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Legal and Practical Basis of Immunity

THE SPECIAL PRIVILEGES AND IMMUNITIES accorded foreign diplomatic and consular representatives assigned to the United States reflect rules developed among the nations of the world regarding the manner in which civilized international relations must be conducted. The underlying concept is that foreign representatives can carry out their duties effectively only if they are accorded a certain degree of insulation from the application of standard law enforcement practices of the host country. The United States benefits greatly from the concept as it protects U.S. diplomats assigned to countries with judicial systems far different than our own.

The various categories of immunity are explained below (and a table is provided to summarize elements of paramount concern to law enforcement officials (*see* Page 26)), but all have a common legal foundation. While customary international law continues to refine the concepts of diplomatic and consular immunity, the basic rules are currently embodied in international treaties. These treaties have been formally adopted by the United States and are, therefore, pursuant to the U.S. Constitution, "the supreme law of the land." The U.S. Government is legally bound to ensure that such privileges and immunities are respected by its states and municipalities.

U.S. law regarding diplomatic immunity has its roots in England. In 1708 the British Parliament formally recognized diplomatic immunity and banned the arrest of foreign envoys. In 1790 the United States passed similar legislation which provided absolute immunity for diplo-

mats, their families and servants, as well as for lower ranking diplomatic mission personnel. This 1790 law remained in force until 1978, when the present Diplomatic Relations Act (22 U.S.C. 254) was enacted to replace it. The principal purpose of the 1978 Act was to bring U.S. law into line with the 1961 Vienna Convention on Diplomatic Relations (which entered into force for the United States in 1972). The 1978 Act imposed a more precise regime and reduced the degree of immunity enjoyed by many persons at diplomatic missions.

On a practical level, failure of the authorities of the United States to respect fully the immunities of foreign diplomatic and consular personnel may complicate diplomatic relations between the United States and the other country concerned. It may also lead to harsher treatment of U.S. personnel abroad, since the principle of reciprocity has, from the most ancient times, been integral to diplomatic and consular relations.

It should be emphasized that even at its highest level, diplomatic immunity does not exempt diplomatic officers from the obligation of conforming with national and local laws and regulations. Diplomatic immunity is not intended to serve as a license for persons 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 official missions on behalf of their governments.** This is a crucial point for law enforcement officers to understand in their dealings with foreign diplomatic and consular

personnel. While police officers are obliged, under international customary and treaty law, to recognize the immunity of the envoy, they must not ignore or condone the commission of crimes. As is explained in greater detail below,

adherence to police procedures in such cases is often essential in order for the United States to formulate appropriate measures through diplomatic channels to deal with such offenders.