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Passage from Traditional Immunity to its Modern Concept in International Law

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Abstract

Immunity is among important factors in international law. Until the formation of international law the principle has been existed, although the form and shape of it changed. In the paper the situation of immunity of heads of states in modern era has be discussed and the major factors in international law have been examined in this regard. Eventually we came to conclusion that the immunity of heads of states now are affected by some of main factors and is changing from the absolute form to the situation that immunity shall be ignored.

Key Words *Immunity, Modern International Law, Sovereignty, Human Rights, Individuals.*

1- Introduction: Immunity of heads of states is from ancient issues of international law. From the time of initiation of states the issue of immunity of states and their heads were considered. After the evolutions in international law and major changes in concepts of it the immunity of heads of states affected by those notions. Today the issue of accountability of states and their heads regarding acts of citizens is one of the emerging issues of international law, but considering the evolution in concept of human rights and respect and promotion of human dignity and widening the domain of courts competence, the issue of criminal immunity of heads of states gained new definition and changed in form and concept.

In the paper firstly the issue ‘Limited immunity of state and its basis in modern international law’ will be discussed, then ‘the Diplomatic immunity in modern international law’ shall be considered, concluding the issue, ‘the Immunity of heads of states and its legal basis’ are going to be surveyed. After considering ‘the concepts relating to immunity, Relation of fundamental concepts of international law to immunity such as sovereignty, Individuals and human rights, law of war and criminal courts in modern era will be discussed. Eventually the conclusion shall be made by referring to all of these important factors and we will answer the question “what is the situation of immunity of heads of states

in modern era?" with the hope that the survey shall help widening the literature of international law.

2- Limited immunity of state and its basis in modern international law: By the gradual fade of the personal concept of sovereignty and emergence of new republics in Europe and America, development of trade and economy among countries and the growing intervention of states in economic development of country, some new and complicated issues have been proposed to courts. Day by day states keep more activities in their hands which were in hands of private sector. State monopoly increased and the economical relation of state with individuals referred to internal courts. By composition of such evolutions, gradually the weakness of absolute immunity of states has been considered. From one side by emergence of new states, state has not its sacred place anymore and on the other side according to the development of intervention of states in economic and trade activities, where states like other businessmen seek benefit, enjoying the especial advantage was unfair and against the principle of free trade. Because of that gradually a new approach among lawyers and judges and states appears according to it, ignoring the absolute immunity of states was not the violation of dignity of states and the judging procedure could be carried out by not hurting the sovereignty of state.¹

According to Steinberger the principle of state immunity is derived from the governor himself and absolute equality of states. Some lawyers such as Bank as and Steinberger believe that the principle of 'state equality' is the follower of the principle 'state sovereignty'.² Regarding the principles 'politeness' Trooboff sees its importance equal to 'equality of states', he also used a case "Parliament Belge" as an example of his words.³ Cassese backed the theory of separation of powers. He sees the observance of immunity obligatory because in civil code of each country duties and competences of executive and judiciary power are separated from each other.⁴ In the theory 'implied consent' the trace of Sucharitkul, Harris and Bankas can be seen. According to the theory it is assumed that each state has the consent to refuse from any pursuance from other country in its borders.⁵ Other theories also have some pros and cons, as concluding word it can be said that none of the theories are accepted in international law completely.

3- Diplomatic immunity in modern international law: By emergence of new concepts in international law and the trend of legalization of international law, gradually the existing principles of international law have been codified in international conventions. The issue of

¹ Dunbar, N. C. H. (1971). Controversial aspects of sovereign immunity in the case law of some states. *R.D.C.*, 132(I) .(

² Steinberger, H. (1989). State Immunity. *Encyclopedia of Public International Law*, .10

³ Trooboff, P. D. (1987). *Foreign State Immunity: Emerging Consensus on Principle*. Boston: Martinus Nijhoff Publishers.

⁴ Cassese, A. (2005). *International Law*. Great Britain: Oxford University Press.

⁵ Sucharitkul, S. (1991). *Immunity of State, International Law: Achievements and Prospects* (M. Bedjaoui Ed.). Paris: UNESCO.

immunity was not an exception, in 1961 the convention on diplomatic relations and in 1963 the convention on consulate relations have been codified. In the introduction of convention it is told that the purpose of such privileges and immunities is not to benefit individuals but to ensure the efficient performance of the functions of diplomatic missions as representing States. Also in article 41 we have: Without prejudice to their privileges and immunities, it is the duty of all persons enjoying such privileges and immunities to respect the laws and regulations of the receiving State. They also have a duty not to interfere in the internal affairs of that State. Ahlullia believes that the main importance of immunity of representatives of states is the growing consideration to economic relations.⁶ Another lawyer “Harvey” believes that the main reason of this immunity in conventions and codification of them is the custom entity of the rules in ancient era and the obligation of countries to it,⁷ a reason which is in line with 1961 and 1963 conventions.

3-1- Immunity of heads of states: Heads of states that are in a mission abroad have key diplomatic duties. Therefore the aim of the principle of immunity of heads of states is to let them do their tasks without any problem. Since the legal regime increased its concentration on human rights safeguards, states accepted some limitations in sovereignty to ensure the decrease in violation of basic humane behaviors and standards, accordingly many of decision makers decided to ignore the immunity of heads of states in benefit of justice. After the 1st and 2nd world war and by gradual development of international law, the criminal responsibility of heads of states and high ranked officials had been rose and they are responsible for the crimes violating the international law.⁸ Pedretti also believes that the immunity of heads of states in foreign countries in this era is shaky.⁹

3-2- Legal basis of diplomatic immunity: In past the theories of ‘reciprocity’, ‘representation’ and ‘extritorial exist’, which each of them are contrary to the modern principles of international law or have lost its meaning. On the other side the theory “need to serve” being justified as: for the diplomatic agent to do his tasks independently and in good situation, he must have vast domain of freedom in the hosting country. This freedom

⁶ Ahluwalia, K. (2012). *The Legal Status, Privileges and Immunities of the Specialized Agencies of the United Nations and Certain Other International Organizations*: Springer Netherlands.

⁷ Bines, H. E., & Thel, S. (2004). *Investment Management Law and Regulation*: Aspen Publishers.

⁸ Fini, K. (2009). The evolution in concept of immunity of heads of states in international law. Foreign policy.

⁹ Pedretti, R. (2014). *Immunity of Heads of State and State Officials for International Crimes*: Brill.

is enjoying some advantages and immunities. This theory has been accepted widely and some lawyers are defending it.¹⁰

Regardless of what has been told previously the principle of immunity located as the rules of international law in Vienna Convention 1961. The Convention in article 31 tell: 1. A diplomatic agent shall enjoy immunity from the criminal jurisdiction of the receiving State. He shall also enjoy immunity from its civil and administrative jurisdiction, except in the case of: (a) A real action relating to private immovable property situated in the territory of the receiving State, unless he holds it on behalf of the sending State for the purposes of the mission; (b) An action relating to succession in which the diplomatic agent is involved as executor, administrator, heir or legatee as a private person and not on behalf of the sending State; (c) An action relating to any professional or commercial activity exercised by the diplomatic agent in the receiving State outside his official functions. 2. A diplomatic agent is not obliged to give evidence as a witness. 3. No measures of execution may be taken in respect of a diplomatic agent except in the cases coming under subparagraphs (a), (b) and (c) of paragraph 1 of this article, and provided that the measures concerned can be taken without infringing the inviolability of his person or of his residence. 4. The immunity of a diplomatic agent from the jurisdiction of the receiving State does not exempt him from the jurisdiction of the sending State.¹¹ About the heads of states and the high ranked officials this immunity has a wider function. They are at their own country and their travel to other countries is rare and also their crimes regarding their position are heavy.

4- Concepts Relating to Immunity: There are some fundamental concepts which have great influence on the others. From among them the concepts of sovereignty, individual, Human Rights, Humanitarian Law and Criminal International System seems to be at the utmost.

4-1- Sovereignty and Immunity in Modern International Law: In the Middle Ages also the Platonic thoughts were exists. As we know in the period, in the domain of natural science the deserved importance did not observed for experience and just referred to insight understanding, of course the impact of such thinking on political thoughts and following of it, political ruling regimes were too much. While the political rulers assert on their belief and base the principles and rules according to the idea, it's obvious that ruling in harsh manner and without flexibility, especially against opposition, will exist. Therefore, human in shadow of such an opinionate regime will be the only victim of power and sovereignty of state. The feature is among the obvious features of renaissance era. The thought waned by the start of Westphalia era in Europe.

¹⁰ Almalah, F. (1981). *DIPLOMATIC ADVANTAGES AND IMMUNITIES*. Egypt: Manshal maaref

¹¹ Vienna Convention on Diplomatic Relation. (1961). legal. un.org/ilc/texts/instruments/english/**conventions/9_1_1961.pdf**

It can be said that the modern or Westphalia era was the time of appearance of sovereignty concept in the existing one. After the middle ages in 16th century the concept of sovereignty among political and international theorists spread and soon as a factor of consisting states, found an important situation.¹² Many refer sovereignty to Bodin.¹³ For the first time 'Jean Bodin' in his famous book 'six Books of Common Wealth' in 1576 explained the idea. Bodin's idea is from those bold symbols which by express of it many of ideas about the issue and other ones raised. According to him, sovereignty is the supreme and ultimate power of state on its citizens and their properties which will not limited by the written law and its absolute and permanent. Sovereignty has both internal and external face. It means that the superior power on citizens in a territory and freedom from foreign interventions of other states. According to Bodin sovereignty is the absolute and permanent power of government over a society.¹⁴

After Bodin, Grotius, the famous Dutch thinker, and after him British thinkers such as Thomas Hobbs, John Lock and John Austin in description of sovereignty told some ideas. George Wilhelm and German Hegel also developed the concept. Existence of sovereignty concept simultaneous to the concept of state among the political thoughts of then, opened a new era in face of thinkers. Therefore in the era the concept of sovereignty has been used as one of the features and elements of state. The point all of the thinkers were agree about the concept of sovereignty, is the description of sovereignty as a logical and exclusive principle. Thomas Hobbs knows it as Absolute. He in all of the matters, except for the special cases, accepts the right of ruler to take hard on its citizens. According to him social ruling located in the ruler of government. The unlimited will is higher than absolute ruler and alongside it no power is tolerable.¹⁵

By the end of 30 year war and by the signature of Westphalia treaty in 1648 a turning point in development of the legal concept of national sovereignty or power happened. In the treaty members of international society accepted the principle of not intervene in others internal affairs. Recognition among states had some important consequences. Firstly the matter shows the victory of intergovernmental regime over the global, political and military concepts which Roman Catholic Church or Holy Roman Empire were the defenders of it. Secondly the issue empowers independent states to decide which of the political domains are independent and which are dependent, because while a power shall force its own will

¹² Sovereignty and Inequality. from <http://www.ejil.org/journal/Vol9/No4/art1.html>

¹³ Bigdeli, M. R. Z. (2000). *Public International law*. Tehran: Ganj Danesh Publication.

¹⁴ Sait, E. M. C., Foster, M. B., & Jones, W. T. (1959). *Masters of Political Thought*: G. G. Harrap & Company Limited.

¹⁵ Sovereignty and Intervention after the Cold War. from <http://globalization.about.com/library/weekly/aa102700a.htm>

inside the sovereignty, it was necessary to recognize other independent sovereignties in order to stabilize the foreign sovereignty of it.¹⁶

While sovereignty formed in the political literature, the root for sovereignty was the power in hands of king and ruler, but by the great revolution of France the concept transferred from king to people and its effects turned back to people. In fact it was the people who execute the supreme power, because the power rooted in people and its control is at the hand of people. To this shape of sovereignty in the internal domain which is absolute and there is no limitation for it and immediately after the formation of state sovereignty will exist for it, is told national sovereignty. But in the outer area there are limitations for this sovereignty, because there is some other sovereignty that the government must have relationship with them. Therefore the national sovereignty makes principles of national and governmental independence tangible. Just while a state governs, its people can decide about their own destiny in line with their needs and special benefits. Therefore if they ask the state to resign from sovereignty is like the case that it ask from people to desist from their freedoms. Also any independent country because of enjoying territorial sovereignty has competencies and authorities to prevent from loss of other countries.¹⁷

In the cold war era two principles of sovereignty and not intervention, both in theory and practice, were observed by states to some extent, which its logical result was the maintenance of independence of countries and on the other side the said principles for states where a powerful halter against commitment to have effective answer over situation of people and the violation of their rights inside the country. The situation did not stay stable and gradually the attention of international society approached toward the human rights and modification of sovereignty.¹⁸

4-2- The promotion of individual situation in modern international law: After the promotion of individual situation in modern international law, two major ideas have been rose about the situation of individuals: one idea refers to idealistic issue and the other is according to the facts of contemporary era. According to the former which its concepts shall be found in school of natural law and legal sociology, especially in ideas of 'Leon Duggy', individuals enjoy the international personality and the international law is delicately refers to the relation of individuals. About the idea it can be said that the subordinates of international law are individuals. In the idea facts and inclinations have been entangled to each other. But in the second idea, that has been supported by many of lawyers, although individuals have especial situation in international law regarding the international rights and obligations but are not like other international entities among the active subordinate of

¹⁶ Meier, R. (2000). *Modern Approach of Political Geography* (H. D. Mir, Trans.). Tehran: Armed Force Geography Organization.

¹⁷ Taylor, P. J. (1994). *Political Geography: World Economy, Nation-State and Locality* (3rd Edition ed.). London: Harlow Longman.

¹⁸ Sadeghi, D. (2013). *International Responsibility to Protect and Sovereignty of States international Relations*.

international law, it means that they are the subject of rights and obligations and no role for them to create and codification of international law has been dedicated. In fact the law of individuals in international law is supporting which usually is called 'human rights' in international law.¹⁹

4-3- Human rights and immunity: Generally human rights are the fundamental and Inalienable right which sees as the basic element for life of human. In other words human rights are a set of values, concepts, documents and mechanisms which their subject are situation, dignity and munificent of human.²⁰ In other definition human rights are a set of rights that have been granted to the residing people of a country regardless of nationality. In the human rights domain the issue of nationality must not be intervened, because this is the least right of a person to enjoy wherever he lives.²¹

The Universal Declaration of Human Rights (UDHR) is a declaration adopted by the United Nations General Assembly on 10 December 1948 at the Palais de Chaillot, Paris. The Declaration arose directly from the experience of the Second World War and represents the first global expression of what many people believe to be the rights to which all human beings are inherently entitled. According to the first article "All human beings are born free and equal in dignity and rights". They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood. The declaration urges countries to work on the promotion and widening some of human rights and reiterates that this right is from the freedom, peace and just foundation.²²

4-4- Humanitarian law: International humanitarian law or the law of war refers to responsibilities and rights of parties in war and impartial countries especially about civilians. Observance of such rules seems to be necessary, because the war itself will violate many of rules. These rules shall narrow down the use weapons and ways of war.²³ This set of rules support the civilians in war. This law tries to prevent from exceeded brutality in war. For this goal the law of war delimits countries in war support victims. In fact law of war by limitation of war ways helps civilians and opposes law violators. It is obvious that in war just the individuals who enjoy immunity shall order to war or an act against humanity, therefore it will be logical if in this field they summoned to court.

4-5- Multilateralism and the role of international organizations in evolution of immunity: Multilateralism in Webster means 'having many sides' and 'involving or

¹⁹ Bigdeli, M. R. Z. (2014). *Public International law*. Tehran: Ganj Danesh Publication.

²⁰ Zakerian, M. (2004). *Ways of Expanding Humanitarian Law in Iran*. Tehran: Law and Politics Journal (1)1

²¹ Langeroudi, J. (1984). *Law Terminology*. Tehran: Ganj Danesh

²² The Universal Declaration of Human Rights. (1948). <http://www.un.org/en/universal-declaration-human-rights/>

²³ Judiciary of the Islamic Republic of Iran, High Council for Human Rights, (2011). <http://en.humanrights-iran.ir/default.aspx>

participated in by more than two nations or parties'. In international relation multilateralism consists of some countries working on an issue. Multilateralism defined by Kahler as: the international management of all and its concept completely opposite to bilateralism in which all believe that is a way for bullying of powerful states on weak ones.²⁴ In 1990 Keohane defined multilateralism as: practice and cooperation in politics of states in groups with three or more members.²⁵

In fact categorization among four concepts of multilateralism is possible. The first form that locates in political dialogue, use multilateralism as goal and mean. The second concept directly refers to the United Nations system, third concept is in the survey agenda of multilateralism, the fourth meaning raise by Ruggie, multilateralism has an organizational form which coordinate the relation of three or more states according to developed behavior principles, Principles which decide the proper domain for bodies of acts.²⁶

Despite the various differences in definition of multilateralism, many of writers see it as a specific foundation of discipline and cooperation among states in international relation. For instance Robert Cohen sees multilateralism as practice of national policies in a group of states.²⁷ But in another definition Ruggie believes that the superficial definition does not cover the quality dimension of multilateralism, because in the quality dimension more assertion is on public principle of it. Ruggie by studying the set of examples of multilateralism which were accepted by all resulted came to conclusion that the common point of multilateral arrangements is the existence of sets of rules arrange the relations among groups of three or more countries according to public behavior principles. These principles decide the necessary behavior symbols to reach a specific goal but the determining point is that the principles which are the practical dimensions of these principles are governing all of states attending the multilateral arrangements. This conclusion guide Ruggie to two claims. First, in multilateral arrangement states behave as the appointed goal reachable only by act of public. Because of that the claimed aim is indivisible. Second, usually multilateral arrangements following the goal according to scattered reciprocity. It means that gained benefits from following the aimed goal will not gained immediately but in period of time from active cooperation of all of parties in a same time.²⁸

²⁴ Zartman, I. W., & Touval, S. (2010). *International Cooperation: The Extents and Limits of Multilateralism*: Cambridge University Press.

²⁵ Press-Barnathan, G. (2004). *Organizing the World: The United States and Regional Cooperation in Asia and Europe*: Taylor & Francis.

²⁶ Vahabpour, P. (2006). The Role of European Union from view Point of Constructivism. *Public Law Survey, 1*(7), 125-148.

²⁷ Cohen, B. J. (2014). *Advanced Introduction to International Political Economy*: E. Elgar.

²⁸ Ruggie, J. G. (1992). Multilateralism: the anatomy of an institution. *International Organization, 46*(03), 561-598. doi: doi:10.1017/S0020818300027831

United Nations in the field of Arms control and disarmament chose multilateralism. The charter of United Nations in 1945 seeks for a legal regime to ensure that the inconsiderable amount of countries incomes and economic sources of countries in conflict pay for producing weapons. If multilateral values and foundations want to be stable must be according to the contemporary principles of legitimacy and ability to face contemporary challenges in effective way.²⁹ Victor Cha in a survey show that the great and small powers in which situations prefer multilateralism and bilateralism. He believes small powers which seeking control over their goals, in any case, whether the goal states be among the great powers or small powers, seek multilateralism. On the other hand great powers if want to have power over small powers prefer bilateralism and in face of great powers prefer multilateralism.³⁰

Eventually by studying the existing situation the conclusion achieved that the approach to multilateralism is developing in the international society and middle and small powers see the multilateralism proper to play their role in international society and achieve their goals. On the other hand great powers in face of small powers prefer to use bi and unilateral acts but arising of various powers in world and some bitter events for great powers, such as 9/11 show to them that the cooperation of other countries shall help them to achieve their goals. As Victor Cha told, the great powers in face of great powers prefer to use multilateralism to create equality. The role of United Nations is tangible in development of multilateralism in the domain of international society. Eventually it can be said that multilateralism not only creates interference in the sovereignty of countries but also make it logical. In other words, for great powers prevent from infiltration and force. Not only multilateralism is a threatening factor for sovereignty but also it is a necessary factor for today world.

4-6- International criminal system: The international criminal system is a vast area regarding all of the violation in international field. In the paper just important acts such as the universal jurisdictions, special courts and ICC will be discussed.

4-6-1- Universal jurisdiction and countries: The principle of universal jurisdiction of criminal law is one of the important principles in recognizing the competence of countries and criminal law. The issue will be concluded by conventions and international treaties. Any of countries as a member of global society has the competence to pursue criminals. The main criteria in such competence is the kind of crime and seizure of criminal and only dedicated to crimes not in the domain of interior competence and all of countries in the world must react against it in their courts. In other words criminalization is over the national borders and all of countries must oppose the crime and while they capture the criminal shall

²⁹ Newman, E. (2007). *A Crisis of Global Institutions?: Multilateralism and International Security*: Taylor & Francis.

³⁰ Cha, V. D. (2010). Powerplay Origins of the U.S. Alliance System in Asia. *International Security*, 34, 158-196.

summon to their courts.³¹ According to the principle a state shall and must in face of some important crimes, regardless of the place happened and the nationality, consider the issue in its courts.³²

4-6-2- Special Courts: It must be mentioned that in the traditional domain of international law two courts paved the way of criminal courts in international society, although the courts have been held by victors of war. The first one is Nuremberg court and the other was Tokyo court.

The Nuremberg trials were a series of military tribunals, held by the Allied forces after World War II, which were most notable for the prosecution of prominent members of the political, military, and economic leadership of Nazi Germany who planned, carried out, or otherwise participated in The Holocaust and other war crimes. The trials were held in the city of Nuremberg, Germany. The first and best known of these trials, described as "the greatest trial in history" by Norman Birkett, one of the British judges who presided over it, was the trial of the major war criminals before the International Military Tribunal (IMT). Held between 20 November 1945 and 1 October 1946, the Tribunal was given the task of trying 23 of the most important political and military leaders of the Third Reich.³³

On January 19, 1946, MacArthur issued a special proclamation ordering the establishment of an International Military Tribunal for the Far East (IMTFE). On the same day, he also approved the Charter of the International Military Tribunal for the Far East (CIMTFE), which prescribed how it was to be formed, the crimes that it was to consider, and how the tribunal was to function. The charter generally followed the model set by the Nuremberg Trials. On April 25, in accordance with the provisions of Article 7 of the CIMTFE, the original Rules of Procedure of the International Military Tribunal for the Far East with amendments were promulgated.³⁴

After them came the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, more commonly referred to as the International Criminal Tribunal for the former Yugoslavia or ICTY, is a body of the United Nations established to prosecute serious crimes committed during the Yugoslav Wars, and to try their perpetrators. The tribunal is an ad hoc court which is located in The Hague, Netherlands.

³¹Dadash Zadeh. A. (2008). *Survey on the Universal Jurisdiction Principle*. Tehran: Islamic Law Investigations. (1)4

³²Baqeri, M. (2009). *International Criminal Law*. Tehran: Javedaneh

³³ Marrus, M. R. (1997). INTERNATIONAL LAW: The Nuremberg Trial: Fifty Years After. *The American Scholar*, 66(4), 563-570. Retrieved from <http://www.jstor.org/stable/41212687>

³⁴ Bix, H. P. (2009). *Hirohito and The Making Of Modern Japan*: HarperCollins. Volume-II, Issue-VI

The Court was established by Resolution 827 of the United Nations Security Council, which was passed on 25 May 1993. It has jurisdiction over four clusters of crimes committed on the territory of the former Yugoslavia since 1991: grave breaches of the Geneva Conventions, violations of the laws or customs of war, genocide, and crimes against humanity. The maximum sentence it can impose is life imprisonment. Various countries have signed agreements with the UN to carry out custodial sentences.³⁵

The International Criminal Tribunal for Rwanda (ICTR) was an international court established in November 1994 by the United Nations Security Council in Resolution 955 in order to judge people responsible for the Rwandan Genocide and other serious violations of international law in Rwanda, or by Rwandan citizens in nearby states, between 1 January and 31 December 1994. In 1995, it became located in Arusha, Tanzania, under Resolution 977. (From 2006, Arusha also became the location of the African Court on Human and Peoples' Rights). In 1998 the operation of the tribunal was expanded in Resolution 1165. Through several resolutions, the Security Council called on the tribunal to complete its investigations by end of 2004, complete all trial activities by end of 2008, and complete all work in 2012.³⁶

The Special Court for Sierra Leone, or the "Special Court" (SCSL), also called the Sierra Leone Tribunal, is a judicial body set up by the government of Sierra Leone and the United Nations to "prosecute persons who bear the greatest responsibility for serious violations of international humanitarian law and Sierra Leonean law" committed in Sierra Leone after 30 November 1996 and during the Sierra Leone Civil War. The court's working language is English. The court lists offices in Freetown, The Hague, and New York City. On 26 April 2012, former Liberian President Charles Taylor became the first African head of state to be convicted for his part in war crimes.³⁷

4-6-3- International Criminal Court: After the cold war, United Nations in 1990 in a Resolution urged the international law commission to start its investigations to establish an international criminal court. Eventually in 1998 the idea turned to reality by Rome statute.³⁸ The ICC began functioning on 1 July 2002, the date that the Rome Statute entered into force. The Rome Statute is a multilateral treaty which serves as the ICC's foundational and governing document. States which become party to the Rome Statute, for example by ratifying it, become member states of the ICC. Currently, there are 124 states which are party to the Rome Statute and therefore members of the ICC. The ICC has four principal organs: the Presidency, the Judicial Divisions, the Office of the Prosecutor, and the Registry. The President is the most senior judge chosen by his or her peers in the Judicial

³⁵ International Criminal Tribunal for the Former Yugoslavia, (2001), retrieved from: <http://www.icty.org/en/about>

³⁶ International Criminal Tribunal for Rwanda, (1994), Retrieved from: <http://unictr.unmict.org/en/tribunal>

³⁷ Special Court for Sierra Leone, (1996), Retrieved from: <http://www.rscsl.org/>

³⁸ Tabatabaee, S. (2005). *Rwanda Criminal Court*. Tehran: Legal Individual Journal

Division, which hears cases before the Court. The Office of the Prosecutor is headed by the Prosecutor who investigates crimes and initiates proceedings before the Judicial Division. The Registry is headed by the Registrar and is charged with managing all the administrative functions of the ICC, including the headquarters, detention unit, and public defense office.³⁹

Up to now some issues have been referred to the court and some others are under investigation. In the court 10 situations are under investigation and 9 cases are under preliminary examination.

5- Conclusion: Eventually by survey the changes in fundamental concepts in international law affecting the notion of immunity in the international modern era, it can be said that the immunity of heads of states passed from its absolute shape to the relative one. Some concepts such as human rights are so important to the existing international society and anything violating the human rights is blamed by the international society. Also it revealed that the theory of serving is observed by the society, in other words, diplomats have immunity to the stake that be sufficient for their acts not more than that. The role of ICC in the violation of immunity of heads of states is so bold. Although weak countries were the subject of court up to now, the horizon of ignoring immunity for important international crimes is bright.

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