A. Policy (CALEA 1.1.4)

It is the policy of the Department to conform with federal law regulating diplomatic immunity. It is understood that dealing with diplomatic immunity poses particular problems for law enforcement officers and that officers may be overly generous in applying immunity if they do not understand its purpose or rules. However, allegations of serious crimes or other serious difficulties with diplomatic or consular personnel should be fully investigated and promptly reported to the State Department. It is imperative that officers perform good investigations, keep good records, and report whenever appropriate, to the State Department. This allows the State Department to exercise the tools it has to remove individuals from the U.S. who are engaged in criminal activity or to revoke the driving privileges from individuals who repeatedly violate the traffic code.

B. Definitions

1. **Diplomatic Mission** - encompasses both the chancery where embassy work is performed and the residence of the head of the mission.

2. **Diplomatic Immunity** - full or limited criminal immunity which the personnel of a foreign diplomatic mission and, in varying degrees, their family members enjoy because they serve as representatives of a sovereign state and require special rights and guarantees for the effective functioning of the mission.

3. **Diplomatic Agents** - a term embracing heads of missions, ambassadors, charge d’affaires, and members of their diplomatic staff, i.e., those recognized by the U.S. Government as having diplomatic rank and title.
4. **Administrative and Technical Staff** - this category includes secretaries, clerical personnel, office managers, and certain professional security personnel. These persons also enjoy a high level of diplomatic agents.

5. **Service Staff** - these persons are drivers, cleaners, and building/grounds personnel. They have much less in the way of immunity.

6. **Private Servants of Members of the Mission** - they and their families are hired by diplomats for their personal use and have no immunity for their criminal acts or private wrongs even if such acts occur in the course of the performance of their duties.

7. **Consular Officers** - are not to be confused with diplomatic agents and do not enjoy the privileges and immunities. Consular officers perform a variety of functions of principal interest to their countries (e.g., issuance of travel documents, attending to difficulties of their own countrymen and generally promoting the commerce of their country.)

8. **Special Bilateral Agreements** - there some foreign countries in respect of which the categories set forth above are not applicable. These are countries with which the United States has bilateral agreements which grant significantly higher privileges and immunities to all members of their embassy staffs (provided the staff member is a national of the sending state) and to certain of their consular personnel (and sometimes their family members). In some cases, these privileges and immunities approximate those accorded diplomatic agents. Again, this situation will be taken care of when identity documents are issued, but officers should be aware of this distinction because they may have to confront situations where a chauffeur or mechanic from the embassy of one of these countries asserts a right to full diplomatic privileges and immunities.

C. **Full Criminal Immunity**

1. This type of immunity is given to the diplomatic agents, administrative and technical staff of missions and their families.

2. Full criminal immunity means more than immunity from prosecution. It means that the residence, vehicles, papers, and correspondence of an individual with this immunity classification cannot be searched, the person cannot be detained or arrested, and is not required to give evidence as a witness.

D. **Limited Criminal Immunity**

Service staff members have limited criminal immunity. They can be detained, arrested, and prosecuted for criminal acts. If prosecuted, service staff members can raise “official
acts” immunity as an affirmative defense. The court having jurisdiction will then determine whether or not the service staff member was acting in his capacity at the time of the offense. Service staff can be required to give evidence as witnesses, and their persons and effects can be searched, in accordance with local law.

E. Outline of Criminal Immunity by Personnel Category or Family Classification

1. Diplomatic Staff of Mission - Full Immunity
   a. Head of Mission (Ambassador or Charge d’affaires).

2. Diplomatic Staff of Mission - Full Immunity
   a. Members of the Delegation of the Commission of the European Communities;
   b. Permanent Representatives and Senior Staff of Mission to Organization of American States and United Nations; and
   c. Senior Officials of the United Nations Secretariat.

3. Administrative and Technical Staff - Full Immunity
   a. Administrative Officers/Assistants;
   b. Security Officers;
   c. Purchasing agents;
   d. Budget and Fiscal Technicians;
   e. Archivists;
   f. Cryptographers;
   g. Receptionists/Secretaries;
   h. Stenographers/Typists;
   i. Clerks;
   j. Couriers/Messengers; and
   k. Guards.
4. Families of Diplomatic Agents, Staff of Mission, Administrative and Technical Staff - Full Immunity

   a. Spouses; and
   
   b. Dependent children until age 21, or age 23 if full-time student at an institution of higher learning.

5. Service Staff - Immunity only for acts in the course of duties (Court decides if acts are in the course of duties)

   a. Chauffeurs;
   
   b. Drivers;
   
   c. Servants in missions; and
   
   d. Employees performing domestic duties in missions.

6. Families of service staff - no immunity.

7. Private servants and their families - no immunity.

8. Members of Consular Posts - Consular officers and their personnel must not be considered identical to embassies. Members of consulates have a significantly lower amount of privilege and immunity, reflecting the fact that consular officers are concerned with issuing travel documents, etc., and not with communication between countries. Consular officers have only “official acts” immunity in both criminal and civil matters. They may be arrested for felonies, with a warrant, but have immunity from providing evidence as witnesses where a case involves their official duties. Note that family members of consular officers enjoy no immunity.

   Note: No officer is expected to determine whether a given set of circumstances constitute an “official act.” Thus, a person enjoying “official acts” immunity may be prosecuted if the alleged criminal act is believed outside the scope of “Official duties.” The court will decide whether the alleged crime was part of “an official act.” Also note that consular service staff have no immunity except they do not have to serve as witnesses concerning “official acts.” Family members have no immunity. U.S. nationals or permanent residents employed by a consulate have limited immunity, and honorary consults have only “official acts” immunity and witness immunity regarding “official acts.” Family members have no immunity.

POLICY AND PROCEDURE # 94 Diplomatic Immunity
F. Traffic Violations Involving Diplomats (CALEA 61.1.3.d)

1. Moving Violations

When a driver believed to have diplomatic immunity is stopped for any moving traffic violation and has proper and valid identification indicating immunity, the officer may issue an appropriate traffic citation or warning notice. The issuance of a traffic citation does not constitute an arrest or detention. This paragraph shall not be construed as authorizing the arrest or detention of members of the Diplomatic Corps for any violation of the Traffic Code of South Carolina.

a. It must be noted that the diplomat does not have to sign the citation and cannot be arrested for refusal to sign or accept the citation.

b. Failure of the diplomat to appear in court to answer the citation may cause action by the Department of Motor Vehicle Administration in relation to the diplomat’s driving privileges within this state.

2. Copies of Citations and Accident Reports

a. Officers should, in addition to normal procedures, advise the Patrol Commander or Director immediately if one of the following situations exist:

1) A citation is issued to the driver of a vehicle (or the accident involves a vehicle) with U.S. Department of State diplomatic license plates:

2) A citation is issued to (or the accident involves) the bearer of a U.S. Department of State diplomatic driver’s license; or

3) A citation is issued to (or the accident involves) a driver whose identity has been confirmed by the U.S. Department of State, Office of Protocol, as a member of a foreign mission entitled to immunity.

b. The Director will promptly forward the original report and citation, with a cover letter under the Director’s signature to the Director of the Records Division, U.S. Mission to the United Nations, for official dissemination. This information may be faxed. See Attachment A for address and phone numbers.
3. Driving While Intoxicated Violations

When an officer stops an individual with the intention of making an arrest for driving while intoxicated and that individual is entitled to diplomatic immunity, the officer shall extend the same courtesy and consideration to him as a member of the Diplomatic Corps as has existed in the past.

a. If the officer has probable cause to believe that a person with full immunity is driving while intoxicated or under the influence, the officer should not allow that person to operate the vehicle. The officer’s primary concern in this situation should be the safety of the community and of the intoxicated individual. The officer will provide assistance in parking the vehicle or securing another driver. Once the vehicle is parked, the diplomat will be provided with a written location of where the vehicle is parked.

b. An officer may issue a traffic citation to the person for DUI and any other related traffic charges. However, no physical arrest can be made.

c. If the diplomat refuses assistance or a claim is made that the officer’s requested action would restrict the effective exercise of his function as a diplomat, the officer will inform the diplomat that he is free to go, but the vehicle may not be moved, and the embassy or legation concerned will be contacted immediately for advice or assistance in obtaining a driver and removing the vehicle.

d. If the driver is entitled to diplomatic immunity, he should not be restrained except in extreme cases. Sobriety tests should be offered, but a diplomat may not be compelled to take any tests. Force must not be used except when necessary to prevent injury to the diplomat or others and then only the absolute minimum should be applied.

4. Towing

When it becomes necessary to have a vehicle bearing diplomatic registration towed, officers will comply with Policy and Procedure #79 (Traffic). It should be noted that a diplomat’s vehicle is considered secure from violation and cannot be searched.

G. Claims of Diplomatic Immunity

1. When proper I.D. is shown and status is verified, the immunity will be fully respected. Where there is full immunity as a diplomatic agent, the person may not
be arrested and should not, except in the most extraordinary circumstances, be
detained in any way. However, in any serious incident, the officer will record all
pertinent details from the I.D. card and details and circumstances of the incident
and complete an Incident Report. An officer initiating such a report will notify
the Patrol Commander the next business day. The Director will promptly forward
the original report, with a cover letter under the Director’s signature to the
Director of the Records Division, U.S. Mission to the United Nations, for official
dissemination.

Serious incidents should be reported by telephone as soon as possible (see
Attachment #1 for address and phone numbers).

2. When an officer is confronted with a person claiming immunity and the person
claiming immunity cannot produce satisfactory I.D. and the situation would
normally warrant arrest or detention, the officer will inform the person that he or
she will be held in custody just until proper identity can be confirmed. The
Command Center of the Bureau of Diplomatic Security, Department of State
(opera tes 24 hours a day) will be called immediately (see Attachment #1) to
verify claims of Diplomatic Immunity. The “Blue book” and “White List” will
no longer be used to verify diplomatic immunity.

3. Inquiry should also promptly be made to the State Department in any case where
an individual claims immunity and cannot present satisfactory identification or in
any case where the officer has reason to believe that invalid identification is being
presented.

4. When public safety is in imminent danger or it is apparent that a serious crime
may otherwise be committed, officers may intervene to the extent necessary to
halt the activity. This naturally includes power of the police to defend them
selves from personal harm.

5. When a U.N. diplomat is involved in an incident or arrested, the initiating officer
will notify the Patrol Commander immediately. The Patrol Commander will
promptly forward the original report, with a cover letter to the Director of the
Records Division, U.S. Mission to the United Nations, for official dissemination.
Serious incidents should be reported by telephone as soon as possible to the
Communications Section of the U.S. Mission to the United Nations in New York
(see Attachment #1 for address and phone numbers).

6. Tax exemption, auto registration, license plates and driver’s licenses are not
conclusive proof of diplomatic immunity. Again, these only indicate that the
bearer may be entitled to some degree of immunity.

7. There are three types of identification cards:

POLICY AND PROCEDURE # 94 Diplomatic Immunity
a. Diplomatic (blue border for diplomats);

b. Official (green border for employees); and

c. Consular (red border for consular personnel).

The identification cards are 3 3/4” X 2 2” and contain a photograph of the bearer. The bearer’s name, title, mission, city and state, date of birth, identification number, expiration date, and a U.S. Department of State seal appears on the front of the card. A brief statement of the bearer’s immunity is printed on the reverse side. Space is also provided for the bearer’s signature. While this form of identification is generally to be relied upon, law enforcement authorities are urged to immediately seek verification as indicated above in connection with any serious incident or in any case where they have reason to doubt the validity of the card. Officers should be alert to the fact that newly arrived members of diplomatic and consular staffs may not yet have these official identity documents and should be prepared to contact the Command Center of the Office of Diplomatic security (see Attachment #1 for the phone number).

d. Even though individuals ultimately enjoy the protections afforded by diplomatic or consular privileges and immunities, as indicated above, it is for the benefit of the sending country that these protections are actually devised. This concept is well established in international law and explains the fact that the individual concerned does not “own” the immunity; such immunity may always be waived, in whole or in part, by the country which employs such person. While waiver of immunity in the face of criminal charges is not common, it is routinely sought and occasionally granted. The department’s ability to secure such a waiver may depend to a large degree on the strength (and documentation) of the case at issue. Similarly, it is of little avail for the Department to secure a waiver of immunity in a particular case if the case has not been developed with sufficient care and completeness to permit a successful subsequent prosecution. Proper documentation and reporting by law enforcement authorities plays a critical role in both of these respects.
Attachments:

Attachment #1- Points of Contact for Information/Notification
Point of Contact for Information/Notification
Diplomatic and Consular Personnel
and International Organizations other than the UN

During Normal Business Hours

1. For reporting traffic incidents/accidents, issuance of citations, etc., involving foreign missions personnel:
   a. (202) 895-3522/Fax (202) 895-3646.
   b. Office of Foreign Missions, DMVO
      Attention: Driver Services
      3507 International Place, N.W.
      Washington, D.C. 20008

2. For reporting any serious incident (non-traffic) involving foreign missions personnel:
   a. (202) 647-7277.
   b. Command Center
      Office of Diplomatic Security
      Department of State, N.W.
      Washington D.C. 20520

3. Verify Current Status of:
   a. U.S. Department of State federal license tags, registration, or other motor vehicle information: (202) 895-3532
   b. U.S. Department of State driver licenses and general licensing information: (202) 895-3521
   c. Diplomatic agents and family members: (202) 647-4570
   d. Embassy administrative and technical, service staff, and families: (202) 647-1405
   e. Consular personnel and families: (202) 647-1404

Attachment #1
f. International organizations: (202) 647-1402

After Normal Business Hours

1. All inquiries should be made to the Command Center of the Office of Diplomatic Security, Department of State (operates 24 hrs./day): (202) 647-7277

United Nations Personnel

During Normal Business Hours

1. Verification information is available from the Host Country Section of the U.S. Mission to the United Nations:
   a. (212) 415-4131
   b. Host country Section
      U.S. Mission to the United Nations
      799 UN Plaza
      New York, NY 10017

2. Current status of U.S. Department of State License tags, registration, or other motor vehicle information: (202) 647-7277

After Normal Business Hours

1. Information is available from the Communications Section of the U.S. Mission to the United Nations (operates 24 hrs./day): (212) 415-4444

Attachment #1