

# Calendar No. 634

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

# S. 3930

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

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## IN THE SENATE OF THE UNITED STATES

SEPTEMBER 22, 2006

Mr. McCONNELL (for himself, Mr. FRIST, and Mr. WARNER) introduced the following bill; which was read the first time pursuant to the order of September 21, 2006, as modified on September 22, 2006

SEPTEMBER 25, 2006

Read the second time and placed on the calendar

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## A BILL

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

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

3       **SECTION 1. SHORT TITLE.**

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

6       **SEC. 2. FINDINGS.**

7       Congress makes the following findings:

1           (1) The Constitution of the United States  
2 grants to Congress the power “To define and punish  
3 ... Offenses against the Law of Nations”, as well as  
4 the power “To declare War ... To raise and support  
5 Armies ... [and] To provide and maintain a Navy”.

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

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

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

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

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

22           (a) IN GENERAL.—The President is authorized to es-  
23 tablish military commissions for the trial of alien unlawful  
24 enemy combatants engaged in hostilities against the  
25 United States for violations of the law of war and other

1 offenses specifically made triable by military commission  
2 as provided in chapter 47 of title 10, United States Code,  
3 and chapter 47A of title 10, United States Code (as en-  
4 acted by this Act).

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

11 (c) SCOPE OF PUNISHMENT AUTHORITY.—A military  
12 commission established pursuant to subsection (a) shall  
13 have authority to impose upon any person found guilty  
14 under a proceeding under chapter 47A of title 10, United  
15 States Code (as so enacted), a sentence that is appropriate  
16 for the offense or offenses for which there is a finding  
17 of guilt, including a sentence of death if authorized under  
18 such chapter, imprisonment for life or a term of years,  
19 payment of a fine or restitution, or such other lawful pun-  
20 ishment or condition of punishment as the military com-  
21 mission shall direct.

22 (d) EXECUTION OF PUNISHMENT.—The Secretary of  
23 Defense is authorized to carry out a sentence of punish-  
24 ment imposed by a military commission established pursu-

1 ant to subsection (a) in accordance with such procedures  
2 as the Secretary may prescribe.

3 (e) ANNUAL REPORT ON TRIALS BY MILITARY COM-  
4 MISSIONS.—

5 (1) ANNUAL REPORT REQUIRED.—Not later  
6 than December 31 each year, the Secretary of De-  
7 fense shall submit to the Committees on Armed  
8 Services of the Senate and the House of Representa-  
9 tives a report on any trials conducted by military  
10 commissions established pursuant to subsection (a)  
11 during such year.

12 (2) FORM.—Each report under this subsection  
13 shall be submitted in unclassified form, but may in-  
14 clude a classified annex.

15 **SEC. 4. MILITARY COMMISSIONS.**

16 (a) MILITARY COMMISSIONS.—

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

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

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

## 1 “SUBCHAPTER I—GENERAL PROVISIONS

“Sec.

“948a. Definitions.

“948b. Military commissions generally.

“948c. Persons subject to military commissions.

“948d. Jurisdiction of military commissions.

2 **“§ 948a. Definitions**

3 “In this chapter:

4 “(1) ALIEN.—The term ‘alien’ means an indi-  
5 vidual who is not a citizen of the United States.6 “(2) CLASSIFIED INFORMATION.—The term  
7 ‘classified information’ means the following:8 “(A) Any information or material that has  
9 been determined by the United States Govern-  
10 ment pursuant to statute, Executive order, or  
11 regulation to require protection against unau-  
12 thorized disclosure for reasons of national secu-  
13 rity.14 “(B) Any restricted data, as that term is  
15 defined in section 11 y. of the Atomic Energy  
16 Act of 1954 (42 U.S.C. 2014(y)).17 “(3) LAWFUL ENEMY COMBATANT.—The term  
18 ‘lawful enemy combatant’ means an individual who  
19 is—20 “(A) a member of the regular forces of a  
21 State party engaged in hostilities against the  
22 United States;

1           “(B) a member of a militia, volunteer  
2           corps, or organized resistance movement belong-  
3           ing to a State party engaged in such hostilities,  
4           which are under responsible command, wear a  
5           fixed distinctive sign recognizable at a distance,  
6           carry their arms openly, and abide by the law  
7           of war; or

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

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

16          **“§ 948b. Military commissions generally**

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

22          “(b) CONSTRUCTION OF PROVISIONS.—The proce-  
23          dures for military commissions set forth in this chapter  
24          are based upon the procedures for trial by general courts-  
25          martial under chapter 47 of this title (the Uniform Code

1 of Military Justice). Chapter 47 of this title does not, by  
2 its terms, apply to trial by military commission except as  
3 specifically provided therein or in this chapter, and many  
4 of the provisions of chapter 47 of this title are by their  
5 terms inapplicable to military commissions. The judicial  
6 construction and application of chapter 47 of this title is  
7 therefore not binding on military commissions established  
8 under this chapter.

9       “(c) INAPPLICABILITY OF CERTAIN PROVISIONS.—  
10 (1) The following provisions of this title shall not apply  
11 to trial by military commission under this chapter:

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

16           “(B) Sections 831(a), (b), and (d) (articles  
17 31(a), (b), and (d) of the Uniform Code of Military  
18 Justice), relating to compulsory self-incrimination.

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

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

1       “(d) STATUS OF MILITARY COMMISSIONS UNDER  
 2 COMMON ARTICLE 3.—A military commission established  
 3 under this chapter is a regularly constituted court, afford-  
 4 ing all the necessary ‘judicial guarantees which are recog-  
 5 nized as indispensable by civilized peoples’ for purposes  
 6 of common Article 3 of the Geneva Conventions.

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

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

22 **“§ 948c. Persons subject to military commissions**

23       “Any alien unlawful enemy combatant engaged in  
 24 hostilities or having supported hostilities against the

1 United States is subject to trial by military commission  
2 as set forth in this chapter.

3 **“§ 948d. Jurisdiction of military commissions**

4       “(a) JURISDICTION.—A military commission under  
5 this chapter shall have jurisdiction to try any offense made  
6 punishable by this chapter, sections 904 and 906 of this  
7 title (articles 104 and 106 of the Uniform Code of Military  
8 Justice), or the law of war when committed by an alien  
9 unlawful enemy combatant before, on, or after September  
10 11, 2001.

11       “(b) LAWFUL ENEMY COMBATANTS.—Military com-  
12 missions under this chapter shall not have jurisdiction  
13 over lawful enemy combatants. Lawful enemy combatants  
14 who violate the law of war are subject to chapter 47 of  
15 this title. Courts-martial established under that chapter  
16 shall have jurisdiction to try a lawful enemy combatant  
17 for any offense made punishable under this chapter.

18       “(c) PUNISHMENTS.—A military commission under  
19 this chapter may, under such limitations as the President  
20 may prescribe, adjudge any punishment not forbidden by  
21 this chapter, including the penalty of death when author-  
22 ized under this chapter, chapter 47 of this title, or the  
23 law of war.

1 “SUBCHAPTER II—COMPOSITION OF MILITARY  
2 COMMISSIONS

“Sec.

“948h. Who may convene military commissions.

“948i. Who may serve on military commissions.

“948j. Military judge of a military commission.

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

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

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

3 **“§ 948h. Who may convene military commissions**

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

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

9 “(a) IN GENERAL.—Any commissioned officer of the  
10 armed forces on active duty is eligible to serve on a mili-  
11 tary commission under this chapter, including commis-  
12 sioned officers of the reserve components of the armed  
13 forces on active duty, commissioned officers of the Na-  
14 tional Guard on active duty in Federal service, or retired  
15 commissioned officers recalled to active duty.

16 “(b) DETAIL OF MEMBERS.—When convening a mili-  
17 tary commission under this chapter, the convening author-  
18 ity shall detail as members thereof such members of the  
19 armed forces eligible under subsection (a) who, as in the  
20 opinion of the convening authority, are best qualified for  
21 the duty by reason of age, education, training, experience,

1 length of service, and judicial temperament. No member  
2 of an armed force is eligible to serve as a member of a  
3 military commission when such member is the accuser or  
4 a witness for the prosecution or has acted as an investi-  
5 gator or counsel in the same case.

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

10 **“§ 948j. Military judge of a military commission**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8           “(2) a civilian who is—

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

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

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

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

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

1       “(d) CHIEF PROSECUTOR; CHIEF DEFENSE COUN-  
2 SEL.—(1) The Chief Prosecutor in a military commission  
3 under this chapter shall meet the requirements set forth  
4 in subsection (b)(1).

5       “(2) The Chief Defense Counsel in a military com-  
6 mission under this chapter shall meet the requirements set  
7 forth in subsection (c)(1).

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

18 **“§ 9481. Detail or employment of reporters and inter-**  
19 **preters**

20       “(a) COURT REPORTERS.—Under such regulations  
21 as the Secretary of Defense may prescribe, the convening  
22 authority of a military commission under this chapter  
23 shall detail to or employ for the military commission quali-  
24 fied court reporters, who shall prepare a verbatim record

1 of the proceedings of and testimony taken before the mili-  
2 tary commission.

3 “(b) INTERPRETERS.—Under such regulations as the  
4 Secretary of Defense may prescribe, the convening author-  
5 ity of a military commission under this chapter may detail  
6 to or employ for the military commission interpreters who  
7 shall interpret for the military commission, and, as nec-  
8 essary, for trial counsel and defense counsel for the mili-  
9 tary commission, and for the accused.

10 “(c) TRANSCRIPT; RECORD.—The transcript of a  
11 military commission under this chapter shall be under the  
12 control of the convening authority of the military commis-  
13 sion, who shall also be responsible for preparing the record  
14 of the proceedings of the military commission.

15 **“§ 948m. Number of members; excuse of members; ab-**  
16 **sent and additional members**

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

20 “(2) In a case in which the accused before a military  
21 commission under this chapter may be sentenced to a pen-  
22 alty of death, the military commission shall have the num-  
23 ber of members prescribed by section 949m(e) of this title.

24 “(b) EXCUSE OF MEMBERS.—No member of a mili-  
25 tary commission under this chapter may be absent or ex-

1 cused after the military commission has been assembled  
 2 for the trial of a case unless excused—

3 “(1) as a result of challenge;

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

6 “(3) by order of the convening authority for  
 7 good cause.

8 “(c) ABSENT AND ADDITIONAL MEMBERS.—When-  
 9 ever a military commission under this chapter is reduced  
 10 below the number of members required by subsection (a),  
 11 the trial may not proceed unless the convening authority  
 12 details new members sufficient to provide not less than  
 13 such number. The trial may proceed with the new mem-  
 14 bers present after the recorded evidence previously intro-  
 15 duced before the members has been read to the military  
 16 commission in the presence of the military judge, the ac-  
 17 cused (except as provided in section 949d of this title),  
 18 and counsel for both sides.

19 “SUBCHAPTER III—PRE-TRIAL PROCEDURE

“Sec.

“948q. Charges and specifications.

“948r. Compulsory self-incrimination prohibited; statements obtained by torture  
 or other methods of coercion.

“948s. Service of charges.

20 “§ 948q. **Charges and specifications**

21 “(a) CHARGES AND SPECIFICATIONS.—Charges and  
 22 specifications against an accused in a military commission  
 23 under this chapter shall be signed by a person subject to

1 chapter 47 of this title under oath before a commissioned  
 2 officer of the armed forces authorized to administer oaths  
 3 and shall state—

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

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

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

13 **“§ 948r. Compulsory self-incrimination prohibited;**  
 14                           **statements obtained by torture or other**  
 15                           **methods of coercion**

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

19           “(b) STATEMENTS OBTAINED BY TORTURE.—A  
 20 statement obtained by use of torture shall not be admis-  
 21 sible in a military commission under this chapter, except  
 22 against a person accused of torture as evidence the state-  
 23 ment was made.

24           “(c) STATEMENTS OBTAINED BEFORE ENACTMENT  
 25 OF DETAINEE TREATMENT ACT OF 2005.—A statement

1 obtained before December 30, 2005 (the date of the enact-  
2 ment of the Detainee Treatment Act of 2005), in which  
3 the degree of coercion is disputed may be admitted only  
4 if the military judge finds that—

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

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

10          “(d) STATEMENTS OBTAINED AFTER ENACTMENT  
11 OF DETAINEE TREATMENT ACT OF 2005.—A statement  
12 obtained on or after December 30, 2005 (the date of the  
13 enactment of the Detainee Treatment Act of 2005), in  
14 which the degree of coercion is disputed may be admitted  
15 only if the military judge finds that—

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

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

21           “(3) the interrogation methods used to obtain  
22           the statement do not violate the cruel, unusual, or  
23           inhumane treatment or punishment prohibited by  
24           the Fifth, Eighth, and 14th Amendments to the  
25           United States Constitution.

1 **“§ 948s. Service of charges**

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

9       “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.

10 **“§ 949a. Rules**

11       “(a) PROCEDURES AND RULES OF EVIDENCE.—Pre-  
12 trial, trial, and post-trial procedures, including elements  
13 and modes of proof, for cases triable by military commis-  
14 sion under this chapter may be prescribed by the Secretary  
15 of Defense. Such procedures may not be contrary to or  
16 inconsistent with this chapter. Except as otherwise pro-  
17 vided in this chapter or chapter 47 of this title, the proce-  
18 dures and rules of evidence applicable in trials by general

1 courts-martial of the United States shall apply in trials  
2 by military commission under this chapter.

3 “(b) EXCEPTIONS.—(1) The Secretary of Defense, in  
4 consultation with the Attorney General, may make such  
5 exceptions in the applicability in trials by military commis-  
6 sion under this chapter from the procedures and rules of  
7 evidence otherwise applicable in general courts-martial as  
8 may be required by the unique circumstances of the con-  
9 duct of military and intelligence operations during hos-  
10 tilities or by other practical need.

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

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

18 “(B) To be present at all sessions of the mili-  
19 tary commission (other than those for deliberations  
20 or voting), except when excluded under section 949d  
21 of this title.

22 “(C) To the assistance of counsel.

23 “(D) To self-representation, if the accused  
24 knowingly and competently waives the assistance of  
25 counsel, subject to the provisions of paragraph (4).

1           “(E) To the suppression of evidence that is not  
2 reliable or probative.

3           “(F) To the suppression of evidence the pro-  
4 bative value of which is substantially outweighed  
5 by—

6                   “(i) the danger of unfair prejudice, confu-  
7 sion of the issues, or misleading the members;  
8 or

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

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

17                   “(A) Evidence seized outside the United States  
18 shall not be excluded from trial by military commis-  
19 sion on the grounds that the evidence was not seized  
20 pursuant to a search warrant or authorization.

21                   “(B) A statement of the accused that is other-  
22 wise admissible shall not be excluded from trial by  
23 military commission on grounds of alleged coercion  
24 or compulsory self-incrimination so long as the evi-

1       dence complies with the provisions of section 948r of  
2       this title.

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

5                       “(i) the military judge of the military com-  
6                       mission determines that there is sufficient evi-  
7                       dence that the evidence is what it is claimed to  
8                       be; and

9                       “(ii) the military judge instructs the mem-  
10                      bers that they may consider any issue as to au-  
11                      thentication or identification of evidence in de-  
12                      termining the weight, if any, to be given to the  
13                      evidence.

14               “(D)(i) Except as provided in clause (ii), hear-  
15       say evidence not otherwise admissible under the  
16       rules of evidence applicable in trial by general  
17       courts-martial may be admitted in a trial by military  
18       commission if the proponent of the evidence makes  
19       known to the adverse party, sufficiently in advance  
20       to provide the adverse party with a fair opportunity  
21       to meet the evidence, the intention of the proponent  
22       to offer the evidence, and the particulars of the evi-  
23       dence (including information on the general cir-  
24       cumstances under which the evidence was obtained).

25       The disclosure of evidence under this clause is sub-

1       ject to the requirements and limitations applicable to  
2       the disclosure of classified information in section  
3       949j(b) of this title.

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

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

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

23       “(c) DELEGATION OF AUTHORITY TO PRESCRIBE  
24       REGULATIONS.—The Secretary of Defense may delegate

1 the authority of the Secretary to prescribe regulations  
2 under this chapter.

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

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

12 “(2) No person may attempt to coerce or, by any un-  
13 authorized means, influence—

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

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

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

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

24 “(A) general instructional or informational  
25 courses in military justice if such courses are de-

1 signed solely for the purpose of instructing members  
2 of a command in the substantive and procedural as-  
3 pects of military commissions; or

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

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

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

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

1 **“§ 949c. Duties of trial counsel and defense counsel**

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

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

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

10       “(3) The accused may be represented by civilian  
11 counsel if retained by the accused, provided that such civil-  
12 ian counsel—

13               “(A) is a United States citizen;

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

17               “(C) has not been the subject of any sanction  
18 of disciplinary action by any court, bar, or other  
19 competent governmental authority for relevant mis-  
20 conduct;

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

24               “(E) has signed a written agreement to comply  
25 with all applicable regulations or instructions for

1 counsel, including any rules of court for conduct  
2 during the proceedings.

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

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

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

14 **“§ 949d. Sessions**

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

21 “(A) hearing and determining motions raising  
22 defenses or objections which are capable of deter-  
23 mination without trial of the issues raised by a plea  
24 of not guilty;

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

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

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

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

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

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

23          “(2) The military judge may close to the public all  
24          or a portion of the proceedings under paragraph (1) only

1 upon making a specific finding that such closure is nec-  
2 essary to—

3           “(A) protect information the disclosure of which  
4           could reasonably be expected to cause damage to the  
5           national security, including intelligence or law en-  
6           forcement sources, methods, or activities; or

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

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

11           “(d) EXCLUSION OF ACCUSED FROM CERTAIN PRO-  
12 CEEDINGS.—The military judge may exclude the accused  
13 from any portion of a proceeding upon a determination  
14 that, after being warned by the military judge, the accused  
15 persists in conduct that justifies exclusion from the court-  
16 room—

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

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

21           “(e) PROTECTION OF CLASSIFIED INFORMATION.—

22           “(1) NATIONAL SECURITY PRIVILEGE.—(A)  
23           Classified information shall be protected and is privi-  
24           leged from disclosure if disclosure would be detri-  
25           mental to the national security. This rule applies to

1 all stages of the proceedings of military commissions  
2 under this chapter.

3 “(B) The privilege referred to in subparagraph  
4 (A) may be claimed by the head of the executive or  
5 military department or government agency con-  
6 cerned based on a finding by the head of that de-  
7 partment or agency that—

8 “(i) the information is properly classified;  
9 and

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

12 “(C) A person who may claim the privilege re-  
13 ferred to in subparagraph (A) may authorize a rep-  
14 resentative, witness, or trial counsel to claim the  
15 privilege and make the finding described in subpara-  
16 graph (B) on behalf of such person. The authority  
17 of the representative, witness, or trial counsel to do  
18 so is presumed in the absence of evidence to the con-  
19 trary.

20 “(2) INTRODUCTION OF CLASSIFIED INFORMA-  
21 TION.—

22 “(A) ALTERNATIVES TO DISCLOSURE.—To  
23 protect classified information from disclosure,  
24 the military judge, upon motion of trial counsel,  
25 shall authorize, to the extent practicable—

1                   “(i) the deletion of specified items of  
2                   classified information from documents to  
3                   be introduced as evidence before the mili-  
4                   tary commission;

5                   “(ii) the substitution of a portion or  
6                   summary of the information for such clas-  
7                   sified documents; or

8                   “(iii) the substitution of a statement  
9                   of relevant facts that the classified infor-  
10                  mation would tend to prove.

11                  “(B) PROTECTION OF SOURCES, METHODS,  
12                  OR ACTIVITIES.—The military judge, upon mo-  
13                  tion of trial counsel, shall permit trial counsel  
14                  to introduce otherwise admissible evidence be-  
15                  fore the military commission, while protecting  
16                  from disclosure the sources, methods, or activi-  
17                  ties by which the United States acquired the  
18                  evidence if the military judge finds that (i) the  
19                  sources, methods, or activities by which the  
20                  United States acquired the evidence are classi-  
21                  fied, and (ii) the evidence is reliable. The mili-  
22                  tary judge may require trial counsel to present  
23                  to the military commission and the defense, to  
24                  the extent practicable and consistent with na-  
25                  tional security, an unclassified summary of the

1 sources, methods, or activities by which the  
2 United States acquired the evidence.

3 “(C) ASSERTION OF NATIONAL SECURITY  
4 PRIVILEGE AT TRIAL.—During the examination  
5 of any witness, trial counsel may object to any  
6 question, line of inquiry, or motion to admit evi-  
7 dence that would require the disclosure of clas-  
8 sified information. Following such an objection,  
9 the military judge shall take suitable action to  
10 safeguard such classified information. Such ac-  
11 tion may include the review of trial counsel’s  
12 claim of privilege by the military judge in cam-  
13 era and on an ex parte basis, and the delay of  
14 proceedings to permit trial counsel to consult  
15 with the department or agency concerned as to  
16 whether the national security privilege should  
17 be asserted.

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

24 “(4) ADDITIONAL REGULATIONS.—The Sec-  
25 retary of Defense may prescribe additional regula-

1 tions, consistent with this subsection, for the use  
2 and protection of classified information during pro-  
3 ceedings of military commissions under this chapter.  
4 A report on any regulations so prescribed, or modi-  
5 fied, shall be submitted to the Committees on Armed  
6 Services of the Senate and the House of Representa-  
7 tives not later than 60 days before the date on which  
8 such regulations or modifications, as the case may  
9 be, go into effect.

10 **“§ 949e. Continuances**

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

15 **“§ 949f. Challenges**

16 “(a) CHALLENGES AUTHORIZED.—The military  
17 judge and members of a military commission under this  
18 chapter may be challenged by the accused or trial counsel  
19 for cause stated to the military commission. The military  
20 judge shall determine the relevance and validity of chal-  
21 lenges for cause, and may not receive a challenge to more  
22 than one person at a time. Challenges by trial counsel  
23 shall ordinarily be presented and decided before those by  
24 the accused are offered.

1           “(b) PEREMPTORY CHALLENGES.—The accused and  
2 trial counsel are each entitled to one peremptory challenge,  
3 but the military judge may not be challenged except for  
4 cause.

5           “(c) CHALLENGES AGAINST ADDITIONAL MEM-  
6 BERS.—Whenever additional members are detailed to a  
7 military commission under this chapter, and after any  
8 challenges for cause against such additional members are  
9 presented and decided, the accused and trial counsel are  
10 each entitled to one peremptory challenge against mem-  
11 bers not previously subject to peremptory challenge.

12 **“§ 949g. Oaths**

13           “(a) IN GENERAL.—(1) Before performing their re-  
14 spective duties in a military commission under this chap-  
15 ter, military judges, members, trial counsel, defense coun-  
16 sel, reporters, and interpreters shall take an oath to per-  
17 form their duties faithfully.

18           “(2) The form of the oath required by paragraph (1),  
19 the time and place of the taking thereof, the manner of  
20 recording thereof, and whether the oath shall be taken for  
21 all cases in which duties are to be performed or for a par-  
22 ticular case, shall be as provided in regulations prescribed  
23 by the Secretary of Defense. The regulations may provide  
24 that—

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

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

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

11          “(c) OATH DEFINED.—In this section, the term  
12          ‘oath’ includes an affirmation.

13          **“§ 949h. Former jeopardy**

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

17          “(b) SCOPE OF TRIAL.—No proceeding in which the  
18          accused has been found guilty by military commission  
19          under this chapter upon any charge or specification is a  
20          trial in the sense of this section until the finding of guilty  
21          has become final after review of the case has been fully  
22          completed.

23          **“§ 949i. Pleas of the accused**

24          “(a) PLEA OF NOT GUILTY.—If an accused in a mili-  
25          tary commission under this chapter after a plea of guilty

1 sets up matter inconsistent with the plea, or if it appears  
2 that the accused has entered the plea of guilty through  
3 lack of understanding of its meaning and effect, or if the  
4 accused fails or refuses to plead, a plea of not guilty shall  
5 be entered in the record, and the military commission shall  
6 proceed as though the accused had pleaded not guilty.

7       “(b) FINDING OF GUILT AFTER GUILTY PLEA.—  
8 With respect to any charge or specification to which a plea  
9 of guilty has been made by the accused in a military com-  
10 mission under this chapter and accepted by the military  
11 judge, a finding of guilty of the charge or specification  
12 may be entered immediately without a vote. The finding  
13 shall constitute the finding of the military commission un-  
14 less the plea of guilty is withdrawn prior to announcement  
15 of the sentence, in which event the proceedings shall con-  
16 tinue as though the accused had pleaded not guilty.

17 **“§ 949j. Opportunity to obtain witnesses and other**  
18 **evidence**

19       “(a) IN GENERAL.—(1) Defense counsel in a military  
20 commission under this chapter shall have a reasonable op-  
21 portunity to obtain witnesses and other evidence as pro-  
22 vided in regulations prescribed by the Secretary of De-  
23 fense.

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

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

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

9       “(b) PROTECTION OF CLASSIFIED INFORMATION.—

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

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

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

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

21       “(2) The military judge, upon motion of trial counsel,  
22 shall authorize trial counsel, in the course of complying  
23 with discovery obligations under this section, to protect  
24 from disclosure the sources, methods, or activities by  
25 which the United States acquired evidence if the military

1 judge finds that the sources, methods, or activities by  
2 which the United States acquired such evidence are classi-  
3 fied. The military judge may require trial counsel to pro-  
4 vide, to the extent practicable, an unclassified summary  
5 of the sources, methods, or activities by which the United  
6 States acquired such evidence.

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

14       “(2) In this subsection, the term ‘evidence known to  
15 trial counsel’, in the case of exculpatory evidence, means  
16 exculpatory evidence that the prosecution would be re-  
17 quired to disclose in a trial by courts-martial under chap-  
18 ter 47 of this title.

19 **“§ 949k. Defense of lack of mental responsibility**

20       “(a) AFFIRMATIVE DEFENSE.—It is an affirmative  
21 defense in a trial by military commission under this chap-  
22 ter that, at the time of the commission of the acts consti-  
23 tuting the offense, the accused, as a result of a severe  
24 mental disease or defect, was unable to appreciate the na-

1 ture and quality or the wrongfulness of the acts. Mental  
2 disease or defect does not otherwise constitute a defense.

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

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

14 “(1) guilty;

15 “(2) not guilty; or

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

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

1 **“§ 949l. Voting and rulings**

2 “(a) VOTE BY SECRET WRITTEN BALLOT.—Voting  
3 by members of a military commission under this chapter  
4 on the findings and on the sentence shall be by secret writ-  
5 ten ballot.

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

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

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

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

24 “(2) that in the case being considered, if there  
25 is a reasonable doubt as to the guilt of the accused,

1 the doubt must be resolved in favor of the accused  
2 and he must be acquitted;

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

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

9 **“§ 949m. Number of votes required**

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

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

19 “(2) No person may be sentenced to death by a mili-  
20 tary commission, except insofar as—

21 “(A) the penalty of death has been expressly  
22 authorized under this chapter, chapter 47 of this  
23 title, or the law of war for an offense of which the  
24 accused has been found guilty;

1           “(B) trial counsel expressly sought the penalty  
2           of death by filing an appropriate notice in advance  
3           of trial;

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

7           “(D) all members present at the time the vote  
8           was taken concurred in the sentence of death.

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

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

19          “(2) In any case described in paragraph (1) in which  
20          12 members are not reasonably available for a military  
21          commission because of physical conditions or military ex-  
22          igencies, the convening authority shall specify a lesser  
23          number of members for the military commission (but not  
24          fewer than 5 members), and the military commission may  
25          be assembled, and the trial held, with not less than the

1 number of members so specified. In any such case, the  
2 convening authority shall make a detailed written state-  
3 ment, to be appended to the record, stating why a greater  
4 number of members were not reasonably available.

5 **“§ 949n. Military commission to announce action**

6 “A military commission under this chapter shall an-  
7 nounce its findings and sentence to the parties as soon  
8 as determined.

9 **“§ 949o. Record of trial**

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

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

1       “(c) PROVISION OF COPY TO ACCUSED.—A copy of  
 2 the record of the proceedings of the military commission  
 3 under this chapter shall be given the accused as soon as  
 4 it is authenticated. If the record contains classified infor-  
 5 mation, or a classified annex, the accused shall receive a  
 6 redacted version of the record consistent with the require-  
 7 ments of section 949d(e) of this title. Defense counsel  
 8 shall have access to the unredacted record, as provided  
 9 in regulations prescribed by the Secretary of Defense.

10                   “SUBCHAPTER V—SENTENCES

“Sec.

“949s. Cruel or unusual punishments prohibited.

“949t. Maximum limits.

“949u. Execution of confinement.

11   **“§ 949s. Cruel or unusual punishments prohibited**

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

19   **“§ 949t. Maximum limits**

20       “The punishment which a military commission under  
 21 this chapter may direct for an offense may not exceed such  
 22 limits as the President or Secretary of Defense may pre-  
 23 scribe for that offense.

1 **“§ 949u. Execution of confinement**

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

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

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

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

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

“Sec.

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

“950b. Review by the convening authority.

“950c. Waiver or withdrawal of appeal.

“950d. Appeal by the United States.

“950e. Rehearings.

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

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

“950h. Appellate counsel

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

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

1 **“§ 950a. Error of law; lesser included offense**

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

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

11 **“§ 950b. Review by the convening authority**

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

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

22 “(2)(A) Except as provided in subparagraph (B), a  
23 submittal under paragraph (1) shall be made in writing

1 within 20 days after accused has been give an authenti-  
2 cated record of trial under section 949o(c) of this title.

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

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

16 “(c) ACTION BY CONVENING AUTHORITY.—(1) The  
17 authority under this subsection to modify the findings and  
18 sentence of a military commission under this chapter is  
19 a matter of the sole discretion and prerogative of the con-  
20 vening authority.

21 “(2) The convening authority is not required to take  
22 action on the findings of a military commission under this  
23 chapter. If the convening authority takes action on the  
24 findings, the convening authority may, in his sole discre-  
25 tion, only—

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

3           “(B) change a finding of guilty to a charge to  
4           a finding of guilty to an offense that is a lesser in-  
5           cluded offense of the offense stated in the charge.

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

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

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

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

22          “(d) ORDER OF REVISION OR REHEARING.—(1) Sub-  
23          ject to paragraphs (2) and (3), the convening authority  
24          of a military commission under this chapter may, in his

1 sole discretion, order a proceeding in revision or a rehear-  
2 ing.

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

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

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

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

14 “(i) reconsider a finding of not guilty of a spec-  
15 ification or a ruling which amounts to a finding of  
16 not guilty;

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

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

24 “(3) A rehearing may be ordered by the convening  
25 authority if the convening authority disapproves the find-

1 ings and sentence and states the reasons for disapproval  
2 of the findings. If the convening authority disapproves the  
3 finding and sentence and does not order a rehearing, the  
4 convening authority shall dismiss the charges. A rehearing  
5 as to the findings may not be ordered by the convening  
6 authority when there is a lack of sufficient evidence in the  
7 record to support the findings. A rehearing as to the sen-  
8 tence may be ordered by the convening authority if the  
9 convening authority disapproves the sentence.

10 **“§ 950c. Waiver or withdrawal of appeal**

11       “(a) WAIVER OF RIGHT OF REVIEW.—(1) An ac-  
12 cused may file with the convening authority a statement  
13 expressly waiving the right of the accused to appellate re-  
14 view by the Court of Military Commission Review under  
15 section 950f of this title of the final decision of the mili-  
16 tary commission under this chapter.

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

19       “(3) A waiver under paragraph (1) must be filed, if  
20 at all, within 10 days after notice of the action is served  
21 on the accused or on defense counsel under section  
22 950b(c)(4) of this title. The convening authority, for good  
23 cause, may extend the period for such filing by not more  
24 than 30 days.

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

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

9       **“§ 950d. Appeal by the United States**

10       “(a) INTERLOCUTORY APPEAL.—(1) Except as pro-  
11 vided in paragraph (2), in a trial by military commission  
12 under this chapter, the United States may take an inter-  
13 locutory appeal to the Court of Military Commission Re-  
14 view under section 950f of this title of any order or ruling  
15 of the military judge that—

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

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

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

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

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

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

11       **“§ 950e. Rehearings**

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

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

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

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

1           “(i) the sentence is based upon a finding  
2           of guilty of an offense not considered upon the  
3           merits in the original proceedings; or

4           “(ii) the sentence prescribed for the of-  
5           fense is mandatory.

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

15       **“§ 950f. Review by Court of Military Commission Re-**  
16               **view**

17           “(a) ESTABLISHMENT.—The Secretary of Defense  
18          shall establish a Court of Military Commission Review  
19          which shall be composed of one or more panels, and each  
20          such panel shall be composed of not less than three appel-  
21          late military judges. For the purpose of reviewing military  
22          commission decisions under this chapter, the Court may  
23          sit in panels or as a whole in accordance with rules pre-  
24          scribed by the Secretary.

1           “(b) APPELLATE MILITARY JUDGES.—The Secretary  
2 shall assign appellate military judges to a Court of Military  
3 Commission Review. Each appellate military judge  
4 shall meet the qualifications for military judges prescribed  
5 by section 948j(b) of this title or shall be a civilian with  
6 comparable qualifications. No person may serve as an appellate  
7 military judge in any case in which that person  
8 acted as a military judge, counsel, or reviewing official.

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

15           “(d) SCOPE OF REVIEW.—In a case reviewed by the  
16 Court of Military Commission Review under this section,  
17 the Court may act only with respect to matters of law.

18 **“§ 950g. Review by the United States Court of Appeals for the District of Columbia Circuit and the Supreme Court**  
19  
20

21           “(a) REVIEW BY UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT.—(1)  
22 Subject to the provisions of this subsection, the United  
23 States Court of Appeals for the District of Columbia Circuit shall have exclusive jurisdiction to determine the final  
24  
25

1 validity of any judgment rendered by a military commis-  
2 sion under this chapter.

3       “(2) The United States Court of Appeals for the Dis-  
4 trict of Columbia Circuit may not determine the final va-  
5 lidity of a judgment of a military commission under this  
6 subsection until all other appeals from the judgment under  
7 this chapter have been waived or exhausted.

8       “(3)(A) An accused may seek a determination by the  
9 United States Court of Appeals for the District of Colum-  
10 bia Circuit of the final validity of the judgment of the mili-  
11 tary commission under this subsection only upon petition  
12 to the Court for such determination.

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

16               “(i) written notice of the final decision of the  
17 military commission is served on the accused or de-  
18 fense counsel; or

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

1       “(C) The accused may not file a petition under sub-  
2 paragraph (A) if the accused has waived the right to ap-  
3 pellate review under section 950e(a) of this title.

4       “(4) The determination by the United States Court  
5 of Appeals for the District of Columbia Circuit of the final  
6 validity of a judgment of a military commission under this  
7 subsection shall be governed by the provisions of section  
8 1005(e)(3) of the Detainee Treatment Act of 2005 (42  
9 U.S.C. 801 note).

10       “(b) REVIEW BY SUPREME COURT.—The Supreme  
11 Court of the United States may review by writ of certiorari  
12 pursuant to section 1257 of title 28 the final judgment  
13 of the United States Court of Appeals for the District of  
14 Columbia Circuit in a determination under subsection (a).

15       **“§ 950h. Appellate counsel**

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

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

1 Government counsel may represent the United States be-  
2 fore the United States Court of Appeals for the District  
3 of Columbia Circuit and the Supreme Court in cases aris-  
4 ing under this chapter when requested to do so by the  
5 Attorney General.

6 “(c) REPRESENTATION OF ACCUSED.—The accused  
7 shall be represented before the United States Court of Ap-  
8 peals for the District of Columbia Circuit or the Supreme  
9 Court by military appellate counsel, or by civilian counsel  
10 if retained by him.

11 **“§ 950i. Execution of sentence; suspension of sentence**

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

19 “(b) EXECUTION OF SENTENCE OF DEATH ONLY  
20 UPON FINAL JUDGMENT OF LEGALITY OF PRO-  
21 CEEDINGS.—(1) If the sentence of a military commission  
22 under this chapter extends to death, the sentence may not  
23 be executed until there is a final judgement as to the legal-  
24 ity of the proceedings (and with respect to death, approval  
25 under subsection (a)).

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

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

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

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

21 **“§ 950j. Finality of proceedings, findings, and sen-**  
22 **tences**

23       “(a) FINALITY.—The appellate review of records of  
24 trial provided by this chapter, and the proceedings, find-  
25 ings, and sentences of military commissions as approved,

1 reviewed, or affirmed as required by this chapter, are final  
 2 and conclusive. Orders publishing the proceedings of mili-  
 3 tary commissions under this chapter are binding upon all  
 4 departments, courts, agencies, and officers of the United  
 5 States, except as otherwise provided by the President.

6       “(b) PROVISIONS OF CHAPTER SOLE BASIS FOR RE-  
 7 VIEW OF MILITARY COMMISSION PROCEDURES AND AC-  
 8 TIONS.—Except as otherwise provided in this chapter and  
 9 notwithstanding any other provision of law (including sec-  
 10 tion 2241 of title 28 or any other habeas corpus provi-  
 11 sion), no court, justice, or judge shall have jurisdiction to  
 12 hear or consider any claim or cause of action whatsoever,  
 13 including any action pending on or filed after the date of  
 14 enactment of this chapter, relating to the prosecution,  
 15 trial, or judgment of a military commission under this  
 16 chapter, including challenges to the lawfulness of proce-  
 17 dures of military commissions under this chapter.

18       “SUBCHAPTER VII—PUNITIVE MATTERS

“Sec.

“950aa. Definitions; construction of certain offenses; common circumstances.

“950bb. Statement of substantive offenses.

“950cc. Principals.

“950dd. Accessory after the fact.

“950ee. Conviction of lesser offenses.

“950ff. Attempts.

“950gg. Solicitation.

“950hh. Murder of protected persons.

“950ii. Attacking civilians.

“950jj. Attacking civilian objects.

“950kk. Attacking protected property.

“950ll. Pillaging.

“950mm. Denying quarter.

“950nn. Taking hostages.

“950oo. Employing poison or similar weapons.

“950pp. Using protected persons as a shield.  
 “950qq. Using protected property as a shield.  
 “950rr. Torture.  
 “950ss. Cruel or inhuman treatment.  
 “950tt. Intentionally causing serious bodily injury.  
 “950uu. Mutilating or maiming.  
 “950vv. Murder in violation of the law of war.  
 “950ww. Destruction of property in violation of the law of war.  
 “950xx. Using treachery or perfidy.  
 “950yy. Improperly using a flag of truce.  
 “950zz. Improperly using a distinctive emblem.  
 “950aaa. Intentionally mistreating a dead body.  
 “950bbb. Rape.  
 “950ccc. Hijacking or hazarding a vessel or aircraft.  
 “950ddd. Terrorism.  
 “950eee. Providing material support for terrorism.  
 “950fff. Wrongfully aiding the enemy.  
 “950ggg. Spying.  
 “950hhh. Conspiracy.  
 “950iii. Contempt.  
 “950jjj. Perjury and obstruction of justice.

1 **“§ 950aa. Definitions; construction of certain offenses;**  
 2 **common circumstances**

3 “(a) DEFINITIONS.—In this subchapter:

4 “(1) The term ‘military objective’ means com-  
 5 batants and those objects during an armed conflict  
 6 which, by their nature, location, purpose, or use, ef-  
 7 fectively contribute to the war-fighting or war-sus-  
 8 taining capability of an opposing force and whose  
 9 total or partial destruction, capture, or neutraliza-  
 10 tion would constitute a definite military advantage  
 11 to the attacker under the circumstances at the time  
 12 of an attack.

13 “(2) The term ‘protected person’ means any  
 14 person entitled to protection under one or more of  
 15 the Geneva Conventions, including civilians not tak-

1       ing an active part in hostilities, military personnel  
2       placed out of combat by sickness, wounds, or deten-  
3       tion, and military medical or religious personnel.

4               “(3) The term ‘protected property’ means any  
5       property specifically protected by the law of war, in-  
6       cluding buildings dedicated to religion, education,  
7       art, science, or charitable purposes, historic monu-  
8       ments, hospitals, and places where the sick and  
9       wounded are collected, but only if and to the extent  
10      such property is not being used for military purposes  
11      or is not otherwise a military objective. The term in-  
12      cludes objects properly identified by one of the dis-  
13      tinctive emblems of the Geneva Conventions, but  
14      does not include civilian property that is a military  
15      objective.

16      “(b) CONSTRUCTION OF CERTAIN OFFENSES.—The  
17      intent required for offenses under sections 950hh, 950ii,  
18      950jj, 950kk, and 950ss of this title precludes their appli-  
19      cability with regard to collateral damage or to death, dam-  
20      age, or injury incident to a lawful attack.

21      “(c) COMMON CIRCUMSTANCES.—An offense speci-  
22      fied in this subchapter is triable by military commission  
23      under this chapter only if the offense is committed in the  
24      context of and associated with armed conflict.

1 **“§ 950bb. Statement of substantive offenses**

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

7       “(b) EFFECT.—Because the provisions of this sub-  
8 chapter (including provisions that incorporate definitions  
9 in other provisions of law) are declarative of existing law,  
10 they do not preclude trial for crimes that occurred before  
11 the date of the enactment of this chapter.

12 **“§ 950cc. Principals**

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

15               “(1) commits an offense punishable by this  
16 chapter, or aids, abets, counsels, commands, or pro-  
17 cures its commission;

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

21               “(3) is a superior commander who, with regard  
22 to acts punishable under this chapter, knew, had  
23 reason to know, or should have known, that a subor-  
24 dinate was about to commit such acts or had done  
25 so and the superior failed to take the necessary and

1 reasonable measures to prevent such acts or to pun-  
2 ish the perpetrators thereof.

3 **“§ 950dd. Accessory after the fact**

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

10 **“§ 950ee. Conviction of lesser offenses**

11 “An accused may be found guilty of an offense nec-  
12 essarily included in the offense charged or of an attempt  
13 to commit either the offense charged or an attempt to  
14 commit either the offense charged or an offense nec-  
15 essarily included therein.

16 **“§ 950ff. Attempts**

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

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

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

5 **“§ 950gg. Solicitation**

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

15 **“§ 950hh. Murder of protected persons**

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

20 **“§ 950ii. Attacking civilians**

21           “Any person subject to this chapter who intentionally  
22 engages in an attack upon a civilian population as such,  
23 or individual civilians not taking active part in hostilities,  
24 shall be punished, if death results to one or more of the  
25 victims, by death or such other punishment as a military

1 commission under this chapter may direct, and, if death  
2 does not result to any of the victims, by such punishment,  
3 other than death, as a military commission under this  
4 chapter may direct.

5 **“§ 950jj. Attacking civilian objects**

6 “Any person subject to this chapter who intentionally  
7 engages in an attack upon a civilian object that is not a  
8 military objective shall be punished as a military commis-  
9 sion under this chapter may direct.

10 **“§ 950kk. Attacking protected property**

11 “Any person subject to this chapter who intentionally  
12 engages in an attack upon protected property shall be pun-  
13 ished as a military commission under this chapter may  
14 direct.

15 **“§ 950ll. Pillaging**

16 “Any person subject to this chapter who intentionally  
17 and in the absence of military necessity appropriates or  
18 seizes property for private or personal use, without the  
19 consent of a person with authority to permit such appro-  
20 priation or seizure, shall be punished as a military com-  
21 mission under this chapter may direct.

22 **“§ 950mm. Denying quarter**

23 “Any person subject to this chapter who, with effec-  
24 tive command or control over subordinate groups, de-  
25 clares, orders, or otherwise indicates to those groups that

1 there shall be no survivors or surrender accepted, with the  
2 intent to threaten an adversary or to conduct hostilities  
3 such that there would be no survivors or surrender accept-  
4 ed, shall be punished as a military commission under this  
5 chapter may direct.

6 **“§ 950nn. Taking hostages**

7 “Any person subject to this chapter who, having  
8 knowingly seized or detained one or more persons, threat-  
9 ens to kill, injure, or continue to detain such person or  
10 persons with the intent of compelling any nation, person  
11 other than the hostage, or group of persons to act or re-  
12 frain from acting as an explicit or implicit condition for  
13 the safety or release of such person or persons, shall be  
14 punished, if death results to one or more of the victims,  
15 by death or such other punishment as a military commis-  
16 sion under this chapter may direct, and, if death does not  
17 result to any of the victims, by such punishment, other  
18 than death, as a military commission under this chapter  
19 may direct.

20 **“§ 950oo. Employing poison or similar weapons**

21 “Any person subject to this chapter who inten-  
22 tionally, as a method of warfare, employs a substance or  
23 weapon that releases a substance that causes death or se-  
24 rious and lasting damage to health in the ordinary course  
25 of events, through its asphyxiating, bacteriological, or

1 toxic properties, shall be punished, if death results to one  
2 or more of the victims, by death or such other punishment  
3 as a military commission under this chapter may direct,  
4 and, if death does not result to any of the victims, by such  
5 punishment, other than death, as a military commission  
6 under this chapter may direct.

7 **“§ 950pp. Using protected persons as a shield**

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

18 **“§ 950qq. Using protected property as a shield**

19 “Any person subject to this chapter who positions,  
20 or otherwise takes advantage of the location of, protected  
21 property with the intent to shield a military objective from  
22 attack, or to shield, favor, or impede military operations,  
23 shall be punished as a military commission under this  
24 chapter may direct.

**1 “§ 950rr. Torture**

2 “(a) OFFENSE.—Any person subject to this chapter  
3 who commits an act specifically intended to inflict severe  
4 physical or mental pain or suffering (other than pain or  
5 suffering incidental to lawful sanctions) upon another per-  
6 son within his custody or physical control for the purpose  
7 of obtaining information or a confession, punishment, in-  
8 timidation, coercion, or any reason based on discrimina-  
9 tion of any kind, shall be punished, if death results to one  
10 or more of the victims, by death or such other punishment  
11 as a military commission under this chapter may direct,  
12 and, if death does not result to any of the victims, by such  
13 punishment, other than death, as a military commission  
14 under this chapter may direct.

15 “(b) SEVERE MENTAL PAIN OR SUFFERING DE-  
16 FINED.—In this section, the term ‘severe mental pain or  
17 suffering’ has the meaning given that term in section  
18 2340(2) of title 18.

**19 “§ 950ss. Cruel or inhuman treatment**

20 “(a) OFFENSE.—Any person subject to this chapter  
21 who commits, or conspires or attempts to commit, an act  
22 intended to inflict severe or serious physical or mental  
23 pain or suffering (other than pain or suffering incidental  
24 to lawful sanctions), including serious physical abuse,  
25 upon another within his custody or control shall be pun-  
26 ished, if death results to the victim, by death or such other

1 punishment as a military commission under this chapter  
2 may direct, and, if death does not result to the victim,  
3 by such punishment, other than death, as a military com-  
4 mission under this chapter may direct.

5 “(b) DEFINITIONS.—In this section:

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

9 “(2) The term ‘serious physical pain or suf-  
10 fering’ means bodily injury that involves—

11 “(A) a substantial risk of death;

12 “(B) extreme physical pain;

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

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

19 “(3) The term ‘serious mental pain or suf-  
20 fering’ has the meaning given the term ‘severe men-  
21 tal pain or suffering’ in section 2340(2) of title 18,  
22 except that—

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

1           “(B) as to conduct occurring after the date  
2           of the enactment of the Military Commission  
3           Act of 2006, the term ‘serious and non-transi-  
4           tory mental harm (which need not be pro-  
5           longed)’ shall replace the term ‘prolonged men-  
6           tal harm’ where it appears.

7   **“§ 950tt. Intentionally causing serious bodily injury**

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

17          “(b) SERIOUS BODILY INJURY DEFINED.—In this  
18          section, the term ‘serious bodily injury’ means bodily in-  
19          jury which involves—

20                 “(1) a substantial risk of death;

21                 “(2) extreme physical pain;

22                 “(3) protracted and obvious disfigurement; or

23                 “(4) protracted loss or impairment of the func-  
24          tion of a bodily member, organ, or mental faculty.

1 **“§ 950uu. Mutilating or maiming**

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

13 **“§ 950vv. Murder in violation of the law of war**

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

19 **“§ 950ww. Destruction of property in violation of the**  
20 **law of war**

21 “Any person subject to this chapter who intentionally  
22 destroys property belonging to another person in violation  
23 of the law of war shall be punished as a military commission  
24 under this chapter may direct.

1 **“§ 950xx. Using treachery or perfidy**

2 “Any person subject to this chapter who, after invit-  
3 ing the confidence or belief of one or more persons that  
4 they were entitled to, or obliged to accord, protection  
5 under the law of war, intentionally makes use of that con-  
6 fidence or belief in killing, injuring, or capturing such per-  
7 son or persons shall be punished, if death results to one  
8 or more of the victims, by death or such other punishment  
9 as a military commission under this chapter may direct,  
10 and, if death does not result to any of the victims, by such  
11 punishment, other than death, as a military commission  
12 under this chapter may direct.

13 **“§ 950yy. Improperly using a flag of truce**

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

19 **“§ 950zz. Improperly using a distinctive emblem**

20 “Any person subject to this chapter who intentionally  
21 uses a distinctive emblem recognized by the law of war  
22 for combatant purposes in a manner prohibited by the law  
23 of war shall be punished as a military commission under  
24 this chapter may direct.

1 **“§ 950aaa. Intentionally mistreating a dead body**

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

6 **“§ 950bbb. Rape**

7 “Any person subject to this chapter who forcibly or  
8 with coercion or threat of force wrongfully invades the  
9 body of a person by penetrating, however slightly, the anal  
10 or genital opening of the victim with any part of the body  
11 of the accused, or with any foreign object, shall be pun-  
12 ished as a military commission under this chapter may  
13 direct.

14 **“§ 950ccc. Hijacking or hazarding a vessel or aircraft**

15 “Any person subject to this chapter who intentionally  
16 seizes, exercises unauthorized control over, or endangers  
17 the safe navigation of a vessel or aircraft that is not a  
18 legitimate military objective shall be punished, if death re-  
19 sults to one or more of the victims, by death or such other  
20 punishment as a military commission under this chapter  
21 may direct, and, if death does not result to any of the  
22 victims, by such punishment, other than death, as a mili-  
23 tary commission under this chapter may direct.

24 **“§ 950ddd. Terrorism**

25 “Any person subject to this chapter who intentionally  
26 kills or inflicts great bodily harm on one or more protected

1 persons, or intentionally engages in an act that evinces  
2 a wanton disregard for human life, in a manner calculated  
3 to influence or affect the conduct of government or civilian  
4 population by intimidation or coercion, or to retaliate  
5 against government conduct, shall be punished, if death  
6 results to one or more of the victims, by death or such  
7 other punishment as a military commission under this  
8 chapter may direct, and, if death does not result to any  
9 of the victims, by such punishment, other than death, as  
10 a military commission under this chapter may direct.

11 **“§ 950eee. Providing material support for terrorism**

12       “(a) OFFENSE.—Any person subject to this chapter  
13 who provides material support or resources, knowing or  
14 intending that they are to be used in preparation for, or  
15 in carrying out, an act of terrorism (as set forth in section  
16 950ddd of this title), or who intentionally provides mate-  
17 rial support or resources to an international terrorist orga-  
18 nization engaged in hostilities against the United States,  
19 knowing that such organization has engaged or engages  
20 in terrorism (as so set forth), shall be punished as a mili-  
21 tary commission under this chapter may direct.

22       “(b) MATERIAL SUPPORT OR RESOURCES DE-  
23 FINED.—In this section, the term ‘material support or re-  
24 sources’ has the meaning given that term in section  
25 2339A(b) of title 18.

1 **“§ 950fff. Wrongfully aiding the enemy**

2 “Any person subject to this chapter who, in breach  
3 of an allegiance or duty to the United States, knowingly  
4 and intentionally aids an enemy of the United States, or  
5 one of the co-belligerents of the enemy, shall be punished  
6 as a military commission under this chapter may direct.

7 **“§ 950ggg. Spying**

8 “Any person subject to this chapter who, in violation  
9 of the law of war and with intent or reason to believe that  
10 it is to be used to the injury of the United States or to  
11 the advantage of a foreign power, collects or attempts to  
12 collect information by clandestine means or while acting  
13 under false pretenses, for the purpose of conveying such  
14 information to an enemy of the United States, or one of  
15 the co-belligerents of the enemy, shall be punished by  
16 death or such other punishment as a military commission  
17 under this chapter may direct.

18 **“§ 950hhh. Conspiracy**

19 “Any person subject to this chapter who conspires to  
20 commit one or more substantive offenses triable by mili-  
21 tary commission under this subchapter, and who know-  
22 ingly does any overt act to effect the object of the con-  
23 spiracy, shall be punished, if death results to one or more  
24 of the victims, by death or such other punishment as a  
25 military commission under this chapter may direct, and,  
26 if death does not result to any of the victims, by such pun-

1 ishment, other than death, as a military commission under  
2 this chapter may direct.

3 **“§ 950iii. Contempt**

4 “A military commission under this chapter may pun-  
5 ish for contempt any person who uses any menacing word,  
6 sign, or gesture in its presence, or who disturbs its pro-  
7 ceedings by any riot or disorder.

8 **“§ 950jjj. Perjury and obstruction of justice**

9 “A military commission under this chapter may try  
10 offenses and impose such punishment as the military com-  
11 mission may direct for perjury, false testimony, or ob-  
12 struction of justice related to the military commission.”.

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 ..... 948a.”.

18 (b) SUBMITTAL OF PROCEDURES TO CONGRESS.—

19 (1) SUBMITTAL OF PROCEDURES.—Not later  
20 than 90 days after the date of the enactment of this  
21 Act, the Secretary of Defense shall submit to the  
22 Committees on Armed Services of the Senate and  
23 the House of Representatives a report setting forth  
24 the procedures for military commissions prescribed

1 under chapter 47A of title 10, United States Code  
2 (as added by subsection (a)).

3 (2) SUBMITTAL OF MODIFICATIONS.—Not later  
4 than 60 days before the date on which any proposed  
5 modification of the procedures described in para-  
6 graph (1) shall go into effect, the Secretary shall  
7 submit to the committees of Congress referred to in  
8 that paragraph a report describing such modifica-  
9 tion.

10 **SEC. 5. AMENDMENTS TO OTHER LAWS.**

11 (a) DETAINEE TREATMENT ACT OF 2005.—Section  
12 1004(b) of the Detainee Treatment Act of 2005 (title X  
13 of Public Law 109–148; 119 Stat. 2740; 42 U.S.C.  
14 200dd–1(b)) is amended—

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

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

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

23 (b) UNIFORM CODE OF MILITARY JUSTICE.—Chap-  
24 ter 47 of title, 10, United States Code (the Uniform Code  
25 of Military Justice), is amended as follows:

1           (1) Section 802 (article 2 of the Uniform Code  
2 of Military Justice) is amended by adding at the end  
3 the following new paragraph:

4           “(13) Lawful enemy combatants (as that term  
5 is defined in section 948a(3) of this title) who vio-  
6 late the law of war.”.

7           (2) Section 821 (article 21 of the Uniform Code  
8 of Military Justice) is amended by striking “by stat-  
9 ute or law of war”.

10           (3) Section 836(a) (article 36(a) of the Uniform  
11 Code of Military Justice) is amended by inserting  
12 “(other than military commissions under chapter  
13 47A of this title)” after “other military tribunals”.

14           (c) PUNITIVE ARTICLE OF CONSPIRACY.—Section  
15 881 of title 10, United States Code (article 81 of the Uni-  
16 form Code of Military Justice)), is amended—

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

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

20           “(b) Any person subject to this chapter or chapter  
21 47A of this title who conspires with any other person to  
22 commit an offense under the law of war, and who know-  
23 ingly does an overt act to effect the object of the con-  
24 spiracy, shall be punished, if death results to one or more  
25 of the victims, by death or such other punishment as a

1 court-martial or military commission may direct, and, if  
2 death does not result to any of the victims, by such pun-  
3 ishment, other than death, as a court-martial or military  
4 commission may direct.”.

5 (d) REVIEW OF JUDGMENTS OF MILITARY COMMIS-  
6 SIONS.—

7 (1) REVIEW BY SUPREME COURT.—Section  
8 1259 of title 28, United States Code, is amended by  
9 adding at the end the following new paragraph:

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

14 (2) DETAINEE TREATMENT ACT OF 2005.—Sec-  
15 tion 1005(e)(3) of the Detainee Treatment Act of  
16 2005 (title X of Public Law 109–148; 119 Stat.  
17 2740; 10 U.S.C. 801 note) is amended—

18 (A) in subparagraph (A), by striking  
19 “pursuant to Military Commission Order  
20 No. 1. dated August 31, 2005 (or any suc-  
21 cesssor military order)” and inserting “by a  
22 military commission under chapter 47A of  
23 title 10, United States Code”;

1 (B) by striking subparagraph (B) and  
2 inserting the following new subparagraph  
3 (B):

4 “(B) GRANT OF REVIEW.—Review under  
5 this paragraph shall be as of right.”;

6 (C) in subparagraph (C)—

7 (i) in clause (i)—

8 (I) by striking “pursuant to  
9 the military order” and inserting  
10 “by a military commission”; and

11 (II) by striking “at Guanta-  
12 namo Bay, Cuba”; and

13 (ii) in clause (ii), by striking  
14 “pursuant to such military order” and  
15 inserting “by the military commis-  
16 sion”; and

17 (D) in subparagraph (D)(i), by strik-  
18 ing “specified in the military order” and  
19 inserting “specified for a military commis-  
20 sion”.

21 **SEC. 6. HABEAS CORPUS MATTERS.**

22 (a) IN GENERAL.—Section 2241 of title 28, United  
23 States Code, is amended—

24 (1) by striking subsection (e) (as added by sec-  
25 tion 1005(e)(1) of Public Law 109–148 (119 Stat.

1 2742)) and by striking subsection (e) (as added by  
2 added by section 1405(e)(1) of Public Law 109–163  
3 (119 Stat. 3477)); and

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

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

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

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

14 “(2) Except as provided in paragraphs (2) and (3)  
15 of section 1005(e) of the Detainee Treatment Act of 2005  
16 (10 U.S.C. 801 note), no court, justice, or judge shall have  
17 jurisdiction to hear or consider any other action against  
18 the United States or its agents relating to any aspect of  
19 the detention, transfer, treatment, trial, or conditions of  
20 confinement of an alien detained by the United States  
21 who—

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

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



1 Members of the Armed Forces at Sea, done at Gene-  
2 va August 12, 1949 (6 UST 3217);

3 (3) the Convention Relative to the Treatment of  
4 Prisoners of War, done at Geneva August 12, 1949  
5 (6 UST 3316); and

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

9 **SEC. 8. IMPLEMENTATION OF TREATY OBLIGATIONS.**

10 (a) IMPLEMENTATION OF TREATY OBLIGATIONS.—

11 (1) IN GENERAL.—The acts enumerated in sub-  
12 section (d) of section 2441 of title 18, United States  
13 Code, as added by subsection (b) of this section, and  
14 in subsection (c) of this section, constitute violations  
15 of common Article 3 of the Geneva Conventions pro-  
16 hibited by United States law.

17 (2) PROHIBITION ON GRAVE BREACHES.—The  
18 provisions of section 2441 of title 18, United States  
19 Code, as amended by this section, fully satisfy the  
20 obligation under Article 129 of the Third Geneva  
21 Convention for the United States to provide effective  
22 penal sanctions for grave breaches which are encom-  
23 passed in common Article 3 in the context of an  
24 armed conflict not of an international character. No  
25 foreign or international source of law shall supply a

1 basis for a rule of decision in the courts of the  
2 United States in interpreting the prohibitions enu-  
3 merated in subsection (d) of such section 2441.

4 (3) INTERPRETATION BY THE PRESIDENT.—(A)

5 As provided by the Constitution and by this section,  
6 the President has the authority for the United  
7 States to interpret the meaning and application of  
8 the Geneva Conventions and to promulgate higher  
9 standards and administrative regulations for viola-  
10 tions of treaty obligations which are not grave  
11 breaches of the Geneva Conventions.

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

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

20 (D) Nothing in this section shall be construed  
21 to affect the constitutional functions and responsibil-  
22 ities of Congress and the judicial branch of the  
23 United States.

24 (4) DEFINITIONS.—In this subsection:

1 (A) The term “Geneva Conventions”  
2 means—

3 (i) the Convention for the Ameliora-  
4 tion of the Condition of the Wounded and  
5 Sick in Armed Forces in the Field, done at  
6 Geneva August 12, 1949 (6 UST 3217);

7 (ii) the Convention for the Ameliora-  
8 tion of the Condition of the Wounded,  
9 Sick, and Shipwrecked Members of the  
10 Armed Forces at Sea, done at Geneva Au-  
11 gust 12, 1949 (6 UST 3217);

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

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

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

23 (b) REVISION TO WAR CRIMES OFFENSE UNDER  
24 FEDERAL CRIMINAL CODE.—

1           (1) IN GENERAL.—Section 2441 of title 18,  
2 United States Code, is amended—

3           (A) in subsection (c), by striking para-  
4 graph (3) and inserting the following new para-  
5 graph (3):

6           “(3) which constitutes a grave breach of com-  
7 mon Article 3 as defined in subsection (d) when  
8 committed in the context of and in association with  
9 an armed conflict not of an international character;  
10 or”;

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

13           “(d) COMMON ARTICLE 3 VIOLATIONS.—

14           “(1) PROHIBITED CONDUCT.—In subsection  
15 (c)(3), the term ‘grave breach of common Article 3’  
16 means any conduct (such conduct constituting a  
17 grave breach of common Article 3 of the inter-  
18 national conventions done at Geneva August 12,  
19 1949), as follows:

20           “(A) TORTURE.—The act of a person who  
21 commits, or conspires or attempts to commit,  
22 an act specifically intended to inflict severe  
23 physical or mental pain or suffering (other than  
24 pain or suffering incidental to lawful sanctions)  
25 upon another person within his custody or

1 physical control for the purpose of obtaining in-  
2 formation or a confession, punishment, intimi-  
3 dation, coercion, or any reason based on dis-  
4 crimination of any kind.

5 “(B) CRUEL OR INHUMAN TREATMENT.—  
6 The act of a person who commits, or conspires  
7 or attempts to commit, an act intended to in-  
8 flict severe or serious physical or mental pain or  
9 suffering (other than pain or suffering inci-  
10 dental to lawful sanctions), including serious  
11 physical abuse, upon another within his custody  
12 or control.

13 “(C) PERFORMING BIOLOGICAL EXPERI-  
14 MENTS.—The act of a person who subjects, or  
15 conspires or attempts to subject, one or more  
16 persons within his custody or physical control to  
17 biological experiments without a legitimate med-  
18 ical or dental purpose and in so doing endan-  
19 gers the body or health of such person or per-  
20 sons.

21 “(D) MURDER.—The act of a person who  
22 intentionally kills, or conspires or attempts to  
23 kill, or kills whether intentionally or uninten-  
24 tionally in the course of committing any other  
25 offense under this subsection, one or more per-

1           sons taking no active part in the hostilities, in-  
2           cluding those placed out of combat by sickness,  
3           wounds, detention, or any other cause.

4           “(E) MUTILATION OR MAIMING.—The act  
5           of a person who intentionally injures, or con-  
6           spires or attempts to injure, or injures whether  
7           intentionally or unintentionally in the course of  
8           committing any other offense under this sub-  
9           section, one or more persons taking no active  
10          part in the hostilities, including those placed  
11          out of combat by sickness, wounds, detention,  
12          or any other cause, by disfiguring the person or  
13          persons by any mutilation thereof or by perma-  
14          nently disabling any member, limb, or organ of  
15          his body, without any legitimate medical or den-  
16          tal purpose.

17          “(F) INTENTIONALLY CAUSING SERIOUS  
18          BODILY INJURY.—The act of a person who in-  
19          tentionally causes, or conspires or attempts to  
20          cause, serious bodily injury to one or more per-  
21          sons, including lawful combatants, in violation  
22          of the law of war.

23          “(G) RAPE.—The act of a person who  
24          forcibly or with coercion or threat of force  
25          wrongfully invades, or conspires or attempts to

1 invade, the body of a person by penetrating,  
2 however slightly, the anal or genital opening of  
3 the victim with any part of the body of the ac-  
4 cused, or with any foreign object.

5 “(H) SEXUAL ASSAULT OR ABUSE.—The  
6 act of a person who forcibly or with coercion or  
7 threat of force engages, or conspires or at-  
8 tempts to engage, in sexual contact with one or  
9 more persons, or causes, or conspires or at-  
10 tempts to cause, one or more persons to engage  
11 in sexual contact.

12 “(I) TAKING HOSTAGES.—The act of a  
13 person who, having knowingly seized or de-  
14 tained one or more persons, threatens to kill,  
15 injure, or continue to detain such person or per-  
16 sons with the intent of compelling any nation,  
17 person other than the hostage, or group of per-  
18 sons to act or refrain from acting as an explicit  
19 or implicit condition for the safety or release of  
20 such person or persons.

21 “(2) DEFINITIONS.—In the case of an offense  
22 under subsection (a) by reason of subsection  
23 (c)(3)—

24 “(A) the term ‘severe mental pain or suf-  
25 fering’ shall be applied for purposes of para-

1 graphs (1)(A) and (1)(B) in accordance with  
2 the meaning given that term in section 2340(2)  
3 of this title;

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

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

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

16 “(i) a substantial risk of death;

17 “(ii) extreme physical pain;

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

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

24 “(E) the term ‘serious mental pain or suf-  
25 fering’ shall be applied for purposes of para-

1 graph (1)(B) in accordance with the meaning  
2 given the term ‘severe mental pain or suffering’  
3 (as defined in section 2340(2) of this title), ex-  
4 cept that—

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

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

13 “(3) INAPPLICABILITY OF CERTAIN PROVISIONS  
14 WITH RESPECT TO COLLATERAL DAMAGE OR INCI-  
15 DENT OF LAWFUL ATTACK.—The intent specified for  
16 the conduct stated in subparagraphs (D), (E), and  
17 (F) or paragraph (1) precludes the applicability of  
18 those subparagraphs to an offense under subsection  
19 (a) by reasons of subsection (c)(3) with respect to—

20 “(A) collateral damage; or

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

23 “(4) INAPPLICABILITY OF TAKING HOSTAGES  
24 TO PRISONER EXCHANGE.—Paragraph (1)(I) does  
25 not apply to an offense under subsection (a) by rea-

1 son of subsection (c)(3) in the case of a prisoner ex-  
2 change during wartime.”.

3 (2) RETROACTIVE APPLICABILITY.—The  
4 amendments made by this subsection, except as  
5 specified in subsection (d)(2)(E) of section 2441 of  
6 title 18, United States Code, shall take effect as of  
7 November 26, 1997, as if enacted immediately after  
8 the amendments made by section 583 of Public Law  
9 105–118 (as amended by section 4002(e)(7) of Pub-  
10 lic Law 107–273).

11 (c) ADDITIONAL PROHIBITION ON CRUEL, INHUMAN,  
12 OR DEGRADING TREATMENT OR PUNISHMENT.—

13 (1) IN GENERAL.—No individual in the custody  
14 or under the physical control of the United States  
15 Government, regardless of nationality or physical lo-  
16 cation, shall be subject to cruel, inhuman, or degrad-  
17 ing treatment or punishment.

18 (2) CRUEL, INHUMAN, OR DEGRADING TREAT-  
19 MENT OR PUNISHMENT DEFINED.—In this sub-  
20 section, the term “cruel, inhuman, or degrading  
21 treatment or punishment” means cruel, unusual,  
22 and inhumane treatment or punishment prohibited  
23 by the Fifth, Eighth, and Fourteenth Amendments  
24 to the Constitution of the United States, as defined  
25 in the United States Reservations, Declarations and

1 Understandings to the United Nations Convention  
2 Against Torture and Other Forms of Cruel, Inhu-  
3 man or Degrading Treatment or Punishment done  
4 at New York, December 10, 1984.

5 (3) COMPLIANCE.—The President shall take ap-  
6 propriate action to ensure compliance with this sub-  
7 section, including through the establishment of ad-  
8 ministrative rules and procedures.

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

12 Section 1005(e)(2)(B)(i) of the Detainee Treatment  
13 Act of 2005 (title X of Public Law 109–148; 119 Stat.  
14 2742; 10 U.S.C. 801 note) is amended by striking “the  
15 Department of Defense at Guantanamo Bay, Cuba” and  
16 inserting “the United States”.

17 **SEC. 10. SEVERABILITY.**

18 If any provision of this Act or amendment made by  
19 a provision of this Act, or the application of such provision  
20 or amendment to any person or circumstance, is held to  
21 be unconstitutional, the remainder of this Act and the  
22 amendments made by this Act, and the application of such  
23 provisions and amendments to any other person or cir-  
24 cumstance, shall not be affected thereby.



Calendar No. 634

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

**S. 3930**

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**A BILL**

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

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SEPTEMBER 25, 2006

Read the second time and placed on the calendar