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THE RIGHT OF AN ACCUSED TO CONFRONT PROSECUTION WITNESSES AS
GENERAL PRINCIPLE OF LEGAL SYSTEMS OF THE WORLD:
A COMPARATIVE ANALYSIS

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ABSTRACT

In its prescription of applicable laws, article 21(1)(c) International Criminal Court Statute ('ICC Statute') accommodates general principles of laws derivable from national laws of legal systems of the world provided that such general principles are in consonance with the International Criminal Court ('ICC')'s enabling instrument and international human rights standards. To this extent, this article assesses some legal systems of the world, notably the common and civil law systems, to determine the extent to which the right of an accused to confrontation ('RtC') and the obligation of international criminal tribunals ('ICTs') to protect witnesses have been balanced under International Criminal Law ('ICL'). The rationale for this inquiry is multiple-fold. Firstly, ICTs, in some unique ways, feature mixed legal culture of both legal systems, having been hatched by the international community ('IC'), which consists of members from the various legal cultures of the world, at one time or the other. Secondly, the ICC's statute provides that recourse may be had to general principles of legal systems of the world, as a secondary source of applicable laws. Finally, the two legal systems represent the adversarial and inquisitorial features which have instigated the bulk of the debate in this regard, it is imperative therefore that the extent to which the conflicting interests have been applied and interpreted by these distinct legal systems be explored. To execute this task, this article is divided into four (4) parts. Whilst Parts one and two will individually examine the features of the RtC under the common and civil law jurisdictions respectively, Part three will draw comparative comments on both legal systems' practices on the RtC. Part four will conclude the article and recommend appropriately. The comparative comments reveal that, though, there seems to be some sort of practice on confrontation under civil law jurisdiction, the practice, however, does not, in the estimation of this study, satisfy the obligation to guarantee the RtC under International Human Rights Law, and consequently, ICL. Therefore, this article recommends that ICTs should, in the bid to ensuring the right of an accused to 'examine' or 'have examined', defer customarily to the general principles on the RtC recognized under common law jurisdictions if the interest of justice is to be seen as the ultimate.

Keywords: Human Rights, Prosecution, Common Law, Litigation.

