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Advancing Accountability for Heads of State at the International Criminal Court

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TABLE OF CONTENTS

ABBREVIATIONS 4

INTRODUCTION 5

STATES MUST REAFFIRM THEIR COMMITMENT TO THE COURT AND THEIR COOPERATION OBLIGATIONS 7

STATES MUST COMPLY WITH ICC JURISPRUDENCE AND ITS CONSISTENT REJECTION OF IMMUNITIES 11

STATES MUST FOLLOW THE ICC CHAMBERS' FINDING OF NO IMMUNITIES AND ADOPT A COHERENT INTERPRETATION OF ARTICLES 27 AND 98 RS 13

STATES MUST AFFIRM, PER CUSTOMARY INTERNATIONAL LAW, THAT IMMUNITIES ARE NO BAR TO THE EXECUTION OF ICC ARREST WARRANTS 15

ADVANCING ACCOUNTABILITY: RECOMMENDATIONS 18

ABBREVIATIONS

ASP	Assembly of States Parties
CoE	Council of Europe
ICC / the Court	International Criminal Court
ICJ	International Court of Justice
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the Former Yugoslavia
PTC	Pre-Trial Chamber
RS / the Statute	Rome Statute
RS crimes	Crimes under the Rome Statute
SCSL	Special Court for Sierra Leone
Special Tribunal	Special Tribunal for the Crime of Aggression against Ukraine
UN	United Nations
UNWCC	United Nations War Crimes Commission
US	United States
VCLT	Vienna Convention on the Law of Treaties

INTRODUCTION

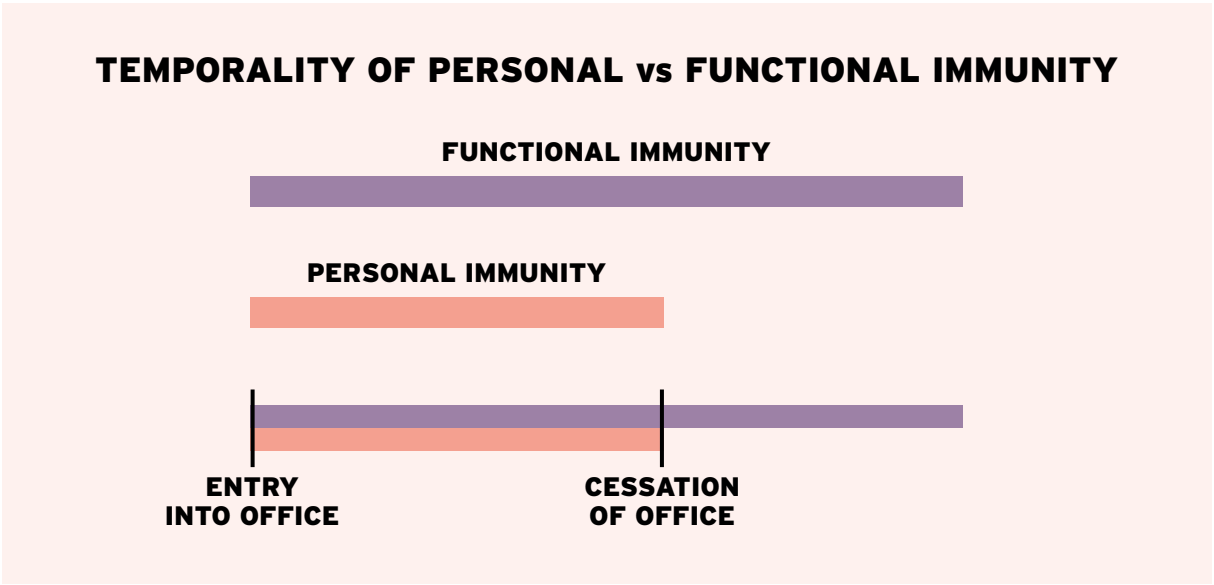
The Rome Statute (RS, the Statute) created a promise that even the most powerful individuals can be held to account when national systems fail. For millions who have been denied justice in their own countries, the International Criminal Court (ICC, Court) represents an essential window of hope. That window begins to close with each instance a State Party fails to arrest a sitting head of state wanted by the Court based on personal immunity. These violations weaken the collective commitment that underpins the RS system and risk turning a clear legal framework into a matter of political choice. This paper sets out why personal immunities cannot bar cooperation with the ICC and why reaffirming this principle is indispensable to preserving equality before the law and ensuring the Court remains a credible avenue for accountability.

The principle that no individual, however senior, may rely on official position to avoid accountability for the most serious international crimes predates the RS and remains central to resolving today's disputes over the arrest of sitting heads of state. It reflects a long-standing approach in international criminal law that rejects the idea that rank or office can shield perpetrators from responsibility. The post–World War II tribunals, including Nuremberg and Tokyo, made clear that immunity has no place when adjudicating atrocities. This position informed the negotiations at the Rome Conference and was ultimately codified in Article 27 RS, which applies even when the suspect's state of nationality is not a party to the Statute, as confirmed in the Court's 2024 non-compliance finding against Mongolia.

Despite the clear legal framework of the Statute, several States Parties have refused to comply with ICC arrest warrants for heads of state, citing the applicability of personal immunities of heads of non-States Parties before the Court as the basis for these refusals. Despite two arrest warrants against the former-President of Sudan, Omar Al Bashir, several states, including Malawi, Chad, and South Africa, permitted Al Bashir's travel to their territory without arresting and surrendering him to the Court. The Al Bashir case is emblematic of a larger pattern of open defiance by some States Parties to comply with ICC cooperation requests with some even inviting and hosting those subject to ICC arrest warrants on their territory.

States developed immunity to facilitate the conduct of international relations and preserve their sovereign equality, not to shield individuals from accountability for atrocity crimes. Presently, international law recognises two forms of immunity: personal immunity and functional immunity. Personal immunity is tied to the position of high-ranking government officials, including the head of state, head of government and minister of foreign affairs – the troika. It covers both official and private acts, including acts preceding the term of office, shielding the individual from foreign criminal jurisdiction while in office. Importantly, personal immunity ceases entirely once an individual leaves office. The practice of international criminal mechanisms has also confirmed that personal immunity does not apply before such mechanisms to cover acts amounting to serious international crimes, including Rome Statute crimes (RS crimes).

Functional immunity is attached to the conduct of all state officials acting in their official capacity. It continues to apply after the end of an official's functions but only covers acts performed in the context of their mandate. Many domestic courts have accepted limitations to the application of functional immunity in foreign national courts, holding that acts amounting to serious international crimes, including RS crimes, are not covered by functional immunity.



The Court's jurisprudence, customary international law, and a harmonious reading of Articles 27 (irrelevance of official capacity) and 98 (cooperation with respect to waiver of immunity and consent to surrender) all support the inapplicability of personal immunity before the ICC, including where a suspect is a national of a non-State Party. Despite this clarity, flawed claims by some States Parties that Article 98(1) creates uncertainty around personal immunities, in order to absolve themselves of the Rome Statute obligations, have contributed to increased non-cooperation and fewer arrests. This paper identifies four priority areas where action by States Parties is essential to maintain the integrity of the RS framework:

1. **Actively reaffirm their commitment to the Court and the cooperation regime.**
2. **Adhere to the Court's jurisprudence and its consistent rejection of immunities.**
3. **Follow the ICC Chambers' coherent interpretation of Articles 27 and 98 RS.**
4. **Affirm, per customary international law, that immunities are no bar to the execution of ICC arrest warrants.**

When establishing the ICC, states affirmed that ending impunity for serious international crimes, through investigation, prosecution, adjudication and, after conviction, reparations, was pivotal to the maintenance of international peace and security. States must reiterate, publicly and consistently, that they are legally bound by the RS and that no individual, whatever their position or nationality, is exempt from ICC arrest. Without such clarity, the ICC's mandate will be undermined and there is a real risk of encouraging impunity and deepening double standards. As affirmed in the Rome Statute's Preamble, the object and purpose of the treaty is to put an end to impunity for the most serious crimes of concern to the international community as a whole, regardless of the official position or rank of their perpetrators.

STATES MUST REAFFIRM THEIR COMMITMENT TO THE COURT AND THEIR COOPERATION OBLIGATIONS

States Parties are obliged to fully cooperate with the Court in accordance with Article 86 RS. This obligation covers, among others, the arrest and surrender of suspects, investigations, detention, and seizure of assets.

In the Pre-Trial Chamber's (PTC) 2011 non-compliance decision against Malawi, after it failed to arrest Al Bashir, the Chamber found that Article 27 RS excludes head of state immunity before the ICC and that customary international law also creates an exception to head of state immunity before international courts. Following this decision, the Court has consistently confirmed that Article 27 applies irrespective of a suspect's nationality and that States Parties must execute arrest and surrender requests accordingly, including for nationals of non-States Parties. States Parties have yet to arrest a sitting head of state pursuant to an ICC arrest warrant, and they continue to make conflicting public statements. States must reaffirm their commitment to the RS and ensure their implementing legislation provides clarity on the inapplicability of immunity from arrest pursuant to ICC arrest warrants. States must also make clear and explicit public statements that align with their legal obligations under the RS.

States should adopt consistent responses to the issuance of arrest warrants

International criminal justice requires continual and consistent action to implement ICC arrest warrants, irrespective of the suspects' nationality. Double standards and selectivity undermine the rule of law, enabling power and politics to determine which victims deserve justice.

In the past two years, States Parties have responded inconsistently to the arrest warrants and immunity-related questions before the Court. France reaffirmed its commitment to arresting and surrendering President Putin and other alleged perpetrators in the *Situation in Ukraine.* Yet, both France and Italy outlined that Prime Minister Netanyahu benefits from immunity before the Court. In July 2025, France, Italy and Greece allowed Prime Minister Netanyahu to fly over their countries despite airspace being their national territory, thereby contradicting their commitment to cooperate with the Court. Germany asserted that immunity is inapplicable to Russian officials, while they said that "further consideration" is required to resolve the immunity question for Prime Minister Netanyahu. The current German Chancellor stated that he will ensure Prime Minister Netanyahu's safe visit to Germany. Polish Prime Minister Tusk affirmed Poland would arrest President Putin, while the Polish government assured Prime Minister Netanyahu's safe passage if he would have attended the 2025 Auschwitz commemoration ceremony. The Netherlands, ICC's host state, asserted that it might be possible for Prime Minister Netanyahu to visit the Netherlands without being arrested. In 2017, South Africa was found not compliant for failing to arrest and surrender former-President Al Bashir, but welcomed the arrest warrants issued in 2024 in the Palestine situation, and, along with seven other states, declared its intention to comply with its obligations under the RS with regards to the arrest warrant against Prime Minister Netanyahu.

©Zuma Press/Alamy. Protests in Munich, Germany, in solidarity with the Ukrainian people following the Russian invasion, March 2022.

Argentina, Austria, Bulgaria, and Paraguay have expressed their disagreement with the issuance of the ICC arrest warrants, alluding to the politicisation of the Court. Other ICC States Parties, including Romania, Hungary, Brazil, Mexico, and South Africa, went further and invited ICC suspects to their countries, showing disregard for the issued arrest warrants and their cooperation obligations under the RS. Most recently, in October 2025, Putin visited Tajikistan, another ICC State Party, without being arrested.

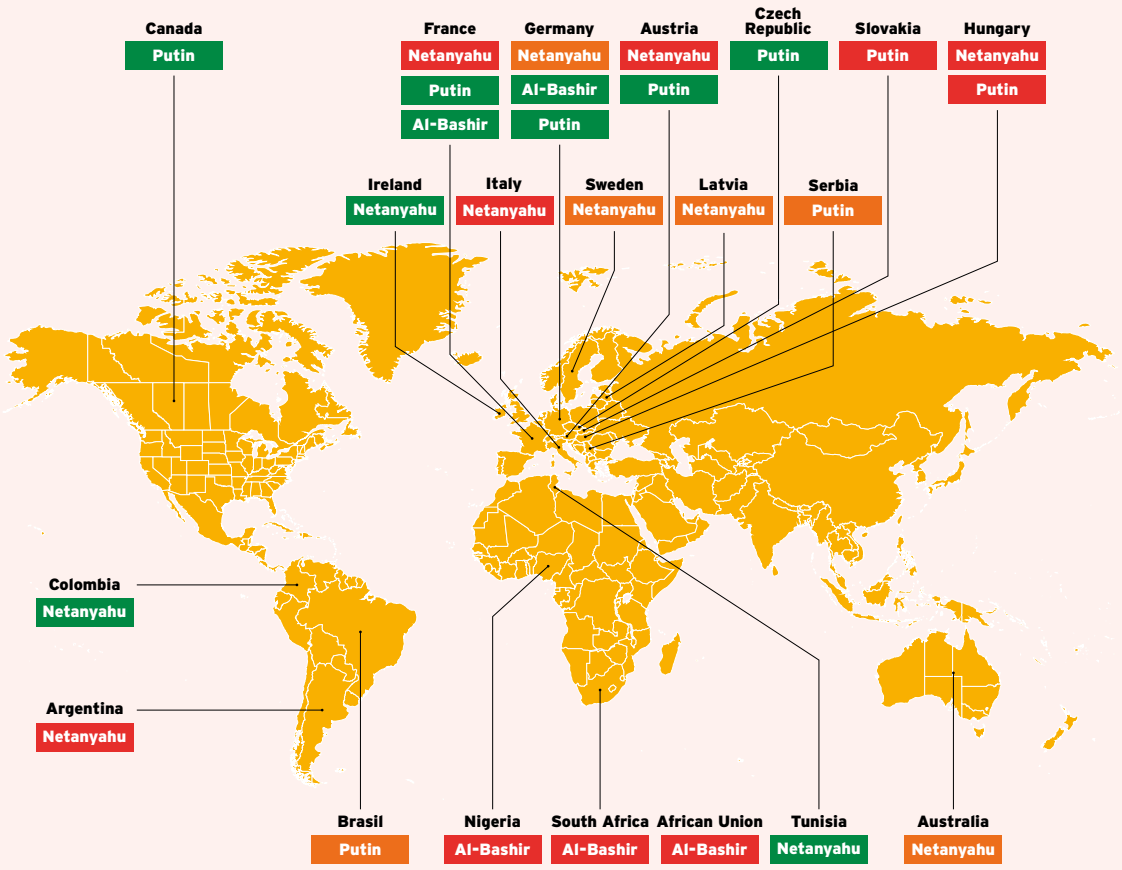
The United States (US), a non-State Party, has been the most blatant in its attempts to instrumentalise the Court for its own political objectives. It welcomed and called for the execution of both the arrest warrant against Al Bashir and against Putin, yet firmly rejected arrest warrants against Netanyahu and Gallant. The political calculations behind these inconsistent positions were fully revealed when the US sanctioned ICC officials and Palestinian civil society organisations supporting its work, undermining the Court's independence and operations. Notwithstanding these disturbing instances, a majority of States Parties' public reactions, notably 39 out of 59, were supportive of the arrest warrant against Netanyahu while affirming their cooperation obligations. This is significant because such widespread support reaffirms the prevailing view among States Parties that personal immunities do not bar arrest and surrender of ICC suspects.

States should take clear public positions regarding the inapplicability of personal immunities before the ICC

Recent declarations by some States Parties opposing specific investigations, or their silence on the issue of cooperation and arrests, undermine the Court and its accountability efforts. States Parties must act with resolve and unity to protect the ICC's independence and credibility. The RS system was created to confront impunity for the gravest crimes, and turning away from that commitment would weaken international accountability far beyond the Hague.

Recently, however, Canada, the Czech Republic, Finland, New Zealand, Slovenia, and Switzerland, have expressed their intent to fully comply with the Court's arrest warrants, should a suspect enter their territory. Brazil condemned a lack of consistency in the responses of States Parties, highlighting the politicisation of state responses based on the nationality of suspects. Recently, 60 States Parties underlined the continuing need for international cooperation while calling for States Parties to assist with requests to arrest and surrender suspects to the Court. Nordic countries emphasised that, under the RS, States Parties must cooperate with the Court, including executing ICC's arrest warrants. On behalf of 59 states, Mexico reiterated the significance of full cooperation with the Court. States must follow this trend and make clear and explicit statements. States Parties should also issue collective and explicit statements affirming that personal immunities have no application before the Court.

COMPLIANCE VS NON-COMPLIANCE WITH ICC ARREST WARRANTS



You can find more information about States Parties' positions here and here.

States Parties must implement the Rome Statute through comprehensive national legislation

States Parties, by virtue of ratification or accession, consent to the obligation to cooperate fully with the Court. States Parties must ensure their domestic legislation enables this cooperation, in line with Article 88 RS on the availability of procedures under national law, through national legislation that provides a complete framework for cooperation obligations, including clear procedures for arrest, surrender, and judicial assistance. Domestic cases in South Africa, Kenya and Uganda demonstrate the importance of implementing legislation. Domestic legislation enhances legal clarity and the certainty of applicable procedures for the arrest and surrender of a suspect, especially with regards to questions about immunity and the ICC.

Following South Africa's failure to arrest then Sudanese President Al Bashir in June 2015, the South African Supreme Court of Appeal found that South Africa had violated its Rome Statute obligations. The Court concluded that when South Africa chose to implement the Rome Statute through the Implementation Act, it did so on the basis that all forms of immunity, including head of state immunity, would not constitute a bar to cooperating with the ICC on arrests and surrender. The Court described this decision as placing South Africa "in the vanguard of attempts to prevent international crimes." In practical terms, the judgment illustrates that once a state makes the political choice to fully implement its RS obligations, wider debates about customary international law become largely unnecessary.

The obligation to arrest and surrender exists, even where domestic legislation has yet to be adopted. Under Article 27 of the Vienna Convention on the Law of Treaties (VCLT), a state may not invoke inconsistency with its national law to avoid responsibility for violating its treaty obligations, including the obligation to cooperate with the Court under the Rome Statute.

The High Court of South Africa confirmed in 2023 South Africa's, and all States Parties', obligation to cooperate with the ICC in the arrest of President Putin. This followed repeated statements by the South African government that it would not arrest Putin should he visit their territory. Following an agreed High Court order, the Department of Justice formally requested the National Director for Public Prosecutions to issue an arrest warrant against Putin. Similarly, the Kenyan Court of Appeal and the High Court of Uganda held that, in failing to arrest Al Bashir, both states violated their obligations to arrest and surrender suspects of core international crimes as per their RS and international obligations. The High Court of Uganda outlined that failure to arrest amounted to a violation of an obligation towards the international community.

STATES MUST COMPLY WITH ICC JURISPRUDENCE AND ITS CONSISTENT REJECTION OF IMMUNITIES

The Court's jurisprudence is clear: personal immunities do not apply before the Court or when states conduct arrests pursuant to the Court's warrants, regardless of the suspect's official position. Although Pre-Trial Chambers have used different lines of reasoning, the Appeals Chamber has consistently held that States Parties must arrest and surrender sitting heads of state, irrespective of nationality. This obligation applies in all circumstances. Should any problems arise that may impede or prevent the execution of a request for arrest, Article 97 RS requires States Parties to consult with the Court.

The Court has rejected arguments asserting personal immunity for individuals who are nationals of non-States Parties, particularly in the *Situation in Darfur* and in relation to the arrest warrants for Al Bashir. The Court has relied on both customary international law and Security Council referrals as lines of reasoning. Most recently the Court clarified that the RS itself removes head of state immunity.

The Court has found that customary international law does not provide for head of state immunity before international courts. In its decisions in *Malawi* and *Chad*, PTC I found that both states had failed to cooperate by refusing to arrest Al Bashir. PTC I held that the non-application of immunity of sitting or former heads of state, even of non-States Parties, before international courts is a rule of customary international law. The Appeals Chamber, in its appeal decision against Jordan, declared that Article 27(2) RS reflected customary international law and applied to inter-state relations. The Chamber also held that "neither State practice nor *opinio juris* ( ) would support the existence of Head of State immunity under customary international law vis-à-vis an international court."

The Court also found that immunities are inapplicable where a United Nations (UN) Security Council resolution refers a situation to the ICC. PTC II found that Security Council Resolution 1593, referring the *Situation in Darfur* to the ICC, made Al Bashir's head of state immunity inapplicable before the Court, and obliged Sudan to cooperate fully with the ICC. In its decisions against the Democratic Republic of the Congo, Uganda, and Djibouti, PTC II similarly held that the Security Council had "waived the immunities granted" to Al Bashir by imposing this cooperation obligation. This obligation removed any purported immunity impediment at the inter-state level and enabled States Parties to arrest Al Bashir. Subsequently, in its decisions against South Africa and Jordan, the Court reasoned that Resolution 1593 had the necessary effect of placing Sudan in a position analogous to an ICC State Party. As a result, Article 27(2) RS was applicable and Al Bashir's personal immunity no longer applied vis-à-vis States Parties. The Appeals Chamber confirmed this reasoning in its appeal decision on Jordan.

Despite these different lines of reasoning, the Court recently affirmed that the RS alone removes any head of state immunity claim before the Court and in inter-state relations. In its 24 October 2024 finding of non-compliance against Mongolia for failing to arrest President Putin, PTC II held that Article 27 RS has the effect of removing "any and all international law immunities of officials, including Heads

of State." PTC II ruled that this provision obliges States Parties not to recognise any kind of immunity and to execute arrest warrants irrespective of the suspect's nationality. The Chamber clarified that this obligation could not be displaced by any purported bilateral obligation a State Party might owe to a non-State Party, also in recognition of the fact that the second paragraph of Article 27 is a conflict-clause affirming the supremacy of the principle of irrelevance of official capacity vis-a-vis any norm of immunities under either international or national law.

STATES MUST FOLLOW THE ICC CHAMBERS' COHERENT INTERPRETATION OF ARTICLES 27 AND 98 RS

States must interpret Articles 27 and 98 RS coherently, in accordance with the Court's jurisprudence, to ensure full state cooperation with the ICC.

The Court issues requests for the arrest and surrender of head of state suspects on the basis that no personal immunity applies under Article 27 RS. Article 27 provides that "immunities (…) 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 (…)." Article 98 RS provides that the requested state cannot be required to act inconsistently with their "obligations under international law with respect to the state or diplomatic immunity of a person or of a third State, unless the Court can first obtain cooperation of that third State for the waiver of the immunity." While states have argued that Article 98 preserves immunity for officials of non-States Parties, the ICC has consistently held that states are obliged to arrest and surrender head of state suspects, irrespective of Article 98 and irrespective of their nationality.

Ensure Article 98 interpretation aligns with treaty interpretation rules

A harmonious reading of the RS, as required under international law, and specifically according to the VCLT, means that Article 98 RS cannot be interpreted in a way that undermines or contradicts Article 27 RS. Both provisions must be read as part of a single, coherent set of rules. Where any uncertainty arises in reconciling the two articles, the RS' preparatory works provide further insight into the drafters' intention.

During the RS negotiations, Article 27 RS was not contentious (Chapter 27, mn 4). It built upon previous draft statutes dating back to 1952, which already contained similar provisions rejecting personal immunities. Scholars (Chapter 27, mn 4) and states (p. 69) alike recognised Article 27 RS as a cornerstone of modern international criminal law.

Article 98 originated from a Singapore proposal, aimed at protecting the "customary inviolability of diplomatic premises and persons." The debate did not touch on the issue of personal immunities for RS crimes before the ICC, or under customary international law, nor did it seek to reintroduce (p. 1132) the immunities expressly excluded under Article 27. The Singapore Proposal underwent only minor linguistic adjustments, introduced by the chairperson, to ensure coherence and legal accuracy. This confirms that negotiating states did not intend Article 98 to erode or contradict Article 27.

Collectively, states must reaffirm that Article 98 does not override the exclusion of immunity in Article 27 RS and restore coherence of their national practice with the RS' framework on personal immunities.

Reaffirm the non-applicability of immunity in inter-state relations

Article 27 RS has a dual function: it governs the relationship between the Court and States Parties, and also as between states. For the Court-States Parties relationship, the ICC makes requests for cooperation, namely the arrest and surrender of a suspect. For state-state relations, States Parties cannot invoke personal immunity of a suspect, or the 'preservation' of diplomatic relations with a non-State Party', to avoid arresting a suspect. Article 27 applies between States Parties in accordance with the VCLT, while Article 27 applies between States Parties and non-States Parties as a matter of customary international law.

States Parties are obliged to arrest and surrender any head of state subject to an ICC arrest warrant. This is for two reasons. First, it is necessary to give effect to the customary international law inapplicability of immunity before international courts and tribunals. Secondly, the Court's exercise of jurisdiction depends on States Parties fulfilling their cooperation obligations, as the Court relies on the law enforcement authorities of states for enforcement.

To ensure the effective implementation of the customary international law (see part 5 below) inapplicability of immunity before international courts, States Parties must arrest and surrender a head of state of another state under an ICC arrest warrant. As the Court itself cannot arrest suspects, the inapplicability of immunity before the Court extends to the international relations of two states, given that the arresting state operates as an extension of the Court's authority.

Where Article 27(2) applies, and the Court has issued an arrest warrant, the arresting state conducts an arrest in accordance with its own national procedural laws. Under Articles 4(2) and 59 RS, an arresting state is not exercising its own criminal jurisdiction, but rather is acting by proxy for the Court's jurisdiction. The ICC is a separate legal entity, and its enforcement powers under the RS depend on state cooperation, not only for arrests and surrenders, but also for detention after conviction and all other forms of cooperation in Part 9 RS.

States Parties must reaffirm that Article 27 RS applies when they execute arrests, regardless of the status or nationality of ICC suspects at large. Failure to do so is not only contrary to Article 27 RS, but also directly undermines the object and purpose of the Statute as expressed in its Preamble.

STATES MUST AFFIRM, PER CUSTOMARY INTERNATIONAL LAW, THAT IMMUNITIES ARE NO BAR TO THE EXECUTION OF ICC ARREST WARRANTS

Customary international law has long supported the inapplicability of personal immunity before international courts mandated to prosecute the most serious crimes, including the ICC. Decades of international and national jurisprudence confirm that such immunities cannot shield leaders from accountability. This understanding should guide the execution of ICC cooperation requests for arrests.

To absolve themselves of their RS obligations, some States Parties have claimed ambiguity in the inapplicability of personal immunities in the context of ICC proceedings. This position is inconsistent both with the RS and the substantial body of international and national jurisprudence supporting the inapplicability of personal immunity under customary international law. States Parties must reaffirm publicly and consistently that they are legally bound by the RS and that no person, regardless of position, enjoys immunity from ICC arrest.

More critically, States Parties must ensure that their implementing legislation gives full effect to Article 27 RS and makes clear that no personal or other immunity can bar cooperation with the ICC. Adequate domestic law removes any uncertainty and avoids reliance on wider debates about customary international law. Failure to do so risks emboldening impunity, and entrenching double standards in international criminal justice.

International courts and tribunals found immunities to be inapplicable, irrespective of their basis of establishment

International courts and tribunals have consistently affirmed that immunities do not shield suspects from prosecution for international crimes before them. This exception applies irrespective of how the court was established or whether a state explicitly consented to its jurisdiction.

The Nuremberg Tribunal expressly confirmed that the official position of a defendant, including as head of state, was no bar to the Court's exercise of jurisdiction in both its Charter and its jurisprudence. In its judgement of 1 October 1946, in the case against Admiral Karl Dönitz, who had assumed the Presidency of the Reich after Hitler's suicide, Germany's non-ratification of the London Agreement was not raised as a bar to the Tribunal assuming jurisdiction over the defendant. The Tokyo Tribunal similarly excluded the application of immunities in its Charter. The International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR) reaffirmed this approach in their statutes and jurisprudence. The ICTY indicted President Milošević while he was still in office and later confirmed that the absence of immunity before the Tribunal reflected customary international law. The Special Court for Sierra Leone (SCSL) reached the same conclusion when it indicted Charles

Taylor during his presidency. The SCSL Appeals Chamber rejected Taylor's immunity claim, declaring that "the principle of state immunity [...] has no relevance to international criminal tribunals which are not organs of a state but derive their mandate from the international community."

This consistent jurisprudence across international criminal courts and tribunals demonstrates a clear and long-established rule: personal immunities do not apply before international courts created to prosecute the most serious crimes. It is against this backdrop that the recently established Special Tribunal for the Crime of Aggression against Ukraine (Special Tribunal) must be understood.

The Special Tribunal's provision on personal immunity does not weaken or contradict the customary international law rule on the inapplicability of immunity before international courts like the ICC. Article 23(5) of the Special Tribunal's Statute allows the Prosecutor to investigate sitting heads of state and government and ministers of foreign affairs, but requires pre-trial judges to pause indictment proceedings until they leave office. The negotiating states deemed it necessary to expressly clarify this procedural limitation. This is because, without an express procedural clause, CIL would have permitted the Special Tribunal to indict sitting leaders immediately. In other words, the provision reflects a political decision to delay indictments, not a challenge to customary international law recognition of the inapplicability of immunities.

The International Court of Justice and domestic courts support the inapplicability of immunity before certain international criminal courts

In its *Arrest Warrant* judgment, the International Court of Justice (ICJ) clarified that immunity enjoyed from jurisdiction does not equal impunity and that criminal prosecution is possible in certain circumstances, including before "certain international criminal courts, where they have jurisdiction." While the judgment did not elaborate on the character of an international court, it cited the ICTY, the ICTR, and the then-future ICC with Article 27(2) RS as examples.

The SCSL Appeals Chamber partially relied on the ICJ's ruling when dismissing Taylor's immunity, emphasising that the inapplicability of immunity was based on its international character. The ICC Appeal Chamber, in its appeal judgment against Jordan and PTC II in its finding against Mongolia, referred to the *Arrest Warrant* case's findings that personal immunity does not bar prosecution before international courts.

Many domestic courts have similarly confirmed that personal immunity cannot be invoked before the ICC or other international criminal tribunals, including when securing the arrest of an ICC wanted suspect.

The Belgian Cour de Cassation, in *Ariel Sharon*, found that personal immunities may be rendered inapplicable by an international treaty, such as the RS (p. 7). A Dutch District Court, in a case against former-President George W. Bush, recognised Article 27 RS as overriding what it identified as a customary international law principle of head of state immunity from foreign criminal jurisdiction (para 3.7). However, Article 27 was inapplicable in the proceedings before the District Court, as the US was not an RS State Party and the ICC had not initiated proceedings against Bush. The Supreme Court of Sierra Leone held that there is no "*a priori* entitlement" for heads of state to claim immunity before international courts (p. 13; see also p.15).

Most recently, the French Cour de Cassation affirmed that personal immunity "cannot be invoked before international courts, whose statutes expressly exclude immunity and which act on behalf of the international community." Yet in its official statement of 27 November 2024, the French government indicated that France must take into account "the immunities that apply to the leaders of States not party to the Rome Statute," noting that this included Netanyahu. This political stance sits in clear tension with the Cour de Cassation's ruling and underscores the need for states to align their public positions with the established legal framework governing international criminal courts.

Post-WWII international courts and tribunals have repeatedly rejected that members of the troika can shield themselves behind their official position when adjudicating atrocities time and time again. The ICJ, as well as domestic courts, have confirmed this customary international law rule. States Parties must be able to arrest and surrender an ICC suspect; otherwise, the effective implementation of customary international law will be undermined and victims denied access to justice. States Parties must affirm that immunity has no place when executing ICC arrest warrants and ensure their national implementing legislation reflects this inapplicability. It is the responsibility of States Parties to advance accountability and end impunity, a promise the Court was created to fulfil.

ADVANCING ACCOUNTABILITY: RECOMMENDATIONS

States are in the driving seat of international law at a pivotal point for international criminal justice. Action taken today can prevent atrocity crimes from occurring tomorrow. States Parties must:

1. **Reaffirm their commitment to the Court and fully comply with their cooperation obligations under the RS and customary international law.**

2. **Ensure that the RS is implemented** comprehensively in national law. This implementation must ensure adequate provisions to enable cooperation with the Court under Part 9 RS on international cooperation, including clear procedures for arrest, surrender, and judicial assistance. It must reflect the inapplicability of any immunities at all stages of their cooperation with the Court, in line with the specific obligation contained in paragraph 2 of Article 27 and customary international law.

3. **Test national procedures** in place to ensure smooth operation if the Court requests assistance with arrest and surrender, including heads of state, heads of government, and ministers of foreign affairs, including those of non-States Parties.

4. **Periodically review their national implementing legislation and procedures** to ensure it continues to provide for adequate means of cooperation, including on arrests and surrenders.

5. **Promptly domesticate and execute ICC arrest warrants** without exception and avoid non-essential contact, in accordance with Article 59 RS on arrest proceedings in the custodial state and Part 9 RS.

6. **Consult in a timely manner with the Court,** under Article 97 RS (on consultations), where a problem arises which may impede the execution of an arrest warrant. States should recall that consultations do not relieve them of the obligation to arrest and surrender.

7. **Reject double standards and take consistent stances** in support of the Court across all situations and investigations, regardless of their geographical scope or of diplomatic preferences, when issuing responses to the Court's requests.

8. **Ensure in their public statements and resolutions**, including at the ASP, that they do not undermine their obligations on cooperation, including arrest and surrender under the RS, regardless of a suspect's nationality or official capacity, including as head of state.

9. **Coordinate diplomatic responses to non-execution of arrest warrants**, including collective public statements supporting the ICC and the full application of international law.

Photo cover credits from left to right:

Lynchpics/Alamy: An anti Benjamin Netanyahu placard at the National March for Palestine in London on October 5th, 2025.

Clive Gee/Alamy: Protesters outside the Sudanese embassy in central London demonstrating in support of ICC investigations in Darfur, July 2008.

Zuma Press/Alamy: Protests in Munich, Germany, in solidarity with the Ukrainian people following the Russian invasion, March 2022.

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