

## Summarizing Diplomatic Lawlessness in International System: Issue and Dilemmas

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### Abstract

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This work is set to unravel the diplomatic lawlessness in international system. The work is predicated on the ground that, diplomats have been violating the rules in international system vis a vis the receiving state. The work found out that, diplomats are immune in certain rules. While relying on documentary data, the work provided a stand for how diplomats need to function so as to bring in a law-based diplomat. The work concluded that ambassadors and the host nations should strictly consider the Vienna convention on diplomatic relations.

**Keywords:** *Lawlessness, Diplomats, International system, Issues, Dilemmas*

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### **Background to the Study**

Diplomacy is the management of international relations through the application of intelligence and skill by the representatives of states and other subjects of international relations<sup>1</sup>, for the purpose of achieving desired goals through peaceful means. Diplomacy is an indispensable tool for directing both the domestic and foreign affairs of a state. The machinery of diplomacy especially through the use and application of negotiation is the great engine used by civilized society for the purpose of maintaining peace. The essence of diplomacy is to conduct official business among states and achieve results without rancor. The Oxford English Dictionary defines diplomacy as the management of international relations by negotiation; the method by which these relations are adjusted and managed by ambassadors and envoys; the business or art of the diplomatist; skill of address in the conduct of international intercourse and negotiation<sup>2</sup>.

The term "lawlessness" has acquired notoriety, and remains a recurrent issue of immense significance, in legal discourse. The Nigerian case of military Governor, Lagos State V. Ojukwu<sup>3</sup> provides a convenient platform for the appreciation of the nature and dimensions of its usage. In the case, what was in issue was the ownership of a house which was built by the father of Chief Odumegwu Ojukwu. However, the Lagos State Government took over the property and treated it as having been abandoned during and after the Nigeria Civil War of 1967-70. In 1984, Chief Ojukwu moved into the house after paying the sum of ninety thousand naira to the agents of the Lagos State Government for an unexpired lease on the property. In August 1985, the Lagos State Government wrote to Chief Ojukwu, requiring him to move out of the property or face ejection. Sensing that his ejection was imminent, Chief Ojukwu sought the protection of the courts, in consequence of which, on the basis of an *ex parte* application, an order of interim injunction was issued restraining the Lagos State Government from ejecting him.

When the matter eventually came before the court on notice, the court, being dissatisfied with certain aspects of Chief Ojukwu's affidavit, vacated the order. Ojukwu and Ojukwu Transport Limited then appealed against the ruling to the Court of Appeal. While the appeal was pending and the Lagos State Government had been served with the notice of appeal, the Government resorted to self-help by using about one hundred and fifty armed men to eject Chief Ojukwu and his family from the property. Subsequently, in a ruling in which the legal history of the rights (if any) to self-help was traced and the concept thoroughly examined, the Court of Appeal held that the right to self-help ended when the dispute was turned over to a Court of Law. The Court then ordered Chief Ojukwu's reinstatement. Apart from disregarding the court's order, the Government appealed against it on the ground that "the remedy of interlocutory injunction is not available for an act which has been carried out and concluded". An indignant and enraged Supreme Court dismissed the appeal coming, as it was, from a party whose actions were capable of endangering the very existence of the judiciary. In the words of Kayode Eso, J.S.C. (as he then was):

*I think for one organ, and more especially the executive, which holds all the physical powers, to put itself in sabotage or deliberate contempt of the other (arms of government) is to stage an executive subversion of the constitution it is to uphold. Executive lawlessness is tantamount to a deliberate violation of the constitution.*

*When the executive is the military which blends both the executive and the legislature together to co-exist with it in the administration of the country, then it is more serious than imagine<sup>4</sup> (Emphasis mine).*

Furthermore, on account of the prevalence of military rule in Nigeria, the Federal Military Government which undertake to “make laws for the peace, order and good government of Nigeria”<sup>5</sup> often make laws which are “so abrasive as to be suffocating”<sup>6</sup> and, therefore, antithetical to the declared objectives, Although some of the laws can be rationalized, but not necessarily justified, others are so outrageous as to amount to a brazen show of legislative lawlessness<sup>7</sup> for instance; General Babangida promulgated the Lands (Title Vesting etc0 Decree No. 52 of 1993 and backdated it to 1978! Earlier, the Gowon regime promulgated the Federal Military Government (Supremacy and Enforcement of power) Decree. No. 28 of 1970 by which it nullified the decision of the supreme court in Lakanmi and Anor V. Attorney-General (Western State) and Ors<sup>8</sup>.

Nigeria's case of Dapianlong V. Dariy<sup>9</sup>. In the case Honorable Dapianlogn Michael, Speaker protempore (as he then was) and seven other Honorable members of Plateau State House of Assembly before the 7-member investigative panel set up to investigate the allegation of gross misconduct against former Governor Jashua Dariye of Plateau state could submit the report of its findings. Honorable Dapianlogn and 7 other Honorable members went ahead and impeached the Governor. Justice Zainab Adamu Bulkachuwa, J.C.A said: I wish to observe that our country cannot develop Political and economically unless we respect the rule of law. Where the constitution is torn into shreds by the action or inaction of those who are charged with the responsibility of upholding it, the net result is that a culture of Lawlessness is sowed into the psyche of the people. The end does not always justify the means.

The judicial arm of government has also come under scathing criticisms, especially in relation to what has come to be known as the “June 12” Imbrogilo.<sup>10</sup> The judiciary was so engulfed by the crisis that most people were unanimous that the judges “were engaged in a duel as to whose court could make the most absurd orders. The scenario was as reprehensible as it was nauseating”,<sup>11</sup> given that the pronouncements of various courts of co-coordinate jurisdiction on the same issue “were as diametrically conflicting and disheartening as if the devil had been let loose to precipitate anarchy within the judicature”<sup>12</sup> This was, of course, a manifest exhibition of judicial lawlessness.<sup>13</sup> It, thus, follows that lawlessness, of whatever dimension, has enormous implications for the legal system and the society as a whole. This chapter employs the use of the term within the context of diplomatic law to depict the abuses of diplomatic immunities and intriguing dilemmas and charts a course of actions.

II. The regime of diplomacy, diplomatic immunities and privileges<sup>14</sup> it is elementary knowledge that, simply put, diplomatic law governs the conduct of relations between representatives or organs of a state (the sending state) within the territory of another state (the receiving state) or, in appropriate case, a third state, with a view to the pursuit of certain objectives.<sup>15</sup> Thus, Article 3(1) of the Vienna Convention on Diplomatic Relations, 1961, Spells out the functions of a diplomatic mission as consisting inter alia in:

- a) Representing the sending state in the receiving state;
- b) Protecting in the receiving state in the interests of the sending state and of its nationals, within the limits permitted by international law;
- c) Negotiating with the Government of the receiving state;
- d) Ascertain by all lawful means conditions and developments in the receiving state, and reporting thereon of the Government of the sending state;
- e) Promoting friendly relations between the sending state and the receiving state, and developing their economic, cultural and scientific relations.

Sub-Article 2 Further provides that nothing in the conventions shall be construed as preventing the performance of consular functions by a diplomatic mission. Given these significant roles, immunities and privileges attach to inter alia diplomatic agents who are the main actors in diplomatic intercourse. Although various theories have, over the years, evolved as to the basis of these immunities and privileges, the jurisprudence of contemporarily diplomatic law acknowledges that “the purpose of such privileges and immunities is not to benefit individuals but to ensure the efficient performance of the functions of diplomatic mission as representing state.”<sup>16</sup>

The Vienna Convention on Diplomatic relations 1961 contains a vast array of diplomatic immunities and privileges which vary according to the status of the officer concerned. Thus, varying immunities and privileges attach to the diplomatic staff, members of administrative and technical staff, members of the service staff and, in deserving cases, private servants. Immunities and privileges are also bestowed on the diplomatic premises, the diplomatic bag, means of transport of the mission, documents and archives, et cetera. For our present purpose, we shall lay emphasis only on those immunities and privileges which will facilitate our understanding of the issue at stake; that is, inviolability of the diplomat, immunity from the criminal jurisdiction of the receiving state, the inviolability of the premises of the mission, as well as the diplomatic bag. Article 29 of the 1961 convention provides as follows:

*The person of a diplomatic agent shall be inviolable. He shall not be liable to any form of arrest or detention. The receiving state shall treat him with due respect and shall take all appropriate steps to prevent any attack on his person, freedom or dignity.*

Article 31 Proceeds to confer on the diplomatic agent absolute immunity from the criminal jurisdiction of the receiving state.<sup>17</sup> However, unlike the 1961 convention, the Vienna Convention on consular Relations, 1963, by Article, 41 (1), permits the arrest and detention pending trial of Consular Officer, “the proceedings shall be conducted with the respect



due to him by reason of his consular functions as little as possible”.

ON the premises of the mission,<sup>18</sup> Article 22 is to the effect that:

1. That premises of the mission shall be inviolable. The agents of the receiving state may not enter them, except with the consent of the head of the mission.
2. The receiving state is under a special duty to take all appropriate steps to protect the premises of the mission against any intrusion or damage and to prevent any disturbance of the peace of the mission or impairment of its dignity.
3. The premises of the mission, their furnishings and other property thereon and the means of transport of the mission shall be immune from search, requisition, attachment or execution.<sup>19</sup>

In contrast, although the 1963 convention also makes provision for the inviolability of consular missions by Article 31(2), it provides further that the “consent of the head of the mission may be assumed in case of fire or other disaster requiring prompt protective action. “Additionally, Article 25(1) of the New York convention on special missions of 1969 contains a similar provision, but requires that consent may be assumed “only in the event that it has but been possible to obtain the express consent of the head of the special mission or, where appropriate, of the head of the permanent mission.” It is striking to note that a proposal to the effect that the 1961 Convention should contain an exception permitting agents of the receiving state to enter the diplomatic premises (without the necessity for consent) in emergency cases was rejected.

Article 27 (3)(4) of the 1961 Convention further provides that “the diplomatic bag shall not be opened or detained”<sup>20</sup> and that “the packages constituting the diplomatic bag must visible external marks of their character and may contain only diplomatic documents or articles intended for official use”. Again, the 1963 Convention goes beyond the blanket, absolute assertion that the diplomatic bag shall neither be opened nor detained: By Article 35 (3):

*The consular bag shall neither be opened nor detained. Nevertheless, if the competent authorities of the receiving state have serious reason to believe that the bag contains something other than the correspondence, documents or articles referred to in paragraph 4 of this article, they may request that the bag be opened in their presence by an authorized representative of the sending state. If this request is refused by the authorities of the sending state, the bag shall be returned to its place of origin.*

It is also important to note that by Article 37(1) of the 1961 convention, “the members of the family of a diplomatic agent forming part of his household shall, if they are not nationals of the receiving state.” Also enjoy the immunities and privileges. Additionally, without prejudice to their immunities and privileges, article 41 provides that “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. “Besides, the immunity of a diplomatic agent from the jurisdiction of the receiving state

does not exempt him from the jurisdiction of the sending state. Thus, the conferment of immunity does not mean that a diplomatic agent cannot in fact commit an offence in the territory of the receiving state. That is why Article 32 empowers the sending state (Although it does, not obligate it) to waive the immunity from jurisdiction of *inter alia* diplomatic agents: failing which the receiving state can invoke the *persona non grata* provisions of the convention, by which such persons cease to be recognized as diplomatic agents and are under an obligation to leave the territory of the receiving state. Indeed, Article 9 is to the effect that the receiving state does not have to explain what informs its decision in that regard.

### **III. The Abuses of Diplomatic Immunities (and privileges)**

There is no gainsaying the incontrovertible fact that diplomatic agents play a crucial role in the society which, of necessity, requires the conferment of immunities and privileges on them. What is doubtful, and which is a serious cause for concern is whether diplomatic practice accords with the fact that the immunities and privilege are not meant to bolster up the whims and caprices of the diplomatic agents or place them above the law and licensed to treat same with impunity. The ensuing discourse explores this apprehension.

Contrary to the provision that the diplomatic bag shall contain only items intended for official use, within the framework of diplomacy, cases abound where the diplomatic bag has been subjected to serious abuse. In one incident, the customs authorities in Rome realized that a large diplomatic bag destined for Cairo (Egypt) was emitting moans. They seize and opened it and found that it contained a drugged Israeli who had been kidnapped. Some members of the Egyptian embassy were declared *persona non grata* as a result of the discovery.<sup>21</sup> In a similar incident,<sup>22</sup> Alhaji Umaru Dikko, a fugitive in London following the December 1983 coup in Nigeria, was found by British intelligence officers drugged and crated in a box. The box was brought to the standstead Airport, where it was to be loaded into a Nigerian-bound Airways plane. The Report of the British Foreign Affairs Committee has it that Dikko was found in the crate with a man who was conscious and in possession of drugs and syringes and that there was another crate which contained two conscious men (said to be Israelis). There was also a report a Nigerian who claimed to be a diplomat was at the airport at the time of loading. Although the Nigerian Governments denied complicity in the sordid affair two Nigerians diplomats in Britain were declared *persona non grata* and deported. In return, the Nigerian Government declared two British diplomats *personal non Gata* and deported them.<sup>23</sup>

The have also been allegations of the use (or abuse) of the diplomatic bag to import firearms for terrorist activities<sup>24</sup> or for the importation of illicit drugs activities which pose serious threat to diplomatic intercourse as well as international peace and security. There are also cases of the abuse of the personal inviolability of diplomatic agents and diplomatic premises, and immunity from jurisdiction.<sup>25</sup> In 1986, Sun Yat-sen, a Chinese national, and a political refugee, was detained as a prisoner in the Chinese legation in London, with the apparent intention of forcibly transporting him to Chin. It took the intervention of the British Government for him to be release. Also, on another occasion,

the Pakistan Government told the Iraqi ambassador that it had evidence that arms imported, under diplomatic cover, into Pakistan were being stored in the embassy of Iraq, and sought permission to search the premises. Although the ambassador refused to grant permission, the local police were authorized to carry out a search in his presence and large quantities of arms were discovered in crates. The government of Pakistan protested strongly to the Government of Iraq, declared the ambassador persona non grata and recalled its own ambassador.<sup>26</sup> Another highly contentious issue is the question of diplomatic asylum which, though not provided for in the Vienna Convention,<sup>27</sup> has been used to shield fugitives (some say criminals) from the justice system of the receiving (or host) state, or as in the case of General Noriega of Panama who sought refuge in the Vatican embassy, from a third state. Also worrisome is the perpetration of espionage under diplomatic cover, although this appears to be one of the unwritten functions of diplomats.

The Libyan – United Kingdom episode of 1984, however, constitutes one of the most serious abuses of diplomatic immunities (a privileges). So-called “revolutionary committees” took over the Libyan embassy in London, renamed the embassy the Libyan people's Bureau and refused to designate a person in charge of the mission. In February 1980, further internal upheavals occurred in the embassy, giving rise to additional diplomatic problems. Subsequently, on April 17 1984, an orderly demonstration was held by Libyan opponents of Colonel Gaddafi's Government, on the pavement in St. James' square, London and the British ambassador in Tripoli had been warned the day before that if the demonstration was allowed to go ahead, Libya “would not be responsible for this consequences” Shots were fired from the bureau, killing a woman police constable, Fletcher, who was on duty in the square.

According to the British Foreign Affairs Committee Report, the Libyan authorities in Tripoli were immediately requested to instruct those inside the Bureau to leave the building and to allow it to be searched for weapons, and explosives. This request was refused. The British embassy in Tripoli was also the scene of demonstrations, leading to the arrest and detention of certain British citizens. The British Government proposed that “as a basis for terminating relations by agreement”, (a) occupants of the Bureau and all other Libyan staff in the country should have safe conduct out of Britain, (b) British diplomats should be allowed to leave Libya in safety, and (c) the British Government should be satisfied that all weapons and explosive were removed from the Bureau and that it “no longer be used for terrorist acts.” These proposals were rejected.

On April 20, a bomb exploded in the luggage hall of Heathrow airport, injuring twenty-five people. There was wide press speculation that it was connected with the incidents in the square. On April 22, the Libyans were informed that diplomatic relations would terminate at 6: 00p.m that day and that all diplomatic staff and other persons in the Bureau were to leave by midnight of April 29-30. Two Libyans (not at the Bureau) were deported after the shooting of WPC Fletcher. Various measures were announced by the Home Secretary for tightening the exercise of his discretionary powers in respect of Libyans already in the country wishing to enter.

The Bureau was evacuated on April 27 1984. Those leaving were questioned and electronically searched. However, diplomatic bags that left the bureau were not searched or scanned. Thereafter, the bureau was sealed and on April 30, it was entered by the British authorities, in the presence of a representative of the Saudi Arabian embassy, and searched. Weapons and relevant forensic evidence were found but, consistent with prevailing immunities and (privileges); the culprits could not be subjected to the criminal jurisdiction of the United Kingdom. There was, of course, outrage at these bizarre events.<sup>28</sup>

## **Conclusion**

At the peak of the St. James' Square incident, many commentators, including some members of parliament, were enraged that, on account of diplomatic immunities and privileges, the Libyan diplomats could not even be arrested let alone tried. It was argued forcefully that diplomats acting in a manner incompatible with diplomatic status should not benefit from the regime of immunities and privileges, since immunities and privileges are not granted for the benefit of the individual but on account of functional necessity. It was further argued that, in the alternative, the convention should be amended or denounced. These arguments continue to be raised each time there is abuse of immunities. Indeed, we are living witnesses to new waves of crime, at least in intensity and proportion, which are capable of threatening international peace and security. Murder, assassination with political underpinnings, terrorism, international trafficking in narcotics, et cetera, are common place. Interestingly, in recognition of this reality, the Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, including Diplomatic Agents, 1973, punishes inter alia the international commission of "murder, kidnapping or other attack upon the person or liberty of an internationally protected person, thus given rise to the question whether there should be put in place an appropriate legal regime to deal with such crimes were committed by a diplomatic agent.

In a study prepared by the Foreign Affairs committee of the United Kingdom House of Commons, these and related issues were examined. It was emphasized that besides balancing intercourse, diplomacy also has to reckon with the interests of nationals abroad who, on account of the twin principles of reciprocity and reprisals, might be endangered. Accordingly, an amendment or outright denunciation of the Convention was cautioned against. In its response to the Foreign Affairs Committee Report, the Government accepted all the major recommendations.

Professor Higgins who acted as a specialist adviser to the foreign Affairs committee at all stages of its work believes that "what is needed is close co-ordination between the various parts of government, and international security co-operation" and that "as is so often the case, legal means are at hand; but they need to be matched by political will."<sup>29</sup> Even so, a number of infesting questions arise: Having regard to the internationalization of crimes to curb the current crime waves, can we say, today, that the regime of immunities and privileges under the 1961 Convention is still tenable in entirety? If the impression is created that diplomatic agents are above the law, what are the implications for "jungle"? Should the Convention be amended to make it mandatory for sending states to waive the



immunity from jurisdiction of their diplomatic agents who commit international crimes? Should jurisdiction in such cases be vested in an international criminal tribunal? Without undermining the status of diplomats Vis-à-vis consular officers, should some of the exceptions under the 1963 convention be explored? For instance, should the diplomatic bags be returned to its place of origin where a request by the authorities of the receiving state to open and inspect same is turned down? Should the absolute inviolability of the diplomatic premises be maintained? Should exceptions be made to reckon with developments which might not have been envisioned at the time of the drafting of the convention? Additionally, should the Convention make it compulsory for a sending state to prosecute its diplomatic agent who has abused his immunities and privileges, the inviolability of the diplomatic bag or the diplomatic premises, et cetera, and has been declared a persona non grata by the receiving state? Should the Convention be amended to expressly provide that where an offence which has a time bar is committed by a diplomatic agent, time does not start to run until he ceases to enjoy his immunities and privileges?<sup>30</sup> what are the implications of the doctrine of restrictive sovereign immunity for diplomatic immunity? Given that in certain jurisdictions, the sovereign does not have immunity in respect of criminal acts and other non-official acts, should diplomatic agents enjoy more immunities than their sovereigns? What really are the implications of diplomatic immunities and privileges for the rule of law? There is no doubt these are critical questions for which there are no ready-made answers. Indeed, on account of the delicate nature of what is called into question, these questions are better addressed on the basis of wide-ranging consultations and informed debate, due advertence being had to the dynamics of change and contemporary realities. We, therefore, recommend the Conference to X-ray these and allied questions. We definitely cannot afford the “luxury” of a carry-over into the next millennium.

### **Recommendation**

A diplomat is a representative of his country in another. He is the minor of his country. He represents his country's image; whatever he does will impact either positively or negatively on the image of his country. Therefore, only person who is morally, intellectually and momentarily qualify should be appointed a diplomatic. Also, there is need for constant retreat, training on what they are expected to do and how they should do it. Appointment as diplomat should not be used to dispense political favour because their job requires intelligence, charisma, chaquet and decency.



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