

DE-ESCALATING THE NEW U.S.-PAKISTAN CRISIS

CIA contractor case could raise difficult immunity precedents

By Toufiq Siddiqi

HONOLULU (Feb. 25, 2011) -- While the ongoing revolutions in the Arab world have been the focus of media attention during the last month, a crisis has developed in U.S. relations with another strategic ally, Pakistan, after Raymond Davis, an American working out of the U.S. consulate in Lahore, was arrested for shooting two Pakistanis from his automobile on a busy street. Mr. Davis has claimed that the two men were attempting to rob him and that he shot them in self-defense.

It has now been confirmed that Mr. Davis was in Pakistan on a covert contract with the CIA. *The Telegraph*, a conservative British newspaper, has stated that he was in fact, the acting head of the CIA in Pakistan, after the cover of the former chief was blown. According to *The Telegraph*, Davis was unknown to ISI, Pakistan's intelligence agency, and "was operating outside the normal agreements between the two countries." *The Washington Post* has reported that ISI is ready to split with the CIA due to what it called heavy-handed pressure and what it believes is a covert operation involving hundreds of contract spies operating in Pakistan.

The U.S. government is insisting that Davis has diplomatic immunity and should be allowed to return to the United States immediately. The Pakistan Foreign Ministry claims that Davis had no blanket immunity, and that the case will be examined and ruled on by the Pakistani courts. Yesterday, Davis appeared in court in Lahore, Pakistan's second-largest city, and refused to sign a document listing the allegations against him. He is expected to be formally charged on March 3. Meanwhile, a separate court is weighing his claim to diplomatic immunity.

The highly respected foreign minister of Pakistan, Shah Mehmood Qureshi, has resigned, claiming that the Pakistani government is being pressured by the U.S. to confirm that Davis had diplomatic immunity and send him home without delay. The U.S. has postponed the visit of President Zardari to Washington, and the chairman of the House Armed Services Committee raised the possibility during a recent visit to Pakistan that U.S. military assistance to the country, presently about \$2 billion per year, may be in jeopardy.

It is clearly in the interests of both countries not to let this one incident affect their overall strategic partnership. For the United States, it would be hard to supply fuel and heavy items to its armed forces in Afghanistan without transit through Pakistan, and it would be almost impossible to go after Al-Qaeda and Taliban militants operating along the Pakistan-Afghanistan border.

It is also very much in Pakistan's interest to prevent the crisis from escalating to the point where hasty decisions are made by either side. In addition to the possible loss of direct economic assistance from the U.S., investments in many sectors of the economy by foreign companies and countries would also be slowed down. Efforts to deal with severe infrastructure problems, such as inadequate supplies of electricity, natural gas, and water, would be greatly hampered.

On the issue of diplomatic immunity, the incident brings to mind the case of a high-ranking diplomat from the Embassy of Georgia who killed a girl in a drunken driving accident in Washington in 1997. At the time, there were calls from U.S. lawmakers to re-evaluate the status of diplomatic immunity for serious crimes, and to suspend aid to Georgia if the diplomat were not tried in the United States.

Then-Secretary of State Warren Christopher appealed to the president of Georgia, Eduard Shevardnadze, to waive the diplomat's immunity. Shevardnadze, who as Foreign Minister in the Soviet Union under Gorbachev, was one of the principal architects of "détente" with the United States, agreed to do so for the sake of good ties with the U.S. and on "moral and ethical grounds." The Georgian diplomat was subsequently tried and sentenced in the U.S., and served several years in a North Carolina prison before being sent back to Georgia to serve the rest of his sentence there.

What would happen if the Pakistanis, who have so far insisted that Davis does not have full immunity, were to instead agree with the U.S. that he does, but then immediately ask for a waiver of the immunity so that Davis could be tried in a Pakistani court?

The precedents that we set often come back to haunt us, and the Davis case may do so in other ways as well. If Davis were freed by Pakistan to go home, what would happen if some foreign embassy or consular official in the United States were to kill one or more Americans and claim "self-defense?" Would we allow him to go home immediately, without any sort of legal process first?

The United States now restricts immunity to only the most senior diplomats and their families. What would the implications be if other countries, using the principle of reciprocity, also decided to do the same for U.S. diplomats? Today, as the larger developing countries begin to assert themselves on the international scene, it is going to be increasingly difficult to expect that other countries treat our nationals differently from the way we treat them. This could become the case even for countries such as Pakistan that receive financial assistance from the U.S.

Long-term positive relationships between countries require that each try to accommodate the bilateral and domestic requirements of the other. In the Davis case, the two countries could try innovative approaches, for example by holding a joint inquiry involving justices from both countries, before proceeding further. Good international lawyers and diplomats might come up with viable options.

The main objective should be to cool public passions now and prevent the crisis from escalating any further and doing permanent harm to a relationship that is of high importance to both countries.

Toufiq Siddiqi is an Adjunct Senior Fellow at the East-West Center and President of Global Environment and Energy in the 21st Century, a non-profit institute based in Honolulu. The views expressed in this commentary are his own, and do not reflect those of any institution with which he is affiliated.