

(b) MATTERS TO BE INCLUDED IN REPORT.—The Secretary shall include in the report the following:

(1) A description of the authorities under laws in effect as of the date of the enactment of this Act for the United States to provide compensation, monetary payments, or other assistance to civilians who incur harm due directly or indirectly to the combat activities of the United States Armed Forces.

(2) A description of the practices in effect as of the date of enactment of this Act for the United States to provide ex gratia, solatia, or other types of condolence payments to civilians who incur harm due directly or indirectly to the combat activities of the United States Armed Forces.

(3) A discussion of the historic practice of the United States to provide compensation, other monetary payments, or other assistance to civilian foreign nationals who incur harm due directly or indirectly to combat activities of the United States Armed Forces.

(4) A discussion of the practice of the United States in Operation Enduring Freedom and Operation Iraqi Freedom to provide compensation, other monetary payments, or other assistance to civilian foreign nationals who incur harm due directly or indirectly to the combat activities of the United States Armed Forces, including the procedures and guidelines used and an assessment of its effectiveness. This discussion will also include estimates of the total amount of funds disbursed to civilian foreign nationals who have incurred harm since the inception of Operation Iraqi Freedom and Operation Enduring Freedom. This discussion will also include how such procedures and guidelines compare to the processing of claims filed under the Foreign Claims Act.

(5) A discussion of the positive and negative effects of using different authorities, procedure, and guidelines to provide monetary assistance to civilian foreign nationals, based upon the culture and economic circumstances of the local populace and the operational impact on the military mission. This discussion will also include whether the use of different authorities, procedures, and guidelines has resulted in disparate monetary assistance to civilian foreign nationals who have incurred substantially similar harm, and if so, the frequency and effect of such results.

(6) A discussion of the positive and negative effects of establishing general uniform procedures and guidelines for the provision of such assistance, based upon the goals of timely commencement of a program of monetary assistance, efficient and effective implementation of such program, and consistency in the amount of assistance in relation to the harm incurred. This discussion will also include whether the implementation of general procedures and guidelines would create a legally enforceable entitlement to "compensation" and, if so, any potential significant operational impact arising from such an entitlement.

(7) Assuming general uniform procedures and guidelines were to be established, a discussion of the following:

(A) Whether such assistance should be limited to specified types of combat activities or operations, e.g., such as during counterinsurgency operations.

(B) Whether such assistance should be contingent upon a formal determination that a particular combat activity/operation is a qualifying activity, and the criteria, if any, for such a determination.

(C) Whether a time limit from the date of loss for providing such assistance should be prescribed.

(D) Whether only monetary or other types of assistance should be authorized, and what

types of nonmonetary assistance, if any, should be authorized.

(E) Whether monetary value limits should be placed on the assistance that may be provided, or whether the determination to provide assistance and, if so, the monetary value of such assistance, should be based, in whole or in part, on a legal advisor's assessment of the facts.

(G) Whether a written record of the determination to provide or to not provide such assistance should be maintained and a copy made available to the civilian foreign national.

(H) Whether in the event of a determination to not provide such assistance the civilian foreign national should be afforded the option of a review of the determination by a higher ranking authority.

(c) RECOMMENDATIONS.—The Secretary shall include in the report such recommendations as the Secretary considers appropriate for legislative or administrative action with respect to the matters discussed in the report.

(d) SUBMISSION OF REPORT.—The report shall be submitted not later than 180 days after the date of the enactment of this Act. The report shall be submitted in unclassified form, but may include a classified annex.

AMENDMENT NO. 1658

(Purpose: To require the Comptroller General of the United States to report to Congress on financial assistance for child care available to deployed members of the reserve components of the Armed Forces)

At the end of subtitle F of title V, add the following:

SEC. 557. COMPTROLLER GENERAL REPORT ON CHILD CARE ASSISTANCE FOR DEPLOYED MEMBERS OF THE RESERVE COMPONENTS OF THE ARMED FORCES.

(a) IN GENERAL.—Not later than 18 months after the date of the enactment of this Act, the Comptroller General of the United States shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on financial assistance for child care provided by the Department of Defense, including through the Operation: Military Child Care and Military Child Care in Your Neighborhood programs, to members of the reserve components of the Armed Forces who are deployed in connection with a contingency operation.

(b) ELEMENTS.—The report required by subsection (a) shall include an assessment of the following:

(1) The types of financial assistance for child care made available by the Department of Defense to members of the reserve components of the Armed Forces who are deployed in connection with a contingency operation.

(2) The extent to which such members have taken advantage of such assistance since such assistance was first made available.

(3) The formulas used for calculating the amount of such assistance provided to such members.

(4) The funding allocated to such assistance.

(5) The remaining costs of child care to families of such members that are not covered by the Department of Defense.

(6) Any barriers to access to such assistance faced by such members and the families of such members.

(7) The different criteria used by different States with respect to the regulation of child care services and the potential impact differences in such criteria may have on the access of such members to such assistance.

(8) The different standards and criteria used by different programs of the Department of Defense for providing such assistance with respect to child care providers and

the potential impact differences in such standards and criteria may have on the access of such members to such assistance.

(9) Any other matters the Comptroller General determines relevant to the improvement of financial assistance for child care made available by the Department of Defense to members of the reserve components of the Armed Forces who are deployed in connection with a contingency operation.

AMENDMENT NO. 1796, AS MODIFIED

(Purpose: To modify the provision requiring a report on potential foreign military sales of the F-22A fighter aircraft to have the report developed by a federally funded research and development center)

In section 123, insert:

ADDITIONAL REPORT REQUIRED.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense shall provide for a federally funded research and development center which will submit to the congressional defense committees, the Committee on Foreign Relations of the Senate, and the Committee on Foreign Affairs of the House of Representatives, through the Secretary of Defense, a report on potential foreign military sales of the F-22A fighter aircraft, addressing the same elements as in subsection (b) of this section.

AMENDMENT NO. 1533, AS MODIFIED

(Purpose: To clarify that the definition of unprivileged enemy belligerent includes members of al Qaeda)

On page 323, beginning on line 19, strike "or" and all that follows through line 22, and insert the following:

"(B) has purposefully and materially supported hostilities against the United States or its coalition partners; or

"(C) is a member of al Qaeda".

MORNING BUSINESS

Mr. LEVIN. I ask unanimous consent that the Senate now proceed to a period of morning business, with Senators permitted to speak for up to 10 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

TREATY MAKING PROCESS

Mr. MCCONNELL. Mr. President, as some of my colleagues may be aware, this week the State Department acceded to a Treaty of Amity and Cooperation in Southeast Asia, TAC. This action reflects an effort by the administration to engage vigorously in the region, which I applaud.

The State Department consulted with the Senate prior to taking this step. During the course of these consultations, Senator KERRY, Senator LUGAR, and I sought clarification on issues related to the substance of the TAC and to the unique process suggested for U.S. accession. To confirm our understandings on these points, Senators KERRY, LUGAR, and I sent a letter to the Secretary of State on July 10, 2009. On the basis of the understandings set forth in this letter, we did not object to the Department's plan for acceding to the TAC. I believe the letter may be of some interest to Senators since it involves both the constitutional role of the Senate in the treaty making process and American foreign policy in Southeast Asia.

I ask unanimous consent to have printed in the RECORD the letter to Secretary Clinton dated July 10, 2009.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

U.S. SENATE,

Washington, DC, July 10, 2009.

Hon. HILLARY RODHAM CLINTON,
Secretary of State,
Washington, DC.

DEAR SECRETARY CLINTON: We write to you regarding the proposed U.S. accession to the Treaty of Amity and Cooperation in Southeast Asia (TAC). We believe that U.S. accession to the TAC reflects the strong American commitment to the region and to vigorous engagement with the Association of Southeast Asian Nations (ASEAN), both of which we fully support. The U.S. has important foreign policy and economic interests in Southeast Asia which we believe this agreement can further.

There are two important points of clarification, however, that we wish to make as part of the Senate's input in the context of the State Department's congressional consultations. First, we understand that the Department is considering having the United States accede to the TAC in late July as a sole executive agreement, which would not require the advice and consent of the Senate. We note that the title of the agreement refers to the agreement as a "treaty," and we are unaware of any precedent for the United States acceding to an agreement styled as a "treaty" without the advice and consent of the Senate as provided for in Article II, Section 2 of the Constitution. At the same time, we are mindful that other factors apart from the formal name of the agreement could suggest that it is consistent with U.S. practice for the United States to accede to the TAC as an executive agreement. Of particular importance, the agreement is largely limited to general pledges of diplomatic cooperation and would not appear to obligate the United States to take (or refrain from taking) any specific action (with the exception of provisions of Article X which we understand will be the subject of a reservation as discussed below). We also note that the United States did not take part in the negotiations among ASEAN countries leading up to the conclusion of the TAC in 1976, or in the decision to characterize it as a treaty.

In light of these unique considerations, we will not object to the Department's plan to accede to the TAC as an executive agreement. We continue to believe, however, that the use of the term "treaty" in the title of an agreement will generally dictate that Senate advice and consent will be required before the United States may accede to the agreement. In this regard, treatment of the TAC as an executive agreement should not be considered a precedent for treating future agreements entitled "treaties" as sole executive agreements. To ensure our understanding that the process surrounding this agreement is not misinterpreted in the future as a precedent, we will submit this letter into the Congressional Record. We would also request that the State Department include it in the next edition of the Digest of United States Practice in International Law.

Second, Article X of the TAC provides that "[e]ach High Contracting party shall not in any manner or form participate in any activity which shall constitute a threat to the political and economic stability, sovereignty, or territorial integrity of another High Contracting Party." We also note that the U.S. has proposed a reservation to the TAC that states that the TAC, noting in particular Article X, "does not limit actions taken by the United States that it considers necessary to address a threat to its national interests."

We interpret this reservation as ensuring that the TAC does not limit the authority of the U.S. government—either the executive branch or the Congress—to take actions that it considers necessary in pursuit of U.S. national interests in the region or with respect to any individual nation.

We thank you for your close consideration of this matter and for the Department's consultation prior to acceding to the TAC.

Sincerely,

JOHN F. KERRY,
Chairman, Senate
Committee on Foreign
Relations.

MITCH MCCONNELL,
Republican Leader
United States Senate.

RICHARD G. LUGAR,
Ranking Member Senate
Committee on
Foreign Relations.

EXECUTIVE CALENDAR OBJECTION

Mr. GRASSLEY. Mr. President, I, Senator CHUCK GRASSLEY, intend to object to proceeding to the nomination of George Wheeler Madison to be General Counsel of the Department of the Treasury, Calendar No. 302, and to the nomination of Carmen R. Nazario to be Assistant Secretary for Family Support of the Department of Health and Human Services, Calendar No. 304, dated July 23, 2009, for the following reasons.

My support for the final confirmation of Mr. Madison rests on his continued responsiveness, and the responsiveness of the Treasury Department, to my questions. I am very concerned that the Special Inspector General for the Troubled Asset Relief Program is not getting the cooperation Congress entitled him to from the Treasury Department and that his recommendations are not being seriously considered.

Regarding Ms. Nazario, I still have an outstanding issue regarding the release of key data on States' TANF participation rates that need to be resolved.

AUTOMOBILE DEALER ECONOMIC RIGHTS RESTORATION ACT OF 2009

Mr. ROCKEFELLER. Mr. President, I take this opportunity to discuss the recent decisions by General Motors and Chrysler to eliminate thousands of automobile franchises across America. This is an extremely important issue: GM's and Chrysler's actions have had a negative impact on small businesses, employees, consumers, and communities in every corner of my State, West Virginia.

Although I do not question the automakers' need to restructure their companies and become financially viable, I do have serious concerns about the way they have handled these dealership terminations. Neither company has been fully transparent in explaining why they needed to terminate dealerships or how they decided which ones to eliminate. Neither company has provided dealers with an adequate oppor-

tunity to fully appeal their terminations—in fact, Chrysler has not established an appeals process at all. And though both companies claim that dealers will be fairly compensated for vehicles, parts, and specialty tools, the reports I continue to receive from terminated Chrysler dealers is that they still have hundreds of thousands of dollars in parts and specialty tools and many have received "no response at all" from Chrysler to their "numerous requests for assistance."

I also continue to hear the argument that "this is how things happen in the normal bankruptcy process." But GM's and Chrysler's bankruptcies are anything but normal. How many bankruptcies are funded with billions of taxpayer dollars? How many bankruptcies result in the government obtaining a majority interest in the restructured companies? Under these circumstances, the thousands of small business owners whose franchise agreements have been summarily revoked deserve more from the companies that would not exist but for taxpayer support.

That is why I have been fighting from the beginning to find a better resolution for the thousands of terminated auto dealers throughout this country. And although we have seen improvements on behalf of dealers so far, I must admit that I am thoroughly disappointed that GM and Chrysler have refused to do more. For that reason, I am cosponsoring S. 1304, the Automobile Dealer Economic Rights Restoration Act of 2009.

I fully understand the serious concerns that have been raised about this bill. But the reality is that GM and Chrysler need to understand that they cannot ignore repeated requests by Congress and the American people to treat terminated dealers fairly. It is my hope that by cosponsoring this bill, I can help the automakers better appreciate that very important point and ultimately come to the table. They should work with Congress and the dealers on a reasonable resolution—one that provides dealers with fair compensation and a meaningful opportunity to challenge their terminations. That is what the people of West Virginia and America expect, and that is what the terminated dealers deserve.

35TH ANNIVERSARY OF THE LEGAL SERVICES CORPORATION

Mr. HARKIN. Mr. President, Saturday, July 25, marks the 35th anniversary of the Legal Services Corporation, LSC. In 1974, Congress—with bipartisan support, including that of President Nixon—established LSC to be a major source of funding for civil legal aid in this country. LSC is a private, non-profit corporation, funded by Congress, with the mission to ensure equal access to justice under law for all Americans by providing civil legal assistance to those who otherwise would be unable to afford it. LSC distributes 95 percent of its annual Federal appropriations to