

Army Regulation 27-52
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LEGAL SERVICES

**CONSULAR
PROTECTION OF
FOREIGN
NATIONALS
SUBJECT TO THE
UNIFORM CODE
OF MILITARY
JUSTICE**

Headquarters
Departments of the Army,
the Navy, and the Air Force
Washington, DC
5 November 1968

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LEGAL SERVICES

CONSULAR PROTECTION OF FOREIGN NATIONALS SUBJECT TO THE UNIFORM CODE OF MILITARY JUSTICE

By Order of the Secretaries of the Army, the
Navy, and the Air Force:

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Summary. This regulation prescribes the policy and procedures under which foreign consular offices are to be given notice of the apprehension, confinement, or trial by

court-martial of their fellow nationals servicing the United States Armed Forces, and are to be provided the opportunity to visit, communicate with, and otherwise safeguard the interests of such foreign nationals.

Applicability. This regulation applies only within the territory of the United States.

Proponent and exception authority.
Not applicable

Army management control process.
Not applicable

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1. Purpose and scope.

This regulation prescribes the policy and procedures under which foreign consular offices are to be given notice of the apprehension, confinement, or trial by court-martial of their fellow nationals serving the United States Armed Forces, and are to be provided the opportunity to visit, communicate with, and otherwise safeguard the interests of such foreign nationals.

2. Explanation of terms.

For the purpose of this regulation, the following explanations apply:

a. "Consul" –The official representative of a foreign country, who is charged with consular matters for the locale in which a circumstance requiring notification occurs.

b. "Foreign national" –Any member of the Armed Forces of the United States who is a national of a foreign country and who is not also a citizen or national of the United States.

c. "Notifying officer" –The officer exercising court-martial jurisdiction over the foreign national. For the Army and Navy and the Marine Corps, the notifying officer is the officer exercising general court martial jurisdiction. For the Air Force, the notifying officer is the officer exercising special court-martial jurisdiction.

d. "Territory of the United States" –The 50 States and the District of Columbia.

3. Applicability.

This regulation applies only within the territory of the United States.

4. Notification.

a. *Circumstances requiring notification.* Notification is required whenever a foreign national is apprehended under circumstances likely to result in confinement or trial by court-martial and states that he is a foreign national, or is ordered into arrest or confinement, or is held for trial with or without any form of restraint, or when court-martial charges against him are referred for trial.

b. *By whom made.* Except as otherwise provided herein, the notifications and reports required by this regulation will be made by the notifying officer. Notification shall be given only when any of the circumstances specified in a above occurs within the territory of the United States.

c. *Exceptions to notification requirements.*

(1) *At sea.* If any of the circumstances specified in a above occurs aboard a ship at sea, notification is not required while the ship is at sea. "At sea," as used here, does not include a harbor or, except on a then outbound ship, territorial waters of the United States.

(2) *Number of notifications.* Once notification is given, it need not be repeated at subsequent stages of the same case.

(3) *Disciplinary action.* This regulation does not require notification when disciplinary action under Article 15 of the Uniform Code of Military Justice or administrative action is taken against a foreign national or if he is apprehended or confined in anticipation that only such actions will be taken against him. If disposition of the foreign national's case by court-martial is thereafter contemplated, the notifying officer will at that time comply with paragraphs 4 through 6 of this regulation, as applicable.

(4) *Civil authorities.* This regulation does not require notification when a foreign national is charged with a crime, arrested, confined, or detained in custody by the civil authorities of the United States, or any political subdivision, possession or territory thereof, or by the authorities of any foreign government.

(5) *Dispute as to foreign nationality.* For the purpose of this regulation, any serviceman who claims to be a foreign national shall be so considered unless such claim is inconsistent with his military records or other pertinent evidence. Whenever charges against an serviceman are referred for trial, his military records shall be examined to ascertain his nationality even if he has not entered a claim of foreign nationality. In the event that the serviceman's claim of foreign nationality is disputed, the notifying officer shall dispatch a telegraphic report thereon, as appropriate, to—

(a) HQDA (DAJA-IA) WASH WASHINGTON, D.C. 20310 (Army). (Correction from C 1.)

(b) The Judge Advocate General, JAGN (Navy and Marine Corp);

(c) HQ USAF, AFJALB (Air Force). If it is determined that the serviceman is a foreign national, the required notification shall be given to the consul by the Judge Advocate General of the military department concerned.

d. *Objection to notification by foreign national.* When a circumstance requiring notification arises, the foreign national shall be advised that notification will be given to his consul unless he objects and, in case he does object, that the Judge Advocate General will determine whether an applicable treaty requires notification irrespective of the wishes of the foreign national concerned. If the foreign national objects to notification being given to his consul, the notifying officer shall send a report by telegraphic means to the appropriate Judge Advocate General as set forth in c(5), above. If an applicable treaty requires notification irrespective of the wishes of the foreign national, notification will be given to the consul by the Judge Advocate General of the military department concerned.

e. *Notification procedure.*

(1) When a circumstance requiring notification occurs, the notifying officer will immediately communicate by telegram directly with the consul of the foreign country concerned nearest the locale in which the circumstances requiring notification occur. Address of foreign consulates are listed in the appendix.

(2) An information copy of such communication shall, at the same time, be directed to the appropriate Judge Advocate General as set forth in c(5), above. Except that for Air Force, such communications shall be directed to HQ USAF, AFJALB and AFJAMD.

(3) When a circumstance requiring notification occurs in an Army, Navy, or Marine Corps command below the level of general court-martial convening authority, the facts shall be reported by the commanding officer or officer in charge immediately concerned to the officer normally exercising general court-martial jurisdiction over that command. The report shall include the items listed in f, below.

f. *Contents of notice.* The notice to the consul shall: Identify the foreign national by name, grade, service number (numerical personnel identifier), and organization; specify the foreign country of which he is a national; contain a concise statement of relevant facts relating to the cause for which he has been apprehended or ordered into arrest or confinement and held for trial, or for which he is held for trial with or without any form of restraint; and, if applicable, the nature of the offense(s) for which he is being held for trial or upon which charges against him have been referred for trial; specify the name of his military and/or civilian defense counsel, if any; and specify where the foreign national may be found. The notice shall also offer to technical consul the assistance of the notifying officer.

5. Consular access rights.

a. *Consular visits.* Under circumstances requiring notification, or when a foreign national is confined in a military confinement facility, the consul shall, upon proper identification to the notifying officer, have the right to visit the foreign national without delay. Such visits shall be conducted in accordance with confinement facility regulations, which shall permit reasonable access to, and the opportunity of privately conversing with, the foreign national. The consul shall also be allowed, subject to confinement facility regulations, to transmit communications between the prisoner and other persons.

b. *Communications between consul and foreign national.* Whether or not a foreign national is confined, he shall have a right to communicate either orally, including telephonically, or in writing with the consul and to receive such communications from the consul. All such communications shall be treated as privileged and not subject to inspection or monitoring, except in those exceptional cases in which the notifying officer determines that national security considerations are involved.

c. *Other consular rights.* The consul shall be given full opportunity to safeguard the interests of the foreign national concerned. The

consul has the right to confer with, to interview, to advise, to arrange legal representation for, to make inquiries to incidents affecting the interest of, and to otherwise assist foreign nationals, the consul or other official representative of the foreign country shall be treated with the dignity and courtesy befitting his office.

6. Record of trial.

A copy of the notice made pursuant to this regulation will be incorporated as part of the allied papers of the court-martial record of trial, if any.

7. Inquiries.

All inquiries concerning the interpretation and application of this regulation should be addressed to the appropriate Judge Advocate General as set forth in paragraph 4c(5).