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Follow-up and implementation of the Vienna Declaration and Programme of Action

Joint written statement* submitted by American Association of Jurists, International Association of Democratic Lawyers (IADL), non-governmental organizations in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[21 August 2023]

* Issued as received, in the language of submission only.



The Case of Ambassador Alex Saab – a Challenge to Global Diplomacy and the Rule of Law

Background

Alex Saab, the Bolivarian Republic of Venezuela's Special Envoy, was engaged in a diplomatic mission to obtain necessities such as food, medicine, and gasoline and engage with foreign governments to address the Bolivarian Republic of Venezuela's pressing humanitarian issues.

While travelling on his third special mission to Tehran, Mr. Saab's plane stopped for refuelling in Cabo Verde on 12 June 2020. Upon completion of refuelling, the aircraft was denied permission to take off. Mr. Saab was arrested and detained by Cape Verdean police at the request of the United States of America, alleging an INTERPOL Red Notice as the basis for his arrest. After over 16 months of extradition proceedings, he was forcibly removed to Miami on 16 October 2021.

Since Alex Saab's detention in Cabo Verde, the Bolivarian Republic of Venezuela has sent 31 formal protests to Cabo Verde and 14 to the United States of America. Neither Cabo Verde nor the United States of America has acknowledged or responded to these diplomatic interventions.

Alex Saab's arrest demonstrates a politically motivated case. The United States of America knew of Saab's humanitarian work and special missions on behalf of the Bolivarian Republic of Venezuela long before his arrest on 12 June 2020, as revealed in a book "A Sacred Oath" by former Defence Secretary Mark T. Esper and in "Never Give an Inch" by Secretary of State Mike Pompeo.

This case, goes beyond Alex Saab; it urgently highlights the dangers to principles of global diplomacy and international law, resonating with the foundations of worldwide diplomatic workings.

Decisions Of International Bodies

Internationally, Special Envoy Saab's situation has not been overlooked. All independent international body tasked with making a formal decision or providing opinions have unanimously agreed that Alex Saab's detention is arbitrary and unlawful.

The Court of Justice of the Economic Community of West African States ("the ECOWAS Court") – West Africa's highest court – twice ruled Mr. Saab's arrest illegal, ordering his release, the termination of extradition proceedings by Cabo Verde, and compensation. Cabo Verde refused to comply with these binding decisions under political pressure from the United States of America.

Specifically, the ECOWAS Court ruled that Alex Saab's arrest violated international and Cape Verdean laws, noting that at the time of his detention, neither an INTERPOL Red Notice nor a local arrest warrant existed, eliminating any legal basis for his arrest.

The authority of those two decisions is significant as on both occasions the judge rapporteur of the panel was Justice Januaria Costa, who is both the former Minister of Justice and a former justice of the Supreme Court of Cabo Verde.

On 8 and 16 June 2021, following the ECOWAS Court's decisions, the UN Human Rights Committee requested Cabo Verde to not extradite Mr. Saab while reviewing his case. Cabo Verde ignored both requests.

It is worth noting that various United Nations bodies have been at the forefront of recognizing the unlawfulness of Alex Saab's detention and the multiple violations of his fundamental rights.

In an unprecedented letter dated 19 July 2021 (i) the Working Group on Arbitrary Detention; (ii) the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; (iii) the Special Rapporteur on the independence of judges and lawyers; (iv) the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; and (v) the Special Rapporteur on the negative effects of unilateral coercive measures on the enjoyment of human rights recognized Mr Saab's diplomatic status, questioned Cabo Verde about the violations of his fundamental rights, his entitlement to immunity, acts of torture, and about the incompatibility of the extradition procedure he was then undergoing with the international treaty obligations of Cabo Verde. Cabo Verde ignored the enquiry.

On 13 October 2021, in another binding decision, the African Commission for Human and People's Rights ruled that Alex Saab should not be extradited. Cabo Verde did not comply.

Extraordinary Rendition

On 16 October 2021, even though local proceedings were still underway, in violation of the binding Judgments of the ECOWAS Court, the African Commission, the Human Rights Committee, and communications from UN bodies, Alex Saab was forcibly removed from Cabo Verde to Miami by the United States of America agents.

Violations of Fundamental Rights

Alex Saab is currently in limbo, being held at the Federal Detention Center in Miami, ("the FDC") since 16 October 2021 and in unlawful detention since 12 June 2020 (initially in Cabo Verde) while awaiting the outcome of his immunity appeal. In reality, Alex Saab's detention is indefinite, which is clearly confirmed by the position of the United States of America Judge Robert N. Scola during a status conference held on 16 February 2022. In response to the statement of Alex Saab's defense of only an intention to apply for bail, Judge Scola, without even considering the parties' arguments on this issue, stated that "nobody in that position should get a bond".

Conditions at the FDC are harsh, with reports of unhygienic, insect-infested food. Alex Saab's damp cell lacks natural light.-

Since being forcibly taken to the United States of America, Alex Saab has been denied consular access under Article 36 of the Vienna Convention on Consular Relations, and his family, including his daughter, who hasn't seen him since she was four months old and is now three, has been unable to visit.

Alex Saab, experiencing health issues like vomiting blood, lacks the necessary medical care at the FDC. Authorities have only provided a blood pressure check, not the required specialist assistance.

Since Alex Saab's arrest in Cabo Verde, there have been multiple breaches of his fundamental rights, including diplomatic immunity, which is globally enforced by treaty and binding customary international law. As provided in the 1961 Vienna Convention on Diplomatic Relations, nations have long recognized diplomatic agents' status and immunity. This aligns with the UN Charter's principles emphasising sovereign equality of states, international peace and security, and the fostering of friendly relations among nations.

The prerogative of states to send and receive diplomatic envoys without interference by third states is a sovereignty tenet. International law upholds the right of innocent passage, protecting diplomats from arrest and detention while in transit between their sending and receiving states.

The prominent 18th century French international law scholar Emmerich de Vattel wrote that "through whose dominions the diplomat passes are not to deny him those regards that is, immunities to which the minister of a sovereign is intitled, and which nations reciprocally owe to each other". The United States of America has historically asserted these rights for itself and demanded adherence from other nations, in peace and war.

For example, in 1854 when a U.S. diplomat (accredited to Spain) while en route to Madrid was detained in France the United States of America “immediately protested” both the “interruption” of the journey and “the refusal” to permit his passage. France relented and, even though it considered the individual—who had been born a French citizen—to be a subversive, it still recognised his international law right to free passage to Spain.

In another instance, during World War I, the United States of America demanded that the United Kingdom of Great Britain and Northern Ireland and France honour the “in transitu” immunity of an Austro-Hungarian diplomat accredited to the United States of America, despite being at war with Austria-Hungary. The State Department asserted their “undisputed right to maintain diplomatic relations”. The United Kingdom of Great Britain and Northern Ireland and France conceded, allowing the diplomat to continue his journey to Washington.

Impact

What we are witnessing is not just a violation of one man's rights but an assault on fundamental diplomatic principles which would have serious implications for all nations, including the United States of America, with the largest number of global diplomats and envoys.

Alex Saab is a diplomat accredited by the Bolivarian Republic of Venezuela to the Islamic Republic of Iran. The United States of America had no more right to interfere with his transit than France had with a U.S. diplomat to Spain, or the United Kingdom of Great Britain and Northern Ireland and France with an Austrian diplomat to the United States of America. The United States of America cannot claim international rights for itself that it denies to other sovereign members of the international community.

The case of Alex Saab reminds us that international law and diplomatic principles are not optional courtesies but obligatory norms upholding global order. This matter's gravity demands immediate and concerted attention.

We trust the United Nations' commitment to uphold global community values and anticipate a fair resolution in line with principles that support our shared international order.

Considering the potential impact of this case on international diplomacy, law, and human rights, we urgently call on the United Nations and the Human Rights Council to reinforce the commitment to principles in the UN Charter and Vienna Convention on Diplomatic Relations. We also demand an immediate end to Alex Saab's arbitrary and illegal detention, which has lasted over 3 years.
