

Chapter 1:

# The Legal Framework



**What do the Constitutions define?**

Country	Leading Political Procedures	Military Instrument	Other Dispositions
<b>Argentina</b> (1853, Last Reform 1994)	<p><b>Powers of the President:</b> Commander-in-Chief of the Armed Forces (Sec. 99, sub. 12). Declare war with the approval of the Congress (Sec. 99, sub. 15) and the state of siege in case of external attacks, for a limited period of time, with the approval of the Senate (Sec. 99, sub. 16). Appoint senior officers with the approval of the Senate (Sec. 99, sub. 13). Arrange, organise and distribute the Armed Forces (Sec. 99, sub. 14).</p> <p><b>Powers of the Congress:</b> Approve the declaration of war (Sec. 75, sub. 25) and the declaration of state of siege in case of external attacks (Sec. 61). Authorise the president to make peace (Sec. 75, sub. 25). Authorise the entry of foreign troops to the national territory and allow the deployment of national troops outside the country (Sec. 75, sub. 28). Establish the Armed Forces (Sec. 75, sub. 27). The Chamber of Deputies has the law initiative on raising revenue and recruitment of troops (Sec. 52). Organize and govern the Armed Forces (Sec. 75, sub. 27). Levy direct taxes for a certain amount of time, in all the territory of the Nation, as long as the defence, common security and general welfare of the State policies so require it (Sec. 75, sub. 2). Approve or dismiss treaties concluded with other nations and with international organizations, as well as the concordats with the Holy See (Sec. 75 sub. 22).</p>	No reference.	<p>The Federal Government intervenes in the territory of the provinces to repel foreign invasions (Sec. 6). Citizen participation: every argentine citizen is obliged to bear arms in defence of the Nation and the Constitution (Sec. 21). The international treaties and concordats celebrated with the Holy See have a higher hierarchy than laws (Sec. 75, sub. 22 y 24).</p>
<b>Bolivia</b> (1967, Last Reform 2005)	<p><b>Powers of the President:</b> General Captain of the Armed Forces (Sec. 97). Conserve and defend external security (Sec. 96, sub. 18). Assign the Commander-in-Chief of the Armed Forces and the Commander of the Army, the Air Force and the Navy (Sec. 96, sub. 19). Appoint senior officers with the approval of the Congress (Sec. 96, sub. 20). Grant the aforementioned ranks in the battlefield, during the state of international war (Sec. 96, sub. 21).</p> <p><b>Powers of the Congress:</b> Approve the declaration of war (Sec. 68, sub. 7). Approve the appointment of senior officers (Sec. 66, sub. 8; Sec. 96, sub. 20). Approve the entry of foreign troops to the national territory and allow the deployment of national troops outside the country (Sec. 59, sub. 15 and 16). Approve the number of Armed Forces (Sec. 59, sub. 14; Sec. 68, sub. 8; Sec. 207). The Armed Forces depend on the President of the Republic and receive their orders regarding administrative matters, through the Ministry of National Defence, and in technical matters, through the Commander-in-Chief (Sec. 210).</p> <p><b>Supreme Council of National Defence:</b> Composition, organization and powers assigned by law, preceded by the General Captain of the Armed Forces (Sec. 212).</p>	<p><b>The Armed Forces:</b> They are obedient, non deliberant, and are subject to military laws and regulations (Sec. 209). The Armed Forces are composed of the Commander-in-Chief, the Army, the Air Force and the Navy (Sec. 207). Organization: they rely on their hierarchy and discipline (Sec. 209). Mission: defend and conserve the national independence, security and stability of the Republic and the national honour and sovereignty; ensure the enforcement of the Political Constitution, guarantee the stability of the legally constituted Government and cooperate in the integral development of the country (Sec. 208). Promotions in accordance with the law (Sec. 214). The members of the military on active duty cannot be elected President, Vice president (Sec. 89, sub. 3) or national representatives (Sec. 50, sub. 1) unless they resign and retire at least sixty days before the election, but they can exercise all the other citizenship rights (Sec. 209).</p>	<p>Any armed force or association of people who attribute themselves the people's sovereignty is guilty of the crime of sedition (Sec. 4, sub. II). Citizen participation: all Bolivians are obliged to do military service (Sec. 8, sub. f; Sec. 213). In case of international war, the National Police shall depend on the Commander in Chief of the Armed Forces for as long as the conflict lasts (Sec. 218).</p>
<b>Brazil</b> (1988, Last Reform 2007)	<p><b>Powers of the President:</b> Supreme Commander of the Armed Forces (Sec. 84, sub. XIII). Declare war with the approval of the Congress, in case of foreign aggression (Sec. 84, sub. XIX); decree the state of defence and the state of siege (Sec. 84, sub. IX). Make peace with the approval of the Congress (Sec. 84, sub. XX). Allow the entry of foreign troops to the national territory (Sec. 84, sub. XXII). Appoint the Commanders of the Armed Forces, and promote general officers (Sec. 84, sub. XIII).</p>	<p><b>The Armed Forces:</b> The Armed Forces are permanent, regular and apolitical national institutions, organized on the bases of hierarchy and discipline (Sec. 142). They are composed of the Navy, the Army and the Air Force (Sec. 142). Incorporation, age limits, rights, obligations, remuneration, prerogatives and other special situations of the members of the military, given the characteristics of their activities, including those carried out due to international commitments and war are determined by law (Sec. 142).</p>	<p>The international relations of Brazil are governed, among other principles, by the defence of peace and the peaceful resolution of conflicts (Sec. 4, sub. 6 and 7). The action of armed groups either civil or military against the constitutional order and the democratic State is a crime not subject to limitation (Sec. 5, sub. XLIV). The Union must ensure national defence (Sec. 21, sub. III) and legislate on territorial, aerospace, maritime, civil defence, and national mobilization (Sec. 22, sub. 28). All nuclear activity within the national territo-</p>

1 Consejo Supremo de Defensa Nacional. \* As of August 2008, a Constituent Assembly process was in progress.



Country	Leading Political Procedures	Military Instrument	Other Dispositions
Brazil	<p>Solely initiate laws which establish or modify the number of regular force members, or rule over members of the military, their legal system, promotions, stability, assignment of positions, remuneration, reform, and transfer to the reserve (Sec. 61, sub. 1).</p> <p><b>Powers of the Congress:</b> Approve the declaration of war (Sec. 49, sub. II). Authorise the President to make peace (Sec. 49, sub. II). Approve the deployment of troops (Sec. 49, sub. II). Determine and modify the number of troops of the Armed Forces (Sec. 48, sub. III).</p> <p><b>Council of the Republic<sup>2</sup>:</b> It is the President's superior consultation body (Sec. 90). Express position on federal intervention, state of war and state of siege (Sec. 90, sub. I).</p> <p><b>Council of National Defence<sup>3</sup>:</b> It is the President's consultation body on issues related to national sovereignty and the defence of the democratic State (Sec. 91). The Council is composed of the Vice President of the Republic, the President of the Chamber of Deputies, the President of the Federal Senate, the Minister of Justice, the Minister of Defence, the Minister of Foreign Affairs, the Minister of Planning, the Commanders of the Navy, the Army and the Air Force (Sec. 91). Express position on the hypothesis of war declaration and peace settlement (Sec. 91, sub. I); the declaration of the state of defence, the state of siege and federal intervention (Sec. 91, sub. II). Propose the criteria and conditions for the use of areas which are indispensable to the security of the national territory, and expresses opinion on its effective use, especially on border zones and on those related to the preservation and exploitation of natural resources of any kind (Sec. 91, sub. III). Study, propose and monitor the development of initiatives required to guarantee national independence and the defence of the democratic State (Sec. 91, sub. IV).</p>	<p>Military service is compulsory in accordance with the law (Sec. 143). Mission: defend the Fatherland and the guarantee of constitutional powers and, on the initiative of any of them, the law and order (Sec. 142). The members of the military on active duty are not entitled to join labour unions or to go on strike; neither can they belong to political parties (Sec. 142, sub. IV), they cannot be candidates on elections (Sec. 14, sub. 8), habeas corpus does not apply to military disciplinary punishment (Sec. 142, sub. 2). Military justice: it shall be incumbent upon the Military Courts to process and judge the military crimes defined by law (Sec. 124).</p>	<p>ry shall only be admitted for peaceful purposes and subject to approval by the National Congress (Sec. 21, sub. XXIII, a).</p>
Chile (1980, Last Reform 2008)	<p><b>Powers of the President:</b> Supreme Chief of the Armed Forces in times of war (Sec. 32, sub. 18). Maintain external security (Sec. 24). Declare war after the pertaining law has been passed, and after hearing the National Defence Council (Sec. 32, sub. 19). Appoint and remove the Commanders-in-Chief of the Army, the Navy and the Air Force (Sec. 32, sub. 16; Sec. 105). Appoint, promote and remove officers (Sec. 32, sub. 16). The President has the law initiative to establish the air, land and sea forces, and the ones which establish rules for the entry and deployment of troops (Sec. 65; Sec. 63, sub. 13). Arrange, organize and distribute the Armed Forces depending on the needs of national security (Sec. 32, sub. 17).</p> <p><b>Powers of the Congress:</b> The Chamber of Deputies has the law initiative regarding recruitment (Sec. 65). Accuse (only Deputies) and judge (only Senators) Generals and Admirals (Sec. 52, sub. 2, d; Sec. 53, sub. 1). Approve or dismiss international treaties which the President might introduce before they are ratified (Sec. 54, sub. 1).</p> <p><b>National Security Council<sup>4</sup>:</b> Formed by: Chief of State (President), President of the Senate, Deputies and Supreme Court, Commander in Chief of the Armed Forces, General Director of Carabineros and General Controller of the Republic when the President</p>	<p><b>The Armed Forces:</b> Depend on the National Ministry of Defence, they are essential to the national security, they are obedient, non deliberant, professional and disciplined, and follow a hierarchical order (Sec. 101). They are composed of the Army, the Navy and the Air Force (Sec. 101). Mission: defend the Fatherland (Sec. 101); safeguard the public order during elections (Sec. 18). Incorporation to the Armed Forces is performed through their own schools, except in the case of professional scales and civilian personnel (Sec. 102). Appointments, promotions, retirement of officers, ranks, incorporation, social security, seniority, command succession and budget are determined by constitutional organic law (Sec. 105). The members of the military on active duty cannot be elected Deputies or Senators unless they resign and retire during the year preceding the election (Sec. 57, sub. 10). Obligatory military service (Sec. 22).</p>	<p>It is the duty of the State to safeguard national security (Sec. 1). Freedom of teaching has no other limitations but those imposed by moral, good customs, public order and national security (Sec. 19, sub. 11). Associations which are contrary to moral, the public order and the security of the State are prohibited (Sec. 19, sub. 15). Citizen participation: all Chileans have the fundamental duty to honour their Fatherland, to defend its sovereignty and to contribute to preserve the national security (Sec. 22).</p>

2 Conselho da República. 3 Conselho de Defesa Nacional. 4 Consejo de Seguridad Nacional.



Country	Leading Political Procedures	Military Instrument	Other Dispositions
<b>Chile</b>	deems it necessary, the Ministers of Government, National Defence, Public Security, Foreign Affairs, and Economy and Public Finances can be present (Sec. 106). Advise the President regarding national security (Sec. 106). The President summons it and an absolute majority is required to session (Sec. 107).		
<b>Colombia (1991, Last Reform 2007)</b>	<b>Powers of the President:</b> Supreme Commander of the Armed Forces (Sec. 189, sub. 3). Provide external security (Sec. 189, sub. 6). Declare war with the approval of the Senate, except in case of foreign aggression (Sec. 189, sub. 6) and lead operations when deemed necessary (Sec. 189, sub. 5). Accord peace informing the Congress (Sec. 189, sub. 6). Appoint officers with the approval of the Senate (Sec. 189, sub. 20; Sec. 173, sub. 2). Direct and mobilize the Public Force (Sec. 189, sub. 3).  <b>Powers of the Congress:</b> Approve the declaration of war (Sec. 173, sub. 5). Approve the appointment of senior officers (Sec. 173, sub. 2). Approve the entry of foreign troops (Sec. 173, sub. 4), when the Senate is in recess this duty is responsibility of the President (Sec. Sec. 189, sub. 7). Dictate general rules with objectives and criteria to establish the wage level and social benefits of the public force (Sec. 150, sub. 20, e).	<b>The Military Forces**:</b> The Military Forces are the Army, the Navy and the Air Force (Sec. 217). They are non deliberant (Sec. 219). Promotions, rights and obligations of their members, disciplinary regime and social security benefits are determined by law (Sec. 217). The education and training include the fundamentals of democracy and human rights (Sec. 222). Mission: defend the sovereignty, independence, the integrity of the national territory and the constitutional order (Sec. 217). The members of the military on active duty are not entitled to join labour unions (Sec. 39), to vote, to make petitions except on issues related to their service or participate in political activities and debates (Sec. 219). They cannot be elected congressmen unless they resign and retire at least twelve months before the election (Sec. 179, sub. 2). The Commanders of the Armed Forces cannot be elected President prior to one year after they left their previous post (Sec. 197). In case of manifest infraction of a constitutional precept to the disadvantage of any person, the responsibility shall fall exclusively on the superior who gives the order (Sec. 91). Military justice for military crimes (Sec. 221, Sec. 250), civilians can not be tried by Martial Law (Sec. 213).	The State is essentially aimed at defending independence and maintaining territorial integrity (Sec. 2). The foreign policy of Colombia shall be oriented to the integration of Latin America and the Caribbean (Sec. 9). One of the duties of the individual and citizen is to strive towards the achievement of peace-keeping (Sec. 95, sub. 6). Citizen participation: all Colombians are obliged to bear arms when public need demands it to defend national independence and public institutions (Sec. 216).
<b>Dominican Republic (2002)</b>	<b>Powers of the President:</b> Supreme Commander of Armed Forces (Sec. 55). Provide legitimate defence to the Nation in case of real or imminent foreign armed attacks (Sec. 55, sub. 15). Appoint and dismiss the members of the Councils of War of the Armed Forces and of the National Police (Sec. 55, sub. 17). Arrange everything related to the Armed Forces (Sec. 55, sub. 14) and to military zones (Sec. 55, sub. 8).  <b>Powers of the Congress:</b> Declare the state of national emergency in case national sovereignty is in real or imminent danger; when the Congress is in recess the President shall have the faculty to declare it (Sec. 37, sub. 8). Approve or dismiss international treaties and agreements signed by the Executive Power (Sec. 37, sub. 14).	<b>The Armed Forces:</b> They are obedient, apolitical and non deliberant (Sec. 93). Mission: defend the independence and integrity of the Republic, maintain the public order and abide by the Constitution and the laws. Intervene in programs of civic action and plans devoted to promote the social and economic development when the Executive Power requires so (Sec. 93). The members of the military on active duty cannot run for President at least during the year preceding the election (Sec. 50, sub. 4) nor can they vote (Sec. 88, sub. 2).	Citizen participation: every Dominican shall provide the civil and military services that the Fatherland may require for its defence and conservation (Sec. 9, sub. b). Sovereignty is inviolable. The Republic is and shall always be free and independent of any foreign power. The principle of non intervention is a permanent rule of international politics. It recognizes and applies the regulations of general and American International Law as long as its public powers have adopted them, and favour economic solidarity of the American countries and shall support every initiative inclined to defend its basic products and resources (Sec. 3). Freedom of association and unarmed meeting, with political, economic, social, cultural purposes or of any other kind, which are contrary to the public order, national security or good customs (Sec. 8, sub. 7). All the information media have free access to official and private news, as long as they are not against the public order or endanger national security (Sec. 8, sub. 10).
<b>Ecuador (1998)*</b>	<b>Powers of the President:</b> Maximum authority to the public force. The President would be able to delegate the authority in case of national emergency (Sec. 171, sub. 14; Sec. 184). Maintain national sovereignty and defend the integrity and independence of the State (Sec. 171, sub. 13). Declare the state of emergency in case of imminent external aggression or international war (Sec. 180). Assumes the political direction of war (Sec. 171, sub. 15). Assign the members of the High Military Command and grant hierarchical promotions to general officers (Sec. 171, sub. 14). Use and summon the whole or part of the reserved forces for active service (Sec. 181, sub. 7). Arrange the use of the Public Force (Sec. 181, sub. 7 and 8).	<b>The Armed Forces:</b> They are obedient and non deliberant, their authorities are responsible for the orders they give (Sec. 185). The National Police is an auxiliary force to the Armed Forces for the defence of national sovereignty (Sec. 183). Permanent Armed Forces and Reserve shall be organised according to the needs of national security (Sec. 183). Mission: preserve national sovereignty, defend the integrity and independence of the State and guarantee its legal order (Sec. 183). The members of the military on active duty cannot be candidates for elections subject to popular vote (Sec. 101, sub. 5). The Armed Forces can participate in economic activities related to national defence (Sec. 190). Obligatory military service. The citizens shall be assigned a civil service to the community, if they	Proclaim peace, cooperation as a system of existence and legal equality of States (Sec. 4, sub. 1). Promote the development of the international community, and the stability and strengthening of its organizations (Sec. 4, sub. 4). Advocate integration, especially of the Andean and Latin American regions (Sec. 4, sub. 5). Individuals or legal persons shall under no circumstance acquire land or concessions in national security areas for economic exploitation (Sec. 15). No information located in public files shall be withheld, except the documents for which such reserve is demanded for national defence reasons (Sec. 81). The access to personal information located in the files related to national defence shall be determined by law (Sec. 94). The competences of the central government

\* As of August 2008, a Constituent Assembly process was in progress. \*\* Denomination used in the constitutional text.

Country	Leading Political Procedures	Military Instrument	Other Dispositions
<b>Ecuador</b>	<p><b>Powers of the Congress:</b> Approve or dismiss international treaties, when applicable (Sub. 130, sub. 7). Approve treaties and international concordats over territorial matters and limits (Sec. 161, sub. 1) and those which establish political or military alliances (Sec. 161, sub. 2).</p> <p><b>National Security Council<sup>5</sup>:</b> It is the superior body responsible for the national defence (Sec. 189).</p>	<p>should plead objection of conscience based on moral, religious or philosophic reasons determined by law (Sec. 188). The members of the public force on active duty are not entitled to vote (Sec. 27). Military justice for military crimes. In case of common infractions, they shall be subject to ordinary justice (Sec. 187).</p>	<p>may be decentralised, except national defence and security (Sec. 226). Citizen participation: all citizens have the duty and responsibility to defend the integral territory of Ecuador (Sec. 97, sub. 2), cooperate in peacekeeping and security (Sec. 97, sub. 15). All the citizens of Ecuador and foreign residents are obliged to cooperate with the National Security Council (Sec. 189).</p>
<b>El Salvador (1983, Last Reform 2003)</b>	<p><b>Powers of the President:</b> General Commander of the Armed Force (Sec. 157). Maintain intact the sovereignty and integrity of the territory (Sec. 168, sub. 2). Sign treaties and international concordats, subjecting them to the Legislative Assembly (Sec. 168 sub. 4). Report on what the Assembly requires, except in the case of secret military plans (Sec. 168, sub. 7). Confer military ranks in accordance with the law (Sec. 168, sub. 11). Organize, maintain (Sec. 168, sub. 11) and arrange the Armed Forces, to maintain the sovereignty, order, security and tranquility of the State (Sec. 168, sub. 12). Summon the necessary force for active duty (Sec. 168, sub. 12). Direct war (Sec. 168, sub. 13). Accord peace treaties with the approval of the Assembly (Sec. 168, sub. 13). Determine the number of active troops of the Armed Forces on an annual basis (Sec. 168 sub. 19).</p> <p><b>Powers of the Assembly:</b> Declare war (Sec. 131, sub. 25). Authorise the President to make peace (Sec. 131, sub. 25). Approve or dismiss the transit of foreign troops on the national territory, and the sojourn of foreign combat ships or aircraft, longer than established in the treaties or international practices (Sec. 131, sub. 29).</p> <p><b>Executive Body on the Branch of Defence and Public Security<sup>6</sup>:</b> Determine the number of troops annually according to the needs of the service (Sec. 213).</p>	<p><b>The Armed Force<sup>**</sup>:</b> It is a permanent institution at the service of the Nation. It is obedient, professional, apolitical and non deliberant (Sec. 211). Its mission is to defend the sovereignty of the State and the integrity of the territory. The President shall exceptionally use the Armed Force to maintain internal peace, in accordance with the Constitution (Sec. 212). The Armed Force shall cooperate with works of public benefit assigned by the Executive Power and shall help the people in case of a national disaster (Sec. 212). The Armed Force is obliged to cooperate with the special commissions of the Legislative Assembly (Sec. 132). It is part of the Executive branch and it is subordinated to the authority of the President as General Commander. Its structure, legal system, doctrine, organization and operation are determined by law, rules and special regulations the President adopts (Sec. 213). The military professional career and promotions are strictly based on rank and in accordance with the law (Sec. 214). Military service is obligatory (Sec. 215). The members of the military on active duty cannot be part of any political party, or be candidates for elections (Sec. 82; Sec. 127; Sec. 152). They cannot be elected President prior to three years after they retire. Military justice jurisdiction: purely military crimes and offences (Sec. 216).</p>	<p>Citizen participation: all the citizens of El Salvador fit for performing military tasks shall be soldiers in case of need (Sec. 215). Armed political, religious or union groups are prohibited (Sec. 7). Death penalty shall only be imposed in the cases specified by the military laws during the state of international war (Sec. 27).</p>
<b>Guatemala (1985, Last Reform 1993)</b>	<p><b>Powers of the President:</b> General Commander of the Army (Sec. 182, 183 and 246). Give orders via the general officer or colonel or his equivalent at the Navy, who serves as Minister of National Defence (Sec. 246). Provide for the defence and security of the Nation (Sec. 183, sub. b). Confer promotions, decorations, military honours and extraordinary pensions (Sec. 246, sub. b). Decree the mobilization and demobilization of troops (Sec. 246 sub. a).</p> <p><b>Powers of the Congress:</b> Declare war (Sec. 171, sub. f). Sign peace treaties (Sec. 171, sub. f). Approve the transit of foreign troops on the national territory and the sojourn of foreign military bases with 2/3 of the votes (Sec. 172, sub. a). Approve treaties which affect or may affect the security of the State or conclude a state of war (Sec. 72 sub. b). The Army depends on the Congress if the President continues in the position once the constitutional period has come to an end and is not recognised by the Congress (Sec. 165 sub. g). The ministers of State are not obliged to come forward to the Congress to answer questions related to diplomatic issues or pending military operations (Sec. 166).</p>	<p><b>The Army<sup>**</sup>:</b> It is unique and indivisible, essentially professional, apolitical, obedient and non deliberant (Sec. 244). It is composed of the land, air and maritime forces (Sec. 244). Organization: hierarchy, based on the principles of discipline and obedience (Sec. 244), it is regulated by the Constitution, its Statutory Law and other military laws and regulations (Sec. 250). They are not obliged to carry out illegal orders or those which involve committing a crime (Sec. 156). Mission: maintain independence, sovereignty and the honour of Guatemala, the integrity of the territory and internal and external peace and security (Sec. 244); cooperate in emergency situations or public calamity (Sec. 249). To be an officer it is required to be a native Guatemalan citizen and not have adopted any foreign nationality at any time (Sec. 247). The members of the military on active duty cannot be elected Deputies (Sec. 164 sub. f) or President, only if they were discharged or retired five years before taking office (Sec. 186 sub. e), they are not entitled to vote or to make political or collective petitions (Sec. 248). The military courts shall acknowledge the crimes of faults committed by the members of the Guatemalan Army (Sec. 219).</p>	<p>Citizen participation: to serve and defend the Nation and to provide social and military service are the rights and responsibilities of all the citizens of Guatemala (Sec. 135). Contribute to peacekeeping and freedom, the respect and defence of human rights, the strengthening of democratic processes and international institutions which guarantee the mutual and equal benefit among States (Sec. 149). Administrative actions are public, except those related to military or diplomatic matters of national security (Sec. 30). No civil servant or public official, civil or military, is obliged to obey orders which are clearly illegal or which involve committing a crime (Sec. 156). The whip or the commanders of a coup d'état, armed revolution or the like which altered the constitutional order shall not be eligible as President or Vice president (Sec. 186). The organization and operation of armed groups not regulated by the laws of the Republic and its regulations constitute a punishable action (Sec. 245).</p>

\*\* Denomination used in the constitutional text. <sup>5</sup> Consejo de Seguridad Nacional. <sup>6</sup> Órgano Ejecutivo en el Ramo de la Defensa y Seguridad Pública.





Country	Leading Political Procedures	Military Instrument	Other Dispositions
<b>Honduras (1982, Last Reform in 2005)</b>	<p><b>Powers of the President:</b> General Commander of the Armed Forces, exercises the Command-in-Chief (Sec. 245, sub. 16; Sec. 277). Maintain the peace and external security; repel external attacks or aggression (Sec. 245, sub. 4), adopt measures for the defence of the Republic (Sec. 245, sub. 16). Declare war and make peace if the Congress is in recess (Sec. 245, sub. 17). Sign international treaties and agreements of a military nature, regarding the territory and sovereignty with the consent of the Congress (Sec. 245, sub. 13). Allow the transit of foreign troops on the national territory and the deployment of national troops outside the country with the approval of the Congress (Sec. 245, sub. 43 and 44). Confer military ranks (second lieutenant to captain) suggested by the Secretary of National Defence (Sec. 245, sub. 36; Sec. 290). Ensure that the Armed Forces are apolitical, essentially professional, obedient and non deliberant (Sec. 245, sub. 37).</p> <p><b>Powers of the Congress:</b> Declare war (Sec. 205, sub. 28). Make peace (Sec. 205, sub. 28). Confer military ranks (from major to general) suggested by the Executive Power (Sec. 205, sub. 24; Sec. 290). Approve the entry of foreign troops to the national territory and the deployment of national troops outside the country (Sec. 205, sub. 26 and 27). Determine the number of permanent troops (Sec. 205, sub. 25). Authorise reception of foreign military missions of assistance or technical cooperation in Honduras (Sec. 205, sub. 29).</p> <p><b>Secretary of State in the Dispatch of National Defence<sup>7</sup>:</b> The Secretary shall be appointed and removed freely by the President of the Republic (Sec. 280).</p> <p><b>National Defence and Security Council<sup>8</sup>:</b> Creation (Sec. 287). Organization and operation determined by law (Sec. 287).</p> <p><b>Board of Commanders of the Armed Forces<sup>9</sup>:</b> It is the consulting body for all the matters related to the Armed Forces. It rules over issues of its competence and acts as a Superior tribunal of the Armed Forces on matters which shall be subject to its knowledge. The Statutory Law of the Armed Forces and its Regulations rule over its operation (Sec. 285). It is composed of the Chairman of the Joint Chief of Staff, the General Inspector and the Commanders of each Force (Sec. 286).</p> <p><b>Chief of Joint Staff of the Armed Forces<sup>10</sup>:</b> The Chairman of the Joint Chief of Staff is selected and removed freely by the President among the members of the Board of Commanders (Sec. 280). The Joint Chiefs of Staff is the superior technical body of consultation, planning, coordination and supervision, which depends on the Secretary of National Defence; its tasks are assigned by the Statutory Law of the Armed Forces (Sec. 283). It shall issue a statement previous to conferring the promotions to the officers (Sec. 290).</p>	<p><b>The Armed Forces:</b> They are permanent, apolitical, essentially professional, obedient and non deliberant (Sec. 272). They are composed of the High Command, the Army, the Air Force, the Navy, the Public Security Force and other organizations determined by the Statutory Law (Sec. 273). Their operation is regulated by the Statutory Law, laws and regulations (Sec. 274). The orders given by the President of the Republic shall be abided by and executed respecting the Constitution of the Republic and the principles of lawfulness, discipline and military professionalism (Sec. 278). The members of the military are not obliged to carry out illegal orders or those which involve committing a crime (Sec. 323). Mission: defend territorial integrity and the sovereignty of the Republic, keep the peace, public order and the respect of the Constitution, the principles of free vote, rotation of the Presidents of the Republic (Sec. 272), cooperate with the National Police in the keeping of the public order (Sec. 272); and with the Secretaries if required so in tasks of literacy, education, agriculture, protection of the environment, road systems, communication, health and agricultural reform. Participate in international peace missions; in the fight against drug trafficking; cooperate with means and personnel to face natural disaster and emergency situations; as well as protection and conservation programs for the ecosystem, for the academic and technical training of their members, and others of national interest. Cooperate with the public security institutions at the request of the Secretary of Security, to fight terrorism, arms trafficking and organized crime, as well as protection of the powers of the State and Elections Tribunal, operating at its request (Sec. 274). Promotions strictly determined by law (Sec. 290). Appointments and removal of the members of the military, related with the administrative order, shall be granted in accordance with the Law of Public Administration. In the operative area, appointments and removals shall be conferred by the Chairman of the Joint Chief of Staff, in accordance with the organic structure of the Armed Forces, the Statutory Law, and other legal regulations, including the personnel of troops and auxiliaries (Sec. 282). Voluntary military service (Sec. 276 and 288). The members of the military on active duty are not entitled to vote (Sec. 37), and they shall be eligible in the cases not prohibited by the law (Sec. 37). They cannot be elected Deputies prior to six months after they retire (Sec. 199, sub. 4 and 6) or twelve months in case they are running for President (Sec. 240, sub. 2, 3 and 4). Military justice for military crimes and offences (Sec. 90 and Sec. 91). National Defence College: it is the highest house of studies for the Armed Forces. It trains selected military and civilian personnel, so they take part in the national strategic planning (Sec. 289). Institute of Military Social Security: for the protection, welfare and social security of all the members of the military, presided by the Chairman of the Joint Chief of Staff, shall operate in accordance with the specific Law (Sec. 291). For defence and national security reasons, the territory shall be divided in military regions commanded by a Chief of Military Region. Their organization and operation shall be in accordance with the Statutory Law of the Armed Forces (Sec. 284). A special law shall regulate the operation of military courts (Sec. 275).</p>	<p>Citizen participation: every Honduran citizen is obliged to defend the Fatherland (Sec. 38; Sec. 276). Military service is a citizen's duty. It is voluntary in times of peace, under a social, humanitarian and democratic education system. The State can summon the troops, in accordance with the Military Service Law. In case of international war, all the citizens capable of defending and service the Fatherland shall be soldiers (Sec. 40, sub. 5; Sec. 276). The people can uprise in defence of the constitutional order (Sec. 3). Embrace the principles and practices of the international law which support human solidarity, the respect for self determination of the people, the non-intervention and strengthening of universal peace and democracy. Honduras proclaims the validity and obligatory execution of arbitrations and judiciary international sentences as unavoidable (Sec. 15). No authority can sign or ratify treaties or grant licences which compromise territorial integrity, sovereignty and the independence of the Republic. Whoever does this shall be tried for treason to the Nation. Responsibility in this case is imprescribable (Sec. 19).</p>

<sup>7</sup> Secretario de Estado en el Despacho de Defensa Nacional. <sup>8</sup> Consejo Nacional de Defensa y Seguridad. <sup>9</sup> Junta de Comandantes de las Fuerzas Armadas.

<sup>10</sup> Jefe del Estado Mayor Conjunto de las Fuerzas Armadas.

Country	Leading Political Procedures	Military Instrument	Other Dispositions
<b>México (1917, Last Reform in 2007)</b>	<p><b>Powers of the President:</b> Preserve national security (Sec. 89, sub. VI). Declare war with the approval of the Congress (Sec. 89, sub. VIII). Appoint colonels and other senior officers with the approval of the Senate (Sec. 89, sub. IV) and other officers (Sec. 89, sub. V). Make use of the permanent Armed Forces and the National Guard to safeguard the security and external defence (Sec. 89, sub. VI and VII). Direct foreign policy and sign international agreements (Sec. 89, sub. X).</p> <p><b>Powers of the Congress:</b> Declare war in view of the information submitted by the Executive Power (Sec. 73, sub. XII). Raise and maintain the Armed institutions and regulate their organization and service (Sec. 73, sub. XIV). Enact laws on national security (Sec. 73, sub. XXIX-M). The Chamber of Deputies has the law initiative on recruitment of troops (Sec. 72, sub. h). Approve (Senate) international treaties and conventions subscribed by the Executive Power, as well as conclude, denounce, suspend, modify, amend, withdraw reserves and formulate interpretations (Sec. 76, sub. 1). Approve the appointment of senior officers (Sec. 76, sub. II; Sec. 89, sub. IV). Approve the transit of foreign troops on the national territory and the deployment of national troops outside the country, and the sojourn of squadrons of other powers in Mexican waters (Sec. 76, sub. III).</p>	<p><b>The Armed Force**:</b> It is composed of the Army, the Navy and the Air Force (Sec. 89, sub. VI). To belong to the Armed Force it is required to be a Mexican citizen by birth (Sec. 32). Members of the military cannot be elected Deputies unless they retire ninety days before the election (Sec. 55, sub. V) or six months in case of the President (Sec. 82, sub. V). Military justice for military crimes committed by members of the military (Sec. 13). In times of peace, no military authority may perform any functions other than those that are directly connected with military discipline (Sec. 129).</p>	<p>No member of the army shall in time of peace be quartered in private dwellings without the consent of the owner, nor may he impose any obligation whatsoever. In time of war the military may demand lodging, equipment, provisions and other assistance in accordance with the respective martial law (Sec. 16). Nuclear energy shall only be used with peaceful purposes (Sec. 27). Any armed meeting shall have the right to deliberate (Sec. 9).</p>
<b>Nicaragua (1986, Last Reform 2007)</b>	<p><b>Powers of the President:</b> Supreme Commander of the Army (Sec. 95 and 144). In exceptional cases can the President, in a Council of Ministers, order the intervention of the Nicaraguan Army to support the National Police, when the stability of the Republic is threatened by serious internal disorder, calamities or natural disasters (Sec. 92). Direct international relations of the Republic. Negotiate, celebrate and sign treaties, pacts, agreements or the like to be approved by the National Assembly (Sec. 150, sub. 8).</p> <p><b>Powers of the National Assembly:</b> Approve the deployment of national troops outside the country (Sec. 138, sub. 26) and the entry of foreign troops only for humanitarian purposes (Sec. 92). Approve or dismiss international agreements celebrated with countries or organizations subject to International Law (Sec. 138, sub. 12).</p>	<p><b>The Army**:</b> It is a national institution, professional, not affiliated to any political party, obedient and non deliberant (Sec. 93), it is strictly subject to the Political Constitution, to which it respects and obeys, it is subject to civil authority exercised by the President or through the corresponding ministry (Sec. 95). No other armed corps can exist in the national territory, or military ranks other than those specified by law (Sec. 95). Organization, structures, activities, ranks, promotions, retirements and everything related to the operational development is specified in the law (Sec. 94). Mission: defend sovereignty, independence and territorial integrity (Sec. 92). The members of the Army shall be trained in civic and human rights matters (Sec. 93). The Army and Police bodies and any other institution of the State are not allowed to perform activities of political espionage (Sec. 96). They cannot perform political activities or hold a position in political organizations; they cannot be eligible for public office at elections, if they have not left their active military post at least a year before the elections (Sec. 94); they cannot be ministers, Vice Ministers, presidents or directors of government or autonomous entities, ambassadors (Sec. 152) and magistrates of tribunals of justice (Sec. 161, sub. 6) or of the Supreme Electoral Council (Sec. 171, sub. d). In the last two cases they shall leave their post twelve months before the elections. Military service is not obligatory, and all kinds of forcible recruitment to be a part of the Army or the Police are forbidden (Sec. 96). Military justice for military crimes committed by members of the Armed Forces, civilians cannot be tried by military courts (Sec. 93 and 159).</p>	<p>The strife over peace is one of the irrenounceable principles of the Nation (Sec. 3). The international relations are based on friendship and solidarity among the people and the reciprocity among the States. Thus, all kind of political, military, economic, cultural and religious aggression is inhibited and prohibited, as is the intervention on internal affairs of other States. It recognises the principle of peaceful resolution of international controversies through the international law and proscribes the use of nuclear weapons and other means of mass destruction in internal and international conflicts, ensures political asylum for political reasons, and rejects all subordination of a State with respect to other (Sec. 5). It is prohibited to establish foreign military bases in the national territory (Sec. 92). Civilian functions shall not be militarized (Sec. 131).</p>
<b>Paraguay (1992)</b>	<p><b>Powers of the President:</b> Commander-in-Chief of the Armed Forces (Sec. 238, sub. 9). Adopt the necessary measures for the national</p>	<p><b>The Armed Forces:</b> They are a permanent, professional, non-deliberant, and obedient institution, subordinated to the powers of the State, to the pro-</p>	<p>Citizen participation: every Paraguayan citizen is obliged to be prepared and give his services for the defence of the Fatherland (Sec. 129). National defence cannot be subject to refe-</p>

\*\* Denomination used in the constitutional text. →



What do the Constitutions define?

Country	Leading Political Procedures	Military Instrument	Other Dispositions
<b>Paraguay</b>	<p>defence (Sec. 238, sub. 9).                      Declare the state of national defence, in case of external aggression, with the approval of the Congress (Sec. 238, sub. 7).                      Make peace with the approval of the Congress (Sec. 238, sub. 7).                      Appoint senior officers of the public force (Sec. 238, sub. 9).                      Issue military regulations and arrange, organise and distribute the Armed Forces (Sec. 238, sub. 9).</p> <p><b>Powers of the Congress:</b>                      Approve the appointment of senior officers (Senate) (Sec. 224, sub. 2).                      Approve the entry of foreign troops to the national territory and the deployment of national troops outside the country (Senate) (Sec. 183, sub. 3; Sec. 224, sub. 5).                      Approve or dismiss international treaties (Sec. 141 and Sec. 202, sub. 9).</p>	<p>visions of the Constitution, and to the law (Sec. 173).                      Mission: safeguard the territorial integrity and defend the legitimately constituted authorities (Sec. 173).                      The members of the military on active duty will conform their actions to the laws and regulations. They cannot be affiliated to any political party or movement or engage in any type of political activity (Sec. 173); they cannot be elected President or Vice President, except for those who retire at least one year prior to the day of election (Sec. 235, sub. 7).                      Police or military personnel on active duty cannot be candidates for senators or deputies (Sec. 197).                      Military courts will hear only crimes and offences of a military nature, committed by military personnel on active duty. Their decisions can be overturned by courts of law (Sec. 174). Only in cases of an armed international conflict can military courts have jurisdiction over civilians and retired military personnel (Sec. 174).                      Military service is compulsory and must be based on full respect of human dignity. In times of peace, it will not exceed twelve months (Sec. 129).</p>	<p>rendum (Sec. 122, sub. 3).                      Relinquishes war but upholds the principle of legitimate self-defence (Sec. 144).                      In its international affairs, Paraguay accepts the international law and endorses the following principles:                      1. national independence;                      2. self-determination of the people;                      3. legal equality among all States;                      4. international solidarity and cooperation;                      5. international protection of human rights;                      6. free navigation of international rivers;                      7. non-intervention, and                      8. the condemnation of every form of dictatorship, colonialism and imperialism (Sec. 143).                      On equal footing with other States, admits a supranational legal system that guarantees the enforcement of human rights, peace, justice, and cooperation, as well as political, socio-economic, and cultural development. Decisions on this sphere can only be adopted through an absolute majority vote by each Chamber of Congress (Sec. 145).</p>
<b>Peru (1993, Last Reform 2005)</b>	<p><b>Powers of the President:</b>                      Supreme Commander of the Armed Forces and Head of the defence system (Sec. 164 and Sec. 167).                      Adopt the necessary measures to ensure the defence of the Republic, the integrity of the territory and the sovereignty of the State (Sec. 118, sub. 15).                      Declare war with the approval of the Congress (Sec. 118, sub. 16).                      Accord peace with the approval of the Congress (Sec. 118, sub. 16).                      Grant promotions to Generals and Admirals (Sec. 172).                      Determine the number of troops (Sec. 172).                      Organize, distribute and arrange the Armed Forces (Sec. 118, sub. 14).                      Sign international treaties on national defence (Sec. 56, sub. 3).                      Authorise Peruvians to serve in a foreign army (Sec. 118, sub. 23).</p> <p><b>Powers of the Congress:</b>                      Approve the declaration of war (Sec. 118, sub. 16).                      Approve the signing of peace treaties (Sec. 118, sub. 16).                      Approve international treaties on national defence (Sec. 56, sub. 3).                      Approve the entry of foreign troops to the national territory as long as it does not affect the national sovereignty in any way (Sec. 102, sub. 8).                      Have the troops available as requested by the President of the Congress (Sec. 98)</p>	<p><b>The Armed Forces:</b>                      They are non deliberant and are subordinated to the constitutional power (Sec. 169).                      The Armed Forces are composed of the Army, the Navy and the Air Force (Sec. 165).                      The respective laws and regulations determine the organization, functions, specialization, training, use and discipline (Sec. 168).                      Promotions are conferred in accordance with the law (Sec. 172).                      Mission: guarantee the independence, sovereignty and territorial integrity, to take control of the internal order in state of emergency if so provided by the President (Sec. 165; Sec. 137, sub. 1). Organize and use their reserves in accordance with the law (Sub. 168).                      The law allocates funds for the logistical requirements of the Armed Forces (Sec. 170).                      The members of the military are not entitled to make collective petitions (Sec. 2, sub. 20), to form unions or go on strike (Sec. 42). They cannot be candidates for elections (Sec. 34; Sec. 91, sub. 4) or perform political activities while on active duty (Sec. 34); they may not enter the floor of Congress without authorization from its President (Sec. 98).                      They can vote (Sec. 34) and be ministers of State (Sec. 124).                      Military justice is established for the Armed Forces and the National Police (Sec. 139, sub. 1). Military courts may have jurisdiction over civilians in the cases of treason and terrorism (Sec. 173).                      The Armed Forces and the National Police participate in the social and economic development of the country, and in civil defence according to the law (Sec. 171).</p>	<p>The defence of national sovereignty is one of the prime duties of the State (Sec. 44).                      The death penalty may only be applied for the crimes of treason in wartime, and of terrorism, in accordance with the laws and treaties Peru is bound to (Sec. 140).                      National defence system: to guarantee national security (Sec. 163), its functions are determined by law, and it is directed by the President (Sec. 164).                      National defence: integral, permanent and conducted internally and externally (Sec. 163).                      Any person shall have the right to request, without stating the reason, any information needed, within the legally specified time and cost. Exceptions are made of information affecting personal privacy and that is expressly excluded by law for reasons of national security (Sec. 2, sub. 5).                      No person, organization, Armed Force, National Police or group of people may arrogate to themselves the exercise of the power of the State. To do so constitutes acts of rebellion or sedition (Sec. 45).</p>
<b>Uruguay (1967, Last Reform 2004)</b>	<p><b>Powers of the President:</b>                      Command the Armed Forces (Sec. 168, sub. 2).                      Maintain and defend external security (Sec. 168, sub. 1).                      Declare war with the approval of the General Assembly (Sec. 168, sub. 16).                      Take prompt security measures in serious and unexpected cases of external attack or internal commotion, informing the General Assembly (Sec. 168, sub. 17).                      Provide military posts and confer promotions (Sec. 168, sub. 9 and 11).                      Grant retirements and manage pensions for civil and military employees in accordance with the law (Sec. 168, sub. 3).</p>	<p><b>The Armed Forces:</b>                      The members of the military are regulated by special laws (Sec. 59, sub. A).                      Members of the military on active duty cannot have a position in the government, form part of commissions or political parties, subscribe to party manifests, authorize the use of their name and execute any other public or private political act, except voting (Sec. 77, sub. 4).                      They cannot run for the election of Representatives (Sec. 91, sub. 2; Sec. 92), Senators (Sec. 100) or for President (Sec. 171) unless they resign and retire at least three months before the election.                      Military justice for military crimes in state of</p>	<p>Nobody shall be obliged to provide assistance, of any kind, or provide lodging to the Armed Forces, if it has not been specified by a civil magistrate in accordance with the law, and shall receive a compensation from the Republic for the perjury which would result from such actions (Sec. 35).                      It shall provide social and economic integration of the Latin American States, especially regarding common defence of its basic products and resources. Furthermore, it shall provide for the effective complementation of its public services (Sec. 6°).</p>





Country	Leading Political Procedures	Military Instrument	Other Dispositions
Uruguay	<p><b>Powers of the General Assembly:</b>            Approve peace treaties (Sec. 85, sub. 7).            Declare war (Sec. 85, sub. 7).            Approve the appointment of senior officers (Sec. 168, sub. 11).            Approve the entry of foreign troops to the national territory and the deployment of national troops outside the country (Sec. 85, sub. 11 y 12).            Approve the number of Armed Forces (Sec. 85, Sub. 8).</p>	<p>war. Common crimes committed by members of the Armed Forces in times of peace, whenever they are committed, shall be subject to ordinary justice (Sec. 253).</p>	
Venezuela (1999)	<p><b>Powers of the President:</b>            Commander-in-Chief of the National Armed Force. Exercise hierarchical authority (Sec. 236, sub. 5) and the supreme command (Sub. 236, sub. 6).            Promote officers starting at the rank of colonel or naval captain and appoint them to the positions exclusively reserved to them (Sec. 236, sub. 6).            Establish their contingent (Sec. 236, sub. 5).            Call and preside over meetings of the National Defence Council (Sec. 236, sub. 23).</p> <p><b>Powers of the National Assembly:</b>            Authorize the operation of military missions abroad or foreign military missions within the country (Sec. 187, sub. 11).            Approve any international treaties or agreements signed by the National Executive (Sec. 187, sub. 18).</p> <p><b>National Defence Council<sup>11</sup>:</b>            It is the highest consultative body for planning and advising the Public Power on matters related to the integral defence of the Nation, its sovereignty and the integrity of its geographical space (Sec. 323).            It is presided over by the President and includes the Vice President, the President of the National Assembly, the Chairman of the Supreme Tribunal of Justice, the Chairman of the Republican Moral Council, and the Ministers of Defence, Internal Security, Foreign Affairs and Planning, and other whose participation may be deemed appropriate (Sec. 323).            It establishes the strategic concept of the Nation (Sec. 323).</p>	<p><b>The National Armed Force<sup>**</sup>:</b>            It is an essentially professional institution, with no political orientation, organized by the State, at the exclusive service of the Nation. It is founded on discipline, obedience and subordination (Sec. 328).            The National Armed Force is composed of the Army, the Navy, the Air Force and the National Guard (Sec. 328).            Mission: guarantee the independence and sovereignty of the Nation and ensure the integrity of its geographical space, through military defence, cooperation in the maintenance of internal order, and active participation in national development (Sec. 328). Their essential responsibility is the planning, execution and control of military operations, as required to ensure the defence of the Nation. The National Guard shall cooperate in the development of these operations and shall have as basic responsibility that of conducting operations as required maintaining internal order within the country. The National Armed Force shall carry out activities of administrative policing and criminal investigation as provided by law (Sec. 329); it shall regulate and control, in accordance with the pertinent legislation, the manufacture, importing, exporting, storage, transit, registration, control, inspection, trade, possession and use of weapons, ammunition and explosives (Sec. 324).            Military promotions shall be effective in accordance with merit, hierarchy and vacancies. They are the exclusive prerogative of National Armed Forces in accordance with the corresponding law (Sec. 330).            Members of the military on active duty can vote. They are not allowed to run for elections, or to participate in propaganda, militancy or proselytizing (Sec. 330).            Military justice for military crimes, its judges shall be elected by competitive procedures (Sec. 261).            The General Controller of the National Armed Forces: monitors, controls and audits revenues, expenses and property allocated to the National Armed Force and their dependencies; it shall be under the responsibility of the General Controller of the Armed Forces, appointed by means of a competitive process (Sec. 291).</p>	<p>Citizen participation: every person, in accordance with the law, has the duty to perform such civilian or military service as maybe necessary for the defence, preservation and development of the country, or to deal with situations involving a public calamity, no one shall be subject to forcible recruitment (Sec. 134). National defence is responsibility of all the Venezuelans (Sec. 322).            The geographical space of Venezuela is an area of peace, no foreign military bases, or facilities having purposes that are in any way military, shall be established within such space by any power or coalition of powers (Sec. 13).            Promotes peaceful cooperation among nations, and strengthens and furthers nuclear disarmament (Preamble).            The public authorities, whether military or civilian, even during a state of emergency, exception or restriction of guarantees, are prohibited from effecting, permitting or tolerating the forced disappearance of persons. The officer receiving an order or instruction to carry it out has the obligation not to obey and report the order or instruction to the competent authorities (Sec. 45).            The State shall prevent the manufacturing and use of nuclear and chemical or biological weapons (Sec. 129).            The Republic shall promote and encourage Latin America and Caribbean integration, in the interest of advancing towards the creation of a community of nations, defending the region's economic, social, cultural, political and environmental interests. The Republic shall sign international treaties that implement and coordinate efforts to promote the common development of our nations, and ensure the welfare of their people and the collective security of their inhabitants (Sec. 153).            National security is an essential competence and responsibility of the State (Sec. 322).            National security is based on the shared responsibility between the State and civil society (Sec. 326).            The National Executive reserves the right to classify and control disclosure of matters directly related to the planning and execution of operations concerning the security of the Nation, on such terms as may be established by law (Sec. 325).</p>

11 Consejo de Defensa de la Nación. \*\* Denomination used in the constitutional text.



### National Legislation

Country	Systems and Concepts	Military Organization
<b>Argentina</b>	<ul style="list-style-type: none"> <li>- National Defence Act (N° 23.554 - 1998/05/05)</li> <li>- Internal Security Act (N° 24.059 - 1992/01/17)</li> <li>- Ministerial Law (N° 22.520 - 1992/03/20)</li> <li>- Act on the Restructuring of the Armed Forces (N° 24.948 - 1998/04/08)</li> <li>- National Intelligence Act (N° 25.520 - 2001/12/06)</li> </ul>	<ul style="list-style-type: none"> <li>- Code of Military Justice (N° 14.029 - 1951/08/06. Last Reform: Act N° 23.049 - 1984/02/15)</li> <li>- Military Service Act (N° 17.531 - 1967/11/16)</li> <li>- Military Personnel Act (N° 19.101 - 1971/07/19)</li> <li>- Voluntary Military Service Act (N° 24.429 - 1995/01/10)</li> <li>- Act on the Entry of Foreign Troops and the Deployment of National Troops outside the Country (N° 25.880 - 2004/04/23)</li> </ul>
<b>Bolivia</b>	<ul style="list-style-type: none"> <li>- Organic Law of the Armed Forces (N° 1.405 - 1992/12/30)</li> <li>- Organization of the Executive Power Act (N° 2.446 - 2003/03/19)</li> <li>- Citizen Security System Act (N° 2.494 - 2004/08/04)</li> </ul>	<ul style="list-style-type: none"> <li>- Decree-Law of Organization of Military Justice (N° 13.321 - 1976/04/02)</li> <li>- Manual on the Use of Force in case of Internal Conflict (Supreme Decree N° 27.977 - 2005/01/14)</li> </ul>
<b>Brazil</b>	<ul style="list-style-type: none"> <li>- Act which establishes the Deployment of Brazilian Troops Overseas (N° 2.953 - 1956/11/20)</li> <li>- Act which determines the Cases when Foreign Armed Forces can Transit or Remain Temporarily in National Territory (Complementary Act N° 90 - 1997/10/02)</li> <li>- Act which institutes the Brazilian System of Intelligence, creates the Brazilian Agency of Intelligence - ABIN, and Other Providences (N° 9.883 - 1999/12/09)</li> <li>- Act on the Organization of the Presidency of the Republic and the Ministers, and Other Providences (N° 10.683 - 2003/05/28)</li> <li>- Act which rules over National Mobilization and creates the National System of Mobilization (N° 11.631 - 2007/12/28)</li> </ul>	<ul style="list-style-type: none"> <li>- Military Service Act (N° 4.375 - 1964/09/03)</li> <li>- Military Penal Code (Decree-Law N° 1.001 - 1969/10/21. Last Reform: Act N° 9.764 - 1998/12/17)</li> <li>- Code of Military Penal Procedure (Decree-Law N° 1.002 - 1969/10/21. Last Reform: Act. N° 9.299 - 1996/08/07)</li> <li>- Act on the Statute of the Members of the Armed Forces (N° 6.880 - 1980/12/11)</li> <li>- Act which regulates Section 143, §§ 1° e 2° of the Federal Constitution, which rules over Rendering Alternative Service to the Obligatory Military Service (N° 8.239 - 1991/10/07)</li> <li>- Act on the Organization of Military Justice (N° 8.457 - 1992/09/04. Last Reform: Ley N° 10.445 - 2002/05/07)</li> <li>- Act on General Regulations for the Organization, Preparation and Use of the Armed Forces, to establish New Subsidiary Powers (Complementary Act N° 117 - 2004/09/02; modifies Complementary Act N° 97 - 1999/06/09)</li> </ul>
<b>Chile</b>	<ul style="list-style-type: none"> <li>- Act which creates the Superior Council of National Defence (N° 7.144 - 1942/01/05)</li> <li>- Decree which creates the Superior Council of National Security and the Board of Commanders-in-Chief (DFL N° 181 - 05/04/1960. Last Reform: DFL N° 2 - 1967/16/09)</li> <li>- Act which dictates Regulations on Mobilization (N° 18.953 - 1990/03/09)</li> <li>- Decree-Law which establishes the Redrafted, Coordinated and Systematized Text of Act N° 18.575, Organic Constitutional Law on General Terms and Conditions of the State Administration (N° 19.653 - 2001/11/17. Last Reform: Act N° 19.882 - 2003/06/23)</li> <li>- Act on the National Intelligence System; creates the National Intelligence Agency (N° 19.974 - 2004/10/02)</li> </ul>	<ul style="list-style-type: none"> <li>- Code of Military Justice (Decree-Law N° 806 - 1925/12/23. Last Reform: Act N° 20.084 - 2005/12/07)</li> <li>- Reserved Coper Law (N° 13.196 - 1958/11/29)</li> <li>- Decree-Law on the Recruiting and Mobilization of the Armed Forces (N° 2.306 - 1978/09/12. Last Reform: Act N° 20.045 - 2005/03/10)</li> <li>- Decree Law of the Military Public Ministry (N° 3.425 - 1980/06/14)</li> <li>- Decree which establishes Regulations on the Constitution, Mission, Dependency and Responsibilities of the Armed Forces (DS N° 272 - 1985/03/16)</li> <li>- Constitutional Organic Act of the Armed Forces (N° 18.948 - 1990/02/27. Last Reform: Act N° 19.806 - 2002/05/31)</li> <li>- Act which modernizes the Obligatory Military Service (N° 20.045 - 2005/09/10)</li> </ul>
<b>Colombia</b>	<ul style="list-style-type: none"> <li>- Decree by which the National Security Council merges with the Superior Council of National Defence and the Commission created by the Decree 813 of 1983 (N° 2.134 - 1992/12/31)</li> <li>- Act which rules over the Organization and Operation of the National Entities, it issues Regulations, Principles and General Rules for the Exercise of the Powers specified in Subsections 15 and 16 of Section 189 of the Political Constitution, as well as other Regulations (N° 489 - 1998/12/29)</li> <li>- Decree by which the Bylaw which regulates the Civil Personnel Administration Regime of the National Ministry of Defence is modified (N° 1.792 - 2000/09/14)</li> <li>- Act which dictates Regulations on the Reincorporation of Members of Irregular Armed Groups which contribute effectively to National Peace and rules over other Regulations for Humanitarian Agreements (N° 975 - 2005/07/25)</li> <li>- Act which establishes the Special Administrative System for Civilian Public Employees at the Service of the National Ministry of Defence, for the Military Forces, the National Police and its Decentralised Entities, related to the Defence sector (N° 1.033 - 2006/07/19)</li> <li>- Decree which regulates the Special System of Promotions in the Defence Sector and dictates some Rules on Personal Administration (N° 091 - 2007/01/17)</li> <li>- Decree which modifies and determines the Nomenclature and Classification System of the Posts within the Entities Jobs which are part of the Defence Sector (N° 092 - 2007/01/17)</li> <li>- Decree which establishes Basic Wages of Public Employment of Civilian Employees of the National Ministry of Defence, of its Decentralised Entities, related to the Military Forces and National Police, in accordance with the New Nomenclature and Classification of Jobs, as well as dictating other Regulations (N° 093 - 2007/01/17)</li> </ul>	<ul style="list-style-type: none"> <li>- Decree which reorganizes the Military Industry (N° 2.346 - 1971/12/03)</li> <li>- Obligatory Military Service Act (N° 48 - 1993/03/03)</li> <li>- Military Penal Code Act (N° 522 - 1999/08/12)</li> <li>- Decree which modifies the Decree which regulates the Rules for the Promotion of Officers and Warrant Officers of the Military Forces (N° 1.790 - 2000/09/14)</li> <li>- Act by which the Rules for Promotions of Officers, Executives, Warrant Officers and National Police Officers are modified (N° 1.791 - 2000/09/14. Reforms: Act N° 1.092 - 2006/09/13 and Act N° 1.168 - 2007/11/21)</li> <li>- Act which regulates the Assessment of the Psychophysical Capacity and the Decline of the Laboral Capacity, and other Disability Aspects, Compensation, Disability Income Insurance and Administrative Reports of Injuries (N° 1.796 - 2000/09/14)</li> <li>- Act which dictates regulations on the Evaluation and Classification for Officers and Warrant Officers of the Military Forces (N° 1.799 - 2000/09/14)</li> <li>- Decree on the Promotions and Statute of Professional Soldiers (N° 1.793 - 2000/09/14)</li> <li>- Decree on the Wages and Benefits of Professional Soldiers (N° 1.794 - 2000/09/14)</li> <li>- Act on the Unique Disciplinary Code (N° 734 - 2002/02/05)</li> <li>- Act which partially modifies the Statute of Promotions of Officers and Warrant Officers of the Military Forces (N° 775 - 2002/12/09)</li> <li>- Act which rules over the Armed Forces Disciplinary Regime (N° 836 2003/07/16)</li> <li>- Act which issues Regulations, Objectives and Criteria for establishing Pensions and Retirement Benefits for the Members of the Public Force (N° 923 - 2004/12/30)</li> <li>- Act which issues Rules on Requirements on the Appointment of Positions within the Military Criminal Jurisdiction in Military Penal Jurisdiction (N° 940 - 2005/01/05)</li> <li>- Act which modifies Decrees related with the Wage System and Benefits (N° 987 - 2005/09/09)</li> <li>- Act which establishes a Special Procedure in the Penal Military Code (N° 1.058 - 2006/07/26)</li> <li>- Act which regulates the Acquisition of Assets and Services for the Defence and National Security (N° 1.089 - 2006/09/01)</li> </ul>

Country	Systems and Concepts	Military Organization
<b>Dominican Republic</b>	- Organic Act of the Armed Forces (N° 873 - 1978/08/08)	- Code of Justice of the Armed Forces (Act N° 3.483 - 1953/02/13)
<b>Ecuador</b>	- National Security Act (N° 275 - 1979/08/09) - General Regulation of the National Security Act (Codification N° 2.264 - 1991/03/14) - Organic Act for National Defence (N° 74 - 2007/01/19)	- Penal Military Code (Codification N° 27 - 1961/11/06) - Code of Penal Military Procedures (Codification N° 28 - 1961/11/06) - Organic Act of Justice Services for the Armed Forces (Codification N° 29 - 1961/11/06) - Social Security Act for the Armed Forces (N° 169 - 1992/08/07. Last Reform: Act N° 82 - 2007/07/31) - Act on Obligatory Military Service for the National Armed Forces (N° 68 - 1994/09/15) - Reformatory Act to the Personnel Act of the Armed Forces (N° 75 - 2007/01/22)
<b>El Salvador</b>	- Organic Law of the Armed Force of El Salvador (DL N° 353, 1998/07/09) - Act on the Intelligence Agency of the State (DL N° 554 - 2001/09/22) - National Defence Act (DL N° 948 - 2002/10/03)	- Military Justice Code (DL N° 562 - 1964/05/29) - Act on Military Career (DL N° 476 - 1995/10/18) - Military Service Act and Reserves of the Armed Force (DL N° 298 - 2002/07/30)
<b>Guatemala</b>	- Constitutive Act of the Guatemalan Army (Decree N° 72-90 - 1991/01/17) - Executive Body Act (Decree N° 114-97 - 1997/11/13) - General Bureau of Civil Intelligence Act (Decree N° 71-2005 - 2005/10/12) - Framework Act on the National Security System (Decree N° 18-2008 - 2008/04/15)	- Military Code (Decree N° 214 - 1878/09/15. Last Reform: Decree N° 41-96 - 1996/07/10) - Act on the Support to Civil Security Forces (Decree N° 40-2000 - 2000/06/16) - Civil Service Act (Decree N° 20-2003 - 2003/06/17)
<b>Honduras</b>	- Constitutive Act of the Armed Forces (Decree N° 39-2001 - 2001/10/29)	- Military Code (Decree N° 76 - 01/03/1906. Last Reform: Decree N° 47 - 1937/01/22) - Act on Social Security Benefits for the Armed Forces (Decree N° 905 - 1980/03/27) - Military Service Act (Decree N° 98-85 - 1985/08/22) - Personnel Act for the Members of the Armed Forces (Decree N° 231-2005 - 2005/10/11)
<b>Mexico</b>	- Organic Law for Federal Public Administration (DOF 29/12/1976. Last Reform: DOF 2007/10/01) - National Security Act (DOF 2005/01/31. Last Reform: DOF 2005/12/26)	- Discipline Act of the Mexican Army and Air Force (DOF 1926/03/15. Last Reform: DOF 2004/12/10) - Organic Act of Military Courts (DOF 1929/06/22. Last Reform: DOF 1931/02/24) - Code of Military Justice (DNL N° 005 - 1933/08/31. Last Reform: DOF 2005/06/29) - Military Service Act (DOF 1940/09/11. Last Reform: DOF 1998/01/23) - Act which creates the Army and the Air Force University (DOF 1975/12/29) - Reward Act for the Navy of Mexico (DOF 1985/01/14) - Organic Law of the Army, Air Force and Navy National Bank (DOF 1986/01/13. Last Reform: DOF 2002/06/24) - Organic Law of the Mexican Army and Air Force (DOF 1986/12/26. Last Reform: DOF 1998/01/23) - Discipline Act for the Personnel of the Navy of Mexico (DOF 2002/12/13) - Organic Act of the Navy of Mexico (DOF 2002/12/30) - Act on Promotions and Rewards of the Mexican Army and Air Force (DOF 2003/10/30) - Act for Checking, Adjusting and Calculating the Services for the Mexican Navy (DOF 2004/06/14) - Promotions Act for the Navy of Mexico (DOF 2004/06/25) - Military Education Act for the Mexican Army and Air Force (DOF 2005/12/23) - Act for Checking, Adjusting and Calculating the Services in the Mexican Army and Air Force (DOF 2006/02/09)
<b>Nicaragua</b>	- Act on the Organization, Competence and Procedures of the Executive Power (N° 290 - 1998/06/03. Last Reform: Act N° 612 - 2007/01/29)	- Act on the Abolition of Compulsory Military Service (N° 120 - 1991/01/03) - Code of Organization, Jurisdiction and Military Social Benefits (N° 181 - 1994/09/02) - Organic Act of Military Tribunals (N° 523 - 2005/04/05) - Military Penal Code (N° 566 - 2006/01/05) - Code of Military Penal Procedures (N° 617 - 2007/08/29)
<b>Paraguay</b>	- National Defence and Internal Security Act (N° 1.337 - 1999/04/14)	- Obligatory Military Service Act (N° 569 - 1975/12/24. Last Reform: N° 2.440 - 2004/09/02) - Organic Act of Military Courts (N° 840 - 1980/12/19) - Military Penal Code (Act N° 843 - 1980/12/19) - Code of Military Penal Procedures in War and Peace Times (Act N° 844 - 1980/12/19) - General Organization of the National Armed Forces Act (N° 74 - 1991/11/20. Last Reform: Act N° 244 - 1993/12/21) - Act of the Military Personnel Statute (N° 1.115 - 1997/08/27)



National Legislation

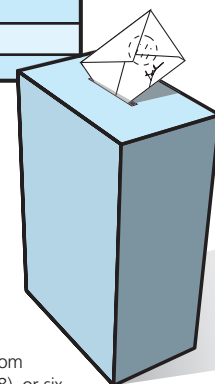
Country	Systems and Concepts	Military Organization
<b>Peru</b>	<ul style="list-style-type: none"> <li>- Act on the Entry of Foreign Troops (N° 27.856 - 2002/10/30)</li> <li>- National Mobilization Act (N° 28.101 - 2003/11/13)</li> <li>- Act on the Internal Intervention of the Armed Forces in the Internal Order (N° 28.222 - 2004/05/18)</li> <li>- Security System and National Defence Act (N° 28.478 - 2005/03/23)</li> <li>- National Intelligence System Act (N° 28.664 - 2006/01/04)</li> <li>- Act which establishes the Legal Nature, Responsibilities, Competencies and Organic Structure of the Ministry of Defence (N° 29.075 - 2007/08/01)</li> <li>- Act which establishes the Rules for the Use of Force by Members of the Military in the National Territory (N° 29.166 - 2007/12/20)</li> </ul>	<ul style="list-style-type: none"> <li>- Peruvian Army Organic Act (DL N° 437 - 1987/09/27)</li> <li>- Peruvian Air Force Organic Act (DL N° 439 - 1987/09/27)</li> <li>- Navy Organic Act (DL N° 438 - 1987/09/27)</li> <li>- Organic Act for the Joint Command of the Armed Forces (DL N° 440 - 1987/09/27)</li> <li>- Military Status Act for Officers of the Armed Forces (N° 28.359 - 2004/10/13)</li> <li>- Act which creates the Fund for the Armed Forces and the National Police (N° 28.455 - 2004/12/31)</li> <li>- Code of Military Police Justice (DL N° 961 - 2006/01/11)</li> <li>- Act on the Promotion of Officers in the Armed Forces (N° 29.108 - 2007/10/30)</li> <li>- Act on the Disciplinary Regime of the Armed Forces (N° 29.131 - 2007/11/09)</li> <li>- Police Justice Law. Organization and Procedures Act (N° 29.182 - 2008/01/11)</li> <li>- Military Service Act (N° 29.248 - 2008/06/28)</li> </ul>
<b>Uruguay</b>	<ul style="list-style-type: none"> <li>- Decree Organic Law for the Armed Forces (N° 14.157 - 1974/03/05; modified by Act N° 15.808 - 1986/04/07)</li> </ul>	<ul style="list-style-type: none"> <li>- Military Codes (Decree-Law N° 10.326 - 1943/01/28)</li> <li>- Organic Act of the Navy (N° 10.808 - 1946/11/08)</li> <li>- Security of the State and Internal Order Act (N° 14.068 - 1972/07/12)</li> <li>- Organic Act of the Air Force (N° 14.747 - 1977/12/30)</li> <li>- Organic Act of the National Army (N° 15.688 - 1985/01/17)</li> </ul>
<b>Venezuela</b>	<ul style="list-style-type: none"> <li>- Organic Act for the Public Administration (GO N° 37.305 - 2001/10/17)</li> <li>- Decree-Law of Citizen Security Coordination (GO N° 37.318 - 2001/11/06)</li> <li>- National Security Organic Act (GO N° 37.594 - 2002/12/18)</li> </ul>	<ul style="list-style-type: none"> <li>- Military Service and Enrollment Law (GO N° 2.306 - 1978/09/11)</li> <li>- Organic Code of Military Justice (GO N° 5.263 - 1998/09/17)</li> <li>- Organic Act of the National Armed Force (GO N° 38.280 - 2005/09/26)</li> <li>- Organic Act of the Bolivarian National Armed Force (GO N° 5.891 - 2008/07/31)</li> </ul>

Source: Compilation based on the above mentioned legislations. The inclusion of Acts in one category or another does not mean it refers exclusively to it.

Political Participation of Military Members

Countries	Can they vote?		Can they be candidates for Elections?	
	Active	Retired	Active	Retired
<b>Argentina</b>	Yes	Yes	No	Yes
<b>Bolivia</b>	Yes	Yes	No	Yes
<b>Brazil</b>	Yes	Yes	No <sup>(1)</sup>	Yes
<b>Chile</b>	Yes	Yes	No	Yes <sup>(2)</sup>
<b>Colombia</b>	No	Yes	No	Yes <sup>(2)</sup>
<b>Dominican Republic</b>	No	Yes	No <sup>(3)</sup>	Yes <sup>(3)</sup>
<b>Ecuador</b>	No	Yes	No	Yes
<b>El Salvador</b>	No	Yes	No	Yes <sup>(4)</sup>
<b>Guatemala</b>	No	Yes	No	Yes <sup>(5)</sup>
<b>Honduras</b>	No	Yes	Yes <sup>(6)</sup>	Yes
<b>Mexico</b>	Yes	Yes	Yes <sup>(7)</sup>	Yes
<b>Nicaragua</b>	Yes	Yes	No	Yes <sup>(2)</sup>
<b>Paraguay</b>	Yes	Yes	No	Yes
<b>Peru</b>	Yes	Yes	No	Yes
<b>Uruguay</b>	Yes	Yes	No <sup>(8)</sup>	Yes <sup>(9)</sup>
<b>Venezuela</b>	Yes	Yes	No	Yes

Source: Compilation based on the national legislation. For more detail on such legislation refer to section "Countries" of this publication.



- (1) With less than ten years of service, the individual shall retire; if he had more than ten years of service he shall be separated by his superior authority; if elected, he shall automatically be discharged.
- (2) One year after retiring.
- (3) Subsection 50 of the National Constitution establishes, as a requisite to be President, not be in active military service or in the police force, for at least during the year the election takes place. Sections 22 and 25, which refer to the conditions to be Senator or Deputy, do not mention such requisites.
- (4) Only three years after retiring can they run for presidential elections.
- (5) Five years after retiring.
- (6) The Constitution mentions the possibility of running for elections in the cases not prohibited by the law (Sec. 37), but it establishes they cannot be elected Deputies (Sec. 199) or President (Sec.240).
- (7) The members of the military on active duty cannot be elected Deputies unless they shall definitely have resigned from their position ninety days prior to the election (Political Constitution, Sec. 55) or Senator (Political Constitution, Sec. 58), or six months in the case of President (Political Constitution, Sec. 82). The law indicates that in order to occupy a post subject to popular elections, the members of the armed forces shall request a special permit for that purpose.
- (8) Section 9 subsection 2 of the National Constitution establishes that "Members of the military who resign to their position and remuneration to enter legislative bodies, shall conserve their rank, but as long as their legislative responsibilities last they shall not be promoted. They shall be except of all military subordination. The time they remain performing legislative activities will not be counted for seniority for a promotion". The Organic Decree-Law for the Armed Forces N° 14.157, in Section 98, says that the military status shall be suspended in the case of a "member of the military elected for a political position".
- (9) Section 77 subsection 4 of the National Constitution establishes that only the members of the military on active duty cannot perform political activities

**Military Justice: A Basic Legal Framework**

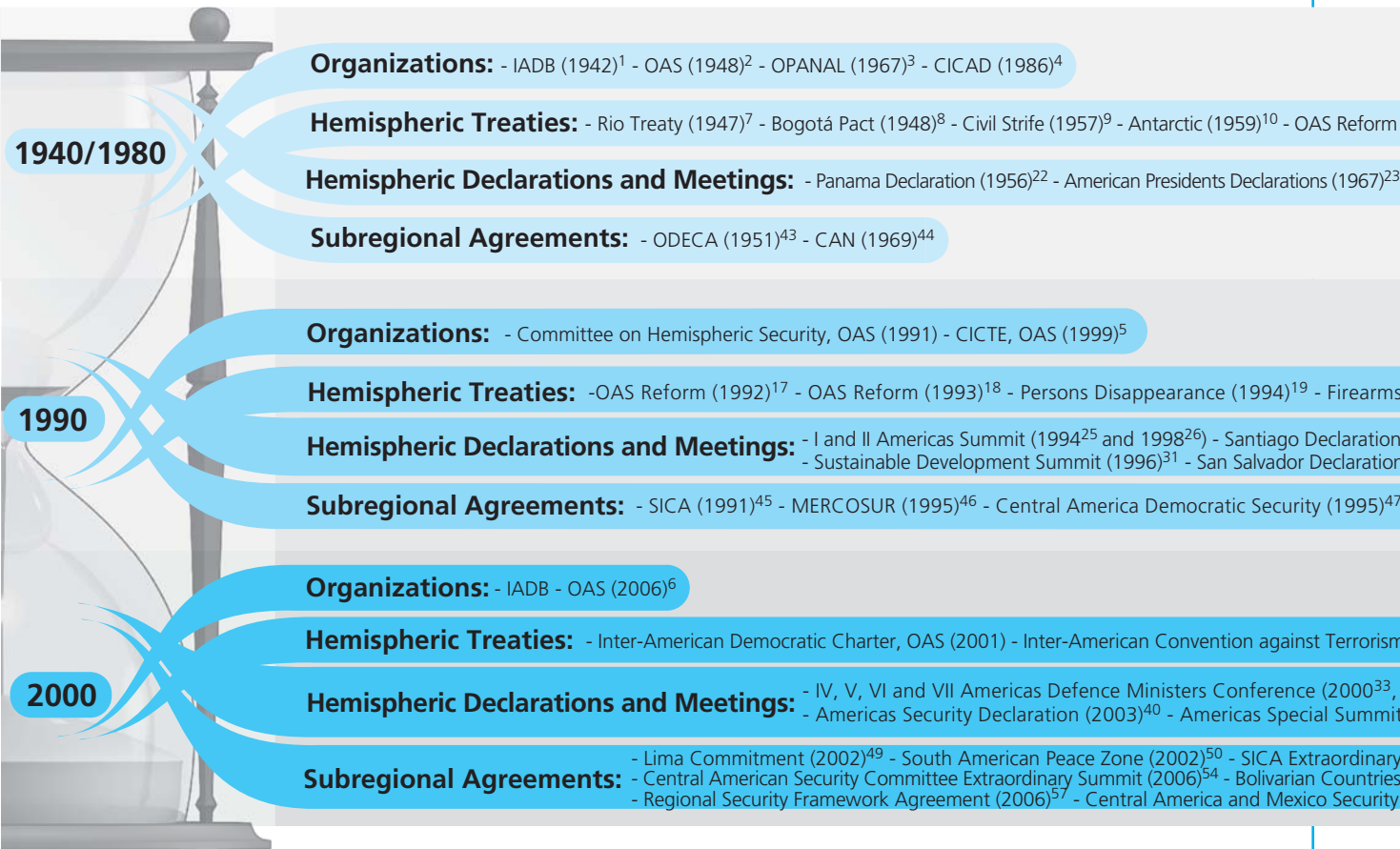


Source: Compilation based on the national legislation. The reforms that the Codes applied to their articles are shown on Table "National Legislation".





## Evolution of Organizations, Treaties and other Hemispheric Agreements



\* The Graph indicates the dates in which the agreements were signed.

- 1 Inter-American Defence Board.
- 2 Organization of American States.
- 3 Agency for the Prohibition of Nuclear Weapons in Latin America and the Caribbean. Treaty for the Prohibition of Nuclear Weapons in Latin America and the Caribbean (Treaty of Tlatelolco)
- 4 Inter-American Drug Abuse Control Commission, OAS.
- 5 Inter-American Convention against Terrorism. OAS.
- 6 The IADB becomes subsidiary organ of the OAS.
- 7 Inter-American Treaty of Reciprocal Assistance. Denunciation by Mexico 2002/09/06.
- 8 Pact of Bogotá. American Treaty on Pacific Settlement.
- 9 Protocol to the Convention on Duties and Rights of States in the Event of Civil Strife.
- 10 Antarctic Treaty.
- 11 Protocol of Amendments to the Charter of the Organization of American States "Protocol of Buenos Aires".
- 12 Treaty for the Prohibition of Nuclear Weapons in Latin America and the Caribbean.
- 13 American Convention on Human Rights (Pact of San Jose, Costa Rica).
- 14 Protocol of Amendment to the TIAR (1975). Signed on 1975/07/26 at the Plenipotentiary Conference of OAS, in San Jose, Costa Rica. To date, it has not gathered the necessary ratifications for its entry into force. It has only been ratified by Brazil (1977), Dominican Republic (1976), Guatemala (1978), and Peru (1991).
- 15 Protocol of Amendments to the Charter of the Organization of American States "Protocol of Cartagena de Indias".
- 16 Inter-American Convention to Prevent and Punish Torture, OAS.
- 17 Protocol of Amendments to the Charter of the Organization of American States "Protocol of Washington".
- 18 Protocol of Amendment to the Charter of the Organization of American States "Protocol of Managua".
- 19 Inter-American Convention on Forced Disappearance of Persons, OAS.
- 20 Inter-American Convention against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives, and Other Related Materials, OAS.
- 21 Inter-American Convention on Transparency in Conventional Weapons Acquisitions, OAS.
- 22 Declaration of the Presidents of the American Republics in Panama.
- 23 Declaration of the Presidents of America. Meeting of American Chiefs of State.
- 24 Convention to Prevent and Punish the Acts of Terrorism taking the Form of Crimes Against Persons and Related Extortion that are of International Significance, OAS.
- 25 I Summit of the Americas, Declaration of Principles, Miami.
- 26 II Summit of the Americas, Declaration of Santiago.
- 27 Declaration of Santiago on Confidence and Security Building Measures, OAS.
- 28 I Conference of Defence Ministers of the Americas, Declaration of Williamsburg.
- 29 II Conference of Defence Ministers of the Americas, Declaration of Bariloche.
- 30 III Conference of Defence Ministers of the Americas, Declaration of Cartagena.
- 31 Summit of the Americas on Sustainable Development, Declaration of Santa Cruz de la Sierra.
- 32 Declaration of San Salvador on Confidence and Security Building Measures, OAS.
- 33 IV Conference of Defence Ministers of the Americas, Declaration of Manaus.
- 34 V Conference of Defence Ministers of the Americas, Declaration of Santiago.
- 35 VI Conference of Defence Ministers of the Americas, Declaration of Quito.
- 36 VII Conference of Defence Ministers of the Americas, Declaration of Managua.

(1967)<sup>11</sup> - Tlatelolco (1967)<sup>12</sup> - Human Rights (1969)<sup>13</sup> - Rio Treaty Reform (1975)<sup>14</sup> - OAS Reform (1985)<sup>15</sup> - Torture Punishment (1985)<sup>16</sup>

- Convention on Terrorism Punishment (1971)<sup>24</sup>

Manufacturing (1997)<sup>20</sup> - Conventional Weapons Transparency (1999)<sup>21</sup>

(1995)<sup>27</sup> - I, II and III Americas Defence Ministers Conference (1995<sup>28</sup>, 1996<sup>29</sup> and 1998<sup>30</sup>) (1998)<sup>32</sup>

- MERCOSUR, Bolivia and Chile Peace Zone (1999)<sup>48</sup>

OAS (2002)

2002<sup>34</sup>, 2004<sup>35</sup> and 2006<sup>36</sup>) - III and IV Americas Summit (2001<sup>37</sup> and 2005<sup>38</sup>) - Bridgetown Declaration (2002)<sup>39</sup> (2004)<sup>41</sup> - Antipersonnel-Land Mine Declaration (2006)<sup>42</sup>

Summit (2003)<sup>51</sup> - Andean Peace Zone (2004)<sup>52</sup> - Andean Common External Security Policy (2004)<sup>53</sup> Ministers Defence Declaration (2006)<sup>55</sup> - OTCA Defence Ministers Meeting (2006)<sup>56</sup> Strategy (2007)<sup>58</sup> - UNASUR (2008)<sup>59</sup>

37 III Summit of the Americas, Declaration of Quebec City.

38 IV Summit of the Americas, Declaration of Mar del Plata.

39 Declaration of Bridgetown. The Multidimensional Approach to Hemispheric Security, OAS.

40 Declaration on Security in the Americas, Special Conference on Security in the Americas, OAS.

41 Special Summit of the Americas, Declaration of Nuevo Leon.

42 Declaration of the Americas as an Antipersonnel-Land Mine Free Zone.

43 Organization of Central American States (Costa Rica, Guatemala, Honduras, Nicaragua, El Salvador). Additional protocols in 1991 and 2002.

44 Andean Community of Nations (Bolivia, Chile, Colombia, Ecuador y Peru). Established in the Cartagena Agreement. Additional protocols in 1996, 1997 and 2000. Venezuela becomes a member in 1973 and withdraws in 2006. Chile withdraws in 1976 and in 2006 is granted associated membership. Argentina, Brazil, Paraguay and Uruguay are associated members as well.

45 Central American Integration System (Belice, Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, and Panama). Dominican Republic is an associated country.

46 Common Market of the South (Argentina, Brazil, Paraguay and Uruguay). Established through the Treaty of Asuncion. Additional protocols in 1994, 1998 and 2002. Bolivia and Chile are associated countries.

47 Framework Treaty on Democratic Security in Central America.

48 Political Declaration of the MERCOSUR, Bolivia and Chile as a Zone of Peace.

49 Conference of Foreign Affairs Ministers and Defence Ministers of the Andean Community. Includes: Andean Charter for Peace and Security, and

the Limitation and Control of Expenses Assigned to External Defence.

50 Declaration of the South American Peace Zone, II Summit of the Presidents of South America (Argentina, Bolivia, Brazil, Chile, Colombia, Ecuador, Guyana, Paraguay, Peru, Suriname, Uruguay and Venezuela).

51 Joint Declaration on Regional Security, Extraordinary Summit of Heads of State and Government of the States Members of the Central American Integration System.

52 Declaration of San Francisco de Quito on the Establishment and Development of the Andean Peace Zone, CAN.

53 Guidelines for the Common External Security Policy of the Andean Community. Decision 587, Council of Ministers of Foreign Affairs, CAN.

54 Extraordinary Summit of the Central American Security Committee, SICA.

55 Joint Declaration of the Ministers of Defence of the Bolivarian Countries (Bolivia, Colombia, Ecuador, Peru and Venezuela).

56 I Meeting of Defence Ministers of the Organization of the Treaty of Amazonic Cooperation on Security and Integral Defence of Amazonia.

57 Framework Agreement on Cooperation in Regional Security Matters (MERCOSUR States, Bolivia, Chile, Colombia, Ecuador, Peru and Venezuela). Still not in effect.

58 Extraordinary Meeting of the Heads of State and Government of SICA countries.

59 Organic Treaty of the Union of the South American Nations. Still not in effect.

Source: Compilation based on the information supplied by the following institutions and organizations on their web pages: OAS ([www.oas.org](http://www.oas.org)), CAN ([www.comunidadandina.org](http://www.comunidadandina.org)), MERCOSUR ([www.mercosur.int/msweb/](http://www.mercosur.int/msweb/)), SICA ([www.sica.int/](http://www.sica.int/)), OPANAL ([www.opanal.org/index-e.htm](http://www.opanal.org/index-e.htm)) and IADB ([www.iid.org/](http://www.iid.org/)).



## Analysis:

# Trends of Military Justice in Latin America

**Juan Rial\***

In the Digest compiled by the Byzantine Emperor Justinian I in the 6<sup>th</sup> century, the provisions on “*re militari*” (military matters) - which had been previously ordered by Tarruntenus Paternus and Arrius Menander - were included. These regulations established the specificity of the military duty, were handed on to the middle ages - as technology started to introduce changes in the military actions - and later on, incorporated new provisions in the national states established during modern times.

In Latin America, the regulations that ruled the military life were based on the provisions of the enlightened monarch Charles III, known as the *Reales Ordenanzas para el Régimen, Disciplina, Subordinación y Servicio de sus Ejércitos* (Royal Ordinances for the Regime, Discipline, Subordination and Service of his Armies), sanctioned in San Lorenzo del Escorial on October 22, 1768. These specified the obligations of the military men in accordance with their rank, laying emphasis on the soldier’s honour and discipline and setting the legal regime of the military sphere.

These ordinances were in force in all Latin American countries until the second half of the 19<sup>th</sup> century. With the beginnings of military professionalization via the establishment of military academies for the formation of officers, the new military codes arose. They were, in many cases, mere copies and adjustments of the former Ordinances. In Spain itself Bourbon ordinances were only ruled out in December 1978, when the new Royal Ordinances for the

■ Regulations that ruled the military life were based on the provisions of the enlightened monarch Charles III, sanctioned in San Lorenzo del Escorial on October 22, 1768.

\* PEITHO / Consultant to International Organizations.

Armed Forces were passed, and later, complemented with each particular forces.

At the beginning of the 19<sup>th</sup> century, the French Prime Minister Georges Clemenceau outlined the central issue of military justice in the widely known – and many times wrongly attributed – phrase: “Military justice bears the same relationship to justice as military music bears to music.” The use of military justice as a fighting instrument against revolutionary and subversive movements that arose as from the 70s in many countries in the region, led to a strong reaction from society. Human rights defence bodies encouraged the removal or restriction of the military jurisdiction, a process that is still under way. In many cases, during times of dictatorship, the military justice prosecuted and sentenced through summary proceedings - or with weak guarantees - many subversive organizations members. The most notorious case was that of the so-called *jueces sin rostro* (faceless judges), who acted against *Sendero Luminoso* (the Shining Path) and *Movimiento Revolucionario Tupac Amarú* (the Tupac Amaru Revolutionary Movement). Judges were identified by a number, and only known by the Armed Forces members. The system was in force between 1993 and 1996. At that time, Italy enforced this system when it confronted the so-called “*Red Brigades*”. Today, there is a mainstream belief that this system should be used in the civil justice system, in those cases of prosecutions against the organized crime heads, including the drug-trafficking heads.

Military justice is based on the existence of one or more Codes containing administrative, disciplinary, criminal and procedural regulations, applicable to the whole of the Armed Forces – including also the specifics within each force – and on the existence of a specialized judge corps and judicial auxiliaries that put them into practice.

The current tendencies show two possible models. The first one is based on the assumed tradition of a specialized code of law; the second one considers that there can only exist one Judicial Branch, and that it should encompass all the crimes that may be considered specifically military. According to this last trend, specificity is only limited to crime typification, but the whole process remains in the hands of ordinary justice. No regional country has accepted this model.

At the same time, even for those who cling to the idea of a separate military jurisdiction, the tendency is to believe that this jurisdiction can only exercise jurisdiction for the crimes and offences carried out by the military, and under no circumstances extend its jurisdiction over people who do not belong to the military forces. Likewise, crimes and offences that can be typified should be exclusively military, except all crimes or offences that are part of all inhabitants’ daily life. As it stems from this concept, it is clearly stated that the ordinary crimes carried out by military staff should be explicitly excluded from the sphere of competence of such military courts.

In the same way, this conception should leave out any possibility for a military court to exercise its jurisdiction over a member of the Armed Forces, in

■ Human rights defence bodies encouraged the removal or restriction of the military jurisdiction, a process that is still under way.



deeds related to human right violations, or any other right acknowledged by the international judicial order in the field of human rights. These crimes must be the exclusive competence of the ordinary penal jurisdiction.

The applicability of this process involves the clear definition of the penal types that constitute a strictly military crime, with strict attachment to the principle stating that only those crimes that specifically concern a legally protected military right will be considered as military crimes.

Those who regard the military justice as a special jurisdiction, depart from the idea that the military are a part of an institution holding its own values, which are not shared with the rest of society. Like the Church – which also deems necessary the existence of the Canon Law, given the peculiarity of its organization and its members – they should be governed by specific regulations not applicable to the rest of society. This concept leads the military to make decisions and mark their own legal boundaries, autonomously from the State. But also, under certain circumstances, and due to its influence over the whole of society, the military can apply these regulations to those who are not an integral part of the military organization, when they attack or challenge the military values. In this case, both nationals and foreigners can be involved. The alleged attack on the morale of the Armed Forces is one of the typical figures that convey this situation.

Thus, and given the fact that the military forces constitute singular, hierarchical, disciplined organizations – all with a specific end, that is, the armed defence of society – it is believed necessary that they have their own code of conduct. It establishes disciplinary regulations that mark a standard action protocol; among those regulations, the most conspicuous are: the way to address superiors, subordinates and peers; salutes, introductions, or obedience requirements expressed through special physical actions, just to mention a few. To put them into practice, they follow discipline regulations that characterize these conducts; the failure to comply with them leads to committing offences that are sanctioned in accordance with the special applicable rules – only for those who bear a military status. But also, there is a legal corpus that defines the crimes to be prosecuted in a jurisdiction of their own.

The existence of the military justice reaffirmed the autonomy of military organizations, and not only because of their technical capacity to handle threats or the use of violence – as well as the underlying ethos in the profession – but also because of the pre-eminent position regarding the other social organizations, as they are considered to be the founders of the Nation and the State, and so, a “tutelary institution” of the State, whom they must serve.

The categorical imperative states that a Military Criminal Code - as a specialized norm - would be necessary and complementary to the ordinary Criminal Code - a law also applicable to the military sphere, while their members are citizens as well. Therefore, the general definitions regarding what should be considered a crime would not be duplicated, and the concepts of malice, guilt or knowing and wilful action, or the ones about the perpetrator,

■ The existence of the military justice strengthened the autonomy of military corporations.



accomplice or accessory after the fact, or the aggravating or mitigating circumstances, would be matters regulated by the Penal Code and by the ordinary Procedural and Penal Code, with the exception of the special cases. For instance, if a soldier or sailor has been enlisted in the institution for only two months, this fact might be established as an extenuating circumstance of the criminal conduct.

Only those actions or omissions that – carried out by military in action or reserve – involve responsibilities of the daily military routines, or affect the fulfillment of assignments or the discipline and the institutional hierarchy, or the Armed Forces resources, would represent military crimes.

Those holding no military condition would be covered by the provisions concerning civil justice. Even in the case of conducts that leads to affect the Forces – but which do not represent a military crime – should be sanctioned by the civil justice, as in the case of attacking guards.

Sentences for military crimes must involve a custodial sentence with the same maximums established by the civil justice; the death penalty should not be imposed, in accordance with international treaties and accords in effect. However, there could also be specific sentences of punishment in the military sphere, such as confinement, temporary or definite discharge from military position, temporary or definite disqualification for command positions, or any other disqualifications, applicable as a main or accessory sentence.

The application of military justice involves the existence of specialized staff. Auditors or military judges are part of a judiciary corps directly subordinate to the Ministry of Defence. Nevertheless, they are currently subordinated to the same discipline regulations –as for their military status– than the rest of their service colleagues, and given that they must follow the professional ethos and the proper regulations, their independence is a matter of debate.

Some countries have created police-type special investigation bodies for the completion of the main indictment, which substantiates the process to be followed in order to typify a criminal conduct. Yet, the norm in most Latin American countries indicates that appointed ad hoc officers from every unit work as *juez sumariante* (summary judges)” or *instructor pre-sumariante* (pre-summary inspector). Public prosecutors, judges and attorneys intervention just occurs at the beginning of the prosecution – which lies in the hands of the military justice.

In some countries, attorneys need to be a military lawyer too, aside from a civil lawyer. The final appeal before the civil justice is allowed in many cases, but the Supreme Court or equivalent – as in the case of co-judges - are integrated with senior members of the military justice, general officers or retired admirals.

The disciplinary regime is ruled by the regulations or a code of conduct, which classifies the offences and their punishments. According to the different cases, it holds the force of law or statute, dictated by the Executive Branch, in accordance with the Ministry of Defence. This provisions bear administrative

■ Sentences owing to military crimes should only involve custodial sentence with the same maximums established by the civil justice.



■ The dominant tendency seems to reveal the existence of an exclusively military jurisdiction, limited to certain specific military crimes.

character, instead of penal. It is questionable if they can be appealed in the framework of civil and administrative contentious jurisdiction, as court of appeal for the military provisions.

The dominant tendency in the Latin-American region at the beginnings of the 21<sup>st</sup> century seems to reveal the existence of an exclusively military jurisdiction, limited to certain specific military crimes that only the Armed Forces staff members can commit. These are disobedience, insubordination, insurrection, mutiny, rebellion and desertion, among others. It is not very clearly shown in the debates how to typify espionage and treason crimes, as in many legal orders it is considered that they can also be committed by civilians. The attempt against the Constitution and the *coup d'état* have motivated recent legislation in several countries, and its inclusion in ordinary penal systems, thus unfolding these cases to the ordinary penal justice. No doubt, it is about a daily and continual matter of debate, where change is in progress.