A norm rejecting what this paper defines as ‘tactical rape’ emerged in the 1990s. The development of the norm was influenced by legal findings from the International Tribunals on Yugoslavia and Rwanda. It was strengthened when the UNSC accepted that the use of rape and sexual violence as a tactic of war was a security issue. Tactical rape goes beyond rape as a weapon of war. It is rape used as a tactic by State or non-State actors to attack enemy forces or groups in intra-state or inter-state conflicts. Tactical rape targets civilians. It is a specific strategy to control, change, destabilise and destroy civilian communities. It is widespread, deliberately promoted or condoned by at least one party to a conflict, may constitute a crime against humanity and may be used as a weapon of genocide or ethnic cleansing. If recurrence of civil wars is to be prevented, there must be justice for survivors in the aftermath of violence and an end to impunity for those who perpetrate these violations of international law. The focus of this paper is the use of tactical rape and sexual violence against women and girls in situations of war. It analyses progress in developing a norm rejecting such violations of international law.

**Key words:** Rape, War, International tribunals, Security Council.
Introduction

Rape in war has long been a reality. In 1992, after visiting refugee camps and women’s groups in and around Zagreb, a team from international aid agencies reported that women from conflicting parties were, “of course” being raped by opposing combatants; the team had heard, many times, “that’s war” with accompanying shrugs. These comments were indicative of the chilling acceptance frequently exhibited to abuse in war. The visit report noted that the two types of rape which refugee women and women’s groups had been highlighting in the conflict between Serbs and Bosnians were rape as a by-product of war and rape as a weapon of war. The response from staff in international organisations was to dismiss the term, “rape as a weapon of war”, as merely provocative or an attempt to be clever or strategically useful by developing a term designed to attract attention to what was deemed a women’s issue. These attitudes indicated that they did not take seriously the reality that rape is a weapon, deliberately planned and systematically implemented. Their comments seemed to indicate a failure to recognise that such rape was an issue for communities, men, women and children.

This failure continued throughout the 1990s. The conflicts in the former Yugoslavia and in Rwanda which occurred in the early 1990s involved widespread use of tactical rape. These conflicts were followed quickly by more widespread use of rape in Kosovo in 1999. Then, the response from one senior executive in an Australian humanitarian agency was, “rape is not a story – men are being killed”. Despite its prevalence in war, rape had traditionally been largely ignored. Rather than seeing it as a violation of humanitarian law or as behaviour which was preventable, there had been an acceptance of rape as an inevitable part of conflict. Such a restricted view had centuries of negative implications for women and communities and had facilitated the ongoing use of rape in war. This persistent denial and mischaracterisation of war rape had according to Farwell:

“...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.”

References:

1. Fitzpatrick, Rape of Women in War. 21.
2. Ibid. 21-22.
This long standing refusal to confront the use of rape in war, finally, gradually, began to be overcome as the 1990s progressed.

This paper analyses discourse around the development of normative rejection of what the paper terms and will define as ‘tactical rape’; discourse which led to normative rejection of the broader concept of sexual violence in war.7 The discourse will be analysed in the context of understanding the changing nature of war, analysis of emerging case law and United Nations Security Council (UNSC) resolutions which have contributed to such a norm rejecting tactical rape and sexual violence in war. This is based on John S. Dryzek’s definition of 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”,8 and 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”.9 The collective expectations of the international community will be seen to have changed, with concomitant changed expectations of behaviour regarding tactical rape and sexual violence in war.

This paper examines the question: to what extent has there been an increasing commitment by the international community to reject tactical rape and sexual violence in war since the early 1990s? Its focus is primarily upon the international level because it is there, this paper argues, that there has been considerable and, in some ways, steady development since the 1990s. Understanding of tactical rape eventually led to the realisation that sexual violence in war needed to be confronted if women, men, communities and states were to be secure and also to an understanding that if women were vulnerable to sexual violence in peace they would be even more vulnerable during war. There are other related questions to be answered: what contributions did the conflicts and ad hoc International Criminal Tribunals for the former Yugoslavia and for Rwanda 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 really reflected in UNSC resolutions since the early 1990s? To what extent do interests of human security and international stability intersect and contribute to a normative rejection of tactical rape and sexual violence? What more is needed to demonstrate a serious international commitment to rejecting tactical rape and sexual violence?

This paper argues that tactical rape and sexual violence have finally been recognised as an issue of international security because the uncontrolled or ongoing use of these abuses is a threat to human security and to international peace and stability. In 1999, a political paper entitled Doctrine of the International Community stated, “We cannot turn our backs on conflicts and the violations of human rights in other countries if we still want to be secure”.10 Political will to confront tactical rape and sexual violence in war has followed more from a gradual

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7. The term ‘rejection’ is used in this paper as being seen to be more active than ‘condemn’. It is acknowledged that ‘prohibit’ or ‘outlaw’ could be used.
8. Dryzek, Deliberative global politics. VI.
realisation that these can be illegal, destructive and de-stabilising tactics used primarily but not exclusively, against women and girls. This greater understanding of the nature of tactical rape has resulted in acceptance that it represents a threat to international peace and security and, as such, must be confronted.

**Defining tactical rape and sexual violence against women in conflicts**

Tactical rape goes beyond rape being just a weapon of war. It is 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. Tactical rape targets civilians. It is a specific strategy to control, change, destabilise and even to destroy the nature, economics and culture of civilian communities. It can constitute a threat to the very existence of a given group. 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 or a weapon of genocide, of torture or of ethnic cleansing.

Tactical rape as a military strategy has an immediate negative physical and emotional impact on women and on 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 and civilian populations. Cases and accounts from the former Yugoslavia and Rwanda in the 1990s, in particular, illustrate these effects. They also show that tactical rape is a threat to human security; a threat to the security of women; a threat to the security of populations and a threat to international security. Tactical rape hinders transitions from conflict to peace, hinders peace making, destabilises communities and states. Tactical rape in war is a reality, a weapon which specifically and deliberately targets civilians, a perniciously effective weapon with immediate and long-term destructive impact. It is a real threat and the international community has a responsibility and a self-interested motive to confront, prevent and hold accountable those who perpetrate tactical rape.

Tactical rape as defined in this paper is essentially a military weapon, used to achieve political ends. There are other 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. There can be rape offered as a reward for victorious forces. 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 and licence to rape has been used as a term of employment for mercenary soldiers. In recent wars, particularly in the Democratic Republic of Congo and Darfur, men have been targeted for rape. These uses of rape must all be condemned. However, these types of rape in war are not the subject of this paper, which focuses on tactical rape and sexual violence as used primarily against women and girls, with acknowledgement that 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.

11. Robertson *Crimes Against Humanity*  306.
12. Chinkin, 'Rape and Abuse of Women in International Law Symposium – the Yugoslav Crisis'
In the 1990s, there was pressure from the public, media and non-government organizations (NGOs) to respond to widespread and systematic rape in the former Yugoslavia and Rwanda. Analysis of the discourse requires clarity in terminology. Gender based violence includes, but is not confined to, violent acts such as rape, torture, mutilation, sexual slavery, forced impregnation and murder and threats of such acts. Sexual violence is a term frequently used in overlapping and potentially confusing ways. The Statute of the International Criminal Court, when defining crimes against humanity, lists: "rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilisation, or any other form of sexual violence of comparable gravity". 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". Sexual violence is a comprehensive list in which rape appears. After reaction to reports of tactical rape in the 1990s, the United Nations began to take sexual violence in its many forms seriously and, as will be seen later in this paper, the broader term of sexual violence, which included rape used as a tactic of war was most frequently applied. Sexual abuse has been defined as "actual or threatened physical intrusion of a sexual nature, whether by force or under unequal or coercive conditions".

In 1996, widespread sexual violence was defined as sexual violence “committed on a large scale” and directed against a “multiplicity of victims”. In 2000, the International Criminal Tribunal for the Territory of the former Yugoslavia (ICTY) said that systematic violence referred to the “organised nature of acts of violence” and not “random occurrences”. In 2008, widespread or systematic violence was said to refer to violence during conflict perpetrated by armed groups “as a strategy of warfare for obtaining political and military ends” ...[and] used to torture, terrorise, demoralise, injure, degrade, intimidate and punish affected populations. Taken together, these definitions draw out the key elements of widespread and systematic sexual violence in war, which often includes tactical rape.

The changing context and implications for use of tactical rape

Attitudes to 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”. Mary Kaldor wrote of “new wars” tending to avoid battles, aiming at control of territory through “political, psychological and economic techniques of intimidation”. 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”. She also said, “Essentially, what were considered to be undesirable and illegitimate side-effects of
old wars have become central to the mode of fighting in the new wars". While Edward Newman claimed that Kaldor had overstated the differences between old and new wars, he acknowledged that tactics such as widespread rape characterised current conflicts.

Herfried Munkler described how, as super-powers developed, it became increasingly difficult for smaller groups to engage in the traditional battles of armies against armies. Such groups often used methods which did not require complex technology and weaponry. Attacks on civilians increased. Munkler highlighted the increased role of children as soldiers, but 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 country's civilian population falls prey to those who, with the help of their armed henchmen, exercise control over them". Munkler noted, too, that one of the crucial factors in the emergence of new wars is "the fact that they have become cheap to wage". This certainly applies to the use of rape as a tactic. Munkler said, "Civilian targets are now taking the place of military objectives" so it becomes urgent that there be some defining acceptance of rules of engagement regarding attacks on non-combatants – including women. Such attacks must no longer be tolerated. 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 move during the twentieth century of targeting civilians: in World War II, civilian deaths accounted for 60 per cent of casualties; in the Korean War there was one military death for every five civilian deaths; in Vietnam it was one soldier to thirteen civilians; in some Third World wars civilian deaths account for 90 per cent of fatalities.

As part of the civilian population women and girls experience generalised violence during conflicts. They may be killed, murdered, imprisoned or tortured. But, as a result of their gender, they experience additional, more specific violence: they can be raped; forced into prostitution; suffer forced impregnation; be pressured by social and cultural attitudes into abortions; suffer particular forms of humiliation, degradation, rejection and exclusion. Waging wars by attacking civilians and communities provides fertile ground for the use of rape as a deliberate tactic of war, a deliberate form of attack. The current climate of impunity in most post-conflict contexts allows the many forms of violence, including sexual violence, to flourish and it has probably become more dangerous to be a woman than a soldier in an armed conflict. Lack of political will to end the vicious cycle of impunity is a serious impediment to the prevention of sexual violence.

This paper argues that patriarchal societies are particularly vulnerable to tactical rape. While patriarchal societies vary, there are some common attitudes which place women as subordinate to men. In some cases women are viewed as the possessions of men, needing to be protected by men and such attitudes contribute to violence against women. J. Ann Tickner stat-

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23. Ibid. 100.
26. Ibid. 16.
27. Ibid. 17.
28. Ibid. 18.
ed: ‘Patriarchy is institutionalised through legal and economic, as well as social and cultural institutions’. It is a framework of particular social relationships, values and hierarchies within communities: constructions which underpin the impact of tactical rape and sexual violence in war. Patriarchy is an element of cultural identity which affects both men and women. It is an aspect of cultural identity which renders whole communities vulnerable to the destructive force of tactical rape and sexual violence in war. This was highlighted 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 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.”

Accounts from survivors, examined below, confirm this analysis of Binaifer Nowrojee that in patriarchal societies, raping a woman perceived to belong to a man sends a clear message about victory in relative power relations.

Testimonies from victims in Rwanda and the former Yugoslavia illustrated the impact of tactical rape on women – impact which went beyond the agonising physical suffering they experienced. Perpetue, from Rwanda, 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. She found temporary refuge before being raped again. In the telling of these horrific events she said, 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 as somehow ‘lesser’, which is likely to be imposed by her community. The same sense of imposed degradation and heartbreak- ing sorrow was reflected when she said, “you can’t ever forget. Until I die, I’ll always be sad”. Tactical rape has long lasting negative effects.

Josepha said, "Rape is a crime worse than death". Goretti, 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 aged eleven when militia attacked her house and severely traumatised after seeing them hack her brothers to pieces in front of her two years earlier, was 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."

Shame such as this is imposed. It is constructed. 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.

These accounts highlight that the suffering of individual women victims of tactical rape and sexual violence can be intensified in a community which is culturally patriarchal. In most societies, physical attacks and violations can be exacerbated by feelings of shame and of being less valuable as well as of being less valued. Such a change and loss of perceived value can impact negatively on women’s access to health services at times when needs are almost certain to be intensified, on women’s economic status and ability to benefit from and contribute to the economy of their societies, on inheritance and identity of children born of tactical rape.

Boose recognised the courage of the women who survived attacks such as these and who went on to testify, at great personal cost in many cases. She posited that the way rape is socially constructed means that in patriarchal societies it is primarily perceived as a violation defiling male members of families and communities, who have accepted responsibility for protection of ‘their’ women. Boose concluded that, “the more patriarchal the culture, the more vulnerable it becomes, all the more likely are the women to become targets for enemy rape”. Rape in war is closely linked with gender constructs in societies and the impact on communities and societies contributes to tactical rape and sexual violence in war being effective in achieving destruction and damage of those communities and societies. Feminist analysts have highlighted links between rape in war and underlying gender relationships: “sexually manifested violence in armed conflict is an aspect of the subordinate position of women globally”.

The ICTY Trial Chamber 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 everything would quiet down. When the rapes started, everybody lost hope, everybody in the camp, men and women. There was such fear, horrible."

People who are raped and people who know of the rapes are all affected so that they are disempowered and resistance is weakened while physical and emotional damage is caused. One interviewee, speaking about events in Rwanda, said, "Many women begged to be killed during..."

39. Ibid. 34.
40. Human Rights Watch, FIDH interview, Dr Emile Rwamasirabo, Director, Kigali Central Hospital, Kigali, March 16, 1996.
41. Boose, 'Crossing the River Drina'.
42. Ibid. 70-96.
44. ICTY Trial Chamber Tadic ICTY (IT-94-1) para. 175
the genocide” and continued, “They were refused and told, you will die of sadness”. 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.”

Such actions are a destructive image of attack on future generations and are intended as a direct demeaning of the value of women as well as savage personal physical attacks. Canadian members of the UN peacekeeping force in Rwanda testified and one witness, Major Brent Beardsley, stated:

“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 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.”

Major Brent Beardsley was a professional soldier. The women and children of whom he was speaking were strangers to him, from another country. His testimony is a powerful description of the use of rape in war and the impact it has on survivors as well as victims.

The impact of tactical rape is even greater when the rapes result in pregnancies and is heightened when there is the belief in strongly patriarchal societies that children ‘belong’ to their fathers. In 1992, a well-educated and professional woman in Zagreb told a visiting team from an international agency, “Part of me will always believe – deep down - that any child I bear is the child of his father”. In Rwanda, customary law accords men the role of head of the family. 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. This has serious implications for inheritance laws and recognition of children. They are the children of their fathers even when the result of rape. The effect of tactical rape is long term and multi-faceted.

**Slow beginnings of change in attitudes to tactical rape and sexual violence in war**

Change in attitudes and values can be brought about by the realisation of the applicability of relevant law, by institutionalising new attitudes and by shared statements of commitment to change. In the 1990s, the international attitude to humanitarianism had begun to change. In the years that followed, the voices of NGOs were heard more clearly. The sanctity of sovereignty was being challenged by the notion of a responsibility to protect. International case law as it 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 in war. It was demonstrated that existing international law could and should be applied. Existing legal obligations were highlighted. There was greater understanding of the relevance and application of customary law, humanitarian law, human rights law and, importantly, judicial 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 humanity and genocide”. The Tribunals dealt with events in different contexts – one African, one European – 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 use of tactical rape and sexual violence in the former Yugoslavia**

The conflict in the former Yugoslavia exemplified the development of new wars. This was not a war in which armies confronted and battled other armies. This was not essentially a battle across international state borders but it was a conflict in which accepted international humanitarian and human rights law were applicable and contravened. The aim was for control of territory but the methods and strategies focused 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 it depended on “continuing fear and insecurity and on perpetuation of hatred of the other”. Mary Kaldor provided a summary of the strategies employed to gain territorial control: systematic murder; ethnic cleansing; rendering an area uninhabitable - physically and economically: defilement through systematic rape and sexual abuse. This conflict was notable because such strategies were reported and condemned rather than accepted as unfortunate but ultimately inevitable in war.

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 vic-

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50. Kaldor. 98.
tims 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. 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 urged distinction between such “opportunistic” crimes and the use of rape and sexual assault as a method of “ethnic cleansing”.

Rape related to ethnic-cleansing was identified as either those rapes which were instances of a deliberate policy of commission where such acts were encouraged or cases which pointed to a policy of omission, where violations were ignored.

This UN Commission of Experts’ report identified recurring characteristics of rapes and sexual assaults and concluded that the patterns suggested that a systematic rape and sexual assault policy existed. The report 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, it suggested, “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”.

The report noted, too, that there was evidence of deliberate impregnation of women raped. It was reported that “perpetrators tell female victims that they will bear children of the perpetrator’s ethnicity and 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”. These would be children of the fathers’ ethnicity. Such deliberate acts of impregnation could be seen as an indicator of intent to destroy a group and were taken into account when the ICTY, as will be seen below, was deciding that tactical rape and sexual violence under certain conditions constituted genocide.

A report by Human Rights Watch 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. Young Muslim women and girls were among Foca’s principal victims. They were reportedly 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. Tens of Muslim women, some as young as twelve years, were detained in the town and forced to have sex with dozens of men. Four accused were eventually indicted and charged at the ICTY.

A witness told the court how one “owner” of four women had forced them to dance naked on a table, had told them they would be executed at the nearby river and then took them there. Another witness told how her mother and

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53. Ibid.
54. Ibid. 8-9.
55. Ibid. 7-8.
56. Human Rights Watch, Bosnia and Herzegovina.”
brothers had been killed and she had been raped by about fifty men. When asked by the prosecutor how she felt after the gang rape, she responded, "I felt dead." After raping one witness, one accused had told her he could have hurt her much more, but would not since she was about the same age as his daughter. The documented rapes indicated a systematic approach. The growing awareness of this systematic approach, an element of tactical rape, was illustrated in UN statements in 1993 and 1994: ECOSOC referred to "the systematic practice of rape" being used in the ethnic cleansing; the UN General Assembly noted its conviction that "this heinous practice constitutes a deliberate weapon of war in fulfilling the policy of ethnic cleansing". Rejection was coming with recognition.

The International Criminal Tribunal for the former Yugoslavia (ICTY)

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". Institutionalising attitudes and values became an increasingly important element in developing the rejection of tactical rape and sexual violence in war. The establishment of the ICTY was perceived as demonstrating that human rights norms were progressing from the first phase of institutionalisation of new norms into international law. As the ICTY progressed, tactical rape and sexual violence in war achieved recognition as crimes against humanity, as war crimes and as gross violations of human rights.

The ICTY was limited in its time frame and geographic range and was accepted politically as "an exceptional step needed to deal with exceptional situations". It was established "for the purpose of upholding universally agreed principles firmly established in international law". It was justified on the grounds that it was not intended to establish new norms or precedents but to investigate and prosecute within the framework of established norms and standards. It provided new insights into tactical rape and sexual violence in war as practices within the definitions and mandates of already accepted international humanitarian and human rights law. It tested tactical rape and sexual violence in war against accepted norms and standards. At the ICTY, a war crime was defined: "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." Further, it could be inferred that offences could be deemed to have been committed in a "systematic or organised" fashion by the nature of the crimes and that the test of a war crime could be satisfied by either a state policy or that of non-state forces including terrorist groups or organisations.

The ICTY identified the objective elements of rape in international law. It is 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 and 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.\textsuperscript{70} This definition, particularly the elaboration of the possible nature of coercion and force, was important in moving from the requirement of proof of non-consent, and it was judged that "any form of captivity vitiates consent".\textsuperscript{71} The ICTY also 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.\textsuperscript{72} 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.\textsuperscript{73}

The ICTY ruled, too, that no corroboration of the victim’s testimony was required and that the prior sexual conduct of the victim was not admissible in evidence. This obviated legal approaches, which might attempt to undermine the testimony of survivors. Further, according to the ICTY “there can be no question that acts of rape may constitute torture under customary law”.\textsuperscript{74} It was judged that one 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”.\textsuperscript{75} Threat of rape as well as the act of rape was recognised as a strategy for intimidation. Legal requirements for acts to be judged as war crimes and crimes against humanity were clarified in the context of this conflict in the former Yugoslavia in the 1990s.

The use of tactical rape and sexual violence in Rwanda

After many years of political unrest and tensions between the two major groups in Rwanda, the Tutsi and the Hutu, in April 1994, the Hutu president’s plane was shot down.\textsuperscript{76} Immediate blame was put on the Tutsis and in the next three months an estimated 800,000 were killed, most victims Tutsis and most killers Hutus.\textsuperscript{77} Slaughter began within hours and an estimated 30,000 personnel took part.\textsuperscript{78} Many civilians participated: some were threatened, some received incentives such as money or food or the right to claim the land of slaughtered Tutsis. Eventually, Tutsis from exile launched a major offensive and Hutu militias fled to neighbouring countries, taking with them around two million Hutu refugees. 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.

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".\textsuperscript{79} Human Rights Watch claimed

\begin{thebibliography}{99}

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75. Askin.324.
77. Ibid.
78. Ibid .
\end{thebibliography}
that "at least half a million people perished" in the thirteen weeks after April 6 1994. There was constant reference to rape of women although there was no attempt to quantify it. 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."

There were large numbers of pregnancies from the rapes. This was also a society where children are children of the fathers’ groups and Nowrojee mentions "children of hate", "unwanted children", "and children of bad memories" and references the estimates as being conservative-ly between 2,000 and 5,000. She noted reports of children being abandoned and of infanticide. The UN Special Rapporteur supported these figures as low estimates and noted that many women aborted or miscarried. 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. This was the case for many "little girls who were raped". The tactical rapes and sexual violence in Rwanda were forms of imposing measures intended to prevent births within the group.

Prevailing belief of aid workers, medical and relief personnel, as early as May 1994, was that any Tutsi female (the term 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". 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 several times between 9-20 June 1994 to 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”. It was not until the report of visits made in August-September 1995 that special attention was drawn to the systematic rapes.

The International Criminal Tribunal for Rwanda (ICTR)

The ICTR contributed significantly by effectively linking tactical rape, sexual violence and genocide. It noted first that, “the Chamber must define rape, as there is no commonly accept-
ed definition of this term in international law and then proceeded to provide this definition:

"...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."

The Tribunal added 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 and 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". These are important elaborations of the complexity of sexual violence.

The ICTR, having investigated events with reference to the Genocide Convention, concluded that, "genocide was, indeed, committed in Rwanda in 1994 against the Tutsi as a group". The nature of the genocide was described as "organised 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". This ruling had the force of a legal judgement.

The judgement which made specific progress in establishing that tactical rape and sexual violence could be used as genocide came in the case against the accused, Jean-Paul Akayesu. His initial indictment referred to murder, lines of responsibility and incitement. Had it not been for the witnesses who linked Akayesu to rapes, the intervention of the court's one female judge, pressure from human rights and women's groups, he might never have been tried for rape crimes. But, finally, the court ruled:

"With regard, particularly, to the acts described [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...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."

This judgement in the Akayesu case was a watershed for victims of tactical rape and sexual violence. 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,

90. Ibid. para. 598.
91. Ibid. para. 688.
92. Ibid. para. 126.
93. Ibid. para. 128.
94. Ibid.
95. Neuffer, The Keys to My Neighbour’s House. 27.
96. Akayesu. para. 731.
specifically targeting Tutsi women and specifically contributing to their destruction and to the destruction of the Tutsi group as a whole.97

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.98 The ICTR is a judiciary whose processes have been less than just to many women survivors and whose processes have reflected many prevailing attitudes to tactical rape and sexual violence.99 But it has made some valuable contributions to international law.

**Tactical rape and sexual violence in war – at the United Nations Security Council**

During the 1990s, as journalists, NGOs and humanitarian agencies reported and detailed atrocities in conflicts such as those in Rwanda and the former Yugoslavia, there had been mounting public condemnation and consequent unwillingness to settle for expressions of dismay, without any accompanying action by states or the UN. Pressure for action reached to the UN, where, eventually, connections were made between such violence and general inequality, poverty and women’s vulnerability to sexual attack and rape in conflict situations.100 The ICTY and ICTR established that such acts were violations of international law. In 1993, ECOSOC expressed outrage at rape being used as a weapon of war.101 In 1994 the UN General Assembly expressed alarm at “the continuing use of rape as a weapon of war”.102 In 1995, the General Assembly 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”.103 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.104 At the United Nations Security Council (UNSC) some particularly relevant resolutions reflected the development of an international discourse rejecting tactical rape. These resolutions were, at least in part, stimulated by the findings of the ICTY and ICTR and built on the rulings of those judiciaries. They also reflected a move from rejecting tactical rape to the broader concept of confronting any form of sexual violence in war.

UNSC resolution 1325 (UNSCR1325), in 2000, reflected a systematic and broad ranging approach. It was an important step in confronting tactical rape and sexual violence in war by confronting women’s generalised vulnerability and generalised community attitudes to women as evidenced in patriarchal societies and societies which failed to recognise women’s right to human rights and to equality in political, economic and cultural aspects of life. It recognised that if women were vulnerable and suffered discrimination and abuse of rights during peace time, they would be even more vulnerable during conflict. It signalled the beginning of a serious debate for the UNSC, which led to UNSC acceptance of responsibility to take action. However, in 2005, there began calls for another resolution which was “more actionable”, which

97. Ibid. para. 731.
98. Ibid. para. 732.
99. Nowrojee, *Your Justice is Too Slow*.
102. United Nations General Assembly, 'Rape and abuse of women in the areas of armed conflict in the former Yugoslavia' General Assembly resolution 1994/205.
103. 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.
104. Ibid.
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”. 105

The debate which preceded the passing of UNSCR 1820, in 2008, presaged the acceptance of tactical rape as an issue of concern and relevance to the Security Council. Comments reflected realisation of the interconnectedness of violence against women and security. The term most frequently used was sexual violence but statements also referred directly to rape as a weapon and a tactic of war. Austria highlighted sexual violence as “not only a manifestation of war, but a deliberate wartime tactic” and a security threat. 106 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’.” 107 The Philippines 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”. 108 Taken together these statements indicated greater understanding of the nature, causes and impact of tactical rape. While this was a long way from actually making any meaningful change, it did reflect greater understanding of the issue.

Condolezza Rice, then Secretary of State of the USA, holding UNSC Presidency, noted the long debate about whether the use of rape and sexual violence as instruments of warfare was an issue for the UNSC, which the Council was authorised to address. 109 She concluded that the UNSC would “affirm that sexual violence against women not only affected the safety of women, but the economic situation and security of their nations”. 110 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”. 111 The UN Deputy Secretary General referred to UNSCR1325, which demonstrated that sexual violence was not just a gender issue but a fundamental security concern. 112 Many other speakers reiterated these sentiments with reference to security of states as well as security of women. Links between women’s security and security of states and international stability were accepted.

UNSCR1820 in 2008 dealt with sexual violence used deliberately to target civilian populations to achieve political and military objectives. It 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. 113 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”. 114 The work of the international tribunals was reflected in this wording. Importantly, the resolution approached the issue of sexual violence in conflict as something to be confronted, not to be treated as inevitable.

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107. Ibid.24.
108. Ibid. 26.
111. UN Press release. 7.
112. Ibid.9.
113. International Women’s Tribune Centre.10.
114. S/RES/1820 para. 4.
Resolutions in 2009 and 2010 insisted on practical measures for coordination and the appointment of a special representative to provide ‘coherent and strategic leadership’ in collaboration with other UN entities in situations of particular concern regarding sexual violence. 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 and with the consent of the host government, to assist national authorities to strengthen the rule of law.

In 2010, a report to the UNSC referred to the mass rapes in the DRC, which had “provoked unprecedented public outrage” and could not be ignored. The norm rejecting tactical rape would seem to have been established. In this report, the Secretary General noted that sexual violence “is not specific to any era, culture or continent”. 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”. The answer to continuing questions about the relevance to the UNSC was that while some people still saw “bullets, bombs and blades as war” and rape as a “random disciplinary infraction or private aspect of culture based gender relations”, sexual violence must be confronted under definitions found in international law.

**Confronting tactical rape and sexual violence as threats to human and international security**

The Security Council’s rejection of tactical rape and sexual violence can be linked to the increasing degree to which debates aligned tactical rape and sexual violence with security. This brought to the fore the need to understand the interplay between the security of individuals, communities and states, states individually and states as a global collective. The Commission on Human Security urged increased recognition of human security as an overarching concept of security, broadening the focus from the security of borders to the lives of people and communities inside and across those borders. The Commission wrote, “all societies depend much more on the acts or omissions of others for the security of their people, even for their survival”. 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 external military attack”. Tactical rape and sexual violence could no longer be side-lined or dismissed as a sectoral issue applying to security for women but not to states.

Still, the use of tactical rape and sexual violence in war continues into 2011. Oxfam reported “sexual violence is increasingly being used as a tool of conflict itself”. It noted that rape was used in Cote d’Ivoire “for political ends” and was prevalent in Myanmar, Kyrgyzstan and the Central Africa Republic (CAR) where one third of women were victims of sexual violence in

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116. Ibid. para. 8.
118. Ibid. para. 3.
119. Ibid. para. 6.
120. Ibid. para. 7.
123. Acharya, ‘Human Security’ in Bayliss and Smith (eds.) The Globalisation of World Politics. 49
conflicts. Sexual violence has been reported as a significant feature of conflict in Ethiopia, Nigeria, Somalia and Chad. In Conakry, Guinea, soldiers particularly targeted women when suppressing a political demonstration where rapes and attacks “appear to have traumatised the citizenry.” The state which has attracted much attention for the ongoing use of tactical rape and sexual violence is the Democratic Republic of Congo (DRC) which has earned the ignominious title of “the rape capital of the world.” 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 and whether it can be judged a crime against humanity, a war crime or genocide.

Human security has been defined as protecting vital freedoms from want and from fear and having freedom to take action on one’s own behalf. Human security does not replace state security. It complements state security. Understanding of state security has moved from securing borders, institutions and values to greater recognition of individuals and communities in ensuring their own security. Human security broadens the focus from the security of borders to the lives of people and communities inside and across those borders. The violence in Rwanda spread over borders into DRC and development consequences of violence, like its origins, spill across borders with implications for neighbours and the region. It takes an average of fourteen years of peace before resumption of economic growth paths. Estimates suggest that countries lose 0.7 per cent of their annual GDP for each neighbour engaged in a civil war.

Progression from violence to sustained security is not linear – every civil war that began since 2003 was a resumption of a previous civil war. In both Rwanda and the former Yugoslavia, perpetrators of violence were often convinced they were avenging previous injustices. Children born of tactical rape in the 1990s are, in 2011, young adults. They have grown up in societies dealing with the trauma of conflicts, reared by mothers likely to be suffering extreme physical and/or emotional damage and possibly suffering from social stigma, discrimination and ostracisation and economic hardship. These children are likely to have grown up with a sense of being the children of criminal acts by men perceived as ‘the enemy’. A woman from DRC made pregnant by being raped by ten combatants who also killed her husband in front of her said:

"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; eve-

125. Ibid. 16.
127. Nossiter, In a Guinea Seized by Violence.
128. Oxfam. 16.
129. Bijleveld, Morssinkhofe, Smeulers, Counting the Countless. 211.
132. Ibid. 5.
133. Ibid. 6.
135. Ibid. 63.
136. Ibid. 65.
137. Ibid. 57.
rybody says he is cursed. And the baby is frightened because the neigh-
bours are always shouting at him."\textsuperscript{138}

Generations beyond the immediate victims continue to feel the impact of abuses and unless there is appropriate resolution will continue a sense of injustice which could be the basis of further stress on states.

Legitimate institutions and governance serve as an immune system and a defense against stresses on states.\textsuperscript{139} The legitimacy of institutions refers to their capacity, their inclusiveness and their accountability.\textsuperscript{140} 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.\textsuperscript{141} After conflict the security sector usually requires reform, particularly in arenas where security forces have been implicated in tactical rape and sexual violence in the conflicts. Security sector reform needs to include demilitarisation and peace building; establishing civilian control and oversight of the security sector; professionalising the security forces and strengthening the rule of law.\textsuperscript{142} If reform processes are inclusive, particularly recognising women’s capacity to participate and take the lead on these issues, they can enable those affected to have a role in change which is likely to build their confidence in security agencies.

A major area of concern for survivors of tactical rape and sexual violence in conflict is the provision of transitional justice, which

"...aims to rebuild social trust, reform justice systems and law enforcement institu-
tions, strengthen accountability for war crimes, promote national reconciliation, sup-
port those affected by conflict, and advance democratic governance."\textsuperscript{143}

Justice needs to be delivered during recovery periods for communities and victims, complementing community based justice systems with building formal justice systems.\textsuperscript{144} Resistance to giving transitional justice priority by governments must be challenged.\textsuperscript{145} So, too, must do-
ners, who provide resources with a focus on building national capacity without building capaci-
ty in security and criminal justice.\textsuperscript{146}

**Conclusion**

Tactical rape and sexual violence do not necessarily cease with cessation of hostilities. Norms of expected behaviours, to standards of behaviour, can have been seriously damaged. Sexual violence can become a way of life: once entrenched in the fabric of civilian society, it lingers long after the guns have fallen silent.\textsuperscript{147} The post-conflict priority should be to avoid a repeti-

\textsuperscript{139} World Bank 2011. 50.
\textsuperscript{140} Ibid. 84.
\textsuperscript{141} Ibid. 87.
\textsuperscript{144} World Bank 201. 107.
\textsuperscript{145} Ibid. Chapter 6.
\textsuperscript{146} Ibid. Chapter 6.
\textsuperscript{147} S/2010/604 para. 14.
tion of patterns of violence and exclusion and thus to prevent the normalisation of brutal and widespread sexual violence. There has been considerable progress in the normative rejection of tactical rape and sexual violence at international level. This has been linked with recognition that tactical rape is a threat to human security and to international security. Significantly, there has been recognition that women’s vulnerability to violence in peace is exacerbated in conflict. Attention must be paid to women’s status in societies and patriarchal attitudes need to be confronted. UNSC resolutions have recognised this reality and there have been steps taken and agreed. There has been increased jurisprudence regarding violation of existing international law and recognition that such violations are a threat to security. But, tactical rape and sexual violence continue at alarming levels. Recent conflicts, perhaps most horrifyingly those in the Democratic Republic of Congo, demonstrate the ongoing use by many parties to the conflict. There is much more to be done, particularly at state level, to ensure appropriate responses to such increased learning about the reality and implication of tactical rape and sexual violence, for women, for communities, for states and for the international community.

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