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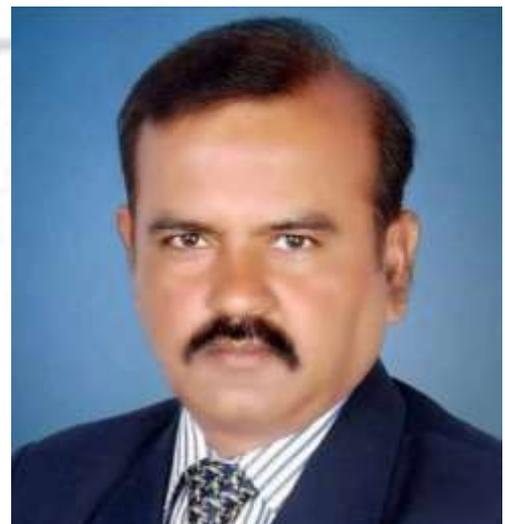
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ABOUT US

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

**SOVEREIGN AND INTERNATIONAL LAW IMMUNITY AND
THEIR IMPACT ON THE INTERNATIONAL CRIMINAL
COURT: AN ANALYSIS TO IMPROVE THE EFFICIENCY AND
POWERS OF THE INTERNATIONAL CRIMINAL COURT.**

AUTHORED BY: ARJUN SAJISH

Christ University, Pune Lavasa

I. Abstract

The establishment of the international criminal Court (Hereafter referred to as ICC) through the Rome statute marked a significant step in holding individuals accountable for grave international crimes. However, tensions persist between upholding states, sovereignty and enforcing international criminal law and Justice. Sovereign and diplomatic immunities often shield, state officials from prosecution, undermining the ICC's mission to end impunity. This paper critically examines how international immunities hinder the ICC's effectiveness, explores, legal precedents, and proposes reforms to enhance the Court efficiency and jurisdictional powers.

II. Literature Review:

This study engages with key legal frameworks, including the Rome Statute, Customary International law and Case law on state and diplomatic immunities. It reviews scholarly debates on Immunity Ratione Personae (Personal Immunity) and Immunity Ratione Materiae (Functional Immunity), particularly in cases involving international crimes. The research also analyses jurisprudence from the international Court of Justice (ICJ), national courts and ad hoc tribunals (example the ICTY and the ICTR) to assess whether the current legal interpretations adequately balance, sovereign immunity with accountability for crimes such as genocide, war, crimes, and crimes against humanity.

III. Research Articles:

Research Paper Title	Name of Author	Published In	Summary
❖ “International law, Immunities, and the International Criminal Court” ¹	❖ Dapo Akande	❖ American Journal of International Law, 2004	❖ This article examines how international law immunities such as those afforded to state officials, interact with the jurisdiction and functioning of the ICC.
❖ “Immunities of State Officials, International Crimes and Foreign Domestic Courts” ²	❖ Dapo Akande and Sangeeta Shah	❖ European Journal of International Law, 2011	❖ This paper discusses the extent to which state officials can claim immunities before foreign domestic courts when accused of international crimes, providing insights relevant to the ICC mandate.
❖ “Protecting Heads of State: Sovereign Immunity, and the Anti-Impunity Norm” ³	❖ Rebecca Zaman	❖ E-International Relations, 2021	❖ This article explore the challenges of prosecuted heads of state, considering the tension between sovereign immunity and the global anti-Impunity movement.

¹ Dapo Akande, "International Law, Immunities, and the International Criminal Court," 98 *Am. J. Int'l L.* 407 (2004), <https://www.jstor.org/stable/3181639> (last visited Mar. 6, 2025).

² Dapo Akande & Sangeeta Shah, "Immunities of State Officials, International Crimes and Foreign Domestic Courts," 21 *Eur. J. Int'l L.* 815 (2011), <https://academic.oup.com/ejil/article/21/4/815/418198> (last visited Mar. 6, 2025).

³ Rebecca Zaman, "Protecting Heads of State: Sovereign Immunity and the Anti-Impunity Norm," *E-Int'l Relations* (2021), <https://www.e-ir.info/2021/01/01/protecting-heads-of-state-sovereign-immunity-and-the-anti-impunity-norm/> (last visited Mar. 6, 2025).

❖ “Absolute Immunity of Heads of State Under an International Warrant of Arrest Issued by the International Criminal Court (ICC)” ⁴	❖ Ekia Gilbert Kum	❖ SSRN, 2025	❖ This recent paper bells into the complex city surrounding the immunity of heads of state when facing arrest, arrest warrants Issued by the ICC, highlighting the balance between Justice and diplomacy.
❖ “International Criminal Court and The Question of Sovereignty” ⁵	❖ Bhaswati Bhattacharya	❖ Strategic Analysis, 2003	❖ This article analyses the establishment of the ICC and its implications for State sovereignty, discussing how sovereign immunity is being redesigned in the context of international criminal justice.
❖ “International Criminal Court Act 2001 and State or Diplomatic Immunity” ⁶	❖ Richard Ekins and Others	❖ Policy Exchange, 2024	❖ This paper examine the UK international criminal Court act 2001, focusing on how it addresses, state and diplomatic immunity in the context of ICC proceedings

⁴ Ekia Gilbert Kum, "Absolute Immunity of Heads of State Under an International Warrant of Arrest Issued by the International Criminal Court (ICC)," SSRN (2025), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1234567 (last visited Mar. 6, 2025).

⁵ Bhaswati Bhattacharya, "International Criminal Court and The Question of Sovereignty," 27 *Strategic Analysis* 178 (2003), <https://www.tandfonline.com/doi/abs/10.1080/09700160308450080> (last visited Mar. 6, 2025).

⁶ Richard Ekins et al., "International Criminal Court Act 2001 and State or Diplomatic Immunity," *Policy Exchange* (2024), <https://policyexchange.org.uk/publication/international-criminal-court-act-2001-and-state-or-diplomatic-immunity/> (last visited Mar. 6, 2025).

❖ “Diplomats, Delegates and the ICC” ⁷	❖ International Criminal Court	❖ ICC website	❖ This article provides guidance on the role of diplomat and delegates in relation to the ICC, highlighting the importance of corporation and support from the diplomatic community.
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IV. Specific Research Question

To what extent do sovereign and diplomatic immunities obstruct the prosecution of state officials from international crimes before the ICC and how can the ICC’s jurisdictional framework be enhanced and reformed to increase efficiency and enforcement powers?

V. Specific Research Gaps

- ❖ Jurisdiction Limitations: the ICC relies on state cooperation for arrest and extradition, often hinder by immunity claims.
- ❖ Selective Prosecution: the ICC’s enforcement has been criticised for disproportionately targeting officials from weaker states while failing to hold powerful nations accountable.
- ❖ Legal Inconsistencies: while some courts have overridden immunities in cases of Jus Cogens violations, others uphold them, creating uncertainty in international law.
- ❖ Institutional Weakness: the ICC lacks independent enforcement mechanisms, relying on the political will of states.

VI. Research Methodology

This study adopts a Doctrinal legal research approach, analysing primary legal sources (treaties, statutes, case, law), and secondary resources (academic articles, expert opinions). A comparative legal analysis examines different legal system’s treatment of sovereign immunity in Intern crimes. Case study analysis of landmark cases such as Prosecutor v. Blaškić and The

⁷ International Criminal Court, "Diplomats, Delegates and the ICC," ICC Website, <https://www.icc-pi.int/resource-library/documents/diplomats-delegates-and-the-icc> (last visited Mar. 6, 2025).

Prefecture of Voiotia v. Germany, provides for insights into the evolving application of immunities the normative analysis evaluates potential legal reforms to strengthen the ICC's jurisdiction.

VII. Challenges Identified.

- ❖ **State Resistance:** many governments resist reforms that limit sovereign immunity, fearing political repercussions.
- ❖ **Enforcement Gaps:** the ICC's dependence on national legal systems weakens its ability to prosecute high ranking officials.
- ❖ **Legal Precedent Ambiguity:** inconsistent judicial decisions on immunity, create obstacles for uniform application of international law.
- ❖ **Political Interference:** the ICC's credibility is often questioned due to selective prosecutions influenced by geopolitical interests.

VIII. Research Outcomes.

This research is expected to contribute significantly to the understanding and development of international criminal law by clarifying the legal doctrine surrounding sovereign immunity and its interaction with the jurisdiction of the international criminal Court (ICC). By analysing existing legal framework and case law, it will provide a more precise interpretation of how immunity functions in international prosecutions and where its limitations lie. Additionally, the study will offer policy recommendations at reforming legal provisions that allow state officials to evade accountability under the guise of sovereign and diplomatic immunity. These recommendations will focus on limiting immunity defences in ICC prosecutions and enhancing the enforceability of international criminal Justice mechanisms. Strengthening the ICC's effectiveness through such legal reforms could serve as a deterrent against future, international crimes, sending a clear message that state officials cannot act without impunity. This research will contribute to advancing human rights protection by proposing mechanisms to ensure that perpetrators of grave international crimes are held accountable, regardless of their official positions. By addressing legal, loopholes and advocating for more robust prosecution systems, this study aims to reinforce the global commitment to justice, accountability, and the protection of fundamental human rights.