

Humanitarian Aid Policies & the Geneva Conventions:

Myths & Realities

The EU, together with Member States, provides the most humanitarian aid in the world and funds medical services in every conflict zone. However, the EU’s restrictive policy on abortion and the Geneva Conventions violates the inalienable rights of girls and women impregnated by war to all necessary medical care, including safe abortion services under international humanitarian law (IHL). As a global leader on humanitarian aid, the EU must change this policy to be in line with EU law and the Geneva Conventions.

Many people often question the necessity for a new policy. The following answers frequently asked questions and concerns, and explains why the EU’s humanitarian aid policy needs to affirm the rights of impregnated war rape victims—and why it is urgent to do so.

Myths	Realities
<i>What is the current EU position with respect to medical care for impregnated victims of war rape?</i>	The Commission’s policy is that the universal mandates of IHL do not govern the medical care given to women and girls raped and impregnated in war. ¹ Instead, the Commission applies national abortion laws as the appropriate medical care standard for these victims. Women—civilians and combatants alike—are the only category of persons “wounded and sick” in armed conflict who are, in violation of their rights, deliberately denied a medical treatment in a humanitarian context. ²
<i>Does the EU need to comply with IHL?</i>	Yes. The TFEU (article 214) and Council Regulation 1257/96 of 20 June 1996 concerning humanitarian aid requires that EU humanitarian aid comply with IHL. The Court of Justice of the European Union (CJEU) has also found that EU institutions must comply with customary international law (which includes IHL’s medical care mandates) in their exercise of powers. ³

Myths	Realities
<i>What are the obligations of EU Member States under IHL?</i>	All EU Member States must “respect” and “ensure respect” for IHL when they engage in situations of armed conflict, including when giving humanitarian aid. ⁴ In the context of medical care to the wounded and sick, Member States have an obligation to ensure that such care is provided without discrimination and is based solely on medical condition. These obligations are reinforced by UN Security Council Resolutions 2106 and 2122. ⁵
<i>Is there a right to abortion under IHL?</i>	The right in question is not an explicit right to abortion, but rather the undisputed right under the Geneva Conventions of all persons “wounded and sick” in armed conflict to all the medical care their condition requires without any adverse distinction. ⁶ A man raped by a gun may require reconstructive surgery, while a woman raped by a penis may need an abortion. Abortion happens to be the medical procedure required in certain cases.
<i>Is abortion specified under IHL as necessary medical care?</i>	No, but it doesn’t have to be. IHL does not refer to any particular medical treatments, and indeed could not, since medical protocols evolve over time according to medical advances. ⁷ Moreover, IHL treaties do not specify what kind of medical care and attention is required in each specific case. In short, IHL guarantees principles, not procedures.
<i>What about situations where abortion is illegal under national law?</i>	IHL supersedes national law when the two conflict. The medical mandates of IHL are universal, absolute, and non-derogable. ⁸ Therefore, when a woman becomes pregnant as a result of war rape, IHL dictates that she must be able to access the care required by her position, including the option of a safe abortion.
<i>Won’t doctors be prosecuted under national law and won’t humanitarian aid partners be expelled from conflict zones?</i>	No. Under the Geneva Conventions, doctors treating war victims are obligated to provide the care necessitated by the patient’s condition and in line with medical ethics, and in turn cannot be punished or prosecuted under national laws. ⁹ Humanitarian aid actors are also protected from prosecution or punishment when providing care for the “wounded and sick”. ¹⁰ The European Commission’s current policy makes this unclear, and this is why it must change.
<i>Doesn’t IHL have to be incorporated into domestic law to be applicable?</i>	No. IHL’s rules are not contingent on incorporation into domestic law. The International Committee of the Red Cross’s Guidelines on Professional Standards for Protection Work provide that domestic laws are to be used only when they reinforce IHL’s protections. ¹¹ The Guidelines also point out that, where IHL and domestic law conflict, domestic law cannot be used as an excuse for non-compliance with IHL.

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<i>Can't doctors refuse to perform abortions if it goes against their conscience?</i>	No. There is no recognition of any sort of “conscience clause” in the Geneva Conventions. ¹² All medical rights and ethics in conflict settings are only viewed through the needs of the patient—not the doctor’s own medical views. ¹³
<i>Do victims of armed conflict have special rights under IHL?</i>	Yes. IHL gives unique protections for victims of armed conflict, distinct from those covering all other humanitarian emergencies. These include: (1) the right to comprehensive, non-discriminatory medical treatment based solely on their medical condition irrespective of national law; and (2) the right to be free from torture or cruel, inhuman, or degrading treatment, including in the context of medical treatment. The applicability of these standards under IHL is universally recognized.
<i>Why is abortion necessary for victims of war rape? Can't they just be given emergency contraception instead?</i>	Emergency contraception, while essential in medical care for rape victims, is insufficient in the majority of conflict zones because it is only effective 72 to 125 hours after the rape. Generally, only a very small percentage of women present for treatment within this timeframe, as hospitals or humanitarian camps may not be easily accessible. In the DRC for example, one study found that as few as 0.6% of women received treatment within 72 hours.
<i>Won't it be impossible to provide abortions in conflict settings because of US restrictions on foreign aid?</i>	No. Not if the Commission requires that its humanitarian partners keep EU funds separated from US funds. For example, in order to ensure the best and most comprehensive care possible, MSF (Doctors Without Borders) refuses to accept US funding; in another example, the World Health Organization segregates US funds from its other donors.
<i>Why is EU leadership so critical on this issue?</i>	The EU and EU Member States together provide over half the world’s aid. As a result, the EU has the power, by changing its humanitarian aid policy, to shift existing practices worldwide and save countless women’s lives. In order to lead on IHL, the EU must begin to provide humanitarian aid in accordance with its obligations under IHL and EU law.



Endnotes

¹Letters from Kristalina Georgieva, Comm. for Int’l Coop., Hum. Aid., and Crisis Response, to GJC, June 30, 2014 and Sept. 8, 2014; Letter from Claus Sorenson, Dir. Gen. of ECHO, to GJC, Dec. 20, 2012.

²Global Justice Center, *The Right to Abortions...*

³Case C-286/90 *Anklagemyndigheden v. Peter Michael Poulsen and Diva Nav. Corp.* (1992), ¶ 9; Case T-115/94 *Opel Austria GmbH v. Council* (1997), ¶ 90; Case C-162/96, *A. Racke GmbH Co. v. Hauptzollamt Mainz* (1998), ¶¶ 45-46.

⁴Common Article 1 to the Geneva Conventions.

⁵S.C. Res. 2106, ¶ 19, U.N. Doc S/RES/2106 (June 24, 2013); S.C Res 2122, recitals, U.N. Doc S/RES/2122 (Oct. 18, 2013).

⁶Global Justice Center, *The Right to an Abortion for Girls and Women Raped in Armed Conflict*, at 8.

⁷Letter from Former ICRC Legal Director Louise Doswald-Beck to US President Barack Obama, Apr. 10, 2013.

⁸ICRC, *Non-Discrimination and Armed Conflict* (March 2001).

⁹ICRC, *Commentary to Additional Protocol I to the Geneva Conventions*, Art. 16, ¶ 665.

¹⁰AP I, art. 16.

¹¹ICRC, *Prof. Stand. For Protection Work Carried Out by Humanitarian and Human Rights actors in Armed Conflict and Other Sit. of Violence* (Oct. 2009), p. 40.

¹²Commentary AP I art. 16, ¶ 669.

¹³Commentary AP I art. 16, ¶ 669; World Medical Association, *WMA Regulations in Times of Armed Conflict*, 2006.

¹⁴See Harv. School of Pub. Health & Physicians for Human Rights, *The Use of Rape as a Weapon of War in the Conflict in Darfur, Sudan* (2004) at 20.

¹⁵See Report of the Sp. Rapp. on Torture, ¶ 46, U.N. Doc. A/HRC/22/53 (Feb. 1, 2013); see also CAT Concluding Observations: Peru, ¶ 23; Committee against Torture, *Concluding Observations: Chile*, ¶ 7(m), U.N. Doc. CAT/C/CR/32/5 (June 14, 2004); Human Rights Committee, *General Comment No. 28*, ¶ 11, U.N. Doc. CCPR/C/21/Rev.1/Add.10 (2000).

About Global Justice Center

The Global Justice Center (GJC) works for peace, justice, and security by enforcing international laws that protect human rights and promote gender equality.

We promote “power, not pity” as we advocate a model for justice that embraces the following tenets:

- Gender parity in power and under the law is essential to global security, justice, and prosperity for all.
- Discriminatory political and legal systems that fail to enforce human rights or ensure equal protection to women must be challenged.
- Progressive interpretation and enforcement of international law is a powerful catalyst for social and structural change and is necessary to establish a global “rule of law.”