

Comparison of Procedures and Rights

Military Commissions Act of 2006, Courts-Martial, U.S. District Courts, and Other International Courts

Procedures and/or Rights	Military Commissions Act of 2006 (Commissions)	Courts-Martial (UCMJ)	U.S. District Court (District Court)	International Military Tribunal (Nuremberg)	International Criminal Court (ICC)	International Criminal Tribunal for the Former Yugoslavia (ICTY)
<i>Presumption of Innocence</i> * ¹ # ²	Yes	Yes	Yes	Not specified	Yes	Yes
<i>Burden of Proof for Guilt</i>	On government	On government	On government	On prosecution, (but could shift to the accused if he belongs to an organization declared criminal by the Tribunal)	On prosecution	On prosecution
<i>Standard of Proof</i>	Beyond a reasonable doubt	Beyond a reasonable doubt	Beyond a reasonable doubt	Not specified	Beyond a reasonable doubt	Beyond a reasonable doubt
<i>Speedy Trial Requirement</i> *# (w/o undue delay)	After service of charges: 30 days to arraignment; 120 days to assembly of court	Yes Generally 120 days or 90 days if confined	Yes No set time frame; depends on the case	Must be "expeditious" and take "strict measures" to prevent delay	Without undue delay	Without undue delay
<i>When the Accused is Informed of Charges</i> *# (promptly & adequate to prepare)	Upon the swearing of charges, as soon as practicable Upon referral of charges, sufficiently in advance of trial to prepare a defense	As soon as practicable GCM may not begin until 5 days after service of charges	Only after indictment by a Grand Jury in felony cases	A reasonable time before trial	Promptly and to provide adequate time to prepare	As soon as practicable Accused has 30 days to file motions after service of indictment
<i>Assistance of Defense Counsel</i> * (counsel of his own choosing)	Detailed military defense counsel at no cost; Choice of qualified civilian counsel at own expense; Pro Se with standby counsel; Foreign consultants	Choice of available military counsel at no cost Choice of civilian counsel at own expense	Assigned public defender at no cost Choice of civilian counsel at own expense	Right to conduct own defense or have the assistance of counsel	Choice of counsel from Court list at no cost	Choice of counsel from Court list at no cost

¹* Required by International Covenant on Civil and Political Rights, Article 14 (ICCPR)

²# Required by 1977 Protocol 1 to the Geneva Conventions of 1949 (standards for even unprivileged detainee-US not party but taught to US forces as reflecting customary international law).

Comparison of Procedures and Rights

Military Commissions Act of 2006, Courts-Martial, U.S. District Courts, and Other International Courts

Procedures and/or Rights	Military Commissions Act of 2006 (Commissions)	Courts-Martial (UCMJ)	U.S. District Court (District Court)	International Military Tribunal (Nuremberg)	International Criminal Court (ICC)	International Criminal Tribunal for the Former Yugoslavia (ICTY)
<i>Accused Entitled to Be Present at Trial</i> *#	Yes May only be excluded if conduct justifies exclusion to ensure the physical safety of individuals, or to prevent disruption of the proceedings by the Accused	Yes May be removed if becomes disruptive	Yes	No May be tried in absentia	Yes May use video-teleconference if disruptive	Yes
<i>Right to Cross-Examine</i> *#	Yes	Yes	Yes	Yes	Yes	Yes
<i>Double Jeopardy</i> *#	No	No	No	Not specified	No	No
<i>Interpreter</i> *#	Yes	Yes	Yes	Yes	Yes	Yes
<i>Right Against Self-Incrimination</i> *#	Yes	Yes	Yes	No Tribunal may interrogate any defendant	Yes	Yes
<i>Pretrial Legal Review</i>	Referral process: Prosecution recommends charges; Legal advisor makes independent informed appraisal of charges; Legal advisor provides pretrial advice to Convening Authority	Yes, if General Courts-Martial Formal preliminary investigation (Article 32 Investigation)	Yes Grand Jury of 16-23 members convenes secretly and issues indictment	Yes A committee of the chief prosecutors reviews and approves indictments	Yes A Pre-Trial chamber supervises investigations and confirms charges	Yes A reviewing judge examines and confirms each indictment
<i>Hearsay Evidence</i>	Yes Admissible if it would have probative value to a reasonable person	No Only admissible in limited circumstances	No Prohibited unless a specific exception exists	Yes Admissible if deemed to have probative value	Yes Admissible if deemed to have probative value	Yes Admissible if deemed to have probative value

Comparison of Procedures and Rights

Military Commissions Act of 2006, Courts-Martial, U.S. District Courts, and Other International Courts

Procedures and/or Rights	Military Commissions Act of 2006 (Commissions)	Courts-Martial (UCMJ)	U.S. District Court (District Court)	International Military Tribunal (Nuremberg)	International Criminal Court (ICC)	International Criminal Tribunal for the Former Yugoslavia (ICTY)
<i>Compulsory Process to Obtain Witnesses</i>	Yes The accused has reasonable opportunity to obtain witnesses and other evidence Subpoena is available; enforcement is not addressed	Yes The accused may obtain witnesses and documents in his or her defense Subpoena is available but must be enforced in District Court	Yes The accused may obtain witnesses and documents in his or her defense Subpoena is available	Yes, if the chief prosecutors do not object, and deemed necessary to the defense's presentation	Yes Pre-Trial Chamber requests help from States if request is material to the defense's case	Yes Any party may request
<i>Exclusionary Rule</i> (Unlawfully obtained evidence is inadmissible)	Yes Statements obtained by torture inadmissible Coerced statements meeting reliability and probative value tests may be admitted	Yes	Yes	No May admit any evidence of probative value Not bound by technical rules of evidence	Yes Evidence inadmissible if gathered in violation of ICC statute or internationally recognized human rights	Yes/No Evidence inadmissible if obtained by methods which cast substantial doubt on its reliability or would jeopardize the integrity of the proceeding
<i>Challenges to Members of the Court</i>	Yes May challenge military judge and members for cause	Yes May challenge military judge or panel members for bias or impartiality	Yes May challenge judge or members of the jury for bias or impartiality	No	Yes May request disqualification of judge, if impartiality in reasonable doubt	Yes May request disqualification of judge, if impartiality in reasonable doubt
<i>Death Penalty</i>	Yes Requires unanimous vote of 12 members	Yes Requires unanimous vote & verdict, & aggravating circumstance	Yes All verdicts must be unanimous Aggravating circumstance required	Yes	No Confinement limited to 30 years (or life, in cases of extreme gravity)	No Punishment limited to life imprisonment
<i>Public Trial</i>	Yes But may be closed to protect national security and ensure the physical safety of individuals	Yes But few exceptions such as to protect classified information	Yes, Unless there is a narrowly tailored compelling interest	Not addressed	Yes But may be closed for special circumstances (to protect victims, witnesses confidential or sensitive information)	Yes, But press or public may be excluded for reasons of public order or morality, for safety or non-disclosure of a victim or witness, or for protection of the interests of justice

Comparison of Procedures and Rights

Military Commissions Act of 2006, Courts-Martial, U.S. District Courts, and Other International Courts

Procedures and/or Rights	Military Commissions Act of 2006 (Commissions)	Courts-Martial (UCMJ)	U.S. District Court (District Court)	International Military Tribunal (Nuremberg)	International Criminal Court (ICC)	International Criminal Tribunal for the Former Yugoslavia (ICTY)
<i>Votes Required to Convict</i>	2/3 (for conviction and sentencing) Death penalty must be unanimous	2/3 (for conviction and sentencing) Unanimous for death 3/4 for confinement of 10 or more years	Unanimous (in all cases)	3/4	Simple majority	Simple majority
<i>Appellate Review</i> <i>* (review by higher tribunal)</i>	Yes Review by Convening Authority (may not increase sentence) Automatic Review by Court of Military Commission Review Review by Court of Appeals for DC Circuit Review by U.S. Supreme Court upon writ of certiorari	Yes Appellate review is automatic in certain cases Review by military courts of appeal, U.S. Court of Appeals for the Armed Forces and U.S. Supreme Court Death penalty must be approved by the President	Yes Appeal is mandatory in all death penalty cases In other cases, appeals are heard at the discretion of the U.S. Circuit Courts or the U.S. Supreme Court	No The Tribunal's judgment shall be final and not subject to review	Yes Appeal by either accused or prosecution (for procedural, factual, or legal error) Sentence appealable as disproportionate Appeals Chamber decides by majority vote May remand factual issues if necessary Note: All appeals are internal to ICC	Yes Appeal by either the accused or the prosecution Interlocutory decision may be appealed by an affected State The Appeals Chamber may hear additional evidence