

Regime Change and Immunity in International Law: A Thought Experiment

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The fallen ruler has long haunted international law – from [Kaiser Wilhelm II](#), to [Milošević](#) at The Hague, to [Gaddafi's](#) summary execution. The question recurs: what are the legal consequences of forced regime change? Recent events frame this question in practical terms. President Maduro was [captured](#) by US forces and flown to New York, Ayatollah Ali Khamenei was [killed](#) in US-Israeli strikes, and President Trump [has said](#) the US expects the “honour” of “taking Cuba in some form”, as an oil blockade strangles its economy. In Shakespeare’s [words](#), “uneasy lies the head that wears the crown”...

But with that crown comes protection under international law – extensive immunity, inviolability and other special rules associated with the Head of State. This article will draw together the concept of regime change and these rules.

Before we begin, what do we understand by “regime change”? In my view, and that of [others](#), a regime change involves the “systemic transformation of institutions”, entailing the ouster of leaders but, more commonly, an entire system of government. Yet it is bound up with, and often personified by, the fate of the Head of State – described by [Jennings and Watts](#) as “the highest organ of the State, representing it ... in the totality of its relations”. The Head of State is protected from attacks on their “[honour or dignity](#)”, reflecting a [deeper idea](#) – echoing the King’s two bodies – that an attack on a Head of State is something more than an attack on a private individual.

This post is framed as a thought experiment. Imagine that you are a foreign leader who has decided that a particular regime must change. Suppose you are a foreign leader, perhaps one of the ‘tyrants’ that Pope Leo has referred to, who has decided that a particular regime must change. What are your options?

Method One: War

The first method proposed to you by your political and military chiefs is war. They point to two case studies. First, [Saddam Hussein](#), leader of Iraq: removed by a US-led coalition invasion in 2003 without UN authorisation, later captured, tried, and executed. Second, [Muammar Gaddafi](#), leader of Libya: toppled in 2011 after a UN Security Council-authorised NATO intervention to protect civilians during the Arab Spring, ending in his capture and summary execution by rebel forces.

You are intrigued by these examples, but then your legal adviser raises some concerns. First, Article 2(4) of the [UN Charter](#) prohibits the use of force against a State’s “political independence”. Though some scholars have [argued](#) that force may be used to liberate a country from a tyrannical government, this view has not attracted broad support. The only exceptions are self-defence and Security Council authorisation. Second, the principle of [non-intervention](#) prohibits coercion short of force, including funding of opposition groups or training armed bands. Finally, your legal adviser points out to you the risk of your own individual criminal responsibility for the crime of aggression under Article 8bis of the [ICC Statute](#).

Method Two: Assassination

Your political and military chiefs now suggest a second method – assassination of the foreign leader. Your chiefs cite legal [scholarship](#) on whether the UN should begin issuing “death warrants” in respect of “dangerous dictators”, and the [recent](#) killing of the Ayatollah, who had ruled Iran since 1989. Your legal adviser warns against this approach, but notes that there is [no](#)

[definition](#) of assassination in international law. They can only point to Article 4(o) of the Constitutive Act of the African Union that commits the AU to condemn and reject “political assassination”. Your legal adviser notes that there are ongoing [debates](#) about the scope of the prohibition on assassination in peacetime and wartime.

Starting with peacetime, the primary legal protection for sitting Heads of State is personal inviolability, which the ICJ has [held](#) protects the individual “against any act of authority of another State which would hinder [them] in the performance of [their] duties” – though this formulation was geographically [limited](#) to protecting the Head of State when he or she is abroad.

Two independent legal rules operate to prohibit peacetime assassination of a Head of State. First, the assassination of a foreign Head of State using military force is prohibited by Article 2(4) of the [UN Charter](#) and customary law. Second, the right to life under Article 6 [ICCPR](#) permits lethal force [only](#) where strictly necessary and subject to the most exacting scrutiny.

Your legal adviser explains that the analysis changes if the assassination occurs in the context of an international armed conflict, where, the analysis shifts to the principle of distinction. Whether a Head of State who is also commander-in-chief becomes a lawful military target by virtue of exercising real operational command or remains a civilian unless formally enrolled in the armed forces, divides [leading scholars](#), with significant implications for any leader who authorises strikes.

Method Three: Capture

Your political and military chiefs recommend a third method – capture of the foreign leader, pointing out the practice relating to [Noriega](#), seized from Panama in 1989, and [Maduro](#), extracted from Caracas in 2026 after an operation in which roughly 100 people were killed.

Your legal adviser steps in to point out that a State [may not](#) exercise enforcement powers on another State’s territory without consent, and that the forcible seizure of a sitting Head of State abroad [breaches](#) the rule of personal inviolability, though this principle only clearly applies abroad. Your legal adviser also notes that commentators including [David Crane](#) and [Göran Sluiter](#) have characterised the Maduro operation as a manifest violation of the Charter amounting to the crime of aggression, a conclusion made easier where, unlike in 1989, no legal justification was even offered.

Method Four: Prosecution

Your political and military chiefs then try to persuade you and your legal adviser by suggesting a fourth method of regime change – prosecution. Again, they point to [Noriega](#), sentenced to 40 years in prison by a federal jury in Miami for drug trafficking, racketeering, and money laundering. They also note that [Maduro](#) is facing ongoing prosecution before the Southern District of New York.

Your legal adviser holds up a book entitled “[The Law of State Immunity](#)” and proceeds to talk you through the complexities. A serving Head of State enjoys [personal immunity](#) – absolute, status-based protection covering all acts, official or private – confirmed by the ICJ in [Arrest Warrant](#). Maduro’s ongoing US prosecution raises [four](#) contested questions: whether immunity applies to criminal conduct (yes, it does); whether non-recognition strips immunity (the better view, and that of France’s [Cour de Cassation](#) in the *Assad* case, is that it does not); whether immunity extends to acts *ultra vires* or to the ordinary criminal conduct (international law recognises no such carve-outs before national courts); and whether a successor government installed after the leader’s removal could validly waive his immunity – a waiver must reflect

free, genuine sovereign consent and in any case cannot operate retrospectively to cure a prior unlawful capture.

Method Five: Non-recognition and Sanctions

Your political and military chiefs relent, they suggest the least intrusive route to regime change: declining to recognise a government, paired with sanctions, as practiced against Maduro [from 2019](#).

Your legal adviser finds there is support for this route. Non-recognition operates on a [spectrum](#): at one end, States withhold formal recognition while still dealing with a government informally; at the other, non-recognition becomes a deliberative tool within a wider political, economic, and legal strategy to bring that government down.

Unilateral sanctions are [not barred](#) by international law provided they respect rules on extraterritorial jurisdiction, and may be justified as countermeasures if proportionate, notified, temporary, and reversible. Yet five years of non-recognition and sanctions, even at maximum intensity, failed to achieve regime change in Venezuela.

Conclusion

We come to the end of my thought experiment. All five routes advocated by your political and military chiefs have obstacles. Some points remain debatable – the geographic reach of inviolability, how the law of armed conflict applies to a Head of State – but the overall picture is a sophisticated legal framework protecting Heads of State from being toppled. Regimes are built to endure, and regime change remains rare.

Nepal's 2025 youth-led [protests](#), leading to a landslide election win for Balendra Shah and recommendations to prosecute the former prime minister for repression, point to a better path: democratic renewal, not overthrow. As Shakespeare also [wrote](#), "there is no sure foundation set on blood".