

The Question of Diplomatic Immunity and Privileges in International Law: The D.S.P Alamiyeseigh Experience

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Abstract

The complex nature of the international system prompted states to adopt treaties, laws and conventions to facilitate peaceful international relations and mutual co-existence hence, this paper examined the relevance of these treaties, laws, rules and conventions especially as it relates to diplomatic immunity and who is qualified to enjoy such diplomatic immunity in contemporary international law. The study observed that elected state governors in Nigeria are entitled to diplomatic immunity as reflected in section 308 of the constitution of the federal republic of Nigeria 1999 as amended. Further findings also revealed that the arrest, detention and trial of D.S.P. Alamiyeseigha in London by the British government violated the provisions of the 1961 Vienna Convention on Diplomatic Relations, 1963 Vienna Convention on Consular Relations and the 1973 Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons including diplomatic agents. Data for the study were drawn from secondary sources while analysis was done descriptively through the qualitative method. In order to strengthen international law and regulate the actions of states and leaders at the global level, state legislatures, national parliaments and agencies of government including the judiciary should be empowered to moderate and check the actions of state governors, president's and other category of political leaders. This will ensure that personal actions and acts are not misrepresented as acts of state/government at all levels.

Keywords: *International law, Diplomatic immunity, Alamiyeseigha, Treaties, Rules and conventions.*

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Background to the Study

The international system is a dynamic but complex system because it is comprised of nation-states with diverse multicultural and religious backgrounds hence nations agree to enter bilateral or multilateral agreements to enhance effective communication, trade and international relations. These agreements, rules and treaties can also be referred to as international law. The effectiveness and impact of international law is determined by several principles and variables that are anchored on the national interest of the states concerned. In international politics, the issue of diplomatic representation in world affairs is crucial and fundamental because state parties and actors in the international system always insist that their agents and representatives including diplomatic personnel's (High Commissioners, Ambassadors etc.) be excluded from certain domestic legislations. Thus, the issue of diplomatic immunity and who should be a beneficiary has been a source of debate at all levels (within countries and at the global level). This debate resurfaced on the 15th September 2005 when Chief D.S.P Alamieyeseigha, a former elected governor of Bayelsa state, Nigeria was arrested by the Metropolitan Police at the Heathrow Airport. It is believed that since section 308 of the constitution of the federal republic of Nigeria 1999 granted diplomatic immunity to state governors in Nigeria, the British government had no basis to arrest and arraign D.S.P Alamieyeseigh in the manner it did. Several schools of thought and opinions on the subject-matter have also emerged. In the light of the above background, this study examined the question of diplomatic immunity and privileges in international law with specific reference to the D.S.P. Alamieyeseigha experience.

Theoretical Framework and Conceptual Analysis

The study relied on the idealist theory while trying to explain the need and relevance of international law amongst states in the international area. Idealism is a political theory that posits that moral principles and rules set by society if strictly adhered to can lead to mutual co-existence and a violence-free society. Idealists, therefore, maintain that society can regulate itself by setting rules and standards of behavior for all members in the society and that the fear of sanctions and collective actions can compel obedience. Scholars in this school of thought believe that a rational and moral political order, derived from university valid abstract principles can be achieved and that a good and just society is possible. On the contrary, realist scholar's and other critiques of the idealist theory argue that the world, imperfect as it is from the rational point of view, is the result of forces inherent in human nature hence, to improve the world one must work with these forces, not against them. Realist scholars therefore reiterated that the international system is a world of opposing interest and conflicts which can be addressed through balance of power, deterrence and other actions based on the use of force. To them, universal moral principles alone cannot guarantee global peace and security.

Conceptual Analysis

The issue of diplomatic immunity is no doubt an important aspect of international law which has been a source of debate and conflict amongst scholars and state actors in the international system. The issue of granting immunity and privileges developed with the development of ad hoc diplomacy which is regarded as the first form of diplomatic practices by states in the ancient times. The essence of granting diplomatic immunity and privileges is to ensure that no

sovereign state is impeded in the court of another sovereign state without its consent, or any administrative action taken against the sovereign state. Satow (1962) traced the evolution of the rule of inviolability of ad hoc diplomatic envoys to the religious protection that the Greeks accorded the Heralds who undertook peace missions. Shaw (1972) described the concept of diplomatic immunity as one of the accepted and uncontroversial aspect of international law topics. In his words: Granting of privileges and immunities is as old as diplomacy itself and international lawyers and analysts have advanced a few reasons for the grant of diplomatic privileges and immunities. These reasons are based on a number of theories which include:

1. Extra Territorial Theory
2. Representative Character Theory
3. Functional Necessity Theory

Senior lawyers and experts in international law also added their voice to the debate. According to Itse-Sagay diplomatic immunity and privileges have no boundary limitations or restrictions hence, the provisions of section 308 of the constitution of the federal republic of Nigeria which grants immunity to elected state governors in Nigeria ought to be respected within and outside Nigeria. In the words of Itse Sagay, a renowned professor of international law, the British government was wrong in arresting and arraigning Alameiyeseigha in London. On the question of immunity, he stated thus, they have been applying that immunity consistently to federating units in other countries. To be precise, Canada and Australia, so how can the case of Nigeria be different? While giving an in dept analysis of the subject matter Gani Fawenhimmi disagreed with Prof Itse Sagay and argued that under international law immunity is enjoyed by the head of a sovereign nation. In a press statement published in the Tell Magazine 10th October 2005 he explained the position of the court of law when he said:

None of the 36 states governors in Nigeria enjoys any immunity under customary international law. Consequently, Governor Diepreye Alameiyeseigha does not enjoy any immunity outside Nigeria. In his words: even regarding presidents, there are exemptions. Citing the case of Manuel Noriega and former head of state of Panama, and Slobodan Milosevic of Yugoslavia, who were both prosecuted while in office, the famous human right lawyer insisted that where a head of state engages in drug trafficking, genocide and human right abuses, he loses his immunity against prosecution? Within the context of this study the following concepts were briefly discussed.

1. **Diplomatic immunity:** This is a special privilege or benefit enjoyed by persons occupying sensitive public office. In Nigeria, section 308 of the constitution of the federal republic of Nigeria 1999 as amended allows presidents, state governors and heads of the judiciary and legislature to enjoy such privileges while in office. At the global level, international treaties and conventions also confer diplomatic immunity to heads of states and their representatives. Examples of such international treaties and conventions include the 1961 Vienna Convention on Diplomatic Relations, the 1963 Vienna Convention on Consular Relations and the 1973 Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons. This clearly shows that diplomatic immunity is an interesting, dynamic but complex subject-matter that is recognized in contemporary international law.

2. **International law:** law consists of series of rules regulating human behavior and reflecting to some extent, the ideas and pre-occupations of the society within which it functions. Laws within a particular country are referred to as municipal law while laws that operate outside and between states, international organizations are referred to as international law. International law helps to regulate the conduct and actions of state parties and actors within the international system. International law within the context of this study was restricted to the issue of immunity and status of state governors under international law.
3. **D.S.P Alamiyeseigha:** He was an elected governor of Bayelsa state, South-south Nigeria from 1999-2005. He was accused of corruption in Nigeria and was arrested by the Metropolitan Police in London. His mode of arrest, detention and trial generated debates amongst scholars especially scholars in the fields of law, diplomacy and international relations. The debate was centered on diplomatic immunity and privileges and whether the immunity granted to him by Section 308 of the Constitution of the federal republic of Nigeria should be honored and respected outside the shores of Nigeria. The D.S.P Alamiyeseigha's travails in London remain a major subject-matter amongst scholars in international law, international relations and diplomacy.

The Question of Diplomatic Immunity and Privileges in International Law

Granting of diplomatic immunity can be traced to the era of Ad-Hoc diplomacy which is the first form of diplomacy practiced by states in the ancient times. Granting of diplomatic immunity and privileges has received wide recognition in recent time. The practice has also assumed a prominent place in contemporary inter-state relations. The importance of this concept is that no sovereign state could be impeded in the court of another sovereign state without its consent, or any administrative action taken against the sovereign state. Satow (1962) traced the evolution of the inviolability of ad hoc diplomatic envoys to the religious protection that the Greeks accorded the heralds who undertook peace missions. Granting of diplomatic immunity and privileges was also advanced through judicial pronouncement as in the case of *Triquet VS Bath* where Lord Mansfield, upholding Williams Blackstone, noted that the privileges of foreign ministers and their domestic servants depend upon the law of nations. Thus, the Vienna Convention on Diplomatic and Consular Immunity and Privileges are therefore documentary declarations of the practice of nations at international and municipal levels. Satow (1962) concluded that the essence of diplomatic immunity and privileges to diplomats and internationally protected persons is based on the principles of international law and the desire to foster international peace and cooperation with a view to avoiding unnecessary dispute between states and state parties in the international system. Diplomatic Immunity is exemptions from serving in an office or performing duties which the law generally requires other citizens to perform. For example, exemptions from paying taxes, freedom or exemption from penalty, burden, or duty, while privileges include a particular and peculiar benefit or advantage enjoyed by a person, company, or a class, beyond the common advantages of other citizens. Experts in international relations also describe diplomatic immunity as special rights and privileges given in accordance with the norms of both international and municipal law to foreign diplomatic missions, head of missions and

members of staff of the missions. They caution that diplomatic immunity and privileges should not be used for personal or selfish purposes hence, such rights and benefits are not for personal benefits of diplomatic agents or envoys. This point is well articulated in the preamble to the 1961 Vienna Convention on Diplomatic Relations. This provision clearly stated that the purpose of diplomatic immunity is to ensure efficiency in the way and manner diplomats and heads of mission perform their functions. Shaw (1972) added that diplomatic immunity and privileges is one the most accepted and uncontroversial aspect of international law topics. He argued that granting of diplomatic immunity and privileges is supported by several theories which include, extra-territorial theory, representative character theory and the functional necessity theory. Gasiokwu (2006) however contended that diplomatic immunity and privileges can only enjoyed by diplomats and their representatives when their actions and conducts relate to acts that are public in nature. In other words, private and personal actions are not included in the rights and benefits provided for in the immunity granted to the head of mission, their representatives and families. Gasiokwu (2006) identified two types of diplomatic immunity and privileges. They include the absolute immunity doctrine and the restrictive immunity doctrine (Gasiokwu, 2006, 207).

The Position of International Law and Conventions on the Arrest Detention and Trial of D.S.P. Alamiyeseigha in London

Whether state governors in sovereign states have immunity outside their countries remains a major concern among scholars in the international system. According to Gani Fawehinmi, a famous human rights lawyer in Nigeria, under international law, immunity is enjoyed by the head of a sovereign nation. In his words: none of the 36 governors in Nigeria enjoys any immunity outside Nigeria. Consequently, governor Diepreye Alamiyeseigha does not enjoy any immunity outside Nigeria. Citing the case of Manuel Noriega of Panama and Slobodan Milosevic of Yugoslavia, who were both prosecuted while in office, the famous human rights lawyer stated thus, where a head of state engages in genocide, drug trafficking or war crimes, he loses his immunity against prosecution. This position was countered by Itse Sagay, a renowned constitutional lawyer and Professor of international law. In a Newspaper report captioned “governor is under absolute immunity published in page 35 of the Vanguard Newspaper 26th December 2005, the erudite professor of international law stated that the British Government was wrong for not according to diplomatic immunity and privileges to D.S.P Alamiyeseigha. In his words: they can't say that they have been applying immunity consistently to federating units in other countries. To be precise, Canada and Australia, so how can the case of Nigeria be different? In the same publication, Mike Ozekhome, a renowned lawyer and human rights activist stated thus, under section 308 of the 1999 constitution of Nigeria, the governor enjoys absolute immunity and that absolute immunity prohibits his arrest, detention or imprisonment in his words: the immunity also prevents any court processes from being served on him or from even bring applied at all. The immunity therefore is total and absolute. But he loses this immunity after serving as governor in 2007 or when he is constitutionally removed. The status of state governors in international law is the main thrust of this paper hence, there is need to establish the concept of state in international law was conceived as a system of rules governing the actions of states. Therefore, states are the most important and most powerful of the subject of international law. The 1933 Montevideo

Convention on Rights and Duties of States stipulates that states in international law should possess the following:

1. Permanent population
2. Defined territory
3. A government
4. Capacity to enter into relations with other states.

There is a need to study existing international treaties and conventions in order to understand the status of state governors in international law. States within countries are regarded as geographical territories which do not have diplomatic immunity in their own right except by virtue of international treaties and conventions. The word conventions mean a treaty hence, when two or more independent sovereign states treat a subject-matter with one another and reach an agreement with the intention of giving it a legal validity, such agreement is called a treaty. It is therefore instructive to note that once nations agree and sign treaties, they create among themselves a *Lex Contractus* of a consistent nature of treaties while the obligatory nature of treaties is known as the rule of *Pacta-sunt-Servanda*, meaning the sanctity of treaties. The legal basis for the creation of norms or international agreements is the coordination of the wills of the parties concerned. Under the auspices of the United Nations, a number of bilateral and multilateral treaties have been included in the area of diplomatic and consular relations. Some of such conventions include the 1961 Vienna Convention on Diplomatic Relations, 1963 Vienna Convention on Consular Relations and 1973 Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons including diplomatic agents. To further prove that the arrest, arraignment and detention of D.S.P Alamieyeseigha in London by the metropolitan police was a clear breach of international law and conventions, this section of the paper critically x-rayed Articles 1a and b of the 1973 Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons including diplomatic agents. It will be recalled that the convention was recommended to the United Nations General Assembly by the 6th committee at its 28th session and was adopted without objection on the 14th of December 1973. Specifically, articles 1a and b of the said convention defined internationally protected persons as;

- a) A head of state, including any member of a collegial body performing the functions of a head of state under the constitution of the concerned state. A head of government or a Minister for Foreign Affairs whenever any of such persons are in a foreign country, as well as members of their families who accompany them.
- b) Any representation or official of a state or any official or other agents of an international organization of an intergovernmental character who, at the time when and in the place where a crime against him, his official premises, his private accommodation or his means of transportations is committed is entitled pursuant to international law to special protection from any attack on his person, freedom, dignity, as well as members of his family forming part of his household. Crimes contemplated in article 1b of the convention are listed in article 2(1) as follows;
 - i. Murder, kidnapping, or other attacks upon the person or liberty of an internationally protected person.
 - ii. Violent attack upon the official premises, private accommodation or the

- means of transportation of an internationally protected person likely to endanger his person or liberty.
- iii. Threat to commit any such attack.
 - iv. An attempt to commit any such attack and
 - v. An act constituting participation as an accomplice in any such attack shall be made by each state party a crime under its law.

The phrase collegial body as used in article 1a of the convention is derived from the Word College or collegiums. The word college according to the Black law Dictionary means “an organized society or collection of people established by law and empowered to cooperate for the performance of some special functions or for the promotion of some common objectives which may be educational, political, ecclesiastical or scientific in its character. In the same vein, collegiums are defined by the same Black law Dictionary as a word having various meaning e.g. an assembly, society, company, a body of Bishops, an army, or class of many associations or individuals of same rank or station or united for the pursuit of some business or enterprise. It is therefore pertinent to stress that the subject matter in this study, Bayelsa state is a state within the Nigerian nation created for administrative convenience with powers to exercise some degree of autonomy such as appointing its own secretary to the state government, commissioners, and head of service, permanent secretaries and judges of the judiciary. The same way the federal government also appoint ambassadors, ministers, secretary to the federal government e.t.c In spite of the immunity enjoyed by state governors by virtue of section 308 of the Constitution of Federal Republic of Nigeria 1999 as amended, the federal government of Nigeria still exercise control over state governments based on items in the exclusive list. It should be noted that the federal government and state governments in Nigeria are established by law and empowered to cooperate for the performance of administrative and political responsibilities (governance).

Conclusion

This study examined the question of diplomatic immunity and privileges in international law: The D.S.P Alamiyeseigh experience in order to unravel the discriminatory application of diplomatic immunity and privileges by states in the international system. The study observed that the question of diplomatic immunity and its application under contemporary international law is well documented by relevant international treaties and conventions such as the 1961 Vienna Convention on Diplomatic Relations, 1963 Vienna Convention on Consular Relations and 1973 Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons including diplomatic agents. With specific reference to the arrest, detention and prosecution of D.S.P Alamiyeseigha (former governor of Bayelsa state in Nigeria) by Metropolitan Police in London, the study argues that public officials in Nigeria and Britain acted in disobedience and disregard for international law and conventions. In terms of structure, the paper contains the following: abstract, introduction, theoretical framework and conceptual analysis, the question of diplomatic immunity and privileges in international law, the position of international law and conventions on the arrest detention and trial of D.S.P Alamiyeseigha in London, conclusion and recommendations.

Recommendations

The following recommendation will no doubt help to ensure fairness, justice and equity in the practice and implementation of domestic and international law at all times:

1. Avoidance of sentiments and self interest in the application and implementation of public policies and actions. This is important and fundamental because some leaders and state actors often misrepresent personal actions as acts of states as reflected in the actions taken against chief D.S.P Alamiyeseigha by Nigeria and their British collaborators.
2. Political institutions should be strengthened and made more effective in order to check the activities and actions of state actors especially autocratic and authoritarian state actors and leaders.
3. Adequate compensation should be given to victims and family members who are victims of state repression and dictatorship. This is important because several citizens have been unlawfully brutalized, maimed and killed by the state for selfish and unsubstantiated reasons.
4. All properties and resources belonging to chief D.S.P Alamiyeseigha confiscated by the Nigeria and British governments should be returned back to the Bayelsa state government and the Alamiyeseigha family.
5. International treaties and conventions such as the ones cited in this study should be respected and adhered to by states and agents of the state. this is important because constant violation of these treaties and conventions could lead to global tension and conflict amongst states and communities hence, leading to instability, violence and anarchy.
6. There is need for the arrest and prosecution of leaders who use the platform of the state to advance personal acts and actions against citizens. In doing this, international institutions such as the international court of justice, international criminal court should be empowered to investigate the actions of serving and former leaders in order to ensure sanity in governance at all levels.

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