**IN SEARCH OF ACCOUNTABILITY: A CRITICAL ASSESSMENT OF THE LITERATURE ON THE IMMUNITIES OF STATE OFFICIALS IN INTERNATIONAL LAW FOR HUMAN RIGHTS VIOLATIONS**

**By**

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 **Abstract**

*The development of international human rights and international criminal law as distinct academic fields within international law has impelled the discourse on immunity of state officials. The trial of German state officials at the International Military Tribunal in Nuremberg at end of World War II and conventional obligations undertaken by states, at least since the establishment of the United Nations have implicated the question whether states and their officials are entitled to immunity in the face of their conventional obligations. This was highlighted by the case against Pinochet Ugarte of Chile before the United Kingdom House of Lords; a case which propelled the immunity of state officials into the limelight of judicial and academic discourse resulting in increased human rights advocacy for accountability. The practice of the United Nations Security Council of using international criminal proceedings under their peace and security mandate by the creation of ad hoc international criminal tribunals, since the 1990s, and the referral of situations in Darfur and Libya to the International Criminal Court as well as the pro-democratic uprising in the Arab states sustain the impetus of this Paper.*

**1.0 INTRODUCTION**

This Paper is part of a wider study examining Canadian Human Rights Engagements in Anglophone Africa. The focus of the Paper is on Nigeria for strategic reasons including the size of Nigeria as Africa’s most populous state, Nigeria’s role in driving and shaping human rights discourse and praxis in Africa, including the issue of accountability of state officials for human rights violations, within the African continent. To this end, the Paper will assess the nature of Canadian engagements with Nigeria as regards the immunity of state officials for violations of human rights with a view to ascertaining the attainments of the engagement as well as problems and prospects thereof.

Some introductory points are caveats are pertinent here. First, immunity is not a free-standing principle of international law. The concept of immunity should be seen in the general context as an exception to the jurisdictional competence (adjudicatory and enforcement) of a body. Secondly, at the core of the international system is the principle that no state can claim legal superiority over another. Thirdly, a distinction is made as to the sovereign immunity entitlements of states into three separate genres *viz* state immunity, diplomatic immunity and state official immunity with the first two genres being governed in international law by customary international law and treaty while state official immunity is governed exclusively by international custom. Fourth, international law adopts a bifurcated approach to immunity of state officials- *ratione personae* to serving officials and *ratione materiae* to former officials. Fifth, it is inherent in its nature that immunity is a procedural bar and thus does not imply an absence of legal liability, but merely an absence of jurisdiction, i.e. adjudication or enforcement is circumscribed by rules on immunity.[[1]](#footnote-1) In addition, a distinction is made between criminal and civil responsibility for the purposes of accountability because the institution of a civil case against state officials implead the state itself. This is why the decisions of the Canadian Supreme Court in *Bouzari v. Islamic Republic of Iran*,[[2]](#footnote-2) and *Kazemi Estate v. Islamic Republic of Iran*,[[3]](#footnote-3) will not form part of the Paper. Finally, the analysis in this Paper is limited to human rights with regards to torture, war crimes, crimes against humanity, genocide and aggression. Thus, other human rights are outside the normative context of the Paper.

The notion of the immunity of states and their officials originated in classical positivist international law at a time when states were recognized as the only subjects of the international law and the direct protection of the individual had not yet materialized into the optic of international law. Traditionally, states were the protectors and enforcers of the individual rights of citizens and so could espouse international claims on behalf of their citizenry. With the development of human rights the evolution of international law has witnessed an individual-oriented approach as against the traditional state-oriented approach. This naturalist progressive view of international law is that there can be no immunity for violations of human rights. While the essence of immunity is the exemption of the adjudicatory and enforcement jurisdiction of states, human rights expanded the adjudicatory jurisdiction of states thereby resulting in a ‘seeming’ doctrinal conflict between the two systems.

Immunity of state officials remains important, controversial and contemporary with issues ranging from the rationale for a system of immunities to what type of state officials would benefit from immunities, the nature of immunities, whether there is a conflict between immunities and human rights and whether there can be immunity for state officials for human rights violations. The focus of the Paper is on the last two issues and to this end, the Paper is divided into 6 sections. The introduction inaugurates the examination to be undertaken and gives a background to the Paper by highlighting the anxieties in the discourse of the immunities of state officials for human rights violations. Section 2 sets out the problem concerning the interface between a system of immunities and a system of human rights. Section 3 is an assessment of some of the literature on whether there can be immunity for human rights while Section 4 assesses Canadian/Nigerian human rights engagements through the optics of the ICC regime and the involvement of Nigeria in the trial of Charles Taylor by the Special Court for Sierra Leone and the establishment of the Extraordinary African Chambers in the Courts of Senegal. The next, the Paper examines the nature, attainments, problems and prospects of the engagement teased out while the Section 6 concludes the Paper and sets out a research agenda.

## 2.0 THE PROBLEM SO FAR

Generally, international human rights instruments are applicable to states and seek to ensure that state officials and agents respect the stipulated standards.[[4]](#footnote-4) However, it has been argued that human rights encounter an “enforcement crises” where immunities are involved.[[5]](#footnote-5) This is because while human rights enhance the jurisdiction of states, immunities are an exemption from the jurisdiction a state may ordinarily possess. A consequence of immunity, by the exemption of a state or its official from the jurisdiction of a court, is the challenge to the enforcement of human rights standards. As such, immunity is perceived as inhibiting the development of a system of human rights capable of meeting international standards of accountability.[[6]](#footnote-6)

At the heart of this Paper are two *seemingly* conflicting perspectives. Firstly, the classical positivist view which recognizes that states are the only subjects of international law and that the duties and rights enunciated in the human rights instruments devolve on states. As such, international rules are to be interpreted against the backdrop of the position of the individual in traditional international law, as incapable of acquiring direct rights in international law.[[7]](#footnote-7) Based on this classical view of international law, the immunities of states and state officials are to be respected always.

Secondly, there is the naturalist progressive human rights perspective of international law that there is no rule stipulating that only states can acquire direct rights and duties in international law. As such, nothing stops individuals and organisations from assuming direct rights in international law, especially in view of the trend of recognizing the increasing importance of non-state actors in international activities.[[8]](#footnote-8) With the emerging trend in international law seeking to entrench a culture of accountability, it has been argued that the enforcement of the rights of individuals is to prevail even where immunities are involved.[[9]](#footnote-9)

It has been argued that the developments in the law regarding the immunities of states, i.e. from absolute to restrictive, was largely contributed to by the increasing significance and recognition of the individual in international law, though it may have only been the economic interests of individuals or at least of ‘the international business man’.[[10]](#footnote-10) Following from this, it would seem that the civil interests of individuals should also be given the same value as their economic interests, hence translating into a more progressive restriction of immunities of states beyond their commercial activities. States, after all, exist for its citizenry and the duty of states includes the protection of individuals and safeguarding their fundamental freedoms.

Like the concept of immunities, the existence of a system of human rights is founded upon the sovereignty of states. Indeed developments in the area of human rights are given impetus by the very idea of sovereignty. It becomes apposite to consider whether there is an actual conflict between the imperatives of a system of human rights and a system of immunities.

**3.0 IMMUNITY OF STATE OFFICALS FOR HUMAN RIGHTS VIOLATIONS**

The issue of whether there can be immunity for human rights violations has pitched legal scholars against each other. There is no area of international law that the polarity is as heated, contentious and patent.

On the one hand, there is the view that state officials enjoy absolute immunity, *ratione persaonae,* for human rights violations and a limited immunity, *ratione materiae*, for similar acts. To proponents of this view, contrary to a popular and contrived opinion, immunity does not mean impunity and importantly, there is no conflict between immunity and human rights even where the rights in question are norms of *jus cogens*. Thus, Fox argues that immunity is a rule of procedure and not of substantive law; the different nature of the rules is such that immunity cannot contradict a *jus cogens* norm but “merely diverts any breach of it to a different method of settlement.”[[11]](#footnote-11) O’Keefe lends his voice to this view contending that a rigorous and dispassionate examination of customary international law does not support an international crime exception to the immunities of state officials.[[12]](#footnote-12)

On the other hand, Pedretti is of the view that foreign state officials cannot escape accountability for crimes against peace or aggression, genocide, war crimes and crimes against humanity by relying on immunity.[[13]](#footnote-13) This view is supported by Labuschagne who has argued that Heads of state are not only politically accountable to their constituencies and citizens but also liable for human rights atrocities in international law.[[14]](#footnote-14) Van der Vyver, has boldly asserted that state official immunity is rapidly being phased out in international criminal law due to “socio-juridical and philosophical shift from the sovereign state to the constitutional state…”[[15]](#footnote-15)

An intermediary view found in legal scholarship is brought to the fore by Wuerth and Keitner. Wuerth approaches the systems of immunities and human rights as each having intrinsic and important value. According to Wuerth,

Immunity is an important issue in its own right; justice and accountability for violations of international criminal law are obviously important values. But it is also part of a [broader](https://global.oup.com/academic/product/humanitys-law-9780199975464?q=teitel&lang=en&cc=de) [move](http://www.ejil.org/article.php?article=1849&issue=92) to reframe sovereignty and international law itself in terms of individuals and human security. Doctrinally, immunity or restrictions on it are one corner of a potential transformation of international law which includes universal jurisdiction, international criminal law, responsibility to protect, and a re-orientation of the work of UN Security Council. Today, however, doctrinal setbacks, the apparent failure of intervention in Libya, difficulties implementing universal jurisdiction, and questionable support from states, all raise questions about whether this broader re-orientation of international law has been or will be fully successful. The values protected by immunity—sovereign equality of states, peaceful coexistence, the avoidance of biased or incorrect judgments by the national courts of foreign states—are of continued, if not growing, importance.[[16]](#footnote-16)

Keitner who although argues that immunity is “necessarily incompatible with combatting impunity” recognizes the imperative of balancing competing values.[[17]](#footnote-17) Bianchi highlights the need for courts to interpret legal rules on immunity in line with the principles and goals of international law, i.e. *lex ferenda*, because international law cannot grant immunity from acts which it criminalises. Van Alebeek, while aware that courts of law can only apply the law as it is, argues that such application of the law should take into consideration *lex ferenda* (policy arguments) so as to ensure remedy for individuals for violations of human rights norms.[[18]](#footnote-18)

There is a reticence in existing scholarship to consider the unique and complex nature of international rule-making in the analysis of whether there can be immunities in international law for violations of human rights. For instance, Dugard in asserting that it is merely a “question of time” before sovereign immunity would give way to human rights which have attained jus cogens status,[[19]](#footnote-19) makes time rather than international convention, international custom the determining factor. This Paper argues that what is needed is an objective assessment of the current state of the law, *de lege lata*, which takes into cognizance the dynamics of international rule-making; this will guide any developments *de lege ferenda*. Currently, the efforts of the International Law Commission (ILC) are invested in the formulation of principles of immunity from foreign criminal jurisdiction,[[20]](#footnote-20) and the Sixth Committee of the United Nations General Assembly is debating the scope and applicability of the principle of universal jurisdiction. These efforts necessarily implicate the views and conduct of states hence necessitating a study of Canadian/Nigerian human rights engagements in this field.

There is a tendency in the literature to assess immunity only from the optic of international public policy for accountability for human rights violations, i.e. immunity vs. impunity. However, there is a grey area presented by transitional societies wherein wider ideals of peace and security must be considered as highlighted by the employment of truth and reconciliation mechanisms even where there have been egregious violations of human rights as done as evident in South Africa and the Gacaca system in Rwanda.

**4.0 CANADIAN/NIGERIAN ENGAGEMENTS IN IMMUNITIES OF STATE OFFICIALS FOR HUMAN RIGHTS VIOLATIONS**

Preliminary findings do not suggest direct engagement between the two countries in this area. At best what is evident from a review of literature is the involvement of both countries, independently of each other, in the area subject of research as will be seen in the establishment of the International Criminal Court (ICC) and its regime, the involvement of Nigeria in the trial of Charles Taylor by the Special Court for Sierra Leone (SCSL) and the establishment of the Extraordinary African Chambers (EAC) in the Courts of Senegal.

*The ICC Regime*

Absence of an internationally agreed regime on immunity of state officials makes practice of Canada and Nigeria important especially in view of the fact that both countries are state parties to the Rome Statute having signed and ratified the Statute.[[21]](#footnote-21) The centrality of Canada’s role in the area of enforcement of human rights through the machinery of international criminal law is evident from its involvement in the establishment of the International Criminal Court (ICC) ranging from its motivation of the international community to adopt the Rome Statute of the ICC, generation of support for the Court through public statements and extensive lobbying, financial assistance to developing countries to participate in the negotiations for the Court, funding of NGOs from developing countries to participate in the process of establishment of the ICC to the chairing of an important negotiating body at the Conference in Rome.[[22]](#footnote-22)

Canada and Nigeria were affiliated with different ideological blocs that emerged in the run up to the Diplomatic Conference in Rome for the adoption of the Statute of the ICC. Canada belonged to the Like-Minded Group and Nigeria belonged to the Non-Aligned Group. The extent of powers to be granted to the Prosecutor of the ICC as a major ideological difference between the blocs. Despite its opposition to the inclusion of *proprio motu* powers of investigation to the Prosecutor under the Statute, Nigeria voted to adopt the Statute. Canada not only ratified the Rome Statute of the ICC but became the first country in the world to adopt comprehensive legislation implementing the Statute.[[23]](#footnote-23) Canada has also funded two Canadian organizations (the International Centre for Criminal Law Reform and Criminal Justice Policy and Rights and Democracy) for the production of manuals to assist states in drafting their national implementation legislation.[[24]](#footnote-24) Canada is the sixth largest financial contributor to the ICC while Nigeria is its second largest African contributor.[[25]](#footnote-25)

Canada’s commitment to the regime of accountability for human rights violations under the ICC was not limited to the establishment of the Court- it extended to lobbying for ratification and national implementation of the Rome Statute. It even refused to sign a bilateral immunity agreement with the United States of America which would have had the effect of curtailing Canada’s obligations to the ICC by not being able to surrender Americans to the Court. Although the Rome Statute removes immunity of state officials for crimes within its jurisdiction, the Statute recognizes that the cooperation of states parties is predicated upon the ability of the Court to secure the cooperation of third states for the waiver of their international law immunities. Thus, by Article 98 of its Statute,[[26]](#footnote-26) the ICC may not make a request for arrest or surrender where to do so would result in state parties violating their international obligations regarding the international immunities of officials of third states. On its part, Nigeria signed the bilateral immunity agreement with the United States not to surrender US citizens to the ICC. Canadian and Nigerian nationals have also been elected as judges of the ICC.[[27]](#footnote-27)

The roles of Canada and Nigeria, albeit to varying extents, in the establishment and regime of the ICC is relevant in the context of the Paper due to the fact that the Rome Statute of the ICC removes immunity of state officials for human rights violations within the jurisdiction of the Court.[[28]](#footnote-28)

In June 2005, the Prosecutor of the ICC announced the decision to open investigation into the situation in Darfur, stating that the investigation will focus on individuals who bear the greatest criminal responsibility for the crimes committed in the Darfur region.[[29]](#footnote-29) In July 2008, the Prosecutor applied to the Pre-Trial Chamber of the ICC for an arrest warrant to be issued against Omar Hassan Ahmad Al-Bashir, the President of Sudan. On 12 July 2010, the Pre-Trial Chamber decided to issue another warrant of arrest against Al-Bashir for charges of genocide.[[30]](#footnote-30) The Chamber also directed the Registrar of the Court to prepare a supplementary request for co-operation seeking the arrest and surrender of Al-Bashir for charges contained in both warrants of arrests and for transmission of the supplementary request to Sudan, all states parties and all Security Council members not states parties to the Rome Statute. On 15 July 2013, the Court was notified of Al-Bashir’s presence in Nigeria to participate in a summit of the African Union.[[31]](#footnote-31) The Pre-Trial Chamber requested his immediate arrest and surrender by Nigeria. Following the filing of an application seeking his arrest by the Nigerian Coalition for the ICC, and calls for his arrest while in Nigeria, Al-Bashir left Nigeria and the warrant for his arrest was not executed (there was little or no indication that Nigeria was inclined towards its execution anyway).

Currently Nigeria is under examination by the Office of the Prosecutor (OTP). The OTP has identified eight potential cases involving the commission of crimes against humanity and war crimes- six involving a terrorist group named Boko Haram and two involving Nigerian Security Forces for their activities in the North Eastern part of Nigeria.[[32]](#footnote-32)

*Nigeria and the Trial of Charles Taylor*

On its own part, Nigeria’s involvement in efforts at accountability for human right violations goes beyond the ICC regime. In June 2000, the President of Sierra Leone requested assistance from the United Nations (UN) to bring to justice those responsible for crimes against the people of Sierra Leone.[[33]](#footnote-33) The Government requested the UN to establish an international court to prosecute those responsible for war crimes committed in the course of the civil war.[[34]](#footnote-34) The Security Council, on 14 August 2000, adopted Resolution 1315 requesting the Secretary-General to negotiate an agreement with the Government of Sierra Leone for the establishment of an independent criminal court in response to the crimes.[[35]](#footnote-35) The Council in its recommendation for the establishment of the SCSL proposed that the personal jurisdiction of the Court should extend to “leaders” and others who bear the greatest responsibility for the commission of crimes against humanity, war crimes and other serious violations of international humanitarian law as well as crimes under Sierra Leonean law committed in Sierra Leone.[[36]](#footnote-36)

The Secretary-General recommended the establishment of the SCSL by an agreement between the Government of Sierra Leone and the UN which would be “a treaty-based *sui generis* court of mixed jurisdiction and composition”.[[37]](#footnote-37) The SCSL was created following the conclusion of the ‘Agreement on the Establishment of a Special Court for Sierra Leone between the UN and the Government of Sierra Leone’.[[38]](#footnote-38)

Like the Rome Statute, the Statute of the SCSL makes irrelevant the immunity of state officials to the question of criminal responsibility or mitigation of punishment.[[39]](#footnote-39) In March 2003, the SCSL issued a 17-count indictment against Charles Taylor while he was still President of Liberia for crimes against humanity and grave breaches of the Geneva Conventions and subsequently issued an international arrest warrant against him.[[40]](#footnote-40) In August 2003, Taylor stepped down as Head of state and was granted exile by the Nigerian Government. However, following mounting international political pressure and a request for the surrender of Mr Taylor by the Government of Liberia, Nigeria released Taylor to Liberia even in the absence of a bilateral extradition agreement to stand trial. He was arrested by the United Nations Mission in Liberia (UNMIL) and was transferred to the SCSL in November 2006. Taylor was subsequently convicted for war crimes and crimes against humanity and is currently serving out his fifty year sentence.[[41]](#footnote-41) Taylor became the first Head of state to be convicted by an international tribunal since the trial of German state officials for war crimes committed during World War II by the International Military Tribunal at Nuremberg.

*Nigeria and the Establishment of the EAC in the Courts of Senegal*

Nigeria was also instrumental in the finding of an ‘African option’ to Hissène Habré, the former Head of state of Chad famously dubbed as ‘Africa’s Pinochet’. After Habré was deposed as the President of the Republic of Chad in 1990 and while in exile in Senegal, an indictment was issued against him in February 2000 based on allegations of acts of torture committed in Chad and he was placed under house arrest in Senegal. Habré appealed against the indictment on the ground that the courts in Senegal had no jurisdiction over the alleged acts since the acts had been committed against foreigners abroad.[[42]](#footnote-42)

The Court of Appeal in Dakar quashed the indictment on the basis of want of jurisdiction. The Court of Appeal held that there was no provision in Senegalese law for the punishment of crimes of humanity and that although the Criminal Code of Senegal had been amended in line with the Convention against Torture that it did not suffice to found jurisdiction in the matter as the procedural laws of Senegal under the Code of Criminal Procedure had to be amended in line with the substantive law so as to provide for universal jurisdiction for the acts of torture.[[43]](#footnote-43)

The complainants appealed to the Court of Cassation against the decision but the appeal was dismissed.[[44]](#footnote-44) The Court of Cassation held that Article 5(2) of the Convention against Torture required parties to take necessary measures to establish jurisdiction over acts of torture and that the enforcement of the Convention required parties to take legislative measures. Therefore, the presence of the accused person in Senegal was not enough to base the exercise of jurisdiction in the absence of any domestic procedural legislation empowering Senegal to exercise jurisdiction.

In September 2005, a Belgian court issued an international arrest warrant against Habré and sought his extradition from Senegal.[[45]](#footnote-45) Despite Habré’s re-arrest in November 2005, the Indicting Chamber of the Court of Appeals in Dakar decided that it had no jurisdiction regarding an extradition request against a former Head of state. The Senegalese President referred the matter to the AU.

At a Summit in Khartoum, Sudan in January 2006, the AU Heads of state and government established a Committee of Eminent African Jurists to consider the aspects and implications of the case against Habré and option for his trial.[[46]](#footnote-46) At a meeting attended by 7 notable jurists, including Prof Michael Ayodele Ajomo of Nigeria, the Committee concluded that Habré was not entitled to immunity and decided on an ‘African option’ as the solution.[[47]](#footnote-47) Under this option, Senegal, Chad or any AU member could exercise jurisdiction over the accused person or an *ad hoc* tribunal could be established in any member state to try the accused. Based on the recommendations of the Committee of Eminent African Jurists, the AU decided that the matter fell within the competence of the Union and mandated Senegal to prosecute and ensure the trial of Habré.[[48]](#footnote-48) Nigeria’s involvement in the area of accountability of state officials for human rights violations is made more obvious by the fact that it is one of the biggest financial contributors to the African Union.

The AU and Senegal entered into an agreement establishing the EAC as an *ad hoc* chamber within the courts of Senegal to try those most responsible for the crimes committed in Chad between 1982 and 1990 under Habré’s presidency.[[49]](#footnote-49) Habré was charged with crimes against humanity, war crimes and torture. On 30 May 2016, he was found guilty and sentenced to life imprisonment.

**5.0 TOWARDS A RESEARCH AGENDA**

In the main, the research so far does not show any direct engagement or conscious cooperation between the two countries in the area of immunity of state officials for human rights violations in practice as well as in the course of negotiations in international conferences leading up to the establishment of the ICC or in the work of the ILC.

On the one hand, the main problem of Canadian-Nigerian Human Rights engagements in the area of research is an absence of direct engagement. The conduct of both countries has been important in this area, Despite Canada’s prominent role in the adoption of the Rome Statute and the establishment of the ICC, Canada has not ratified the amendment to the Statute on the definition of aggression. The signing of a bilateral immunity agreement with the United States and the appeal of the Nigerian Government of the decision of the Federal High Court granting leave to survivors of human rights violations sponsored by Charles Taylor to challenge his asylum status in Nigeria contending that the decision to grant asylum was a political one and not amenable to judicial review,[[50]](#footnote-50) highlight the inconsistency in Nigeria’s practice. In the absence of any direct engagement between Canada and Nigeria, it goes without saying that there are no attainments to be considered.

On the other hand, the problem of an absence of direct engagement portends prospect of direct engagement. The need for such engagement comes at an important time with negotiations and debates going at the ILC towards drafting of articles on the immunity of state officials from foreign criminal jurisdiction. Despite the topic being added to the ILC’s agenda in 2007 by the United Nations General Assembly Sixth Committee, 2 Special Rapporteurs and 8 reports later this important issue still controversial. With the efforts of the ILC in the formulation of principles of immunity of state officials and the Sixth Committee debating the scope and application of universal jurisdiction, the conduct and views of states is necessarily implicated and necessitates cooperation between Canada and Nigeria as important stakeholders and participants.

In addition, a Canada/Nigerian Bi-National Commission was created in 2012 to facilitate bilateral exchanges between the two countries on politics, trade, development and security issues. Currently, Canada is assisting Nigeria in counter terrorism capacity building and regional technical assistance by strengthening, *inter alia*, criminal justice systems.[[51]](#footnote-51) This strengthens the case for direct engagements in the area of immunities of state officials for human rights violations.

An engagement between Canada and Nigeria in this regard will hopefully help in addressing the concerns of African states and the recent threats of some African States (South Africa, Burundi and the Gambia) to withdraw from the Statute of the ICC due to allegations of bias, not without some merit, involving the concentration of cases involving African states and their officials in the docket of the ICC. This has resulted in a number of African countries including Nigeria and South Africa (focal countries in the wider research of this proposed project) failing/refusing to arrest and surrender President Al-Bashir to the ICC. Even as talks are in the pipelines for the establishment of a criminal chamber in the African Court of Justice with jurisdiction for crimes against humanity, war crimes and genocide, all these are prospects of direct engagement between Canada and Nigeria in the area of international law immunities of state officials for human rights violations.

**6.0 CONCLUSION**

The Paper set out to critically assess the literature on the Canadian and Nigerian human rights engagements on immunities of state officials for human rights violations with a view to ascertaining the nature of the engagements, its attainments, problems and prospects. Preliminary findings do not support any direct engagement between both countries as their participation in this area has been devoid of any conscious and concerted efforts towards cooperation. Contemporary developments in the area of study show opportunities for cooperation. Thus, a research agenda would include identifying how Canada and Nigeria can partner in the area of immunities of state officials for human rights violations and the nature of such partnership i.e. whether technical, financial or to build capacity. Importantly, the ways in which the partnership will impact on the criminal justice systems of both countries as well as internationally would be a key component in the research.

**BIBLIOGRAPHY**

1. Lord Hewart, C.J in *Dickinson v. Del Solar; Mobile and General Insurance Co. Ltd (3rd Party)*, 5 *ILR* 299. See also *Case Concerning the Arrest Warrant* *of 11 April 2000 (Democratic Republic of Congo v. Belgium)* Judgment of 14 February 2002, (2002) *I.C.J. Reports* 3, Paragraph 60 [Hereinafter *Arrest Warrant* case]; Yoram Dinstein, ‘Diplomatic Immunity from Jurisdiction *Ratione Materiae*’, (1966) 15 *ICLQ* 76, 81 [↑](#footnote-ref-1)
2. (Ontario Superior Court of Justice Decision of 1 May 2002) 124 *ILR* 427; (Ontario Court of Appeal Decision of 30 June 2004, dismissing the appeal) 128 *ILR* 586 [↑](#footnote-ref-2)
3. 2014 SCC 62, [2014] 3 S.C.R. 176 [↑](#footnote-ref-3)
4. Ilias Bantekas and Susan Nash, *International Criminal Law*, 2nd edition, (London: Cavendish Publishing, 2003), 14 [↑](#footnote-ref-4)
5. M. Cherif Bassiouni, ‘The Proscribing Function of International Criminal Law in the Processes of International Protection of Human Rights’, (1982-1983) 9 *Yale Journal of World Public Order* 193 [↑](#footnote-ref-5)
6. *Campione v. Peti-Nitrogenmuvek NV and Hungarian Republic*, 65 *ILR* 287, 302 [↑](#footnote-ref-6)
7. Jürgen Bröhmer, *State Immunity and the Violation of Human Rights*, (The Hague: Martinus Nijhoff Publishers, 1997), 8 [↑](#footnote-ref-7)
8. Hersch Lauterpacht, *International Law and Human Rights*, (London: Stevens and Sons Ltd, 1950) 4 [↑](#footnote-ref-8)
9. Hersch Lauterpacht, ‘The Problem of Jurisdictional Immunities of Foreign States’, (1951) 28 *BYIL* 220, 235 [↑](#footnote-ref-9)
10. Jürgen Bröhmer, *State Immunity and the Violation of Human Rights*, (The Hague: Martinus Nijhoff Publishers, 1997), 143 [↑](#footnote-ref-10)
11. Hazel Fox, *The Law of State Immunity*, (Oxford : OUP, 2002), 525; Hazel Fox, *The Law of State Immunity*, 2nd edition, (Oxford : OUP, 2008), 151; see *Jones v. Saudi Arabia, [*2004] *EWCA* Civ 1394; [2005] 2 *WLR* 808; [2006] *UKHL* 26; Judgments of Lords Bingham and Hoffman, Paragraphs 24 and 44, respectively [↑](#footnote-ref-11)
12. Roger O’Keefe, ‘An “International Crime” Exception to the Immunity of State Officials from Foreign Criminal Jurisdiction: Nor Currently, Not Likely’, (2015) 109 *AJIL Unbound* 167, 167 [↑](#footnote-ref-12)
13. Ramona Pedretti, *Immunity of Heads of State and State Officials for International Crimes*, (The Netherlands: Martinus Nijhoff, 2014) 119 [↑](#footnote-ref-13)
14. JMT Labuschagne, ‘Immunity of the Head of State for Human Rights Violations in International Criminal Law’, (2001) 26 *SAYBIL* 180, 183 [↑](#footnote-ref-14)
15. J.D. Van der Vyver, ‘Universal Jurisdiction in International Criminal Law’, (1999) 24 *SAYBIL* 107, 190-191 [↑](#footnote-ref-15)
16. Ingrid B. Wuerth, ‘Introduction to Symposium: Immunities of State Officials from Foreign Criminal Jurisdiction: Comments on the International Law Commission’s Draft Articles’, (2015) 109 *AJIL Unbound* 153, 154 [↑](#footnote-ref-16)
17. Chimène I. Keitner, ‘Horizontal Enforcement and the ILC’s Proposed Draft Articles on the Immunity of State Officials from Foreign Criminal Jurisdiction’, (2015) 109 *AJIL Unbound* 161, 163 [↑](#footnote-ref-17)
18. Rosanne Van Alebeek, *The Immunity of States and Their Officials in International Criminal Law and International Human Rights Law*, (Oxford: OUP, 2008) [↑](#footnote-ref-18)
19. John Dugard, ‘Immunity, Human Rights and International Crimes’, (2005) *Journal of South African Law* 482 [↑](#footnote-ref-19)
20. See Sean D Murphy, ‘Immunity *Ratione Personae* of Foreign Government Officials and Other Topics: The Sixty-Fifth Session of the International Law Commission’, (2014) 108 *AJIL* 41 [↑](#footnote-ref-20)
21. Canada ratified the Statute on 07 July 2000 while Nigeria ratified it on 27 September 2001, <https://asp.icc-cpi.int/en_menus/asp/states%20parties/Pages/states%20parties%20_%20chronological%20list.aspx> (Accessed 28/11/2016) [↑](#footnote-ref-21)
22. <http://www.international.gc.ca/court-cour/index.aspx?lang=eng> (Accessed 28/11/2016) [↑](#footnote-ref-22)
23. *Ibid*. [↑](#footnote-ref-23)
24. Izevbuwa Kehinde Ikhimiukor, ‘A Review of Canadian-Nigerian Human Rights Engagements in the Area of International Criminal Justice (1999-2011)’, Workshop on Canadian-Nigerian Human Rights Cooperation (1999-2011), 8-10 May 2014, <http://nathanson.osgoode.yorku.ca//wp-content/uploads/2013/11/Izevbuwa.Paper25.05.2015.pdf> (Accessed 28/11/2016) [↑](#footnote-ref-24)
25. In 2015, Canada contributed 5,906,274 Euros and Nigeria contributed 180,375 Euros, see Financial Statements for the International Criminal Court for the Year Ended 31 December 2015, Status of Contributions as at 31 December 2015 (in Euros), Annex, Schedule 1, ICC-ASP/15/12 [↑](#footnote-ref-25)
26. 2187 *UNTS* 90 [↑](#footnote-ref-26)
27. Philippe Kirsch of Canada was elected in February 2003 and re-elected in March 2006; Chile Eboe-Osuji of Nigeria, who was educated in Nigeria and Canada where he also worked as a Barrister was elected in December 2011. [↑](#footnote-ref-27)
28. Rome Statute, Article 27 [↑](#footnote-ref-28)
29. ICC Press Releases (2005), ICC-OTP-0606-104 [↑](#footnote-ref-29)
30. Rome Statute, Article 6(a) [↑](#footnote-ref-30)
31. The Prosecutor v. Omar Hassan Ahmad Al Bashir, No. ICC-02/05-01/09, 15 July 2013, <https://www.icc-cpi.int/CourtRecords/CR2013_04947.PDF> (Accessed 28/11/2016) [↑](#footnote-ref-31)
32. Office of the Prosecutor, Report on Preliminary Examination Activities (2015), paragraphs 195-215, available at <https://www.icc-cpi.int/iccdocs/otp/OTP-PE-rep-2015-Eng.pdf> (Accessed 28/11/2016) [↑](#footnote-ref-32)
33. Letter from President of Sierra Leone to the UN Secretary-General, Kofi Annan UN Doc S/2000/786, Annex [↑](#footnote-ref-33)
34. For background, see Tom Perriello and Marieke Wierda, ‘The Special Court for Sierra Leone Under Scrutiny’, *International Center for Transitional Justice*, March 2006; James L. Miglin, ‘From Immunity to Impunity: Charles Taylor and the Special Court for Sierra Leone’, (2007) 16 *Dalhousie Journal of Legal Studies* 21 [↑](#footnote-ref-34)
35. S/RES/1315 (2000); see Michael Scharf, ‘The Special Court for Sierra Leone’, (October 2000) *ASIL Insights* [↑](#footnote-ref-35)
36. S/RES/1315 (2000), Operative Paragraph 3 [↑](#footnote-ref-36)
37. Report of the Secretary-General on the Establishment of a Special Court for Sierra Leone, 4 October 2000, UNDoc.S/2000/915, Paragraph 9 [↑](#footnote-ref-37)
38. Appendix II to the “Letter Dated 6 March 2002 from the Secretary-General addressed to the President of

the Security Council”; text available at [www.rscsl.org](http://www.rscsl.org) [↑](#footnote-ref-38)
39. Article 6(2) Statute of the SCSL available at [www.rscsl.org](http://www.rscsl.org) [↑](#footnote-ref-39)
40. *Prosecutor v Charles Ghankay Taylor*, Case No. SCSL-03-01, Indictment, 3 March 2003, [www.rscsl.org](http://www.rscsl.org); [↑](#footnote-ref-40)
41. *Prosecutor v. Charles Ghankay Taylor*, Case No. SCSL-03-1-T, [www.rscsl.org](http://www.rscsl.org) [↑](#footnote-ref-41)
42. *Public Prosecutor v. Hissène Habré*, Cour d’Appel, Case No. 135 of 4 July 2000, 125 *ILR* 569 [↑](#footnote-ref-42)
43. *Ibid.* [↑](#footnote-ref-43)
44. *Souleymane Guenggueng et al v. Hissène Habré*, Cour de Cassation, Case No. 14 of 20 March 2001, 125 *ILR* 577 [↑](#footnote-ref-44)
45. See Questions Relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal), 2012 *I.C.J Reports* 422 [↑](#footnote-ref-45)
46. Assembly of the African Union, Decision on the Hissène Habré Case and the African Union (Doc.Assembly/AU/8 (VI)) Add.9, 24 January 2006, Assembly/AU/Dec.103 (VI) [↑](#footnote-ref-46)
47. Report of the Committee of Eminent African Jurists on the Case of Hissène Habré, Assembly/AU/Dec.103 (VI) [↑](#footnote-ref-47)
48. Assembly/AU/Dec.127 (VII) [↑](#footnote-ref-48)
49. (2013) 52 *ILM* 1020 [↑](#footnote-ref-49)
50. Press Release of Open Society Justice Initiative, 02 November 2005, available at <https://www.opensocietyfoundations.org/press-releases/nigerian-court-paves-way-war-crimes-victims-suit-against-charles-taylor> (Accessed 28/11/2016). See also H.A Olaniyan, ‘Nigeria and the Emerging Concept of Universal Civil Jurisdiction’, (2012) 5 British Journal of Arts and Social Sciences 248, 266 [↑](#footnote-ref-50)
51. <http://www.canadainternational.gc.ca/nigeria/bilateral_relations_bilaterales/canada_nigeria.aspx?lang=eng> (Accessed 28/11/2016) [↑](#footnote-ref-51)