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Abuse of diplomatic privileges and immunities in Nigeria and the United States of America

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Abstract

Diplomatic privileges and immunities are used to describe the protection a local jurisdiction offers a representative of a sending national government for serving in various capacities within the territory of the receiving state. The Vienna Convention on Diplomatic Relations, 1961 made it clear that it is the responsibility of all persons privileged to enjoy these rights to give maximum respect to the guiding laws and regulations of the host state. There are many instances where immunities and privileges were abused. This paper analysed abuses of diplomatic privileges in Nigeria and the United States of America.

Doctrinal approach was adopted for the study. It was library-based research. The primary sources of materials used were: Vienna Convention on Diplomatic Relations (VCDR) 1961, United States of America State Immunity Act, 1978, United Foreign Sovereign Immunities Act, 1976, Vienna Convention on Consular Relations 1963, Nigerian Diplomatic Act 1962, Nigerian Diplomatic Privileges and Immunities Act, 2004. The secondary sources of materials included relevant published text books on the topic, scholarly peer-reviewed journals, articles, law reports and other relevant materials sourced in the internet. The work adopted power theory of social misery in addressing the problem of the study.

The study discovered series of abuse in the practice of diplomatic privileges and immunities in both Nigeria and the United States of America. The corrupt nature of the Nigerian system led to limited account of abuses in the ministry of external affairs, which indeed is an impalpable experience. The contents of the Convention are outdated and no longer suited the practice of diplomatic immunities in the 21st century. It is recommended that the United Nations should amend the Convention to meet the trend of development. More stringent measures should be made to govern or checkmate all diplomatic officials at the international and local levels to serve as deterrents to erring diplomatic officials.

Keywords: Diplomacy, privileges, immunities, social misery, Vienna convention

Introduction

The relationship between one country or the other cannot be overemphasised. The relationship amongst countries of the world brought about international relations which resulted in international diplomacy, diplomatic relations, diplomatic privileges and immunities. Diplomatic privileges and immunities are the rights diplomats enjoy in the host countries to enable them do their statutory work in the host countries without any hindrances. Due to the unlimited privileges and immunities of the diplomats under the Vienna Convention of 1961, they do abuse which has resulted to negativity on the part of security, economy, development and so on in the host states. The development has called for the comparative study of the abuses of diplomatic privileges and immunities in Nigeria and the United States of America.

The Abuse of Diplomatic Privileges and Immunities in Nigeria

According to Barker, "abuse arises where the diplomat is subject to substantive law, but when he breaks it, the receiving state has no jurisdiction over him"^[1]. Abuse of diplomatic immunities puts a threat to the principles of diplomatic immunity with respects to the Vienna Convention on Diplomatic Relation. The problem of diplomatic abuse is a global issue which is embedded on selfish desire and political region^[2].

The Nigerian crate fugitive is an example of diplomatic abuse of diplomatic bag; where a drugged ex- minister was placed in a diplomatic crate and was carried to the airport. Nevertheless, the crates were found to be distrustful by a custom officer at the airport as it was being packaged for Nigeria trip. The crates were specified as diplomatic pouches with seals from the Nigerian Embassy^[3] together with a courier accompanying the crates.

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Issue arose when the custom officer found out that the crates were not appropriately demarcated and also the courier was found to be improperly documented by the authorisation of a diplomatic courier^[4]. However, the crates were ordered to be opened in the presence of the Nigerian Embassy. The crates contained four men, one of whom was Mr. Dikko an ex-member of the Nigeria Ministry of Transportation. Mr. Umaru Dikko took an escape route to London and rented a luxurious apartment. Afterwards, Mr. Dikko was charged by the then new military government for the offence of committing fraudulent act from the government pouches and was demanded by the government to return to Nigeria for a trial^[5]. Succinctly, the procedure for effecting extradition was not followed rather mercenaries were employed to assist in kidnapping and bringing Mr. Dikko to face his trial. However, the Israeli government who were involved in the kidnap of Mr. Dikko denied their involvement in the act, the other men charged with kidnapping was a Nigeria diplomat from Lagos and was not eligible for immunity under the Vienna Convention^[6]. Hence, members of the Nigerian Embassy refused to waive their immunity laying down series of negotiations, but yielded no significant improvement. With respects to this, the British government expelled two high ranking diplomats and notified the Nigeria High Commissioner who was residing in Lagos not to be allowed to step foot in the Great Britain. This movement brought Nigeria into a complete break of ties with Great Britain relations. However, as time progressed, the two governments were able to resolve their differences, but the diplomats who were expelled were not recalled. In January 1985, the Nigeria government filed formal papers appealing for Mr. Umaru. This appeal was an opportunity for Britain to restore, promote and strengthen her relationship with Nigeria.

Dodging the congestion charge is an abuse by the Nigerian diplomatic officials, where a foreign embassy in London owes millions unpaid congestion charges. London is well known for its congestion charge, a fee charged basically on motor vehicles operating within London axis^[7]. London is owed more than ninety-five (95) million in congestion charges since the scheme was launched in 2003. Hence, Nigeria owes up an outstanding debt of 5.9million and refused to pay, claiming that they are entitled to diplomatic immunity which exempts them from making payment^[8].

The Security Implication of Abuse of Diplomatic Immunity and Privileges in Nigeria

The London economic implication in June, 1984 stands as a symbol of the effects of abuse of diplomatic privileges and immunities. Prior to 1984, the rate of diplomatic abuse has become a prevalent issue among independent states together with massive support of terrorists. The fact that there is high rate of diplomatic abuse among independent states, countermeasures have taken place by governments towards enacting and implementing laws which combats diplomatic abuse. However, the problems of diplomatic privileges and immunities abuses have been put into contemplation aimed at bringing to an end such abuses before it becomes difficult to control. Consequently, there is a great attention towards the go kaput of diplomatic privileges globally causing continuous violations of diplomatic agreements which have led to the detriment of the peace and security of independent states. The aftermath of the incidence in June, 1984 depicts the rules of the Vienna Convention which were broken and

the privilege of the diplomatic bag was abused; where an ex-minister was packaged to be flown to Nigeria in a crate.

Basically, countermeasures have been employed to safeguard the security position of diplomatic abuse in Nigeria^[9]. However, question arises towards the possibility of implementing these measures which will help in protecting the peace and security of the country and in maintaining her relations with other states. Also, question arises as to what can be done to curtail the increase rate of diplomatic abuse in Nigeria which is subject to the security implications of the subject matter of study. The incidence of June 1984 is a clear indication of abuse of diplomatic privileges in Nigeria through terrorist acts.

With positive response to the security status of diplomatic abuse in Nigeria, the London economic summit in its declaration issued in June 1984^[10], laid down three proposals for addressing and combating the problem of diplomatic abuse in Nigeria. These proposals addressed the issue of security implications of diplomatic abuse in Nigeria as a pillow to lay on with respects to the aftermath of the above stated case. They are:

- a. promoting and fostering mutual aid and harmonisation between the police and security institutions and other relevant law enforcement agencies with the aim of exchanging information, intelligence and technical knowledge;
- b. the use of powers of the receiving states under the Vienna Convention on Diplomatic Relations with respects to matters of diplomatic missions, and the number of persons entitled to the benefit of diplomatic privileges and immunities and
- c. adequate consultation to foster mutual aid in examining the massive expansion of terrorists from other countries as well as persons of diplomatic status who are engross in terrorism^[11].

In view of the above, Nigeria demands good governance. A government that would drive the goal of the country through a straight path course addressing the security lapses that gives room for nursing the abuse of diplomatic immunities which has brought terrorism to our country^[12].

The Abuse of Diplomatic Privileges and Immunities in United States of America

The concept of diplomatic immunity is a fundamental principle of international law ensuring that certain foreign government officials are not questioned by the authority of local courts and other law enforcement agencies in a host state^[13]. By implication, where a crime is committed, diplomatic officials are not subjected to any form of legal impediments such as arrest and detention, search or seizure of property, prosecution or local court decisions^[14]. There is high rate of diplomatic abuse stemming from immunities and privileges granted to diplomatic officials in the discharge of their official duties. The abuse of diplomatic privileges and immunities negate the good intentions designed to be achieved by the practice of diplomatic immunities and privileges.

The principle of international law requires law enforcement agents in the United States of America, to extend certain privileges and immunities to members of foreign diplomatic officials. However, these diplomatic immunities and privileges are often taken for granted. This raises questions about the integrity of the practices of diplomatic immunities

and privileges in the US as captured in the tenets of the Vienna Convention of 1961. The Vienna Convention provides for certain immunities and privileges to be enjoyed by diplomatic officials, their staff and families ^[15]. Such immunities, according to Ben include immunity from arrest and detention, search or seizure of property, prosecution or local court decisions ^[16]. Hence, the fact that they are granted immunities and privileges raise the issue of abuses and this arises in circumstances when a crime is committed in the discharge of their official duties.

Section 1 of the Vienna Convention on Diplomatic Relations divides diplomatic officials into diplomatic agents, which consist of the head of mission, staff, families, members of administrative and Technical Staff among others ^[17].

In the US, diplomatic agents are referred to as ambassadors enjoying the utmost degree of privileges and immunities. In a simplified term, diplomats are entitled to absolute personal inviolability, this means they cannot be detained or arrested or handcuffed or their property confiscated when a crime is committed apart from extraordinary circumstances ^[18]. Article 29 of the Vienna Convention provides that diplomatic agents are inviolable. Simply put, diplomatic agents are not legally responsible to any form of arrest or detention. In other words, diplomatic agents are treated with sense of respect by the receiving states and also appropriate measures taken to prevent them from any form of attack which may affect his persons, freedom or dignity in the discharge of their official duties. In effect, such action led to diplomatic abuse in the US, whereby victims of diplomatic abuses are treated with injustice by diplomatic agents during the discharge of their official duties. Diplomatic agents are immune from criminal jurisdictions of the receiving states and cannot be prosecuted for any offence regardless of the gravity of the offence committed unless such immunity is waived by the sending states ^[19]. In view of this, diplomatic agents take this to their own advantage by committing crimes infringing the rights and security of the people. As a result of this there is high rate of diplomatic abuse causing injustice to injured parties. In furtherance to the above, the locus classicus of personal inviolability was established in the case of *Republican v De Long champs*. In this case US embraced the concept of diplomatic immunity. Thus, according to Chief Justice M'Kean, persons of diplomatic officials are inviolable and sacred ^[20]. By this, the prosecution of the secretary takes the form of the secretary freedoms of conducting any business of his sovereign. This principle led to the enactment of the Crimes Act of 1790 ^[21]. The Act was designed to regulate the law governing diplomatic privileges and immunities. However, the Act was limited in its provision and was not able to curtail the degree of diplomatic abuse in US. The Act does not provide for compensation of injured party suffered by the abuse of diplomatic officials save for those involving the use of motor vehicles, aircrafts or vessel ^[22] as well as traffic violations, such as speeding and not paying fines, are the most prevalent areas of abuse constantly plaguing the citizens in US ^[23].

Categories of Diplomatic Abuse in the United States of America

Basically, in the United States of America, abuse of diplomatic privileges and immunities arise in different forms ^[24]. They include:

1. commission of violent crimes by diplomats;
2. the use of diplomatic bag illegally and
3. the promotion of states terrorism by foreign governments through the involvements of their embassies in the host states.

Commission of Crimes by Diplomats: crimes committed by diplomats ranges from series of offences such as traffic violation, smuggling, child trafficking, law violations, money laundering, tax evasion, influence of alcohol, imposition of slavery, preying on children, child abuse, drug trafficking, rape and murder ^[24]. An example of crime committed by a diplomat was captured in the case of Joshua Walde ^[25]. In this case, Mr. Joshua an American diplomat in Nairobi, Kenya had a crash with a taxi and thereafter killed a person in July 2013 ^[26] as well other eight persons who were left behind as a result of lack of financial assistance to pay for their medical treatment and the expenses incurred at the hospitals. As a result of the incidents, the US embassy took the diplomats and his family and fled away from Kenya the next day. In furtherance to the above, government officials in US were only concerned with the effect the accident would have on the bilateral relations with Kenya ^[27]. Mr. Joshua was under the umbrella of diplomatic immunity, he was not detained or arrested. Accordingly, the injured party was denied of legal attention because the perpetrator of the act is a diplomatic agent who is entitled to the benefit of diplomatic immunities and privileges ^[28].

Another form of US diplomatic abuse is capture in cases of smuggling ^[29], diplomats who are entitled to diplomatic immunities venture in smuggling drug business and are immune from any offence which may arise in the discharge of their official duties. An example of this was established in the case of Venezuelan general ^[30] who was in search in US for the commission of drug smuggling and was arrested in Aruba. Consequently, he was discharged by the Venezuelan government who advocated for his diplomatic immunity and impose a threat sanction if the Aruba officials did not discharge him ^[31]. This connotes an abuse of diplomatic immunity in the receiving state, US.

Imposition of Slavery: slaves are subjected to work with hard labour without any payment of salary and they are also made to sleep on the ground and eat spoiled food. In addition, they are subjected to sexual harassment and often times beaten with bash marks on their skin. Their freedom to escape is always denied by diplomats through their visa. An example of this is the case of Bolivian servant ^[32] who was kept in prison by an Egyptian diplomat in US. The Bolivian servant who was in the hands of the US diplomatic agents most times subjected her to work for full one week without any payment for the work done coupled with the fact that she was being denied of medical treatment by the US diplomats and also her means of escape was denied. This is also another form of abuse carried out by US diplomatic agents in a foreign land.

Another illuminating decision of diplomatic abuse held in US, is a case where two women were kept as slaves in the London home of a princess from Kuwaiti Royal Family. A complaint was made by one of the women that she was kicked, beaten and suffered malnutrition. The Princess claimed that she was entitled to the benefit of immunities and privileges and could not be subjected to any form of

legal impediments^[33] such as arrest and detention or search of premises and prosecution.

However, in most cases, diplomatic agents deny employees their entitlement to the payment of wages, vacation and holiday, maximum working hours, provision of food, lack of communication and are abused both physically and emotionally often times, their privacy and property raid^[34].

Child Custody / Assault: in December 1987, the US Department of States exiled Floyd Karamba, who is a commercial attaché at the Zimbabwean official visit to the United Nations; an action was brought against him for brutally abusing his children and mounting pressure on his family^[35]. The United States did not bring any legal action against Karamba because he was under the umbrella of diplomatic immunity^[36]. As a result of this, the victim who was badly injured and brutally traumatised as a result of the bruise on his body was psychologically primed for the journey to Zimbabwe. Consequently, Karamba's was acquitted of the offence brought against him as a result of the diplomatic immunities and privileges bestowed on him in the receiving state. Hence, the injured boy was prevented to return as held by the United States Supreme Court.

Financial Abuse: issues arise as diplomatic officials fail to pay their debt to local citizens and small medium enterprises. With response to this, most financial organisations declined to loan out to diplomatic officials because they lack the *locus standi* to institute an action, if the money owed to them has not been paid by the diplomatic official. Most especially, when filing a civil action against a diplomat with respect to unpaid rent, alimony and child support often seems difficult in a suit against diplomatic officials. The areas of financial abuses include:

a. Rent: diplomatic officials declining to pay their rent become a prevalent issue in the discharge of their official duty. This issue raises the question of abuse which is common by the US diplomatic officials in the discharge of their official duties^[37]. Often times diplomatic officials decline to clear their debt with respect to their place of living and work place. Consequently, creditors who are being owned by these diplomatic officials are not entitled to bring an action in recovering the outstanding debt in their own capacity^[38]. This is based on the fact that they are not authorised to enter the offices or apartments of diplomats to evict them for any offence committed. However, this is provided in Foreign Sovereign Immunities Act; "that the property in the United States of a foreign state shall be immune from attack, arrest and execution^[39]". This principle has laid down rules for creditors to take prudent decision before they loan out to diplomats and also change their rental policies^[40] an example of this is stated in the case where diplomatic officials from Zaire refused paying their rent to their landlord with an outstanding debt of \$400, 000. The landlord brought an action against the diplomats, yet, the US State Department defended the Zaireans officials on the basis of diplomatic immunity and the court upheld to the decision. However, the landlord cut off his service to regain his outstanding payment, even still the official escape without paying his complete money^[41].

b. Alimony and Child Support: alimony and child support has been a subject matter of discussion at the 1995 UN Fourth World Conference on women in Beijing. Most fathers who are granted diplomatic immunity in the US failed to fulfill their obligations as the head of the family and abused their diplomatic immunity. They failed fulfilling their financial duties to their wives and children yet claiming UN dependency, travel education, allowances for their families. In effect, they no longer put their families in consideration^[42].

Influence of Alcohol and Parking Violation to Assault: an example of this is exposed in the case of an American driver in Vladivostok, Russia on 27th October 1998 named Mr. Douglas Kent; an American Consul General in Russia was involved in a car accident where he left a young man called Alexander Kashin disabled^[43]. Kent was acquitted and discharged of the offence by US Court. However, according to the provision of the Vienna Convention, diplomatic immunity does not apply to civil proceedings with respect to vehicle accident^[44]. Hence in 2006, the Court of Appeal in US ruled that, "since he was using his vehicle for consular mission; Kent could not sue for the abuse caused to him as an infringement of his right"^[45].

Espionage: an example of this occurred in Peking on August 2, 1995, where two US Air Force officers were expelled from China for invading. The Chinese Foreign Ministry justified the expulsion^[46]. This was based on the fact that the diplomatic officials came for an official visit in American Embassy in Peking to spy upon Chinese military equipment and to make enquiry about their military intelligence through photographing and videotaping^[47]. However, the diplomatic officials were shielded from diplomatic immunity with respect to crime committed in the host state. As a result of the espionage activities, the Chinese government expelled the military officers.

The Security Implication of the Abuse of Diplomatic Privileges and Immunities in United States of America

The increased rate of diplomatic abuse in United States is tremendous and statistics has shown that in US there are about 1,500 embassies and diplomatic consuls in operation enjoying diplomatic immunities and privileges, such as; the organisation of American States, International Monetary Fund Offices and many others^[48]. United States of America maintains diplomatic relations with one hundred and forty-eight nations and the US government bestows them with full immunities and privileges in the estimation of 20, 000 people consisting of the ambassadors, staffs, and families^[49]. By implication there are about 20, 000 persons with a great likelihood of committing an offence in which case they are not subjected to any form of punishment as a result of entitlement to diplomatic privileges and immunities in US^[50]. As earlier stated in this study, diplomatic immunity in US was adopted in the case of Republican vs. De Long Champs. It went ahead to enact the Crimes Act of 1790 as a tool for controlling the law governing diplomatic immunities and privileges. The Act was designed to guide the principles of diplomatic immunity in terms of its local application in US. In addition, the Act espoused to the rule of De Long Champs that immunity of diplomats is in effect absolute^[51]. Finally, the Act granted absolute immunity to

diplomats, their families and staffs with respect to civil and criminal jurisdiction^[52].

Consequently, the provision of the Act was designed to grant immunities and privileges to diplomats from being arrested and prosecuted, detained or placed on any form of harassment in the discharge of their official duties. Hence, the Crimes Act of 1790 was primarily designed to meet the conditions of diplomacy in the 18th century where a relatively small number of diplomats were in the country.

Due to the availability of these immunities coupled with the increasing number of diplomatic abuses in US, tremendous efforts have been put in place by the public pressure of the US Congress in order to curb these abuses. The US Congress brought into effect a new law which was passed on September, 1978 as the Diplomatic Relations Act^[53].

The Act was established with the intent of clarifying and reforming the conflicting laws of American diplomatic immunity which has shaped the diplomatic abuse of security implication in the states. The Act went further to provide some positive act of encouragement for law-abiding citizens and also compensating victims abused by diplomatic officials^[54]. The Act was also able to rectify the differences and put an end to the unilateral, partial treatment granted to foreign diplomatic officials in the host states. This Act transformed the US law of diplomatic immunity into the 20th century and basically rescinded the Crimes Act of 1790^[55].

In response to the security implication of diplomatic abuse in US, the pertinent question is, does the new Act succeed in controlling the rate of diplomatic abuse in US? The Act to some extent has been able to rectify the issues associated with US diplomatic abuse, nevertheless, it has not completely purged out the abuse of privileges and immunities executed in US. But, have made some tremendous efforts to reduce the number of diplomats abusing their immunities and privileges in the discharge of their official duties in the United States of America. Also, the Act has aided in reducing hostilities exhibited by US citizens to diplomats thereby granting personal recourse by individual's citizens as opposed to diplomatic tortfeasors.

Conversely, Zaid affirmed that there are over 18,000 individuals in US who are entitled to diplomatic immunity with a great number of persons committing serious crimes^[56]. To this effect, the rate of abuse to some extent has been exempted in the aspect of on-duty exemption, enforcement, traffic and parking dilemma and reciprocity^[57]. In view of this, US States Department has also played a significant role to make sure that the abuse system of diplomatic immunity does not affect the security of the states especially with respects to reducing crimes related to alcohol^[58]. The Act has lessened the general number of persons entitled to claim immunity. From this view, where a US citizen is injured by high-ranking diplomat or his family, they do not have any legal remedy except in cases of civil proceedings which is covered by the insurers^[59].

The assistance of other nations by establishing new legislation policies has been a great help for the American government with respects to the security stand of diplomatic abuse. The American government with profound expression humbly solicits that the foreign governments should penalise their diplomats for non-adherence to the proviso of the Act^[60]. On this basis, assistance by other independent states has played a significant role to reduce the rate of diplomatic abuse in US.

The most prevalent areas of diplomatic abuse in US are traffic violations, such as speeding and not paying fines. This form of abuse continuously plagued the US government^[61]. Despite the provisions of the Act, diplomatic officials continue to escape from liability with respect to offences related to parking tickets and traffic violation due to the fact that there are related to criminal offences.

However, the US public congress has put a lot of tremendous effort in reviewing the provisions of laws enacted to balance the equities of diplomatic immunity with respects to the security of the citizens. Basically, these efforts have not been easy to accomplish owing up to the sensitivity of issues underlying the principles of diplomatic immunity. Hence, a proposal was recommended to set up a claim fund to compensate victims in US for all personal injuries and property destroyed including wrongful conducts of diplomats^[62]. The establishment of this proposal was designed to fill up the lacuna where victims who could not successfully bring an action under the Diplomatic Relations Act 1798 to claim their compensation from the United States Government funded financial pool^[63]. Garley^[64] affirmed that the Act is insufficient to protect the rights of citizens on two fundamental bases: first, under the 1798 Act citizens are not able to get recompense for delicta or criminal acts of a diplomat; secondly, there are problems encountered in enforcing and administering the liability insurance and direct provisions of the Act^[65].

The proposal necessitates granting compensation for injured citizens where the diplomatic official has caused a great harm and has carried no liability insurance^[66]. Furthermore, the proposal intended that the fund would provide a remedy of last resort to victims who could not claim compensation because the immunity granted to diplomatic officials prevent them from getting legal remedy. However, the proposal was restricted to the scope of compensating damages with respects to victims of motor-vehicle accidents^[67]. Hence, New York Congress Representative, known as Solarz expanded the claims fund to fill up some gaps in the proposal^[68]. Mr. Solarz; "recommended the establishment of a bureau of claims granting full compensation to victims and reimbursing local governments with respects to revenues lost due to non-payment of fines by diplomats^[69]."

The establishment of this fund certifies that the right of the citizens should be protected without any form of interference by diplomatic officials. The Solarz bill died at the committed stage, the issue for determination was who should bear the financial onus of sustaining the fund^[70].

The initiative of granting full compensation financed by the United States of America Government to injure parties was found to be irrational^[71]. However, according to Goodman he affirmed that the claims fund should be reconsidered since there are no other adequate means of compensating injured citizens for wrongful abuse of diplomatic officials^[72].

Hence, the status quo ante remains debatably with regards to the security implications of abuse of diplomatic immunities and privileges in the United States which has not been completely eliminated the abuse of citizens by the diplomats.

Conclusion and Recommendations

The abuse of diplomatic privileges and immunities in Nigeria and the United States of America has affected both countries negatively in terms of economy, security and development. Therefore, it is recommended that the United Nations should revisit the principles in the Vienna Convention on Diplomatic Relations, 1961 with a view to amending it to let diplomats' family members, relations, other officials attached to them, bags, cars be searched and restrictive immunity be globally adopted by member countries. The diplomats' family members, relations and other officials attached to them who might have committed criminal offences, involved in issues that might have led to civil suits be let to face the wroght of the law of the host states and not to be returned to the sending states for prosecution because the sending states do not have territorial expansion to the host states.

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