

Geneva Police Department GENERAL ORDERS		DIPLOMATIC AND CONSULAR IMMUNITY	
<input type="checkbox"/> new: <input checked="" type="checkbox"/> rescinds: Policy & Procedure 47.1A <input type="checkbox"/> amends:		cross-reference: Accreditation/Recognition standards: C.A.L.E.A.: NYS L.E.A.P.: 47.1	
effective date: 4.30.04		issue/amend date: 4.30.04 / 2.19.15 / 5.19.20	

I. PURPOSE	The purpose of this General Order is to establish and describe policies and procedures for taking law enforcement action involving Foreign Nationals and Consular personnel.
II. POLICY	It is the policy of the Geneva Police Department to abide by international customs and treaties, to recognize the privileges and immunities afforded various members of Diplomatic Missions and Consulates, and to treat such officials of foreign countries with normal respect and courtesy.
III. BACKGROUND	<p>A. The principle of Diplomatic Immunity is one of the oldest concepts of foreign relations. As a matter of International Law, Diplomatic Immunity was primarily based on custom and international courtesy among countries.</p> <p>B. Since World War II, a number of international conventions, most noteworthy, the Vienna Convention on Diplomatic and Consular Relations, have formalized the rules and made their application more uniform.</p> <p>C. Privileges accorded Foreign Diplomats vary with rank and circumstances, but even at the highest level, Diplomatic Immunity does not exempt Diplomatic Officers from the obligation to conform to National and Local Laws and Regulations. It is not intended to serve as a license for such person(s) to flout the law and purposely avoid liability for their actions. The purpose of these privileges and immunities is not to benefit individuals, but to ensure the efficient and effective performance of their missions.</p>
IV. CATAGORIES OF DIPLOMATIC AND CONSULAR IMMUNITY	<p>A. For police purposes, Diplomatic and Consular Immunity is divided into three categories:</p> <ol style="list-style-type: none"> 1. <u>Inviolability</u> - A person granted such is free from arrest and detention. The person's residence, vehicle, personal papers and correspondence are free from being entered, searched or seized. Reasonable restraints, however, may be applied in emergency circumstances involving self-defense, public safety, or the prevention of serious criminal acts. 2. <u>Immunity From Criminal Jurisdiction</u> - The person is free from being prosecuted for a violation of criminal law. 3. <u>Immunity From Civil Jurisdiction</u> - The person is not subject to civil or administrative jurisdiction. There are exceptions to the civil immunity, but they are not listed because these civil matters are outside police jurisdiction.
V. DIPLOMATIC PERSONNEL AND PRIVILEGES	<p>A. The category and extent of privileges and immunities is determined by the function and position of the person in the Foreign Mission or Consulate. The following provides general rules. The Diplomatic and Consular personnel of certain foreign countries may enjoy higher levels of privileges on the basis of special bilateral agreements. Individuals who are U.S. Nationals or Permanent Residents of the United States generally enjoy none, or reduced privileges and immunities.</p> <ol style="list-style-type: none"> 1. <u>Diplomatic Agent</u> - A Diplomatic Agent is the head of a diplomatic mission or a

V. DIPLOMATIC PERSONNEL AND PRIVILEGES (CONT.)

member of the Diplomatic Staff of the Mission. Diplomatic Agents, and members of their immediate families, are granted the highest levels of privileges and immunities including:

- a. Full inviolability;
- b. Immunity from criminal jurisdiction;
- c. Immunity from civil jurisdiction; and
- d. Freedom from having to give evidence as a witness.

2. **Administrative and Technical Staff** - This group of the non-diplomatic support staff of a Diplomatic Mission and members of their families, enjoy full immunity, civil immunity for acts performed as part of their official duties, and inviolability. They are not obliged to give evidence as a witness.
3. **Service Staff** - This group of non-diplomatic support staff of a Diplomatic Mission enjoy civil and criminal immunity only for acts performed as part of their official duties. They enjoy no inviolability. The family of a service staff member enjoys no immunity or inviolability.
4. **Private Servants** - A person privately employed by a member of a Diplomatic Mission is not a member of the mission and does not enjoy any immunity or inviolability.
5. **Career Consular Officers** - This group consists of career employees who are appointed to perform consular duties on behalf of their country. When stationed at a Diplomatic Mission, Consular Officers are accredited as Diplomatic Agents. When stationed at a Consulate they are accredited as Consular Officers and enjoy a significantly lower level of privileges. They may be arrested provided that the offense is a felony and the arrest is made pursuant to a warrant. Consular Officers enjoy civil and criminal immunity from prosecution only for official acts. They are not obliged to give evidence as a witness concerning official matters. They may be called on to testify in other matters, but no measures of coercion or penalties may be applied if they decline to testify. Members of their family enjoy no immunity or inviolability.
6. **Consular Employees** - This group performs the administrative and technical services for the Consular post. They may be arrested or detained. They enjoy civil and criminal immunity only for official acts. They are not obliged to give evidence as a witness concerning official matters. The members of their families enjoy no immunity or inviolability.
7. **Consular Service Staff** - They do not enjoy immunity or inviolability of any kind but they are not obliged provide evidence as witnesses concerning official matters.

8. **Honorary Consular Officers** - These are U.S. Nationals or Legal Permanent

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Residents of the U. S. who are appointed and received as Honorary Consular Officers and perform a variety of Consular functions. Such officers do not receive identification cards from the U.S. State Department of the type issued to career Consular Officers, though they may exhibit reduced-size copies of the Exequatur or Diplomatic note evidencing recognition by the United States Government. These individuals enjoy civil and criminal immunity for official acts performed in the exercise of their official Consular functions. They are subject to arrest and detention. They are not obliged to give evidence as a witness concerning official matters. Members of their families enjoy no immunity or inviolability.

9. **International Organizations and Missions** - The staff of certain international organizations and missions of such international organizations enjoy privileges and immunities as specified in relevant treaties or headquarters agreements. Officers should be guided by U.S. Department of State identification documents.

A. Identification of Diplomatic and Consular Personnel

1. Police officers confronted by a person claiming immunity shall immediately request that the person present his or her official U.S. Department of State Identification in order to verify the person's status and immunity. The only authoritative identity document is the identity card issued by the U.S. Department of State Protocol Office. There are three types of identification cards being Diplomatic (blue border for Diplomats), Official (green border for employees), and Consular (red border for Consular personnel). The identification cards will contain a photograph of the bearer and the bearer's name, title, mission, and date of birth. The expiration date, U.S. State Department Identification Number, and a U.S. Department of State Seal will appear on the front of the card. A brief statement of the bearer's immunity will be printed on the reverse side.
2. When proper identification is produced the individual's privileges and immunity shall be fully respected to the degree to which he/she is entitled. Whenever it is established that the individual is entitled to full inviolability, he/she may not be arrested or detained and should not, except in extraordinary emergency circumstances, be handcuffed or restrained in any way.
3. Officers should not accept other forms of proof of Diplomatic status as conclusive evidence of the person's position or privilege. Other forms of proof may include, but are not limited to, Diplomatic passports or visas, Diplomatic license plates, automobile registrations and tax exemption cards. If the individual claiming Diplomatic status is unable to produce satisfactory identification and the situation would normally warrant arrest or detention, Officers shall inform the individual that he will be detained until proper identity can be confirmed.
4. If for any reason the status cannot be readily determined locally, the following 24-hour telephone numbers may be attempted:
 - a. Any Diplomatic incident: (202) 895-3600.
 - b. Command Center of the Bureau of Diplomatic Security Coordination Center, U.S. Department of State at (571) 345-3146 or (866)217-2089.
 - c. For verification of the status of United Nations personnel, officers may call during business hours or 24 hours a day, (212) 415-4444.
5. Officers shall record all pertinent details from the identification card.

B. Personal Inviolability and Public Safety

VI. PROCEDURES

**VI. PROCEDURES
(cont.)**

1. In circumstances where 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 such activity.

C. Traffic Enforcement

1. Traffic stops and the issuance of traffic citations or summons do not constitute arrest or detention and is permissible. Therefore, Officers should never hesitate to follow normal procedures to intervene in a traffic violation. Even if immunity ultimately bars any further action at the scene, Officers may issue summonses for traffic offenses without regard to the level of immunity or inviolability.
2. Individuals believed to be driving while intoxicated shall not be allowed to continue to drive. Individuals enjoying inviolability may be offered breath and chemical tests but they are not required to submit to the tests and cannot be compelled to do so. However, if on the basis of observation alone, the violator is believed to be intoxicated, the individual should not be permitted to drive even in the case of a Diplomatic Agent. Officers shall ensure that the person is not a danger to himself/herself or the public. Officers shall have the following options when resolving these incidents:
 - a. Take the individual to the Public Safety Building or a location where he/she can recover sufficiently to drive safely.
 - b. Call a relative, friend, or Mission official to come for him/her.
 - c. Call a taxi for him/her.
 - d. Take him/her home.

D. Property and Vehicles of Diplomatic Missions, Consular Posts and Their Personnel

1. Diplomatic and Consular premises cannot be entered without the consent of the head of the Diplomatic Mission or by the head of the post or his/her designee.
2. Diplomatic and Consular archives, documents, records, and correspondence are inviolable at all times and wherever they may be. In addition, the consular archives and documents of a Consular post headed by an honorary consul are inviolable at all times and wherever they may be, provided they are kept separate from other papers and documents of a private or commercial nature relating to the other activities of an honorary Consul and persons working with him/her.
3. The property of an individual enjoying personal inviolability, including his/her residence and vehicle, may not be searched, entered or seized without the consent of the individual or the head of the Mission. Residences and vehicles of consular officers are not generally inviolable.
4. Inviolable vehicles may be towed the distance necessary to remove them from obstructing traffic or endangering public safety. Vehicle occupants may be required to present vehicle and personal identifications. If the vehicle is stolen or was used by unauthorized persons in the commission of a crime, the inviolability to which the vehicle would normally be entitled is temporarily suspended and normal search and detention of the vehicle is permissible.

E. Reporting Procedures

**VI. PROCEDURES
(CONT.)**

1. Whenever anyone with immunity is involved in an incident, investigation, crime or traffic violation, Officers shall:
 - a. Immediately notify an on-duty Supervisor.
 - b. Complete an Incident Report fully recording the details and circumstances of the incident. Proper documentation and notification is essential to permit the U.S. Department of State to take appropriate action.
2. The on-duty Supervisor shall notify the Chief of Police.
3. It is the policy of the U.S. Department of State to suspend the operator's license of diplomatic personnel who are irresponsible drivers and to take action against diplomatic personnel who violate criminal statutes. Waivers of immunity may be requested from the sending Nation to permit prosecution or the individual may be expelled from the United States. This policy may only be effectively enforced if all driving related infractions and criminal investigations are fully reported to the U.S. Department of State.
4. It shall be the responsibility of the Records Bureau to promptly forward a copy of all reports involving Diplomatic or Consular personnel to the U.S. Department of State.

Approved By

MICHAEL J. PASSALACQUA
CHIEF OF POLICE