

Pro inspiraci a nalézání právních argumentů se zamyslete nad následujícími výroky:

**Sir Artur Watts:** *„State are artificial legal persons: they can only act through the institutions and agencies of the State, which means ultimately through its official and other individuals acting on behalf of the State. For international conduct which is so serious as to be tainted with criminality to be regarded as attributable only to the impersonal state and not to the individuals who ordered or perpetrated it is both unrealistic and offensive to common notion of justice.“*

**Vattel:** *„Head of State who commits murder and other grave crimes is chargeable with all the evils, all the horrors, of the war; all the effusions of blood, the desolation of families, the rapine, the violence, the revenge, the burnings, are his works and his crimes. He is guilty towards the enemy, of attacking, oppressing, massacring them without cause, guilty towards his people, of drawing them into acts of injustice, exposing their lives without necessity, without reason, towards that part of his subjects whom the war ruins, or who are great sufferers by it, of losing their lives, their fortune, or their health. Lastly, he is guilty towards all mankind, of disturbing their quiet, and setting a pernicious example.“<sup>1</sup>*

**Lord Lloyd:** *„The setting up of these special international tribunals for the trial of those accused of genocide and other crimes against humanity, including torture, shows that such crimes, when committed by heads of state or other responsible government officials cannot be tried in the ordinary courts of other states. If they could, there would be little need for the international tribunal.“*

*„I have no doubt that the crimes of which Senator Pinochet is accused, including the crime of torture, were governmental in nature ... it would be unjustifiable in theory, and unworkable in practice, to impose any restriction on head of state immunity by reference to the number or gravity of the alleged crimes. Otherwise one would get to this position: that the crimes of a head of state in the execution of his governmental authority are to be attributed to the state so long as they are not too serious. But beyond a certain (undefined) degree of seriousness the crimes cease to be attributable to the state, and are instead to be treated as his private crimes. That would not make sense.“*

**Lord Nicholls:** *„International law recognises, of course, that the functions of a head of state may include activities which are wrongful, even illegal, by the law of his own state or by the laws of other states. But international law has made plain that certain types of conduct, including torture and hostage-taking, are not acceptable conduct on the part of anyone. This applies as much to heads of state, or even more so, as it does to everyone else; the contrary conclusion would make a mockery of international law.“*

**Lord Philips:** *„Would international law have required a court to grant immunity to a defendant upon his demonstrating that he was acting in his official capacity? In my view plainly it would not. I do not reach that conclusion on the simple basis that no established rule of international law requires state immunity *ratione materiae* to be accorded in respect of prosecution for an international crime. International crimes and extra-territorial jurisdiction in relation to them are both new arrivals in the field of public international law. I do not believe that state immunity *ratione materiae* can coexist with them.“*

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<sup>1</sup> Wright, Q.: The Legal Liability of the Kaiser. *American Political Science Review* 13 (1919), str. 120, 126.