

**Calendar No. 595**109<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION**S. 3861**

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

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**IN THE SENATE OF THE UNITED STATES**

SEPTEMBER 6, 2006

Mr. FRIST (for himself, Mr. MCCONNELL, and Mr. INHOFE) introduced the following bill; which was read the first time

SEPTEMBER 8, 2006

Read the second time and placed on the calendar

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**A BILL**

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

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Bringing Terrorists  
5 to Justice Act of 2006”.

1 **SEC. 2. FINDINGS.**

2 Congress makes the following findings:

3 (1) For more than 10 years, the al Qaeda ter-  
4 rorist organization has waged an unlawful war of vi-  
5 olence and terror against the United States and its  
6 allies. Al Qaeda was involved in the bombing of the  
7 World Trade Center in New York City in 1993, the  
8 bombing of the United States Embassies in Kenya  
9 and Tanzania in 1998, and the attack on the U.S.S.  
10 Cole in Yemen in 2000. On September 11, 2001, al  
11 Qaeda launched the most deadly foreign attack on  
12 United States soil in history. Nineteen al Qaeda  
13 operatives hijacked four commercial aircraft and pi-  
14 loted them into the World Trade Center Towers in  
15 New York City and the headquarters of the United  
16 States Department of Defense at the Pentagon, and  
17 downed United Airlines Flight 93. The attack de-  
18 stroyed the Towers, severely damaged the Pentagon,  
19 and resulted in the deaths of approximately 3,000  
20 innocent people.

21 (2) Following the attacks on the United States  
22 on September 11th, Congress recognized the existing  
23 hostilities with al Qaeda and affiliated terrorist orga-  
24 nizations and, by the Authorization for the Use of  
25 Military Force Joint Resolution (Public Law 107-  
26 40), recognized that “the President has authority

1 under the Constitution to take action to deter and  
2 prevent acts of international terrorism against the  
3 United States” and authorized the President “to use  
4 all necessary and appropriate force against those na-  
5 tions, organizations, or persons he determines  
6 planned, authorized, committed, or aided the ter-  
7 rorist attacks that occurred on September 11, 2001  
8 . . . in order to prevent any future acts of inter-  
9 national terrorism against the United States by such  
10 nations, organizations or persons.”.

11 (3) The President’s authority to convene mili-  
12 tary commissions arises from the Constitution’s vest-  
13 ing in the President of the executive power and the  
14 power of Commander in Chief of the Armed Forces.  
15 As the Supreme Court of the United States recog-  
16 nized in *Madsen v. Kinsella*, 343 U.S. 341, 346–48  
17 (1952), “[s]ince our nation’s earliest days, such  
18 commissions have been constitutionally recognized  
19 agencies for meeting many urgent governmental re-  
20 sponsibilities related to war. . . . They have taken  
21 many forms and borne many names. Neither their  
22 procedure nor their jurisdiction has been prescribed  
23 by statute. It has been adapted in each instance to  
24 the need that called it forth.”.

1           (4) In exercising the authority vested in the  
2           President by the Constitution and laws of the  
3           United States, including the Authorization for Use  
4           of Military Force Joint Resolution, and in accord-  
5           ance with the law of war, the President has detained  
6           enemy combatants in the course of this armed con-  
7           flict and issued the Military Order of November 13,  
8           2001, to govern the “Detention, Treatment, and  
9           Trial of Certain Non-Citizens in the War Against  
10          Terrorism”. This Order authorized the Secretary of  
11          Defense to establish military commissions to try in-  
12          dividuals subject to the Order for any offenses tri-  
13          able by military commission that such individuals  
14          are alleged to have committed.

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

1 by military commissions. The prosecution of such in-  
2 dividuals by military commissions established and  
3 conducted consistent with this Act fully complies  
4 with the Constitution, the laws of the United States,  
5 treaties to which the United States is a party, and  
6 the law of war.

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

20 (7) Many procedures for courts-martial would  
21 not be practicable in trying the unlawful enemy com-  
22 batants for whom this Act provides for trial by mili-  
23 tary commission. For instance, court martial pro-  
24 ceedings would in certain circumstances—

1 (A) compel the Government to share classi-  
2 fied information with the accused, even though  
3 members of al Qaeda cannot be trusted with  
4 our Nation's secrets and it would not be con-  
5 sistent with the national security of the United  
6 States to provide them with access to classified  
7 information;

8 (B) exclude the use of hearsay evidence  
9 even though such evidence often will be the best  
10 and most reliable evidence that the accused has  
11 committed a war crime. For example, many wit-  
12 nesses in military commission trials are likely to  
13 be foreign nationals who are not amenable to  
14 process or may be precluded for national secu-  
15 rity reasons from entering the United States or  
16 Guantanamo Bay to testify. Other witnesses  
17 may be unavailable because of military neces-  
18 sity, incarceration, injury, or death. In short,  
19 applying the hearsay rules from the Manual for  
20 Courts-Martial or from the Federal Rules of  
21 Evidence would make it virtually impossible to  
22 bring terrorists to justice for their violations of  
23 the law of war;

24 (C) specify speedy trials and technical  
25 rules for sworn and authenticated statements

1           when, due to the exigencies of wartime, the  
2           United States cannot safely require members of  
3           the armed forces to gather evidence on the bat-  
4           tlefield, including civilian eyewitness testimony,  
5           as though they were police officers. Nor can the  
6           United States divert members from the front  
7           lines and their duty stations to attend military  
8           commission proceedings. Therefore, strict com-  
9           pliance with such rules for evidence gathered on  
10          the battlefield would be impracticable, given the  
11          preeminent focus on military operations and the  
12          chaotic nature of combat.

13          (8) The exclusive judicial review for which this  
14          Act, and the Detainee Treatment Act of 2005, pro-  
15          vides is without precedent in the history of armed  
16          conflicts involving the United States, exceeds the  
17          scope of judicial review historically provided for by  
18          military commissions, and is channeled in a manner  
19          appropriately tailored to—

20                 (A) the circumstances of the conflicts be-  
21                 tween the United States and international ter-  
22                 rorist organizations; and

23                 (B) the need to ensure fair treatment of  
24                 those detained as enemy combatants, to mini-  
25                 mize the diversion of members of the armed

1 forces from other wartime duties, and to protect  
2 the national security of the United States.

3 (9) In early 2002, as memorialized in a memo-  
4 randum dated February 7, 2002, the President de-  
5 termined that common Article 3 of the Geneva Con-  
6 ventions did not apply with respect to the United  
7 States conflict with al Qaeda because al Qaeda was  
8 not a party to those treaties and the conflict with al  
9 Qaeda was an armed conflict of an international  
10 character. That was the interpretation of the United  
11 States prior to the Supreme Court's decision in  
12 Hamdan on June 29, 2006. Hamdan's statement to  
13 the contrary makes it appropriate to clarify the  
14 standards imposed by common Article 3. This Act  
15 makes clear that the prohibitions against cruel, in-  
16 human, and degrading treatment found in the De-  
17 tainee Treatment Act of 2005 fully satisfy the obli-  
18 gations of the United States with respect to the  
19 standards for detention and treatment established by  
20 section 1 of common Article 3, except for those obli-  
21 gations arising under paragraphs (b) and (d). In ad-  
22 dition, the Act makes clear that the Geneva Conven-  
23 tions are not a source of judicially enforceable indi-  
24 vidual rights, thereby reaffirming that enforcement



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

3 **SEC. 3. AUTHORIZATION FOR MILITARY COMMISSIONS.**

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

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

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

24 (d) EXECUTION OF PUNISHMENT.—The Secretary of  
25 Defense shall be authorized to carry out a sentence of pun-

1 ishment decreed by a military commission pursuant to  
 2 subsection (a) in accordance with such procedures as the  
 3 Secretary may prescribe.

4 (e) ANNUAL REPORT ON TRIALS BY MILITARY COM-  
 5 MISSION.—

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

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

16 **SEC. 4. MILITARY COMMISSIONS.**

17 (a) MILITARY COMMISSIONS.—

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

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

22 **“SUBCHAPTER I—GENERAL PROVISIONS**

“Sec.

“948a. Definitions.

“948b. Military commissions generally.

“948c. Persons subject to military commissions.

“948d. Jurisdiction of military commissions.

1 **“§ 948a. Definitions**

2 “In this chapter:

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

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

7 “(A) Any information or material that has  
8 been determined by the United States Govern-  
9 ment pursuant to statute, Executive order, or  
10 regulation to require protection against unau-  
11 thorized disclosure for reasons of national secu-  
12 rity.

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

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

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

22 “(5) LAWFUL ENEMY COMBATANT.—The term  
23 ‘lawful enemy combatant’ means an individual deter-  
24 mined by or under the authority of the President or  
25 Secretary of Defense (whether on an individualized  
26 or collective basis) to be: (i) a member of the regular

1 forces of a State party engaged in hostilities against  
2 the United States or its co-belligerents; (ii) a mem-  
3 ber of a militia, volunteer corps, or organized resist-  
4 ance movement belonging to a State party engaged  
5 in such hostilities, which are under responsible com-  
6 mand, wear a fixed distinctive sign recognizable at  
7 a distance, carry their arms openly, and abide by the  
8 law of war; or (iii) a member of a regular armed  
9 forces who professes allegiance to a government en-  
10 gaged in such hostilities, but not recognized by the  
11 United States.

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

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

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

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

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

3           “‘This definition includes any individual deter-  
4           mined by a Combatant Status Review Tribunal, be-  
5           fore the effective date of this Act, to have been prop-  
6           erly detained as an enemy combatant, but excludes  
7           any alien determined by the President or the Sec-  
8           retary of Defense (whether on an individualized or  
9           collective basis), or by any competent tribunal estab-  
10          lished under their authority, to be (i) a lawful enemy  
11          combatant (including a prisoner of war), or (ii) a  
12          protected person whose trial by these military com-  
13          missions would be inconsistent with Articles 64–76  
14          of the Geneva Convention Relative to the Protection  
15          of Civilian Persons in Time of War of August 12,  
16          1949. For purposes of this section, the term “pro-  
17          tected person” refers to the category of persons de-  
18          scribed in Article 4 of the Geneva Convention Rel-  
19          ative to the Protection of Civilian Persons in Time  
20          of War of August 12, 1949.

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

1 **“§ 948b. Military commissions generally**

2       “(a) PURPOSE.—This chapter codifies and estab-  
3 lishes procedures governing the use of military commis-  
4 sions to try unlawful enemy combatants for violations of  
5 the law of war and other offenses triable by military com-  
6 missions. Although military commissions traditionally  
7 have been constituted by order of the President, the deci-  
8 sion of the Supreme Court in *Hamdan v. Rumsfeld* makes  
9 it both necessary and appropriate to codify procedures for  
10 military commissions as set forth herein.

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

23       “(c) Alien unlawful enemy combatants may be tried  
24 for violations of the law of war and other offenses triable  
25 by military commissions committed against the United

1 States or its co-belligerents before, on, or after September  
2 11, 2001.

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

8 **“§ 948c. Persons subject to military commissions**

9 “Alien unlawful enemy combatants, as defined in sec-  
10 tion 948a of this title, shall be subject to trial by military  
11 commissions as set forth in this chapter.

12 **“§ 948d. Jurisdiction of military commissions**

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

23 “(b) Military commissions shall not have jurisdiction  
24 over any individual determined by the President or the  
25 Secretary of Defense (whether on an individualized or col-





1           “(b) The Secretary may delegate his authority to con-  
2 vene military commissions or to promulgate any regula-  
3 tions under this chapter.

4 **“§ 948i. Who may serve on military commissions**

5           “(a) IN GENERAL.—Any commissioned officer of the  
6 United States armed forces on active duty is eligible to  
7 serve on a military commission. Eligible commissioned of-  
8 ficers shall include, without limitation, reserve personnel  
9 on active duty, National Guard personnel on active duty  
10 in Federal service, and retired personnel recalled to active  
11 duty.

12           “(b) DETAIL OF MEMBERS.—When convening a com-  
13 mission, the convening authority shall detail as members  
14 thereof such members of the armed forces as, in his opin-  
15 ion, are fully qualified for the duty by reason of age, edu-  
16 cation, training, experience, length of service, and judicial  
17 temperament. No member of an armed force shall be eligi-  
18 ble to serve as a member of a commission when he is the  
19 accuser or a witness for the prosecution or has acted as  
20 an investigator or counsel in the same case.

21           “(c) EXCUSE OF MEMBERS.—Before a commission is  
22 assembled for the trial of a case, the convening authority  
23 may excuse a member of the commission from partici-  
24 pating in the case.

1 **“§ 948j. Military judge of a military commission**

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

11       “(b) **ELIGIBILITY.**—A military judge shall be a com-  
12 missioned officer of the armed forces who is a member  
13 of the bar of a Federal court or a member of the bar of  
14 the highest court of a State, and who is certified to be  
15 qualified for duty as a military judge by the Judge Advo-  
16 cate General of the armed force of which such military  
17 judge is a member. A commissioned officer who is certified  
18 to be qualified for duty as a military judge of a commis-  
19 sion may perform such other duties as are assigned to him  
20 by or with the approval of that Judge Advocate General  
21 or his designee.

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

1       “(d) CONSULTATION WITH MEMBERS; INELIGI-  
2 BILITY TO VOTE.—Except as provided in section 949d of  
3 this title, the military judge detailed to the commission  
4 may not consult with the members of the commission ex-  
5 cept in the presence of the accused, trial counsel, and de-  
6 fense counsel, nor may he vote with the members of the  
7 commission.

8 **“§ 948k. Detail of trial counsel and defense counsel**

9       “(a) DETAIL OF COUNSEL GENERALLY.—

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

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

15           “(3) Military defense counsel shall be detailed  
16 as soon as practicable after the swearing of charges  
17 against the person accused.

18           “(4) The Secretary shall prescribe regulations  
19 providing for the manner in which counsel are de-  
20 tailed for military commissions and for the persons  
21 who are authorized to detail counsel for such mili-  
22 tary commissions.

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

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

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

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

10          “(2) a civilian who is—

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

13           “(B) otherwise qualified to practice before  
14 the commission pursuant to regulations pre-  
15 scribed by the Secretary.

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

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

23           “(2) certified as competent to perform duties as  
24 defense counsel before general courts-martial by the

1 Judge Advocate General of the armed force of which  
2 he is a member.

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

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

13 “(a) COURT REPORTERS.—Under such regulations  
14 as the Secretary may prescribe, the convening authority  
15 of a military commission shall detail or employ qualified  
16 court reporters, who shall record the proceedings of and  
17 testimony taken before that commission.

18 “(b) INTERPRETERS.—Under like regulations the  
19 convening authority may detail or employ interpreters who  
20 shall interpret for the commission, and, as necessary, for  
21 trial counsel and defense counsel.

22 “(c) TRANSCRIPT; RECORD.—The transcript shall be  
23 under the control of the convening authority, which is re-  
24 sponsible for preparing the record of the proceedings.

1 **“§ 948m. Number of members; excuse of members; ab-**  
2 **sent and additional members**

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

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

9 “(b) EXCUSE OF MEMBERS.—No member of a mili-  
10 tary commission may be absent or excused after the com-  
11 mission has been assembled for the trial of the accused  
12 unless excused—

13 “(1) as a result of challenge;

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

16 “(3) by order of the convening authority for  
17 good cause.

18 “(c) ABSENT AND ADDITIONAL MEMBERS.—When-  
19 ever a military commission is reduced below the requisite  
20 number of members, the trial may not proceed unless the  
21 convening authority details new members sufficient to pro-  
22 vide not less than the requisite number. The trial may pro-  
23 ceed with the new members present after the recorded evi-  
24 dence previously introduced before the members of the  
25 commission has been read to the commission in the pres-

1 ence of the military judge, the accused (except as provided  
2 by section 949d of this title), and counsel for both sides.

3 “SUBCHAPTER III—PRE-TRIAL PROCEDURE

“Sec.

“948q. Charges and specifications.

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

“948s. Service of charges.

4 “§ 948q. **Charges and specifications**

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

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

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

15 “(b) NOTICE TO ACCUSED.— Upon the swearing of  
16 the charges and specifications in accordance with sub-  
17 section (a), the accused shall be informed of the charges  
18 and specifications against him as soon as practicable.

19 “§ 948r. **Compulsory self-incrimination prohibited;**  
20 **statements obtained by torture**

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

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

6       “(c) STATEMENTS NOT OBTAINED BY TORTURE.—  
 7 No otherwise admissible statement may be received in evi-  
 8 dence, including statements allegedly obtained by coercion,  
 9 if the military judge finds that the circumstances under  
 10 which the statement was made render it unreliable or lack-  
 11 ing in probative value.

12       **“§ 948s. Service of charges**

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

19       **“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.

1 **“§ 949a. Rules**

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

7       “(b) RULES OF EVIDENCE.—Subject to such excep-  
8 tions and limitations as the Secretary may provide by reg-  
9 ulation, evidence in a military commission shall be admis-  
10 sible if the military judge determines that the evidence  
11 would have probative value to a reasonable person.

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

18       “The military judge shall exclude any evidence the  
19 probative value of which is substantially outweighed by the  
20 danger of unfair prejudice, confusion of the issues, or mis-  
21 leading the members of the commission, or by consider-  
22 ations of undue delay, waste of time, or needless presen-  
23 tation of cumulative evidence.

1 **“§ 949b. Unlawfully influencing action of military**  
2 **commission**

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

10 “(2) No person may attempt to coerce or, by any un-  
11 authorized means, influence the action of a commission  
12 or any member thereof, in reaching the findings or sen-  
13 tence in any case, or the action of any convening, approv-  
14 ing, or reviewing authority with respect to his judicial acts.

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

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

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

24 “(b) PROHIBITION ON CONSIDERATION OF ACTIONS  
25 ON COMMISSION IN EVALUATION OF FITNESS.—In the  
26 preparation of an effectiveness, fitness, or efficiency report

1 or any other report or document used in whole or in part  
2 for the purpose of determining whether a commissioned  
3 officer of the armed forces is qualified to be advanced, in  
4 grade, or in determining the assignment or transfer of any  
5 such officer or in determining whether any such officer  
6 should be retained on active duty, no person may—

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

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

15 **“§ 949c. Duties of trial counsel and defense counsel**

16           “(a) TRIAL COUNSEL.—The trial counsel of a mili-  
17 tary commission shall prosecute in the name of the United  
18 States.

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

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

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

1           “(A) is a United States citizen;

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

5           “(C) has not been the subject of any sanction  
6 of disciplinary action by any court, bar, or other  
7 competent governmental authority for relevant mis-  
8 conduct;

9           “(D) has been determined to be eligible for ac-  
10 cess to information classified at the level Secret or  
11 higher; and

12           “(E) has signed a written agreement to comply  
13 with all applicable regulations or instructions for  
14 counsel, including any rules of court for conduct  
15 during the proceedings.

16           “Civilian defense counsel shall protect any classified  
17 information received during the course of their representa-  
18 tion of the accused in accordance with all applicable law  
19 governing the protection of classified information, and  
20 shall not divulge such information to any person not au-  
21 thorized to receive it.

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

24           “(5) The accused is not entitled to be represented by  
25 more than one military counsel. However, the person au-

1 thorized under regulations prescribed under section 948k  
2 of this title to detail counsel in his sole discretion may  
3 detail additional military counsel.

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

6 **“§ 949d. Sessions**

7 “(a) SESSIONS WITHOUT PRESENCE OF MEM-  
8 BERS.—(1) At any time after the service of charges which  
9 have been referred for trial by military commission, the  
10 military judge may call the commission into session with-  
11 out the presence of the members for the purpose of—

12 “(A) hearing and determining motions raising  
13 defenses or objections which are capable of deter-  
14 mination without trial of the issues raised by a plea  
15 of not guilty;

16 “(B) hearing and ruling upon any matter which  
17 may be ruled upon by the military judge under this  
18 chapter, whether or not the matter is appropriate for  
19 later consideration or decision by the members of  
20 the commission;

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

23 “(D) performing any other procedural function  
24 which may be performed by the military judge under  
25 this chapter or under rules prescribed pursuant to

1 section 949a of this title and which does not require  
2 the presence of the members of the commission.

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

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

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

15 “(d) PUBLIC PROCEEDINGS.—(1) The military com-  
16 mission shall hold open and public proceedings.

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

21 “(A) protect information the disclosure of which  
22 could reasonably be expected to cause identifiable  
23 damage to the public interest or the national secu-  
24 rity, including intelligence or law enforcement  
25 sources, methods, or activities; or

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

2           “(e) LIMITED EXCLUSION OF THE ACCUSED FOR  
3 THE PROTECTION OF CLASSIFIED INFORMATION.—(1)  
4 The military judge may, subject to the provisions of this  
5 subsection, permit the admission in a military commission  
6 under this chapter of classified information outside the  
7 presence of the accused.

8           “(2) The military judge shall not exclude the accused  
9 from any portion of the proceeding except upon a specific  
10 finding that extraordinary circumstances exist such that—

11           “(A) the exclusion of the accused—

12                   “(i) is necessary to protect classified infor-  
13 mation the disclosure of which to the accused  
14 could reasonably be expected to cause identifi-  
15 able damage to the national security, including  
16 intelligence or law enforcement sources, meth-  
17 ods, or activities; or

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

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

22           “(B) the exclusion of the accused—

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

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

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

4       “(B) Before trial counsel may make a presentation  
5 described in subparagraph (A) requesting the admission  
6 of classified evidence outside the presence of the accused,  
7 the head of the executive or military department or gov-  
8 ernmental agency which has control over the matter (after  
9 personal consideration by that officer) shall certify in writ-  
10 ing to the military judge that—

11               “(i) the disclosure of such classified information  
12 to the accused could reasonably be expected to prej-  
13 udice the national security; and

14               “(ii) such evidence has been declassified to the  
15 maximum extent possible, consistent with the re-  
16 quirements of national security.

17       “(4)(A) No evidence shall be admitted if the accused  
18 is not present for its admission or the evidence is not oth-  
19 erwise provided to the accused, unless the evidence is clas-  
20 sified information and the military judge makes a specific  
21 finding that—

22               “(i) consideration of the evidence by the com-  
23 mission, without the presence of the accused, is war-  
24 ranted; and



1           “(ii) admission of an unclassified summary or  
2           redacted version of that evidence would not be an  
3           adequate substitute and, in the case of testimony, al-  
4           ternative methods to obscure the identity of the wit-  
5           ness are not adequate; and

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

8           “(B) If the accused is excluded from a portion of the  
9           proceeding, the accused shall be provided with a redacted  
10          transcript of the proceeding and, to the extent practicable,  
11          an unclassified summary of any evidence introduced.  
12          Under no circumstances shall such a summary or redacted  
13          transcript compromise the interests warranting the exclu-  
14          sion of the accused under this subsection.

15          “(5)(A) Military defense counsel shall be present and  
16          able to participate in all trial proceedings, and shall be  
17          given access to all evidence admitted under subparagraph  
18          (4).

19          “(B) Civilian defense counsel shall be permitted to  
20          be present and to participate in all trial proceedings, and  
21          shall be given access to evidence admitted under sub-para-  
22          graph (4), provided that civilian defense counsel has ob-  
23          tained the necessary security clearances and that such  
24          presence and access are consistent with regulations that

1 the Secretary may prescribe to protect classified informa-  
2 tion.

3 “(C) Notwithstanding any other provision of law, any  
4 defense counsel who receives classified information admit-  
5 ted pursuant to subparagraph (4) shall not be obligated  
6 to, and may not, disclose that evidence to the accused.

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

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

1 **“§ 949e. Continuances**

2 “The military judge may, for reasonable cause, grant  
3 a continuance to any party for such time, and as often,  
4 as may appear to be just.

5 **“§ 949f. Challenges**

6 “(a) CHALLENGES AUTHORIZED.—The military  
7 judge and members of the commission may be challenged  
8 by the accused or the trial counsel for cause stated to the  
9 commission. The military judge shall determine the rel-  
10 evance and validity of the challenges for cause, and may  
11 not receive a challenge to more than one person at a time.  
12 Challenges by the trial counsel shall ordinarily be pre-  
13 sented and decided before those by the accused are of-  
14 fered.

15 “(b) PEREMPTORY CHALLENGES.—Each accused  
16 and the trial counsel is entitled to one peremptory chal-  
17 lenge, but the military judge may not be challenged except  
18 for cause.

19 “(c) CHALLENGES AGAINST ADDITIONAL MEM-  
20 BERS.—Whenever additional members are detailed to the  
21 court, and after any challenges for cause against such ad-  
22 ditional members are presented and decided each accused  
23 and the trial counsel are entitled to one peremptory chal-  
24 lenge against members not previously subject to peremp-  
25 tory challenge.

1 **“§ 949g. Oaths**

2       “(a) IN GENERAL.—(1) Before performing their re-  
3 spective duties, military judges, members of commissions,  
4 trial counsel, defense counsel, reporters, and interpreters  
5 shall take an oath to perform their duties faithfully.

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

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

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

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

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

1 **“§ 949h. Former jeopardy**

2 “(a) IN GENERAL.—No person may, without his con-  
3 sent, be tried by a commission a second time for the same  
4 offense.

5 “(b) SCOPE OF TRIAL.—No proceeding in which the  
6 accused has been found guilty by military commission  
7 upon any charge or specification is a trial in the sense  
8 of this section until the finding of guilty has become final  
9 after review of the case has been fully completed.

10 **“§ 949i. Pleas of the accused**

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

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

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

3 “(a) IN GENERAL.—(1) Defense counsel in a military  
4 commission under this chapter shall have a reasonable op-  
5 portunity to obtain witnesses and other evidence, including  
6 evidence in the possession of the United States, as speci-  
7 fied in regulations prescribed by the Secretary.

8 “(2) Process issued in military commissions to com-  
9 pel witnesses to appear and testify and to compel the pro-  
10 duction of other evidence—

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

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

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

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

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

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

4           “(c) DISCLOSURE OF EXCULPATORY EVIDENCE.—

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

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

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

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

23                  “(A) shall be provided to military defense coun-  
24          sel; and

1           “(B) shall be provided to civilian defense coun-  
2           sel, provided that civilian defense counsel has ob-  
3           tained the necessary security clearances and access  
4           to such evidence is consistent with regulations that  
5           the Secretary may prescribe to protect classified in-  
6           formation; and

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

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

15          **“§ 949k. Defense of lack of mental responsibility**

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

23          “(b) BURDEN OF PROOF.—The accused has the bur-  
24          den of proving the defense of lack of mental responsibility  
25          by clear and convincing evidence.



1       “(c) FINDINGS FOLLOWING ASSERTION OF DE-  
2 FENSE.—Whenever lack of mental responsibility of the ac-  
3 cused with respect to an offense is properly at issue, the  
4 military judge shall instruct the members of the commis-  
5 sion as to the defense of lack of mental responsibility  
6 under this section and shall charge them to find the ac-  
7 cused—

8               “(1) guilty;

9               “(2) not guilty; or

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

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

18 **“§ 949I. Voting and rulings**

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

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

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

7       “(c) INSTRUCTIONS PRIOR TO VOTE.—Before a vote  
8 is taken of the findings, the military judge shall, in the  
9 presence of the accused and counsel, instruct the members  
10 of the commission as to the elements of the offense and  
11 charge them—

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

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

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

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

1 **“§ 949m. Number of votes required**

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

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

10 “(2) No person may be sentenced to suffer death, ex-  
11 cept insofar as—

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

15 “(B) the charges referred to the commission ex-  
16 pressly sought the penalty of death;

17 “(C) the accused was convicted of the offense  
18 by the concurrence of all the members of the mili-  
19 tary commission present at the time the vote is  
20 taken; and

21 “(D) all members of the military commission  
22 present at the time the vote was taken concurred in  
23 the sentence of death.

24 “(3) No person may be sentenced to life imprison-  
25 ment or to confinement for more than 10 years, except

1 by the concurrence of three-fourths of the members at the  
2 time the vote is taken.

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

7 “(2) In any case described in paragraph (1) in which  
8 12 members are not reasonably available because of phys-  
9 ical conditions or military exigencies, the convening au-  
10 thority shall specify a lesser number of members for the  
11 military commission (but not fewer than 5 members), and  
12 the military commission may be assembled and the trial  
13 held with not fewer than the number of members so speci-  
14 fied. In such a case, the convening authority shall make  
15 a detailed written statement, to be appended to the record,  
16 stating why a greater number of members were not rea-  
17 sonably available.

18 **“§ 949n. Military commission to announce action**

19 “A military commission shall announce its findings  
20 and sentence to the parties as soon as determined.

21 **“§ 949o. Record of trial**

22 “(a) RECORD; AUTHENTICATION.—Each military  
23 commission shall keep a separate, substantially verbatim,  
24 record of the proceedings in each case brought before it,  
25 and the record shall be authenticated by the signature of

1 the military judge. If the record cannot be authenticated  
2 by the military judge by reason of his death, disability,  
3 or absence, it shall be authenticated by the signature of  
4 the trial counsel or by that of a member of the commission  
5 if the trial counsel is unable to authenticate it by reason  
6 of his death, disability, or absence. Where appropriate,  
7 and as provided by regulation, the record of the military  
8 commission may contain a classified annex.

9       “(b) COMPLETE RECORD REQUIRED.—A complete  
10 record of the proceedings and testimony shall be prepared  
11 in every military commission established under this chap-  
12 ter.

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

21               “SUBCHAPTER V—SENTENCES

“Sec.

“949s. Cruel or unusual punishments prohibited.

“949t. Maximum limits.

“949u. Execution of confinement.

1 **“§ 949s. Cruel or unusual punishments prohibited**

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

8 **“§ 949t. Maximum limits**

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

12 **“§ 949u. Execution of confinement**

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

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

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

22 “(b) TREATMENT DURING CONFINEMENT BY OTHER  
23 THAN THE ARMED FORCES.—Persons confined under  
24 subsection (a)(2) in a penal or correctional institution not  
25 under the control of one of the armed forces are subject  
26 to the same discipline and treatment as persons confined

1 or committed by the courts of the United States or of the  
 2 State, Territory, District of Columbia, or place in which  
 3 the institution is situated.

4 “SUBCHAPTER VI—POST-TRIAL PROCEDURE  
 5 AND REVIEW OF MILITARY COMMISSIONS

“Sec.

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

“950b. Review by the convening authority.

“950c. Waiver or withdrawal of appeal.

“950d. Appeal by the United States.

“950e. Rehearings.

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

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

“950h. Appellate counsel.

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

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

6 **“§ 950a. Error of law; lesser included offense**

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

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

15 **“§ 950b. Review by the convening authority**

16 “(a) NOTICE TO CONVENING AUTHORITY OF FIND-  
 17 INGS AND SENTENCE.—The findings and sentence of a  
 18 military commission under this chapter shall be reported

1 in writing promptly to the convening authority after the  
2 announcement of the sentence.

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

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

13 “(B) If the accused shows that additional time is re-  
14 quired for the accused to make a submittal under para-  
15 graph (1), the convening authority, for good cause, may  
16 extend the applicable period under subparagraph (A) for  
17 not more than an additional 20 days.

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



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

6       “(2)(A) Action on the sentence of a military commis-  
7 sion shall be taken by the convening authority.

8       “(B) Subject to regulations of the Secretary, such ac-  
9 tion may be taken only after consideration of any matters  
10 submitted by the accused under subsection (b) or after  
11 the time for submitting such matters expires, whichever  
12 is earlier.

13       “(C) In taking action under this paragraph, the con-  
14 vening authority, in his sole discretion, may approve, dis-  
15 approve, commute, or suspend the sentence in whole or  
16 in part. The convening authority may not increase the sen-  
17 tence beyond that which is found by the commission.

18       “(3) Action on the findings of a military commission  
19 by the convening authority is not required. However, the  
20 convening authority, in his sole discretion, may—

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

23               “(B) change a finding of guilty to a charge to  
24 a finding of guilty to an offense that is a lesser in-  
25 cluded offense of the offense stated in the charge.

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

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

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

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

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

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

18           “(i) reconsider a finding of not guilty of any  
19 specification or a ruling which amounts to a finding  
20 of not guilty;

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

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

4           “(3) A rehearing may be ordered by the convening  
5           authority if he disapproves the findings and sentence and  
6           states the reasons for disapproval of the findings. If such  
7           a person disapproves the findings and sentence and does  
8           not order a rehearing, he shall dismiss the charges. A re-  
9           hearing as to the findings may not be ordered where there  
10          is a lack of sufficient evidence in the record to support  
11          the findings. A rehearing as to the sentence may be or-  
12          dered if the convening authority disapproves the sentence.

13          **“§ 950c. Waiver or withdrawal of appeal**

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

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

23          “(3) A waiver under paragraph (1) must be filed, if  
24          at all, within 10 days after notice on the action is served  
25          on the accused under section 950b(c)(4) of this title. The

1 convening authority, for good cause, may extend the pe-  
2 riod for such filing by not more than 30 days.

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

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

11 **“§ 950d. Appeal by the United States**

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

17 “(A) terminates commission proceedings with  
18 respect to a charge or specification;

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

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

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

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

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

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

13 “(d) COURT OF APPEALS.—The United States may  
14 appeal an adverse ruling under subsection (c) to the  
15 United States Court of Appeals for the District of Colum-  
16 bia Circuit by filing a petition for review in the Court of  
17 Appeals within 10 days after the date of such ruling. Re-  
18 view under this subsection shall be at the discretion of the  
19 Court of Appeals.

20 **“§ 950e. Rehearings**

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

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

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

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

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

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

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

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

24       “(a) COURT ESTABLISHED.—(1) The Secretary shall  
25 establish a Court of Military Commission Review which

1 shall be composed of one or more panels, and each such  
2 panel shall be composed of not less than three appellate  
3 military judges.

4 “(2) For the purpose of reviewing military commis-  
5 sion decisions, the court may sit in panels or as a whole  
6 in accordance with rules prescribed by the Secretary.

7 “(b) COMPOSITION OF THE COURT.—(1) The Sec-  
8 retary shall assign appellate military judges to a Court  
9 of Military Commission Review.

10 “(2) Each appellate military judge shall meet the  
11 qualifications for military judges prescribed by section  
12 948j(b) of this Act or shall be a civilian with comparable  
13 qualifications.

14 “(3) No person may be appointed to serve as an ap-  
15 pellate military judge in any case in which that person  
16 acted as a military judge, counsel, or reviewing official.

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

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

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

5 “(a) IN GENERAL.—(1)(A) Except as provided in  
6 subparagraph (B), the United States Court of Appeals for  
7 the District of Columbia Circuit shall have exclusive juris-  
8 diction to determine the validity of a final judgment ren-  
9 dered by a military commission, pursuant to Section  
10 1005(e)(3) of the Detainee Treatment Act of 2005.

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

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

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

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

24 “(b) REVIEW BY SUPREME COURT.—The Supreme  
25 Court of the United States may review by writ of certiorari



1 the final judgment of the Court of Appeals pursuant to  
2 section 1257 of title 28, United States Code.

3 **“§ 950h. Appellate counsel**

4 “(a) APPOINTMENT.—The Secretary shall, by regula-  
5 tion, establish procedures for the appointment of appellate  
6 counsel for the United States and for the accused in mili-  
7 tary commissions under this chapter. Appellate counsel  
8 shall meet the qualifications for appearing before military  
9 commissions under this chapter.

10 “(b) REPRESENTATION OF UNITED STATES.—Appel-  
11 late counsel may represent the United States in any ap-  
12 peal or review proceeding under this chapter. Appellate  
13 Government counsel may represent the United States be-  
14 fore the Supreme Court in cases arising under this chapter  
15 when requested to do so by the Attorney General.

16 “(c) REPRESENTATION OF ACCUSED.—The accused  
17 shall be represented by appellate military counsel before  
18 the Court of Military Commission Review, the United  
19 State Court of Appeals for the District of Columbia Cir-  
20 cuit, or the Supreme Court, or by civilian counsel if re-  
21 tained by him.

22 **“§ 950i. Execution of sentence; suspension of sentence**

23 “(a) EXECUTION OF SENTENCE OF DEATH ONLY  
24 UPON APPROVAL BY THE PRESIDENT.—If the sentence  
25 of a military commission under this chapter extends to

1 death, that part of the sentence providing for death may  
2 not be executed until approved by the President. In such  
3 a case, the President may commute, remit, or suspend the  
4 sentence, or any part thereof, as he sees fit.

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

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

14               “(A) review is completed by the Court of Mili-  
15 tary Commission Review and—

16                       “(i) the time for the accused to file a peti-  
17 tion for review by the Court of Appeals for the  
18 D.C. Circuit has expired;

19                       “(ii) the accused has not filed a timely pe-  
20 tition for such review; and

21                       “(iii) the case is not otherwise under re-  
22 view by that Court; or

23               “(B) review is completed in accordance with  
24 judgment of the Court of Appeals for the D.C. Cir-  
25 cuit and—

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

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

5           “(iii) review is otherwise completed in ac-  
6 cordance with the judgment of the Supreme  
7 Court.

8           “(c) SUSPENSION OF SENTENCE.—The Secretary, or  
9 the convening authority acting on the case (if other than  
10 the Secretary), may suspend the execution of any sentence  
11 or part thereof in the case, except a sentence of death.

12 **“§ 950j. Finality of proceedings, findings, and sen-  
13 tences**

14           “(a) FINALITY.—The appellate review of records of  
15 trial provided by this chapter, the proceedings, findings,  
16 and sentences of military commissions as approved, re-  
17 viewed, or affirmed as required by this chapter, are final  
18 and conclusive. Orders publishing the proceedings of mili-  
19 tary commissions are binding upon all departments,  
20 courts, agencies, and officers of the United States, subject  
21 only to authority of the President.

22           “(b) PROVISIONS OF CHAPTER SOLE BASIS FOR RE-  
23 VIEW OF MILITARY COMMISSION PROCEDURES AND AC-  
24 TIONS.—Except as otherwise provided in this chapter, and  
25 notwithstanding any other law (including section 2241 of

1 title 28, United States Code, or any other habeas corpus  
 2 provision), no court, justice, or judge shall have jurisdic-  
 3 tion to hear or consider any claim or cause of action what-  
 4 soever, including any action pending on or filed after the  
 5 date of enactment of this chapter, relating to the prosecu-  
 6 tion, trial, or judgment of a military commission convened  
 7 under this section, including challenges to the lawfulness  
 8 of the procedures of military commissions under this chap-  
 9 ter.

10 “SUBCHAPTER VII—PUNITIVE MATTERS

“Sec.

“950p. Substantive offenses.

“950q. Principals.

“950r. Accessory after the fact.

“950s. Conviction of lesser offenses.

“950t. Attempts.

“950u. Solicitation.

“950v. Crimes triable by military commission.

“950w. Perjury and obstruction of justice.

“950x. Contempt.

11 “§ 950p. **Substantive offenses generally**

12 “(a) PURPOSE.—The following provisions codify of-  
 13 fenses that have traditionally been triable by military com-  
 14 missions. This Act does not establish new crimes that did  
 15 not exist before its establishment, but rather codifies those  
 16 crimes for trial by military commission.

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

1 **“§ 950q. Principals**

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

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

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

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

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

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

23 **“§ 950s. Conviction of lesser offenses**

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

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

3 **“§ 950t. Attempts**

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

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

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

16 **“§ 950u. Solicitation**

17 “Any person subject to this chapter who solicits or  
18 advises another or others to commit one or more sub-  
19 stantive offenses triable by military commission shall, if  
20 the offense solicited or advised is attempted or committed,  
21 be punished with the punishment provided for the commis-  
22 sion of the offense, but, if the offense solicited or advised  
23 is not committed or attempted, he shall be punished as  
24 a military commission may direct.

1 **“§ 950v. Crimes triable by military commission**

2       “(a) DEFINITIONS AND CONSTRUCTION.—(1) For  
3 purposes of this chapter, the term ‘military objective’ re-  
4 fers to combatants and those objects during an armed con-  
5 flict which, by their nature, location, purpose, or use, ef-  
6 fectively contribute to the opposing force’s war-fighting or  
7 war-sustaining capability and whose total or partial de-  
8 struction, capture, or neutralization would constitute a  
9 definite military advantage to the attacker under the cir-  
10 cumstances at the time of the attack.

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

17       “(3) For purposes of this chapter, the term ‘protected  
18 property’ refers to property specifically protected by the  
19 law of war such as buildings dedicated to religion, edu-  
20 cation, art, science or charitable purposes, historic monu-  
21 ments, hospitals, or places where the sick and wounded  
22 are collected, provided they are not being used for military  
23 purposes or are not otherwise military objectives. Such  
24 property would include objects properly identified by one  
25 of the distinctive emblems of the Geneva Conventions but  
26 does not include all civilian property.

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

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

9           “(1) MURDER OF PROTECTED PERSONS.—Any  
10 person who intentionally kills one or more protected  
11 persons is guilty of the offense of intentionally kill-  
12 ing protected persons and shall be subject to what-  
13 ever punishment the commission may direct, includ-  
14 ing the penalty of death.

15           “(2) ATTACKING CIVILIANS.—Any person who  
16 intentionally engages in an attack upon a civilian  
17 population as such or individual civilians not taking  
18 active part in hostilities is guilty of the offense of at-  
19 tacking civilians and shall be subject to whatever  
20 punishment the commission may direct, including, if  
21 death results to one or more of the victims, the pen-  
22 alty of death.

23           “(3) ATTACKING CIVILIAN OBJECTS.—Any per-  
24 son who intentionally engages in an attack upon ci-  
25 vilian objects (property that is not a military objec-



1       tive) shall be guilty of the offense of attacking civil-  
2       ian objects and shall be subject to whatever punish-  
3       ment the commission may direct.

4               “(4) ATTACKING PROTECTED PROPERTY.—Any  
5       person who intentionally engages in an attack upon  
6       protected property shall be guilty of the offense of  
7       attacking protected property and shall be subject to  
8       whatever punishment the commission may direct.

9               “(5) PILLAGING.—Any person who intentionally  
10       and in the absence of military necessity appropriates  
11       or seizes property for private or personal use, with-  
12       out the consent of a person with authority to permit  
13       such appropriation or seizure, shall be guilty of the  
14       offense of pillaging and shall be subject to whatever  
15       punishment the commission may direct.

16               “(6) DENYING QUARTER.—Any person who,  
17       with effective command or control over subordinate  
18       groups, declares, orders, or otherwise indicates to  
19       those forces that there shall be no survivors or sur-  
20       render accepted, with the intent therefore to threat-  
21       en an adversary or to conduct hostilities such that  
22       there would be no survivors or surrender accepted,  
23       shall be guilty of denying quarter and shall be sub-  
24       ject to whatever punishment the commission may di-  
25       rect.

1           “(7) TAKING HOSTAGES.—Any person who,  
2           having knowingly seized or detained one or more  
3           persons, threatens to kill, injure, or continue to de-  
4           tain such person or persons with the intent of com-  
5           pelling any nation, person other than the hostage, or  
6           group of persons to act or refrain from acting as an  
7           explicit or implicit condition for the safety or release  
8           of such person or persons, shall be guilty of the of-  
9           fense of taking hostages and shall be subject to  
10          whatever punishment the commission may direct, in-  
11          cluding, if death results to one or more of the vic-  
12          tims, the penalty of death.

13           “(8) EMPLOYING POISON OR ANALOGOUS WEAP-  
14          ONS.—Any person who intentionally, as a method of  
15          warfare, employs a substance or a weapon that re-  
16          leases a substance that causes death or serious and  
17          lasting damage to health in the ordinary course of  
18          events, through its asphyxiating, bacteriological, or  
19          toxic properties, shall be guilty of employing poison  
20          or analogous weapons and shall be subject to what-  
21          ever punishment the commission may direct, includ-  
22          ing, if death results to one or more of the victims,  
23          the penalty of death.

24           “(9) USING PROTECTED PERSONS AS  
25          SHIELDS.—Any person who positions, or otherwise

1 takes advantage of, a protected person with the in-  
2 tent to shield a military objective from attack or to  
3 shield, favor, or impede military operations, shall be  
4 guilty of the offense of using protected persons as  
5 shields and shall be subject to whatever punishment  
6 the commission may direct, including, if death re-  
7 sults to one or more of the victims, the penalty of  
8 death.

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

18 “(11) TORTURE.—Any person who commits an  
19 act specifically intended to inflict severe physical or  
20 mental pain or suffering (other than pain or suf-  
21 fering incidental to lawful sanctions) upon another  
22 person within his custody or physical control for the  
23 purpose of obtaining information or a confession,  
24 punishment, intimidation, coercion, or any reason  
25 based on discrimination of any kind, shall be guilty

1 of torture and subject to whatever punishment the  
2 commission may direct, including, if death results to  
3 one or more of the victims, the penalty of death. ‘Se-  
4 vere mental pain or suffering’ has the meaning pro-  
5 vided in 18 U.S.C. 2340(2).

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

17 “(13) INTENTIONALLY CAUSING SERIOUS BOD-  
18 ILY INJURY.—Any person who intentionally causes  
19 serious bodily injury to one or more persons, includ-  
20 ing lawful combatants, in violation of the law of war  
21 shall be guilty of the offense of causing serious bod-  
22 ily injury and shall be subject to whatever punish-  
23 ment the commission may direct, including, if death  
24 results to one or more of the victims, the penalty of

1 death. ‘Serious bodily injury’ has the meaning pro-  
2 vided in 18 U.S.C. 113(b)(2).

3 “(14) MUTILATING OR MAIMING.—Any person  
4 who intentionally injures one or more protected per-  
5 sons, by disfiguring the person or persons by any  
6 mutilation thereof or by permanently disabling any  
7 member, limb, or organ of his body, without any le-  
8 gitimate medical or dental purpose, shall be guilty of  
9 the offense of mutilation or maiming and shall be  
10 subject to whatever punishment the commission may  
11 direct, including, if death results to one or more of  
12 the victims, the penalty of death.

13 “(15) MURDER IN VIOLATION OF THE LAW OF  
14 WAR.—Any person who intentionally kills one or  
15 more persons, including lawful combatants, in viola-  
16 tion of the law of war shall be guilty of the offense  
17 of murder in violation of the law of war and shall  
18 be subject to whatever punishment the commission  
19 may direct, including the penalty of death.

20 “(16) DESTRUCTION OF PROPERTY IN VIOLA-  
21 TION OF THE LAW OF WAR.—Any person who inten-  
22 tionally destroys property belonging to another per-  
23 son in violation of the law of war shall be guilty of  
24 the offense of destruction of property in violation of

1 the law of war and shall be subject to whatever pun-  
2 ishment the commission may direct.

3 “(17) USING TREACHERY OR PERFIDY.—Any  
4 person who, after inviting the confidence or belief of  
5 one or more persons that they were entitled to, or  
6 obliged to accord, protection under the law of war,  
7 intentionally makes use of that confidence or belief  
8 in killing, injuring, or capturing such person or per-  
9 sons, shall be guilty of using treachery or perfidy  
10 and shall be subject to whatever punishment the  
11 commission may direct.

12 “(18) IMPROPERLY USING A FLAG OF TRUCE.—  
13 Any person who uses a flag of truce to feign an in-  
14 tention to negotiate, surrender, or otherwise to sus-  
15 pend hostilities when there is no such intention,  
16 shall be guilty of improperly using a flag of truce  
17 and shall be subject to whatever punishment the  
18 commission may direct.

19 “(19) IMPROPERLY USING A DISTINCTIVE EM-  
20 BLEM.—Any person who intentionally uses a distine-  
21 tive emblem recognized by the law of war for com-  
22 batant purposes in a manner prohibited by the law  
23 of war shall be guilty of improperly using a distine-  
24 tive emblem and shall be subject to whatever punish-  
25 ment the commission may direct.

1           “(20) INTENTIONALLY MISTREATING A DEAD  
2 BODY.—Any person who intentionally mistreats the  
3 body of a dead person, without justification by legiti-  
4 mate military necessary, shall be guilty of the of-  
5 fense of mistreating a dead body and shall be sub-  
6 ject to whatever punishment the commission may di-  
7 rect.

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

16           “(22) HIJACKING OR HAZARDING A VESSEL OR  
17 AIRCRAFT.—Any person subject to this chapter who  
18 intentionally seizes, exercises unauthorized control  
19 over, or endangers the safe navigation of, a vessel or  
20 aircraft that was not a legitimate military target is  
21 guilty of the offense of hijacking or hazarding a ves-  
22 sel or aircraft and shall be subject to whatever pun-  
23 ishment the commission may direct, including, if  
24 death results to one or more of the victims, the pen-  
25 alty of death.

1           “(23) **TERRORISM.**—Any person subject to this  
2 chapter who intentionally kills or inflicts great bodily  
3 harm on one or more persons, or intentionally en-  
4 gages in an act that evinces a wanton disregard for  
5 human life, in a manner calculated to influence or  
6 affect the conduct of government or civilian popu-  
7 lation by intimidation or coercion, or to retaliate  
8 against government conduct, shall be guilty of the  
9 offense of terrorism and shall be subject to whatever  
10 punishment the commission may direct, including, if  
11 death results to one or more of the victims, penalty  
12 of death.

13           “(24) **PROVIDING MATERIAL SUPPORT FOR**  
14 **TERRORISM.**—Any person who provides material  
15 support or resources, knowing or intending that they  
16 are to be used in preparation for, or in carrying out,  
17 an act of terrorism (as defined in subsection (b)(23)  
18 of this section), or who intentionally provides mate-  
19 rial support or resources to an international terrorist  
20 organization engage in hostilities against the United  
21 States, knowing that such organization has engaged  
22 or engages in terrorism as defined in subsection  
23 (b)(23) of this section), shall be guilty of the offense  
24 of providing material support for terrorism and shall  
25 be subject to whatever punishment the commission



1       may direct. The term ‘material support or resources’  
2       has the meaning provided in 18 U.S.C. 2339A(b).

3           “(25) WRONGFULLY AIDING THE ENEMY.—Any  
4       person who, in breach of an allegiance or duty to the  
5       United States, knowingly and intentionally aids an  
6       enemy of the United States or one its co-belligerents  
7       shall be guilty of the offense of wrongfully aiding the  
8       enemy and shall be subject to whatever punishment  
9       the commission may direct.

10          “(26) SPYING.—Any person who, with intent or  
11       reason to believe that it is to be used to the injury  
12       of the United States or to the advantage of a for-  
13       eign-power, collects or attempts to collect certain in-  
14       formation by clandestine means or while acting  
15       under false pretenses, for the purpose of conveying  
16       such information to an enemy of the United States  
17       or one of its co-belligerents, shall be guilty of the of-  
18       fense of spying and shall be subject to whatever pun-  
19       ishment the commission may direct, including the  
20       penalty of death.

21          “(27) CONSPIRACY.—Any person who conspires  
22       to commit one or more substantive offenses triable  
23       under this section, and who knowingly does any  
24       overt act to effect the object of the conspiracy, shall  
25       be guilty of conspiracy and shall be subject to what-

1       ever punishment the commission may direct, includ-  
 2       ing, if death results to one or more of the victims,  
 3       the penalty of death.

4       **“§ 950w. Perjury and obstruction of justice**

5       “‘The military commissions also may try offenses and  
 6       impose punishments for perjury, false testimony, or ob-  
 7       struction of justice related to military commissions.

8       **“§ 950x. Contempt**

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

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

                  “CHAPTER 47A—MILITARY COMMISSIONS

                  “SUBCHAPTER I—GENERAL PROVISIONS

                  “SUBCHAPTER II—COMPOSITION OF COURTS-MARTIAL

                  “SUBCHAPTER III—PRE-TRIAL PROCEDURE

                  “SUBCHAPTER IV—TRIAL PROCEDURE

                  “SUBCHAPTER V—SENTENCES

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

                  “SUBCHAPTER VII—PUNITIVE MATTERS

18      (b) SUBMITTAL OF PROCEDURES TO CONGRESS.—

1           (1) SUBMITTAL OF PROCEDURES.—Not later  
2 than 90 days after the date of the enactment of this  
3 Act, the Secretary shall submit to the Committees  
4 on Armed Forces of the Senate and the House of  
5 Representatives a report setting forth the procedures  
6 for military commissions prescribed under Chapter  
7 47A of title 10, United States Code (as added by  
8 subsection (a)).

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

16 **SEC. 5. JUDICIAL REVIEW.**

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

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

1 United States as an unlawful enemy combatant, relating  
2 to any aspect of the alien’s detention, transfer, treatment,  
3 or conditions of confinement:

4 “(1) COMBATANT STATUS REVIEW TRIBUNALS.

5 The United States Court of Appeals for the District  
6 of Columbia Circuit shall have exclusive jurisdiction  
7 to determine the validity of any final decision of a  
8 Combatant Status Review Tribunal. The scope of  
9 such review is defined in section 1005(e)(2) of the  
10 Detainee Treatment Act of 2005. If the Court  
11 grants a detainee’s petition for review, the Depart-  
12 ment of Defense may conduct a new Combatant Sta-  
13 tus Review Tribunal.

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

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

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

23 (a) IN GENERAL.—Satisfaction of the prohibitions  
24 against cruel, inhuman, and degrading treatment set forth  
25 in Section 1003 of the Detainee Treatment Act of 2005

1 (title X of Public Law 109–148; 119 Stat. 2739; 42  
2 U.S.C. 2000dd) shall fully satisfy United States obliga-  
3 tions with respect to the standards for detention and treat-  
4 ment established by section 1 of common Article 3 of the  
5 Geneva Conventions, with the exception of the obligations  
6 imposed by subsections 1 (b) and 1 (d) of such Article.

7 (b) RIGHTS NOT JUDICIALLY ENFORCEABLE.—

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

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

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

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

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

24 “(3) which constitutes any of the following serious  
25 violations of common Article 3 of the international conven-

1 tions signed at Geneva 12 August 1949, when committed  
2 in the context of and in association with an armed conflict  
3 not of an international character—

4           “(A) TORTURE.—Any person who commits, or  
5           conspires or attempts to commit, an act specifically  
6           intended to inflict severe physical or mental pain or  
7           suffering (other than pain or suffering incidental to  
8           lawful sanctions) upon another person within his  
9           custody or physical control for the purpose of ob-  
10          taining information or a confession, punishment, in-  
11          timidation, coercion, or any reason based on dis-  
12          crimination of any kind, shall be guilty of a violation  
13          of this subsection. ‘Severe mental pain or suffering’  
14          has the meaning provided in 18 U.S.C. 2340(2).

15           “(B) CRUEL OR INHUMAN TREATMENT.—Any  
16          person who commits, or conspires or attempts to  
17          commit, an act intended to inflict severe physical or  
18          mental pain or suffering (other than pain or suf-  
19          fering incidental to lawful sanctions), including se-  
20          vere physical abuse, upon another person within his  
21          custody or physical control shall be guilty of a viola-  
22          tion of this subsection. ‘Severe mental pain or suf-  
23          fering’ has the meaning provided in 18 U.S.C.  
24          2340(2).

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

8           “(D) MURDER.—Any person who intentionally  
9           kills, or conspires or attempts to kill, or kills wheth-  
10          er intentionally or unintentionally in the course of  
11          committing any other offense under this section, one  
12          or more persons taking no active part in the hos-  
13          tilities, including those placed hors de combat by  
14          sickness, wounds, detention, or any other cause,  
15          shall be guilty of a violation of this subsection. The  
16          intent required for this offense precludes its applica-  
17          bility with regard to collateral damage or to death,  
18          damage, or injury incident to a lawful attack.

19          “(E) MUTILATION OR MAIMING.—Any person  
20          who intentionally injures, or conspires or attempts to  
21          injure, or injures whether intentionally or uninten-  
22          tionally in the course of committing any other of-  
23          fense under this section, one or more persons taking  
24          no active part in the hostilities, including those  
25          placed hors de combat by sickness, wounds, deten-

1       tion, or any other cause, by disfiguring the person  
2       or persons by any mutilation thereof or by perma-  
3       nently disabling any member, limb, or organ of his  
4       body, without any legitimate medical or dental pur-  
5       pose, shall be guilty of a violation of this subsection.  
6       The intent required for this offense precludes its ap-  
7       plicability with regard to collateral damage or to  
8       death, damage, or injury incident to a lawful attack.

9               “(F) INTENTIONALLY CAUSING GREAT SUF-  
10       FERING OR SERIOUS INJURY.—Any person who in-  
11       tentionally causes, or conspires or attempts to cause,  
12       serious, bodily injury to one or more persons taking  
13       no active part in the hostilities, including those  
14       placed hors de combat by sickness, wounds, deten-  
15       tion, or any other cause, shall be guilty of a violation  
16       of this subsection. The intent required for this of-  
17       fense precludes its applicability with regard to collat-  
18       eral damage or to death, damage, or injury incident  
19       to a lawful attack. ‘Serious bodily injury’ has the  
20       meaning provided in 18 U.S.C. 113(b)(2).

21               “(G) RAPE.—Any person who forcibly or with  
22       coercion or threat of force wrongfully invades, or  
23       conspires or attempts to invade, the body of a per-  
24       son by penetrating, however slightly, the anal or  
25       genital opening of the victim with any part of the



1 body of the accused or with any foreign object shall  
2 be guilty of a violation of this subsection.

3 “(H) SEXUAL ASSAULT OR ABUSE.—Any per-  
4 son who forcibly or with coercion or threat of force  
5 engages, or conspires or attempts to engage, in sex-  
6 ual contact with one or more persons, or causes, or  
7 conspires or attempts to cause, one or more persons  
8 to engage in sexual contact, shall be guilty of a vio-  
9 lation of this subsection. For purposes of this of-  
10 fense, ‘sexual contact’ has the meaning provided in  
11 18 U.S.C. 2246(3).

12 “(I) TAKING HOSTAGES.—Any person who, hav-  
13 ing knowingly seized or detained one or more per-  
14 sons, threatens to kill, injure, or continue to detain  
15 such person or persons with the intent of compelling  
16 any nation, person other than the hostage, or group  
17 of persons to act or refrain from acting as an ex-  
18 plicit or implicit condition for the safety or release  
19 of such person or persons, shall be guilty of a viola-  
20 tion of this subsection. Any person who attempts to  
21 engage or conspires to engage in this offense shall  
22 also be guilty under this subsection.”.

1 **SEC. 8. CONFORMING AMENDMENTS.**

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

5 (1) by replacing “may provide” with “shall pro-  
6 vide”;

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

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

13 (b) Section 1005 of the Detainee Treatment Act of  
14 2005 (10 U.S.C. 801 note) is amended to conform with  
15 this Act as follows—

16 (1) by striking subsection (e)(3)(B) and renum-  
17 bering subsections (e)(3)(C) and (e)(3)(D) as sub-  
18 sections (e)(3)(B) and (e)(3)(C), respectively;

19 (2) in subsection (e)(3)(A), by striking “pursu-  
20 ant to Military Commission Order No. 1, August 31,  
21 2005 (or any successor military order)” and insert-  
22 ing “by a military commission under chapter 47a of  
23 title 10”;

24 (3) in former subsection (e)(3)(C)(i), by strik-  
25 ing “pursuant to the military order” and inserting  
26 “by a military commission”;

1           (4) in former subsection (e)(3)(C)(ii), by strik-  
2           ing “pursuant to such military order” and inserting  
3           “by such a military commission”;

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

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

9           (7) in former subsection (e)(2)(b)(i) by replac-  
10          ing “the Department of Defense at Guantanamo  
11          Bay, Cuba” with “United States”.

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

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

18          (e) Section 836 of title 10, United States Code, is  
19          amended to conform with this Act as follows—in sub-  
20          section (a), by replacing “military commissions and other  
21          military tribunals” with “and other military tribunals (ex-  
22          cluding military commissions)”.

23          **SEC. 9. RETROACTIVE APPLICATION.**

24          This Act shall take effect on the date of the enact-  
25          ment of this Act and shall apply retroactively, including

1 to any aspect of the detention, treatment, or trial of any  
2 person detained at any time since September 11, 2001,  
3 and to any claim or cause of action pending on or after  
4 the date of the enactment of this Act.

5 **SEC. 10. SEVERABILITY.**

6 If any provision of this Act, or the application of a  
7 provision to any person or circumstance, is held to be un-  
8 constitutional, the remainder of this Act, and the applica-  
9 tion of the provisions to any other person or circumstance,  
10 shall not be affected thereby.



**Calendar No. 595**

109<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

**S. 3861**

**A BILL**

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

SEPTEMBER 8, 2006

Read the second time and placed on the calendar