

GLOBAL HEALTH DIPLOMACY AND THE JUSTIFICATION OF SENDING STATES TO TREAT THEIR CITIZENS ABROAD: A CASE STUDY OF NIGERIA AND CHINESE DOCTORS DURING COVID-19 PANDEMIC*

Abstract

In the heydays of COVID 19, Chinese doctors volunteered to come and render medical assistance to Nigerian doctors in order to combat the pandemic. The Nigerian government accepted that offer and was willing to collaborate with the Chinese doctors. However, the wishes of Nigerian government to invite Chinese doctors to help Nigerian doctors to combat Nigeria doctors were affected by two main factors. The first factor was the legal regimes that prohibit foreign medical doctors from treatment in Nigeria until certain condition are satisfied. The second reason was due to the fact that prior to that time Nigerian doctors were already having industrial issues with the federal government. Consequently, many writers, especially on medical law condemned the right of foreign doctors to treat patients on Nigerian soil, without adverting their minds to certain exceptions. However, it was the position of this writer that there are certain instances where foreign doctors can treat a patient without complying with Nigeria's law medical practice. It was in attempt to espouse this position that this work derived its roots. This work further established that foreign doctors can treat patients in Nigerian in their embassies. It also discovered that foreign doctors can treat patients in a situation where there is armed conflict. The work recommended proper understanding of health diplomacy and international law as the way forward. It also recommended the need for Nigeria government to encourage telemedicine in this era of e- health diplomacy. The work deployed the use of statutes, case laws, journals, textbooks, periodicals, statistics and other ancillary sources.

Keywords: Health, Global Diplomacy, Covid-19 Pandemic, State's treatment of citizens abroad, Nigeria, China

1. Introduction

This paper is structured into four parts. The first part will examine the concept of health diplomacy and its relevance to diplomatic relations. In the second part, the writer will discuss the legal regime regulating medical practice in Nigeria and its exceptions. In the third part, the work will center on the justification of foreign treatment by doctors of a sending state in receiving states. In doing so, the writer will explore the exceptions provided under Nigeria laws as well as those provided under Vienna Convention on Diplomatic Relation (VCDR) 1961 and Vienna Convention on Consular Relations (VCCR) 1963. The fourth part of the work concludes with the way forward on how to bolster the concept of health diplomacy among comity of nations.

2. Meanings of Global Health Diplomacy

The concept of global health diplomacy (hereafter known as GHD) has been defined from different perspectives by many scholars. However, in all these views there is no singular accepted definition of GHD. However, the central theme in all these definitions is that negotiation, humanitarianism and projection of foreign policy is at the heart of GHD. To Novotny and Adams, GHD is the deployment of political relations via the provision of health care services and through that establishing diplomatic relations. To them the use of health resources is a tool of fostering diplomacy. It is from this perspective that they defined GHD as 'a political change activity that meets the dual goals of improving global health while maintaining and strengthening international relations abroad, particularly in resource conflict areas and resource-poor environments'.¹ The import of this quotation is that health diplomacy is a strategy of fostering international relations among countries through the instrumentality of healthcare assistance. This is mostly done in assisting areas affected by conflicts and those that are in dearth of healthcare facilities. With respect to assistance rendered to areas affected with conflict, there

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¹. Kelley Lee and Richard Smith, 'What is 'Global Health Diplomacy'? A Conceptual Review' P.1, Global Health Governance, Volume V.NO.1(Fall 2011) @<http://www.ghgi.org><accessed on October 15th, 2020>

are two approaches. The first one could relate to countries affected by armed conflicts. The second one relates to countries affected by either epidemic or endemic.

With respect to countries affected by armed conflict, nations and international organizations are allowed under international law to assist them with medical assistance without being attacked.² Similarly where nations are affected by epidemics or endemics, countries and international organizations are permitted to intervene by rendering healthcare assistance.³ Thus, in order to encourage health diplomacy in such situations the law accorded states and international organizations certain status under international law. In case of countries/organization supplying health necessities during armed conflicts, they enjoyed the status of health neutrality. By this they are prevented from being attacked as military objects.⁴ With respect to the countries or organization rendering medical assistance, they enjoy the status of protected persons.⁵ As of countries rendering medical assistance to another state, they are bound to comply with the municipal laws of the receiving states, except in certain instances. Furthermore, Fauci views global health diplomacy as *'winning the hearts and minds of people in poor countries by exporting medical care, personnel to help those in need it most'*. Fauci's notion of global health diplomacy may be inspired by the dependency relationship between the developed and the developing countries whereby the former woo the heart of the later. This is mostly appreciated in a situation where by the developed country is relying on the power of persuasion to promote its foreign policy objectives to the country it helped. This can be illustrated in a situation whereby a developed country (who might have large pharmaceutical companies) may render medical assistance to a developing state, with the view that the later may patronized the former's drug company. It also means that the developed state may made some national concession. Fauci's position is further corroborated by Bond who view it GHD as the cultivation of trust and negotiation of mutual benefits in the context of global health goals.⁶

3. Imperatives of Health Diplomacy

The first imperative of health diplomacy is that it opened a new visa of diplomatic engagement. The states that entered into bilateral relations are seen as mutual beneficiaries of one another. While one state depends on one another for provision of health care facilities, the supporting states will view the states it is helping as market place. Through this interaction commercial ties will be established. The supporting states may enter into partnership to the effect that it is only the health facilities that will be patronized by the weaker state. Also, it promotes the concepts of bilateral and multilateral treaties. This is usually done across regional or continental blocs. It is from this angle that we have the Brussels Treaty of (2012-2020)⁷ signed by the European countries. Also, in Malaysia entered into Memorandum of Understand with Thailand in 1997. Also, in 2006 Thailand and Malaysia entered into a bilateral treaty known as Border Health Goodwill Committee.⁸ This was meant to prevent illicit drugs trafficking, infectious diseases and exchange of health care personnel. Furthermore, it is factual that humanity is facing a turn of unimaginable outcome of health challenges that transcends national borders.⁹ Some of these outbreaks of pandemics include *Zika Virus, Ebola Virus, SARS, Chikungunya Virus* and now COVID 19. The emergence and resurgence of these viruses clearly calls for united global project. Hence

². Dustin A Lewis, Naz K. Modirzadeh and Gabriella Blum, 'Medical Care in Armed Conflict : International Humanitarian Law and State Responses to Terrorism (Harvard Law School Program on International Law and Armed Conflict (HLS PILAC), Sept. 2015) @Pp .35 to 47@<https://nrs.harvard.edu/urn-3:HUL.InstRepos.22508590><accessedon 2nd November, 2020>

³.United Nation Coordinated Appeal April to December,2020,'Global Humanitarian Response Plan COVID 19',@[www.unocha.org>sites>files PDF](http://www.unocha.org/sites/files/PDF) <accessedonNovember2nd, 2020>See also, Ignacio Packer, 'COVID 19 NGOs Critical to the Delivery of Principled and effective Humanitarian Assistance'ICVA@[www.icvanetwork.org>resources](http://www.icvanetwork.org/resources)<accessed on November 2nd, 2020>

⁴. M.Goniewicz and K.Goniewicz, 'Protection of Medical Personnel in Armed Conflicts-Case Study Afghanistan ',EUR.J Trauma Emerg. Surg (2013),Springer.Com@[link.springer.com.article](http://link.springer.com/article)<accessed on 3rd November, 2020>

⁵. .Articles 25 and 25 of GC1and Article 36 and 37 of the GC11.

⁶. Kelley Lee and Richard Smith, Loc Cit.

⁷. Otherwise known as' Commission Staff Working Document: on the Applicability of the existing EU Legal framework to telemedicine services'

⁸.Simon Barraclough and Kai-Lit Phua ,Health Imperatives in Foreign Policy :the case of Malaysia' Bulletin of The World Health Organisation,2007@[www.ncbi.nlm.nih.gov.articles.P...](http://www.ncbi.nlm.nih.gov/articles.P...)<accessed on November 3rd 2020>

⁹.What is Health Diplomacy and Why is it Relevant in Times Like This?@[www.paho.org>spc-crb>ca...PDF](http://www.paho.org/spc-crb>ca...PDF)<accessedonNovember,2020>

there is the need for imperative of global health diplomacy. Health diplomacy also promotes global security. Unity against the spread of infectious diseases is premised on the ground that injury by one state is equally an injury to a global community. Thus, the emergence of infectious diseases like SARS, Ebola and COVID 19 clearly promotes diplomacy in terms of promotion of international security. Pandemics are becoming global threat to human security; hence there is the need of collective unity in combating it. This can be effectively achieved through diplomacy. And this is what global health diplomacy seeks to achieve. It brings the roles of non-state actors in diplomatic relations. These non-state actors include Red Cross Society, *Medicines Sans Frontiers* and other International organizations. Through health diplomacy, Non- State Actors like World Health Organization and Red Cross Society were able to be granted special diplomatic status in some countries.¹⁰ It is also through health diplomacy that NGOs like *Medicines Sans Frontiers* were able to render humanitarian services to countries of the world.

4. The Place of Global Health Diplomacy under International Law

Due to the effects of globalization on humanity, GDH has been recognized by international law. Since health care is now becoming major source of insecurity to global citizens, it is therefore imperative to ensure that international law regulates it. Some of the international law that supports the concept of global health diplomacy includes VCDR 1961, VCCR 1963, Vienna Convention on and Laws of Treaties 1969 and United Nation Convention Special Mission 1969. The Vienna Convention on Diplomatic Relations 1961 (subsequently refers to as VCDR) provides for the rights of the sending states to address the needs of its citizens abroad in the receiving state.¹¹ This right of protection of citizens applies to both the natural and artificial citizens (corporate entities) of the sending states. Based on this, a sending state may extend medical care to its citizens abroad in situation of armed conflicts or pandemics.

Similarly, Article 5 of the Vienna Convention on Consular Relations 1963 (subsequently refers to as VCCR) provides for the responsibility of a sending states to protect the interest of its citizens abroad. This includes both natural and artificial persons/citizens. The Vienna Convention of Law of Treaties, 1969 regulatess the need for parties to comply with treaties they signed in the course of their international relations. Thus, any agreement or treaties entered by states is expected to be obeyed with utmost faith. This is termed as *Pacta Sunct Servanda*, which means that parties should act in utmost faith.¹² The recognition of Vienna Convention of Laws of Treaties is reflected in Article 73 of VCCR 3 which provides that ratifying the VCCR shall not invalidate or preclude the execution of any other international agreement entered by parties.

United Nation Convention Special Mission 1969 is another legal instrument that backed the practice of health diplomacy. This law defines a special mission as: ‘... a temporary missions representing the State, which is sent by one State to another State with the consent of the latter for the purpose of dealing with it on specific questions or in performing in relation to it a specific task’. From the above definition it is clear that states can send a special mission to assist in a specific task in instances of health diplomacy. Thus, under this law states can come into the sovereignty of another state and rendered medical assistance and after that it can call off its special mission. Special mission can be deployed to address the health needs of its Citizens abroad or the citizens of the receiving states. Having examined the likely international legal regimes that may justify GDH, one is prompt to ask whether in the light of COVID 19 pandemic a state can send its representative to treats its citizens abroad? If this question is in the affirmative one will further be asked whether there is justification for China to send it doctors to offer treatment of COVID 19 in Nigeria. Responding to these posers will take us to the next part of this work – justification of Chinese doctor’s visits to Nigeria.

¹⁰.Ibid

¹¹.Article 3 of the VCDR 1961

¹².Article 26 of the VCLT, 1969

5. Is There Any Justification For Chinese Doctors To Offer Treatment Or Run Test For Covid-19 Nigeria Under The Doctrine Of Global Health Diplomacy?

In April 2020 Nigeria government approved the coming of Chinese doctors to come and rendered medical and health assistance to Nigerian doctors on how to combat COVID 19 pandemic. This move was strongly opposed by Nigerian doctors and civil society as such the exercised was cancelled. However, the narrative changed when the Chinese delegates stated that they are in Nigeria to treat their citizens. This appears to hush the early public outcry that greeted their coming. Therefore, one of the critical areas of interest to this article to explore whether it is absolutely right for China to treat COVID 19 citizens in Nigeria without resorting to Nigeria's law? Also, segment of this work is interested in examining the exceptions that exist under Nigeria laws regarding treatment by foreign doctors. In discussing the above principles, this work shall explore legal frameworks governing medical practice by foreign doctors. Some of these laws include: Medical and Dental Practitioners Act, CAP M 18, LFN,2004; Code of Medical Ethics, 2008; Diplomatic and Privileges Act, CAP D 19 2004; International treaties ratified by Nigeria It is after the exploration of these national laws that one can conclude whether or not there is a justification for China to treat its citizens on Nigerian soil.

The first law to examine here is the Medical and Dental Practitioners Act, CAP M 18, LFN, 2004. This law is the principle legislation that governs medical practice in Nigeria. It deals with the accreditation, qualification and registration of all persons seeking to practice medicine in Nigeria. It provides for the procedure to be followed by both Nigerian and foreign doctors who seek to practice in Nigeria. On the regulations of foreign doctors seeking to practice medicine in Nigeria the law provides as follows:¹³

- (a) They or the organization inviting them must apply for his registration and license with Nigeria Medical Association
- (b) He must swear to an affidavit stating that they do not have a private Hospital or Clinic either in Nigeria or in his country of origin.
- (c) The doctors must write a national examination designated as Assessment Proficiency Examination conducted by Nigeria Medical Association, except doctors on foreign exchange programme.
- (d) They must pass that Examination with scores above 60%.
- (e) After passing the Assessment Proficiency Examination, they will be granted limited registration for a specific period.
- (f) He cannot work beyond the expiration of his limited registration.
- (g) There must also work within the scope of his duty; anything outside their scopes of duty, failure to do so violates the law.

The above provisions of the law are necessary requirements for any for any foreign doctor to comply with. Failure to comply with these requirements will disqualify the said foreigner from practice in Nigeria. This is because it is cardinal of Nigeria's jurisprudence that where a law provides for a specific way of doing things that procedures must be complied with. Failure to abide by the stipulated manner of doing the said act will amount to illegality.¹⁴ Another law that regulates practice of medicine in Nigeria by foreigners is the Code of Medical Ethics, 2008. The requirements for foreign medical doctor to practice in Nigeria are that he must register either under limited or provisional registrations with Nigeria medical authorities.¹⁵ During the registration period he is expected to work and operate within a specific period. The specified period must also be tied to a particular employment. ¹⁶Therefore, where there specified period expires, the said registrant must be renewed his registration. In the same way, where there is changed in the terms of the particular employment, a foreign doctor must process a new registration in terms of the new job.¹⁷ Additionally, a foreign doctor who is under limited registration must not practice alone. He must practice with a Nigerian doctor in any tasks he is assigned to. Also, a

¹³. Section 6 (iii) of Code of Medical Ethics, 2008. and Section 13 of the Medical and Dental Practitioners Act, CAP M8, LFN, 2004 also deals with limited registrations.

¹⁴ . Nnabunde V GNG (W/AT) (2010) PT. 1216

¹⁵.Section 6 (iii) of Code of Medical Ethics, 2008. .

¹⁶ Sections 12 and 13 of the Medical and Dental Practitioners Act, CAP M8, LFN, 2004 also deals with limited registrations

¹⁷.Section 13 of the Medical and Dental Practitioners Act, CAPM8, LFN, 2004 also deals with limited registrations

foreign doctor under limited registration must not operate a private clinic alone but with Nigerian doctor.¹⁸

Again, the National Agency for Food and Drugs Administration and Control, Guidelines for Registration of Imported Drugs in Nigeria (Human and Veterinary Drugs), 2018, is very helpful in this work. This is another national law in Nigeria that governs foreign treatment in Nigeria soil. This law states that before imported drugs are used, they must be submitted for sampling in the laboratory of Nigeria. It is after the successful sampling that the said drugs will be qualified for use.¹⁹ This further implies that a drug that will be used by foreign doctor must be subjected to the laboratory procedures in Nigeria. It is after this is observed and approved by Nigerian authorities that such drugs will be qualified to be used for medicinal purpose in Nigeria. Therefore, where foreign doctors subjected their drugs to Nigeria authorities, and it was approved, such drugs can be used by foreign doctors to treat their patients. When such procedures are complied with it will be used for treatment. It is factually clear that Chinese health personnel did not register with Nigeria medical authorities before and when their came into Nigeria. It is also true that they did not write the proficiency examination for foreign medical doctors provided by Nigeria medical authorities. Similarly, the drugs purported to be used by the Chinese doctors were not subjected to Nigeria drugs authorities for sampling and approval. It is these cumulative omissions and non compliance with the domestic legal regime that led the medical personnel in Nigeria to turn down the offer of Chinese Government to render assistance to Nigeria in combating COVID 19.²⁰ Now having explored these positions of Nigerian laws on the rules governing treatment by foreign doctors in Nigeria, the next question is: are there any justification for foreign doctors to treat their citizens without registering with medical authorities? It is in response to these questions that will usher us to the next part of this work.

6. Exceptions to the Legal Requirement of Foreign Doctors to Practice and the Justification for Sending States to Treat Their Citizens in Nigeria

By justification here we refer to certain instances where foreign doctors will be allowed or excused to treat their citizens or any other patients in Nigeria without registering with the medical authorities in Nigeria. These instances are mostly captured by complying with the conditions stipulated under Nigeria's law. There are also justified by existence of certain exceptions to the general rule governing foreign doctors. One area that served as an exception is the where there is a bilateral treaty between state parties. Once there is such agreement it therefore means that a registration of doctors in one state is tantamount to its registration in all the states that are parties to the treaty. For example, once there is a treaty among Economic, Community of West Africa States (ECOWAS) on medical diplomacy, it means that once a doctor is registered in Nigeria, he can practice anywhere in ECOWAS without registering again in his state of origin. Another justification is when the foreign doctors came to treat and rescue their citizens during armed conflicts. In such situations less attention is given to diplomatic relations between the state parties. As such the sending states may not need to comply with the procedure of registration in Nigeria. These armed conflicts could either be between the sending state and the receiving states- in case of international armed conflict. It could also be an internal armed conflict such as civil wars. In such situations, diplomatic relationships could be terminated or suspended.²¹ The members of Diplomatic staff who are health personnel may not register with the Nigeria medical authorities. This is because Articles 31 and 37 (1) (2) and (3) of the VCDR 1961. By this provision, a doctor who is a member of diplomatic corps is immune from the subjecting himself to the administrative jurisdiction of Nigeria. This means that there are not supposed to be registered with Nigerian medical authorities.²² Thus, this is another exception to the rule that foreign doctors must register before practicing medicine in Nigeria. By these renditions the doctors of the sending states in Nigeria, foreign missions or any accredited diplomatic agency, that have the approval of Nigeria, based

¹⁸.Ibid

¹⁹. Regulations 5 and 6 of the National Agency for Food & Drug Administration & Control (NAFDAC), Guidelines For Registration of Imported Drugs in Nigeria (Human and Veterinary Drugs), 2018.

²⁰.Anthonia Obokoh and Godsgift Onyedinefu, 'Coronavirus: NMA Rejects Invitation of Chinese Doctors', Business Day@businessday.ng<accessed on October 30th, 2020>

²¹.Articles 5,6 and 7 of the Vienna Convention Law Treaties, 1969

²².Ibid

on the concept of extraterritoriality; can practice medicine in their embassies without resorting to Nigerian Medical jurisprudence. It is from this prism that one can notice the justification of Chinese health personnel treating their citizens (may be in Chinese High Commission) without complying with Nigeria laws.

Also where there are bilateral treaties approving transnational medical practices among countries, the need to comply with the requirements of complying with municipal laws may be dispensed with. For example, where a Nigeria signed a bilateral agreement with any nation or international agencies, such countries or international organizations will not be subject to the municipal laws of the contracting nation before practicing medicines.²³ Thus, issues like writing proficiency assessment examinations may not be necessary. This is the practice adopted by the UK. However, this privilege applies only to countries that are members of European Union (EU) who are signatories to the Brussels Treaty (2012-2020).²⁴ It is for this reason that articles 3(1) of the Brussels treaty clearly provides that once a doctor is assessed and accredited by the country of his origin he is qualify to treat a patient anywhere within the EU member states.²⁵ By doing so it is assumed that the said medical practitioner does not to comply with the registrations of the municipal countries.²⁶ Also under the Nigeria Diplomatic and Immunities Act, the Minister of Foreign Affairs of Nigeria may confer immunities to foreign doctors to practice without registering with medical authorities. This power can be exercised to the members of Commonwealth, International organizations, delegates attending international conferences and certain persons. Thus, this is one of the exceptions where foreign doctors can practice in Nigeria without registering.²⁷ Furthermore, Articles 46 (2) of the VCCR immune members of consular staff from amenable to judicial and administrative jurisdiction of the receiving states. This further means that a consular staff who is a doctor is not expected to follow the administrative policies/laws of Nigeria. Therefore, a medical doctor working with embassy is not expected to register with the Nigeria Medical and Dental Practitioners Act, 2004 because he is immune from the administrative jurisdiction of Nigeria.

Therefore, from the above expositions, it is clear that there are exceptional circumstances under which foreign doctors cannot registered under Nigerian medical authorities. These exceptional circumstances include registration with Nigeria medical authorities, interventions in armed conflicts, existence of bilateral treaties to waive registrations among state parties and doctors who are members of the administrative staff of the sending states.

7. The Way Forward

In the light of the controversies that surrounded the coming of Chinese doctors to render medical treatment in Nigeria, this work suggests the following steps as way forward. These steps will be examined in the subsequent paragraphs. The first thing is to encourage the study of global health diplomacy. This will make nations to know that with the recent trend in globalization and diplomacy medical law is beyond municipal jurisdiction. It is an area where a municipal law meets with international law, especially humanitarian law and diplomacy. Scholars on diplomacy should emphasize on this sphere as one of the trending aspects diplomacy. Also, the use of telemedicine should be promoted among members of the global community. The COVID 19 pandemic shows the imperative of telemedicine in treating international health insecurity. The use of telemedicine will further promote global health diplomacy. This can be actualized through the bilateral treaties among regional or continental blocs. The foreign minister of Nigeria should have utilized his power to grant the order of exemptions to members of foreign missions, diplomatic staffs and international organizations. This would have neutralized the necessity of Chinese doctors complying with Nigeria laws. Again, Nigerian government should be deliberate about equipping the health care industry as well as the welfare of the

²³.Holger P.Hestermeyer, 'Vienna Convention On Diplomatic Relations (1961),'Oxford International Law(<http://opil.ouplaw.com>). (c)Oxford University Press Ltd,2015<accessed on15th October,2020>

²⁴. Otherwise known as ' Commission Staff Working Document: on the Applicability of the existing EU Legal framework to telemedicine services'

²⁵. William Ferreira, Adilene Rosales and Hogan Lovells, Op.Cit.

²⁶.Ibid

²⁷.Sections 11,12,13,14 and 15 of the Diplomatic Immunities and Privileges Act·CAP D 9 LFN,2004

health personnel. It is clear that Nigeria government is not doing well in promoting the health care industry in Nigeria. This is evident in the dearth of health care facilities and modern health equipment in Nigeria. The COVID 19 pandemic exposed the flaws of Nigerian government with respect to health care facilities. Nigeria government should pursue health diplomacy and partnership with advanced countries. Nigerian government should have as its foreign policy objectives the promotion of the health care of its citizens as the core value of its diplomacy. The citizen center diplomacy should focus on providing quality health care to Nigerians at home and in Diaspora.