A BILL

To authorize trial by military commission for violations of the law of war, and for other purposes.

1 Be it enacted by the Senate and House of Representa-
2 tives of the United States of America in Congress assembled,
3
4 SECTION 1. SHORT TITLE.
5 This Act may be cited as the “Military Commissions
6 Act of 2006”.
7
8 SEC. 2. FINDINGS.
9 Congress makes the following findings:
10 (1) The Constitution of the United States
11 grants to Congress the power “To define and pun-
12 ish... Offenses against the Law of Nations”, as well
as the power “To declare War...To raise and support
Armies...[and] To provide and maintain a Navy”.

(2) The military commission is the traditional
tribunal for the trial of persons engaged in hostilities
for violations of the law of war.

(3) Congress has, in the past, both authorized
the use of military commission by statute and recog-
nized the existence and authority of military com-
missions.

(4) Military commissions have been convened
both by the President and by military commanders
in the field to try offenses against the law of war.

(5) It is in the national interest for Congress to
exercise its authority under the Constitution to enact
legislation authorizing and regulating the use of
military commissions to try and punish violations of
the law of war.

SEC. 3. AUTHORIZATION FOR MILITARY COMMISSIONS.

(a) IN GENERAL.—The President is authorized to es-
tablish military commissions for the trial of alien unlawful
enemy combatants engaged in hostilities against the
United States for violations of the law of war and other
offenses specifically made triable by military commission
as provided in chapter 47 of title 10, United States Code,
and chapter 47A of title 10, United States Code (as enacted by this Act).

(b) CONSTRUCTION.—The authority in subsection (a) may not be construed to alter or limit the authority of the President under the Constitution and laws of the United States to establish military commissions for areas declared to be under martial law or in occupied territories should circumstances so require.

(e) SCOPE OF PUNISHMENT AUTHORITY.—A military commission established pursuant to subsection (a) shall have authority to impose upon any person found guilty under a proceeding under chapter 47A of title 10, United States Code (as so enacted), a sentence that is appropriate for the offense or offenses for which there is a finding of guilt, including a sentence of death if authorized under such chapter, 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 military commission shall direct.

(d) EXECUTION OF PUNISHMENT.—The Secretary of Defense is authorized to carry out a sentence of punishment imposed by a military commission established pursuant to subsection (a) in accordance with such procedures as the Secretary may prescribe.
(c) **Annual Report on Trials by Military Commissions.**—

(1) **Annual report required.**—Not later than December 31 each year, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on any trials conducted by military commissions established pursuant to subsection (a) during such year.

(2) **Form.**—Each report under this subsection shall be submitted in unclassified form, but may include a classified annex.

**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"

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

"SUBCHAPTER I—GENERAL PROVISIONS"
§ 948a. Definitions

“(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) LAWFUL ENEMY COMBATANT.—The term ‘lawful enemy combatant’ means an individual who is—

“(A) a member of the regular forces of a State party engaged in hostilities against the United States;

“(B) 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

“(C) a member of a regular armed force
who professes allegiance to a government en-
gaged in such hostilities, but not recognized by
the United States.

“(4) UNLAWFUL ENEMY COMBATANT.—The
term ‘unlawful enemy combatant’ means an indi-
vidual engaged in hostilities against the United
States who is not a lawful enemy combatant.

“§ 948b. Military commissions generally

“(a) PURPOSE.—This chapter establishes procedures
governing the use of military commissions to try alien un-
lawful enemy combatants engaged in hostilities against the
United States for violations of the law of war and other
offenses triable by military commission.

“(b) CONSTRUCTION OF PROVISIONS.—The proce-
dures for military commissions set forth in this chapter
are based upon the procedures for trial by general courts-
martial under chapter 47 of this title (the Uniform Code
of Military Justice). Chapter 47 of this title does not, by
its terms, apply to trial by military commission except as
specifically provided therein or in this chapter, and many
of the provisions of chapter 47 of this title are by their
terms inapplicable to military commissions. The judicial
construction and application of chapter 47 of this title is
therefore not binding on military commissions established
under this chapter.

“(c) Inapplicability of Certain Provisions.—
(1) The following provisions of this title shall not apply
to trial by military commission under this chapter:

“(A) Section 810 (article 10 of the Uniform
Code of Military Justice), relating to speedy trial,
including any rule of courts-martial relating to
speedy trial.

“(B) Sections 831(a), (b), and (d) (articles
31(a), (b), and (d) of the Uniform Code of Military
Justice), relating to compulsory self-incrimination.

“(C) Section 832 (article 32 of the Uniform
Code of Military Justice), relating to pretrial inves-
tigation.

“(2) Other provisions of chapter 47 of this title shall
apply to trial by military commission under this chapter
only to the extent provided by the terms of such provisions
or by this chapter.

“(d) Status of Military Commissions Under
Common Article 3.—A military commission established
under this chapter is a regularly constituted court, afford-
ing all the necessary ‘judicial guarantees which are recog-
nized as indispensable by civilized peoples’ for purposes 
of common Article 3 of the Geneva Conventions.

“(e) TREATMENT OF RULINGS AND PRECEDENTS.—
The findings, holdings, interpretations, and other prece-
dents of military commissions under this chapter may not 
be introduced or considered in any hearing, trial, or other 
proceeding of a court-martial convened under chapter 47 
of this title. The findings, holdings, interpretations, and 
other precedents of military commissions under this chap-
ter may not form the basis of any holding, decision, or 
other determination of a court-martial convened under 
that chapter.

“(f) GENEVA CONVENTIONS NOT ESTABLISHING 
SOURCE OF RIGHTS.—No alien enemy unlawful combat-
ant subject to trial by military commission under this 
chapter may invoke the Geneva Conventions as a source 
of rights at his trial by military commission.

“§948c. Persons subject to military commissions 
“Any alien unlawful enemy combatant engaged in 
hostilities or having supported hostilities against the 
United States is subject to trial by military commission 
as set forth in this chapter.
§ 948d. Jurisdiction of military commissions

(a) Jurisdiction.—A military commission under this chapter shall have jurisdiction to try any offense made punishable by this chapter, sections 904 and 906 of this title (articles 104 and 106 of the Uniform Code of Military Justice), or the law of war when committed by an alien unlawful enemy combatant before, on, or after September 11, 2001.

(b) Lawful Enemy Combatants.—Military commissions under this chapter shall not have jurisdiction over lawful enemy combatants. Lawful enemy combatants who violate the law of war are subject to chapter 47 of this title. Courts-martial established under that chapter shall have jurisdiction to try a lawful enemy combatant for any offense made punishable under this chapter.

(c) Punishments.—A military commission under this chapter may, under such limitations as the President may prescribe, adjudge any punishment not forbidden by this chapter, including the penalty of death when authorized under this chapter, chapter 47 of this title, or the law of war.

SUBCHAPTER II—COMPOSITION OF MILITARY COMMISSIONS

Sec. 948h. Who may convene military commissions.

948i. Who may serve on military commissions.

948j. Military judge of a military commission.

948k. Detail of trial counsel and defense counsel.
“§ 948h. Who may convene military commissions

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

“§ 948i. Who may serve on military commissions

“(a) IN GENERAL.—Any commissioned officer of the armed forces on active duty is eligible to serve on a military commission under this chapter, including commissioned officers of the reserve components of the armed forces on active duty, commissioned officers of the National Guard on active duty in Federal service, or retired commissioned officers recalled to active duty.

“(b) DETAIL OF MEMBERS.—When convening a military commission under this chapter, the convening authority shall detail as members thereof such members of the armed forces eligible under subsection (a) who, as in the opinion of the convening authority, are best qualified for the duty by reason of age, education, training, experience, length of service, and judicial temperament. No member of an armed force is eligible to serve as a member of a military commission when such member 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 military com-
mission under this chapter is assembled for the trial of
a case, the convening authority may excuse a member
from participating in the case.

§ 948j. Military judge of a military commission

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

“(b) ELIGIBILITY.—A military judge shall be a com-
missioned 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 under section 826 of this title (article
26 of the Uniform Code of Military Justice) as a military
judge in general courts-martial by the Judge Advocate
General of the armed force of which such military judge
is a member.

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

“(d) Consultation With Members; Ineligibility to Vote.—A military judge detailed to a military
commission under this chapter may not consult with the
members except in the presence of the accused (except as
otherwise provided in section 949d of this title), trial coun-
sel, and defense counsel, nor may he vote with the mem-
bers.

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

“(f) Prohibition on Evaluation of Fitness by
Convening Authority.—The convening authority of a
military commission under this chapter shall not prepare
or review any report concerning the effectiveness, fitness,
or efficiency of a military judge detailed to the military
commission which relates to his performance of duty as
a military judge on the military commission.
§ 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 military commission under this chapter.

(2) Assistant trial counsel and assistant and associate defense counsel may be detailed for a military commission under this chapter.

(3) Military defense counsel for a military commission under this chapter shall be detailed as soon as practicable after the swearing of charges.

(4) The Secretary of Defense shall prescribe regulations providing for the manner in which trial counsel and military defense counsel are detailed for military commissions under this chapter and for the persons who are authorized to detail such counsel for such military commissions.

(b) Trial Counsel.—Subject to subsection (e), 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 (article 1 of the Uniform Code of Military Justice)) 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 military commission pursuant to regulations prescribed by the Secretary of Defense.

“(c) MILITARY DEFENSE COUNSEL.—Subject to subsection (e), 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 is 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) CHIEF PROSECUTOR; CHIEF DEFENSE COUNSEL.—(1) The Chief Prosecutor in a military commission under this chapter shall meet the requirements set forth in subsection (b)(1).
“(2) The Chief Defense Counsel in a military commission under this chapter shall meet the requirements set forth in subsection (c)(1).

“(e) Ineligibility of Certain Individuals.—No person who has acted as an investigator, military judge, or member of a military commission under this chapter in any case may act later as trial counsel or military defense counsel in the same case. No person who has acted for the prosecution before a military commission under this chapter may act later in the same case for the defense, nor may any person who has acted for the defense before a military commission under this chapter act later in the same case for the prosecution.

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

“(a) Court Reporters.—Under such regulations as the Secretary of Defense may prescribe, the convening authority of a military commission under this chapter shall detail to or employ for the military commission qualified court reporters, who shall prepare a verbatim record of the proceedings of and testimony taken before the military commission.

“(b) Interpreters.—Under such regulations as the Secretary of Defense may prescribe, the convening authority of a military commission under this chapter may detail
to or employ for the military commission interpreters who shall interpret for the military commission, and, as necessary, for trial counsel and defense counsel for the military commission, and for the accused.

“(c) Transcript; Record.—The transcript of a military commission under this chapter shall be under the control of the convening authority of the military commission, who shall also be responsible for preparing the record of the proceedings of the military commission.

“§ 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 accused before a military commission under this chapter may be sentenced to a penalty of death, 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 under this chapter may be absent or excused after the military commission has been assembled for the trial of a case 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 under this chapter is reduced below the number of members required by subsection (a), the trial may not proceed unless the convening authority details new members sufficient to provide not less than such number. The trial may proceed with the new members present after the recorded evidence previously introduced before the members has been read to the military commission in the presence of the military judge, the accused (except as provided in section 949d of this title), and counsel for both sides.

“SUBCHAPTER III—PRE-TRIAL PROCEDURE

§ 948q. Charges and specifications

“(a) CHARGES AND SPECIFICATIONS.—Charges and specifications against an accused in a military commission under this chapter 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 or other methods of coercion

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

“(b) STATEMENTS OBTAINED BY TORTURE.—A statement obtained by use of torture shall not be admissible in a military commission under this chapter, except against a person accused of torture as evidence the statement was made.

“(c) STATEMENTS OBTAINED BEFORE ENACTMENT OF DETAINEE TREATMENT ACT OF 2005.—A statement obtained before December 30, 2005 (the date of the enactment of the Detainee Treatment Act of 2005), in which
the degree of coercion is disputed may be admitted only if the military judge finds that—

“(1) the totality of the circumstances renders it reliable and possessing sufficient probative value; and

“(2) the interests of justice would best be served by admission of the statement into evidence.

“(d) Statements Obtained After Enactment of Detainee Treatment Act of 2005.—A statement obtained on or after December 30, 2005 (the date of the enactment of the Detainee Treatment Act of 2005), in which the degree of coercion is disputed may be admitted only if the military judge finds that—

“(1) the totality of the circumstances renders it reliable and possessing sufficient probative value;

“(2) the interests of justice would best be served by admission of the statement into evidence; and

“(3) the interrogation methods used to obtain the statement do not violate the cruel, unusual, or inhumane treatment or punishment prohibited by the Fifth, Eighth, and 14th Amendments to the United States Constitution.
“§ 948s. Service of charges

“The trial counsel assigned to a case before a military commission under this chapter shall cause to be served upon the accused and military defense counsel a copy of the charges upon which trial is to be had in English and, if appropriate, in another language that the accused understands, sufficiently in advance of trial to prepare a defense.

“SUBCHAPTER IV—TRIAL PROCEDURE

Sec.

949a. Rules.
949b. Unlawfully influencing action of military commission.
949c. Duties of trial counsel and defense counsel.
949d. Sessions.
949e. Continuances.
949f. Challenges.
949g. Oaths.
949h. Former jeopardy.
949i. Pleas of the accused.
949j. Opportunity to obtain witnesses and other evidence.
949k. Defense of lack of mental responsibility.
949l. Voting and rulings.
949m. Number of votes required.
949n. Military commission to announce action.
949o. Record of trial.

“§ 949a. Rules

(a) PROCEDURES AND RULES OF EVIDENCE.—Pre-trial, trial, and post-trial procedures, including elements and modes of proof, for cases triable by military commission under this chapter may be prescribed by the Secretary of Defense. Such procedures may not be contrary to or inconsistent with this chapter. Except as otherwise provided in this chapter or chapter 47 of this title, the procedures and rules of evidence applicable in trials by general
courts-martial of the United States shall apply in trials by military commission under this chapter.

“(b) EXCEPTIONS.—(1) The Secretary of Defense, in consultation with the Attorney General, may make such exceptions in the applicability in trials by military commission under this chapter from the procedures and rules of evidence otherwise applicable in general courts-martial as may be required by the unique circumstances of the conduct of military and intelligence operations during hostilities or by other practical need.

“(2) Notwithstanding any exceptions authorized by paragraph (1), the procedures and rules of evidence in trials by military commission under this chapter shall include, at a minimum, the following rights:

“(A) To examine and respond to all evidence considered by the military commission on the issue of guilt or innocence and for sentencing.

“(B) To be present at all sessions of the military commission (other than those for deliberations or voting), except when excluded under section 949d of this title.

“(C) To the assistance of counsel.

“(D) To self-representation, if the accused knowingly and competently waives the assistance of counsel, subject to the provisions of paragraph (4).
“(E) To the suppression of evidence that is not reliable or probative.

“(F) To the suppression of evidence the probative value of which is substantially outweighed by—

“(i) the danger of unfair prejudice, confusion of the issues, or misleading the members; or

“(ii) considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

“(3) In making exceptions in the applicability in trials by military commission under this chapter from the procedures and rules otherwise applicable in general courts-martial, the Secretary of Defense may provide the following:

“(A) Evidence seized outside the United States shall not be excluded from trial by military commission on the grounds that the evidence was not seized pursuant to a search warrant or authorization.

“(B) A statement of the accused that is otherwise admissible shall not be excluded from trial by military commission on grounds of alleged coercion or compulsory self-incrimination so long as the evi-
ence complies with the provisions of section 948r of this title.

“(C) Evidence shall be admitted as authentic so long as—

“(i) the military judge of the military commission determines that there is sufficient evidence that the evidence is what it is claimed to be; and

“(ii) the military judge instructs the members that they may consider any issue as to authentication or identification of evidence in determining the weight, if any, to be given to the evidence.

“(D)(i) Except as provided in clause (ii), hearsay evidence not otherwise admissible under the rules of evidence applicable in trial by general courts-martial may be admitted in a trial by military commission if the proponent of the evidence makes known to the adverse party, sufficiently in advance to provide the adverse party with a fair opportunity to meet the evidence, the intention of the proponent to offer the evidence, and the particulars of the evidence (including information on the general circumstances under which the evidence was obtained).

The disclosure of evidence under this clause is sub-
ject to the requirements and limitations applicable to
the disclosure of classified information in section
949j(b) of this title.

“(ii) Hearsay evidence not otherwise admissible
under the rules of evidence applicable in trial by
general courts-martial shall not be admitted in a
trial by military commission if the party opposing
the admission of the evidence demonstrates that the
evidence is unreliable or lacking in probative value.

“(4)(A) The accused in a military commission under
this chapter who exercises the right to self-representation
under paragraph (2)(D) shall conform his deportment and
the conduct of the defense to the rules of evidence, proce-
dure, and decorum applicable to trials by military commis-
sion.

“(B) Failure of the accused to conform to the rules
described in subparagraph (A) may result in a partial or
total revocation by the military judge of the right of self-
representation under paragraph (2)(D). In such case, the
detailed defense counsel of the accused or an appropriately
authorized civilian counsel shall perform the functions nec-
essary for the defense.

“(c) DELEGATION OF AUTHORITY TO PRESCRIBE
REGULATIONS.—The Secretary of Defense may delegate
the authority of the Secretary to prescribe regulations under this chapter.

“§ 949b. Unlawfully influencing action of military commission

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

“(2) No person may attempt to coerce or, by any unauthorized means, influence—

“(A) the action of a military commission under this chapter, or any member thereof, in reaching the findings or sentence in any case;

“(B) the action of any convening, approving, or reviewing authority with respect to their judicial acts; or

“(C) the exercise of professional judgment by trial counsel or defense counsel.

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

“(A) general instructional or informational courses in military justice if such courses are de-
signed solely for the purpose of instructing members
of a command in the substantive and procedural as-
pects of military commissions; or
“(B) statements and instructions given in open
proceedings by a 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 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 under this chapter 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 under this chapter 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 the accused, provided that such civilian counsel—

(A) is a United States citizen;

(B) is admitted to the practice of law in a State, district, 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.

“(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 such person’s sole discretion, may detail additional military counsel to represent the accused.

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

“§ 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 under this chapter, the military judge may call the military commission into session without the presence of the members for the purpose of—

“(A) hearing and determining motions raising defenses or objections which are capable of determination 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 under this chapter, whether or not the matter is appropriate for later consideration or decision by the members;

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

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

“(2) Except as provided in subsections (b), (c), and (d), any proceedings under paragraph (1) shall be conducted in the presence of the accused, defense counsel, and trial counsel, and shall be made part of the record.

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

“(c) CLOSURE OF PROCEEDINGS.—(1) The military judge may close to the public all or part of the proceedings of a military commission under this chapter.

“(2) The military judge may close to the public all or a portion of the proceedings under paragraph (1) 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 damage to the national security, including intelligence or law enforcement sources, methods, or activities; or

“(B) ensure the physical safety of individuals.

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

“(d) EXCLUSION OF ACCUSED FROM CERTAIN PROCEEDINGS.—The military judge may exclude the accused from any portion of a proceeding upon a determination that, after being warned by the military judge, the accused persists in conduct that justifies exclusion from the courtroom—

“(1) to ensure the physical safety of individuals; or

“(2) to prevent disruption of the proceedings by the accused.

“(e) PROTECTION OF CLASSIFIED INFORMATION.—

“(1) NATIONAL SECURITY PRIVILEGE.—(A) Classified information shall be protected and is privileged from disclosure if disclosure would be detrimental to the national security. This rule applies to
all stages of the proceedings of military commissions under this chapter.

“(B) The privilege referred to in subparagraph (A) may be claimed by the head of the executive or military department or government agency concerned based on a finding by the head of that department or agency that—

“(i) the information is properly classified; and

“(ii) disclosure would be detrimental to the national security.

“(C) A person who may claim the privilege referred to in subparagraph (A) may authorize a representative, witness, or trial counsel to claim the privilege and make the finding described in subparagraph (B) on behalf of such person. The authority of the representative, witness, or trial counsel to do so is presumed in the absence of evidence to the contrary.

“(2) Introduction of classified information.—

“(A) Alternatives to disclosure.—To protect classified information from disclosure, the military judge, upon motion of trial counsel, shall authorize, to the extent practicable—
“(i) the deletion of specified items of classified information from documents to be introduced as evidence before the military commission;

“(ii) the substitution of a portion or summary of the information for such classified documents; or

“(iii) the substitution of a statement of relevant facts that the classified information would tend to prove.

“(B) Protection of Sources, Methods, or Activities.—The military judge, upon motion of trial counsel, shall permit trial counsel to introduce otherwise admissible evidence before the military commission, while protecting from disclosure the sources, methods, or activities by which the United States acquired the evidence if the military judge finds that (i) the sources, methods, or activities by which the United States acquired the evidence are classified, and (ii) the evidence is reliable. The military judge may require trial counsel to present to the military commission and the defense, to the extent practicable and consistent with national security, an unclassified summary of the
sources, methods, or activities by which the United States acquired the evidence.

“(C) ASSERTION OF NATIONAL SECURITY PRIVILEGE AT TRIAL.—During the examination of any witness, trial counsel may object to any question, line of inquiry, or motion to admit evidence that would require the disclosure of classified information. Following such an objection, the military judge shall take suitable action to safeguard such classified information. Such action may include the review of trial counsel’s claim of privilege by the military judge in camera and on an ex parte basis, and the delay of proceedings to permit trial counsel to consult with the department or agency concerned as to whether the national security privilege should be asserted.

“(3) CONSIDERATION OF PRIVILEGE AND RELATED MATERIALS.—A claim of privilege under this subsection, and any materials submitted in support thereof, shall, upon request of the Government, be considered by the military judge in camera and shall not be disclosed to the accused.

“(4) ADDITIONAL REGULATIONS.—The Secretary of Defense may prescribe additional regula-
tions, consistent with this subsection, for the use
and protection of classified information during pro-
ceedings of military commissions under this chapter.
A report on any regulations so prescribed, or modi-
fied, shall be submitted to the Committees on Armed
Services of the Senate and the House of Representa-
tives not later than 60 days before the date on which
such regulations or modifications, as the case may
be, go into effect.

“§ 949e. Continuances

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

“§ 949f. Challenges

“(a) CHALLENGES AUTHORIZED.—The military
judge and members of a military commission under this
chapter may be challenged by the accused or trial counsel
for cause stated to the military commission. The military
judge shall determine the relevance and validity of chal-
lenges for cause, and may not receive a challenge to more
than one person at a time. Challenges by trial counsel
shall ordinarily be presented and decided before those by
the accused are offered.
“(b) PEREMPTORY CHALLENGES.—The accused and trial counsel are each 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 a military commission under this chapter, and after any challenges for cause against such additional members are presented and decided, the accused and trial counsel are each entitled to one peremptory challenge against members not previously subject to peremptory challenge.

“§ 949g. Oaths

“(a) IN GENERAL.—(1) Before performing their respective duties in a military commission under this chapter, military judges, members, 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 thereof, and whether the oath shall be taken for all cases in which duties are to be performed or for a particular case, shall be as provided in regulations prescribed by the Secretary of Defense. The 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 the duty; and

“(B) if such an oath is taken, such oath 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.—In this section, the term ‘oath’ includes an affirmation.

§ 949h. Former jeopardy

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

“(b) SCOPE OF TRIAL.—No proceeding in which the accused has been found guilty by military commission under this chapter 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 in a military commission under this chapter after a plea of guilty
sets up matter inconsistent with the plea, or if it appears
that the accused has entered the plea of guilty through
lack of understanding of its meaning and effect, or if the
accused fails or refuses to plead, a plea of not guilty shall
be entered in the record, and the military commission shall
proceed as though the accused 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 in a military com-
mission under this chapter and accepted by the military
judge, a finding of guilty of the charge or specification
may be entered immediately without a vote. The finding
shall constitute the finding of the military commission un-
less the plea of guilty is withdrawn prior to announcement
of the sentence, in which event the proceedings shall con-
tinue 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 op-
portunity to obtain witnesses and other evidence as pro-
vided in regulations prescribed by the Secretary of De-
fense.
“(2) Process issued in military commissions under this chapter 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) PROTECTION OF CLASSIFIED INFORMATION.—

(1) With respect to the discovery obligations of trial counsel under this section, the military judge, upon motion of trial counsel, shall authorize, to the extent practicable—

“(A) the deletion of specified items of classified information from documents to be made available to the accused;

“(B) the substitution of a portion or summary of the information for such classified documents; or

“(C) the substitution of a statement admitting relevant facts that the classified information would tend prove.

“(2) The military judge, upon motion of trial counsel, shall authorize trial counsel, in the course of complying with discovery obligations under this section, to protect from disclosure the sources, methods, or activities by which the United States acquired evidence if the military
judge finds that the sources, methods, or activities by which the United States acquired such evidence are classified. The military judge may require trial counsel to provide, to the extent practicable, an unclassified summary of the sources, methods, or activities by which the United States acquired such evidence.

“(c) EXCULPATORY EVIDENCE.—(1) As soon as practicable, trial counsel shall disclose to the defense the existence of any evidence known to trial counsel that reasonably tends to exculpate the accused. Where exculpatory evidence is classified, the accused shall be provided with an adequate substitute in accordance with the procedures under subsection (b).

“(2) In this subsection, the term ‘evidence known to trial counsel’, in the case of exculpatory evidence, means exculpatory evidence that the prosecution would be required to disclose in a trial by courts-martial under chapter 47 of this title.

“§949k. Defense of lack of mental responsibility

“(a) AFFIRMATIVE DEFENSE.—It is an affirmative defense in a trial by military commission under this chapter 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 na-
ture and quality or the wrongfulness of the acts. Mental
disease or defect does not otherwise constitute a defense.

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

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

“(1) guilty;

“(2) not guilty; or

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

“(d) **MAJORITY VOTE REQUIRED FOR FINDING.**—
The accused shall be found not guilty by reason of lack
of mental responsibility under subsection (c)(3) only if a
majority of the members present at the time the vote is
taken determines that the defense of lack of mental re-
ponsibility has been established.
§ 949l. Voting and rulings

(a) Vote by Secret Written Ballot.—Voting by members of a military commission under this chapter on the findings and on the sentence shall be by secret written ballot.

(b) Rulings.—(1) The military judge in a military commission under this chapter shall rule upon all questions of law, including the admissibility of evidence and all interlocutory questions arising during the proceedings.

(2) Any ruling made by the military judge upon a question of law or an interlocutory question (other than the factual issue of mental responsibility of the accused) is conclusive and constitutes the ruling of the military commission. However, a 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 of a military commission under this chapter, the military judge shall, in the presence of the accused and counsel, instruct the members as to the elements of the offense and charge the members—

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

(2) that in the case being considered, if there is a reasonable doubt as to the guilt of the accused,
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 de-
gree 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 by
a military commission under this chapter 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 para-
graphs (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 death by a mili-
tary commission, except insofar as—

“(A) the penalty of death has been expressly
authorized under this chapter, chapter 47 of this
title, or the law of war for an offense of which the
accused has been found guilty;
“(B) trial counsel expressly sought the penalty of death by filing an appropriate notice in advance of trial;

“(C) the accused was convicted of the offense by the concurrence of all the members present at the time the vote is taken; and

“(D) all members 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, by a military commission under this chapter except by the concurrence of three-fourths of the members present 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 of the military commission under this chapter shall be not less than 12 members.

“(2) In any case described in paragraph (1) in which 12 members are not reasonably available for a military commission 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 less than the
number of members so specified. In any such case, the
cvening authority shall make a detailed written state-
tment, 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 under this chapter shall an-
nounce its findings and sentence to the parties as soon
as determined.

“§ 949o. Record of trial

“(a) Record; Authentication.—Each military
commission under this chapter shall keep a separate, ver-
batim, record of the proceedings in each case brought be-
fore it, and the record shall be authenticated by the signa-
ture of the military judge. If the record cannot be authen-
ticated by the military judge by reason of his death, dis-
ability, or absence, it shall be authenticated by the signa-
ture of the trial counsel or by a member if the trial counsel
is unable to authenticate it by reason of his death, dis-
ability, or absence. Where appropriate, and as provided
in regulations prescribed by the Secretary of Defense, the
record of a military commission under this chapter may
contain a classified annex.

“(b) Complete Record Required.—A complete
record of the proceedings and testimony shall be prepared
in every military commission under this chapter.
"(c) Provision of Copy to Accused.—A copy of the record of the proceedings of the military commission under this chapter shall be given the accused as soon as it is authenticated. If the record contains classified information, or a classified annex, the accused shall receive a redacted version of the record consistent with the requirements of section 949d(e) of this title. Defense counsel shall have access to the unredacted record, as provided in regulations prescribed by the Secretary of Defense.

"Subchapter V—Sentences

"§ 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 under this chapter or inflicted under this chapter upon any person subject to this chapter. The use of irons, single or double, except for the purpose of safe custody, is prohibited under this chapter.

"§ 949t. Maximum limits

"The punishment which a military commission under this chapter may direct for an offense may not exceed such limits as the President or Secretary of Defense may prescribe for that offense.
§ 949u. Execution of confinement

(a) In general.—Under such regulations as the Secretary of Defense may prescribe, a sentence of confinement adjudged by a military commission under this chapter 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 subsection (a)(2) in a penal or correctional institution not under the control of an armed force are subject to the same discipline and treatment as persons confined or committed by the courts of the United States or of the State, 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.
950h. Appellate counsel
§ 950a. Error of law; lesser included offense

(a) Error of Law.—A finding or sentence of a military commission under this chapter 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 by a military commission under this chapter 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 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 may, for good cause, 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 submittal to the convening authority under paragraph (1). Such a waiver shall 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 submittal under this subsection shall be deemed to have expired upon the submittal of a waiver under this paragraph to the convening authority.

“(c) Action by Convening Authority.—(1) The authority under this subsection 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.

“(2) The convening authority is not required to take action on the findings of a military commission under this chapter. If the convening authority takes action on the findings, the convening authority may, in his sole discretion, only—
“(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.

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

“(B) Subject to regulations prescribed by the Secretary of Defense, action under this paragraph may be taken only after consideration of any matters submitted by the accused under subsection (b) or after the time for submitting such matters expires, whichever is earlier.

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

“(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) Sub-
sole discretion, order a proceeding in revision or a rehear-

“(2)(A) Except as provided in subparagraph (B), a
proceeding in revision may be ordered by the convening

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

“(ii) the record shows improper or inconsistent
action by the 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 a spec-
ification 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; or

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

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

“§ 950c. Waiver or withdrawal of appeal

“(a) Waiver of Right of Review.—(1) An accused may file with the convening authority a statement expressly waiving the right of the accused to appellate review by the Court of Military Commission Review under section 950f of this title of the final decision of the military commission under this chapter.

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

“(3) A waiver under paragraph (1) must be filed, if at all, within 10 days after notice of the action is served on the accused or on defense counsel under section 950b(c)(4) of this title. The convening authority, for good cause, may extend the period 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 extends to 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 of this title.

“§ 950d. Appeal by the United States

“(a) Interlocutory Appeal.—(1) Except as provided in paragraph (2), in a trial by military commission under this chapter, the United States may take an interlocutory appeal to the Court of Military Commission Review under section 950f of this title of any order or ruling of the military judge that—

“(A) terminates proceedings of the military commission 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 (c), (d), or (e) of section 949d of this title.

“(2) The United States may not appeal under paragraph (1) an order or ruling that is, or amounts to, a finding of not guilty by the military commission with respect to a 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 the order or ruling.

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

§ 950e. Rehearings

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

“(b) SCOPE OF REHEARING.—(1) Upon a rehearing—

“(A) the accused may not be tried for any offense of which he was found not guilty by the first military 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 finding of guilty of an offense not considered upon the merits in the original proceedings; or

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

“(2) Upon a rehearing, if the sentence approved after the first military 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 punishment not in excess of that lawfully adjudged at the first military commission.

§ 950f. Review by Court of Military Commission Review

“(a) Establishment.—The Secretary of Defense 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 appellate military judges. For the purpose of reviewing military commission decisions under this chapter, the Court may sit in panels or as a whole in accordance with rules prescribed by the Secretary.
“(b) APPELLATE MILITARY JUDGES.—The Secretary shall assign appellate military judges to a Court of Military Commission Review. Each appellate military judge shall meet the qualifications for military judges prescribed by section 948j(b) of this title or shall be a civilian with comparable qualifications. No person may 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 a 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 a case reviewed by the Court of Military Commission Review under this section, the Court may act only with respect to matters of law.
validity of any judgment rendered by a military commission under this chapter.

“(2) The United States Court of Appeals for the District of Columbia Circuit may not determine the final validity of a judgment of a military commission under this subsection until all other appeals from the judgment under this chapter have been waived or exhausted.

“(3)(A) An accused may seek a determination by the United States Court of Appeals for the District of Columbia Circuit of the final validity of the judgment of the military commission under this subsection only upon petition to the Court for such determination.

“(B) A petition on a judgment under subparagraph (A) shall be filed by the accused in the Court not later than 20 days after the date on which—

“(i) written notice of the final decision of the military commission is served on the accused or defense counsel; or

“(ii) the accused submits, in the form prescribed by section 950e of this title, a written notice waiving the right of the accused to review by the Court of Military Commission Review under section 950f of this title.
“(C) The accused may not file a petition under sub-
paragraph (A) if the accused has waived the right to ap-
pellate review under section 950c(a) of this title.

“(4) The determination by the United States Court
of Appeals for the District of Columbia Circuit of the final
validity of a judgment of a military commission under this
subsection shall be governed by the provisions of section
1005(e)(3) of the Detainee Treatment Act of 2005 (42

“(b) Review by Supreme Court.—The Supreme
Court of the United States may review by writ of certiorari
pursuant to section 1257 of title 28 the final judgment
of the United States Court of Appeals for the District of
Columbia Circuit in a determination under subsection (a).

§ 950h. Appellate counsel

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

“(b) Representation of United States.—Appel-
late counsel may represent the United States in any ap-
peal or review proceeding under this chapter. Appellate
Government counsel may represent the United States before the United States Court of Appeals for the District of Columbia Circuit and 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 before the United States Court of Appeals for the District of Columbia Circuit or the Supreme Court by military appellate counsel, 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 judgement as to the legality of the proceedings (and with respect to death, approval under subsection (a)).
“(2) A judgement as to legality of proceedings is final for purposes of paragraph (1) when—

“(A) the time for the accused to file a petition for review by the United States Court of Appeals for the District of Columbia Circuit has expired and the accused has not filed a timely petition for such re-
view and the case is not otherwise under review by the Court; or

“(B) review is completed in accordance with the judgment of the United States Court of Appeals for the District of Columbia Circuit and (A) a petition for a writ of certiorari is not timely filed, (B) such a petition is denied by the Supreme Court, or (C) review is otherwise completed in accordance with the judgment of the Supreme Court.

“(c) SUSPENSION OF SENTENCE.—The Secretary of the Defense, 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 sen-
tence of death.

“§950j. Finality of proceedings, findings, and sentences

“(a) FINALITY.—The appellate review of records of trial provided by this chapter, and the proceedings, find-
ings, and sentences of military commissions as approved,
reviewed, or affirmed as required by this chapter, are final
and conclusive. Orders publishing the proceedings of mili-
tary commissions under this chapter are binding upon all
departments, courts, agencies, and officers of the United
States, except as otherwise provided by the President.
``(b) Provisions of Chapter Sole Basis for Re-
view of Military Commission Procedures and Ac-
tions.—Except as otherwise provided in this chapter and
notwithstanding any other provision of law (including sec-
tion 2241 of title 28 or any other habeas corpus provi-
sion), 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 under this
chapter, including challenges to the lawfulness of proce-
dures of military commissions under this chapter.
``SUBCHAPTER VII—PUNITIVE MATTERS

`Sec.
`950aa. Definitions; construction of certain offenses; common circumstances.
`950bb. Statement of substantive offenses.
`950cc. Principals.
`950dd. Accessory after the fact.
`950ee. Conviction of lesser offenses.
`950ff. Attempts.
`950gg. Solicitation.
`950hh. Murder of protected persons.
`950ii. Attacking civilians.
`950jj. Attacking civilian objects.
`950kk. Attacking protected property.
`950ll. Pillaging.
`950mm. Denying quarter.
`950nn. Taking hostages.
`950oo. Employing poison or similar weapons.
1 “§ 950aa. Definitions; construction of certain offenses;

common circumstances

“(a) DEFINITIONS.—In this subchapter:

“(1) The term ‘military objective’ means combatants and those objects during an armed conflict which, by their nature, location, purpose, or use, effectively contribute to the war-fighting or war-sustaining capability of an opposing force 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 an attack.

“(2) The term ‘protected person’ means any person entitled to protection under one or more of the Geneva Conventions, including civilians not tak-
ing an active part in hostilities, military personnel placed out of combat by sickness, wounds, or detention, and military medical or religious personnel.

“(3) The term ‘protected property’ means any property specifically protected by the law of war, including buildings dedicated to religion, education, art, science, or charitable purposes, historic monuments, hospitals, and places where the sick and wounded are collected, but only if and to the extent such property is not being used for military purposes or is not otherwise a military objective. The term includes objects properly identified by one of the distinctive emblems of the Geneva Conventions, but does not include civilian property that is a military objective.

“(b) CONSTRUCTION OF CERTAIN OFFENSES.—The intent required for offenses under sections 950hh, 950ii, 950jj, 950kk, and 950ss of this title precludes their applicability with regard to collateral damage or to death, damage, or injury incident to a lawful attack.

“(c) COMMON CIRCUMSTANCES.—An offense specified in this subchapter is triable by military commission under this chapter only if the offense is committed in the context of and associated with armed conflict.
§ 950bb. Statement of substantive offenses

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

(b) EFFECT.—Because the provisions of this subchapter (including provisions that incorporate definitions in other provisions of law) are declarative of existing law, they do not preclude trial for crimes that occurred before the date of the enactment of this chapter.

§ 950cc. Principals

Any person is punishable as a principle under this chapter who—

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

(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.

“§ 950dd. 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 under this chapter may direct.

“§ 950ee. 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 attempt to commit either the offense charged or an offense necessarily included therein.

“§ 950ff. Attempts

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

§ 950gg. 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 under this chapter 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 under this chapter may direct.

§ 950hh. Murder of protected persons

"Any person subject to this chapter who intentionally kills one or more protected persons shall be punished by death or such other punishment as a military commission under this chapter may direct.

§ 950ii. Attacking civilians

"Any person subject to this chapter who intentionally engages in an attack upon a civilian population as such, or individual civilians not taking active part in hostilities, shall be punished, if death results to one or more of the victims, by death or such other punishment as a military
commission under this chapter may direct, and, if death does not result to any of the victims, by such punishment, other than death, as a military commission under this chapter may direct.

§ 950jj. Attacking civilian objects

“Any person subject to this chapter who intentionally engages in an attack upon a civilian object that is not a military objective shall be punished as a military commission under this chapter may direct.

§ 950kk. Attacking protected property

“Any person subject to this chapter who intentionally engages in an attack upon protected property shall be punished as a military commission under this chapter may direct.

§ 950ll. Pillaging

“Any person subject to this chapter 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 punished as a military commission under this chapter may direct.

§ 950mm. Denying quarter

“Any person subject to this chapter who, with effective command or control over subordinate groups, declares, orders, or otherwise indicates to those groups that
there shall be no survivors or surrender accepted, with the intent to threaten an adversary or to conduct hostilities such that there would be no survivors or surrender accepted, shall be punished as a military commission under this chapter may direct.

“§ 950nn. Taking hostages

“Any person subject to this chapter 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 punished, if death results to one or more of the victims, by death or such other punishment as a military commission under this chapter may direct, and, if death does not result to any of the victims, by such punishment, other than death, as a military commission under this chapter may direct.

“§ 950oo. Employing poison or similar weapons

“Any person subject to this chapter who intentionally, as a method of warfare, employs a substance or weapon that releases a substance that causes death or serious and lasting damage to health in the ordinary course of events, through its asphyxiating, bacteriological, or
toxic properties, shall be punished, if death results to one
or more of the victims, by death or such other punishment
as a military commission under this chapter may direct,
and, if death does not result to any of the victims, by such
punishment, other than death, as a military commission
under this chapter may direct.

“§ 950pp. Using protected persons as a shield

“Any person subject to this chapter who positions,
or otherwise takes advantage of, a protected person with
the intent to shield a military objective from attack or
to shield, favor, or impede military operations, shall be
punished, if death results to one or more of the victims,
by death or such other punishment as a military commis-
sion under this chapter may direct, and, if death does not
result to any of the victims, by such punishment, other
than death, as a military commission under this chapter
may direct.

“§ 950qq. Using protected property as a shield

“Any person subject to this chapter who positions,
or otherwise takes advantage of the location of, protected
property with the intent to shield a military objective from
attack, or to shield, favor, or impede military operations,
shall be punished as a military commission under this
chapter may direct.
§ 950rr. Torture

(a) Offense.—Any person subject to this chapter who commits 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 punished, if death results to one or more of the victims, by death or such other punishment as a military commission under this chapter may direct, and, if death does not result to any of the victims, by such punishment, other than death, as a military commission under this chapter may direct.

(b) Severe Mental Pain or Suffering Defined.—In this section, the term ‘severe mental pain or suffering’ has the meaning given that term in section 2340(2) of title 18.

§ 950ss. Cruel or inhuman treatment

(a) Offense.—Any person subject to this chapter who commits, or conspires or attempts to commit, an act intended to inflict severe or serious physical or mental pain or suffering (other than pain or suffering incidental to lawful sanctions), including serious physical abuse, upon another within his custody or control shall be punished, if death results to the victim, by death or such other
punishment as a military commission under this chapter may direct, and, if death does not result to the victim, by such punishment, other than death, as a military commission under this chapter may direct.

“(b) DEFINITIONS.—In this section:

“(1) The term ‘severe mental pain or suffering’ has the meaning given that term in section 2340(2) of title 18.

“(2) The term ‘serious physical pain or suffering’ means bodily injury that involves—

“(A) a substantial risk of death;

“(B) extreme physical pain;

“(C) a burn or physical disfigurement of a serious nature (other than cuts, abrasions, or bruises); or

“(D) significant loss or impairment of the function of a bodily member, organ, or mental faculty.

“(3) The term ‘serious mental pain or suffering’ has the meaning given the term ‘severe mental pain or suffering’ in section 2340(2) of title 18, except that—

“(A) the term ‘serious’ shall replace the term ‘severe’ where it appears; and
“(B) as to conduct occurring after the date of the enactment of the Military Commission Act of 2006, the term ‘serious and non-transitory mental harm (which need not be prolonged)’ shall replace the term ‘prolonged mental harm’ where it appears.

“§ 950tt. Intentionally causing serious bodily injury

“(a) Offense.—Any person subject to this chapter who intentionally causes serious bodily injury to one or more persons, including lawful combatants, in violation of the law of war shall be punished, if death results to one or more of the victims, by death or such other punishment as a military commission under this chapter may direct, and, if death does not result to any of the victims, by such punishment, other than death, as a military commission under this chapter may direct.

“(b) Serious Bodily Injury Defined.—In this section, the term ‘serious bodily injury’ means bodily injury which involves—

“(1) a substantial risk of death;

“(2) extreme physical pain;

“(3) protracted and obvious disfigurement; or

“(4) protracted loss or impairment of the function of a bodily member, organ, or mental faculty.
§ 950uu. Mutilating or maiming

“Any person subject to this chapter who intentionally injures one or more protected persons by disfiguring the person or persons by any mutilation of the person or persons, or by permanently disabling any member, limb, or organ of the body of the person or persons, without any legitimate medical or dental purpose, shall be punished, if death results to one or more of the victims, by death or such other punishment as a military commission under this chapter may direct, and, if death does not result to any of the victims, by such punishment, other than death, as a military commission under this chapter may direct.

§ 950vv. Murder in violation of the law of war

“Any person subject to this chapter who intentionally kills one or more persons, including lawful combatants, in violation of the law of war shall be punished by death or such other punishment as a military commission under this chapter may direct.

§ 950ww. Destruction of property in violation of the law of war

“Any person subject to this chapter who intentionally destroys property belonging to another person in violation of the law of war shall punished as a military commission under this chapter may direct.
§ 950xx. Using treachery or perfidy

Any person subject to this chapter 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 punished, if death results to one or more of the victims, by death or such other punishment as a military commission under this chapter may direct, and, if death does not result to any of the victims, by such punishment, other than death, as a military commission under this chapter may direct.

§ 950yy. Improperly using a flag of truce

Any person subject to this chapter who uses a flag of truce to feign an intention to negotiate, surrender, or otherwise suspend hostilities when there is no such intention shall be punished as a military commission under this chapter may direct.

§ 950zz. Improperly using a distinctive emblem

Any person subject to this chapter 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 punished as a military commission under this chapter may direct.
§ 950aaa. Intentionally mistreating a dead body

“Any person subject to this chapter who intentionally mistreats the body of a dead person, without justification by legitimate military necessary, shall be punished as a military commission under this chapter may direct.

§ 950bbb. Rape

“Any person subject to this chapter 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 punished as a military commission under this chapter may direct.

§ 950ccc. 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 is not a legitimate military objective shall be punished, if death results to one or more of the victims, by death or such other punishment as a military commission under this chapter may direct, and, if death does not result to any of the victims, by such punishment, other than death, as a military commission under this chapter may direct.

§ 950ddd. Terrorism

“Any person subject to this chapter who intentionally kills or inflicts great bodily harm on one or more protected
persons, or intentionally engages in an act that evinces a wanton disregard for human life, in a manner calculated to influence or affect the conduct of government or civilian population by intimidation or coercion, or to retaliate against government conduct, shall be punished, if death results to one or more of the victims, by death or such other punishment as a military commission under this chapter may direct, and, if death does not result to any of the victims, by such punishment, other than death, as a military commission under this chapter may direct.

“§ 950eee. Providing material support for terrorism

“(a) OFFENSE.—Any person subject to this chapter who provides material support or resources, knowing or intending that they are to be used in preparation for, or in carrying out, an act of terrorism (as set forth in section 950ddd of this title), or who intentionally provides material support or resources to an international terrorist organization engaged in hostilities against the United States, knowing that such organization has engaged or engages in terrorism (as so set forth), shall be punished as a military commission under this chapter may direct.

“(b) MATERIAL SUPPORT OR RESOURCES DEFINED.—In this section, the term ‘material support or resources’ has the meaning given that term in section 2339A(b) of title 18.
§ 950fff. Wrongfully aiding the enemy

“Any person subject to this chapter 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 the co-belligerents of the enemy, shall be punished as a military commission under this chapter may direct.

§ 950ggg. Spying

“Any person subject to this chapter who, in violation of the law of war and 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 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 the co-belligerents of the enemy, shall be punished by death or such other punishment as a military commission under this chapter may direct.

§ 950hhh. Conspiracy

“Any person subject to this chapter who conspires to commit one or more substantive offenses triable by military commission under this subchapter, and who knowingly does any overt act to effect the object of the conspiracy, shall be punished, if death results to one or more of the victims, by death or such other punishment as a military commission under this chapter may direct, and, if death does not result to any of the victims, by such pun-
ishment, other than death, as a military commission under this chapter may direct.

“§ 950iii. Contempt
“A military commission under this chapter 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.

“§ 950jjj. Perjury and obstruction of justice
“A military commission under this chapter may try offenses and impose such punishment as the military commission may direct for perjury, false testimony, or obstruction of justice related to the military commission.”

(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 Commissions ....................................................... 948a”.

(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 of Defense shall submit to the Committees on Armed Services 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 para-
graph (1) shall go into effect, the Secretary shall
submit to the committees of Congress referred to in
that paragraph a report describing such modifica-

SEC. 5. AMENDMENTS TO OTHER LAWS.

(a) DETAINEE TREATMENT ACT OF 2005.—Section
1004(b) of the Detainee Treatment Act of 2005 (title X
200dd–1(b)) is amended—

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

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

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

(b) UNIFORM CODE OF MILITARY JUSTICE.—Chap-
ter 47 of title, 10, United States Code (the Uniform Code
of Military Justice), is amended as follows:
(1) Section 802 (article 2 of the Uniform Code of Military Justice) is amended by adding at the end the following new paragraph:

“(13) Lawful enemy combatants (as that term is defined in section 948a(3) of this title) who violate the law of war.”

(2) Section 821 (article 21 of the Uniform Code of Military Justice) is amended by striking “by statute or law of war”.

(3) Section 836(a) (article 36(a) of the Uniform Code of Military Justice) is amended by inserting “(other than military commissions under chapter 47A of this title)” after “other military tribunals”.

(c) PUNITIVE ARTICLE OF CONSPIRACY.—Section 881 of title 10, United States Code (article 81 of the Uniform Code of Military Justice), is amended—

(1) by inserting “(a)” before “Any person”; and

(2) by adding at the end the following new subsection:

“(b) Any person subject to this chapter or chapter 47A of this title who conspires with any other person to commit an offense under the law of war, and who knowingly does an overt act to effect the object of the conspiracy, shall be punished, if death results to one or more of the victims, by death or such other punishment as a
court-martial or military commission may direct, and, if
death does not result to any of the victims, by such pun-
ishment, other than death, as a court-martial or military
commission may direct.”.

(d) Review of Judgments of Military Commissions.—

(1) Review by Supreme Court.—Section
1259 of title 28, United States Code, is amended by
adding at the end the following new paragraph:

“(5) Cases tried by military commission and re-
viewed by the United States Court of Appeals for
the District of Columbia Circuit under section 950g
of title 10.”.

(2) Detainee Treatment Act of 2005.—Sec-
section 1005(e)(3) of the Detainee Treatment Act of
2740; 10 U.S.C. 801 note) is amended—

(A) in subparagraph (A), by striking
“pursuant to Military Commission Order
No. 1. dated August 31, 2005 (or any suc-
cessor military order)” and inserting “by a
military commission under chapter 47A of
title 10, United States Code”;
(B) by striking subparagraph (B) and inserting the following new subparagraph
(B):
“(B) GRANT OF REVIEW.—Review under this paragraph shall be as of right.”;
(C) in subparagraph (C)—
(i) in clause (i)—
(I) by striking “pursuant to the military order” and inserting “by a military commission”; and
(II) by striking “at Guantánamo Bay, Cuba”; and
(ii) in clause (ii), by striking “pursuant to such military order” and inserting “by the military commission”; and
(D) in subparagraph (D)(i), by striking “specified in the military order” and inserting “specified for a military commission”.

SEC. 6. HABEAS CORPUS MATTERS.
(a) IN GENERAL.—Section 2241 of title 28, United States Code, is amended—
(1) by striking subsection (e) (as added by section 1005(e)(1) of Public Law 109–148 (119 Stat.
2742)) and by striking subsection (e) (as added by added by section 1405(e)(1) of Public Law 109–163 (119 Stat. 3477)); and

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

“(e)(1) No court, justice, or judge shall have jurisdic-
tion to hear or consider an application for a writ of habeas corpus filed by or on behalf of an alien detained by the United States who—

“(A) is currently in United States custody; and

“(B) has been determined by the United States to have been properly detained as an enemy combat-
ant or is awaiting such determination.

“(2) Except as provided in paragraphs (2) and (3) of section 1005(e) of the Detainee Treatment Act of 2005 (10 U.S.C. 801 note), no court, justice, or judge shall have jurisdiction to hear or consider any other action against the United States or its agents relating to any aspect of the detention, transfer, treatment, trial, or conditions of confinement of an alien detained by the United States who—

“(A) is currently in United States custody; and

“(B) has been determined by the United States to have been properly detained as an enemy combat-
ant or is awaiting such determination.”.
(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect on the date of the enactment of this Act, and shall apply to all cases, without exception, pending on or after the date of the enactment of this Act which relate to any aspect of the detention, transfer, treatment, trial, or conditions of detention of an alien detained by the United States since September 11, 2001.

SEC. 7. TREATY OBLIGATIONS NOT ESTABLISHING GROUNDS FOR CERTAIN CLAIMS.

(a) IN GENERAL.—No person may invoke the Geneva Conventions, or any protocols thereto, in any habeas or civil action or proceeding to which the United States, or a current or former officer, employee, member of the Armed Forces, or other agent of the United States, is a party, as a source of rights in any court of the United States or its States or territories.

(b) GENEVA CONVENTIONS DEFINED.—In this section, the term “Geneva Conventions” means—

(1) the Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, done at Geneva August 12, 1949 (6 UST 3217);

(2) the Convention for the Amelioration of the Condition of the Wounded, Sick, and Shipwrecked
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Members of the Armed Forces at Sea, done at Geneva August 12, 1949 (6 UST 3217);

(3) the Convention Relative to the Treatment of Prisoners of War, done at Geneva August 12, 1949 (6 UST 3316); and

(4) the Convention Relative to the Protection of Civilian Persons in Time of War, done at Geneva August 12, 1949 (6 UST 3516).

SEC. 8. IMPLEMENTATION OF TREATY OBLIGATIONS.

(a) IMPLEMENTATION OF TREATY OBLIGATIONS.—

(1) IN GENERAL.—The acts enumerated in subsection (d) of section 2441 of title 18, United States Code, as added by subsection (b) of this section, and in subsection (e) of this section, constitute violations of common Article 3 of the Geneva Conventions prohibited by United States law.

(2) PROHIBITION ON GRAVE BREACHES.—The provisions of section 2441 of title 18, United States Code, as amended by this section, fully satisfy the obligation under Article 129 of the Third Geneva Convention for the United States to provide effective penal sanctions for grave breaches which are encompassed in common Article 3 in the context of an armed conflict not of an international character. No foreign or international source of law shall supply a
basis for a rule of decision in the courts of the United States in interpreting the prohibitions enumerated in subsection (d) of such section 2441.

(3) Interpretation by the President.—(A) As provided by the Constitution and by this section, the President has the authority for the United States to interpret the meaning and application of the Geneva Conventions and to promulgate higher standards and administrative regulations for violations of treaty obligations which are not grave breaches of the Geneva Conventions.

(B) The President shall issue interpretations described by subparagraph (A) by Executive Order published in the Federal Register.

(C) Any Executive Order published under this paragraph shall be authoritative (as to non-grave breach provisions of common Article 3) as a matter of United States law, in the same manner as other administrative regulations.

(D) Nothing in this section shall be construed to affect the constitutional functions and responsibilities of Congress and the judicial branch of the United States.

(4) Definitions.—In this subsection:
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(A) The term “Geneva Conventions” means—

(i) the Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, done at Geneva August 12, 1949 (6 UST 3217);

(ii) the Convention for the Amelioration of the Condition of the Wounded, Sick, and Shipwrecked Members of the Armed Forces at Sea, done at Geneva August 12, 1949 (6 UST 3217);

(iii) the Convention Relative to the Treatment of Prisoners of War, done at Geneva August 12, 1949 (6 UST 3316); and

(iv) the Convention Relative to the Protection of Civilian Persons in Time of War, done at Geneva August 12, 1949 (6 UST 3516).

(B) The term “Third Geneva Convention” means the international convention referred to in subparagraph (A)(iii).

(b) Revision to War Crimes Offense Under Federal Criminal Code.—
(1) IN GENERAL.—Section 2441 of title 18, United States Code, is amended—

(A) in subsection (c), by striking paragraph (3) and inserting the following new paragraph (3):

“(3) which constitutes a grave breach of common Article 3 as defined in subsection (d) when committed in the context of and in association with an armed conflict not of an international character; or”; and

(B) by adding at the end the following new subsection:

“(d) COMMON ARTICLE 3 VIOLATIONS.—

“(1) PROHIBITED CONDUCT.—In subsection (c)(3), the term ‘grave breach of common Article 3’ means any conduct (such conduct constituting a grave breach of common Article 3 of the international conventions done at Geneva August 12, 1949), as follows:

“(A) TORTURE.—The act of a 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.

“(B) Cruel or inhuman treatment.—The act of a person who commits, or conspires or attempts to commit, an act intended to inflict severe or serious physical or mental pain or suffering (other than pain or suffering incidental to lawful sanctions), including serious physical abuse, upon another within his custody or control.

“(C) Performing biological experiments.—The act of a 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 or dental purpose and in so doing endangers the body or health of such person or persons.

“(D) Murder.—The act of a 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 subsection, one or more per-
sons taking no active part in the hostilities, in-
cluding those placed out of combat by sickness,
wounds, detention, or any other cause.

“(E) Mutilation or Maiming.—The act of a person who intentionally injures, or cons-
spires or attempts to injure, or injures whether intentionally or unintentionally in the course of committing any other offense under this sub-
section, one or more persons taking no active part in the hostilities, including those placed out of combat by sickness, wounds, detention, or any other cause, by disfiguring the person or persons by any mutilation thereof or by perma-
ently disabling any member, limb, or organ of his body, without any legitimate medical or den-
tal purpose.

“(F) Intentionally Causing Serious Bodily Injury.—The act of a person who in-
tentionally causes, or conspires or attempts to cause, serious bodily injury to one or more per-
sons, including lawful combatants, in violation of the law of war.

“(G) Rape.—The act of a 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.

“(H) SEXUAL ASSAULT OR ABUSE.—The act of a 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.

“(I) TAKING HOSTAGES.—The act of a 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.

“(2) DEFINITIONS.—In the case of an offense under subsection (a) by reason of subsection (e)(3)—

“(A) the term ‘severe mental pain or suffering’ shall be applied for purposes of para-
graphs (1)(A) and (1)(B) in accordance with
the meaning given that term in section 2340(2)
of this title;

“(B) the term ‘serious bodily injury’ shall
be applied for purposes of paragraph (1)(F) in
accordance with the meaning given that term in
section 113(b)(2) of this title;

“(C) the term ‘sexual contact’ shall be ap-
plied for purposes of paragraph (1)(G) in ac-
cordance with the meaning given that term in
section 2246(3) of this title;

“(D) the term ‘serious physical pain or
suffering’ shall be applied for purposes of para-
graph (1)(B) as meaning bodily injury that in-
volves—

“(i) a substantial risk of death;

“(ii) extreme physical pain;

“(iii) a burn or physical disfigurement
of a serious nature (other than cuts, abra-
sions, or bruises); or

“(iv) significant loss or impairment of
the function of a bodily member, organ, or
mental faculty; and

“(E) the term ‘serious mental pain or suf-
fering’ shall be applied for purposes of para-
graph (1)(B) in accordance with the meaning
given the term ‘severe mental pain or suffering’
(as defined in section 2340(2) of this title), ex-
cept that—

“(i) the term ‘serious’ shall replace
the term ‘severe’ where it appears; and

“(ii) as to conduct occurring after the
date of the enactment of the Military Com-
mission Act of 2006, the term ‘serious and
non-transitory mental harm (which need
not be prolonged)’ shall replace the term
‘prolonged mental harm’ where it appears.

“(3) Inapplicability of certain provisions
with respect to collateral damage or inci-
dent of lawful attack.—The intent specified for
the conduct stated in subparagraphs (D), (E), and
(F) or paragraph (1) precludes the applicability of
those subparagraphs to an offense under subsection
(a) by reasons of subsection (c)(3) with respect to—

“(A) collateral damage; or

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

“(4) Inapplicability of taking hostages
to prisoner exchange.—Paragraph (1)(I) does
not apply to an offense under subsection (a) by rea-
son of subsection (c)(3) in the case of a prisoner ex-
change during wartime.”.

(2) Retroactive Applicability.—The amendments made by this subsection, except as specified in subsection (d)(2)(E) of section 2441 of title 18, United States Code, shall take effect as of November 26, 1997, as if enacted immediately after the amendments made by section 583 of Public Law 105–118 (as amended by section 4002(e)(7) of Pub-
law 107–273).

(c) Additional Prohibition on Cruel, Inhuman, or Degrading Treatment or Punishment.—

(1) In General.—No individual in the custody or under the physical control of the United States Government, regardless of nationality or physical lo-
cation, shall be subject to cruel, inhuman, or degrad-
ing treatment or punishment.

(2) Cruel, Inhuman, or Degrading Treatment or Punishment Defined.—In this sub-
section, the term “cruel, inhuman, or degrading treatment or punishment” means cruel, unusual, and inhumane treatment or punishment prohibited by the Fifth, Eighth, and Fourteenth Amendments to the Constitution of the United States, as defined in the United States Reservations, Declarations and
Understandings to the United Nations Convention
Against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment done

(3) COMPLIANCE.—The President shall take appropriate action to ensure compliance with this subsection, including through the establishment of administrative rules and procedures.

SEC. 9. DETENTION COVERED BY REVIEW OF DECISIONS
OF COMBATANT STATUS REVIEW TRIBUNALS
OF PROPRIETY OF DETENTION.


SEC. 10. SEVERABILITY.

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