Egypt and Current Efforts to Criminalize International Crimes

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1. Introduction

Egypt has a well recognized justice system within the Middle East. The system would be able and willing to prosecute serious human rights violations. Both judges and prosecutors receive advanced legal education at least to a degree that meets international standards. Courts, moreover, are well functioning and enjoy a respectable degree of independence and impartiality. The principle of separation of powers is respected and renders the judiciary free, to an extent, from external pressures. However, the question remains, why do Egyptian courts avoid prosecuting international crimes? What are the existing impediments? What are the future remedies? This article examines these questions in three different sections. Section 1.1 will highlight the deficiencies under existing Egyptian laws and will attempt to demonstrate that a lack of definitions of international crimes and penalties is the major obstacle. Section

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1.2 expands on section 1.1. Its aim is twofold: first; to provide the reader with an overview of the existing forms of jurisdiction; second, to show that these forms only apply to ordinary crimes and are an inadequate means of enforcement. Finally, section 1.3 is the core of this study, as it explores the remedies for the existing shortcomings in Egyptian law. In so doing, it summarizes the latest initiatives taken by the League of Arab States and the International Committee of the Red Cross (ICRC Cairo delegation) and examines the ICRC proposed draft model law for the Crimes that fall under the jurisdiction of the International Criminal Court (ICC).

1.1. Deficiencies under Existing Laws

Egypt has ratified most of the significant international treaties that dealing with international crimes. Yet more than fifty years have passed since the ratification of the Geneva and the Genocide Conventions without any genuine attempt to include the grave breaches of the Geneva Conventions or the crime of genocide into the domestic law. Although Egypt is based roughly on a monist system which renders international treaties directly applicable into domestic law, the practical applicability of such treaties and some others may

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4 Said El Gaddar, ‘Tatbeek Al Kanoon Aldowaly Amam Al Mahkem Al Mesriah (Applying International Law Before Egyptian Courts)’, (Alexandria: Dar Al Matboaat Al Gamaeyah, 1999), p. 52; Adel Maged, Al Mahkmah Al Genaith Al Dowalish Wa Asieiah Al Wataniyah (The International Criminal Court and State Sovereignty), (Cairo: Al-Ahram, 2001), p. 111; See also the 1980 Constitution of the Arab Republic of Egypt, After the Amendments Ratified in May 22, 1980 Referendum, art. 151(1), reprinted in, Albert P. Blaustein & Gisbert H. Flanz, ‘Constitutions of the Countries of the World’, (New York: Oceana Publications, 1991, p. 38 [hereinafter Egyptian Constitution], Article 151, which reflects the monist approach, stipulates that: “The President of the Republic shall conclude treaties and communicate them to the People’s Assembly, accompanied with suitable clarifications. They shall have the force of law after their conclusion, ratification and publication according to the established procedure. However, peace treaties, alliance pacts, commercial and maritime treaties and all other treaties involving modifications in the territory of the State or having connection with the rights of sovereignty, or which lay upon the treasury of the State certain charges not included in the budget, must acquire the approval of the People’s Assembly”. However, the jurisprudence of the