

## **Evaluating International Criminal Procedures: Inquisitorial, Adversarial, or Hybrid - Lessons for the Pakistani Legal System**

**Dr. Muhammad Ramzan Kasuri**

*Assistant District Public Prosecutor, Anti-Terrorism Court-I,  
Rawalpindi, Public Prosecution Department*

**Muhammad Zaigham**

*Civil Judge 1<sup>st</sup> Class-cum-Magistrate Section 30, Punjab District  
Judiciary*

**Akhtar Ali Ansari**

*LLM Scholar, University of Lahore, Lahore*

### **Abstract**

This Article examines two key aspects of international criminal procedure (ICP): the normative frameworks that govern ICP and procedures being utilized by International Criminal Tribunals (ICT) and Courts. It examines the established norms and practices of international tribunals. The discussion encompasses the formulation of standards, guidelines, and guarantees aimed at preventing judicial errors. It evaluates that whether ICP can be characterized as "adversarial," "inquisitorial," or "a blend of both". It examines the case law and legal framework of international courts and tribunals. Employing a comparative and analytical research methodology, this article demonstrates that a genuinely hybrid procedure has emerged through successive amendments to the ICT for the former Yugoslavia and its rules of Procedure and Evidence (RPE) and the formulation of the Rome Statute. This procedure effectively synthesizes elements from both traditions; common law (adversarial) and civil law (inquisitorial) into a cohesive international legal framework. The article emphasizes the convergence of legal positions across jurisdictions. The observed similarities in legal frameworks

arise from the universal recognition of the importance of justice in shaping human coexistence. However, the article acknowledges that the diversity in human minds leads to variations in devising solutions and creating means, explaining the inherent disparities in legal approaches across different contexts. It will be beneficial for Pakistan to adopt Islamic Criminal Procedure having hybrid criminal procedure that will improve the efficiency of our judicial system, ensuring swift resolution of criminal cases with effective outcomes.

**Keywords:** Adversarial, Criminal Procedure, International Criminal law, Inquisitorial, Hybrid Procedure

## **I. Introduction**

Over the past century, there has been a significant increase in global efforts to protect human rights, resulting in the creation of numerous international instruments dedicated to safeguarding individuals. This intensified focus on human rights has profoundly shaped legal framework across nations. Within the spectrum of international standards, the domain of criminal procedure has garnered special attention from the global community. The international community has placed great emphasis on establishing uniform standards for criminal procedures, prioritizing the right to due process and fairness (Gordon, 2006). Since 1948, numerous binding conventions and treaties have repeatedly affirmed and reinforced these fundamental principles. These international instruments articulate fundamental aspects of criminal procedure that governments are expected to adhere to. These include the right to liberty, life, security, equal protection, equal recognition before the law, freedom from torture, illegal detention, unlawful arrest and inhumanity, presumption of innocence, protection from degrading treatment, right of fair trial and fairness, assistance of counsel, right of expeditious and speedy trial, the right to appeal, protection from double jeopardy, and protection from ex post facto laws (United Nations 2003). The internationalization of criminal procedure has mirrored its constitutionalizing, echoing the words of Martin Luther King that "injustice anywhere is a threat to justice everywhere" (Kareem 2020). This reflects a global acknowledgment of the interconnectedness of justice and the need for consistent standards. However, concerns persist within the international community due to instances of abuse

and misuse of the criminal process (Bassiouni, 2014). Addressing these concerns, organizations like Amnesty International have taken proactive steps to promote fairness in criminal proceedings. Notably, Amnesty International prepared a comprehensive Fair Trial Manual listing 32 human rights principles. This manual serves as a guide to ensure that individuals undergoing criminal processes receive fair treatment and are not subjected to unjust punishment. In essence, the global discourse on criminal procedure underscores the shared commitment to upholding human rights and fostering a just and equitable legal environment for all (Amnesty International, 2014).

### **I.I. Background**

The aftermath of World War II brought about a profound shift in the perception of individual rights, casting them as sacred and immune from state encroachment. In response, nations globally enshrined these fundamental rights within their constitutions, emphasizing explicit guarantees. Judicial decisions underscored the imperative for states to respect and uphold these rights. The momentum was further fueled by international law, as exemplified in landmark agreements like the Charter of United Nations (U.N), the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), and the International Bill of Rights. These agreements laid the foundation for a shared understanding of how states should treat individuals, especially in legal proceedings, ultimately shaping constitutional criminal procedures worldwide (Amann, 2000). In the early decades of the 20th century, a groundbreaking paradigm in constitutional criminal procedure began to take shape in the United States. This innovative model, rooted in the principles of the separation of powers and judicial independence, unfolded against the backdrop of an evolving relationship between the government and its citizens. The birth of constitutional criminal procedure was spurred by a growing call for human autonomy, echoing through the formal dynamics between the governing bodies and the individuals they serve. While the origins of this transformative approach can be traced back to European legal traditions, it was in the United States that the model truly matured and came into its own. The literature of the time reflects a dynamic interplay of ideas, a fusion of historical influences, and the unique American experience, all converging to shape a constitutional

criminal procedure that would stand as a beacon of legal innovation (Amann, 2000). The model of constitutional criminal procedure stands as a distinctive feature within the landscape of United States legal scholarship. Yet, its roots trace back to Europe, where post-revolutionary reforms introduced elements of the accusatorial criminal procedure, commonly found in common law systems, into the prevailing inquisitorial method on the European continent. In the mid-twentieth century, collaborative efforts emerged in the repercussion of World War II to bring individuals accused of war crimes to trial. This endeavor resulted in the formulation of a criminal procedure code that artfully blended aspects of both methods. The post-World War II era ushered in a perspective emphasizing the need for international law to balance the interests of states while safeguarding the rights of individuals. During this period, there was a horizontal alignment of states with human rights treaties, echoing the fair-trial guarantees enshrined in the U.S. Bill of Rights. Civil liberties groups, non-governmental organizations, and individuals played pivotal roles in shaping U.S. constitutional criminal procedure. Their contributions, manifested through public criticism, lobbying, and grassroots activism, exerted pressure on states and international organizations to uphold the rights of the accused. This dynamic interplay not only enhanced the attractiveness of the constitutional criminal procedure model but also aligned it more accurately with the evolving currents in legal literature (Amann, 2000).

## **1.2. Literature Review**

The exploration of fundamental safeguards against unfair trials within the global context is intricately woven into a rich tapestry of international legal instruments. These safeguards find expression in treaties, namely Covenants, Conventions, Charters, and protocols, which hold legal sway over states that are signatories to these agreements. Additionally, they manifest in non-treaty instruments, such as Declarations, Principles, Rules, and Guidelines, reflecting the international community's consensus on the standards to which states are expected to adhere. Furthermore, these safeguards extend to customary international law, a binding force applicable universally. This literature review seeks to unravel and illuminate the comprehensive framework that underpins the international commitment to ensuring fair trials, exploring the legal

provisions and collective global efforts that underscore the significance of this imperative legal undertaking. In the sphere of international human rights, numerous standards and instruments have been developed to protect the dignity and rights of individuals worldwide. These standards are generally divided into universal treaty standards and non-treaty standards, both essential in shaping human rights protection. Universal treaty standards include a range of agreements such as ICCPR, the Convention on the Rights of the Child, the Convention against Torture and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). These treaties offer a comprehensive framework to address various aspects of rights and liberties such as civil and political, and the rights of migrants and persons with disabilities. Universal non-treaty standards, including key documents like the UDHR and Principles such as the basic principles on the independence of the judiciary, complement treaty standards. These universal guidelines are crucial for shaping legal systems and safeguarding individual rights, irrespective of nationality or status. Furthermore, regional treaties and instruments developed by intergovernmental organizations - such as the American States' Organization, the European Council, African Union and Arab States' League - have played an important role in advancing human rights standards. Additionally, the statutes and rules of ICCs, such ICTY, and permanent ICC, have emerged as pivotal sources for international standards in criminal procedure, ensuring a fair trial for all.

For the purpose of our current discussion, we have reviewed eleven international instruments, as follows: I) Convention Against Torture, (UN, 1984); II), Convention on Racial Discrimination (UN 1966); III), ICCPR (UN 1966); IV) Fundamental Freedoms (UN, 1950); V) Body of Principles (UN, 1988); VI) UDHR (UN, 1948); VII) U.N standard for prisoners' protections (UN 1956); VIII) European Convention on Protection of Detainees] (EC, 1987); IX) African Charter (ACOHPR, 1981); X) American Convention on Human Rights, (ACOHR, 1951); XI) ICJ (ICJ, 1945) and ICC (ICC, 1998).

### **1.2.1. Work of Prof. Mahmoud Cherif Bassiouni**

When examining the literature on ICL – its mechanisms, historical evolution, and contemporary relevance – one name stands out prominently: Professor

Mahmoud Cherif Bassiouni (1937-2017), an Egyptian-born scholar based in America who has recognized as the godfather of international criminal justice (ICJ). He has edited 45 books and authored 23 books along with crafting 242 book chapters, journal articles and other legal publication on ICL, U.S Criminal law, Human rights and comparative law Bassiouni's profound contributions have made him the foremost authority in this field. For researchers exploring inquiries within ICL, Bassiouni's extensive body of work serves as a cornerstone. This study predominantly draws upon his authored books and articles, which offer invaluable insights. One of the decisive works of Bassiouni is his book, "Introduction to ICL" which serves as a comprehensive resource on the subject. Within its pages, readers are guided through the evolution of ICL, its procedural and operational frameworks, the establishment and jurisdiction of ICTs, including preparatory insights into the Rome Statute (Bassiouni, 2013). Bassiouni thoroughly explores the intersection of International Criminal Justice and human rights in his book "Globalization and Its Impact on the Future of Human Rights and International Criminal Justice" (Bassiouni, 2015) In his influential work "Crimes Against Humanity in ICL," (Bassiouni, 2011). Professor Bassiouni delivers a concise yet comprehensive examination of the historical roots, legal status, and contemporary challenges surrounding crimes against humanity. Exploring its origins, treaty law implications, and the concept of universal jurisdiction, Bassiouni adeptly navigates the complex landscape of international justice. Equally groundbreaking is Professor Bassiouni's contribution in "ICL: A Draft International Criminal Code," (Bassiouni, 1980) in which he outlines a visionary blueprint for the establishment of a future ICC. Through meticulous drafting and adherence to fundamental legal principles, he presents a model that holds promise for advancing global accountability. In his collaborative effort with colleagues in "ICL: Cases and Materials," (Paust, Bassiouni and Scharf, 2013), Bassiouni provides a vital resource detailing pertinent case law and materials in the field of ICL. In his work "International Extradition: U.S Law and Practices," (Bassiouni 2014) Bassiouni explains the traditional and conventional notions surrounding extradition within the framework of the ICJ system. In his book "ICL Conventions and their Penal Provisions," (Bassiouni, 2023). Professor

Bassiouni meticulously discusses the depths of international crimes as defined by treaty law. Within its pages, he meticulously outlines a comprehensive list of criminal conventions, each with its own set of penal provisions and procedure. Likewise, in "The ICC: An Introduction to Domestic Implementation of the ICC Statute," Bassiouni eloquently presents a blueprint for the integration of the ICC Statute into domestic legal frameworks. In the realm of safeguarding human rights through the ICJ system, Bassiouni's edited volume, "The Protection of Human Rights in the Administration of Criminal Justice: A Compendium of U.N Norms and Standards," serves as a valuable repository of data and insights. Similarly, an array of literature discusses ICL and justice by various scholars. Take, for example, Antonio Cassese's comprehensive exploration of ICC, offering a broad perspective on its application and enforcement mechanisms. Cassese's work provides a foundational understanding of the subject's development and principles. In a similar vein, David Stewart's ICL in a Nutshell discusses the historical evolution, structure, and jurisdiction of ICT and the ICC. Stewart's book offers a detailed descriptive analysis of key concepts within the field.

These influential works serve as indispensable resources for understanding the development and principles of ICP law, making them essential additions to any scholar or practitioner's library. This comprehensive array of standards, drawn from diverse sources, underscores the dynamic and evolving nature of the international human rights framework. As we discussed the literature in detailed, it becomes evident that these standards collectively form a rich tapestry of principles, guidelines, and treaties that collectively strive towards a world where the rights and dignity of every individual are universally recognized and protected.

## **2. Internationally Protected Human Rights in Criminal Process**

In our discourse of internationally protected rights during criminal process, we explore different rights, clusters of rights and general protections provided by the international instruments to the citizens during the administration of criminal justice system. These instruments not only bear witness to global acknowledgment of certain rights but also reflect their legal recognition by national states in their constitutions. The harmonious existence of these rights in both spheres; international instruments and national constitutions

make them general principle of international law (Bassiouni 2014). The paramount significance of these rights emerges in the pursuit of fairness within the criminal process. Devoid of these safeguards, there exists a perilous vulnerability to the arbitrary curtailment of individual liberty through the manipulation of legal proceedings. The crucible of the criminal process often becomes the stage for the infringement of fundamental human rights. Amnesty International, a vanguard in the defense of human rights, meticulously outlines 32 procedural safeguards and guarantees—26 general and 6 specials. Ten safeguards are available at the pre-trial stage which include the ‘right to liberty’, ‘rights of people in custody to information’, ‘right to legal counsel before trial’, ‘right of detainees’ to have access to the outside world’, ‘right to be brought promptly before a judge’, ‘right to challenge to the lawfulness of detention’, ‘right of timely trial or release’, ‘right of adequate time and facilities for defense preparation’, ‘rights during questioning’, and ‘humane detention conditions free from torture’(Amnesty International, 2014). Transitioning to the trial stage, Amnesty International expounds upon 16 safeguards, encompassing ‘equality before the law and courts’, ‘trial by a competent, independent, and impartial tribunal established by law’, ‘a public hearing’, ‘a fair hearing’, ‘the right against self-incrimination’, ‘presumption of innocence’, ‘trial without undue delay’, ‘prohibition of retrospective application of laws’, ‘exclusion of evidence obtained in violation of international standards’, ‘the right to defend oneself in person or through counsel’, ‘the right to call and examine witnesses’, ‘presence at trial, and appeal, ‘interpretation and translation’, ‘the right to judgment’, acquittal or conviction, and the ‘right to appeal’ and retrial (Amnesty International, 2014).

Special considerations merit an additional 6 safeguards, addressing unique circumstances such as cases involving ‘children’, ‘the death penalty’, ‘compensation for miscarriages of justice’, ‘special, specialized, and military courts’, ‘fair trial rights during states of emergency’, and ‘fair trial rights in armed conflict’. In essence, this mosaic of rights forms the bedrock of a just and equitable criminal justice system, ensuring the protection and dignity of individuals navigating its complexities (Bassiouni, 2011).



### **3. International Criminal Procedure**

What is international criminal procedure? What are the sources? What is its nature? The ICP, rooted in the fabric of public international law, draws its legal foundation from the authoritative channels outlined in Article 38 of the Statute of the ICJ. These pillars include treaties or conventions, embodying collective will of nations; customary international law, epitomizing the sustained actions of states, grounded in the conviction that such behavior aligns with, or is mandated or proscribed by, international law; the overarching principles of law acknowledged by states, often derived from their domestic legal systems; and as a supplementary source, insights from judicious rulings and scholarly works of the most esteemed legal scholars and practitioners. This intricate web of legal sources harmonizes to sculpt the framework of ICP, ensuring its depth and resilience on the global stage (Statute of ICJ, 1945). The ICP is intricately woven from well-established sources within international law. Rooted in fundamental human rights principles, it stands as an indispensable component of the broader framework of ICL. The essence of the rules governing ICP is not confined solely to the treaties establishing ICTs; it is equally grounded in the foundational principles that shape the human rights regime. The seamless alignment of these procedural rules with the overarching principles of human rights framework is pivotal. The genesis of ICP is not only evidence in the treaties establishing ICT but is also deeply rooted in the underlying principles that define the architecture of human rights regime. The harmonious integration of these procedural rules with the fundamental tenets of the human rights framework is imperative. It is imperative to emphasize that all ICTs explicitly mandate the observance of fair trial rights derived from Article 14 of the ICCPR. This explicit acknowledgment underscores the commitment to upholding the principles of justice and fairness in the pursuit of ICJ (Boas, Bischoff, Reid and Taylor, 2011). The evolution of ICP has been significantly shaped by the paramount role played by international instruments in safeguarding human rights. This transformative journey encompasses a vast spectrum of treaties, non-treaty instruments, state customary practices, and the legally binding essence of general principles of law. The traditional arguments grounded in sovereignty, which once opposed

the application and acknowledgment of internationally protected human rights, now stand invalidated. The protective framework for human rights manifests as a harmonious convergence of treaties, customs, national legislation, and jus cogens norms. This amalgamation allows international human rights to permeate areas previously confined within the boundaries of domestic law. The intricate interplay of these elements not only underscores the interconnectedness of legal systems but also heralds a new era where the international community collectively embraces the imperative of upholding and enforcing fundamental human rights (Bassiouni, 2014).

#### **4. Rules of Procedure of International Criminal Tribunals and Court and their Nature**

In the criminal procedure of the ICTs, a compelling trend toward procedural hybridization has emerged, giving rise to numerous innovative procedural developments. This evolution prompts a profound reconsideration of the roles played by various actors in the justice process, as they mold their distinctive features and align with policy considerations (Stahn, 2019). While ad-hoc Tribunals ostensibly adhere to the adversarial model in their structure, they have seamlessly integrated procedural elements from the civil law system to a significant extent. This harmonious fusion not only enhances their operational efficiency but also underscores their commitment to a comprehensive and fair adjudicative process, (Mundis, 2001). The ICC employs a dynamic procedural framework derived from diverse legal traditions across the globe, enhancing its adaptability and efficacy (Kuczynska, 2015).

##### **4.I. Development & Trends**

After World War-II, the United Nations has played a pivotal role in establishing several ICTs to address the grave offences committed during the conflict. These tribunals stand as a testament to the global commitment to justice and accountability, showcasing a collective determination to hold perpetrators accountable for their actions on the world stage. The international Military Tribunal for Nuremberg (IMT) was established in 1945 to prosecute major war criminals of the Third Reich after World War II. Following this, the IMT for the Far East was formed in 1946 to address war crimes committed by Japanese military leaders. In 1993, the ICTY was

established to adjudicate crimes stemming from the Balkan conflicts. Following this, the ICTR was seated in 1994 to address the Rwanda genocide. The establishment of the ICC in 1998 marked a significant milestone in international justice, providing a permanent institution to prosecute individuals for the most serious crimes of global concern. Collectively, these tribunals and the ICC form essential pillars in the pursuit of global accountability and promotion of international justice. The ICTs and courts serve as dynamic laboratories for procedural innovation. The foundational Charters of special criminal tribunals, such as Nuremberg and Tokyo International Military Tribunals (IMTs), empowered each tribunal to establish its own rules of procedure. Consequently, these tribunals were significantly shaped by the influence of domestic procedural norms, particularly the Anglo-American adversarial system. The adversarial feature embedded in these tribunals' procedures were notable, encompassing crucial elements such as the right to legal representation, the defendant's entitlement to a detailed indictment, the ability to conduct one's defense, and the parties' rights to present evidence, examine witnesses and cross-examine them. The infusion of inquisitorial features added another layer of complexity, featuring elements such as the defendant's right to explain themselves at a preliminary hearing, trial by a panel of judges rather than a jury, relaxed rules on the admissibility of evidence, and the possibility of conducting trials in absentia. While the procedural mechanism of these tribunal was fundamentally fair, the protection afforded to the accused was not exhaustive and omitted certain rights, such as the right to remain silent or to appeal against a conviction. This intersection of adversarial and inquisitorial elements within international criminals reflects a well-known approach to justice, fostering an environment where procedural experimentation occurs at the intersection of diverse legal traditions (Cryer, Friman, Robinson and Mshurst, 2010). The evolution of the ICTY marked a distinctive fusion of adversarial and inquisitorial elements (Ambos, 2003). The Statutes of ICTY and ICTR offered limited guidance on the Rules of Procedure and Evidence, granting judges the authority to establish detailed rules. in the pursuit of an effective and expeditious legal process, the tribunals adopted a distinctive blend of adversarial and inquisitorial elements. While not strictly adhering to either procedural model,

the ICTY leaned towards a more adversarial approach. In an effort to streamline proceedings and mitigate delays, the tribunal incorporated inquisitorial elements, such as augmenting judges' supervisory powers. This included the exercise of inherent powers by judges, extending beyond traditional applications to routine matters like ordering disclosure and managing counsel withdrawals. This nuanced procedural approach aimed at achieving a balance between efficiency and fairness, showcasing a unique and pragmatic response to the complexities of ICJ system (Mundis, 2001 and Symons, 2003). The initial draft of the ICC Statute primarily embodied an adversarial approach. However, as the negotiations unfolded – bearing in mind that the Statute of the ICC is a treaty subject to negotiation among states – there was a discernible shift towards incorporating more features of the inquisitorial model. Within the ICC Statute, intricate procedural rules were meticulously discussed and agreed upon by participating states, resulting in the establishment of crucial bridges that seamlessly integrate elements from both adversarial and inquisitorial models of legal procedure. In navigating the procedural intricacies of the ICC, one observes a departure from the rigid confines of pure adversarial or inquisitorial frameworks. Remarkably, the language embedded in the ICC's procedural law does not align with any specific pre-existing hybrid system. Instead, it presents a compelling and unique compromise structure. The delicate equilibrium between adversarial and inquisitorial elements has been intentionally entrusted to the discernment of the judges, emphasizing a dynamic and adaptive approach to justice within the international legal sphere (Kress, 2003). While comprehensive procedural rules were established through negotiations among states parties, the judges of the ICC were additionally vested with the authority to formulate Regulations of the Court. These regulations serve to govern procedural aspects of substantive significance, enhancing the efficiency and efficacy of the court's proceedings (Art. 52, ICC Statute). The judges were vested with the authority to 'apply principles and rules of law as interpreted in their previous decisions', thereby ensuring a consistent and well-grounded application of legal standards (Art. 21, ICC Statute).

### **5. Office of the Prosecutor (Otp) In Icc**

The office of the Prosecutor in the ICC is an important, independent and powerful pillar within the Court. Article 42(1) provides that the Office of the Prosecutor operates as an independent entity within the Court, tasked with receiving referrals and verified information on crimes under the court's jurisdiction. It examines these cases, conducts investigations, and prosecutes offenders before the Court. Members of the Office are strictly prohibited from seeking or acting on instructions from any external sources. It has responsibility to scrutinize situations related to gravest of offences such as war crimes, genocide, crimes against humanity and aggression which are within the Court's jurisdiction. For the first time in history, an international prosecutor holds a remarkable mandate, endorsed by an increasing number of states, making a significant milestone. The OTP has empowered to autonomously and impartially select situations for investigation where atrocity crimes have scarred the territories or been committed by the nationals of member states. Like the judges of ICC, the Prosecutor and Deputy Prosecutor are elected by the Assembly of States Parties (ASP) for the period of nine years. The OTP has power to investigate. Under the Article 15(1), the Prosecutor can take *suo muto* (*proprio motu*) action and can initiate investigation on the basis of information of crimes falling under the jurisdiction of the Court (Art. 15, ICC, 1998). If the prosecutor deems the information reasonable, they will submit a request to the Pre-Trial Chamber for authorization to investigate. Should the Court find a reasonable basis for the investigation, it will grant the Prosecutor the authority to proceed. (Art. 15, ICC, 1998).

### **6. Theory of Convergence**

Exploring the nature of ICP - whether it has shaped by an adversarial, inquisitorial or a harmonious blend of both system – reveals a convergence of elements from both systems of procedure. This synthesis reflects the evolving nature of global legal practices. The Procedural frameworks of the ICTY, ICTR and ICC have shaped by a synthesis of domestic legal procedures. Consequently, they have evolved into a unique hybrid system, blending adversarial and inquisitorial elements. This innovative approach was crafted to establish a cohesive and balanced whole, strategically integrating key

features from diverse domestic legal systems. The goal was to ensure proceedings in criminal cases are not only fair but also highly effective (Cryer, Friman, Robinson and Mshurst 2010). The ICP operates primarily within an adversarial framework, yet it incorporates numerous civil law inquisitorial elements that significantly influence legal proceedings. Within the realm of the ICC, an increasing prevalence of procedures rooted in civil law principles is evident, surpassing the practices observed in the ad hoc Tribunals. This amalgamation of adversarial and civil law aspects not only defines the structural foundation of international criminal procedure but also enhances the depth and sophistication of legal processes, contributing to a more dynamic legal landscape (Boas, and others 2011). These two procedural systems, particularly in their application within the realm of criminal justice, exhibit notable distinctions. Within the Common law adversarial system, the court typically maintains a hands-off approach, refraining from substantial interference in the case's preparation and to a considerable extent, its proceedings. Conversely, in civil law inquisitorial criminal system, the court plays a substantial and active role throughout the entire process, starting from the investigative phase. To illustrate, in France, an investigating judge takes charge of directing the investigation and holds the authority to decide whether a criminal trial will move forward (Boas, and others 2011). An in-depth examination of the legal frameworks governing the ICTs such as ICTY and ICTR elucidates a transformative evolution in their procedural methodologies, transitioning from an adversarial approach to a nuanced mixed procedure. This evolution is meticulously traced through a series of amendments in their RPE. The drafting of ICC's Statutes stands out as a pivotal juncture where the amalgamation of adversarial and inquisitorial elements laid the groundwork for the development of ICP. The significance of this shift lies not merely in categorizing rules as adversarial or inquisitorial, but rather in assessing whether each specific rule aligns with fundamental fair trial standards. Central to this evaluation is the imperative question of whether the rule effectively aids the tribunal in fulfilling its responsibilities, ultimately facilitating the attainment of a just decision. This approach underscores a commitment to procedural excellence and equitable justice within the realm of ICL (Ambos, 2003).

The essence of ICP lies in its unique nature, allowing it the flexibility to draw upon diverse legal traditions or craft innovative rules autonomously. This inherent adaptability aims at fostering proceedings that are not only fairer but also more efficient and transparent, serving the overarching goal of justice on a global scale (Boas & others, 2011). The ICP has foundation on international human rights law and fundamental principle of the right to a fair trial. The sui generis framework of ICP adeptly integrates elements from both accusatorial and inquisitorial systems. While the proceedings before ICTs lean towards an accusatorial or adversarial approach, they simultaneously incorporate distinctive features uncommon in common law practice. These include proactive judicial involvement, active participation of victims, adaptable rules governing the admissibility of evidence with minimal exclusionary constraints, a discouragement of plea bargaining, and a steadfast refusal to engage in witness proofing. This unique amalgamation not only ensures a fair and rigorous legal process but also sets the international criminal justice system apart with its progressive approach (Boas & others, 2011). The establishment of ICTs played a significant role in promoting convergence. These institutions created a forum for prosecuting individuals for the most serious international crimes, fostering a common approach to the legal procedures. The hybrid criminal procedural system emerged which involves integrating foundational components from both criminal procedures; the inquisitorial and adversarial. Nevertheless, in the latest advancements, there has been a notable integration of additional inquisitorial elements into the framework of ICP, enhancing their overall effectiveness and fairness.

#### **7. Nature of Criminal Procedure of Pakistan**

There is no explicit provision in the Code of Criminal Procedure (Cr.P.C) 1898 of Pakistan stating that our system is adversarial or inquisitorial. However, this can be inferred from the fact that our legal system, developed by British colonial rulers, is rooted in the common law tradition, which is adversarial in England. Alternatively, one might infer that Pakistan, being an ideological state with Islam as its state religion and foundational ideology, should reflect Islamic principles (Kareem, 2020). However, in practice, the courts follow the adversarial mind set and criminal trials are being regulated under the rules of adversarial procedures. The criminal trial judges remain

passive during the trial. Although the Cr.P.C. integrates numerous inquisitorial elements to reduce the criminal court's passive role, criminal trial courts are still reluctant to fully adopt their active role as defined by these inquisitorial provisions. In various case laws of higher courts in Pakistan, different opinions have emerged regarding the nature of the country's criminal procedure. One perspective asserts that the criminal procedure is fundamentally adversarial, though it incorporates elements of the inquisitorial system (Muhammad Naeem case, 2019). Another viewpoint holds that the criminal procedure is primarily inquisitorial in nature (Ch. Muhammad Anwar case, 2021). A third opinion suggests that while the procedure is adversarial in civil cases, this is not the case for criminal matters (Abdul Latif Aasi case, 1999). Additionally, some argues that Pakistan's criminal procedure represents a fusion of both adversarial and inquisitorial system (Karim, 2020). The approach that magistrates and trial judges take –whether active or passive – throughout criminal cases, from inception to conclusion, significantly influences the dynamics of the criminal justice system of the country. Failing to articulate a clear approach may lead to heightened complexities due to the overlapping and sometimes conflicting domains of existing legal systems. A contemporary Islamic state must acknowledge the imperatives of modern governance, considering the pressures and demands it faces. Addressing these realities is crucial in formulating an approach that effectively resolves modern conflicts. Prompt recognition of these considerations will expedite the resolution of persistent legal issues. As previously mentioned, the hybrid criminal procedural system has emerged by integrating foundational elements from both the inquisitorial and adversarial procedures. This integration aims to enhance efficiency and expedite case resolution. Recent advancements have further incorporated additional inquisitorial elements into the ICP framework, significantly improving its effectiveness and fairness in achieving the swift disposal of cases. It is advantageous for our country to implement a hybrid legal procedure that enhances efficiency in the judicial system, ensuring prompt resolution of criminal cases with effective outcomes. The Islamic criminal procedure, combining elements of both inquisitorial and adversarial systems, is particularly well-suited to our nation's needs. Its unique approach ensures a



balanced handling of cases, as detailed by the researcher in a dedicated article (Kasuri, Abbas & Mustafa, 2024).

### **Conclusion**

The ICP has been founded on the legal principles enshrined in the human rights regime, encompassing fundamental elements such as due process and fair trial rights. The current paradigm has shifted from a rigid classification of legal proceedings as either ‘adversarial’ or ‘inquisitorial’. The focal point now centers on evaluating whether a given rule enhances the efficiency of Tribunals and aligns with fundamental fair trial standards. Recognizing the imperative for streamlined trial management, a UN Expert Group has proposed an enhanced role for judges, emphasizing their active involvement in overseeing trial direction and evidence collection. In this evolving landscape, it is suggested that a judge-led procedure, reminiscent of civil law systems, may be more adept at preventing delays arising from uncontrolled interactions between the involved parties. This innovative approach advocates for a truly mixed procedure, necessitating Prosecutors, Defense Counsel, and judges to possess comprehensive knowledge spanning both common and civil law. Such a skill set empowers them to transcend individual legal paradigms and collectively contribute to the overall effectiveness of the legal system. This dynamic integration of expertise not only streamlines proceedings but also fosters a more inclusive and effective legal environment. In the light of the discussion, it is beneficial for Pakistan to adopt a hybrid criminal procedure that improves the efficiency of our judicial system, ensuring swift resolution of criminal cases with effective outcomes. Drawing from the Islamic Criminal procedure, which integrates aspects of both inquisitorial and adversarial systems, proves to be exceptionally fitting for our nation. This approach offers a well-rounded method for handling cases, emphasizing balance and effectiveness.

### **References**

1. Ambos Kai, (2003) “International Criminal Procedure: adversarial, inquisitorial or mixed?” *International Criminal Law Review Vol. 3* (2003), 1. PP. 1-37. available at
2. [https://www.department-ambos.uni-goettingen.de/data/documents/Veroeffentlichungen/epapers/ICLR\\_2003-Intl\\_Crim\\_procedure.pdf](https://www.department-ambos.uni-goettingen.de/data/documents/Veroeffentlichungen/epapers/ICLR_2003-Intl_Crim_procedure.pdf) (last accessed 10.04.2024).

3. Amann Diane Marie, (2000), "Harmonic Convergence? Constitutional Criminal Procedure in an International Contest", *Indiana Law Journal*, Vol. 75, pp. 810-869 available at [https://ilj.law.indiana.edu/articles/75/75\\_3\\_Amann.pdf](https://ilj.law.indiana.edu/articles/75/75_3_Amann.pdf) (last accessed 20.04.2024).
4. Amnesty International, (2014), Fair Trial Manual second addition, available at <https://www.amnesty.org/download/Documents/8000/pol300022014en.pdf> (last accessed 14.04.2021). It is a practical and authoritative guide containing standards to international and regional community for fair trial in criminal proceedings before and during trial and during appeal.
5. *Abdul Latif Aasi vs. the State*, 1999 MLD 1069
6. Bassiouni M Cherif, (2023) *International Criminal Law Conventions and their Penal Provisions*, "New York: Brill.
7. Bassiouni, M Cherif (2015), *Globalization and Its Impact on the Future of Human Rights and International Criminal Justice* New York: Cambridge, Intersentia.
8. Bassiouni M. Cherif, (2014) *Introduction to International Criminal Law: Second Revised Edition*, Leiden. Boston, Martinus Nijhoff Publishers.
9. Bassiouni M Cherif, (2014) *International Extradition: United States Law and Practices*, New York" Oxford University Press, 6<sup>th</sup> Edition.
10. Bassiouni, M. Cherif, (2013), *Introduction to International Criminal Law*, New York, BRILL, 2<sup>nd</sup> Edition.
11. Bassiouni M Cherif, (2011) *Crimes against Humanity in International Criminal Law*, New York: Cambridge University Press.
12. Bassiouni M Cherif, (1980), *International Criminal Law: A Draft International Criminal Code*, Netherlands:, Cambridge.
13. Boas Gideon, Bischoff James L. Reid Natalie L. and Taylor III B. Don, (2011) "*International Criminal Law Practitioner Library, Volume III*", New York: Cambridge University Press. olume III of International Criminal Law Practitioner Library discusses realm of procedural law and practice observed by International Criminal Tribunals throughout the entire legal process – from the initiation of investigation to the culmination of trials, appeals, and the executions of the punishments. This Volume sheds light on the criminal procedure of International Criminal Court (ICC), the International Criminal Tribunal for the former Yugoslavia (ICTY), the International Criminal Tribunal for Rwanda (ICTR), other institutions such as the Special Court for Sierra Leone (SCSL) and internationalized tribunals. It explores how these tribunals, in response to emerging challenges and evolving circumstances, have played a pivotal role in shaping the dynamic evolution of international criminal procedure.
14. *Ch. Muhammad Anwar v. judge Accountability Court & others*, (2021), MLD 2021 LHC 648
15. Cryer Robert, Friman Hakan, Robinson Darryl and Mshurst Elizabeth Wil, (2010) *An introduction to International Criminal Law and Procedure*, 2<sup>nd</sup> Ed. New York, Cambridge University Press.
16. Gordon Gregory S., (2006) "Toward an International Criminal Procedure: Due Process Aspirations and Limitations", available at <https://law.bepress.com/cgi/viewcontent.cgi?article=7962&context=expresso> (last accessed on 14.06.2024).
17. International Court of Justice (1945), The International Court of Justice (ICJ) was established by the United Nations Charter in 1945 and began its work in 1946. Its statute is not under a separate resolution but is part of the United Nations Charter, which is the founding document of the United Nations. The ICJ is the principal judicial organ of the United Nations and settles legal disputes between states and gives advisory opinions on legal questions referred to it by the UN General Assembly, the UN Security Council, or other UN specialized agencies and related organizations. On the other hand, the International Criminal Court (ICC) was established by the Rome Statute, which was adopted on July 17, 1998. The Rome Statute entered into force on July 1, 2002, after it was ratified by a sufficient number of countries. The ICC is a permanent international court

- with the mandate to prosecute individuals for the most serious crimes of international concern, such as genocide, war crimes, crimes against humanity, and the crime of aggression. The ICJ was established by the UN Charter, while the ICC was established by the Rome Statute.
18. Kareem, Justice Fazal, (2020) *Judicial Review of Public Action Judicial Review of Public Actions*, Karachi: Pakistan Law House, 2<sup>nd</sup> Edition, 2020.
  19. Karim Justice Fazal, (2020) *Access to justice in Pakistan*, Karachi: Pakistan Law House, 2<sup>nd</sup> Edition.
  20. Kasuri Dr. Muhammad Ramzan, Abbas Dr. Sheer Abbas and Mustafa Raza ul (2024) "An Appraisal of the Nature of Islamic Criminal Procedure, Whether Adversarial or Inquisitorial?", *Al-Qamar, Volume 7, Issue 1* (January-March 2024), PP. 17-44
  21. Kuczynska Hanna, (2015) *The Accusation Model Before the International Criminal Court, Study of Convergence of Criminal Justice Systems*, Springer International Publishers, New York.
  22. Kress Claus (2003), "The Procedural Law of the International Criminal Court in Outline: Anatomy of Unique Compromise", *Journal of International Criminal Justice*, Vol. 1:3, PP-603-617. available at <https://doi.org/10.1093/jicj/1.3.603>.
  23. Mundis Daryl A., (2001) 'From "Common Law" Towards "Civil Law": The Evolution of the ICTY Rules of Procedure and Evidence', *Leiden Journal of International Law* Vol. 14, PP 367-382. available at <https://doi.org/10.1017/S0922156501000188>.
  24. *Muhammad Naeem v. State*, (2019) PLD 2019 SC 669.
  25. O.A.U (1981), African Charter on Human and Peoples' Rights, O.A.U. Doc. CAB/LEG/67/3/Rev. 5 adopted June 27, 1981, reprinted in 21 I.L.M. 58 (1982).
  26. O.A.S (1969), Nov. 22, 1969, O.A.S. Treaty Series No. 36, at I, O.A.S. Off. Rec. OEA/ Ser.A/16.
  27. Paust Jordan J., Bassiouni M Cherif, and Scharf Michael et.al, (2013) *International Criminal Law: Cases and Materials*, Carolina Academic Press, 4<sup>th</sup> Edition.
  28. Robinson Patrick L., (2005) 'Fair but Expeditious Trials', in *Hirad Abtahi*
  29. *Boas Gideon* (2005), *The Dynamics of International Criminal Justice: Essays in Honour of Sir Richard May*.
  30. Rome Convention of International Criminal Court (1998).
  31. Stahn Carsten, (2019) *A Critical Introduction to International Criminal Law*, New York: Cambridge University Press.
  32. The Code of Criminal Procedure (Cr.P.C) 1898 of Pakistan
  33. U.N (United Nations) (2003), *Human Rights in the Administration of Justice: A Manual on Human Rights for Judges, Prosecutors and Lawyers*, New York & Geneva: United Nations, 2003.
  34. U.N (1984), *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 39 U.N. GAOR, 39th Sess., Supp. No. 51, at 197, U.N. Doc. A/RES/39/46.
  35. U.N (1966), *International Convention on the Elimination of All Forms of Racial Discrimination*, General Assembly Resolution. 2200 (XXI), U.N. GAOR, 21st Sess., Supp. No. 16, at 52, U.N. Doc. A/6316.
  36. U.N (1966), *International Covenant on Civil and Political Rights*, General Assembly Resolution, 2200A (XXI) of 16 December 1966.
  37. U.N (1950) *Convention for the Protection of Human Rights and Fundamental Freedoms, Rome, 4(XI) of 1950*.
  38. U.N (1988), *Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment*, General Assembly Resolution. 43/173, U.N. GAOR, 43rd Sess., Supp. No. 49, at 297, U.N. Doc. A/43/173 (1988).
  39. U.N (1948) *Universal Declaration on Human Rights*, [referred to as *Universal Declaration*, General Assembly Resolution. 217A (III), U.N. GAOR, 3d Sess., at 71, U.N. Doc. A/810.

### Evaluating International Criminal Procedures: Inquisitorial, Adversarial, or Hybrid...

40. U.N. (1956), *United Nations Standard Minimum Rules for the Treatment of Prisoners*, Doc. A/CONF/6/I, Annex I, A, U.N. Sales No. 1956.IV.4 (1956).
41. U.N (1987), European Convention on the Protection of Detainees from Torture and from Cruel, Inhuman or Degrading Treatment or Punishment.