
STATE SOVEREIGNTY VS INTERNATIONAL CRIMINAL ACCOUNTABILITY

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CHAPTER I: INTRODUCTION

1.1 Background and Context

The classical form of international law is based on the assumption that states have the exclusive territory under their sovereignty. Therefore, criminal accountability questions were viewed as domestic issues, whereas international law dealt only with acts and conduct of the states and not the individuals. The state responsibility mediated even the most serious violation of international standards under this paradigm, thus closing the paths to direct individual accountability.¹

This paradigm later split apart when it was realized that the domestic legal machinery alone could not be used to ensure accountability for large-scale atrocities. In cases where the state machinery itself was involved in mischief, the assumption of effective domestic prosecution proved unrealistic. This gap was filled by the jurisprudential development after the Second World War that suggested a position where individuals can be directly held responsible under international law and thus limited the protective scope of sovereignty in matters related to the commission of serious crimes.²

The introduction of ad hoc international criminal tribunals and eventually the permanent International Criminal Court as defined by the Rome Statute did not end the state-centric architecture but placed another layer of responsibility on it. The International Criminal Court is not the substitute of the national jurisdiction, but it operates under the very system that depends on the consent, cooperation, and enforcement of the states. This dependency is what makes sure that the efficacy and scope of the international criminal law practice are still

¹Lassa Oppenheim, *International Law: A Treatise* (Longmans 1905).

²*Trial of the Major War Criminals before the International Military Tribunal* (Nuremberg Judgment, 1946).

dictated by sovereignty.³

The doctrine of complementarity reflects this compromise. It aims at harmonizing international responsibility with current sovereign frameworks through delegating primary responsibility to national courts and only involving international intervention in cases of jurisdictional failure. Such an arrangement, however, does not eliminate tension; it only changes it into questions about how and when international jurisdiction must take over in domestic control. The active relationship between sovereignty and accountability remains dynamic and requires a discussion of whether the current legal system creates a working balance or just alleviates the ongoing conflicts.⁴

1.2 Problem Statement

International criminal law is aimed at ensuring responsibility for such serious crimes as genocide, crimes against humanity, and war crimes, but the general international legal order is still based on the principles of sovereignty of states and equality. Subsequently, a long-term conflict continues amidst the jurisdictions of international criminal law and domestic authority.

Despite the fact that the International Criminal Court represents an important leap in institutionalizing accountability, its functioning is beholden to states, especially when it comes to issues of consent, immunity, and collaboration. The Rome Statute tries to alleviate such a dependency by the complementarity principle whereby domestic courts are prioritized and international intervention is allowed only in situations where the national mechanisms are ineffective. However, it is questionable whether this construct balances the power of the sovereign with the overriding need to hold international criminals accountable.

1.3 Research Objectives

1. To analyze the classical understanding of state sovereignty under international law and its application in the exercise of criminal jurisdiction.
2. To examine the change in relation between sovereignty and international accountability

³Rome Statute of the International Criminal Court (adopted 17 July 1998, entered into force 1 July 2002), 2187 UNTS 90.

⁴Antonio Cassese, *International Criminal Law* (2nd edn., OUP 2008).

by the development of individual criminal responsibility after the Second World War.

3. To examine the institutionalization and jurisdictional structure of the International Criminal Court according to the Rome Statute.
4. To examine the major sovereign limitations on international criminal jurisdiction, like immunity, consent, and the necessity of state cooperation.
5. To determine whether the principle of complementarity under the Rome Statute presents an effective system to balance sovereign power and international criminal accountability.

1.4 Research Questions

1. What role has the classical principle of state sovereignty played in affecting the boundaries and exercise of international criminal jurisdiction?
2. How did the development of individual criminal responsibility after the Second World War change the relationship between sovereignty and international accountability?
3. How does the institutionalization and jurisdiction of the International Criminal Court under the Rome Statute balance sovereign authority with international criminal justice?
4. Which legal and practical limitations of state sovereignty persist in the exercise of international criminal jurisdiction?
5. How far does the principle of complementarity reconcile the state authority and the necessity to provide accountability to international crimes?

1.5 Research Methodology

The research takes a doctrinal legal research approach that is based on the authoritative legal sources. It examines treaties, case law, and the commentaries of the law in order to question the nexus of state sovereignty and international law in criminal jurisdiction.

Primary sources include the main tools of international criminal law, especially Rome Statute, and a court ruling of international tribunals to interpret. Secondary sources involve academic

pieces of writing that give contextual analysis. It is a non-empirical inquiry into the doctrinal assessment of the way international criminal law moves through the dilemma of sovereignty and responsibility.

CHAPTER II: FROM ABSOLUTE SOVEREIGNTY TO INTERNATIONAL CRIMINAL ACCOUNTABILITY

This study talks about the central tension structuring contemporary international criminal law that arises from the relationship between state sovereignty and international criminal accountability. This tension could be explained by focusing on the development of international law, where criminal jurisdiction went from an exclusively domestic matter to one that recognizes individual criminal responsibility at the international level. It starts with the classical foundations of sovereignty, then examines the emergence of individual criminal accountability after the Second World War, and concludes by examining how these led to the formation of international criminal institutions, which were eventually to form the International Criminal Court.

2.1 Classical Foundations of State Sovereignty in International Law

Traditional international law positioned sovereignty as the key organizing principle of the international legal order, expressing the political sovereignty and equality of states. Within this paradigm system, every sovereign state maintained exclusive control over its territory and its people, thus shielding domestic affairs even in criminal law enforcement. Therefore, the criminal jurisdiction was considered an obligatory characteristic of sovereign power, and the territorial jurisdiction was the main foundation of prosecuting offenses.⁵

In this system, international law did not directly criminalize individuals but held that the states were liable for the breach of international standards. The international remedies that were often available to address legal matters involved diplomatic protection or reparation other than personal prosecution. The sovereign equality principle also prevented a state or an international government from supplying jurisdictional measures to the authorities of a different sovereign.

The state representatives in the official situation, in their turn, were safeguarded by the doctrine

⁵Malcolm N Shaw, *International Law* (9th edn, Cambridge University Press 2021).

of immunity because it showed that they were beyond the NATO criminal jurisdiction.⁶

Consequently, this limited the progress of international criminal responsibility. Even where conduct violated globally recognized international norms, enforcement was based on domestic laws. The states that did not want to prosecute their officials could successfully avoid accountability in an individual capacity. The most striking manifestation of these structural limitations came at the beginning of the twentieth century, when the inability of a system based entirely on states to respond adequately to the most serious acts of international law was demonstrated, and the appropriateness of sovereignty as a necessary component of accountability thus came under severe critique.⁷

2.2 Emergence of Individual Criminal Responsibility after the Nuremberg Trials

The Second World War marked the opening of a decisive shift in international law by exposing the incompleteness of a system where the state was solely held responsible for dealing with mass atrocities. The Allied powers responded to this by forming the International Military Tribunal at Nuremberg to prosecute high-level political and military officials, thus bringing about the concept of individual responsibility of higher-ranking officials internationally.⁸

The Tribunal decided that some crimes could be included in international law, like war crimes and crimes against humanity, which should be punishable in international law regardless of their legality under the domestic jurisdiction. In this way, it deposed the old perception and belief that international law applied only to the actions of states. It further clarified that these claims to official capacity or state power do not help one avoid responsibility and, thus, established that international duties apply directly to individuals.⁹

Nuremberg further promoted the idea that some types of crimes are an issue for the international community in general, and thus they should be prosecuted irrespective of their local territorial limits. Even though the Tribunal was established in a particular post-war environment, its jurisprudential reasoning was the foundational basis of the current doctrine of

⁶*Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo v Belgium)* [2002] ICJ Rep 3.

⁷Antonio Cassese, *International Criminal Law* (2nd edn, OUP 2008).

⁸Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis (London Agreement) (8 August 1945) 82 UNTS 279.

⁹*Trial of the Major War Criminals before the International Military Tribunal* (Nuremberg Judgment, 1946) 41 AJIL 172.

international criminal responsibility, as well as a profound shift in the relationship between sovereignty and accountability.¹⁰

Regardless of this doctrinal shift, the post-war period did not bring the stable institutional system overnight. Political divisions of the Cold War sabotaged the creation of the permanent International Criminal Court, and the enforcement remained on the domestic level. However, the concepts put forth in Nuremberg remained influential in the progressive transformation of international criminal law and later institutionalization.¹¹

2.3 Development of International Criminal Tribunals and Institutions

The revival of the international criminal institutions in the late twentieth century was the indication of the increasing concern over mass atrocities during conflicts, such as those in former Yugoslavia and Rwanda. The United Nations Security Council in turn created the International Criminal Tribunal for the Former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR), the very first ad hoc international criminal tribunals since Nuremberg and Tokyo.¹²

These tribunals revealed the readiness of the international community to convict people who committed grave offenses against international humanitarian law, such as genocide, crimes against humanity, and war crimes. Their legal philosophy propelled the discipline by illuminating aspects of international crimes, perfected the formulations of personal responsibility, and expounded concepts of international law like command responsibility. They further confirmed that senior political and military leaders were liable to international courts.¹³

These tribunals, however, were ad hoc in nature, thus displaying structural constraints. There was also a narrow temporal and geographical jurisdiction since the two bodies were restricted to particular conflicts and geographical areas. Further, their creation by Security Council resolutions raised the issue regarding selectivity and the role of political preferences in determining when the international criminal jurisdiction would be applied.¹⁴

¹⁰Antonio Cassese, *International Criminal Law* (2nd edn, OUP 2008).

¹¹William A. Schabas, *An Introduction to the International Criminal Court* (5th edn, CUP 2017).

¹²Statute of the International Criminal Tribunal for the Former Yugoslavia (adopted 25 May 1993) UN Doc S/RES/827; Statute of the International Criminal Tribunal for Rwanda (adopted 8 November 1994) UN Doc S/RES/955.

¹³Prosecutor v Tadić (Judgment) IT-94-1-A (Appeals Chamber, 15 July 1999).

¹⁴Antonio Cassese, *International Criminal Law* (2nd edn, OUP 2008).

Such drawbacks strengthened the case for having an international criminal institution standing on a permanent basis with an expanded and more uniform jurisdiction. The need to have a consistent and predictable system of accountability eventually led to the establishment of the International Criminal Court, which aimed at going beyond ad hoc tribunals, which were eradicated in sporadic bursts.¹⁵

2.4 International Criminal Court Framework and Jurisdiction by the Rome Statute.

The Rome Statute, adopted in 1998, was an institutional landmark in the field of international criminal prosecution in terms of the fact that it put the International Criminal Court (ICC) in place as an institutionalized body charged with jurisdiction over acts of genocide, crimes against humanity, war crimes, and the crime of aggression.¹⁶ The court represents a structured effort to institutionalize accountability for serious international crimes within a treaty-based framework.

At the same time, the statute reflects a measured balance between international and state sovereignty. The ICC has no universal jurisdiction; its powers are circumscribed by rules of territoriality and nationality and, in the majority of cases, by state acquiescence. Jurisdiction generally arises when the state concerned is party to the statute or has accepted court authority, hence incorporating the court into the legal hierarchy.¹⁷

One of the main characteristics of this framework is the principle of complementarity according to which the main responsibility of prosecution remains to domestic courts. The ICC will only be able to intervene in situations where national systems are not willing or able to carry actual proceedings. This arrangement does not eliminate the status of states as the main criminal law enforcers and offers a last resort mechanism at the international level.¹⁸

The Rome Statute thus reflects a shift from state control to a layered system of accountability. The establishment of the ICC shows willingness to accept individual criminal accountability, and its dependence on state consent shows the continuing role of sovereignty in shaping international jurisdiction. These limitations allow analysis of doctrines such as immunity,

¹⁵William A. Schabas, *An Introduction to the International Criminal Court* (5th edn., CUP 2017).

¹⁶Rome Statute of the International Criminal Court (adopted 17 July 1998, entered into force 1 July 2002) 2187 UNTS 3.

¹⁷ibid arts 12–13.

¹⁸ibid. art. 17.

consent, and cooperation influencing the exercise of international criminal authority.¹⁹

CHAPTER III: SOVEREIGNTY CONSTRAINTS IN THE EXERCISE OF INTERNATIONAL CRIMINAL JURISDICTION

The development of international criminal law also evidences an unmistakable normative shift in the direction of holding accountable those responsible for grave international crimes. However, this normative shift has not affected the basic structure of international law, which remains rooted in the concept of state sovereignty. Therefore, the exercise of international criminal law remains circumscribed by the doctrines and practices that continue to underpin the concept of state sovereignty. The constraints on the exercise of international criminal law are not merely theoretical but also have an impact on the functioning of institutions such as the ICC.

3.1 Head-of-State Immunity and International Criminal Jurisdiction

The doctrine of immunity highlights a key tension between state sovereignty and international criminal accountability. Traditionally, under the principle of sovereign equality, states cannot exercise jurisdiction over other states or their top officials. This gives rise to two forms of immunity: immunity *ratione personae*, which grants absolute immunity to high-ranking officials like heads of state during their tenure, and immunity *ratione materiae*, which protects official acts even after leaving office. However, in cases involving serious international crimes such as genocide and crimes against humanity, this doctrine has been increasingly questioned. The core concern is that strict application of immunity may allow those most responsible for such grave crimes to escape accountability.

The shift away from the doctrine of immunity was ushered in by the tribunals that were convened in the aftermath of the Second World War. The Nuremberg Charter, which was the founding instrument of the International Military Tribunal, specifically rejected the doctrine of official capacity as a defense. This position was reaffirmed by the United Nations General Assembly when it recognized the Nuremberg Principles, which provide that individuals are responsible for the commission of international crimes despite their position.²⁰

¹⁹William A. Schabas, *An Introduction to the International Criminal Court* (5th edn., CUP 2017).

²⁰ Principles of International Law Recognized in the Charter of the Nürnberg Tribunal and in the Judgment of the Tribunal (1950), UN Doc A/CN.4/SER.A/1950/Add.1
https://legal.un.org/ilc/texts/instruments/english/draft_articles/7_1_1950.pdf accessed 18 March 2026.

This principle is most explicitly stated in Article 27 of the Rome Statute, which specifically provides that the ICC shall not recognize any immunity, whether personal or functional, with regard to the commission of international crimes.²¹

However, the position in this regard is not clear. The main problem is when the ICC has to seek cooperation from states, especially when dealing with officials from non-state parties. The situation is further complicated by Article 98, which states that the ICC cannot seek surrender if it requires a state to act inconsistently with its obligations under international law concerning immunity, unless immunity has been waived.²² The situation was highlighted in the case involving Al-Bashir, where the ICC issued arrest warrants against the sitting president of Sudan on charges of genocide and crimes against humanity. The states of South Africa and Jordan failed to arrest him when he visited those countries. The ICC held that there was no immunity before international courts, especially when referred by the Security Council.

This was also reiterated by the International Court of Justice in the Arrest Warrant Case, which held that foreign ministers, while in foreign lands, are fully immune from the jurisdiction of national courts in those countries, even in the face of grave international criminal acts.²³

This has given rise to a disjointed legal regime in which international criminal law rejects the principle of immunity, but general international law still accepts it, mainly due to state cooperation. Thus, the principle of immunity still exists, and this is a dual regime that affects the jurisdiction of international criminal law, especially in relation to political leaders.

3.2 Jurisdictional Authority and the Question of State Consent

The second notable limitation relates to the continued role of state consent in international law. In contrast to national law, jurisdiction is not obligatory but rather voluntary in international law. State consent must be obtained prior to the imposition of any binding obligations.

The Rome Statute clearly shows that the above statement holds true. The ICC does not have universal jurisdiction. The jurisdiction of the ICC is limited, conditional, and based on specific circumstances associated with the concepts of territoriality, nationality, or state consent, as set

²¹ Rome Statute of the International Criminal Court Art. 27

²² *ibid.* Art. 98

²³ *Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo v Belgium)* (Judgment) [2002] ICJ Rep 3 <https://www.icj-cij.org/case/121> accessed 18 March 2026

out in Articles 12 and 13 of the Rome Statute.²⁴

This is a compromise between international responsibility and state freedom. However, we can see that there are inequalities. Powerful states such as the USA, China, and Russia are outside the ICC framework. In such a case, the jurisdiction of the court is limited to UN involvement in accordance with Article 13b. Although this increases the jurisdiction of the Court, political influence is involved due to veto power.

This is a drawback in terms of selective prosecution. In other words, certain cases are referred to the Court, and in other cases, political stalemates are involved. In fact, state sovereignty is still dominant in such a sense that enforcement is required from states for universal criminal responsibility.

3.3 State Cooperation, Enforcement, and Political Resistance

The third, and perhaps most applicable, limitation to international criminal jurisdiction is the necessity to cooperate with states. Ultimately, the viability of international criminal law depends upon the willingness of states to comply, even in situations where jurisdiction is clear and laws are well defined.

The ICC has no power to enforce laws, no power to arrest suspects, no power to require witnesses to attend, and no power to collect evidence in the territories of state parties without their cooperation. The power to do all this is completely dependent upon cooperation from state parties. Part 9 of the ICC Statute details the intricate requirements that state parties must comply with in their cooperation with the ICC.²⁵

However, the enforcement of the decisions of the ICC is not consistent, as states may choose not to comply due to their own political affinities and pressures, as well as their concerns regarding their sovereignty. The most visible impact of this is the lack of execution of the arrest warrants issued by the court. The case of Omar al-Bashir is a clear example of this, as despite the fact that the latter entered the territories of some of the ICC's member states, he was not arrested for a long time, and the decisions of the Court regarding the lack of compliance had no impact since no measures of enforcement are in place.

²⁴ Rome Statute of the International Criminal Court (n. 2) arts. 12–13.

²⁵ Rome Statute of the International Criminal Court Art. 86

The ICC has faced a political backlash, particularly from the African Union, which has sometimes accused the Court of being biased in its decisions and has even called upon its members not to comply in some cases. The reason is the decentralized structure of international criminal law and the fact that enforcement is left up to the states.

At the same time, it would be inaccurate to view the system as entirely ineffective. In many instances, states have cooperated, especially in areas such as evidence gathering and prosecution. The system, therefore, works through a balance of cooperation and resistance.

Generally, it can be stated that international criminal law has been able to achieve the goal of creating important institutional frameworks and rules, although the question of state sovereignty is one of the basic limitations, as there is no centralized system for enforcement.

CHAPTER IV: COMPLEMENTARITY AS A MECHANISM FOR BALANCING SOVEREIGNTY AND ACCOUNTABILITY

However, it is important to understand the role of the principle of complementarity in order to understand the attempt of the Rome Statute to strike a balance between state sovereignty and international justice. The International Criminal Court is not an entirely supranational system of penal justice. Instead, it has been incorporated into the existing system of international law. The states have been the main actors.

This is because of the compromise that had to be made between two different issues. On one hand, there is the value of sovereignty and the efficiency of national laws. On the other hand, there is the need to ensure that international crimes are not left unpunished because of the failure of states to act. The principle of complementarity is both jurisdictional and normative.

4.1 Concept and Legal Basis of Complementarity in the Rome Statute

The principle of complementarity is based on the belief that, in general, national courts are better suited to investigate and prosecute international crimes because they have access to evidence and witnesses, which will in turn increase the legitimacy of the trial process. In reality, however, states are not always ready or able to prosecute these crimes, particularly when state officials or influential individuals are involved.

The Rome Statute addresses this issue by making the ICC a court of last resort, as stated in its

Preamble, which places the burden first and foremost on states to assume criminal jurisdiction for international crimes, with the ICC acting as a complement to state action.

This concept is given practical effect through Article 17, which outlines the admissibility criteria. A case is inadmissible before the ICC if it is being genuinely investigated or prosecuted in a state with jurisdiction or if it has been prosecuted in the state against the individual.²⁶

This is because complementarity is not only the division of jurisdiction but also the relationship itself. The ICC steps in only when it is necessary. Therefore, it is a qualified concept of sovereignty that is linked to the willingness of the state to respect international norms. In addition to this, complementarity has a preventive “shadow effect” that prompts states to initiate proceedings to avoid ICC intervention. However, the principle of complementarity is ambiguous because terms such as “genuine investigation” can be interpreted differently.

4.2 Admissibility Standards: Unwillingness and Inability of Domestic Courts

However, the effectiveness of the complementarity principle is dependent on the application of the admissibility criteria as per Article 17 of the ICC. The ICC is required to assess whether the state is handling the case or if it is justified to intervene on grounds of unwillingness or inability.

The assessment of the effectiveness of the complementarity principle is a legal and factual assessment that requires an in-depth analysis of the nature of the proceedings of the state.

Unwillingness

On the other hand, unwillingness is focused on the intent of the state, and this is demonstrated through actions such as shielding, delay, or lack of independence and impartiality in the proceedings, as provided for in Article 17(2). The concept of shielding is quite important, as it addresses the question of how states, through their internal proceedings, manage to shield themselves from responsibility. This was evident in the admissibility case in Kenya, where it was alleged that the state was taking steps to investigate the violence that followed after the election.

²⁶ Rome Statute of the International Criminal Court Art.17

However, the ICC ruled that no concrete actions were being taken against the same individuals for the same actions. This case clarified the meaning of complementarity, as the ICC ruled that states must demonstrate concrete actions and investigations against individuals.

Although this is a step in the right direction, it also places a limitation on state flexibility, especially in situations involving complex cases and widespread crimes.

Inability

"Inability" refers to cases where a state is not in a genuine position to prosecute, as stipulated in Article 17(3). This includes the state's judicial system failing or the state's inability to gather evidence and testimony. The idea is most applicable in a war situation, where the ICC is essential in ensuring that the state is not completely unable to prosecute.

However, the idea of inability is a problem in itself. The idea of inability makes the ICC assess the state's institutions, which might be considered interference in internal affairs. There is the possibility of the assessment being based on incomplete knowledge.

Same Person, Same Conduct Test

A significant development in the ICC doctrine is the "same person, same conduct" test. The "same person, same conduct" test holds that "domestic proceedings must relate to the same person and substantially the same conduct as the ICC proceedings."

This is a gate keeping function of ICC doctrine. It is a means to stop states from taking advantage of the process by arguing that jurisdiction is not available due to domestic proceedings unrelated to the case. However, the "same person, same conduct" test is arguably too rigid. Domestic legislation may categorize crimes in different ways. Some crimes may include a broader range of conduct than is reflected in the ICC.

There is a balance between a rigid approach to doctrine and a flexible approach to applying the law. The "same person, same conduct" test is clear and provides guidance. However, it may limit the ability of states to act in good faith.

4.3 Judicial Interpretation of Complementarity in International Criminal Jurisprudence

The concept of complementarity was fleshed out in the decisions made by the ICC. The

decisions made by the ICC have indicated that the concept of complementarity is not automatic but is subject to analysis. In the Lubanga case, the Court made its position very clear that the issue of admissibility had to be analyzed in the context of the evidence of national proceedings.

²⁷In the Katanga case, the Court made a comparison between the national and international proceedings in order to assess the admissibility of the case before the Court.²⁸ These decisions have indicated that the Court is willing to make a detailed analysis and is not willing to rely on the mere assertions of the state. However, there is the possibility of overreach.

Positive Complementarity

Another development with regards to the concept of complementarity is the concept of positive complementarity. This is seen as a development beyond the ICC as a fallback institution. This is seen as the ICC and the international community assisting national prosecutions.

This can be done in many ways, such as through the provision of technical support or the sharing of knowledge. This concept is seen as a way to strengthen national capacity, which is necessary for the state to discharge its primary responsibility.

The concept of positive complementarity is seen as an important development with regards to the concept of complementarity, as this is a very cooperative way of dealing with international justice. This concept is seen as the best way to deal with international justice, as this is the best way to achieve justice.

However, this concept is also seen as having its limitations, as it is dependent on the state, which is not always the case.

This concept is also seen as having limitations, as the state may not always want the support or the state may not always be able to implement the reforms effectively.

Critical Evaluation of Complementarity

While complementarity is intended as a balanced approach, its practical operation reveals key challenges. States may engage in strategic compliance by initiating superficial proceedings to avoid ICC jurisdiction. There is also an imbalance, as stronger legal systems are better able to

²⁷ *Prosecutor v Thomas Lubanga Dyilo* ICC-01/04-01/06 (10 February 2006)

²⁸ *Prosecutor v Germain Katanga* ICC-01/04-01/07 (25 September 2009)

retain cases domestically, while weaker states face greater ICC intervention. Additionally, admissibility determinations can delay action, risking loss of evidence and delayed justice for victims.

Conceptually, complementarity is a reflection of the limits of international criminal law. It is not a replacement of sovereignty but a transformation of it, in the sense that state sovereignty is subject to the respect of international rules. Therefore, it is a weakness and a strength, limiting the system in the name of sovereignty and enabling it within the same parameters.

CHAPTER V: CONCLUSION: REFRAMING SOVEREIGNTY IN THE ERA OF INTERNATIONAL CRIMINAL JUSTICE

5.1 Key Findings

This paper has explored the interplay between state sovereignty and international criminal liability within the context of international criminal law. The paper has demonstrated that although state sovereignty is an important concept within international criminal law, it is no longer the same as it was perceived to be in the past. In the past, state sovereignty was perceived as the exclusive domain of criminal jurisdiction. However, this perception of state sovereignty has been transformed in the post-Second World War era to emphasize individual criminal liability.

This is evident in the establishment of international criminal tribunals and the ICC. The establishment of these tribunals is a clear indication that some crimes affect the international community as a whole. Therefore, there is a need to have these crimes addressed at the international level. However, this does not mean that state sovereignty is no longer important in international criminal law. State sovereignty is still important and is reflected in the application of principles such as head-of-state immunity and the need to have state consent to exercise jurisdiction. The principle of complementarity also supports this.

5.2 Reassessing the Sovereignty–Accountability Tension

The relationship between sovereignty and international criminal accountability is not in contradiction but in constant negotiation. Sovereign authority is thus no longer absolute because states are increasingly required to conform to international standards, particularly in relation to grave offenses such as genocide and crimes against humanity.

However, international criminal law also remains subject to state consent and cooperation and thus remains in a state of hybridity, neither fully international nor fully national. This gives rise to both limitations and advantages.

The concept of complementarity is most representative in this regard because it seeks to promote both state sovereignty and prevent impunity. The tension between sovereignty and criminal accountability is thus resolved but in a manner that places limitations on both.

5.3 Future Directions for International Criminal Law

Looking forward, we can expect that international criminal law will continue to develop as a balance between sovereignty and accountability and that this balance will be one in which sovereignty is not diminished but in which it does not stand in the way of justice.

The strengthening of domestic legal systems will remain an important feature, as this is where we expect to see most international crimes prosecuted domestically, while addressing concerns regarding consistency, particularly in relation to selective action by the Security Council, will be necessary to ensure legitimacy in this process, as will state cooperation, as this system depends heavily upon state cooperation.

Additionally, the notion of sovereignty has evolved over time from power to responsibility, and this implies that states must be made accountable for their serious crimes, and in this regard, international institutions must act as supporting structures, and in all this, we will continue to work towards a better alignment of state actions and justice.