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469A Bukit Timah Road
#07-01, Tower Block, Singapore 259770
Tel: 6516 6179 / 6516 4239
Fax: 6776 7505 / 6314 5447
Email: isasec@nus.edu.sg
Website: www.isas.nus.edu.sg



The Raymond Davis Case

Rajshree Jetly¹

Abstract

This paper discusses the Raymond Davis case in the context of Pakistan-United States (US) relations. The Raymond Davis saga demonstrates, once again, the challenges faced by Pakistan as a frontline state in the international war on terrorism and how the Government has to make difficult decisions in balancing its domestic and foreign policy interests.

On 26 January 2011, an American named Raymond Davis shot two young men dead in broad daylight on a busy street in Lahore. Raymond Davis surrendered to the authorities and claimed diplomatic immunity with the support of the US Government. The tussle over how to deal with Davis threatened to spiral into a major crisis between Pakistan and the US, straining the already tense relationship between the two countries.

The US pressed for Davis' release on the grounds that he was protected by diplomatic immunity as prescribed under the Vienna Convention, to which Pakistan was also a signatory. There were also reports of US threats to cut off aid unless Davis was set free. President Barack Obama also personally weighed into the crisis and issued a statement pressing for Davis' immediate release. The issue was complicated by the uncertainty over Davis' actual diplomatic status and the fact that Davis was a Central Intelligence Agency (CIA) contractor. According to reports, he was a part of CIA operations ostensibly working outside of Inter-Services Intelligence's (ISI) knowledge to track militant organisations such as the Tehrik-e-Taliban and Lashkar-e-Jhangvi. This was seen by large sections in Pakistan as interference in their internal affairs. It also inflamed the ISI and the Pakistan military.

¹ Dr Rajshree Jetly is Research Fellow at the Institute of South Asian Studies (ISAS) in the National University of Singapore (NUS). She can be reached at isasrj@nus.edu.sg. The views reflected in the paper are those of the author and not of the institute

The Pakistan government was reluctant to be drawn into making an official statement on whether Davis enjoyed full diplomatic immunity, maintaining instead that the case, including the question of immunity, would be tried in Pakistan under Pakistan's laws. However, it was soon clear that differences of opinion existed between Pakistan and the US on the 'interpretation and applicability of international and national laws'.² Both sides adopted strong positions publicly and were put in a difficult situation where they could not compromise without losing face. The question of immunity was ultimately not decided by the courts although the issue was considered by the Sessions Court and the High Court of Lahore.

Meanwhile, the US and Pakistani officials were working frantically in backroom negotiations and diplomatic parleys to find a mutually acceptable solution. The military was also involved in the negotiations, reportedly at a meeting held in Oman, between top military officials including Admiral Mike Mullen, Chairman of the US Joint Chiefs of Staff and General Ashfaq Parvez Kayani, Pakistani Chief of Army Staff.

The solution finally came not through a resolution of the question of immunity, but through a creative alternative option, relying on Sharia law. There are provisions in Sharia law for the pardon of a crime if the perpetrator pays compensation to the victim or victim's families and that those parties accept that compensation and forgive the perpetrator. The families had agreed to accept *diya* or compensation in the total sum of US\$2.3 million and forgave Davis on 16 March 2011.³ Davis was then formally acquitted and within hours left Pakistan for the US. While a showdown between Pakistan and the US was averted, the solution did not bring much respite to the Pakistan government reeling under public criticism for its failure to stand up to US pressures.

The Davis case is a classic example of realpolitik in action. The stakes were too high for both Pakistan and the US. Pakistan has been under immense stress due to its frontline status in the international war on terror as well as its own rising domestic militancy. There are many people like Raymond Davis in Pakistan and the Pakistan government cannot be seen turning a blind eye to this killing. On the other hand, the US needs to protect its agents who are operating in Pakistan, which was why the US Government was adamant that diplomatic immunity applied. The sad thing is that to some extent truth also became a casualty in this unfortunate episode. By avoiding a trial, there was no finding as to why the killing occurred and who was in the wrong. More significantly, there was no resolution as to the extent of diplomatic immunity that persons such as Davis might enjoy.

² Raja Aghar, 'Row continuing with US on Davis issue, admits Gilani', *Dawn* (22 February 2011), www.dawn.com/2011/02/22/row-continuing-with-us-on-davis-issue-admits-gilani.html. Accessed on 28 March 2011.

³ 'CIA-ISI Partnership after Davis', *The Friday Times* (25-31 March 2011), Vol.XXIII, No.6, www.thefridaytimes.com/25032011/page3.shtml. Accessed on 28 March 2011.

At the broader level, the Raymond Davis case is symptomatic of deeper issues impinging on Pakistan's internal and external challenges as well as the US' own dilemmas in the region. First, the key challenge for Pakistan is to find a balance between maintaining relations with the US on an even keel and coping with an increasingly hostile anti-US climate within the country. Pakistan is in an increasingly difficult position. Its role as a frontline state in the war on terror is imposing an unacceptably heavy domestic burden on it. Caught in the midst of US priorities and rising anti-US public opinion within the country, Pakistan is finding itself with few options. Its equivocal position on Davis' immunity is an example of its predicament. Affirming immunity would alienate its domestic constituency and denying immunity would alienate the US. Pakistan is heavily dependent on the US for advanced weapons and training of its military. In addition, Pakistan receives a massive package of economic and humanitarian aid. The US' financial assistance remains crucial to curb rising militancy within the country. For example, the US is expected to sanction US\$1.1 billion through the Pakistan Counterinsurgency Fund to help fight militants.⁴ Pakistan cannot afford to lose that.

On the other hand, there is no denying that the US needs Pakistan to achieve success in its war on terror and its strategy towards Afghanistan. The US, however, feels that the Pakistan government and security forces are not doing enough against key insurgent groups operating in Afghanistan. More important, despite repeated US pleas, Pakistan remains reluctant to launch counter operations against the militant groups in North Waziristan, who are using this territory to launch attacks against US forces in Afghanistan. In view of its commitment to gradually wind down its operations in Afghanistan, beginning July 2011, the US pressures on Pakistan are bound to grow in the days to come.

The recent drone attack in Dattakhel, North Waziristan, just a day after Davis' release, only underlines the simmering undercurrents in the Pakistan-US relationship. The resumption of the drone attacks, which had been suspended for a while during the Raymond Davis saga, has led to a public outcry against the US transgressions of Pakistan's sovereignty. The government in Pakistan has strongly condemned the attack in Dattakhel, which has resulted in heavy casualties amongst innocent civilians including children. Calling it a violation of human rights, General Kayani went on record to say that 'such acts of violence take us away from our objective of elimination of terrorism.'⁵ Pakistan has also postponed the trilateral dialogue between the US, Pakistan and Afghanistan scheduled for 26 March 2011.

A related challenge that the Davis case has brought to the fore is the fragility of the present coalition government in Pakistan. The Government has been under attack for failure to take

⁴ 'Raymond Davis case: Three possible outcomes', *The Express Tribune* (19 February 2011), <http://tribune.com.pk/story/120866/raymond-davis-case-three-possible-outcomes/>. Accessed on 28 March 2011.

⁵ 'Rare condemnation by PM, army chief: 40 killed in drone attack', *Dawn* (18 March 2011), www.dawn.com/2011/03/18/rare-condemnation-by-pm-army-chief-40-killed-in-drone-attack.html. Accessed on 24 March 2011.

adequate action in social and economic sectors and address the concerns of the common man – who has been hard hit by rising prices, power shortages, unemployment and challenges of governance, including corruption. The acquittal of Davis has evoked further criticism of the Government for failing to take a firm stand and appearing to accommodate US interest. The extremist sections have lost no time in whipping up passions against the Government which could feed into growing Islamist militancy in the country. The only silver lining is that the settlement of the Davis case under the Sharia law seems to have taken some wind out of the sails of a few extremists, although it has failed to fully placate them. For example, the Jamaat-e-Islami has condemned the release of Davis and called for street demonstrations in protest. The Davis episode shows once again the continuing challenges for the Government in Pakistan. It remains to be seen whether there will be any major fallout from Davis' acquittal.

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