

109TH CONGRESS  
2D SESSION

# H. R. 6054

To amend title 10, United States Code, to authorize trial by military commission for violations of the law of war, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 12, 2006

Mr. HUNTER (for himself, Mr. BOEHNER, Mr. SENSENBRENNER, Mr. CALVERT, Mrs. MILLER of Michigan, Mr. MILLER of Florida, Mr. SHUSTER, Mr. FRANKS of Arizona, Mr. WILSON of South Carolina, Mr. SAXTON, Mr. PORTER, Mr. KLINE, Mr. HEFLEY, Mr. HAYES, Mr. SWEENEY, Mr. CHOCOLA, and Mr. LOBIONDO) introduced the following bill; which was referred to the Committee on Armed Services, and in addition to the Committees on the Judiciary and International Relations, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To amend title 10, United States Code, to authorize trial by military commission for violations of the law of war, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the  
5 “Military Commissions Act of 2006”.

1 (b) TABLE OF CONTENTS.—The table of contents for  
 2 this Act is as follows:

1. Short title; table of contents.
2. Construction of Presidential authority to establish military commissions.
3. Military commissions.
4. Clarification of conduct constituting war crime offense under Federal Criminal Code.
5. Judicial review.
6. Satisfaction of treaty obligations.
7. Revisions to Detainee Treatment Act of 2005 relating to protection of certain United States Government personnel.
8. Retroactive applicability.

3 **SEC. 2. CONSTRUCTION OF PRESIDENTIAL AUTHORITY TO**  
 4 **ESTABLISH MILITARY COMMISSIONS.**

5 The authority to establish military commissions  
 6 under chapter 47A of title 10, United States Code, as  
 7 added by section 3(a), may not be construed to alter or  
 8 limit the authority of the President under the Constitution  
 9 to establish military commissions on the battlefield or in  
 10 occupied territories should circumstances so require.

11 **SEC. 3. MILITARY COMMISSIONS.**

12 (a) MILITARY COMMISSIONS.—

13 (1) IN GENERAL.—Subtitle A of title 10,  
 14 United States Code, is amended by inserting after  
 15 chapter 47 the following new chapter:

16 **“CHAPTER 47A—MILITARY COMMISSIONS**

“Subchapter	
“I. General Provisions .....	948a
“II. Composition of Military Commissions .....	948h
“III. Pre-Trial Procedure .....	948q
“IV. Trial Procedure .....	949a
“V. Sentences .....	949s
“VI. Post-Trial Procedure and Review of Military Commissions .....	950a
“VII. Punitive Matters .....	950p

## 1       “SUBCHAPTER I—GENERAL PROVISIONS

“Sec.

“948a. Definitions.

“948b. Military commissions generally.

“948c. Persons subject to military commissions.

“948d. Jurisdiction of military commissions.

“948e. Annual report to congressional committees.

2       **“§ 948a. Definitions**

3       “In this chapter:

4               “(1) UNLAWFUL ENEMY COMBATANT.—(A) The  
5       term ‘unlawful enemy combatant’ means an indi-  
6       vidual determined by or under the authority of the  
7       President or the Secretary of Defense—

8               “(i) to be part of or affiliated with a force  
9               or organization (including al Qaeda, the  
10       Taliban, any international terrorist organiza-  
11       tion, or associated forces) that is engaged in  
12       hostilities against the United States or its co-  
13       belligerents in violation of the law of war;

14               “(ii) to have committed a hostile act in aid  
15       of such a force or organization so engaged; or

16               “(iii) to have supported hostilities in aid of  
17       such a force or organization so engaged.

18               “(B) Such term includes any individual deter-  
19       mined by a Combatant Status Review Tribunal be-  
20       fore the date of the enactment of the Military Com-  
21       missions Act of 2006 to have been properly detained  
22       as an enemy combatant.

1           “(C) Such term does not include any alien de-  
2           termined by the President or the Secretary of De-  
3           fense (whether on an individualized or collective  
4           basis), or by any competent tribunal established  
5           under their authority, to be—

6                   “(i) a lawful enemy combatant (including a  
7                   prisoner of war); or

8                   “(ii) a protected person whose trial by a  
9                   military commission under this chapter would  
10                  be inconsistent with Articles 64 through 76 of  
11                  the Geneva Convention Relative to the Protec-  
12                  tion of Civilian Persons in Time of War of Au-  
13                  gust 12, 1949.

14           “(D) For purposes of subparagraph (C)(ii), the  
15           term ‘protected person’ refers to the category of per-  
16           sons described in Article 4 of the Geneva Convention  
17           Relative to the Protection of Civilian Persons in  
18           Time of War of August 12, 1949.

19                   “(2) GENEVA CONVENTIONS.—The term ‘Gene-  
20                   va Conventions’ means the international conventions  
21                   signed at Geneva on August 12, 1949, including  
22                   Common Article 3.

23                   “(3) CLASSIFIED INFORMATION.—The term  
24                   ‘classified information’ means the following:

1           “(A) Any information or material that has  
2           been determined by the United States Govern-  
3           ment pursuant to statute, Executive order, or  
4           regulation to require protection against unau-  
5           thorized disclosure for reasons of national secu-  
6           rity.

7           “(B) Any restricted data, as that term is  
8           defined in section 11 y. of the Atomic Energy  
9           Act of 1954 (42 U.S.C. 2014(y)).

10          “(4) ALIEN.—The term ‘alien’ means an indi-  
11          vidual who is not a citizen of the United States.

12          **“§ 948b. Military commissions generally**

13          “(a) AUTHORITY FOR MILITARY COMMISSIONS  
14          UNDER THIS CHAPTER.—The President is authorized to  
15          establish military commissions for violations of offenses  
16          triable by military commission as provided in this chapter.

17          “(b) CONSTRUCTION OF PROVISIONS.—The proce-  
18          dures for military commissions set forth in this chapter  
19          are based upon the procedures for trial by general courts-  
20          martial under chapter 47 of this title (the Uniform Code  
21          of Military Justice). Chapter 47 of this title, including any  
22          construction or application of such chapter and any ad-  
23          ministrative practice under such chapter, does not apply  
24          to trial by military commission under this chapter.

1           “(c) STATUS OF COMMISSIONS UNDER COMMON AR-  
2 TICLE 3.—A military commission established under this  
3 chapter is a regularly constituted court, affording all the  
4 necessary ‘judicial guarantees which are recognized as in-  
5 dispensable by civilized peoples’ for purposes of common  
6 Article 3 of the Geneva Conventions.

7 **“§ 948c. Persons subject to military commissions**

8           “Any alien unlawful enemy combatant is subject to  
9 trial by military commission under this chapter.

10 **“§ 948d. Jurisdiction of military commissions**

11           “(a) JURISDICTION.—A military commission under  
12 this chapter shall have jurisdiction to try any offense made  
13 punishable by this chapter when committed by an alien  
14 unlawful enemy combatant before, on, or after September  
15 11, 2001.

16           “(b) PUNISHMENTS.—A military commission under  
17 this chapter may, under such limitations as the Secretary  
18 of Defense may prescribe, adjudge any punishment not  
19 forbidden by this chapter, including the penalty of death  
20 when authorized under this chapter.

21 **“§ 948e. Annual report to congressional committees**

22           “(a) ANNUAL REPORT REQUIRED.—Not later than  
23 December 31 each year, the Secretary of Defense shall  
24 submit to the Committees on Armed Services of the Sen-  
25 ate and the House of Representatives a report on any

1 trials conducted by military commissions under this chap-  
 2 ter during such year.

3 “(b) FORM.—Each report under this section shall be  
 4 submitted in unclassified form, but may include a classi-  
 5 fied annex.

6 “SUBCHAPTER II—COMPOSITION OF MILITARY  
 7 COMMISSIONS

“Sec.

“948h. Who may convene military commissions.

“948i. Who may serve on military commissions.

“948j. Military judges.

“948k. Detail of trial counsel and defense counsel.

“948l. Detail or employment of reporters and interpreters.

“948m. Number of members; excuse of members; absent and additional mem-  
 bers.

8 “§ 948h. Who may convene military commissions

9 “Military commissions under this chapter may be  
 10 convened by the Secretary of Defense or by any officer  
 11 or official of the United States designated by the Secretary  
 12 for that purpose.

13 “§ 948i Who may serve on military commissions

14 “(a) IN GENERAL.—Any commissioned officer of the  
 15 armed forces on active duty is eligible to serve on a mili-  
 16 tary commission under this chapter.

17 “(b) DETAIL OF MEMBERS.—When convening a mili-  
 18 tary commission under this chapter, the convening author-  
 19 ity shall detail as members of the commission such mem-  
 20 bers of the armed forces eligible under subsection (a), as  
 21 in the opinion of the convening authority, are fully quali-

1 fied for the duty by reason of age, education, training,  
2 experience, length of service, and judicial temperament.  
3 No member of an armed force is eligible to serve as a  
4 member of a military commission when such member is  
5 the accuser or a witness for the prosecution or has acted  
6 as an investigator or counsel in the same case.

7 “(c) EXCUSE OF MEMBERS.—Before a military com-  
8 mission under this chapter is assembled for the trial of  
9 a case, the convening authority may excuse a member  
10 from participating in the case.

11 **“§ 948j. Military judges**

12 “(a) DETAIL OF MILITARY JUDGE.—A military judge  
13 shall be detailed to each military commission under this  
14 chapter. The Secretary of Defense shall prescribe regula-  
15 tions providing for the manner in which military judges  
16 are so detailed to military commissions. The military judge  
17 shall preside over each military commission to which he  
18 has been detailed.

19 “(b) QUALIFICATIONS.—A military judge shall be a  
20 commissioned officer of the armed forces who is a member  
21 of the bar of a Federal court, or a member of the bar  
22 of the highest court of a State, and who is certified to  
23 be qualified for duty under section 826 of this title (article  
24 26 of the Uniform Code of Military Justice) as a military  
25 judge in general courts-martial by the Judge Advocate



1 General of the armed force of which such military judge  
2 is a member.

3 “(c) INELIGIBILITY OF CERTAIN INDIVIDUALS.—No  
4 person is eligible to act as military judge in a case of a  
5 military commission under this chapter if he is the accuser  
6 or a witness or has acted as investigator or a counsel in  
7 the same case.

8 “(d) CONSULTATION WITH MEMBERS; INELIGI-  
9 BILITY TO VOTE.—A military judge detailed to a military  
10 commission under this chapter may not consult with the  
11 members of the commission except in the presence of the  
12 accused (except as otherwise provided in section 949d of  
13 this title), trial counsel, and defense counsel, nor may he  
14 vote with the members of the commission.

15 “(e) OTHER DUTIES.—A commissioned officer who  
16 is certified to be qualified for duty as a military judge of  
17 a military commission under this chapter may perform  
18 such other duties as are assigned to him by or with the  
19 approval of the Judge Advocate General of the armed  
20 force of which such officer is a member or the designee  
21 of such Judge Advocate General.

22 “(f) PROHIBITION ON EVALUATION OF FITNESS BY  
23 CONVENING AUTHORITY.—The convening authority of a  
24 military commission under this chapter shall not prepare  
25 or review any report concerning the effectiveness, fitness,

1 or efficiency of a military judge detailed to the military  
2 commission which relates to his performance of duty as  
3 a military judge on the military commission.

4 **“§ 948k. Detail of trial counsel and defense counsel**

5       “(a) **DETAIL OF COUNSEL GENERALLY.**—(1) Trial  
6 counsel and military defense counsel shall be detailed for  
7 each military commission under this chapter.

8       “(2) Assistant trial counsel and assistant and asso-  
9 ciate defense counsel may be detailed for a military com-  
10 mission under this chapter.

11       “(3) Military defense counsel for a military commis-  
12 sion under this chapter shall be detailed as soon as prac-  
13 ticable after the swearing of charges against the accused.

14       “(4) The Secretary of Defense shall prescribe regula-  
15 tions providing for the manner in which trial counsel and  
16 military defense counsel are detailed for military commis-  
17 sions under this chapter and for the persons who are au-  
18 thorized to detail such counsel for such commissions.

19       “(b) **TRIAL COUNSEL.**—Subject to subsection (d),  
20 trial counsel detailed for a military commission under this  
21 chapter must be—

22               “(1) a judge advocate (as that term is defined  
23 in section 801 of this title (article 1 of the Uniform  
24 Code of Military Justice) who is—

1           “(A) a graduate of an accredited law  
2 school or is a member of the bar of a Federal  
3 court or of the highest court of a State; and

4           “(B) certified as competent to perform du-  
5 ties as trial counsel before general courts-mar-  
6 tial by the Judge Advocate General of the  
7 armed force of which he is a member; or

8           “(2) a civilian who is—

9           “(A) a member of the bar of a Federal  
10 court or of the highest court of a State; and

11           “(B) otherwise qualified to practice before  
12 the military commission pursuant to regulations  
13 prescribed by the Secretary of Defense.

14           “(c) MILITARY DEFENSE COUNSEL.—Subject to sub-  
15 section (d), military defense counsel detailed for a military  
16 commission under this chapter must be a judge advocate  
17 (as so defined) who is—

18           “(1) a graduate of an accredited law school or  
19 is a member of the bar of a Federal court or of the  
20 highest court of a State; and

21           “(2) certified as competent to perform duties as  
22 defense counsel before general courts-martial by the  
23 Judge Advocate General of the armed force of which  
24 he is a member.

1           “(d) INELIGIBILITY OF CERTAIN INDIVIDUALS.—No  
2 person who has acted as an investigator, military judge,  
3 or member of a military commission under this chapter  
4 in any case may act later as trial counsel or military de-  
5 fense counsel in the same case. No person who has acted  
6 for the prosecution before a military commission under  
7 this chapter may act later in the same case for the de-  
8 fense, nor may any person who has acted for the defense  
9 before a military commission under this chapter act later  
10 in the same case for the prosecution.

11   **“§ 948l. Detail or employment of reporters and inter-**  
12   **preters**

13           “(a) COURT REPORTERS.—Under such regulations  
14 as the Secretary of Defense may prescribe, the convening  
15 authority of a military commission under this chapter  
16 shall detail to or employ for the commission qualified court  
17 reporters, who shall make a verbatim recording of the pro-  
18 ceedings of and testimony taken before the commission.

19           “(b) INTERPRETERS.—Under such regulations as the  
20 Secretary of Defense may prescribe, the convening author-  
21 ity of a military commission under this chapter may detail  
22 to or employ for the military commission interpreters who  
23 shall interpret for the commission and, as necessary, for  
24 trial counsel and defense counsel.

1           “(c) TRANSCRIPT; RECORD.—The transcript of a  
2 military commission under this chapter shall be under the  
3 control of the convening authority of the commission, who  
4 shall also be responsible for preparing the record of the  
5 proceedings.

6       **“§ 948m. Number of members; excuse of members; ab-**  
7                       **sent and additional members**

8           “(a) NUMBER OF MEMBERS.—(1) A military com-  
9 mission under this chapter shall, except as provided in  
10 paragraph (2), have at least five members.

11          “(2) In a case in which the death penalty is sought,  
12 the military commission shall have the number of members  
13 prescribed by section 949m(c) of this title.

14          “(b) EXCUSE OF MEMBERS.—No member of a mili-  
15 tary commission under this chapter may be absent or ex-  
16 cused after the military commission has been assembled  
17 for the trial of a case unless excused—

18                       “(1) as a result of challenge;

19                       “(2) by the military judge for physical disability  
20 or other good cause; or

21                       “(3) by order of the convening authority for  
22 good cause.

23          “(c) ABSENT AND ADDITIONAL MEMBERS.—When-  
24 ever a military commission under this chapter is reduced  
25 below the number of members required by subsection (a),

1 the trial may not proceed unless the convening authority  
 2 details new members sufficient to provide not less than  
 3 such number. The trial may proceed with the new mem-  
 4 bers present after the recorded evidence previously intro-  
 5 duced before the members has been read to the military  
 6 commission in the presence of the military judge, the ac-  
 7 cused (except as provided in section 949d of this title),  
 8 and counsel for both sides.

9 “SUBCHAPTER III—PRE-TRIAL PROCEDURE

“Sec.

“948q. Charges and specifications.

“948r. Compulsory self-incrimination prohibited; treatment of statements ob-  
 tained by torture and other statements.

“948s. Service of charges.

10 “§ 948q. **Charges and specifications**

11 “(a) CHARGES AND SPECIFICATIONS.—Charges and  
 12 specifications against an accused in a military commission  
 13 under this chapter shall be signed by a person subject to  
 14 chapter 47 of this title under oath before a commissioned  
 15 officer of the armed forces authorized to administer oaths  
 16 and shall state—

17 “(1) that the signer has personal knowledge of,  
 18 or reason to believe, the matters set forth therein;  
 19 and

20 “(2) that they are true in fact to the best of the  
 21 signer’s knowledge and belief.

22 “(b) NOTICE TO ACCUSED.—Upon the swearing of  
 23 the charges and specifications in accordance with sub-

1 section (a), the accused shall be informed of the charges  
2 against him as soon as practicable.

3 **“§ 948r. Compulsory self-incrimination prohibited;**  
4 **treatment of statements obtained by tor-**  
5 **ture and other statements**

6 “(a) IN GENERAL.—No person shall be required to  
7 testify against himself at a proceeding of a military com-  
8 mission under this chapter.

9 “(b) EXCLUSION OF STATEMENTS OBTAINED BY  
10 TORTURE.—A statement obtained by use of torture,  
11 whether or not under color of law, shall not be admissible  
12 against the accused in a military commission under this  
13 chapter, except against a person accused of torture as evi-  
14 dence the statement was made.

15 “(c) OTHER STATEMENTS.—An otherwise admissible  
16 statement, including a statement allegedly obtained by co-  
17 ercion, shall not be admitted in evidence in a military com-  
18 mission under this chapter if the military judge finds that  
19 the circumstances under which the statement was made  
20 render the statement unreliable or lacking in probative  
21 value.

22 “(d) TORTURE.—In this section, the term ‘torture’  
23 has the meaning given that term in section 2340 of title  
24 18.

1 **“§ 948s. Service of charges**

2 “The trial counsel assigned to a case before a military  
 3 commission under this chapter shall cause to be served  
 4 upon the accused and military defense counsel a copy of  
 5 the charges upon which trial is to be had. Such charges  
 6 shall be served in English and, if appropriate, in another  
 7 language that the accused understands. Such service shall  
 8 be made sufficiently in advance of trial to prepare a de-  
 9 fense.

10 **“SUBCHAPTER IV—TRIAL PROCEDURE**

“Sec.

“949a. Rules.

“949b. Unlawfully influencing action of military commission.

“949c. Duties of trial counsel and defense counsel.

“949d. Sessions.

“949e. Continuances.

“949f. Challenges.

“949g. Oaths.

“949h. Former jeopardy.

“949i. Pleas of the accused.

“949j. Opportunity to obtain witnesses and other evidence.

“949k. Defense of lack of mental responsibility.

“949l. Voting and rulings.

“949m. Number of votes required.

“949n. Military commission to announce action.

“949o. Record of trial.

11 **“§ 949a. Rules**

12 “(a) PROCEDURES.—Pretrial, trial, and post-trial  
 13 procedures, including elements and modes of proof, for  
 14 cases triable by military commission under this chapter  
 15 shall be prescribed by the Secretary of Defense, but may  
 16 not be contrary to or inconsistent with this chapter.

17 “(b) RULES OF EVIDENCE.—(1) Subject to such ex-  
 18 ceptions and limitations as the Secretary may prescribe



1 by regulation, evidence in a military commission under  
2 this chapter shall be admissible if the military judge deter-  
3 mines that the evidence would have probative value to a  
4 reasonable person.

5       “(2) Hearsay evidence is admissible unless the mili-  
6 tary judge finds that the circumstances render the evi-  
7 dence unreliable or lacking in probative value. However,  
8 such evidence may be admitted only if the proponent of  
9 the evidence makes the evidence known to the adverse  
10 party in advance of trial or hearing.

11       “(3) The military judge shall exclude any evidence  
12 the probative value of which is substantially outweighed—

13               “(A) by the danger of unfair prejudice, confu-  
14 sion of the issues, or misleading the members of the  
15 commission; or

16               “(B) by considerations of undue delay, waste of  
17 time, or needless presentation of cumulative evi-  
18 dence.

19       “(c) NOTIFICATION TO CONGRESSIONAL COMMIT-  
20 TEES OF CHANGES TO PROCEDURES.—Not later than 60  
21 days before the date on which any proposed modification  
22 of the procedures in effect for military commissions under  
23 this chapter goes into effect, the Secretary of Defense  
24 shall submit to the Committee on Armed Services of the  
25 Senate and the Committee on Armed Services of the

1 House of Representatives a report describing the modifica-  
2 tion.

3 **“§ 949b. Unlawfully influencing action of military**  
4 **commission**

5 “(a) IN GENERAL.—(1) No authority convening a  
6 military commission under this chapter may censure, rep-  
7 rimand, or admonish the military commission, or any  
8 member, military judge, or counsel thereof, with respect  
9 to the findings or sentence adjudged by the military com-  
10 mission, or with respect to any other exercises of its or  
11 his functions in the conduct of the proceedings.

12 “(2) No person may attempt to coerce or, by any un-  
13 authorized means, influence the action of a military com-  
14 mission under this chapter, or any member thereof, in  
15 reaching the findings or sentence in any case, or the action  
16 of any convening, approving, or reviewing authority with  
17 respect to his judicial acts.

18 “(3) Paragraphs (1) and (2) do not apply with re-  
19 spect to—

20 “(A) general instructional or informational  
21 courses in military justice if such courses are de-  
22 signed solely for the purpose of instructing members  
23 of a command in the substantive and procedural as-  
24 pects of military commissions; or

1           “(B) statements and instructions given in open  
2           proceedings by a military judge or counsel.

3           “(b) PROHIBITION ON CONSIDERATION OF ACTIONS  
4 ON COMMISSION IN EVALUATION OF FITNESS.—In the  
5 preparation of an effectiveness, fitness, or efficiency report  
6 or any other report or document used in whole or in part  
7 for the purpose of determining whether a commissioned  
8 officer of the armed forces is qualified to be advanced in  
9 grade, or in determining the assignment or transfer of any  
10 such officer or whether any such officer should be retained  
11 on active duty, no person may—

12           “(1) consider or evaluate the performance of  
13 duty of any member of a military commission under  
14 this chapter; or

15           “(2) give a less favorable rating or evaluation  
16 to any commissioned officer because of the zeal with  
17 which such officer, in acting as counsel, represented  
18 any accused before a military commission under this  
19 chapter.

20 **“§ 949c. Duties of trial counsel and defense counsel**

21           “(a) TRIAL COUNSEL.—The trial counsel of a mili-  
22 tary commission under this chapter shall prosecute in the  
23 name of the United States.

1       “(b) DEFENSE COUNSEL.—(1) The accused shall be  
2 represented in his defense before a military commission  
3 under this chapter as provided in this subsection.

4       “(2) The accused shall be represented by military  
5 counsel detailed under section 948k of this title.

6       “(3) The accused may be represented by civilian  
7 counsel if retained by the accused, but only if such civilian  
8 counsel—

9               “(A) is a United States citizen;

10              “(B) is admitted to the practice of law in a  
11 State, district, or possession of the United States or  
12 before a Federal court;

13              “(C) has not been the subject of any sanction  
14 of disciplinary action by any court, bar, or other  
15 competent governmental authority for relevant mis-  
16 conduct;

17              “(D) has been determined to be eligible for ac-  
18 cess to classified information that is classified at the  
19 level Secret or higher; and

20              “(E) has signed a written agreement to comply  
21 with all applicable regulations or instructions for  
22 counsel, including any rules of court for conduct  
23 during the proceedings.

24       “(4) Civilian defense counsel shall protect any classi-  
25 fied information received during the course of representa-

1 tion of the accused in accordance with all applicable law  
2 governing the protection of classified information and may  
3 not divulge such information to any person not authorized  
4 to receive it.

5 “(5) If the accused is represented by civilian counsel,  
6 military counsel detailed shall act as associate counsel.

7 “(6) The accused is not entitled to be represented by  
8 more than one military counsel. However, the person au-  
9 thorized under regulations prescribed under section 948k  
10 of this title to detail counsel, in that person’s sole discre-  
11 tion, may detail additional military counsel to represent  
12 the accused.

13 “(7) Defense counsel may cross-examine each witness  
14 for the prosecution who testifies before a military commis-  
15 sion under this chapter.

16 **“§ 949d. Sessions**

17 “(a) SESSIONS WITHOUT PRESENCE OF MEM-  
18 BERS.—(1) At any time after the service of charges which  
19 have been referred for trial by military commission under  
20 this chapter, the military judge may call the military com-  
21 mission into session without the presence of the members  
22 for the purpose of—

23 “(A) hearing and determining motions raising  
24 defenses or objections which are capable of deter-

1 mination without trial of the issues raised by a plea  
2 of not guilty;

3 “(B) hearing and ruling upon any matter which  
4 may be ruled upon by the military judge under this  
5 chapter, whether or not the matter is appropriate for  
6 later consideration or decision by the members;

7 “(C) if permitted by regulations prescribed by  
8 the Secretary of Defense, receiving the pleas of the  
9 accused; and

10 “(D) performing any other procedural function  
11 which may be performed by the military judge under  
12 this chapter or under rules prescribed pursuant to  
13 section 949a of this title and which does not require  
14 the presence of the members.

15 “(2) Except as provided in subsections (c), (d), and  
16 (e), any proceedings under paragraph (1) shall—

17 “(A) be conducted in the presence of the ac-  
18 cused, defense counsel, and trial counsel; and

19 “(B) be made part of the record.

20 “(b) PROCEEDINGS IN PRESENCE OF ACCUSED.—

21 Except as provided in subsections (c) and (e), all pro-  
22 ceedings of a military commission under this chapter, in-  
23 cluding any consultation of the members with the military  
24 judge or counsel, shall—

1           “(1) be in the presence of the accused, defense  
2           counsel, and trial counsel; and

3           “(2) be made a part of the record.

4           “(c) DELIBERATION OR VOTE OF MEMBERS.—When  
5           the members of a military commission under this chapter  
6           deliberate or vote, only the members may be present.

7           “(d) CLOSURE OF PROCEEDINGS.—(1) The military  
8           judge may close to the public all or part of the proceedings  
9           of a military commission under this chapter, but only in  
10          accordance with this subsection.

11          “(2)(A) The military judge may close to the public  
12          all or a portion of the proceedings of a military commis-  
13          sion under paragraph (1), or permit the admission of clas-  
14          sified information outside the presence of the accused,  
15          based upon a presentation (including an ex parte or in  
16          camera presentation) by either the prosecution or the de-  
17          fense.

18          “(B) Trial counsel may not make a presentation re-  
19          questing the admission of classified information outside  
20          the presence of the accused unless the head of the depart-  
21          ment or agency which has control over the matter (after  
22          personal consideration by that officer) certifies in writing  
23          to the military judge that—

1           “(i) the disclosure of the classified information  
2           to the accused could reasonably be expected to prej-  
3           udice the national security; and

4           “(ii) that such evidence has been declassified to  
5           the maximum extent possible, consistent with the re-  
6           quirements of national security.

7           “(3) The military judge may close to the public all  
8           or a portion of the proceedings of a military commission  
9           under paragraph (1) upon making a specific finding that  
10          such closure is necessary to—

11          “(A) protect information the disclosure of which  
12          could reasonably be expected to cause identifiable  
13          damage to the public interest or the national secu-  
14          rity, including intelligence or law enforcement  
15          sources, methods, or activities; or

16          “(B) ensure the physical safety of individuals.

17          “(e) EXCLUSION OF ACCUSED FROM CERTAIN PRO-  
18          CEEDINGS.—(1) The military judge may not exclude the  
19          accused from any portion of the proceeding except upon  
20          a specific finding of each of the following:

21          “(A) That the exclusion of the accused—

22                  “(i) is necessary to protect classified infor-  
23                  mation the disclosure of which to the accused  
24                  could reasonably be expected to cause identifi-  
25                  able damage to the national security, including



1 intelligence or law enforcement sources, meth-  
2 ods, or activities;

3 “(ii) is necessary to ensure the physical  
4 safety of individuals; or

5 “(iii) is necessary to prevent disruption of  
6 the proceedings by the accused.

7 “(B) That the exclusion of the accused—

8 “(i) is no broader than necessary; and

9 “(ii) will not deprive the accused of a full  
10 and fair trial.

11 “(2)(A) A finding under paragraph (1) may be based  
12 upon a presentation, including a presentation *ex parte* or  
13 *in camera*, by either trial counsel or defense counsel.

14 “(B) Before trial counsel may make a presentation  
15 for purposes of subparagraph (A) requesting the admis-  
16 sion of classified information that has not been provided  
17 to the accused, the head of the executive or military de-  
18 partment or governmental agency concerned shall ensure,  
19 and shall certify in writing to the military judge, that such  
20 evidence has been declassified to the maximum extent pos-  
21 sible, consistent with the requirements of national secu-  
22 rity.

23 “(3)(A) No evidence may be admitted that has not  
24 been provided to the accused unless the evidence is classi-

1 fied information and the military judge makes a specific  
2 finding that—

3 “(i) consideration of that evidence by the mili-  
4 tary commission, without the presence of the ac-  
5 cused, is warranted;

6 “(ii) admission of an unclassified summary or  
7 redacted version of that evidence would not be an  
8 adequate substitute and, in the case of testimony, al-  
9 ternative methods to obscure the identity of the wit-  
10 ness are not adequate; and

11 “(iii) admission of the evidence would not de-  
12 prive the accused of a full and fair trial.

13 “(B) If the accused is excluded from a portion of the  
14 proceedings, the accused shall be provided with a redacted  
15 transcript of the proceedings from which excluded and, to  
16 the extent practicable, an unclassified summary of any evi-  
17 dence introduced. Under no circumstances shall such a  
18 summary or redacted transcript compromise the interests  
19 warranting the exclusion of the accused under paragraph  
20 (1).

21 “(4)(A) Military defense counsel shall be present and  
22 able to participate in all trial proceedings and shall be  
23 given access to all evidence admitted under paragraph (3).

24 “(B) Civilian defense counsel shall be permitted to  
25 be present and to participate in proceedings from which

1 the accused is excluded under this subsection, and shall  
2 be given access to classified information admitted under  
3 this subsection, if—

4           “(i) civilian defense counsel has obtained the  
5 necessary security clearances; and

6           “(ii) the presence of civilian defense counsel or  
7 access of civilian defense counsel to such informa-  
8 tion, as applicable, is consistent with regulations to  
9 protect classified information that the Secretary of  
10 Defense may prescribe.

11           “(C) Any defense counsel who receives classified in-  
12 formation admitted under this subsection shall not be obli-  
13 gated to, and may not, disclose that information to the  
14 accused.

15           “(D) At all times the accused must have defense  
16 counsel with sufficient security clearance to participate in  
17 any proceeding, including an ex parte or in camera presen-  
18 tation, with respect to classified information.

19           “(5) If evidence has been admitted under this sub-  
20 section that has not been provided to the accused, the  
21 judge shall instruct the members of the commission—

22           “(A) that such evidence was so admitted; and

23           “(B) that, in weighing the value of that evi-  
24 dence, the commission shall consider the fact that

1 such evidence was admitted without having been  
2 provided to the accused.

3 “(f) ADMISSION OF STATEMENTS OF ACCUSED.—(1)  
4 A statement described in paragraph (2) that is made by  
5 the accused during an interrogation, even if otherwise  
6 classified, may not be admitted into evidence in a military  
7 commission under this chapter unless the accused is  
8 present for the admission of the statement into evidence  
9 or the statement is otherwise provided to the accused.

10 “(2) A statement of an accused described in this  
11 paragraph is a statement communicated knowingly and di-  
12 rectly by the accused in response to questioning by United  
13 States or foreign military, intelligence, or criminal inves-  
14 tigative personnel.

15 “(3) This subsection shall not be construed to prevent  
16 the redaction of intelligence sources or methods, which do  
17 not constitute statements of the accused, from any docu-  
18 ment provided to the accused or admitted into evidence.

19 **“§ 949e. Continuances**

20 “The military judge in a military commission under  
21 this chapter may, for reasonable cause, grant a continu-  
22 ance to any party for such time, and as often, as may  
23 appear to be just.

**1 “§ 949f. Challenges**

2 “(a) CHALLENGES AUTHORIZED.—The military  
3 judge and members of a military commission under this  
4 chapter may be challenged by the accused or trial counsel  
5 for cause stated to the commission. The military judge  
6 shall determine the relevance and validity of challenges for  
7 cause. The military judge may not receive a challenge to  
8 more than one person at a time. Challenges by trial coun-  
9 sel shall ordinarily be presented and decided before those  
10 by the accused are offered.

11 “(b) PEREMPTORY CHALLENGES.—Each accused  
12 and the trial counsel are entitled to one peremptory chal-  
13 lenge. The military judge may not be challenged except  
14 for cause.

15 “(c) CHALLENGES AGAINST ADDITIONAL MEM-  
16 BERS.—Whenever additional members are detailed to a  
17 military commission under this chapter, and after any  
18 challenges for cause against such additional members are  
19 presented and decided, each accused and the trial counsel  
20 are entitled to one peremptory challenge against members  
21 not previously subject to peremptory challenge.

**22 “§ 949g. Oaths**

23 “(a) IN GENERAL.—(1) Before performing their re-  
24 spective duties in a military commission under this chap-  
25 ter, military judges, members, trial counsel, defense coun-

1 sel, reporters, and interpreters shall take an oath to per-  
2 form their duties faithfully.

3 “(2) The form of the oath required by paragraph (1),  
4 the time and place of the taking thereof, the manner of  
5 recording the same, and whether the oath shall be taken  
6 for all cases in which duties are to be performed or for  
7 a particular case, shall be as prescribed in regulations of  
8 the Secretary of Defense. Those regulations may provide  
9 that—

10 “(A) an oath to perform faithfully duties as a  
11 military judge, trial counsel, or defense counsel may  
12 be taken at any time by any judge advocate or other  
13 person certified to be qualified or competent for the  
14 duty; and

15 “(B) if such an oath is taken, such oath need  
16 not again be taken at the time the judge advocate  
17 or other person is detailed to that duty.

18 “(b) WITNESSES.—Each witness before a military  
19 commission under this chapter shall be examined on oath.

20 **“§ 949h. Former jeopardy**

21 “(a) IN GENERAL.—No person may, without his con-  
22 sent, be tried by a military commission under this chapter  
23 a second time for the same offense.

24 “(b) SCOPE OF TRIAL.—No proceeding in which the  
25 accused has been found guilty by military commission

1 under this chapter upon any charge or specification is a  
2 trial in the sense of this section until the finding of guilty  
3 has become final after review of the case has been fully  
4 completed.

5 **“§ 949i. Pleas of the accused**

6       “(a) ENTRY OF PLEA OF NOT GUILTY.—If an ac-  
7 cused in a military commission under this chapter after  
8 a plea of guilty sets up matter inconsistent with the plea,  
9 or if it appears that the accused has entered the plea of  
10 guilty through lack of understanding of its meaning and  
11 effect, or if the accused fails or refuses to plead, a plea  
12 of not guilty shall be entered in the record, and the mili-  
13 tary commission shall proceed as though the accused had  
14 pleaded not guilty.

15       “(b) FINDING OF GUILT AFTER GUILTY PLEA.—  
16 With respect to any charge or specification to which a plea  
17 of guilty has been made by the accused in a military com-  
18 mission under this chapter and accepted by the military  
19 judge, a finding of guilty of the charge or specification  
20 may be entered immediately without a vote. The finding  
21 shall constitute the finding of the commission unless the  
22 plea of guilty is withdrawn prior to announcement of the  
23 sentence, in which event the proceedings shall continue as  
24 though the accused had pleaded not guilty.

1 **“§ 949j. Opportunity to obtain witnesses and other**  
2 **evidence**

3 “(a) RIGHT OF DEFENSE COUNSEL.—Defense coun-  
4 sel in a military commission under this chapter shall have  
5 a reasonable opportunity to obtain witnesses and other evi-  
6 dence, including evidence in the possession of the United  
7 States, as provided in regulations prescribed by the Sec-  
8 retary of Defense.

9 “(b) PROCESS FOR COMPULSION.—Process issued in  
10 a military commission under this chapter to compel wit-  
11 nesses to appear and testify and to compel the production  
12 of other evidence—

13 “(1) shall be similar to that which courts of the  
14 United States having criminal jurisdiction may law-  
15 fully issue; and

16 “(2) shall run to any place where the United  
17 States shall have jurisdiction thereof.

18 “(c) TREATMENT OF CLASSIFIED INFORMATION.—  
19 The military judge in a military commission under this  
20 chapter, upon a sufficient showing, may authorize trial  
21 counsel, in making documents available to the accused  
22 through discovery conducted pursuant to such rules as the  
23 Secretary of Defense shall prescribe, to delete specified  
24 items of classified information from such documents and,  
25 when such a deletion is made—



1           “(1) to substitute an unclassified summary of  
2           the classified information in such documents; or

3           “(2) to substitute an unclassified statement ad-  
4           mitting relevant facts that classified information in  
5           such documents would tend to prove.

6           “(d) DISCLOSURE OF EXCULPATORY EVIDENCE.—

7           (1) As soon as practicable, trial counsel in a military com-  
8           mission under this chapter shall disclose to the defense  
9           the existence of any evidence known to trial counsel that  
10          reasonably tends to exculpate the accused.

11          “(2) Exculpatory evidence that consists of classified  
12          information may be provided solely to defense counsel, and  
13          not the accused, after review in camera by the military  
14          judge.

15          “(3) Before evidence may be withheld from the ac-  
16          cused under this subsection, the head of the executive or  
17          military department or government agency concerned shall  
18          ensure, and shall certify in writing to the military judge,  
19          that—

20                  “(A) the disclosure of such evidence to the ac-  
21                  cused could reasonably be expected to prejudice the  
22                  national security; and

23                  “(B) such evidence has been declassified to the  
24                  maximum extent possible, consistent with the re-  
25                  quirements of national security.

1       “(4) Any classified exculpatory evidence that is not  
2 disclosed to the accused under this subsection—

3           “(A) shall be provided to military defense coun-  
4 sel;

5           “(B) shall be provided to civilian defense coun-  
6 sel, if civilian defense counsel has obtained the nec-  
7 essary security clearances and access to such evi-  
8 dence is consistent with regulations that the Sec-  
9 retary may prescribe to protect classified informa-  
10 tion; and

11           “(C) shall be provided to the accused in a re-  
12 dacted or summary form, if it is possible to do so  
13 without compromising intelligence sources, methods,  
14 or activities or other national security interests.

15       “(5) A defense counsel who receives evidence under  
16 this subsection shall not be obligated to, and may not, dis-  
17 close that evidence to the accused.

18 **“§ 949k. Defense of lack of mental responsibility**

19       “(a) AFFIRMATIVE DEFENSE.—It is an affirmative  
20 defense in a trial by military commission under this chap-  
21 ter that, at the time of the commission of the acts consti-  
22 tuting the offense, the accused, as a result of a severe  
23 mental disease or defect, was unable to appreciate the na-  
24 ture and quality or the wrongfulness of the acts. Mental  
25 disease or defect does not otherwise constitute a defense.

1           “(b) BURDEN OF PROOF.—The accused in a military  
2 commission under this chapter has the burden of proving  
3 the defense of lack of mental responsibility by clear and  
4 convincing evidence.

5           “(c) FINDINGS FOLLOWING ASSERTION OF DE-  
6 FENSE.—Whenever lack of mental responsibility of the ac-  
7 cused with respect to an offense is properly at issue in  
8 a military commission under this chapter, the military  
9 judge shall instruct the members of the commission as to  
10 the defense of lack of mental responsibility under this sec-  
11 tion and shall charge them to find the accused—

12                   “(1) guilty;

13                   “(2) not guilty; or

14                   “(3) subject to subsection (d), not guilty by rea-  
15 son of lack of mental responsibility.

16           “(d) MAJORITY VOTE REQUIRED FOR FINDING.—  
17 The accused shall be found not guilty by reason of lack  
18 of mental responsibility under subsection (c)(3) only if a  
19 majority of the members present at the time the vote is  
20 taken determines that the defense of lack of mental re-  
21 sponsibility has been established.

22 **“§ 949l. Voting and rulings**

23           “(a) VOTE BY SECRET WRITTEN BALLOT.—Voting  
24 by members of a military commission under this chapter

1 on the findings and on the sentence shall be by secret writ-  
2 ten ballot.

3 “(b) RULINGS.—(1) The military judge in a military  
4 commission under this chapter shall rule upon all ques-  
5 tions of law, including the admissibility of evidence and  
6 all interlocutory questions arising during the proceedings.

7 “(2) Any ruling made by the military judge upon a  
8 question of law or an interlocutory question (other than  
9 the factual issue of mental responsibility of the accused)  
10 is conclusive and constitutes the ruling of the military  
11 commission. However, a military judge may change his  
12 ruling at any time during the trial.

13 “(c) INSTRUCTIONS PRIOR TO VOTE.—Before a vote  
14 is taken of the findings of a military commission under  
15 this chapter, the military judge shall, in the presence of  
16 the accused and counsel, instruct the members as to the  
17 elements of the offense and charge them—

18 “(1) that the accused must be presumed to be  
19 innocent until his guilt is established by legal and  
20 competent evidence beyond a reasonable doubt;

21 “(2) that in the case being considered, if there  
22 is a reasonable doubt as to the guilt of the accused,  
23 the doubt must be resolved in favor of the accused  
24 and he must be acquitted;

1           “(3) that, if there is reasonable doubt as to the  
2 degree of guilt, the finding must be in a lower de-  
3 gree as to which there is no reasonable doubt; and

4           “(4) that the burden of proof to establish the  
5 guilt of the accused beyond a reasonable doubt is  
6 upon the United States.

7 **“§ 949m. Number of votes required**

8           “(a) CONVICTION.—No person may be convicted by  
9 a military commission under this chapter of any offense,  
10 except as provided in section 949i(b) of this title or by  
11 concurrence of two-thirds of the members present at the  
12 time the vote is taken.

13           “(b) SENTENCES.—(1) No person may be sentenced  
14 by a military commission to suffer death, except insofar  
15 as—

16           “(A) the penalty of death is expressly author-  
17 ized under this chapter for an offense of which the  
18 accused has been found guilty;

19           “(B) trial counsel expressly sought the penalty  
20 of death by filing an appropriate notice in advance  
21 of trial;

22           “(C) the accused is convicted of the offense by  
23 the concurrence of all the members; and

24           “(D) all the members concur in the sentence of  
25 death.

1       “(2) No person may be sentenced to life imprison-  
2 ment, or to confinement for more than 10 years, by a mili-  
3 tary commission under this chapter except by the concur-  
4 rence of three-fourths of the members present at the time  
5 the vote is taken.

6       “(3) All other sentences shall be determined by a  
7 military commission by the concurrence of two-thirds of  
8 the members present at the time the vote is taken.

9       “(c) NUMBER OF MEMBERS REQUIRED FOR PEN-  
10 ALTY OF DEATH.—(1) Except as provided in paragraph  
11 (2), in a case in which the penalty of death is sought, the  
12 number of members of the military commission under this  
13 chapter shall be not less than 12.

14       “(2) In any case described in paragraph (1) in which  
15 12 members are not reasonably available because of phys-  
16 ical conditions or military exigencies, the convening au-  
17 thority shall specify a lesser number of members for the  
18 military commission (but not fewer than 9 members), and  
19 the military commission may be assembled, and the trial  
20 held, with not fewer than the number of members so speci-  
21 fied. In such a case, the convening authority shall make  
22 a detailed written statement, to be appended to the record,  
23 stating why a greater number of members were not rea-  
24 sonably available.

1 **“§ 949n. Military commission to announce action**

2 “A military commission under this chapter shall an-  
3 nounce its findings and sentence to the parties as soon  
4 as determined.

5 **“§ 949o. Record of trial**

6 “(a) RECORD; AUTHENTICATION.—Each military  
7 commission under this chapter shall keep a separate, ver-  
8 batim, record of the proceedings in each case brought be-  
9 fore it, and the record shall be authenticated by the signa-  
10 ture of the military judge. If the record cannot be authen-  
11 ticated by the military judge by reason of his death, dis-  
12 ability, or absence, it shall be authenticated by the signa-  
13 ture of the trial counsel or by a member of the commission  
14 if the trial counsel is unable to authenticate it by reason  
15 of his death, disability, or absence. Where appropriate,  
16 and as provided in regulations prescribed by the Secretary  
17 of Defense, the record of a military commission under this  
18 chapter may contain a classified annex.

19 “(b) COMPLETE RECORD REQUIRED.—A complete  
20 record of the proceedings and testimony shall be prepared  
21 in every military commission under this chapter.

22 “(c) PROVISION OF COPY TO ACCUSED.—A copy of  
23 the record of the proceedings of the military commission  
24 under this chapter shall be given the accused as soon as  
25 it is authenticated. If the record contains classified infor-  
26 mation, or a classified annex, the accused shall be given

1 a redacted version of the record. The appropriate defense  
2 counsel shall have access to the unredacted record, as pro-  
3 vided in regulations prescribed by the Secretary of De-  
4 fense.

5 “SUBCHAPTER V—SENTENCES

“Sec.

“949s. Cruel or unusual punishments prohibited.

“949t. Maximum limits.

“949u. Execution of confinement.

6 “§ 949s. **Cruel or unusual punishments prohibited**

7 “Punishment by flogging, or by branding, marking,  
8 or tattooing on the body, or any other cruel or unusual  
9 punishment, may not be adjudged by a military commis-  
10 sion under this chapter or inflicted under this chapter  
11 upon any person subject to this chapter. The use of irons,  
12 single or double, except for the purpose of safe custody,  
13 is prohibited under this chapter.

14 “§ 949t. **Maximum limits**

15 “The punishment which a military commission under  
16 this chapter may direct for an offense may not exceed such  
17 limits as the President or Secretary of Defense may pre-  
18 scribe for that offense.

19 “§ 949u. **Execution of confinement**

20 “(a) IN GENERAL.—Under such regulations as the  
21 Secretary of Defense may prescribe, a sentence of confine-  
22 ment adjudged by a military commission under this chap-  
23 ter may be carried into execution by confinement—



1           “(1) in any place of confinement under the con-  
2           trol of any of the armed forces; or

3           “(2) in any penal or correctional institution  
4           under the control of the United States or its allies,  
5           or which the United States may be allowed to use.

6           “(b) TREATMENT DURING CONFINEMENT BY OTHER  
7           THAN THE ARMED FORCES.—Persons confined under  
8           subsection (a)(2) in a penal or correctional institution not  
9           under the control of an armed force are subject to the  
10          same discipline and treatment as persons confined or com-  
11          mitted by the courts of the United States or of the State,  
12          District of Columbia, or place in which the institution is  
13          situated.

14          “SUBCHAPTER VI—POST-TRIAL PROCEDURE  
15          AND REVIEW OF MILITARY COMMISSIONS

“Sec.

“950a. Error of law; lesser included offense.

“950b. Review by the convening authority.

“950c. Waiver or withdrawal of appeal.

“950d. Appeal by the United States.

“950e. Rehearings.

“950f. Review by Court of Military Commission Review.

“950g. Review by the United States Court of Appeals for the District of Colum-  
  bia Circuit and the Supreme Court.

“950h. Appellate counsel.

“950i. Execution of sentence; suspension of sentence.

“950j. Finality or proceedings, findings, and sentences.

16          “**§ 950a. Error of law; lesser included offense**

17          “(a) ERROR OF LAW.—A finding or sentence of a  
18          military commission under this chapter may not be held

1 incorrect on the ground of an error of law unless the error  
2 materially prejudices the substantial rights of the accused.

3 “(b) LESSER INCLUDED OFFENSE.—Any reviewing  
4 authority with the power to approve or affirm a finding  
5 of guilty by a military commission under this chapter may  
6 approve or affirm, instead, so much of the finding as in-  
7 cludes a lesser included offense.

8 **“§ 950b. Review by the convening authority**

9 “(a) NOTICE TO CONVENING AUTHORITY OF FIND-  
10 INGS AND SENTENCE.—The findings and sentence of a  
11 military commission under this chapter shall be reported  
12 in writing promptly to the convening authority after the  
13 announcement of the sentence.

14 “(b) SUBMITTAL OF MATTERS BY ACCUSED TO CON-  
15 VENING AUTHORITY.—(1) The accused may submit to the  
16 convening authority matters for consideration by the con-  
17 vening authority with respect to the findings and the sen-  
18 tence of the military commission under this chapter.

19 “(2)(A) Except as provided in subparagraph (B), a  
20 submittal under paragraph (1) shall be made in writing  
21 within 20 days after accused has been given an authenti-  
22 cated record of trial under section 949o(c) of this title.

23 “(B) If the accused shows that additional time is re-  
24 quired for the accused to make a submittal under para-  
25 graph (1), the convening authority may, for good cause,

1 extend the applicable period under subparagraph (A) for  
2 not more than an additional 20 days.

3       “(3) The accused may waive his right to make a sub-  
4 mittal to the convening authority under paragraph (1).  
5 Such a waiver shall be made in writing and may not be  
6 revoked. For the purposes of subsection (c)(2), the time  
7 within which the accused may make a submittal under this  
8 subsection shall be deemed to have expired upon the sub-  
9 mittal of a waiver under this paragraph to the convening  
10 authority.

11       “(c) ACTION BY CONVENING AUTHORITY.—(1) The  
12 authority under this subsection to modify the findings and  
13 sentence of a military commission under this chapter is  
14 a matter of the sole discretion and prerogative of the con-  
15 vening authority.

16       “(2)(A) The convening authority shall take action on  
17 the sentence of a military commission under this chapter.

18       “(B) Subject to regulations prescribed by the Sec-  
19 retary of Defense, action on the sentence under this para-  
20 graph may be taken only after consideration of any mat-  
21 ters submitted by the accused under subsection (b) or  
22 after the time for submitting such matters expires, which-  
23 ever is earlier.

24       “(C) In taking action under this paragraph, the con-  
25 vening authority may, in his sole discretion, approve, dis-

1 approve, commute, or suspend the sentence in whole or  
2 in part. The convening authority may not increase a sen-  
3 tence beyond that which is found by the military commis-  
4 sion.

5 “(3) The convening authority is not required to take  
6 action on the findings of a military commission under this  
7 chapter. If the convening authority takes action on the  
8 findings, the convening authority may, in his sole discre-  
9 tion, may—

10 “(A) dismiss any charge or specification by set-  
11 ting aside a finding of guilty thereto; or

12 “(B) change a finding of guilty to a charge to  
13 a finding of guilty to an offense that is a lesser in-  
14 cluded offense of the offense stated in the charge.

15 “(4) The convening authority shall serve on the ac-  
16 cused or on defense counsel notice of any action taken by  
17 the convening authority under this subsection.

18 “(d) ORDER OF REVISION OR REHEARING.—(1) Sub-  
19 ject to paragraphs (2) and (3), the convening authority  
20 of a military commission under this chapter may, in his  
21 sole discretion, order a proceeding in revision or a rehear-  
22 ing.

23 “(2)(A) Except as provided in subparagraph (B), a  
24 proceeding in revision may be ordered by the convening  
25 authority if—

1           “(i) there is an apparent error or omission in  
2           the record; or

3           “(ii) the record shows improper or inconsistent  
4           action by the military commission with respect to  
5           the findings or sentence that can be rectified without  
6           material prejudice to the substantial rights of the  
7           accused.

8           “(B) In no case may a proceeding in revision—

9           “(i) reconsider a finding of not guilty of a spec-  
10          ification or a ruling which amounts to a finding of  
11          not guilty;

12          “(ii) reconsider a finding of not guilty of any  
13          charge, unless there has been a finding of guilty  
14          under a specification laid under that charge, which  
15          sufficiently alleges a violation; or

16          “(iii) increase the severity of the sentence un-  
17          less the sentence prescribed for the offense is man-  
18          datory.

19          “(3) A rehearing may be ordered by the convening  
20          authority if the convening authority disapproves the find-  
21          ings and sentence and states the reasons for disapproval  
22          of the findings. If the convening authority disapproves the  
23          finding and sentence and does not order a rehearing, the  
24          convening authority shall dismiss the charges. A rehearing  
25          as to the findings may not be ordered by the convening

1 authority when there is a lack of sufficient evidence in the  
2 record to support the findings. A rehearing as to the sen-  
3 tence may be ordered by the convening authority if the  
4 convening authority disapproves the sentence.

5 **“§ 950c. Appellate referral; waiver or withdrawal of**  
6 **appeal**

7 “(a) AUTOMATIC REFERRAL FOR APPELLATE RE-  
8 VIEW.—Except as provided under subsection (b), in each  
9 case in which the final decision of a military commission  
10 (as approved by the convening authority) includes a find-  
11 ing of guilty, the convening authority shall refer the case  
12 to the Court of Military Commission Review. Any such re-  
13 ferral shall be made in accordance with procedures pre-  
14 scribed under regulations of the Secretary.

15 “(b) WAIVER OF RIGHT OF REVIEW.—(1) In each  
16 case subject to appellate review under section 950f of this  
17 title, except a case in which the sentence as approved  
18 under section 950b of this title extends to death, the ac-  
19 cused may file with the convening authority a statement  
20 expressly waiving the right of the accused to such review.

21 “(2) A waiver under paragraph (1) shall be signed  
22 by both the accused and a defense counsel.

23 “(3) A waiver under paragraph (1) must be filed, if  
24 at all, within 10 days after notice on the action is served  
25 on the accused or on defense counsel under section

1 950b(c)(4) of this title. The convening authority, for good  
2 cause, may extend the period for such filing by not more  
3 than 30 days.

4 “(c) WITHDRAWAL OF APPEAL.—Except in a case in  
5 which the sentence as approved under section 950b of this  
6 title extends to death, the accused may withdraw an ap-  
7 peal at any time.

8 “(d) EFFECT OF WAIVER OR WITHDRAWAL.—A  
9 waiver of the right to appellate review or the withdrawal  
10 of an appeal under this section bars review under section  
11 950f of this title.

12 **“§ 950d. Appeal by the United States**

13 “(a) INTERLOCUTORY APPEAL.—(1) Except as pro-  
14 vided in paragraph (2), in a trial by military commission  
15 under this chapter, the United States may take an inter-  
16 locutory appeal to the Court of Military Commission Re-  
17 view of any order or ruling of the military judge that—

18 “(A) terminates proceedings of the military  
19 commission with respect to a charge or specification;

20 “(B) excludes evidence that is substantial proof  
21 of a fact material in the proceeding; or

22 “(C) relates to a matter under subsection (d),  
23 (e), or (f) of section 949d of this title.

24 “(2) The United States may not appeal under para-  
25 graph (1) an order or ruling that is, or amounts to, a find-

1 ing of not guilty by the military commission with respect  
2 to a charge or specification.

3 “(b) NOTICE OF APPEAL.—The United States shall  
4 take an appeal of an order or ruling under subsection (a)  
5 by filing a notice of appeal with the military judge within  
6 five days after the date of such order or ruling.

7 “(c) APPEAL.—An appeal under this section shall be  
8 forwarded, by means specified in regulations prescribed  
9 the Secretary of Defense, directly to the Court of Military  
10 Commission Review. In ruling on an appeal under this sec-  
11 tion, the Court of Military Commission Review may act  
12 only with respect to matters of law.

13 “(d) APPEAL FROM ADVERSE RULING.—The United  
14 States may appeal an adverse ruling on an appeal under  
15 subsection (c) to the United States Court of Appeals for  
16 the District of Columbia Circuit by filing a petition for  
17 review in the Court of Appeals within 10 days after the  
18 date of such ruling. Review under this subsection shall be  
19 at the discretion of the Court of Appeals.

20 **“§ 950e. Rehearings**

21 “(a) COMPOSITION OF MILITARY COMMISSION FOR  
22 REHEARING.—Each rehearing under this chapter shall  
23 take place before a military commission under this chapter  
24 composed of members who were not members of the mili-  
25 tary commission which first heard the case.



1       “(b) SCOPE OF REHEARING.—(1) Upon a rehear-  
2 ing—

3               “(A) the accused may not be tried for any of-  
4 fense of which he was found not guilty by the first  
5 military commission; and

6               “(B) no sentence in excess of or more than the  
7 original sentence may be imposed unless—

8                       “(i) the sentence is based upon a finding  
9 of guilty of an offense not considered upon the  
10 merits in the original proceedings; or

11                      “(ii) the sentence prescribed for the of-  
12 fense is mandatory.

13       “(2) Upon a rehearing, if the sentence approved after  
14 the first military commission was in accordance with a  
15 pretrial agreement and the accused at the rehearing  
16 changes his plea with respect to the charges or specifica-  
17 tions upon which the pretrial agreement was based, or oth-  
18 erwise does not comply with pretrial agreement, the sen-  
19 tence as to those charges or specifications may include any  
20 punishment not in excess of that lawfully adjudged at the  
21 first military commission.

22       **“§ 950f. Review by Court of Military Commission Re-**  
23                               **view**

24       “(a) ESTABLISHMENT.—The Secretary of Defense  
25 shall establish a Court of Military Commission Review

1 which shall be composed of one or more panels, and each  
2 such panel shall be composed of not less than three appel-  
3 late military judges. For the purpose of reviewing military  
4 commission decisions under this chapter, the court may  
5 sit in panels or as a whole in accordance with rules pre-  
6 scribed by the Secretary.

7       “(b) APPELLATE MILITARY JUDGES.—The Secretary  
8 shall assign appellate military judges to a Court of Mili-  
9 tary Commission Review. Each appellate military judge  
10 shall meet the qualifications for military judges prescribed  
11 by section 948j(b) of this title or shall be a civilian with  
12 comparable qualifications. No person may be appointed to  
13 serve as an appellate military judge in any case in which  
14 that person acted as a military judge, counsel, or review-  
15 ing official.

16       “(c) CASES TO BE REVIEWED.—The Court of Mili-  
17 tary Commission Review, in accordance with procedures  
18 prescribed under regulations of the Secretary, shall review  
19 the record in each case that is referred to the Court by  
20 the convening authority under section 950c of this title  
21 with respect to any matter of law raised by the accused.

22       “(d) SCOPE OF REVIEW.—In a case reviewed by it  
23 under this section, the Court of Military Commission Re-  
24 view may act only with respect to matters of law.

1 **“§ 950g. Review by the United States Court of Ap-**  
2 **peals for the District of Columbia Circuit**  
3 **and the Supreme Court**

4 “(a) EXCLUSIVE APPELLATE JURISDICTION.—(1)(A)  
5 Except as provided in subparagraph (B), the United  
6 States Court of Appeals for the District of Columbia Cir-  
7 cuit shall have exclusive jurisdiction to determine the va-  
8 lidity of a final judgment rendered by a military commis-  
9 sion (as approved by the convening authority) under this  
10 chapter.

11 “(B) The Court of Appeals may not review the final  
12 judgment until all other appeals under this chapter have  
13 been waived or exhausted.

14 “(2) A petition for review must be filed by the ac-  
15 cused in the Court of Appeals not later than 20 days after  
16 the date on which—

17 “(A) written notice of the final decision of the  
18 Court of Military Commission Review is served on  
19 the accused or on defense counsel; or

20 “(B) the accused submits, in the form pre-  
21 scribed by section 950c of this title, a written notice  
22 waiving the right of the accused to review by the  
23 Court of Military Commission Review under section  
24 950f of this title.

1       “(b) STANDARD FOR REVIEW.—In a case reviewed  
2 by it under this section, the Court of Appeals may act  
3 only with respect to matters of law.

4       “(c) SCOPE OF REVIEW.—The jurisdiction of the  
5 Court of Appeals on an appeal under subsection (a) shall  
6 be limited to the consideration of—

7               “(1) whether the final decision was consistent  
8 with the standards and procedures specified in this  
9 chapter; and

10              “(2) to the extent applicable, the Constitution.

11       “(d) SUPREME COURT.—The Supreme Court may re-  
12 view by writ of certiorari the final judgment of the Court  
13 of Appeals pursuant to section 1257 of title 28.

14       **“§ 950h. Appellate counsel**

15       “(a) APPOINTMENT.—The Secretary of Defense  
16 shall, by regulation, establish procedures for the appoint-  
17 ment of appellate counsel for the United States and for  
18 the accused in military commissions under this chapter.  
19 Appellate counsel shall meet the qualifications for counsel  
20 appearing before military commissions under this chapter.

21       “(b) REPRESENTATION OF UNITED STATES.—Appel-  
22 late counsel appointed under subsection (a)—

23               “(1) shall represent the United States in any  
24 appeal or review proceeding under this chapter be-  
25 fore the Court of Military Commission Review; and

1           “(2) may, when requested to do so by the At-  
2           torney General in a case arising under this chapter,  
3           represent the United States before the United States  
4           Court of Appeals for the District of Columbia Cir-  
5           cuit or the Supreme Court.

6           “(c) REPRESENTATION OF ACCUSED.—The accused  
7           shall be represented by appellate counsel appointed under  
8           subsection (a) before the Court of Military Commission  
9           Review, the United States Court of Appeals for the Dis-  
10          trict of Columbia Circuit, and the Supreme Court, and by  
11          civilian counsel if retained by the accused. Any such civil-  
12          ian counsel shall meet the qualifications under paragraph  
13          (3) of section 949c(b) of this title for civilian counsel ap-  
14          pearing before military commissions under this chapter  
15          and shall be subject to the requirements of paragraph (4)  
16          of that section. The provisions of subparagraph (D) of sec-  
17          tion 949d(e)(5) of this title shall apply with respect to ap-  
18          pellate counsel.

19          **“§ 950i. Execution of sentence; suspension of sentence**

20          “(a) EXECUTION OF SENTENCE OF DEATH ONLY  
21          UPON APPROVAL BY THE PRESIDENT.—If the sentence  
22          of a military commission under this chapter extends to  
23          death, that part of the sentence providing for death may  
24          not be executed until approved by the President. In such

1 a case, the President may commute, remit, or suspend the  
2 sentence, or any part thereof, as he sees fit.

3 “(b) EXECUTION OF SENTENCE OF DEATH ONLY  
4 UPON FINAL JUDGMENT OF LEGALITY OF PRO-  
5 CEEDINGS.—(1) If the sentence of a military commission  
6 under this chapter extends to death, the sentence may not  
7 be executed until there is a final judgement as to the legal-  
8 ity of the proceedings (and with respect to death, approval  
9 under subsection (a)).

10 “(2) A judgement as to legality of proceedings is final  
11 for purposes of paragraph (1) when—

12 “(A) the time for the accused to file a petition  
13 for review by the Court of Appeals for the District  
14 of Columbia Circuit has expired and the accused has  
15 not filed a timely petition for such review and the  
16 case is not otherwise under review by that Court; or

17 “(B) review is completed in accordance with the  
18 judgment of the United States Court of Appeals for  
19 the District of Columbia Circuit and—

20 “(i) a petition for a writ of certiorari is not  
21 timely filed;

22 “(ii) such a petition is denied by the Su-  
23 preme Court; or

1                   “(iii) review is otherwise completed in ac-  
2                   cordance with the judgment of the Supreme  
3                   Court.

4                   “(c) SUSPENSION OF SENTENCE.—The Secretary of  
5 the Defense, or the convening authority acting on the case  
6 (if other than the Secretary), may suspend the execution  
7 of any sentence or part thereof in the case, except a sen-  
8 tence of death.

9                   **“§ 950j. Finality or proceedings, findings, and sen-  
10                   tences**

11                   “(a) FINALITY.—The appellate review of records of  
12 trial provided by this chapter, and the proceedings, find-  
13 ings, and sentences of military commissions as approved,  
14 reviewed, or affirmed as required by this chapter, are final  
15 and conclusive. Orders publishing the proceedings of mili-  
16 tary commissions under this chapter are binding upon all  
17 departments, courts, agencies, and officers of the United  
18 States, except as otherwise provided by the President.

19                   “(b) PROVISIONS OF CHAPTER SOLE BASIS FOR RE-  
20 VIEW OF MILITARY COMMISSION PROCEDURES AND AC-  
21 TIONS.—Except as otherwise provided in this chapter and  
22 notwithstanding any other provision of law (including sec-  
23 tion 2241 of title 28 or any other habeas corpus provi-  
24 sion), no court, justice, or judge shall have jurisdiction to  
25 hear or consider any claim or cause of action whatsoever,

1 including any action pending on or filed after the date of  
 2 the enactment of the Military Commissions Act of 2006,  
 3 relating to the prosecution, trial, or judgment of a military  
 4 commission under this chapter, including challenges to the  
 5 lawfulness of procedures of military commissions under  
 6 this chapter.

7 “SUBCHAPTER VII—PUNITIVE MATTERS

“Sec.

“950p. Statement of substantive offenses.

“950q. Principals.

“950r. Accessory after the fact.

“950s. Conviction of lesser included offense.

“950t. Attempts.

“950u. Solicitation.

“950v. Crimes triable by military commissions.

“950w. Perjury and obstruction of justice.

“950x. Contempt.

8 “§ 950p. Statement of substantive offenses

9 “(a) PURPOSE.—The provisions of this subchapter  
 10 codify offenses that have traditionally been triable by mili-  
 11 tary commissions. This chapter does not establish new  
 12 crimes that did not exist before its enactment, but rather  
 13 codifies those crimes for trial by military commission.

14 “(b) EFFECT.—Because the provisions of this sub-  
 15 chapter (including provisions that incorporate definitions  
 16 in other provisions of law) are declarative of existing law,  
 17 they do not preclude trial for crimes that occurred before  
 18 the date of the enactment of this chapter.



1 **“§ 950q. Principals**

2 “Any person is punishable as a principal under this  
3 chapter who—

4 “(1) commits an offense punishable by this  
5 chapter, or aids, abets, counsels, commands, or pro-  
6 cures its commission;

7 “(2) causes an act to be done which if directly  
8 performed by him would be punishable by this chap-  
9 ter; or

10 “(3) is a superior commander who, with regard  
11 to acts punishable under this chapter, knew, had  
12 reason to know, or should have known, that a subor-  
13 dinate was about to commit such acts or had done  
14 so and the superior failed to take the necessary and  
15 reasonable measures to prevent such acts or to pun-  
16 ish the perpetrators thereof.

17 **“§ 950r. Accessory after the fact**

18 “Any person subject to this chapter who, knowing  
19 that an offense punishable by this chapter has been com-  
20 mitted, receives, comforts, or assists the offender in order  
21 to hinder or prevent his apprehension, trial, or punishment  
22 shall be punished as a military commission under this  
23 chapter may direct.

24 **“§ 950s. Conviction of lesser included offense**

25 “An accused may be found guilty of an offense nec-  
26 essarily included in the offense charged or of an attempt

1 to commit either the offense charged or an attempt to  
2 commit either the offense charged or an offense nec-  
3 essarily included therein.

4 **“§ 950t. Attempts**

5 “(a) IN GENERAL.—Any person subject to this chap-  
6 ter who attempts to commit any offense punishable by this  
7 chapter shall be punished as a military commission under  
8 this chapter may direct.

9 “(b) SCOPE OF OFFENSE.—An act, done with spe-  
10 cific intent to commit an offense under this chapter,  
11 amounting to more than mere preparation and tending,  
12 even though failing, to effect its commission, is an attempt  
13 to commit that offense.

14 “(c) EFFECT OF CONSUMMATION.—Any person sub-  
15 ject to this chapter may be convicted of an attempt to com-  
16 mit an offense although it appears on the trial that the  
17 offense was consummated.

18 **“§ 950u. Solicitation**

19 “Any person subject to this chapter who solicits or  
20 advises another or others to commit one or more sub-  
21 stantive offenses triable by military commission under this  
22 chapter shall, if the offense solicited or advised is at-  
23 tempted or committed, be punished with the punishment  
24 provided for the commission of the offense, but, if the of-  
25 fense solicited or advised is not committed or attempted,

1 he shall be punished as a military commission under this  
2 chapter may direct.

3 **“§ 950v. Crimes triable by military commissions**

4 “(a) DEFINITIONS AND CONSTRUCTION.—In this sec-  
5 tion:

6 “(1) MILITARY OBJECTIVE.—The term ‘military  
7 objective’ refers to—

8 “(A) combatants; and

9 “(B) those objects during an armed con-  
10 flict—

11 “(i) which, by their nature, location,  
12 purpose, or use, effectively contribute to  
13 the opposing force’s war-fighting or war-  
14 sustaining capability; and

15 “(ii) the total or partial destruction,  
16 capture, or neutralization of which would  
17 constitute a definite military advantage to  
18 the attacker under the circumstances at  
19 the time of the attack.

20 “(2) PROTECTED PERSON.—The term ‘pro-  
21 tected person’ refers to any person entitled to pro-  
22 tection under one or more of the Geneva Conven-  
23 tions, including—

24 “(A) civilians not taking an active part in  
25 hostilities;

1           “(B) military personnel placed hors de  
2           combat by sickness, wounds, or detention; and

3           “(C) military medical or religious per-  
4           sonnel.

5           “(3) PROTECTED PROPERTY.—The term ‘pro-  
6           tected property’ refers to property specifically pro-  
7           tected by the law of war (such as buildings dedicated  
8           to religion, education, art, science or charitable pur-  
9           poses, historic monuments, hospitals, or places  
10          where the sick and wounded are collected), if such  
11          property is not being used for military purposes or  
12          is not otherwise a military objective. Such term in-  
13          cludes objects properly identified by one of the dis-  
14          tinctive emblems of the Geneva Conventions.

15          “(4) CONSTRUCTION.—The intent specified for  
16          an offense under paragraph (1), (2), (3), (4), or  
17          (12) of subsection (b) precludes the applicability of  
18          such offense with regard to—

19                  “(A) collateral damage; or

20                  “(B) death, damage, or injury incident to  
21                  a lawful attack.

22          “(b) OFFENSES.—The following offenses shall be tri-  
23          able by military commission under this chapter at any  
24          time without limitation:

1           “(1) MURDER OF PROTECTED PERSONS.—An  
2 alien unlawful enemy combatant who intentionally  
3 kills one or more protected persons is guilty of the  
4 offense of intentionally killing a protected person  
5 and shall be subject to whatever punishment a com-  
6 mission may direct, including the penalty of death.

7           “(2) ATTACKING CIVILIANS.—An alien unlawful  
8 enemy combatant who intentionally engages in an  
9 attack upon a civilian population as such or indi-  
10 vidual civilians not taking active part in hostilities is  
11 guilty of the offense of attacking civilians and shall  
12 be subject to whatever punishment a commission  
13 may direct, including, if death results to one or more  
14 of the victims, the penalty of death.

15           “(3) ATTACKING CIVILIAN OBJECTS.—An alien  
16 unlawful enemy combatant who intentionally en-  
17 gages in an attack upon property that is not a mili-  
18 tary objective shall be guilty of the offense of attack-  
19 ing civilian objects and shall be subject to whatever  
20 punishment a commission may direct.

21           “(4) ATTACKING PROTECTED PROPERTY.—An  
22 alien unlawful enemy combatant who intentionally  
23 engages in an attack upon protected property shall  
24 be guilty of the offense of attacking protected prop-

1 erty and shall be subject to whatever punishment a  
2 commission may direct.

3 “(5) PILLAGING.—An alien unlawful enemy  
4 combatant who intentionally and in the absence of  
5 military necessity appropriates or seizes property for  
6 private or personal use, without the consent of a  
7 person with authority to permit such appropriation  
8 or seizure, shall be guilty of the offense of pillaging  
9 and shall be subject to whatever punishment a com-  
10 mission may direct.

11 “(6) DENYING QUARTER.—An alien unlawful  
12 enemy combatant who, with effective command or  
13 control over subordinate groups, declares, orders, or  
14 otherwise indicates to those forces that there shall  
15 be no survivors or surrender accepted, with the in-  
16 tent therefore to threaten an adversary or to conduct  
17 hostilities such that there would be no survivors or  
18 surrender accepted, shall be guilty of denying quar-  
19 ter and shall be subject to whatever punishment a  
20 commission may direct.

21 “(7) TAKING HOSTAGES.—An alien unlawful  
22 enemy combatant who, having knowingly seized or  
23 detained one or more persons, threatens to kill, in-  
24 jure, or continue to detain such person or persons  
25 with the intent of compelling any nation, person

1 other than the hostage, or group of persons to act  
2 or refrain from acting as an explicit or implicit con-  
3 dition for the safety or release of such person or per-  
4 sons, shall be guilty of the offense of taking hostages  
5 and shall be subject to whatever punishment a com-  
6 mission may direct, including, if death results to one  
7 or more of the victims, the penalty of death.

8 “(8) EMPLOYING POISON OR ANALOGOUS WEAP-  
9 ONS.—An alien unlawful enemy combatant who in-  
10 tentiously, as a method of warfare, employs a sub-  
11 stance or a weapon that releases a substance that  
12 causes death or serious and lasting damage to health  
13 in the ordinary course of events, through its asphyx-  
14 iating, bacteriological, or toxic properties, shall be  
15 guilty of employing poison or analogous weapons and  
16 shall be subject to whatever punishment a commis-  
17 sion may direct, including, if death results to one or  
18 more of the victims, the penalty of death.

19 “(9) USING PROTECTED PERSONS AS  
20 SHIELDS.—An alien unlawful enemy combatant who  
21 positions, or otherwise takes advantage of, a pro-  
22 tected person with the intent to shield a military ob-  
23 jective from attack or to shield, favor, or impede  
24 military operations, shall be guilty of the offense of  
25 using protected persons as shields and shall be sub-

1       ject to whatever punishment a commission may di-  
2       rect, including, if death results to one or more of the  
3       victims, the penalty of death.

4           “(10) USING PROTECTED PROPERTY AS  
5       SHIELDS.—An alien unlawful enemy combatant who  
6       positions, or otherwise takes advantage of the loca-  
7       tion of, protected property under the law of war with  
8       the intent to shield a military objective from attack  
9       or to shield, favor, or impede military operations,  
10       shall be guilty of the offense of using protected prop-  
11       erty as shields and shall be subject to whatever pun-  
12       ishment a commission may direct.

13           “(11) TORTURE.—An alien unlawful enemy  
14       combatant who commits an act specifically intended  
15       to inflict severe physical pain or suffering or severe  
16       mental pain or suffering (other than pain or suf-  
17       fering incidental to lawful sanctions) upon another  
18       person within his custody or physical control for the  
19       purpose of obtaining information or a confession,  
20       punishment, intimidation, coercion, or any reason  
21       based on discrimination of any kind, shall be guilty  
22       of torture and subject to whatever punishment a  
23       commission may direct, including, if death results to  
24       one or more of the victims, the penalty of death. In  
25       this paragraph, the term ‘severe mental pain or suf-



1       fering’ has the meaning given that term in section  
2       2340(2) of title 18.

3           “(12) CRUEL OR INHUMAN TREATMENT.—An  
4       alien unlawful enemy combatant who commits an act  
5       intended to inflict severe physical pain or suffering  
6       or severe mental pain or suffering (other than pain  
7       or suffering incidental to lawful sanctions), including  
8       severe physical abuse, upon another person within  
9       his custody or physical control shall be guilty of  
10      cruel or inhuman treatment and subject to whatever  
11      punishment a commission may direct, including, if  
12      death results to one or more of the victims, the pen-  
13      alty of death. In this paragraph, the term ‘severe  
14      mental pain or suffering’ has the meaning given that  
15      term in section 2340(2) of title 18.

16          “(13) INTENTIONALLY CAUSING SERIOUS BOD-  
17      ILY INJURY.—An alien unlawful enemy combatant  
18      who intentionally causes serious bodily injury to one  
19      or more persons, including lawful combatants, in vio-  
20      lation of the law of war shall be guilty of the offense  
21      of causing serious bodily injury and shall be subject  
22      to whatever punishment a commission may direct,  
23      including, if death results to one or more of the vic-  
24      tims, the penalty of death. In this paragraph, the

1 term ‘serious bodily injury’ has the meaning given  
2 that term in section 113(b)(2) of title 18.

3 “(14) MUTILATING OR MAIMING.—An alien un-  
4 lawful enemy combatant who intentionally injures  
5 one or more protected persons, by disfiguring the  
6 person or persons by any mutilation thereof or by  
7 permanently disabling any member, limb, or organ  
8 of his body, without any legitimate medical or dental  
9 purpose, shall be guilty of the offense of mutilation  
10 or maiming and shall be subject to whatever punish-  
11 ment a commission may direct, including, if death  
12 results to one or more of the victims, the penalty of  
13 death.

14 “(15) MURDER IN VIOLATION OF THE LAW OF  
15 WAR.—An alien unlawful enemy combatant who in-  
16 tentiously kills one or more persons, including law-  
17 ful combatants, in violation of the law of war shall  
18 be guilty of the offense of murder in violation of the  
19 law of war and shall be subject to whatever punish-  
20 ment a commission may direct, including the penalty  
21 of death.

22 “(16) DESTRUCTION OF PROPERTY IN VIOLA-  
23 TION OF THE LAW OF WAR.—An alien unlawful  
24 enemy combatant who intentionally destroys prop-  
25 erty belonging to another person in violation of the

1 law of war shall be guilty of the offense of destruc-  
2 tion of property in violation of the law of war and  
3 shall be subject to whatever punishment a commis-  
4 sion may direct.

5 “(17) USING TREACHERY OR PERFIDY.—An  
6 alien unlawful enemy combatant who, after inviting  
7 the confidence or belief of one or more persons that  
8 they were entitled to, or obliged to accord, protection  
9 under the law of war, intentionally makes use of  
10 that confidence or belief in killing, injuring, or cap-  
11 turing such person or persons, shall be guilty of  
12 using treachery or perfidy and shall be subject to  
13 whatever punishment a commission may direct.

14 “(18) IMPROPERLY USING A FLAG OF TRUCE.—  
15 An alien unlawful enemy combatant who uses a flag  
16 of truce to feign an intention to negotiate, sur-  
17 render, or otherwise to suspend hostilities when  
18 there is no such intention, shall be guilty of improp-  
19 erly using a flag of truce and shall be subject to  
20 whatever punishment a commission may direct.

21 “(19) IMPROPERLY USING A DISTINCTIVE EM-  
22 BLEM.—An alien unlawful enemy combatant who in-  
23 tentiously uses a distinctive emblem recognized by  
24 the law of war for combatant purposes in a manner  
25 prohibited by the law of war shall be guilty of im-

1 properly using a distinctive emblem and shall be  
2 subject to whatever punishment a commission may  
3 direct.

4 “(20) INTENTIONALLY MISTREATING A DEAD  
5 BODY.—An alien unlawful enemy combatant who in-  
6 tentiously mistreats the body of a dead person,  
7 without justification by legitimate military necessary,  
8 shall be guilty of the offense of mistreating a dead  
9 body and shall be subject to whatever punishment a  
10 commission may direct.

11 “(21) RAPE.—An alien unlawful enemy combat-  
12 ant who forcibly or with coercion or threat of force  
13 wrongfully invades the body of a person by pene-  
14 trating, however slightly, the anal or genital opening  
15 of the victim with any part of the body of the ac-  
16 cused or with any foreign object shall be guilty of  
17 the offense of rape and shall be subject to whatever  
18 punishment a commission may direct.

19 “(22) HIJACKING OR HAZARDING A VESSEL OR  
20 AIRCRAFT.—An alien unlawful enemy combatant  
21 subject to this title who intentionally seizes, exer-  
22 cises unauthorized control over, or endangers the  
23 safe navigation of, a vessel or aircraft that was not  
24 a legitimate military target is guilty of the offense  
25 of hijacking or hazarding a vessel or aircraft and

1 shall be subject to whatever punishment a commis-  
2 sion may direct, including, if death results to one or  
3 more of the victims, the penalty of death.

4 “(23) **TERRORISM.**—An alien unlawful enemy  
5 combatant subject to this title who intentionally kills  
6 or inflicts great bodily harm on one or more persons,  
7 or intentionally engages in an act that evinces a  
8 wanton disregard for human life, in a manner cal-  
9 culated to influence or affect the conduct of govern-  
10 ment or civilian population by intimidation or coer-  
11 cion, or to retaliate against government conduct,  
12 shall be guilty of the offense of terrorism and shall  
13 be subject to whatever punishment a commission  
14 may direct, including, if death results to one or more  
15 of the victims, the penalty of death.

16 “(24) **PROVIDING MATERIAL SUPPORT FOR**  
17 **TERRORISM.**—An alien unlawful enemy combatant  
18 who provides material support or resources, knowing  
19 or intending that they are to be used in preparation  
20 for, or in carrying out, an act of terrorism (as de-  
21 fined in paragraph (23)), or who intentionally pro-  
22 vides material support or resources to an inter-  
23 national terrorist organization engaged in hostilities  
24 against the United States, knowing that such orga-  
25 nization has engaged or engages in terrorism (as de-

1        fined in paragraph (23)), shall be guilty of the of-  
2        fense of providing material support for terrorism  
3        and shall be subject to whatever punishment a com-  
4        mission may direct. In this paragraph, the term ‘ma-  
5        terial support or resources’ has the meaning given  
6        that term in section 2339A(b) of title 18.

7            “(25) WRONGFULLY AIDING THE ENEMY.—An  
8        alien unlawful enemy combatant who, in breach of  
9        an allegiance or duty to the United States, know-  
10       ingly and intentionally aids an enemy of the United  
11       States or one its co-belligerents shall be guilty of the  
12       offense of wrongfully aiding the enemy and shall be  
13       subject to whatever punishment a commission may  
14       direct.

15           “(26) SPYING.—An alien unlawful enemy com-  
16       batant who, with intent or reason to believe that it  
17       is to be used to the injury of the United States or  
18       to the advantage of a foreign power, collects or at-  
19       tempts to collect certain information by clandestine  
20       means or while acting under false pretenses, for the  
21       purpose of conveying such information to an enemy  
22       of the United States or one of its co-belligerents,  
23       shall be guilty of the offense of spying and shall be  
24       subject to whatever punishment a commission may  
25       direct, including the penalty of death.

1           “(27) CONSPIRACY.—An alien unlawful enemy  
 2           combatant who conspires to commit one or more  
 3           substantive offenses triable under this section, and  
 4           who knowingly does any overt act to effect the object  
 5           of the conspiracy, shall be guilty of conspiracy and  
 6           shall be subject to whatever punishment a commis-  
 7           sion may direct, including, if death results to one or  
 8           more of the victims, the penalty of death.

9   **“§ 950w. Perjury and obstruction of justice**

10          “A military commission under this chapter may try  
 11          offenses and impose punishments for perjury, false testi-  
 12          mony, or obstruction of justice related to military commis-  
 13          sions under this chapter.

14   **“§ 950x. Contempt**

15          “A military commission under this chapter may pun-  
 16          ish for contempt any person who uses any menacing word,  
 17          sign, or gesture in its presence, or who disturbs its pro-  
 18          ceedings by any riot or disorder.”.

19               (2) TABLES OF CHAPTERS AMENDMENTS.—The  
 20          tables of chapters at the beginning of subtitle A, and  
 21          at the beginning of part II of subtitle A, of title 10,  
 22          United States Code, are each amended by inserting  
 23          after the item relating to chapter 47 the following  
 24          new item:

“47A. Military Commissions ..... 948a”.

1 (b) CONFORMING AMENDMENT TO UCMJ.—Section  
2 836(a) of title 10, United States Code (article 36(a) of  
3 the Uniform Code of Military Justice)), is amended by in-  
4 serting “, except as provided in chapter 47A of this title,”  
5 after “but which may not”.

6 (c) SUBMITTAL OF PROCEDURES TO CONGRESS.—  
7 Not later than 90 days after the date of the enactment  
8 of this Act, the Secretary of Defense shall submit to the  
9 Committees on Armed Services of the Senate and the  
10 House of Representatives a report setting forth the proce-  
11 dures for military commissions prescribed under chapter  
12 47A of title 10, United States Code (as added by sub-  
13 section (a)).

14 **SEC. 4. CLARIFICATION OF CONDUCT CONSTITUTING WAR**  
15 **CRIME OFFENSE UNDER FEDERAL CRIMINAL**  
16 **CODE.**

17 (a) APPLICABILITY ONLY TO SERIOUS VIOLATIONS  
18 OF COMMON ARTICLE 3.—Section 2441 of title 18, United  
19 States Code is amended—

20 (1) by striking paragraph (3) of subsection (c)  
21 and inserting the following:

22 “(3) which constitutes a serious violation of  
23 common Article 3 of the 1949 Geneva Conventions,  
24 when committed in the context of and in association



1 with an armed conflict not of an international char-  
2 acter; or”; and

3 (2) by adding at the end the following new sub-  
4 section:

5 “(d) COVERED COMMON ARTICLE 3 VIOLATIONS.—

6 “(1) SERIOUS VIOLATIONS.—In subsection  
7 (c)(3), the term ‘serious violation of common Article  
8 3 of the 1949 Geneva Conventions’ means any of the  
9 following:

10 “(A) TORTURE.—The act of a person who  
11 commits, or conspires or attempts to commit,  
12 an act specifically intended to inflict severe  
13 physical pain or suffering or severe mental pain  
14 or suffering (as such term is defined in section  
15 2340(2) of this title), other than pain or suf-  
16 fering incidental to lawful sanctions, upon an-  
17 other person within his custody or physical con-  
18 trol for the purpose of obtaining information or  
19 a confession, punishment, intimidation, coer-  
20 cion, or any reason based on discrimination of  
21 any kind.

22 “(B) CRUEL OR INHUMAN TREATMENT.—

23 The act of a person who commits, or conspires  
24 or attempts to commit, an act intended to in-  
25 flict severe physical pain or suffering or severe

1           mental pain or suffering (as such term is de-  
2           fined in section 2340(2) of this title), other  
3           than pain or suffering incidental to lawful sanc-  
4           tions, and including severe physical abuse, upon  
5           another person within his custody or physical  
6           control.

7           “(C) PERFORMING BIOLOGICAL EXPERI-  
8           MENTS.—The act of a person who subjects, or  
9           conspires or attempts to subject, one or more  
10          persons within his custody or physical control to  
11          biological experiments and in so doing endan-  
12          gers the body or health of such person or per-  
13          sons.

14          “(D) MURDER.—The act of a person who  
15          intentionally kills, or conspires or attempts to  
16          kill, or kills whether intentionally or uninten-  
17          tionally in the course of committing any other  
18          offense under this section, one or more persons  
19          taking no active part in the hostilities, including  
20          those placed hors de combat by sickness,  
21          wounds, detention, or any other cause.

22          “(E) MUTILATION OR MAIMING.—The act  
23          of a person who intentionally injures, or con-  
24          spires or attempts to injure, or injures whether  
25          intentionally or unintentionally in the course of

1 committing any other offense under this sec-  
2 tion, one or more persons taking no active part  
3 in the hostilities, including those placed hors de  
4 combat by sickness, wounds, detention, or any  
5 other cause, by disfiguring the person or per-  
6 sons by any mutilation thereof or by perma-  
7 nently disabling any member, limb, or organ of  
8 his body, without any legitimate medical or den-  
9 tal purpose.

10 “(F) INTENTIONALLY CAUSING GREAT  
11 SUFFERING OR SERIOUS INJURY.—The act of a  
12 person who intentionally causes, or conspires or  
13 attempts to cause, serious bodily injury (as  
14 such term is defined in section 113(b)(2) of this  
15 title) to one or more persons taking no active  
16 part in the hostilities, including those placed  
17 hors de combat by sickness, wounds, detention,  
18 or any other cause.

19 “(G) RAPE.—The act of a person who  
20 forcibly or with coercion or threat of force  
21 wrongfully invades, or conspires or attempts to  
22 invade, the body of a person by penetrating,  
23 however slightly, the anal or genital opening of  
24 the victim with any part of the body of the ac-  
25 cused or with any foreign object.

1           “(H) SEXUAL ASSAULT OR ABUSE.—The  
2           act of a person who forcibly or with coercion or  
3           threat of force engages, or conspires or at-  
4           tempts to engage, in sexual contact (as such  
5           term is defined in section 2246(3) of this title)  
6           with one or more persons, or causes, or con-  
7           spires or attempts to cause, one or more per-  
8           sons to engage in sexual contact (as so defined).

9           “(I) TAKING HOSTAGES.—The act of a  
10          person who—

11                 “(i) having knowingly seized or de-  
12                 tained one or more persons, threatens to  
13                 kill, injure, or continue to detain such per-  
14                 son or persons with the intent of compel-  
15                 ling any nation, person other than the hos-  
16                 tage, or group of persons to act or refrain  
17                 from acting as an explicit or implicit condi-  
18                 tion for the safety or release of such per-  
19                 son or persons; or

20                 “(ii) attempts to engage or conspires  
21                 to engage in conduct under clause (i).

22           “(2) INAPPLICABILITY OF SPECIFIED PROVI-  
23           SIONS WITH RESPECT TO CERTAIN CONDUCT.—The  
24           intent specified for the conduct stated in subpara-  
25           graphs (D), (E), and (F) of paragraph (1) precludes

1 the applicability of those subparagraphs with regard  
2 to—

3 “(A) collateral damage; or

4 “(B) death, damage, or injury incident to  
5 a lawful attack.”.

6 (b) **RETROACTIVE APPLICABILITY.**—The amend-  
7 ments made by this section shall take effect as of Novem-  
8 ber 26, 1997, as if enacted immediately after the amend-  
9 ments made by section 583 of Public Law 105–118 (as  
10 amended by section 4002 of Public Law 107–273).

11 **SEC. 5. JUDICIAL REVIEW.**

12 Section 2241 of title 28, United States Code, is  
13 amended by striking both the subsection (e) added by sec-  
14 tion 1005(e)(1) of Public Law 109–148 (119 Stat. 2742)  
15 and the subsection (e) added by section 1405(e)(1) of  
16 Public Law 109–163 (119 Stat. 3477) and inserting the  
17 following new subsection (e):

18 “(e)(1) Except as provided for in this subsection, and  
19 notwithstanding any other law, no court, justice, or judge  
20 shall have jurisdiction to hear or consider any claim or  
21 cause of action, including an application for a writ of ha-  
22 beas corpus, pending on or filed after the date of the en-  
23 actment of the Military Commissions Act of 2006, against  
24 the United States or its agents, brought by or on behalf  
25 of any alien detained by the United States as an unlawful

1 enemy combatant, relating to any aspect of the alien’s de-  
2 tention, transfer, treatment, or conditions of confinement.

3 “(2) The United States Court of Appeals for the Dis-  
4 trict of Columbia Circuit shall have exclusive jurisdiction  
5 to determine the validity of any final decision of a Combat-  
6 ant Status Review Tribunal. The scope of such review is  
7 defined in section 1005(e)(2) of the Detainee Treatment  
8 Act of 2005. If the Court grants a detainee’s petition for  
9 review, the Secretary of Defense may conduct a new Com-  
10 batant Status Review Tribunal.

11 “(3) Review shall be had only of final judgments of  
12 military commissions as provided for pursuant to section  
13 950g of title 10, United States Code.

14 “(4) The court may consider classified information  
15 submitted in camera and ex parte in making any deter-  
16 mination under this section.”.

17 **SEC. 6. SATISFACTION OF TREATY OBLIGATIONS.**

18 (a) IN GENERAL.—Satisfaction of the prohibitions  
19 against cruel, inhuman, and degrading treatment set forth  
20 in section 1003 of the Detainee Treatment Act of 2005  
21 (42 U.S.C. 2000dd) shall fully satisfy United States obli-  
22 gations with respect to the standards for detention and  
23 treatment established by section 1 of Common Article 3  
24 of the Geneva Conventions, with the exception of the obli-

1 gations imposed by subsections 1(b) and 1(d) of such Arti-  
2 cle .

3 (b) RIGHTS NOT JUDICIALLY ENFORCEABLE.—

4 (1) IN GENERAL.—No person in any habeas ac-  
5 tion or any other action may invoke the Geneva Con-  
6 ventions or any protocols thereto as a source of  
7 rights, whether directly or indirectly, for any pur-  
8 pose in any court of the United States or its States  
9 or territories.

10 (2) CONSTRUCTION.—Paragraph (1) may not  
11 be construed to affect the obligations of the United  
12 States under the Geneva Conventions.

13 (c) GENEVA CONVENTIONS DEFINED.—In this sec-  
14 tion, the term “Geneva Conventions” means the inter-  
15 national conventions signed at Geneva on August 12,  
16 1949, including common Article 3.

17 **SEC. 7. REVISIONS TO DETAINEE TREATMENT ACT OF 2005**

18 **RELATING TO PROTECTION OF CERTAIN**

19 **UNITED STATES GOVERNMENT PERSONNEL.**

20 (a) COUNSEL AND INVESTIGATIONS.—Section  
21 1004(b) of the Detainee Treatment Act of 2005 (42  
22 U.S.C. 2000dd–1(b)) is amended—

23 (1) by striking “may provide” and inserting  
24 “shall provide”;

1           (2) by inserting “or investigation” after “crimi-  
2           nal prosecution”; and

3           (3) by inserting “whether before United States  
4           courts or agencies, foreign courts or agencies, or  
5           international courts or agencies,” after “described in  
6           that subsection”.

7           (b) PROTECTION OF PERSONNEL.—Section 1004 of  
8           the Detainee Treatment Act of 2005 (42 U.S.C. 2000dd–  
9           1) shall apply with respect to any criminal prosecution  
10          that—

11           (1) relates to the detention and interrogation of  
12          aliens described in such section;

13           (2) is grounded in section 2441(c)(3) of title  
14          18, United States Code; and

15           (3) relates to actions occurring between Sep-  
16          tember 11, 2001, and December 30, 2005.

17          **SEC. 8. RETROACTIVE APPLICABILITY.**

18          This Act shall take effect on the date of the enact-  
19          ment of this Act and shall apply retroactively, including—

20           (1) to any aspect of the detention, treatment, or  
21          trial of any person detained at any time since Sep-  
22          tember 11, 2001; and

23           (2) to any claim or cause of action pending on  
24          or after the date of the enactment of this Act.

○