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 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,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Military Commissions Act of 2006”.

SEC. 2. FINDINGS.

Congress makes the following findings:

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

(2) Following the attacks on the United States on September 11th, Congress recognized the existing hostilities with al Qaeda and affiliated terrorist organizations and, by the Authorization for the Use of Military Force Joint Resolution (Public Law 107-40), recognized that “the President has authority under the Constitution to take action to deter and prevent acts of international terrorism against the United States” and authorized the President “to use all necessary and appropriate force against those nations, organizations, or per-
sons he determines planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001 . . . in order to prevent any future acts of international terrorism against the United States by such nations, organizations or persons.”

(3) The President’s authority to convene military commissions arises from the Constitution’s vesting in the President of the executive power and the power of Commander in Chief of the Armed Forces. As the Supreme Court of the United States recognized in Madsen v. Kinsella, 343 U.S. 341, 346-48 (1952), “[s]ince our nation’s earliest days, such commissions have been constitutionally recognized agencies for meeting many urgent governmental responsibilities related to war. . . . They have taken many forms and borne many names. Neither their procedure nor their jurisdiction has been prescribed by statute. It has been adapted in each instance to the need that called it forth.”

(4) In exercising the authority vested in the President by the Constitution and laws of the United States, including the Authorization for Use of Military Force Joint Resolution, and in accor-
dance with the law of war, the President has detained enemy combatants in the course of this armed conflict and issued the Military Order of November 13, 2001, to govern the “Detention, Treatment, and Trial of Certain Non-Citizens in the War Against Terrorism.” This Order authorized the Secretary of Defense to establish military commissions to try individuals subject to the Order for any offenses triable by military commission that such individuals are alleged to have committed.

(5) The Supreme Court in *Hamdan v. Rumsfeld*, 126 S. Ct. 2749 (2006), held that the military commissions established by the Department of Defense under the President’s Military Order of November 13, 2001, were not consistent with certain aspects of United States domestic law. The Congress may by law, and does by enactment of this statute, eliminate any deficiency of statutory authority to facilitate bringing terrorists with whom the United States is engaged in armed conflict to justice for violations of the law of war and other offenses triable by military commissions. The prosecution of such individuals by military commissions established and conducted consistent with
this Act fully complies with the Constitution, the
laws of the United States, treaties to which the
United States is a party, and the law of war.

(6) The use of military commissions is par-

ticularly important in this context because other al-
ternatives, such as the use of courts-martial, gener-
ally are impracticable. The terrorists with whom
the United States is engaged in armed conflict have
demonstrated a commitment to the destruction of
the United States and its people, to the violation of
the law of war, and to the abuse of American legal
processes. In a time of ongoing armed conflict, it
generally is neither practicable nor appropriate for
combatants like al Qaeda terrorists to be tried be-
fore tribunals that include all of the procedures as-
associated with courts-martial.

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

(A) compel the Government to share
classified information with the accused,
even though members of al Qaeda cannot be
trusted with our Nation’s secrets and it would not be consistent with the national security of the United States to provide them with access to classified information;

(B) exclude the use of hearsay evidence even though such evidence often will be the best and most reliable evidence that the accused has committed a war crime. For example, many witnesses in military commission trials are likely to be foreign nationals who are not amenable to process or may be precluded for national security reasons from entering the United States or Guantanamo Bay to testify. Other witnesses may be unavailable because of military necessity, incarceration, injury, or death. In short, applying the hearsay rules from the Manual for Courts-Martial or from the Federal Rules of Evidence would make it virtually impossible to bring terrorists to justice for their violations of the law of war;

(C) specify speedy trials and technical rules for sworn and authenticated statements when, due to the exigencies of wartime, the United States cannot safely require members
of the armed forces to gather evidence on
the battlefield, including civilian eye-
witness testimony, as though they were po-
lice officers. Nor can the United States di-
vert members from the front lines and their
duty stations to attend military commission
proceedings. Therefore, strict compliance
with such rules for evidence gathered on the
battlefield would be impracticable, given the
preeminent focus on military operations and
the chaotic nature of combat.

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

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

(B) the need to ensure fair treatment
of those detained as enemy combatants, to
minimize the diversion of members of the
armed forces from other wartime duties, and
to protect the national security of the United States.

(9) In early 2002, as memorialized in a memorandum dated February 7, 2002, the President determined that common Article 3 of the Geneva Conventions did not apply with respect to the United States conflict with al Qaeda because al Qaeda was not a party to those treaties and the conflict with al Qaeda was an armed conflict of an international character. That was the interpretation of the United States prior to the Supreme Court’s decision in *Hamdan* on June 29, 2006. *Hamdan*’s statement to the contrary makes it appropriate to clarify the standards imposed by common Article 3. This Act makes clear that the prohibitions against cruel, inhuman, and degrading treatment found in the Detainee Treatment Act of 2005 fully satisfy the obligations of the United States with respect to the standards for detention and treatment established by section 1 of common Article 3, except for those obligations arising under paragraphs (b) and (d). In addition, the Act makes clear that the Geneva Conventions are not a source of judicially enforceable individual rights, thereby reaffirming that enforcement of the obligations im-
posed by the Conventions is a matter between the
nations that are parties to them.

SEC. 3. AUTHORIZATION FOR MILITARY COMMISSIONS.

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

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

(c) SCOPE OF PUNISHMENT AUTHORITY.—A mili-
tary commission established pursuant to subsection (a)
shall have authority to impose upon any person found
guilty after a proceeding under this Act a sentence that is
appropriate to the offense or offenses for which there was
a finding of guilt, which sentence may include death
where authorized by this Act, imprisonment for life or a
term of years, payment of a fine or restitution, or such
other lawful punishment or condition of punishment as
the commission shall determine to be proper.
(d) EXECUTION OF PUNISHMENT.—The Secretary of Defense shall be authorized to carry out a sentence of punishment decreed by a military commission pursuant to subsection (a) in accordance with such procedures as the Secretary may prescribe.

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

(1) ANNUAL REPORT REQUIRED.—Not later than December 31 each year, the Secretary of Defense shall submit to the Armed Services Committees of the House of Representatives and the Senate an annual report on the conduct of trials by military commissions established pursuant to subsection (a) during such year.

(2) FORM.—Each such report shall be submitted in unclassified form, with classified annex, if necessary and consistent with national security.

SEC. 4. MILITARY COMMISSIONS

(a) MILITARY COMMISSIONS.—

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

“CHAPTER 47A—MILITARY COMMISSIONS

“SUBCHAPTER I—GENERAL PROVISIONS

“Sec.

“948a. Definitions.

“948b. Military commissions generally.
“§ 948a. Definitions

“In this chapter:

“(1) ALIEN.—The term ‘alien’ means an individual who is not a citizen of the United States.

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

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

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

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

“(4) CONVENING AUTHORITY.—The term ‘convening authority’ shall be the Secretary of Defense or his designee.

“(5) LAWFUL ENEMY COMBATANT.—The term ‘lawful enemy combatant’ means an individual determined by or under the authority of the
President or Secretary of Defense (whether on an individualized or collective basis) to be: (i) a member of the regular forces of a State party engaged in hostilities against the United States or its co-belligerents; (ii) a member of a militia, volunteer corps, or organized resistance movement belonging to a State party engaged in such hostilities, which are under responsible command, wear a fixed distinctive sign recognizable at a distance, carry their arms openly, and abide by the law of war; or (iii) a member of a regular armed forces who professes allegiance to a government engaged in such hostilities, but not recognized by the United States.

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

“(7) UNLAWFUL ENEMY COMBATANT.—The term ‘unlawful enemy combatant’ means an individual determined by or under the authority of the President or the Secretary of Defense—

“(A) to be part of or affiliated with a force or organization—including but not limited to al Qaeda, the Taliban, any international terrorist organization, or associated forces—engaged in hostilities against the
United States or its co-belligerents in violation of the law of war;

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

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

“This definition includes any individual determined by a Combatant Status Review Tribunal, before the effective date of this Act, to have been properly detained as an enemy combatant, but excludes any alien determined by the President or the Secretary of Defense (whether on an individualized or collective basis), or by any competent tribunal established under their authority, to be (i) a lawful enemy combatant (including a prisoner of war), or (ii) a protected person whose trial by these military commissions would be inconsistent with Articles 64-76 of the Geneva Convention Relative to the Protection of Civilian Persons in Time of War of August 12, 1949. For purposes of this section, the term “protected person” refers to the category of persons described in Article 4 of the Ge-

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

“§ 948b. Military commissions generally

“(a) **PURPOSE.**—This chapter codifies and establishes procedures governing the use of military commissions to try unlawful enemy combatants for violations of the law of war and other offenses triable by military commissions. Although military commissions traditionally have been constituted by order of the President, the decision of the Supreme Court in *Hamdan v. Rumsfeld* makes it both necessary and appropriate to codify procedures for military commissions as set forth herein.

“(b) **RULE OF CONSTRUCTION.**—The procedures for military commissions set forth in this chapter are modeled after the procedures established for courts-martial in the Uniform Code of Military Justice. However, it would be neither desirable nor practicable to try unlawful enemy combatants by court-martial procedures. The trial of such persons by military commission presents new challenges that require that interpretations of this Act not be unduly influenced by the rules and procedures developed
for courts-martial. Therefore, no construction or application of chapter 47 of this title shall be binding in the construction or application of this chapter.

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

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

“§ 948c. Persons subject to military commissions

“Alien unlawful enemy combatants, as defined in section 948a of this title, shall be subject to trial by military commissions as set forth in this chapter.

“§ 948d. Jurisdiction of military commissions

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

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

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

“SUBCHAPTER II—COMPOSITION OF MILITARY
COMMISSIONS

“Sec.
“948h. Who may convene military commissions.
“948i. Who may serve on military commissions.
“§ 948i. Who may serve on military commissions

“(a) In General.—Any commissioned officer of the United States armed forces on active duty is eligible to serve on a military commission. Eligible commissioned officers shall include, without limitation, reserve personnel on active duty, National Guard personnel on active duty in Federal service, and retired personnel recalled to active duty.

“(b) Detail of Members.—When convening a commission, the convening authority shall detail as members thereof such members of the armed forces as, in his opinion, are fully qualified for the duty by reason of age, education, training, experience, length of service, and judicial temperament. No member of an armed force shall be eligible to serve as a member of a commission.
when he is the accuser or a witness for the prosecution or has acted as an investigator or counsel in the same case.

“(c) EXCUSE OF MEMBERS.—Before a commission is assembled for the trial of a case, the convening authority may excuse a member of the commission from participating in the case.

“§ 948j. Military judge of a military commission

“(a) DETAIL OF A MILITARY JUDGE.—A military judge shall be detailed to each commission. The Secretary shall prescribe regulations providing for the manner in which military judges are detailed to such commissions. The military judge shall preside over each commission to which he has been detailed. The convening authority shall not prepare or review any report concerning the effectiveness, fitness, or efficiency of the military judge so detailed relating to his performance of duty as a military judge.

“(b) ELIGIBILITY.—A military judge shall be a commissioned officer of the armed forces who is a member of the bar of a Federal court or a member of the bar of the highest court of a State, and who is certified to be qualified for duty as a military judge by the Judge Advocate General of the armed force of which such military judge is a member. A commissioned officer who is certified to be qualified for duty as a military judge of a
commission may perform such other duties as are as-
signed to him by or with the approval of that Judge Ad-
vocate General or his designee.

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

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

§ 948k. Detail of trial counsel and defense counsel

“(a) DETAIL OF COUNSEL GENERALLY.—

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

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

“(3) Military defense counsel shall be de-
tailed as soon as practicable after the swearing of
charges against the person accused.
“(4) The Secretary shall prescribe regulations providing for the manner in which counsel are detailed for military commissions and for the persons who are authorized to detail counsel for such military commissions.

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

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

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

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

“(2) a civilian who is—

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

“(B) otherwise qualified to practice before the commission pursuant to regulations prescribed by the Secretary.

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

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

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

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

“§ 948/. Detail or employment of reporters and interpreters

“(a) COURT REPORTERS.—Under such regulations as the Secretary may prescribe, the convening authority of a military commission shall detail or employ qualified court reporters, who shall record the proceedings of and testimony taken before that commission.
“(b) INTERPRETERS.—Under like regulations the convening authority may detail or employ interpreters who shall interpret for the commission, and, as necessary, for trial counsel and defense counsel.

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

§ 948m. Number of members; excuse of members; absent and additional members

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

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

“(b) EXCUSE OF MEMBERS.—No member of a military commission may be absent or excused after the commission has been assembled for the trial of the accused unless excused—

“(1) as a result of challenge;

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

“(3) by order of the convening authority for good cause.
“(c) ABSENT AND ADDITIONAL MEMBERS.—
Whenever a military commission is reduced below the requisite number of members, the trial may not proceed unless the convening authority details new members sufficient to provide not less than the requisite number. The trial may proceed with the new members present after the recorded evidence previously introduced before the members of the commission has been read to the commission in the presence of the military judge, the accused (except as provided by section 949d of this title), and counsel for both sides.

“SUBCHAPTER III—PRE-TRIAL PROCEDURE

“Sec.
“948q. Charges and specifications.
“948r. Compulsory self-incrimination prohibited; statements obtained by torture.
“948s. Service of charges.

“§ 948q. Charges and specifications

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

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

“(2) that they are true in fact to the best of his knowledge and belief.
“(b) NOTICE TO ACCUSED.—Upon the swearing of the charges and specifications in accordance with subsection (a), the accused shall be informed of the charges and specifications against him as soon as practicable.

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

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

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

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

“§ 948s. Service of charges

“The trial counsel assigned to the case shall cause to be served upon the accused and counsel a copy of the charges upon which trial is to be had in English and, if appropriate, in another language that the accused under-
stands, sufficiently in advance of trial to prepare a de-

“SUBCHAPTER IV—TRIAL PROCEDURE

“Sec.
“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.

“§ 949a. Rules

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

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

“(c) HEARSAY EVIDENCE.—Hearsay evidence is
admissible, unless the military judge finds that the cir-
cumstances render it unreliable or lacking in probative
value, provided that the proponent of the evidence makes
the evidence known to the adverse party in advance of
trial or hearing.

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

“§ 949b. Unlawfully influencing action of military
commission

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

“(2) No person may attempt to coerce or, by any
unauthorized means, influence the action of a commis-
sion or any member thereof, in reaching the findings or
sentence in any case, or the action of any convening, ap-
proving, or reviewing authority with respect to his judi-
cial acts.
“(3) The foregoing provisions of this subsection shall not apply with respect to—

“(A) general instructional or informational courses in military justice if such courses are designed solely for the purpose of instructing members of a command in the substantive and procedural aspects of military commissions; or

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

“(b) Prohibition on consideration of actions on commission in evaluation of fitness. In the preparation of an effectiveness, fitness, or efficiency report or any other report or document used in whole or in part for the purpose of determining whether a commissioned officer of the armed forces is qualified to be advanced, in grade, or in determining the assignment or transfer of any such officer or in determining whether any such officer should be retained on active duty, no person may—

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

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

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

“(a) TRIAL COUNSEL.—The trial counsel of a military commission shall prosecute in the name of the United States.

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

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

“(3) The accused may be represented by civilian counsel if retained by him, provided that civilian counsel—

“(A) is a United States citizen;

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

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

“(D) has been determined to be eligible for access to information classified at the level Secret or higher; and
“(E) has signed a written agreement to comply with all applicable regulations or instructions for counsel, including any rules of court for conduct during the proceedings.

“Civilian defense counsel shall protect any classified information received during the course of their representation of the accused in accordance with all applicable law governing the protection of classified information, and shall not divulge such information to any person not authorized to receive it.

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

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

“(6) Defense counsel may cross-examine each witness for the prosecution who testifies before the commission.

“§ 949d. Sessions

“(a) SESSIONS WITHOUT PRESENCE OF MEMBERS.—

(1) At any time after the service of charges which have been referred for trial by military commission, the mili-
tary judge may call the commission into session without
the presence of the members for the purpose of—

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

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

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

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

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

“(b) PROCEEDINGS IN PRESENCE OF ACCUSED.—
Except as provided in subsections (c) and (e), all pro-
ceedings of a military commission under this chapter shall be in the presence of the accused, defense counsel, and trial counsel, and shall be made a part of the record.

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

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

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

“(A) protect information the disclosure of which could reasonably be expected to cause identifiable damage to the public interest or the national security, including intelligence or law enforcement sources, methods, or activities; or

“(B) ensure the physical safety of individuals.

“(e) LIMITED EXCLUSION OF THE ACCUSED FOR THE PROTECTION OF CLASSIFIED INFORMATION.—(1) The military judge may, subject to the provisions of this subsection, permit the admission in a military commission under this chapter of classified information outside the presence of the accused.
“(2) The military judge shall not exclude the accused from any portion of the proceeding except upon a specific finding that extraordinary circumstances exist such that—

“(A) the exclusion of the accused—

“(i) is necessary to protect classified information the disclosure of which to the accused could reasonably be expected to cause identifiable damage to the national security, including intelligence or law enforcement sources, methods, or activities; or

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

“(iii) is necessary to prevent disruption of the proceedings by the accused; and

“(B) the exclusion of the accused—

“(i) is no broader than necessary; and

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

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

“(B) Before trial counsel may make a presentation described in subparagraph (A) requesting the admission
of classified evidence outside the presence of the ac-
cused, the head of the executive or military department or
governmental agency which has control over the matter
(after personal consideration by that officer) shall certify
in writing to the military judge that—

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

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

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

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

“(ii) admission of an unclassified summary
or redacted version of that evidence would not be
an adequate substitute and, in the case of testi-
mony, alternative methods to obscure the identity
of the witness are not adequate; and
“(iii) admission of the evidence would not deprive the accused of a full and fair trial.

“(B) If the accused is excluded from a portion of the proceeding, the accused shall be provided with a redacted transcript of the proceeding and, to the extent practicable, an unclassified summary of any evidence introduced. Under no circumstances shall such a summary or redacted transcript compromise the interests warranting the exclusion of the accused under this subsection.

“(5)(A) Military defense counsel shall be present and able to participate in all trial proceedings, and shall be given access to all evidence admitted under subparagraph (4).

“(B) Civilian defense counsel shall be permitted to be present and to participate in all trial proceedings, and shall be given access to evidence admitted under subparagraph (4), provided that civilian defense counsel has obtained the necessary security clearances and that such presence and access are consistent with regulations that the Secretary may prescribe to protect classified information.

“(C) Notwithstanding any other provision of law, any defense counsel who receives classified information admitted pursuant to subparagraph (4) shall not be obli-
gated to, and may not, disclose that evidence to the ac-
cused.

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

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

“§ 949e. Continuances
“The military judge may, for reasonable cause,
grant a continuance to any party for such time, and as of-
ten, as may appear to be just.

“§ 949f. Challenges
“(a) CHALLENGES AUTHORIZED.—The military
judge and members of the commission may be chal-
lenged by the accused or the trial counsel for cause stated to the commission. The military judge shall determine the relevance and validity of the challenges for cause, and may not receive a challenge to more than one person at a time. Challenges by the trial counsel shall ordinarily be presented and decided before those by the accused are offered.

“(b) PEREMPTORY CHALLENGES.—Each accused and the trial counsel is entitled to one peremptory challenge, but the military judge may not be challenged except for cause.

“(c) CHALLENGES AGAINST ADDITIONAL MEMBERS.—Whenever additional members are detailed to the court, and after any challenges for cause against such additional members are presented and decided, each accused and the trial counsel are entitled to one peremptory challenge against members not previously subject to peremptory challenge.

“§ 949g. Oaths

“(a) IN GENERAL.—(1) Before performing their respective duties, military judges, members of commissions, trial counsel, defense counsel, reporters, and interpreters shall take an oath to perform their duties faithfully.
“(2) The form of the oath required by paragraph (1), the time and place of the taking thereof, the manner of recording the same, and whether the oath shall be taken for all cases in which these duties are to be performed or for a particular case, shall be as prescribed in regulations of the Secretary. These regulations may provide that—

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

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

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

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

§ 949h. Former jeopardy

“(a) IN GENERAL.—No person may, without his consent, be tried by a commission a second time for the same offense.
“(b) Scope of Trial.—No proceeding in which the accused has been found guilty by military commission upon any charge or specification is a trial in the sense of this section until the finding of guilty has become final after review of the case has been fully completed.

“§ 949i. Pleas of the accused

“(a) Plea of Not Guilty.—If an accused after a plea of guilty sets up matter inconsistent with the plea, or if it appears that he has entered the plea of guilty through lack of understanding of its meaning and effect, or if he fails or refuses to plead, a plea of not guilty shall be entered in the record, and the commission shall proceed as though he had pleaded not guilty.

“(b) Finding of Guilt After Guilty Plea.—With respect to any charge or specification to which a plea of guilty has been made by the accused and accepted by the military judge, a finding of guilty of the charge or specification may be entered immediately without a vote. This finding shall constitute the finding of the commission unless the plea of guilty is withdrawn prior to announcement of the sentence, in which event the proceedings shall continue as though the accused had pleaded not guilty.
“§ 949j. Opportunity to obtain witnesses and other evidence

“(a) IN GENERAL.—(1) Defense counsel in a military commission under this chapter shall have a reasonable opportunity to obtain witnesses and other evidence, including evidence in the possession of the United States, as specified in regulations prescribed by the Secretary.

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

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

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

“(b) TREATMENT OF CERTAIN ITEMS.—The military judge in a military commission under this chapter may, upon a sufficient showing, authori...
“(3) to substitute an unclassified statement admitting relevant facts that classified information would tend to prove.

“(c) DISCLOSURE OF EXCULPATORY EVIDENCE.—

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

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

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

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

“(A) shall be provided to military defense counsel; and
“(B) shall be provided to civilian defense
counsel, provided that civilian defense counsel has
obtained the necessary security clearances and ac-
cess to such evidence is consistent with regulations
that the Secretary may prescribe to protect classi-
ified information; and

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

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

“§ 949k. Defense of lack of mental responsibility

“(a) AFFIRMATIVE DEFENSE.—It is an affirmative
defense in a trial by military commission that, at the time
of the commission of the acts constituting the offense, the
accused, as a result of a severe mental disease or defect,
was unable to appreciate the nature and quality or the
wrongfulness of the acts. Mental disease or defect does
not otherwise constitute a defense.
“(b) **BURDEN OF PROOF.**—The accused has the burden of proving the defense of lack of mental responsi-

bility by clear and convincing evidence.

“(c) **FINDINGS FOLLOWING ASSERTION OF DE-

FENSE.**—Whenever lack of mental responsibility of the accused with respect to an offense is properly at issue, the military judge shall instruct the members of the commission as to the defense of lack of mental responsi-

bility under this section and shall charge them to find the accused—

“(1) guilty;

“(2) not guilty; or

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

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

“§ 949i. Voting and rulings

“(a) **VOTE BY SECRET WRITTEN BALLOT.**—Voting by members of a military commission on the findings and on the sentence shall be by secret written ballot.
“(b) RULINGS.—(1) The military judge shall rule
upon all questions of law, including the admissibility of
evidence, and all interlocutory questions arising during
the proceedings.

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

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

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

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

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

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

§ 949m. Number of votes required

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

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

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

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

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

“(C) the accused was convicted of the offense by the concurrence of all the members of the military commission present at the time the vote is taken; and
“(D) All members of the military commission present at the time the vote was taken concurred in the sentence of death.

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

“(c) Number of Members Required for Penalty of Death.—(1) Except as provided in paragraph (2), in a case in which the penalty of death is sought, the number of members shall be not less than 12.

“(2) In any case described in paragraph (1) in which 12 members are not reasonably available because of physical conditions or military exigencies, the convening authority shall specify a lesser number of members for the military commission (but not fewer than 5 members), and the military commission may be assembled and the trial held with not fewer than the number of members so specified. In such a case, the convening authority shall make a detailed written statement, to be appended to the record, stating why a greater number of members were not reasonably available.

“§ 949n. Military commission to announce action

“A military commission shall announce its findings and sentence to the parties as soon as determined.
“§ 949o. Record of trial

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

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

“(c) PROVISION OF COPY TO ACCUSED.—A copy of the record of the proceedings of each military commission shall be given to the accused as soon as it is authenticated. Where the record contains classified information, or a classified annex, the accused shall receive a redacted version of the record. The appropriate defense counsel shall have access to the unredacted record, as provided by regulation.
“SUBCHAPTER V—SENTENCES

“Sec.
“949s. Cruel or unusual punishments prohibited.
“949u. Execution of confinement.

“§ 949s. Cruel or unusual punishments prohibited

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

“§ 949t. Maximum limits

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

“§ 949u. Execution of confinement

“(a) IN GENERAL.—Under such regulations as the Secretary may prescribe, a sentence of confinement adjudged by a military commission may be carried into execution by confinement—

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

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

“SUBCHAPTER VI—POST-TRIAL PROCEDURE
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.

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

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

“(b) LESSER INCLUDED OFFENSE.—Any reviewing
authority with the power to approve or affirm a finding of
guilty may approve or affirm, instead, so much of the
finding as includes a lesser included offense.
§ 950b. Review by the convening authority

“(a) NOTICE TO CONVENING AUTHORITY OF FINDINGS AND SENTENCE.—The findings and sentence of a military commission under this chapter shall be reported in writing promptly to the convening authority after the announcement of the sentence.

“(b) SUBMITTAL OF MATTERS BY ACCUSED TO CONVENING AUTHORITY.—(1) The accused may submit to the convening authority matters for consideration by the convening authority with respect to the findings and the sentence of the military commission under this chapter.

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

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

“(3) The accused may waive his right to make a submission to the convening authority under paragraph (1). Such a waiver must be made in writing and may not
be revoked. For the purposes of subsection (c)(2), the
time within which the accused may make a submission
under this subsection shall be deemed to have expired
upon the submission of such a waiver to the convening
authority.

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

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

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

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

“(3) Action on the findings of a military commis-
sion by the convening authority is not required. How-
ever, the convening authority, in his sole discretion, may—

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

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

“(4) The convening authority shall serve on the accused or on defense counsel notice of any action taken by the convening authority under this subsection.

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

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

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

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

“(B) In no case may a proceeding in revision—
“(i) reconsider a finding of not guilty of any specification or a ruling which amounts to a finding of not guilty;

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

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

“(3) A rehearing may be ordered by the convening authority if he disapproves the findings and sentence and states the reasons for disapproval of the findings. If such a person disapproves the findings and sentence and does not order a rehearing, he shall dismiss the charges. A rehearing as to the findings may not be ordered where there is a lack of sufficient evidence in the record to support the findings. A rehearing as to the sentence may be ordered if the convening authority disapproves the sentence.

“§ 950c. Waiver or withdrawal of appeal

“(a) WAIVER OF RIGHT OF REVIEW.—(1) In each case subject to appellate review under section 950f and 950g of this title, except a case in which the sentence as approved under section 950b of this title includes death,
the accused may file with the convening authority a
statement expressly waiving the right of the accused to
such review.

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

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

“(b) Withdrawal of Appeal.—Except in a case
in which the sentence as approved under section 950b of
this title includes death, the accused may withdraw an
appeal at any time.

“(c) Effect of Waiver or Withdrawal.—A
waiver of the right to appellate review or the withdrawal
of an appeal under this section bars review under section
950f or 950g of this title.

“§ 950d. Appeal by the United States

“(a) Interlocutory Appeal.—(1) Except as pro-
vided in paragraph (2), in a trial by military commission
under this chapter, the United States may take an inter-
locutory appeal to the Court of Military Commission Re-
view of any order or ruling of the military judge that—
“(A) terminates commission proceedings
     with respect to a charge or specification;
     “(B) excludes evidence that is substantial
     proof of a fact material in the proceeding; or
     “(C) relates to a matter under subsection (d),
     (e), or (f) of section 949d of this title.
“(2) The United States may not appeal under para-
     graph (1) an order or ruling that is, or amounts to, a find-
     ing of not guilty by the commission with respect to the
     charge or specification.
     “(b) NOTICE OF APPEAL.—The United States shall
     take an appeal of an order or ruling under subsection (a)
     by filing a notice of appeal with the military judge within
     five days after the date of such order or ruling.
     “(c) APPEAL.—An appeal under this section shall
     be forwarded by means prescribed under regulations of
     the Secretary directly to the Court of Military Commis-
     sion Review. In ruling on an appeal under this section,
     the Court of Military Commission Review may act only
     with respect to matters of law.
     “(d) COURT OF APPEALS.—The United States may
     appeal an adverse ruling under subsection (c) to the
     United States Court of Appeals for the District of Co-
     lumbia Circuit by filing a petition for review in the Court
     of Appeals within 10 days after the date of such ruling.
Review under this subsection shall be at the discretion of
the Court of Appeals.

§ 950e. Rehearings

“(a) Composition of Military Commission for
Rehearing.—Each rehearing under this chapter shall
take place before a military commission composed of
members not members of the commission which first
heard the case.

“(b) Scope of Rehearing.—(1) Upon a rehear-
ing—

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

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

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

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

“(2) Upon a rehearing, if the sentence approved af-
ter the first commission was in accordance with a pretrial
agreement and the accused at the rehearing changes his
plea with respect to the charges or specifications upon
which the pretrial agreement was based, or otherwise
does not comply with pretrial agreement, the sentence as
to those charges or specifications may include any pun-
ishment not in excess of that lawfully adjudged at the
first commission.

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

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

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

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

“(2) Each appellate military judge shall meet the
qualifications for military judges prescribed by section
948j(b) of this Act or shall be a civilian with comparable
qualifications.
“(3) No person may be appointed to serve as an appellate military judge in any case in which that person acted as a military judge, counsel, or reviewing official.

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

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

“§ 950g. Review by the United States Court of Appeals for the District of Columbia Circuit and the Supreme Court of the United States

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

“(B) The Court of Appeals shall not review the final judgment until all other appeals under this chapter have been waived or exhausted.
“(2) A petition for review must be filed by the accused in the Court of Appeals by no longer than 20 days from the earlier of when—

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

“(B) the accused submits, in the form prescribed by section 950c of this title, a written notice waiving his right to appeal under section 950f of this title.

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

§ 950h. Appellate counsel

“(a) APPOINTMENT.—The Secretary shall, by regulation, establish procedures for the appointment of appellate counsel for the United States and for the accused in military commissions under this chapter. Appellate counsel shall meet the qualifications for appearing before military commissions under this chapter.

“(b) REPRESENTATION OF UNITED STATES.—Appellate counsel may represent the United States in any appeal or review proceeding under this chapter. Appellate Government counsel may represent the United States
before the Supreme Court in cases arising under this chapter when requested to do so by the Attorney General.

“(c) REPRESENTATION OF ACCUSED.—The accused shall be represented by appellate military counsel before the Court of Military Commission Review, the United State Court of Appeals for the District of Columbia Circuit, or the Supreme Court, or by civilian counsel if retained by him.

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

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

“(b) EXECUTION OF SENTENCE OF DEATH ONLY UPON FINAL JUDGMENT OF LEGALITY OF PROCEEDINGS.—(1) If the sentence of a military commission under this chapter extends to death, the sentence may not be executed until there is a final judgment as to the legality of the proceedings (and with respect to death, approval under subsection (a)).

“(2) A judgment as to legality of the proceedings is final for purposes of paragraph (1) when—
“(A) review is completed by the Court of Military Commission Review and—

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

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

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

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

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

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

“(iii) review is otherwise completed in accordance with the judgment of the Supreme Court.

“(c) SUSPENSION OF SENTENCE.—The Secretary, or the convening authority acting on the case (if other than the Secretary), may suspend the execution of any sentence or part thereof in the case, except a sentence of death.
§ 950j. Finality of proceedings, findings, and sentences

(a) Finality.—The appellate review of records of trial provided by this chapter, the proceedings, findings, and sentences of military commissions as approved, reviewed, or affirmed as required by this chapter, are final and conclusive. Orders publishing the proceedings of military commissions are binding upon all departments, courts, agencies, and officers of the United States, subject only to the authority of the President.

(b) Provisions of Chapter Sole Basis for Review of Military Commission Procedures and Actions.—Except as otherwise provided in this chapter, and notwithstanding any other law (including section 2241 of title 28, United States Code, or any other habeas corpus provision), no court, justice, or judge shall have jurisdiction to hear or consider any claim or cause of action whatsoever, including any action pending on or filed after the date of enactment of this chapter, relating to the prosecution, trial, or judgment of a military commission convened under this section, including challenges to the lawfulness of the procedures of military commissions under this chapter.

Subchapter VII—Punitive Matters

Sec.
950p. Substantive offenses.
950q. Principals.
§ 950p. Substantive offenses generally

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

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

§ 950q. Principals

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

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

“(2) causes an act to be done which if directly performed by him would be punishable by this chapter; or

“(3) is a superior commander who, with regard to acts punishable under this chapter, knew, had reason to know, or should have known, that a subordinate was about to commit such acts or had
done so and the superior failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof.

“§ 950r. Accessory after the fact

“Any person subject to this chapter who, knowing that an offense punishable by this chapter has been committed, receives, comforts, or assists the offender in order to hinder or prevent his apprehension, trial, or punishment shall be punished as a military commission may direct.

“§ 950s. Conviction of lesser offenses

“An accused may be found guilty of an offense necessarily included in the offense charged or of an attempt to commit either the offense charged or an offense necessarily included therein.

“§ 950t. Attempts

“(a) In General.—Any person subject to this chapter who attempts to commit any offense punishable by this Act shall be punished as a military commission may direct.

“(b) Scope of Offense.—An act, done with specific intent to commit an offense under this chapter, amounting to more than mere preparation and tending, even though failing, to effect its commission, is an attempt to commit that offense.
“(c) Effect of Consummation.—Any person subject to this chapter may be convicted of an attempt to commit an offense although it appears on the trial that the offense was consummated.

“§ 950u. Solicitation

“Any person subject to this chapter who solicits or advises another or others to commit one or more substantive offenses triable by military commission shall, if the offense solicited or advised is attempted or committed, be punished with the punishment provided for the commission of the offense, but, if the offense solicited or advised is not committed or attempted, he shall be punished as a military commission may direct.

“§ 950v. Crimes triable by military commission

“(a) Definitions and Construction.—(1) For purposes of this chapter, the term ‘military objective’ refers to combatants and those objects during an armed conflict which, by their nature, location, purpose, or use, effectively contribute to the opposing force’s war-fighting or war-sustaining capability and whose total or partial destruction, capture, or neutralization would constitute a definite military advantage to the attacker under the circumstances at the time of the attack.

“(2) For purposes of this section only, ‘protected person’ refers to any person entitled to protection under
one or more of the Geneva Conventions, including civilians not taking an active part in hostilities, military personnel placed *hors de combat* by sickness, wounds, or detention, and military medical or religious personnel.

“(3) For purposes of this chapter, the term ‘protected property’ refers to property specifically protected by the law of war such as buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals, or places where the sick and wounded are collected, provided they are not being used for military purposes or are not otherwise military objectives. Such property would include objects properly identified by one of the distinctive emblems of the Geneva Conventions but does not include all civilian property.

“(4) The intent required for offenses (1), (2), (3), (4) and (12) under subsection (b) precludes their applicability with regard to collateral damage or to death, damage, or injury incident to a lawful attack.

“(b) OFFENSES.—The following enumerated offenses, when committed in the context of and associated with armed conflict, shall be triable by military commission under this chapter at any time without limitation—

“(1) MURDER OF PROTECTED PERSONS.—Any person who intentionally kills one or more
protected persons is guilty of the offense of intentionally killing protected persons and shall be subject to whatever punishment the commission may direct, including the penalty of death.

“(2) ATTACKING CIVILIANS.—Any person who intentionally engages in an attack upon a civilian population as such or individual civilians not taking active part in hostilities is guilty of the offense of attacking civilians and shall be subject to whatever punishment the commission may direct, including, if death results to one or more of the victims, the penalty of death.

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

“(4) ATTACKING PROTECTED PROPERTY.—Any person who intentionally engages in an attack upon protected property shall be guilty of the offense of attacking protected property and shall be subject to whatever punishment the commission may direct.
“(5) PILLAGING.—Any person who intentionally and in the absence of military necessity appropriates or seizes property for private or personal use, without the consent of a person with authority to permit such appropriation or seizure, shall be guilty of the offense of pillaging and shall be subject to whatever punishment the commission may direct.

“(6) DENYING QUARTER.—Any person who, with effective command or control over subordinate groups, declares, orders, or otherwise indicates to those forces that there shall be no survivors or surrender accepted, with the intent therefore to threaten an adversary or to conduct hostilities such that there would be no survivors or surrender accepted, shall be guilty of denying quarter and shall be subject to whatever punishment the commission may direct.

“(7) TAKING HOSTAGES.—Any person who, having knowingly seized or detained one or more persons, threatens to kill, injure, or continue to detain such person or persons with the intent of compelling any nation, person other than the hostage, or group of persons to act or refrain from acting as an explicit or implicit condition for the safety or
release of such person or persons, shall be guilty of
the offense of taking hostages and shall be subject
to whatever punishment the commission may di-
rect, including, if death results to one or more of
the victims, the penalty of death.

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

“(9) USING PROTECTED PERSONS AS
SHIELDS.—Any person who positions, or otherwise
takes advantage of, a protected person with the in-
tent to shield a military objective from attack or to
shield, favor, or impede military operations, shall
be guilty of the offense of using protected persons
as shields and shall be subject to whatever pun-
ishment the commission may direct, including, if
death results to one or more of the victims, the
penalty of death.

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

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

“(13) INTENTIONALLY CAUSING SERIOUS BODILY INJURY.—Any person who intentionally causes serious bodily injury to one or more persons, including lawful combatants, in violation of the law of war shall be guilty of the offense of causing serious bodily injury and shall be subject to whatever punishment the commission may direct, including, if death results to one or more of the victims, the penalty of death. ‘Serious bodily injury’ has the meaning provided in 18 U.S.C. § 113(b)(2).

“(14) MUTILATING OR MAIMING.—Any person who intentionally injures one or more pro-
tected persons, by disfiguring the person or persons by any mutilation thereof or by permanently disabling any member, limb, or organ of his body, without any legitimate medical or dental purpose, shall be guilty of the offense of mutilation or maiming and shall be subject to whatever punishment the commission may direct, including, if death results to one or more of the victims, the penalty of death.

“(15) Murder in Violation of the Law of War.—Any person who intentionally kills one or more persons, including lawful combatants, in violation of the law of war shall be guilty of the offense of murder in violation of the law of war and shall be subject to whatever punishment the commission may direct, including the penalty of death.

“(16) Destruction of Property in Violation of the Law of War.—Any person who intentionally destroys property belonging to another person in violation of the law of war shall be guilty of the offense of destruction of property in violation of the law of war and shall be subject to whatever punishment the commission may direct.

“(17) Using Treachery or Perfidy.—Any person who, after inviting the confidence or belief
of one or more persons that they were entitled to, or obliged to accord, protection under the law of war, intentionally makes use of that confidence or belief in killing, injuring, or capturing such person or persons, shall be guilty of using treachery or perfidy and shall be subject to whatever punishment the commission may direct.

“(18) Improperly Using a Flag of Truce.—Any person who uses a flag of truce to feign an intention to negotiate, surrender, or otherwise to suspend hostilities when there is no such intention, shall be guilty of improperly using a flag of truce and shall be subject to whatever punishment the commission may direct.

“(19) Improperly Using a Distinctive Emblem.—Any person who intentionally uses a distinctive emblem recognized by the law of war for combatant purposes in a manner prohibited by the law of war shall be guilty of improperly using a distinctive emblem and shall be subject to whatever punishment the commission may direct.

“(20) Intentionally Mistreating a Dead Body.—Any person who intentionally mistreats the body of a dead person, without justification by legitimate military necessary, shall be guilty of the
offense of mistreating a dead body and shall be subject to whatever punishment the commission may direct.

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

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

“(23) TERRORISM.—Any person subject to this chapter who intentionally kills or inflicts great bodily harm on one or more persons, or intentionally engages in an act that evinces a wanton disre-
gard for human life, in a manner calculated to in-
fluence or affect the conduct of government or ci-
vilian population by intimidation or coercion, or to
retaliate against government conduct, shall be
guilty of the offense of terrorism and shall be sub-
ject to whatever punishment the commission may
direct, including, if death results to one or more of
the victims, the penalty of death.

“(24) PROVIDING MATERIAL SUPPORT FOR
TERRORISM.—Any person who provides material
support or resources, knowing or intending that
they are to be used in preparation for, or in carry-
ing out, an act of terrorism (as defined in subsec-
tion (b)(23) of this section), or who intentionally
provides material support or resources to an inter-
national terrorist organization engaged in hostili-
ties against the United States, knowing that such
organization has engaged or engages in terrorism
(as defined in subsection (b)(23) of this section),
shall be guilty of the offense of providing material
support for terrorism and shall be subject to what-
ever punishment the commission may direct. The
term ‘material support or resources’ has the mean-
ing provided in 18 U.S.C. § 2339A(b).
“(25) **Wrongfully Aiding the Enemy.**—Any person who, in breach of an allegiance or duty to the United States, knowingly and intentionally aids an enemy of the United States or one of its co-belligerents shall be guilty of the offense of wrongfully aiding the enemy and shall be subject to whatever punishment the commission may direct.

“(26) **Spying.**—Any person who, with intent or reason to believe that it is to be used to the injury of the United States or to the advantage of a foreign power, collects or attempts to collect certain information by clandestine means or while acting under false pretenses, for the purpose of conveying such information to an enemy of the United States or one of its co-belligerents, shall be guilty of the offense of spying and shall be subject to whatever punishment the commission may direct, including the penalty of death.

“(27) **Conspiracy.**—Any person who conspires to commit one or more substantive offenses triable under this section, and who knowingly does any overt act to effect the object of the conspiracy, shall be guilty of conspiracy and shall be subject to whatever punishment the commission may direct,
including, if death results to one or more of the
victims, the penalty of death.

“§ 950w. Perjury and obstruction of justice

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

“§ 950x. Contempt

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

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

“CHAPTER 47A—MILITARY COMMISIONS
“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 COMMISIONS
“SUBCHAPTER VII—PUNITIVE MATTERS

(b) SUBMITTAL OF PROCEDURES TO CONGRESS.—

(1) SUBMITTAL OF PROCEDURES.—Not later
than 90 days after the date of the enactment of this
Act, the Secretary shall submit to the Committees on Armed Forces of the Senate and the House of Representatives a report setting forth the procedures for military commissions prescribed under Chapter 47A of title 10, United States Code (as added by subsection (a)).

(2) SUBMITTAL OF MODIFICATIONS.—Not later than 60 days before the date on which any proposed modification of the procedures described in paragraph (1) shall go into effect, the Secretary shall submit to the committees of Congress referred to in that paragraph a report describing such modifications.

SEC. 5. JUDICIAL REVIEW.

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

“(e) Except as provided for in this subsection, and notwithstanding any other law, no court, justice, or judge shall have jurisdiction to hear or consider any claim or cause of action, including an application for a writ of habeas corpus, pending on or filed after the date of enactment of this Act, against the United States or its agents, brought by or on behalf of any alien detained by the United States as an unlawful enemy combatant, relating
to any aspect of the alien’s detention, transfer, treatment, or conditions of confinement:

“(1) Combatant Status Review Tribunals.—The United States Court of Appeals for the District of Columbia Circuit shall have exclusive jurisdiction to determine the validity of any final decision of a Combatant Status Review Tribunal. The scope of such review is defined in section 1005(e)(2) of the Detainee Treatment Act of 2005. If the Court grants a detainee’s petition for review, the Department of Defense may conduct a new Combatant Status Review Tribunal.

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

“(3) Information Considered.—The court may consider classified information submitted in camera and ex parte in making any determination under this section.”.

SEC. 6. SATISFACTION OF TREATY OBLIGATIONS.

(a) In General.—Satisfaction of the prohibitions against cruel, inhuman, and degrading treatment set forth in Section 1003 of the Detainee Treatment Act of 2005 (title X of Public Law 109-148; 119 Stat. 2739; 42
U.S.C. 2000dd) shall fully satisfy United States obligations with respect to the standards for detention and treatment established by section 1 of common Article 3 of the Geneva Conventions, with the exception of the obligations imposed by subsections 1(b) and 1(d) of such Article.

(b) RIGHTS NOT JUDICIALy ENFORCEABLE.—

(1) IN GENERAL.—No person in any habeas action or any other action may invoke the Geneva Conventions or any protocols thereto as a source of rights, whether directly or indirectly, for any purpose in any court of the United States or its States or territories.

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

(c) GENEVA CONVENTIONS DEFINED.—In this section, the term “Geneva Conventions” means the international conventions signed at Geneva on August 12, 1949, including common Article 3.

SEC. 7. WAR CRIMES ACT AMENDMENT.

Section 2441 of title 18, United States Code is amended by replacing subsection (c)(3) with the following:
“(3) which constitutes any of the following serious violations of common Article 3 of the international conventions signed at Geneva 12 August 1949, when committed in the context of and in association with an armed conflict not of an international character—

“(1) TORTURE.—Any person who commits, or conspires or attempts to commit, an act specifically intended to inflict severe physical or mental pain or suffering (other than pain or suffering incidental to lawful sanctions) upon another person within his custody or physical control for the purpose of obtaining information or a confession, punishment, intimidation, coercion, or any reason based on discrimination of any kind, shall be guilty of a violation of this subsection. ‘Severe mental pain or suffering’ has the meaning provided in 18 U.S.C. § 2340(2).

“(2) CRUEL OR INHUMAN TREATMENT.—Any person who commits, or conspires or attempts to commit, an act intended to inflict severe physical or mental pain or suffering (other than pain or suffering incidental to lawful sanctions), including severe physical abuse, upon another person within his custody or physical control shall be guilty of a violation of this subsection. ‘Severe mental pain
or suffering’ has the meaning provided in 18 U.S.C. § 2340(2).

“(3) PERFORMING BIOLOGICAL EXPERIMENTS.—Any person who subjects, or conspires or attempts to subject, one or more persons within his custody or physical control to biological experiments without a legitimate medical purpose and in so doing endangers the body or health of such person or persons shall be guilty of a violation of this subsection.

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

“(5) MUTILATION OR MAIMING.—Any person who intentionally injures, or conspires or attempts to injure, or injures whether intentionally or
unintentionally in the course of committing any other offense under this section, one or more persons taking no active part in the hostilities, including those placed *hors de combat* by sickness, wounds, detention, or any other cause, by disfiguring the person or persons by any mutilation thereof or by permanently disabling any member, limb, or organ of his body, without any legitimate medical or dental purpose, shall be guilty of a violation of this subsection. The intent required for this offense precludes its applicability with regard to collateral damage or to death, damage, or injury incident to a lawful attack.

“(6) **Intentionally Causing Great Suffering or Serious Injury.**—Any person who intentionally causes, or conspires or attempts to cause, serious bodily injury to one or more persons taking no active part in the hostilities, including those placed *hors de combat* by sickness, wounds, detention, or any other cause, shall be guilty of a violation of this subsection. The intent required for this offense precludes its applicability with regard to collateral damage or to death, damage, or injury incident to a lawful attack. ‘Serious bodily
injury’ has the meaning provided in 18 U.S.C. § 113(b)(2).

“(7) RAPE.—Any person who forcibly or with coercion or threat of force wrongfully invades, or conspires or attempts to invade, the body of a person by penetrating, however slightly, the anal or genital opening of the victim with any part of the body of the accused or with any foreign object shall be guilty of a violation of this subsection.

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

“(9) TAKING HOSTAGES.—Any person who, having knowingly seized or detained one or more persons, threatens to kill, injure, or continue to detain such person or persons with the intent of compelling any nation, person other than the hostage, or group of persons to act or refrain from acting as an explicit or implicit condition for the safety or
release of such person or persons, shall be guilty of a violation of this subsection. Any person who attempts to engage or conspires to engage in this offense shall also be guilty under this subsection.”.

SEC. 8. CONFORMING AMENDMENTS.

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

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

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

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

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

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

(2) in subsection (e)(3)(A), by striking “pursuant to Military Commission Order No. 1, August
31, 2005 (or any successor military order)” and in-
serting “by a military commission under chapter
47a of title 10”; and

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

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

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

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

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

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

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

(e) Section 836 of title 10, United States Code, is
amended to conform with this Act as follows—in subsec-
tion (a), by replacing “military commissions and other military tribunals” with “and other military tribunals (excluding military commissions)”.

SEC. 9. RETROACTIVE APPLICATION.

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

SEC. 10. SEVERABILITY.

If any provision of this Act, or the application of a provision to any person or circumstance, is held to be unconstitutional, the remainder of this Act, and the application of the provisions to any other person or circumstance, shall not be affected thereby.