible and contribute to unsafe abortion. These barriers include lack of access to information; requiring third-party authorization; restricting the type of health-care providers and facilities that can lawfully provide services; failing to guarantee access to affordable services; failing to guarantee confidentiality and privacy; and allowing conscientious objection without referrals on the part of health-care providers and facilities.
- An enabling regulatory and policy environment is needed to ensure that every woman who is legally eligible has ready access to good-quality abortion services. Policies should be geared to respecting, protecting and fulfilling the human rights of women, to achieving positive health outcomes for women, to providing good-quality contraceptive and family planning information and services, and to meeting the particular needs of poor women, adolescents, rape survivors and women living with HIV.

4.1 Women's health and human rights

Unsafe abortion accounts for 13% of maternal deaths, and 20% of the total mortality and disability burden due to pregnancy and childbirth. Almost all deaths and morbidity from unsafe abortion occur in countries where abortion is severely restricted in law and in practice. Every year, about 47 000 women die from complications of unsafe abortion, an estimated 5 million women suffer temporary or permanent disability, including infertility. Where there are few restrictions on access to safe abortion, deaths and illness are dramatically reduced. This chapter

highlights the inextricable link between women's health and human rights and the need for laws and policies that promote and protect both.

Most governments have ratified legally binding international treaties and conventions that protect human rights, including the right to the highest attainable standard of health, the right to non-discrimination, the right to life, the right to liberty and the right to security of the person, the right to be free from inhuman and degrading treatment, and the right to education and information. These rights are further recognized and defined in regional treaties, enacted in national constitutions and laws of many countries.

In consideration of these human rights, governments agreed in the United Nations International Conference on Population and Development, 1999 (ICPD+5) review and appraisal process that “in circumstances where abortion is not against the law, health systems should train and equip health-service providers and should take other measures to ensure that such abortion is safe and accessible. Additional measures should be taken to safeguard women's health”. The original document, *Safe abortion: technical and policy guidance for health systems*, published by the World Health Organization (WHO) in 2003 started from this mandate.

Over the past 15 years, human rights have been increasingly applied by international and regional human rights bodies and national courts, including the United Nations treaty monitoring bodies in the context of abortion (see Box 4.1). They recommended that States reform laws that criminalize medical procedures that are needed only by women, and that punish women who undergo these procedures, both of which are applicable in the case of abortion. In order to protect women's health and human rights these human rights bodies recommended that States should make all efforts to ensure that women do not have to undergo life-threatening clandestine abortions and that abortion should be legal at a minimum when continuation of the pregnancy endangers the life and health of the woman and in cases of rape and incest. They also recommended that States should ensure timely and affordable access to good-quality health services, which should be delivered in a way that ensures that a woman gives her fully informed consent, respects her dignity, guarantees her confidentiality, and is sensitive to her needs and perspectives.

Given the clear link between access to safe abortion and women's health, it is recommended that laws and policies should respect and protect women's health and their human rights.

BOX 4.1: Examples of application of human rights to safe abortion, in the context of comprehensive reproductive health care, by international and regional human rights bodies

Human rights, as they are enshrined in international and regional treaties and in national constitutions, and the output of United Nations treaty monitoring bodies, including their general comments/recommendations and concluding observations to States, as well as regional and national court decisions form a reference system for human rights accountability at international, regional and national levels. They give clear guidance to States (in the case of concluding observations, to individual States) on the measures to be taken to ensure the respect, protection and fulfilment of human rights.

UN treaty monitoring bodies, regional and national courts have given increasing attention to the issue of abortion during the past decades, including maternal mortality due to unsafe abortion, criminalization of abortion, and restrictive legislation that leads women to obtain illegal and unsafe abortions. Increasingly they have called upon States to provide comprehensive sexual and reproductive health information and services to women and adolescents, eliminate regulatory

and administrative barriers that impede women's access to safe abortion services and provide treatment for abortion complications. If they do not do so, States may not meet their treaty and constitutional obligations to respect, protect and fulfil the right to life, the right to non-discrimination, the right to the highest attainable standard of health, the right to be free from cruel, inhuman and degrading treatment and the rights to privacy, confidentiality, information and education. UN treaty monitoring body recommendations and regional court decisions to States include the following examples:

Ensuring comprehensive legal grounds for abortion

- Take action to prevent unsafe abortion, including by amending restrictive laws that threaten women's, including adolescents', lives.
- Provide legal abortion in cases where the continued pregnancy endangers the health of women, including adolescents.
- Provide legal abortion in cases of rape and incest.
- Amend laws that criminalize medical procedures, including abortion, needed only by women and/or that punish women who undergo those procedures.

Planning and managing safe abortion care

- Ensure timely access to a range of good-quality sexual and reproductive health services, including for adolescents, which are delivered in a way that ensures a woman's fully informed consent, respects her dignity, guarantees her confidentiality and is sensitive to her needs and perspectives.
- Reduce maternal morbidity and mortality in adolescents, particularly caused by early pregnancy and unsafe abortion practices, and develop and implement programmes that provide access to sexual and reproductive health services, including family planning, contraception and safe abortion services where abortion is not against the law.
- Provide information on sexual and reproductive health, and mechanisms to ensure that all women, including adolescents, have access to information about legal abortion services.

Eliminating regulatory, policy and access barriers

- Remove third-party authorization requirements that interfere with women's and adolescents' right to make decisions about reproduction and to exercise control over their bodies.
- Eliminate barriers that impede women's access to health services, such as high fees for health-care services, the requirement for preliminary authorization by spouse, parent or hospital authorities, long distances from health facilities and the absence of convenient and affordable public transport, and also ensure that the exercise of conscientious objection does not prevent individuals from accessing services to which they are legally entitled.
- Implement a legal and/or policy framework that enables women to access abortion where the medical procedure is permitted under the law.

Providing treatment of abortion complications

- Provide timely treatment for abortion complications regardless of the law on induced abortion, to protect a woman's life and health.

- Eliminate the practice of extracting confessions for prosecution purposes from women seeking emergency medical care as a result of illegal abortion and the legal requirement for doctors and other health-care personnel to report cases of women who have undergone abortion.

4.2 Laws and their implementation within the context of human rights

Legal restrictions on abortion do not result in fewer abortions nor do they result in significant increases in birth rates. Conversely, laws and policies that facilitate access to safe abortion do not increase the rate or number of abortions. The principle effect is to shift previously clandestine, unsafe procedures to legal and safe ones.

Restricting legal access to abortion does not decrease the need for abortion, but it is likely to increase the number of women seeking illegal and unsafe abortions, leading to increased morbidity and mortality. Legal restrictions also lead many women to seek services in other countries/states, which is costly, delays access and creates social inequities. Restricting abortion, with the intent of boosting population has been well documented in several countries. In each case, abortion restrictions resulted in an increase of illegal and unsafe abortions and pregnancy-related mortality, with insignificant net increase in the population.

Abortion laws began to be liberalized, through legislation and/or through broader legal interpretations and applications, in the first part of the 20th century when the extent of the public health problem of unsafe abortion began to be recognized. Dating from the late 1960s, there has been a trend towards liberalization of the legal grounds for abortion (30). Since 1985, over 36 countries have liberalized their abortion laws, while only a few countries have imposed further restrictions in their laws. These reforms have come about through both judicial and legislative action.

Evidence increasingly shows that, where abortion is legal on broad socioeconomic grounds and on a woman's request, and where safe services are accessible, both unsafe abortion and abortion-related mortality and morbidity are reduced (32–35) (see Figure 4.1). . . .

[A]cross the world, 40% of women of childbearing age live in countries that have highly restrictive laws, and/or where abortion, even when lawful, is neither available nor accessible.

4.2.1 Understanding legal grounds for abortion

4.2.1.2 When there is a threat to a woman's health

The fulfilment of human rights requires that women can access safe abortion when it is indicated to protect their health. Physical health is widely understood to include conditions that aggravate pregnancy and those aggravated by pregnancy. The scope of mental health includes psychological distress or mental suffering caused by, for example, coerced or forced sexual acts and diagnosis of severe fetal impairment. A woman's social circumstances are also taken into account to assess health risk.

- In many countries, the law does not specify the aspects of health that are concerned but merely states that abortion is permitted to avert risk of injury to the pregnant woman's health. Since all countries that are members of WHO accept its constitutional description of health as "a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity", this description of complete health is implied in the interpretation of laws that allow abortion to protect women's health.

4.2.1.3 When pregnancy is the result of rape or incest

The protection of women from cruel, inhuman and degrading treatment requires that those who have become pregnant as the result of coerced or forced sexual acts can lawfully access safe abortion services. Nearly 50% of countries reflect this standard and permit abortion in the specific case of rape, or more generally where pregnancy is the result of a criminal act, such as in cases of incest. Some countries require as evidence the woman's report of the act to legal authorities. Others require forensic evidence of sexual penetration or a police investigation to confirm that intercourse was involuntary or exploitative. Delays owing to such requirements can result in women being denied services because they have exceeded gestational age limits prescribed by law. In many contexts, women who have been victims of rape may fear being stigmatized further by the police and others and will therefore avoid reporting the rape at all, thus precluding access to legal abortion. Either situation can lead women to resort to clandestine, unsafe services to terminate their pregnancy.

- Prompt, safe abortion services should be provided on the basis of a woman's complaint rather than requiring forensic evidence or police examination. Administrative requirements should be minimized and clear protocols established for both police and health-care providers as this will facilitate referral and access to care.

4.2.2 Legal, regulatory or administrative barriers to safe abortion access in the context of human rights

The legal grounds, and the scope of their interpretation, are only one dimension of the legal and policy environment that affects women's access to safe abortion. Health system and service-delivery barriers as they are explained in Chapter 3 may also be codified in laws, regulations, policies and practices. Laws, policies and practices that restrict access to abortion information and services can deter women from care seeking and create a "chilling effect" (suppression of actions because of fear of reprisals or penalties) for the provision of safe, legal services.

Examples of barriers include:

- prohibiting access to information on legal abortion services, or failing to provide public information on the legal status of abortion;
- requiring third-party authorization from one or more medical professionals or a hospital committee, court or police, parent or guardian or a woman's partner or spouse;
- restricting available methods of abortion, including surgical and medical methods through, for instance, lack of regulatory approval for essential medicines;
- restricting the range of health-care providers and facilities that can safely provide services, e.g. to physicians in inpatient facilities with sophisticated equipment;
- failing to assure referral in case of conscientious objection;
- requiring mandatory waiting periods;
- censoring, withholding or intentionally misrepresenting health-related information;
- excluding coverage for abortion services under health insurance, or failing to eliminate or reduce service fees for poor women and adolescents (see Chapter 3);
- failing to guarantee confidentiality and privacy, including for treatment of abortion complications (see Chapter 3);
- requiring women to provide the names of practitioners before providing them with treatment for complications from illegal abortion;
- restrictive interpretation of legal grounds.

These barriers contribute to unsafe abortion because they:

- deter women from seeking care and providers from delivering services within the formal health system;
- cause delay in access to services, which may result in denial of services due to gestational limits on the legal grounds;
- create complex and burdensome administrative procedures;
- increase the costs of accessing abortion services;
- limit the availability of services and their equitable geographic distribution.

Details of selected policy barriers follow.

4.2.2.1 Access to information

Access to information is a key determinant of safe abortion. Criminal laws, including on the provision of abortion-related information, and the stigmatization of abortion deter many women from requesting information from their regular health-care providers about legal services. Women may prefer not to consult their regular health-care providers, or to seek care outside their communities.

Many women and health-care providers (as well as police and court officers) do not know what the law allows with regard to abortion. For instance, in a country where abortion is permitted up to 20 weeks of pregnancy to protect a woman's health and for contraceptive failure, a survey revealed that more than 75% of married women and men were not aware that abortion was legal in these circumstances. Public health policies or regulations may contain special provisions that clarify how to interpret an abortion law. In many countries, however, no formal interpretation or enabling regulation exists. The fear of violating a law produces a chilling effect. Women are deterred from seeking services within the formal health sector. Health-care professionals tend to be overly cautious when deciding whether the legal grounds for abortion are met, thereby denying women services to which they are lawfully entitled. In other cases, there is inadequate or conflicting information, for instance, about appropriate dosages of drugs for medical abortion.

- The provision of information about safe, legal abortion is crucial to protect women's health and their human rights. States should decriminalize the provision of information related to legal abortion and should provide clear guidance on how legal grounds for abortion are to be interpreted and applied, as well as information on how and where to access lawful services. Legislators, judges, prosecutors and policy-makers also need to understand the human rights and health dimensions of legal access to safe abortion services, made available through training or other appropriately targeted information.

4.2.2.5 Conscientious objection

Health-care professionals sometimes exempt themselves from abortion care on the basis of conscientious objection to the procedure, while not referring the woman to an abortion provider. In the absence of a readily available abortion-care provider, this practice can delay care for women in need of safe abortion, which increases risks to their health and life. While the right to freedom of thought, conscience, and religion is protected by international human rights law, international human rights law also stipulates that freedom to manifest one's religion or beliefs might be subject to limitations necessary to protect the fundamental human rights of others. Therefore laws and regulations should not entitle providers and institutions to impede women's access to lawful health services.

- Health-care professionals who claim conscientious objection must refer the woman to another willing and trained provider in the same, or another easily accessible health-care facility, in accordance with national law. Where referral is not possible, the health-care professional who objects must provide abortion to save the woman's life or to prevent damage to her health. Health services should be organized in such a way as to ensure that an effective exercise of the freedom of conscience of health professionals in the professional context does not prevent patients from obtaining access to services to which they are entitled under the applicable legislation.

4.2.2.7 Censoring, withholding or intentionally misrepresenting health-related information

Women have a right to be fully informed of their options for health care by properly trained personnel, including information about the likely benefits and potential adverse effects of proposed procedures and available alternatives. Censoring, withholding or intentionally misrepresenting information about abortion services can result in a lack of access to services or delays, which increase health risks for women. Provision of information is an essential part of good-quality abortion services (see Box 4.2 and also see Chapter 2 “Information and counselling”). Information must be complete, accurate and easy to understand, and be given in a way that facilitates a woman being able to freely give her fully informed consent, respects her dignity, guarantees her privacy and confidentiality and is sensitive to her needs and perspectives.

- States should refrain from limiting access to means of maintaining sexual and reproductive health, including censoring, withholding or intentionally misrepresenting health-related information.

4.2.2.9 Restrictive interpretation of laws on abortion

The respect, protection and fulfilment of human rights require that governments ensure abortion services that are allowable by law are accessible in practice. Institutional and administrative mechanisms should be in place and should protect against unduly restrictive interpretations of legal grounds. These mechanisms should allow service provider and facility administrator decisions to be reviewed by an independent body, should take into consideration the views of the pregnant woman, and should provide timely resolution of review processes.

4.3. Creating an enabling environment

An enabling environment is needed to ensure that every woman who is legally eligible has ready access to safe abortion care. Policies should be geared to respecting, protecting and fulfilling the human rights of women, to achieving positive health outcomes for women, to providing good-quality contraceptive information and services, and to meeting the particular needs of groups such as poor women, adolescents, rape survivors and women living with HIV. The respect, protection, and fulfilment of human rights require that comprehensive regulations and policies be in place and they address all elements listed in Section 4.2.2, to ensure that abortion is safe and accessible. Existing policies should be examined to ascertain where there are gaps and where improvements are needed (see also Chapter 3).

Policies should aim to:

- respect, protect and fulfil the human rights of women, including women's dignity, autonomy and equality;
- promote and protect the health of women, as a state of complete physical, mental and social well-being;

- minimize the rate of unintended pregnancy by providing good-quality contraceptive information and services, including a broad range of contraceptive methods, emergency contraception and comprehensive sexuality education;
- prevent and address stigma and discrimination against women who seek abortion services or treatment for abortion complications;
- reduce maternal mortality and morbidity due to unsafe abortion, by ensuring that every woman entitled to legal abortion care can access safe and timely services including post-abortion contraception;
- meet the particular needs of women belonging to vulnerable and disadvantaged groups, such as poor women, adolescents, single women, refugees and displaced women, women living with HIV, and survivors of rape.

While countries differ in prevailing national health system conditions and constraints on available resources, all countries can take immediate and targeted steps to elaborate comprehensive policies that expand access to sexual and reproductive health services, including safe abortion care.

World Medical Assembly, Regulations in Times of Armed Conflict and Other Situations of Violence (revised October 2012)⁸⁰

BACKGROUND: The World Medical Assembly (WMA), “[a]s an organization promoting the highest possible standards of medical ethics . . . provides ethical guidance to physicians through its Declarations, Resolutions and Statements. These also help to guide National Medical Associations, governments and international organizations throughout the world. The Declarations, Resolutions and Statements cover a wide range of subjects, including an International Code of Medical Ethics, the rights of patients, research on human subjects, care of the sick and wounded in times of armed conflict, torture of prisoners, the use and abuse of drugs, family planning and pollution.”⁸¹

TEXT OF REGULATIONS:

General Guidelines

Medical ethics in times of armed conflict is identical to medical ethics in times of peace, as stated in the International Code of Medical Ethics of the WMA. If, in performing their professional duty, physicians have conflicting loyalties, their primary obligation is to their patients; **in all their professional activities, physicians should adhere to international conventions on human rights, international humanitarian law and WMA declarations on medical ethics.**

The primary task of the medical profession is to preserve health and save life. Hence it is deemed unethical for physicians to:

- Give advice or perform prophylactic, diagnostic or therapeutic procedures that are not justifiable for the patient's health care;
- Weaken the physical or mental strength of a human being without therapeutic justification;
- Employ scientific knowledge to imperil health or destroy life;
- Employ personal health information to facilitate interrogation;

- **Condone, facilitate or participate in the practice of torture or any form of cruel, inhuman or degrading treatment.**

Code of Conduct: Duties of Physicians Working in Armed Conflict and Other Situations of Violence

Physicians must in all circumstances:

- **Neither commit nor assist violations of international law (international humanitarian law or human rights law);**
- Not abandon the wounded and sick;
- Not take part in any act of hostility;
- **Remind authorities of their obligation to search for the wounded and sick and to ensure access to health care without unfair discrimination;**
- **Advocate and provide effective and impartial care to the wounded and sick (without reference to any ground of unfair discrimination, including whether they are the "enemy");**
- Recognise that security of individuals, patients and institutions are a major constraint to ethical behaviour and not take undue risk in the discharge of their duties;
- **Respect the individual wounded or sick person, his / her will, confidence and his / her dignity;**
- Not take advantage of the situation and the vulnerability of the wounded and sick for personal financial gain;
- Not undertake any kind of experimentation on the wounded and sick without their real and valid consent and never where they are deprived of liberty;
- **Give special consideration to the greater vulnerability of women and children in armed conflict and other situations of violence and to their specific health-care needs;**
- Respect the right of a family to know the fate and whereabouts of a missing family member whether or not that person is dead or receiving health care;
- Provide health care for anyone taken prisoner;
- Advocate for regular visits to prisons and prisoners by physicians, if such a mechanism is not already in place;
- Denounce and act, where possible, to put an end to any unscrupulous practices or distribution of poor quality/counterfeit materials and medicines;
- Encourage authorities to recognise their obligations under international humanitarian law and other pertinent bodies of international law with respect to protection of health care personnel and infrastructure in armed conflict and other situations of violence;
- Be aware of the legal obligations to report to authorities the outbreak of any notifiable disease or trauma;
- Do anything within their power to prevent reprisals against the wounded and sick or health care;

- Recognise that there are other situations where health care might be compromised but in which there are dilemmas.

Physicians should to the degree possible:

- **Refuse to obey an illegal or unethical order;**
- **Give careful consideration to any dual loyalties that the physician may be bound by and discuss these dual loyalties with colleagues and anyone in authority;**
- **As an exception to professional confidentiality, and in line with WMA Resolution on the Responsibility of Physicians in the Documentation and Denunciation of Acts of Torture or Cruel or Inhuman or Degrading Treatment and the Istanbul Protocol, denounce acts of torture or cruel, inhuman or degrading treatment of which physicians are aware, where possible with the subject's consent, but in certain circumstances where the victim is unable to express him/herself freely, without explicit consent;**
- Listen to and respect the opinions of colleagues;
- Reflect on and try to improve the standards of care appropriate to the situation;
- Report unethical behaviour of a colleague to the appropriate superior;
- Keep adequate health care records;
- Support sustainability of civilian health care disrupted by the context;
- Report to a commander or to other appropriate authorities if health care needs are not met;
- **Give consideration to how health care personnel might shorten or mitigate the effects of the violence in question, for example by reacting to violations of international humanitarian law or human rights law.**

Inter-agency Working Group on Reproductive Health in Crises, revised Inter-agency Field Manual on Reproductive Health in Humanitarian Settings (2010)⁸²

BACKGROUND: “IAWG [Inter-agency Working Group on Reproductive Health in Crises] is a broad-based, highly collaborative coalition of 18 Steering Committee member agencies – representing UN, government, non-governmental, research, and donor organizations. Formed in 1995, and currently a network of over 1,500 individual members from 450 agencies, IAWG remains committed to advancing the sexual and reproductive health of people affected by conflict and natural disaster.”⁸³ The following excerpts are from “the revised *Inter-agency Field Manual on Reproductive Health in Humanitarian Settings* that continues to serve as the authoritative guidance on reproductive health programming in humanitarian settings.”⁸⁴

RELEVANT EXCERPTS:⁸⁵

4. Human Rights and legal considerations

GBV goes against many fundamental human rights and can be a serious impediment to the realization of human rights and fundamental freedoms. A number of human rights principles contained in various international human rights instruments serve as the basis for protection from GBV. These include the rights to: . . .

- the highest attainable standard of physical and mental health – this right may be restricted if a person is denied access to appropriate medical care following rape;
- freedom from torture or cruel, inhuman or degrading treatment or punishment – FGM, rape, severe forms of domestic violence, forced sterilization and forced abortion, as well as **denial of access to safe abortion services to women who have become pregnant as a result of rape and human trafficking violations, can constitute torture or cruel, inhuman or degrading treatment or punishment . . .**

II. UK POLICIES & PRACTICES RELEVANT TO HUMANITARIAN AID FOR GIRLS AND WOMEN RAPED IN ARMED CONFLICT

A. Foreign and Commonwealth Office (FCO) & Department for International Development (DFID) Policies and Rules on Humanitarian Aid on Abortion

BACKGROUND: The Department for International Development (DFID) is a department of the UK government that funds humanitarian missions, including supporting the UN Millennium Development Goals such as reproductive, maternal, and newborn health, child health, and access to healthcare. Below are reports that DFID produced pertaining to women's health issues in humanitarian situations and UK humanitarian policy.

Abortion services in conflict situations: DFID's response to the Woman's Hour debate on BBC Radio 4 around access to abortion services in conflict zones (11 February 2013)⁸⁶

BACKGROUND: On 11 February 2013, a DFID spokesperson clarified UK policy on funding and provision of abortions to women and girls raped in conflict, in response to a Woman's Hour debate on BBC Radio 4.

TEXT OF STATEMENT:

In conflict situations, UK-funded medical care is provided through humanitarian organisations who work according to humanitarian principles including the provision of non-discriminatory aid provided according to need and need alone.

On access to abortion services, UK policy is clear: the UK development budget can be used, without exception, to provide safe abortion care where necessary, and to the extent allowed by national laws. In conflict situations where denying an abortion in accordance with national law would threaten the mother's life or cause unbearable suffering, international humanitarian law principles may justify performing an abortion rather than extending what amounts to inhumane treatment in the form of an act of cruel treatment or torture. This will depend both on the woman's condition and the safety and security of the humanitarian staff.

US regulations on the provision of abortion services have no influence on UK funding. We maintain good discussions with US and Norwegian counterparts. The UK remains one of only a handful of international donors willing to tackle this highly sensitive issue.

FCO's Preventing Sexual Violence Initiative (2012)⁸⁷

BACKGROUND: The Preventing Sexual Violence Initiative (PSVI) of 2012 was created by the FCO to unite efforts within the international community in order to prevent the occurrence of sexual violence in conflict and to punish the perpetrators who commit sexual violence abuses. PSVI acknowledges that the targeting of girls and women for sexual violence in armed conflict is a weapon of war and should be brought to an end. Their medical treatment should, thus, reflect this realization and be able to treat all of their "war wounds" effectively, including abortion.

Ambassadors, my Lords, Ladies and Gentlemen; good evening and welcome to the Foreign and Commonwealth Office.

We are here to launch of the British Government's new initiative on preventing sexual violence in armed conflict, in the presence of our very special guests this evening. When we think of armed conflict, we think of battlefields, soldiers in arms and tanks. But wars tragically are also about civilians, particularly women and children, caught on the margins of the battlefield yet at the centre of warfare.

Rape and other forms of sexual violence have been used as weapons against women in conflicts the world over.

This was brought home to me most starkly when I met women in refugee camps in Darfur who had been viciously assaulted when collecting firewood to cook for their children, and the survivors of Srebrenica – the worst atrocity on European soil since the end of the Second World War. . . .

It is my firm conviction that tackling sexual violence is central to conflict prevention and peace-building worldwide. It must be as prominent in foreign policy as it is in development policy, for the two cannot be separated. And it also cannot be separated from wider issues of women's rights.

We will not succeed in building sustainable peace in conflict areas unless we give the issue of sexual violence the centrality it deserves; alongside the economic and political empowerment of women and their vital role in peace-building.

For where there is no justice and accountability, the seeds of future violence are sown and human development is held back. I pay tribute to the huge amount of dedicated work by the UN and its agencies and by NGOs over the last decade: providing care and sexual health support on the ground, raising global awareness, pursuing ground-breaking legal cases and working with member states to frame vital UN Security Council Resolutions on women, peace and security, including Resolutions 1325 and 1820. . . .

It is a rallying-call that none of us can ignore. Today, I want publicly to renew the British Government's commitment to tackling sexual violence in armed conflict. We want to work to find practical ways to ensure that survivors feel confident to speak out, and are able to regain the dignity and rights that are due to them.

We want to see a significant increase in the number of successful prosecutions for these crimes, so that we erode and eventually demolish the culture of impunity and establish a new culture of deterrence in its place. We want to use Britain's influence and diplomatic network to rally sustained international action and to push this issue up the global agenda.

So to that end, we will set up a new UK team of experts devoted to combating and preventing sexual violence in armed conflict. This team will be able to be deployed overseas at short notice to gather evidence and testimony that can be used to support investigations and prosecutions.

It will draw on the skills of doctors, lawyers, police, psychologists, forensic specialists and experts in the care and protection of victims and witnesses. It will significantly strengthen the specialist capabilities that we are able to bring to bear on these issues as the United Kingdom.

The team will be available to support UN and other international missions, and to provide training and mentoring to national authorities to help them develop the right laws and capabilities. It will also be able to work on the frontline with grassroots organisations, local peace builders and human rights.

I can also announce that we will use Britain's Presidency of the G8, starting on January 1st 2013, to run a year-long diplomatic campaign on preventing sexual violence in armed conflict. We will use the crucial seven months before our Presidency to build real momentum around this initiative. . . .

DFID, "Safe and Unsafe Abortion: Practice Paper, DFID Policy" (July 2011)⁸⁹

RELEVANT EXCERPTS:

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Our Position

Women and adolescent girls must have the right to make their own decisions about their sexual and reproductive health and well being, and be able to choose whether, when and how many children to have.

We do not support abortion as a method of family planning – indeed we are working to increase access to modern methods of family planning (which would ultimately reduce demand for abortion).

Safe abortion reduces recourse to unsafe abortion and saves maternal lives.

We do not enter the ring on the rights and wrongs of abortion, but in countries where abortion is permitted, we can support programmes that make safe abortion more accessible.

In countries where it is highly restricted and maternal mortality and morbidity are high, we can help make the consequences of unsafe abortion more widely understood, and can consider supporting processes of legal and policy reform.

Key Facts

- 215 million women who want to delay or avoid a pregnancy are not using an effective method of family planning.
- Worldwide, there were an estimated 21.6 million unsafe abortions in 2008. Nearly all were in developing countries.
- Unsafe abortion accounts for 13% of all maternal deaths;
- Where effective contraception is available and widely used the rate of abortion declines, but nowhere has it reached zero.
- Unsafe abortion is most common in countries where abortion is prohibited or permitted only in highly restricted circumstances.
- Death from unsafe abortion is rare in countries where abortion is permitted and quality, affordable services are available.

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Rape and forced pregnancy as a tool of war and retaliation have been documented in a number of countries and regions including Sierra Leone, Somalia and Darfur. It is estimated that

between 2,000 to 5,000 children were born in Rwanda as a result of rape during the genocide. Many thousands of women were also infected with HIV as a result of rape. Worldwide, one in five women becomes the victim of rape or attempted rape at some point in their lifetime. . . .

The consequences of gender inequality, cultural norms and poverty on unwanted pregnancy for the most vulnerable are dire. For many it equates to social exclusion, expulsion from the family, abandonment and deepening poverty. **For most the choices are limited – risk death from an unsafe abortion, or face social exclusion and destitution from isolation and extreme poverty.**

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Millions of women around the world each year decide to seek an abortion, whether or not it is legal and available. **Our position is that safe abortion reduces recourse to unsafe abortion and thus saves lives, and that women and adolescent girls must have the right to make their own decision about their sexual and reproductive health and well being.**

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Women should not face death or disability when they decide to have an abortion. To reduce deaths to women from the complications of unsafe abortion we support the prevention of unsafe abortion as part of broader public health efforts to improve sexual and reproductive health. We support programmes that make safe abortion more accessible in countries where it is permitted. We can help make the consequences of an unsafe abortion more widely understood in countries where it is highly restricted. We can also consider supporting civil society-led processes that enable legal and policy reform.

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In many countries abortion may be permitted only on limited or highly restricted grounds. **In these circumstances, we can consider support to increase awareness among policy-makers, legislators, national health authorities and health personnel of the circumstances under which abortion is allowed.** We can also work to highlight the consequences arising from the complications of unsafe abortion, such as the burden of maternal ill-health and high health service costs. We can also consider support to locally-led efforts to enable legal and policy reform in circumstances where the existing law and policy are contributing to high maternal mortality and morbidity; and to regional or international initiatives that are working to prevent unsafe abortion.

DFID, “Saving lives, preventing suffering and building resilience: The UK Government’s Humanitarian Policy” (September 2011)⁹⁰

RELEVANT EXCERPTS:

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51. The UK’s Strategy on the Protection of Civilians commits us to “lobby strongly for humanitarian access, and hold countries to their commitments and obligations under International Humanitarian Law”.

We will:

21. Implement the appropriate political, security, humanitarian and development actions necessary to uphold respect for international law, protect civilians and to secure humanitarian access.

22. Ensure that UK humanitarian action contributes to preventing and responding to violence against women and girls.

23. Allocate proportionate funds in the most volatile situations to security management costs and ensure those we fund undertake quality risk assessments and put in place security risk mitigation measures.

DFID, “Humanitarian Emergency Response Review Inception Report” (November 2010)⁹¹

RELEVANT EXCERPTS:

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Furthermore, **International Humanitarian Law, Human Rights Law and Refugee Law, as well as UN Resolutions, provide the international legal framework for international humanitarian emergency response:** while the affected state has the primary obligation to respond, the UK and other state and non-governmental international partners have a responsibility to provide assistance when the affected state is unable or unwilling to do so. These legal norms also establish that humanitarian aid should be guided by the principles of **humanity** - the centrality of saving lives and alleviating suffering wherever it is found - **impartiality** - humanitarian aid should be implemented solely on the basis of need, without discrimination between or within affected populations - **neutrality** - humanitarian action must not favour any side in an armed conflict or other dispute - and **independence** – humanitarian objectives are autonomous from political, economic, military objectives or other interests related to the location where assistance is provided.

DFID, “Choices for Women: planned pregnancies, safe births and healthy newborns: The UK’s Framework for Results for improving reproductive, maternal and newborn health in the developing world” (December 2010)⁹²

RELEVANT EXCERPTS:

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Women and babies affected by crises, including conflict and natural disaster, often lack access to essential information and services. Support to reproductive, maternal and newborn health during crises is an important but relatively neglected aspect of any humanitarian response. Relevant needs assessment is a critical first step, followed by sufficient supplies and relevant services. This includes supporting access to family planning, including emergency contraception, and **access to safe abortion and other care as a response to rape.**

FCO Strategy for the Prevention of Torture (2011-2015), Human Rights and Democracy Department (October 2011)⁹³

BACKGROUND: In 2011, the FCO released this strategy to serve as a guide to foreign UK posts on how they can work to prevent and report the occurrence of torture. The strategy is to be implemented through 2015. The FCO should ensure that these policies against torture are adhered to in all of its overseas activities, including the donation of aid to organizations that provide medical services, such as the ICRC.

RELEVANT EXCERPTS:

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Our Position

The Government considers torture to be an abhorrent violation of human rights and human dignity, and unreservedly condemns the practice. International action against torture has long been a priority for the UK and we have a reputation as one of the most active countries in the world on the subject. Torture prevention is a component of safeguarding Britain's security as, aside from the appalling physical and psychological harm for victims, the sense of indignity and injustice it creates can radicalise individuals and communities and brutalise the societies they live in. Preventing torture can help to break that pattern. Torture prevention sits firmly within wider rule of law work being done to build fair legal systems, security and stability overseas. It also reinforces our Consular work to address the mistreatment of British detainees overseas. The UK has contributed to the UN Voluntary Fund for Victims of Torture which provides assistance to victims of torture and members of their family. . . .

In order to achieve this agenda, HMG must have a good record itself. As the Foreign Secretary has said, where problems have arisen that have affected the UK's moral standing we will act on the lessons learnt and tackle the difficult issues head on. We will use these lessons to inform the torture prevention work that we do overseas. The position of the Government is clear: the prohibition on torture applies to all individuals. . . .

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Challenges

. . . Governments may accuse the UK of meddling in their internal affairs or their justice system. We should be constructive in our approach but be clear that torture is a matter for the international community. Torture prevention is an important part of criminal justice reform, rule of law and security work. . . .

Consistency

. . . There are further strategies and guidelines which are relevant to torture prevention and which should be considered as complementary to this strategy, for example the EU guidelines on human rights defenders and violence against women and HMG's action plan for UNSCR 1325 on Women, Peace and Security. We will also try to ensure that good practice on torture prevention is shared between our overseas posts.

FCO's Torture and Mistreatment Reporting Guidance (March 2011)⁹⁴

BACKGROUND: The reporting guidelines of 2011 outline the responsibilities of FCO staff with respect to the reporting of torture allegations. They reiterate the strong UK policy against torture that each member of FCO staff is obligated to uphold so that the policies may be rectified. Similarly, FCO staff in states where girls and women are being denied medically necessary

abortions should call on UK government leaders to assure these victims of war rape get all the necessary medical treatment required by their condition.

RELEVANT EXCERPTS:

1. Every member of staff has **an individual responsibility to report immediately allegations and/or concerns about suspected torture or cruel, inhuman or degrading treatment or punishment (CIDT) that occurs overseas, so that such allegations and/or concerns can be acted upon appropriately.** This guidance applies to acts occurring outside the UK and sets out what this responsibility means and how to report such allegations and/or concerns. . . .

UK Policy on torture and CIDT

5. The United Kingdom Government's policy is clear – we do not participate in, solicit, encourage or condone the use of torture or CIDT for any purpose. We have consistently made clear our absolute opposition to such behaviour and our determination to combat it wherever and whenever it occurs. We take all allegations and/or concerns of torture and CIDT very seriously and will follow up with action, as appropriate.

B. UK Parliamentary Questions and Government Answers regarding UK Law and Humanitarian Aid Policies on Abortion for Victims of War Rape

BACKGROUND: Parliamentary questions are a tool for parliamentarians to ask the UK government what the official position is on certain issues and policies. The following questions were asked with respect to UK humanitarian aid for funding of medical care in conflict zones where rape is being used as a weapon of war, the US abortion ban, and the availability of abortions for war rape victims.

Question Asked by Baroness Tonge regarding Armed Conflict and Rape – Answered by Baroness Northover, Government Spokesperson in the House of Lords on International Development (6 March 2013)⁹⁵

Question by Baroness Tonge

My Lords, I congratulate the right reverend Prelate on securing this debate. I wish to raise three practical points. First, the Foreign Secretary has stated that rape and sexual violence are used as a deliberate weapon of war. That said, will he take the lead at the G8 in calling for rape and sexual violence in conflict to be classified as a war crime?

Secondly, we had reassurances during the debate tabled by the Lord, Lord Lester, two weeks ago that after rape during conflict, women are entitled to have a safe abortion, if they want it, under international humanitarian law. Can we therefore have this specifically included in DfID's paper on safe and unsafe abortion, so that it is quite clear? It is unthinkable that women who have been raped should be forced to continue their pregnancy, should they not want to.

Finally, NGOs often pool funds for specific projects and I have been totally unable to establish whether the USA's ban on funds for abortion is affecting our projects in this field. NGOs that I have approached-and there are many-are unable to give me any figures at all so how can we be sure that our money, channelled through DfID, is being used for safe abortion? Please can the Minister give us some more information?

Answer by Baroness Northover

. . . This year, 2013, is a hugely important year for this agenda. We are working hard with other Governments to ensure that this year's UN Commission on the Status of Women, whose focus is on violence against women and girls, is a success and agrees a set of robust global standards to protect women and girls from discrimination and violence. My honourable friend Lynne Featherstone is leading the UK delegation. We also want to see women and girls at the heart of the new millennium development goal framework to be published later this year. Their inclusion is critical to achieving our goal of ending extreme poverty.

This year will also see greater government action to address the use of sexual violence in conflict as we further develop and implement the Foreign Secretary's preventing sexual violence initiative, to which noble Lords have referred. In our own lifetimes, millions of women, men, and children have endured this horror, including in the Democratic Republic of Congo, to which noble Lords have referred, in South Sudan, in Colombia, as the noble Baroness, Lady Coussins, said, in Bosnia and in Syria. The truth today, as the right reverend Prelate pointed out, is that the perpetrators of these appalling, life-shattering crimes more often than not go unpunished.

We believe that more must be done to combat the use of sexual violence in conflict. We want the international community to address the culture of impunity that has been allowed to develop for these crimes and to increase the number of perpetrators brought to justice, both internationally and nationally. As other noble Lords have mentioned, the Foreign Secretary has placed this issue at the top of the G8 agenda for 2013. We want G8 Foreign Ministers at their April meeting to speak out against those who use sexual violence in conflict and to declare that rape and serious sexual violence amount to grave breaches of the Geneva Conventions. This is a very significant step in the development of international humanitarian law. Declaring that serious sexual violence and rape amount to grave breaches sends the message that these crimes are to be treated in the same way as the most serious category of war crimes. I can therefore reassure my noble friends Lady Tonge and Lord Alderdice that these crimes will become the most serious category of war crime in international law. I can also assure my noble friend Lord Alderdice that they can be taken to the International Criminal Court. Consultation with prosecutors at the ICC has clearly identified that a lack of clarity over investigations and collection of evidence led to the low number of prosecutions in the ICC and other international tribunals. The protocol will directly address this.

We are also proposing a set of practical G8 commitments that, taken together, will promote justice and accountability and provide greater support to victims. I hope that my noble friend Lady Hamwee, the noble Lords, Lord Parekh and Lord Judd, and others will welcome them. These commitments are, first, to improve investigations and the documentation of sexual violence in conflict, including through endorsing a new international protocol; secondly, to provide greater support and assistance to survivors, including child survivors, of sexual violence, so that they can rebuild their lives and attain justice for what they have endured; thirdly, as the noble Baroness, Lady O'Loan, emphasised, to ensure that the response to sexual and gender-based violence is fully integrated into wider peace and security efforts; and fourthly, to improve international co-ordination, including through the UN, because a co-operative approach to addressing sexual violence will have a much greater long-term impact.

To underpin these international efforts, the Government have established a new specialist UK team of experts, to which the noble Lord, Lord Sheikh, referred, who can be deployed to conflict areas to help local authorities and organisations address sexual violence. This team has already been deployed to the Syrian border to help train local health professionals. In answer to the right reverend Prelate, we aim to work with, and support, those who can document these abuses in that area. We also plan to deploy the team to at least five other countries this year. It will go to Libya, to support survivors of sexual violence committed during the revolution; to South Sudan, to work alongside the UN and the Government to strengthen local justice; to eastern DRC, to help doctors and lawyers to investigate crimes

against the hundreds of women and girls who are raped each month; to Bosnia-Herzegovina, to help courts and prosecutors address the backlog of war crimes cases; and to Mali, to provide human rights training to the Malian armed forces on preventing and responding to sexual violence. As the noble Baroness, Lady O'Loan, emphasised, in order to address these issues, we need first the law to protect and then we need to work with those who can help to ensure the implementation of those laws: the police, the judges, civil society and the media.

Our plans for the initiative have been developed in consultation with UN agencies, other international bodies, NGOs, and I can also reassure the right reverend Prelate-representatives from faith groups. These groups have a particular role, not least because of their ability to reach out across communities. We want to continue to work closely with them as we challenge the myths and stigma associated with victims of sexual violence.

There were a number of questions. My noble friend Lady Tonge asked about the proposals we brought forward earlier this year in terms of international humanitarian law. In conflict situations, even if it is contrary to national law, abortion care can be offered where its denial would amount to torture or cruel treatment. We need now to focus very much on bringing our international partners with us on this. We are very forward-looking on this, as we have been in the area of safe abortion as well, and it is extremely important that we take others with us. However, if the noble Baroness has any evidence that UK aid is not being used appropriately and is not reaching women, will she please let us have those details? . . .

Questions Asked by Baroness Tonge regarding Armed Conflict and Rape – Answered by Baroness Northover, Government Spokesperson in the House of Lords on International Development (28 January 2013)⁹⁶

Question by Baroness Tonge

To ask Her Majesty's Government whether they have taken steps to ensure that women raped in war are given access to appropriate and necessary medical care by means of safe abortions by the International Committee of the Red Cross.[HL4580]

To ask Her Majesty's Government what steps they have taken to ensure that their policy of providing safe abortions to women raped in war is followed by the International Committee of the Red Cross and other humanitarian organisations.[HL4581]

Answer by Baroness Northover

In the recent House of Lords debate on 9 January 2013 (Official Report, col. 208), the UK's policy was made clear—including that there may be some circumstances where an abortion might be offered, despite being in breach of national law, such as when the life of the mother is at risk. The provision of such services depends on the specific circumstances of each situation.

As a humanitarian donor, the UK does not ask the International Committee of the Red Cross (ICRC), or any other humanitarian organisation, to compromise its humanitarian mandate. All humanitarian organisations are free to determine how they operate within the guidance of humanitarian principles and in accordance with applicable international law.

The ICRC has little medical infrastructure of its own in conflict-affected countries. The majority of its assistance is provided as support to national health services who retain the primary responsibility for the medical care of their citizens.

The ICRC was aware of the recent debate and we continue to engage in dialogue with them on this. They are also aware of the UK's policy and position.

Question by Baroness Tonge

To ask Her Majesty's Government whether they will encourage the International Committee of the Red Cross to separate its United States funding from that of the United Kingdom, to ensure safe abortion services for women raped in war.[HL4582]

Answer by Baroness Northover

I refer the noble Baroness to my speech in the House of Lords on 9 January 2013 (Official Report, col. 208). UK aid is not in any way influenced by the restrictions in place on US funding.

Humanitarian organisations are subject to strict audit and accounting processes. Most organisations receive their funding from a variety of donors, each with its own particular terms and conditions. It is part of normal business for these organisations to follow the relevant terms and conditions for each donor's contribution.

Question by Baroness Tonge

To ask Her Majesty's Government whether they plan to make representations to the Government of the United States regarding the ban on United States aid being used for abortions for women raped in armed conflict.[HL4583]

Answer by Baroness Northover

I refer the noble Baroness to my speech in the House on 9 January in the debate on rape in armed conflict (Official Report, col. 208): DfID officials are in regular dialogue with both USAID and US-based international non-governmental organisations with regard to improving access to sexual and reproductive health services and rights. This includes reducing recourse to unsafe abortion.

US colleagues have been made aware of the debate, and we continue to have a dialogue on the issues raised including the UK position on the interpretation of international humanitarian law in these situations.

Question for Short Debate: Rape in Armed Conflict (9 January 2012)⁹⁷

Asked by Lord Lester of Herne Hill

To ask Her Majesty's Government what is their strategy for ensuring that United Kingdom government-funded medical care for women and girls impregnated by rape in armed conflict is non-discriminatory and includes abortion services where they are medically necessary in compliance with international humanitarian law.

Baroness Garden of Frognal

My Lords, the next debate is timed and the timing is very tight. Would noble Lords who have six minutes to speak make sure that they sit down as the clock hits six-or, preferably, momentarily

before-to ensure that the Minister has as much time as possible to reply to the points raised in this important debate?

Lord Lester of Herne Hill

My Lords, the central question that this debate seeks to clarify is the Government's strategy for ensuring that UK-funded medical care for women and girls impregnated by rape in armed conflict is non-discriminatory and includes the provision of safe abortion services where medically appropriate and necessary. This is the Government's obligation under international humanitarian law, including the medical mandates of the Geneva conventions. Despite these legal mandates and the life and health-threatening nature of many pregnancies arising out of war rape, girls and women raped in armed conflict are routinely denied safe abortions in humanitarian medical settings, including those funded by DfID.

I am grateful to the international NGO, Global Justice Centre, and its dynamic president, Janet Benshoof, and her staff, for providing me with background information for this debate. I am also grateful to the Minister and her advisers for meeting me to discuss the issues in depth. The Minister has a strong commitment to equality for women and respect for international humanitarian law. I look forward to her reply, which may be influential well beyond this country and enable the UK to provide strong international leadership.

Sexual violence against women is a global evil. In its most pernicious form, rape of girls and women is used as a weapon of choice in the majority of today's armed conflicts. All rapes are terrible, but rape used as a weapon of war is often fatal. About 70% of conflict-related rapes in the DRC are gang rapes, most accompanied by mutilating injuries to women, including deliberate HIV infection. One-third of the victims of war rape in the DRC are girls under the age of 18 and, as many are raped in the context of sexual slavery, they incur the greatest risk of pregnancy.

Girls and women subject to rape used as a weapon of war are persons "wounded and sick" in armed conflict, guaranteed absolute rights to non-discriminatory, appropriate and necessary medical care under the Geneva conventions. Yet these women war victims are routinely denied, by blanket exclusions, life and health-saving abortions in humanitarian settings, leaving them with the terrible "choice" of risking an unsafe abortion, suicide or being forced to bear the child of their rapists.

War rape is torture. Denying a rape victim an abortion when there is medical need is also capable of amounting to a form of torture. In a recent statement, the World Organisation Against Torture, the largest global network of NGOs working against torture, said:

"To prevent a rape victim from access to abortion is contrary to the absolute prohibition of torture and cruel, inhuman or degrading treatment or punishment".

The right at stake is not a right to abortion; it is the right of everyone "wounded and sick" in armed conflicts, including women, to appropriate and necessary life and health-saving medical care. Plastic surgery, blood transfusions, amputations, prostheses, dental treatment and penile reconstruction surgery are all medical procedures protected by international law when needed by persons "wounded and sick" in armed conflict. The same applies, or should apply, to the termination of pregnancies where the continuing of a pregnancy creates a serious risk to the life and physical and mental health of the raped woman or girl.

Why are women raped in war being denied access to appropriate and necessary medical care by means of safe abortions where the continuation of the pregnancy threatens the life and health of the woman or girl? Two powerful forces perpetuate the anti-abortion medical protocols and sweepingly broad exclusions imposed on the provision of healthcare to women raped in war—the United States Government and the ICRC, the International Committee of the Red Cross. The United States imposes a “no abortion” total ban in its foreign aid, requiring all recipients, including foreign Governments, the ICRC and UN entities, to pledge not to discuss abortion or provide abortions with US funds. The US has eliminated previously existing exceptions allowing abortions for rape or to save the life of the woman.

The United States and the UK largely fund the same humanitarian organisations. Only one of the top 10 recipients of DfID humanitarian funding, the World Health Organisation, segregates its US funds from DfID and other donor funds to ensure the integrity of its abortion-related work. The ICRC, whose largest single donor is the United States, is clear in its internal operational guidelines for ICRC staff treating women victims of sexual violence in armed conflict that its medical staff “do not perform abortions”. The guidelines further discourage abortion referrals on the ground that making such referrals might impair the reputation of the ICRC in the conflict country.

The ICRC is DfID’s partner of choice in conflict situations and the largest recipient of DfID aid to humanitarian organisations. I was one of 43 British parliamentarians, including three former leaders of my party, who wrote to President Obama in February 2012 recalling the absolute rights of girls and women raped in war to non-discriminatory care, including abortions, under the Geneva and torture conventions. We requested the President to lift the US abortion ban on aid to war victims. To date, he has not yet done so. Denying medically needed abortions for victims of rape in war, including girls targeted for forced pregnancy as an element of genocide, is barbaric. Our Government should fill the vacuum of global leadership on this issue by ensuring that DfID’s humanitarian aid advances, and does not undermine, the rights of women raped in war to non-discriminatory medical care, which includes abortions.

The issue has been raised in Parliament since 2010. The Government have expressed their concerns about the US abortion ban, noting that it now prohibits abortions in cases of rape or to save a woman's life. However, the Government appear neither to have taken steps to ensure in practice that UK funds are not used to support facilities that provide discriminatory care for women raped in war, nor requested the US to lift the ban on victims of war rape.

DfID’s aid programme apparently defers to local anti-abortion laws. This breaches the UK's international humanitarian law obligations when the aid is supporting medical care for war victims. DfID-funded humanitarian entities such as the ICRC do not even provide abortions for war rape victims in conflict countries where abortions are legal for rape victims, as in the Sudan.

The Minister’s Written Answers and those of the honourable Lynne Featherstone MP on this issue are inconsistent about whether international humanitarian law is trumped by incompatible national law. Time prevents me from citing the inconsistent answers but I have given the references to my noble friend the Minister. I ask her to clarify the apparent contradiction in those answers and to explain the following points: first, how DfID policy implements UK law, as set out in the UK military manual, that national laws are relevant in conflict situations only so far as they do not conflict with international humanitarian law mandates; secondly, whether DfID monitoring or assessments of the performance of funded humanitarian entities includes, when applicable, assessing their compliance with the medical mandates of international

humanitarian law; thirdly, whether DfID is engaged in any discussions with the ICRC on the question of the ICRC segregating its compromised US funding from that of DfID and other donors to provide abortions for war victims, or whether in any other way the ICRC can ensure that women war rape victims treated by the ICRC are able to have access to abortion services from non-ICRC medical providers. Fourthly, do the Government have any plans to make a request to President Obama to lift the abortion ban on women raped in armed conflict as a matter of US compliance with the Geneva conventions?

Finally, can the Minister confirm that excluding access to abortions for women raped in war where such medical treatment is appropriate and necessary is discriminatory and likely to breach the Geneva conventions and, most important, that international humanitarian law takes precedence over conflicting national laws which authorise torture or serious ill treatment by banning medically necessary abortions for the victims of rape in armed conflict?

Baroness Kinnock of Holyhead

My Lords, at the outset I want to pay tribute to the noble Lord, Lord Lester, for initiating this debate so convincingly and eloquently and for raising concerns about what clearly are life or death issues. Over many years I have been visiting conflict-afflicted fragile states where I have met and talked to women who have suffered the agony of brutal rape and where sexual violence is the shocking and specific consequence of conflict. These women are traumatised, stigmatised and often ostracised by their families.

I firmly reject the notion that dealing with rape is down to culture, custom and religion and that that somehow excuses the denial of the right to safe abortion for women who have often endured mass rape which has scarred them both physically and psychologically. They are attacked while they go to fetch firewood or food for their families. In Darfur some women told me that they had to choose between the threat of rape and feeding their families. It is time for us to assume responsibility and to go beyond simply condemning the perpetrators of rape and instead to take steps to end it. Indeed, we must recognise, as Hillary Clinton has said, that it is not cultural, it is criminal.

In 2010, I visited the Panzi Hospital in Congo run by Dr Denis Mukwege and I talked to three women who only the day before had been attacked and raped several times as they walked home from the market with their children. They were traumatised, but their fortitude and strength was overwhelming. I could barely hold back the tears. Their main concern was not to talk about their suffering but to ask for a search to be made for their children whom they had encouraged to run away when the attack took place. I feared that they may be pregnant and would need terminations, but abortion is illegal in Congo.

In addition, as the noble Lord, Lord Lester, pointed out, US abortion restrictions mean that humanitarian aid managed by the International Committee of the Red Cross cannot be used for the victims of rape. These draconian restrictions prevent Governments, NGOs and humanitarian aid providers such as DfID and ECHO, the European humanitarian aid office, from providing the option of abortion to women and girls who have been raped. The UK is completely compromised by the no-abortion prohibition put on US humanitarian aid which prevents all humanitarian entities funded by the US from speaking out about abortion, or indeed from providing abortion services—even a life-saving abortion for a very young girl raped in conflict. This flies in the face of both international humanitarian law and the Geneva conventions, which say that victims of rape are entitled to, “receive, to the fullest extent

practicable and with the least possible delay, the medical care and attention required by their condition”.

Similarly, US domestic law requires such a response through the Geneva Conventions Act and the joint services manual of armed conflict.

I have three specific questions for the Minister. Norway has made a bilateral request to the US to ask it to lift the abortion ban on humanitarian aid for women raped in war as a matter of US compliance with the Geneva conventions. Why has the UK not followed Norway’s example? In fact, as I have said, the ban actually compromises the UK and, of course, it also affects the ICRC, MERLIN, the UNFPA, UNICEF and others engaged in humanitarian work. In countries such as Sudan and the DRC, countries that, incidentally, receive high levels of UK aid, women raped in war are denied the abortions to which they are absolutely entitled as persons who are “wounded and sick”. They may take their own lives or risk an unsafe abortion. Given the US stance on abortion, surely the UK is the country with the clout that can make a difference. The UK is a substantial donor through its involvement with ECHO and its own development and humanitarian assistance. This country must take global leadership on this matter. It is clear that women raped in war are persons who are wounded and sick in armed conflict, and UK law is also clear that the medical care rights of all persons wounded and sick in war are absolute.

A major problem is that it is DfID’s practice to lump all rape victims together and thus fail to give women and girls who are rape victims their special rights under the Geneva conventions as war victims. Tonight we are discussing a failure of will to bring about the changes that will deliver some justice to all women who have endured such suffering.

Baroness Flather

My Lords, this important topic needs to be discussed more often and at a time when many more Members are in their place. For me this is a very distressing subject because, as I get older, I find that less value is placed on women, not more. Recently we saw the most appalling incident of rape in Delhi. During the war between Bangladesh and Pakistan, some 2,000 women were kept in cages. They were not given any clothes because they would use them to hang themselves. They were used by the soldiers. Appalling things are done to women during conflict and in war situations. But a woman who becomes pregnant because she has been raped, perhaps many times, is supposed to have the baby. What is that baby going to do for her? Is that baby going to be a child of love? It will be a child of hate and a reminder for the rest of a woman’s life of what happened to her. How can we inflict that kind of situation on any woman anywhere?

We are very protected in this country; we are sitting in a cocoon, but other countries are not so cocooned. The Americans are more cocooned than anybody else in the world and I do not think they understand what the real world is like. I do not think they understand what happens to women during conflicts in poor countries. It is appalling that they cannot see the need.

Many years ago, during the Bosnia conflict, Marie Stopes International held a function in this place. Other NGOs were saying that they could not perform abortions because there was not enough time for counselling and there were no proper operating theatres. My goodness, those women had been raped from morning till night. They did not want counselling or proper operating theatres, they just did not want to bear the children. That is the bottom line. Why should a woman be forced to bear a child that she never wanted and could not want?

The only way forward is for DfID to separate itself completely from all the US-funded agencies and concentrate on abortion and women's health. Why bother with anything else? Women

comprise half the population and they do not get much attention in this world. It is time that we in this country decided that all our money should go to save and to serve women. This is what I would like to see. It is time to stop pussyfooting around and to do something about it.

Baroness Uddin

My Lords, I add my thanks to the noble Lord, Lord Lester, for his dedication. I also pay tribute to the Global Justice Center for its long leadership.

In 1971, as a 12 year-old in Bangladesh, I met women who were raped with impunity by Pakistani soldiers. These women were mothers, daughters and sisters, often abandoned on the streets or left to die. I have always regarded this as a brutal rape of a nation. Most women did not receive any medical or social support or intervention and were forced to bear the pregnancy. Since then, many more wars have continued to blight our world. In the 36 most recent conflicts, mass rape has been documented, yet the level of service and support remains unacceptable and inadequate.

It is a barbaric practice of targeting girls and women for forced pregnancy as an element of genocide, as has been said. The denial of necessary abortion for victims of rape in war must itself be considered barbaric and entirely uncivilised. The Geneva Convention requires non-discriminatory medical care to be provided, whether by the state in conflict or by others.

Thirty-three years ago, the UN General Assembly adopted the Convention on the Elimination of All Forms of Discrimination Against Women, which included the prevention of all forms of violence against women. This treaty was signed by the UK Government on 22 July 1981, and Members of this House should recall that it was ratified on 7 April 1986. The United States, on the other hand, has the questionable honour of being in the company of six other countries-Iran, Sudan, South Sudan, Somalia, Palau and Tonga-that have all so far refused to ratify this treaty which is vital for the fair treatment of women around the world.

In many societies, a culture of patriarchy and the fear of an unenlightened civic and religious leadership lead to the stigmatisation and marginalisation of women who are left unable to report rape, let alone to have treatment and see justice served. One incident of hope is being witnessed in India and may be a path for those voices which have until now suffered in silence-those who have felt compelled not to report rape and violence, fearing repercussion from their attackers as well as from within their family. This is where the law and law enforcement is critical. It is not just in India; violence against women is a global epidemic of immense magnitude, most brutally and mercilessly executed within our homes, witnessed by our family members and our children. Our coercive and collective silence is responsible for its continued menace, in our homes or during war and conflict. I accept that it is difficult for many countries to grapple with these issues, not least where religious guidance supersedes humanitarian consideration. In such grave circumstances, women should have recourse to preventive care and non-discriminatory medical care on the basis of the mother's life or health being in danger.

When I stood before this House on 7 October 2010, I said that rape as a weapon of war leads to the deaths of thousands of girls and women. A year later, the UN Secretary-General's special representative on sexual violence in conflict said:

“Sexual violence has become a tactic of choice for armed groups, being cheaper, more destructive and easier to get away with than other methods of warfare”.

That little has changed since we both spoke up on these matters is a damning indictment. We cannot be subject to the policy of a nation that has refused to ratify a treaty eliminating all forms of discrimination against women when we have ratified it.

We must, as a society and as a civilisation, reject all forms of violence against women. Where used as a tool and a weapon of war, it is specifically designed to impede the advancement of women and to maintain their subordinate status. By allowing the destruction of the lives of women, we allow them to continue not to have a stake in society. This, I humbly suggest, is something that our Government cannot support. I hope that we will not compromise our legal obligation at the behest of any other nation, even one with whom we have our closest ties. It cannot be right that the policy of a single nation can compromise the legal obligation of the United Kingdom. In the light of this discussion, what response will the Minister make in terms of the representation that the Government make?

Baroness Kennedy of The Shaws

My Lords, I join others in paying tribute to the noble Lord, Lord Lester, who has for many decades been a great champion of women's rights. I am glad that he has raised this issue tonight. It is only recently that rape has been acknowledged as one of the hidden elements of war. Rape in war was always portrayed historically as a sexual and personal matter that was somehow about military men's need for sexual gratification, when in fact it is now recognised as a tactic of war and a threat to international security, and is a recognised war crime. The Geneva Conventions expressly prohibit rape. In recent decades, we have seen a growing understanding of the function and effects of rape.

A great woman in the law is Judge Navi Pillay, the main judge in the Rwandan war crimes tribunal. I remember hearing her describing the rape in Rwanda of 500,000 women as the destruction of the spirit, of the will to live and of life itself. She described it as being about social control and as a process of destroying the Tutsi as an ethnic group. The reason it was seen to be so much about destroying life was because it was a question of making your enemy's women carry your children. When her court found Jean-Paul Akayesu guilty of genocide, it held that rape and sexual assault constituted acts of genocide in so far as they were committed with the intent to destroy in whole or in part a targeted group. Rape is often about ethnic cleansing, or the ethnic reconfiguring, of a population. We saw it in Rwanda, and have seen it since in Congo and Darfur: tens of thousands of rapes, and women profoundly traumatised as well as physically damaged internally, mutilated and infected with disease. We have heard the descriptions of the tearing of organs and the vagina. They are unbearable to hear and to read.

For those women and girls who become pregnant, their suffering is prolonged. They face increased rates of maternal mortality, and when they are forced to resort to illegal abortion it often leads to infection, scarring, sterilisation and frequently death. If left pregnant by the enemy—we must think about this—the women are often ostracised by their own communities, abandoned by their spouses, and experience physical violence from parts of their communities who are ashamed of them and who see them as the carriers of the enemy's seed. The children produced are despised as the product of the enemy. We must see this as being carried on through generations. What these women suffer, as the noble Lord, Lord Lester, said, is torture—cruel and inhumane treatment. Women must be able to make choices about their lives after such unimaginable horror. They need good medical care, and advice must be afforded to them. None of us should be the people who decide whether they should have an abortion. It must be a matter for them.

The United States of America is still putting abortion restrictions on humanitarian aid, as other people have said. It is for that reason, one can be sure, that the Red Cross is falling in line with its policy, because it is anxious not to alienate major players in the international field. I am afraid that the United States holds that trump card. It must be persuaded by partners-by other nations like our own-that what it is doing is an affront to international law. It is a violation of women's rights under international human rights and humanitarian law, including under the Geneva Conventions.

When I speak to women of religious conviction and describe to them the testimonies that I have heard from women-just as my noble friend Lady Kinnock described-I never hear from them that women in extremis should be denied the right to make a choice. It is for those individual women to make peace with their God, and not for us to do it on their behalf.

The United Kingdom Government should be pressing for change in the US policy, and should have a very clear position with regard to our policy and those of the organisations that we fund in these terribly conflicted parts of the world. This is not just about humanity and compassion; it is about violations of rights and international law. If the rule of law means anything, we must be upholders and champions of it throughout the world.

Baroness Tonge

My Lords, I congratulate my noble friend Lord Lester for not only securing this debate but having the courage to raise what is a very contentious issue. It is difficult to estimate how many women have been raped during armed conflict, but a survey in the *American Journal of Public Health* a year ago estimated that in the Congo, over 1,000 women were raped every day. We know that rape is a weapon of war and, as the noble Baroness, Lady Kennedy, said, is also a step to genocide.

Closer to home, I was fortunate-or unfortunate-enough to be in Tirana in the spring of 1999 when the people of Kosovo were fleeing from the Serbs. I was fortunate because I witnessed the unquestioning and generous help that ordinary Albanians were giving the refugees, mostly total strangers to them. However, it was harrowing to visit one of the hospitals and hear the stories of some of the women who were brave enough to tell what had happened to them. Some had been gang-raped by soldiers, some had been brutally raped and then abused with rifle butts, broken bottles and, in one case I heard of, with burning plastic bottles. Noble Lords can imagine the suffering.

The trauma is suffered on many levels. There is appalling physical injury and infection to be dealt with. There is great mental suffering. Children may have witnessed the rape of their mothers and are deeply traumatised as well. Husbands may reject or leave a wife who has been raped. There is social exclusion from the group, and shame heaped upon the victim by the community. Many women do not admit what has happened to them because of this.

If pregnancy results from the rape, support and counselling will be needed for the victim, although I think the idea of proper counselling in conflict zones is just pie in the sky. The majority of women will want safe abortion; without safe abortion provision, women who have been raped will try to end the pregnancy by unsafe means. The International Conference on Population and Development, held by the UNFPA in Cairo as long ago as 1994, stated in its programme of action that human rights abuses occur when a woman is forced to carry an unwanted or unviable pregnancy; this is degrading and causes mental suffering especially when the pregnancy is the result of rape.

I was not going to repeat the legal arguments but I think we have time to remind ourselves. As my noble friend has told the House, under the Geneva Convention, women who have been subjected to rape as a weapon of war fall into the category of “wounded and sick” and should have equal access to medical treatment. The UN Convention Against Torture recognises that safe abortion is a necessary element of complete medical services for injuries resulting from torture. Rape is torture, and the denial of correct medical treatment after rape is therefore, in itself, cruel and inhuman treatment-torture, in other words.

The purpose of this debate is to try to clarify just what treatment women can get from the humanitarian programmes provided by DfID. Despite President Obama's lifting of the “global gag” rule when he came in office, abortion is still effectively banned as part of US humanitarian aid, as we have heard, which ignores the fact that the USA recognises girls and women raped in armed conflict as victims of torture. The UNFPA receives funding from the USA and would lose its funding from that source if it was using money from other donors, such as us, for abortion in the same field of operation. The UK Government have been exemplary in recognising the need for safe abortion as a necessary part of treating women who have been raped in conflict, but some of us have had confusing replies when we have tried to establish whether the USA ruling is preventing other countries doing this work when funds are pooled by agencies such as UNFPA.

On a slightly different matter, I also ask my noble friend the Minister to what extent emergency contraception-hormone-pills are used after rape. Emergency contraception is not abortion; it prevents ovulation. It can be taken up to two days after intercourse; five days for some of the new products which are becoming available. Intra-uterine devices can also be used up to five days after sexual intercourse and will prevent ovulation if they contain copper. These methods are very easy to administer. They are cheap and do not carry quite so much baggage as surgical abortion for people working in the field.

If the evidence is lacking, will research be commissioned urgently so that we can live up to our legal and moral obligations to minimise the terrible suffering of victims of conflict and sexual violence?

Lord Collins of Highbury

My Lords, I, too, pay tribute to the noble Lord, Lord Lester, for initiating this important debate. Wartime sexual violence is one of history's greatest silences. However, as my noble friend Lady Kinnock described, since the 1990s there has been an increased awareness of sexual violence in wartime due to the significant impact of armed conflicts on civilian populations. According to UN Women, 90% of casualties in contemporary conflicts are civilians, and the majority of those are women and children.

Sadly, the effects often continue beyond war. Post-conflict studies from Rwanda, where up to half a million women were raped during the conflict, show a spiral of continuing violence against women. The same cycle is being repeated in Syria right now, with reports from organisations like Human Rights Watch of Syrian government forces and militias sexually abusing girls as young as 12.

This country needs to live up to its commitment to protect women. Violence against women as a tool of war remains one of the least prosecuted crimes; we have to do better to ensure action against the perpetrators. However, we must be tough not only on the crime but its causes. This

means that we must tackle the underlying problems of lack of empowerment, education and inclusion.

The unanimous adoption 12 years ago of Resolution 1325 on women, peace and security was a landmark decision in which the situation of women in armed conflict was specifically addressed. The resolution called for their participation at all levels of decision-making on conflict resolution and peace-building. The UN recognised that women's exclusion from peace processes not only contravened their rights but weakened the prospects for sustainable peace. Since the adoption of Resolution 1325, four supporting resolutions have been adopted by the Security Council. All focus on three key goals: strengthening women's participation in decision-making; ending sexual violence and impunity; and providing a system of accountability. Together, the resolutions provide a powerful framework and mandate for implementing and measuring change in the lives of women in conflict-affected countries.

As a member of the UN Women executive, Britain has a responsibility to help ensure that UN Women has commitment both from us and the international community. I hope that the Minister will reassure the House that the Secretary of State for International Development, Justine Greening, will make that a priority. UN Women has great potential, but that potential will not survive without our support. Currently it does not have the long-term backing that everyone agrees is necessary for the organisation to take off. The aim is to join up the work that is done across the UN on gender equality and women's empowerment, pooling resources and effort to increase its impact and reach.

As we have heard from the noble Lord, Lord Lester, and others in tonight's debate, girls and women who are raped and become pregnant have rights under the Geneva Convention to have full medical care, which must include their choice of an abortion. I repeat the clarification sought by the noble Lord on what appear to be contradictory statements previously made to the House by the Minister. Due to time limits I will not repeat the exact quotes, but it is vital that we have clarification on this issue.

I also want to repeat the question and the point made by my noble friends, in particular my noble friend Lady Kinnock. Will the Government follow the call by Norway to seek changes in the American Government's attitude on this important issue?

Baroness Northover

My Lords, I thank my noble friend Lord Lester for securing this debate and for all his work in this area. I also thank noble Lords for their contributions.

The Government have put women and girls at the heart of their international development work. Our *Strategic Vision for Girls and Women* sets out our strategy on delaying first pregnancy, support for safe childbirth and the prevention of violence against women and girls. We recognise that violence against women and girls is widespread, with high prevalence and devastating consequences. It has often been hidden and accepted for far too long. The noble Baroness, Lady Kinnock, is right to quote Hillary Clinton: rape is not cultural; it is criminal. It is brutal, as she and the noble Baronesses, Lady Flather and Lady Uddin, and others, have said.

My right honourable friend the Secretary of State for International Development has made it clear that tackling violence against women and girls is a central part of the UK's development policy. My honourable friend Lynne Featherstone continues her very active efforts in this area as champion of combating violence against women and girls. My right honourable friend the

Foreign Secretary has made the prevention of sexual violence in conflict countries a key priority for the UK's G8 presidency this year.

The noble Lord, Lord Collins, is right to highlight the causes of the abuse of women and the assumption of the inequality of women. Millions of women and girls have no control over the circumstances in which they become pregnant. Every year 47,000 die as a result of unsafe abortion; millions more are permanently injured. I assure the noble Baroness, Lady Flather, that the UK is one of only a handful of donors willing to tackle this contentious issue, and we will continue to do so. I assure the noble Baroness, Lady Kinnock, that we are taking a lead here and will continue to do so.

This year we have major opportunities to secure greater international commitment to eliminating violence against women and girls. Key here are the Commission on the Status of Women, and our presidency of the G8, where for the first time the Foreign Secretary's preventing sexual violence initiative will put this issue before G8 Foreign Ministers. Sexual violence causes physical and psychological damage to millions of women and girls and in the worst cases results in loss of life, as we have just seen in the terrible cases in India referred to by the noble Baroness, Lady Flather. A number of women and girls who are victims will be faced with an unwanted pregnancy. They may seek abortion, even when these services are not safely or legally available. In these situations the UK policy is clear: UK aid can be used, without exception, to provide safe abortion care where necessary and to the extent allowed by national laws. I can assure noble Lords that UK aid is not in any way influenced by the restrictions in place on US funding. Women and girls who are survivors of rape should have access to sensitive and high quality care that includes counselling and emotional support. I can assure my noble friend Lady Tonge that this includes access to emergency contraception—we recognise the importance of that—and presumptive treatment against sexually transmitted infections including post-exposure prophylaxis for HIV prevention.

My noble friend Lord Lester is flagging here the particular circumstances of sexual violence in armed conflict. Rape being recognised as a war crime was a landmark achievement. It has long been held that women are entitled to equal protection under international humanitarian law to that received by men. As we know, and as the noble Baronesses, Lady Kennedy and Lady Kinnock, and others said, rape is used as an extremely effective weapon of war. Let me address the central question of UK-funded medical care for women and girls raped in conflict. Parties to an armed conflict are obliged to provide all wounded and sick victims of armed conflict with humane treatment. To the extent practicable and with the least possible delay, they are obliged to provide the medical care and attention required by the given condition without discrimination except on medical grounds. This includes appropriate life-saving medical care which, in our view, may include the provision of abortion to women raped in conflict if it is deemed medically necessary.

The UK military manual sets out the UK's interpretation of international humanitarian law applicable to the operation of our Armed Forces. While it does not itself apply to aid funding, it is a useful interpretation of the international humanitarian law context in conflict zones. As the manual notes, and as my noble friend Lord Lester pointed out, where there is a direct conflict between national law and the fundamental obligation on parties to a conflict under Common Article 3 of the Geneva Conventions, the obligation is to comply with Common Article 3. That article provides that those not participating in hostilities should be treated humanely. It prohibits murder, torture, humiliating and degrading treatment and, of course, rape, and requires that the wounded and sick are collected and cared for. The denial of abortion in a situation that is life

threatening or causing unbearable suffering to a victim of armed conflict may therefore contravene Common Article 3. Therefore, an abortion may be offered despite being in breach of national law by parties to the conflict or humanitarian organisations providing medical care and assistance. Clearly, this service provision very much depends on the facts of each situation but I state clearly that it is our view that there is no blanket ban on such medical help when covered by international humanitarian law even if national laws might be at variance with that.

I also assure my noble friend Lord Lester that DfID requires that all UK-funded humanitarian partners abide by humanitarian principles, including non-discriminatory provision of assistance. In conflict situations, DfID expects all medical humanitarian agencies to observe and abide by international law, including international humanitarian law, in the activities that they provide. DfID's monitoring of projects focuses on how the agency has contributed to saving lives and alleviating suffering, and these findings inform our funding decisions. To be clear, in all funded humanitarian activities, the UK requires all its humanitarian partners to adhere to widely agreed international principles of humanitarian action: those of humanity, impartiality, independence and neutrality. All humanitarian assistance is provided on the basis of need and without discrimination on any grounds.

My noble friend Lord Lester also asked whether DfID has asked the ICRC to segregate its US funding from that of the UK. DfID respects the mandates and independence of its humanitarian partners and we do not ask the ICRC to segregate funds as it is fully aware of its obligations to different donors. We have flagged and will continue to flag the UK's position to the ICRC.

My noble friend asked about the engagement with the United States on this matter, as did other noble Lords. DfID officials are in regular dialogue with both USAID and US-based international NGOs with regard to improving access to sexual and reproductive health services and rights. This includes reducing recourse to unsafe abortion. We recognise the challenges faced by the US Administration in re-opening the interpretation of the Helms amendment, but I am happy to assure my noble friend and other noble Lords that we will flag this debate, with its forceful concerns expressed about the reproductive rights of women raped in armed conflict, to US colleagues. I can tell the noble Baroness, Lady Kinnock, that we are exploring further the Norwegian position with our counterparts there. I can also assure the noble Lord, Lord Collins, of our commitment to UN Women. We recognise the importance of that, and DfID has been a strong supporter since the very beginning.

I was asked by the noble Baroness, Lady Tonge, about research. There is a fund of up to £25 million for research and innovation, which will focus on the prevention response to violence against women and girls in conflict and humanitarian situations. However, I think that the noble Baroness was asking whether research was needed in order to produce clarification. I trust that I have produced the clarification that noble Lords were seeking.

This debate goes to the heart of our responsibility to protect women and girls around the world, and especially when they are at their most vulnerable in places and times of conflict. As we have heard, rape is so terribly often used as a weapon of war. I assure noble Lords that the UK will continue to work to prevent violence against women and girls and to improve access to appropriate non-discriminatory medical care including services for abortion care in situations of armed conflict.

Question Asked by Heidi Alexander, MP, regarding Health Services in Developing Countries – Answered by Lynne Featherstone, Parliamentary Under-Secretary of State for International Development (17 December 2012)⁹⁸

Question by Heidi Alexander

To ask the Secretary of State for International Development if she will assess the adequacy of non-discriminatory medical care provided by each aid agency in receipt of funding from her Department to (a) women and girls who have been raped in situations of armed conflict and (b) such females seeking abortion services; and if she will make a statement. [133504]

Answer by Lynne Featherstone

Humanitarian assistance funded by DFID is provided according to humanitarian principles thus according to need and without discrimination.

DFID provides funding to trusted humanitarian partners, whose performance and programme quality we assess regularly. Preventing and responding to violence against women and girls in conflict and humanitarian situations is a key objective of the UK's humanitarian policy.

DFID's policy on safe abortion clearly states the UK is committed to improving women's health and reducing the number of women dying from pregnancy and childbirth. Tackling unsafe abortion is part of this commitment.

In countries where abortion is permitted, DFID can support programmes that make abortion safe and accessible, because access to safe abortion reduces recourse to unsafe abortion and saves maternal lives.

Question asked by Lord Lester of Herne Hill, regarding Overseas Aid - Answered by Baroness Northover, Government Spokesperson in the House of Lords on International Development (21 November 2012)⁹⁹

Question by Lord Lester

To ask Her Majesty's Government, further to the Written Answer by Baroness Northover on 30 October (WA 125), whether they are working with the European Commission to ensure that the Commission adopts as policy the provision of humanitarian aid without exception to provide safe abortion care for victims of rape in armed conflict.

Answer by Baroness Northover

UK aid without exception can be used to provide safe abortion care where necessary, and to the extent allowed by national laws, for victims of rape in conflict zones. The UK Government are not working specifically with the European Commission to ensure the European Commission adopts this as policy.

Question asked by Lord Lester of Herne Hill, regarding Overseas Aid - Answered by Baroness Northover, Government Spokesperson in the House of Lords on International Development (30 October 2012)¹⁰⁰

Question by Lord Lester

To ask whether they have requested that the Government of the United States lifts its ban on United States humanitarian aid being provided to organisations which facilitate abortions for women and girls impregnated by rape in armed conflict.

Answer by Baroness Northover

The UK Government are clear that where international humanitarian law takes precedence over national laws, UK aid can be used, without exception, to provide safe abortion care for victims of rape as part of non-discriminatory medical care.

The UK Government have not requested the United States Government to change its policy.

Questions asked by Lord Lester of Herne Hill, regarding Abortion, Overseas Aid, and Rape - Answered by Baroness Northover, Government Spokesperson in the House of Lords on International Development (18 October 2012)¹⁰¹

Question by Lord Lester

To ask Her Majesty's Government what procedures are in place to ensure that Department for International Development-funded medical services for women and girls impregnated by rape in armed conflict include the option of abortion services if medically necessary, in the light of Common Article 3 of the Geneva Conventions and Protocols.[HL2378]

Answer by Baroness Northover

The UK Government directly support the provision of non-discriminatory and comprehensive medical care to victims of rape in a range of countries, including those affected by conflict. One of the leading causes of maternal death is unsafe abortion. The UK policy recognises that provision of safe abortion services is important in reducing the number of women who die as a result of unsafe abortions.

UK aid without exception can be used to provide safe abortion care where necessary, and to the extent allowed by national laws, for victims of rape in conflict zones.

Question by Lord Lester

To ask Her Majesty's Government whether any of the humanitarian entities funded by the United Kingdom to provide medical services for victims of rape in armed conflict keep their United Kingdom funding segregated from their United States funding on the basis that the latter is subject to a ban on providing abortion services notwithstanding medical necessity.[HL2379]

Answer by Baroness Northover

The UK adheres to the internationally accepted principles of humanity, impartiality, neutrality and independence in its humanitarian action. UK humanitarian action is, and will continue to be, based on need. Although there are restrictions on US aid to finance abortions, these do not extend to funding provided by the UK. UK aid without exception can be used to provide safe abortion care, where necessary and to the extent allowed by national laws, for victims of rape in conflict zones.

...

Question by Lord Lester

To ask Her Majesty's Government how much funding annually is given by the United Kingdom to the International Committee of the Red Cross (ICRC) to provide humanitarian services for wounded and sick persons in armed conflict, and whether such funds are kept separate from United States funds to the ICRC which cannot be used to provide abortion services where medically necessary. [HL2380]

Answer by Baroness Northover

In 2011-12, the Department for International Development (DfID) has provided £40 million of core funding to the International Committee of the Red Cross (ICRC) to ensure the needs of victims of armed conflict are met. In addition, DfID has provided additional funds to respond to specific country appeals. It is for ICRC to allocate its funds according to need.

Although there are restrictions on US aid to finance abortions, these do not extend to funding provided by the UK. UK aid without exception can be used to provide safe abortion care, where necessary and to the extent allowed by national laws, for victims of rape in conflict zones.

Question by Lord Lester

To ask Her Majesty's Government what measures they take in funding humanitarian aid for women and girls raped in armed conflict to ensure that the funding complies with the non-discrimination standards on medical care for the wounded and sick in armed conflict in accordance with the Geneva Conventions Act 1957 as amended and the Joint Service Manual on the Law of Armed Conflict.[HL2381]

Answer by Baroness Northover

UK humanitarian action is, and will continue to be, based on need and need alone, autonomous from political, military, security or economic objectives. In armed conflict, where international humanitarian law takes precedence over national laws, UK aid can be used, without exception, to provide safe abortion care for victims of rape as part of non-discriminatory medical care.

...

Question by Lord Lester

To ask Her Majesty's Government whether they treat women and girls made pregnant through rape in armed conflict as victims of torture within the scope of the United Nations Convention Against Torture and Other Cruel Inhuman or Degrading Punishment.[HL2382]

Answer by Baroness Northover

Article 14 (1) of the Convention Against Torture provides that states shall ensure in their legal systems that the victim of an act of torture obtains the means for "as full rehabilitation as possible". The means of rehabilitation and whether or not torture has taken place depends on the facts of the individual case.

The Department for International Development (DfID) directly supports the provision of non-discriminatory medical care to victims of rape in a range of countries, including those affected by conflict.

Question asked by Lord Lester of Herne Hill, regarding Abortion – Answered by Baroness Northover, Government Spokesperson in the House of Lords on International Development (6 February 2012)¹⁰²

Question by Lord Lester

To ask Her Majesty's Government whether the right of the wounded and sick to comprehensive medical care, under the Geneva Conventions and the Convention Against Torture, includes a right for girls and women raped in situations of armed conflict to have access to safe abortion and other medical care and attention.[HL15040]

Answer by Baroness Northover

The UK does not consider that there is any general right to an abortion under international humanitarian law or international human rights law.

The Geneva Conventions contain a number of provisions for the provision of care for the wounded and sick in an armed conflict, which apply equally to women, men, girls and boys. The care to be provided will depend upon the facts of the individual case. Article 14 (1) of the Convention Against Torture provides that states shall ensure in their legal systems that the victim of an act of torture obtains the means for "as full rehabilitation as possible". The means of rehabilitation and whether or not torture has taken place will depend on the facts of the individual case.

The Department for International Development's (DfID) position is that safe abortion reduces recourse to unsafe abortion and thus saves lives, and that women and adolescent girls must have the right to make their own decisions about their sexual and reproductive health and well-being. The July 2011 DfID practice paper clearly outlines the UK policy position on safe and unsafe abortion in developing countries.

Question by Lord Lester

To ask Her Majesty's Government whether they will encourage the Government of the United States to withdraw the restriction on its foreign aid which prevents the provision of safe abortion and other medical care and attention to wounded and sick girls and women raped in situations of armed conflict.[HL15041]

Answer by Baroness Northover

The July 2011 the Department for International Development (DfID) practice paper clearly outlines the UK policy position on safe and unsafe abortion in developing countries. We are open to discussing our position with others who wish to learn more about or from our stance.

UK officials are engaged in regular working-level discussions with both US Government officials and non-government organisations who work to improve access to reproductive health.

Questions Asked by Lord Alton of Liverpool, regarding Abortion – Answered by Baroness Verma, (Former) Spokesperson for the Cabinet Office, International Development and Equalities and Women's Issues (15 February 2011)¹⁰³

Question by Lord Alton

To ask Her Majesty's Government, further to the Written Answer by Baroness Verma on 24 January (WA 82), which countries where abortion is permitted receive support from the Department for International Development (DfID); what support is given; at what cost; and whether DfID has placed restrictions on the use of such funds.[HL6457]

Answer by Baroness Verma

The Guttmacher Institute report *Abortion Worldwide: A Decade of Uneven Progress* Annex Table 1 (page 50) provides a list of all countries and territories, by region, in which abortion is legally permitted as at 2008. I will arrange for this report to be placed in the Library of the House.

UK development spending is reported annually in *Statistics on International Development* which is available in the Library of the House and on the Department for International Development's (DfID's) website. Tables 14.1-14.4 show total DfID expenditure and UK gross public expenditure (GPEX) on aid by recipient country.

The Government's bilateral aid programme provides funding to improve healthcare through a number of channels, such as budgetary support, project and programme support, sector support and via grants to at least 150 civil society organisations, both internationally and working in developing countries. DfID also provides unrestricted core funding to over 33 international organisations, including the European Commission, the World Bank and a number of UN agencies working in reproductive health (such as United Nations Population Fund, United Nations Children's Fund, the United Nations Development Programme, and the World Health Organisation), all of which provide support to improve healthcare in developing countries. Acquiring information from this many organisations would cost in excess of the disproportionate cost threshold.

Restrictions on the use of development funds are contained within the International Development Act 2002. DfID's policy is set out in *Choices for women: planned pregnancies, safe births and healthy newborns: The UK's Framework for Results for improving reproductive, maternal and newborn health in the developing world*, which is available on DfID's website and in the Library of the House.

Question by Lord Alton

To ask Her Majesty's Government, further to the Written Answer by Baroness Verma on 24 January (WA 82), what activities are undertaken by the Department for International Development in countries where abortion is not permitted.[HL6458]

Answer by Baroness Verma

The Department for International Development's (DfID's) policy is set out in *Choices for women: planned pregnancies, safe births and healthy newborns: The UK's Framework for Results for improving reproductive, maternal and newborn health in the developing world* and *Safe and Unsafe Abortion*, which are available in the Library of the House and on the DfID website.

Question by Lord Alton

To ask Her Majesty's Government why the Secretary of State for International Development, Mr Andrew Mitchell, said at the consultation meeting to inform his Department's business plan

on reproductive, maternal and newborn health that the Government do not “enter the ring” on the rights and wrongs of abortion.[HL6459]

Answer by Baroness Verma

The Coalition Government's position is that safe abortion reduces recourse to unsafe abortion and thus saves lives, and that women and adolescent girls must have the right to make their own decisions about their sexual and reproductive health and well-being.

Question by Lord Alton

To ask Her Majesty's Government, further to the Written Answer by Baroness Verma on 25 January (WA 129), whether the Department for International Development collects figures on the causes of death of those who died following unsafe abortion in each country.[HL6682]

Answer by Baroness Verma

The Department for International Development (DfID) does not collect these data but relies on data collected by the World Health Organisation (WHO).

Question asked by Baroness Tonge, regarding Rape – Answered by Baroness Verma, (Former) Spokesperson for the Cabinet Office, International Development and Equalities and Women's Issues (12 November 2010)¹⁰⁴

Question by Baroness Tonge

To ask Her Majesty's Government what steps they are taking to ensure that women and girls raped in conflict are ensured full, non-discriminatory medical care, including abortions.[HL3599]

Answer by Baroness Verma

The Department for International Development (DfID) directly supports the provision of non-discriminatory medical care to victims of rape in a range of countries, including those affected by conflict. In the Democratic Republic of Congo, for example, the UK has made contributions totalling around £1 million to the Panzi hospital in Bukavu, which has a specialist unit to provide care for the victims of acts of sexual violence. In Sierra Leone, DfID funds referral centres that support large numbers of women-including girls under 15- who have been victims of sexual assault.

The UK Government do not promote abortion as a method of family planning, but we are committed to reducing maternal mortality in the developing world and one of the leading causes of maternal death is unsafe abortion. The World Health Organisation estimates that nearly 70,000 women die each year following unsafe abortion and we are committed to bringing this number down, including in situations of armed conflict.

Question asked by Baroness Tonge, regarding Overseas Aid – Answered by Lord Howell of Guildford, Minister of State, Foreign and Commonwealth Office (15 November 2010)¹⁰⁵

Question by Baroness Tonge

To ask Her Majesty's Government whether they will recommend, at the United Nations Human Rights Council on 5 November, that the United States remove abortion restrictions placed on all foreign aid.[HL3600]

Answer by Lord Howell

The United Kingdom speaks at every universal periodic review of the UN Human Rights Council. We are candid with the United States (US) about our concerns as well as encouraging progress. For the review of the US we raised many points in our advance questions, including on the issue raised by the noble Baroness.

We are constrained in what we can cover in our review statement by being restricted to two minutes speaking time. However, we have continuous dialogue with the US on human rights and we will continue to raise issues where our policies differ.

Questions asked by Lord Judd, regarding Women, Peace and Security – Answered by Lord Howell of Guildford, Minister of State, Foreign and Commonwealth Office (15 November 2010)

Question by Lord Judd

To ask Her Majesty's Government what action they are taking to promote the accountability of governments in the context of United Nations Security Council Resolution 1325.[HL3623]

Answer by Lord Howell

The Government are promoting the accountability of governments in their implementation of UN Security Council Resolution 1325 by: lobbying conflict-affected states to tackle impunity for perpetrators of sexual and gender-based violence; providing financial and technical support for states to develop action plans; and supporting international mechanisms to improve accountability, including the development of UN indicators to measure progress and the International Criminal Court to tackle impunity.

Fuller details of the Government's work will be set out in our National Action Plan on Women, Peace and Security, which will be released later this month. We intend to lay a copy of this plan before the Parliament.

Question by Lord Judd

To ask Her Majesty's Government what action they are taking to promote the development of implementation indicators as practical applied measures to secure the objectives of United Nations Security Council Resolution 1325 as they relate to the role and security of women in conflict and peacebuilding in Afghanistan, Nepal and Uganda.[HL3622]

Answer by Lord Howell

The Government strongly support the development of UN indicators to enhance implementation of UN Security Council Resolution 1325. And we are supporting efforts by states better to measure their progress.

We support human rights institutions that assist the Government of Afghanistan to fulfil their obligations under 1325; we provide financial and technical support to the Nepalese Government to develop their own National Action Plan on UN Security Council Resolution 1325; and in Uganda, the Department for International Development is supporting UN

Development Fund for Women's programme to engage women in building peace and security. Part of this programme aims to improve the use of indicators to strengthen accountability.

Our new National Action Plan on Women, Peace and Security, due for release later this month, will also measure progress made in our own activity. We intend to lay a copy of our plan before Parliament.

Question by Lord Judd

To ask Her Majesty's Government what action they are taking to secure the rights and wellbeing of women in the context of United Kingdom support for the reconciliation process in Afghanistan. [HL3624]

Answer by Lord Howell

We continue to work closely with the Afghan Government to improve the status of women in Afghanistan, so they can play as full a part as possible in a future, peaceful Afghanistan.

The UK will work with individuals and groups who accept the conditions laid down by President Karzai's Government: insurgents must renounce al-Qaeda, give up armed struggle and work within the constitutional framework. We consider on its merits any request for the UK to play a role in support of this Afghan-led process.

Question by Lord Judd

To ask Her Majesty's Government what action they are taking to promote the protection of women in areas of conflict and to monitor the effective implementation of United Nations Security Council Resolution 1820.[HL3625]

Answer by Lord Howell

The Government are fully committed to improving the protection of women in conflict and are taking a range of actions to implement UN Security Council Resolution 1820. We will set out our activity in a National Action Plan on Women Peace and Security, due for release later this month.

Our activities include: action on the ground, such as Department for International Development's £60 million five-year "Security Sector Accountability and Police Reform" project in the Democratic Republic of the Congo; supporting integration of UN Security Council Resolution 1820 into UN operations and missions; and providing training on UN Security Council Resolution 1325 for UK military and civilian personnel involved in conflict resolution.

Fuller details of the Government's work will be set out in our national action plan. We intend to lay a copy of this plan before Parliament.

Question asked by Lord Judd, regarding Democratic Republic of Congo – Answered by Baroness Verma, (Former) Spokesperson for the Cabinet Office, International Development and Equalities and Women's Issues (16 November 2010)¹⁰⁶

Question by Lord Judd

To ask Her Majesty's Government what action they are taking to ensure the security, basic health and economic, social and psychological rehabilitation of women who have been subjected to violence and rape in the Democratic Republic of Congo.[HL3626]

Answer by Baroness Verma

The safety and security of women is a top priority for our aid programme and for wider HMG work in DRC. Through our humanitarian programme we have provided medical and psychosocial care over the past year to more than 5,000 victims of gender-based violence, and are working with the International Committee of the Red Cross to support a network of 30 listening centres that provide psychosocial support and referral services to victims. In addition, we are seeking to strengthen accountability and the rule of law through our support to police and judicial reform, and enhance civilian protection through wider UK Government support to the UN peacekeeping mission in DRC.

We are currently reviewing our aid programme to determine how we can achieve better value for money for the taxpayer and accelerate progress towards the millennium development goals. Women and girls, including their safety and security, will remain at the heart of what we do.

Question asked by Lord Judd, regarding Rape – Answered by Lord Howell of Guildford, Minister of State, Foreign and Commonwealth Office (17 November 2010)¹⁰⁷

Question by Lord Judd

To ask Her Majesty's Government what assessment they have made of the use of rape as a weapon in areas of conflict; and what action they are pursuing to ensure the elimination of the practice.[HL3627]

Answer by Lord Howell

The Government condemn all forms of violence against women and abhor the use of sexual and gender-based violence in conflict. Assessments from the UN and non-governmental organisations groups highlight the widespread use of sexual violence in conflict situations. We are supporting the development of UN indicators to provide more reliable information. Fuller details of the Government's work to combat sexual violence in conflict will be set out in our National Action Plan on Women, Peace and Security, which will be released later this month. We intend to lay a copy of this plan before Parliament.

Speech by Baroness Uddin on Millennium Development Goals and the Impact of the US Abortion Ban (October 2010)¹⁰⁸

BACKGROUND: Baroness Uddin made the following speech in the House of Lords regarding UK leadership on the UN Millennium Development Goals. She directly addresses the necessity of providing abortion services to raped girls and women in armed conflict, calling it both a “moral imperative” and a “legal obligation”.

TEXT OF SPEECH:

My Lords, I, too, thank the noble Lord, Lord Chidgey, for initiating this important discussion. In the UK we should be rightly proud of the British leadership in advancing the millennium development goals which represent a vision of a world transformed where equality and justice prevail.

However, while we are very pleased, one group of women remains outside the MDG effort. Until we address this failure, we cannot speak of real progress. Today I ask our Government to call explicitly for girls and women who are forcibly impregnated by the vicious use of rape in armed conflict to be included under MDG 5-reducing maternal mortality. "Rape as a weapon of war" is a phrase commonly used accurately to describe what is happening alongside today's armed conflicts, but we rarely speak about the consequences of this weapon. Thousands of girls and women impregnated by rape used as a weapon of war are routinely denied access to abortions. Girls and women die from their attempts to self-abort and from suicide resulting from untold stigmatisation leading to social marginalisation.

We should do what no other country has done: to ensure that the humanitarian medical aid provided to girls and women in places such as Congo, Sudan and Burma-an endless list of countries-gives them choices and access to abortion when pregnancy is a direct result of rape as a weapon of war. This is a moral imperative and a legal obligation. The Geneva Convention requires that civilians and combatant victims receive non-discriminatory medical care, whether it is provided by the state in conflict or by others. Why, then, are pregnant rape victims given discriminatory medical care through the routine denial of access to abortion? The embedded inequality towards women in conflict settings has been recognised by the Security Council in such historic resolutions as 1325 and 1820. Equal justice for women is not limited to the courtroom, it must be extended to supporting those women who are victims of the inhuman practice of rape as a weapon of war.

I draw the attention of the House to the recent report of the Harvard Humanitarian Initiative and Oxfam, which details examples of the impact, stigma and suffering of raped children and women in Congo, Sudan and elsewhere, where no legal provision exists to support them. It also mentions that women should be given preventive care-that is, utilisation of contraception-as though women who are raped can be prepared for such horrors.

One of the solutions proposed by women's organisations, including the international human rights organisation the Global Justice Center, is that access to abortion must be a critical part of the support available to women. The centre filed a shadow report with the Human Rights Council asking it to recommend that the US remove the prohibitions put on humanitarian aid to rape victims in conflict, as it violates the US obligation under the Geneva Convention. The UK can and must support this issue by asking questions of the US during the council's review process due shortly.

I know that these are difficult matters for many individuals and countries to address, and international donor communities have thus far resisted pressurising countries to review their policies. **Neither criminal abortion laws in the conflict state nor foreign aid contracts with the United States can serve as defence to a state provision of discriminatory medical care to all victims under international humanitarian law.**

Time is short, and I should have liked to highlight many examples of countries such as Bangladesh where the suffering and humiliation of rape has left decades of suffering, ill health and stigma. The UK must take a lead to end that discrimination. This will mark real progress

towards the millennium development goals and towards ensuring equal rights for women under international humanitarian law.

C. UK Foreign Policy Statements, Letters and Pledges on International Legal Instruments and Principles

UK Government National Action Plan on UN Security Council Resolution 1325 Women, Peace & Security (November 2010)¹⁰⁹

BACKGROUND: In recognition of the dedication to uphold UNSC Resolution 1325 on Women, Peace & Security, the UK implemented a National Action Plan in February 2012 which will integrate the principles behind the resolution in order to alleviate the effects of armed conflict on girls and women. The Plan is focused on three conflict countries – Afghanistan, the Democratic Republic of Congo, and Nepal. Denying abortion for raped girls and women in the DRC undermines the Action Plan’s goal of “aiming to reduce maternal mortality.”

RELEVANT EXCERPTS:

Page 3

Objectives

The aims of the revised NAP [UK National Action Plan] are to provide a clear framework for our work on Women, Peace and Security; to maximise the impact of UK efforts by focusing on where we have the most influence; to ensure cross departmental working; to ensure that UK action covers the four UN pillars of UNSCR 1325 (prevention, protection, participation, and relief and recovery); to strengthen our annual reporting and monitoring process; and to work more closely with civil society to improve the plan on an ongoing basis.

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The Democratic Republic of Congo (DRC)

Objective: Strengthen the legislative and judicial framework to help prevent sexual and gender based violence

Description of Action: Lobbying the DRC Government to implement the sexual violence legislation which provides for stricter sentencing and raises the age of a minor from 14 to 18 (law passed in 2006). Lobbying DRC Government to implement the zero tolerance policy on human rights abuse to end impunity and prosecute human rights abusers.

Objective: Increased access to public services and income generation for women

Description of Action: DfID funding for a \$60m project led by Merlin and IRC aiming to reduce maternal mortality through increased access to and utilisation of free health services by pregnant women and children under five.

“Preventing sexual violence in conflict and post-conflict situations,” the Rt Hon William Hague MP, Keynote address at Wilton Park (14 November 2012)¹¹⁰

TRANSCRIPT OF KEYNOTE ADDRESS:

Each generation faces its own challenges, and each can shape our world for the better.

Our generation has the opportunity, and the responsibility, to confront the use of rape and sexual violence as a weapon of war.

In our lifetimes millions of women, children and men have endured this horror, including in Rwanda, the Democratic Republic of Congo, Colombia, Uganda, Liberia and in Bosnia, where only twenty years ago, on European soil, rape camps were set up and tens of thousands of women subjected to sexual slavery and enforced pregnancy.

I believe that preventing and addressing sexual violence is vital to resolving conflicts and building sustainable peace. I see it as a vast international issue that national foreign policies have not yet adequately addressed. And I am convinced that we can actually do something more about it. That is why I am championing it as Foreign Secretary.

While my Party was still in Opposition I met survivors of rape in refugee camps in Darfur and in Srebrenica. Last month I returned to Bosnia and spent time with female and male survivors in Sarajevo, and I recently shared a platform with people working with survivors of rape and torture in the DRC.

These experiences brought home to me the sheer extent and intensity of the problem, the overwhelming lack of justice for survivors of wartime rape and sexual violence despite a huge amount of excellent work by grassroots organisations and NGOs, and the direct link that this has with peace and security today. Where there is no justice or dignity for survivors development is held back, and the seeds of future conflict are sown.

I approach this subject with a good deal of humility, as a man, and as someone who has not experienced conflict first hand or worked with survivors. But I have been appalled by the toll sexual violence in conflict has on children. To take just one example, of the thousands of reported rapes in the DRC in one recent period, up to 50% of all survivors were under the age of 17, and 10% were under the age of 10.

I have been struck by the terrible life sentence of trauma, stigma and illness that follows in the wake of rape in war, and its impact on families and communities. This was illustrated to me by the fact that 67% of survivors in Rwanda were subsequently found to be HIV positive.

And I have been deeply affected by the knowledge that many victims never get the recognition or support they are entitled to, eking out a precarious existence in conflict zones with their abusers often still at large in their communities.

There has been a tendency in the past to regard sexual violence as an inevitable by-product of conflict, something that happens in the 'fog of war' when law and order breaks down.

On top of this, we have treated sexual violence either as an issue of marginal importance in peace agreements which often tend to exclude women, or to see it as a global problem that is too immense for us to do anything about it.

This has to change. We now know that rape and sexual violence is used as a deliberate weapon of war in the same way that guns and tanks are, to terrorise civilian populations, to humiliate, scar and destroy whole ethnic groups or religious or political opponents, cheaply, silently and devastatingly.

To simply accept that this is part of the cycle of war is to consign hundreds of thousands of innocent people to an appalling fate in the future.

And I am convinced from my own experiences as Foreign Secretary over the last two and a half years that our failure to confront this issue does play a part in emboldening those who are orchestrating atrocities today, including in Syria. Our efforts to prevent rape in war have to be as determined as our efforts to prevent conflict in the first place.

These are just some of the reasons why this issue matters to me and has a direct bearing on foreign policy. But there are also two factors which explain why I think the conditions are right for a major new international initiative, and why I am personally optimistic about our chances.

The first is that we have developed an impressive array of mechanisms at the UN and national level over the last decade, including UN Security Council Resolutions 1325, 1820, 1888 and 1960, the office of the UN Special Representative on Sexual Violence in Conflict, the various UN teams of experts, new mechanisms to train peacekeepers, and National Action Plans on Women Peace and Security, which include protections for violence against women and girls. Our understanding of these issues has been transformed over the last decade and we have a far wider range of capabilities to bring to bear against this problem. In the United Kingdom we are determined to champion women's rights in all the UN bodies, and to be vigilant and outspoken against any attempt to undermine the gains that have now been secured.

And second, I believe that a critical mass of public opinion has now begun to build up in many countries against the use of sexual violence in conflict. My experience as a politician leads me to believe that this is the moment to mobilise global public opinion and to rally the efforts of nations, in the same way that we have mustered the will to ban the use of landmines and cluster munitions, and are on the verge of securing an international Arms Trade Treaty. Shattering the culture of impunity for those who use rape as a weapon of war is the next great global challenge of our generation. It is a cause whose time has come.

This is overwhelmingly due to years of work by the UN and its agencies, by NGOs, the International Criminal Court and other international tribunals and brave survivors who have felt able to share their stories with a shocked world. I am also conscious that many other countries have shown leadership in this area, including many that have emerged from conflict themselves.

We have also benefited greatly from the insights of filmmakers, who have shone a light on painful events and helped us to understand our responsibilities.

One such Director is Jasmila Zbani? [sic], who allowed us to screen her film 'Emma's Story' during this conference.

And another is Angelina Jolie.

Many of you will be familiar with her work as Special Envoy of the UN High Commissioner for Refugees.

But it was my encounter earlier this year with her film *In the Land of Blood and Honey* that actually galvanised me into starting this new British initiative, and led to her joining me at our event in the Foreign Office in May when I announced it.

I am very grateful to Angelina Jolie for her support for our efforts to combat the terrible suffering she depicted so powerfully in her film, and for joining us again today.

She assures me she is here to meet you and to listen to our discussion, but I also think she may also be checking up on whether we have lived up to our promises.

I believe we are making some strong and encouraging progress with your help. And our ambition and resolve is even greater than when we first began this initiative, because of the overwhelmingly positive reception it has received around the world.

We are focussing our efforts on accountability and justice, and on increasing the number of prosecutions for these crimes. This is the area where there is the most glaring lack of political will, where I believe governments like our own can make the most difference, and where we must act if we are to erode the culture of impunity.

In May I announced that Britain would set up a specialist team of experts that can be deployed to conflict areas to support UN missions and local civil society to investigate allegations of sexual violence, to gather evidence and to help build up the capabilities of other nations.

Today, six months later we have recruited 70 people for this team already, which includes police, lawyers, psychologists, doctors, forensic experts, gender-based violence experts and experts in the care and protection of survivors and witnesses. I will shortly be able to announce its first deployment which will begin before the end of this year.

Each deployment will be tailored to meet local needs and circumstances. The deployments will be based on in-depth assessments of national and international responses in that country to date and how the British team could reinforce or complement existing efforts, as well as consultations with the authorities in each country.

I also pledged six months ago that we would use our Presidency of the G8 in 2013 to secure new commitments from some of the world's most powerful nations. Be in no doubt, we really mean business about this. By the time our Presidency actually starts in January, we will already have spent seven months building support for our objectives before we begin negotiations in earnest. My colleagues around the world know already that it will be one of my top priorities for the meeting of G8 Foreign Ministers in April.

We have proposed new G8 partnerships with conflict-affected countries, and a new International Protocol on the investigation and documentation of sexual violence in conflict. I welcome the fact that Mr Brammertz flagged up this issue yesterday, when he said that we need a standardised set of guidelines for effective prosecutions. This would be a practical response to the need to improve the evidence base for prosecutions for sexual violence in conflict at the national and international level, and it would draw on existing advice and guidelines. We want any new Protocol to be of genuine value to national authorities in their efforts to seek prosecutions. If adopted, it could be used in training and capacity building programmes, ensuring an enduring legacy which we would hope to expand beyond the G8 over time.

In all these areas our Government is not looking to reinvent the wheel - but we are saying that we are prepared to put Britain's shoulder to it as never before.

We do not want to duplicate or cut across the work that has been done by experts - but we do want to set an example to the world of what governments can do.

We are one of the few countries in the world that can lead such an effort. We have a network of 260 diplomatic posts around the globe, one of the most extensive of any nation. We have one of the largest programmes of international development aid in the world. We are members of the United Nations Security Council, NATO, the EU and the Commonwealth as well as our G8

role, all of which gives us the ability - as well as the responsibility - to take this cause to many of the most influential multilateral bodies in the world.

And we have set up an excellent new team of Foreign Office officials led by Emma Hopkins to oversee all our efforts. She and her colleagues have already visited Japan, France, Germany, the US, Canada, China, South Korea and international human rights organisations in Geneva, The Hague and the European Union, to discuss our proposals and mobilise support for our G8 campaign. I think their work will become a model for how other Foreign Ministries can increase their capabilities in this area, particularly in the way it draws on wide expertise from DfID and the Home Office as well as the Foreign and Commonwealth Office itself.

As a sign of our determination to reinforce and not duplicate existing efforts, we are working closely with the UN Team of Experts on Rule of Law and Sexual Violence that supports the office of the UN Secretary-General's Special Representative on Sexual Violence in Conflict, Mrs Zainab Bangura.

In July I announced that we have donated £1 million over two years to the ICC's groundbreaking mechanism to help victims rebuild their lives, the Trust Fund for Victims. The projects the Fund supports in Uganda, DRC and elsewhere are based on the understanding that it is impossible fully to undo the damage caused by war crimes, including sexual violence. However it is possible to help empower survivors to rebuild their families and regain their place as contributing members of their society.

In New York in September I announced an increase in British support for the UN Special Representative's work, with £1 million of funding over the next three years. I welcome the greater emphasis that she is placing on national ownership, leadership and responsibility. And I think we must also promote a more 'strategic' use of international effort to support UN work to combat impunity.

And I am announcing today that we will contribute £375,000 over a three year period to the UN Department of Peacekeeping Operations and the Department of Field Support to develop policies, guidance and training for use by peacekeepers as first responders to incidents of sexual violence.

We are urging other countries to match our voluntary contributions in each of these areas. We will do all of these things and more, but of course we look to you to give us your help, advice, constructive criticism and support.

You are among the world's leading experts in the field of combating wartime rape and sexual violence, with deep knowledge and personal experience. I am extremely grateful to you all for travelling a long way to be here and for sharing your expertise with us, and I want to pay particular tribute to Special Representative Bangura and her predecessor Margot Wallstrom.

We need your help to ensure that we have set the right level of ambition for the G8, to ensure that we are aiming high enough and that our proposals are drawn up to have the maximum possible impact.

We have already drawn five important conclusions from your discussions over the last two days.

First, justice has got to be viewed in its fullest sense. It means many things to survivors, ranging from access to justice and effective remedy at the local and national level, reparation, medical care and support to rebuild lives, and it can also involve restorative justice and truth commissions as well as prosecutions.

Second, we must conceptualise sexual violence in its broadest sense, in terms of women's rights, education and participation. It is part of a much broader effort to address violence against women and girls and to empower women across society.

Third, we need better coordination of current efforts, across the silos that can set in between our humanitarian, security and developmental efforts.

Fourth, we have to build up national ownership by matching international efforts much more closely to national requirements and building up national capacity. In my mind this must include how we work to bridge the gap between international efforts and the grass roots organisations which work on the ground, understand the grain of the society, and have the trust of local people.

And finally, we need to shift the balance of shame away from survivors to the perpetrators of this crime. We need to break down the stigma by talking about it, which is something I am attempting to do as Foreign Secretary in my conversations around the world. And we have to recognise that unless we shift attitudes amongst men that rape is not a family matter, it is a violent crime, then the problem will persist.

So I am extremely grateful to you for taking part in this conference, and I will study your detailed recommendations. It is my sincere hope that you will continue to work with us over the coming year, giving us guidance and honest advice when you think we can do more. And I particularly hope you will feel able to work us with to build public momentum around our G8 campaign in 2013 and beyond, so that each country can feel the campaign in their own parliaments and media.

So this will be our approach: increasing our own capabilities in the British Foreign Office, significantly increasing our support to UN efforts, raising the profile of the need to confront sexual violence in conflict in every way we can, and proposing new action that we hope will be adopted by many nations in a new collective effort for our generation.

It has been inspiring to meet many people around the world who share our sense of hope and ambition. On the rare occasion that I am met with a sceptical smile, I remind people of the 18th century slave trade. Although slavery is still with us in modern variants, our predecessors exploded the belief that slavery was in the natural order of things, and a problem too complex to be tackled. And I also remind people that even if our action only succeeds in making a difference at the margins of this vast problem, it could mean that thousands of vulnerable people are spared this appalling violation.

The survivors I have met have made a great impression on me by their courage to speak about their experiences and to live, raise families and hold their heads high. By standing shoulder to shoulder with civil society, communities and international organisations I believe we can match the courage of these survivors with a new international resolve to confront and one day even end the use of sexual violence as a weapon of war.

“Rape is a weapon of war. We must confront it,” the Rt Hon William Hague MP, The Times of London (15 October 2012)¹¹¹

BACKGROUND: Foreign Minister William Hague wrote this op-ed to state the UK position and new initiative on PSVI. He acknowledges that not enough is being done to combat the egregious use of rape as a weapon of war. The UK should combat these efforts by fighting on behalf of

girls and women to have full access to all necessary medical services that save the integrity of their health and life, including abortion.

TEXT OF ARTICLE:

From Bosnia to the Democratic Republic of Congo we have seen rape used as a terrifying weapon of war. Inflicted systematically and sometimes to order from the highest levels, it is as much a means of waging war as are bullets or tanks. And more often than not it is carried out not by invading armies but by one group against another: deliberately to destroy, degrade, humiliate and scar political opponents or entire ethnic and religious groups.

The number of victims involved is utterly chilling. In Rwanda alone, up to 400,000 women are estimated to have been raped in the 100-day genocide of 1994. The vast majority of victims are women and children, but men are often targeted too.

Guilt lies with those who commit these crimes, but the shame falls on the whole world. For we have failed to act in a concerted way against this problem and have allowed a culture of impunity to develop. The shocking truth is that very few perpetrators have ever been put on trial for rape in conflict and even fewer have gone to prison. In wartime Bosnia, up to 50,000 women were raped, but only 30 men have ever been convicted. Given this record, the government forces and militia committing rape in Syria today probably expect they will simply get away with it.

As a man I feel appalled by this, and as Foreign Secretary I believe that it is within our power to do something about it. Moreover, I am convinced that this is a cause that Britain must champion. Ours is one of the few countries in the world with the global reach, resources and diplomatic network to be able to set a lead and so it is our responsibility to do so.

I believe that the time has come for a concerted international effort to challenge the use of rape as a weapon of war and to shatter the culture of impunity. Our predecessors came together to abolish the 19th-century slave trade and drive it from the high seas. In our generation, the world has come together to act against landmines and cluster munitions. And after ten years of campaigning by charities and members of the public, we are coming closer to agreeing a historic Arms Trade Treaty. In each case hope, vision and determination prevailed. In each case people seized a moment and pressed boldly forward. It is time to act in the same way against rape as a weapon of war and other forms of sexualised violence, seizing another crucial moment to shape our world for the better.

We have to establish a culture of deterrence by increasing the number of successful prosecutions. We have to give the UN and other agencies the support they need to support and empower survivors, and to increase women's participation in peace-building. Many organisations have done incredible work in conflict-affected countries and at the UN over many years, including achieving a framework of UN Security Council Resolutions. Now, it is time for us as governments to muster the will to act.

I've heard it said that preventing sexual violence from happening in war is simply impossible. It is an inevitable by-product of conflict, so the argument goes; a problem as ancient as war itself and far too complex to tackle. For many people the issue of the use of rape in war is as distant as slavery would have been to most Britons in the 18th and 19th century: something that happened far away and barely touched their lives.

But I have been able to meet female rape victims in Darfur and survivors of the Srebrenica massacres in Bosnia-Herzegovina. I have seen for myself how the lack of justice for survivors

inflicts terrible suffering, makes recovery from war even harder and undermines our common security.

Survivors often endure shame, ostracism and disease, unwanted pregnancy, psychological trauma, an inability to work and family breakdown. Their communities are deeply affected too. Tackling sexual violence in conflict is not only a moral issue, it is central to peace-building and conflict prevention.

So our Government has begun a major new initiative in the Foreign and Commonwealth Office that I will lead. First, we are setting up a specialist team of experts that will be deployed to conflict areas to support efforts to prevent and investigate sexual violence in conflict. It will include police, lawyers, psychologists, doctors, forensic experts, experts in gender-based violence and in the care and protection of survivors and witnesses. It will support UN investigations and civil society organisations, and help other countries to develop their own capabilities. We have already recruited 65 members of the team, and their first pilot deployment will take place before the end of this year. We hope that by setting this example we can help to support successful prosecutions and encourage other countries to set up similar teams.

Second, we are significantly increasing our support to the UN. We are giving £1 million over the next three years to support the UN Secretary-General's Special Representative on Sexual Violence and urge other countries to do more too.

Third, when the UK takes on the presidency of the G8 in January, one of our objectives will be to secure new commitments from some of the world's most powerful nations. We will urge G8 countries to enter into partnerships with conflict-affected nations. We will call for new financial commitments, and development assistance focused on legislative reforms, economic empowerment and support for survivors, which we hope to broaden beyond the G8 over time. And we are assessing if there is a need for a new international protocol on the investigation and prosecution of sexual violence in conflict and the protection of survivors.

I know that if the world can act more effectively against this problem we will not only prevent appalling injustices, but also help to break the cycle of instability and injustice in conflict-affected countries. That is our ambition and we are calling on governments, civil society and concerned citizens around the world to join us in making it a reality.

The Montreux Document on pertinent international legal obligations and good practices for States related to operations of private military and security companies during armed conflict (17 September 2008)¹¹²

BACKGROUND: The UK is a signatory of the Montreux Document, which contains protocols developed by the ICRC and Swiss government to guide states in ensuring that their private military contractors comply with IHL where applicable. The UK Foreign and Commonwealth Office (FCO) was critical to the development of this agreement, which holds that states that fund private military contractors for work in conflict areas are legally responsible for any breaches of IHL (as well as resulting reparations owed) by those private military contractors. The Montreux Document outlines the affirmative steps, or “due diligence,” that is legally required of states when they provide humanitarian aid or private contract work in situations governed by IHL.

RELEVANT EXCERPTS:

Foreword

The presence of private military and security companies (PMSCs) in armed conflicts has traditionally drawn scant attention. In some ways this is surprising; as such, reliance on private entrepreneurs during war is nothing new. Such entrepreneurs have played a role in wars past and present, from ancient times to the conflicts of our day. But historians apparently considered them no more than an ancillary aspect of military affairs, their status and significance warranting no particular scrutiny.

This has now changed. Today, PMSCs are viewed in some quarters as an indispensable ingredient of military undertakings. Since the end of the Cold War, demand for PMSCs has increased to such an extent that there is now a lively PMSC industry offering an ever wider range of services, with some companies employing well beyond 10,000 staff. In terms of scale and scope of services involved, PMSCs today are a wholly new phenomenon.

In response, several diplomatic initiatives were launched to clarify what the role of PMSCs in armed conflicts is and should be. Yet it was only with the Montreux Document of September 2008, the fruit of a joint initiative by the Swiss Government and the International Committee of the Red Cross (ICRC), that the discussion around PMSCs was carefully brought to a first conclusion. The Swiss Initiative brought together 17 governments from various regions of the world and drew widely on the knowledge of industry representatives, academic experts and non-governmental organizations. For the first time, an intergovernmental statement clearly articulates the most pertinent international legal obligations with regard to PMSCs and debunks the prevailing misconception that private contractors operate in a legal vacuum.

It addresses substantive legal concerns, such as the status of PMSC personnel under the 1949 Geneva Conventions, individual accountability for misconduct in different jurisdictions, and the authorities' duty to oversee and screen the actions of firms for potential misconduct. The Montreux Document is explicitly geared to have a bearing on the practical aspects of work in the field.

The Montreux Document is not the final word on all questions – regulatory or otherwise – associated with PMSCs. This was never the intention. It does not endeavour to establish new regulations but simply seeks to provide guidance on a number of thorny legal and practical points, on the basis of existing international law. It does so without taking a stance on the much broader question of the legitimacy and advisability of using PMSCs in armed conflicts – a matter on which debate is no doubt important and necessary. But for humanitarian purposes, it appears equally important and necessary that a restatement of the law such as the Montreux Document provides remain impartial on the matter, that it acknowledge the reality on the ground, and that it do so now.

Now that the Montreux Document has been finalized, the question is how it will be brought to have a bearing on conduct in the field. This brochure seeks to play a part in that effort. Knowledge being the first condition for compliance, the brochure explains the Montreux Document – what it is, what it does, why it is useful – in a concise and accessible manner. It is intended as much for government officials and officials of international organizations as for the PMSC industry, civil society and interested individuals.

Preface

This document is the product of an initiative launched cooperatively by the Government of Switzerland and the International Committee of the Red Cross. It was developed with the participation of governmental experts from Afghanistan, Angola, Australia, Austria, Canada, China, France, Germany, Iraq, Poland, Sierra Leone, South Africa, Sweden, Switzerland, the United Kingdom of Great Britain and Northern Ireland, Ukraine, and the United States of America in meetings convened in January and November 2006, November 2007, and April and September 2008. Representatives of civil society and of the private military and security industry were consulted.

The following understandings guided the development of this document:

1. That certain well-established rules of international law apply to States in their relations with private military and security companies (PMSCs) and their operation during armed conflict, in particular under international humanitarian law and human rights law;
2. That this document recalls existing legal obligations of States and PMSCs and their personnel (Part One), and provides States with good practices to promote compliance with international humanitarian law and human rights law during armed conflict (Part Two); . . .
6. That cooperation, information sharing and assistance between States, commensurate with each State's capacities, is desirable in order to achieve full respect for international humanitarian law and human rights law; as is cooperative implementation with the private military and security industry and other relevant actors; . . .

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Part One: Pertinent international legal obligations relating to private military and security companies

Introduction

The following statements aim to recall certain existing international legal obligations of States regarding private military and security companies. The statements are drawn from various international humanitarian and human rights agreements and customary international law. This document, and the statements herein, do not create legal obligations. Each State is responsible for complying with the obligations it has undertaken pursuant to international agreements to which it is a party, subject to any reservations, understandings and declarations made, and to customary international law.

A. Contracting States

1. Contracting States retain their obligations under international law, even if they contract PMSCs to perform certain activities. If they are occupying powers, they have an obligation to take all measures in their power to restore, and ensure, as far as possible, public order and safety, i.e. exercise vigilance in preventing violations of international humanitarian law and human rights law.
2. Contracting States have an obligation not to contract PMSCs to carry out activities that international humanitarian law explicitly assigns to a State agent or authority, such as exercising the power of the responsible officer over prisoner-of-war camps or places of internment of civilians in accordance with the Geneva Conventions.

3. Contracting States have an obligation, within their power, to ensure respect for international humanitarian law by PMSCs they contract, in particular to:
 - a) ensure that PMSCs that they contract and their personnel are aware of their obligations and trained accordingly;
 - b) not encourage or assist in, and take appropriate measures to prevent, any violations of international humanitarian law by personnel of PMSCs;
 - c) take measures to suppress violations of international humanitarian law committed by the personnel of PMSCs through appropriate means, such as military regulations, administrative orders and other regulatory measures as well as administrative, disciplinary or judicial sanctions, as appropriate.
4. Contracting States are responsible to implement their obligations under international human rights law, including by adopting such legislative and other measures as may be necessary to give effect to these obligations. To this end they have the obligation, in specific circumstances, to take appropriate measures to prevent, investigate and provide effective remedies for relevant misconduct of PMSCs and their personnel.
5. Contracting States have an obligation to enact any legislation necessary to provide effective penal sanctions for persons committing, or ordering to be committed, grave breaches of the Geneva Conventions and, where applicable, Additional Protocol I, and have an obligation to search for persons alleged to have committed, or to have ordered to be committed, such grave breaches and bring such persons, regardless of their nationality, before their own courts. They may also, if they prefer, and in accordance with the provisions of their own legislation, hand such persons over for trial to another State concerned, provided such State has made out a *prima facie* case, or to an international criminal tribunal.
6. Contracting States also have an obligation to investigate and, as required by international law, or otherwise as appropriate, prosecute, extradite or surrender persons suspected of having committed other crimes under international law, such as torture or hostage taking, in accordance with their obligations under international law. Such prosecutions are to be carried out in accordance with international law providing for fair trial, mindful that sanctions be commensurate with the gravity of the crime.
7. Although entering into contractual relations does not in itself engage the responsibility of Contracting States, the latter are responsible for violations of international humanitarian law, human rights law, or other rules of international law committed by PMSCs or their personnel where such violations are attributable to the Contracting State, consistent with customary international law, in particular if they are:
 - a) incorporated by the State into their regular armed forces in accordance with its domestic legislation;
 - b) members of organized armed forces, groups or units under a command responsible to the State;
 - c) empowered to exercise elements of governmental authority if they are acting in that capacity (i.e. are formally authorized by law or regulation to carry out functions normally conducted by organs of the State); or

- d) in fact acting on the instructions of the State (i.e. the State has specifically instructed the private actor's conduct) or under its direction or control (i.e. actual exercise of effective control by the State over a private actor's conduct).
8. Contracting States have an obligation to provide reparations for violations of international humanitarian law and human rights law caused by wrongful conduct of the personnel of PMSCs when such conduct is attributable to the Contracting States in accordance with the customary international law of State responsibility.

B. Territorial States

9. Territorial States have an obligation, within their power, to ensure respect for international humanitarian law by PMSCs operating on their territory, in particular to:
- a) disseminate, as widely as possible, the text of the Geneva Conventions and other relevant norms of international humanitarian law among PMSCs and their personnel;
 - b) not encourage or assist in, and take appropriate measures to prevent, any violations of international humanitarian law by personnel of PMSCs;
 - c) take measures to suppress violations of international humanitarian law committed by the personnel of PMSCs through appropriate means such as military regulations, administrative orders and other regulatory measures as well as administrative, disciplinary or judicial sanctions, as appropriate.
10. Territorial States are responsible to implement their obligations under international human rights law, including by adopting such legislative and other measures as may be necessary to give effect to these obligations. To this end they have the obligation, in specific circumstances, to take appropriate measures to prevent, investigate and provide effective remedies for relevant misconduct of PMSCs and their personnel.
11. Territorial States have an obligation to enact any legislation necessary to provide effective penal sanctions for persons committing, or ordering to be committed, grave breaches of the Geneva Conventions and, where applicable, Additional Protocol I, and have an obligation to search for persons alleged to have committed, or to have ordered to be committed, such grave breaches and bring such persons, regardless of their nationality, before their own courts. They may also, if they prefer, and in accordance with the provisions of their own legislation, hand such persons over for trial to another State concerned, provided such State has made out a *prima facie* case, or to an international criminal tribunal.
12. Territorial States also have an obligation to investigate and, as required by international law, or otherwise as appropriate, prosecute, extradite or surrender persons suspected of having committed other crimes under international law, such as torture or hostage taking, in accordance with their obligations under international law. Such prosecutions are to be carried out in accordance with international law providing for fair trial, mindful that sanctions be commensurate with the gravity of the crime.

13. In situations of occupation, the obligations of Territorial States are limited to areas in which they are able to exercise effective control.

C. Home States

14. Home States have an obligation, within their power, to ensure respect for international humanitarian law by PMSCs of their nationality, in particular to:
 - a) disseminate, as widely as possible, the text of the Geneva Conventions and other relevant norms of international humanitarian law among PMSCs and their personnel;
 - b) not encourage or assist in, and take appropriate measures to prevent, any violations of international humanitarian law by personnel of PMSCs;
 - c) take measures to suppress violations of international humanitarian law committed by the personnel of PMSCs through appropriate means such as administrative or other regulatory measures as well as administrative, disciplinary or judicial sanctions, as appropriate.
15. Home States are responsible to implement their obligations under international human rights law, including by adopting such legislative and other measures as may be necessary to give effect to these obligations. To this end they have the obligation, in specific circumstances, to take appropriate measures to prevent, investigate and provide effective remedies for relevant misconduct of PMSCs and their personnel.
16. Home States have an obligation to enact any legislation necessary to provide effective penal sanctions for persons committing, or ordering to be committed, grave breaches of the Geneva Conventions and, where applicable, Additional Protocol I, and have an obligation to search for persons alleged to have committed, or to have ordered to be committed, such grave breaches and bring such persons, regardless of their nationality, before their own courts. They may also, if they prefer, and in accordance with the provisions of their own legislation, hand such persons over for trial to another State concerned, provided such State has made out a *prima facie* case, or to an international criminal tribunal.
17. Home States also have an obligation to investigate and, as required by international law, or otherwise as appropriate, prosecute, extradite or surrender persons suspected of having committed other crimes under international law, such as torture or hostage taking, in accordance with their obligations under international law. Such prosecutions are to be carried out in accordance with international law providing for fair trial, mindful that sanctions be commensurate with the gravity of the crime.

D. All other States

18. All other States have an obligation, within their power, to ensure respect for international humanitarian law. They have an obligation to refrain from encouraging or assisting in violations of international humanitarian law by any party to an armed conflict.
19. All other States are responsible to implement their obligations under international human rights law, including by adopting such legislative and other measures as may be necessary to give effect to these obligations.
20. All other States have an obligation to enact any legislation necessary to provide effective penal sanctions for persons committing, or ordering to be committed,

grave breaches of the Geneva Conventions and, where applicable, Additional Protocol I, and have an obligation to search for persons alleged to have committed, or to have ordered to be committed, such grave breaches and bring such persons, regardless of their nationality, before their own courts. They may also, if they prefer, and in accordance with the provisions of their own legislation, hand such persons over for trial to another State concerned, provided such State has made out a *prima facie* case, or to an international criminal tribunal.

21. All other States also have an obligation to investigate and, as required by international law, or otherwise as appropriate, prosecute, extradite or surrender persons suspected of having committed other crimes under international law, such as torture or hostage taking, in accordance with their obligations under international law. Such prosecutions are to be carried out in accordance with international law providing for fair trial, mindful that sanctions be commensurate with the gravity of the crime.

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Part Two: Good practices relating to private military and security companies

Introduction

This Part contains a description of good practices that aims to provide guidance and assistance to States in ensuring respect for international humanitarian law and human rights law and otherwise promoting responsible conduct in their relationships with PMSCs operating in areas of armed conflict. They may also provide useful guidance for States in their relationships with PMSCs operating outside of areas of armed conflict.

The good practices do not have legally binding effect and are not meant to be exhaustive. It is understood that a State may not have the capacity to implement all the good practices, and that no State has the legal obligation to implement any particular good practice, whether that State is a Contracting State, a Territorial State, or a Home State. States are invited to consider these good practices in defining their relationships with PMSCs, recognizing that a particular good practice may not be appropriate in all circumstances and emphasizing that this Part is not meant to imply that States should necessarily follow all these practices as a whole.

The good practices are intended, *inter alia*, to assist States to implement their obligations under international humanitarian law and human rights law. However, in considering regulation, States may also need to take into account obligations they have under other branches of international law, including as members of international organizations such as the United Nations, and under international law relating to trade and government procurement. They may also need to take into account bilateral agreements between Contracting States and Territorial States. Moreover, States are encouraged to fully implement relevant provisions of international instruments to which they are Parties, including anti-corruption, anti-organized crime and firearms conventions.

Furthermore, any of these good practices will need to be adapted in practice to the specific situation and the State's legal system and capacity.

II. Procedure for the selection and contracting of PMSCs

2. To assess the capacity of the PMSC to carry out its activities in conformity with relevant national law, international humanitarian law and international human rights law, taking into account the inherent risk associated with the services to be performed, for instance by:

- a) acquiring information relating to the principal services the PMSC has provided in the past;
 - b) obtaining references from clients for whom the PMSC has previously provided similar services to those the Contracting State is seeking to acquire;
 - c) acquiring information relating to the PMSC's ownership structure and conducting background checks on the PMSC and its superior personnel, taking into account relations with subcontractors, subsidiary corporations and ventures. . . .
4. To ensure transparency and supervision in the selection and contracting of PMSCs. Relevant mechanisms may include:
- a) public disclosure of PMSC contracting regulations, practices and processes;
 - b) public disclosure of general information about specific contracts, if necessary redacted to address national security, privacy and commercial confidentiality requirements;
 - c) publication of an overview of incident reports or complaints, and sanctions taken where misconduct has been proven; if necessary redacted to address national security, privacy and commercial confidentiality requirements;
 - d) oversight by parliamentary bodies, including through annual reports or notification of particular contracts to such bodies. . . .
12. To take into account the PMSC's internal organization and regulations, such as:
- a) the existence and implementation of policies relating to international humanitarian law and human rights law, especially on the use of force and firearms, as well as policies against bribery, corruption, and other crimes;
 - b) the existence of monitoring and supervisory as well as internal accountability mechanisms, such as:
 - i. internal investigation and disciplinary arrangements in case of allegations of wrongdoing by its personnel;
 - ii. mechanisms enabling persons affected by the conduct of the personnel of the PMSC to lodge a complaint, including both third party complaint mechanisms and whistleblower protection arrangements; and
 - iii. regular performance reporting, specific incident reporting, and reporting on demand to the Contracting State and under certain circumstances other appropriate authorities;
 - iv. requiring PMSC personnel and its subcontracted personnel to report any misconduct to the PMSC's management or a competent authority. . . .

IV. Terms of contract with PMSCs

14. To include contractual clauses and performance requirements that ensure respect for relevant national law, international humanitarian law and human rights law by the contracted PMSC. . . .

V. Monitoring compliance and ensuring accountability

19. To provide for criminal jurisdiction in their national legislation over crimes under international law and their national law committed by PMSCs and their personnel and, in addition, to consider establishing:

- a) corporate criminal responsibility for crimes committed by the PMSC, consistent with the Contracting State's national legal system;
 - b) criminal jurisdiction over serious crimes committed by PMSC personnel abroad.
20. To provide for non-criminal accountability mechanisms for improper or unlawful conduct of PMSCs and their personnel, including:
- a) contractual sanctions commensurate to the conduct, including :
 - i. immediate or graduated termination of the contract;
 - ii. financial penalties;
 - iii. removal from consideration for future contracts, possibly for a set time period;
 - iv. removal of individual wrongdoers from the performance of the contract;
 - b) referral of the matter to competent investigative authorities;
 - c) providing for civil liability, as appropriate.

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Explanatory Comments

The Montreux Document in a Nutshell: What it does

The Montreux Document . . .

- recalls the pertinent international legal obligations of States, PMSCs and their personnel in situations of armed conflict;
- contains a compilation of good practices designed to help States take national measures to implement their obligations;
- highlights the responsibilities of three types of States: Contracting States (countries that hire PMSCs), Territorial States (countries on whose territory PMSCs operate) and Home States (countries in which PMSCs are based);
- makes it clear that States have an obligation to ensure respect for international humanitarian law and to uphold human rights law; as a result, they have a duty to take measures designed to prevent misconduct by PMSCs and ensure accountability for criminal behaviour;
- recalls that PMSCs and their personnel are bound by international humanitarian law and must respect its provisions at all times during armed conflict, regardless of their status;
- recalls that misconduct on the part of PMSCs and their personnel can trigger responsibility on two levels: first, the criminal responsibility of the perpetrators and their superiors, and second, the responsibility of the State that gave instructions for, directed or controlled the misconduct;
- provides a toolkit for governments to establish effective oversight and control over PMSCs, for example through contracts or licensing/authorization systems.

The Montreux Document in a Nutshell: Why it is useful

The Montreux Document is useful because it enhances the protection afforded to people affected by armed conflicts. It does so by clarifying and reaffirming international law, by encouraging the adoption of national regulations on PMSCs designed to strengthen respect for

international law, and by offering guidance on how and in what light this should be done, based on lessons learnt.

...

The main rules and good practices of the Montreux Document: Non-transferable responsibilities of the State

Statement 1 explains that Contracting States retain their obligations under international law even if they contract PMSCs to perform certain activities. The fact that PMSCs are private enterprises and not State authorities does not relieve States from their international obligations. For example, they retain their obligation not to start a war in contravention of the Charter of the United Nations.

That some State responsibilities are non-transferable is particularly relevant in situations of occupation. If a State occupies foreign territory and uses PMSCs to perform certain functions (provide security or logistic support, guard detention centres), the occupying State still has obligations towards the occupied population. It has to ensure public order in the occupied territory and the population's safety.

Statement 2 reminds States that their liberty to contract out activities to PMSCs is limited. International humanitarian law requires the State authorities to carry out certain activities themselves, so it would be unlawful to contract them out. The supervision of prisoner-of-war camps and civilian places of internment is an example. While certain administrative tasks can be outsourced, overall responsibility must rest with the State authorities.

...

The main rules and good practices of the Montreux Document: Obligation to ensure respect for international humanitarian law

Statements 3, 9, 14 and 18 emphasize the general obligation that States have under Article 1 common to the four 1949 Geneva Conventions to ensure respect for international humanitarian law. This general obligation is important because it requires the States not only to refrain from committing violations of international humanitarian law, but also to take all measures in their power to ensure that PMSCs, as entities separate from the State, respect the law. It is universal and applies to any State.

However, Contracting States are particularly well placed to ensure respect for international humanitarian law. It is relatively easy for them, when selecting companies and entering into contracts with them, to influence how PMSCs operate in the field. As a matter of law, Contracting States must ensure, in the contract, that PMSCs and their personnel are aware of their obligations when they are deployed to conflict situations and that they are trained accordingly.

Territorial States are also in a strong position to influence the behaviour of companies. They have the authority, based on their territorial sovereignty, to impose restrictions on PMSCs through national law. In practice, however, ongoing armed conflict may severely limit what a Territorial State can do to ensure respect for international humanitarian law. It may not have sufficient control over parts of its territory.

...

The main rules and good practices of the Montreux Document: State responsibility for PMSC acts

Statement 7 explains that, in certain circumstances, the conduct of a PMSC is attributable to the Contracting State as a matter of international law. The State in question then must assume responsibility for any wrongdoing on the part of the PMSC. Such circumstances are the exception, rather than the rule, since States are generally speaking not responsible for the acts and omissions of private companies or individuals.

Statement 7 lists the cases in which PMSC conduct is attributable to the Contracting State. A first clear case is when PMSCs are incorporated into the Contracting State's armed forces and are thus part of what constitutes the State. The same holds true if the Contracting State contracts a company to perform so-called elements of governmental authority. For example, any act of criminal investigation or prosecution to which a PMSC contributes would be considered as an element of governmental authority, since the justice system is inherently governmental. It is also likely that the running of prisons, which is a law-enforcement function, is inherently a government function. While it may be contracted out, the State remains responsible. Finally, PMSC conduct is also attributable to the Contracting State if the PMSC is in fact acting on the instructions of the State (i.e. the State has specifically instructed the private actor's conduct) or under its direction or control.

Statement 8 affirms that whenever violations are attributable to it, the Contracting State has an obligation to provide reparations for the injury incurred. Reparation can take several forms. Usually it consists of monetary compensation, but it can also take the form of satisfaction (an apology) or restitution (for instance of property).

...

The main rules and good practices of the Montreux Document: Rights and responsibilities of PMSC personnel

Statement 26a recalls that whatever their status, the personnel of PMSCs must always comply with international humanitarian law. Indeed, humanitarian law must be respected not only by all parties to the conflict, but by all individuals acting in relation to a conflict – whether or not they are acting on behalf of a government.

...

Questions and answers on the Montreux Document: What rules apply to States with regard to PMSCs?

States that contract PMSCs can, under certain conditions, be held accountable for violations committed by PMSC employees, in particular if the PMSC exercises elements of governmental authority or if it acts under the instructions or control of the State authorities. In such cases, the same rules apply to the State – i.e. not to violate international humanitarian law and human rights law – as if it had acted itself through its own military forces.

States also have obligations to uphold the law: they must ensure respect for international humanitarian law and, to the extent that it applies in armed conflicts, human rights law. Hence States must take appropriate measures to ensure that no PMSC violates international humanitarian law or engages in misconduct that affects the human rights of potential victims. This can include taking measures to ensure that PMSCs vet their personnel and provide

adequate training for them. States also have an obligation to prosecute war crimes and certain serious violations of human rights law.

UK Government Strategy on the Protection of Civilians in Armed Conflict (2010)¹¹³

BACKGROUND: The strategy states the UK position on how civilians should be protected in times of armed conflict. The strategy is a collaborative effort between the FCO, DFID, and MOD and sets out goals through 2013.

RELEVANT EXCERPTS:

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Protection of civilians in armed conflict matters from a legal perspective, because the UK has specific obligations concerning the protection of civilians in situations where it is involved in military action. International humanitarian law (IHL) provides that civilians shall enjoy general protection from the effects of armed conflict, protects civilians from being the object of attack, and prohibits attacks that are indiscriminate. The UK is a strong supporter of the standards set out in international human rights and humanitarian law and of international criminal law tribunals, including the International Criminal Court.

Page 3

The UK has a number of different roles in promoting and protecting civilians in armed conflict, including:

- As a member of international organisations, and as a permanent member of the UN Security Council.
- As a party of IHL treaties.
- As a donor to intergovernmental organizations and other humanitarian actors operating in situations of armed conflict. . . .

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Box 1 – International Obligations to Respect and Protect Civilians

During armed conflict, civilians and combatants “hors de combat” are entitled to specific protection under international humanitarian law (IHL) providing that they are not, or are no longer, taking a direct part in hostilities. IHL requires parties to a conflict to respect and protect civilians. In the conduct of military operations they must distinguish at all times between combatants and civilians, and only direct attacks against suspected combatants and other military objectives. They must take constant care to spare civilians and civilian objects from the effects of hostilities. Amongst other things, this means that civilians must not be the target of physical attacks or subjected to acts of violence such as killing, maiming, torture and other forms of ill-treatment (including sexual violence), preventing the provision of medical care, slavery, forced recruitment and hostage taking. Civilian property must not be targeted. The forcible displacement of the civilian population is also prohibited unless required for the security of the population or imperative military reasons. IHL also calls on parties to authorise impartial humanitarian assistance to populations affected by the conflict.

In addition international human rights law instruments may provide further protection. In times of armed conflict states may exceptionally derogate from certain rights under strictly defined

circumstances, however, a number of human rights, central to the protection agenda, can never be suspended: the right not to be arbitrarily deprived of life; the prohibition of torture or cruel inhuman or degrading treatment or punishment; the prohibition of slavery and servitude and the prohibition of the retroactive application of criminal laws.

Specific population groups such as women, children and the disabled, benefit from additional protection provided for in specific conventions. . . .

In addition to this international legal framework the UN Security Council has also adopted a number of relevant resolutions including on the protection of civilians in armed conflict (which mentions specific groups such as refugees and Internally Displaced People (IDPs)), women, peace and security and children affected by armed conflict.

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The UK is committed to helping prevent, manage and resolve conflicts around the world. From a protection perspective, this involves working bilaterally not only on resolution of the conflict itself, but also to ensure that the parties involved respect their obligations under international humanitarian, criminal and human rights law.

Humanitarian Emergency Response Review, Chaired by Lord (Paddy) Ashdown (28 March 2011)¹¹⁴

BACKGROUND: The Humanitarian Emergency Response Review is a report commissioned and written by a committee chaired by Lord Ashdown in 2011 regarding the UK's ability to effectively respond to man-made and natural disasters in a way that provides the most effective relief to victims and efficiently utilizes taxpayer funds. It anticipates future challenges in the provision of humanitarian aid and urges the UK to continue its global leadership on the issue.

RELEVANT EXCERPTS:

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These legal norms establish that humanitarian aid should be guided by the principles of:

- i. Humanity—the centrality of saving lives and alleviating suffering wherever it is found.
- ii. Impartiality—humanitarian aid should be implemented solely on the basis of need, without discrimination between or within affected populations.
- iii. Neutrality—humanitarian action must not favour any side in an armed conflict or other dispute.
- iv. Independence—humanitarian objectives are autonomous from political, economic, military objectives or other interests related to the location where assistance is provided.

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Gender

Accountability cannot improve without the humanitarian system becoming more gender aware. Poverty experienced by women and men is shaped by inequalities that discriminate against and marginalise certain social groups. The most pervasive one is gender inequality and this is magnified by the impacts of climate change and disasters. A study by the London School of

Economics shows that natural disasters and their subsequent impact on average kill more women than men or kill women at an earlier age.

An approach that does not recognize that women, men, girls and boys in an emergency situation have different needs and are exposed to different types of risk will in the best case be bad quality programming, in the worst case it can cause harm. Projects that are gender blind risk missing out on the most vulnerable individuals and may also provide an inappropriate response due to lack of analysis and limited understanding of what the gender specific needs are.

At the same time, the role of women in prevention, relief and recovery is not recognized enough. Previous evaluations show that women drive the move from immediate concerns—reuniting families, finding shelter and food—to identifying ways to generate income. And women have repeatedly led initiatives to adapt to the impacts of climate change, and their knowledge and responsibilities related to natural resource management have proven critical to community survival. Women and girls need to be consulted on their needs immediately, appropriately and comprehensively throughout all stages of assistance.

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Working with the European Union

The European Union collectively provides half of all official humanitarian aid. It also has its own humanitarian aid agency, ECHO, which is the second largest global donor in its own right. And although the UK provides a sixth of its funding, it does not engage with ECHO strategically. This needs to change.

DFID's policy level relationship with ECHO is weak. DFID and ECHO too often work in parallel, failing to communicate effectively. This results in duplication of work and costly overlaps. In disaster situations ECHO is routinely unaware of what DFID's response will be. At policy level, DFID focuses priority attention on the major UN humanitarian partners rather than other donors. The lack of effective partnership with ECHO is a wasted opportunity. The UK holds a unique position amongst EU member states, with capacity to provide effective humanitarian aid when acting alone. This experience if better shared, could be beneficial to both agencies. . . .

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Working with bilateral donors

The US government is the world's largest individual humanitarian donor. It is very influential, with the heads of WFP, UNICEF and the World Bank traditionally coming from the US. The US government is also the largest donor to UNHCR and the ICRC.

This means the US has an opportunity to influence UN agencies at a high level. This is often not used coherently because of the fragmented nature of the US aid bureaucracy. But even so, DFID does not have a sustained policy dialogue with the humanitarian agencies of the US government, and is often perceived by the US as a loner. . . .

The Good Humanitarian Donorship (GHD) group has played a role in achieving change in the humanitarian system. Donors such as the Netherlands, Sweden, Norway and Canada have been close allies for DFID. GHD has created a space for collective action that did not previously exist, and provided DFID with its most consistent allies. Lately, it has lost momentum. DFID

should work to reinvigorate this group, both globally and in countries like DR Congo where it plays a pivotal role. . . .

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Working with the Red Cross and Red Crescent Movement

. . . The relationship between DFID and the Red Cross/Red Crescent Movement has traditionally been mediated by the British Red Cross Society (BRCS). The BRCS is one of the stronger National Societies (NS) in the Movement, a large contributor to other NS in its own right, and a strategic voice in the IFRC Secretariat. For the past decade, DFID funds for both the IFRC and ICRC passed through the BRCS in what was called a ‘tripartite’ relationship. This recently changed for the ICRC–DFID funds now go direct to Geneva—but remains the same for the IFRC.

The different arrangements reflect the strengths and character of the different organisations. The ICRC is widely admired for its professionalism and its adherence to mandate. It scores highly in internal DFID analysis, including the recent multilateral aid review, and with country offices. This makes the ICRC a partner of choice in conflict situations and this review endorses that view. DFID should continue to work with the ICRC as it is, a trusted and principled partner in conflict situations. . . .

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Changing the policy

The International Development Act 2002 is the key piece of UK legislation that frames overseas assistance. In the act, humanitarian assistance is defined as, “assistance for the purpose of alleviating the effects of a natural or man-made disaster or other emergency on the population of one or more countries outside the United Kingdom”.

In addition to its domestic legal obligations, the UK is signatory to EU and international law. The EU consensus on humanitarian aid in particular commits the UK to, ‘provide a needs-based emergency response aimed at preserving life, preventing and alleviating human suffering and maintaining human dignity wherever the need arises if governments and local actors are overwhelmed, unable or unwilling to act’.

The consensus also subscribes to a number of other principles and codes. Notably it ‘firmly’ commits to the ‘fundamental humanitarian principles of humanity, neutrality, impartiality and independence’. DFID has also committed to these principles in its 2006 humanitarian policy.

If the international development act and the key pieces of European and International law determine the overall framework for DFID humanitarian action, then the 2006 humanitarian policy is the key internal document. It had three policy goals:

- Improve the effectiveness of humanitarian responses.
- Be a better donor.
- Reduce risk and extreme vulnerability. . . .

Letter of Alistair Burt, Parliamentary Under Secretary of State for Foreign and Commonwealth Affairs, on US Abortion Restrictions (19 March 2012)

BACKGROUND: On 19 March 2012, Parliamentary Under Secretary of State for Foreign and Commonwealth Affairs, Alistair Burt, wrote a letter to Lillian Greenwood MP of the House of Commons, in response to her letter about the Helms Amendment and the provision of abortion services to female victims of war rape.

TEXT OF LETTER:

Dear Lillian,

Thank you for your letter of 14 February to the Foreign Secretary about aid for the victims of rape in conflict. I am replying as Minister for North America.

The British Government is committed to the resolution of this important issue. I understand that, although there are currently certain restrictions (through the 'Helms Amendment') on US aid to finance abortions, these do not extend to funding provided by other donors. UK aid can be used, in line with our policy on safe and unsafe abortion, to provide care, including where necessary safe abortion care to victims of rape in conflict zones.

I also understand that the Helms Amendment was intended to preclude the use of US aid to finance abortions as a method of family planning. The Amendment should not prohibit the use of US aid to assist women who are victims of rape in conflict. Nonetheless, the interpretation of the Amendment has led to a policy approach that seems to restrict funding for abortion more widely. This means that currently US funding is not used for any advocacy, information or service provision related to safe abortion - including for victims of rape, incest or when the mother's life is in danger as a consequence of pregnancy.

Non Government Organisations (NGOs) working on safe abortion issues in the US are aware of this issue and are actively working to encourage re-interpretation of Helms. Foreign and Commonwealth Office (FCO) and Department for International Development (DFID) policy experts have recently agreed to a working level meeting with the Global Justice Centre (GJC) in an attempt clarify the situation. We will await the outcome of this meeting before deciding how best to proceed.

Thank you again for writing to me on this important issue; we must ensure that we do all we can to provide women raped in war zones with the help they need to recover from this awful crime.

ALISTAIR BURT

Letter of Andrew Mitchell, Secretary of State for International Development, on DFID Abortion Policy (5 July 2012)

BACKGROUND: On 5 July 2012, Secretary of State for International Development, Andrew Mitchell MP, wrote a letter to Olivia Warham, Director of Waging Peace, in response to her letter regarding UK policy on the provision of abortions to women and girls raped in conflict.

TEXT OF LETTER:

Dear Olivia,

Thank you for your letter of 17 June to the Prime Minister about provision of medical care for victims of rape in conflict. I am responding as Secretary of State for International Development.

The World Health Organisation estimates that nearly 47,000 women die and millions more are injured each year following an unsafe abortion and we are committed to bringing this number

down. We believe the best way to eliminate unsafe abortion is to improve access to comprehensive family planning information, services and supplies and to ensure that women have more control over the circumstances in which they have sex. But we recognise that, for many, this is not the reality.

The UK Government directly supports the provision of non-discriminatory and comprehensive medical care to victims of rape in a range of countries, including those affected by conflict. One of the leading causes of maternal death is unsafe abortion. Our policy recognises that provision of safe abortion services is important in reducing the number of women who die as a result of unsafe abortions.

Although there are restrictions (through the 'Helms Amendment') on US aid to finance abortions, these do not extend to funding provided by the UK. UK aid without exception can be used to provide safe abortion care, where necessary and to the extent allowed by national laws, for victims of rape in conflict zones.

International organisations, such as the Red Cross, and the NGO's, with whom we and the US Government work, are well aware of our respective policy positions. We and they make every effort to work coherently and comprehensively to alleviate the suffering of victims of rape in fragile and conflict countries.

ANDREW MITCHELL

ANNEX I: ADDITIONAL SOURCES

A. Reports

- **Atlas, Implementation of International Humanitarian Law and International Human Rights Law: United Kingdom, 2009**
Available at: http://projetatlas.univ-paris1.fr/IMG/pdf/UK_Report_Country_Report.pdf
- **Global Justice Center, The Right to an Abortion for Girls and Women Raped in Armed Conflict**
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<http://globaljusticecenter.net/index.php/our-work/geneva-initiative/august-12th-campaign/u-s-abortion-restrictions/letters-to-president-obama>
- **ICRC, Customary International Humanitarian Law Practices: United Kingdom, 2005**
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- **NORAD, Scoping Paper: Sexual Violence in Conflict and the Role of the Health Sector**
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ENDNOTES

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- ⁴ *Manual of the Law of Armed Conflict*, Ministry of Defence, 1 July 2004, Foreword, available at: <http://www.mod.uk/NR/rdonlyres/82702E75-9A14-4EF5-B414-49B0D7A27816/0/JSP3832004Edition.pdf>.
- ⁵ Human Rights Act, 1998, c. 42, available at: <http://www.legislation.gov.uk/ukpga/1998/42>.
- ⁶ Treaty of Lisbon Amending the Treaty on European Union and the Treaty establishing the European Community, signed at Lisbon, Dec. 13 2007, O. J., available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2007:306:FULL:EN:PDF>.
- ⁷ Council Regulation (EC) No 1257/96 of 20 June 1996 concerning humanitarian aid, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:1996R1257:20090420:EN:PDF> (emphasis added).
- ⁸ See Proposal for a Council Regulation (EC) concerning Humanitarian Aid, Brussels, 31.05.1995, COM (95) 201 final.
- ⁹ Updated European Union guidelines on promoting compliance with IHL(2009/C 303/06), Section II, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2009:303:0012:0017:EN:PDF> (emphasis added).
- ¹⁰ European Parliament resolution of 13 March 2012 on equality between women and men in the European Union - 2011 (2011/2244(INI)) available at <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P7-TA-2012-0069&language=EN&ring=A7-2012-0041> (emphasis added).
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- ¹³ European Court of Human Rights, Information Note on the Court's case-law No. 141: *R.R. v. Poland*, Application no. 27617/04, 26 May 2011, available at: <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=002-518>.
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- ²¹ European Parliament, Parliamentary Questions: Answer given by Ms Georgieva on behalf of the Commission (July 17, 2012), available at <http://www.europarl.europa.eu/sides/getAllAnswers.do?reference=E-2012-005386&language=EN>.
- ²² Vice-Presidents' of European Parliament Letter to President Obama, available at <http://globaljusticecenter.net/index.php/publications/letters/august-12th-letters/202-vice-presidents-of-european-parliament-letter-to-president-obama.html>.
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- ³² NORAD, Scoping Paper: Sexual Violence in Conflict and the Role of the Health Sector, *available at* http://globaljusticecenter.net/index.php?option=com_mtree&task=att_download&link_id=332&cf_id=34.
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- ³⁹ See Jelena Pejić, *The protective scope of Common Article 3: more than meets the eye*, 93(881) INTERNATIONAL REVIEW OF THE RED CROSS 1 (March 2011), 10 (“[T]he International Court of Justice affirmed in the Nicaragua case that: ‘Article 3 which is common to all four Geneva Conventions of 12 August 1949 defines certain rules to be applied in the armed conflicts of a non-international character. There is no doubt that, in the event of international armed conflicts, these rules also constitute a minimum yardstick, in addition to the more elaborate rules which are also to apply to international conflicts; and they are rules which, in the Court’s opinion, reflect what the Court in 1949 called ‘elementary considerations of humanity . . .’”) (citing International Court of Justice (ICJ), Case concerning Military and Paramilitary Activities in and against Nicaragua (*Nicaragua v. United States of America*), 27 June 1986, Judgment, para. 218).
- ⁴⁰ Geneva Conventions common arts. 1 and 3, 12 Aug. 1949, 75 U.N.T.S. 135, available at: <http://www.icrc.org/ihl.nsf/WebART/380-600004?OpenDocument> and <http://www.icrc.org/ihl.nsf/WebART/375-590006> (emphasis added).
- ⁴¹ Protocol Additional (I) to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts [hereinafter “Protocol I”], (1979) 1125 UNTS 3.

⁴²Protocol Additional (II) to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts [hereinafter “Protocol II”], (1979) 1125 UNTS 609 (emphasis added).

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⁴⁶*The Public Committee against Torture in Israel et al v. The Government of Israel et al*, Supreme Court of Israel sitting as the High Court of Justice, Judgment, 11 December 2006, HCJ 769/02, paras. 23, 29-30, 33-34, 40-42, 46. Study also referred to by the Colombian Constitutional Court, Sentencia, C-291/07, 25 April 2007.

⁴⁷ICTY, Appeals Chamber, *Prosecutor v. Hadžić, Kordić and Čabrović*, Decision on Joint Defence Interlocutory Appeal of Trial Chamber Decision on Rule 98bis Motions for Acquittal, IT-01-47-AR73.3, 11 March 2005, paras 29–30, 38 and 45–46; *Prosecutor v. Radoslav Bračin*, Appeals Judgment, case No. IT-99-36-A, Annex B, 3 April 2007; *Prosecutor v. Ante Gotovina et al*, Trial Judgment, Vol. II of II, Case No. IT-06-90-T, 15 April 2011, n. 873. See also e.g. Special Court for Sierra Leone, Appeals Chamber, *Prosecutor v. Sam Hinga Norman*, Decision on Preliminary Motion based on Lack of Jurisdiction (Child Recruitment), Case No. SCSL-2004-14-AR72(E), 31 May 2004; Inter-American Court of Human Rights, *Case of the Miguel Castro Castro Prison v. Peru*, Judgment of 25 November 2006, Concurring Opinion of Judge A.A. Cançado Trindade, para. 36.

⁴⁸See e.g. UN Docs: A/HRC/2/8, 29 September 2006, para. 8, n. 3; A/HRC/2/7, 2 October 2006, para. 22, n. 22; A/HRC/4/20/Add.1, 12 March 2007, at 248; A/HRC/10/22, 20 March 2009, paras. 11, 46, 66 and 83; UN Doc. A/HRC/13/42, 19 February 2010, at 27, n. 63; Report of the Secretary-General's Panel of Experts on Accountability in Sri Lanka, 31 March 2011; Report of the International Commission of Inquiry to investigate all alleged violations of international human rights law in the Libyan Arab Jamahiriya, UN Doc. A/HRC/17/44, 1 June 2011.

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⁵⁰Common Article 3, sub-para. 1, to all four Geneva Conventions of 12 August 1949.

⁵¹Common Article 3, sub-para. 2, to all four Geneva Conventions of 12 August 1949.

⁵²Commentary to Geneva Convention I of 12 August 1949 for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, ICRC, Pictet (ed) 1952, at 56. The first Geneva Convention of 1864 provided a duty to care for all wounded and sick military personnel, irrespective of nationality. It is the basis of subsequent more detailed Geneva Conventions on the same topic, the 1949 version being Geneva Convention I.

⁵³Geneva Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, (1950) 75 UNTS 31, Art. 12.

⁵⁴Commentary to Geneva Convention I of 12 August 1949 for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, ICRC, Pictet (ed) 1952, at 137.

⁵⁵Geneva Convention (IV) Relative to the Protection of Civilians [hereinafter “Geneva Convention IV”], (1950) 75 UNTS 287, Art. 16.

⁵⁶In particular, Art. 10, which states that: “In all circumstances they [the wounded and sick] shall be treated humanely and shall receive, to the fullest extent practicable and with the least possible delay, the medical care and attention required by their condition. There shall be no distinction among them founded on any grounds other than medical ones.” Protocol Additional (I) to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts [hereinafter “Protocol I”], (1979) 1125 UNTS 3, Art. 10. The same is provided for in Additional Protocol (II) to the Geneva Conventions of 12 August 1949, and relating to

the Protection of Victims of Non-International Armed Conflicts [hereinafter “Protocol II”], (1979) 1125 UNTS 609, Art. 7. Additionally, medical personnel must be allowed to give the best possible care in accordance with medical ethics (this rule is codified in API, Art. 16). ICRC Customary IHL Study, Rule 26 (which also applies to non-international conflicts).

⁵⁷ Art. 8(a) of API defines “wounded and sick” as “persons, whether military or civilian, who, because of trauma, disease or other physical or mental disorder or disability, are in need of medical assistance or care and who refrain from any act of hostility. These terms also cover maternity cases...” Protocol I, Art. 8(a).

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⁵⁹ ICRC Customary IHL Study, Rule 110.

⁶⁰ See Geneva Convention IV, common Art. 3 (“Persons . . . shall in all circumstances be treated . . . without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.”); see also Protocol I, Art. 10 (“There shall be no distinction among them founded on any grounds other than medical ones.”); Protocol II, Art. 7; ICRC Customary IHL Study, Rule 88 (“Adverse distinction in the application of international humanitarian law based on race, colour, sex, language, religion or belief, political or other opinion, national or social origin, wealth, birth or other status, or on any other similar criteria is prohibited.”), Rule 110 (“No distinction may be made among them [the wounded, sick and shipwrecked] founded on any grounds other than medical ones.”); Geneva Convention (III) Relative to the Treatment of Prisoners of War, (1950) 75 UNTS 135, Art. 14. (“Women shall be treated with all the regard due to their sex and shall in all cases benefit by treatment as favourable as that granted to men.”).

⁶¹ See, in particular, CEDAW, General Recommendation 24, paras. 11 and 14, and General Recommendation 25, para. 8.

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⁶³ See ICRC Women Facing War Study, at 34.

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⁶⁵ Harvard Humanitarian Initiative & Oxfam International, ‘Now the World is Without Me: An Investigation of Sexual Violence in Eastern Democratic Republic of Congo’ (April 2010) [hereinafter “Harvard & Oxfam, ‘Now the World is Without Me’”], at 41 (citing a maternal mortality rate in the Eastern DRC of “3,000 deaths per 100,000 live births”). See also: Global Justice Center, ‘The Right to an Abortion for Girls and Women Raped in Armed Conflict’ (February 2011), available at

http://globaljusticecenter.net/index.php?option=com_mtree&task=att_download&link_id=2&cf_id=34.

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⁶⁸ See e.g. Concluding Observations of the Committee against Torture on Nicaragua, UN Doc. CAT/C/NIC/CO/1, 10 June 2009, para. 16 (“The Committee is deeply concerned by the general prohibition of abortion . . . even in cases of rape, incest or apparently life-threatening pregnancies that in many cases are the direct result of crimes of gender violence. For the woman in question, this situation entails constant exposure to the violation committed against her and causes serious traumatic stress and a risk of long-lasting psychological problems such as anxiety and depression.”).

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- ⁸³ About IAWG, <http://iawg.net/about-iawg/>.
- ⁸⁴ Revised Inter-agency Field Manual, <http://iawg.net/>.
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