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Heads of State International Criminal Immunity, What's Wrong?

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Since World War One, Heads of State international responsibility has been discussed in international law. It seems that International immunities can no longer protect them when they are charged with international crimes such as genocide, aggression, crimes against humanity and war crimes.

However, International law provided by international custom and international conventions, like the 1961 Vienna Convention on Diplomatic Relations, the 1969 New York International Convention on Special Missions and the 1978 State Immunity Act, grants special protection, or even inviolability to high-ranking state officials.

But, what is the definition of head of state international immunity?

Head of State international Immunity is an old theoretical concept in international law. It means each state must respect foreign heads of state and nobody can charge or sentence them. Both immunity from jurisdiction and immunity of execution are justified by the fact that leaders must be free to manage international affairs. It can also be argued that legal immunity is needed to "*oil the wheels of diplomacy*". So, it is forbidden to expose them to judicial intervention.

Yet, many crimes are committed by government. Indeed, the international responsibility of Heads of State appeared at the end of World War One. But, it was mostly formalized at the end of World War Two through the establishment of the Nuremberg and Tokyo military tribunals.

The International Law Commission of the United Nations in 1950 asserted this following extract, approved by the United General Assembly: "*The fact that an author of an act which constitutes a crime under international criminal law has acted in his capacity as a head of state or of government does not release him of his responsibility under international law*". These provisions can be found in the Statutes of several international tribunals. For instance, the ex-Yugoslavia and Rwanda Tribunals provide that the official position of any accused person, whether as Head of State or Government or as a responsible Government official, shall not relieve such person of criminal responsibility nor mitigate punishment. The Statute of The International Criminal Court in The Hague contains this kind of provision too.

Another international mechanism recognized by some international conventions and state legislations is called Universal Jurisdiction. It includes an obligation to investigate and prosecute international crime suspects if they come into a state's jurisdiction which signed and ratified these conventions, even if suspects are Heads of State. Violating

conventions which recognize Universal Jurisdiction leads to removal of immunity. Indeed, it was what happened in the Pinochet case. In this case, The Law Lord's Decision made it clear that torture was not covered by immunity. This crime is not compatible with the immunity to which former Heads of State are entitled under the jurisdiction of foreign national courts.

But, the effectiveness of these rules is rare. Actually, warrants issued against serving presidents fail like those which are presently issued against Sudan's current president Al Bashir.

So how can we connect, match or combine rules of Heads of State responsibility and international immunity?

The Arrest warrant case by International Court of Justice in 2002 answered this topical question: "*While jurisdictional immunity is procedural in nature, criminal responsibility is a question of substantive law. Jurisdictional immunity may well bar prosecution for a certain period or for certain offences; it cannot exonerate the person to whom it applies from all criminal responsibility*". But the main point of this decision concerns the impossibility to prosecute a serving high-ranking state official. That means that only former political leaders can be prosecuted.

Should Leaders who are in office be prosecuted in the same way as former leaders? Why? Many arguments demonstrate that dictators who have committed international crimes can modify their state constitution to remain in power, forever.

In another way, another point touched upon the fact that economical and financial crimes committed by heads of State also called "indigenous spoliation" can lead to prosecuting. Many international conventions prohibit corruption and economical infractions like the United Nations and African Conventions against corruption of 2003.

In the end, human rights should be embedded in states' institutions and each state must observe the obligation to respect human rights. Political leaders suspected of having committed serious human rights violations must answer for their crimes.

In 1994, the Hutu President, Juvenile Habyarimana, was killed in a plane crash and this was taken by Hutu as the signal to start a campaign of genocidal killing: 800, 000 were killed. Two million Jews died at Auschwitz, a Nazi death camp, during the 1939-1945 World War Two. Hitler and his Nazi followers believed the Jews to be inferior people who should be exterminated. NEVER AGAIN.

Never again face the escalate of violence in this century.