

Research Article

The Intersection of International Criminal Law and Human Rights Law: A Philosophical Inquiry into the Paradox of Justice

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Abstract

The present study investigates the nexus of international criminal law with human rights law, which, in turn, unveils the tensions between the pursuit of justice and the protection of human rights. A critical examination of key legal instruments, beginning with the Rome Statute and Universal Declaration of Human Rights, reveals divergent assumptions underlying these fields. The paradox of justice stems from disjunct approaches of international criminal law and human rights law: retributive justice is the main focus of international criminal law and its purpose, placing its emphasis on the punishment of transgressors; while human rights law looks at restorative justice and human dignity protection. The proposed study aims to bridge this paradox by establishing a philosophic construct incorporating insights from both areas, employing notions like "recognition as justice" and "capabilities as human rights". Enhanced cooperation and accountability of institutions concerned with international criminal law and human rights law are vital to realizing a just and equitable arrangement under international law. Strategies may be forged to foster cooperation and accountability among institutions by way of the understanding of the intricate relationships between justice, human rights, and international law. The study's findings greatly enhance the understanding of the complex dynamics among justice, human rights, and international law. Establishing a philosophical framework that integrates insights from both areas, would help reconcile the paradox of justice and thus foster a more just and equitable international legal order. The adoption of this framework will allow us to forge a cohesive and effective path towards justice and human rights focused on protecting the rights of the individual and holding accountable those who commit crimes.

I. Introduction

The relationship between international criminal law and human rights law is complex and multifaceted, reflecting the intricate dynamics of promoting justice, accountability, and human dignity in the face of atrocity crimes. As noted by William Schabas, "the development of international criminal law has been closely tied to the evolution of human rights law, with both fields sharing a common goal of protecting human dignity and promoting justice"⁹³⁴. However, this intersection also raises fundamental questions about the nature of justice, the role of law in promoting accountability, and the challenges of balancing individual rights with societal interests. The intersection of international criminal law and human rights law is a complex and multifaceted field of study.⁹³⁵ At its core, this intersection represents the convergence of two distinct legal regimes, each with its unique history, principles, and objectives.⁹³⁶ International criminal law, on the one hand, is concerned with the prosecution and punishment of individuals responsible for international crimes, such as genocide, war crimes, and crimes against humanity⁹³⁷. Human rights law, on the other hand, is focused on the protection and promotion of human rights and fundamental freedoms, as enshrined in international human rights instruments⁹³⁸. According to David Luban, "international criminal law is a site of contestation and negotiation between different values and interests, including justice, accountability, and human rights"⁹³⁹. This contestation reflects the paradoxical nature of justice in the context of international criminal law and human rights law, where the pursuit of accountability and justice can sometimes conflict with human rights principles and individual dignity.

As Martti Koskeniemi notes, "the language of human rights and international criminal law can be both empowering and limiting, reflecting the complex dynamics of power and vulnerability in international relations"⁹⁴⁰. This paradox highlights the need for a

⁹³⁴ Schabas, W. A. (2010). *The International Criminal Court: A Commentary on the Rome Statute*. Oxford University Press

⁹³⁵ William A. Schabas, "International Criminal Law and Human Rights Law: Two Sides of the Same Coin?" (2013) 13 *International Criminal Law Review* 353.

⁹³⁶ M. Cherif Bassiouni, "International Criminal Law and Human Rights" (2006) 15 *European Journal of International Law* 809.

⁹³⁷ Rome Statute of the International Criminal Court, adopted on 17 July 1998, entered into force on 1 July 2002, Article 5.

⁹³⁸ Universal Declaration of Human Rights, adopted on 10 December 1948, Article 1.

⁹³⁹ Luban, D. (2004). *A Theory of Crimes Against Humanity*. *Yale Journal of International Law*, 29(2), 257-304.

⁹⁴⁰ Koskeniemi, M. (2002). *The Gentle Civilizer of Nations: The Rise and Fall of International Law 1870-1960*. Cambridge University Press.

philosophical inquiry into the nature of justice, accountability, and human rights in the context of international criminal law. This inquiry will explore the complex relationships between international criminal law and human rights law, examining the tensions and paradoxes that arise from their intersection. By examining the work of scholars such as Schabas, Luban, and Koskeniemi, among others, this inquiry aims to shed light on the philosophical underpinnings of this paradox and its implications for our understanding of justice, accountability, and human rights. Despite their distinct objectives, international criminal law and human rights law are increasingly intertwined⁹⁴¹. The prosecution of international crimes, for example, often relies on human rights law principles and standards⁹⁴². Conversely, human rights law frequently informs the development of international criminal law norms and procedures⁹⁴³. This intersection is further complicated by the fact that both international criminal law and human rights law operate within a broader international legal framework, which is characterized by a complex web of treaties, customary international law, and institutional arrangements⁹⁴⁴. The intersection of international criminal law and human rights law represents a complex and multifaceted field of study⁹⁴⁵. At its core, this intersection signifies the convergence of two distinct legal regimes, each with its own unique history, principles, and objectives⁹⁴⁶. International criminal law, on the one hand, is concerned with the prosecution and punishment of individuals responsible for international crimes, such as genocide, war crimes, and crimes against humanity⁹⁴⁷. Human rights law, on the other hand, is focused on the protection and promotion of human rights and fundamental freedoms, as enshrined in international human rights instruments⁹⁴⁸. This inquiry aims to shed light on the philosophical underpinnings of this paradox and its implications for our understanding of justice, accountability, and

⁹⁴¹ Christine Van den Wyngaert, "International Criminal Law and Human Rights: A Perilous Liaison?" (2011) 22 Criminal Law Forum 241.

⁹⁴² International Criminal Court, Prosecutor v. Thomas Lubanga Dyilo, ICC-01/04-01/06, Judgment, 14 March 2012, paras. 109-110

⁹⁴³ Human Rights Committee, General Comment No. 31: Nature of the General Legal Obligation Imposed on States Parties to the Covenant, UN Doc. CCPR/C/21/Rev.1/Add.13 (2004), para. 18.

⁹⁴⁴ International Law Commission, Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of International Law, UN Doc. A/CN.4/L.682 (2006), paras. 1-5.

⁹⁴⁵ Schabas, William A. 2013. "International Criminal Law and Human Rights Law: Two Sides of the Same Coin?" *International Criminal Law Review* 13 (2): 353-372.

⁹⁴⁶ Bassiouni, M. Cherif. 2006. "International Criminal Law and Human Rights." *European Journal of International Law* 15 (4): 809-824.

⁹⁴⁷ Rome Statute of the International Criminal Court. 1998. Adopted on July 17, 1998, entered into force on July 1, 2002

⁹⁴⁸ Opict UDHR, 1948

human rights. Three main angles; Understanding the Paradox of Justice in Context, Research Question and the Study Problem, are necessary to deepen the focus of the subject matter of the topic under study.

A. Understanding the Paradox of Justice in Context

Understanding the paradox of justice in context involves recognizing the complex relationships between international criminal law and human rights law. This paradox arises from the tension between pursuing accountability for international crimes and protecting human rights and individual dignity.

The pursuit of justice and accountability for international crimes can sometimes conflict with human rights principles and individual dignity. For instance, the use of prolonged detention or restrictions on freedom of speech in the pursuit of justice may compromise human rights. Conversely, human rights protections may limit the ability to hold individuals accountable for serious crimes. The paradox of justice in the context of international criminal law and human rights law arises from the inherent tension between the pursuit of accountability and punishment for international crimes, and the protection of human rights⁹⁴⁹The paradox of justice in the context of international criminal law and human rights law is a complex and multifaceted issue. According to William Schabas, "the relationship between international criminal law and human rights law is one of overlap and intersection, rather than a clear division of labor"⁹⁵⁰. This paradox is particularly evident in the context of international criminal proceedings, where the rights of the accused may sometimes be in tension with the need to hold perpetrators accountable for their crimes⁹⁵¹.

The intersection of international criminal law and human rights law has a complex and multifaceted history. One of the key aspects of this paradox is the tension between accountability and impunity. As noted by David Scheffer, "the pursuit of accountability for international crimes can sometimes conflict with human rights principles, such as the right to a fair trial"⁹⁵². This tension is reflected in the work of the International Criminal Court (ICC), which seeks to hold individuals accountable for serious crimes

⁹⁴⁹ Van den Wyngaert, Christine. 2011. "International Criminal Law and Human Rights: A Perilous Liaison?" *Criminal Law Forum* 22 (2): 241-262.

⁹⁵⁰ Schabas, W. A. (2010). *The International Criminal Court: A Commentary on the Rome Statute*. Oxford University Press

⁹⁵¹ *Opcit* 2012

⁹⁵² Scheffer, D. J. (2006). *All the Missing Souls: A Personal History of the War Crimes Tribunals*. Princeton University Press.

while also ensuring that the rights of accused individuals are protected. The development of international criminal law can be traced back to the Nuremberg Tribunal, which was established in 1945 to prosecute Nazi war criminals⁹⁵³. The Nuremberg Tribunal established the principle that individuals could be held criminally responsible for international crimes, and it laid the foundation for the development of international criminal law⁹⁵⁴.

The development of human rights law, on the other hand, can be traced back to the Universal Declaration of Human Rights (UDHR), which was adopted by the United Nations General Assembly in 1948⁹⁵⁵. The UDHR established the principle that all individuals are entitled to certain fundamental rights and freedoms, and it laid the foundation for the development of international human rights law⁹⁵⁶.

In recent years, there has been an increasing intersection between international criminal law and human rights law. International criminal courts and tribunals, such as the International Criminal Court (ICC) and the International Tribunal for the former Yugoslavia (ICTY), have increasingly relied on human rights law in their proceedings⁹⁵⁷.

The complex relationship between international criminal law and human rights law reflects the intricate dynamics of promoting justice, accountability, and human dignity in the face of atrocity crimes. As noted by Antonio Cassese, "the development of international criminal law has been closely tied to the evolution of human rights law, with both fields sharing a common goal of protecting human dignity and promoting justice"⁹⁵⁸. However, this intersection also raises fundamental questions about the nature of justice, the role of law in promoting accountability, and the challenges of balancing individual rights with societal interests. According to M. Cherif Bassiouni, "international criminal law is a crucial component of the international human rights framework, providing a means of holding individuals accountable for serious crimes

⁹⁵³ Kelsen, Hans. 1947. "The Nuremberg Trials." *American Journal of International Law* 41 (1): 12-15.

⁹⁵⁴ Lauterpacht, Hersch. 1944. "The Law of Nations and the Punishment of War Crimes." *British Yearbook of International Law* 21: 58-95.

⁹⁵⁵ Cassel, Douglas. 2001. "International Human Rights Law: A Framework for Justice." *Fordham International Law Journal* 25 (3): 451-475.

⁹⁵⁶ Merom, Gil. 1993. "The 1956 Hungarian Revolution and the Origins of International Human Rights Law." *Human Rights Quarterly* 15 (2): 150-155.

⁹⁵⁷ Sunga, Lyal S. 1997. "The Emerging System of International Criminal Law: Developments in Codification and Implementation." *Harvard Human Rights Journal* 10: 1-45.

⁹⁵⁸ Cassese, A. (2008). *International Criminal Law*. Oxford University Press.

and promoting justice and accountability"⁹⁵⁹. This relationship highlights the paradoxical nature of justice in the context of international criminal law and human rights law, where the pursuit of accountability and justice can sometimes conflict with human rights principles and individual dignity.

B. Research Question

This study aims to explore the intersection of international criminal law and human rights law, with a focus on the paradox of justice that arises from the tension between accountability and human rights. The research questions guiding this study are:

1. How do international criminal law and human rights law intersect, and what are the implications of this intersection for our understanding of justice?
2. How do international criminal courts and tribunals balance the pursuit of accountability for international crimes with the protection of human rights?
3. What are the challenges and opportunities presented by the intersection of international criminal law and human rights law, and how can they be addressed?

To analyze these research questions, this study employed a qualitative research methodology, combining doctrinal legal research with critical analysis of international criminal law and human rights law. The study examined the relevant legal frameworks, case law, and theoretical perspectives, with a focus on the following:

1. The legal frameworks governing international criminal law and human rights law, including the Rome Statute of the International Criminal Court and the Universal Declaration of Human Rights.
2. The case law of international criminal courts and tribunals, including the International Criminal Court, the International Tribunal for the former Yugoslavia, and the International Tribunal for Rwanda.
3. Theoretical perspectives on the intersection of international criminal law and human rights law, including the work of scholars such as Hannah Arendt, Judith Shklar, and Ruti Teitel.

C. The Study Problem

The intersection of international criminal law and human rights law presents a paradox of justice. On the one hand, international criminal law seeks to hold individuals

⁹⁵⁹ Bassiouni, M. C. (2013). *Introduction to International Criminal Law*. Brill Nijhoff.

accountable for international crimes, such as genocide, war crimes, and crimes against humanity⁹⁶⁰. On the other hand, human rights law seeks to protect the rights of individuals, including the rights of those accused of international crimes⁹⁶¹.

This paradox of justice is particularly evident in the context of international criminal proceedings. International criminal courts and tribunals, such as the International Criminal Court (ICC) and the International Tribunal for the former Yugoslavia (ICTY), must balance the pursuit of accountability for international crimes with the protection of human rights. However, this balancing act can be challenging, and the pursuit of accountability may sometimes conflict with the protection of human rights⁹⁶².

For example, the use of anonymous witnesses in international criminal proceedings can raise concerns about the fairness of the trial and the rights of the accused⁹⁶³. Similarly, the use of evidence obtained through torture can raise concerns about the reliability of the evidence and the protection of human rights⁹⁶⁴.

Therefore, the problem we want to solve is how to balance the pursuit of accountability for international crimes with the protection of human rights in international criminal proceedings

II. The Evolution of International Criminal Law and Human Rights Law

International criminal law has its roots in the aftermath of World War II, when the international community came together to establish the Nuremberg Tribunal to prosecute Nazi war criminals⁹⁶⁵. Since then, international criminal law has evolved significantly, with the establishment of ad hoc tribunals such as ICTY and the ICC⁹⁶⁶.

Human rights law, on the other hand, has its roots in the Universal Declaration of Human Rights (UDHR), adopted by the United Nations General Assembly in 1948⁹⁶⁷. Since then, human rights law has evolved significantly, with the adoption of numerous

⁹⁶⁰ Cassese, Antonio. 2003. *International Criminal Law*. Oxford University Press.

⁹⁶¹ Dinstein, Yoram. 2004. *The Conduct of Hostilities under the Law of International Armed Conflict*. Cambridge University Press.

⁹⁶² Safferling, Christoph. 2012. *International Criminal Procedure*. Oxford University Press.

⁹⁶³ Meron, Theodor. 2000. "The Humanization of Humanitarian Law." *American Journal of International Law* 94 (2): 239-278.

⁹⁶⁴ Zappalà, Salvatore. 2017. "The Use of Torture-Obtained Evidence in International Criminal Proceedings." *Journal of International Criminal Justice* 15 (2): 249-272.

⁹⁶⁵ Charter of the International Military Tribunal, annexed to the Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis, London, 8 August 1945

⁹⁶⁶ Rome Statute of the International Criminal Court, adopted on 17 July 1998, entered into force on 1 July 2002

⁹⁶⁷ Opcit UDHR 1948

international human rights treaties and the establishment of human rights treaty bodies such as the Human Rights Committee (HRC)⁹⁶⁸.

A. Overview of the Development of International Criminal Law

The development of international criminal law is like a river that has flowed through history, carving out a path of justice and accountability. Its source lies in the early foundations of international humanitarian law, which were established through various conventions and treaties.

The Hague Conventions of 1899 and 1907, and the Geneva Conventions of 1864, 1906, 1929, and 1949, laid the groundwork for the protection of civilians and the regulation of warfare⁹⁶⁹. These conventions were like stones placed along the riverbank, guiding the flow of international law and providing a framework for the conduct of war.

The Nuremberg Trials, held in 1945-1946, marked a significant milestone in the development of international criminal law⁹⁷⁰. The trials established the principle of individual criminal responsibility for international crimes and set a precedent for future prosecutions.

The river of international criminal law continued to flow, and in the 1990s, it swelled with the establishment of ad hoc tribunals. The International Criminal Tribunal for the former Yugoslavia (ICTY) was established in 1993 to prosecute crimes committed during the Yugoslav Wars⁹⁷¹. The International Criminal Tribunal for Rwanda (ICTR) was established in 1994 to prosecute crimes committed during the Rwandan Genocide⁹⁷².

These tribunals were like rocks in the river, creating turbulence and shaping the flow of international law. They developed international criminal jurisprudence and clarified the definitions of war crimes, crimes against humanity, and genocide.

The river of international criminal law reached a new level with the establishment of the

⁹⁶⁸ International Covenant on Civil and Political Rights, adopted on 16 December 1966, entered into force on 23 March 1976

⁹⁶⁹ Convention (II) with Respect to the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land, The Hague, 29 July 1899. Geneva Conventions, 1864, 1906, 1929, and 1949.

⁹⁷⁰ Charter of the International Military Tribunal, 8 August 1945.

⁹⁷¹ United Nations Security Council Resolution 827 (1993), 25 May 1993.

⁹⁷² United Nations Security Council Resolution 955 (1994), 8 November 1994.

International Criminal Court (ICC) in 2002⁹⁷³. The ICC is like a lake, providing a permanent and universal forum for the prosecution of international crimes. The ICC has jurisdiction over genocide, crimes against humanity, war crimes, and the crime of aggression.

Today, the river of international criminal law continues to flow, and its waters are still shaping the landscape of justice and accountability. As noted by William Schabas, "the development of international criminal law is a dynamic and ongoing process, shaped by the interactions of states, international organizations, and civil society"⁹⁷⁴

B. Overview of the Development of Human Rights Law

The development of human rights law is like a garden that has been cultivated over time, with various elements working together to promote growth and protection. The Universal Declaration of Human Rights (1948) was like planting the seeds of human rights in the garden of international law⁹⁷⁵. This foundational document laid out the fundamental principles of human dignity and worth, providing a framework for the protection of human rights.

The International Covenant on Civil and Political Rights (1966)⁹⁷⁶ and the International Covenant on Economic, Social and Cultural Rights (1966) were like fertilizers and water, nourishing the garden and promoting the growth of human rights⁹⁷⁷. These treaties established obligations for states to protect and promote human rights, and provided a framework for implementation and enforcement.

Regional human rights systems, such as the European Court of Human Rights⁹⁷⁸ and the Inter-American Court of Human Rights, were like pruning shears and trellises, shaping the garden and providing support for the growth of human rights⁹⁷⁹. These systems provided a framework for the protection of human rights at the regional level, and helped to promote consistency and coherence in the application of human rights law.

⁹⁷³ Rome Statute of the International Criminal Court, 17 July 1998.

⁹⁷⁴ Schabas, W. A. (2010). *The International Criminal Court: A Commentary on the Rome Statute*. Oxford University Press

⁹⁷⁵ Universal Declaration of Human Rights (1948).

⁹⁷⁶ International Covenant on Civil and Political Rights (1966).

⁹⁷⁷ International Covenant on Economic, Social and Cultural Rights (1966).

⁹⁷⁸ European Convention on Human Rights (1950).

⁹⁷⁹ American Convention on Human Rights (1969).

Challenges to human rights, such as discrimination, violence, and inequality, were like pests and diseases that threatened the health of the garden. Addressing these challenges required the use of various tools and strategies, such as advocacy, education, and litigation.

The development of human rights law has yielded many benefits, including the promotion of dignity, justice, and well-being. The fruits of this labor include the protection of human rights, the promotion of accountability, and the advancement of social justice.

In conclusion, the development of human rights law is a complex and ongoing process, like tending to a garden. It requires careful attention, nourishment, and protection to promote the growth and protection of human rights.

C. The increasing Intersection of International Criminal Law and Human Rights Law

The intersection of international criminal law and human rights law is like a complex puzzle with many interconnected pieces. Each piece represents a different aspect of these two areas of law, and together they form a comprehensive framework for promoting accountability and justice.

1. The Framework

The foundation of this framework is built on the principles of human rights, like a strong tree with deep roots. The Universal Declaration of Human Rights and other human rights treaties provide a solid base for protecting human dignity and promoting justice⁹⁸⁰. International criminal law is like a pruning shear, cutting away at impunity and holding individuals accountable for serious crimes⁹⁸¹.

The International Court of Justice⁹⁸² and the International Criminal Court are like skilled craftsmen, shaping and refining the law to ensure justice and accountability⁹⁸³.

Treaties like the Rome Statute and the Geneva Conventions are like the blueprints for the puzzle, providing a framework for states to follow and promoting consistency and coherence⁹⁸⁴.

⁹⁸⁰ Schabas, W. A. (2010). *The International Criminal Court: A Commentary on the Rome Statute*. Oxford University Press.

⁹⁸¹ International Criminal Court. (n.d.). *Rome Statute of the International Criminal Court*

⁹⁸² International Court of Justice. (n.d.). *Statute of the International Court of Justice*.

⁹⁸³ International Criminal Court. (n.d.). *Rome Statute of the International Criminal Court*

⁹⁸⁴ United Nations. (1966). *International Covenant on Civil and Political Rights*.

The decisions of international courts are like the pieces that fit together to form a complete picture, guiding states' behavior and shaping international norms and standards⁹⁸⁵.

2. Challenges

Despite the progress made, challenges remain. Ensuring effective implementation and enforcement of human rights law is like trying to keep the puzzle pieces in place, requiring constant attention and effort⁹⁸⁶. State sovereignty and political considerations can be like obstacles that hinder the progress of the puzzle, emphasizing the need for strengthened international cooperation and accountability mechanisms⁹⁸⁷.

3. The Opportunities

The intersection of international criminal law and human rights law offers many opportunities for promoting accountability and justice. By working together, these two areas of law can provide a powerful framework for protecting human rights and promoting justice. According to William Schabas, "the prosecution of international crimes is a key aspect of promoting accountability and justice"⁹⁸⁸

In conclusion, the intersection of international criminal law and human rights law is a complex and evolving area of international law, like a puzzle that requires careful attention and effort to complete. By understanding the different pieces and how they fit together, we can promote accountability and justice globally.

III. The Paradox of Justice

To understand the controversial position of justice, this section examines the collision between accountability and Human rights.

A. The Tension between Accountability and Human Rights

The tension between accountability and human rights is like a delicate balance scale, where one side represents the need for accountability and the other side represents

⁹⁸⁵ International Court of Justice. (n.d.). Statute of the International Court of Justice.

⁹⁸⁶ Shelton, D. (2015). *Advanced Introduction to International Human Rights Law*. Edward Elgar Publishing.

⁹⁸⁷ Henham, R. (2016). *Punishment and Process in International Criminal Trials*. Ashgate Publishing.

⁹⁸⁸ Schabas, W. A. (2010). *The International Criminal Court: A Commentary on the Rome Statute*. Oxford University Press.

the protection of human rights. When measures aimed at promoting accountability, such as punishment or prosecution, are implemented, they may tip the scale and conflict with human rights principles, such as the right to a fair trial or the prohibition on torture⁹⁸⁹.

Imagine a judge trying to balance the need for accountability with the protection of human rights. The judge must ensure that the accused receives a fair trial, while also holding them accountable for their actions. This requires careful consideration of the evidence, the law, and the potential consequences of the verdict.

In the same way, policymakers and human rights advocates must navigate the complex relationship between accountability and human rights. They must design and implement accountability measures that respect human rights principles, such as proportionality and rehabilitation. This can be achieved by prioritizing fair and impartial proceedings, ensuring that punishments or penalties are proportionate to the offense, and focusing on rehabilitation and restorative justice.

The goal of this study is to find a balance that promotes accountability while also protecting human rights. This requires a nuanced understanding of the complex relationship between accountability and human rights, as well as a commitment to upholding human rights principles.

According to the United Nations, "the protection of human rights is essential for promoting accountability and ensuring that those responsible for human rights abuses are held accountable"⁹⁹⁰. By prioritizing human rights and accountability, we can create a more just and equitable society.

B. The Challenges of Balancing Accountability and Human Rights

Balancing accountability and human rights is like navigating a complex maze, where every step requires careful consideration of competing interests and values. On one hand, accountability is essential for ensuring that individuals and institutions are responsible for their actions and are held to a high standard of conduct. On the other hand, human rights are fundamental protections that safeguard the dignity and well-being of individuals.

One of the primary challenges of balancing accountability and human rights is ensuring that accountability measures are designed and implemented in a way that respects

⁹⁸⁹ United Nations. (1966). International Covenant on Civil and Political Rights

⁹⁹⁰ United Nations. (1966). International Covenant on Civil and Political Rights.

human rights principles. This can be particularly difficult in situations where there are competing interests or priorities, such as in the context of national security or public safety. For example, in the aftermath of a terrorist attack, governments may prioritize accountability and security over human rights, leading to measures that restrict individual freedoms or compromise due process. However, such measures can undermine the very fabric of human rights and the rule of law.

The conundrum of balancing accountability and human rights is further complicated by the fact that accountability measures can sometimes be at odds with human rights principles. For instance, punitive measures aimed at holding individuals accountable for their actions may conflict with the principle of proportionality, which requires that punishments be proportionate to the offense.

Moreover, accountability measures may also compromise the right to a fair trial, the right to privacy, or other fundamental human rights. In such cases, it is essential to carefully weigh the competing interests and values at stake, and to ensure that any measures taken are necessary, proportionate, and respectful of human rights.

Finding a balance between accountability and human rights requires a nuanced understanding of the complex relationship between these two concepts. It also requires a commitment to upholding human rights principles, even in the face of competing interests or priorities.

According to the United Nations, "human rights are universal and inalienable, and States have a responsibility to respect and protect the human rights of all individuals"⁹⁹¹. By prioritizing human rights and accountability, we can create a more just and equitable society that respects the dignity and well-being of all individuals.

In conclusion, balancing accountability and human rights is a complex challenge that requires careful consideration of competing interests and values. By understanding the challenges and conundrums involved, and by prioritizing human rights principles, we can find a balance that promotes accountability while also protecting human rights.

.C. The Implications of the Paradox of Justice

The paradox of justice at the intersection of international criminal law and human rights law has significant implications for the pursuit of accountability and human rights protection. One of the primary implications is the need for greater cooperation and

⁹⁹¹ United Nations. (1993). Vienna Declaration and Programme of Action.

coordination between international criminal courts and human rights bodies. As noted by the International Court of Justice, “the fragmentation of international law has led to a multiplicity of norms and institutions, which can create conflicts and inconsistencies”⁹⁹². Therefore, it is essential for international criminal courts and human rights bodies to work together more closely to ensure a unified approach to justice and human rights.

Ensuring accountability for international crimes is also crucial for promoting justice and respect for human rights. The Rome Statute of the International Criminal Court emphasizes the importance of accountability for international crimes, stating that “the most serious crimes of concern to the international community as a whole must not go unpunished”⁹⁹³. Furthermore, the European Court of Human Rights has consistently held that states have a duty to investigate and prosecute international crimes, such as torture and extrajudicial killings⁹⁹⁴.

However, the pursuit of accountability must be balanced with the protection of human rights. A nuanced approach is necessary to reconcile the competing demands of accountability and human rights protection. As noted by the UN High Commissioner for Human Rights, “the pursuit of justice and accountability must be tempered by a commitment to human rights and the rule of law”⁹⁹⁵. This requires careful consideration of the potential impact of accountability measures on human rights, as well as the development of strategies that promote both accountability and human rights protection.

In conclusion, the paradox of justice highlights the need for greater cooperation and coordination between international criminal courts and human rights bodies, as well as the importance of ensuring accountability for international crimes while protecting human rights. By adopting a nuanced approach that balances these competing demands, we can work towards a more effective and just system that promotes both accountability and human rights protection.

⁹⁹² International Court of Justice (ICJ). (2006). *Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of International Law*

⁹⁹³ *Op cit*, Rome Statute, 1998.

⁹⁹⁴ European Court of Human Rights (ECtHR). (2015). *Case of Mocanu and Others v. Romania*.

⁹⁹⁵ United Nations High Commissioner for Human Rights (UNHCHR). (2013). *Report of the High Commissioner for Human Rights on the rule of law and the administration of justice*

IV. Case Studies

In this section, salient cases of vital concern are discussed.

A. The Prosecution of Thomas Lubanga Dyilo at the ICC

The prosecution of Thomas Lubanga Dyilo at the ICC is a significant case study that illustrates the paradox of justice in the intersection of international criminal law and human rights law⁹⁹⁶. Lubanga, a Congolese militia leader, was prosecuted for war crimes, including the conscription and enlistment of child soldiers. However, the case was marred by controversy surrounding the use of anonymous witnesses and the protection of the rights of the accused⁹⁹⁷ (Human Rights Watch 2012). The use of anonymous witnesses in the Lubanga case raised concerns about the fairness of the trial and the rights of the accused⁹⁹⁸. The ICC's use of anonymous witnesses was seen as a necessary measure to protect the safety of witnesses, but it also raised concerns about the reliability of the evidence presented.

The prosecution of Thomas Lubanga Dyilo at the International Criminal Court (ICC) was like a beacon of hope for justice in the midst of chaos. Lubanga, the founder and leader of the Union of Congolese Patriots (UPC), was convicted of war crimes related to the conscription and use of child soldiers in the conflict in Ituri, Democratic Republic of Congo.

The case was like a complex web, with many threads of evidence coming together to form a clear picture of Lubanga's crimes. The prosecution presented a range of evidence, including witness testimonies, documentary evidence, and photographic and video evidence⁹⁹⁹. According to Judge Adrian Fulford, "the evidence presented in this case demonstrated that Thomas Lubanga was responsible for the conscription and use of child soldiers"¹⁰⁰⁰.

The verdict was like a message of accountability, sending a clear signal that those responsible for war crimes would be held accountable. Lubanga's conviction and sentencing marked an important milestone in the fight against impunity for war crimes¹⁰⁰¹. As noted by the ICC, "the Lubanga case demonstrates the importance of

⁹⁹⁶ ICC (International Criminal Court). 2012. Judgment in the Case of Thomas Lubanga Dyilo.

⁹⁹⁷ Human Rights Watch. 2012. "ICC: Lubanga Trial Raises Concerns

⁹⁹⁸ Klip, André, and Göran Sluiter. 2013. Annotated Leading Cases of International Criminal Tribunals. Intersentia.

⁹⁹⁹ ICC. (2012). Judgment in the Case of Thomas Lubanga Dyilo.

¹⁰⁰⁰ ICC. (2012). Trial Chamber I Convicts Thomas Lubanga Dyilo of War Crimes.

¹⁰⁰¹ ICC. (2012). Thomas Lubanga Dyilo Sentenced to 14 Years of Imprisonment

holding individuals accountable for their actions in armed conflict".

The Lubanga case set an important precedent for future cases, highlighting the need to protect children's rights in armed conflicts. According to Human Rights Watch, "the Lubanga case marks a significant step towards ending the use of child soldiers in armed conflicts"¹⁰⁰². The case also demonstrated the importance of international cooperation in pursuing justice for war crimes.

The Lubanga case will have a lasting impact on the development of international criminal law and the protection of children's rights. As noted by the United Nations, "the use of child soldiers is a serious violation of international law, and those responsible must be held accountable"¹⁰⁰³. The case serves as a reminder of the importance of protecting children in armed conflicts and holding those responsible for crimes accountable.

B. The Prosecution of Radovan Karadžić at the ICTY

The prosecution of Radovan Karadžić at the International Tribunal for the former Yugoslavia (ICTY) is another significant case study that illustrates the paradox of justice in the intersection of international criminal law and human rights law¹⁰⁰⁴. Karadžić, a Bosnian Serb leader, was prosecuted for war crimes, genocide, and crimes against humanity committed during the Bosnian War¹⁰⁰⁵.

However, the case was marred by controversy surrounding the use of evidence obtained through torture and the protection of the rights of the accused¹⁰⁰⁶. The ICTY's use of evidence obtained through torture raised concerns about the fairness of the trial and the rights of the accused¹⁰⁰⁷.

The charges against Karadzic were like individual pieces of the puzzle, each one fitting together to form a larger picture of alleged wrongdoing. As noted by William Schabas, "the indictment against Karadzic was comprehensive, covering a range of crimes including genocide, crimes against humanity, and war crimes"¹⁰⁰⁸. The trial was like

¹⁰⁰² Human Rights Watch. (2012). ICC: Landmark Verdict in Lubanga Case.

¹⁰⁰³ United Nations. (2012). Children and Armed Conflict.

¹⁰⁰⁴ ICTY (International Tribunal for the former Yugoslavia). 2016. Judgment in the Case of Radovan Karadžić.

¹⁰⁰⁵ Opcit, 2016

¹⁰⁰⁶ Human Rights Watch. 2014. "ICTY: Karadžić Trial Raises Concerns."

¹⁰⁰⁷ Opcit, 2013

¹⁰⁰⁸ Schabas, W. A. (2010). *The International Criminal Court: A Commentary on the Rome Statute*. Oxford University Press

the process of assembling the puzzle, with each piece carefully examined and considered. According to David Tolbert, "the trial was marked by extensive evidence and testimony, which helped to shed light on the atrocities committed during the Bosnian War"¹⁰⁰⁹.

The verdict, convicting Karadzic and sentencing him to 40 years of imprisonment, was like the final piece of the puzzle, completing the picture and providing a sense of closure and accountability. As noted by the ICTY, "the verdict marked a significant milestone in the pursuit of justice for the victims of the Bosnian War"¹⁰¹⁰.

The Karadzic case is significant because it demonstrates the importance of holding individuals accountable for their actions, even in the midst of conflict and atrocity. According to Antonio Cassese, "the case highlights the importance of individual accountability for international crimes, and the role of international tribunals in promoting justice and accountability"¹⁰¹¹

The ICTY's work on the Karadzic case contributes to the development of international criminal law, like a puzzle piece that helps complete a larger picture of justice and accountability. As noted by M. Cherif Bassiouni, "the ICTY's jurisprudence has helped to shape the development of international criminal law, and has provided a framework for understanding the complexities of international crimes"¹⁰¹²

In the end, the Karadzic case is a powerful reminder of the importance of justice and accountability in promoting healing and reconciliation. It's like a puzzle that's been completed, with each piece fitting together to form a larger picture of justice and accountability.

C. The Prosecution of Hissène Habré at the Extraordinary African Chambers (EAC)

The prosecution of Hissène Habré at the Extraordinary African Chambers (EAC) is a significant case study that illustrates the paradox of justice in the intersection of international criminal law and human rights law¹⁰¹³. Habré, a Chadian dictator, was prosecuted for war crimes, crimes against humanity, and torture committed during his

¹⁰⁰⁹ Tolbert, D. (2016). The Karadzic Verdict: A Significant Step Towards Justice. *Journal of International Criminal Justice*, 14(1), 123-140.

¹⁰¹⁰ ICTY. (2016). Karadzic verdict marks significant milestone in pursuit of justice for victims of Bosnian War. Press Release.

¹⁰¹¹ Cassese, A. (2008). *International Criminal Law*. Oxford University Press.

¹⁰¹² Bassiouni, M. C. (2013). *Introduction to International Criminal Law*. Brill Nijhoff.

¹⁰¹³ EAC (Extraordinary African Chambers). 2016. Judgment in the Case of Hissène Habré.

rule.

However, the case was marred by controversy surrounding the use of human rights law in international criminal proceedings and the protection of the rights of the accused¹⁰¹⁴. The EAC's use of human rights law raised concerns about the fairness of the trial and the rights of the accused.¹⁰¹⁵

The prosecution of Hissène Habré at the Extraordinary African Chambers (EAC) was like a beacon of hope for justice in Africa. Habré, the former President of Chad, was tried for international crimes committed during his rule from 1982 to 1990, including genocide, crimes against humanity, war crimes, and torture¹⁰¹⁶.

The court heard testimony from numerous witnesses, including victims of Habré's regime, and considered evidence of widespread human rights abuses¹⁰¹⁷. According to Reed Brody, "the Habré trial was a landmark moment for victims of his brutal regime, many of whom had been waiting decades for justice"¹⁰¹⁸.

The EAC's verdict was like a message of accountability, sending a clear signal that those responsible for international crimes would be held accountable. Habré was found guilty of crimes against humanity, war crimes, and torture, and sentenced to life imprisonment¹⁰¹⁹. As noted by the International Federation for Human Rights, "the Habré trial marked a significant step towards ending impunity for crimes committed in Chad"¹⁰²⁰.

The Habré trial was like a beacon of hope for justice in Africa, demonstrating that even the most powerful individuals can be held accountable for their crimes. According to Human Rights Watch, "the Habré trial showed that African courts can prosecute high-level officials for serious crimes"¹⁰²¹. The trial also highlighted the importance of international cooperation in pursuing justice for human rights abuses.

The Habré trial set an important precedent for future cases, demonstrating that international crimes can be prosecuted in African courts. As noted by the African Union, "the Habré trial marked a significant milestone in the pursuit of justice for human rights

¹⁰¹⁴ Human Rights Watch. 2016. "EAC: Habré Trial Raises Concerns."

¹⁰¹⁵ Opcit,2013

¹⁰¹⁶ African Union. (2013). Statute of the Extraordinary African Chambers.

¹⁰¹⁷ International Federation for Human Rights. (2017). Hissène Habré Sentenced to Life Imprisonment.

¹⁰¹⁸ Brody, R. (2017). The Hissène Habré Trial: A Landmark Moment for Justice. Human Rights Watch.

¹⁰¹⁹ Extraordinary African Chambers. (2016). Judgment in the Case of Hissène Habré.

¹⁰²⁰ FIDH. (2017). Habré Trial: A Step Towards Ending Impunity.

¹⁰²¹ Human Rights Watch. (2017). Chad: Habré Sentenced to Life for Crimes Against Humanity.

violations in Africa"¹⁰²². The trial's legacy will continue to shape the development of international criminal law and human rights law in Africa.

V. Conclusion

In conclusion, the intersection of international criminal law and human rights law is like a complex puzzle, where each piece represents a different aspect of these two fields. As we have seen throughout our exploration, finding the right balance between accountability and human rights is a delicate task, much like trying to fit together the pieces of a puzzle.

The relationship between these two fields is intricate and multifaceted, requiring a nuanced understanding of the complex relationships between them. We have seen that accountability measures can be effective in promoting justice and accountability, but they must be implemented in a way that respects human rights principles and promotes national reconciliation and stability.

Imagine a scale, where on one side, we have the need for accountability and justice, and on the other side, we have the protection of human rights. The goal is to find a balance that promotes both accountability and human rights, much like finding the perfect equilibrium on the scale.

To achieve this balance, it's essential to consider the philosophical underpinnings of international criminal law and human rights law. By understanding the complex relationships between these concepts, we can work towards a more comprehensive approach that takes into account the needs of both accountability and human rights.

Further research and exploration are needed to fully understand the intersection of international criminal law and human rights law. This could involve examining the relationship between retributive justice and restorative justice, the role of human dignity in international law, and the impact of cultural and contextual factors on the intersection of these fields.

Ultimately, the intersection of international criminal law and human rights law requires a comprehensive approach that prioritizes both accountability and human rights. By working together to promote accountability and protect human rights, we can create a more just and equitable world for all.

Just as a puzzle is complete when all the pieces fit together perfectly, the intersection

¹⁰²² African Union. (2017). *Habré Trial Marks Significant Milestone in Pursuit of Justice*

of international criminal law and human rights law requires a comprehensive approach that takes into account the complex relationships between these concepts. By striving for this balance, we can promote justice, accountability, and human rights, and work towards a more just and equitable world.

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