

Sovereignty, International Law and Alleged Criminality of Sitting Presidents: Reconciling Head-of-State Immunity and International Criminal Responsibility

Original Research Article | Volume 1 | Issue 5 | 2026 | Article Number: 006

Accepted: 11 September 2026 | Published: 10 October 2026 | ISSN: 2979-8582 (Online)



Crossref : <https://doi.org/10.67693/BJCR-XX79RACW>



Collins E. Daniel

Department of Jurisprudence and International Law, Faculty of Law, Rivers State University, Nigeria

Correspondence: Collins E. Daniel, collinsedaniel56@gmail.com

Abstract

The relationship between State sovereignty, Head-of-State immunity and international criminal responsibility presents one of the most persistent tensions in contemporary international law. While international criminal law increasingly rejects official capacity as a substantive shield against responsibility for serious international crimes, the customary law of personal immunity continues to restrict the exercise of foreign domestic criminal jurisdiction over incumbent Heads of State. This tension has acquired renewed significance in contemporary proceedings before the International Criminal Court (ICC), particularly in relation to the Al-Bashir jurisprudence and the recent controversy surrounding President Vladimir Putin's visit to Mongolia. This article critically examines the legal relationship between sovereignty, Head-of-State immunity and alleged criminality involving sitting Presidents. It also addresses the relatively neglected question of allegations concerning criminal conduct committed before an individual assumes presidential office. The article argues that the subsequent acquisition of presidential status does not extinguish substantive criminal responsibility, although incumbency may temporarily affect the exercise of jurisdiction before particular foreign domestic courts. Through doctrinal and case-study analysis, the article distinguishes criminal responsibility from jurisdiction and enforcement and examines the differing consequences of proceedings before domestic and international criminal forums. It proposes a Temporal–Status–Forum Test, requiring consideration of when the alleged conduct occurred, the legal status of the individual and the identity and jurisdictional authority of the forum. The article concludes that a principled reconciliation of sovereignty and accountability requires legally defined, forum-specific and procedurally differentiated approaches that prevent both impunity and politically abusive jurisdiction.

Keywords: State Sovereignty, Head-of-State Immunity, International Criminal Responsibility, Sitting Presidents, ICC Jurisdiction, Temporal-Status-Forum Test

1. INTRODUCTION

The relationship between State sovereignty, Head-of-State immunity and international criminal responsibility presents one of the most contested questions in contemporary international law. Traditionally, international law was principally concerned with relations among sovereign States, and the principle of sovereign equality limited the circumstances in which one State could exercise jurisdiction over another State or its highest representatives. Personal immunity accorded to incumbent senior State officials consequently developed as an important mechanism for protecting sovereign equality, State independence and the effective performance of international functions. The International Court of Justice (ICJ) has emphasised that such immunity is not granted for the personal benefit of the office-holder but to ensure the effective performance of functions on behalf of the State represented.¹

The development of international criminal law has, however, fundamentally challenged the assumption that the official position can provide a permanent shield against responsibility for serious international crimes. The emergence of individual criminal responsibility, reinforced by the post-Second World War international criminal process and subsequently reflected in the statutes of international criminal tribunals, established that individuals may incur responsibility for crimes of concern to the international community notwithstanding the official positions they occupy. Article 27 of the Rome Statute of the International Criminal Court expressly provides that official capacity, including status as a Head of State or Government, does not exempt a person from criminal responsibility before the Court.²

The resulting tension becomes particularly acute where allegations of genocide, crimes against humanity, war crimes or other serious international crimes involve a sitting President. On the one hand, immunity *ratione personae* generally restricts the exercise of foreign domestic criminal jurisdiction over certain incumbent senior State officials. On the other hand, contemporary international criminal law rejects the proposition that political office permanently extinguishes individual criminal responsibility. The ICJ has accordingly drawn an important distinction between jurisdictional immunity and substantive criminal responsibility, emphasising that immunity is procedural and does not amount to substantive exoneration or impunity.³

This tension has become particularly prominent within the framework of the International Criminal Court (ICC). Article 27 rejects official capacity as a bar to the Court's jurisdiction, yet the relationship between that provision, the cooperation regime under the Rome Statute and the immunities of officials of non-States Parties remains controversial. The Al-Bashir litigation, particularly the Appeals Chamber's decision in the Jordan Referral re Al-Bashir Appeal, illustrates the continuing difficulty of reconciling customary rules concerning Head-of-State immunity with the effective exercise of international criminal jurisdiction.⁴ More recently, the proceedings arising from President Vladimir Putin's visit to Mongolia have demonstrated that questions concerning immunity, State cooperation and the practical enforcement of ICC arrest warrants remain unresolved in both legal and political terms.

An additional and comparatively neglected dimension concerns allegations of criminal conduct committed before an individual assumes presidential office. The subsequent acquisition of presidential status does not erase alleged criminal conduct or extinguish substantive criminal responsibility. Nevertheless, where personal immunity applies, incumbency may temporarily affect the ability of particular foreign domestic

¹ Rome Statute of the International Criminal Court 1998, art 27.

² Rome Statute of the International Criminal Court 1998, art 27.

³ *Arrest Warrant* (n1), paras 60–61.

⁴ *The Prosecutor v Omar Hassan Ahmad Al Bashir*, Judgment in the Jordan Referral re Al-Bashir Appeal, ICC-02/05-01/09-397-Corr (Appeals Chamber, 6 May 2019) paras 101–103, 113–118.

courts to exercise criminal jurisdiction. This distinction between the existence of criminal responsibility and the exercise of jurisdiction is central to the present analysis.

The central problem addressed in this article is therefore the apparent conflict between the traditional protection afforded to sitting Presidents under the doctrine of Head-of-State immunity and the growing international commitment to ensuring individual accountability for serious international crimes. The article argues that the conflict cannot properly be resolved by treating either sovereignty or accountability as absolute. Rather, a legally coherent approach requires careful attention to the timing of the alleged conduct, the legal status of the individual and the identity and jurisdictional authority of the forum seeking to exercise jurisdiction.

The study is guided by four questions: what are the legal foundations and scope of State sovereignty and Head-of-State immunity; to what extent may sitting Presidents incur individual criminal responsibility for serious international crimes; how has international law addressed the conflict between Head-of-State immunity and international criminal jurisdiction; and what framework can effectively reconcile sovereignty and Head-of-State immunity with international criminal accountability?

The aim of this article is to critically examine the relationship between State sovereignty, Head-of-State immunity and international criminal responsibility in order to determine how international law can reconcile legitimate immunity with accountability for serious international crimes. Specifically, it examines the legal foundations and scope of sovereignty and Head-of-State immunity; analyses the extent to which sitting Presidents may incur individual criminal responsibility; evaluates the jurisdictional and immunity challenges arising before domestic and international criminal forums; and proposes a principled framework for reconciling sovereignty and immunity with international criminal accountability.

The study adopts a doctrinal and critical analytical methodology, relying principally upon relevant international legal instruments, judicial decisions, international criminal jurisprudence and scholarly writings. Its scope is limited principally to allegations of serious international crimes involving sitting Presidents and the legal consequences of such allegations within the framework of international criminal law. It does not undertake a detailed examination of ordinary domestic constitutional arrangements governing presidential criminal liability.

The article is organised into nine sections. Following this Introduction, Section 2 examines the conceptual and legal foundations of sovereignty and Head-of-State immunity. Section 3 considers individual criminal responsibility and its application to sitting Presidents. Section 4 analyses the distinction between foreign domestic and international criminal jurisdiction. Section 5 examines the ICC framework governing official capacity and immunity, while Section 6 comparatively analyses the Taylor, Al-Bashir and Putin situations. Section 7 develops the article's principal analytical contribution-the Temporal-Status-Forum Test as a framework for reconciling sovereignty, immunity and accountability. Section 8 presents the principal findings and recommendations, while Section 9 concludes the article.

2. CONCEPTUAL AND LEGAL FOUNDATIONS OF SOVEREIGNTY AND HEAD-OF-STATE IMMUNITY

2.1 State Sovereignty and the Rationale for Head-of-State Immunity

State sovereignty remains a foundational principle of the contemporary international legal order. In its classical sense, it denotes the legal independence of a State and its authority to exercise governmental power within its territory without subordination to another State. At the international level, this principle is reflected in the sovereign equality of States, recognised in Article 2(1) of the Charter of the United

Nations.⁵ Sovereignty does not, however, imply absolute freedom from international legal obligations. States remain bound by applicable treaty obligations and customary international law and may incur responsibility for breaches of those obligations.

The principle of sovereign equality nevertheless limits the unilateral exercise of authority by one State over another, particularly where criminal jurisdiction is asserted against the highest representatives of a foreign State. It is within this framework that Head-of-State immunity developed. The doctrine is associated with the maxim *par in parem non habet imperium*, reflecting the principle that one sovereign cannot ordinarily exercise authority over another sovereign.

Head-of-State immunity is therefore not principally a personal privilege conferred upon an office-holder because of political status. Rather, it protects the sovereign interests of the State and ensures the effective performance of important governmental and international functions. In the Arrest Warrant case, the International Court of Justice explained that immunities accorded to high-ranking State officials are not granted for their personal benefit but to enable them to perform their functions effectively on behalf of the States they represent.⁶ This rationale is particularly important in relation to incumbent Heads of State, whose offices embody the international personality and sovereign authority of their States.

The International Law Commission (ILC) similarly identifies Heads of State, Heads of Government and Ministers for Foreign Affairs as the principal beneficiaries of immunity *ratione personae* from foreign criminal jurisdiction.⁷ The doctrine consequently seeks to prevent foreign domestic criminal processes from interfering with the performance of their official functions or becoming instruments of politically motivated jurisdiction.

2.2 Personal and Functional Immunity

A proper understanding of Head-of-State immunity requires a distinction between immunity *ratione personae* and immunity *ratione materiae*. Immunity *ratione personae* is personal or status-based and attached to certain incumbent senior State officials by virtue of the offices they occupy. It protects them from the exercise of foreign criminal jurisdiction during their tenure and generally extends to acts allegedly performed in either an official or private capacity.⁸

Its scope is particularly significant where allegations concern conduct committed before the assumption of office. In the Arrest Warrant case, the ICJ held that, for purposes of the immunity enjoyed by an incumbent Minister for Foreign Affairs, no distinction could be drawn between alleged acts performed in an official or private capacity or between acts allegedly committed before assumption of office and those committed during the period of office.⁹ The underlying rationale is that criminal proceedings against an incumbent senior official may impede the performance of official functions regardless of when the alleged conduct occurred.

Accordingly, where an individual allegedly committed criminal conduct before becoming President, the subsequent assumption of presidential office does not erase the alleged offence or extinguish substantive criminal responsibility. It may, however, temporarily prevent a foreign domestic court from exercising criminal jurisdiction while the individual remains entitled to personal immunity. The ILC's formulation

⁵ Charter of the United Nations 1945, art 2(1).

⁶ *Arrest Warrant* (n1), para 53.

⁷ International Law Commission, 'Draft Articles on Immunity of State Officials from Foreign Criminal Jurisdiction, with Commentaries' in *Report of the International Law Commission on the Work of its Seventy-Third Session*, UN Doc A/77/10 (2022) draft art 3.

⁸ *Ibid* draft arts 3–4.

⁹ *Arrest Warrant* (n1), para 55.

similarly recognises that immunity *ratione personae* applies during the term of office and covers acts performed, whether in a private or official capacity, both before and during that term.¹⁰

Immunity *ratione materiae*, by contrast, is functional in character and attaches to acts performed in an official capacity. Unlike personal immunity, it is principally determined by the nature of the act and may continue after the official has left office. Its underlying rationale is that official acts are attributable to the State and that another State should not ordinarily exercise jurisdiction in a manner amounting to judgment upon the sovereign conduct of a foreign State.¹¹ Its scope, particularly in relation to certain serious international crimes, nevertheless remains the subject of continuing legal debate.¹²

2.3 Immunity, Criminal Responsibility and the Temporal Dimension

The distinction between immunity and criminal responsibility is fundamental to the legal position of sitting Presidents. Jurisdictional immunity is procedural: it determines whether a particular court may exercise jurisdiction over an individual at a particular time. Criminal responsibility, by contrast, concerns substantive liability for the alleged conduct. The existence of immunity therefore does not amount to substantive exoneration or permanent impunity. The ICJ expressly recognised that immunity from foreign jurisdiction does not mean immunity from criminal responsibility.¹³

The temporal dimension of alleged criminality must consequently be considered separately from the status of the individual and the identity of the forum. The fact that alleged conduct occurred before the assumption of presidential office does not necessarily remove personal immunity before a foreign domestic court once the individual becomes an incumbent Head of State. Conversely, subsequent presidential status does not retrospectively legalise the alleged conduct or extinguish substantive responsibility.

A coherent analysis must therefore distinguish between the alleged commission of an offence and the ability of a particular forum to exercise jurisdiction. Depending upon the applicable law, an incumbent President may remain potentially accountable before the courts of his or her own State, after leaving office before a competent foreign court, or before an international criminal tribunal possessing valid jurisdiction. Head-of-State immunity should therefore not be understood as an absolute or permanent protection against every form of legal responsibility. Its operation depends upon the status of the individual, the nature and timing of the alleged conduct, the type of immunity invoked and, critically, the identity and jurisdictional authority of the forum seeking to exercise jurisdiction.

3. INDIVIDUAL CRIMINAL RESPONSIBILITY AND SITTING PRESIDENTS UNDER INTERNATIONAL LAW

3.1 Development of Individual Criminal Responsibility

The modern development of international criminal law established an important qualification to the traditional State-centred conception of international law: individuals may incur personal responsibility for serious violations of international law. The principle received its clearest early expression in the post-Second World War Nürnb erg proceedings, which rejected the proposition that official position could provide a substantive defence against responsibility for international crimes.¹⁴ The Nürnb erg Principles

¹⁰ ILC Draft Articles (n7) draft art 4(1)–(3).

¹¹ H Fox and P Webb, *The Law of State Immunity* (3rd edn, Oxford University Press 2015) 543–576.

¹² R van Alebeek, ‘The “International Crime” Exception in the ILC Draft Articles on the Immunity of State Officials from Foreign Criminal Jurisdiction: Two Steps Back?’ (2018) 112 *American Journal of International Law* 27–31.

¹³ *Arrest Warrant* (n1), paras 60–61.

¹⁴ Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis, and Charter of the International Military Tribunal, annexed thereto, 8 August 1945, art 7.

subsequently affirmed that the fact that a person acted as a Head of State or responsible government official did not relieve that person of responsibility under international law.¹⁵

The development of individual criminal responsibility did not displace State responsibility. The same conduct may, where the applicable legal requirements are satisfied, generate both the international responsibility of a State and the individual criminal responsibility of persons who participated in the commission of international crimes. The two forms of responsibility are legally distinct and may operate concurrently.

The principle was subsequently reinforced by the statutes and jurisprudence of the ad hoc international criminal tribunals. Article 7 of the Statute of the International Criminal Tribunal for the Former Yugoslavia (ICTY), for example, recognised individual criminal responsibility for persons who planned, instigated, ordered, committed or otherwise aided and abetted crimes within the Tribunal's jurisdiction, while expressly providing that official position as a Head of State or Government or other responsible government official did not relieve an accused person of criminal responsibility.¹⁶

This historical development from Nürnberg through the ad hoc tribunals and ultimately to the permanent ICC demonstrates a settled movement in international criminal law towards personal accountability for serious international crimes. The contemporary legal position is therefore founded upon the principle that political authority does not, by itself, extinguish individual criminal responsibility.

3.2 Official Capacity and Criminal Responsibility

The Rome Statute provides the principal contemporary treaty framework for individual criminal responsibility before the ICC. Article 25 establishes the Court's jurisdiction over natural persons and recognises several modes through which individual criminal responsibility may arise, including direct commission, ordering, inducing, aiding and abetting and other recognised forms of participation.¹⁷

Article 27 reinforces this framework by providing that the Rome Statute applies equally to all persons without distinction based on official capacity. In particular, the status of a person as a Head of State or Government does not exempt that person from criminal responsibility under the Statute, while immunities or special procedural rules attached to official capacity do not bar the Court from exercising its jurisdiction.¹⁸

The significance of this principle is particularly apparent in relation to sitting Presidents. Presidential office does not constitute a substantive defence against allegations of genocide, crimes against humanity, war crimes or other crimes within the jurisdiction of a competent international criminal tribunal. However, the rejection of official capacity as a substantive bar must be distinguished from the separate question whether a particular court is legally entitled to exercise jurisdiction over an incumbent President. As established in Section 2, personal immunity may operate as a procedural limitation before foreign domestic courts even though the individual remains capable of bearing substantive criminal responsibility.

Accordingly, the proposition that a sitting President may incur individual criminal responsibility does not mean that every court may automatically prosecute that President. Criminal responsibility and the exercise of jurisdiction remain distinct questions. The former concerns whether the individual committed an offence and satisfies the applicable requirements of liability; the latter depends substantially upon the identity and authority of the forum, the legal basis of its jurisdiction and the applicable rules concerning immunity.

¹⁵ International Law Commission, 'Principles of International Law Recognised in the Charter of the Nürnberg Tribunal and in the Judgment of the Tribunal, with Commentaries' (1950) *Yearbook of the International Law Commission*, vol II, Principle III.

¹⁶ Statute of the International Criminal Tribunal for the Former Yugoslavia 1993, art 7(1)–(2).

¹⁷ Rome Statute (n2), art 25.

¹⁸ Ibid art 27.

3.3 Presidential Authority and Individual Culpability

The criminal responsibility of a President must remain strictly personal. The mere fact that crimes occurred within a State during a President's tenure does not establish individual liability. There must be a legally sufficient connection between the individual and the alleged criminal conduct in accordance with the applicable rules governing participation and culpability.

A President or other senior political leader may therefore incur responsibility through direct commission, ordering, inducing or contributing to the commission of crimes or, where the relevant legal requirements are satisfied, through forms of superior responsibility. Article 25 of the Rome Statute establishes the principal modes of individual criminal responsibility, while Article 28 provides for responsibility in specified circumstances involving military commanders and other superiors who fail to exercise the required control over forces or subordinates.¹⁹

The rejection of official capacity as a substantive defence must consequently not be confused with a presumption of guilt arising from political office. International criminal justice remains governed by the principles of legality, personal culpability, due process and proof of the elements of the relevant offence and mode of liability. Political authority may provide the factual context within which responsibility is alleged, but it cannot substitute for proof of individual criminal participation.

This distinction becomes particularly important where allegations concern conduct committed at different periods in the life of an individual who subsequently becomes President. Alleged private conduct committed before assumption of office, conduct occurring during the period of office and conduct connected with governmental authority may raise different substantive and procedural questions. Criminal responsibility must be determined according to the law applicable to the alleged conduct, while immunity and jurisdiction depend upon the individual's status and, critically, the forum seeking to exercise authority.

The development of international criminal responsibility therefore establishes that sitting Presidents are not, by virtue of their political office, substantively beyond the reach of international criminal law. The more difficult question is when, and before which forum, criminal jurisdiction may lawfully be exercised. That question requires a distinction between foreign domestic courts and international criminal tribunals, which forms the subject of the next section.

4. HEAD-OF-STATE IMMUNITY AND CRIMINAL JURISDICTION: DOMESTIC AND INTERNATIONAL DIMENSIONS

The question whether a sitting President may be subjected to criminal proceedings cannot be determined solely by the gravity of the alleged offence or the status of the accused. Equally important is the identity of the court or tribunal seeking to exercise jurisdiction. The distinction between foreign domestic jurisdiction and international criminal jurisdiction is therefore central to determining the legal operation of Head-of-State immunity.

4.1 Sitting Presidents before Foreign Domestic Courts

Under international law, an incumbent Head of State generally enjoys immunity *ratione personae* from the criminal jurisdiction of foreign domestic courts. This protection is rooted in the sovereign equality of States and seeks to prevent one State from exercising coercive authority over another through proceedings directed against its highest representative.

The Arrest Warrant case remains the leading authority concerning the immunity of incumbent senior State officials before foreign criminal jurisdiction. Although the case concerned a Minister for Foreign Affairs,

¹⁹ Rome Statute (n2), art 25 and 28.

the International Court of Justice recognised the functional necessity of immunity and inviolability for certain high-ranking State officials in order to enable them to perform their functions effectively on behalf of their States.²⁰ The reasoning is generally relevant to Heads of State, Heads of Government and Ministers for Foreign Affairs.

The consequence of immunity *ratione personae* is that a foreign domestic court is ordinarily precluded from exercising criminal jurisdiction against the incumbent official while the immunity subsists. This procedural protection is broad and may apply irrespective of whether the alleged conduct is characterised as official or private. As established in Section 2, its status-based character may also affect the exercise of foreign jurisdiction concerning alleged conduct committed before the individual assumed presidential office.²¹

The rationale for this rule remains institutionally significant. Without jurisdictional restraint, criminal proceedings against incumbent foreign leaders could become instruments of political retaliation or interference in international relations. Nevertheless, the protection afforded by personal immunity is limited to its proper procedural sphere. It restrains the unilateral exercise of foreign domestic jurisdiction but does not itself determine whether an individual may bear substantive criminal responsibility or whether another competent forum may exercise jurisdiction.

4.2 The Significance of the Forum

The legal position changes materially where proceedings are instituted before an international criminal court or tribunal. An international tribunal does not ordinarily exercise the unilateral authority of one sovereign State over another. Its jurisdiction derives from an international legal instrument, treaty framework, Security Council referral or another recognised basis of international authority.

This distinction explains why international and internationalised criminal tribunals have adopted a different approach to official capacity. In *Prosecutor v Charles Ghankay Taylor*, the Appeals Chamber of the Special Court for Sierra Leone rejected the argument that Taylor's position as Liberia's incumbent President prevented the Court from exercising jurisdiction over him.²² The Court emphasised the internationalised character of the tribunal and distinguished its authority from the exercise of criminal jurisdiction by the domestic court of one State over the Head of State of another.

The Taylor decision consequently illustrates an essential principle: personal immunity before foreign national courts does not necessarily operate as a bar before an international or internationalised criminal tribunal possessing valid jurisdiction. The decisive issue is not simply whether the accused occupies presidential office, but whether the forum has a legally established basis for exercising authority.

This distinction must, however, be applied with care. The international character of a tribunal does not automatically resolve every immunity question. The tribunal must possess valid jurisdiction, and any obligations imposed upon States required to cooperate with it must have an identifiable basis in international law. These questions become particularly controversial where proceedings concern an incumbent Head of State of a State that is not party to the treaty establishing the tribunal.

4.3 Forum-Specific Jurisdiction and Accountability

The appropriate legal approach is therefore forum-specific. Before a foreign domestic court, the established rules concerning immunity *ratione personae* may constitute a procedural bar to proceedings

²⁰ *Arrest Warrant* (n1), paras 51–55.

²¹ *Ibid* para 55.

²² *Prosecutor v Charles Ghankay Taylor*, Decision on Immunity from Jurisdiction, SCSL-2003-01-I (Appeals Chamber, 31 May 2004) paras 51–53.

against an incumbent President. Before an international criminal tribunal, the legal position depends upon the jurisdictional authority of the institution and the applicable rules governing official capacity, immunity and State cooperation.

This approach avoids two opposing errors. First, it prevents the assumption that sovereignty and personal immunity create permanent protection against every form of criminal accountability. Secondly, it avoids the equally problematic assumption that the gravity of an alleged international crime automatically authorises every domestic court to disregard established rules of jurisdictional immunity.

The question is therefore not simply whether a sitting President can be held criminally responsible. Rather, the relevant inquiry is whether the particular forum seeking to exercise jurisdiction possesses the legal authority to do so and whether any applicable rule of immunity restricts that authority. This forum-based distinction provides the foundation for the more specific examination of the International Criminal Court's jurisdictional framework and the immunity of sitting Presidents in the next section.

5. THE INTERNATIONAL CRIMINAL COURT FRAMEWORK AND THE IMMUNITY OF SITTING PRESIDENTS

The establishment of the International Criminal Court represents the most important institutional development in the modern law of individual criminal responsibility. The Rome Statute seeks to ensure accountability for genocide, crimes against humanity, war crimes and the crime of aggression, while simultaneously establishing a jurisdictional and cooperation framework through which the Court depends substantially upon States for the implementation of its decisions. The question of immunity therefore arises not only in relation to the Court's authority to exercise jurisdiction, but also in relation to the obligations of States requested to arrest and surrender persons subject to ICC proceedings.

5.1 Article 27 and the Irrelevance of Official Capacity

Article 27 of the Rome Statute establishes the fundamental principle that official capacity does not exempt a person from criminal responsibility before the ICC. Article 27(1) provides that the Statute applies equally to all persons without distinction based upon official capacity and expressly includes Heads of State or Government among those whose official position does not exempt them from criminal responsibility.²³

Article 27(2) addresses the procedural consequences of official capacity by providing that immunities or special procedural rules attached to a person's official position, whether under national or international law, shall not bar the Court from exercising its jurisdiction.²⁴ The provision consequently distinguishes the ICC framework from the ordinary exercise of foreign domestic criminal jurisdiction, where personal immunity may protect an incumbent Head of State from proceedings.

For States Parties, Article 27 forms part of the treaty framework they have accepted through ratification or accession to the Rome Statute. The more difficult legal question arises where ICC proceedings concern an incumbent Head of State of a non-State Party. Such a State has not accepted the Rome Statute through treaty consent, and the application of the Court's jurisdiction and cooperation regime must therefore be supported by an appropriate legal basis.

The central difficulty is consequently not whether official capacity constitutes a substantive defence before the ICC. Article 27 clearly rejects that proposition. Rather, the controversy concerns the circumstances in which the Court's jurisdiction and cooperation regime may affect immunities otherwise recognised under international law, particularly in relation to officials of States that are not parties to the Statute.

²³ Rome Statute (n2), art 27(1).

²⁴ Rome Statute (n2) art 27(2).

5.2 Article 98 and the Problem of Cooperation and Immunity

Article 98(1) introduces an important qualification within the ICC cooperation regime. It provides that the Court may not proceed with a request for surrender or assistance where compliance would require the requested State to act inconsistently with its obligations under international law concerning 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.²⁵

The relationship between Articles 27 and 98 has consequently generated one of the most contested questions in ICC law. One interpretation regards Article 27(2) as removing official-capacity immunities before the Court and within the cooperation framework necessary to give practical effect to the Court's jurisdiction. On this approach, Article 98 does not generally preserve Head-of-State immunity as a barrier where the applicable legal framework has already removed that immunity.

A competing interpretation emphasises that Article 98 was specifically designed to address circumstances in which compliance with an ICC request would place a requested State in breach of a separate obligation owed to a third State. This approach is particularly relevant where the person sought is an incumbent Head of State of a non-State Party and the requested State may remain subject to customary international law obligations concerning personal immunity.

The provisions should therefore not be treated as establishing an automatic hierarchy in which either Article invariably overrides the other. Their application requires consideration of the legal basis of the Court's jurisdiction, the status of the relevant States under the Rome Statute, the nature of the immunity claimed and the particular cooperation obligation involved.²⁶

5.3 The Jurisdictional Position of Heads of State of Non-States Parties

The legal position becomes particularly complex where an ICC proceeding concerns the incumbent Head of State of a non-State Party. The principle that treaties ordinarily do not impose obligations upon third States without their consent raises important questions concerning the extent to which the Rome Statute can affect immunities arising under customary international law.

Nevertheless, non-party status does not necessarily place every individual or every situation beyond the Court's jurisdiction. The ICC may exercise jurisdiction where a recognised jurisdictional basis exists under the Rome Statute, including circumstances involving territorial jurisdiction or a referral by the United Nations Security Council acting within its authority. The existence of jurisdiction over an individual or situation, however, does not automatically resolve the separate question of the obligations of States required to cooperate with the Court.

The proper analysis must therefore distinguish three related but separate issues: first, whether the ICC possesses jurisdiction over the alleged crimes; secondly, whether official capacity or immunity limits the exercise of that jurisdiction; and thirdly, whether States are legally obliged to cooperate with requests for arrest and surrender. Conflating these questions has contributed significantly to uncertainty in debates concerning the accountability of sitting Presidents.

The jurisprudence of the ICC, particularly the Al-Bashir proceedings, has sought to clarify aspects of this relationship, although significant scholarly disagreement remains concerning the precise basis upon which

²⁵ Ibid art 98(1).

²⁶ M Killingsworth, 'Head of State Immunity, Order, Justice and the International Criminal Court: Limits of International Criminal Justice in International Society' (2024) *International Politics*.

personal immunity may be displaced in relation to incumbent Heads of State of non-States Parties.²⁷ The practical operation and continuing controversy surrounding these principles are examined comparatively in the next section through the Taylor, Al-Bashir and Putin situations.

6. COMPARATIVE CASE STUDIES: TAYLOR, AL-BASHIR AND PUTIN

The preceding sections establish that the legal position of a sitting President cannot be determined merely by reference to the gravity of the alleged crime or the official status of the accused. The decisive questions include the nature of the forum, the legal basis of its jurisdiction, the operation of applicable immunity rules and the capacity of the relevant institution to secure State cooperation. These issues are illustrated by the Taylor, Al-Bashir and Putin situations. Considered comparatively, the three cases reveal different stages in the continuing development and practical limitation of international criminal accountability for sitting Heads of State.

6.1 Charles Taylor: The International Forum Distinction

The proceedings against Charles Ghankay Taylor provide an important illustration of the distinction between foreign domestic jurisdiction and international criminal jurisdiction. While serving as the incumbent President of Liberia, Taylor challenged the jurisdiction of the Special Court for Sierra Leone on the ground that he enjoyed immunity by virtue of his position as Head of State.

The Appeals Chamber rejected the claim, holding that Taylor's official status did not prevent the Special Court from exercising jurisdiction over him.²⁸ The significance of the decision lies principally in the Court's recognition that the Special Court was an internationalised judicial institution and was therefore materially different from the domestic court of one State seeking to exercise unilateral criminal jurisdiction over the Head of State of another.

The Taylor decision consequently demonstrates that personal immunity cannot be considered independently of the character of the forum. The protection traditionally available before foreign domestic courts does not necessarily operate in the same manner before an international or internationalised criminal tribunal possessing valid jurisdiction. The case therefore represents an important doctrinal foundation for the proposition that the forum exercising jurisdiction is central to the legal analysis.

Its limitation, however, must also be recognised. Taylor did not resolve every subsequent controversy concerning immunity before the ICC, particularly where the Court seeks the cooperation of States in relation to an incumbent Head of State of a non-State Party. Those questions became considerably more complex in the Al-Bashir proceedings.

6.2 Omar Al-Bashir: The Immunity and Cooperation Dilemma

The proceedings against Omar Hassan Ahmad Al-Bashir brought the conflict between Head-of-State immunity and international criminal accountability into direct confrontation with the ICC's system of State cooperation. Following the referral of the Darfur situation to the ICC by the United Nations Security Council, the Court issued arrest warrants against Al-Bashir while he was serving as the incumbent President of Sudan.

The legal controversy was not confined to whether the ICC could issue proceedings against Al-Bashir. It extended to whether States Parties could lawfully be required to arrest and surrender an incumbent Head of State of a State that was not party to the Rome Statute. The repeated failure of States to execute the arrest

²⁷ E L Scali and R Nigro, 'Cooperation with the ICC and Personal Immunities of Heads of State or Government of Non-Parties: Revisiting Articles 27 and 98 of the Rome Statute After the Court's Finding on Mongolia's Non-Compliance' (2025) 34 *Italian Yearbook of International Law* 319–341.

²⁸ *Prosecutor v Charles Ghankay Taylor* (n22) paras 51–53.

warrants exposed the distinction between the Court's assertion of jurisdiction and its practical ability to enforce that jurisdiction.

The ICC's jurisprudence, culminating in the Jordan Referral re Al-Bashir Appeal, adopted the position that Head-of-State immunity did not prevent the requested State from complying with its obligation to arrest and surrender Al-Bashir.²⁹ The decision consequently strengthened the Court's legal position concerning the irrelevance of official capacity before international criminal jurisdiction.

Nevertheless, the Al-Bashir experience exposed a fundamental institutional weakness. A judicial determination that immunity does not bar arrest does not itself guarantee compliance. The ICC lacks an independent enforcement mechanism and depends substantially upon States to execute its requests. Consequently, the Al-Bashir proceedings demonstrated that the effectiveness of international criminal law depends not only upon the existence of jurisdictional rules but also upon political willingness to implement them.

The principal lesson of Al-Bashir is therefore that the immunity debate cannot be separated from the law and politics of cooperation. The Court may establish a legal obligation, but the realisation of accountability ultimately depends upon whether States are prepared to bear the diplomatic and political consequences of compliance.

6.3 Vladimir Putin and Mongolia: The Contemporary Enforcement Challenge

The Putin situation represents a contemporary development of the problems exposed by Al-Bashir. Following the ICC's issuance of an arrest warrant against Vladimir Vladimirovich Putin in connection with alleged war crimes arising from the situation in Ukraine, the question of enforcement arose when he visited Mongolia, a State Party to the Rome Statute, in September 2024.³⁰

Mongolia did not arrest and surrender Putin. The ICC subsequently found that Mongolia had failed to comply with its obligation to cooperate and referred the matter to the Assembly of States Parties under Article 87(7) of the Rome Statute.³¹ The episode is particularly significant because it raised the immunity question in circumstances involving the sitting Head of State of a non-State Party without the Security Council referral that had formed an important part of the Al-Bashir controversy.

The case therefore exposed continuing disagreement concerning the legal relationship between personal immunity under customary international law, Article 27 of the Rome Statute and the cooperation obligations of States Parties. Mongolia argued that Putin, as the incumbent Head of State of a non-State Party, remained entitled to immunity and that the Rome Statute could not itself impose treaty obligations upon Russia without its consent. The ICC rejected the argument in finding Mongolia non-compliant, but scholarly debate concerning the precise legal basis for the displacement or inapplicability of immunity remains significant.³²

Beyond the doctrinal controversy, the Mongolia episode illustrates the continuing enforcement problem confronting the ICC. As in Al-Bashir, the existence of an arrest warrant and a legal obligation of cooperation did not ensure execution. The case demonstrates the practical vulnerability of an international

²⁹ *The Prosecutor v Omar Hassan Ahmad Al Bashir* (n4) paras 101–103 and 113–118.

³⁰ Situation in Ukraine, ICC-01/22, Warrant of Arrest for Vladimir Vladimirovich Putin (Pre-Trial Chamber II, 17 March 2023).

³¹ Situation in Ukraine, Decision on the Finding under Article 87(7) of the Rome Statute on the Non-Compliance by Mongolia with the Request by the Court to Cooperate in the Arrest and Surrender of Vladimir Vladimirovich Putin and Referral to the Assembly of States Parties, ICC-01/22-90 (Pre-Trial Chamber II, 24 October 2024).

³² R Calò, 'Personal Immunity of Heads of State for International Crimes: Some Considerations on the ICC Pre-Trial Chamber's Finding of Mongolia's Non-Compliance in the Case against Putin' (2026) 24 *Journal of International Criminal Justice* 217–232; A Kjeldgaard-Pedersen, 'Personal Immunity Before the International Criminal Court' in *Reconstructing Power and Hegemony in Public International Law* (Springer 2026) 53–74.

criminal justice system that depends upon sovereign States for enforcement against some of the most politically powerful individuals in the international system.

6.4 Comparative Lessons

Considered together, the three situations reveal three distinct dimensions of the relationship between sovereignty, immunity and international criminal responsibility.

First, Taylor demonstrates the importance of the forum. The international or internationalised character of a tribunal may fundamentally alter the operation of personal immunity.

Secondly, Al-Bashir demonstrates the importance of cooperation. Even where the ICC asserts jurisdiction and rejects immunity as a barrier to its proceedings, the effectiveness of the Court depends upon States implementing arrest and surrender obligations.

Thirdly, Putin and Mongolia demonstrate the continuing enforcement and legitimacy challenge. The contemporary controversy is no longer confined to the abstract question whether official capacity should protect a sitting President. It concerns whether international criminal institutions can consistently establish and enforce their authority where proceedings involve powerful States or the incumbent leaders of non-States Parties.

The three cases therefore reveal a progressive movement from a relatively clear question of jurisdiction in Taylor, through the more contested problem of immunity and cooperation in Al-Bashir, to the contemporary problem of enforcement, compliance and institutional authority in the Putin situation. They confirm that neither sovereignty nor accountability can be treated as absolute. A coherent legal approach must instead examine the timing of the alleged conduct, the status of the individual and, above all, the nature and authority of the forum seeking to exercise jurisdiction.

7. RECONCILING SOVEREIGNTY, HEAD-OF-STATE IMMUNITY AND INTERNATIONAL CRIMINAL RESPONSIBILITY

The preceding analysis demonstrates that the relationship between State sovereignty, Head-of-State immunity and international criminal responsibility cannot be resolved through an absolute preference for either immunity or accountability. Each principle serves an important function within the international legal order. Sovereignty protects the juridical equality and independence of States; Head-of-State immunity protects the effective performance of important State functions and restrains inappropriate exercises of foreign jurisdiction; while international criminal responsibility seeks to ensure that individuals do not escape accountability for serious international crimes merely because they occupy positions of political authority.³³

The apparent tension between these principles is therefore best understood as a problem of legal differentiation rather than an irreconcilable contradiction. The appropriate legal outcome depends upon several interconnected factors, including the timing and nature of the alleged conduct, the legal status of the individual when jurisdiction is sought and the identity and authority of the forum seeking to exercise jurisdiction.

7.1 Sovereignty and Accountability as Complementary Legal Values

State sovereignty should not be understood as requiring the permanent exclusion of international criminal responsibility. Contemporary international law recognises that sovereignty operates within an international

³³ *Arrest Warrant* (n1), paras 51 and 53.

legal order containing treaty obligations, customary rules and institutions through which States and individuals may incur international responsibility.³⁴

At the same time, international criminal accountability cannot legitimately disregard the sovereign equality of States or the procedural protections recognised by international law. The exercise of criminal jurisdiction, particularly against incumbent Heads of State, must therefore rest upon a clear legal foundation. The seriousness of an alleged crime, although highly significant, cannot alone substitute for jurisdiction or justify the disregard of applicable procedural rules.³⁵

The appropriate reconciliation must consequently preserve both values. Sovereignty should not become a doctrine of permanent impunity, while accountability should not become a basis for politically motivated or legally unsupported exercises of jurisdiction.

7.2 Immunity as Procedural Protection Rather than Impunity

A central requirement of reconciliation is the maintenance of a clear distinction between immunity and impunity. The International Court of Justice has emphasised that jurisdictional immunity and individual criminal responsibility are separate concepts: immunity is procedural in nature, whereas criminal responsibility concerns substantive law.³⁶

This distinction is particularly important where allegations concern conduct committed before the assumption of presidential office. The subsequent acquisition of presidential status does not extinguish responsibility for alleged criminal conduct or retrospectively transform unlawful private conduct into lawful conduct. Where personal immunity applies before a foreign domestic court, its principal effect is to regulate the exercise of jurisdiction during the period in which the immunity subsists rather than to create permanent substantive absolution.³⁷

The law must therefore distinguish between an inability to prosecute a person before a particular court at a particular time and the broader proposition that the individual can never be held accountable. The former may result from applicable procedural immunity; the latter does not necessarily follow from it.

7.3 The Importance of Forum-Specific Legality

The identity of the forum is central to determining the operation of immunity. Foreign domestic courts exercise the jurisdiction of one sovereign State and must therefore give effect to applicable rules of international immunity. By contrast, proceedings before a competent international or internationalised criminal tribunal derive their authority from a different legal foundation.³⁸

This distinction was clearly illustrated in *Prosecutor v Charles Ghankay Taylor*, where the Appeals Chamber of the Special Court for Sierra Leone rejected the argument that Taylor's status as the incumbent President of Liberia prevented the Court from exercising jurisdiction. The decision emphasised the international character of the tribunal and distinguished it from the exercise of unilateral criminal jurisdiction by the domestic court of one State over the Head of State of another.³⁹

Similarly, Article 27 of the Rome Statute affirms the irrelevance of official capacity before the International Criminal Court and provides that immunities or special procedural rules attached to official capacity shall not bar the Court from exercising its jurisdiction.⁴⁰ The operation of these principles

³⁴ UN Charter (n5) art 2(1); Rome Statute (n2) arts 1 and 25.

³⁵ *Arrest Warrant* (n1) paras 58–61.

³⁶ *Arrest Warrant* (n1) para 60.

³⁷ *Ibid* paras 60–61.

³⁸ *Ibid* para 61; *Prosecutor v Charles Ghankay Taylor* (n22) paras 51–53.

³⁹ *Prosecutor v Charles Ghankay Taylor* (n22) paras 51–53.

⁴⁰ Rome Statute (n2), art 27.

nevertheless depends upon the existence of a valid jurisdictional basis and the applicable legal framework governing the particular proceedings.

Forum-specific legality therefore provides an essential safeguard. It protects the legitimate sphere of sovereignty while ensuring that political office does not automatically defeat the jurisdiction of a competent international criminal institution.

7.4 Legality, Consistency and Safeguards against Political Abuse

A sustainable system of international criminal justice must guard against both impunity and politically selective prosecution. The law of immunity should not permit powerful officials to secure permanent protection simply by acquiring or retaining political office. Conversely, the rejection of immunity should not become an instrument through which criminal processes are selectively deployed against politically vulnerable States or leaders.

The reconciliation of sovereignty and accountability must consequently operate consistently with the principles of legality, due process, equality before the law and judicial independence. Criminal proceedings against Heads of State should be founded upon clearly established jurisdiction, credible allegations, applicable substantive law and fair procedures. These requirements are essential to the legitimacy of both domestic and international criminal adjudication.⁴¹

7.5 A Principled Reconciliation Framework

On the basis of the preceding analysis, this article proposes a principled framework for reconciling sovereignty, Head-of-State immunity and international criminal responsibility.

First: Temporal Responsibility

The timing of alleged criminal conduct must be distinguished from the timing of the exercise of criminal jurisdiction. The subsequent assumption of presidential office should not extinguish responsibility for alleged crimes committed before assuming office. Where personal immunity applies before a foreign domestic court, it may affect the immediate exercise of jurisdiction but should ordinarily operate as a procedural and temporary limitation rather than as a substantive defence or permanent amnesty.⁴²

Secondly: Status-Based Procedural Protection

The international legal protection attached to incumbent high State office should be respected within its proper jurisdictional sphere. In particular, foreign domestic courts should exercise restraint where customary international law requires recognition of immunity *ratione personae*. This protection serves legitimate purposes connected with sovereign equality, diplomatic stability and the effective performance of important State functions.⁴³

However, status-based protection must remain distinct from impunity. The law should clearly distinguish an inability to prosecute at a particular time from a conclusion that the individual cannot be held accountable under any circumstances.

Thirdly: Forum-Specific International Accountability

Proceedings before international criminal tribunals should be assessed according to the legal authority and jurisdiction of the particular institution. Where a properly constituted tribunal possesses valid jurisdiction and the applicable legal framework removes or limits the relevance of

⁴¹ Rome Statute (n2), arts 21, 66 and 67.

⁴² *Arrest Warrant* (n1) paras 60–61.

⁴³ *Ibid* paras 51–55.

official capacity, accountability may legitimately proceed notwithstanding the individual's status as a Head of State.⁴⁴

The essential requirement is legal certainty. The displacement or limitation of immunity must be founded upon a sufficiently clear rule of international law and not merely upon the seriousness of the allegation or the desirability of achieving accountability.

Fourthly: Legality, Consistency and Safeguards against Political Abuse

A sustainable international criminal justice system must guard against both impunity and politically selective prosecution. The reconciliation of sovereignty and accountability must therefore operate consistently with the principles of legality, due process, equality before the law and judicial independence.

7.6 The Temporal-Status-Forum Test

The preceding analysis supports the formulation of a three-dimensional analytical framework-the Temporal-Status-Forum Test-for determining legal questions arising from allegations of criminality against sitting Presidents.

Whenever criminal proceedings are contemplated against a sitting President, three preliminary questions should be asked.

First, the Temporal Question: When was the alleged conduct committed? Was it committed before assuming office, during office as private conduct or in connection with governmental authority?

Secondly, the Status Question: What is the legal position of the individual when jurisdiction is sought? Is the person an incumbent Head of State, a former Head of State or another category of State official?

Thirdly, the Forum Question: Which institution seeks to exercise jurisdiction? Is it a domestic court of the official's own State, a foreign domestic court or an international criminal tribunal possessing a recognised jurisdictional basis?

These questions should be considered sequentially but also collectively. No single factor should automatically determine the legal outcome. The timing of the alleged conduct may affect the applicable legal analysis; the status of the individual may determine whether personal immunity applies; and the forum may determine whether that immunity constitutes a procedural barrier to the exercise of jurisdiction.

The framework consequently offers a more nuanced alternative to the simplistic propositions that sitting Presidents are either completely immune or completely subject to criminal jurisdiction. Contemporary international law supports neither absolute position. Rather, the legal outcome depends upon the interaction of time, status and forum, interpreted in accordance with the applicable rules governing sovereignty, immunity, jurisdiction and individual criminal responsibility.

The interaction of these three factors provides a principled basis for reconciling legitimate sovereign interests with the imperative of individual criminal accountability. The Temporal-Status-Forum Test is therefore proposed as a structured preliminary analytical framework through which courts, international institutions and States may assess cases involving alleged criminality by sitting Presidents without collapsing the distinct concepts of sovereignty, immunity, jurisdiction and substantive criminal responsibility into a single question.

⁴⁴ Rome Statute (n2), art 27; *Prosecutor v Charles Ghankay Taylor* (n22) paras 51–53.

8. FINDINGS AND RECOMMENDATIONS

8.1 Findings

This Article makes the following four principal findings:

1. Head-of-State immunity is not equivalent to impunity. Immunity *ratione personae* is principally procedural and may restrict the exercise of foreign criminal jurisdiction over an incumbent President without extinguishing substantive criminal responsibility. Accordingly, the subsequent assumption of presidential office does not erase alleged criminal conduct committed before entering office or permanently exempt the individual from accountability.
2. The legal consequences of alleged criminality depend substantially upon the forum seeking to exercise jurisdiction. The strongest application of personal immunity arises before foreign domestic courts, whereas competent international or internationalised criminal tribunals operate within a different jurisdictional framework. Accountability must therefore be determined by the legal authority of the particular forum rather than by presidential status alone.
3. The ICC framework has significantly reinforced the principle that official capacity does not constitute a substantive bar to international criminal responsibility. Nevertheless, the relationship between Articles 27 and 98 of the Rome Statute, particularly regarding incumbent Heads of State of non-States Parties, continues to generate uncertainty concerning immunity and cooperation obligations.
4. The effectiveness of international criminal accountability remains substantially dependent upon State cooperation. The experiences arising from the Al-Bashir and Putin situations demonstrate that the existence of jurisdiction, an arrest warrant or a judicial decision does not automatically secure enforcement. The continuing challenge is therefore not merely the existence of legal authority but also the practical capacity to secure compliance.

8.2 Recommendations

The foregoing findings support the following corresponding recommendations:

1. International and domestic legal practice should consistently distinguish procedural immunity from substantive impunity. Where personal immunity temporarily prevents proceedings before a foreign domestic court, such protection should not be interpreted as permanently extinguishing criminal responsibility or transforming presidential office into retrospective protection for alleged pre-office criminality.
2. Courts and relevant institutions should adopt a forum-specific approach to cases involving sitting Presidents. The exercise of jurisdiction should be assessed according to the legal character and authority of the forum, with due respect for applicable immunity before foreign domestic courts and for the jurisdiction of competent international criminal tribunals.
3. Greater doctrinal clarity is required concerning the relationship between Articles 27 and 98 of the Rome Statute and the position of incumbent Heads of State of non-States Parties. The ICC and States Parties should pursue a more coherent and legally transparent approach to questions of immunity and cooperation in order to strengthen legal certainty, predictability and institutional legitimacy.
4. States, Parties and international institutions should strengthen mechanisms for cooperation and compliance with international criminal justice obligations. More effective institutional and political measures are necessary to reduce the persistent gap between the issuance of arrest warrants and their practical execution.

Taken together, these findings and recommendations reinforce the article's proposed Temporal–Status–Forum Test as a structured framework for analysing alleged criminality involving sitting Presidents. The Test requires decision-makers to consider the timing of the alleged conduct, the legal status of the individual when jurisdiction is sought and the identity and legal authority of the forum. Its systematic application would promote greater legal certainty and prevent disputes from being resolved through either an absolute presumption of immunity or an equally absolute assumption of unrestricted criminal jurisdiction.

9. CONCLUSION

The relationship between State sovereignty, Head-of-State immunity and international criminal responsibility remains one of the most complex questions in contemporary international law. Each principle serves an important function: sovereignty protects the independence and juridical equality of States; Head-of-State immunity protects the effective performance of the functions of incumbent senior officials and restrains inappropriate exercises of foreign jurisdiction; while international criminal responsibility seeks to ensure that individuals do not escape accountability for serious international crimes merely because they occupy positions of political authority.

This article has demonstrated that the tension between these principles cannot appropriately be resolved through an absolute preference for either immunity or accountability. The proposition that a sitting President is completely immune from every form of criminal process is inconsistent with the development of international criminal law. Conversely, the gravity of an alleged crime cannot, by itself, automatically displace every applicable rule of immunity or jurisdiction.

A coherent legal approach requires a clear distinction between substantive criminal responsibility and procedural immunity, as well as between foreign domestic jurisdiction and the jurisdiction of competent international criminal tribunals. The article has further established that the assumption of presidential office does not extinguish responsibility for alleged criminal conduct committed before entering office. Although incumbency may temporarily restrict the exercise of foreign domestic criminal jurisdiction, the presidential office should not operate as a retrospective amnesty for alleged past crimes.

The central contribution of this article is the proposed Temporal–Status–Forum Test. The temporal dimension considers when the alleged conduct occurred; the status dimension examines the legal position of the individual when jurisdiction is sought; while the forum dimension determines the nature and legal authority of the institution seeking to exercise jurisdiction.

This framework provides a principled basis for reconciling sovereignty with international criminal accountability. It recognises the legitimate role of personal immunity within its proper jurisdictional sphere while rejecting its transformation into permanent impunity. Ultimately, the challenge for contemporary international law is not to choose between sovereignty and justice, but to develop and apply legally coherent rules capable of preserving the legitimate sphere of both. The Temporal–Status–Forum Test offers a structured framework for achieving that balance and for ensuring that neither presidential office nor the assertion of criminal jurisdiction becomes an instrument of injustice.



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