

World Humanitarian Summit
Making IHL Work for Women and Girls
Panel Presentation of Janet Benshoof
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Thank you, Charlotte and distinguished panelists.

My remarks focus on how to make the Geneva Conventions work for women.

International humanitarian law or as I will use interchangeably, the Geneva Conventions, is the oldest, and most accepted of all international laws. Girls and women raped in war, like all other war victims, have inalienable rights to protection and assistance under the Geneva Conventions. Neither national laws nor restrictive donor policies are a defense to breaches of women's rights under the Geneva Conventions.

Over the last twenty years, we have seen enormous advances for women under international humanitarian law including:

- Eight Security Council Resolutions on Women Peace and Security affirming and advancing the duties of States and the UN to ensure women victims of armed conflict are accorded equal protection under international humanitarian law including to medical services;
- Security Council Resolutions finding that rape is being used as a tactic of warfare as defined under international humanitarian law. This finding requires states and the UN to treat such use of rape like the use of other prohibited tactics and weapons of warfare.
- The inclusion of rape and other gender crimes in the Statute for the International Criminal Court with the same gravity of all other crimes;
- Decisions from international tribunals finding rape in armed conflict as torture, a constituent element of genocide, crimes against humanity and as a war crime;
- The March 2016 ICRC updated commentaries on the Geneva Conventions affirming:

- that all persons protected under the Geneva Conventions have inalienable rights and are entitled to redress for breaches of those rights,
- that IHL is distinct from the laws that apply to situations of natural disasters and states are obligated to uphold the distinct rights of persons protected by the Geneva Conventions irrespective of state law; and
- that women's rights to non-discrimination as defined by the Geneva Conventions require states to ensure the specific needs of women are met; only distinctions adverse to women are prohibited.

Laws do not advance on their own. Women's rights under the Geneva Conventions have advanced only because people like all of you have pushed for those advances.

Despite this progress, there still exists an enormous gap between women's rights on paper and the reality of women's lives in war zones. States and humanitarian actors can close this gap by building on these advances and doing the following:

First, states, humanitarian actors and international entities like the UN and the EU, should pledge to:

- Uphold international humanitarian law in all of their operations, whether as a party to a conflict or as a third party state providing humanitarian aid.
- Take positive steps to distinguish which humanitarian aid beneficiaries have inalienable rights under the Geneva Conventions, and which beneficiaries are governed by various national or human rights laws.
- Advance women's rights to non-discrimination as non-discrimination as defined under IHL. States have positive obligations to provide women and girls all the services they need in order to ensure that the outcome for women and girls is as favorable as for men and boys. This applies to all provisions of international humanitarian law including rules governing the use of weapons and those on protection and assistance for war victims.

This pledge should be in every MOU or agreement a state, international entity or humanitarian organization enters into with a state or non-state party to conflict.

Next, the Geneva Conventions exist solely to relieve human suffering. In order to make the Geneva Conventions work for women, positive steps must be taken to ensure non-discrimination of women under IHL rules governing the rights of war victims to comprehensive medical care.

For example, women impregnated by rape in armed conflict, who are considered torture victims, are entitled to all the non-discriminatory medical care they need based solely on their condition, including abortions.

This is not about reproductive or sexual rights or even a so-called “right to abortion.” All persons “wounded and sick” in armed conflicts, have the same right to all the medical care they need under the Geneva Conventions. Civilian and military doctors treating war victims are immune from being prosecuted under national laws. Although women impregnated by war rape in armed conflict continue to be denied abortions in humanitarian aid settings, this is changing.

In 2010, Norway became the first country to challenge the abortion ban on US humanitarian aid for war victims as violating the rights of girls and women raped in war.

In 2013, the United Kingdom became the first country in the world to acknowledge that for girls and women raped in war, the right to all necessary medical services under the Geneva Conventions includes abortion, irrespective of any national anti-abortion laws. And, further, that to deny a war victim an abortion could constitute inhumane treatment under the Geneva Conventions.

Subsequently, both the Netherlands and France affirmed this same UK policy, as have the UN Secretary-General and the UN Security Council.

Now, what could be a game changer is that in 2015 the EU also changed its policy on the Geneva Conventions and abortion to that of the UK. This was followed up by language in the 2016 EU budget which requires all EU funded partners to fully comply with common Article 3 of the Geneva Conventions and prohibits partners from letting the ban on US aid affect the way EU funds are used for women war victims.

However, the lives of women and girls will only be saved by implementation. Until then, this enormous sea change exists only on paper. Participants at this conference, particularly the United States, by lifting the Helms abortion ban on foreign aid, can make this happen.

In my limited time, I want to call to your attention the systemic discrimination against women in how states enforce the IHL prohibitions on the use of certain weapons and tactics of war. There is a consensus that rape is used as an unlawful tactic of war, but rape is not treated like the use of other unlawful tactics. Why is this so important? Deterrence. The use of unlawful tactics or weapons has never been stopped by prosecuting individual perpetrators, such as the soldiers who embed landmines or use chemical weapons. However, states stigmatizing the use of a heinous tactic or weapon by other states, as was done in response to the use of mustard gas in WWI, has proven effective.

Finally, the most effective way to enforce the rights of girls and women under the Geneva Conventions is to ensure that local women's groups supporting war victims, and often engaging with local armed groups, are equipped to utilize and engage with IHL in their work. This includes through the provision of adequate and long-term funding and support to groups like the group my fellow panelist Julienne Lusenge is president of, Female Solidarity for Integrated Peace and Development (Sofepadi), a Congolese organization founded by 24 women to promote women's rights and campaign for an end to sexual violence in the DRC.

Humanitarian actors, including states and the UN, are under a moral and legal imperative to ensure that humanitarian aid providers advance the rights of girls and women under the Geneva Conventions. Making these rights real will save lives and transform the future of women in war.