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SCHOOL OF LAW

DEPARTMENT OF LAW

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Dissertation Submitted in partial fulfillment of the academic requirements for the award of a Bachelor's Degree with honors in Law

By:

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Kigali, August 2024

DECLARATION

I do hereby declare that this dissertation entitled "Critical analysis on the capacity to investigate and prosecute international crimes committed by people with immunity under

international criminal law" is my original work. I have to the best of my knowledge acknowledged all authors or sources from where I got information. We further declare that this work has not been submitted to any university or institution for the award of a degree or any of its equivalents.

NKOMEZAKURINDA Charles

Signature………………………

Date………/……/2024

APPROVAL

It is certified that the work incorporated in this dissertation, entitled “Critical analysis on the capacity to investigate and prosecute international crimes committed by people with immunity under international criminal law”submitted in partial fulfillment of the requirements for the bachelor degree with honors in law (LLB), in Kigali independent university (ULK), is being carried out by NKOMEZAKURINDA Charles

KABANDANA Elneste

Signature:

Date:…………/…………./ 2024

Dedication

This dissertation is dedicated to

To Almighty God

To my father RUDAHNGA Emmanuel

To my mother MUKAHIGIRO Seraphine

To my Sister ISHIMWE Christine

ACKNOWLEDGEMENTS

First and foremost, we would like to extend our sincere thanks to the Founder of Kigali Independent University ULK Prof.Dr. RWIGAMBA BALINDA and the School of law for helping us in carrying out this research. Specifically, we are very appreciated to our supervisor, KABANDANA Elneste, who was our supervisor in the preparation of this research. He gave us a very in-time valuable instructions, has shown us the way to follow

and mostly his time when we needed the advice, humbly, he never hesitated to provide the needed help. We are very grateful for his extensive guidance. He has been an encouraging mentor, supervisor and a primary source of direction in this research.

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To all the above, named person and others who we could not mention, we are truly grateful for your support!

May God bless you!

NKOMEZAKURINDA Charles

Definition of acronyms

Art: Article

DOC: Documents

ECCC: Extraordinary Chambers in the Courts of Cambodia

ICC: International Criminal Court

ICJ: International Court of Justice

ICTY: International Criminal Tribunal for the Former Yugoslavia

Id: idem

ILC: International Law Commission

ITCR: International Criminal Tribunal for Rwanda

ULK: Kigali Independent University

UN: United Nations

UNTAET: United Nations Transitional Administration in East Timor

Us: United States

Www I: World War 1

GENERAL INTRODUCTION

This chapter tries to analyses the topic and is subdivided from the background of the study, problem statement, research objective, research questions, hypothesis, dissertation of the study, interest of the study, scope of the study, research methodology and the subdivision of the study.

1.1. Background of the study

International law created the legal concept of immunity to deal with unfair jurisdictional discrepancies. International law grants immunities and privileges to support international interactions for the State, its high-ranking representatives, and other high-ranking people assigned diplomatic links and tasks.[1]Immunity was first produced by the following:

Societies needed to be confident that their envoys could travel safely in order to keep lines of communication open and, ultimately, avert and settle conflicts, especially during periods of high emotion and mistrust. Laws both domestic and international were created to guarantee the inviolability of a foreign state's representatives as well as their immunity from being subject to legal action.[2]

Immunity is a legal defense that the State and its senior official have against foreign investigations. It stems from the sovereignty-oriented perspective of the international legal

system. The application of foreign State jurisdiction is prohibited by immunity. The State enjoying immunity must consent to give up its immunity in order for the jurisdiction to be reactivated.Immunity has therefore become one of the most prominent and useful factors limiting jurisdiction under international law.3

International immunities are usually granted to certain organizations or bodies that are legally able to do so in order to ensure that they are safe from foreign interference, that foreign governments can fulfill their obligations, and that international relations are effectively maintained.4

A sovereign state is granted a right by the legal notion of immunity. A sovereign state is prohibited from "exercising the power to adjudicate as well as the non-exercise of all other administrative and executive powers by whatever measures or procedures" under this clause. Sovereign immunity is defined as "the immunity of the sovereign or government from lawsuits or other legal actions, unless it consents to them." 5By providing specific entities and individuals with legal protection under specific situations, sovereign immunity functions as a judicial theory. This is similar to how legal immunity is conceptualized.

Even though the immunity help the heads of the state from being prosecuted and promotes the international relations between the countries, the immunity of the state official leads to the impunity of the or the dictatorship in most of the countries as they use these immunity that have according to the international and violates the rights of their own citizen and also violate the sovereignty of the other countries.

The international criminal law as the domain of the international law was brought to remove those impunity after the WWI where the most of the official were brought before the court that was set to prosecute and investigate the crimes that were committed during the First World War (WWI).

1.2. Interest of the study

This study has the various interests either personally, academically and scientific interest where anyone can use this study to get the information about legal analysis on the investigation and prosecution of personnel with immunity under International Criminal Law. The following are the highlights of the interest of the study

1.2.1. Personal interest

This study is going to help me to know and assess the international criminal law on investigation and prosecution of personnel with immunity under International Criminal Law such as international criminal law, customary international law

1.2.2. Academic interest

This study will help the academically the student who are doing the assignment on this topic about Critical analysis on the capacity to investigate and prosecute internatioanal crimes committed by people with immunity under international criminal law, also the student who will be doing their final thesis to get the information on the above mentioned topic

The study also will help the lecturers who are preparing the notes as the slides to teach the student to get all the information about the same topic. This will bring to end the problem of the investigation and prosecution of personnel with immunity under International Criminal

1.2.3. Scientific interest

This study scientifically will help the legislator who entails to formulate the law or revising the law, also it will help the policy maker that to make the policy that will help to bring to the end the investigation and prosecution of personnel with immunity under International Criminal

Also this study scientifically will help the judge during the adjudication of the cases in the court also the study will help the lawyer who are trying to make the their submission and help them to get the information that they will be used in preparing their report

The study internationally will help the international organization such as the human right where they will get the information that can be used in making the reports on the

international level, also will help other country to take example on what is written in this book and use it in their country.

1.3 Scope of the study

Scope of the study This study will cover the wide range from space, time, domain through evaluating the duty to investigate and prosecute of personnel with immunity under International Criminal, the following are the scope of the study

1.3.1 Space

The study will cover the international territory through evolution of the international legislation and the international customary law on the investigation and prosecution of personnel with immunity under International Criminal

1.3.2 Time

This study will cover the time from the 2002 up to 2023. As in 2002 is when the international criminal court as the only tribunal in charge of international crimes, and in 2023 is when the world have faced some tramendus act such invasion of Ukraine and attack Gaza

1.3.2 Domain

This study will be under the domain of the public internationallaw especiallyinternational criminal law and the international customary law especially the that on the immunities.

1.4. Problem statement

International criminal law encompasses the body of legal principles and norms that govern the prosecution and punishment of individuals or entities responsible for serious international crimes. These crimes include genocide, war crimes, crimes against humanity, and aggression. The investigation and prosecution of such crimes often involve complex legal frameworks, as they transcend national boundaries and implicate multiple jurisdictions. International criminal law operates through international tribunals, hybrid courts, and domestic legal systems, aiming to hold perpetrators accountable and provide justice to victims.6

Investigation and prosecution in international criminal law typically involve collaboration between various stakeholders, including national authorities, international organizations such as the United Nations, specialized tribunals like the International Criminal Court (ICC), and non-governmental organizations. The process begins with the collection of evidence, often challenging due to the nature of the crimes and the hostile environments in which they occur. International cooperation is crucial for gathering evidence, conducting interviews, and securing witness testimonies, especially when crimes have been committed across borders or in conflict zones.7

Once evidence is gathered, prosecutors build cases against alleged perpetrators, adhering to the principles of fairness and due process. Defendants are afforded rights to a fair trial, including legal representation and the presumption of innocence until proven guilty. Trials may take place in international or domestic courts, depending on the jurisdiction and the legal framework applicable to the case. Through the investigation and prosecution of international crimes, the aim is not only to hold individuals accountable but also to deter future atrocities, promote peace, and uphold the rule of law on a global scale.8

Investigation and prosecution of the international crimes facilitate the deliverance of Justice in the international arena as it facilitate victim of the international criminal law however it is challenged by immunity as the people with immunity evade criminal liability of their action.

The practical implementation of prosecuting state officials with immunity remains fraught with political, logistical, and jurisdictional challenges. Diplomatic tensions often arise when international bodies attempt to assert jurisdiction over sitting officials, leading to resistance and non-cooperation from the accused state. Moreover, the enforcement of arrest warrants and the gathering of evidence in conflict-affected regions can be extremely difficult. 9

Some of examples was shown in recent year for example the President of Russia committed the international crimes in invasion of Russia but its investigation was not possible because of the immunity the mentioned president has over the international liability of the international crimes committed. 10The issue remain to know whether the people with immunity are not reliable for those crimes.

1.5. Research questions

1. What specific challenges arise during the investigation and prosecution of persons with immunity under international criminal law ?
2. What legal mechanisms to be adopted to ensure the investigation and prosecution of person with immunity?

1.6. Research hypothesis

1. The duty to investigate and prosecute the personnel with the immunity face some challenges such as getting evidence, political intervention of big countries ,sovereignty and others which can be resolved through collaboration between the states and criminal court in order that the state can waive the immunities granted to the diplomates and other state high ranking official.

2. Legal mechanisms within International Criminal Law to address state officials' immunity could involve establishing specialized international tribunals or hybrid courts with jurisdiction over such cases. These mechanisms may rely on principles of customary international law or treaties to circumvent immunity claims. Additionally, diplomatic pressure, sanctions, or targeted measures against the state could be employed to incentivize cooperation with investigations and prosecutions.

1.7. Research objectives

This study has the two objectives that are the general objectives and the specific objectives

1.7.1. General Objectives

To critically analyse the legal framework surrounding the investigation and prosecution of personnel with immunity under International Criminal Law, with a view to enhancing accountability and upholding justice.

1.7.2. Specific objectives

- To analyse the problematic of investigation and prosecution of persons with immunity under international criminal law.
- To analyse the mechanism that can be adopted to solve the challenges faced in investigation and prosecution of person with immunity under international criminal.

1.8. Research Methodology

Research methodology is the specific procedure or techniques used to identify, select process and analyse information about the topic. The methodology sections allow the reader to critically evaluate study's overall validity and reliability. The methodology section answers the main questions: how data are collected or generated? How was it analysed?

1.8.1 Research Techniques

Techniques in research are the statically methods of collection analysis, interpretation, presentation and origination of data

1.8.1.1 Documentary techniques

The term documentary research method refers to the process of examining document that contains data about the topic under investigation. Whether in the public or private domain, written documents are the most prevalent physical sources that are investigated and categorized using the documentary research approach.11

This is when we support the viewpoint or the thesis of our study by drawing on additional sources. Conceptualizing and assessing material are usually involved in the documentary research; these are the steps we will take into account as we develop our research techniques

1.8.2 Research methods

The present research uses the following research methodology which enables researcher to interpret and analyse the legal provision in connection with the topic

1.8.2.1 Exegetic method

Exegetic methods is an interpretation techniques used in the study of legal text that focuses on how the legislator drafted the law or regulation. 12The analysis of grammatical and linguistic rules is used to study it. The objective reading of legal text is known as the exegetical methods.

This approach was utilized to interpret various status and crucial papers pertaining to the international criminal law and customary international law

1.8.2.2 Analytical method

A type of qualitative research is analytical legal research. It is a particular kind of the study that calls for the use of crucial thinking abilities and the assessment of data and information pertinent to the project at hands. 13Additionally through analytical study, one learn crucial information to enrich the work in progress with fresh concept

By employing these techniques we examined the law as it related to criminal matters as well actual situation on the ground. We also used the analytical methods to examine the law and summarize the results of the analysis to obtain comprehensive and insightful information relevant to our research.

1.9. Subdivision of the study

This study is introduced by general introduction and it has three chapters the first focused on conceptual and theoretical framework of analysis on the investigation and prosecution of personnel with immunity under International Criminal Law, second focused The Shield of Immunity: Challenges in Prosecuting International Crimes and the last chapter discussed on Removing the Veil of Immunity through International Criminal Law Investigations and Prosecutions of State Officials. Also the study will end by the general conclusion and the recommendation, also the study will have the reference.

CHAPTER 1: CONCEPTUAL AND THEORETICAL FRAMEWORK

1.1. INTRODUCTION

This chapter delves into the intricate conceptual and theoretical frameworks underpinning the capacity to investigate and prosecute international crimes committed by individuals

granted immunity under international criminal law. It critically examines the tension between the principles of sovereign immunity and the imperative to hold perpetrators of heinous crimes accountable. By analyzing key legal precedents, treaties, and the evolving jurisprudence of international courts, this chapter aims to illuminate the challenges and potential resolutions in balancing state sovereignty with the global pursuit of justice. Through a rigorous critique, it seeks to provide a comprehensive understanding of the mechanisms and limitations inherent in prosecuting high-profile offenders who enjoy immunity, offering insights into the effectiveness and future direction of international criminal law.

1.2. Definition of Key Concepts

The study named Critical analysis on the capacity to investigate and prosecute international crimes committed by people with immunity under international criminal law has the several concepts that needs some explanation in order to understand well. In this part some key concepts on the above-mentioned study are going to be explained.

1.2.1. Immunity

Immunity refers to the protection granted to individuals from prosecution or punishment in exchange for providing information or cooperation to law enforcement agencies or prosecutors. This tool is often utilized to incentivize witnesses or accomplices to come forward and disclose valuable information regarding criminal activities, thereby aiding in the investigation and prosecution of offenders. Immunity can take various forms, such as transactional immunity, which grants complete protection from prosecution for the disclosed offense, or use immunity, which prohibits the use of the disclosed information against the individual but still allows for prosecution based on independent evidence. 14While immunity agreements can be powerful tools for securing cooperation and obtaining crucial evidence, they must be carefully negotiated and executed to ensure fairness and uphold the principles of justice.

1.2.2. International law

International law is a set of rules and principles governing the relations between states and

other international actors, aiming to maintain peace, promote cooperation, and regulate interactions in areas such as human rights, armed conflict, trade, and the environment. It encompasses treaties, customary practices, judicial decisions, and the teachings of recognized legal scholars. 15International law is characterized by its decentralized enforcement mechanism, relying on the consent of states and institutions such as the International Court of Justice, international tribunals, and diplomatic negotiations for implementation and compliance.

1.2.3. International customary law

International customary law refers to the body of unwritten rules derived from consistent state practice, accepted as legally binding by the international community. It is formed through the repetition of actions by states out of a sense of legal obligation (opiniojuris) and becomes binding on all states, regardless of whether they have explicitly consented to it. Customary law covers a wide range of issues, from diplomatic relations to human rights, and serves as a fundamental source of international law alongside treaties. 16Its development reflects the evolving values and practices of the international community, contributing to the stability and predictability of the global legal order.

1.2.4. International criminal law

International criminal law encompasses a body of laws and norms aimed at addressing the most serious violations of international human rights and humanitarian law. It encompasses crimes such as genocide, war crimes, crimes against humanity, and aggression. These laws are enforced through international tribunals such as the International Criminal Court (ICC) and ad hoc tribunals like the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR), as well as through national courts utilizing the principle of universal jurisdiction. The development and enforcement of international criminal law reflect a global commitment to accountability, justice, and the protection of human rights on an international scale.17

1.2.5. Genocide

Genocide is an extreme form of violence aimed at the deliberate extermination of a particular group of people based on their ethnicity, nationality, religion, or other defining characteristics. It involves systematic and widespread acts such as mass killings, forced displacement, torture, rape, and other atrocities with the intention of destroying the targeted group, either in whole or in part. Genocide is considered one of the most heinous crimes under international law and is explicitly prohibited by the United Nations Genocide Convention of 1948. Despite these legal frameworks, genocide continues to occur in various parts of the world, often driven by ethnic or religious tensions, political conflicts, or other forms of discrimination and oppression.Top of Form18

1.2.6. Crime against humanity

Crimes against humanity encompass a range of reprehensible acts committed as part of a widespread or systematic attack against a civilian population. These include but are not limited to murder, extermination, enslavement, deportation, imprisonment, torture, rape, persecution, enforced disappearance, and other inhumane acts causing great suffering or serious injury to mental or physical health. Perpetrators, whether individuals or state actors, can be held accountable under international law for these egregious violations, which strike at the core of human dignity and the principles of justice and peace.19

1.2.7. War crime

A war crime refers to a serious violation of international humanitarian law committed during armed conflict, whether international or internal in nature. These crimes encompass a wide range of acts, including but not limited to intentional targeting of civilians, indiscriminate attacks, torture, rape, forced displacement, and the use of chemical or biological weapons. War crimes are considered egregious breaches of the laws and customs of war, and perpetrators can be held accountable under international law, including through international criminal tribunals or national courts. Such acts not only inflict immediate harm on individuals and communities but also undermine the foundation of human rights and the rule of law.20

1.2.8. Jus cogen

Jus cogens, a Latin term meaning "compelling law," refers to peremptory norms of international law that are universally recognized and accepted. These norms embody fundamental principles that are considered essential to the international legal order, such as prohibitions against genocide, slavery, and torture. Jus cogens norms are non-derogable and override other principles of international law, including treaties and customary law. They form the foundation of international legal obligations and carry significant implications for state behavior and accountability on the global stage.21

1.2.9. Jus ad bellum

Jus ad bellum " is a Latin term that translates to "right to war" or "right to engage in war." It refers to the justification or principles that govern when it is ethically and legally justifiable for a nation or entity to go to war. These justifications typically include factors such as self-defense, defense of others, and sometimes preemptive strikes to prevent imminent harm. The principles of jus ad bellum are often debated in international law and ethics to determine the legitimacy of military actions.22

1.2.10. Jus in bellum

Jus in bellum is a Latin phrase that translates to "justice in war." It refers to the ethical principles and rules that govern the conduct of parties engaged in war or armed conflict. These principles include concepts such as proportionality, discrimination, and the protection of non-combatants. Essentially, it's about ensuring that even in the midst of conflict, actions are guided by moral and legal considerations.23

1.2.11. International convention

An international convention serves as a pivotal platform for nations to convene and negotiate agreements on various issues of global significance, ranging from human rights and environmental protection to trade and security. These gatherings provide an opportunity for diplomatic dialogue, fostering mutual understanding, and collaboration among countries with diverse backgrounds and interests. Through consensus-building and the formulation of treaties or resolutions, international conventions aim to establish

frameworks for cooperation, address common challenges, and uphold shared values on a global scale, thereby contributing to the maintenance of peace, stability, and progress in an interconnected world.24

1.3. Theoretical framework

In this part the details and some theories on the study named Critical analysis on the capacity to investigate and prosecute international crimes committed by people with immunity under international criminal law are going to be highlighted and deeply explained

1.3.1. Rationales for State Immunity in International Law

As referred to throughout the above discussion, various rationales have been proposed for the application of the state immunity rule in international law. Some of the more important of these are discussed in more detail below:

1.3.1.1. The Symbolic Sovereignty and Non-Intervention Rationale

According to this rationale, the justification for the grant of immunity to a foreign state and its high-ranking officials is implicit in the very sovereignty of the state itself and the consequent need for non-intervention in its internal affairs. This rationale is expressed in so many variations, including: “sovereign capacity” or simply “being a sovereign”; “independence”; “equality”; “dignity”; and their various permutations and combinations.25 Sovereignty is the hallmark of statehood, and the forum state‟s exercise of jurisdiction over the foreign state will not only defeat the very foundation of statehood on which the foreign state is built, but also amount to interference in the foreign state‟sindependence and internal political administration. Thus, according to Akande and Shah:26

A Head of State is accorded immunity ratione personae not only because of the functions he performs, but also because of what he symbolizes: the sovereign state. The person and position of the Head of State reflects the sovereign quality of the state and the immunity accorded to him or her is in part due to the respect for the dignity of the office and of the state which that office represents. The principle of non-intervention constitutes a further justification for the absolute immunity from criminal jurisdiction for Heads of State. The principle is the „corollary of the principle of sovereign equality of states, which is the basis

for the immunity of states from the jurisdiction of other states (par in parem non habet imperium). To arrest and detain the leader of a country is effectively to change the government of that state. This would be a particularly extreme form of interference with the autonomy and independence of that foreign state. The notion of independence means that a state has exclusive jurisdiction to appoint its own government – and that other states are not empowered to intervene in this matter. Were the rule of Head of State immunity relaxed in criminal proceedings so as to permit arrests, such interference right at the top of the political administration of a state would eviscerate the principles of sovereign equality and independence.

This rationale has been questioned in certain places, though, since it is not thought to be particularly sound or persuasive. For instance, "sovereignty" as the foundation of immunity is allegedly a shaky idea (Xiaodong Yang). To put it plainly, sovereignty belongs to both the forum state and the defendant state. There's more motivation for the forum state to insist on submission to jurisdiction if the defendant state has grounds for immunity. In other words, depending on who is looking at the situation, sovereignty can be used just as aggressively to support immunity as it can to deny it. Therefore, it is doctrinally contradictory and counterproductive to argue that immunity stems from sovereignty. This result also holds true for other aspects of statehood, such as independence, equality, and dignity. 27

For Yang, claiming that all of these characteristics and features of statehood together form the foundation of state immunity is one way to get around this problem and, it seems, to always be on the safe side. As a result, it may be said that a state's immunity stems from the combination of all of its characteristics within the framework of international law. In other words, a state is immune just by virtue of its being as a state.28

This argument, nevertheless, is not very strong. Without a doubt, the sovereignty of the foreign state and the forum are recognized by international law. Both the foreign state and

the forum state are acknowledged as sovereign inside their own borders. Nonetheless, one could counter that preventing one state's sovereignty from superseding another is a fundamental component of the state immunity rule. Therefore, international law attempts to ensure that one state's sovereignty does not supersede another's, while still acknowledging the sovereignty of the forum state. 29

It is also debatable if terms and expressions like "independence," "sovereign capacity," and "being a sovereign" are anything more than euphemisms for the concept of sovereignty. They don't mean anything different from the basic word "sovereignty"; they are just synonyms for it. Lastly, in the context of state immunity, terms like "equality" and "dignity" may be viewed as characteristics or facets of sovereignty and should not be interpreted as having meanings distinct from or equal to "sovereignty."30

1.3.1.2. The Fundamental Right Rationale

For the proponents of this rationale, state immunity is a fundamental right of a state by virtue of the principle of sovereign equality of states.31According to them, the traditional starting point for this view is the maxim, “par in parem non habet imperium” (an equal has no power over an equal).32

Theodore Giuttari (a major proponent of this rationale) explains the maxim‟s historical origin in the classical period of international law as follows:33

In this period, the state was generally conceived of as a juristic entity having a distinctive personality and entitled to specific fundamental rights, such as the rights of absolute sovereignty, complete and exclusive territorial jurisdiction, absolute independence and legal equality within the family of nations. Consequently, it appeared as a logical deduction from such attributes to conclude that as all sovereign states were equal in law, no single state should be subjected to the jurisdiction of another state.

This rationale has been supported by the Italian Cour d‟ Cassation in Special Representative of the Vatican v Piecinkiewiez . Some publicists have also been among the strongest supporters of this rationale. For SompongSucharitkul, while acknowledging the basic principle of territorial jurisdiction, a state's right to sovereign equality should also be emphasized. According to Sucharitkul, the principle of state jurisdiction must give way to the principle of sovereign equality to effectuate a state's right to immunity.34

In the words of the Nigerian Court of Appeal:

The basis of which one state is considered to be immune from the territorial jurisdiction of the courts of another country is expressed in the Latin maxim, “par in parem imperium non habet” which literally means that an equal has no authority over an equal. In other words and in legal parlance it means that the sovereign or governmental acts of one state or country are not matters on which the courts of another country will adjudicate35

Regarding this line of reasoning, Xiaodong Yang notes that it is easy to believe that the Latin proverb "par in parem non habet imperium" provides the foundation for sovereign immunity. Yang acknowledges that there is nothing wrong with the idea because the Latin maxim appears to be accepted almost universally in the field of international law and beyond, as evidenced by its frequent citation in academic literature and national court rulings..36

State immunity, however, is not a basic right of a state. Although the Latin proverb "par in parem non habet imperium" seems to be accepted by everybody, it does not imply a state's legal entitlement. The goal of the state immunity rule is to restrict the forum state's ability to make decisions. It merely extends the forum state's exclusive territorial jurisdiction to include appealing to a foreign state. As a result, this norm requires the forum state to refrain from using its judicial authority over a foreign state. Since an obligation alone does not generate a right, this responsibility does not automatically convert into a legal right for the foreign state. According to David Lyons:37

The pattern of relations between rights and obligations … does not seem to be universal.

When behavior is simply required or prohibited by law or morals, without presupposing such special relations or transactions between particular individuals …, we often say that "duties" or "obligations" are imposed. But since these duties or obligations are not "owed" to anyone in particular, we cannot determine who, if anyone, has corresponding rights by noting to whom they are "owed." Indeed, although rights sometimes do correlate with such duties or obligations, we cannot infer that there are such rights merely from the fact there are such duties and obligations…. From the fact that the law requires that A be treated in a certain way, it does not follow, without any further assumptions, that A may be said to have a right to be treated in that way. That is, rights do not follow from duties or obligations, or from requirements or prohibitions, alone. Other conditions must be satisfied.

1.3.1.3. The Practical Courtesy ("Comity") Rationale

Justification According to this reasoning, the state immunity rule developed as a result of a forum state's voluntary decision to voluntarily revoke its right to adjudicatory jurisdiction as a courtesy to promote interstate relations. Supporters of this theory contend that state immunity is an exception to the rule of state jurisdiction that is justified by the desire to advance international comity rather than a fundamental right of a state. 38Thus, those who support this reasoning contend that the state immunity rule is not a legally obligatory provision.

State immunity is justified on the basis of practical necessity or convenience, especially the wish to foster international goodwill and reciprocal courtesies.Many US judicial decisions demonstrate that the US is leading the charge in advancing arguments in favor of this theory. The Schooner Exchange case, where Chief Justice Marshall said that "intercourse" between nations and "an interchange of those good offices which humanity dictates and its wants require foster mutual benefit," recognized this reasoning. 39He also said that "all sovereigns have consented to relaxation in practice... of that absolute complete jurisdiction within their respective territories which sovereignty confers". 40In Verlinden BV v Central

Bank of Nigeria, the US Supreme Court held, inter alia, that the grant of state immunity to a foreign state before the US Courts is “a matter of grace and comity on the part of the United States”. The Court reached a similar decision in Republic of Austria v Altmann41

However, this reasoning has come under heavy fire for not accurately reflecting the position of international law. For example, according to Martin Dixon, the claim that a state's grant of immunity to another is predicated on comity does not imply that the requirement of state immunity is predicated on comity rather than legal responsibility. He asserts that it is obvious that a territorial sovereign has an international obligation to provide immunity. Immunity is not a freely given privilege; rather, it is derived from a norm of the law.42

1.3.1.4. The Functional Necessity Rationale

This rationale postulates that the essence of state immunity is not necessarily to shield state officials from the forum state‟s domestic jurisdiction regarding their misconduct, but rather to ensure that the functions of the foreign state are effectively carried out without unnecessary hindrances.43Thus, the benefit of the immunity does not accrue personally to the officials but to the state they represent. According to Michael Tunks, for example: Head-of-state immunity allows a nation‟s leader to engage in his official duties, including travel to foreign countries, without fearing arrest, detention, or other treatment inconsistent with his role as the head of a sovereign state. Without the guarantee that they will not be subjected to trial in foreign courts, heads of state may simply choose to stay at home rather than assume the risk of engaging in international diplomacy.44

Other senior state officials who are likewise eligible for immunity ratione personae can also be justified using the same reasoning. For this reason, the International Court of Justice (ICJ) determined in the ICJ Arrest Warrant Case45 that although state officials are entitled to immunity under international law while holding office, this immunity is not bestowed upon them for personal gain but rather to guarantee the efficient execution of their duties on

behalf of their respective states. 45According to the World Court:

In customary international law, the immunities accorded to Ministers for Foreign Affairs are not granted for their personal benefit, but to ensure the effective performance of their functions on behalf of their respective States. In order to determine the extent of these immunities, the Court must therefore consider the nature of the functions exercised by a Minister for Foreign Affairs. He or she is in charge of his or her Government‟s diplomatic activities and generally acts as its representative in international negotiations and intergovernmental meetings…. In the performance of these functions, he or she is frequently required to travel internationally and thus must be in a position freely to do so whenever the need should arise.46

An analogous justification for this reasoning is that international law's guarantee of state immunity is justified by refraining from interfering with other states' domestic affairs. There is no question, according to one supporter of this theory, that legal actions taken against foreign governments have the potential to inflame tensions between nations and obstruct the management of international relations. The reasoning therefore "rests equally on the dignity of the foreign nation, its organs and representatives, and on the functional need to leave them unencumbered in the pursuit of their mission," as Ian Brownlie put it.47 On this note, the thesis concludes its examination of the rationales for state immunity and proceeds to the question of whether or not state immunity can be waived.

Partial Conclusion

In concluding the chapter on the conceptual and theoretical framework of critical analysis regarding the capacity to investigate and prosecute international crimes committed by individuals with immunity under international criminal law, it becomes evident that addressing impunity is a multifaceted challenge requiring nuanced approaches. While international law provides mechanisms to hold perpetrators of grave crimes accountable, the practical application often encounters hurdles, particularly when high-ranking officials or individuals shielded by immunity are implicated. This underscores the necessity for legal

frameworks to evolve, incorporating mechanisms to overcome immunity barriers while upholding principles of fairness and justice. Moreover, it emphasizes the importance of international cooperation, judicial independence, and the empowerment of supranational institutions to effectively combat impunity and ensure accountability for international crimes.

CHAPTER 2: The problematic of investigation and prosecuting of people with immunity under international law

2.1. Introduction

The chapter "The Shield of Immunity: Challenges in Prosecuting International Crimes" delves into the complex legal and political landscapes that hinder the prosecution of individuals for international crimes. It explores how immunity doctrines, often rooted in diplomatic and sovereign protections, create significant barriers to justice. By examining landmark cases and international statutes, this chapter highlights the intricate interplay between legal norms and political realities, offering a critical analysis of the mechanisms that allow perpetrators of serious offenses to evade accountability. Through this examination, it seeks to underscore the urgent need for reform in international law to better address these challenges and ensure that justice is served.

2.2. Immunity under International Law

Immunity under international law refers to the protection given to certain individuals and entities from legal processes, such as arrest or prosecution, by foreign jurisdictions. This

principle is grounded in the need to maintain peaceful international relations and ensure the functioning of diplomatic activities. There are two main types of immunity: diplomatic immunity and sovereign immunity. Diplomatic immunity protects diplomats and their families from legal action in their host country, while sovereign immunity shields states and their officials from being sued in foreign courts. These immunities are codified in treaties like the Vienna Convention on Diplomatic Relations (1961) and the United Nations Convention on Jurisdictional Immunities of States and Their Property (2004).48

2.2.1. People that have Immunity Under International Criminal Law

Under international criminal law, the scope of immunity is more restricted, particularly concerning individuals accused of serious international crimes such as genocide, war crimes, and crimes against humanity. While heads of state, senior government officials, and diplomats enjoy certain immunities under international customary law and treaties, these protections do not extend to international criminal courts like the International Criminal Court (ICC). For example, the Rome Statute, which established the ICC, explicitly states that immunities related to official capacity do not bar the court from exercising its jurisdiction. Thus, even high-ranking officials can be held accountable for international crimes despite traditional immunities.49

2.2.2. problem related to balancing Immunity and Accountability

The principle of immunity under international law is rooted in the need to preserve the sovereignty of states and maintain peaceful diplomatic relations between nations. It grants state officials and diplomat's protection from prosecution for actions performed in their official capacities, thereby safeguarding the functioning of international diplomacy and state interactions. This form of immunity ensures that state representatives can perform their duties without fear of legal retribution in foreign jurisdictions, thus fostering an environment conducive to international cooperation. 50However, as global interconnectedness has

evolved, so too has the recognition that this blanket immunity can be misused to shield individuals from accountability for egregious violations of international law, such as genocide, war crimes, and crimes against humanity.

In response to this challenge, international criminal law has gradually eroded the traditional concept of immunity, especially for serious crimes that violate fundamental human rights. Courts like the International Criminal Court (ICC) and various ad hoc tribunals have increasingly rejected claims of immunity in cases involving grave offenses, arguing that justice for victims and the need to uphold international norms outweighs the protection afforded by state sovereignty. This shift reflects a growing consensus within the international community that individuals, regardless of their official status, must be held accountable for the most heinous crimes. 51Thus, the balance between maintaining diplomatic immunity and ensuring accountability continues to evolve, driven by the imperative to prevent impunity for serious violations of international law.

2.3. Problem related head of state immunity

The question of head of state immunity is relevant to consider in three contexts, and a different law applies to each of them. These three are national proceedings against an own former or serving head of state, national proceedings against a foreign former or sitting head of state, and international proceedings against a former or sitting head of state.52, The law regulating a state's ability to prosecute its own former or sitting head of state is regulated by national law and procedures and will not be dealt with in this thesis. In this chapter the thesis will instead investigate to what extent head of state immunity is a bar to jurisdiction for international crimes before foreign national courts.53

Before head of state immunity is discussed further, there will be a short presentation of the immunities afforded to states in general. The purpose is to create a background for later discussions, since head of state immunity is derived from the wider area of state immunity. the 1973 Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents. 54Article 1(1)(a) of the convention defines "Internationally protected persons" which includes "a Head of State, including any member

of a collegial body performing the functions of a Head of State under the constitution of the State concerned, a Head of Government or a Minister for Foreign Affairs, whenever any such person is in a foreign State[…]". Even though the convention deals with protection of crimes against diplomatic agents and heads of state, not acts or crimes performed by such persons, it is apparent that there has been a history of affording similar rights to heads of state as to diplomatic agents. 55

However, although there are considerable influences of diplomatic immunity on the immunity afforded to heads of state, the current theory of head of state immunity cannot be said to be founded upon diplomatic immunity. Both diplomatic immunity and head of state immunity are today instead to be regarded as different aspects of the wider concept of state immunity. Notwithstanding this, some parts of diplomatic law, such as the provisions of the 1961 Vienna Convention, must be said to be relevant to some aspects of the position of heads of state. That connection will be discussed in the chapters to come.56

Different features of head of state immunity Under international law, two diverse concepts of immunity are often identified: personal immunity (or immunity rationae personae) and functional immunity (or immunity rationaemateriae) . Although this conceptual distinction between personal and functional immunity has been questioned, it now seems to be widely accepted as part of customary international law. In fact, making a distinction between these two features of immunity is vital for understanding head of state immunity. The concepts of these two types of immunity will be given brief explanations below. 57

2.3.1 Personal immunity as obstacles to international Justice

Personal immunity refers to the legal protection from the jurisdiction of foreign national courts granted to a specific group of high-ranking state officials, based on their official status within the state apparatus. This immunity is primarily extended to heads of state and diplomatic agents, ensuring that they are not subject to prosecution or legal actions in foreign courts while carrying out their official duties. The concept of personal immunity has been recognized as essential to uphold the inviolability of such individuals, allowing them to operate with the necessary security and independence in their diplomatic and official

capacities. 58The scope of this immunity has been extended over time to encompass other key state officials, such as ministers of foreign affairs, who play critical roles in the conduct of international relations.

The underlying rationale for personal immunity lies in the necessity of facilitating smooth international interactions and cooperation. State officials, particularly those engaged in diplomacy, must be able to travel freely and execute their official functions without the threat of foreign legal challenges. By shielding them from the jurisdiction of other nations' courts, personal immunity ensures that they can represent their countries without hindrance. 59This legal protection not only preserves diplomatic channels but also contributes to the stability and predictability of international relations. However, the scope and application of personal immunity can sometimes raise questions, especially in cases where issues of accountability and international justice intersect with the privileges granted to state officials

Behind personal immunity is the functioning of international relations since state officials need to be able to work and travel as part of their official function.60

2.3.2. Personal immunity before national jurisdictions

Personal immunity before national jurisdictions refers to a legal principle that exempts certain individuals, typically high-ranking officials such as heads of state, diplomats, and international organization representatives, from being subject to the jurisdiction of national courts for both civil and criminal matters. This immunity, often grounded in international law and diplomatic protocols, is intended to allow these individuals to perform their duties without interference from the legal systems of other nations. However, the scope and extent of personal immunity are subject to limitations, particularly in cases involving serious international crimes such as genocide, war crimes, and crimes against humanity.

2.3.2.1. Belgium v. Congo (Arrest Warrant case)

In the Arrest Warrant case the ICJ concluded that a serving foreign minister shall be granted immunity even from charges of serious international crimes. The background of the case was that Belgium in 1999 had adapted its war crimes legislation to the standards

of the Rome Statute from 1998, which states the irrelevance of official capacity.The new addition in the Belgian law stated (in translation) that "The immunity attributed to the official capacity of a person, does not prevent the application of the present Act". This meant that the new legislation did not recognize any immunity. Under this newly adopted law, and while exercising universal jurisdiction, an investigating judge issued an international arrest warrant against Mr. AbdulayeYerodiaNdombasi, the serving foreign minister of the Republic of Congo.61The crimes listed in the arrest warrant were war crimes and crimes against humanity. The Republic of Congo filed an application with the ICJ complaining that Belgium, by issuing the arrest warrant, had violated the personal immunity of their foreign minister, as well as the principle par in parem non habet imperium.62

In its judgement, the ICJ held the immunity from criminal jurisdiction of ministers of foreign affairs is absolute for all acts, both private and official: "[…] the functions of a Minister of Foreign Affairs are such that […] he or she when abroad enjoys full immunity from criminal jurisdiction and inviolability. That immunity and that inviolability protects the individual concerned against any act of authority of another State which would hinder him or her in performance of his or her duties."63

2.3.2.2 Belgium v. Sharon

In 2001, a civilian complaint was filed with a Belgian Court against Ariel Sharon, the serving prime minister of Israel. The complaint charged Sharon for acts of genocide, crimes against humanity and war crimes, which took place in Beirut in 1982. The Belgian Act under which the complaint had been filed was the same as in the Arrest Warrant Case. However, in the light of the outcome of the Arrest Warrant case, the Belgian Cour de Cassation concluded that although the Belgian Act on universal jurisdiction did not recognize official status, the Belgian legislation would be in conflict with customary international law if would set aside the head of state immunity of Ariel Sharon.Therefore, the case was dismissed by the Court.64

2.3.2.3. United States v. Noriega

The case United States v. Noriega is the only national court case where personal immunity

has been denied to a serving head of state. The case is noteworthy, even though it does not involve serious international crimes. General Manuel Noriega had been seized by U.S. troops in 1990 and faced charges for drug trafficking and money laundry, and Noriega was convicted and sentenced to prison. The case does however not conclude that a serving head of state is not entitled to invoke immunity. Instead, immunity was not accorded on the ground that the US government had never recognized Noriega as head of state.65

2.3.2.4. Pinochet case (No. 3)

Further, in the case Pinochet No.3, although the case concerned a former head of state, the British House of Lords concluded that its decision not to afford Augusto Pinochet immunity did not affect the immunity of serving heads of state, i.e. it did not affect personal immunity.66

2.3.2.5. Spain v. Fidel Castro

Similarly, in 1999, in a Spanish case against Fidel Castro the Spanish AudienciaNacional in its decision not to extradite Castro concluded that a serving head of state has absolute immunity from the criminal jurisdiction from foreign courts, even in respect of allegations of crimes against international law.67

2.4. Diplomatic Immunity and international criminal law

Diplomatic immunity is a fundamental principle in international law that provides diplomats with legal protection from the jurisdiction of the host country. This principle allows diplomats to carry out their duties without fear of legal repercussions, ensuring they can represent their home country's interests freely and effectively. It encompasses immunity from criminal, civil, and administrative jurisdiction, as well as inviolability of the diplomat's person, residence, and correspondence. Such protections are enshrined in international treaties like the Vienna Convention on Diplomatic Relations (1961), which aims to foster diplomacy by safeguarding the rights and privileges of foreign representatives. 68This immunity is essential for maintaining peaceful international relations, as it prevents diplomats from being unfairly targeted or hindered by the legal systems of the countries in which they serve.

Despite its importance, diplomatic immunity is not without controversy and complexities. Critics argue that it can be abused by diplomats who exploit their immunity to avoid prosecution for serious crimes or unethical behavior, undermining the rule of law in host countries. Furthermore, the immunity extends to family members and administrative staff, which some perceive as excessive. There are also instances where diplomatic immunity leads to diplomatic tensions between countries when a host state feels that justice is being obstructed. 69While the principle is crucial for protecting diplomats, these criticisms highlight the need for careful application and potential reforms to balance diplomatic protections with accountability.

2.4.1. problem related to abuse of Privileges

One of the most significant critiques of diplomatic immunity is the potential for abuse inherent in its structure. Diplomatic immunity, designed to safeguard diplomats from political persecution and ensure their unimpeded performance of official duties, inadvertently creates a shield that can be exploited for nefarious purposes. Diplomats, aware that they are protected from local prosecution, may feel emboldened to engage in activities that are illegal or unethical without fear of facing consequences. This misuse of diplomatic immunity is not merely hypothetical; numerous documented cases illustrate the severity of the issue. Instances where diplomats have been involved in serious crimes such as drug trafficking, human trafficking, and even violent offenses underscore the gravity of this problem.70 The example was shown by the cases where most of the high ranking officials such as Noriega as it was explained.

Vienna Convention on Diplomatic Relations (1961) that grants immunity is fundamentally aimed at maintaining the integrity and functionality of diplomatic missions by preventing host countries from using legal systems as tools of political coercion. However, this same provision can be twisted to allow for significant abuses, leading to a troubling lack of accountability. When diplomats commit serious crimes, the shield of immunity can obstruct justice, allowing offenders to evade prosecution and continue their harmful activities. This exploitation of diplomatic immunity not only undermines the rule of law but also tarnishes

the principles of diplomacy, raising critical questions about the balance between protecting diplomatic functions and ensuring that immunity does not become a license for misconduct.71

2.4.2. Legal Impunity and Justice Denied as obstacles to international criminal law

Another critical issue is the notion of justice denied to victims of crimes committed by diplomats. Article 31 of the Vienna Convention grants diplomatic agents immunity from the criminal jurisdiction of the host state, effectively shielding them from legal consequences for their actions. This legal immunity means that victims of crimes perpetrated by diplomats have limited recourse for justice, as diplomats cannot be prosecuted in the host country.72 This situation is particularly problematic in severe cases, such as assault or other violent crimes, where the inability to hold the perpetrator accountable exacerbates the trauma experienced by the victims. The lack of prosecution opportunities in the host country often leaves victims feeling abandoned by the justice system, unable to seek redress or closure for the wrongs committed against them.73

In cases of civil disputes, the situation is slightly different, yet still fraught with challenges. Article 31(1)(c) of the Vienna Convention provides an exception for acts performed outside official duties, allowing for the possibility of legal action in such instances. However, the burden of proof rests heavily on the victims, who must demonstrate that the diplomat's actions were not part of their official duties. This task is daunting and often insurmountable due to the complexities of diplomatic protocols and the potential for diplomatic pressure to influence proceedings. Additionally, the power imbalance between the victims and the diplomatic agents can lead to further complications, making it exceedingly difficult to pursue justice. The combination of these factors creates a significant imbalance in the justice system, where victims may feel powerless and wronged, perpetuating a cycle of injustice and impunity.74

2.4.3. Diplomatic vs. Functional Immunity

The broad application of diplomatic immunity has sparked considerable debate and raised significant concerns. While diplomatic immunity is intended to protect diplomats from legal

action for acts performed in the course of their official duties, its application often extends far beyond this intended scope. This expansive interpretation can lead to situations where diplomats are shielded from accountability for actions that are not directly related to their diplomatic responsibilities. Such an all-encompassing application of immunity can undermine the legal systems of host countries and create opportunities for misuse. Consequently, it is crucial to understand the distinction between diplomatic immunity, which offers personal immunity covering both private and official acts, and functional immunity, which is limited to actions performed strictly within the scope of official duties.75 Critics argue that the current broad definition of diplomatic immunity should be reconsidered and more narrowly defined to prevent its misuse. They suggest that adopting a model based on functional immunity would be a more appropriate and balanced approach.76 Functional immunity restricts protection to actions that are part of the diplomat's official functions, thereby ensuring that personal misconduct or activities outside the diplomat's professional duties do not enjoy the same level of immunity. This approach would help maintain the integrity of legal systems while still respecting the necessity of protecting diplomats in their official capacities. By focusing immunity on official acts, the potential for abuse is reduced, and a fairer balance is struck between diplomatic privileges and accountability.77

2.4.4. problem related to lack of political will

While diplomatic immunity is essential for the maintenance of international relations, it can sometimes lead to strained ties between countries. Diplomatic immunity ensures that diplomats can perform their duties without fear of legal harassment or coercion, fostering an environment of open and effective communication. However, this privilege is occasionally misused, with some diplomats engaging in activities that violate the laws of the host country, ranging from minor offenses to serious crimes. When such abuses occur, the host country may find itself in a difficult position, having to balance the need to uphold international diplomatic norms against the demand for justice within its own legal system. These situations often lead to diplomatic tensions, with the host country pressing for

waivers of immunity to prosecute the offending diplomats.78

Article 32 of the Vienna Convention on Diplomatic Relations provides a mechanism for such waivers, allowing the sending state to permit its diplomats to be subject to the host country's legal jurisdiction. However, this provision is rarely invoked, as countries are often reluctant to expose their diplomats to foreign legal systems. This reluctance stems from concerns over the potential for biased treatment or political retribution. Consequently, the refusal to waive immunity can exacerbate diplomatic conflicts, creating a stalemate where neither party is willing to compromise.79 This impasse can hinder the resolution of international disputes, as unresolved legal issues fester and contribute to a climate of mistrust and animosity between the countries involved. Thus, while diplomatic immunity is a cornerstone of international diplomacy, its occasional abuse and the challenges in addressing such abuses can complicate international relations.80

2.5. Challenge in investigation and prosecution of people with immunity

The investigation and prosecution of individuals with immunity present significant challenges for legal systems worldwide. Immunity, typically granted to diplomats, heads of state, and certain government officials, can hinder justice processes by providing protection from legal action. In the context of criminal investigations, this immunity complicates the ability of law enforcement agencies to gather evidence, question suspects, or pursue prosecutions. The challenge lies in balancing the principles of justice and accountability with the diplomatic or legal protections afforded to individuals under international treaties, national constitutions, or laws. In Rwanda, as in many other countries, these challenges require careful navigation of both domestic and international legal frameworks.

2.5.1. Evidentiary Challenges

Investigating and prosecuting individuals with immunity presents significant evidentiary challenges due to the legal protections afforded to them. Diplomatic immunity, for example, shields diplomats from criminal prosecution, creating a barrier to obtaining evidence through standard legal procedures such as search warrants, subpoenas, and

interrogations. This lack of access to direct evidence can hinder the collection of crucial information needed to build a case. Moreover, diplomatic missions are considered sovereign territory, further complicating efforts to gather evidence without violating international law and potentially sparking diplomatic conflicts.81

Prosecuting individuals with immunity also faces obstacles in the courtroom. Even if evidence is obtained, it might be inadmissible if collected in violation of the immunity provisions. Additionally, witnesses might be reluctant to testify against individuals with significant political or diplomatic influence, fearing retaliation or international repercussions. These factors can lead to a reliance on indirect evidence or the need for diplomatic negotiations to waive immunity, which is a rare and often politically sensitive occurrence. Overall, these challenges require careful navigation of both legal frameworks and international relations to pursue justice effectively.82

2.5.2. Political related Challenges

Investigating and prosecuting individuals with immunity presents a multifaceted political challenge. Firstly, immunity, often granted to high-ranking officials or individuals in certain positions, can hinder the pursuit of justice by creating legal barriers that shield wrongdoers from accountability. This can undermine public trust in the legal system and erode confidence in the rule of law, leading to perceptions of impunity and inequality before the law. Politically, addressing this issue requires a delicate balance between upholding the principle of immunity where necessary for the functioning of governance and ensuring that it does not serve as a shield for corruption or abuse of power. This balance often becomes contentious, with debates over the extent of immunity and its application, highlighting deep-seated political tensions and interests.83

Moreover, investigating and prosecuting individuals with immunity can provoke political backlash, particularly if those individuals hold significant influence or are part of powerful institutions. Political pressure may be exerted to impede or obstruct investigations, whether through legal maneuvering, interference with evidence, or intimidation of witnesses. 84Additionally, the decision to pursue cases against individuals with immunity can be

influenced by political considerations, such as the potential impact on electoral outcomes or broader geopolitical dynamics. Navigating these challenges requires a commitment to the independence and integrity of the judiciary, as well as robust legal frameworks that ensure accountability and transparency in the face of political pressure. However, achieving this balance often requires navigating complex political landscapes and confronting entrenched power structures.

2.6. Conclusion

In concluding "The Shield of Immunity: Challenges in Prosecuting International Crimes," it becomes evident that the pursuit of justice for international crimes faces multifaceted hurdles. The chapter delineates the intricate interplay between legal frameworks, political considerations, and practical challenges that impede effective prosecution. It underscores the need for a concerted global effort to strengthen accountability mechanisms, overcome jurisdictional barriers, and address impunity. Despite the formidable obstacles delineated, the chapter also highlights promising avenues for progress, such as enhanced cooperation among states, bolstering international legal instruments, and empowering supranational bodies. Ultimately, the chapter advocates for sustained commitment and innovation in the pursuit of justice to ensure accountability for perpetrators and deliver redress for victims of grave human rights violations.

CHAPTER 3: MECHANISMS NECESSARY FOR INVESTIGATION AND PROSECUTION OF PERSON WITH IMMUNIT.

3.1. Introduction

This chapter explores the mechanisms necessary for the investigation and prosecution of individuals who possess immunity under Rwandan law. It delves into the legal and procedural frameworks that govern the treatment of persons with immunity, such as diplomatic agents, members of parliament, and other officials who are afforded special protections under international and domestic law. The chapter examines the balance between upholding the rule of law and respecting the legal privileges granted to these individuals. Additionally, it considers the challenges and limitations that arise in pursuing accountability and justice when dealing with such protected persons, and discusses potential reforms to enhance the effectiveness of legal mechanisms in this context.
Enhanced Cooperation between international criminal tribunal and states
According to what was stated in Chapter 2, immunity for public servants may be claimed under ratione personae, rationemateriae, or both, contingent upon the specifics of each case. When authorities do not represent the State in the most direct way possible, such as when serving as a Head of State, issues can occur in practice. 85The seeming lack of precision in the regimes controlling the extremely broad hierarchical range of State officials is the cause of this gap. The rule of attribution of State responsibility in international law

should, in theory, establish the individual scope of State immunity. 86We find support for this finding in the ILC Draft Articles on State Responsibility.

State responsibility, immunity from state action, and immunity from state officials appear to create a triangle that, at first glance, appears to be made up of ideas that are inextricably linked to the actions that give rise to each of them. We will stick to what is pertinent to the current topic because delving deeper into these ideas is not the goal of this study. It has been declared authoritatively:"A State can only act through its servants and agents; their official acts are the State's acts; the fundamental element of the State immunity principle is the State's immunity with regard to them."87

In fact, the goal of the ILC on Responsibility of States for International Wrongful Acts Draft Articles is to empower States for international accountability. Within the framework of this regime, the fourth Draft Article affirms that the behavior of State officials is attributable to their State: 88

Under international law, any State organ's actions are regarded as acts of that State; this applies regardless of the organ's role within the State's organization, whether it is an organ of the state's central government or a territorial unit, or it may perform any other type of function.

According to the State's internal legislation, any individual or organization that possesses that status is considered an organ. 89

Because of the official capacity in which the conducts were carried out, even in cases where the contested acts were performed ultra vires, they are nevertheless seen as falling inside the purview of actions attributable to governmental directives for the purposes of their immunity coverage. 90

Apparently, immunity for State officials follows logically from agreements that guarantee immunity owing to the State. 91It is unlikely that any law could concurrently deny immunity from criminal prosecution to a government's officers who have followed out its directives if international law has secured the government's immunity from prosecution in foreign domestic courts.

There is conflict in this area since there are more and more situations where State officials' immunity has been scrutinized for violations of international law's preemptive rules. 92The forum court has to make a distinction between the immunity of the State and that of its agents in order to undermine the idea of "State sponsored crimes," as there is a growing trend of thinking that the actions of officials should not be protected, even while their governments are.

Furthermore, these draft articles only address the areas that correspond to state responsibility. In terms of individual responsibility, however, the regime appears to refrain from making any mention of it at all, implying that any person acting on behalf of a state must handle the matter.93International criminal law as a field of expertise. "Any question regarding any person acting on behalf of a State's individual responsibility under international law is not prejudiced by these articles."

3.3. The Rejection of Immunity Based on Status

The classical method to determine the status of an act carried out by the State is to distinguish between the acts of a purely sovereign nature and those of non-sovereign activities, i.e. acta jure imperii and acta jure gestionis.94History demonstrates that the most serious crimes, such as genocide, war crimes, and crimes against humanity, are almost exclusively committed by individuals with the support of the State's apparatus and avail of material resources; and this infrastructure would seem to veil the individual's conduct under the alleged pursuance of State policies.95

Nonetheless, it is a matter of logic and reality that no State has ever been permitted to use its sovereignty as a justification for committing an international crime. The aforementioned requirements are therefore useless since they categorically do not correspond to regular State duties and cannot be carried out by the State in any kind of private capacity. 96No matter who commits a criminal, it is still a crime. Any other reading would be incorrect and blatantly unfair.

In the Pinochet case, Lord Phillips expressed the following strong opinion: "An international crime is as offensive, if not more offensive, to the international community when committed under the color of office." 97

Therefore, any purported "authority" to carry out actions that contravene a globally recognized standard that holds supreme authority is inherently void, and no State could ever formally ratify such actions. 98

Since the Eichmann case and, more strongly, following the Pinochet ruling, the aforementioned opinions have been asserted more and more in legal doctrine and are also gradually finding expression in State practice, as demonstrated by judicial decisions and opinions. 99

There is no legal basis at all for the invocation of State immunities in response to these crimes, and the concepts of individual criminal culpability and State responsibility for fundamental international crimes coexist side by side. 100

3.4. Direct criminal responsibility of state official

As was stated in the earlier Sections, if a State official's actions are intended to be used to further an international offense by that State, they cannot be regarded as State activities for the purposes of State immunity. Furthermore, no State official's actions that fall under

this category can be justifiedly considered incidental to their duties. One cannot apply functional immunities to particular State officials under international law and then ignore the nature of the "function" that those officials are performing. Since international law strongly forbids an individual from serving the State in that capacity, actions that have the potential to result in criminal consequences cannot be justified as being in the course of carrying out any public duty or function. Neither does it provide the State with any legal ammunition to claim jurisdictional immunity. 101
Because the criminal liability of the individual in question for committing the crimes at hand, rather than the representativeness of the State, 102is at issue, any claim of functional immunity to this effect is automatically rejected when the charge is one of committing international crimes.

Individuals are subjects under international law as well as actors, and as such, they are the holders of rights and obligations that flow directly from international law as jus gentium. This information is crucial to grasp. To put it another way, "it is an acknowledged part of international law that individuals who commit international crimes are internationally accountable for them" means that people have rights that go beyond the national requirements of obedience imposed by their State. 103

In addition, the theory of sovereign immunities, which was based on a narrow, State-centric perspective, "unduly underestimated and irresponsibly neglected the position of the human person in international law, in the law of nations, droit des gens." 104

The range of actions by State officials that can be attributed to the State in order to invoke State immunity is limited by international legal norms that recognize personal criminal responsibility; additionally, these norms have acquired a preeminent position in the international legal system due to the nature of the violated protected legal interest. 105International crimes are committed by people, not by inanimate objects like states, and

the rule of law can only be upheld by holding those responsible for their crimes accountable. 106Therefore, by using their immunities, these offenders cannot use international law to shield themselves from the legal repercussions of their anti-juridical actions.

The righteous obligations of duty in the international setting finally seem to be ready to be acknowledged by contemporary jurisprudence and international legal thought. 107It is acknowledged that these criminal acts cannot longer be justified as solely the product of the impersonal State, rather than the people who gave the orders or carried them out, without being irrational and disrespectful to all widely held beliefs about justice.

In conclusion, customary international law has unmistakably solidified in a number of regimes to guarantee that any State official, including the head of state, will be held personally liable in the event that there is enough proof to determine that the official directed, approved, consented to, or participated in the commission of any fundamental international crimes.108

3.5. Ways of removing barriers of Immunity as a shield from international criminal accountability

The Court seeks to justify its stance by separating the notions of immunity and individual criminal responsibility, arguing that they are not inherently interconnected under international criminal law. 109The Court attempts to clarify that its rulings should not be interpreted as absolving individuals of criminal responsibility when such responsibility is, in fact, present and applicable.

However, while these arguments may seem logical, they pose a significant issue: they overly formalize the concept of justice administration, potentially opening the door to impunity. What might naturally seem fair and just becomes overshadowed by legal technicalities when viewed through the principle of ubi jus ibi remedium (where there is a

right, there is a remedy).110It would be a substantial inconsistency and a critical flaw within the international legal framework if the immunity regime were to be used as a shield to evade criminal responsibility for those who violate international law.

3.6. Institutional Mechanism

This section will explore the role of institutions in combating impunity, particularly in cases where individuals with immunity commit crimes. It will examine how these institutions have worked to hold such individuals accountable despite the legal protections they may enjoy. By analyzing specific actions, policies, and legal reforms, this section aims to highlight the challenges and successes in ensuring that immunity does not become a shield for impunity. The section will also focus on how these institutions collaborate with international bodies and governments to enforce justice, demonstrating their commitment to the fight against impunity.

3.6.1. International criminal prosecution forums

This Section is enhanced to the development and implementation of the theoretical framework of immunities elaborated in Section I; this practical application materializes within the context of international prosecutions. A prosecution becomes international, for the purposes of this study, when the domestic courts of the nationality of the perpetrator or of territorial state where the crimes where committed are unwilling or unable to do so themselves. 111To this effect there are two fora to carry out the prosecution of international crimes.

The first avenue consists of foreign domestic courts by way of universal jurisdiction, and the second one of International Criminal Courts and Tribunals set out by the international community. However, their existence should not be mutually exclusive, for both avenues are equally relevant in the overarching aim of ending impunity. Yet, within the context of this individual study, the analysis of foreign national courts will be succinct, for their jurisprudence and practice abide to the conventional use of immunities as explained in

Section I. 112The emphasis will be placed on the advancements regarding immunities in International Criminal Courts and Tribunals, more specifically in the International Criminal Court.

3.6.2. Strengthening complementarity

Traditionally, national courts were the sole avenue of crime pursuit and have thus had an important role in prosecuting the perpetrators of international crimes, even if they were committed outside their borders. This is possible based on the international law doctrine of universal jurisdiction, which permits all States to apply their laws to an act «even if [it](...) occurred outside its territory, even if it has been perpetrated by a non-national, and even if [its] nationals have not been harmed by [it] (...)». 113

While the origins and historical use of universal jurisdiction attended mainly acts of piracy, the bedrock of this doctrine lies on the premise that the perpetrators of such acts are hostishumani generis, i.e., the enemy of all mankind. The exercise of universal jurisdiction still abides to this description, and by means of custom and treaty, has gradually extended its scope of application to acts of genocide114, torture, enforced disappearances, crimes against humanity, grave breaches of international humanitarian law106 and even terrorism. 115This practice is based on the notion that some crimes are so heinous that they affect all human kind and indeed, they imperil civilization itself. Hence, it is in the interest of any and all States to prosecute those responsible for them, for as has been observed, these crimes are often committed by high officials «in the name of the State» and are therefore highly unlikely to be held accountable in their territorial State.116

However, given that the forum State is applying through means of its national law, international law,this does not come without obstacles. The most recurrent handi- cap to this effect is the claim of immunity as a bar to criminal jurisdiction. However, particularly in claims regarding immunity rationemateriae there is an increasing tendency to dissociate these terms,117«while immunity is procedural in nature... it cannot exonerate the person to whom it applies from all criminal responsibility»118, for it is well established in international law that accountability is expected from the perpetrators of international crimes.

3.6.3. International courts and tribunals and the «no immunity, no impunity

In light of all of the above, in order to end the global culture of impunity, there was an undeniable need for an institutional response to the exorbitant reality of the proliferating armed conflicts. The establishment of adequate tribunals to prosecute the crimes committed within these contexts became absolutely necessary, 119and for the sake of ensuring their success in attaining accountability, it was clear that official capacity could not bar proceedings.

Impunity is defined as «the impossibility, de jure or de facto, of bringing the perpetrators of human rights violations to account whether in criminal, civil, administrative or disciplinary proceedings since they are not subject to any inquiry that might lead to their being accused, arrested, tried and, if found guilty, convicted, and to reparations being made to their victims.»120

To fight and end this abhorrent reality is the international's community underlying motivation to create and establish International Criminal Courts and Tribunals. Ergo, it follows that the rejection of immunities within their jurisdictions is axiomatic. Furthermore, by virtue of their own nature as supranational entities they do not abide to the principles described in Section I, as national courts do, since they derive their mandate from the international community and their operation is not subject or under the comprehension of any State.121

Additionally, literal exclusion any immunity claim is laid down in each one of the tribunals founding instruments, consistent with the purpose of their establishment. The International Military Tribunals of Nuremberg,122were the first of its kind to accomplish a successful prosecution of high State officials. The waiver of immunities was possible given the fact that the Allies were in a position of national legislators, and as such, they could adequate the applicable law to the necessity of doing so and therefore, pioneering in the endeavor of ending impunity for the most serious crimes.

«The principle of international law, (immunity) which under certain circumstances, protects the representative of a State, cannot be applied to acts which are condemned as criminal

by international law. The authors of these acts cannot shelter themselves behind their official position in order to be freed from punishment in appropriate proceedings.»123

It was seconded by the often forgotten International Military Tribunal for the Far East,124which reaffirmed the standing of its recent predecessor by providing that official capacity does not exempt criminal responsibility. From that moment on, the precedent seemed to be set in stone.

Fifty years later, when the International Criminal Tribunal for the former Yugoslavia, (ICTY) and the International Criminal Tribunal for Rwanda,125(ICTR) were created by Chapter VII Security Council Resolutions, the exclusion of immunity for Heads of State and other government officials followed as a means to the correct execution of their mandate. Hence, this provision was identically ingrained in their respective Statutes.

«The official position of any accused person, whether as Head of State or Government or as a responsible Government official, shall not relieve such person of criminal responsibility nor mitigate punishment.» The first time it was taken into practice was in , when the ICTY issued an indictment for Slobodan Milošević, the sitting Head of State of the Federal Republic of Yugoslavia at the time.126

Moreover, the ICTY declared in 2001 that Article 7(2) of its Statute reflected «the customary character of the rule that a Head of State cannot plead his official position as a bar to criminal liability in respect of crimes over which the International Tribunal has jurisdiction». To this effect the Chamber cited as support the Pinochet case and the 1996 Draft Code of Crimes against the Peace and Security of Mankind,127 which was intended to apply to both, international and national courts.The International Law Commission clarified in this respect:

«The author of a crime under international law cannot invoke his official position to escape punishment in appropriate proceedings. The absence of any procedural immunity with respect to prosecution or punishment in appropriate judicial proceedings is an essential corollary of the absence of any substantive immunity or defence. It would be paradoxical to prevent an individual from invoking his official position to avoid responsibility for a crime

only to permit him to invoke this same consideration to avoid the consequences of this responsibility.»128

The aforementioned custom also transpired in the emerging so-called «hybrid» Tribunals, which are national courts with international elements. This is the case of the Extraordinary Chambers in the Courts of Cambodia, 129(ECCC) and the United Nations Transitional Administration in East Timor Regulation establishing the Special Panel for Serious Crimes in Timor-Leste, (UNTAET) which include an explicit rejection of not only functional, but also personal immunities.

3.6.4. The International Criminal Court

The International Criminal Court (ICC) is a sui generis institution, for it is the first permanent and independent judicial body. Its source of creation is different from all previous International Criminal Tribunals insofar as it was established by a universal multilateral treaty, a.k.a the Rome Statute; not by a Security Council Resolution or by a Special Agreement between a State and the UN, or an agreement amongst the victorious powers or a peace treaty.130

Moreover, unlike the ad hoc Tribunals, the ICC's jurisdiction is deliberately non- retroactive to the entry into force of the Rome Statute, i.e. its jurisdiction is established a priori for future crimes. The Statute was conceived on July 17, 1998, yet it did not enter into force until sixty days posterior to its sixtieth ratification, which occurred on July 1st, 2002.131

Furthermore, this Court represents the pinnacle of a very long line of attempts to establish a specialized forum to counteract impunity for the crimes of genocide, crimes against humanity, war crimes and aggression. Nevertheless, it was established as a «last resort» mechanism,132abiding to the principle of complementarity.

By acceding to this treaty, States consent to avail their nationals to the jurisdiction of the Court,133 including those who fall under the category of Article 27.

1. This Statute shall apply equally to all persons without any distinction based on official capacity. In particular, official capacity as a Head of State or Government, a member of a Government or parliament, an elected representative or a government official shall in no

case exempt a person from criminal responsibility under this Statute, nor shall it, in and of itself, constitute a ground for reduction of sentence.

2. Immunities or special procedural rules which may attach to the official capacity of a person, whether under national or international law, shall not bar the Court from exercising its jurisdiction over such a person.

Accordingly, the vast negotiations leading to this statutory provision constitute the digested embodiment of the evolution of international criminal law, from the viewpoint of all legal traditions around the world. Naturally including the recognition that no one, irrespective of their official capacity or rank, is above the law and immune from prosecution of these crimes.[134] By accession to the Statute, State Parties have agreed to Article 27, thereby expressly accepting that Heads of State are not entitled to immunity for the abovementioned crimes. In other words, they waived any immunity owed to their Heads of State and high-ranking officials, both before the ICC itself and before all other State Parties in respect of their cooperation with the Court.[135]

In regards to our topic of interest, once States accept the Court's jurisdiction, they ipso facto renounce the right to claim immunities. Yet, by virtue of the treaty nature of the Rome Statute, this provision will only be binding upon those State Parties that have ratified it. [136] To this date, there are 124 State Parties to the Rome Statute, in other words, there are 72 States who are not; this amounts to a very large jurisdictional gap. [137] Therefore, there are many possible scenarios involving nationals of those non State Parties that can unfold before this Court, as was the case concerning Omar Al-Bashir; this raises the question of what would be the adequate way to deal with these situations, especially in the light of Article 98(1) of the Statute, which reads:

The Court may not proceed with a request for surrender or assistance which would require the requested State to act inconsistently with its obligations under international law with respect to the State or diplomatic immunity of a person or property of a third State, unless the Court can first obtain the cooperation of that third State for the waiver of the immunity.

3.7. Inconsistency of Immunity Claims and Court Jurisdiction

To the exercise of the Court's functions: «When cooperating with this Court and therefore acting on its behalf, States Parties are instruments for the enforcement of the jus puniendi of the international community whose exercise has been entrusted to this Court when States have failed to prosecute those responsible for the crimes within this jurisdiction.» 138Any contrary conclusion would undermine the Rome Statute's mandate and circumvent Article 27, rendering it practically meaningless.

Moreover, it would be contradictory to provide that immunities shall not bar the exercise of jurisdiction by the Court while simultaneously leading way to claim such immunities as to avoid arrests by national authorities.139

Furthermore, according to the travauxpréparatoires conducted during the negotiations of this Statute, Article 98(1) is applicable only to State or diplomatic immunity of property. It was the inviolability of diplomatic premises that was at the heart of the debate on article 98(1) and not the issue of personal immunity, which was already comprehensively dealt with in the drafting and inclusion of Article 27.140Withal, even if, arguendo, one were to concede that there is a tension between these provisions, there are different points to contemplate.

As a starting point and given that the Court is bound to apply first its Statute and only suppletorily recourse to principles of international law, it follows that since the Statute explicitly precludes immunity for officials, its provisions remain authoritative. 141

Moreover, the fact that customary - or arguably merely comity - obligations to respect immunity apply solely to national courts,163 deference should be granted to stipulations under Article 27, which prevent impunity for international crimes. This interpretation is consistent with both jurisprudence and international practice.142

State Parties to the Court, are legally obliged by Article 86 to cooperate with the arrest and surrender of suspects when requested, thereby enhancing international cooperation.143Failure to comply with such ratified provisions would be a blatant obstruction of the Court's animus by encouraging impunity, and a clear breach of the international obligations set forth by the Rome Statute regime.

In light of the relevant case law, the lexlata as it stands rejects immunities as a bar for prosecution of international crimes in international tribunals, which reflects a teleological compliance with the pertinent customary international law. Therefore, there could be no conflict between a request of cooperation by the Court and the requested State's alternate obligations under international law with respect to immunities,144because they have already been redefined by international custom.

3.8. Conclusion

In conclusion, the mechanisms necessary for the investigation and prosecution of individuals with immunity require a delicate balance between upholding legal accountability and respecting the privileges granted by law. While immunity serves to protect certain individuals from legal processes that might hinder their official duties, it is crucial that these protections do not become shields for impunity. Effective legal frameworks and institutional mechanisms must ensure that, where immunity is granted, there are clear and transparent procedures for its lifting in cases where serious crimes, such as corruption or human rights violations, are involved. This balance is essential to maintain the integrity of the justice system while respecting the legal privileges that certain roles confer.

GENERAL CONCLUSION AND RECOMMENDATION

1. General Conclusion

The topic of immunity of State officials from foreign criminal jurisdiction became very important due to its essential nature for the maintenance of a system of good relations and peaceful cooperation between States. The main purpose of immunity is to protect the State from the infringement of its independence and to guarantee sovereign equality among other States through the protection of persons who act on its behalf. International relations are impossible without an effective process of communication between States. But State itself is only an immaterial and nonphysical social object which can act only with the help of its agents. As such, it is very important that those agents are able to perform their functions without any threat to be persecuted in the foreign State.

In the present thesis, two types of immunity of State officials were distinguished: personal

immunity ratione personae and functional immunity rationemateriae. It was established that personal immunity is absolute in nature, which means it is applicable in respect to all acts performed by State official in question during the entire period of time when he or she holds the office. However, the lists of State officials entitled to that type of immunity is very limited and it seems that it was accorded under international law that only an incumbent Head of State, Head of Government and Minister of Foreign Affairs enjoy it because their posts assume representation of the State on the international level.

Notwithstanding, when it comes to functional or conductbased immunity, it becomes more difficult to establish rules governing it. First of all, there is no list of officials entitled to it because of the existence of a wide variety of models in different national systems. Second, immunity rationemateriae exclusively applies with regard to acts performed in an official capacity. However, it is not always easy to draw the line between “official” and “private” acts, because there are acts performed for the exclusive benefit of official committed it that had been done only due to the official status of the individual concerned, such as acts of corruption. It seems that we can consider rules governing personal immunity as wellestablished rules under international law, but in respect to immunity rationemateriae, courts should examine them on a case-by-case basis, and there is no unanimous State practice on that issue.

Another controversial issue examined in the present thesis is the topic of exceptions to the immunity of State officials from foreign criminal jurisdiction. There are different opinions with regard to that topic and the existing practice, both national and international one, shows that there is no unanimous approach that would allow stating about the existence or absence of those exceptions. It seems to be agreed, that foreign courts cannot prosecute an incumbent Head of State, Head of Government and Minister of Foreign Affairs even with regard to acts which constitute crimes under international law. This opinion reflects the support for the absolute nature of personal immunity.

However, it is more complicated to speak about possible exceptions to functional immunity. For example, with regard to international crimes, it is hardly possible to commit such

criminal conduct without permission or support given by the State and they often constitute a part of the official State policy. As such, international crimes could be defined as “official” acts, and it has been concluded that acts performed in an official capacity are covered by immunity rationemateriae. Consequently, on the one hand, we have rules governing functional immunity of State officials from foreign criminal jurisdiction, and on the other hand, we have gross violations of human rights and international humanitarian law, the fight against impunity and the principle of individual responsibility for international crimes supported by the Rome Statute of the International Criminal Court and statutes of different hybrid and ad hoc tribunals.

In the contemporary world, when the conception of human rights is of significant importance for the existence of the international community as a whole, it seems incomprehensible the impunity for international crimes irrespective of the official position of its perpetrator. Notwithstanding, there is no established rule in the international law that would state about the existence of exceptions to immunity from foreign criminal jurisdiction with regard to those crimes. Nevertheless, numerous existing practice that was mentioned in the second chapter allows assuming about the presence of a certain tendency in that direction.

Nevertheless, placing State sovereignty in this equation seems to be a mere excuse to shield State officials who commit international crimes; yet, it is an axiomatically futile premise due to the fact that clearly no State can claim that type of conduct as their own. Furthermore, the gravity and transcendence of these crimes annihilates any respect for the official capacity of who committed them regardless of their rank, and if international law is to have any value, it cannot be mocked by allowing perpetrators to escape their criminal responsibility for these heinous calculated actions under the false pretense of State immunity.

For this purpose, the international community has created International Criminal Courts and Tribunals, to operate in a complementary manner to national courts towards the overarching aim of fighting impunity. However, it must be noted that the prosecution of

international crimes bifurcates when it comes to the immunities regime, inasmuch as immunity from national criminal jurisdiction seems to be fundamentally different to the immunity from international criminal jurisdiction, and therefore, the two should not be normatively linked.

nternational criminal law, strictosensu, is the embodiment the jus puniendi of the international community as a whole, and as a matter of logic, its exercise should be thus entrusted to organs created for the purpose of representing the collective will, rather than by individual States that may jeopardize this animus, as a result of a vitiated balance of the different interests that are concomitant to their own sovereignty.

This distinction was addressed in the Eichmann case,when it was argued that «the crime against Jews was also a crime against mankind and consequently the verdict can be handed down only by a court of justice representing all mankind.» i.e. an International Court. Finally, it is evident that the perpetuation of «State sponsored crimes» is antagonistic to the very core notions of an international legal system and cardinally defeats its ultimate purpose which is the safeguard of worldwide peace and security for the sake of humanity.

As analyzed in the previous Sections, the flourishing development of international law in this regard is adequately responding in the form of custom and jurisprudence, to the increased alertness of this paradox. Hence, national and international enforcement measures must follow by consciously coalescing to put an end to impunity, and to propitiate the consolidation of a lasting respect for international justice.

The most efficient way to achieve these desired results is to raise the appropriate homogeneous awareness amongst States about the importance of this universal goal in order to achieve an interconnected system of willing States availing upright cooperation, amongst themselves and in respect of International Criminal Courts and Tribunals, for this is in practice an indispensable element to carry out their mandates. This unprejudiced cooperation is absolutely vital for the international quest of accountability and justice to thrive; for it is our collective societal duty to shift the course of our unnecessarily violent

and unadmonished history.

2. Recommendation

Enhancing the Capacity to Investigate and Prosecute International Crimes Committed by Individuals with Immunity under International Criminal Law through:

Strengthening Legal Frameworks

1. Clarify Immunity Laws: International law should be further clarified to distinguish between functional and personal immunities, ensuring that those in positions of power cannot exploit legal ambiguities to evade justice.

2. Codify Exceptions: Clearly codify exceptions to immunity for serious international crimes such as genocide, war crimes, and crimes against humanity, in international treaties and national laws.

International Cooperation

1. Foster Collaboration: Enhance cooperation among states, international organizations, and judicial bodies to ensure that evidence collection and prosecution are not hindered by political or diplomatic obstacles.

2. Support the ICC: Strengthen support for the International Criminal Court (ICC) by encouraging more countries to become state parties to the Rome Statute and by enhancing cooperation in surrendering individuals with immunity.

Capacity Building

1. Training and Resources: Provide specialized training for investigators, prosecutors, and judges on handling cases involving high-profile individuals with immunity. Increase funding and resources for international criminal tribunals and domestic courts to handle complex international crime cases effectively.

2. Develop Expertise: Foster the development of legal expertise in international criminal law within domestic legal systems to bridge gaps between national and international legal practices.

Political Will and Advocacy

1. Promote Accountability: Advocate for stronger political will among states to pursue

justice irrespective of the political stature of the accused. Encourage civil society organizations to play a critical role in holding governments accountable.

2. Address Political Interference: Implement measures to reduce political interference in the judicial process, ensuring that investigations and prosecutions are impartial and based on the rule of law.

Victim and Witness Protection

1. Enhance Protection Programs: Establish robust programs to protect victims and witnesses who may face significant risks in cases involving powerful individuals. Ensuring their safety is crucial for the success of investigations and prosecutions.

2. Support Victim Participation: Ensure meaningful participation of victims in the judicial process, providing them with legal assistance and psychological support.

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