

PART I
PREAMBLE

1. Structural provisions of the M.C.A.

The M.C.A. amends both Articles 21 and 36, Uniform Code of Military Justice (U.C.M.J.) (10 U.S.C. §§ 821 and 836) to permit greater flexibility in constructing procedural and evidentiary rules for trials of alien unlawful enemy combatants by military commission. Several key provisions of the M.C.A. demonstrate this accommodation of military operational and national security considerations:

(a) While the M.C.A. is consistent with the U.C.M.J. in many respects, neither the U.C.M.J. itself nor “[t]he judicial construction and application of that chapter” is binding on trials by military commission (10 U.S.C. § 948b(c)).

(b) 10 U.S.C. §§ 810, 831(a), (b), & (d), and 832 do not apply to these military commissions (10 U.S.C. § 948b(d)(1)).

(c) Other provisions of the U.C.M.J. apply only as specified in the M.C.A. (10 U.S.C. § 948b(d)(2)).

(d) The M.C.A. provides that the Secretary of Defense, in consultation with the Attorney General, may prescribe rules of evidence and procedure, as well as elements and modes of proof, for offenses tried by these military commissions (10 U.S.C. § 949a(a)), and that if the Secretary promulgates regulations, he shall submit them to the Committees on Armed Services of the Senate and the House of Representatives (M.C.A. § 3(b)).

(e) Such rules “shall, so far as the Secretary considers practicable or consistent with military or intelligence activities, apply the principles of law and the rules of evidence” for trials by general court-martial, so long as the Secretary’s rules and procedures are not contrary to or inconsistent with the M.C.A. (10 U.S.C. § 949a(a)).

(f) Implementing rules must be consistent with the M.C.A. and provide for the accused’s rights to:

(1) be present at trial, examine and respond to evidence admitted against him, cross-examine witnesses who testify against him, obtain and present evidence, and not be required to testify against himself at a military commission proceeding (10 U.S.C. §§ 948r(a), 949a(b)(1)(A) & (B), and 949j(a)); and

(2) assistance by counsel or self-representation (10 U.S.C. § 949a(b)(1)(C) & (D)).

(g) Statements obtained by torture are not admissible (10 U.S.C. § 948r(b)), but statements “in which the degree of coercion is disputed” may be admitted if reliable, probative, and the admission would best serve the interests of justice (10 U.S.C.

PART II. RULES FOR MILITARY COMMISSIONS

CHAPTER I. GENERAL PROVISIONS

Rule 101. Scope, title

(a) *In general.* These rules govern the procedures and punishments in all trials by military commissions of alien unlawful enemy combatants engaged in hostilities against the United States as defined in 10 U.S.C. § 948a(1) and (3) for violations of the law of war and other offenses triable by military commissions and, whenever expressly provided, preliminary, supplementary, and appellate procedures and activities.

(b) *Title.* These rules may be known and cited as the Rules for Military Commissions (R.M.C.).

Rule 102. Purpose and construction

(a) *Purpose.* These rules are intended to provide for the just determination of every proceeding relating to trial by military commissions.

(b) *Construction.* These rules shall be construed to secure simplicity in procedure, fairness in administration, and the elimination of unjustifiable expense and delay.

Rule 103. Definitions and rules of construction

(a) The following definitions and rules of construction apply throughout this Manual, unless otherwise expressly provided.

(1) “Alien” means a person who is not a citizen of the United States.

(2) “Article” refers to articles of the Uniform Code of Military Justice (Title 10 U.S.C., Chapter 47) unless the context indicates otherwise.

(3) “Capital case” means a military commission to which a capital offense has been referred with an instruction that the case be treated as capital, and, in the case of a rehearing or new or other trial, for which offense death remains an authorized punishment under R.M.C. 810(d).

(4) “Capital offense” means an offense for which death is an authorized punishment under the M.C.A. or the law of war.

(5) “Citizen of the United States.” A person may become a citizen of the United States only by birth within the territory of the United States, by birth to parents who are United States citizens, or by naturalization. *See* 8 U.S.C. §§ 1401, 1427.

PART III
MILITARY COMMISSION RULES OF EVIDENCE

SECTION I
GENERAL PROVISIONS

Rule 101. Scope

(a) *Applicability.* These rules apply in trials by military commissions convened pursuant to the Military Commissions Act of 2006 (10 U.S.C. Chapter 47A) (hereinafter “the M.C.A.”).

(b) *Secondary sources.* If not otherwise prescribed in this Manual or these rules, and insofar as practicable and consistent with military and intelligence activities, and not inconsistent with or contrary to the M.C.A. or this Manual, military commissions shall apply:

(1) First, the Military Rules of Evidence (“Mil. R. Evid.”), as applied in trials by courts-martial under 10 U.S.C. Chapter 47;

(2) Second, the rules of evidence generally recognized in the trial of criminal cases in the United States district courts; and

(3) Third, when not inconsistent with subsections (b)(1) and (b)(2), the rules of evidence at common law.

Rule 102. Purpose and construction

These rules shall be construed to secure fairness in administration, elimination of unjustifiable expense and delay, the protection of national security, and promotion of growth and development of the law of evidence to the end that the truth may be ascertained and proceedings justly determined.

Rule 103. Ruling on evidence

(a) *Effect of erroneous ruling.* Error may not be predicated upon a ruling that admits or excludes evidence unless the ruling materially prejudices a substantial right of a party; and

(1) *Objection.* In case the ruling is one admitting evidence, a timely objection appears of record, stating the specific ground of objection, if the specific ground was not apparent from the context; or

(2) *Offer of proof.* In case the ruling is one excluding evidence, the substance of the evidence was made known to the military judge by offer or was apparent from the context within which questions were asked. Once the military judge makes a definitive

PART IV—CRIMES AND ELEMENTS

(950p) – Statement of substantive offenses

This part of the Manual provides guidance with respect to crimes that may be tried by military commission and enumerates the elements of those crimes.

1. (Section 950q) – Principals

a. *Text.* “Any person is punishable as a principal under this chapter who—

- (1) commits an offense punishable by this chapter, or aids, abets, counsels, commands, or procures its commission;
- (2) causes an act to be done which if directly performed by him would be punishable by this chapter; or
- (3) is a superior commander who, with regard to acts punishable under this chapter, knew, had reason to know, or should have known, that a subordinate was about to commit such acts or had done so and who failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof.”

2. (Section 950r) – Accessory after the fact

a. *Text.* “Any person subject to this chapter who, knowing that an offense punishable by this chapter has been committed, receives, comforts, or assists the offender in order to hinder or prevent his apprehension, trial, or punishment shall be punished as a military commission under this chapter may direct.”

b. *Elements.*

- (1) That an offense punishable by the M.C.A. was committed by a certain person;
- (2) That the accused knew that this person had committed such an offense;
- (3) That thereafter the accused received, comforted, or assisted the offender; and
- (4) That the accused did so for the purpose of hindering or preventing the apprehension, trial, or punishment of the offender.

c. *Maximum punishment.* Any person subject to this chapter who is found guilty as an accessory after the fact to an offense punishable by the M.C.A. shall be subject to the maximum punishment authorized for the principle offense, except that in no case shall the death penalty nor more than one-half of the maximum confinement authorized for that offense be adjudged, nor shall the period of confinement exceed 10 years in any case, including offenses for which life imprisonment may be adjudged.

3. (Section 950s) – Conviction of lesser included offense

a. *Text.* “An accused may be found guilty of an offense necessarily included in the offense charged or of an attempt to commit either the offense charged or an attempt to commit either the