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APPROVED
AUG 19 1976

88/9/76

THE WHITE HOUSE

ACTION

WASHINGTON

Last Day: August 23

August 17, 1976

Posted
8/21/76

archives
8/23/76

MEMORANDUM FOR

THE PRESIDENT

FROM:

JIM CANNON

[Signature]

SUBJECT:

H.R. 7896 - Settlement of certain international claims

Attached for your consideration is H.R. 7896, sponsored by Representative Rodino.

The enrolled bill amends present law to provide for settlement, under international agreements, of certain claims incident to the non-combat activities of the armed forces.

A detailed explanation of the provisions of the enrolled bill is provided in OMB's enrolled bill report at Tab A.

OMB, NSC, Max Friedersdorf, Counsel's Office (Lazarus) and I recommend approval of the enrolled bill.

RECOMMENDATION

That you sign H.R. 7896 at Tab B.





EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

AUG 16 1976

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill H.R. 7896 - Settlement of certain
international claims
Sponsor - Rep. Rodino (D) New Jersey

Last Day for Action

August 23, 1976 - Monday

Purpose

Amends present law to provide for settlement, under international agreements, of certain claims incident to the non-combat activities of the armed forces.

Agency Recommendations

Office of Management and Budget	Approval
Department of Defense	Approval
Department of Transportation	Approval
Department of State	Approval
Department of Justice	Defers to other agencies

Discussion

Under the NATO Status of Forces Agreement and similar bilateral agreements to which the United States is a party, each member nation has agreed to assume responsibility for paying compensation for noncombat damages done

to third parties by other armed forces present in its territory as if caused by the host country's own armed forces. These agreements require that the host country investigate, settle, adjudicate and make final awards directly to claimants when the claim arises out of the act or omissions of members of a force or a civilian component of the guest country done in the performance of official duty and claims arising out of other acts, omissions, or occurrences for which such force or civilian component is "otherwise legally responsible" under local law. Typically, these agreements call for sharing such claims payments on a pro rata basis where the host country pays 75 percent and the guest country 25 percent.

However, existing law limits the United States' ability to fully comply with its above noted treaty obligations because settlement authority is limited to those "claims... arising out of the acts or omissions in the performance of official duty in a foreign country of a civilian employee, or a member of an armed force..." Thus, the United States cannot pay its pro rata share for those claims arising from other acts, omissions, or occurrences for which a force or civilian component is "otherwise legally responsible." Such "otherwise legally responsible" claims can develop because many foreign countries impose liability on the owner of property, particularly automobiles and aircraft, whether or not the damage was caused by an act or omission in the performance of official duty.

To overcome the inconsistency between existing law and our various status of force agreements, the Department of Defense submitted legislation to the 94th Congress that would authorize the Secretary of Defense (and the Secretary of Transportation with respect to the Coast Guard) to pay the United States' pro rata share of the "otherwise legally responsible" type claims which are discussed above. The Defense proposal also provided an amendment to clarify that claim settlements could be made by arbitration. H.R. 7896 is identical to the legislation proposed by Defense and it would have inconsequential budgetary impact.

In commenting on the enrolled bill, the Department of State has advised us that it has been concerned with the possible lack of statutory authority to meet international commitments under status of forces agreements and has favored the enactment of legislation similar to H.R. 7896 for many years. The Department further notes that this amendment will be most helpful in the negotiation of new status of forces agreements and in the implementation of existing agreements.

James M. Frey
Assistant Director for
Legislative Reference

Enclosures

THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.:

Date: August 17

Time: 930am

FOR ACTION: Max Friedersdorf
Ken Lazarus
NSC/S
Judy Hope

cc (for information): Jack Marsh
Jim Cavanaugh
Ed Schmults

FROM THE STAFF SECRETARY

DUE: Date: August 17

Time: 1100am

SUBJECT:

H.R. 7896-settlement of certain international claims

ACTION REQUESTED:

____ For Necessary Action

____ For Your Recommendations

____ Prepare Agenda and Brief

____ Draft Reply

☒ For Your Comments

____ Draft Remarks

REMARKS:

please return to judy johnston, ground floor west wing

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

K. R. COLE, JR.
For the President



DEPARTMENT OF THE AIR FORCE
WASHINGTON 20330



OFFICE OF THE SECRETARY

13 AUG 1976

Honorable James T. Lynn
Director, Office of Management
and Budget
Washington, D.C. 20503

Dear Mr. Lynn:

Reference is made to your request for the views of the Department of Defense with respect to the enrolled enactment of H.R. 7896, 94th Congress, an act

"To amend sections 2734a(a) and 2734b(a) of title 10, United States Code, to provide for settlement under international agreements, of certain claims incident to the noncombat activities of the armed forces, and for other purposes."

The Secretary of Defense has delegated to the Department of the Air Force the responsibility for expressing the views of the Department of Defense.

The primary purpose of the proposed legislation is to amend section 2734a (the so-called International Agreement Claims Act) to make it consistent with the NATO Status of Forces type agreements, thereby granting the United States statutory authority to pay certain claims we have agreed to pay under those treaties.

Among other categories of claims, the NATO Status of Forces type agreements provide the receiving state will pay and the United States will partially reimburse the receiving state for claims arising out of acts, omissions, or occurrences for which the United States forces or civilian components are otherwise legally responsible under local law. Section 2734a presently purports to implement these agreements, but does not fully provide for reimbursement or payment to foreign governments in the "otherwise legally responsible" category mentioned above. H.R. 7896 amends section 2734a to make such reimbursement possible.

NATIONAL SECURITY COUNCIL

August 17, 1976

MEMORANDUM FOR: JAMES M. CANNON
FROM: Jeanne W. Davis *WJD*
SUBJECT: *fn* H.R. 7896

The NSC Staff concurs in H.R. 7896 - Settlement of Certain International Claims.

For consistency, this legislation makes a corollary amendment in section 2734b which relates to the payment or reimbursement to the United States for claims resulting from property loss, personal injury, or death as the result of the acts or omissions in the United States of a civilian employee or member of an armed force of a foreign country.

Due to the unpredictability of future claims, it is impossible to accurately forecast the precise dollar impact of this legislation, but from past experience it is estimated to be less than \$10,000 per annum. The primary benefit of H.R. 7896 would be international harmony by eliminating the disparity between our treaties and our statutory authority.

The Department of the Air Force on behalf of the Department of Defense strongly endorses this legislation and recommends that the President approve H.R. 7896.

Sincerely,

A handwritten signature in cursive script, reading "Eldon L. McColl".

ELDON L. McCOLL
Deputy Administrative Assistant



THE DEPUTY SECRETARY OF TRANSPORTATION
WASHINGTON, D.C. 20590

AUG 16 1976

Honorable James T. Lynn
Director
Office of Management and Budget
Washington, D. C. 20503

Dear Mr. Lynn:

Reference is made to your request for the views of the Department of Transportation concerning H.R. 7896, an enrolled bill

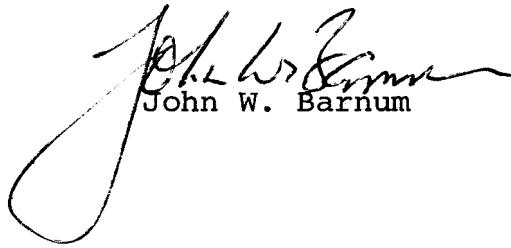
"To amend sections 2734a(a) and 2734b(a) of title 10, United States Code, to provide for settlement, under international agreements, of certain claims incident to the noncombat activities of the armed forces, and for other purposes."

The enrolled bill, sponsored by the Department of Defense, amends sections 2734a(a) and 2734b(a) of title 10, United States Code, to clarify the administrative settlement procedures for certain claims under those sections. Although the total number of claims involved is small, the present language of those sections has raised a question as to the ability of the United States to comply full with its Status of Forces Agreements in some instances. By adding the language "...arising out of any other act, omission, or occurrence for which an armed force of the United States is legally responsible under the law of another party of the international agreement..." in section 2734a, and corresponding language in section 2734b, the enrolled bill makes clear the authority of the United States to implement its claims obligations under the NATO Status of Forces Agreement and similar bilateral agreements.

The enrolled bill also amends those sections to remove a possible ambiguity as to the authority of the United States to reimburse another party to the agreement for claims settled by administrative action.

This Department recommends that the President sign the enrolled bill.

Sincerely,

A handwritten signature in dark ink, appearing to read "John W. Barnum", is written over the printed name. The signature is fluid and cursive, with a large loop at the end of the last name.

John W. Barnum



DEPARTMENT OF STATE

Washington, D.C. 20520

AUG 16 1976

Dear Mr. Lynn:

Reference is made to Mr. Frey's memorandum of August 12, requesting the views and recommendations of the Department of State on H.R. 7896, an enrolled bill.

The enrolled enactment amends sections 2734a and 2734b of title 10, United States Code, to provide for the settlement under international agreements of certain claims incident to the noncombat activities of the armed forces. Its purpose is to conform the statutory claims settlement authority of the Secretary of Defense (and the Secretary of Transportation with respect to the Coast Guard) with the international obligations of the United States under various status of forces agreements.

Existing law limits settlement authority to "claims ... arising out of the acts or omissions in the performance of official duty in a foreign country of a civilian employee, or a member of an armed force..." The NATO Status of Forces Agreement and similar agreements with countries which are not members of NATO oblige the United States to pay a pro rata share in satisfaction of such claims, and also for claims arising from other acts, omissions or occurrences for which a force or civilian component is "otherwise legally responsible." The inconsistency of the existing statute with the terms of the relevant international agreements has created difficulties in situations where local law imposes liability on the owner of a motor vehicle for its operation, whether or not in the course of official duty, and in cases where local law imposes absolute liability, without regard to fault, in connection with such inherently dangerous activities as the transportation of explosives.

The Honorable
James T. Lynn, Director,
Office of Management and Budget.

This bill also clarifies certain ambiguities in existing law regarding the mode of settlement, and makes parallel amendments to the statute dealing with claims against foreign forces present in the United States.

The proposed legislation was a part of the Department of Defense Legislative Program for the Ninety-Fourth Congress, and was approved by the Department of State. The draft bill submitted to Congress by the Air Force on May 23, 1975 has been passed without amendment.

The Department of State has been concerned with the possible lack of statutory authority to meet international commitments under status of forces agreements and has favored the enactment of legislation similar to H.R. 7896 for many years. We believe this amendment will be most helpful in the negotiation of new status of forces agreements and in the implementation of existing agreements.

For the foregoing reasons, the Department of State recommends that the President approve the enrolled bill.

Sincerely,

A handwritten signature in black ink, reading "Robert J. McCloskey". The signature is written in a cursive, flowing style.

Robert J. McCloskey
Assistant Secretary for
Congressional Relations

Department of Justice
Washington, D.C. 20530

August 16, 1976

Honorable James T. Lynn
Director
Office of Management and Budget
Washington, D. C. 20503

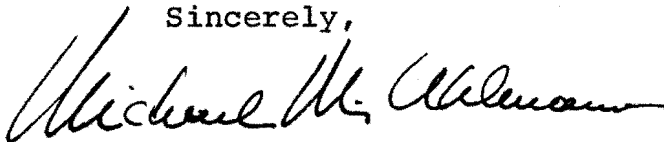
Dear Mr. Lynn:

In compliance with your request, I have examined a facsimile of the enrolled bill, H.R. 7896, a bill "to amend sections 2734a(a) and 2734b(a) of title 10, United States Code, to provide for settlement, under international agreements, of certain claims incident to the noncombat activities of the armed forces, and for other purposes."

This bill revises and reenacts sections 2734a(a) and 2734b(a) of title 10, United States Code to permit the Secretary of Defense or the Secretary of Transportation or their designees to administer the claims program under an international agreement in accordance with the intent and present implementation of the international agreement.

While the provisions of section 2734b(a) may ultimately require the Department of Justice to defend the United States in court, our previous experience in this area has been very minimal. Accordingly, the Department of Justice defers to those agencies more directly concerned with the subject matter of the bill as to whether it should receive Executive approval.

Sincerely,



MICHAEL M. UHLMANN
Assistant Attorney General

THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.:

Date: August 17

Time: 930am

FOR ACTION: Max Friedersdorf
Ken Lazarus
NSC/S
Judy Hope

cc (for information): Jack Marsh
Jim Cavanaugh
Ed Schmults

FROM THE STAFF SECRETARY

DUE: Date: August 17

Time: 1100am

SUBJECT:

H.R. 7896-settlement of certain international claims

ACTION REQUESTED:

☐ For Necessary Action

☐ For Your Recommendations

☐ Prepare Agenda and Brief

☐ Draft Reply

☒ For Your Comments

☐ Draft Remarks

REMARKS:

please return to judy johnston, ground floor west wing

No objection -- Ken Lazarus

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If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

James M. Cannon

THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.:

Date: August 17

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FOR ACTION: Max Friedersdorf
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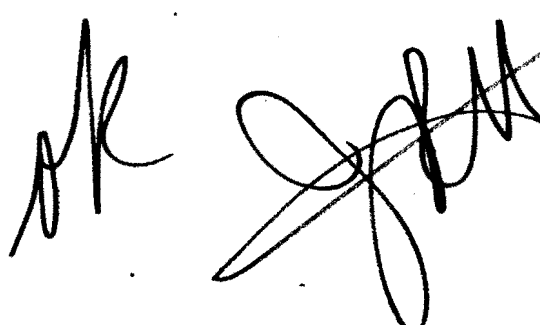
☐ Draft Reply

☒ For Your Comments

☐ Draft Remarks

REMARKS:

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Advise the Staff Secretary

James M. Cannon

THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.:

Date: August 17

Time: 930am

FOR ACTION: Max Friedersdorf *RFW* cc (for information): Jack Marsh
Ken Lazarus Jim Cavanaugh
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☐ Draft Remarks

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James M. Cannon



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

AUG 16 1976

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill H.R. 7896 - Settlement of certain
international claims
Sponsor - Rep. Rodino (D) New Jersey

Last Day for Action

August 23, 1976 - Monday

Purpose

Amends present law to provide for settlement, under international agreements, of certain claims incident to the non-combat activities of the armed forces.

Agency Recommendations

Office of Management and Budget

Approval

Department of Defense

Approval

Department of Transportation

Approval

Department of State

Approval

Department of Justice

Defers to other
agencies

Discussion

Under the NATO Status of Forces Agreement and similar bilateral agreements to which the United States is a party, each member nation has agreed to assume responsibility for paying compensation for noncombat damages done

AMENDING SECTIONS 2734a(a) AND 2734b(a) OF TITLE 10, UNITED STATES CODE, TO PROVIDE FOR SETTLEMENT, UNDER INTERNATIONAL AGREEMENTS, OF CERTAIN CLAIMS INCIDENT TO THE NONCOMBAT ACTIVITIES OF THE ARMED FORCES, AND FOR OTHER PURPOSES

OCTOBER 8, 1975.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. FLOWERS, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H.R. 7896]

The Committee on the Judiciary, to whom was referred the bill (H.R. 7896) to amend sections 2734a(a) and 2734b(a) of title 10, United States Code, to provide for settlement, under international agreements, of certain claims incident to the noncombat activities of the armed forces, and for other purposes, having considered the same, reports favorably thereon without amendment and recommend that the bill do pass.

PURPOSE

The purpose of the proposed legislation is to amend sections 2734a(a) and 2734b(a) of title 10, United States Code, so that the language of the sections will be consistent with the provisions of the Status of Forces Agreements entered into by the United States with other countries to provide for reimbursement or payment for claims which are settled or adjudicated under those agreements.

STATEMENT

The bill H.R. 7896 was introduced in accordance with the recommendations of an Executive Communication from the Department of the Air Force in behalf of the Department of Defense which recommends its enactment.

The Status of Forces Agreements typified by those entered into by the United States under the North Atlantic Treaty, provide for the reimbursement or payment to the other country for claims which are settled or adjudicated under such Status of Forces Agreement. These agreements provide that the receiving state shall investigate, settle, adjudicate and make final awards direct to claimants when the claim

arises out of the acts or omissions of members of a force or a civilian component of the sending state done in the performance of official duty and claims arising out of other acts, omissions, or occurrences for which a force or civilian component is legally responsible under local law. The usual reimbursement under the agreements is made on a pro-rata basis of 75 percent of the amount paid by the receiving state. Section 2734a provides the authority for the reimbursement of other countries for claims settled and paid under a status of forces agreement and the parallel language of section 2734b provides the authority for the United States to settle, pay and seek reimbursement for claims settled under such an agreement which arise in the United States as the result of property loss, personal injury or death as the results of military activity of foreign forces which may be present in the United States subject to a status of forces agreement. As presently written, sections 2734a(a) and 2734b(a) do not clearly fully implement the agreements because the language does not specifically refer to claims for which an armed force of the United States is legally responsible as provided in the status of forces agreements.

The basic principle for claims settlements under status of forces agreements is that the claims will be settled by the receiving state, that is, the state in which the United States has forces, as if the claims were against the receiving state and were generated by activity of its own military forces. Therefore, the claims are adjudicated and paid on the basis of the laws and procedures of that particular state. The language of this bill providing for the inclusion of the words "legally responsible under the law of another party to the international agreement" in sections 2734a(a) and 2734b(a) of title 10 expresses this basic principle. It is logical and appropriate that the implementing section contain these words.

This manner of claims settlement has a considerable history dating back to claim settlements by allied forces in World War I. In 1915, Britain and France agreed that claims arising out of British activity in France would be considered to be against France and claimants could bring actions against the French government in French courts as if the damages were done by French forces rather than British forces. Other allied nations entered into similar agreements and after the Armistice in 1919, the claims settlement agreement between the United States and France provided that claims would be settled on this basis.

During World War II, an agreement dated August 25, 1944 between France, the United Kingdom, and the United States provides that damages caused in France by allied forces other than by military operations would be paid as determined by claims commissions. On February 15, 1945, an agreement between France and the United States provides that as to motor vehicle accidents, the French government was to be substituted for the United States for claims. The Blum-Byrnes Agreement of May 28, 1946 provided for a more comprehensive basis for claims settlement. The agreement provided for a general financial settlement of claims relating to lend lease, military surplus, war debts and disposition of property and installations. As to claims arising from acts or omissions of service members and civilian personnel of the United States forces prior to July 1, 1946, the agreement provided that they were to be paid by the French.

The wartime agreements were found not to be suited to the peacetime situation after the war and new arrangements were necessary to provide for claims settlement. In Europe, initially the claims situation was provided for through the Brussels Treaty and the agreement of the status of members of the armed forces of the Brussels Treaty Powers. That treaty was signed in London on December 21, 1949. The status of forces agreement provided that each contracting party would be responsible for paying compensation for damage done to third parties by other armed forces present in its territory under the Brussels Treaty as if caused by that contracting party's own armed forces. These claims were to be filed and considered in accordance with the laws and regulations applicable to the receiving state.

The experience gained in claims settlements prior to the formation of the North Atlantic Organization obviously influenced the claims agreements under the NATO Treaty. The fundamental principle, as was stated at the outset, is that the receiving state is charged with the responsibility of settling and paying claims arising from the activities of the Armed Forces of a sending state and its territory as if caused by its own military activity. When the claims arising from United States activity under these circumstances are paid, it becomes the obligation of the United States to reimburse the other state in the percentage provided for in the agreement. This bill is intended to clarify the law so that the United States can fully meet this obligation.

The Executive Communication indicates that the deficiency in the existing language has raised a question as to the ability of the United States to fully comply with its treaty obligations in some instances. While the number of claims affected are not large, the question as to statutory authority has caused some difficulty. The Executive Communication points out that the law of one NATO country provides that the party initiating the transportation of inherently dangerous material such as explosives and high octane gasoline is to be held liable for any damage which may occur. The law provides that transportation of such material is to be accomplished by licensed independent contractors, but this would not insulate the contracting party from liability. In the country concerned, the transportation of military explosives would be subject to this type of liability, but the United States is presently unable to give assurances that the provisions of section 2734(a) are sufficiently broad to implement the treaty obligations to reimburse the country for its pro-rata share of any claims that might arise as a result of an accident involving such explosives. In that event, the United States under the agreement would be responsible for reimbursement for damages under the law of the receiving state.

In such a case, it would not be possible in most of such cases to trace the cause of an explosion to an act or omission of a member of the armed forces or civilian component acting in the performance of official duty. The language added by this bill would meet this sort of problem and make it clear that the United States would have the authority to implement its claims obligations under the NATO Status of Forces Agreement and similar bilateral agreements. Other examples cited by the Air Force in its communication relate to claims based upon liability of the owners of property with particular reference to automobiles and aircraft.

The bill also provides for amendments to the sections to remove a possible ambiguity as to the authority of the United States to reimburse for claims settled by administrative action. The specific language in the present statute referring to claims "adjudicated" by a country under its laws and regulations is interpreted as authorizing reimbursement for claims settled by administrative action which is the method generally followed in claim settlements abroad as well as in this Country. In other words, it is not limited to claims subject to adjudication by the courts. The best example of this sort of settlement in the United States is administrative settlement under the Federal Tort Claims Act¹ which also provides that the filing of a claim for administrative settlement and its rejection is a pre-requisite to court jurisdictions.²

The Executive Communication also points out that the status of forces agreements provide that as to claims for damage to the property of a foreign state, the settlements are to be made by arbitration unless the contracting parties agree otherwise. The amendment proposed in this bill in providing for settlements would clarify the procedures under the agreement since, in practice, settlements for this type of damage have been made by negotiation between the parties concerned. The new language to subsections (a) of sections 2734a and 2734b specifically referring to "settlement" under international agreements therefore more specifically provides for procedures now being followed in claims settlements and reimbursements under those agreements.

CONCLUSION

The bill provides for amendments to sections 2734a and 2734b which implement the international claim agreements to which the United States is a party. The committee recommends that the bill be considered favorably.

[The Executive Communication of the Air Force in behalf of the Department of Defense is as follows:]

DEPARTMENT OF THE AIR FORCE,
Washington, May 23, 1975.

Hon. CARL ALBERT,
Speaker of the House of Representatives.

DEAR MR. SPEAKER: There is forwarded herewith a draft of proposed legislation to amend sections 2734a (a) and 2734b (a) of title 10, United States Code, to provide for settlement under international agreements, of certain claims incident to the noncombat activities of the armed forces, and for other purposes.

This proposal is part of the Department of Defense Legislative Program for the 94th Congress and the Office of Management and Budget advises that, from the standpoint of the Administration's program, there is no objection to the presentation of this proposal for the consideration of the Congress. The Department of the Air Force has been designated as the representative of the Department of Defense for this legislation. It is recommended that this proposal be enacted by the Congress.

¹ 28 USC § 2672.
² 28 USC § 2675.

PURPOSE OF THE LEGISLATION

The primary purpose of the proposed legislation is to amend section 2734a (a) (the so-called International Agreement Claims Act) to make it consistent with the NATO Status of Forces type agreements with respect to the reimbursement or payment to a foreign country by the United States for certain claims that are settled or adjudicated under such agreements. Under these agreements, the receiving state investigates, settles, adjudicates, and makes final awards direct to third-party claimants in two categories of cases: where the claim arises out of (1) acts or omissions of members of a force or a civilian component of the sending state done in the performance of official duty; and (2) other acts, omissions, or occurrences for which a force or civilian component is otherwise legally responsible under local law. The agreements require that reimbursement be made in both situations by the sending state on a pro rata basis, usually 75 percent of the amount of the claim allowed by the receiving state. Section 2734a presently purports to implement these agreements, but does not fully provide for reimbursement or payment to foreign governments in the "otherwise legally responsible" category mentioned above.

The "otherwise legally responsible" category of claims cases under the status of forces agreements reflects the fact that the laws of many foreign countries impose liability on the owner of property, particularly automobiles and aircraft, whether or not the damage was caused by an act or omission in the performance of official duty by his agent or employee. In addition, some foreign laws impose absolute liability by virtue of the inherently dangerous nature of the activity or property involved, such as explosives and high octane gasoline. In one NATO country, for example, where the law provides for transportation of military explosives by licensed independent contractors, the United States is presently unable to give assurances that its permanent domestic legislation is sufficiently broad to implement its treaty obligations to reimburse its pro rata share of such claims. Although the United States would be legally responsible for damages under the law of the receiving state, it would not be possible in most of such cases to trace the cause of an explosion to an act or omission of a member of the armed forces or civilian component acting in the performance of official duty. The proposed amendment to section 2734a (a) would fully implement the claims obligations of the United States under the NATO Status of Forces Agreement and similar bilateral agreements.

The present law refers to agreements providing for reimbursement or payment for claims "adjudicated" by the foreign country under its laws and regulations, and adjudication in this context could be interpreted to mean action by the local courts. The agreements, however, also authorize settlement by administrative action and this method has been generally followed. This possible ambiguity in describing the method of settlement would be eliminated by the proposed amendment.

The proposed legislation would also clarify the authority in clause (2) of section 2734a (a) to pay a foreign country the agreed pro rata share of a claim for damage to its property that is not specifically waived under the applicable agreement. The agreements provide that,

unless the contracting parties agree otherwise, settlements are to be made by arbitration. Thus, adjudication is not mandatory under the agreements, and in practice all settlements have been made by negotiation between the parties concerned. The present law, as stated, refers only to adjudication.

For consistency, the proposed legislation would make a corollary amendment in section 2734b which relates to the payment or reimbursement to the United States for claims arising in the United States resulting from property loss, personal injury, or death as the result of the acts or omissions of a civilian employee or member of an armed force of a foreign country.

In summary, it is clear that sections 2734a and 2734b do not fully implement the international agreements to which the United States is a party and the proposed amendments would cause these sections to conform to the international agreements and eliminate the existing discrepancy.

COST AND BUDGET DATA

The cost of the legislation cannot be definitely ascertained since we are unable to forecast the number of "legally responsible" accidents or incidents in countries where status of forces agreements are in effect and which are not payable under the present statute. On the basis of 14 years' experience, however, this type of claim is expected to have very little, if any budgetary impact on the Department of Defense.

Sincerely,

JACK L. STEMLER,
General Counsel.

A BILL To amend sections 2734a(a) and 2734b(a) of title 10, United States Code, to provide for settlement, under international agreements, of certain claims incident to the noncombat activities of the armed forces, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That title 10, United States Code, is amended—

(1) by amending section 2734a(a) to read as follows:

"(a) When the United States is a party to an international agreement which provides for the settlement or adjudication and cost sharing of claims against the United States arising out of the acts or omissions of a member or civilian employee of an armed force of the United States done in the performance of official duty, or arising out of any other act, omission, or occurrence for which an armed force of the United States is legally responsible under the law of another party to the international agreement, and causing damage in the territory of such party, the Secretary of Defense or the Secretary of Transportation or their designees may—

"(1) reimburse the party to the agreement for the agreed pro rata share of amounts, including any authorized arbitration costs, paid by that party in satisfying awards or judgments on claims, in accordance with the agreement; or

"(2) pay the party to the agreement the agreed pro rata share of any claim, including any authorized arbitration costs, for damage to property owned by it, in accordance with the agreement."; and

(2) by amending section 2734b(a) to read as follows:

"(a) When the United States is a party to an international agreement which provides for the settlement or adjudication by the United States under its laws and regulations, and subject to agreed pro rata reimbursement, of claims against another party to the agreement arising out of the acts or omissions of a member or civilian employee of an armed force of that party done in the performance of official duty, or arising out of any other act, omission, or occurrence for which that armed force is legally responsible under applicable United States law, and causing damage in the United States, or a territory, Commonwealth or possession thereof; those claims may be prosecuted against the United States, or settled by the United States, in accordance with the agreement, as if the acts or omissions upon which they are based were the acts or omissions of a member or a civilian employee of an armed force of the United States."

CHANGES IN EXISTING LAW

In compliance with paragraph 2 of clause 3 of Rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

TITLE 10.—ARMED FORCES

* * * * *
Chapter 163. Military Claims

* * * * *
§ 2734a. Property loss; personal injury or death; incident to non-combat activities of armed forces; foreign countries; international agreements.

[(a) Under an international agreement to which the United States is a party that provides that claims against the United States arising out of the acts or omissions in the performance of official duty in a foreign country of a civilian employee, or a member, of an armed force may be adjudicated by that country under its laws and regulations, the Secretary of Defense may—

(1) reimburse that country for the agreed pro rata share of such amounts as are spent by that country to pay those claims, including the costs of settlement or arbitration; or

(2) pay that country the agreed pro rata share of claims arising out of damage to the property of that country, including the costs of settlement or arbitration.]

(a) When the United States is a party to an international agreement which provides for the settlement or adjudication and cost sharing

of claims against the United States arising out of the acts or omissions of a member or civilian employee of an armed force of the United States done in the performance of official duty, or arising out of any other act, omission, or occurrence for which an armed force of the United States is legally responsible under the law of another party to the international agreement, and causing damage in the territory of such party, the Secretary of Defense or the Secretary of Transportation or their designees may—

(1) reimburse the party to the agreement for the agreed pro rata share of amounts, including any authorized arbitration costs, paid by that party in satisfying awards or judgments on claims, in accordance with the agreement; or

(2) pay the party to the agreement pro rata share of any claim, including any authorized arbitration costs, for damage to property owned by it, in accordance with the agreement.

(b) A claim arising out of an act of an enemy of the United States or arising, directly or indirectly, from an act of the armed forces, or a member thereof, while engaged in combat may not be considered or paid under this section.

(c) A reimbursement or payment under this section shall be made by the Secretary of Defense out of appropriations for that purpose except that payment of claims against the Coast Guard arising while it is operating as a service of the Department of Transportation shall be made out of the appropriations for the operating expenses of the Coast Guard. The appropriations referred to in this subsection may be used to buy foreign currencies required for the reimbursement or payment.

(d) Upon the request of the Secretary of Transportation or his designee, any payments made relating to claims arising from the activities of the Coast Guard and covered by subsection (a) may be reimbursed or paid to the foreign country concerned by the authorized representative of the Department of Defense out of the appropriation for claims of the Department of Defense, subject to reimbursement from the Department of Transportation. (Added Pub. L. 87-651, title I, § 113(a), Sept. 7, 1962, 76 Stat. 512, and amended Pub. L. 90-521, § 4, Sept. 26, 1968, 82 Stat. 874.)

§ 2734b. Property loss; personal injury or death: incident to activities of armed forces of foreign countries in United States; international agreements.

[(a) Where an international agreement to which the United States is a party provides that claims against a foreign country arising out of the acts or omissions in the performance of official duty in the United States, or a Territory, Commonwealth, or possession, of a civilian employee, or member, of the armed forces of that country, be adjudicated by the United States under its laws and regulations subject to an agreed pro rata reimbursement, those claims may be prosecuted against the United States, or settled by the United States, under then existing laws and regulations as if the acts or omissions upon which they are based were the acts or omissions in the performance of official duty of a civilian employee, or a member, of an armed force.]

(a) When the United States is a party to an international agreement which provides for the settlement or adjudication by the United States under its laws and regulations, and subject to agreed pro rata reimbursement, of claims against another party to the agreement arising out of the acts or omissions of a member or civilian employee of an armed force of that party done in the performance of official duty, or arising out of any other act, omission, or occurrence for which that armed force is legally responsible under applicable United States law, and causing damage in the United States, or a territory, Commonwealth, or possession thereof; those claims may be prosecuted against the United States, or settled by the United States, in accordance with the agreement, as if the acts or omissions upon which they are based were the acts or omissions of a member or a civilian employee of an armed force of the United States.

(b) When a dispute arises in the settlement or adjudication of a claim under this section whether an act or omission was in the performance of official duty, or whether the use of a vehicle of the armed forces was authorized, the dispute shall be decided under the international agreement with the foreign country concerned. Such a decision is final and conclusive. The Secretary of Defense may pay that part of the cost of obtaining such a decision that is chargeable to the United States under that agreement.

(c) A claim arising out of an act of an enemy of the United States may not be considered or paid under this section.

(d) A payment under this section shall be made by the Secretary of Defense out of appropriations for that purpose. (Added Pub. L. 87-651, title I, § 113(a), Sept. 7, 1962, 76 Stat. 512.)

○

AMENDING SECTIONS 2734a(a) AND 2734b(a) OF TITLE 10,
UNITED STATES CODE, TO PROVIDE FOR SETTLE-
MENT, UNDER INTERNATIONAL AGREEMENTS, OF
CERTAIN CLAIMS INCIDENT TO THE NONCOMBAT
ACTIVITIES OF THE ARMED FORCES

AUGUST 5, 1976.—Ordered to be printed

Mr. THURMOND, from the Committee on the Judiciary,
submitted the following

REPORT

[To accompany H.R. 7896]

The Committee on the Judiciary, to which was referred the bill (H.R. 7896), to amend sections 2734a(a) and 2734b(a) of title 10, United States Code, to provide for settlement, under international agreements, to certain claims incident to the noncombat activities of the Armed Forces, and for other purposes, having considered the same, reports favorably thereon, without amendment, and recommends that the bill do pass.

PURPOSE

The purpose of the proposed legislation is to amend sections 2734a(a) and 2734b(a) of title 10, United States Code, so that the language of the sections will be consistent with the provisions of the Status of Forces Agreements entered into by the United States with other countries to provide for reimbursement or payment for claims which are settled or adjudicated under those agreements.

STATEMENT

The statement contained in the House Report on H.R. 2786 is as follows:

The bill H.R. 7896 was introduced in accordance with the recommendations of an Executive Communication from the Department of the Air Force in behalf of the Department of Defense which recommends its enactment.

The Status of Forces Agreements typified by those entered into by the United States under the North Atlantic Treaty, provide for the reimbursement or payment to the other country for claims which are settled or adjudicated under such Status of Forces Agreement. These agreements provide that the receiving state shall investigate, settle, adjudicate and make final awards direct to claimants when the claim arises out of the act or omissions of members of a force or a civilian component of the sending state done in the performance of official duty and claims arising out of other acts, omissions, or occurrences for which a force or civilian component is legally responsible under local law. The usual reimbursement under the agreements is made on a prorata basis of 75 percent of the amount paid by the receiving state. Section 2734a provides the authority for the reimbursement of other countries for claims settled and paid under a status of forces agreement and the parallel language of section 2734b provides the authority for the United States to settle, pay and seek reimbursement for claims settled under such an agreement which arise in the United States as the result of property loss, personal injury or death as the results of military activity of foreign forces which may be present in the United States subject to a status of forces agreement. As presently written, sections 2734a(a) and 2734b(a) do not clearly fully implement the agreements because the language does not specifically refer to claims for which an armed force of the United States is legally responsible as provided in the status of forces agreements.

The basic principle for claims settlements under status of forces agreements is that the claims will be settled by the receiving state, that is, the state in which the United States has forces, as if the claims were against the receiving state and were generated by activity of its own military forces. Therefore, the claims are adjudicated and paid on the basis of the laws and procedures of that particular state. The language of this bill providing for the inclusion of the words "legally responsible under the law of another party to the international agreement" in sections 2734a(a) and 2734b(a) of title 10 expresses this basic principle. It is logical and appropriate that the implementing section contain these words.

This manner of claims settlement has a considerable history dating back to claim settlements by allied forces in World War I. In 1915, Britain and France agreed that claims arising out of British activity in France would be considered to be against France and claimants could bring actions against the French government in French courts as if the damages were done by French forces rather than British forces. Other allied nations entered into similar agreements and after the Armistice in 1918, the claims settlement agreement between the United States and France provided that claims would be settled on this basis.

During World War II, an agreement dated August 25, 1944 between France, the United Kingdom, and the United States provides that damages caused in France by allied forces other than by military operations would be paid as determined by claims commissions. On February 15, 1945, an agreement between France and the United States provides that as to motor vehicle accidents, the French government was to be substituted for the United States for claims. The Blum-Byrnes Agreement of May 28, 1946 provided for a more comprehensive basis for claims settlement. The agreement provided for a general financial settlement of claims relating to lend lease, military surplus, war debts and disposition of property and installations. As to claims arising from acts or omissions of service members and civilian personnel of the United States forces prior to July 1, 1946, the agreement provided that they were to be paid by the French.

The wartime agreements were found not to be suited to the peace-time situation after the war and new arrangements were necessary to provide for claims settlement. In Europe, initially the claims situation was provided for through the Brussels Treaty and the agreement of the status of members of the armed forces of the Brussels Treaty Powers. That treaty was signed in London on December 21, 1949. The status of forces agreement provided that each contracting party would be responsible for paying compensation for damage done to third parties by other armed forces present in its territory under the Brussels Treaty as if caused by that contracting party's own armed forces. These claims were to be filed and considered in accordance with the laws and regulations applicable to the receiving state.

The experience gained in claims settlements prior to the formation of the North Atlantic Organization obviously influenced the claims agreements under the NATO Treaty. The fundamental principle, as was stated at the outset, is that the receiving state is charged with the responsibility of settling and paying claims arising from the activities of the Armed Forces of a sending state and its territory as if caused by its own military activity. When the claims arising from United States activity under these circumstances are paid, it becomes the obligation of the United States to reimburse the other state in the percentage provided for in the agreement. This bill is intended to clarify the law so that the United States can fully meet this obligation.

The Executive Communication indicates that the deficiency in the existing language has raised a question as to the ability of the United States to fully comply with its treaty obligations in some instances. While the number of claims affected are not large, the question as to statutory authority has caused some difficulty. The Executive Communication points out that the law of one NATO country provides that the party initiating the transportation of inherently dangerous material such as explosives and high octane gasoline is to be

held liable for any damage which may occur. The law provides that transportation of such material is to be accomplished by licensed independent contractors, but this would not insulate the contracting party from liability. In the country concerned, the transportation of military explosives would be subject to this type of liability, but the United States is presently unable to give assurances that the provisions of section 2734(a) are sufficiently broad to implement the treaty obligations to reimburse the country for its pro-rata share of any claims that might arise as a result of an accident involving such explosives. In that event, the United States under the agreement would be responsible for reimbursement for damages under the law of the receiving state.

In such a case, it would not be possible in most of such cases to trace the cause of an explosion to an act or omission of a member of the armed forces or civilian component acting in the performance of official duty. The language added by this bill would meet this sort of problem and make it clear that the United States would have the authority to implement its claims obligations under the NATO Status of Forces Agreement and similar bilateral agreements. Other examples cited by the Air Force in its communication relate to claims based upon liability of the owners of property with particular reference to automobiles and aircraft.

The bill also provides for amendments to the sections to remove a possible ambiguity as to the authority of the United States to reimburse for claims settled by administrative action. The specific language in the present statute referring to claims "adjudicated" by a country under its laws and regulations is interpreted as authorizing reimbursement for claims settled by administrative action which is the method generally followed in claim settlements abroad as well as in this Country. In other words, it is not limited to claims subject to adjudication by the courts. The best example of this sort of settlement in the United States is administrative settlement under the Federal Tort Claims Act¹ which also provides that the filing of a claim for administrative settlement and its rejection is a pre-requisite to court jurisdictions.²

The Executive Communication also points out that the status of forces agreements provide that as to claims for damage to the property of a foreign state, the settlements are to be made by arbitration unless the contracting parties agree otherwise. The amendment proposed in this bill in providing for settlements would clarify the procedures under the agreement since, in practice, settlements for this type of damage have been made by negotiation between the parties concerned. The new language to subsections (a) of sections 2734a and 2734b specifically referring to "settlement" under international agreements therefore more specifically provides for procedures now being followed in claims settlements and reimbursements under those agreements.

H.R. 7896 was passed by the House on November 3, 1975.

The Committee is in agreement with the findings and recommendations of the House Committee on the Judiciary and, accordingly, recommends favorable consideration of H.R. 7896.

Attached and made a part of this report is the executive communication of the Air Force on H.R. 7896 on behalf of the Department of Defense.

DEPARTMENT OF THE AIR FORCE,
Washington, May 23, 1975.

HON. CARL ALBERT,
Speaker of the House of Representatives.

DEAR MR. SPEAKER: There is forwarded herewith a draft of proposed legislation to amend sections 2734a(a) and 2734b(a) of title 10, United States Code, to provide for settlement under international agreements, of certain claims incident to the noncombat activities of the armed forces, and for other purposes.

This proposal is part of the Department of Defense Legislative Program for the 94th Congress and the Office of Management and Budget advises that, from the standpoint of the Administration's program, there is no objection to the presentation of this proposal for the consideration of the Congress. The Department of the Air Force has been designated as the representative of the Department of Defense for this legislation. It is recommended that this proposal be enacted by the Congress.

PURPOSE OF THE LEGISLATION

The primary purpose of the proposed legislation is to amend section 2734a(a) (the so-called International Agreement Claims Act) to make it consistent with the NATO Status of Forces type agreements with respect to the reimbursement or payment to a foreign country by the United States for certain claims that are settled or adjudicated under such agreements. Under these agreements, the receiving state investigates, settles, adjudicates, and makes final awards direct to third-party claimants in two categories of cases: where the claim arises out of (1) acts or omissions of members of a force or a civilian component of the sending state done in the performance of official duty; and (2) other acts, omissions, or occurrences for which a force or civilian component is otherwise legally responsible under local law. The agreements require that reimbursement be made in both situations by the sending state on a pro rata basis, usually 75 percent of the amount of the claim allowed by the receiving state. Section 2734a presently purports to implement these agreements, but does not fully provide for reimbursement or payment to foreign governments in the "otherwise legally responsible" category mentioned above.

The "otherwise legally responsible" category of claims cases under the status of forces agreements reflects the fact that the laws of many foreign countries impose liability on the owner of property, particularly automobiles and aircraft, whether or not the damage was caused by an act or omission in the performance of official duty by his agent or employee. In addition, some foreign laws impose absolute liability by virtue of the inherently dangerous nature of the activity or property involved, such as explosives and high octane gasoline. In one NATO

country, for example, where the law provides for transportation of military explosives by licensed independent contractors, the United States is presently unable to give assurances that its permanent domestic legislation is sufficiently broad to implement its treaty obligations to reimburse its pro rata share of such claims. Although the United States would be legally responsible for damages under the law of the receiving state, it would not be possible in most of such cases to trace the cause of an explosion to an act or omission of a member of the armed forces or civilian component acting in the performance of official duty. The proposed amendment to section 2734(a) would fully implement the claims obligations of the United States under the NATO Status of Forces Agreement and similar bilateral agreements.

The present law refers to agreements providing for reimbursement or payment for claims "adjudicated" by the foreign country under its laws and regulations, and adjudication in this context could be interpreted to mean action by the local courts. The agreements, however, also authorize settlement by administrative action and this method has been generally followed. This possible ambiguity in describing the method of settlement would be eliminated by the proposed amendment.

The proposed legislation would also clarify the authority in clause (2) of section 2734a(a) to pay a foreign country the agreed pro rata share of a claim for damage to its property that is not specifically waived under the applicable agreement. The agreements provide that, unless the contracting parties agree otherwise, settlements are to be made by arbitration. Thus, adjudication is not mandatory under the agreements, and in practice all settlements have been made by negotiation between the parties concerned. The present law, as stated, refers only to adjudication.

For consistency, the proposed legislation would make a corollary amendment in section 2734b which relates to the payment or reimbursement to the United States for claims arising in the United States resulting from property loss, personal injury, or death as the result of the acts or omissions of a civilian employee or member of an armed force of a foreign country.

In summary, it is clear that sections 2734a and 2734b do not fully implement the international agreements to which the United States is a party and the proposed amendments would cause these sections to conform to the international agreements and eliminate the existing discrepancy.

COST AND BUDGET DATA

The cost of the legislation cannot be definitely ascertained since we are unable to forecast the number of "legally responsible" accidents or incidents in countries where status of forces agreements are in effect and which are not payable under the present statute. On the basis of 14 years' experience, however, this type of claim is expected to have very little, if any budgetary impact on the Department of Defense.

Sincerely,

JACK L. STEMLER,
General Counsel.

CHANGES IN EXISTING LAW

In compliance with subsection (4) of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman) :

TITLE 10.—ARMED FORCES

Chapter 163. Military Claims

§ 2734a. Property loss; personal injury or death: incident to non-combat activities of armed forces; foreign countries; international agreements.

[(a) Under an international agreement to which the United States is a party that provides that claims against the United States arising out of the acts or omissions in the performance of official duty in a foreign country of a civilian employee, or a member, of an armed force may be adjudicated by that country under its laws and regulations, the Secretary of Defense may—

(1) reimburse that country for the agreed pro rata share of such amounts as are spent by that country to pay those claims, including the costs of settlement or arbitration; or

(2) pay that country the agreed pro rata share of claims arising out of damage to the property of that country, including the costs of settlement or arbitration.]

(a) *When the United States is a party to an international agreement which provides for the settlement or adjudication and cost sharing of claims against the United States arising out of the acts or omissions of a member or civilian employee of an armed force of the United States done in the performance of official duty, or arising out of any other act, omission, or occurrence for which an armed force of the United States is legally responsible under the law of another party to the international agreement, and causing damage in the territory of such party, the Secretary of Defense or the Secretary of Transportation or their designees may—*

(1) *reimburse the party to the agreement for the agreed pro rata share of amounts, including any authorized arbitration costs, paid by that party in satisfying awards or judgments on claims, in accordance with the agreement; or*

(2) *pay the party to the agreement pro rata share of any claim, including any authorized arbitration costs, for damage to property owned by it, in accordance with the agreement.*

(b) A claim arising out of an act of an enemy of the United States or arising, directly or indirectly, from an act of the armed forces, or a member thereof, while engaged in combat may not be considered or paid under this section.

(c) A reimbursement or payment under this section shall be made by the Secretary of Defense out of appropriations for that purpose except that payment of claims against the Coast Guard arising while it is operating as a service of the Department of Transportation shall be made out of the appropriations for the operating expenses of the Coast Guard. The appropriations referred to in this subsection may be used to buy foreign currencies required for the reimbursement or payment.

(d) Upon the request of the Secretary of Transportation or his designee, any payments made relating to claims arising from the activities of the Coast Guard and covered by subsection (a) may be reimbursed or paid to the foreign country concerned by the authorized representative of the Department of Defense out of the appropriation for claims of the Department of Defense, subject to reimbursement from the Department of Transportation. (Added Pub. L. 87-651, title I, § 113(a), Sept. 7, 1962, 76 Stat. 512, and amended Pub. L. 90-521, § 4, Sept. 28, 1968, 82 Stat. 874.)

§ 2734b. Property loss; personal injury or death: incident to activities of armed forces of foreign countries in United States; international agreements.

[(a) Where an international agreement to which the United States is a party provides that claims against a foreign country arising out of the acts or omissions in the performance of official duty in the United States, or a Territory, Commonwealth, or possession, of a civilian employee, or member, of the armed forces of that country, be adjudicated by the United States under its laws and regulations subject to an agreed pro rata reimbursement, those claims may be prosecuted against the United States, or settled by the United States, under then existing laws and regulations as if the acts or omissions upon which they are based were the acts or omissions in the performance of official duty of a civilian employee, or a member, of an armed force.]

(a) *When the United States is a party to an international agreement which provides for the settlement or adjudication by the United States under its laws and regulations, and subject to agreed pro rata reimbursement, of claims against another party to the agreement arising out of the acts or omissions of a member or civilian employee of an armed force of that party done in the performance of official duty, or arising out of any other act, omission, or occurrence for which that armed force is legally responsible under applicable United States law, and causing damage in the United States, or a territory, Commonwealth, or possession thereof; those claims may be prosecuted against the United States, or settled by the United States, in accordance with the agreement, as if the acts or omissions upon which they are based were the acts or omissions of a member or a civilian employee of an armed force of the United States.*

(b) When a dispute arises in the settlement or adjudication of a claim under this section whether an act or omission was in the performance of official duty, or whether the use of a vehicle of the armed forces was authorized, the dispute shall be decided under the international agreement with the foreign country concerned. Such a decision is final and conclusive. The Secretary of Defense may pay that part

of the cost of obtaining such a decision that is chargeable to the United States under that agreement.

(c) A claim arising out of an act of an enemy of the United States may not be considered or paid under this section.

(d) A payment under this section shall be made by the Secretary of Defense out of appropriations for that purpose. (Added Pub. L. 87-651, title I, § 113(a), Sept. 7, 1962, 76 Stat. 512.)

COST ESTIMATE OF LEGISLATION

The only estimation that has been done as to the cost of this legislation has been by the Department of the Air Force. Its cost analysis is contained in the Executive Communication by the Department of the Air Force on behalf of the Department of Defense attached to this report. That communication states:

COST AND BUDGET DATA

The cost of the legislation cannot be definitely ascertained since we are unable to forecast the number of "legally responsible" accidents or incidents in countries where status of forces agreements are in effect and which are not payable under the present statute. On the basis of 14 years' experience, however, this type of claim is expected to have very little, if any budgetary impact on the Department of Defense.

The Congressional Budget Office has been asked to provide a report on the potential budgetary implications of H.R. 7896.

This report is as follows:

CONGRESS OF THE UNITED STATES,
CONGRESSIONAL BUDGET OFFICE,
Washington, D.C., June 23, 1976.

HON. JAMES O. EASTLAND,
Chairman, Committee on the Judiciary,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has prepared the attached cost estimate for H.R. 7896, a bill to amend Sections 2734a(a) and 2734b(a) of Title 10, United States Code.

Should the Committee so desire, we would be pleased to provide further details on the attached cost estimate.

Sincerely,

ALICE M. RIVLIN, Director.

CONGRESSIONAL BUDGET OFFICE

COST ESTIMATE, JUNE 23, 1976

1. Bill No.: H.R. 7896.
2. Bill title: Amend Sections 2734a(a) and 2734b(a) of Title 10, United States Code.
3. Purpose of bill: This bill amends the United States Code to authorize the Secretaries of Defense and Transportation to pay cer-

tain claims against the United States specified by Status of Forces Agreements (SOFA) but not authorized under current statute. The bill would also amend the statute to explicitly authorize claim settlement by administrative action.

4. Cost estimate:

Fiscal year:	Costs
1977	\$17,500
1978	(1)
1979	(1)
1980	(1)
1981	(1)

¹ Less than \$500.

5. Basis of estimate: Costs indicated above are net costs. The legislation will increase costs by authorizing an additional category of claims. The bill will also reduce costs by allowing claims currently paid entirely by the United States to be paid prorata with the host nation.

The bill increases costs over the current statute in two ways:

1. It provides the authority for payment of claims now pending which are currently not authorized by statute but for which the United States is liable under SOFA. These claims now total \$19,000.

2. It will eventually increase the number of claims payable. While estimates of this increase are uncertain, these costs are expected to remain small.

The bill will generate some cost savings since some agencies now pay all claims for which the United States is liable under SOFA. If a claim is not authorized under the current statute, these agencies make payment under other statutory authority which requires 100 percent payment by the United States. Payments under Section 2734, however, are prorated, 75 percent paid by the United States, 25 percent by the host nation. This reduction in payment is expected to yield savings of approximately \$1,540/year.

Cost estimates are summarized below:

	Fiscal year—				
	1977	1978	1979	1980	1981
Claims pending	\$19,000				
Increased claims		\$1,600	\$1,700	\$1,800	\$1,800
Savings (subtracted)	1,500	1,500	1,500	1,500	1,500
Total	17,500	(1)	(1)	(1)	(1)

¹ Less than \$500.

6. Estimate comparison: In a letter to the Speaker of the House dated May 23, 1975, the General Counsel of the Air Force estimated "very little if any budgetary impact on the Department of Defense."

7. Previous CBO estimate: None.

8. Estimate prepared by: William B. Taylor.

9. Estimate approved by: James L. Blum, Assistant Director for Budget Analysis.

Ninety-fourth Congress of the United States of America

AT THE SECOND SESSION

*Begun and held at the City of Washington on Monday, the nineteenth day of January,
one thousand nine hundred and seventy-six*

An Act

To amend sections 2734a(a) and 2734b(a) of title 10, United States Code, to provide for settlement, under international agreements, of certain claims incident to the noncombat activities of the armed forces, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That title 10, United States Code, is amended—

(1) by amending section 2734a(a) to read as follows:

“(a) When the United States is a party to an international agreement which provides for the settlement or adjudication and cost sharing of claims against the United States arising out of the acts or omissions of a member or civilian employee of an armed force of the United States done in the performance of official duty, or arising out of any other act, omission, or occurrence for which an armed force of the United States is legally responsible under the law of another party to the international agreement, and causing damage in the territory of such party, the Secretary of Defense or the Secretary of Transportation or their designees may—

“(1) reimburse the party to the agreement for the agreed pro rata share of amounts, including any authorized arbitration costs, paid by that party in satisfying awards or judgments on claims, in accordance with the agreement; or

“(2) pay the party to the agreement the agreed pro rata share of any claim, including any authorized arbitration costs, for damage to property owned by it, in accordance with the agreement.”; and

(2) by amending section 2734b(a) to read as follows:

“(a) When the United States is a party to an international agreement which provides for the settlement or adjudication by the United States under its laws and regulations, and subject to agreed pro rata reimbursement, of claims against another party to the agreement arising out of the acts or omissions of a member or civilian employee of an armed force of that party done in the performance of official duty, or arising out of any other act, omission, or occurrence for which that armed force is legally responsible under applicable United States law, and causing damage in the United States, or a territory, Commonwealth, or possession thereof; those claims may be prosecuted against the United States, or settled by the United States, in accordance with the agreement, as if the acts or omissions upon which they are based were the acts or omissions of a member or a civilian employee of an armed force of the United States.”.

Speaker of the House of Representatives.

*Vice President of the United States and
President of the Senate.*