

PART I

PREAMBLE

1. Sources of military jurisdiction

The sources of military jurisdiction include the Constitution and international law. International law includes the law of war.

2. Exercise of military jurisdiction

(a) *Kinds*. Military jurisdiction is exercised by:

(1) A government in the exercise of that branch of the municipal law which regulates its military establishment. (Military law).

(2) A government temporarily governing the civil population within its territory or a portion of its territory through its military forces as necessity may require. (Martial law).

(3) A belligerent occupying enemy territory. (Military government).

(4) A government with respect to offenses against the law of war.

(b) *Agencies*. The agencies through which military jurisdiction is exercised include:

(1) Courts-martial for the trial of offenses against military law and, in the case of general courts-martial, of persons who by the law of war are subject to trial by military tribunals. *See* Parts II, III, and IV of this Manual for rules governing courts-martial.

(2) Military commissions and provost courts for the trial of cases within their respective jurisdictions. Subject to any applicable rule of international law or to any regulations prescribed by the President or by other competent authority, military commissions and provost courts shall be guided by the appropriate principles of law and rules of procedures and evidence prescribed for courts-martial.

(3) Courts of inquiry for the investigation of any matter referred to such court by competent authority. *See* Article 135. The Secretary concerned may prescribe regulations governing courts of inquiry.

(4) Nonjudicial punishment proceedings of a commander under Article 15. *See* Part V of this Manual.

3. Nature and purpose of military law

Military law consists of the statutes governing the

military establishment and regulations issued thereunder, the constitutional powers of the President and regulations issued thereunder, and the inherent authority of military commanders. Military law includes jurisdiction exercised by courts-martial and the jurisdiction exercised by commanders with respect to nonjudicial punishment. The purpose of military law is to promote justice, to assist in maintaining good order and discipline in the armed forces, to promote efficiency and effectiveness in the military establishment, and thereby to strengthen the national security of the United States.

4. Structure and application of the Manual for Courts-Martial

The Manual for Courts-Martial shall consist of this Preamble, the Rules for Courts-Martial, the Military Rules of Evidence, the Punitive Articles, the Nonjudicial Punishment Procedures (Parts I-V), and Appendix 12A. This Manual shall be applied in a manner consistent with the purpose of military law.

The Department of Defense, in conjunction with the Department of Homeland Security, publishes supplementary materials to accompany the Manual for Courts-Martial. These materials consist of a Preface, a Table of Contents, Discussions, Appendices (other than Appendix 12A, which was promulgated by the President), and an Index. These supplementary materials do not have the force of law.

The Manual shall be identified by the year in which it was printed; for example, "Manual for Courts-Martial, United States (20xx edition)." Any amendments to the Manual made by Executive Order shall be identified as "20xx" Amendments to the Manual for Courts-Martial, United States, "20xx" being the year the Executive Order was signed.

The Department of Defense Joint Service Committee (JSC) on Military Justice reviews the Manual for Courts-Martial and proposes amendments to the Department of Defense (DoD) for consideration by the President on an annual basis. In conducting its annual review, the JSC is guided by DoD Directive 5500.17, "Role and Responsibilities of the Joint Service Committee (JSC) on Military Justice." DoD Directive 5500.17 includes provisions allowing public participation in the annual review process.

Discussion

The Department of Defense, in conjunction with the Department of Homeland Security, has published supplementary materials to accompany the Manual for Courts-Martial. These materials consist of a Discussion (accompanying the Preamble, the Rules for Courts-Martial, the Military Rules of Evidence, and the Punitive Articles), an Analysis, and various appendices. With the exception of Appendix 12A (lesser included offenses), which is issued by the President pursuant to Article 79, these supplementary materials do not constitute the official views of the Department of Defense, the Department of Homeland Security, the Department of Justice, the military departments, the United States Court of Appeals for the Armed Forces, or any other authority of the Government of the United States, and they do not constitute rules. *Cf., e.g.*, 5 U.S.C. § 551(4). The supplementary materials do not create rights or responsibilities that are binding on any person, party, or other entity (including any authority of the Government of the United States whether or not included in the definition of “agency” in 5 U.S.C. § 551(1)). Failure to comply with matter set forth in the supplementary materials does not, of itself, constitute error, although these materials may refer to requirements in the rules set forth in the Executive Order or established by other legal authorities (for example, binding judicial precedents applicable to courts-martial) that are based on sources of authority independent of the supplementary materials. *See* Appendix 15 in this Manual.

The 1995 amendment to paragraph 4 of the Preamble eliminated the practice of identifying the Manual for Courts-Martial, United States, by a particular year. Historically the Manual had been published in its entirety sporadically (*e.g.*, 1917, 1921, 1928, 1949, 1951, 1969, and 1984) with amendments to it published piecemeal. It was therefore logical to identify the Manual by the calendar year of publication, with periodic amendments identified as “Changes” to the Manual. Beginning in 1995, however, a new edition of the Manual was published in its entirety and a new naming convention was adopted. *See* Exec. Order No. 12960 of May 12, 1995. Beginning in 1995, the Manual was to be referred to as “Manual for Courts-Martial, United States (19xx edition).” In 2013, the Preamble was amended to identify new Manuals based on their publication date.

Amendments made to the Manual can be researched in the relevant Executive Order as referenced in Appendix 19. Although the Executive Orders were removed from Appendix 19 of the Manual in 2012 to reduce printing requirements, they can be accessed online. *See* Appendix 19.
