



MINUTES OF THE VII INTER-AMERICAN MILITARY JUSTICE FORUM

In the city of Guatemala, on the 22nd day of November 2019, in the framework of the VII Inter-American Forum of Military Justice, this Act of approval is submitted for signature in accordance to the Regulations of the Advisory Council and the Technical Secretariat, with the participation of representatives of the following countries: General **Lucio Mario de Barros Góes** from the República Federativa de Brasil; Brigadier General **Rodrigo Sandoval Calderón** from República de Chile; Colonel **Camilo Suárez Aldana** from República de Colombia; Brigadier General **Susan K. Escallier** from the United States of America; General de División **Albin Enrique Dubois Ramírez** de la República de Guatemala; Doctor **Alejandro Carlos Espinoza** de los Estados Unidos Mexicanos; Mayor General FAP **Arturo Giles Ferrer** de la República del Perú; Contralmirante **Julio Pacheco Gaige**, Representing the Inter American Association of Military Justice in his capacity as President of the Forum Militar and Police of the Republic of Perú; General **Daniel Castellá** de la República Oriental del Uruguay.

During the weeks prior to the inauguration of the VII Inter-American Forum, the texts of the Regulations of the Advisory Council and the Technical Secretariat were proposed via email, which, having not been adjusted, have been approved as suggested.

REGULATIONS OF THE ADVISORY COUNCIL

Chapter I: General Provisions:

Article 1.- These Regulations govern the organization and operation of the Advisory Council of the Inter-American Forum on Military Justice (hereinafter Forum).

Article 2.- The Advisory Council represents a consultative and support body of many bodies: members of the Forum, whose purpose is to contribute and assist the achievement of its objectives.

Chapter II: Objectives and Competence

Article 3.- The Advisory Council is an academic body on issues related to the administration of military and/or police justice, which, due to their importance at national and international level, can be treated or should be treated by experts in the field.

Article 4.- The Advisory Council should:

- issue an opinion at request of the Forum's constituent bodies.
- carry out studies on issues related to military justice and others entrusted to it.
- attend meetings of the Forum and participate in them with the right to address the board.
- propose the adoption of provisions that are related to the Forum's aims.
- analyze the proposals that the members of the Forum and the Technical Secretariat make for better development of their activities.

Article 5.- The reports, opinions and/or any other documentation issued by the Advisory Council are not binding.

Chapter III: Composition and Appointment

Article 6.- The Advisory Council will be made up of a group of five (5) experts in the field related to military and/or police justice.

Article 7.- They are designated ad-honorem by the representatives accredited before the Forum, maintaining independence and autonomy with respect to the States of which they are nation.

Chapter IV: On the Presidency

Article 8.- The President's appointment shall be made by agreement between the representatives before the Forum, of a list proposed by the Technical Secretary, who in turn shall be the Secretary of the Advisory Council with a right to be heard but no vote, with the same duration as of the Technical Secretariat.

Article 9.- The President may be re-elected once, by agreement of the representatives before the Forum.

Article 10.- The President should:

1. Act as representative of the Advisory Council.
2. Convene the meetings deemed pertinent, giving priority to the use of computer technology.
3. Receive and respond to communications sent to the Advisory Council.
4. Present to the Forum the opinions that the Advisory Council has decided to issue on matters within its competence.

5. Perform the other powers assigned by the Forum and/or the Advisory Board in compliance with its general objectives.

Chapter V: On meetings and pronouncements.

Article 11.- The Consultative Council will meet, on the occasion of the meetings to be held as part of the Forum, at the same venue where it is held. The quorum for meetings will consist of three members with the right to be heard and vote.

Article 12.- In the other cases of summon, it will prioritize its meetings using computer technology available on a timely basis.

Article 13.- The Advisory Council shall issue its pronouncement, through agreements reached with the approval of the simple majority.

Chapter VI: Final Provisions

Article 14.- The Advisory Council, if it considers it pertinent, may invite other experts to participate in its meetings to contribute their knowledge to the best achievement of its objectives.

Article 15.- These Regulations will enter into force upon approval.

Chapter VII: Transitional Provisions:

Article 16.- The members of the current Advisory Council may increase at the next meeting of the Inter-American Forum on Police Military Justice.

Article 17.- While the Forum's mechanisms and management are approved, the Advisory Council shall carry out its activities by observing as far as possible the content of these Regulations.

REGULATIONS OF THE TECHNICAL SECRETARIAT

CHAPTER I: General Provisions

1. The Technical Secretariat represents the management and support body of the Inter-American Forum of Military and Police Justice.
2. Its headquarters will be in the country where the Technical Secretariat has been designated.
3. The duration of the Technical Secretariat's responsibility in charge of the designated country will be the period in charge of the aforementioned Secretariat. It will finish with the designation of another country for such event.

CHAPTER II: Objectives and competence

4. To work closely with the representatives that are part of the Forum, in the implementation of the guidelines, regulations and other management instruments to achieve their objectives.
5. To maintain permanent coordination with the representatives of the member countries, through institutional channels and in the manner indicated by the countries.
6. To help strengthen the identification of the Forum, in national and international channels by presenting a work program to achieve these ends.

CHAPTER III: Functions

7. To conduct technical studies that contribute to the development of the Forum implementation process.
8. It will be responsible for registering, protecting and archiving the documentation of the Forum and organizing its publication with prior authorization from the member countries.
9. It will prepare and keep an updated guide for the distribution of the information that it has among all member countries; including the procedures to prepare them.
10. It will coordinate the creation of an official website for the dissemination of military justice work in member countries.
11. It will implement a digital library with military justice standards of all member countries of the Forum, as well as, their spreading among them.
12. It will establish contact with universities or institutes which may contribute to the purposes of the Forum and others interested in the work of Military and Police Justice to make possible the participation of academic institutions.
13. It will manage, before the member countries, the appointment of experts to make up an Advisory Committee.
14. It will propose the criteria for the creation of a Center for International Studies of Military and Police Justice in addition to Military Law.
15. With respect to paragraphs 10 to 13, it will generate reports corresponding to its implementation within four months of its creation.
16. To coordinate the realization of the respective Inter-American Forum; as well as, where necessary and possible a Preparatory Meeting to the aforementioned event and other academic activities.

CHAPTER IV: Final Provisions

17. The country in charge of the Technical Secretariat of the Forum will establish its organization according to its internal law and work plan, which will govern during the period it was elected.

Next, the attendees approved all the conclusions and recommendations, the sessions summarized herein:

1. Military Justice is a component of the commander's ability to ensure good order and discipline. We have a highly discipline force that is the pride of our nation. The commander instills good order and discipline every day at the head of his or her formation and the military justice system exist to address indiscipline when and where it occurs.
2. Commander involvement. Commanders and judge advocates work together at every echelon to ensure that military justice serves the purpose of swift and efficient justice as well as the objective of ensuring good order and discipline. The partnership between judge advocates and commanders is ingrained into our training and our daily operations and is the lynchpin for success of our system.
3. We can adjudicate cases with complete respect of the rights of the accused and robust due process in every environment where we are deployed. It is vital to maintain a fully deplorable system.
4. Civilian Oversight. We have civilian oversight from the Court of Appeals of the Armed Forces at the end of a trial process. We also have the robust oversight from the U.S. Congress and our committees of jurisdiction that allow us to ensure that the law is amended and updated as needed. We are grateful for the partnership of the U.S. Congress to assist us in ensuring the best possible military justice system.
5. Military Justice in the USA is the product of an old and settled tradition that has evolved through the years. Historically, it has been greatly influenced by the fact that USA is a force deployed throughout the world. The constitution has granted the commanders great power and responsibility to impose military justice. Southern Command is the combatant command in charge of that mission for this hemisphere, and is dedicated to the common values of democracy, justice, and the respect for the rule of law and human rights. That creates the bases for a disciplined and organized force that leads the nations, creating important and ever lasting relationships that fortify the systems of military justice for all, while supporting other missions such as the defeat of transnational organizations, narco-terrorist organizations, and other common threats to our values, all while preserving the rule of law and the use of principles of International Humanitarian Law in all operations..
6. In the United States, the Staff Judge Advocate (SJA) is the principal legal advisor to the commander, and counsels the command not just on legal matters, but policy and good relations aspects of the International Law according to the degree of expertise that this legal advisor possesses. According to this legal acumen, as well as his or her knowledge,

experience, and initiative, it can actualize the command on the ever changing legal aspects of international law, and proposes then the actualization of rules and regulations according to his competence; thus ensuring that all military operations are conducted in accordance to well settled law, and in compliance of the International Humanitarian Law, and the law of International Human Rights.

7. The USA also continues his commitment to the support of Peace Keeping Operations as mandated by the United Nations, and this becomes the toolset that permits the cross training and development of standardized aspects of military operations through training and development of partners in all aspects of military operations. This, so that we can jointly defeat our common threats and guarantee the continued security, liberty and prosperity of the hemisphere. This also will eventually allow us to defeat the tactics already in use of those common enemies that are contrary to our common principles of democracy. We will then be able to deter the malign influence of those enemies of our democratic values and will directly influence on our common progress. U.S. Southcom takes the view that it takes a network to defeat a network, and will continue working together to rise above any common challenges and guarantee our regional stability.
8. In Brazil, Military Justice Systems has gone through a number of changes throughout their history. Initially a purview of the executive power, it is now, and since 1934 under the judicial power, so it has grown and gives now a heightened status to the Military Superior Tribunal. This one in turn has a number of "Auditorias Militares" or the offices directly in charge of imposing military justice throughout the entire Brazilian territory in accordance with the Federal Constitution, the Military Penal Code, and complementary laws. This, with a strict compliance with all constitutional guarantees and procedural protections to the accused.
9. The recent and exceptional use of the Armed Forces of Brazil for urban local operations in support of police forces, and to guarantee respect for local authorities and the guarantee of the law and order have been successful. There has been a reestablishment and a return to the social conditions that give local authorities and police department the control of the communities, neighborhoods, touristic destinations and other locations threatened by common criminal groups. Thankfully, the Armed Forces have received the necessary training and equipment, to include the weaponry to adequately respond and control this difficult situation. Thus, the military has expanded their role, from guardians of the national security in times of war, to provide this necessary support to local and police authorities, even acting as a force against common crime and the control of local population committing them. The challenge being to do so while strictly following ROE, RUOF, and the compliance with Human Rights laws.

10. In Guatemala, the Military Code dates from the year 1878, yet it is still in use and application. One hundred years later, in 1985 the new political constitution of the Country legitimized the military tribunals, and constituted them as sources of justice overseeing the crimes or transgressions of military members. Later, in 1996, through a Public Law number 41-96, the Military Code is partially reformed limiting the Military competency to those crimes and transgressions with a military nexus. Notably, the same year, the peace process in Guatemala comes to a conclusion with the signatory of an agreement between the government.
11. In 1994, there is a very substantive reform to the ordinary penal justice in Guatemala, for the long existing inquisitive system is replaced by an accusatory oral process. This change left behind the Military Justice System which still stuck with the old inquisitive system. At this time, there is a Project to modify one more time the Military Code to correct this incongruence with the civilian system; however, this has met a number of detractors and critics that maintain the system is fundamentally flawed since the juries, judges, prosecutors and other players, being all military, would not exercise judicial Independence in the penal system, and will not be able to be fair to the accused. Other national and international social sectors have similar criticism, especially after in 2005 when the increase of organized crime forced the government to involve the Army in operations aimed at curtailing the rise in Criminal activity. This exceptional mandate, by national Law number 40-2000 passed by the National Congress gave the Army the ability to support law enforcement and border security missions, but unfortunately delayed the ongoing reforms to the Military Justice Code. However, the maximum national court, Corte de Constitucionalidad, has emphatically stated over and over that the competency and jurisdiction of Military tribunals is over the military members of the Guatemalan forces subjects to the Military justice system.
12. Nowadays. There exists a new board of judicial review that is reviewing, analyzing, and enabling a new law to finally update the Military Code. It is composed by the Judge Advocates of the services, and it also has the support and guidance of United States specialists from DIILS, the Defense International Institute of Legal Studies.
13. In Peru, the political side once again used police military justice as a means of avoidance to try terrorists and gangs, to deprive them of liberty in the face of the reluctance of the judiciary, hypertrophying it in their competences. When the terrorism was defeated, the Constitutional Rule of Law was reestablished, the very existence of a military justice was questioned. The Constitutional Court declared such proceedings null and invalid and they were prosecuted once again. The differences in the procedures were minimal, yet no terrorist was released. After a prolonged process and multiple rulings of the Constitutional Court, to include the most relevant being, the 0001-2009-PI/TC, the military justice was recognized and professionalized and it became completely independent. This system became an unprecedented institution in

America, for the maintenance of discipline in the Armed Forces and National Police, completely independent of the political and the judiciary powers.

14. In Chile, there are three criminal procedural systems, the first system was used in the criminal cases prior to the criminal procedural reform that occurred between the years 2000 to 2005. The remaining two systems are currently in place and these are the civil criminal procedure and the military criminal procedure. The civil criminal procedure which is accusatory, is well advanced in the Region and this diverges with its military justice system. Thus, the military justice system is effective, it has strong inquisitive principles such as unilateral hearings and the principle of secrecy in the investigation phase. The inquisitive principles make the system vulnerable to the possibility to disappear.
15. The Inter-American Court of Human Rights sentenced the military justice of the Republic of Chile to abide and process only crimes of function. To this date, there is not a clear definition of crimes of function, therefore, the armed forces have undertaken an arduous effort before the political body, to push forward reforms to the military justice code, with the goal to update and professionalize their military institutions and procedures.
16. The legal framework or legal protection available to the Chilean armed forces does not have sufficient legal hierarchy to carry out the safeguarding tasks and constitutional order of the Chilean people. The actions of the armed forces are regulated by a plan issued by the Minister of National Defense, without the recognition of the courts. As a result, their actions are only covered by the rules of self-defense when justified.
17. The military justice of the Republic of Uruguay, dating from 1851. With the passing of time, in 2010, the Law of National Defense Framework, No.18,650, generated substantial changes and provided for the transfer of the functions of military jurisdiction to the Judicial Power. The full implementation was a challenge, because in reality military justice is unique and indispensable, since it applies to special conduct and its purpose is to safeguard, protect and ensure the discipline of the Armed Forces and the potential nation's war. Therefore, nine years after that law, military jurisdiction is exercised by the institutions established in the military codes, which remain in full force. Because reform projects are not yet passed, and subsequent laws validate the military judicial system and its independence from the Judicial Power, the military jurisdiction enforces the due process and other guarantees, while seeking the specialization of military magistrate lawyers.
18. In Mexico, a country convulsed by organized crime, the Armed Forces have been forced to intervene in support of the police. The military justice system operates as a special forum in strict abidance to the Political Constitution and the jurisprudence of the Court of Inter-American Human Rights. One of the most important case is Radilla Pacheco, among other

cases, wherein the main contribution was the reversal of the presumption of guilt to the presumption of innocence. There is a lot of professionalism in military magistrates, however, there is an urgency to conduct serious studies and educate regarding military justice in the universities.

- 19 With regards to the role of women in Mexican society, it has an increasing presence in both society and politics, which implies progress towards equal rights and opportunities as well as the reduction of discrimination in access to work and in the Armed Forces. Their incorporation has been gradually and has enabled the evolution of important aspects, including regulations, overcoming military traditions and professionalizing the career. The female participation has promulgated gender integration and has eliminated the existence of gender inequality.
- 20 The model of military justice of each State is as unique to that State as its own national anthem and each State must have the military justice system that addresses its needs. Acknowledging that there are certain principles that are common, such as the safeguarding of obedience, good order and discipline, and potential of a nation's war. The winds of change that military justice systems in America have been suffered are necessary, but in no case can they imply their suppression, given their constitutional recognition in most of our countries.
- 12 The great and numerous response provided to the the VII Military Justice Forum permits us to share our views and common issues, so that we can continue searching for common solutions that might be enduring and efficient.

RECOMMENDATIONS

- 1 **First Recommendation:** It is extremely important to create a bond and a relationship between the Military Justice systems and their civilian counterparts. It is valuable to explain a shared understanding about the importance of Military Justice systems to the civilian society, explaining not only our importance, and also our strict adherence to constitutional principles of respect for the rights of the accused. It is also necessary to create interest amid the academia world on the judicial discipline within the military forces, and advance a common and firm posture regarding this importance given the amount of resistance found amid certain areas of society, especially those that oppose military forums the most.
- 2 **Second Recommendation:** The militaries of the participant countries should continue pushing the firm efforts to counter the political powers that dismiss Military Justice and try to achieve the reforms that permit the updating and professionalization of the Military Justice.

- 3 **Third Recommendation:** That the militaries of the participant countries get involved more profoundly on their owning of the military justice development and promotion.

In the end, we proceed to sign these minutes, attesting to their accuracy this 22d of November, 2019. It is noted that the U. S. delegation agrees to sign as to the majority of this document with the exception of the regulations of the advisory council, and the technical secretariat, which will have to be studied, presented to the appropriate authorities at SOUTHCOM, and then signed at a later moment, unless the U.S. proposes changes or updates to the same. As to the rest, the signatures here attest to the accuracy and concurrence with these minutes.

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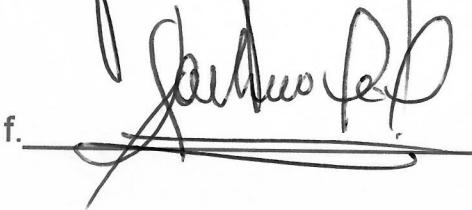
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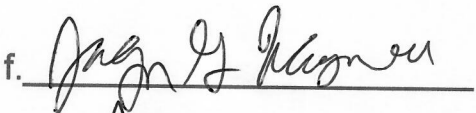
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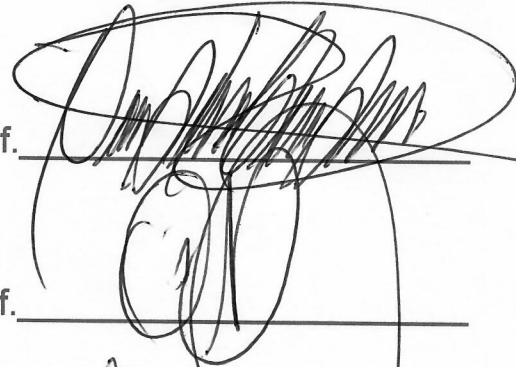
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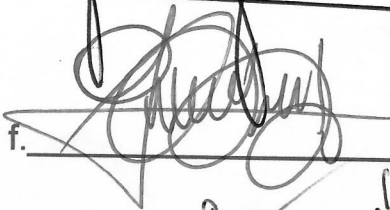
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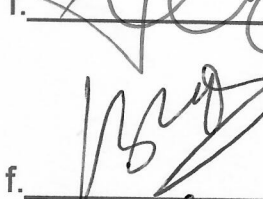
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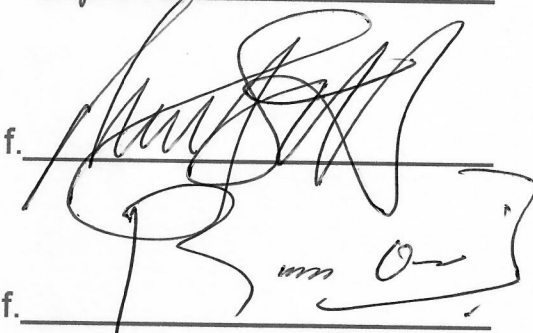
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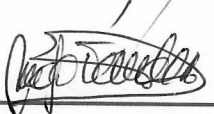
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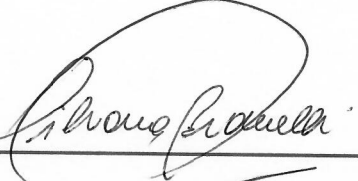
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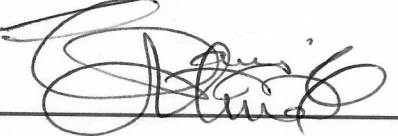
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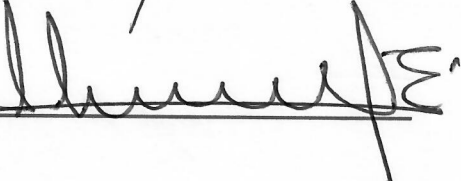
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