

cate to the Commandant of the Marine Corps; and

(3) two members of the public appointed by the Secretary of Defense.

(c) REPORTS.—(1) After each such survey, the committee shall submit a report—

(A) to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives; and

(B) to the Secretary of Defense, the Secretaries of the military departments, and the Secretary of Homeland Security.

(2) Each report under paragraph (1) shall include the following:

(A) Information on the number and status of pending cases.

(B) Any recommendation of the committee relating to—

- (i) uniformity of policies as to sentences;
(ii) amendments to this chapter; and
(iii) any other matter the committee considers appropriate.

(d) QUALIFICATIONS AND TERMS OF APPOINTED MEMBERS.—Each member of the committee appointed by the Secretary of Defense under subsection (b)(3) shall be a recognized authority in military justice or criminal law. Each such member shall be appointed for a term of three years.

(e) APPLICABILITY OF FEDERAL ADVISORY COMMITTEE ACT.—The Federal Advisory Committee Act (5 U.S.C. App. I) shall not apply to the committee.

(Added Pub. L. 101-189, div. A, title XIII, §1301(c), Nov. 29, 1989, 103 Stat. 1574; amended Pub. L. 103-337, div. A, title IX, §924(c)(1), Oct. 5, 1994, 108 Stat. 2831; Pub. L. 104-106, div. A, title XV, §1502(a)(1), Feb. 10, 1996, 110 Stat. 502; Pub. L. 106-65, div. A, title X, §1067(1), Oct. 5, 1999, 113 Stat. 774; Pub. L. 107-296, title XVII, §1704(b)(1), Nov. 25, 2002, 116 Stat. 2314.)

REFERENCES IN TEXT

The Federal Advisory Committee Act, referred to in subsec. (e), is Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

AMENDMENTS

2002—Subsec. (c)(1)(B). Pub. L. 107-296 substituted “of Homeland Security” for “of Transportation”.

1999—Subsec. (c)(1)(A). Pub. L. 106-65 substituted “and the Committee on Armed Services” for “and the Committee on National Security”.

1996—Subsec. (c)(1)(A). Pub. L. 104-106 substituted “Committee on Armed Services of the Senate and the Committee on National Security of the House of Representatives” for “Committees on Armed Services of the Senate and House of Representatives”.

1994—Subsec. (b)(1). Pub. L. 103-337 substituted “Court of Appeals for the Armed Forces” for “Court of Military Appeals”.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107-296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107-296, set out as a note under section 101 of this title.

CHAPTER 47A—MILITARY COMMISSIONS

Subchapter I. General Provisions 948a.

Subchapter II. Composition of Military Commissions .. 948h.
III. Pre-Trial Procedure 948q.
IV. Trial Procedure 949a.
V. Classified Information Procedures 949p-1.
VI. Sentences 949s.
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VIII. Punitive Matters 950p.

CODIFICATION

This chapter was originally added by Pub. L. 109-366, §3(a)(1), Oct. 17, 2006, 120 Stat. 2600, and amended by Pub. L. 110-181, Jan. 28, 2008, 122 Stat. 3. This chapter is shown here, however, as having been added by Pub. L. 111-84, div. A, title XVIII, §1802, Oct. 28, 2009, 123 Stat. 2574, without reference to those intervening amendments because of the general amendment of this chapter by Pub. L. 111-84.

SUBCHAPTER I—GENERAL PROVISIONS

Sec. 948a. Definitions.
948b. Military commissions generally.
948c. Persons subject to military commissions.
948d. Jurisdiction of military commissions.

§ 948a. Definitions

In this chapter:

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

(2) CLASSIFIED INFORMATION.—The term “classified information” means the following:

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

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

(3) COALITION PARTNER.—The term “coalition partner”, with respect to hostilities engaged in by the United States, means any State or armed force directly engaged along with the United States in such hostilities or providing direct operational support to the United States in connection with such hostilities.

(4) GENEVA CONVENTION RELATIVE TO THE TREATMENT OF PRISONERS OF WAR.—The term “Geneva Convention Relative to the Treatment of Prisoners of War” means the Convention Relative to the Treatment of Prisoners of War, done at Geneva August 12, 1949 (6 UST 3316).

(5) GENEVA CONVENTIONS.—The term “Geneva Conventions” means the international conventions signed at Geneva on August 12, 1949.

(6) PRIVILEGED BELLIGERENT.—The term “privileged belligerent” means an individual belonging to one of the eight categories enumerated in Article 4 of the Geneva Convention Relative to the Treatment of Prisoners of War.

(7) UNPRIVILEGED ENEMY BELLIGERENT.—The term “unprivileged enemy belligerent” means an individual (other than a privileged belligerent) who—

¹ So in original. Does not conform to subchapter heading.

(A) has engaged in hostilities against the United States or its coalition partners;

(B) has purposefully and materially supported hostilities against the United States or its coalition partners; or

(C) was a part of al Qaeda at the time of the alleged offense under this chapter.

(8) NATIONAL SECURITY.—The term “national security” means the national defense and foreign relations of the United States.

(9) HOSTILITIES.—The term “hostilities” means any conflict subject to the laws of war.

(Added Pub. L. 111-84, div. A, title XVIII, §1802, Oct. 28, 2009, 123 Stat. 2574.)

PRIOR PROVISIONS

A prior section 948a, added Pub. L. 109-366, §3(a)(1), Oct. 17, 2006, 120 Stat. 2601, related to definitions, prior to the general amendment of this chapter by Pub. L. 111-84.

SHORT TITLE OF 2009 AMENDMENT

Pub. L. 111-84, div. A, title XVIII, §1801, Oct. 28, 2009, 123 Stat. 2574, provided that: “This title [enacting this chapter, amending sections 802 and 839 of this title, enacting provisions set out as notes under this section, and amending provisions set out as a note under section 801 of this title] may be cited as the ‘Military Commissions Act of 2009.’”

SHORT TITLE OF 2006 AMENDMENT

Pub. L. 109-366, §1(a), Oct. 17, 2006, 120 Stat. 2600, provided that: “This Act [see Tables for classification] may be cited as the ‘Military Commissions Act of 2006.’”

PROCEEDINGS UNDER PRIOR STATUTE

Pub. L. 111-84, div. A, title XVIII, §1804, Oct. 28, 2009, 123 Stat. 2612, provided that:

“(a) PRIOR CONVICTIONS.—The amendment made by section 1802 [generally amending this chapter] shall have no effect on the validity of any conviction pursuant to chapter 47A of title 10, United States Code (as such chapter was in effect on the day before the date of the enactment of this Act [Oct. 28, 2009]).

“(b) COMPOSITION OF MILITARY COMMISSIONS.—Notwithstanding the amendment made by section 1802—

“(1) any commission convened pursuant to chapter 47A of title 10, United States Code (as such chapter was in effect on the day before the date of the enactment of this Act), shall be deemed to have been convened pursuant to chapter 47A of title 10, United States Code (as amended by section 1802);

“(2) any member of the Armed Forces detailed to serve on a commission pursuant to chapter 47A of title 10, United States Code (as in effect on the day before the date of the enactment of this Act), shall be deemed to have been detailed pursuant to chapter 47A of title 10, United States Code (as so amended);

“(3) any military judge detailed to a commission pursuant to chapter 47A of title 10, United States Code (as in effect on the day before the date of the enactment of this Act), shall be deemed to have been detailed pursuant to chapter 47A of title 10, United States Code (as so amended);

“(4) any trial counsel or defense counsel detailed for a commission pursuant to chapter 47A of title 10, United States Code (as in effect on the day before the date of the enactment of this Act), shall be deemed to have been detailed pursuant to chapter 47A of title 10, United States Code (as so amended);

“(5) any court reporters detailed to or employed by a commission pursuant to chapter 47A of title 10, United States Code (as in effect on the day before the date of the enactment of this Act), shall be deemed to have been detailed or employed pursuant to chapter

47A of title 10, United States Code (as so amended); and

“(6) any appellate military judge or other duly appointed appellate judge on the Court of Military Commission Review pursuant to chapter 47A of title 10, United States Code (as in effect on the day before the date of the enactment of this Act), shall be deemed to have been detailed or appointed to the United States Court of Military Commission Review pursuant to chapter 47A of title 10, United States Code (as so amended).

“(c) CHARGES AND SPECIFICATIONS.—Notwithstanding the amendment made by section 1802—

“(1) any charges or specifications sworn or referred pursuant to chapter 47A of title 10, United States Code (as such chapter was in effect on the day before the date of the enactment of this Act), shall be deemed to have been sworn or referred pursuant to chapter 47A of title 10, United States Code (as amended by section 1802); and

“(2) any charges or specifications described in paragraph (1) may be amended, without prejudice, as needed to properly allege jurisdiction under chapter 47A of title 10, United States Code (as so amended), and crimes triable under such chapter.

“(d) PROCEDURES AND REQUIREMENTS.—

“(1) IN GENERAL.—Except as provided in subsections (a) through (c) and subject to paragraph (2), any commission convened pursuant to chapter 47A of title 10, United States Code (as such chapter was in effect on the day before the date of the enactment of this Act), shall be conducted after the date of the enactment of this Act in accordance with the procedures and requirements of chapter 47A of title 10, United States Code (as amended by section 1802).

“(2) TEMPORARY CONTINUATION OF PRIOR PROCEDURES AND REQUIREMENTS.—Any military commission described in paragraph (1) may be conducted in accordance with any procedures and requirements of chapter 47A of title 10, United States Code (as in effect on the day before the date of the enactment of this Act), that are not inconsistent with the provisions of chapter 47A of title 10, United States Code, (as so amended), until the earlier of—

“(A) the date of the submittal to Congress under section 1805 of the revised rules for military commissions under chapter 47A of title 10, United States Code (as so amended); or

“(B) the date that is 90 days after the date of the enactment of this Act.”

SUBMITTAL TO CONGRESS OF REVISED RULES FOR MILITARY COMMISSIONS

Pub. L. 111-84, div. A, title XVIII, §1805, Oct. 28, 2009, 123 Stat. 2614, provided that:

“(a) DEADLINE FOR SUBMITTAL.—Not later than 90 days after the date of the enactment of this Act [Oct. 28, 2009], the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives the revised rules for military commissions prescribed by the Secretary for purposes of chapter 47A of title 10, United States Code (as amended by section 1802).

“(b) TREATMENT OF REVISED RULES UNDER REQUIREMENT FOR NOTICE AND WAIT REGARDING MODIFICATION OF RULES.—The revised rules submitted to Congress under subsection (a) shall not be treated as a modification of the rules in effect for military commissions for purposes of section 949a(d) of title 10, United States Code (as so amended).”

ANNUAL REPORTS TO CONGRESS ON TRIALS BY MILITARY COMMISSION

Pub. L. 111-84, div. A, title XVIII, §1806, Oct. 28, 2009, 123 Stat. 2614, provided that:

“(a) ANNUAL REPORTS REQUIRED.—Not later than January 31 of each year, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on

any trials conducted by military commissions under chapter 47A of title 10, United States Code (as amended by section 1802), during the preceding year.

“(b) FORM.—Each report under this section shall be submitted in unclassified form, but may include a classified annex.”

CONSTRUCTION OF PRESIDENTIAL AUTHORITY TO ESTABLISH MILITARY COMMISSIONS

Pub. L. 109-366, § 2, Oct. 17, 2006, 120 Stat. 2600, provided that: “The authority to establish military commissions under chapter 47A of title 10, United States Code, as added by section 3(a), may not be construed to alter or limit the authority of the President under the Constitution of the United States and laws of the United States to establish military commissions for areas declared to be under martial law or in occupied territories should circumstances so require.”

§ 948b. Military commissions generally

(a) PURPOSE.—This chapter establishes procedures governing the use of military commissions to try alien unprivileged enemy belligerents for violations of the law of war and other offenses triable by military commission.

(b) AUTHORITY FOR MILITARY COMMISSIONS UNDER THIS CHAPTER.—The President is authorized to establish military commissions under this chapter for offenses triable by military commission as provided in this chapter.

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

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

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

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

(C) Section 832 (article 32 of the Uniform Code of Military Justice), relating to pretrial investigation.

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

(e) GENEVA CONVENTIONS NOT ESTABLISHING PRIVATE RIGHT OF ACTION.—No alien unprivileged enemy belligerent subject to trial by military commission under this chapter may invoke the Geneva Conventions as a basis for a private right of action.

(Added Pub. L. 111-84, div. A, title XVIII, § 1802, Oct. 28, 2009, 123 Stat. 2575.)

PRIOR PROVISIONS

A prior section 948b, added Pub. L. 109-366, § 3(a)(1), Oct. 17, 2006, 120 Stat. 2602, related to military commissions generally, prior to the general amendment of this chapter by Pub. L. 111-84.

EX. ORD. NO. 13425. TRIAL OF ALIEN UNLAWFUL ENEMY COMBATANTS BY MILITARY COMMISSION

Ex. Ord. No. 13425, Feb. 14, 2007, 72 F.R. 7737, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Military Commissions Act of 2006 (Public Law 109-366), the Authorization for Use of Military Force (Public Law 107-40), and section 948b(b) of title 10, United States Code, it is hereby ordered as follows:

SECTION 1. *Establishment of Military Commissions.* There are hereby established military commissions to try alien unlawful enemy combatants for offenses triable by military commission as provided in chapter 47A of title 10.

SEC. 2. *Definitions.* As used in this order:

(a) “unlawful enemy combatant” has the meaning provided for that term in section 948a(1) of title 10; and

(b) “alien” means a person who is not a citizen of the United States.

SEC. 3. *Superseding.* This order supersedes any provision of the President’s Military Order of November 13, 2001 (66 *Fed. Reg.* 57,833), that relates to trial by military commission, specifically including:

(a) section 4 of the Military Order; and

(b) any requirement in section 2 of the Military Order, as it relates to trial by military commission, for a determination of:

(i) reason to believe specified matters; or

(ii) the interest of the United States.

SEC. 4. *General Provisions.* (a) This order shall be implemented in accordance with applicable law and subject to the availability of appropriations.

(b) The heads of executive departments and agencies shall provide such information and assistance to the Secretary of Defense as may be necessary to implement this order and chapter 47A of title 10.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, entities, officers, employees, or agents, or any other person.

GEORGE W. BUSH.

§ 948c. Persons subject to military commissions

Any alien unprivileged enemy belligerent is subject to trial by military commission as set forth in this chapter.

(Added Pub. L. 111-84, div. A, title XVIII, § 1802, Oct. 28, 2009, 123 Stat. 2576.)

PRIOR PROVISIONS

A prior section 948c, added Pub. L. 109-366, § 3(a)(1), Oct. 17, 2006, 120 Stat. 2602, related to persons subject to military commissions, prior to the general amendment of this chapter by Pub. L. 111-84.

§ 948d. Jurisdiction of military commissions

A military commission under this chapter shall have jurisdiction to try persons subject to this chapter for any offense made punishable by this chapter, sections 904 and 906 of this title (articles 104 and 106 of the Uniform Code of Military Justice), or the law of war, whether such offense was committed before, on, or after September 11, 2001, and may, under such limitations as the President may prescribe, adjudge any punishment not forbidden by this chapter, including the penalty of death when specifically