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Immunity, Inviolability and Power in International Law

From Head-of-State Immunity to Diplomatic Protection: The Cases of Maduro and Glas

— The Metropolitan Detention Center in Brooklyn, New York City, is well-known for its “celebrity” inmates such as Sean ‘Diddy’ Combs, R. Kelly and Juan Orlando Hernández, the former president of Honduras. All of them awaited trial there. Since the beginning of January 2026, this facility is housing another high-profile figure: the Venezuelan politician Nicolás Maduro whose role as the incumbent president of Venezuela is contested by the United States (see [here](#)). He is not the only (former) Latin American politician currently in custody. Jorge Glas, the former Vice President of Ecuador, is serving a sentence on charges including corruption but – unlike Maduro – in his home country. He was arrested during a raid by Ecuadorian police forces on the Mexican embassy in Quito (for more details read [here](#)).

Issues to Be Considered

In March 2020, the U.S. issued an arrest warrant against Maduro and others on charges of narco-terrorism, conspiracy to import cocaine and other offenses (see [superseding indictment](#)). On January 3, 2026, U.S. military forces entered Venezuelan airspace, raided a residence where Maduro was staying, and arrested him along with his wife, Cilia Flores. They were brought to a U.S. naval vessel and then to U.S. territory. He now faces trial before a court in the Southern District of New York (see [here](#)). A significant debate – both among legal scholars and beyond – has emerged regarding the compliance of these actions with public international law and whether any legal justification exists for such *prima facie* violations of international law.

Similarly, in Latin America, in December 2023 former Ecuadorian Vice President Jorge Glas sought refuge in the Mexican embassy in Quito in order to avoid arrest on charges of (inter alia) corruption. On April 5, 2024, after Glas had resided in the embassy for several months, Ecuadorian police forces entered the premises without the consent of the head of mission, arrested Glas, and took him into custody (see [here](#)).

This article briefly outlines the legal concepts of personal immunity and inviolability of diplomatic premises before applying them to the cases of Nicolás Maduro and Jorge Glas. The reaction of the international community concerning both cases is then being illustrated and discussed. Finally, it is shown that in their reactions to those operations states adopted strikingly different positions, even though in both cases the legal assessment is quite obvious – showcasing once more the often-criticized double standard in international law.

On Personal Immunities and the Inviolability of Diplomatic Premises

International law recognizes immunities for certain high-ranking state officials, such as heads of state, heads of government, and ministers for foreign affairs. These officials enjoy personal immunity (*ratione personae*) from foreign criminal jurisdiction during their term in office, covering both official and private acts. In 2022, the ILC adopted “[draft articles on the immunity of state officials from foreign criminal jurisdiction](#)”. Art. 3 confirms the personal immunity *ratione*

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personae of “Heads of State, Heads of Government and Ministers for Foreign Affairs”. Although these draft articles are in themselves not legally binding, they claim to reflect customary international law (see page 215 of the draft [articles](#)). Under international law states are not even entitled to issue an arrest warrant against incumbent foreign politicians. The ICJ confirmed in the *Arrest Warrant* Case of 2002 that an arrest warrant against an incumbent foreign minister violates personal immunity and must be withdrawn (see paras. 78(2) and 78(3) of the judgment).

As with state representatives enjoying immunity, premises of a diplomatic mission are inviolable, and agents of the receiving state may not enter them without the consent of the head of mission, as stipulated in art. 22 of the Vienna Convention on Diplomatic Relations ([VCDR](#)). Consequently, there have been numerous instances in which individuals sought refuge in embassies with the consent of the sending state. In the *Asylum* Case of 1950, the ICJ held that the grant of diplomatic asylum was not in conformity with the applicable treaty provision (art. 2 para. 2) of the Havana Convention on Asylum of 1928 (page 288 of the judgment). However, in the subsequent *Haya de la Torre* Case of 1951, the Court clarified that the receiving state could not compel the surrender of the individual from the embassy (page 82 of the judgment).

Application to the Cases of Maduro and Glas and International Reactions

Legal scholars mostly agree that both actions – by the U.S. and by Ecuador – constitute violations of rules of international law (see for example [here](#), [here](#) and [here](#)).

The fact that the U.S. does not recognize Maduro as head of state is a domestic determination and does not affect the application of international law as the arrest warrant is unlawful under international law (see the abovementioned *Arrest Warrant* Case, para. 76). Also, the ILC has emphasized that, for the purposes of immunity, the manner in which a head of state assumes office is irrelevant (see page 216 of the ILC draft [articles](#)). There thus appears to be little convincing legal justification for Maduro’s arrest under international law (see for example [here](#)). In the UN Security Council, the U.S. ambassador nevertheless [tried to justify](#) the arrest with Maduro’s role as an indicted fugitive while not being recognized as Venezuelan head of state. Furthermore, the battle against narcotics trafficking and a threat on U.S. and regional security are invoked to justify the arrest.

Although Venezuela – a sovereign state – has been overwhelmed by a military strike by U.S. armed forces, who arrested Maduro, political leaders – especially from the Western world – tend to be very reluctant in accusing the U.S. of having committed a violation of international law. As Maduro ruled Venezuela in a totalitarian manner and maintained good ties with Moscow and Beijing, there was little to no compassion with him among Western politicians. The EU High Representative for Foreign Affairs and Security Policy, Kaja Kallas, [vowed](#) to uphold the “principles of international law and the UN Charter” but at the same time repeated the EU’s point on the lack of legitimacy of Maduro as elected president of Venezuela and the need to lead this state into democracy. According to a press release, German Chancellor Merz [said](#) that the legal evaluation of the U.S. military operation is “complex” and that the principles of international law must apply among states “in general”. In a striking contrast, Latin American leaders from Brazil, Colombia and Cuba [laid much](#)

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greater emphasis on the condemnation of the U.S. strike itself rather than on the (il)legitimacy of Maduro as the Venezuelan head of state.

The UN Security Council set an urgent meeting to discuss the incident two days after it happened. The debate was conducted in a very intense manner and divided the Council into two blocs: While states like Russia and China talked about an “armed aggression” others like Argentina and Paraguay welcomed the arrest of Maduro. As a matter of fact, the action of the U.S. had no chance of being condemned by the Security Council as the U.S. would have vetoed any resolution on this topic. Moreover, neither the U.S. nor Venezuela generally acknowledge the jurisdiction of the ICJ so that no decision of an international court on the (non-)compliance of the U.S. action with international law can ever be expected. The Organization of American States (OAS) primarily emphasized the need for a peaceful democratic transition and long-term political stability in Venezuela, rather than condemning the actions of the U.S. as a violation of international law. One gets the impression that states aim to downplay the significance of the U.S. military strike even though there are no doubts regarding its illegality.

In the case of Glas, Ecuador has accused Mexico of abusing the inviolability of its embassy in Quito in order to grant asylum to Glas. However, it was Ecuador that entered the Mexican embassy without consent, thereby violating a fundamental principle of diplomatic law. It seems that the arrest of Glas in the embassy has a larger impact on diplomatic relations in the region than the arrest of Maduro. The resulting diplomatic tensions were caused less by Glas’s arrest per se than by the raid on the embassy. At the time of his arrest, Glas was no longer Vice President, and thus personal immunity did not apply.

This incident triggered a large-scale diplomatic outcry extending beyond Ecuador and Mexico. Mexico severed diplomatic relations with Ecuador, as did Nicaragua. Moreover, the OAS condemned the action as inappropriate and thus as a violation of diplomatic norms. Also, UN Secretary General António Guterres expressed that the cardinal principle of the inviolability of diplomatic and consular premises must be respected in all cases.

Both, Mexico and Ecuador, have since initiated proceedings before the ICJ, which are currently pending (see here and here). Mexico alleges a violation of the inviolability of diplomatic premises, whereas Ecuador argues that Mexico was not entitled to grant diplomatic asylum to Glas. The rejoinders of both parties are expected by February 2027, making a decision before the end of 2027 unlikely. It is noteworthy that Ecuador itself once granted diplomatic asylum to WikiLeaks founder Julian Assange in its embassy in London, where he remained for nearly seven years. Although Assange was of course no state official, Ecuador seems to act highly contradictory when it on the one hand grants diplomatic asylum to a suspect but does not accept it when the embassy of another state grants it as well.

Different Attitudes of the International Community

Personal immunities and the inviolability of diplomatic premises are cornerstones of diplomatic law and generally pose significant legal obstacles to enforcement actions by foreign authorities.

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Violations can lead to serious diplomatic consequences, including the expulsion of diplomats or the severance of diplomatic relations (like Mexico and Nicaragua did with Ecuador).

The comparison of the two cases leads to a clear conclusion: while both situations involve violations of international law, their legal assessment is straightforward, but their political consequences are not. The arrest of Maduro appears hardly reconcilable with established rules on personal immunity, whereas Ecuador's raid on the Mexican embassy constitutes a textbook violation of the inviolability of diplomatic premises.

However, the reactions of the international community differ significantly. This discrepancy illustrates that the enforcement of international law remains, as ever, dependent on political power rather than legal consistency.

In the case of Maduro, the U.S. military strike is not uniformly criticized to the same extent and criticism is often paired with the questioned role of Maduro as head of state and a totalitarian leader. Only few states express solidarity with Maduro. When criticizing the U.S. for breaching the prohibition on the use of force, states seem to adapt a more rhetorical approach. But between the lines the idea that "the end justifies the means" indirectly emerges.

In the case of Glas, the reaction seemed to be more silent in media coverage than with Maduro but still, the international community took a more uniform approach in condemning this action of Ecuador as a violation of a fundamental principle of diplomatic law. This leads to the obvious and yet unfortunate observation, that states are less inclined to take on powerful states like the U.S.

In this sense, the two cases exemplify a persistent structural imbalance: international law sets clear rules, but their effectiveness ultimately depends on the willingness – and the ability – of states to enforce them. Also, a state's extent of participation in international forums plays a crucial role. For instance, states are free to decide whether to acknowledge the jurisdiction of the ICJ or not. Most violations of international law will never be examined by the ICJ because of a lack of admissibility. States seem more likely to acknowledge the ICJ's jurisdiction when they expect to regularly become "victims" of such kinds of violations and hope that the "offender" state acknowledges its jurisdiction as well in terms of reciprocity. Also, the position of a state in organs of the UN has a major impact on decisions like resolutions. This account especially in cases when a state is a "veto-power" in the Security Council, like the U.S. But even if a state is not entitled to veto a resolution of the Security Council autonomously, it can often use its good ties with a state which has the power to do so.

The reasons why individual states treat different violations of international law differently may be since these states have a special relation with the state that committed the breach and fear its reaction. No one wants to jeopardize good diplomatic and economic relations with a state. However, for international law to be effective, it is essential that clear breaches of international law are dealt with consistently and without exceptions, to strengthen states'



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awareness of the global need to comply with all norms of international law. It is a matter of smart diplomacy to draw attention to clear breaches of international law by a “friendly” state without having to fear retaliatory measures.

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