

Rape in militarised conflicts: variations in international outrage and responsiveness

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Abstract

World War II genocide in Germany, the Rwanda genocide in the early 1990s and the Darfur genocide today are visceral reminders of the devastation and senselessness in the breakdown of human order, a poignant but sad insight into the nature of man and politics. Yet the international community, and by extension the United Nations (UN), have shown a remarkable reluctance to address rape and other forms of gender violence perpetrated during militarised conflicts. Given the psychological toll and devastating effect of rape and the growing number of conflicts, this effort does not speak well to the UN's commitment to problems that destabilise international peace. It does however raise concerns in the minds of those who see the UN as cherry-picking which conflicts to address while sidestepping others until it is too late. With a view to the Allies' response to genocide during World War II, this article argues that the realist analytical framework of world politics provides the most plausible basis for explaining variations in international response in militarised conflicts such as Rwanda and Darfur. We present testable hypotheses to conclude that while rape in itself may not be the sole trigger for interventions, states with unstable regimes or sovereign capacity whose government has been deposed are more likely to be the object for interventions or held accountable than those with otherwise stable governments who benefit from the support of a hegemonic power. To victims of crimes of rape caught in militarised conflicts, and to whom justice may come only after a perpetrator regime has been deposed, the conclusion that the decision to intervene is predicated more on political might than justice is disquieting.

'The use of rape as a weapon of war is perhaps the most notorious and brutal way in which conflict impacts on women. As rape and sexual violence are so pervasive within situations of conflict, the "rape victim" has become an emblematic image of women's experience of war.'

(AI, 2004b, 'Lives blown apart . . .', ENGACT77075-2004)

'A million people killed, tens of thousands displaced – we do not have the right to forget them. The victims of the genocide must be enshrined in our memory, not only for history's sake, but also, and especially, for the sake of the future.'

(UNESCO Director-General Koichiro Matsuura, UNESCO-PRESS, April 2004)

'The international community is guilty of sins of omission . . . The international community failed Rwanda and that must leave us all with a sense of bitter regret. I believe at the time that I

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was doing my best. I realized after the genocide that there was more that I could and should have done to sound the alarm and rally support.’

‘If the international community had acted promptly and with determination, it could have stopped most of the killing. But the political will was not there, nor were the troops. If the United Nations, Government officials, the international media and other observers had paid more attention to the gathering signs of disaster, and taken timely action, it might have been averted. Warnings were missed . . .’

(Kofi Annan, UN Secretary General, Remarks, New York, 26 March 2004)

The United Nations, and by extension the international community, have shown a reluctance to respond to rape perpetrated against women in international militarised or civil conflict. Evidence of toothless efforts, generating more steam and heat with no meaningful practical or serious follow-ups, is in abundance. The decade of the 1990s, for example, is replete with anecdotal evidence to support the lack of practical efforts even if significant measures were achieved during the same period in passing international standards with commitments made to tackle violence against women through the passage of laws.¹ With exceptions, when one considers that the United Nations has been prompt in its response to other forms of atrocities such as genocide, massacres of non-combatants and mass displacements of civilian populations, it not only begs the question of why the reluctance to address violence perpetrated against women as a group by intervention, it questions whether it is a manifestation of indifference to the plight of women. A larger question for this article is why the UN has responded to certain atrocities more readily than others, with a specific focus on rapes committed against women in militarised conflicts, whether internal to a state or external across borders.

The conclusions that in most conflicts women suffer more than men from the effects of war is common knowledge, but the most obvious threats to women are the prospects of being raped by the enemy soldiers. This may be the direct result of combatants from another nation state’s forces or from a paramilitary organization in a civil war situation against its own people. While acts of rape perpetrated on men during periods of conflicts have rarely, if ever, been recorded, Brownmiller (1975, pp. 31–40) has documented that women have been susceptible to rape as an instrument of war since antiquity. Violence against women is a human rights scandal, yet in many societies reports of such crimes are met with lack of interest, silence or indeed apathy on the part of governments. International responses in themselves carry the risk that violent offences directed towards women will be perceived as something exceptionally peculiar to a conflict. That international law has not always responded to crimes of violence against women in a way that addresses their needs is not new, but since the 1990s there have been noticeable changes as women and human rights advocates began using a variety of international arenas to transform the understanding of violence against women as a human rights issue. Thus, during that time, particular issues of violence against women in militarised conflicts rose in importance on the international agenda, particularly at the UN and in its human rights bodies.

For example, a vital step was taken in 1992, when the Committee on the Elimination of Discrimination against Women defined violence against women as a form of discrimination (UN Doc. HRI\GEN\1\Rev.1). Women’s rights advocates participating at the Vienna Conference on Human

1 See notably, the efforts to establish standards, mechanisms and commitments to tackle violence against women: *UN Security Council Resolution 1325* (2000) on Women and peace and security; UN Declaration on the Elimination of Violence against Women, Article 1; Committee on the Elimination of Discrimination against Women, General Recommendation 19, Violence against women, (Eleventh session, 1992); UN Doc. HRI\GEN\1\Rev.1; Fourth World Conference on Women, Beijing, September 1995; Action for Equality, Development and Peace, Beijing Declaration and Platform for Action, UN Doc. A/Conf.177/20 (1995); Rehn, Elisabeth, and Sirleaf, Ellen J., *Women, War, Peace: The Independent Experts’ Assessment of the Impact of Armed Conflict on Women and Women’s Role in Peace-building*, UN Development Fund for Women (UNIFEM), 2002; and Report of the Special Rapporteur on violence against women, *Towards an effective implementation of international norms to end violence against women*, UN Doc. E/CN.4/2004/66, 26 December 2003.

Rights (United Nations, 1993) also proclaimed that ‘women’s rights are human rights’; see especially its preamble which emphasises the Universal declaration of Human Rights as constituting a common standard of achievement for all peoples and all nations. As a direct result of these efforts, the UN General Assembly adopted the ‘Declaration on the Elimination of Violence against Women’ (UN Doc A/RES/48/104) with a Special Rapporteur on violence against women, its causes and consequences (see ‘Violence against Women’, 1997–2000, and 2001, UN Doc. E/CN.4/2001/73). According to Amnesty International Reports (2001a, 2001b), under these protocols the failure to act makes the international community and governments not only complicit but responsible. Elsewhere, Pufong (2001) argues that all governments have the responsibility under international human rights law to prevent, investigate and punish acts of all forms of *violence*. Similarly, Amnesty International and other human rights groups have made the case that governments are required to take all measures to empower women and strengthen their economic independence, and to protect and promote the full enjoyment of all rights and fundamental freedoms. This includes the condemnation of *violence against women* (VAW) whether in the home, workplace, the community or society, in custody or in situations of armed conflict. They also urge governments to abandon the practice of invoking customs and traditions and other practices in the name of religion or culture to avoid the obligations to eliminate such violence. Lastly, the UN’s Special Rapporteur’s own report has urged governments to intensify their efforts in developing and utilising legislation, educational, social and other measures to prevent violence to include the dissemination of information and the training of judicial and health personnel.²

In this article our focus is less on governments, who in most cases either ignore the violence directed toward women or the atrocities that occur under their watch, since they sometimes help perpetuate the context in which such violence flourishes. Instead, we are interested in the international community as embodied in UN representation. Most notably, we are interested in what that community does or has done to intervene when violence on women has taken place or is occurring in militarised conflicts. For example, having made ‘Violence against Women’ its central effort in the 1990s and to that end adopted the 1993 ‘Declaration on the Elimination of Violence against Women’ and several investigatory Rapporteurs thereafter, we are interested in the United Nations’ ability to respond to militarised conflicts with irrefutable claims of mass rapes or violence against women consistent with these declarations. Given the grave implication of the crime of rape and its potential use as weapon of war, it is assumed that anecdotal evidence of a certain magnitude alone will be a trigger for an international response to include investigations of criminal acts committed during such militarised conflicts.

Beside the noted instruments, and the will to intervene, Table 1 provides an abundance of international legal instruments to include the statute of the International Criminal Court (ICC) that can be used to prosecute perpetrators of violence against women if the international community must do so (see also Pufong, 2001). In 1995, the *New York Times* and other international media sources presented evidence from the Bosnian war showing that the international community acted quickly to investigate atrocities such as genocide and other massacres with the intention of bringing about indictments of the guilty parties.³ Stiglmayer (1994, pp. 24–26) also reported that when Muslim

2 Two of such calls were initiated between 2001 and 2003 in publications such as “*Universal jurisdiction: the duty of states to enact and implement legislation*” (AI Index: IOR 53/002-018/2001), and “*Special Rapporteur on violence against women: towards an effective implementation of international norms to end violence against women*” (UN Doc. E/CN.4/2004/66, 26 December 2003) which provide details on state responsibility on the matter. Also see “*Lives blown apart: Crimes against women in times of conflict: Stop violence against women*” *Amnesty International* <http://web.amnesty.org/library/Index/ENGACT770752004>.

3 See *The New York Times* (2-15-95 and 7-26-95) reports on Bosnian Serb leader Radovan Karadzic and Bosnian Army General Ratko Mladic who were indicted by the *International Criminal Tribunal* for war crimes and crimes against humanity. In another case, the *NY Times* (8-3-2001) reported that Bosnian Serb General Radislav Krstic was found guilty for the massacre of unarmed Muslims in 1995. Also see *Amnesty International* report on Bosnia-Herzegovina, titled “*Rape and Sexual Abuse by Armed Forces*,” January 1993.

Table 1 International and regional instruments designed to stop violence against women (VAW) in conflict-related situations**Treaties**

- International Labor Organization (ILO) Forced Labor Convention (1930).
- UN Charter (1945).
- UN Convention on the Prevention and Punishment of the Crime of Genocide (1948).
- Geneva Conventions of 1949 and their Additional Protocols of 1977.
- European Convention on Human Rights and Fundamental Freedoms (1950).
- UN Convention relating to the Status of Refugees (1951) and its Protocol (1967).
- UN Convention relating to the Status of Stateless Persons (1954).
- ILO Abolition of Forced Labor Convention (1957).
- UN Convention on the Reduction of Statelessness (1961).
- International Covenant on Civil and Political Rights (ICCPR) (1966).
- International Covenant on Economic, Social and Cultural Rights (ICESCR) (1966).
- (African Union) Convention Governing the Specific Aspects of Refugee Problems in Africa (1969).
- American Convention on Human Rights (1969).
- UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) (1979) and its Optional Protocol (2000).
- African Charter on Human and Peoples' Rights (1981).
- UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (1984).
- Inter-American Convention to Prevent and Punish Torture (1985).
- European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (1987).
- Additional Protocol to the American Convention on Human Rights in the area of Economic, Social and Cultural Rights (1988).
- UN Convention on the Rights of the Child (CRC) (1989).
- African Charter on the Rights and Welfare of the Child (1990).
- UN Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990).
- Inter-American Convention on Forced Disappearance of Persons (1994).
- Inter-American Convention on the prevention, punishment and eradication of violence against women (1994).
- Convention on the Prohibition of the use, stockpiling, production and transfer of antipersonnel mines and on their destruction (1997).
- Rome Statute of the International Criminal Court (1998).
- Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (2000).
- UN Convention against Transnational Organised Crime (2000).
- UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (Trafficking Protocol, also known as Palermo Protocol) (2001).
- Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (2002)

Declarations and other standards

- Universal Declaration of Human Rights (1948).
- UN Declaration on the Protection of Women and Children in Emergency and Armed Conflict (1974).

Table 1 (cont.)

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- UN Code of Conduct for Law Enforcement Officials (1979).
 - UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (1985).
 - Committee on the Elimination of Discrimination against Women, General Recommendation 19, Violence against Women (1992).
 - UN Declaration on the Protection of All Persons from Enforced Disappearances (1992).
 - UN Declaration on the Elimination of Violence against Women (1993).
 - Vienna Declaration and Program of Action (1993).
 - The Cairo Declaration: Program of Action of the International Conference on Population and Development (1994).
 - Beijing Declaration and Platform for Action (1995).
 - UN Guiding Principles on Internal Displacement (1998).
 - UN Security Council resolutions on children and armed conflict, 1261 (1999), 1314 (2000), 1379 (2001).
 - UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised -Human Rights and Fundamental Freedoms (1999).
 - UN Security Council Resolution 1325 (2000).
 - Durban Declaration and Program of Action (2001).
 - UN High Commissioner for Human Rights, Recommended Principles and Guidelines on Human Rights and Human Trafficking, UN Doc. E/2002/68/Add.1 (2002).
 - UN Secretary-General's Bulletin, Special measures for protection from sexual exploitation and sexual abuse, UN Doc. ST/SGB/2003/13 (2003)
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Source: Various by authors

women first began complaining of rape at the hands of Bosnian Serb soldiers, officials of the UN Commission on Refugees and other international non-governmental organisations such as the International Red Cross practically ignored their claim. Accordingly, Stiglymayer observed, with both organisations on the ground and operating in Bosnia during the war, when women came forward with allegations of their treatments they adopted a neutral stance, claiming that all sides at war were committing rapes against each other. International uproar over the treatment of women in the hands of Bosnian Serbs would not occur until later in the war, and even then the international organisations appeared reluctant to address this issue.

The observation posted in the vignette at the top of this article, made by the UN Secretary General on the occasion of the tenth anniversary of the Rwanda genocide, is very insightful as it speaks in hindsight regretfully about what the UN could have done to alter the course of the Rwanda mass killings. However, Darfur started that same year, with the full knowledge of the international community, and, despite many UN declarations condemning it, very little has been done to reverse the course of what the UN's own commission finding widely acknowledged, that 'genocide has been committed in Darfur' (see UN Security Council Resolution 1593, 2005).

The puzzle regarding the apparent disparity in priorities given to investigations of rapes as war crimes warrants close examination to ascertain factors that contribute to and allow for differences in priorities to exist. Predictably, answers relative to the sources of such differences in priority may have far-reaching implications for the international community in general, and in particular those organizations that have prosecutorial powers, such as the International Criminal Court. Clearly, timely response to impose economic sanctions, to send troops to stop hostilities or to prosecute rapes as war crimes may abate conduct or indicate greater sensitivity to women who are used as a weapon of war in conflict situations. At most, such response sends a clear message that indicates the

acceptable limit of the international community's tolerance of such conduct. However, it may also be the case that reluctance to investigate and successfully prosecute allegations of rape, apart from other associated crimes of war, reflect the structural politics of the nations from which the United Nations, as an organisation, draws its membership. If this is the case, then it raises the question of how the structures of power among member states of the international community influence responses to international crises of a militarised nature. For example, how does consensus, or lack of it, among the membership – in the General Assembly and, more importantly, the Security Council – impact the decision of the international community or its likelihood to respond or intervene in militarised conflicts? More specifically, how does hegemonic power and influence affect the international response to militarised conflicts?

In this article we use the Rwanda and Sudan militarised conflicts as case studies to identify factors that best explain how the international community, and the UN in particular, responds to crimes of rape against women or decides to intervene in militarised conflicts with pronounced issues of mass rape.

Literature review

Rape is probably one of the most committed wartime atrocities. However, it is unfortunately the case that it is also the least reported, least investigated and least punished crime, in spite of its frequent occurrence (Salzman 2000, p. 87). But painful as it is, rape in wartime is not merely a matter of chance, nor is a matter of sex; it is rather an act of power and control (see Graycar and Morgan, 1990). Documented crime statistics in conflict zones support these contentions. Commission reports such as Amnesty International's 2004 reports on 'Women and War: Rape as Weapon of War' and 'Lives Blown Apart: Crimes Against Women in Times of Conflict: Stop Violence against Women', and Human Rights Watch's 2000 'Global Report on Women's Human Rights' assert that rape is used in armed conflicts to intimidate, conquer and control women and their communities precisely because it has been used as a form of gender-based torture to extract information, punish and terrorise as well as intimidate and humiliate women. Accordingly, they maintain that while 70 percent of the casualties in recent conflicts have been non-combatants, 80 percent of these have been women and children (see Amnesty International Report, 2004). However, Salzman (2000) confirms that the high incidence of rape in wartime has unfortunately led to its acceptance as a common aspect of war. This may explain why during the Bosnian conflict the international community met the initial reports that Bosnian Muslim women were being raped by Bosnian Serbs with indifference. It was not until long after the reports were substantiated that the international community began to address the rapes committed in Bosnia. Thus, according to Salzman (2000), the hesitancy to address the Bosnian rapes is consistent with the rampant but unfounded notion that rape is an incidental aspect of war and that 'boys will be boys' – the silly notion that soldiers will inevitably take the opportunity to appropriate the spoils of war such as raping and plundering conquered territories. In the end the international community responded, but for the most part the response was due to the efforts generated by women activist groups. Whether or not the international responses were because the rapes occurred in connection with other wartime atrocities, such as the internment of Bosnian Muslims in deplorable detention centres, the fact remains that the UN eventually responded to the Bosnians' treatment of Muslim women.⁴

The majority of the literature on rape in militarised conflicts depicts rape as an atrocity perpetrated either on individuals or on communities (Allen, 1996; Seifert, 1994, pp. 63–66;

4 See New York Times (February 2000) reporting that the United Nation's International Criminal Tribunal for the former Yugoslavia (ICTY) convicted three Bosnian Serbs for raping and torturing Muslim women. This was the first time an international tribunal specifically prosecuted combatants for sexual crimes.

Stiglmyer, 1994, pp. 82–146; Turshen, 1998: 20, 2000), as well as present chronological narratives of rape perpetrated on women in militarised conflicts (Brownmiller, 1975; Littlewood, 1997). Others offer possible explanations and purposes served by rape in war. For example, Seifert (1994, pp. 54–58) argues that rape serves as a tool to terrorise and demoralise women and their cultures. For example, in violence focused on women's role as mothers of the next generation, women's bodies are mutilated and fetuses destroyed. For the most part, in these situations women are raped in front of their families to deepen their sense of shame. They may also risk harsher punishment or even death for bringing 'dishonour' on the family. Yet another category of literature focuses on the legal status of rape as a war crime, on its evolution, on suggestions as to why rape has not been included as a genre of crimes and on arguments for its inclusion as a crime against humanity (see Sullivan, 1994; Chinklin, 1994; MacKinnon, 1994, pp. 183–188; Copelon, 1994, pp. 199–207; also see Tables 1 and 2).

First, as part of crimes perpetrated on individuals as well as communities, the Bosnian conflict is a prime example. Even though it has been amply documented that in the former Yugoslavia rape was employed as a military and political tactic to achieve the Serbian political objectives of ethnic cleansing,⁵ most scholarly accounts agree as to the cruelty of rape as an instrument of warfare with a different emphasis. While Barstow (2000), for example, sees rape as a deliberate military strategy often used to disrupt the community, Allen (1996) argues that rape and murder are instruments of terror used to intimidate those who survive to abandon their homes and communities, and therefore the intent is to render the vicinity 'cleansed' of the ethnic group – what becomes 'ethnic cleansing'. While both Barstow and Allen agree about the ethnic cleansing intent of the Bosnian Serbian military leaders, Allen argues further that because the military hierarchy co-ordinated and implemented the mass rapes of Bosnian women as part of their political and military policy, it should be viewed with more condemnation than events that were incidental to the conflict. Similarly, Stiglmyer (1994, p. 82) also sees the purpose of mass rape as a way to deter Bosnian women and children from returning to their homes of origin. This fits in with a view of ethnic cleansing which describes the political objective of using terror to compel ethnic group minorities, in this case, the Muslims and Croats, to vacate a geographical location (Allen, 1996, pp. 44–63; Stiglmyer, 1994, p. 19).

Are mass rapes centrally co-ordinated at the highest levels of military and political planning or initiated at the field level by military commanders acting on their own initiative for tactical reasons? Rejecting Allen's (1996) and Barstow's (2000) conjectures that mass rapes are centrally co-ordinated at the highest levels of military and political planning, Hayden (2000) presents two counter-theses that highlight context and source. First, he argues that mass rapes are more likely to occur in militarised conflicts where large states are in the process of partitioning into smaller states. Second, he sees military commanders in the field as acting of their own initiative – offering their troops the opportunity to rape – to achieve tactical objectives, amongst which is included the population abandoning personal properties, etc. Thus, the attempted and eventual partitioning of Yugoslavia in 1992, in Hayden's view, was no different from the partitioning of the Punjab that resulted from the conflict between India and Pakistan in 1947 (see Hayden, 2000). In both cases he argues, as other have done (see Pufong, 2003), that the instances of mass rapes could not be legally

5 See mostly, *Amnesty International*, "Bosnia-Herzegovina, Rape and Sexual Abuse by Armed Forces" (January 1993); Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights, Report Pursuant to Commission Resolution 1992/S-1/1 of 14 August 1992, E/CN.4/1993/50 (10 February 1993); European Community Investigative Mission into the Treatment of Muslim Women in the Former Yugoslavia, Warburton Report, E/CN.4/1993/92, Women Living Under Muslim Laws, Compilation of Information on Crimes of War against Women in Ex-Yugoslavia (3 December 1992, updated 11 January 1993). On 15 April 1994 the Commission of Experts established pursuant to SC Res. 780, 1992 stated in a Press Release, SC/94/8 that it had evidence of a large number of violations of international humanitarian law in the territory of the former Yugoslavia.

Table 2 Selected elements of gendered crimes in the Statute of International Criminal Court**Article 8 (2) (e) (vi)-1****War crime of rape****Elements**

1. The perpetrator invaded¹ the body of a person by conduct resulting in penetration, however slight, of any part of the body of the victim or of the perpetrator with a sexual organ, or of the anal or genital opening of the victim with any object or any other part of the body.
2. The invasion was committed by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or another person, or by taking advantage of a coercive environment, or the invasion was committed against a person incapable of giving genuine consent.² The conduct took place in the context of and was associated with an armed conflict not of an international character.
4. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

Article 8 (2) (e) (vi)-2**War crime of sexual slavery³****Elements**

1. The perpetrator exercised any or all of the powers attaching to the right of ownership over one or more persons, such as by purchasing, selling, lending or bartering such a person or persons, or by imposing on them a similar deprivation of liberty.

[It is understood that such deprivation of liberty may, in some circumstances, include exacting forced labor or otherwise reducing a person to a servile status as defined in the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery of 1956. It is also understood that the conduct described in this element includes trafficking in persons, in particular women and children.]

2. The conduct was committed as part of a widespread or systematic attack directed against a civilian population.
3. The perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.

Article 8 (2) (e) (vi)-3**War crime of enforced prostitution****Elements**

1. The perpetrator caused one or more persons to engage in one or more acts of a sexual nature by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or persons or another person, or by taking advantage of a coercive environment or such person's or persons' incapacity to give genuine consent.
2. The perpetrator or another person obtained or expected to obtain pecuniary or other advantage in exchange for or in connection with the acts of a sexual nature.
3. The conduct took place in the context of and was associated with an armed conflict not of an international character.
4. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

Table 2 (cont.)

Article 8 (2) (e) (vi)-4
War crime of forced pregnancy

Elements

1. The perpetrator confined one or more women forcibly made pregnant, with the intent of affecting the ethnic composition of any population or carrying out other grave violations of international law.
2. The conduct took place in the context of and was associated with an armed conflict not of an international character.
3. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

Article 8 (2) (e) (vi)-5
War crime of enforced sterilization

Elements

1. The perpetrator deprived one or more persons of biological reproductive capacity.⁴
2. The conduct was neither justified by the medical or hospital treatment of the person or persons concerned nor carried out with their genuine consent.⁵
3. The conduct took place in the context of and was associated with an armed conflict not of an international character.
4. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

Article 8 (2) (e) (vi)-6
War crime of sexual violence

Elements

1. The perpetrator committed an act of a sexual nature against one or more persons or caused such person or persons to engage in an act of a sexual nature by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or persons or another person, or by taking advantage of a coercive environment or such person's or persons' incapacity to give genuine consent.
2. The conduct was of gravity comparable to that of a serious violation of article 3 common to the four Geneva Conventions.
3. The perpetrator was aware of the factual circumstances that established the gravity of the conduct.
4. The conduct took place in the context of and was associated with an armed conflict not of an international character.
5. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

1. The concept of "invasion" is intended to be broad enough to be gender-neutral.
 2. It is understood that a person may be incapable of giving genuine consent if affected by natural, induced or age-related incapacity. This also applies to the corresponding elements in article 8 (2) (e) (vi)-3, 5 and 6.
 3. Given the complex nature of this crime, it is recognized that its commission could involve more than one perpetrator as a part of a common criminal purpose.
 4. The deprivation is not intended to include birth-control measures, which have a non-permanent effect in practice.
 5. It is understood that "genuine consent" does not include consent obtained through deception.
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Source: Reconstructed by authors from ICC article 9 for the interpretation and application of articles 6, 7 and 8 of the Statute of International Criminal Court, U.N. Doc. PCNICC/2000/1/Add.2, 2000.

attributed to the political and military leadership of the warring factions. In her analysis of the civil wars in Uganda, Meredith Turshen (2000) came to a similar conclusion, finding that rape is one of the tools used by military commanders in the field to intimidate and terrorise a community. She found that in that conflict, both the Ugandan government and rebel forces encouraged their military forces to use the threat of mass rape to compel residents to either abandon their lands or to punish the community for giving aid and comfort to the opposition. Turshen concluded that the rape of women deprives them of economic, social and political resources in the long run because of the premium placed on women's sexual innocence and purity in these cultures.⁶

In a 1997 article, appropriately titled 'Military Rape', examining the plight of sexual violence in international conflicts, Littlewood established that Indian soldiers used rape to punish women for harbouring enemy terrorists during the conflict in Kashmir. He also found that Indian soldiers employed rape as a method of inflicting punishment on women for committing various infractions and as a way to humiliate an entire community during their intervention in Sri Lanka in the 1980s. In her widely cited 1975 classic titled 'Against Our Will', Brownmiller traces the history of rape in warfare from antiquity to recent history. Her perspective, even if troubling in the imagination, is simply that rape is a natural consequence of war, usually perpetrated on the vanquished by the victorious military. While devoting much attention to conflicts of the twentieth century with illuminating statistics – e.g. on the number of women assaulted during World Wars I and II – Brownmiller chronicles rapes committed in Bangladesh during the Indian, Pakistani and Vietnam Wars. Unlike others, she surmises that when rapes in conflict situations occur in connection with battles, they are usually initiated by soldiers with the tacit consent of commanders in the battlefield. While she views instances of forcible prostitution as orchestrated by 'the men in the field', they are not a necessary component of military strategy designed to achieve a political goal of the war. She points to two exceptions that were policies initiated by the government, notably the Nazi's enforcement of Jewish women and the Japanese enforcement of Korean and Chinese women into prostitution, or so-called 'comfort women'. But in both instances, Brownmiller (1975, pp. 62–63) argues, there seems to be a concerted effort by both governments to deny any culpability.

Thus, following our review of the literature on rape in militarised conflicts, and its impact on the individual and community, what emerges is a picture without depth. First, there is a general acknowledgement of rape in militarised conflicts and its impact on women, as well as the precise intent for its use, but there is disagreement regarding where blame should be placed. For example, while Allen (1996) and Barstow (2000) implicate the leadership at the highest level of the military and political regime, Hayden (2000), and by extension Brownmiller (1975), instead put blame on field commanders who act on their own initiatives to achieve practical military and at times political objectives – to win the war at all cost. Second, while silent on the specifics of whether events such as mass rapes in militarised conflicts warrant an international response, the literature lacks a theoretical foundation to inform the lack of attention paid to the phenomenon of rape by the international community. Indeed, it is unclear if rape in militarised conflicts is a sufficient condition for international response, or one among several conditions necessary for intervention. While there is consensus in the literature that the last decade of the twentieth century saw an increased use of mass rapes as a strategy to achieve the political objectives of war by military leaders, its use in this fashion is a relatively new phenomenon. For example, Brownmiller (1975) observes that historically when and if rapes occurred in conflicts, they were more often the result of a breakdown of morals and discipline in battlefield conditions. In those instances, she observes, commanders allowed their

6 For example, Turshen argues that because there are certain stigmatization that accompanies rape; women are either shunned by important men in their lives (husbands, fathers, sons, brothers) resulting in being stripped of property, inheritance or prohibited from property ownership independent of men, and other economic prospects in their future.

Table 3 Significant ongoing armed conflicts, 2006

Main warring parties	Year began ¹
Middle East	
US and UK vs. Iraq	2003
Israel vs. Palestinians	1948
Asia	
Afghanistan: US, UK and Coalition Forces vs. al-Qaeda and Taliban	2001
India vs. Kashmiri separatist groups/Pakistan	1948
India vs. Assam insurgents (various)	1979
Indonesia vs. Christians and Muslims in Molucca Islands	1977
Indonesia vs. Papua (Irian Jaya) separatists	1969
Nepal vs. Maoist rebels	1995
Philippines vs. Mindanaoan separatists(MILF/ASG)	1971
Sri Lanka vs. Tamil Eelan ²	1978
Africa	
Algeria vs. Armed Islamic Group (GIA)	1991
Côte d'Ivoire vs. rebels	2002
Democratic Republic of Congo and allies vs. Rwanda, Uganda, and indigenous rebels	1997
Somalia vs. rival clans and Islamist groups	1991
Sudan vs. Darfur rebel groups	2003
Uganda vs. Lord's Resistance Army (LRA)	1986
Europe	
Russia vs. Chechen separatists	1994
Latin America	
Colombia vs. National Liberation Army (ELN)	1978
Colombia vs. Revolutionary Armed Forces of Colombia (FARC)	1978
Colombia vs. Autodefensas Unidas de Colombia (AUC)	1990

1. Where multiple parties and long-standing but sporadic conflict are concerned, date of first combat deaths is given.

2. 2002 cease-fire collapsed in 2006.

Sources: Project Ploughshares, www.ploughshares.ca, and news sources (as of October 2006).

soldiers to rape and loot conquered territories both as a reward for their loyalty and as a means to secure future loyalty. In most of the cases, she surmised, field commanders did little to control the amount of damage soldiers caused while looting the conquered territories (Brownmiller, 1975, pp. 62–63).

Lastly, other plausible explanations for the paucity of constructs to explain the UN's, and by extension the international community's, response is the sheer number of militarised conflicts. With roughly sixty-three conflicts between 1989 and 1997, conflicts such as those in Bosnia, Kosovo, Rwanda and the Sudan, their sheer scale is too daunting to provide a one-dimensional answer that explains the broad spectrum of war crimes and violence against women or to offer plausible explanations for their occurrence (Gardam and Jarvis, 2001). To illustrate the point, Table 3 provides a sample of current and ongoing conflicts around the world, where each is unique and yet complex with its unique history, that compounds the effort to put forth a single explanatory construct.

Theoretical expectations

In looking at violence against women and the examination of the particular question of rape in militarised conflicts, constructivists, who emphasise the importance of 'ideas and culture in shaping

both reality and discourse in world politics', would argue that it is important to recognise that experiences differ, and if they do not, they are influenced by particularised political and cultural contexts, aspects of identity, beliefs and situations (Wendt, 1992). While that may not furnish sufficient explanation as to why the international community would respond at times, an Amnesty International 2004 report entitled 'Lives Blown Apart: Crimes against Women in Times of Conflict', presenting what might be viewed as a feminist view of world politics, argues that factors which contribute to violence against women in situations of conflict and militarisation have their roots in the pervasive discrimination that women face in peacetime as well as during and after conflict. Thus, violence and discrimination against women in this view is embedded in the language and rhetoric of conflict and militarisation which becomes an inherent feature of the conduct of war, which itself is endemic in the institutions waging it. Since in peacetime women rarely have the same economic resources, political rights, authority or control over their environment and needs as men do, situations of armed conflicts exacerbates women's unequal status by fuelling conditions for even greater discrimination and violence against them in the society (see Amnesty International Report, 2004b, EGACTION77075-2004).

Conflict and militarisation therefore are seen as reinforcing sexist stereotyping and the rigid differentiation of gender roles, especially where weapons proliferate and violence becomes an everyday means of social interaction (Amnesty International Report, 2004b, EGACTION77075-2004). Hence, because conflicts often create conditions of severe economic deprivation where the civilian population – and in particular women – becomes almost totally dependent on certain authorities (whether they are occupation forces, peacekeepers or humanitarian workers) for survival, it leaves them acutely vulnerable to sexual and other forms of exploitation. More than that, the fact that during emergency situations civil or political rights are suspended in law or in practice, it is surmised, further restricts women's ability to challenge or influence the course of events around them. Since the phenomenon of rape in militarised conflicts has no firm foundation on which to explain or predict any expected response from the international community, it is informative to trace and perhaps use the template of the evolution of genocide as a legal instrument in the aftermath of World War II.

First, the use of the Holocaust by the Germans and the use of rape for political and military purposes by the Bosnian Serbs have some similarities, not only in the means used to achieve ends, but more importantly in how they triggered the initial international response. The similarity, we argue, provides justification for looking to the Holocaust and the eventual response by the international community at the time in formulating an account that explains its response. For example, both cases at their outset challenged the international community because of the unprecedented scale of the inhumanity and heinousness displayed by the perpetrators of these crimes. Furthermore, just as the international community came to the conclusion that it would never ignore the gruesome nature of using rape used as a tool of 'ethnic cleansing' in Bosnia, the international community faced a similar challenge when the knowledge of the Nazi Holocaust was made public for the first time. Decisions had to be made on how to respond to Germany's genocidal campaign, whose goal and ends were the extermination of people of Jewish ancestry.

To be sure, the notion that a state could seek to exterminate an entire race of people was unprecedented then and unimaginable before World War II. After the war, the Allies recognised the need to hold Germany responsible for crimes it committed during the war by putting the perpetrators on trial and punishing them. In doing so, according to Sunga (1992, p. 46), the political resolve shown by the international community established a precedent for dealing with those who would thereafter use genocide as a government policy in any conflict. In a similar vein, the mass rapes that occurred in the former Yugoslavia presented the international community with a serious challenge – whether to acknowledge rape as a strategic policy used by the Bosnian military hierarchy and how to address the atrocity that was committed (see Pufong, 2001, 2002). Upon taking the

decision to do so, the next logical question was how to deal with the perpetrators, and lastly to establish guidelines to allocate blame for the crimes committed during the conflict. Since the literature is largely silent on this, we argue that the international community's response to the war crimes (genocide) committed by Nazi Germany accurately mirrors how the international community might respond to the increased inclination to use mass rape as a means of achieving political and military objectives during militarised conflicts.

Prior to the Nuremberg Trials in 1945–1946, Hitler's policy of exterminating the Jews did not have a name. Raphael Lemkin coined the term 'genocide' and defined it as the intent to exterminate racial, religious and ethnic groups. Initially, reports of the mass executions of Jews were met with shock, incredulity and, above all, no response from the international community (Peterson, 1999). Just as the Bosnian Serbs would do fifty years later, the Germans first attempted to hide their atrocities from the world by burying the bodies in mass graves and later, after it was apparent that they would lose the war, by attempting to erase evidence of the death camps they had used (see Moore, 1996). It is therefore not too difficult to understand the ambivalent reaction coming from the international community when the reports were initially made. In Moore's (1996, p. 198) observation, the scale of brutality and inhumanity directed towards the Jews as a group of people was unprecedented; something the world had not witnessed previously. It is also understandable that the international community's resolve to investigate and punish the Germans would not be assured until the reports of their atrocities were documented and substantiated near the end of the war (see Frensz, 1999). It was therefore at the end of the war that the United States, Great Britain, France, and the Soviet Union set up an International Military Tribunal (IMT) in Nuremberg to prosecute the Nazi war criminals.

Three notable crimes would fall under the jurisdiction of the tribunal: (1) crimes against humanity; (2) crimes against peace; and (3) war crimes (see Table 4). In all, after the war twenty-four Nazi leaders were indicted for war crimes, or genocide. Indeed, genocide, the criminal act of 'killing members of a group; causing conditions of life calculated to bring about physical destruction; imposing measures intended to prevent births within the group; and forcibly transferring children from one group to another' with intent to destroy, in whole or in part, a national, ethnical, racial or religious group would become a generic international crime after the war (Peterson, 1999; Rogers, 1996; Frensz, 1999). The institution of an IMT at Nuremberg to prosecute German leaders, however, was the first occasion that the four major powers who were part of the war, worked together. After Nuremberg, the United States, Great Britain, France and the Soviet Union conducted their own separate military tribunals and the United States prosecuted and executed approximately 450 Germans for war crimes (Rogers, 1996, pp. 165–166). Table 4 provides the three uniform legal grounds used for the prosecution of German war criminals and other similar offenders, other than those dealt with by the International Military Tribunal, as established by the London Agreement of 8 August 1945. Note in Table 4 that item 'c' indicates that, in 1945, atrocities such as 'torture and rape, or other inhumane acts committed against any civilian population etc' were criminalised as crimes against humanity.

Realism, a plausible explanation

While the existing literature on rape in militarised conflicts discussed above is useful in providing anecdotal and descriptive insights, it provides no theoretical insight and is therefore less helpful in explaining the basis of the international response, let alone variations in the kinds of responses. We take the view that the circumstances surrounding the international community's response to Nazi genocide after World War II, and more recently the Bosnian conflict, are more apt in giving a context to guide our understanding of why the UN responds in some situations and not in others. We find useful prominent theoretical analytical perspectives in international

Table 4 War crimes, crimes against peace, and crimes against humanity as established by the Control Council Law No. 10, 20 December 1945 3 Official Gazette, Control Council for Germany 50-55 (1946)

In order to give effect to the terms of the . . . London Agreement of 8 August 1945, and the Charter issued pursuant thereto and in order to establish a uniform legal basis in Germany for the prosecution of war criminals and other similar offenders, other than those dealt with by the International Military Tribunal, the Control Council enacts as follows: . . .

Article II

- i. Each of the following acts is recognized as a crime:
 - a) **Crimes against Peace.** Initiation of invasions of other countries and wars of aggression in violation of international laws and treaties, including but not limited to planning, preparation, initiation or waging a war of aggression, or a war in violation of international treaties, agreements, or assurances, or participation in a common plan or conspiracy for the accomplishment of any of the foregoing.
 - b) **War Crimes.** Atrocities or offences against persons or property, constituting violations of the laws or customs of war, including but not limited to, murder, ill treatment or deportation to slave labor or for any other purpose of civilian population from occupied territory, murder or ill treatment of prisoners of war or persons on the seas, killing of hostages, plunder of public or private property, wanton destruction of cities, towns or villages, or devastation not justified by military necessity.
 - c) **Crimes against Humanity.** Atrocities and offences, including but not limited to murder, extermination, enslavement, deportation, imprisonment, torture, *rape, or other inhumane acts committed against any civilian population*, or persecutions on political, racial or religious grounds whether or not in violation of the domestic laws of the country where perpetrated. . . .

Source: Formulated by the authors from: The London Agreement Official Gazette, Control Council for Germany 50-55, 1946

politics, such as *realism*, *liberalism* as complemented by a *constructivist* approach and their associated views on ethics such as *sceptics*, *state moralists* and *cosmopolitans*, as offering powerful insights for understanding world events (Nye, 2005, pp. 4–8). Accordingly, those who are *realist* in their descriptive assessment of world politics are closely associated with sceptics or state moralists in their evaluative approach; and those who emphasise a *liberal* analytical approach also tend to be either moralist or cosmopolitan moralists in their evaluative approach (Nye, 2005, p. 23). On the whole, liberals put the emphasis on domestic politics, where *the state*, *political institutions* or *state actors* dominate, as the basis for their views on world politics and tend to be less susceptible to the balance of power or structural explanations proffered by realists and neorealists (Keohane and Nye, 1977; Waltz, 1979).

Using known interventions, such as the post-war International Military Tribunal at Nuremberg, as a template that illustrates an instance of the international community's response, one can very well argue that either the *realist* or *liberal* view of international politics (Waltz, 1979; Morgenthau, 1993; Gilpin, 1983) offer useful approaches from which to explain the international response to militarised conflicts.⁷ Yet the question is: Which of the approaches offers the most compelling framework to explain why international responses in militarised conflicts vary and why? As explained

7 The realist view of international politics places emphasis in power politics, holding that the distribution of power in the international system is the main force shaping relationships among and between nation-states. Also known as the *international structure* or *hegemonic stability theory*, it adopts the view that the "international power structure" is the primary explanatory variable (Waltz, 1979, Morgenthau 1993). Different distributions

here, realism offers not only a plausible, but suitable, descriptive and analytical framework, and here is why in context. It is noteworthy that the Nuremberg trials were the result of the allies' victory over Germany, and were surely not staged only in the interest of justice and human rights alone, as the liberals' analytical framework would have us believe. Consistent with the realist analysis, power and structural politics were an issue, and the intervention in Germany was necessary to preserve world order for peace to ensue. In that view, having prevailed in the war over Germany, the powerful allies, acting in their interests as *hegemonic forces*, imposed a tribunal on the defeated German military and political leaders to try them for war crimes (Gilpin, 1983; Keohane, 1984a).

Structural realists argue that a state's position in the international system tells us how its national interests are defined in a given situation since they can always redefine their interests and strategy to defend these interests differently in similar situations (Nye, 2005, p. 50). This explains the variable responses to international conflicts, especially where in the end the final decision to intervene may be supported or opposed by hegemonic actors. In the realist view, hegemonic allies could impose the Nuremberg Tribunal only after the total subjugation and occupation of the German territory (Gilpin, 1983; see also Boco, 1994).⁸ According to Keohane (1984a), relying on asymmetric co-operation, a hegemonic leadership can help to create a pattern of order. It is a reasonable argument that without the total overthrow of the Nazi regime, and the occupation of the German territory, the institution of an International Military Tribunal would have been highly unlikely. Thus, power is an important concept in the realist and neorealist approaches; it provides one explanation of how the IMT in Nuremberg was made possible. The most powerful states creating a hegemonic force at the end of World War II, led by the United States and the Soviet Union, were able to respond to the criminal acts of the German political and military hierarchy because Germany lost both the war and its relative power in the international system.

To understand how power and interests factor in the realists' assessment of what motivated the decision to intervene after the war, consider that government officials in Germany were not the only ones alleged to have committed war crimes, even if the Nazi crimes were outrageous. The soldiers of the Soviet army also committed serious human rights violations as retaliatory measures for the treatment of their citizens at the hands of the German army (see Brownmiller, 1975, pp. 68–71). Some citizens of Poland and of what later became East Germany were also suspected of serious human rights violations, yet the United Nations and the international community never investigated or otherwise sought to hold them accountable. Power, or the relative position of the Soviet Union within the international community, in the realist view, here provides the explanation of why this is the case. Considering that Poland and East Germany were satellite communist states of the then Soviet Union, and the Soviet Union was one of the two nation states to emerge as a superpower after the war, it was never seriously considered that a citizen of the Soviet Union or one of its satellite states would be held accountable for suspected war crimes that occurred during the war. Thus, the relative position held in the international structure by the Soviet Union after World War II, and therefore its balance of power, guaranteed that neither its citizens nor citizens of states in its sphere of influence would be held accountable for wartime atrocities. Thus, short of war, there was no other way the international community could have held the Soviet Union accountable for wartime atrocities.

of power among states accordingly, lead to different degrees of stability in the international system or different levels of openness in national policies. In its strongest form, the international structure theory predicts that a *hegemonic system*, one in which power is concentrated in the hands of a single country, will produce the most stable and open international economy (see also Gilpin 1983; Kindleberger, 1951, 1973, 1981; Krasner, 1976a, 1976b, 1978, 1982; Keohane, 1980, 1984a, 1984b, 1986; Keohane and Nye, 1977).

8 Gilpin (1983) defines hegemon or hegemonic influence as a state with overwhelming military, economic and political power that has the ability to maintain its dominant position in the international system.

The same realist assessment applies to Great Britain. It has also been alleged that suspected war criminals escaped to Great Britain and France and countries that were part of the post-war allies, and that these countries refused in some cases to extradite them for trial when called upon to do so. Again, following the realist view, the positions occupied by these countries in the international power structure at the time rendered them immune to diplomatic pressures to respond to extradition requests. Clearly, suspects who were held accountable for war crimes were citizens from the defeated states – Nazi Germany and Imperial Japan. While one may argue that the international community turned a blind eye to the acts committed by the citizens of the Soviet Union or its satellites nations, their crimes were not on the same scale as those committed by Nazi Germany. It would also be difficult to argue that the trials held in Nuremberg and Tokyo were simply cases of the powerful dictating terms to the weak. In both cases, the war had rendered both countries (Germany and Japan) to what amounted to politically and structurally weak states if not totally collapsed states. Under those conditions they could not resist the imposition of tribunals on their leaderships who were suspected to have perpetrated war crimes.

Since the end of World War II, several government or state officials have been suspected of gross human rights abuses or crimes against humanity, but only a handful have been held accountable. Again, one may wonder why, what factors explain this? As Pufong (2004) has argued elsewhere, the justification lies either in the state's structural position in the international community or in its proximity to and support from an ally that holds a preponderance of power in the international system. Take, for example, the Cambodian regime, which committed serious human rights abuses under the Khmer Rouge regime that seized power in that country in 1975. Until fairly recently, the international community could not agree on how to address the issue. As it turns out, Cambodia had staunch hegemonic support. When the Khmer Rouge was ousted in 1979 by forces from neighbouring Vietnam, the United States supported the Khmer Rouge exiles and assured their continuing seat in the United Nations. The United States' backing of the Khmer Rouge kept Cambodian politics in a turmoil, which in turn prevented the pursuit of justice and the prosecution of suspects for the mass killings during the Khmer Rouge regime. Some estimates list between 500,000 and 1.7 million people killed by that regime under their brief government (see Marks, 1999; Rudolph, 2001).⁹ However, on 17 March 2003, the United Nations finally reached a consensus for a draft agreement with the Cambodian government to create an international criminal tribunal to try former Khmer Rouge leaders (Madra, 2007). The agreement reached came after five years of negotiations and twenty-four years after the Khmer Rouge were driven from power.

Since, under the agreement, the panel of judges for the court will include a majority of Cambodians, human rights groups argue that the government's ability to impose its will on these judges poses an unacceptable obstacle to justice. On the other hand, with many likely defendants over the age of seventy, time is running out for justice to be served. According to the *Globe and Mail* (14 June 2007), after a year of internal squabbling the tribunal is now on the verge of moving ahead with its first arrests and indictments. It finally agreed on the crucial decision on the tribunal's internal rules, thus clearing the way for the formal process of taking action against the Khmer Rouge leaders who presided over the slaughter of up to two million Cambodians between 1975 and 1979 (York, 2007). Again, the lack of support from the US and China, both superpowers, is useful for understanding why heretofore the United Nations had not been able to establish a tribunal, let alone hold suspected war criminals in Cambodia accountable for their actions in 1979.

9 Cambodia held two, well publicized trials of the Khmer Rouge leaders. The first occurred in 1979 after Vietnam overthrew the regime and the second occurred in 1997. Pol Pot, the focus of the second trial died before he could be extradited to Canada for trial by an International tribunal. Marks (1999) describes both as "judicial farces" which failed to satisfy the demands for justice for those victimized under the Khmer Rouge regime.

Marks (1999) and Rudolph (2001) argue that China, a member in the UN Security Council, and the successive Cambodian regimes which have ruled that country since 1979, vigorously opposed any attempts by the international community to force the surrender of its citizens for trial under an international tribunal, ostensibly because an international tribunal would expose the culpability of some of the members of the regimes. It is clear that until now, without the support of China any move by the United Nations to compel the government of Cambodia to surrender suspected criminals for trial would have been vetoed by China, thus ending any possibility of an international tribunal. The fact that China or the United States or both can succeed in doing this is therefore consistent with the realist principle that when it is not in the national interest of one of the permanent members of the Security Council to support, for example, a decision to intervene, the member can impede or prevent an international response. Pre-Iraqi invasion debate in the UN Security Council and the United States' insistence to go to war alone with or without UN approval is yet another case in point.

Thus, to explain the international community's response or non-response to crimes that target women in militarised conflicts, the *realist* analytical view of world politics appears the most compelling of alternative views. While we find valuable other descriptive analyses, we also deem them to be operable within the realist analytical scheme of world politics. This is the case in our view because hegemonic interests, and therefore power, complicate the decision to intervene in a sovereign state's territory, especially where a hegemonic interest may be at stake. Also as a process which ultimately involves the Security Council, since the laws and customs that govern international institutions and what they do in the end depend on the dictates of the most powerful nations who must agree, that too makes their implementation complicated. As Nye (2005, p. 23) so eloquently observes, in an anarchic world with no sense of community, let alone community effect, 'the strong do what they have the power to do, and the weak accept what they have to accept', and since *might makes right*, the powerful hegemonic states ultimately get their way.

Research design: assumptions, hypotheses and case studies

Assumptions

In using the realist analytical framework to estimate international response we accept the prospect that different schemes of interests at stake in any given area of militarised conflicts can generate different levels of responsiveness. We assume that any observable difference in response may be due to the nature of bargains that are politically achievable to preserve the balance of power and further the hegemony's interests at issue. This, we believe, is consistent with realist expectations that a state's position in the international system either predicts its foreign policies or provides a rough estimate of how its national interests are defined (Nye, 2005).

In this article, to gauge international response in militarised conflicts, we assume first that gross humanitarian violations may be committed by a functioning sovereign state, its agent or allied militias with or without the knowledge and support of the regime in power. Such violations may also be caused by an insurgent group at war with the regime in power. Second, we further assume that gross human rights violations may occur in areas of continued unrest where the state and government have become inoperable or dysfunctional. According to Burnell and Randall (2005, pp. 174, 387), this includes failed or collapsed states where atrocities have been committed by all sides at war. While state collapse designates situations where a functioning state ceases to exist, state failure implies less than a complete collapse but a situation where the state is progressively failing in some or all of its functions but has yet to reach full collapse. Zartman (1995, p. 6) refer to both events as the 'breakdown in good governance and in law and order'. Under this scenario, the political structure of the state ceases to function because of internal strife, possibly precipitated by ethnic or religious conflict where the ruling regime has been deposed, leaving the country without a

legitimate ruling government. A total breakdown in governance may therefore invite intervention or may be caused by intervening states, as was the case with the occupation of Nazi Germany by the Allied forces after World War II.

Under the first assumption stated above, and consistent with the realist descriptive analysis of world politics, if a regime has the support of a hegemonic power or is under its sphere of interest, the events (violations) noted under that assumption will be the *least likely* to evoke consensus for an international response, even where the state in question falls under the category of a failed state, and is at a state short of a complete collapse.¹⁰ In practice, this means a state that retains its sovereignty, with an active government in charge that has the backing of a structurally powerful hegemonic ally, is in a better position to reject, stall, avoid and delay any attempts by the UN or other international organisations to intervene within its sovereign space, impose economic sanctions or create an international tribunal to investigate and put its citizens on trial for the underlying crimes. A concrete example here is the case of Cambodia, where from the 1970s through to the summer of 2007 it fought hard to avoid an international tribunal, with the active support of major powers such as the United States (Marks, 1999; Rudolph, 2001).

Conversely, the events (violations) under the second assumption above are *more likely* to evoke consensus in the United Nations or the international community to formulate some kind of response. For one thing, the breakdown in law and order in a state's capacity to govern due to civil war, especially where its political structure is *dysfunctional*, with an effectively deposed government, is a breeding ground for gross crimes against humanity that constitutes a breach of international peace. This is the case because not only Chapter VII of the UN Charter warrants a response, politically with no hegemonic support, but also areas of militarised conflicts with massive human rights abuses (within what essentially has become a failed and collapse state), are *more likely* to gather the attention of the international community. Examples here are situations where the ruling regime no longer has control of part or the entire legitimate boundary, has been deposed by insurgent forces or does not exist anymore.¹¹ While civil wars often cause some governments to lose effective control of parts of their territory to the insurgent forces, internal violence motivated by ethnic, racial and religious intolerance may also cause irreparable damage to the existing political structure of a country. We argue that these kinds of situations are more likely to stir up one or all of the known responses that the international community can politically afford for an intervention (see Table 5). For instance, the UN can intervene by placing peacekeeping forces, may impose economic sanctions or create international tribunals to investigate and bring perpetrators of the underlying crime to justice.

In this article, we employ the case study method to assess the Rwandan and Sudanese militarised conflicts. Specifically, these cases are used to examine international responses in both countries, since rapes were apparently used as a weapon of war in both conflicts. Following the specified assumptions and hypotheses, we explore each of the cases in detail to explain why the international community or the UN would respond in some situations and not in others. We operationalise the dependent variables by assessing any reaction or response by the UN or international community in each of the two militarised conflicts using what we term here a 'modified Nye scale', ranging from 'low to high coercion' (Nye, 2005, p. 158; see Table 5). We focus on the timeliness, decisiveness and effectiveness of these responses in assessing the support or opposition of the the UN General Assembly and the fifteen member states of the Security Council, and more importantly the five superpowers – China, Russia, the UK, France and the United States. We deem all of the five

10 See *The Fund for Peace*. "Index of Failed States" for Sudan as a case in point in this example www.fundforpeace.org, 2007.

11 Classic case examples are the Yugoslavia and Rwanda conflicts in 1990s. Serbia was effectively the central government, but did not have control over the republics that were bent on succeeding or the Rwanda conflict which effectively collapsed from within leaving the country with no functioning government.

Table 5 Types and scale of interventions

Speeches	Condemnations	<i>Low coercion</i> (high local choice)
Broadcast		
Economic aid		
Military advisers		
Support of opposition	Sanctions	
Blockade		
Limited military action		
Military invasion	Interventions	
	International Tribunal	<i>High coercion</i> (low local choice)

Adopted and modified from Nye 2005 p 158.

superpower nations – who hold the power of veto in the Security Council – to be hegemonic powers as defined by Gilpin (1993, 1995, 2002). We use mostly primary, with some secondary, source information from the UN records, newspapers, journals of records and the Internet to establish the response. While the international response takes a variety of forms (see Table 5, first and third rows), they also vary in their effectiveness relative to the intended results – low versus high coercion.

We view the international responses in *four* possible forms as possibly related, both specifically and generally, to the concerns of the victims in militarised conflicts, and notably in the Rwandan and Sudanese conflicts. The four possible forms (Table 5, middle row) are: (1) *condemnation* – issued by the international community, such as a resolution by the United Nations condemning the crimes committed, the state’s action or inaction, or the responsible faction within the state; (2) *sanctions* – the imposition of economic sanctions or embargos for actions or failure to take action; (3) *intervention* – sending peacekeeping forces for the possible outright overthrow of an existing regime; and (4) *international tribunal* – the formation of an ad hoc tribunal to investigate and bring suspected perpetrators to justice. Predictably, the lower the method of international response in the event of known cases of atrocities visited on a population, the higher the domestic autonomy and therefore the scale of continued abuses, and vice versa. But that is not always the case, since the ability of the international community to use any of these measures on a member state requires the full support of all five permanent members of the UN Security Council (SC) who hold the power of veto. For example, an SC resolution requesting the establishment of an ad hoc tribunal, or that the ICC commences an investigation and ultimately prosecutes those accused, requires the approval of all five members of the Council. Thus, the preferences of hegemonic powers, or how each member of the SC chooses to define their interests, is an important consideration. In sum, in any militarised conflict, whether it violates the laws of war or breaches international peace, consensus or lack of it among the hegemonic powers is a critical factor in determining international responsiveness or the level of such a response.

Hypotheses

We state as a general hypothesis that in militarised conflicts a regime’s support or lack of support by a hegemonic power predicts the likelihood and nature of any UN response. Specifically, we hypothesise that in the event of lack of consensus among hegemonic powers: (a) the United Nations is the *least likely* to respond to alleged human rights violation if it occurred under the jurisdiction of a sovereign state whose political structure falls within the sphere of influence of a hegemonic power and there is functioning regime. On the other hand, in the event of consensus among hegemonic powers: (b) the international community or the United Nations is *more likely* to intervene in militarised conflicts where the existing governing regime has been ousted from power (e.g. by rebel forces) or is said to have been compromised, does not exist or has no hegemonic support.

Table 6 The failed states Index: most vulnerable countries

Country	Ranks		
	2005	2006	2007
Sudan	3	1	1
Rwanda	12	24	36

The *Fund for Peace* rank troubled countries that are in 'danger' of collapse. Ranked according to 12 social, economic, political, and military indicators, including economic decline and inequality, demographic pressures, war, and corruption, a failed state is defined as 'one in which the government does not have effective control of its territory, is not perceived as legitimate by a significant portion of its population, does not provide domestic security or basic public services to its citizens, and lacks a monopoly on the use of force'. The index covers countries at risk, not countries that have already failed. Here we provide the relative ranks of two countries used in this study for 2005–07.

Source: *The Fund for Peace*. www.fundforpeace.org, 2007.

Specific to the Rwandan and Sudanese conflicts, Table 6 illustrates the positions for both countries on the 'Failed States Index' for 2005–2007, showing the ranking relative to each other, and Sudan is worse off than many countries, including Rwanda. Bear in mind that this index covers countries at risk, not countries that have already failed. Ranked according to twelve social, economic, political and military indicators, including economic decline and inequality, demographic pressures, war and corruption, a failed state is defined as 'one in which the government does not have effective control of its territory, is not perceived as legitimate by a significant portion of its population, does not provide domestic security or basic public services to its citizens, and lacks a monopoly on the use of force'. The United Nations Development Program's (UNDP) Human Development Indicators for both countries is also consistent with indicators showing that both countries are of the same human developmental achievement level, gender related disparity and human poverty level. Again, Sudan is worse off than many countries and Rwanda on the indexes, but since 2003 the international community had been in no rush to execute even a humanitarian intervention for the reported grave abuse in Darfur. Indeed, if international responses alone are predicated on the potential harm a failing state might cause its citizenry in the event of the total failure, collapse or total breakdown of its political structure, then international responses would be regular occurrences, but unfortunately they are not.

The scale of militarised conflicts around the world, which shows countries on the verge of total breakdown with *no* international response, underscores the view that international response relies on more than the ranks designated to countries on the Failed States Index of failed states (see Table 6). Because realism and/or *hegemonic interests*, in our view, determine how the international community responds to militarised conflicts, the international response to militarised conflicts also varies. Realism would surely explain how international politics functions, as being a defeated regime or being one brought down by war, as the case of Germany and Japan during World War II illustrates.

Specifically, the collapse and breakdown of the political structures in both regimes occurred as the result of their defeat by the allied forces. This also included the imposition of a tribunal to try the culprits as well as a plan to rebuild both countries from the ruins and savages of the war. These postwar measures, undertaken by the United States and its allies, were consistent with political realism, where their hegemonic interests were defined in the *balance of power* and in long-term strategic, economic and political terms (Nye, 2005, p. 49). For the Rwandan and Sudanese cases, two possible kinds of pattern of state failure and state collapse, supplied by Burnell and Randall (2005), fits their political fate. While the Rwandan conflict fits the pattern where 'the state is marked by historical mismatch between the nature and operation of state institutions, and the socio-political process and divisions within the society', the Darfur conflict fits the pattern where 'the state is

undergoing a major struggle over power as well as the political and cultural orientation and organization of the society' (2005, p. 179). Both countries are politically unstable but the cause of instability, and therefore the conflicts that resulted in rape and the displacements of civilian populations, are internal not external, which underscores the level of state failure.

Thus, we submit that: (1) where a government is embroiled in a militarised conflict, is in a state of chaos, failing, or otherwise collapsing or overthrown, it *increases the likelihood* of international intervention, even if such intervention occurs late. Such intervention, even if without hegemonic support, is *more likely* if mass rape and other crimes against humanity are committed in connection with the militarised activity, which may be the result of ethnic or religious violence. However: (2) where a regime engaged in militarised conflict is under the sphere of influence of a hegemonic power, even if unstable, failing or otherwise collapsing, this *decreases the likelihood* of international intervention or an effective international response. This is likely to continue to be the case even where mass rape and other crimes against humanity have allegedly been committed in connection with the conflict.

Case studies

Case 1: Rwanda

Rape as part of an attack on a community can be an element of genocide. Where killings and other crimes, such as rape, are committed with intent to destroy in whole or in part, a national, ethnic, racial or religious group, whether in peace or war, the crimes constitute genocide. The Rwandan genocide is arguably the worst of the post Cold-War era. How did the events start? On 6 April 1994, rocket fire shot down an aeroplane carrying Rwandan President Juvenal Habyarimana and Burundian President Cyprien Ntaryamira as it approached Rwanda's National Airport, killing both presidents and the rest of the passengers on board. This event triggered the mass murder of Rwanda's minority ethnic Tutsis by the majority Hutus in a campaign of genocide that lasted until July. Estimates of the death toll range between 250,000 to 1 million.¹² While the exact number of deaths is uncertain, it is common knowledge, as Klinghoffer (1998) observes, that between April and July 1994, half of Rwanda's Tutsi population were killed by Hutus.

While reports vary, the substance of the narratives is similar. Destexhe (1995) holds that the Rwandan genocide was the culmination of years of meticulous planning by Hutu extremists who became increasingly threatened by the prospects of democratic reforms and the possibility of losing the political power they had wielded since the overthrow of the ruling Tutsi king in 1959. Yet Hutu rule, and their dominance in the Rwandan power structure, are traceable from that nation's independence on 1 July 1962. In October 1990 that dominance was put to test when the Rwandan Patriotic Front (RPF), a Tutsi rebel group exiled in Uganda, invaded Rwanda in an attempt to overthrow the Hutu-led government. While a peace accord signed in August 1993 in Arusha, and Tanzania called for a coalition government of the two ethnic groups, the downing of the plane that killed the presidents of both Rwanda and Burundi in April 1994 generated deep-seated ethnic violence that erupted into war. It is unclear who actually shot down the plane, but one account points to Hutu extremists who frowned at the Hutu–Tutsi power-sharing plan (the so-called Arusha Accords) initiated and signed by President Juvenal Habyarimana, a Hutu moderate (Destexhe, 1995; Ransdell, 1994).¹³

¹² The exact number is difficult to determine. Klinghoffer (1998, p. 165) states that the U.N.'s official total of the number killed is 500,000, while Ransdell (1994) reports that by May that year, 250,000 had perished. The CIA Fact book (<http://www.odci.gov/cia/publications/factbook/index.html>) lists the death toll at 800,000.

¹³ According to Destexhe (1995), the agreement called for democratic reforms and an integrated Rwandan government, to the detriment of Hutus extremists. Habyarimana's signing of the agreement would have been viewed by many extremists Hutus as a betrayal of ethnic Hutus.

Suspicions that Habyarimana's plane was shot down by extremists in retaliation for the signing of the Arusha Accords was confirmed almost immediately, since upon his death Hutu extremists seized control of the government and began implementing their plan to rid the country of the Tutsis (Ransdell, 1994; Parker, 1994). After assassinating a number of moderate Hutus who opposed Habyarimana's policies and were known to be sympathetic to the Tutsi Rwandan Patriotic Front, the opposition party, the Hutu extremists, ordered their militia and the presidential guard to begin the round-up of the country's Tutsis (Klinghoffer, 1998, p. 43). The Hutu extremists, now in charge in the Rwandan government, used radio as a propaganda tool to excite the country's Hutus to assist the militia in wiping out the Tutsis. Roadblocks were set up by the militia to stop and check passers-by for their identification cards, and any Tutsis that were found were killed on the spot. Hutu peasants heeded the call of government ministers and assisted the militia in their genocidal campaign. With teachers killing their students, neighbours killing neighbours and Hutu husbands killing their Tutsi wives in some cases, the scenes of the bloodiest carnages took place at churches and schools where Tutsis gathered for sanctuary (Klinghoffer, 1998, p. 45). At some sites, the death toll was as high as 6,000. In 100 days, beginning in April 1994, Hutus rampaged through the country and slaughtered an estimated 800,000 Tutsis and their moderate Hutu sympathisers. The bloodbath lasted well into July, when the forces of the Rwandan Patriotic Front defeated the Hutu government forces, thus putting an end to the genocidal campaign.¹⁴

Related to the crime of genocide, Tutsi women were subjected to mass rape. A 30,000-member militia group, the Interahamwe, notably civilians and soldiers of Rwanda's armed forces, encouraged Hutus to commit acts of sexual violence against the Tutsi as one of their means of achieving their political objective – which included the destruction of the Tutsis social structure (HRW Report, September 1996). The Women's International Network made estimates of approximately 15,500 rapes perpetrated against Tutsi women and girls, and of these 2,000 to 5,000 gave birth.¹⁵ According to Sullivan and Hammer (1996), many women were also mutilated or killed after being raped (see Women's International Network, Summer 1995). Although the genocidal slaughter and rapes seemed a spontaneous eruption of hatred, they have in fact been shown to have been carefully orchestrated by the Hutu government following a pattern where, while women were singled out at checkpoints or other points to be raped, the men were being slaughtered (see Prosecutor v. Jean-Paul Akayesu, 1998). After the rapes, the women were either mutilated or also killed, or held for days and weeks in sexual bondage. Further, some women were taken away by the Rwandan Hutu forces as they retreated to Zaire under the gunfire of the RPF forces (HRW Report, September 1996). Human Rights Watch reported that rapes were indiscriminately administered to Tutsi as well as Hutu women, especially if they were known to be sympathetic to or were married to Tutsis. Accordingly, some Hutu women, too, were singled out and raped if they were deemed attractive. Despite these horrific reports of genocide, no country came to the Tutsi's assistance. The UN, already stationed in Rwanda at the time of the killing, is said to have withdrawn entirely after ten of its soldiers were killed.

While the UN Security Council intervened late with resolutions that condemned the mass killings, an International Criminal Tribunal for Rwanda (ICTR) was created in 1994 for the purpose of prosecuting genocide suspects for crimes committed between 1 January and 31 December 1994 (Scharf, 1999). Initially, the ICTR was challenged by staffing and resource shortages. The ICTR

14 Although Tutsi rebels took control of the government, they permitted a Hutu, Pasteur Bizimungu, to serve as president in an attempt to foster national unity but mainly to deflect accusations of resurgence in Tutsi elitism. Paul Kagame, the Tutsi RPF rebel leader and now the President, became the vice president but held the real power (see U.S. State Dept. Country Notes on Rwanda, 1998).

15 Also see Women's International Network News, Summer 1995, Vol 21, p. 58 and Sullivan and Hammer (1996).

moreover, was not conducive to investigating gender-specific human rights violations. According to Human Rights Watch reports, the tribunal took two years to establish the Sexual Assault Committee, which had responsibility for coordinating the investigation of gender-related violations (see Human Rights Watch, 1996). By May 1999, the ICTR had 328 individuals in custody, 10 of whom were senior government, military, media and militia officials (Okali, 1999). The tribunal successfully prosecuted some of the highest-ranking officials in the Rwandan government who presided over the genocidal campaign. Among those receiving life sentences from the ICTR were Jean-Paul Akayesu, former mayor of Taba, Jean Kambanda, former prime minister of Rwanda and Clement Kayishema, a former provincial governor. Of these, the conviction of Jean-Paul Akayesu is the most important for several reasons. First, Akayesu's conviction marks the first time an international tribunal has successfully convicted someone for the crime of genocide.¹⁶

Second, the indictment included rape as a gender-specific component of genocide. To be specific, in the case of Jean-Paul Akayesu, the tribunal determined that rapes were part of the genocidal attack since he was found guilty of inciting and ordering the murder, torture and rape of Tutsis who sought refuge in the commune (i.e. the city government) during the 1994 genocide (see Prosecutor v. Jean-Paul Akayesu, 1998). He was convicted of committing torture himself, and was also convicted of murder and rape through ordering and otherwise aiding and abetting those crimes. Jean Kambanda, the former prime minister, for his part is notable not for the life sentence he received but for the fact he became the first person in history to be convicted solely on the basis of the crime of genocide as first defined in the 1948 Genocide Convention after World War II. By 2001, eight others had also been convicted of the same charge.

To be sure, the inclusion of rape in the Rwandan indictment established a precedent for the successful prosecution of gender-specific crimes such as rape, genital mutilation and sexual slavery in future cases. It also paved the way for the indictment of human rights violators in the future, especially of those who disrupt and humiliate an ethnic, religious or racial subgroup by committing acts of gender violence that disrupt the social fabric of those communities. Tables 2 and 4 similarly provide reference and definitions of various crimes as now conceived by the statute of the International Criminal Court (ICC). What the Hutus sought to do to the Tutsis in Rwanda is precisely what the Bosnian Serbs did to the Muslims in the former Yugoslavia, which also led to the creation of the International Criminal Tribunal for Yugoslavia (ICTY) at The Hague, Netherlands.

Case 2: Sudan

Darfur, the locus of the current dispute, covers about one-fifth of Sudan's vast territory and is home to one-seventh of the country's population, which includes a mixture of Arab and non-Arab ethnic groups, both of which are predominantly Muslim. Since 2003, the Sudan government-sponsored forces, the Janjaweed, have engaged in an armed conflict with the Sudanese Liberation Army/Movement (SLA/SLM) and the Justice and Equality Movement (JEM), both of which are rebel groups. With undisputable evidence backing their claim, international observers charged that as part of its operations against these rebel groups, the Sudanese government-sponsored forces have waged a systematic campaign of 'ethnic cleansing' against civilian populations who are members of the same ethnic groups as the rebels. The reports also charge that the Sudanese government systematically ignores and even facilitates such violations. Thus, several accounts from reputable sources, such as the US Department of State, the *New York Times*, Amnesty International (AI) and Human Rights Watch document between 200,000 and 300,000 civilian deaths and the displacement of more than

16 Although former Rwandan Prime Minister Kambanda was the first to be sentenced, Akayesu was the first to be convicted. It is because of this, that human rights advocates consider Akayesu's case important, even though he was a low ranking government official, the mayor of Taba commune (Vo 1998; Okali 1999).

29 million people with some 200,000 who have sought refuge in Chad.¹⁷ Accordingly, an AI report entitled 'Darfur: Rape as a Weapon of War', published in July 2004, describe the mass rapes and killing of women in conflicts in Western Sudan as part of an act of 'collective violence' where rape is used systematically and deliberately to drive out one group and empty the land of its settled population. Attacks, they observed, are highly gendered, where men are killed and women are subjected to rape and other forms of sexual assault. Accordingly, the HWR report 'Targeting the Fur: Mass Killings in Darfur' (21 January 2005) observed that the government-sponsored Janjaweed burned and destroyed hundreds of villages, killed and caused the deaths of at least 200,000 people, and raped and assaulted thousands of women and girls.

On 9 September 2004, in a statement that confirmed these and other press accounts on the state of Darfur atrocities, US Secretary of State Colin Powell declared that 'genocide has been committed in the Sudanese region of Darfur'. Citing 'consistent and widespread' patterns of atrocities that included killings, rapes and the burning of villages, Powell observed that the Darfur atrocities were 'coordinated effort, and not random violence, for which the government of Sudan and its Janjaweed militias bear responsibility'.¹⁸ Under the 1948 International Convention for the Prevention of Genocide three criteria are used to identify genocide, which Secretary Powell described: (a) specific acts are committed (i.e. killing, causing serious bodily or mental harm), deliberately inflicting conditions of life calculated to bring about the physical destruction of a group in whole or in part, by imposing measures to prevent births or forcibly transferring children to another group; (b) such acts are committed against members of a national, ethnic, racial or religious group; and (c) such acts are carried out 'with intent to destroy, in whole or in part (the group)'.¹⁹ Since Sudan is a contracting party to the genocide convention, Powell concluded, it is therefore obliged under the convention to prevent and punish acts of genocide committed within its territory.²⁰ Therefore, rape as part of an attack on a community can be an element of genocide, especially when killings and crimes that include mass rape have been committed with intent to destroy, in whole or in part, a national, ethnic, racial or religious group, whether in peace or war time.

Indeed, rape and sexual violence against women and girls has been a prominent feature of the conflict in Darfur almost since its very beginning in early 2003. According to HRW reports and briefing papers 'Targeting the Fur: Mass Killings in Darfur' (21 January 2005), the major perpetrators have been the Sudanese military forces and their allied militias, the Janjaweed. These crimes, the HRW report noted, have been committed in a systematic manner by the Janjaweed with assisted co-ordination from Sudanese government soldiers and the air force. The Amnesty International report 'Sudan Crises' (2004d) also observed that while men and women in the thousands have been killed in Darfur, thousands of women have been raped and more than a million villagers forcibly displaced – with their houses and crops burnt as well as their livestock looted and killed. While confirming similar reports issued by the US State Department's Atrocities Documentation Team on Darfur (2004), Amnesty International also reported that the violence inflicted on the civilian population was also highly gender-based. For example, while men were taken away and executed, women were systematically raped and beaten and were stabbed and in most cases gunned down if they resisted or tried to escape. Other kinds

17 See AI Report 2004d – Sudan Crisis – Amnesty International, <http://web.amnesty.org/pages/sdn-index-eng>; also see Human Rights Watch reports and briefing paper: "Targeting the Fur: Mass Killings in Darfur," January 21, 2005.

18 See CNN.com "Powell calls Sudan killings genocide" <http://www.cnn.com/2004/WORLD/africa/09/09/sudan.powel>, September 9, 2004.

19 See Convention on the Prevention and Punishment of the Crime of Genocide, 78 U.N.T.S. 277, *effective* January 12, 1951.

20 See CNN.com "Powell calls Sudan killings genocide" <http://www.cnn.com/2004/WORLD/africa/09/09/sudan.powel>, September 9, 2004.

of atrocities reported include raping pregnant women publicly, in front of their husbands, relatives and the wider community to humiliate their families. Women and girls, some as young as eight, were abducted and made sex slaves and forced to stay with the Janjaweed in military camps, with the threat of having their legs and arms broken if they tried to escape (Amnesty International Report, 2004c, AFR 54/076/2004). This is the state of the conflict in Darfur, Sudan in a nutshell.

On 25 January 2005, a United Nations' sponsored International Commission of Inquiry, charged by the UN Secretary General, issued its report which, unlike the US State Department report, stopped short at declaring that genocide had been committed in Darfur. Instead, it observed that gross violations of human rights perpetrated by government forces and the militias under their control engaged in killing, caused serious bodily and mental harm, and deliberately inflicted conditions of life likely to bring about physical destruction. As with other earlier media accounts, it also concluded that the government and its Janjaweed militias had used rape and sexual violence as a 'deliberate strategy with the aim of terrorizing the population, ensuring control of the movement of the population and perpetuating its displacement'. In its report 'Targeting the Fur: Mass Killings in Darfur' (21 January 2005), Human Rights Watch also documented several first-hand observations in Darfur where women and girls were the object of rape and other forms of sexual violence during a Sudanese government attack on villages, which included multiple rapes by multiple attackers from the government and its militia forces, the Janjaweed. The US State Department's report on Darfur (2004) characterised the current conflict as the worst humanitarian and human rights crisis in the world today. As of January 2007, approximately two million displaced people lived in camps in Darfur, and at least 232,000 people had fled to neighbouring Chad, where they live in refugee camps.

Historically, Sudan has been embroiled in continuous civil wars and coup d'états since gaining its independence from Britain in 1956.²¹ At the very least, 1972–1983 witnessed a period of relative tranquillity, owing to an agreement signed in Addis Ababa in 1972 between the governments of Sudan and Southern Sudan that allowed the South to be politically autonomous from the government in Khartoum. In 1983 everything changed. Wakoson (1993) points to two interrelated incidents as the cause of the current internal conflict in Sudan. First, the indiscriminate imposition of the fundamentalist Islamic law in 1983 by Gaafar Mohamed Nimeiri, who was then head of Sudan's ruling military junta. The main problem was the full-scale applicability of the law to all parts of the country, even to areas where the majority was not Muslim. Second was the nullification of the so-called Addis Ababa agreement that allowed Southern Sudan to be politically autonomous. The institution of the Islamic law exacerbated the existing rift between the Arab North and the black and animist Christian South, since a key distinguishing characteristic of the two regions was and still is their ethnic and religious make-up. While the North comprised mainly Arabs who were religiously Muslim, the South comprised mostly black Africans and Christians. Due to the ethnic cleavage and other cultural differences, the allowance of self-governance for Southern Sudan as contemplated by the 1972 Addis Ababa agreement was important for the stability of Sudan. Indeed, language, religion, ethnicity and political power had been integral to the cause and unending circle of civil wars between government forces, strongly influenced by the National Islamic Front (NIF), and the southern rebels, whose most influential faction then was the Sudan People's Liberation Army (SPLA).

After President Nimeiri nullified the Addis Ababa agreement in 1983, the South, led by the SPLA responded by taking up arms against the Sudanese government (Martin, 2002; Wakoson, 1993, p. 37). In the mid 1980s, after the Nimeiri regime had left office, ethnic violence continued to affect Darfur and the southern regions of Sudan. In 1986, the successor government to Nimeiri followed suit and began arming ethnic Arab tribes to fight John Garang's SPLA in the South. After helping the

21 *Human Rights Watch* also report that Sudan has been involved in Civil Wars for approximately 32 years making that country one of the least politically unstable in Africa (<http://hrw.org/reports/world/sudan-pubs.php>).

government of Sudan repel an SPLA attack in Darfur in 1991, one of the Arab tribes sought to resolve ancient disputes over land and water rights by attacking the Zaghawa, Fur and Massalit peoples in Southern Darfur. This action resulted in the retaliatory destructions of some 600 non-Arab villages with deaths that tolled over 3,000. Amidst the civil war, the government of Sudan openly encouraged the formation of an Arab Alliance (from which the Janjaweed emerged) to keep non-Arab ethnic groups in check in Darfur, an action which precipitated the flow of weapons into the Darfur region that later inflamed the conflict in 2003 (Satchell, 2001; Foek, 1998; Martin, 2002). When current President Bashir seized power in 1989, he continued the same pro-Arab support in both Darfur and the Southern regions and, while actively seeking to disarm the non-Arab ethnic groups, he allowed the politically loyal Arab allied militias (the Janjaweed) to keep their weapons.

Since the outbreak of the Darfur conflict in 2003, the rebel factions, once led by the SPLA, have splintered into several warring factions.²² While the previous Darfur Liberation Front (DLF) changed its name in March 2003 to the Sudan Liberation Movement/Army (SLM/SLA), it intensified its military operations and unveiled its political programme for a 'united democratic Sudan', and bolstered its military strength to 4,000 troops. Another group, the Justice and Equality Movement (JEM), established in 2002 with fewer than 1,000 rebels, also joined the SLM/SLA in its campaigns against the government forces of Sudan. In a move that intensified the Darfur conflict, the government began providing support (that included paid salaries to recruits, communication equipment, arms and identity cards) to the Arab Janjaweed militias that were used to attack the non-Arab civilians. The US State Department's report on Darfur (2004), Amnesty International, Human Rights Watch and several other press accounts confirm that the government logistic support in aerial bombardment and attacks on civilians significantly advanced the effectiveness of the Janjaweed militias throughout the region. While to date the exact number of casualties caused by aerial bombardment alone cannot yet be determined, large numbers of Darfurians, especially the non-Arabs were killed, with women raped and humiliated and forced to flee their homes and villages. The tragedy is that the majority of the casualties are not military combatants killed on the battlefield, but civilians who are caught in the middle of the warring factions.

Until recently, although the US State Department had documented and announced in 2004 that 'genocide' had indeed been committed in Darfur, the international community gave nothing but a toothless response, even with a UN-commissioned inquiry reaching a similar conclusion (see UN Report of the International Commission of Inquiry, 25 January 2005). While sanctions had been imposed on Sudan in the past, they were for alleged links to terrorism in the 1990s. The massive gender violence inflicted on innocent women in Darfur and Southern Sudan had until recently not yielded a concerted response from the international community. On 24 June 2004, after deliberations which cited violation of a broad range of existing international conventions applicable to the Darfur conflicts, the US Congress adopted Secretary Powell's declaration confirming that 'atrocities had been committed in the Western Sudan region of Darfur'. Both the declaration and House Resolution 467 urged the Bush administration to 'lead an international effort to prevent genocide in Darfur' (see US House Resolution 467, 2004). However, it took the Bush administration *three* years, to 27 May 2007 to be exact, to establish a list of 'sanctions targeting Sudanese companies and individuals said to be involved in the violence in Darfur'. What the US sanctions accomplished was to ban thirty Sudanese companies, mostly in the oil business, and three Sudanese citizens, from trading or banking with the United States.²³ While Sudan continued to insist on its sovereign right to investigate,

22 It should be observed that the Sudan People's Liberation Movement (SPLM) was created by the Sudan People's Liberation Army (SPLA).

23 As the BBC confirms this was not the first time since the US and the UK have long threatened to impose sanctions unless Sudan agrees to have more UN peacekeepers in Darfur. But the threats achieved little as Sudan's allies – Russia and China – in the UN Security Council used their veto to wisely block those

execute arrest warrants and prosecute the perpetrators of the Darfur crimes on its own terms in its national courts, human rights organisations have observed that failure to do so or to acknowledge state responsibility for its own actions, are good enough reasons why it must hand over suspects to the ICC, charged under Security Council Resolution 1593 to prosecute the Darfur war crime violations.²⁴

Discussion

What, then, are the likely explanations for the lack of response from the international community to the Rwandan, as well as the sluggish and much-delayed response to the Sudanese, militarised conflicts? Surely it has nothing to do with their wealth. The Fund for Peace 'Failed States Index' ranks both countries in the top forty 'failing states' (see Table 6). What this means is that both countries are similar on the basis of the indicators used in making judgments. The higher a country's rank, the better the indicator in the aggregate and the lower the rank, the worse off the country. Overall, Sudan is slightly worse off on all scales and rankings than Rwanda, even if both countries are in the same category of failed states. Furthermore, Sudan is on the top twenty list of *most repressive* countries in the world, i.e. those that exert pervasive control on the daily life of their citizens by banning free speech, independent organisations and political oppositions, or by engaging in severe human rights violations (see Freedom House, 2007). Also, since 1993 the US State Department has continuously listed Sudan in the ranks of states that sponsor terrorism. These indicators for both Sudan and Rwanda are within the same level and scope of deprivation of the rights of their citizens. On the basis of these findings, coupled with reports of crimes against humanity and war crimes committed in either of the two countries, one can readily assume that it would justify and compel any decision to intervene made by the UN or the international community. But that is not the case, since both case studies under review show variations in the kind and nature of the UN response for each country.

In the first case study for Rwanda, realism appears to explain the international community's, and by extension the UN's, reluctance, and in the end its eventual response in setting up an international tribunal. The atrociousness of the crimes committed in Rwanda necessitated the UN Security Council to reciprocate with some type of action, if for no other reason than to deter future would-be perpetrators from following the example of the Hutu government, who carefully planned and orchestrated the genocide against the Tutsis in Rwanda. As stated in the theoretical analysis above, realism best explains an international response to rape cases when the ruling regime is no longer in control of its state's jurisdiction and more importantly, where there is consensus among the superpowers who have the power of veto in the UN Security Council. The Hutus responsible for planning the genocide were ousted from power in Rwanda after suffering a military defeat at the hands of the Tutsi-led RPF. The military defeat and removal from power of those responsible for the genocide made it easier to apprehend and hold the leaders accountable for their actions at the ICTR (Scharf, 1999). More importantly, the consensus in the Security Council among the fifteen member states and the five superpowers made this possible, even if such a consensus was reached too late to be meaningful in undermining the Hutu massacre of the Tutsis. The prosecution and sentencing of the top people in the Hutu government responsible for the genocide, such as former Prime Minister Jean Kambanda and Ferdinand Nahimana, the manager of the radio station used to encourage Hutus

measures. In 1997, the US imposed sanctions on Sudan because of its supposed ties to Osama Bin Laden and the terms of the sanctions, Sudanese firms cannot use US dollars for international trade (See BBC News "Sudan's Darfur conflict" <http://news.bbc.co.uk/go/pr/fr/-/1/hi/world/africa/3496731.stm>, 2007/05/29).

24 See *UN Security Council Resolution 1593* (2005), U.N. SCOR, 60th Sess., U.N. Doc. S/RES/1593 (2005) www.icc-pi.int/library/cases/No529273.darfureferral.eng.pdf on the basis of the findings of the *International Commission of Inquiry*, referring the matter of Darfur to the ICC in March 2005.

to kill Tutsis, should act as a deterrent to regimes who might be tempted to imitate these kinds of atrocities.

Although military forces from other foreign states did not occupy Rwanda, our case study shows that the ruling regime responsible for the genocide was deposed, and as a result, the international community was in a more favourable position for responding to the crimes perpetrated by the regime. For example, the delay to act should be appreciated as well. It was not until the Hutus were ousted that the UN Security Council, and therefore the international community, was able to set up the International Criminal Tribunal for Rwanda. It is debatable whether the UN Security Council would have established a tribunal had the Hutu perpetrators been successful in defeating the RPF and consequently were in effective control of the government in Rwanda. Clearly, it is a reasonable assumption that in the face of mounting international criticisms for failing to take action to prevent the slaughter of so many people, a response of some kind was forthcoming from the Security Council. A plausible argument to the contrary, however, is that because the credibility of the UN was at stake, the Security Council would have in the end done *something* in response to the Rwandan genocide.²⁵ The institution of the ICTR in Rwanda as a response of the international community supports the theoretical assumption of realism adopted in this analysis.

With regard to the second case study on Sudan, even before the current Darfur conflict the UN and the international community found it impossible to reach consensus on the imposition of meaningful sanctions to bring about internal change in that country. The inception of the Darfur conflict in 2003 did not change that trend. For example, Table 7 shows that between 2004 and 2007, the UN Security Council enacted several resolutions,²⁶ almost all of which were challenged or weakened significantly at every turn by Sudan's hegemonic allies, who are important veto members in the Security Council, notably Russia and China. As hypothesised and argued in this article, realism in our formulation explains the lack of resolve and delays in the international response. That is, when a ruling regime is in the control of its state's jurisdiction and there is an apparent lack of consensus among the superpowers with the power of veto in the Security Council the chances of intervention are significantly reduced. As the Sudan case illustrates, even where there has been limited consensus of some kind, China and Russia not only supported Sudan but worked hard to weaken what eventually amounted to a final resolution to impose sanctions on Sudan.²⁷ The fact that the UN had until recently failed to respond to the rapes and other crimes against humanity in Darfur can therefore be explained by the lack of consensus, a conclusion consistent with the general hypothesis that a regime's support or lack of support by a hegemonic power predicts the likelihood and nature of the UN response.

25 Scharf (1999) for example, references remarks made by the president of the UN General Assembly who questioned the UN's ability to respond to "massive human tragedies" in the future because of the UN and the international community's inaction in Rwanda.

26 See resolutions concerning the situation in the Sudan, in particular resolutions 1679 (2006) of 16 May 2006, 1665 (2006) of 29 March 2006; 1663 (2006) of 24 March 2006; 1593 (2005) of 31 March 2005; 1591 (2005) of 29 March 2005; 1590 (2005) of 24 March 2005; 1574 (2004) of 19 November 2004; 1564 (2004) of 18 September 2004; and 1556 (2004) of 30 July 2004 and the statements of the President concerning the Sudan.

27 For example, according to Shichor (2006), China's justifications for the obvious trend in *abstentions* in Table 7 and since its return to the Security Council in 1971, to include draft abstention on resolutions perceived by Beijing to interfering in the domestic affairs or undermining their sovereignty, independence and territorial integrity, should not be taken out of context. Following ancient Chinese Confucian principles, which explain most Chinese thinking, Beijing customary preference is that conflicts be settled by the concerned parties or, as a last option, by local and regional organisations, without external intervention such as the UN or the International Criminal Court. Documented veto statistics for this article and part of Table 7 for 2005 reinforces this observation. As of 2005, UNSC permanent five members had used their veto power a total of 257 times – the Soviet Union/Russia 122 times, the United States 80, Britain 32, France 18 and lastly China only 5 times, to include Taiwan before 25 October 1971. Indeed, as recently as 2007, China used its fifth veto option when it joined Russia to veto a joint US/UK backed Security Council Draft on a resolution directed by Myanmar.

Table 7 Summary of China's votes on key Security Council resolutions on Darfur 2004–2007

Resolution	Descriptive purpose	China's vote
SC Resolution 1556 [30 July 2004]	To impose an arms embargo on all non-governmental combatants in Darfur, including the Janjaweed militias. Threatens to 'consider further actions' if the Sudanese government fails to disarm the Janjaweed within 30 days.	Abstained
SC Resolution 1564 [18 September 2004]	To observe Sudan government's failure to disarm the Janjaweed militia. The Council again threatens to 'consider additional measures', possibly involving the petroleum sector, should the Sudan government fail to comply.	Abstained
SC Resolution 1574 [19 November 2004]	Request the Sudanese government and rebel forces to cease all violence with the prospect of large sums of international aid and calls on the African Union to expand its mission Sudan.	Approved
SC Resolution 1590 [25 March 2005]	Request that UNMIS closely and continuously liaise and coordinate at all levels with AMIS with a view towards expeditiously reinforcing the effort to foster peace in Darfur. Describes UNMIS' mandate.	Abstained
SC Resolution 1591 [29 March 2005]	Establishes sanctions committee and expert panel.	Abstained*
SC Resolution 1593 [31 March 2005]	To refer perpetrators of human rights abuse in Sudan's Darfur region to the International Criminal Court (ICC).	Abstained
SC Resolution 1672 [25 April 2006]	To imposed sanctions on four Sudanese nationals accused of war crimes in Darfur.	Abstained
SC Resolution 1663 [24 March 2006]	To demand to 'expedite the necessary preparatory planning for transition' from AMIS to a UN operation.	Abstained
SC Resolution 1679 [16 May 2006]	Aims at speeding up the transition of the African Union peacekeeping mission (AMIS) in Darfur to a larger UN force.	Abstained
SC Resolution 1706 [31 August 2006]	Decided that the UN should deploy 17,000 peacekeepers in Darfur. While confronted with Khartoum's refusal to have international troops on its grounds, the Council invites the consent of the Sudanese government.	Abstained
SC Resolution 1755 [30 April 2007]	Express concerns over the restrictions imposed on UNMIS, and urges Khartoum to implement immediately its commitment, support, protect and facilitate all humanitarian operations in Darfur.	Approved
SC Resolution 1769 [31 July 2007]	Determined that the situation in Darfur constitutes a threat to peace, and authorised the deployment of a UN–African Union Mission in Darfur (UNAMID), the largest United Nations multilateral peacekeeping force ever deployed under Chapter VII of the UN Charter. UNAMID to have a total presence of more than 31,000 troops, police, and civilian personnel	Unanimous

Sources: By author from various sources

*This 2005 abstention position typifies most of China's abstention statements on Darfur. On the decision to abstain, Mr Wang Guangya, said that China had followed the situation in Darfur closely and supported a political solution: 'China deplored deeply the violations of international humanitarian law and human rights law and believed that the perpetrators must be brought to justice. The question . . . what (was) is the most appropriate way to do so. While ensuring justice, it was important to sustain the hard-won gains of the North–South peace process.' (see Press Release SC/8351, Security Council 5158th meeting, www.un.org/News/Press/docs/2005/sc8351.doc.htm)

Indeed, before 2004, the only instance of a UN sanction on Sudan with full Security Council support was in 1997. The sanction then was for harbouring suspected terrorist affiliated with Bin Laden and the al-Qa'ida network after the Nairobi and Dar es Salaam bombings of the US embassies. Even then, the full support of the Security Council was predicated on the *kind* and *nature* of the designated intervention, which consisted of a one-off aerial strike to be made by the United States on a pharmaceutical factory believed to be related to the al-Qa'ida terrorist network in Sudan. In the light of the then ongoing conflict in Southern Sudan and the United Nations' inability to reach a consensus for sanctions on the Khartoum regime, it seems as if dismantling a terrorist network or the apprehension of suspected terrorists was far more important or easier to reach consensus on than addressing the stark dynamics of twenty years of civil war with devastating consequences in the Southern part of that country. Perhaps this is explained by the fact that terrorists potentially have more of an adverse effect on international security and order than domestic ethnic power rivalry. For the current Darfur conflict, in spite of the EU and the US conclusions that the Darfur killing is genocide, and despite UN resolutions demanding that Sudan stop its Arab militias, not only have the killings continued, the Security Council has not been able to reach a consensus to impose effective sanctions on Sudan to end the rape and mass killing of women as well as innocent civilians.

Also, in spite of the US assertion of a definite crime of genocide in Darfur, a UN report issued after a field review in February 2005 reached a different conclusion. The report surmised instead that 'there was no definitive evidence of genocide in Darfur', and even if there were atrocities, they were 'no less serious and heinous'.²⁸ This apparent factual contradiction on the state of the conflict in Darfur cast doubt in an already doubtful context, therefore contributing to the lack of consensus among the superpowers in the Security Council. The lack of agreement suggests in part why the Sudanese government, led by Lieutenant General Omar Bashir – embroiled in a lengthy civil war since 1989 – enjoys the support of parts of the international community who choose to see his regime as the legitimate sovereign of Sudan, with powers to take care of its internal problems. This perhaps also explain why since 2005, while the US and the UK have favoured stiff international sanctions against Sudan – to force the acceptance of UN peacekeepers in Darfur – such threats have achieved little. Sudan's allies Russia and China have consistently threatened to use their powers of veto to block any resolutions directed at that country, as would be expected of any hegemonic power with economic and other interests within its sphere of influence. For example, according to *Timesonline*, both Russia and China on 17 April 2006 thwarted a year-long diplomatic initiative by Britain and the United States to impose UN sanctions on the perpetrators of the violence in the Darfur province of Sudan.²⁹ On 18 April 2007, again China, Russia and South Africa voiced strong opposition to a plan by the US and Britain to push for UN sanctions against Sudan at a time when, in their view, Khartoum was co-operating with the United Nations on measures in Darfur.³⁰ On 29 May 2007, the US announced a new set of sanctions targeting Sudanese companies and individuals involved in the violence in Darfur. It banned thirty Sudanese companies, mostly in the oil business, and three individuals, from trading or banking with the United States (see HRW, 28 May 2007).

Finally, while on 31 July 2007 the Security Council agreed to a British and French sponsored resolution for a 26,000-strong peacekeeping force for Darfur – the so-called UNAMID resolution – China yet again significantly altered what became the final version of that resolution with amendments and objections. Stripped of its harsh language in an attempt to win the approval of China and Russia, the resolution dropped all but one section under a Chapter 7 provision dealing with 'threats

28 See United Nations Security Council Resolution 1593 (2005), U.N. SCOR, 60th Sess., U.N. Doc. S/RES/1593 (2005) www.icc-cpi.int/library/cases/No529273.darfureferral.eng.pdf.

29 See 'Human Rights Sanctions Blocked', *Timesonline.co.uk/tol/news/world/article706521.ece*.

30 Agence France Press "China, Russia, South Africa oppose UN sanctions on Sudan" April 18, 2007.

to peace and security which can be militarily enforced'.³¹ Even though the United States objected, in the end it also voted in favour of the UNAMID resolution. Under this resolution, the UNAMID peacekeeping forces are forbidden to monitor the presence or circulation of arms in Darfur, which might violate previous UN resolutions or peace agreements, to which Sudan is a party.³² Thus, the effectiveness of the UNAMID resolution is doubtful at best. Again, China's support for this resolution and against several other sanction related resolutions on Sudan relative to Darfur is consistent with our stated hypothesis. Doing so on a version far less effective than originally proposed speaks volumes about hegemony influence. In the end China, and by extension Sudan, got a final version of Security Council Resolution 1769 that: (1) was stripped of language that threatened the Sudan regime with sanctions in the event of non-compliance with the terms of the resolution; (2) condemned Sudan's well-documented obstruction and harassment of humanitarian operations; and (3) provided Chapter 7 authority for 'seizure and disposal' of illegal arms that have entered Darfur in violation of earlier agreements. The exemptions made, while an important victory for Sudan, seriously weakened Resolution 1769 and hence the international community's ability to provide an effective force for the Darfur conflict. This leads to the question of whether under the UNAMID resolution the al Bashir regime and its Janjaweed supported militias would: (a) be held to account for obstructing the deployment and movement of the peacekeeping forces; and (b) be held accountable for the rapes, crimes against humanity and other war crimes committed thus far in Darfur.

While in the end the imposition of unilateral economic sanctions by any country, including the United States, remain a viable option, steps taken by China to weaken the effectiveness of the UNAMID resolution raises doubt as to whether a consensus for effective sanctions toward Sudan will ever be reached in the event of violation. The International Criminal Court had already been put on notice in January 2005 to prosecute the events in Darfur by the Security Council resolution, the first such referral since that Court was established on 1 July 2002.³³ However, when the ICC announced plans to open investigations, the Chief Justice of the Supreme Court of Sudan, in a move designed to demonstrate that Sudan could handle the prosecutions domestically, announced the creation of a *Special National Criminal Court on the Events in Darfur* (SCCED).³⁴ But, more importantly, the aim was to divest the ICC of the power to hear such cases, thereby obstructing the Security Council's mandate for an investigation and prosecution of crimes committed in Darfur. Indeed, statements made by officials of the government of Sudan reflect an ambition to challenge the ICC's jurisdiction, with explicit reference to Article 17 of the Rome Statute which requires the ICC to reject a case 'if the State which has jurisdiction to investigate and prosecute *unless* the State is unwilling or unable genuinely to carry out the investigation or prosecution'.³⁵ That Sudan to date has repeatedly stated its unwillingness to cooperate with the ICC – because the government is capable of trying the suspects of the Darfur crimes³⁶ – stands to confirm the realist's thesis of a sovereign state whose political

31 See The Associated Press – Sudan Tribune 'US lawmakers say UN resolution on Darfur not enough', www.sudantribune.com/spip.php?article23070, Wed August 1, 2007 for early insights on this resolution.

32 See The Associated Press 'U.N. OKs Peacekeepers for Darfur', www.msnbc.msn.com/id/20056711/, 31 July 2007.

33 See UN Security Council Resolution 1593 (2005), U.N. SCOR, 60th Sess., U.N. Doc. S/RES/1593 (2005) www.icc-cpi.int/library/cases/No529273.darfureferral.eng.pdf.

34 See Annex to the letter dated 18 June 2005 from the Chargé d'affaires of the Permanent Mission of the Sudan to the United Nations addressed to the President of the Security Council, U.N. Doc. S/2005/403.

35 For the clearest rejection of ICC's jurisdiction so far see 'Sudan: Judiciary challenges ICC over Darfur cases', IRIN-News, 24 June 2005, www.irinnews.org/report.asp?ReportID=47802&SelectRegion=East_Africa&SelectCountry=SUDAN.

36 See 'Sudan rejects handing over Darfur suspects', UPI, 2 April 2005, <http://washingtontimes.com/upi-breaking/20050402-093001-5192r>.

structure falls within the sphere of influence of a hegemonic power. Thus, here, strong support from China and Russia, with whom Sudan enjoys strong diplomatic and trade relations, is noteworthy.³⁷

The inability of the Security Council to reach a consensus on viable and effective sanctions on Sudan opens up possible conjectures to the conclusion that the international community is perhaps not as concerned with human rights issues as it would have been if it were an attack on an institution of balance of power (Nye, 2005). This assumption has credence since under the classic realist assumption viable interventions are necessary only if there is a threat that is likely to rearrange the existing balance of power in the international system (see Waltz, 1979). However, at stake in the Darfur conflict, with its subplots of rapes, genocide and crimes against humanity, is China's hegemonic claim, predicated on its new 'mercantilist' policy (see Hoslag, 2006, 2007). With China's direct oil investment in Sudan high and growing, a report by the Brussels-based International Crisis Group (ICG) has charged that China has 'a vested interest in the continuation of some level of insecurity in Sudan since it might keep other major investors or super powers out' (see Harman, 2007). In line with its economic interest, China not only buys the vast majority of Sudan's oil, it is the majority partner in a consortium extracting the oil. Citing UN records, Hoslag (2007) presents estimates showing that China represents as much as 64 percent of Sudan's trade volume with over 60 percent of its oil exported to China (see also United Nations *Comtrade*, 2007). He estimates that between 1999 and 2006, Sudan's oil exports to China increased from 266,126 tons to more than 6.5 million tons. The largest single stakeholder in Sudan's national petroleum company, the Greater Nile Petroleum Operating Company, is China. Regarding arms sales, Goodman (2004) observed that China is Sudan's largest supplier of arms, with weapons such as tanks, fighter planes, bombers, helicopters, machine guns and rocket-propelled grenades, all of which has intensified the two decades old north-south civil war. It is speculated that China relishes the absence of a real peace in Sudan since it enhances its business opportunities, at the cost of southern Sudanese civilian victims, implying a total disregard for the human rights implications of its investments (Harman, 2007). This is undoubtedly behaviour consistent with hegemony's self-interest in the realist world-view.

Conclusion

The associated problems of failed or collapsed states, ethnic tensions and conflicts generated are an ongoing reality that affect people across the globe, and their number shows no sign of waning. Estimates for eight years – 1989 to 1997 – were at 103 conflicts in 69 countries around the world (Gardam and Jarvis, 2001). The UN Secretary-General's 'Report on the Causes of Conflicts and the Promotion of a Durable Peace' estimates that in the late 1990s over one-quarter of Africa's 53 countries suffered a conflict of some kind (see UN Doc. A/52/871-S/1998/318). As observed by Amnesty International and other human rights groups, the unfortunate trend which the Rwanda and Sudan cases exemplifies is that in a world ever more at war, where rape is used as a weapon of war, the victims are increasingly civilian and non-combatant women and children who are caught between battles. The statements appended in capsules at the top of this article aside, there is this pessimism that there is no sign in sight that provides consolation to (rape) victims in militarised conflicts beyond their control.

While one might call into question the validity of examining two cases, of importance is the magnitude and scope of the rapes and other atrocities committed in Rwanda and Sudan. The effect and impact on human lives lost and, worst yet, deliberately inflicted, cannot be ignored. For example

37 For example, China's investments in Sudan's oil sector exceed US\$6 billion according to Ahmed Magzoub, Sudanese Minister of State for Finance and National Economy. China also has some direct non-petroleum investments in the industrial and agricultural fields and in economic services that amounts to another US\$300 million with well over 50 existing and new projects with Chinese investment in Sudan. In its part what Sudan exports to China amounts to US\$2.6 billion while imports from China is US\$1.3 billion. See The Herald, 'Chinese oil investments in Sudan hit US\$6bn' www.sudan.net/news/posted/14862.html, June 27, 2007.

in Sudan, the government-sponsored Janjaweed, mostly responsible for the reported atrocities in Darfur, makes the nature of the mass rapes committed in that country a purposeful state crime and therefore a state responsibility deserving of international sanction. We argue that but for China's strong objections in the Security Council, tied to its economic and military interests in Sudan, the decision to intervene in Darfur would have been made easier at the onset of the conflict. Similarly, the delay in intervening at the onset of the mass rapes and genocide in Rwanda, unlike Sudan which enjoyed China's support, was due to the fact that Rwanda also had no hegemonic cover. That is, while the genocide in Rwanda was ongoing with the knowledge of the Security Council, no resolution for intervention was evoked until long after the Tutsi-led rebel movement (RFP) had deposed the Hutu regime and most of the culprits were on the run.³⁸ Both conclusions reached here³⁹ confirm our general hypothesis that regime support or lack of it by a hegemonic power predicts the likelihood of UN response in militarised conflicts.

Rwanda was not the first delay in intervention at the onset of a conflict. In Nazi Germany and in Bosnia in the early 1990s, the international community did not respond to human rights abuses until *after* the ruling regimes were ousted from power. As long as the regime responsible for the human atrocities remained in power, the international community displayed a lack of political will in addressing the human rights abuses caused by those in power, or which occurred under their watchful eye. In the end, governments whose sovereign capacities are unstable, and, worst yet, whose governing regimes have been deposed, are more likely to be held accountable for war crimes committed under their watch (Rwanda), than those whose sovereign capacity are stable (Sudan) and benefit from the strong support of a strong hegemonic ally (China). While by stable sovereign capacity we mean governments with rigid control over their administrative capacity and territory of the state, by hegemonic support we mean the assistance provided by a hegemonic power with demonstrable objectives – which may be, but are not limited to, economic, political and military assistance (see Keohane, 1984a). According to Keohane (1984a, p. 39) a hegemonic power must possess enough military capability to be able to protect the international political economy that it supports or dominates from hostile adversaries. This is essential, Keohane argues, because economic issues, if they are crucial enough to basic national values, may become security issues later. In Rwanda, the Hutu regime, implicated in the use of mass rape as a tool in the genocidal campaign, had been ousted from power before an international tribunal was initiated for the suspects to be brought to trial for the crimes of rape and genocide committed during the conflict. It is a reasonable assumption, therefore, that whilst the UN intervention in Rwanda was belated, *absent* a hegemonic support or interest, Rwanda with no effective government was vulnerable to yet other conflicts as well as ripe for all kind of interventions – internal and external. This explains why the belated decision of the UN to intervene in Rwanda to create the ICTR was never contested.

In the second case (Sudan), the Bashir regime currently in power has been there since 1989, a period which is characterised by a continued unrest in that country with a twenty-year civil war which since 2003 has drifted from the South to the West in Darfur. The fact that the Bashir regime in power enjoys strong and sustainable support from China and Russia – both with powers of veto in the UN Security Council – is strong enough confirmation for the realist analytical framework. As hypothesised, states with governments who benefit from the support of hegemonic powers are less likely to be the object of international intervention. Unlike Rwanda, which had no support, but had a

38 Koffi Anan statement of regrets is especially revealing on this point (See 'UN chief's Rwanda genocide regret' <http://news.bbc.co.uk/go/pr/fr/-/1/hi/world/africa/3573229.stm> 2004/03/26), and also see *UN Secretary General* Remarks on the 10 Anniversary of the Rwanda Genocide New York, March 26, 2004.

39 The conclusions are – (a) the UN Security Council inability to reach a consensus in four years to intervene in the ongoing Darfur conflict, and (b) Security Council belated response to intervene in the Rwandan conflict, even if at the end of the crisis to order the creation of an international tribunal.

tough conflict which unleashed mass rapes and genocide, China's hegemonic interests, relationship and support for Sudan has been a decisive leverage in fending UN intervention and sanctions. Specifically, China's relationship with Sudan includes close and comprehensive bilateral economic, political and military ties, as well as diplomatic support in multilateral institutions such as the United Nations. For example, China is the world's largest player in Sudan's oil industry, playing major roles in its development, extraction and acquisition. While accounting only for 7 percent of China's total oil imports, China is Sudan's largest foreign investor and the largest stakeholder in Sudan's national petroleum company, the Greater Nile Petroleum Operatign Company. Chinese firms are also active in several energy-related sectors that include the construction of oil pipelines, electricity and hydropower facilities in Sudan. In the area of general trade, China is also Sudan's largest trading partner in the world – purchasing over 64 percent of Sudan's global exports and providing 21 percent of its global imports. Sudan, in turn is China's third largest trading partner in Africa, where it accounts for 13 percent of China's total trade with Africa.

Within areas that matters most – in multilateral institutions – such as the United Nations, China has been the leading and staunch supporter of Sudan. Acting on behalf of Sudan, but more for its own self-interest, as would be expected of any hegemonic power, China has objected and placed major impediments to strong UN Security Council action against that government for its role in the mass killing and genocide in Darfur. Most recently, it has succeeded in watering down several Security Council resolutions related to Darfur, including Resolution 1706, which on 31 July 2007 authorised a robust peacekeeping force of 22,500 UN troops to protect civilians in Sudan. Beyond that China has also prevented the passages of resolutions that would have imposed multilateral economic and diplomatic sanctions as well as resisted efforts to sanction Sudanese officials currently accused of war crimes for the Darfur atrocities.

It is apparent, therefore, that under certain conditions the international community will respond to militarised conflicts or conflicts where rapes have been committed on a large scale. While militarised conflicts present occasion where the rape of women occurs, in this article, using the Rwanda and Darfur cases and prior literature on similar conflicts, we have explained why that may be the case and the circumstances and conditions in which such intervention are likely. We argue that while factors that explain the decision to respond are vast, variable and complex, the realist analytical framework of international politics used here provides for a much more plausible framework for understanding prevailing conditions for such decision than alternative and competitive analytical frameworks. More conclusively, we find useful the *liberal* and *constructivist* descriptive analysis, which emphasises the role of institutions in providing information and legal frameworks that shape expectations through community law and customs. However, because theses institutions are made useful only within the realist scheme of world order, their practical effectiveness and efficiency can and are always called into question. That being the case, international regimes and institutions such as the UN, UNESCO, etc. are less reliable, if not inadequate, than the *realist* reliance on balance of power, structural and hegemonic explanations to explain how communities decide to respond to rapes in militarised conflicts, as demonstrated in this article.

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