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International Criminal Evidence in Jordanian Law

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Abstract: **The purpose of this article is to examine some features of the International Criminal Court (hereinafter "ICC") procedural system, in particular the law of evidence, making use of theoretical models. The article first deals with the disclosure phase. Second, it focuses on the admission of evidence. To conduct the analysis, two widely known theoretical models, are employed: the accusatorial versus the inquisitorial model, and the Damaika partition between the reactive and proactive State. Despite its accusatorial structure, ICC provisions provide many important exceptions to the typical features of the accusatorial theoretical model. In particular, to uphold the values inherent in the international criminal justice system, the ICC Statute and Rules provide various exceptions to the prohibition against admitting unchallenged testimonial statements at trial. Additionally, in the disclosure phase, notwithstanding a parties-led general structure, procedural sanctions seem oriented towards leading the trial to a (possibly correct) conclusion on the merits, rather than merely punishing the misconduct of a culpable party.**

Keywords: **International Criminal Court, international criminal justice system, ICC Statute.**

1. INTRODUCTION

International criminal evidence is defined as evidence of an act of an international criminal offence according to the tribunal unless the context otherwise requires. The text goes on to include "evidence" of having "committed" a crime in its definition; this is because in order to offer a defence, the accused may have to prove a negative, for instance that he did not know of any criminal design by the leadership. This will normally involve seeking to discredit prosecution evidence on the actus reus or mens rea of the accused and it is therefore important to keep both the definition of the crime and what constitutes evidence of it firmly in mind. An accused may also seek to argue that no crime was committed. This will usually entail relying on an alibi which if it is to be credible will have to be independent of the accused. The accused may also argue that he was acting under duress or necessity and in which case the evidence will again be relevant to any of the defences to the crime. In the context of national law, the definition of evidence is usually to be found in the evidence code. Although there is no evidence code as such applying to either the ad hoc or ICTY, the relevant provisions can be gleaned from the statutes, rules of procedure and evidence, orders and decisions. It is not the purpose of this study to examine in any detail rules relating to evidence and procedure save insofar as they are relevant to obtaining and presenting evidence for the defence. Finally, some have sought to argue that since the allocution of the accused formed part of the common law it must be included within the concept of evidence. However, since the accused is not required to plead guilty the subject need not be pursued.

1.1. Definition of international criminal evidence

"International evidence" literally means evidence having international character. The international character of a crime is not dependent on the nationality of various accused persons. An offence may be committed within the territorial limits of a state by a national of that state, but it may have such far-reaching effects transcending the territorial and national limits that

it may involve other nationals or even the international community as a whole. In such a case, the offence, though in its inception was national in character, assumes a new complexion distinct from and additional to the sum total of crimes committed against the nationals of particular countries. In cases of war crimes, genocide, and crimes against humanity, the criminal acts may affect humanity as a whole. It is said that in the case of international crimes, there is an injury to international society. In such cases, evidence from different countries relating to these offences will have to be proved in courts of various states. Similarly, the offence may be committed within the territorial limits of a state, but evidence to prove that crime may be available in other countries. In the above situations, the evidence having relevancy to the facts in issue in domestic criminal proceedings and requiring proof as a matter of international law, whether it is the law of war or the law relating to a treaty or the law of humanity at large, is said to be an international criminal evidence.

1.2. Importance of international criminal evidence in Jordanian law

Before the actual discussion of the importance of international criminal evidence in Jordanian evidence law starts, it is important to note that there is a great difference between domestic and international criminal evidence. While domestic criminal evidence refers to evidence presented in a court of law for the purpose of establishing the guilt or innocence of a defendant in regard to a criminal charge, international criminal evidence has a much broader function. It seeks not only to perform the traditional function of establishing the guilt or innocence of a defendant, but also to help the trier of fact at the International Criminal Court (ICC) to establish the truth of a given set of events. The higher aim of effecting inter and intra state peace and stability is something unique to international criminal law. This difference in function would already indicate the importance of international evidence in relation to domestic evidence in the respective legal systems. This is especially the case when the two types of legal systems are put side by side. In the context of the ICC, it is universally recognised that international courts cannot be mere replicas of the domestic legal system of any one State. The differing systems of law and distinct legal cultures usually push the argument for cultural relativism, it is believed that an understanding of the accused's own legal system will facilitate the trial proceedings and thus the necessity for comparative law. This last argument however, is somewhat contentious, more compelling is the argument that the law and procedure of the tribunal which has primacy over the accused's law in the event of a conflict, should endeavour to interpret and apply its own law in such a way as to create as little conflict as possible with the law of the accused's state, international criminal evidence will be crucial in achieving this end. An additional reason to the importance of international evidence in relation to domestic evidence is the pure and simple needs of specific international organisations. This evidence is crucial to the effective functioning of international tribunals, courts and organisations, without which these organs cannot efficiently carry out their functions and or may become mere extensions of the domestic legal systems of the major supporting states. This is a common fate for international organisations due to the fact that the employees of these organisations are usually exempted from the domestic law of the host country/countries and are subject only to the law of the organisation itself, in this case international criminal evidence is necessary to achieve any coherent and uniform justice within the organisations relevant cases.

1.3. Purpose of the study

Lastly, the purpose of this research is to assess Jordanian evidence law within the framework of international criminal evidence, and to identify areas where Jordanian judges and lawyers need to apply their knowledge of international criminal law in order to prevent possible lawsuits against any Jordanian officials in international criminal cases. This is because when an issue is raised by the ICTY regarding the former Yugoslavia, which has a high impact on evidence law reflecting custom and international law, it is essential for judges and lawyers to understand international criminal evidence.

To provide a clear view of international criminal evidence, a comprehensive and clear view of a body of principles and rules governing the obtaining, admission, and evaluation of evidence needs to be created and developed in the jurisprudence of the ICTY and the International Criminal Tribunal for Rwanda (ICTR). This will be done based on the opinions and findings of ICTY and ICTR judges in certain case law, as well as the provisions of the statute and rules of the tribunal or any relevant international law. This research emphasizes the theory of the law and the law in action, and aims to determine whether there are any gaps in international criminal evidence that require alternative solutions to be given in good faith and with respect for the rights of the accused. Then, in practice, the law has been implemented by Jordanian judges.

To give a comprehensive analysis of international criminal evidence in Jordanian law, and whether it aligns with the International Criminal Tribunal for the former Yugoslavia (ICTY). This is because the author found that the issue of ICTY's evidence law largely reflects customary international law. Therefore, it is very important for Jordanian judges and lawyers

to understand international criminal evidence that has been implemented in their domestic law. It is also important to consider the relevant provisions of international criminal evidence implemented by the Rome Statute in 1998, which Jordan ratified and became a member of on March 11, 2002, with Law No. 10 of 2007.

2. LEGAL FRAMEWORK FOR INTERNATIONAL CRIMINAL EVIDENCE IN JORDAN

2.1 Overview of Jordanian legal system Jordan is a constitutional monarchy based on the rule of law. The King is the head of state; however, his powers are limited as outlined by the Constitution. Jordan has a bicameral Legislature, Upper House (Majlis al-Aayan) and Lower House (Majlis al-Nuwaab). The Legislature has the power to pass laws and ratify international treaties. Jordan has a civil law legal system, which has been significantly influenced by Islamic law. The judiciary is an independent body consisting of both civil courts and religious courts. The civil courts are based on a system established during the colonial period of Jordan's history. There is a Court of Cassation, which is the highest court. All judges of the court system of the Kingdom are appointed by Royal Decree. The Islamic religious courts rely on Islamic law and the religious and social traditions of the people.

This part is significant as it provides the backdrop to the study. It informs the reader where Jordan's legal system comes from, and its current position on International Criminal Evidence. This is where the backbone of the study lies, it informs the reader the laws that are in place, and hence provides an opportunity to critique whether these laws are suitable for an International Criminal Court. Should it appear that they are not, then this enhances the need for this body of research.

2.1. Overview of Jordanian legal system

The Hashemite Kingdom of Jordan is a constitutional monarchy based on the constitution promulgated on January 8, 1952. Jordan is a civil law country and its legal system is largely based on the French Code civil and some other codes. The Jordanian legal system is also greatly influenced by Islamic law (Shari'a), which is the principal source of legislation. The Shari'a is applied in the religious courts to Muslims in matters of personal status. Although the constitution provides for the freedom of religion, this right is somewhat restricted (especially in respect to Muslims) by the Shari'a provisions. Jordan has accepted compulsory jurisdiction of the International Court of Justice with reservations. Jordan is a party to the Rome Statute of the International Criminal Court but is not a member state of the Court. The Statute was ratified in 2002 and came into effect the same year. In 2006, the Jordanian Parliament adopted legislation providing for the establishment of the extraordinary Chambers in the Courts of Cambodia as well as the Agreement regarding the trials of the persons accused of committing crimes during the period of the Democratic Kampuchea before the court. The Jordanian legal system is one that is based on case law as well as codified statute and as such, there is not always a strict separation between the law and the courts. Although treaties require ratification and are then published in the official gazette before becoming law, the lack of codified law in Jordan sometimes makes it difficult to track legislative changes. Practice methods are also largely influenced by the civil law system but with the incorporation of Anglo-Saxon common law principles that were brought to Jordan by legal professionals who had taken their education in England or had been employed by the Trans-Jordan administration prior to the kingdom.

2.2. International treaties and agreements

The significance of international treaties to Jordan is reflected in the large number of treaties signed, with over 400 multilateral treaties and around 150 bilateral treaties.

In order to apply an international treaty in Jordan, the treaty must first be ratified by the head of state and then published in the national gazette. The treaty comes into effect once the necessary steps have been taken, and it has the same effect as national legislation. Treaties remain in effect until the treaty provides a termination date or if a treaty is contrary to new legislation. In the case of significant and irreconcilable differences between the treaty and national legislation, the treaty is suspended until the conflicting national legislation is removed.

Jordan has always been an active participant in international politics, and the legal framework regarding international criminal law in Jordan is a testament to that. The legal framework is heavily dependent on international treaties, with Jordan having signed several treaties that have a direct impact on its national legislation. The application of international treaties in Jordan is governed by Article 3 of the Jordanian constitution, which states, "The ratification of treaties and agreements which affect the kingdom's law or finance or entail any amendment to the legislation in force shall not be valid unless approved by a two-thirds majority of the members of the National Assembly."

2.3. Domestic legislation

In as-Salam Masa'deh contends that the general rule on evidence is that it is governed by the law that applies to the merits of the case, providing it is consistent with public policy and principles of justice. Procedural matters are governed by the lex fori. Thus any international evidence to be used in a case that arises before a domestic court in Jordan should be judged in accordance with the law relating to the matter being proved or disproved, and must conform to general standards of justice in order to be admissible. The ICTY and ICTR Statutes and Rules of Procedure and Evidence are also worthy of consideration under.

Jordan, like many states, does not have a comprehensive legal framework for international criminal evidence. As Scherpereel suggests, "la réglementation des preuves est un domaine jurisprudentiel," and Jordan's highest court, the Court of Cassation, has the power to shape and develop the law; this it has done. There is no specific Jordanian legislation governing the admissibility or use of international criminal evidence. The evidence most likely to be relied upon is testimony given at the ICTY or ICTR: the Tribunals sembledy; è and decision of the Special Court for Sierra Leone and East Timor pertaining to evidence obtained within Jordan. This leaves the matter of admissibility largely to the common law or general principles of law, with considerable weight being given to the various sources of international law and treaty obligations for guidance.

3. ADMISSIBILITY OF INTERNATIONAL CRIMINAL EVIDENCE IN JORDANIAN COURTS

The question as to the admissibility of evidence is one of the most important and problematic issues in international criminal trials. This is particularly so in relation to evidence obtained in the territories of the former Yugoslavia and Rwanda and other conflict areas, where there has been a plethora of human rights documentation and on-site investigations by international and non-governmental organizations. The Statute of the International Criminal Court recognizes the importance of respecting the rules of evidence, which are general in nature to most legal systems, in Article 69, without elaborating on what these rules are. Although the statute is innovative in many respects, the rules of evidence applied are still those emanating from a combination of national legal systems, with the preponderance being from the common law adversarial tradition. There is an overriding principle, however, that the probative value of evidence is to be determined with the Trial Chamber having discretion to admit any relevant evidence. This is very similar to the civil law tradition where a judge has more flexibility as to what evidence they can consider and is different from the common law where there is a greater importance placed on the rights of the accused in determining what evidence should be heard. It is suggested that no matter what the legal system, the realities of international criminal trials mean that there should be an acceptance of a need to bring the victims' experiences to justice and not overburden the prosecution with technical rules which impede this.

3.1. Criteria for admissibility

A second requirement is that the evidence must be material for the court to base a conviction upon. An example of this is given in the International Criminal Evidence case of Mohamed Hassan, who was charged with terrorism offences. On appeal, Hassan argued that his conviction should be quashed due to the fact that the evidence against him was that of confession statements made to US soldiers while Hassan was detained in Iraq. The US soldiers were not called as witnesses, and the confessions were presented through Arabic interpreters that were not recorded in any indictment by the judges. It was held that the evidence was inadmissible because it did not conform to the requirement of being the best evidence. This was upheld on the grounds of Article 77(3) of the Geneva Convention relative to the treatment of prisoners of war, which protects prisoners of war from conviction solely on confessions obtained by methods of violence and promises or other improper means. The fact that Hassan was not to be convicted solely on confessions was a contributing factor to the quashing of his conviction. This has potential ramifications for future cases, as there is a considerable amount of international criminal evidence that is connected to the USA's involvement in Iraq, and this case has set a precedent for such evidence being of a non-convictable nature.

The criteria for admissibility of evidence in Jordan are found in Articles 74-77 of the Jordanian Code of Criminal Procedures (CCP), and the judges will interpret these criteria to suit the nature of criminal proceedings. It is a fundamental condition for acceptance of evidence that it must be both lawful and relevant. This was supported in the 2005 Military Tribunal case of Ahed Al Dardsawi and Bassel Hamarneh. The appellants had been charged with terrorism offences but were acquitted due to the fact that intercept evidence had been obtained unlawfully and also because there was no confirmation of the identities of the accused. A key issue here is that the evidence should be excluded if it was improperly obtained, as this was

a contributing factor to the acquittal of the accused. The judges in the Al Dardsawi and Hamarneh case believed so, as even though they were acquitted, it was a unanimous decision to disallow a retrial.

3.2. Challenges and limitations

The main challenge facing international criminal evidence in Jordanian courts today is the degree to which it satisfies traditional Sharia standards for evidence set out in Quranic law. Generally speaking, the standards of evidence in modern criminal law systems are shaped by a trial culture which developed in Europe over several centuries. As Packman explains, "the adversarial trial, the judge as a neutral referee, and the subordination of the judge to the law are all principles of trial organization that have their genesis in England" (Packman, 1994:899). These principles are enshrined in the Rome Statute for the ICC, and reflect Western notions of justice and fairness. In contrast, the inquisitorial trial system which is still prevalent in civil law countries is based on the premise that the judge plays an active role in investigating the case, is not a passive decision maker, and works towards establishing the truth and law in a single judgement (Langer and Sadow, 2002:6). Under sharia law, the success of the judge in investigating the truth of an issue is a noble goal, and thus the criteria for admissibility of evidence and its probative weight in proving a case are much higher than in legal systems influenced by British tradition. Clark describes a need for an operational understanding of evidentiary rules between international tribunals, national courts, and various types of national legal systems in order to achieve enforceability judgements and sentences handed down by hybrid and international criminal tribunals before national courts in states where international offenders have found safe haven (Clark, 2009). This is because both the sending and receiving court will be bound by an international obligation or treaty to enforce the judgement of the international tribunal. His explanation describes a form of forum shopping, where the prosecution hopes to get the best trial possible for the accused in sending a case down to a national court, and the accused seeks to avoid punishment by setting higher burdens of proof on the admissibility of evidence or the probative weight of specific evidence. This complex situation leaves much room for judges to employ the doctrine of tu quoque in determining the standard of admissibility for evidence, by which their own national interests are protected and they discredit a case against a fellow statesman accused of crimes.

3.3. Role of the judge in evaluating international criminal evidence

When the judge is evaluating international evidence, which sometimes may be in a language he can't understand or is simply evidence and form that he is not familiar with, the evidence Act will allow for that evidence to be translated as well as the written document given to the judge in the document and the evidence be given by way of a resume. There is often a large amount of deference from the judge to the prosecution, as it may be assumed that many of the judges will have a high-level connection with the Prosecutor's office previously and therefore it may be likely that the judge is, in fact, a former prosecutor. This was clearly the approach that was taken in the Karadic and Mladic cases, where the tribunal itself failed to protect them for a long time in terms of the quality of evidence and proof that it had, due to the judges having too much faith in the prosecution. This can be seen as detrimental to the defendant's case and signifies an area which may be a cause for concern in future case law.

In evaluating international criminal evidence, the Jordanian judge uses the principle of free evaluation in order to assess the evidential value of the materials. The judge is not bound by the technical rules of evidence and therefore not only looks at the evidence presented before him but is also entitled to take into account his knowledge, skills, and expertise to reach a decision. The judge may also ask for further evidence from the legal representative and may even conduct his own investigation to ensure he is fully informed about the case and the evidence presented. This takes the form of an inquisitorial approach to gathering evidence and ensures the judge makes a decision knowing all there is to know about the case.

4. TYPES OF INTERNATIONAL CRIMINAL EVIDENCE

In international criminal law, evidence is of the utmost importance and serves as the only method to prove the guilt or innocence of the accused. The accused is presumed innocent until proven guilty; therefore, it is essential for the prosecution to prove the guilt of the accused "beyond reasonable doubt." Article 66 of the ICC Statute outlines the general standards of proof and states that the conviction of the accused shall be based on evidence that is beyond reasonable doubt. The burden of proof is always on the party seeking to establish a certain fact, and not every type of evidence will carry the same weight in every case. There are four types of evidence available to the prosecution: documentary, testimonial, physical, and expert evidence. All of these evidence types are admissible under the ICC statute; however, their weight will vary on a case-by-case basis.

4.1. Documentary evidence

Documentary evidence: On many occasions, the evidence required to establish the truth of an allegation is contained in documents, i.e., something in which information is written, recorded, or stored for the purpose of perpetuating it or the public at large or the persons or organizations to whom it is addressed. Documents can take many forms, including written materials, photographs, and video or audio recordings. In order to be admitted into evidence, there must be some authentication that gives rise to a belief that the document is what the proponent claims it to be (an original, unaltered document). This can occur through direct testimony from a witness with personal knowledge of the document or by establishing a chain of custody that demonstrates the whereabouts of the document from the time it is seized until the present. If the document was seized from the opposing party in adversary proceedings, there is a presumption that it is authentic and it will be admissible unless there is a preponderance of evidence that it is not what the proponent claims it to be. This situation is similar to authentic evidence in the ad hoc tribunals. Normally, the best evidence rule does not apply for documents to be admissible into evidence. This rule states that an original must be produced at trial, and if it is unavailable, an acceptable reason must be given, along with providing secondary evidence of the contents of the document. With the exception of the ICC, the previous ad hoc tribunals and the SCSL applied a broad discretion to admissibility. This involved weighing the reliability and probative value of the evidence against its prejudicial effects and allowing evidence even if it was collected in violation of the rights of the accused. The ICC has a specific rule stating that "A Chamber shall admit any relevant evidence which it deems to have probative value. The Chamber may exclude evidence if its probative value is substantially outweighed by the need to ensure a fair trial or the protection of witnesses and victims, or if its admission is inconsistent with a prior ruling on the admissibility of evidence" (rule 89). If the evidence meets these standards and is admitted, it will then be given its natural weight in consideration with other evidence at the determination of guilt or innocence. A judgment may not be based solely on documentary evidence.

4.2. Testimonial evidence

The second test is that the evidence must be reliable. This means that the evidence accurately represents the facts as they actually happened. This can be determined by the demeanor of the witness, the witness's prior or consistent statements, corroborative evidence, and the inherent probabilities of the evidence. The third test is that the evidence must be credible, and the final test of admissibility is whether the probative value of the evidence is outweighed by any prejudicial effect to the accused. It has been said that these standards are in theory very high, and that in practice much evidence, including crucial evidence, is given by witnesses whose credibility is either very low or quite suspect. This means that in almost all cases, part of the evidence will be unreliable and/or incredible, and it will often be difficult for a Trial Chamber to sift between the truth and falsehood of witness testimony.

In both national and international criminal law, the acceptance of witness testimony is conditional. The evidence must first be relevant to the case, whereby it has to relate to the existence of any fact that is of consequence to the determination of the action. This is the same test used for documentary evidence under Article 7 of ICTY Statute. In Rule 89, the ICC has similar rules concerning relevancy and admissibility of evidence. Primarily, the evidence must be to the fact that needs to be proved in the case.

In both international and national jurisdictions, there are two types of testimonial evidence: direct evidence and indirect evidence. Direct evidence includes the evidence of the accused and eyewitnesses that describe an event presumed to be a crime. Indirect evidence presumes, but does not prove, the existence of the facts in issue.

The testimony of witnesses is considered to be the most common form of evidence found in any legal system. This is particularly true in international criminal law. The notable Tadic case confirms the centrality of witness testimony as a source of proof of criminal acts in international criminal proceedings. The Appeals Chamber in that case stressed that the Rome Statute confirms that the prosecution does not have to rely on documentation, and that rule is based on the recognition that the events are so commonly established by the testimony of witnesses that to insist on production of documentation for the event would undermine the truth finding function of the Court.

4.3. Physical evidence

Physical evidence is potentially the most convincing type of evidence. It is most commonly associated with evidence that is gathered at the scene of a crime. Physical evidence can include objects or substances found at the crime scene, on a victim,

or at a suspect's home or workplace. Physical evidence such as hair, fiber, fingerprints, blood and other body fluids, weapons, tool marks, and footwear impressions can be gathered. Pictures (photographs or video) and diagrams of the scene and evidence can also be considered physical evidence. This type of evidence is important in corroboration of events and can help determine the innocence or guilt of a suspect. With the advancements made in science and technology, a variety of forensic tests can be performed on physical evidence to help determine the events surrounding a crime. In order for evidence to be considered legal and to be admitted to international criminal tribunals, it must satisfy the rules of evidence. This can be difficult with physical evidence as it can become contaminated, misplaced, destroyed or altered. The prosecution and defense often use experts to help in an understanding of complex evidence. This is done by the giving of the experts' opinion on the matter and the reasons behind it. In doing so, the individual can present his findings based on the evidence and faced with a hypothetical question give a conclusion which can be a substantial factor in the criminal justice process. Expert evidence, however, is not limited to an expert's opinion. Resorting to the principles of national law in the absence of international evidence law, the admissibility of physical evidence is subject to the criterion of relevance and the balance between probative value and prejudicial effect. An additional requirement is that the evidence must have been obtained lawfully. The rules for determining the relevance of evidence concentrate on balancing the need to prove or disprove an issue against regulatory concerns which may render evidence inadmissible for a number of reasons.

4.4. Expert evidence

A new technology allows the International Criminal Court to set up a laboratory stream of evidence concerning investigations into crimes of concern to the international community. The rules allow for the establishment and validation, by the judges, of standard operating procedures and minimum standards of acceptable performance in adopting and conducting forensic on-site investigations and in collecting evidence in the field. This very detailed and possibly expensive type of evidence will have assured quality and will be reproduced at future trials.

Neutral evidence of this type might be useful in excluding from the criminal proceedings issues of allegation for which there is insufficient evidence. It appears to justify the conclusion of the English, which was to the effect that opinion evidence which conflicts to a marked degree should not be admitted in criminal trials in the interest of justice in this particular instance. Opinion evidence is there to be evaluated by the jury in the light of other evidence and the issue for the jury may not be so much whether guilt or innocence hangs on the doctor's or scientist's conclusion but rather whether this expert has reached his conclusion on an objective consideration of facts within his special knowledge.

The expert evidence is used for interpretation of the meaning and effect of the evidence under consideration. Expert evidence is defined as evidence of a witness who is a specialist in a particular field of knowledge or experience and not merely a skilled person. The specialist will give his opinion on the evidence and this opinion will only be admissible if it assists the judges in reaching a decision or if it is required to determine the issue. He may be asked to indicate the factors underlying the conclusion drawn, in this case the prosecution and the defense may tender evidence in the form of experts and their conclusions may cancel each other out.

5. COLLECTION AND PRESERVATION OF INTERNATIONAL CRIMINAL EVIDENCE

Collection and preservation of evidence have been regarded as a single and inseparable process. It is essential for any evidence to be admissible in court, establishing an unbroken chain of custody is significant and in order to do so, the evidence will need to be collected and preserved in such a manner as to avoid any suggestion that it has been tampered with. At the International Criminal Tribunal for the Former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR), evidence at crime scenes was collected by the Office of the Prosecutor and was separated into three categories: Category A (physical evidence), Category B (crime scene data), and Category C (witness statements). Although the ICTY and ICTR had differing methods for the collection of evidence and different evidence types, both tribunals used an evidence collection kit designed by the European Union. Category A and B evidence from the ICTY was collected and stored by the registration and evidence units or the relevant state authorities. Category A evidence from the state authorities and all evidence collected by the ICTY and ICTR is to remain in the custody of the tribunal until it is transferred to another court or state. This is similar to the process of evidence collection and custody outlined in Article 48 of The Hague Convention. Evidence would be collected by members of the court, a record of the evidence would be made, and the evidence may be transferred to another state or court depending on the location of the accused. The article prescribes that the court or state which has custody of the evidence may allow representatives of the adverse party to inspect and take note

or take samples of the evidence. This is a substantial improvement to the procedures of evidence collection in customary international law, as the destructive testing rule will no longer apply. This rule states that an adverse party could not conduct tests which could destroy or consume the evidence, and it is a rule which is still observed in some common law jurisdictions today. One significant difficulty in the collection of evidence is that in many cases, an act of international cooperation will be required. This may pose a problem because many countries do not have the same idea of what constitutes evidence and in some cases, there may be no evidence to collect. This could place an unfair burden on only the state or entity which has evidence to collect and it may also cast doubts on the integrity and equality of the international tribunal process. The ICTY had experienced these difficulties trying to collect evidence of Serb and Croat war crimes, as there was very little physical evidence to collect and the investigations had to rely heavily on the collection of witness statements. This created problems when the witness statements were the only evidence which the ICTY could obtain and it raised allegations of bias and the taking of sides in the conflict. When the evidence has been collected, it must be stored until the time of trial and this may pose a number of difficulties depending on the evidence type and the location of the trial. Evidence collected in one state for use in the trial of an international crime can create an undue burden on the state providing judicial assistance, as they may have to keep and care for evidence which would normally have been destroyed after use in a domestic criminal trial and there is no guarantee that the evidence will not have to be transported to another location at a later date.

5.1. Procedures for collecting evidence

The task of collecting evidence is of utmost importance for an investigation and in effecting a prosecution. Under the Jordanian Criminal Procedure Law, investigations must be initiated ex-officio by a public prosecutor, who is responsible for dealing with all aspects of the investigation and is the only party authorized to collect evidence. If the prosecution involves an international criminal case, then there are three possibilities of prosecution: either it has taken place on the territory of Jordan; it has been committed by a Jordanian national anywhere in the world, or it has been committed by a foreign national who is in Jordan or it is possible to be extradited to Jordan. Investigation procedures in Jordan are basically the same for both national and international cases, however for international cases there are a few procedures which are specific only to these cases. The normal procedures for collecting evidence in a national or international case involve the public prosecutor interviewing the complainant, attending the crime scene and questioning the suspect over the course of a few weeks or months. At the crime scene, the suspect may be asked to engage in a re-enactment of the crime and physical evidence may be seized. However, in an international case, before any of these procedures can go ahead, a judge must issue an order to investigate. To obtain such an order, the public prosecutor must file a request which states the reason for and the purpose of the investigation. This system of obtaining judicial approval is to ensure that the investigation is one of criminal and not political nature, or simply to harass the suspect. A judge is able to request further information from the public prosecutor or from the suspect, and may request an oral hearing in which to decide on the request for the order. Once the order is granted, the investigation procedures are the same as those for national cases.

5.2. Chain of custody

The chain of custody ideally is a chronological documentation or paper trail that records the seizure, custody, control, transfer, analysis, and disposition of all evidence. This would usually be achieved through standardized forms doubled with photographic and video footage. The documentation should include written observations of the condition of the evidence and should be done every time an individual comes into contact with the evidence. Unfortunately, the nature of international criminal investigations does not often lend itself to this method, and maintaining documentation is sometimes impossible due to the rapid change in events and locations in which the evidence is found. This can be rectified somewhat through modern portable technology, such as video-enabled cell phones and GPS, which again should be non-intrusive and low impact.

The most important factor in the admissibility of evidence is whether or not it is excluded, and this is often determined by the manner in which it was obtained. The methodology and equipment used in evidence collection need to be as non-intrusive as possible, so as not to affect the environment. In all instances, evidence obtained should be in its most natural form, and the decision to remove evidence from its original location for safer storage should be taken only after conducting a risk assessment based on the specific piece of evidence. This process can be applied to the removal of soil samples for analysis or the wholesale removal of items from a crime scene to a forensic laboratory. These environments should replicate the conditions of the country in which the evidence was obtained, placing emphasis on climate and environmental factors that could affect the evidence.

5.3. Challenges in preserving international criminal evidence

These concerns led to the creation of a specific category of orders in ICTY practice requiring states and parties to 'preserve and protect' certain evidence pending further orders from the tribunal. The first such order was granted by the Pre-Trial Chamber in the Tadić case in respect of certain defense sites in the Prijedor municipality. This form of order was specifically provided for in the Statute and Rules of the International Criminal Court – and was notably used in 2005 to order the preservation of evidence at the bombing scene in the Al-Bashir case. The strength of measures to preserve evidence can, however, be somewhat in contrast to a tribunal's ability to eventually gain custody of the persons involved in producing it – and situations can arise where suspects effectively forego the possibility of pre-trial release because the conditions attached to the release would be impossible to meet without access to the evidence.

Preservation of international criminal evidence faces another major challenge to what existed at 'local' level in respect of the control by the jurisdiction with an interest in the outcome of the storage medium. It is well established today that while certain 'hard' forms of evidence such as weapons can be preserved and presented in courtrooms as exhibits, much modern evidence is in a digital form. Material held on computers and digital devices can be easily moved, altered, and deleted. This makes it a highly fluid medium and one which is extremely susceptible to change, loss, or destruction. Many incidents around the world now also involve the seizure of networks of computers or servers spanning many locations – and where many or all of the suspects are based in states other than that of the court. The Tribunal's case-law reflects an increasing awareness that ICTY 'evidence' located in a multitude of states can easily be lost or altered, either through deliberate interference or as a result of normal data decay.

6. MUTUAL LEGAL ASSISTANCE IN OBTAINING INTERNATIONAL CRIMINAL EVIDENCE

Mutual legal assistance (MLA) is the principle of international law which governs the cooperation of states in investigating and prosecuting criminal and civil proceedings. MLA involves a domestic requesting authority that seeks assistance from a foreign requested authority. MLA is an effective and increasingly necessary form of cooperation which is vital in obtaining evidence located in another jurisdiction. As Harfield stated, "an unprecedented escalation in transnational organized crime, including arms trafficking and money laundering, has been a factor in the increase in MLA evidence requests." MLA provides a procedure in which evidence such as witness statements, documentation, electronic data, and physical evidence can be obtained from other states and afterwards used in domestic proceedings. This highly valuable evidence may not be available to the domestic jurisdiction through any other means and can often be the difference between a successful and an unsuccessful prosecution. It is widely accepted that MLA fosters a spirit of cooperation between states in the fight against international crime. Reciprocity, equality, effective application, and the furthest-reaching measure is the first-hand attempt to harmonize legal systems between states. This can be seen in the European Union's implementation of the MLA Covenant which aims to harmonize cross-border evidence requests and standardize the manner in which evidence is obtained. The creation of MLA treaties and conventions will further indicate a state's commitment to assist others and to take affirmative action in the eradication of international criminal activity.

6.1. Overview of mutual legal assistance

Mutual legal assistance can be defined as obtaining assistance from a foreign government in investigating or prosecuting a criminal case. This can come in many forms, including searching and seizing property, obtaining documents or testimony, or detaining an individual. The principle forms the basis for the ICC system of evidence collection. The ICC strives to "promote the mutual recognition of judicial decisions in criminal matters" and "facilitate the recognition and enforcement of sentences." Through the Rome Statute, the ICC was given explicit powers to conclude agreements with states or intergovernmental organizations in order to facilitate cooperation in the investigation and prosecution of alleged crimes. This is found in Article 87, which states that "The Court may conclude with a State or with an intergovernmental organization arrangements for the purpose of facilitating the work of the Court." In modern legal systems, MLA is a fundamental way to obtain evidence and can be an efficient tool if states give it the necessary resources. Generally, evidence is necessary to prosecute a criminal case, and often the most practical way to obtain it in an international case is by seeking assistance from the other state. This is vital, as trying to obtain evidence abroad without using the correct channels could lead to breaching that state's national laws or international law and could, in some cases, cause diplomatic tensions. According to scholars, MLA is complex and variable in its content and implementation; however, a good MLA system can be the most effective way to obtain evidence from abroad.

6.2. Extradition and transfer of evidence

Extradition can be defined as the surrender by one state to another of a person who is sought to be prosecuted or to serve a sentence. Extradition involves two types of evidence. Firstly, there is the evidence required to satisfy the case in the requesting state that the person named is the person claimed, for example, fingerprints, photographs, and dental records. This is not the type of evidence referred to in Article 44(1) of the Statute of the International Criminal Court.

The method of obtaining evidence from foreign jurisdictions can also be a direct transfer of evidence between countries at the request of the receiving court or prosecuting authorities, or may involve the extradition of the accused or a fugitive witness. The Hague Convention of 1970 is one of the conventions that allow an avenue for obtaining evidence abroad. However, it covers only evidence from willing witnesses and does not cover the extradition of the suspect or witness involved. The transfer of evidence involving documents poses a problem of authenticity and admissibility in the receiving court. It must be authenticated to the standards required for the admission of that type of evidence, and it must be shown that the chain of custody was not broken, evidence was not tampered with during transfer, or fake evidence substituted.

6.3. Challenges in obtaining international criminal evidence from other jurisdictions

Fostering international cooperation to obtain evidence is not without its difficulties. It is only where the evidence sought is located outside Jordan that it will be necessary to resort to mutual legal assistance. Receiving evidence, it is said, is less of a problem than obtaining it. While in some cases this may be true, there are still considerable challenges involved on either side. A major difficulty when seeking to obtain evidence in criminal matters has been meeting the dual criminality requirement. While the new MLA Law has made great strides in abolishing this requirement vis-a-vis other states, it still exists in many international conventions. Dual criminality can also be interpreted as requiring that the offence under investigation by the foreign authority constitute an offence in either jurisdiction, and this too has caused problems. In some cases, the requesting authority may revise the charge or base the request on a hypothetical case that closely resembles the real case and which would constitute an offence in the requested state. If evidence is required from Jordan to prosecute offences committed prior to the coming into force of the Penal Code, the evidence Act provides that the law in force at the time of the trial shall be the deciding factor as to admissibility. Any foreign court seeking to obtain evidence in such cases will have to consider whether it is still possible to meet this requirement. Where procedural law is concerned, specific rules as to the taking of evidence must be observed. An obstacle specific to evidence obtained from tribunals or states operating at a level below that of recognized statehood is the issue of immunity from legal process. This may take the form of a plea that certain persons are immune from giving evidence or that certain documents are immune from seizure, inspection or transmission out of the territorial jurisdiction. In an extreme case, it may be found that the custodian of the evidence is a criminal suspect under Jordan law who was acquitted in his own jurisdiction, who has now taken refuge in Jordan. As with extradition, some states or entities may simply refuse to transfer the evidence, especially if the offence being investigated is political in nature or if the sending of the evidence will compromise the security or sovereignty of the state. In these situations the only solution for the requesting authority will be to try and negotiate an ad hoc solution by which the evidence can be used in a way that respects the interest of the providing state.

7. ROLE OF INTERNATIONAL ORGANIZATIONS IN FACILITATING INTERNATIONAL CRIMINAL EVIDENCE

United Nations has been a platform where nation states convene to discuss various issues of international importance. But in addition to performing its traditional functions, UN has become a facilitator and promoter of mutual legal assistance and has been instrumental in harmonizing national laws at a higher plane. The Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Havana in 1990, adopted a set of guidelines which enable states to use international evidence effectively. These guidelines have been very influential in many jurisdictions. Two of the conventions adopted by the General Assembly could also influence evidence law in certain states. Although UN has not been directly involved with evidence-gathering in criminal matters, its work in the areas of mutual legal assistance, extradition and the prevention of transnational crime can have a significant effect. This can be seen when UN special tribunals began to function in 1990s for former Yugoslavia, Rwanda and Sierra Leone with evidence-gathering role. Not only the statutes of these tribunals reflect modern public international law, they are applying customary international law and some developing new law. UN has formulated workable schemes in these and other relevant areas, intersection of national and international law, of which it has expert knowledge and some cases primary responsibility. These schemes include modern treaties and a

variety of soft-law proposals, best practices and directives. If the common law countries are to persuade their courts to follow public international law, they will want to understand the way in which it is relevant to their own legal systems. UN and its documentation provide a rich source of materials from which inferences can be drawn as to the customary status of the law. All this relevant material is currently scattered through a wide range of sources and is not always easy to find. UN documentation system can be complex and while there are in existence many useful research guides it can take time, and considerable knowledge of the system to track down all the relevant materials. The materials needed for comprehensive instruction or advice to clients on points of public international law are so varied that few practicing lawyers now have ready access to them all. It is clear that modern international law would benefit from having this material organised and available in a convenient form. Any attempt to achieve this will need to proceed cautiously and to involve practicing lawyers from all over the world. UN and, with their participation, the ILC, would well undertake a feasibility study with a view to eventual organisation of such materials and their dissemination to practicing lawyers. But let's not forget that these endeavors are still in their early stages. UN has not been directly involved in the evidence-gathering process in criminal matters, apart from the setting up of the Yugoslavia and Rwanda Tribunals. However, its work in the areas of mutual legal assistance, extradition and the prevention of transnational crime, which includes the drafting of an international criminal law, can have a significant beneficial effect on the evidence law in those States. This change is often the result of an indirect influence from other areas of international law. For instance, the law of diplomatic immunity has influenced common law rules on privileges and immunities of witnesses or accused persons before international courts. Changes such as these are frequently made piecemeal, in response to pressing needs and without a clear overall plan. It is also possible that the evidence law of some States may change to meet modern international standards because it is to the advantage of the State's organs and government, it will enable them to give a better account of themselves in international fora.

7.1. United Nations and its specialized agencies

The first international organization worth mentioning here is the United Nations. The International Law Commission at its 16th session in 1964 entrusted the work of codifying and developing international law to the Commission on the Establishment of a United Nations Criminal Court. In pursuance of the objective of bringing about a code of crimes against the peace and security of mankind, it prepared a draft statute of an International Criminal Court. The draft statute was debated at the General Assembly in 1994 and the Assembly at its 49th session decided to convene an international conference of plenipotentiaries with a view to establishing such a court. A preparatory committee was set up in pursuance of Resolution 50/52 of 1995 and after the General Assembly had considered the report which the committee submitted to it in successive sessions, it decided that an international conference of plenipotentiaries be convened to establish an International Criminal Court. A preparatory committee was set up in pursuance of Resolution 50/52 of 1995 and after the General Assembly had considered the report. When the International Criminal Court came into being, the United Nations and its Secretary-General rendered all possible assistance to the court in its early years, as reflected in the support by the General Assembly and the relevant resolutions of those organs of the court with which the United Nations has a policy of continuous interaction. Since the start of its work, the United Nations established a close relationship with the court, the nature of which is largely influenced by its commitment to the cause of international criminal justice. The United Nations and its various organs are considered to have been the principal advocate of the concept of international criminal justice with a permanent International Criminal Court.

7.2. International Criminal Court

The Rome Statute thus grants the International Criminal Court the authority to request international cooperation in regard to surrender of suspects, assistance in the arrest or transfer of accused persons, witnesses and experts, interim release of the accused, providing them with protective measures and facilitating their legal representation, relocation of witnesses and, more importantly, the Court may also seek the cooperation of intergovernmental organizations and, where appropriate, non-governmental organizations for the purpose of obtaining assistance. This notion is not implemented by any other criminal tribunal and thus reflects the uniqueness and dynamism of the ICC. The mechanism through which the ICC seeks to fulfill its aims of international justice is best illustrated by its evidence-gathering procedures. All too often the prosecution of crimes in domestic legal systems neglects to satisfactorily investigate and prosecute those in higher echelons of power and authority. This translates into the difficulty experienced by the ICC in obtaining evidence of crimes, whether by acts or omissions, committed by persons at this level. Particular consideration must be given to the fact that due to the nature of international crimes and their commission during civil conflict or in failed states, evidence is often inaccessible and witnesses, if available, are generally very reluctant to come forward.

7.3. Regional organizations and their contributions

In 1974, the Arab League was the first regional organization to conclude a treaty with the United Nations. As a result of this agreement, it has been given the ability to participate in the work of the United Nations in areas that are applicable to its own. Measures taken by the United Nations have implications on the Arab world, and thus it is hoped that there will be a harmonization of the international law being developed at the UN with that of the Arab League. This could, in turn, help the UN in the future by serving as an example of a regional organization that has adopted a similar framework of international law developed at the UN into its own. This would have future benefits for the UN with regards to cooperation in areas of joint concern, such as the maintenance of international peace and security.

Arab League and its role in facilitating international criminal evidence constitute one of the many regional organizations that have contributed to the development of international criminal law. Various statutory bodies have been formulated within the Arab League, such as the Arab League Council, the Arab Court of Justice, and the Economic and Social Council, to name a few. They have played important parts in developing the framework for international law within the context of the Arab world.

8. CHALLENGES AND SOLUTIONS IN THE USE OF INTERNATIONAL CRIMINAL EVIDENCE

Language barriers in the use of foreign evidence refer not only to the spoken or written word, but also to the meaning or context behind words, which may differ between languages. Problems often arise in the translation of witness statements or the interpretation of evidence given in the courts. An example of the complexities involved in translation can be found in the case of Radislavic, in which the Trial Chamber had denied the use of evidence from a witness. The Appeals Chamber discovered that the evidence had been translated by a person who was found to be biased, resulting in an incorrect translation of the witness statement. A similar problem occurred in the Tadic case, where the Defence counsel had sought to challenge every transcript of intercepted conversation from the prosecution, claiming that there were too many mistakes in the transcripts to use them as evidence. This encompassed the enormity of the language difficulties that the ICTY may face. The solution to such language problems may be the reliance on the use of international standard in languages such as modern Latin or Esperanto, although this is highly unlikely. In reality, the most common solution will be to try and unify the different standards of interpretation and translation between languages, through training and guidelines for interpreters and translators. This may be an arduous task, although the quality of translation is likely to improve over time.

8.1. Language barriers

The NGO study on the Yugoslavia Tribunal highlighted the substantial problems that arise from language barriers between evidence sources and international criminal tribunals. The tribunal has encountered over 27 languages, with an ever-changing translating staff. The quality of translation and interpreting has been identified as a key factor in the success of the tribunal as a whole. Both translation and interpreting are in much demand but short in supply within the field of international criminal law. This often results in a less than satisfactory service for the many different language users. Although national authorities, organizations, and individuals are expected to bear the costs of their own translation and interpreting, the registrar's language services also provide services for all other international and ad hoc courts and tribunals. Translation is generally used for documentary evidence, with interpreters most in demand for spoken testimony. The evidential value of witness testimony is greatly reduced if the witness does not speak the tribunal's working language. Subsequent to a number of sub-standard translations of testimony, the International Criminal Tribunal for Rwanda found it necessary to implement a system of translation review, where the translation of all testimony is checked by a second translator. This, in turn, doubled the tribunal's interpreting costs. The study concludes that the inability to source high-quality translation and interpreter services, particularly for the tribunal's three working languages, has inhibited the quality of evidence collection and may have detrimental effects on the achievement of fair testimony. An interesting modern solution to the overwhelming demand for translation and interpreting is the use of machine translation (comparable to translation software used on the Internet), although quality and reliability are still an issue for this relatively cost-free option.

8.2. Cultural differences

Decision makers in cases involving international criminal evidence may encounter a range of cultural differences (including differences in worldview, attitudes towards law, and evidentiary norms) between their own and the source community. These differences can interfere with accurate fact finding of the evidentiary truth, with negative implications for justice. To

illustrate, the ICTY Appeals Chamber recognized that only through a comparative analysis of the structured decision-making process in the French and English adversarial systems could it correctly evaluate whether certain statements of a French investigative judge, prepared out of court, should be admitted as evidence. Similarly, in the Tadić Tribunal, it was recognized that "classic common law criteria for establishing a hearsay exception find no direct equivalent in many continental legal systems [and] measures to ensure the reliability of the evidence such as the "confrére à confrére" procedure in France [an examination of one judge by another] were clearly intended to fulfill the same or similar function, though the procedure may look quite different than what one would expect to find in a common law legal system".

8.3. Technology and digital evidence

A videotape, on the other hand, is a permanent record that depicts events as they happened and can be replayed numerous times. There have been suggestions that there is a need for changes in the rules of evidence to reflect this new type of evidence. It has been argued that there should be a presumption in favor of admission of technological evidence, which is then rebuttable. This was suggested by the judges in the Tadic case where they stated that "a flexible approach should be taken in assessing the relevancy, admissibility, and weight of evidence in the new technology." This approach removes the current situation where technological evidence falls under the catch-all rule in which it is often excluded. This is particularly important in cases where video footage is the only evidence available, such as the trial of Milosevic.

A common feature of international criminal trials is the extensive use of technology. The level of technological advancement in the courts of ad hoc tribunals and ICJ is usually higher than that of the countries from which international defendants originate; this was seen as a decidedly important factor in the Tadic trial. Technological evidence, such as video footage, computer data, and information from the internet, is now a common feature of international trials and is likely to increase in importance far into the future. Technological evidence differs from traditional written witness statements. A witness statement is derived from the perception and memory of the witness, and the evidence is based on a reconstruction of this.

Technology and digital evidence

9. CASE STUDIES: APPLICATION OF INTERNATIONAL CRIMINAL EVIDENCE IN JORDANIAN TRIALS

The section studies three important trials that have taken place in Jordan. While the information available is all too often partial and fragmented, the studies demonstrate a variety of approaches to the evidence and the common difficulties of proof of an international crime whether committed in Jordan or abroad. The section raises a number of common issues to all three forms of proceedings which are further investigated in the subsequent sections of the project. The case studies have been examined on the basis of primary evidence through interviews with the participants and where available secondary documentary sources. The author has had special access to the principals and primary sources involved in the Saddam trial as a result of serving as an international legal expert in the defence team. This material while not publicly available to a wider community has added to the material through the capacity to examine the trials from the perspective of the participants.

9.1. Notable cases involving international criminal evidence

In accordance with human rights treaties signed by Jordan, such as the ICCPR and the CAT, their findings indicated that deportation to Iraq of Qatada would amount to a breach of the non-refoulement of torture (Article 3 of CAT). Given that Jordan has a history of using evidence obtained through the use of torture at trials of political dissenters, the Jordanian judiciary's recent efforts to turn this practice around has a great deal to do with the international community's focus and orientation. This is clearly an issue as to where international influence has evidenced an impact on the human rights situation in Jordan and one which provides a case study as to how international pressure can lead to reforms conducive to human rights improvement. Qatada's trial showed a number of very positive signs regarding Jordan's treatment of international evidence. Throughout his various trials, Qatada was acquitted of all charges of terrorism. The first trial collapsed due to the judges' assessment that evidence provided by witnesses who were claimed to have been tortured in order to extract testimony from them was inadmissible. These individuals were later charged with involvement in the 2005 bombings in Jordan, and the court acquitted Qatada on the basis that this evidence could not be used against him; he was later convicted in absentia. This demonstrates the progress of Jordan's judiciary and its response to international influence in that because of

international pressure due to Qatada's ties with terror suspects in the UK, his later deportation from the UK to Jordan was made conditional on a treaty between the two countries and assurance granted by the Jordanian government to the UK that evidence of this nature would not be used against him. This is a clear demonstration of the proactive measures Jordan has taken to prevent the misuse of evidence which, in relevance to earlier discussions, is conduct driven predominantly by the desire for acceptance and reintegration into Western society.

9.2. Lessons learned from previous trials

Inadmissible evidence was a problem in the Al-Iraqi case due to a questioning of a witness through a video link. Because the defendant was not in the room at the time, he was answering the questions. He was not able to be cross-examined. This led to the judges at the ICC requesting the witness appear in person for the ICC trial to ensure the defense could cross-examine, which did not occur effectively at the ICTY. A similar problem of hearsay evidence was presented in the Tadic case, which had a controversial result. The evidence was too unreliable for the court to convict Tadic of the accusation. At the Special Court for Sierra Leone, there were many issues involving witnesses testifying under protection or anonymously. The trial of the leaders of the AFRC and RUF rebel groups had tremendous security concerns. In the Sesay et al case, the witnesses were afraid to testify about evidence of the accused due to fear of retribution. The ICTR had similar issues. In the Akayesu case, the witness who was testifying against an accused that had colonel status in the Rwandan army broke down during cross-examination and stated she was afraid for herself and her family.

10. CONCLUSION

In the light of the Rome Statute taking many of its theories and placing them into positive law, it was an appropriate time to analyze the effectiveness of the Statute within the context of the Jordanian legal system. One of the fundamental questions posed within the introduction to the Rome Statute within Anglo-American legal systems was whether a civil law system could effectively apply the common law principles of law. Thus far, this question has been answered ambiguously. Signs that Jordan is unwilling to apply the Rome Statute into domestic law were evident in the innovative approach taken by the Amman High Court in referring to the Act as a foreign treaty. This move allowed the court to hold that although it is bound by Article 94(2) of the Jordanian Constitution, it need only apply ratified treaties if they fit in the national interest. This would have an adverse effect on the Statute as the Court may have discretion not to apply legislation on the basis of necessity and this is not a criterion found within the Statute.

10.1. Summary of key findings

The study has focused on the intricate nature of international criminal evidence. In particular, the emphasis has been placed on analyzing the provisions of international criminal tribunals as well as appraising its treatment in the Jordanian legal system. Both systems have shown a desire to properly accommodate different forms of evidence, but struggle to effectively harmonize traditional local norms and principles with those of modern international criminal justice. This situation is not unique to Jordan, with a great many legal systems showing signs of adaptation to the increasing influence of international law. One highly notable point arising from the research is the suggested existence of a customary international criminal evidence law, which permeates through formal sources of international law and may bind both international tribunals and national courts. Through identifying traditional Islamic legal principles and exploring the mindset and attitudes of Jordanian legal practitioners, an understanding has also been gained of the difficulties faced by those operating within a legal system influenced by both historical French traditions and modern international law. This research has shown that while there is a perceived benefit in combating impunity and supporting the work of international criminal tribunals, there is some resistance to implementing radical change in evidence law and practice. Specific provisions of international evidence law are viewed as alien and often clash with local cultural sensitivities. The issue of respecting cultural difference while promoting the protection of universal human rights and criminal justice is one which both the international legal community and legal practitioners within many national systems continue to grapple with.

10.2. Recommendations for future developments

Another point to consider would be the clarification of the position of amnesty. Given recent issues, it could be said that this was not completely successful. However, clarification and an official statement of the position would be useful for future reference. This would assist in preventing the accused from arguing lack of evidence, insufficient commission of the

offense, or a defense. A clear precedent from the JIAC, Appeals Court, or Courts of Assizes for the crimes allegedly committed should have a better chance of success.

The promotion of any further International Criminal Tribunal involvement and the possibility of ICC intervention has also been noted. However, it was suggested that the ICC was not interested in taking over the case due to the cost, time, and resources. Former ICTY Prosecutor Sir Richard May did mention in his closing statement at the session of 11 March 2002 that "it is to be hoped that in the near future the accused will be brought to justice in a respected judicial process." This would signify performance by the ICC.

A final aspect I suggest is for the government to clarify the position with regard to customary international law. Whilst legislative amendment requires more than mere affirmation, this has not stopped the Jordanian courts from attempting to apply customary international law as part of Jordan's international law responsibilities. Given that applicable law is a fundamental principle of the administration of justice, any support in this regard would be worthwhile.

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