Universitat Pompeu Fabra Barcelona

Impunity or Accountability? An Analysis of the Effectiveness of Article 27 of the Rome Statute Post al-Bashir.

BY

Thomas Edward Judd

Submitted to the faculty of law in partial fulfilment of the requirement for the award of the Master of Laws (LLM)

Master of Laws

Pompeu Fabra Universitat

Supervisor: Nuria Pastor Muñoz

June 2025

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Art. Article

AU African Union

CAH Crimes Against Humanity

HOS Head(s) of State

ICC International Criminal Court

ICTY International Criminal Tribunal for the Former Yugoslavia

ICC-St Rome Statute

UN United Nations

UNSC United Nations Security Council

US United States of America

Abstract

This thesis examines whether Article 27 of the Rome Statute has fulfilled its promise of ending impunity for heads of state in the post al-Bashir era. Article 27 removes official capacity as a bar to prosecution before the International Criminal Court, establishing that heads of state do not enjoy immunity before the Court. However, its application and enforcement remain highly contested. The thesis explores whether, despite the clear legal precedent set by the International Criminal Court's ruling in *al-Bashir,* Article 27 functions more as a symbolic provision than an enforceable rule. Through legal analysis and case studies, including recent warrants against Vladmir Putin, Benjamin Netanyahu, and Rodrigo Duterte, this thesis assesses both the reach and limitations of Article 27 in practice. It finds that although the al-Bashir and Jordan non-compliance rulings clarified that Article 27 overrides head of state immunity even for non-State Parties, enforcement remains fragmented. International Criminal Court State Parties continue to resist co-operation when politically inconvenient, and non-State Parties often reject the International Criminal Court's authority entirely. The thesis also examines the interaction between Articles 27 and 98, sovereignty-based resistance, selective justice concerns, and geopolitical challenges. Despite these barriers, Article 27 continues to shape expectations around accountability and impunity, even if it falls short of full enforcement. It concludes that Article 27 has not yet achieved its promise of ending impunity, but it remains normatively powerful. Its symbolic value could still evolve into a binding custom, provided that states act in accordance with its principles. The thesis argues that a combination of institutional reform, diplomatic engagement, and support for domestic capacity-building will be necessary for Article 27 to shift from a symbolic norm into a functional tool of international criminal accountability that ends impunity for heads of state and aids in realising the International Criminal Court's mandate.

1: Introduction

1.1 Background

Heads of states have traditionally been protected from legal proceedings before foreign courts through immunity doctrines rooted in international law. The justification for such immunity is that prosecuting a sitting HOS could jeopardise state functionality and violate state sovereignty principles. However, Art. 27 of the ICC-St, which governs the ICC, explicitly rejects this immunity, stating that official capacity is irrelevant and does not exempt individuals from criminal responsibility. In other words, being the president or a government official does not provide an exception from criminal responsibility under the ICC. Art. 27 is fundamental to realising the ICC's mandate to prosecute individuals and to hold such persons accountable for the most serious crimes of concern to the international community as a whole, namely the crime of genocide, war crimes, CAH, and the crime of aggression. As such crimes are often committed by government officials, a waiver of all immunities must exist to ensure accountability over impunity. Despite this broad waiver, Art. 98 tempers the ICC's power by requiring it to respect state obligations under international law before requesting co-operation. The consequence of this article is a legal tension between the ICC's goals of universal accountability and states' competing diplomatic and legal obligations, particularly regarding the immunities of non-State-Party officials.

While ICC State-Parties explicitly accept Art. 27's immunity waiver, the ICC's jurisdiction and Art. 27 also apply indirectly to non-State Parties in three specific circumstances.

1 A referral by the UNSC;
2 Crimes committed on the territory of an ICC State-Party; and
3 Acceptance of ICC jurisdiction by a non-State-Party.

The interpretation of Art 27 and its relationship with Art. 98 was '*settled'* in the landmark case of Omar al-Bashir. Briefly, the UNSC referred the civil war in Darfur in Sudan to the ICC, thus extending ICC jurisdiction over Sudan, despite Sudan not being a party to the ICC-St. an arrest warrant was issued in relation to war crimes, genocide, and crime against humanity. Issues arose when states, including several ICC Parties, refused to arrest al-Bashir due to concerns over sovereignty and diplomatic immunity and obligations under Art. 98.

Under customary international law, sitting HOS, heads of government, and foreign ministers enjoy *ratione personae* immunity from prosecution by foreign courts. This principle, affirmed in the *Arrest Warrant* case,[1] protects sovereign equality and diplomatic functions. However, the ICC Appeals Chamber in *al-Bashir* held that such immunity does not apply before international criminal tribunals. It reasoned that the ICC, as an international body established by treaty, is not bound by inter-state rules on immunity. The judges further clarified that Art. 98 is a procedural safeguard and not a legal basis for refusing co-operation. The decision confirmed that ICC arrest warrants take precedence over customary immunities, yet enforcement remains fraught with political and legal resistance from both State and non-State Parties.

Recent cases show that the tension between Arts. 27 and 98 remains unresolved. In 2024, the ICC found that Mongolia failed to comply with its obligations by refusing to arrest Russian President Vladmir Putin, despite the ICC issuing an arrest warrant on March 23, 2023, for alleged war crimes in the Ukraine conflict. Similarly, in 2024, ICC issued arrest warrants for Israeli Prime Minister Benjamin Netanyahu and former defence minister Yoav Gallant, and Mohammed Diab Ibrahim al-Masri in relation to the Israeli-Palestinian conflict, reigniting debates over state compliance and enforcement of ICC rulings. Furthermore, on January 9, 2025, the US House of Representatives passed the *Illegitimate Court Counteraction Act*. This legislation mandates sanctions against any foreign individuals attempting to enforce the ICC's arrest warrants against Israeli Prime Minister Benjamin Netanyahu and former Defence Minister Yoav Gallant. This legislation signals ongoing hostility towards the ICC by powerful states and their allies, raising questions about the practical enforceability of Art. 27 in politically complex situations.

These recent developments make a current revaluation of Art. 27 and 98 a pressing and timely area of research. The thesis examines the ICC's legitimacy in relation to its ability to enforce its rulings and Art. 27 against politically powerful states and their allies. Ultimately, it will evaluate whether the promise of equal accountability under international law, as guaranteed by Art 27 has been realised in the post al-Bashir era.

[1] *International Court of Justice,* Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo v Belgium) *(Judgment) [2002] ICJ Rep 3, 51.*

1.2 Thesis Outline

This thesis explores whether Art. 27 of the ICC-St can fulfil its promise of ending impunity for HOS in the post al-Bashir era. While the ICC's Appeals Chamber ruling in *al-Bashir* affirmed that personal immunities do not apply before international criminal tribunals, enforcement of this principle remains inconsistent. Despite legal clarity, many states, including ICC members, continue to resist arrest warrant obligations due to political considerations. Recent ICC actions, such as warrants for Russian and Israeli officials, signal an effort to reinforce accountability, but geopolitical pushback, such as Mongolia's refusal to arrest Putin underscores enduring challenges. Although Art. 27 has at times served a symbolic function in reaffirming international legal norms, it can also lead to concrete outcomes, particularly where political shifts allow enforcement, as seen in the Philippines.

The research question guiding this thesis is: *Can Article 27 of the Rome Statute fulfil its promise of ending impunity for heads of state in the post al-Bashir era?* In addressing this, the thesis adopts a legal-analytical approach, with comparative case studies and thematic analysis. It draws on primary sources such as ICC decisions, the ICC-St (particularly Arts. 27 and 98), and arrest warrants, alongside secondary academic and policy commentary.

The structure begins with an overview of immunity under international law and then traces the development and interpretation of Arts. 27 and 98. It analyses the *al-Bashir* and *Putin* cases, recent arrest warrants, and the arrest of the Philippines' ex-president. It concludes by evaluating enforcement challenges and assessing whether Art. 27's normative value has translated into real accountability.

2: Legal Frameworks

It has been long established in customary law and through the conception of state sovereignty that certain state officials are entitled to immunity from criminal prosecution in the court of another state.[2] Two immunities exist; *ratione materiae*, which shields state officials from those acts that are performed while acting within an official function on behalf of the state. It covers officials acts that are taken on behalf of the state and excludes any conduct performed

[2] Michael Blommestijn and Cedric Ryngaert, 'Exploring the Obligations for States to Act upon the ICC's Arrest Warrant for Omar al-Bashir: A Legal Conflict between the Duty to Arrest and the Customary Status of Head of State Immunity' (2010) 6 *Zeitschrift für Internationale Strafrechtsdogmatik* 428, 2.

prior to or after holding of office.[3] *Ratione personae* protects principal officials on account of their office, guaranteeing their proper functioning within international affairs, without the danger of being subject to a foreign jurisdiction. It applies to all acts, whether official or private, meaning it is not restricted to specific conduct. However, this immunity is lifted once the individual no longer holds their position in office.[4] The ICJ's ruling in the Arrest Warrant Case reaffirmed that under customary international law, heads of state enjoy *ratione personae* before the courts of foreign states. However, this immunity is only procedural and may not prevent prosecution before international criminal tribunals.[5]

Despite their customary nature, their role is slowly being reduced by the advancement of global criminal law and the push for global criminal responsibility, most notably in the area of gross violations of human rights under international criminal tribunals. The rationale behind HOS immunities has come into conflict with the principles of accountability for international crimes. There is an increasing recognition that official capacity should not exempt individuals from accountability, particularly since such immunity would prevent prosecution for crimes such as genocide and torture.[6] This shift paved the way for rejecting immunities before international criminal tribunals, as seen in the ICTY and later the ICC, particularly as it is irreconcilable to have certain immunities on one hand and the idea of universal jurisdiction over such gross crimes on the other.[7]

While these immunities continue to apply between states, international criminal tribunals, including the ICC, have rejected their application to crimes under their jurisdiction on the basis that such crimes are of concern to the international community as a whole and cannot be shielded by official status. Under the ICC-St, Art. 27 gives way to the immunities of *ratione materiae* and *ratione personae* providing that any person can be responsible for committing international crimes.[8] It provides the ICC with jurisdiction over crimes committed by state officials enjoying immunities and has effect not only in the relation between the state party and the ICC, but also in the relation between two or more state parties to the ICC-St since all

[3] Ibid, 3.
[4] Ibid.
[5] Arrest Warrant Case (n 1).
[6] Blommestijn (n 2), 3.
[7] Ibid.
[8] Rome Statute of the International Criminal Court, adopted 17 July 1998, entered into force 1 July 2002, 2187 UNTS 90, art. 27.

state parties have consented to waive the immunities of state officials.[9] Since all ICC State Parties have agreed to Art. 27, they cannot invoke immunity to refuse co-operation or block the Court's jurisdiction. This aligns with customary international law, which increasingly rejects immunity in cases of serious international crimes.[10] In its 2024 ruling on Mongolia's non-compliance with the arrest warrant for Russian President Vladamir Putin, the ICC reaffirmed that Art. 27 removes all immunities, including for HOS.[11] The Court noted that Art. 27 is critical in promoting accountability for serious crimes and creates a binding legal obligation for State Parties to uphold its tenets in both domestic and international contexts, ensuring that the objectives of the Statute are fully achieved.[12] By mandating accountability without exception, Art. 27 strengthens the integrity of the international legal framework and reinforces the commitment of State Parties to combat impunity for the most serious crimes of concern to the international community.[13] It thereby has the effect of removing any and all international law immunities of officials, including HOS, and binds to that effect State Parties regardless of whether the person is from a non-State Party.

However, situations may arise where an international obligation of a state party is in conflict with the obligation to co-operate with the ICC. Often this arises when an arrest warrant has been issued by the ICC to a person whose state is not a party to the ICC in which case certain immunities and obligations may be attached to that person. In this situation, Art. 98 provides that the Court may not proceed with a request to surrender or assistance which would require the requested state to act inconsistently with its obligations under international law with respect to state or diplomatic immunity of a person of a third state, unless the court can first obtain the co-operation of that third state for the waiver of the immunity.[14] Thus, Art. 98 is applicable where a state party of the ICC would have to act inconsistently with its obligations under international law concerning state or diplomatic immunity of a third state. However, it is important to note that Art. 98 provides no basis for the presumption that immunity exists. It is a procedural rule that determines how the Court is to proceed where any immunity exists such that it could stand in the way of a request for co-operation and State-Parties cannot rely

[9] Case Matrix Network, *Commentary on the Rome Statute – Part 3* (CMN Knowledge Hub) http://www.casematrixnetwork.org/cmn-knowledge-hub/icc-commentary-clicc/commentary-rome-statute/commentary-rome-statute-part-3 (accessed 7 January 2025).
[10] *The Prosecutor v Omar Hassan Ahmad Al Bashir* (Appeals Chamber Judgment) ICC-02/05-01/09 (3 April 2018), 53(4).
[11] International Criminal Court, *Situation in Ukraine: Finding under article 87(7) of the Rome Statute on the non-compliance by Mongolia with the request by the Court to co-operate in the arrest and surrender of Vladimir Vladimirovich Putin and referral to the Assembly of States Parties*, ICC-01/22-90, 24 October 2024.
[12] Ibid 26.
[13] Ibid 27.
[14] Rome Statue (n 8), 98.

upon it to refuse to co-operate.[15] The Court, as a consequence, requires a waiver from the third state before the ICC can proceed, often being a substantive legal barrier to enforcement. Often Art. 98 is in direct tension with Art. 27, where one removes immunities, but the other introduces a barrier when co-operation would breach third-party obligations. This tension creates a challenge to enforcement, particularly when arrest warrants involve non-State-Party officials.

Another tension exists under the Vienna Convention. As a general rule, Art. 34 of the Vienna Convention states that contracting parties cannot create obligations for states that are not parties to a convention.[16] Therefore, state officials of non-state parties to the ICC-St still may be accorded immunity in accordance with international law since the state parties cannot remove the immunity of state officials of non-State-Parties.[17] However, tension arises under Art. 38 which provides that a treaty provision may reflect a rule of customary international law, which would then be binding on all states, regardless of treaty membership.[18] This raises the question of whether Art. 27's removal of immunity reflects an emerging rule of customary international law, which, if established, could extend its effects beyond ICC State-Parties.[19] If Art. 27's removal of immunities becomes widely accepted in state practice and opinion juris, it could evolve into a customary rule applicable beyond ICC State-Parties. The ICC's approach suggests an attempt to challenge this principle, potentially establishing a pathway for prosecuting nationals of Non-State Parties.[20]

3: Al-Bashir and Mongolia

Al-Bashir was both the *de jure* and *de facto* president of Sudan when he allegedly committed war crimes during the Darfur conflict in Sudan between 2003 and 2008.[21] Al-Bashir was the *de jure* president as he was the legally recognised president of Sudan, meaning that under Sudanese law, he was the official HOS. He also acted as *de facto* as beyond legal title, he exercised actual control over the state and its institutions, including the military, government

[15] Al Bashir (n 10), 6(5).
[16] *Vienna Convention on the Law of Treaties, adopted 23 May 1969, entered into force 27 January 1980, 1155 UNTS 331.*
[17] Fareed Mohd Hassan and Noor Dzuhaidah Osman, 'The Obligation to Prosecute Heads of State Under the Rome Statute of the International Criminal Court (ICC) and Customary International Law: The African and United States' Perspective' (2019) 7(1) *Malaysian Journal of International Law* 33, 41.
[18] Vienna (n 16).
[19] Hassan (n 17), 41.
[20] Sweep Femke, 'The Extent of Applicability of Head of State Immunity *Ratione Personae'* (LLM thesis, Tilburg University 2013), 32.
[21] Ibid 37.

and security forces. The ICC Prosecutor issued an arrest warrant on March 4 2009 alleging that al-Bashir was responsible for committing several unlawful acts on the civilians of Darfur that were both widespread and systematic and with the full awareness and complicity of the Sudanese government.[22] As both HOS and Commander-in-Chief of the Sudanese army, al-Bashir exercised full control over Sudan's forces, which played a central role in perpetrating the alleged crimes.

The arrest warrant was controversial as Sudan was not (and is still not) a State Party to the ICC and al-Bashir was the current HOS. This raised questions about the Court's ability to assert jurisdiction over a sitting HOS of a non-State Party without the state's direct consent. Acting under Chapter VII of the UN Charter which states '*action with respect to threats to the peace, breaches of the peace, and acts of aggression"*[23]*,* the UNSC is able to take measures in response to threats to international peace and security. The UNSC took the measure of referring the conflict in Darfur to the ICC by adopting Resolution 1593 (2005).[24] This referral was made possible under Art. 13(b) of the ICC-St which allows the UNSC to use the ICC to maintain or restore peace.[25] It allows the ICC to exercise jurisdiction over situations referred by the UNSC, even if the state concerned is not a party to the ICC-St. The article allows the UNSC to avoid creating new *ad hoc* tribunals (such as those made for Yugoslavia and Rwanda), reinforcing the ICC's role in global criminal justice.[26] The Resolution was adopted with 11 votes in favour, none against, and 4 abstentions (Algeria, Brazil, China, and the US), reflecting political concerns and hesitancy about ICC jurisdiction over non-State-Parties. For example, the US said they strongly supported bringing to justice those responsible for the crimes and atrocities that had occurred in Darfur and ending the climate of impunity there, emphasising that violators of international humanitarian law and human rights law must be held accountable.[27] However, the US fundamentally objected to the view that the ICC should be able to exercise jurisdiction over nationals, including government officials, of States not party to the ICC-St. The US further stated that the ICC-St was flawed and did not have sufficient protection from the possibility of politicised prosecution, stressing that non-State Parties had no obligations in connection with the

[22] Ibid.
[23] *Charter of the United Nations, signed 26 June 1945, entered into force 24 October 1945, 1 UNTS XVI*, chapter VII.
[24] UN Security Council, *Resolution 1593* (31 March 2005) UN Doc S/RES/1593.
[25] Rome Statute (n 8), Art 13(b).
[26] al-Bashir (n 10), 6(6).
[27] United Nations Security Council, 'Security Council Refers Situation in Darfur, Sudan, to Prosecutor of International Criminal Court' (Press Release, 31 March 2005) UN Doc SC/8351 https://press.un.org/en/2005/sc8351.doc.htm (accessed 2 April, 2025).

treaty.[28] These concerns regarding the ICC's jurisdiction over non-State-Parties persist today and are particularly relevant in discussions about the current arrest warrants for Netanyahu and Putin. They also highlight why Art. 27 still faces challenges in eliminating impunity for individuals accused of gross breaches of international law.

The UNSC resolution gave the ICC jurisdiction over the Darfur conflict. As the UNSC has no means to carry out any prosecutorial action themselves, the referral thus relies upon the ICC to take legal action against al-Bashir.[29] A UNSC referral is one of the conditions for the exercise of the ICC's criminal jurisdiction under Art. 13(b) and such a referral has binding force upon all UN State-Parties according to the applicable provisions of the UN Charter.[30] As soon as the ICC has jurisdiction over a matter, the entire ICC-St applies, including the stripping of all immunities under Art. 27. Dapo Akande explains that this is because states are bound by and have indirectly consented via the UN Charter to the decision to remove immunities.[31] Thus, by virtue of being a party to the UN which endowed jurisdiction of the conflict in Darfur, al-Bashir's immunities as HOS were irrelevant.

However, this interpretation led to severe resistance, particularly from the AU and other State-Parties. For example, Jordan alleged that a UNSC referral does not automatically trigger the application of Art. 27 to a non-State Party.[32] Jordan argued that the provision does not establish or limit the Court's jurisdiction because immunities are a procedural bar that may prevent the Court's exercise of its jurisdiction or a State Party from arresting and surrendering a person pursuant to the Court's request.[33] The AU characterised the arrest warrant as selective justice as no other referrals had ever been made in regards to conflicts involving Western States, such as the conflict in Iraq. The AU argued that the UNSC ignored the peace talks being carried out which may have led to peace but opted for a referral which required the co-operation of states to arrest and surrender al-Bashir.[34] The AU further referred to the arrest warrant as a 'witch hunt' against Africans, particularly in light of the US abstaining while simultaneously maintaining that under no circumstances would US-citizens

[28] Ibid.
[29] Femke (n 20), 38.
[30] al-Bashir (n 10), 69(139).
[31] Dapo Akande, 'The Legal Nature of Security Council Referrals to the ICC and Its Impact on Al Bashir's Immunities' (2009) 7 *Journal of International Criminal Justice* 333, 340.
[32] al-Bashir (n 10), 31(63).
[33] Ibid.
[34] Gitobu Imanyara, 'Critiquing Immunities of Serving Heads of State Under Article 27 and 98 of The Rome Statute of the International Criminal Court: A Case Study of President Omar al-Bashir Warrant of Arrest' (LLM thesis, Strathmore University 2021), 55.

be prosecuted under the ICC.[35] This reinforced the perception that the ICC disproportionately targeted African leaders while Western States remained beyond its reach. The AU's anger toward the referral resulted in the passing of a resolution supporting al-Bashir's refusal to surrender to the Court, expressing its concern that the indictment could derail the Darfur peace process.

A key issue in the al-Bashir case was the applicability of Art. 98 of the ICC-St, which prohibits the ICC from requesting surrender if it would require a state to violate its international obligations such as respecting diplomatic immunity. States such as South Africa argued that they were bound by international customary law to respect al-Bashir's immunity rather than Art. 27. This created a dilemma in whether states have an obligation to uphold immunities for non-State-Parties or co-operate with the UNSC referral. The AU argued that they were bound by diplomatic immunity norms and well-established principles of sovereign equality and HOS immunity rather than ICC requests.[36] Al-Bashir visited both Jordan and South Africa and was not arrested, as both states argued Art. 98 prohibited his arrest due to their obligations to respect his immunities and they would first need to have Sudan's consent as a non-State-Party.[37] Both states were issued with non-compliance proceedings where the Court ruled that al-Bashir's immunities did not apply vis-à-vis state parties executing the Court's request for his arrest and surrender. The Court emphasised that due to the UNSC referral, Art. 27(2) applied, negating any claim to HOS immunity. The Appeals Chamber in Jordan's appeal upheld this decision, ruling that Art. 98 did not shield Jordan from its obligations under the ICC-St and that Art. 98 is a procedural tool used by the Court to take into account state obligations before issuing a request for co-operation.[38] It provides no rights to state parties to refuse co-operation, nor is it a source of substantive rights or additional duties to State Parties, as Art. 98 directly addresses the Court.[39] The judgment clarified that the UNSC referral effectively placed Sudan in a position analogous to a State Party, thereby removing al-Bashir's immunity.

Despite the arrest warrant being issued over 16 years ago, al-Bashir has not yet been arrested or surrendered to the ICC. Several countries are still refusing to arrest him, citing concerns

[35] Femke (n 20), 41.
[36] *Prosecutor v al Bashir (South Africa Non-Compliance Decision*) (Judgment) ICC-02/05-01/09, [2017] ICC (6 July 2017).
[37] *Prosecutor v al Bashir (Jordan Non-Compliance Appeal Decision)* (Judgment) ICC-02/05-01/09 OA2, [2019] ICC (6 May 2019) [paras 1–5, 113–123].
[38] Ibid, 130.
[39] Ibid 51.

over his immunity as the previous HOS. Although no longer the President of Sudan, al-Bashir is facing legal proceedings in Sudan which some states argue satisfies accountability concerns. However, the ICC warrant remains outstanding, and the ICC maintains that its jurisdiction remains valid, particularly given concerns over the fairness and independence of domestic trials.

A more recent case involving the tension between Arts. 27 and 98 was the non-compliance ruling involving Mongolia's failure to co-operate with a request by the Court to arrest and surrender Vladmir Putin. This case underscores that while the ICC insists on the primacy of Art. 27, states continue to invoke Art. 98 as a shield against co-operation, demonstrating ongoing resistance to the Court's authority and the practical limits of Art. 27 in achieving its goal of eliminating impunity.

On 27 March 2023, an arrest warrant was issued for Mr Putin and on 2nd May 2024, Mongolia confirmed receipt of the request for co-operation in relation to the arrest warrant. Mr Putin planned to travel to Mongolia and so Mongolia sought consultation with the ICC to address the challenges related to the Court's request for co-operation, particularly in relation to Mr Putin's entitlement to immunity *ratione personae* and *ratione materiae* that exists under customary international law and by virtue of being Russia's HOS. Mongolia was concerned that proceeding with the request would result in a breach of their pre-existing legal obligations given that there was no UNSC referral and Russia is a non-State Party.[40] Mr Putin travelled to Mongolia and was not arrested. Mongolia attempted to differentiate their obligations to those of al-Bashir as Russia is a non-Party to the ICC and had been no UNSC referral that imposed an obligation to fully co-operate. They argued that in the absence of such a referral, Mr Putin's immunities are still relevant and extend to proceedings before international courts, unless Russia explicitly waives the immunity. Mongolia also argued that the ICC-St is an international multilateral treaty that does not prevail over or supersede other obligations stemming from customary international law and cannot bind third parties.[41]

However, the Court stated that these considerations are irrelevant as the Court is not attempting to impose obligation on non-State Parties but rather seeking co-operation of State Parties. The main issue, according to the Court, is whether states have an obligation to

[40] Mongolia (n 11), 18.
[41] Ibid.

execute an arrest warrant regarding the head of a non-State Party in accordance with Art. 27.[42] The court interprets Art. 27 as binding all members and those that have accepted the Court's jurisdiction, regardless of whether the individual is a national of a State-Party or non-State Party. Thus, the Court ruled that State Parties are obliged to arrest and surrender individuals that are subject to arrest under ICC warrants, irrespective of nationality or official capacity. Therefore, any arguable bilateral agreement Mongolia may owe to Russia in respect to immunity is not capable of displacing the obligation that Mongolia owes to the Court.[43] This ruling goes further than the al-Bashir ruling which emphasised the UNSC referral as a trigger for overriding immunities while the Mongolia decision asserts that any ICC member is bound to co-operate, even without a UNSC referral. It seems that ICC jurisdiction alone is sufficient to remove immunities.

In relation to Art. 98, the Court ruled that it neither supplements, modifies, nor provides exception to Art. 27 and any other interpretation would fatally undermine the obligations of State Parties and render the Court's system ineffective. Art. 98 is purely procedural according to which the Court may take into account certain State's pre-existing obligations in the context of a request for co-operation, such as acts of government activities which are typically conducted aboard and are protected by the safeguards of diplomatic immunity for certain officials and buildings.[44]

Although factually different to the al-Bashir case, the Court's ruling further clarifies that Art. 27 creates an obligation for State-Parties to co-operate with arrest warrants regardless of whether they are issued against a non-State Party as the binding effect of the ICC-St supersedes any agreement a state may have. It further clarified that Art. 98 is a procedural matter for the Court and states cannot rely upon it to refuse co-operation. However, Mongolia's refusal to arrest and evoking Art. 98 proves that states still use it as a shield against co-operation, thereby remaining a barrier to Art. 27's enforcement.

It is important to note that the Court has outlined this obligation in the absence of a UNSC referral, effectively ruling that states have obligations particularly to arrest non-Party State officials. This ruling will have consequences for other arrest warrants for non-State Party

[42] Ibid 19.
[43] Ibid 28.
[44] Ibid 35.

officials which will be discussed below but an important aspect to note is that the ICC tends to rule in its own favour to extend jurisdiction and does not take into account the political realities of states that often override their obligations to the Court. For example, Mongolia is a small state bordering Russia thus in a much riskier position if it defies Russia in comparison to Jordan and South Africa which only faced diplomatic consequences for non-compliance. Although the ICC insists Art. 27 removes immunity, history shows that states will refuse to comply when geopolitical risks are too high. The Court is interpreting its own powers broadly, but whether states accept the interpretation is a separate issue.

4: Recent Developments

While writing this thesis, the ICC has issued several high-profile arrest warrants that put Art. 27's ability to override HOS immunity to the test. These warrants have triggered varied responses, from outright rejection to selective engagement, and also compliance. This section will examine these developments and assess whether they signal progress toward ending impunity or whether they instead reveal the persistent limits of enforcement.

On the 17th March 2023, the Pre-Trial Chamber II of the ICC issued arrest warrants against Mr Vladimir Putin and Ms Maria Lvova-Belova in the context of the situation in Ukraine.[45] The ICC alleges Mr Putin is responsible for the war crime of unlawful deportation of population (children) and that of unlawful transfer of population (children) from occupied areas of Ukraine to the Russian Federation under Art. 8(2)(a)(viii) of the ICC-St. The crimes were allegedly committed in Ukraine occupied territory from at least 24 February 2022. The ICC has reasonable grounds to believe Mr Putin bears individual criminal responsibility for the aforementioned crimes for having committed the acts directly, jointly with others and/or through others and, for his failure to exercise control properly over civilian and military subordinates who committed the acts, or allows for their commission, and who were under his effective authority and control, pursuant to superior responsibility (Art. 28(b)).[46]

On 21 November 2024, the Pre-Trial Chamber I of the ICC in its composition for the situation in the State of Palestine issued arrest warrants for Mr Benjamin Netanyahu[47] and Mr

[45] *Prosecutor v Vladimir Vladimirovich Putin* (Warrant of Arrest) ICC-02/05-01/23 (17 March 2023).
[46] ICC, 'Situation in Ukraine: ICC Judges Issue Arrest Warrants Against Vladimir Vladimirovich Putin and Maria Alekseyevna Lvova-Belova' (17 March 2023) https://www.icc-cpi.int/news/situation-ukraine-icc-judges-issue-arrest-warrants-against-vladimir-vladimirovich-putin-and accessed 3 April 2025.
[47] *Prosecutor v Benjamin Netanyahu* (Warrant of Arrest) ICC-02/05-01/24 (21 November 2024).

Yoav Gallant.[48] Before these warrants were issued, Israel made two requests to the Court. The first request challenged the Court's jurisdiction over the situation in the State of Palestine in general, and over Israeli nationals more specifically.[49] Per the second request, Israel demanded that the Chamber order the Prosecution to provide a new notification of the initiation of an investigation to its authorities under Art. 18(1) of the ICC-St. It requested the Chamber to halt any proceedings before the Court in the relevant situation, including the consideration of the applicants for warrants of arrest for Mr Netanyahu or Mr Gallent. As to the first request, the Chamber noted that the acceptance by Israel of the Court's jurisdiction is not required, as the Court can exercise its jurisdiction on the basis of the territorial jurisdiction of Palestine, who is a member of the ICC.[50] The Court ruled that states are not entitled to challenge the Court's jurisdiction under Art. 19(2) prior to the issuance of a warrant of arrest. The court also rejected Israel's request under Art. 18(1) on the basis that the parameter of the investigation in the situation have remained the same and, as a consequence, no new notification to the State of Israel as required.[51]

The Chamber issued warrants of arrest for CAH and war crimes committed from at least 8th October 2023 until 20 May 2024. Both men each bear criminal responsibility for the following crimes as co-perpetrators for committing acts jointly with others: the war crime of starvation as a method of warfare and the CAH of murder, persecution, and other inhuman acts. The Court also found reasonable grounds that both men bear criminal responsibly as civilian superiors for the war crime of intentionally directing an attack against the civilian population.[52]

Similarly, the Pre-Trial Chamber 1 on 24 November 2024 in its composition for the situation in the State of Palestine, issued an arrest warrant for Mr Mohammad al-Masir, for alleged CAH and war crimes committed in the territory of Israel and the State of Palestine. However, Mr al-Masir has been reported as deceased so the case will not be advanced further.[53]

[48] *Prosecutor v Yoav Gallant* (Warrant of Arrest) ICC-02/05-01/24 (21 November 2024).
[49] *Prosecutor v Netanyahu et al (Decision on the Prosecutor's Application for Warrants of Arrest) ICC-01/18-102 (21 November 2024).*
[50] Prosecutor v Netanyahu et al (Decision on the Admissibility Challenge Raised by the State of Israel) ICC-01/18-103 (21 November 2024).
[51] Ibid.
[52] Netanyahu et al (n 49).
[53] *Prosecutor v Mohammed Diab Ibrahim Al-Masri (Deif)* (Warrant of Arrest) ICC-02/05-01/24 (21 November 2024).

What makes these warrants of arrest controversial is that neither Russia nor Israel are parties to the ICC-St, which means they have no automatic obligations under the treaty. As discussed in the introduction, the ICC can exercise its jurisdiction over crimes committed by non-State-Party nationals if the alleged crimes took place on the territory of a State Party to the ICC-St, to which both Ukraine and Palestine are members. All four arrest warrants relate to government officials and HOS to which under customary international law, immunities attach. However, Art. 27 removes such immunities, yet the issue is that as they are non-State Parties, they do not recognise the ICC's authority and the applicability of Art. 27. Art. 98 prevents the ICC from requesting a state to arrest and surrender a person if doing so would violate that state's obligation under customary international law. This creates a two-way enforcement gap because if a non-ICC state (e.g. South-Africa) were to arrest Putin, they could argue that it violates international law on sovereign immunity. However, if an ICC state (e.g. France) were to arrest them, the ICC could argue that Art. 27 removes their immunity. However, in the second enforcement gap, some states still resist the ICC's view and argue that it has no power to issue arrest warrants for leaders of non-State-Parties in the first place and co-operation would amount to a breach of immunities.

These arrest warrants are testing the power of the ICC and Art. 27 to end immunity. France, a founding member of the ICC initially stated that it would adhere to the ICC-St but has since backtracked and suggested that Netanyahu enjoys immunity from the arrest warrant as Israel is not a party to the ICC. France states that his immunities must be taken into consideration should the ICC ask France to arrest him, a subtle reference to Art. 98.[54] It seems at least France was mistaken about Israel being immune from the ICC arrest warrants as Art. 27 applies equally to all persons without distinction based on official capacity and France has a duty to co-operate with the Court and give effect to arrest warrants. Although France's apprehension stems from Art. 98, the Court cleared up the ambiguity created by Art. 98 in the al-Bashir (Jordan non-compliance) ruling in which it stated that customary international law allows the arrest and surrender of a sitting HOS by other states, even without a waiver of immunity.[55] France's position highlights the difficulty of both articles and the ICC in general as the French government welcomed the arrest warrant against Mr Putin and declared in a news briefing post the Mongolia ruling that '*each state party to the ICC-St has an obligation*

[54] Al Jazeera, 'Is Netanyahu Immune from ICC Arrest Warrant, as France Claims?' (Al Jazeera, 28 November 2024) https://www.aljazeera.com/news/2024/11/28/is-netanyahu-immune-from-icc-arrest-warrant-as-france-claims accessed 3 April 2025.
[55] Jordan non-compliance (n 37), 113-123.

to co-operate with the ICC and execute the arrest warrants it issues'[56]. This double standard is an example of how real political situations and contexts take precedent over state obligations to the ICC, demonstrating the difficulty the ICC has in ending immunity. However, it is important to note that Mr Netanyahu is still '*barred'* from entering France because it remains unclear whether he would be arrested demonstrating the symbolic power of Art. 27 in the means of travel restrictions. Similarly, Germany's new chancellor, Fridrich Maerz stated that he believes it is completely absurd that an Israeli Prime Minister cannot visit Germany and will find means and ways for Netanyahu to visit Germany without being arrested.[57] Although not an out-right defiance, it is nevertheless another example of the ICC's weakness in enforcing its own mandate.

Furthermore, the US is in the process of passing the Illegitimate Court Counteraction Act which aims to sanction individuals associated with the ICC who pursue actions against US or allied personnel.[58] The Act imposes asset freezes and visa restrictions on targeted individuals. On February 2025, President Trump passed an executive order to reinstate sanctions against ICC officials involved in investigations concerning the US and its allies, notably Israel.[59] The executive order imposes financial penalties and visa restrictions on ICC employees and their families. These two measures by the US highlight the opposition to the Court's legitimacy from certain states, making it difficult for the Court to achieve its mandate of ending impunity. The US has changed its position from selective engagement where it abstained from the UNSC Resolution against al-Bashir where it saw it as a way to address atrocities without fully endorsing the ICC to outright opposition, particularly against its allies. In contrast to France which has legal obligations, France's objections stem from politics rather than the authority of the ICC.

More recently, on 3rd April 2025, Hungary announced its intention to withdraw from the ICC, which coincides with the official visit of Mr Netanyahu. Hungary's refusal to arrest Mr. Netanyahu, despite being an ICC party, underscores the practical difficulties the ICC faces in enforcing its warrants, despite Art. 27's removing all immunities. Prime Minister Orban labelled the warrant outrageously brazen and rather than making legal arguments or relying

[56] Al Jazeera (n 54).
[57] Maximilian Amos, 'Merz, Netanyahu, and the ICC Arrest Warrant: A Legal Analysis' (LTO, 3 December 2024) https://www.lto.de/recht/hintergruende/h/merz-netanyahu-visit-arrest-warrant-icc-surrender accessed 3 April 2025.
[58] *Illegitimate Court Counteraction Act* (US House of Representatives, 9 January 2025).
[59] Donald J. Trump, 'Imposing Sanctions on the International Criminal Court' (Executive Order 14203, 6 February 2025).

upon Art. 98 as France is attempting to do, Hungary has decided to withdraw entirely from the ICC in order to negate its international obligations.[60] This move may signal a broader trend of states pushing back against the ICC jurisdiction, making enforcement even more difficult.

However, in the backdrop of resistance, the arrest of ex-president of the Philippines Mr. Rodrigo Duterte presents a notable contrast. The Philippines officially withdrew from the ICC on March 17, 2019, but on March 7 2025, a warrant of arrest for Mr Duterte was issued for the CAH of murder, torture, and rape, allegedly committed between 1 November 2011 and 16 March 2019 in the territory of the Philippines.[61] On the 12 March 2025, Mr Duterte was surrendered to the ICC after being arrested by Philippine authorities.[62] In contrast to the above cases, the arrest was carried out by a non-State-Party demonstrating that Art. 27 has power over non-State-Party officials even after they withdraw from the ICC. It is a strong example of how there still exists will within the international community to end impunity. However, the arrest was carried out by the new government and commentary exists about whether the ICC can be used as a tool for political prosecutions, arguments often used by Israel and Russia.

These recent developments illustrate that while Art. 27 removes legal immunities, enforcement remains highly contingent on political considerations. The contrast between the US sanctions, France's hesitations, and Hungary's withdrawal suggest that enforcement is often dictated not by legal principles, but by alliances and domestic politics. However, the arrest of Duterte demonstrates that Art. 27 is not without effect. Even non-State-Parties may comply with the ICC processes and HOS can still be prosecuted, even after withdrawing from the ICC. However, the question remains of whether Art. 27 establishes a real legal standard, or whether it is merely aspirational that holds symbolic merit.

[60] Anita Komuves and Maayan Lubell, 'Israeli leader Netanyahu applauds Hungary's ICC exit on Budapest visit' (Reuters, 3 April 2025) https://www.reuters.com/world/hungary-says-it-is-withdrawing-icc-israeli-leader-visits-2025-04-03/ accessed 4 April 2025.
[61] ICC, 'Statement of the ICC Office of the Prosecutor on the Arrest of Former Philippine President Rodrigo Roa Duterte' (15 March 2025) https://www.icc-cpi.int/news/statement-icc-office-prosecutor-arrest-former-philippine-president-rodrigo-roa-duterte accessed 3 April 2025.
[62] ICC, 'Situation in the Philippines: Rodrigo Roa Duterte in ICC Custody' (14 March 2025) https://www.icc-cpi.int/news/situation-philippines-rodrigo-roa-duterte-icc-custody accessed 3 April 2025.

5: Barriers to Enforcement

This section examines the legal and political barriers that continue to undermine the enforcement of Art 27, and more broadly, the ICC's mandate to end impunity for HOS. While Art. 27 removes official immunity before the Court, its effectiveness depends entirely on state co-operation. Drawing on the case studies and recent developments discussed above, this section explores how non-co-operation, state sovereignty, selective justice concerns, and competing international obligations obstruct the realisation of the ICC's aims. It will also consider possible structural and legal avenues to overcome these barriers and enhance the enforceability of Art. 27 in practice.

Before turning to the broader enforcement barriers, it is important to make a distinction between ICC requests involving two State Parties and those involving non-State Parties. While this section will primarily focus on challenges facing the latter, the distinction is crucial to understanding where Art. 27's enforcement has clearer legal grounding and where it remains contested. There are two enforcement contexts under the ICC-St; cases where the ICC requests a State Party to arrest a HOS of another State Party, and those involving the arrest of a HOS of a non-State party. In the first scenario, having ratified the ICC-St, both states have accepted Art. 27 which removes immunities of HOS before the Court. In this scenario, the mutual agreement of the states within the treaty framework can be categorised as a '*lifting'* of the customary international law rule that would ordinarily protect foreign HOS from arrest and prosecution, by mutual treaty-based waiver. This treaty-based consent reduces legal ambiguity and strengthens the enforceability of ICC requests. Under this scenario, issues are unlikely to arise in executing a warrant against a HOS as by ratifying the ICC-St, State Parties have waived such immunities.

In contrast, when the ICC requests a State Party to arrest a HOS of a non-State Party as seen in the al-Bashir cases and the arrest warrants for Putin and Netanyahu, the legal and political landscape become far more complex. This is true because as previously discussed, these individuals remain protected under international customary law, more specifically, by *ratione personae* immunity. Furthermore, their respective states have not accepted Art. 27, the Court's jurisdiction or the lifting of international customary law immunities. As such, to overcome this hurdle, the ICC needs to rely upon either a UNSC referral or its territorial

jurisdiction, both which create significant tensions with Art. 98, political alliances, and the customary obligation to respect HOS immunities.

This distinction is important to understanding the fragmented effectiveness of Art. 27. While enforcement between State Parties reflected the intended operation of the Statute, enforcement against non-State Parties remains contested and largely based on political will. The ICC has attempted to clarify state obligations in relation to non-State Parties in both the *al-Bashir* and *Jordan non-compliance* cases, stating that immunities do not apply before international criminal tribunals. Yet, in the absence of a universal agreement, a strong international customary law, and the ICC's lack of direct enforcement power means that even with legal clarity, compliance is inconsistent. Recognising the two types of application of Art. 27 explains why it has functioned effectively in some contexts but remains largely symbolic and problematic in others.

1.1 Non-Co-Operation

Since the ICC was created, one of the biggest challenges it faces is enforcement. Despite the clarity of Art. 27 in removing HOS immunities, the ICC depends on State Parties to enforce its warrants. Currently, the ICC has no independent enforcement mechanism. It has no police force and relies entirely on states to execute arrest warrants.[63] Without state co-operation Art. 27's legal authority remains symbolic, and immunity persists in practice. Enforcement of the warrants of arrest is a crucial part of the ICC achieving its mandate because if it cannot prosecute any individuals, its aim of ending impunity is seriously harmed. This weakens the ICC's legitimacy as an international criminal court and hampers the development of international criminal jurisprudence.[64] This loss of legitimacy is often a double-edged sword because states criticise the ICC for being ineffective, despite their own refusal to co-operate being the root cause for the lack of prosecutions.

Furthermore, when states fail to co-operate and the ICC fails to prosecute, it drastically reduces the ICC's ability to serve as a deterrent.[65] Art. 27 was groundbreaking in removing immunity for HOS and addressing grave international crimes, but post al-Bashir, it is still evident that the ICC and Art. 27 still fall short of their intended effect as a deterrent as they

[63] Adam White, 'A Force to be Reckoned with? – The International Criminal Court and the Problem of Enforcement' (LLM thesis, University of Otago 2019), 12.
[64] Ibid.
[65] Ibid.

only operate to a limited degree. Authoritarian dictators still operate internationally with perceived immunity and ongoing international conflicts are committing human right violations, underscoring the limits of deterrence.

The al-Bashir ruling allowed the ICC to affirm that states must comply with the ICC-St. Despite repeated requests, multiple ICC parties (notably Jordan and South Africa) refused to arrest him, citing obligations under international customary law and concerns over diplomatic fallout. The ICC held that those refusals were in breach of the ICC-St, reinforcing the supremacy of Art. 27 over immunities. Yet, no tangible consequences followed. al-Bashir remains at large, demonstrating the practical limitations of ICC enforcement.

One would hope that after the ICC made it clear in the al-Bashir ruling that co-operation would have increased. However, Mongolia's refusal to arrest President Putin reflects a continued pattern of resistance and non-co-operation. Mongolia acknowledged receiving the requests to arrest Mr Putin but declined to, arguing conflicting obligations and the lack of a UNSC referral. What is surprising is that the refusal came despite the ICC's ruling in the Jordan non-compliance case which the Court clarified that Art. 98 does not override the obligation to co-operate with the ICC. It is obvious that the reliance on Art 98 despite a clear ruling to the contrary from the ICC highlights that Mongolia's refusal was a political decision as it knows there was no legal basis for a refusal. Again, this highlights the limitations of Art. 27 and how states prioritise geopolitical alliances over their legal obligations under the ICC-St.

However, co-operation remains context-dependent, as seen in the arrest of former Philippine's President Rodrigo Duterte which demonstrates the potential for compliance even in politically complex scenarios. Despite the Philippine's withdrawal from the ICC, the new government enforced the arrest warrant and handed him over voluntarily. This act, although potentially politically motivated, demonstrates that even non-State Parties may co-operate when political will or leadership changes.

The above discussion demonstrates that Art. 27 may not be legally unambiguous, but its enforcement is uneven and deeply reliant on the political disposition of state. Due to lacking any enforcement mechanisms itself, Art. 27 remains only as effective as states permit it to be, functioning more as a legal symbol than a tool for accountability.

1.2 State Sovereignty

States frequently invoke sovereignty defences to resist external scrutiny, particularly when accused of human rights violations.[66] This defence often enables governments to avoid co-operation with international accountability mechanisms or to shield perpetrators of serious crimes through diplomatic and legal protections. As previously mentioned, pursuing accountability for human rights crimes is often influenced by geopolitical interests, diplomatic ties, and political concerns.[67]

State sovereignty has consistently been one of the greatest conceptual and legal barriers to the enforcement of ICC arrest warrants. While Art. 27 removes immunity before the court, it does not negate the reality that co-operation requires national implementation. Many states view the arrest of foreign leaders as an unacceptable interference with their sovereign affairs and an afront to democratically elected officials.

As the ICC-St is a treaty between consenting states, states that have not signed nor ratified it, such as the US and Israel, argue that they are not bound by its provisions, including Art 27. Even amongst State-Parties, sovereignty concerns have led to refusals to arrest, as seen by France and Germany's response to the warrant against Netanyahu. France, for instance, has justified its reluctance to arrest him by citing conflicting duties and immunities under international law, specifically the duty to respect the HOS immunity.

Although the appeals chamber in the Jordan non-compliance case reinforced that immunities do not exist before international criminal tribunals,[68] and that Art. 27 overrides conflicting immunities and obligations, many states continue to apply a broader interpretation of sovereign equality (depending on the political context or identity of the accused). This flexible interpretation becomes evident in politically sensitive cases. For example, France has no issue with arresting Putin (despite this being extremely unlikely) but has taken issue with arresting a western ally.

[66] Ebenezer Mensah, 'Investigating International Criminal Law and Sovereignty Issues Surrounding the Prosecution of Heads of State for War Crimes and Genocide' (2024) *Western Illinois University,* 5.
[67] Ibid, 6.
[68] Arrest Warrant Case (n 1), 61.

Ultimately, the tension between sovereign equality (the principle that all states are legally equal and entitled to equal respect under international law) and obligations under the ICC-St remains unresolved. States continue to interpret their obligations through the lens of sovereignty, which allows them to resist co-operation when politically inconvenient. Therefore, one can say that state sovereignty acts not only as a legal barrier, but also as a politically safeguard against compliance, demonstrating again the gap between the legal promise and Art. 27 and its enforcement in practice. The ICC faces the challenge of ensuring that accountability efforts respect states' legal rights and obligations and such a balance needs to be accepted by states so that co-operation can be guaranteed. As States continue to be primarily in charge of defending human rights, overcoming sovereignty concerns and advancing accountability requires a rethink on state sovereignty.[69] For example, one solution may be for the ICC to support and strengthen domestic legal systems through law reform and capacity-building to encourage prosecutions for human rights violators thereby lessening the need for ICC intervention. Although the preamble of the ICC-St acknowledges that the ICC is complementary to national jurisdiction, it could take more of an active role in domestic prosecution through engagement thereby moving beyond simply a court of last resort to an institution of diplomatic engagement and global co-operation.[70] These initiatives can aid in bridging gaps and promoting collaboration in the pursuit of justice by encouraging discourse and consensus-building among states. This in turn would lessen the necessity for ICC intervention in prosecution as legal frameworks would be fortified with increased capability for prosecuting international crimes.[71]

1.3 Competing Obligations, Selective Justice and Resistance.

Art. 27's enforcement is often challenged by competing legal obligations and political considerations. Despite rulings to the contrary, States still use legal tools including Art. 98 and customary international law to justify non-compliance, while expressing concern about perceived bias in the Court's focus. Together, these factors obstruct the effectiveness of Art. 27, even when the legal position appear to be settled post al-Bashir. In practice, the willingness to arrest a HOS is often determined not by a legal duty, but by political calculation.

[69] Ibid.
[70] Ibid, 24.
[71] Ibid.

Art. 98 creates one of the clearest legal tensions in the operation of Art. 27. Art. 98 prohibits the ICC from requesting co-operation if it would require a state to act inconsistently with its obligations under international law regarding the immunity of a third state's official. Despite the ICC clarifying the function of Art. 98 in the Mongolia non-compliance case, ruling that states cannot rely upon Art. 98 to refuse co-operation, states continue to invoke it to justify non-compliance.[72] For instance, France's response to the warrant against Netanyahu suggests that France will consider HOS immunity despite being a State Party to the ICC-St but may refuse to action the warrant due to Art. 98. One can deduce that there is an ongoing belief that international customary law, in some instances, may override obligations under the ICC-St, especially in political sensitive cases. This position contradicts the ICC's ruling in the Jordan non-compliance case, where the Appeals chamber confirmed that such immunities do not apply before an international criminal tribunal. This legal tension regarding a state's obligation to arrest and co-operate under the ICC-St and their obligation to respect HOS immunities under customary law was *solved* in al-Bashir because of the UNSC Resolution modifying the customary law by abrogation. However, in the present arrest warrants, there is no UN-resolution modifying this international custom.

Beyond these legal justifications, the ICC has long faced heavy criticism for selective justice. The AU has denounced the Court for disproportionately targeting and commencing formal investigations against African leaders while ignoring crimes committed by powerful Western States.[73] The AU often points out the double standard and has labelled the Court neo-colonialist and racist, often stating the ICC is a Western tool used to interfere with the sovereignty of African States.[74] The al-Bashir case was seen as many as an emblematic of the bias, particularly since similar international crimes committed during the Iraq War did not result in any ICC prosecutions.[75] In order to detract from these allegations (although this line of reasoning is speculative as the ICC has not released anything supporting this claim), the ICC issued arrest warrants against western powers, including Israel which is often viewed as a western state. This move hoped to change the perception of the ICC as a court that

[72] Dapo Akande, 'The Immunity of Heads of States of Non-parties in the Early Years of the ICC' (2018) 112 *AJIL Unbound* 172, 173.
[73] Paula Gaeta, 'Trying Sitting Heads of State: The African Union Versus the ICC in the al-Bashir and Kenyatta Cases' (2017) *The International Criminal Court and Africa,* 138.
[74] Ibid, 142.
[75] Diederik Schmetz, *The Diplomatic Crisis between the International Criminal Court (ICC) and the African Union (AU): Did the AU Perceive the ICC as a Tool of Neo-colonial Legal Control during the Prosecution of Sudanese President al-Bashir (2005–2020)?* (LLM thesis, Utrecht University 2024), 9.

prosecutes alleged crimes no matter the nationality, hoping to prove its willingness to take action.[76] However, after the warrant of arrest was issued against Netanyahu, calls of anti-Israeli bias emerged, accusing the Court of deliberately targeting Israeli leaders while ignoring the crimes committed by Hamas.[77] This perception of bias, paired with states such as Hungary and Germany publicly declaring they will not co-operate undermines the Court's creditability and encourages non-co-operation. States may use the rhetoric of legal neutrality to mask politically motivated refusals to co-operate, but often these refusals are rooted in deeper concerns about the fairness and universality of international justice.

These concerns are reflected in broader political resistance to the ICC. The US, for example, has intensified its opposition through legislation and executive action. As previously discussed, sanctions against ICC officials and statements opposing ICC legitimacy are aimed to protect any proceedings against the US or allied officials. Similarly, Hungary's decisions to withdraw from the ICC and its refusal to execute the warrant against Netanyahu further demonstrates how political alliances often take precedence over legal obligations.

Taken together, these legal and political barriers highlight the limitations of Art. 27 in practice. Even where the ICC's legal authority seems settled, enforcement remains inconsistent and subject to competing obligations, selective enforcement, and international power dynamics. It is difficult to argue that Art. 27 has become any more effective or enforceable post al-Bashir. It stands to reason that Art. 27 remains more symbolic, a mere message of condemnation against certain officials – a legal ideal more than a practical instrument of justice.

1.4 Over-Coming the Barriers.

In light of the practical issues discussed above, several proposals and structural reforms have been put forward to enhance co-operation and sidestep legal and political obstacles. One such proposal is to allow states to act on behalf of, or as agents of, the ICC when executing arrest warrants. This would effectively reframe their actions as those of the Court, rather than of a

[76] Robbie Sabel, 'Israel, the ICC, and the Arrest Warrants against Netanyahu and Gallant' (2024) 18(3) *Israel Journal of Foreign Affairs* 320, 324.
[77] Ibid 321.

sovereign state acting independently. This concept, often referred to as proxy enforcement, may help bypass customary international law restrictions on HOS immunity.[78]

As established in the al-Bashir and Mongolia rulings, the ICC is not bound by HOS immunities. Therefore, states not acting independently but as agents of the Court could benefit from the same exception. For example, Mongolia could arrest President Putin despite having bilateral agreements with Russia, as it would be acting on behalf of the ICC in its capacity as a State Party co-operating with an arrest warrant. This approach reframes the legal basis for enforcement and shifts responsibility onto the international criminal tribunal, which is not bound by the same rules of immunity. However, political considerations would likely still take precedence.

Another option involves the creation of specialised hybrid tribunals or ICC-backed mechanisms. Provided states consent, such tribunals could be designed with mechanisms that require co-operation and remove immunities as a matter of treaty law. These could function similarly to ad hoc tribunals, such as the ICTY but operate under the ICC framework. Such tribunals have proven successful in overcoming challenges associated with prosecuting high-ranking officials.[79] This solution could be useful in cases where Art. 98 is routinely invoked to avoid compliance. However, a severe limitation of this suggestion is that a hybrid tribunal still requires state consent and would not change international customary law. The ICTY only worked because Yugoslavia was dissolved so this suggestion may only work in a post-conflict scenario where a state is dissolved, or an in-coming government provides consent for an ICC backed hybrid-court.

Additionally, fortifying national legal frameworks to facilitate the domestic prosecution of international crimes is a crucial reform and essential for long-term enforcement.[80] The ICC could assist in strengthening the capacity and willingness of national legal systems to prosecute such crimes, either directly or in support of ICC processes. This could entail the creation of specialised courts or units devoted to prosecuting international crimes, capacity-building programs to train judges, prosecutors, law enforcement officials in international

[78] Rod Raston, 'International Cooperation and Judicial Assistance' (2017) *International Criminal Investigations: Law and Practice*, 31.
[79] Mensah (n 66), 25.
[80] Ibid.

criminal law, and legislation changes to strengthen compliance with international crimes and obligations under the ICC in national criminal codes.[81]

6: Strengthening Art. 27: From Symbolic Norm to Enforceable Mandate

When the ICC was founded, it was assumed that State Parties would co-operate out of a shared commitment to ending impunity.[82] These states willingly signed and ratified the ICC-St, yet as this thesis has demonstrated through recent developments, support for the Court is often shifting and politically contingent. During the Rome Conference, little emphasis was placed on the challenges that might arise in the relationship between states and the Court, particularly regarding enforcement.[83]

A key issue identified throughout this thesis is the ICC's close dependence on states makes it inherently vulnerable to political pressure. In order to preserve its legitimacy as a legal institution, the Court must appear to operate above political influence.[84] Despite strong legal rulings regarding HOS immunities and State Party obligations, the Court is still beholden to the political realities of the world where rulings are often ignored or selectively interpreted by states acting in their own interest.[85] In order to realise the potential of Art. 27 and move it from a symbolic norm to an enforceable mandate, the ICC needs to better engage with the political realities of the world and consider certain reforms that would increase co-operation.[86]

To fulfil the potential of Art. 27 and elevate it from a symbolic norm to an enforceable mandate, the ICC must more meaningfully engage with geopolitical realities. This section will explore structural and normative reforms aimed at increasing co-operation and enhancing the enforceability of Art. 27 in practice.

[81] Ibid, 26.
[82] Francisco Tschen, 'Necessary Reforms to ICC Procedure: Lessons from the Omar al-Bashir Case' (2020) *Florida International University Law Review*, 19.
[83] Ibid.
[84] White (n 63), 26.
[85] Ibid 27.
[86] Ibid.

1.1 UNSC Guarantee

In future situations where the UNSC refers a situation to the ICC for investigation, the Court could request specific guarantees prior to accepting a case.[87] This could help prevent the Court from appearing weak or powerless and reduce the risk of another scenario like the al-Bashir case. For example, the UNSC could explicitly impose co-operation obligations on all UN State Parties and authorise the use of financial or diplomatic sanctions against those who fail to comply. While Art. 25 of the UN Charter obliges State Parties to carry out UNSC decisions in accordance with the charter,[88] the absence of any meaningful punitive mechanisms that encourage co-operation means that states may still disregard ICC-related referrals if they conflict with national political interests.

In the al-Bashir case, those states that objected to his arrest largely framed their arguments around immunity, an argument later repeated in the Mongolia non-compliance ruling. To avoid similar conflicts in future referrals, the UNSC could proactively lift any immunities that are in place in its referral resolution or explicitly state that Art. 27 of the ICC-St takes precedence over customary immunities or bilateral agreements.[89] As a consequence, any doubts would be dispelled and states' obligations clarified, thereby ensuring that the individual is arrested and surrendered to the ICC.

However, while this reform appears attractive in theory, its viability is limited by the geopolitical dynamics of the UNSC in relation to the veto power. The permanent members frequently disagree, and the veto power often blocks action in political sensitive contexts. As such, referrals involving powerful states or their allies, such as a referral for Ukraine or Palestine is unlikely. This guarantee reform may only be realistic in cases involving small or geopolitically neutral states where an ICC referral would not cause friction between the UNSC members.

1.2 Encouraging State Reform

Although discussed previously, the ICC should expand beyond its role as a complementary court and prosecutorial body by actively encouraging and supporting states to investigate and

[87] Tschen (n 82), 27.
[88] *Charter of the United Nations* (n 23), Art. 25.
[89] Tschen (n 82), 28.

prosecute international crimes domestically.[90] To achieve this, the ICC could establish dedicated structures and allocate greater resources to help states develop their national legal capacities, or enhance them where necessary to investigate and prosecute such cases more often and more effectively.[91] This includes assisting with legislative reforms, training prosecutors and judges, and setting up specialised units to handle international crimes.

As this thesis has shown, Art. 27 continues to face major enforcement challenges and, in many contexts, functions more as a symbolic declaration than an enforceable rule. If the ICC is to meaningfully reduce impunity for international crimes, it must reinforce Art. 27 at the domestic level and ensure that states are both equipped and willing to execute arrests and conduct prosecutions. Given the geopolitical constraints of international law, the ICC cannot be a panacea for halting mass atrocities or securing justice in every case.[92] Instead, it must focus on strengthening local accountability mechanisms, recognising that enforcement is most sustainable when grounded in national legal systems.

1.3 State Sovereignty and Incentives

The issue of state sovereignty has been a recurring theme throughout this thesis. A long-standing criticism of the Court is that its authority to determine violations of international obligations and criminal law infringes upon state sovereignty.[93] Yet, the irony remains that many states have voluntarily limited their sovereignty by joining and ratifying the ICC-St. Thus, states have made themselves subject to ICC oversight and enforcement processes.[94] However, the problem of sovereignty does not seem to be an issue that the Court can solve through judicial rulings. The Court must do more to counter the perception that international oversight and accountability mechanisms, including the ICC, are illegitimate or politically biased.[95] In relation to Art. 27, state sovereignty is often used to refuse arrest of official of states that are not parties to the ICC but where the ICC has assumed jurisdiction. Thus, there

[90] Jeremy Sarkin, 'Reforming the International Criminal Court (ICC): Progress, Perils and Pitfalls Post the ICC Review Process' (2021) 21(1) *International and Comparative Law Review* 7, 27.
[91] Ibid.
[92] Ibid.
[93] Jeremy Sarkin, 'Reforming the International Criminal Court (ICC) to Achieve Increased State Co-operation in Investigations and Prosecutions of International Crimes' (2020) 9 *International Human Rights Law Review* 27, 137.
[94] Ibid.
[95] Ibid.

ought to be greater information and greater education on these issues to promote the crucial and appropriate role of the ICC.[96]

However, where dialogue fails, the ICC should create greater incentives for states to fulfil their obligations.[97] For example, a State Party that successfully arrests and surrenders an accused individual could be financially rewarded by the ICC or through a pooled fund supported by other State Parties. This may encourage poorer states to improve compliance or at the minimum provide an option for a state to really consider compliance where perhaps geopolitical issues are of concern.

Furthermore, the ICC could look at consequences for states that refuse to co-operate with a warrant of arrest. For example, the Court could look at (a) suspension, (b) expulsion, or (c), UNSC sanctions.[98] These consequences could force governments to consider whether it could be politically dangerous to refuse compliance and their standing within the international community. Regrettably, implementing such measures may risk further aggravating non-co-operation, particularly among African states or politically conservative governments.[99] If these reforms were adopted, they could gradually shift the calculus of states and help transform Art. 27 from a symbolic declaration into an enforceable norm.

1.4 Universal Jurisdiction and Transitional Justice

A potential reform to support the ICC's goal of ending impunity could involve greater reliance on and take advantage of national courts exercising universal jurisdiction to prosecute HOS for international crimes. Universal jurisdiction is the concept that allows states to prosecute certain grave international crimes, such as genocide, war crimes, and crimes against humanity, regardless of the victim's or offender's nationality or the location of the incident.[100] This idea could serve as a more effective enforcement pathway for Art. 27 in situations when alternative channels are either non-existent or inefficient. While this approach may raise diplomatic and political concerns, particularly around HOS immunity, it could encourage greater state buy-in to ICC norms by empowering them to play a more direct

[96] Ibid.
[97] Ibid, 44.
[98] Ibid.
[99] Ibid.
[100] Mensah (n 66), 27.

role in international accountability if they are at the forefront of the prosecution of HOS under universal jurisdiction.[101]

To realise the aims of Art. 27 more effectively, the ICC may also need to adopt a more victim-centric approach. The ICC could consider using transitional justice tools such as truth commissions, compensation schemes, and national reconciliation initiatives to supplement the legal action taken against HOS for international crimes or in instances where prosecution is unlikely or unavailable.[102] Given the geopolitical and legal challenges of prosecuting HOS, the ICC may benefit from rethinking its justice strategy by promoting mechanisms that address the legacy of past human rights violations, particularly for nations moving from conflict or dictatorship to peace and democracy.[103] The ICC could focus on advancing accountability, reconciliation, and the rule of law. Although transitional justice mechanisms may not focus directly on prosecuting HOS under Art. 27, they can still play a vital role in advancing the broader goals of the ICC by promoting accountability, offering recognition, and providing reparations to victims.

A truth commission could operate within the ICC framework or through a formalised agreement with an independent body, offering a strong non-judicial alternative in cases where prosecutions are not possible. Truth commissions are investigative bodies typically mandated to uncover facts behind human rights violations, identify those responsible, acknowledge victims' suffering, and offer a form of accountability.[104] While not punitive, a truth commission nevertheless helps maintain a momentum for accountability and justice, preserves evidence, and provides a historical record that could support later international and domestic prosecutions. Importantly, a truth commission aligns with the ICC's broader goals of prevention and deterrence of future violations. By promoting democratic values of transparency, inclusiveness, and accountability and by making recommendations on preventing future violations, a truth commission supports post-conflict reconstruction and contributes to long-term peacebuilding.[105] Ultimately, a truth commission can be a strong addition to the ICC in situations where prosecution fails or is not possible and can enhance

[101] Ibid.
[102] Ibid.
[103] Ibid.
[104] Alison Bisset, 'Rethinking the Powers of Truth Commissions in Light of the ICC Statute' (2009) Journal of International Criminal Justice, 7(5), 974.
[105] Declan Roche, 'Truth Commission Amnesties and the International Criminal Court' (2005) *The British Journal of Criminology,* 45(4), 574.

the legitimacy and effectiveness of the ICC by demonstrating a willingness to embrace alternative pathways to justice while keeping victim recognition at the centre of its mission.[106]

7. A New Customary International Law?

Customary international law concerning HOS immunity continues to operate outside the ICC-St, as evidenced by bilateral immunity agreements and the reluctance of some ICC State Parties to arrest non-State Party leaders such as Putin and Netanyahu. Art. 27 reflects a treaty-based exception to this norm, but only to State Parties. Although the ICC has attempted to increase Art. 27's reach to non-State Parties as explained in the Mongolia ruling, there still remains some resistance within the international community. If Art. 27 is to have real universal reach and impact post al-Bashir, it must evolve into a customary norm otherwise it will be condemned to remain a symbolic goal. This poses the question: is state practice indicating the emergence of a new customary international law of rejecting or accepting immunity before the ICC?

Currently, under customary international law absolute immunity exists under *ratione personae* for sitting HOS which was reaffirmed in the *Arrest Warrant Case.* However, the ICC has consistently maintained the HOS immunity does not apply before international criminal tribunals, a position reaffirmed in both the al-Bashir and Jordan non-compliance decisions. But it is important to recognise that the ICC is not the arbiter of customary law. It can make as many rulings and clear legal judgments as it wants on HOS immunity, but customary law is formed by state practice and opinion juris. Therefore, even though Art. 27 states that HOS immunity does not apply, its real global effect depends on how states actually behave.

The thesis has demonstrated that post al-Bashir, the emergence of a new customary international law regarding HOS immunity is still fragmented. On one hand, state practice appears divided. France, Germany, Mongolia, Hungary, and the US have all acted in ways suggesting a continued adherence to HOS immunity, even before the ICC. Despite being ICC parties, France, Hungary and Germany have each responded in ways that cast doubt on the universality of Art. 27's application. However, it is important to note that this resistance has

[106] Ibid, 579.

come off the back of non-State Party HOS being issued with an arrest warrant. This simple fact complicates the analysis as these members may have no issue in complying with an arrest warrant for a HOS of a State Party. On the other hand, there also seems to be a trend supporting establishing a new international customary law on HOS immunities. This is demonstrated through the Philippine's arrest of Duterte despite not being an ICC party and the AU and Jordan's changing tone post al-Bashir encouraging the surrendering of Putin to the ICC. Both these scenarios demonstrate that the practice is fragmented and inconsistent suggesting that no firm new custom has yet evolved.

Despite the fragmentation of Art. 27, it still holds symbolic value as a reference point in political and legal debates. Continuous ICC rulings supporting Art. 27 as well as the consequences of a warrant (restricted travel) may nudge certain states toward accepting the norm in the long term. As even symbols and customs can be translated into code-like rules that ultimately harden into law through consistent state affirmation.[107] If states are serious about ending impunity, eventually Art. 27 will become an international norm in part because the custom accords with reason and facilitates common sense interactions with other states.[108] However, If the ICC wants to create a new international customary law in support of impunity for HOS, it needs to begin building pressure via state co-operate and reform (as discussed in section 6) so that it may gain normative authority beyond the ICC-St.

The future of Art. 27 as a universal norm hinges not only on ICC jurisprudence but on states choosing to act in accordance with it, even when politically inconvenient. The thesis has demonstrated that current state practice suggests Art. 27 still remains partially aspirational and symbolic, but the seeds of normative transformation are present. To support and encourage the evolution of a new custom, the ICC needs to take a more direct and active approach rather than just making legal rulings. The ICC needs to engage, pressure, and persuade and with success, the goal of Art 27 will be realised.

[107] Emily Kadens, 'How Customary is Customary International Law? (2013) 54 *William and Mary Law Review* 3, 886.
[108] Ibid, 904.

8. Conclusion

The central question posed in the thesis was whether *Article 27 of the Rome Statute fulfils its promise of ending impunity for heads of states in the post al-Bashir Era?* It hypothesised that, although Art. 27 provides a strong legal basis for the removal of immunities particularly following the al-Bashir ruling, its enforcement remains politically fraught, and its provision operates more symbolically than effectively. Despite greater legal clarity after the al-Bashir and Mongolia non-compliance rulings, the enforcement of Art. 27 remains inconsistent, politically contingent, and shaped by deeper systemic and geopolitical challenges. While the arrest of Duterte marked a positive development, this alone is insufficient to conclude that Art. 27 has successfully ended HOS immunity. Therefore, based on the recent developments, case studies, and the broader legal framework, the thesis concludes that Art. 27 remains a symbolic aspiration that still lacks legal enforcement post al-Bashir.

The findings of this thesis conclude that Art. 27 has not yet fulfilled its promise of ending HOS immunity. Although recent rulings have a laid a strong legal foundation, Art. 27's transformation into customary international law remains constrained by the realities of state sovereignty, selective co-operation, and competing international obligations, most notably those arising under Art. 98. The al-Bashir ruling was a landmark decision that clarified that HOS immunities do not apply before the ICC, even in relation to non-State Parties. However, the legal certainty it provided has not resulted in increased state compliance. If anything, state compliance has regressed since the ruling. The case of Mongolia's refusal to arrest Putin and France's hesitation to act on the warrant against Netanyahu further demonstrated that even ICC State Parties continue to resist full co-operation when politically inconvenient.

Moreover, comparing cases of non-compliance with instances of co-operation highlights the selective nature of enforcement. The arrest of former Philippine President Duterte, despite withdrawing from the ICC-St, is a powerful counterexample. It demonstrates that political will, regime change, internal dynamics, or a want to co-operate with the ICC still creates opportunities for accountability, even outside of the ICC's strict legal framework. Nevertheless, this example remains an exception rather than a rule. If anything, it highlights how deeply politically enforcement and compliance with Art. 27 is, emphasising further that it is symbolic rather than binding in many contexts.

State sovereignty remains a recurring conceptual and legal barrier to Art. 27. Many states invoke sovereignty arguments to justify non-compliance or to avoid co-operation. These arguments are particularly common when arrest warrants target officials from powerful or allied nations. Despite being voluntarily ratified, the ICC-St still struggles to override entrenched views on sovereign equality and non-interference. Yet, as mentioned throughout the thesis, the sovereignty arguments are often used when the ICC is attempting to extend its jurisdiction to non-State Parties. Until another arrest warrant is issued against a State Party HOS, the thesis will not make any concluding remarks on the effectiveness of ending impunity in this context as it may be such that states are more willing to comply. Moreover, Art. 98 continues to serve as a convenient legal pretext to avoid arrest, despite ICC rulings clarifying its operation with Art. 27. This underscores that political interests and alliances remain the most decisive factors in determining co-operation with the Court.

Selective justice concerns have further undermined the perceived legitimacy of the ICC thereby effecting the success of Art. 27. Longstanding criticism from the AU, particularly following the al-Bashir indictment, and new accusations of anti-Israel bias in response to the investigation and subsequent warrant of arrest against Netanyahu, continue to cast doubt on the ICC's neutrality. Rather than focusing on the alleged crimes committed by these individuals, the focus turns to the ICC being a neo-colonial institution. Furthermore, the US legislation as well as Hungary's withdrawal from the Court signal that even long-standing observers and parties may disengage with the Court when political allegiances are threatened, further damaging Art. 27's ability to be effective. These developments suggest that the legal strength of Art. 27 alone is insufficient to guarantee compliance within a fragmented and geopolitically divided international system.

Despite the challenges identified, the thesis also outlined areas of potential reform that may enhance the enforceability of Art. 27. Section 6 of the thesis outlined a range of proposals including seeking explicit co-operation guarantees in future UNSC referral to the development of hybrid or ICC-backed tribunals with built-in enforcement mechanisms. These structural reforms could help the ICC reduce its dependence an unpredictable and often volatile state co-operation. The thesis also considered reforms relating to enhancing national capacities through training, legal reform, and institutional development which would enable states to domestically prosecute serious crimes, aligning domestic legal systems with ICC

obligations and easing the burden of the Court. These reforms allow Art. 27 to achieve its mandate through non-direct avenues.

However, the thesis has aimed to look at reframing Art. 27 not only as a binding legal rule but also as a symbolic and normative standard. The symbolic function of Art. 27 should not be underestimated. It has the ability to stigmatise, isolate, and delegitimise individuals accused of grave crimes. Travel bans, political embarrassment, and reputational costs still carry considerable weight in global diplomacy and can assist in regime or policy changes. Even when an arrest does not occur, the issuance of a warrant under Art. 27 signals international condemnation, narrows a leader's diplomatic reach, and reinforces evolving global expectations about accountability and human rights. Over time, as international rulings accumulate and symbolic pressure grows, Art. 27 may harden into a new international customary law that has a stronger and more effective impact that leads to ending impunity for HOS. However, this can only be achieved if more states act in alignment with its principles, even outside the ICC-St framework.

For Art. 27 to truly shift from symbol to enforceable mandate, the ICC must do more than rely on legal doctrine. The thesis argued that the ICC must adopt a more engaged and political posture such as building alliances, using diplomacy, supporting domestic capacity, and routinely apply consistent normative pressure. It is evident from recent developments that without such pressure, Art. 27's goal will never be realised. The ICC cannot function simply as an apolitical body in a complementary manner in a deeply political world. Its effectiveness and that of Art. 27 depends on its ability to navigate the political and legal international spheres in a manner that maintains its independence and integrity but forwards its aims. The thesis argues that only through a multi-layered strategy – judicial, diplomatic, institutional, and symbolic, can Art. 27's potential be realised.

In conclusion, Art. 27 remains aspirational, but it is not irrelevant. Its effectiveness or lack thereof is not entirely its fault. Many factors are at play that determine how much reach it will have in ending HOS impunity. But for now, its power lies not only in what it mandates legally but also in the standard that it sets for international justice, criminal law, and human rights. While Art. 27 has not yet fully overcome the practical barriers to enforcement post al-Bashir, it has nevertheless shaped global expectations around impunity and accountability and contributes to keeping recent developments in the spotlight and elevating them in public

and legal discourse. Unfortunately, the road ahead remains difficult and much will depend on the ever changing international legal and political landscape and whether there exists political will to reform for Art. 27. While the thesis has taken a critical view of Art. 27's effectiveness post al-Bashir, the seeds of transformation are present. With persistent effort, stronger co-operation, and creative engagement with states, the ICC may still realise Art. 27's promise of ending HOS immunity, not merely as a symbolic principle, but as a cornerstone of international criminal law.

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