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The Raymond Davis Affair: A Case with Global Ramifications

By Sajjad Ashraf

Synopsis

The case of an American alleged to have murdered two Pakistanis in a Lahore street has become a test of the diplomatic immunity of consular officers. Should he be given immunity, what will it mean for international diplomatic relations?

Commentary

THE CASE of Raymond Davis, the American arrested for the alleged murder of two Pakistanis at a busy street in Lahore on 27 January 2011 is becoming increasingly complex. It has serious political and diplomatic ramifications not only for Pakistan but also for the future of inter-state diplomatic relations.

The case hinges on whether or not Davis enjoys diplomatic immunity as a consular officer. The complication began with a flip-flop US position on whether he was an employee of the US consulate in Lahore or of the US Embassy in Islamabad. The diplomatic immunities in the two cases are different as the two types of employees come under two Vienna Conventions -- of 1963 and 1961 respectively.

Controversy over Diplomatic Immunity

The Pakistan Foreign Office asked the Lahore High Court for three weeks to present its opinion on the issue. The Foreign Office is believed to be under pressure to declare Davis immune from prosecution. The foreign minister, Shah Mahmood Qureshi, was removed from the cabinet reportedly for declining the President's wish to rule in favour of Davis' immunity. Qureshi has publically declared that the advice he received from his Foreign Office team, immediately after the shootings, clearly denied the claim of immunity.

Some sections of the US government have threatened to withhold promised assistance to Pakistan and even approach the International Court of Justice to obtain a ruling on immunity. The Lahore High Court, where several petitions opposing his release have been lodged, has ruled that Davis should not be removed from its area of jurisdiction. In the interim the court ordered his name to be put on the Exit Control list. At the last hearing, Davis refused to accept the charge sheet by claiming diplomatic immunity. The court has given the government until today (3 March 2011) to present its opinion on the immunity question and has fixed the hearing for this day.

The US government claims that Davis was driving alone in an impoverished area, rarely visited by foreigners, when two young Pakistanis brandished weapons at him, forcing him to shoot them in self defence. The two

young men were reportedly ISI operatives detailed to trail him. Autopsies showed that they were shot in the back.

Senior police officials in the Punjab province, in whose custody Davis is currently being held, claim that "Davis was instrumental in recruiting young people from Punjab for the Taliban to fuel the bloody insurgency" in Pakistan. The New York Times reported on 23 February, quoting unnamed official sources in Washington, that Davis "carried out scouting and other reconnaissance missions as a security officer for the CIA".

Pressure on Pakistan-US Relations

The CIA chief Leon Panetta had a telephone conversation with the ISI Chief Lt-Gen. Ahmed Shuja Pasha, also seeking Davis' release. Apparently, the approach made little headway as the ISI is incensed at the US covert operations in Pakistan, exemplified by his dubious activities. The ISI is justifiably wary and wants to know how many more Davises are operating in Pakistan under "diplomatic cover" and seeks to curtail their activities.

This incident has aroused local passions and has put further pressure on Pakistan-US relations. The people and the civil society are convinced that the nature of the crime does not qualify for diplomatic exemption. Several political parties have threatened to storm the US Consulate in Lahore and the embassy in Islamabad if Davis is not brought to justice. The affair also seems to have put on hold CIA's cooperation with Pakistan's intelligence agency, the ISI. The political fallout of this episode is likely to be serious.

Vienna Convention violation

The Vienna Convention on Consular Relations (1963), under Article 55 makes it incumbent upon all consular agents "to respect the laws and regulations of the receiving state". They also have a duty "not to interfere in the internal affairs of the state". Davis' act and his recovered possessions clearly put him in direct violation of the Vienna Convention. The questions that then arise are the extent to which immunity is available to a diplomatic agent and how the US has handled such situations when confronted with these very questions in the past.

In January 1997, when the Deputy Chief of Mission of the Georgian Embassy in Washington, Gueorgui Makharadze, ran over and killed a teenage American girl in a case of drunk driving, the US pressured Georgia (known for its pro-US alliance), which earlier claimed immunity, and had the diplomatic waiver removed. The man was tried in the US and sentenced for seven years for manslaughter.

In January 2003, the US State Department asked Pakistan to withdraw diplomatic immunity of its UN Permanent Representative, when the New York City prosecutors sought to press misdemeanour charges against him on a complaint from an estranged girl friend, claiming that he had hit her on the head after an argument. Can the US seek to claim immunity on a charge such as double murder when it had pressured other countries to withdraw immunity from diplomats on much lesser charges?

Diplomatic ramifications

As the law has developed, immunity is granted only for actions in the performance of diplomatic duties. This means that personal criminal acts of diplomats are not covered by the immunity blanket. Civilised countries in the world, including Singapore, make it quite clear to their diplomats when they are sent abroad that they have to abide by the local laws (under Articles 41 and 55 of the respective Vienna Conventions of 1961 and 1963). If they are held for personal misdemeanours or other crimes, the government will waive their immunity.

The Davis case, whichever way it goes, could set precedents on how diplomats are expected to conduct themselves in the future. It may establish the principle that it is the courts and not the foreign office that determines the immunity question. If, based on the Pakistan Foreign Office opinion, the Court allows the immunity protection, it can possibly lead to international anarchy where diplomats of sending states obtain an open licence to kill. Surely, that cannot be the intention of diplomatic conventions.

Sajjad Ashraf was Pakistan's High Commissioner to Singapore from July 2004 to December 2008 and finished his term as the Dean of the Diplomatic Corps. His diplomatic career spanned 36 years.