

Commissioner Kristalina Georgieva  
Member of the European Commission  
International Cooperation, Humanitarian Aid and Crisis Response  
B-1049 Brussels  
Belgium

25 April 2014

Re: The Commission's Policy on Abortions for Women and Girls Impregnated by Rape in Armed Conflict

Dear Commissioner Georgieva,

We are writing on a matter of the utmost importance: to urge the European Commission to change its current position that *the Geneva Conventions do not apply to the medical care accorded women and girls impregnated by war rape*.<sup>i</sup> This Commission policy, which applies to all EU humanitarian aid, perpetuates the routine and deadly denial of life- and health-saving abortions to girls and women made pregnant by rape in armed conflict in humanitarian settings, the majority of which are funded by the European Commission and member states.<sup>ii</sup>

The Commission's position is to defer to national abortion laws to provide the appropriate standard of care for EU-funded medical services for female war rape victims, whether it be civilian girls and women or servicewomen, including female military peacekeepers who are raped in armed conflict or as POWs. This EU policy legitimizes forced childbearing as an appropriate medical outcome for the vast majority of war rape survivors, given that most countries where rape in armed conflict is endemic prohibit abortions as a matter of law or in practice.

The Commission's policy on abortion and the Geneva Conventions stands in sharp contrast with that of its largest donors, the United Kingdom and France. The UK has repeatedly made clear that the Geneva Conventions, not national laws, govern the scope of medical care that must be provided to women victims of rape in armed conflict, including abortions.<sup>iii</sup>

The Commission's policy also violates the rights of war rape victims under international humanitarian law (IHL).<sup>iv</sup> IHL, including the Geneva Conventions, its Additional Protocols, and customary international law, mandate that *all persons* "wounded and sick" in armed conflict receive "to the fullest extent practicable and with the least possible delay the medical care and attention required by their condition," with no adverse distinction made "on any grounds other than medical ones."<sup>v</sup> For women and girls impregnated by war rape—and facing unwanted and oftentimes dangerous pregnancies—the option of safe abortion is the medical care required by their condition. Further, IHL requires that women "shall be treated with all the regard due to their sex and shall in all cases benefit from [medical] treatment as favourable as that granted to men."<sup>vi</sup>

We call your attention to the letter of Professor Louise Doswald Beck, former legal director of the International Committee of the Red Cross, to US President Barack Obama, detailing how the omission of abortion services for female war rape survivors violates the IHL prohibition on “adverse distinction,” which precludes any use of “biological differences between males and females as a rationale for less favorable treatment of females.”<sup>vii</sup> Professor Beck explains that:

“Distinctions on the basis of sex are . . . prohibited only to the extent that they are unfavorable or adverse, favorable distinctions are permissible and indeed required, to ensure the best possible treatment for each person. . . . 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.”<sup>viii</sup>

All EU member states have ratified the Geneva Conventions and the 1977 Additional Protocols, and they have nonderogable obligations under common Article 1 of the Geneva Conventions to ensure that their humanitarian aid “respects” and “ensures respect” for the Conventions in all circumstances.<sup>ix</sup> This duty applies to the European Commission in its stewardship of member states’ humanitarian aid.<sup>x</sup>

The Commission defends its deferral to national laws prohibiting abortions for rape victims by arguing that this is necessary for the EU to do because “[v]iolating domestic law would carry the risk of prosecution which would put humanitarian aid at risk.”<sup>xi</sup> This rationale is not supportable.

The purpose of the Geneva Conventions was to establish binding international rules covering all war victims regardless of geographic location. IHL contains no exception allowing states, or in this case the EU on behalf of states, to derogate from these universal rules by denying a needed medical treatment (abortion) to one category of war victims (women rape survivors) in order to not risk upsetting the conflict state;<sup>xii</sup> in other words, IHL does not permit sacrificing some victims (women) in order to avoid a potential future denial of humanitarian aid to all victims.

Moreover, military and civilian doctors treating war victims, including wounded servicewomen, are under an absolute legal duty to provide optimal medical care, guided solely by medical ethics without regard to any conflicting national laws. In turn, IHL provides doctors and medical workers with absolute immunity from prosecution for breaches of national laws, including laws criminalizing abortion.<sup>xiii</sup> The IHL medical treatment mandates for victims of armed conflict are very different from national or human rights based standards of care in non-conflict emergency settings, where doctors have no heightened legal duties or immunities.

While the Commission has publicly applauded the EU guidelines on promoting compliance with IHL,<sup>xiv</sup> it does not follow them. The guidelines require all EU bodies to identify, “without delay,” which of their activities take place in situations where IHL may apply” and “recommend action to promote compliance with IHL in accordance with these Guidelines.”<sup>xv</sup> The Commission takes the opposite approach to the guidelines by adopting a “one policy fit all” standard for its distribution of humanitarian aid,<sup>xvi</sup> failing to

differentiate—or to require its partners to differentiate—between beneficiaries of EU aid entitled to the protections of IHL and those in non-conflict settings governed by national law and applicable human rights law. This policy not only violates the guidelines but the Treaty on the Functioning of the European Union, which mandates that the EU's "[h]umanitarian aid operations shall be conducted in compliance with the principles of international law and with the principles of impartiality, neutrality and non-discrimination."<sup>xvii</sup>

The Commission's absolute duty to recognize that medical care for impregnated female war rape survivors is governed by IHL is underscored by Security Council Resolution 2122 (2013). The Security Council, in a historic move, made clear in Resolution 2122 that states' humanitarian aid for war rape victims must provide all medical options including abortion, "noting the need for access to the full range of sexual and reproductive health services, including regarding pregnancies resulting from rape, without discrimination."<sup>xviii</sup> Although the word "abortion" was not explicit, the Council's action was in direct response to UN Secretary General Ban Ki-moon's recommendation that war rape victims should be ensured "services for safe termination of pregnancies resulting from rape, without discrimination and in accordance with international human rights and humanitarian law."<sup>xix</sup> Resolution 2122 was passed unanimously, co-sponsored by 24 member states of the European Union, with others expressing support,<sup>xx</sup> and greeted with strong acclaim by women's rights organizations around the world.

We note further that the Geneva-based World Organization against Torture, the largest global network of non-governmental organizations combating torture, has stated that aid policies which prevent rape victims from accessing abortion are "contrary to the absolute prohibition of torture and cruel, inhuman or degrading treatment or punishment."<sup>xxi</sup>

Finally, we would urge the Commission to heed the two European Parliament resolutions addressing the US abortion ban imposed on all US humanitarian aid, which include a call for EU humanitarian aid, in compliance with Security Council Resolution 1325, to be segregated from US aid in order to "ensur[e] access to abortion for women and girls who are victims of rape in armed conflicts."<sup>xxii</sup>

The US abortion ban operates to prevent the Commission from ensuring its partners provide abortions for women rape survivors<sup>xxiii</sup> even where such abortions are legal under national laws including in the Sudan, Central African Republic and Syria.<sup>xxiv</sup> The Global Justice Center has previously provided the Commission with specific examples where the US abortion ban de facto applies to EU humanitarian aid because EU partners do not, with the exception of the World Health Organization, segregate their EU aid from their US aid.

We applaud the EU for its global leadership on the enforcement of IHL, particularly with regard to girls and women raped in armed conflict. As you stressed in a recent speech, "[i]n the European Union, we hold IHL dear to our hearts."<sup>xxv</sup>

This summer's Global Summit on Preventing Sexual Violence in Conflict, to be held in London in June, serves as a perfect opportunity for the EU and the Commission to again

lead the way in compliance with IHL by amending its humanitarian aid policy so that it ensures IHL protection for women who have been raped and impregnated in war.

Respectfully,



Janet Benshoof

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<sup>i</sup> In a 2012 letter to the Global Justice Center outlining ECHO policy, the director-general of DG ECHO stated the following: “Neither international humanitarian law nor international human rights law explicitly refer to abortion rights and therefore the legal primacy of international frameworks on this issue is not clear. Even if international humanitarian law were to give unequivocal rights in this field (which does not currently appear to be the case), in many countries this law is only enforceable if integrated into domestic law. Generally speaking, our humanitarian partners advise their staff operating in country to abide by the laws of the land. Violating domestic law would carry the risk of prosecution which would put humanitarian aid at risk.” Letter from Claus Sørensen, Director-General DG ECHO, to Global Justice Center (20 Dec. 2012). Thus, ECHO recognizes national law, rather than the Geneva Conventions, as the applicable legal framework for determining the medical treatment due war rape victims. Further, in response to parliamentary questions in July 2012, Commissioner Georgieva explained that ECHO relies on the Minimum Initial Service Package of Reproductive Health in Crises (MISP), which defers to local laws that criminalize abortion, as the defining standard of care provided to rape victims in humanitarian settings. This deference to national law in situations of armed conflict, where IHL reigns supreme, violates the absolute, non-derogable obligations of the Geneva Conventions.

<sup>ii</sup> The European Union is the second largest donor of humanitarian assistance in the world. Global Humanitarian Assistance, *EU Institutions*, available at: <http://www.globalhumanitarianassistance.org/countryprofile/eu-institutions>.

<sup>iii</sup> See Question Asked by Lord Lester regarding Abortion –Answered by Baroness Warsi, Senior Minister of State, Department for Communities and Local Government & Foreign and Commonwealth Office (21 Jan. 2014), available at <http://www.publications.parliament.uk/pa/ld201314/ldhansrd/text/140121w0001.htm> (“The UK welcomes the UN Security Council’s focus on improving access to sexual and reproductive health. In light of the recent resolution 2122, we have reviewed the UK policy position on safe and unsafe abortion and clarified within it our view of abortion and international humanitarian law principles: where abortion is permitted, UK aid can be used for activities to improve the quality, safety and accessibility of abortion services. In conflict situations where denial of abortion would threaten the woman’s or girl’s life, international humanitarian law principles may justify offering an abortion rather than perpetuating what amounts to inhuman or degrading treatment.”); UK Parliament, *Question for Short Debate: Rape in Armed Conflict* (9 Jan. 2013), available at [http://www.publications.parliament.uk/pa/ld201213/ldhansrd/text/130109-0002.htm#1301\\_0975\\_000273](http://www.publications.parliament.uk/pa/ld201213/ldhansrd/text/130109-0002.htm#1301_0975_000273) (“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.”) (Answer by Baroness Northover).

<sup>iv</sup> Including the mandates 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, which are absolute, nonderogable, and peremptory norms of international law.

<sup>v</sup> See Global Justice Center, *The Right to an Abortion for Girls and Women Raped in Armed Conflict* (Feb. 2011), at 8, available at <http://globaljusticecenter.net/index.php/publications/briefs-and-white-papers/2-the-right-to-an-abortion-for-girls-and-women-raped-in-armed-conflict-february-2011> (citing Protocol Additional (I) to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts

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[hereinafter “Protocol I”], (1979) 1125 U.N.T.S. 3, Art. 10; Protocol 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 U.N.T.S. 609, Art. 7); *see also* International Committee of the Red Cross (ICRC), Customary International Humanitarian Law Database, *Rule 88. Non-Discrimination*, available at [http://www.icrc.org/customary-ihl/eng/docs/v1\\_rul\\_rule88](http://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule88).

<sup>vi</sup> *See* Geneva Convention (III) Relative to the Treatment of Prisoners of War, (1949) 75 U.N.T.S. 135, Art. 14.

<sup>vii</sup> *See* Letter from Prof. Louise Doswald-Beck, Former Head, Legal Division, International Committee of the Red Cross, to President Obama (10 Apr. 2013), at 2, available at [http://www.globaljusticecenter.net/index.php?option=com\\_mtree&task=att\\_download&link\\_id=321&cf\\_id=34](http://www.globaljusticecenter.net/index.php?option=com_mtree&task=att_download&link_id=321&cf_id=34).

<sup>viii</sup> *See id.*

<sup>ix</sup> *See* Common Article 1 to the Geneva Conventions of 1949.

<sup>x</sup> Notwithstanding the EU’s separate legal personality and supremacy, the EU is the de facto successor to certain obligations of Member States. Article 351 of the Treaty on the Functioning of the European Union preserves for EU Member States those obligations incumbent upon them before acceding to the EU. *See* Consolidated Version of the Treaty on the Functioning of the European Union art. 351, Sep. 5, 2008, 2008 O.J. (C 115) 47; Regional Office for Europe, OHCHR, *EU and Human Rights Law*, at 26. As a consequence of article 351, the European Union Court of Justice has held that where Member States have transferred powers to the EU necessary for performing the obligations incurred under prior treaties, the EU may de fact succeed to their obligations. Regional Office for Europe, OHCHR, *EU and Human Rights Law*, at 26.

<sup>xi</sup> *See* Letter from Claus Sørensen, Director-General DG ECHO, to Global Justice Center (20 Dec. 2012).

<sup>xii</sup> *See* International Court of Justice (1996) Advisory Opinion, *Legality of the Threat or Use of Nuclear Weapons*, Case No. 1996 I.C.J. 226, ¶ 79, 8 July (finding that “a great many” rules of IHL must be observed by all states because they “constitute intransgressible principles of international customary law”).

<sup>xiii</sup> Protocol I, Art. 16(1) (“Under no circumstances shall any person be punished for carrying out medical activities compatible with medical ethics, regardless of the person benefiting therefrom.”); Protocol II, Art. 10(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.”); ICRC, Customary International Humanitarian Law Database, *Rule 26. Medical Activities*, available at [http://www.icrc.org/customary-ihl/eng/docs/v1\\_rul\\_rule26](http://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule26) (“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.”).

<sup>xiv</sup> Speech by Kristalina Georgieva, EU Commissioner for International Cooperation, Humanitarian Aid and Crisis Response, “The European Union at the Front of Protecting International Humanitarian Law,” given at Palais D’Egmont, Brussels (29 Jan. 2014).

<sup>xv</sup> Updated European Union guidelines on promoting compliance with IHL (2009/C 303/06), Section II, ¶ 15.

<sup>xvi</sup> In response to a question about the status of women raped in war, Director-General of DG ECHO, Clause Sørensen, has stated: “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.” *See* Letter from Claus Sørensen, Director-General DG ECHO, to Global Justice Center (20 Dec. 2012).

<sup>xvii</sup> The Treaty of Lisbon amending the Treaty Establishing the European Union and the Treaty Establishing the European Community, including the Protocols and Annexes, and Final Act with Declarations art. 188(J)(2), 13 Dec. 2007, 2007 O.J. (C 306) 1; *accord* Consolidated Version of the Treaty on the Functioning of the European Union art. 214, Sep. 5, 2008, 2008 O.J. (C 115) 47.

<sup>xviii</sup> United Nations Security Council Resolution 2122, Preamble, U.N. Doc. S/Res/2122 (2013).

<sup>xix</sup> *See* Report of the Secretary-General on women and peace and security, U.N. Doc. S/2013/525 (4 Sept. 2013), at ¶ 72(a); American Society of International Law, *Substantive New Normative Provisions on Women and Armed Conflict Concurrently Adopted by the United Nations Security Council and the CEDAW Committee* (18 Feb. 2014), available at <http://www.asil.org/insights/volume/18/issue/5/substantive-new-normative-provisions-women-and-armed-conflict>. Resolution 2122 also reinforces the Security Council’s earlier call in Resolution 2106, in June 2013, for the UN and donor countries to ensure that girls and women raped in armed conflict are provided “non-

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discriminatory and comprehensive health services, including sexual and reproductive health.” United Nations Security Council Resolution 2106, ¶ 19, U.N. Doc. S/RES/2106 (2013).

<sup>xx</sup> Security Council, 7044th meeting, at 2, U.N. Doc. S/PV.7044 (18 Oct. 2013). While only 4 EU member states did not co-sponsor the resolution, they still expressed support: Ireland “warmly welcome[d]” the Resolution and Slovenia “particularly welcome[d] the reference to the need for access to a full range of sexual and reproductive health services in the resolution adopted today.” See Statement by Mr. Donaghue, Permanent Mission of Ireland to the United Nations, Security Council Open Debate on Women, Rule of Law and Transitional Justice in Conflict-Affected Situations (18 Oct. 2013); Statement by Mr. Logar, Permanent Mission of Slovenia to the United Nations, Security Council Open Debate on Women, Rule of Law and Transitional Justice in Conflict-Affected Situations (18 Oct. 2013).

<sup>xxi</sup> Letter from Gerald Staberock, Secretary General of the World Organisation Against Torture (OMCT), to US President Barack Obama (28 Nov. 2012).

<sup>xxii</sup> European Parliament resolution of 13 June 2013 on the Millennium Development Goals – defining the post-2015 framework (2012/2289 (INI)), ¶ 31 (“Urges that the provision of EU humanitarian aid that contributes to the attainment of the MDGs and should effectively be excluded from the restrictions on humanitarian aid imposed by the USA or other donors, in particular *by ensuring access to abortion for women and girls who are victims of rape in armed conflicts*”) (emphasis added); European Parliament resolution of 13 March 2012 on equality between women and men in the European Union - 2011 (2011/2244(INI)), ¶ 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.*”) (emphasis added). The International Development Committee of the United Kingdom (UK) House of Commons has also urged the UK’s Department for International Development (DFID) to take a stand on the US abortion ban on humanitarian aid: “We also recommend that DFID engage in serious dialogue with donors that restrict the use of their funds for abortion—notably the US Government—to ensure that women raped in humanitarian conflict settings can access the services they need, including abortion. DFID should work with its counterparts in the US, and with agencies affected by the US ban, such as the ICRC, to ensure that women raped in humanitarian conflict settings can access the services they need, including abortion.” Third Special Report of the International Development Committee of the House of Commons, Session 2013-14: Violence Against Women and Girls, Appendix: Government Response (3 Sept. 2013).

<sup>xxiii</sup> The US abortion ban applies to all US humanitarian aid, including aid to organizations providing medical care in war zones, such as the ICRC and UN entities. These same organizations are also funded by the EU, and—because US funds are not segregated—the abortion ban is applied to their entire operations, barring EU aid from providing access to abortion. The EU’s bilateral aid to countries in armed conflict is also compromised as the abortion ban is a condition attached to all US bilateral aid to foreign governments.

<sup>xxiv</sup> Abortion is legal in Sudan to save a woman’s life, in case of rape or incest, or in case of fetal impairment; legal in the Central African Republic to save a woman’s life; and legal in Syria to save a woman’s life. United Nations Department of Economic and Social Affairs, Population Division, *World Abortion Policies 2013*, available at [http://www.un.org/en/development/desa/population/publications/pdf/policy/WorldAbortionPolicies2013/WorldAbortionPolicies2013\\_WallChart.pdf](http://www.un.org/en/development/desa/population/publications/pdf/policy/WorldAbortionPolicies2013/WorldAbortionPolicies2013_WallChart.pdf).

<sup>xxv</sup> Speech by Kristalina Georgieva, EU Commissioner for International Cooperation, Humanitarian Aid and Crisis Response, “The European Union at the Front of Protecting International Humanitarian Law,” given at Palais D’Egmont, Brussels (29 Jan. 2014).