

Immunity *Ratione Materiae* in Action: Analysing a Former US President Trial Before the US Supreme Court and the Nature of Official Acts with Regard to the Arrest Warrant Case

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Abstract

*The United States (US) Supreme Court reversed the decisions of the lower courts by a 6-3 majority in favour of granting absolute immunity from criminal prosecution to former President Donald Trump from his conclusive and preclusive authority. The issue before the Court was whether a former president enjoys immunity for conduct involving official acts committed during his term in office and, if so, to what extent. While a minority of the Justices dissented on the fact that a former President enjoys no such immunity, the majority concurred that he enjoys immunity for official acts. The article examines the decision of the US Supreme Court regarding immunity *ratione materiae* and whether the decision is consistent with the rules of customary law granting such immunity. Since the issue of the President's official acts is still a significant concern, this article attempts to draw the line between official and unofficial acts. In other words, this article examines the following questions: (i) To what extent does the United States Supreme Court's decision grant criminal immunity to a former President for official acts committed while in office?; (ii) Is the Supreme Court's interpretation of presidential immunity consistent with the principles of customary international law, particularly immunity *ratione materiae*? And (iii) How can the distinction between official and unofficial acts of a President be legally and practically delineated? It argues that the nature of this immunity for a former president requires that such actions should be official and private, provided they are perpetrated while in office. It further argues that an act may not be unofficial merely because it is unconstitutional and violates applicable law. With lessons drawn from the Arrest Warrant decision, it is argued here that the decision of the Supreme Court appears to be consistent on the position of international law rules on immunity. The article further examines the immunity of Donald Trump as the current or incumbent US President by asserting that sitting Presidents enjoy both functional and personal immunity from criminal prosecution recognised by both national and international law before concluding remarks.*

Keywords: *immunity *ratione materiae*; United States Supreme Court, presidential immunity; official acts and unofficial acts of the President; arrest warrant judgment.*

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1. Introduction

For the first time in the history of the United States, a former President was prosecuted on criminal charges for actions taken while he was the President of the United States.² Accordingly, former President Donald J. Trump triumphed before the US Supreme Court on its decision delivered on 1 July 2024.³ Trump was the 45th President of the US from January 2017 to January 2021. In April 2024, a federal grand jury indicted the former President on four counts for conduct that occurred during his presidency after the November 2020 elections.⁴ In the indictment, Trump was alleged to have conspired to overturn the election result after losing the 2020 election.⁵ He was accused of intentionally disseminating false election fraud to obstruct the collecting, counting, and certifying of the election results.⁶ In the trial, Trump move to dismiss the indictment based on Presidential immunity. He argued that the President has absolute immunity from criminal prosecution for actions performed under his official responsibilities and official duties. The District Court (D.C) refused Trump's motion to dismiss the allegations and held that former President do not possess federal criminal immunity for any act.⁷ On appeal, the Columbia District Court Circuit affirmed and maintained the D.C decision that former President Trump do not possess immunity for any act. Not satisfied with the decisions of both courts, Trump decided to petition the Supreme Court of the United States. It is imperative to note that both the District Court and the District Court Circuit declined to decide whether the indicted conduct constitute official acts.⁸ Consequently, the matter before the US Supreme Court was to determine whether and if so, to what extent does a former president enjoy presidential immunity from criminal prosecution for conduct alleged to involve official acts during his tenure in office. As indicated earlier, in determining this case, the US Supreme made careful assessment since it was the first time for more than 230 years handling such matter

² See *Trump v. United States*, 603 U.S. 593 [2024-02-01]. Judgment of the Supreme Court of America, 2024, No. 23-939.

³ See An Overview of the Supreme Court's Presidential Immunity Decision-America Cornerstone Institute [online]. 2024-07-01[cit. 2025-04-14]. Available at: <https://americancornerstone.org/an-overview-of-the-supreme-courts-presidential-immunity-decision/>.

⁴ He was indicted on the following allegedly criminal actions (i) attempting to influence state officials to subvert the legitimate election results (ii) organizing fraudulent slates of electors (iii) conduct sham election criminal investigations; (iv) knowingly and fraudulently attempting to influence the Vice President's role in certifying electoral votes; and (v) utilizing the events of January 6, 2021, to levy false claims of election fraud and convince members of Congress to delay the certification.

⁵ See generally the *United States of America v. Donald J. Trump* [2023-12-01]. Judgment of the United States District Court for the District of Colombia, 2023, Criminal Action No. 23-257(TSC).

⁶ See Quinn, M. and Legane, L. *Trump immunity claim rejected by appeals court in 2020 election case* [online]. 2024-01-07 [cit. 2025-04-14]. Available at: <https://www.cbsnews.com/amp/news/trump-immunity-appeals-court-2020-election-case/>.

⁷ See Johnson, Carrie *Federal appeals courts rules Trump doesn't have broad immunity from prosecution* [online]. 2024-02-06]. Available at: <https://www.npr.org/2024/02/06/1223904739/trump-immunity-ruling>.

⁸ See Supreme Court Grants Trump Broad Immunity for Official Acts, Placing President Above the Law [online]. 2024-07-01. Available at: <https://www.aclu.org/press-releases/supreme-grants-trump-broad-immunity-for-official-acts-placing-presidents-above-the-law>.

dealing with the scope of the presidential power under the Constitution of the US. The Court noted as follows: *The nature of that power requires that a former President have some immunity from criminal prosecution for official acts during his tenure in office. At least with respect to the President's exercise of his core constitutional powers, this immunity must be absolute. As for his remaining official actions, he is entitled to at least presumptive immunity.*⁹

Based on this decision, former Presidents of the US enjoy absolute immunity from criminal prosecution for official acts and presumptive immunity for any other action taken while in office.¹⁰ Accordingly, the Supreme held that under constitutional structure of separated powers, the nature of Presidential power entitles a former President to absolute immunity from criminal prosecution for actions within his conclusive and preclusive constitutional authority. And he is entitled to at least presumptive immunity from prosecution for all his official acts. In other words, the US President exercise absolute and unquestionable powers for official acts committed while in office. However, there is no immunity for unofficial acts. In determining what constitute official acts and unofficial acts, and whether the decision of the Supreme Court is consistent with customary rules of immunity for former president as recognised by both the national and foreign national jurisdiction,¹¹ it is imperative to examine nature of immunity *ratione materiae*, in Part I. Part II examines the difference between official acts and unofficial acts with references from the *Eichmann* case.¹² Part III draws lessons from the decision of the International Court of Justice (ICJ) in the *Arrest Warrant* case with regards to customary international rules of immunity.¹³ Part IV analyses the immunity of Donld Trump as sitting President before reaching a conclusion in on the decision of the US Supreme Court regarding this matter.

2. Whether the Nature of Immunity *Ratione Materiae* in International Law Is Consistent with Supreme Court Judgment in the Trump Case

Perhaps, the one question that ought to be answered here is that whether the US

⁹ *Trump v. United States*, 603 U.S. 593 [2024-02-01]. Judgment of the Supreme Court of America, 2024, No. 23-939, para. 1.

¹⁰ See for example *Marbury v. Madison* [1803-02-24] Judgment of the United States Supreme Court, 5U.S (1Cranch)137, paras 165-66, where it held that a President's official acts can never be examinable by the courts.

¹¹ See for example the decision of the Israeli Supreme Court of Israel sitting as Court of Criminal Appeal in the *Attorney-General of the Government of Israel v. Adolf, the son of Karl Adolf Eichmann*, 36 *International Law Reports (ILR)*, para. 277, (the *Eichmann* case).

¹² Adolf Eichmann was a German who served the Nazi regime under Hitler. According to source, he was only answerable to Hitler himself. After the defeat of Germany and the Nazi regime, Eichmann escaped to Argentina. He was later captured by Israeli special force and brought to Jerusalem to stand trials for crimes committed against the Jews by the Nazi regime. His was indicted for 15 charges in total: four as crimes against the Jewish people; seven as crimes against humanity; one as a war crime; and three as membership of hostile organisation. Accordingly, 12 of these charges carry death penalty under the Nazi Collaborators Law enacted by Israeli Parliament in 1950.

¹³ See *Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo v. Belgium)*, [2002-02-14] Judgment of the International Court of Justice (ICJ) 2002, 3 Reports.

Supreme Court invented another rule on immunity *ratione materiae*. Consequently, to determine whether the US Supreme interpretation and application of immunity *ratione materiae* in the Trump case, it is vital to remember that the lower courts refused to recognise the immunity claims of Donald Trump. Accordingly, both D.C. and the Columbia District Circuit Court (acting as appeal court) held the Donald Trump as former President enjoyed no such immunity for official acts.¹⁴ However, as indicated earlier, the US Supreme Court reversed the decisions.¹⁵ The question as to what constitute official acts could only be properly answered by analysing immunity *ratione materiae*. In this regard, Immunity *ratione materiae* attaches to the official acts that are exercised in accordance with certain state policy by using the apparatus of the state, and since the officials who performed such acts acted as instruments of the state; it is the state rather than the official in his or her personal capacity that is responsible for such acts.¹⁶ Accordingly, immunity *ratione materiae* or functional immunity usually protects state officials from all official acts performed on behalf of the state.¹⁷ This functional immunity attaches to all official acts executed by the officials representing the state. Most state officials, including the heads of state, are accorded functional immunity since the acts they perform are sovereign acts or *acta jure imperii* in their official capacity. This immunity exclusively covers the acts performed in an official capacity on behalf of the state and not the person.¹⁸ In other words, immunity *ratione materiae* or functional or organic immunities as it may be referred include the following characteristic: (i) functional immunity relates to substantive law and therefore substantive defence. In addition, Immunity *ratione materiae* shields the state official from the substantive law of a foreign country or international law in cases where they would breach such laws even though they are expected to respect and follow the law. However, should a state official violate any law whether national or international, these violations or breaches are not attributed to the official but to their state; (ii) functional immunity covers official acts of any *de jure* or *de facto* state official or agent; (iii) functional immunity's continuation as it does not cease at the end of the release of the official functions of the state official because both the acts and its responsibility are legally imputed to the state; and (iv) finally, functional immunity is an *erga omnes*.¹⁹

¹⁴ See Goudswaard, A. *Trump's sweeping immunity claim rejected by US appeals court* [online]. 2022-02-06 [cit. 2025-04-14]. Available at: <https://www.reuters.com/legal/trump-not-immune-election-subversion-charges-us-appeals-court-rules-2024-02-06>.

¹⁵ See Howe, A. *Justices rule Trump has some immunity from prosecution* [online]. 2024-07-01 [2025-04-14]. Available online at: <https://www.scotusblog.com/2024/07/justices-rule-trump-has-some-immunity-from-prosecution/>.

¹⁶ See Pedretti, Ramona. „Immunity of Heads of State and State Officials for International Crimes”, (Leiden, The Netherlands: Brill | Nijhoff, 26 Nov. 2014), p. 305, Doi: <https://doi.org/10.1163/9789004287778>.

¹⁷ See Dugard, John, „Immunity, Human Rights and International Law Crimes”, *Journal of South African Law*. 2005, No. 3, p. 482-488, p. 484, <https://hdl.handle.net/10520/EJC54976>.

¹⁸ See Bates, ED. „State Immunity for Torture”, *Human Right Law Review (HRLR)*. 2007, Vol. 7, issue 4, pp. 651-680, p. 672, <https://doi.org/10.1093/hrlr/ngm025>.

¹⁹ See Hanson Ekor, A. *Immunities of African State Officials and the Requests to Cooperate Pursuant to Warrants issued under the Rome Statute*, Galda Verlag 2024, p. 102, ISBN-13 978-3962033644.

Consequently, the acts performed in this capacity escape foreign scrutiny because they are sovereign acts.²⁰

For these reasons, immunity *ratione materiae* will continue to protect the official acts even when the state official is no longer in office.²¹ Moreover, functional immunity will not cease but continue to shield both the current and former heads of state, as well as other state officials for acts performed in their official capacity in the interest of the state or general public while in office.²² Again, the rationale here is that the official acts would have been performed on behalf of and in the interest of the state.²³ That is why even when the state officials are no longer in office; the acts will be regarded as official acts covered by functional immunity. Furthermore, immunity *ratione materiae* applies only to official acts of the state and former president are protected by this immunity. It may not cover unofficial acts committed by former president while in office and consequently not applicable. However, all unofficial acts not amounting to crimes perpetrated in office are covered by immunity *ratione materiae* because such acts are attributed to the state. Based on these analyses, it appears that the nature of immunity *ratione materiae* is consistent with the Supreme Court decision in the Trump case in that there is wider coverage for official acts. Accordingly, the Supreme categorically held that under the US Constitution, the nature of Presidential power entitles a former President (in this regard Donald Trump as the former President) to enjoy absolute immunity from criminal prosecution for actions within his conclusive and preclusive constitutional authority. And that Trump is also entitled to at least presumptive immunity from prosecution for all his official acts, while there is no immunity for unofficial acts.²⁴ In other words, it stated in the *Trump* case that under the outer perimeter of immunity, official acts would be deemed immune as long as it is not “manifestly or palpably” beyond his authority.²⁵ These views are consistent with international law rules on immunity *ratione materiae* as stated in the *Arrest Warrant* case where it was asserted that no distinction can be made between acts performed by the state official in an official capacity and those performed in a private capacity or even acts performed before the person assumed office and those performed while in office.²⁶

²⁰ Koivu, Virpi. „Head of State Immunity v Individual Criminal Responsibility under International Law”, *Finish Yearbook of International Law*. 2001, Vol. 12, pp. 305-330, p. 312.

²¹ See Tomonori, Mizushima, „The Individual as Beneficiary of State Immunity: Problems of the Attribution of Ultra Vires Conduct”, *Denver Journal of International Law & Policy*, 2001, Vol. 29. no.4, p. 281. ISSN 0196-2035.

²² See Bradley, C.A. & Goldsmith, J.L. „Foreign Sovereign Immunity, Individual Officials, and Human Rights Litigation”, *Green Bag 2D*, 2010, Vol. 13, p. 18.

²³ See Mitchell, A.D. Leave Your Hat? On-Head of State Immunity and Pinochet *Monash University Law Review*. 1999, Vol. 25, no. 2, pp.30-31.

²⁴ See Lowell, H. *US supreme court rules Trump has absolute immunity for official acts* [online]. 2024-07-01 [cit. 2025-04-14]. Available at: <https://www.theguardian.com/us-news/ng-interactive/2024/jul/01/supreme-court-decision-trump-immunity-ruling>.

²⁵ See Read the full Supreme Court decision on Trump and presidential immunity [online]. 2024-07-01 [cit. 2025-04-14]. Available at; <https://www.pbs.org/newshour/politics/read-the-full-supreme-court-decision-on-trump-and-presidential-immunity>.

²⁶ See *Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo v. Belgium)*, [2002-02-14]. Judgment of the International Court of Justice (ICJ) 2002, 3 Reports para. 55.

In other words, this immunity is wider in scope and its main objective is to ensure that the state official may exercise and execute his functions without any interference by the judicial authorities.

3. Differences Between Official and Unofficial Acts of the President

Even though Justice Sotomayor in her dissenting statement held that the new official acts immunity is like a loaded weapon for any president that wishes to place his interest, political agenda, financial gain above the interest of the nation, official acts are immune simply because of the interest of the state and not personal gain.²⁷ The issue regarding official acts and unofficial was equally not dealt with by the lower courts and this appears to be a fundamental issue before Trump case. Accordingly, immunities are granted based on the actions of the state official or president,²⁸ whether such actions are official or unofficial and what constitute official acts by the president is not precisely defined according to Chief Justice John Roberts.²⁹ Consequently, the Supreme Court noticed that the key issue to determine whether former President Trump actions are immune is to differentiate official acts from unofficial acts. Conversely, in international law, one of the conundrums that judges and scholars have had to battle with is to draw a line of what constitute official acts and unofficial acts, especially with regard to former president, or senior state officials. The distinction between these acts is imperative because it would determine the nature of immunity granted to a former head of states. Thus, while official acts of former heads of state are automatically protected by international law and covered by immunity, unofficial or non-official acts are not protected by the state and international. Hence, former heads of state are criminally liable for these acts committed while in office. In the *Trump* case, it was held that former President Trump (now the 47 President of the US) is entitled to at least presumptive immunity from prosecution for all his official acts.³⁰ One of the undeniable facts taken into consideration when determining what constitute official and unofficial acts is that such acts should benefit the generally public or is of public interest rather than the individual official, and that such acts should be consistent with public policies.

In the Trump case, the Court noted that one of the ‘critical threshold issues in this case are how to differentiate between a President’s official and unofficial actions, and how to do so with respect to the indictment’s extensive and detailed allegations covering a broad range of conduct’. Consequently, in determining the distinction

²⁷ In the *Arrest Warrant* case *supra* para. 53, it was stated that in customary international law, the immunities accorded to state officials are not granted for their personal benefit, but to ensure the effective performance of their functions on behalf of their respective States.

²⁸ See *R v. Bow Street Metropolitan Stipendiary Magistrate, ex parte Pinochet Ugarte (Amnesty International Intervening) (No.3)* [1999] UKHL 17, [2000] 1 A.C. 147. Judgment of the United Kingdom House of Lords, 2000, para. 147.

²⁹ See Reinstein, J. *What constitutes an official act by a president* [online]. 2024-07-01 [cit. 2025-04-10]. Available at: <https://abcnews.go.com/politics/constitutes-official-act-president/story?id=111583865>.

³⁰ See Radford, A, et al, *Supreme court rules Trump is entitled to some immunity in January 6 case* [online]. 2024-07-01 [cit. 2025-04-17]. Available at: <https://www.cnn.com/politics/live-news/trump-immunity-supreme-court-decision-07-01-24/index.htm>.

between official and unofficial acts the following guidelines are often used: (i) when the President act in accordance with his Constitutional and statutory, he takes actions to perform the function of his office. However, some Presidential conduct may and can be qualified as official acts even when not obviously connected to constitutional and statutory provision; (ii) in distinguishing official from unofficial acts, courts may not inquire into the President's motives. This is because such inquiry would open the floodgate or risk the examination of the most official acts and conduct by the judiciary for improper purposes.

Consequently, the issue of official acts and the basis for the granting of immunity *ratione materiae* was adjudicated in the jurisprudence of the International Criminal Tribunal for the Former Yugoslavia (ICTY) in the case of the *Prosecutor v. Blaskic*, in which the Appeals Chamber provided as follows: *The Appeals Chamber dismisses the possibility of the International Tribunal addressing subpoenas to State officials acting on their official capacity. Such officials are mere instruments of a State, and their official action can only be attributed to the State. They cannot be subject to sanctions or penalties for conduct that is not private but undertaken on the behalf of the State. In other words, such State officials cannot suffer the consequences of wrongful acts which are not attributable to them personally but to the state on whose behalf they act: they enjoy so-called functional immunity. This is a well-established rule of customary international law going back in the eighteenth and nineteenth centuries, restated many times since.*³¹

As a matter of fact, former presidents are entitled to absolute and presumptive immunity for their official actions under the US Constitution after the landmark decision in the *Trump* case. Official acts therefore are exempted from judicial scrutiny. Where the President exercise such authority, congress cannot act on, and courts cannot examine the President's action as he enjoys absolute immunity for his conclusive and preclusive authority. In addition, the President of the US also benefits from the outer perimeter of his official acts. For example, according to the Supreme Court, most of the President's public communication are covered or falls within the outer perimeter of his official responsibility.³² Moreover, when the President acts according to the Constitution or statutory authority, his actions are official and therefore covered by immunity *ratione materiae* because he acts in an official capacity. Conversely, courts may not regard an action unofficial merely because its allegedly violates a general applicable law or statute. Again, official acts are committed as a mere arm or mouthpiece of a state and are acts of that state rather than acts of the official personally.³³ In other words, the state official cannot be called to account for these acts in their personal capacity. This rule therefore is a substantive defence available to state officials

³¹ See *Prosecutor v. Blastic*, [1997-07-18] Case No.IT-95-14. Appeal Chamber, Judgment on the Request of the Republic of Croatia for review of the decisions of Trial Chamber II of 18 July 1997 para. 38.

³² See Debusmann, B. *Trump has some immunity from prosecution, Supreme Court rules* [online]. 2024-07-01 [cit. 2025-04-20]. Available at: <https://www.bbc.com/news/articles/czrrv8yg3nvo.amp>.

³³ See Rosalina Alebeek, V. „National Courts, International Crimes, and the Functional Immunity of State Officials”, *Netherlands International Law Review (NILR)*. 2012 Vol. 59, issue 1, pp. 5 - 41, DOI: <https://doi.org/10.1017/S0165070X12000022>.

for any of the official acts he or she may have committed.³⁴ However, unofficial acts amount to serious criminal violation and this include for example; crimes against humanity, genocide, war crimes, crimes of apartheid, torture and enforced disappearance.³⁵ Against these acts there is no immunity *ratione materiae*. In essence, all official acts of former US Presidents are immune, and the immunity may even cover unofficial acts under the outer perimeter as they are not manifestly or palpably. However, as indicated in this article, there is no immunity for unofficial acts as such action may amount to crime. For example, in *Eichmann* case, one of the defences Eichmann pleaded was that the crimes against humanity he had allegedly committed were acts of the German state and that he as an agent of the state could not be held personally responsible. The Israeli Supreme Court rejected Eichmann defence and maintained that persons who commit international crimes such as crimes against humanity must be personally responsible for such acts and that the act falls completely outside the jurisdiction of the sovereign state that ordered or ratified their commission, therefore the individuals cannot shelter behind the official character of their task. In addition, the opinion of the US Supreme Court regarding immunity *ratione materiae* is consistent with some of the views expressed by the ICJ judges in the *Arrest Warrant* case.

4. Lessons from the Arrest Warrant Case and Customary Rules on Immunity

The issue under examination regarding this section is whether Trump's triumph at the US Supreme Court has implications for customary rules on immunity. Accordingly, the *Arrest Warrant* case and the *Trump* case appear to be similar in the sense that both officials were tried for crimes perpetrated when they were no longer in office. Also, their matters were initiated by the domestic courts. However, the former was finally decided by the ICJ and the issue of functional immunity pertaining to former state officials was decided by the same Court. The key issue to be decided by the US Supreme Court was when may a former President be prosecuted for official acts taken during his term of office and this equally applies to the *Arrest Warrant's* decision.

Accordingly, by way of summary of the facts, the *Arrest Warrant* case is concerned with an arrest warrant issued on 11 April 2000 by an investigating judge of Brussels, Belgium against Mr Abdulaye Yerodia Ndombasi, an incumbent Minister of Foreign Affairs of the Congo accusing him for offences which constitutes serious breaches of the Geneva Convention of 1949 and its Protocols as well as crimes against humanity.³⁶ One of the submissions of the Congo is that by issuing and circulating an

³⁴ See Wedgwood, R., „Augusto Pinochet and the International Law”, *McGill Law Journal*. 2000, Vol. 46, pp. 241-253, p. 244, <http://hdl.handle.net/20.500.13051/1582>.

³⁵ For example, in the *Pinochet* case, the House of Law held that former President General Augusto Pinochet was held criminally responsible for the act of torture which he had committed when he was in office and also that torture is not an official.

³⁶ See *Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo v. Belgium)*, [2002-02-14]. Judgment of the International Court of Justice (ICJ) 2002, 3 Reports para.13.

international arrest warrant against an incumbent state official, Belgium has violated the rule of customary international law regarding absolute inviolability and immunity from criminal process of incumbent Minister, and also the equality of state principle.³⁷ The Belgian contention that at the time of the hearing, Mr Yerodia was no longer the Minister of Foreign Affairs who was ejected by the ICJ and the Court noted that the character of the dispute has not changed, which was the lawfulness of the arrest warrant issued on 11 April 2000 to an incumbent Minister of Foreign Affairs.³⁸

After careful examination of this matter,³⁹ the Court decided that there is no customary international law exception to the rule accorded to immunity from jurisdiction and inviolability to incumbent Minister of Foreign Affairs, and senior state officials like heads of state when they are accused of crimes or have committed war crimes or crimes against humanity. The ICJ further assert there is no exception to the rule granting immunity to heads of state where they are suspected of having committed crimes in international law. Certainly, Donald Trump did not commit any international crimes. The underlined principle here is that it is very difficult to prosecute incumbent presidents before an international or national jurisdiction for crimes committed while in office and it does not matter whether such crimes were committed in his or her official or unofficial capacity. In fact, in the *Trump* case, the US Supreme Court granted immunity to conduct, or acts committed which may be governed by the Constitution. Consequently, the decision of the ICJ in the *Arrest Warrant* case regarding the immunity and official capacity of the incumbent heads of state is consistent with the US Supreme Court decision in the *Trump* case because immunity was recognised for official acts. Based on the decision, Donald Trump or any US President enjoys absolute immunity for official acts committed while in office and these acts are not subject to judicial scrutiny. The US President also enjoys immunity for acts not covered or granted by the Constitution (outer parameter acts). In addition, Customary law rule lifting immunity *ratione materiae* applies to international crimes committed in private capacity after the state official is no longer in office. In other words, international crimes perpetrated in official capacity are covered by this immunity and this appears to be supported by the US Supreme Court decision. Accordingly, Trump charges were nowhere near serious international crimes such as crimes against humanity, war crimes, the crimes of genocide and aggression, torture, and terrorism where immunity *ratione materiae* is inapplicable, and there is no immunity because they are unofficial acts. In this regard, the decision of the US Supreme Court is consistent with customary law rules applicable to immunity *ratione materiae*, hence charges against former President Trump are covered by this immunity. Moreover, it was further asserted the rule lifting immunity *ratione materiae* for state officials is determined by the court and not customary international law. Consequently, one may deduce that the decision taken in *Arrest*

³⁷ See *Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo v. Belgium)*, [2002-02-14] Judgment of the International Court of Justice (ICJ) 2002, 3 Reports para. 12.

³⁸ See *Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo v. Belgium)*, [2002-02-14]. Judgment of the International Court of Justice (ICJ) 2002, 3 Reports para. 40.

³⁹ For example, in paragraph 58 of the *Arrest Warrant* case, the ICJ examined Article 7 of the IMT Charter, Article 6 of IMTFE, Article 7(2) of the ICTY, Article 6(2) of the ICTR and Article 27 of the Rome Statute.

Warrant case intended to prevent the prosecution of senior former state officials for crimes committed when they were in office. The rationale for this reasoning is that the crimes were perpetrated under official capacity and are not private acts.

Another point to consider here is whether the actions and charges for which Trump was accused falls under official acts or private act. Just as a reminder here is that former President Trump was accused of intentionally disseminating false election fraud, and it appears that these charges may have been classified as official acts carried out in official capacity, hence, the application of functional immunity to these charges. In addition, the US Supreme Court decision granting Donald Trump as former President immunity for his action is consistent with the *Arrest Warrant* decision because the official nature of the actions and Constitutional mandate of the office of the President equally granted him conclusive and presumptive immunity, making these acts unexaminable before the courts. In all, in the *Arrest Warrant* case, it was held that immunity and inviolability protect the president or senior state officials against any act of the authority of another state and no distinction may be drawn between official acts or private acts, provided the official is in office, the acts are all immune. However, immunity will only be lifted if the acts in question amount to crime. Equally, unofficial, or private acts that does not amount to crime are covered by this functional immunity.⁴⁰ This view appears to be consistent with the outer perimeter principle of the US Supreme Court regarding immunity *ratione materiae* of former President Trump, and absolute immunity for officials acts. There is no doubt that Trump as the current US President enjoys both functional and status immunity while exercising the duties of the Office of the President.

5. The Position of Donald Trump as US President

Trump as the US President is protected by immunity *ratione personae* and immunity *ratione materiae* for official acts and private acts after the elections in November 2025. It is imperative to note here that President Trump is coming in as the 47th US President for his second and last mandate. He was first elected as the 45th US President in 2016. He failed the re-elections in 2020 to Joe Biden, who was the current and outgoing US President after Trump victory in the November 2024. Consequently, President Trump was official handed power as US President on 20 January 2025 and his position entitled him to enjoy personal immunity recognised by the US courts and in international law. This immunity is also known as status immunity, personal immunity attached to an office or status.⁴¹ In addition, immunity *ratione personae* is absolute while the state official is in office and comes to an end when the person is no

⁴⁰ See *Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo v. Belgium)*, [2002-02-14]. Judgment of the International Court of Justice (ICJ) 2002, 3 Reports para. 54.

⁴¹ See Gaeta, Paola. „Ratione materiae immunities of former heads of state and international crimes: the Hissène Habré case”. In: *Journal of international criminal justice*, 2003, p. 186–196. Doi: 10.1093/jicj/1.1.186.

longer in office or has abdicated his or her office.⁴² State officials entitled to this immunity are completely immune from the jurisdiction of other states in both civil and criminal jurisdictions for acts, which they would have performed in an official capacity and equally those carried out in private capacity.⁴³ Moreover, immunity *ratione personae* also shields the state officials for actions amounting to international crimes irrespective of whether the actions concerned were executed before the person assumed office or when in office.⁴⁴ Furthermore, this immunity is granted to only high-ranking and top state officials in office. Consequently, under customary international law, President Trump enjoys absolute immunity and inviolability from criminal jurisdiction as sitting president. This absolute immunity also applies before national courts.⁴⁵ This view was also expressed in support of the immunity of a former president for official acts committed while in office. Moreover, personal immunity or immunity *ratione personae* or status immunity consist of the following: (i) a procedural law and procedural defence as it defends state officials from civil and criminal jurisdiction; (ii) immunity that is totally inviolable because it covers official or private acts performed by state officials while in office;⁴⁶ (iii) immunity that is intended to protect only a limited category of state officials such as diplomatic agents, heads of state, heads of government and Ministers of Foreign Affairs according to the ICJ judgment in the *Arrest Warrant* case; (iv) immunity that is expected to end after the termination of the official functions of the state official; and (v) finally, immunity *ratione personae* is *erga omnes*. In other words, the personal immunity of the president enable him to act with impunity before any criminal jurisdiction and this view was supported by the ICJ in the *Arrest Warrant* decision where it held that it has been unable to deduce from this practice that there exists under customary international law any form of exception to the rule according immunity and inviolability to incumbent or sitting presidents where they are suspected of having committed any international crime such as war crimes or crimes against humanity.

⁴² See Murphy, Sean D. "Immunity Ratione Personae of Foreign Government Officials and Other Topics: The Sixty-Fifth Session of the International Law Commission." *American Journal of International Law* 108, no. 1 (2014): 41–57, p. 46, <https://doi.org/10.5305/amerjintellaw.108.1.0041>.

⁴³ See *R v. Bow Street Metropolitan Stipendiary Magistrate, Pinochet Ugarte (No.3)* [1999] UKHL 17, [2000] 1 A.C.147 paras. 201–202, *per* Lord Browne-Wilkinson (indicating that this immunity enjoyed by a head of state in office is absolute immunity attached to the person of the head of state, which renders him immune from all actions or prosecutions whether they relate to matters done for the benefit of the state).

⁴⁴ See Gaeta, P., *Immunity of States and State officials: A Major Stumbling Block to Judicial Scrutiny?*, in Antonio Cassese (ed), *Realizing Utopia: The Future of International Law*, Oxford University Press USA 2012, p. 228.

⁴⁵ Cassese, A., „When May Senior State Officials Be Tried for International Crimes? Some Comments on the Congo v. Belgium Case”, *European Journal of International Law (EJIL)*. 2002, Vol.13, no.4, p. 853–875, p.862. ISSN 0938-5428.

⁴⁶ See Michael A. Tunks, „Diplomat or Defendants? Defining the Future of Head-of-State Immunity”, *Duke Law Journal*. 2002, Vol. 52, p. 651–682, p. 677.

6. Conclusions

President Trump was indicted after losing the elections in 2020 and four years later, (that is in 2024, following the elections on 05 November) he overwhelmingly won the election to become the 47 President of the United States. Accordingly, while he was the former president, the Supreme noted that he is protected by the US Constitution and under international law by immunity *ratione materiae*. Now, that he is the 47th US President for the second and last mandate in office since 20 January 2025, President Trump is protected by both personal immunity and functional immunity for official acts while in office for the next four years. Finally, the position of the ICJ with regards to immunity *ratione materiae* and personal immunity is very much similar to the decision and views of the US Supreme in the *Trump* case. With regard to official act, it has been established that former heads of state may not be tried for official acts since such acts are attributed to the state hence, immunity *ratione materiae* covers only official acts while unofficial acts may be prosecuted. In the US, following the decision of the Supreme Court, the immunity granted to a former president is both absolute and conclusive and presumptive immunity from criminal prosecution for official acts. Similarly, through the outer perimeter principle, official acts with criminal nature may still be covered by this immunity and it is responsibility of the prosecutor to prove that the actions are unofficial. In other words, the US President exercise enormous power granted by the Constitution and recognised and confirm by the Supreme Court. The exercise of this power allows almost every act of President to be classified as official acts and it was indicated in *Marbury v. Madison*, that President's official acts can never be examinable by the courts as this will interfere and be a hinderance to the smooth execution of his mandate. This position is consistent with customary international law rules regarding immunity *ratione materiae* and official acts. Finally, it was held in the *Arrest Warrant* case that immunity and inviolability protect the president or state officials entitled to against any act of the authority of another state which would hinder him or her in the performance of his or her duties or the execution of official acts. In other words, the granting of immunity in both national and international courts is closely related to the function of the state officials in office. Heads of state enjoys absolute immunity for official acts and presumptive immunity for unofficial acts that does not amount to crime in the US courts.

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