

109TH CONGRESS
2D SESSION

To facilitate bringing to justice terrorists and other unlawful enemy combatants through full and fair trials by military commissions, and for other purposes.

IN THE OF THE UNITED STATES

introduced the following bill; which was read twice and referred to the Committee on

A BILL

To facilitate bringing to justice terrorists and other unlawful enemy combatants through full and fair trials by military commissions, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Military Commis-
3 sions Act of 2006”.

4 **SEC. 2. FINDINGS.**

5 Congress makes the following findings:

6 (1) For more than 10 years, the al Qaeda ter-
7 rorist organization has waged an unlawful war of
8 violence and terror against the United States and
9 its allies. Al Qaeda was involved in the bombing

1 of the World Trade Center in New York City in
2 1993, the bombing of the United States Embassies
3 in Kenya and Tanzania in 1998, and the attack on
4 the *U.S.S. Cole* in Yemen in 2000. On September
5 11, 2001, al Qaeda launched the most deadly for-
6 eign attack on United States soil in history. Nine-
7 teen al Qaeda operatives hijacked four commercial
8 aircraft and piloted them into the World Trade
9 Center Towers in New York City and the head-
10 quarters of the United States Department of De-
11 fense at the Pentagon, and downed United Airlines
12 Flight 93. The attack destroyed the Towers, se-
13 verely damaged the Pentagon, and resulted in the
14 deaths of approximately 3,000 innocent people.

15 (2) Following the attacks on the United
16 States on September 11th, Congress recognized the
17 existing hostilities with al Qaeda and affiliated ter-
18 rorist organizations and, by the Authorization for
19 the Use of Military Force Joint Resolution (Public
20 Law 107-40), recognized that “the President has
21 authority under the Constitution to take action to
22 deter and prevent acts of international terrorism
23 against the United States” and authorized the
24 President “to use all necessary and appropriate
25 force against those nations, organizations, or per-

1 sons he determines planned, authorized, commit-
2 ted, or aided the terrorist attacks that occurred on
3 September 11, 2001 . . . in order to prevent any fu-
4 ture acts of international terrorism against the
5 United States by such nations, organizations or
6 persons.”

7 (3) The President’s authority to convene
8 military commissions arises from the Constitu-
9 tion’s vesting in the President of the executive
10 power and the power of Commander in Chief of
11 the Armed Forces. As the Supreme Court of the
12 United States recognized in *Madsen v. Kinsella*,
13 343 U.S. 341, 346-48 (1952), “[s]ince our nation’s
14 earliest days, such commissions have been consti-
15 tutionally recognized agencies for meeting many
16 urgent governmental responsibilities related to
17 war. . . . They have taken many forms and borne
18 many names. Neither their procedure nor their ju-
19 risdiction has been prescribed by statute. It has
20 been adapted in each instance to the need that
21 called it forth.”

22 (4) In exercising the authority vested in the
23 President by the Constitution and laws of the
24 United States, including the Authorization for Use
25 of Military Force Joint Resolution, and in accor-

1 dance with the law of war, the President has de-
2 tained enemy combatants in the course of this
3 armed conflict and issued the Military Order of
4 November 13, 2001, to govern the “Detention,
5 Treatment, and Trial of Certain Non-Citizens in
6 the War Against Terrorism.” This Order author-
7 ized the Secretary of Defense to establish military
8 commissions to try individuals subject to the Order
9 for any offenses triable by military commission
10 that such individuals are alleged to have commit-
11 ted.

12 (5) The Supreme Court in *Hamdan v. Rums-*
13 *feld*, 126 S. Ct. 2749 (2006), held that the military
14 commissions established by the Department of De-
15 fense under the President’s Military Order of No-
16 vember 13, 2001, were not consistent with certain
17 aspects of United States domestic law. The Con-
18 gress may by law, and does by enactment of this
19 statute, eliminate any deficiency of statutory au-
20 thority to facilitate bringing terrorists with whom
21 the United States is engaged in armed conflict to
22 justice for violations of the law of war and other
23 offenses triable by military commissions. The
24 prosecution of such individuals by military com-
25 missions established and conducted consistent with

1 this Act fully complies with the Constitution, the
2 laws of the United States, treaties to which the
3 United States is a party, and the law of war.

4 (6) The use of military commissions is par-
5 ticularly important in this context because other al-
6 ternatives, such as the use of courts-martial, gener-
7 ally are impracticable. The terrorists with whom
8 the United States is engaged in armed conflict have
9 demonstrated a commitment to the destruction of
10 the United States and its people, to the violation of
11 the law of war, and to the abuse of American legal
12 processes. In a time of ongoing armed conflict, it
13 generally is neither practicable nor appropriate for
14 combatants like al Qaeda terrorists to be tried be-
15 fore tribunals that include all of the procedures as-
16 sociated with courts-martial.

17 (7) Many procedures for courts-martial
18 would not be practicable in trying the unlawful en-
19 emy combatants for whom this Act provides for
20 trial by military commission. For instance, court-
21 martial proceedings would in certain circum-
22 stances—

23 (A) compel the Government to share
24 classified information with the accused,
25 even though members of al Qaeda cannot be

1 trusted with our Nation's secrets and it
2 would not be consistent with the national se-
3 curity of the United States to provide them
4 with access to classified information;

5 (B) exclude the use of hearsay evi-
6 dence even though such evidence often will
7 be the best and most reliable evidence that
8 the accused has committed a war crime. For
9 example, many witnesses in military com-
10 mission trials are likely to be foreign nation-
11 als who are not amenable to process or may
12 be precluded for national security reasons
13 from entering the United States or Guan-
14 tanamo Bay to testify. Other witnesses may
15 be unavailable because of military necessity,
16 incarceration, injury, or death. In short, ap-
17 plying the hearsay rules from the Manual for
18 Courts-Martial or from the Federal Rules of
19 Evidence would make it virtually impossible
20 to bring terrorists to justice for their viola-
21 tions of the law of war;

22 (C) specify speedy trials and technical
23 rules for sworn and authenticated statements
24 when, due to the exigencies of wartime, the
25 United States cannot safely require members

1 of the armed forces to gather evidence on
2 the battlefield, including civilian eye-
3 witness testimony, as though they were po-
4 lice officers. Nor can the United States di-
5 vert members from the front lines and their
6 duty stations to attend military commission
7 proceedings. Therefore, strict compliance
8 with such rules for evidence gathered on the
9 battlefield would be impracticable, given the
10 preeminent focus on military operations and
11 the chaotic nature of combat.

12 (8) The exclusive judicial review for which
13 this Act, and the Detainee Treatment Act of 2005,
14 provides is without precedent in the history of
15 armed conflicts involving the United States, ex-
16 ceeds the scope of judicial review historically pro-
17 vided for by military commissions, and is chan-
18 nelled in a manner appropriately tailored to—

19 (A) the circumstances of the conflicts
20 between the United States and international
21 terrorist organizations; and

22 (B) the need to ensure fair treatment
23 of those detained as enemy combatants, to
24 minimize the diversion of members of the
25 armed forces from other wartime duties, and

1 to protect the national security of the United
2 States.

3 (9) In early 2002, as memorialized in a
4 memorandum dated February 7, 2002, the Presi-
5 dent determined that common Article 3 of the Ge-
6 neva Conventions did not apply with respect to the
7 United States conflict with al Qaeda because al
8 Qaeda was not a party to those treaties and the
9 conflict with al Qaeda was an armed conflict of an
10 international character. That was the interpretation
11 of the United States prior to the Supreme Court's
12 decision in *Hamdan* on June 29, 2006. *Hamdan's*
13 statement to the contrary makes it appropriate to
14 clarify the standards imposed by common Article
15 3. This Act makes clear that the prohibitions
16 against cruel, inhuman, and degrading treatment
17 found in the Detainee Treatment Act of 2005 fully
18 satisfy the obligations of the United States with re-
19 spect to the standards for detention and treatment
20 established by section 1 of common Article 3, ex-
21 cept for those obligations arising under paragraphs
22 (b) and (d). In addition, the Act makes clear that
23 the Geneva Conventions are not a source of judi-
24 cially enforceable individual rights, thereby reaf-
25 firming that enforcement of the obligations im-

1 posed by the Conventions is a matter between the
2 nations that are parties to them.

3 **SEC. 3. AUTHORIZATION FOR MILITARY COMMIS-**
4 **SIONS.**

5 (a) **IN GENERAL.**—The President is authorized to
6 establish military commissions for violations of the law
7 of war and other offenses triable by military commissions
8 as provided in section 4 of this Act (chapter 47A of title
9 10).

10 (b) **CONSTRUCTION.**—The authority granted in
11 subsection (a) shall not be construed to limit the authority
12 of the President under the Constitution of the United
13 States or the laws thereof to establish military commis-
14 sions on the battlefield, in occupied territories, or in other
15 armed conflicts should circumstances so require.

16 (c) **SCOPE OF PUNISHMENT AUTHORITY.**—A mili-
17 tary commission established pursuant to subsection (a)
18 shall have authority to impose upon any person found
19 guilty after a proceeding under this Act a sentence that is
20 appropriate to the offense or offenses for which there was
21 a finding of guilt, which sentence may include death
22 where authorized by this Act, imprisonment for life or a
23 term of years, payment of a fine or restitution, or such
24 other lawful punishment or condition of punishment as
25 the commission shall determine to be proper.

1 (d) EXECUTION OF PUNISHMENT.—The Secretary of
2 Defense shall be authorized to carry out a sentence of
3 punishment decreed by a military commission pursuant
4 to subsection (a) in accordance with such procedures as
5 the Secretary may prescribe.

6 (e) ANNUAL REPORT ON TRIALS BY MILITARY
7 COMMISSION.—

8 (1) ANNUAL REPORT REQUIRED.—Not later
9 than December 31 each year, the Secretary of De-
10 fense shall submit to the Armed Services Commit-
11 tees of the House of Representatives and the Sen-
12 ate an annual report on the conduct of trials by
13 military commissions established pursuant to sub-
14 section (a) during such year.

15 (2) FORM.—Each such report shall be sub-
16 mitted in unclassified form, with classified annex,
17 if necessary and consistent with national security.

18 **SEC. 4. MILITARY COMMISSIONS**

19 (a) MILITARY COMMISSIONS.—

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

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

24 **“SUBCHAPTER I—GENERAL PROVISIONS**

“Sec.

“948a. Definitions.

“948b. Military commissions generally.

“948c. Persons subject to military commissions.

“948d. Jurisdiction of military commissions.

1 **“§ 948a. Definitions**

2 “In this chapter:

3 “(1) ALIEN.—The term ‘alien’ means an in-
4 dividual who is not a citizen of the United States.

5 “(2) CLASSIFIED INFORMATION.— The term
6 ‘classified information’ means the following—

7 “(A) Any information or material that
8 has been determined by the United States
9 Government pursuant to statute, Executive
10 order, or regulation to require protection
11 against unauthorized disclosure for reasons
12 of national security.

13 “(B) Any restricted data, as that term
14 is defined in section 11 y. of the Atomic En-
15 ergy Act of 1954 (42 U.S.C. 2014(y)).

16 “(3) COMMISSION.—The term ‘commission’
17 means a military commission established pursuant
18 to chapter 47A of title 10, United States Code.

19 “(4) CONVENING AUTHORITY.—The term
20 ‘convening authority’ shall be the Secretary of De-
21 fense or his designee.

22 “(5) LAWFUL ENEMY COMBATANT.—The
23 term ‘lawful enemy combatant’ means an individ-
24 ual determined by or under the authority of the

1 President or Secretary of Defense (whether on an
2 individualized or collective basis) to be: (i) a
3 member of the regular forces of a State party en-
4 gaged in hostilities against the United States or its
5 co-belligerents; (ii) a member of a militia, volun-
6 teer corps, or organized resistance movement be-
7 longing to a State party engaged in such hostilities,
8 which are under responsible command, wear a
9 fixed distinctive sign recognizable at a distance,
10 carry their arms openly, and abide by the law of
11 war; or (iii) a member of a regular armed forces
12 who professes allegiance to a government engaged
13 in such hostilities, but not recognized by the
14 United States.

15 “(6) SECRETARY.—The term ‘Secretary’
16 means the Secretary of Defense.

17 “(7) UNLAWFUL ENEMY COMBATANT.—The
18 term ‘unlawful enemy combatant’ means an indi-
19 vidual determined by or under the authority of the
20 President or the Secretary of Defense—

21 “(A) to be part of or affiliated with a
22 force or organization—including but not
23 limited to al Qaeda, the Taliban, any interna-
24 tional terrorist organization, or associated
25 forces—engaged in hostilities against the

1 United States or its co-belligerents in viola-
2 tion of the law of war;

3 “(B) to have committed a hostile act
4 in aid of such a force or organization so en-
5 gaged; or

6 “(C) to have supported hostilities in
7 aid of such a force or organization so en-
8 gaged.

9 “This definition includes any individual de-
10 termined by a Combatant Status Review Tribunal,
11 before the effective date of this Act, to have been
12 properly detained as an enemy combatant, but ex-
13 cludes any alien determined by the President or the
14 Secretary of Defense (whether on an individual-
15 ized or collective basis), or by any competent tri-
16 bunal established under their authority, to be (i) a
17 lawful enemy combatant (including a prisoner of
18 war), or (ii) a protected person whose trial by these
19 military commissions would be inconsistent with
20 Articles 64-76 of the Geneva Convention Relative
21 to the Protection of Civilian Persons in Time of
22 War of August 12, 1949. For purposes of this sec-
23 tion, the term “protected person” refers to the cate-
24 gory of persons described in Article 4 of the Ge-

1 Geneva Convention Relative to the Protection of Ci-
2 vilian Persons in Time of War of August 12, 1949.

3 “(6) GENEVA CONVENTIONS.—The term
4 ‘Geneva Conventions’ means the international
5 conventions signed at Geneva on August 12, 1949,
6 including common Article 3.

7 **“§ 948b. Military commissions generally**

8 “(a) PURPOSE.—This chapter codifies and estab-
9 lishes procedures governing the use of military commis-
10 sions to try unlawful enemy combatants for violations of
11 the law of war and other offenses triable by military
12 commissions. Although military commissions tradition-
13 ally have been constituted by order of the President, the
14 decision of the Supreme Court in *Hamdan v. Rumsfeld*
15 makes it both necessary and appropriate to codify proce-
16 dures for military commissions as set forth herein.

17 “(b) RULE OF CONSTRUCTION.—The procedures for
18 military commissions set forth in this chapter are mod-
19 eled after the procedures established for courts-martial in
20 the Uniform Code of Military Justice. However, it would
21 be neither desirable nor practicable to try unlawful en-
22 emy combatants by court-martial procedures. The trial of
23 such persons by military commission presents new chal-
24 lenges that require that interpretations of this Act not be
25 unduly influenced by the rules and procedures developed

1 for courts-martial. Therefore, no construction or applica-
2 tion of chapter 47 of this title shall be binding in the con-
3 struction or application of this chapter.

4 “(c) Alien unlawful enemy combatants may be
5 tried for violations of the law of war and other offenses
6 triable by military commissions committed against the
7 United States or its co-belligerents before, on, or after
8 September 11, 2001.

9 “(d) A military commission established under this
10 chapter is a regularly constituted court, affording all the
11 necessary ‘judicial guarantees which are recognized as
12 indispensable by civilized peoples’ for purposes of com-
13 mon Article 3 of the Geneva Conventions.

14 **“§ 948c. Persons subject to military commissions**

15 “Alien unlawful enemy combatants, as defined in
16 section 948a of this title, shall be subject to trial by mili-
17 tary commissions as set forth in this chapter.

18 **“§ 948d. Jurisdiction of military commissions**

19 “(a) Military commissions shall have jurisdiction
20 to try any offense made punishable under this chapter,
21 when committed by an alien unlawful enemy combatant.
22 Military commissions shall not have jurisdiction over
23 lawful enemy combatants. Lawful enemy combatants
24 who violate the law of war are subject to chapter 47 of
25 Title 10, United States Code. Courts-martial established

1 under chapter 47 shall have jurisdiction to try a lawful
2 enemy combatant for any offense made punishable under
3 this chapter.

4 “(b) Military commissions shall not have jurisdic-
5 tion over any individual determined by the President or
6 the Secretary of Defense (whether on an individualized
7 or collective basis), or by any competent tribunal estab-
8 lished under their authority, to be a “protected person”
9 whose trial by these military commissions would be in-
10 consistent with Articles 64-76 of the Geneva Convention
11 Relative to the Protection of Civilian Persons in Time of
12 War of August 12, 1949. Such persons shall be tried in
13 courts-martial or other tribunals consistent with their
14 status under the Geneva Conventions. For purposes of
15 this section, the term “protected person” refers to the
16 category of persons described in Article 4 of the Geneva
17 Convention Relative to the Protected of Civilian Persons
18 in Time of War of August 12, 1949.

19 “(c) Military commissions may, under such limita-
20 tions as the Secretary of Defense may prescribe, adjudge
21 any punishment not forbidden by this chapter, including
22 the penalty of death where authorized by this chapter.

23 “SUBCHAPTER II—COMPOSITION OF MILITARY
24 COMMISSIONS

“Sec.

“948h. Who may convene military commissions.

“948i. Who may serve on military commissions.

“948j. Military judge of a military commission.

“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 members.

1 **“§ 948h. Who may convene military commissions**

2 “(a) The Secretary may issue orders convening
3 military commissions to try individuals under this chap-
4 ter.

5 “(b) The Secretary may delegate his authority to
6 convene military commissions or to promulgate any
7 regulations under this chapter.

8 **“§ 948i. Who may serve on military commissions**

9 “(a) IN GENERAL.—Any commissioned officer of
10 the United States armed forces on active duty is eligible
11 to serve on a military commission. Eligible commis-
12 sioned officers shall include, without limitation, reserve
13 personnel on active duty, National Guard personnel on
14 active duty in Federal service, and retired personnel re-
15 called to active duty.

16 “(b) DETAIL OF MEMBERS.—When convening a
17 commission, the convening authority shall detail as
18 members thereof such members of the armed forces as, in
19 his opinion, are fully qualified for the duty by reason of
20 age, education, training, experience, length of service,
21 and judicial temperament. No member of an armed force
22 shall be eligible to serve as a member of a commission

1 when he is the accuser or a witness for the prosecution or
2 has acted as an investigator or counsel in the same case.

3 “(c) EXCUSE OF MEMBERS.—Before a commission
4 is assembled for the trial of a case, the convening author-
5 ity may excuse a member of the commission from par-
6 ticipating in the case.

7 **“§ 948j. Military judge of a military commission**

8 “(a) DETAIL OF A MILITARY JUDGE.—A military
9 judge shall be detailed to each commission. The Secre-
10 tary shall prescribe regulations providing for the manner
11 in which military judges are detailed to such commis-
12 sions. The military judge shall preside over each com-
13 mission to which he has been detailed. The convening
14 authority shall not prepare or review any report concern-
15 ing the effectiveness, fitness, or efficiency of the military
16 judge so detailed relating to his performance of duty as a
17 military judge.

18 “(b) ELIGIBILITY.—A military judge shall be a
19 commissioned officer of the armed forces who is a mem-
20 ber of the bar of a Federal court or a member of the bar
21 of the highest court of a State, and who is certified to be
22 qualified for duty as a military judge by the Judge Advo-
23 cate General of the armed force of which such military
24 judge is a member. A commissioned officer who is certi-
25 fied to be qualified for duty as a military judge of a

1 commission may perform such other duties as are as-
2 signed to him by or with the approval of that Judge Ad-
3 vocate General or his designee.

4 “(c) INELIGIBILITY OF CERTAIN INDIVIDUALS.—No
5 person is eligible to act as military judge in any case in
6 which he is the accuser or a witness or has acted as inves-
7 tigator or a counsel in the same case.

8 “(d) CONSULTATION WITH MEMBERS; INELIGIBILITY
9 TO VOTE.—Except as provided in section 949d of this ti-
10 tle, the military judge detailed to the commission may not
11 consult with the members of the commission except in
12 the presence of the accused, trial counsel, and defense
13 counsel, nor may he vote with the members of the com-
14 mission.

15 **“§ 948k. Detail of trial counsel and defense counsel**

16 “(a) DETAIL OF COUNSEL GENERALLY.—

17 “(1) Trial counsel and military defense
18 counsel shall be detailed for each commission.

19 “(2) Assistant trial counsel and assistant and
20 associate military defense counsel may be detailed
21 for each commission.

22 “(3) Military defense counsel shall be de-
23 tailed as soon as practicable after the swearing of
24 charges against the person accused.

1 “(4) The Secretary shall prescribe regula-
2 tions providing for the manner in which counsel
3 are detailed for military commissions and for the
4 persons who are authorized to detail counsel for
5 such military commissions.

6 “(b) TRIAL COUNSEL.—Subject to subsection (d),
7 trial counsel detailed for a military commission under
8 this chapter must be—

9 “(1) a judge advocate (as that term is defined
10 in section 801 of this title) who is—

11 “(A) a graduate of an accredited law
12 school or is a member of the bar of a Federal
13 court or of the highest court of a State; and

14 “(B) certified as competent to perform
15 duties as trial counsel before general courts-
16 martial by the Judge Advocate General of
17 the armed force of which he is a member; or

18 “(2) a civilian who is—

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

21 “(B) otherwise qualified to practice
22 before the commission pursuant to regula-
23 tions prescribed by the Secretary.

24 “(c) MILITARY DEFENSE COUNSEL.—Subject to
25 subsection (d), military defense counsel detailed for a

1 military commission under this chapter must be a judge
2 advocate (as so defined) who is—

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

6 “(2) certified as competent to perform duties
7 as defense counsel before general courts-martial by
8 the Judge Advocate General of the armed force of
9 which he is a member.

10 “(d) INELIGIBILITY OF CERTAIN INDIVIDUALS.—No
11 person who has acted as an investigator, military judge,
12 or member of a military commission under this chapter
13 may act later as trial counsel or defense counsel in the
14 same case. No person who has acted for the prosecution
15 may act later in the same case for the defense, nor may
16 any person who has acted for the defense act later in the
17 same case for the prosecution.

18 **“§ 948l. Detail or employment of reporters and inter-**
19 **preters**

20 “(a) COURT REPORTERS.—Under such regulations
21 as the Secretary may prescribe, the convening authority
22 of a military commission shall detail or employ qualified
23 court reporters, who shall record the proceedings of and
24 testimony taken before that commission.

1 “(b) INTERPRETERS.—Under like regulations the
2 convening authority may detail or employ interpreters
3 who shall interpret for the commission, and, as necessary,
4 for trial counsel and defense counsel.

5 “(c) TRANSCRIPT; RECORD.—The transcript shall
6 be under the control of the convening authority, which is
7 responsible for preparing the record of the proceedings.

8 **“§ 948m. Number of members; excuse of members;**
9 **absent and additional members**

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

13 “(2) In a case in which the death penalty is sought,
14 the military commission shall have the number of mem-
15 bers prescribed by section 949m(c) of this title.

16 “(b) EXCUSE OF MEMBERS.—No member of a mili-
17 tary commission may be absent or excused after the
18 commission has been assembled for the trial of the ac-
19 cused unless excused—

20 “(1) as a result of challenge;

21 “(2) by the military judge for physical dis-
22 ability or other good cause; or

23 “(3) by order of the convening authority for
24 good cause.

1 “(c) ABSENT AND ADDITIONAL MEMBERS.—
 2 Whenever a military commission is reduced below the
 3 requisite number of members, the trial may not proceed
 4 unless the convening authority details new members suf-
 5 ficient to provide not less than the requisite number. The
 6 trial may proceed with the new members present after the
 7 recorded evidence previously introduced before the
 8 members of the commission has been read to the com-
 9 mission in the presence of the military judge, the accused
 10 (except as provided by section 949d of this title), and
 11 counsel for both sides.

12 “SUBCHAPTER III—PRE-TRIAL PROCEDURE

“Sec.

“948q. Charges and specifications.

“948r. Compulsory self-incrimination prohibited; statements
 obtained by torture.

“948s. Service of charges.

13 “§ 948q. Charges and specifications

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

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

22 “(2) that they are true in fact to the best of
 23 his knowledge and belief.

1 “(b) NOTICE TO ACCUSED.—Upon the swearing of
2 the charges and specifications in accordance with subsec-
3 tion (a), the accused shall be informed of the charges and
4 specifications against him as soon as practicable.

5 **§ 948r. Compulsory self-incrimination prohibited;**
6 **statements obtained by torture**

7 “(a) IN GENERAL.—No person shall be required to
8 testify against himself at a commission proceeding.

9 “(b) STATEMENTS OBTAINED BY TORTURE.—A
10 statement obtained by use of torture, as defined in 18
11 U.S.C. § 2340, whether or not under color of law, shall
12 not be admissible against the accused, except against a
13 person accused of torture as evidence the statement was
14 made.

15 “(c) STATEMENTS NOT OBTAINED BY TORTURE.—
16 No otherwise admissible statement may be received in
17 evidence, including statements allegedly obtained by co-
18 ercion, if the military judge finds that the circumstances
19 under which the statement was made render it unreliable
20 or lacking in probative value.

21 **“§ 948s. Service of charges**

22 “The trial counsel assigned to the case shall cause
23 to be served upon the accused and counsel a copy of the
24 charges upon which trial is to be had in English and, if
25 appropriate, in another language that the accused under-

1 stands, sufficiently in advance of trial to prepare a de-
 2 fense.

3 “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.

4 “§ 949a. Rules

5 “(a) PROCEDURES.—Pretrial, trial, and post-trial
 6 procedures, including elements and modes of proof, for
 7 cases triable by military commission under this chapter
 8 shall be prescribed by the Secretary, but may not be con-
 9 trary to or inconsistent with this chapter.

10 “(b) RULES OF EVIDENCE.—Subject to such excep-
 11 tions and limitations as the Secretary may provide by
 12 regulation, evidence in a military commission shall be
 13 admissible if the military judge determines that the evi-
 14 dence would have probative value to a reasonable person.

15 “(c) HEARSAY EVIDENCE.—Hearsay evidence is
 16 admissible, unless the military judge finds that the cir-
 17 cumstances render it unreliable or lacking in probative

1 value, provided that the proponent of the evidence makes
2 the evidence known to the adverse party in advance of
3 trial or hearing.

4 “The military judge shall exclude any evidence the
5 probative value of which is substantially outweighed by
6 the danger of unfair prejudice, confusion of the issues, or
7 misleading the members of the commission, or by con-
8 siderations of undue delay, waste of time, or needless
9 presentation of cumulative evidence.

10 **“§ 949b. Unlawfully influencing action of military**
11 **commission**

12 “(a) IN GENERAL.—(1) No authority convening a
13 military commission under this chapter may censure, rep-
14 rimand, or admonish the commission or any member,
15 military judge, or counsel thereof, with respect to the
16 findings or sentence adjudged by the commission, or with
17 respect to any other exercises of its or his functions in the
18 conduct of the proceedings.

19 “(2) No person may attempt to coerce or, by any
20 unauthorized means, influence the action of a commis-
21 sion or any member thereof, in reaching the findings or
22 sentence in any case, or the action of any convening, ap-
23 proving, or reviewing authority with respect to his judi-
24 cial acts.

1 “(3) The foregoing provisions of this subsection
2 shall not apply with respect to—

3 “(A) general instructional or informational
4 courses in military justice if such courses are de-
5 signed solely for the purpose of instructing mem-
6 bers of a command in the substantive and proce-
7 dural aspects of military commissions; or

8 “(B) statements and instructions given in
9 open proceedings by the military judge or counsel.

10 “(b) PROHIBITION ON CONSIDERATION OF ACTIONS
11 ON COMMISSION IN EVALUATION OF FITNESS. In the
12 preparation of an effectiveness, fitness, or efficiency re-
13 port or any other report or document used in whole or in
14 part for the purpose of determining whether a commis-
15 sioned officer of the armed forces is qualified to be ad-
16 vanced, in grade, or in determining the assignment or
17 transfer of any such officer or in determining whether
18 any such officer should be retained on active duty, no
19 person may—

20 “(1) consider or evaluate the performance of
21 duty of any member of a military commission un-
22 der this chapter; or

23 “(2) give a less favorable rating or evalua-
24 tion to any commissioned officer because of the
25 zeal with which such officer, in acting as counsel,

1 represented any accused before a military commis-
2 sion under this chapter.

3 **“§ 949c. Duties of trial counsel and defense counsel**

4 “(a) TRIAL COUNSEL.—The trial counsel of a mili-
5 tary commission shall prosecute in the name of the
6 United States.

7 “(b) DEFENSE COUNSEL.—(1) The accused shall be
8 represented in his defense before a military commission
9 as provided in this subsection.

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

12 “(3) The accused may be represented by civilian
13 counsel if retained by him, provided that civilian coun-
14 sel—

15 “(A) is a United States citizen;

16 “(B) is admitted to the practice of law in a
17 State, district, territory, or possession of the United
18 States, or before a Federal court;

19 “(C) has not been the subject of any sanction
20 of disciplinary action by any court, bar, or other
21 competent governmental authority for relevant
22 misconduct;

23 “(D) has been determined to be eligible for
24 access to information classified at the level Secret
25 or higher; and

1 “(E) has signed a written agreement to com-
2 ply with all applicable regulations or instructions
3 for counsel, including any rules of court for con-
4 duct during the proceedings.

5 “Civilian defense counsel shall protect any classi-
6 fied information received during the course of their rep-
7 resentation of the accused in accordance with all applica-
8 ble law governing the protection of classified informa-
9 tion, and shall not divulge such information to any person
10 not authorized to receive it.

11 “(4) If the accused is represented by civilian coun-
12 sel, military counsel detailed shall act as associate coun-
13 sel.

14 “(5) The accused is not entitled to be represented
15 by more than one military counsel. However, the person
16 authorized under regulations prescribed under section
17 948k of this title to detail counsel in his sole discretion
18 may detail additional military counsel.

19 “(6) Defense counsel may cross-examine each wit-
20 ness for the prosecution who testifies before the commis-
21 sion.

22 **“§ 949d. Sessions**

23 “(a) SESSIONS WITHOUT PRESENCE OF MEMBERS.—
24 (1) At any time after the service of charges which have
25 been referred for trial by military commission, the mili-

1 tary judge may call the commission into session without
2 the presence of the members for the purpose of—

3 “(A) hearing and determining motions rais-
4 ing defenses or objections which are capable of de-
5 termination without trial of the issues raised by a
6 plea of not guilty;

7 “(B) hearing and ruling upon any matter
8 which may be ruled upon by the military judge un-
9 der this chapter, whether or not the matter is ap-
10 propriate for later consideration or decision by the
11 members of the commission;

12 “(C) if permitted by regulations of the Sec-
13 retary, receiving the pleas of the accused; and

14 “(D) performing any other procedural func-
15 tion which may be performed by the military judge
16 under this chapter or under rules prescribed pursu-
17 ant to section 949a of this title and which does not
18 require the presence of the members of the com-
19 mission.

20 “(2) Except as provided in subsection (e), any pro-
21 ceedings under paragraph (1) shall be conducted in the
22 presence of the accused, defense counsel, and trial coun-
23 sel, and shall be made part of the record.

24 “(b) PROCEEDINGS IN PRESENCE OF ACCUSED.—
25 Except as provided in subsections (c) and (e), all pro-

1 proceedings of a military commission under this chapter
2 shall be in the presence of the accused, defense counsel,
3 and trial counsel, and shall be made a part of the record.

4 “(c) DELIBERATIONS OR VOTE OF MEMBERS.—
5 When the members of the commission deliberate or vote,
6 only the members may be present.

7 “(d) PUBLIC PROCEEDINGS.—(1) The military
8 commission shall hold open and public proceedings.

9 “(2) The military judge may close to the public all
10 or a part of the proceedings of a military commission un-
11 der this chapter only upon making a specific finding that
12 such closure is necessary to—

13 “(A) protect information the disclosure of
14 which could reasonably be expected to cause iden-
15 tifiable damage to the public interest or the na-
16 tional security, including intelligence or law en-
17 forcement sources, methods, or activities; or

18 “(B) ensure the physical safety of individu-
19 als.

20 “(e) LIMITED EXCLUSION OF THE ACCUSED FOR THE
21 PROTECTION OF CLASSIFIED INFORMATION.—(1) The mili-
22 tary judge may, subject to the provisions of this subsec-
23 tion, permit the admission in a military commission un-
24 der this chapter of classified information outside the
25 presence of the accused.

1 “(2) The military judge shall not exclude the ac-
2 cused from any portion of the proceeding except upon a
3 specific finding that extraordinary circumstances exist
4 such that—

5 “(A) the exclusion of the accused—

6 “(i) is necessary to protect classified
7 information the disclosure of which to the
8 accused could reasonably be expected to
9 cause identifiable damage to the national se-
10 curity, including intelligence or law en-
11 forcement sources, methods, or activities; or

12 “(ii) is necessary to ensure the physi-
13 cal safety of individuals; or

14 “(iii) is necessary to prevent disrup-
15 tion of the proceedings by the accused; and

16 “(B) the exclusion of the accused—

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

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

20 “(3)(A) A finding under paragraph (2) may be
21 based upon a presentation, including an ex parte or in
22 camera presentation, by either trial counsel or defense
23 counsel.

24 “(B) Before trial counsel may make a presentation
25 described in subparagraph (A) requesting the admission

1 of classified evidence outside the presence of the ac-
2 cused, the head of the executive or military department or
3 governmental agency which has control over the matter
4 (after personal consideration by that officer) shall certify
5 in writing to the military judge that—

6 “(i) the disclosure of such classified infor-
7 mation to the accused could reasonably be ex-
8 pected to prejudice the national security; and

9 “(ii) such evidence has been declassified to
10 the maximum extent possible, consistent with the
11 requirements of national security.

12 “(4)(A) No evidence shall be admitted if the ac-
13 cused is not present for its admission or the evidence is
14 not otherwise provided to the accused, unless the evi-
15 dence is classified information and the military judge
16 makes a specific finding that—

17 “(i) consideration of the evidence by the
18 commission, without the presence of the accused,
19 is warranted; and

20 “(ii) admission of an unclassified summary
21 or redacted version of that evidence would not be
22 an adequate substitute and, in the case of testi-
23 mony, alternative methods to obscure the identity
24 of the witness are not adequate; and

1 “(iii) admission of the evidence would not
2 deprive the accused of a full and fair trial.

3 “(B) If the accused is excluded from a portion of
4 the proceeding, the accused shall be provided with a re-
5 dacted transcript of the proceeding and, to the extent
6 practicable, an unclassified summary of any evidence in-
7 troduced. Under no circumstances shall such a summary
8 or redacted transcript compromise the interests warrant-
9 ing the exclusion of the accused under this subsection.

10 “(5)(A) Military defense counsel shall be present
11 and able to participate in all trial proceedings, and shall
12 be given access to all evidence admitted under subpara-
13 graph (4).

14 “(B) Civilian defense counsel shall be permitted to
15 be present and to participate in all trial proceedings, and
16 shall be given access to evidence admitted under sub-
17 paragraph (4), provided that civilian defense counsel has
18 obtained the necessary security clearances and that such
19 presence and access are consistent with regulations that
20 the Secretary may prescribe to protect classified informa-
21 tion.

22 “(C) Notwithstanding any other provision of law,
23 any defense counsel who receives classified information
24 admitted pursuant to subparagraph (4) shall not be obli-

1 gated to, and may not, disclose that evidence to the ac-
2 cused.

3 “(f) ADMISSION OF STATEMENTS OF ACCUSED.—(1)
4 Notwithstanding any other provision in this chapter, no
5 statement made by the accused during an interrogation,
6 even if otherwise classified, may be admitted into evi-
7 dence in a military commission under this chapter unless
8 the accused is present for its admission or the evidence is
9 otherwise provided to the accused.

10 “(2) For purposes of this subsection, a ‘statement’
11 is a statement communicated knowingly and directly by
12 the accused in response to questioning by foreign or
13 United States military, intelligence, or criminal investiga-
14 tive personnel. This paragraph shall not be construed to
15 prevent the redaction of intelligence sources or methods,
16 which do not constitute statements of the accused, from
17 any document provided to the accused or admitted into
18 evidence.

19 **“§ 949e. Continuances**

20 “The military judge may, for reasonable cause,
21 grant a continuance to any party for such time, and as of-
22 ten, as may appear to be just.

23 **“§ 949f. Challenges**

24 “(a) CHALLENGES AUTHORIZED.—The military
25 judge and members of the commission may be chal-

1 lenged by the accused or the trial counsel for cause stated
2 to the commission. The military judge shall determine
3 the relevance and validity of the challenges for cause,
4 and may not receive a challenge to more than one person
5 at a time. Challenges by the trial counsel shall ordinarily
6 be presented and decided before those by the accused are
7 offered.

8 “(b) PEREMPTORY CHALLENGES.—Each accused
9 and the trial counsel is entitled to one peremptory chal-
10 lenge, but the military judge may not be challenged ex-
11 cept for cause.

12 “(c) CHALLENGES AGAINST ADDITIONAL MEM-
13 BERS.—Whenever additional members are detailed to the
14 court, and after any challenges for cause against such ad-
15 ditional members are presented and decided, each ac-
16 cused and the trial counsel are entitled to one peremptory
17 challenge against members not previously subject to per-
18 emptory challenge.

19 **“§ 949g. Oaths**

20 “(a) IN GENERAL.—(1) Before performing their re-
21 spective duties, military judges, members of commis-
22 sions, trial counsel, defense counsel, reporters, and inter-
23 preters shall take an oath to perform their duties faith-
24 fully.

1 “(2) The form of the oath required by paragraph
2 (1), the time and place of the taking thereof, the manner
3 of recording the same, and whether the oath shall be
4 taken for all cases in which these duties are to be per-
5 formed or for a particular case, shall be as prescribed in
6 regulations of the Secretary. These regulations may pro-
7 vide that—

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

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

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

19 “(c) OATH DEFINED.—As used in this section,
20 “oath” includes an affirmation.

21 **“§ 949h. Former jeopardy**

22 “(a) IN GENERAL.—No person may, without his
23 consent, be tried by a commission a second time for the
24 same offense.

1 “(b) SCOPE OF TRIAL.—No proceeding in which
2 the accused has been found guilty by military commis-
3 sion upon any charge or specification is a trial in the
4 sense of this section until the finding of guilty has be-
5 come final after review of the case has been fully com-
6 pleted.

7 **“§ 949i. Pleas of the accused**

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

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

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

3 “(a) IN GENERAL.—(1) Defense counsel in a mili-
4 tary commission under this chapter shall have a reason-
5 able opportunity to obtain witnesses and other evidence,
6 including evidence in the possession of the United States,
7 as specified in regulations prescribed by the Secretary.

8 “(2) Process issued in military commissions to
9 compel witnesses to appear and testify and to compel the
10 production of other evidence—

11 “(A) shall be similar to that which courts of
12 the United States having criminal jurisdiction may
13 lawfully issue; and

14 “(B) shall run to any place where the United
15 States shall have jurisdiction thereof.

16 “(b) TREATMENT OF CERTAIN ITEMS.—The military
17 judge in a military commission under this chapter may,
18 upon a sufficient showing, authorize trial counsel in mak-
19 ing documents available to the defense through discovery
20 conducted pursuant to such rules as the Secretary shall
21 prescribe—

22 “(1) to delete specified items of classified
23 information from such documents;

24 “(2) to substitute an unclassified summary of
25 the information for such classified documents; or

1 “(3) to substitute an unclassified statement
2 admitting relevant facts that classified information
3 would tend to prove.

4 “(c) DISCLOSURE OF EXCULPATORY EVIDENCE.—

5 (1) As soon as practicable, trial counsel in a military
6 commission under this chapter shall disclose to the de-
7 fense the existence of any evidence known to trial coun-
8 sel that reasonably tends to exculpate the accused.

9 “(2) Exculpatory evidence that is classified may be
10 provided solely to defense counsel, and not the accused,
11 after *in camera* review by the military judge.

12 “(3) Before classified evidence may be withheld
13 from the accused under this subsection, the executive or
14 military department or governmental agency which has
15 control over the matter shall ensure and shall certify in
16 writing to the military judge that the disclosure of such
17 evidence to the accused could reasonably be expected to
18 prejudice the national security and that such evidence has
19 been declassified to the maximum extent possible, con-
20 sistent with the requirements of national security.

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

23 “(A) shall be provided to military defense
24 counsel; and

1 “(B) shall be provided to civilian defense
2 counsel, provided that civilian defense counsel has
3 obtained the necessary security clearances and ac-
4 cess to such evidence is consistent with regulations
5 that the Secretary may prescribe to protect classi-
6 fied information; and

7 “(C) shall be provided to the accused in a
8 redacted or summary form, if it is possible to do so
9 without compromising intelligence sources, meth-
10 ods, or activities, or other national security inter-
11 ests.

12 “(5) Notwithstanding any other provision of law,
13 any defense counsel who receives evidence under this
14 subsection shall not be obligated to, and may not, dis-
15 close that evidence to the accused.

16 **“§ 949k. Defense of lack of mental responsibility**

17 “(a) AFFIRMATIVE DEFENSE.—It is an affirmative
18 defense in a trial by military commission that, at the time
19 of the commission of the acts constituting the offense, the
20 accused, as a result of a severe mental disease or defect,
21 was unable to appreciate the nature and quality or the
22 wrongfulness of the acts. Mental disease or defect does
23 not otherwise constitute a defense.

1 “(b) BURDEN OF PROOF.—The accused has the
2 burden of proving the defense of lack of mental responsi-
3 bility by clear and convincing evidence.

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

11 “(1) guilty;

12 “(2) not guilty; or

13 “(3) not guilty only by reason of lack of
14 mental responsibility.

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

21 **“§ 949l. Voting and rulings**

22 “(a) VOTE BY SECRET WRITTEN BALLOT.—Voting
23 by members of a military commission on the findings and
24 on the sentence shall be by secret written ballot.

1 “(b) RULINGS.—(1) The military judge shall rule
2 upon all questions of law, including the admissibility of
3 evidence, and all interlocutory questions arising during
4 the proceedings.

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

11 “(c) INSTRUCTIONS PRIOR TO VOTE.—Before a vote
12 is taken of the findings, the military judge shall, in the
13 presence of the accused and counsel, instruct the mem-
14 bers of the commission as to the elements of the offense
15 and charge them—

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

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

23 “(3) that, if there is reasonable doubt as to
24 the degree of guilt, the finding must be in a lower

1 degree as to which there is no reasonable doubt;
2 and

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

6 **“§ 949m. Number of votes required**

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

11 “(b) SENTENCES.—(1) Except as provided in para-
12 graphs (2) and (3), sentences shall be determined by a
13 military commission by the concurrence of two-thirds of
14 the members present at the time the vote is taken.

15 “(2) No person may be sentenced to suffer death,
16 except insofar as—

17 “(A) death has been expressly authorized
18 under this Act for an offense of which the accused
19 has been found guilty;

20 “(B) the charges referred to the commission
21 expressly sought the penalty of death;

22 “(C) the accused was convicted of the of-
23 fense by the concurrence of all the members of the
24 military commission present at the time the vote is
25 taken; and

1 “(D) all members of the military commis-
2 sion present at the time the vote was taken con-
3 curred in the sentence of death.

4 “(3) No person may be sentenced to life imprison-
5 ment or to confinement for more than 10 years, except by
6 the concurrence of three-fourths of the members at the
7 time the vote is taken.

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

12 “(2) In any case described in paragraph (1) in
13 which 12 members are not reasonably available because
14 of physical conditions or military exigencies, the conven-
15 ing authority shall specify a lesser number of members
16 for the military commission (but not fewer than 5 mem-
17 bers), and the military commission may be assembled
18 and the trial held with not fewer than the number of
19 members so specified. In such a case, the convening au-
20 thority shall make a detailed written statement, to be ap-
21 pended to the record, stating why a greater number of
22 members were not reasonably available.

23 **“§ 949n. Military commission to announce action**

24 “A military commission shall announce its find-
25 ings and sentence to the parties as soon as determined.

1 **“§ 949o. Record of trial**

2 “(a) RECORD; AUTHENTICATION.—Each military
3 commission shall keep a separate, substantially verbatim,
4 record of the proceedings in each case brought before it,
5 and the record shall be authenticated by the signature of
6 the military judge. If the record cannot be authenticated
7 by the military judge by reason of his death, disability, or
8 absence, it shall be authenticated by the signature of the
9 trial counsel or by that of a member of the commission if
10 the trial counsel is unable to authenticate it by reason of
11 his death, disability, or absence. Where appropriate, and
12 as provided by regulation, the record of the military
13 commission may contain a classified annex.

14 “(b) COMPLETE RECORD REQUIRED.—A complete
15 record of the proceedings and testimony shall be pre-
16 pared in every military commission established under this
17 chapter.

18 “(c) PROVISION OF COPY TO ACCUSED.—A copy of
19 the record of the proceedings of each military commis-
20 sion shall be given to the accused as soon as it is authen-
21 ticated. Where the record contains classified informa-
22 tion, or a classified annex, the accused shall receive a re-
23 dacted version of the record. The appropriate defense
24 counsel shall have access to the unredacted record, as
25 provided by regulation.

1 “SUBCHAPTER V—SENTENCES

“Sec.

“949s. Cruel or unusual punishments prohibited.

“949t. Maximum limits.

“949u. Execution of confinement.

2 **“§ 949s. Cruel or unusual punishments prohibited**

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

9 **“§ 949t. Maximum limits**

10 “The punishment which a military commission
11 may direct for an offense may not exceed such limits as
12 the President or Secretary may prescribe for that offense.

13 **“§ 949u. Execution of confinement**

14 “(a) IN GENERAL.—Under such regulations as the
15 Secretary may prescribe, a sentence of confinement ad-
16 judged by a military commission may be carried into exe-
17 cution by confinement—

18 “(1) in any place of confinement under the
19 control of any of the armed forces; or

20 “(2) in any penal or correctional institution
21 under the control of the United States or its allies
22 or which the United States may be allowed to use.

1 “(b) TREATMENT DURING CONFINEMENT BY OTHER
 2 THAN THE ARMED FORCES.—Persons confined under sub-
 3 section (a)(2) in a penal or correctional institution not
 4 under the control of one of the armed forces are subject
 5 to the same discipline and treatment as persons confined
 6 or committed by the courts of the United States or of the
 7 State, Territory, District of Columbia, or place in which
 8 the institution is situated.

9 “SUBCHAPTER VI—POST-TRIAL PROCEDURE
 10 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
 Columbia Circuit and the Supreme Court of the United
 States.

“950h. Appellate counsel.

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

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

11 **“§ 950a. Error of law; lesser included offense**

12 “(a) ERROR OF LAW.—A finding or sentence of a
 13 military commission may not be held incorrect on the
 14 ground of an error of law unless the error materially
 15 prejudices the substantial rights of the accused.

16 “(b) LESSER INCLUDED OFFENSE.—Any reviewing
 17 authority with the power to approve or affirm a finding of
 18 guilty may approve or affirm, instead, so much of the
 19 finding as includes a lesser included offense.

1 **“§ 950b. Review by the convening authority**

2 “(a) NOTICE TO CONVENING AUTHORITY OF FIND-
3 INGS AND SENTENCE.—The findings and sentence of a
4 military commission under this chapter shall be reported
5 in writing promptly to the convening authority after the
6 announcement of the sentence.

7 “(b) SUBMITTAL OF MATTERS BY ACCUSED TO
8 CONVENING AUTHORITY.—(1) The accused may submit
9 to the convening authority matters for consideration by
10 the convening authority with respect to the findings and
11 the sentence of the military commission under this chap-
12 ter.

13 “(2)(A) Except as provided in subparagraph (B), a
14 submittal under paragraph (1) shall be made in writing
15 within 20 days after the accused has been given an au-
16 thenticated record of trial under section 949o(c) of this
17 title.

18 “(B) If the accused shows that additional time is
19 required for the accused to make a submittal under para-
20 graph (1), the convening authority, for good cause, may
21 extend the applicable period under subparagraph (A) for
22 not more than an additional 20 days.

23 “(3) The accused may waive his right to make a
24 submission to the convening authority under paragraph
25 (1). Such a waiver must be made in writing and may not

1 be revoked. For the purposes of subsection (c)(2), the
2 time within which the accused may make a submission
3 under this subsection shall be deemed to have expired
4 upon the submission of such a waiver to the convening
5 authority.

6 “(c) ACTION BY THE CONVENING AUTHORITY.—(1)
7 The authority under this section to modify the findings
8 and sentence of a military commission under this chapter
9 is a matter of the sole discretion and prerogative of the
10 convening authority.

11 “(3)(A) Action on the sentence of a military com-
12 mission shall be taken by the convening authority.

13 “(B) Subject to regulations of the Secretary, such
14 action may be taken only after consideration of any mat-
15 ters submitted by the accused under subsection (b) or af-
16 ter the time for submitting such matters expires, which-
17 ever is earlier.

18 “(C) In taking action under this paragraph, the
19 convening authority, in his sole discretion, may approve,
20 disapprove, commute, or suspend the sentence in whole
21 or in part. The convening authority may not increase the
22 sentence beyond that which is found by the commission.

23 “(3) Action on the findings of a military commis-
24 sion by the convening authority is not required. How-

1 ever, the convening authority, in his sole discretion,
2 may—

3 “(A) dismiss any charge or specification by
4 setting aside a finding of guilty thereto; or

5 “(B) change a finding of guilty to a charge
6 to a finding of guilty to an offense that is a lesser
7 included offense of the offense stated in the
8 charge.

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

12 “(d) ORDER OF REVISION OR REHEARING.—(1) Sub-
13 ject to paragraphs (2) and (3), the convening authority, in
14 his sole discretion, may order a proceeding in revision or
15 a rehearing.

16 “(2)(A) Except as provided in subparagraph (B), a
17 proceeding in revision may be ordered if—

18 “(i) there is an apparent error or omission in
19 the record; or

20 “(ii) the record shows improper or inconsis-
21 tent action by a military commission with respect
22 to the findings or sentence that can be rectified
23 without material prejudice to the substantial rights
24 of the accused.

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

1 “(i) reconsider a finding of not guilty of any
2 specification or a ruling which amounts to a find-
3 ing of not guilty;

4 “(ii) reconsider a finding of not guilty of any
5 charge, unless there has been a finding of guilty
6 under a specification laid under that charge, which
7 sufficiently alleges a violation;

8 “(iii) increase the severity of the sentence
9 unless the sentence prescribed for the offense is
10 mandatory.

11 “(3) A rehearing may be ordered by the convening
12 authority if he disapproves the findings and sentence and
13 states the reasons for disapproval of the findings. If such
14 a person disapproves the findings and sentence and does
15 not order a rehearing, he shall dismiss the charges. A re-
16 hearing as to the findings may not be ordered where there
17 is a lack of sufficient evidence in the record to support
18 the findings. A rehearing as to the sentence may be or-
19 dered if the convening authority disapproves the sen-
20 tence.

21 **“§ 950c. Waiver or withdrawal of appeal**

22 “(a) WAIVER OF RIGHT OF REVIEW.—(1) In each
23 case subject to appellate review under section 950f and
24 950g of this title, except a case in which the sentence as
25 approved under section 950b of this title includes death,

1 the accused may file with the convening authority a
2 statement expressly waiving the right of the accused to
3 such review.

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

6 “(3) A waiver under paragraph (1) must be filed, if
7 at all, within 10 days after notice on the action is served
8 on the accused under section 950b(c)(4) of this title. The
9 convening authority, for good cause, may extend the pe-
10 riod for such filing by not more than 30 days.

11 “(b) WITHDRAWAL OF APPEAL.—Except in a case
12 in which the sentence as approved under section 950b of
13 this title includes death, the accused may withdraw an
14 appeal at any time.

15 “(c) EFFECT OF WAIVER OR WITHDRAWAL.—A
16 waiver of the right to appellate review or the withdrawal
17 of an appeal under this section bars review under section
18 950f or 950g of this title.

19 **“§ 950d. Appeal by the United States**

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

1 “(A) terminates commission proceedings
2 with respect to a charge or specification;

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

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

7 “(2) The United States may not appeal under para-
8 graph (1) an order or ruling that is, or amounts to, a find-
9 ing of not guilty by the commission with respect to the
10 charge or specification.

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

15 “(c) APPEAL.—An appeal under this section shall
16 be forwarded by means prescribed under regulations of
17 the Secretary directly to the Court of Military Commis-
18 sion Review. In ruling on an appeal under this section,
19 the Court of Military Commission Review may act only
20 with respect to matters of law.

21 “(d) COURT OF APPEALS.—The United States may
22 appeal an adverse ruling under subsection (c) to the
23 United States Court of Appeals for the District of Co-
24 lumbia Circuit by filing a petition for review in the Court
25 of Appeals within 10 days after the date of such ruling.

1 Review under this subsection shall be at the discretion of
2 the Court of Appeals.

3 **“§ 950e. Rehearings**

4 “(a) COMPOSITION OF MILITARY COMMISSION FOR
5 REHEARING.—Each rehearing under this chapter shall
6 take place before a military commission composed of
7 members not members of the commission which first
8 heard the case.

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

11 “(A) the accused may not be tried for any
12 offense of which he was found not guilty by the
13 first commission; and

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

16 “(i) the sentence is based upon a find-
17 ing of guilty of an offense not considered
18 upon the merits in the original proceedings;
19 or

20 “(ii) unless the sentence prescribed for
21 the offense is mandatory.

22 “(2) Upon a rehearing, if the sentence approved af-
23 ter the first commission was in accordance with a pretrial
24 agreement and the accused at the rehearing changes his
25 plea with respect to the charges or specifications upon

1 which the pretrial agreement was based, or otherwise
2 does not comply with pretrial agreement, the sentence as
3 to those charges or specifications may include any pun-
4 ishment not in excess of that lawfully adjudged at the
5 first commission.

6 **“§ 950f. Review by Court of Military Commission Re-**
7 **view**

8 “(a) COURT ESTABLISHED.—(1) The Secretary
9 shall establish a Court of Military Commission Review
10 which shall be composed of one or more panels, and each
11 such panel shall be composed of not less than three ap-
12 pellate military judges.

13 “(2) For the purpose of reviewing military com-
14 mission decisions, the court may sit in panels or as a
15 whole in accordance with rules prescribed by the Secre-
16 tary.

17 “(b) COMPOSITION OF THE COURT.—(1) The Secre-
18 tary shall assign appellate military judges to a Court of
19 Military Commission Review.

20 “(2) Each appellate military judge shall meet the
21 qualifications for military judges prescribed by section
22 948j(b) of this Act or shall be a civilian with comparable
23 qualifications.

1 “(3) No person may be appointed to serve as an
2 appellate military judge in any case in which that person
3 acted as a military judge, counsel, or reviewing official.

4 “(c) RIGHT OF APPEAL.—The accused may appeal
5 from the final decision of a military commission, and the
6 United States may appeal as provided in section 950d of
7 this title, to the Court of Military Commission Review in
8 accordance with procedures prescribed under regulations
9 of the Secretary.

10 “(d) SCOPE OF REVIEW.—In ruling on an appeal
11 under this section, the Court of Military Commission Re-
12 view may act only with respect to matters of law.

13 **“§ 950g. Review by the United States Court of Ap-
14 peals for the District of Columbia Circuit
15 and the Supreme Court of the United
16 States**

17 “(a) IN GENERAL.—(1)(A) Except as provided in
18 subparagraph (B), the United States Court of Appeals for
19 the District of Columbia Circuit shall have exclusive ju-
20 risdiction to determine the validity of a final judgment
21 rendered by a military commission, pursuant to Section
22 1005(e)(3) of the Detainee Treatment Act of 2005.

23 “(B) The Court of Appeals shall not review the fi-
24 nal judgment until all other appeals under this chapter
25 have been waived or exhausted.

1 “(2) A petition for review must be filed by the ac-
2 cused in the Court of Appeals by no longer than 20 days
3 from the earlier of when—

4 “(A) written notice of the final decision of
5 the Court of Military Commission Review is
6 served on the accused or on defense counsel; or

7 “(B) the accused submits, in the form pre-
8 scribed by section 950c of this title, a written no-
9 tice waiving his right to appeal under section 950f
10 of this title.

11 “(b) REVIEW BY SUPREME COURT.—The Supreme
12 Court of the United States may review by writ of certio-
13 rari the final judgment of the Court of Appeals pursuant
14 to section 1257 of title 28, United States Code.

15 **“§ 950h. Appellate counsel**

16 “(a) APPOINTMENT.—The Secretary shall, by regu-
17 lation, establish procedures for the appointment of appel-
18 late counsel for the United States and for the accused in
19 military commissions under this chapter. Appellate
20 counsel shall meet the qualifications for appearing before
21 military commissions under this chapter.

22 “(b) REPRESENTATION OF UNITED STATES.—
23 Appellate counsel may represent the United States in any
24 appeal or review proceeding under this chapter. Appel-
25 late Government counsel may represent the United States

1 before the Supreme Court in cases arising under this
2 chapter when requested to do so by the Attorney General.

3 “(c) REPRESENTATION OF ACCUSED.—The accused
4 shall be represented by appellate military counsel before
5 the Court of Military Commission Review, the United
6 State Court of Appeals for the District of Columbia Cir-
7 cuit, or the Supreme Court, or by civilian counsel if re-
8 tained by him.

9 **“§ 950i. Execution of sentence; suspension of sentence**

10 “(a) EXECUTION OF SENTENCE OF DEATH ONLY
11 UPON APPROVAL BY THE PRESIDENT.—If the sentence of
12 a military commission under this chapter extends to
13 death, that part of the sentence providing for death may
14 not be executed until approved by the President. In such
15 a case, the President may commute, remit, or suspend the
16 sentence, or any part thereof, as he sees fit.

17 “(b) EXECUTION OF SENTENCE OF DEATH ONLY
18 UPON FINAL JUDGMENT OF LEGALITY OF PROCEEDINGS.—
19 (1) If the sentence of a military commission under this
20 chapter extends to death, the sentence may not be exe-
21 cuted until there is a final judgment as to the legality of
22 the proceedings (and with respect to death, approval un-
23 der subsection (a)).

24 “(2) A judgment as to legality of the proceedings is
25 final for purposes of paragraph (1) when—

1 “(A) review is completed by the Court of
2 Military Commission Review and—

3 “(i) the time for the accused to file a
4 petition for review by the Court of Appeals
5 for the D.C. Circuit has expired; and

6 “(ii) the accused has not filed a timely
7 petition for such review; and

8 “(iii) the case is not otherwise under
9 review by that Court; or

10 “(B) review is completed in accordance with
11 the judgment of the Court of Appeals for the D.C.
12 Circuit and—

13 “(i) a petition for a writ of certiorari is
14 not timely filed;

15 “(ii) such a petition is denied by the
16 Supreme Court; or

17 “(iii) review is otherwise completed in
18 accordance with the judgment of the Su-
19 preme Court.

20 “(c) SUSPENSION OF SENTENCE.—The Secretary, or
21 the convening authority acting on the case (if other than
22 the Secretary), may suspend the execution of any sen-
23 tence or part thereof in the case, except a sentence of
24 death.

1 **“§ 950j. Finality of proceedings, findings, and sen-**
2 **tences**

3 “(a) FINALITY.—The appellate review of records of
4 trial provided by this chapter, the proceedings, findings,
5 and sentences of military commissions as approved, re-
6 viewed, or affirmed as required by this chapter, are final
7 and conclusive. Orders publishing the proceedings of
8 military commissions are binding upon all departments,
9 courts, agencies, and officers of the United States, subject
10 only to the authority of the President.

11 “(b) PROVISIONS OF CHAPTER SOLE BASIS FOR RE-
12 VIEW OF MILITARY COMMISSION PROCEDURES AND AC-
13 TIONS.—Except as otherwise provided in this chapter,
14 and notwithstanding any other law (including section
15 2241 of title 28, United States Code, or any other habeas
16 corpus provision), no court, justice, or judge shall have
17 jurisdiction to hear or consider any claim or cause of ac-
18 tion whatsoever, including any action pending on or filed
19 after the date of enactment of this chapter, relating to the
20 prosecution, trial, or judgment of a military commission
21 convened under this section, including challenges to the
22 lawfulness of the procedures of military commissions
23 under this chapter.

24 “SUBCHAPTER VII—PUNITIVE MATTERS

“Sec.

“950p. Substantive offenses.

“950q. Principals.

“950r. Accessory after the fact.

“950s. Conviction of lesser offenses.

“950t. Attempts.

“950u. Solicitation.

“950v. Crimes triable by military commission.

“950w. Perjury and obstruction of justice.

“950x. Contempt.

1 **“§ 950p. Substantive offenses generally**

2 “(a) PURPOSE.—The following provisions codify
3 offenses that have traditionally been triable by military
4 commissions. This Act does not establish new crimes
5 that did not exist before its establishment, but rather codi-
6 fies those crimes for trial by military commission.

7 “(b) EFFECT.—Because these provisions are de-
8 clarative of existing law, they do not preclude trial for
9 crimes that occurred prior to their effective date.

10 **“§ 950q. Principals**

11 “Any person is punishable as a principal under this
12 chapter who—

13 “(1) commits an offense punishable by this
14 chapter, or aids, abets, counsels, commands, or
15 procures its commission; or

16 “(2) causes an act to be done which if di-
17 rectly performed by him would be punishable by
18 this chapter; or

19 “(3) is a superior commander who, with re-
20 gard to acts punishable under this chapter, knew,
21 had reason to know, or should have known, that a
22 subordinate was about to commit such acts or had

1 done so and the superior failed to take the neces-
2 sary and reasonable measures to prevent such acts
3 or to punish the perpetrators thereof.

4 **“§ 950r. Accessory after the fact**

5 “Any person subject to this chapter who, knowing
6 that an offense punishable by this chapter has been com-
7 mitted, receives, comforts, or assists the offender in order
8 to hinder or prevent his apprehension, trial, or punish-
9 ment shall be punished as a military commission may di-
10 rect.

11 **“§ 950s. Conviction of lesser offenses**

12 “An accused may be found guilty of an offense
13 necessarily included in the offense charged or of an at-
14 tempt to commit either the offense charged or an offense
15 necessarily included therein.

16 **“§ 950t. Attempts**

17 “(a) IN GENERAL.—Any person subject to this
18 chapter who attempts to commit any offense punishable
19 by this Act shall be punished as a military commission
20 may direct.

21 “(b) SCOPE OF OFFENSE.—An act, done with spe-
22 cific intent to commit an offense under this chapter,
23 amounting to more than mere preparation and tending,
24 even though failing, to effect its commission, is an at-
25 tempt to commit that offense.

1 “(c) EFFECT OF CONSUMMATION.—Any person
2 subject to this chapter may be convicted of an attempt to
3 commit an offense although it appears on the trial that the
4 offense was consummated.

5 **“§ 950u. Solicitation**

6 “Any person subject to this chapter who solicits or
7 advises another or others to commit one or more substan-
8 tive offenses triable by military commission shall, if the
9 offense solicited or advised is attempted or committed, be
10 punished with the punishment provided for the commis-
11 sion of the offense, but, if the offense solicited or advised
12 is not committed or attempted, he shall be punished as a
13 military commission may direct.

14 **“§ 950v. Crimes triable by military commission**

15 “(a) DEFINITIONS AND CONSTRUCTION.—(1) For
16 purposes of this chapter, the term ‘military objective’ re-
17 fers to combatants and those objects during an armed
18 conflict which, by their nature, location, purpose, or use,
19 effectively contribute to the opposing force’s war-
20 fighting or war-sustaining capability and whose total or
21 partial destruction, capture, or neutralization would con-
22 stitute a definite military advantage to the attacker under
23 the circumstances at the time of the attack.

24 “(2) For purposes of this section only, ‘protected
25 person’ refers to any person entitled to protection under

1 one or more of the Geneva Conventions, including civil-
2 ians not taking an active part in hostilities, military per-
3 sonnel placed *hors de combat* by sickness, wounds, or
4 detention, and military medical or religious personnel.

5 “(3) For purposes of this chapter, the term ‘pro-
6 tected property’ refers to property specifically protected
7 by the law of war such as buildings dedicated to religion,
8 education, art, science or charitable purposes, historic
9 monuments, hospitals, or places where the sick and
10 wounded are collected, provided they are not being used
11 for military purposes or are not otherwise military objec-
12 tives. Such property would include objects properly
13 identified by one of the distinctive emblems of the Ge-
14 neva Conventions but does not include all civilian prop-
15 erty.

16 “(4) The intent required for offenses (1), (2), (3),
17 (4) and (12) under subsection (b) precludes their applica-
18 bility with regard to collateral damage or to death, dam-
19 age, or injury incident to a lawful attack.

20 “(b) OFFENSES.—The following enumerated of-
21 fenses, when committed in the context of and associated
22 with armed conflict, shall be triable by military commis-
23 sion under this chapter at any time without limitation—

24 “(1) MURDER OF PROTECTED PERSONS.—
25 Any person who intentionally kills one or more

1 protected persons is guilty of the offense of inten-
2 tionally killing protected persons and shall be sub-
3 ject to whatever punishment the commission may
4 direct, including the penalty of death.

5 “(2) ATTACKING CIVILIANS.—Any person
6 who intentionally engages in an attack upon a ci-
7 vilian population as such or individual civilians not
8 taking active part in hostilities is guilty of the of-
9 fense of attacking civilians and shall be subject to
10 whatever punishment the commission may direct,
11 including, if death results to one or more of the
12 victims, the penalty of death.

13 “(3) ATTACKING CIVILIAN OBJECTS.—Any
14 person who intentionally engages in an attack upon
15 civilian objects (property that is not a military ob-
16 jective) shall be guilty of the offense of attacking
17 civilian objects and shall be subject to whatever
18 punishment the commission may direct.

19 “(4) ATTACKING PROTECTED PROPERTY.—
20 Any person who intentionally engages in an attack
21 upon protected property shall be guilty of the of-
22 fense of attacking protected property and shall be
23 subject to whatever punishment the commission
24 may direct.

1 “(5) PILLAGING.—Any person who inten-
2 tionally and in the absence of military necessity
3 appropriates or seizes property for private or per-
4 sonal use, without the consent of a person with au-
5 thority to permit such appropriation or seizure,
6 shall be guilty of the offense of pillaging and shall
7 be subject to whatever punishment the commission
8 may direct.

9 “(6) DENYING QUARTER.—Any person who,
10 with effective command or control over subordi-
11 nate groups, declares, orders, or otherwise indi-
12 cates to those forces that there shall be no survi-
13 vors or surrender accepted, with the intent there-
14 fore to threaten an adversary or to conduct hostili-
15 ties such that there would be no survivors or sur-
16 render accepted, shall be guilty of denying quarter
17 and shall be subject to whatever punishment the
18 commission may direct.

19 “(7) TAKING HOSTAGES.—Any person who,
20 having knowingly seized or detained one or more
21 persons, threatens to kill, injure, or continue to de-
22 tain such person or persons with the intent of com-
23 pelling any nation, person other than the hostage,
24 or group of persons to act or refrain from acting as
25 an explicit or implicit condition for the safety or

1 release of such person or persons, shall be guilty of
2 the offense of taking hostages and shall be subject
3 to whatever punishment the commission may di-
4 rect, including, if death results to one or more of
5 the victims, the penalty of death.

6 “(8) EMPLOYING POISON OR ANALOGOUS
7 WEAPONS.—Any person who intentionally, as a
8 method of warfare, employs a substance or a
9 weapon that releases a substance that causes death
10 or serious and lasting damage to health in the ordi-
11 nary course of events, through its asphyxiating,
12 bacteriological, or toxic properties, shall be guilty
13 of employing poison or analogous weapons and
14 shall be subject to whatever punishment the com-
15 mission may direct, including, if death results to
16 one or more of the victims, the penalty of death.

17 “(9) USING PROTECTED PERSONS AS
18 SHIELDS.—Any person who positions, or otherwise
19 takes advantage of, a protected person with the in-
20 tent to shield a military objective from attack or to
21 shield, favor, or impede military operations, shall
22 be guilty of the offense of using protected persons
23 as shields and shall be subject to whatever pun-
24 ishment the commission may direct, including, if

1 death results to one or more of the victims, the
2 penalty of death.

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

12 “(11) TORTURE.—Any person who commits
13 an act specifically intended to inflict severe physi-
14 cal or mental pain or suffering (other than pain or
15 suffering incidental to lawful sanctions) upon an-
16 other person within his custody or physical control
17 for the purpose of obtaining information or a con-
18 fession, punishment, intimidation, coercion, or any
19 reason based on discrimination of any kind, shall
20 be guilty of torture and subject to whatever pun-
21 ishment the commission may direct, including, if
22 death results to one or more of the victims, the
23 penalty of death. ‘Severe mental pain or suffering’
24 has the meaning provided in 18 U.S.C. § 2340(2).

1 “(12) CRUEL OR INHUMAN TREATMENT.—
2 Any person who commits an act intended to inflict
3 severe physical or mental pain or suffering (other
4 than pain or suffering incidental to lawful sanc-
5 tions), including severe physical abuse, upon an-
6 other person within his custody or physical control
7 shall be guilty of cruel or inhuman treatment and
8 subject to whatever punishment the commission
9 may direct, including, if death results to one or
10 more of the victims, the penalty of death. ‘Severe
11 mental pain or suffering’ has the meaning provided
12 in 18 U.S.C. § 2340(2).

13 “(13) INTENTIONALLY CAUSING SERIOUS
14 BODILY INJURY.—Any person who intentionally
15 causes serious bodily injury to one or more per-
16 sons, including lawful combatants, in violation of
17 the law of war shall be guilty of the offense of
18 causing serious bodily injury and shall be subject
19 to whatever punishment the commission may di-
20 rect, including, if death results to one or more of
21 the victims, the penalty of death. ‘Serious bodily
22 injury’ has the meaning provided in 18 U.S.C. §
23 113(b)(2).

24 “(14) MUTILATING OR MAIMING.—Any per-
25 son who intentionally injures one or more pro-

1 tected persons, by disfiguring the person or per-
2 sons by any mutilation thereof or by permanently
3 disabling any member, limb, or organ of his body,
4 without any legitimate medical or dental purpose,
5 shall be guilty of the offense of mutilation or
6 maiming and shall be subject to whatever punish-
7 ment the commission may direct, including, if
8 death results to one or more of the victims, the
9 penalty of death.

10 “(15) MURDER IN VIOLATION OF THE LAW OF
11 WAR.—Any person who intentionally kills one or
12 more persons, including lawful combatants, in vio-
13 lation of the law of war shall be guilty of the of-
14 fense of murder in violation of the law of war and
15 shall be subject to whatever punishment the com-
16 mission may direct, including the penalty of death.

17 “(16) DESTRUCTION OF PROPERTY IN VIOLA-
18 TION OF THE LAW OF WAR.—Any person who in-
19 tentionally destroys property belonging to another
20 person in violation of the law of war shall be guilty
21 of the offense of destruction of property in viola-
22 tion of the law of war and shall be subject to what-
23 ever punishment the commission may direct.

24 “(17) USING TREACHERY OR PERFIDY.—Any
25 person who, after inviting the confidence or belief

1 of one or more persons that they were entitled to,
2 or obliged to accord, protection under the law of
3 war, intentionally makes use of that confidence or
4 belief in killing, injuring, or capturing such person
5 or persons, shall be guilty of using treachery or
6 perfidy and shall be subject to whatever punish-
7 ment the commission may direct.

8 “(18) IMPROPERLY USING A FLAG OF
9 TRUCE.—Any person who uses a flag of truce to
10 feign an intention to negotiate, surrender, or oth-
11 erwise to suspend hostilities when there is no such
12 intention, shall be guilty of improperly using a flag
13 of truce and shall be subject to whatever punish-
14 ment the commission may direct.

15 “(19) IMPROPERLY USING A DISTINCTIVE
16 EMBLEM.—Any person who intentionally uses a
17 distinctive emblem recognized by the law of war
18 for combatant purposes in a manner prohibited by
19 the law of war shall be guilty of improperly using a
20 distinctive emblem and shall be subject to what-
21 ever punishment the commission may direct.

22 “(20) INTENTIONALLY MISTREATING A DEAD
23 BODY.—Any person who intentionally mistreats
24 the body of a dead person, without justification by
25 legitimate military necessity, shall be guilty of the

1 offense of mistreating a dead body and shall be
2 subject to whatever punishment the commission
3 may direct.

4 “(21) RAPE.—Any person who forcibly or
5 with coercion or threat of force wrongfully invades
6 the body of a person by penetrating, however
7 slightly, the anal or genital opening of the victim
8 with any part of the body of the accused or with
9 any foreign object shall be guilty of the offense of
10 rape and shall be subject to whatever punishment
11 the commission may direct.

12 “(22) HIJACKING OR HAZARDING A VESSEL
13 OR AIRCRAFT.—Any person subject to this chapter
14 who intentionally seizes, exercises unauthorized
15 control over, or endangers the safe navigation of, a
16 vessel or aircraft that was not a legitimate military
17 target is guilty of the offense of hijacking or haz-
18 arding a vessel or aircraft and shall be subject to
19 whatever punishment the commission may direct,
20 including, if death results to one or more of the
21 victims, the penalty of death.

22 “(23) TERRORISM.—Any person subject to
23 this chapter who intentionally kills or inflicts great
24 bodily harm on one or more persons, or intention-
25 ally engages in an act that evinces a wanton disre-

1 gard for human life, in a manner calculated to in-
2 fluence or affect the conduct of government or ci-
3 vilian population by intimidation or coercion, or to
4 retaliate against government conduct, shall be
5 guilty of the offense of terrorism and shall be sub-
6 ject to whatever punishment the commission may
7 direct, including, if death results to one or more of
8 the victims, the penalty of death.

9 “(24) PROVIDING MATERIAL SUPPORT FOR
10 TERRORISM.—Any person who provides material
11 support or resources, knowing or intending that
12 they are to be used in preparation for, or in carry-
13 ing out, an act of terrorism (as defined in subsec-
14 tion (b)(23) of this section), or who intentionally
15 provides material support or resources to an inter-
16 national terrorist organization engaged in hostili-
17 ties against the United States, knowing that such
18 organization has engaged or engages in terrorism
19 (as defined in subsection (b)(23) of this section),
20 shall be guilty of the offense of providing material
21 support for terrorism and shall be subject to what-
22 ever punishment the commission may direct. The
23 term ‘material support or resources’ has the mean-
24 ing provided in 18 U.S.C. § 2339A(b).

1 “(25) WRONGFULLY AIDING THE ENEMY.—

2 Any person who, in breach of an allegiance or duty
3 to the United States, knowingly and intentionally
4 aids an enemy of the United States or one its co-
5 belligerents shall be guilty of the offense of wrong-
6 fully aiding the enemy and shall be subject to
7 whatever punishment the commission may direct.

8 “(26) SPYING.—Any person who, with intent

9 or reason to believe that it is to be used to the in-
10 jury of the United States or to the advantage of a
11 foreign power, collects or attempts to collect cer-
12 tain information by clandestine means or while
13 acting under false pretenses, for the purpose of
14 conveying such information to an enemy of the
15 United States or one of its co-belligerents, shall be
16 guilty of the offense of spying and shall be subject
17 to whatever punishment the commission may di-
18 rect, including the penalty of death.

19 “(27) CONSPIRACY.—Any person who con-

20 spires to commit one or more substantive offenses
21 triable under this section, and who knowingly does
22 any overt act to effect the object of the conspiracy,
23 shall be guilty of conspiracy and shall be subject to
24 whatever punishment the commission may direct,

1 including, if death results to one or more of the
2 victims, the penalty of death.

3 **“§ 950w. Perjury and obstruction of justice**

4 “The military commissions also may try offenses
5 and impose punishments for perjury, false testimony, or
6 obstruction of justice related to military commissions.

7 **“§ 950x. Contempt**

8 “A military commission may punish for contempt
9 any person who uses any menacing word, sign, or gesture
10 in its presence, or who disturbs its proceedings by any
11 riot or disorder.”.

12 (2) TABLES OF CHAPTERS AMENDMENTS.—

13 The tables of chapters at the beginning of subtitle
14 A and part II of subtitle A of title 10, United States
15 Code, are each amended by inserting after the item
16 relating to chapter 47 the following new item:

“CHAPTER 47A—MILITARY COMMISSIONS
“SUBCHAPTER I—GENERAL PROVISIONS
“SUBCHAPTER II—COMPOSITION OF COURTS-
MARTIAL
“SUBCHAPTER III—PRE-TRIAL PROCEDURE
“SUBCHAPTER IV—TRIAL PROCEDURE
“SUBCHAPTER V—SENTENCES
“SUBCHAPTER VI—POST-TRIAL PROCEDURE
AND REVIEW OF MILITARY COMMISSIONS
“SUBCHAPTER VII—PUNITIVE MATTERS

17 (b) SUBMITTAL OF PROCEDURES TO CONGRESS.—

18 (1) SUBMITTAL OF PROCEDURES.—Not later
19 than 90 days after the date of the enactment of this

1 Act, the Secretary shall submit to the Committees
2 on Armed Forces of the Senate and the House of
3 Representatives a report setting forth the proce-
4 dures for military commissions prescribed under
5 Chapter 47A of title 10, United States Code (as
6 added by subsection (a)).

7 (2) SUBMITTAL OF MODIFICATIONS.—Not
8 later than 60 days before the date on which any
9 proposed modification of the procedures described
10 in paragraph (1) shall go into effect, the Secretary
11 shall submit to the committees of Congress re-
12 ferred to in that paragraph a report describing such
13 modifications.

14 **SEC. 5. JUDICIAL REVIEW.**

15 Section 2241 of title 28, United States Code, is
16 amended by replacing subsection (e) with the following:

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

1 to any aspect of the alien’s detention, transfer, treatment,
2 or conditions of confinement:

3 “(1) COMBATANT STATUS REVIEW TRIBU-
4 NALS.—The United States Court of Appeals for the
5 District of Columbia Circuit shall have exclusive
6 jurisdiction to determine the validity of any final
7 decision of a Combatant Status Review Tribunal.
8 The scope of such review is defined in section
9 1005(e)(2) of the Detainee Treatment Act of 2005.
10 If the Court grants a detainee’s petition for review,
11 the Department of Defense may conduct a new
12 Combatant Status Review Tribunal.

13 “(2) MILITARY COMMISSIONS.—Review
14 shall be had only of final judgments of military
15 commissions as provided for pursuant to section
16 247 of the Military Commissions Act of 2006.

17 “(3) INFORMATION CONSIDERED.—The court
18 may consider classified information submitted *in*
19 *camera* and *ex parte* in making any determination
20 under this section.”.

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

22 (a) IN GENERAL.—Satisfaction of the prohibitions
23 against cruel, inhuman, and degrading treatment set forth
24 in Section 1003 of the Detainee Treatment Act of 2005
25 (title X of Public Law 109-148; 119 Stat. 2739; 42

1 U.S.C. 2000dd) shall fully satisfy United States obliga-
2 tions with respect to the standards for detention and
3 treatment established by section 1 of common Article 3
4 of the Geneva Conventions, with the exception of the ob-
5 ligations imposed by subsections 1(b) and 1(d) of such
6 Article.

7 (b) RIGHTS NOT JUDICIALLY ENFORCEABLE.—

8 (1) IN GENERAL.—No person in any habeas
9 action or any other action may invoke the Geneva
10 Conventions or any protocols thereto as a source of
11 rights, whether directly or indirectly, for any pur-
12 pose in any court of the United States or its States
13 or territories.

14 (2) CONSTRUCTION.—Paragraph (1) may not
15 be construed to affect the obligations of the United
16 States under the Geneva Conventions.

17 (c) GENEVA CONVENTIONS DEFINED.—In this sec-
18 tion, the term “Geneva Conventions” means the interna-
19 tional conventions signed at Geneva on August 12, 1949,
20 including common Article 3.

21 **SEC. 7. WAR CRIMES ACT AMENDMENT.**

22 Section 2441 of title 18, United States Code is
23 amended by replacing subsection (c)(3) with the follow-
24 ing:

1 “(3) which constitutes any of the following serious
2 violations of common Article 3 of the international con-
3 ventions signed at Geneva 12 August 1949, when com-
4 mitted in the context of and in association with an armed
5 conflict not of an international character—

6 “(1) TORTURE.—Any person who commits,
7 or conspires or attempts to commit, an act specifi-
8 cally intended to inflict severe physical or mental
9 pain or suffering (other than pain or suffering inci-
10 dental to lawful sanctions) upon another person
11 within his custody or physical control for the pur-
12 pose of obtaining information or a confession, pun-
13 ishment, intimidation, coercion, or any reason
14 based on discrimination of any kind, shall be guilty
15 of a violation of this subsection. ‘Severe mental
16 pain or suffering’ has the meaning provided in 18
17 U.S.C. § 2340(2).

18 “(2) CRUEL OR INHUMAN TREATMENT.—Any
19 person who commits, or conspires or attempts to
20 commit, an act intended to inflict severe physical
21 or mental pain or suffering (other than pain or suf-
22 fering incidental to lawful sanctions), including
23 severe physical abuse, upon another person within
24 his custody or physical control shall be guilty of a
25 violation of this subsection. ‘Severe mental pain

1 or suffering' has the meaning provided in 18
2 U.S.C. § 2340(2).

3 “(3) PERFORMING BIOLOGICAL EXPERI-
4 MENTS.—Any person who subjects, or conspires or
5 attempts to subject, one or more persons within his
6 custody or physical control to biological experi-
7 ments without a legitimate medical purpose and in
8 so doing endangers the body or health of such per-
9 son or persons shall be guilty of a violation of this
10 subsection.

11 “(4) MURDER.—Any person who intention-
12 ally kills, or conspires or attempts to kill, or kills
13 whether intentionally or unintentionally in the
14 course of committing any other offense under this
15 section, one or more persons taking no active part
16 in the hostilities, including those placed *hors de*
17 *combat* by sickness, wounds, detention, or any
18 other cause, shall be guilty of a violation of this
19 subsection. The intent required for this offense
20 precludes its applicability with regard to collateral
21 damage or to death, damage, or injury incident to a
22 lawful attack.

23 “(5) MUTILATION OR MAIMING.—Any per-
24 son who intentionally injures, or conspires or at-
25 tempts to injure, or injures whether intentionally or

1 unintentionally in the course of committing any
2 other offense under this section, one or more per-
3 sons taking no active part in the hostilities, includ-
4 ing those placed *hors de combat* by sickness,
5 wounds, detention, or any other cause, by disfigur-
6 ing the person or persons by any mutilation thereof
7 or by permanently disabling any member, limb, or
8 organ of his body, without any legitimate medical
9 or dental purpose, shall be guilty of a violation of
10 this subsection. The intent required for this of-
11 fense precludes its applicability with regard to col-
12 lateral damage or to death, damage, or injury inci-
13 dent to a lawful attack.

14 “(6) INTENTIONALLY CAUSING GREAT SUF-
15 FERING OR SERIOUS INJURY.—Any person who in-
16 tentionally causes, or conspires or attempts to
17 cause, serious bodily injury to one or more persons
18 taking no active part in the hostilities, including
19 those placed *hors de combat* by sickness, wounds,
20 detention, or any other cause, shall be guilty of a
21 violation of this subsection. The intent required
22 for this offense precludes its applicability with re-
23 gard to collateral damage or to death, damage, or
24 injury incident to a lawful attack. ‘Serious bodily

1 injury' has the meaning provided in 18 U.S.C.
2 § 113(b)(2).

3 “(7) RAPE.—Any person who forcibly or
4 with coercion or threat of force wrongfully in-
5 vades, or conspires or attempts to invade, the body
6 of a person by penetrating, however slightly, the
7 anal or genital opening of the victim with any part
8 of the body of the accused or with any foreign ob-
9 ject shall be guilty of a violation of this subsection.

10 “(8) SEXUAL ASSAULT OR ABUSE.—Any
11 person who forcibly or with coercion or threat of
12 force engages, or conspires or attempts to engage,
13 in sexual contact with one or more persons, or
14 causes, or conspires or attempts to cause, one or
15 more persons to engage in sexual contact, shall be
16 guilty of a violation of this subsection. For pur-
17 poses of this offense, ‘sexual contact’ has the
18 meaning provided in 18 U.S.C. § 2246(3).

19 “(9) TAKING HOSTAGES.—Any person who,
20 having knowingly seized or detained one or more
21 persons, threatens to kill, injure, or continue to de-
22 tain such person or persons with the intent of com-
23 pelling any nation, person other than the hostage,
24 or group of persons to act or refrain from acting as
25 an explicit or implicit condition for the safety or

1 release of such person or persons, shall be guilty of
2 a violation of this subsection. Any person who at-
3 tempts to engage or conspires to engage in this of-
4 fense shall also be guilty under this subsection.”.

5 **SEC. 8. CONFORMING AMENDMENTS.**

6 (a) Section 1004(b) of the Detainee Treatment Act
7 of 2005 (10 U.S.C. § 801 note) is amended to conform
8 with this Act as follows—

9 (1) by replacing “may provide” with “shall
10 provide”; and

11 (2) by adding “or investigation” after
12 “criminal prosecution”; and

13 (3) by adding “whether before United States
14 courts or agencies, foreign courts or agencies, or
15 international courts or agencies,” after “described
16 in that subsection”;

17 (b) Section 1005 of the Detainee Treatment Act of
18 2005 (10 U.S.C. § 801 note) is amended to conform with
19 this Act as follows—

20 (1) by striking subsection (e)(3)(B) and re-
21 numbering subsections (e)(3)(C) and (e)(3)(D) as
22 subsections (e)(3)(B) and (e)(3)(C), respectively;
23 and

24 (2) in subsection (e)(3)(A), by striking “pur-
25 suant to Military Commission Order No. 1, August

1 31, 2005 (or any successor military order)” and in-
2 serting “by a military commission under chapter
3 47a of title 10”; and

4 (3) in former subsection (e)(3)(C)(i), by
5 striking “pursuant to the military order” and insert-
6 ing “by a military commission”; and

7 (4) in former subsection (e)(3)(C)(ii), by
8 striking “pursuant to such military order” and in-
9 serting “by such a military commission”; and

10 (5) in former subsection (e)(3)(D)(i) by
11 striking “specified in the military order” and in-
12 serting “specified for a military commission”; and

13 (6) and in former subsection (e)(3)(C)(i), by
14 striking “at Guantanamo Bay, Cuba”; and

15 (7) in former subsection (e)(2)(B)(i) by re-
16 placing “the Department of Defense at Guan-
17 tanamo Bay, Cuba” with “United States”.

18 (c) Section 802 of title 10, United States Code, is
19 amended to conform with this Act by adding, “(a)(13)
20 Lawful enemy combatants who violate the law of war.”

21 (d) Section 821 of title 10, United States Code, is
22 amended to conform with this Act by striking the phrase
23 “by statute or the law of war”.

24 (e) Section 836 of title 10, United States Code, is
25 amended to conform with this Act as follows—in subsec-

1 tion (a), by replacing “military commissions and other
2 military tribunals” with “and other military tribunals (ex-
3 cluding military commissions)”.

4 **SEC. 9. RETROACTIVE APPLICATION.**

5 This Act shall take effect on the date of the enact-
6 ment of this Act and shall apply retroactively, including
7 to any aspect of the detention, treatment, or trial of any
8 person detained at any time since September 11, 2001,
9 and to any claim or cause of action pending on or after
10 the date of the enactment of this Act.

11 **SEC. 10. SEVERABILITY.**

12 If any provision of this Act, or the application of a
13 provision to any person or circumstance, is held to be un-
14 constitutional, the remainder of this Act, and the applica-
15 tion of the provisions to any other person or circum-
16 stance, shall not be affected thereby.