



**University of Vienna
School of Law**

Winter Semester 2016

Seminar Title: Immunities in International Law – Research Seminar

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Purpose and summary of the seminar

The legal phenomenon of Immunity is a shield protecting States and officials against the exercise of foreign jurisdiction exercised by administrative authorities, civil and criminal tribunals and courts. In this respect, immunity comes into conflict with accountability.

This seminar discusses specific legal and political features of the different kinds of immunity established so far by international law: the immunity enjoyed by diplomats and similar persons, by other officials or by States. Whereas diplomatic immunity has been developed very early, State immunities before foreign courts became particularly relevant recently, since States began to increasingly engage in commercial activities on a global scale. This issue has a bearing on the status of States as well as on the relationships between individuals and States. Accordingly, the course will be divided in diplomatic immunities (including also similar immunities such as consular immunities etc), State immunity in civil proceedings, and immunities of State officials in criminal proceedings under foreign jurisdiction.

This seminar is divided into the introductory phase and the preparation and presentation of the papers of the participants.

In the introductory phase, the basic understanding of the State will be presented together with its economic activities as well as its status in international law on the basis of the equality of States. This approach requires an assessment of the political implications such as the relation to accountability and ramifications of inter-State relations.

As to diplomatic immunities, the course will discuss the conceptual and political basis of this immunity, its scope *ratione personae*, *materiae* and *temporis*. It could even be discussed whether the present scope of this immunity is still justified under the actual conditions. This kind of immunity is not confined only the diplomats in the narrow sense, but extends also to consular agents, ad hoc diplomats. Also immunities enjoyed *ratione personae* such as head of States immunities will be included.

Further focus will be given to the different changes of the legal and political status of States in international relations and their subsequent effects which generated a restrictive approach to immunity. In this respect the present status of State immunity as well as the reasons for its existence and its

implications will be addressed. Particular emphasis will be given to the restriction of State immunity, the waiver and also situations where immunity cannot be granted. Focal points of this discussion will be the meaning of the State in this context, the criteria defining commercial acts, the problem of State enterprises, service contracts, personal injuries and, last but by far not least, the problem of enforcement. Other issues to be addressed are the present attempts to deny immunity in cases of grave violations of human rights, commission of international crimes or violations of *jus cogens* obligations. It has been argued that such a denial would constitute the only way to offer individuals who are victims of such crimes to make use of a judicial instance in order to obtain certain compensation for their suffering and to avoid impunity. State immunity will be compared to the immunities of international organizations.

These considerations lead to the part on the immunity of State officials before foreign national courts in criminal proceedings. In particular in recent times, this matter raised major concerns as it is discussed whether the immunities can still be invoked in the case of the commission of international crimes by State officials.

Syllabus of the course

1. **Introduction:** the different forms of immunity in international law and their objectives, their development
2. **Diplomatic immunities:**
 - a. Meaning and scope: Vienna Convention on Diplomatic Relations Articles
 - b. Vienna Convention on Consular Relations
 - c. United Nations Convention on Special Missions
3. **Head of State immunity:**
4. **State Immunities:** Definitions and their problems; the dependence on political parameters
5. **Different forms of consent to waiver of immunity**
6. **Exceptions to State immunity**
7. **The problem of measures of constraint: the different alternative**
8. **Problems connected with the United Nations Convention**
9. **The attempts to deny immunity in case of grave violations of human rights**
10. **Immunity of State officials from foreign criminal jurisdiction**
11. **Universal jurisdiction**
 - Cases of universal jurisdiction
 - Political problems