



Model Code of Military Justice

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TRANSLATION NOTE

In translating these documents from Spanish to English we attempted to find the closest corresponding U.S. English legal terms, some of which can be found in the Black's Law Dictionary, 5111 cd. The definition of some of the particularly unfamiliar terms are included in the Glossary and have been written in italics in the text of the English translation to facilitate the reader's understanding.

We acknowledge the contributions and learned comments from representatives of Argentina, Bolivia, Chile, Colombia, Ecuador, El Salvador, Guatemala, Honduras, Paraguay, Peru, Uruguay, and Venezuela, in this endeavor. We also acknowledge the special contributions made by Col. Charles H. Matthewson, Col. Michael McDonald, Lt Col. David Maldonado, Lt Col. Omar T. Ojeda, Lt Col. Luis E. Rivera, Capt Gregory W. Kruse and Maria N. Cline, who made possible the publication of this work.

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Foreword

In September 1995, a truly historic undertaking began in Panama City, Panama. The United States Southern Command Air Forces Staff Judge Advocate hosted representatives from eight Central and South American nations as part of our ongoing program of Subject Matter Expert Exchanges (SMEE) in military justice matters. The distinguished representatives identified a common interest in the improvement of the military justice systems of the Americas and agreed to cooperate in the preparation of a document that would serve as a guide for undertaking the changes demanded of our Armed Forces -- a Model Code of Military Justice.

In April 1996, we hosted the first conference of what is now known as The American Military Legal Committee, or COJUMA, at Homestead Air Reserve Base, Florida. There, the Committee adopted "The Miami Declaration" creating the necessary framework which produced, two and one-half years later, the historic document which I now present for your consideration.

The Model Code of Military Justice was drafted by military lawyers, from throughout Central and South America, trained in the civil law tradition, but with the cooperation of our common law lawyers. The Model Code reflects their combined scholarship and experience, and it embraces democratic ideals of justice and equality. It incorporates modern legal concepts such as an independent judiciary, the right to counsel and the principle that, as citizens of democratic societies, military members are responsible and accountable for their actions to their duly elected civilian leaders.

The extensive process of drafting the code has been as much of a success as the code itself. Central and South American judge advocates have worked hand in hand with United States judge advocates in a spirit of professional respect and cooperation that sets a standard for military exchange programs. We must continue to build partnerships that will preserve the values we share and promote the ideals that will ensure better conditions for our Armed Forces and those we serve. The Model Code offers a glimpse of what such partnerships can yield.

LANSFORD E. TRAPP, JR.
Lieutenant General, USAF
Commander

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BOOK ONE ORGANIC LAW

TITLE I MILITARY COURTS

CHAPTER I General Provisions

Article 1. Jurisdictional function.

Military Courts exercise their jurisdictional function under the terms and the guarantees established in the Constitution and with the specific characteristics provided for in Peacetime and in time of War.

For purposes of this Code, time of War is considered to include, not only when it has been officially declared, but also when it exists as a matter of fact or is manifested through other indicators of a proximate and undeniable military confrontation.

Article 2. Independence.

Magistrates and Military Judges are independent in the exercise of their functions and bound only by the Law.

Article 3. Civilian attorneys.

Civilian attorneys may defend individuals who are subject to criminal process before Military Courts, with no requirement other than that they are admitted to practice law.

CHAPTER II Jurisdiction

Article 4. Scope of application.

Military jurisdiction includes all personnel in the service of the Armed Forces, for their acts or omissions in the exercise of their military duties and those civilian personnel who, as a result of a legal provision, would be included within this jurisdiction. In time of War and in accordance with International Law, prisoners of war shall be subject to military jurisdiction.

Military Jurisdiction includes:

- a. The offenses listed in Book Two of this Code and those infractions included under this jurisdiction by special law.

- b. All other offenses when they affect the particular interests of the Armed Forces provided that any of the following circumstances are present:
 - 1) That it is committed in a military location or under its exclusive military authority, whether permanently or temporarily.
 - 2) That it is committed in the performance, or in relation to, an act of service.
 - 3) That it is committed while in the conduct of authorized military operations ordered by competent authority.
- c. In time of War, military jurisdiction will extend to the following:
 - 1) All offenses committed in a military location, or committed in the performance, or in relation to, an act of service.
 - 2) Offenses committed by members of the armed forces while in the performance of a duty ordered by their superiors at the request of civilian authorities, or while responding to their request.
 - 3) All other cases of criminal infractions as expressly established in this Code.

Article 5. Primary jurisdiction.

In case of a concurrence of offenses, where the same person must respond for civilian and military crimes, jurisdiction shall be exercised by the authority with the most serious offense and, in the case where making such a distinction is not possible, the primary right of jurisdiction shall be available to the civilian courts.

Article 6. Determination of conflict of jurisdiction.

In case of a conflict of jurisdiction between the civilian and military courts, it shall be resolved by the highest common court or as determined by law.

CHAPTER III Organization

Article 7. Composition and guarantees.

The law shall establish the composition of the judicial bodies of the Military Justice system, in which the judicial guarantees of due process shall prevail, to include the presence of at least two fact finding judicial stages. Separate military courts may be established for the trial of different categories of military personnel.

Article 8. Composition of the courts.

The courts that compose the Military Justice system are:

- a. Court of military instruction.
- b. Trial court.
- c. Appellate court.
- d. Court of cassation.

Article 9. Support agencies.

Consistent with the provisions of the preceding article, administrative support agencies shall be integrated and will cooperate in observing due process, notwithstanding their denomination.

Article 10. Legal staff-performance of duties.

Attorneys in the armed forces serve as Military Justice personnel and constitute the Legal Staff. The authority and responsibilities of the Legal Staff shall be regulated by law, to include among others, the responsibility to provide military legal advice, and sponsor professional, educational and military court activities.

The duties of magistrates and judges in Military Courts shall be exercised by Military Justice officers or by officers with adequate legal knowledge. The law shall establish such duties, job requirements, as well as their inherent attributes, responsibilities, and obligations, all of which shall be compatible with the appropriate rank and fitness requirements.

Attorneys assigned to Military Justice service may freely exercise their technical-professional activities in civilian courts with no restrictions other than that such practice shall not be prejudicial to, or incompatible with, military service. Military Justice officials shall not represent individuals who are subject to process before Military Courts.

**CHAPTER IV
Powers**

Article 11. Essential Functions.

The powers of supervision, judicial inspection, and disciplinary disposition are functions essential to the organization of Military Justice. The law shall determine the manner, structure, and scope of these powers.

**CHAPTER V
Military Courts in Time of War**

Article 12. Composition.

In time of War, Military Courts shall be established taking into consideration the necessary requirements and the prevailing situation. Their proceedings shall be summary without implying a violation of constitutional guarantees. The Courts that constitute the Military Justice system in time of War are the following:

- a. Trial court.
- b. Appellate Court.

BOOK TWO MILITARY CRIMINAL LAW

TITLE I GENERAL PROVISIONS

CHAPTER I Governing Principles

Article 13. Legality.

No person shall be accused tried or convicted for an act not expressly punishable under the criminal law in effect at the time of its commission, nor shall the person be subject to a punishment or restraint not previously established. In addition, punishments or restraints shall not be imposed under conditions other than those already established in the Law.

Article 14. Punishable Act.

For a particular conduct to be punishable, it must be typified, unlawful, and culpable.

Article 15. Typification.

A punishable act shall be unequivocally defined in the criminal code. For a particular conduct to be "typified," its precise form and structural elements must coincide.

Article 16. Unlawfulness.

For a typified conduct to be punishable, it is required that such conduct injures, or places at risk, without justification, a lawful interest.

Article 17. Favorable application of law.

In matters of criminal law and procedure, the most lenient or favorable law, even if enacted after the criminal conduct, shall be applied with preference over the more restrictive or unfavorable provisions. This principle also applies in those cases of persons already convicted.

Article 18. Equality.

Military Criminal law shall be applied equally without regard to differences not stated in the law.

Article 19. Res Judicata.

A person accused, convicted or acquitted by final judgment or other equally binding decision issued in his country or in a foreign territory, shall not be subject to a new trial for the same act.

Article 20. Knowledge of the Law.

Ignorance of military criminal law does not exempt a person from criminal responsibility, but for the exceptions provided for in the law.

Article 21. Publicity.

Military criminal proceedings shall be public, except for the provisions established in criminal investigative procedures.

Article 22. Technical defense.

A suspect, or accused, has the right to a defense and to the assistance of counsel, whether freely selected by him, assigned by the court, or a public defender; to be able to communicate freely and privately with said counsel during the investigation and trial; to a public due process without undue delays; to present evidence on his own behalf and to rebut the evidence presented against him; and to appeal his conviction.

Article 23. Presumption of innocence.

All persons are presumed innocent and should be treated as such, until a final judicial decision is rendered concerning criminal responsibility.

Article 24. Recognition of human dignity.

All persons alleged to have committed a crime have the right to be treated with the dignity inherent of a human being. Internationally recognized legal standards for human rights shall be respected and in no case shall these standards be violated.

Article 25. In Dubio Pro Reo.

All doubt arising in the judicial process shall be resolved in favor of the accused.

Article 26. Impartiality.

All judicial officials shall act with absolute impartiality in the judicial process.

CHAPTER II

Fundamental Principles and Rules

Article 27. Form and Time of the Punishable Act.

A punishable act is configured by its form and time.

- a. Form of commission: The punishable act can be committed through action or omission.
- b. Time of the act: The punishable act is considered to have been completed at the time the action or the omission takes place, notwithstanding a different result. An omission is considered to have been completed at the time the omitted action should have taken place.

Article 28. Participation.

The criminally responsible primary subjects are:

- a. Actors: Those who engage directly in the commission of the offense and those who force, provoke, instigate, or induce others to commit the punishable act.
- b. Accomplices: Those who knowingly take part in a punishable act committed by another person.

Article 29. Absence of responsibility.

There shall be no criminal responsibility:

- a. When a person acts in compliance with a legal duty or to a legitimate order issued by competent authority.
- b. When a person acts in self defense, in defense of his property, his rights or dwelling, or in defense of the person, property, or rights of others or the dwelling of others, under such circumstances that it is reasonable to believe that injury or damage is imminent, provided that the defense is proportionate to the aggression.
- c. When in the execution of lawful conduct the act or omission results as a consequence of a fortuitous act or force majeure.
- d. When the act or omission results from a state of necessity.
- e. When the act is committed under the erroneous and invincible conviction that the act or omission is lawful.

Article 30. Lack of responsibility.

The following persons are exempt from criminal responsibility:

- a. Those who at the time of the commission of the offense lacked the capacity to comprehend the illegality of their actions.
- b. Those who at the time of the commission of the offense are under the age prescribed by law.

Article 31. Principles of culpability.

No person can be punished for the commission of a criminal act unless he or she has committed such act with malice, except for those cases where the law expressly recognizes the presence of gross negligence or fault as an element.

- a. Malice: Conduct involves malice when the person knows of the criminal act and desires its ultimate result; similarly, when the person acts with knowledge that its result is possible.
- b. Negligence: Conduct involves negligence when the person commits the punishable act without anticipating the foreseeable result or, when having foreseen it, believes that it could be avoided.
- c. Unintentional: Conduct is unintentional when its result, although foreseeable, exceeds the intention of the person.

Article 32. Attempt.

Attempt is committed when, after the initiation of acts directed at the commission of a crime, the crime is not consummated for reasons independent of the person. Its punishment shall always be lesser than that established for the consummated act.

Article 33. Punishments.

The applicable punishments for the commission of an offense under this code are:

- a. Death.
- b. Restraint of liberty.
- c. Pecuniary.
- d. Accessory.

Article 34. Criteria for imposing punishment.

The competent authority will impose punishment according to the severity and characteristics of the criminal act, the character of the accused, the degree of culpability, and mitigating and aggravating circumstances.

Article 35. Mitigating factors.

Factors that mitigate a crime, among others, are:

- a. Prior good conduct.
- b. Remorse.
- c. Provocation, threat, or offense.
- d. Exemplary or heroic service to the nation.
- e. Acting under noble or altruistic motives.
- f. Obfuscation in comprehension.
- g. Voluntarily submitting to the proper authorities after the commission of the offense.
- h. Preventing an unjust accusation of others.
- i. The age of the accused.

Article 36. Aggravating factors.

Factors that aggravate a crime, among others, are:

- a. Recidivism.
- b. Commission of a crime during a state of war or internal turmoil.
- c. Premeditation and treachery.

- d. Commission of the act in the presence, or with the aid, of subordinates.
- e. Commission of the crime against a superior or competent authority.
- f. The utilization of means during the commission of the crime that could endanger the public.
- g. Commission of the crime for money or for a promise of gratification.
- h. Use of trickery, deceit, or disguise.
- i. Commission of the crime at night or by unlawful entry of a residence.
- j. Commission of the crime as a means of committing another crime.
- k. Breach of trust.
- l. When the crime causes disgrace or sets a bad example in barracks, or at other military or civilian installations, warships, vehicles or aircraft.
- m. Commission of the crime by taking advantage of public confusion or calamity.
- n. Abuse of authority.

Article 37. Conditional punishment.

In the sentence imposed by the trial, appellate, or summary court, the judge may suspend the execution of the sentence for a probationary period that does not exceed the sentence provided by law.

Article 38. Conditional liberty.

The judge may grant conditional liberty to a convict, when he has served two-thirds of the sentence and observed good conduct during confinement, provided that the sentenced imposed was the minimum confinement established by law in these cases.

Article 39. Extinction of the criminal action and punishment.

The criminal action or punishment shall be extinguished by:

- a. The death of the accused or convict.
- b. Amnesty or pardon.
- c. Prescription.
- d. Expiration of criminal actions that require a complaint.
- e. Payment of the fine in a timely manner.

Article 40. Forfeiture

At any stage of an investigation, the instruments and effects used in or that result from the commission of a crime, and the sole purpose of which was for the commission of a crime, or that were manufactured, possessed, used or sold illegally, shall become the property of the State when the law does not provide for its destruction or other disposition.

TITLE II CRIMES

CHAPTER I Crimes Against the Existence and Security of the State

Article 41. Espionage.

This crime is committed by a person who, through any means and in a surreptitious manner, takes, obtains, or collects information, of any nature, that could be of use to the enemy or a foreign power.

Article 42. Treason.

This crime is committed by a person who takes up arms against the State, or aids or collaborates with the enemy.

Article 43. Rebellion.

This crime is committed by a person who, through the use of arms, rebels against the institutions of the State.

Article 44. Sedition.

This crime is committed by a person who promotes, induces or participates in a conspiracy or mutiny against the function of the State Institutions.

Article 45. Sabotage.

This crime is committed by a person who, in a deliberate manner, and through any means, causes damage to State property that is destined for use in the national defense.

Article 46. Attack on a sentry.

This crime is committed by a person who uses violence or engages in acts of force against a sentry.

Article 47. Revealing secrets.

This crime is committed by a person who, through any means, reveals military secrets or provides any type of classified information to the enemy.

Article 48. Manufacture, possession or illegal trafficking of weapons, munitions, explosives or chemical agents.

This crime is committed by a person who, without just cause, imports, exports, manufactures, repairs, stores, acquires, keeps, or supplies under any title, or carries, weapons, ammunitions, explosives, or chemical or biological agents destined for military use.

Article 49. Provocation of panic.

This crime is committed by a person who intentionally causes panic in a unit or in any instrumentality of the armed forces.

CHAPTER II

Crimes Against Military Honor

Article 50. Cowardice.

This crime is committed by a person who acts in a cowardly manner before the enemy or who incites others to acts of cowardice.

Article 51. Libel and defamation.

This crime is committed by a person who, through the use of words, gestures, or other forms of expression, undermines, offends, or injures another person.

Article 52. False accusation.

This crime is committed by a person who falsely attributes to another person the commission of a crime.

Article 53. Unauthorized use of uniforms.

This crime is committed by any person who publicly wears a uniform, rank, insignias, or military decorations to which he is not entitled.

Article 54. Conduct unbecoming an officer.

This crime is committed by an officer who engages in dishonest, unjust, indecent, indecorous, illegal, or cruel acts and such conduct results in prejudice to the good order and discipline of the armed forces.

CHAPTER III

Crimes Against Discipline and Military Duty

Article 55. Desertion.

This crime is committed by a person who, without permission or just cause, remains absent from his assigned duty location as required by law.

Article 56. Disobedience.

This crime is committed by a person who disobeys a military order or modifies an order issued by a superior.

Article 57. Disobedience by retirees and reservists.

This crime is committed by a person, in retirement or reserve status, who fails to report to his assigned unit at the time and day ordered by a service recall.

Article 58. Insubordination.

This crime is committed by a person who, through violent acts, refuses to, or incites others to refuse, or prevents others to, obey legitimate authority.

Article 59. Assault upon a superior or a subordinate.

This crime is committed by a person who as a matter of fact attacks a superior or subordinate.

Article 60. Abuse of authority.

This crime is committed by a person who exercises his authority or powers beyond the limits set by law or by the inherent nature of his functions.

Article 61. Instigation.

This crime is committed by a person who, through the abuse of authority, induces his subordinates to commit a crime or offense.

Article 62. Usurpation of command.

This crime is committed by a person who unlawfully seizes or retains political, military, or police command.

Article 63. Malingering.

This crime is committed by a person who self-inflicts an injury or becomes disabled with the intention of avoiding his duties or to obtain a disability or social benefits.

Article 64. Piracy.

This crime is committed by a person who engages in predatory or violent acts on a vessel, aircraft, or vehicle.

Article 65. Extortion.

This crime is committed by a person who, through abuse of his position or authority, compels or induces another to give or promise him, or to another, money or other improper benefit, or so solicits.

Article 66. Bribery.

This crime is committed by a person who receives for himself or for a third party, money or other benefit, or accepts a promise of direct or indirect remuneration in exchange for delaying or omitting to perform a duty, or for performing an act that is contrary to his official duties.

Article 67. Influence peddling.

This crime is committed by a person who, by alleging real or simulated influences, receives, gives or causes others to give to him or to a third party, promises, money, or gifts, with the purpose of obtaining favors from an employee that is handling or will be handling an official matter or witness.

Article 68. False alarm.

This crime is committed by a person who causes or communicates a false alarm that calls for the preparation of defense or combat.

Article 69. Breach of duty by sentry.

This crime is committed by a sentinel who falls asleep, or becomes intoxicated, or voluntarily comes under the influence of narcotics or other psychotropic substances, or fails to comply with the special instructions given, or leaves his post, or allows himself to be relieved of his post by a person without the authority to do so.

Article 70. Abandonment of ship, aircraft or vehicle.

This crime is committed by a crew member aboard a vessel, aircraft or vehicle, who at the time of, or after, an accident abandons the same without having been ordered to do so by a superior or without justifiable cause.

Article 71. Abandonment of escort.

This crime is committed by a person who abandons a ship or convoy while in charge of its escort.

Article 72. Damage or disablement of vessels, aircraft or vehicles.

This crime is committed by a person who disables or damages vessels, aircraft or vehicles.

CHAPTER IV
Crimes Against the Administration of Military Justice

Article 73. Escape by prisoners.

This crime is committed by a person who escapes while being legally detained or while serving a sentence imposed by a court of military jurisdiction.

Article 74. Aiding escape.

This crime is committed by a person who procures or facilitates the escape of a person that has been captured, detained or sentenced. The crime is aggravated when committed by the person in charge of the custody, guard or transportation of a person that has been captured, detained or sentenced.

Article 75. False complaint.

This crime is committed by a person who makes a false complaint to the proper authority of a crime that was never committed.

Article 76. Material falsity in documents.

This crime is committed by a person who, through the exercise of his authority, alters documents that could serve as evidence.

Article 77. Ideological falsity.

This crime is committed by a person who issues a document, which may serve as evidence, containing a false statement or failing to disclose, all or part of the truth.

Article 78. Use of a false document.

This crime is committed by a person who, without having participated in its falsification, knowingly uses a false document that could serve as evidence.

Article 79. Destruction, suppression or concealment of documents.

This crime is committed by a person who destroys, suppresses or conceals, in whole or in part, documents that could serve as evidence.

Article 80. False testimony.

This crime is committed by a person who, when participating in a judicial proceeding before competent authority, and while under oath, lies or conceals the truth in whole or in part.

Article 81. Bribery.

This crime is committed by a person who delivers or promises a benefit or a personal gain to a witness to get him to lie or conceal the truth, in whole or in part, in his testimony.

Article 82. Procedural fraud.

This crime is committed by a person who through fraudulent means causes a military justice official to commit an error in order to obtain a favorable decision that is contrary to Law.

Article 83. Abuse of judicial authority.

This crime is committed by a person who imposes a sentence or exercises the administration of justice in a deceitful or corrupt manner.

Article 84. Concealment.

This crime is committed by a person who, with knowledge of the commission of a crime, conceals the perpetrator of the crime or collaborates in any way through the concealment, disappearance or alteration of evidence to avoid judicial action.

CHAPTER V

Crimes Against the Person

Article 85. Illegal restraint of liberty.

This crime is committed by a person who, through the abuse of his authority, deprives another of his liberty.

Article 86. Illegal prolongation of restraint of liberty.

This crime is committed by a person who unlawfully prolongs the deprivation of a person's liberty.

Article 87. Homicide.

This crime is committed by a person who kills another person.

Article 88. Unintentional homicide.

This crime is committed by a person who unintentionally kills another person.

Article 89. Negligent homicide.

This crime is committed by a person who kills another person through negligence.

Article 90. Personal injuries.

This crime is committed by a person who causes injury or illness to another person.

Article 91. Negligent personal injuries.

This crime is committed by a person who causes injury to another person through negligence.

Article 92. Torture.

This crime is committed by a person who subjects another to physical or psychological torture.

**CHAPTER VI
Crimes Against Property**

Article 93. Larceny.

This crime is committed by a person who unlawfully takes the property of another person.

Article 94. Robbery.

This crime is committed by a person who unlawfully takes the personal property of another person through the use of violence upon the person or the property.

Article 95. Damage to the property of others.

This crime is committed by a person who voluntarily and through any means causes damage to the property or goods of another.

Article 96. Robbery or larceny of war materiel.

This crime is committed by a person who robs or steals weapons, munitions or other war materiel.

Article 97. Embezzlement of public funds or property.

This crime is committed by a person who unlawfully takes public money or property under his custody or administration.

Article 98. Destruction of military materiel.

This crime is committed by a person who voluntarily and through any means causes damage to property destined for national defense.

CHAPTER VII

Crimes Against International Law (Human Rights)

Article 99. Pillage.

This crime is committed by a person who, while participating in combat operations and without cause, takes the personal property of another for his personal benefit or for the benefit of another person.

Article 100. Forcing a prisoner to engage combat against his country.

This crime is committed by a person who forces a prisoner to engage in combat against his own country.

Article 101. Devastation.

This crime is committed by a person who, absent the exigencies of war and contrary to international law, destroys architectural monuments or valuable historical buildings, or the personal or real property of similar artistic, scientific, or technical characteristics, archeological sites, sites of anthropological value, nature sites, gardens and parks of historical, artistic or anthropological value or generally anything that constitutes part of the historical patrimony of the State.

Article 102. Genocide.

This crime is committed by a person who, for the purpose of causing the material destruction, in whole or in part, of a national, ethnic or religious group, kills, inflicts grave physical or mental injury, imposes particular living conditions or imposes measures to control the rate of birth.

Article 103. Forced disappearance.

This crime is committed by a person who, without cause and while performing military service, apprehends another and makes him disappear.

Article 104. Non-combat homicide.

This crime is committed by a person who kills another person who is wounded, has surrendered or is unable to resist an attack.

Article 105. Perfidy.

This crime is committed by a person who uses the protection afforded by international agreements to conduct acts of aggression against the enemy.

Article 106. Violation of armistices and agreements.

This crime is committed by a person who, knowing about their existence and without just cause, violates an armistice, truce, surrender covenant or other agreement.

Article 107. Exile.

This crime is committed by a person who orders unlawful deportations, detentions, or illegal transfers.

Article 108. Exaction.

This crime is committed by a person who, without authority and without a lawful cause, seizes or orders the seizure of personal property.

A person who demands the delivery of personal property from the civilian population will also be liable for this crime.

Article 109. Damage to the environment.

This crime is committed by a person who, absent military necessity, engages in acts attributable to him that result in the alteration or destruction of the environment.

CHAPTER VIII
Crimes Relating to the Traffic of Narcotics and Controlled Substances

Article 110. Manufacture, possession, use, trafficking, distribution or transportation of narcotics, chemical precursors or controlled substances.

This crime is committed by a person who manufactures, uses, trades, distributes or transports narcotics, chemical precursors or controlled substances that are prohibited by domestic law or international agreements.

BOOK THREE
PROCEDURAL LAW

TITLE I
PROCEDURAL GUARANTEES

SOLE CHAPTER
General Provisions

Article 111. Procedural Guarantees.

The accused shall enjoy all the procedural guarantees contained in constitutional principles and in related statutes.

Included in these guarantees is, among others, the Principle of Legality, Presumption of Innocence, Right to a Defense, Lawful Detention, the Principle of Equality, Due Process of Law and not to be exposed twice to punishment for the same offense.

Article 112. Complementation of the general provisions.

The law shall establish the rules applicable to the excusal, recusal and inhibition of judges and third parties in their distinct forms, procedural standards, notices, and other applicable legal principles.

Similarly, the confiscation of the property of the accused or convicts shall be regulated to guarantee compensation for any damages caused to the Armed Forces and the victims.

TITLE II CRIMINAL PROCESS

CHAPTER I Stages, Forms of Initiation and Proof

Article 113. Initiation of the process.

Military criminal process is initiated by:

- a. As directed by law;
- b. By complaint; or,
- c. By criminal charge.

Article 114. Nature of the criminal action.

The commission of a crime gives rise to the military criminal action, which is a matter of public policy.

Article 115. Exercise of the criminal action.

Military criminal action is exercised by military prosecutors as directed by law.

Article 116. Complaints by victims.

Those injured by a crime that falls within the scope of the military jurisdiction can file criminal charges with the competent military authority.

Article 117. Form of process.

Military judicial process may be oral or written. A written record shall be made of the oral proceedings.

Article 118. Content of the complaint or criminal charge.

All complaints and criminal charges shall contain:

- a. A description of the circumstances of the alleged criminal act;
- b. The name of the accused, accomplices, if any, witnesses, and any other persons with knowledge of the facts; and,
- c. All other circumstances that can assist in the investigation of the crime and help with the identification of the alleged actor or actors and accomplices.

Article 119. Obligation to file complaint.

Any military person who has discovered or has knowledge of the commission of a military crime shall immediately file a complaint orally or in writing.

Article 120. Record of the complaint.

Whoever receives a complaint or criminal charges shall provide the complainant, after noting his identity, a record showing the date and time of the report, the names of the complainants, suspects and the documents attached to the complaint.

Article 121. Preliminary investigation.

The military authority with knowledge of the commission of a criminal act shall immediately order the investigation, which cannot exceed a period of thirty (30) days. The investigative judge shall have the following authority:

- a. To verify the commission of the crime;
- b. To gather all the instruments, documents and other materials considered necessary and to maintain them in his custody;
- c. To receive and record statements of the accused, complainants, or witnesses, which shall be entered into the record of proceedings;
- d. To order the medical and forensic examination of the victims;
- e. To order the detention and restriction of communication of the accused; and
- f. To take any other measures, which he may, deems necessary.

Article 122. Preventive detention.

The investigative Judge may order preventive detention if, after receiving the preliminary statements, there are in the opinion of the Judge sufficient indications of guilt.

Preventive detention shall be evidenced by written resolution properly founded.

CHAPTER II Conclusion of the Investigation

Article 123. Closing the judicial investigation.

Once the formal portion of the judicial investigation is concluded, the Judge shall forward to the competent authorities the record of the investigation and proceedings.

CHAPTER III

Trial

Article 124. Accusation.

When the proceedings are in the trial stage, the military court shall undertake the necessary actions to prepare the record for charges and defense. The record shall be forwarded to the prosecutor's office for the preparation of the charges. The charges shall contain in precise, substantiated and numbered statements, the following:

- a. The punishable acts which, in the opinion of the accuser, are reflected in the judicial investigation;
- b. The legal significance of the acts;
- c. The participation of the accused in the commission of the punishable acts;
- d. All of the aggravating and mitigating circumstances; and,
- e. The punishment that should be applied.

Article 125. Presentation of evidence by the parties.

After the charge, the case shall be transferred to the complainant, if applicable, and to the accused's counsel. The parties may propose all of the means of proof and elements of conviction that could lead to finding the truth.

Article 126. Announcement of sentence.

After presentation of all of the evidence, for and against the accused, the Court shall announce its sentence.

CHAPTER IV

Sentence

Article 127. Condemnatory sentence.

A sentence shall be condemnatory when, from the study of the evidence offered and presented in the prosecution of the action, the existence and commission of the crime are completely proven as well as the accused's participation in its commission.

Article 128. Absolutory sentence.

The finding shall be absolutory when, from the study and evaluation of the evidence, the conviction is reached that the crime was not perpetrated; that there was insufficient evidence to establish the commission of the crime; that there is in favor of the accused reason for exempting criminal liability; or, that although the accused may have committed the punishable act, the circumstances under which he did so act are not criminally imputable to him.

TITLE III REMEDIES TO SENTENCES

SOLE CHAPTER General Provisions

Article 129. Appeal, review and cassation.

Judicial findings shall be subject to all judicial remedies, regardless of the denomination given, in the manner, form and procedure provided in the law. The following are bases for cassation:

- a. Violation of the written law; or
- b. Erroneous interpretation of the legal precepts upon which the sentence is based.

FINAL PROVISION

Article 130. Final provision.

Copies of this draft and its antecedent documents shall be provided to the Military Justice authorities in all countries of the Americas for their favorable consideration.

APPENDIX

PREAMBLE

THE MEMBERS OF COJUMA, SIGNATORIES TO THIS "MODEL CODE OF MILITARY JUSTICE," DECLARE:

- The interest in the consolidation of Military Law in general and Military Criminal Law in particular, within a harmonious balance of national aspirations, founded in the respect for the sovereignty of all nations.

- The conviction that the similarities in the missions given to the Armed Forces result in almost analogous behaviors and allow for the identification of common procedures and solutions that are more or less applicable within the greater legislative parameters.

- The interest in the study, analysis and drafting of a Model Code of Military Justice for the Americas, as a reference point, is the theme upon which the academic value of this document aspires to become the standard for future endeavors.

- The objective of achieving efficiency in Military Justice is one of COJUMA's principles; it being understood that it can be attained through suitable professionalization in activities and encouragement of constant personal improvement.

- We desire that the drafting of this Organic, Substantive and Procedural Model Code be a sound instrument for Nations to standardize, unify, implement and modernize rules of Military Criminal Law, so as to advance the interaction and judicial certainty between Domestic and International Law, and those values unique to our defense institutions, such as discipline, service and justice.

MIAMI DECLARATION

From 22 to 25 April 1996, at Miami, Florida, United States of America, American Military Justice representatives, as indicated below, convened at Homestead Air Reserve Base to study and prepare a draft Model Code of Military Justice for the Armed Forces of the Continent:

Argentina: Vice-Commodore Osvaldo Garcia, Chief, Department of Military Affairs, Office of the Inspector General of the Air Force

Bolivia: Major General Raúl Gantier Pacheco, President, Permanent Military Justice Tribunal

Ecuador: Captain Byron Vaca Martinez, Secretary to the Contracts Committee, Army

United States of America: Colonel Charles H. Matthewson, Staff Judge Advocate, Twelfth Air Force

United States of America: Colonel Robert Reed, Chief, HQ USAF/JAJM

United States of America: Lieutenant Colonel Luis E. Rivera, Major Walter Skierski and Captain Gregory W. Kruse, Judge Advocates, Twelfth Air Force

United States of America: Major David Maldonado, Twelfth Air Force

El Salvador: Captain Alvaro Valladares Servellón, Chief, Legal Department, Joint Chiefs of Staff of the Armed Forces

Guatemala: Lieutenant Colonel Eduardo Galván, Deputy Chief of the Legal Department, Army

Honduras: Captain Dario Torres, Assistant Judge Advocate

Paraguay: Colonel Venancio Román, Member of the Supreme Court of Military Justice

Peru: Colonel Raúl Talledo Valdivieso, Senior Prosecutor, Supreme Council of the Court of Military Justice

Uruguay: Doctor Alfredo Maeso Vera, Legal Advisor, Ministry of National Defense

Venezuela: Colonel Gonzalo Navarro Sánchez. Legal Advisor, Air Force

In consideration of the presentations made and the evaluations of the conclusions of the meeting held in Panama (September 1995-Subject Matter Expert Exchange on Military Law) on the above-mentioned draft, and as a source of guidance for ever changing situations and interpretations, and after first hearing each of the aforementioned representatives, concur and declare:

- I. Manifest a desire in the study, analysis and writing of a draft Model Code of Military Justice for America, which will serve as a legal standard for military rules on the subject
- II. Adopt as its designation for the works to be done on this matter the name of THE AMERICAN MILITARY LEGAL COMMITTEE, which shall be known by the acronym "COJUMA".
- III. To establish as its objectives for this and future meetings:
 1. Define the purpose of this Model Code.
 2. Establish the rules and procedures for the work group-COJUMA:

- a. Create support groups in each country, and
 - b. Establish permanent contact among the members of the work groups or through the corresponding authority.
3. Promote the participation of other countries of America and to communicate to the non-attending countries the information generated by the work groups.
 4. Identify and discuss the common elements of the different systems of Military Justice:
 - a. Create a library of American Military Codes, and
 - b. Heed the constitutional standards of each nation.
 5. Identify and discuss the elements to be included in its format.
 6. Draft a Model Code.
 7. Establish means of action for the consideration of the draft code.

IV. Definition of Purpose:

Create and keep current an organic, substantive and procedural Model Code to provide the nations with an instrument to standardize, unify, implement and modernize Military Justice Law precepts, in such a manner so as to advance the interaction and judicial certainty between Domestic and International Law.

V. Rules and Procedures for COJUMA:

1. Organization:
 - a. The role of coordinator or facilitator will be assigned to Military Justice representatives of the United States who will designate the necessary assistants (Secretary, Coordinator, etc.)
 - b. Work groups, which may be Internal (composed of members of the plenary group) or External (composed of representatives of other member nations).
2. General rules:
 - a. The record of proceedings and minutes of each conference will be recorded and translated within thirty (30) days of the conclusion of the sessions and copies sent to each participating country.
 - b. Questions or issues henceforth will be resolved as follows:
 1. Primarily by consensus; and if there is no agreement,
 2. By two-thirds (2/3) majority vote of the members present,
 3. Reconsiderations will be allowed by two-thirds (2/3) vote of the members present, and
 4. Proxy vote will be allowed by corresponding written document and for a specific matter.
 - c. Deliberations within COJUMA shall be free and open. Above all, decisions shall be governed by "Flexibility in the debate and broadness in the decisions."

- d. Periodic meetings will be convened for the pursuit of studying and making of decisions on the different subjects of the COJUMA Objectives; at such time, under such conditions and at such places as the circumstances dictate.
- e. Work groups will study, analyze and evaluate the subjects at issue assigned by the plenary. In matters having to do with external work groups, they will send to each member nation or Military Justice representative, for their consideration and comment, copy of their work product at least sixty (60) days prior to the next plenary meeting.

VI. Future taskings:

1. Review the objective identified at item III, section e of this declaration.
2. Specific Task: Assign, by country, the issues to be discussed and presented at the next plenary meeting.
3. Next meeting: To be determined.

VII. Proposed format for the document:

1. Preamble Of Statement of Purposes,
2. Organic Book,
3. Substantive Book, and
4. Procedural Book.

Wherefore the aforementioned representatives have subscribed this Document in conformed copies and to that effect.

COJUMA II CONFERENCE

On 12 November 1996, San Juan, Puerto Rico, American Military Justice representatives met at the Salon Carioca, Sands Hotel, to convene the Second Conference of the American Military Legal Committee (COJUMA) to study and prepare a draft Model Code of Military Justice for the Armed Forces of the Continent:

Argentina: Major Carlos Walter Agostinelli, Chief, Department of Judicial Inspections, Office of the Director General of Legal Affairs to the Chief of Staff of the Air Force

Bolivia: Major General Raúl Gantier Pacheco, President, Permanent Military Justice Tribunal

Chile: Lieutenant Colonel Sergio Cea Cienfuegos, Staff Judge Advocate, Second Military Court

Colombia: Commander Román Germán Prieto Navarro, The Judge Advocate of the Navy

Ecuador: Major Just Byron Vaca K. Martínez, Secretary to the Contracts Committee, Army

United States of America: Colonel Charles H. Matthewson, Staff Judge Advocate, Twelfth Air Force

United States of America: Colonel Robert Reed, Chief: HQ USAF/JAJM

United States of America: Colonel Epifanio Morales, Jr., Staff Judge Advocate of Puerto Rico Air National Guard

United States of America: Lieutenant Colonel Luis E. Rivera, Major David Maldonado and Captain Gregory W. Kruse, Twelfth Air Force

El Salvador: Captain Alvaro Valladares Servellón, Chief, Legal Department, Joint Chiefs of Staff of the Armed Forces

Guatemala: Lieutenant Colonel Eduardo Galván, Deputy Chief of the Legal Department, Army

Honduras: Captain Dario Torres, Assistant Judge Advocate

Paraguay: Colonel Venancio Román, Member of the Supreme Court of Military Justice

Peru: Colonel Raúl Talledo Valdivieso, Senior Prosecutor, Supreme Council of the Court of Military Justice

Uruguay: Doctor Alfredo Maeso Vera, Legal Advisor, Ministry of National Defense

In accordance with the objectives set forth in COJUMA I. item 5, it was determined that COJUMA II analysis would include "Identify and discuss the elements to be included in its format," to which effect the order of deliberation includes:

OBJECTIVES

First: That the representative of each country shall make a presentation on the organization of the Military Code of Justice currently in use in his country.

Second: Each representative shall identify within its code the various legal topics shown in the comparison table.

Third: The group will define the three (3) parts which constitute the Model Code: Organic, Substantive, and Procedural Books.

Fourth: The group will discuss and will reach a consensus as to the first step to take towards drafting of a Model Code.

Fifth: The group will meet in different committees which will discuss and take notes of the discussions relating to the three parts that constitute the Model Code. (Each representative will identify the method by which his country of origin will continue the effort and will establish a suspense date to submit preliminary outlines of the Model Code.)

Sixth: A summary of the work accomplished during the conference will be drafted in Spanish.

1. At the beginning of deliberations Colonel Charles H. Matthewson welcomed the participants and expressed his appreciation for the attendance of his fellow associates for the study of this Code and was particularly delighted to note an increase of participation at this forum with the representatives from Chile and Colombia. He anticipated the greatest success in the deliberations and proceeded to introduce to the participants Colonel Epifanio Morales, and expressed his thanks in advance for the efforts undertaken and further collaborations which were anticipated from him.

Thereafter, Colonel Morales, acting in the name of Major General Emilio Diaz Col6n, Deputy Commander of the Puerto Rico National Guard and Brigadier General Daniel Lopez Rom6, Commander of the Puerto Rico Air National Guard, welcomed the representatives to this rightly called "Enchanted Island" and noted his honor to participate in these proceedings.

2. At the request of the Coordinator (United States of America), each country representative made their corresponding presentations thus facilitating their relationships.

3. Major David Maldonado and Senior Master Sergeant Carlos Felix, then made a brief presentation about their duties and the basic coordinations needed to facilitate each delegation's stay.

4. Lt Col Luis E. Rivera then proceeded to make a review of the previous meetings and particularly the deliberation of COJUMA I, as described in the Miami Declaration, copy of which was provided to the participants.

5. Continuing with deliberations, each representative made a presentation on the work accomplished in each of their countries since COJUMA I had been held, noting the following matters:

- a. Interest in COJUMA 's final objective,
- b. Difficulties in communication among COIUMA participants, and
- c. Overcoming skepticism in achieving the final objective.

6. Order of deliberation:

- a. The representatives of each nation gave a briefing on their respective military criminal systems, which included pertinent answers to the issues raised.
- b. Afterwards, Maj David Maldonado briefed the plenary on the objectives and scope of a comparative table of legal terms extracted from codes in the recently-created library, and solicited participants for their evaluation and completion which would be a basis guide to advance the study of this draft. These tables were delivered and once completed they were turned over to the coordinating country (United States of America).
- c. The parts comprising the Model Code will include:
 - 1) A Preamble or Statement of Purposes,
 - 2) Organic Book,
 - 3) Substantive Book, and

- 4) Procedural Book.
- d. To facilitate the continuation of the discussions, the group was divided into three work groups, corresponding with each Book of the Code, in order to identify and include the fundamental chapters or titles of each component, of which resulted in the following conclusions:
 - 1) Organic Book:
 - a) Concept: that which structures the military judicial system determining its organisms, duties and attributions,
 - b) Glossary,
 - c) Persons subject to the code,
 - d) Determination of authorities,
 - e) Institutions of the State,
 - f) Jurisdiction, and
 - g) Competence.
 - 2) Substantive Book:

Crimes and punishments: General dispositions, which describe the legal form and elements of the Military Criminal Law.
 - 3) Procedural Book:
 - a) Due process-procedural guarantees,
 - b) Types and phases-peace and war,
 - c) Application of the civil process,
 - d) Extradition-International Criminal Law,
 - e) Writs,
 - f) Relationship with Civil Authority.
- e. Regarding the steps to achieve this objective, it is established:
 - 1) The designation of three (3) external work groups:
 - a) No. 1: Argentina. Chile, Paraguay and Uruguay,
 - b) No. 2: Bolivia, Colombia, Ecuador, Peru and Venezuela, and
 - c) No.3: United States, El Salvador, Guatemala and Honduras.
 - 2) Assign the work groups the following tasks:
 - a) No. 1: To draft the Organic Book.

- b) No.2: To draft the Substantive Book, and
 - c) No.3: To draft the Procedural Book.
- 3) Copy of these drafts will be sent to each of the participating countries.
 - 4) The United States of America will coordinate with the other countries the time and place for the respective work group meetings.
 - 5) The work group meetings will be open to any COJUMA member wishing to attend.
7. By agreement, the participants ratified the Declaration of Miami of April 1996, which is incorporated to the official records of COJUMA.
 8. Next plenary meeting: To be determined.

COJUMA II concluded its deliberations on the 14th day of November of 1996.

Wherefore the aforementioned representatives have subscribed this Document in conformed copies and to that effect.

RECORD OF PROCEEDINGS OF COJUMA WORK

GROUP N0.1

On 23 and 24 June 1997, at San Juan, Puerto Rico, American Military Justice representatives, as indicated below, convened as a work group at the Sands Hotel, to prepare a draft of the Organic Book of the Model.

Argentina: Major Carlos Walter Agostinelli, Chief, Department of Judicial Inspections, Office of the Director General of Legal Affairs to the Chief of Staff of the Air Force

Chile: Lieutenant Colonel César Dario Ocaranza Sandoval, Judge Advocate of the Public Defense Ministry, Acting Senior Military Prosecutor

United States of America: Major David Maldonado, Twelfth Air Force and Captain Gregory W. Kruse, Judge Advocate, Twelfth Air Force

Paraguay: Colonel Venancio Román, Member of the Supreme Court of Military Justice

Uruguay: Doctor Alfredo Maeso Vera, Legal Advisor, Ministry of National Defense

At the beginning of the deliberations, Lieutenant Colonel David Maldonado proceeded to review the COJUMA objectives and that of this group, which is the drafting of the Organic Book.

Thereafter, Colonel Roman submitted for consideration by the group, a draft document, making it clear that his purpose in submitting this work was to facilitate the progress of the meeting. The document was accepted for those purposes.

The participants then made a statement with respect to their national law as it pertains to each and every title and chapter of the proposed book, in an atmosphere of complete tolerance, respect and understanding. which facilitated an agreement upon the terms of the said book and in compliance with the Declaration of Miami (April 1996) and the Proceedings of COJUMA II, San Juan, Puerto Rico (November 1996).

At the end of the deliberations, the attached document was agreed to for proper consideration at a plenary COJUMA assembly to be held at a date to be determined.

Wherefore the aforementioned representatives have subscribed this Document in conformed copies and to that effect.

RECORD OF PROCEEDINGS OF COJUMA WORK

GROUP N0.2

On 26 and 27 June 1997, San Juan, Puerto Rico, meeting at the Sands Hotel, the following American Military Justice representatives convened as members of the subcommittee charged with the responsibility of developing the Procedural Book of the Model Code of Military Justice.

United States of America: Lieutenant Colonel David Maldonado, Twelfth Air Force

United States of America: Captain Gregory W. Kruse, Judge Advocate, Twelfth Air Force

El Salvador: Captain Alvaro Valladares Servellón, Chief, Legal Department, Joint Chiefs of Staff of the Armed Forces

Guatemala: Lieutenant Colonel Eduardo Galván, Deputy Chief of the Legal Department, Army

At the commencement of deliberations, Lieutenant Colonel Maldonado reviewed the COJUMA objectives and those of the working group as they pertained to the drafting of the Procedural Book for the Model Code.

After discussions relating to the subject matter to be drafted and a review of the majority of the American military justice codes, as part of a comparative review of the various titles and chapters to be contained in the Procedural Book, the above-mentioned country representatives worked together in a friendly atmosphere, with plenty of tolerance, respect, and understanding, which facilitated a consensus as to the terms to be used in the above-referenced Book and in accord with the Miami Declaration (April 1996) and the Proceedings of COJUMA II, San Juan, Puerto Rico (November 1996).

At the end of the deliberations, the attached draft of the Procedural Book was agreed to for proper consideration at a plenary COJUMA assembly to be held at a date to be determined.

Wherefore the aforementioned representatives have subscribed this Document in conformed copies and to that effect.

RECORD OF PROCEEDINGS OF COJUMA WORK

GROUP N0.3

From 29 September to 3 October 1997, at Davis-Monthan Air Force Base, Tucson, Arizona, the following American Military Justice representatives convened as members of the subcommittee charged with the responsibility of developing the draft of the Substantive Book of the Model Code of Military Justice:

Bolivia: Major General Raúl Gantier Pacheco, Representative of the Republic

Colombia: Captain (Navy) Román Germán Prieto Navarro, Representative of the Republic

Colombia: Lieutenant Colonel Lucy de Vargas, Representative of the Republic

Ecuador: Major Byron Vaca Martínez, Representative of the Republic

United States of America: Lieutenant Colonel Luis E. Rivera, Judge Advocate, United States Air Force

United States of America: Lieutenant Colonel Omar Ojeda, Judge Advocate, United States Air Force

United States of America: Lieutenant Colonel David Maldonado, Twelfth Air Force

United States of America: Captain Gregory W. Kruse, Judge Advocate, Twelfth Air Force

Venezuela: Colonel Gonzalo Navarro Sánchez, Representative of the Republic

At the beginning of the meeting and after recounting previous meetings, the participants unanimously agreed to designate the Ecuadorian representative as the Secretary for the work group. At that point the group proceeded to plan its work and the format for the Substantive Book of the Model Code for Military Justice

These meetings were carried out with open discussions of the opinions expressed by the participating countries, who expressed these opinions and their insights in arriving at the important conclusions that are recorded in the draft document evidencing this meeting.

The relevant decisions made for the next meeting are:

- a. Review the work done for the Procedural Book, as shown in the draft document prepared by the previous work group.
- b. Incorporate into the Substantive Book sections relating to extraterritoriality and transferred intent, which are new subjects in the different jurisdictions, and statutory murder.
- c. Based on the work produced, the country representatives pledge to carry out their work and recommendations in accordance with the legal dictionaries Omeba and Cabanella, and their respective country codes.
- d. At the next meeting they will discuss the possibility of including in the Organic Book the definitions of the legal terms.

At the conclusion of the deliberations and agreements, the completed work was executed in writing which will be submitted for plenary consideration at the next meeting to be held at a date to be determined.

Wherefore the aforementioned representatives have subscribed this Document in conformed copies and to that effect.

RECORD OF PROCEEDINGS OF COJUMA WORK

GROUP N0.4

From 10 and 13 of February 1997, at Davis-Monthan Air Force Base, Tucson, Arizona, the following American Military Justice representatives convened to prepare a draft of the Model Code of Military Justice.

Argentina: Commander Carlos Alberto Corbelle and Major Carlos Walter Agostinelli

Bolivia: Colonel Cesar Annando Rudón

Chile: Lieutenant Colonel Cesar Dario Ocaranza Sandoval

Colombia: Lieutenant Colonel Lucy de Vargas and Navy Captain Germán Prieto Navarro

Ecuador: Major Byron Kleber Vaca Martínez

United States of America: Lieutenant Colonel Luis E. Rivera, Lieutenant Colonel Omar Ojeda, Major Jorge Romero, Major Steven Parrish, and Captain Gregory W. Kruse, Judge Advocates

El Salvador: Captain Alvaro Valladares Servellon

Guatemala: Lieutenant Colonel Eduardo Galván

Paraguay: Colonel Venancio Román

Uruguay: Dr. Alfredo Maeso

Venezuela: Colonel José Gustavo Sulbarán

Lt Col Omar Ojeda opened the meeting and introduced Lt Col Terry Gent, Chief, Operations and International Law, Twelfth Air Force, who in turn, addressed the participants and expressed her appreciation for the attendance of her fellow associates and the opportunity to bring together the Military Justice representatives from the American countries and expressed her wishes for a successful meeting. At this point, Lt Col Gent introduced Colonel Michael McDonald, Staff Judge Advocate, Twelfth Air Force, who gave a warm welcome to the participants of this work group COJUMA No. 4 and expressed his appreciation for the work being accomplished. He requested the participants to place themselves in their best state of mind for a very productive meeting, and wished to let them know he had complete trust in their abilities and capabilities. Lastly, he asked all representatives to introduce themselves to the group and thus become acquainted with one another.

At this point two working groups were formed, and it was agreed that the opinions expressed, as well as the resulting product, would be of a personal nature and for academic purpose, and in no way would reflect the official opinion of the Institutions and Nations of the participants. Group I was comprised of the representatives from Argentina (Captain Corbelle), Chile, Colombia, Ecuador, and Venezuela; and Group 2 was comprised of with the representatives from Argentina (Major Agostinelli), Bolivia, El Salvador, Guatemala, Paraguay and Uruguay. These group discussions were facilitated by Lt Col Omar Ojeda and Lt Col Luis E. Rivera, respectively. Once the groups moved to their corresponding working areas, the first group proceeded to review the draft of the Substantive Book and the second group the Organic and Procedural Books. The main results of their work are as follows:

Group No. I: The group members promptly immersed themselves in the study and consideration of the Substantive Book. The work was distributed to three subgroups that after reviewing their corresponding tasks, again convened as a group to discuss and integrate their drafts into a finished product. The result of those

deliberations is the work herein attached for subsequent review and final evaluation by COJUMA in plenary session. The document represents a profound and exhaustive review of the current legal standards.

Group No. 2: Initially, the group proceeded to study and review the draft of the Organic Book prepared by a previous work group at San Juan, Puerto Rico, in June 1997. The analysis of each article, chapter and title, demanded an in-depth review of its contents by all participants, who sought to integrate their substantive material with the other two drafts, in order to create one legal body with common substance, uniform principles, and current doctrine, which has been made part of this document.

Thereafter, the group proceeded to study and review the draft of the Procedural Book, which analysis produced excellent discussions and evaluations. Having reached agreement on the work product, they have also attached a copy to this document.

The two groups then assembled in the main meeting area with Lt Col Rivera acting as moderator. The various drafts of the books of the Model Code of Military Justice were once more subject of review, explanation, modification, and addition in the form and manner in which it now appears. In consideration of the complexity of the subjects, the need to bring discussions to an end, and the desire to reach consensus on the content of the Model Code, it was decided to task the participants of this work group with the analysis of articles numbered 38 through 105, inclusive, and to submit their comments, corrections, and new comments within 30 days from this date.

The Military Justice representatives of the participating nations express their gratitude and recognition to the Twelfth Air Force authorities and their American officers, who always provided guidance, understanding, and friendship, upon which the feelings herein expressed, are based.

After reading and ratifying the content of this document, the undersigned participants sign and subscribe this instrument in 11 true copies for the purposes expressed herein.

The meeting adjourned on the 12th day of February of the year one thousand nine hundred and ninety eight.

CDR Carlos Alberto Corbelle

MAJ Carlos Walter Agostinelli

COL César Annando Rudón

LTC Lucy de Vargas

CPT Gennan Prieto Navarro

LTC César Darío Oscaranza Sandoval

MAJ Byron Kleber Vaca Martinez

CPT Alvaro Valladares

LTC Eduardo Galván

COL Venancio Roman

Dr. Alfredo Maeso

COL José Gustavo Sulbarán

LT COL Omar Ojeda

LT COL Luis E. Rivera

MAJ Steven Parrish

MAJ Jorge Romero

CAPT Gregory W. Kruse

GLOSSARY

1. Court of Military Instruction/Instruction. The combined actions and steps required by law tending to the search and gathering of proof of the existence of infractions and the guilt of its participants.
2. Court of Cassation/Cassation. The highest court of appeals in various countries. The act of annulling or canceling or quashing. [A review by the highest court. for the limited purpose, of seeking a judicial opinion as to the interpretation and application of a fundamental rule of law/constitution.]

