

Published on *National Catholic Reporter* (<https://www.ncronline.org>)

February 22, 2011 at 4:33pm

Expert: If CIA agent in Pakistan not diplomat, not immune

by Joshua J. McElwee

News that Raymond Davis, the American who sparked a diplomatic crisis between the U.S. and Pakistan by shooting two men dead in the city of Lahore last month, was working for the CIA means U.S. claims that he is a diplomat with immunity have "no basis," says one expert.

The revelation also raises questions about how Pakistanis will tolerate the continued American military presence in their country in the midst of unmanned drone attacks and with U.S. troops scheduled to withdraw from Afghanistan in 2014, say others.

Davis' connection with the CIA first came to light Sunday in a report in the U.K.'s *Guardian* newspaper, which cited U.S. officials confirming he was working with the clandestine agency as a private contractor.

The U.K.'s *Telegraph* reported yesterday that the spy may have been acting as the CIA's station chief in the country.

U.S. officials say Davis was attached to the American diplomatic delegation at the time of the shootings and therefore is entitled to diplomatic immunity. In a press conference last week, President Barack Obama described Davis as "our diplomat" in Pakistan.

Davis -- who is a former special forces soldier and former employee of Xe, the controversial private military contractor previously known as Blackwater -- has said that he was acting in self defense against a pair of suspected robbers.

With the revelation that Davis at least contracted with the CIA, "there seems to be no basis for saying he has immunity," said Mary Ellen O'Connell, a law professor at the University of Notre Dame.

?Because the U.S. said he was a member of the staff of the Consulate in Lahore, it's plain to me that consulate staff would not have immunity in a case like this,? she said.

At stake in the question of whether Davis was acting as a diplomat in Pakistan are American claims that he cannot be prosecuted for the shooting deaths, said O'Connell, author of *The Power and Purpose of International Law*.

In order for Davis' shootings to fall under the scope of diplomatic immunity, they must have taken place while he was on the embassy staff in Islamabad, she said.

In a Jan. 28 press release, the U.S. embassy in Pakistan said Davis was a "staff member of the U.S. Consulate General in Lahore." In a Jan. 30 release, the embassy said Davis "is a member of the U.S. Embassy's technical and administrative staff."

The discrepancy between the two reports reflects that the treatment given to embassy and consulate staffs is different, said O'Connell, because diplomatic immunity involves a certain amount of international compromise.

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"Nation states make a big concession in providing immunity to diplomats; they are less willing to be so generous to consuls and consulate staff," she said.

Pakistani authorities have challenged Davis' account that he was acting in self defense when he shot two motorcyclists Jan. 27. They point to the fact that both victims had been shot five times, and one had been shot from behind.

The authorities also raise questions about the items which were found in Davis' vehicle, which included a Glock pistol and five magazines; 75 rounds of pistol ammunition; a GPS tracker; and a flashlight headlamp.

The contents of his car also raise questions about Davis' status as someone attached to the U.S. embassy, said another expert.

Those kinds of items ?probably aren't the kinds of things that people are just driving around with in Pakistan, unless they are doing work that's more than just providing physical security at the embassy or one of the consulates,? said David Alvarez, a political science professor at Saint Mary's College of California.

Alvarez -- who was cautious to say that the details of the spy's position in relation to the U.S. embassy in Pakistan still seemed unclear -- also said that if Davis was working for the CIA as a contractor, U.S. officials' public support of diplomatic immunity for him may indicate that other contractors elsewhere work under similar assumptions of immunity.

It's possible that ?arrangements have been made? between contractors and U.S. government officials, said the author of *Spies in the Vatican: Espionage and Intrigue from Napoleon to the Holocaust*.

While the outcome of the U.S. call for immunity for Davis will ultimately be up to a Pakistani court -- which has given authorities until March 14 to determine Davis' immunity status -- the longer the dispute

continues, the worse it could be for Pakistani/U.S. relations, said a Pakistani expert.

“The delay in the two governments getting together to resolve this out of the public eye has fueled a lot of resentment inside Pakistan,” said Shuja Nawaz, a political and strategic analyst at The Atlantic Council.

That resentment, Nawaz said, also comes at a time when many Pakistanis are upset about the CIA’s continued use of unmanned attack drones in the country.

“A very large majority of people inside Pakistan think that the drone attacks are never justified,” said Nawaz. “Since this is apparently a CIA operation, it will further inflame people against other CIA operations in Pakistan.”

With the withdrawal of U.S. troops from Afghanistan scheduled for 2014, Nawaz also said improving relations with Pakistan is considered “critical” by the United States.

[Joshua J. McElwee is an *NCR* staff writer.]

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