

bers, excuse of members, and absent and additional members of a military commission, prior to the general amendment of this chapter by Pub. L. 111-84.

AMENDMENTS

2013—Subsec. (a)(1). Pub. L. 113-66, § 1031(a)(1)(A), substituted “at least five primary members and as many alternate members as the convening authority shall detail” for “at least five members” and inserted at end “Alternate members shall be designated in the order in which they will replace an excused primary member.”

Subsec. (a)(2). Pub. L. 113-66, § 1031(a)(1)(B), inserted “primary” before “members”.

Subsecs. (b), (c). Pub. L. 113-66, § 1031(a)(2)(B), added subsecs. (b) and (c). Former subsecs. (b) and (c) redesignated (d) and (e), respectively.

Subsec. (d). Pub. L. 113-66, § 1031(a)(2)(A), (3), redesignated subsec. (b) as (d), inserted “primary or alternate” before “member” in introductory provisions, and added par. (4).

Subsec. (e). Pub. L. 113-66, § 1031(a)(2)(A), (4), redesignated subsec. (c) as (e), substituted “Whenever the number of primary members of a military commission under this chapter is reduced below the number of primary members required by subsection (a) and there are no remaining alternate members to replace the excused primary members” for “Whenever a military commission under this chapter is reduced below the number of members required by subsection (a)”, and inserted at end “An alternate member who was present for the introduction of all evidence shall not be considered to be a new or additional member.”

SUBCHAPTER III—PRE-TRIAL PROCEDURE

Sec.	
948q.	Charges and specifications.
948r.	Exclusion of statements obtained by torture or cruel, inhuman, or degrading treatment; prohibition of self-incrimination; admission of other statements of the accused.
948s.	Service of charges.

§ 948q. Charges and specifications

(a) CHARGES AND SPECIFICATIONS.—Charges and specifications against an accused in a military commission under this chapter shall be signed by a person subject to chapter 47 of this title under oath before a commissioned officer of the armed forces authorized to administer oaths and shall state—

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

(2) that such matters are true in fact to the best of the signer’s knowledge and belief.

(b) NOTICE TO ACCUSED.—Upon the swearing of the charges and specifications in accordance with subsection (a), the accused shall be informed of the charges and specifications against the accused as soon as practicable.

(Added Pub. L. 111-84, div. A, title XVIII, § 1802, Oct. 28, 2009, 123 Stat. 2579.)

PRIOR PROVISIONS

A prior section 948q, added Pub. L. 109-366, § 3(a)(1), Oct. 17, 2006, 120 Stat. 2606, related to charges and specifications, prior to the general amendment of this chapter by Pub. L. 111-84.

§ 948r. Exclusion of statements obtained by torture or cruel, inhuman, or degrading treatment; prohibition of self-incrimination; admission of other statements of the accused

(a) EXCLUSION OF STATEMENTS OBTAIN BY TORTURE OR CRUEL, INHUMAN, OR DEGRADING TREAT-

MENT.—No statement obtained by the use of torture or by cruel, inhuman, or degrading treatment (as defined by section 1003 of the Detainee Treatment Act of 2005 (42 U.S.C. 2000dd)), whether or not under color of law, shall be admissible in a military commission under this chapter, except against a person accused of torture or such treatment as evidence that the statement was made.

(b) SELF-INCRIMINATION PROHIBITED.—No person shall be required to testify against himself or herself at a proceeding of a military commission under this chapter.

(c) OTHER STATEMENTS OF THE ACCUSED.—A statement of the accused may be admitted in evidence in a military commission under this chapter only if the military judge finds—

(1) that the totality of the circumstances renders the statement reliable and possessing sufficient probative value; and

(2) that—

(A) the statement was made incident to lawful conduct during military operations at the point of capture or during closely related active combat engagement, and the interests of justice would best be served by admission of the statement into evidence; or

(B) the statement was voluntarily given.

(d) DETERMINATION OF VOLUNTARINESS.—In determining for purposes of subsection (c)(2)(B) whether a statement was voluntarily given, the military judge shall consider the totality of the circumstances, including, as appropriate, the following:

(1) The details of the taking of the statement, accounting for the circumstances of the conduct of military and intelligence operations during hostilities.

(2) The characteristics of the accused, such as military training, age, and education level.

(3) The lapse of time, change of place, or change in identity of the questioners between the statement sought to be admitted and any prior questioning of the accused.

(Added by Pub. L. 111-84, div. A, title XVIII, § 1802, Oct. 28, 2009, 123 Stat. 2580.)

PRIOR PROVISIONS

A prior section 948r, added Pub. L. 109-366, § 3(a)(1), Oct. 17, 2006, 120 Stat. 2607; amended Pub. L. 110-181, div. A, title X, § 1063(a)(4), Jan. 28, 2008, 122 Stat. 321, related to prohibition of compulsory self-incrimination and treatment of statements obtained by torture and other statements, prior to the general amendment of this chapter by Pub. L. 111-84.

§ 948s. Service of charges

The trial counsel assigned to a case before a military commission under this chapter shall cause to be served upon the accused and military defense counsel a copy of the charges upon which trial is to be had in English and, if appropriate, in another language that the accused understands, sufficiently in advance of trial to prepare a defense.

(Added Pub. L. 111-84, div. A, title XVIII, § 1802, Oct. 28, 2009, 123 Stat. 2580.)

PRIOR PROVISIONS

A prior section 948s, added Pub. L. 109-366, § 3(a)(1), Oct. 17, 2006, 120 Stat. 2607, related to service of charges,

prior to the general amendment of this chapter by Pub. L. 111-84.

SUBCHAPTER IV—TRIAL PROCEDURE

Sec.	
949a.	Rules.
949b.	Unlawfully influencing action of military commission and United States Court of Military Commission Review.
949c.	Duties of trial counsel and defense counsel.
949d.	Sessions.
949e.	Continuances.
949f.	Challenges.
949g.	Oaths.
949h.	Former jeopardy.
949i.	Pleas of the accused.
949j.	Opportunity to obtain witnesses and other evidence.
949k.	Defense of lack of mental responsibility.
949l.	Voting and rulings.
949m.	Number of votes required.
949n.	Military commission to announce action.
949o.	Record of trial.

§ 949a. Rules

(a) PROCEDURES AND RULES OF EVIDENCE.—Pre-trial, trial, and post-trial procedures, including elements and modes of proof, for cases triable by military commission under this chapter may be prescribed by the Secretary of Defense. Such procedures may not be contrary to or inconsistent with this chapter. Except as otherwise provided in this chapter or chapter 47 of this title, the procedures and rules of evidence applicable in trials by general courts-martial of the United States shall apply in trials by military commission under this chapter.

(b) EXCEPTIONS.—(1) In trials by military commission under this chapter, the Secretary of Defense, in consultation with the Attorney General, may make such exceptions in the applicability of the procedures and rules of evidence otherwise applicable in general courts-martial as may be required by the unique circumstances of the conduct of military and intelligence operations during hostilities or by other practical need consistent with this chapter.

(2) Notwithstanding any exceptions authorized by paragraph (1), the procedures and rules of evidence in trials by military commission under this chapter shall include, at a minimum, the following rights of the accused:

(A) To present evidence in the accused's defense, to cross-examine the witnesses who testify against the accused, and to examine and respond to all evidence admitted against the accused on the issue of guilt or innocence and for sentencing, as provided for by this chapter.

(B) To be present at all sessions of the military commission (other than those for deliberations or voting), except when excluded under section 949d of this title.

(C)(i) When none of the charges sworn against the accused are capital, to be represented before a military commission by civilian counsel if provided at no expense to the Government, and by either the defense counsel detailed or the military counsel of the accused's own selection, if reasonably available.

(ii) When any of the charges sworn against the accused are capital, to be represented before a military commission in accordance with clause (i) and, to the greatest extent prac-

ticable, by at least one additional counsel who is learned in applicable law relating to capital cases and who, if necessary, may be a civilian and compensated in accordance with regulations prescribed by the Secretary of Defense.

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

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

(F) To the suppression of evidence the probative value of which is substantially outweighed by—

(i) the danger of unfair prejudice, confusion of the issues, or misleading the members; or

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

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

(A) Evidence seized outside the United States shall not be excluded from trial by military commission on the grounds that the evidence was not seized pursuant to a search warrant or authorization.

(B) A statement of the accused that is otherwise admissible shall not be excluded from trial by military commission on grounds of alleged coercion or compulsory self-incrimination so long as the evidence complies with the provisions of section 948r of this title.

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

(i) the military judge of the military commission determines that there is sufficient evidence that the evidence is what it is claimed to be; and

(ii) the military judge instructs the members that they may consider any issue as to authentication or identification of evidence in determining the weight, if any, to be given to the evidence.

(D) Hearsay evidence not otherwise admissible under the rules of evidence applicable in trial by general courts-martial may be admitted in a trial by military commission only if—

(i) the proponent of the evidence makes known to the adverse party, sufficiently in advance to provide the adverse party with a fair opportunity to meet the evidence, the proponent's intention to offer the evidence, and the particulars of the evidence (including information on the circumstances under which the evidence was obtained); and

(ii) the military judge, after taking into account all of the circumstances surrounding the taking of the statement, including the degree to which the statement is corroborated, the indicia of reliability within the statement itself, and whether the will of the declarant was overborne, determines that—

(I) the statement is offered as evidence of a material fact;

(II) the statement is probative on the point for which it is offered;