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DEFENCES IN INTERNATIONAL CRIMINAL LAW: ACCEPTABLE AND NON-ACCEPTABLE DEFENCES

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ABSTRACT
Accountability for crime is a veritable source of social security and political stability. Throughout recorded history, leaders have ordered most egregious crimes: the mass atrocities, the genocides and the crimes against humanity; the perpetrators are universally condemned and punishment recommended. The prosecution for international crimes as we have had it over the years: at the Nuremberg, at the Tokyo trials, at The Hague, Arusha, and at Sierra Leone, indicates that there is a belief that crimes must be punished. Looking at the heinous nature of international crimes, one would imagine them inexcusable. Yet, just like with municipal crimes, international law provides for defenses. In this paper, we x-ray the defenses for crimes in international law. Do these defenses seek to defend the indefensible or are they justified. The purpose of this research is to provide a guide on defenses acceptable for international crimes and defenses not accepted. The significance of the research is that it guides practitioners and stakeholders in international criminal justice on acceptable practice, hence maintaining equilibrium in international criminal jurisprudence. The potential impact of this work is that it establishes accountability which in itself guarantees international peace and security.

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KEYWORDS: international crimes, prosecution, accountability, defenses, punishment and international criminal justice.

INTRODUCTION

International law as a body of law seeks to regulate the conduct of relationships between states, individuals and other entities operating in the international arena. Over time, international law has developed to grant restrictive immunity to states and to extend it's subject to individuals. At the Nuremberg Trials of Major War Criminals of the world war, it was recognized that crimes against humanity etcetera were committed by human beings and that it is only by punishing these individuals can the object of international law be achieved. Individuals are the major players in international politics, economics and diplomacy, and thus bind their states by their actions. However, in the case of international criminal law, the doctrine of individual criminal responsibility for international crimes have been established vide the Nuremberg and Tokyo trials, the Hague trials of international offences committed in the former Yugoslavia, the Arusha trials, and somewhat by the Sierra Leonine Special Court.

Punishment can be defined as any action designed to deprive a person or persons of things of value because of something that person has done or is thought to have done (Barlow 1984). According to Austin Turk (1969), examples of valued things include liberty, civil rights, skills, opportunities, material objects, less tangible forms of wealth, health, identity, life, and personal relationships. It is a sanction, such as a fine, penalty, confinement, or loss of property, right, or privilege assessed against a person who has violated the law.(Garner 2000)

Stanford defines it as an authorized imposition of deprivations, of freedom or privacy or other goods to which the person otherwise has a right, or the imposition of special burdens because the person has been found guilty of some criminal violation, typically (though not invariably) involving harm to the innocent. This definition, according to him, although imperfect because of its brevity, does allow us to bring out several essential points. First, punishment is an authorized act, not an incidental or accidental harm. It is an act of the political authority having jurisdiction in the community where the harmful wrong occurred.

Second, punishment is constituted by imposing some burden or by some form of deprivation or by withholding some benefit. Specifying the deprivation as a deprivation of ***rights*** (which rights is controversial but that controversy does not affect the main point) is a helpful reminder that a crime is (among other things) a violation of the victim's rights, and the harm thus done is akin to the kind of harm a punishment does.

Third, punishment is a human institution, not a natural event outside human purposes, intentions, and acts. Its practice requires persons to be cast in various socially defined roles according to public rules. Harms of various sorts may befall a wrong-doer, but they do not count as punishment except in an extended sense unless they are inflicted by personal agency.

Fourth, punishment is imposed on persons who are believed to have acted wrongly (the basis and adequacy of such belief in any given case may be open to dispute). Being ***found*** guilty by persons authorized to make such a finding, and based on their belief in the person's guilt, is a necessary condition of justified punishment. Actually **being** guilty is not. (For this reason it is possible to punish the innocent and undeserving without being unjust.)

Fifth, no single explicit purpose or aim is built by definition into the practice of punishment. The practice, as Nietzsche(1969) was the first to notice, is consistent with several functions or purposes (it is not consistent with having no purposes or functions whatever).

International crimes constitute the most heinous crimes that deserve punishment; and are always greeted by public outcry and demand for justice. There are many theories on the justification for punishment. Although punishment can be defined without reference to any purposes, it cannot be justified without such reference. Therefore, to justify punishment there is need to specify the goals that are sought to be achieved, that these goals are indeed achieved, and that it is the only way to achieve these goals. Iwarimie-Jaja(2003) sets out the following justification for punishment: Prevention, restraint, rehabilitation, deterrence, education, retribution, eugenic, sedation, and expiation. We see that there is much good in seeking to punish crimes.

STATEMENT OF THE PROBLEM

When perpetrators of international crimes are presented with defenses, it elicits sentiments to the effect that perpetrators of such acts deserve no mercy. All international human rights instruments recognize the right of persons to a fair hearing, and to present his defense in any allegation of crime. The problem therefore is harmonizing the rights of offenders to their defense and the need to ensure that such heinous crimes do not go unpunished. This paper seeks to bring the issues to the fore and draw a divide to show that not all defences are accepted.

Defenses in International Criminal Law

A defense is an answer to a criminal charge. It is used to denote ‘all grounds which, for one reason or another, hinder the sanctioning of an offence – despite the fact the offence has fulfilled all definitional elements of a crime (Eser 1996). It is thus a form of justification or excuse for the commission of a crime. The International Law Commission (ILC) in its Draft Articles on Responsibility of States for Internationally Wrongful Acts, 2001 codifies six circumstances precluding the wrongfulness of an otherwise unlawful act (Sassoli 2002): consent, self-defense, counter-measures, *force majeure,* distress and necessity. These defenses were clearly listed as conditions precluding the wrongfulness of violations of international humanitarian law and refer to State Responsibility. Some of the defences cannot be related to individuals accused of international crimes.

Case law on war crimes prosecutions suggest that, aside from superior orders and command of the law, the main pleas invoked by the accused are: acting in an official capacity, duress, military necessity, self-defence, reprisal, mistake of law or fact, and insanity.

The Rome Statute of the International Criminal Court partially codifies available defences in Articles 31, 32 and 33. Article 31, entitled ‘Grounds for excluding criminal responsibility, deals specifically with insanity, intoxication, self-defence, duress and necessity. Article 32 addresses mistake, and Article 33 concerns superior orders and prescription of law. The Statute allows the Court to accept other defences, relying on the sources set out in Article 21(1). Obvious uncodified defences would include alibi, military necessity, abuse of process, consent and reprisal.

Accepted Defences

Accepted defenses refer to defenses that are accepted as excluding culpability for the most heinous crimes at international law.

Insanity

A person shall not be responsible if, at the time of that person’s conduct, the person suffers from a mental disease or defect that destroys the person’s capacity to appreciate the unlawfulness or nature of his or her conduct, or capacity to control his or her conduct to conform to the requirements of law; or the person is in a state of intoxication that destroys that person’s capacity to appreciate the unlawfulness or nature of his or her conduct, or capacity to control his or her conduct to conform to the requirements of law, unless the person has become voluntarily intoxicated under such circumstances that the person knew, or disregarded the risk, that, as a result of the intoxication, he or she was likely to engage in conduct constituting a crime within the jurisdiction of the court.

Insanity as a defence has arisen only rarely in the case law of major war crimes prosecutions. Rudolf Hess unsuccessfully raised it at Nuremberg. The text of Article 31 (1)(a) of the Statute of the International Criminal Court echoes the ***M’Naghten*** rules derived

from the common law. Thus, as derived from that rule, an individual who succeeds with a plea of insanity is entitled to a declaration that he or she is not criminally responsible. In the International Criminal Tribunal for the former Yugoslavia, in ***Prosecutor v. Delalic et al***, on Esad Landzo's submission regarding diminished or Lack of mental capacity, 18 June 1998, of 15 July 1998, the tribunal opted for the preponderance of evidence standard for the proof of insanity. No standard is stated in the Statute of the ICC.

Examples in case law of the defence of intoxication in international criminal law are as infrequent as the defence of insanity.

Self defense

A person shall not be criminally liable if, at the time of that person's conduct, the person acts reasonably to defend himself or herself or another person or, in the case of war crimes, property which is essential for the survival of the person or another person or property which is essential for accomplishing a military mission, against an imminent and unlawful use of force in a manner proportionate to the degree of danger to the person or the other person or property protected.

Self defence consists in the use of force against another person which may otherwise constitute a crime when and to the extent that the actor reasonably believes that such force is necessary to defend himself or anyone else against such other persons' imminent use of unlawful force, and in a manner which is reasonably proportionate to the threat or use of force.

The plea of self-defense may be successfully put forward in war crimes trials in much the same circumstances as in trials held under municipal law. In the case of ***United States v. Krupp*****,** the Court implied that it would accept a plea of self-defense defined as executing "the repulse of a wrong". Another case was the trial of ***Weiss and Mundo*** before the United States General Military Government court at Luwigsburg, Germany, November 1945. Here two German policemen were acquitted of shooting a captured American airman whom they believed to be drawing a pistol.

A judgment of the *ad hoc* tribunals has noted that the principle of self-defence enshrined in Article 31 (1) (c) corresponds to provisions found in most national criminal codes and may be regarded as constituting a rule of customary international law.

Duress and Necessity

It is a defense that the conduct which is alleged to constitute a crime within the jurisdiction of the Court has been caused by duress resulting from a threat of imminent death or of continuing or imminent serious bodily harm against that person or another person, and the person acts necessarily and reasonably to avoid this threat, provided that the person does not intend to cause a greater harm than the one sought to be avoided. Such a threat may either be made by other persons; or constituted by other circumstances beyond that person's control.

The defence of duress is often confounded with that of superior orders, but the two are quite distinct. A person acting under duress is someone who is compelled to commit the crime by a threat to his life or her life, or to that of another person. In the related defense of necessity, this inexorable threat is the result of natural circumstances rather than that of other persons, but, in either case, the defendant is deemed to have no viable moral choice in the matter. An exhaustive judgment of the Appeals Chamber of the International Criminal Tribunal for the Former Yugoslavia, in 1997, determined, by a majority of three to two, that duress is not admissible as a defense to crimes against humanity. The consequence of the provision in the Rome Statute is to set aside the precedent established by the Yugoslav Tribunal and to reinstate the defence of duress.

This plea had been justified in the case of ***United States v. Ohlendorf*** in which the court said:

> But it is stated that in military law even if the subordinate realizes that the act he is called upon to perform is a crime, he may not refuse its execution without incurring serious consequences, and that this, therefore constitutes duress. Let it be said at once that there is no law, which requires that an innocent man must forfeit his life, or suffer serious harm in order to avoid committing a crime which he condemns. The threat, however, must be imminent, real and inevitable. No court will punish a man who, with a loaded gun at this head, is compelled to pull a lethal lever. Nor need the peril be that imminent in order to escape punishment.

In order successfully to use the defense, the defendant must have an honest belief that he is to be subjected to a serious wrong if he does not carry out the act in question. Furthermore, this threatened harm must be more serious than the harm, which will result to others from the act to be performed.

Mistake of Fact and Mistake of Law

Under Article 32 of the ICC Statute, an offender who lacks knowledge of an essential fact does not possess the guilty mind or *mens rea* necessary for conviction.

This is in fact what the Rome Statute declares, admitting mistake only if it 'negates the mental element'. Mistake of fact as a defense is not controversial. However, a mistake of law as to whether a particular type of conduct is a crime within the jurisdiction of the International Criminal Court shall not be a ground for excluding criminal responsibility. A mistake of law may, however, be a ground for excluding criminal responsibility if it negates the mental element required by such a crime. Most national legal systems refuse to admit the defense of mistake of law on public policy grounds.

Lack of Knowledge

The defence of lack of knowledge is relevant is cases of command responsibility. This is suggested by Article 28 (1)(a) of the Statute of the ICC. It provides:

> 1. A military commander or person effectively acting as a military commander shall be criminally responsible for crimes within the jurisdiction of the court committed by forces under his or her effective command and control, or effective authority and control as the case may be, as a result of his or her failure to exercise control properly over such forces, where:
>
> (a) That military commander or person either knew or owing to the circumstances at the time, should have known that the forces were committing or about to commit such crimes; and

From the words of the provision, it is indicative that a particular state of mind is required for the commission of the offence, that is, knowledge. Unless there is evidence to show that the Superior knew, or had reason to know, then there will be no command responsibility. Article 30 on mental element for the commission of the offences in the ICC Statute; require that the material elements are committed with intent and knowledge. According to the Article, a person has intent where that person means to engage in the conduct and means to cause that consequence or is aware that it will occur in the ordinary course of events. Knowledge here refers to awareness that a circumstance exists or a consequence will occur in the ordinary course of events.

From the combined interpretation of Articles 38 and 30, there is an implication that "Lack of Knowledge", would be a valid defence in a charge based on responsibility of commanders and other superiors.

Defences not accepted in International Law

When a defence is not accepted, it means that there is culpability, and the perpetrator deserves the blame and to be punished for the crime. The following defences are not accepted for international crimes.

Propriety under Domestic Law

It is well settled that a state cannot plead provisions of its own law or deficiencies in that law in answer to a claim against it for an alleged breach of its obligations under international law. With respect to individuals, the International Military Tribunal at Nuremberg and many national tribunals did not admit pleas by accused persons charged with war crimes that they had acted in accordance with their national law. The Allied Control Council Law No. 10 authorized punishment for crimes against humanity "whether or not in violation of the domestic law in the country where perpetrated." Thus, it will not be a defence in a criminal charge before an international court, to plead the deficiencies of the municipal system. Such pleas may be envisaged where the international law has not been domesticated; so long as the state has ratified such international law in a treaty form.

Tu Quoque

Literally, *Tu Quoque* means "You also". This defence actually says that, "I can do to you what you have done to me." This defence was urged by the Germans in justification of their acts. They argued that at least one and possibly more of the prosecuting nations had themselves waged aggressive wars contemporaneous with those of the Reich. The court answered in the case of US v. Von Leeb:

> *Under general principles of law, an accused does not exculpate himself from a crime by showing that another committed a similar crime either before or after the alleged commission of the crime by the accused.*

It is important to note the refusal of this defence, especially, in the light of breaches of norms of international humanitarian law, and the pointing of fingers, to show that the other party had also committed such breach.

Defence of Superior Orders

The question whether obedience to superior orders creates an aegis for the offender, a shield under which he can hide himself from the arm of the law, has long disturbed juristic thinking within different systems of national law. In the main, it is a product of the national need to keep and maintain an efficient army. Any army by its very nature is founded on the basis of discipline; discipline means that every subordinate must obey the orders of his superiors.

For the sake of the maintenance of discipline within the national army, the national legal system, through the decrees of military law, imposes upon soldiers a legal duty to obey orders, and threatens them with the direst of sanctions in case of insubordination, especially in time of war and in the presence of the enemy. The problem is that, when a soldier is

confronted with an (illegal) order to perform an act constituting a criminal offence, the demands of military discipline, as expressed in the duty of obedience to superior orders, come into conflict with the imperative need to preserve the supremacy of the law as manifested in the prescriptions of criminal law: military discipline requires unflinching compliance with orders; the supremacy of the law proscribes the commission of criminal acts. This head-on collision creates a difficult dilemma, from the practical as well as the theoretical angle. According to Dicey(1959):

> 'The position of a soldier is in theory and may be in practice a difficult one. He may, as it has been well said, be liable to be shot by a court-martial if he disobeys an order, and to be hanged by a judge and jury if he obeys it"

Two diametrically opposed doctrines have been advocated and have somehow gained acceptance(Coste-Floret 1945):

(a) The doctrine of *respondeat superior* according to which a soldier committing an offence in obedience to superior orders is relieved of responsibility automatically, without any condition or qualification. Let the superior issuing the order be criminally answerable, not the subordinate complying with his command

(b) The doctrine of absolute liability, in accordance with which a soldier must examine and weigh every superior order that is given to him. If it is an order to perform a criminal act, he must refuse to carry it out, and it is impossible to punish him for the refusal. If he obeys the order, he does so at his own risk. The fact of obedience to orders will not save him from criminal conviction.

As a matter of fact, neither solution overcomes the dilemma. On the contrary, each actually succumbs, in its own way, to one of the two menacing horns. The quest of jurists, legislators and judges for a better solution, which might enable the legal system to lop off both horns instead of being impaled upon one of them, has produced, *inter alia,* the following doctrine: the general rule is that a soldier committing an offence in obedience to superior orders is relieved of responsibility for his wrongdoing. If, however, the illegality of the order is clear on the face of it, that is, manifestly and palpably, the soldier must refuse to obey it or else pay the penalty. This is generally referred to as the 'manifest illegality principle.' The manifest illegality principle has the imprimatur of many national legislations. Example, Section 19 (b) of the Criminal Code Ordinance, 1936 of Israel reproduced the principle verbatim. In Nigeria, S. 32 (2) of the Criminal Code provides that a person is not criminally responsible for an act or omission if he does or omits to do the act in obedience to the order of a competent authority which he is bound by law to obey, unless the order is manifestly unlawful..

At the Nuremberg Trials, it was submitted on behalf of most of the defendants, that in doing what they did, they were acting under the orders of Hitler, and therefore cannot be held responsible for the acts committed by them in carrying out these orders. The Nuremberg Charter provides in Article 8 that the fact that the defendant acted pursuant to order of his Government or of a Superior shall not free him from responsibility, but may be considered in mitigation of punishment".

The Nuremberg Tribunal held this provision to be in conformity with the law of nations. It held, "that a soldier was ordered to kill or torture in violation of international law of war has never been recognized as a defence to such acts of brutality, though as the Charter here provides, the order may be urged in mitigation of the punishment." The tribunal therefore stated thus:

> "Hitler could not make aggressive war by himself. He had to have the cooperation of statesmen, military leaders, diplomats and businessmen …they are not to be deemed innocent because Hitler made use of them, if they knew what they were doing. That they were assigned to their tasks by a dictator does not absolve them from responsibility for their act, the relation of leader and follower does not preclude responsibility here any more than it does in the comparable tyranny of organized domestic crime.

The Charter of the International Military Tribunal for the Far East also provided in Article 6 that the fact that an accused acted pursuant to order of his government or of a superior shall, of itself not be sufficient to free such accused from responsibility for any crime with which he is charged, but such circumstances may be considered in mitigation of punishment if the Tribunal determines that justice so requires"

Under the Control Council Law No. 10, Article II Section 4(b) provides:

> "The fact that any person acted pursuant to the order of his government or of a superior does not free him from responsibility for a crime, but may be considered in mitigation."

Therefore, while admitting that orders given by a higher authority justify the acts of an inferior, this justification fails where the order is manifestly illegal. Such orders should be disobeyed in view of

its manifest violation of a superior principle of humanity especially as its flagrantly illegal character is universally recognised as being contrary to law.

The Nigerian Supreme Court rejected the defense of superior order in *Pius Nwaoga v. The State,* a case arising from the Nigerian Civil War. There, the appellant and two others, all officers in the Biafran army, went disguised in civilian clothes, to a town, which was under the control of Federal troops. There, in accordance with orders given them by their superior officers, they killed the deceased. The appellant appealed from his conviction for murder, raising the defense of superior orders. The court held, dismissing the appeal:

> "Soldiers operating in civilian clothes, behind their enemy's lines were liable to be punished for any act which contravened the Criminal Code, whether or not they were acting under orders. The deliberate killing of an unarmed person in this manner was murder and a crime against humanity".

The Statute of the ICC as did the Statutes of both the International Criminal Tribunal for the former Yugoslavia and that for Rwanda incorporates the rule on superior orders. It provides in Article 33 that the fact that a crime within the jurisdiction of the Court has been committed by a person pursuant to an order of a Government or of a superior, whether military or civilian, shall not relieve that person of criminal responsibility unless:

(a) That person was under a legal obligation to obey orders of the Government or the superior in question;
(b) The person did not know that the order was unlawful; and
(c) The order was not manifestly unlawful.

Official Capacity

One of the greatest challenges that have faced the Criminal Tribunals has been how to investigate and prosecute the political and military leadership. Most of them did not commit the murders, beatings, torture, rapes, and other inhumane acts themselves, rather they were alleged to have participated in the planning, ordering, or instigation of these acts, or failed to take measures to prevent or punish the perpetrators.

According to Oji(2013), the immunity of the Prince or Head of Government had always been consonant with the sovereignty of the state. Thus, as with state immunity, the immunity of the prince has lost its absoluteness. With respect to liability for international crimes, several treaties now provide that official capacity as Head of State or government cannot be a defence for the commission of international crime.

Under the Convention for the Prevention and Punishment of the Crime of Genocide 1948, a person committing genocide or any of the other acts enumerated in Article III shall be punished, whether they are constitutionally responsible rulers, public officials or private individuals.

The Geneva Conventions, and the rules of humanitarian law contained therein are binding not only on states but also on Heads of state. Article 3 of the Draft Code on Crimes to Peace and the Security of Mankind 1954 and Article 7 of the Draft Code of Crimes against the Peace and Security of Mankind adopted in 1996 also recognize the liability of Heads of state for international crime.

The International Covenant on Civil and Political Rights 1966 in Article 2 (3) (a)
provides that each state party to the present covenant undertakes:

> *"to ensure that any person whose rights or freedoms as herein recognised are violated shall have an effective remedy, not withstanding that the violation has been committed by persons acting in an official capacity".*

The statute of the International Criminal Tribunal for the former Yugoslavia specifically provides that the official position of any accused person whether as Head of State or Government or as a responsible Government official, shall not relieve such person of criminal responsibility nor mitigate punishment. The fact that the act was committed by a subordinate does not relieve his superior of criminal responsibility if he knew or had reason to know that the sub-ordinate was about to commit such acts or had done so and the superior failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof.

Article 6 Paragraph 2 of the Statute of the International Criminal Tribunal for Rwanda contains the same provision as in Article 7 (2) (3) of the statute of the Yugoslavia Tribunal.
The statutes of the Nuremberg and Tokyo Tribunals covered the same principles as those of the ad hoc International Criminal Tribunals.

The statute of the International Criminal Court under the heading 'irrelevance of official capacity' provides that[1]:

> "This statute shall apply equally to all persons without any distinction based on official capacity. In

[1] ICC Statute, Article 27.

> particular, official capacity, as a Head of State or Government, a member of a Government or parliament, an elected representative or a government official shall in no case exempt a person from criminal responsibility under this statute, nor shall it, in and of itself, constitute a ground for reduction of sentence".

Despite the relative newness of the concept of liability of the Head of State or other officials for international crimes committed by them while in office, it is worthy of note that the ad hoc international criminal tribunals had indicted and/or prosecuted responsible heads of governments; such as Augusto Pinochet, Slobadan Milosevic, Charles Taylor, Saddam Hussein, Jean-Paul Akayesu, Thomas Lubanga Dyilo, Al Bashir etc. These indictments and/or indictments clearly show the unacceptability of the defence of official capacity.

CONCLUSION

International criminal law strives to punish the most heinous crimes in the international community. Though it is desirous that every act of crime be punished; the law permits of some defences which precludes culpability. This research reveals that in the attempts at prosecution for international crimes, several defences have been made.

The research shows that a new world order has emerged. A new order that no longer condones impunity. A new order that has removed the immunity of Leaders of government, so that they can be held responsible for their actions, which offend international law.

We found out that with sufficient political will – which is required for the success of any international institution – the International Criminal Court (ICC) can prove to be effective in punishing and deterring international crimes.

REFERENCES

Alabama Claims Arbitration (1872) Moore 1 Int Arbitrations, 653

Barlow H D, *Introduction to Criminology* 3rd Edition (Boston; Toronto, Little, Brown and Co., 1984)

Bassiouni, MC, "A Draft International criminal Code and Draft Statute of an International Criminal Tribunal" 109-10(1987) in Jordan Paust et al, Op.Cit. p. 1390

Bitter E. and Anthony *Platt The Meaning of Punishment: Issues in "Criminology* (2, 1966)

Brownlie I, *Principles of Public International Law*, (Oxford, University Press, 1990) p. 37

Carolina, Caroline Academic Press, 1996)

Convention against Torture 1984

Convention for the Prevention and Punishment of the Crime of Genocide 1948

Coste-Floret, "La Repression des Crimes de Guerre et le Fait Justificatif Tire de l'Ordre Superieur" (Dalloz, 1945, Chronique IV, pp. 21-22

Crimes in International Law,_ (The Hague, Boston and London: Kluwer Law International, 1996) pp. 251-73 at p. 251

Dicey, Introduction to the Study of the Law of the Constitution (10th ed., 1959)

Dinstein , *The Defence of 'Obedience to Superior Orders' in International Law,* (Leyden, A.W.Sijthoff,

Dixon R, "Prosecuting The Leaders" in Peter J. Van Krieken, (Ed.) *Refugee Law in Context: The Exclusion Clause,* (The Hague, T.M.C. Asser Press, 1999) p. 131

Draft Articles on Responsibility of States for Internationally Wrongful Acts, 2001

Eser A, "Defences" in War Crime Trials', in Yoran Dinstein and Mala Tabory; eds. *'War*

Garner B A. Ed. *Black's Law Dictionary*, (St. Paul Minn., West Group, 7th Ed. 2000)

Iwarimie-Jaja_ D. *Criminology: The Study of Crime,* (Owerri, Springfield Publishers Ltd., 2003)

M'Nghten' Case (1843) 10 CL. & Fin. 200, 8 ER 718

Mahajan V.D *Jurisprudence and Legal Theory*; (Lucknor, Eastern Book Coy., 1987

Microsoft Encarta Encyclopedia 1993-2003 Microsoft Corporation.

Nietzsche F, 1887, ***On the Genealogy of Morals***, tr. Walter Kaufmann, New York: Vintage, 1969.

Nuremberg Trial, Judgment, Cmd. No. 6964, p. 44. Also *Ministries Case*, Judgment, N.M.T., Vol. 14, p. 339; *Roechling case*, Judgment, N.M.T., Vol. 14, p. 1104

Nwaoga v. The State (1972) 1 All N. L. R (Part 1) 149; (1972) I. L. R. 494

OJI E. A, *"Responsibility for Crimes under International Law*", (Lagos, Odade Publishers, 2013)

Paton GW, A Textbook of Jurisprudence (Oxford, Oxford University Press, 4th Ed. 1972)

Paust Jordan J et al; *International Criminal Law – Cases and Materials*, (Durban, North

Prosecutor v. Delalic et al Case No. IT-96-21-T

Prosecutor v. Delalic et al Case No. IT-96-21-T

Prosecutor v. Delalic et al Case No. IT-96-21-T

Prosecutor v. Erdemovic (Case No.IT-96-22-A) Sentencing Appeal, 7 October 1997.

Prosecutor v. Kordic and Cerkez (Case No.IT-95-14/2-7,) Judgment, 26 February 2001

R:e Hirota v. Others (1938) 15 I.L.R. 356 - 376

Re Von Mackensen And Maelzer (Andeatine Caves Massacre Case (1940) 13 I.L.R. 260

Sassoli M, "State Responsibility for Violations of International Humanitarian Law", IRRC, June 2002 Vol. 84 No. 846 p.413

Stanford "Punishment" in Stanford Emcyclopedia of Philosophy
http://plato.stanford.edu/enties/punishment

Statute of the International Criminal Court ICC Statute 1998

Statute of the International Criminal Tribunal for the former Yugoslavia 1993

Statute of the International Criminal Tribunal for Rwanda 1994

Turk A, *Criminality and Legal Order (*Chicago, Rand McNally, 1969), p. 19

U. S. v. Von Leeb (1950) U.S Mil. Tri 1948, SI Trials of War Criminals

United States v. Krupp US Dept. of Army, II International Law 246 (1962)

Vienna Convention on the Law of Treaties, 1969.

Weiss and Mundo US Dept. of Army, II International Law 246 (1962)