LEX LOCALIS-JOURNAL OF LOCAL SELF-GOVERNMENT
ISSN:1581-5374 E-ISSN:1855-363X
VOL. 23, NO. 11 (2025)

CHALLENGES OF INTERNATIONAL CRIMINAL MONITORING

Dr. HEBBAZ SANA[1], Dr. Mesli Noureddine[2], Pr. AMRAOUI KHADIDJA[3]

[1]Abbas Laghrour University of Khenchela (Algeria).
[2]University Mohamed Cherif Maasadiya of Soukahras (Algeria).
[3]Abbas Laghrour University of Khenchela (Algeria).

habbaz.sana@univ-khenchela.dz[1]
n.Mesli@univ-soukahras.dz[2]
amraoui.khadidja@univ-khenchela.dz[3]

Corresponding author email: habbaz.sana@univ-khenchela.dz[1]

Received: 15/01/2025 Accepted: 27/08/2025 Published: 03/10/2025

Abstract:
After nearly half a century of efforts by the United Nations and its member states, the International Criminal Court was established under the Rome Statute in 1998, and its statute came into force in July 2002. This marked a historic step in human history and was significant in the field of international criminal law. The drafters of the statute aimed to create a consensual system that would satisfy all countries, thereby enhancing the court's effectiveness. However, the court has faced numerous obstacles and challenges in carrying out its functions, which have limited its effectiveness and hindered its operations. This has led some to question whether it will achieve the objectives for which it was established. Nevertheless, despite the positive aspects of this mechanism, there are many negatives that have obstructed its work and affected its efficacy. This study aims to clarify these issues, which is why we have divided it into two sections. The first section addresses the principle of national sovereignty, while the second section discusses diplomatic immunity. The study concluded that the international legal system lacks a compulsory enforcement mechanism.

Keywords: court, criminal, sovereignty, immunity, diplomatic

Introduction:

The crimes and tragedies committed against humanity during the First and Second World Wars prompted the international community to establish international criminal justice in the form of the International Criminal Court, in order to punish the perpetrators. However, this international judicial body's work has faced and continues to face numerous obstacles and challenges that hinder it from achieving its goals and objectives. This confirms that the anticipated justice to be achieved through the court will encounter obstacles and hurdles that must be examined, discussed and resolved.

Thus, we ask: what is the nature of these obstacles and challenges that impede the effective operation of international criminal monitoring?

To answer this question, we have decided to adopt the following approach:

Section One: National Sovereignty

Section Two: Diplomatic Immunity

Section Three: Extradition System

Section One: National Sovereignty

National sovereignty is considered one of the political concepts directly linked to human rights in private law, specifically with regard to equality of rights between citizens of the same nation. This means that the citizen belongs to a specific political entity in a mandatory and compulsory manner.

Section One: The Concept of Sovereignty

First: Definition of sovereignty:

Sovereignty is defined as 'a legal status attributed to a state when it possesses the material components of a population, territory and organised governing authority'. This represents the state's power to exercise authority over individuals within its territory and engage with other states abroad. A key aspect of this authority is that the state's actions in various matters are based solely on its own will[1].

This means that the state's authority, both domestically and internationally, is not superseded by any other authority. The legal scholar Bodin defined it as 'the supreme authority over citizens and subjects that is not subject to laws'. However, most scholars agree that its characteristics are indivisible and cannot be transferred or extinguished by prescription. In the famous 'Corfu Channel' case in 1949, the International Court of Justice defined sovereignty as 'the necessity of sovereignty being the exclusive and absolute jurisdiction of the state within its territorial limits, and the respect for territorial sovereignty among independent states being considered a fundamental basis of international relations'[2].

Internally, sovereignty has positive connotations through its supremacy over individuals in society. This includes complete freedom in decision-making and the establishment of laws and regulations, as well as the legitimate monopoly of coercive tools. Externally, sovereignty's content becomes negative as it does not recognise any higher authority. This means that the state does not acknowledge any authority above itself and is only bound in the international arena by the treaties and agreements it has entered into, thereby expressing its sovereignty and independence in its affairs. Thus, sovereignty represents the highest degree of authority in the state, encompassing positive content internally and negative content in international relations[3].

Section Two: Manifestations of Sovereignty

A sovereign state possesses the authority to impose its will over the territory it governs, including the people and property within that territory, because it owns the territory. In the context of international relations, it interacts with other states based on the principles of equality and adherence to international law[4].

We will therefore discuss the manifestations of sovereignty at both the internal and external levels.

First: sovereignty at the internal level.

It is difficult to list the matters that fall within the state's exclusive domain, often referred to as 'the powers of national sovereignty'. The state's original authority is not limited by a specification of matters within its core competencies; it has complete freedom to choose its judicial, political and economic systems. As international law has evolved, the principle of a state's exclusive jurisdiction over its territory has emerged. This is considered the starting point for organising all matters that impact international relations[5].

---

[1]- Mohamed Talaat Al-Ghunaimi: The Mediator in Peace Law, Manshat Al-Ma'arif, Alexandria, Egypt, 1993, p. 318.

[2]- Same reference, p. 318.

[3]- Ait Youssef, S.: 'Judicial Jurisdiction in Criminalising Certain Acts Between the Reserved Domain of States and the Contemporary Trend Towards Globalisation', Master's thesis, Department of Public International Law, supervised by Dr Kassher Abdelkader, Doctoral School of Law and Political Science, Faculty of Law and Political Science, Mouloud Mammeri University, Tizi Ouzou, p. 96.

[4]- Al-Jouzi, A. (2008). 'The Principle of the Right to Humanitarian Intervention Between Sovereignty and Human Rights'. Master's thesis in Public Law, Department of State Transformations, Faculty of Law, Mouloud Maameri University, Tizi Ouzou.

[5]- Al-Jouzi Azeddine: Same reference, pp. 67-68.

Territorial sovereignty involves the right to exercise governmental functions exclusively, as well as the obligation to protect the rights of other states. Thus, its territorial jurisdiction is essentially governed by three main interacting principles:
1. The state's exclusive and singular legal authority over its territory.
2. The duty not to interfere in the legal jurisdiction of other states.
3. The connection of obligations under customary and treaty law to the consent and approval of the party in question[6].
Therefore, it can be said that manifestations of sovereignty at an internal level include the state's right to exercise authority and manage facilities within its territory. All individuals residing within the territory are subject to the state's legal systems and judicial rulings[7].
Internal jurisdiction represents the ultimate manifestation of sovereignty because it is through this that the state maintains its identity. Any encroachment on these powers would undermine the principle of international equality[8].

Second: sovereignty at the external level.

The Dictionary of International Law defines sovereignty as 'the supreme, indivisible authority that the state possesses to enact and apply laws to all persons, property and incidents within its borders'[9]. This definition is consistent with that of the International Court of Justice in the 1949 Corfu Channel case, which ruled that 'sovereignty necessarily entails exclusive and absolute jurisdiction within a state's territorial limits, and respect for territorial sovereignty among independent states forms the basis of international relations'[10].
This means that a state has the right to form alliances with other states, conclude treaties and join international organisations. It also governs its external relations and connections with other states[11]. Sovereignty also grants a state the right to maintain military power to safeguard its internal security and protect its territory from any external aggression[12].
In simpler terms, manifestations of sovereignty at the external level refer to a state's freedom to manage its foreign affairs and determine its relationships with other international entities[13].

Section Three: Effects of Sovereignty

Sovereignty has many effects, the most significant of which are:

---

[6]- Bousultan Mohamed: Principles of Public International Law, University Publications House, Algeria, 1994, Part One, p. 172.

[7]- Ghaith Masoud Muftah: International Intervention Under Humanitarian Pretexts: A Case Study of Somalia', Dar Quba Al-Haditha, Cairo, 2004, p. 62.

[8]- Al-Jouzi, Azeddine: Same reference, p. 69.

[9]- Jamal Ben Marar: 'The Evolution of the Concept of Sovereignty in Light of New Changes: A Case Study of the European Union', Master's thesis in Political Science and International Relations specialising in International Relations, Department of Political Science and International Relations, Faculty of Political Science and Media, Ben Youssef Ben Khadda University, Algeria, 2001, p. 27.

[10]- Nawari Ahlam: 'The Retreat of National Sovereignty in Light of International Transformations', Notebooks of Politics and Law, Saida University, Algeria, Issue Four, p. 21, 2016.

[11]- Bouras Abdelkader: Humanitarian International Intervention and the Retreat of the Principle of National Sovereignty, Dar Al-Jamia Al-Jadida, Al-Azariyya, 2009, p. 40.

[12]- Ghaith Masoud Muftah: Same reference, p. 63.

[13]- Bouras Abdelkader: Same reference, pp. 40–41.

First: States enjoy all rights and advantages inherent in their sovereignty, both internationally — such as concluding international treaties, exchanging diplomatic and consular representation, and invoking international responsibility to seek compensation for damages suffered by the state or its nationals — and domestically, where the state has the right to manage its primary resources and natural wealth. The state can also take measures it deems appropriate regarding individuals present in its territory, regardless of their citizenship status.

Second: equality among states:

Sovereignty also entails that states are legally equal, with no hierarchy among them. This means that the rights and obligations of states are equal from a legal standpoint, regardless of differences in population density, geographic area or economic resources. However, the principle of equality in sovereignty, as established by the UN Charter, is not absolute. Permanent members of the UN Security Council possess numerous exclusive rights, such as the right to veto and the right to amend the Charter. Nevertheless, there is a trend in international jurisprudence aimed at addressing actual inequalities by establishing legal rules and mechanisms that reduce these disparities[14].

Thirdly, the prohibition of intervention in the affairs of other states.

Providing an accurate definition of what constitutes intervention at the international level is one of the most challenging tasks faced by scholars of international law. Some define it as 'a dictatorial intervention by one state in the affairs of another state with the intent to maintain or change the current situation, thereby affecting the territorial integrity and political independence of that state'. International law prohibits any state from interfering in the internal affairs of another state, since each state is free to choose and develop its own political, economic, social and cultural systems without external interference. However, a state's sovereignty is constrained by international law, particularly with regard to human rights and the commission of war crimes and genocide. A state cannot act without limits in international relations because it is subject to international law and has obligations to the international community[15].

Section Four: States Invoking the Principle of National Sovereignty to Evade International Obligations

One of the most significant topics under the issue of national sovereignty is the judicial sovereignty of the state over its territory and nationals. In the criminal domain, this can be expressed as the state's jurisdiction over crimes committed within its territory. Regarding state nationals, a key issue of sovereignty is that citizens, particularly leaders, are not subject to the jurisdiction of any legal authority other than their own state. Generally, states possess absolute criminal jurisdiction over property and persons within their territory[16].

Many states feared the establishment of the International Criminal Court, worried that it would undermine their national sovereignty. While sovereignty no longer merely signifies a desire to impose a facade through which states can assert their authority, it now reflects states' contributions to international life according to their capabilities. However, no state currently views the International Criminal Court as an extension of its national courts without imposing a set of conditions. This is particularly true concerning the relationship between trial procedures and those

---

[14]- Amari Taher al-Din: 'Sovereignty and Human Rights', doctoral thesis in law, Faculty of Law and Political Science, Mouloud Mammeri University, Tizi Ouzou, 2009, pp. 37–38.

[15]- Same reference, p. 37.

[16]- Ben Haddad, S. and Ben Safia, M.: 'The Limits of the International Criminal Court's Jurisdiction in Establishing Individual Criminal Responsibility', Master's Thesis in Law, Department of Public Law specialising in Humanitarian Law and Human Rights, supervised by Professor Amar Berkani, Department of Public Law, Faculty of Law and Political Science, Abderrahmane Mira University, Béjaïa, 2012–13, p. 5.

undertaken before national courts. States have surrounded the principle of sovereignty with a strong protective barrier, a stance that has been reinforced by the international system's repeated failure to address chaos and armed violence in international relations and establish an appropriate mechanism to affirm and respect its principles and values.

Ultimately, we conclude that the International Criminal Court has complementary rather than sovereign jurisdiction over national courts. The states themselves established this court under an international treaty of their own volition, which explicitly states that the ICC has complementary jurisdiction. Therefore, invoking national sovereignty merely serves as an excuse for not ratifying the treaty that established the ICC[17].

Section Two: Diplomatic Immunity

Subsection One: The Concept of Diplomatic Immunity

First: Definition of Diplomatic Immunity

Linguistically, the term 'immunity' derives from the verb 'to fortify', indicating preservation, protection and safeguarding. A place is said to be fortified when it is made strong and impregnable. Immunity signifies the strength and power that prevents others from harming or degrading the individual who possesses it. Thus, immunity places the individual in a state that protects them from harm or prosecution for reasons regulated by international law, particularly with regard to diplomatic envoys and those in similar positions[18].

Legally:

1. Jurisprudential definition: diplomatic immunity is defined as 'the exemption of certain persons or entities from the jurisdiction of the courts in the state where they are accredited in the event of a lawsuit against them'. This includes representatives of foreign states and recognised international organisations[19].

2. Legal definition: the United Nations and international agreements define diplomatic immunity as 'the privilege of exemption from the exercise of jurisdiction or the dominance of local authorities'.

The Protocol Department of the Egyptian Ministry of Foreign Affairs also defines it as 'exemptions from certain financial obligations and procedural rules that citizens are subject to, as determined by national legislation for this foreign category, in accordance with the internationally upheld principle of reciprocity, and in line with the provisions of customary and international law, to facilitate the fulfilment of the duties of these missions and their members'[20].

Second: types of diplomatic immunity

International law scholars categorise diplomatic immunity into four types:

A. Personal immunity: This is the right to absolute and complete security and freedom, ensuring that the envoy is not harmed under any circumstances. It includes personal inviolability, freedom of belief and worship, freedom of residence and movement, freedom of communication, and freedom to participate in social life. This is referenced in Article 29 of the 1961 Vienna Convention on Diplomatic Relations[21].

---

[17]- Same reference, pp. 5–6.

[18]- Muhammad bin Faris bin Zakariya Abu Al-Hasan: Dictionary of the Measures of Language, Dar Al-Fikr for Printing, Publishing and Distribution, 1979, vol. 2, p. 69.

[19]- Ali Hussein Al-Shami: Diplomacy: Its Origin, Development, and the System of Diplomatic Immunities and Privileges', Dar Al-Ilm for Millions, Beirut, Lebanon, 1990, p. 421.

[20]- Saleh Badari: Diplomatic Immunities under the Statute of the International Criminal Court, Supplementary Thesis for a Master's Degree in Law specialising in International Law and Human Rights, supervised by Professor Adel Rzeiq, Department of Law, Faculty of Law and Political Science, Mohamed Khider University, Biskra, 2014–15, p. 4.

[21]- Same reference, p. 9.

B. Judicial immunity: This refers to an ambassador or diplomat being exempt from the jurisdiction of the host state, as set out in Article 31 of the 1961 Vienna Convention. It includes immunity from criminal, administrative and civil prosecution in the host state.
C. Immunity of the diplomatic mission's premises: The system of permanent diplomatic missions requires that they have specific premises for their tasks and activities. It is therefore essential that these premises enjoy diplomatic immunity, allowing them to perform their functions freely and independently, without influence or intervention from the host state. This is stipulated in Article 22 of the 1961 Vienna Convention.

Second: Persons Covered by Immunity

Since, by international custom, a diplomat is someone who implements their state's foreign policy with other states, anyone who undertakes this task is considered a diplomat. The 1961 Vienna Convention on Diplomatic Relations leaves the determination of this matter to the laws of individual states. Typically, this role is filled by heads of state, government members and individuals sent by the state on permanent or special missions abroad[22].

Subsection Two: Immunity of Heads of State

Modern jurisprudence and international law recognise two types of immunity enjoyed by heads of state: personal and functional (or objective) immunity.

First: Personal immunity:

Personal immunity protects the individual who possesses it at all times, as long as they remain in their position. It can also cover actions taken in their personal capacity as representatives of their state. This type of immunity is typically enjoyed by the head of state, the head of government, the foreign minister and senior state representatives[23].

Second: Functional (objective) immunity:

In contrast, functional or objective immunity is based on actions and conduct carried out while in office. This means that the nature of the actions in question and their connection to the official position are considered; thus, it does not extend to personal actions. This principle has been adhered to by jurisprudence and international courts in various international cases[24].

Subsection Three: Immunity of Heads of State in the Rome Statute

The Rome Statute of the International Criminal Court outlines the substantive and procedural rules related to immunity, particularly in Articles 27 and 98. Article 27 states that all individuals — whether soldiers, civilians, generals, diplomats, ministers, kings or heads of state — are equal in accountability and prosecution before the International Criminal Court. It does not allow the immunity claimed by certain individuals, including heads of state, to be used as a reason to evade or mitigate punishment — this is the principle. However, Article 98 of the same statute limits the application of Article 27 by requiring the International Criminal Court not to take judicial action against individuals from a specific state, such as issuing an arrest warrant or a request for surrender, without first obtaining a waiver of their immunities or that state's consent for their surrender to the court.

The issue also arises when the court requests a state that is not a party to the Rome Statute, as this state is not legally obligated to surrender the person in question. This is because considerations of

[22]- Suhail Hussein Al-Fatlawi: Diplomatic Law, Dar Al-Thaqafa for Publishing and Distribution, 2010, p. 131.

[23]- Maher Osama Nasser Masoud: 'The Immunity of Heads of State before the International Criminal Court' (analytical study), thesis submitted to meet the requirements for obtaining a Master's degree in public law, supervised by Professor Dr Abdel Rahman Abu Nasr, Faculty of Law, Al-Azhar University, Gaza, Palestine, 2016, p. 13.

[24]- Maher Osama Nasser Masoud: Same reference, p. 19.

respect for international custom, the UN Charter, and agreements regarding immunity take precedence[25].

Section Three: The Extradition System

The extradition system forms the basis of international judicial cooperation, enabling one state to surrender an individual accused of committing a crime or wanted for the execution of a judicial ruling to another state. This is done based on bilateral or regional treaties, or under international legal rules. The extradition is granted if the act for which extradition is requested is a crime in both states, in accordance with the fundamental principle of 'dual criminality'.

Subsection One: Concept of the Extradition System

First: Definition

Linguistically, the term 'extradition' is derived from the Latin 'extradere', and most national legislation, international agreements and international case law use the term 'extradition', whether in French or English. This is translated into Arabic as '.(surrender of criminals) 'تسليم المجرمين

Legally, among the definitions provided, the international legal definition adopted from the Dictionary of International Criminal Law describes it as follows: 'The legal procedure by which a state surrenders a person present on its territory to another state that requests them for trial or to serve a sentence issued against them.[26]'

Subsection Two: The Legal Nature of the Extradition System

The legal nature of the extradition system is determined by national legislation and international agreements, which have varied. Some view it as a system of state sovereignty, decided solely by the government, while others see it as a judicial system, determined solely by the judiciary. However, it is generally accepted that most national legislation and international agreements adopt the view that it has a mixed nature, possessing both sovereign and judicial characteristics. Thus, the judiciary is responsible for examining extradition requests, verifying the conditions for their fulfilment and reviewing the validity of the evidence attached in proving the crime, while taking into account the provisions of bilateral or multilateral extradition agreements. Meanwhile, the government receives the extradition request through diplomatic channels and refers it to the public prosecutor, who submits it to the relevant judicial authority[27].

Subsection Three: Legal Foundations of Extradition

The legal foundations of extradition are divided into primary and supplementary foundations.

First: Primary foundations:

These include international extradition treaties (whether bilateral or multilateral), national legislation related to extradition, international custom and general principles of law.

Secondly, supplementary foundations include:

These encompass international jurisprudence and the decisions of international organisations, particularly the Security Council and the International Court of Justice[28].

Subsection Four: Crimes and persons subject to the extradition system

First: International crimes subject to extradition

In international criminal jurisprudence, it is generally accepted that the international crimes subject to extradition include genocide, crimes against humanity, war crimes and the crime of aggression.

---

[25]- Same reference, p. 36.

[26]- Ben Zahaf Faisal, 'The Extradition of Perpetrators of International Crimes', Thesis for Obtaining a Doctorate in International Law and International Political Relations, supervised by Dr Thabet Daraz Ahlam, Faculty of Law and Political Science, University of Oran, 2011–12, pp. 19–21.

[27]- Ben Zahaf Faisal: Same reference, p. 28.

[28]- Same reference, pp. 40, 63.

Second: persons subject to extradition.

According to international custom, jurisprudence and criminal law, the following individuals are subject to extradition: heads of state; heads of government; foreign ministers; members of the diplomatic corps; military leaders; members of parliament; and heads of civil organisations, such as governors, local elected officials, police chiefs and administrative officials with presidential administrative authority[29].

Conclusion:

From the above, we conclude that international criminal prosecutions face a number of obstacles and challenges that hinder their proper functioning. The most significant of these include issues relating to national sovereignty, diplomatic immunity and the extradition system. Despite these challenges casting doubt on the court's effectiveness, states must strive to reform these issues in order to combat those who threaten international peace and security.

References and sources:

Books:

- Mohammad Talaat Al-Ghneimi: The Mediator in Peace Law, Establishment of Knowledge, Alexandria, Egypt, 1993.
- Sultan Mohammad: Principles of Public International Law, University Publications Office, Algeria, 1994 (Volume One).
- Gaith Masoud Mouftah: International Intervention Under Humanitarian Considerations: A Case Study of Somalia', Dar Qabaa Al-Haditha, Cairo, 2004.
- Bouras Abdelkader: International Humanitarian Intervention and the Erosion of the Principle of National Sovereignty, Dar Al-Jami'a Al-Jadida, Al-Azariya, 2009.
- Mohammad bin Faris bin Zakaria Abu Al-Hassan: Dictionary of Language Standards, Dar Al-Fikr for Printing and Publishing, 2nd edition, 1979, volume 2.
- Ali Hussein Al-Shami: Diplomacy: Its Origins, Development and the System of Diplomatic Immunities and Privileges, Dar Al-Ilm for Millions, Beirut, Lebanon, 1990.
- Suhail Hussein Al-Fatlawi: Diplomatic Law, Dar Al-Thaqafa for Publishing and Distribution, 2010.

Theses and academic dissertations

- Ait Youssef Sabrine: 'Judicial Jurisdiction in Criminalising Certain Acts: Between the Reserved Domain of States and the Contemporary Trend Towards Globalisation', Master's thesis in International Public Law, supervised by Dr Kasher Abdelkader, Faculty of Law and Political Science, Mouloud Mammeri University, Tizi Ouzou.
- Al-Jouzi, A. Z.: 'The Principle of the Right to Humanitarian Intervention Between Sovereignty Competencies and Human Rights', Master's Thesis in Public Law, State Transformations Branch, Faculty of Law, Mouloud Mammeri University, Tizi Ouzou, 2008.
- Amari Taher Al-Din: 'Sovereignty and Human Rights', doctoral dissertation in law, faculty of law and political science, Mouloud Mammeri University, Tizi Ouzou, 2009.
- Maher Osama Nasr Masoud: Immunity of Heads of State Before the International Criminal Court (analytical study). Thesis submitted to fulfil the requirements for a Master's degree in public law. Supervised by Professor Dr Abdel Rahman Abu Al-Nasr. Faculty of law, Al-Azhar University, Gaza, Palestine. 2016.

Ben Zahaf, Faisal, 'Extradition of Perpetrators of International Crimes', Doctoral Thesis in International Law and International Political Relations, supervised by Dr Thabet Daraz, Ahlem, Faculty of Law and Political Science, University of Oran, 2011–12.

[29]- Ben Zahaf Faisal: Same reference, p. 199.