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Non – Recognition of A Head of State as A Basis for the Denial of Immunity Ratione Personae (Case Study of United States Practice in the Nicolás Maduro Case from the Perspective of the Formation of Customary Internasional Law)

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Abstract

On January 3, 2026, Nicolás Maduro, Venezuela's incumbent president, was apprehended by United States military forces, raising questions about whether he retained immunity ratione personae despite the United States' longstanding refusal to recognize his presidency and its previous recognition of Juan Guaidó as Venezuela's interim president. This article examines whether United States practice in the Maduro case contributed to the formation of customary international law permitting the denial of immunity ratione personae to unrecognized heads of state. Employing a normative legal research method incorporating conceptual and case law approaches, the study analyzed primary, secondary, and tertiary legal materials, including the United Nations Charter, International Court of Justice (ICJ) jurisprudence, particularly the Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo v. Belgium) case, and relevant draft articles of the International Law Commission (ILC). The analysis focused on the two constituent elements of customary international law: state practice and opinio juris. The findings indicated that although the United States and several other states had refused to recognize Maduro's presidency, their positions were not supported by sufficiently widespread, consistent, and representative state practice or clear opinio juris demonstrating a belief that non-recognition legally extinguished personal immunity. Rather than establishing a new customary rule, the case highlighted the unresolved tension between the political dimensions of governmental recognition and the procedural, status-based nature of immunity ratione personae, particularly in circumstances involving competing claims to governmental authority. The study concluded that United States practice represented a form of contestation of existing legal norms rather than sufficient evidence of an established change in customary international law governing the personal immunity of heads of state.

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INTRODUCTION

On January 3, 2026, Venezuelan President Nicolás Maduro and his wife were apprehended by United States military forces during a military operation in Caracas (United States Department of State, n.d.). At the time of his apprehension, Maduro

exercised the functions of Venezuela's president, although the legitimacy of his presidency remained contested internationally (Ahmed, 2026). Under customary international law, incumbent heads of state, heads of government, and ministers for foreign affairs generally enjoy immunity ratione personae, a form of personal immunity that protects them from the exercise of criminal jurisdiction by foreign states while they remain in office, irrespective of the nature of the alleged offenses (Fox & Webb, 2015; International Court of Justice [ICJ], 2002; International Law Commission [ILC], 2026). This immunity extends to protection against arrest and detention by foreign authorities and is grounded in the principle of sovereign equality, which requires states to respect one another's equal legal status under international law (Syamsuddin et al., 2025; United Nations, 1945a).

The United States pursued criminal charges against Maduro based on allegations of narco-terrorism and related drug trafficking offenses (Galbraith, 2020). According to United States authorities, Maduro and several senior Venezuelan officials were allegedly associated with the Cartel de los Soles, a purported criminal network accused of collaborating with the Fuerzas Armadas Revolucionarias de Colombia (FARC), a Colombian guerrilla organization involved in the country's armed conflict for decades (Sari, 2014). The United States had previously maintained that Maduro was not Venezuela's legitimate president, a position associated with the political crisis following the Venezuelan National Assembly's 2019 declaration challenging the legitimacy of his presidency. Subsequently, numerous states recognized Juan Guaidó as Venezuela's interim president (United States Department of State, 2019). Nevertheless, despite the non-recognition policies adopted by several governments, Maduro continued to exercise effective control over Venezuela's governmental institutions. The distinction between political recognition and effective governmental authority consequently became central to the legal controversy surrounding his entitlement to immunity ratione personae (Crawford, 2019; Talmon, 1998).

Although the United States has generally acknowledged the personal immunity of incumbent foreign heads of state, former United States Attorney General William Barr argued in 2020 (Galbraith, 2020) that Maduro was not entitled to such immunity because the United States and numerous other states recognized Juan Guaidó as Venezuela's interim president. The criminal indictment against Maduro reflected a development in United States policy toward Venezuela, which had previously relied substantially on targeted sanctions against Maduro and individuals associated with his administration. Nevertheless, several states maintained diplomatic relations with Maduro's government or continued to recognize his authority, including China, Cuba, Iran, Nicaragua, and Russia (Harrison et al., 2024). These divergent positions demonstrated the absence of a uniform international approach to recognizing Venezuela's governmental leadership. From the perspective of international law, however, immunity ratione personae is generally understood as a legal protection attached to certain high-ranking state offices rather than a privilege determined exclusively by the political recognition granted by other states (Akande & Shah, 2010; Pavlopoulos, 2024). Consequently, disputes over governmental legitimacy have increasingly exposed tensions between the established principles of

personal immunity and the discretionary nature of diplomatic recognition.

The Maduro case illustrates these tensions and raises the question of whether non-recognition may lawfully affect an incumbent head of state's entitlement to immunity ratione personae under customary international law. The United States conducted a military operation to apprehend Maduro within Venezuelan territory, raising concerns regarding the prohibition on the use of force and the fundamental principles established by the Charter of the United Nations (Cassese, 2005). Beyond the legality of the military operation itself, the incident generated a distinct legal question concerning Maduro's entitlement to personal immunity from the criminal jurisdiction of United States courts. Article 2(4) of the United Nations Charter (United Nations, 1945a) prohibits the threat or use of force against the territorial integrity or political independence of any state, subject to the exceptions recognized under international law. Accordingly, the forcible apprehension of a foreign political leader within another state's territory, without that state's valid consent, Security Council authorization, or another applicable legal justification, prima facie raises serious questions concerning compliance with the prohibition on the use of force, territorial sovereignty, and the principle of non-intervention. These questions must nevertheless be distinguished from the separate issue of immunity from foreign criminal jurisdiction.

The case therefore presents an intersection between two distinct legal frameworks. On the one hand, the United States alleged that Maduro had committed serious transnational criminal offenses and asserted criminal jurisdiction under its domestic criminal legislation, including provisions establishing extraterritorial jurisdiction. On the other hand, customary international law generally recognizes immunity ratione personae for incumbent heads of state, protecting them from the exercise of criminal jurisdiction by foreign states while they remain in office (Kingdom of the Netherlands, 2016). Although domestic legislation may establish jurisdiction over alleged offenses committed beyond national territory, the existence of such jurisdiction does not necessarily eliminate immunities recognized under international law. This distinction raises an important legal question concerning whether the United States' refusal to recognize Maduro as Venezuela's legitimate president could provide a sufficient basis for denying the personal immunity ordinarily associated with the office of head of state.

Several international law scholars have argued that immunity ratione personae is not automatically extinguished merely because other states refuse to recognize an individual as the legitimate head of state. Hazel Fox and Philippa Webb (2015) explain that personal immunity is associated with the functions and status of certain high-ranking state officials and derives from principles governing sovereign equality and the effective performance of state functions. Similarly, Dapo Akande (2004) distinguishes the legal entitlement to immunity from questions of diplomatic or political recognition, emphasizing that these matters are governed by different considerations under international law. Relevant guidance may also be drawn from the jurisprudence of the International Court of Justice (ICJ), particularly the Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo v. Belgium) case, in which the Court affirmed the immunity from foreign criminal jurisdiction and inviolability enjoyed by an incumbent

minister for foreign affairs (ICJ, 2002). Although that judgment concerned a foreign minister rather than a head of state and did not directly resolve the consequences of non-recognition, it provides an important foundation for understanding the procedural protections afforded to certain incumbent high-ranking officials. These authorities suggest that non-recognition alone does not necessarily establish a sufficient legal basis for denying immunity ratione personae. Consequently, the legality and broader significance of the United States' position must be examined in light of the customary international law governing the immunity of state officials and the requirements for the formation of new customary rules.

The central issue extends beyond determining whether Maduro remained entitled to personal immunity. It concerns whether the conduct and legal positions adopted by the United States could contribute to the formation or modification of customary international law regarding the denial of immunity ratione personae to unrecognized heads of state. Under the established framework for identifying customary international law, two constituent elements must be examined: a general practice accepted as law and opinio juris, referring to the belief that a particular practice is legally required, permitted, or prohibited (ICJ, 1969; ILC, 2018). Accordingly, the United States' actions cannot be assessed solely as an isolated political decision. Their potential normative significance depends on whether they reflect a legally articulated position, whether comparable practices have been adopted by other states, and whether the relevant international responses demonstrate acceptance or rejection of the asserted legal justification.

Existing scholarship has primarily examined the relationship between governmental recognition and the continued applicability of immunity ratione personae, particularly whether the refusal to recognize a head of state affects the availability of personal immunity under international law (Hamilton, 2023; Okplewu, 2026; Popa Tache, 2023). Although these studies have contributed substantially to understanding the legal foundations of personal immunity, comparatively limited attention has been devoted to assessing the implications of United States practice in the Maduro case for the formation of customary international law. In particular, the question of whether non-recognition-based denials of immunity constitute sufficiently consistent and representative state practice, accompanied by the requisite opinio juris, remains insufficiently explored (Cole et al., 2025; ILC, 2008). This research addresses that gap by shifting the analytical focus from the individual entitlement to immunity toward the normative significance of state conduct and its potential contribution to customary international law.

The novelty of this study lies in its examination of the Maduro case through the constituent elements of customary international law rather than solely through the conventional legal framework governing the immunity of incumbent heads of state. Specifically, it evaluates whether the United States' non-recognition policy, criminal proceedings, and actions concerning Maduro, considered alongside the responses of other states, demonstrate an emerging customary rule permitting the denial of immunity ratione personae or instead represent a contested and potentially isolated practice. This approach distinguishes between unilateral state conduct, the political motivations

underlying that conduct, and evidence of a legally accepted international practice (ILC, 2004). It also considers whether the reactions of other states support the existence of opinio juris or reveal continuing disagreement regarding the legal consequences of non-recognition.

This issue is particularly significant because treating non-recognition as an independent basis for denying immunity ratione personae could have broader implications for the international legal order. Such an interpretation could affect the principle of sovereign equality, increase the politicization of head-of-state immunity, and create uncertainty concerning the legal protections afforded to incumbent state officials whose governmental legitimacy is disputed. The potential consequences extend beyond the Maduro case, particularly in situations involving contested elections, rival claims to governmental authority, and international disagreements over political recognition. Establishing whether state practice has contributed to a new customary rule therefore requires careful consideration of the consistency, generality, and representativeness of relevant conduct, together with evidence that states regard such conduct as legally justified.

Accordingly, this article aims to examine whether United States practice in the Nicolás Maduro case contributes to the formation of customary international law permitting the denial of immunity ratione personae to unrecognized heads of state. The analysis focuses on the two constituent elements of customary international law, namely state practice and opinio juris, to determine whether the relevant conduct indicates the emergence of a new customary rule or constitutes an isolated and contested practice. Theoretically, this research contributes to scholarship on the formation of customary international law, the immunity of state officials, and the legal consequences of governmental non-recognition. Practically, it provides an analytical framework for evaluating the normative significance of unilateral state conduct and offers guidance for states, legal practitioners, and international tribunals in assessing the evidentiary requirements for establishing changes in customary international law.

METHOD

This study employed a normative (doctrinal) legal research method to examine whether United States practice in the Nicolás Maduro case contributed to the formation of a new rule of customary international law concerning the denial of immunity ratione personae to an unrecognized head of state. The research adopted two complementary approaches. First, a conceptual approach was used to examine immunity ratione personae, governmental recognition and non-recognition, and the constituent elements of customary international law, namely state practice and opinio juris, based on international legal scholarship and the work of the International Law Commission (ILC). Second, a case-based approach was employed to analyze United States conduct in the Maduro case, with reference to relevant jurisprudence of the International Court of Justice (ICJ), particularly the Arrest Warrant and North Sea Continental Shelf cases.

The study relied on documentary legal materials comprising primary and secondary sources. Primary legal sources included the Charter of the United Nations

(United Nations, 1945a), the Statute of the International Court of Justice (United Nations, 1945b), the Vienna Convention on Diplomatic Relations (United Nations, 1961), relevant ICJ judgments, and pertinent ILC instruments and draft articles. Secondary sources included academic books, journal articles, scholarly commentaries, official government statements, and documented international responses to the Maduro case. These materials were collected through library and documentary research and analyzed qualitatively using a deductive approach. The analysis applied the legal principles governing immunity ratione personae and the requirements of state practice and opinio juris to assess whether United States conduct contributed to the formation or modification of a customary international law rule or instead represented an isolated and contested state practice.

RESULTS AND DISCUSSION

Under the international law, incumbent Heads of State geberally enjoy immunity ratione personae from the criminal jurisdiction of foreign states during their term of office. However, the question of whether non-recognition of a person as Head of State affects his or her entitlement to immunity ratione personae remains debated. This issue has become particularly significant in the Maduro case. Upon closer examination, however, the issue is not limited to whether immunity exists, but also concerns who is entitled to determine whether an individual qualifies as the Head of State for the purpose of invoking such immunity. Immunity ratione personae is closely connected to the principle of sovereign equality of states, while recognition is generally regarded as a matter closely associated with a state's foreign policy. This creates a potential tension between the legal character of immunity and the political dimension of recognition. Some scholars therefore argue that recognition by other states should not determine whether a Head of State is entitled to immunity. Akande (2004), for example, argues that the position adopted by a foreign state concerning the status of a particular government does not, by itself, determine the immunity of the officials concerned, because the question of recognition and the question of immunity involve distinct legal considerations. From this perspective, making recognition a prerequisite for immunity would allow the political position of one state toward another state's government to influence the application of a rule of international law concerning personal immunity. Similarly, Okplewu (2026) argues that non-recognition does not, in itself, remove immunity ratione personae because such immunity is attached to the official status of the officeholder and is connected to the representation of the state.

Both arguments are consistent with the principle of sovereign equality of states and the meed to preserve stability in international relations. If recognition by other states were treated as an prerequisite for immunity ratione personae, the protection afforded to a head of state could become dependent upon the political preferences of foreign states. This would potentially undermine the function of immunity as a procedural protection connected to the exercise of state functions. It would also create whenever states adopt different poitions regarding the legitimacy or recognition of a government. Nevertheless, separating recognition from immunity does not completely resolve the

problem. The arguments advanced by Akande and Okplewu primarily address whether non-recognition can remove an immunity that already attaches to a head of state. A prior question, however, arises where two or more individuals claim to represent the same state: which individuals is entitled to invoke the immunity attached to the office of head od state? This question is particularly relevant where recognition is contested because immunity is not granted to an abstract position independently of the person occupying it; rather, immunity ratione personae operates in connection with the status of the individual who actually holds the relevant state office. Consequently, determining who may invoke immunity may require considerations of the individual's status as the incumbent head of state, the position of the state concerned, and the circumstances surrounding competing claims to governmental authority.

The Maduro case illustrates this problem clearly. In 2019, the United States recognized Juan Guaidó as the interim President of Venezuela (United States Department of State, 2019). However, Maduro continued to excercise effective governmental control and retained control over key state institutions within Venezuela. The more fundamental question is which individual should be regarded as entitled to invoke the immunity attached to the office of head of state when competng claims to that office exist. This also raises a further question concerning who has the authority to determine whether an individual is entitled to invoke immunity ratione personae. The immunity is not created simply by the recognition of another state, nor can it be understood as a privilege that a foreign state freely grants to a particular individual. Rather, it follows from the individuals status as an incumbent head of state under international law. The difficulty arises when that status itself is disputed, as accured betwen Maduro and Guaidó. In such circumstances, the issue is not who "grants" the immunity, but how a foreign state determines which individual is entitled to invoke the immunity attached to the office of head of state. In this context, recognition may have practical relevance in determining how a state a competing claim to governmental authority, particulary in diplomatic relations. However, this does not necessarily mean that recognition determines the existence of immunity ratione personae as a matter of international law. Treating recognition as the source of immunity would risk making the enjoyment of a legal protection dependen ton the political position of another state. The Maduro case therefore demonstrates that the more difficult question lies not in who grants immunity, but in how the status of the person entitled to invoke it is identified when legitimacy and authority of head of state are contested. This created a situation in which the question of who represented Venezuela internationally became closely connected to the question of who exercised effective governmental authority within the state. Maduro's position was supported by his continued exercise of governmental authority, while Guaidó claim to the presidency was supported by recognition from the United States and a number of other states. This situation demonstrates that the relationship between recognition and immunity is more complicated than simply asking whether non-recognition removes immunity. The more fundamental question is which individual should be regarded as entitled to invoke the immunity attached to the office of Head of State when competing claims to that office exist. Theoritically, recognition and immunity remain distinct legal

concepts. Recognition concerns a state's position regarding the status or legitimacy of a government, whereas immunity concerns the jurisdictional protection accorded to certain state officials in connection with their official position. However, where competing claims to governmental authority exist, the practical application of immunity may become connected to the question of which individual is regarded as occupying the relevant state office.

The United States practice in relation to Maduro can therefore be understood not merely as an attempt to deny or limit an individuals immunity ratione personae, but also as part of a broader position concerning who was entitled to represent Venezuela in diplomatic and international relations. This position was expressly reflected in the United States diplomatic practice. In January 2019, the United States stated that it did not recognize the Maduro regime as the government of Venezuela and that it would conduct its relations with Venezuela throught the interim government of juan Guaidó. The United States therefore did not merely adopt political position concerning the Venezuelan government; it also attached legal and diplomatic consequences to its recognition of Guaidó, including regarding the representation of Venezuela in international relations. be seen not only as an attempt to remove someones immunity ratione personae, but also as an attempt to determine who is considered entitled to represent Venezuela in diplomatic and international relations.

The significance of this practice, however, should not be determined solely from the perspective of the United States. The fact that a number of states also recognized Guaidó is relevant to the assesment of the broader international response, but such recognition does not automatically establish a customary rule concerning Head of State immunity. What must be examined is whether the positions adopted by other states were accompanied by legal consequences of recognition or non-recognition for immunity. This distinction is important because, under the law of customary international law, state conduct and the legal conviction accompanying that conduct must be assessed separately. Acordingly, the Maduro case raises a broader question concerning the possible implications of the United States practice for customary international law. The relevant issue is not simply whether the United States treated Maduro as lacking the status necessary to invoke immunity ratione personae, but whether this position, together with the responses and legal positions of other states. Provides evidence of a broader change in state practice and opinio juris. Only through such an assessment can it be determined whether the United States practice represents an isolated position or contributes to the development or possible modification of an existing customary rule concerning the immunity of Heads of State.

Therefore, the practice of the United States alone is not sufficient to demonstrate a change in customary international law. Under the law of customary international law, the existence of a new rule or a change to an existing rule requires as an assessment of both state practice and opinio juris. State practice must be sufficiently general, widespread, representative, and consistent, while opinio juris requires evidence that states regard the practice as legally required, permitted, or recognized under international law (ILC, 2018). When these requirements are applied to the Maduro case,

there is no sufficiently widespread and consistent international practice concerning the denial of immunity ratione personae to an unrecognized head of state. Although several states followed the United States in recognizing Juan Guaidó as Venezuelas interim president, other states maintened relations with or continued to recognize Nicolás Maduro as Venezuelas president. More importantly, the states that recognized Guaidó did not necessarily adopt the position that non-recognition itself removed or limited Maduro's immunity ratione personae. Their positions were primarily expressed in the context of the Venezuelan political and constitutional crisis and the question of wich authority should be regarded as representing Venezuela. Therefore, the international response cannot readily be characterized as a sufficiently uniform and representative practice establishing a legal rule that non-recognition affects the personal immunity of head of state. The absence of sufficiently consistent state practice is also accompanied by a lack of clear evidance of Opinio Juris. There is no sufficient evidence that the states recognizing Guaidó did so on the basis of a legal conviction that international law permits a state to deny immunity ratione personae to a head of state solely because that individual is not recognized by the forum state. In assessing opinio juris, the relevant question is not merely why a state recognized a particular government, but whether the state regarded its conduct as reflecting a right or obligation under international law. In the Maduro case, the available state positions lagerly concerned democratic legitimacy, constitutional authority, and the political crisis in Venezuela. These considerations may explain the states conduct, but they do not by themselves demonstrate the existence of a legal conviction that recognition is a prerequisite for the enjoyment of immunity ratione personae.

As a result, it is dificult to conclude that a new customary international law rule has been established whereby the non-recognition of a head of state permits the denial of immunity ratione personae. The Maduro case instead demonstrates the difficulty of maintaining a complete separation between recognition and immunity when competing claims to governmental authority exist. While recognition and immunity remain distinct legal concepts, the practical determination of who may invoke immunity ratione personae may become connected to the question of who is regarded as occupying the office of head of state. Accordingly, the author argues that the actions of the United States in the Maduro case have not, by themselves, altered the customary international law governing immunity personae. The United States position may constitute a relevant instance od state practice, but it does not satisfy, on its own, the requirements necessary to establish a change in customary international law. The broader international response also does not provide sufficient evidence of a general and consistent practice accompanied by opinio juris supporting suvh a change. Nevertheless, the Maduro case may indicate an emerging development that deserves attention: the increasing tendency to consider recognition as a factor in determining which individual is treated as the head of state for the purposes of invoking immunity ratione personae. This development should not yet be regarded as a new customary rule. Rather, it can be understood as a form on non-normative contestation of the existing relationship between recognition and immunity. The practice therefore does not demonstarate that the customary rule has

already changed, but it may contribute to a non going debate over whether, and ude rehat circumstances, recognition may become relevant to the identification of the individual entitled to invoke head of state immunity.

Overall, the Maduro case does not provide sufficient basis to conclude that the customary international law on immunity ratione personae has changed. The practice of the United States is relevant as a form of state practice, but it has not been followed by a sufficiently widespread, consistent, and representative practice of other states. More importantly, there is no clear evidence that states recognized Guaidó on the basis of a legal belief that non-recognition could remove or limit Maduro's personal immunity. Their positions were largely connected to the political and constitutional crisis in Venezuela and the question of who should represent the Venezuelan state. Therefore, the Maduro case is better understood not as a change in the existing rule of immunity ratione personae, but as a situation that exposes the practical difficulty of separating recognition from immunity when competing claims to governmental authority exist. Recognition may become relevant in determining who is treated as the head of state for the purpose of invoking immunity, but this does not mean that recognition has become a legal requirement for immunity under customary international law. At this stage, the practice remains a form of non-normative contestation rather than established change in the customary rule.

CONCLUSION

United States practice in the Nicolás Maduro case demonstrates that the relationship between governmental recognition and immunity ratione personae under international law remains unresolved. Although the United States did not recognize Maduro as the legitimate president of Venezuela, its conduct was insufficient to establish a change in the customary international law governing immunity ratione personae. To date, there has been no sufficiently widespread, consistent, and representative state practice, accompanied by the requisite opinio juris, to support the emergence of a customary rule permitting states to deny an incumbent head of state personal immunity solely on the basis of non-recognition.

The significance of the Maduro case, therefore, lies not in demonstrating that the United States has modified an existing customary rule but in highlighting the legal uncertainty arising when international recognition and effective governmental control diverge. Under such circumstances, the central issue concerns not only the existence of personal immunity but also the determination of which individual is legally entitled to invoke that immunity when competing claims to the office of head of state arise. Recognition may have practical implications for how states address competing claims to governmental authority, particularly in diplomatic relations. However, recognition alone cannot be regarded as the source of, or an indispensable legal prerequisite for, immunity ratione personae under existing customary international law.

Accordingly, this study argues that United States practice in the Maduro case has not altered the existing customary international law governing immunity ratione personae. Rather, it has challenged traditional understandings of the relationship

between governmental recognition and personal immunity, particularly where international recognition and effective governmental control are exercised by different individuals. Although the case has not established a new customary rule, it has highlighted an unresolved legal question concerning how the status of a head of state, and consequently the identity of the individual entitled to invoke personal immunity and represent the state internationally, should be determined when competing claims to governmental authority exist. At this stage, United States practice is therefore more appropriately characterized as a form of non-normative contestation than as sufficient evidence of a change in customary international law.

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AUTHOR'S CONTRIBUTION

All authors contributed to the preparation of this article. Helen Palisca, was responsible for the conceptualization of the study, data collection and analysis, interpretation of the results, and manuscript preparation. The other authors contributed to the review, editing, and final approval of the manuscript.

GENERATIVE ARTIFICIAL INTELLIGENCE USAGE STATEMENT

The authors declare that no generative artificial intelligence was used in the preparation of this article.

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