

European Parliament Hearing

The Situation of Women in Armed Conflicts in the Context of Security Resolution 1325 on Women, Peace and Security

Briefing by Janet Benshoof, President, Global Justice Center

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I. Introduction: The problem with 1325

Thank you. It is an honor to address this body. The EU, unquestionably, is the global leader in advancing international law and women's equality.

As we sit here today, over 200 Christian Chibok schoolgirls are waking up to their 548th day of dehumanizing sexual degradation by their Boko Haram slave masters.¹ So too, ISIS continues expanding its genocidal hell; enslaving Yazidi and Christian girls and women in Iraq and Syria for a lifetime of "religiously" justified rape, even of prepubescent young girls, of forced impregnation, forced marriage, and forced conversion.²

What happened to 1325? Where is the Responsibility to Protect? Where is the Genocide Convention?

The Security Council has passed 1325 and seven additional resolutions to stop the rampant rape of women and girls in armed conflicts and to rectify peacekeeping and post conflict inequality.³ The very fact that the UN Security Council regularly examines the impact of today's armed conflict on women is a sea change for women's rights.

Progress has been made on 1325 goals but not on its central goal: mass rape of women and girls continues as the weapon of choice in a third of today's armed conflicts. This does not mean 1325 is at fault. The reasons *states and the UN working together, have failed to stop rape in war lie elsewhere.*

The Security Council's competency to pass 1325 is based in its mandate to stop gross violations of international humanitarian law, or the Geneva Conventions for shorthand, *as threats to international peace and security*. The Secretary-General's first report to the Council on 1325 in 2002 was unequivocal: to stop rape in war, the Geneva Conventions and Additional Protocols, must be enforced by all states without discrimination against women.⁴

The 1325 experience starkly exposes the soft underbelly of international humanitarian law; *it does not work for the women and girls at the center of today's wars.*

The historic model of armed conflict the Geneva Conventions were written for was men fighting other men with conventional weapons, like guns and explosives, across country borders. 90% of war casualties were male combatants, treated in military field hospitals.⁵

This is not the face of war addressed by 1325. Today's conflicts are largely internal, with non-state armed groups like ISIS. Targets aren't limited to enemy soldiers, rather women and girls are raped, killed, mutilated and enslaved as equally effective ways to win wars.⁶ 90% of modern war casualties are civilians, mainly women and children, whose medical care is in civilian hospitals.⁷

Even war wounds are different: brutal rapes result in traumatic injuries, HIV infection, and deadly pregnancies—half of war rape victims are girls under 18.⁸ Brutal penetrations result in genitourinary fistulas many which permanently destroy women and girl's sexual and reproductive organs.⁹

The Security Council called on states and the UN to stop rape in war by ensuring global respect for the Geneva Conventions.¹⁰ ***However, the Geneva Conventions aren't up for this task so long as they remain mired down in the mud of in their patriarchal origins.***

Think about it—mass rape used as a weapon is not responded to like other unlawful weapons, women's injuries from rape are not treated with the gravity of war wounds from conventional weapons, and women raped to death are not counted as battlefield deaths.¹¹ Crimes in war specific to women are ignored, limiting women's access to justice. 1325 calls for impunity, but for what crimes? Many crimes against women in war are not even seen as crimes.

The challenge for the global community is not how to fix 1325, but how to fix the Geneva Conventions so that they work for women and girls. Until this is done, no Security Council Resolution to stop rape in war can "work."

II. Making the Geneva Conventions Work for Women

The Geneva Conventions can be fixed—they were designed to be adaptable. States and international bodies like the EU can do **what the Geneva Conventions already require and ensure there is no adverse distinction against women in the application of all parts of international humanitarian law.** Girl children are entitled to enhanced protections; and the Geneva Conventions require that protections be tailored to account for girls' vulnerability as special targets for abductions, enslavement and forced pregnancy, are granted and respected.

This is not about gender mainstreaming. This is about upholding states nonderogable duties to ensure no adverse distinction against women under the laws of war, a duty so fundamental that compliance is owed to the global community.¹²

Think about the paradigm change needed: How many conferences on international humanitarian law and weapons use include an assessment of the lethality of and injuries from the use of rape as an illegal tactic of war?

Three Examples: Transforming the Situation of Women in War

I want to highlight three examples of the many forms of systemic discrimination against female war rape victims under the Geneva Conventions.

1. Discrimination under the “protecting victims” arm

The Geneva Conventions seek to alleviate human suffering in war in two ways: by protecting war victims and by regulating the “means and methods of warfare.”

Since 1864, central to protecting victims is that **states must ensure that all persons wounded and sick in armed conflict, civilians or soldiers, get all the medical care they need, based solely on their condition, with no adverse distinction based on sex or other criteria.**¹³ Of course the medical procedures which are needed evolve as the practice of medicine evolves.

Despite this absolute guarantee—girls and women impregnated by war rape are routinely denied abortions in humanitarian facilities. The result is forced childbearing, more deaths and injuries from continued pregnancy, and more—not less—suffering. If it were available, nearly all women in this situation would choose abortion as a UN study of outcome from war rape in the former Yugoslavia conflict concluded.¹⁴

There is good news on the horizon. Just two days ago the 15 year Global Study on 1325 endorsed by the Security Council and Secretary General said denying abortion services for female war rape victims abortions violates common Article 3, the Additional Protocols to the Geneva Conventions and customary international law, and the Conventions’ trump any local abortion laws.¹⁵

Given the male culture of war, it is hard for people to think in terms of abortion being “necessary” medical care for the “war wounded” or even that the “war wounded” include women and children who have been raped. Until recently, no implementation of 1325 took account of the fact that women victims in armed conflict have medical care rights under the Geneva Conventions law that may not exist for women in post-conflict situations.

There has been enormous progress on this front: the UK, France, the Netherlands, Security Council Resolution 2122, and recently the EU, have acknowledged that abortions are part of necessary medical care that victims of war rape must be provided under international humanitarian law.¹⁶ The UK implemented this policy by officially incorporating it into the Department for International Development’s policy paper on “Safe and unsafe abortion,” and communicating this change to all grantees of UK

humanitarian aid.¹⁷ The UK has informed its grantees that denial of abortion in this context could constitute torture or cruel treatment in breach of the Geneva Conventions.¹⁸

The Commission's recent new policy on abortion and the Geneva Conventions mirrors that of the UK, as the UK government has indicated to the UK parliament.¹⁹ **Because the EU is the world's second largest humanitarian aid donor, and with member states by far the largest, this policy—when implemented—will save lives and transform the fate of women and children raped in war.**²⁰ Key to the implementation of any EU policy is to ensure that all doctors funded by the EU for treating female war rape are informed of their legal obligations to provide all the care necessitated by the patient's condition and in line with medical ethics, including abortions, and that doctors have immunity from prosecution under national laws.²¹ Implementation of the EU policy will counter the dominating effect of the abortion ban the US attaches to its humanitarian aid funding for war victims. For the new Commission policy to work, EU partners in war zones will need to segregate their EU funds from contaminated US funds.

Let me give you one example: UNFPA is the multi-sectorial coordinator, including on medical care, for responding to gender-based violence in over 90% of high-risk countries, including in the DRC, Sudan, and Nigeria. In 2014, the US funded 4.77% of UNFPA's annual budget whereas the EU along with the top five EU member states funded some 49.2%.²² Yet, UNFPA applies the US abortion ban to all of its operations in every war zone.²³ Following information that nearly 1/3 of women and girls rescued from Boko Haram were pregnant, UNFPA stated earlier this year that "UNFPA does not promote abortion as a method of family planning nor does it have any abortion related interventions in Nigeria."²⁴

2. Discrimination under the Weapons prohibition arm

The Geneva Conventions have been effective in stopping, or deterring to a large degree, the use of unlawful weapons or tactics of war. This is because states that use them are stigmatized before other states, as demonstrated by the global condemnation and response to Syria's use of chemical weapons.²⁵ Prosecutions or the threat of prosecutions alone have never stopped the use of an unlawful weapon or tactic. The heinous use of mustard gas in World War I was stopped in World War II by getting states to agree on a ban—thereby stigmatizing a state in breach. The same goes for landmines.²⁶

Rape and chemical weapons are equally prohibited unlawful means or methods of warfare under the criteria set forth by the Geneva Conventions. The Security Council has repeatedly declared that rape is being used as a tactic of war and called for its cessation.²⁷ Both the UN and the ICRC have defined what elements must be present for rape to be an unlawful tactic or method of war.²⁸

More women and girls have suffered in Syria from rape used as a weapon of war, than from exposure to chemical weapons.²⁹ **The fact they are treated so differently, denies women equal protection of the weapons framework under the Geneva Conventions.**

Under international humanitarian law, all states are obligated to examine weapons and tactics of war under certain criteria and hold states accountable for the use of unlawful tactics.³⁰ Rape is so deeply embedded in the fabric of war its use as an illegal tactic of war is never treated like the use of a weapon, much less an unlawful weapon or tactic such as chemical weapons, dum dum bullets and starvation.

Take for example the Rwandan 1994 genocide. **One study showed that 75 percent of Tutsi women who were raped were either killed during or as a part of the rapes.**³¹ These deaths are routinely categorized as “nonviolent” or “indirect” deaths and are not counted towards numbers of “direct” deaths or battlefield casualties which form the baseline of global indices on conflict.³²

Putting the focus on states, in this case, rape-using states will remove the easy deflection to errant commanders. There are two signs of progress in this area, the conclusions of last year’s Global Summit to End Sexual Violence in Conflict hosted by the UK government, recognized that it is a grave breach of the Geneva Conventions and when used as a method of warfare it will always be unlawful – another breach.³³ Second, the Norwegian Labor party in its 2013-2017 Party Platform calls for rape in this manner to be classified as an unlawful weapon/tactic in the Rome Statute of the International Criminal Court.³⁴

3. Discrimination under the Accountability Arm

A key component of 1325 and the women, peace and security agenda is a call to end impunity for crimes against women in war.³⁵ While this call is repeatedly made, it is often unclear what it means. In fact, there continues to be discrimination in how crimes are understood, investigated and prosecuted. One key inquiry in the call for accountability is: what crimes are we ending impunity for?

Currently, the avenues of justice for women are limited. I have spoken about how the failure to ensure women’s rights to accountability and redress from states and individuals as victims of rape used as an unlawful tactic of war constitutes prohibited discrimination under international humanitarian law. **Another example of discrimination in the realm of accountability is that ongoing crimes against women and girls, which may amount to genocide, are not being prevented, suppressed, or punished.** These include two of the “non-killing” crimes of genocide: imposing measures intended to prevent births within the group, which includes forced pregnancy and the forcible transfer of children.³⁶ Further, genocide is the only international crime that explicitly allows all States parties to the Genocide Convention, even third-party uninjured States, to go to the International Court of Justice, as well as the Security Council, to seek to end genocide.³⁷

The failure to take such measures, for example with respect to the acts perpetrated by ISIS against Yazidi and Christian women and girls, ***deprives these victims of their rights under the Genocide Conventions, which imposes strict obligations on all states to act in face of genocide.***³⁸ ***Action now needs to be taken.***

III. Next steps for 1325

The Security Council must first and foremost require states and the UN to distinguish those actions to implement 1325 which are related to enforcing international humanitarian law, including women's rights to protection and medical care and to have rape stopped, from actions seeking to rectify inequality post-conflict processes and governance structures. **Understanding and utilizing the appropriate international law framework is essential to ensuring that women's rights in conflict are ensured.** Notably, the CEDAW Committee in its General Recommendation 30 on women in conflict prevention, conflict and post-conflict situations, lays out the complementarity between CEDAW, international humanitarian law and Security Council mandates on women, peace and security in order to ensure that state actions protect and ensure women's rights under all of these legal regimes.³⁹ The Security Council should similarly require implementation of IHL distinct from post-conflict measures.

State national action plans on 1325 are a case in point. Very few even contain the phrase "international humanitarian law," much less specify the actions they will take to uphold it for women. National action plans must not ignore states' preexisting duties to respond to rape in war as a violation of the Geneva Conventions and distinguish actions furthering the Geneva Conventions rights of women in conflict situations from other 1325 actions post conflict which are governed by a mosaic of national and human rights laws.

IV. Conclusion: The time is now

Never before has there been such a high level of state, UN, and EU commitment to stop sexual violence in war, and enforce women rights under the laws of war.

Strong, fundamental international laws and infrastructure bulwark this political will. These include 1325, international humanitarian law, obligations to prevent and punish genocide, the responsibility to protect doctrine and institutions like the International Criminal Court.

I am optimistic—indeed excited—that 1325 and related resolutions can be powerful tools to save women's lives and shape the future of war and peace. The EU has the power, influence, and political will to do just this. **Together we can change this ever again to truly never again for women.**

¹ UN Human Rights Council, *Report of the United Nations High Commissioner for Human Rights on violations and abuses committed by Boko Haram and the impact on human rights in the affected countries*, U.N. Doc. A/HRC/30/67, ¶ 30 (Sept. 29, 2015).

² UN Security Council, *Report of the Secretary-General on conflict-related sexual violence*, S/2015/203, ¶¶ 28-29 (Mar. 23, 2015).

³ S.C. Res. 1325, U.N. Doc. S/RES/1325 (Oct. 31, 2000); S.C. Res. 1820, U.N. Doc. S/RES/1820 (June 19, 2008); S.C. Res. 1888, U.N. Doc. S/RES/1888 (Sept. 30, 2009); S.C. Res. 1889, U.N. Doc. S/RES/1889 (Oct. 5, 2009); S.C. Res. 1960, U.N. Doc. S/RES/1960 (Dec. 16, 2010); S.C. Res. 2106, U.N. Doc. S/RES/2106 (June 24, 2013); S.C. Res. 2122, U.N. Doc. S/RES/2122 (Oct. 18, 2013); S.C. Res. 2242, U.N. Doc. S/RES/2242 (Oct. 13, 2015).

⁴ UN Security Council, *Report of the Secretary-General on women, peace and security*, S/2002/1154, ¶¶ 16-17 (Oct. 16, 2002).

⁵ *Id.* at ¶ 3.

⁶ See e.g. Le Monde, *Syria's Silent Crime: Systematic Mass Rape* (11 Mar. 2014); Amnesty International, *Escape from Hell: Torture and Sexual Slavery in Islamic State Captivity in Iraq* (2014); Human Rights Watch, *Mass Rape in Darfur: Sudanese Army Attacks against Civilian in Tabit* (Feb. 2015); Save the Children, *Unspeakable Crimes against Children: Sexual Violence in Conflict* (2013).

⁷ Study submitted by the Secretary-General pursuant to Security Council resolution 1325, ¶ 3.

⁸ UN Women, *Fast Facts: statistics on violence against women and girls*, <http://www.endvawnow.org/en/articles/299-fast-facts-statistics-onviolence-against-women-and-girls.html> (last visited Oct. 14, 2015).

⁹ Harvard. Hum. Ini. & Oxfam Int'l, *Now the World is Without Me: An Investigation of Sexual Violence in Eastern DRC* (Apr. 2010).

¹⁰ S.C. Res. 1325, U.N. Doc S/RES/1325, ¶ 9 (Oct. 31, 2000).

¹¹ Janet Benshoof, *The Other Red Line: The Use of Rape as an Unlawful Tactic of Warfare*, 5(2) GLOBAL POLICY MAGAZINE 146, 152 (2013).

¹² JEAN-MARIE HENCKHAERTS & LOUSIE DOSWALD-BECK, CUSTOMARY INTERNATIONAL HUMANITARIAN LAW: VOLUME I, Rules 87 (humane treatment), 90 (prohibition on torture and cruel, inhuman or degrading treatment) and 110 (wounded and sick must be collected and cared for) (International Committee of the Red Cross 2005). See also *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States)*, Merits, Judgment, I.C.J. Reports 1986, ¶ 218; Jelena Pejic, *Non-discrimination and Armed Conflict*, INT'L REV. RED CROSS 841; Common Article 1 to the Geneva Conventions of 1946.

¹³ Common Article 3 to the Geneva Conventions of 1949; Additional Protocol I of the Geneva Conventions, Arts. 10, 16; Additional Protocol II of the Geneva Conventions, Arts. 7, 10.

¹⁴ Commission on Human Rights, *Report on the situation of human rights in the territory of the former Yugoslavia submitted by Mr. Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights, pursuant to Commission resolution 1992/S-1/1 of 14 August 1992*, U.N. Doc. E/CN.4/1993/50, Annex II: Report of the team of experts on their mission to investigate allegations of rape in the territory of the former Yugoslavia from 12 to 23 January 1993 (Feb. 10, 1993).

¹⁵ UN Women, *Preventing Conflict, Transforming Justice, Securing the Peace: Global Study on the Implementation of United Nations Security Council Resolution 1325*, pp. 65-66, Oct. 2015.

¹⁶ S.C. Res. 2122, U.N. Doc. S/RES/2122, preamble paragraph (18 Oct. 2013); UN Women, *Preventing Conflict, Transforming Justice, Securing the Peace: Global Study on the Implementation of United Nations Security Council Resolution 1325*, pp. 65-66, Oct. 2015; DEPARTMENT FOR INTERNATIONAL DEVELOPMENT, SAFE AND UNSAFE ABORTION - THE UK'S POLICY ON SAFE AND UNSAFE ABORTION IN DEVELOPING COUNTRIES (a DfID Strategic Document), June 2014, at p. 9; See Written parliamentary answers from Frans Timmermans, Minister of Foreign Affairs, and Liliaane Ploumen, Minister of Foreign Trade and Development Aid, in answer to questions from Parliament Member Sjoerd Sjoerdsma regarding safe abortion for raped women in war zones (Mar. 8, 2013); Security Council, 6984th meeting, U.N. Doc. S/PV.6984 (June 24, 2013), at 48 (statement by Netherlands); Security Council, 7160th meeting, U.N. Doc. S/PV.7160 (Apr. 25, 2014), at 15 (statement by France); European Commission, Letter from Federica Mogherini (EU High Representative of the Union for Foreign Affairs and Security Policy) and Christos Stylianides (Commissioner for Humanitarian Aid and Crisis Management) in response to request of 39 MEPs for Commission to evaluate its policy on abortions for victims of war rape, Sept. 11, 2015.

¹⁷ DEPARTMENT FOR INTERNATIONAL DEVELOPMENT, SAFE AND UNSAFE ABORTION - THE UK'S POLICY ON SAFE AND UNSAFE ABORTION IN DEVELOPING COUNTRIES (a DfID Strategic Document), June 2014, at p. 9.

¹⁸ *Id.*

¹⁹ UK House of Lords, *Written Parliamentary Question by Lord Lester of Herne Hill of her Majesty's Government on Armed Conflict, Sexual Offences*, HL2207 (Sept. 14, 2015).

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- ²⁰ Global Humanitarian Assistance, Global Humanitarian Assistance Report 2014, p. 27.
- ²¹ See Protocol II, art. 10; Protocol I, art. 16; ICRC, Commentary to Protocol I, art. 16, ¶ 665; ICRC, Customary IHL Database, Rule 26 (medical activities); World Medical Association, *WMA Regulations in Times of Armed Conflict*, 2006.
- ²² United Nations Population Fund, UNFPA Annual Report 2014, p. 56.
- ²³ Congressional Research Service, *Abortion, Judicial History and Legislative Response (Jon O. Shimabukuro)*, at 14, Sept. 16, 2015 UNFPA – Frequently Asked Questions, <http://www.unfpa.org/frequently-asked-questions> (last visited Oct. 14, 2015).
- ²⁴ Favour Nnabugwu, *Nigeria: UNFPA Denies Promoting Abortion Among Rescued Women, Girls*, ALL AFRICA, May 26, 2015.
- ²⁵ S.C. Res. 2209, U.N. Doc S/RES/2209, (Mar. 6, 2015).
- ²⁶ A. BRYDEN, INTERNATIONAL LAW, POLITICS AND INHUMANE WEAPONS: THE EFFECTIVENESS OF GLOBAL LANDMINE REGIMES (2012). See also, M. Finnemore, M. and K. Sikkink, *International Norm Dynamics and Political Change*, 52(4) INTERNATIONAL ORGANIZATION 907–908 (1998).
- ²⁷ S.C. Res. 1820, U.N. Doc S/RES/1820, preambular paragraph 6 (June 19, 2008); S.C. Res. 1888, U.N. Doc S/RES/1888, operational paragraph 1 (Sept. 30, 2009); S.C. Res. 1960, U.N. Doc S/RES/1960, operational paragraph 1 (Dec. 16, 2010); S.C. Res. 2106, U.N. Doc S/RES/2106, operational paragraphs 1, 12 (June 24, 2013); S.C. Res. 2242, U.N. Doc S/RES/2242, preambular paragraphs 10, 14 (Oct. 13, 2015).
- ²⁸ UN Action against Sexual Violence in Conflict, *Analytical & Conceptual Framing of Conflict-Related Sexual Violence*, at 2; International Committee of the Red Cross, Customary International Law Database, Rule 93, Rape and Other forms of Sexual Violence, available at https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule93.
- ²⁹ The Syrian civil war, ongoing since 2011, has seen an estimated 50,000 rapes. See Le Monde, *Syria's Silent Crime: Systematic Mass Rape* (11 Mar. 2014).
- ³⁰ Common Article 1 to the Geneva Conventions of 12 August 1949; Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977, Art. 36; International Committee of the Red Cross, Customary International Law Database, Rule 139: Respect for International Humanitarian Law, Rule 157: Jurisdiction over War Crimes, Rule 158: Prosecution of War Crimes.
- ³¹ C. Bijleveld, A. Morssinkhof, & A. Smeulers, *Counting the Countless: Rape Victimization During the Rwanda Genocide*, 19(2) International Criminal Justice Review 208–224 (2009); M. Verpoorten, *The Death Toll of the Rwandan Genocide: A Detailed Analysis for Gikongoro Province*, 60(4) Population 331–367 (2005).
- ³² Geneva Declaration, Global Burden of Armed Violence, pp. 38-39 (2008); Uppsala Univ., Dept. of Peace and Conflict Research, *Definitions*, http://www.pcr.uu.se/research/ucdp/definitions/#Battle-related_deaths (Oct. 14, 2015).
- ³³ UK Foreign and Commonwealth Office, *Chair's Summary – Global Summit to End Sexual Violence in Conflict* (June 2014).
- ³⁴ *Moving Norway Forward: The Programme of the Norwegian Labour Party 2013-2017*, at 93.
- ³⁵ S.C. Res. 1325, U.N. Doc S/RES/1325, ¶ 11 (Oct. 31, 2000).
- ³⁶ See International Criminal Court, *Elements of Crimes*, Sec. 6(d) & (e).
- ³⁷ Convention on the Prevention and Punishment of the Crime of Genocide, Art. 8; *Case Concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, I.C.J. Judgment of 26 Feb. 2007.
- ³⁸ Convention on the Prevention and Punishment of the Crime of Genocide, Arts. 5, 6, 8.
- ³⁹ Committee on the Elimination of Discrimination Against Women, General Recommendation No. 30 on Women in Conflict Prevention, Conflict and Post-Conflict Situations, ¶¶ 19-28, U.N. Doc. CEDAW/C/GC/30 (2013).