Rejecting Sexual Violence in Conflict: Significant Progress; Ongoing Challenges

by

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Acknowledgements

This dissertation is an attempt to contribute to an awareness of the reality of tactical rape and sexual violence in war. It is an attempt to engage other writers and analysts to consider the nature and implications of developing normative rejection and condemnation of these crimes. It is hoped this will contribute to actions to confront these violations of humanitarian law. It is an attempt, too, to identify appropriate grounds for pressuring states to confront these crimes as threats to international stability.

This dissertation has been inspired by experiences related to me by many women and girls encountered in war zones and refugee camps. It is an attempt to keep faith with those who sat on cold, concrete floors and those who sat in African darkness, who often held my hand and cried as they told me what had happened to women in wars. Sometimes it was couched as, ‘this woman I know’ or ‘my sister’ or ‘my daughter’. Sometimes it was admitted as the teller’s own tale. They were stories of great courage, terrible suffering and of the additional outrage of shame felt by victims. Their specific stories are not used in this dissertation but the stories of others who faced the pain of courts represent them.

These women and all those who suffer sexual violence in war are the people who make it important to take action against such violations. They make it important to understand the legal judgements which are the basis for states to recognise their responsibilities to prevent and confront these crimes and to ensure accountability for those who perpetrate them. These women are the reason why it matters to have United Nations Security resolutions and to follow through with sustained actions to implement action which will eventually provide some protection and justice for victims of rape and sexual violence used as tactics in war.
During the years I worked with international humanitarian agencies and travelled to areas of conflict, I was supported by many people in the UN, in governments and NGOs. Many leaders supported my work from Geneva: Dame Anna Warburton who heard my briefing before taking a European Council team into the former Yugoslavia; colleagues at UNHCR who asked me to investigate rumours of rape camps; senior personnel at the Commission of Human Rights who used positions of influence to highlight women’s suffering; international advocates and activists who used my reports to bring pressure on governments and judiciaries; women’s groups and NGOs who distributed over a thousand reports through civil society networks; the delegation of church leaders who handed one of my reports to Slobodan Milosevic and later sent copies to the Hague; NGOs such as those humanitarian response agencies who authorised and facilitated my visits to conflict zones and who often stood by me against political interests who felt my work was outside organisational concerns or even just ‘not an issue’. After my return to Australia, Senator Natasha Stott-Despoja went with me to Kosovar refugee camps and used her influence to engage media attention and cross-party Australian senators to distribute my report and engage Australian Government interest. There have been many journalists who have helped by reporting on and publicising my work, not least Steve Levitt and Hugh Riminton of CNN and BBC.

Dr Lynne Alice of Deakin University encouraged me into academic circles and offered me a way to make some sense of all I had witnessed by finding a theoretical framework in which to consider reasons for and reactions to sexual violence in wars. Dr Steven Slaughter of Deakin University agreed to supervise the project after Dr Alice’s death and has acted as a critic and aide as the work developed, constantly reminding me to write as an academic and not still as an activist. It is to be hoped this has been successful. Dr Kim Tofoletti offered to critique a final draft and Dr Costas
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Introduction

Subject and Parameters of this Dissertation

Rape in war has long been a reality. In 1992, after visiting refugee camps and women’s groups in and around Zagreb, a member of a team representing international aid agencies reported that representatives of churches and international agencies stated that women from conflicting parties were, ‘of course’ being raped by opposing combatants and she heard, many times, ‘that’s war’ with accompanying shrugs.\(^1\) It was a comment indicative of the chilling acceptance frequently exhibited to this reality of abuse in war. The report of the visit noted the two types of rape which refugee women and women’s groups had been highlighting in the conflict between Serbs and Bosnians: rape as a by-product of war and rape as a weapon of war.\(^2\) The response from some observers in the international organisation which led the team, was to dismiss the term, ‘rape as a weapon of war’, as merely provocative or as an attempt to be clever or strategically useful, in attracting attention to what they deemed ‘just’ a women’s issue.\(^3\) Such attitudes indicated that these workers in humanitarian organisations did not take seriously the reality that rape was and could be a weapon, deliberately planned and systematically implemented. Their comments seemed to indicate a failure to recognise that such rape was an issue for communities, women, men and children.

The conflict in Rwanda in 1994 followed with more widespread use of rape. Then in 1999 another report was presented to humanitarian organisations and to a cross-party group of women senators in the Australian Government; this report highlighted that rape was continuing on a mass scale in the conflict in Kosovo.\(^4\) The response, this time, from a senior executive in the Australian humanitarian agency which had

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\(^2\) Fitzpatrick, pp. 21-22.
funded the investigation was: ‘It is not a story – men are being killed’.\textsuperscript{5} Despite its prevalence in history and the work of feminist scholars such as those discussed in later chapters of this dissertation, rape in war had been largely ignored. Rather than seeing it as a violation of humanitarian law or as behaviour which was preventable, there had been a general acceptance of rape as an inevitable part of conflict. Such a restricted view had centuries of negative implication for women and communities and facilitated the ongoing use of rape in war. This persistent denial and mischaracterisation of war rape had:

reinforced its acceptance as a natural, if regrettable, aspect of war rather than as a crime under humanitarian law. Implicit tolerance by military and political leaders signifies implicit permission (and) can lead to condoning it and thereby to an overt strategy that utilises rape as a weapon of war.\textsuperscript{6}

This long-standing refusal to confront the tactical use of rape in war finally, gradually, began to be overcome from the 1990s.

This dissertation analyses discourse between judiciaries, states and international organisations since the 1990s, which indicates the development of normative rejection of what the dissertation terms and will define as ‘tactical rape’. It finds discourse which led to increased understanding and normative rejection of the broader concept of sexual violence in war. John Dryzek defined discourse as, ‘the sets of concepts, categories and ideas that provide ways to understand and act in the world, whether or not those who subscribe to them are aware of their existence’.\textsuperscript{7} The discourse will be analysed in the context of understanding the changing nature of war. It will consider emerging judicial decisions and applications of international

\textsuperscript{5} World Vision Australia.
humanitarian law and United Nations Security Council (UNSC) resolutions which have contributed to a growing normative rejection of tactical rape and sexual violence in war. This is based on the definition of norms as ‘collective expectations about proper behaviour for a given identity’ as distinct from principled ideas which are defined as ‘beliefs about right and wrong held by individuals’. This is based on the definition of norms as ‘collective expectations about proper behaviour for a given identity’ as distinct from principled ideas which are defined as ‘beliefs about right and wrong held by individuals’. More detailed consideration of the development of collective expectations within and by communities will be examined in Chapter 1.

This dissertation examines the question: what has been the nature and extent of commitment by the international community to reject tactical rape and sexual violence in war since the early 1990s? The focus is primarily at the international level where, it is argued, there has been considerable and, in some ways, steady development of normative and institutional rejection of tactical rape and sexual violence in conflict since the 1990s. Terms such as ‘reject’, ‘condemn’ and ‘prohibit’ are all relevant to describing responses. However, the term most used in this dissertation is ‘reject’, defined as refusing ‘to acquiesce in, submit to or adopt (a rule, command, practice, etc), to refuse credit to’, with some use of ‘condemn’ which is defined as holding ‘a judicial conviction; an expression of disapprobation’ or ‘prohibit’, which is defined as ‘forbid’. The focus is at international level because it will be shown that, at this level, reactions to the use of tactical rape finally resulted in a broad rejection of sexual violence in war. Reference to the international community is reference to international institutions such as the United Nations Security Council (UNSC), international Non-Government Organisations (NGOs) and to international civil society. Recognition and understanding of tactical rape eventually led to the

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realisation that sexual violence needed to be confronted if women, men, communities and states were to be secure. It also led to the realisation that if women were vulnerable to sexual violence in peace they would be even more vulnerable in wartime.

In order to answer this question about the level of commitment to respond to tactical violence and sexual violence, there are other, related, questions to be answered. What contributions did the conflicts and ad hoc International Criminal Tribunals for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR) make to the international community’s eventual rejection of tactical rape? What degree of understanding and commitment to rejecting tactical rape and understanding the broader concept of sexual violence is reflected in United Nations Security Council resolutions in the two decades since the early 1990s? To what extent do the interests of human security and international stability intersect and how has realisation of this intersection contributed to a normative rejection of tactical rape and sexual violence? What is needed to demonstrate a serious international commitment to rejecting tactical rape and sexual violence?

This dissertation argues that rejection of tactical rape and sexual violence is an issue of international security because this ongoing form of abuse is a threat to human security and to international peace and stability. It represents a failure of compliance with accepted international humanitarian and human rights law and it impedes international responses to humanitarian crises. International humanitarian law is the law which imposes duties on states and individuals to restrain the conduct of war in order to protect or limit harm to non-combatants and to those who are defenceless in the hands of the enemy.\footnote{GIAD Draper, ‘Humanitarianism in the Modern Law of Armed Conflict’, \textit{International Relations}, vol. viii no 4, 1985, p.240.} This dissertation argues that as tactical rape and sexual violence in war are understood in their totality as a strategic method of targeting
civilians in conflict, contravening accepted international humanitarian and human rights law, there is a consequent requirement to prevent such violations, to hold perpetrators accountable and to provide justice for survivors. It argues that accountability and justice must be evident during transitions from war to peace and in the long term. It argues that the provision of justice is essential to avoid re-emergence of conflicts. As will be seen in later analysis of United Nations Security Council (UNSC) resolutions, states have begun slowly to accept responsibility and respond accordingly. Because tactical rape and sexual violence can destabilise states and hinder peacemaking and peacekeeping, it is in states’ interest to respond and take action to confront such attacks. In 1999, the then Prime Minister of the United Kingdom, Tony Blair, outlined a new ‘Doctrine of International Community’ and stated as part of that doctrine, ‘we cannot turn our backs on conflicts and the violations of human rights in other countries if we still want to be secure’.\footnote{A Blair, 	extit{Doctrine of the International Community}, address to the Chicago Economic Club, 22 April 1999.} As later chapters demonstrate, the political will to confront tactical rape and sexual violence in war has followed more from a gradual realisation of it as a threat to international peace and security than from a perception of rape in war as a women’s issue.

This introduction first defines tactical rape and sexual violence. It then acknowledges the nature of the ‘new wars’ and conflicts of the 1990s, the contexts in which tactical rape and sexual violence have been widely used as a deliberate strategy. It identifies key events which have stimulated discourse and legal bases for the development of international progress from understanding tactical rape to the normative rejection of sexual violence as it includes and goes beyond tactical rape. It outlines the concept, debates and implications of tactical rape and sexual violence for security and it establishes the parameters of this dissertation.
**Tactical Rape and Sexual Violence in War**

In this dissertation, tactical rape is defined as rape which is used as a tactic by state or non-state actors to attack individuals, groups and communities deemed to be enemies in conflicts, which may be intra-state or inter-state. It targets civilians. It is a specific strategy to control, destabilise and even to destroy the social fabric of civilian communities. It can be a strategy to remove populations from one geographic area to another. It is a widespread, deliberate policy of attack, promoted or condoned by at least one party to a conflict and it may constitute a war crime, a crime against humanity and may be used as a weapon of genocide, of torture or of ethnic cleansing.

This dissertation argues that tactical rape as a military strategy has immediate negative physical, emotional and communal impact on women and civilian populations (including men) during conflict. Because of how societies are constructed, there are also long-lasting negative economic, cultural and social impacts on women, civilian populations and communities. The cases and accounts in Chapters one, three and four, relating to the former Yugoslavia and Rwanda in particular, illustrate these effects. There is also consideration of the role of societal values and attitudes, such as patriarchy, in fostering and increasing the effectiveness of tactical rape. It will be shown that tactical rape has been recognised as having an impact which hinders transitions from conflict to peace, hinders peacemaking, destabilises communities and states and can be a threat to international security. Tactical rape in war is a reality, a strategy which specifically and deliberately targets civilians, which is perniciously effective with immediate and long-term destructive impact. It is a real threat and the international community of states has increasingly recognised its responsibility and a self-interested motive to confront, to prevent, and to hold accountable those who perpetrate tactical rape and sexual violence in war.
It is imperative to recognise that tactical rape and sexual violence in war as defined in this dissertation are essentially military weapons, used to gain political ends. As with any rape, tactical rape is not primarily to do with sexuality. There are various types of rape in war: rape of individuals by individuals; rape by the rogue soldier or criminal who acts without any authorisation. These can be referred to as ‘by-products’ of war and the concomitant breakdown of law and order. They are matters of concern and should not be easily dismissed. There can be rape offered as a reward for victorious forces. There can be rape offered as a ‘comfort’ to troops – an insidious term used in reference to women taken into sexual slavery by Japanese forces during World War 2. During the Russian army advance through Germany, two million women were raped with Stalin’s blessing on the grounds that ‘the boys are entitled to their fun’. There has been a long tradition of victors claiming the right to rape. Christine Chinkin, who has provided numerous insights to the issue of rape and sexual violence, stated in one paper that ‘women are attacked in conflicts across the globe by men of all colours, religions, nationalities and ideologies’ and pointed out that licence to rape has even been used as a term of employment for mercenary soldiers. These uses of rape must all be condemned as abuses of human rights. However, these types of rape in war are not the core subject of this dissertation. This dissertation focuses on tactical rape as used primarily against civilian women and girls, with acknowledgement that women combatants and men are, at times, also targeted and women may, at times, be complicit. There is no assumption that all men rape nor that all military men rape. The type of rape which is the focus here is tactical rape – not rape as a right or a reward for victory – but rape as a policy and a tactic to effect military or political victory.

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There has been increasing discourse in UNSC resolutions and debates (analysed in later chapters), which reflects a global comprehension that the use of rape as a deliberate, multi-faceted tactic used in conflict is an issue which falls within the mandate and responsibility of the UNSC. Analysis of this discourse will show an emerging realisation that there is also a multi-faceted impact on states, recognising the reality that tactical rape is a threat to human security; a threat to security of women, a threat to security of populations and a threat to international security. There has also been recognition that confronting tactical rape as a deliberate strategy employed in varying ways by parties to conflicts must be comprehensive. Rape can be seen as a weapon of war or as a crime against humanity; as a weapon of torture or ethnic cleansing or as a weapon of genocide. However, this dissertation will examine how recognition of the comprehensive range of uses and impact of tactical rape has resulted in a more direct understanding by states of their responsibilities and recognition that it is in their own self-interest to ensure compliance with international humanitarian and human rights laws. As will be discussed later, some policies of some states have begun to reflect, in practice, the normative rejection which at present is still largely limited to the international arena. Focussing on the complex totality of tactical rape has resulted in comprehension of tactical rape as one particular strategy among many which constitute sexual violence, which has gradually led to a more comprehensive response to confronting sexual violence.

This definition of tactical rape reflects the recognition of widespread, policy-directed use of rape as a deliberate tactic of attack. Since the 1990s, recognition of the full impact of tactical rape and its rejection has evolved into recognition and rejection of sexual violence in conflict situations. Sexual violence has been defined in a number of key documents by the international community and is a term which is both comprehensive and frequently used without specific definition, in overlapping and potentially confusing ways. Mahima Achuthan and Renee Black pointed out that
recognising three non-mutually exclusive categories for describing sexual crimes is useful: sexual violence; sexual exploitation and gender-based violence.14

In the Statute of the International Criminal Court, rape appears in a comprehensive list of acts which are deemed sexual violence. When defining crimes against humanity the Statute lists, ‘Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity’.15 This list is repeated when defining war crimes and is extended to include, ‘any other form of sexual violence also constituting a serious violation of article 3 common to the four Geneva Conventions’.16 The second term which is commonly used in discussion is ‘sexual exploitation and abuse’. There are two concepts inherent in this term. Sexual exploitation has been defined by the Secretary General of the United Nations as, ‘any actual or attempted abuse of a position of vulnerability, differential power or trust for sexual purposes including but not limited to, profiting monetarily, socially or politically from the sexual exploitation of another’.17 Sexual abuse has been defined as ‘actual or threatened physical intrusion of a sexual nature, whether by force or under unequal or coercive conditions’.18 This terminology became particularly relevant in the formulation of United Nations Security Council Resolution (UNSCR) 1325 (2000) which is discussed more fully in Chapter 5 of this dissertation. It reflects the understanding that sexual violence may encompass a variety of forms of attack.

Gender-based violence was defined in 1992 with reference to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). The

15 Statute of the International Criminal Court, Article 7 para 1 (g).
16 Statute of the International Criminal Court, Article 7 para 2 (e).
monitoring committee of CEDAW referred to the Convention, which in Article 1 defines gender-based violence as:

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.\(^{19}\)

Gender-based violence includes violent acts such as rape, torture, mutilation, sexual slavery, forced impregnation and murder and threats of such acts.\(^{20}\)

In this dissertation there is reference to widespread or systematic abuse as an element of tactical rape and/or sexual violence in war. In 1996, widespread sexual violence was defined as sexual violence ‘committed on a large scale’ and directed against a ‘multiplicity of victims’.\(^{21}\) In 2000, the International Criminal Tribunal for the former Yugoslavia (ICTY) said that systematic violence referred to the ‘organised nature of acts of violence’ and not ‘random occurrences’.\(^{22}\) In 2008, the report of a conference held at Wilton Park, just prior to the passing of UNSCR 1820, said that widespread or systematic violence referred to violence during conflict perpetrated by armed groups ‘as a strategy of warfare for obtaining political and military ends’ and ‘is used to torture, terrorize, demoralize, injure, degrade, intimidate and punish affected populations’.\(^{23}\) Taken together, these definitions elicited the key elements of widespread and systematic sexual violence.


\(^{20}\) M Achuthan & R Black, p. 11.


\(^{22}\) ICTY Case No. IT-95-14-A Judgement (March 3, 2000).

As will be seen in later chapters, relevant UNSC resolutions are now entitled and include reference to ‘women, peace and security’. This is a term which covers concerns for women in conflict situations and, since the 1990s, has increasingly referred to a recognition that tactical rape and sexual violence relate to human security and international security. Later chapters will focus on particularly relevant documents of the Security Council: debates and presidential statements as well as the text of specific resolutions. It will be seen that strong calls from the public and pressure from Non-Government Organisations (NGOs) to respond to widespread tactical rape, developed into strong calls to respond to the broader practice of sexual violence in war and eventually to a greater understanding of the links between women’s vulnerability in peace and in conflict and human and state security.

The Changing Context and Implications for Use of Tactical Rape

Consideration of rape in war began to change in the early 1990s with increased recognition of rape in war as a policy-based attack against civilians, requiring it to be considered ‘as a weapon, a targeted act of terror, rather than merely as a by-product of the violence surrounding war’.24 Understanding rape as a tactic in war is comprehensible when linked with recognising the changing nature of war in recent decades, as will be discussed in the next chapter.25 Mary Kaldor, in her insightful consideration, wrote of ‘new wars’ tending to avoid battles between armies and instead to aim at control of territory through ‘political, psychological and economic techniques of intimidation’.26 When referring to wars in the Balkans and Africa, she wrote that in these conflicts, ‘warring parties share the aim of sowing ‘fear and hatred’ …and ‘create a climate of insecurity and suspicion’.27 She also said, ‘essentially, what were considered to be undesirable and illegitimate side-effects of

24 Farwell, p. 390.
25 A fuller account of the changing nature of war is provided in Chapter 1.
26 Kaldor, p. 8.
27 Kaldor, p. 9.
old war have become central to the mode of fighting in the new wars’. Tactical rape is an ideal strategy to achieve the aims of these new wars. While Edward Newman claimed that Kaldor had overstated the differences between old and new wars, he also acknowledged that tactics such as widespread rape characterised current conflicts.

Later chapters on the former Yugoslavia and Rwanda will show that in these two conflicts, violence was directed against civilian populations. Tactics such as rape and sexual violence were prevalent because, as will be demonstrated, these are effective ways of targeting women and the communities of which they are part. As part of the civilian population, women and girls experience generalised violence. They may be killed, murdered, imprisoned or tortured. But, as a result of their gender, they experience additional, more specific violence. They may be raped, forced into prostitution, suffer forced impregnation, pressured by social and cultural attitudes into abortions and may suffer particular forms of humiliation, degradation, rejection and exclusion.

This method of waging wars, by attacking civilians and communities rather than directly facing enemies in delineated battles between armies, is fertile ground for the use of rape as a deliberate tactic of war. Retired Major General Patrick Cammart, Former Division Commander of the United Nations Organization Mission in the Democratic Republic of the Congo (MONUC), said in a UNSC debate preceding resolution 1820, in 2008, that the climate of impunity in most post-conflict contexts allowed the many forms of violence, including sexual violence, to flourish. Further, he noted that the political will to end the vicious cycle of impunity did not exist and

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28 Kaldor, p. 100.
this remained a serious impediment for the prevention of sexual violence. He said, ‘it has probably become more dangerous to be a woman than a soldier in an armed conflict’. The use of this particular tactic of waging new wars is an issue for states and entire populations. It is not an issue restricted to concern for one sector of states and populations.

**Discourse Leading to Normative Rejection of Tactical Rape and Sexual Violence**

The growing awareness of tactical rape on the part of the media and NGOs eventually evolved into widespread rejection of any form of sexual violence. International law, particularly as case law emerged from the ICTY and ICTR, provided a basis to establish state obligation to prevent, prosecute, hold accountable and disallow impunity for perpetrators of tactical rape and sexual violence in war. It became possible to demonstrate where existing law could and should be applied and to confront arguments against its application. Existing obligations were demonstrated. These required understanding and applying sources of customary law, humanitarian law, human rights law and, importantly, judicial case law. Emerging case law from the International Criminal Tribunals for the former Yugoslavia and Rwanda will be shown to have provided a substantial body of definitions and interpretations of international law.

It was in these judiciaries that significant normative progress occurred and this will be examined in this dissertation, while recognising that there are other ongoing sources of such case law. Writing in 2003, Kelly Askin noted, ‘ten years ago… there was debate as to whether rape was even a war crime. Since that time, the Tribunals have developed immensely the jurisprudence of war crimes, crimes against

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32 The rationale for focussing on these two Tribunals will be provided later in this chapter.
humanity and genocide’. The Tribunals dealt with events in different contexts – one in Africa, one in Europe – but both dealt with arenas where tactical rape was perpetrated. Their similarities and their differences helped to ensure a broad understanding of the issue. The extent and nature of the rapes in these two conflict arenas will be identified and judicial rulings and definitions will be analysed with consideration of the key existing instruments of international law and their contributions to the discourse rejecting tactical rape and sexual violence.

Key UNSC resolutions also provide grounds for tracking and analysing the development of an international discourse rejecting tactical rape. These resolutions were, at least in part, stimulated by the findings of the Tribunals and built on the two sets of outcomes from those judiciaries. For this reason they are linked together in the development of an international recognition and response to sexual violence in conflict. The major relevant resolutions of the United Nations Security Council to be analysed include: UNSCR 1325 (2000); UNSCR 1820 (2008); UNSCR 1888 (2009) and UNSCR 1969 (2010). These are developments since the early 1990s and are the focus of consideration because they reflect the growing attention to rape in conflict, rape in its manifestations as contravention of international law. Tracking the progress on these resolutions demonstrates that normative rejection of rape in conflict appears to be accelerating at global level. This is also reflected in the development of the mandate and focus of the International Criminal Court (ICC), which will also be reviewed. However, further consideration will show that progress is still limited as far as institutionalisation at national levels. Each of these resolutions will be analysed to evaluate the extent to which each demonstrates some progress in understanding the complexity and urgency of having a widely accepted norm rejecting tactical rape. Debates by states around these resolutions will be analysed to evaluate the extent to

which recognition of the security implications of tactical rape was increasingly expressed and, increasingly, provided motivation for confronting tactical rape specifically and sexual violence more broadly.

_Tactical Rape and Sexual Violence as Threats to Human and International Security_

The gradual move to the Security Council rejecting tactical rape and eventually rejecting sexual violence can be linked to the increasing degree to which debates aligned tactical rape and sexual violence with security. It is necessary to recognise the links between threats to individuals, to human security and threats to international stability, peacekeeping and peacemaking. These threats endanger the security of states. Kaldor wrote of the complex relationship between processes of governance, legitimacy and forms of security, which she explained as ‘how organised violence is controlled’ and she contrasted this with the ‘old wars’ which were concerned with ‘national security’ in the sense of protection of territory and protection from external threats.\(^{34}\) This brings to the fore the need to understand the interplay between the security of individuals, communities and states – states individually and as a global collective.

The Commission on Human Security has urged increased recognition of human security as an overarching concept of security, which broadens the focus from the security of borders to the lives of people and communities inside and across those borders.\(^{35}\) The Commission also wrote, ‘all societies depend much more on the acts or omissions of others for the security of their people, even for their survival.’\(^{36}\) Amitav Acharya wrote, ‘in an era of rapid globalisation, security must encompass a broader range of concerns and challenges than simply defending the state from

\(^{34}\) Kaldor, p. 140.


\(^{36}\) Commission on Human Security, p. 12.
external military attack’. In the new wars of the former Yugoslavia and Rwanda, security threats extended from the immediate, localised, internal territory to the international community whose laws of war and laws for the protection of the most basic of human rights were flouted, deliberately and extensively. These threats were eventually confronted with the international tribunals and some forms of direct intervention into the sovereignty of states.

It was in the key UNSC resolutions passed between 2000 and 2011 which are the focus of this dissertation, that the UNSC recognised the need for action in response to violence against women. There were significant instances of states’ representatives in UNSC debates referring to rape in war and the well-being and security of states as linked. Secretary of State of the United States, Condoleezza Rice, chaired the debate on UNSCR 1820 in June 2008. She commented on the fact that there had long been dispute about whether sexual violence against women in conflict was an issue the Council was authorised to address and said, ‘we affirm that sexual violence profoundly affects not only the health and safety of women, but the economic and social stability of their nations’. In the same discussion, Deputy Secretary-General Asha-Rose Migiro also addressed the meeting, saying that sexual violence had not only grave physical and psychological health consequences for its victims, but also direct social consequences for communities and entire societies: ‘impunity for sexual violence committed during conflict perpetuates a tolerance of abuse against women and girls and leaves a damaging legacy by hindering national reconciliation’. The debates by states in Security Council, which will be analysed more fully in a later chapter, reflected an important step with states agreeing that rejection of tactical rape and sexual violence was, indeed, an issue for the Security Council and could no

longer be side-lined or dismissed as a sectoral issue applying to women but not to states.

In discussions around the passing of UNSCR 1888, in 2009, Secretary of State of the United States, Hillary Clinton, urged the UNSC to pursue the fight against sexual crimes even beyond the measures called for in the resolution, saying that sexual violence in conflict areas could not be separated from the broader security issues on the Council’s agenda.\textsuperscript{40} In that same discussion, Bedouma Alain Yoda, Minister for Foreign Affairs of Burkina Faso, said sexual crimes created long-lasting enmity between peoples, making it hard to bring about peace and degrading the dignity of women reduced their crucial ability to contribute to peacemaking.\textsuperscript{41} Recognition and rejection of tactical rape and sexual violence was on the agenda of the Security Council.

\textit{Establishing the Parameters and Methodology}

There are clear parameters established in this dissertation. It focuses on tactical, widespread rape and sexual violence in war. This is not, in any way, to establish a hierarchy of horror nor to underestimate the impact of individual rapes on individuals. Rape of any nature must be condemned. Impunity for violent, sexual abuse of vulnerable victims must end, whether it is the result of deliberate policy or not. This dissertation does not call for anything less. There is, sadly, usually rape of one sort or another on all sides of most conflicts. Women are disproportionately victims and often tactical rape and sexual violence are employed by at least one side. These are the situations which will be the focus of this dissertation, even while there is acknowledgement of the concerns of those feminist writers (considered in Chapter 2) who call for attention to all forms of rape, who worry that by putting a focus on

\textsuperscript{41} <www.un.org/News/Press/docs/2009/sc9753.doc.htm> retrieved 3 May 2010.}
one form of rape, other forms are somehow diminished, or who worry that by focussing on international or state security, the suffering of women may somehow be diminished. Lene Hansen noted the fears that by making a distinction between individual and collective rapes, the needs of the individual who suffers rape may be diminished.\(^4\) This is understandable and a fear shared by many who would demand accountability for rapists. It is understandable because there is such a history of ignoring rape of women in war.

This dissertation does, however, limit itself to consideration of tactical rape and sexual violence which is organised and officially promulgated. Furthermore, this dissertation specifically focuses on outcomes of international tribunals and courts, particularly the ICTY and ICTR. This is done recognising the limitations and inappropriate nature of judicial systems to recognise the suffering of women participating in confrontational and antagonistic proceedings which may, justifiably, be deemed another level of violence against victims. Focussing on legal proceedings is done recognising the validity of those who condemn the suffering which women experience when testifying in such courts. The perspectives of scholars who express concerns regarding legal proceedings will be considered in more detail in Chapter 2, reviewing objections and concerns regarding the impact of tribunals on individual women as victims of tactical rape and sexual violence.

This dissertation chooses to focus primarily on two conflicts when there are a plethora of similar arenas.\(^4\) The conflicts in Rwanda and the former Yugoslavia were watershed cases in the development of consideration and action regarding tactical rape. These were conflicts where there was widespread recognition of the use of


tactical rape and sexual violence in war. Cases were documented and witness accounts verified, despite difficulties in establishing exact numbers of rapes. Causes for this difficulty will be considered in Chapter 3 on the former Yugoslavia. Kaldor referred to the war in Bosnia-Herzegovina as having become ‘the paradigm of the new type of warfare’ and ‘likely to turn out to be one of those defining events, in which entrenched political assumptions, strategic thinking and international arrangements are both challenged and reconstructed’.44 She highlighted the techniques of population displacement in new wars: systematic murder; ethnic cleansing; rendering an area uninhabitable – physically, psychologically, economically – and noted that a method of defilement is ‘through systematic rape and sexual abuse…or by other public and very visible acts of brutality’.45 Each technique can be explicitly applied to the conflicts in both the former Yugoslavia and in Rwanda.46 This will be further explored in later chapters where analysis demonstrates that in each of these conflict arenas, tactical rape was a deliberate policy and strategy of attacks on civilians and rape was widespread.

While the work of scholars is referenced in this dissertation there is also a strong focus on primary sources such as case judgements from the two Tribunals, reports to the UNSC and specific resolutions. Many are recent and have not yet been the subject of extensive academic consideration. With some dearth of scholarly commentary, reports by NGOs – including some written by the author of this dissertation - are sometimes referenced, particularly where such reports were used to stimulate action by UN Special Rapporteurs, the European Community and legal advocates and investigators. As will be referenced in later chapters, such reports were part of pressure applied to have UN Special Rapporteurs extend the original areas of investigation and eventually include reference to rape in the former

44 Kaldor, p. 32.
45 Kaldor, pp. 99-100.
46 Kaldor, p. 99.
Yugoslavia and Rwanda. Organisational reports of meetings and encounters in and around Zagreb and Rwanda written by NGO representatives included summary accounts of stories and concerns expressed by refugee women and workers in camps in Zagreb, Benaco and Ngara; by individuals whose identities were not published for reasons of their own security. They included prisoners who had escaped across the border into Zagreb; representatives of organisations including UNHCR, documentation centres, women’s houses, women’s support and advocacy groups (such as ‘Mothers for Peace’, ‘Help for Children in Croatia’, ‘Women of Bosnia-Herzegovina’, ‘Women of the Anti-War Campaign’); by humanitarian assistance agencies and by church representatives, both Christian and Muslim.47 There has been much input to relevant multi-lateral agencies and panels and many reports and many articles regarding these experiences written and submitted to international organisations and activist groups. The author of this dissertation has not included any interview material from her experiences and meetings with women and girls who suffered tactical rape and sexual violence in conflicts, other than those referenced in published reports. The author’s experiences did, however, lead to the desire to undertake and publish further research. Insights from recorded and public accounts of personal, professional experience, particularly regarding certain actions taken by international NGOs, may at times be referenced. This follows an established practice among authorities, analysts and scholars as well as advocates, of using informal narrative to inform as well as to stimulate responses from states, international agencies and judiciaries.

Chapter Outline

This dissertation is organised with chapters which focus on specific stages in the development of international commitment to confronting tactical rape and sexual

violence in conflict. Chapter 1 considers discourse contributing to the rejection of tactical rape and sexual violence in conflict. It provides a more detailed consideration of the changing nature of war, the impact of the use of rape in war and includes a brief overview of particular social relationships as an insight to understanding why and how the use of tactical rape and sexual violence is such a pernicious and damaging way of attacking communities. It considers how social relationships and attitudes can change. Chapter 2 provides a review of the legal concepts and critical commentary relevant to tactical rape and sexual violence. It analyses aspects of rape and international law, providing relevant legal definitions. It considers the United Nations Security Council and its resolutions. It also recognises the contributions and reservations of some feminist analysts regarding theorising on such a topic as rape in war and the limitations and inappropriateness of judicial systems in recognising the suffering of women participating in antagonistic proceedings.

Chapters 3 and 4 respectively analyse the use of tactical rape and sexual violence in the conflicts of the former Yugoslavia and Rwanda in the 1990s and the progress and limitations of the work of two key international judiciaries: the ICTY and ICTR. These Tribunals were intended to provide justice in the immediate aftermath of violence and became the most immediate forms of transitional justice available to survivors of the widespread tactical rape and sexual violence which characterised the two conflicts in the former Yugoslavia and Rwanda. Their work will be considered in the context of the contribution to case law and legal definitions pertaining to tactical rape and/or, at least, aspects of tactical rape. The analysis will provide a review of case law and international agreements with emerging definitions, understanding tactical rape in war and understanding tactical rape as a crime against humanity and rape as a method of genocide.
In chapters 5 and 6, major UNSC resolutions which demonstrate and contribute to the development of international recognition of the security implications and rejection of tactical rape and sexual violence are analysed. These particular resolutions have been selected for their links to international attitudes and acknowledged responsibilities. Gaps and limitations in each of these key resolutions will be analysed. The developing role and work of the International Criminal Court will be reviewed as part of evaluating international progress in confronting and rejecting tactical rape and sexual violence. There have been other tribunals, other relevant conflicts and many other relevant UN documents. However, outcomes from the conflicts in the former Yugoslavia and Rwanda and the identified UNSC resolutions, particularly, moved the understanding of tactical rape into understanding sexual violence and brought these violations into international consideration in important and major ways. With all their flaws – and there are many – these moments in the development of the discourse have provided the building blocks for taking the discourse into the future and they warrant particular attention and analysis.

The penultimate chapter, chapter 7, focuses on the situation in 2011 and analyses ongoing challenges. It includes a review of the ongoing use of tactical rape and sexual violence in war and the threat this poses to the increasingly interlinked concepts of women’s security, human security and state security. It deals with state level institutionalisation of the rejection of sexual violence in conflict, emphasising the need for security sector reform and effective transitional justice in the aftermath of widespread use of tactical rape and sexual violence if renewed conflicts are to be avoided.

The conclusion will contend that despite limitations and ongoing challenges, progress towards commitment to action against tactical rape and sexual violence has been significant. There has been increased acceptance of the links between women’s
status in peace and in war. There has been acceptance that tactical rape and sexual violence in war represent violations of international humanitarian law and are threats to security. There have been significant moves towards institutionalisation of the need to confront tactical rape and sexual violence in war. There remain many problems such as the slow change in patriarchal attitudes, the slow change in women’s status and participation nationally. Sadly, it is likely that tactical rape and sexual violence will continue in national/local conflicts and, as will be seen, there appears to be growing use of tactical rape on men. What is needed is continued pressure from feminist analysts, from NGOs, from UN agencies, from the ICC and a global refusal to grant impunity as part of ‘deals for peace’. Reform of the security sector and ensuring effective transitional and long-term justice for victims of tactical rape and sexual violence in war will be imperative to confront the immediate and continuing effects on women, the children born of abuse and the communities attacked by these tactics. There will be a need for follow-up with indictments at the highest levels and there will need to be realistic funding for actions linked to the relevant UNSC resolutions.

**Conclusion**

This dissertation tracks the development of discourse around the progress towards an accepted normative rejection of tactical rape and sexual violence in war. It places tactical rape within the context of new wars and emerging international case law and tracks the development of understanding and rejecting tactical rape to the understanding and rejection of sexual violence. It analyses relevant UNSC resolutions since 2000 which have contributed to such normative rejection of tactical rape and sexual violence and argues the link between tactical rape, sexual violence and international security, a link which makes sexual violence an issue to be confronted for the security and well-being of women and for the security and well-being of entire communities. The chapters which follow lead to judging the degree of
serious commitment exhibited by the international community in acting on its resolutions.
Chapter 1

Discourse Contributing to Rejection of Tactical Rape and Sexual Violence

For effective analysis of the extent to which there has been an increasing commitment by the international community to reject tactical rape and sexual violence in war since the early 1990s, it is necessary to be clear about the context in which this occurs. The time frame being considered in this dissertation is the period between 1990 and 2011. This has been a time of considerable development in global normative rejection of sexual violence in war and of what this dissertation has defined as tactical rape. It has been a period in which many wars and conflicts have occurred, with significant humanitarian implications. This dissertation has a focus on the former Yugoslavia and Rwanda because events in these two arenas and in the ad hoc tribunals established to deal with those events will be shown to have been instrumental in developing international attitudes of rejection of tactical rape and sexual violence in war.

This chapter first reviews the changing nature and style of war in the 20th and 21st centuries as a basis for putting these two specific conflicts and genocide into context. Secondly, the chapter reviews the use of tactical rape and sexual violence and its impact on collectives as well as individuals. As a third step, there is consideration and recognition of the basis for such impact: patriarchy as a framework of particular social relationships, values and hierarchies of communities. This includes the social constructions which contribute to the impact of tactical rape and sexual violence in war. There is recognition that patriarchy affects the way women value themselves and that it has a pervasive impact on whole communities. Finally, there is a brief examination of how development of normative change can and could happen and how social attitudes and values develop so that this understanding can be applied to the development of the global discourse which has led to international rejection of tactical rape and sexual violence in war.
The Changing Nature of War

As noted in the introduction to this dissertation, understanding rape as a tactic in war is made easier when linked with recognising the changing nature of war in recent decades. Herfried Munkler described the process by which, historically, war gradually became a state controlled enterprise, for reasons related to economic costs and the type of complex weaponry being employed.¹ He averred that as war became expensive and required increasingly complex management states took control of them and actual conflicts and hostilities became shorter with each state engaged in the war wanting to bring about a rapid end to fighting because shorter conflicts incurred less cost. As he said, ‘war of this kind was a war of soldiers against soldiers and the civilian population was largely spared from violence and destruction’.² These are not the sort of wars fought in the former Yugoslavia and Rwanda in the 1990s.

Munkler described how as super-powers developed it became increasingly difficult for smaller groups to engage in the traditional battles of armies against armies. Guerrilla warfare came to the fore as the method utilised by groups who did not have the means to wage traditional wars. These groups could afford to take longer to achieve their goals and used methods which did not require complex technology and weaponry. A key factor in the changes was that attacks on civilians increased as, ‘the country’s civilian population … falls prey to those who, with the help of their armed henchmen, exercise control over them’.³ While Munkler did highlight the increased role of children as soldiers, notably, he failed to highlight the place of women as particular targets in civilian populations. Yet much of what he says in general can explain the particular use of rape as a tactic in new wars. The relevance to the

² Munkler, p. 15.
³ Munkler, p. 16.
conflicts of the former Yugoslavia and Rwanda in the 1990s will become apparent in Chapters 3 and 4 of this dissertation.

Civilian populations are largely comprised of women and rape is a means of attacking women. Munkler noted that one of the crucial factors in the emergence of new styles of warfare is ‘the fact that they have become cheap to wage’. This certainly applies to the use of rape and sexual violence as tactics. They require no special equipment, no special training and no ongoing maintenance or supply of those capable of employing such tactics for an identified goal. If civilian targets are now taking the place of military objectives then it becomes urgent that there be clarity of rules of engagement regarding attacks on non-combatants, including women. Analysis of the outcomes of proceedings at the ICTR and ICTY in later chapters will demonstrate how international humanitarian law can and should be applied to this particular tactic increasingly common in conflicts.

When considering the strength of the impact of allowing rape as a tactic of war it must be recognised that the tolerance of rape as a weapon of war has been an ongoing factor in conflicts throughout history. Christoph Schiessl referenced a pro-Serb organisation which denied the reports of rape by saying they had investigated and found there were no reliable reports of ‘more than average war-time rape’. He highlighted the development during the twentieth century of the focus on targeting civilians. Mary Kaldor noted the relevant statistics: at the beginning of the twentieth century, 85-90 per cent of conflict related casualties were military; in World War II, approximately half the casualties were civilian; by the late 1990s approximately 80

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4 Munkler, p. 17.
5 Munkler, p. 18.
per cent of casualties are civilians. Kaldor reiterated the changing rate of civilian to military deaths since World War II and current conflicts and added data indicating that the numbers of internally displaced people have risen from approximately 40,000 per conflict in 1969 to 857,000 per conflict in 1992.8

Kaldor referred to the ‘new wars’ of the 20th century and stressed the change from military to civilian targets, describing the aim of the new warfare as being ‘to control the population by getting rid of everyone of a different identity (and indeed of a different opinion)’.9 She stated that the new warfare tends to avoid battle and to control territory through political control of the population:

hence the strategic goal of these wars is population expulsion through various means such as mass killings, forcible resettlement, as well as a range of political, psychological and economic techniques of intimidation.10

It is not difficult to see that tactical rape and sexual violence are strategies which fit Kaldor’s description of how such new wars are being fought. Tactical rape is an attack on civilian rather than military targets. It has psychological as well as physical effects. It can be a form of killing and destroying whole generations of a population, as will be seen when there is later consideration of the impact of tactical rape in Rwanda and the former Yugoslavia.

As a tactic of war, rape is particularly violent and it is a rational tactic. Katrina Lee-Koo has provided a clear and comprehensive explanation of the impact of rape:

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9 Kaldor, p. 8.
10 Kaldor, p. 8.
Rape attacks women’s physical and emotional sense of security while simultaneously launching an assault, through women’s bodies, upon the genealogy of security as constructed by the body politic.11

Lee-Koo has recognised that the use of tactical rape is a rational strategy, a sanctioned and systematic means of achieving political objectives. She has highlighted that such use of rape can be based on state-sanctioned representations of non-combatant women which reflect rather than confront traditional conceptualisation of women’s realities and this will be further considered in Chapters 4 and 5 dealing with United Nations responses and resolutions.12 Lee-Koo’s concerns reflected those of many feminist analysts and advocates and eventually resulted in actions which will be considered in detail in these later chapters of this dissertation.

The focus of this dissertation is the conflict in the former Yugoslavia and Rwanda, two conflicts which will be seen to have been different wars but with certain common elements. Carl von Clausewitz recognised that while war is ‘a true chameleon’, forever changing and adapting its appearance to the varying socio-political conditions under which it is waged, it is always distinguished by ‘the intrinsic violence of its components, the creativity of its strategists and the rationality of the political decision-makers’.13 Political objectives are those which ‘have at their heart control, compliance of civilians and even genocide’.14 Tactical rape bears all the hallmarks of modern warfare, and the links between military objectives and social attitudes such as those evident in patriarchal societies will be considered later in this chapter. Rape is a tactic which has immediate and long-term impact on the

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12 Lee-Koo, p.525.
14 Farwell, p. 393.
societies of victims in ways which will be detailed in later chapters of this dissertation. If, too, war is ‘an act of violence intended to compel our opponent to fulfil our will’, then, again, rape and any form of sexual violence are effective and destructive acts of violence.¹⁵ Tactical rape and sexual violence are aspects of new wars which cannot be ignored. They are gendered forms of tactics aimed at attacking individual women and entire communities.

The Impact of Rape in War

Tactical rape and sexual violence in war have negative and long lasting impacts on individuals and on their societies and communities. While this dissertation focuses on what it has defined as tactical rape, it recognises that there is an extensive and diverse field of study regarding rape. To understand the impact and effectiveness of tactical rape this dissertation generally accepts that rape is a socially learned form of aggression. Lee Ellis referred to three theories of rape, including the Social Learning Theory of Rape, in which he posits that rape is a form of interpersonal aggression arising from learned and observed behaviour.¹⁶ While there are numerous other theories, this dissertation will generally accept a focus on the sociological theory in that it is a political and socio-economic approach and a construction of societies affected in the two specific arenas of conflict selected for focus. Making the decision to exclude the full debate on the nature of rape itself is not taken lightly. It is acknowledged that without fully understanding the real nature of rape it becomes difficult, if not almost impossible, to achieve appropriate responses to it. But this dissertation has a focus on tactical rape and it is the sociological approach which best helps comprehend the impact of this form of attack on women and communities. Tactical rape is an attack which achieves high and widespread impact because, as

¹⁶ L Ellis, Theories of Rape – Inquiries into the causes of sexual aggression, Hemisphere Publishing Corporation, USA, 1989.
will be discussed in this chapter, it relies on social relationships and values, particularly the constructed values inherent in patriarchy.

Claudia Card, writing in 1996, reminded readers that rape as a weapon of war was not new but the attention it was receiving and the extent of its relative publicity was indeed new. When considering the nature and impact of rape she stated:

One set of fundamental functions of rape, civilian or martial, is to display, communicate and produce or maintain dominance which is enjoyed for its own sake and used for such ulterior ends as exploitation, expulsion, dispersion and murder.

This description acknowledged that sexual gratification could have some role in the perpetration of rape – while this may not be a primary motivation for tactical rape, it does facilitate its application.

Considering the diverse types of rape, Cynthia Enloe referred to ‘the militarization of rape’. When focussing on consideration of militarised rape, she referred to three types of rape in war: recreational rape as the alleged outcome of not supplying male soldiers with ‘adequately accessible’ militarised prostitutes; national security rape as an instrument for bolstering a nervous state; systematic, mass rape, as an instrument of open warfare. Each of these types of rape is recognised as occurring in many conflict zones. Each type of rape requires attention, prevention and bringing to account those who perpetrate them. It is, however, the impact of the third type, systematic, mass rape which is the focus of this dissertation.

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18 Card, p. 2.
20 Enloe, p. 111.
Before looking at the underlying reasons for such impact, it is useful to consider commentaries and analyses of the ways in which these crimes have been observed affecting direct victims and others in the conflict and genocide of the former Yugoslavia and Rwanda. By the end of the twentieth century, scholars were reviewing the emerging law on rape from early customary international law through the post World War Two era and to the late twentieth century responses to Rwanda and Bosnia. Rape had long been an element of war. This did not change in the twentieth century. Despite many efforts by women to have rape recognised as more than some unfortunate but inevitable by-product of war, it was not until international global attention was drawn to the conflicts and genocide in the former Yugoslavia and Rwanda that attitudes began to change. The events in those two conflicts, relevant judicial rulings and legal decisions and related discourse at the United Nations Security Council, which contributed to global rejection of tactical rape and sexual violence in war since the 1990s are detailed more fully in later chapters.

Reviewing the impact of rape in war, and the reasons why rape is an effective tactic, will highlight the underlying social attitudes and values regarding women in many communities. But, first, it is essential to consider the use and impact of tactical rape. Tactical rape and sexual violence in war must be recognised as affecting individuals and their communities and societies. The ICTY Trial Chamber, for example, quoted testimony from a medical worker:

The very act of rape, in my opinion – I spoke to these people, I observed their reactions – it had a terrible effect on them. They could, perhaps, explain it to themselves when somebody steals something from them or even beatings or even some killings. Somehow they sort of accepted it in some way, but when the rapes started they lost all hope. Until then they had hope that this war could pass, that

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everything would quiet down. When the rapes started, everybody lost hope, everybody in the camp, men and women. There was such fear, horrible.22

This statement reflects an understanding of rape as a tactic of war. People who are raped and people who know that others in their group are being raped are all affected so that they are disempowered and resistance is attacked while physical and emotional damage are caused. The impact on individuals and on the communities of those direct victims must be recognised and the underlying causes of such impact can then be considered.

In her paper questioning the effectiveness of the ICTR in dealing with Rwanda’s rape victims, Binaifer Nowrojee quoted statements to the ICTR by Major Brent Beardsley, a professional soldier and a Canadian member of the UN peacekeeping force:

One, when they killed women it appeared that the blows that had killed them were aimed at sexual organs, either breasts or vagina; they had been deliberately swiped or slashed in those areas. And, secondly, there was a great deal of what we came to believe was rape, where the women’s bodies or clothes would be ripped off their bodies, they would be lying back in a back position, their legs spread, especially in the case of very young girls. I’m talking girls as young as six, seven years of age, their vaginas would be split and swollen from obviously gang rape, and then they would be killed in that position. So they were lying in a position they had been raped; that’s the position they were in.

Rape was one of the hardest things to deal with in Rwanda on our part. It deeply affected every one of us. We had a habit at night of coming back to the headquarters and, after activities had slowed down for the night, before we went to bed, sitting

22 ICTY Trial Chamber, Prosecutor vs. Tadic (IT-94-1) para. 175.
around talking about what happened that day, drink coffee, have a chat, and amongst all of us the hardest thing that we had to deal with was not so much the bodies of people, the murder of people – I know that can sound bad, but that wasn’t as bad to us as the rape and especially the systematic rape and gang rape of children. Massacres kill the body. Rape kills the soul. And there was a lot of rape.23

This is a powerful description of the use of rape in war and the impact it has on survivors as well as victims. His description highlighted the particular violence suffered by women and children and the physical evidence of links to gender in the ways they were killed. His comment that rape kills the soul links with the underlying collective attitudes to rape that will be considered later in this chapter and is indicative of the reality that tactical rape and sexual violence have long lasting and wide spread negative effects.

Various accounts of the use of rape in conflict and in genocide contribute to understanding the impact of such crimes. The International Committee for the Red Cross and Red Crescent has written that rape is at times used as a method of extracting information and as punishment for actual or alleged actions.24 Human Rights Watch supports this observation of rape as a punishment with accounts of Serbian police and military forces raping women as a punishment for their husbands or family members being members of the Kosovo Liberation Army and there were also the reports of public rapes which have an additional impact beyond the suffering of individual women.25 They attack the fabric of their communities and can destroy hopes of any long-lasting recovery even when the rapes and conflict stop. As will be

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detailed later in this chapter, the attack extends beyond the individual and beyond the immediate pain and suffering of the victim.

Bulert Diken and Carsten Bagge Laustsen contributed to understanding the reality of tactical rape and sexual violence, basing observations and analysis on events in Bosnia Herzegovina, particularly noting that family members were at times forced to rape each other or to witness the rape of family members. After such rapes, victims and perpetrators would have severe difficulty in facing each other. For some men raping was seen as form of rite of initiation – being forced into a brotherhood of guilt. This is far from an opportunistic attitude to rape by rogue individuals making the most of a breakdown of law and order. This is a deliberate attack on the community as well as individual women. In their article on rape and sexual violence, Diken and Laustsen noted that as well as the immediate degradation, pain and terror, rape survivors frequently experience long-term physical injury and psychological trauma. They highlighted risks of sexually transmitted diseases and pregnancy and noted the intense cultural pressures which could come into play, especially when faced with either seeking an abortion in a context where health provision was likely to be disrupted, when there may be cultural opposition to abortion – but there may also be pressure against keeping a child conceived by rape.

Hilary Charlesworth and Christine Chinkin helped further understanding of the nature and extent of harm done by rape in war when they noted the variety of ways in which rape in war impacts on women and their communities:

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27 Diken and Laustsen, pp. 111-128.
28 Diken and Laustsen, pp. 111-128.
As well as the immediate degradation, pain and terror, rape survivors frequently experience long-term physical injury and psychological trauma. Fear and shock are also experienced by women who were not themselves subjected to attack.²⁹

It is essential to understand that fear and shock are experienced both by the victims and by those in their collective group before going on to consider the reasons for this wider experience. Charlesworth and Chinkin recognised a number of allied impacts on women raped in war, including the risk of sexually transmitted disease and pregnancy, with the possibility of facing childbirth or seeking an abortion ‘at a time of great dislocation, with reduced health care and intense social and cultural pressures, sometimes against abortion and sometimes against keeping a child conceived by rape’.³⁰ Physical damage may last long after an attack and can have serious health implications for childbirth, at the very time when health services are less available.

When women are forced to flee conflict zones, they are vulnerable to a variety of forms of rape and sexual violence. Charlesworth and Chinkin referred to attacks ‘in refugee camps, in foreign countries or as displaced persons in their own countries’ and to demands for sex amounting to rape when such demands are exploiting economic need of women and are made as requisites for provision of food and necessities for survival.³¹ The definitions of rape in war developed in the ICTY and ICTR began to come to terms with rape which was not specifically the result of physical force and violent attack but still was the result of coercion. These definitions will be discussed further in later chapters when analysing the variety of forms of rape which could be deemed to be tactical. Charlesworth and Chinkin were voicing the

³⁰ Charlesworth & Chinkin, p. 253.
³¹ Charlesworth & Chinkin, p. 253.
concerns about rape necessitating violent force and which neglected the variety of ways in which force could be applied. These concerns were gradually confronted by the international community. The analysis of Charlesworth and Chinkin was relevant and powerful as an expression of feminist recognition of the full reality of women’s vulnerability in conflict.

Charlesworth and Chinkin also referred to the reality that war-related rape can continue to occur after a conflict. They noted, ‘a rape epidemic was reported in Kuwait after ‘liberation’ at levels worse than during the Iraqi occupation’ where the attitude of men perpetrating the rapes was that the women targeted ‘deserved’ their treatment for ‘supporting’ the Iraqis.\(^{32}\) They further noted the failure of the government to take action against these crimes ‘especially where rapes were committed by men in uniform’.\(^{33}\) These were not specifically tactical rape but do demonstrate that tactical rape can leave a legacy of using rape for a variety of reasons and a variety of expressions of power relations. The final chapters of this dissertation will include a focus on the economic and security impacts of tactical rape and sexual violence in war on states and on their neighbours.

Rape – always an expression of power relationships – can in the context of conflict be an expression of power over a collective as well as over an individual. A report relating to the former Yugoslavia, in 1992, noted that there was mounting evidence of systematic rape’, with survivors speaking of what they called ‘rape on the front line’ and ‘third-party rape’ which were reported as rapes carried out publicly by Serbian soldiers to demoralise family members and opposition forces compelled to witness them.\(^{34}\) This report was based on accounts given by women and workers in a refugee camp. The stories were accepted as sufficiently convincing for legal and

\(^{32}\) Charlesworth & Chinkin, p. 262.

\(^{33}\) Charlesworth & Chinkin, p. 262.

\(^{34}\) Fitzpatrick, *Rape of Women in War*, p. 21.
formal investigations to take them into account and the writer of the report was requested to brief a European Council (EC) investigative team which traveled to Zagreb immediately after the report’s distribution.35

The report of the EC mission substantiated the earlier report noting in its findings, ‘the delegation frequently heard – including from several individual witnesses and sources – that a repeated feature of Serbian attacks on Moslem towns and villages was the use of rape, often in public’.36 This public rape was perceived as having impact on the victim - and on her community. The ICTR and ICTY, by recording accounts of survivors and responses by medical and military observers, have taken comprehension of tactical rape and sexual violence into discussions about which international laws cover such violations. As will be seen in Chapters 3 and 4, the ICTR and ICTY contributed to recognition of the applicability of existing international law, particularly for individuals who suffered tactical rape and sexual violence. But tactical rape and sexual violence also impact on communities and the collective impact of tactical rape must be traced back to collective social relationships.

Social Relationships Which Make Tactical Rape and Sexual Violence Effective

The vulnerability of women and communities to tactical rape and sexual violence in war is linked with attitudes and community values that must be recognised. This is a vulnerability which has the potential to extend the range of impact beyond the immediate tragic damage done to individuals in any physical attack. Importantly, it is a vulnerability which could be lessened by clear recognition of the interaction of conflict with social attitudes and norms – and by subsequently attempting to change those attitudes and norms. Tactical rape and sexual violence in war have immediate

and long-lasting, widespread physical, cultural and emotional effects on individuals and on collectives. Understanding these effects is facilitated by understanding the collective values and sense of identity. Understanding the learned values and attitudes which render women and their communities vulnerable to tactical rape and sexual violence can also provide a basis for confronting that vulnerability. This is the greater understanding referenced by Lee-Koo as the need to ‘un/recover the experiences of women’. This is a significant need.

If, as Munkler claimed, ‘the defence of cultural identity could also become a recurring reason for going to war’ then attacks on cultural identity can be an effective and strategic way to wage war. The definitions of culture are varied but this dissertation accepts that, ‘culture constitutes one’s political self’. Attitudes to women are part of cultural identity. Patriarchy is an element of cultural identity which affects both men and women. Testimonies of witnesses from cases heard by the international tribunals (especially those at the ICTR) demonstrate how attacks on women were used as attacks on communities, men and women. Patriarchy certainly is an aspect of cultural identity which renders whole communities vulnerable to the destructive force of tactical rape and sexual violence in war. One definition has been provided by Adrienne Rich:

Patriarchy is the power of the fathers: a familial-social, ideological, political system in which men – by force, direct pressure or through ritual, tradition, law and language, customs, etiquette, education and the division of labour determine what

37 Lee-Koo p. 526
38 Munkler, p. 12.
part women shall or shall not play and in which the female is everywhere subsumed under the male.\textsuperscript{40}

The definition does articulate many of the features of patriarchal societies even though these may be interpreted differently between cultures.

Nancy Farwell has provided valuable insights to understanding the links between often demonstrated patriarchal attitudes and militarisation of rape.\textsuperscript{41} She noted the protectionist values inherent in patriarchal relationships which promote the view that women are property of men and as such are to be defended.\textsuperscript{42} In a patriarchal society, a female may be ‘viewed as a vessel for a male seed’ and this can provide ‘a construct that is central to the use of rape in ethnic cleansing’.\textsuperscript{43} She wrote that in patriarchal societies women are perceived as protecting the honour of the community through marriage and cultural practices that maintain a pure lineage and pure ethnic-cultural heritage.\textsuperscript{44} This can help explain how ‘rape and sexual violence during ethnic conflict become strategies for infiltrating or destroying those boundaries and attacking the honour of the community and the purity of the lineage’.\textsuperscript{45} Understanding these often present elements of patriarchy helps understanding of the collective as well as the individual damage done by tactical rape and sexual violence in war. The individual victim suffers direct physical and emotional pain – and she also suffers from additional pain resulting from the perceptions of her community. The community suffers from a perceived attack on the holder of its values and its


\textsuperscript{41} Farwell.

\textsuperscript{42} Farwell p.394.

\textsuperscript{43} Farwell pp. 394-395.

\textsuperscript{44} Farwell p. 395.

\textsuperscript{45} Farwell p. 395.
lineage, an attack on a member whom the community has perceived as being one for whom it has a responsibility to protect.

While patriarchal attitudes have damaging impacts on women and girls in restricting their access to many of the rights they should share in communities, patriarchy should be seen, also, as an issue damaging to communities as a whole. Restricting the freedom and rights of women makes communities vulnerable to attacks such as tactical rape and sexual violence in war. In Rwanda, before the genocide, women were traditionally deemed to be dependents of men. A 1996 report on the status of women in Rwandan society said:

> Throughout their lives, women are expected to be managed and protected by their fathers, their husbands and their male children. Traditionally, the role of the Rwandan woman in society centred on her position as wife and mother.46

Such an attitude puts women in a position where they are valued as belongings rather than as individuals – and women’s value is determined by the degree to which they are valued by males. Such an attitude, while giving males the power to determine the value of women, also places pressure on males to protect ‘their’ women. Any demonstration of their failure to do so can contribute to social disintegration. It can intensify defeat of the ‘owner’ as it is clear he is unable to protect ’his’ property. Tactical rape and sexual violence in war are effective methods of attacking a community for these reasons.

Earlier, in 1992, the United Nations Committee monitoring the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), made these comments regarding the causes of gender-based violence:

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traditional attitudes by which women are regarded as subordinate to men or as having stereotyped roles perpetuate widespread practices involving violence or coercion, such as family violence and abuse, forced marriage, dowry deaths, acid attacks and female circumcision. Such prejudices and practices may justify gender-based violence as a form of protection or control of women.47

This recognition of the overall societal attitude to women is applicable to sexual violence in war and all forms of gender-based violence. Patriarchy is a pervasive element and as will be seen in later analysis of events in the former Yugoslavia and Rwanda and UNSC responses, it is the case that women’s vulnerability to violence in peacetime results in even greater vulnerability in war. The combination of patriarchal attitudes and women’s gender is a potent factor in the effectiveness of tactical rape and sexual violence in war.

Jill Steans has contributed to realisation of the need to confront gender when she devoted a chapter in her monograph Gender and International Relations to understanding ‘how gender is central to the processes involved in constructing the boundaries of the nation-states, specifically war’.48 She considered the relationship between military participation and citizenship concluding with the implications of the relationship between women and ‘the state, the military- and state-sanctioned violence’.49 When considering patriarchy, Steans focussed on the conventional distinctions made between protectors and those protected in social and political relationships, with women always seen as those needing protection. Steans helped illuminate the importance of understanding the implications of this socially constructed and legally reflected status of women in many communities. She said,

49 Steans, p. 8.
‘the distinction between the “protectors” and “protected” disguises the particular ways women suffer in wars’ listing the disruption to lives, the ongoing suffering of women in wars that have ‘no neat beginnings and endings’, the need for women to be carers and the high numbers of women in refugee populations where they are vulnerable to a range of violence including sexual violence.\textsuperscript{50} She quoted J.H. Stiehm who had noted that ‘protectors usually control those whom they protect’\textsuperscript{51} and Jan Pettman, ‘the protector/protected relationship makes women vulnerable to other men’s/states’ violence’.\textsuperscript{52} Steans believed that it was patriarchal attitudes which underlie and exacerbate women’s vulnerability in wartime, particularly vulnerability to rape.

Steans also highlighted that ‘rape in warfare does not occur as an isolated incident’ but, as she claimed feminists had long argued, attitudes to rape ‘should be viewed as an accepted part of the code that governs the fighting of wars rather than as an individual act of wrong’.\textsuperscript{53} She noted that domestic violence springs from the same patriarchal attitude and concluded, ‘war, violence and women’s oppression all grow from the same root’.\textsuperscript{54} The notion of women as only victims, as having little capacity to protect themselves and participate in peacemaking and peacekeeping has been soundly debated as will be seen in later chapters regarding United Nations Security Council resolutions but Steans does helpfully explain the societal underpinnings of societies in which tactical rape and sexual violence are effective forms of attack.

The link between rape in war and patriarchy was also highlighted by Christine Chinkin, who explained that the potency of rape as a weapon is often due to the fact

\textsuperscript{50} Steans, p. 100.
\textsuperscript{53} Steans, p. 101.
\textsuperscript{54} Steans, p. 102.
that for men the rape of their women encapsulates the totality of their defeat as they are demonstrably unable to protect ‘their’ women.\textsuperscript{55} Hilary Charlesworth and Christine Chinkin quoted B. Reardon, noting that ‘sexually manifested violence’ is ‘connected to ideas of male soldiers’ privileges, to the power of the military’s line of command as well as by class and ethnic differences among women’.\textsuperscript{56} They also quoted R. Seifert referring to the link between rape and the idea of women as property – a link which means that ‘to rape a woman is to humiliate her community’.\textsuperscript{57} Patriarchy is a context to be understood for its implications regarding tactical rape and sexual violence in conflict.

It is essential to stress that the use of rape in war is closely linked with women’s position in societies and communities. Hilary Charlesworth and Christine Chinkin have also written, ‘Sexually manifested violence in armed conflict is an aspect of the subordinate position of women globally’.\textsuperscript{58} Writing in 1998, they noted that such violence against women had not received due attention and that:

the entirely unacceptable situation in international law is that the fundamental norms which all states must observe include systematic racial discrimination but not discrimination against women or even widespread gender-based violence. Women have had to mount a campaign to have violence against women, in all its forms, recognised as an international legal wrong.\textsuperscript{59}

\textsuperscript{58} Charlesworth and Chinkin, p. 254.
\textsuperscript{59} Charlesworth and Chinkin, p. xi.
They are among the feminist analysts of rape in war who have highlighted the links between rape in war and underlying gender relationships often most clearly determined in recognition of patriarchy.

Importantly, too, Charlesworth and Chinkin recognised the community impact of rape in war. They quoted the Special Rapporteur of the Commission on Human Rights, who said that rape was used in the former Yugoslavia, to humiliate, shame, degrade, and terrify an entire ethnic group.60 This is a reflection of the reality that communities see women as belonging to the group, as requiring protection and as holders of what Farwell called ‘the purity of the lineage’.61 It is an essential part of the use of rape in war that it attacks individual victims and it attacks their societies and communities, who see their own ability to protect and preserve their identity. Social constructions regarding the perceived damage by rape to a woman’s value come into play and often it is in times of great social upheaval and disruption that women are faced with no options that will satisfy prevailing social standards. Abortion may be judged as wrong but impregnated women may perceive that there will be nothing gained by either the woman or the child by keeping a child of a perceived enemy. The lack of control of the woman against attack does not counterbalance the fact that she is carrying an unwanted child.

There is a complex and damaging effect on individual women and on women as part of a group. The group impact of rape has also been described by Binaifer Nowrojee:

The humiliation, pain and terror inflicted by the rapist are meant to degrade not just the individual woman but also to strip the humanity from the larger group of which she is a part. The rape of one person is translated into an assault upon the community

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61 Farwell p. 395.
through the emphasis placed in every culture on women’s sexual virtue: the shame of the rape humiliates the family and all those associated with the survivor.62

This can be seen as a result of patriarchal attitudes – attitudes which lead to damaging impacts on whole communities and males as well as females. In patriarchal societies where women are perceived as belonging to men, then raping someone perceived to be a man’s woman sends a clear message about victory in relative power relations. This in no way diminishes the suffering of individual women victims of tactical rape and sexual violence. It explains how their suffering is intensified in a community which is culturally patriarchal. As accounts from women in Rwanda and the former Yugoslavia will demonstrate, the physical attacks and violations of women are exacerbated by their feelings of shame and their perception of themselves as being less valuable as well as of being less valued. Tactical rape has a long-term communal – as well as an immediate individual – capacity to damage.

The work of so many of these feminist analysts highlights the need to confront both cause and effect of tactical rape and sexual violence in war. In addressing the root causes and the impact of rape in the former Yugoslavia, particularly Bosnia Herzegovina, Lynda Boose posited that the way rape is socially constructed makes it ‘primarily’ a violation defiling male members of families and communities and concluded, ‘the more patriarchal the culture, the more vulnerable it becomes, all the more likely are the women to become targets for enemy rape’.63 It does need to be noted that while rape may be a violation of males, it is questionable that it is ‘primarily’ a violation of those males in any society. This would seem to be a value judgement with which many women victims might disagree. However, Boose did refer to the numbers and the identity of the women raped and linked these with

63 LE Boose, ‘Crossing the River Drina: Bosnian rape camps, Turkish Impalement and Serb Cultural Memory’, Signs, vol. 28 no. 1, Gender and Cultural Memory, Autumn 2002.
ongoing relations between Serbs and Turks.\textsuperscript{64} She recognised the courage of the women who survived and who went on to testify, at great personal cost in many cases. She observed that even the word rape could not encompass the trauma of the events for many of those women for whom sexual violation would have been one of a series of abuses: seeing their family members killed, being tortured, and being humiliated publicly. It is important to consider these aspects of rape in war to understand that the use of rape and sexual violence in war is closely linked with gendered constructs in societies. The impact on societies contributes to such violations being effective in achieving destruction and damage of those societies.

Other feminist analysts have contributed to understanding the pernicious effectiveness of tactical rape and sexual violence in war. In 2006, Diana Milillo specifically referred to rape as a tactic of war and she also made the link with the impact of rape and patriarchal societies, noting that rape devastates both individuals and their societies and her conviction that:

\begin{quote}
the systematic nature of rape as a tactic of war exists against a backdrop of rigid cultural norm of gender and women’s sexuality, social dominance and power within conflicting groups and a soldier’s identity as a man and as a member of a particular military group.\textsuperscript{65}
\end{quote}

She convincingly challenged the notion that all men have a drive to use their genitalia as a weapon – pointing out that not all men rape and in fact not even most men rape.\textsuperscript{66} Milillo quoted H. Tajfel and J.C. Turner who believed that individual men have a desire for a positive social identity and will do what is needed to enhance the status of the group perceived as the ‘in-group’ and/or to discriminate against the

\textsuperscript{64} Boose, p.70-96.
\textsuperscript{66} S Brownmiller, \textit{Against our will: men, women and rape}, Simon and Schuster, New York, 1975, quoted in Millilo, p. 198.
‘out group’. Milillo’s linking of the concepts of tactics and rape in war was indicative of an advance in understanding of the causes and motivations for the use of tactical rape and sexual violence in war.

Again, the work of Lee-Koo had contributed when she highlighted the ‘extreme insecurity’ of women in war and the failure of mainstream approaches to international relations theory to identify this extreme insecurity of individual women and their experiences in inter-state war. She criticised the realist and neo-realist traditions of international relations theory as a discourse which renders women unseen and unheard in international relations, trapping them in gendered and subordinate roles. She also recognised that there had been some positive developments: international recognition of the socially constructed and gendered reality identifying vested interests in the subordination of women; acknowledgement of the multiple subjectivities of women which helps to dispel the ‘essential women’ myth. This was a valuable insight, expanding on the broad approach to women’s vulnerability in conflict reflected in UNSCR 1325 in 2000, a resolution which will be analysed in detail in Chapter 5 and which recognised the causes of – and therefore the ways towards confronting - tactical rape and sexual violence in war.

It is important to recognise that patriarchy is not restricted in its impact to the attitudes of men in communities. As members of patriarchal societies, women, themselves, may share their society’s value of them. A report from the Rwandan Government in 1995 reflected that society’s value of women:

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68 Lee-Koo, pp. 525-536.

69 Lee-Koo, p. 527.

70 UNSCR 1325 (2000) will be discussed at length in Chapter 5 of this dissertation.
the ideal image of a woman is still generally viewed through the perspective of her maternal role. The woman must be fertile, hard-working and reserved. She must learn the art of silence and reserve.\footnote{Government of Rwanda, Rapport National du Rwanda pour le Quatrième Conférence Mondiale sur les Femmes, Beijing, September 1995, p. 19.}

As members of the Rwandan society, women could share this view. It is not difficult to understand, therefore, why many women would be reluctant to speak of their experiences of being raped. Silence and reserve were honoured. Those who were physically damaged and no longer likely to be able to bear children were likely to fear being rejected as no longer fertile and valuable. The report, \textit{Shattered Lives} said:

\begin{quote}
In Rwanda, as elsewhere in the world, rape and other gender-based violations carry a severe social stigma. The physical and psychological injuries suffered by Rwandan rape survivors are aggravated by a sense of isolation and ostracisation. Rwandan women who have been raped or have suffered sexual abuse generally do not dare reveal their experiences publicly, fearing that they will be rejected by their family and wider community, and that they will never be able to reintegrate or marry.\footnote{Nowrojee, \textit{Shattered Lives}, p. 3.}
\end{quote}

This statement would likely hold true for women in many other patriarchal societies. The silence of women who have survived rape of any form has been a long-standing issue and the experiences which will be outlined in the chapter regarding testifying, particularly at the ICTR, will highlight many reasons for such silence.

Testimonies from victims in Rwanda and the former Yugoslavia are particularly illustrative of the impact of tactical rape on women – impact which goes beyond the agonising physical suffering they experienced and which reflect the constructed sense of self as a member of a society. One woman, ‘Goretti’, was raped for days by various groups and had her legs held open while the sharpened end of the stick of a
hoe was pushed into her. After this she found some temporary refuge before being raped again. In the telling of these horrific events she said that after the last rapes:

I was left alone and naked. I decided to try and escape. I couldn’t walk properly and so was on all fours. When people passed me, I sat down and stopped walking so they wouldn’t know I had been raped because I was ashamed.

The fact that the victim felt shame was an addition to her plight that goes beyond the terrible physical attack and reflects the constructed value of herself that had been imposed upon her. The same sense of imposed degradation and heartbreaking sorrow was reflected when she said, ‘you can’t ever forget. Until I die, I’ll always be sad’.

Sadly, there have been many stories of such dire suffering.

Another victim, ‘Josepha’, said, ‘rape is a crime worse than death’. ‘Jeanne’, who was abducted and kept in sexual slavery as a ‘wife’ said, ‘rape is a crime worse than others. There’s no death worse than that’. ‘Nadia’, who was eleven when militia attacked her house, who was still severely traumatised two years after seeing them hack her brothers to pieces in front of her, was then taken and raped at least five times. She said:

He threatened to kill me with his machete. He would keep the machete near the bed while he raped me. I have never told anyone before what happened to me. I am ashamed and scared that people will laugh at me.

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73 Nowrojee, Shattered Lives, pp.28-29
75 Nowrojee, Shattered Lives, p. 29.
76 Nowrojee, Shattered Lives, p. 28.
77 Nowrojee, Shattered Lives, p. 35.
Shame such as this is socially constructed and imposed. Medical practitioners have reported rape victims being reluctant to seek medical treatment because of the fear of being judged because ‘society is looking at you’ and they feel such shame.\textsuperscript{79}

The effect of tactical rape was not some unfortunate by-product of rape. One interviewee said, ‘many women begged to be killed during the genocide’ and she continued, ‘they were refused and told, you will die of sadness’.\textsuperscript{80} The rapes were often accompanied by severe torture and mutilation, particularly of sexual organs, which emphasised degradation and violation:

Sexual mutilations included the pouring of boiling water into the vagina; the opening of the womb; to cut out an unborn child before killing the mother; cutting off breasts; slashing the pelvis area; and the mutilation of vaginas.\textsuperscript{81}

Such actions are more than torture. As well as savage personal physical attacks, they are a destructive image of attack on future generations and are considered to be a direct demeaning of the value of women. This is a potent attack in societies where women are valued as holding the purity of lineage.

The impact of tactical rape is often even greater when rapes in war result in pregnancies and children. This is heightened when there is the added belief in strongly patriarchal societies that children ‘belong’ to their fathers. During the visit of an international team to refugee camps in and around Zagreb in 1992, a woman in Zagreb said, ‘one part of me – deep inside – believes that my children belong to their

\textsuperscript{79} Nowrojee \textit{Shattered Lives}, FIDH interview, E Rwamasirabo, Director, Kigali Central Hospital, Kigali, 16 March 1996.

\textsuperscript{80} Nowrojee, \textit{Shattered Lives}, FIDH Ester Mujawayo of the Association for Widows of the April Genocide, 18 March 1996.

\textsuperscript{81} Nowrojee, \textit{Shattered Lives}, Coordination of Women’s Advocacy, \textit{Mission on Gender-based War Crimes Against Women and Girls During the Genocide in Rwanda: Summary of Findings and Recommendations}, p. 7.
father’.82 She explained the struggle which the community of the women raped would have in accepting the children of those rapes as part of the mothers’ communities. In wars with strategies to attack the civilians of opposing groups in a conflict, rape is frighteningly effective. Nowrojee explained the rights of men in Rwanda, noting that in Rwanda, customary law accords men the role of head of the family.83 They inherit property, name children and transmit the family name. Before the genocide, when ethnicity was registered, it was the father’s ethnicity which was transmitted. If the husband dies, children can be taken from the wife by the husband’s family as the children ‘belong’ to the husband and his family.84 This has serious implications for inheritance laws and recognition of children – they are the children of their fathers even when the result of rape.

A further impact of tactical rape may be that a woman’s ability to bear children could be affected. When a woman is physically damaged to the point of not being able to be sexually active or to have children, she, as well as the community, may judge her as devalued, not worthy of being a marriage partner. An international team interviewing refugees and workers in camps in Zagreb in 1992, was told that there had been calls within the Muslim community to accept women who had been raped as ‘heroes’ and ‘to maintain marriage as a continuing option’.85 The motivation behind the call was seen as intended to be supportive and to ameliorate community judgement of raped women as being of less value. However, as women workers at the time said to one another and to the team, there would be many women who would not welcome any sexual relationship after their attacks and so would be caught between the choice of entering into an unwelcome marriage or being seen as less than a natural woman, with a less secure place in their society.

82 Fitzpatrick, Rape of Women in War, p. 20.
85 Fitzpatrick, Rape of Women in War p. 23.
Attacks on women are attacks on future generations of their collectives. In Rwanda, ‘Maria’, an eighteen year old Hutu student ‘does not like to see or be near men’. Her story is tragic. She saw her grandparents, two aunts and her brother killed before being gang raped and having her vagina slashed with knives by militia who shouted, ‘We are going to kill you so you will want death’. What may seem at first as a nonsensical statement actually can be seen to reflect a different form of killing for a woman, a form of attacking so that a quick death would be welcome. When she eventually reached medical help reconstructive surgery was performed but she will never be sexually active or bear children and she is carrying the HIV/AIDS virus. She said, ‘They have ruined my future. I am not the only one. What they did to me they did to many others. But what can I do?’ In a society which values a woman for bearing children, ‘Maria’ sees herself deemed valueless. Such is the destructive impact of rape when patriarchy is prevalent.

It is essential to understanding the effectiveness and danger of tactical rape that constructed attitudes and community values be recognised as potential areas of vulnerability. This vulnerability extends the range of impact beyond the immediate tragic damage done to individuals in any physical attack. This is a vulnerability which could be lessened by changes in social attitudes and norms. Priorities and programmes developing from UNSC resolutions and institutionalised allocations of resources to confront women’s vulnerability in peace time will be detailed more fully in later chapters. These resolutions have recognised that by working to reduce women’s economic, social and political vulnerability in peace time, their vulnerability – and that of their communities – in conflict will be confronted. Societal attitudes such as those evident in patriarchal communities which are

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88 Nowrojee, Shattered Lives, p. 41.
constructed can be changed. It is important to understand how such change can be effected.

*Changing Societal Attitudes*

Key stimuli for changing existing attitudes and relationships may come from international or trans-national sources. Non-governmental organisations can be key agents, working within a context of global and national civil society. The Prosecutor of the International Criminal Court, noted: ‘global civil society, as a network of domestic and transnational non-governmental organisations is able to shape the values and the priorities of the international community’.\(^9^9\) Commenting on the role of civil society in affecting normative attitudes, he said, ‘when domestic and transnational NGOs work together in consensus with a common message, new international norms are established and justice can more easily be recognised’.\(^9^0\) This was certainly the case in drawing attention to the widespread use of rape in both the former Yugoslavia and Rwanda in the 1990s. Many NGOs and multilateral agencies had, for many years, highlighted situations of tragic sexual abuse and rape in conflicts. In the early 1990s, they seemed finally to attract due attention to widespread tactical rape and sexual violence in the particular conflict areas of the former Yugoslavia and Rwanda. They were, of course, supported by individuals and organisational leaders within and beyond country borders, civil society groups within country and regional structures. The roles played by many of these entities will be demonstrated in later chapters.

Martha Finnemore and Kathryn Sikkink have proposed that ‘new ideas often emerge in response to dramatic policy shocks, failures or crises’.\(^9^1\) The events in both the

\(^9^0\) Moreno-Ocampo, p.5.
former Yugoslavia and Rwanda in the 1990s shocked the international humanitarian and human rights organisations. But, perhaps more significantly in terms of developing policies and responses, the events shocked state members at various UN bodies. In 1993, ECOSOC expressed outrage at rape being used as a weapon of war, and in 1994 the UN General Assembly expressed alarm at ‘the continuing use of rape as a weapon of war’. Both these resolutions recognised rape as an instrument of ethnic cleansing and noted that the abhorrent policy of ethnic cleansing was a form of genocide. In 1995, the General Assembly noted that it reaffirmed ‘that rape in the conduct of armed conflict constitutes a war crime and that under certain circumstances it constitutes a crime against humanity and an act of genocide’. It called upon states to ‘take all measures for the protection of women and children from such acts and to strengthen mechanisms to investigate and punish’ those responsible. It took some time before there was any real attempt to spell out just what these statements implied, but they demonstrated that the shock of continuing events – and continuing media attention – did stimulate responses and contributed to the development of the international normative rejection of tactical rape. UN attitudes and interpretations regarding tactical rape and sexual violence in war began to change.

Tactical rape and sexual violence came to be perceived by UN agencies as pressing political problems. Pressure for response to the reports of widespread rape came from sustained attention and publicity from public media and NGOs and, eventually, from the UN’s own rapporteurs. It became difficult for states to ignore the use of rape in

93 United Nations General Assembly, Rape and abuse of women in the areas of armed conflict in the former Yugoslavia, General Assembly resolution 1994/205.
94 United Nations General Assembly, Committee: 3 Rape and Abuse of Women in the Areas of Armed Conflict in the former Yugoslavia, 90th plenary meeting, 22 December 1995.
95 United Nations General Assembly, Committee: 3 Rape and Abuse of Women in the Areas of Armed Conflict in the former Yugoslavia, 99th plenary meeting, 22 December 1995.
the two specific conflicts. The events in the former Yugoslavia and Rwanda were being perceived as pressing by the public media which publicised reports such as those of the European Community and NGOs which will be detailed in Chapters 3 and 4. The consequent pressure on the international community, particularly the UN, to respond could be perceived as leading to the resolutions noted above, from the General Assembly and Economic and Social Council of the United Nations (ECOSOC) in particular. More action would be demanded of the United Nations Security Council (UNSC) as will be seen in chapters 5 and 6 of this dissertation. It will be seen, too, that at a certain stage, states themselves began demanding more than statements of rejection and called for resolutions which made explicit the action needed to confront tactical rape and sexual violence in war.96

An idea’s degree of persuasion may also originate in the perceived legitimacy of the advocate as well as in the extent of international support it is perceived to be receiving. Thomas Risse, Stephen C. Ropp and Kathryn Sikkink recognised the role of ‘trans-national advocacy networks’, agreeing with other analysts that these are networks of ‘those relevant actors working internationally on an issue, who are bound together by shared values, a common discourse, and dense exchanges of information and services’.97 Risse, Ropp and Sikkink acknowledged the essential role of international NGOs and foundations which are loosely connected to human rights organisations (international and domestic) and the role of international institutions such as United Nations bodies and related treaties drafted and ratified under the auspices of UN and regional institutions.98 In the consideration and analysis of key steps such as UNSC resolutions, it will be shown that such trans-national advocacy

96 See Chapter 6 regarding UNSCR 1820.
98 Risse, Ropp & Sikkink, p. 21.
networks have been instrumental in sustaining discourse to bring attention and responses to tactical rape and sexual violence in war.

The work of Risse, Ropp and Sikkink has been helpful in positing processes by which states are socialised and norms become entrenched in domestic policy and practice, moving beyond rhetoric when ideas and norms become habitualised and internalised.99 Attitudes need to become part of the rule of law in states as well as at international level. Shirley V. Scott has commented that the principle of the rule of law ‘serves as a normative basis for law: it establishes what the law should do, even though it does not always do so’.100 The National Action Plans required of states by UNSCR 1325, which will be analysed in detail in Chapter 5, demonstrate how rejection of tactical rape and sexual violence in war can be translated from global rhetoric into state institutions, policy and practice. They also demonstrate how attitudes can become part of the rule of law.

Risse, Ropp and Sikkink highlighted that normative change influences political change through a socialisation process. They asserted that ‘norms become relevant and causally consequential during the process by which actors define and refine their collective identities and interests’.101 The framework they provide for understanding the socialisation of states and for tracking progress in the acceptance of norms is useful when determining the extent to which events and discourse reflect states’ real likelihood of changing to respond to the new international rejection of tactical rape and sexual violence in war. While Risse, Ropp and Sikkink focus on human rights norms, the models they provide for understanding socialisation processes transfer

99 Risse, Ropp & Sikkink.
101 Risse, Ropp & Sikkink, p. 9.
easily to consideration of normative rejection of tactical rape and sexual violence in war.

The three types of socialisation processes necessary for enduring change which Risse, Ropp and Sikkink have identified are, first, the processes of adaptation and strategic bargaining; second, the processes of moral consciousness-raising, ‘shaming’, argumentation, dialogue and persuasion; and third, the processes of institutionalisation and habitualisation.102 These stages may overlap or occur in parallel time. States may, firstly, endorse a norm for strategic motives in a desire to win approval from other states – and possibly, political and economic benefits in so doing. Risse, Ropp and Sikkink note that to ‘endorse a norm not only expresses a belief, but also creates an impetus for behaviour consistent with the belief’.103 So, whatever the motive, there can be moves to the second stage, accompanying or eventual moral consciousness raising. This can have positive results as norms, which may have been adopted or at least given rhetorical support by some leaders, may eventually become internalised as leaders, used to hearing the rhetoric, come to believe and accept what has become collective expectations. Consequently, ‘the goal of socialisation is for the actors to internalise norms, so that external pressure is no longer needed to ensure compliance’.104 When international actors and organisations such as those at the UNSC and United Nations Assembly began to reject certain behaviours – even when those statements might initially have seemed to be mere rhetoric – it is possible that eventually change occurred in normative attitudes. This progress will be examined further in later chapters of this dissertation. As will be demonstrated in the later analysis, UNSC 1325 articulated broad ranging understanding of the fact that women’s vulnerability in peace was directly linked to the degree to which they are vulnerable in conflict. Confronting tactical rape and

102 Risse, Ropp & Sikkink, p. 11.
103 Risse, Ropp & Sikkink, p. 7.
104 Risse, Ropp & Sikkink, p. 11.
sexual violence in war was seen to require confronting negative gendered realities of women in many patriarchal communities.

The third stage, the degree to which societal and political change is truly effected, is reflected in the degree to which it can be seen reflected in national policy and institutions. No significant change can be deemed to have taken place if apparent acceptance of an attitude or value is not reflected by ratification of relevant international conventions and optional protocols; is not reflected in constitutions and domestic law; does not provide some mechanisms for citizens to call for redress of abuses; if states do not comply without complaint of ‘interference in internal affairs’.

This is why analysis of National Action Plans in Chapter 5 is a useful indicator of the real degree of change which has filtered into states’ domestic policy and practice. However, it must be noted that reliance on states to institutionalise norms such as rejection of tactical rape and sexual violence is in itself problematic, as many feminist scholars have highlighted that there is an inherent legitimising of ‘a model of (male) dominance and (female) subservience within states as immutable’. International agencies and organisations must provide an institutionalised focus for implementing change if it is to be taken seriously. International donors and development agencies must, also be aware of the need to support new and apparently more just policies and practices in states – such as change for a greater degree of gender equality. Funders’ support for such change can be a factor in the reflection of international norms in sustainable national practice and policy.

As consideration focuses on Rwanda and the former Yugoslavia in later chapters, it will become apparent that outcomes of these differing contexts have impacted on the degree to which international attitudes to tactical rape and sexual violence in war

105 Risse, Ropp & Sikkink, p. 29.
106 Charlesworth and Chinkin, p. 164.
eventually changed as well as the emergence of developing international discourse regarding rejection of these abuses. UNSC resolutions analysed later also indicate a growing awareness at global level of the diverse areas of gender inequality and injustice which are linked with women’s particular vulnerability to tactical rape and sexual violence in war. J.T. Checkel stated that not only do different states react differently to the same international norms, but the mechanisms by which norms are internalised within states also differ.107 This has been demonstrated in international responses to tactical rape and sexual violence in war. Change happens slowly in social, community attitudes and responses to events and is often eventually encapsulated in the development of new social and community attitudes and values. But, the rejection of tactical rape and sexual violence in war has been gaining strength since the early 1990s, in ways and for reasons which will be considered and analysed to ascertain the degree of progress in changing attitudes and standards of states. Key developments such as the working of the two international tribunals and the UNSC are relevant because international law and international organisations are the primary vehicles for stating community norms and for collective legitimation.108

As the process of raising moral consciousness occurs and is shared, then allied processes of argumentation and a variety of forms of dialogue and persuasion can come into play. The notion of shaming agents or entities, which do not comply with these articulated and accepted standards may be utilised and is often effective in applying pressure for compliance. This was the case regarding the widespread use of rape in the 1992 conflicts in the former Yugoslavia and Rwanda as media and NGOs made events so public that there was a sense that the international community had to

108 Risse, Ropp & Sikkink, p. 8.
respond and make clear their condemnation of such acts. As the expectations of collective behaviour are integrated into the operations and expectations of institutions they are simultaneously strengthened. The two tribunals, ICTY and ICTR, were key institutions contributing to expectations regarding tactical rape, sexual violence and international law. By making judgements and legal clarifications these two tribunals institutionalised internationally acceptable standards and demonstrated that tactical rape and sexual violence were contraventions of acceptable attitudes. Engaging in moral discourse can help clarification and implications of expressed standards or modes of behaviour and contribute to eventual conviction that these standards are justified. Adaptation of behaviour can follow. However, it is also possible that, ‘actors might actually agree on the moral validity of the norm, but disagree whether certain behaviour is covered by it’. 109 It would appear, from the ongoing discourse at the UNSC, to be analysed in a later chapter, that there are actors who genuinely reject tactical rape and sexual violence in war.

While Risse, Ropp and Sikkink do not refer to it, there can also be instances of misappropriation of moral attitudes – using them as excuses for behaviour that would otherwise be condemned. The excuse of countering terrorism or extremism may be invoked to provide a cover for any behaviour against groups or governments, which are perceived to be oppositional. Risse, Ropp and Sikkink have acknowledged that persuasion itself can be conflictual and often involves, ‘not just reasoning with opponents, but also pressures, arm-twisting and sanctions’. 110 Later chapters analysing the practical actions taken – or not taken – by states in response to UNSC resolutions will demonstrate that progress on developing acceptance of a normative rejection of tactical rape is in early and varied stages of institutionalisation and socialisation.

109 Risse, Ropp & Sikkink, p. 11.
There is a long way to go before rejection of tactical rape and sexual violence in war is fully institutionalised by states, until it is ‘incorporated into standard operating procedures of domestic institutions’ and ‘actors follow the norm because it is the normal thing to do’.\(^{111}\) There is, too, a long way to go before the gendered attitudes to women’s participation in and ability to contribute effectively to political and social life of their communities is fully recognised. However, another and strong motivation for states to institutionalise rejection of tactical rape and sexual violence in war can be the belief that it is in a state’s own interest to conform to international norms for economic or political reasons. As will be discussed in a later chapter, states may also conform because there is awareness that accepting the norm will affect their own security.

The institutionalisation of a response to tactical rape and sexual violence in conflict is also influenced by existing humanitarian norms and institutions. These are articulated in treaties and conventions, with definitions which have been included, considered clarified and expanded in judicial case law and statutes. An important step in discourse leading to rejection of tactical rape and sexual violence in war is changing and challenging existing law to have it respond to a feminist analysis. Hilary Charlesworth, Christine Chinkin and Shelley Wright, in 1991, focussed on developing an international feminist perspective, outlined the male organisational and normative structure of the international legal system and applied feminist analyses to various legal principles.\(^{112}\) This required ‘looking behind the abstract entities of states to the actual impact of rules on women within states’.\(^{113}\) They concluded that modern international law is both andro-centric and Euro-centred in its origins and includes legal institutions which are essentially patriarchal and which are

\(^{111}\) Risse, Ropp & Sikkink, p. 17.


\(^{113}\) Charlesworth, Chinkin & Wright, p. 614.
based on questionable assumptions that law is objective, gender neutral and universally applicable. It is the recognition that the centrality of the state in international law reflects its patriarchal forms, which has particular bearing on the approach to rejection of tactical rape and sexual violence in war. Understanding and challenging the patriarchal base which applies in many situations must be a foundation for an emerging change of attitude and to non-acceptance of tactical rape and sexual violence in war.

Conclusion

This chapter has reviewed the changing nature of war in order to provide a context for the two arenas of conflict which will be the primary focus of further consideration. It has considered the impact of tactical rape and sexual violence in war on women and on their communities. It has considered the discourse between feminist analysts and NGOs and the voices of women testifying in ad hoc courts. This discourse provides insight to the impact of tactical rape and sexual violence in war and into social relationships and attitudes which contribute to tactical rape and sexual violence in war being effective. The chapter has briefly considered the ways social attitudes can change as international discourse influences state policy and practice by applying rhetorical normative rejection of behaviours such as tactical rape and sexual violence in war. The next chapters will consider legal and analytical contributions and highlight some of the constraints and reservations of commentators and feminist analysts.
Chapter 2

Legal Concepts and Critical Commentary Relating to Tactical Rape and Sexual Violence in War

As awareness and accompanying media and NGO outrage at tactical rape and sexual violence in the former Yugoslavia and Rwanda grew in the 1990s, so too did the pressure to respond. The ICTY and ICTR reviewed international humanitarian law and applied it in new ways in cases against those accused of these crimes. There had long been feminist commentators and analysts who condemned the use of rape and sexual violence in war, but they were relatively few in number among political commentators and until this period the issue had been usually considered a sectoral one, an issue affecting women and girls rather than states. The international attitude to humanitarianism began to change slowly. As will be seen in the later chapters regarding the former Yugoslavia and Rwanda, the voices of NGOs and feminist analysts were heard more clearly. International humanitarian law was found to apply more broadly than previously acknowledged. Eventually, even the United Nations Security Council (UNSC) began to consider that tactical rape and sexual violence in war might be within its mandate – and within its limits of responsibilities. Eventually, too, the sanctity of sovereignty would be challenged by the notion of a Responsibility to Protect.

This chapter briefly reviews the legal and critical context in which discourse around recognition and rejection of tactical rape and sexual violence in war began to develop. It begins with an examination of the place of rape in international law. The second step is to review feminist critical analysis in the discourse around tactical rape and sexual violence in war in order to evaluate progress in rejecting these abuses and to identify issues in the related emerging discourse. The third step is to clarify relevant legal definitions. Fourthly, this chapter will review the role of the UNSC in order to ensure that detailed analysis of its resolutions later in this dissertation can be
evaluated. The fifth step is to review and acknowledge the reservations of some feminist writers regarding theorising on such a topic as rape in war – and to argue that despite the legitimacy of their concerns, it remains useful to focus on tactical rape and sexual violence in war. Finally, it recognises the concerns of those who decry the limitations and inappropriateness of judicial systems in recognising the suffering of women participating in antagonistic proceedings. While agreeing the legitimacy of these concerns, this dissertation is based on a conviction that imperfect and incremental progress is preferable to waiting for ideal and immediate change.

Rape and International Law

A number of analysts have reviewed the place of rape in international law. In many cases this has been a matter of noting the omission of mention of rape or the lack of understanding the nature of rape – particularly tactical rape. There is some, albeit limited, recognition of rape even when it is not specifically mentioned in international law. It is in the areas of International Humanitarian Law (IHL) and Human Rights Law that there is most often reference to rape, especially rape in war. This dissertation bases its understanding of international law on the work of Shirley V. Scott who defined international law as:

a system of rules, principles and concepts that governs relations among states and, increasingly, international organisations, individuals and other actors in world politics.¹

Scott highlighted the need to ‘appreciate that international law, although an integral part of politics is also to a large extent, autonomous’.² She claimed that as there is no international legislature, it is the case that rules, concepts and principles come from a variety of sources. These include treaties, which are ‘agreements between states,

² Scott, p. 2.
between states and international organisations or between international organisations’. Treaties may be bilateral between two parties such as an international organisation and a specific state or between two states regarding extradition or control of prosecution over actions of armed forces. They may be multilateral between three or more states such as those within a geographic region or between a larger number of states aiming at a global participation. The UN Charter requires members to register all treaties with the UN Secretariat. The other source of international law is customary international law, which Scott pointed out, was once the most important source of international law: ‘Custom is created by what states do, where that action is carried out with a view to the rules and principles of international law.’ Whatever the source of international law, its enforcement is problematic.

Scott noted that international law operates ‘in a state-based system that is anarchical’ made up of ‘sovereign equals’ so enforcing compliance must rely on retortion, ‘unfriendly but legal acts’, countermeasures, ‘acts that would be illegal except that they are carried out in response to an illegal act by the other party’ or by rewarding compliance with assistance. There are some limited judiciaries established to enforce compliance. But it is in the Statute of the International Court of Justice, as Scott noted, that the sources of international law have been formally articulated and these include treaties (international conventions); international custom; ‘general principles of law recognised by civilised nations’ and ‘judicial decisions and the teachings of the most highly qualified publicists of the various nations’. The term ‘civilised nations’ is now understood as ‘states’ and ‘general principles’ is understood to refer to:

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3 Scott, p. 3.
4 Scott, pp. 4,5.
5 Scott, p. 6.
6 Scott, p. 10.
7 Article 38 (1) Statute of the International Court of Justice quoted in Scott, p. 11.
general principles of law common to a representative majority of domestic legal orders which includes ‘the main forms of civilisation and the principle legal systems of the world.\textsuperscript{8}

The definition of states is set out in the Montevideo Convention of 1933:

A State must have a permanent population, a defined territory and a government capable of maintaining effective control over its territory and of conducting international relations with other States.\textsuperscript{9}

This definition becomes particularly relevant as analysis of UNSC actions emerges later in this dissertation. It will also become apparent that states are not always willing or ready to maintain effective control over its territory. Judicial decisions refer to judgements of tribunals and courts and writings of distinguished international lawyers which can be utilised to inform judgements.\textsuperscript{10} The ICTY and ICTR are the specific judiciaries which are the focus of this dissertation and the rulings of these tribunals are analysed to understand and evaluate their actual and potential contribution to rejection of tactical rape and sexual violence in war. Each of these tribunals was mandated by the UNSC to operate within the limits of existing law – and it was by doing this that rulings demanded recognition of the fact that tactical rape and sexual violence in war did violate existing standards and agreements. As will be detailed in later chapters, they established that no new law was needed because tactical rape and sexual violence in war were deemed to be violations of existing international law.


\textsuperscript{10} Scott, p. 12.
One area of international law most applicable to tactical rape is international humanitarian law (*jus in bello*) the laws by which war should be fought and which have been codified in numerous legal instruments since the nineteenth century. Scott, however, pointed out that such rules of conducting war had been set out in much earlier times such as in the wars between the Egyptians and the Sumerians in the second millennium BC and rules prohibiting the use of poisoned arrows by Hindus set out in the ancient Laws of Manu. Scott provided a detailed context for modern humanitarian law and noted that currently, modern humanitarian law has two streams: that pertaining to limitations or prohibitions of specific means and methods of warfare (the Hague laws) and that regarding the protection of civilians and those no longer fighting (the Geneva laws). It is this second set of laws which is the primary focus of this consideration of the legal context for rejecting tactical rape and sexual violence. As later analysis will show, there are grounds for dealing with tactical rape under the Geneva laws – known as the Geneva Conventions and their additional protocols. It is Convention IV, concerning the protection of civilians, which will be shown to apply most clearly to tactical rape and sexual violence in war as these are attacks on civilians.

It has been acknowledged by Scott, among others, that the distinction between the two streams had become less clear since the 1977 Protocols Additional to the Geneva Conventions which address both issues. The 1977 additional protocols are the Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts and Protocol Additional to the

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11 Roberts & Gueff, *Documents on the Laws of War*, p. 29, quoted in Scott, p. 245.
12 Scott, pp. 245-246.
13 Geneva Convention I for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (75 UNTS 31); Geneva Convention II for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked members of Armed Forces at Sea; Geneva Convention III Concerning the Treatment of Prisoners of War; Geneva Convention IV Concerning the Protection of Civilian Persons in Time of War.
14 Scott, p. 246.
Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of Non-International Armed Conflicts. While there is still a degree of invisibility of women in the Geneva law, article 76(i) of the first additional protocol does at least stipulate that ‘women shall be the object of special respect and shall be protected against rape, forced prostitution and any other forms of indecent assault’. Protocol 2 cleared the way as the first piece of international law to acknowledge the need for protection of people in non-international conflicts – an important and relevant development when considering events in Rwanda and the former Yugoslavia. As will be seen, the ICTY and ICTR were able to build on these protocols and apply interpretations of the other major treaty in international humanitarian law, the Convention on the Protection and Punishment of the Crime of Genocide (the Genocide Convention). This Convention will be a focus in the chapter on the ICTR.

As well as the Genocide Convention and the four Geneva Conventions with Additional Protocol II, which are referenced in the statutes of the ICTY, ICTR and the International Criminal Court (ICC), there are some key international agreements which are relevant to tactical rape and sexual violence in war. These include (inter alia): the United Nations Convention on Elimination of Discrimination Against Women and Optional Protocol (1979); the Universal Declaration of Human Rights; the Declaration on Elimination of Violence Against Women.

It is essential to understand the developments in international humanitarian law in recent decades if one is to analyse its relatively recent application to tactical rape and sexual violence in war. Dietrich Schindler outlined two contradictory aspects of the recent development of international humanitarian law: enormous progress in attaining almost universal recognition and the gross violations of that law in inhumane and cruel acts committed in armed conflicts in the same period.\textsuperscript{15} He referred to the ‘remarkable normative development of international humanitarian law

since 1949’ and reviewed the phases of this development.\textsuperscript{16} He then claimed that there are five major developments which international humanitarian law has experienced since the end of the Cold War. The first was a realisation by the UNSC ‘that large scale violations of human rights and international humanitarian law and the ensuing magnitude of human suffering can constitute a threat to international peace’.\textsuperscript{17} Schindler referred to specific resolutions which included mention of situations in the former Yugoslavia (Bosnia) and Rwanda, where the UNSC determined that violations of international humanitarian law constitute a threat to international peace and security.\textsuperscript{18}

The second development Schindler identified was that the distinction between international and non-international conflicts lost much of its significance in IHL.\textsuperscript{19} As later analysis will indicate, this development was certainly applicable when confronting the conflicts in the former Yugoslavia and Rwanda. The third development was the growing importance of customary law in judicial decision making. The fourth was the increasing influence of human rights law on international humanitarian law. The fifth development was seen to be located in a judgement of the International Court of Justice which ruled that the principles of international humanitarian law, ‘belong to the most fundamental norms of international law, norms which form part of what could be called the unwritten constitution of the international community.’\textsuperscript{20} As the rejection of tactical rape and sexual violence was discussed in international forums, the role of tribunals in demonstrating through case decisions was crucial and for this reason the work of the ICTR and ICTY are a focus of this dissertation. Such focus, however, also reinforces Schindler’s

\textsuperscript{16} Schindler, p. 716.
\textsuperscript{17} Schindler, p. 720.
\textsuperscript{18} UNSCR 929 (1994) on Rwanda; UNSCR 770 on Bosnia and Herzegovina (1992); UNSCR 808 (1993); UNSCR 827 on Yugoslavia (1993); UNSCR 955 on Rwanda (1994).
\textsuperscript{19} Schindler, p. 721.
\textsuperscript{20} Schindler, p. 723.
acknowledgement of the massive lack of compliance and there is acknowledgment too of the increased levels of violent conflicts in the years since the conflicts in the former Yugoslavia and Rwanda.

Critical Analysis Contributing to the Discourse Regarding Tactical Rape and Sexual Violence in War

The changes in development of international law are positive but there have been many reservations expressed. As referenced in Chapter 1, Hilary Charlesworth and Christine Chinkin have written extensively on women and international law, examining the boundaries of this law from a feminist perspective.21 They have placed any progress for women in the application of existing international law in the context that such law is formulated to exclude appreciation of women’s concerns. It is a gendered legal context. Their analysis provided an understanding of the gendered attitudes inherent in law which supposedly applied to both men and women but which, in reality, ignored or failed to recognise the differing needs of the two genders. They have defined international law as ‘a mechanism for distributing power and resources in the international and national communities.’22 Their approach and rationale for feminist analysis was based on the recognition that international law is highly gendered, with limited reference to and inclusion of women. They quoted the feminist philosopher, Elizabeth Grosz, when commenting on the ‘international’ in international law, recognising it as a ‘veiled representation and projection of a masculine which takes itself as the unquestioned norm’.23

Charlesworth and Chinkin approached their feminist analysis from the conviction that such analysis has two major roles: ‘one is deconstruction of the explicit and

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21 Charlesworth and Chinkin, p. 252.
22 Charlesworth and Chinkin, p. 1.
implicit values of the international legal system, challenging their claim to
objectivity and rationality because of the limited base on which they are built’. 24 This
conviction could lead to elemental revision of all international law. The second role
is to reconstruct, the explicit and implicit values, which ‘requires rebuilding the basic
concepts of international law in a way that they do not support or reinforce the
domination of women by men’. 25 A number of factors contribute to understanding
how the formulation and application of international law has impeded justice for
women victims of tactical rape. A key factor is the need to understand that
international law is severely gendered. There are important benefits to be gained
from analysis such as that provided by Charlesworth and Chinkin and from
considering the lack of awareness of gender issues displayed in international law.
This will be apparent in later chapters where such law is analysed in the work of the
ICTY and ICTR. However, while it remains questionable that the goal of
reconstructing international law to incorporate a gendered perspective has been
achieved, there will be demonstrated at least some progress in applying international
law more inclusively so that women have been able to access more justice from the
existing law.

Under article 27, the fourth Geneva Convention says that states parties must protect
women ‘against any attack on their honour, in particular against rape, enforced
prostitution or any form of indecent assault’. Charlesworth and Chinkin recognised
that this does not explicitly prohibit the offences but calls for protection of women
and that by designating rape as a crime against ‘honour’ rather than one of violence,
the protection presents women as male and family property. 26 Protocol I continues to
portray women as needing special respect and protection and Protocol II identifies
rape in non-international conflicts as an outrage upon personal dignity not a violent

24 Charlesworth and Chinkin, p. 60.
25 Charlesworth and Chinkin, p. 61.
26 Charlesworth and Chinkin, p. 314.
attack on personal integrity.\textsuperscript{27} Charlesworth and Chinkin’s analysis highlighted that ‘grave breaches of the Geneva Conventions are made subject to universal jurisdiction exercisable in national courts’ and are ‘regarded as the most significant violations of international humanitarian law’.\textsuperscript{28} It is telling that, as they point out, ‘rape, enforced prostitution and sexual assault are not explicitly designated grave breaches’.\textsuperscript{29} It is possible, of course, to use the wording of Protocol I, which lists grave breaches as ‘degrading practices involving outrages on personal dignity based on racial discrimination’ for prosecuting cases of tactical rape and sexual violence in war. Non-grave breaches can be deemed war crimes. But, as Charlesworth and Chinkin highlighted, this is a less than satisfactory formulation in international law.\textsuperscript{30} Even in common Article 3 to the four Geneva Conventions it is not made explicit that sexual assault and violence are covered by listed prohibitions. In chapters 3 and 4, the work of the ICTY and the ICTR in interpreting and applying what international humanitarian laws could be applied to tactical rape will be shown to have, at least, gone some way to redressing these deficiencies.

Charlesworth and Chinkin have also considered the gendered aspects of human rights law, the other main form of international law which is applicable to tactical rape and sexual violence in war. They have noted that human rights law ‘challenges the traditional state-centred scope of international law, giving individuals and groups, otherwise with very restricted access to the international legal system, the possibility of making international legal claims.’\textsuperscript{31} An important international instrument relevant to tactical rape and sexual violence in war is the Universal Declaration of Human Rights.\textsuperscript{32} This includes a requirement that states do not engage in acts such as

\textsuperscript{27} Charlesworth and Chinkin, p. 315.
\textsuperscript{28} Charlesworth and Chinkin, p. 315.
\textsuperscript{29} Charlesworth and Chinkin, p. 315.
\textsuperscript{30} Charlesworth and Chinkin, p. 316.
\textsuperscript{31} Charlesworth and Chinkin, p. 201.
\textsuperscript{32} GA Res. 217A(111), 10 December 1948.
torture, arbitrary deprivation of life, liberty and security. The outcomes of the ICTR and ICTY established that this prohibition applies to tactical rape and sexual violence in war.

However, as Charlesworth and Chinkin pointed out, ‘mainstream human rights institutions have tended to ignore the application of human rights norms to women’ and they referred to the study in 1993 of the work of the UN Commission on Human Rights’ Special Rapporteur on Torture, which found that ‘he rarely considered the application of norms of international human rights law or international humanitarian law to women’. This same report found that in the Special Rapporteur’s work, ‘well documented cases of torture and ill-treatment of women went un-investigated or were treated in a desultory fashion’. It was indicative of attitudes to tactical rape and sexual violence in war that the Special Rapporteur’s condemnation of rapes in Bosnia-Herzegovina focussed on the harm resulting to ethnic communities and failed to acknowledge the harm inflicted on women as individuals because of their sex and gender. The particular shortcomings of the work of this Special Rapporteur will be dealt with in more detail in the later chapter on the former Yugoslavia.

In a similar case, Charlesworth and Chinkin pointed out that the UN’s fact finding in Rwanda did not detect ‘systematic sexual violence against women until nine months after the genocide when women began to give birth in unprecedented numbers’ – an instance exemplifying the reality that ‘methods of investigating and documenting human rights abuses can often obscure or even conceal abuses against women.’

chapter on Rwanda will demonstrate that the failure to report formally on the widespread use of tactical rape and sexual violence was almost incomprehensible given the awareness of NGOs, media and peacekeepers across the war-torn country. Tactical rape and sexual abuse in the conflict were apparent to even the most casual observer, but were not accorded attention in many early reports. So, while human rights law could be invoked to confront tactical rape and sexual violence in war, it was as difficult an exercise as applying international humanitarian law.

Together with other feminist analysts, Judith Gardam has provided insight to understanding the broader context of justice for women. Writing in 1998, Gardam considered the impact of the growing focus on women’s human rights, particularly in relation to the criminalisation and punishment of sexual violence against women in armed conflicts.37 Her opening statement referred to the general development in the last fifty years of the principles that comprise human rights law having had a major impact on international humanitarian law and indeed on international law generally.38 Her insightful analysis, which followed, highlighted that the impact could be seen ‘primarily in developments regarding the criminalization and punishment of sexual violence against women in armed conflict’.39 Gardam tracked the progress through the actions of human rights activists and organisations and considered the achievements and difficulties in the ICTR and ICTY and concluded that the scrutiny by human rights groups of sexual violence against women in armed conflicts had translated into ‘a new perception that such acts must be addressed by mainstream bodies dealing with enforcement of international humanitarian law’.40 This is a reiteration of the dual need to ensure equality of women’s human rights and the need to ensure the same application to war crimes and crimes against humanity when

perpetrated against women as when perpetrated against anyone else in armed conflict.

Gardam examined the work by the International Committee of the Red Cross (ICRC) and she noted that the ICRC had ‘given increasing recognition to the fact that the situation of women in armed conflicts poses distinctive challenges for humanitarian law.’\(^{41}\) She referred specifically to a resolution of the ICRC, adopted by consensus in 1995, which dealt separately with sexual violence against women.\(^{42}\) This resolution condemned the practice of sexual violence against women in armed conflict, reaffirmed that rape in the conduct of hostilities was a war crime and highlighted the importance of enforcing the relevant provisions and the need to train those involved in such processes.\(^{43}\) This was certainly some progress, but Gardam was forced to conclude that despite progress in paying attention to women’s human rights and the allied impact on international humanitarian law, this had not led to ‘a general acknowledgement that women’s human rights warrant a special place in humanitarian law’.\(^{44}\) With no specific formulation of women’s rights in international law, this left the option of using mainstream humanitarian law, elaborated where possible by reference to human rights law, to enforce justice for victims of tactical rape and sexual violence.

Writing in 2001 with Michelle J. Jarvis, Gardam highlighted the need to view the use of sexual violence in war in the broader context of generalised discrimination:

\(^{41}\) Gardam, 1998 p. 432.  
\(^{42}\) Resolution 2(B), of the 26th International Conference of the Red Cross and Red Crescent, 1995.  
\(^{43}\) Gardam, 1998 p. 432.  
\(^{44}\) Gardam, 1998 p. 432.
violence against women is perhaps one of the clearest examples of how discrimination against women that exists in all societies during peace-time is exacerbated during periods of armed conflict.\textsuperscript{45}

As will be seen in later chapters, this realisation was also reflected in UNSC resolutions, in the 2000s, which did take a more holistic view in confronting sexual violence against women in war. However, Gardam and Jarvis were right to highlight that discrimination against women in society is reflected in international humanitarian law and that the ‘unequal status of women also exacerbates what appear initially to be neutral factors experienced by both men and women’.\textsuperscript{46} Their commentary provided a basis for deeper understanding of the linkage between gender discrimination and violence against women in war.

Related to women’s place in their societies is the nature of the formulation and understanding of human rights. Georgina Ashworth, writing on human rights in global politics, charted responses by women’s human rights movements to ‘the built-in selectivity’ of the human rights regime.\textsuperscript{47} This charting, too, helped understand that existing human rights law required a new way of interpreting and applying it to women’s needs and concerns. The responses she charted included NGO activism and the formulation of sections for inclusion in the Declaration and Programme for Action for adoption at the Vienna World Conference on Human Rights (1993). The objectives of those activists included demonstrating how recognition of women’s human rights had been suppressed and this was echoed in later international conference participation.\textsuperscript{48} Ashworth concluded that women’s groups themselves had


\textsuperscript{46} Gardam & Jarvis, 2001 p.134.


\textsuperscript{48} Ashworth, p. 265.
begun to use the ‘mainstream’ human rights systems more effectively and that ‘while not abandoning the Women’s Convention, they aspire to see the equality promises in the major conventions become real for themselves and their sisters.’ This approach of using existing, mainstream international law, especially international humanitarian law and human rights law, and insisting it be applied to issues such as tactical rape and sexual violence in war, has been the basis for much of the work of the ICTY and ICTR. As will be seen in later chapters of this dissertation, the Tribunal statutes set existing law as parameters – an approach which appeared to be a pragmatically effective strategy.

While the ICTY and ICTR were mandated to work within existing international law, there was growing recognition that this existing legal framework would require new approaches to interpretation and application to ensure justice for women – approaches which the two courts did, at least in part, undertake. A paper by Jane Connors, Chief of the Women’s Rights Unit of the UN’s Division for the Advancement of Women, listed a number of the international conferences at which the issue of gendered discrimination of women’s access to their human rights had been confronted. These included the Vienna World Conference on Human Rights in June 1993. Connors said the international community had openly acknowledged that the body of international law and mechanisms established to promote and protect human rights had not properly taken into account the concerns of over half the world’s population and states formally recognised the human rights of women as ‘an inalienable, integral and indivisible part of human rights’. This had been an important step.

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49 Ashworth, p. 271.
51 Connors, p. 37.
Connors also noted progress with the Declaration on the Elimination of Violence Against Women (December 1993) and the Beijing Declaration and Platform for Action (September 1995). However, she continued to identify limitations of the existing human rights system: human rights were conceptualised and defined without significant participation of women’s groups; many issues including (inter alia) systematic violence had not been defined as human rights issues or made the subject of legally binding norms; international human rights law effectively excluded many actions by non-state actors and in the private sphere; discrimination against women was justified by governments on the basis of culture, religion and ethnicity.\(^\text{52}\) Connors named the Committee on Torture as having done less than other treaty bodies to reflect the importance of gender consideration.\(^\text{53}\) This overview of work being done to ensure protection for women’s human rights highlighted the reality that much more needed to be done when applying human rights law to victims of tactical rape and sexual violence in war, on the grounds of human rights violation.

Other analysts debated concerns about the distinctions made between public and private spheres when dealing with tactical rape and sexual violence in war. This is a distinction which had to be recognised as impacting on where, when and how international law was interpreted and applied. When Karen Knop introduced her book on gender and human rights she referred to feminist debates over the public/private distinctions made in interpreting international law.\(^\text{54}\) Karen Engle, for example, mapped ‘onto public international law the public/private distinction that demarcates bodily autonomy as private, and this distinction carries different implications for legal intervention’.\(^\text{55}\) Knop made the point that feminist legal

\(^{52}\) Connors, p. 39.  
^{53}\) Connors, p. 45.  
analysis had shown that women are more vulnerable in the private sphere but the public/private distinction had been applied, possibly for reasons of convenience, to prevent relevant law from remedying the situation. She pointed out that this had been the issue adapted to critiques of international law and noted that this distinction, intended as a critique of international law had been questioned for possibly being more ‘mystifying than useful’ by Patricia Viseur-Sellers.56 The distinction between private and public spheres was referred to as a notional division that sees ‘legal regulation as appropriate to the public sphere and ordinarily inappropriate to the private sphere, where the line between public and private is most often drawn either between the state and civil society or within civil society so as to mark off the domestic space of family life as private’.57 Sellers had focussed on individuals’ liability for collective violence with particular attention to work of the ICTY reviewed in the context of the public/private distinction.

Sellers emphasised that international law regulated armed conflict such as crimes against humanity yet when these crimes were committed against women, they had been deemed to be in the private sphere and not really the subject of international humanitarian law. She referred to what she called a self-evident point:

All international humanitarian law, or in modern terminology, the laws of armed conflict, is public not private law. To accentuate the obvious, war crimes, crimes against humanity and genocide reside only in the very public domain that obligates state action and, more recently, galvanized the international community to establish the ad hoc Tribunals and the ICC.58

Sellers had been clear that whether war crimes were perpetrated against men or women, they were in the public domain and demanded response. This was as

57 Knop, p. 6.
applicable to tactical rape and sexual violence as a war crime as it was applicable to any other war crime. Again, this analysis quite rightly highlighted that application of existing law to ensuring justice for women had been wanting. Given this situation, the work of the ICTY and ICTR, when considered further in Chapters 3 and 4 particularly, will be seen to have been progressive.

Julie Mertus also clarified some of the legal frameworks which could be seen to pertain to tactical rape and sexual violence in war.\(^59\) She reviewed the work of Hugo Grotius in De Jure Belli (1623-1624) and his conclusion that the rights of combatants and non-combatants alike should be protected. She noted, too, that ‘Eighteenth-century Enlightenment thinkers further refined the rights of non-combatants and the limitations placed on warfare’ and ‘rape was not viewed as strategy to further war aims nor was it regarded as necessary to winning a war.’\(^60\) As Mertus highlighted, even by the nineteenth century, when states were beginning to look at sexual violence in codes of conduct for armed forces, rape in peace or in war was still seen as a crime against a man, ‘an assault on male property’ and even when rape was seen as a theft of chastity and virtue, the crime was against the man or the family ‘who was entitled to the woman’s chastity and virtue, not against the woman herself as an independent individual’.\(^61\) After World War I there was some effort to document violence against women in armed conflict. There was the ‘existence of international customary law prohibiting rape during armed conflict’ but ‘political will to prosecute and punish violators of such rules’ did not exist.\(^62\) It was not until the trials at Nuremberg and Tokyo that some attention (albeit limited) was paid to rape. This minimal attention did have value for the prosecution of rape as a war crime in that it

\(^{60}\) Mertus, p. 73.
\(^{61}\) Mertus, p. 73.
\(^{62}\) Mertus, p. 74.
paved the way for the prosecution of rape before the international criminal tribunals of Yugoslavia and Rwanda some fifty years later.63

Mertus identified where prohibition against wartime rape could be found in many international instruments as well as in customary international law.64 This approach supported the notion that existing law, when appropriately interpreted and applied could provide a framework for justice for victims of tactical rape and sexual violence in war. Mertus noted that rape is listed as a simple breach of obligation under Article 27 of the Fourth Geneva Convention which calls for women to be ‘especially protected against any attack on their honour, in particular rape’ but could be understood to constitute a grave breach of the Geneva Conventions if classified as inhuman treatment or great suffering or serious injury to body or health.65 Mertus highlighted that this is important because it is only grave breaches which fall under universal jurisdiction, meaning that they can be tried by any court irrespective of where the offence occurs. Rape can also fall under common Article 3 of all Geneva Conventions and the two 1977 Protocols Additional to Geneva Conventions of 1949. These protocols ‘offer greater protection as they apply to all women in the territory of the conflict, regardless of whether their states are parties to the convention’.66 These international laws could provide protection to victims of tactical rape and sexual violence in war, but it required political will to prosecute and bring to account perpetrators of violations of such rules.

The International Committee of the Red Cross (ICRC) in an Aide Memoir in 1992 had deemed rape to fall under the provisions of both the Articles referenced in

63 Mertus, p. 77.
64 Mertus, p. 79.
65 Mertus, p. 79.
66 Mertus, p. 83.
Mertus. With the commentary of the ICRC on Protocol II to the Geneva Conventions, which reaffirmed and supplemented Common Article 3, it became clear that it was necessary to strengthen the protection of women who may also be the victims of rape. This approach and attention to reading existing law from the perspective of understanding the reality of rape in war and recognition that terms of existing law could be legitimately applied was a sign of progress towards due attention being paid to tactical rape and sexual violence in war. It was becoming apparent that existing law encapsulated the rules for confronting tactical rape and sexual violence in war, including wars fought in new ways.

As was noted in the introduction to this dissertation, Mary Kaldor provided a framework for understanding the new ways in which wars were fought in the twentieth century. This framework is particularly relevant to understanding the conflict and genocide in the former Yugoslavia and Rwanda and to recognising the degree to which existing law applied to victims of tactical rape and sexual violence in war. She described the new wars as, ‘in a sense, a mixture of war, crime and human rights violations’ so it is understandable that tactical rape, a strategy of these new wars, required reference to a range of law. Kaldor stated that ‘all types of warfare are characterised by rules; the very fact that warfare is a socially sanctioned activity, that it has to be organised and justified, requires rules’. She said, ‘there developed rules about what constituted legitimate warfare which were later codified in the laws of war’. These codified laws constitute international humanitarian law and much of the work of the ICTY and ICTR which will be analysed later in this

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69 Kaldor, p. 11.
70 Kaldor, p. 17.
71 Kaldor, p. 17.
dissertation comes within the ambit of interpreting and applying that law to tactical rape and sexual violence in those conflicts. Kaldor noted that after the Second World War, human rights norms were added to what was known as international humanitarian law and the difference, ‘between humanitarian and human rights law has to do largely with whether violation of the law takes place in war or peacetime’. However, as will be seen, the ICTY and ICTR did not accept that actions which would be illegal in war should escape accountability because the definition of war and peace had become blurred in the new type of warfare.

The ICTY and ICTR were operating in a context of greater understanding of the changing nature of war. Chris Brown provided a re-examination of war and the states system in 2002, helping to clarify that the context in which tactical rape and sexual violence could be utilised had changed as he identified changes in the way war is fought in the 21st century, including a move away from decisive battles and the differences between women’s place in the public and private spheres. It is notable, however, that he omitted any real focus on the attacks on civilians, which is where attacks on women become apparent, although he did offer insights into human rights law and norms. Human rights laws frequently represent norms purportedly held by many states.

Brown considered the term ‘settled norms’ used earlier by Mervyn Frost and stated: ‘a norm is ‘settled’ if states endorse it even when their behaviour is apparently in contradiction to it’. A developing norm, such as one rejecting tactical rape and sexual violence in war, would take time to be considered ‘settled’.

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72 Kaldor, p. 116.
74 It is recognised that there are ongoing debates around the universality of human rights but these are not considered to negate this general statement.
As the work of the ICTY and ICTR continued, there was further commentary recognising the nature of the context of failure to apply existing law to achieve justice for women. In 2003 Kelly Askin highlighted how limited has been the attention paid by international law and allied judicial proceedings to rape in war.\textsuperscript{76} She noted that in the Hague Conventions, there is one single article which prohibits sexual violence as violation of ‘family honour’; at the Nuremberg Trials, there were 723 pages of reports but rape was not even in the index; at the Tokyo Trial, with five supplementary indexes to twenty-two volumes, rape is mentioned only four times under ‘atrocities’; in the four Geneva Conventions, of the 429 sentences, only one mentions prohibition of rape although there are a few others which could be interpreted as including rape; the 1974 Declaration on Protection of Women and Children in Emergency and Armed Conflict includes no mention of rape; in the 1977 two Additional Protocols to Geneva Conventions only one sentence explicitly prohibits sexual violence’.\textsuperscript{77}

Also helping to understand the application and interpretation of existing international law in ICTY and ICTR trials involving tactical rape and sexual violence, Askin summarised and highlighted key findings with implications for other cases and future accountability of perpetrators.\textsuperscript{78} She provided an overview of the progress and the obstacles facing advocates for prosecuting perpetrators of rape in war. She provided comprehensive background and analysis, noting that while there had been progress this had to be measured against a prior dearth of attention and focus. These analyses by Askin will be referenced extensively in later chapters dealing with outcomes of the ICTY and ICTR, because they focus not only on the limitations of applying

\textsuperscript{77} Askin, ‘Prosecuting Wartime Rape’, p. 295.
existing law but also on the progress – however limited – in confronting tactical rape and sexual violence in war with existing law. They also figure in analysis because many aspects of rape and international law were defined and clarified in the rulings of these two tribunals and in other relevant documents as the international community made links between tactical rape and sexual violence in war and existing international law.

*Legal definitions relevant to tactical rape and sexual violence in war*

A UN legal study on rape and sexual assault summarised some key issues for states and international relations when dealing with rape. It said, ‘a single act suffices to constitute a war crime’. It follows that individual rapes can be war crimes and therefore action can be taken against a perpetrator. This study also said, ‘crimes against humanity can be committed by anybody and come with universal jurisdiction’. State involvement must be proved, ‘at least in terms of tolerance’ and acts must be part of a widespread or systematic attack based on national, political, ethnic or religious grounds. So, individual rapes can be recognised and accountability required – when part of a tactical strategy. Geoffrey Robertson clarified what he deemed an important distinction, ‘an act which is wicked in itself, becomes especially wicked (that is a crime against humanity) when deployed systematically and for political ends’. This is an important distinction and helps understand the difference between rape as a ‘by-product’ of war and rape as a tactic of war.

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80 UNSC Annex II VI A.
81 UNSC Annex II VI A.
82 UNSC Annex II VI A.
The work of the ICTY and ICTR contributed to definitions now generally accepted in international law and reflected specifically in the Rome Treaty, which was the base for the International Criminal Court.\footnote{The Rome Treaty 1998-2002 A/CONF.183/9. Adopted 17 July 1998, came into force 1 July 2002.} The International Criminal Court (ICC) is an independent, permanent court established by the Rome Statute of the International Criminal Court – adopted in 1998 and entered into force in 2002 after ratification of sixty states. The ICC is mandated to act as a court of last resort and will not act if a case is investigated or prosecuted by a national judicial system unless the national proceedings were not genuine. It tries only ‘those accused of the gravest crimes’.\footnote{Rome Statute of the International Criminal Court, retrieved 8 September 2008, <www.icc-cpi.int>.} The definition of a crime against humanity to be used by the ICC drew on work done by the ICTY, acknowledging the need to consider the existence of ‘widespread or systematic attack on civilian populations and the mental state of the individual defendant’.\footnote{S van Schaack, ‘The definition of crimes against humanity: resolving the incoherence’, Santa Clara University Legal Studies Research Paper no. 07-38, \textit{Journal of Transnational Law and Policy}, vol. 37 no. 787, 1999.} The ICC is mandated to discourage acts of criminality, not acts of war. As this court may try cases where it is believed the national proceedings were not genuine and may have been held to shield an accused, it will have a role beyond the time frame of ad hoc tribunals. If states without political will to prosecute particular crimes try to avoid international scrutiny and accountability, the ICC is mandated to take action.

Key definitions from the ICC Statute, built on established international law as well as on the work of the ICTY and ICTR, and provide an ongoing basis for applying international law. Article 6 of the ICC Statute refers to the definition and requirements of acts of genocide, set out in the text of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, the ‘Genocide Convention’.\footnote{Text of the 1948 Genocide Convention in GJ Andreopoulos, \textit{Genocide: Conceptual and Historical Dimensions}, University of Pennsylvania Press, Philadelphia, 1997.} This Convention provides the foundational elements to be considered when...
determining whether or not actions constitute genocide. These include defining and identifying the perpetrators, the targeted victims, the nature of the acts, the intent behind those acts and the responsibility to prosecute. This definition will be particularly relevant when considering tactical rape and sexual violence in Rwanda. Article 6 of the ICC Statute defines genocide as any of the following acts committed with the intent to destroy, in whole or in part, a national, ethnical, racial, or religious group, as such: killing members of the group; causing serious bodily or mental harm to members of the group; deliberately inflicting on the group conditions of life calculated to bring its physical destruction in whole or in part; imposing measures intended to prevent births within the group; forcibly transferring children of the group to another group. The ICTR made a first and key ruling regarding tactical rape and genocide and this is the focus in Chapter 4 where there is detailed analysis of the elements of events in Rwanda which were able to be interpreted as genocide.

The ICC Statute Article 7 defined a crime against humanity as any of a comprehensive list of acts committed as part of a widespread or systematic attack directed against a civilian population with knowledge of the attack. These included (inter alia):

- rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilisation, or any other form of sexual violence of comparable gravity;
- persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious; gender or other grounds that are universally recognised as impermissible under international law.\(^{88}\)

The comprehensive list ensures a mandate to deal with a diverse range of acts under the general rubric of tactical rape and sexual violence in war. The specific note that

\(^{88}\text{Statute of the International Criminal Court, Article 7 para. 1.}\)
such acts are ‘impermissible under international law’ sets such acts within the existing, established parameters of international law.

Article 8 of the ICC Statute gives the ICC jurisdiction over war crimes ‘when committed as part of a plan or policy’ or when acts are committed on a large scale. It defines war crimes as: ‘grave breaches of the Geneva Conventions of August 12 1949’ and lists a number of specific acts which include (inter alia): wilful killing; torture or inhuman treatment; wilfully causing great suffering or serious injury to body or health. 89 A second category of war crimes are acts which constitute ‘serious violation of laws and customs applicable in international armed conflict’ and such acts include (inter alia): intentionally attacking civilian populations or individuals not taking direct part in hostilities; committing outrages on personal dignity in particular humiliating or degrading treatment; committing rape, sexual slavery, enforced prostitution, forced pregnancy or any other form of sexual violence constituting a breach of the Geneva Conventions.90 In the case of an armed conflict not of international character, the Statute includes as war crimes violations of Common Article 3 of the Geneva Conventions and violations of laws and customs applicable in armed conflicts not of international nature.91 The conflicts in the former Yugoslavia and Rwanda were clearly covered by this Statute and later chapters regarding the judgements and work of the ICTR and ICTY will show that they were influential in establishing the applicability of these definitions – especially regarding international vs. non-international conflicts – and in defining rape, sexual slavery, torture and other aspects of tactical rape. All of these have informed other commentaries and considerations of elements of the three main categories of crimes relevant to consideration of tactical rape and sexual violence in war: crimes against humanity; war crimes and genocide.

89 Statute of ICC Article 8 para. 2a.
90 Statute of ICC Article 8 para. 2b.
91 Statute of ICC Article 8 para. 2c.
There is often confusion regarding the two terms ‘genocide and ‘ethnic cleansing’. Genocide is defined according to the Genocide Convention. It is a legal term based on agreed international law. It is essential to establish the key elements of genocide as determined by the international convention. The primary source regarding rape as a weapon of genocide must be the Genocide Convention. Raphael Lemkin may not have been fully satisfied with the final text but this Convention which resulted largely due to his efforts, does have widespread application. Lemkin was appalled that the banner of ‘state sovereignty’ could shield men ‘who tried to wipe out an entire minority’ and argued that ‘sovereignty cannot be conceived as the right to kill millions of innocent people’. Eventually, he achieved international agreement to what is the Convention, which has been ratified and widely accepted by states as setting a standard for international behaviour. The definition and requirements for definition of acts of genocide, set out in the text, provide the foundational elements to be considered when defining actions as constituting genocide. Article 2 defines genocide as ‘any of the following acts committed with the intent to destroy, in whole or in part, a national, ethnical, racial, or religious group, as such: (a) killing members of the group; (b) causing serious bodily or mental harm to members of the group; (c) deliberately inflicting on the group conditions of life calculated to bring its physical destruction in whole or in part; (d) imposing measures intended to prevent births within the group; (e) forcibly transferring children of the group to another group. There is no legal requirement for conflict to be occurring for events to be deemed genocide.

Helen Fein believed that Lemkin viewed (c), (d) and (e) as steps towards (a) in most cases of genocide and she noted that besides mass killing, genocide also may include

94 Power, p. 19.
murder through starvation and poisoning of air, water or food and the involuntary transfer of children.\textsuperscript{95} Rape is a notable omission from her list considering that tactical rape and sexual violence can contribute to mass killing and can also be shown to be a strategy resulting in serious bodily or mental harm, deliberately inflicting conditions of life calculated to bring about physical destruction and to impose measures intended to prevent births within the group if the intent is to destroy the group.

In contrast to genocide, ethnic cleansing is a political concept rather than a legally defined term. It is a concept which became particularly relevant in the conflicts in both the former Yugoslavia and Rwanda in the 1990s. According to Martin Griffiths and Terry O’Callaghan, ethnic cleansing was a term coined during the dissolution of Yugoslavia, although it has been applied in many other contexts since its original application.\textsuperscript{96} It refers to situations or stratagems by which ethnic minorities are driven from a land or an area so that ‘a majority group can assemble a more unified, more contiguous, and larger territory for its nation-state’.\textsuperscript{97} It is important to note the significant difference. Ethnic cleansing seeks to ‘cleanse or purify’, the territory of an ethnic group ‘by use of terror, rape and murder to convince the inhabitants to leave’.\textsuperscript{98} In contrast, genocide seeks to destroy the group.

In 1993, the United Nations Economic and Social Council (ECOSOC) expressed outrage at rape being used as a weapon of war.\textsuperscript{99} In 1994, the United Nations General Assembly resolution 1994/205 expressed alarm at ‘the continuing use of rape as a

\textsuperscript{97} Griffiths & O’Callaghan, p. 94.
\textsuperscript{98} Griffiths & O’Callaghan, p. 94.
weapon of war’. Both these resolutions also recognised the use of rape as an instrument of ethnic cleansing and noted that the abhorrent policy of ethnic cleansing was a form of genocide. However, this was not a legal definition. Ethnic cleansing had been defined by the UN Commission of Experts as, ‘rendering an area ethnically homogeneous by using force, or intimidation to remove from a given area persons from another ethnic or religious group’. Analysis of the two arenas of conflict in later chapters demonstrates that ethnic cleansing was a strategy employed and part of this strategy included tactical rape as a method of ‘cleansing’ a territory of unwanted groups. As will be seen, rape was eventually judged to have been a means of genocide in Rwanda. However, it must be clear that the term ethnic cleansing is a general expression of a strategy, while genocide is a legal term with consequent legal implications. There is a need to establish the distinction between ethnic cleansing and genocide because the two terms are sometimes used as if they are interchangeable.

The United Nations Security Council and Its Resolutions

In the absence of a global parliament or government, any change in political attitudes and expectations of states by states usually finds its roots in debates and deliberations at the United Nations. Hedley Bull’s definition of the concept of international society is that it exists:

when a group of states, conscious of certain common values, form a society in the sense that they conceive themselves to be bound by a common set of rules in their relations with one another, and share in the working of common institutions.

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100 United Nations General Assembly, Rape and abuse of women in the areas of armed conflict in the former Yugoslavia, General Assembly Resolution 1994/205, 6 March 1995.
This international society finds its expression in the United Nations where rules and values are debated and shared and become international law. Michael Barnett and Martha Finnemore have pointed out that ‘rules, norms and principles that define what counts as legitimate international order’ are not fixed in stone but are subject to debate. They note, too, that most important debates often happen in the UN and are ‘most intense when there is ‘shift, shock or challenge in world politics that potentially destabilises the existing standards’. Debates on tactical rape and sexual violence would appear to fit into such a description as world media and NGOs decried events in the former Yugoslavia and Rwanda in the 1990s.

The United Nations Security Council bears ‘primary responsibility for the maintenance of international peace and security’. The Council is certainly the most powerful UN organ. Security Council decisions can be binding on all member states when adopted under Chapter VII of the Charter. During the Cold War, from 1946 to 1986, the Council passed 593 resolutions but between 1987 and 2005, 1010 resolutions were passed. There has not always been full implementation of these resolutions and there is ongoing concern about the range and number of resolutions passed. This will emerge in later chapters focussed on specific resolutions. Indicative of the potency and power of the Security Council, the ICTR and ICTY were established under Chapter VII of the UN Charter. It was the powers conferred on the Security Council by Chapter VII which allowed for the tribunals’ establishment and for the tribunals to claim primacy over domestic courts and demand ‘legally

105 UN Charter Article 24 SC, Chapter VII.
cognizable cooperation’ from UN member states.\textsuperscript{108} These were the powers of the Security Council to remove threats to international peace and security.\textsuperscript{109}

However, the Security Council faced new conditions for action as the twentieth century drew to a close. It had to operate in a context of globalisation or ‘increased-connectivity’ of states and organisations and it faced new expectations of humanitarianism and a new understanding of sovereignty. The sovereignty of states came increasingly, to include ‘a modicum of respect for human rights’.\textsuperscript{110} As the important debates on rules, norms and principles mentioned by Barnett and Finnemore result in resolutions, there is pressure on member states to implement and respect agreed standards of behaviour and responsibilities. The Charter refers to the UN being based on sovereign equality of all member states.\textsuperscript{111} But, there is increasing recognition that in reality not all member states are equal and that it is, in fact, possible for some states to fail. So, while borders remain crucial, sovereignty seems considerably less sacrosanct today than in 1945.\textsuperscript{112}

This lessening of the inviolability of sovereignty has, in part, resulted from the promulgation of the concept of Responsibility to Protect. In the early 1990s there was a shift in attitudes to humanitarian intervention. In 2001, the report of The International Commission on Intervention and State Sovereignty (ICISS) moved emphasis from the traditional right of states to non-interference in their affairs within their own borders and emphasised the responsibility of states and the international community to protect citizens within those borders.\textsuperscript{113} There has been ongoing debate around this concept, generally seen as illustrating the power of ‘a strong normative

\textsuperscript{109} Goldstone in Weiss & Daws, p. 466.
\textsuperscript{110} Weiss & Daws, p. 8.
\textsuperscript{111} UN Charter 2 (1).
\textsuperscript{112} Weiss & Daws, p. 9.
\textsuperscript{113} Malone in Weiss & Daws, p. 126.
concept in responding to massive atrocities’.\footnote{114} Although the responsibility to protect has developed from a sense of hoping it would end mass atrocities, ‘once and for all’, Hilary Charlesworth argued that the responsibility to protect had ‘developed without adequate attention to the lives of women.’\footnote{115} While she noted the ambivalent attitudes of feminist scholars to international law – sometimes invoking it and ‘sometimes worrying that invoking it may legitimate oppressive state structures’ – she concluded that the responsibility to protect should be framed ‘as one strand of a complex response that draws inspiration and ideas from everyone affected by violence’ and was valuable.\footnote{116} It is a concept that is influencing the function of the UNSC and as such worth noting when analysing the context in which normative rejection of tactical rape and sexual violence in war began to emerge.

Reservations about Theorising Rape and Judicial Processes

Other approaches and analyses regarding tactical rape and sexual violence in war have raised concerns among feminist scholars and commentators.. The very fact of theorising about rape in war, of developing principles and frameworks around such pernicious practice can be – and has been – questioned. There is disagreement about the relevance of feminist theory to women raped in war. There is disagreement regarding the extent to which such theorising actually creates tensions, as most of the theorising is perceived to be culturally driven by feminists whose situations differ markedly from that of women who have been subjected to tactical rape and sexual violence in war. This debate between feminist writers and commentators highlights differences in attitudes to considering women as victims or women as having some agency in their own right and in their own ways of responding. Positively, this discourse keeps the issue in the public and academic consciousness. It is important to

\footnote{115}{Charlesworth, p. 233.}
\footnote{116}{Charlesworth, p. 249.}
recognise concerns regarding responses to the need for justice for women before a
detailed examination of how and what progress has been made at global level in
rejecting tactical rape and sexual violence in war.

Beverley Allen, writing in the journal *Signs*, noted that, after spending time in
Croatia during the war and in Bosnia-Herzegovina after the war, with ‘people who
had been affected by the war, including those affected by genocidal rape’, she had
found that ‘the relevance of contemporary theory grew pretty distant’ and she had
‘stopped reading feminist theory pretty much altogether’. 117 She wrote of her
disappointment at the cognitive dissonance between the Balkans and American
academia and that her response had been to turn to reliance on her experience and
observations – admitting to more anecdotes and ever less theory, even while noting
that such anecdotes bear all the defects and limitations of experience. In this article,
she wondered that so few academics had direct experience in the Balkans, when so
much of what was being studied – ethnicity, gender, nationalism – had become
matters of life and death there. 118 This is an understandable reaction to experiencing
at close range the stories and accounts of women who have been exposed to real
suffering. But, as is seen below, it is not necessarily a point of view shared by others.

Janice Haarken wrote of ‘the seductions of theory’ and maintained that some of the
explorations of theories of rape have inherent flaws, in particular she asserted that to
explore the ambiguities at the borders of the politics of rape does not inevitably lead
back to victim blaming but it does pose a risk of such blaming. 119 She believed there
was a need to insist on an approach to politics of sexual violence that encompassed
the full range of complexity of women’s experience and the subjective and objective

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117 B Allen, ‘Towards a new feminist theory of rape: a response from the field’, *Signs*, vol. 27 no. 3
(Spring 2002), pp. 777-781.
118 Allen pp. 777-781
119 J Haarken, ‘Towards a new feminist theory of rape: the seduction of theory’, *Signs*, vol. 27 no. 3
(Spring 2002), pp. 781-786.
barriers to women’s emancipation from patriarchal dominance. Haarken noted that one of the issues that bridges rape politics and feminist cultural theory centred on ‘how we understand the gap between experience and representation’ and she continued, ‘it is important to recognise that there is an inevitable disjuncture between rape as a metaphor and rape as a concrete act of violence.’ This would seem, at least in part, to have supported Allen’s call which, in effect, was to remember that rape in war affects real people in real ways and cannot always be dealt with without some subjective, emotional response.

Carine Mardorossian took both Allen and Haarken to task. She rejected the ‘theory/experience opposition’ which she believed Haarken was propounding and insisted that Allen was failing to see that academic theories could be useful, failing to use a theoretical framework to make sense of her experience. Responding to Allen’s use of anecdote and narrative, Mardorossian claimed that Allen wrote about victims of ‘genocidal rape’ and assembled their stories while Mardorossian, herself, addressed the ethical and theoretical questions that arise when feminists document, explain, or work to alleviate the suffering of rape victims. She claimed that she addressed the process through which academic feminists write about victims, make sense of their subjectivity and import their stories so as to interpret them. This exchange of views is indicative of the diverse approaches to considering tactical rape and sexual violence in war. For this dissertation, however, as noted in the introduction, there has been a decision to incorporate stories, testimonies and anecdotes which have been documented and consider them within theoretical frameworks which are deemed to help illuminate or understand the impact of those stories. This dissertation is based on a conviction that theoretical understanding

120 Haarken, pp. 781-786.
122 Mardorossian, pp. 787-791.
cannot and should not be divorced from experiential understanding. Nor should the human, personal dimension of an issue be excluded in consideration and analysis. The one can illuminate the other, with theory and analytical frameworks making sense of what is often the chaos of war and experience ensuring that humanity is not lost in objective considerations.

Also writing in 2005, Karen Engle reviewed the progress in criminalising wartime rape.123 This highlighted a further aspect requiring caution when proceeding to bring about recognition and rejection of tactical rape and sexual violence in war. Engle recalled the two ‘camps’, as she termed them, engaged in feminist theory and strategising in the early 1990s: one camp consisted of those who focussed on the rapes being genocidal and in some respects different from what was referenced as ‘everyday rape’ or even ‘everyday wartime rape’; the other ‘camp’ believed that as rape in war had long been a reality even in large numbers it was nothing new and the focus should not be genocide but rapes. She acknowledged that, with time, the debate seemed to fade as feminists joined forces to achieve what was certainly progress in the ICTY – as will be seen in a later chapter of this dissertation. However, she maintained that the ICTY’s achievements were not as path-breaking, nor as progressive as doctrinal recognition might suggest, and that pushing the limits of the ICTY might even be counterproductive.

Limitations and Inappropriateness of Judicial Systems in Recognising the Suffering of Women

A particular debate relevant to this dissertation is the debate around whether or not judicial proceedings such as those of the tribunals are appropriate responses to tactical rape and sexual violence in war. Julia Hall commented, ‘I think the reticence

[of international courts to try cases of rape] is a combination of classic gender
discrimination that manifests itself in the attitude that crimes of sexual violence
against women are so-called lesser crimes.\textsuperscript{124} She called for courts to deal with cases
of rape, particularly rape in war. But, her calls, which are typical of many NGOs and
women’s advocates such as this author, have been to some degree challenged by
other feminist writers who highlight the additional suffering and pain which can be
experienced by women in judicial proceedings which do not reflect understanding of
the true nature and impact of rape. Such suffering and pain cannot be denied but
demands recognition and caution. This dissertation relies on analysis of judicial
proceedings and it is imperative to acknowledge that while such proceedings will be
shown to have had significant benefits in the development of normative rejection of
tactical rape and sexual violence, those benefits will have been at considerable cost
for the women who testified.

Binaifer Nowrojee highlighted experiences of women victim’s suffering in judicial
processes, exemplified in a case before the ICTR where a woman had been victim of
multiple rapes and was being cross-examined:

As lawyer Mwanyumba ineptly and insensitively questioned the witness at length
about the rapes, the judges burst out laughing twice at the lawyer while witness TA
described in detail the lead up to the rape. Witness TA had undergone a day and a
half of questioning by the prosecutor, before being put through a week of cross-
examination by the counsel of the six defendants. One of the more offensive
questions put by defence lawyer, Mwanyumba, included reference to the fact that the
woman had not taken a bath, and the implication that she could not have been raped

\textsuperscript{124} J Hall, lawyer with Human Rights Watch in an interview reported by A Poolos, ‘Human Rights
because she smelled. The three judges [named] never apologised to the rape victim on the stand, nor were they reprimanded in any way for their behaviour.125

If trial judges do not protect victims and ensure due process in judicial proceedings there is indeed potential for insensitive, unjustifiable and antagonistic strategies to be used in the name of formal investigation.

In a case before the ICTY, defence counsel called for a woman judge, Florence Mumba, to be disqualified for apparent bias.126 This judge had previously been a Zambian representative on the United Nations Commission on the Status of Women and it was implied she was therefore predisposed to promote a feminist outlook. The court eventually deemed that being opposed to rape and believing those who perpetrate rape should be held accountable, did not render the judge biased. In another case, before the ICTY, the testimony of one witness was initially disallowed because she had undergone counselling for her trauma and her testimony was therefore claimed to be unreliable. Her evidence was finally judged to be admissible. This ruling did eventually clarify that there were no grounds for excluding a witness because of her suffering extreme trauma.127 However, the very fact of such a call being made would indicate the defence saw some potential to exclude a witness account of a traumatic event – because she was traumatised. This would seem a long way from justice or even logic. The very fact of calls such as these demonstrated the degree of opposition that women encounter and lack of understanding of the issues encountered by women in legal proceedings.

126 Prosecutor vs. Furundzija, Judgement IT-95-17/1-A, 21 July 2000, para.164 (fourth ground of appeal).
127 Furundzija Trial Chamber Judgement, para. 109.
Julie Mertus, in ‘Shouting from the Bottom of the Well’, highlighted the limitations and disadvantages of women, victims of rape, being involved in international courts. She based her case around the experiences of women involved in the trials of the three men indicted in the ICTY Foca case. Many people who have seen the impact of criminal court hearings of rape crimes will agree with Mertus’ analysis that the adversarial process can result in a further violation of victims. She said, quite convincingly, that testifying itself does not provide for any healthy catharsis for victims – regardless of the fact that many may have expected it to do so. While there is sympathy for Mertus’ opinion, there is a danger that a desire for an ideal situation may endanger even the slow and tiny progress being made in confronting the impunity of those who rape in war. Many aspects of domestic, national criminal law demonstrate that by bringing criminals to account, very little is done to atone to victims. Yet, without such legal prosecution, the degree of impunity might continue or increase. The ideal would be to ensure processes and practices which recognise the pain of victims, their right to protection and understanding – while at the same time ensuring protection of the rights of the accused. Too often, it seems, the rights of the accused take precedence over the rights of the accuser. Certainly, as this dissertation concludes, the concerns regarding the additional suffering experienced by women testifying are well founded.

Other analysts have highlighted that bringing women to testify is not always motivated by a desire to accord the victims justice. Dorothy Thomas and Regan Ralph have provided many examples of rape being ‘mischaracterised and dismissed by military and political leaders’. Importantly, they highlight a need for awareness

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when acting to bring accountability for perpetrators of tactical rape and sexual violence in war. They highlighted that rape has been – and is still in many penal codes – seen as a crime against the honour of males rather than an attack on the victim herself. They wrote of the long-standing impunity of those who rape in war, despite the act of rape being universally condemned and asserted that the attitudes towards women that prompt rape [in war] in the first place and that fuel its mischaracterisation as a personal matter are reinforced and even shared by those in a position to prohibit and punish the abuse. Thomas and Ralph, too, highlighted that many women suffer a further violation when crimes against them are made public and denounced but when this is done for political purposes rather than to prevent abuse or to see justice done. The danger of misappropriation of women’s suffering is always a possibility.

Women victims experience additional suffering by courts and also from having their suffering ignored. Cynthia Enloe wrote of the invisibility of many rape victims in war, saying that ‘the women who suffer rape in wartime usually remain faceless.’

Enloe asserted that even trying to increase the visibility of particular rapes by soldiers is a political act and she highlighted two traps. For the first, Enloe referred to Atina Grossman for an explanation of the trap of assuming that increasing the visibility of rape ‘is a simple undertaking to reveal ‘the truth’ about militarized rape, even brutal war-time rapes or mass-scale rapes’. Grossman had written about the widespread rapes of German women, mostly by Soviet troops in 1945-46, explaining that the telling of a rape experience is affected by many factors beyond the specific physical attack:

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Women’s rape stories were framed in incredibly complicated ways, shaped by their audience and the motives behind their telling. Their experiences were ordered and given meaning within a complex grid of multiple images and discourses.133

For courts to recognise this complexity and still acknowledge the justice of hearing women’s stories and gleaning the truth within them is no easy task. It is a task which must be undertaken sensitively and honestly. Enloe, in her book, *Maneuvers*, which considered the politics of militarising women’s lives, devoted a particular chapter to looking at the political implications which may be linked to situations when soldiers rape.134 Enloe’s overall concern in this chapter was the militarising of rape and the diverse nature of militarised rape. In her introductory chapter she defined militarisation as, ‘a step-by-step process by which a person or thing gradually comes to be controlled by the military or comes to depend for its well-being on militaristic ideas’.135 In this case she was talking of the militarisation of the act of rape. She referred to conflict arenas including Bosnia and Rwanda. She noted there was sometimes a need for organising by women for women to uncover soldiers’ systematic political uses of rape.136

Enloe noted a second trap likely to be encountered in making war-time rape visible when she wrote that exposing militarised rape did not automatically serve the cause of demilitarising women’s lives.137 The example she provided was that of a woman outside the military who has been raped by someone else’s soldiers and who could be remilitarised if her ordeal were made visible chiefly for the purpose of mobilising her

134 Enloe, chapter 4.
135 Enloe, p. 3.
137 Enloe, p. 109.
male compatriots to take up arms to avenge her – and their – allegedly lost honour.\textsuperscript{138} By bringing cases of tactical rape and sexual violence in war to the international tribunals, it is acknowledged that there could be exploitation of women’s suffering for reasons other than justice for those victims.

Charlesworth and Chinkin, having noted the effects of patriarchy and manipulation of ideas of women as property to be protected by males, quoted Gibson as having written that ‘the vulnerability of women to sexual attack is appropriated by government, military and the media’ for the purpose of justifying international responses to situations of conflict – in the case of the Iraqi invasion of Kuwait for example, projecting ‘the construct of the virile, white male defender of women and children’.\textsuperscript{139} This is a recognition of the varied understanding of tactical rape and sexual violence in war and the ways they receive attention or are portrayed by governments and media. This can present a dilemma for activists and NGOs. Tactical rape and sexual violence in war may be highlighted for short-term, political gains and may, frequently, then be allowed to fade from public attention, eliciting little or no response to the specific needs of women and the underlying reasons why tactical rape and sexual violence are effective.

Yet, despite these justifiable reservations, there persists a reasonable argument, shared by this author, that by bringing perpetrators to account, even in less than perfect court processes, there may be a preventative impact on potential offenders. Making tactical rape and sexual violence visible may be sometimes counter-productive in advancing justice for women and may be exploited for political reasons. But, again, this dissertation is based on the conviction that ongoing secrecy

\textsuperscript{138} Enloe, p. 109.

and failure to raise awareness of tactical rape and sexual violence in war must be countered. By publicising events and indicting those who commit rape in war, some greater security – albeit extremely limited – is achieved for women, individually and collectively. During meetings in refugee camps for Kosovar women in 1999, it was noted that women refugees in Kosovo were ‘unusually’ prepared to report rape because the expectation would have been of reticence based on rape often being ‘seen as such a big shame, a mark for their whole lives’. Some reasons were put forward in a conversation with a lawyer engaged in taking formal statements from victims. One was, ‘sadly when many women have been raped, it may be easier for each one to cope and to speak about her experiences’. It should be noted that at the time of this conflict there had been widespread reporting and condemnation of the use of tactical rape in Bosnia-Herzegovina. It is possible that the Kosovar women knew of what had happened to others in Bosnia-Herzegovina from media reports: they felt they would be believed and not made to suffer for being victims. They may also have thought there was a chance of perpetrators being held accountable. The lawyer continued that the women were, ‘first interviewed at border points but they really WANT to give evidence again’. International efforts towards formal, international rejection of tactical rape and sexual violence in war were, at the time of the Kosovo outbreak, 1999, in their infancy. Formal recognition and rejection was beginning to be considered and had been accorded a degree of credibility even at that stage.

Closely allied with concerns for the additional suffering experienced by women victims of tactical rape and sexual violence in war were concerns regarding the suffering incurred when well-meaning activists ‘interview’ women. There are times when it is a natural part of interaction for women to tell their stories but as Cynthia

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141 Fitzpatrick, Kosovo, p.15.
142 Fitzpatrick, Kosovo, p.15.
Enloe highlighted, unnecessary additional pain can be inflicted, quoting one case when a woman had been questioned by twelve interviewers.\textsuperscript{143} Shana Swiss and Joan E. Giller referred to the damage which could be inflicted by well-meaning attempts at recording experiences:

> The very process of human rights documentation may conflict with the needs of the individual survivor. Recounting the details of a traumatic experience may trigger an intense reliving of the event and, along with it, feelings of extreme vulnerability, humiliation and despair.\textsuperscript{144}

The retelling of tactical rape can have significant repercussions. It may endanger the teller socially. It may have emotional and psychological impact. Part of the insidious effect of tactical rape and sexual violence in war is the damage they do to any cultural notions of chastity and social value. However much those outside a society may decry such values they are often imbedded in the psychology of women as much as in the psychology of the men in their societies. This author heard many stories from women in refugee camps, but names and identifications were always protected. These details were the purview of authorised and formally authenticated documentation. Many interviews on these visits were with workers in camps rather than actual victims. Any retelling must be approached with sensitivity and the antagonistic style of most judiciaries needs to be understood and, where possible, changed.

By 2005 there was awareness of a further dimension of prosecuting perpetrators of rape in war, raising questions as to whether victims should be considered due compensation beyond the punishment of perpetrators. Rosalind Dixon reviewed developments in prosecution of rape in international law and noted the emerging

\textsuperscript{143} C Enloe, \textit{Maneuvers}, p. 133.
imperative for recognition of victims as well as the imperative for a more ordered international community. She posited that prosecution alone would not provide for due and just recognition of victims and proposed that another system of compensation might be needed as the concept of ‘justice’ moved beyond the existing ICTY and Rome Statutes. This is a justifiable proposition given the recognition in much domestic law now that compensation is due to victims of many crimes but this aspect of justice will not be considered further in this dissertation.

Focus on specific judiciaries, such as the tribunals, must acknowledge the limitations of such processes. Certainly, there have been limitations to the achievements of both the ICTY and the ICTR and there have been some disgraceful incidents in both of these courts, which will be recognised in later chapters while also demonstrating that these judicial proceedings have been milestones in the developing attitude to tactical rape and sexual violence in war. The motivations for prosecuting tactical rape and sexual violence and highlighting their impact have at last received attention in international judiciaries. While long practised, historically, these forms of attack have always been on the margins or dependent on interpretation in international law. At least, recently, victims have been awarded their days in court.

Conclusion

This chapter has established that rape and sexual violence in war are referenced in international law, with specific definitions relevant to understanding the outcomes and work of the ICTY, ICTR and the UNSC. The chapter has also reviewed the critical analyses which have contributed to the discourse leading to the rejection of tactical rape and sexual violence in war. There are analysts who have highlighted serious reservations about a focus on judicial proceedings because of the

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inappropriateness and insensitivity of many of these proceedings. This dissertation recognises the legitimacy of some of these reservations, but does track what are incremental and less than perfect moves in development to assess and analyse progress towards normative rejection of tactical rape and sexual violence in war. There is a conviction that these proceedings have contributed greatly to international rejection of tactical rape and sexual violence in war. Chapters 3 and 4 will consider the work of the ICTY and the ICTR to determine how they have contributed to recognition of the applicability of existing international law to crimes such as tactical rape and sexual violence in war.
Chapter 3

International Law, Tactical Rape and Sexual Violence in the former Yugoslavia

This chapter considers the conflict in the former Yugoslavia and the work of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia (ICTY). It contends that here are initial signs here of an increasing commitment by the international community to reject tactical rape and sexual violence in war. This was an important conflict for the ways in which it demonstrated a style of warfare where civilians were targeted, where international intervention happened within a context of new understandings of the limits on sovereignty, where a tribunal which was deliberately an ad hoc entity extended judgements regarding tactical rape and sexual violence as contraventions of established international law. It became ‘the paradigm case, from which different lessons are drawn, the example which is used to argue out different general positions, and, at the same time, a laboratory in which different ways of managing the new wars are experimented’.¹ The judgements of the ICTY provided a base for recognising that tactical rape and sexual violence were issues of security for women, for communities and for states. The security implications will be analysed more fully in later chapters of this dissertation.

This chapter, first, provides analysis and reference to understanding the nature of this conflict. Secondly, it reviews some key aspects of focussing international attention on the nature and extent of the use of tactical rape and sexual violence in conflict. In doing so, it reviews the developing discourse around normative rejection of tactical rape and sexual violence in war. There is attention to the work of NGOs who were, as this dissertation argues, influential in eventual action at international level. Thirdly, it analyses the establishment of the ICTY. Fourthly, it analyses the ways in

¹ Kaldor, p. 6.
which the emerging judgements and definitions contributed to building a basis of international law for rejecting tactical rape and sexual violence as war crimes and crimes against humanity. Finally, it references the emergence of other relevant judiciaries which contributed to bringing at least some degree of accountability for perpetrators of tactical rape and sexual violence in conflict.

The Conflict

The conflict in the former Yugoslavia between 1992 and 1995 was extremely complex but an understanding of the complexity and the root causes is essential to understanding the degree of antipathy and the resulting war crimes and crimes against humanity, into which conflict the use of tactical rape and sexual violence was introduced.\(^2\) The conflict concerned three main ethnic groups: Bosniaks (Bosnian Muslims), Croats and Serbs. In 1991, after the fall of communism, the first multi-party elections were held, despite the fact that it was clear that all three groups had different goals. Muslim nationalists wanted a centralised independent Bosnia-Herzegovina. Serb nationalists wanted a Belgrade-dominated Yugoslavia. Croats wanted an independent Croatian state. Serbian leader, Slobodan Milosevic, took military action against Croatia and Slovenia after they declared independence. Media reports began detailing severe human rights abuses including mass, targeted rape and pressure for action was mounted by many NGOs. Largely as a result of this pressure, in January 1992 the UN established a protection force, UNPROFOR, to act as a peacekeeping force in Croatia.

In March 1992, Bosnia declared independence. War broke out and the Serb Republic was proclaimed. Ethnic cleansing began and in April 1992 a report by the Secretary General to the UN Assembly and Security Council in noted, ‘Ethnic cleansing is the

\(^2\) Much of this detail is sourced from BBC World, retrieved July 2007, <news.bbc.co.uk/2/hi/europe/country_profiles/1066886.stm>.
direct cause of the vast majority of human rights violations which have occurred in Bosnia and Herzegovina since the present human rights emergency began in March and April 1992’. In early August 1992, media reports were widely published about the Omarska Prison Camp in Northern Bosnia, in which reputable reporters from the Guardian and Newsweek newspapers told of horror treatments, including torture and rape. The August 1992 Report on the Situation of Human Rights in the Territory of Former Yugoslavia presented to the UN, was followed by a series of UN resolutions which included the protection of humanitarian convoys and establishing ‘safe havens’. Few of these were effectively implemented.

The conflict in the former Yugoslavia exemplified the development of ‘new wars’. This was not a war in which armies just confronted and battled other armies. The findings of the ICTY, to be detailed later, show that while this was not essentially a battle across international state borders it was indeed a conflict in which accepted international humanitarian and human rights law were applicable and contravened. The battle was for control of territory but the methods and strategies focussed on control of civilian populations. Achievement of the goal depended on ‘getting rid of all possible opponents’, creating ‘an unfavourable environment for all those people it cannot control’ and on ‘continuing fear and insecurity and on perpetuation of hatred of the other’. Different groups in the disputed areas were, before the conflict, living together in shared communities. A report to the UN in 1992 stated that some observers believed that attacking forces were ‘determined to ‘kill’ the city [Sarajevo] and the tradition of tolerance and ethnic harmony that it represents’. Mary Kaldor

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4 E Vulliamy, Shame of Omarska Camps, 7 August 1992, Guardian.co.uk.
6 Kaldor, p. 98.
identified specific techniques for gaining territorial control: systematic murder; ethnic cleansing; rendering an area uninhabitable – physically and economically: defilement through systematic rape and sexual abuse. Kaldor, in effect, provided a summary of the strategies employed in the conflict in the country. The full nature and impact of all the strategies – particularly tactical rape and sexual violence – employed in this conflict took time to be recognised and understood. But, this conflict was something of a water-shed in that such strategies were even noted and condemned rather than accepted as unfortunate but ultimately inevitable in war.

Many human rights and humanitarian NGOs were already active in the Balkans region. In particular there were groups organised to address women’s rights and concerns. ‘Women in Black’, an internationally linked group of activists, worked to call attention to the patriarchal nature of nationalism and war and protested against the killing of civilians and ethnic cleansing. In October 1992, UNSCR 780 established a Commission of Experts to analyse and examine events relating to ‘violations of humanitarian law, including grave breaches of the Geneva Conventions’.

**Awareness of Rape as Part of the Conflict**

In November 1992, an informal request was made by a worker at UNHCR to a Geneva-based international peak body of church-related humanitarian agencies. Information was shared about rumours and reports of extensive rape being used against women and the request was for a team to check out these reports. In December 1992, a team of women went to the former Yugoslavia with the aim of verifying reports, which were already the subject of many calls for action from the

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8 Kaldor, pp. 99-100.
public media. The team met with refugee women and workers in camps in Zagreb, ex-prisoners who had escaped across the border into Zagreb, UNHCR, representatives of organisations including documentation centres, women’s houses, women’s support and advocacy groups (such as ‘Mothers for Peace’, ‘Help for Children in Croatia’, Women of Bosnia-Herzegovina’, ‘Women of the Anti-War Campaign’), humanitarian assistance agencies and church representatives – both Christian and Muslim.

This team found that there were grounds for a formal international investigation of the use of rape in the conflict and that ‘as part of the overall humanitarian response to physical and emotional needs it is a matter of urgency that adequate and appropriate attention be given to the psychological needs of women raped in war’. The team reported its conviction that there was evidence of the rape of women by all sides in the conflict in Bosnia-Herzegovina – including rape as a by-product of the conflict. However, it also reported on rape that was systematic and this type of rape was more than opportunistic or random:

The team is convinced that there is clear evidence of the use of systematic, mass rape as an increasingly sophisticated weapon of war being used, in this instance, by members of the Serbian forces. Survivors speak of ‘rape on the front line’ and ‘third party rape’. These are rapes carried out publicly by Serbian soldiers to demoralise family members and opposition forces compelled to witness them.

This was a description of the use of rape for strategic, tactical purposes, linked with the campaign of ethnic cleansing. It specified the nature of such rape as systematic and widespread and as being used by one party to the conflict against civilians. In

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11 Fitzpatrick, Rape of Women in War.
12 Fitzpatrick, Rape of Women in War, p. 24.
13 Fitzpatrick, Rape of Women in War, p. 21.
14 Fitzpatrick, Rape of Women in War, p. 21.
essence, it referred to the strategic use of rape before there was any public recognition of the concept of tactical rape.

The team also recorded women’s groups dismay and anger regarding the lack of attention being paid to the crimes reported and concluded:

Women’s groups are angered by what they see as prevarication and refusal to accept the accounts of women’s suffering. The ‘second-layer’ of victimisation of survivors by insistence upon legalistic interrogation is being resisted. The team believes that there is sufficient conviction of the truth of reports of mass, systematic rape to, now, place the onus of ‘proof’ on the international community which claims to condemn it.15

The concerns of feminist analysts and commentators such as those referenced in the previous chapters were apparent and reinforced. There was a dearth of serious attention to the reports of tactical rape and sexual violence, despite widespread media and NGO calls of condemnation.

This report, Rape of Women in War, was written immediately after the team returned to Geneva and was widely shared among UN agencies, NGOs and women’s advocates.16 There were numerous press announcements and media conferences and a request to brief Dame Anna Warburton who was about to lead a European Community Delegation on one of the first formal investigations. The report from this delegation, ‘European Council: an Investigative Mission’ in January 1993, accepted the possibility of speaking ‘in terms of many thousands. Estimates vary widely, ranging from 10,000 to as many as 60,000. The most reasoned estimates suggested to

15 Fitzpatrick, Rape of Women in War, p. 22.
16 The report of this team investigation was later hand delivered to Slobodan Milosevic by a delegation of the European Council of Churches and that same delegation eventually submitted a copy to The Hague when Milosevic was on trial.
the Mission place the number of victims at around 20,000’. These numbers and the limited mandate of the Mission (to investigate only treatment of Muslim women) were later criticised by Norma von Ragenfeld-Feldman but her criticisms and reservations regarding possibly inflated numbers were offset by the acknowledged reluctance of many women to report rapes. The outcome of this and other subsequent investigations later confirmed that throughout these conflicts, rape was widespread and systematic.

It should be noted that media attention to the use of rape was maintained for extended periods rather than the more usual, single and often sensationalised story. Exactly why there was such sustained media attention has not been definitively established. One could posit that it was largely driven by the observation that the victims in the former Yugoslavia were European as compared with those victims in other conflicts such as in Africa and Asia. There was, too, the fact that the conflicts and genocide in the former Yugoslavia and Rwanda followed closely on one another. The genocide in Rwanda followed the inauguration of Nelson Mandela in South Africa and the media had focussed on Africa as a continent at that time with some hope for positive development. Then the genocide in Rwanda exploded much of that hope. The complexity of events in the former Yugoslavia and Rwanda, especially in the former Yugoslavia, may have meant that to focus on one aspect of the extensive violence was easier. Distribution of reports such as those mentioned above by the World Council of Churches and the European Council exerted effective pressure and kept stories alive. Perhaps, too, the very extent and horror of the violations made it difficult for media management to determine a short shelf life for the stories. Certainly, the sensational nature of the issue of rape and killing may have helped to

sustain public pressure and consequent pressure on states and the UN to acknowledge what was happening. Certainly, too, events reported in the two arenas interacted to exert pressure to recognise the widespread incidence of rape and to link it with genocide and ethnic cleansing.

In the final months of 1992, another group of women connected to ecumenical churches visited Belgrade. Their report called for international support and solidarity with women in Serbia, such as Women in Black, who demonstrated weekly against the suffering of women in the whole of the former Yugoslavia. This visiting group reported on meetings with senior churchmen who, with some exceptions, denied that the widespread rapes being reported could occur on the Serbian side and insisted that media reports were merely propaganda. Despite these protestations, on December 16, 1992, the United Nations High Commissioner for Refugees (UNHCR) issued a statement noting that the agency was ‘shocked at reports, over the past several weeks of human rights abuses directed against women in former Yugoslavia’ and continued:

> In over 40 years of working with women fleeing conflict and persecution UNHCR has documented many cases of rape. In addition to causing personal physical and mental suffering, rape may be perceived to bring dishonour to the woman and result in marginalisation of both her and her family. Its systematic use can result in the destruction of the social fabric of the persecuted group.20

This was a specific recognition of the use of rape in the conflict and recognition of the impact on communities as well as individual women. It was a development from

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20 UNHCR Situation of Women in Ex-Yugoslavia, 16/12/92, quoted in Fitzpatrick, *Rape of Women in War*, Appendix III.
rape being couched only in terms of ‘dishonour’ as consistent with the Geneva Convention terminology.

In January 1993, the Special Rapporteur made his third visit to investigate human rights abuses and he reported back to the UN in February 1993. In this report he referred to ‘an alarming number of allegations’ regarding the use of rape as a weapon of ethnic cleansing. He also noted the reports of missions by the European Community, the World Council of Churches, Amnesty International, Helsinki Watch and two French physicians. ‘Gravely concerned’ by these reports he had sent a team of experts to investigate the allegations, January 12-23 1993 and included the expert team’s findings in his own report. These findings included that rape had been used on a large scale predominantly by Serb forces against Muslim women and girls, rape had been used as an instrument of ethnic cleansing and furthermore it was noted that those in positions of power had made no attempt to stop the rapes.

By 1993 tensions had increased and alliances and conflicts had become increasingly complicated: conflict between Muslims and Croats; Muslims and Serbs allied against Croats in Herzegovina; rival Muslim forces fought each other in north-west Bosnia; Croats and Serbs allied against Muslims in central Bosnia. The UN established ‘safe havens’ in Sarajevo, Goradze and Srebrenica as populations were caught and torn by the conflicts. The UN Commission of Experts reported back in 1993 that there had been grave breaches and violations of international law including rape. The Commission also recommended the establishment of an ad hoc tribunal and May 25,
1993 saw the agreement of the Security Council to establish the ad hoc International Criminal Tribunal for Yugoslavia (ICTY). 27

In December 1994, the report of the UN’s Commission of Experts recorded claims that in the former Yugoslavia, there were approximately 1,100 reported cases of rape and sexual assault: about 800 victims had been named or were known to the submitting source; about 1,800 victims had been specifically referred to but not named or identified sufficiently by the reporting witness; witness reports through approximations referred to a possible further 10,000 victims. 28 The report of the Commission of Experts outlined some reasons for survivors of rape being reluctant or unable to report offences against them. 29 They included fear of reprisals for themselves and family members and shame and fear of ostracism. As time passed, many women just wanted to get on with their lives. Many women did not have a place to report the assaults or rapes and refugees had an increasing scepticism about the response of the international community.

Importantly, Cherif M. Bassiouni, author of this report, identified several different categories of rape, which included some committed as the result of individual or small group conduct ‘without evidence of command direction or an overall policy’ and he urged a distinction between ‘opportunistic’ crimes and the use of rape and sexual assault as a method of ‘ethnic cleansing’. 30 The two types of rape, which can be related to ethnic cleansing are identified as either those which are instances of a

29 Bassiouni, Annex IX 28-12-1994 Section A (a) – (f).
30 Bassiouni, Section C para. 1.
policy of commission or cases which point to a policy of omission.\textsuperscript{31} This report to the United Nations Security Council also identified recurring characteristics of rapes and sexual assaults and concluded that the patterns suggested that ‘a systematic rape and sexual assault policy exists’.\textsuperscript{32} While admitting that, at that time, this was yet to be proved, he noted that some level of organisation would have been needed to account for the large number of rapes which occurred – particularly in places of detention. When considering the correlation between media attention and the decline in the number of rapes and assaults, he suggested, too, ‘that the purposes for which the alleged rape and sexual assault was carried out had been served by the publicity’ and that this, in turn, ‘would indicate that commanders could control the alleged perpetrators, leading to the conclusion that there was an overriding policy advocating the use of rape and sexual assault as a method of ethnic cleansing’.\textsuperscript{33}

Bassiouni noted there was the evidence of deliberate impregnation of women raped, which could be seen as an indicator of intent to destroy a group, necessary when assessing whether or not events constituted genocide. When describing the patterns of rape and sexual assault, he reported that ‘perpetrators tell female victims that they will bear children of the perpetrator’s ethnicity, that the perpetrators were ordered to rape and sexually assault them’ and ‘perpetrators tell victims that they must become pregnant and hold them in custody until it is too late to get an abortion’.\textsuperscript{34} The social impact of bearing children who are deemed to be children of an enemy, children outside the group of the mother, is psychologically as well as physically damaging. It can have economic impact as the women who bear these children may be ostracised and denied economic support, inheritance may be contested or denied and

\textsuperscript{31} Bassiouni, Conclusion para. 3.
\textsuperscript{32} Bassiouni, Conclusion. para. 2.
\textsuperscript{33} Bassiouni, Section D, Annex IX, pp. 8, 9.
\textsuperscript{34} Bassiouni, Annex IX Section C.
communities may reject the children themselves – all these impacts can have long-term negative effects.

Bassiouni’s report was substantiated by other sources including the journalist, Peter Maas, who detailed many individual incidents.35 The report by Human Rights Watch, Bosnia and Herzegovina A Closed Dark Place: Past and Present Human Rights Abuses in Foca also documented many accounts.36 This report focused on events in Foca, a town of about 40,000, after the Serb takeover in April 1992, when local authorities established a ‘Crisis Committee’ to coordinate the Serb military and police in their campaign of ‘ethnic cleansing’: detaining, arresting, expelling, raping, torturing, and murdering the non-Serb population. Foca became known as the site of ‘rape camps’ where non-Serb women were detained and abused.37 Young Muslim women and girls were among Foca’s principal victims: they were raped on a daily basis and enslaved in a context of other crimes such as murder, torture, and the destruction of civilian property and religious sites. Many Muslim women, some as young as twelve years of age, were detained in various locations in the town, and forced to have sex with the accused and with dozens of other persons. The perpetrators were members of the Republika Srpska army and police, along with soldiers from Montenegro (mainly from the Niksic area) and individuals (Dragoljub Kunarac, Radomir Kovac and Zoran Vukovic) were indicted and charged. The crimes took place in 1992 and the first half of 1993; the indictment was issued in 1996, and the trial began in March 2000.38 One witness told the court how Radomir Kovac, termed the ‘owner’ of four women, had forced them to dance naked on a

36 Human Rights Watch, Bosnia and Herzegovina. A Closed Dark Place: Past and Present Human Rights Abuses in Foca, vol.10 no.6 (D).
table, had told them they would be executed at the nearby river and then took them
there. They were subsequently held as sex slaves. Another witness told how her
mother and brothers had been killed and she had been raped by about fifty men.
When asked by the prosecutor about how she felt after the gang rape she had
described, she responded, ‘I felt dead’.39 After raping one witness, Zoran Vukovic
had told her that he could have hurt her much more, but would not since she was
about the same age as his daughter.40

The rapes documented in the report on Foca by Human Rights Watch indicated a
systematic approach. The growing awareness of this systematic approach, an element
of rape being used as a tactic in conflict, was emphasised in UN statements in 1993
and 1994: ECOSOC referred to ‘the systematic practice of rape’ being used in the
ethnic cleansing.41 The UN General Assembly noted conviction that ‘this heinous
practice constitutes a deliberate weapon of war in fulfilling the policy of ethnic
cleansing’.42 In 1995, Srebrenica was overrun by Bosnian Serbs under General Ratko
Mladic. Thousands of men and boys were massacred despite the presence of Dutch
UN troops. The failure of the international community in the form of these Dutch
troops to intervene when they were supposed to be protecting the residents, and the
failure to send threatened air strikes, would later be a factor in strengthening
acceptance of the policy of Responsibility to Protect which is perceived to override
the concept of sovereignty. This contributed to the UNSC’s strengthened
preparedness to support international legal processes to protect victims of tactical
rape and sexual violence.

In February 2001, in an historic court ruling, Bosnian Serbs were convicted by the ICTY for rape, torture and enslavement, in the case against Kunarac et al. This was the first conviction of a crime against humanity by the Tribunal and will be considered in more detail with other legal judgments and their implications in international law later in this chapter. In August 2001, the ICTY convicted Radislav Krstic of genocide and in 2004 in a ruling dismissing his appeal the Tribunal stated clearly that ‘the crime of genocide was committed at Srebrenica, July 1995’. The appeal hearings, considering the requirements and definitions of the Genocide Convention had confirmed an intent to destroy and that the intent had been destruction ‘in part’ of a group. The court noted the Genocide Convention’s requirement that ‘in part’ be a substantial part and that the hearings had taken this seriously because ‘the gravity of genocide is reflected in the stringent requirements which must be satisfied’ and the need to ‘guard against a danger that convictions for this crime will be imposed lightly’. These convictions did not refer to tactical rape or sexual violence but did establish that genocide had been a feature of the conflict. [In the next chapter on the ICTR, there will be a focus on genocide, tactical rape and sexual violence.]

*The International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia (ICTY).*

The establishment of the ICTY was an important step in providing a relevant institution and basis for the emerging norm rejecting tactical rape. Faced with a situation which was stimulating strong international cries for action and condemnation including calls from NGOs, public media and its own UN agencies such as UNHCR and the Human Rights Commission, the UN Security Council was

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44 ICTY IT-98-33-A para. 39.
45 ICTY IT-98-33-A para. 37.
under pressure to take direct action. While the issue of sovereignty is never far away when the international society acts against or within a particular state, the international society, as recognised in the form of the UNSC, was unable to continue ignoring the contravention of its common humanitarian values and rules in the former Yugoslavia. However, any solution needed to take into account recognition of the opposition to any action perceived to override the sovereignty of individual States. The Security Council had adopted a number of resolutions regarding the former Yugoslavia before establishing the ICTY. Resolution 764 (13 July 1992) reaffirmed obligations to respect international humanitarian law and set down the principle of individual responsibility for grave breaches of the Geneva Conventions. Resolution 771 (1 August 1992) applied Chapter VII of the Charter of the United Nations demanding all states desist from all breaches of international law. Most importantly, resolution 827 (27 May 1993) approved the Statute of the ICTY, under the Charter of the UN.

The ICTY was established with ‘the power to prosecute persons responsible for serious human rights violations of international humanitarian law committed in the territory of the former Yugoslavia since 1991’.

The Statute covered powers to prosecute grave breaches of the Geneva Conventions of 1949, violations of the laws or customs of war, genocide and crimes against humanity. It outlined areas of responsibility regarding superior command, planning, instigating, ordering or committing violations and territorial and temporal jurisdiction. A head of state does not have impunity from prosecution – this became important in the indictment of Slobodan Milosevic. The decision to establish such a court was based on Chapter VII

of the UN Charter and ‘constituted a response to the threat to international peace and security posed by those crimes’. 47

Juan Jose Quintana pointed out that normally establishing such a tribunal would be a lengthy and complex process but by acting under the application of Chapter VII of the UN Charter, it had ‘the major advantage that all States would be under a binding obligation to take whatever action is required to apply the decision of the Security Council, since it was a measure approved under Chapter VII’. 48 Quintana listed the distinctive features of the ICTY: it is an independent organ not subject to any kind of authority or control by the Security Council; it is a temporary organ, the existence or maintenance of which depends on the restoration of peace and international security in the former Yugoslavia; it is an ad hoc jurisdictional mechanism not directly related to the establishment of an international criminal jurisdiction of a permanent nature; it must confine itself to applying existing rules of international humanitarian law and not develop or create new rules. 49 Provided it operated under its mandate, rulings and judgements of the ICTY would be difficult to ignore.

Establishment of the ICTY represented a judicial response to the reports of serious violations of human rights. In many cases the international community seeks to find a way of responding to such violations by means other than forcible intervention. The use of force is always more difficult to justify than humanitarian or, in the case of the former Yugoslavia and Rwanda in the 1990s, judicial intervention. There was still a desire to avoid establishing a permanent body, because this could be seen to be intervening in internal concerns, so it is important to understand the implications of

49 Quintana, pp. 227-228.
establishing the ICTY as an ad hoc judiciary, with the features noted above by Quintana.

Andrea Birdsall provided a useful analysis of the implications of the establishment of the ICTY as an ad hoc solution, outlining problems and progress. She argued, convincingly, that the establishment of the ICTY, ‘constituted an important precedent for multi-lateral action towards institutionalising respect for the rule of law and principles of individual justice’ and concluded that ‘this suggests that these norms are being taken increasingly seriously and are being given priority over other fundamental principles of order such as sovereignty and non-intervention’. The institutionalising of attitudes and values became an increasingly important element in the development of rejection of tactical rape and sexual violence in war and the establishment of the ICTY was a step towards such institutionalisation. Birdsall described the ICTY as constituting ‘external intervention by a number of states into the internal affairs of another sovereign state in order to enforce human rights laws and to protect principles of justice’ and her definition of justice as ‘enforcement of international human rights laws and norms aimed at holding perpetrators accountable and ending the culture of impunity’ is consistent with the role to be played by the ICTY in furthering the acceptance and response to the norm rejecting tactical rape. There was little doubt that the ICTY would be judging behaviours and events in a sovereign state. There was, too, little doubt that by giving the ICTY its mandate, the international society was prepared to hold accountable those who contravened existing international laws.

Birdsall perceived the establishment of the ICTY as demonstrating that human rights norms were in train to cascade from the first phase of institutionalisation of new

50 Birdsall, p. 397.
51 Birdsall, p. 399.
norms into international law. While this may well have been the case, rejection of
the use of rape as a tactic for policy attack on a civilian population was still not
integrated into the recognised spectrum of human rights violations. It was as the
ICTY progressed that tactical rape and sexual violence in war achieved recognition
as crimes against humanity, as war crimes and as gross violations of human rights.
However, the fact that human rights norms had already been established in
international law and included universal jurisdiction provisions which placed states
under obligation to enforce them was significant in providing international society
with grounds to take action. Birdsall noted that such universal jurisdiction provisions
were significant because they recognised that ‘some human rights are seen as
fundamental to all states and have the potential to take precedence over other
principles’. As the ICTY developed it was made clear that protection of civilian
populations from tactical rape and sexual violence in war should be included as one
of these fundamental human rights and not be dismissed as merely an inevitable by-
product of conflicts.

The decision to establish the ICTY as an ad hoc judiciary was founded in politics and
state concerns regarding sovereignty. The ICTY Statute established the court under
Chapter VII of the UN Charter and as such was a response to threats to peace and
security. States were using the rhetoric of established human rights norms as
justification for a tribunal which would, in effect, override the sovereignty of another
state. The Security Council was careful to make sure that the ICTY was not a
permanent fixture in international judiciaries. It was ad hoc and mandated to a
specific conflict at a specific time. The ICTY was limited in its time frame, its
geographic range and acceptable as ‘an exceptional step needed to deal with
exceptional situations’. Importantly, the ICTY was established ‘for the purpose of

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52 Birdsall, p. 400.
53 Birdsall, p. 415.
upholding universally agreed principles firmly established in international law’. The ICTY, therefore, was justified on the grounds that it was not intended to establish new norms or precedents, but only to investigate and prosecute within the framework of established norms and standards.

However, as the ICTY proceeded, it provided new insights into a developing norm such as rejection of tactical rape and sexual violence in war by judging that these practices fell within the definitions and mandates of already accepted international humanitarian and human rights law. As analysis of its decisions shows, the ICTY did extend and develop recognition, scope and definition of accepted norms – and tested tactical rape and sexual violence in war against those accepted norms and standards, finding that there was a legal basis for rejecting tactical rape and sexual violence in war. It accepted arguments that, under certain circumstances, these abuses fell within the parameters of the ICTY’s own Statute and perpetrators could be and were indicted and charged for rape and sexual violence as well as other acts seen as grave breaches and violations of accepted international law.

Not surprisingly, even as an ad hoc tribunal, the ICTY was opposed by leadership in affected areas of the former Yugoslavia. The right to establish the ICTY was interpreted as overstepping sovereignty of an independent state and the Tribunal’s authority later challenged. However, the Security Council proceeded and such appeals were dismissed in cases such as those against Dusko Tadic. The ICTY Appeals Chamber dismissed appeals from Tadic relating to the Tribunal’s authority and the challenges to the Security Council’s authority to establish such a court:

The Chamber concluded that the Tribunal was properly established by the Security Council. In reaching this conclusion, the Chamber determined that it could assess the

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55 Birdsall, p. 403.
56 ICTY Trial Chamber Tadic (IT-94-1).
lawfulness of Security Council actions when necessary to satisfy itself that it has the authority to proceed in a case. Upon conducting this kind of assessment, the Chamber found that the Security Council’s decision to establish the Tribunal was a legitimate measure aimed at the restoration of peace and security authorised under the United Nations Charter, and that the Tribunal had been duly established according to the rule of law.57

The Appeals Chamber similarly dismissed Tadic’s challenge to the Tribunal’s assertion of primacy over national courts, concluding that, contrary to Tadic’s submissions, the Tribunal’s primacy did not constitute an improper intrusion on state sovereignty. The Chamber noted that such actions were authorised under Article 2.7 of the United Nations Charter and emphasised that state sovereignty must give way in the face of offences that ‘do not affect the interests of one State alone but shock the conscience of mankind’.58 The Appeals Chamber also dismissed Tadic’s objection to the Tribunal’s jurisdiction, rejecting his assertion that the Tribunal lacked jurisdiction because the Bosnian conflict was a civil war. As will be seen later in this chapter, this particular objection was countered and case law established regarding intra- and inter-national conflicts. Taking responsibility for bringing to account perpetrators of crimes against established international humanitarian law was an important step in eventually holding accountable those who perpetrated crimes relating to tactical rape and sexual violence in conflict.

Birdsall qualified the impact of the ICTY, asserting that it should only be seen as a step in the life-cycle of a developing norm and that ‘further developments need to take place in international politics and law to achieve a more universal, less

58 ICTY, Press Release, C/PIO/021-E.
discriminatory enforcement of existing norms’.59 Certainly, further development was needed and the work of the ICTY enabled that further development. Birdsall did refer to the work of Victor Peskin who recognised the long-term normative impact of ad hoc courts in establishing precedents for the further extension of international law.60 It is arguable, therefore, that the ICTY, while not establishing new norms, did indeed extend the understanding and reaction to tactical rape and sexual violence in war within the application of existing norms and international law – and it did establish important new case law regarding the existing international law.

**Building a Basis in International Law for Rejecting Tactical Rape and Sexual Violence in War**

The development of normative rejection of tactical rape and sexual violence in war was encouraged by the specific case law which emerged from the ICTY and ICTR. The ICTY contributed significantly to the legal basis of treating tactical rape and sexual violence as contraventions of accepted international law. Importantly, it established that these abuses were contraventions of international humanitarian law as well as human rights law. When considering, in the previous chapter, how change occurs in societal values and attitudes, one factor highlighted was that an idea’s degree of persuasion may originate in the perceived legitimacy of the advocate or in the extent of international support it is perceived to be receiving. The ICTY’s legitimacy came from Chapter VII of the UN Charter and from the widespread support it received from the Security Council and member states. It should also be noted that the work of the ICTR and the ICTY often proceeded in parallel, either with one judiciary developing a particular aspect first or by building on the work of the other tribunal. This will become clear in the analysis of the ICTR which follows in the next chapter.

59 Birdsall, p 406.
The ICTY has listed what it sees as its core achievements. These include (inter alia): expanding on the legal elements of the crime of grave breaches of the Geneva Conventions by further defining the test of overall control, identifying the existence of an international armed conflict and an extended and exact definition of protected persons under the Conventions; narrowing the differences between laws or customs of war applicable to conflicts; identifying a general prohibition of torture in international law which cannot be derogated from by a treaty or by internal law. Other achievements listed include making significant advances in international humanitarian law pertaining to the legal treatment and punishment of sexual violence in war and identification and application of the concept of command responsibility. The significant advances in international humanitarian law pertaining to the legal treatment and punishment of sexual violence in war are directly relevant to the normative rejection of tactical rape. Other achievements frequently link to or support case findings and new international case law which extend international rejection and strengthen the judicial base for the norm. The outcomes and rulings related to cases of the ICTY include major development and progress in establishing international legal bases for defining and prosecuting tactical rape and sexual violence in war. This was an important step in providing legitimacy for changed attitudes and eventual rejection of the abuses.

The ICTY findings in the case against Tadic contributed to general jurisprudence relating to crimes against humanity. It deemed that a single act could qualify as a crime against humanity as long as there was a link with a widespread or systematic attack against a civilian population and although a ‘policy’ to commit crimes against humanity must exist, it need not be the policy of a state but could be instigated or

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directed by a non-state organisation or group. Rochus J.P. Pronk and Brian D. Tittemore provided an overview of these significant developments from the Tadic case.63 The ICTY deemed that commission of crimes against humanity came under customary international law for which there is individual criminal responsibility. It identified key elements that were required under Article 5 of the ICTY Statute, to judge an act as a crime against humanity. Article 5 lists specific acts which may be classified as crimes against humanity. Pronk and Tittemore highlighted that the ICTY judged that acts needed to be committed ‘during’, as opposed to ‘in’, an armed conflict, and be linked temporally and geographically to that conflict. The ICTY Appeals Chamber, in its previous jurisdiction appeal decision in the Tadic case, had held this linking was not required as a matter of customary international law but was nevertheless expressly required under the ICTY Statute. A further requirement was that a systematic widespread attack on a civilian population was occurring at the time of the commission of the acts. Finally, it had to be established that the accused knew or had reason to know that by his acts or omission that he was participating in the attack on the population.

Certain aspects of the Statute of the ICTY have particular relevance to the prosecution of perpetrators of tactical rape and sexual violence in war. One such is the clarification of who is deemed a protected person when applying international law. The Statute of the ICTY included powers under Article 2 to prosecute persons under the laws as set out in the Geneva Conventions. Under Additional Protocol 1 to those Conventions, it had been firmly established that civilians should never be specifically targeted in war.64 This cleared the way for the ICTY to deal with rape of

civilians as part of a policy of tactical use of rape. However, the Fourth Geneva Convention says that protected persons are ‘those in the hands of a party to the conflict or Occupying Power of which they are not nationals’.65 This might have excluded victims of the same nationality as their abusers but that definition of protected persons was interpreted widely by the ICTY to include victims for whom ‘factors such as religion or ethnicity may be more determinative of where an individual’s alliance lies than formal nationality’.66 This provided protection to such people as Bosnian Muslims victimised by Bosnian Serbs. The ruling by the ICTY set a judicial precedent for avoiding legal loopholes to enable impunity for perpetrators of tactical rape and sexual violence.

Veronica Arbreu provided some additional useful analysis when she noted that Article 2 of the ICTY Statute referred to persons protected under the provisions of the Geneva Conventions.67 The ICTY was established under the UN Charter which is committed to promoting respect for human rights and for fundamental freedom for all people without distinction such as their sex.68 It follows that the ICTY, as an entity of the UN, must recognise the same rights for men and women and must provide for equal protection. Included in the Statute were the acts for prosecution by the ICTY: torture or inhuman treatment; wilfully causing great suffering or serious injury to body or health and unlawful confinement of a civilian. These are all aspects of crimes which can be applicable to understanding the impact and conduct of tactical rape and link with the advances in legal treatment and punishment of sexual violence in war. The ICTY determined that civilians in the former Yugoslavia had

65 Fourth Geneva Convention Article 4 (1).
68 UN Charter, Article 1, paras 1-3.
the right to protection from crimes by forces not of their ethnic group.\textsuperscript{69} This clarified legal grounds for prosecuting perpetrators of tactical rape and sexual violence.

A further important development from the ICTY was the clarification of the relevance of distinctions between international and internal conflicts. Theodor Meron provided useful commentary on the role played by the jurisprudence of the ICTY in enabling the application of international humanitarian law to internal conflicts when he asserted that there was no moral justification and no truly persuasive legal reasons for treating perpetrators of atrocities in internal conflicts more leniently than those engaged in international wars.\textsuperscript{70} Article 5 of the ICTY Statute enabled prosecution of crimes against humanity, listing acts and conditions under which they might be constituted ‘crimes against humanity’. This had to be included in the Statute as there was no international treaty which specifically defined ‘crimes against humanity’. Article 5 is important in that it recognises that such acts can be committed as part of either international or internal conflicts and forces perpetrating these acts do not have to be state-controlled but can include ‘illegitimate forces that take de facto control over defined territory, including militias, terrorist groups and organisations’.\textsuperscript{71}

It was in the ICTY Appeals Chamber Decision on Jurisdiction that armed conflict was defined as conflict existing, ‘whenever there is a resort to armed force between States or protracted armed violence between governmental authorities and organised armed groups or between such groups within a State’.\textsuperscript{72} In this same ruling, it was judged that such conflict was deemed to exist until such time as a peaceful settlement was reached, whether or not actual combat was taking place. This was an important

\textsuperscript{69} Prosecutor v Tadic, Judgement, Case No. IT-94-1-A, paras 167-168 (ICTY App. CH.15 July 1999).

\textsuperscript{70} T Meron, International Criminalisation of Internal Atrocities, 89, American Journal of International Law, 554 (1995).

\textsuperscript{71} Arbreu, p. 9.

\textsuperscript{72} Prosecutor v Tadic, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, 2 October 1995, IT-94-1-AR72, para. 70.
ruling in that it meant that International Humanitarian Law should apply to conflicts within states even if there were protests or concerns about intervention into the realm of a particular state’s sovereignty. This meant that tactical rape and sexual violence could be prosecuted if perpetrated as part of an internal conflict.

The ICTY also noted that human rights law and humanitarian law pertain during conflicts whether international or internal, stating that both human rights law and humanitarian law, ‘take as their starting point the concern for human dignity, which forms the basis of a list of fundamental minimum standards of humanity’. 73 Askin noted that the Geneva Conventions, Common Article 2 and the Martens Clause of the early Hague Conventions, assert that ‘fundamental human rights do not cease to be applicable during armed conflict’. 74 By recognising that international humanitarian law and human rights law apply in conflicts – and those conflicts may be international or internal – the application and relevance of other international instruments such as the declarations and covenants which formulate required protection of human rights, civil and political rights, protection of women and children and prohibit torture and discrimination were all clarified. 75 The rights to protection and justice contained in these instruments can be seen to have attained the status of *jus cogens* meaning that these are rights considered so fundamental that states are not permitted to contract out of them. 76 It is to this status that the rejection of tactical rape and sexual violence in war must aspire.

73 Prosecutor v Delalic, Judgement, IT-96-21-A, 20 Feb. 2001, para. 149
74 Askin, ‘Prosecuting Wartime Rape’, p. 293
75 Universal Declaration of Human Rights; Declaration on Elimination of Violence Against Women; Convention Against Torture; International Covenant on Civil and political Rights; Convention on Rights of the Child.
Tactical Rape as Strategy and Policy

Article 5 of the Statute of the ICTY enabled prosecution as crimes against humanity, if a series of criminal acts – including rape – were committed as part of a widespread or systematic attack against a civilian population. The concept of tactical rape as defined earlier in this dissertation included that rape be part of a strategy and policy of attacking civilians, be widespread or systematic. Kelly Askin, reviewing cases heard by the international tribunals noted that ‘evidence indicates that rape crimes are increasingly committed systematically and strategically, such that sexual violence forms a central and fundamental part of the attack against an opposing group’. She concluded, too, that the laws of warfare have prohibited rape of combatants and non-combatants for centuries, but noted that increasingly, ‘this prohibition extends to other forms of sexual violence, including sexual slavery, forced impregnation, forced maternity, forced abortion, forced sterilisation, forced marriage, forced nudity, sexual molestation, sexual mutilation, sexual humiliation and sex trafficking.’ Tactical rape in the former Yugoslavia was the abuse which sparked outrage and condemnation, but the other acts which constitute sexual violence also often accompanied it. The practice of tactical rape and sexual violence were indeed widespread. This contention was supported in the ICTY Judgement in the case Prosecution v Kvocka. There was general acceptance that widespread attacks such as tactical rape and sexual violence in any conflict are subject to international humanitarian law. At the ICTY, a crime against humanity was defined as: ‘a single act by a perpetrator taken within a widespread or systematic attack against a civilian population entails individual responsibility and an individual perpetrator need not commit numerous offences to be held liable’. Deciding that offences have been

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78 Askin, ‘Prosecuting Wartime Rape’, p. 305.  
80 Prosecutor v Dusko Tadic, para. 649.
committed in a ‘systematic or organised’ fashion can be guided by examining the nature of the crimes which may have been perpetrated as a result of either a state policy or the policy of non-state forces including terrorist groups or organisations.\footnote{Charlesworth and Chinkin, p. 322.}

The ICTY ruled in the case against Kunarac, one of four accused who were convicted of various crimes dealing with rape and sexual slavery: ‘It is sufficient to show that the act took place in the context of an accumulation of acts of violence, which, individually, may vary greatly in nature and gravity’.\footnote{Prosecutor v Kunarac, Judgement, IT-96-23-T para. 419.} Each individual act of rape may be deemed to be an act of tactical rape when it is part of an overall, systematic attack which is widespread and strategically motivated. When judging Vukovic, one of those accused with Kunarac, the court dismissed his defence that his actions were beyond the court’s jurisdiction because even if he had raped it was not out of hatred. The court ruled, ‘all that matters in this context is his awareness of an attack against the Muslim civilian population of which his victim was a member and, for the purpose of torture, that he intended to discriminate between the group of which he is a member and the group of the victim’.\footnote{Prosecutor v Kunarac, para. 816.} This clarified the essential condition for tactical rape and sexual violence being deemed war crimes – the fact that such acts were committed as part of a strategic or policy-driven plan to gain political or military ascendancy over another group or to ethnically cleanse a territory. The court also ruled that a plan or policy may be indicative of the systematic nature of the crime and thus be ‘evidentially relevant’ but it is not essential to produce such a plan or policy for an attack to be deemed ‘systematic’.\footnote{Askin, ‘Prosecuting Wartime Rape’ p. 315.}

This pre-condition of being widespread or systematic also applied when ruling on tactical rape and sexual violence as crimes against humanity. The Statute of the
ICTY listed a number of acts under Article 5, Crimes Against Humanity, as this had not been elsewhere formally agreed despite the term being widely used since the Nuremburg Trials. Askin said that while definitions differed, ‘in essence, a crime against humanity consists of an inhumane act (typically a series of inhumane acts such as murder, rape, and torture) committed as part of a widespread or systematic attack directed against a civilian population’.  

It is important therefore that there be clear understanding of what is meant by ‘widespread’ or ‘systematic’. An article in the Slovenian newspaper, Delo, was quoted by Mary Kaldor, as it claimed that the Yugoslav National Army had a plan for mass rapes as a weapon of psychological warfare: ‘Analysis of the Muslims’ behaviour showed their morale, desire for battle and will could be crushed most easily by raping women, especially minors and even children’. The existence of a plan contributed to establishing that the rapes were widespread and systematic. Cases tried before the ICTY established that tactical rape and sexual violence were, indeed, widespread. In the ICTY case against Tadic where the indictment included alleging a ‘campaign of terror which included killings, torture, sexual assaults and other physical and psychological abuse’, the Trial Chamber noted that treatment received by some named witnesses was not unique: ‘A policy to terrorize … is evident’. The work of the ICTY, therefore, in ruling about elements of systematic attacks contributed substantively to establishing legal grounds for understanding tactical rape and sexual violence as violations of established humanitarian law.

In the ICTY case against Furundzija, there was development in the understanding of rape in international law. In this case, Anto Furundzija was found guilty of aiding and abetting outrages on personal dignity including rape. He had been a local

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85 Askin, ‘Prosecuting Wartime Rape’, p. 313, Note 123.
86 Kaldor, p. 56.
88 Prosecutor v Furundzija, Judgement, IT-95-17/1-T, 10 December 1998.
commander of a group within the Croatian Defence Council, known as ‘the Jokers’ and in mid-May 1993 had been interrogating a witness. Another accused had been rubbing a knife on the woman’s inner thigh and threatening to cut her. Later, she was raped in the mouth, anus and vagina while other members of the group milled around watching and laughing. She was deemed to have suffered severe physical and mental harm and public humiliation. The Trial Chamber identified the ‘objective elements’ of rape in international law as the sexual penetration, however slight, of the vagina or anus of the victim by the penis of the perpetrator or any other object used by the perpetrator; or penetration of the mouth of the victim by the penis of the perpetrator. The definition also included rape when such penetration was perpetrated by coercion or force or threat of force against the victim or a third person.

This definition of objective elements, particularly the elaboration of the possible nature of coercion and force, was important in moving from the requirement of proof of non-consent and the judgement noted that ‘any form of captivity vitiates consent’. This represented a serious attempt to define and understand the reality of rape. The Trial Chamber emphasised that while force, threat of force or coercion are relevant, these factors are not exhaustive and the emphasis must be placed on violations of sexual autonomy. Sexual autonomy was ruled to be violated ‘wherever the person subjected to the act has not freely agreed to it or is otherwise not a voluntary participant’ and factors such as force, threat or taking advantage of a vulnerable person provide evidence as to whether consent is voluntary. Under Rule 96 regarding procedures and evidence, the Trial Chamber also ruled that no corroboration of the victim’s testimony was required and prior sexual conduct of the victim was not admissible in evidence. This was a realistic obviation of legal

89 Prosecutor v Furundzija, Judgement, IT-95-17/1-T, 10 December 1998.
90 Furundzija, Judgement, para. 185.
91 Furundzija, Judgement, para. 271.
93 Furundidzija, Judgement, paras 457 & 458.
approaches which might attempt to undermine the testimony of survivors of tactical rape or sexual violence in war.

There were numerous incidences of rulings which provided a realistic understanding of tactical rape and allied sexual attacks. In the Kvocka case the Trial Chamber pointed out that ‘sexual violence covers a broad range of acts and includes such crimes as rape, molestation, sexual slavery, sexual mutilation, forced marriage, forced abortion, enforced prostitution, forced pregnancy and forced sterilization’.\(^{94}\) In the Celebici case the Trial Chamber stressed that rape ‘causes severe pain and suffering, both physical and psychological. The psychological suffering of persons upon whom rape is inflicted may be exacerbated by the social and cultural conditions and can be particularly acute and long lasting’.\(^{95}\) This Celebici case focused on four accused: with Zejnil Delalic eventually acquitted and Zdravko Mucic, Hazim Delic and Landzo convicted and sentenced to terms ranging from seven to twenty-five years. The indictment alleged that in 1992, forces consisting of Bosnian Muslims and Bosnian Croats took control of those villages containing predominantly Bosnian Serbs within and around the Konjic municipality in central Bosnia. Those persons detained during these operations were held in the Celebici prison-camp, where detainees were killed, tortured, sexually assaulted, beaten and otherwise subjected to cruel and inhuman treatment by the four accused.

This was a case with significant findings and judgements. It was the first judgement involving multiple defendants. It provided legal classification of the conflict in Bosnia and Herzegovina, deeming it to be an international conflict because of the involvement of the federal republic of Yugoslavia and its forces. It provided the first elucidation of the concept of command responsibility by an international judicial body since the cases decided in the wake of the Second World War, including

\(^{94}\) Askin, ‘Prosecuting Wartime Rape’, p. 342.

\(^{95}\) Prosecutor v Delalic, Judgement, IT-96-21-T, 16 Nov. 1998, para. 496.
responsibility of civilians holding posts of authority. This was also the first conviction of an accused person for rape as torture by the ICTY. Rape as torture was charged as a grave breach of the Geneva Conventions and a violation of the laws and customs of war and according to the Trial Chamber ‘there can be no question that acts of rape may constitute torture under customary law’.  

In the case against Kunarac, the Trial Chamber noted, ‘rape is one of the worst sufferings a human being can inflict on another’ and took into account that the accused had frequently told his victims ‘that they would give birth to Serb babies’. The Trial Chamber also emphasised that suffering need not be long-lasting, stating it was not ‘open to regard the fact that a victim has recovered or is overcoming the effects of such an offence as indicating it did not constitute an outrage on personal dignity’. These were important acknowledgements of the immediate and long term impacts of rape. They demonstrated an increased and more thoughtful degree of commitment to confronting and bringing to account the perpetrators of tactical rape and sexual violence in war, with an increased sensitivity to the real impact of these abuses on victims.

Kelly Askin reviewed the judgement on Tadic and the events at Omarska camp where ‘both male and female prisoners were subjected to severe mistreatment, which included beatings, sexual assaults, torture and executions’. Askin noted it was ‘particularly significant that the trial chamber cited [this] testimony concerning sexual violence and reproduced testimony attesting to the enormous pain and suffering endured by women and girls and the community at large.’

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99 Tadic Judgement, para. 154.
100 Askin, ‘Sexual Violence’, p. 102.
recognition of the widespread negative impact of tactical rape on a group and, importantly, it was recognition that such negative impact extended from the individuals directly attacked to their communities.

In situations of conflict there may be debate regarding where responsibility lies for criminal acts: with those who actually perpetrate those acts, those who allow or condone them or those who may authorise and plan them. Edoardo Greppi wrote:

the rules of humanitarian law concerning international crimes and responsibility have not always appeared sufficiently clear. One of the thorniest problems is that relating to the legal nature of international crimes committed by individuals and considered as serious violations of the rules of humanitarian law.\(^\text{101}\)

Commenting further Greppi continued that the basic problem regarding the classification of offences seemed to be that the borderline between war crimes and crimes against humanity appears blurred.\(^\text{102}\) The ICTY achieved some clarity in these aspects of international law. Greppi wrote about the distinction which grew after 1946 and noted that ‘beyond any doubt’ crimes against humanity had become part of international law and judgements of the ICTY ‘affirmed it openly’.\(^\text{103}\) He focussed on the ‘humanity’ aspect of the distinctions between the two forms of crimes because ‘the principle of humanity is at the core of international humanitarian law’ and ‘the principle of individual responsibility has clearly been established by humanitarian law’.\(^\text{104}\)

Aspects of humanitarian law, particularly regarding responsibility, required attention. Timothy McCormack pointed out regarding humanitarian law, that ‘acceptance of


\(^{102}\) Greppi, p. 532.

\(^{103}\) Greppi, p. 549.

\(^{104}\) Greppi, p. 551.
the body of rules and principles regulating the conduct of armed conflict can be perceived as condoning the resort to force’ but ‘when it comes to the prosecution of war crimes and other atrocities committed in armed conflict, the existence of legal principles is crucial’. An article by Frits Kalshoven and Liesbeth Zegveld, written in 2001, outlined the variety of responses made by the UN Security Council to gross violations of human rights law and humanitarian law, then noted that the goal of humanitarian law is ‘to preserve humanity in the face of the reality of war’ and linked this with the opinion that Security Council decisions to establish the ICTY and ICTR had been based on the notion of individual responsibility. In establishing a base of jurisprudence regarding tactical rape, it was, therefore, imperative that issues of responsibility were clarified if the degree of impunity were ever to be reduced.

Patricia Viseur-Sellers focussed on the outcomes of ICTY sexual assault cases regarding common purpose and joint responsibility, providing a detailed analysis of cases and the legal steps involved in reaching relevant decisions. From her position as legal advisor for Gender-related Crimes in the Office of the Prosecutor for the ICTY, she noted, ‘war, systematic attacks against civilians or the eruption of genocide entail collective criminal conduct’. She explained that the ICTY Appeals Chamber ‘ruled that no one who participates in a serious violation of humanitarian law escapes the Tribunal’s jurisdiction’. This was an important approach, avoiding loopholes for perpetrators. Sellers described the two broad forms of individual liability: direct criminal responsibility and indirect or superior responsibility. Direct responsibility implicates any accused who has planned, instigated, committed,

109 Prosecutor v Dusko Tadic, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, 2 October 1995, Case No. IT-94-AR72, para. 92.
ordered or aided or abetted the execution of crimes within the jurisdiction of the Statute (of the ICTY). Indirect criminal responsibility attributes liability to a person in a position of superior authority, whether military, political, business or any hierarchical status, for acts directly committed by his or her subordinates.\(^{110}\)

Sellers described the approach by which a judgement was made by the Trial Chambers and Appeals Chamber regarding criminal liability, not directly expressed in Article 7(1), the relevant article of the ICTY Statute: ‘Co-perpetration or joint criminal enterprise is a form of direct liability based upon a perpetrator undertaking to participate in criminal conduct with a plurality of actors’.\(^ {111}\) This clarification considerably extends the range of liability of participation and responsibility of perpetrators of tactical rape and sexual violence. Sellers wrote in 2004 that she would ‘not presume to predict, only speculate upon the munificent effect the common purpose or joint criminal enterprise doctrine might have on the development of sexual assault jurisprudence’.\(^ {112}\) However, this author shares the hope that it will indeed prove to be of benefit in a wide-ranging application for justice for victims of tactical rape and sexual violence.

A number of other rulings contributed to the jurisprudence regarding responsibility. The case against four men who were involved in acts of sexual violence at the Celebici camp, mentioned earlier, referred to violence against men and women.\(^ {113}\) The accused were a de facto commander at the camp; a second person with alleged authority over the camp; a worker and a guard. The court judged that even when they did not commit the specific acts of sexual violence, the accused were responsible on

\(^{110}\) Sellers, p. 154.

\(^{111}\) Sellers, p. 155.

\(^{112}\) Sellers, p. 156.

\(^{113}\) Prosecutor v Delacic, Indictment, IT-96-21-1, 19 March 1996 (referred to as Celebici indictment).
the basis of ‘their de facto as well as their de jure positions as superiors’.

This judgement was supported by the ICTY Appeals Chamber and deemed that superior responsibility for crimes committed by subordinates could be incurred for war crimes, crimes against humanity and genocide:

Superior responsibility may be used to hold military and civilian leaders accountable for crimes of sexual violence committed by subordinates that the superior negligently failed to prevent or punish.

This was an important step forward because, as Kelly Askin noted, it set a precedent which could be used, ‘to hold superiors criminally liable for failing to adequately train, monitor, supervise, control and punish subordinates who commit rape crimes’ and there could be no illusions that women and girls were not at high risk of sexual violence during war, mass violence and occupation. This represented progress in accountability of those who were responsible for permitting or even encouraging widespread and systematic rape. Responsibility can now be placed on those who are judged to be in control of troops.

In the judgements in the Omarska case, there was also a closely-allied ruling about joint responsibility of people who were reasonably deemed to know about or support crimes. The accused included Kvocka who was convicted of having had sufficient influence to prevent or halt some of the abuses but rarely made use of that influence. The Trial Chamber of the ICTY ruled that it was not reasonable for those who worked at the camp not to have known that abuses were being inflicted. As well as possibly witnessing the rapes and abuses, those who worked at the camp would have known because:

114 Celebici, Trial Chamber Judgement, para. 354.
evidence of abuses could be seen in the bloodied, bruised and injured bodies … heaps of dead bodies, lying in piles … cramped conditions and bloodstained walls … and evidence of abuse could be heard from the screams of pain and suffering … evidence could be smelled from deteriorating corpses, the urine and faeces … 

It was accepted that knowledge alone was not sufficient grounds for conviction but the accused must have participated at some level – such as aiding acts of abuse or performing acts which advanced the goals of what was a criminal enterprise. Mlado Radic was a professional policeman who had power over guards but was convicted for using that power selectively, ‘while ignoring the vast majority of crimes committed during his shift’. However, he was also convicted of rape, participation in sexual intimidation, harassment and assaults as well as acts of sexual violence characterised as torture taking into account ‘the vulnerability of the victims, the pain deliberately inflicted and the state of anxiety in which women detainees were kept at Omarska.’ This again broadened the range of people responsible for contravention of International Humanitarian Law – and may well deter participation in such violations even if no more direct action to prevent is taken or possible.

The indictment of Slobodan Milosevic, despite his death before any concluding ruling of the Tribunal, also demonstrated that heads of sovereign states could be brought to account. Milosevic was President of the Federal Republic of Yugoslavia from 15/7/1997 until 6/10/2000. He was arrested 1/4/2001 and transferred to the ICTY 29/6/2001 where he was charged with crimes including cruel and inhumane treatment which included the sexual assault of women in Bosnia-Herzegovina and the sexual assault of Kosovar Albanians by forces under his command. He died

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119 Omarska, Keraterm and Trnopolje Camps, IT-98-30/1, ICTY Press Release.
120 Omarska, Keraterm and Trnopolje Camps, IT-98-30/1 ICTY Press Release.
While the complexity and number of charges against him probably led to the drawn-out proceedings and the ICTY’s dealings with the man himself in the proceedings, his arrest and charges signalled that command responsibility would be applied at the highest levels of government.

In its report to the UN Security Council and General Assembly in 2007, the ICTY highlighted its focus on ‘senior level individuals accused of the most serious crimes’ and noted that the failure at that time to arrest Radovan Karadzic and Ratko Mladic remained ‘of grave concern with respect to the proper administration of justice’. Since then, in July, 2008, Karadzic has been arrested and is in The Hague. Both Karadzic and Mladic were charged with having superior authority and that ‘by their acts and omissions and in concert with others, committed a crime against humanity’ for acts which included them being ‘criminally responsible for (inter alia) rape and sexual assault’. Holding heads of states and senior leaders accountable is the logical outcome of recognising superior responsibility and does, at least, send a message to those who use tactical rape and sexual violence as strategies in conflicts that they may not have impunity.

From the Celebici case important judgements emerged which referred to rape as torture. In a key ruling, the Trial and Appeals Chambers of the ICTY interpreted Article 3 of its Statute, which refers to violations of laws of war or customs of war, ‘to include the crimes of torture and ‘outrages upon personal dignity’, which includes

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acts such as rape, within its purview’. In this particular case, the elements of torture for the purposes of the war crimes provisions of the ICTY Statute were held to be the elements of torture contained in the Convention Against Torture. This includes acts: which inflict severe pain or suffering, whether physical or mental; which are committed intentionally for obtaining information or confessions from the victim or a third person; committed as punishment, intimidation or coercion for any reason based on discrimination of any kind; committed by or as a result of instigation, consent or acquiescence of an official or person acting in an official capacity. The Trial Chamber ruled that when rape or any form of sexual violence satisfies these elements, it may constitute torture. In this case it was judged that the accused:

used sexual violence as an instrument of torture and subordination, since he committed the rapes with an aim of ‘intimidating not only the victim but also other inmates, by creating an atmosphere of fear and powerlessness’.

It is important that the threat of rape was recognised as a strategy for intimidation – not just the act of rape itself. Here again, the rulings established a legal base for maintaining that rape is a contravention of accepted law and as such, it is a ruling which also strengthens attitudes rejecting the use of tactical rape as a strategy in conflicts.

In the case against Furundzija, there was recognition that involvement in torture may include a varying range of action – from ordering, to organising, to provision of opportunity, to processing results of information which may be obtained. All these

125 Convention Against Torture Article 1.
126 Celebici, Trial Chamber Judgement, para. 496.
127 Askin, ‘Prosecuting Wartime Rape’, p. 324.
actions carry responsibility.\textsuperscript{128} This case also established that being forced to watch the rape of a woman he knew constituted torture of a male victim.\textsuperscript{129} The rulings stated that there was also a generally accepted prohibition of torture which has reached the status of jus cogens under international law and that ‘acts constituting sexual terrorism amount to torture’.\textsuperscript{130}

It was the Kunarac case in 2001 in which the ICTY gave its first judgement of rape as a crime against humanity and as sexual slavery.\textsuperscript{131} The accused in this case were convicted for crimes committed in the detention centres in Foca in 1992. The ICTY Statute Article 5 which referred to crimes against humanity did not specifically refer to sexual slavery but did list rape and enslavement as two acts ‘justiciable as crimes against humanity’ so ‘the crime of holding women and girls for sexual servitude was charged and prosecuted’.\textsuperscript{132} The Foca municipality was a particularly horrific centre of rape of women and girls, where from and in a range of holding places, ‘forces systematically raped, gang raped and publicly raped’ many women and young girls, with some being taken out, raped and returned and some being held in specific locations for ‘sexual access whenever captors demanded it’.\textsuperscript{133}

The Trial Chamber of the ICTY, in this case, referred to the definition of slavery in international law, including in the Slavery Convention, as ‘the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised’ and found that indicia of slavery included (inter alia) absence of consent or free will, exploitation, forced labour or service, sex, prostitution and control of sexuality.\textsuperscript{134} The judgement ‘forcefully concluded that neither physical restraint nor

\begin{footnotes}
\item[128] Furundzija, para. 253.
\item[129] Furundzija, para. 267.
\item[130] Arbreu, p. 9, referring to Furundzija.
\item[131] Kunarac, Trial Chamber Judgement.
\item[133] Askin, ‘Prosecuting Wartime Rape’, p. 333.
\item[134] Askin, ‘Prosecuting Wartime Rape’, p. 338.
\end{footnotes}
detention is a required element of slavery’ and ‘implicitly accepted that fear of retribution if they escaped and were recaptured as a reason that women were psychologically prevented from escaping’.135 However, as Askin noted, while the judgement took care to emphasise that control over a person’s sexual autonomy, or obliging a person to provide sexual services may be indicative of enslavement, regrettably, the term sexual slavery was never used in the judgement.136

Despite this lack, the ruling was historic for linking rape and slavery and was welcomed by many advocates. The ruling provoked this response from Regan Ralph of Human Rights Watch: ‘This decision is historic because it puts those who rape and sexually enslave women on notice that they will not get away with these heinous crimes’.137 Many advocates including this writer shared Ralph’s sense of encouragement that there had been, at least, some recognition of these crimes and some accountability demanded.

Judicial progress

By June 2010, the ICTY had indicted more than 160 persons. Proceedings against 123 had been completed and a further 40 cases were still open. These included Radovan Karadzic, who was the Bosnian-Serb President at the time of the conflict. He was indicted for genocide and crimes against humanity related to events at Srebrenica.138 The other accused, Ratko Mladic, also indicted for genocide and

crimes against humanity, was finally arrested in May 2011. He too was charged with genocide and with persecution, in which charges were included sexual violence.\footnote{Amended indictment Mladic,IT-95-5/18-1, <www.icty.org/x/cases/mladic/ind/en/mladic021010e.pdf> Count 3 paras. 37 (b) and (f).} In 2002, the International Criminal Court entered into force, established by the Rome Statute and adopted in 1998.\footnote{Rome Statute of the International Criminal Court, 1998.} This court is not directly linked with the former Yugoslavia but is noted here as its mandate built on work by the ICTY such as that mentioned in the previous chapter of the ICC Statute defining a crime against humanity by drawing on work done by the ICTY, referencing the widespread or systematic attack on civilian populations and the mental state of the individual defendant.\footnote{S van Schaack, ‘The definition of crimes against humanity: resolving the incoherence’, Santa Clara University Legal Studies Research paper no. 07-38, Journal of Transnational Law and Policy, vol. 37, no. 787, 1999.} In January 2003, the Office of the High Representative in Bosnia (OHR) and the ICTY recommended the creation of a specialised chamber to try war crimes cases within the State Court of Bosnia and Herzegovina. In August of that same year, the UN Security Council passed a resolution which called on donors to support the creation of such a specialised chamber.\footnote{UNSCR1503, August 2003.} This War Crimes Chamber was created and began operations in 2005. In its World Report 2006, Human Rights Watch (HRW) noted that in 2006 the Bosnian War Chamber had been hearing eighteen cases while district courts in Republika Srpska continued to try cases, ‘albeit at a slow pace’.\footnote{Human Rights Watch, World Report Bosnia and Herzegovina Events of 2006, retrieved 2 March 2008, <www.hrw.org/englishhrw2k7/2007/01/11>.} This report noted that the efforts of cantonal and district courts were hindered by lack of support from the public, under-resourcing and witness cooperation issues, but the non-availability of suspects remained the biggest impediment to accountability’.\footnote{Human Rights Watch, World Report Bosnia and Herzegovina Events of 2006.} By 12 February 2007, Human Rights Watch reported there were nine ongoing trials; there had been nine verdicts and three of
those had been confirmed on appeal; there had been five cases involving nine accused transferred to the War Crimes Chamber from the ICTY.\textsuperscript{145}

The other judiciary to note is the International Court of Justice (ICJ) which, in 2006, began hearings in genocide cases brought by Bosnia-Herzegovina against Serbia and Montenegro. In 2007, the ICJ ruled that events at Srebrenica did constitute genocide but cleared Serbia of direct responsibility. It is, however, the work of the ICTY which has most direct bearing on tactical rape and sexual violence. Its establishment as well as the case law it produced have contributed to the early signs of rejection of these practices in war. The ICTY continues hearing cases – notably regarding rape in specific indictments and rape as a weapon of war and a crime against humanity.

\textit{Conclusion}

The ICTY did effectively contribute to the understanding of how conflicts were waged in the late twentieth century by examining the strategies and tactics employed by combatants in the former Yugoslavia. It contributed to the legal basis for normative rejection of tactical rape and sexual violence in war by the international community by advancing valuable judgments and interpretations about International Humanitarian Law. Essential elements of legal requirements for acts to be judged as war crimes and crimes against humanity were clarified in the context of this conflict. The ICTY demonstrated that tactical rape and sexual violence were contraventions of existing International Humanitarian Law and that perpetrators should therefore be brought to account. Analysis of the work of the ICTY indicates that there was increased commitment to rejecting tactical rape and sexual violence in war as definitions were expanded and degrees and locus of responsibility were identified. All this was done within the mandate of interpretation and application of existing law

and norms. The work of the ICTY and the ICTR were similar in many ways – but differences arose from the nature of the conflicts with which they dealt and the different emphases arising from cases they heard. The ICTR will be considered and its contributions to discourse and legal bases for rejection of tactical rape and sexual violence in war as acts of genocide will be analysed in the next chapter.
Chapter 4

Genocide, Tactical Rape and Sexual Violence in Rwanda

This chapter focuses on the genocide in Rwanda in 1994. This was again a situation which included widespread and systematic tactical rape and sexual violence. It was another situation where the UNSC established an ad hoc tribunal from which significant case law and legal definitions emerged. This case law and definitions have contributed to the commitment of the international community to the development of a discourse rejecting tactical rape and sexual violence in war. The question considered in this and the previous chapter is, ‘What contributions did the conflict and genocide and ad hoc International Criminal Tribunals for the former Yugoslavia and for Rwanda make to the development of a norm rejecting tactical rape and sexual violence?’

As with the conflict in the former Yugoslavia and the judicial statements and rulings of the ICTY, the Rwandan genocide and the ICTR resulted in progress in understanding the nature and use of rape and sexual violence in war. It was another example of a ‘new war’ where the use of tactical rape and sexual violence, received attention from public media and the international community to a degree not previously common. Again, civilians were targeted as the genocide erupted within national borders. Again, intent to destroy a group was evident. Again, international intervention happened within a context of new understandings of the limits on sovereignty. The ICTR was also a tribunal which was deliberately an ad hoc entity, limited to extend judgements on existing international humanitarian norms and laws and when it considered tactical rape and sexual violence, it had to do so as a contravention of established IHL. There were – still are – many areas in which the ICTR failed to perform well and failed victims of tactical rape and sexual violence. However, it produced what could be argued to be the most significant case in international law regarding rape and genocide, despite many reservations and a sad
lack of substantive progress since that case. While the conflict in the former Yugoslavia and the genocide in Rwanda occurred in a close time frame and a similar context of approaches to humanitarianism and the international community reacted in both arenas with ad hoc tribunals, Rwanda and the ICTR exemplified a different form of conflict, a different culture, a different form of using tactical rape and sexual violence – this time in an African state.

The focus of this chapter is on understanding the elements which resulted in events in Rwanda being deemed to be genocide and the contribution of the ICTR to understanding the links between tactical rape, sexual violence and genocide. There is no requirement that conflict be occurring for genocide to occur but events in Rwanda – which could be deemed to have been in a post-conflict state – certainly resulted in genocide. This chapter will, first, review the key events of the Rwanda genocide. It will, secondly, analyse the nature of the genocide in Rwanda. Thirdly, it will analyse how the hatred of the Tutsi – in particular Tutsi women – was constructed. Fourthly, it will examine the formation of the ICTR and the emerging case law with reference to tactical rape and sexual violence as genocidal. The outcomes of the ICTR and its judgements regarding tactical rape and sexual violence will be analysed, with a particular focus on how this contributed to building a base of international law for recognising the link between tactical rape and sexual violence and genocide. Finally, there is recognition of the limitations of the work of the ICTR, despite its progress in effectively linking tactical rape, sexual violence and genocide.

**Key Events in the Rwandan Conflict**

The events in Rwanda were not a spontaneous genocide. It was one phase in a long-running series of historical and political events and key events need to be registered. From the fourteenth century, the population of Rwanda had been a mix of majority
Hutu, minority Tutsi and a very small number of Twa.\(^1\) Germany colonised Rwanda from 1897-1916.\(^2\) Belgium occupied it in 1916 and in 1919 Belgium was given, by the League of Nations, a mandate to rule Rwanda and did this through Tutsi kings.\(^3\)

In 1959, one of several outbreaks of violence against the Tutsi caused approximately 130,000 Tutsi eventually to flee to the Belgian Congo, Burundi, Tanganyika and Uganda.\(^4\) Rwanda was declared a republic in 1962, with a Hutu president.\(^5\) Violence continued and by 1964, it is ‘likely’ that the correct estimate of Tutsis who had been forced to flee Rwanda was around 600,000 to 700,000 refugees.\(^6\) In 1973, Juvenal Habyarimana, another Hutu, took over as president in a military coup and he was formally elected in 1987.\(^7\)

There was ongoing tension and conflict between the Hutu and Tutsi in the realms of the military and political leadership, particularly as, after independence, the economy of Rwanda weakened and eventually the Hutu president, Juvenal Habyarimana lost popularity.\(^8\) Many Tutsi refugees in Uganda formed the Rwandan Popular Front (RFP) with some dissident, moderate Hutus, and planned to overthrow Habyarimana and regain the right to return to Rwanda. In 1990, a rebel army, mostly Tutsi, invaded from Uganda but power remained with Habyarimana and the Hutu and Habyarimana exploited this threat, hoping to bring dissident Hutus back on side with him and his government.\(^9\) Tutsis inside Rwanda were accused of collaborating to overthrow the government and of being a threat to Rwanda generally.\(^10\)


\(^{2}\) Prunier p. 25.

\(^{3}\) Prunier pp. 25-26.

\(^{4}\) Prunier pp. 50-51.

\(^{5}\) Prunier p.54.

\(^{6}\) Prunier p.63.

\(^{7}\) Prunier p. 75.

\(^{8}\) Prunier pp. 84-90.

\(^{9}\) Prunier pp. 90-92.

\(^{10}\) Prunier pp. 90-92.
extended periods of violence, in August 1993, Habyarimana signed a peace accord in Arusha with the RPF – but it had little effect except perhaps to be seen as Habyarimana falling into partnership with moderate Hutus as well as the threatening RPF.  

Habyarimana’s plane was shot down in April 1994 and he and the Burundian president travelling with him were killed.  

There were accusations on both sides that the Hutu leadership had ordered the assassination.  

Whatever the case, the shooting signalled the eruption of genocide and in the next three months an estimated 800,000 were killed – nearly three quarters of the Tutsi population.  

Eventually, the RPF launched a major offensive and Hutu militias fled to neighbouring countries, taking with them around two million Hutu refugees who joined the flow of Tutsis and moderate Hutus and the Twa who were also targeted in the events which became defined as genocide and which showed clear signs of being well-planned and prepared.  

The United Nations High Commission for Refugees (UNHCR) reported ‘the largest and fastest exodus UNHCR has ever seen’.  

The writer of this dissertation was in the refugee camps in Tanzania following the massive exodus from Rwanda in May 1994 and agrees with Gerard Prunier that these camps were filled with refugees who were a mix of surviving Tutsis and Hutus together with Hutus who had been involved in the massacres.  

It was a volatile mix. A description of the camp inhabitants noted on May 19, 1994 that the refugees included ‘women who have been raped’ as this was evident to most workers.  

It is notable, however, that the History of the Rwandan

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11 Prunier, pp. 174-191.  
13 Prunier, pp. 213-229.  
15 Prunier pp. 248-265.  
17 Prunier, p. 265-266.  
18 World Council if Churches, Pentecost Appeal, 19 May 1994.
Crisis published by Gerard Prunier has no mention of rape in the otherwise extremely detailed accounts of events.

It needs to be noted that while many NGOs and observers had, early in the conflict, called the events in Rwanda ‘genocide’, it was some time before it was formally acknowledged as such by the international community and sovereign states. In 1994, the UN Special Rapporteur when considering whether or not the acts constituted genocide accepted there was clear and unambiguous intention to destroy a group in whole or in part, referring to the incitements put out by the media (particularly radio RTLM) and reproduced in leaflets.\textsuperscript{19} He added that even without such evidence the intention could be deduced on the basis of a variety of concordant indications including preparations for the acts with distribution of firearms and training of militias, the number of Tutsis killed and the policy of destruction of the Tutsis.\textsuperscript{20}

Attacks and slaughter began within hours of Habiyirama’s plane being shot down and were carried out by the Presidential Guard and militias.\textsuperscript{21} It has been estimated that country-wide the militias numbered about 50,000 members.\textsuperscript{22} Many civilians also participated: some were threatened, some received incentives such as money or food or the right to claim the land of slaughtered Tutsis.\textsuperscript{23} The main organisers were ‘a small tight group belonging to the regime’s political, military and economic elite’.\textsuperscript{24} The Special Rapporteur recorded that radio had urged attacks and recruits were sent rapidly all over the country to incite and carry out many of the killings, noting that Radio Rwanda which broadcast during the events sent messages

\textsuperscript{20} A/49/508, para. 46.
\textsuperscript{21} Prunier, pp. 229-239.
\textsuperscript{22} Prunier, p. 243.
\textsuperscript{23} Prunier, pp. 242-250.
\textsuperscript{24} Prunier, p. 241.
throughout the country: ‘by 5 May, the cleansing of the Tutsi must be complete’ and ‘the grave is only half full, who will help us fill it?’

The fact of widespread rape as part of the genocide was evident. A Canadian peacekeeper testified at the ICTY: ‘It seemed that everywhere we went, from the period of 19th April [1994] until the time we left, there was rape everywhere near these killing sites’. He was one of the professional soldiers who expressed shock at what they had seen of the widespread rape. When Phillip Gorovitch, a prize-winning journalist and author, visited a church where many Tutsis were slaughtered in mid-April 1994 he saw bodies in varying stages of decomposition and observed:

A woman in a cloth wrap printed with flowers lay near the door. Her fleshless hip-bones were high and her legs slightly spread, and a child’s skeleton extended between them.

A soldier from the Rwandese Patriotic Front, a Tutsi, told Gorovitch that the dead in this room were mostly women who had been raped before being murdered. These were just some of the indications that widespread rape had accompanied killing and documentation and evidence at the ICTR, considered later, indicated that rape had also been systematic and a direct strategy and tactic in the events aimed at destroying the Tutsi. In January 1996, Rene Degni-Segui, UN Special Rapporteur, reported: ‘rape was the rule and its absence the exception’.

The UN Special Rapporteur reported difficulties in having exact figures of rape victims because of social stigma and cultural values but also because they did not take into account any accurate

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25 A/49/508, para. 59.
26 B Beardsley, assistant to former peacekeeping commander, Dallaire, giving testimony at ICTR 2004, quoted by Nowrojee, ‘Your justice is too slow’, p. 1.
27 P Gorovitch, We wish to inform you that tomorrow we will be killed with our families, Picador, London, 2000, p. 16.
28 Gorovitch p. 16.
estimation of ‘rapes which took place in refugee camps’.\(^\text{30}\) Prevailing belief of the aid workers and medical and relief personnel, as early as May 1994, was that any Tutsi ‘female’ (this term was often used to include both women and little girls of any age) who had managed to cross the border to safety had ‘probably been raped – and maybe more than once’.\(^\text{31}\)

The UN Special Rapporteur when considering that not only Tutsis were targeted referenced a document issued by the General Staff of the Rwandese Army which distinguished between the Tutsi as the main enemy but also referred to ‘supporters’ described as ‘any person who gives any support to the main enemy’.\(^\text{32}\) Accounts of women who survived tactical rape such as those in earlier chapters of this dissertation indicate that Hutu women married to Tutsi or Tutsi women married to Hutus were not spared. The reasons for this are further indication of the patriarchal belief that women bore children who belonged to the father or father’s group. Hutu women were to be ‘equally punished for having married Tutsis and having Tutsi children’.\(^\text{33}\)

The use of rape was widespread and systematic. The UN Special Rapporteur noted that women ‘may even be regarded as the main victims of the massacres, with good reason, since they were raped and massacred and subjected to other brutalities’.\(^\text{34}\) Human Rights Watch published an extensive documentation of events in Rwanda and claimed that ‘at least half a million people perished’ in the thirteen weeks after

\(^\text{30}\) E/CN.4/1996/68, para. 16.
\(^\text{31}\) Comment from a woman with Médecins sans Frontières to this author during a conversation in Ngara, 1994. It was a comment echoed many times by a variety of Tanzanian and European personnel dealing with the refugees.
\(^\text{34}\) E/CN.4/1996/68, para. 12.
Throughout the 771 pages of this documentation there are constant references to rape of women although there is no attempt to quantify it. In the publication, *Shattered Lives*, Binaifer Nowrojee said, ‘Rwandan women were subjected to sexual violence on a massive scale’ and she continued:

> Although the exact number of women raped will never be known, testimonies from survivors confirm that rape was extremely widespread and that thousands of women were individually raped, gang-raped, raped with objects such as sharpened sticks or gun barrels, held in sexual slavery (either collectively or through forced ‘marriage’) or sexually mutilated.\(^{36}\)

There were also large numbers of pregnancies from the rapes. Remembering that this was a society where children are considered to be of the fathers’ groups there were severe problems for these children and their mothers. Nowrojee mentions terms such as ‘children of hate’, ‘unwanted children’, ‘children of bad memories’ and references the estimates as being conservatively between 2,000 and 5,000.\(^{37}\) She noted reports of children being abandoned and of infanticide.\(^{38}\)

The UN Special Rapporteur supported these figures as low estimates and noted ‘that it may never be known exactly how many women were raped’.\(^{39}\) Adding to the shame perceived by victims and communities, which resulted from social values, there were many cases of forced incest and children probably born of these attacks. Many women suffered such damage to sexual organs that they were unable to bear children – the Special Rapporteur noting this was the case for many ‘little girls who were raped’.\(^{40}\)

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child-bearers and carers and sexual partners all contributed to the sense of shame and loss of any self-esteem indicated in those accounts. The tactical rapes and sexual violence in Rwanda were forms of imposing measures intended to prevent births within the group.

While this empirical evidence abounded as early as May 1994, it is indicative of the attitude towards tactical rape that the UN investigators who visited Rwanda from 9-20 June 1994, from 29-31 July 1994, from 14-25 October 1994, 27 March to 3 April and 25-28 May 1995 did not dedicate any particular attention to rapes except for including rape among problems and a brief reference to ‘taking women as hostages and victims of rape’.41 It was not until the report of visits made in August-September 1995 that special attention was drawn to the systematic rapes.42 By July, 1994 the RPF had captured the Rwandan capital, Kigali. The government collapsed and the RPF announced a ceasefire. With the RPF victory, an estimated two million Hutus fled across borders, mostly into Zaire. This meant that in the same refugee camps there were both survivors and perpetrators of the genocide. Women who had survived rape were in the same camps as those who had raped them. The issue of protection for women refugees was extreme in this situation.

There was evidence indicating intent to destroy a particular group and of great bodily and mental harm (from tactical rape as well as other attacks). There was evidence of tactical rape imposing measures intended to prevent births within the group and evidence that with the prevailing patriarchal attitudes that would mean children of rapes would not be children of the targeted group but deemed to be children of the attackers. Still the international community resisted naming events as genocide –

42 E/CN.4/1996/68.
which could have brought with it a responsibility to intervene. UN troops had withdrawn after ten soldiers were killed and UN attempts at ceasefires failed.\textsuperscript{43} International response was limited to humanitarian aid to those who managed to escape across borders. It was not until after July 19, 1994 when a new multi-ethnic government was formed, that the UNSC established the ad hoc International Criminal Tribunal for Rwanda (ICTR) which eventually judged that genocide had occurred and that the use of tactical rape and sexual violence had been part of the genocide in Rwanda.

\textit{Understanding the Nature of the Genocide in Rwanda}

The genocide in Rwanda in 1994 did not require high technology or large budgets. Pangas made for tilling agricultural plots became weapons for killing. Youth groups and ordinary citizens were troops. Civilians and militia attacked civilians. The entire Hutu population was expected to attack the entire Tutsi population. Reports indicated that the extremists’ aim was for the entire Hutu populace to participate in the killings. Having involved everyone in the massacres, the blood of genocide would stain everybody and there could be no going back.\textsuperscript{44} Widespread participation by the populace was evident. A Kigali lawyer and survivor said, ‘everyone was called to hunt the enemy’.\textsuperscript{45} The speaker went on to explain what he believed was the process for ensuring everyone participated:

But let’s say someone is reluctant. Say that guy comes with a stick. They tell him, ‘No, get a masu [weapon]’. So, ok he does and he runs along with all the rest but he doesn’t kill. They say, ‘Hey, he might denounce us later. He must kill. Everyone must help to kill at least one person. So this person who is not a killer is made to do

\textsuperscript{43} Prunier, p. 230.
\textsuperscript{44} R Omaar & A de Waal, ‘Rwanda: Death, Despair and Defiance’, \textit{Africa Rights}, September 1994, p. 35, quoted in Kaldor, p. 84.
\textsuperscript{45} P Gorovitch, \textit{We wish to inform you that tomorrow we will be killed with our families}, Picador, London, 2000, p. 24.
it. And the next day it’s become a game to him. You don’t need to keep pushing him.46

This is as likely as any explanation of the motivation of some who participated but motives will have differed. In a country with a long history of conflict between differing groups, participants will have had differing motivations – some political, some economic. This was genocide with origins in previous events and was a tragic continuation of those events. But there is some need to understand how such a large number of people could be engaged in such acts. The same lawyer said:

In Rwandan history, everyone obeys authority. People revere power and there isn’t enough education. You take a poor, ignorant population and give them arms and say, ‘It’s yours. Kill.’ They’ll obey….And in Rwanda, an order can be given very quietly.47

It became clear that orders had been given and orders had been obeyed and that included orders regarding the rape and humiliation of women. Gerard Prunier pointed out that when identifying the ‘organisers’ of the events in Rwanda, ‘doubts are relatively limited’ and until the late stage ‘the killers were controlled and directed in their task by civil servants in the central government’ who, in turn, received orders from the capital, Kigali.48 This is supported by a record dated May 6, 1994 in which prefectural authorities decided to write to burgomasters about the need to stop rapes with violence.49 Clearly, there were authorities who were in a position to control the mass behaviour.

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47 Gorovitch, p. 23.
48 Prunier, pp. 239, 244.
49 Des Forges, p. 564.
Regardless of diverse motivations for participation, this was not an impulsive conflict. It made use of available resources such as the tools found in most households as well as what appeared, to the writer of this dissertation, to be old Kalashnikovs. Small groups were armed but the vast majority of the attackers used whatever was available as weapons, from household farming implements to tactical rape. This genocide was planned and was early recognised as being planned. It was not an impulsive, spur of the moment reaction to events. In a report from the World Council of Churches’ team which was in refugee camps and spent time with many refugees, it was noted:

Some mention should, I think, be made here of the fact that (a) the killings had been carefully planned beforehand (b) gangs had been provided with weapons (c) the signal to start the massacres was broadcast in pre-arranged code over the government controlled Radio Mille Collines, saying, ‘It is time to gather in the harvest’ and later, ‘the baskets are only half-full: they should be filled to the brim’.50

Using local radio, the most prevalent form of communication in Rwanda as in most African countries, this war maximised available resources rather than developing specific, expensive alternatives.

However, the use of simple agricultural tools and public radio did not mitigate the horrific nature of events:

Although the killing was low-tech – performed largely by machete – it was carried out at a dazzling speed: of an original population of about seven and a half million, at least eight hundred thousand people were killed in just a hundred days. Rwandans often speak of a million deaths and they may be right. The dead of Rwanda accumulated at nearly three times the rate of Jewish dead during the holocaust. It

50 E Salter, World Council of Churches’ Commission of the Churches on International Affairs, quoted in Fitzpatrick, The Rwandan Regional Crisis, p. 12.
was the most efficient mass killing since the atomic bombings of Hiroshima and Nagasaki.\textsuperscript{51}

In this context, tactical rape and sexual violence as weapons came into their own. The use of these forms of attack was driven by pre-established, constructed hatreds and fear, which will be elaborated later in this chapter. They were attacks which could kill and could inflict lasting damage to bodies, to spirits and to groups. Social attitudes such as patriarchy and the relationships between Hutu and Tutsi (discussed further below) meant tactical rape and sexual violence impacted on community identities, on social relationships and economic options. Widespread HIV/AIDS added an additional physical menace. HIV/AIDS was already rife in Rwanda and the widespread rape of women and girls is deemed to have dramatically increased the rate of infection.\textsuperscript{52} The Rapport National of 1995 said that while it was difficult to ascertain exact numbers, the question of HIV/AIDS infection was aggravated considerably between April and July 1994.\textsuperscript{53} In such a situation of prevalent HIV/AIDS, rape of women resulted in infecting victims either consciously or not adding to the genocidal impact by contributing to the destruction of the group.

The reality of massive participation in the massacres was clear to observers because ‘great and sustained destruction’ does not occur aimlessly but ‘must be conceived as the means of achieving a new order’ and ‘even if killers do not enjoy killing, they must want their victims dead’ and ‘they have to want it so badly that they consider it a necessity.’\textsuperscript{54} This contributes to an analysis that such destruction – and the tactical rape and sexual violence which were part of it – were deliberate, planned and

\textsuperscript{51} Gorovitch, p 3.
\textsuperscript{52} Rwandan Rapport National 1995, p. 59.
\textsuperscript{54} Gorovitch, pp. 17-18.
systematic. The outcomes of the ICTR provided further insight and more detailed and authoritative documentation and evidence.

An international NGO worker in the refugee camp at Benaco, Tanzania, reported that many people believed that what they did was in revenge for what happened to them some years ago, while others were avenging what those ‘avengers’ had just done.\textsuperscript{55} The antagonism between Hutu and Tutsi and the particular antagonism of Hutu to Tutsi women was a social phenomenon which had been developed over previous years. This was a conflict constructed on the deliberate generation of hatred and fear. It involved – but went beyond – the inherent vulnerability of women and their communities when there is an accepted patriarchal basis of community relationships.

\textit{Understanding the Constructed Hatred of Tutsi as a Group – Particularly Tutsi Women}

In many ways the hatred between Hutu and Tutsi was constructed – and an additional layer of hatred targeting Tutsi women was overlaid on these constructions. It is too easy to blame either long-standing conflict between Hutu and Tutsi or to blame the European colonisers for the events in Rwanda in 1994. The reality of the cause is a more complex combination of factors. Rwandan writers such as Anastase Shyake have written strongly of an integrated pre-colonial population of Rwandan – but with two clear identity groups, the Tutsi and Hutu (with a much smaller group of Twa).\textsuperscript{56} The two groups shared language and cultural values. Rather than merely accepting the fact of colonisation as the sole cause of antipathy, Catherine Newbury referred to ‘corporate perception of identity’ and used this term to explain the group identification of people as objects for fear or hatred where Tutsi were not to be

\textsuperscript{55} Fitzpatrick, \textit{The Rwandan Regional Crisis}, p. 8.

\textsuperscript{56} A Shyake, \textit{The Rwandan Conflict: Origin, Development, Exit Strategies}, A study ordered by the National Unity and Reconciliation Commission of Rwanda, 2005/2006.
considered individuals but rather as a total group, having one, corporate identity which was opposed to the Hutu as a group:

The generalisation of blame was dramatically evident in the genocide against Tutsi in Rwanda in 1994 when hardliners in the Hutu-dominated government labelled all Tutsi in the country as enemies of the state. The genocide was calculated to exterminate them.\(^{57}\)

By generalising that all Tutsi were responsible for all problems in Rwanda, whether those problems were economic or political, it was only a step to believing that defence of the state required exterminating all Tutsi. As Binaifer Nowrojee noted, the propaganda of the time indicated that Tutsi were foreign conquerors, who had refused to accept their loss of power and were bent on reasserting their control over Hutu.\(^{58}\) Newbury also noted that in 1997, this corporate view of ethnicity, which targeted all Tutsi during the genocide, was also used later to label all Hutu refugees as genocidaires (people who helped perpetrate genocide) and this view seemed to be part of a political programme of vengeance directed against Hutu.\(^{59}\)

The reasons behind such corporate views of ethnicity are to be found in historical events, which include colonisation, but which also include economic and power contests. The variation in formulation of the diverse rationales is largely determined by factional/ethnic interests. The UN Special Rapporteur believed that the pre-colonisation society was similar to a feudal system with three different kingdoms (Hutu, Tutsi and Twa) under one king. He described the economic division with Tutsi having cattle and economic dominance, linked with the royalty and Hutu being


\(^{58}\) Nowrojee, Shattered Lives p. 12.

\(^{59}\) Newbury, p. 68.
farmers and noted there was mobility between groups. The Twa, the hunters, suffered discrimination and violence to a massive degree although it often seems they are ignored in consideration and analysis of the history and the conflict itself. First the German then the Belgian colonisers exacerbated these divisions, with the Belgians first depending on the Tutsi for indirect rule and later turning on them when the Tutsi demanded independence. The history of Rwanda is full of indications that the situation was extremely volatile. From early in the 20th century, tensions grew. The Belgian colonisers who arrived in 1916, when divisions already existed between Hutu and Tutsi, treated the Tutsi as a superior group, strengthening Tutsi economic power and privilege. Not surprisingly, this caused ongoing resentment and tension between Tutsi and Hutu and the 1959 riots resulted in the deaths of thousands of Tutsis and in many Tutsi fleeing to Tanzania, Burundi and Uganda.

After 1962, when Belgium withdrew from Rwanda and the Hutus took their place as political leaders, Tutsis were seen as scapegoats for any crisis or problem in the country. With independence came stronger delineation between the groups as Hutu governments discriminated against Tutsi in a reversal of dominance. Degni-Segui described the situation as having political causes with ethnic overtones and the political power being strongly linked with economic power in a country which was essentially poor and over-populated. The Hutu government applied quotas in schools, public service, excluded Tutsis from the army, the police and information services and the population had identity cards naming their group. By doing this, successive regimes and systems, for their own political ends, ‘gradually conditioned

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64 E/CN.4/1997/61, paras 17, 18.
the population to psychological and social acceptance of ethnic discrimination’.\(^65\) This set a context for the events which followed in 1994.

Sustaining this perception of division and difference rested on schools and largely on public media. The effective use of media helps further to understand this conflict in Rwanda as an example of what Kaldor called the ‘new wars’ described earlier in this dissertation. In Rwanda, public radio was the primary communications vehicle both in preparations for and in the perpetration of the events of 1994. Kaldor noted the high impact of such communication media:

> The electronic media has an authority that newspapers cannot match: in parts of Africa, radio is ‘magic’ [and] ‘the use of ‘hate’ radio to incite people to genocide in Rwanda’ [provided] ‘a mechanism for speeding up the pace of political mobilization’.\(^66\)

This was reiterated by the UN Special Rapporteur who noted, ‘false rumours and tracts designed to inflame ethnic hatred and encourage violence are constantly circulating in Rwanda’ with the Tutsi portrayed as serious threats to the Hutu.\(^67\) He also referred to the ‘long-standing campaign’ and the existence of ‘Hutu ten commandments’ which ‘advocate an ideology of apartheid’.\(^68\) Tutsi women were frequently both admired for their beauty and feared for their ability to seduce and harm Hutu men.\(^69\)

Public media was used to establish and construct the social relationships which would be the context for the genocide. It also increased the vulnerability of women


\(^{66}\) Kaldor, p. 86.


\(^{68}\) A/49/508, para. 58.

and the collective impact on communities and groups of tactical rape and sexual violence because the media propaganda which preceded the massacres often focussed on Tutsi women. ‘Tutsi women were always viewed as enemies of the state’, said one Tutsi woman. She continued:

No military man could marry Tutsi women or they would have to leave the military. …Tutsi women were considered beautiful which bred hate against them. …It led to a hate that I can’t describe…I was told I couldn’t work in certain places because as a Tutsi woman I would poison the others.70

Stereotypes portrayed Tutsi women as arrogant, despising Hutu men and more sinister portrayals depicted them as weapons for use by Tutsi men against the Hutu. Of the ten ‘Hutu Commandments’ four dealt specifically with Tutsi women. These included warning Hutu women to be vigilant against Tutsi women’s wiles used to attract Hutu husbands, brothers and sons and warning Hutu men against Tutsi women advising that any who married, befriended or employed a Tutsi woman would be considered a traitor because the Tutsi ‘will not hesitate to transform their sisters, wives and mothers into pistols’ to conquer Rwanda.71 The extremist and virulently propagandist newspaper, Kangura, ran articles accusing Tutsi women of taking Hutu jobs, of despising Hutu men and of using their sexual prowess to seduce UN peacekeepers.72 So, women targeted in the genocide suffered from an interlinked culture which operated on multiple levels. Women were targets when they were Tutsi.73 Women were targets when they were considered the property of Tutsi men.74

73 Nowrojee, Shattered Lives, p. 3.
74 Nowrojee, Shattered Lives, p. 3.
Women were targets when they could have Tutsi children, which meant children of Tutsi men.75

This perception and acceptance of the Tutsi as a group and of Tutsi women as a particularly hated group was key to directing violence against them and in understanding why the term ‘genocide’ was eventually applied to events. Most women raped during the attacks and later interviewed by Nowrojee described how their rapists mentioned their ethnicity before or during the rape.76 Comments included: ‘we want to see how sweet Tutsi women are’; ‘you Tutsi women think you are too good for us’; ‘if there were peace you would never accept me’, ‘you Tutsi girls are too proud’. All of these remarks indicated a sense that Tutsi women were deemed special because they were Tutsi and could be interpreted as setting the stage for their degradation.77 Accounts of events show that the use of tactical rape and sexual violence was a deliberate strategy used by the Hutu.

The ICTR, Tactical Rape, Sexual Violence in War and Genocide in Rwanda

On July 1, 1994 the UNSC established a Commission of Experts to investigate reports coming out of Rwanda.78 This Commission began work in August 1994 and provided its first report to the UNSC on October 1, 1994.79 This first report referred to ‘concerted, planned, systematic and methodical’ massacres ‘motivated out of ethnic hatred’.80 It reported media propaganda campaigns inciting hatred and killing of Tutsi.81 It referred to events within Rwanda as ‘genocidal massacres’.82 It believed there had been breaches of norms of international law, norms prohibiting crimes

75 Nowrojee, Shattered Lives, p. 3.
80 S/1994/1125 para. 44.
81 S/1994/1225 para. 50.
against humanity and norms prohibiting genocide.\(^83\) The second report was submitted on 9 December, 1994.\(^84\) The introductory summary stated there was overwhelming evidence of acts of genocide, crimes against humanity and serious violations of international humanitarian law by both sides, but committed by Hutu with intent to destroy Tutsi, and referred the matters for investigation by the newly-established ICTR.\(^85\) It is notable that even so many months after NGOs, humanitarian workers, medical workers and refugees were aware of the prevalence of widespread rape there was no mention of these in either report.

The ICTR has been the subject of considerable negative commentary but it did eventually rule on rape and genocide and on the implications of media mounting campaigns which contributed to the mass hatred of Tutsi women. The Statute of the ICTR refers to The International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens responsible for genocide and other such violations committed in the territory of neighbouring States, between 1 January 1994 and 31 December 1994 (hereinafter referred to as ‘The International Tribunal for Rwanda’). There was an acceptance that genocide was a reasonable conclusion and an expectation it would be investigated. Still, there was no mention of tactical rape or sexual violence.

It was not until the case was being heard against Jean Paul Akayesu, a Rwandan citizen who was bourgomestre of Taba commune, Prefecture of Gitarama of Rwanda, that charges included rape as genocide.\(^86\) But this was almost accidental. There had been pressure from a range of groups for formal investigation of rapes because,

\(^84\) UN Document S/1994/1405.
\(^86\) The Prosecutor v Jean-Paul Akayesu, ICTR-96-4-T, Decision of 2 September 1998 [The Akayesu decision].
despite the apathy of formal bodies, the accounts of tactical rape were widespread. The original indictments had no mention of rape and it was not until witnesses recounted events that the indictments were amended. One observer at the trial of Akeyesu said:

Had it not been for the [witnesses] who linked Akayesu to the Taba rapes, the interest in the case shown by the court’s one female judge, pressure from human rights and women’s groups and prosecutors skilled at winning over their witnesses the former mayor might never have been tried for Taba’s rape crimes.\(^\text{87}\)

Akayesu had been indicted for genocide, crimes against humanity and violations of Article 3 Common to the Geneva Conventions relating to his role as an authority at Taba where numerous atrocities were committed with his knowledge and as established under his supervision. But while murder, lines of responsibility and incitement were included, there had been no charges relating to rape.

The ICTR did, finally, rule that genocide had been committed. Having investigated events with reference to the Genocide Convention it concluded that, ‘genocide was, indeed, committed in Rwanda in 1994 against the Tutsi as a group’.\(^\text{88}\) The nature of the genocide was described as ‘organized and planned’ and was ‘executed essentially by civilians including the armed militia and even ordinary citizens, and above all, that the majority of the Tutsi victims were non-combatants, including thousands of women and children, even foetuses’.\(^\text{89}\) This ruling had the force of a legal judgement. Part of the justification for the ruling was the established reference to planned incitement to hatred, even beyond the role played by the media. It was noted that Léon Mugesera, a lecturer at the National University of Rwanda, had published two


\(^{88}\) Akayesu decision, para. 126.

\(^{89}\) Akayesu decision, para. 128.
pamphlets accusing the Tutsi of planning genocide of the Hutu. In November 1992 he had called for the extermination of the Tutsi and the assassination of Hutu opposed to the President. He exhorted his listeners to avoid the error of earlier massacres during which some Tutsi, particularly children, were spared. The intent to destroy the group was established, with some clear reference to patriarchal attitudes.

There were some specific witness accounts which supported the allegations that Tutsi women were targeted and which also demonstrated the strong belief that children belonged to the group of the father:

Other testimonies heard, especially that of Major-General Dallaire, also show that there was an intention to wipe out the Tutsi group in its entirety, since even newborn babies were not spared. Even pregnant women, including those of Hutu origin, were killed on the grounds that the foetuses in their wombs were fathered by Tutsi men, for in a patrilineal society like Rwanda, the child belongs to the father’s group of origin.

One witness testified regarding the rape of Tutsi women married to Hutu men. She described encountering on the road a man and woman who had been killed. She said the woman, whom she knew to be a Tutsi married to a Hutu, was ‘not exactly dead’ and still in agony. She described the Interahamwe forcing a piece of wood into the woman’s sexual organs while she was still breathing, before she died. She said, however, that she believed that in most cases Tutsi women married to Hutu men ‘were left alone because it was said that these women deliver Hutu children’. She

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90 Akayesu decision, para. 10.
91 Akayesu decision, para. 121.
92 Akayesu decision, para. 429.
93 Akayesu decision, para. 429.
said that there were Hutu men who married Tutsi women to save them, but that these women were sought, taken away forcibly and killed.94

It was in statements from particular witnesses at the ICTR hearing that the court was shocked to hear the link made between acts being judged for being genocide and rape of Tutsi women.95 On 17 June, 1997, the indictment of Akayesu was amended to include allegations of sexual violence and additional charges against the Accused under Article 3(g), Article 3(i) and Article 4(2)(c) of the ICTR Statute. The prosecution stated that the evidence of witnesses had prompted them ‘to renew their investigation of sexual violence in connection with events which took place in Taba at the bureau communal’ and that there had not previously been sufficient evidence to link Akayesu to acts of sexual violence, acknowledging that factors to explain this lack of evidence ‘might include the shame that accompanies acts of sexual violence as well as insensitivity in the investigation of sexual violence’.96 The use of ‘might’ would seem to be some indicator of an understated reality.

Later criticisms of the ICTR have constantly noted the insensitivity of investigators and, at times of the judges – as noted in Chapter 2 of this dissertation.97 The lack of interest was borne out by the fact that even when a witness volunteered the story of her six year-old daughter being raped by three men as part of her testimony about Akayesu and counts of murder, the prosecutor failed to pursue the point. Three judges intervened. One was a woman from South Africa who recalled, ‘I couldn’t understand what prosecution was doing’.98 The statement included in the case decision sought to answer questions regarding the pressure from NGOs which it considered indicative of public opinion and which resulted in an amendment to the

94 Akayesu decision, para. 429.
95 Akayesu decision, paras 416, 421, 422.
96 Akayesu decision, para. 417.
97 Nowrojee, Your justice is too slow, p. 24.
98 Neumann, p. 279.
original indictment and concluded that ‘the investigation and presentation of
evidence relating to sexual violence is in the interest of justice’. While there were
concerns regarding the conduct of this case it was a watershed for recognising the
links between tactical rape and genocide.

It did achieve a number of important steps forward. One was that it defined rape
under international law as a crime against humanity, noting that, ‘the Chamber must
define rape, as there is no commonly accepted definition of this term in international
law’. It defined rape:

...as a physical invasion of a sexual nature, committed on a person under
circumstances which are coercive. Sexual violence, which includes rape, is
considered to be any act of a sexual nature which is committed on a person under
circumstances which are coercive. This act must be committed: a) as part of a
widespread or systematic attack; (b) on a civilian population; (c) on certain
catalogued discriminatory grounds, namely: national, ethnic, political, racial, or
religious grounds.

In its concluding rulings the Tribunal added to this definition that sexual violence is
not limited to physical invasion of the human body and may include acts which do
not involve penetration or even physical contact. The Tribunal went on to note that
coercive circumstances need not be evidenced by a show of physical force:

threats, intimidation, extortion and other forms of duress which prey on fear or
desperation may constitute coercion, and coercion may be inherent in certain

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99 Akayesu decision, para. 417.
100 Akayesu decision, para. 596.
101 Akayesu decision, para. 598.
102 Akayesu decision, para. 688.
circumstances, such as armed conflict or the military presence of Interahamwe among refugee Tutsi women at the bureau communal.\textsuperscript{103}

The statement included recognition that sexual violence fell within the scope of ‘other inhumane acts’, set forth in Article 3(i) of the Tribunal’s Statute, ‘outrages upon personal dignity,’ set forth in Article 4(e) of the Statute, and ‘serious bodily or mental harm’, set forth in Article 2(2)(b) of the Statute.\textsuperscript{104} This was a particularly important development in the understanding of rape as it included the notion of coercion which can be understood in many forms. Victim testimony, which was included in trial proceedings, established the use of tactical rape and sexual violence as severe attacks targeting Tutsi women and girls. They are distressing to read because of the reality of suffering inherent in them but they established the widespread nature and violence of the rapes. It was an achievement that at last there was an international court documenting and considering the true extent of damage done by tactical rape.

Witness JJ testified that the Interahamwe took young girls and women from their site of refuge near the Bureau Communal into a forest in the area and raped them.\textsuperscript{105} Witness JJ testified that this happened to her – that she was stripped of her clothing and raped in front of other people. At the request of the Prosecutor and with great embarrassment, she explicitly specified that the rapist, a young man armed with an axe and a long knife, penetrated her vagina with his penis. She stated that on this occasion she was raped twice.\textsuperscript{106} This account from the trial proceedings highlights the trauma experienced by many women when asked to recount sexual attacks. It is understandable that many women were reluctant to testify. Elizabeth Neuffer wrote

\textsuperscript{103} Akayesu decision, para. 688.
\textsuperscript{104} Akayesu decision. Para. 688.
\textsuperscript{105} Akayesu decision, para. 421.
\textsuperscript{106} Akayesu decision, para. 421.
that it was not surprising that Rwandan women would not talk about being raped when ‘investigators, mostly white males, roared into villages in their white UN jeeps and treated survivors with condescension as if they were stupid rather than traumatised’.\textsuperscript{107} This sort of response indicates the lack of understanding and of trained personnel to deal with survivors of tactical rape and sexual violence.

It was this ‘Witness JJ’ whose testimony had galvanised action to have rape charges included in the indictment of Akayesu.\textsuperscript{108} Her testimony included accounts of experiences which had continued after the attacks described above. She testified that when they arrived at the Bureau Communal the women were hoping the authorities would defend them but she was surprised to the contrary. In her testimony she recalled lying in the cultural centre, having been raped repeatedly by Interahamwe, and hearing the cries of young girls around her, girls as young as twelve or thirteen years old. On the way to the cultural centre the first time she was raped there, Witness JJ said that she and the others were taken past the accused who was looking at them. The second time she was taken to the cultural centre to be raped, Witness JJ recalled seeing the accused standing at the entrance of the cultural centre and hearing him say loudly to the Interahamwe, ‘never ask me again what a Tutsi woman tastes like’ and ‘tomorrow they will be killed’.\textsuperscript{109}

It was these statements indicating that Akayesu was focussed on Tutsi women, knew they were specific targets and was cooperating in the attacks on them which were said to have been keys in his eventual conviction. One of the judges, who was openly critical of the trial proceedings, asked the witness, twice, if investigators had asked her for the names of the men who had raped her.\textsuperscript{110} They had not done so. Neuffer

\textsuperscript{107} Neuffer, p. 278.
\textsuperscript{108} Akayesu decision, para. 421.
\textsuperscript{109} Akayesu decision, para. 421.
\textsuperscript{110} Neuffer, p. 282.
wrote that the witness had only mentioned the rapes to the prosecutor the day before and he had realised that the refugees at the Bureau Communal were all women ‘and that they were part of a plan for their rape’.\textsuperscript{111} This late awareness was indicative of the limited range of examination in preparation for cases and the lack of direct questioning of those testifying. Witness JJ had continued and after describing the accused and the statement he made regarding the taste of Tutsi women, she said he was ‘talking as if someone were encouraging a player’ and suggested that he was the one ‘supervising’ the acts of rape.\textsuperscript{112} She said most of the girls and women were subsequently killed, either brought to the river and killed there, or after having returned to their houses, or killed at the Bureau Communal and in a further account she told of her experience of finding her sister before she died, having been raped and cut with a machete.\textsuperscript{113} After the testimony, investigators went to Taba and, finally, investigated the rape attacks.

The evidence was emerging that Akayesu was complicit in acts which targeted the Tutsi. Another witness testified that she had gone to him and asked for an attestation to help her keep her children alive.\textsuperscript{114} She said he replied that it was not he who had made them be born Tutsi and that ‘when rats are killed you don’t spare rats that are still in the form of fetus’.\textsuperscript{115} She had been pregnant and miscarried after being beaten by police and Interahamwe. Of her nine children, only two survived the events of this period.\textsuperscript{116} Akayesu’s statements regarding the ‘taste’ of Tutsi women and the apparent desire to destroy children as well as women were reflected in other accounts. A case indicating the intent to destroy even the children was that of a particularly savage attack on a woman called Alexia by Interahamwe. They threw her

\textsuperscript{111} Neuffer, p. 282.
\textsuperscript{112} Akayesu decision, para. 421.
\textsuperscript{113} Akayesu decision, para. 421.
\textsuperscript{114} Akayesu decision, para. 428.
\textsuperscript{115} Akayesu decision, para. 428.
\textsuperscript{116} Akayesu decision, para. 428.
to the ground and climbed on top of her saying ‘now, let’s see what the vagina of a Tutsi woman feels like’. According to Witness PP, Alexia gave the Interahamwe, named Pierre, her Bible before he raped her and told him, ‘take this Bible because it’s our memory, because you do not know what you’re doing’. Then one person held her neck, others took her by the shoulders and others held her thighs apart as numerous Interahamwe continued to rape her. According to the testimony, Alexia was pregnant. When she became weak she was turned over and lying on her stomach, she went into premature delivery during the rapes.

The evidence of witnesses constantly emphasised the desire on the part of attackers to humiliate as well as physically wound them. Another Tutsi woman, the younger sister of JJ, described being raped along with another sister by two men in the courtyard of their home, just after it was destroyed by their Hutu neighbours and her brother and father had been killed. She said one of the men told her that the girls had been spared so that they could be raped and when her mother begged the men, who were armed with bludgeons and machetes, to kill her daughters rather than rape them in front of her, the man replied that the ‘principle was to make them suffer’. The girls were then raped and on examination the witness said that the man who raped her penetrated her vagina with his penis, saying he did it in an ‘atrocious’ manner, mocking and taunting them. She said her sister was raped by the other man at the same time, near her, so that they could each see what was happening to the other. Afterwards, she said she begged for death. These accounts support the contention that the rapes were more than sexual attacks by forces out of control –

117 Akayesu decision, para. 473.
118 Akayesu decision, para. 473.
119 Akayesu decision, para. 473.
120 Akayesu decision, para. 430.
121 Akayesu decision, para. 430.
122 Akayesu decision, para. 430.
they were intended to impart lasting humiliation and inflict serious bodily and mental harm.

Building on work at the ICTY, the Akayesu decision also recognised the difficulties for rape victims to provide corroborating evidence. It concluded that Rule 96(i) of the Rules of the court alone specifically dealt with the issue of corroboration of testimony required by the Chamber and ruled that the provisions of this Rule, which applied only to cases of testimony by victims of sexual assault, stipulated that no corroboration shall be required. The ICTR quoted the ICTY ruling in the Tadic judgment and determined that this ‘sub-rule accords to the testimony of a victim of sexual assault the same presumption of reliability as the testimony of victims of other crimes, something which had long been denied to victims of sexual assault in common law [which] certainly does not [...] justify any inference that in cases of crimes other than sexual assault, corroboration is required. The proper inference is, in fact, directly to the contrary’.123 This was an important step in facilitating justice for women victims of tactical rape and in reinforcing the decision made by the ICTY which strengthened the force of such approaches. While corroboration of crimes may be required in some cases, it is unreasonable in many instances to require such corroboration from victims of tactical rape and sexual violence.

The final rulings in this case established case law which provides support for a developing norm and understanding of tactical rape. While Akayesu was not found to have committed rapes himself, the ICTR found beyond a reasonable doubt that the accused had reason to know and in fact knew that sexual violence was taking place on or near the premises of the bureau communal, and that women were being taken away from the bureau communal and sexually violated. There was no evidence that the accused took any measures to prevent acts of sexual violence or to punish the

perpetrators of sexual violence.\textsuperscript{124} He was found guilty of having ‘specifically ordered, instigated, aided and abetted … acts of sexual violence’.\textsuperscript{125} It was ruled he did this:

by allowing them to take place on or near the premises of the bureau communal and
by facilitating the commission of such sexual violence through his words of encouragement in other acts of sexual violence which, by virtue of his authority, sent a clear signal of official tolerance for sexual violence, without which these acts would not have taken place.\textsuperscript{126}

This ruling, as in similar ones by the ICTY, established responsibility by virtue of authority which could have prevented or stopped tactical rape.

However, the step which made specific progress in establishing that tactical rape and sexual violence could be used as genocide came when the court ruled:

with regard, particularly, to the acts described in paragraphs 12(A) and 12(B) of the Indictment, that is, rape and sexual violence, the Chamber wishes to underscore the fact that in its opinion, they constitute genocide in the same way as any other act as long as they were committed with the specific intent to destroy, in whole or in part, a particular group, targeted as such. Indeed, rape and sexual violence certainly constitute infliction of serious bodily and mental harm on the victims [FN181] and are even, according to the Chamber, one of the worst ways to inflict harm on the victim as he or she suffers both bodily and mental harm.\textsuperscript{127}

Even with the many reservations about the operation of the ICTR, this was a watershed case for victims of tactical rape and sexual violence. It clearly linked these

\textsuperscript{124} Akayesu decision, para. 452.
\textsuperscript{125} Akayesu decision, para. 692.
\textsuperscript{126} Akayesu decision, para. 694.
\textsuperscript{127} Akayesu decision, para. 731.
attacks with genocide, an act condemned by the international community and the naming of which should bring responsibility for states to act to protect victims. The ruling stated explicitly that these rapes:

resulted in physical and psychological destruction of Tutsi women, their families and their communities. Sexual violence was an integral part of the process of destruction, specifically targeting Tutsi women and specifically contributing to their destruction and to the destruction of the Tutsi group as a whole.128

It stated that sexual violence was a step in the process of destruction of the Tutsi group – destruction of the spirit, of the will to live, and of life itself.129 This is a ruling which can be used by many other victims of tactical rape and greatly expanded the legal basis for action and for international rejection of rape being used as a means of genocide.

The ruling applied to the suffering of Tutsi women finally recognised in an international tribunal the impact of tactical rape and sexual violence when it formally acknowledged that:

the acts of rape and sexual violence, as other acts of serious bodily and mental harm committed against the Tutsi, reflected the determination to make Tutsi women suffer and to mutilate them even before killing them, the intent being to destroy the Tutsi group while inflicting acute suffering on its members in the process.130

Certainly, this was an important step in developing case law and bases for international rejection of tactical rape. The case may have been flawed in its process and in the way it demonstrated a lack of commitment to bringing to account those

128 Akayesu decision, para. 731.
129 Akayesu decision, para. 732.
130 Akayesu decision, para. 733.
who perpetrate tactical rape and sexual violence, but it did result in progress towards full comprehension of such crimes.

**Limited Progress Despite Recognition of Tactical Rape, Sexual Violence in War and Genocide in Rwanda**

Despite the progress made by establishing a legal case for rape and sexual violence as elements of genocide there remained much to do before there was truly any commitment to the developing norm rejecting tactical rape. Given the late inclusion of charges relating to rape and sexual violence, the ruling in the Akayesu case could be deemed to have been more a matter of luck than of any real commitment to bringing justice to victims. There have been no additional rulings specifically linking tactical rape and sexual violence with genocide. There have been few rulings from the ICTR on rape at all. By the tenth anniversary of the Rwandan genocide, the ICTR had handed down 21 sentences with 18 convictions and 3 acquittals and only ten percent of those contained any rape convictions, with no rape charges even brought in 70 percent of those adjudicated cases.\(^\text{131}\) This was despite widespread recognition of the extent and nature of tactical rape and sexual violence in the genocide.

There continues to be resounding criticism of the style of investigations into rape cases where they do take place. Binaifer Nowrojee has written of a lack of provision of optimal care for those testifying, of a lack of information and follow-up for women who do testify and inadequate attempts to provide witnesses with anonymity and care, so they often return home to threats and reprisals.\(^\text{132}\) There is a stated sense that ‘as groundbreaking as the Akayesu judgement is, it increasingly stands as an exception, an anomaly’.\(^\text{133}\) Rwandan women who are rape survivors have expressed, ‘almost without exception’ their sense that the ICTR has failed them as far as the law

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\(^{131}\) Nowrojee, *Your Justice is Too Slow*, p. iv.

\(^{132}\) Nowrojee, *Your Justice is Too Slow*, p. v.

\(^{133}\) Nowrojee, *Your Justice is Too Slow*, p. 3.
is concerned because they want the legal record to show ‘the horrific sexual violence’ they experienced.\textsuperscript{134} The ICTR has failed them as far as justice is concerned because they want respect and care in legal processes, they want to be kept informed and they want protection from ‘reprisal, exposure and stigma’.\textsuperscript{135}

The Cyangugu case was a cause of considerable controversy and outrage on the part of women’s groups and trial attorneys.\textsuperscript{136} Samuel Imanishimwe (former military garrison commander), Emmanuel Bagambiki (former prefect) and André Ntagerura (former Minister of Transportation) were all three accused of genocide, complicity in genocide, direct and public incitement to commit genocide, crimes against humanity and violations of Article 3 common to the Geneva Conventions, for crimes committed in the Cyangugu region. None of them was accused of committing or inciting to commit crimes of sexual violence. The trial began on 18 September, 2000. Ntagerura and Bagambiki were acquitted. Women’s groups were outraged that they had not been permitted to have additional evidence which linked the two to sexual violence and rape admitted into proceedings. A trial attorney was quoted, ‘we had collected strong evidence. The women of Cyangugu were begging us to tell their story’.\textsuperscript{137} The evidence concerned particularly the convicted man, Imanishimwe, who had raped women himself and ‘had killed a woman by inserting a pistol into her vagina and shooting her to death’.\textsuperscript{138} It is quoted as a case where rape charges could have been brought but never were ‘even though the prosecutor had evidence’.\textsuperscript{139} Unlike the Akayesu case, the prosecutor was not prepared to amend the initial charges to include rape. This is indicative of processes where investigations are not implemented with an awareness of a need for appropriately considering whether or

\begin{thebibliography}{99}
\bibitem{134} Nowrojee, \textit{Your Justice is Too Slow}, p. 4.
\bibitem{135} Nowrojee, \textit{Your Justice is Too Slow}, p. 4.
\bibitem{136} Nowrojee, \textit{Your Justice is Too Slow}, p. 14.
\bibitem{137} Nowrojee, \textit{Your Justice is Too Slow}, p. 14.
\bibitem{138} Nowrojee, \textit{Your Justice is Too Slow}, p. 14.
\bibitem{139} Nowrojee, \textit{Your Justice is Too Slow}, p. 14.
\end{thebibliography}
not rape has occurred – and given the widespread use of rape this would seem to be a reasonable possibility.

The other reservations regarding progress building on the Akayesu case come from reservations about the Genocide Convention itself. The Genocide Convention, while widely ratified and established as setting a norm for international respect, still has critics: some are pragmatic about enforceability or lack of enforceability and others critical of the extent of behaviour covered by the text. George Andreopolous raised the issues around prosecution referring to Fein’s observation that the most fundamental problem with the Convention is ‘its unenforceability, as the perpetrator of the genocide, the state, is responsible for its prosecution’.140 This issue of state sovereignty is at the heart of dealing with genocide. States are wary of applying the title ‘genocide’ to events. Naming genocide brings with it responsibilities which many states are often reluctant to take. It was months before the UNSC reacted with investigations into events in Rwanda. It was months after events that UN reports even recognised that widespread rape had occurred.

Another critic is Peter Stoett who outlined difficulties in enforcing prosecution given the scale of genocidal acts and questioned whether the United Nations could ever play an effective and impartial role.141 If there are difficulties in prosecuting genocidal killings, then there will be even more reticence and enumerated obstacles to prosecuting genocidal rape because of traditional and prevailing dismissals of sexual crimes which has been practice for so long. Samantha Power highlighted the US responses to genocide and these certainly provide grounds for fearing that there are many ways of states avoiding responsibilities, even when there is little doubt of those responsibilities under international law and the Genocide Convention in

140 Andreopolous, pp. 3, 18.
particular. She wrote that despite graphic media coverage, US policy-makers, journalists and citizens, ‘assume rational actors will not inflict gratuitous violence’.\textsuperscript{142} She believed that they, ‘trust in good-faith negotiations and traditional diplomacy’ and then, once killings start, they ‘assume civilians who keep their heads down will be left alone’, at which point, ‘they urge ceasefires and donate humanitarian aid’.\textsuperscript{143} One clear strategy to avoid the recognition of any state’s responsibility to intervene in events is avoidance of naming those events, ‘genocide’. As Power opined, the state, will, ‘render the blood-shed two-sided and inevitable, not genocidal’ and by avoiding use of the word, genocide, the state can, ‘in good conscience, favor stopping genocide in the abstract, while, simultaneously, opposing American involvement in the moment’.\textsuperscript{144} Sadly, such perceptions would seem all too credible and strengthen the views of those writers who claim the Convention is unenforceable.

Richard Falk noted that the international community had shown little real capacity to ‘address the supreme moral challenge of genocidal behaviour’.\textsuperscript{145} He referred to a directive within the Clinton Administration instructing officials to avoid calling events in Rwanda genocide ‘because that would arouse public pressures to take some action’.\textsuperscript{146} He listed numerous reasons and complicating causes of why the prevention of genocide is not a simple matter: ‘the passion of ethnic politics’ having been unleashed and resistance to intervention, with memories of colonisation being invoked.\textsuperscript{147} But, overall he saw a lack of real commitment by governments to intervene as the primary cause of non-action. His solutions lay in preventive modes, which included education and the inclusion of tolerance as an integral element in the

\textsuperscript{142} Power, pp. xvii – xviii.
\textsuperscript{143} Power, p. xvii.
\textsuperscript{144} Power, p. xviii.
\textsuperscript{146} Falk, p. 185.
\textsuperscript{147} Falk, p. 185.
teaching of democratic theory and practice, stating clearly his belief that ‘reactive modes of response to genocide are likely to be ineffectual’ and even reactive responses to genocide are unlikely unless, ‘it provokes a major response that reflects security priorities of strong neighbouring states …or regional or global actors’.148 This link to security is a thread which will be considered in more detail in later chapters of this dissertation, but the limitations on real progress by having tactical rape recognised as genocide are clear.

Lisa Sharlach, however, said that crimes of genocide under international law ‘are a more grave matter than widespread crimes against women on the basis of sex’.149 Her concern was with the Convention text and content. She argued that the current Genocide Convention does not explicitly state that sexual violence is a crime of genocide and it should be expanded to include mass rape, regardless of whether the victims are raped on the basis of racial/ethnic, national or religious identity. In an ideal world this may be the next step in the development of effective security for women – it would likely strengthen the legal grounds for rejecting tactical rape. Meantime, pragmatists have little option but to use the current terms and jurisprudence from the ICTR to at least increase the pressure on states to intervene when women are being raped collectively. Sharlach also said, ‘the seeming disinterest around the globe in prosecution of rape as genocide may mean that in future ethnic conflicts men believe that they have license to rape’.150 This might mean that it could be counter-productive for tactical rape to be deemed genocidal – and yet still fail to bring perpetrators to account. It emphasises the need, while work continues to strengthen the wording of international law and new legal precedents are

148 Falk, p. 188.
149 L Sharlach, Rape as Genocide in Bangladesh, the Former Yugoslavia and Rwanda, New Political Science, vol. 22, no. 1, 2000, p. 93.
150 Sharlach, p. 102.
being set, to pressure states to intervene when other states are culpable in not providing security for its women.

If, as Power intimated, there is a general reluctance to respond to genocide, then it is possible that this reluctance could be increased if there were any doubt regarding definitions of genocide, in particular when it meant recognising tactical rape and sexual violence as genocide. It is acknowledged that this could mean that calling for action by states on the grounds that tactical rape and sexual violence are weapons of perpetrating genocide, may well be counter-productive. It is acknowledged that it is possible that states could prevaricate around definitions. However, this thesis argues that it is only by really understanding all the implications and potential use of tactical rape that progress towards appropriate state engagement in prevention, protection and accountability will be achieved. The Convention remains the best hope for dealing with genocide and with tactical rape and sexual violence as methods of perpetrating genocide.

**Conclusion**

In the conflict in Rwanda civilians were targeted. It was a conflict which was judged to be a genocide. It demonstrated how social attitudes such as patriarchy and constructed hatreds made the use of tactical rape and sexual violence chillingly effective as part of genocide. The judgements of the ICTR did enable progress in the comprehension of tactical rape and sexual violence as contraventions of international law. It is a judiciary whose processes have provided little justice for many women survivors and whose processes have reflected many prevailing attitudes to tactical rape and sexual violence. It has been a far from perfect judiciary, but it has made some valuable contributions to international legal precedence. With all its defects the ICTR did go a long way to demonstrate and provide judicial support for bringing to account those who use tactical rape to perpetrate a genocide. Ensuring political will
to do so is, of course, another matter. In the next chapters there will be analysis of how the UN Security Council and the international community reacted to the work of the ICTR and the ICTY and how recognition that the impact of tactical rape and sexual violence can go beyond the borders of any single state and threaten international stability developed.
Chapter 5

United Nations Security Council Resolution 1325

For all their limitations, the two ad hoc international criminal tribunals (ICTY and ICTR) contributed considerable case law which clarified and established legal bases for rejecting tactical rape. Notably, the international community, particularly the United Nations Security Council (UNSC), began to evince interest in tactical rape from the early 1990s in ways which had not been demonstrated earlier. The key question to be answered in this dissertation is: to what extent has there been an increasing commitment by the international community to reject tactical rape since the early 1990s? The primary focus is at the international level where, it is argued, there has been considerable and, in some ways, rapid development since the 1990s. The establishment of the two criminal tribunals exemplified at least to some degree that tactical rape was an issue – and an issue which needed international legal attention. The question then to be considered in this and the next chapter is: what degree of commitment to rejecting tactical rape is reflected in United Nations Security Council resolutions since the early 1990s? The development of policy and practice regarding sexual violence in war at the International Criminal Court (ICC) will form part of the answer to this question and will be considered in chapter 6.

This chapter will first consider briefly the context of changing attitudes towards humanitarianism in which the international community in the UNSC began a long overdue consideration of tactical rape. Secondly this chapter will look at developments leading to UNSCR 1325\(^1\). The third chapter will analyse UNSCR 1325, passed in 2000, which was a ground-breaking resolution in many ways. This resolution warrants close scrutiny because it was hailed as reflecting a systematic and broad-ranging approach to dealing with women’s vulnerability in conflict situations.

\(^1\) S/RES/1325/2000
It recognised that if women are vulnerable and suffer discrimination and denial of rights during peacetime, they will be even more vulnerable during conflict. It signalled the move from outrage at tactical rape to a broader rejection of sexual violence in war. It also signalled the beginning of a serious debate as to whether the use of sexual violence in war (including tactical rape) was a concern for the UNSC and it was the foundation of the ongoing debate which led to UNSC acknowledgement that confronting these violations was a responsibility of that international body. This acknowledgement of responsibility was more fully expressed in the later resolutions which will be the focus of the next chapter, but UNSCR 1325 was an important step in the development of an international norm rejecting tactical rape. For all its problems especially regarding implementation and the lack of accountability measures inherent in UNSCR 1325, the issue at its core is now clearly on the UNSC agenda: ‘Women, peace and security has emerged as an issue that can no longer be overlooked either by the United Nations or its member states. Accordingly, it is regarded as a new norm in the making’. Finally, the chapter will provide a brief analysis of various National Action Plans which have been formulated and adopted as the extension into national level of states’ commitments to this particular resolution. This analysis will indicate the degree of action and response which followed UNSCR 1325 because this provides an indicator of national application of international discourse with respect to tactical rape and sexual violence in war.

*Changing Attitudes in the 1990s*

The 1990s saw an era of changing attitudes to humanitarianism and this contributed to international response to tactical rape as well as to other forms of human suffering and need. Torunn L. Tryggestad noted several key factors about change by the end of

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the 1990s in ‘how the security concept and legitimate intervention in intra-state might be defined’. She noted the debate about the need to broaden the security concept to human security; the ways in which the nature of conflict had shifted to intra-state conflicts; to the way civilian populations were increasingly seen as the targets and means of attack, with ‘an exponential growth in the use of sexualised violence as a weapon of war’. Michael Barnett and Thomas Weiss focussed on questions raised for and from humanitarian agencies about the nature, motivations and effects of humanitarianism. They noted that agencies were engaged in identity-defining questions regarding what humanitarianism aspired to accomplish and concluded that the answer must include establishing the rule of law and respect for human rights. The impact of public media in raising awareness and consequent demands that action be taken in the face of ‘conscience-shocking suffering’ contributed to states recognising the need for action. The motivation of states is not always disinterested. They are influenced by their own interests and their concerns regarding security which will be further discussed in Chapter 7. However, as Barnett and Weiss pointed out, international laws, norms and principles are also important and pressure to respect these was reinforced by real-time media coverage and graphic images of suffering of people as individuals and not just disembodied numbers. The 1990s was a decade of dramatic communications showing situations which outraged and mobilised calls for action. Barnett and Weiss commented that the crises of the turbulent 1990s helped catalyse new movements that were intent on protecting and rescuing those in danger. As journalists, NGOs and humanitarian agencies reported and detailed atrocities in conflicts such as those in Rwanda and the former Yugoslavia, there was mounting public condemnation and consequent unwillingness

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3 Tryggestad p. 543  
4 Tryggstad p. 543  
6 Barnett & Weiss, p. 3.  
7 Barnett & Weiss, p. 16.  
to settle for expressions of dismay without any accompanying action by states or the
UN.

The member states of the UN were aware of calls to respond. In the late 1980s and
into the 1990s there was a realisation that pressure for change could come from
publics which rejected bureaucratic or governmental apathy. Humanitarian crises
became personalised and humanised, with faces attached to statistics and analysis.
By late 1988, telling the stories of individuals and highlighting the human tragedies
of victims of conflicts became a strategy of investigators such as this writer working
for humanitarian agencies, who presented stories of individuals in conflict situations
and humanitarian need to UN agencies, international NGOs and peak aid agencies.
Telling such stories highlighted the impact of tactical rape and resulted in pressure on
states to respond to known incidences of mass suffering and to the flouting of
accepted norms regulating behaviour of states and within states. The pressure
reached to the United Nations as links were made between rape and international
law. In 1993, ECOSOC expressed outrage at rape being used as a weapon of war.9 In
1994 the UN General Assembly expressed alarm at ‘the continuing use of rape as a
weapon of war’.10 Both these resolutions recognised rape as an instrument of ethnic
cleansing and noted that the abhorrent policy of ethnic cleansing can be a form of
genocide.

This was a time when the distinction between ethnic cleansing, the term used to refer
to events and practices in the former Yugoslavia, and genocide was not always fully
clarified. In 1995, the General Assembly reaffirmed ‘that rape in the conduct of
armed conflict constitutes a war crime and that under certain circumstances it

9 United Nations Economic and Social Council, *Rape and abuse of women in the areas of armed
10 United Nations General Assembly, *Rape and abuse of women in the areas of armed conflict in the
former Yugoslavia*’ General Assembly resolution 1994/205.
constitutes a crime against humanity and an act of genocide’. It called upon states to ‘take all measures for the protection of women and children from such acts and to strengthen mechanisms to investigate and punish’ those responsible. With media and NGO attention to the widespread use of tactical rape in Rwanda and in the former Yugoslavia and the engagement of bodies such as ECOSOC and the General Assembly as well as reports coming from the Special Rapporteurs regarding tactical rape such as those considered in previous chapters of this dissertation, pressure was mounting for international engagement and eventually the UNSC responded.

Towards UNSCR 1325

The awareness of events in the former Yugoslavia and Rwanda meant that the 1990s were a time of increased recognition of tactical rape and the need to prevent this form of abuse, to protect women in conflict situations, to prosecute perpetrators and to ensure that acceptable normative expectations of states precluded what was increasingly recognised as a particular war crime and crime against humanity. LaShawn Jefferson wrote that it was necessary to understand the backdrop against which such gender-based violence occurs, because it is ‘a continuation – and a significant worsening – of the various discriminatory and violent ways that women are treated in times of peace’. Jefferson identified what she called several critical factors which make sexual violence in conflict resistant to eradication: women’s ‘subordinate and unequal status in peacetime renders them predictably at risk’ in wartime; ‘increasing international exposure and public outrage’ have failed to result in any serious accountability; inadequate post-conflict attention to the needs of sexual violence survivors ‘reflects official disregard’ and suggests a ‘lack of

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11 United Nations General Assembly, Committee 3, Rape and Abuse of Women in the Areas of Armed Conflict in the former Yugoslavia, 99th plenary meeting, 22 December 1995.
12 United Nations General Assembly, Committee 3, Rape and Abuse of Women in the Areas of Armed Conflict in the former Yugoslavia, 99th plenary meeting, 22 December 1995.
commitment to facilitating survivors’ reintegration’ to their communities.\textsuperscript{14} This understanding of the complexity of causes and therefore potential strategies to prevent, mitigate, prosecute perpetrators and respond to survivors’ needs set the scene for UNSCR 1325.

Jefferson highlighted areas such as ‘both law and practice’ where women are subordinate and lack the rights of male counterparts.\textsuperscript{15} She noted, too, the social attitudes frequently exhibited even by the judiciary which blame victims of rape and judge according to previous sexual experience, so that virgins are considered more favourably than other women and the reality that in some cultures a failure to achieve a conviction can mean additional suffering, discrimination and even imprisonment for the woman making the charges. Jefferson wrote, ‘many men are accustomed to enforcing gender norms and stereotypes through physical violence’.\textsuperscript{16} She argued, ‘such violence is often culturally, sometimes, legally sanctioned’.\textsuperscript{17} Changing the legal status and achieving legal rights for women can be steps towards changing the degree of protection that women are afforded by some communities.

Patriarchy and a sense of male ‘ownership’ of women contributes to women’s vulnerability in that during conflict women can be viewed as rewards or as a source of labour by combatants. The many cases considered earlier from Rwanda of forced ‘marriages’ can be the outcome when such views are held. It is this same patriarchal attitude which renders women so vulnerable to attack when male combatants set out to find ways to attack each other. As Jefferson said, ‘the patterns of social dominance and deeply engrained gender-specific roles get violently expressed in wartime’.\textsuperscript{18} It is reasonable, therefore, to see changes in attitudes, social relationships and women’s

\begin{footnotesize}
\textsuperscript{14} Jefferson, p. 1.
\textsuperscript{15} Jefferson, p. 2.
\textsuperscript{16} Jefferson, p. 3.
\textsuperscript{17} Jefferson, p. 3.
\textsuperscript{18} Jefferson, p. 6.
\end{footnotesize}
access to rights as strategies to prevent or at least minimise tactical rape and sexual violence in war.

Part of this realisation of the relevance of women’s situations pre-conflict and post-conflict as well as during conflict began to gather momentum during the 1990s. Jefferson spoke of training combatants as one essential step.\(^\text{19}\) Education regarding rights, international human rights law and International Humanitarian Law may contribute to lessening vulnerability of women in conflict. Bringing perpetrators to account, monitoring behaviour of combatants, documenting violations of national and international law – all these can alter attitudes and behaviours. In Kosovar refugee camps in 1999, when it was noted that women were more ready to talk about their experiences of rape than the women of Bosnia had been only a few years earlier, a young lawyer taking depositions said that he believed it was because the Kosovars had heard that the Bosnian women were being taken seriously and were less afraid of being ignored or suffering discrimination.\(^\text{20}\) Sadly, for many of these brave women, their faith was misplaced, but for some it was vindicated as perpetrators were charged and the international community generally was brought to a better understanding of what was their reality.

There was, also, at least some effort by humanitarian agencies to recognise the needs of survivors of tactical rape in the post-conflict stages and recognition that the reintegration of these survivors would require economic self-sufficiency and support in recovery from physical and psychological trauma. Many humanitarian agencies including major ones such as those connected to the World Council of Churches, World Vision, the International Red Cross and Red Crescent all had at least some programmes which focussed on the needs of women victims in the conflicts in both Rwanda and the former Yugoslavia. But, these were often narrowly focussed and it

\(^{19}\text{Jefferson, p. 6.}\)

\(^{20}\text{Fitzpatrick, Kosovo, pp.14-15.}\)
was not until UNSCR 1325 that there was a more holistic approach to dealing with tactical rape.

Laura Shepherd provided an analysis of the lead-up to UNSCR 1325 in the UN and the role played by women’s advocacy groups.21 From NGOs there was mounting pressure for action and the UN had taken a series of steps towards recognition of women’s issues. These had their beginnings as far back as 1975 in the UN International Year of Women, and continued in the Convention on the Elimination of All Forms of Discrimination Against Women, in the Declaration on the Elimination of Violence Against Women and ‘the ever strengthening linkages between feminist theorists/activists and the UN system’.22 Each of these steps at the international level moved forward the understanding of women’s realities and needs. At the Vienna Conference on Human Rights in 1993, women’s advocates and activists began to call for the recognition of women’s rights as human rights. They were critical of traditional human rights frameworks for tending to exclude the experiences of women and to fail to recognise the realities of women’s experiences and lives in war and in peace. There were also the UN World Conferences on Women including the 1995 Beijing Conference which produced an influential Beijing Platform of Action (BPFA). Shepherd refers to descriptions of the document, noting that the BPFA set comprehensive benchmarks and a vision for improving women’s lives and that it was at Beijing, with 188 states as signatories to the Platform for Action, that the impact of armed conflict on women was noted as a specific emerging issue requiring

22 Shepherd, p. 387.
attention. Some feminist analysts have commented that these World Conferences ‘played a crucial role – one that would pave the way for UNSC 1325’.24

The key group of NGOs involved in preparing the way for UNSCR 1325 was represented by the NGO Working Group on Women, Peace and Security (NGO-WG). This group lobbied members of the UNSC and applied pressure for action on behalf of women in conflict and is largely credited with major contribution to achieving UNSCR 1325. Shepherd noted that it was this Working Group, ‘through its continued political presence’, which was, ‘able to transform decades of theorising and activism into concrete achievements in the issue area of women, peace and security’.25 The linking of women, peace and security was a foundational step towards understanding the interaction between tactical rape and security – an understanding which would be developed further in the next decade and will be considered in the next chapter of this dissertation. During the 1990s interaction between the UN and NGOs had increased, with UN agencies seeking advice and information and entering into a range of joint activities.26

Concurrent with this NGO action, the UN itself was taking steps towards acknowledging it had a role to play in dealing with tactical rape. Importantly, it was in this process towards passing UNSCR 1325 that the UNSC began to consider new concepts of security – a change in attitude which would eventually lead to even stronger focus on tactical rape in the next decade. The UNSC Presidential Statement of February 1999 had condemned the fact that there was an increasing toll of civilian casualties in conflicts, that women were the majority of those increased casualties

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23 Shepherd, p. 387.
25 Shepherd, p. 391.
26 Shepherd, p. 392.
and that increasingly women were the targets of combatants and armed elements. The statement made reference to the need for a ‘comprehensive and coordinated approach by Member States and international organisations’ to address the problem of protecting civilians in situations of conflict. The Secretary General had been requested to submit a detailed report and consequently presented his Report to the Security Council on Protection of Civilians. This report was presented in September 1999 and began with acknowledging the Geneva Conventions and ‘legal norms from which there can be no derogation’. It reiterated that civilians were disproportionately represented among the victims of armed conflict – with women and children disproportionately represented in those civilian numbers and deliberately targeted and subjected to gender-based violence including rape. There was reference to both the ICTR and ICTY as demonstrating UNSC concern for these issues. The Secretary General called for action by states to ratify and respect existing legal instruments, called for special protection of women and children and asked Member States to be prepared to take action against those guilty of widespread violations.

Two UNSC resolutions, 1265 (1999) and 1296 (2000), addressed the protection of civilians in armed conflict and ‘functioned to suggest that the UN Security Council recognises the protection of civilians as an issue that falls under its remit’. This was an important step towards accepting responsibility for confronting tactical rape. Although it was not until later (considered in the next chapter of this dissertation) that all members of the UNSC finally accepted that tactical rape and sexual violence in war were a direct concern of the UNSC, this acknowledgement of responsibility for protecting civilians created a context for a resolution such as UNSCR 1325 which

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28 UN Document S/1999/957.
29 UN Document S/1999/957.
30 Shepherd, p. 393.
focussed on the protection of a section of that civilian group – the women and girls. In March 2000, the UNSC issued a statement in which, members of the Security Council recognised ‘that peace is inextricably linked with equality between men and women’, and which referenced ‘violence against women’ and identified obligations of the ‘international community’ to ‘refrain from human rights abuses in conflict situations’ and called for those responsible to be prosecuted.31

With obligations of the member states of the UNSC recognised, it remained to formulate a strategic approach to meeting those obligations. In June 2000, Mary Robinson, High Commissioner for Human Rights, presented a report on Systematic Rape, Sexual Slavery and Slavery-Like Practices during Armed Conflict.32 This set the scene for the international approach to confronting tactical rape. Robinson wrote of rape and sexual violence being used as a weapon of war and said that in order to end the cycle of violence, action was needed on a broad range of fronts. She wrote:

Without the full equality and participation of women, the empowerment of women, the emancipation of women’s image, allowing women to develop confidence and respect for themselves, and enabling them to realise their full potential and acknowledging the full value of the contribution they make to the well-being, security and progress of society, any measure taken to prevent the systematic rape of women during armed conflicts, in fact any form of gender-based violence, will fail.33

This was a recognition of the complexity of the issues around tactical rape and indicated that any strategic approach aiming at preventing tactical rape would need to encompass steps to reduce women’s vulnerability in peace as well as in conflict and would need to recognise women both as potential victims and as capable of positive

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contributors to situations of improved peace and security. It was a statement which was to be reflected in the overall direction of UNSC 1325.

In the open debate prior to passing UNSCR 1325, many UNSC representatives made the links between tactical rape and the need for involvement of women in peacekeeping. The starting point was the awareness of the impact of conflict on women. The Netherlands’ representative called for actions to prevent gender-based violence, to support prosecution of those responsible, to increase awareness that rape, sexual slavery, enforced prostitution and pregnancy and sterilisation were war crimes when committed in conflict situations and could be crimes against humanity under certain circumstances. He demanded an end to impunity for offenders. As the open debate concluded, many member states’ representatives called for women to be more included in high-level positions in both peacemaking and peacekeeping and for gender training for peacekeeping forces, decision-makers and negotiators. The connection was made between general inequality, poverty and women’s vulnerability to sexual attack and rape in conflict situations.

Finally, on 31 October, 2000, a milestone was reached in states’ recognition of the need to respond to violence against women in war and conflict situations. UNSCR 1325 was passed unanimously and welcomed as an important advance for women in conflict situations. The resolution in itself was certainly progressive and was hailed as ‘a vital and innovative political framework’ for dealing with issues, such as tactical rape, in the pre-conflict and post-conflict phases as well as during conflict. Agencies such as Human Rights Watch were among those who recognised the advance represented by UNSC 1325 stating that:

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38 Shepherd, p. 383.
the resolution is historic not only in that it constituted the first time the Council systematically addressed the manner in which conflict affects women and girls differently from men and boys, but also because it acknowledges the crucial link between peace, women’s participation in decision-making, and the recognition of women’s life experiences throughout the conflict cycle.39

It was, indeed, in its systematic and comprehensive approach that UNSCR 1325 demonstrated a commitment to broad-ranging strategies to confront tactical rape and sexual violence in war. It went beyond condemnation and rhetorical outrage to real actions in a way that had not been demonstrated in previous international resolutions of the Security Council. Writing in 2009, Aisling Swaine commented that UNSCR 1325 had ‘moved international discourse and debate on women’s role in international security forward in the last decade in that it has redefined the position of women in the context of security’.40 It was an important step in progress towards recognising and responding to tactical rape and sexual violence by recognising the link between women’s vulnerability in peace time and vulnerability in war.


Because UNSCR 1325 was such a major development in states’ commitment to dealing with tactical rape, it deserves close consideration. The resolution was recognised as an important step in confronting gender-specific aspects of women in war and:

reducing gender-based violence. Rather than marginalizing women’s experiences, it appears to bring gender specific concerns within mainstream peace and security policy considerations.41

While there is a perceived intent to mainstream gender specific concerns, it is notable that such mainstreaming is only directly mentioned in relation to peacekeeping missions.42 The resolution acknowledged that a broad ranging approach would be required to confront sexual violence in war. It included the customary preamble and then operative paragraphs. Each section demonstrated the development of attitudes and strategic approaches. It is worth noting that the resolution opened with ‘recalling’ numerous other resolutions: UNSCR 1261 (1999); UNSCR 1265 (1999); UNSCR 1296 (2000); UNSCR 1314 (2000). It clearly built on UNSCR 1296 which condemned all violence against civilians, particularly women, children and other vulnerable groups43. It also ‘recalled’ commitments of the Beijing Declaration and Platform for Action (A/52/231) and the outcome document of the 23rd Special Session of the UN General Assembly, ‘Women 2000: gender, equality, development and peace’ (A/S-23/10/Rev.1). In the body of the resolution it also ‘recalls’ UNSCR 1208 (1998). This is an indication of how incrementally progress is made on an issue such as women’s security, with many apparently small steps towards recognition of the gravity of an issue and consequent decisions to take some action.

The preamble of the resolution expressed concern that women and children are the majority of those ‘adversely affected’ in conflicts and recognised that they are the targets of combatants and armed elements.44 The text of the preamble included a

42 Barrow referring to clause 5, p. 229.
number of specific references to established principles or agreements. These included references to the targeting of women and children, the role women could play in peace and security, the relevance of existing human rights and international humanitarian law and the need to mainstream gender perspectives across a wide range of related peacekeeping operations. It is important to note these references as part of understanding the development which UNSC represented. Rather than assuming a by-product of conflict is that women and children are accidentally likely to be caught in the crossfire, there is recognition that civilians are increasingly being specifically targeted by armed groups. It is recognised that this is a route to escalation of violence and has long-term effects on possibilities for peace. This was – and remains – a vital recognition about the nature of conflicts and the deliberate targeting of women and children among civilian populations. It recognised that new wars are not fought solely between armies or militias. Armed elements deliberately target civilians – contrary to established international law.

This language of referring to women and children as one entity has, however, raised concerns among some feminist analysts. Nadine Puechguirbal offered a review of many of these concerns. She concluded that the linking of women with children resulted in – and reflected - a negative attitude to women as being victims and having little or no agency in their own lives. She deplored the ongoing association with children noting that if women were seen ‘as actors within the family and community, rather than just given the status of victim, they would have more leverage in recovering from armed conflicts’. She claimed that because of the ongoing portrayal of women as vulnerable victims, ‘women’s experiences of local issues in

47 Puechguirbal, p. 173.
48 Puechguirbal, p. 178.
the sphere of security remain an untapped resource’. UNSCR 1325 could be accused of being couched in terms of women’s vulnerability – but, at least, it offered some sign posts to the link between vulnerability in peace with vulnerability in conflict and, as will be seen regarding later resolutions, there were efforts to recognise women’s agency in peacemaking and peacekeeping. From feminist analysts of UNSCR 1325 came, ‘genuinely radical understanding’ of patriarchy as the ‘principal cause both of the outbreak of violent societal conflicts and the international community’s frequent failures in providing long term resolutions to those conflicts’. The issue ‘women, peace and security’ could be weakened if women were always as identified as being in need of protection and not capable of contributing to key elements in peacemaking and peacekeeping.

It is no surprise then that the preamble stated that by passing UNSCR 1325, the UNSC was 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. Women and girls are to be protected by existing human rights laws and international humanitarian law, particularly the Geneva Conventions and Additional Protocols – all existing norms governing behaviour of governments and their armed forces and which apply equally to armed opposition groups and any other parties to a conflict. This echoes the approach of the two international tribunals applying existing international humanitarian and human rights law to the experiences of women and children in conflict.

Significantly, the preamble acknowledged that protection of women required a broader understanding of the reality of women’s situations in many communities. It

49 Puechguirbal, p. 178.
recognised that such understanding had to apply and develop across a range of aspects of women’s lives. General understanding of social, cultural, economic and political realities of women was essential. Protecting women required action beyond direct responses to conflict situations. The preamble prefaced its direct recommendations by ‘recognizing the urgent need to mainstream a gender perspective into peacekeeping operations,’ and the use of ‘urgent’ was important as it reflected a degree of seriousness about this aspect of strategies which were to follow.\(^{51}\) Taking the issue beyond direct conflict contexts to consider women’s roles in peace and reconciliation was a major step.

The preamble also reaffirmed ‘the important role of women in the prevention and resolution of conflicts and in peacebuilding’\(^{52}\). This was a recognition that women’s lives and contributions were of importance for women themselves and for their communities, a recognition beyond women being viewed narrowly as victims when conflict broke out. There was acknowledgement of women’s potential for contribution, equal participation and ‘full involvement in all efforts for the maintenance and promotion of peace and security’.\(^{53}\) Logically, then the preamble called for action to increase women’s role in decision-making with regard to conflict prevention and resolution. This paragraph of the preamble was a reflection of the growing understanding of women as more than victims. It formally acknowledged that women have contributions to make in prevention and in recovery processes and was a basis for recognition that if women were to be enabled to play an equal part in security and maintaining peace, they must be empowered politically and economically. The understanding that confronting violence against women in conflict requires confronting inequality and subordination of women generally in their communities was growing.

\(^{51}\) UNSCR 1325 Preamble, para. 8.
\(^{52}\) UNSCR 1325 Preamble, para. 5.
\(^{53}\) UNSCR 1325 Preamble, para. 5.
Dealing with such inequalities can also result in benefit to women and girls – and to their communities and to the international community. The preamble recognised the necessity of understanding the impact of armed conflict on women and girls. Notably, it recognised that the provision of effective institutional arrangements to guarantee women’s protection and full participation in the peace process ‘can significantly contribute to the maintenance and promotion of international peace and security’. Related to this aim was the need ‘to consolidate data on the impact of armed conflict on women and girls’. The need to be informed, to understand accurately the reality of the impact of conflict on women and girls is underscored here as a crucial element in ensuring effective protection and response to specific needs. Attention is drawn to the paucity of data available and the absence of any systematic processes for documentation, collation and analysis of information to inform responses to the impact of conflict on women. Similarly, there is a need for reliable information regarding women’s potential and actual role in relation to peacebuilding, especially when women and women’s groups are frequently engaged in support responses both post and during conflicts at local, national and regional levels. The UNSC also noted its own responsibilities towards protection of women and girls. Referring back to the statement of the UNSC president to the press on March 8, earlier in the year, the preamble reiterated reference to its own mandate with regards to authorising peacekeeping operations, placing emphasis on the importance of training peacekeepers so that women and children are protected and their special needs are identified and addressed.54

Having set out in the preamble the bases on which it was proceeding, UNSCR 1325 then moved to the specifics of its resolution. The operative paragraphs of the resolution reflect the steps to be taken and, as in any resolution, the language signalled differing levels of commitment or differing levels of application. In some

54 UNSCR 1325 Preamble, para. 1.
steps states were ‘urged’ to action. In other steps states were ‘encouraged’. The Secretary General was ‘required’ to undertake certain steps. Just as the preamble had indicated the UNSC’s own responsibilities, so too did the operative paragraphs.

Some concerns regarding the slow progress in implementation of the resolution have been linked back to the language of the resolution. UNSCR 1325 was adopted under Chapter VI which means that although it was adopted unanimously it is non-coercive and not binding on states. It does however, ‘carry a normative imperative that is intended to influence behaviour (in the short and long term) at both international and national levels’. Resolutions adopted under Chapter VII are deemed coercive, binding on states and invoked when a breach of the peace or a threat to international peace and security is perceived. Because it was not adopted under Security Council Chapter VII mandate, the language is deemed to be ‘soft’ in comparison to ‘hard’ language in other resolutions. For example, SCR 1373 on Counter Terrorism uses terminology such as, ‘decides’ ‘declares’ ‘directs’ while SCR 1325 uses terms such as ‘express’ ‘emphasises’ ‘requests’. It has been argued that ‘because the language appears weak it fails to be taken seriously by the military’. However, Torunn L. Tryggestad has commented that since the advent of UNSCR 1325, ‘women, peace and security has appeared as a normative issue that is increasingly difficult for states to shun’ noting that women’s issues were traditionally relegated to soft policy and thus not something to which the Security Council was required to pay attention. She concluded that despite reservations and criticisms of the resolution, it was ‘a

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55 Tryggstad p.544.
56 Swaine p. 409 referring to D Otto, ‘The Exile of Exclusion: Reflections on Gender Issues in International Law Over the Last Decade’ 10 Melbourne Journal of International Law 2009 at p. 21
58 Swaine p. 410 quoting Barbour.
59 Tryggestad, pp. 542.
remarkable development’. The first four operative paragraphs urged and encouraged member states and the UN secretariat under the Secretary General to work for increased participation of women at all decision-making levels. Member states were urged to do so ‘in national, regional and international institutions and mechanisms for the prevention, management, and resolution of conflict’. The Secretary General was encouraged to implement a plan formulated in 1994 which had called for ‘an increase in the participation of women at decision-making levels in conflict resolution and peace processes’. In the first two operative paragraphs, both member states and the UN itself were called to take action. Operative paragraphs three and four similarly focused on participation of women and inclusion in decision-making positions. While this focus on women’s participation in decision-making was admirable, the need to reiterate the call did highlight that much needed to be done to make this a reality.

There followed a paragraph relating to peacekeeping operations. The wording is tentative at best. The UNSC ‘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’. The phrase ‘where appropriate’ is one with implications that there will be a judgment but no clear parameters or conditionality set out as a basis for such judgment. A ‘willingness to incorporate’ does not appear to carry any requirement for specific action. It is a passive statement. However, this paragraph needed to be read in the

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60 Tryggestad, p. 542.
61 UNSCR 1325, para. 1.
62 UNSCR 1325, para. 2, referring to UN Doc A/49/587, 1 November 1994.
63 UNSCR 1325, para. 5.
context of the Secretary General having provided a report (October 2000) on resource requirements for implementation of the report of the Panel on United Nations Peace Operations in 2000 and this request for resources had noted that attention needed to be given to gender perspectives in all phases of the peace support operations, beginning with needs assessment missions through post-conflict peacebuilding.\(^{64}\)

This report of the Secretary General had included attention to gender in analyses, policy and strategy development and planning of peace support operations, as well as training programmes and instruments developed to support effective implementation of those operations. The report had listed political analysis, military operations, civilian police activities, electoral assistance, human rights support, humanitarian assistance, assistance for refugees and displaced persons, development and reconstruction activities and public information, noting the importance of training of troops and civilian police on gender issues as well as gender balance in interim bodies and development of capacity within interim governing bodies. The report highlighted the importance of paying attention to gender perspectives ‘from the very outset of peacebuilding and peacekeeping missions, including through incorporation in the initial mandates’ and importantly it recommended that all reports of any individual mission to the Security Council ‘should include explicit routine reporting on progress in integrating gender perspectives as well as information on the number and levels of women involved in all aspects of the mission’.\(^{65}\)

Paragraph five was a commitment to follow through on these identified needs and represents agreement that such a gender perspective should be incorporated into peacekeeping missions – with an important implied recognition that this needed to be noted in budgetary allocations. Operative paragraph six recognised the need for

\(^{64}\) UN Document A/55/507/Add.1.

\(^{65}\) UN Document A/55/507/Add.1.
‘specialized training for all peacekeeping personnel on the protection, special needs and human rights of women and children in conflict situations’. It was imperative that member states accept responsibility for their own peacekeeping forces as a way to demonstrate commitment and shared responsibility of all states and agencies. This was followed by Paragraphs 7 and 8 which ‘request[ed]’ provision of training in many aspects of gender sensitivity and ‘urge[d]’ financial allocations and commitments to enable such training. The outline of financial allocations indicated a seriousness to commit to action.

This degree of seriousness is continued in operative paragraph eight where ‘all actors’ are called upon to adopt ‘a gender perspective’ when ‘negotiating and implementing peace agreements.’ Rather than a generalised call, the resolution notes specific aspects requiring attention. It highlights the special needs of women and girls during repatriation and resettlement and for rehabilitation, reintegration and post-conflict reconstruction. It calls for measures that support local women’s peace initiatives and indigenous processes for conflict resolution, and that involve women in all of the implementation mechanisms of the peace agreements. It also calls for measures that ensure the protection of and respect for human rights of women and girls, particularly as they relate to the constitution, the electoral system, the police and the judiciary. This indicates an emphasis on involving local women and valuing local and national processes, with a requirement for involving women in peace agreements. Proposed action included agreements on power-sharing arrangements; economic reconstruction; demobilisation and reintegration of soldiers; legislation on human rights; access to land, education and health; the status of displaced people and the empowerment of civil society. All require attention to gender, regardless of who is doing the negotiating or implementing. By addressing reintegration, the Security Council was recognising that refugee women and women who are Internally

66 UNSCR 1325 Operative para. 6.
67 UNSCR 1325 Operative para. 9.
Displaced Persons, as well as female demobilised soldiers returning to their homes, require particular care and attention. For all these women return must be voluntary and any facilitated return must consider issues of security. Later paragraphs dealt with the need to respond effectively to identified special needs of women in refugee camps and as ex-combatants with dependents.\textsuperscript{68}

Operative paragraph nine, by mentioning the International criminal Court (ICC), ‘could be used to lobby for a referral of the Security Council to the ICC when states fail to address cases of massive sexual violence’.\textsuperscript{69} Operative paragraph eleven, UNSCR 1325 called upon all parties to armed conflict to respect fully international law applicable to the rights and protection of women and girls as civilians. This was a key point as it reaffirms the applicability of existing norms to women in conflict. The paragraph goes on to list some of the major – and non-derogable – international normative agreements, which most, if not all, member states have acknowledged. While it may seem odd that a specific statement was needed to ensure that women were included as civilians and international law applied to women, it was, in reality, an important step. It built on the work and judgements of the international tribunals and made clear that while women had specific needs they were covered by the same international law as any civilians. This led logically to the next paragraph which dealt with impunity and accountability. It emphasised ‘the responsibility of all States to put an end to impunity and to prosecute those responsible for genocide, crimes against humanity, war crimes including those relating to sexual violence against women and girls.’\textsuperscript{70} Crimes such as sexual violence (which would include tactical rape) were to be confronted. Impunity for such crimes was to end. This was a natural development from the recognition that such crimes were not to be considered inevitable by-products of conflict, something to be deplored but accepted as part of

\textsuperscript{68} UNSCR 1325 Operative paragraphs 12 & 13.
\textsuperscript{69} Binder. Lukas and Schweiger p.34
\textsuperscript{70} UNSCR 1325 Operative para. 11.
conflict. It was a specific recognition that these were acts which contravened international law and for which perpetrators were to be brought to justice. The paragraph continued to ‘stress’ the need to exclude these crimes, ‘where feasible’, from amnesty provisions. This call to put an end to impunity was welcomed but the inclusion of the words, ‘where feasible’ to exclude sexual and other violence against women from amnesty agreements were disappointing as they indicated a sense that exceptions could be made. The work of ICTY and ICTR had demonstrated the difficulties in bringing perpetrators to justice. Such difficulty, however, should not preclude the principle of refusing amnesty. There are many instances where implementation of international humanitarian law and human rights law may prove difficult. The implications of respecting the Genocide Convention may present serious challenges to those responsible to respond to violations and may result in states hesitant to name acts as genocidal. These difficulties are recognised. They cannot be allowed to render it acceptable to grant amnesty to those who commit the violations.

However, overall, UNSC 1325 demonstrated an understanding of the impact of armed conflict on women and the need for effective institutional arrangements to guarantee their protection and full participation. It recognised that such understanding and arrangements could significantly contribute to maintenance and promotion of international peace and security. It emphasised the need to respect existing law and called for a gender perspective in peacemaking and peace agreements, rejecting impunity for perpetrators of violence against women and children and urging, ‘where feasible’, that amnesty for such offences be avoided. This was an important step in the development of normative rejection of tactical rape. It is notable, however, that C. Binder, K. Lukas and R. Schweiger, writing in 2008, commented: ‘surprisingly, few academic papers and legal documents reference Resolution 1325’ and they went on to highlight that ‘the most comprehensive UN
paper on post-conflict justice, the UN secretary general’s report on transitional justice and the rule of law in conflict and post-conflict societies does not mention the resolution’. As will be seen in the next chapters, there have been some significant moves at the UN to support implementation of UNSCR 1325 and subsequent resolutions, but the real test of commitment came with states’ actions to put in place the requirements of the resolution, to formulate their National Action Plans.

National Action Plans as Measures of Commitment to UNSCR 1325

UNSCR 1325 addressed the impact of war and conflict on women and called for women's participation in conflict prevention, conflict resolution and sustainable peace-building. The resolution, however, did not include any clear mechanisms for monitoring implementation and ensuring accountability and states were asked to formulate National Action Plans (NAPs). National Action Plans represented a relatively new approach to ‘the challenge’ of implementation and ‘are regarded as a practical means through which states can demonstrate the steps they are taking to meet their obligations under the resolution.’ UNSCR 1325 called for member states to take a range of specific steps, which would require specific policy and practice. The resolution, being adopted unanimously, carried with it a responsibility that member states adapt and incorporate the elements of the strategy it contained into national policy and procedures with a focus on named general areas of concern regarding women, peace and security. States were to act to develop participation of women in decision-making and peace processes with a consequent increased number of women in institutions and UN field operations. States were to consult with women and ensure the inclusion of women in peace processes. Elements in states’ implementation of UNSCR 1325 would require including women in decision-making

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72 Swaine, p.411.
and peace processes, protecting women from sexual violence in war and ensuring gender perspectives in training and peacekeeping.

Implementation of UNSCR 1325 would mean gender mainstreaming in UN reporting systems and programme implementation. The aim was for states to mainstream gender aspects of policy and practice. All these were aspects to be incorporated into states’ action plans. Mainstreaming a gender perspective was defined by the Economic and Social Council as a process of assessing the implications for women and men of any planned action, including legislation, policies or programmes, in all areas and at all levels. The forum agreed mainstreaming was a strategy for making women's as well as men's concerns and experiences an integral dimension of the design, implementation, monitoring and evaluation of policies and programmes in all political, economic and societal spheres so that women and men would benefit equally and inequality is not perpetuated. However, it was argued that if mainstreaming were the goal, then a separate policy document or action plan would negate such mainstreaming which would require adaptation or amendment of existing policy and practice. This was countered by a fear that gender aspects would be lost or ignored without specific plans and while some states such as Fiji incorporated gender aspects into existing policy approaches, many states began formulating national action plans. In Israel, a law has been passed making it mandatory to include women in government peace negotiations, effectively incorporating UNSCR 1325 into national law.

In Presidential Statements S/PRST/2004/40 and S/PRST/2005/52, the Security Council called on member states to implement UNSCR 1325, including through the

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74 Swaine, p. 411.
75 Swaine, p. 411.
76 Swaine, p. 412.
development of national action plans (NAPs) or other national level strategies. The
creation of an action plan provides an opportunity to initiate strategic actions,
identify priorities and resources, and determine responsibilities and time frames at a
national level.77 Henry F. Carey having said that norms comprise the rules and goals
of governing which constitute a regime type, referred to UNSCR 1325 as the epitome
of a new regime.78 This resolution represented a stated commitment to a new regime
for protecting women from sexual violence in conflict. However, Carey noted too,
that UN member states ‘are able to support the new regime in principle, even if
practice will not change automatically’.79 As he noted, universal human rights and
humanitarian law institutions already prohibited sexual violence against women and
sought to protect their human rights.80 This had not resulted in preventing or even
seriously prohibiting sexual violence. By creating national action plans to implement
and institutionalise the responsibilities accepted by agreement to UNSCR 1325,
states could demonstrate a commitment beyond rhetoric.

A National Action Plan is where a state articulates practical measures to implement
agreements made at international level. The National Action Plans are the national
extension of the international agreements inherent in UNSCR 1325. It was the
awareness of the use of tactical rape and sexual violence in war and the work of the
international tribunals which stimulated the international sense that women must be
protected in war – and in, particular protected from tactical rape and sexual violence.
UNSCR was passed unanimously by all member states of the UNSC. All states
accepted an implied responsibility to honour and enact steps to implement the
resolution. As noted above, allocation of resources is an indication of seriousness to
commit to any actions. So, too, is the adoption of national policy and associated

78 HF Carey, ‘Women, Peace and Security: The Politics of Implementing Gender Sensitivity Norms in
79 Carey, p. 53.
80 Carey, p. 53.
practice a measure of commitment. The UN – INSTRAW recommended guide for NAPs refers to a number of components and provides a guide to evaluating existing NAPs.\textsuperscript{81} It refers to the following elements: an introduction indicating process, peace and security issues for women; a rationale with reference to 1325, importance of women, peace and security and relations to the state; long and short-term objectives; specific initiatives linked to objectives, with key performance indicators, deadlines, resources; time frames for the plan as a whole and for specific initiatives; monitoring and evaluation systems and an allocated budget.\textsuperscript{82}

Analysis of how multi-lateral agencies and states approached this responsibility with regard to UNSCR 1325 and the processes and plans they did or did not follow sheds some light on the degree of real commitment to the task of confronting tactical rape and ensuring adherence to the developed norm rejecting tactical rape. While it will be useful to focus on action at the UN after UNSCR 1325, the NAPs provide an insight to states’ commitment. The responses of various states – those which have responded – are varied in the quality of demonstrated commitment exhibited in their National Action Plans (NAPs). Aspects of some plans indicate states taking seriously the implications of UNSCR 1325. Some plans are useful as models demonstrating pitfalls and omissions. Some exemplify attitudes that are unhelpful to the purposes stated in UNSCR 1325. The process of developing a plan is a key reflection of how women are recognised and included and it should be a process of ‘awareness raising and capacity-building in order to overcome gaps and challenges to the full implementation of resolution 1325’.\textsuperscript{83}

\begin{footnotesize}
\textsuperscript{81} UN International Research and Training Institute for the Advancement of Women, \textit{Securing Equality, Engendering Peace: A guide to policy and planning on women, peace and security}, (UNSCR 1325), 2006.
\textsuperscript{82} UN International Research and Training Institute, 2006.
\end{footnotesize}
Analysing Some Action Plans as Measures of Commitment

As an indicator of the slow pace of implementation of UNSCR 1325, it should be noted that the UN took five years to formulate an organisation wide action plan.\(^{84}\) Although it has since been revised the plan was initially seen as ‘a compendium of activities’ rather than a forward looking ‘action –oriented document’ to challenge stakeholders to change their ways of doing business and address gaps in implementation.\(^{85}\) It took time and further resolutions, which will be discussed in the next chapter, before satisfactory institutional changes and definite operational time frames and loci of responsibility were really developed. Writing in 2008, Binder, Lukas and Scheiger noted that ‘a review of recommendations of UN human rights committees (committee on CEDAW, on the Rights of the Child, on the Convention on Civil and Political Rights, on the Convention on Torture) shows that not a single committee referenced 1325’.\(^{86}\) Work on implementing and applying UNSCR 1325 was slow to gain momentum.

As of 30 June 2009, women in the UN Secretariat constituted: 38.3% (2,894 out of 7,565) of all staff in the professional and higher categories with appointments of one year or more; 27.3% (180 out of 660) of all staff at the D-1 level and above; 39.3% (2,713 out of 6,903) of all staff at the P level. Gender balance had only been achieved at the P-1 (50%) and P-2 levels (51.5%) and during the 11-year period June 1998-June 2009 in the UN Secretariat, the overall growth of women in appointments of one year or more was 3.7%, an increase from 34.6% (1,441 out of 4,164) in 1998 to 38.3% (2,894 out of 7,565) in 2009.\(^{87}\)


\(^{85}\) Swaine, p. 414.

\(^{86}\) Binder, Lukas & Schweiger, p.30.


Peurchguirbal concluded, ‘the relations of inequality and the imbalance of power between women and men in the UN remain uncontested, despite the existence of resolution 1325’.\(^{88}\) The UN itself should have been leading the early implementation of UNSCR 1325 but it was slow to react.

There were a number of steps taken by the European Union: the European Parliament and Council of Europe have formulated documents encouraging implementation of UNSCR as have NATO and the OSCE and some UN member states formed ‘The Group of Friends of 1325’.\(^{89}\) In 2008, this group comprised 31 member states and was coordinated by Canada.\(^{90}\) In European countries where NAPs have been formulated it has usually been ministries responsible for foreign affairs – development cooperation, defence and justice – which have taken the lead while in Africa it seems to have been ministries responsible for gender equality.\(^{91}\) Uganda, for example has included an analysis of the gendered aspects of conflict.\(^{92}\) Consideration and analysis of these plans needs to remember that the aim of UNSCR 1325 was to have gender specific issues mainstreamed into states’ policies and practices. Hilary Charlesworth and Christine Chinkin have commented on the dissonance between equality and representation that may still arise when women are accorded participation in decision making bodies or when equality is measured by numbers of women participating because ‘this account of equality ignores the presence of underlying structures and power relations that contribute to the oppression of women’.\(^{93}\) Others have noted that UNSCR 1325 does not address root causes or

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\(^{88}\) Puerchguirbal, p. 184.

\(^{89}\) Swaine, p. 414.

\(^{90}\) Tryggstad, p. 547.

\(^{91}\) Swaine, pp. 416-417.


\(^{93}\) Charlesworth & Chinkin, p.229.
structural problems such as women’s access to economic or financial resources and education.\textsuperscript{94}

However, by April 2012, the number of countries which had formulated NAPs in response to UNSCR 1325 as well as to UNSCR 1820 and other resolutions to be discussed in the next chapter had grown to thirty-six.\textsuperscript{95} When reviewing UNSCR 1325 in particular, it is useful to consider some NAPs which were developed in direct response to that specific resolution. Three early NAPs provide interesting examples of similarities and variations in process and content - those of the Netherlands, of Iceland and of Finland - while the first and then later plans of the UK show a process of development.

In many ways, although it has some notable flaws, the Netherlands Plan set a standard for others to follow.\textsuperscript{96} The process of developing the Netherlands Action Plan reflected a growing sense of the importance of networks which are ‘increasingly central in publicising trans-national social issues and consolidating change’.\textsuperscript{97} It facilitated exchanges across national regions according to legal, cultural, social and economic (including labour) interests for women, peace and security, utilising NGO networks at local levels in countries to gain information and to facilitate reporting of concerns which may otherwise have had no way of being shared or communicated. It includes serious consideration of women before, during and after conflicts as victims, combatants and pillars of development and it defines key concepts such as gender mainstreaming and discrimination against women to ensure clarity of focus and

\textsuperscript{94} Binder, Lukas & Schweiger, p. 25.
\textsuperscript{97} The Netherlands National Action Plan, p. 23.
understanding. It sets a focus on periods of time before and after conflict and deals chiefly with physical safety and legal security of men and women. Monitoring and evaluation responsibilities are allocated with focus on all partners working at national and international levels and reporting progress.

The Netherlands Plan sets out to be as clear as possible as it is intended to inform the efforts of those across the country who signed it, stating explicitly what is expected of them.98 This is in contrast to some other plans which are ‘chiefly government documents’ and which offer cursory reference to many key concepts and do not demonstrate any attempts to incorporate learning or reflection.99 This Netherlands Plan referred to reconstruction after conflict, providing an explanation that this is interwoven with prevention which remains a major objective of the Netherlands’ Foreign Policy and core business of some NGOs. Prevention was, in turn, linked with development cooperation. Despite its recognition that security is a socioeconomic concept there was a decision not to include the socioeconomic aspects of security because ‘security and development influence each other so directly one may ask where one stops and the other begins’.100 The Plan acknowledged past achievements and difficulties – such as failure to recruit sufficiently in the ranks of police and military and it acknowledged that bi-lateral and multi-lateral activities must reinforce one another while empowering those most affected.101

This NAP set out to ‘unite people and organisations active in the fields of development (including humanitarian aid), diplomacy and social action in a joint effort for conflict prevention and resolution, peace negotiations and

98 The Netherlands National Action Plan, p. 11.
99 The Netherlands National Action Plan, p. 11.
100 The Netherlands National Action Plan, p. 12.
reconstruction’. For each specific action, there was identified an area of focus, a goal and activities and those responsible for implementation were named. In some cases, the availability of resources was confirmed – or noted for allocation or sourcing. When referencing the international legal framework, the Netherlands Plan asserted the importance of human rights and the Government’s endorsement of the concept of the ‘responsibility to protect’ and noted the ever-growing discrepancy between international standards and reality. For this reason, it established there must be steps relating to both the design of legal systems and law enforcement. There must be national as well as international laws which protect women’s rights and combat impunity. Actions included aligning national legislation with international human rights agreements and calling countries to account for violations and protecting women’s rights in unofficial legal systems.

International women’s networks were to be used to give women an effective voice – demonstrating the usefulness of cooperation with NGOs, especially those with international connections. Importantly, the Netherlands Plan included guarding against the misuse of women’s rights for agendas other than gender justice – a warning reflecting the reality of states ‘using’ such rights for political ends. Throughout the Plan, the goal was to institutionalise women’s equal participation. It recognised the differing situations of women who may have been combatants. Gender perspectives were to be advocated in all international organisations and within any new structure of the UN. The need to reform security sectors after conflict was emphasised and there was a commitment to see the role of women embedded in peace missions and in UN, NATO and EU operational guidelines, as well as promoting the inclusion of UNSCR 1325 in mandates, resolutions and terms of reference. Peacekeepers would be required to maintain codes of conduct and

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102 The Netherlands Action Plan, p. 6.
104 Changes in UN structures especially in the Secretariat are detailed in Chapters 6, 7.
foreign partners would be called to account for conduct on missions. Training on the roles and capabilities of women would be provided. There would be local gender focal points to whom reports could be made and gender specialists in short missions. The Plan also recognised that some international missions would oppose accountability when there were troops from countries which either condoned or promoted impunity for their own troops. This was an acknowledgement that in the international arena there can be glib commitments without any accompanying commitment.

There is a sense of real commitment in this Netherlands Action Plan although there are some areas where it could be strengthened. It included ‘promoting’ training among professionals in the justice sector and for personnel on peace missions and while ‘promotion’ is useful, such training should be mandatory in most cases.\textsuperscript{105} It ‘condemned’ impunity but only ‘encourage[d]’ prosecutions.\textsuperscript{106} It talked of monitoring the security and safety of women during court proceedings and supporting them with psycho-social counselling – this was an implied but not explicit acceptance of responsibility to follow up where women’s safety and security are found to be under threat. It put emphasis on intensifying research into women, peace and security but did not go further than examining whether funding could be increased. However, the style of this NAP had much to offer, even with the omissions and concerns mentioned. Throughout, it did allocate responsibilities and set clear time frames. It recognised what was known about women, peace and security and it recognised that further research was needed. Importantly, it recognised that women have multiple realities and a variety of skills and need to be empowered to effect changes for themselves while being supported with adequate resources and advocacy. It reflected a serious commitment to implement the intent of UNSCR 1325 as a broad-ranging strategy which could confront the reality of tactical

\textsuperscript{105} The Netherlands National Action Plan, p. 47.

\textsuperscript{106} The Netherlands National Action Plan, p. 29.
rape, confront women’s vulnerability in conflict that is often rooted in their vulnerability in peace and exacerbated in conflict.

The NAP of Iceland was released early 2008 and followed a broad consultative process similar in nature to that of the Netherlands. It included little analysis of women’s issues and needs but involved in the plan’s formulation were civil society, Nordic partners, and academic institutions. The Iceland Plan stated it was built on ‘the main pillars of Iceland’s foreign policy: respect for human rights; increased development cooperation and peaceful resolution of conflict. Special emphasis was put on women’s access to the negotiating table’. Despite the consultative process, in most specific activities it is the Icelandic Government named as responsible for implementation and there was no mention of the expertise or contextual contribution which could be brought by NGOs.

There was, however, a general commitment to incorporating gender perspectives into projects in all fields of peace, security and development, to promoting UNSCR 1325 and its implementation and monitoring and a specific commitment to developing a checklist to help peacekeepers apply UNSCR 1325 in the field. Who was to be responsible to develop this checklist was not made explicit. There was an emphasis on continuing pressure for participation of women in positions as officials in international organisations, as heads and members of peacekeeping operations and as local employees during peacekeeping operations. There was a commitment to considering UNSCR 1325 when deciding in which peacekeeping operations Iceland would participate. There was an emphasis on civilian peacekeeping and women’s access to post-conflict reconstruction. Importantly, too, there was direct mention of


108 Iceland’s National Action Plan, p. 3.
the importance of working towards increasing the economic independence and security of women – with this being a clear priority action.\textsuperscript{109} While it did not elucidate how this would be achieved, it was a positive step to have such a commitment.

As in the Netherlands Plan, there was reference to education and training for Foreign Service personnel and peacekeepers. However, the Foreign Service personnel were seen as being ‘briefed’ while peacekeepers were to be ‘educated’.\textsuperscript{110} It is an interesting distinction and, hopefully, did not indicate a different level of importance and choice versus mandated informing. There were clear and definite statements that misconduct of peacekeepers and other posted personnel would not be tolerated. This included buying sexual services or otherwise procuring them from anyone dependent on the peacekeepers. Specific codes of conduct were set and it was made clear that criminal laws apply to all deployed personnel.\textsuperscript{111} Where the Dutch Plan referred to ‘finding’ new funds, the Icelandic Plan stated it would support research and would allocate appropriate funds to projects related to UNSCR 1325.\textsuperscript{112}

The Finnish Action Plan was released September 19, 2008.\textsuperscript{113} As in the Netherlands and Iceland it was the result of a consultative process: in this case between named government ministries, the ‘1325 NGO Network’ and research institutions. A working group was established in 2007 to ensure the drafting process was open and participatory. The action plan was divided into three sections with specific ministries named as responsible for implementation. The first section considered conflict

\textsuperscript{109} Iceland’s National Action Plan, p. 6.
\textsuperscript{110} Iceland’s National Action Plan, p. 6.
\textsuperscript{111} Iceland’s National Action Plan, pp. 6, 7.
\textsuperscript{112} Iceland’s National Action Plan, p. 8.
Ministry of Foreign Affairs of Finland. retrieved 10 August 2009,
prevention, peace negotiations and peacebuilding, with three specific objectives. The first objective was to advocate implementation of UNSCR 1325 in conflict prevention, peace negotiation and peacebuilding, which included: recognising UNSCR 1325 as a cross cutting theme in the UN strategy of Finland; urging attention to equal participation of women and mainstreaming 1325 into all UNSC activities; recognising the needs of women and children in disarmament and repatriation programmes and monitoring international organisations for gender aspects of governing boards, evaluation and research.114 Finland would contribute to improvement of women’s position in political decision-making in developing countries and to local activities which enhance participation of women in conflict prevention and reconstruction such as drafting constitutions and formation of electoral and law commissions. It mainstreamed gender issues into humanitarian aid, granting men and women equal opportunities in related decision-making. This was much more specific than other plans when Finland included a requirement for compliance with the principle of non-discrimination as a pre-condition for all reconstruction projects and supported the improvement of women’s financial situation.

The second objective of the first section was to produce and publish information on women’s role in crisis management, on the impact of gender-related aspects of conflict and gender roles in peace processes and conflict resolution.115 As well as public information and awareness-raising it supported the accumulation and analysis of gender-aggregated data on conflicts and violence, with the use of comparable gender-related indicators when reporting on programmes and operations. The third objective of this same first section stated that ‘special attention is paid to women’s role in the management of natural resources, land ownership and use and the creation of sources of livelihood’.116 As with UNSCR 1325 generally, this reflected

recognition that the vulnerability of women in conflict can at least be alleviated by changing some of the constructed attitudes of women as mere dependents or property of males.

The second section concerned actions in crisis management, with specific mention of the need to confront human trafficking and sexual exploitation among human rights abuses, stressing that all forms of sexual exploitation are criminal offences, with a clear resolve that offences will be investigated under Finnish legislation.117 The third section dealt with strengthening, protecting and safeguarding the human rights of women and girls by encouraging all countries to ratify international agreements and monitoring.118 There was stated commitment to fighting impunity, requiring prosecutions and supporting the ICC, ICTR, ICTY and the Special Court for Sierra Leone as well as continuing support for prosecution of international crimes. Importantly, Finland, too, emphasised that countries receiving development assistance must ensure that national legislation complied with international standards. It was, however, disappointing that when referring to training for prosecutors, judges, police and other public authorities, the wording was that they would ‘be offered’ training, rather than insisting on such training.119

Some states reacted quickly, with what were seen as rapid but less than satisfactory plans. The United Kingdom (UK) was one state which later re-formulated a more comprehensive and more soundly based plan but the early UK outline of its implementation appeared cursory at best, with no indication of real community consultation or involvement.120 This provided an interesting comparison between a brief ‘high level’ paper and more detailed and thoughtful National Action Plans such

120 UK High Level Plan, retrieved 12 June 2007,
as those above and a full plan, which was released at a later date by the UK.\textsuperscript{121} Some time after the launch of the paper, (March 8 2006), the UK human rights representative to OSCE said it was a cross-departmental government process which encountered difficulties and developed into a series of inter-departmental working groups and other working groups including civil society and experts from other governments.\textsuperscript{122} This paper referred to ‘gender elements’ and ‘gender perspectives’, assuming these were understood, without any real attempt to elucidate.\textsuperscript{123} Activities were followed by examples but with no clear allocation of responsibility or time frames, other than Her Majesty’s Government (HMG) and in one instance the UK Ministry of Defence. There was no mention of evaluation, revision, monitoring or updating the plan. There was mention of activities regarding training and policy within the Government. However, the language was not strong. Officials were to ‘be offered desk top training’ but not required to undertake it and rather than establishing such training as mandatory it was only ‘where necessary’ that there would be awareness-raising on gender and the UN Code of Conduct on personal behaviour.\textsuperscript{124} It stated that ‘where appropriate’ gender perspective training would be incorporated into other military and conflict related personnel doctrines.\textsuperscript{125} Possibilities for personnel to avoid training seem clear. This did not indicate any real sense of urgency or need for such training. There was encouragement to international institutions, civil society and UN member states to identify suitable women candidates for posts – but the only mention within the UK was to ‘encourage’ UK

\textsuperscript{122} Alistair Long, Human Rights Representative to OSCE, UK, Presentation on UNSCR 1325, 4 October 2007.
\textsuperscript{123} UK High Level Plan, paras. 1, 2.
\textsuperscript{124} UK High Level Plan, para. 5.
\textsuperscript{125} UK High Level Plan, para. 6.
military and police forces to make known all vacancies as a means of continuing to deploy appropriate female personnel on operations. 126

The lukewarm tone continued with ‘advocating’ inclusion of gender-based violations in mandates of transitional justice mechanisms as the example of how it will promote justice for women and tackle post-conflict gender violence.127 When agreeing to address gender issues in UK-supported disarmament, demobilisation and reintegration there was a commitment to provide guidelines to UK officials – but no indication of the varying nature of combatants or of women in different situations.128 The only mention of the role that NGOs could play came in the final action point when the Government would liaise with them and with civil society and parliamentarians on implementation of UNSCR 1325 and would continue dialogue on gender-related issues.129 Overall, this first UK plan did not demonstrate any real reflection or new initiatives. Rather, the impression was of a paper drawn up to meet the minimum demands of the resolution. A more detailed NAP was later released in 2008 and reflected a more committed approach to implementing the key aspects of UNSCR 1325.

As at April 2012, there were still omissions from the list of states which have complied with UNSC 1325 and formulated national plans but thirty-six states had complied. Those with plans included: Australia NAP (2012); Austria NAP (2007); Belgium NAP (2009); Bosnia-Herzegovina NAP (2010); Canada NAP (2010); Chile NAP (2009); Cote d’Ivoire NAP (2007); Croatia NAP (2011); Denmark NAP (2005); Denmark Revised NAP (2008-2013); DRC NAP (2010); Netherlands NAP (2000); Estonia NAP (2010); Finland NAP (2008); France NAP (2010); Georgia

126 UK High Level Plan, para. 7.
127 UK High Level Plan, para. 9.
128 UK High Level Plan, para. 11.
129 UK High Level Plan, para. 12.
NAP (2011); Guinea NAP (2011); Guinea-Bissau NAP(2011); Iceland NAP (2008); Ireland NAP (2011); Italy NAP (2010); Liberia NAP (2009); Nepal NAP (2010); Netherlands second NAP (2011); Norway NAP (2006); Philippines NAP (2010); Portugal NAP (2009); Rwanda NAP (2010); Sierra Leone NAP (2010); Slovenia (2011); Spain NAP (2007); Sweden NAP (2006); Sweden revised NAP (2009); Switzerland NAP (2007); Switzerland revised NAP (2010); Uganda NAP (2008); UK NAP (2010); USA NAP (2011). There were, admittedly, other states which were in the drafting phase – eleven years after formally accepting responsibility and acknowledging the need for action. While this may be a limited list, given that UNSCR 1325 was passed unanimously by all member states of the UNSC, it is nevertheless significant that NAPs have in fact been formulated.

Each of the NAPs considered (Dutch, Icelandic, Finnish) reflected the degree of commitment of states to implement the broad strategies inherent in UNSCR 1325 to decrease women’s vulnerability in conflict. They are strategies which strengthen women’s access to decision-making, to a greater degree of independence and to an increased hope of countering social attitudes which expose them to particular violence such as tactical rape during conflict. The plans are the practical measure of commitment at national level to implement policies and principles which form the basis of normative expectations regarding treatment of women in conflict. As such they indicate a varied and generally limited degree of commitment. Most National Action Plans have lacked adequate indicators to evaluate their implementation. Of course, NAPs are not the only way to develop policy on women, peace and security and offer no guarantee that states are seriously committed to implementation of stated strategies. It is possible that a state may claim to be mainstreaming the concerns of UNSCR 1325 into other policy frameworks. However, they can be viewed as a statement of intent to meet agreed responsibilities and to comply with

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what is becoming a normative expectation that strategies will be formulated and
implemented to meet needs as outlined in UNSCR 1325.

Conclusion

Changes in attitudes towards humanitarianism during the 1990s set a context in
which there was progress in discourse leading to normative rejection of tactical rape
and sexual violence in war. At the UNSC, initially in reaction to the public
awareness of tactical rape and cries for action there began movements towards
confronting sexual violence. This eventually led to UNSCR 1325, where there was
recognition that confronting tactical rape and sexual violence in war would require
multi-faceted actions. All member states of the UNSC passed UNSCR 1325. In
doing this, they effectively committed to policies and practices outlined in that
resolution. When reminded of these obligations states were asked to formulate NAPs.
Twenty six had done so by 2011. The quality of those NAPs varies. However, when
compared with an example such as the high level paper of the UK – which might
have been the norm but for pressure from the UN and other states – some of those
NAPs are indicative of some serious consideration.

Despite the slow pace of this aspect of commitment to UNSC 1325 there has
continued to be further development at the UNSC in additional resolutions. Gaps and
omissions of UNSCR 1325 became clear as the international community, while
recognising the developments UNSCR 1325 represented, became stronger in
requiring that more needed to be done. The next chapter will look at how far the
principal elements of UNSCR 1325 had developed and been integrated into
attitudinal and normative change within a decade of the resolution being hailed as
such a milestone for women. It will consider the recognition that UNSCR 1325 did
not provide all the answers to confronting tactical rape and sexual violence in war. It
will also look at the additional resolutions which attempted to increase the efficacy of
UNSC 1325 and their implications for the international commitments and the developing discourse rejecting tactical rape. The pace of these additional commitments has increased since 2008 and they reflect some further normative progress.
UNSCR 1325 was an important step in the development of recognition by the international community of states that tactical rape and sexual violence in war were realities as targeted attacks and deliberate strategies used in many conflicts. It was an important step in stated commitment to confronting tactical rape and sexual violence. UNSCR 1325 had demonstrated preparedness to confront women’s generalised vulnerability. These are vulnerabilities which often arise from generalised community attitudes to women evident in patriarchal societies and societies failing to recognise women’s right to human rights and to equality in political, economic and cultural aspects of life. It was a development in the discourse which, increasingly, was recognising that vulnerability in peacetime is highly likely to result in exacerbated vulnerability in times of conflict. Consideration of UNSCR 1325 has partially begun to answer the question about the degree of commitment to rejecting tactical rape which was really reflected in United Nations Security Council resolutions since the early 1990s. Consideration of the National Action Plans translating UNSCR 1325 into national settings provided an important measure of the degree of serious commitment of states to the elements of the resolution.

This chapter will consider the developments in discourse which followed UNSCR 1325 in the UNSC. This included debate on the relevance of tactical rape and sexual violence in war to issues of security. There were additional resolutions to strengthen, expand and reaffirm the importance of confronting tactical rape and sexual violence in war. Importantly, there was debate by member states, which concluded that sexual violence (and tactical rape which was usually a part of that sexual violence) did fall within the mandate of the UNSC because these violations did have an impact on security. But, the precise type of security was not always clear.
This chapter will, first, analyse developments between the passing of UNSCR 1325 (2000) and the next key resolution regarding women, peace and security, UNSCR 1820 (2008). This will include consideration of the International Criminal Court (ICC). It will, secondly, analyse developments in discourse reflected in the significant debate between member states of the UNSC prior to passing UNSCR 1820. Thirdly, this chapter will analyse the developments reflected in UNSCR 1820. Fourthly, it will analyse UNSCR 1888 (2009) and UNSCR 1889 (2009). Finally, it will analyse developments in 2010 and into 2011 as the discourse continued with UNSCR 1960 (2010). It will analyse the content and the import of these resolutions and the degree of commitment to the developing discourse reflecting international rejection of sexual violence in war, which they demonstrate. It will set the context for understanding the increased links made between tactical rape and security as even the terms ‘tactic’ and ‘security’ began to appear frequently in the discourse around the named resolutions.

The International Criminal Court (ICC)

The international tribunals (ICTY and ICTR) were ad hoc courts, limited in timeframe and geographic focus. Because they were established to try crimes committed only within a specific time-frame and during a specific conflict, and because there was considerable lobbying and advocacy by some states and by international NGOs, there was eventually general agreement among states that an independent, permanent, criminal court was needed. In 1998, the Rome Statute was adopted by 120 states, as the legal basis for the establishment of the International Criminal Court.
By 2011, 116 states were parties and a further 34 had signed but not ratified the Statute.

The ICC is ‘an independent judicial institution, charged with carrying out investigations into and trials of individuals allegedly responsible for the most serious crimes of international concern, namely genocide, crimes against humanity and war crimes’. It is an independent international organisation and is not part of the UN system, although it is funded primarily ‘by states parties as well as by governments, international organisations, individuals, corporations and other entities’. The ICC entered into force July 2002 and has built on the work of the tribunals and concerns regarding tactical rape and sexual violence reflected in UNSCR 1325. The ICC report to the General Assembly, 2011, indicated that the UN continued to provide support and assistance to the Court’ and the Court, engaged closely with States, the UN and regional and intergovernmental organisations to enhance cooperation in the fight against impunity for genocide, crimes against humanity and war crimes. The same report noted meetings between the Court and the Special Representative of the Secretary General on Sexual Violence in Conflict (a post which will be detailed later in this dissertation).

The ICC has a particular mandate to consider sexual violence in conflict. In 2009, the ICC prosecutor, Luis Moreno-Ocampo, outlined the approaches to gender crimes,

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9 International Criminal Court, retrieved 7 August 2011, <www.icc-cpi.int/Menus/ICC/About+the+Court>.
10 A/66/309.
11 A/66/309, para. 101
particularly as they are committed in conflict. He highlighted that the Rome Statute specifically included a mandate to deal with crimes of gender, specifically in Articles 42 (9) and 54 (1) (b). He made the connection with the former Yugoslavia:

The efforts since the mid-1990s to obtain accountability for atrocities committed against women in Bosnia helped establish how rape and other sexual violence could be instrumentalised in a campaign of genocide. This equally contributed to the expanding understanding of gender or sexual violence as war crimes or crimes against humanity.

This direct reference to the ICTY was accompanied by reference to the work of the ICTR, in particular the Akayesu case, described as, ‘the most groundbreaking decision advancing gender jurisprudence world wide’ noting that ‘for the first time in history, rape was explicitly recognised as an instrument of genocide’. By recognising the foundational work of the ICTY and ICTR, the ICC was providing permanent codification of the progress in normative rejection of tactical rape and sexual violence. It was an important development in the fight against sexual violence in conflict which was the focus of UNSCR 1325.

Moreno-Ocampo provided examples from ICC cases. From the Central Africa Republic (CAR) he referred to one case where one party to the conflict had, ‘used rape as a primary weapon of war to terrorise and punish the civilian population…and to create a politically pliable situation.’ This is a clear indicator that, as Moreno-Ocampo himself recognised, there has been an ‘evolution’ regarding gender crimes.

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13 Moreno-Ocampo, p. 3.
14 Moreno-Ocampo, pp. 4, 5.
15 Moreno-Ocampo, p. 5.
16 Moreno-Ocampo, p. 5.
17 Moreno-Ocampo, p. 4.
With reference to the Application for Arrest Warrant for Al Bashir, President of Sudan, he noted that, ‘crimes of rape and sexual violence committed in the Darfur area are an ‘integral part’ of his attempt to destroy’ certain groups and ‘should be charged as genocide’. The connection with findings of the ICTY and ICTR are clear. He concluded, that his office ‘is part of a new system to end impunity’.

*The Years between UNSCR 1325 (2000) and UNSCR 1820 (2008)*

As has been shown, the translation of UNSCR 1325 into national policy and procedure was slow and varied in quality. Much of the initial excitement that accompanied UNSCR 1325 continued as there was wide recognition of its value as a basis for confronting sexual violence in war. But gaps in the resolution became clear and the reality of the limited degree of commitment really being demonstrated by states began to become evident. The reality of tactical rape and sexual violence in war continued to be reported and recognised. The ICTY and ICTR acted to provide new understanding that these were violations of existing international law. Increasingly there was rejection of such violations. It had been established with the two tribunals that there had been widespread rape in Rwanda and the former Yugoslavia. Further reports had emerged from Kosovo of mass rapes. One article, in 2000, referred to more than 20,000 women raped in Kosovo. Reports that rape had occurred in Kosovo also emerged from NGO reports such as that by World Vision. After the conflict in Sierra Leone and reports of mass rapes in that country, the Special Court for Sierra Leone (SCSL) was established in 2002 by agreement between the United Nations and the Government of Sierra Leone ‘pursuant to Security Council Resolution 1315’. The statute of this Special Court allowed ‘prosecution of rape as a crime against humanity and as a violation of common

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18 Moreno-Ocampo, p. 7.
20 Fitzpatrick, *Kosovo*.
Article 3 to the Geneva Conventions of 12 August 1949 for Protection of War Victims and of additional protocol II thereto of 8 June 1977. In 2007, the SCSL convicted three accused for rape as a crime against humanity and for sexual slavery and forced marriage.

The conflict in the Democratic Republic of Congo (DRC) also received wide media attention. In 2004, it was reported that hundreds of thousands of Congolese women had been subjected to sexual violence. It was reported, in 2004, that ‘an estimated 40 rapes occur every day in one province alone’. By 2007, reports were being made of mass rape being carried out by all sides to the conflict in DRC. A UN expert on violence against women wrote that because of the seriousness and urgency of the situation in the DRC, his visit ‘focused mainly on sexual violence, which is rampant and committed by non-state armed groups, the Armed Forces of the DRC, the National Congolese Police and increasingly also by civilians’. His report, in 2007, continued that in one province alone, records indicated, ‘4500 sexual violence cases in the first six months of this year alone. The real number of cases is certainly many times higher as most victims live in inaccessible areas, are afraid to report or did not survive the violence’. What is interesting is that in light of the strategic approaches outlined in UNSCR 1325 this same UN expert also cautioned against:

singling out sexual violence from the continuum of violence that Congolese women experience, which manifests itself in various forms in their homes and communities.

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Violence against women seems to be perceived by large sectors of society to be normal.27

This was reaffirming the growing understanding that confronting sexual violence in conflict must be approached in the context of confronting violence against women in peacetime. This UN expert report recommended that:

empowerment and equality of women, socio-economic development and change of mentalities on gender must be prioritized as integral components of the reconstruction process if sustainable and just peace is to be achieved in the Democratic Republic of Congo.28

This UN expert report reflected the contents and statements expressed in UNSCR 1325 but there was a growing sense that UNSCR 1325 alone was insufficient to deal with tactical rape and sexual violence in war. A further resolution was needed and was achieved - this time more as a result of state advocacy rather than pressure from NGOs.

The Permanent Mission of the United Kingdom to the UN has been credited with being the first mission to begin, in 2005, advocating for another resolution which was ‘more actionable’, which would ‘specifically address the types of gross human rights violations that were increasingly being reported in conflict-related areas’ and which would ‘advance the women, peace and security agenda’.29 Whereas NGOs had been key players in advocating and formulating UNSCR 1325, this time some women’s groups initially resisted advocacy for a new resolution. They were reportedly concerned about reversion to an attitude of women as victims rather than participants

– an attitude which had begun to change after UNSCR 1325.\textsuperscript{30} They were also reportedly concerned that a new resolution would distract from the pressure to have UNSCR 1325 fully implemented.\textsuperscript{31}

In May 2008, the UK and UNIFEM hosted a conference at Wilton Park in the UK, attended by representatives from permanent missions to the UN, country level ministers, military personnel, policy-makers, NGO experts from conflict zones and practitioners and experts with insight to tackling sexual violence. Shortly after this conference, the USA expressed interest in advancing a resolution during its presidency of the Security Council.\textsuperscript{32} While NGOs had little input to the actual wording of this new resolution – certainly much less that with UNSCR 1325 – the NGO Working Group on Women, Peace and Security (NGOWG) eventually agreed minimum requirements for the text of the proposed resolution as the value of sustaining momentum and attention to the women, peace and security agenda. This set the scene for a day-long ministerial level debate on ‘Women, Peace and Security’ and the passing of UNSCR 1820 on June 19, 2008.

\textit{Women, Peace and Security at the Security Council: The Debate Before UNSCR 1820}

The day-long debate which preceded the passing of UNSCR 1820, in 2008, included representatives of member states, of Pacific Small Island Developing States, the African Union and the European Union and was a debate on ‘Women, Peace and Security’.\textsuperscript{33} It is worth looking closely at contributions to the discourse in this debate. It was noteworthy because it presaged the acceptence of sexual violence as an issue of concern and relevance to the Security Council. The language of ‘women, peace

\textsuperscript{30} Achuthan & Black 2009, p. 7.
\textsuperscript{31} Achuthan & Black 2009, p. 7.
\textsuperscript{32} Achuthan & Black 2009, p. 9.
and security’ had begun to take hold, reflected as an issue where concerns of women intersected with security concerns. As the following analysis indicates, comments of speakers reflected the specific interest in the interconnectedness of violence against women and security. In some cases, it will be seen that input from states’ representatives could be interpreted as apportioning blame, deflecting attention towards other players or of furthering issues not immediately perceived as related to rape and sexual violence as instruments of war. Overall, the input from the UN, regional bodies and individual states all indicate a major shift in perception of tactical rape.

The term most frequently used was sexual violence but statements frequently referred directly to rape as a weapon and a tactic of war. Representatives of some member states articulated clearer understandings of tactical rape. The representative of Austria used the term tactic in its statement. It highlighted sexual violence as ‘not only a manifestation of war, but a deliberate wartime tactic’ as well as a security threat.34 The representative of Argentina recognised ‘an increasing use of sexual violence as a political or military tool’ and noted that ‘rape and other heinous forms of sexual violence can be used by agents of the State as a tool to spread terror, to torture and degrade those it considers its ‘enemies’”.35 The representative of Benin recognised that such violence on women ‘was in full contradiction to international standards’.36 The Philippines’ representative stated that sexual violence was ‘deeply rooted in a pervasive culture of discrimination’, highlighted by the unequal power equation that denied equal status to women, ‘which was manifested during conflict through the social, political and cultural norms identifying women and girls as property of men as well as sexual objects’.37 The representative of Liberia noted that

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36 SC/9364, p. 29.
such acts of sexual violence against women during conflict were embedded in cultural beliefs and practices ‘that will have to go’.\textsuperscript{38} Taken together these statements indicate that understanding of the nature, causes and impact of sexual violence were being clarified. While this is a long way from actually reducing the incidence of sexual violence in war, it does at least provide a base for understanding and recognising the issue.

The key outcome of the debate was the acceptance of tactical rape as a Security Council concern. This was expressed by Condoleezza Rice, then Secretary of State of the USA, holding the Council Presidency, when she noted that there had long been debate about whether the use of rape and sexual violence as instruments of warfare was an issue that should be debated by the Security Council and which the Council was authorised to address.\textsuperscript{39} She declared that the broad and high-level participation in the debate that day meant a strong agreement that this was indeed an issue for the SC and the SC would “affirm that sexual violence against women not only affected the safety of women, but the economic situation and security of their nations”.\textsuperscript{40} She added that member states were responsible for holding their troops accountable for any abuse of this recognised expectation that states ‘protect and provide justice for its most vulnerable’.\textsuperscript{41} Many other speakers reiterated these sentiments with reference to security of states as well as security of women. However, as an analysis of other inputs indicates, there was often a lack of clarity regarding the precise type of security being highlighted and there was no definition of women’s security, human security, state security or even international security. The terms frequently appear to have been used interchangeably.

\textsuperscript{38} SC/9364, p. 2.
\textsuperscript{39} SC/9364, p. 6.
\textsuperscript{40} SC/9364, p. 6.
\textsuperscript{41} SC/9364, p. 7.
Various representatives and office-holders of the UN referred to security issues. Ban Ki Moon, the UN Secretary General, spoke of sexual violence as posing ‘a grave threat to women’s security in fragile post-conflict countries’ and undermining ‘efforts to cement peace’. The President of the UN General Assembly referred to the Assembly’s thematic debate on ‘Human Security’ which had resulted in demonstrating the importance that member states ascribed to the integration of ‘human security perspectives into the Organisation’s peace and security work’. The President continued that ‘people-centred solutions at the crossroads of security, development and human rights must be at the heart of efforts to fight gender-based crimes in conflict situations because such violence against women was an inherent and grave threat to human security’. The UN Deputy Secretary General referred back to UNSCR 1325, which she said demonstrated that sexual violence was not just a gender issue but a fundamental security concern.

Major General Cammart, former Division Commander of the UN’s Organisation Mission in the Democratic Republic of Congo (MONUC) who had served for thirty-nine years, referred to what he had seen of the violence against women and girls in conflict and said that ‘even when conflict formally ended and UN peacekeepers had been deployed, women and girls continued to be targeted’. He continued: ‘the current climate of impunity in most post-conflict contexts allows the many forms of violence, including sexual violence to flourish’ and added that often the political will to end the vicious cycle of impunity did not exist. He added: ‘sexual violence must be seen as a threat to international peace and security’. The representative of Panama stated that systematic acts of gender-based violence threatened international

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42 SC/9364, p. 7.
43 SC/9364, p. 9.
44 SC/9364, p. 9.
45 SC/9364, p. 9.
46 SC/9364, p. 10.
47 SC/9364, p. 10.
peace and security.\textsuperscript{48} So, within just these contributions to the debate there was reference to women’s security, human security, security linked with development and human rights and security as a threat to international peace and stability. Progress in recognising the links between women’s security and the need to protect them from tactical rape had been made. The links between women’s security and the security of states and international stability was implied but still not clearly defined.

Member states also contributed to the discourse with diverse references to security. The representative from Croatia referred to the need for ‘social norms’ to ensure ‘women’s physical and economic security’ and informed the gathering that Croatia was integrating a gender perspective into its national security policy.\textsuperscript{49} In this and some other statements there was recognition emerging of the links between women’s security and economic security of states, but still the focus was on security in some form or another. The UK said that the international community now better understood how sexual violence damaged prospects for post-conflict recovery and that the Security Council should show leadership by recognising that widespread and systematic sexual violence could pose a threat to international peace and security.\textsuperscript{50} Belgium believed that sexual violence against women and children was an issue of international peace and security and the international community should mobilise all efforts to end sexual violence as a weapon of war.\textsuperscript{51} Costa Rica said that systematic sexual violence exacerbated conflicts and was an enormous obstacle to resolving them.\textsuperscript{52} Similar statements were made (\textit{inter alia}) by representatives of Ireland, the Republic of Korea, Tonga and Bosnia Herzegovina. These all reflected progress in seeing sexual violence and its aftermath as an issue demanding attention – not because it is an issue for women but because it is an issue for communities, for states

\begin{itemize}
\item \textsuperscript{48} SC/9364, p. 16.
\item \textsuperscript{49} SC/9364, p. 11.
\item \textsuperscript{50} SC/9364, p. 12.
\item \textsuperscript{51} SC/9364, p. 13.
\item \textsuperscript{52} SC/9364, p. 15.
\end{itemize}
and for the international community of states. The representative of Japan said clearly: ‘the matter should not be treated as only a women’s issue’. This evidenced real change from attitudes early in the 1990s. The representative of Ghana was clear that rape ranked highly among the core security challenges of the time and should not be viewed as only a human rights or women’s issue. Ghana’s representative also called for security institutions to be encouraged to work more closely with women’s organisations and this was just one of the calls for specific action including intergovernmental oversight of UNSCR 1325 because responses of states had been ‘woefully inadequate’.

A number of member states placed emphasis on how to respond to the issue. France referred to doubts which had been raised as to whether or not a debate on sexual violence in armed conflict should be included in the Security Council which debated peace and war. France believed that peace could not be re-established while remaining silent about the violence done to women and with a realisation that ‘law must be supported by action’, it promised that the EU would make the issue a priority ‘on both political and financial levels’. By making specific reference to financial priorities for action France was sending a strong message of commitment. Rhetorical commitment must be accompanied by practical commitment, especially by enabling practical action, which means providing funds. In contrast, Vietnam urged that any action guard against unnecessary administrative and financial burdens for member states – a message that calling for financial commitment could impact on all states and therefore was not to be taken lightly. This might be interpreted as a difference between the relative strengths of states’ economies but it did highlight that

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53 SC/9364, p. 16.
54 SC/9364, p. 17.
55 SC/9364, p. 17.
57 SC/9364, p. 15.
actually financing steps to achieve the goals set out in resolutions could not be taken for granted.

The debate highlighted a range of diverse issues in this important discourse of confronting sexual violence. References to security were common. The representative of Israel referred to the Wilton Park Conference and recommendations made there that sexual violence be viewed as a security issue and that the international community should identify the circumstances under which sexual violence threatened national and international peace and security.\textsuperscript{58} The representative of Israel also stated that a there was need for ‘change in societal attitudes and norms on sexual violence’.\textsuperscript{59} The act of states actively calling for such normative change is an important step in achieving it. This statement also referenced the need to confront societal attitudes – patriarchy has been shown to be a factor in the efficiency of tactical rape and sexual violence in war. The representative of Germany, stating that sexual violence was a security problem requiring a systematic security response, supported ‘a stronger normative and operative framework on gender equality and empowerment’ and asked that the ‘topic should be mainstreamed into the Council’s work programme, including in its discussions of conflict and post-conflict situations’.\textsuperscript{60} This was another indicator that the issue demanded ongoing attention as part of the work of the UNSC, mainstreaming it into core security considerations. The representative of Canada referred specifically to Sudan, DRC and the wider Great Lakes region where sexual violence was a clear threat to international peace and security and where the problem required a ‘security-based response’.\textsuperscript{61} These calls for inclusion in mainstream work of the UNSC were echoed in the contribution from the representative of Ecuador, which stated that ‘sexual

\textsuperscript{58} SC/9364, p. 20.
\textsuperscript{59} SC/9364, p. 20.
\textsuperscript{60} SC/9364, p. 25.
\textsuperscript{61} SC/9364, p. 22.
violence, including violence perpetrated during times of armed conflict, should be systematically and permanently examined by the Council’. 62

The two states which had been most resistant to acknowledging that sexual violence was an issue for the Security Council were China and Russia. However, even these two states, so often reluctant to be involved in issues of humanitarianism and human rights at the UNSC, had been persuaded to agree and eventually to pass a further resolution, UNSCR 1820, which followed this debate. A letter from seventy-one women’s organisations in the DRC, calling for help, has been credited with contributing to persuading them to support the trend evident in the attitudes of the majority of states. 63 The Russian spokesperson did eventually condemn rape and sexual violence and stated that the international community must address the issue of women, peace and security broadly ‘not just as a matter of sexual violence’. 64 This representative of Russia was more guarded regarding the UNSC role. While he said that responding to widespread and systematic violence against women should be a priority for the UN, he cautioned against ‘duplication of efforts in the field’ as the draft resolution being considered appeared to be a repetition of work being done by the Assembly which also requested the General Secretary to report on sexual violence. 65 However, the statement did include, along with a call for condemnation, a call for ‘strict sanctions, especially in situations where the practice was widespread and systematic’. 66 Admittedly, the nature of such sanctions was not spelled out but it was an inclusion which could be read as a serious concern. When the resolution was eventually put to the UNSC, Russia agreed to it. China also agreed to the resolution. In its statement it had urged that the UNSC should focus on prevention of conflicts,

62 SC/9364, p. 23.
63 Achuthan & Black p. 9.
64 SC/9364, p. 16.
65 SC/9364, p. 16.
66 SC/9364, p. 16.
peacekeeping and post-conflict reconstruction. These were, of course, already established as the ongoing work of the UNSC. He condemned sexual violence, called on all governments to investigate and punish those who perpetrated such violence, while urging that ‘sexual violence should not be treated as a stand-alone issue’. There was not a clear commitment to the UNSC undertaking to act on sexual violence in war per se, but it was close enough to ensure the resolution would eventually pass. China and Russia were also among the states which focussed on the role of the UN itself in confronting rape by its own troops of peacekeepers. The Secretary General had already noted a policy of zero tolerance for abuses by its peacekeepers. This policy certainly needed affirmation but one cannot help but feel that a focus on this element of action might be construed as a way of shifting focus away from specific states and ensuring that the UN took its share of responsibility.

Many states acknowledged the shortcomings of UNSCR 1325 and the shortcomings in its implementation. This was the basis for recognising that any new resolution needed accountability, benchmarks and focal points in the UN system to ensure follow up on implementation at national levels. The representative of Italy said that the time had come to ‘shift gears’ in implementing 1325 because the link between sexual violence and the maintenance of peace and security demanded immediate action. The representative of Indonesia referred to UNSCR 1325 as a guidepost but recognised that more work needed to be done. The representative of Tanzania supported UNSCR but called for ‘stern measures’ to end impunity. It commented that despite the number of calls in various Security Council documents to protect women and girls, there was an ‘escalation of systematic and brutal acts as calculated

69 SC/9364, p. 2.
70 SC/9364, p. 16.
71 SC/9364, p. 15.
72 SC/9364, p. 25.
tools of war against civilians’.\textsuperscript{73} This was one of the states which reminded the gathering that such attacks were in clear violation of existing international law and as such, brought a responsibility on the UNSC to take real action. Concerned for a more effective follow up to UNSCR 1325, the representative of Netherlands referred to national action plans and noted that at last more states were formulating them.\textsuperscript{74} Some states called for help in progressing actions with Spain identifying a need to study ‘how to structure and institutionalise an efficient response’.\textsuperscript{75} The representative of Bangladesh noted that there was still inadequate understanding of the gender dimensions of conflict, a lack of understanding which led to gaps in institutional capacity to address’.\textsuperscript{76} These contributions are indicative of a narrowing of focus to specific actions needed to ensure specific effective action. It is true that they still did not really detail with whom or where precisely responsibility for these actions should be placed, but these states were at least prepared to engage in the debate and generally accept the need for action. At some level, these were positive calls for specific action.

While the final resolution, which was the result of this debate, is a key step further in the development of normative rejection of tactical rape, it is the debate itself which indicates the progress made in the understanding of states and their preparedness to accept responsibility for confronting it. It demonstrated a preparedness to shoulder responsibility for sexual violence in war. It demonstrated an understanding that sexual violence was an issue of security and whether it was security for women, for humanity, for states or for the international community, it fell under the responsibility of the Security Council to deal with it. At the end of the day-long debate UNSCR 1820 was passed and led then to further commitments and later

\textsuperscript{73} SC/9364, p. 25.
\textsuperscript{74} SC/9364, p. 20.
\textsuperscript{75} SC/9364, p. 19.
\textsuperscript{76} SC/9364, p. 19.
resolutions – all under the rubric of ‘women, peace and security’. These resolutions are the formal expressions of attitudes and commitment which comprised important discourse in the development of normative rejection of tactical rape.

*Women, Peace and Security: UNSCR 1820 (2008)*

The first operative paragraph of UNSCR 1820 was a strong statement about the reality of tactical rape where the UNSC ‘stresses’ that sexual violence, ‘can be used or commissioned as a tactic of war’ and recognised that it ‘can exacerbate situations of armed conflict and may impede restoration of international peace and security’. The verbs italicised, as in any resolution, may indicate the level of seriousness. Having acknowledged this reality the text continued that the UNSC:

> affirms in this regard that effective steps to prevent and respond to such acts…can significantly contribute to international peace and security, and expresses its readiness when considering situations on the agenda of the Council, to, where necessary, adopt appropriate steps to address widespread or systematic sexual abuse.

So, the existence and the potential for impact on international peace and security were beginning points for the resolution. The links between women, peace and security had been explicitly recognised.

Although the resolution stated that such acts (of sexual violence) ‘can contribute to international peace and security’ it fell just short of saying they did represent a threat. While the resolution then expresses readiness to confront sexual violence, it failed to be explicit about it coming under the authority and duty of the UNSC to confront it

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77 S/Res/1820 para. 1.
78 S/Res/1820, para. 1.
under Chapter VII of the Charter of the UN.\textsuperscript{79} However, it then aligned sexual violence with situations where the UNSC would be considering items on its agenda, accepting that dealing with such sexual violence was within the scope of responses and concerns of the UNSC. There have been concerns expressed by some women’s groups that the resolution applied only to sexual violence and not to other forms of gender-based violence.\textsuperscript{80} While this is a legitimate concern, the resolution did maintain momentum on UNSCR 1325 and did continue to reflect a strategic approach to women’s vulnerability generally in peacetime as well as in conflict. For these reasons the more specific focus on detailing responses to sexual violence should be seen as progress within the broader context of women’s vulnerability to violence.

In paragraph 5 of UNSCR 1820, there is what could be seen as a major development reflecting the seriousness with which the issue was being taken – the resolution ‘Affirms its intention’ when ‘establishing and renewing state-specific sanctions’ to consider the issue and ‘take into consideration the appropriateness of targeted and graduated measures’.\textsuperscript{81} The application of sanctions is a key tool in the armament of the UNSC and by referring to sanctions in the same paragraph as referencing graduated and targeted measures, it may be taken that the UNSC would consider using this tool when confronting sexual violence in war. This is another strong measure of the seriousness with which the issue was being viewed. There can be criticism of this wording as being too weak but the inclusion of the paragraph was an important sign of progress. It is, of course, acknowledged that the likelihood of such sanctions being applied without a veto from China and Russia is slight. However,


\textsuperscript{80} Achuthan & Black, p. 22.

\textsuperscript{81} S/Res/1820, para. 5.
this analysis of progress on the issue of women, peace and security has demonstrated that change happens slowly and incrementally rather than in great leaps forward.

This overall acceptance of responsibility did clear the way for practical responses and reactions such as that expressed in the previous paragraph where it ‘demands the immediate and complete cessation by all parties to armed conflict of acts of sexual violence against civilians with immediate effect’. This is strong language for a resolution and reflects a degree of seriousness on the part of member states to confront the issue. The next paragraph continued in a similarly strong vein with a demand that all parties protect civilians, including women and girls, from all forms of sexual violence. Throughout the resolution, responsible agents such as parties to conflict, states in conflict, states, regions and sub-regions were identified as requested to take action.

Specific action was urged on the Secretary General of the UN and UN agencies. Countries contributing forces, civil society and NGOs and police forces were identified for specific action. The role of the Peacebuilding Commission was stressed. The Peacebuilding Commission (PBC) was established in 2006 as an intergovernmental advisory body to support peace efforts in countries emerging from conflict, and as a key addition to the capacity of the International Community in the broad peace agenda. It has a unique role in bringing together all of the relevant actors, including international donors, the international financial institutions, national governments, troop contributing countries. Its role includes marshalling resources and advising on and proposing integrated strategies for post-conflict peacebuilding and recovery and, where appropriate, highlighting any gaps that threaten to undermine peace. The resolution called upon the PBC for provision of advice and

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82 S/Res/1820, para. 2.
83 S/Res/1820, para. 3.
recommendations regarding particularly post-conflict strategies for ways to address sexual violence committed during and in the aftermath of conflict.\textsuperscript{85} There was direct reference to regional bodies in reconstruction and rehabilitation processes, which proved to be an astute move as it will have contributed to the formulation of the African Union gender policy of 2009 which called on its members and states to use UNSCR 1325 and UNSCR 1820 as points of reference in working to protect women and girls.\textsuperscript{86}

There were strong indications in UNSCR that the rejection of sexual violence in war was becoming institutionalised at international level. This specifying of particular actors and agencies was an improvement on UNSCR 1325 where implementation of strategies was largely left to states as a general body, with a few directions to the Secretary General and the UN agencies. In this resolution the Secretary General is requested to ‘systematically include in his written reports to the Council on conflict situations his observations concerning the protection of women and girls and his recommendations in this regard’.\textsuperscript{87} This meant that all considerations of conflict in any country would include consideration of the protection of women and girls – a major change in procedures. A detailed report on implementing UNSCR 1820 was also requested but this seemed to be a one-off request for focussed follow up, and concerns about this continuing were clarified and confronted in later resolutions to be discussed in this chapter.

The resolution was clear about the subject of its concerns. The main body of UNSCR 1820 dealt with sexual violence when it is used as a tactic of war to deliberately target civilian populations in order to achieve political and military objectives. It

\textsuperscript{85} S/Res/1820, para. 11.
\textsuperscript{87} S/Res/1820, para. 9.
referred to sexual violence when it constitutes a widespread or systematic attack on
civilian populations, including opportunistic attacks as a consequence of
environments of impunity. It noted 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’. The work of the international tribunals was reflected in this
wording as these judiciaries had established that tactical rape and sexual violence in
war were clear violations of existing international law. The resolution highlighted
specific related issues such as sexual exploitation and abuse; command
responsibility; issues of abuse which may arise in UN camps for refugees and
internally displaced persons.

Importantly the resolution approached the issue of sexual violence in conflict as
something which must be confronted. It was not treated as inevitable. It was treated
as a violation of existing laws and something to be rejected and opposed and for
which there must be accountability. By affirming that sexual violence of this nature
is against international laws and standards, the resolution presented a tool for
advocates, civil society and NGOs to use in work to make governments act and in
reforming national laws and ensuring appropriate, effective, relevant national
legislation. This affirmation of sexual violence as a deliberate tactic rather than as an
unavoidable aspect of conflict provided a basis for excluding amnesty and for
disallowing impunity for those who perpetrate such violence.

What was missing in the resolution was any direction to specific overall leadership
for ensuring implementation by the various actors and there were no monitoring
mechanisms included. While the Secretary General was requested to include the
issue in reports and to provide at least one report on UNSCR 1820 itself, there was
no mention of any specific focal point for ensuring implementation and monitoring

88 Achuthan & Black, p. 10.
89 S/RES/1820, para. 4.
states’ or even the UN agencies’ actions. The IWTC assessment of the challenges and opportunities of UNSCR 1820 outlined a number of possible avenues for strengthening the impact of the resolution.\(^90\) There was advocacy for formation of a UNSC Working Group on women, peace and security, similar to the existing working group on Children and Armed Conflict. Other recommendations included setting time frames for certain actions, more explicit monitoring and measurements of progress, with overall goals of preventing widespread violence from leading to cultures of impunity and strengthening effective accountability mechanisms to prosecute perpetrators.\(^91\) These recommendations recognised that while there will likely be similarities between conflicts the situation of women and girls needed to be considered individually for each community or group involved or impacted by conflicts. These were valuable insights to areas where further work was needed to build on UNSCR 1820 and UNSCR 1888 (2009)\(^92\) filled some of these gaps.

**UNSCR 1888 (2009)**

UNSCR 1888 was passed in September 2009 and it built on UNSCR 1820, to address lack of specificity in that resolution which had, in its turn, tried to address lack of specificity in UNSCR 1325. The resolution in 2009 reaffirmed SC concerns expressed in UNSCR 1820 about sexual violence as a tactic of war and reiterated its understanding of the nature, extent and impact of such violence against women. However, it went further than UNSCR 1820 had done and listed twenty-nine operative paragraphs, most of which were considerably more specific than in previous resolutions.

UNSCR 1820 had included a demand that all parties immediately take measures for the protection of women and children. UNSCR 1888 included in those measures a

\(^90\) Achuthan & Black, pp. 33-39.
\(^91\) Achuthan & Black, p. 33.
demand that those measures include, ‘vetting candidates for national armies and security forces to ensure the exclusion of those associated with serious violations of international humanitarian and human rights law, including sexual violence’.\textsuperscript{93} This was approaching the concern to articulate practical steps for states to take as they met their responsibilities under previous resolutions. There were also further steps in institutionalising rejection of sexual violence in war. UNSCR 1888 called on the Secretary General to identify and appoint a Special Representative to provide ‘coherent and strategic leadership’ in coordination and collaboration with other entities primarily through the inter-agency initiative ‘United Nations Action Against Sexual Violence in Conflict’ in situations of particular concern regarding sexual violence.\textsuperscript{94} The Special Representative was to work with UN personnel on the ground and national governments to strengthen the rule of law. The Special Representative was to include information about the prevalence of sexual violence in reports to the Security Council by UN peacekeeping missions. Teams of experts were to be immediately deployed to situations of particular concern with respect to sexual violence in armed conflict, working through the United Nations’ presence on the ground and with the consent of the host government, to assist national authorities to strengthen the rule of law.\textsuperscript{95} These were specific steps to be taken to provide the leadership and focal points missing in UNSCR 1820. Responsibilities and responses for practical confrontation of sexual violence were to be placed clearly within UN structures.

Concerns which had been voiced about reporting in UNSCR 1820 were also addressed. UNSCR 1888 registered specific steps regarding both monitoring and reporting with calls for the Secretary General to devise specific proposals to ensure more effective monitoring and reporting within the UN system on the protection of

\textsuperscript{93} S/RES/1888 para. 3.
\textsuperscript{94} S/RES/1888, para. 4.
\textsuperscript{95} S/RES/1888, para. 8.
women and children from rape and other sexual violence – setting a time frame of three months for him to comply with these requests. In line with the vetting requirements of applicants to security posts as noted in paragraph 3, UNSCR also asked for annual reports to provide details on the perpetrators of any sexual violence. There was a request for the Secretary General to include, where appropriate, in his regular reports on individual peacekeeping operations, information on steps taken within those operations, to implement measures to protect civilians, particularly women and children, against sexual violence. There were other paragraphs regarding peacekeeping and encouragement for states, ‘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’. These paragraphs reflected the growing awareness that confronting sexual violence in war required multi-faceted responses to meet the needs of survivors. They went a long way to meet concerns regarding perceived gaps in UNSCR 1820. In addition there was a specific request for regular reports from the Secretary General to the UNSC on the implementation of UNSCR 1888 and these were to include information regarding ‘parties to armed conflict that are credibly suspected of committing patterns of rape or other forms of sexual violence, in situations that are on the Council’s agenda’. This certainly seemed to send a message that violations of international law regarding sexual violence were to be taken seriously.

An important addition to the lists of actors which had been a feature of UNSCR 1820 was the mention of leaders at the national and local level, ‘including traditional leaders where they exist and religious leaders’ with encouragement for them ‘to play a more active role in sensitising communities on sexual violence to avoid

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97 S/RES/1888, para. 25.
99 S/RES/1888, para. 28.
marginalisation and stigmatisation of victims, to assist with their social reintegration, and to combat a culture of impunity for these crimes’. This was a recognition that the issue of sexual violence in conflict had some roots in cultural and societal attitudes and that there would be no international acceptance of cultural or religious differences as excuses for such use of tactical rape or other sexual violence. It was also a recognition that international norms needed to be substantiated and institutionalised at local levels.

While UNSCR 1888 was clearly an improvement on previous resolutions regarding reporting and regarding spelling out more precisely a serious commitment to confronting tactical rape, it did still omit some areas. It did not include specific accountability and implementation mechanisms. There was a focal point in the recommended appointment of a Special Representative and there were calls for agencies to report. But the mechanisms and methods for the UNSC to ensure and monitor implementation of its agreed actions were still missing. What is pertinent is that this resolution followed so quickly on UNSCR 1820. The pace of action seemed to be increasing. There was also little doubt that even if resolutions did not yet fulfill all requirements to ensure comprehensive confrontation of sexual violence in war, there had been major and important steps towards achieving agreement that such action was not normatively acceptable.

**UNSCR 1889: Building on UNSCR 1325**

In October of 2009, the same year as UNSCR 1888 was passed, a further resolution, UNSCR 1889, was also unanimously passed by the UNSC. While UNSCR 1888 had built on UNSCR 1820, this resolution emphasised specific elements more directly enunciated in UNSCR 1325. It emphasised elements of that earlier resolution

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100 S/RES/1888, para. 15.
which called for women to be recognised as participants and agents in creating sustainable peace and security. This was an affirmation that confronting tactical rape required broad strategies to ensure women’s capacity and potential to be part of creating the communities in which they lived and in contributing positively to the way those communities dealt with issues of peace and security.

The second paragraph in the preamble of UNSCR 1889 was an important re-statement of the connection between women, peace and security and the role of the UNSC itself. The resolution is set in the context of the UNSC being ‘guided by the purposes and principles of the Charter of the United Nations, and bearing in mind the primary responsibility of the Security Council under the Charter for the maintenance of international peace and security’. The debate about whether or not this issue of women, peace and security is one for the UNSC has been concluded. The preamble referred to the report of the Secretary General of 16 September 2009 in which it was noted that obstacles to implementation of UNSCR 1325 related to the breadth of that resolution. That report of the Secretary General had noted that the breadth of UNSCR 1325 often meant that ‘novelty and creativity’ were required in implementation of the resolution and the difficulties which arose from a ‘weak implementation framework and absence of clear targets and reliable data’. It had become clear that more work was needed to make UNSCR 1325 achievable.

The preamble to UNSCR 1889 also enumerated a diverse range of concerns and obstacles to women’s involvement in ‘the prevention and resolution of conflicts and participation in post-conflict public life’, and recognised that obstacles arose from a more diverse set of causes than those recognised in UNSCR 1325. These causes

102 S/RES/1889.
105 S/RES/1889, preamble 8th paragraph.
were noted as being the result of ‘violence and intimidation, lack of security and lack of rule of law, cultural discrimination and stigmatisation, including the rise of extremist or fanatical views on women, and socio-economic factors including the lack of access to education’.

This builds on the inclusion noted above about the references to community and religious leaders in UNSCR 1888. Overall the preamble recognised that the marginalisation of women could delay or undermine the achievement of durable peace, security and reconciliation. It noted that women in situations of armed conflict and post-conflict situations still continued to be ‘often considered as victims and not as actors in addressing and resolving situations of armed conflict’ and it stressed ‘the need to focus not only on protection of women but also on their empowerment in peacebuilding’.

This answered to some degree any possible concerns that UNSCR 1888 would reverse progress made regarding women as participants and not merely victims in issues of peace and security. As the preamble also expressed concern that women’s capacity to engage in public decision-making and economic recovery often did not receive adequate recognition or financing in post-conflict situations, it could be expected that the operative paragraphs would include some specific actions. The mention of finance often reflects seriousness in approach to issues.

Consequently major developments in UNSCR 1889 had a practical focus on the participation of women in peace processes, peacekeeping, conflict resolution and peacebuilding. It called for increased participation of women at all levels of the peace process, particularly as high-level mediators and on mediation teams as well as in peacekeeping as special representatives and special envoys. It reiterated that women had a vital place as participants in preventing and resolving conflicts with

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106 S/RES/1889, preamble 8th paragraph.
107 S/RES/1889, preamble 11th paragraph.
108 S/RES/1889, preamble 10th paragraph.
109 S/RES 1889, paras 4, 15.
frequent reference to the need to ensure such participation. It requested the Secretary General to include gender advisors on relevant missions. As part of advancing the concerns regarding women’s development donors were ‘urged’ to address women’s empowerment and insist on transparency in the tracking of funds. All of these actions represented advances in taking seriously the recognition that confronting tactical rape and sexual violence in conflict required broad-ranging strategies to confront societal status, attitudes and inequalities which contributed to women’s vulnerability in peace – and vulnerability in conflict. They were steps which recognised that women have capacity to be involved in processes relating to their own security.

UNSCR 1889 had a general direction of strengthening and making more specific the elements in UNSCR 1325. There were calls for states to continue developing National Action Plans for the translation of UNSCR 1325 strategies into national policy and practice and to collect relevant and, where appropriate, gender-aggregated data for the development of national strategies to help understand women’s needs. UNSCR 1889 did not omit reference to UNSCR 1888, requesting that the Secretary General ‘ensure full transparency, cooperation and coordination of efforts between the Special Representative of the Secretary General on Children and Armed Conflict and the Special Representative of the Secretary General on sexual violence and armed conflict whose appointment has been requested by its resolution 1888 (2009)’.

A key development in working for more practical application of the principles set out in UNSCR 1325 was a call for recommendations in 2010 on how the Security

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110 S/RES/1889, paras 1, 8, 15.
111 S/RES/1889, para. 7.
112 S/RES/1889, para. 9.
113 S/RES/1889, paras 5, 10.
114 S/RES/1889, para. 16.
Council should receive, analyse, and act on information of violations of UNSCR 1325. This was a direct request for the Secretary-General to submit to the Security Council within six months, ‘a set of indicators for use at the global level to track implementation of its resolution 1325 (2000), which could serve as a common basis for reporting by relevant United Nations entities, other international and regional organisations, and Member States, on the implementation of resolution 1325 (2000) in 2010 and beyond’.\textsuperscript{115} There was also a request for the Secretary General to provide a review of progress on UNSCR 1325 which was to include an assessment of the processes by which the Security Council received, analysed and took action on information pertinent to UNSCR 1325 and recommendations on further measures to improve coordination across the UN and with member states and civil society.\textsuperscript{116} Taken together these actions represent developments towards working to put into practice and policy, issues recognised in UNSCR 1325 and informing states so that they were better equipped to confront the reality of the impact on women of sexual violence in conflict. The request that all country reports include information on the situation of women and girls again reinforced the acceptance that this was an issue of work for the UNSC.\textsuperscript{117}

While again this resolution was an advance in the commitment of the UNSC to confront the issues around women, peace and security there remained some shortfalls. The resolution still failed to identify or refer to specific sanctions for violations of relevant international law and violations of the norm rejecting tactical rape. There were still no strong enforcement measures but more detailed reporting was a useful step. The sad reality was that tactical rape and sexual violence in war continued even though efforts to confront, prevent and bring perpetrators to account were becoming more prevalent at the international level.

\textsuperscript{115} S/RES/1889, para. 17.
\textsuperscript{116} S/RES/1889, para. 18.
\textsuperscript{117} S/RES/1889, para. 5.
Late in 2010, there were further significant developments at the Security Council on the issue of women, peace and security. The first was the report of the Secretary General to the UNSC on September 28, 2010.\textsuperscript{118} This was recognition that a decade had passed since UNSCR 1325 and while the role of women and peace was ‘now more clearly integrated into the Council’s deliberations’, there remained much more to do before sexual violence was fully confronted.\textsuperscript{119} Some specific developments were identified in the work of the UN, some states and civil society but, importantly, this report was a response to calls made in UNSCR 1889 for indicators relating to monitoring progress because despite increased commitment to confronting issues such as tactical rape, ‘significant achievements are difficult to identify and quantify’.\textsuperscript{120}

There was a list of the number of resolutions and recommendations which had included reference to women, peace and security in the first half of 2010 and these included: seven out of fifteen Presidential Statements and thirteen out of twenty-eight resolutions.\textsuperscript{121} It was understandable that with such a degree of inclusion in the relevant aspects of UNSC work, there was a need for some way to monitor the impact of the resolutions. The report noted that this would need commitment from the Council and efficient and effective approaches in processing the information which came to the table from diverse sources such as UN agencies, states, civil society and NGOs.\textsuperscript{122} There was a list of tools such as reports from experts and specific missions, assessments commissions of enquiry, which the UNSC could use for information and a related suggestion that the UNSC could issue regular statements to media to stimulate national and international discussion and

\begin{footnotes}
\item[118] S/2010/498 (2010).
\item[119] S/2010/498, para. 6.
\item[120] S/2010/498, para. 3.
\item[121] S/2010/498, para. 78.
\item[122] S/2010/498, paras 74 & 76.
\end{footnotes}
momentum. Section IV of the report was a detailed review of the first UN system-wide Action Plan 2008-2009 on the implementation of UNSCR 1325.

In direct response to calls from UNSCR 1889, as noted above, this report included a detailed list of indicators to be used to monitor, analyse and review progress. The process towards developing these indicators had begun earlier with an Open Debate in April 2010 after which the Secretary General had been requested to carry out further consultations with SC members and other stakeholders. The indicators as attached to the report included some which were qualitative, some quantitative, and included some financial tracking. On October 26, 2010, the Security Council also held an Open Debate on Women, Peace and Security which considered the twenty-six indicators contained in the annex of the report. The Council adopted a Presidential Statement. This was a non-binding political statement which expressed support for taking forward the indicators but did not specifically endorse them, as had been hoped for by the report itself. However, at least by supporting them, the adopted statement allowed for the UN and relevant actors to begin operationalising them.

The next significant development was that on November 24, 2010, the Secretary General presented a report to the UNSC in which he referred to the mass rapes being carried out by all sides in the ongoing conflict in the DRC late in July and in August of that year, which had ‘provoked unprecedented public outrage’. Such outrage at the ongoing practice of rape as a tactic in the attacks on civilians was sustained by public reports of such abuses and the UNSC recognised that it could not be ignored. In this report, the Secretary General noted that sexual violence ‘is not specific to any

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123 S/2010/498, para. 89.
124 S/2010/498, para. 112.
125 S/2010/498, para. 118.
era, culture or continent’.

He continued to comment that rape is not synonymous with sexual violence which covers a wider range of acts under international law and he highlighted the fact that disaggregating sexual violence into more specific actions ‘permits a more focused approach’.

This was a recognition that there are diverse types of rape in war and one of those types is tactical rape, not just opportunistic rape. Rejection of tactical rape such as that evident in the DRC was contributing to rejection of other abuses which fell under the general definition of sexual violence. Importantly, the report continued that while sexual violence had for long been approached as a matter of reproductive health or development, ‘the international community has begun to embrace the concept of conflict-related sexual violence so as to address the security-related social drivers of such violence’.

This was reinforcement of the strategic approach to confronting tactical rape: recognising that tactical rape is one element of sexual violence and recognising that preventing it requires a broad base of strategies targeting root causes as well as outcomes.

In the report there was reference to questions remaining in some circles even after UNSCR 1820 as to how dealing with sexual violence ‘corresponds with the fundamental purpose of security institutions’.

The answer to such questions was made clear in that while some people still see ‘bullets, bombs and blades as war’ and rape as a ‘random disciplinary infraction or private aspect of culture-based gender relations’, sexual violence in war must be confronted under definitions found in international law.

The understanding of tactical rape as a purposeful and political act, while still not completely accepted in some circles, had certainly developed. The report notes that in the DRC, the numbers of military casualties were ‘dwarfed’ by the numbers of rape, killing and destruction experienced by civilians so that sexual

\[128\] S/2010/604, para. 3.
\[129\] S/2010/604, para. 4.
\[130\] S/2010/604, para. 6.
\[131\] S/2010/604, para. 7.
violence has become a ‘front line consideration’, that the collapse of the rule of law often enables new and more brutal forms of rape and that rape of boys and men was being included in the ‘repertoire of armed and political violence’ as a method of attacking ‘community norms and structures’.133

Despite this growing awareness and a developing discourse rejecting tactical rape, the report noted that it was remarkable that two days after UNSCR 1820 was passed and in a conflict where the ICC was investigating a case which alleged the number of rapes far outweighed the number of killings in the Central Republic of Africa, a peace accord between the Government and three armed groups was signed that made no mention of sexual violence.134 There followed a detailed report of initiatives and progress aimed at implementing UNSCR 1820 and 1888, a list which demonstrates serious attempts to respond to those resolutions. However, before making further recommendations the report noted, ‘tragically, laudable progress at the level of policy has been overshadowed by the surge of sexual violence’ in the DRC and its continuing prevalence elsewhere.135 It was, indeed, tragic that the attention and growing commitment at international level did nothing to prevent the suffering of the women in the DRC. But, the increased awareness, the increased recognition that such suffering is a reality and the increased – even if not yet thorough – rejection of such suffering does provide a basis for future confrontation of the causes, impact and perpetration of tactical rape and sexual violence in conflict.

Recommendations in this report of the Secretary General included some very specific actions. The system of monitoring, analysing and reporting on incidents of sexual violence was proposed in response to a ‘gaps analysis’ identified in paragraph 26 of

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134 S/2010/604, para. 15.
135 S/2010/604, para. 46.
UNSCR 1888.\textsuperscript{136} The UNSC was requested to support the development and application of this monitoring system. The Secretary General also proposed applying increased pressure on perpetrators through sanctions and by listing in annual reports the names of those parties engaged in sexual violence in situations of armed violence.\textsuperscript{137} This was a further step forward in that such listing had the potential to publicise and shame those who violated what had become a norm rejecting sexual violence. These recommendations were taken up for discussion in the formulation of UNSCR 1960 which followed within weeks.

Further significant developments came on December 16 and 17, 2010. On December 16, 2010, UNSCR 1960 (2010) was passed and this was followed by a Security Council Open Debate on Sexual Violence in Conflict.\textsuperscript{138} This resolution followed the trend of previous reports, attempting to create institutional structures and processes to confront sexual violence in conflict and to act more deliberately for protection of women and rejection of impunity for those who perpetrated such violence. It built on the Secretary General’s report S/2010/604 discussed above. Specifically, this resolution encouraged the Secretary General to include in his annual reports to the UNSC, detailed information on ‘parties to armed conflict that are credibly suspected of committing or being responsible for acts of rape or other forms of sexual violence’ and to provide an annexed list of the parties ‘that are credibly suspected of committing or being responsible for patterns of rape and other forms of sexual violence in situations of armed conflict on the Security Council agenda’.\textsuperscript{139} This was a clear decision to apply public pressure and condemnation of those who perpetrated sexual violence (which would include tactical rape) and indicative of the growing import of the discourse rejecting such abuses and violations of international law. The

\textsuperscript{136} S/2010/604, para. 46 (e).
\textsuperscript{137} S/2010/604, para. 46 (a) & (c).
\textsuperscript{138} S/RES/1960 (2010).
\textsuperscript{139} S/ RES/1960, para. 3.
same paragraph set out the use to be made of these lists as the SC expressed, ‘its intention to use this list as a basis for more focused United Nations engagement with those parties, including, as appropriate, measures in accordance with the procedures of the relevant sanctions committees’. This listing mechanism is similar to that relating to offenders against Children and Armed Conflict (CAAC), although CAAC has a specific working group and the CAAC mechanism and Resolution 1882 already require the UN System to gather information on and publish a list of perpetrators of sexual violence where the victims are children. This is a significant step in institutionalisation and bringing offenders to account. UNSCR 1960, by endorsing a similar system for sexual violence perpetrated against adult women, obviates the divide between victims according to their age so that lists of perpetrators include those who offend against women and girls without the cut off at age eighteen years for victims.

There has been some concern by women’s advocates that this mechanism was limited to situations on the Security Council’s agenda. However, it certainly did send a strong message that impunity, for these violations of international law, was being challenged with specific strategies to deal with it. With referrals to the UN Sanctions Committee and to the ICC, there was a clear political message. Serious action was being proposed with the resolve that ‘when adopting or renewing targeted sanctions in situations of armed conflict, to consider including, where appropriate, designation criteria pertaining to acts of rape and other forms of sexual violence’ and a quite detailed list of those who would be expected to share relevant information with the UN Sanctions Committee when this consideration was being undertaken. The extent to which member states would eventually accede to such referrals in

\[140\] S/RES/1960, para. 3.
\[141\] S/RES/1960, para. 7. & UNSCR 1882.
\[143\] S/RES/1960, para. 7.
practice was still to be determined but the resolve to do so was a major step towards ending impunity.

A similarly strong message was sent by the resolution to states and others involved in conflict. They were called upon ‘to make and implement specific and time-bound commitments to combat sexual violence’.144 Some specific strategies were outlined for them including: ‘issuance of clear orders through chains of command prohibiting sexual violence and the prohibition of sexual violence in Codes of Conduct, military field manuals, or equivalent’.145 They were further called upon ‘to make and implement specific commitments on timely investigation of alleged abuses in order to hold perpetrators accountable’.146 As well as calling on these parties the Secretary General was also asked to track and monitor the implementation ‘of these commitments by parties to armed conflict on the Security Council’s agenda that engage in patterns of rape and other sexual violence, and regularly update the Council in relevant reports and briefings’.147 There was certainly a sense that, this time, the SC was more serious about expectations that all parties act responsibly. As with any crime or violation of international law, the ending of impunity for offenders – or at least serious efforts to end it – aims to have some deterrent effect.

The previous work on developing indicators for monitoring and analysis as well as efficient data collation was also resolved when the Secretary General was requested to establish ‘monitoring, analysis and reporting arrangements on conflict-related sexual violence, including rape in situations of armed conflict and post-conflict’.148 The resolution requested that these arrangements take into account ‘the specificity of

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144 S/RES/1960, para. 5.
145 S/RES/1969, para. 5.
146 S/RES/1960, para. 5.
147 S/RES/1960, para. 6
each country’ in order to ensure a coherent and coordinated approach at the field level’. The paragraph encouraged 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.

There was a request for annual follow up reports on the resolution, with the first due within twelve months of the resolution being passed, which meant by December 2011.

The final significant development in 2010 regarding women, peace and security at the Security Council was the open debate which followed the passing of UNSCR 1960. There were forty-three speakers and general accord that impunity must be tackled and ended for violators of international law, in perpetrating sexual violence in conflict. The debate was based largely on the report of the Secretary General which had outlined specific steps to be taken, including the recommended sets of indicators for monitoring and the listing of offenders for consideration in application of sanctions.

The Secretary General reported on a range of developments including the appointment of the Special Representative to the Secretary General on Sexual Violence in Conflict. This was a new post within the UN structure designed to bring together the widening focus on the issue. The post’s mandate included: addressing

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151 SC/10122, 16 December 2010.
impunity including by supporting national entities to prosecute; empowering women to seek redress; mobilising political leadership; increasing recognition of rape as a tactic and consequence of conflict; ensuring more coherence in UN response. This is a wide-ranging mandate. The Special Representative’s priorities include facilitating a rapid response mechanism based on a matrix of indicators; identifying and promoting exemplary responses; urging media attention when there is insufficient attention and under-resourcing for situations of sexual violence in conflict; supporting national institutions and the development of appropriate government strategies to combat sexual violence. Upon appointment the Special Representative, Margot Wallstrom of Sweden, urged member states to seek accountability for mass rapes committed in the Eastern DRC telling the UN Security Council it should ‘turn the tide against impunity’. She said it was crucial that all means be used to put pressure on all armed groups in that country, and elsewhere, to turn over to authorities perpetrators of sexual violence and to prevent further such violence. She highlighted her authority to inform the UNSC on matters such as sanctions saying: ‘In this regard, the leverage that we gain from the credible threat of Council sanctions against perpetrators of sexual violence cannot be overestimated’.

The Special Representative demonstrated her understanding of the long-lasting impact of sexual violence in conflict as she warned that the atrocities committed daily against women and children would leave a devastating imprint on the country for years to come. She said: ‘Where sexual violence has been a way of war, it can destroy a way of life’ and children accustomed to rape and violence could grow into adults who accepted such behaviour as the norm. She reminded the forum that

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156 SC/10055.
157 SC/10055.
‘international peace and security is indivisible from women’s peace and security’.\textsuperscript{158} Continuing, she referred to her own mandate in the new position of Special Representative and stated that ending impunity was her first priority as she believed that prosecution of perpetrators equalled protection for victims, noting that, ‘rape victims are the only casualties of war that a nation dishonours, rather than honours’\textsuperscript{159}. The role of states in ending impunity was also reiterated with references to the need for effective rule of law and strong legal structures.\textsuperscript{160}

The Secretary General also reported on the preparation of a conceptual framework for a Team of Experts which would be multi-disciplinary and available for rapid deployment to assist governments to reinforce judicial systems weakened by conflict.\textsuperscript{161} He reported other developments which included arrangements for improved reporting, defining the roles of women’s protection advisors and work on approaches to dealing with sexual violence in peace and mediation processes.\textsuperscript{162} The report continued to outline work on developing strategies for governments to combat sexual violence in conflict, improving services for victims of sexual violence in conflict and generally strengthening protection from and prevention of sexual violence in conflict. These were strong indicators of institutionalisation of the recommendations from the resolutions. It was a significant move from the early decades as the Secretary General concluded, ‘there can be no security without women’s security’.\textsuperscript{163} The days of failing to recognise the interconnectedness of women’s human security and international security would seem to have passed.

\textsuperscript{158} SC/10122, p. 4.  
\textsuperscript{159} SC/10122, p. 4.  
\textsuperscript{160} SC/10122 examples: Bosnia and Herzegovina p. 12; Nigeria p. 11.  
\textsuperscript{161} S/2010/604 paras 23 & 26.  
\textsuperscript{162} S/2010/604 paras. 27-34, 35, 37, 38, 42.  
\textsuperscript{163} S/2010/604, para. 47.
Speakers in the debate affirmed the importance of these steps. The representative of Mexico called for strengthening of the ICC to enable effective prosecutions and representatives of France, Austria, Uganda and the Russian Federation were among those who expressed alarm at the continuing use of tactical rape and sexual violence in conflict. There was no dissent from the resolve to list and publish the list of perpetrators, no question of the relevance of the issue to the UNSC and no question that sexual violence in conflict related to security.

**Conclusion**

The progress made during the period between UNSCR1325 in 2000 and UNSCR 1820 in 2008 may have been slow but there was an acceleration of attention and institutionalisation from 2008 to the end of 2010. The discourse indicated that understanding of the issues of tactical rape and sexual violence in conflict generally progressed substantially as evidenced in debates, reports and resolutions. Early outrage to reports of tactical rape had developed into rejection of sexual violence in war. There continued to be some gaps and some reservations but acceptance of these issues as issues for the attention of the Security Council was notable. The level of commitment to confront this issue grew and, importantly, the level of institutionalisation within the UNSC system was significant. This was clearly indicated in the report of the Secretary General which preceded the open debate.164 The appointment of the Special Representative to the Secretary General on Sexual Violence in Conflict and changes to institutional practice and policies were all positive steps. There remained, however, several areas which required greater attention and clarification and these will be considered further in the next chapter which looks at the way forward.

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Chapter 7

Women and Security

This dissertation has established that events in Rwanda and the former Yugoslavia in the 1990s brought international attention to tactical rape and sexual violence in conflict. It has acknowledged that, as Shirley V. Scott, Anthony John Billingsley and Christopher Michaelson highlighted, western publics were shocked into demanding that these practices should not be allowed to continue.\(^1\) The ICTY and the ICTR made clear that tactical rape and sexual violence in conflict are breaches of International Humanitarian Law. It was an important development to state clearly that tactical rape and sexual violence in conflict were violations of IHL.

Feminists, activists and many NGOs have been calling for many years for acknowledgement that such breaches of IHL are security concerns. Previous chapters of the dissertation have demonstrated that the UNSC finally began to address and confront these violations of IHL and has begun taking practical steps to institutionalise action to prevent and to prosecute those responsible for these crimes. Importantly, the UNSC recognised such actions as a security threat, falling within the UNSC mandate. This was a significant recognition regarding tactical rape and sexual violence in conflict and the nature of that threat needs to be fully understood because tactical rape and sexual violence in war continue to present security threats. It is a threat which forms the basis for member states – not only the UNSC - to be required to recognise and accept their responsibility to confront tactical rape and sexual violence in conflict.

This chapter first looks at the continuing use of tactical rape and sexual violence in conflict. Next is an analysis of the nature of the security threat from tactical rape and

sexual violence in conflict. Thirdly, this chapter will analyse the interaction between women’s security, human security and state security. The development from the limited perception of tactical rape and sexual violence in conflict as a security threat only for women to perceiving such acts as a human security threat and finally to full understanding that tactical rape and sexual violence in conflict constitute security threats to women, to communities and to international stability of states is a significant move and must be understood. It must be understood because this recognition impacts on the responsibilities of member states as well as on the UNSC. The fourth focus of this chapter will be on how states need to institutionalise security from sexual violence in conflict. It will be argued in the fifth area of focus in the chapter that states need to ensure security sector reform and transitional justice in the aftermath of conflict. Finally, because states need to accept responsibility for confronting tactical rape and sexual violence in conflict, the sixth section of this chapter will consider states’ responsibilities for transitioning from the ICTY and ICTR to national judiciaries.

Continuing Use of Tactical Rape and Sexual Violence in Conflicts

While there has been an increase in international attention to and rejection of tactical rape and sexual violence in war, these abuses continue, with Oxfam reporting in 2011, that ‘sexual violence is increasingly being used as a tool of conflict itself’. The Oxfam report highlighted the geographic spread of the abuse across continents, noting the claims of the UN Special Representative on Sexual Violence in Conflict, in 2010, that rape was used in Côte d’Ivoire for political ends. On 3 October 2011, the Pre-Trial Chamber III of the International Criminal Court (ICC) granted the Prosecutor’s request to commence an investigation in Côte d’Ivoire with respect to alleged crimes within the jurisdiction of the Court, committed since 28 November

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2010, as well as with regard to crimes that may be committed in the future in the context of this situation. These are likely to include charges relating to tactical rape and sexual violence in the conflict. Oxfam named other arenas where sexual violence has been prevalent: rape used in Myanmar as a tool in the long-running conflict; in Kyrgyzstan where at least six hundred people suffered from sexual violence in clashes during the period June to December 2010; and in the Central Africa Republic (CAR) where one third of women were victims of sexual violence in conflicts in Bambouti and Mboki. Darfur and Colombia also remained a focus of UNSC concern regarding sexual violence in conflicts though it was noted that UNSC response had been uneven, with some conflicts attracting attention and others seen as not being on the UNSC agenda. This is indicative of concerns that will be considered later in this chapter.

Other countries where sexual violence has been reported as a significant feature of conflict include Ethiopia, Nigeria, Somalia and Chad. In Chad, rape has been used as ‘a deliberate conflict tactic’. For Chad, Randi Solhjell, John Karlsrud and Jon Harald Sande Lie noted that dealing with sexual and gender-based violence ‘involves improving security and is an important element in the imperative to protect civilians under the auspices of international humanitarian law and human rights law’. However, there is also a fear that protection of civilians in line with international law will not be a primary priority of the Government of Chad. The list of conflicts where

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4 Oxfam, Protection of Civilians in 2010, p. 16.
5 Oxfam, Protecting Civilians in 2010, p. 5.
7 R Solhjell, J Karlsrud & JHS Lie, ‘Protecting Civilians Against Sexual and Gender Based Violence in Chad’, Norwegian Institute of International Affairs, 2010, p. 5.
8 Solhjell, Karlsrud & Lie, p. 7.
9 Solhjell, Karlsrud & Lie, p. 21.
tactical rape and sexual violence are reported is long. It includes the conflict in Conakry, Guinea, where soldiers particularly targeted women when suppressing a political demonstration at a stadium in Conakry and where rapes and attacks ‘appear to have traumatized the citizenry’.10 Early reports in June 2011 were that the chief prosecutor of the ICC was likely to add rape to the war crime charges against Muammar Gaddafi following mounting evidence that sexual attacks on women were being used as a weapon in the Libyan conflict.11 There are, sadly, too many ongoing cases of conflict where sexual violence may be being used to consider in depth, which is in no way an indicator of lack of importance. As ‘new wars’ continue so too does the use of tactical rape and sexual violence.

However, the arena which must be mentioned further and which has attracted much attention for the ongoing use of tactical rape and sexual violence is the Democratic Republic of Congo (DRC). This conflict has earned for DRC the ignominious title of ‘the rape capital of the world’.12 This has been an intractable conflict involving seven nations and many rebel groups of armed combatants, all with varying agendas and motives, beginning in 1996, with a short break between 1997-1998 before it resumed.13 There are aspects of this conflict which are an extension of Rwanda’s civil war between Hutu and Tutsi which has continued onto DRC territory. Major causes of the wars are seen to be long-term, ongoing disputes over land and resources overlaid with significant elements of ethnic conflict. Whatever the causes, DRC has been unable to make any sustainable peace as conflicts still continue over access to economic and political power. In 2001, tensions were described by the UN as ‘perpetuating the conflict in the country, impeding economic development, and

12 Oxfam, Protecting Civilians in 2010, p. 16.
exacerbating the suffering of the Congolese people’. There were renewed outbreaks of fighting again in 2009, despite continued attempts at peace-making. In March 2009, it was reported that a peace accord had been signed between the DRC Government and the National Congress for People’s Defence (CNDP), which it was hoped would ‘foresee the end of all hostilities, the transformation of armed groups into political parties and the return of refugees and displaced persons’. However, in April 2009, it was reported that renewed waves of fighting between splintered rebel factions had forced more than 30,000 civilians to flee their homes.

Sexual violence against women and girls continued in the conflict and may even have increased with reports that in South Kivu in the east of the country, some 463 women were raped in the first quarter of 2009 – more than half the total number of violations registered for the whole of 2008. At the national level, the UN reported that 1100 rapes per month were registered from 21 November, 2008 to 24 March, 2009, with an average of thirty-six per day. Analysis of the age of victims indicated that between thirty-five and fifty percent of victims were aged between ten and seventeen years, while more than ten percent were younger than ten years of age. A disturbing factor in the use of tactical rape and sexual violence in DRC is that in this conflict use was not restricted to one of the warring parties. As noted above there are

16 United Nations, 2009b, DR Congo: more than 30,000 flee new attacks by splintered rebel factions, UN News Centre, 7 April 2009.
17 United Nations, 2009c, Growing number of women falling victim to rape in DR Congo, reports UN, UN News Centre, 20 May 2009.
many opposing groups in DRC and reports have indicated that all sides are using these abuses as strategies of attack: members of all armed groups, rebel groups, the police force and opportunistic criminals have been perpetrators of rape and sexual violence against women and girls in the DRC.\textsuperscript{20} There were at least 15,000 cases of sexual violence in DRC in 2009 and by mid-2010, 7685 cases had been reported.\textsuperscript{21}

By 2011 there had been no lasting resolution, with the conflict in DRC described as ‘Africa’s world war’, with an estimated 5.4 million deaths and widespread use of rape to strategically shame, demoralise and humiliate ‘the enemy’.\textsuperscript{22} A Harvard Humanitarian Initiative report insists that this use of rape must not be seen as ‘collateral damage’ but as a deliberate strategy.\textsuperscript{23} Many cases have featured either the rapes of mothers and daughters in front of their families, mass rapes, rapes in public, or forcing victims to have sex with family members.\textsuperscript{24} There have been clear indications of ethnic elements to the use of rape, with combatants purposefully singling out their victims from among an ‘opposing’ ethnic group.\textsuperscript{25} Analysis also clearly indicates a spill-over into what are termed civilian rapes (rapes committed by non-military personnel), which, between 2004 and 2008 increased seventeen-fold while military rapes decreased.\textsuperscript{26} These findings imply a normalisation of rape among the civilian population suggesting the erosion of all constructive social mechanisms which ought to protect civilians from sexual violence.\textsuperscript{27} If this extended use of tactical rape and sexual violence as part of conflict is ever to end then ‘the

\textsuperscript{20} Csete & Kippenberg, p. 23.
\textsuperscript{22} Harvard Humanitarian Initiative with support from Oxfam, ‘\textit{Now the World is Without me}; An Investigation of Sexual Violence in Eastern Democratic Republic of Congo, April 2010, p. 7.
\textsuperscript{26} HHI, p. 8.
\textsuperscript{27} HHI, p. 8.
environment of impunity must end’. This will require ongoing attention and appropriate programme responses from international funders and effective judicial systems to confront and bring perpetrators to account.

It must be noted, too, that in DRC there are reports of the rape of men and boys and some analysts have expressed concern that there is too much focus on such violence against women to the detriment of concern for men and boys as victims of gender-based sexual violence. As has been discussed earlier in this dissertation, in many situations, the rape of women is an attack on men and communities, but in the DRC now there is direct sexual attack on males. This, too, must be condemned. It must not be allowed to develop into an either/or choice for attention and response. Tactical rape, whether of men or of women, must always be decried and confronted. It has been reported that within the DRC Government, an official was heard to say that ‘rape was a women’s issue that women needed to deal with on their own’. There needs to be change social attitudes which render women and men vulnerable, either by direct attack or because social attitudes render one gender particularly vulnerable. Sadly, men and boys are suffering but sadly women are still disproportionately the victims. All victims deserve response and protection and the protection of men and boys will require different responses and recognition of different needs.

While the reports noted above are indicative of the widespread and deliberate use of tactical rape and sexual violence it is recognised that many victims do not or cannot report attacks. Resources to document these reports are likely to be limited. The

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28 HHI, p. 9.
30 Baaaz & Stern, p 43.
result is that there is often very little timely or reliable consolidated information on rape and sexual violence despite these being persistent and severe threats faced by women as well as children and men in conflicts. Work is needed to estimate and effectively document the numbers and types of rapes in war. Catrien Bijleveld, Aafke Morssinkhofe and Alette Smeulers have argued the case for improved documentation. They have listed some of the reasons often given for arguing that such documentation is not essential: some say it is not important, because the number differentials are trivial in the sense that it does not matter if the final figure is two million victims or two point one million victims. They note that some commentators fear the numbers may overshadow a focus on the causes and nature of a conflict and others feel the precise number bears little legal relevance. However, as they concluded, it is important to collect data. Figures are important when each figure represents an individual. For planning and delivering post-conflict strategies and resources there is a need to know how many victims there were and their locations. Such data is essential to provide for consequences such as pregnancies and health issues, including HIV/AIDS. To meet the needs of victims and survivors of tactical rape and sexual violence it is necessary to understand if they are able still to bear children and whether or not they are likely to be able to care for children – emotionally and economically. For recovery and rebuilding, truth commissions have been shown to be effective. Such commissions proceed from an acknowledgement of victims and the damage done to them. The aim is to ‘deconstruct the social reality in which the crimes were committed’ so knowing the extent and the nature of suffering matters. It is important to have reliable data regarding current and future conflicts in which sexual violence may be used as a tactic if there is to be adequate and appropriate response to protection of civilians and accountability of perpetrators.

From a legal perspective, there is a need to know figures and patterns of the use of tactical rape and sexual violence in order to establish if such use was widespread and/or systematic. This is an element of judging if the abuse could be deemed a crime against humanity or a war crime. The extent and nature of the crimes is also important in deciding whether such attacks were deliberate, aimed at a specific group – whether they constituted genocide. There is recognition of the difficulties in gathering such data but it must be recognised as a need to be solved. One option proposed is that a self-report for rape victims might be worth considering. There are immediate difficulties in such a plan – the literacy level of victims will vary greatly, resources would be needed to support, design and collate findings. However, what is clear is that this must become a priority and it is encouraging to see the moves being made at the UNSC, analysed in the previous chapter, to tackle this issue. These will be considered in more detail later in this chapter. What is clear is that in 2011 tactical rape and sexual violence in war remain a persistent and pernicious practice.

What Sort of Security Threat?

As stated earlier in this chapter, it is significant that the UNSC has recognised tactical rape and sexual violence in conflict as falling within its mandate because they are issues of security concern. This was significant progress but early steps could not be viewed without reservations. Referring to the conflict in the former Yugoslavia and writing in 2001, Judith G. Gardam and Michelle J. Jarvis noted that:

> for the first time, sexual violence against women during armed conflict as a distinct issue within the UN system. In particular, the sexual abuse of women during armed

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36 Bijleveld, Morssinkhoef & Smeulers, p. 211.
37 Bijleveld, Morssinkhoef & Smeulers, p. 223.
conflict was linked with the maintenance of international peace and security and the United Nations system as a whole was prompted to respond.\textsuperscript{38}

Gardam and Jarvis did however, highlight some limitations to this progress noting that the woman who benefitted most from this developing concern had to be white and Western and needed to ‘be perceived by Western media to be the victim of sexual violence as part of a deliberate war strategy’.\textsuperscript{39} While previous chapters have shown that there has indeed been progress on tactical rape and sexual violence since 2001, it is recognised that Gardam and Jarvis sounded a clear warning against assuming that this is the only form of sexual violence which warrants attention by the international community.\textsuperscript{40} They also sounded warnings regarding the efficacy of trials as the only form of delivering justice for women victims of sexual violence in war. These concerns warrant ongoing recognition if there is to be effective implementation to the UNSC resolutions previously analysed and if there are to be coherent responses to the security threats posed to women. However, there has been significant progress in discourse regarding the need to reject tactical rape and sexual violence, seen as security threats.

Clarity is needed regarding the nature of those security concerns. Katrina Lee-Koo pointed out that security is not just about the absence of threat and not just about uncovering and addressing sources of insecurity.\textsuperscript{41} It is also about providing the values which make a person feel secure. For women survivors of tactical rape and sexual violence this must mean enabling them to feel secure as part of their communities, even though those communities have often rejected them. Lee-Koo


\textsuperscript{39} Gardam & Jarvis 2001 p. 173.

\textsuperscript{40} Gardam & Jarvis 2001, chapter 2.

averred that the key was to reconstruct concepts such as ‘international politics’ and ‘security’. She noted that realists define security in political and military terms as the protection of the boundaries and integrity of the state against the dangers of an anarchical international environment. She concluded that within this discourse, women as a gendered grouping cannot be seen or heard, and are placed outside the realm of the ‘international’, which threatens lives and engenders gross insecurity in ‘silenced and unseen space’. This is an important insight. It is significant that the official discourse rejecting tactical rape and sexual violence in war has belatedly acknowledged the gendered dynamics of security. Women must be enabled to be part of developing their own security. They must be given space to participate and their capacity to do so must be part of any rehabilitation and reconstruction programme.

This progress of the gendered dynamics of security is also due to the growing impact of the understanding of human security. It is essential to appreciate the growing discourse of the interconnectedness of human and international security. In 1998, Canada and Norway formed a partnership in human security which subsequently became the Human Security Network, ‘an informal coalition of states that is committed to human security’. Eventually, the Commission on Human Security was established and released a seminal report in 2003. The Report of the Commission on Human Security defined human security as protecting vital freedoms. It continued that human security means protecting people from critical and pervasive threats and situations, building on their strengths and aspirations. It also means creating systems that give people ‘the building blocks of survival, dignity

and livelihood’. Human security connects different types of freedoms – freedom from want, freedom from fear and freedom to take action on one’s own behalf. When considering how human security can be delivered the Report offered two general strategies: protection and empowerment. Protection shields people from dangers. It requires concerted effort to develop norms, processes and institutions that systematically address insecurities. Empowerment enables people to develop their potential and become full participants in decision-making. Reasonably, there is recognition that protection and empowerment are mutually reinforcing and that both strategies are required in most situations for people to be secure. Commentary in 2006 noted that human security offered a way of ‘identifying and prioritizing issues to be addressed in respect of international law and conflict’. Recognition by policymakers of the interdependence of women’s security and international security meant recognition of the interdependence of human security and state security. This was an important step as it was a recognition long espoused and promoted by feminists, activists and some NGOs but largely ignored by power brokers.

In March 2010, the Secretary General presented a summary report on Human Security to the UN General Assembly. He referred to (inter alia) the Human Security Network, the report of the Commission on Human Security and the 2005 World Summit which had considered human security and stated that the concept ‘is gaining wide support in the United Nations and other forums’. One action had been a debate in the General Assembly in May 2008 and during the course of those deliberations:

50 von Tigerstrom, p. 614.
51 A/64/701 8 March 2010.
52 A/64/701 para. 1.
broad consensus was reached by Member States on the need for a new culture of international relations that goes beyond fragmented responses and calls for comprehensive, integrated and people-centred approaches.53

As part of this new awareness it was noted that:

human security draws attention to a wide range of threats faced by individuals and communities and focuses on the root causes of such insecurities. In addition, by understanding how particular constellations of threats to individuals and communities translate into broader intra- and inter-State security breaches, human security seeks to prevent and mitigate the occurrence of future threats, and in this regard can be a critical element in achieving national security and international stability.54

By the time this debate took place, the UNSC had recognised that tactical rape and sexual violence in conflict, as breaches of IHL, were threats to international stability. The concurrent discourse on human security and discourse on sexual violence in conflict could be seen to have been mutually strengthening.

By 2011 there has developed further understanding of the inter-relatedness of human security and international security in ways which must be taken into account in effective rejection of sexual violence in war. Human security is vital if there is to be any security but it does not replace state security. A report from the Commission on Human Security stated that human security complements state security.55 Over the past decades there has been a growing understanding and broadening of state security, from securing borders, institutions and values to greater recognition of

53 A/64/701 para. 7.
54 A/64/701 para. 25.
individuals and communities in ensuring their own security.\textsuperscript{56} Human security broadens the focus from the security of borders to the lives of people and communities inside and across those borders.\textsuperscript{57} Working to achieve human security does not take the place of working for protection of states. It complements state security by being people-centered and addressing insecurities that have not always been considered as state security threats. Human security puts people at the centre of focus with a requirement for freedom from fear, from want, to live in dignity.\textsuperscript{58} In line with this concept of securing people, but with a somewhat different focus, the World Development Report used the term ‘citizen security’ because it is claimed that this sharpened focus on freedom from physical violence and freedom from fear of violence.\textsuperscript{59}

For women, there may be some hesitation in adopting this term, citizen security, as women are often excluded from real citizenship with allied political and economic access. As early as 1997, Ann Tickner had pointed out that terms such as citizen, head of household, bread-winner are not neutral terms and are problematic for women especially, given that in many parts of the world women are still struggling for equality and may not have the right to vote.\textsuperscript{60} She reminded that previously security had been defined in the realist paradigm, in political/military terms, as the protection of the boundaries and integrity of the state and its values against the dangers of a hostile international environment. Then, Tickner noted, in the 1980s there began a trend towards defining security in economic and environmental terms as well as political and military terms.\textsuperscript{61} This broadening of definitions led to the

\begin{itemize}
\item \textsuperscript{56} Outline Report CHS 2002-2003 p. 5.
\item \textsuperscript{57} Outline report CHS 2002-2003 p. 6.
\item \textsuperscript{58} Outline Report CHS 2002-2003, p. 1.
\item \textsuperscript{60} A Tickner, ‘You Just Don’t Understand: Troubled Engagements between Feminists and IR Theorists’, \textit{International Studies Quarterly}, vol. 41 no. 4, December 1997, p. 627.
\item \textsuperscript{61} Tickner, ‘You Just Don’t Understand’, p. 624. (See note 59 & 155 – Don’t or Do Not?)
\end{itemize}
concept of human security and, eventually, to recognition that tactical rape and sexual violence were security concerns for the UNSC. Where early considerations of security focused on understanding and analysing the causes and consequences of wars from a top-down perspective, feminists have been more concerned with considerations at community or individual levels and aiming at a analysis of the impact of conflict and related violence at these levels to understand the extent to which unjust social relations contribute to insecurity.\textsuperscript{62}

*Women’s security, human security and state security*

While recognising the importance of women’s security and human security generally, there must be recognition of their impact on the security of states, which do not operate in isolation from each other or the global system. There has been recent focus on understanding that a lack of human security can cause insecurity for states. This has contributed to recognition of the links between women’s security, state security and sexual violence in war. The World Development Report (WDR) 2011 was notable for its insights to this interdependence.\textsuperscript{63} The WDR of 2011 reiterated that states are part of an international system that confers certain benefits and requires certain behaviours.\textsuperscript{64} The required behaviours include: helping to maintain interstate security by not threatening each other and by observing ‘rules of warfare’; upholding international law and treaty obligations; and behaviour at home consistent with international norms such as upholding human rights.\textsuperscript{65} Importantly, now these expectations include rejection of tactical rape and sexual violence in war. Previous chapters of this dissertation have considered the nature of tactical rape and


\textsuperscript{64} World Bank, WDR p. 109.

\textsuperscript{65} World Bank WDR p. 109.
sexual violence in conflict and have demonstrated that such violations are against the rules of warfare, they breach international law and treaty obligations and they contravene international norms regarding human rights. States which do not meet these expectations can create stresses between states.

The WDR reported that major stresses which are likely to result in violence between or within states are often a combination of security, economic and political stresses. Insights into the links with tactical rape and sexual violence have been made more explicit in 2011 with understanding the regional and international impact of these violations on the states in which they occur and the impact on other states. The WDR highlighted that interstate wars have decreased in number since the two world wars of the first half of the 20th century. But civil wars (those with more than 1000 battle deaths a year) have increased, peaking late in the 1980s and early 1990s when there were twenty-one active major civil wars. This number of civil wars has decreased to less than ten each year since 2002. 66 These figures were reinforced by the Human Security Report 2009-2010 which also stated that since the period of 1992-2003, state-based conflicts decreased. 67 These are the conflicts involving a government as one of the warring parties. However, since 2003, the global incidence of non-state armed conflicts (those with no government as a warring party) increased by 25%. This figure rose between 2007 and 2008 when conflicts including non-state actors increased by 119 percent. These involved actors such as rebel groups, war lords and factional militias. 68 There are also conflicts termed campaigns of ‘one-sided violence’: campaigns of organised violence by a government or non-state armed

66 World Bank WDR p. 52.
group directed against unarmed civilians who cannot fight back and which results in twenty-five or more codable deaths in a calendar year.69

This analysis of conflicts up to 2011 helped to understand the implications of specific conflicts such as those which have been the focus of this dissertation. The Rwandan genocide by government and Hutu militias was the worst example of one-sided violence and the attacks by the Serbian Government on Bosnia and Herzegovina was second worst in the 1990s.70 The WDR highlighted that conflicts in the 1990s in those two specific countries had impact beyond the time of the conflicts and beyond the borders in which the conflicts took place.71

It was important to note that a conflict in one state can affect the security of its neighbouring states. Violence has economic impact and disrupts development. The effects of violence are community-wide and long-lasting. The WDR estimated that it takes an average of fourteen years of peace before resumption of economic growth paths.72 The violence in Rwanda spread over into DRC and it is recognised that development consequences of violence, like its origins, spill across borders with implications for the neighbours, the region and globally.73 Estimates suggest that countries lose 0.7 per cent of their annual GDP for each neighbour engaged in a civil war.74 This indicates that there is a shared interest in global, regional and state peace and prosperity and a shared interest in ensuring security for populations even if those populations are within an individual state’s own borders. The violence in Rwanda with widespread sexual violence has had implications beyond Rwanda’s borders.

71 World Bank WDR, p. 63
72 World Bank WDR, p. 63.
73 World Bank WDR, p. 63.
74 World Bank WDR, p. 65.
Political and economic issues can be triggers for violence and conflict within states. Injustice and exclusion, too, can act as stresses on security and there has been found to be strong correlation between past human rights abuses and current risks of conflict.\(^{75}\) This would certainly appear to have applied to the conflict in Rwanda and raises the issue of the interconnectedness of human and state security. Most contemporary armed conflicts are ‘low intensity’ civil wars that avoid major military engagements but frequently target civilians with great brutality and with the threat and perpetration of sexual and physical violence against women and children a systematic weapon of war.\(^{76}\) As has been seen from the analysis of the impact of tactical rape and sexual violence in Rwanda and the former Yugoslavia, such violence compromises human security and dignity.

It was increasingly clear by 2011 that for political, economic and humanitarian reasons, no country or region could afford to ignore areas where repeated cycles of violence flourished or men or women were disengaged from protection and participation in the workings of the state. Human security is a pre-eminent goal underpinned by justice and economic independence and there is a need for states as well as the international community to act pre-emptively before violence recurs or escalates.\(^{77}\) Survivors of tactical rape and sexual violence frequently suffer from discrimination and exclusion which renders them economically and socially isolated. Many women rear children of rape in poverty. Many women also wait for some acknowledgement of their suffering and for justice. States must be active participants in ensuring social protection for their citizens. International humanitarian agencies will often be involved in post-conflict provision of justice and economic development. If social protection is delivered only through international humanitarian aid, then governments and communities have few incentives to take

\(^{75}\) World Bank WDR, p. 82.  
^{76}\) World Bank WDR, p. 60.  
^{77}\) World Bank WDR, p. 252.
responsibility for violence prevention and neither do national institutions have incentives to take on responsibility for protecting all vulnerable citizens.\textsuperscript{78}

What is of particular relevance to dealing appropriately with tactical rape and sexual violence is the recognition that emerged by 2011 that it is incorrect to think of the progression from violence to sustained security as linear. Almost every civil war that had begun after 2003 was a resumption of a previous civil war.\textsuperscript{79} The analysis in previous chapters has demonstrated that the impact of tactical rape and sexual violence is long-lasting. If action is not taken to deal effectively with the aftermath of these abuses and with the needs of survivors, the potential for recurring violence increases. As was seen in both Rwanda and the former Yugoslavia, perpetrators of violence were often convinced they were avenging previous injustices. Failure to offer support, failure to challenge societal attitudes such as rejection of victims of rape, failure to achieve some sort of accountability and disallow impunity – all of these failures have the potential to be the foundation for the next wave of violence. Transitional justice is essential and will be considered later in this chapter.

The children born of tactical rape in the conflicts in Rwanda and the former Yugoslavia were, in 2011, in their late teens – young adults in their communities. They have grown up in societies dealing with the trauma of those conflicts. They will have been, for the most part, reared by mothers who are likely to be suffering extreme physical and/or emotional damage. It is possible that many of these children and their mothers will have also suffered from social stigma, discrimination and ostracisation. The economic effects for the women victims and their children may well have been significant. It is possible that some mothers would have difficulties relating appropriately to offspring who might be perceived to have caused such negative community reactions. Certainly, these children will have grown up with a

\begin{footnotes}
\item[78] World Bank WDR, p. 253.
\item[79] World Bank WDR, p. 57.
\end{footnotes}
sense of being the children of criminal acts by men perceived as ‘the enemy’. This is not only the case in Rwanda and the former Yugoslavia. A doctor from DRC reported the words of a twenty-two year old woman made pregnant by being raped by ten combatants who also killed her husband in front of her, and which provide further representation of the impact that rape has in Congolese communities:

> Today, when I walk with my baby, the people in the community say that I am the enemy’s woman, and that the child belongs to the enemy…I am alone. What I find upsetting is that nobody will come near my baby; everybody says he is cursed. And the baby is frightened because the neighbours are always shouting at him.80

The challenge is that for human security to be achieved, this attitude and its consequent suffering for women and children victims of tactical rape and sexual violence must be confronted and states have a consequent responsibility.

Given that by 2011 there was increased recognition that most civil wars are in fact continuations of previous conflicts which were unresolved, there must also be recognition that generations beyond the immediate victims continue to feel the impact of abuses. These generations could still be confronting what happened before, at and after their conception. Attitudes which contributed to those events are likely to persist. This means that there must be due attention to this newly-emerging group of adults, attention to their emotional and economic welfare, if the cycles of violence are to be broken. Support must be offered to all survivors of rape in conflict, the women who suffered directly, the children born of those rapes and their communities. The approach to survivor care must assist all those who are survivors of the general trauma of the conflicts as well as involving men where possible.81

Previous chapters have shown that the international community has made significant

81 HHI, p. 9.
progress in confronting challenges such as these and now has the legal foundation for
doing so. States must be part of confronting these challenges.

However, response by the international community has varied in the extent to which
it has demonstrated specific responses of certain states. Scott, Billingsley and
Michaelson highlighted that the west ‘ultimately acted decisively to address
problems of the disintegrating Yugoslavia, but ignored the Rwandan genocide, a
human rights tragedy on an even larger scale.’ The relationship between the UNSC
and sovereign states is in ongoing tension. These writers identified the challenge:
‘the task is not to find alternatives to the Security Council as a source of authority but
to make the Security Council work better than it has’. Closely related is the ongoing
discourse regarding any intervention in the affairs of sovereign states and the concept
of the responsibility of states to protect populations in other states. The outcome
document of the 2005 World Summit considering this issue stated that each
individual state has the responsibility to protect its population from genocide, war
crimes, ethnic cleansing and crimes against humanity. Where a state does not provide
such protection other states have a responsibility to intervene – and the UNSC has
established grounds for doing so when sexual violence is used against populations.
Gareth Evans has noted that the debated ‘Responsibility to Protect’ is relevant in
specific and narrowly focused problem areas. These are situations where mass
atrocity crimes are clearly being committed or where such crimes are imminent
according to warning signs.

These are difficulties and Evans acknowledged that it is more difficult to pin down
countries where such crimes are likely in the future, perhaps because of history of

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82 Scott, Billingsley & Michaelson p.108.
83 Scott, Billingsley & Michaelson, p. 108
84 G Evans, The Responsibility to Protect: Consolidating the Norm, paper presented at the 39th IPA
Conference on The UN Security Council and the Responsibility to Protect, Vienna, Favorita Papers
1/2010.
such crimes, continuation or re-emergence of relevant internal tensions and incapacity to control potentially explosive situations.\textsuperscript{85} Rwanda and the former Yugoslavia are among countries which could be assessed as likely for re-emergence of tensions and renewed violence. It is essential to recognise this potential for renewed violence in states where there is no accountability, where there is impunity, where there is no redress or reparation, no attention to children of tactical rape and no change in societal attitudes and status of women. But intervention will be a political step and it would appear that, ‘the approach whereby policy considerations will override legal considerations in cases of emergencies is likely to dominate’.\textsuperscript{86} It is at least now established that tactical rape and sexual violence in conflict are contraventions of IHL and they present a threat to security. It is in states’ interest to confront those crimes but it remains to be seen how often such state intervention follows such abuses and threats.

The approach for states concerned about security must be to ensure accountability for those who fail to respect agreed international law and treaties. Such accountability must be evident as soon as possible after cessation of hostilities and, as will be seen below, the period of transitional justice is a key factor in moves to security within societies which have suffered – including victims of tactical rape and sexual violence. There is a need to ensure adequate and appropriate security structures at state levels. Prioritisation of basic security and justice reforms programmes has been part of successful core tools to develop resilience to violence.\textsuperscript{87} This priority should be enacted wherever there has been ongoing violence – particularly where there has been tactical rape and sexual violence – if the cycles of violence are to be broken. Promoting democratic principles is a step towards attaining human security and development. It enables people to participate in governance and make their voices

\textsuperscript{85} Evans, \textit{The Responsibility to Protect}.
\textsuperscript{86} Scott, Billingsley and Michaelson \textit{p.110}.
\textsuperscript{87} World Bank WDR, \textit{p. 255}. 
heard. This requires building strong institutions, establishing the rule of law and empowering people.88

*State level Institutionalisation of Security from Sexual Violence in War*

Legitimate institutions and governance serve as an immune system and defence against ongoing conflict for states.89 In this context, the legitimacy of institutions refers to their capacity, inclusiveness and accountability.90 Where institutions and governance are not capable, inclusive and accountable, a state can be fragile in terms of development and political security. States where institutions are weak are more vulnerable to civil war. Of seventeen fragile states (as measured by the World Bank) between 1990 and 2008, fourteen experienced major civil wars.91 There are a number of recognised institutional indices relevant to reduction of violence and these can be usefully applied to reduction of the impact of sexual violence in war. These include ‘rule of law; levels of corruption; respect for human rights; democratic governance; bureaucratic quality; oversight of security sectors and equity for the disadvantaged’.92

From arenas such as Rwanda and the former Yugoslavia it is apparent that many of these indices could have indicated the need for prevention of conflict.

Rape and sexual violence against women can also be seen as indicative of rising tensions and incipient conflict. It has been recognised that continuation of sexual violence indicates that peace has not been achieved in a state. Rosan Smits and Serena Cruz noted that ‘rape is seen as strategy for undermining efforts to achieve and maintain stability in areas torn by conflict but striving to achieve peace’.93 Such

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89 World Bank WDR, p. 50.
90 World Bank WDR, p. 84.
91 World Bank WDR p.87.
92 World Bank WDR p.108.
recognition has serious implications for states. There are security implications of ongoing rape and sexual violence after cessation of hostilities and these constitute part of the long-lasting effect of such violations and will spread into peacetime practice when norms are broken down and when there has been perceived impunity for perpetrators. The cyclical nature of many conflicts means that attention must be paid to indicators of potential conflict even as peace seems to be established. Paul D. Church noted, when writing about protection of civilians in peace operations, that when deterrence of events such as massacres is the objective there is a need to strengthen global norms, reinforcing certain values to the point where it is well understood they must not be violated.\(^{94}\) This is a principle which must be applied to deterrence of renewed tactical rape and sexual violence in conflicts because, as can be seen in the Democratic Republic of Congo, when ‘norms of war are internalised into everyday male behaviour’, sexual violence continues after conflict ceases.\(^{95}\) The challenge is to support states to internalise normative rejection of tactical rape and sexual violence in war as an integral part of their planning and responses to protect their populations.

Even when rape and sexual violence are not tactical or part of a systematic use as a weapon, they are indicative of tensions. They should be used as warning signs of armed conflict and indicate the need for prevention strategies.\(^{96}\) Within a state, underlying weaknesses that increase risks of repeated cycles of violence have been identified as: deficits in security, deficits in justice and inadequate job creation.\(^{97}\) As rejection of tactical rape and sexual violence in conflict moves from international to national levels to confront these risks, there continues to be a need to be alert to the

\(^{95}\) Governance and Social Research Center, ‘Conflict and Sexual and Domestic Violence against Women’, *Governance and Social Research Center*, 1 May 2009, p. 9.
\(^{96}\) Governance and Social Research Center, p. 2.
\(^{97}\) World Bank WDR, p. 248.
justifiable concerns of feminist analysts regarding the nature of political and institutional structures. Jacqui True has presented an insightful review of such concerns and concluded that ‘malestream’ visions of international relations distort knowledge of both ‘relations’ and ‘international’ transformation and concluded:

if one wants to gain fresh insights into the processes of transformation of world order, averting one’s gaze from the processes of state formation…has its limits as a research strategy.98

These are concerns regarding the international structure within which this dissertation has tracked progress in rejecting tactical rape and sexual violence. They also apply when considering national transformation. True has provided a reminder that throughout modern history:

women have been told that they will receive equal human rights, equality with men, after the war, after liberation, after the national economy has been rebuilt, and so on: but after all these ‘outside’ forces have been conquered, the commonplace demand is for things to go back to normal and women to a subordinate place.99

If the rejection of tactical rape and sexual violence in conflict is to be reflected in state institutions, it is imperative that the tendency to delay women’s security, justice and strengthening their positions in societies be strenuously avoided. Eric Blanchard highlighted that ‘feminist security theory articulates an alternative vision’ which entails ‘revealing gendered hierarchies, eradicating patriarchal structural violence and working towards the eventual achievement of common security’.100 There is at

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99 True, p. 248.
least – and at last – some progress in recognising the need for women’s security but Blanchard continued:

Ironically, the policy world of nation states has recently begun to outpace the academic discipline of International Relations in its acceptance of feminist issues, as evidenced by the rapid diffusion of ‘gender mainstreaming’ bureaucracies and gender sensitive policies across states from a diverse range of cultures and levels of gender equality’. ¹⁰¹

It would be reasonable but probably optimistic to assume that security reform will follow the inclusive and restructured approach of feminist security theory. Much further research, analysis and comment to support advocacy for women’s security will be needed. As the policy world of states and the international community continues to evolve, some tasks are not yet completed.

However, there has been useful work done regarding how strengthening women’s security, justice and equality at state level has impact on international stability. Work by Mary Caprioli and Mark Boyer has indicated that states exhibiting high levels of gender equality also exhibit lower levels of violence in international crises and disputes. ¹⁰² Caprioli is reported to have extended this analysis to militarised interstate disputes and to have found a similar relationship where ‘states with the highest levels of gender equality display lower levels of aggression in these disputes and were less likely to use force first’. ¹⁰³ Working with Peter Trumbore, Caprioli found that this applied to intra-state conflicts as well as international ones:

states characterized by norms of gender and ethnic inequality as well as human rights abuses are more likely to become involved in militarized interstate disputes and in violent interstate disputes, to be the aggressors during international disputes, and to rely on force when involved in an international dispute.\textsuperscript{104}

This benefit to states of ensuring gender equity and justice has been recognised to some degree. As understanding of the full impact of tactical rape and sexual violence has grown, so too has the understanding of its implications for states’ development and security. In 2006, Secretary-General of the United Nations Koffi Annan was of the opinion that:

the world is starting to grasp that there is no policy more effective [in promoting development, health, and education] than the empowerment of women and girls. And I would venture that no policy is more important in preventing conflict, or in achieving reconciliation after a conflict has ended.\textsuperscript{105}

Recognising such interdependence between women’s equal, justice and security with state security has been an important step.

According to the World Development Report, there have also been identified basic principles for sustained violence prevention and recovery: inclusive enough coalitions for change; some early results to build confidence and create momentum for longer-term institutional transformation; pragmatic best-fit options to address immediate challenges.\textsuperscript{106} Where lack of accountability has been a source of tension,


\textsuperscript{106} World Bank WDR, p. 248.
strategies need to focus on responsiveness to citizens and to act against abuses perpetrated during a conflict.\textsuperscript{107} In confronting the impact of tactical rape and sexual violence, early results in justice and accountability for these violations as well as broader democratic accountability would be particularly essential as women, their children and their communities struggle to see that crimes were committed and to help end impunity of perpetrators. It has been noted that the inclusion of populations affected and targeted by violence has been productive and that ‘including women leaders and women’s groups has a good track record in creating continued pressure for change’.\textsuperscript{108} This may seem self-evident to those who are aware of structural discrimination against women but at least it is now being officially, more widely recognised as an effective approach to rehabilitation and reconstruction activities as they pertain to building and reforming security institutions after periods of extreme sexual violence in conflict.

\textit{Security sector reform and transitional justice}

In periods following conflict the security sector of states involved usually requires reform – particularly in arenas such as Rwanda, the former Yugoslavia and the DRC where security forces have been implicated in tactical rape and sexual violence in the conflicts. In broad terms, security sector reform operations need to cover a range of strategies and actions which include demilitarisation and peacebuilding; establishing civilian control and oversight of the security sector; professionalising the security forces and strengthening the rule of law.\textsuperscript{109} Such reform typically involves defining a country’s long-term security needs and vision; conducting an audit of existing security sector institutions, laws, policies and capacities; identifying structural issues, discriminatory practices and other barriers to meeting state security requirements;

\textsuperscript{107} World Bank WDR, p. 249.
\textsuperscript{108} World Bank WDR, p. 250.
and developing a plan to bridge the gap between what exists and what is needed to provide effective security. Particularly if these actions and processes are inclusive, as noted above, they can be productive in strengthening local ownership of peacebuilding processes, by enabling those affected to have a role in change which is likely to build their confidence in state security agencies.

Without being enabled to participate, women particularly, are unlikely to see reason to trust these agencies. It is also imperative that women have a role in designing and implementing processes and systems which recognise their trauma and which provide appropriately for survivors to testify and require official accountability for the wrongs they have suffered. Women who have experienced tactical rape and sexual violence in conflict have particular security concerns which must be recognised. Addressing this issue and institutionalising security provision involves a broad set of reforms, such as excluding ex-combatants who are known to have committed sexual violence from security sector positions; establishing specialised police units for investigating crimes of tactical rape and sexual violence in war; recruiting more women into the security sector; strengthening the capacity of health services to collect forensic evidence and providing legal services to victims. In Rwanda, for example, the UN agency, UN Women, has provided support to strengthening female parliamentarians’ oversight role, to improving women’s access to justice through the National Police Gender Desk, to developing protocols and policies on sexual and gender-based violence, to improving services for victims, and partnering on gender-sensitive reform with other security sector institutions.

Security sector reform is intended to transform security sectors and systems, ‘which includes all the actors, their roles and responsibilities – working together to manage

111 UN Women ‘Women and Security Sector reform’.
112 UN Women ‘Women and Security Sector reform’.
and operate the system in a manner which is more consistent with democratic norms.\textsuperscript{113} This cannot be achieved when women survivors of tactical rape and sexual violence are excluded. A UNIFEM Workshop on Gender and Security Sector Reform, in 2003, concluded that gender-responsive security sector reform requires normative, institutional and procedural reform of security institutions that includes a commitment to protect women, to advance their rights and practical access to services, to ensure policies are translated into instructions and incentives for implementers.\textsuperscript{114} This must apply to women who have suffered tactical rape and sexual violence and a particular point of focus must be on their first contact with security and justice systems. It is also essential to work with traditional authorities to raise awareness of women’s security needs.\textsuperscript{115} In addition to such specific measures, the needs of women must also be recognised in general policy-making processes which follow cessation of hostilities. These would include the development of national security policies, peace agreements, codes of conduct, and the strategies of donors and international organisations.\textsuperscript{116}

A major area of concern for survivors of tactical rape and sexual violence in conflict is to ensure recognition of the need to provide transitional justice and ensuring their access to this justice during conflict and when conflict ceases. An important aspect of tactical rape and sexual violence is that impact does not necessarily cease after cessation of hostilities. The motivation may be less clear with war no longer the context, but the damage to social behaviours, to norms of expected behaviours, to standards of behaviour – all these can have been seriously damaged. Sexual violence as a tool of war can become a way of life: once entrenched in the fabric of civilian

\textsuperscript{114} UNIFEM Workshop on Gender and Security Sector Reform, Summary, September 2009, p. 3.
\textsuperscript{115} UNIFEM Workshop on Gender and Security Sector Reform, Summary, pp. 7-8.
\textsuperscript{116} UN Women ‘Women and Security Sector Reform’.
society, it lingers long after ‘the guns have fallen silent’.\textsuperscript{117} During conflict the priority is to protect civilians and halt sexual violence by armed elements. After conflict the priority is to avoid a repetition of patterns of violence and exclusion thus preventing the ‘normalisation’ of brutal and widespread sexual violence committed by security forces, combatants and non-combatants alike.\textsuperscript{118}

In 2007, Médecins Sans Frontières commented that the extent of sexual violence against women in DRC was significant as an indicator of the breakdown of social relationships after so many years of conflict.\textsuperscript{119} They argued that ‘social norms’ had been considerably weakened, allowing individuals to engage in acts of extreme violence with almost absolute impunity.\textsuperscript{120} This perception of impunity was linked with the justice system in the DRC, described by the UN as being in a ‘deplorable state’, and with widespread reports of corruption and political interference.\textsuperscript{121} This was recognition of the impact of tactical rape and sexual violence with the breakdown of the security sector and highlighted the need for strategies to confront and reform a seriously flawed security sector. MSF continued:

\begin{quote}
In rare cases where women brave all obstacles and dare to report sexual violence, it has been widely reported that senior officers shield the men under their command from prosecution and deliberately obstruct investigations. Intrinsically linked to addressing the widespread impunity within the DRC will be the task of changing society’s attitude towards victims of rape and sexual violence. Changing such
\end{quote}

\begin{footnotesize}
\textsuperscript{117} S/2010/604, para. 14.
\textsuperscript{118} S/2010/604, para. 21.
\textsuperscript{120} Médécins Sans Frontières, 2007, p. 20.
\textsuperscript{121} UN expert of violence against women expresses serious concerns following visit to Democratic Republic of Congo, United Nations Press Release, 30 July 2007, quoted in Médécins Sans Frontières, p. 20.
\end{footnotesize}
attitudes represents an enormously difficult and complex task as they are embedded within societal values and customary law.\textsuperscript{122}

Changing such attitudes will be a difficult task but it must be accompanied by ensuring effective transitional justice for victims of tactical rape and sexual violence in conflict.

Transitional justice refers to the set of judicial and non-judicial measures that have been implemented by different countries in order to redress the legacies of massive human rights abuses. It has been recognised that:

\begin{quote}
transitional justice mechanisms can be critical in helping societies cope with the legacies of conflict, including widespread human rights violations. Through both judicial and non-judicial means, transitional justice aims to rebuild social trust, reform justice systems and law enforcement institutions, strengthen accountability for war crimes, promote national reconciliation, support those affected by conflict, and advance democratic governance.\textsuperscript{123}
\end{quote}

Given the possibility of renewed conflict when issues are unresolved and the generational impact of tactical rape there is a definite need for justice which can be delivered during the recovery period for communities and victims.

The International Center for Transitional Justice has identified certain measures to be put in place when delivering transitional justice and these include criminal prosecutions, truth commissions, reparations programs, and various kinds of institutional reforms.\textsuperscript{124} According to the ICTJ, there are four core elements of transitional justice. The first is criminal prosecutions, particularly those that address

\textsuperscript{122} Médecins Sans Frontières, p. 20.
\textsuperscript{124} International Center for Transitional Justice(ICTJ), retrieved 11 November 2011, <ictj.org/about/transitional-justice >.
perpetrators considered to be the most responsible.\textsuperscript{125} The second is reparations, through which governments recognise and take steps to address the harms suffered (such initiatives often have material elements such as cash payments or health services as well as symbolic aspects such as public apologies or day of remembrance.\textsuperscript{126} The third core element is institutional reform of abusive state institutions such as armed forces, police and courts, to dismantle—by appropriate means—the structural machinery of abuses and prevent recurrence of serious human rights abuses and impunity.\textsuperscript{127} The final core element identified is truth commissions or other means to investigate and report on systematic patterns of abuse, recommend changes and help understand the underlying causes of serious human rights violations.\textsuperscript{128}

There may be instances, such as truth commissions, where a degree of immunity may be negotiated in exchange for testimony but these do offer a form of accountability agreed by victims and survivors as part of a process of reconciliation. This is not to ignore or fail to bring perpetrators to account. It is, rather, an agreed process with at least some form of enabling communities to acknowledge crimes and injustices and to effect some basis for collective healing. There may be a perceived need for granting collective amnesties – often a compromise between justice and peace. There may be tensions arising from each of these approaches and some may be selected according to local practices. However, as analysis later in this chapter of the use of traditional courts in Rwanda will show, they may have a mixed degree of success. This reinforces the need to complement use of community-based justice systems with building formal justice systems.\textsuperscript{129}

\textsuperscript{125} ICTJ.
\textsuperscript{126} ICTJ.
\textsuperscript{127} ICTJ.
\textsuperscript{128} ICTJ.
\textsuperscript{129} World Bank WDR, p. 107.
Transitional societies emerging from serious conflict, ‘often adopt amnesty laws to consolidate fragile peace or fledgling democracy’.\textsuperscript{130} For women and communities recovering from tactical rape and sexual violence which has constituted such crimes, amnesty must not be seen as a viable alternative to accountability – even when governments might want to further other goals relating to recovery. The warnings of Jaqui True regarding promises made to women by recovering governments but which are not eventually delivered must be noted.\textsuperscript{131} The institutions to support these elements of transitional justice, often requiring security sector reform, must be in place for recognisable accountability and an end to impunity. It is possible that transitional justice may not be given high priority by governments which see other priorities for recovery after conflicts. These may reflect more concern for economic aspects of recovery and there may be a lack of understanding that transitional justice is a basic need of effective, long-lasting recovery. There are sound reasons to challenge such resistance to the provision of justice for survivors. As highlighted above, the possibility of recurrence, of the spread of violence and of ongoing lack of development all have implications beyond the immediate and convincing needs of specific communities. The end of conflict and the recovery and rehabilitation phases provide important opportunities to call for legal and judicial reforms, which in turn can be factors in developing compliance with international standards and law. For women in some post-conflict countries, such reforms can be critical in abolishing discriminatory laws and practices that keep them dependent on male family members and prevent them from participating fully in peacebuilding and reconstruction.\textsuperscript{132}

The international community, as well as state governments, has responsibilities relating to transitional justice. During recovery periods international donors play a

\begin{itemize}
\item \textsuperscript{130} ICTJ, retrieved 11 November 2011, <ictj.org/sites/default/files/ICTJ-DRC-Amnesty-Facts-2009-English.pdf>.
\item \textsuperscript{131} True, ‘Feminism’, p. 248.
\item \textsuperscript{132} UN Women, ‘Transitional Justice’.
\end{itemize}
significant role in setting priorities for change and development. Many development agencies have focused on building national capacity but little on building capacity in security and criminal justice, but there is a need to reinforce the sense of needing to act for prevention.\textsuperscript{133} Greater understanding of the inter-relatedness of human security and state security, with the consequent understanding of the need for security reform and transitional justice to prevent renewed wars, may be more compelling than the recognition of the needs of survivors of tactical rape and sexual violence. Whatever the motivation, security and justice are essential at both state and international levels.

The Need to Transition from International to National Justice and Security For Victims of Sexual Violence in War.

The UNSC has recognised that ‘when states are unwilling or unable to protect their civilians then international actors…may become engaged to remind parties of their obligations to protect civilians and may take measures to prevent abuses and protect people from harm’ and has progressively identified the protection of civilians as part of the business of the UNSC.\textsuperscript{134} The establishment of the ICTY and ICTR represented action by international actors stepping in to provide justice for civilians where states were not providing it. Given the analysis and focus in this dissertation on the former Yugoslavia and Rwanda these provide useful examples for analyzing how justice and security concerns need to transfer from international to state levels.

The ICTY and ICTR are both nearing conclusion. Each has made contributions to the application and interpretation of international law to crimes of tactical rape and sexual violence. Each has held accountable at least some perpetrators of these crimes. They have defined rape and have defined when tactical rape and sexual

\textsuperscript{133} World Bank WDR, Chapter 6.
\textsuperscript{134} Oxfam, \textit{Protection of Civilians in 2010}, p. 3
violence can be war crimes, crimes against humanity and genocide. In doing so, each has provided valuable grounds and bases for requiring that tactical rape and sexual violence in conflict are rejected. The issue of concern now is how justice will be delivered to those victims who have not received justice from the tribunals and for whom it may seem that their suffering goes unacknowledged and perpetrators go unpunished. For these victims and for their communities there must be justice if they are to be enabled to move on and if the possibility of renewed violence from a sense of unresolved issues is to be prevented. If there is to be security for them within their states the security institutions must be legitimate and must be seen to be legitimate. Authority to deal with unheard cases must be passed over to legitimate courts. Any future tribunals need to function better and lessons must be learned from the successes and failures of these two judiciaries.

In both the ICTY and ICTR the work of investigating sexual crimes has been found to be difficult. There must be further attention to training personnel and to setting in place systems which respond to the realities of victims within their own cultural contexts. John Cencich has acted as an investigator of sexual violence for the ICTY and outlined ten specific difficulties he encountered when investigating. He included in these difficulties the need to recognise and work with differences between civil and common law; issues around who is in charge of investigations; differences in methods of interrogation; differences regarding admissibility of hearsay and circumstantial evidence; differences in ways of using intelligence and counter-intelligence; differences in perceived need for personal security and attitudes to individual criminal responsibility and joint criminal enterprises. While these difficulties were put forward from his personal experience as an investigator for the ICTY, rather than tested theories, they should be recognised for further enquiry and

136 Cencich, pp. 175-191.
for developing guidelines for future court investigations. Cencich concluded that it is imperative that investigators be properly trained in international criminal law and in dealing with inherently different personal and legal needs of accused and accusers associated with charges before the courts.\textsuperscript{137} This is relevant for all crimes being investigated including those involving sexual violence if there is to be appropriate accountability.

The work of the two tribunals was carried out with some serious deficits. By the tenth anniversary of its establishment, the ICTR had handed down twenty-one sentences, with eighteen convictions and three acquittals.\textsuperscript{138} Ninety percent of those cases included no rape convictions and no rape cases were even brought by the prosecutor’s office in seventy percent of those cases.\textsuperscript{139} The report from the UN Research Institute for Social Development which provided these statistics claimed that the past decade has revealed a lack of political will at senior management level to integrate sexual violence crimes into a consistently followed prosecution strategy.\textsuperscript{140} This report was titled, ‘Your Justice is Too Slow’, reflecting the sense of frustration of many women in Rwanda. It concluded that prosecutions have been hampered by inadequate investigations, by inappropriate investigating methodology and a lack of training for staff. Some cases have moved forward without the inclusion of rape charges even when the prosecutor had strong evidence of such crimes.\textsuperscript{141} Despite statements about the need for justice for rape victims, the UN ‘has managed to transpose some of the crushing limitations and biases that rape victims

\textsuperscript{137} Cencich, p. 189.
\textsuperscript{138} Nowrojee, \textit{Your Justice is Too Slow}, p. iv.
\textsuperscript{139} Nowrojee, \textit{Your Justice is Too Slow}, p. iv.
\textsuperscript{140} Nowrojee, \textit{Your Justice is Too Slow}, p. iv.
\textsuperscript{141} Nowrojee, \textit{Your Justice is Too Slow}, p. iv.
encounter in their national jurisdictions to the international legal system it administers’ and there is concern to ensure the same does not happen at the ICC. 142

The specific strategy adopted in Rwanda to move accountability and provision of justice from the international tribunal to local courts provides some insights to how difficult such a process can be in a post-conflict situation. With the ICTR proceeding slowly and tens of thousands of cases awaiting trial, Rwanda attempted transition to local justice, ‘blending local conflict-resolution traditions with modern punitive legal system to deliver justice’.143 This was a transfer of cases to the community-based courts known as ‘gacaca’ in the hope that this justice system would have community support and would be able to deliver justice to survivors of the genocide, including women who had suffered from tactical rape and sexual violence. Human Rights Watch reported in 2011 that since 2005, 12,000 courts had tried 1.2 million cases.144 It needs to be recognised that within a few months after the genocide, jails were bursting. By 1998, there were an estimated 130,000 prisoners in jails built for 12,000 prisoners and conventional courts had tried approximately 1,292 suspects between December 1996 and 1998.145 There have been some achievements from this move to involve traditional justice systems but there are many concerns. Concerns relate to lack of fair trials due to untrained or corrupt judges, lack of rights to legal representation and failure of community members to denounce false testimonies because they feared reprisal.146 Related to this fear of reprisal is the reality that rape has been used as a tactic of war, to humiliate, intimidate and traumatise whole communities. Reprisals fuel further violence, and, as the climate descends into

142 Nowrojee, Your Justice is Too Slow, p. 26.
144 HRW, Justice Compromised, p. 8.
145 HRW, Justice Compromised, p. 9.
146 HRW, Justice Compromised, p. 11.
general lawlessness, opportunistic rape by civilians becomes a normal part of life.\textsuperscript{147} Perceived impunity for perpetrators can contribute to the generalised breakdown of security within the society. If gacaca courts were to be offering resolution and accountability they had to be seen to be just. Security for women testifying also needed to be effective.

Genocide related rape cases, originally deemed to be under the jurisdiction of conventional courts, were transferred to gacaca in 2008. Women had preferred conventional courts believing they would have a better chance of confidentiality and many were surprised and felt betrayed when suddenly cases were transferred to gacaca. However, Human Rights Watch reported the government as saying that some women had requested a more speedy response and that many victims who had contracted HIV/AIDS were dying before courts could hear cases.\textsuperscript{148} Rape victims uniformly expressed disappointment at having to appear in gacaca rather than conventional courts, as gacaca proceedings – even behind closed doors – failed to protect their privacy. The government had changed relevant laws so gacaca could be held behind closed doors – but the nature of the process meant that the whole community knew of cases and there were some cases in which there was no witness as to whether or not trials were fair.\textsuperscript{149} Many women, as well as voicing fears regarding privacy noted the bias of judges where, for example, in some cases, judges were related to the accused and in one case the judge was the brother of a man accused of rape during the genocide.\textsuperscript{150} There were also allegations of women being bribed to drop cases and of judges demanding bribes.\textsuperscript{151} Rape victims were offered support counselors but these were limited in number. There were some attempts to

\textsuperscript{147} Care International, \textit{Voices Against Violence} July 2009, retrieved 14 January 2011, \texttt{<www.care.org/campaigns/voices-against-violence/Rape\%20as\%20a\%20weapon.pdf>}.  
\textsuperscript{148} HRW, \textit{Justice Compromised}, p. 12.  
\textsuperscript{149} HRW, \textit{Justice Compromised}, p. 119.  
\textsuperscript{150} HRW, \textit{Justice Compromised}, p. 120.  
\textsuperscript{151} HRW, \textit{Justice Compromised}, p. 121.
respond appropriately with some women being accompanied to gacaca when they feared attacks from relatives of the accused. However, complaints were rife. Often witnesses failed to appear and gacaca sometimes tried cases with just accused and accuser present. Some women found judges asked ‘bad’ or ‘insensitive’ questions although there were cases where some women were satisfied with the process and outcome.152 There were many complaints that compensation was only awarded in cases regarding property, with no compensation being offered to those who had been raped.153

Community-based gacaca courts and national conventional courts continued to try individuals for crimes committed during the 1994 genocide. Reporting in 2009, Human Rights Watch noted that while some Rwandans felt the gacaca process had helped reconciliation, others pointed to corruption and argued that the accused received sentences that were too lenient, or were convicted on flimsy evidence154. There were also concerns that the government had increasingly but unsuccessfully called for foreign jurisdictions, including the International Criminal Tribunal for Rwanda (ICTR) in Tanzania, and several European countries, to return genocide suspects to Rwanda. The government vehemently rejected calls for the ICTR to prosecute crimes committed by the Rwandan Patriotic Front in 1994. According to Human Rights Watch, gacaca courts tried thousands of sexual violence and other particularly serious cases, and imposed mandatory lifetime solitary confinement for convicted persons. But, in the absence of legislation setting out the implementation of this punishment, prison authorities did not isolate prisoners.155

152 HRW, Justice Compromised, p. 124.  
153 HRW, Justice Compromised, p. 130.  
Gacaca trials started in 2005 and were initially due to end late in 2007. The closing date was then extended to June 2009, but the National Service of Gacaca Jurisdictions (SNJG) unexpectedly began gathering new allegations in parts of the country and extended the deadline to December.\textsuperscript{156} This time-frame was extended once more until, in July 2010, the government announced that the last cases had been finalised. Then two months later, the government announced gacaca would continue to review cases considered miscarriages of justice but would hear no new cases.\textsuperscript{157}

There is concern, of course, that if reviews are again carried out in gacaca, there is the same vulnerability to corruption and miscarriages. Human Rights Watch recommended that such reviews be carried out by a special unit attached to the Supreme Court.\textsuperscript{158} They also recommended that there be provision of trauma counseling and support for victims of sexual abuse.\textsuperscript{159} In all, there are reasons for concern that as the ICTR closes, there will be little application of the findings that emerged from its work to ensure justice and appropriate security for victims of tactical rape and sexual violence. Failure to effectively resolve their issues does not auger well for future stability.

The situation in the former Yugoslavia also gives reason for concern as the ICTY draws to a close and responsibility for ongoing work passes to the national courts and judicial systems. Already there are strong grounds for urging better practice in these national courts. There are concerns that many perpetrators of tactical rape and sexual violence are enjoying impunity for those crimes. Amnesty International has concluded that the government of Bosnia and Herzegovina (BiH) has failed to ensure justice and reparation for thousands of women who were raped during the 1992-1995

\textsuperscript{156} HRW \textit{Rwanda: events of 2009}, p. 1.
\textsuperscript{157} HRW \textit{Justice Compromised}, p. 10.
\textsuperscript{158} HRW \textit{Justice Compromised}, p. 139.
\textsuperscript{159} HRW \textit{Justice Compromised}, p. 14.
war.\footnote{Amnesty International, \textit{Whose Justice? The Women of Bosnia and Herzegovina Are Still Waiting}, Amnesty International, 2009, pp. 3-4.} As in Rwanda, there is a perceived failure to comprehensively investigate and prosecute before international and national courts. In many cases, women face stigmatisation, post-traumatic stress disorder and other psychological and physical problems. They often live in poverty and cannot afford medicines. As in Rwanda, too, no reparation for victims of sexual violence is required by international law and this absence of reparation creates additional difficulties for victims to deal with the past and move on with their lives.\footnote{Amnesty International, \textit{Whose Justice?}, pp. 3-4.} In BiH this situation is exacerbated by women survivors of war crimes of sexual violence knowing they are discriminated against even at the level of social benefits available to them in comparison with what is available to war veterans.\footnote{Amnesty International, \textit{Whose Justice?}, p. 41.} It seems that recognition of these women as casualties of war, victims of rape which was a tactic of war, is not yet achieved. It is in such practical ways that governments and communities express attitudes to these abuses.

The list of obstacles still to be overcome before the justice system functions appropriately in cases of sexual violence is long and varied. Legal frameworks are often inadequate, which means cases which are prosecuted are adjudicated based on legal frameworks not in line with international standards for prosecuting war crimes. There is failure to provide adequate protection and support for survivors and witnesses and many women are re-traumatised during legal proceedings.\footnote{Amnesty International, \textit{Whose Justice?}, p. 61.} One call from Amnesty International is for amendment of the BiH Criminal Code to include a definition of sexual violence in line with international standards and jurisprudence related to prosecution of war crimes of sexual violence – by removing the condition of ‘force or threat of immediate attack’ from the present definition of sexual violence.\footnote{Amnesty International, \textit{Whose Justice?}, p. 62.} In 2009, Amnesty International also called on the international
community to continue support for the State Court of BiH and to provide adequate funding for witness support and protection, while BiH authorities were urged to develop a state strategy on reparation for victims of war crimes of sexual violence. All of these changes are needed if the justice system is to meet the needs of the women of BiH. International donors and agencies need to be prepared to continue with such reforms if they are committed to rejecting tactical rape and sexual violence in conflicts, which again have the potential to recur when issues are insufficiently or inadequately resolved. Transitional justice is an essential element of providing security and responses are essential at both state and international levels.

Conclusion

This chapter has reviewed the nature of the security threat posed by tactical rape and sexual violence in conflict. It has analysed the security threats inherent in acts which are now officially acknowledged as violations of international law: the threat of the spread of political and sexual violence across borders; the threat to economic development; the threat to societal norms when conflict ceases; the threat of recurrence of violence when there is insufficient accountability and justice. The chapter has considered the links between women’s security, human security and state security with international stability. The role of states has been shown to be crucial in the provision of security for its population and this must include providing security for women who may become victims of tactical rape and sexual violence in conflict. In the immediate aftermath of conflict it is imperative to ensure a viable and functioning security sector. Transitional justice provides a basis for recovery, rehabilitation and recovery of the state. International initiatives such as the ICTY and ICTR represent action taken by the international community – but ensuring the work of those judiciaries is taken into state systems is a responsibility which states cannot ignore.

Recognition that tactical rape and sexual violence in conflict constitute a security threat and come within the responsibilities of the UNSC to confront has been a significant development. This chapter has argued that there is an ongoing need to confront tactical rape and sexual violence in conflict because security threats continue. It argues that states have a responsibility to confront tactical rape and sexual violence in conflict. States, as well as the UNSC, need to institutionalise policies and practices and ensure appropriate security sectors and transitional justice. States must eventually accept responsibility for the working and outcomes of internationally established ad hoc tribunals.
Conclusion: significant progress; ongoing challenges

This dissertation set out to question the nature and extent of a commitment by the international community to confront tactical rape and sexual violence in war since the early 1990s. In doing so it considered the conflicts and ad hoc International Criminal Tribunals for the former Yugoslavia (ICTY) and for Rwanda (ICTR). The dissertation analysed their contributions to the international community’s eventual move to actively reject tactical rape and to articulate and reject the broader practice of sexual violence in war. It analysed United Nations Security Council (UNSC) resolutions, particularly since 2000, to understand the progress of official institutionalisation of efforts to confront tactical rape and sexual violence in conflict. The dissertation considered how the interests of human security and international stability intersect and how the security of women, human security and state security interplay.

The central argument of the dissertation is that despite ongoing use of tactical rape and sexual violence in conflict, there has been significant progress in the international recognition of sexual violence as a tactic of war. This has led to a broader international response to gender-based violence in conflict as these acts have been increasingly perceived as a threat to international and human security. There certainly remain serious ongoing challenges before women, girls and their communities in situations and arenas of conflict are duly protected from these violations of international law. However, the fact that the UNSC recognised sexual violence in conflict as a security issue and consequently promoted various forms of institutionalisation to confront this threat has been a major achievement. Importantly, the dissertation finds evidence of official international recognition that women’s vulnerability in peace is exacerbated in times of conflict. This reflects work by feminists, activists and certain NGOs over a long period of time and there is, now, an official approach to strategising to confront sexual violence in conflict.
The dissertation also argues that a number of factors contributed to this development in rejecting sexual violence in conflict. The examination of events in the conflicts of Rwanda and the former Yugoslavia and the related work of the ICTY and ICTR established that sexual violence in war violates international humanitarian and human rights law. The dissertation finds that a significant development has been UNSC realisation of the intersection of the interests of human security and international stability which, in turn, has been a major contribution to a normative rejection of tactical rape and sexual violence in war. UNSC acknowledgement of the threat to international and human security posed by tactical rape and sexual violence in war has led to consequent responses to this threat. The dissertation also finds that there has been significant contribution made to these developments by a diverse range of actors including NGOs, feminist analysts and some states.

While recognising these significant indicators of progress in rejecting sexual violence in conflict, the dissertation does also acknowledge that there remain significant challenges to ongoing rejection of sexual violence in war. These challenges are particularly in the transfer from international to state-level policies and practices. However, the fact that this has been identified and states have been required to take action in National Action Plans is itself a major achievement, even though there is much still to be done to integrate action to confront sexual violence in conflict into state policies and practice. There remains a need for ongoing action at international and state levels to prevent these abuses, to protect women and communities and to bring to account perpetrators of what are now recognised as violations of international law and threats to security. In concluding the argument that there has been progress in the international response to gender-based violence in conflict, there are five important features that need to be emphasised.
Recognition of tactical rape

First and central to progress since the 1990s in rejecting sexual violence in conflict has been the major achievement of the recognition by states and in the United Nations Security Council (UNSC) that rape and sexual violence can be tactics of war, employed for political and military gain. Tactical rape was defined for the purpose of this analysis in the introduction, because it is a term which the author argues encapsulates concerns about the use of widespread rape as a tactic and a deliberate strategy in wars since the 1990s. Although rape has been used for generations, it was in the changing context of international attitudes to humanitarianism that attitudes to this particular violation of civilians began to change in the early 1990s. There was public outrage at reports of widespread tactical rape. The wars being waged towards the end of the twentieth century were described as ‘new wars’. These were wars in which attacks on civilians were employed deliberately. Attacks on civilians included attacks on women and rape was an effective tactic. There were media and public calls for international action to stop the rapes which were being reported from the former Yugoslavia and Rwanda. In the early reports regarding rape in the former Yugoslavia, the term ‘rape as a weapon of war’ began to circulate.\(^1\) It took many years before even this term, which did not carry a full understanding of tactical rape, was accepted in general use by NGOs and states, as discussed in earlier chapters of this dissertation. The awareness of rape being used deliberately for military and political purposes grew and pressure to act reached to the United Nations, which demonstrated a concern about tactical rape – a concern which broadened to include a wider concern for various forms of sexual violence in conflict.

This dissertation argues that an integral achievement of this significant discourse was the recognition that action to confront tactical rape and sexual violence in war meant

\(^1\) Fitzpatrick, *Rape of Women in War.*
understanding and confronting the reality that women’s vulnerability in peace is exacerbated in war. The concerns of feminist analysts and many NGOs which had been articulated for many years were eventually – even if not entirely – officially registered in the UNSC as demanding attention. Underlying causes of the total impact of tactical rape and sexual violence in conflict were registered as needing to be confronted.

Feminists have argued convincingly that inequalities between men and women which contribute to all forms of insecurity can only be understood and explained within the framework of patriarchal structures that extend from the household to the global economy.2 This is integral to providing protection for women in conflict and for ensuring justice for them after wars. Largely because of patriarchal attitudes reflected in social relationships and cultural values, rape has long-lasting effects on communities who see ‘their’ women raped. Patriarchy, while variously exhibited and defined in earlier chapters, is evident in communities and as such an influential social, cultural and legal element affecting women and men. In many of these patriarchal communities, women are valued as ‘belonging’ to men. Gendered values of women include chastity and fertility. Women as well as men often share these values so women may estimate their own value through the lens of the communal values. This is what makes tactical rape and sexual violence horrifyingly effective. Women victims of tactical rape suffer physically, emotionally, economically and socially. The effects can continue for generations as children born of tactical rape can continue to be ostracised, rejected and impoverished with – and perhaps by – their mothers.

It is concluded therefore that it is significant that there has been formal, international recognition at the UNSC that confronting policies and practices which discriminate

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2 Tickner, ‘You Just Don’t Understand’, p. 626.
against women in peace time is an element confronting the use of tactical rape and sexual violence in conflict. It is also significant that there has been recognition of the responsibility of the international community and states, locally, to respond. This responsibility means meeting the need for attention to those social attitudes and values inherent in some communities which contribute to tactical rape and sexual violence being such perniciously effective strategies to achieve military, territorial and political gains. It is a responsibility which includes formulating and implementing policies which enhance women’s education, economic independence and participation in government.

*Confirming that sexual violence in conflict contravenes IHL*

Second, this dissertation has concluded that establishing tactical rape and sexual violence in conflict as contraventions of international humanitarian law has been essential to the moral condemnation of tactical rape and sexual violence in war. The outcomes of the ICTY and ICTR as they investigated breaches of international humanitarian law examined cases of rape and sexual violence in those conflicts, provided the legal basis for international concern. The two ad hoc tribunals were enabled to investigate and to bring to account perpetrators of violence in the two conflicts in the former Yugoslavia and Rwanda. The tribunals were mandated to apply existing international law, not to establish new law. However, it proved possible to prosecute tactical rape within the existing legal framework. This was an important development as the tribunals demonstrated that application and interpretation of existing law was sufficient to recognise and confront the reality of tactical rape and sexual violence in war as breaches of established law. With indictments and judgements came a broadening of concern about rape into concern for all forms of sexual violence in war, encapsulating what was tactical rape and other forms of sexual violence. The term ‘rape’ was finally defined comprehensively and international law was found to be applicable in various ways.
At the ICTY, there were judgements regarding rape as a crime against humanity, a war crime, slavery and torture. Chapter 3 of this dissertation showed that there were specific clarifications and definitions which were extremely valuable in setting legal precedence and in ensuring recognition that tactical rape and sexual violence in war contravene international law. There was clarification of terms within international law such as ‘protected persons’ and of when international law applied to conflicts within as well as across borders. At the ICTR, the subject of Chapter 4, it was established that rape and sexual violence could be methods of genocide. Following initial resistance to calling rape in certain circumstances a means of contributing to genocide, the work of the Tribunals contributed to the eventual (albeit limited) acknowledgement of it as such under the terms of the International Convention on the Prevention and Punishment of the Crime of Genocide. Part of this acknowledgment was that rape had become increasingly not only a weapon of war but also a policy-determined, tactical weapon of genocide. The term ‘sexual violence in war’ was used frequently as an extension of the initial abhorrence for rape which was used as a tactic. These were important developments in a discourse leading to rejection of sexual violence in war. The international community of states has formally rejected genocide and accepted the responsibility to prevent and respond to genocide. There is now a consequent responsibility to respond to tactical rape and sexual violence where these are used to perpetrate genocide. It is, however, recognised that the reluctance sometimes demonstrated by states to respond to events which could be deemed genocide may also apply to tactical rape and sexual violence in war.

The testimonies of many women in the tribunals exposed underlying social attitudes. This included attitudes demonstrated in the operation of the tribunals themselves, with judges and prosecutors reflecting at times levels of insensitivity and a lack of care that must shock any observer. The extent and intrinsic cruelty of the rapes and
sexual violence documented in survivor and witness accounts in both conflict arenas demonstrated the deliberate, planned and authorised nature of attacks on women. They also demonstrated the multi-faceted and long-term suffering of victims. Discourse leading to rejection of tactical rape and sexual violence in war accelerated as the work of the tribunals was disseminated. At the international level, at least, grounds for rejection of these abuses grew with recognition that they were established violations of international law. Given these achievements, which provided legal grounds for rejecting tactical rape and sexual violence in war, the conclusion, therefore, is that the conflicts and the ICTY and ICTR did make significant contributions to the international community’s eventual rejection of such abuses.

The analysis of testimonies and court proceedings at the ICTY and ICTR has resulted in the conclusion that the serious reservations, especially on the part of feminist analysts as discussed in Chapter 1 are indeed justified. The potential for negative impact on women who had suffered from tactical rape and sexual violence being required to testify in these tribunals is clear. These reservations were shown to be credible, especially as accounts of women’s experiences in the tribunals began to emerge. The testimonies referenced in Chapters 3 and 4 regarding the insensitivity of courts and of judges and investigators, the risks and indignities encountered by witnesses and the limited attention paid to tactical rape and sexual violence – all these demonstrated the need for greater understanding and more effective responses when responding to the crimes of tactical rape and sexual violence in war. There were lessons learned about the operation of courts and judiciaries dealing with witnesses and with the requirement to pay due attention to tactical rape and sexual violence as violations of accepted international humanitarian law. On balance, the outcome of these two judiciaries contributed positively to case law, legal definitions, recognition of the need for accountability of perpetrators and in so doing did support
rejection of tactical rape and sexual violence at international level. Despite some reservations and ongoing challenges discussed below, it is concluded that the work of the ICTY and ICTR in establishing sexual violence in war as a contravention of international humanitarian law has under-pinned progress in understanding and acceptance by the UNSC that sexual violence in war constitutes a threat to both human security and to the security of states.

Establishing sexual violence in conflict as a security issue

Third, this dissertation has also argued that the acceptance that the issue of sexual violence against women in conflict falls within the mandate of the UNSC has been another momentous achievement. The nature of the security threat posed by sexual violence in war is increasingly being officially recognised. It is the conclusion of this dissertation that the question regarding the extent to which interests of human security and international stability intersect and contribute to a normative rejection of tactical rape and sexual violence has begun to be answered. Chapter 7 considered the significant work undertaken on human security and the inter-relatedness of human security and security of states. It was established that unresolved sexual violence in war, where there was insufficient or unsatisfactory accountability and justice, leads to recurring conflict. As was noted earlier, it was common in both Rwanda and the former Yugoslavia to hear participants in violence say they were avenging earlier events. When perpetrators of sexual violence escape accountability and are granted impunity, the cycles of enmity can continue. It was also established that conflict in one state can spill over into neighbouring states. There is evidence from the World Bank, noted in Chapter 7 that economic development is impeded when neighbouring states are in conflict. There is evidence also noted earlier that tactical rape can erode social norms to the point that, without accountability for perpetrators, the violations which occur in conflict carry over into peace time. There can be a cycle of violence against women in peacetime leading to violence against women in war, leading to
renewed conflict and more violence against women in war. It has been recognised at the UNSC that women’s security as part of human security is closely interlinked with the security of states.

This recognition of sexual violence in war as a security threat has been reflected in unanimous passage of UNSC resolutions and particularly in the open debate around UNSC 1820 in 2008 which was discussed in detail in Chapter 6. The consideration and analysis of UNSC resolutions leads to the conclusion that a considerable degree of commitment to rejecting tactical rape and understanding the broader concept of sexual violence in war has been evinced in important ways by the UNSC since the 1990s. Building on specific decisions of the ICTY and ICTR, which made clear that these abuses were violations of existing international law, the United Nations began to take steps towards confronting what was increasingly perceived to be a security threat falling within the mandate of the Security Council.

As seen in Chapter 5 of this dissertation, the UNSC demonstrated its involvement when in 2000 it passed a landmark resolution, UNSCR 1325. It was this resolution, passed unanimously by all member states of the UNSC, that demanded action be taken to confront sexual violence in all its forms (including tactical rape) and steps taken for the prevention of this abuse and for prosecution of perpetrators. The resolution was remarkable for the breadth of understanding of the nature, sources and effect of sexual violence in war and for the recognition of it as a violation of international law. Perhaps even more remarkable was the explicit acknowledgement that if women are vulnerable in peacetime, their vulnerability is exacerbated in times of conflict. Confronting sexual violence in war, therefore, required confronting social attitudes, community structures and value systems which render women vulnerable to violence in peacetime. There was recognition of the particular needs of women in conflict and in peace, whether that peace preceded or followed conflict. There was
also recognition of the potential for women to play constructive roles in peacemaking and reconciliation. This resolution was a major step in international efforts to prohibit tactical rape and sexual violence in war.

UNSCR 1325 was passed unanimously and all member states had a responsibility to act on issues included in the resolution. However, states were slow to take practical steps to incorporate the resolution into national policies and practice so all states were asked to formulate National Action Plans (NAPs) to ensure such state level policy and practice. It is concluded that the resolution was a significant step in the discourse rejecting sexual violence in war because it was an overt attempt by the UNSC to strengthen state capabilities in addressing sexual violence. It is also argued that the UNSC requiring states to formulate National Action Plans was a significant step even if there is still a long way to go before commitment to rejecting sexual violence in war is effectively institutionalised at the national level of many member states.

While UNSCR 1325 was widely acclaimed, there was some continuing debate about whether or not tactical rape and sexual violence were issues for the UNSC. Were these acts security threats for states? At one level, there was acceptance that deliberate, policy-based, widespread violation of international law contributed to international instability. But, until 2008, questions were still raised about the alignment of rejection of sexual violence in war and the mandate of the UNSC. In 2008, as discussed in Chapter 6, in an open debate preceding the passage of another key resolution, UNSCR 1820, member states formally acknowledged the links between tactical rape, sexual violence in war and security. This resolution and UNSCR 1888 (2009), UNSCR 1889 (2009) and UNSCR 1960 (2010) which followed represented further steps in institutionalising the focus and confrontation of sexual violence in the structure and practice of the UNSC. Once it had been
recognised – as indicated in UNSC 1325 – that approaches to prevention and protection require a range of diverse strategies then appropriate implementation of UNSC resolutions was more likely to be effected. The effects of UNSC 1325 and other UNSC resolutions look promising and there has been significant progress in institutionalising UN responses to tackling sexual violence in conflict. There are however, ongoing challenges to be considered later in this conclusion.

Contributors to progress in the discourse rejecting sexual violence in conflict

Fourth, this dissertation has concluded that various stakeholders have played significant roles in achieving this recognition of UNSC responsibility to recognise and confront tactical rape and sexual violence in war. The role of feminist analysts such as those who have informed this dissertation is acknowledged. Other stakeholders have included NGOs, activists and governments. In particular, it is a conclusion of this dissertation that the ongoing role of NGOs and civil society groups should be acknowledged in the development of the international rejection of tactical rape and sexual violence in war. Analysis in Chapters 3 and 4 showed that even the UN Special Rapporteurs, appointed to investigate human rights abuses in the former Yugoslavia and Rwanda did not acknowledge the widespread use of tactical rape and sexual violence in those two arenas of conflict and genocide. Those chapters demonstrate that early reports from these investigators failed to record what was glaringly apparent to humanitarian aid workers, peacekeepers and NGO observers – that there was widespread use of tactical rape and sexual violence in those conflicts and genocide. As shown in Chapter 5, the sustained pressure exerted by those NGOs and civil society groups eventually resulted in UNSC 1325.

The role of NGOs in investigating and recording early reports of mass rapes demonstrates the contributions of these groups to sustaining pressure on the UN to respond. An important strategy included in the operation of NGOs at the time of
reporting about tactical rape and sexual violence was the collation of personal testimonies and data about the number, type, targets and extent of the violations. These records, as demonstrated in Chapters 3 and 4, provided grounds for recognising the reality of tactical rape and sexual violence and a basis for acknowledging that such practices constituted a threat to the international community as well as a threat to women. As noted, a representative of the World Council of Churches (WCC) provided a briefing for the European Council’s investigative team into the former Yugoslavia and its own report. Reports from the WCC and other NGOs also helped apply pressure for the UN Special Rapporteurs to take note of the rapes and sexual violence and for the establishment of the two tribunals, ICTY and ICTR. The role of NGOs such as Human Rights Watch and writers such as Binaifer Nowrojee indicate the power of advocacy groups when they alert the international community to violations of international humanitarian and human rights law.

Thomas Risse, Stephen C. Ropp and Kathryn Sikkink recognised the role of trans-national advocacy networks. So, too, did Jacqui True who wrote of trans-national networks of women’s NGOs as being conduits of information and best practice models but also of their ‘knowledge concerning alternative political strategies and how they may be applied to further promote gender policy change’. Analysis of the development of normative rejection of tactical rape and sexual violence in war confirms the value of such networks in sharing information as a method of bringing pressure for change.

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4 Fitzpatrick, Rape of Women in War and Fitzpatrick The Rwandan Regional Crisis.
5 Nowrojee, Shattered Lives.
Whereas pressure from NGOs sharing information and demanding responses had been key in the adoption of UNSC 1325, the next major step, UNSCR 1820, came as a result of pressure from specific states. Chapter 6 includes detail of the role of states in advocating for a further resolution which provided for monitoring and implementing specific actions to confront the concerns raised in and by UNSCR 1325. The chapter noted that in this instance some NGOs were hesitant to raise perceived weaknesses in UNSCR 1325, fearing to undermine the positive impact of that resolution but states such as the United Kingdom took the lead in calling for another resolution which would take further the progress inherent in UNSCR 1325.

Member states of the UN were also active in a number of areas related to confronting sexual violence in war. In 2000, the same year as UNSCR 1325 was passed, the International Criminal Court (ICC) came into operation. The mandate of the ICC, as has been discussed earlier in this dissertation, included dealing with crimes such as tactical rape and sexual violence. This was a development which went beyond the time limited, specific conflict related, ad hoc tribunals. In effect, states had agreed that accountability was essential for breaches such as those being identified by the ICTY and ICTR. It is concluded that normative change can be instigated and sustained by productive partnerships between states and NGOs, particularly when states perceive it is in their own interest to promote such change.

Chapter 1 noted the three types of socialisation processes necessary for enduring change identified by Risse, Ropp and Sikkink: first, the processes of adaptation and strategic bargaining; second, the processes of moral consciousness-raising, ‘shaming’, argumentation, dialogue and persuasion and thirdly the processes of institutionalisation and habitualisation. In the case of normative rejection and condemnation of tactical rape and sexual violence these stages have overlapped and

8 Risse, Ropp & Sikkink, p. 11.
occurred in parallel. It was a significant development when states at the UNSC, after considerable debate, endorsed this normative rejection unanimously. Given the reservations outlined in Chapter 6 it could be surmised that at least some of those states did so for strategic motives in a desire to win approval from other states – and possibly, political and economic benefits in so doing. However, as Risse, Ropp and Sikkink noted, to ‘endorse a norm not only expresses a belief, but also creates an impetus for behaviour consistent with the belief’.\(^9\)

Whatever their motives may be when responding, it is notable that states have found themselves required to formulate national action plans and to support changes in policy and practice at global levels. Not all states have yet complied, but the fact of the requirement on states to enact national policies and practices could result in moves to the second stage, accompanying or eventual moral consciousness raising. This could have the positive result that the normative rejection, which may have been adopted at global level but given only rhetorical support by some leaders, may eventually become internalised as new leaders, used to hearing the rhetoric come to believe and accept what has become collective expectations. Consequently, ‘the goal of socialisation is for the actors to internalise norms, so that external pressure is no longer needed to ensure compliance’.\(^10\) It can be concluded that international actors and organisations such as those at the UNSC and Assembly have begun to state the rejection of tactical rape and sexual violence in war in specific resolutions – and those resolutions are increasingly accompanied by specific institutionalised policies and practices.

Effecting substantive change requires serious work in institutionalising and resourcing policies and practices and there has been member state support for such institutionalisation at the UN. Resolutions at UNSC have been valuable in moving

\(^9\) Risse, Ropp & Sikkink, p. 7.
\(^10\) Risse, Ropp & Sikkink, p. 11.
forward understanding of how to confront sexual violence in war, but practical action has been needed to see many elements of those resolutions implemented. The analysis of UNSCRs 1820 and 1888 in Chapter 6 detailed that senior appointments were made, teams of experts were established, on-going procedures for regular reporting were set in train and budget allocations agreed by states at the UNSC. The UNSC agreed a policy of zero tolerance for sexual violation and exploitation by peacekeepers was to be instituted. UNSCR1888 included a requirement regarding peacekeeping and encouragement for states, ‘to increase access to health care, psychological support, legal assistance and socio-economic reintegration services for victims of sexual violence in particular in rural areas’. Training programmes for all personnel involved in the aftermath of conflicts were to include gender-related issues and women were to be actively recruited and involved in all UN activities relating to peacekeeping, peacemaking and reconstruction and recovery initiatives. UNSCR 1888 reinforced the decisions that teams of experts were to be immediately deployed to situations of particular concern with respect to sexual violence in armed conflict, working through the UN presence on the ground with the consent of the host government to assist national authorities to strengthen the rule of law. Data collection by a range of stakeholders including UN agencies, governments and development funders, continues to be imperative if the issue of tactical rape and sexual violence in conflict is to receive due attention. UNSC reports being required to include information regarding sexual violence and support for the work of the Special Representative are positive developments.

It is, therefore, a further conclusion of this dissertation that, as a result of the work by diverse stakeholders, there has been significant institutionalising at the UN to ensure resources are available for the ongoing work of confronting sexual violence in conflict. These resources include staffing, training and documentation and recording.

12 S/RES/1888 para. 18.
of incidence and extent of tactical rape and sexual violence in conflict. These are all important steps to ensure effective planning and post-conflict strategies for recovery, reconstruction and rehabilitation of individuals and communities. By 2011, it was clear that at international level, as evidenced by these resolutions and accompanying implementation of a range of policies, that there was considerable institutionalised commitment to confronting sexual violence in war. In March 2012, a statement from the Organisation for Security and Cooperation in Europe (OSCE) demonstrated ongoing and regional institutionalisation, noting that it would, ‘continue to examine ways to integrate into the activities of the Organisation, the relevant parts of UNSCR1325 and related resolutions’ and its decision to appoint an OSCE Special Representative on Gender Issues.13

**Ongoing challenges**

Fifth, there have been significant developments in confronting tactical rape and sexual violence in conflict but there remain ongoing challenges. This dissertation argues there have been major developments in discourse regarding normative rejection and condemnation of tactical rape and sexual violence in war. It argues also that a challenge is to build on this discourse and to ensure that this rejection is sustained, strengthened and translated more seriously from global to state levels. The developing normative rejection of sexual violence in war must be mainstreamed in all states and in all aspects of humanitarian response.

The challenge, therefore, is to build on the achievement of requiring states to develop and support sustained, extended actions to confront sexual violence in war effectively. States must continue to work with the UN to develop further legal and normative frameworks which have been set in train with the developments charted in

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this dissertation. States must recognise their responsibilities to cooperate for effective data collection and documentation of the incidence of tactical rape and sexual violence in war, essential for planning post-conflict strategies. International and national stakeholders, government and non-government, must prioritise strengthening state level institutions such as the security sector and judiciaries. International assistance needs to be sustained and to focus on security sector reform as well as strengthening national justice systems and courts. Together, they must ensure that demobilisation and rehabilitation strategies are designed to take women’s roles and experiences into account. Approaches which are inclusive of women in recovery and development are essential.

Closely related is the conclusion that a further challenge will be to ensure state policies and practices in the aftermath of conflict recognise that while men and women civilians share some of the same needs, women also suffer gender-related violence in war, often linked to and exacerbated by their pre-conflict status. For effective peacebuilding, there must be attention to the pre-conflict status of women. As has been noted, women vulnerable to violence in peacetime are even more vulnerable in conflict when attacks on them are deemed to be attacks on their communities. This becomes part of a cycle as civil wars recur: peacetime vulnerability leads to wartime vulnerability which leads to post-conflict vulnerability. Confronting and dealing with the issue of women’s status has been recognised as essential for peacebuilding. William Durch and Alison Giffen found that the pre-conflict status of women significantly affects the probability of successful peacebuilding when a peacekeeping operation is present:

The higher the pre-conflict status of women, the greater was the probability of peace building within five years of the end of conflict. In other words protecting and
empowering women in post war settings, often cast as a moral imperative, can also
be seen as an operational necessity for building sustainable peace.\textsuperscript{14}

This finding is indicative of the growing realisation that an ongoing challenge in
building security in states post-conflict is building security for women.

This dissertation also concludes that serious challenges have emerged alongside the
achievements of the ICTY and ICTR. Continued and sustained action at a number of
levels and by a number of stakeholders is needed to cement progress achieved in
those judiciaries. National and international monitors of the tribunals must watch
how these tribunals pass over responsibilities to national and domestic judiciaries.
They need to observe and evaluate how the gacaca community courts of Rwanda as
discussed earlier, deal with all the remaining cases. It will be necessary to see how
communities deal with considerable backlogs of cases and to see if impunity is in
any way dented. Importantly, it will be necessary to observe how or if the continuing
tensions between competing calls for attention in the courts in both Rwanda and the
former Yugoslavia are lessened or exacerbated when international steps for
accountability appear to be lessening. Lessons can be learned about the need for
witness protection, training for court personnel dealing with survivors of tactical rape
and sexual violence and programmes to confront existing communal and social
attitudes to survivors and their children. All these need to be the foundation for state
and international actions relating to the aftermath of conflicts. The challenge is to
ensure that in transitions from conflict to peace, tactical rape and sexual violence are
dealt with to the same extent as other breaches of international humanitarian law.

\textsuperscript{14} WJ Durch and AC Giffen, \textit{Challenges of Strengthening the Protection of Civilians in Multi-
Dimensional Peace Operations}, Background paper prepared for the 3rd International Forum for the
There are other ongoing challenges at international level. Member states of the UN must ensure and sustain an ongoing, well-funded and resourced focus on the prevention of tactical rape and sexual violence in war and ensure appropriate steps and strategies for prosecution of perpetrators. As indicated in resolutions to date, this must include strategies of peacekeeping, peacemaking and transitional justice in recovery, reconstruction and rehabilitation phases post conflict. These include continuing to tackle issues of concern regarding peace support operations, efforts to integrate gender perspectives across the work of the UN and its agencies and preventing sexual exploitation. All these require ongoing budget allocations for staffing, funding and meeting enforcement deficiencies. An ongoing challenge comes from the fact that to support this work, further field research and active scholarly debate on UN policies are still urgently needed.15

Closely allied is the need to ensure data collation and to provide resources for research into the extent, impact and confrontation of tactical rape and sexual violence in conflict. Research and academic analysis of causes and strategies to prevent sexual violence in conflict, to bring perpetrators to account and to meeting the needs of survivors – this must be encouraged and enabled. The UN, through its agencies, which are now required to mainstream women’s issues, must include resources to ensure women’s concerns are researched, analysed, incorporated into policy and are monitored in all areas relating to post-conflict activity and crises which involve women likely to have been victims of tactical rape and sexual violence. This must be an ongoing concern and challenge for the Special Representative appointed by the Secretary General, as noted earlier, to provide, ‘coherent and strategic leadership’ in coordination and collaboration with other entities primarily through the inter-agency

initiative, ‘United Nations Action Against Sexual Violence in Conflict’ in situations of particular concern regarding sexual violence.\textsuperscript{16}

Many other challenges have emerged in the course of this dissertation and will require specific attention from states and international organisations. It will be important that responses to prevent and confront sexual violence is coordinated so that concerns for women, children, men and boys are not competing for funds and practical institutional support and there must be further attention to the staffing, training and resourcing of ad hoc tribunals – the Tribunal for Sierra Leone will continue after the ICTY and ICTR conclude. Despite the significant development of discourse regarding tactical rape and sexual violence in conflict, changes are needed in societal attitudes to these abuses.

Guidance and direction is needed as to how to implement many of the decisions regarding women’s role in peacebuilding. These strategies may include setting up advisory groups, appointing gender focal points in government departments and generally ensuring that civil society organisations and women’s groups are supported practically to participate in policy and practice decisions. These are very practical strategies and often it is such practicalities which either facilitate or prevent women’s participation in building their own security and peace in their own communities. Issues of funding must underlie all practical efforts at protection and security at state and international levels if tactical rape and sexual violence are to be confronted.

\textit{Conclusion}

Sadly, as Chapter 7 highlighted, tactical rape and sexual violence in war continued into 2011 and will probably continue into the future. In the conflicts of the DRC, involving multiple warring factions, all sides are employing these tactics. Women

\textsuperscript{16} S/RES/1888, para. 4.
and girls suffer disproportionately. Men and boys are being increasingly targeted. The children of tactical rapes perpetrated in the 1990s are now teenagers or young adults. It can be concluded that if this generation does not see practical policies and practices to end impunity for perpetrators of sexual violence in war and to strengthen protection of women in peacetime, then there are grounds to fear recurring violence.

However, this dissertation argues that there has been significant progress in the discourse regarding tactical rape and sexual violence in conflict. There has been at last recognition by the UNSC that tactical rape and sexual violence can be used for military or political goals. Establishing that tactical rape and sexual violence in war contravene international law has been another important step in providing official and legal grounds for rejecting such violations. There has been recognition that women’s vulnerability in peace time exacerbates their vulnerability in conflict and that underlying causes of such vulnerability must be confronted. The recognition by the UNSC that tactical rape and sexual violence in conflict constitute a security threat - bringing responsibility to confront them into the UNSC responsibilities – has been a major step. Resolutions reflecting an international normative rejection of tactical rape and sexual violence are strongly indicative that the international community and states will not accept such practices on the part of states or warring factions. Specific resolutions and allied responses such as establishing courts to investigate and prosecute perpetrators do represent a significant commitment by the international community to reject tactical rape and sexual violence in war. There have also been practical steps taken to institutionalise UN capacity and the capacity of states and regions to respond to the threats of tactical rape and sexual violence in war.

This dissertation also argues that there are ongoing challenges in confronting the continued use of tactical rape and sexual violence in conflict. But, with all these challenges, it is concluded that in the ways highlighted in this dissertation, there has
been progress - in many ways remarkable progress - in recognising the reality and
the implications of tactical rape and sexual violence in war. After centuries of states
and the international community appearing to ignore, accept, condone or exploit the
prevalence of rape and sexual violence in war, an international discourse involving
these states and international policy makers has emerged. This discourse incorporates
a rejection of tactical rape and sexual violence in war by considering such practices
and violations of international humanitarian law and articulating specific
measures to institutionalise this rejection.

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