Union Calendar No. 409

109TH CONGRESS 2D SESSION

H. R. 6054

[Report No. 109-664, Parts I and II]

To amend title 10, United States Code, to authorize trial by military commission for violations of the law of war, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

September 12, 2006

Mr. Hunter (for himself, Mr. Boehner, Mr. Sensenbrenner, Mr. Calvert, Mrs. Miller of Michigan, Mr. Miller of Florida, Mr. Shuster, Mr. Franks of Arizona, Mr. Wilson of South Carolina, Mr. Saxton, Mr. Porter, Mr. Kline, Mr. Hefley, Mr. Hayes, Mr. Sweeney, Mr. Chocola, and Mr. Lobiondo) introduced the following bill; which was referred to the Committee on Armed Services, and in addition to the Committees on the Judiciary and International Relations, 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

September 15, 2006

Reported from the Committee on Armed Services with amendments
[Omit the part struck through and insert the part printed in italic]

September 15, 2006

Referral to the Committees on the Judiciary and International Relations extended for a period ending not later than September 18, 2006

SEPTEMBER 18, 2006

The Committee on International Relations discharged

SEPTEMBER 18, 2006

Referral to the Committee on the Judiciary extended for a period ending not later than September 25, 2006

September 25, 2006

Additional sponsors: Mr. Renzi, Ms. Granger, and Mrs. Schmidt

September 25, 2006

Reported from the Committee on the Judiciary with amendments, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Omit the part struck through and insert the part printed in italic]

A BILL

To amend title 10, United States Code, 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; TABLE OF CONTENTS.
- 4 (a) Short Title.—This Act may be cited as the
- 5 "Military Commissions Act of 2006".
- 6 (b) Table of Contents for
- 7 this Act is as follows:
 - 1. Short title; table of contents.
 - 2. Construction of Presidential authority to establish military commissions.
 - 3. Military commissions.
 - 4. Clarification of conduct constituting war crime offense under Federal Criminal Code.
 - 5. Judicial review.
 - 6. Satisfaction of treaty obligations.
 - 7. Revisions to Detainee Treatment Act of 2005 relating to protection of certain United States Government personnel.
 - 8. Retroactive applicability.

8 SEC. 2. CONSTRUCTION OF PRESIDENTIAL AUTHORITY TO

- 9 ESTABLISH MILITARY COMMISSIONS.
- The authority to establish military commissions
- 11 under chapter 47A of title 10, United States Code, as
- 12 added by section 3(a), may not be construed to alter or

1	limit the authority of the President under the Constitution
2	to establish military commissions on the battlefield or in
3	occupied territories should circumstances so require.
4	SEC. 3. MILITARY COMMISSIONS.
5	(a) Military Commissions.—
6	(1) In General.—Subtitle A of title 10,
7	United States Code, is amended by inserting after
8	chapter 47 the following new chapter:
9	"CHAPTER 47A—MILITARY COMMISSIONS
10	"Subchapter "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 950p "SUBCHAPTER I—GENERAL PROVISIONS "Sec. "948a. Definitions. "948b. Military commissions generally. "948c. Persons subject to military commissions. "948d. Jurisdiction of military commissions. "948e. Annual report to congressional committees.
11	"§ 948a. Definitions
12	"In this chapter:
13	"(1) Unlawful enemy combatant.—(A) The
14	term 'unlawful enemy combatant' means an indi-
15	vidual determined by or under the authority of the
16	President or the Secretary of Defense—
17	"(i) to be part of or affiliated with a force
18	or organization (including al Qaeda, the

1	Taliban, any international terrorist organiza-
2	tion, or associated forces) that is engaged in
3	hostilities against the United States or its co-
4	belligerents in violation of the law of war;
5	"(ii) to have committed a hostile act in aid
6	of such a force or organization so engaged; or
7	"(iii) to have supported hostilities in aid of
8	such a force or organization so engaged.
9	"(B) Such term includes any individual deter-
10	mined by a Combatant Status Review Tribunal be-
11	fore the date of the enactment of the Military Com-
12	missions Act of 2006 to have been properly detained
13	as an enemy combatant.
14	"(C) Such term does not include any alien de-
15	termined by the President or the Secretary of De-
16	fense (whether on an individualized or collective
17	basis), or by any competent tribunal established
18	under their authority, to be—
19	"(i) a lawful enemy combatant (including a
20	prisoner of war); or
21	"(ii) a protected person whose trial by a
22	military commission under this chapter would
23	be inconsistent with Articles 64 through 76 of
24	the Geneva Convention Relative to the Protec-

1	tion of Civilian Persons in Time of War of Au-
2	gust 12, 1949.
3	"(D) For purposes of subparagraph (C)(ii), the
4	term 'protected person' refers to the category of per-
5	sons described in Article 4 of the Geneva Convention
6	Relative to the Protection of Civilian Persons in
7	Time of War of August 12, 1949.
8	"(2) Lawful enemy combatant.—The term
9	'lawful enemy combatant' means an individual deter-
10	mined by or under the authority of the President or
11	Secretary of Defense (whether on an individualized or
12	collective basis) to be—
13	"(A) a member of the regular forces of a
14	State party engaged in hostilities against the
15	United States or its co-belligerents;
16	"(B) a member of a militia, volunteer corps,
17	or organized resistance movement belonging to a
18	State party engaged in such hostilities, which
19	are under responsible command, wear a fixed
20	distinctive sign recognizable at a distance, carry
21	their arms openly, and abide by the law of war;
22	or
23	"(C) a member of a regular armed forces
24	who professes allegiance to a government engaged

1	in such hostilities, but not recognized by the
2	United States.
3	"(2) (3) Geneva conventions.—The term
4	'Geneva Conventions' means the international con-
5	ventions signed at Geneva on August 12, 1949, in-
6	cluding Common Article 3.
7	"(3) (4) Classified information.—The term
8	'classified information' means the following:
9	"(A) Any information or material that has
10	been determined by the United States Govern-
11	ment pursuant to statute, Executive order, or
12	regulation to require protection against unau-
13	thorized disclosure for reasons of national secu-
14	rity.
15	"(B) Any restricted data, as that term is
16	defined in section 11 y. of the Atomic Energy
17	Act of 1954 (42 U.S.C. 2014(y)).
18	" (4) (5) ALIEN.—The term 'alien' means an in-
19	dividual who is not a citizen of the United States.
20	"§ 948b. Military commissions generally
21	"(a) Authority for Military Commissions
22	UNDER THIS CHAPTER.—The President is authorized to
23	establish military commissions for violations of offenses
24	triable by military commission as provided in this chapter.

- 1 "(b) Construction of Provisions.—The proce-
- 2 dures for military commissions set forth in this chapter
- 3 are based upon the procedures for trial by general courts-
- 4 martial under chapter 47 of this title (the Uniform Code
- 5 of Military Justice). Chapter 47 of this title, including any
- 6 construction or application of such chapter and any ad-
- 7 ministrative practice under such chapter, does not apply
- 8 to trial by military commission under this chapter.
- 9 "(c) Status of Commissions Under Common Ar-
- 10 TICLE 3.—A military commission established under this
- 11 chapter is a regularly constituted court, affording all the
- 12 necessary 'judicial guarantees which are recognized as in-
- 13 dispensable by civilized peoples' for purposes of common
- 14 Article 3 of the Geneva Conventions.

15 "§ 948c. Persons subject to military commissions

- 16 "Any alien unlawful enemy combatant is subject to
- 17 trial by military commission under this chapter.

18 "§ 948d. Jurisdiction of military commissions

- 19 "(a) Jurisdiction.—A military commission under
- 20 this chapter shall have jurisdiction to try any offense made
- 21 punishable by this chapter when committed by an alien
- 22 unlawful enemy combatant before, on, or after September
- 23 11, 2001.
- 24 "(b) Lawful Enemy Combatants.—Military com-
- 25 missions under this chapter shall not have jurisdiction over

- 1 lawful enemy combatants. Lawful enemy combatants who
- 2 violate the law of war are subject to chapter 47 of this title.
- 3 Courts martial established under that chapter shall have ju-
- 4 risdiction to try a lawful enemy combatant for any offense
- 5 made punishable under this chapter.
- 6 "(b) (c) Punishments.—A military commission
- 7 under this chapter may, under such limitations as the Sec-
- 8 retary of Defense may prescribe, adjudge any punishment
- 9 not forbidden by this chapter, including the penalty of
- 10 death when authorized under this chapter.

11 "§ 948e. Annual report to congressional committees

- 12 "(a) Annual Report Required.—Not later than
- 13 December 31 each year, the Secretary of Defense shall
- 14 submit to the Committees on Armed Services of the Sen-
- 15 ate and the House of Representatives a report on any
- 16 trials conducted by military commissions under this chap-
- 17 ter during such year.
- 18 "(b) FORM.—Each report under this section shall be
- 19 submitted in unclassified form, but may include a classi-
- 20 fied annex.

21 "SUBCHAPTER II—COMPOSITION OF MILITARY

22 COMMISSIONS

[&]quot;Sec.

[&]quot;948h. Who may convene military commissions.

[&]quot;948i. Who may serve on military commissions.

[&]quot;948j. Military judges.

[&]quot;948k. Detail of trial counsel and defense counsel.

[&]quot;9481. Detail or employment of reporters and interpreters.

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

l "§ 948h. Who may convene military commissions

- 2 "Military commissions under this chapter may be
- 3 convened by the Secretary of Defense or by any officer
- 4 or official of the United States designated by the Secretary
- 5 for that purpose.

6 "§ 948i Who may serve on military commissions

- 7 "(a) IN GENERAL.—Any commissioned officer of the
- 8 armed forces on active duty is eligible to serve on a mili-
- 9 tary commission under this chapter.
- 10 "(b) Detail of Members.—When convening a mili-
- 11 tary commission under this chapter, the convening author-
- 12 ity shall detail as members of the commission such mem-
- 13 bers of the armed forces eligible under subsection (a), as
- 14 in the opinion of the convening authority, are fully quali-
- 15 fied for the duty by reason of age, education, training,
- 16 experience, length of service, and judicial temperament.
- 17 No member of an armed force is eligible to serve as a
- 18 member of a military commission when such member is
- 19 the accuser or a witness for the prosecution or has acted
- 20 as an investigator or counsel in the same case.
- 21 "(c) Excuse of Members.—Before a military com-
- 22 mission under this chapter is assembled for the trial of
- 23 a case, the convening authority may excuse a member
- 24 from participating in the case.

1 "§ 948j. Military judges

- 2 "(a) Detail of Military Judge.—A military judge
- 3 shall be detailed to each military commission under this
- 4 chapter. The Secretary of Defense shall prescribe regula-
- 5 tions providing for the manner in which military judges
- 6 are so detailed to military commissions. The military judge
- 7 shall preside over each military commission to which he
- 8 has been detailed.
- 9 "(b) QUALIFICATIONS.—A military judge shall be a
- 10 commissioned officer of the armed forces who is a member
- 11 of the bar of a Federal court, or a member of the bar
- 12 of the highest court of a State, and who is certified to
- 13 be qualified for duty under section 826 of this title (article
- 14 26 of the Uniform Code of Military Justice) as a military
- 15 judge in general courts-martial by the Judge Advocate
- 16 General of the armed force of which such military judge
- 17 is a member.
- 18 "(c) Ineligibility of Certain Individuals.—No
- 19 person is eligible to act as military judge in a case of a
- 20 military commission under this chapter if he is the accuser
- 21 or a witness or has acted as investigator or a counsel in
- 22 the same case.
- 23 "(d) Consultation With Members; Ineligi-
- 24 BILITY TO VOTE.—A military judge detailed to a military
- 25 commission under this chapter may not consult with the
- 26 members of the commission except in the presence of the

- 1 accused (except as otherwise provided in section 949d of
- 2 this title), trial counsel, and defense counsel, nor may he
- 3 vote with the members of the commission.
- 4 "(e) Other Duties.—A commissioned officer who
- 5 is certified to be qualified for duty as a military judge of
- 6 a military commission under this chapter may perform
- 7 such other duties as are assigned to him by or with the
- 8 approval of the Judge Advocate General of the armed
- 9 force of which such officer is a member or the designee
- 10 of such Judge Advocate General.
- 11 "(f) Prohibition on Evaluation of Fitness by
- 12 Convening Authority.—The convening authority of a
- 13 military commission under this chapter shall not prepare
- 14 or review any report concerning the effectiveness, fitness,
- 15 or efficiency of a military judge detailed to the military
- 16 commission which relates to his performance of duty as
- 17 a military judge on the military commission.

18 "§ 948k. Detail of trial counsel and defense counsel

- 19 "(a) Detail of Counsel Generally.—(1) Trial
- 20 counsel and military defense counsel shall be detailed for
- 21 each military commission under this chapter.
- 22 "(2) Assistant trial counsel and assistant and asso-
- 23 ciate defense counsel may be detailed for a military com-
- 24 mission under this chapter.

1	"(3) Military defense counsel for a military commis-
2	sion under this chapter shall be detailed as soon as prac-
3	ticable after the swearing of charges against the accused.
4	"(4) The Secretary of Defense shall prescribe regula-
5	tions providing for the manner in which trial counsel and
6	military defense counsel are detailed for military commis-
7	sions under this chapter and for the persons who are au-
8	thorized to detail such counsel for such commissions.
9	"(b) Trial Counsel.—Subject to subsection (d),
10	trial counsel detailed for a military commission under this
11	chapter must be—
12	"(1) a judge advocate (as that term is defined
13	in section 801 of this title (article 1 of the Uniform
14	Code of Military Justice) who is—
15	"(A) a graduate of an accredited law
16	school or is a member of the bar of a Federal
17	court or of the highest court of a State; and
18	"(B) certified as competent to perform du-
19	ties as trial counsel before general courts-mar-
20	tial by the Judge Advocate General of the
21	armed force of which he is a member; or
22	"(2) a civilian who is—
23	"(A) a member of the bar of a Federal
24	court or of the highest court of a State; and

1	"(B) otherwise qualified to practice before
2	the military commission pursuant to regulations
3	prescribed by the Secretary of Defense.
4	"(c) Military Defense Counsel.—Subject to sub-
5	section (d), military defense counsel detailed for a military
6	commission under this chapter must be a judge advocate
7	(as so defined) who is—
8	"(1) a graduate of an accredited law school or
9	is a member of the bar of a Federal court or of the
10	highest court of a State; and
11	"(2) certified as competent to perform duties as
12	defense counsel before general courts-martial by the
13	Judge Advocate General of the armed force of which
14	he is a member.
15	"(d) Ineligibility of Certain Individuals.—No
16	person who has acted as an investigator, military judge,
17	or member of a military commission under this chapter
18	in any case may act later as trial counsel or military de-
19	fense counsel in the same case. No person who has acted
20	for the prosecution before a military commission under
21	this chapter may act later in the same case for the de-
22	fense, nor may any person who has acted for the defense
23	before a military commission under this chapter act later
24	in the same case for the prosecution.

	14
1	"§ 9481. Detail or employment of reporters and inter-
2	preters
3	"(a) Court Reporters.—Under such regulations
4	as the Secretary of Defense may prescribe, the convening
5	authority of a military commission under this chapter
6	shall detail to or employ for the commission qualified court
7	reporters, who shall make a verbatim recording of the pro-
8	ceedings of and testimony taken before the commission.
9	"(b) Interpreters.—Under such regulations as the
10	Secretary of Defense may prescribe, the convening author-
11	ity of a military commission under this chapter may detail
12	to or employ for the military commission interpreters who
13	shall interpret for the commission and, as necessary, for
14	trial counsel and defense counsel.
15	"(c) Transcript; Record.—The transcript of a
16	military commission under this chapter shall be under the
17	control of the convening authority of the commission, who
18	shall also be responsible for preparing the record of the
19	proceedings.
20	"§ 948m. Number of members; excuse of members; ab-
21	sent and additional members
22	"(a) Number of Members.—(1) A military com-

24 paragraph (2), have at least five members.

mission under this chapter shall, except as provided in

- 1 "(2) In a case in which the death penalty is sought,
- 2 the military commission shall have the number of members
- 3 prescribed by section 949m(c) of this title.
- 4 "(b) Excuse of Members.—No member of a mili-
- 5 tary commission under this chapter may be absent or ex-
- 6 cused after the military commission has been assembled
- 7 for the trial of a case unless excused—
- 8 "(1) as a result of challenge;
- 9 "(2) by the military judge for physical disability
- or other good cause; or
- 11 "(3) by order of the convening authority for
- 12 good cause.
- 13 "(c) Absent and Additional Members.—When-
- 14 ever a military commission under this chapter is reduced
- 15 below the number of members required by subsection (a),
- 16 the trial may not proceed unless the convening authority
- 17 details new members sufficient to provide not less than
- 18 such number. The trial may proceed with the new mem-
- 19 bers present after the recorded evidence previously intro-
- 20 duced before the members has been read to the military
- 21 commission in the presence of the military judge, the ac-
- 22 cused (except as provided in section 949d of this title),
- 23 and counsel for both sides.
- 24 "SUBCHAPTER III—PRE-TRIAL PROCEDURE

[&]quot;Sec.

[&]quot;948q. Charges and specifications.

"948r. Compulsory self-incrimination prohibited; treatment of statements obtained by torture and other statements.

"948s. Service of charges.

1 "§ 948q. Charges and specifications

- 2 "(a) Charges and Specifications.—Charges and
- 3 specifications against an accused in a military commission
- 4 under this chapter shall be signed by a person subject to
- 5 chapter 47 of this title under oath before a commissioned
- 6 officer of the armed forces authorized to administer oaths
- 7 and shall state—
- 8 "(1) that the signer has personal knowledge of,
- 9 or reason to believe, the matters set forth therein;
- 10 and
- "(2) that they are true in fact to the best of the
- signer's knowledge and belief.
- 13 "(b) Notice to Accused.—Upon the swearing of
- 14 the charges and specifications in accordance with sub-
- 15 section (a), the accused shall be informed of the charges
- 16 against him as soon as practicable.
- 17 "§ 948r. Compulsory self-incrimination prohibited;
- 18 treatment of statements obtained by tor-
- 19 ture and other statements
- 20 "(a) In General.—No person shall be required to
- 21 testify against himself at a proceeding of a military com-
- 22 mission under this chapter.
- 23 "(b) Exclusion of Statements Obtained by
- 24 TORTURE.—A statement obtained by use of torture,

- 1 whether or not under color of law, shall not be admissible
- 2 against the accused in a military commission under this
- 3 chapter, except against a person accused of torture as evi-
- 4 dence the statement was made.
- 5 "(c) Other Statements.—An otherwise admissible
- 6 statement, including a statement allegedly obtained by co-
- 7 ercion, shall not be admitted in evidence in a military com-
- 8 mission under this chapter if the military judge finds that
- 9 the circumstances under which the statement was made
- 10 render the statement unreliable or lacking in probative
- 11 value.
- 12 "(d) TORTURE.—In this section, the term 'torture'
- 13 has the meaning given that term in section 2340 of title
- 14 18.

15 "§ 948s. Service of charges

- 16 "The trial counsel assigned to a case before a military
- 17 commission under this chapter shall cause to be served
- 18 upon the accused and military defense counsel a copy of
- 19 the charges upon which trial is to be had. Such charges
- 20 shall be served in English and, if appropriate, in another
- 21 language that the accused understands. Such service shall
- 22 be made sufficiently in advance of trial to prepare a de-
- 23 fense.

24 "SUBCHAPTER IV—TRIAL PROCEDURE

[&]quot;Sec.

[&]quot;949a Rules

[&]quot;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.
- "9491. Voting and rulings.
- "949m. Number of votes required.
- "949n. Military commission to announce action.
- "949o. Record of trial.

1 **"§ 949a. Rules**

- 2 "(a) Procedures.—Pretrial, trial, and post-trial
- 3 procedures, including elements and modes of proof, for
- 4 cases triable by military commission under this chapter
- 5 shall be prescribed by the Secretary of Defense, but may
- 6 not be contrary to or inconsistent with this chapter.
- 7 "(b) Rules of Evidence.—(1) Subject to such ex-
- 8 ceptions and limitations as the Secretary may prescribe
- 9 by regulation, evidence in a military commission under
- 10 this chapter shall be admissible if the military judge deter-
- 11 mines that the evidence would have probative value to a
- 12 reasonable person.
- 13 "(2) Hearsay evidence is admissible unless the mili-
- 14 tary judge finds that the circumstances render the evi-
- 15 dence unreliable or lacking in probative value. However,
- 16 such evidence may be admitted only if the proponent of
- 17 the evidence makes the evidence known to the adverse
- 18 party in advance of trial or hearing.

- 1 "(3) The military judge shall exclude any evidence
- 2 the probative value of which is substantially outweighed—
- 3 "(A) by the danger of unfair prejudice, confu-
- 4 sion of the issues, or misleading the members of the
- 5 commission; or
- 6 "(B) by considerations of undue delay, waste of
- 7 time, or needless presentation of cumulative evi-
- 8 dence.
- 9 "(c) Notification to Congressional Commit-
- 10 TEES OF CHANGES TO PROCEDURES.—Not later than 60
- 11 days before the date on which any proposed modification
- 12 of the procedures in effect for military commissions under
- 13 this chapter goes into effect, the Secretary of Defense
- 14 shall submit to the Committee on Armed Services of the
- 15 Senate and the Committee on Armed Services of the
- 16 House of Representatives a report describing the modifica-
- 17 tion.
- 18 "§ 949b. Unlawfully influencing action of military
- 19 **commission**
- 20 "(a) In General.—(1) No authority convening a
- 21 military commission under this chapter may censure, rep-
- 22 rimand, or admonish the military commission, or any
- 23 member, military judge, or counsel thereof, with respect
- 24 to the findings or sentence adjudged by the military com-

- 1 mission, or with respect to any other exercises of its or
- 2 his functions in the conduct of the proceedings.
- 3 "(2) No person may attempt to coerce or, by any un-
- 4 authorized means, influence the action of a military com-
- 5 mission under this chapter, or any member thereof, in
- 6 reaching the findings or sentence in any case, or the action
- 7 of any convening, approving, or reviewing authority with
- 8 respect to his judicial acts.
- 9 "(3) Paragraphs (1) and (2) do not apply with re-
- 10 spect to—
- 11 "(A) general instructional or informational
- 12 courses in military justice if such courses are de-
- signed solely for the purpose of instructing members
- of a command in the substantive and procedural as-
- pects of military commissions; or
- 16 "(B) statements and instructions given in open
- proceedings by a military judge or counsel.
- 18 "(b) Prohibition on Consideration of Actions
- 19 ON COMMISSION IN EVALUATION OF FITNESS.—In the
- 20 preparation of an effectiveness, fitness, or efficiency report
- 21 or any other report or document used in whole or in part
- 22 for the purpose of determining whether a commissioned
- 23 officer of the armed forces is qualified to be advanced in
- 24 grade, or in determining the assignment or transfer of any

- 1 such officer or whether any such officer should be retained
- 2 on active duty, no person may—
- 3 "(1) consider or evaluate the performance of
- 4 duty of any member of a military commission under
- 5 this chapter; or
- 6 "(2) give a less favorable rating or evaluation
- 7 to any commissioned officer because of the zeal with
- 8 which such officer, in acting as counsel, represented
- 9 any accused before a military commission under this
- 10 chapter.

11 "§ 949c. Duties of trial counsel and defense counsel

- 12 "(a) Trial Counsel.—The trial counsel of a mili-
- 13 tary commission under this chapter shall prosecute in the
- 14 name of the United States.
- 15 "(b) Defense Counsel.—(1) The accused shall be
- 16 represented in his defense before a military commission
- 17 under this chapter as provided in this subsection.
- 18 "(2) The accused shall be represented by military
- 19 counsel detailed under section 948k of this title.
- 20 "(3) The accused may be represented by civilian
- 21 counsel if retained by the accused, but only if such civilian
- 22 counsel—
- 23 "(A) is a United States citizen;

- 1 "(B) is admitted to the practice of law in a 2 State, district, or possession of the United States or 3 before a Federal court;
- "(C) has not been the subject of any sanction
 of disciplinary action by any court, bar, or other
 competent governmental authority for relevant misconduct:
- 8 "(D) has been determined to be eligible for ac-9 cess to classified information that is classified at the 10 level Secret or higher; and
- "(E) has signed a written agreement to comply
 with all applicable regulations or instructions for
 counsel, including any rules of court for conduct
 during the proceedings.
- "(4) Civilian defense counsel shall protect any classified information received during the course of representation of the accused in accordance with all applicable law governing the protection of classified information and may not divulge such information to any person not authorized to receive it.
- 21 "(5) If the accused is represented by civilian counsel,22 military counsel detailed shall act as associate counsel.
- "(6) The accused is not entitled to be represented by more than one military counsel. However, the person authorized under regulations prescribed under section 948k

- 1 of this title to detail counsel, in that person's sole discre-
- 2 tion, may detail additional military counsel to represent
- 3 the accused.
- 4 "(7) Defense counsel may cross-examine each witness
- 5 for the prosecution who testifies before a military commis-
- 6 sion under this chapter.

7 **"§ 949d. Sessions**

- 8 "(a) Sessions Without Presence of Mem-
- 9 BERS.—(1) At any time after the service of charges which
- 10 have been referred for trial by military commission under
- 11 this chapter, the military judge may call the military com-
- 12 mission into session without the presence of the members
- 13 for the purpose of—
- 14 "(A) hearing and determining motions raising
- defenses or objections which are capable of deter-
- mination without trial of the issues raised by a plea
- of not guilty;
- 18 "(B) hearing and ruling upon any matter which
- may be ruled upon by the military judge under this
- chapter, whether or not the matter is appropriate for
- 21 later consideration or decision by the members;
- 22 "(C) if permitted by regulations prescribed by
- 23 the Secretary of Defense, receiving the pleas of the
- 24 accused; and

"(D) performing any other procedural function 1 2 which may be performed by the military judge under 3 this chapter or under rules prescribed pursuant to 4 section 949a of this title and which does not require 5 the presence of the members. 6 "(2) Except as provided in subsections (c), (d), and 7 (e), any proceedings under paragraph (1) shall— "(A) be conducted in the presence of the ac-8 9 cused, defense counsel, and trial counsel; and "(B) be made part of the record. 10 "(b) Proceedings in Presence of Accused.— 11 12 Except as provided in subsections (c) and (e), all proceedings of a military commission under this chapter, in-13 cluding any consultation of the members with the military 14 15 judge or counsel, shall— "(1) be in the presence of the accused, defense 16 17 counsel, and trial counsel; and "(2) be made a part of the record. 18 "(c) Deliberation or Vote of Members.—When 19 the members of a military commission under this chapter 20 21 deliberate or vote, only the members may be present. 22 "(d) Closure of Proceedings.—(1) The military judge may close to the public all or part of the proceedings of a military commission under this chapter, but only in

accordance with this subsection.

- 1 "(2)(A) The military judge may close to the public
- 2 all or a portion of the proceedings of a military commis-
- 3 sion under paragraph (1), or permit the admission of clas-
- 4 sified information outside the presence of the accused,
- 5 based upon a presentation (including an exparte or in
- 6 camera presentation) by either the prosecution or the de-
- 7 fense.
- 8 "(B) Trial counsel may not make a presentation re-
- 9 questing the admission of classified information outside
- 10 the presence of the accused unless the head of the depart-
- 11 ment or agency which has control over the matter (after
- 12 personal consideration by that officer) certifies in writing
- 13 to the military judge that—
- 14 "(i) the disclosure of the classified information
- to the accused could reasonably be expected to prej-
- 16 udice the national security; and
- 17 "(ii) that such evidence has been declassified to
- the maximum extent possible, consistent with the re-
- 19 quirements of national security.
- 20 "(3) The military judge may close to the public all
- 21 or a portion of the proceedings of a military commission
- 22 under paragraph (1) upon making a specific finding that
- 23 such closure is necessary to—
- 24 "(A) protect information the disclosure of which
- could reasonably be expected to cause identifiable

1	damage to the public interest or the national secu-
2	rity, including intelligence or law enforcement
3	sources, methods, or activities; or
4	"(B) ensure the physical safety of individuals
5	"(e) Exclusion of Accused From Certain Pro-
6	CEEDINGS.—(1) The military judge may not exclude the
7	accused from any portion of the proceeding except upon
8	a specific finding of each of the following:
9	"(A) That the exclusion of the accused—
10	"(i) is necessary to protect classified infor-
11	mation the disclosure of which to the accused
12	could reasonably be expected to cause identifi-
13	able damage to the national security, including
14	intelligence or law enforcement sources, meth-
15	ods, or activities;
16	"(ii) is necessary to ensure the physical
17	safety of individuals; or
18	"(iii) is necessary to prevent disruption of
19	the proceedings by the accused.
20	"(B) That the exclusion of the accused—
21	"(i) is no broader than necessary; and
22	"(ii) will not deprive the accused of a full
23	and fair trial

- 1 "(2)(A) A finding under paragraph (1) may be based
- 2 upon a presentation, including a presentation ex parte or
- 3 in camera, by either trial counsel or defense counsel.
- 4 "(B) Before trial counsel may make a presentation
- 5 for purposes of subparagraph (A) requesting the admis-
- 6 sion of classified information that has not been provided
- 7 to the accused, the head of the executive or military de-
- 8 partment or governmental agency concerned shall ensure,
- 9 and shall certify in writing to the military judge, that such
- 10 evidence has been declassified to the maximum extent pos-
- 11 sible, consistent with the requirements of national secu-
- 12 rity.
- 13 "(3)(A) No evidence may be admitted that has not
- 14 been provided to the accused unless the evidence is classi-
- 15 fied information and the military judge makes a specific
- 16 finding that—
- "(i) consideration of that evidence by the mili-
- tary commission, without the presence of the ac-
- 19 cused, is warranted;
- 20 "(ii) admission of an unclassified summary or
- 21 redacted version of that evidence would not be an
- adequate substitute and, in the case of testimony, al-
- ternative methods to obscure the identity of the wit-
- 24 ness are not adequate; and

1	"(iii) admission of the evidence would not de-
2	prive the accused of a full and fair trial.
3	"(B) If the accused is excluded from a portion of the
4	proceedings, the accused shall be provided with a redacted
5	transcript of the proceedings from which excluded and, to
6	the extent practicable, an unclassified summary of any evi-
7	dence introduced. Under no circumstances shall such a
8	summary or redacted transcript compromise the interests
9	warranting the exclusion of the accused under paragraph
10	(1).
11	"(4)(A) Military defense counsel shall be present and
12	able to participate in all trial proceedings and shall be
13	given access to all evidence admitted under paragraph (3).
14	"(B) Civilian defense counsel shall be permitted to
15	be present and to participate in proceedings from which
16	the accused is excluded under this subsection, and shall
17	be given access to classified information admitted under
18	this subsection, if—
19	"(i) civilian defense counsel has obtained the
20	necessary security clearances; and
21	"(ii) the presence of civilian defense counsel or
22	access of civilian defense counsel to such informa-
23	tion, as applicable, is consistent with regulations to
24	protect classified information that the Secretary of
25	Defense may prescribe.

- 1 "(C) Any defense counsel who receives classified in-
- 2 formation admitted under this subsection shall not be obli-
- 3 gated to, and may not, disclose that information to the
- 4 accused.
- 5 "(D) At all times the accused must have defense
- 6 counsel with sufficient security clearance to participate in
- 7 any proceeding, including an ex parte or in camera presen-
- 8 tation, with respect to classified information.
- 9 "(5) If evidence has been admitted under this sub-
- 10 section that has not been provided to the accused, the
- 11 judge shall instruct the members of the commission—
- "(A) that such evidence was so admitted; and
- "(B) that, in weighing the value of that evi-
- dence, the commission shall consider the fact that
- such evidence was admitted without having been
- provided to the accused.
- 17 "(f) Admission of Statements of Accused.—(1)
- 18 A statement described in paragraph (2) that is made by
- 19 the accused during an interrogation, even if otherwise
- 20 classified, may not be admitted into evidence in a military
- 21 commission under this chapter unless the accused is
- 22 present for the admission of the statement into evidence
- 23 or the statement is otherwise provided to the accused.
- 24 "(2) A statement of an accused described in this
- 25 paragraph is a statement communicated knowingly and di-

- 1 rectly by the accused in response to questioning by United
- 2 States or foreign military, intelligence, or criminal inves-
- 3 tigative personnel.
- 4 "(3) This subsection shall not be construed to prevent
- 5 the redaction of intelligence sources or methods, which do
- 6 not constitute statements of the accused, from any docu-
- 7 ment provided to the accused or admitted into evidence.

8 "§ 949e. Continuances

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

13 **"§ 949f. Challenges**

- 14 "(a) Challenges Authorized.—The military
- 15 judge and members of a military commission under this
- 16 chapter may be challenged by the accused or trial counsel
- 17 for cause stated to the commission. The military judge
- 18 shall determine the relevance and validity of challenges for
- 19 cause. The military judge may not receive a challenge to
- 20 more than one person at a time. Challenges by trial coun-
- 21 sel shall ordinarily be presented and decided before those
- 22 by the accused are offered.
- 23 "(b) Peremptory Challenges.—Each accused
- 24 and the trial counsel are entitled to one peremptory chal-

- 1 lenge. The military judge may not be challenged except
- 2 for cause.
- 3 "(c) Challenges Against Additional Mem-
- 4 BERS.—Whenever additional members are detailed to a
- 5 military commission under this chapter, and after any
- 6 challenges for cause against such additional members are
- 7 presented and decided, each accused and the trial counsel
- 8 are entitled to one peremptory challenge against members
- 9 not previously subject to peremptory challenge.

10 **"§ 949g. Oaths**

- 11 "(a) IN GENERAL.—(1) Before performing their re-
- 12 spective duties in a military commission under this chap-
- 13 ter, military judges, members, trial counsel, defense coun-
- 14 sel, reporters, and interpreters shall take an oath to per-
- 15 form their duties faithfully.
- "(2) The form of the oath required by paragraph (1),
- 17 the time and place of the taking thereof, the manner of
- 18 recording the same, and whether the oath shall be taken
- 19 for all cases in which duties are to be performed or for
- 20 a particular case, shall be as prescribed in regulations of
- 21 the Secretary of Defense. Those regulations may provide
- 22 that—
- 23 "(A) an oath to perform faithfully duties as a
- 24 military judge, trial counsel, or defense counsel may
- be taken at any time by any judge advocate or other

- 1 person certified to be qualified or competent for the
- 2 duty; and
- 3 "(B) if such an oath is taken, such oath need
- 4 not again be taken at the time the judge advocate
- 5 or other person is detailed to that duty.
- 6 "(b) Witnesses.—Each witness before a military
- 7 commission under this chapter shall be examined on oath.

8 "§ 949h. Former jeopardy

- 9 "(a) In General.—No person may, without his con-
- 10 sent, be tried by a military commission under this chapter
- 11 a second time for the same offense.
- 12 "(b) Scope of Trial.—No proceeding in which the
- 13 accused has been found guilty by military commission
- 14 under this chapter upon any charge or specification is a
- 15 trial in the sense of this section until the finding of guilty
- 16 has become final after review of the case has been fully
- 17 completed.

18 "§ 949i. Pleas of the accused

- 19 "(a) Entry of Plea of Not Guilty.—If an ac-
- 20 cused in a military commission under this chapter after
- 21 a plea of guilty sets up matter inconsistent with the plea,
- 22 or if it appears that the accused has entered the plea of
- 23 guilty through lack of understanding of its meaning and
- 24 effect, or if the accused fails or refuses to plead, a plea
- 25 of not guilty shall be entered in the record, and the mili-

- 1 tary commission shall proceed as though the accused had
- 2 pleaded not guilty.
- 3 "(b) FINDING OF GUILT AFTER GUILTY PLEA.—
- 4 With respect to any charge or specification to which a plea
- 5 of guilty has been made by the accused in a military com-
- 6 mission under this chapter and accepted by the military
- 7 judge, a finding of guilty of the charge or specification
- 8 may be entered immediately without a vote. The finding
- 9 shall constitute the finding of the commission unless the
- 10 plea of guilty is withdrawn prior to announcement of the
- 11 sentence, in which event the proceedings shall continue as
- 12 though the accused had pleaded not guilty.
- 13 "§ 949j. Opportunity to obtain witnesses and other
- 14 evidence
- 15 "(a) Right of Defense Counsel.—Defense coun-
- 16 sel in a military commission under this chapter shall have
- 17 a reasonable opportunity to obtain witnesses and other evi-
- 18 dence, including evidence in the possession of the United
- 19 States, as provided in regulations prescribed by the Sec-
- 20 retary of Defense.
- 21 "(b) Process for Compulsion.—Process issued in
- 22 a military commission under this chapter to compel wit-
- 23 nesses to appear and testify and to compel the production
- 24 of other evidence—

1	"(1) shall be similar to that which courts of the
2	United States having criminal jurisdiction may law-
3	fully issue; and
4	"(2) shall run to any place where the United
5	States shall have jurisdiction thereof.
6	"(c) Treatment of Classified Information.—
7	The military judge in a military commission under this
8	chapter, upon a sufficient showing, may authorize trial
9	counsel, in making documents available to the accused
10	through discovery conducted pursuant to such rules as the
11	Secretary of Defense shall prescribe, to delete specified
12	items of classified information from such documents and,
13	when such a deletion is made—
14	"(1) to substitute an unclassified summary of
15	the classified information in such documents; or
16	"(2) to substitute an unclassified statement ad-
17	mitting relevant facts that classified information in
18	such documents would tend to prove.
19	"(d) DISCLOSURE OF EXCULPATORY EVIDENCE.—
20	(1) As soon as practicable, trial counsel in a military com-
21	mission under this chapter shall disclose to the defense
22	the existence of any evidence known to trial counsel that
23	reasonably tends to exculpate the accused.
24	"(2) Exculpatory evidence that consists of classified
25	information may be provided solely to defense counsel, and

- 1 not the accused, after review in camera by the military 2 judge. 3 "(3) Before evidence may be withheld from the accused under this subsection, the head of the executive or 5 military department or government agency concerned shall ensure, and shall certify in writing to the military judge, 6 7 that— "(A) the disclosure of such evidence to the ac-8 9 cused could reasonably be expected to prejudice the 10 national security; and 11 "(B) such evidence has been declassified to the 12 maximum extent possible, consistent with the re-13 quirements of national security. 14 "(4) Any classified exculpatory evidence that is not 15 disclosed to the accused under this subsection— "(A) shall be provided to military defense coun-16 17 sel; 18 "(B) shall be provided to civilian defense coun-19 sel, if civilian defense counsel has obtained the nec-20 essary security clearances and access to such evi-
- 24 "(C) shall be provided to the accused in a re-25 dacted or summary form, if it is possible to do so

dence is consistent with regulations that the Sec-

retary may prescribe to protect classified informa-

tion; and

21

22

23

- 1 without compromising intelligence sources, methods,
- 2 or activities or other national security interests.
- 3 "(5) A defense counsel who receives *classifed* evidence
- 4 under this subsection shall not be obligated to, and may
- 5 not, disclose that evidence to the accused.

6 "§ 949k. Defense of lack of mental responsibility

- 7 "(a) Affirmative Defense.—It is an affirmative
- 8 defense in a trial by military commission under this chap-
- 9 ter that, at the time of the commission of the acts consti-
- 10 tuting the offense, the accused, as a result of a severe
- 11 mental disease or defect, was unable to appreciate the na-
- 12 ture and quality or the wrongfulness of the acts. Mental
- 13 disease or defect does not otherwise constitute a defense.
- 14 "(b) BURDEN OF PROOF.—The accused in a military
- 15 commission under this chapter has the burden of proving
- 16 the defense of lack of mental responsibility by clear and
- 17 convincing evidence.
- 18 "(c) Findings Following Assertion of De-
- 19 FENSE.—Whenever lack of mental responsibility of the ac-
- 20 cused with respect to an offense is properly at issue in
- 21 a military commission under this chapter, the military
- 22 judge shall instruct the members of the commission as to
- 23 the defense of lack of mental responsibility under this sec-
- 24 tion and shall charge them to find the accused—
- 25 "(1) guilty;

- 1 "(2) not guilty; or
- 2 "(3) subject to subsection (d), not guilty by rea-
- 3 son of lack of mental responsibility.
- 4 "(d) Majority Vote Required for Finding.—
- 5 The accused shall be found not guilty by reason of lack
- 6 of mental responsibility under subsection (c)(3) only if a
- 7 majority of the members present at the time the vote is
- 8 taken determines that the defense of lack of mental re-
- 9 sponsibility has been established.

10 "§ 9491. Voting and rulings

- 11 "(a) Vote by Secret Written Ballot.—Voting
- 12 by members of a military commission under this chapter
- 13 on the findings and on the sentence shall be by secret writ-
- 14 ten ballot.
- 15 "(b) Rulings.—(1) The military judge in a military
- 16 commission under this chapter shall rule upon all ques-
- 17 tions of law, including the admissibility of evidence and
- 18 all interlocutory questions arising during the proceedings.
- 19 "(2) Any ruling made by the military judge upon a
- 20 question of law or an interlocutory question (other than
- 21 the factual issue of mental responsibility of the accused)
- 22 is conclusive and constitutes the ruling of the military
- 23 commission. However, a military judge may change his
- 24 ruling at any time during the trial.

- 1 "(c) Instructions Prior to Vote.—Before a vote
- 2 is taken of the findings of a military commission under
- 3 this chapter, the military judge shall, in the presence of
- 4 the accused and counsel, instruct the members as to the
- 5 elements of the offense and charge them—
- 6 "(1) that the accused must be presumed to be
- 7 innocent until his guilt is established by legal and
- 8 competent evidence beyond a reasonable doubt;
- 9 "(2) that in the case being considered, if there
- is a reasonable doubt as to the guilt of the accused,
- the doubt must be resolved in favor of the accused
- and he must be acquitted;
- "(3) that, if there is reasonable doubt as to the
- degree of guilt, the finding must be in a lower de-
- gree as to which there is no reasonable doubt; and
- 16 "(4) that the burden of proof to establish the
- guilt of the accused beyond a reasonable doubt is
- 18 upon the United States.

19 "§ 949m. Number of votes required

- 20 "(a) Conviction.—No person may be convicted by
- 21 a military commission under this chapter of any offense,
- 22 except as provided in section 949i(b) of this title or by
- 23 concurrence of two-thirds of the members present at the
- 24 time the vote is taken.

- 1 "(b) Sentences.—(1) No person may be sentenced
- 2 by a military commission to suffer death, except insofar
- 3 as—
- 4 "(A) the penalty of death is expressly author-
- 5 ized under this chapter for an offense of which the
- 6 accused has been found guilty;
- 7 "(B) trial counsel expressly sought the penalty
- 8 of death by filing an appropriate notice in advance
- 9 of trial;
- "(C) the accused is convicted of the offense by
- the concurrence of all the members; and
- "(D) all the members concur in the sentence of
- death.
- 14 "(2) No person may be sentenced to life imprison-
- 15 ment, or to confinement for more than 10 years, by a mili-
- 16 tary commission under this chapter except by the concur-
- 17 rence of three-fourths of the members present at the time
- 18 the vote is taken.
- 19 "(3) All other sentences shall be determined by a
- 20 military commission by the concurrence of two-thirds of
- 21 the members present at the time the vote is taken.
- 22 "(c) Number of Members Required for Pen-
- 23 ALTY OF DEATH.—(1) Except as provided in paragraph
- 24 (2), in a case in which the penalty of death is sought, the

- 1 number of members of the military commission under this
- 2 chapter shall be not less than 12.
- 3 "(2) In any case described in paragraph (1) in which
- 4 12 members are not reasonably available because of phys-
- 5 ical conditions or military exigencies, the convening au-
- 6 thority shall specify a lesser number of members for the
- 7 military commission (but not fewer than 9 members), and
- 8 the military commission may be assembled, and the trial
- 9 held, with not fewer than the number of members so speci-
- 10 fied. In such a case, the convening authority shall make
- 11 a detailed written statement, to be appended to the record,
- 12 stating why a greater number of members were not rea-
- 13 sonably available.

14 "§ 949n. Military commission to announce action

- 15 "A military commission under this chapter shall an-
- 16 nounce its findings and sentence to the parties as soon
- 17 as determined.

18 "§ 949o. Record of trial

- 19 "(a) RECORD; AUTHENTICATION.—Each military
- 20 commission under this chapter shall keep a separate, ver-
- 21 batim, record of the proceedings in each case brought be-
- 22 fore it, and the record shall be authenticated by the signa-
- 23 ture of the military judge. If the record cannot be authen-
- 24 ticated by the military judge by reason of his death, dis-
- 25 ability, or absence, it shall be authenticated by the signa-

- 1 ture of the trial counsel or by a member of the commission
- 2 if the trial counsel is unable to authenticate it by reason
- 3 of his death, disability, or absence. Where appropriate,
- 4 and as provided in regulations prescribed by the Secretary
- 5 of Defense, the record of a military commission under this
- 6 chapter may contain a classified annex.
- 7 "(b) Complete Record Required.—A complete
- 8 record of the proceedings and testimony shall be prepared
- 9 in every military commission under this chapter.
- 10 "(c) Provision of Copy to Accused.—A copy of
- 11 the record of the proceedings of the military commission
- 12 under this chapter shall be given the accused as soon as
- 13 it is authenticated. If the record contains classified infor-
- 14 mation, or a classified annex, the accused shall be given
- 15 a redacted version of the record. The appropriate defense
- 16 counsel shall have access to the unredacted record, as pro-
- 17 vided in regulations prescribed by the Secretary of De-
- 18 fense.

19 "SUBCHAPTER V—SENTENCES

20 "§ 949s. Cruel or unusual punishments prohibited

- 21 "Punishment by flogging, or by branding, marking,
- 22 or tattooing on the body, or any other cruel or unusual
- 23 punishment, may not be adjudged by a military commis-

[&]quot;Sec.

[&]quot;949s. Cruel or unusual punishments prohibited.

[&]quot;949t. Maximum limits.

[&]quot;949u. Execution of confinement.

- 1 sion under this chapter or inflicted under this chapter
- 2 upon any person subject to this chapter. The use of irons,
- 3 single or double, except for the purpose of safe custody,
- 4 is prohibited under this chapter.

5 "§ 949t. Maximum limits

- 6 "The punishment which a military commission under
- 7 this chapter may direct for an offense may not exceed such
- 8 limits as the President or Secretary of Defense may pre-
- 9 scribe for that offense.

10 "§ 949u. Execution of confinement

- 11 "(a) IN GENERAL.—Under such regulations as the
- 12 Secretary of Defense may prescribe, a sentence of confine-
- 13 ment adjudged by a military commission under this chap-
- 14 ter may be carried into execution by confinement—
- 15 "(1) in any place of confinement under the con-
- trol of any of the armed forces; or
- 17 "(2) in any penal or correctional institution
- under the control of the United States or its allies,
- or which the United States may be allowed to use.
- 20 "(b) Treatment During Confinement by Other
- 21 Than the Armed Forces.—Persons confined under
- 22 subsection (a)(2) in a penal or correctional institution not
- 23 under the control of an armed force are subject to the
- 24 same discipline and treatment as persons confined or com-
- 25 mitted by the courts of the United States or of the State,

- 1 District of Columbia, or place in which the institution is
- 2 situated.

3 "SUBCHAPTER VI—POST-TRIAL PROCEDURE

4 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 Columbia Circuit and the Supreme Court.
- "950h. Appellate counsel.
- "950i. Execution of sentence; suspension of sentence.
- "950j. Finality or proceedings, findings, and sentences.

5 "§ 950a. Error of law; lesser included offense

- 6 "(a) Error of Law.—A finding or sentence of a
- 7 military commission under this chapter may not be held
- 8 incorrect on the ground of an error of law unless the error
- 9 materially prejudices the substantial rights of the accused.
- 10 "(b) Lesser Included Offense.—Any reviewing
- 11 authority with the power to approve or affirm a finding
- 12 of guilty by a military commission under this chapter may
- 13 approve or affirm, instead, so much of the finding as in-
- 14 cludes a lesser included offense.

15 "§ 950b. Review by the convening authority

- 16 "(a) Notice to Convening Authority of Find-
- 17 INGS AND SENTENCE.—The findings and sentence of a
- 18 military commission under this chapter shall be reported

- 1 in writing promptly to the convening authority after the
- 2 announcement of the sentence.
- 3 "(b) Submittal of Matters by Accused to Con-
- 4 VENING AUTHORITY.—(1) The accused may submit to the
- 5 convening authority matters for consideration by the con-
- 6 vening authority with respect to the findings and the sen-
- 7 tence of the military commission under this chapter.
- 8 "(2)(A) Except as provided in subparagraph (B), a
- 9 submittal under paragraph (1) shall be made in writing
- 10 within 20 days afer accused has been given an authenti-
- 11 cated record of trial under section 949o(c) of this title.
- 12 "(B) If the accused shows that additional time is re-
- 13 quired for the accused to make a submittal under para-
- 14 graph (1), the convening authority may, for good cause,
- 15 extend the applicable period under subparagraph (A) for
- 16 not more than an additional 20 days.
- 17 "(3) The accused may waive his right to make a sub-
- 18 mittal to the convening authority under paragraph (1).
- 19 Such a waiver shall be made in writing and may not be
- 20 revoked. For the purposes of subsection (c)(2), the time
- 21 within which the accused may make a submittal under this
- 22 subsection shall be deemed to have expired upon the sub-
- 23 mittal of a waiver under this paragraph to the convening
- 24 authority.

- 1 "(c) ACTION BY CONVENING AUTHORITY.—(1) The
- 2 authority under this subsection to modify the findings and
- 3 sentence of a military commission under this chapter is
- 4 a matter of the sole discretion and prerogative of the con-
- 5 vening authority.
- 6 "(2)(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 on the sentence under this para-
- 10 graph may be taken only after consideration of any mat-
- 11 ters submitted by the accused under subsection (b) or
- 12 after the time for submitting such matters expires, which-
- 13 ever is earlier.
- 14 "(C) In taking action under this paragraph, the con-
- 15 vening authority may, in his sole discretion, approve, dis-
- 16 approve, commute, or suspend the sentence in whole or
- 17 in part. The convening authority may not increase a sen-
- 18 tence beyond that which is found by the military commis-
- 19 sion.
- 20 "(3) The convening authority is not required to take
- 21 action on the findings of a military commission under this
- 22 chapter. If the convening authority takes action on the
- 23 findings, the convening authority may, in his sole discre-
- 24 tion, may—

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 a finding of guilty to an offense that is a lesser in-4 5 cluded offense of the offense stated in the charge. 6 "(4) The convening authority shall serve on the accused or on defense counsel notice of any action taken by 8 the convening authority under this subsection. 9 "(d) Order of Revision or Rehearing.—(1) Subject to paragraphs (2) and (3), the convening authority 10 of a military commission under this chapter may, in his sole discretion, order a proceeding in revision or a rehear-13 ing. 14 "(2)(A) Except as provided in subparagraph (B), a 15 proceeding in revision may be ordered by the convening authority if— 16 "(i) there is an apparent error or omission in 17 18 the record; or 19 "(ii) the record shows improper or inconsistent 20 action by the military commission with respect to 21 the findings or sentence that can be rectified without 22 material prejudice to the substantial rights of the 23 accused. "(B) In no case may a proceeding in revision— 24

1	"(i) reconsider a finding of not guilty of a spec-
2	ification or a ruling which amounts to a finding of
3	not guilty;
4	"(ii) reconsider a finding of not guilty of any
5	charge, unless there has been a finding of guilty
6	under a specification laid under that charge, which
7	sufficiently alleges a violation; or
8	"(iii) increase the severity of the sentence un-
9	less the sentence prescribed for the offense is man-
10	datory.
11	"(3) A rehearing may be ordered by the convening
12	authority if the convening authority disapproves the find-
13	ings and sentence and states the reasons for disapprova
14	of the findings. If the convening authority disapproves the
15	finding and sentence and does not order a rehearing, the
16	convening authority shall dismiss the charges. A rehearing
17	as to the findings may not be ordered by the convening
18	authority when there is a lack of sufficient evidence in the
19	record to support the findings. A rehearing as to the sen-
20	tence may be ordered by the convening authority if the
21	convening authority disapproves the sentence.
22	"§ 950c. Appellate referral; waiver or withdrawal of
23	appeal
24	"(a) Automatic Referral for Appellate Re-

25 VIEW.—Except as provided under subsection (b), in each

- 1 case in which the final decision of a military commission
- 2 (as approved by the convening authority) includes a find-
- 3 ing of guilty, the convening authority shall refer the case
- 4 to the Court of Military Commission Review. Any such re-
- 5 ferral shall be made in accordance with procedures pre-
- 6 scribed under regulations of the Secretary.
- 7 "(b) Waiver of Right of Review.—(1) In each
- 8 case subject to appellate review under section 950f of this
- 9 title, except a case in which the sentence as approved
- 10 under section 950b of this title extends to death, the ac-
- 11 cused may file with the convening authority a statement
- 12 expressly waiving the right of the accused to such review.
- 13 "(2) A waiver under paragraph (1) shall be signed
- 14 by both the accused and a defense counsel.
- 15 "(3) A waiver under paragraph (1) must be filed, if
- 16 at all, within 10 days after notice on the action is served
- 17 on the accused or on defense counsel under section
- 18 950b(c)(4) of this title. The convening authority, for good
- 19 cause, may extend the period for such filing by not more
- 20 than 30 days.
- 21 "(c) WITHDRAWAL OF APPEAL.—Except in a case in
- 22 which the sentence as approved under section 950b of this
- 23 title extends to death, the accused may withdraw an ap-
- 24 peal at any time.

- 1 "(d) Effect of Waiver or Withdrawal.—A
- 2 waiver of the right to appellate review or the withdrawal
- 3 of an appeal under this section bars review under section
- 4 950f of this title.

5 "§ 950d. Appeal by the United States

- 6 "(a) Interlocutory Appeal.—(1) Except as pro-
- 7 vided in paragraph (2), in a trial by military commission
- 8 under this chapter, the United States may take an inter-
- 9 locutory appeal to the Court of Military Commission Re-
- 10 view of any order or ruling of the military judge that—
- 11 "(A) terminates proceedings of the military
- commission with respect to a charge or specification;
- "(B) excludes evidence that is substantial proof
- of a fact material in the proceeding; or
- 15 "(C) relates to a matter under subsection (d),
- (e), or (f) of section 949d of this title.
- 17 "(2) The United States may not appeal under para-
- 18 graph (1) an order or ruling that is, or amounts to, a find-
- 19 ing of not guilty by the military commission with respect
- 20 to a charge or specification.
- 21 "(b) Notice of Appeal.—The United States shall
- 22 take an appeal of an order or ruling under subsection (a)
- 23 by filing a notice of appeal with the military judge within
- 24 five days after the date of such order or ruling.

- 1 "(c) APPEAL.—An appeal under this section shall be
- 2 forwarded, by means specified in regulations prescribed
- 3 the Secretary of Defense, directly to the Court of Military
- 4 Commission Review. In ruling on an appeal under this sec-
- 5 tion, the Court of Military Commission Review may act
- 6 only with respect to matters of law.
- 7 "(d) APPEAL FROM ADVERSE RULING.—The United
- 8 States may appeal an adverse ruling on an appeal under
- 9 subsection (c) to the United States Court of Appeals for
- 10 the District of Columbia Circuit by filing a petition for
- 11 review in the Court of Appeals within 10 days after the
- 12 date of such ruling. Review under this subsection shall be
- 13 at the discretion of the Court of Appeals.

14 **"§ 950e. Rehearings**

- 15 "(a) Composition of Military Commission for
- 16 Rehearing.—Each rehearing under this chapter shall
- 17 take place before a military commission under this chapter
- 18 composed of members who were not members of the mili-
- 19 tary commission which first heard the case.
- 20 "(b) Scope of Rehearing.—(1) Upon a rehear-
- 21 ing—
- 22 "(A) the accused may not be tried for any of-
- fense of which he was found not guilty by the first
- 24 military commission; and

1	"(B) no sentence in excess of or more than the
2	original sentence may be imposed unless—
3	"(i) the sentence is based upon a finding
4	of guilty of an offense not considered upon the
5	merits in the original proceedings; or
6	"(ii) the sentence prescribed for the of-
7	fense is mandatory.
8	"(2) Upon a rehearing, if the sentence approved after
9	the first military commission was in accordance with a
10	pretrial agreement and the accused at the rehearing
11	changes his plea with respect to the charges or specifica-
12	tions upon which the pretrial agreement was based, or oth-
13	erwise does not comply with pretrial agreement, the sen-
14	tence as to those charges or specifications may include any
15	punishment not in excess of that lawfully adjudged at the
16	first military commission.
17	"§ 950f. Review by Court of Military Commission Re-
18	view
19	"(a) Establishment.—The Secretary of Defense
20	shall establish a Court of Military Commission Review
21	which shall be composed of one or more panels, and each
22	such panel shall be composed of not less than three appel-
23	late military judges. For the purpose of reviewing military
24	commission decisions under this chapter, the court may

- 1 sit in panels or as a whole in accordance with rules pre-
- 2 scribed by the Secretary.
- 3 "(b) Appellate Military Judges.—The Secretary
- 4 shall assign appellate military judges to a Court of Mili-
- 5 tary Commission Review. Each appellate military judge
- 6 shall meet the qualifications for military judges prescribed
- 7 by section 948j(b) of this title or shall be a civilian with
- 8 comparable qualifications. No person may be appointed to
- 9 serve as an appellate military judge in any case in which
- 10 that person acted as a military judge, counsel, or review-
- 11 ing official.
- 12 "(c) Cases to Be Reviewed.—The Court of Mili-
- 13 tary Commission Review, in accordance with procedures
- 14 prescribed under regulations of the Secretary, shall review
- 15 the record in each case that is referred to the Court by
- 16 the convening authority under section 950c of this title
- 17 with respect to any matter of law raised by the accused.
- 18 "(d) Scope of Review.—In a case reviewed by it
- 19 under this section, the Court of Military Commission Re-
- 20 view may act only with respect to matters of law.
- 21 "§ 950g. Review by the United States Court of Ap-
- 22 peals for the District of Columbia Circuit
- 23 and the Supreme Court
- 24 "(a) Exclusive Appellate Jurisdiction.—(1)(A)
- 25 Except as provided in subparagraph (B), the United

- 1 States Court of Appeals for the District of Columbia Cir-
- 2 cuit shall have exclusive jurisdiction to determine the va-
- 3 lidity of a final judgment rendered by a military commis-
- 4 sion (as approved by the convening authority) under this
- 5 chapter.
- 6 "(B) The Court of Appeals may not review the final
- 7 judgment until all other appeals under this chapter have
- 8 been waived or exhausted.
- 9 "(2) A petition for review must be filed by the ac-
- 10 cused in the Court of Appeals not later than 20 days after
- 11 the date on which—
- 12 "(A) written notice of the final decision of the
- 13 Court of Military Commission Review is served on
- the accused or on defense counsel; or
- 15 "(B) the accused submits, in the form pre-
- scribed by section 950c of this title, a written notice
- 17 waiving the right of the accused to review by the
- 18 Court of Military Commission Review under section
- 19 950f of this title.
- 20 "(b) Standard for Review.—In a case reviewed
- 21 by it under this section, the Court of Appeals may act
- 22 only with respect to matters of law.
- 23 "(c) Scope of Review.—The jurisdiction of the
- 24 Court of Appeals on an appeal under subsection (a) shall
- 25 be limited to the consideration of—

"(1) whether the final decision was consistent 1 2 with the standards and procedures specified in this 3 chapter; and 4 "(2) to the extent applicable, the Constitution. "(d) Supreme Court.—The Supreme Court may re-5 view by writ of certiorari the final judgment of the Court 7 of Appeals pursuant to section 1257 of title 28. 8 "§ 950h. Appellate counsel "(a) Appointment.—The Secretary of Defense 9 shall, by regulation, establish procedures for the appoint-10 ment of appellate counsel for the United States and for 11 12 the accused in military commissions under this chapter. Appellate counsel shall meet the qualifications for counsel appearing before military commissions under this chapter. 14 "(b) Representation of United States.—Appel-15 late counsel appointed under subsection (a)— 17 "(1) shall represent the United States in any 18 appeal or review proceeding under this chapter be-19 fore the Court of Military Commission Review; and "(2) may, when requested to do so by the At-20 21 torney General in a case arising under this chapter, 22 represent the United States before the United States 23 Court of Appeals for the District of Columbia Cir-24 cuit or the Supreme Court.

- 1 "(c) Representation of Accused.—The accused
- 2 shall be represented by appellate counsel appointed under
- 3 subsection (a) before the Court of Military Commission
- 4 Review, the United States Court of Appeals for the Dis-
- 5 trict of Columbia Circuit, and the Supreme Court, and by
- 6 civilian counsel if retained by the accused. Any such civil-
- 7 ian counsel shall meet the qualifications under paragraph
- 8 (3) of section 949c(b) of this title for civilian counsel ap-
- 9 pearing before military commissions under this chapter
- 10 and shall be subject to the requirements of paragraph (4)
- 11 of that section. The provisions of subparagraph (D) of sec-
- 12 tion 949d(e)(5) of this title shall apply with respect to ap-
- 13 pellate counsel.

14 "§ 950i. Execution of sentence; suspension of sentence

- 15 "(a) Execution of Sentence of Death Only
- 16 Upon Approval by the President.—If the sentence
- 17 of a military commission under this chapter extends to
- 18 death, that part of the sentence providing for death may
- 19 not be executed until approved by the President. In such
- 20 a case, the President may commute, remit, or suspend the
- 21 sentence, or any part thereof, as he sees fit.
- 22 "(b) Execution of Sentence of Death Only
- 23 Upon Final Judgment of Legality of Pro-
- 24 CEEDINGS.—(1) If the sentence of a military commission
- 25 under this chapter extends to death, the sentence may not

be executed until there is a final judgement as to the legality of the proceedings (and with respect to death, approval 3 under subsection (a)). 4 "(2) A judgement as to legality of proceedings is final 5 for purposes of paragraph (1) when— 6 "(A) the time for the accused to file a petition 7 for review by the Court of Appeals for the District 8 of Columbia Circuit has expired and the accused has 9 not filed a timely petition for such review and the case is not otherwise under review by that Court; or 10 11 "(B) review is completed in accordance with the 12 judgment of the United States Court of Appeals for 13 the District of Columbia Circuit and— "(i) a petition for a writ of certiorari is not 14 15 timely filed; "(ii) such a petition is denied by the Su-16 17 preme Court; or 18 "(iii) review is otherwise completed in ac-19 cordance with the judgment of the Supreme 20 Court. "(c) Suspension of Sentence.—The Secretary of 21 22 the Defense, or the convening authority acting on the case 23 (if other than the Secretary), may suspend the execution of any sentence or part thereof in the case, except a sentence of death. 25

1	"8 950i.	Finality	or	proceedings,	findings.	and	sen.
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- 2 tences
- 3 "(a) Finality.—The appellate review of records of
- 4 trial provided by this chapter, and the proceedings, find-
- 5 ings, and sentences of military commissions as approved,
- 6 reviewed, or affirmed as required by this chapter, are final
- 7 and conclusive. Orders publishing the proceedings of mili-
- 8 tary commissions under this chapter are binding upon all
- 9 departments, courts, agencies, and officers of the United
- 10 States, except as otherwise provided by the President.
- 11 "(b) Provisions of Chapter Sole Basis for Re-
- 12 VIEW OF MILIARY COMMISSION PROCEDURES AND AC-
- 13 TIONS.—Except as otherwise provided in this chapter and
- 14 notwithstanding any other provision of law (including sec-
- 15 tion 2241 of title 28 or any other habeas corpus provi-
- 16 sion), no court, justice, or judge shall have jurisdiction to
- 17 hear or consider any claim or cause of action whatsoever,
- 18 including any action pending on or filed after the date of
- 19 the enactment of the Military Commissions Act of 2006,
- 20 relating to the prosecution, trial, or judgment of a military
- 21 commission under this chapter, including challenges to the
- 22 lawfulness of procedures of military commissions under
- 23 this chapter.

24 "SUBCHAPTER VII—PUNITIVE MATTERS

[&]quot;Sec.

[&]quot;950p. Statement of substantive offenses.

[&]quot;950q. Principals.

- "950r. Accessory after the fact.
- "950s. Conviction of lesser included offense.
- "950t. Attempts.
- "950u. Solicitation.
- "950v. Crimes triable by military commissions.
- "950w. Perjury and obstruction of justice.
- "950x. Contempt.

1 "§ 950p. 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 **"§ 950q. Principals**

- "Any person is punishable as a principal under this
- 14 chapter who—
- 15 "(1) commits an offense punishable by this
- 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

- 1 reason to know, or should have known, that a subor-
- 2 dinate was about to commit such acts or had done
- 3 so and the superior failed to take the necessary and
- 4 reasonable measures to prevent such acts or to pun-
- 5 ish the perpetrators thereof.

6 "§ 950r. Accessory after the fact

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

13 "§ 950s. Conviction of lesser included offense

- "An accused may be found guilty of an offense nec-
- 15 essarily included in the offense charged or of an attempt
- 16 to commit either the offense charged or an attempt to
- 17 commit either the offense charged or an offense nec-
- 18 essarily included therein.

19 **"§ 950t. Attempts**

- 20 "(a) IN GENERAL.—Any person subject to this chap-
- 21 ter who attempts to commit any offense punishable by this
- 22 chapter shall be punished as a military commission under
- 23 this chapter may direct.
- 24 "(b) Scope of Offense.—An act, done with spe-
- 25 cific intent to commit an offense under this chapter,

- amounting to more than mere preparation and tending, even though failing, to effect its commission, is an attempt to commit that offense.
- 4 "(c) Effect of Consummation.—Any person sub-
- ject to this chapter may be convicted of an attempt to com-
- mit an offense although it appears on the trial that the
- 7 offense was consummated.

8 "§ 950u. Solicitation

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- 9 "Any person subject to this chapter who solicits or
- advises another or others to commit one or more sub-10
- 11 stantive offenses triable by military commission under this
- 12 chapter shall, if the offense solicited or advised is at-
- tempted or committed, be punished with the punishment
- provided for the commission of the offense, but, if the of-
- fense solicited or advised is not committed or attempted,
- he shall be punished as a military commission under this
- chapter may direct. 17

"§ 950v. Crimes triable by military commissions 18

- "(a) Definitions and Construction.—In this sec-19
- 20 tion:
- "(1) MILITARY OBJECTIVE.—The term 'military 21
- 22 objective' refers to—
- "(A) combatants; and 23
- 24 "(B) those objects during an armed con-
- 25 flict—

1	"(i) which, by their nature, location,
2	purpose, or use, effectively contribute to
3	the opposing force's war-fighting or war-
4	sustaining capability; and
5	"(ii) the total or partial destruction,
6	capture, or neutralization of which would
7	constitute a definite military advantage to
8	the attacker under the circumstances at
9	the time of the attack.
10	"(2) Protected Person.—The term 'pro-
11	tected person' refers to any person entitled to pro-
12	tection under one or more of the Geneva Conven-
13	tions, including—
14	"(A) civilians not taking an active part in
15	hostilities;
16	"(B) military personnel placed hors de
17	combat by sickness, wounds, or detention; and
18	"(C) military medical or religious per-
19	sonnel.
20	"(3) Protected property.—The term 'pro-
21	tected property' refers to property specifically pro-
22	tected by the law of war (such as buildings dedicated
23	to religion, education, art, science or charitable pur-
24	poses, historic monuments, hospitals, or places
25	where the sick and wounded are collected), if such

1 property is not being used for military purposes or 2 is not otherwise a military objective. Such term in-3 cludes objects properly identified by one of the dis-4 tinctive emblems of the Geneva Conventions. "(4) Construction.—The intent specified for 5 an offense under paragraph (1), (2), (3), (4), or 6 7 (12) of subsection (b) precludes the applicability of 8 such offense with regard to— 9 "(A) collateral damage; or "(B) death, damage, or injury incident to 10 11 a lawful attack. 12 "(b) Offenses.—The following offenses shall be triable by military commission under this chapter at any 13 14 time without limitation: "(1) Murder of protected persons.—An 15 16 alien unlawful enemy combatant who intentionally 17 kills one or more protected persons is guilty of the 18 offense of intentionally killing a protected person 19 and shall be subject to whatever punishment a com-20 mission may direct, including the penalty of death. "(2) ATTACKING CIVILIANS.—An alien unlawful 21 22 enemy combatant who intentionally engages in an 23 attack upon a civilian population as such or indi-24 vidual civilians not taking active part in hostilities is

guilty of the offense of attacking civilians and shall

- be subject to whatever punishment a commission
 may direct, including, if death results to one or more
 of the victims, the penalty of death.
 - "(3) Attacking civilian objects.—An alien unlawful enemy combatant who intentionally engages in an attack upon property that is not a military objective shall be guilty of the offense of attacking civilian objects and shall be subject to whatever punishment a commission may direct.
 - "(4) ATTACKING PROTECTED PROPERTY.—An alien unlawful enemy combatant who intentionally engages in an attack upon protected property shall be guilty of the offense of attacking protected property and shall be subject to whatever punishment a commission may direct.
 - "(5) PILLAGING.—An alien unlawful enemy combatant who intentionally and in the absence of military necessity appropriates or seizes property for private or personal use, without the consent of a person with authority to permit such appropriation or seizure, shall be guilty of the offense of pillaging and shall be subject to whatever punishment a commission may direct.
 - "(6) DENYING QUARTER.—An alien unlawful enemy combatant who, with effective command or

control over subordinate groups, declares, orders, or otherwise indicates to those forces that there shall be no survivors or surrender accepted, with the intent therefore to threaten an adversary or to conduct hostilities such that there would be no survivors or surrender accepted, shall be guilty of denying quarter and shall be subject to whatever punishment a commission may direct.

"(7) Taking hostages.—An alien unlawful enemy combatant who, having knowingly seized or detained one or more persons, threatens to kill, injure, or continue to detain such person or persons with the intent of compelling any nation, person other than the hostage, or group of persons to act or refrain from acting as an explicit or implicit condition for the safety or release of such person or persons, shall be guilty of the offense of taking hostages and shall be subject to whatever punishment a commission may direct, including, if death results to one or more of the victims, the penalty of death.

"(8) Employing poison or analogous weapons.—An alien unlawful enemy combatant who intentionally, as a method of warfare, employs a substance or a weapon that releases a substance that causes death or serious and lasting damage to health 2 iating, bacteriological, or toxic properties, shall be 3 guilty of employing poison or analogous weapons and

in the ordinary course of events, through its asphyx-

- shall be subject to whatever punishment a commission may direct, including, if death results to one or
- 6 more of the victims, the penalty of death.

- "(9) USING PROTECTED PERSONS AS SHIELDS.—An alien unlawful enemy combatant who positions, or otherwise takes advantage of, a protected person with the intent to shield a military objective from attack or to shield, favor, or impede military operations, shall be guilty of the offense of using protected persons as shields and shall be subject to whatever punishment a commission may direct, including, if death results to one or more of the victims, the penalty of death.
 - "(10) USING PROTECTED PROPERTY AS SHIELDS.—An alien unlawful enemy combatant who positions, or otherwise takes advantage of the location of, protected property under the law of war with the intent to shield a military objective from attack or to shield, favor, or impede military operations, shall be guilty of the offense of using protected property as shields and shall be subject to whatever punishment a commission may direct.

"(11) TORTURE.—An alien unlawful enemy combatant who commits an act specifically intended to inflict severe physical pain or suffering or severe mental pain or suffering (other than pain or suffering incidental to lawful sanctions) upon another person within his custody or physical control for the purpose of obtaining information or a confession, punishment, intimidation, coercion, or any reason based on discrimination of any kind, shall be guilty of torture and subject to whatever punishment a commission may direct, including, if death results to one or more of the victims, the penalty of death. In this paragraph, the term 'severe mental pain or suffering' has the meaning given that term in section 2340(2) of title 18.

"(12) CRUEL OR INHUMAN TREATMENT.—An alien unlawful enemy combatant who commits an act intended to inflict severe physical pain or suffering or severe mental pain or suffering (other than pain or suffering incidental to lawful sanctions), including severe physical abuse, upon another person within his custody or physical control shall be guilty of cruel or inhuman treatment and subject to whatever punishment a commission may direct, including, if death results to one or more of the victims, the pen-

alty of death. In this paragraph, the term 'severe mental pain or suffering' has the meaning given that term in section 2340(2) of title 18.

"(13) Intentionally causing serious bodily injury.—An alien unlawful enemy combatant who intentionally causes serious bodily injury to one or more persons, including lawful combatants, in violation of the law of war shall be guilty of the offense of causing serious bodily injury and shall be subject to whatever punishment a commission may direct, including, if death results to one or more of the victims, the penalty of death. In this paragraph, the term 'serious bodily injury' has the meaning given that term in section 113(b)(2) of title 18.

"(14) Mutiliating or maiming.—An alien unlawful enemy combatant who intentionally injures one or more protected persons, by disfiguring the person or persons by any mutilation thereof or by permanently disabling any member, limb, or organ of his body, without any legitimate medical or dental purpose, shall be guilty of the offense of mutilation or maiming and shall be subject to whatever punishment a commission may direct, including, if death results to one or more of the victims, the penalty of death.

"(15) MURDER IN VIOLATION OF THE LAW OF
WAR.—An alien unlawful enemy combatant who intentionally kills one or more persons, including lawful combatants, in violation of the law of war shall
be guilty of the offense of murder in violation of the
law of war and shall be subject to whatever punishment a commission may direct, including the penalty
of death.

"(16) Destruction of Property in Violation of the Law of War.—An alien unlawful enemy combatant who intentionally destroys property belonging to another person in violation of the law of war shall be guilty of the offense of destruction of property in violation of the law of war and shall be subject to whatever punishment a commission may direct.

"(17) Using treachery or perfidy.—An alien unlawful enemy combatant who, after inviting the confidence or belief of one or more persons that they were entitled to, or obliged to accord, protection under the law of war, intentionally makes use of that confidence or belief in killing, injuring, or capturing such person or persons, shall be guilty of using treachery or perfidy and shall be subject to whatever punishment a commission may direct.

"(18) Improperly using a flag of truce.—
An alien unlawful enemy combatant who uses a flag of truce to feign an intention to negotiate, surrender, or otherwise to suspend hostilities when there is no such intention, shall be guilty of improperly using a flag of truce and shall be subject to whatever punishment a commission may direct.

"(19) Improperly using a distinctive emblem recognized by the law of war for combatant purposes in a manner prohibited by the law of war shall be guilty of improperly using a distinctive emblem and shall be subject to whatever punishment a commission may direct.

"(20) Intentionally mistreating a dead Body.—An alien unlawful enemy combatant who intentionally mistreats the body of a dead person, without justification by legitimate military necessary, shall be guilty of the offense of mistreating a dead body and shall be subject to whatever punishment a commission may direct.

"(21) RAPE.—An alien unlawful enemy combatant who forcibly or with coercion or threat of force wrongfully invades the body of a person by pene-

trating, however slightly, the anal or genital opening of the victim with any part of the body of the accused or with any foreign object shall be guilty of the offense of rape and shall be subject to whatever punishment a commission may direct.

"(22) Hijacking or hazarding a vessel or aircraft that was not a legitimate military target is guilty of the offense of hijacking or hazarding a vessel or aircraft and shall be subject to whatever punishment a commission may direct, including, if death results to one or more of the victims, the penalty of death.

"(23) Terrorism.—An alien unlawful enemy combatant subject to this title who intentionally kills or inflicts great bodily harm on one or more persons, or intentionally engages in an act that evinces a wanton disregard for human life, in a manner calculated to influence or affect the conduct of government or civilian population by intimidation or coercion, or to retaliate against government conduct, shall be guilty of the offense of terrorism and shall be subject to whatever punishment a commission

1 may direct, including, if death results to one or more 2 of the victims, the penalty of death.

> "(24) Providing material support FORTERRORISM.—An alien unlawful enemy combatant who provides material support or resources, knowing or intending that they are to be used in preparation for, or in carrying out, an act of terrorism (as defined in paragraph (23)), or who intentionally provides material support or resources to an international terrorist organization engaged in hostilities against the United States, knowing that such organization has engaged or engages in terrorism (as defined in paragraph (23)), shall be guilty of the offense of providing material support for terrorism and shall be subject to whatever punishment a commission may direct. In this paragraph, the term 'material support or resources' has the meaning given that term in section 2339A(b) of title 18.

> "(25) Wrongfully aiding the enemy.—An alien unlawful enemy combatant who, in breach of an allegiance or duty to the United States, knowingly and intentionally aids an enemy of the United States or one its co-belligerents shall be guilty of the offense of wrongfully aiding the enemy and shall be

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subject to whatever punishment a commission may direct.

"(26) SPYING.—An alien unlawful enemy combatant who, with intent or reason to believe that it is to be used to the injury of the United States or to the advantage of a foreign power, collects or attempts to collect certain information by clandestine means or while acting under false pretenses, for the purpose of conveying such information to an enemy of the United States or one of its co-belligerents, shall be guilty of the offense of spying and shall be subject to whatever punishment a commission may direct, including the penalty of death.

"(27) Conspiracy.—An alien unlawful enemy combatant who conspires to commit one or more substantive offenses triable under this section, and who knowingly does any overt act to effect the object of the conspiracy, shall be guilty of conspiracy and shall be subject to whatever punishment a commission may direct, including, if death results to one or more of the victims, the penalty of death.

22 "§ 950w. Perjury and obstruction of justice

23 "A military commission under this chapter may try 24 offenses and impose punishments for perjury, false testi-

- 1 mony, or obstruction of justice related to military commis-
- 2 sions under this chapter.

3 "§ 950x. 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 (2) Tables of Chapters amendments.—The
- 9 tables of chapters at the beginning of subtitle A, and
- at the beginning of part II of subtitle A, of title 10,
- 11 United States Code, are each amended by inserting
- after the item relating to chapter 47 the following
- 13 new item:
- 14 (b) Conforming Amendment to UCMJ.—Section
- 15 836(a) of title 10, United States Code (article 36(a) of
- 16 the Uniform Code of Military Justice)), is amended by in-
- 17 serting ", except as provided in chapter 47A of this title,"
- 18 after "but which may not".
- 19 (c) Submittal of Procedures to Congress.—
- 20 Not later than 90 days after the date of the enactment
- 21 of this Act, the Secretary of Defense shall submit to the
- 22 Committees on Armed Services of the Senate and the
- 23 House of Representatives a report setting forth the proce-
- 24 dures for military commissions prescribed under chapter

1	47A of title 10, United States Code (as added by sub-
2	section (a)).
3	SEC. 4. CLARIFICATION OF CONDUCT CONSTITUTING WAR
4	CRIME OFFENSE UNDER FEDERAL CRIMINAL
5	CODE.
6	(a) Applicability Only to Serious Violations
7	OF COMMON ARTICLE 3.—Section 2441 of title 18, United
8	States Code is amended—
9	(1) by striking paragraph (3) of subsection (c)
10	and inserting the following:
11	"(3) which constitutes a serious violation of
12	common Article 3 of the 1949 Geneva Conventions,
13	when committed in the context of and in association
14	with an armed conflict not of an international char-
15	acter; or"; and
16	(2) by adding at the end the following new sub-
17	section:
18	"(d) Covered Common Article 3 Violations.—
19	"(1) Serious violations.—In subsection
20	(c)(3), the term 'serious violation of common Article
21	3 of the 1949 Geneva Conventions' means any of the
22	following:
23	"(A) TORTURE.—The act of a person who
24	commits, or conspires or attempts to commit,
25	an act specifically intended to inflict severe

physical pain or suffering or severe mental pain or suffering (as such term is defined in section 2340(2) of this title), other than pain or suffering incidental to lawful sanctions, upon another person within his custody or physical control for the purpose of obtaining information or a confession, punishment, intimidation, coercion, or any reason based on discrimination of any kind.

"(B) CRUEL OR INHUMAN TREATMENT.—
The act of a person who commits, or conspires or attempts to commit, an act intended to inflict severe physical pain or suffering or severe mental pain or suffering (as such term is defined in section 2340(2) of this title), other than pain or suffering incidental to lawful sanctions, and including severe physical abuse, upon another person within his custody or physical control.

"(C) Performing biological experiments.—The act of a person who subjects, or conspires or attempts to subject, one or more persons within his custody or physical control to biological experiments and in so doing endan-

gers the body or health of such person or persons.

"(D) MURDER.—The act of a person who intentionally kills, or conspires or attempts to kill, or kills whether intentionally or unintentionally in the course of committing any other offense under this section, one or more persons taking no active part in the hostilities, including those placed hors de combat by sickness, wounds, detention, or any other cause.

"(E) MUTILATION OR MAIMING.—The act of a person who intentionally injures, or conspires or attempts to injure, or injures whether intentionally or unintentionally in the course of committing any other offense under this section, one or more persons taking no active part in the hostilities, including those placed hors de combat by sickness, wounds, detention, or any other cause, by disfiguring the person or persons by any mutilation thereof or by permanently disabling any member, limb, or organ of his body, without any legitimate medical or dental purpose.

"(F) Intentionally causing great suffering or serious injury.—The act of a

person who intentionally causes, or conspires or attempts to cause, serious bodily injury (as such term is defined in section 113(b)(2) of this title) to one or more persons taking no active part in the hostilities, including those placed hors de combat by sickness, wounds, detention, or any other cause.

- "(G) RAPE.—The act of a person who forcibly or with coercion or threat of force wrongfully invades, or conspires or attempts to invade, the body of a person by penetrating, however slightly, the anal or genital opening of the victim with any part of the body of the accused or with any foreign object.
- "(H) SEXUAL ASSAULT OR ABUSE.—The act of a person who forcibly or with coercion or threat of force engages, or conspires or attempts to engage, in sexual contact (as such term is defined in section 2246(3) of this title) with one or more persons, or causes, or conspires or attempts to cause, one or more persons to engage in sexual contact (as so defined).
- "(I) Taking hostages.—The act of a person who—

1	"(i) having knowingly seized or de-
2	tained one or more persons, threatens to
3	kill, injure, or continue to detain such per-
4	son or persons with the intent of compel-
5	ling any nation, person other than the hos-
6	tage, or group of persons to act or refrain
7	from acting as an explicit or implicit condi-
8	tion for the safety or release of such per-
9	son or persons; or
10	"(ii) attempts to engage or conspires
11	to engage in conduct under clause (i).
12	"(2) Inapplicability of specified provi-
13	SIONS WITH RESPECT TO CERTAIN CONDUCT.—The
14	intent specified for the conduct stated in subpara-
15	graphs (D), (E), and (F) of paragraph (1) precludes
16	the applicability of those subparagraphs with regard
17	to—
18	"(A) collateral damage; or
19	"(B) death, damage, or injury incident to
20	a lawful attack.".
21	(b) Retroactive Applicability.—The amend-
22	ments made by this section shall take effect as of Novem-
23	ber 26, 1997, as if enacted immediately after the amend-
24	ments made by section 583 of Public Law 105–118 (as
25	amended by section 4002 of Public Law 107–273).

1 SEC. 5. JUDICIAL REVIEW.

- 2 Section 2241 of title 28, United States Code, is
- 3 amended by striking both the subsection (e) added by sec-
- 4 tion 1005(e)(1) of Public Law 109–148 (119 Stat. 2742)
- 5 and the subsection (e) added by section 1405(e)(1) of
- 6 Public Law 109–163 (119 Stat. 3477) and inserting the
- 7 following new subsection (e):
- 8 "(e)(1) Except as provided for in this subsection, and
- 9 notwithstanding any other law, no court, justice, or judge
- 10 shall have jurisdiction to hear or consider any claim or
- 11 cause of action, including an application for a writ of ha-
- 12 beas corpus, pending on or filed after the date of the en-
- 13 actment of the Military Commissions Act of 2006, against
- 14 the United States or its agents, brought by or on behalf
- 15 of any alien detained by the United States as an unlawful
- 16 enemy combatant, relating to any aspect of the alien's de-
- 17 tention, transfer, treatment, or conditions of confinement.
- 18 "(2) The United States Court of Appeals for the Dis-
- 19 trict of Columbia Circuit shall have exclusive jurisdiction
- 20 to determine the validity of any final decision of a Combat-
- 21 ant Status Review Tribunal. The scope of such review is
- 22 defined in section 1005(e)(2) of the Detainee Treatment
- 23 Act of 2005. If the Court grants a detainee's petition for
- 24 review, the Secretary of Defense may conduct a new Com-
- 25 batant Status Review Tribunal.

- 1 "(3) Review shall be had only of final judgments of
- 2 military commissions as provided for pursuant to section
- 3 950g of title 10, United States Code.
- 4 "(4) The court may consider classified information
- 5 submitted in camera and ex parte in making any deter-
- 6 mination under this section.".

7 SEC. 6. SATISFACTION OF TREATY OBLIGATIONS.

- 8 (a) In General.—Satisfaction of the prohibitions
- 9 against cruel, inhuman, and degrading treatment set forth
- 10 in section 1003 of the Detainee Treatment Act of 2005
- 11 (42 U.S.C. 2000dd) shall fully satisfy United States obli-
- 12 gations with respect to the standards for detention and
- 13 treatment established by section 1 of Common Article 3
- 14 of the Geneva Conventions, with the exception of the obli-
- 15 gations imposed by subsections 1(b) and 1(d) of such Arti-
- 16 cle.
- 17 (b) RIGHTS NOT JUDICIALLY ENFORCEABLE.—
- 18 (1) In General.—No person in any habeas ac-
- tion or any other action may invoke the Geneva Con-
- ventions or any protocols thereto as a source of
- 21 rights, whether directly or indirectly, for any pur-
- pose in any court of the United States or its States
- or territories.

1	(2) Construction.—Paragraph (1) may not
2	be construed to affect the obligations of the United
3	States under the Geneva Conventions.
4	(c) Geneva Conventions Defined.—In this sec-
5	tion, the term "Geneva Conventions" means the inter-
6	national conventions signed at Geneva on August 12,
7	1949, including common Article 3.
8	SEC. 7. REVISIONS TO DETAINEE TREATMENT ACT OF 2005
9	RELATING TO PROTECTION OF CERTAIN
10	UNITED STATES GOVERNMENT PERSONNEL.
11	(a) Counsel and Investigations.—Section
12	1004(b) of the Detainee Treatment Act of 2005 (42
13	U.S.C. 2000dd-1(b)) is amended—
14	(1) by striking "may provide" and inserting
15	"shall provide";
16	(2) by inserting "or investigation" after "crimi-
17	nal prosecution"; and
18	(3) by inserting "whether before United States
19	courts or agencies, foreign courts or agencies, or
20	international courts or agencies," after "described in
21	that subsection".
22	(b) Protection of Personnel.—Section 1004 of
23	the Detainee Treatment Act of 2005 (42 U.S.C. 2000dd-
24	1) shall apply with respect to any criminal prosecution
25	that—

1	(1) relates to the detention and interrogation of
2	aliens described in such section;
3	(2) is grounded in section 2441(c)(3) of title
4	18, United States Code; and
5	(3) relates to actions occurring between Sep-
6	tember 11, 2001, and December 30, 2005.
7	SEC. 8. RETROACTIVE APPLICABILITY.
8	This Act shall take effect on the date of the enact-
9	ment of this Act and shall apply retroactively, including—
10	(1) to any aspect of the detention, treatment, or
11	trial of any person detained at any time since Sep-
12	tember 11, 2001; and
13	(2) to any claim or cause of action pending on
14	or after the date of the enactment of this Act.
15	SEC. 9. AMENDMENTS TO UNIFORM CODE OF MILITARY
16	JUSTICE.
17	(a) Applicability to Lawful Enemy Combat-
18	ANTS.—Section 802(a) of title 10, United States Code (arti-
19	cle 2(a) of the Uniform Code of Military Justice), is amend-
20	ed by adding at the end the following new paragraph:
21	"(13) Lawful enemy combatants who violate the
22	law of war.".
23	(b) Exclusion of Chapter 47A Commissions.—Sec-
24	tion 821 of such title (article 21 of such Code) is amended
25	by adding at the end the following new sentence: "This sec-

- 1 tion does not apply to military commissions established
- 2 under chapter 47A of this title.".
- 3 (c) Inapplicability of Requirement for Uniform
- 4 Regulations.—Section 36(b) of such title (article (36) of
- 5 such Code) is amended by inserting before the period at the
- 6 end ", except insofar as applicable to military commissions
- 7 established under chapter 47A of this title".

Union Calendar No. 409

109TH CONGRESS H. R. 6054

[Report No. 109-664, Parts I and II]

A BILL

To amend title 10, United States Code, to authorize trial by military commission for violations of the law of war, and for other purposes.

September 25, 2006

Reported with amendments, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed