



**HOUSE ARMED SERVICES COMMITTEE  
DUNCAN HUNTER – CHAIRMAN**

***PRESS RELEASE***

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**Opening Statement of Chairman Duncan Hunter**

***Full Committee Markup of H.R. 6054, the Military Commissions Act of 2006***

**Washington, D.C.** --- The committee meets today to mark up H.R. 6054, the Military Commissions Act of 2006. I am pleased to announce that the bill has been co-sponsored by the Majority Leader, Mr. Boehner, the Chairman of the Judiciary Committee, Mr. Sensenbrenner, and many colleagues on the committee. I can think of no better way to honor the fifth anniversary of September 11<sup>th</sup> than by establishing a system to prosecute the terrorists who, on that day, murdered thousands of innocent civilians, and who continue to seek to kill Americans both on and off the battlefield.

Our foremost consideration in writing this legislation is to protect American troops and American citizens from harm.

The war against terror has produced a new type of battlefield and a new type of enemy. It is necessary at this point for Congress to develop a military commission process that will allow for the effective prosecution of enemy combatants during this ongoing conflict. Unless Congress acts in response to the Supreme Court's

decision in Hamdan, the United States has no effective means to try and punish the perpetrators of September 11<sup>th</sup>, the attack on the U.S.S. Cole and the embassy bombings.

While we need to provide basic fairness in our prosecutions, we must preserve the ability of our warfighters to operate effectively on the battlefield.

I think a fair process has two guiding principles

- **First, the government must be able to present its case fully and without compromising its intelligence sources or compromising military necessity; and**
- **Second, the prosecutorial process must be done fairly, swiftly and conclusively.**

Before we begin, I would like to highlight key areas in this mark.

First, in Section 3, Congress authorizes the establishment of military commissions for alien unlawful enemy combatants, which is the legal term we use to define international terrorists and those who aid and support them, in a new separate chapter of Title 10 of the USC Code, Chapter 47A. While this new chapter is based upon the Uniform Code of Military Justice, it creates an entirely new structure for these trials.

In this mark we provide standards for the admission of evidence, including hearsay evidence and other statements, that are adapted to military exigencies and provide the military judge the necessary discretion to determine if the evidence is reliable and probative.

In this mark we allow the introduction of sensitive classified information into evidence outside the presence of the accused if the military judge determines this extraordinary step is necessary to protect national security. However, the military judge must also rule that the exclusion is no broader than necessary and will not deprive the accused of a full and fair trial. This step is only taken after a determination by the judge that any redactions, substitutions or alternative means will not protect the evidence.

Under this mark the accused will always have an attorney who is provided with this classified evidence. The accused will be provided a redacted summary of any such evidence to the extent practicable.

At the request of the TJAGs we have added to this mark the requirement that the members of the commission be instructed of this exclusion and that they be told to use that fact in assessing the weight to be given any such evidence.

This decision is reviewed by a new Court of Military Commission Review and by the U.S. Court of Appeals for the District of Columbia. These courts must certify that the judge's decision will not deprive the accused of a full and fair trial.

I think these rules protect classified evidence and yet preserve a fair trial. During an ongoing conflict, sharing sensitive intelligence sources, methods and other classified information with terrorist detainees could be highly dangerous to national security. I am not prepared to take that risk.

Section 4 of the mark amends 18 USC Section 2441, the War Crimes Act. Section (c)(3) of the War Crimes Act defines a war crime as any conduct which constitutes a violation of Common Article 3 of the Geneva Conventions. Common Article 3 prohibits some actions that are universally condemned, such as murder and torture but also prohibits "outrages upon personal dignity" and "humiliating and degrading treatment," phrases which are vague and do not provide adequate guidance to our personnel. Since violation of Common Article 3 is a felony under this act, it is necessary to amend U.S. law to provide clarity and certainty to the interpretation of this statute. The surest way to achieve that clarity and certainty is to define a list of specific offenses that constitute war crimes punishable as serious violations of Common Article 3.

Section 5 of the mark addresses the question of judicial review of claims by detainees by amending 28 USC Section 2241 to clarify the intent of the Detainee Treatment Act of 2005 to limit the right of detainees to challenge their detention. The practical effect of this amendment will be to eliminate the hundreds of detainee lawsuits that are pending in courts throughout the country and to consolidate all detainee treatment cases in the D.C. Circuit. Under this provision detainees will retain their opportunity to file legitimate challenges to their status and to challenge convictions by military commissions.

Section 6 of the mark defines the standards governing the treatment of detainees by the United States in the War on Terror. It defines our obligations under Geneva Common Article 3 by reference to the U.S. constitutional standard adopted by the Detainee Treatment Act of 2005. The DTA prohibits "cruel, inhuman, or degrading treatment or punishment" as defined by reference to the Fifth, Eighth and Fourteenth Amendments to

the U.S. Constitution for detainees held by the United States. This is consistent with the U.S. reservations to the Convention Against Torture is has been our standard interpretation of these terms.

Finally, Section 7 of the mark amends Section 1004 of the Detainee Treatment Act of 2005 to enhance the protection of U.S. government personnel engaged in authorized interrogations.

I strongly believe that this mark is the best way to prosecute enemy terrorists and to protect U.S. government personnel and service members who are fighting them.

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