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RAPE AS A TOOL OF WAR: EXAMINING THE CULPABILITY OF THE STATE

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ABSTRACT

The goal of this study is to evaluate the culpability of the State in the commission of rape in armed conflict using the Rwanda conflict as case study. There is a growing alarm worldwide over the use of rape as a tool of war. Prosecuting only individuals alleged to be responsible has not served the desired deterrent effect. This study investigates the widespread commission of the offence in Rwanda vis a vis alleged use of State machinery to create an enabling environment for its commission and the deliberate failure of the State to stop it. The study hypothesis that rape committed in the Rwanda conflict was precipitated by deliberate State policy of genocide. The study concludes that wars are prosecuted by States and the only way to stop rape from being used as a tool of war is to, in addition to prosecuting the individuals involved, prosecute the State also.

Keywords: State, Criminal Responsibility, Rape, Prosecution, Armed Conflicts.

1. INTRODUCTION

Rape committed during armed conflicts dates back to the origin of wars. It has been regarded as a bye product of conflict and compensation to the victorious side in a conflict. However, there has been a shift from rape been just a 'necessary consequence of war' to it been used as a tool of war. Conflicts like the First and Second World Wars, the Bosnian wars, the Rwandan conflict, Sudan conflict, etc. have witnessed the use of rape as a tool of war. Reasons for this vary from boosting the morale of the army, weakening the enemy, ethnic cleansing to genocidal campaigns. The international community had been slow in taking steps to address this grievous crime and identifying it as a crime against humanity. It was only in the 1990's that in the Statute of the International Criminal Tribunal for former Yugoslavia that the offence was listed as one of the crimes against humanity for the first time. There has been some positive development at the international arena towards the prosecution of this offence to serve as a deterrent to its commission. The setting up of the International Criminal Tribunal for former Yugoslavia and Rwanda, the International Criminal Court, perhaps, were geared amongst others towards addressing this crime. However, rather than abate, conflicts (DR Congo, Sudan, etc.) following the setting up of the Tribunals referred to above have witnessed the use of rape as a tool to terrorise people from their homelands or instill fear in them.

Societies are regulated by laws. The observance of these laws ensures the maintenance of peace and security. Laws are penal or non- penal in nature. The breach of penal laws attracts sanctions which come in the form of reprimands, suspensions, fines, imprisonment, death penalty, etc. The breach of laws particularly affects the society and some does violence to the

fabric of society more than others. An offence like rape is one that essentially rips the fabric of society apart and therefore the acts of anyone connected with its commission must be appropriately condemned if society is to ensure maintenance of its equilibrium. The modern State and their institutions can sometimes facilitate, enable and program for serious wrongdoing, in ways that are either irreducible or incompletely irreducible to individual criminality. (Tanguay-Renaud) This study seeks to examine the responsibility of States under international law for the crime of rape committed during armed conflicts, to make a case for attribution of criminal responsibility to a State for the rape committed by its agents, analyse the categories of 'persons' who can be regarded as agents of a State in the circumstance and recommend holding States accountable for the offence where its involvement is established. In that light, the study is divided into four parts. The first part looks at State responsibility for the acts of its agents under international law. Reference is drawn from the provisions of the International Law Commission (ILC) Articles on State Responsibility for Internationally Wrongful Acts. The second part looks at the Rwandan conflict with the aim of examining the role of the State in the widespread rapes that were committed. The third part of the study looks at arguments against State criminal responsibility with a view to show that such arguments are unfounded against the backdrop of current realities in armed conflicts. The work concludes with the researcher advocating for a review of the ILC Articles on State Responsibility for Internationally Wrongful Acts and the Rome Statute to include provisions for State criminal responsibility for rape committed by its agents in an armed conflict in appropriate cases.

2. STATE RESPONSIBILITY FOR ACTS OF ITS AGENTS UNDER INTERNATIONAL LAW

The concept of State responsibility is a sensitive principle under international law. It has generated a lot of interest in the face of happenings in the international community. Jagers in an exposition on State Responsibility stated that at first sight the issue of state responsibility does not seem to be complicated; if a state violates an international obligation, it bears international responsibility for that violation. However, the doctrine of state responsibility has proven to be a very complex matter. The United Nations (UN) considered it important so much so that the ILC was directed to work on possible codification of it (This was adopted by the ILC in August 2001 and on 12 December 2001 the General Assembly of the United Nations (UN) adopted Resolution 56/83 which commends the Articles to the attention of Government without prejudice to the question of their future adoption or other appropriate action).. However, before the attempt at codification of state responsibility under international law by the ILC, there were pickets of responsibilities contained in international treaties, conventions and instruments. It has been stated that the ILC succeeded in making one of the most complicated topics in the field of international law readily comprehensible to the non-specialist (Nissel). Bodansky and Crooks are of the view that the adoption of the Articles by the ILC doubtless represents a significant moment in the continuing development of international law. The development of international law is continuing as unfolding events in the international landscape of necessity requires dynamic adjustments to address them. There have been arguments as to the legal significance of the ILC Articles on State Responsibility given the fact that it is yet to be codified in treaty form. Caron (2002) is of the view that the decision of the ILC to jettison consideration of the Articles as a treaty and preferring rather to choose influence of the Articles despite controversies arising from it raises fundamental questions about the ILC arbitral decision-making and traditional images of international law-making. The author expressed concerns that the Articles will be adopted by arbitration panels and decision makers without sufficient probing by these bodies. This according to the author will result in the Articles not been a document that changes and grows with the testing of particular cases but it being a document inappropriately accorded the authority of a formal source of law under international law. The analysis here of State

responsibility shall be restricted to the ILC Articles on State Responsibility for Internationally Wrongful Acts. Article 1 of the ILC Articles provides that every internationally wrongful acts of a State entails the international responsibility of that State. This principle is fairly settled under international law. What is not settled is the fact of what type of responsibility should be ascribed to a State for different type of breaches. This work sets out to posit that with regard to a State's duty of preventing and punishing crimes (in this work rape) committed in armed conflict, criminal attribution should be ascribed to States. Article 2 is to the effect that there is an internationally wrongful act of a state when conduct consisting of an action or omission is attributed to the State and constitutes a breach of an international obligation of the state. With regards to the principle under this Article, the International Court of Justice (ICJ) in the *Corfu Channel case* (1949) ICJ *Reports p.4 at pp22-23* held that it was sufficient basis for Albanian responsibility that it knew, or must have known, of the presence of the mines in its territorial waters and did nothing to warn third party States of their presence. In this case it was the conduct of the Albanian authorities in not informing third party States of the presence of the mines in its waters that formed the basis for their liability. Under this Article, a State can also be liable for its inaction as can be found in the *Diplomatic and Consular staff case* (1980) ICJ Reports p.3 pp 31-32 where the US Embassy in Iran was invaded and Iran did nothing. The ICJ held that the responsibility of Iran was entailed by the inaction of its authorities which failed to take appropriate steps in circumstances where such steps were evidently called for. Perhaps, the recent shootings that took place in the US Embassy in Libya that led to the death of the American ambassador can be compared with the Iranian case. Libya took steps to bring the situation under control and thus can be said to have carried out its obligation under international law.

It is therefore vital to examine features of the agents of a State for the purpose of attributing the conduct of the agent to the State. Garner[1] defines an agent to be one who is authorised to act for or in place of another. Article 4 of the ILC Articles provides:

- The conduct of any State organ shall be considered an act of that state under international law, whether the organ exercises legislative, executive, judicial or any other functions, whatever position it holds in the organisation of the state, and whatever its character as an organ of the central government or of a territorial unit of the state.

- An organ includes any person or entity which has that status in accordance with the internal law of the state.

From the above provision, it can be clearly deduced that the acts of the armed forces of a State are attributable to the State as its armed forces forms part of the organs of the State. The International Court of Justice has given credence to the provision in this Article in the *Difference Relating to Immunity from Legal Process of a Special Rapporteur of the Commission on Human Right case*, when it stated that "… the conduct of any organ of a State must be regarded as an act of that State…".[2] This is properly so because the State though a distinct entity must of necessity act through its organs be it the executive, legislature or judiciary and these are manned by persons.

The army or other security operatives of a State are organs of the State from this Article and their conduct can be rightly attributed to the state. Article 7 provides that the act of the organ is attributable to the State even if the organ exceeds its authority or contravenes instructions. All that is required is that such is acting in its official capacity. There is no distinction between the acts of "superior" and "subordinate". As such where an army of a State sent to protect the territorial integrity of a State or to engage in an armed conflict, decides to

[1] Garner, B.A. (2004) *Blacks Law Dictionary* Eight Edn, (St Paul MN: West Publishing, p.68.
[2] (1999) ICJ Reports p.62 at 87

engage in maintaining concentration camps where women are kept and raped, the conduct of the army is still attributed to the state. This is in line with sound reasoning. A State has the responsibility of educating its armed forces on the rules of engagement in any conflict and the need to adhere strictly to international conventions regulating the conduct of wars such as the Geneva conventions. Where such armed forces decide to act in contravention of these regulations, then the State should be held responsible for it. The State cannot be seen to take only the benefits of maintaining an armed force but abdicates responsibility of the wrongs committed by such forces.

There is the issue of private armed groups who commit crimes against humanity during a conflict in a State. Can their action be attributable to the State wherein they operate? Can they be classified as agents of the State? The degree to which States should be held responsible for conducts involving private actors is an increasingly significant contemporary issue as none state actors play greater international roles. Newton & Kuhlman on the issues of effective control by a State over private armed group is of the view that despite its broad acceptance and frequent regurgitation in jurisprudence, the doctrine of effective control drawn from the essence of the leader's authority is increasingly inapplicable to non state actors who conducts hostilities in non- traditional conflicts. This view is in consonance with current developments internationally. The ILC article has this to say in Article 8:

> The conduct of a person or group of persons shall be considered an act of a state under international law if the person or group of persons is in fact acting on the instructions of, or under the direction or control of that state in carrying out the conduct.

Prior to the events of September 11, 2001 in the United States of America (USA), disputes about the contours of this rule centered on the degree of control states must exercise over the private actors to trigger an imputation of responsibility. The ICJ pronouncing on this principle in the *Military and Paramilitary Activities case (Nicaragua v USA)*[3] held that for the USA conduct to give rise to responsibility, it must be proved that it had effective control of the military or paramilitary operations of the group.

The view expressed in this work is that this interpretation given by the court is too restrictive. The conduct of the USA in question included the financing, organizing, training, supplying and equipping of the contras, the selection of targets and the planning of its whole operations. It is our submission that the conduct of the USA is the livewire of the contras. What more control over a military operations can there be outside this? Stretching the definition of effective control as done by the ICJ does violence to the principle. The purport of requiring that the private group be under the control or direction of the state for its conduct to be attributed to the state is, in our humble view, to avoid a situation where a state will be held responsible for the conduct of armed groups operating in their territory beyond their control. It should not be a situation where a state maintains and arm a private group only to turn around to say that they do not have effective control of the group[4] "State Responsibility for Warlike Acts of the Armed Forces"[5].

The International Criminal Tribunal for former Yugoslavia (ICTY) Appeals Chambers in its decision on this principle, attempted to take a more liberal interpretation of the principle in the *Prosecutor v Tadic*[6]. The Tribunal moving away from the ICJ "effective control" enunciated that what is required is overall control over private armed groups. The Chambers stressed that:

[3] (1986) ICJ Report p.14
[4] Kalshoren, F (1991)
[5] 40 (1991) International & Comparative Law Quarterly 827. Accessed on 26 June 2012 Web
[6] (1999) I.L.M, vol.38, p.1518 at 1541, Case IT-94-1

> The requirement of international law for the attribution to States of acts performed by private individuals is that the State exercises' control over the individual. The degree of control may however vary according to the factual circumstances of each case. The Appeals Chambers fails to see why in each and every circumstance, international law should require a high threshold for the test control.

The researcher agrees with the view of the Appeal Chambers of the ICTY. The control test should not be applied rigidly as it will allow states to escape liability in cases where clearly they should be held accountable. Lichtermann (2011) is of the view that after an extensive analysis of the case-law, it becomes clear that a new principle is being established: the overall control test is being applied to organized military groups and effective control to non-military organizations.

Where a state funds and trains private citizens, who are involved in military or paramilitary operation, then, it should be their duty to ensure that such operates within the limits of the law. They cannot groom a potential 'monster' and then turn around to say they did not have effective control of it. The court properly attributed the conduct of the defendant to the former Republic of Yugoslavia finding that on the facts, there existed overall of the Bosnian-Serb army by the Yugoslav army, to constitute a *de facto* organ of state. The issue before the ICTY in the *Tadic case* was whether the Bosnia conflict was an international armed conflict or an internal one. This is because the ICTY only had jurisdiction over persons and could not have been considering the liability of the state of Yugoslavia. But it may be instructive to mention the view of the court on the "control test" principle.

In the situation in the Rwanda, the conflict has been stated to have been birthed by the genocidal policies of the Hutu government. In 1990, Hutu power political parties began to form and train paramilitary units such as the National Revolutionary Movement for Democracy and Development (MRND) *Interahamwe*. It was this *Interahamwe* and the interim government in Rwanda after the Death of President Habyarimana that were reported to be responsible for the killing, raping, maiming of hundreds of thousands in the armed conflict that ensured. The *Interahamwe* cannot be regarded as an organ of the Rwandan State for the State to be held responsible for their conduct. The question is, can they be said to be a private group whose conduct the State of Rwanda has control of to necessitate imputing their unlawful conduct to the State? It is humbly submitted that they can. It was the government in power that established the group and was responsible for their training. When genocidal campaigns were carried out by the group through propaganda in the state owned media, the state cannot be said to be unaware of the fact. It is submitted that the group's conduct was on behalf of the state and the state ought to be held responsible for it. It is pertinent to state that the head of the interim government in Rwanda during the conflict together with some cabinet ministers have been convicted for offences ranging from genocide, crimes against humanity and war crimes by the International Criminal Tribunal for Rwanda.

Article 9 attributes the conduct of a person or group of persons to a state where such persons exercises elements of governmental authority in the absence or default of the official authorities and in circumstances such as to call for the exercise of those elements of authority. The commentary to this article seems to suggest situations where there is break down of law and order a state becomes a 'failed' state. The Rwandan situation can also be captured under Article 9 of the ILC Articles.

However, after the terror attack on the USA on September 11, 2001, international law appears to be moving away from using solely the control test to attribute the acts of a private armed group to a state. The permissive response to terrorist attacks and other recent developments strongly suggests that the scope of state liability for private conduct has

expanded. According to Jinks (2003), the USA military action against the state of Afghanistan which was by conduct endorsed by the UN was on the basis that the Taliban regime in Afghanistan had supported and harboured the *al Qaeda* terror group. This position was taken irrespective of the lack of 'effective control' or 'overall control' over the group by the regime. The USA did not attempt to establish that *al Qaeda* acted on behalf of the Taliban or that the Taliban played any direct role in nor had any direct knowledge of the planning and execution of the attack. It is our humble view that this is a welcome development and hopes for its codification in international instruments or a pronouncement on it by the international courts. Law is dynamic and must change with changing realities of our time. Adhering rigidly to the effective control or overall control test will allow states to evade responsibility in clear cases where they should not. It should be the responsibility of states to ensure that no criminal group find a safe haven in their territory and when they decide to look the other way while such groups operate in their domain to the harm of their own citizens or citizens of other states, they should be held responsible.

Drawing from the above analysis, it is the view of the researcher that the Rwandan State can be held accountable for the acts of the private armed group, *Interahamwe*, for the rapes committed by them during the conflict. There is abundant evidence to show that the Rwandan State supported and harboured the group in the events leading to the conflict. They should therefore be held accountable for the acts of this group.

Having analysed state responsibility for the acts of its agents as contained in the ILC Articles on State Responsibility. It is important to note that, Articles prescribes only civil liability against a state for internationally wrongful acts attributed to it as discussed in the preceding paragraphs. Also, it appears that the responsibilities provided for in the Articles are responsibility of States to other States. The responsibility of States to individuals is not directly addressed. This paper examined them for the purpose of establishing conducts attributable to a State internationally. It is instructive to point out that the initial draft of the ILC Articles on State responsibility for internationally wrongful acts attempted to criminalise certain acts of States under international law.

The initial Article 19 of the ILC Draft Article prescribes state criminal liability. It was a controversial provision and the super powers were not comfortable with it and it was omitted in the final draft at its adoption in 2001. This it tried to achieve by drawing a distinction between an international crime and an international delict. The ILC Articles defined an international crime in Article 17(2) *inter alia*:

> … an internationally wrongful act of a State which breaches…an international obligation so essential for the protection of fundamental interest of the international community that its breach is recognised as a crime by that community as a whole (This was initially Article 17(2) of the ILC Draft Article.[7]

The above definition according to Nwoke and Dawanka[8], suggests that whether an act is an international crime or not depends not only on the nature of the obligation breached but also the consequence of such breach for the international community as a whole. According to the omitted Art 19 of the ILC Articles, the categories of acts that make up international crimes are: "A serious breach on a wide spread of an obligation safeguarding the human being, such as those prohibiting slavery, genocide and apartheid…" It is pertinent at this point to state that it

[7] This was omitted in the final draft adopted by the commission and as such there is currently no notion as international crime of a state under international law.

[8] Nwoke, F.C. & Danwanka, S.A. (1999) "Is There a Place for State Criminal Responsibility In Contemporary Interventional Law?" UDUSLJ VOL 1, p.148

was established in the decision of the International Criminal Tribunal in Rwanda in the case of *Prosecutor v Akayesu*[9] that:

> … rape when committed in a widespread manner against a particular group with the intention to annihilate that group constitutes genocide. Evidence given in cases tried by the ICTR established that the incidents of rape in the conflicts in Rwanda were widespread and bordered on ethnic cleansing and genocide.

Based on that, it is safe to say that rape in armed conflict falls under one of the acts listed by the ILC in Article 19 as constituting international crimes. However, in the final draft of the ILC articles which was adopted by the Commission, this provision was omitted. The provision was a controversial point for stakeholders especially the 'superpowers' most of whom held the view that international law knows no concept such as international crimes of State and consequently State criminal responsibility[10]. The position taken at the Nuremberg tribunal to the effect that, crimes against international law are committed by men, not by abstract entities, and only by punishing individuals who commit such crimes can the provisions of international law be enforced effect was cited as authority for the stance. Ironically, an important point was missed. Before Nuremberg, States were primarily responsible for such acts. So it can be argued that it is not correct to say that the concept of states been liable for such acts is new. What is new in the omitted Article 19 is the attribution of the nomenclature "criminal" to the responsibility of States. Before Nuremberg, States were responsible for atrocities committed during conflicts. The punishment meted out to them included payment of damages, loss of territories, etc.

The ILC instead of criminal responsibility of States rather made provision in Article 40 for serious breaches by a State of an obligation arising under a peremptory norm of general international law. Under this Article, a breach of an obligation will be serious if it involves a gross or systemic failure by the responsible state to fulfill the obligation. Article 41 enjoins all States to cooperate to bring to an end any serious breach. Injured States are also allowed by Article 49 to take countermeasures against the erring State but these are limited to non performance of any international obligation from the State taking the countermeasure to the erring State. But this in our opinion cannot address the issue of the role of States in the commission of atrocities against its citizens or citizens of other States. What if the erring states is a power broker in the international area. What kind of countermeasures can 'small states' take against it that will serve any purpose? It does appear that in situations like that, such erring 'powers' will go practically free. However, a criminal attribution to such relevant conduct through legal machinery of adjudication will keep the balance between the powerful and the weak as the law is said to be no respecter of persons.

3. RAPE IN THE RWANDAN CONFLICT AND THE ROLE PLAYED BY THE STATE

The Rwanda genocide took place in 1994. Over the course of approximately one hundred days, several hundreds of thousands of Tutsi and moderate Hutu women were raped, brutalized with sharp objects, forced into sexual slavery or mutilated. Some were raped and then murdered. It has been reported that majority of the rapes were committed after the victim has been made to watch the torture and murder of her family (Than & Shorts 2003). By some accounts, virtually all female survivors including very young girls in Rwanda were raped or

[9] Case No. ICTR-96-4-T, Judgment (September2, 1998)
[10] Harris, D.J. *(2004) Cases and Materials on International Law*, Sixth Edn, (London: Sweet and Maxwell) p. 504.

sexually assaulted during the 100 days of the genocide. A brief history of Rwanda is necessary to understand the 1994 conflict that witnessed massive rape of women (Sloane 2011). Anthropologists and historians recount that the people of Rwanda (and Burundi) descended from three distinct populations: one known as the Hutu, who resembled the Bantu people of the region; a second, the Tutsi, who resembled the Cushitic or Nilotic people of the Horn of Africa; and a third, the Twa, related to local pigmy populations. Over time, these groups intermixed and developed a common language and culture. The groups were differentiated by occupation, economic means, and political status and were more fluid than fixed.

During the colonial era, from approximately 1890 to 1962, Belgian colonial administrators solidified these distinctions by "assigning" individuals an "ethnicity" on a state-issued identity card. The Hutu represented about eighty-four percent of the population, the Tutsi constituted about fifteen percent, and the Twa about one percent. At first, the colonizers favored individuals identified as Tutsi—for reasons grounded in racism, some have argued, as such individuals had more Caucasian features. As a nascent independence ethos began to develop among the Tutsi elite in the 1940s, the Belgian colonizers shifted their allegiance to the Hutu populace in an effort to prolong their rule over the region. This coincided with the Catholic Church's promotion of a political awareness among the Hutu populace. Hutu intellectuals soon published revolutionary manifestos outlining the political, social, and economic oppression suffered by the Hutu populace at the hands of the minority Tutsi group. In 1956, the U.N. Trusteeship Council pressured Belgium to organize elections on the basis of universal suffrage. These elections elevated Hutu individuals for the first time into local and national positions of political power. Rwanda achieved its independence in 1962 under the leadership of the Belgium-installed Grégoire Kayibanda, a Hutu leader who imposed ethnically-based quotas for access to schools, some industries, and the civil service that significantly limited Tutsi participation in these sectors.

More systematic violence began to break out between the two groups in the wake of these policies and the inequities they generated. Many Tutsi individuals fled to neighboring countries, especially Uganda, Burundi, and Congo. Some of these exiles organized themselves into militia to carry out cross-border raids at night, embracing what later became the epithet *Inyenzi*, meaning "cockroach." These raids provoked violent reprisals against Tutsis within Rwanda. Tutsi exiles in Uganda further organized themselves into the Rwandese Patriotic Front ("RPF"), with the Rwandan Patriotic Army ("RPA") as its military wing. Their goals were the return of exiles to Rwanda and eventually the overthrow of the Hutu-dominated regime, later led by President Kayibanda's successor, General Juvénal Habyarimana, who took power in a coup on July 5, 1973. Habyarimana at first installed a one-party state with automatic national membership in his *MouvementRépublicain National Pour La Démocratieet le Développement.* Habyarimana eventually capitulated to internal and external pressure to allow a multi –party state. This opened the way for the rise of Hutu-power political groups, such as the *Coalition pour la Défense de la République.*

The RPF launched a devastating attack in October 1990, further destabilizing Habyarimana's regime. Hutu-power political parties began to form and train paramilitary units, such as the *Interahamwe* (meaning "those who stand together") and the *Impuzamugambi* (meaning "those who share a single goal"). Together, the groups stepped up anti-Tutsi violence and propaganda, particularly through the Hutu-dominated *Radio TélévisionLibre des Milles Collines* and a pictorial magazine, *Kangura* (meaning "Wake Up"). After several failed ceasefires, the RPF and the Government of Rwanda agreed to the Arusha Peace Accords on August 4, 1993, providing for the establishment of a transitional government to include the RPF, the partial demobilization and integration of the two opposing armies, the creation of a demilitarized zone, and the deployment of a two-year U.N. peace-keeping force composed of 2,500 soldiers to help implement the Accords.

On April 6, 1994, the plane carrying the then president of Rwanda, President Juvenal Habyarimana was shot down by unknown gun men and the President (a Hutu) was killed. This led to break down of law and order. From that day to early July 1994, the Hutu power movement*, interahamwe*, and the interim government of Rwanda systematically raped, maimed and massacred between 500,000 and 800,000 Tutsi and moderate Hutu(Carlsson 2005). Moderate Hutus are those members of the Hutu tribe who take sides with the Tutsi rebels. Radio stations, immediately after the alleged assassination, proclaimed the end of the last ceasefire and government agents set up roadblocks around the country. Massacres of Tutsi and moderate Hutu individuals began in Kigali and soon spread to other parts of the country. Fueled by genocidal propaganda broadcast over the radio and facilitated by the ubiquitous identity cards, many Hutu citizens turned against their Tutsi friends, neighbors, and compatriots. Even children were not spared. By the end of April, corpses clogged rivers and streams and lay in heaps around the country. Because ammunition was eventually in short supply, many deaths were accomplished with machetes and other rudimentary farm implements. Eventually, 500,000-800,000 individuals were left dead, almost seventy-five percent of the Tutsi population.

In the face of this bloodshed, the international community remained largely silent. In January 1994, several months before the genocide began, Major-General Roméo Dallaire, the Canadian force commander of UNAMIR, had learned from a high-level informant that the extermination of the Tutsi populace was being planned. Dallaire made several requests to expand his mandate, but in fact, the opposite ensued. On April 7, 1994, the Rwandan Army executed ten Belgian peacekeepers in order to provoke Belgium's withdrawal. Belgium reacted in line with their expectations and recalled the rest of its troops on April 19. On April 21, the U.N. Security Council reduced UNAMIR's force size to a few hundred individuals. The international community employed a series of semantic distortions to avoid using the term "genocide," afraid that the Genocide Convention would require states parties to intervene. Six weeks after the genocide began; the U.S. State Department finally permitted the use of the term.

On July 1, 1994, in the midst of the genocide's final days, the U.N. Security Council asked the Secretary-General to establish an expert Commission to investigate the numerous reports of systematic, widespread violations of international human rights and humanitarian law in Rwanda.

On November 8, 1994, the Security Council, stressing the Commission's findings

and other credible evidence, and convinced that in the particular circumstances of Rwanda, the prosecution of persons responsible for serious violations of humanitarian law would contribute to the process of national reconciliation and to the restoration and maintenance of peace, passed Resolution 955 establishing the ICTR to prosecute persons responsible for genocide and other serious violations of international humanitarian law committed in the territory of Rwanda between 1 January 1994 and 31 December 1994.The Council annexed the ICTR's Statute to this resolution, defining the scope of its jurisdiction and the Tribunal's general structure. The role the Rwandan state played in the perpetration of the rapes will now be examined.

The Rwandan State and some corporations are alleged to have played an important role in the genocide that occurred. Coffee companies were said to have assisted in the storage of arms and equipment, construction companies and radio stations were actively involved in the propaganda leading to the genocide? Months before the conflict broke out, the Hutu main political party (the Hutus were in power) was recruiting and training paramilitary groups, there was open propaganda dehumanising the Tutsi. They were openly referred to as cockroaches and comments like "what do you do with cockroaches, you kill them" were rift. Insinuations of the Tutsi women been instruments for the oppression of the Hutus using their sexuality (which propaganda was openly aired in the State owned media) were also very common. In addition, discriminatory government policies directed against the Tutsi opened the door to the level of violence that was meted out to the Tutsi.

4. ARGUMENTS AGAINST STATE CRIMINAL RESPONSIBILITY

Some writers have expressed concerns on the possibility of state criminal responsibility with some out rightly saying it is inconceivable under international law. Gould argues that the decision not to accept State criminality in the Nuremberg Trials and in the deliberations leading to the Rome Statutes is indicative of the fact that state criminality cannot rightly be said to be an emerging category of customary international law. The author argues further that states can only commit serious breaches of international obligations and that whether states commit crimes or serious breaches they both give rise to liability and in principle sanctions and as such the difference is only a matter of semantics. Posner and Sykes[11] are of the view that the distinction between civil and criminal penalties for corporations and states is a meaningless one, arguing that neither can be incarcerated and that the same array of alternative sanctions may be employed regardless of the label that attaches to them. In addition the authors argues that the possibility of state criminal liability is of little importance in itself and that what matters is the proper calibration of sanctions for breach of international law whatever label they may carry.

What are the fears against criminalising a state as expressed by some of these authors and are these fears justified? This paper examined some of the arguments against criminalising a state and attempt to show that though these fears are not without substance, they are not justified in the face of the current realities and happenings internationally.

Firstly, it looks at the argument that States are sovereign and criminalising them will tamper with their sovereign rights. There is the notion that punishment suggests some normative superiority of the punisher over the punished which might undermine the basic organizing principle of the international system, namely sovereign equality. Sovereign equality has often been invoked by international law scholars as a reason to reject the concept of state punishment. This type of reasoning paints a picture of a hierarchical order between the punisher and the punished (Blum). If all states enjoy equal sovereignty, how could one sit in judgment over and punish another. This argument hinges on the premise that the ascription of criminality to a state will be done by another state supposedly the aggrieved state. in our opinion, this argument is basically faulty. Under international criminal law, crimes are prosecuted on behalf of the international community and not by the state *per se*. just like under national laws, crimes are prosecuted by states, so also, under international law, the international criminal court or special tribunals set up to try offences are set up by the international community and not by an injured or aggrieved state. So the issue of one state sitting in judgment over another does not arise. The concept of punishment evokes psycho-theological sentiments of a higher moral authority, but the higher moral authority in this instance is the collective power given to the United Nations by its members that enables it to set up bodies like the international criminal court and international criminal tribunal like the ICTY and ICTR. Opponents of state criminal liability in furthering this argument states that the idea of punishing States is foreign to the contemporary international legal order based on the sovereignty of States. The term international crimes are only used for labeling of certain kinds of internationally wrongful acts of extremely grave nature. And as earlier stated, the use of the terminology international crimes was jettisoned by the ILC in the Final Draft of the Articles on State responsibility. Huls, writing on State responsibility for crimes under International law noted that prosecuting individual perpetrators for international crimes in international courts did provide certain satisfaction to the global community and to the victims but falls short of fully addressing the scope of the violations. The author is of the view that when whole States acted criminally either internally as in the former Yugoslavia case or externally as in the situation in the Democratic Republic of Congo, other

[11] Posner, E. A. & Sykes, A.O. (2013) "An Economic Analysis of State and Individual Responsibility under International Law", University of Chicago John M. Olin Law and Economics Working Paper No. 279, Web, accessed on 27 March 2013

mechanisms are needed to provide much wanted information about the crimes and to attribute responsibility. This in the author's view led to alternatives to individual trials like Truth Commissions and that countries where such Truth Commissions complements the criminal justice system arguably dealt with the past more comprehensively. However, according to the author this can only be achieved where the government in power is different from those involved in the perpetration of the crime and came to the conclusion that in prosecuting only individuals in a situation where crimes are committed by the States results in gaps in international responsibility and recommends criminal responsibility of States.

The fact that the involvement of states cannot be overlooked in commission of this offence, is further strengthened by the fact that commission of the offence in the scale with it was done in Rwanda cannot be attributed to individuals alone but points to obvious connivance of an organised entity. According to Nollkaemper (2008), commenting on the issue of international crimes that could not have been committed by individuals in their individual capacity alone opined that in such cases responsibility should not only be located at the individual level but should also address the system within which the individual behaviour is embedded. The author is of the view that targeting responses to system criminality at individuals authors of crimes is only a partial solution that does not always take away the need for addressing larger entities of which individuals are a part and came to the conclusion that if the goal is termination of the crimes and prevention of their recurrence, individual responsibility is unlikely to do the job. We are in total agreement with these views expressed by the author but notes that the author's work is on international crimes generally while this researcher focuses on the crime of rape in armed conflict.

Sovereign equality, however, is not an entirely convincing reason to avoid the punishment of States. Blum is of the view that truly, it is not an accidental occurrence that the justification for war as punishment by states subsided in the late eighteenth and nineteenth centuries, just as the nation state succeeded the princely state and sovereign equality gained a central and more universal prominence.

From the 20th century sovereign equality has become synonymous with a lack of any normative evaluation of international relations, including war. Yet, neither the concept of sovereignty nor that of sovereign equality means today what they had meant in the nineteenth century, and it is exactly the development in the international community's willingness to engage in a normative evaluation of states behavior that has driven their new meaning. Ironically, any argument about sovereign equality as a shield from punishment is at variance with one of the arguably greatest achievements of international law in the twentieth century; which is that sovereignty cannot be used as a shield from international intervention. We concede that the UN Charter still forbids states from meddling in the internal affairs of other states by Article 2 paragraph of the United Nations Charter. However the international legal establishment has sought to distinguish a situation of mere intermeddling in the internal affairs of other states which is prohibited and the upholding of internationally accepted values against erring members. In line with this the concept of state sovereignty has been equated with responsibility rather than immunity. The case of the USA invasion of Afghanistan for harbouring terrorist is in point. It is our humble view with regards to this argument that the fear of tampering with a state sovereignty is uncalled for. Under international law, no state tries and punishes another state. Rather, international criminal tribunals like the Nuremberg Tribunal, the Tokyo Tribunal, the International Criminal Tribunal for former Yugoslavia, the International Criminal Tribunal for Rwandan, etc. and now more recently, the international criminal court have been the instrument for criminal punishment. These tribunals are not set up by one country. So far for the Tribunals, the UN Security Council had exercised its powers under Chapter IV of the UN Charter to set them up. But then again, the UN Security Council is not made up of one country. The argument that the strong nations may use it against the weak nature has been taken care of by the ICC example. In fact one of the power brokers in

international law, the USA is not currently a signatory to the Rome Statute. It is unclear whether the tribunals and/or court mentioned were set up to try individuals but in the same way an international criminal court to try individuals was set, so also establishing a court to try states or even upgrading the current ICC to enable it try and punish states is possible. More so, it is our view that punishing a state by an international criminal court guarantees equality of states better than the current trend of applying preventive measures and sanctions. This is because; the more powerful states can prevent police or compel others while remaining themselves immune to such efforts others targeting them. Also, international criminal ensures that punishment is proportionate with the offence committed. The due process followed in prosecuting, convicting and sentencing offenders under international criminal law is a necessary safeguard against arbitrariness. But this cannot be said of the current trend of imposition of sanctions. There are no measures put in place to ensure that the sanctions meted out against erring states are commensurate with their wrongdoing. If anything, it is this current trend that portends danger for the international community. This is because the state imposing the sanctions assumes the pedestal of a blameless State whipping an erring State in line. The case of the USA imposition of sanctions on Iran is in point. The concept of equality cannot be invoked when it comes to punishment and then ignored with regards to policing and preventive measures.

Secondly, there is the argument that punishment breeds humiliation, revenge and further violence. The term punishment, especially if understood as retribution, runs the risk of blurring the lines between legitimate vindication and visceral revenge. Vengeance, by nature, risks being out of proportion to legitimate punishment, and then quickly invites retaliatory vengeance. The argument states further that state punishment may have been appropriate in the theocratic state, where punishment was inflicted by God, whether directly or through intermediaries, and that it has no place in secularized international system, which envisions the creation of a solidarist and polite international society. Punishment places the punished outside civilized community. And once outside civilized community, they may be subjected to the infliction of unlimited and indiscriminate violence. International law is said to be the gentle civilizer of nations, while punishment is neither gentle nor necessarily civilized. With due respect, these arguments and preposition appears confusing. Are these critics saying in effect that societies where their domestic criminal law imposes punishment on offenders, such societies are not civilized? We are rather of the view that it is crime that places the offender outside civilized community and that the concept of punishment of offender is an offspring of civilization and took over from the uncivilized practice of jungle justice where people/ states take laws into their own hands. The acts of rape used as tools of war is repulsive to civilized society and hence the public outcry against it. It is committing this crime for example that places the offender outside civilized society. By punishing such an offender, an opportunity is given for such to be changed and accepted back to civilized society.

Those against State criminal responsibility have also expressed the fear that punishment breeds humiliation on the part of the punished. They cited the example of the ILC. According to them, the fear of the consequences of punishment as humiliating a fellow state was largely responsible for the much later ILC's decisions to do away with the concept of international crimes and punitive reparations, as well as to rename "sanctions" as "countermeasures." From the language of the ILC in the Articles on state responsibility, it appears that the desire to avoid any appearance of shame or disgrace was so strong that the Articles made it clear that even apologies or the promise of non-repetition of the violation which are both traditional forms of satisfaction to a victim may not take a form humiliating the responsible State (Article 37 of the ILC Articles. The case of Bosnia & Herzegovina v Serbia & Montenegro (2007) ICJ Reports 166 at 464 when the International Court of Justice (ICJ) found Serbia responsible for not stopping the genocide in the Bosnian town of Srebrenica is in point. By this decision, the court for the first time, howbeit indirectly, determined that a state could be held liable for the crime of genocide. Despite this finding, the court was reluctant to impose any form of punishment on the

Serbian state itself. Instead, it ordered Serbia to punish or transfer individuals accused of genocide to the International Criminal Tribunal for the Former Yugoslavia to be tried. Finding that monetary compensation or the guarantee of non-repetition were not appropriate remedies for this type of a case, the Court nonetheless concluded that bringing several identifiable individuals to trial would constitute appropriate satisfaction.

With respect, we are of the opinion, that the reason the ICJ was not able to punish the Serbian State is that it has no such jurisdiction and not because of any perceived reluctance to do it. The ICJ does not have criminal jurisdiction over states and could not have imposed any punishment. Those against state criminalisation think rather that unlike punishment, the rhetoric of prevention appears to promise a pragmatic debate, which can mask deep value divisions. They posit further that by using the language of threat rather than guilt, the international community can avoid the assigning of moral blame name calling, and remain within a more neutral and pragmatic frame of prevention. Prevention unlike punishment, according to the opponents of state criminal responsibility promises to act as a balancing formula between securing countries' rights and protections while avoiding cycles of spiraling violence. While revenge can never lead to peace, the morally-benign nature of prevention is more likely to. Following this analogy, the avoidance of punishment allows a greater focus on the rehabilitation of the offending state, bringing it back into compliance and integrating it back into the international community. In a dramatic twist, the opponent of state criminal responsibility agrees that retribution is a necessary component in the healing of the injured party, and that it can be achieved through the prosecution of individuals. As such individuals should be the one to be criminally responsible and punished. The conclusion we draw from this argument is that punishment as a form of retribution should only be meted out to individuals who deserved to be humiliated but not States who though may be guilty cannot afford to face humiliation. We do not see the reason for the distinction. Where a State by its policy draws the accolades of the world, its citizen's share in its glory, why is the reverse considered abhorrent? If humiliation is what it will take to stop a policy that breeds crimes against, then the international community is the better for. The alternative is dangerous. Where states are allowed to go with genocidal campaign without prosecution on the ground that it will breed humiliation, then there will be no full accountability for the commission of these crimes as it has been argued earlier that the rapes committed in the Bosnia and Rwanda conflict were done in furtherance of state genocidal campaign and not just the act of individuals. Where accountability for atrocious is deficient, impunity will abide. This is particularly dangerous with regards to rape in armed conflict, as it will continue to be used as a tool of war with impunity and unchecked.

In reply to this school of thought, Blum, is of the view that the instrumental logic of the aversion to punishment, fearing it will breed more revenge and violence is questionable. According to the author, "for one thing, not all cases of in-conflict or post-conflict punishment have led to cycles of revenge and hostility". While unilaterally-imposed sanctions sometimes bred more violence, Japan, which suffered the most notorious form of injury in modern history, adopted an explicitly peaceful attitude to foreign relations in its constitution and subsequent foreign affairs. Additionally, according to the author, while it is possible that punishment breeds sentiments of humiliation and an urge for revenge because of both its potentially harsh disciplinary character and its connotation of moral blame, it is unclear that the rhetorical disguise of prevention has any different effects. A sense of humiliation following punishment may be replaced by a sense of injustice or helplessness in the face of coercive prevention, neither of which is necessarily more conducive to international peace and security. Populations of countries that are subject to sanctions may view such sanctions as harmful and unfair, even if they understand or agree with the motivations behind them. The author cited the instance of North Korea, stating that its population may have no more sympathy for Kim Jong-Il their leader than does the UN Security Council, and yet they may resent the UN Security Council for further burdening it, by imposing sanctions on the North Korean regime. The case of Iran is

another case in point. The Iranians have been hard hit by the sanctions imposed by USA and some European countries against the leadership of the country for its nuclear program. It was report that there was jubilations in the streets of Tehran when a nuclear deal between the USA and some other countries that make up the G8 nations will result in the removable of some of the sanctions against Iran(CNN). It is arguable whether these sanctions do not affect the general populace even more than the supreme leader of Iran. It is also arguable whether the channeling of retribution to individual leaders indeed protects the broader domestic population from the so called sense of humiliation. One may reasonably hold that while the distinction between leaders and populations is convincing in tyrannical regimes, it is probably less so where indicted leaders enjoys popular support from their citizens. If so, the rationale of avoiding violence(by rejecting criminal responsibility of states) and preferring peace(imposition of sanctions) may already be compromised by the project of international criminal law. It is our humble view that the argument against state punishment based on the fear of revenge and violence resting on the possible hazards of the expressive power of the paradigm of punishment for international relations, is not founded. If for anything, punishments imposed by international Tribunals have not exceeded those imposed by domestic courts. This has led some writers to hold the view that international criminal law requires a legal regime for sentencing (Drumbl 2005).

Clearly, any punishment of the "State" would necessarily result in collective harm to its population which the current trend of the international community adopting preventive measures and sanctions also does. The important question should be could such collective punishment ever be justified?, or is it only the harm that is inflicted in the course of prevention efforts that could be? Leaders of state who have imposed sanctions against other states have been careful to emphasize that their actions are not intended as collective punishment, though in effect that is what it is. For example, the North Atlantic Treaty Organisation (NATO) 1999 statement on Kosovo clearly singled out Milosevic and his regime as the target of its operation and insisted that it was not meant as a collective punishment of the people of Serbia but the statement did not stop it from affecting the collective. Again President Bush repeatedly distinguished Afghans from Al Qaeda and the Taliban, Iraqis from Saddam Hussein, and Muslims from terrorists. But this 'distinguishing' did not take away the collective effect of the actions taken against the leaders of these countries on their citizens.

Moreover, we are of the view that with respect to rapes committed in armed conflict forming a genocidal campaign of a state, preventive measures and sanction are inappropriate. From the *modus operadi* of its perpetration as evidenced in the former Yugoslavia and Rwandan conflicts, the offence would have been committed before the international community will get to know of it and by that time preventive measures will be too late. We therefore submit that criminalising the State for this offence in the circumstance already discussed is the answer to bringing about justice and any meaningful peace. As we believe that there can be no meaningful peace without justice and as such international criminal law must be reviewed to reflect State criminal responsibility for rape in armed conflict. With regards to the case study of this research, and given that the work of the ICTY and ICTR are winding up, we suggest that provisions like Article 5 of the Statute of the ICTY should be amended to reflect criminal liability for the state where it is established that the rapes where part of a state's agenda of ethnic cleansing in the future. So also Article 3 of the ICTR Statute which already recognised the commission of the offence in the light of systemic attacks should be reviewed to provide for criminal responsibility of the state. In this light, we recommend that the Rome Statute be reviewed to reflect this position.

Another argument against State criminal responsibility which we will like to examine is the notion that international law lacks the institutional mechanisms for adjudication and enforcement and as such a paradigm of punishment for states will lend itself too easily to power politics. It is not in doubt that the international legal system does not a mechanism devoted for

the trial and punishment of states. Currently, the only institutions that have jurisdictions over states (The ICJ, the World Trade Organisation Dispute Settlement Body, the African Court of Human and Peoples rights, etc. do not have power to pronounce guilt or impose punishment. It is pertinent to state at this juncture, that this research work does not set out to type, modalities or mode of operation of an international institutional to try states and will not delve into it. Suffice to say here that there have been calls for the establishment of such dating back to the twentieth century. The need for such an institution as a necessity for state criminalisation cannot be overemphaised. To have legitimate punishment means that some institutional and procedural features must be installed to distinguished legitimate punishment from mere vigilantism or international lynching. Without such a structure in place, the concept of state criminal responsibility and consequently punishment stands the chance of been abused and applied by the strong against the weak and leaving the former immune from its reach. International criminal law like domestic criminal law is built on due process. Concepts such as nobody been tried for an offence unknown to law, punishment been proportional with the crimes committed, etc. are also applicable to international law. it is our view that it is the best avenue to deal with the criminality of states without to a large extent been hijacked by the powerful nations to the detriment of the weaker ones. It is further opined that it is the current practice in international law of preventive sanctions and measures that stands the chance of been abused by the powerful to the detriment of weaker nations. This is because, there are no parameters to measuring proportionate preventive sanctions against erring states and as such sanctions could very well be imposed arbitrarily. State criminal responsibility may sound and look strange but it is not unattainable. It was Burnett[12] that said: "At first people refuse to believe that a strange new thing can be done, then they begin to hope it can be done, they see it can be done…then it is done and all the world wonders why it was not done centuries ago."

5. CONCLUDING REMARKS

The analysis of existing international legal instruments and legal literatures above show a paradigm shift from rape in armed conflicts being just a bye product of such conflicts, to it been an instrument for prosecuting wars. This suggests that there is a movement away from not just individuals engaging in the act but an entity as a whole using it as a tool to fight in a conflict. The study finds that under the existing laws in international law, only individuals can be prosecuted for the offence. The Statutes of the International Criminal Tribunal for Rwanda only confers jurisdiction on the Tribunal to try individuals, the Rome Statutes confers only power to try individuals on the international criminal court. The ILC Articles on State responsibility only attributes civil responsibility on States for wrongful acts done against international law. as such even when evidence adduced during trial points to the involvement of the State, these courts cannot do anything about it. The study also finds that prosecution of individuals only for the offence under the new paradigm shift has not deterred the commission of it. This is evidenced in the continued use of rape as a tool of war in conflicts after the Rwanda conflict like the conflicts in DR Congo, Sudan, etc. The present legal regime cannot address the commission of a crime where the actors have moved from just individuals to in addition State actors.

The study suggests that States though obviously are involved in the perpetration of rape in armed conflict (from evidence gathered from trials in the international criminal tribunal for former Yugoslavia, the International Criminal Tribunal for Rwanda, etc.), they are excluded from prosecution. The grounds canvassed as reason for this do not accord with current realities. The reasons include the assertion that states being abstract bodies without flesh and blood or souls that can be damned, punishing them for acts done will not serve any purpose. It is also

[12] Burnett, F.H. (2008) "The Secret Garden" Web. Accessed on 30-08-2008.

argued that states enjoy sovereignty which prosecuting them will allegedly take from them. If adjudicating over states at the international court of Justice does not take away the sovereignty of a state, why then should a criminal prosecution of same by an international court do otherwise. It is also the view that finding a State "guilty" amount to collective punishment which is barbaric and not in harmony with civilized society. The study finds that the current practice of imposing sanctions on erring States also amount to collective punishment. Therefore terming it barbaric is hypocritical.

The study finds that the Rwandan State actively supported the rape of the Tutsi women by deliberate state policy that fueled the hatred against the women and also turning a blind eye to the propaganda which were even disseminated by state owned media outfits. The massive rape of women could not have taken place without the active connivance and support of the Rwanda State.

Rape in armed conflict has assumed an alarming and dangerous proportion. As a weapon of war it has proved to be a very effective tool to weaken a perceived enemy, to perpetrate a perceived dominance of a group over another or others and to generally create a feeling of terror among a group of people. It has become a weapon of war. Generally, it can be asserted that it is States that prosecute wars. The individual combatants are mere tools in the hands of the State in the prosecution of a war. International criminal law is currently empowered to prosecute only individuals alleged to have committed rape during an armed conflict. This study provides a new dimension at addressing the problem. It demonstrates that individuals alone should not be prosecuted for the offence if deterrence to the commission of the offence is the goal. Rather, the role of the State in the commission of the offence should be examined and appropriately sanctioned. This will act as a check on the excesses of States in using this crime to perpetrate genocidal policies. This will also check the root cause of the problem as it has been found that the rapes been carried out are not isolated incidences but a well planned and calculated agenda against a targeted group. This previously ignored aspect of the commission of this offence as actively facilitated the commission of the offence, the shielding of individual offenders from the law, the frustration of the prosecution mechanism against certain offenders, destruction or disappearance of evidence to prosecute , etc.

In terms of policy implications, in the light of the findings of this study, there is an urgent need to review the international legal instrument such as the Rome Statutes, the International Law Commission Article on State Responsibility. The starting point is the recognition of the role of the State in the commission of the offence and accepting the need to appropriately punish the State.

The prosecution process should include a look at the actions or inactions of the State with regards to the perpetration of the offence. every State has a duty to ensure that their 'armed forces' abides by the rules of engagement. The failure of a State to meet this obligation should not be overlooked as doing so could tantamount to sanctioning and encouraging State impunity.

REFERENCES

Blum, G. (2013) "The Crime and Punishment of States" 38 YALE J. INT'L L

Bodansky, D. & Crooks, J.R. (2012) "The ILC's State Responsibility Articles: Introduction and Overview" *www.nomos-elibrary.de/?dokid=202741* Accessed on 20 November 2012.

Bratspies, R.M (2012) "Organs of Society": A Plea for Human Rights Accountability for Transnational Enterprises and Other Business Entities", Web. Accessed on 23 March, 2012.

Burnett, F.H. (2008) "The Secret Garden" *https://thepsychologist.bps.org.uk/.../looking-back-rewriting-rest-cure-se* Accessed on 30-08-2008.

Caron, D.D. "The ILC Articles on State Responsibility: The Paradoxical Relationship Between Form & Authority" UC Berkeley School of Law Public Law & Legal Theory Research Paper No.97 2002, Web, accessed on 11 February 2013

Drumbl, M.A. (2012) "Collective Violence and Individual Punishment: The Criminality of Mass Atrocity" Web. Accessed 26 June 2012.

Ferguson, G. Corruption and Corporate Criminal Liability, Web, accessed on 2 February 2013.

Fitzgerald, K. (1998) " Problems of Prosecutions and Adjudication of Rape and Other Sexual Assault Under International Law" , , E.J.I.L. 638.

Garner, B.A. (2004) *Blacks Law Dictionary* Eight Edn, (St Paul MN: West Publishing)

Gould, H. D. (2009) "International Criminal Bodies: Conceptual Clarification of the Ideas of State Criminality and International Punishment" 35 REV. of INT'L STUDIES 701

Harris, D.J. *(*2004*) Cases and Materials on International Law*, Sixth Edn, (London: Sweet and Maxwell) p.504.

Huls, V. (2012) "State Responsibility for Crimes Under International Law: Filling the Justice Gap in the Congo" Web. Accessed on 10 December 2012.

Jagers, N., (2002) *Corporate Human Rights Obligations: In Search of Accountability*, (New York: Intersentia, 2002) p.137.

Jinks, D. (2012) "State Responsibility for the Acts of Private Armed Groups" Web. Accessed on 23 November 2012

Kalshoren, F. (1991) "State Responsibility for Warlike Acts of the Armed Forces", 40 International & Comparative Law Quarterly 827. Accessed on 26 June 2012 Web

Lichtermann, S. " Control Tests," The Nature of Conflict and Attribution of Responsibility for Mass Crimes and Genocide in Criminal and Civil Liability Cases: 'Overall' v 'Effective ' Control Test, Sarazevo International & Comparative Law Review 2011 Web. Accessed on 02- 01-13

Luban, D. " State Criminality and the Ambition of International Criminal Law" in Isaacs, T. & Veron, R. (eds) Accountability for Collective Wrongdoing (Cambridge: Cambridge University Press 2011) pp. 61-91.

Newton, M.A. & Kuhlman, C."Why Criminal Culpability should Follow the Critical Path: Reframing the Theory of Effective Control", Vanderbilt University Law School Public Law and Legal Theory Working Paper No.10 -17,
www. *ssrn.com/abstract=1588247* Accessed on 2-01-13

Nissel, A. "The ILC Articles on State Responsibility: Between Self Help and Solidarity" Web. *nyujilp.org/wp-content/uploads/2013/02/38.1_2-Nissel.pdf* Accessed on 20 November 2012.

Nollkaemper, A. (2008) System Criminality in International Law: Introduction,. www.*ssrn.com/abstract=1222442* Accessed on 6 March 2013.

Nwoke, F.C. & Danwanka, S.A. (1999) "Is There a Place for State Criminal Responsibility In Contemporary Interventional Law?" , UDUSLJ VOL 1, p.148 . Print.

Pellet, A. (1999) " Can a State Commit a Crime? Definitely Yes! EJIL 10/4 p.432

Posner, E. A. & Sykes, A.O. (2013) "An Economic Analysis of State and Individual Responsibility under International Law", University of Chicago John M. Olin Law and Economics Working Paper No. 279, Web, www.law.uchicago.edu/files/files/279-eap-as-responsibility.pdf accessed on 27 March 2013

Sloane, R.D. "The International Criminal Tribunal for Rwanda"
Web. *ssrn.com/abstract=1969981* Accessed on 26 June 2012.

Tanguay-Renaud, F. "Criminalizing the State", Web.
http://digitalcommons.osgoode.yorku.ca/cgi/viewcontent.cgi?article=1020&context=clpe Accessed on 20 November 2012.

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