



(5) *Liability for offenses.* Each conspirator is liable for all offenses committed pursuant to the conspiracy by any of the co-conspirators while the conspiracy continues and the person remains a party to it.

(6) *Withdrawal.* A party to the conspiracy who abandons or withdraws from the agreement to commit the offense before the commission of an overt act by any conspirator is not guilty of conspiracy. An effective withdrawal or abandonment must consist of affirmative conduct which is wholly inconsistent with adherence to the unlawful agreement and which shows that the party has severed all connection with the conspiracy. A conspirator who effectively abandons or withdraws from the conspiracy after the performance of an overt act by one of the conspirators remains guilty of conspiracy and of any offenses committed pursuant to the conspiracy up to the time of the abandonment or withdrawal. However a

person who has abandoned or withdrawn from the conspiracy is not liable for offenses committed thereafter by the remaining conspirators. The withdrawal of a conspirator from the conspiracy does not affect the status of the remaining members.

(7) *Factual impossibility.* It is not a defense that the means adopted by the conspirators to achieve their object, if apparently adapted to that end, were actually not capable of success, or that the conspirators were not physically able to accomplish their intended object.

(8) *Conspiracy as a separate offense.* A conspiracy to commit an offense is a separate and distinct offense from the offense which is the object of the conspiracy, and both the conspiracy and the consummated offense which was its object may be charged, tried, and punished. The commission of the intended offense may also constitute the overt act which is an element of the conspiracy to commit that offense.

(9) *Special conspiracies under Article 134.* The United States Code prohibits conspiracies to commit certain specific offenses which do not require an overt act. These conspiracies should be charged under Article 134. Examples include conspiracies to impede or injure any Federal officer in the discharge of duties under 18 U.S.C. § 372, conspiracies against civil rights under 18 U.S.C. § 241, and certain drug conspiracies under 21 U.S.C. § 846. See paragraph 60c(4)(c)(ii).

d. *Lesser included offense.* Article 80—attempts

e. *Maximum punishment.* Any person subject to the code who is found guilty of conspiracy shall be subject to the maximum punishment authorized for the offense which is the object of the conspiracy, except that in no case shall the death penalty be imposed.

f. *Sample specification*

(1) *Conspiracy.*

In that \_\_\_\_\_(personal jurisdiction data), did, (at/on board—location)(subject-matter jurisdiction data, if required), on or about \_\_\_\_20\_\_, conspire with \_\_\_\_\_(and\_\_\_\_\_)to commit an offense under the Uniform Code of Military Justice, to wit: (larceny of \_\_\_\_\_, of a value of (about) \$ \_\_\_\_\_, the property of \_\_\_\_\_), and in order to effect the object of the conspiracy the said \_\_\_\_\_(and \_\_\_\_\_) did \_\_\_\_\_.

(2) *Conspiracy when an offense is an offense under the law of war resulting in the death of one or more victims.*

In that \_\_\_\_\_(personal jurisdiction data), did, (at/on board—location)(subject-matter jurisdiction data, if required), on or about \_\_\_\_20\_\_, conspire with \_\_\_\_\_(and\_\_\_\_\_)to commit an offense under the law of war, to wit: (murder of \_\_\_\_\_), and in order to effect the object of the conspiracy the said \_\_\_\_\_ knowingly did \_\_\_\_\_ resulting in the death of \_\_\_\_\_.

## 6. Article 82—Solicitation

a. *Text of statute.*

(a) **Any person subject to this chapter who solicits or advises another or other to desert in violation of section 885 of this title (Article 85) or mutiny in violation of section 894 of this title (Article 94) shall, if the offense solicited or advised is attempted or committed, be punished with the punishment provided for the commission of the offense, but, if the offense solicited or advised is not committed or attempted, he shall be punished as a court-martial may direct.**

(b) **Any person subject to this chapter who solicits or advises another or others to commit an act of misbehavior before the enemy in violation of section 899 of this title (Article 99) or sedition in violation of section 894 of this title (Article 94) shall, if the offense solicited or advised is committed, be punished with the punishment provided for the commission of the offense, but, if the offense solicited or advised is not committed, he shall be punished as a court-martial may direct.**

b. *Elements.*

(1) That the accused solicited or advised a certain person or persons to commit any of the four offenses named in Article 82; and