

Presidents Immunities Form international crimes under the International Criminal Code... Study Warrant for Sudan's President

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Abstract:

This study is an attempt to highlight the responsibility a president for committing international crimes under the Criminal law, the legal status of the President of the International, and to what extent the principles of international criminal law are opposed to the concept of national sovereignty of states, and define the concept of criminal responsibility of presents in the international criminal law, in addition, focusing the issue of Sudan's president with the International Criminal Court . This study aims to illustrate the evolution of the principle of criminal responsibility of the president in international criminal law, from the formation of temporary military courts in Tokyo, Leipzig and Nuremberg, and later in Ronda and the former Yugoslavia and Sierra Leone and ending with the birth of the International Criminal Court.

While devoting the principle of criminal responsibility of presidents for international crimes under international criminal law, other principles of customary international law started to be limited and fade, as the principle of national sovereignty of States and the immunities and privileges that presidents enjoy.

According to this development it is no longer possible to plead the constitutional and international immunities for the exemption from prosecution and punishment, as the item 27 of Court criminal system confirmed of official capacity as a contraceptive trial and punishment, and thus treats the president treatment of any other person in front of the International Criminal Court in the event of proven involvement of committing international crimes.

Hence this study aims to reveal the discrepancy between the legal status of the president in the international public and international criminal laws, and the extent of prejudice to the implementation of the principles of international criminal law to the sovereignty of States, as well as to clarify the privacy of the jurisdiction of the International Criminal Court and superiority upon the national jurisdiction of States.

The study comes with a dangerous precedent is the issuance of the arrest warrant against Sudanese President by the Prosecutor of the International Criminal Court, it is the first event to the President who is still in power after the trial of former Yugoslav "Milosevic" at the Criminal Court for the former Yugoslavia, as well as the president's trial Charles Taylor, and attempts to prosecute former Chilean President "Pinochet". In this context, this study shows the most important legal and political dimensions to accuse the Sudanese President, and determine the constitutional and international immunities at the Criminal Court and the legal basis for his criminal responsibility, in addition to the emphasis on the question of the jurisdiction of the International Criminal Court on the case of Sudan or not and the powers of the Security Council to end the crisis between Sudan and International Criminal Court.

Key words: Criminal Court, international immunities, Criminal law, International crime, international law.

International crime is as old as international relations, but this idea was hit by atrophy as a result of the emergence of theoretical position, which did not recognize the individual to share in the international personality. The international law admitted the right of peoples in punishment, in the event that their interests were attacked, where there was an international custom which punishes people who involve in crimes of piracy, war and espionage, thus the international crime has acquired a global interest, where the international community tried to alleviate the pain suffered by the human as a result committing many heinous crimes against the peoples, where the international community tried to alleviate the human's pains they suffer from as a result of many heinous crimes against peoples, especially during World War I and World War II and the subsequent civil and ethnic wars and policies of racial discrimination which humanity is still suffering from, in addition to the terrorist war that committed in the name of religions against innocent citizens in every corner and place of this world . These efforts has succeeded in multiple time stations, where it has resulted in the establishment of international courts to try war criminals and that during the First World War I as well as subsequent courts formed immediately after World War II.

And until the twentieth century, there were not international courts imposed its guardianship on presidents yet national courts can not do this to the presidents who are still in service, or former ones. This position has evolved under international law since then. It first developed in the framework of Article 227 of the Treaty of Versailles (1919), and the trials of Nuremberg and Tokyo at the end of World War II during which, the Allied leaders confirmed that they are interested in "Punishing those who are responsible for atrocities and crimes against the citizens of the Allied countries ". The principle of individual criminal responsibility devoted for international crimes under the criminal courts established to try war criminals in former Yugoslavia, and the court which specialized in prosecuting war criminals in Ronda, Yugoslavia and the court concerning with Sierra Leonean ending with the birth of the International Criminal Court, in each of these stages, the concept of the international crime altered and changed that helped in its composition scholars and international criminal justice .

With regard to the development of the principle of individual criminal responsibility under the International Criminal Law, we note that this principle is not relatively speaking, as it is related by event Napoleon's exile of in 1815, Hague Convention for the year 1899, And the trial of Prince " Peter " year 1474, But the world at that time did not have the clear judicial system subjected to international legal rules. The Treaty of Versailles has been the first contemporary document endorsed the principle of personal responsibility of individuals for international crimes, which Item 227 of this treaty included explicit provisions that "Gallium II" the former Emperor of Germany should be prosecuted for war crimes. And the principle of personal responsibility for international crimes is a principle that permits the trial of the presidents and leaders of military forces in certain cases, and holds them accountable for the atrocities committed by their soldiers. This was dedicated later thanks to the Nuremberg trials.

Under the Statute of the International Criminal Court in 1998, the principle of individual criminal responsibility for international crimes became an inescapable reality, as Part III deals with of these systems this principle, and most importantly, this part also confirmed the principle of criminal responsibility of presidents and officials and not to abuse of official capacity as a contraceptive for accountability, and considered that the national immunities they enjoy for the nature of their work does not preclude court appearance and account them criminally.

Based on the foregoing, there was a kind of contradiction between the principles of international criminal which recognizes the principle of criminal responsibility of presidents for international crimes, and the principles of customary international law on the principle of national sovereignty of States and the immunities and privileges of presidents that respects the subject of presidents to laws and foreign courts, which prompted many countries, particularly the United States and Israel not to join the Rome Convention which established the International Criminal Court, for fear of compromising its

sovereignty, immunities and privileges of the presidents and officials of countries. This conflict created a kind of duplication in the application of international criminal justice, as it became subject to the standards of strength and weakness, and the crisis between Sudan and the ICC concerning the arrest warrant for Sudan's president for international crimes in Darfur, is a good example of this.

This study is trying to answer many questions related to the problem of the study if there is a conflict between the legal status of the president and between the public international law and international criminal law? Can considerations of transmission of International criminal justice be implemented without prejudice to the sovereignty of States? Do immunities of presidents prevent their trial and punishment for international crimes? Is the jurisdiction of the International Criminal Court superior to the national jurisdiction of the States? What are the legal and political dimensions to accuse the Sudanese President of committing international war crimes? Are the constitutional and international immunities the Lieutenant-General Omar Hassan al-Bashir enjoys, absolute or relative spending in front of the International Criminal Court? What are the legal foundations of criminal liability against the Sudanese President in light of the Statute of the International Criminal Court? Will the jurisdiction of the International Criminal Court be held the on the case of Sudan, with the latter is not a party of the court? What are the powers of the UN Security Council to end the current crisis between Sudan and the International Criminal Court, and thus achieving "peace in Darfur, in turn for justice?"

To answer all the previous questions we depend on the scientific analytical descriptive, and historical method, and as the president's responsibility for international crimes under international criminal law is the focus of this research, we suggest to divide it into four chapters: the first chapter shows the legal status of the president in the international law, and the second chapter focuses to what extent the principles of international criminal law are opposed to the concept of national sovereignty of states, and the third chapter addresses the criminal responsibility of presidents in the international criminal law, while the fourth one deals with the issue of the Sudanese president and the International Criminal Court.

The legal status of the president under the international law.

According to the rules of customary international law, the president is that will which expresses the people of the State, a symbol of its sovereignty, unity, and thus enjoys the immunities and privileges which helps him carry out his duties as president at both the internal and external, and therefore he is protected and is not subject to the foreign laws and exempt from appearing at foreign courts of States regardless of the crime he commits. Hence, the international law gives the President the absolute immunities of foreign courts of States, and remains entitled to these immunities for the duration of his assumption of being a president, and even after leaving his status, there are still some close immunities for him. Because of the importance of the legal status issue to the of the president under international law, the researcher divided this section to the following demands:

The first requirement: The Legal Status for the President.

The second requirement: Legal basis for the immunities of Presidents.

The third requirement: Types and ranges of immunities of heads of state.

The first requirement: The Legal Status for the Head of State.

The legal status of the President is according to the status of his state under the international law, and the extent of admitting by the international body, from its sovereignty, he derives his immunity's strength in the face of foreign countries and entities against any action that would disrupt the tools of this sovereignty. And the state is known as political and legal phenomenon, which has undergone to evolution processes extending to very ancient centuries, so there was the tribe, and minority access to, and according to this sense it is different from the concept of social groups "Unlike these groups, the state aim to achieve legal and political goals. It could therefore be argued that the state is not an abstract vital idea aims to achieve

political goals, and other legal, it is the expression of the citizens' will and protect their interests through practicing of the Legitimacy in imposing law and order by the people.

The axioms of constitutional law, is that the states can not be founded or established until the availability of certain elements, as the concept of state is linked to the existence of the region, the people and the government, however, the concept of the state is not just the integration of these component elements; it is also a tool for expression of its citizens' will and the defense for their sovereign by the presence of a supreme political power, and the concept of state is also known as a political institution that monopolizes the Legitimacy, and tries to enforce law and calmness, and the use of force to defend the country's internal and external interests, however, it is agreed that the state is a legal object mere of will needs man to its will and takes care of internal and external interests .

Presidents plays a very Important role, if in the internal or foreign affairs of the country, regardless to the denominated, kings, princes, presidents or advisers, because they represent the symbol of the people, the will of the nation and the head of the political hierarchy in the state . They enjoy this role, by the approval of the international law and the constitutional legal procedure, the heads of power in their country, and they have the responsibility of developing internal policies and external, so the international custom and law allow them privileges and immunities and enjoy the appreciation and respect suitable to their position during official moving outside their countries, the State Constitution Which determines and regulates the terms of functions and powers of the Presidents in the field of domestic and foreign policies. The constitutional terms and international customs determine role of the President in actual practice for external relations and also set his personality, interests and circumstances surrounding him, and identifying and establishing the legal status of the president is associated in the international law with the state's admission in this character to enable him to practice his powers . And the admission of the President can be either explicit or implicit at an official permission, provide credentials, or through the conclusion of bilateral treaties. And the Presidents representative jurisdiction derive from the constitutions of their countries, and multiple legal systems that govern the internal situation of Heads of States, some are Royal, Presidential, Parliamentary and others, however most of the international constitutional regimes, agree to give presidents functional public powers concerning the acceptance of the credentials of the ambassadors, and the ratification of international conventions, the declaration of cases war and peace, and the appointment of senior staff in the state of its three authorities, executive, legislative and judicial .

Under the international law, it does not admit the legal status of the president to have of the privileges and procedural and functional immunities only in the case of the admission of its country. According to the rules of the implicit and explicit international recognition of states, the element of integration should be available in the country place of the recognition, this means that the State have the necessary elements in the description of states, the existence of the region, the people, and sovereignty. Whether it is complete or incomplete sovereignty, and in the context, the scope of immunities and privileges accorded to presidents are not linked to the country's political or geographical or economical situation. As the immunities enjoyed by the President of the largest state in terms of geographical area, economical and military power, are the same as that enjoyed by the president in terms of less availability of such Potential. For example, privileges and immunities granted to the President of the United States equal to that accorded to the Sultan of Brunei.

The second requirement: Legal basis for the immunities of Presidents.

Within the framework of international relations between states, the Presidents have immunities and privileges designed to enable them to do their jobs and businesses in an international environment which is free from conflicts and wars, in recognition of the international legislator about the importance of the role of the Presidents at the level of consolidation of the concepts of peaceful coexistence between peoples. In this context, question concerning the legal basis of the immunities granted to Presidents highlights, and whether there is a special legal law governing such privileges and

immunities? In fact, there is no international legal law at the level of the international law relating to organizing privileges and immunities of heads of state, but the texts of special protection to these privileges can be traced in numerous treaties and conventions of various international, such as the Vienna Convention on Diplomatic Relations in 1961 And the Convention of Havana .

We can trace the legal roots of treaties that provide protection for the Heads of State, and regulate the issue of personal immunities in the Vienna Convention on Diplomatic Relations of 1961 note that this Convention governing the immunities of diplomats and members of foreign missions abroad, but since the Presidents who appoint ambassadors, it is fortiori that such protection is also implemented to them. Vienna Convention on Diplomatic Relations of 1961 ,emphasizes the diplomatic immunity against criminal jurisdiction, civil Or administration in the host country, this treaty has characterized between two types of immunities, the first procedural immunity which enjoyed by diplomatic throughout the period of his position , and valid even after he leaves his work, and the second is the substance immunity, on the contrary characterized nature of the person, and includes all criminal and civil actions, and applicable only on the practices of diplomats jobs .

In the same context, Treaty of New York was about the special missions for the year 1969. Some texts emphasize the privileges and immunities of Presidents and Foreign Ministers, and exempt them from being subject to the implements of foreign laws or face foreign legal and judicial actions, and the explicit protection in the second paragraph of Article 21 of New York Treaty applicable to be implemented on the Presidents. On the issue of immunity of presidents at the serious violations of international law, it has not been explicitly emphasized in the Vienna Convention on diplomatic relations of 1961, but it remained stems from the concept of sovereign immunity, immunity which was granted to the president is an extension to the immunity given to the State itself.

The International custom concept settled on the enjoyment of the president absolute judicial immunity exempt him from submission to criminal justice of the state where he is, or take any criminal procedures against him, or the implementation of the provisions of the criminal or civil courts of the foreign State judgment. This is confirmed by Article 91 of the Havana Convention, and Article 31/1 Of the Vienna Convention in 1961. There is no trusteeship for the national civil elimination judgment of disputes for heads of state, as the immunity of the state against the civil judgment of the national courts is absolute, but for transactions and private actions. Under Article 31 of the Vienna Convention on diplomatic relations 1961 presidents can not compelled to appear at the national courts to testify, whether in civil or criminal cases, and have the right to reject any such request.

It should also be noted that the legal basis for concessions of Heads States have been referred to briefly and indirectly in some charters and various international treaties, and specifically in the Article 1 (A) Convention on the prevention of crimes against Internationally protected persons, including diplomatic agents, and punishment of the year 1973 , Which includes the president to internationally protected persons . Also it was emphasized on the privileges and immunities of Presidents in the draft articles on the immunities of states and their property from the jurisdiction adopted by the International Law Commission in 1991 , Which directly dealt with the issue of immunities of presidents in the second article which, subparagraph b (1) and (3) , And this was also mentioned in Article 21 of the Convention on Special Missions for the year 1969 , Which approved distinctive privileges and immunities of the Heads of Countries who are still in office .

The third requirement: Types and scope of immunities of heads of state.

immunities of presidents under international law is divided into two types, the first associated with people's status called the personal immunity "ratione persona" and the second functional immunity-related to acts and of formal and functional practices known as *ratione materiae* . With regard to personal immunity, it means that a person representative of the State is protected; it is not allowed to assault him, or subjecting to the criminal courts, or implementing local laws on. In

short, according to the immunity that it is not allowed not take any legal action relating to investigation or trial against protected persons, while the functional immunity is applicable to the Presidents in the event of leaving them to their posts, and then, this immunity is implemented on the presidents in case of leaving their positions. Thus, this immunity is limited in scope because it is related to the person's functional aspect; it covers only the work exerted by the person as a career and not other acts. Here, we note that the protection provided by this immunity is personal of the person who committed the act and functional for the committed act on behalf of the state.

The International Law recognizes the personal immunity of Presidents and not allowing prosecuting criminally in any foreign country, or at any foreign judicial court which their own countries are not members, and this immunity covers all people's actions, if they emerged from a private will or functional official. However, this immunity is characterized as temporary, and remains as long as the person remains in his job. If there is an international custom gives presidents an immunity while carrying out their tasks, which is a binding custom as any law, but they lose this immunity in the event of involvement of committing international or terrorist crimes. This immunity is derived from the concept of state sovereignty, it also extended to include in addition to the head of state, prime minister and ministers of the sovereign portfolios. In the case of (Democratic Republic of the Congo v. Belgium) which was prosecuted by the State of the Congo v. Belgium in 2002, the Court has refused to lift the immunity of the Congolese Foreign Minister, as there is an international custom protects the Consul General and Ambassador who work in their country's missions abroad, and thus it is fortiori not to lift the immunity of president who appointed them. The ICJ decision is applicable to heads of state. Because of a simple reason that the Court used a justification that Minister of Foreign Affairs and the President benefit of as representatives of the Department of State.

From the foregoing, it is clear to us that the International Court of Justice recognized the immunity of presidents at the international criminal courts and national and local courts ones, which confirmed the priority given to the international criminal courts to try persons according to its universal jurisdiction, which transcends the jurisdiction of national courts. Thus, the International Court of Justice failed to recognize the principle of universal jurisdiction of national courts, as the president has an absolute judicial immunity during his duties at the national courts of foreign countries, depending on international customs, especially articles 32 -39 of the Vienna Convention on international relations in 1961, and the first paragraph of Article 2 of the draft articles relating to the immunity of presidents and their property, developed by the International Law Commission in 1991, as well as Article 21 of the International Agreement for tasks of heads of special missions and approved by the General Assembly of the United Nations in 1969.

Under the international criminal law, the judicial immunity of presidents is limited, as it fades in the event of the involvement of any of them of committing international crimes, even if it is committed in an official capacity, and the Presidents lose immunity jurisdiction in the event of serious crimes threatening international peace and security, or serious violations against international and humanitarian law as war crimes and genocide, and crimes against humanity. Thus, if the president commits an international crime or involves or plans can be tried at the International Criminal Court, according to the Rome Statute establishing this court, and then the president can be arrested or captured, investigated or move the criminal and civil proceedings cases against him in case of being proved his involvement in the commission of international crimes. In this context, Article 27 (1) of the system of punishment says that provisions of the system are implemented "on all persons equally without any distinction based on official capacity" and that official capacity, whether a president or any other capacity, "does not relieve him in any way from criminal responsibility under this Statute. as it does not constitute in itself a reason in mitigation of punishment. "The second paragraph of the same article, says " Immunities or special procedural rules which may attach to the official capacity of a person, whether under national or international law, do not prevent the Court's practice of its jurisdiction upon such person."

The countries that want to avoid the Court's practice of its jurisdiction upon the cases investigated by the lawsuit, these countries have to ensure cancellation of any immunity guaranteed by the national law for the perpetrators of criminal acts that are offended by international law according to their official capacity.

The national law should permit the trial of any responsible for these crimes and stipulates that, under the Statute to surrender any responsible to the court when requested.

The principles of international criminal law are opposed to the concept of national sovereignty of states.

Controversy jurisprudence is still based on the dialectical relationship between the principles of international criminal law and the concept of national sovereignty of States, especially as it is complex and marred by some confusion, especially when it comes to the practice of States for their national sovereignty and the consequent legal implications recognized by customary international law, as jurisdiction of the States for crimes committed on its territory or against one of its citizens, or immunities of the state's political and military symbols.

The principles of international criminal law have witnessed a major development and generated concepts and new principles at the level of wished International justice, devoted by in criminal trials, which was established in the wake of World War II, such as the Nuremberg Court, Tokyo, Leipzig and the International Criminal courts for the courts of war's criminals in former Yugoslavia and Rhonda and Sierra Leone, as well as the permanent International Criminal Court established under the Rome Statute of 1998, which devoted scientific principles of criminal jurisdiction for international crimes, and did not care about the official capacity of heads of state, ministers and military leaders for committing such crimes, and did not take the principle of immunity, which the texts of traditional international law approve. Therefore, the researcher decides to divide this section into three demands for more in-depth investigation of this matter and the potential benefits, and is as follow:

The first requirement: International Criminal Court and the idea of sovereignty.

The second requirement: Extent of the threat of criminal court to the principle of sovereignty.

Third requirement: The principle of universal jurisdiction and international immunities.

The first requirement: International Criminal Court and the idea of sovereignty.

In its general meaning, the idea of national sovereignty within the domestic jurisdiction of each State is to devote to the supreme authority of the state on its territory by practising its jurisdiction freely in all fields which are not regulated by the international law, including denying any interference in its affairs. The idea of the right of sovereign compelled the state to respect the sovereignty of the other one, depending on the concept of sovereign equality mentioned in paragraph 1 of Article 2 of the Charter of the United Nations, as well as respect fundamental freedoms of each individual and preserved by the Charter of the United Nations. It is well known that sovereignty is the legal standard enjoyed by the state to acquire legal and international capacity, thus the independence is an actual and practical feature and a consequence of sovereignty and an impact of its effects.

The jurists have disagreed about the difference between the concept of national sovereignty and the principles of international criminal law, while some of them of see the national sovereignty that transcends the international criminal law. The other side dominated the implementation of international criminal law on the concept of national sovereignty. In this context the jurist "Antonio Casses "says ; Whether a person supports the national sovereignty or supports the rule of transcending of the law, the two non-compatible" Turning to the definition of the concept of state and the phenomenon of national sovereignty, some absolutely define the concept of sovereignty in the sense that there is no authority in the international community to override the authority of the States enable it to impose its will, principle of sovereignty of the peremptory norms of general international law which not only must not be violated, but must not be agreed to controvert,

while others defined it as is a relative absolute, concept because there are actual limitations upon, Hence it can be said that sovereignty may be complete or incomplete.

In the same context, Andrew Clapham sees That sovereignty is " a variable idea adapted to the nature of the developments that occur at the level of international law itself, which the idea of sovereignty changes according to the change of international relations, on the other hand the concept of sovereignty the point of being out of the question to the point of absence of power and to dominate the idea of global humanitarian interest, upon national interests of States. Ian Ward sees that the phenomenon of globalization makes it imperative for everyone to review their policies, including some of the sensitive concepts of people, as the concept of national sovereignty, of international law and the international community are still watching a series of developments and changes touched by the human with the beginning of the twentieth century, and thus the international law has changed from the case of co-location to the state of cooperation.

The second requirement: Extent of the threat of criminal court to the principle of sovereignty.

The international criminal forms total of rules prescribed for punishment for violation of the principles of public international law. The Nuremberg Tribunal is the first implementation of the principle of the responsibility of rulers and leaders for inhuman crimes as extermination and mass murder, and here it is noted that the Nuremberg and Tokyo Tribunals were allowed the adoption of new principles of international criminal justice. There is a contrast between the concept of national sovereignty of States and the principles of international criminal law, and it can be likened as constant hostility men of international criminal law enshrined in their writings on this field from knowledge fields. So the relationship between international criminal law and the concept of national sovereignty of States is complex and further complicated after the end of the Cold War, which made the subject being discussed and at the interest of most legal scholars in the world. International criminal law is not available on the idea of sovereignty and immunity, however, international justice is a complement to national judicial systems.

The question arises here about whether the International Criminal Court constitutes a real threat to the principle of national sovereignty? Dr. Cherif Bassiouni negates, by confirming that the International Criminal Court does not constitute in its content a high authority on the States, it is a complement judicial organ to the national criminal jurisdiction, and this view seems logically from the legal point, where the International Criminal Court authority does not represent authority over the States', but in fact we find that the Rome Statute Establishing the this court affects the national sovereignty of States, and wastes the principle of immunity related to the official and personal character to the individual, as well as the non-observance of prohibition of constitutions to extradite citizens to any authority in the world, so it can be said that the favorable opinions of the International Criminal Court has always tried to oppose the fact that the International Criminal Court states threatens the states' existence and sovereignty, or that its presence is a violation to the principles of established law, while they look to this court as one of the features of the evolution of this law.

In fact, the establishment of the ICC under an agreement outside of the United Nations points out that it was an attempt to amend the Charter of the United Nations and the established principles in the public international law, and therefore, the existence of this court reflects a real change at the level of international law, and not necessarily at the level of international institutions and bodies. As noted earlier, the relationship of international criminal law and state sovereignty is complex and poorly understood, however it is clear that the international criminal law affects the sovereignty of the State, through the criminalization of many acts and behaviors at the national level, such as crimes against humanity and genocide, which did not exist in international law before.

Here we can say that the origin of the Rome Statute obliges the parties to give up its sovereignty and jurisdiction in relation to the commission of international crimes, as well as abandon the immunities accorded to members if they are found involved in committing such crimes. In this context, the second paragraph of Article 4 of this Statute says "The Court shall

have international legal personality. It shall also have such legal capacity as may be necessary for the exercise of its functions and the fulfillment of its purposes. The Court may exercise its functions and powers, as provided in this Statute, on the territory of any State Party and, by special agreement, on the territory of any other State. ". And it is not acceptable to confiscate the state sovereignty in order to prevent the commission of international crimes, in most cases of international crimes are committed when sovereignty is absent, for example, the absence of sovereignty of the state in Somalia resulted in committing a lot of international crimes, and the same thing with regard to Sierra Leone.

Some argue that the Statute is considered the national courts appropriate to prosecute persons accused of international crimes, and that the rule of "superiority" does not mean that the jurisdiction of the court transcends the jurisdiction of national courts, but rather completes it, and therefore the jurisdiction is not imposed on the local judiciary unless it is proved that the national judiciary is unable to judge cases of international crimes. Others consider the admission of the rule of superiority of the International Criminal Court's jurisdiction to the jurisdiction of the national courts is a flagrant violation of the principle of national jurisdiction and sovereignty of a State, so many countries like the United States, China, Sudan and Japan had an adverse position to the "superiority" or giving priority to the jurisdiction of the International Criminal Court, the national court, which call for its right to object to any investigation intimated by the Prosecutor of the Court that are inconsistent with the investigations carried out by the national judiciary, as one of the conditions for accession to the Statute of the Court.

To implement this rule, the International Criminal Tribunal of the former Yugoslavia, the issue of "Tadic" offered a request to the German government extradite him and refer the case to it, but the Court of Appeal German stressed that the rule of "superiority" is necessary for the International Criminal Court, and thus the national sovereignty of the State or even immunities and privileges granted to the senior statesmen are no longer a prevention of subject to the international law and international courts, temporary or permanent.

The third requirement: *The principle of universal jurisdiction and international immunities.*

Although the international law is based on individual values, but it is still subject to the concepts of sovereignty and the nation-state, and therefore the imposition of responsibility on the States alone, without individuals is a violation of the principles of the international law. Many of the legal mechanisms on the setting of this responsibility at the States level have been created, such as the International Court of Justice, the Commission on Human Rights of the United Nations. With regard to the question of the possibility of individuals for their crimes in international law it is considered a relatively new idea.

The most important decided by the principle of national sovereignty is the practice of States to its jurisdiction over its territory, within its actual sovereignty, and thus the implementation of domestic laws of the country can not extend outside the limits of sovereignty, but the principle of universal jurisdiction, reduces the importance of national sovereignty in the exercise of criminal proceedings for the investigation and prosecution for crimes committed within the limits of sovereignty, especially when it comes to committing international crimes punishable by international law, and that threaten the international community. And impair the implementation of the principle of universal jurisdiction from the jurisdiction of the States, and recognized by the international law, that is "territorial jurisdiction" of the state in the trial of crimes committed on its territory, as well as "personal jurisdiction" of the state in the trial of crimes committed by their citizens or against them, in addition to opposition of this principle with the so-called "preventive state, which allows states to prosecute crimes that pose a threat to some of its national interests.

The concept of universal jurisdiction is the most important concept that calls for movements of the protection of international human rights to implement to violators of human rights, especially those who are sheltering behind the principles of national sovereignty and privileges thereof as immunities. The implementation of universal jurisdiction of

States over individuals in the case of the Congo v Belgium Considered by the International Court of Justice has emerged, which did not address the question of the applicability of universal jurisdiction claimed by Belgium in the oral arguments made at the courts, where it was deferred to the final judgment sessions, however the Court's judgment was in favor of the view of the traditional international law which recognizes the immunity of individuals at the international tribunals and the prohibition of prejudice, so the judgment of the Court enshrined the principle of national sovereignty of States, which is the basis of this immunity.

According to the principle of universality that a certain type of terrible crimes are facing all countries in the world, and thus it is interest to all states to bring the perpetrators to justice, the rule "Universal Jurisdiction", requires that in the interest of every State to refer to justice the perpetrators of certain crimes of concern the entire international community, regardless matter where the offense was committed, and regardless of the nationality of the perpetrator or the nationality of the victims. The mechanisms of implementation of this principle have oriented differently in the present time, especially after the establishment of the international criminal tribunals, as the International Criminal Court war criminals in former Yugoslavia, and the Court of Ronda, in addition to the permanent International Criminal Court, and specifically after a trial "Meulsevi " The attempt to prosecute" Pinochet ", former Presidents and their immunities did not intercede for, nor the principle of national sovereignty without the prosecution and trial for committing international crimes.

The legal basis of the principle of universal jurisdiction lies in the many international conventions and treaties, the most important of which the four Geneva Conventions of 1949, which granted the States Parties the right to pursue and prosecute perpetrators of grave violations at their courts, regardless to their nationality, whether they follow the State exercising the criminal jurisdiction or any other country. And also the United Nations Convention against Torture and Other Cruel, Inhuman or cruel, inhuman or degrading of 1984 confirmed the principle of universal jurisdiction, as Article 8 of this Agreement allows any court in any State that has signed the Convention against Torture to accept the claims against those who committed this crime while on the territory of that State.

Under the Rome Statute of 1998, and the origin of the permanent International Criminal Court, the Court's jurisdiction is complementary to the mandate of the national jurisdiction of States. Accordingly, the global mandate to the International Criminal Court does not take place except in the cases of refusal or inability of the local judiciary of the States to prosecute perpetrators of international crimes, at the same time, the implementation of the Rome Statute over national legislation of the States Parties of the Convention have the right to exercise the principle the universal criminal jurisdiction by themselves or to give it to the court to prosecute perpetrators of international crimes.

Among the most important practical implementation of the universal principle jurisdiction that Israel kidnapped Adolf Eichmann Adolf Eichmann from Argentina, the head of the Jews in German security apparatus during the Hitler govern. According to the principle of universal jurisdiction it issued a death sentence in Jerusalem in 1961 for an offense to commit genocide against the Jews, , and in the same context, in 2000, a Senegalese court charged Chad's former President Hussein Habre with the committing torture, And that while he was in Senegal, where developed by under house arrest, and it was the first time that one of the African courts accused people from African countries of committing international crimes based on the principle of universal criminal jurisdiction, but he had not been tried already, which forced to transfer the case to Belgium, which is known as the universal jurisdiction capital. In another case, the Danish authorities in 2001, arrested Army Chief of Staff of the former Iraqi General Nizar al-Nizar Khazraji , Where the authorities based on the principle of universal jurisdiction to try him for war crimes and genocide against the Kurds in northern Iraq, during the use of the Iraqi army of chemicals weapons against the Kurds, and is still on trial in Denmark on the back of charges of war crimes and genocide against the Iraqis in Anfal and Halabja 1988.

In another case, illustrating the sensitivity of the principles of international immunity accorded to presidents the

present and former with the implementation of the principle of universal jurisdiction of States to prosecute and try persons accused of international crimes, it was the crime of the late Chilean President Augusto Pinochet, Who was arrested by the British authorities in 1998, while he was in one of the clinics of London, and at the request of Spanish judge Baltazar Garzon for his trial on charges of torture, murder and disappearance of a large number of political opponents during his rule of Chile from 1973 to 1990, and in the Switzerland Geneva First Instance Court began in 2005 examining a lawsuit against President Zine El Abidine **Zain El-Abedeem** ,, And on the charge of torturing a citizen of Tunisia, which threatens the issuance of a civil Judgment in absence, the court has relied on the principle of universal jurisdiction without taking into account the immunities as Chairman of the State of Tunisia. In another case, in 2004, the Lebanese investigation Judge issued an arrest warrant in absence against the Libyan leader Colonel Muammar Gaddafi, six counts of committing crimes intervention kidnap and hide and extortion and impersonation and forgery and use of forgery in the case of the disappearance of the Al-Sadr, the Lebanese court relied on its right to practice the principle of universal jurisdiction.

In terms of international criminal justice, in 1998, the ICC for the former Yugoslavia issued, an indictment memorandum against former Yugoslav President Slobodan Milozewicz of committing war crimes and crimes against humanity, yet his trial stopped because of his death. As well as the Special Criminal Court for Sierra Leone in 2003, an indictment memorandum against Liberian President Charles Taylor for committing war crimes and crimes against humanity, he is currently on trial at this court in Hague.

Finally, in July,2008, the Prosecutor of the International Criminal Court addressed a formal indictment memorandum against Sudanese President Omar Hassan al-Bashir for war crimes "and genocide" in Darfur region and called for his arrest.

Criminal responsibility of presidents in international criminal law:

The question of criminal responsibility of natural persons, and presidents for international crimes has become stable in international criminal law, and this responsibility have been intensified after World War I, specifically during the trials witnessed by human in the aftermath of World War II. The Treaty of Versailles of 1917 was the first document recognizing the responsibility of natural persons and presidents for international crimes, which is confirmed by Article 227 of this Treaty, practically , the implementation of the principle of individual responsibility in the courts of Nuremberg, Tokyo, Yugoslavia, and Rhonda.

International efforts culminated in the recognition of the permanent criminal liability, as Article 25 (4) of this statute that the adoption of "Individual criminal responsibility does not affect the responsibility of States under international law."

The most important reasons that led to the remarkable development on the idea of criminal responsibility of natural persons in terms of international law, is the negative role played by the Presidents during World War I and II, which led to grave consequences on peace and international security, as well as the fear of impunity of this group from Criminal justice pretext of the privileges and immunities granted to them under the provisions of customary international law, so the researcher finds it appropriate to divide this chapter into the following demands:

The first requirement: The international basis for criminal responsibility.

The second requirement: Immunity of Presidents and the International Criminal Court.

Third requirement: The jurisdiction of the International Criminal Court.

The first requirement: *The international basis for criminal responsibility*

Man has known crime since the dawn of history, since Abel and Cain, signing the first crime in human history, crime is a behavior that no community is free of it since its formation, which will require intensified efforts to eliminate them both internal and external, criminal liability is known as a "commitment to bear the legal consequences the act

ascribed to the complainant it "accused of" where there is no reason in law, rule it out. It also means: Man bears the punishment of his action or illegal leaving which come to him voluntarily and he is aware of what it might be and its consequences. The main feature of criminal responsibility is a question of attribution in the sense "Crime is assigned to a specific person required to prove a direct link between his conduct, and the act constituting the offense with its two parts, material and moral. This link is a direct causal relation, or relation of reason to the result, that is the individual's activity who created the crime and existed it by law. In addition, the essence of criminal responsibility is the person's eligibility that the crime is attributed to. To take responsibility for the crime or the criminal deserves punishment, imposed by law.

The contemporary criminal jurisprudence had not remained at one trend about the issue of individual criminal responsibility for international crimes because of the dispute about the legal status and In this context, traditional school considers that the State not individuals ask legally, So the president is merely a tool to express the will of the state, does not bear any criminal responsibility because he is not a subject of international law. Another trend takes the principle of international criminal responsibility of heads of state, and only individuals not the state who commits international crimes.

Regardless, the question of individual criminal responsibility for international crimes has become one of the most important principles that the international criminal law considers, whether for ordinary people, or soldiers or leaders of armies, or even presidents and higher categories of staff in the States.

Before World War II there was no international judicial organ can implement the provisions of serious international crimes, and make judgments decide the responsibility of the perpetrators and determine the sanctions to be implemented against them. However, there were attempts to define the concept of individual criminal responsibility for violations of international law, a committee "*The Responsibility of Authors of the War*" was established for the mission of answering questions related to wars foundations. In the end, the committee found out that "all persons belonging to the States enemies, regardless to their rank, and even presidents accused of crimes against the laws and customs of war, the laws of humanity, can be subject to criminal prosecution. The Treaty of Versailles 1917 which ended World War I confirmed clearly in its Article 227 the principle of criminal responsibility of presidents and called for trying "Guillaume II" Emperor of Germany, and identified four reasons for this treaty to be tried, but they have not been implemented.

In the aftermath of World War II, documentation, regulations and legal systems, which included the idea of criminal responsibility of presidents for international crimes increased. The "Nuremberg" Court considered that natural persons alone are responsible for the crimes of international law.

The International Criminal Tribunal for the former Yugoslavia (ICTY) confirmed that its jurisdiction over natural persons who commit the specified offenses in its system. The principle of the criminal personal responsibility of president and the natural members contents of Article VI of the system. Article (6) is on "the personal jurisdiction of the Court, relating to natural persons and is based on the principle of criminal liability on the personal jurisdiction of the Court, relating to natural persons and is based on the principle of individual criminal responsibility, including head of state, and public officials, and superiors and subordinates. Article VII of the Statute of the International Criminal Court in the former Yugoslavia as it included a wide range (individual criminal responsibility) covers all persons who (planned or instigated, ordered or committed or assisted in the planning or preparation of the crime or implementation). The same article decided the principle of individual criminal responsibility for all persons who hold an official position, whether they are presidents or Heads of Government or officials of the government and the leaders of the army.

The court also approved the Rhonda principle of personal responsibility at the international level for the crimes of genocide, crimes against humanity, and articles 5 and 6 of the Statute of the Court provided on this principle. The Statute of the Court of considered the principle of personal criminal responsibility of the Head of State, and not caring about his official character as a reason to deny his criminal responsibility or lessen punishment. In this regard, Article VI, paragraph 2

of the Rules provides that "the accused official character as a president or Government or a major employee does not exempt him from criminal responsibility and is not a good reason for the commutation of the sentence." Also the third paragraph of the article itself confirmed the responsibility of the President or the Supreme Commander for the crimes committed by his soldiers on his own knowledge or he could know about committing such crimes.

The Convention on the Prevention of Crime of Genocide and Punishment of 1948 have adopted the principle of personal responsibility of presidents for international crimes, article IV said " persons those who commit the crime of genocide or any of the acts provided for in Article (3),are punished whether they are rulers, officials , or public officials or ordinary individuals. "

In recent developments at the level of international criminal law, the Statute of the permanent International Criminal Court in 1998 came to emphasize the principle of criminal responsibility of heads of state, officials and Irrelevance of official character as a contraceptive for accountability, and considered that the national immunities that they enjoy due to the nature of their work does not prevent their appearance at the court and held accountable criminally.

Responsibility in accordance with the different principles of international criminal tribunals is upon the criminal act committed on behalf of these countries and in its interest, whether they are senior officials or military leaders or even just soldiers in the regular forces.

The second requirement: Presidents immunity under the Statute of the International Criminal Court.

Under the Rome Statute establishing the permanent International Criminal Court the immunity of Presidents has become an absolute for the commission of international crimes, as the official character of the president does not exempt him from criminal responsibility and punishment, and therefore Immunities or special procedural rules of presidents do not prevent being subject to the jurisdiction of the Court of Criminal, the Rome Statute involves three separate provisions on official immunities of States. Article 27 of the rules repeal substantive immunity of the head of state, and it is in its concept and language are similar to the provisions of special regulations for criminal courts, which were formed after World War II, and in accordance with Article 27 of this Statute, the immunities accorded to presidents or special procedural rules whether in the framework of local laws or international law can not be a barrier to the International Criminal Court to exercise its to this person, others argued that Article 27, cancel substantive and procedural immunities of heads of state. However it can be said that Article 27 distinguished between substantive immunity and procedural immunity, as, it does not allow to allege in the official character of President in case of being at the court for committing the offenses set forth in the statute, while the procedural immunity remains closely to the President as long as he exercise his constitutional duties as a president and does not go away except in accordance with the provisions of the constitution and internal rules, or after he leaves office.

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