

Unit Goal: Duties and responsibilities of the officer regarding consular notification.

13.1. Identify the provisions of consular notification as per the Vienna Convention on Consular Notification and bilateral treaties.

Instructor Note: Show the video – “It’s the Right Thing to Do” – U.S. Dept. of State, Bureau of Consular Affairs (see the U.S. Department of State’s website for publications and other resources: travel.state.gov)

Lecture Scenarios: Officer conducts a traffic stop along the Texas/Mexican border. Officer notices the vehicle’s license plate is from Mexico. Further investigation reveals the driver is under the influence of alcohol and is arrested.

- Student will give thoughts on how to handle this incident.
- Student will identify what rights the driver has as to being arrested and a citizen of a foreign country.

Basic Rule – (VCCR Article 36):

- A foreign detainee must be informed of his right to have his consulate notified.
- The arrestees’ decision should be documented.
- Applies to all foreign detainees, whether in the country illegally or not.

Article 36 COMMUNICATION AND CONTACT WITH NATIONALS OF THE SENDING STATE

1. With a view to facilitating the exercise of consular functions relating to nationals of the sending State:

(a) Consular officers shall be free to communicate with nationals of the sending State and to have access to them. Nationals of the sending State shall have the same freedom with respect to communication with and access to consular officers of the sending State;

(b) if he so requests, the competent authorities of the receiving State shall, without delay, inform the consular post of the sending State if, within its consular district, a national of that State is arrested or committed to prison or to custody pending trial or is detained in any other manner. Any communication addressed to the consular post by the person arrested, in prison, custody or detention shall also be forwarded by the said authorities without delay. The said authorities shall inform the person concerned without delay of his rights under this sub-paragraph;

(c) consular officers shall have the right to visit a national of the sending State who is in prison, custody or detention, to converse and correspond with him and to arrange for his legal representation. They shall also have the right to visit any national of the sending State who is in prison, custody or detention in their district in pursuance of a judgment. Nevertheless, consular officers shall refrain from taking action on behalf of a national who is in prison, custody or detention if he expressly opposes such action.

2. The rights referred to in paragraph 1 of this Article shall be exercised in conformity with the laws and regulations of the receiving State, subject to the proviso, however, the said laws and regulations must enable full effect to be given to the purposes for which the rights accorded under this Article are intended.

Mandatory Rule:

- Certain consulates MUST be notified regardless of the wishes of the detainee.
- Refer to Consular Notification and Access handbook and Consular Notification and Access reference card.
https://travel.state.gov/content/dam/travel/CNAtrainingresources/CNA%20Manual%205th%20Edition_September%202018.pdf
- https://travel.state.gov/content/dam/travel/cna_pdf/CNA%20Pocket%20Card_BW_2018.pdf

Right to Privacy:

- Does not apply to mandatory notification of foreign nationals covered by a bilateral treaty.
- Privacy of citizens of VCCR countries should be respected.

13.2. Identify the steps to be taken when a foreign national is arrested.

Steps in the arrest of a foreign national:

- Ask the detainee if they are a U.S. citizen.
- Check the list of mandatory notification countries - if mandatory notification is required, do so without delay (most bilateral treaties allow a maximum of 72 hours to make notification).
- If not on the list of mandatory notification, ask if they wish for their consulate to be notified of their arrest or detention.
- Keep a written record of the arrestees'/detainees' response.
- Document the notification (date, time, method of notification, and the person notified).

13.3. Identify the purpose of the Vienna Convention on Consular Notification treaty and bilateral treaties.

VCCR and bilateral treaties make notification an obligation:

- Purpose – To ensure a foreign national is not placed in a situation in which they cannot receive assistance from their own government.

13.4. Identify the forms of access a consular official may have to an arrested foreign national.

Consular official access:

- Visit
- Call
- Write
- Consuls must follow the regulations of the detention facility (security, time, place, manner of visits).
- Services of a consular officer.
 - Arrange legal representation.
 - Monitor progress of the case.
 - Ensure a fair trial.
 - Monitor conditions of confinement.

- Provide reading material, food, medicine, other necessities.
- Legal reasons – Its “the law of the land”
- Policy reasons – Reciprocity
- Pragmatic reasons – To avoid investigation and litigation

13.5. Demonstrate use of the Consular Notification, Access Handbook, Consular Notification, and Access Reference Card.

Practical Scenario:

- Pass out Consular Notification and Access Reference cards.
- Have students’ role-play arrest of a foreign national and practice selecting the appropriate statement to be read to the arrestee from the card.
- Have the students, through role-play of the arrest of a foreign national, determine if notification of the arrestee’s consulate is mandatory.

Scenario #1: You have arrested John Sato for assault. What are the steps following John’s arrest?

- Ask if he is a U. S. citizen.
 - John says, no, he is a citizen of Japan.
- Read him statement #1 of the pocket card (Why statement #1?).
 - He says he does not want his consulate notified.
- Record his response.
- Take no further action.

Scenario #2: You have arrested Maria Garcia for prostitution. What are the steps following Maria’s arrest?

- Ask her if she is a U. S. citizen.
 - She says, no, she is a citizen of Belize.
- Read her statement #2 of the pocket card (Why statement #2?).
 - She says she acknowledges that her consulate will be notified.
- Record her response.

Notify the Belize consulate ‘without delay’.

- Record date, time, method of notification, & party contacted.

Scenario #3: You have arrested Robert Tan for theft. What are the steps following Robert’s arrest?

- Ask him if he is a U.S. citizen.
 - Robert says, no, he is a citizen of Singapore.
- Read him statement #2 of the pocket card. (Why statement #2?).
 - He says that he does not want his consulate notified.
- Record his response.
- Proceed with notification of his consulate “without delay.”
 - Record date, time, method of notification, & party contacted.
- Ask him if he is a U.S. citizen.

- He says, no, he is a citizen of Mexico, but is in the U.S. illegally.
- Read him statement #1 of the pocket card. (Why statement #1?).
 - He says that he does want his consulate notified.
- Record his response.
- Proceed with contacting the Mexican consulate.
 - Record date, time, method of notification, and party contacted.

Instructor Note: The U.S. Department of State has a Consular Notification and Access outreach program for federal, state, and local officials. Training is available upon request from the Department of State. Materials can be obtained from their web site, <https://travel.state.gov/content/travel/en/consularnotification.html>. This information is available by request via email at consnot@state.gov. Any questions or requests for guidance may also be sent to this email address.

U.S. DEPARTMENT OF STATE
Office of Foreign Missions/Houston Regional Office
(OFM/Houston)



DIPLOMATIC IMMUNITY

Do you know what to do in an incident involving diplomatic immunity? Ever encountered a suspect claiming to be a diplomat? Office of Foreign Missions (OFM) is the leading bureau within the U.S. Department of State tasked with overseeing diplomatic immunities, reciprocity, and national security issues involving foreign missions in the United States. Headquartered in Washington, D.C., OFM Houston opened in March 2005 and covers eight states: Texas, Arkansas, Colorado, Kansas, Louisiana, Nebraska, New Mexico, and Oklahoma. OFM, in coordination with Diplomatic Security, provides liaison support on immunity issues related to foreign mission members in the United States. We provide training and guidance on immunity issues for law enforcement and attorneys. For more information, please contact Regional Director Katherine Ho at HoKL@state.gov or OFMHouston@state.gov.

C.A.N. Principle: Law enforcement **C.A.N.** take actions when encountering claims of immunity protection.

- **CALL** the Department of State to verify immunity status: 202-647-3417 (8:00AM-5:00PM EST (Monday-Friday)) or 571-345-3146/1-866-217-2089 (outside of business hours).
- **ASSIST** by providing detailed documentation of the incident following usual procedures and issuing any relevant citations. Remember that anyone can get a traffic citation!
- **NOTIFY** us by sending a copy of all citations and reports to the Department of State, Office of Foreign Missions at OFMImmunity@state.gov or OFMHouston@state.gov.

Immunity is to be respected, but nothing is more important than officer and public safety. When law enforcement provides the Department of State with thorough documentation of incidents, this allows OFM to pursue the matter through diplomatic channels (termination of U.S. tour, immunity waiver request, etc.). More resources for law enforcement are located at: <https://www.state.gov/information-for-law-enforcement>.