

# Video Transcript

## Immunities – Gleider Hernández

Immunity is an interesting concept, it sounds a little bit more technical, a little bit more unusual compared to some of the topics we've been covering before. Basically, what it refers to is the immunity from prosecution. So, the inability to prosecute one, or to take one to a court, on the basis that one is a state, or that one is an official connected to, and acting on behalf of, the state. These immunities are derived from the sovereign equality of states and the obligation of states not to interfere in each other's affairs. Without it, states could use domestic prosecution or civil claims in domestic courts as a way to influence or to harass the decisions of another state, and perhaps undermine its independence on the international plane (perhaps forcing it to change the legislation, or to change policy, in a way that would be compromising of its equality).

So immunity has become one of these cardinal features of international law, and, indeed, one of the oldest treaties; a treaty conducted between the ancient Egyptians and the ancient Hittites back in, I think it was 1231BC. But even then, one of the first provisions of that treaty affirmed that the representatives of each other's states could not be arrested, detained, and their personal goods could not be confiscated. And that was a very early form of what we recognise today as immunity. So it's very much central to the conduct of international relations.

So, what kind of immunity are we talking about? We're talking about a number of different categories of immunities: one of them is the immunity of the state itself. There's a basic principle that, as a general rule, a state should not appear as a defendant in the courts of another state. To do so undermines the sovereignty of that state. And, over time, the scope of that principle has been narrowed somewhat. It used to be that states could never appear before the courts of another state, but now we recognise the distinction between what are called *acta jure imperii* (so those are acts in the exercise of state power, or state prerogative; so that would be the signing of the treaty, or the decision to declare war on another state, or the decision to take a matter as a policy decision). And those are to be juxtaposed with what are called in Latin *acta jure gestionis*, and those are acts of management or of administration. Those are acts like when a state will purchase computer equipment to equip an embassy, or a state will sign a contract for the provision of paper or supplies in order to run an office. Those are

considered acts that are not immune because they're purely of a private character. In short, another legal person could have done that.

So, in essence, we see that there's been a narrowing of the immunity of the state. And similarly, there's been a narrowing of immunity in respect of the representatives of the state. It used to be that all representatives of states enjoyed pure immunity and could not be prosecuted at all. And gradually that has also narrowed to certain categories of states, but also categories of acts. And you've got the high officials of the state (the head of state, the head of government and the foreign minister of the state), who enjoy what is called *ratione personae* immunity, which means immunity in respect of all their official acts, but also all of their private acts, by virtue of the office that they hold. It's deemed so crucial for international relations that states can't arrest each other's heads of state, head of government, or foreign minister, that that is respected.

And next to that you have immunity *ratione materiae*, which is immunity in the scope of your subject, of your functions. And that is an immunity that is generally recognised for ministers of the country, or officials of the country, that don't occupy one of those high offices, and also for former occupants, former heads of state, former heads of government and former foreign ministers, that can also enjoy this functional immunity. And that is narrowing as well, because it used to be that they enjoyed immunity in respect of official and private acts, but under *ratione materiae* immunity, former officials and other regular ministers only enjoy official immunity in respect of their acts as it performed in an official capacity, and not their acts performed in a private function.

So those are two major fields of immunities that we cover. And there's a third, and that is the immunities that we call 'diplomatic' and 'consular' immunities. Those are the privileges and inviolability that attach to an ambassador, the staff of an embassy and the premises of the embassy itself, and also to a consul, the staff of a consular mission, and the premises of the consular mission. Those are codified in two great conventions: the Vienna Convention on Diplomatic and Consular Relations, and, in effect, spell out how states are to respect the premises and the representatives of each other's missions in their relations to one another. And those are the three major regimes of immunities that are covered in this chapter.

Thank you.