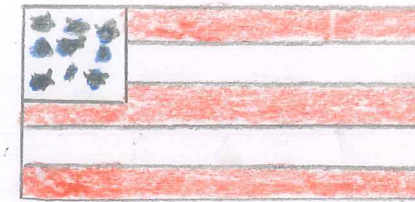
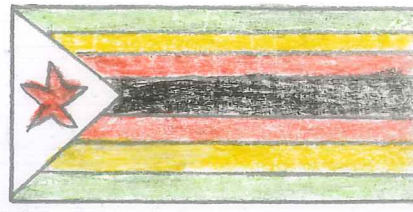
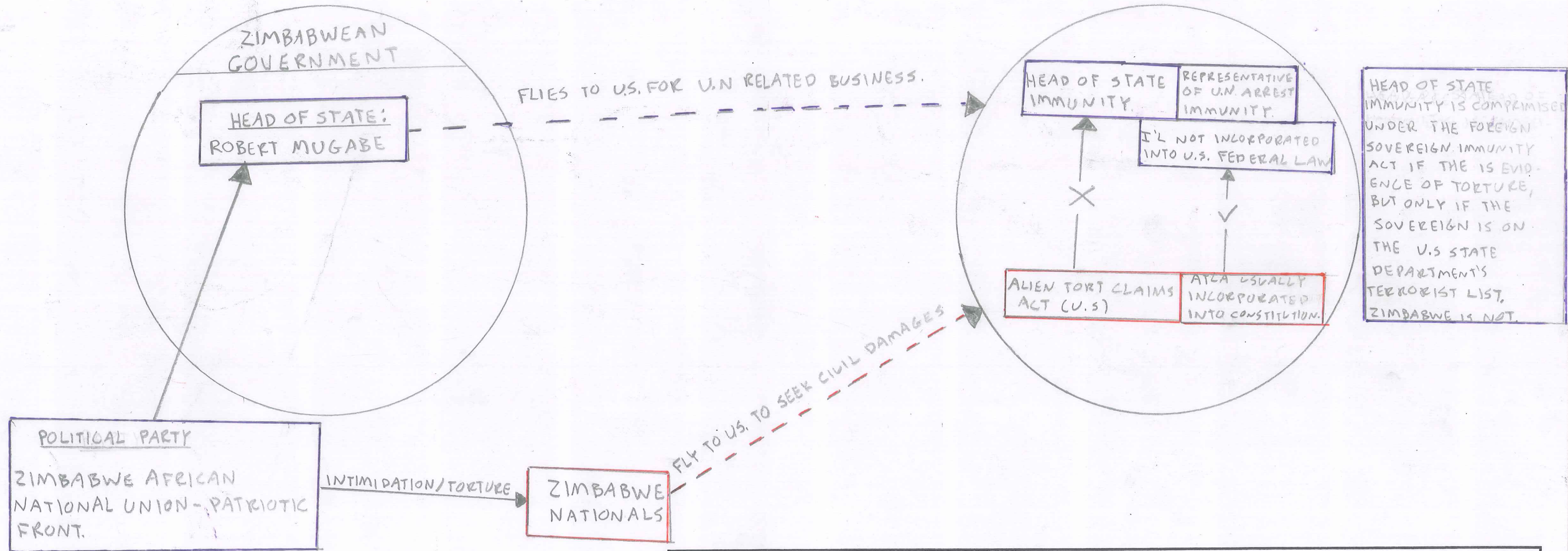


# ALIEN TORT CLAIMS ACT PRECEEDING AGAINST ROBERT MUGABE

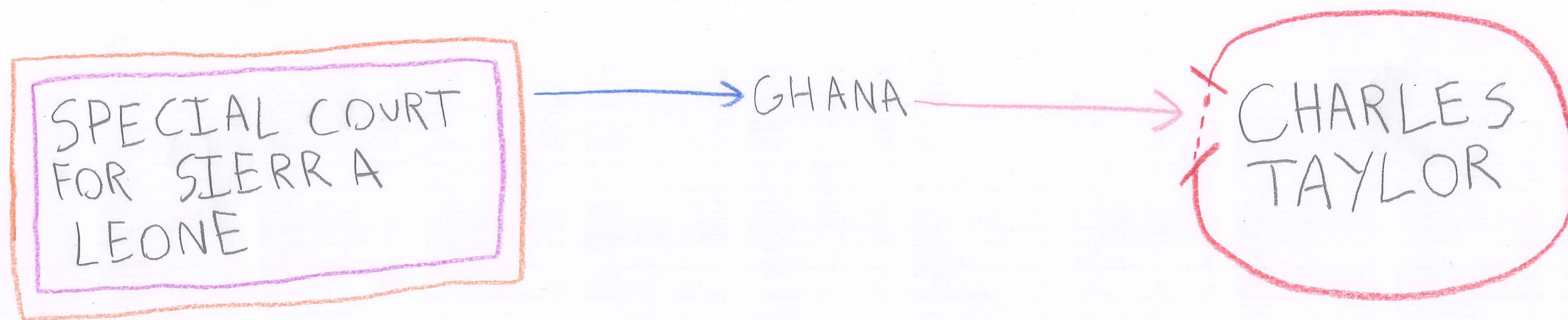


A



**RATIO** Robert Mugabe would receive Head of State Immunity as he was in New York on U.N business. For international law to apply, these acts must be committed by the "Official" government rather than a political party.





■ = International tribunal without UNSC chapter VII powers to assert jurisdiction over heads of state

■ = Customary powers to indict heads of state for serious, universal crimes that shock conscience (CAH, WC, UNGC)

■ = Incumbent Head of state immunity from prosecution

--- = Immunity exception: International Tribunals investigating serious, international crimes

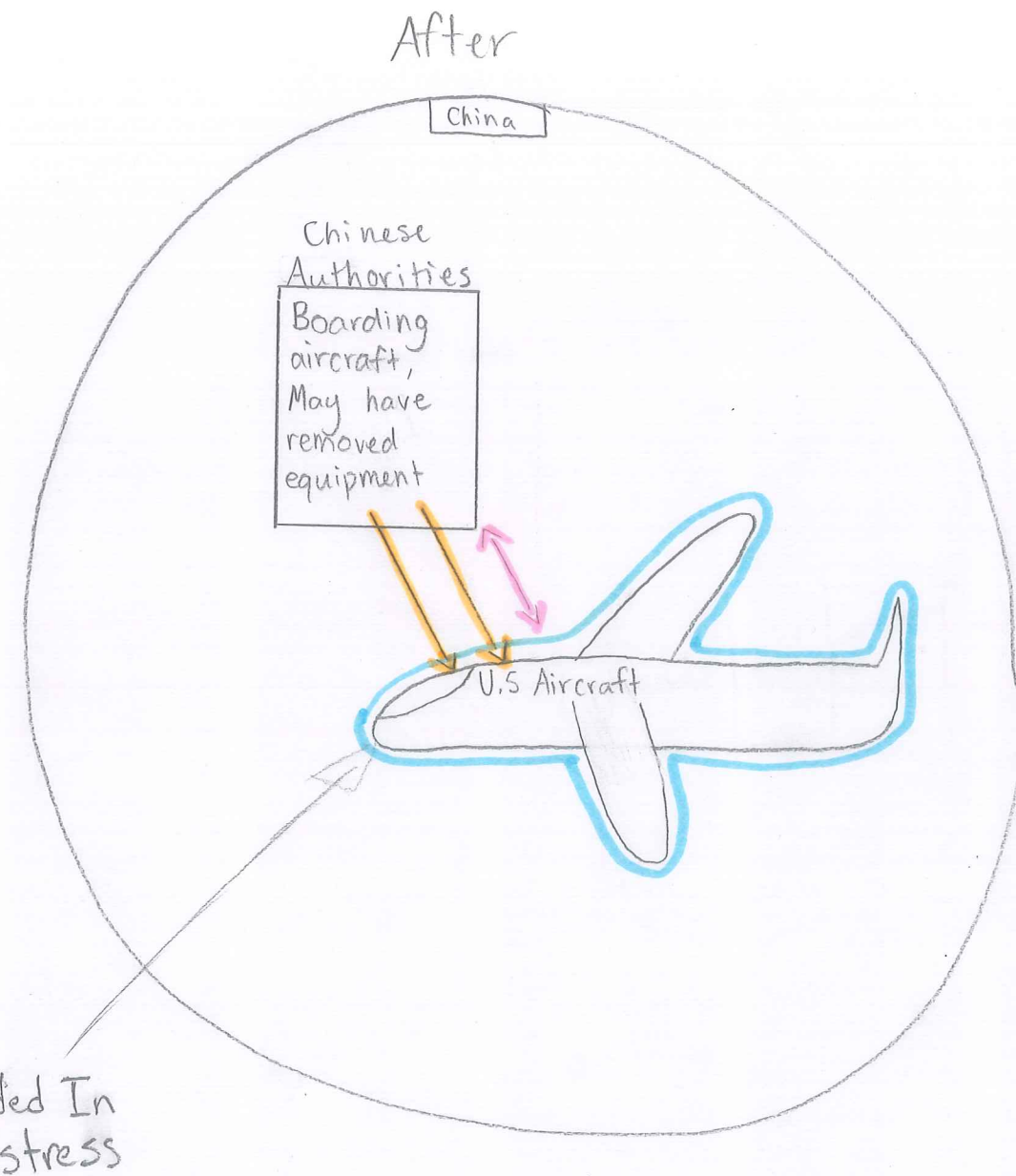
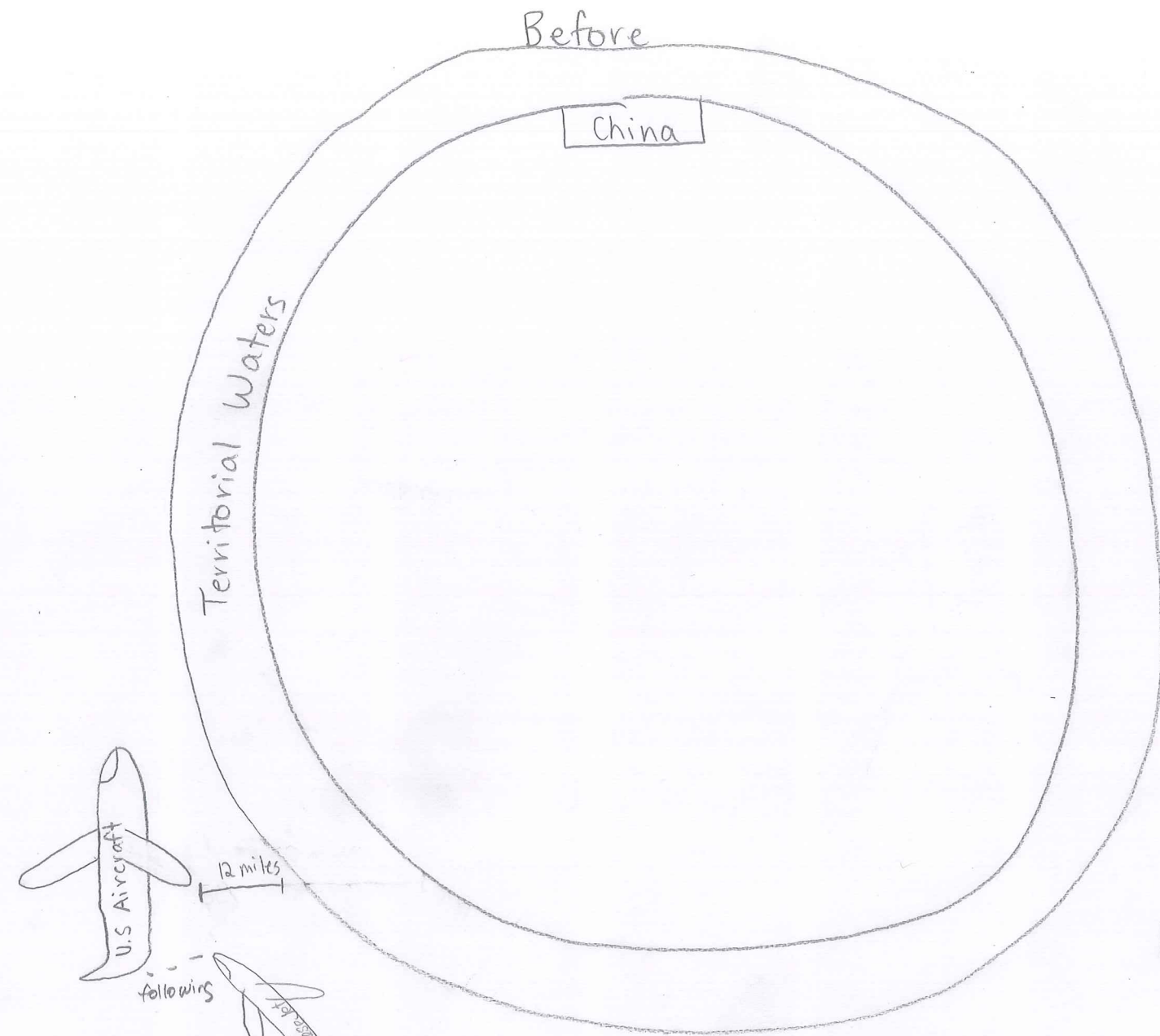
■ = Arrest warrant for 17 counts of WC and CAH:  
 - using child soldiers  
 - sexual and physical violence  
 - abductions  
 - forced labour  
 - Attacks on peacekeepers and humanitarian staff  
 - looting  
 - burning

■ = Voluntary execution of arrest warrant by Gho

### RATIO

International Criminal Tribunals have jurisdiction to arrest incumbent heads of state and over-rule head of state immunity in cases of serious universal crimes that shock the conscience. This jurisdiction is not limited to tribunals with UNSC chapter VII powers, it is extended under customary international law for WC and CAH cases.



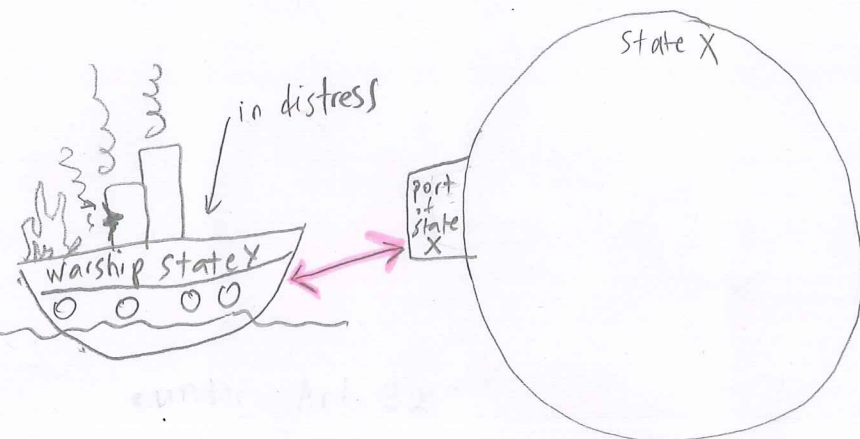


- Article 24 VCDR "Inviolability of documents" } Immunity
- Article 22 VCDR "Inviolability of premises" }

- Art 32 of Law of the Sea Convention
- foreign military vessel in port is immune from the jurisdiction of the port state.

## RATIO

The American aircraft in this circumstance is analogous to to warships in Art. 32 and Art. 95 of the Convention on the Law of the Sea, which states that, a warship is entitled to immunity from jurisdiction and entitled to immunity from boarding even if in the territorial sea of another country. The extension of immunity is also based on The Schooner Exchange, which says military vessels in distress should be immune from jurisdiction of port state. Aircrafts can be considered warships, as a warship doesn't have to be armed, making an aircraft very similar. China could adopt the idea of "defensive sea areas" (which America has previously claimed), however ~~the~~ states are not in a state of war.





② Fact Pattern - Diplomatic Immunities in Iraq

**Legal Issues:** 1 - Does a regime change constitute a loss of immunity for foreign diplomats?  
2 - Does U.S. have legal jurisdiction over staff and agents employed in embassies?

statements  
contradict me

**NON-STATE ACTOR & INTERNATIONAL LAW**  
1961 Vienna Convention on Diplomatic Relations ("the Convention"), whose purpose is not to benefit individuals but to ensure the efficient performance of the functions of diplomatic missions as representing States".  
2 Articles 29-31 of 1961 D.P.R. Convention states that diplomatic agents and diplomatic property have immunity from interference & from receiving State's criminal & civil jurisdiction. Art 32 states that immunity of diplomatic staff of the mission "by declaring them 'persona non grata' of diplomatic staff of the mission" by declaring them 'persona non grata'. They do not have to explain their reasons to the sending state. Sending state will "either recall the person concerned or terminate his functions with the mission".  
3 person may be declared persona non grata prior to entering the territory of the receiving state.  
4 No explicit mention of what would occur with immunities if the government of the receiving state were to be deposed.

**OTHER SENDING STATES**  
2 Immunity

(contd) 5 VCDR, Art. 13 states that head of mission is granted its mission following its presentation at credentials to the receiving State's Ministry of Foreign Affairs.  
6 It can be argued from here that since the sending states' diplomats were accepted by a new deposed regime, their credentials are no longer legitimate.  
7 An occupying state temporarily takes over many duties of the former government, however, the responsibilities of the occupying state do not include accreditation of diplomats.  
8 This would mean that diplomats of the sending states would be without diplomatic protection in Iraq.

**ORATIO**  
The occupying power (U.S.) must not be held responsible for providing immunity for agents of sending states in Iraq, however, sending states must be allowed to continue diplomatic activities during occupation in the interest of international fairness and stability.

But why would regime change constitute this?

**UNITED STATES  
// OCCUPYING POWER**

2  
May 29 2003 - Boucher, spokesman for U.S. state dep.,  
"Do [these diplomats in Baghdad] have diplomatic accreditation? Do they have diplomatic status? Do they have diplomatic immunity? No. They don't" → R.J. why  
"We do not regard these as diplomatic missions. They're accredited to a regime that is no longer existent, and, therefore, their accreditation would have lapsed." 1  
R. Boucher in response to the question: Are there now no diplomatic privileges in Iraq, he answered yes and explained "because there's no government in Iraq to grant those privileges." 6

Where is the level to support U.S. claim to authority over the regime?  
Is it one of only political support? 2

U.S. could have declared sending states' diplomatic staff & agents "persona non grata" 3  
but instead used the argument of regime change = loss of diplomatic status. Is it because they U.S. had been acknowledged by the U.S. as the authority to remove diplomatic status from (other) sending states' diplomats? 2

not the receiving state in this to remove diplomatic status?



British courts rejected Pinochet's immunity and ruled he could be extradited to Spain. (Never occurred)

UK home secretary allowed Pinochet to return home after 503 days of arrest on the grounds of ill health.

Warrant issued by Spanish Judge Baltasar Garçon

Pinochet detained and Legal Debate

Spain

Pinochet claimed he was entitled to immunity as a former head of state

UK

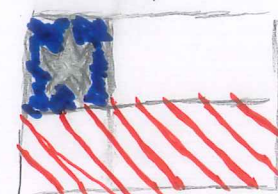
Pinochet detained under arrest



Chile

COMMITTED CRIMES AGAINST HUMANITY

Pinochet overthrew the Chilean gov't, and obtained power as president in 1974



1990 he was removed from power as president

Spain put an international warrant for the crimes against humanity



Pinochet died in the hands of Britain

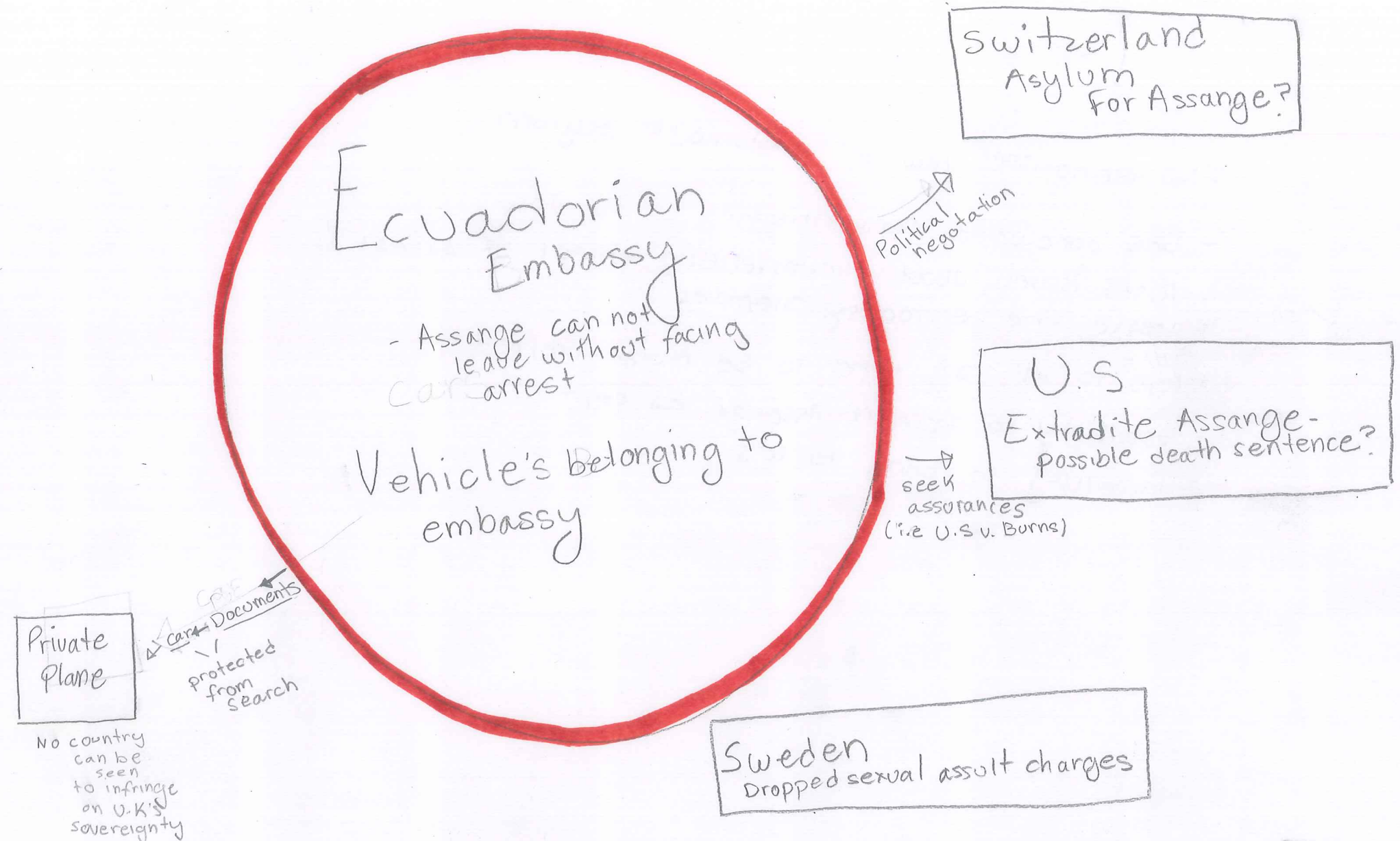
## RATIO

Pinochet would not have immunity as he was former head of state and held a diplomatic passport which had no meaning for not being a diplomatic agent. There is also increasing acceptance for universal jurisdiction for indiscriminate violent attacks on people at large. Former Heads of States lose diplomatic immunity especially when accused of crimes against humanity.



# JULIAN ASSANGE: THE LAW OF DIPLOMATIC RELATIONS

F



**RATIO:** The Julian Assange case brings up many issues regarding international law and diplomatic immunity. Firstly, Assange's request was widely protested because no legal right to seek diplomatic asylum exists. Moreover, the OAS have concluded the Convention on Diplomatic Asylum - a treaty that facilitates the granting of asylum and departure to a foreign territory amongst state parties. However, no equivalent treaty exists between the U.K. and Ecuador - the issue of diplomatic asylum was deliberately not dealt with in the Vienna Convention on Diplomatic Relations. Therefore, the U.K. doesn't need to recognize Ecuador's grant of asylum. In addition, Assange's exit of the embassy creates many complications regarding arrest by U.K. Leaving by vehicle to circumvent the threat of arrest and escape to Ecuador is implausible because Assange would have to walk by foot to reach the vehicle. This dilemma brought up many issues such as appropriate conditions to violate the "diplomatic bag." Another contentious option was appointing Assange as a diplomat so that he could enjoy immunity. This interfered with Ecuadorian law as diplomats must be Ecuadorian by birth.