

# Extraterritorial Jurisdiction and Head-of-State Immunity: Sovereignty and The Use of Force in The Fragmentation of International Law

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## Abstract.

*The exercise of extraterritorial jurisdiction against a foreign head of state raises fundamental problems in international law because it directly implicates the principles of state sovereignty, head-of-state immunity, and the prohibition of the use of force. Normatively, international law recognizes that an incumbent head of state enjoys personal immunity (immunity *ratione personae*) from the criminal jurisdiction of other states, grounded in customary international law and international jurisprudence. This principle is reinforced by the Charter of the United Nations, particularly Article 2(4) on the prohibition of the threat or use of force and Article 2(7) on the principle of non-intervention (UN Charter, 1945). However, the practice of some states applies extraterritorial jurisdiction unilaterally under the rationale of global law enforcement or national security, while in practice disregarding head-of-state immunity and the limits of territorial sovereignty. This condition reflects normative fragmentation and the politicization of the application of international law. Regulatory weaknesses are evident in the absence of a comprehensive international instrument governing the limits of extraterritorial jurisdiction over senior state officials, weak enforcement mechanisms for violations of the non-intervention principle, and the lack of effective sanctions outside international judicial fora. This research employs a normative legal method, using approaches grounded in international legal instruments, conceptual analysis, and jurisprudential review, including the Arrest Warrant decision (Democratic Republic of the Congo v. Belgium, 2002). The findings confirm that cross-border law enforcement through coercive measures without the consent of the territorial state or a mandate from the UN Security Council is inconsistent with state sovereignty and the prohibition of the use of force. Therefore, international legal norms should be strengthened through multilateral instruments and lawful accountability mechanisms to safeguard the supremacy of international law.*

**Keywords:** Extraterritorial Jurisdiction; Head-of-State Immunity; State Sovereignty; Prohibition of the Use of Force and Fragmentation of International Law.

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## I. INTRODUCTION

Extraterritorial jurisdiction directed at a foreign head of state constitutes a boiling point in public international law because it tests three interlocking foundations: territorial sovereignty, the personal immunity of an incumbent head of state (*immunity ratione personae*), and the prohibition of the use of force. Normatively, the most basic boundary is found in the UN Charter. Article 2(4) prohibits the threat or use of force against the territorial integrity and political independence of any state, while Article 2(7) affirms non-intervention in matters essentially within the domestic jurisdiction of a state. Exceptions such as Article 51 (self-defence) or collective measures under Chapter VII are narrow and designed as responses to threats to international peace and security, not as instruments to export domestic criminal law enforcement into another state's territory. This framework generates a decisive conceptual distinction: *prescriptive jurisdiction* (the authority to prescribe legal norms) may be claimed on certain accepted bases (effects doctrine, nationality, protective principle), but *enforcement jurisdiction* (coercion/arrest across borders) remains constrained by the prohibition of force and respect for territorial sovereignty, and thus is unlawful absent the consent of the territorial state or a legitimate collective mandate. On top of the Charter foundation, the doctrine of personal immunity functions as a procedural shield for an incumbent head of state. Its rationale is not an individual privilege, but a consequence of sovereign equality and the functional necessity of interstate relations: if a

head of state could be arrested or summoned before foreign courts at any time, diplomacy and the stability of international relations would readily collapse and be replaced by political litigation.

This principle received strong juridical articulation through the International Court of Justice (ICJ) decision in the *Arrest Warrant of 11 April 2000* (DRC v. Belgium) (2002), which affirmed immunity for certain high-ranking officials from foreign criminal jurisdiction during their term of office (explicitly a foreign minister; and in doctrine/practice also relevant to heads of state/heads of government), while recognizing possible accountability through other channels (international fora, domestic proceedings, or after leaving office). The sharpest tension arises at the implementation stage, particularly when prescriptive claims are followed by cross-border coercion. In many modern controversies, the central issue is no longer whether State A may criminalize conduct that affects its interests, but whether State A may enforce its criminal law within State B's territory through coercive action. At this point, Article 2(4) becomes the gatekeeper of legality for cross-border arrest/forcible transfer operations, especially involving armed agents, which can readily be challenged as an unlawful use of force or an unlawful intervention, unless consent or a lawful collective mandate can be demonstrated conditions rarely satisfied in the context of law enforcement. An "most current" controversy (early January 2026) presented in this manuscript as an empirical-normative illustration is the case of Nicolas Maduro in the United States. Reuters and AP reportedly described a U.S. military operation that apprehended/transferred Maduro to New York for criminal proceedings the defence characterized it as military abduction/kidnapping, while Reuters emphasized the core dispute: whether Maduro could invoke head-of-state immunity when the United States has not recognized his leadership as legitimate since 2019.

This case highlights two problematic nodes: (i) the legality of cross-border coercion without consent/collective mechanisms, commonly viewed as incompatible with sovereignty and not justifiable via Article 51; and (ii) how recognition politics may be used to deactivate *immunity ratione personae* in domestic courts, creating risks of double standards and politicized criminal jurisdiction. Another development that underscores international law's preference for multilateral channels appears in the dispute *Embassy of Mexico in Quito* (Mexico v. Ecuador) before the ICJ, triggered by the raid on Mexico's embassy premises in Quito (April 2024) to arrest Jorge Glas. Although not a head-of-state immunity case, it is significant for demonstrating the high sensitivity surrounding violations of sovereignty/inviolability of protected premises, and for reinforcing that the "legitimate" response is adjudication and provisional measures before the ICJ rather than normalizing unilateral action. In Europe, a different pole of fragmentation appears in the French *Cour de cassation* decision (2025), which as widely reported and analysed annulled an arrest warrant against Bashar al-Assad by referencing the absolute personal immunity of an incumbent head of state at the relevant time, even though the allegations involved serious international crimes. This decision demonstrates doctrinal consistency regarding *immunity ratione personae* in domestic fora while illustrating the latent conflict between interstate stability (immunity) and demands for accountability (prosecution). At the same time, international legal reform is moving through codification and progressive development within the International Law Commission (ILC) on the topic *Immunity of State officials from foreign criminal jurisdiction*.

The fact that the ILC remains in an ongoing drafting/refinement process indicates normative gaps and the lack of a coherent state practice regarding the precise limits of foreign criminal jurisdiction over high officials and the need for procedural safeguards to prevent political criminalization. These gaps explain why state practices diverge: some reinforce personal immunity, others expand accountability via universal/extraterritorial jurisdiction, and some leverage political recognition to shape the effects of immunity. The implications for international law suggest the need for reform that avoids both extremes absolute immunity without accountability and absolute accountability that sacrifices sovereignty. The most realistic reform path (and one compatible with the UN Charter) is: (a) to affirm a strict separation between prescriptive and enforcement jurisdiction claims to jurisdiction do not automatically legitimate cross-border coercion; (b) to strengthen multilateral channels (ICJ, the Security Council, or lawful international mechanisms) as the primary venues for assessing the legality of coercive action and resolving disputes; and

(c) to codify due process safeguards in the ILC framework so that accountability is not pursued by methods that create precedents of sovereignty violations and breaches of the prohibition of force.

Under this approach, procedural legitimacy becomes the measure: even when accountability is pursued, the instruments and methods must remain aligned with the UN Charter and the architecture of immunities for senior officials. For Indonesia, the implications are direct and strategic. Indonesia, which consistently emphasizes sovereignty, non-intervention, and multilateralism, has an interest in rejecting the normalization of extraterritorial law enforcement accompanied by cross-border coercion without consent, because such precedents risk harming developing states within global power configurations. Diplomatically, Indonesia can adopt a pro-reform stance by (i) supporting the strengthening of the ILC's work on immunity limits and safeguards; (ii) reinforcing multilateral fora such as the ICJ for inter-state dispute settlement (drawing lessons from *Mexico v. Ecuador*); and (iii) rejecting "law enforcement by force" logic that expands justification for unilateral action. Domestically, Indonesia should build compliance guardrails when responding to extradition, MLA requests, or law-enforcement cooperation affecting foreign senior officials ensuring that jurisdictional claims do not transform into enforcement actions that violate another state's sovereignty or place Indonesia in an inconsistent position under the UN Charter. Thus, Indonesia's interest aligns with reform that reinforces the supremacy of law, sovereign equality, and multilateral legitimacy, rather than expanding unilateralism by powerful states.

## II. LITERATURE REVIEW

Classical discourse on extraterritorial jurisdiction typically begins with an analytical distinction between prescriptive jurisdiction the authority to prescribe legal norms and enforcement jurisdiction the authority to take coercive action, including arrest. Doctrinal literature tends to view the prescriptive sphere as relatively more flexible because it can be justified on accepted bases such as the effects doctrine (objective territoriality), nationality, and the protective principle, whereas universal jurisdiction remains tightly contested, depending on the category of crime, consistency of state practice, and the requirement of procedural caution. Contemporary literature, however, shows that the core controversy increasingly shifts away from whether cross-border criminalization is possible, and toward the legality of enforcement when jurisdictional claims are implemented through cross-border coercion that may erode territorial sovereignty and trigger escalation. In this context, the UN Charter functions as the normative fence at the enforcement stage: the prohibition of the threat or use of force (Article 2(4)) and the principle of non-intervention (Article 2(7)) constrain unilateral action within another state's territory, except under narrow exceptions such as self-defence (Article 51) or lawful collective authorization under Chapter VII (United Nations, Charter of the United Nations, art. 2(4), art. 2(7), art. 51 (1945)). Above these Charter constraints, the literature on immunity of senior officials positions *immunity ratione personae* as procedural protection for a small set of top officials during their tenure—primarily heads of state, heads of government, and foreign ministers derived from sovereign equality and the functional necessity of international relations.

This framework normatively rejects the use of domestic criminal courts as instruments to "lock" interstate relations through unilateral detention or summons of senior officials. The anchor reference is the ICJ decision in *Arrest Warrant* (DRC v. Belgium, 2002), which confirmed that certain high officials enjoy immunity from foreign criminal jurisdiction during office, while acknowledging accountability pathways through alternative mechanisms (domestic proceedings, competent international fora, or prosecution after leaving office) (International Court of Justice, *Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo v. Belgium)*, Judgment 14 February 2002). In scholarship, this judgment is often treated as a hard reference because it links immunity to the stability of interstate relations and signals that accountability goals do not automatically justify unilateral action. The immunity regime is not a single uniform block. First, there is a conceptual and normative tension between personal immunity (*ratione personae*) and functional immunity (*ratione material*), especially when allegations concern serious international crimes. Second, there is no final, universally binding codification instrument that definitively settles the detailed limits of the immunity of senior officials in relation to foreign criminal jurisdiction. This unfinished status is reflected in the ILC's ongoing work on *Immunity of State officials from foreign criminal jurisdiction*, which remains in

progressive development and continues debating scope, the design of exceptions, and procedural safeguards to prevent domestic courts from becoming vehicles of political criminalization.

This non-finality is often read as evidence that state practice is not fully coherent, creating space for fragmentation both between states and among domestic institutions. At the level of contemporary practice, the literature emphasizes that fragmentation typically appears at two highly political decision points: (i) enforcement (how a jurisdictional claim is operationalized), and (ii) recognition (who is recognized as head of state, thereby activating or not the immunity). On enforcement, scholarly attention grows on “law enforcement by force” patterns cross-border transfers or forced arrests because they raise dual problems: breach of territorial sovereignty and the question whether the conduct amounts to prohibited intervention or even prohibited force under the Charter. This argument gains added resonance when disputes are brought into multilateral adjudication. The ICJ case *Embassy of Mexico in Quito* (Mexico v. Ecuador), triggered by the April 2024 raid on Mexico’s embassy premises in Quito, is frequently read as reinforcing the view that sovereignty/coercion clashes should be tested through international adjudication rather than normalized as unilateral practice. On recognition, scholarship warns of the danger of double standards if the forum state can manipulate the effect of immunity through political recognition policies. Then *ratione personae* risks being treated selectively according to geopolitical preferences. Consequently, the relationship between immunity and extraterritorial jurisdiction is not merely a dogmatic legal issue but also assumes a constitutional-international dimension, because executive recognition decisions may open or close jurisdictional doors in domestic courts.

Conversely, the literature also records a line of practice reaffirming strict personal immunity limits in domestic fora. French jurisdictional dynamics concerning foreign official immunity, as reflected in widely circulated rulings and reporting, are often cited as examples of domestic courts maintaining *ratione personae* for incumbents despite accountability pressures. Across this landscape, an important gap concerns the integrated analysis of: (a) prescriptive bases of criminal jurisdiction, (b) immunity architecture (*ratione personae/material*), and (c) the UN Charter regime on force and non-intervention. As a result, evaluations often stop at the immunity-versus-accountability dichotomy without treating enforcement legality as a determinant of legitimacy, or without acknowledging recognition as a variable that changes the immunity configuration in domestic proceedings. This research can close the gap through a three-layer procedural legitimacy framework: (1) the prescriptive basis of jurisdiction, (2) the legality of enforcement tested through the Charter’s gatekeeping (Articles 2(4)/2(7)/51), and (3) the effect of recognition on the activation/deactivation of *immunity ratione personae*, linked to ongoing codification dynamics in the ILC. These implications are strategic for Indonesia: as a state committed to non-intervention and multilateralism, Indonesia has an interest in rejecting the normalization of cross-border enforcement without consent/collective mandate, and in relying on lawful mechanisms such as extradition and mutual legal assistance (MLA) for cross-border law enforcement.

From the perspective of national law, such a framework is supported by Indonesia’s Extradition Law (Law No. 1 of 1979) and MLA in Criminal Matters Law (Law No. 1 of 2006), which can function as compliance screening tools to ensure due process, proper authority channels and consistency with international obligations so that the research output moves beyond diagnosing fragmentation and produces operational guardrails to prevent Indonesia from being drawn into “law enforcement by force” precedents that tend to disadvantage developing states.

### III. RESULT AND DISCUSSION

#### 3.1. The Interlocking Nature of Three Normative Regimes and the Consequences for State Action Legitimacy

Extraterritorial jurisdiction against a foreign head of state is among the most problematic nodes in public international law because it forces analysis across three interlocking normative regimes: (1) territorial sovereignty and the prohibition of cross-border coercion; (2) the immunity regime for senior state officials, particularly an incumbent head of state; and (3) the UN Charter regime on the prohibition of force and the principle of non-intervention. The interconnection explains why extraterritorial jurisdiction disputes cannot



be reduced to technical questions of a forum state's criminal competence, but must be understood as problems of legitimacy of state action within the international order. In this context, prescriptive jurisdiction claims often matter less than enforcement methods that may violate the territorial integrity of another state (Malcolm N. Shaw, 2021). Under the UN Charter, the normative starting point is always Article 2(4) prohibiting threats or use of force against territorial integrity and political independence, and Article 2(7) affirming non-intervention in matters essentially within domestic jurisdiction. These norms function as the legal gate for any cross-border action. Even if a state asserts extraterritorial jurisdiction on an effects basis or to protect vital interests, coercive enforcement such as arrest or forced transfer from another state's territory faces stringent scrutiny, because such enforcement can be characterized as unlawful intervention and, at a certain level, as prohibited force (James Crawford, 2019). The Charter does provide exceptions, but they are limited and conditional. Article 51 permits self-defence only against an armed attack, and Chapter VII allows collective action on the basis of Security Council authorization to maintain or restore international peace and security. Therefore, mainstream scholarship concludes that the UN Charter was not designed to legitimize unilateral domestic criminal law enforcement in another state's territory. The lawful channel consistent with the Charter is consent-based cooperation or a legitimate collective mechanism (Antonio Cassese, 2005).

### **3.2. The Doctrinal Separation of Prescriptive and Enforcement Jurisdiction**

Conceptually, classical literature sharply distinguishes prescriptive jurisdiction from enforcement jurisdiction. Prescriptive jurisdiction is relatively more flexible because a state may link it to territoriality, nationality, the protective principle, and—within limits—universal jurisdiction for crimes considered threatening to the international community. Yet once prescriptive claims reach the enforcement stage across borders, the legal character changes fundamentally. Enforcement jurisdiction is the strictest domain because it directly engages territorial sovereignty: without the territorial state's consent, coercive enforcement on its territory is, in principle, a sovereignty violation. The prohibition of force and non-intervention lock in this constraint: the forum state cannot convert a jurisdictional claim into an entitlement to conduct an arrest operation within another state's territory. Above the Charter and sovereignty regime stands the head-of-state immunity regime as procedural protection. Personal immunity (*immunity ratione personae*) for an incumbent head of state is understood as a consequence of sovereign equality and functional necessity. Without it, top officials would be continuously exposed to politically motivated prosecutions, undermining diplomacy and transforming interstate relations into litigation arenas. The most important normative anchor is the ICJ judgment in *Arrest Warrant* (DRC v. Belgium) (2002). The Court confirmed that certain senior officials enjoy immunity from foreign criminal jurisdiction during office, without excluding accountability through other fora or after leaving office (Dapo Akande, 2004). Although the case directly concerned a foreign minister, its reasoning is broadly treated as the principal reference for the architecture of personal immunity for top officials, including heads of state and heads of government.

### **3.3. The Tension Point: Immunity, Accountability, and Special Regimes (ICC)**

Tension arises when a forum state attempts to proceed criminally against an incumbent foreign head of state. On one hand, it may assert prescriptive bases such as effects within its territory or violations of vital interests. On the other, personal immunity operates as a procedural barrier that blocks foreign criminal jurisdiction during office. The literature addresses this dilemma by distinguishing immunity in the domestic courts of other states from accountability in specific international fora with special jurisdictional bases. Comparisons are often drawn to Article 27 of the Rome Statute, which removes the relevance of official capacity before the ICC; however, that provision is a special regime and does not automatically displace customary rules on immunities in the criminal courts of other states. The linkage between immunity and the prohibition of force becomes clearest in “law enforcement by force” contexts cross-border arrests or forced transfers. Even if immunity status is contested due to recognition issues, cross-border coercion without the territorial state's consent still confronts sovereignty and the UN Charter constraints. ICJ case law on force and non-intervention, such as *Nicaragua v. United States*, shows the Court's consistent seriousness in assessing sovereignty violations regardless of political or security justifications. This confirms that procedural legitimacy in international law enforcement demands Charter-compatible channels, not unilateral coercion.

### 3.4. Diplomatic Protection Regime: Inviolability of Diplomatic Missions (Vienna Convention 1961)

Another relevant regime is the protection of diplomatic relations. The 1961 Vienna Convention affirms the inviolability of diplomatic mission premises and the receiving state's duty to protect them. When coercive action touches protected spaces, disputes often shift from law enforcement issues to violations of the diplomatic protection regime, with a preference for multilateral settlement mechanisms. Methodologically, such disputes illustrate the international system's preference for adjudication rather than normalization of unilateral action. In the context of international law reform, the ILC's work on *Immunity of State officials from foreign criminal jurisdiction* shows that the international community has not yet reached a final consensus on the detailed limits of immunity and procedural safeguards to prevent political criminalization. This non-finality suggests that fragmentation is driven not by the absence of norms, but by selective operationalization at political points, especially enforcement and recognition. Hence, realistic reform lies in procedural legitimacy reform: strict separation of prescriptive and enforcement jurisdiction; strengthening multilateral channels as legality testers for coercive action; and codifying safeguards to prevent domestic criminal processes from becoming political instruments. In this way, reform avoids both extremes absolute immunity and absolute accountability by maintaining balance among sovereignty, the prohibition of force, and accountability needs.

A comparative view of cases shows that variation in outcomes is shaped less by a lack of international legal norms than by political-institutional configurations and the forum choices states make. The normative framework remains relatively stable: the UN Charter prohibits threats or use of force (Article 2(4)) and unilateral intervention (Article 2(7)), serving as the primary barrier to unilateral cross-border coercion. Meanwhile, personal immunity of an incumbent head of state is recognized under customary international law and international jurisprudence. Under this configuration, claims of extraterritorial criminal jurisdiction—such as effects or protective interest bases—may be doctrinally debated, but the legitimacy of dispute settlement ultimately turns on the pathway selected (international adjudication, a domestic forum that respects immunity doctrine, or unilateral action) and on the enforcement method (cooperative or coercive). The *Arrest Warrant* case represents a norm-preserving judicial international settlement pattern. The ICJ placed senior-official immunity within the structure of interstate relations grounded in sovereign equality, such that foreign criminal jurisdiction cannot be exercised against certain officials during office. Accountability is not eliminated but redirected to Charter-compatible channels (domestic processes, competent international fora, or prosecution after office). By contrast, *Embassy of Mexico in Quito* (2024) shows a multilateral-institutional model emphasizing sovereignty and diplomatic inviolability.

Although not about head-of-state immunity, it supports the thesis that coercive acts affecting protected interests are assessed through international adjudication, including provisional measures, as corrective tools against unilateral action. Under the Vienna Convention 1961, inviolability of mission premises complements the UN Charter regime; from a liberal institutionalist perspective, the goal is not merely victory but reinforcing institutional functions to restrain escalation and stabilize norms. French jurisdictional dynamics (2024–2025) illustrate another pattern: domestic adjudication showing judicial deference to international law by treating an incumbent head of state's personal immunity as a bar to criminal jurisdiction despite accountability pressures. This reflects operational legal pluralism: international law works through domestic internalization without formal subordination. Fragmentation does not always mean normative conflict but may reflect different institutional strategies: domestic courts preserve immunity to prevent politicization, while accountability is redirected to more appropriate channels. The sharpest contrast appears in the Maduro controversy (as framed in this manuscript), which is often characterized as unilateral power-based settlement reinforced by recognition politics. The layered problems are not only whether jurisdiction may be claimed, but whether coercive enforcement is compatible with sovereignty and the Charter's prohibition of force, and whether recognition is used to activate/deactivate *immunity ratione personae* in domestic courts.

A realist-critical reading explains why deviations persist: international law may be reduced to a legitimizing tool for powerful states and fragmentation emerges primarily at the application level especially

enforcement and recognition rather than from a lack of norms. Comparative reading suggests outcomes depend on the pathway: (i) international adjudication that preserves normative stability; (ii) multilateral channels that remedy sovereignty violations or apply special protection regimes; (iii) domestic fora that respect immunity doctrine; or (iv) unilateral coercive action producing legitimacy crises. Relevant reform thus requires strengthening procedural architecture: affirming the prescriptive/enforcement separation; strengthening multilateral legality-testing mechanisms; and developing procedural safeguards so domestic prosecutions do not become vehicles of political criminalization. Under this framework, procedural legitimacy synthesizes the issue legality is measured not by the goal of law enforcement alone, but by the conformity of procedures with the UN Charter, the immunity regime and lawful multilateral mechanisms. For Indonesia, this comparative reading provides practical rule-based grounding. Indonesia can consistently reject the normalization of coercive cross-border enforcement absent consent or a collective mandate, because such precedents may disadvantage developing states. At the same time, Indonesia can reaffirm multilateralism by supporting dispute settlement through the ICJ and strengthening lawful cooperation mechanisms—extradition and MLA—as Charter-compatible enforcement pathways that preserve sovereignty and due process.

### **3.5. Fragmentation and Reform Direction: ILC, Procedural Safeguards, and Strengthening Multilateral Channels**

Fragmentation of international law in relation to extraterritorial jurisdiction over heads of state and senior officials is rooted not in the absence of fundamental norms but in the tension between stable foundational norms and increasingly uneven, politically charged state practice. Core norms—the prohibition of the threat or use of force, non-intervention, and senior-official immunity—have long been reflected in the UN Charter and customary international law. Yet contemporary practice increasingly confronts these norms with demands for transnational accountability, expansion of extraterritorial criminal jurisdiction claims, and the use of political recognition to determine whether head-of-state immunity applies. In this configuration, fragmentation appears less as open conflict among norms and more as divergence in how the same norms are applied and operationalized. Divergence emerges particularly at the procedural level—enforcement and forum selection. States may agree on abstract norms yet differ significantly on the how/when/where of implementation. Accordingly, international law can appear incoherent not because it has lost its normative foundation but because identical norms yield different outcomes across different political and institutional configurations.

### **3.6. The ILC and Procedural Gaps Concerning the Limits of State Official Immunity**

The International Law Commission plays a key role in reading and responding to this fragmentation. By placing *Immunity of State officials from foreign criminal jurisdiction* on its agenda, the ILC openly acknowledged that positive international law has not yet provided a final and comprehensive codified framework governing the limits of state official immunity vis-à-vis foreign criminal jurisdiction. This recognition matters: the debate is not merely interpretive disagreement over settled norms but also reflects a lack of mature consensus about the most appropriate normative design. ILC discussions show that while immunity *ratione personae* for certain incumbent high officials (including heads of state) is widely recognized as customary international law, operational aspects remain uncertain. This uncertainty becomes sharper when immunity intersects with allegations of serious international crimes, where arguments are sometimes advanced that certain norms are *jus cogens* and thus cannot be limited by immunity. Yet this claim has not achieved universal acceptance and remains intensely contested in both scholarship and state practice.

The “gap” confronting the ILC is not total absence of rules but lack of consensus on three crucial aspects: (1) which categories of state officials are definitively protected by personal immunity in foreign criminal proceedings; (2) how personal immunity relates to possible exceptions for serious international crimes; and (3) what standardized procedural safeguards are needed to ensure that domestic prosecutions do not become instruments of political criminalization. The fact that ILC work remains in progressive development indicates insufficient coherence in state practice for definitive codification. Some states maintain strict personal immunity during office to preserve stable interstate relations, while others advocate

limiting immunity through broader universal or extraterritorial jurisdiction. The lack of a binding multilateral instrument allows states to select interpretations aligned with their political and strategic interests. As a result, fragmentation is not only horizontal (among states) but also vertical (between international norms and their domestic application).

#### IV. CONCLUSION

Extraterritorial jurisdiction over a foreign head of state constitutes one of the most critical tests for the coherence of public international law because it brings together three interlocking and mutually constraining normative regimes: territorial sovereignty and the prohibition of cross-border coercion, personal immunity for incumbent senior state officials, and the UN Charter regime on the prohibition of force and non-intervention. The main finding of this research is that extraterritorial jurisdiction disputes cannot be reduced to technical questions of a forum state's criminal competence; rather, they must be understood as problems of the legitimacy of state action within the international order. Within this framework, prescriptive jurisdiction claims become non-determinative when implemented through coercive enforcement methods that violate another state's territorial sovereignty. Normatively, international law displays relatively stable consistency. The UN Charter strongly restricts threats or use of force and unilateral intervention, except under narrowly defined and strictly constructed exceptions. Consistently, customary international law and international jurisprudence recognize *immunity ratione personae* for an incumbent head of state as procedural protection grounded in sovereign equality and the functional needs of interstate relations. The core problem is not the absence of substantive norms but the tension at the application stage, where identical norms are selectively operationalized by states in different political and institutional configurations.

Comparative case analysis shows that variations in outcomes are shaped more by the chosen dispute-settlement pathway and enforcement method than by differences in legal norms. Resolution through international adjudication or domestic fora demonstrating judicial deference to international law tends to preserve coherence and legitimacy. By contrast, unilateral action relying on cross-border coercion especially when reinforced by recognition politics produces fragmentation and legitimacy crises by blurring the line between law enforcement and the use of force. Fragmentation thus is not a conflict among norms but a procedural divergence at political points, particularly enforcement and recognition. The ILC's ongoing work on state official immunity reinforces this conclusion. The non-finality of codification does not reflect a lack of foundational norms, but the absence of consensus on operational limits and procedural safeguards to prevent the misuse of foreign criminal jurisdiction by domestic courts. The gap is procedural and institutional, not substantive-normative. Accordingly, relevant reform does not lie in reactive creation of new substantive norms, but in strengthening procedural architecture so existing norms are applied consistently, legitimately, and free from instrumentalization.

The most realistic reform direction consistent with the UN Charter is procedural legitimacy reform: a strict separation between prescriptive and enforcement jurisdiction; strengthened multilateral channels as the primary fora to test the legality of cross-border coercion; and the development of binding procedural safeguards to prevent domestic prosecutions from becoming instruments of political pressure against foreign senior officials. This approach allows international accountability demands to be accommodated without sacrificing sovereignty and the prohibition of force. For Indonesia, these implications are strategic and operational. Indonesia's consistent commitment to non-intervention and multilateralism finds strong normative grounding to reject the normalization of coercive extraterritorial law enforcement absent consent or lawful collective mandate. At the same time, Indonesia can strengthen its identity as a rule-based actor by prioritizing lawful cooperation mechanisms such as extradition and mutual legal assistance as cross-border enforcement tools consistent with due process, sovereignty, and international obligations. This research contributes not only theoretically but also provides normative and policy foundations for Indonesia to play an active role in reforming international law in a manner that reinforces the supremacy of law, sovereign equality, and multilateral legitimacy.



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