

107TH CONGRESS
2D SESSION

H. R. 5071

To authorize the President to establish military tribunals to try the terrorists responsible for the September 11, 2001 attacks against the United States, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JULY 9, 2002

Mr. SCHIFF (for himself, Mr. CONYERS, and Mr. FRANK) introduced the following bill; which was referred to the Committee on Armed Services, and in addition to the Committee on the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To authorize the President to establish military tribunals to try the terrorists responsible for the September 11, 2001 attacks against the United States, 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 Tribunals Act
5 of 2002”.

6 **SEC. 2. FINDINGS.**

7 Congress makes the following findings:

1 (1) The al Qaeda terrorist organization and its
2 leaders have committed unlawful attacks against the
3 United States, including the August 7, 1998 bomb-
4 ings of the United States embassies in Nairobi,
5 Kenya, and Dar es Salaam, Tanzania, the October
6 12, 2000 attack on the USS COLE and the Sep-
7 tember 11, 2001 attacks on the United States.

8 (2) The al Qaeda terrorist organization and its
9 leaders have threatened renewed attacks on the
10 United States and have threatened the use of weap-
11 ons of mass destruction.

12 (3) In violation of the resolutions of the United
13 Nations, the Taliban of Afghanistan provided a safe
14 haven to the al Qaeda terrorist organization and its
15 leaders and allowed the territory of that country to
16 be used as a base from which to sponsor inter-
17 national terrorist operations.

18 (4) The United Nations Security Council, in
19 Resolution 1267, declared in 1999 that the actions
20 of the Taliban constitute a threat to international
21 peace and security.

22 (5) The United Nations Security Council, in
23 Resolutions 1368 and 1373, declared in September
24 2001 that the September 11 attacks against the

1 United States constitute a threat to international
2 peace and security.

3 (6) The United States is justified in exercising
4 its right of self-defense pursuant to international law
5 and the United Nations Charter.

6 (7) Congress authorized the President on Sep-
7 tember 18, 2001, to use all necessary and appro-
8 priate force against those nations, organizations, or
9 persons that he determines to have planned, author-
10 ized, committed, or aided the September 11 terrorist
11 attacks or harbored such organizations or persons,
12 in order to prevent any future acts of international
13 terrorism against the United States, within the
14 meaning of section 5(b) of the War Powers Resolu-
15 tion.

16 (8) The United States and its allies are en-
17 gaged in armed conflict with al Qaeda and the
18 Taliban.

19 (9) Military trials of the terrorists may be ap-
20 propriate to protect the safety of the public and
21 those involved in the investigation and prosecution,
22 to facilitate the use of classified information as evi-
23 dence without compromising intelligence or military
24 efforts, and otherwise to protect national security in-
25 terests.

1 (10) Military trials that provide basic proce-
2 dural guarantees of fairness, consistent with the
3 international law of armed conflict and the Inter-
4 national Covenant on Civil and Political Rights
5 (opened for signature December 16, 1966), would
6 garner the support of the community of nations.

7 (11) Due process, including the writ of habeas
8 corpus and the right to an appeals process, must be
9 afforded to any person subject to a military tribunal.

10 (12) Preliminary proceedings should be estab-
11 lished to determine whether jurisdiction over the
12 person and over the charge is properly vested in the
13 tribunal.

14 (13) Article I, section 8, of the Constitution
15 provides that the Congress, not the President, has
16 the power to “constitute Tribunals inferior to the
17 Supreme Court; ... define and punish ... Offenses
18 against the Law of Nations; ... make Rules con-
19 cerning Captures on Land and Water; ... make all
20 Laws which shall be necessary and proper for car-
21 rying into Execution the foregoing Powers and all
22 other Powers vested by this Constitution in the Gov-
23 ernment of the United States, or in any Department
24 or Officer thereof.”.

1 (14) Without protections and reporting require-
2 ments in place, persons detained for an indefinite
3 amount of time would have no recourse. A signifi-
4 cant danger exists that due process might be evaded
5 simply by failing to bring detainees before a tribunal
6 for trial.

7 (15) Congressional authorization is necessary
8 for the establishment of extraordinary tribunals to
9 adjudicate and punish offenses arising from the Sep-
10 tember 11, 2001 attacks against the United States
11 and to provide a clear and unambiguous legal foun-
12 dation for such trials.

13 (16) Judicial review of individual detentions is
14 best handled by a court that would not have to ap-
15 point special masters or magistrates to do the nec-
16 essary fact finding.

17 **SEC. 3. ESTABLISHMENT OF EXTRAORDINARY TRIBUNALS.**

18 (a) **AUTHORITY.**—The President is hereby authorized
19 to establish tribunals for the trial of individuals who—

20 (1) are not United States persons or residents;

21 (2) are members of al Qaeda who knowingly
22 planned, authorized, committed, aided, or abetted
23 one or more terrorist acts against the United States,
24 or members of other terrorist organizations who
25 knowingly cooperated with members of al Qaeda in

1 planning, authorizing, committing, aiding, or abet-
2 ting one or more terrorists acts against the United
3 States; and

4 (3) are not prisoners of war within the meaning
5 of the Geneva Convention Relative to the Treatment
6 of Prisoners of War, done on August 12, 1949.

7 (b) JURISDICTION.—Tribunals established under
8 subsection (a) may adjudicate violations of the law of war,
9 international laws of armed conflict, and crimes against
10 humanity targeted against United States persons or resi-
11 dents.

12 (c) AUTHORITY TO ESTABLISH PROCEDURAL
13 RULES.—The Secretary of Defense, in consultation with
14 the Secretary of State and the Attorney General, shall pre-
15 scribe and publish in the Federal Register, and report to
16 the Committees on the Judiciary of the Senate and the
17 House of Representatives, the rules of evidence and proce-
18 dure that are to apply to tribunals established under sub-
19 section (a).

20 **SEC. 4. PROCEDURAL REQUIREMENTS.**

21 (a) IN GENERAL.—The rules prescribed for a tri-
22 bunal under section 3(c) shall be designed to ensure a full
23 and fair hearing of the charges against the accused. The
24 rules shall require the following:

1 (1) That the tribunal be independent and im-
2 partial.

3 (2) That the accused be notified of the particu-
4 lars of the offense charged or alleged without delay.

5 (3) That the proceedings be made simulta-
6 neously intelligible for participants not conversant in
7 the English language by translation or interpreta-
8 tion.

9 (4) That the evidence supporting each alleged
10 offense be given to the accused, except as provided
11 in section 4(d) of this Act.

12 (5) That the accused have the opportunity to be
13 present at trial.

14 (6) That the accused have a right to be rep-
15 resented by counsel.

16 (7) That the accused have the opportunity—

17 (A) to respond to the evidence supporting
18 each alleged offense;

19 (B) to obtain exculpatory evidence from
20 the prosecution; and

21 (C) to present exculpatory evidence.

22 (8) That the accused have the opportunity to
23 confront and cross-examine adverse witnesses and to
24 offer witnesses.

1 (9) That the proceeding and disposition be ex-
2 peditious.

3 (10) That the tribunal apply reasonable rules of
4 evidence designed to ensure admission only of reli-
5 able information or material with probative value.

6 (11) That the accused be afforded all necessary
7 means of defense before and after the trial.

8 (12) That conviction of an alleged offense be
9 based only upon proof of individual responsibility for
10 the offense.

11 (13) That conviction of an alleged offense not
12 be based upon an act, offense, or omission that was
13 not an offense under law when it was committed.

14 (14) That the penalty for an offense not be
15 greater than it was when the offense was committed.

16 (15) That the accused—

17 (A) be presumed innocent until proven
18 guilty, and

19 (B) not be found guilty except upon proof
20 beyond a reasonable doubt.

21 (16) That the accused not be compelled to con-
22 fess guilt or testify against himself.

23 (17) That, subject to subsections (c) and (d),
24 the trial be open and public and include public avail-

1 ability of the transcripts of the trial and the pro-
2 nouncement of judgment.

3 (18) That a convicted person be informed of
4 remedies and appeals and the time limits for the ex-
5 ercise of the person's rights to the remedies and ap-
6 peals under the rules.

7 (19) That a preliminary proceeding be held
8 within 30 days of detention to determine whether
9 there is jurisdiction under section 3 over the person
10 and the offenses charged. The preliminary pro-
11 ceeding may be continued for an additional 30 days
12 for good cause shown.

13 (20) That the privilege of the writ of habeas
14 corpus under title 28, United States Code, or under
15 any other provision of law not be infringed.

16 (21) That the tribunal be comprised of a mili-
17 tary judge and not less than five members.

18 (b) IMPOSITION OF THE DEATH PENALTY.—The re-
19 quirements of the Uniform Code of Military Justice for
20 the imposition of the death penalty shall apply in any case
21 in which a tribunal established under section 3 is re-
22 quested to adjudge the death penalty.

23 (c) PUBLIC PROCEEDINGS.—Any proceedings con-
24 ducted by a tribunal established under section 3, and the
25 proceedings on any appeal of an action of the tribunal,

1 shall be accessible to the public consistent with any de-
2 monstrable necessity to secure the safety of observers, wit-
3 nesses, tribunal judges, counsel, or other persons.

4 (d) CONFIDENTIALITY OF EVIDENCE.—Evidence
5 available from an agency of the Federal Government that
6 is offered in a trial by a tribunal established under section
7 3 may be kept secret from the public only when the head
8 of the agency personally certifies in writing that disclosure
9 will cause—

10 (1) identifiable harm to the prosecution of mili-
11 tary objectives or interfere with the capture of mem-
12 bers of al Qaeda anywhere;

13 (2) significant, identifiable harm to intelligence
14 sources or methods; or

15 (3) substantial risk that such evidence could be
16 used for planning future terrorist attacks.

17 (e) REVIEW.—

18 (1) PROCEDURES REQUIRED.—The Secretary of
19 Defense shall provide for prompt review of convic-
20 tions by tribunals established under section 3 to en-
21 sure that the procedural requirements of a full and
22 fair hearing have been met and that the evidence
23 reasonably supports the convictions.

24 (2) UNITED STATES COURT OF APPEALS FOR
25 THE ARMED FORCES.—The procedures established

1 under paragraph (1) shall, at a minimum, allow for
2 review of the proceedings of the tribunals, and the
3 convictions and sentences of such tribunals, by the
4 United States Court of Appeals for the Armed
5 Forces established under the Uniform Code of Mili-
6 tary Justice.

7 (3) SUPREME COURT.—The decisions of the
8 United States Court of Appeals for the Armed
9 Forces regarding proceedings of tribunals estab-
10 lished under section 3 shall be subject to review by
11 the Supreme Court by writ of certiorari.

12 **SEC. 5. DETENTION.**

13 (a) IN GENERAL.—The President may direct the Sec-
14 retary of Defense to detain any person who is subject to
15 a tribunal established under section 3 pursuant to rules
16 and regulations that are promulgated by the Secretary and
17 are consistent with international law of armed conflict.

18 (b) DURATION OF DETENTION.—

19 (1) LIMITATION.—A person may be detained
20 under subsection (a) only while—

21 (A) there is in effect for the purposes of
22 this section a certification by the President that
23 the United States Armed Forces are engaged in
24 a state of armed conflict with al Qaeda or

1 Taliban forces in the region of Afghanistan or
2 with al Qaeda forces elsewhere; or

3 (B) an investigation with a view toward
4 prosecution, a prosecution, or a post-trial pro-
5 ceeding in the case of such person, pursuant to
6 the provisions of this Act, is ongoing.

7 (2) CERTIFICATION AND RECERTIFICATION.—A
8 certification of circumstances made under paragraph
9 (1) shall be effective for 180 days. The President
10 may make successive certifications of the cir-
11 cumstances.

12 (c) DISCLOSURE OF EVIDENCE.—Evidence that may
13 establish that an accused is not a person described in sub-
14 section (a) shall be disclosed to the accused and his coun-
15 sel, except that a summary of such evidence shall be pro-
16 vided to the accused and his counsel when the Attorney
17 General personally certifies that disclosure of the evidence
18 would cause identifiable harm to the prosecution of mili-
19 tary objectives, to the capture of other persons who are
20 subject to this Act or reside outside the United States,
21 or to the prevention of future terrorist acts directed
22 against Americans. A summary of evidence shall be as
23 complete as is possible in order to provide the accused with
24 an evidentiary basis to seek release from detention.

1 (d) DETENTION REVIEW.—The United States Dis-
2 trict Court for the District of Columbia shall have exclu-
3 sive jurisdiction to review any determination under this
4 section that the requirements of this section for detaining
5 an accused are satisfied. Findings of fact shall be sus-
6 tained unless they are clearly erroneous. Conclusions of
7 law and mixed questions of law and fact shall be subject
8 to de novo review.

9 (e) CONDITIONS OF DETENTION.—A person detained
10 under this section shall be—

11 (1) detained at an appropriate location des-
12 ignated by the Secretary of Defense;

13 (2) treated humanely, without any adverse dis-
14 tinction based on race, color, religion, gender, birth,
15 wealth, or any similar criteria;

16 (3) afforded adequate food, drinking water,
17 shelter, clothing, and medical treatment;

18 (4) sheltered under hygienic conditions and pro-
19 vided necessary means of personal hygiene; and

20 (5) allowed the free exercise of religion con-
21 sistent with the requirements of such detention.

22 **SEC. 6. SENSE OF CONGRESS.**

23 It is the sense of Congress that the President should
24 seek the cooperation of United States allies and other na-
25 tions in conducting the investigations and prosecutions, in-

cluding extraditions, of the persons who are responsible for the September 11, 2001 attacks on the United States, and use to the fullest extent possible multilateral institutions and mechanisms for carrying out such investigations and prosecutions.

SEC. 7. REPORTS TO CONGRESS.

Not less often than once every 12 months, the President shall submit to the Congress a report on the use of the authority provided by this Act. Each such report shall specify—

(1) each individual subject to, or detained pursuant to, a military tribunal authorized by this Act; and

(2) each individual detained pursuant to any actual or planned act of terrorism occurring on or after September 11, 2001, who has not been referred for trial in connection with that act of terrorism to a criminal court or to a military tribunal authorized by this Act.

SEC. 8. DEFINITIONS.

In this Act:

(1) **SEPTEMBER 11, 2001 ATTACKS ON THE UNITED STATES.**—The term “September 11, 2001 attacks on the United States” means the attacks on the Pentagon in the metropolitan area of Wash-

1 ington, District of Columbia, and the World Trade
2 Center, New York, New York, on September 11,
3 2001, and includes the hijackings of American Air-
4 lines flights 77 and 11 and United Airlines flights
5 175 and 93 on that date.

6 (2) UNITED STATES PERSON OR RESIDENT.—
7 The term “United States person or resident”
8 means—

9 (A) a United States person, as such term
10 is defined in section 101(i) of the Foreign Intel-
11 ligence Surveillance Act of 1978 (50 U.S.C.
12 1801(i)); or

13 (B) an alien lawfully admitted to the
14 United States for permanent residence.

15 **SEC. 9. TERMINATION OF AUTHORITY.**

16 The authority under this Act shall terminate at the
17 end of December 31, 2005.

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