

DAVIS CASE CONFUSION

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DOES Raymond Davis enjoy diplomatic immunity? Did he work for the American consulate in Lahore or the embassy in Islamabad? These are two of the many questions that have been raised about Davis whose case involving the murder of Pakistani nationals has put pressure on US-Pakistan ties.

Recent days have seen Senator John Kerry come to Pakistan as part of a larger effort to secure Davis's release and to ease tensions between the two sides. A junior congressional delegation also visited Pakistan with the intention of repairing ties. However, the impasse continues.

There are three other questions directly linked to the previous two: what is the correct interpretation of the Vienna conventions and Pakistani laws regarding diplomatic immunity? What is the likely scenario if Davis is tried in Pakistan? What may happen if Pakistan hands him over to the US and lets the law take its course there?

There are two Vienna conventions that are relevant to the issue. The first one on diplomatic relations was signed in 1961 and entered into force in April 1964. The other on consular relations was signed in 1963 and entered into force in March 1967. Pakistan has ratified both and promulgated a Diplomatic and Consular Privileges Act in 1972. Diplomatic missions and consular posts are two different things and that is why there are two different conventions. Thus the confusion over the status of Davis's immunity.

According to Article 31 of the Vienna Convention on Diplomatic Relations, 1961, diplomatic agents, diplomatic staff and members of the administrative and technical staff have immunity from criminal jurisdiction in the receiving state. Conversely, Article 41 of the Vienna Convention on Consular Relations, 1963, clearly states that any person posted at the consular office can be indicted for committing violations in the jurisdiction of the receiving state.

Hence Davis can only be tried for killing the two Pakistanis if he is from the US consular office in Lahore. Going by memory and the print media, initially the US embassy stated that Davis was an employee of its consulate in Lahore. Only a week later it was asserted that he was an employee of the mission in Islamabad.

As per the Vienna Conventions, the US State Department has to notify the Ministry of Foreign Affairs as to whether a person is appointed to a diplomatic or consular post when he/she enters Pakistani territory for the first time. The key to solving the problem lies with the ministry's records. When did it receive this notification and what was Davis's status? That date can be matched with the immigration record and the stamp on Davis's passport. One wonders why

former foreign minister Shah Mehmood Qureshi took a firm stance on the issue. Was he privy to this information but oblivious of the consequences?

Under Section 4 of Pakistan's Diplomatic and Consular Privileges Act, the federal government was bound to tell the Punjab government if and when Davis was posted to the consulate in Lahore. Did that happen? The ambiguity on this score may partially explain why the PPP-led federal government and the Punjab government headed by the PML-N appear to shift the onus of dealing with Davis onto each other.

The political fallout of dealing with Davis is too costly for both parties to bear.

The existing laws are very clear on how to deal with the case and *jus cogens* — peremptory norm — points that in case of confusion, Pakistan will have to let Davis go and tried according to US law. This norm takes us to London on April 18, 1984. A British policewoman was killed outside the Libyan embassy in a shootout inside the embassy compound. The incident resulted in the severing of diplomatic relationship between Libya and the UK but no member of diplomatic staff was handed over to the British government and no Libyan was indicted.

What will happen if Davis is tried in Pakistan? Notwithstanding the outcome of the trial, PML-N will be on America's wrong side and PPP will lose face on its initial position that Davis enjoys immunity. The US may want to suspend the Kerry-Lugar law and cut off aid to Pakistan. Only Washington's dependence on Pakistan for survival in Afghanistan may stave off an economic disaster.

Even if Davis gets a slap on the wrist for killing two Pakistanis, America loses in a big way. It will hurt America's big-power ego, create a norm regarding the indictment of US citizens and embolden hostile states to follow suit. The Obama administration cannot afford to see a foreign country prosecute one of its citizens who is either a diplomat or a consular officer.

If Pakistan lets Davis go, it will wreak havoc in domestic politics and will be detrimental to long-term American interests in Pakistan and in the region. The PPP will find it hard to counter the opposition's and the religious parties' campaign to unseat it for compromising Pakistan's sovereignty, and anti-American sentiment will be further exploited by the militants and those of their ilk.

To play its cards wisely, the Americans must allow the legal course to be pursued in Pakistan and avoid bringing more Americans (and its Afghan strategy) into harm's way.

The impasse over the status of Davis's diplomatic immunity indicates that Islamabad is finding it hard to swallow the bitter pill. Probably the provisions of the *diyat* law — paying blood money to the victims' families — may save all from embarrassment. The ball is in America's court while Pakistan is in a catch-22 situation.

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