CLAIMS AGAINST BULGARIA, HUNGARY, AND RUMANIA

Statutory authority: Title III of the International Claims Settlement Act of 1949, 69 Stat. 570 (1955), 22 U.S.C. §§ 1641–1641q (1964), as amended, 72 Stat. 531 (1958), 22 U.S.C. 1641j (1964).

BULGARIAN CLAIMS PROGRAM STATISTICS

Number of claims: 391.
Amount asserted: $25,455,927.
Number of awards: 217.
Amount of awards: Principal, $4,684,187.
Interest, $1,887,638.
Amount of fund: $2,613,325.59.
Program completed: August 9, 1959.

HUNGARIAN CLAIMS PROGRAM STATISTICS

Number of claims: 2,725.
Amount asserted: $225,816,966.
Number of awards: 1,153.
Amount of awards: Principal, $58,181,408.
Interest, $22,114,639.
Amount of fund: $1,653,647.09.
Program completed: August 9, 1959.

RUMANIAN CLAIMS PROGRAM STATISTICS

Number of claims: 1,073.
Amount asserted: $259,742,036.
Number of awards: 498.
Amount of awards: Principal, $60,011,348.
Interest, $24,717,943.
Amount of fund: $20,057,346.65.
Program completed: August 9, 1959.

In the Matter of the Claim of

Claim No. RUM–30214
Decision No. RUM–30

MARGOT FACTOR

Against the Government of Rumania

For purposes of Section 303(1), Title III of the 1949 Act, "United Nations nationals," as used in treaties of peace with Bulgaria, Hungary or Rumania, means United Nations nationals by virtue of being United States nationals. Claim denied under Section 303(1) because owners of property lost during World War II, having been then Rumanian nationals, were not "nationals of the United States," although they may have been "United Nations nationals" under the treaty of peace with Rumania.

Nationality prerequisites satisfied under Section 303(1) if the claims against Bulgaria, Hungary and Rumania were owned by nationals of the United States on the respective armistice dates (October 28, 1944—Bulgaria; January 20, 1945—Hungary; and September 12, 1944—Rumania) and continuously thereafter until the dates of filing with the Commission.

Nationality prerequisites satisfied under Section 303(2) if the claims were owned by nationals of the United States on the dates they arose and continuously thereafter until the dates of filing with the Commission.

FINAL DECISION

This is a claim against the Government of Rumania under Section 303 of the International Claims Settlement Act of 1949, as amended, for the value of the property allegedly taken from Julius and/or Rositta Bohus, the uncle and aunt of the claimant, MARGOT FACTOR, at various times between 1940 and 1951. Neither Mr. nor Mrs. Bohus was ever a national of the United States. The claimant became a United States national by naturalization on July 23, 1943, and the claim was assigned to her on March 5, 1952.

In a Proposed Decision issued on February 14, 1957, the claim was held to be not compensable under Section 303(2) of the Act because it was not owned by a United States national at the time it arose, and was held to be not compensable under Section 303(1) of the Act because it was not owned by a United States national on September 12, 1944, the date of the armistice with Rumania. Objection has been raised to that portion of the Proposed Decision which denies the claim under Section 303(1).

Section 303 of the Act provides in pertinent part as follows:

> The Commission shall receive and determine in accordance with applicable substantive law, including international law, the validity and amounts of claims of nationals of the United States against the Governments of Bulgaria, Hungary, and Rumania, or any of them, arising out of the failure to—(1) restore or pay compensation for property of nationals of the United States as required by article 23 of the treaty of peace with Bulgaria, articles 26 and 27 of the treaty of peace with Hungary, and articles 24 and 25 of the treaty of peace with Rumania.

Article 24 of the treaty of peace with Rumania provides that Rumania shall restore all legal rights and interests and return all property in Rumania of the United Nations and their nationals, or, where property cannot be returned or has been damaged as a result of the war, shall pay compensation therefor. Article 25 requires the restoration of, or compensation for, property which was the subject of measures of sequestration, confiscation or control on account of the racial origin or religion of persons under Rumanian jurisdiction. United Nations nationals are defined in article 24 as including individuals who are nationals of any of the United Nations and have been such since the date of the armistice with Rumania, and also all individuals who were "treated as enemy" under the laws in force in Rumania during the war.

It is contended that Mr. and Mrs. Bohus, though Rumanian nationals during the war, were "treated as enemy" under Rumanian laws then in effect, and consequently were United Nations nationals within the meaning of article 24 of the treaty on the date of the armistice and thereafter. The claim for loss having subsequently become that of a United States national, the argument is that the requirements as to nationality for a claim under Section 303(1) of the Act are fulfilled.

For an award under Section 303(1) of the International Claims Settlement Act, however, there must be a claim compensable under a referenced article of the treaty, a failure by the foreign government to make compensation, *and* a fulfillment of the eligibility requirements of the Act itself. The Commission finds that as to nationality, in the case of a claim against Rumania under Section 303(1) of the Act, these requirements are that the claimant be a United States national, and that on September 12, 1944, the date of the armistice with Rumania, the claim have been owned by a United States national. The Commission holds that the requirements as to nationality are not met in this claim.

We find no merit in the argument advanced by counsel for claimant that the wording of the definition of "National of the

United States" in Section 301(2) of the Act indicates that such nationality is required only as of August 9, 1955, the date of enactment. That definition reads, in part:

> "National of the United States" means (A) a natural person who *is* a citizen of the United States. . . . (emphasis supplied)

In that definition, the word "is", the present tense of the verb "to be", was used in order to match the present tense of the verb "means". The Commission finds that the definition is not intended for use as a substantive rule under Sections 303, 304, or 305 of the Act. It is for use solely in determining whether or not a person is a United States national as of any particular time, and has nothing to do with establishing the date on which such nationality must be found to have existed if an award is to be made under the Act. If claimant is a United States citizen today, claimant is a United States national today, within the definition. The same is true, speaking as of August 9, 1955, or as of March 5, 1952, when this claim was assigned, or as of any other date which may be pertinent. We must look to the appropriate subsection of Section 303 (in this case, Section 303(1)), to determine the pertinent date—i.e., the date on which claimant, or her predecessor in interest, must have been a citizen in order to qualify for an award.

United States nationality is clearly required at the time of filing the claim, since it is only the claims of "nationals of the United States" that the Commission is authorized to receive and determine under the opening sentence of Section 303. Had it been the intention of Congress to require no more than this, the phrase "nationals of the United States" need not have been repeated in the ensuing paragraphs; and Section 303(1) need only have referred to failure to "restore or pay compensation for property" as required by the treaty. The repetition of the phrase "nationals of the United States" in each of the subsections of Section 303 must have some effect other than to require such nationality at the time of filing the claim, or each such usage is superfluous; and it is elementary that a statute must be so construed as to avoid surplusage, and to give effect to every word, clause, and sentence.

The language of Section 303(1), in its ordinary import would appear to embrace persons who, while nationals of the United States, suffered property losses later provided for in the treaties of peace. This reading is altogether consistent with application of the customary rule of international law requiring United States ownership of a claim at the time of loss and continuously thereafter. In the Proposed Decision, there was adopted a modifi-

cation which should prove less stringent in most, if not all, cases —that of requiring United States nationality on the date of the armistice—a rule for which ample support is found in the history of the legislation culminating in the enactment of the amendment to the International Claims Settlement Act of 1949 which included, among other things, Section 303.

At one stage of the legislative process, the bill contained the so-called Dodd statement, adding to Section 303(1) the following language:

> No claim under this paragraph shall be denied on the sole ground that the natural person who originally suffered the loss was not a national of the United States if on the date of the armistice with the country with respect to which his claim is asserted and continuously thereafter until September 15, 1947, such person was a permanent resident of the United States, and if he had at any time prior to the date of such armistice formally declared his intention of becoming a citizen of the United States and had become a citizen of the United States by September 15, 1947.

The drafters of the foregoing quite obviously anticipated that unless the bill were specifically made to provide otherwise, the Commission would be compelled to combine the nationality requirements of the treaty and the Act with a resultant exclusion of all who were not United *States* nationals on the date of the *armistice*. The Senate Committee on Foreign Relations rejected this liberalizing amendment, stating in its report (S. Rep. No. 1050, 84th Cong., 1st Sess. 8 (1955)):

> The general principle controlling the eligibility of a natural person to file a claim against another government is the familiar rule of international law that such a claim must be continuously owned by a national of the claimant State from the time the claim arose until the date of its presentation. This principle is followed in the bill as it passed the House with respect to the Russian and Italian claims, as well as for claims based upon nationalization and compulsory liquidation of property in the territory of Bulgaria, Hungary, and Rumania. It is not followed with respect to war damage claims or claims of American stockholders in foreign owned corporations. (See sec. 5 above.) Thus, the bill as approved by the House does not contain a uniform standard of eligibility, and consequently discriminates in principle between various categories of claimants.
>
> In the draft bill originally submitted by the administration to the House Committee on Foreign Affairs, the same principle was applied to claims based upon war damage in those three countries. As reported by that committee, however, and passed by the House, the principle was abandoned for such claims. Instead, section 303

> declares that the claimant need not have been an American citizen when the loss was suffered, provided that he was (a) a person who had declared his intention to become an American citizen at the time of the armistice, (b) had become a citizen by September 15, 1947 (the date of the peace treaty), and (c) resided in the United States permanently from the date of the armistice to the date of the peace treaty.

Continuing, the Senate Committee stated in its report that after careful consideration, and weighing of all pertinent factors, it concluded that such a precedent was not desirable, keeping "uppermost in view the interest of those individuals who did possess American nationality at the time of loss." The committee then acted upon its conclusion by deleting the last sentence of Section 303(1), explaining that the deletion:

> would have the effect of limiting the eligible class to claimants who were American citizens at the date the loss was sustained.

The history of the bill is replete with other proposed amendments designed to liberalize the nationality requirements and to broaden the class of eligible claimants, all of which were eventually rejected. From all of this, it is clear that the Congress, in determining prospective beneficiaries of the fund involved in this legislation, was not satisfied with the treaty requirements for nationality. Rather, the Congress insisted upon nothing less than United *States* nationality at the time the claim arose, whether that be viewed as the date of loss (often extremely difficult or impossible to determine with exactitude) or, as in the treaty, the more administratively feasible date of the armistice.

The Commission is of the opinion that under Section 303(1) the less stringent requirement of United States nationality on the armistice date should be the standard used. Thus, it may be said that whereas the treaty requires United Nations nationality on the date of armistice, the statute provides relief only to those who had United Nations nationality by virtue of United States nationality. To this extent, the customary rule of international law may be regarded as having been modified by the treaty and by the International Claims Settlement Act.

The Commission has carefully considered the entire record, including the contentions advanced in claimant's behalf by brief and oral argument. The Commission concludes that in order for an award to be made under Section 303(1) of the Act, the property forming the basis of the claim, or the claim arising from its loss, must have been owned by a national or nationals of the United States on the date of the armistice with the country

against which the claim is filed. Accordingly, the Proposed Decision herein is affirmed, and the claim is denied.

Dated at Washington, D.C.
May 28, 1957.

SUPPLEMENTAL DECISION

In its Final Decision issued May 28, 1957, after a hearing and due consideration of the claimant's objections to the Proposed Decision, the Commission denied the claim of Margot Factor for compensation under the International Claims Settlement Act of 1949, as amended, on the ground that the property upon which the claim is based was not owned by a United States national on September 12, 1944 or at the time the loss occurred. Upon petition, claimant was granted a rehearing on July 11, 1957 at which time it was asserted that the Commission erred in its construction of Sections 301 and 303, Title III, of the Act and applied the Act so as to raise a question of constitutionality.

The contention of counsel for claimant that Section 303 should be construed so as to require United States nationality of the claim only as of August 9, 1955, the date of the enactment of Public Law 285, 84th Congress, was fully treated by the Commission in its Final Decision. We find no compelling reasons advanced for modifying our conclusion that the Congress intended to require more, in order that a claimant be eligible for compensation, than United States nationality on August 9, 1955. The Commission adheres to its conclusions as set forth in its previous decisions in this matter.

As a rule, it has been the position of the Department of State that naturalization is not retroactive so as to justify the espousal of claims arising prior to the acquisition of United States citizenship. This position was stated in language most pertinent to the facts in this claim, by Mr. Fish, Secretary of State, to Mr. Miller, May 16, 1871, *89 M.S. DOM. Let. 348*:

> By adopting a foreigner, under any form of naturalization, as a citizen, this government does not undertake the patronage of a claim which he may have upon the country of his original allegiance or upon any other government. To admit that he can charge it with this burden would allow him to call upon a dozen governments in succession, to each of which he might transfer his allegiance, to urge his claim. Under such a rule the government supposed to be indebted could never know when the discussion of a claim would cease. All governments are, therefore, interested in resisting such exten-

sion. Quoted in VI Moore, International Law Digest 637 (1906).[1]

Counsel for claimant argues that a claim under the Treaty of Peace with Rumania, even though originally a claim of a Rumanian national (as here) is an international claim espousable by the United States and therefore covered by Section 303 in which this Commission is directed to determine claims in accordance with applicable substantive law, including international law.

We have not stated that this claim is not espousable by the Government of the United States. We have stated that the claimant does not meet the eligibility tests established by the Congress for recovery under the International Claims Settlement Act of 1949, as amended. That this legislation was not intended to be an all-inclusive remedy for all claims which the United States Government could elect to espouse under international law is made clear by a mere reading of the Act. For example, Section 303 is concerned only with claims based upon property and contractual rights. No provision is made for tort claims; and, furthermore, the Congress saw fit to limit narrowly the kind of contractual rights which could be the basis of a claim to those expressed in dollars and acquired by United States nationals prior to certain specific dates. If there can be any doubt that the Congress elected to compensate only certain types of claims and only those held by United States nationals at the time their claims arose, it will quickly be dispelled by an examination of the legislative history of Public Law 285, 84th Congress. The House Committee on Foreign Affairs stated in its report (H. R. Rep. No. 624, 84th Cong., 1st Sess. 5, 6 (1955)):

> Although this bill is an international claims settlement bill, it should be made clear that all claims of American citizens against the Soviet Union and the three satellite countries will not be settled by virtue of its passage. . . . This bill does not include claims arising since the treaties for nationalization, compulsory liquidation, or other seizure, and it does not include as claimants the large number of persons who have become American citizens since the treaties were ratified. It would therefore be a mistake to consider this bill as doing justice to Americans whose rights have been violated by the Soviets and their satellites. There is no way in which this bill can be amended to do justice to all of these claimants and all of their claims by distributing $36 million. . . . The way to secure justice for these thousands of American citizens with their millions in claims is to induce the Soviets and their satellites to recognize, adjudicate fairly, and then pay these claims. All of them are based upon promises,

[1] To the same effect, are such recent statements as that prepared by the Legal Advisor, Department of State, in the Memorandum, "Citizenship as a Basis for International Claims," April 22, 1952, at page 14.

agreements, and international law which prevails among civilized nations. If, as, and when, the President meets "at the summit" with the Soviet leaders, it is our hope that he will place high on the agenda of matters to be considered the rights of these American citizens. It might well be that, as a prerequisite to considering future promises by the Soviets, he would insist upon performance of the past promises involved in these unsettled claims, and would require their early satisfaction as a token of the good faith that must be demonstrated by deeds, not words, before just and lasting peace can come.

The same report at pages 12 and 13 specifically defined eligible claimants for treaty claims as persons who were United States nationals on the date of the armistice with the country involved and upon the date of the peace treaty but stated that the proposed bill substituted therefor the more liberal requirement that the claimant have been a permanent resident of the United States on the armistice date and have by then formally declared his intention to become a United States citizen.

The Senate Committee on Foreign Relations rejected this liberalizing provision, stating in its report (S. Rep. No. 1050, 84th Cong., 1st Sess. 9 (1955)):

> The committee has carefully considered the arguments advanced in support of the proposed extension of eligibility which, if adopted, would mark the first time in the claims history of the United States that a declaration of intention was equated with citizenship. After weighing all pertinent factors, the committee has concluded that such a precedent is not desirable. While sympathetic to the plight of those unfortunate individuals who were not American citizens when they sustained war losses, the committee has had to keep uppermost in view the interest of those individuals who did possess American nationality at the time of loss. It is these persons who have a paramount claim to any funds which may be available. . . . To include the non-national-in-origin group would only dilute the funds still further, and increase the injustice to American owners. For these reasons, the committee decided to delete the last sentence of section 303, paragraph (1), which would have the effect of limiting the eligible class to claimants who were American citizens at the date the loss was sustained.

In the enactment of the International Claims Settlement Act, as amended, the Congress thus adopted, for claims thereunder, the traditional rule:

> A state is responsible to another state which claims in behalf of one of its nationals only in so far as a beneficial interest in the claim has been continuously in one of its nationals down to the time of the presentation

of the claim. *The Harvard Research in International Law.*[2]

Finally, claimant's counsel alleges that this Commission's interpretation of the Act represents a discrimination between classes of United States citizens which contravenes the Constitution, particularly the due process clause of the Fifth Amendment, by arbitrarily and capriciously excluding the claimant and other United States citizens similarly situated from the protection of the Act. It is this Commission's conclusion that the Congress made no distinction between the classes of United States citizens but rather provided for compensation under the Act for certain specific and limited types of claims which were American in origin and continuously held by United States nationals.

> Arbitrary discrimination between persons in similar circumstances is a denial of due process but equal protection of the laws is not denied by statute if all persons subject to it are treated alike under similar circumstances and conditions in respect both of the privileges conferred and the liabilities imposed. *Russian Volunteer Fleet v. U.S.*, 282 U.S. 481 (1931)

The Commission's interpretation of the Act does not effect a discrimination between persons similarly situated. It requires a showing as to the ownership of a claim by nationals of the United States without regard to whether such nationality was acquired by birth or by naturalization.

It is therefore ORDERED that the Final Decision herein be and the same is hereby sustained and affirmed.

CONCURRING OPINION

I concur in the result arrived at in this case by my colleague. There appears no justification in law or in equity which would permit construction of Section 303 so as to require United States nationality of claimants only as of August 9, 1955, the date of enactment of Public Law 285, 84th Congress. To further argue this obvious conclusion would serve no purpose as it is so well established in international law that in order for a country to espouse a claim of one of its nationals he or she must have been a national at the time of loss or damage.

My concern here is the general approach to this case by the Commission as set forth in the Final Decision issued on May 28, 1957 which, in my opinion has the effect of a restricted interpretation of Public Law 285. I conceive it to be our duty under this law to grant, where justified on the facts and in law, claims of all persons who had property damaged, confiscated or other-

[2] 23 Am. J. Int'l L., Spec. Supp. 133, 198 (1929).

wise taken as a consequence of war. We must necessarily be liberal in our interpretation of the law and we must, because of the peculiar circumstances in the area covered by Public Law 285, establish certain presumptions. The question of liberality of construction of this law was well stated in the opinion of my colleagues as expressed in the decision of the majority of the Commission in the Siegel case (SOV–40017) where it found that Public Law 285 was remedial legislation and "should be liberally construed." Although I dissented in the result arrived at in that case, I cannot agree too vigorously in that conclusion set forth in the Commission's findings. The liberal approach of the Commission is essential in determining cases where ordinary elements of proof are as difficult to obtain as they are in these cases which affect property located in countries behind the iron curtain. It should be our duty and we should be prepared to go as far as legally possible in compensating these unfortunate claimants for their losses occasioned as a consequence of war. Our measure of compensation in these cases is only small consideration of the heart-rending experiences that have befallen these persons. The scars left by war and the losses to family and family heritage can never be replaced. Here we have an opportunity to compensate these people in some measure for their losses which far exceed anything we can grant them in a monetary manner. What we can do and what we should do wherever possible is to liberally construe the provisions of this remedial legislation.

Dated at Washington, D.C.
September 18, 1957.

Nationality requirements.—Title III of the 1949 Act contains no specific provision regarding the period of time during which a claim must have been owned by a national or nationals of the United States in order to be compensable. In view of the directive in Section 303 that the Commission determine claims "in accordance with applicable substantive law, including international law," the Commission stated the nationality requirement in its Proposed Decision on the *Factor* claim as follows: "Under well established principles of international law, unless otherwise provided by treaty, in order for a claim espoused by the United States to be compensable, the property upon which it is based must have been owned by a national or nationals of the United States at the time of loss, and the claims which arose from such loss must have been owned by a United States national or nationals continuously thereafter."

In further definition of the period of required ownership of a

claim by United States nationals, the Commission issued a Proposed Decision denying a claim because claimant had lost his United States nationality shortly after filing the claim, and therefore the claim had not been owned continuously by a United States national until the date of settlement thereof. However, by Amended Proposed Decision subsequently affirmed and entered as the Final Decision, the Commission granted an award on the claim, finding that claimant had been a national of the United States from the date of his naturalization on April 14, 1947 "up to and including the date of filing of this claim," thereby establishing the principle thereafter adhered to by the Commission that the nationality requirement is satisfied by United States ownership until the filing date, and is not affected by changes in ownership or nationality occurring thereafter. (*Claim of Benedict Lustgarten,* Claim No. RUM–30575, Dec. No. RUM–434, 10 FCSC Semiann. Rep. 119 (Jan.-June 1959).)

As to the beginning of the period of required ownership by United States nationals, this depended in claims against Bulgaria, Hungary or Rumania upon whether the claim was based upon war losses uncompensated as required by the treaties of peace (Section 303(1)), upon nationalization, compulsory liquidation, or other taking of property (Section 303(2)), or upon certain defined contractual obligations of the three governments (Section 303(3)). As illustrated in the *Factor* claim, a claim under Section 303(1) of the Act must have been owned by a national or nationals of the United States on the date of the armistice with the country against which the claim was filed, in order to be found compensable. These dates were October 28, 1944 in the case of Bulgaria, January 20, 1945 for Hungary, and September 12, 1944 for Rumania.

The *Factor* decision in denying a portion of the claim based upon property which had been taken by the Government of Rumania on the ground that the property had not been owned by a United States national on the date the claim arose, also illustrates the requirement for claims under Section 303(2) that the property have been owned by a United States national on the date of loss. In one claim which was denied by Proposed Decision because claimant was not a United States national on the date of nationalization of the subject property, claimant contended that the claim arose not on the date of nationalization, but at some later date after the lapse of a reasonable time within which the Government of Hungary had failed to pay compensation for the property as promised in the nationalizing statute, at which time claimant was a United States national. In its Final Decision the Commission rejected this contention, and affirmed the denial of the claim on the ground that the property had not been owned by a United States national on the date on which it was taken. (*Claim of Hermann F. Broch de Rothermann,* Claim No. HUNG–21100, Dec. No. HUNG–1889, 10 FCSC Semiann. Rep. 85 (Jan.-June 1959).)

Another claimant under Section 303(2) of the 1949 Act contended that he had satisfied the nationality requirements by reason of his having declared his intention to become a citizen of the United States. Claimant reasoned that his declaration

rendered him a natural person "who owes permanent allegiance to the United States" within the meaning of Section 301(2) of the 1949 Act. In concluding that claimant had not met the nationality requirements, the Commission held that one does not owe permanent allegiance to the United States by reason of making a declaration of intention to become a citizen. (*Claim of Szobolcs Szunyogh,* Claim No. HUNG–22185, Dec. No. HUNG–333, 10 FCSC Semiann. Rep. 34 (Jan.-June 1959).) For a more detailed discussion of persons who are not citizens of the United States but who are nationals thereof by reason of owing permanent allegiance to the United States, see *Claim of Edward Krukowski,* appearing at page 467.

Section 303(3) of the 1949 Act covers claims based upon obligations "arising out of contractual or other rights acquired by nationals of the United States prior to April 24, 1941, in the case of Bulgaria, and prior to September 1, 1939, in the case of Hungary and Rumania," thus providing specific dates to begin the period of required ownership by United States nationals. A claim under Section 303(3) of the Act raised the question of whether the nationality requirements of this section were met by a person who acquired contractual rights prior to September 1, 1939 if that person acquired United States nationality thereafter, but prior to the date of loss. The Commission held that Section 303(3) required United States nationality prior to September 1, 1939 as a condition precedent to eligibility for compensation in a claim of this nature against Hungary. Accordingly, recovery was denied to a claimant who became a United States national in 1944. (*Claim of Hedwiga Geller,* Claim No. HUNG–20506, Dec. No. HUNG–36, 10 FCSC Semiann. Rep. 37 (Jan.-June 1959).)

Corporate claimants.—Section 301(2), Title III, of the 1949 Act included within the definition of a "national of the United States" a "corporation or other legal entity which is organized under the laws of the United States, any State or Territory thereof, or the District of Columbia, if natural persons who are nationals of the United States own, directly or indirectly, more than 50 per centum of the outstanding capital stock or other beneficial interest in such legal entity." The definition appearing in Title I of the 1949 Act included no specific reference to corporations or legal entities. However, the Yugoslav Agreement of 1948, which was implemented by that Title, contained a provision in Article 2 for claims based on property which at the time of taking was owned "by a juridical person organized under the laws of the United States, or a constituent state or other political entity thereof, twenty percent or more of any class of the outstanding securities of which were at such time owned by individual nationals of the United States, directly or indirectly. . . ." A comparison of the requirements under the two programs reveals that the "substantial interest" in a corporation which would merit espousal of its claims by the United States Government was deemed to be twenty percent of the outstanding stock of any class in the case of Title I and fifty percent of all outstanding stock in the case of Title III of the 1949 Act. This difference between the Title I and Title III claims is not a unique situation. In implementing its policy to espouse claims involving a sub-

stantial United States ownership interest the State Department has applied various definitions to the term "substantial."

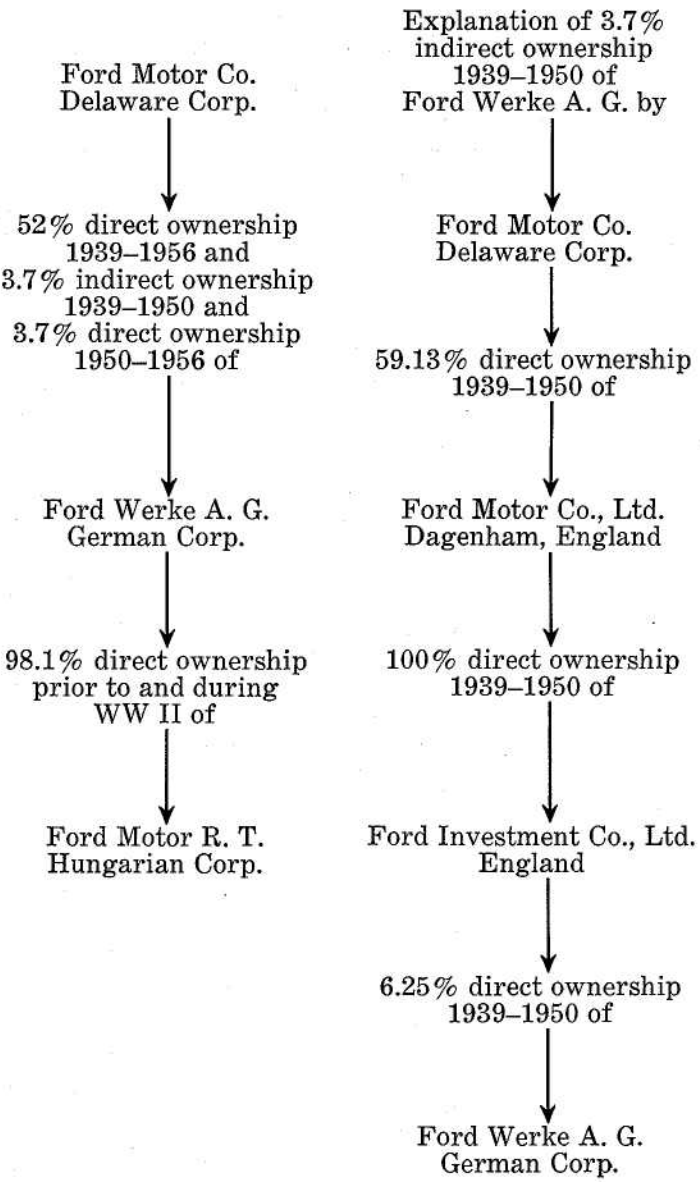
An interesting issue was presented by the claim of the Ford Motor Company against the Government of Hungary. (*Claim of Ford Motor Company,* Claim No. HUNG–20027, Dec. No. HUNG–2116, 10 FCSC Semiann. Rep. 80 (Jan.-June 1959).) The question arose whether Ford, a Delaware corporation, satisfied the eligibility requirements of Section 301(2) of the Act in the light of the fact that during a time pertinent to the claim more than fifty per centum of the outstanding stock of the Delaware corporation was owned by The Ford Foundation, a nonstock, charitable corporation organized pursuant to the laws of the State of Michigan. In reaching an affirmative answer, the Commission considered the complex factual and legal issues of the claim as set forth in the following Panel Opinion No. 14:

SUBJECT: Eligibility as a Claimant of the Ford Motor Company Under the International Claims Settlement Act of 1949.

The Ford Motor Company, a Delaware corporation, has filed with the Commission a claim against the Government of Hungary, pursuant to the provisions of Sections 303(1) and (2) and 311(b) of the International Claims Settlement Act of 1949, as amended by Public Law 285, 84th Congress, approved August 9, 1955, arising out of the failure of the Government of Hungary, to restore or pay war damage compensation for the property of Ford Motor R. T., a subsidiary corporation organized under the laws of Hungary, as required by articles 26 and 27 of the treaty of peace with Hungary; as well as for the failure to pay effective compensation for the nationalization or other taking of the property of Ford Motor R. T. in Budapest, Hungary. The said property consists of a factory and office building.

With respect to claimant's eligibility, it is contended that the Ford Motor Company is a national of the United States within the purview of Section 301(2)(B) of the Act which requires that more than 50% of the outstanding capital stock of this Delaware chartered corporation be owned, directly or indirectly, by natural persons who are nationals of the United States. Moreover, it is contended that at the time the losses were sustained at least 25% of the outstanding capital stock of Ford Motor R. T. was owned, directly or indirectly, by natural persons who were nationals of the United States, within the contemplation of Section 311(b) of the Act.

There follows a schematic diagram which illustrates the extent of the indirect ownership of Ford Motor R. T. by the Ford Motor Company.



Consequently, from September 1, 1939 to the date the claim was filed, Ford Motor Company owned indirectly 54.65% of the outstanding stock of Ford Motor R. T. by virtue of the claimant's ownership of 55.7% of the outstanding stock of Ford Werke A. G.[1]

Without prejudice to any future determination by the Commission, it is assumed here that any claimant must be a national of the United States on the date the loss

[1] Details of indirect ownership of the Hungarian corporation by the Delaware corporation extracted from Exhibit C of the claim.

was sustained continuously to the date that the claim is filed under Title III of the International Claims Settlement Act of 1949, as amended.

The Ford Motor Company claim was filed on January 17, 1956. From September 1, 1939 to the date the claim was filed all of the outstanding stock of the claimant parent corporation, was owned by members of the Ford family, their estates, "certain Ford Family interests," directors, officers and employees of the claimant, and the Ford Foundation.[2] From September 1, 1939 to September 10, 1947, various members of the Ford Family and their estates owned more than 50% of the outstanding stock of the Ford Motor Company. From September 10, 1947 to the date the claim was filed, the Ford Foundation owned more than 50% of the outstanding stock of the Ford Motor Company. All members of the Ford family, their executors and executrices are citizens of the United States. "Certain Ford family interests" are not otherwise identified. "All or almost all" of the directors, officers and employees of the Ford Motor Company are citizens of the United States. The Ford Foundation is a nonstock, charitable corporation organized under the provisions of the Michigan General Corporation Act.[3] The Ford Foundation is managed by a Board of Trustees elected by the members of the Foundation. All of the trustees and all of the members of the Ford Foundation are individuals and nationals of the United States.[4]

The fundamental issue to be resolved, then, is the status of the Ford Foundation with respect to the statutory eligibility requirement that stock ownership in relation to the qualification of corporate or stockholder claimants must be by natural persons who are nationals of the United States.[5]

It is axiomatic that the primary object and rule of all interpretation or construction of the words of a statute is the accomplishment of the legislative intent.[6] It has been said that while interpretation confines one to the content of the statute, construction permits the use of extrinsic aids such as the many documents which pertain to the legislative, administrative and judicial history of the statute. In common usage, however, interpretation and construction are usually understood to have the same significance.[7] If the words of a statute are clear in meaning and do not lead to repugnant and inconsistent consequences, such words are, of course, evidence of the ultimate legislative intent. In such cases, construction is not required. However, even when the plain meaning does not produce repugnant and inconsistent results, but merely an unreasonable one plainly at variance with

[2] The first public offering of Ford Motor Company stock was made on January 18, 1956.
[3] 15 Michigan Stat. Ann. § 21.1.
[4] Details of direct ownership of claimant extracted from Exhibit A of the claim.
[5] Sections 301(2)(B) and 311(b) of the International Claims Settlement Act of 1949, as amended.
[6] *Vermilya-Brown Co., Inc.* v. *Connell*, 335 U.S. 377 (1948).
[7] *U.S.* v. *Keital*, 211 U.S. 370 (1908).

the policy of the legislation as a whole, the legislative purpose is followed rather than the literal words.[8] In a determination of such purpose extrinsic aids to construction are used.

The primary technique in the determination of statutory language is the rule of literalness, or, as it is sometimes referred to, the plain meaning rule. When this rule is employed to determine the meaning of the words of a statute, it is, of course, essential to the proper application of the rule that the context be considered. In other words, the meaning of the words when read together with the rest of the words of the pertinent section of the Act and the other sections of the Act as well must be determined. If such a reading leads to repugnant and inconsistent results construction is required.

Before consideration is given to the Ford case, it is pertinent to inquire with respect to the eligibility under Title III of the Act of the American National Red Cross which operates under a charter granted by Congress in 1905, and the Sofia American Schools, Incorporated, a nonstock corporation chartered in Massachusetts in 1926. Resolution of the issue of eligibility in these cases, where the charitable corporation is the claimant, will have distinct bearing in the Ford case where the charitable corporation holds considerable of the capital stock of the claimant.

Section 301(1) defines the term "person" to include a "natural person" but does not, in turn, define the term "natural person." It is this latter term, however, which is employed in Section 301(2)(A) and (B) and 311(b) and which leads to difficulty in the matter of nonstock, eleemosynary corporations.

Section 301(1) also includes a partnership, association, other unincorporated body, *corporation*, or body politic in the term "person." Thus, it is manifest that a corporation is a person within the ambit of the statute. It is for the Commission to determine if a further extension was intended by the Congress, in other words, if a corporation, and more specifically a nonstock charitable corporation, is a natural person.

Section 301(2) defines a national of the United States as,

(A) a natural person who is a citizen of the United States, or who owes permanent allegiance to the United States, and

(B) a corporation or other legal entity which is organized under the laws of the United States, any State or Territory thereof, or the District of Columbia, if natural persons who are nationals of the United States own, directly or indirectly, more than 50 per centum of the outstanding capital stock or other beneficial interest in such legal entity.

With respect to a corporation, it is observed that it is

[8] *Markham* v. *Cabell*, 326 U.S. 404 (1945).

contemplated that natural persons own capital stock or other beneficial interest in the corporation.

The American National Red Cross is a corporation governed by a 50 member Board of Governors of whom 30 are elected by the 3700 local chapters, 8 are appointed by the President of the United States, and 12 are elected by the Board itself as members-at-large. Sofia American Schools, Inc. is a Massachusetts charitable corporation which is governed by a Board of Trustees.

The American National Red Cross and the Sofia American Schools, Inc. are not within the literal definition of a corporation or other legal entity which is a national of the United States inasmuch as they are nonstock corporations and natural persons have no beneficial interest in either corporation. Are the American National Red Cross and the Sofia American Schools, Inc., then within the meaning of Section 301(2)(A) of the Act, nationals of the United States by virtue of being natural persons?

Clearly, here is a situation where the literal reading of the statute leads to unreasonable if not repugnant and inconsistent results which demand statutory construction to determine the intent of the Congress.

One of the better extrinsic aids employed in statutory construction is a comparison of the various prints of a bill as it is carried through the executive and legislative branches of the government to enactment. With respect to claims against Bulgaria, Hungary and Rumania, the draft of the proposed legislation, which was submitted by the Foreign Claims Settlement Commission to the Congress and which ultimately became Public Law 285, provided that the term,

> "nationals of the United States" includes (A) persons who are citizens of the United States, and (B) persons, who, though not citizens of the United States, owe permanent allegiance to the United States. It does not include aliens.

While there had been three revisions of the original draft of the proposed legislation by the executive branch before submission to the Congress, the definition of a national of the United States was not altered. This definition originated in Section 2 of the International Claims Settlement Act of 1949.

On March 4, 1955 Senator George introduced S. 1310, 84th Congress, in the Senate. This bill retained the definition of "nationals of the United States" as originally set out in Section 2 of the International Claims Settlement Act of 1949. No action was taken on S. 1310, the companion bill of H.R. 6382 which ultimately became Public Law 285, 84th Congress, and which added Titles II and III to the Act.

There were two committee prints of H.R. 6382, which was introduced in the House on May 19, 1955 by Mr. Richards, Chairman of the Committee on Foreign Affairs. Both committee prints adopted the definition of

"nationals of the United States" which had been submitted by the executive branch. However, as introduced, and as passed in the House and the Senate, the definition of a "national of the United States" was changed to the meaning now found in Section 301(2) of the Act.

It is manifest that this change was not effected to exclude charitable corporations chartered in the United States. Rather, the phraseology, as adopted by the Congress, is in harmony with the traditional practice of the United States in requiring a "substantial" American interest in a corporation before it will espouse an international claim.[9] Consistent with this underlying philosophy of the legislation it could scarcely be contended that American charitable corporations devoted to humanitarian works and the teaching and dissemination of American language, ideals and culture in foreign lands, were intended to be ineligible claimants because of a failure to come within the highly technical definition of a corporation which is a national of the United States. The general purpose and import of the statute requires, therefore, that nonstock charitable corporations be encompassed within the term "natural person."

That the term "natural person" includes a corporation is not without precedent in the law even though the precedents are distinguishable from the instant case. The Illinois Banking Act provides that "no natural person or natural persons, firm or partnership shall transact the business of banking or the business of receiving money upon deposit, or shall use the word 'Bank' or 'Banker' in connection with said business." [10] Illinois law further provides that, " 'Person' or 'persons' as well as all words referring to or importing persons, may extend and be applied to bodies politic and corporate as well as individuals." [11] Where a West Virginia corporation appealed an order entered by the Secretary of State canceling the license of the corporation to do business in Illinois, the Appellate Court of Illinois, Third District, in affirming the judgment of the lower court and the order of the Secretary of State, held that the term "natural person" or "natural persons" used in the Banking Act extended to and applied to "bodies politic" and "corporate." [12]

In an action by an individual engaged in the operation of a motor passenger service against a Public Service Commission to enjoin the enforcement of an order charging the plaintiff with the cost of a proposed investigation and examination of his business under the provisions of a statute, it was held that the term "public service or public utilities corporation" included natural persons who operate public utilities.[13]

[9] V Hackworth, Digest of International Law 839 (1943).
[10] Smith-Hurd Ann. St. Ch. 16½ § 16.
[11] Id., Ch. 131 § 1.05.
[12] *Fidelity Investment Association* v. *Emmerson, Secretary of State*, 235 Ill. App. 518, 526 (1924); reversed on other grounds 318 Ill. 548, 149 N.E. 530 (1925).
[13] *Gremillion* v. *Louisiana Public Service Commission*, 186 La. 295, 172 So. 163, 166 (1937).

Moreover, many courts have construed the word "corporation" as used in a statute to include individuals whenever it has appeared that the legislative intent required it.[14]

Turning to another facet of the legislative history of Title III of the Act, it is noteworthy that, with respect to the Ford claim, Chairman Gillilland, at the request of the Senate Committee on Foreign Relations, furnished the Committee with the names of the 20 then known claimants asserting the largest claims.[15] The list contained the name of the Ford Motor Company as a claimant for the sum of $5.1 million for war damage and nationalization claims.

In addition, the Congress was aware of the claim of the Sofia American Schools, Inc. At no time, however, during the Senate and House hearings on H.R. 6382 was a question raised relative to the eligibility of this or any other charitable corporation. In fact, considerable interest, favorable in character, was expressed relative to the University by members of the Senate Foreign Relations Committee while considering the bill in open session.[16]

In light of the foregoing it is the position of the Office of the General Counsel that charitable corporations, such as the Ford Foundation, the American National Red Cross and Sofia American Schools, Incorporated, are within the ambit of the term "natural person" as used in Sections 301(1) and (2) and 311(b) of the International Claims Settlement Act of 1949, as amended. Accordingly, it is recommended that if, on development by the Settlement Division, the evidence sustains the qualification requirements of Section 311(b), a determination that the Ford Motor Company is an eligible claimant under Title III of the International Claims Settlement Act of 1949, as amended, be entered.

A different question regarding the nationality requirement, as affected by Section 311(b) of the 1949 Act, was presented by claims of individuals having stockholder interests in corporations which did not qualify as nationals of the United States. This is discussed in the annotations to *Claim of Niagara Share Corporation,* appearing at page 184.

Nationality requirements: Trusts.—The principle that nationality requirements must be applied to the beneficial owners of claims and not to the record owners thereof was discussed and applied with respect to Title I in the *Claim of Siegfried Arndt,* appearing at page 22. The reasoning underlying that holding was deemed persuasive by the Commission and the policy was incorporated in the case of Title III claims also. Accordingly, where the record disclosed that the *cestuis que trust* whom claimant represented were nonnationals of the United States, the Com-

[14] *Van Dyke* v. *Members of the Corporation Commission of the State of Arizona,* 244 U.S. 39 (1917).

[15] Hearings on H.R. 6382 Before the Senate Committee on Foreign Relations, 84th Cong., 1st Sess. 67–70 (1955).

[16] Hearings, *supra* note 15 at 71–82; and Hearings on H.R. 6382 Before the House Committee on Foreign Affairs, 84th Cong., 1st Sess. 83–85 (1955).

mission was constrained to hold that the claim did not qualify as that of a national of the United States within the meaning of Section 303 of the Act. (*Claim of American Security and Trust Company, Trustee Under the Will of Carl F. Jeansen, Deceased,* Claim No. HUNG–20540, Dec. No. HUNG–51.)

The question of whether the established rule requiring a claim which is national in character at its origin to remain such thereafter to the date of filing should be applied to a trust was a core issue in a claim against the Government of Bulgaria under Section 303(3). An American national who acquired bonds of the Government of Bulgaria prior to the statutory date, April 24, 1941, established a testamentary trust which incorporated the subject bonds as part of the corpus. He died in October 1941 and the record of the claim disclosed that none of the beneficiaries of the trust had acquired United States nationality before 1946. Applying the rule that the eligibility requirements must be applied to the beneficiaries of a trust, the Commission determined that there was a break in the ownership of the claim by United States nationals during the required period, and ruled that the claim did not qualify as that of a United States national. In so ruling the Commission adverted to the fact that it is not a condition precedent to the application of the rule of continuous national ownership of a claim that the claim can be effectively asserted at all times during the subject period. (*Claim of The Hanover Bank, et al.,* Claim No. BUL–1181, Dec. No. BUL–115, Final Decision, 10 FCSC Semiann. Rep. 16 (Jan.-June 1959).)

Expatriation.—As was illustrated in the discussion of the nationality requirements in Title I claims, an allied issue in this area is that of expatriation, that is, the loss of one's nationality status. Reference is made to the basic United States statutes, the policy considerations incorporated therein, and court decisions applicable to this issue in the *Claim of Jerko Bogovich, et al.,* appearing at page 24.

Where a claimant failed to overcome the presumption of expatriation established by the Act of March 2, 1907 (34 Stat. 1228) for continuous residence in the country of his origin (*Claim of Paul Bodor,* Claim No. HUNG–20501, Dec. No. HUNG–2022), or where claimant expatriated herself under Section 401(e) of the Nationality Act of 1940 (54 Stat. 1168) by voting in a national election in Hungary (*Claim of Gizella M. Kezdy-Reich,* Claim No. HUNG–22361, Dec. No. HUNG–1143, 10 FCSC Semiann. Rep. 52 (Jan.-June 1959)), the Commission was constrained to deny recovery under Title III.

Unusual factual situations were presented by other claims filed pursuant to Title III, and called for the application of other sections of the pertinent statutes regulating nationality. The record before the Commission in one claim indicated that the owner of certain claimed property had been employed from June 1932 to November 1944 by the City of Budapest, Hungary. Based upon this evidence and information supplied by the Hungarian Minister of Trade that foreigners were not employed in claimant's position during that period, the Commission determined that the said owner of the property had been expatriated pursuant to Section 401(d) of the Nationality Act of 1940 (54 Stat. 1137)

which provided that a United States national would lose this status by accepting or performing duties of employment of a political subdivision of a foreign government if only nationals of such state were eligible for these positions. An alternate ground for denial of the claim was expatriation arising from continuous residence in the country of origin for the requisite statutory period. Upon consideration of the evidence produced at a hearing, a report of the State Department Board of Review which stated that the record did not support the conclusion that the post occupied by the deceased was one for which only Hungarian nationals were eligible or that deceased ever was expatriated, the Commission issued an award in the claim, stating that "in an expatriation case, the burden of proof is on the government, and the evidence must be clear, unequivocal and convincing." (*Claim of Estate of Frederick Jehl, Deceased,* Claim No. HUNG–27013, Dec. No. HUNG–1164, Final Decision, 10 FCSC Semiann. Rep. 69 (Jan.-June 1959).)

A claimant against the Government of Rumania under Title III lost her status as a United States national by reason of her marriage in 1903 to a subject of Great Britain, and did not reacquire United States nationality until her naturalization in 1949. Accordingly, her portion of the claim was denied because it was not established that the property on which it was based was owned by a national of the United States at the time of loss and that the claim which arose therefrom was owned by a United States national continuously thereafter. (*Claim of Martha McIntire, et al.,* Claim No. RUM–30562, Dec. No. RUM–539, 10 FCSC Semiann. Rep. 117 (Jan.-June 1959).)

In a similar claim, a female who was expatriated prior to World War II by marriage took an oath of allegiance when preparing to re-enter the United States in 1948. Despite the fact that she was refused permission to register as a United States citizen, she contended that the aforesaid oath conferred United States nationality on her pursuant to the Act of June 25, 1936 (49 Stat. 1917). In its decision the Commission pointed out that the referenced law had been repealed by the Nationality Act of 1940 (54 Stat. 1137) which was effective as of 1941, a date prior to the taking of the oath of allegiance, and that pursuant to the 1940 Act a woman in claimant's situation reacquired United States nationality on the taking of an oath if it were established that her marital status with the alien had terminated. Because this condition had not been satisfied, claimant retained her status as a nonnational and the claim was denied for the reason that the nationality requirements of Section 303(3) of the 1949 Act were not satisfied. (*Claim of Chase Manhattan Bank,* Claim No. HUNG–21792, Dec. No. HUNG–533, 10 FCSC Semiann. Rep. 36 (Jan.-June 1959).)

In the Matter of the Claim of

NIAGARA SHARE CORPORATION

Against the Government of Rumania

Claim No. RUM–30315
Decision No. RUM–364

Claims based on direct stock interests in nationalized corporations in Bulgaria, Hungary or Rumania, otherwise compensable under Section 303(2), Title III of the 1949 Act, allowed without regard to per centum of stock interests vested in nationals of the United States at the time of loss, pursuant to Section 311(b) as amended by Public Law 85–604 of August 8, 1958.
Value of stock interests in nationalized corporations as of date of nationalization determined on basis of balance sheets and financial statements of such entities, other appropriate information concerning their assets and operations, as well as stock market quotations.

PROPOSED DECISION

This is a claim under the provisions of the International Claims Settlement Act of 1949, as amended, against the Government of Rumania, by NIAGARA SHARE CORPORATION, a corporation organized under the laws of the State of Maryland, for the failure of the said government to pay effective compensation for the nationalization of corporations in which claimant had a stock interest. Part of the claim is based upon an alleged bank account of 173,800 lei with the "Temesvar Bank & Trading Corporation."

Claimant asserts that it owns the following shares of stock: 900 in "Banca Agrara, Oradea," 1500 in "Banca Victoria S.A.," 750 in "Banater Bankverein A.G.," 350 in "Kronstadter Allgemeine Sparkasse," 1000 in "Polgari Takarek Penztar R.T.," 1850 in "Temesvar Bank and Trading Corporation," and 3750 in "Vereignite Bank and Sparkasse."

It is clear that in a claim based on ownership of a stock interest in a corporation, which itself is not a United States national and hence not a qualified claimant under the Act, one of the conditions which must be met before claimants can establish entitlement to an award under Section 303 of the Act, is that which is imposed by Section 311(b) of the Act, which provides as follows:

> A claim based upon an interest, direct or indirect, in a corporation or other legal entity which directly suffered the loss with respect to which the claim is asserted, but which was not a national of the United States at the time of the loss, shall be acted upon without regard to the nationality of such legal entity if at the time of the loss at least 25 per centum of the outstanding capi-

tal stock or other beneficial interest in such entity was owned, directly or indirectly, by natural persons who were nationals of the United States.

The reports of the Committees of Congress which considered the legislation which, when enacted, incorporated 311(b) into the International Claims Settlement Act of 1949, leave no doubt that Section 311(b) was intended to exclude from the scope of the Act those claims which are based on interests in non-national corporations or other legal entities which were not at least 25% owned by nationals of the United States. In describing the intended effect of Section 311(b), the Report of the House of Representatives' Committee on Foreign Affairs stated in part as follows:

> Accordingly, the bill provides that awards based on such indirect interests will be made only if, at the time of the loss at least 25 per cent of the stock or other beneficial interest in the corporation which suffered the loss was owned directly or indirectly by individual United States nationals.[1]

Similarly, the Senate Committee on Foreign Relations expressed its understanding of the intent which was manifested by the inclusion of Section 311(b) in the Act in its report as follows:

> Its primary purpose, however, was to eliminate claims based upon a holding of 1 or 2 shares which would hardly justify the expense and effort of processing.[2]

The shares held by the claimant represent but a small fraction of the total capitalization of the corporations in question. Claimant has not offered evidence of any ownership interests in the corporations other than its own in order to establish that at least 25% of the corporations was owned by natural persons who were nationals of the United States. Moreover, it does not appear, from information available to the Commission, that the ownership interests in the instant corporations of nationals of the United States approximated anywhere near 25% of the total capitalization of the corporations. Thus, it must be concluded that claimant has not established that at least 25% of the corporations in question was owned at the time of loss by natural persons who were nationals of the United States, and that, therefore, this claim is not compensable.

Accordingly, for the foregoing reasons, this part of the claim is denied.

That part of the claim which is based upon an alleged deposit of 173,800 lei with the "Temesvar Bank and Trading Corporation" is denied for the reasons specified in the attached Pro-

[1] H.R. Rep. No. 624, 84th Cong., 1st Sess. 17, 18 (1955).
[2] S. Rep. No. 1050, 84th Cong., 1st Sess. 7 (1955).

posed Decision, No. RUM–314, *In the Matter of the Claim of Ilie Muresan* (RUM–30211).

The Commission finds it unnecessary to make determinations with respect to other elements of this claim.

Dated at Washington, D.C.
March 6, 1958.

SUPPLEMENTAL PROPOSED DECISION

This is a claim against the Government of Rumania under Section 303(2) of the International Claims Settlement Act of 1949, as amended, by NIAGARA SHARE CORPORATION, a national of the United States within the meaning of Section 301(2)(B) of the Act, for the taking of property in Rumania.

The claim was denied by Decision No. RUM–364 of March 6, 1958, but subsequently was reopened solely for the purpose of making a redetermination of that portion of the claim based upon stock interests pursuant to the provisions of Section 3 of Public Law 85–604, approved August 8, 1958, amending Section 311(b) of the Act.

The Commission finds that the claimant owned 350 shares of stock in Cassa Generala de Pastrare, Brasov, 1500 shares of stock in Banca Victoria S.A., Arad, 1850 shares of stock in Banca Timisoarei, and 750 shares of stock in Bancile Banatene Unite, Timisoara, which corporations were nationalized without compensation to the stockholders by the Government of Rumania pursuant to Law No. 119 of June 11, 1948 (Monitorul Oficial No. 133 bis.).

In computing the values of the shares of stock of Rumanian corporations at the time of their nationalization, it being impossible to make on-the-spot appraisals, the Commission has considered quotations on various European stock exchanges, financial data from Compass and other publications, balance sheets and operating statements, book values, and advice obtained from governmental and financial sources in foreign countries, as well as information provided by various claimants with respect to prices paid for the shares of stock and their values. On the basis of all the evidence and information available, the Commission finds that the values of the shares of stock of Cassa Generala de Pastrare, Brasov, Banca Victoria S.A., Arad, Banca Timisoarei, and Bancile Banatene Unite, Timisoara, at the time of

nationalization of the corporations, were $1.00, $1.00, $0.25, and $1.25 per share, respectively.

The Commission finds, therefore, that the value of claimant's stock interest in such corporations was Three Thousand Four Hundred Thirty-seven Dollars and Fifty Cents ($3,437.50), and concludes that claimant is entitled to compensation under Section 303(2) of the Act.

A portion of the claim is based upon 900 shares of stock of Banca Agrara, Oradea, 1000 shares of stock of Cassa de Pastrare Civila, Oradea, and 3750 shares of stock of Bancile Fuzienate si Cassa de Eoon, Oradea. Claimant has been unable to submit evidence which fully substantiates its allegations as to the extent of the loss with respect to these shares of stock. Nevertheless, the Commission, not being bound by the usual rules of evidence, is persuaded that the claimant owned stock interests in these said corporations which were taken within the meaning of Section 303(2) of the Act apparently in 1948, and that no compensation has been paid therefor by the Government of Rumania. Denial of the claim for lack of corroboration under such circumstances, would not, in the opinion of the Commission, be an act of justice. On the other hand, the absence of reliable evidence precludes an award of the full amount claimed.

The Commission finds that the value of claimant's stock in the said three corporations was One Thousand Four Hundred Twelve Dollars and Fifty Cents ($1,412.50), and concludes that claimant is entitled to compensation under Section 303(2) of the Act for this loss.

AWARD

Pursuant to the provisions of the International Claims Settlement Act of 1949, as amended, an award is hereby made to NIAGARA SHARE CORPORATION in the amount of Four Thousand Eight Hundred and Fifty Dollars ($4,850.00), plus interest thereon at the rate of 6% per annum from June 11, 1948 to August 9, 1955, the effective date of the Act, in the amount of Two Thousand Eighty-four Dollars and Sixty-seven Cents ($2,084.67).

Payment of any part of this award shall not be construed to have divested the claimant herein or the Government of the United States, on its behalf, of any rights against the Government of Rumania for the unpaid balance of the claim, if any.

Dated at Washington, D.C.
March 9, 1959.

Nationality of corporations—Stockholder's claims.—Under Section 301(2) of Title III of the International Claims Settlement Act of 1949, as amended, a corporation which was organized under the laws of the United States, any State or Territory thereof, or the District of Columbia, was deemed a "national of the United States" if natural persons who were nationals of the United States owned, directly or indirectly, more than 50 per centum of the outstanding capital stock or other beneficial interest in such legal entity. If the corporation qualified as a "national of the United States," the corporation was the proper party claimant, and no award could be made to any other person with respect to such claim. (Section 311(a) of Title III of the Act.)

Many claims were filed by United States nationals who were stockholders in corporations which did not themselves qualify as nationals of the United States. The Commission originally took the position that if the corporation which directly suffered the loss was not a national of the United States, and therefore ineligible, Section 311(b) provides that United States nationals who *directly* or *indirectly* owned stock in such corporation could be compensated only if 25 per centum or more of the stock or other beneficial interest was owned directly or indirectly at the time of loss by natural persons who were nationals of the United States. Accordingly, the portion of the instant claim based upon interests in nationalized corporations was denied for failure to establish 25% ownership of the enterprises by United States nationals. Likewise, a claim filed by a shareholder for his interest in *Steaua Romana,* a nationalized Rumanian corporation, was denied for claimant's failure to prove 25% United States ownership interest in such corporation. (*Claim of Eugene L. Garbaty,* Claim No. RUM–30250, Dec. No. RUM–13, 10 FCSC Semiann. Rep. 93 (Jan.-June 1959).)

It had been argued that under the Rumanian law concerning the nationalization of industrial concerns, both the stockholder shares and the corporate assets were taken simultaneously. It was contended that Section 311(b) does not apply to the situation in which stock in a Rumanian corporation was taken because the taking of stock gave rise to a direct claim rather than one based on an interest in a corporation; and it was urged that the requirement of a 25% United States stock interest applies only to stockholders in a non-Rumanian foreign corporation which in turn owned property in Rumania.

The issue was resolved by Section 3 of Public Law 85–604, 72 Stat. 527 (1958), amending Section 311 of the International Claims Settlement Act of 1949, as amended, so that a claim based upon *direct* ownership interest in a corporation nationalized, liquidated, or otherwise taken would be allowed without regard to the percentage of ownership vested in the claimant. The effect of this amendment was that the prerequisite of 25% United States interest applied only in cases where the claim was based upon *indirect* ownership interest in the corporation which sustained the loss, such as ownership of stock in a Belgian corporation which in turn owned stock in a Bulgarian, Hungarian, or Rumanian corporation.

Pursuant to the congressional mandate contained in Section

3(b) of Public Law 85–604 (*supra*) all claims which had been denied under Subsection (b) of Section 311 of the Act were reconsidered by the Commission and awards were granted where appropriate, as in the Supplemental Proposed Decision in the *Niagara Share Corporation* claim.

The 25% United States ownership interest was required to have been in *natural persons* who were nationals of the United States. Of the 235,687 outstanding shares of a claimant corporation, the Mergenthaler Linotype Company, 3,656 shares were held by nonnationals, 28,808 shares by and for International Linotype Ltd., London, and the remainder by United States nationals. Claimant argued that the block of 28,808 shares held by and for International Linotype Ltd. should be considered non-foreign because they were controlled by claimant through its British subsidiary, Linotype and Machinery Ltd. Since claimant did not respond to requests for additional information and evidence to justify its allegation that the 28,808 shares held by International Linotype Ltd. should be considered as owned at the time of loss by natural persons who were nationals of the United States, the Commission ruled that only 203,223 of claimant's shares of stock, or 86.226%, could be considered as owned by natural persons who were nationals of the United States. The net result of such ruling was that claimant's ownership interest in the nationalized corporation First Hungarian Type Foundry, owned indirectly through claimant's German subsidiaries the Mergenthaler Setzmaschinen-Fabrik and D. Stempel, A.G., was found to be 22.701%, or less than 25%, and the claim was denied. (*Claim of Mergenthaler Linotype Company,* Claim No. HUNG–12860, Dec. No. HUNG–1921, 10 FCSC Semiann. Rep. 64–66 (Jan.-June 1959).)

Value on date of loss.—Awards under Section 303(2) of the 1949 Act for the nationalization or other taking of property in Bulgaria, Hungary, and Rumania were based upon the value of the property at the time of loss. Recognizing that the determination of value would prove difficult in many cases, the Commission endeavored to assist claimants through independent investigation and accumulation of standards for evaluation of property of various types. Some of the elements considered by the Commission in this respect were purchase price or offers to purchase, age and condition of the property, type of construction, location and surroundings, appraisals by experts and by individuals having personal knowledge of the facts, rental income, and values determined for similar types of property in the same or adjacent areas.

Claims or portions of claims based upon indirect damages, such as loss of earnings, anticipated profits, and loss of rent, generally were denied as speculative or not reasonably certain and susceptible of accurate determination. (*Claim of Anna Ide,* Claim No. RUM–30441, Dec. No. RUM–375, 10 FCSC Semiann. Rep. 113 (Jan.-June 1959) ; and *Claim of Constantine Halkides,* Claim No. HUNG–20705, Dec. No. HUNG–1294.) In some instances evidence of value was rejected in whole or in part. In a claim based upon compulsory liquidation of a business in Rumania, the Commission held that it was necessary for claimant to establish that the amount he received for the property was less than the actual

value thereof. The report of an asserted expert was considered, but the Commission found that the values which he placed upon machinery, equipment and goods were based upon hearsay rather than upon his own knowledge. The claim was denied for failure of proof. (*Claim of Jacob J. Roder,* Claim No. RUM–30337, Dec. No. RUM–801, 10 FCSC Semiann. Rep. 124 (Jan.-June 1959).)

Where a claim was based upon direct or indirect ownership of an interest in a nationalized corporation, the amount of the award depended upon an evaluation of the enterprise at the time of loss, and claimant's interest therein was calculated as the proportion of his shareholding to the total number of shares outstanding. In computing the value per share of stock of corporations at the time of their nationalization, it being impossible to make on-the-spot appraisals, the Commission considered quotations on various European stock exchanges, financial data from *Compass* (Compassverlag, Wien, Austria) and other publications, balance sheets and operating statements, book values, and advice obtained from governmental and financial sources in foreign countries, as well as information provided by various claimants with respect to prices paid for the shares of stock and its value.

In establishing the value of certain subsoil reserves of crude oil and gas liquids, a claimant proposed the analytical or engineering method of appraisal which is widely accepted and used by the oil industry in estimating the value of hydrocarbon reserves in the United States and throughout the world. Under this method, claimant calculated the "present worth" value of the reserves at the time of nationalization at $17,483,522.00. In applying the method, claimant assumed that all of the leases were valid, used pre-World War II cost experience "adjusted" to 1948, figured sales prices on the basis of a competitive free market, and projected these costs and prices to 1978 and 1983. Additionally, claimant assumed, for the remaining life of the leases, a government tax of 50% plus 11% royalty.

The Commission recognized the validity of the method adopted by the claimant, but was not entirely persuaded that all of the assumptions as to costs, prices, and taxes, and particularly the reliance upon their continuance throughout the life of the leases, should be accepted without qualification. The Commission was not convinced that in arriving at the market value at the date of nationalization, a buyer in a competitive market would be willing to pay the figure asserted by the claimant. The Commission concluded that a discounting or downward adjustment of the claimant's figure was indicated and, accordingly, the amount of $12,240,000.00 was allowed for the loss sustained on account of the nationalization of claimant's oil and gas reserves. (*Claim of Standard Oil Company,* Claim No. RUM–30140, Dec. No. RUM–813, 10 FCSC Semiann. Rep. 128–130 (Jan.-June 1959).)

Unlike the Yugoslav and Panama claims programs in which payments on account of awards were made from funds received as a result of agreements between the Governments of those countries and the United States, payments on awards under Title III of the 1949 Act were made from the proceeds of enemy assets seized during World War II, and the Commission was soon aware of the fact that available funds would be insufficient for payment

in full of anticipated awards against Bulgaria, Hungary, or Rumania. The *Niagara* decision illustrates the practice adopted by the Commission of adding a final paragraph after the statement of award to the effect that partial payment of the award would not divest the claimant or the United States Government of any rights against the country concerned for the unpaid balance.

In the Matter of the Claim of

Claim No. BUL–1094
Decision No. BUL–280

GEORGE H. EARLE, III

UNITED STATES OF AMERICA

Against the Government of Bulgaria

Claims found valid under Section 303, Title III of the 1949 Act allowed only to extent of uncompensated losses. United States of America deemed subrogated by virtue of payments pursuant to private laws on account of claims allowable under Section 303. Stipulations between the United States and claimants thus paid govern extent of their respective interests.
Awards under Section 303(1) not increased by interest because they are limited to "two-thirds of the loss or damage actually sustained."

PROPOSED DECISION

This is a claim against the Government of Bulgaria under Section 303(1) of the International Claims Settlement Act of 1949, as amended, for $37,933.00, by GEORGE H. EARLE, III, a national of the United States since his birth in the United States on December 5, 1890, for the loss of personal property in Bulgaria during World War II. On June 25, 1958, the UNITED STATES OF AMERICA intervened as co-claimant.

The Commission finds that the claimant, GEORGE H. EARLE, III, owned certain personal property which was lost or damaged as a result of World War II and that no compensation for such loss has been paid by the Government of Bulgaria. The Commission further finds that the loss or damage actually sustained amounted to $27,210.00 and concludes that claimant, GEORGE H. EARLE, III, is entitled to an award under Section 303(1) of the Act in the amount of $18,140.00 since under this Section awards are limited to two-thirds of the loss or damage actually sustained.

On or about June 14, 1954, the Government of the United

States, under Private Law No. 417, 83rd Congress, paid to the claimant, GEORGE H. EARLE, III, the sum of $12,830.00 in consideration of losses of personal property in Bulgaria while in the diplomatic service of the United States. Claimants have agreed by *Stipulation of Settlement* that the United States of America shall receive 34% of the proceeds of any award herein made by the Foreign Claims Settlement Commission and that GEORGE H. EARLE, III shall receive 66% thereof.

AWARD

Pursuant to the provisions of the International Claims Settlement Act of 1949, as amended, this claim is allowed and an award is made in the amount of $18,140.00, in which award the interest of GEORGE H. EARLE, III is 66% or $11,972.40, and the interest of the UNITED STATES OF AMERICA is 34% or $6,167.60.

Payment of any part of this award shall not be construed to have divested GEORGE H. EARLE, III herein, or the Government of the United States on his behalf, of any rights against the Government of Bulgaria for the unpaid balance of the claim, if any.

Dated at Washington, D.C.
December 15, 1958.

Subrogation. Compensation received from other sources.—Under Section 303(1), Title III, of the International Claims Settlement Act of 1949, as amended, the Commission determined the validity of war damage claims of nationals of the United States and, where applicable, made awards limited to two-thirds of the loss or damage actually sustained.

In a few cases, such as in the instant claim, under private laws passed for the relief of the claimants prior to the enactment of Title III of the Act, the Government of the United States paid compensation for a portion of war damage sustained in Bulgaria, Hungary and Rumania to individuals who served in these countries as employees of the United States. The claimants filed claims with the Commission for the uncollected portion of the loss, and the Government of the United States joined in the proceedings before the Commission as a co-claimant. The Commission took notice that the claimants and the United States Government stipulated that the proceeds of the award made by the Commission should be divided between the claimants and the Government by a certain percentage: in the instant claim by payment of 66% of the proceeds to the claimant and of 34% of the proceeds to the Government.

The Commission held that both the claimant and the United States Government were entitled to awards, the latter under the principle of subrogation, having made payment without previous legal obligation for the benefit of the claimant. In view of the stipulations entered into between the claimant and the Government, the award, limited to two-thirds of the actual loss, was divided between the claimant and the Government at the ratio of 66% for the claimant and 34% for the Government.

In a similar claim, the same proportion of 66% for the claimant and 34% for the Government was stipulated, and the awards were so granted. (*Claim of Martin Meadows, et al.*, Claim No. BUL–1059, Dec. No. BUL–279.) In another claim, the proportion had been stipulated at the ratio of 60% for the claimant and 40% for the Government and the awards were made in that proportion. (*Claim of Robert Berry Macatee,* Claim No. HUNG–22253, Dec. No. HUNG–1701.)

Where the record indicated that claimant had been compensated fully for his wartime loss under an order of the Office of Alien Property, his claim under Title III of the Act was denied. (*Claim of Eugene Agoston,* Claim No. HUNG–20237, Dec. No. HUNG–651, 10 FCSC Semiann. Rep. 42 (Jan.-June 1959).)

In one case, claimant's property was taken in 1939 by virtue of condemnation proceedings instituted by the Government of Hungary. In 1940 the Government offered payment for this property taken under eminent domain, but claimant refused the offer because the Hungarian Government was not willing to make payment in the United States. The Commission held that the prewar tender of adequate compensation in domestic currency was sufficient to satisfy the requirement under international law that effective compensation be paid for the taking of property, and the claim was denied. (*Claim of Robert Ferdinand Garrow,* Claim No. HUNG–22048, Dec. No. HUNG–2107, 10 FCSC Semiann. Rep. 79 (Jan.-June 1959).)

On the other hand, where in 1947 the Hungarian Government expropriated real property and deposited a sum of domestic currency in a blocked account to the credit of the claimant as compensation for the taking of the property, the Commission found that the amount of compensation thus paid was less than the value of the property, and held that claimant was entitled to an award for the amount of loss thereby sustained. (*Claim of Gladys Moore Vanderbilt Szechenyi,* Claim No. HUNG–21305, Dec. No. HUNG–2124, 10 FCSC Semiann. Rep. 84 (Jan.-June 1959).)

In 1926 the Government of Bulgaria issued certain dollar bonds bearing 7% interest, payable semiannually until the maturity date of January 1, 1967. The interest on the bonds for the years 1940 and 1941 was paid at a reduced rate, but claimant accepted such reduced payments and surrendered the respective coupons to the Government of Bulgaria. The Commission held that claimant was entitled only to the payment of the unpaid coupons which became payable prior to September 15, 1947, and that he forfeited his right to receive the full amount of interest for coupons he had surrendered in accepting payment at a reduced interest rate. (*Claim of Anthony Geraci, Jr.,* Claim No. BUL–1040, Final Dec.

No. BUL–2, 10 FCSC Semiann. Rep. 14 (Jan.-June 1959).) On the question of limitation to amounts which became payable prior to September 15, 1947, see *Claim of Arthur Zentler,* appearing at page 244.

There have been other sources from which claimants occasionally were able to obtain compensation for their losses. This was the case in a claim where the owner of a nationalized building in Sofia, Bulgaria, filed a claim with the Swiss Government's Commission of Indemnification for Nationalization pursuant to an agreement concluded between Switzerland and Bulgaria for compensation for nationalized property. Claimant obtained an award from the Swiss Commission but, nevertheless, also filed a claim in the United States. The claim was denied inasmuch as claimant in accepting the Swiss award executed a release of the claim for the taking of the building. (*Claim of Sophie J. Guggenheim,* Claim No. BUL–1220, Dec. No. BUL–332, 10 FCSC Semiann. Rep. 25 (Jan.-June 1959).)

Interest on awards.—At the outset of this claims program it was necessary for the Commission to determine whether awards should include interest on the amount of the loss. A study made on this subject by the office of the General Counsel of the Commission prior to the adjudication of claims, resulted in the following memorandum of law with recommendations presented to the Commission:

> Sections 303, 304, and 305, Title III, of the International Claims Setttlement Act of 1949, as amended,[1] alike provide that the Commission shall determine claims in accordance with applicable substantive law including international law.
>
> The general rule in international law is that interest shall be allowed. As stated by one authority, "Interest, according to the usage of nations, is a necessary part of a just national indemnification." [2] The common law rule prohibiting interest on claims against a sovereign is not applicable where one government makes claims against another government.[3]
>
> International commissions and boards have generally included interest as part of awards.[4] The Franco-American Commission issued decisions allowing interest "Upon indemnities on account of requisitions and international offenses," and "Upon indemnities on account of eventual contractual debts for a certain amount and for forced loans." [5] The subject of interest received special attention from the Mixed Claims Commission, United States and Germany, which laid down the following "Rules Governing Damages In The Nature of Interest": [6]
>
> 1. The measure of compensation will include interest "In all claims for losses wherever occurring based on

1 69 Stat. 570 (1955); 22 U.S C. § 1631 (1964).
2 VI Moore, International Law Digest § 1059 (1906), citing other authorities.
3 Ibid.
4 I Moore, International Arbitrations Digest 287, 339, 374 (1898); II 1317; IV 3734, 4313; V 4613.
5 Ralston, Supplement to 1926 Revised Edition of the Law and Procedure of International Tribunals § 211(a) (1936).
6 Administrative Decision No. III, December 11, 1923.

property taken or destroyed by Germany or her agents during the period of neutrality" and "during the period of belligerency";

2. The measure of compensation will include interest "In all claims for losses wherever occurring sustained at any time during the war period based on personal injuries or on death, and in all claims arising during the period of belligerency" based upon "any kind of maltreatment of prisoners of war," or "acts of cruelty, violence, or maltreatment" of civilians including imprisonment, forced labor, the imposition of fines, etc.; as well as claims for personal injuries resulting from military operations.

The Hague Permanent Court of Arbitration, in considering the same subject, made the following statement: [7]

> The tribunal is of the opinion that all interest-damages are always reparation, compensation for culpability. . . . Legal interest allowed a creditor for a sum of money from the date of the demand in due form is the legal compensation for the delinquency of a tardy debtor exactly as interest-damages or interest allowed in case of an act of violence, of a quasi-act of violence or the non-fulfillment of an obligation are compensable for the injury suffered by the creditor. . . . Identical in their origin—culpability—they are the same in their consequences—reparation in money. . . .

Another authority has stated that "The question of the allowance of interest has in fact arisen before almost every international tribunal, and usually, and except where the claim was for a tort purely, its allowance has been considered rightful, differences more frequently arising as to the time of its commencement or termination and the rate at which it shall be allowed."[8]

Thus, interest has usually been granted in the following types of claims: [9]

1. for the breach of a contract;
2. "for the illegal seizure and detention of property"; and
3. for forced loans.

On the other hand, the Mexican-American Mixed Claims Commission recognized the general rule that interest shall not be allowed when a lump sum for damages was granted.[10] Nor did the Mixed Claims Commission, United States and Germany, award "damages in the nature of interest where the loss is neither liquidated nor the amount thereof capable of being ascertained by computation merely." [11] In other instances, interest has

[7] Ralston, The Law and Procedure of International Tribunals § 211 (rev. ed. 1926).
[8] Id. at § 212.
[9] III Whiteman, Damages in International Law 1913 (1937).
[10] Opinions of Commissioners (*Venable* v. *Mexico*) 348 (1927).
[11] Ralston, *op. cit. supra*, note 5.

been denied where its allowance would be inequitable, such as claims wherein the amount of loss is indefinite or not well proved.[12] Additionally, where the government concerned had little, if any, responsibility for the acts giving rise to the claim, no interest was awarded.[13]

Similar principles have been applied in the determination of claims against the United States under domestic law. Thus, it has been held that when the Government of the United States goes into the business of insurance and provides that in case of disagreement it may be sued, "it must be assumed to have accepted the ordinary incidents of suits in such business," including the payment of interest.[14] It has also been held that interest is a proper part of "just compensation" in eminent-domain proceedings.[15] Where the government acts as a contractor,[16] it has been held liable for interest, as well as in suits to recover excess duties illegally exacted,[17] despite the absence of a statute to that effect.

The fact that the Congress considered the question of interest as applicable to at least some of the claims under Sections 303, 304, and 305 of the Act is evidenced by the provisions of Section 310(a)(5) which reads as follows:

> After payment has been made in full of the principal amounts of all awards from any one fund, pro rata payments from the remainder of such fund then available for distribution on account of *accrued interest on such awards as bear interest.* (Emphasis supplied)

It has been suggested, however, that the foregoing section pertains to "moratory interest" running from the date of the award to the date of payment as distinguished from "compensatory interest" running from the date of the loss to the date of the award. Such an interpretation would in effect charge the Government of the United States with the duty of accomplishing the prompt payment of awards in full in order to avoid the accumulation of interest. Inasmuch as the statute provides for payment in certain installments thereby necessitating delays in every case, it hardly warrants mention that such could not have been the intention of the Congress in enacting Title III of the Act. The only conclusion consistent with the evident intention of the Congress in this respect is that the Commission has been given the discretion to determine, "in accordance with applicable substantive law, including international law," which claims, if any, shall bear interest as well as the period during which and the rates at which such interest shall be computed. It is equally clear that the term, "on such

[12] III Whiteman, *op. cit. supra*, note 9, at 1990.
[13] II Moore, *op. cit. supra*, note 4, at 1445.
[14] *Standard Oil Co. of N. J.* v. *U.S.*, 267 U.S. 76 (1925).
[15] *U.S.* v. *Rogers*, 255 U.S. 163 (1921).
[16] *National Home For Disabled Volunteer Soldiers* v. *Parrish*, 229 U.S. 494 (1913).
[17] *Redfield* v. *Bartels*, 139 U.S. 694 (1891).

awards as bear interest," necessarily implies that the Congress did not intend that interest be summarily granted on all claims.

In this connection, it should be noted that certain claims based upon judgments under Section 305(a)(1) of the Act will undoubtedly include interest as parts of the judgments. To hold that this is the interest referred to in Section 310(a)(5) of the Act would be straining the meaning of the language employed by the Congress, and render superfluous the provisions of Section 305(b) of the Act which are as follows:

> Any judgment entered in any court of the United States or of a State of the United States shall be binding upon the Commission in its determination, under paragraph (1) of subsection (a) of this section, of any issue which was determined by the court in which the judgment was entered.

In order to give vitality and effect to the foregoing language of the Act, it must be concluded that the entire amount of the judgment including interest, if any, represents "the principal amount of each award" under Section 310 of the Act. By the same token, any claim based upon a contract or other instrument, which by its terms bears interest, should likewise be construed as including the amount of interest so provided in determining "the principal amount" of such award.

The further suggestion that interest be awarded irrespective of the fact that the fund concerned may be depleted before the principal amounts are fully paid, will be dealt with below.

In order to resolve the question of which claims should include interest over and above the principal amounts of awards, it is necessary to examine the nature of the claims recognized under Sections 303, 304 and 305 of the Act. These sections provide for the payment of three general categories of claims as follows:

(1) nationalization and expropriation claims;
(2) breach of contract and debt claims; and
(3) war damage claims.

Ample authority exists to sustain the conclusion that claims under categories (1) and (2) above should be deemed to bear interest, and particularly where the losses result from culpability. The rule under which interest is allowed in cases of a similar nature pervades domestic law whether or not the government is a party. Thus, the law allows interest where a contract is breached,[18] for the use of forebearance of money, or as damages for its detention,[19] or for the violation of some duty,[20] or for the loss of the use of property.[21]

[18] *Loudon* v. *Taxing Dist. of Shelby County*, 104 U.S. 771 (1882).
[19] *Marion* v. *City of Detroit*, 284 Mich. 476, 280 N.W. 26, 29 (1938).
[20] *U.S.* v. *Bethlehem Steel Corp.*, 23 F. Supp. 676 (E.D. Pa. 1938), aff'd; 113 F. 2d 301 (3d Cir. 1940), aff'd; 315 U.S. 289 (1942).
[21] *Resolute Ins. Co.* v. *Percy Jones, Inc.* 198 F. 2d 309 (10th Cir. 1952).

The practice of awarding interest in nationalization and expropriation claims was adopted by the International Claims Commission as a precedent based upon the premise that the claimants were entitled to reparation "for the loss of each claimant's use of the property from the time of taking. . . ." [22]

However, claims for war damage appear to rest on other principles. As a general rule, "Injuries sustained by private property as a direct result of belligerent acts —battle, siege, bombardment—or incidental thereto are not the subject of indemnification." [23] This former rule has been changed in modern times to one of indemnity by international commissions,[24] principally because the acts giving rise to the damage were in violation of the laws of war. Nevertheless, compensation is not allowed for war damage in the absence of a provision in the treaty of peace to this effect,[25] or special legislation in the nature of the War Claims Act of 1948, as amended.[26] It appears, however, that claims will be recognized under the Act irrespective of whether the losses resulted from the action of the Allied Nations or the countries against which the claims are filed. As stated by the committee which reported on H. R. 6382, the bill finally enacted as Public Law 285, "War damage claims include claims for the physical loss or destruction of identifiable property resulting from war operations in the particular country against which the claim is filed." [27]

It is clear that interest is generally awarded where culpability is shown to exist—wrongful possession, breach of contract and payment withheld. While it may be contended that even where the losses resulted from the action of the Allied Nations, assuming it were possible to establish this or the contrary as a fact, it may be attributed to the country concerned. Such losses are, nevertheless, to be distinguished from others more direct in point of intention.

In this connection, it is noted that a distinction is made in the several articles of the treaties of peace with Hungary, Bulgaria, and Rumania, respecting compensation for damages and losses suffered by United States nationals. These articles, all identical, do not provide for application to the government involved where the claim arises out of war damage, as they do in cases based upon seizure or sequestration of property.[28] Insofar as war damage claims are concerned, the articles simply provide

---

22 *Claim of Joseph Senser*, Docket No. Y–1756, Dec. No. 663.

23 Borchard, The Diplomatic Protection of Citizens Abroad § 103 (1928), citing Vattel, Moore, Oppenheim, and various decisions by international commissions.

24 Id. at § 99.

25 Id. at § 3103; II Oppenheim, International Law § 274 (7th ed. 1952).

26 62 Stat. 1240 (1964); 50 U.S.C. App. § 2001–2016 (1964). The Commission did not allow interest on claims under that Act since compensation was deemed gratuitous.

27 S. Rep. No. 1050, 84th Cong., 1st Sess. 5 (1955).

28 Treaty of Peace with Bulgaria, Sept. 15, 1947, art. XXIII, para. 2 and 4, T.I.A.S. No. 1650; Treaty of Peace with Hungary, Sept. 15, 1947, art. XXVI, para. 2 and 4, T.I.A.S. No. 1651; Treaty of Peace with Rumania, Sept. 15, 1947, art. XXIV, para. 2 and 4, T.I.A.S. No. 1649.

that the particular country shall compensate to the extent of two-thirds of the loss. It is presumed that these countries were thereby required to provide some machinery to accommodate such claims. To be sure, a failure to honor a valid claim under these treaty provisions may be a sound basis for allowing interest on the theory that payment was wrongfully withheld. However, before such a finding could be made, it would first be necessary to trace the action taken by the claimant, the State Department and the particular country, with respect to each war damage claim. The Chairman of the Commission has estimated that the following number of war damage claims would be filed under the Act: [29]

(a)	Claims against Hungary	2,268
(b)	Claims against Rumania	840
(c)	Claims against Bulgaria	268
(d)	Claims against Italy	*1,500

Such an investigation under these circumstances would create an almost impossible administrative burden. Moreover, it appears from present estimates that the amount of loss in war damage claims will generally be indefinite, may present difficulties in proof, and may be considered as unliquidated claims for lump sums which would not, under international law, warrant an award of interest.

In view of the foregoing, it is recommended that interest be allowed on claims based upon nationalization, seizure, breach of contract and debt claims, and that no interest be granted in pure war damage claims.

Whether or not claims for personal torts will be recognized as valid under the Act has not as yet been determined. For the purposes of this discussion, it will be presumed that certain tort claims will be acceptable under Sections 304 and 305 of the Act.

Pure tort claims, being neither liquidated nor capable of being ascertained by computation merely, usually result in a lump-sum payment in which interest, as an element of damages, is not considered applicable.[30] It is, therefore, recommended that no interest be allowed in any personal tort claims determined to be valid under the Act.

The next question which presents itself relates to the periods of time during which interest shall be deemed to have accumulated for purposes of awards.

Under international law, claims arising out of breach of contract have generally been found to warrant the payment of interest from the date of the breach.[31] The same principles have been applied to claims based upon the taking or seizure of property.[32]

With respect to the date when interest shall cease to

[29] Hearings on H.R. 6382 Before the Senate Committee on Foreign Relations, 84th Cong., 1st Sess. 16–17 (1955).
*Which may include a substantial number of war damage claims.
[30] Ralston, *op. cit. supra* note 7, at § 212.
[31] III Whiteman, *op. cit. supra* note 9, at 1928.
[32] Id. at 1932.

run, "It is well settled that where a disputed fund is deposited in court, interest is not recoverable thereon during the time it remains so deposited." [33] For the purpose of determining claims under the Act, the assignment of funds pursuant to the Litvinov Assignment and the Memorandum of Understanding may be deemed to be in the nature of tenders into court thereby preventing the further running of interest. This was the position taken in connection with the *Claim of Joseph Senser*,[34] in which interest was awarded "from the time of taking to the date of payment by the Government of Yugoslavia of the lump sum of $17,000,000."

It is noted that no such assignments were made by the Governments of Bulgaria, Hungary, and Rumania. However, pursuant to the provisions of Title II of the Act, certain blocked property of these countries was authorized to be vested in the Government of the United States. Undoubtedly, some time will elapse before the property is actually vested and liquidated. Under the circumstances, it would not be good administrative practice to wait until those events occur in order to accurately compute the amount of interest on any claim under Section 303 of the Act. The authority to vest the property may be deemed to be equivalent to an assignment of a lump sum of money. Accordingly, it is recommended that interest on such claims cease to run as of August 9, 1955, the effective date of Title III of the Act.

Certain practical considerations suggest themselves in relation to the subject of interest. Should the Commission allow interest when clearly there will be insufficient funds to pay the principal in full? Does the Commission have authority to issue an award of interest under such circumstances?

It is noted that under Section 305(a)(1) of the Act, awards may not exceed the proceeds of the property against which the "in rem" proceedings were had. This provision merely expresses the law which governs such secured creditors. However, it also serves to illustrate how impractical it would be to issue an award in excess of available funds when the chance of ever obtaining satisfaction with respect to the excess amount is so remote that it may be considered impossible for all intents and purposes. It appears that the Congress was aware of these circumstances during the course of the proceedings leading to the enactment of Title III of the Act. As stated by the Committee which recommended the enactment of the bill, "The purpose of the present bill is to establish a claims program for the benefit of American nationals whereby they may obtain at least partial compensation. . . . Because there is at present no other way for American owners to obtain recompense for their

[33] *Fox* v. *Lofland*, 98 F. 2d 589 (3d Cir. 1938); cert. denied, 305 U.S. 658 (1939).
[34] *Op. cit. supra* note 22.

losses except against the assets made available in this bill. . . ." [35]

Nevertheless, it has been suggested that interest be included as part of those awards which bear interest inasmuch as this will be of assistance in any future negotiations with the countries concerned pursuant to the provisions of Section 313 of the Act. In this respect, the issuance of such awards may be of questionable value inasmuch as the decisions of the Commission may not be considered binding in such negotiations, which will necessarily be in the nature of de novo proceedings.

Accordingly, it is suggested that: (1) interest be awarded on such claims as bear interest by the express or implied terms of the transactions giving rise to the claims; and (2) interest be awarded on other claims, which under substantive law warrant interest as indicated hereinabove.

The rate of interest usually varies from 3 to 6 per centum.[36] Where the initial transaction giving rise to the claim prescribes a fixed rate of interest, this rate should apply until maturity. In order to be uniform, interest should be allowed at a fixed rate in all other cases. Inasmuch as 6 per centum was allowed by the International Claims Commission and is usually considered the legal rate of interest, it is suggested that this rate apply.

In its Panel Opinion No. 5, the Commission accepted the recommendations in principle and concluded that under Section 303 of Public Law 285, 84th Congress, interest should be computed at the rate of 6% per annum on the awards, except with respect to war damage awards made under Section 303(1) which were limited by the statute to two-thirds of the loss or damage actually sustained, the interest to be computed for the period commencing on the date of the loss and terminating on August 9, 1955, the date when the authority to vest the assets of Bulgaria, Hungary and Rumania was granted.

Accordingly, in the instant claim, no interest was allowed, since this claim was based in its entirety on war damage. In claims where awards were granted for loss resulting from nationalization or other taking of property or from failure of the Governments of Bulgaria, Hungary or Rumania to meet United States dollar obligations, 6% interest on the award was allowed. (*Claim of Andrew de Balogh,* Claim No. HUNG–20573, Dec. No. HUNG–1993, 10 FCSC Semiann. Rep. 66 (Jan.-June 1959); *Claim of Anthony Geraci, Jr.,* Claim No. BUL–1040, Dec. No. BUL–2, 10 FCSC Semiann. Rep. 14 (Jan.-June 1959).)

In claims under Title III of the 1949 Act based upon dollar bonds of the Governments of Bulgaria, Hungary and Rumania, including loss due to nonpayment of interest on coupons maturing on various dates, the Commission's awards included interest at the rate of 6% per annum from the respective due dates of the obligations to August 9, 1955, as in *Claim of Arthur Zentler,* appearing at page 246.

[35] S. Rep. No. 1050, *supra* note 27, at 1–3.
[36] III Whiteman, *op. cit. supra* note 9, at 1913.

In the Matter of the Claim of

SAMUEL WEISS

Against the Government of Hungary

Claim No. HUNG–20004
Decision No. HUNG–13

Claim against Hungary denied under Section 303(1) of the 1949 Act because the properties involved were not located in Hungary as it existed on September 15, 1947, and denied under Section 303(2) because not located in Hungary at the time of loss. Pursuant to Article 26 of treaty of peace with Hungary, referred to in Section 303(1), Hungary was responsible for war losses in Hungary as it existed on September 15, 1947, as well as for losses in Northern Transylvania, a part of Rumania.

FINAL DECISION

This is a claim against the Government of Hungary under Section 303 of the International Claims Settlement Act of 1949, as amended, for an alleged taking of movable property by Hungarian troops in Slovenske Nove Mesto, Czechoslovakia.

In the Proposed Decision issued on January 16, 1957, the claim was held to be not compensable under Section 303(1) or Section 303(2) of the Act because the property on which it is based was not located in Hungary as it existed on September 15, 1947, or in Northern Transylvania.

Section 303(1) of the Act authorizes the Commission to receive and determine claims against the Government of Hungary for failure to restore or pay compensation for property of nationals of the United States as required by articles 26 and 27 of the treaty of peace with Hungary. Article 26 of the treaty provides that Hungary shall restore all legal rights and interests in Hungary of the United Nations and their nationals as they existed on September 1, 1939, and that it shall return all property of the United Nations and their nationals in Hungary as it existed on September 15, 1947 (the effective date of the treaty of peace), and that Hungary shall pay certain compensation to those United Nations nationals whose properties in Hungary or Northern Transylvania suffered war damage or those whose properties in Hungary can not be returned.

Article 27 of the treaty provides relief with respect to property in Hungary for persons, organizations, or communities which suffered loss by reason of racial origin, religion, or other Fascist measures of persecution.

The Commission affirms its holding that it is a requirement for an award under Section 303(1) of the Act in a claim against Hungary that the alleged loss have occurred within the boundaries of Hungary as they existed on September 15, 1947, or in Northern

Transylvania. By virtue of article 1 of the treaty, the frontier between Hungary and Czechoslovakia as of September 15, 1947, is that which existed on January 1, 1938, with minor changes of no significance herein. Finding Slovenske Nove Mesto to have been in Czechoslovakia, rather than in Hungary or Northern Transylvania, on September 15, 1947, the Commission holds this claim not compensable under Section 303(1) of the Act.

Section 303(2) of the Act authorizes, *inter alia*, the receipt and determination of claims against the Government of Hungary for its failure to "pay effective compensation for the nationalization, compulsory liquidation, or other taking, prior to the effective date of this title [August 9, 1955], of property of nationals of the United States in . . . Hungary. . . ." Here also, a claim is compensable only if based upon a loss of property *in Hungary*. However, in the absence of any words to the contrary, such as the reference to the treaty of peace in Section 303(1), it must be held that it is the clear intention of the Congress that the loss have occurred in Hungary as it existed at the time of loss in order for a claim to fall within the purview of Section 303(2).

The claimant has objected to the Proposed Decision, alleging that at the time of loss (October 1938), Slovenske Nove Mesto was a part of Hungary, having become such through annexation. We must consider, therefore, whether, in the light of this allegation, the claim may be found compensable under Section 303(2). The Commission finds, upon investigation, that Slovenske Nove Mesto was not a part of Hungary in October 1938, and accordingly finds that this claim is not compensable.

The dismemberment of Czechoslovakian territory began with the Munich Agreement of September 29, 1938, under which the Sudetenland was incorporated into Germany. Czechoslovakia remained a federative state composed of three autonomous divisions: Bohemia and Moravia, Slovakia, and Subcarpathia. Slovakia included an area known as the Highland Territories which, with Subcarpathia, had been lost by Hungary to Czechoslovakia under the Trianon Treaty of 1921. Slovenske Nove Mesto was within the Highland Territories, to which Hungary renewed its claims during the Munich crisis. Germany and Italy, having assumed factual control of Central Europe by the time of the Munich Agreement, determined to arbitrate Hungarian claims against Czechoslovakia. As a result, the so-called Vienna Award was issued on November 2, 1938, by the German and Italian Foreign Ministers, allotting a number of Czechoslovakian districts to Hungary, including the Highland Territories and Slovenske Nove Mesto. The Hungarian Government formally accepted the award and incorporated the Highland Territories by

"Law XXXIV of 1938 concerning the Reincorporation into the Country of the Highland Territories Returned to the Hungarian Holy Crown, November 12, 1938." Some readjustment of boundaries was made as of March 13, 1939 in what purported to be a final agreement in execution of the Vienna arbitration (Order No. 102,473/1939 B.M. of the Hungarian Royal Ministry of the Interior). Thereafter, Slovenske Nove Mesto remained, at least *de facto*, a part of Hungary until the 1945 armistice. By article 1, paragraph 4(a), of the treaty of peace with Hungary, the decisions of the Vienna Award of November 2, 1938, were declared null and void.

Entirely apart from the question of the validity of the Vienna Award and the extent to which the Commission is bound to give it effect, it will be seen that Slovenske Nove Mesto was a part of Czechoslovakia at the time of claimant's alleged loss, which antedated both the issuance of the Award, and its acceptance and the official "reincorporation" of the territory. As early as October 10, 1938, it was reported that the Czechoslovakian Government was willing to make certain relatively small concessions to Hungary, including the return of Slovenske Nove Mesto; and it appears that Hungarian troops crossed the border and occupied Slovenske Nove Mesto on October 11, 1938. It is well settled in international law, however, that sovereignty is not acquired by mere occupation of the territory of another nation by armed force; and there is no evidence to indicate that the Hungarian action was other than premature, in anticipation of later acquisition of sovereignty at the conclusion of then pending negotiations. The Commission does not hold that depredations committed in the interim by Hungarian troops on Czechoslovakian soil do not give rise to claims in international law against the Government of Hungary. The Commission does hold, however, that they do not give rise to compensable claims against Hungary under Section 303(2) of the International Claims Settlement Act, in view of the requirement that the loss have occurred within the borders of Hungary as they existed at the time of loss.

Accordingly, the Proposed Decision herein is affirmed, and the claim is denied.

Dated at Washington, D.C.
September 4, 1957.

Claims for war damage in Bulgaria, Hungary, and Rumania.— The legal basis for the payment of claims based upon war losses is either a treaty under the terms of which a defeated

power is required to discharge claims for war losses, or domestic legislation which each country is free to develop and implement as it finds convenient. With respect to Bulgaria, Hungary, and Rumania, the peace treaties signed at Paris, France, on February 10, 1947 by the Allied Powers and these three countries, and effective on September 15, 1947, provided that the latter should restore property to United Nations nationals or pay compensation or indemnity in domestic currency to the extent of two-thirds of the sum necessary to purchase similar property or to make good the loss suffered. (Treaty of Peace with Bulgaria, Sept. 15, 1947, Art. 23, T.I.A.S. No. 1650, 61 Stat. 1915; Treaty of Peace with Hungary, Sept. 15, 1947, Art. 26 and 27, T.I.A.S. No. 1651, 61 Stat. 2065; Treaty of Peace with Rumania, Sept. 15, 1947, Art. 24 and 25, T.I.A.S. No. 1649, 61 Stat. 1757.) However, as a rule, no payment for war damage under the peace treaties was made by any of the three countries.

In view of the continued delinquency of these three governments, the 1949 Act was amended to include Title III, which in Section 303(1) authorized the Commission to determine claims of United States nationals arising out of the failure of the three governments to restore or pay compensation as required by the provisions of the peace treaties.

Boundaries.—Certain problems arose in view of the fact that since 1938 many territorial changes had been effected in Bulgaria, Hungary, and Rumania and their boundaries were different at various times.

Bulgaria obtained the area of Southern Dobruja from Rumania under the Treaty of Craiova as of August 31, 1940; joined the Axis Powers by signing the Tripartite Pact in Vienna on March 1, 1941; and in April 1941, in the wake of the German defeat of Yugoslav and Greek armies, occupied the portion of Yugoslavia known as Serbian Macedonia and the portions of Greece known as Eastern Macedonia and Western Thrace. Serbian and Eastern Macedonia and Western Thrace were lost to Bulgaria under Article 1 of the treaty of peace which provided that the frontiers of Bulgaria should be those which existed on January 1, 1941. Southern Dobruja remained a part of Bulgaria.

Hungary occupied a portion of Slovakia on November 3, 1938, Carpathian Ruthenia or Subcarpathia on March 15, 1939, and Northern Transylvania on August 30, 1940. Under Article 1 of the treaty of peace, Hungary's frontiers were established as they had been on January 1, 1938, with a minor adjustment as to the frontier between Hungary and Czechoslovakia. As a result, Hungary withdrew from the territories which it had occupied and, in addition, ceded to Czechoslovakia the villages of Horvathjarfalu, Oroszvar, and Dunacsun.

Rumania lost the territories known as Northern Bukovina and Bessarabia when they were occupied by the U.S.S.R. on June 27, 1940 and new boundaries were established by a Soviet-Rumanian Agreement of June 28, 1940. As noted above, Northern Transylvania was occupied by Hungary on August 30, 1940, and Southern Dobruja was ceded to Bulgaria on August 31, 1940. When the German armies drove back the Russian forces, Rumania reoccu-

pied Northern Bukovina and Bessarabia from mid-July 1941 until the spring of 1944, but these territories were lost to the U.S.S.R. under Article 1 of the treaty of peace which fixed Rumania's frontiers as they existed on January 1, 1941, except for the Rumania-Hungary frontier which was restored as it had been on January 1, 1938. This brought Northern Transylvania back into Rumania, but left Southern Dobruja in Bulgaria.

The question arose whether claims for the loss of property which occurred within the wartime boundaries are compensable as losses attributable to the country which exercised actual authority over the property at the time of loss, or whether claims against a country are confined to property located within the boundaries of that country as established by the peace treaties of September 15, 1947.

Article 23 of the treaty of peace with Bulgaria required Bulgaria to return all property "in Bulgaria of the United Nations and their nationals as it now exists." Articles 26 and 24 of the treaties of peace with Hungary and Rumania, respectively, similarly required the return of property "in Hungary" and "in Rumania," "as it now exists." An exception was made as to Northern Transylvania in the Hungarian and Rumanian treaties, in that the provisions requiring payment of compensation for lost or damaged property would apply to Hungary, rather than Rumania, if the action giving rise to a claim concerning property in Northern Transylvania took place when that territory was subject to Hungarian rather than Rumanian authority. (Extracts from the treaties with Bulgaria, Hungary, and Rumania appear on pages 740, 743, and 746, respectively.)

Accordingly, the Commission confined claims against a country under Section 303(1) of the Act to property which had been located within the boundaries of that country as established by the peace treaties, with the noted exception in the case of Northern Transylvania. Thus, the *Weiss* claim, based upon a loss of property in Slovenske Nove Mesto, Czechoslovakia, was denied as a claim under Section 303(1) of the Act even though that community was under Hungarian occupation at the time of loss. It was not within the boundaries of Hungary as established by the treaty of peace. The claim likewise was found to be not compensable under Section 303(2) of the Act, covering the nationalization or other taking of property "in Bulgaria, Hungary, and Rumania." In this respect the Commission noted that under international law, sovereignty is not acquired by mere occupation of the territory of another nation by armed force. The Commission stated specifically that it was not holding that depredations committed by Hungarian troops in Czechoslovakia do not give rise to claims against Hungary in international law, but did hold that they do not give rise to valid claims against Hungary under Section 303(2) of the Act in view of the requirement that the loss have occurred within the borders of Hungary as they existed at the time of loss.

In a similar situation, the Commission denied a claim against Hungary based upon a loss of property in Berehovo, once a part of Czechoslovakia, but occupied by Hungary at the time of loss, and under the jurisdiction of the U.S.S.R. as of September 15,

1947, under the treaty of peace. It was contended that the area was a part of Hungary at the time of loss. The Commission, however, held that "It is well established that acquisition of territory by subjugation requires a formal annexation following a *firmly established* conquest, and that a conquest does not become firmly established so long as the armed conflict continues. (I Oppenheim, International Law, Sections 169, 210, 236, 237, 239.) In this instance, the armed conflict continued until the conquest was nullified under the terms of the armistice. The Commission concluded, therefore, that Berehovo, which was Beregszasz, Czechoslovakia, at the inception of World War II, may not be considered to be in Hungary within the contemplation of the treaty of peace with Hungary or Section 303(1) of the Act." (*Claim of Arline Ray,* Claim No. HUNG–20894, Dec. No. HUNG–688, 10 FCSC Semiann. Rep. 43 (Jan.-June 1959).) In the same manner, a claim filed against Bulgaria, for loss of property in Greece at a time when it was occupied by Bulgaria, was denied. (*Claim of George Theohari,* Claim No. BUL–1086, Dec. No. BUL–26.)

In a claim against Hungary under Section 303(1) of the Act, involving the special situation in Northern Transylvania, the Commission granted an award for two-thirds of the value of two houses in Oradea Mare which had been destroyed during the war. Although Oradea Mare is in Northern Transylvania and a part of Rumania, it was subject to Hungarian authority at the time of loss. In these circumstances, because of the specific provisions of the treaties of peace, the claim was properly one against the Government of Hungary. (*Claim of Veronika Spisak,* Claim No. HUNG–22374, Dec. No. HUNG–1328, 10 FCSC Semiann. Rep. 57 (Jan.-June 1959).)

A claim based upon an alleged loss of property in Dobruja as a consequence of the cession of that area by Rumania to Bulgaria in 1940, was denied for failure to establish any acts or failures to act on the part of Bulgaria, for which it was responsible under the Act. The cession itself was found to be a proper exercise of sovereignty, not giving rise to a compensable claim against Rumania or Bulgaria. (*Claim of Leon Bileca,* Claim No. BUL–1360, Dec. No. BUL–264, 10 FCSC Semiann. Rep. 22 (Jan.-June 1959).)

Voluntary aid to the enemy.—In a very few claims the Commission was constrained to apply Section 312 of Title III of the Act which provided as follows:

> No award shall be made under this title to or for the benefit of any person who voluntarily, knowingly, and without duress gave aid to . . . or in any manner served any government hostile to the United States during World War II. . . .

In one such claim, when it was evident that a claimant had invested substantial amounts of funds for the purchase of heavy machinery and equipment which was then employed in construction projects aiding and serving the Government of Hungary while that government was at war with the United States, the claim was denied. (*Claim of Esther De Buzna,* Claim No. HUNG–20650, Dec. No. HUNG–2032.)

In the Matter of the Claim of

JAMES ALLEN BRITTAIN

Claim No. RUM-30012
Decision No. RUM-344

Against the Government of Rumania

Taking of personal property from members of the Armed Forces of the United States upon capture in Bulgaria, Hungary, or Rumania during World War II gave rise to claims under Section 303(1), Title III of the 1949 Act, although provision may have been made for such claims under another statute.

PROPOSED DECISION

This is a claim against the Government of Rumania under the provisions of Section 303 of the International Claims Settlement Act of 1949, as amended, for the loss of certain personal property valued at five hundred twenty-five dollars ($525.00), allegedly taken from the person of the claimant, then a member of the Armed Forces of the United States, following a parachute landing in Rumanian territory and capture by Rumanian authorities during World War II.

Section 303 of the Act, in the pertinent part, authorizes the Commission to receive and determine in accordance with applicable substantive law, including international law, claims of nationals of the United States against the Government of Rumania arising out of the failure to—

> (1) to restore or pay compensation for property of nationals of the United States as required by articles 24 and 25 of the treaty of peace with Rumania;
> (2) pay effective compensation for the nationalization, compulsory liquidation, or other taking, prior to August 9, 1955, of property of nationals of the United States in Rumania.

The claim here under consideration appears to be one substantially cognizable under the language of the Military Personnel Claims Act of 1945.[1] This Act authorized the payment of claims of civilian employees and military personnel of the Armed Forces of the United States "for damage to or loss, destruction, capture, or abandonment of personal property incident to their service." The history of this Act was carefully traced and its purpose was aptly stated by a court in one of the leading cases on the subject.[2] In its decision, the court stated, in part, as follows:

> The Act was the culmination of years of effort to secure for military personnel a comprehensive system of compensation for loss of personal property in the service. * * * It was manifestly the intent of the Congress that

[1] 59 Stat. 225; 31 U.S.C. 222 c.
[2] *Fidelity-Phenix Fire Ins. Co.* v. *U.S.*, 111 F. Supp. 899 (1953).

the Military Personnel Claims Act should remain as the single comprehensive remedy for property losses of military personnel incident to their service.

The Court cited the applicable Air Force Regulations promulgated under the Act (AFR–112–7, 15 Federal Register 1511, § 836.92(b), 32 C.F.R. (1951 Revised Edition) § 836.92(b)), and quoted, as one example of claims payable thereunder, the following regulation:

> (4) *Enemy action or public service.* Where property is damaged, lost, destroyed, captured, or abandoned as a result of enemy action or threat thereof, combat or activities incident thereto, belligerent activities or *unjust confiscation by a foreign power or its nationals,* civil disturbances, public disasters, or the saving of Government property or human life. (Emphasis supplied.)

In cases in which the question has arisen, the remedy has been held to be exclusive,[3] regardless of whether the property in question belonged to a serviceman or to another.[4] Nothing appears either in the language or the history of Public Law 285 which would support a finding that in the enactment of this measure the Congress intended to provide a measure of compensation for claims for which no provision had previously been made. Thus, in the report [5] of the Senate Committee which recommended enactment of H. R. 6382, the bill which became Public Law 285, there appears the following statement:

> The purpose of the present bill is to establish a claims program for the benefit of American nationals whereby they may obtain at least partial compensation for (1) war damage, nationalization, and pre-war government debt (bond) claims, against the Governments of Bulgaria, Hungary, and Rumania.

The Committee pointed out that these countries had failed to honor their obligations under the respective treaties of peace to compensate for war damage inflicted on American-owned property, and had failed to provide compensation "for property which was nationalized or otherwise taken subsequent to the date of the treaties." [6]

The Commission is of the opinion that losses sustained by military personnel of the United States incident to their service are not compensable under Public Law 285, 84th Congress.

For the foregoing reasons, this claim should be and hereby is

---

[3] *Preferred Ins. Co. v. U.S.*, 222 F. 2d 942 (1955); cert. denied, 350 U.S. 837 (1955); rehearing denied, 351 U.S. 990 (1956).

[4] *Wallis v. U.S.*, 126 F. Supp. 673 (1954).

[5] S. Rep. No. 1050, 84th Cong., 1st Sess. 1 (1955).

[6] *Id.* at 2.

denied. The Commission deems it unnecessary to make determinations with respect to other elements of this claim.

Dated at Washington, D.C.
March 3, 1958.

Dissenting Opinion:

I cannot find myself in agreement with the proposed decision on this claim. I find no language in the International Claims Settlement Act of 1949, as amended, (Public Law 285, 84th Congress) nor in the intent of Congress as revealed by the history of the legislation, which would preclude a claimant, otherwise eligible, from receiving an award under this act, solely by reason of the fact that he may have been entitled to some compensation for his loss if he had filed a claim under the Military Personnel Claims Act of 1945.

It is my opinion that the cases cited are not directly in point. The courts in such cases decided that under the Military Personnel Act of 1945, the United States was liable for certain losses, sustained by the members of the military forces and civilian employees of the military and that such remedy was exclusive where the property loss bore some *substantial relation* to the claimants' military service. Quoting from Section (a) of the Act, "such property must be reasonable, useful, necessary or proper under the attending circumstances."

The instant claim is distinguishable in two respects. Firstly, it is not a claim against the United States, but a claim against the government of Rumania. And, secondly, it cannot be said on the basis of the record before the Commission, that the property on which the claim is based was *militarily reasonable,* useful, *necessary* or *proper* under the attending circumstances, all of which must be established as prerequisites for eligibility for compensation under the Military Personnel Act of 1945 (*supra*).

Dated at Washington, D.C.
March 3, 1958.

FINAL DECISION

This is a claim against the Government of Rumania under Section 303(1) of the International Claims Settlement Act of 1949, as amended, for $525.00 by JAMES ALLEN BRITTAIN, a national of the United States since his birth in the United States on March 23, 1923, for loss of property in Rumania during World War II.

In a decision issued on March 3, 1958, the denial of the claim was proposed. After consideration of objections filed and argu-

ments presented at a hearing held on July 2, 1958, the Commission now finds that the claimant was the owner of certain personal property which was lost in Rumania as a result of World War II, and that such loss falls within the scope of Section 303(1) of the Act. The Commission further finds that the loss or damage actually sustained amounted to Five Hundred Twenty-Five Dollars ($525.00) and concludes that claimant is entitled to an award under Section 303(1) of the Act for two-thirds of that amount, since under this Section awards are limited to two-thirds of the loss or damage actually sustained.

AWARD

Pursuant to the provisions of the International Claims Settlement Act of 1949, as amended, an award is hereby made to JAMES ALLEN BRITTAIN in the amount of Three Hundred Fifty Dollars ($350.00).

Payment of any part of this award shall not be construed to have divested the claimant herein, or the Government of the United States on his behalf, of any rights against the Government of Rumania for the unpaid balance of the claim, if any.

It is ORDERED that the award granted herein be certified to the Secretary of the Treasury.

Dated at Washington, D.C.
July 30, 1958.

Confiscation by military authorities.—In a few claims the question arose whether property of American nationals confiscated during the war by military authorities of Bulgaria, Hungary, and Rumania fell within the provisions of Section 303(1) of the Act. The question was answered in the affirmative. Thus, a claim for the loss of an automobile confiscated during the war by Rumanian military forces was deemed as having been a war damage loss, compensable under Section 303(1) to the extent of two-thirds of the loss. (*Claim of Harry Juster,* Claim No. RUM-30017, Dec. No. RUM-278, 10 FCSC Semiann. Rep. 107 (Jan.-June 1959).)

Failure to restore property seized during World War II by civilian authorities.—Articles 23, 24 and 26 of the treaties of peace with Bulgaria, Hungary and Rumania, respectively, provided for the restoration to its owners of property seized during the war or for the payment of compensation, if the property could not be returned. In a claim where assets of an American company were sequestered and taken under the control of the Government of Rumania in 1944, and where the assets were neither

returned nor the loss compensated, the Commission held in the Proposed Decision that such loss is compensable under Section 303(1) as a war loss and the award was limited to two-thirds of the loss. The Commission also held that the statute provided compensation for losses or damage *actually* sustained, and not for the loss of anticipated profits or intangible property. (*Claim of United Shoe Machinery Corporation,* Claim No. RUM–30269, Dec. No. RUM–816, 10 FCSC Semiann. Rep. 131 (Jan.-June 1959).)

In another claim, the Commission was confronted with the fact that during World War II the Government of Bulgaria collected from a claimant discriminatory anti-Jewish taxes and rentals from his property. No restoration was made to the claimant by that Government. The Commission held that this damage was compensable under Section 303(1) of the Act and limited the award to two-thirds of the loss actually sustained. (*Claim of Isaac Arditti,* Claim No. BUL–1294, Dec. No. BUL–326, 10 FCSC Semiann. Rep. 25 (Jan.-June 1959).)

Loss of property by military personnel.—A controversial question was under consideration by the Commission with respect to losses of personal property sustained by United States military personnel who had been prisoners of war in Bulgaria, Hungary or Rumania. In 1945 a statute was enacted (Military Personnel Claims Act of 1945, 59 Stat. 225, 31 U.S.C. 222c) which authorized the payment of claims of civilian employees and military personnel of the Armed Forces of the United States for damage to or loss, destruction, capture or abandonment of personal property incident to their service. Some claims were filed with the Commission under Section 303(1) of Public Law 285, 84th Congress, by former prisoners of war, which would have been cognizable under the Military Personnel Claims Act of 1945. However, that Act contained a one-year limitation for the presentation of claims and some claimants failed to present timely claims with the appropriate authorities in 1946 but filed claim with the Commission in 1955–1956. The question arose whether such a claim was compensable under Public Law 285. In the Proposed Decision in the instant claim, the Commission held that losses sustained by military personnel were not compensable under Public Law 285 because such losses were included in the Military Personnel Claims Act of 1945, and this Act was a single, comprehensive remedy for property losses of military personnel incident to their service. From this view one of the Commissioners dissented, stating that nothing in Public Law 285 precluded a claimant, otherwise eligible, from receiving an award under the provisions of Section 303(1) of Public Law 285 solely by reason of the fact that he may have been entitled to compensation for his loss if he had filed a claim under the Military Personnel Act of 1945. In the Final Decision in the instant claim, this latter view was adopted by the Commission and compensation was allowed the claimant for the loss of personal property taken while he was a prisoner of war in Rumania.

In a similar claim, a denial was proposed following the holding in the Proposed Decision in the *Brittain* claim, but subsequently the claim was allowed in the Final Decision based upon the

reversal in the *Brittain* case and upon evidence presented at an oral hearing before the Commission. (*Claim of Louis Chused,* Claim No. BUL–1140, Dec. No. BUL–224, 10 FCSC Semiann. Rep. 21 (Jan.-June 1959).)

Personal injuries resulting from World War II not covered under Section 303.—One claimant alleged that he sustained personal injuries while serving in the Armed Forces of Hungary. The injuries originated from the failure to provide him with immediate medical care and resulted in his physical disability.

The Commission held that this claim was not within the purview of Section 303 of the Act because it did not involve a property loss as contemplated by the treaty of peace with Hungary, nor did it constitute a claim for the nationalization or taking of property. Consequently, this claim was denied. (*Claim of Nicholas Slaninka,* Claim No. HUNG–21925, Dec. No. HUNG–596, 10 FCSC Semiann. Rep. 40 (Jan.-June 1959).)

In the Matter of the Claim of

Claim No. RUM–30828
Decision No. RUM–806

GABOR BANO

Against the Government of Rumania

For purposes of Section 303, Title III of the 1949 Act, ownership of personal property pledged to secure a debt remained in pledgor or general owner throughout the period of the pledge while possession of the property was transferred to pledgee.
Claim denied in part under Section 303(2) because claimant failed to establish that his property was nationalized or otherwise taken by Rumania, or that any "taking" of his property occurred on or after he acquired nationality of the United States.

PROPOSED DECISION

This is a claim for $4,855,721.00 against the Government of Rumania under Section 303 of the International Claims Settlement Act of 1949, as amended, by GABOR BANO, a national of the United States since his naturalization on November 20, 1946, based upon war damage to and nationalization of the S. A. Industria Lemnului din Bicsad, a Rumanian company, hereinafter called "Bicsad."

Section 303 of the Act provides for the receipt and determination by the Commission in accordance with applicable law, including international law, of the validity and amounts of certain claims against the Governments of Rumania, Hungary, or Bulgaria. The provision relating to claims for property damage or loss as a result of World War II is Section 303(1), which pro-

vides for the receipt and determination of claims of United States nationals for failure of the foreign government to restore or pay compensation for property of nationals of the United States as required by certain referenced articles of the treaty of peace between it and the United States.

Inasmuch as the physical assets of Bicsad were located in Northern Transylvania, the portion of the claim which is based upon war damage thereto could be compensable only as a claim against the Government of Hungary, in view of the provisions of article 24(5) of the treaty of peace with Rumania and article 26(5) of the treaty of peace with Hungary. However, this portion of the claim is not compensable in any event, as will be seen.

With respect to the Hungarian treaty, articles 26 and 27 are those referenced in Section 303(1) of the Act. Article 26 provides for the restoration of rights and return of property of the United Nations and their nationals and for the payment of compensation to United Nations nationals whose property suffered war damage or can not be returned, and United Nations nationality is made to depend either upon nationality in any one of the United Nations on January 20, 1945, the date of the armistice with Hungary, or upon having been treated as an enemy under the laws in force in Hungary during the war. Article 27 requires the restoration of, or compensation for, property which was the subject of measures of sequestration, confiscation or control on account of the racial origin or religion of persons under Hungarian jurisdiction. However, claims under Section 303(1) of the International Claims Settlement Act are restricted by the language of the Act itself to those owned by United States nationals.

Under well established principles of international law, unless otherwise provided by treaty, in order for a claim espoused by the United States to be compensable, the property upon which it is based must have been owned by a national or nationals of the United States at the time of loss, and the claim which arose from such loss must have been owned by a United States national or nationals continuously thereafter.

The rule of international law, its modification by the treaty of peace, and the limitations of Section 303(1) of the International Claims Settlement Act, provide a clear requirement as to the national character of a claim against the Government of Hungary under Section 303(1), if it is to be found compensable; namely, that the claim must have been owned by a national or nationals of the United States on January 20, 1945, and continuously thereafter.

The Commission finds that it has not been established that the claim for war damage to the property of Bicsad was owned by a

national of the United States on January 20, 1945, the date of the armistice with Hungary, and it must, therefore, be denied.

It is urged by the claimant that the above-described requirement is fulfilled herein, inasmuch as the claimant (allegedly the owner of 100% of the stock of Bicsad), though not himself a national of the United States, had delivered all of the stock of Bicsad to Schwabach & Company, a partnership composed principally of United States nationals, in pledge as security for the payment of a debt owed to the partnership by another corporation in which the claimant was a stockholder, and that the stock of Bicsad was so held at the time of the war damage, and was not released to the claimant, upon payment of the debt, until after he had acquired United States nationality. The Commission holds, however, that under these circumstances the claimant retained the general right of ownership of the stock throughout the period of the pledge, and that the partnership did not become the owner thereof so as to satisfy the requirement of ownership by a United States national. Had the debt not been paid, Schwabach & Company would have been entitled to subject the pledge *res* (the stock of Bicsad) to its payment. As pledgee, Schwabach & Company had the right to pursue any remedy which the owner would have had for loss of the property, holding any proceeds thereof in trust for the owner, except for such portion as might be required to pay any portion of the debt defaulted. As shown above, however, the legal owner of the stock had no remedy with respect to the war damage, which might be pursued by the pledgee. In actual result, no loss was suffered by the United States nationals who were partners in Schwabach & Company. The loss as a result of World War II was suffered by the claimant, and is not a loss compensable under Section 303(1) of the Act, in view of his lack of United States nationality on January 20, 1945. Accordingly, this portion of the claim is denied.

The pertinent portions of Section 303(2) of the Act provide, *inter alia*, that the Commission shall receive and determine in accordance with applicable substantive law, including international law, the validity and amounts of claims of nationals of the United States against the Government of Rumania arising out of the failure to pay effective compensation for the nationalization, compulsory liquidation, or other taking, prior to August 9, 1955, of property in Rumania of nationals of the United States.

Compensation under Section 303(2) of the Act depends upon fulfillment of the requirement of international law, mentioned above, that the property upon which the claim is based has been owned by a national of the United States at the time of loss, and

the claim which arose from such loss has been owned by a United States national continuously thereafter.

Prior to November 20, 1946, GABOR BANO, the owner of Bicsad, was not a national of the United States. Consequently, any losses sustained prior to that date cannot be the basis of a compensable claim under Section 303(2) of the Act. Portions of the claim are based upon losses sustained through alleged expropriation of land, fuel wood and locomotives, and the forced sales of lumber for delivery to Russia. The evidence of record fails to establish that any of these losses occurred after November 20, 1946. The Commission concludes that those portions of the claim must be, and accordingly are denied, for lack of United States nationality in the owner of the property at the time of loss.

Another portion of the claim is based upon losses sustained in connection with alleged "compulsory sales of approximately 18,000 cu. meters of beech lumber to England." The record is not clear as to when these losses occurred, the quantity of lumber involved, or whether the lumber belonged to Bicsad or to the Swiss company "Iseli." Moreover, it does not appear that either Bicsad or claimant was forced by the Rumanian Government to export any lumber to England. On the contrary, there are indications that the company experienced difficulties in obtaining export licenses. The manager of the company, George Justus, in a letter to the American Legation, Bucharest, dated December 17, 1947, stated:

> Objectivity demands, however, to recognize that, beside these losses there were also positive results booked during the last 2½ years to the advantage of our Company.—
>
> So e.g.—as I have repeatedly had the opportunity to report to you verbally—the Government has granted us, in October 1946, a principal permit to export 9000 m3 of lumber. Of these, 3000 m3 have effectively been exported, while the rest of 6000 m3 from the quantity authorized has been cancelled. Though the export effected failed to bring to our Company the whole gain expected, it was still a very renumeratory operation.— Beside this, we succeeded to get, in October 1947, another permit of export for the 14,500 m3 Swiss (Iseli) owned lumber on our hands. The delivery has, however, not taken place yet, owing to transfer difficulties (the purchaser has had no possibility, so far, to open the credit according to the Government's requirements) but the question took a more advantageous turn in the meantime and—unless obstructed by international complications—the business is likely to become perfectable within a short time. This will free our Company from the burden of an old debt to Switzerland and help us get a substantial supply of new working capital.

Other evidence submitted indicates that the lumber involved in the 1947 contract was not actually shipped until after the company was nationalized, or that even if Bicsad was still the owner, the same lumber might have been included in the assets of the company at the time it was nationalized on June 11, 1948. Claimant asserts in the Statement of Claim herein that such assets included "Approximately 15,000 cu. meters of beech lumber products located at the plants and warehouses of the plants or in transit to England or the Government agencies and which according to the contracts under which they had to be delivered had a value of at least $50. per cu. m. . . ."

On the basis of the record as presently constituted, the Commission finds that it has not been established that any loss which might have been sustained in connection with sales of lumber to England was attributable to a nationalization, compulsory liquidation, or other taking of property by the Government of Rumania. Accordingly, this portion of the claim is also denied.

With respect to the remaining portion of the claim, the Commission finds that the company Bicsad was nationalized without compensation by the Government of Rumania pursuant to the provisions of Law No. 119 of June 11, 1948. The Commission further finds that the value of claimant's interest in the company at the time of nationalization amounted to Five Hundred Fifty-six Thousand Seven Hundred Fifty Dollars ($556,750.00), and concludes that he is entitled to an award under Section 303(2) of the Act.

AWARD

Pursuant to the provisions of the International Claims Settlement Act of 1949, as amended, this claim is allowed in part, and an award is hereby made to GABOR BANO in the amount of Five Hundred Fifty-six Thousand Seven Hundred Fifty Dollars ($556,750.00) plus interest thereon at the rate of 6% per annum from June 11, 1948 to August 9, 1955, the effective date of the Act, in the amount of Two Hundred Thirty-nine Thousand One Hundred Twenty-four Dollars and Twelve Cents ($239,124.12).

Payment of any part of this award shall not be construed to have divested the claimant herein, or the Government of the United States on his behalf, of any rights against the Government of Rumania for the unpaid balance of the claim, if any.

Dated at Washington, D.C.
May 11, 1959.

Ownership.—Proof of ownership of the subject property was a condition precedent to recovery under Title III of the 1949 Act. This requirement is implicit in the rule of international law which provides that a condition to espousal of a claim is continuous ownership thereof by a national of the espousing nation from the date of its inception. The instant claim, wherein the Commission, in determining issues of ownership, focused on the substance of the purported owner's rights and interests with respect to the subject property and not on the technical question of bare legal title, reflects the Commission's concern for adherence to the requirements of the national character of a claim. This interrelated issue of nationality requirements is discussed in the *Claim of Margot Factor,* appearing at page 168.

In a claim against the Government of Hungary under Section 303 of the 1949 Act, arising out of the asserted loss of property owned by claimant's wife who had filed a separate claim for the same property, the Commission denied recovery to claimant because neither the property nor the claim was owned by him. However, the Commission indicated that his wife's claim would be considered on its own merits. (*Claim of Robert H. Sabel,* Claim No. HUNG–21178, Dec. No. HUNG–633, 10 FCSC Semiann. Rep. 42 (Jan.-June 1959).)

The record in another claim against the Government of Hungary disclosed that claimants each acquired, upon the death of their uncle, a 1/24 interest in real property which was taken by the Government after his death in 1945. At estate proceedings before a Hungarian court in 1946, other heirs, who were not nationals of the United States, "renounced" their inherited interests in favor of claimants, thereby increasing claimants' interests in the estate. The Commission determined that the "renunciation" of these interests constituted an assignment to claimants which was effective as of the date of the renunciation and not as of the date of death of the deceased owner. Accordingly, the award was limited to the interest held by each claimant in his own right, and recovery for the "renounced" portions was denied because such portions were not owned by nationals of the United States on the date of taking. (*Claim of Arthur Dobozy, et al.,* Claim No. HUNG–21300, Dec. No. HUNG–1257, 10 FCSC Semiann. Rep. 55 (Jan.-June 1959).)

The character of an inherited interest was in issue in another claim against the Government of Hungary. Claimant asserted a claim for his mother's entire estate following her death intestate, although she had another surviving son. The record established that claimant's mother had made *inter vivos* gifts of property to the brother which were equivalent to the share he would have acquired pursuant to the intestacy laws. The Commission held that, for the purposes of the claim, claimant was the sole heir of his mother for the reason that under the laws of Hungary such gifts rendered the recipient (claimant's brother) ineligible to inherit upon the death of the deceased owner, in the absence of a will to the contrary. An award issued to claimant for so much of the property remaining in the name of his mother at her death as was lost under circumstances falling within the scope of the Act.

(*Claim of Andrew de Balogh*, Claim No. HUNG–20573, Dec. No. HUNG–1993, 10 FCSC Semiann. Rep. 66 (Jan.-June 1959).)

Burden of proof.—Although the Commission endeavors, to the extent of its resources, to assist claimants in obtaining evidence to establish their claims, the burden of proof remains on the claimant, and a failure of proof may result in denial of a claim in part, as in the *Bano* claim, or *in toto*. In another claim against the Government of Rumania, reference was made to the Commission's Regulations establishing claimant as the moving party and placing on him the burden of proof as to all issues. The Commission held that claimant had not sustained the burden of proof as he had failed to submit evidence supporting critical elements of the claim or to respond to the Commission's suggestions regarding appropriate evidence. (*Claim of Paul Smith*, Claim No. RUM–30259, Dec. No. RUM–143, 10 FCSC Semiann. Rep. 104 (Jan.-June 1959).)

The record in another claim against Rumania under the 1949 Act was barren of evidence of ownership except for claimants' statements that they had a "usufruct" in certain real property which assertedly was taken by the Government. The Commission held that claimants failed to establish that they owned either the property or claims arising out of the loss of property, and recovery was denied. (*Claim of Frank Buhn, et al.*, Claim No. RUM–30039, Dec. No. RUM–328, 10 FCSC Semiann. Rep. 112 (Jan.-June 1959).)

In the Matter of the Claim of

EUROPEAN GAS & ELECTRIC COMPANY

Against the Government of Hungary

Claim No. HUNG–20367
Decision No. HUNG–2135

Rights and concessions to exploit proven reserves of crude oil, gas and other minerals in land not owned by claimant constituted "property" as defined in Title III of the 1949 Act. Results of analytical or engineering method of appraising oil and gas reserves by use of prewar cost experience adjusted to 1948, date of nationalization, subjected to reduction by Commission because costs, prices, taxes and other factors assumed in course of appraisal were not entirely established. Portion of claim for oil exploration rights in undeveloped land denied under Section 303(2) because claimant failed to establish that the rights had a proved or predictable value.

Claim for expenses incurred in effecting return of personal property removed by Germany during World War II denied because it involved neither war damages under Section 303(1), a taking of property under Section 303(2), nor a failure of Hungary to meet its obligations under Section 303(3). Claim based on sup-

plies furnished or services rendered to Allied Powers in Bulgaria, Hungary or Rumania denied because such transactions involved no act for which Bulgaria, Hungary or Rumania was responsible under Section 303. Unilateral action by Bulgaria, Hungary or Rumania fixing the price of oil substantially lower than its actual value did not constitute "nationalization, compulsory liquidation, or other taking" of property within meaning of Section 303(2) in absence of a forced sale of the property at such price.

FINAL DECISION

The Commission issued its Proposed Decision on this claim on May 22, 1959, a copy of which was duly served upon the claimant.

Full consideration having been given to the objections of the claimant, and to the evidence and oral arguments presented at the hearing on July 2, 1959 and to the entire record herein, it is

ORDERED that the Proposed Decision be amended as follows, and that as so amended it be entered as the Final Decision in this claim.

The record shows that claimant owned, directly or beneficially, 100% of the outstanding shares of capital stock of "Hungarian American Oil Company," hereinafter called "Maort," a Hungarian corporation, which in turn owned real and personal property in Hungary. It is also established by the record before the Commission that "Maort" owned a 50% interest in the "Maortgas Marketing Company, Ltd.," a Hungarian corporation which marketed natural gas derivatives in Hungary.

The Commission finds that certain structures and physical assets of "Maort" were damaged and certain pieces of property of "Maort" were totally destroyed as a result of World War II. The Commission also finds that the loss thus actually sustained amounted to $1,769,795.50 and concludes that claimant is entitled to compensation under Section 303(1) of the Act in the amount of $1,179,863.66 since under this Section, awards are limited to two-thirds of the loss or damage actually sustained.

The Commission finds that "Maort" was nationalized without compensation by the Government of Hungary pursuant to Decree No. 9,960/1948 Korm, of September 24, 1948. The record shows that "Maortgas Marketing Company, Ltd." was likewise nationalized without compensation by the Government of Hungary. The Commission further finds that the value of claimant's interest in "Maort," not including hydrocarbon reserves, was $9,515,-171.00, and concludes that claimant is entitled to compensation under Section 303(2) of the Act for the nationalization thereof.

Claimant also seeks compensation based upon certain reserves in the subsoil consisting of crude oil, natural gas and gas liquids, in which "Maort" had interests. The record shows that "Maort"

had acquired certain rights and concessions under which it exploited the land covered by the Agreement of 1933 and extracted crude oil, natural gas and gas liquids. In consideration of the rights and concessions, "Maort" invested large sums of money to exploit the lands in question and was obliged to pay royalties, taxes and other charges to the Hungarian Government.

It is concluded that these rights and concessions constituted "property" within the meaning of Section 301(9) of the Act and that such rights and concessions were nationalized without compensation by the Government of Hungary pursuant to Decree No. 9,960/1948, Korm, of September 24, 1948. The record shows that the land in question contained reserves in the approximate amounts of 26,871,700 barrels of crude oil, 72,140,000,000 cubic feet of natural gas and 111,846,000 gallons of gas liquids.

In estimating the value of "Maort's" interest in the reserves, the claimant proposes the analytical or engineering method of appraisal which is widely accepted and used by the oil industry in estimating the value of hydrocarbon reserves in the United States and throughout the world. Under this method, the claimant calculates the present worth value of the reserves at the time of nationalization at $24,724,389.00. In applying the method claimant has used pre-war cost experience "adjusted" to 1948, has figured sales prices on the basis of a competitive free market and projected these costs and prices over the years to 1974.

The Commission recognizes the validity of the method adopted by the claimant, but is not entirely convinced that all of the assumptions as to the costs, prices, taxes, etc., and particularly the reliance upon their continuance throughout the life of the concession, should be accepted without qualification. In arriving at the market value at the date of nationalization, the Commission is not presently convinced that a buyer in a competitive market would be willing to pay the figure asserted by the claimant. It is concluded that a discounting or downward adjustment of the claimant's figure is indicated and, accordingly, the amount of $17,307,000.00 is awarded for nationalization of the claimant's reserves.

The claimant also seeks compensation for loss of certain other rights and concessions belonging to "Maort." It appears that these rights and concessions related to certain undeveloped acreage, and a portion of the claim is based upon the taking of said undeveloped acreage. The Commission has consistently held that the burden of establishing all elements of a claim rests with the claimant. It has not been shown that these rights and concessions of "Maort" had any proved or predictable value. Therefore, it is concluded that claimant has not met its burden of estab-

lishing that it sustained any losses with respect to the undeveloped acreage within the meaning of Section 303(2) of the Act, and accordingly, this portion of the claim is denied.

A portion of the claim is based upon the sale of crude oil by "Maort" at prices fixed by the Government of Hungary. Claimant states that the Hungarian Government unilaterally fixed a delivery price for "Maort" crude oil for the year 1947 and from January 1948 to September 1948 of 170 forints per ton, whereas the lowest possible average free market delivery price for Hungarian crude oil was much higher.

Claimant further states that the fixing of such prices by the Government of Hungary was in violation of Clause 11 of the Concession Contract, dated June 8, 1933, which provided that the sales price for crude oil shall be mutually agreed upon by the Hungarian Minister of Finance and "Maort," and in the event of a failure to reach any agreement in this respect, the selling price of the oil products shall be the market prices then prevailing.

The record fails to show and it has not been alleged that the Government of Hungary compelled "Maort" to sell to it any of the oil products involved in this portion of the claim. Claimant has admitted that in 1948, "Maort" actually sold some of the crude oil in question at prices in excess of the 170 forints per ton fixed by the Government of Hungary. The Commission holds with respect to this portion of the instant claim that it has not been established that the circumstances herein constitute war damage within the scope of Section 303(1) of the Act or a nationalization, compulsory liquidation or other taking of property by the Government of Hungary within the meaning of Section 303(2) of the Act. It is to be noted, however, that such holding does not constitute a finding that the actions complained of are not international wrongs which might give rise to liability under the customary rules of international law.

When this portion of the claim is considered under Section 303(3) of the Act, relating to certain claims for the failure to meet certain obligations expressed in currency of the United States, it is found to be not compensable, for the reasons specified in the attached copy of Proposed Decision No. HUNG–1, *In the Matter of the Claim of Vincent I. Varga* (HUNG–20264). Additionally, this portion of the claim is found to be not compensable for the reasons specified in the attached copy of Proposed Decision No. BUL–20, *In the Matter of the Claim of Henry Herbert Gould* (BUL–1174), which is for equal application, *mutatis mutandis*, in similar claims against the Government of Hungary.

Accordingly, this portion of the claim is denied.

The portion of the claim based upon supplies furnished and services rendered to the Soviet Army is denied for the reason that such items do not fall within the purview of Article 26 and Article 27, the only Articles of the treaty of peace with Hungary referenced in Section 303(1) of the Act. In this connection, it is noted that specific provisions are made for such items in Article 32, paragraph 2 of the treaty of peace with Hungary, which is not referenced in Section 303(1) of the Act. Paragraph 2 of Article 32 reads as follows:

> The provisions of this Article shall bar, completely and finally, all claims of the nature referred to herein, which will be henceforward extinguished, whoever may be the parties in interest. The Hungarian Government agrees to make equitable compensation in Hungarian currency to persons who furnished supplies or services on requisition to the forces of Allied or Associated Powers in Hungarian territory and in satisfaction of non-combat damage claims against the forces of Allied or Associated Powers arising in Hungarian territory.

It is concluded that the fact that Section 303(1) of the Act references only Articles 26 and 27 of the treaty of peace with Hungary clearly indicates a Congressional intent to include under Section 303(1) only those claims which fall within the purview of the said referenced Articles.

When this portion of the claim is considered under Section 303(2) of the Act, it is found to be not compensable for the reason that the circumstances herein cannot be construed as a taking by the Government of Hungary so as to give rise to a compensable claim thereunder.

A portion of the claim is based upon sales of crude oil made during World War II while "Maort" was under sequestration by the Government of Hungary. Claimant states that the agency of the Government of Hungary, exercising control over "Maort," exported to Germany certain amounts of crude oil belonging to "Maort." This agency paid "Maort" the inland or Hungarian market price and sold the crude oil for prices in excess thereof.

The Commission finds that the circumstances of this portion of the claim do not constitute a nationalization, compulsory liquidation or other taking of property within the meaning of Section 303(2) of the Act. Moreover, the Commission finds that it has not been established that the claimant suffered any loss by reason of the aforesaid acts. Accordingly, this portion of the claim is denied.

Claimant seeks compensation for certain expenses incurred in effecting a return of certain property of "Maort" from Germany. The record shows that the property in question was taken out of

Hungary by the German Army and brought into Germany. After cessation of hostilities, representatives of "Maort" located the property in Germany and incurred expenses in returning it to Hungary, including the payment of import duties.

The Commission finds that this portion of the claim does not involve a property loss as contemplated under Articles 26 and 27, the only Articles of the treaty of peace with Hungary referenced in Section 303(1), nor does it constitute a nationalization or other taking of property within the meaning of Section 303(2) of the Act; and the circumstances herein do not give rise to a claim for the failure of the Government of Hungary to meet its contractual obligations expressed in currency of the United States, one of the prerequisites of Section 303(3) of the Act. For the foregoing reasons, this portion of the claim is denied.

The Commission deems it unnecessary to make determinations with respect to other elements of the portions of the claim denied herein.

AWARD

Pursuant to the provisions of the International Claims Settlement Act of 1949, as amended, the claim is allowed in part, and an award is hereby made to the EUROPEAN GAS AND ELECTRIC COMPANY in the amount of Twenty-eight Million Two Thousand Thirty-four Dollars and Sixty-six Cents ($28,002,-034.66) plus interest upon that portion of the award granted pursuant to Section 303(2) at the rate of 6% per annum from September 24, 1948 to August 9, 1955, the effective date of the Act, in the amount of Eleven Million Sixty-eight Thousand Six Hundred Fifteen Dollars and Eighty-two Cents ($11,068,615.82).

Payment of any part of this award shall not be construed to have divested the claimant herein, or the Government of the United States on its behalf, of any rights against the Government of Hungary for the unpaid balance of the claim, if any.

General notice of the Proposed Decision having been given by posting for thirty days, it is

ORDERED that the Proposed Decision, as amended herein, be and is hereby entered as the Final Decision on this claim, and it is further

ORDERED that the award granted herein be certified to the Secretary of the Treasury.

Dated at Washington, D.C.
July 24, 1959.

Special property rights.—As a prerequisite to an award under Section 303 of the 1949 Act, claimant must have had an ownership interest in "property" as contemplated by the Act, as to which a loss was suffered within the scope of Section 303. Section 301(9) defines "property" as "any property, right, or interest." In the instant claim, claimant's wholly owned Hungarian subsidiary had rights and concessions to exploit land, the subsoil of which contained proven reserves of crude oil, natural gas and gas liquids. Such rights and concessions were found by the Commission to constitute property within the meaning of Section 301(9). Claimant had invested large sums of money in the exploitation of the land, and established that it contained proven reserves in ascertainable amounts. A standard method of evaluation for hydrocarbon reserves was available, moreover, to calculate the dollar value of claimant's losses. On the other hand, the loss of rights and concessions in certain other undeveloped acreage was not compensated because claimant did not show that such rights and concessions had any proved or predictable value.

In addition to compensation for the loss of real property of which she was the record owner, a claimant received an award for her right of usufruct in real property in Miskolc, Hungary, which was found to have been lost when the property was nationalized in 1952. The right of usufruct was "property" within the meaning of Section 301(9) of the Act. The value thereof was computed by use of the Makehamized mortality table, appearing as Table 38 of United States Life Tables and Actuarial Tables 1939–1941, and a 3½% interest rate, compounded annually. (*Claim of Vilma Ferenc,* Claim No. HUNG–20151, Dec. No. HUNG–966, 10 FCSC Semiann. Rep. 52 (Jan.-June 1959).) Similarly, the Commission found in another claim that claimant's remainder interests in several properties in Budapest formed a valid basis for her claim and her interests were evaluated by deducting the values of the life estates from the total value of the property at the time of loss. (*Claim of Marietta Kovesi Kuper, et al.,* Claim No. HUNG–22197, Dec. No. HUNG–2044, 10 FCSC Semiann. Rep. 70 (Jan.-June 1959).)

In a claim against the Government of Bulgaria, claimant alleged that he had advanced money to his father and brother for the purpose of purchasing a lot in Sofia and erecting a building thereon, that he later satisfied a mortgage against the property and received a "letter of release and purchase" from his brother and father, but subsequently learned that the property had been sold without his knowledge or receipt of any proceeds by him. The claim was denied as based upon a private transaction involving no act or failure to act for which Bulgaria was responsible under the statute. (*Claim of Lazar George,* Claim No. BUL–1006, Dec. No. BUL–138, 10 FCSC Semiann. Rep. 15 (Jan.-June 1959).)

In another claim it was asserted that by virtue of a decree issued by the Government of Rumania in 1938 rendering American citizens resident in Rumania ineligible for employment there, the claimant suffered a loss of earnings during the succeeding eight-year period. The Commission held that there had been no loss of or damage to property belonging to claimant, nor was

there a claim based upon an obligation of the Government of Rumania expressed in United States currency as set forth in Section 303(3) of the Act. (*Claim of Anna Ide,* Claim No. RUM–30441, Dec. No. RUM–375 (Final Decision), 10 FCSC Semiann. Rep. 113 (Jan.-June 1959).) Likewise, a claim based upon an interference with private contracts through the revocation in 1948 of a license to exhibit American motion pictures in Hungary was found not to have been within the provisions of the Act. (*Claim of Motion Picture Export Association of America,* Claim No. HUNG–21133, Dec. No. HUNG–1652, 10 FCSC Semiann. Rep. 62 (Jan.-June 1959).)

Forced sales.—A portion of the instant claim was based upon sales during 1947 and 1948 of crude oil by claimant's Hungarian subsidiary at prices fixed by the Government of Hungary. Claimant asserted that the lowest possible average free market delivery price for Hungarian crude oil was much higher than the fixed price, and that such price fixing was a violation of the concession contract. The Commission found, however, that claimant had failed to show that its subsidiary was compelled to sell its oil products at such fixed prices and the record indicated, moreover, that some crude oil was actually sold at prices higher than those fixed by the Government of Hungary, and this portion of the claim was denied. In another claim based upon similar losses, on the contrary, compensation was made. There, the Commission found that claimant's Rumanian subsidiary was forced to sell to the Government of Rumania certain oil products at prices fixed by that government, and that the prices thus fixed were substantially lower than the value of such oil products. Losses were sustained as a result of such forced sales and the action of the Rumanian Government constituted a taking of claimant's property within the meaning of Section 303(2) of the Act. (*Claim of Standard Oil Company,* Claim No. RUM–30140, Dec. No. RUM–813, 10 FCSC Semiann. Rep. 128 (Jan.-June 1959).) Together, these two claims illustrate that prewar and wartime conditions in central Europe alone were insufficient to establish that business transactions at the time were made under duress. It was necessary to show not only that the transaction was compelled but also that loss resulted.

Claimant in another case asserted that in August 1940, before returning to the United States, he had to sell his household effects and belongings in Bucharest at a very low price and that the loss he suffered thereby arose out of World War II. Although under Article 24 of the treaty of peace with Rumania that government was under a duty to restore rights and interests, and return the property of nationals of the United States, or to compensate where property in Rumania had been injured or damaged, not all losses suffered in transactions in Rumania were to be made good. The Commission found, on the contrary, that losses sustained by a United States national in transactions during the war which were entered into as a matter of discretion were not the responsibility of the Government of Rumania. The record indicated that claimant had sold his belongings in Bucharest below their real market value in order to avoid transportation costs to the United States and because he would not have room for them

here. The Commission stated that the mere fact that the disadvantageous sale was made in an unfavorable market did not result in a claim against the Government of Rumania. (*Claim of Hugo Peter Rudinger,* Claim No. RUM–30326, Dec. No. RUM–101, 10 FCSC Semiann. Rep. 98 (Jan.-June 1959).)

In another claim based upon losses assertedly a result of the liquidation of a partnership due to Hungarian anti-Jewish laws of 1939, the Commission found nothing in the legislation to compel the sale of interests in the partnership. Although the liquidation may have been motivated by the anti-Jewish climate of the time and place, it did not appear that the liquidation or any attendant loss resulted directly and unavoidably from the legislation which preceded it. The Commission held that compulsory liquidation within the meaning of Section 303(2) of the Act is that which is specifically and directly compelled by government utterance, so that the liquidation in compliance therewith is mandatory, and not an act of discretion on the part of those affected. Claimant was unable to show that the liquidation of the partnership in which he held an interest was in required compliance with governmental decree; and the claim was denied. (*Claim of Eugene Joseph Vayda,* Claim No. HUNG–20900, Dec. No. HUNG–709.)

In the Matter of the Claim of

Claim No. HUNG–20016
Decision No. HUNG–667

ERNIE DAVE TURNER, ET AL.

Against the Government of Hungary

Effective date of "taking" of property in Hungary under Decree No. 4–1952 was February 17, 1952, date of publication of decree. Awards under Section 303(2) measured by value of the property at the time of loss, and increased by interest at rate of 6% per annum from date of taking to August 9, 1955, effective date of the statute.
Claim for loss of rental income accruing after nationalization denied under Section 303(2) because such income belonged to the State.

PROPOSED DECISION

This is a claim under Section 303(2) of the International Claims Settlement Act of 1949, as amended, for $9,100.00 by ERNIE DAVE TURNER and LINA TURNER, nationals of the United States since their naturalization in the United States on November 18, 1946 and April 22, 1946, respectively, for nationalization of property in Hungary, and for loss of rental income therefor.

The Commission finds that each of the claimants owned an

undivided one-half interest in certain portions of community apartment buildings described as 26b Bercsenyi utca, Budapest XI, 1st floor No. 2, and 87 Bartok Bela ut, Budapest XI, 2nd floor No. 2b, which were nationalized without compensation by the Government of Hungary on February 17, 1952 pursuant to Hungarian Law-Decree 1952:4 *tvr.* (Official Gazette No. 18, February 17, 1952). The Commission further finds that the value of the property taken was five thousand seventy-one dollars and eighty-five cents ($5,071.85); and concludes that claimants are entitled under Section 303(2) of the Act to awards totalling that amount.

The claim for loss of rent is denied, inasmuch as the property belonged to the State after February 17, 1952, rather than to the claimants. However, the claimants were entitled, on the date the property was taken, to compensation in an amount equal to the value of the property. Thus, they have suffered the loss of the use of the money they were entitled to receive on February 17, 1952. Such loss of use can be compensated for in terms of interest and the Commission concludes that interest should be allowed on the award at the rate of 6% per annum from the date of loss to August 9, 1955, the effective date of Section 303.

AWARDS

Pursuant to the provisions of the International Claims Settlement Act of 1949, as amended, an award is hereby made to ERNIE DAVE TURNER in the amount of two thousand five hundred thirty-five dollars and ninety-three cents ($2,535.93) plus interest in the amount of five hundred twenty-eight dollars and fifty-eight cents ($528.58); and an award is made to LINA TURNER in the amount of two thousand five hundred thirty-five dollars and ninety-two cents ($2,535.92), plus interest in the amount of five hundred twenty-eight dollars and fifty-eight cents ($528.58).

Payment of any part of these awards shall not be construed to have divested the claimants herein, or the Government of the United States on their behalf, of any rights against the Government of Hungary for the unpaid balance of the claim, if any.

Dated at Washington, D.C.
November 20, 1957.

In the course of determination of claims under Section 303(2) of the 1949 Act, based upon the "nationalization, compulsory liquidation, or other taking . . . of property of nationals of the United States in Bulgaria, Hungary, and Rumania," the Commission accumulated considerable information concerning the pattern of the taking of property in those countries. A resume follows.

Nationalization or other taking of property in Bulgaria.—As in most Eastern European countries, expropriation of property was initiated by Land Reform Legislation. By Law of April 9, 1946 a maximum limit of acreage was established for owners of farmland. This limit was usually about 50 acres. All property in excess of such limit was expropriated. The Law provided for payment of compensation in State bonds, payable within 15 years. This Law was amended several times. The amendments provided for the expropriation of agricultural equipment and farm machinery and for the nationalization of forest land and forest pastures. Within 10 years most of the more productive farms in Bulgaria had been expropriated and turned over to the administrators of cooperatives or to state farms.

By Law of December 27, 1947 all private banks were nationalized. The assets and liabilities of the banks were transferred to two State banks. The nationalization and transfer did not affect creditors' rights. The former stockholders of the banks were assured that they would receive compensation in state bonds. Stockholders of foreign nationality were to be paid "according to mutual agreements." In fact, domestic stockholders received very little, if any, compensation, and foreign owners, as a rule, received nothing. Under laws which were enacted subsequently, accounts of former merchants and industrialists were confiscated.

At the same time, by Law of December 27, 1947, almost all private industrial and mining enterprises were nationalized. The former owners of nationalized enterprises were to receive from the State an indemnity in State bonds, but such indemnity was to be computed by law on a percentage basis of the assessed taxable value of the enterprise.

Enterprises which were not nationalized by the Law of December 27, 1947, were either liquidated or taken over by the State under various individual laws and decrees enacted after the aforesaid Law. The liquidation of wholesale and retail trade enterprises began with the enactment of the Law of December 3, 1948, and remaining commercial companies were dissolved on September 25, 1951. An edict of the Bulgarian Government of February 20, 1952 stated that wholesale commerce was a monopoly of the State and that retail commerce operated by private persons would be tolerated under exceptional circumstances only.

A Law of March 8, 1948 expropriated urban real property which was used mostly for purposes of income. This Law nationalized all real property in urban districts owned as an investment. The owners of such expropriated property were assured of compensation to be paid in State bonds. However, such indemnity was to be computed on a percentage basis of the assessed value of the real property for tax purposes. If paid, such compensation

in bonds amounted actually to a small fraction of the value of the property, because under the law the higher the value, the lower was the percentage paid by the Government.

A Law of November 16, 1951, authorized the Government to expropriate any property, real or personal, of farm cooperatives and of public organizations and enterprises, to meet particularly important needs of the State.

By 1956, Bulgaria had nationalized all financial, industrial and trade enterprises, with the exception of smaller shops. It also nationalized or confiscated all larger buildings in cities and towns, and all larger and better agricultural estates. The majority of farms and all forest land was in the hands of the Government, of farm cooperatives, machine tractor stations, etc. The trend was toward the collectivization of all or nearly all productive farms.

Nationalization or other taking of property in Hungary.—Expropriation of property in Hungary started with measures called Agrarian Reform Legislation. Decree No. 600/1945 *M.E.* of March 15, 1945, as incorporated into Law 1945: VI, as of September 16, 1945, provided for expropriation of large estates (of more than approximately 1400 acres). Smaller estates were broken up, and the former owners were allowed to retain land amounting to something less than 150 acres (in some areas 75 acres). The decree provided for the payment of compensation, except in cases where the former owners were war criminals or German collaborators. However, all payments were deferred and actually no compensation ever was paid. Property owned by Germans or by citizens of German descent was confiscated outright by Decree No. 12330/1945 *M.E.* of December 29, 1945.

By Law No. IX of May 10, 1946, unimproved land in areas suitable for house building was declared subject to condemnation by the government. The Law provided for compensation, but again compensation was never paid.

Law No. XIII of June 7, 1946 ordered the nationalization of coal mines, and Law No. XX of September 2, 1946, the nationalization of electric power stations and electric works.

The major industrial enterprises were placed under the direction of appointed government administrators by individual decrees beginning in 1945. By Law No. XXV of April 26, 1948, the major Hungarian enterprises were nationalized and became property of the State. This Law was amended by Law-Decree 20/1949 *tvr.* of December 28, 1949 which provided for the nationalization of the remaining private industrial enterprises, except for those which employed less than 10 persons. The principle of compensation was expressed in both Law No. XXV and Law-Decree 20, but no compensation was actually paid, except to certain foreign countries (such as Switzerland) in lump-sum agreements for the indemnification of citizens of such countries.

Banks were nationalized by Law No. XXX of December 1, 1947. Creditors' rights were not directly affected by the nationalization of banks, but due to the total depreciation of the value of the currency of Hungary during 1945 and 1946, the creditors remained actually unpaid for all credits and claims which accrued prior to August 1, 1946. The principle of compensation to the

former owners or shareholders of banks was recognized, but nothing was done to give practical effect to the payment of compensation.

Private wholesale and retail mercantile enterprises were not formally nationalized, but various decrees ordered the transfer of assets of such enterprises to appropriate government enterprises for liquidation. In addition, Decree No. 19/1950 *M.T.* of January 18, 1950 made wholesale trade a monopoly of the State. By the same decree retail trade was restricted to the smallest enterprises. The liquidation of commercial enterprises was carried out by the corresponding State retail enterprises and stores.

Property of political emigrants abroad was confiscated by Law 1948:XXVI *tv.*, and so-called "abandoned property" was seized by Law 1948:XXVIII *tv.* These laws were directed against property of absent owners who had left Hungary for political or for any other reasons. A series of decrees issued between 1948 and 1950 nationalized or liquidated smaller private enterprises, businesses, schools, hospitals, museums and similar economic, cultural and welfare institutions.

By Law-Decree 4/1952 *tvr.* of February 17, 1952, all privately owned buildings which had been utilized for rental purposes and buildings owned by former "capitalists," were nationalized, including the personal property of the owners found in such buildings. No compensation was paid for this property, even though the principle of compensation was recognized in the decree.

By 1956, with the exception of the smallest stores and shops, all industry and trade in Hungary had been nationalized or liquidated. All larger farms, buildings, all commerce at the wholesale and retail level, all schools, hospitals, laboratories, etc., were government-owned. Still not nationalized were small private homes for the use of individual owners, and small farms. There was, however, a strong tendency to bring all productive farms into State or farmers' cooperatives, and this tendency progressed from year to year.

Nationalization or other taking of property in Rumania.—In Rumania, expropriation of property started with an attempt to nationalize agricultural property belonging to persons described as absentees or collaborators with the Germans. In addition, all real estate exceeding 50 hectares was nationalized without compensation to the former owners. (Law No. 187 of March 22, 1945.)

Certain land on well established farms, called "model farms," was exempt from the nationalization provisions. However, by Law No. 83 of March 1, 1949, such model farms were also nationalized, as well as the 50 hectares of land which had been left to those whose land was expropriated under Law No. 187 of March 22, 1945. No compensation was paid to such owners.

Forest land and enterprises were expropriated under Law No. 359 of November 14, 1947, which gave authorization to the appropriate authorities to take over forest properties.

By Law No. 119 of June 11, 1948 all major industrial enterprises were nationalized. While the Law contains certain provisions for compensation, mainly by the issuance of government

bonds, actually no compensation was ever paid to the owners or shareholders of nationalized industrial enterprises. However, the Rumanian Government entered into negotiations with a few foreign countries (such as Switzerland) and made agreements for lump-sum payments to those countries on behalf of the foreign owners of nationalized Rumanian enterprises.

Separate laws were enacted for the nationalization of minor industrial and cultural enterprises (motion picture companies, chemical-pharmaceutical laboratories, pharmacies, schools, etc.).

By Law No. 197 of August 12, 1948 the Rumanian Government ordered the dissolution and liquidation of banks and of credit institutes. The law ordered that all assets of the banks should be sold, all claims collected and obligations of the banks paid. The National Bank of Rumania was empowered to carry out the liquidation. The creditors of the banks were deprived to a great extent of their claims, because the domestic currency, the "leu," had lost almost all of its value and a new unit, the "stabilized leu," was introduced, which was exchanged for old lei at the ratio of 20,000:1. In addition, the exchange of old money to new currency was restricted to an amount of 5,000,000 old lei at the most. The owners and shareholders of the banks received nothing as a result of the liquidation of the banks.

By Decree No. 92 of April 19, 1950, all buildings that belonged to former industrialists, landowners, bankers, major merchants and other members of the former propertied classes, were nationalized, as well as all buildings held for rental purposes, all abandoned, damaged, wrecked and improperly managed houses, and all hotels. Compensation for the nationalized buildings and houses was expressly excluded by the law.

By a Decree No. 111 of July 17, 1951, all "abandoned property" was confiscated, which included properties whose owners were absent for any reason whatsoever for more than one year, as well as certain categories of other properties whose owners could not exercise their property rights. This Decree and a number of preceding and subsequent governmental measures expropriated practically all business enterprises, including shops and the wholesale and retail trade.

By 1956, with the exception of the smallest stores and shops, all industry and trade in Rumania was nationalized. All larger agricultural estates, all larger buildings, all health institutions, hospitals, schools, etc., were government owned. However, under various restrictions imposed by the government, a good number of farms were still owned individually by farmers, but there was a growing trend toward collectivization of all productive farms into cooperative agricultural units or state farms.

Effective date of taking of property.—In all claims based upon a taking of property, the date of taking was an essential element to be established, not only as a beginning date for the computation of interest where awards were granted, but also for determination of the validity of the claim, in view of the requirement of ownership of the property by a national of the United States at the time of loss. In many cases where the property owner did not become a United States national until after the date of taking, or the claim was inherited by a United States national after the

date of taking, it was urged upon the Commission that the circumstances warranted finding that the claim did not arise until a later date. In any event, Section 303(2) encompassed only claims based upon the failure to pay compensation for the taking of property "prior to the effective date of this title," which was August 9, 1955. Accordingly, where a claim was based on interests in property taken by the Government of Rumania in 1956, the claim was denied. (*Claim of Fanny Margoshes, et al.*, Claim Nos. RUM–30479 and RUM–30660, Dec. No. RUM–246, 10 FCSC Semiann. Rep. 105 (Jan.-June 1959).)

Generally, the effective date of taking was the date of the publication in the official journals and papers of the controlling Decree or Law.

As indicated in the annotations to *Claim of Margot Factor,* appearing on page 169, despite the contention of one claimant that his claim did not arise until the expiration of a reasonable time after his property was nationalized, during which time no compensation had been paid, the Commission denied the claim on the ground that the property had not been owned by a United States national on the date of taking thereof. (*Claim of Hermann F. Broch de Rothermann,* Claim No. HUNG–21100, Dec. No. HUNG–1889 (Final Decision), 10 FCSC Semiann. Rep. 85 (Jan.-June 1959).)

Similarly, the Commission found that a claimant's farmland had been taken by the Government of Hungary pursuant to the Decree of March 15, 1945. Claimant contended that November 13, 1945, the date of a decision under which his application for restoration was denied, should be deemed the date of taking. The Commission found no merit in claimant's contention, commenting that the decision of November 13, 1945 reflected that the property had already been taken pursuant to the earlier Decree, and was a mere denial of the return of property which already had been lost. (*Claim of Michael Alexander Patton,* Claim No. HUNG–21198, Dec. No. HUNG–1786, 10 FCSC Semiann. Rep. 63 (Jan.-June 1959).) Insofar as the principle recited herein is concerned, the Proposed Decision was affirmed upon the entry of a Final Decision.

Another claimant stored certain items of her personal property with a storage concern in Hungary. The property was seized by the Office of the Commissioner for Abandoned Property on a date prior to the time when claimant became a national of the United States. An order was issued by the State for the return of the property on a date subsequent to claimant's United States naturalization, but none of the property was ever returned to claimant. The Commission found that the claimant was permanently deprived of possession, control and dominion over her property at the time of the seizure by the Office of the Commissioner for Abandoned Property, and that the date of such action constituted the date of taking. The fact that the authorities issued a subsequent order for the return of the property did not advance the date of taking. (*Claim of Sabine G. Helbig,* Claim No. HUNG–20590, Dec. No. HUNG–941, 10 FCSC Semiann. Rep. 51 (Jan.-June 1959).)

However, there were instances in which the Commission could

look beyond the effective date of a decree and determine, from other evidence, the true date of taking of property. A claimant placed his art collection in the custody of the Hungarian National Museum of Fine Arts on June 5, 1948, just prior to coming to the United States on July 29, 1948. In 1949, the Government of Hungary enacted Law Decree 1949:13 *tvr.* which provided that private art collections should be preserved by the owners and made available to the public, and further provided that such collections could be taken by the State if it appeared they could not be so maintained. Subsequent to his naturalization on March 22, 1954, under date of December 17, 1954, claimant requested the return of his collection, and on February 18, 1955 the Museum replied, stating that art objects under the protection of the above-mentioned Law Decree 1949:13 *tvr.* could not be exported from Hungary. Thereafter on March 20, 1956, claimant asked whether it would be possible to turn the collection over to another person in Hungary, but was advised by the Ministry of National Culture on June 27, 1956 that the pictures could not be removed from the Museum even if they remained in Hungarian territory. The Commission found that the governmental action placing a private art collection in a museum and prohibiting its return to the owner constituted "other taking" of property under the Act, and determined that the date of taking was not the date of the publication of the decree but rather February 18, 1955, the date of notification from the State that the art collection could not be exported from Hungary. (*Claim of Geza Danos,* Claim No. HUNG–21487, Dec. No. HUNG–1004 (Amended Proposed Decision), 10 FCSC Semiann. Rep. 56 (Jan.-June 1959).)

There were other situations in which the taking was not predicated upon a specific Decree or Law. In some instances the Commission examined the actions affecting the subject property and determined that the property had, to all intents and purposes, been taken. This was true even in claims where, according to the public records, title had not passed from the record owners. A claimant owned an interest in four acres of vineyard and five acres of farmland in Hungary, and two threshing machines. In 1949 the Government of Hungary evicted the owners' tenant from the land and took the threshing machines, thereafter utilizing the property in a farmer's cooperative, without compensation. The Commission noted that such cooperatives were under strict governmental control and were an integral part of Hungary's land reform program leading to the absorption of the land into State ownership. The Commission found that such action constituted a taking of property within the meaning of the Act even though the taking was not effected through a specific decree. (*Claim of Malvin Klein, et al.,* Claim No. HUNG–21262, Dec. No. HUNG–1123, 10 FCSC Semiann. Rep. 53 (Jan.-June 1959).)

Again, where the Government of Hungary prohibited the sale of a dwelling or the placing of liens thereon, and precluded the owners from occupying the premises, such acts constituted a taking of the property notwithstanding that the record title to claimant's property had not been transferred to the State. (*Claim of Albert Bela Reet,* Claim No. HUNG–22083, Dec. No. HUNG–1625, 10 FCSC Semiann. Rep. 61 (Jan.-June 1959).) In

a similar factual situation, the Commission held that although claimant remained "endowed with the indicia of ownership," nevertheless his property had been effectively taken from him within the meaning of Section 303(2) of the Act, and granted an award. (*Claim of Jeno Hartmann,* Claim No. HUNG–20068, Dec. No. HUNG–717, 10 FCSC Semiann. Rep. 45 (Jan.-June 1959).)

Other taking.—The statute provided for the "nationalization, compulsory liquidation, or other taking" of property. Where claimant was the indirect owner of all of the outstanding capital stock of a Rumanian corporation whose assets were taken under the control of the Government of Rumania in 1946, taken by occupation authorities in 1947, and acquired by the Government of Rumania in 1954 and held continuously thereafter by Rumania, the Commission held that the property had been taken by the Rumanian Government in 1946, quoting from page 5 of Senate Report No. 1050, 84th Congress, 1st Session, as follows: "The phrase 'other taking' in paragraph 2 of this section would also appear to include takings of American-owned property in the satellite countries by occupation authorities, which property was subsequently acquired and is presently held by the satellite governments. The precise means by which they attained control over such property would seem to be immaterial." (*Claim of Estate of Siegfried Arndt, Deceased,* Claim No. RUM–30007, Dec. No. RUM–810, 10 FCSC Semiann. Rep. 131 (Jan.-June 1959).)

This is to be distinguished from a claim in which the assets of a Rumanian corporation were sequestered and taken under control by the Government of Rumania in October 1944, and not returned thereafter to claimant, the indirect owner of all of its capital stock, as required by article 24 of the treaty of peace with Rumania. There, an award was granted under Section 303 (1) of the Act, which limited such award to two-thirds of the loss actually sustained. (*Claim of United Shoe Machinery Corporation,* Claim No. RUM–30269, Dec. No. RUM–816, 10 FCSC Semiann. Rep. 131 (Jan.-June 1959).)

Loss of rent.—The *Turner* claim also provides an example of the Commission's denial of a portion of a claim based upon loss of rent from property after the time of its nationalization. Although awards were made to claimants for the value of their interests in apartment buildings at the time of taking, they were denied compensation for loss of rent from the buildings thereafter on the ground that the buildings then belonged to the Hungarian Government. The Commission pointed out, however, that the inclusion in the awards of interest at 6% per annum from February 17, 1952, the date of nationalization, would represent compensation for the loss of use of the money they should have received for the taking of the property on that date. For a further discussion of inclusion of interest in awards under Section 303, see the annotations to *Claim of George H. Earle, III, and United States of America,* appearing at page 190.

In the Matter of the Claim of

Claim No. HUNG–20187
Decision No. HUNG–716

JOZSEF CHOBADY

Against the Government of Hungary

Claim based on deposits in Hungarian banks denied under Section 303(2), Title III of the 1949 Act because deposits were not subjected to "nationalization, compulsory liquidation, or other taking" by Hungary. Nationalization of banks by Hungary did not curtail or abolish any rights of bank depositors. Claimant's losses resulted from economic conditions causing devaluation of Hungarian currency.

Prohibition against transfer of funds outside of a country, and blocking of bank accounts, are exercises of sovereign authority which do not constitute a "nationalization, compulsory liquidation, or other taking" of property under Section 303(2).

PROPOSED DECISION

This is a claim against the Government of Hungary under Section 303 of the International Claims Settlement Act of 1949, as amended, by JOZSEF CHOBADY based upon an alleged deposit in 1926, of 102,000 *korona* in a savings account with the *Magyar-Olasz Bank R.T.* (Hungarian-Italian Bank, Ltd.).

The only provision of Section 303 of possible application herein is Subsection (2), which provides for the receipt and determination of claims against the Government of Hungary, among others, for its failure to—

> pay effective compensation for the nationalization, compulsory liquidation, or other taking, prior to the effective date of this title [August 9, 1955], of property of nationals of the United States in . . . Hungary. . . .

It is concluded that the grievance of the claimant is the consequence of severe currency devaluation and restrictions on the transfer of currency out of Hungary brought about by general economic conditions rather than by any specific action of the Hungarian Government which may be characterized as a "nationalization, compulsory liquidation, or other taking" of claimant's property within the meaning of the Act.

In 1925, subsequent to the making of the *korona* deposit which forms the basis of this claim, in recognition of the depreciation of the currency, a new currency, the *pengo*, was introduced in Hungary by Law 1925:XXXV *tv.*, providing for an exchange ratio of 12,500 *korona* for one *pengo*. On this basis claimant's 102,000 *korona* became the equivalent of 8.16 *pengo*.

While Law 1928:XII *tv.* provided for the revaluation of certain money debts within the period of one year, debts based on savings

and checking accounts were expressly excluded from operation of the Law by Section 4 thereof.

There followed a gradual loss of value of the *pengo* ending in complete collapse of that currency so that with the establishment of the *forint* on August 1, 1946, the exchange ratio between the *pengo* and *forint* was 400 octillion (*negyszazquadrillio*) to one.[1] The *pengo* had entirely lost its value. Thus, claims for deposits in *pengo* or *korona* are claims expressed in a completely destroyed, valueless currency. While the currency devaluation caused economic loss to a great many individuals holding such currency, in or out of banks, it was not a nationalization, compulsory liquidation, or other taking of property by the Government of Hungary. Such loss was the result of tremendous damage inflicted upon the Hungarian economy, principally by the war and post-war conditions, and not of any action by the Government of Hungary giving rise to a compensable claim under the Act.

The record contains no evidence of a confiscation, nationalization, compulsory liquidation, or other taking by the Government of Hungary of the bank accounts of the claimant, as distinguished from the bank which was not the property of the claimant. This is true, notwithstanding the fact that Law 1947:XXX *tv.*, as amended, and implemented, provided for the nationalization of banking institutions and as a consequence of such provisions, accounts of certain banks were taken over by other banks. There is no evidence that the rights of depositors were curtailed or abolished by such actions.

Likewise, a prohibition against transfer of funds outside of a country is an exercise of sovereign authority which, though causing hardship to nonresidents having currency on deposit within the country, may not be deemed a "taking" of their property within the meaning of Section 303(2) of the Act.

Accordingly, claimant having failed to establish any action on the part of the Government of Hungary which amounts to "nationalization, compulsory liquidation, or other taking" of his property, within the meaning of the Act, the claim is denied. The Commission finds it unnecessary to make determinations with respect to other elements of the claim.

Dated at Washington, D.C.
February 5, 1958.

[1] Decrees 9,000/1946. (VII.28.) *M.E.* and 8,640/1946. (VII.29.) *M.E.*

Devaluation—Monetary reform.—Due to economic conditions prevailing during World War II and in the years immediately thereafter, the domestic currencies of Bulgaria, Hungary, and Rumania suffered a drastic loss of purchasing power. During the period of 1946–1952 these currencies became practically worthless. A short history of these currencies during and after World War II follows:

Bulgaria.—Prior to World War II the official rate of exchange between Bulgarian leva and United States dollars was approximately 84 leva to one dollar. In addition, the National Bank of Bulgaria purchased and sold foreign exchange at rates considerably above the official rate. In 1946 an official exchange rate of 288 leva to one United States dollar was established and such rate of exchange, even though a fictitious one, remained in effect until 1952. (I International Financial Statistics 139 (No. 3, March 1948).)

The Decree of the Council of Ministers of March 5, 1946 (Official Gazette No. 54 of March 8, 1946) ordered the withdrawal of bank notes and of certain bonds from circulation. Against the deposited bank notes the depositors were entitled to receive not more than 2,000 leva of new bank notes. All debts arising before or after the Decree of March 5, 1946 had to be paid with new bank notes.

On May 11, 1952 the Council of Ministers and the Central Committee of the Bulgarian Communist Party issued a decision on Monetary Reform (Decree No. 405, Official Gazette No. 40 of May 11, 1952). The new exchange rate for the United States dollar was $1 for 6.80 leva. Internally the exchange of the old money for the new was entrusted to the Bulgarian National Bank and was to be completed between May 12 and May 15, 1952. The rate of exchange for cash was established at a ratio of 100 old leva for one new lev. (Foreign Commerce Weekly of June 23, 1952.) The rate of exchange applied to obligations from salaries, premiums, taxes, debts and contractual obligations between enterprises, government agencies and organizations, to payments by private persons to the government as well as to contractual obligations and debts between the Bulgarian National Bank and foreign countries, was established at the ratio of 100 to 4. For savings accounts, sliding scales were adopted. Bank deposits were divided into three categories:

(1) Deposits of workers, children, orphans and students which were payable up to 50,000 leva at the ratio of 100 to 4, from 50,001 to 100,000 leva at the ratio of 100 to 3, and over 100,000 leva at the ratio of 100 to 2.

(2) Savings deposits originating from rents were payable up to 200,000 leva at the ratio of 100 to 3, and over 200,000 leva at the ratio of 100 to 2.

(3) All other deposits were payable up to 50,000 leva at the ratio of 100 to 3, from 50,001 to 100,000 leva at the ratio of 100 to 2, from 100,001 to 200,000 leva at the ratio of 100 to 1½, and over 200,000 leva at the ratio of 100 to 1.

A similar sliding scale was later adopted by the Edict of November 4, 1953 (Official Gazette No. 90 of November 10, 1953) for all obligations between private persons. While the general

rule remained that 4 new leva should be paid for obligations of 100 old leva, under special circumstances (not further defined), the debtors were able to discharge their debts up to 50,000 old leva at the ratio of 100 to 3, from 50,001 to 100,000 old leva at the ratio of 100 to 2, from 100,001 to 200,000 old leva at the ratio of 100 to 1½, and over 200,000 leva at the ratio of 100 to 1.

Hungary.—Prior to World War II the official rate of exchange between the Hungarian pengo and the United States dollar was approximately 3.5 pengos for one dollar. After World War II the value of the pengo collapsed, and by June 30, 1946, its value was practically zero (1,835 billion pengos were equal to one dollar). On August 1, 1946 a new currency, the forint, was introduced and its value was established at 11.83 forints to one United States dollar. No exchange rate between the old and new currency was ever established. (I International Financial Statistics 146 (No. 3, March 1948).)

The Government of Hungary failed to enact any general statute for the revaluation of claims expressed in the former currency. Decree No. 13110/1948 (XII.24) *Korm.* allows only revalorization of claims for the support of a person, for damages originating in tort, claims depending on a master and servant relationship, claims for retirement benefits, claims based on family or inheritance rights, claims for damages arising from a criminal or unlawful act, and other limited claims. Such claims could be revalorized by substitution of the forint for the pengo according to the intrinsic value of the pengo at the time when the claim arose. For claims for wages or other compensation for labor performed, and claims for retirement benefits, a table of conversion between pengos and forints was published by the Government, which shows the conversion rate for each day between March 1, 1945 and July 31, 1946.

Decree No. 13110/1948 (XII.24) *Korm.* specifies that claims for money deposits originating prior to August 1, 1946 cannot be enforced against public bodies. Under Law 1947: XX *tv.*, which became effective on December 4, 1947, all the shares of stock issued by banking institutions and held by Hungarian nationals or by companies located in Hungary, became property of the Hungarian state. Enterprises administered by the State were to be considered public bodies under Decree No. 13110/1948 (XII.24) *Korm.* As a consequence, claims for money deposits against nationalized banks originating prior to August 1, 1946 could not be enforced.

Claims for bank deposits in pengos are claims expressed in a completely destroyed currency. The destruction of the currency took place in 1945 and 1946, before the peace treaty was signed and before the banks were nationalized. No responsibility was attached in the peace treaty to the Government of Hungary for the fact that obligations in pengos became worthless.

Rumania.—Prior to World War II the official rate of exchange between the Rumanian leu and the United States dollar was approximately 141 lei for a dollar. After World War II the value of Rumanian currency was very unstable and in 1947 the leu collapsed to such a low level that officially about 500,000 lei were considered to be the equivalent of a dollar. On August 15, 1947

the new leu was established. Old currency was redeemed for new at the rate of 20,000 old to one new leu within the maximum amount set by the government for various occupational classes of people, the remainder being deposited with the National Bank. (I International Financial Statistics 154 (No. 3, March 1948).)

Law No. 285 of August 15, 1947 (Official Gazette No. 186 of August 15, 1947) provided that debts contracted prior to August 15, 1947 shall be paid in new leu at the established rate of 20,000 to one. No exception was made as to any kind of obligation, and it appears that the rate of 20,000 to one also applied to bank deposits in Rumania.

By Decree No. 197, published in Official Gazette No. 186 of August 13, 1948 and effective that date, the government ordered the dissolution of all banking enterprises and credit institutions in Rumania, with the exception of a few banking institutions. The Rumanian Government appointed liquidators of the banks who were to sell the assets of the banks and pay the obligations. The National Bank of Rumania was authorized to advance to the liquidators the necessary funds for payment of the obligations. Bank deposits were not confiscated or otherwise taken.

On January 27, 1952 a second devaluation took place. The leu was now tied to the Soviet ruble at the nominal value of 2.80 lei per ruble. On February 1, 1954 a currency reform aligned the leu with the ruble of the U.S.S.R. at the rate of 1.50 leu per ruble. This relation represents a value of 6 lei for a United States dollar. (The Statesman's Yearbook 1349 (ed. 1955).)

Bank deposits, mortgages.—In the *Chobady* claim the Commission noted that the nationalization of banks in Hungary did not affect the rights of depositors. Although they suffered loss when the money on deposit lost its value, the Commission held that the complete collapse of Hungarian currency in 1946 was the result of damage inflicted upon the Hungarian economy principally by the war and post-World War II conditions, and not of any action by the Government of Hungary giving rise to a compensable claim under Title III of the Act. The Commission further held that a prohibition against transfer of funds outside of a country is an exercise of sovereign authority which, though causing hardship to nonresidents having currency on deposit within the country, may not be deemed a "taking" of their property within the meaning of Section 303(2) of the Act. Claims based upon deposits in Bulgarian or Rumanian banks and expressed in Bulgarian leva or Rumanian leu were denied for the same reason. (*Claim of George Evanoff*, Claim No. BUL–1005, Dec. No. BUL–221, 10 FCSC Semiann. Rep. 17 (Jan.-June 1959) ; *Claim of Ilie Muresan*, Claim No. RUM–30211, Dec. No. RUM–314, 10 FCSC Semiann. Rep. 111 (Jan.-June 1959).) Similar reasons were given for the denial of a portion of a claim based upon Hungarian *korona* bank notes which were in claimant's possession but had become worthless. (*Claim of Irene Hill Mascotte*, Claim No. HUNG–20435, Dec. No. HUNG–20, 10 FCSC Semiann. Rep. 28 (Jan.-June 1959).)

A portion of another claim, based upon loss in connection with sums on deposit in blocked bank accounts in Hungary, was denied for the reasons stated in the *Chobady* claim. In its Final Decision,

the Commission added that "the blocking of all bank accounts is an exercise of sovereign authority which does not give rise to a compensable claim under Section 303 of the International Claims Settlement Act of 1949, as amended, against the nation in question, even though it precludes reinvestment and may result in a decline in the value of the accounts." (*Claim of IBM World Trade Corporation,* Claim No. HUNG–21107, Dec. No. HUNG–2030, 10 FCSC Semiann. Rep. 86 (Jan.-June 1959).)

A claim based upon a pengo mortgage acquired in 1935 on property in Hungary was denied, the Commission finding that when the pengo lost all value, entries in land records concerning pengo mortgages became meaningless. Although the Government of Hungary caused pengo mortgage entries to be cancelled in 1949, the Commission held that "such loss as the claimant may have sustained with respect to the mortgage in question was the result of drastic currency reform in Hungary, rather than the result of any of the actions for which the Government of Hungary is responsible under Section 303 of the Act. A currency reform resulting in devaluation of a nation's currency is an exercise of sovereign authority which does not give rise to cause of action against the nation in question." (*Claim of Elizabeth Endreny,* Claim No. HUNG–20783, Dec. No. HUNG–1626, 10 FCSC Semiann. Rep. 60 (Jan.-June 1959).)

The Commission also recognized the right of a sovereign to impose taxes on real property as a measure to provide revenue for governmental purposes, so long as such taxation does not discriminate against aliens. The portion of a claim based upon nondiscriminatory taxes collected on property prior to its nationalization was denied. (*Claim of Estate of Theresa Jeney, Deceased,* Claim No. HUNG–20006, Dec. No. HUNG–1094 (Amended), 10 FCSC Semiann. Rep. 58 (Jan.-June 1959).) Similarly, the loss of real property as a result of the foreclosure of tax liens was not deemed to be a "taking" within the meaning of Section 303(2) of the Act. (*Claim of Ladislas Edward Hudec,* Claim No. HUNG–22321, Dec. No. HUNG–1395, 10 FCSC Semiann. Rep. 54 (Jan.-June 1959).)

In the Matter of the Claim of

ARTHUR ZENTLER

Against the Government of Rumania

Claim No. RUM–30044
Decision No. RUM–4

Awards on bond claims under Section 303(3), Title III of the 1949 Act limited to amounts which, by the terms of the bond contracts, "became payable prior to September 15, 1947." Provisions in bond contracts accelerating principal amounts did not render such amounts "payable prior to September 15, 1947" unless invoked before that date. Mere default by Rumania in paying

interest on its bonded indebtedness was insufficient to accelerate principal amounts under bond contracts requiring, as condition precedent, written notice by at least 25% of the bondholders.

PROPOSED DECISION

This is a claim for twenty-two thousand six hundred dollars ($22,600.00) under the provisions of Section 303(3) of the International Claims Settlement Act of 1949, as amended, against the Government of Rumania by ARTHUR ZENTLER, a citizen of the United States since his naturalization on January 24, 1898, for the failure of the said government to meet its contractual obligations.

The record shows that claimant purchased on March 7, 1929, and presently holds ten bonds of the denomination of one thousand dollars ($1000.00) each of the issue known as Kingdom of Roumania Monopolies Institute 7% Guaranteed External Sinking Fund, Stabilization and Development Loan of 1929, due February 1, 1959, numbers M 18136 to M 18145 inclusive, under the terms of which the Government of Rumania, as a primary obligor, guaranteed payment to holders of the sum of thirty-five dollars ($35.00) for each thousand dollars ($1000.00) in principal amount held semiannually on February 1st and on August 1st of each year until the maturity date of the bond issue on February 1, 1959. It further appears that commencing with the payment which fell due on February 1, 1938, no payments on account of interest have been made to date by the Government of Rumania with respect to claimant's bonds. Thus, the Commission finds that from February 1, 1938 to September 15, 1947, the Government of Rumania failed to meet its obligations under claimant's bond contracts to make payments to him totalling seven thousand dollars ($7000.00).

Section 303(3) of the Act authorizes the Commission to receive and determine, among other claims, those based on the failure of the Government of Rumania to—

> meet obligations expressed in currency of the United States arising out of contractual or other rights acquired by nationals of the United States . . . prior to September 1, 1939, in the case of . . . Rumania, and which became payable prior to September 15, 1947.

Accordingly, the Commission has concluded that any award under the above provisions of the Act may include only unpaid amounts which by the terms of the bond contracts were payable prior to September 15, 1947, and may not include any amounts which became payable thereafter.

AWARD

On the above evidence and grounds, this claim is allowed and an award is hereby made to ARTHUR ZENTLER, claimant herein, in the amount of seven thousand dollars ($7000.00), plus interest thereon at the rate of 6% per annum from the respective due dates of the obligations represented by the above award to August 9, 1955, the effective date of Section 303.

Payment of the award herein shall not be construed to have divested claimant herein or the Government of the United States, on his behalf, of any rights against the Government of Rumania, for the unpaid balance of the claim, if any.

Dated at Washington, D.C.
January 16, 1957.

FINAL DECISION

The Commission issued its Proposed Decision on January 16, 1957, allowing this claim, based on the failure of the Government of Rumania to meet its obligations with respect to certain bonds held by claimant, and making an award in the amount of seven thousand dollars, plus interest. The said award was calculated on the basis of including therein only amounts representing past due coupons which by the terms of bond contracts were payable prior to September 15, 1947 in accordance with the limitation contained in Section 303(3) of the International Claims Settlement Act of 1949, as amended. Claimant has filed objections to the said Proposed Decision but requested no hearing.

In substance, claimant's objections to the Proposed Decision herein appear to be founded on a contention that there was an "accelerated maturity" of the principal of the obligations which form the basis of the claim and that hence, such principal amounts should be included as an item upon which to calculate his award.

In support of his contention, claimant cites the following provision of the bond agreement: ". . . in case of default as provided in the Loan Agreement the principal . . . of issue may be declared and become due and payable in the manner and with the effect provided in the Loan Agreement." He does not, however, cite the Loan Agreement in order to show the "manner" of accelerating principal, nor does he go to such agreement to determine the "effect" of such action. In addition, he does not, in his objections, state that principal has in fact been "declared" and has "become due and payable," as provided in the Loan Agreement. Rather, he relies on "wartime events" which "may have led to omission of what were superfluous formalities" to excuse the fact that the

acceleration provisions of the Loan Agreement were never invoked by the bondholders.

The acceleration provision contained in the Monopolies Institute Loan Agreement referred to by claimant provides that in the event of default by the Institute "then in such case, the holders of at least twenty-five per cent (25%) in principal amount of all Stabilization Bonds at the time outstanding may, by notice in writing signed by or on behalf of such holders and delivered to the respective Fiscal Agents, declare the entire principal amount of all the Stabilization Bonds at the time outstanding, due and payable. . . ." Claimant has submitted no evidence to establish that the acceleration provisions in question were ever invoked. Quite to the contrary, information available to the Commission clearly establishes that the provisions were never invoked.

It is of interest to note that there was little or nothing for bondholders of this issue to gain by declaring the principal obligations accelerated since the government of Rumania repeatedly, from 1934 on, pleaded and demonstrated its inability to meet the service on its external debt, let alone the greater amounts represented by the principal obligations thereof. Moreover, the act of declaring the principal of the obligations in question due and payable would have been a rather meaningless gesture toward increasing any remedies which United States national creditors may have had since there was no United States espousal of these simple debt claims and no judicial remedy with respect to the sovereign government of Rumania. Lastly, it is noted that the acceleration provision of the Loan Agreement underlying the issue in question was so drafted as to render it highly unlikely that it would be invoked because of the fact that concerted action by a large percentage of bondholders scattered all over the world was a very remote possibility where there was little or no incentive to take the required action. The conclusion which may be most reasonably drawn from the foregoing is that the vast majority of bondholders of the issue held by claimant felt that their interests would best be served after default in service on obligations held by them by accepting certain compromise payments which were offered rather than by declaring an acceleration of the principal of the debt.

The Commission finds that the provisions of the Loan Agreement regarding acceleration of maturity must be viewed as establishing conditions precedent to acceleration rather than "mere formalities." Moreover, claimant's attempt to justify failure to invoke these provisions on the ground that World War II made it difficult or impossible to take advantage of the provisions must be considered not in point since the bond issue in question has

been in default continuously since February 1934, which is well prior to Rumania's involvement in World War II.

Accordingly, general notice of the Proposed Decision having been given by posting for thirty days, it is ORDERED that such Proposed Decision be and the same is hereby entered as the Final Decision on this claim, the award being restated as follows:

> Seven thousand dollars ($7,000.00) plus interest thereon at the rate of 6% per annum from the respective due dates of the obligations represented by the above award to August 9, 1955, the effective date of Section 303, in the amount of five thousand three hundred sixty-three dollars ($5,363.00).

DISSENTING OPINION:

I find that I am unable to agree in all respects with the findings and conclusions of my colleagues in this case. My particular difference with their conclusions is in the decision to limit claimant's recovery solely to the defaulted interest which accrued between February 1, 1938 and September 15, 1947 and which amounts to $7,000.00 plus interest on the defaulted coupons to August 9, 1955 in the amount of $5,363.00. This award by virtue of the narrow construction accorded Section 303(3), in my opinion, allows something short of that intended by the Congress in extending relief to American nationals under the Act.

There is no argument about the fact that the Government of Rumania defaulted in its obligations to pay interest on the bond issue in question, known as Kingdom of Rumania Monopolies Institute 7% Guaranteed External Sinking Fund, Stabilization and Development Loan 1929, due February 1, 1959. Nor is there any difference of opinion concerning the fact that the Government of Rumania defaulted in certain other contractual obligations under the bond agreement prior to September 1, 1939.

The contractual obligations or covenants which were breached by the obligor government under the bond agreement included failure to choose each year by lottery a certain number of bonds for accelerated payment, failure to contribute to the sinking fund provided for retirement of the issue at maturity, etc. While it is recognized that the bond holder was required under the terms of the agreement to exercise certain positive actions in order to accelerate such payment, it is apparent from the conduct and action of the obligor that prior to September 15, 1947 it exercised certain sovereign powers which altered or changed its covenants under the contract without recourse to the obligee by regulating the value of money or freedom of use of the monies which it agreed to pay. These restrictions were only a few of the many curtailments imposed on holders of securities. On July 11, 1940,

Decree Law No. 2343 ordered conversion of certain types of bearer shares of stock into registered shares and then froze such stock in the hands of the holders. A similar type of restriction was enacted by the law of April 1, 1941 (M.O. No. 78) in which all shares of state monopolies securities were nationalized and exchange limited to conversion restricted to lei. These laws and numerous other regulations obviously restricted use of private property without recourse. It is also evident that prior to and after the war, up to September 15, 1947, there were neither adequate nor proper legal remedies afforded an obligee to protect his interest. The fact that there were political and economic exigencies at the time, in my opinion, is no excuse.

The events which followed the signing of the peace treaty with Rumania on September 15, 1947 and the early flaunting of its obligations thereunder by this former enemy government is some indication of its lack of intention or desire to remedy the default in interest or other defaulted covenants in the bond agreement. In spite of statements to the contrary, all indications point to the fact that other than exercising the meaningless act of acknowledging the obligation to preserve its bargaining position, the Government of Rumania intends to do nothing more. Aside from this speculation and in view of the very limited respect that is granted individual's property rights in Rumania today, there is little likelihood that the remedies provided under the contract could be pursued with any success in this Communist-dominated country. There have occurred certain definite and undenied defaults under the bond agreement. Likewise, it is apparent that prior to the war, and more particularly since the war, there has been a denial of justice or, more specifically, there has been a failure by this particular foreign government to permit proper legal remedies or afford other means of relief which would normally accrue under generally accepted principles of law in any democratic form of government.

Without undue taxing of one's imagination, under the present regime in Rumania, there is little likelihood that the claimant would or could have a proper forum or judicial forum to provide him with a means of redress should he elect to exercise his rights to accelerate the bonds under the contract. In fact, under the present circumstances the resort to such remedy would clearly be futile and indeed might be fatal should the claimant undertake to obtain such relief under local law. Such action coupled with a default or defaults as has been indicated here is, in my opinion, a *de facto* repudiation. Under such conditions, a claim would arise under the international law. *II Hyde, International Law §§ 281–85 (rev. ed. 1951)*.

It is reasonable to assume that where an injured national does not have a fair and impartial opportunity to resort to the legal remedies against the responsible foreign government and exhaust them, there is a denial of justice. *V Hackworth, Digest of International Law, 611, 612* (1943). Until recently the claimant was required to show that he had exhausted his local remedy. The strict compliance with this requirement has been relaxed. The first official departure from the generally accepted rule was occasioned in 1923 in the Mixed Claims Convention with Mexico in which it was provided that no claim should be rejected for failure to exhaust local remedies. *Claims Convention with Mexico, September 8, 1923, 43 Stat. 1730, TS No. 678.*

I cannot bring myself to believe, in light of the Government of Rumania's complete disregard of private rights by its numerous expropriations, nationalizations and confiscatory acts since September 15, 1947, that it has any real or serious intention to honor its contractual or other obligations set forth in this bond issue agreement of 1929. It would seem naive to continue to honor this contract in light of present conditions in Rumania trusting that on the maturity date, February 1, 1959, the default which has continued from 1934 to date will ripen into full and complete satisfaction of all obligations which will then have accrued. It would not seem unreasonable to expect that the events of the past set a clear picture or pattern of what may be anticipated for the future.

The flagrant injustices that exist today in Rumania, evaluated on our concept of justice and equity, clearly indicate that the claimant here has been denied a proper forum within which to remedy the defaults that have taken place.

One good fact is worth a shipload of argument. We may argue that Rumania may honor its obligations on February 1, 1959. The facts as we know them bespeak strongly against such a probability. Should the unexpected come to pass on that date, the Commission could still undertake to adjust equities to obviate a double payment to the bondholder. Until such a condition exists, I believe the claimant is entitled to the benefit of doubt. I would find here that the bonds in question have in fact been repudiated and that they are now due in the face amount with accrued interest to September 15, 1947. To hold to the contrary is wishful thinking and according the claimant something less than he is entitled.

Dated at Washington, D.C.
April 10, 1957.

Dollar bonds of the Governments of Bulgaria, Hungary, and Rumania.—Section 303(3) of the 1949 Act authorized the Commission to receive and determine claims based upon certain obligations which, among other things, became payable prior to September 15, 1947. Accordingly, in the instant case, only the interest which became due prior to September 15, 1947 on bonds known as Kingdom of Rumania Monopolies Institute 7% Loan of 1929, due on February 1, 1959, was found to be within the purview of Section 303(3) of the Act and compensable, and the portion of the claim based upon the principal amount of the bonds and the interest which became due after September 15, 1947, was denied, one of the Commissioners dissenting. The same reasoning was applied with respect to bonds of the Government of Bulgaria (*Claim of Elizabeth R. Tollner,* Claim No. BUL–1036, Dec. No. BUL–1) and of the Government of Hungary, even in cases where the original maturity date of February 1, 1944 of bonds of the 7½% Hungarian State Loan of 1924 was postponed, according to a legend superimposed on the bonds, to August 1, 1979, and portions of claims based upon the principal amount and interest coupons due after September 15, 1947 were denied. (*Claim of Howard P. Stemple,* Claim No. HUNG–20000, Dec. No. HUNG–4, 10 FCSC Semiann. Rep. 29 (Jan.-June 1959).) Interest coupons of public bonds were held to be separate and distinct contracts for the payment of money when due, and not merely incidents of the principal debt to which they were attached. This position was taken in connection with a claim based upon interest coupons of a bond of the 7% Kingdom of Bulgaria Settlement Loan of 1926, where the bond itself had been disposed of by the claimant. (*Claim of Joseph E. Rosatti,* Claim No. BUL–1066, Dec. No. BUL–196.)

Limitations on awards.—Section 307 of the 1949 Act limited any award to the "actual consideration last paid" for the claim "either prior to January 1, 1953, or between that date and the filing of the claim, whichever is less." The purpose of this provision was to prevent the enrichment of speculators who bought bonds and other claims at low prices. (H.R. Rep. No. 624, 84th Cong., 1st Sess. 15 (1955).) Where a claimant had purchased the eight bonds of the 7% Kingdom of Bulgaria Settlement Loan of 1926 and ten bonds of the 7½% Kingdom of Bulgaria Stabilization Loan of 1928, each in the face amount of $1,000.00, for a total of $540.00 on June 29, 1946, the award was limited to such latter amount. (*Claim of Benjamin Blumberg,* Claim No. BUL–1126, Dec. No. BUL–98, 10 FCSC Semiann. Rep. 14–15 (Jan.-June 1959).)

An interesting issue arose when a claimant based a portion of her claim upon five certificates, each evidencing the payment of $5.00 toward the purchase of a Kingdom of Rumania 4% Consolidation Loan of 1922 bond, which would have been issued upon the presentation of such certificates in the total amount of $500.00, such amount being the face amount of the bond. The Commission held that such certificates were obviously not bonds and did not bind the Government of Rumania under any contract until a number sufficient for the issuance of a $500.00 bond had been acquired and presented, and denied this portion of the claim.

(*Claim of Edith Rosalind Marks,* Claim No. RUM–30308, Dec. No. RUM–299, 10 FCSC Semiann. Rep. 110–111 (Jan.-June 1959).)

Currency of the United States.—In order to form the basis of a valid claim under Section 303(3) of the 1949 Act, obligations must have been "expressed in currency of the United States. . . ." Some bonds of the Governments of Bulgaria, Hungary and Rumania were issued in currency other than that of the United States, but with an option under which the holder of the bond could demand payment in such foreign currency or in currency of the United States. In such cases the Commission considered that the option was with the holder of the bond and not with the obligor government to make the bond payable in dollars of the United States of America. The Commission held that the term, "obligations expressed in currency of the United States," as used in Section 303(3) of the Act, includes obligations expressed in alternative currencies, provided one of them is United States currency. Accordingly, pound sterling bonds of the issue known as Kingdom of Rumania 4% Consolidation Loan of 1922, payable in pounds sterling or United States dollars, were held to be within the purview of Section 303(3) of the Act and compensation was granted. (*Claim of Adrian Clyde Fisher,* Claim No. RUM–30031, Dec. No. RUM–16, 10 FCSC Semiann. Rep. 94–95 (Jan.-June 1959).)

A related issue arose in connection with 7% Kingdom of Rumania Monopolies Institute bonds having a superimposed legend by which the medium of payment was changed from currency of the United States to Austrian schillings pursuant to an "Accord" entered into in 1937. The Commission held that such bonds fell into default under the terms of the "Accord," by failure of payment of interest due in July 1939 and thereafter. Moreover, this default constituted a failure of satisfaction which relegated the parties to their original agreement, under which payment of these bonds, and interest thereon, was to be in United States currency, and award was granted accordingly. (*Claim of Laura Raul,* Claim No. RUM–30592, Dec. No. RUM–352 (Final Decision).)

Claims based upon obligations which were not expressed in currency of the United States were found not compensable under Title III of the Act. Accordingly, claims based upon bonds of the Government of Hungary of the 6% issue of 1929, expressed and payable in Swiss francs, and 6% Series B bonds of 100 *korona* denomination, issued November 1, 1914 and payable in Austro-Hungarian currency, were denied. (*Claim of Fred A. Weiss,* Claim No. HUNG–21186, Dec. No. HUNG–29, 10 FCSC Semiann. Rep. 34 (Jan.-June 1959); and *Claim of Vincent I. Varga,* Claim No. HUNG–20264, Dec. No. HUNG–1, 10 FCSC Semiann. Rep. 27 (Jan.-June 1959).)

Other contractual rights.—The term "obligations . . . arising out of contractual or other rights," as used in Section 303(3) of the Act, was not limited to bonds of the Governments of Bulgaria, Hungary and Rumania, but also included other types of government obligations. An indebtedness of the Government of Rumania under a contractual agreement, in United States dollars, was held to be within the purview of Section 303(3) of the Act. (*Claim of Evelina Ball Perkins, et al.,* Claim No. RUM–30192, Dec. No.

RUM–264, 10 FCSC Semiann. Rep. 106–107 (Jan.-June 1959).) The same conclusion was reached in a claim based upon expenses incurred in the course of representing Rumanian citizens in the United States pursuant to the request of the Government of Rumania. (*Claim of Alic J. Lupear*, Claim No. RUM–30476, Dec. No. RUM–794 (Final Decision), 10 FCSC Semiann. Rep. 121, 124 (Jan.-June 1959).)

Interest on awards in bond claims.—For a discussion of the payment of interest on awards, in general, see the annotations to *Claim of George H. Earle III and United States of America*, appearing on page 190. It will be noted from the statement of the award in the *Zentler* claim that interest on bond claims, where the principal amount of the award comprises unpaid interest coupons maturing on various dates, is to be computed from the respective due dates of the obligations represented by the award.

In the Matter of the Claim of

EUROPEAN MORTGAGE SERIES B CORPORATION

Claim No. HUNG–22020
Decision No. HUNG–1605

Against the Government of Hungary

Debt claim against Hungary denied under Section 303(3), Title III of the 1949 Act because it was an obligation of Hungarian enterprises and not one of the Government of Hungary "prior to September 1, 1939," if at all. Section 303(3) provides compensation for a limited class of claims having origin in contract; such claims, if not meeting requirements of Section 303(3) for compensability, are not to be considered under Section 303(1) or (2).

FINAL DECISION

This is a claim by EUROPEAN MORTGAGE SERIES B CORPORATION against the Government of Hungary under Section 303 of the International Claims Settlement Act of 1949, as amended, for $2,151,807.19, based upon certain contractual obligations expressed in certificates known as pfandbriefe, issued by the Hungarian Banks Cooperative Society for the Issuing of Mortgage Bonds, secured by first mortgages on real property in Hungary in favor of the Cooperative Society, and guaranteed by the Cooperative Society and several Hungarian banks which were the Society's members.

The pfandbriefe were issued originally to European Mortgage and Investment Corporation, which pledged them as security for

its own issue of Series B bonds. As a result of a 1935 reorganization of European Mortgage and Investment Corporation, the claimant corporation was organized as its successor in certain respects, taking over the collateral for the Series B bonds and issuing its own income bonds to Series B bondholders.

Claimant alleges loss as a result of: (1) actions of the Hungarian Government reducing, suspending, and terminating payments of interest and principal on the pfandbriefe and the underlying mortgages; (2) nationalization of the guaranteeing banks and the mortgages, and consequent assumption of the obligations by the Hungarian Government; (3) seizure of the mortgaged properties; (4) other decrees having adverse effect on claimant's interest in pledged properties; and (5) war damage to pledged properties.

Section 303 of the Act provides, *inter alia,* for the receipt and determination of claims of nationals of the United States against the Government of Hungary, for its failure: (1) to restore or pay compensation for property of nationals of the United States as required by articles 26 and 27 of the treaty of peace with Hungary; (2) to pay effective compensation for the nationalization or other taking of property of nationals of the United States in Hungary; and (3) to meet obligations expressed in currency of the United States arising out of contractual or other rights acquired by nationals of the United States prior to September 1, 1939, and becoming payable prior to September 15, 1947.

In a Proposed Decision issued on November 10, 1958, the claim was found to be not compensable under Section 303 of the Act for the reasons that: (1) it had not been established that the claimant had suffered a loss for which the Government of Hungary was required to make restoration or pay compensation under the referenced articles of the treaty of peace; (2) as a debt claim arising out of contract, this claim is one which the Congress intended be entertained only under Section 303(3) and not under Section 303(2) of the Act; and (3) the obligation was not one of the Government of Hungary on September 1, 1939, as required for compensation under Section 303(3).

Claimant filed objections to the Proposed Decision, and the matter was heard on January 21, 1959, together with other claims of a similar nature, in which objections to Proposed Decisions were filed. Having carefully considered all briefs and oral arguments presented to it, the Commission finds its position in the matter unaltered.

The requirements of Section 303(1) and Section 303(3) for compensation thereunder remain unsatisfied. The principal argument, however, of those opposing the Proposed Decisions was for

entitlement to compensation under Section 303(2) of the Act, on the theory that the nationalization of a debtor is a taking of the property of the creditor; or, at least, that this is so when the nationalization involves a taking of property of the debtor which was pledged as security for the debt. However, the Commission remains of the opinion stated in the Proposed Decision, that the enactment of Section 303(3) manifests the intention of Congress to compensate for a limited class of claims having their origin in contract, that such claims are compensable under that Section or nowhere in the Act, and that where such a claim fails under Section 303(3), the carefully worded limitations of that Section are not to be nullified by entertainment of the claim under other, less restrictive, provisions of the statute. Moreover, consideration of the claim under (1) or (2) of Section 303, notwithstanding this Congressional intention, would not achieve the result desired by claimant, as will be seen.

Title III of the International Claims Settlement Act of 1949, as amended, under which the instant claim is filed, defines "property":

Sec. 301(9) "Property" means any property, right, or interest.

The title then goes on to provide at section 303(1), (2) and (3), at section 304 and at section 305(a)(1) and (2) for six categories of claims which, among others, may arise from injuries to or losses of American property. The word "property" appears in three of them.

The question of compensability under (2) of section 303 requires a determination of the meaning of the immediately pertinent language in the light of its relationship to other language of the section, and in the light of the legislative history and background.

The immediately pertinent part of the language is as follows:

> Sec. 303. The Commission shall—determine in accordance with applicable substantive law, including international law, the validity—of claims of nationals of the United States against the Government of—Hungary arising out of the failure to—
>
> (2) pay effective compensation for the nationalization, compulsory liquidation or other taking—of property of nationals of the United States in—Hungary—.

This is not equivalent to saying that every interference with American property shall be the subject of compensation. The property must have been in Hungary and the claim must be one which is valid when determined in accordance with applicable substantive law, including international law.

There are a number of indications that the Congress did not intend an extension of the coverages of section 303 beyond its clear import.

One of them is the special reference to the words "international law" to be found at page 13 of the Report of the Committee on Foreign Affairs (House Report No. 624, 84th Congress, 1st Session). It is there stated:

> Significance of phrase "including international law"—In connection with all categories of claims (referred to in secs. 303, 304 and 305), the Commission is authorized and directed to determine the claims "in accordance with applicable substantive law, including international law." The inclusion of "international law" would permit the application of several principles of law which might not otherwise be available to the Commission.

Thereafter follow two examples, both of them exclusionary.

Another indication of this intention on the part of Congress is found in expressions of awareness of the very limited amount of the funds available for payment of claims. That Congress was acutely cognizant of the meagerness of the funds is clearly pointed out in the Committee reports. The fact is referred to no less than six times in the House Report (*supra*) and three times in the Senate Report (Report No. 1050, Committee on Foreign Relations, 84th Congress, 1st Session). In a number of instances the reports give this as a reason against extending the legislative coverage of claims.

For example, in opposition to one specific proposal to extend the coverages the Senate Committee Report (page 10) states:

> To include the non-national in origin group would only dilute the funds still further, and increase the injustice to American owners.

Again in the "Conclusions" (page 12) the report states:

> Admittedly, the bill, as it is reported to the Senate, does not embrace all categories of claimants who may feel that they should be allowed to participate in the funds. It must be emphasized, however, that these funds are limited, and that to the extent that additional, less deserving classes are admitted, those funds will be further diluted, to the prejudice of individuals who were American citizens at the time they were injured in their property rights. The Committee's primary concern has been to do the greatest possible equity while at the same time following a course which is believed to be in the best interests of the United States in maintaining a sound claims policy.

Developments to date have borne out Congressional expectation regarding the inadequacy of the funds. It now appears that in

the Hungarian program, little, if any, more than the initial payments provided by statute will be possible. The situation with regard to the Rumanian claims is but a little better; and even in the case of Bulgaria only fractional final payments will be possible.

The Treaty of Peace with Hungary became effective September 15, 1947. The treaty provided for the payment of war damage claims by Hungary. Her failure to make payment brought about the vesting of her assets in the United States and application of the proceeds to the war damage claims (303(1)) plus those others designated in this statute. The Fund in this instance would be inadequate for the payment of the war damage claims and it is further diminished by the participation of every added class.

At page 3 of the House Committee Report the following appears:

> The treaty of peace with each of the three countries provides that the United States can seize and liquidate property in the United States belonging to such country or its nationals and apply the proceeds for "such purposes as it may desire, within the limits of its claims and those of its nationals * * *" against such country.
>
> The peace treaties specifically require that war claims are to be taken care of by each of the three former enemy countries. None of the three countries has complied with its treaty agreement in this respect. In addition, each has seized property of United States nationals and has made no compensation. Consequently, the bill provides for the liquidation of the blocked assets to be vested and those already vested under the Trading With the Enemy Act, and the distribution of the proceeds among United States nationals having *prewar contract claims, war damage claims,* and *nationalization* or other *expropriation claims* * * * *. (Emphasis supplied).

This legislative history and background indicates a conservative approach in the effort to understand the meaning of the statutory language employed by the Congress and warns against any hurried recognition of claims in categories clouded by ambiguities or uncertainties.

The actual intent of the Congress in this matter becomes clearly apparent from a consideration of the language of and reasons for the presence in the statute of 303(3). This language immediately follows in the same sentence the above-quoted portions of section 303. It, together with the portions of the opening phrases of the section necessary to understanding, is as follows:

> The Commission shall—determine in accordance with applicable substantive law, including international law, the validity and amount of claims of nationals of the United States against the Government of—Hungary—arising out of the failure to—

(1)—
(2)—
(3)—meet obligations expressed in currency of the United States arising out of contractual or other rights acquired by nationals of the United States prior to—September 1, 1939, in the case of Hungary—and which became payable prior to September 15, 1947.

Claims in the category to which the instant claim belongs are primarily creditor claims. Likewise a claim against the Government of Hungary based on failure to meet obligations expressed in currency of the United States, and arising out of contractual or other rights acquired by a national of the United States prior to September 1, 1939 and payable prior to September 15, 1947, is a creditor claim. Nevertheless, it is obvious that if creditor claims are to be entertained under 303(2) then 303(3) has no purpose in the statute, for the claimant eligible under 303(3) could have his claim allowed in full if he filed under section 303(2) and free of the limitations of 303(3) to amounts payable prior to September 15, 1947.

In the interpretation of the law in this respect, there must be borne in mind a maxim of statutory construction which has been expressed as follows:

> The presumption is that the lawmaker has a definite purpose in every enactment and has adopted and formulated the subsidiary provisions in harmony with that purpose; that these are needful to accomplish it; and that, if that is the intended effect, they will, at least, conduce to effectuate it. That purpose is an implied limitation on the sense of general terms, and a touchstone for the expansion of narrower terms. . . . Thus Chancellor Kent observed: "In the exposition of a statute the intention of the lawmaker will prevail over the literal sense of the terms; and its reason and intention will prevail over the strict letter. When the words are not explicit, the intention is to be collected from the context; from the occasion and necessity of the law; from the mischief felt and the remedy in view; and the intention should be taken or presumed according to what is consistent with reason and good discretion.[1]

Should the presence of (3) in 303 be interpreted as excluding only the class of creditor claims there defined from a coverage which otherwise would be enjoyed under 303(2), we reach a result which is equally startling for it would mean that claims of creditors of the offending government itself, although recognized, would nevertheless be recognized only in a limited status inferior to that of creditors of its mere nationals.

The only conclusion completely consistent with the legislative history and background and with the presence in the statute of

[1] *2 Sutherland, Statutory Construction 338* (3rd ed., Horack, 1943).

(3) of section 303 is one which leads to a denial of the claim, i.e., that claims presenting such a set of facts as this are not, without more, to be found compensable under (2) of section 303.

The question remains as to whether such a result is consistent with the language of (2) of section 303.

It has been pointed out above that the claim must be one which is valid when determined in accordance with applicable international law. That is a requirement of section 303. It has also been pointed out that special emphasis was given to this provision in the Senate Committee Report.

It has not been demonstrated to the Commission, and the Commission's own research has not established, that international law requires a payment of compensation to a creditor when the debtor or the debtor's property has been nationalized or otherwise taken. Quite to the contrary, the weight of authority is to the effect that such losses as a creditor may suffer as a result of a wrongful act committed against his debtor are too remote or indirect to sustain an award to the creditor.

Hackworth, in discussing claims such as the foregoing, states as follows:

> The British-Mexican Claims Commission disallowed a claim of bondholders of a corporation which held a mortgage on Mexican property damaged by acts of insurgents. The Commission said:
>
> > . . . It was not explained just how the debenture holders had suffered that damage; but assuming that this fact had been proved, such damage would be too indirect for the Commission to venture to hold Mexico responsible for it. Independently of this consideration, the Commission agrees with Ralston, The Law and Procedure of International Tribunals, paragraph 287:—
> >
> > > Creditors and Mortgagees as Parties.—The question as to whether creditors of a person suffering injury have a right to claim before a commission, came several times before the Spanish-American Commission, and it was repeatedly decided that they had no footing because of wrongs committed toward their debtor. This was the holding in the Mora and Arango, Benner and Rodriguez cases, it also being the holding in the last case that "the embargo of an estate which was mortgaged to the claimant, but of which he had neither the legal title nor possession, afforded no ground for a claim of damages."
>
> And with Borchard, Diplomatic Protection of Citizens Abroad, p. 645, paragraph 297:—

> . . . Mortgagees are secured creditors in a special sense. A mortgage is in form a conveyance vesting in the mortgagee upon its execution a conditional estate, which becomes absolute upon breach of the condition. The Department of State in the exercise of its discretion has on several occasions exercised good offices on behalf of the equitable interest of American mortgagees of foreign-owned property. This has been particularly true of American bondholder-mortgagees of foreign railroads.
>
> International Commissions by weight of authority have shown a disinclination to allow American mortgagees to appear as claimants for damages arising out of injuries to the property of their debtor mortgagors. This conclusion may be defended on the ground that the mortgagee is too indirectly affected by such injuries to authorize his appearance as a claimant.[2]

Similarly, the majority of the General Claims Commission, United States and Mexico, in disallowing the claim of a United States national for nonpayment for equipment furnished to a Mexican railroad corporation which had been taken over and operated by the Mexican Government, concluded:

> I. A State does not incur international responsibility from the fact that a subject of the claimant State suffers damage as a corollary or result of an injury which the defendant State has inflicted upon one of its own nationals or upon an individual of a nationality other than that of the claimant country, with whom the claimant is united by ties of relationship.
>
> II. A State does not incur international responsibility from the fact that an individual or company of the nationality of another State suffers a pecuniary injury as the corollary or result of an injury which the defendant State has inflicted upon an individual or company irrespective of nationality when the relations between the former and the latter are of a contractual nature.[3]

The application of the rule of proximate cause to claims of this nature was discussed by The Mixed Claims Commission (United States and Germany), established under the agreement of August 10, 1922, in its Administrative Decision II. They concluded that "The simple test to be applied in all cases is: has an Ameri-

---

[2] V. Hackworth, Digest of International Law 848. Mention in this quotation of the Rodriguez case has reference to the claim of *Anna M. Rodriguez, Executrix of the Estate of Mateo C. Rodriguez*, which was presented by the United States to the Spanish-United States Claims Commission, established in accordance with the agreement of February 11–12, 1871. Claimant there, a United States national, held a mortgage on an estate in Cuba which was seized and burned wrongfully by Spanish authorities. The claim was disallowed, as indicated.

[3] *V. Hackworth, Digest of International Law 808.*

can national proven a loss suffered by him, susceptible of being measured with reasonable exactness by pecuniary standards, and is that loss attributable to Germany's act as a proximate cause?" A claimant's burden of establishing that he would not have suffered loss had it not been for the wrongful act complained of was made clear in the Commission's order of May 7, 1925, which included among rules applicable to debts, bank deposits, and bonds, the following:

> 15. Whether an exceptional war measure was the proximate cause of the damage will depend on the facts in each particular case. In considering these facts, the following principles will be observed:
> (a) ....
> (b) The exceptional war measure will be established as the proximate cause of the damage sustained on account of the depreciation in the value of such bonds that may be proven by the evidence in any particular case, if it appears that from all the facts and circumstances in such case the reasonable inference to be drawn therefrom is that the claimant would have withdrawn his bonds from Germany for the purpose of sale or exchange, had he not been prevented from doing so by such exceptional war measures.[4]

Application of a similar rule to the instant case places upon the claimant a burden of establishing, if compensation is to be had under Section 303(2) of the Act, that the debt forming the basis of its claim would have been paid, *but for* the actions of the Government of Hungary of which it complains. This has not been established and does not appear susceptible of establishment in view of the events commencing in 1931 which adversely affected claimant's rights.

Also for consideration herein is the 1945 Annual Report of the Foreign Bondholders Protective Council, which, at page 6, quotes from the October 20, 1933 White House announcement concerning the organization of the Council, as follows:

> The White House announcement to the press on October 20, 1933, stated that the making of satisfactory arrangements and protecting American interests was "a task primarily for private initiative and interests. The traditional policy of the American Government has been that such loan and investment transactions were primarily private actions, to be handled by the parties directly concerned. The Government realizes a duty, within the proper limits of international law and international amity, to defend American interests abroad. However, it would not be wise for the Government to

[4] *Id.* at 498–499.

undertake directly the settlement of private debt situations."

This language is quoted with approval in the Senate Committee Report, *supra*, at the bottom of page 11.

It is also to be noted that (2) of section 303 requires that the property which is the subject of the claim have been in Hungary. Credits, bonds, notes, mortgages and the like are intangible property which for many purposes is given the situs, not of the debtor or of any property encumbered to secure the debt, but more commonly that of the owner. (See 15 C.J.S. 928, 84 C.J.S. 656, and cases thereat cited.)

It is clear that no American who has a claim against Hungary, Rumania, or Bulgaria, has an effective remedy against those countries and it is equally clear that Section 303 does not purport to include all types of claims which claimants might reasonably expect to be chargeable against those countries.

Accordingly, it is not a sufficient basis for an award under Section 303 for the Commission to find merely that the claimant appears to have no remedy elsewhere. What the Congress, mindful of the impracticability of any but limited coverages, appears to have undertaken to do here is to set up a classification, each section of which is self-contained and exclusive. Again and again in the Committee reports and earlier history of the legislation, the three types of claims included in the three divisions of section 303 are described as war damage claims, postwar nationalization claims, and prewar governmental debt claims. There is no reason to suppose that any overlapping or blurring of distinctions was anticipated. Debt claims not in the prewar governmental category are nowhere mentioned, and there can be little reason to believe that they could have been expected to crop up in the guise of war damage or postwar nationalization claims free of the severe limitations imposed by (3) of section 303.

There is still another statutory provision which is inconsistent with any Congressional purpose to throw open the gate for creditor claims under (2) of section 303. Section 208 of Title II specifically authorizes recovery on a limited class of creditor claims, being claims against those debtors whose property has come under the jurisdiction of the Office of Alien Property. If such claims were also to be considered under (2) of section 303 it would give rise to the possibility of double benefits, a result which Congress could scarcely have intended.

The Commission has carefully considered the contentions of the claimant that its mortgage bonds qualify under the provisions of (1) of 303. The pertinent parts of the opening language of 303 and of (1) are as follows:

The Commission shall determine in accordance with applicable substantive law, including international law, the validity—of claims of nationals of the United States against the Government of Hungary—arising out of the failure to—(1) restore or pay compensation for property of nationals of the United States as required by—articles 26 and 27 of the treaty of peace with Hungary—.

The claimant relies on the following language of article 26:

1. Insofar as Hungary has not already done so, Hungary shall restore all legal rights and interests in Hungary of the United Nations and their nationals as they existed on September 1, 1939, and shall return all property in Hungary of the United Nations and their nationals as it now exists.

It is obvious that if claimant's contention be regarded as valid on this point it would apply with equal force in the case of defaulted obligations of the Government of Hungary and reach a result which Congress could scarcely have contemplated. Otherwise it would not have added (3) of 303. The language of (1) of 303 is not to be interpreted as so far reaching.

In any event, a plea for restoration under article 26 of the treaty of claimant's legal rights as they existed on September 1, 1939, is without substance, since there has been no showing of a diminution of such rights since that date. Moreover, while articles 26 and 27 of the treaty of peace are referenced in (1) of Section 303, article 31 of the treaty is not so referenced, and provides:

1. The existence of the state of war shall not, in itself, be regarded as affecting the obligation to pay pecuniary debts arising out of obligations and contracts which existed, and rights which were acquired, before the existence of the state of war, which became payable prior to the coming into force of the present treaty [September 15, 1947], and which are due by the Government or nationals of Hungary to the Government or nationals of one of the Allied and Associated Powers or are due by the Government or nationals of one of the Allied and Associated Powers to the Government or nationals of Hungary.

Failure to reference the above-quoted article in (1) of Section 303 can only indicate Congressional intention to include creditor claims not within that provision of the statute, but only within Section 303(3), which uses similar provisions to delineate the type of claim envisioned.

As to (3) of Section 303, nothing has been brought to the attention of the Commission to effect any modification of its consistent holding that compensation thereunder in a claim against Hungary depends, among other things, upon the obligation having been one of the Government of Hungary on September 1, 1939

and continuously thereafter. In the instant case, the obligation was not one of the Government of Hungary on that date, if, indeed, it ever became so.

The Commission is of the opinion that the instant claim must be denied. It is not intended to find that a creditor claimant could under no circumstances show himself entitled to recover, particularly under a statute with different background, history and language,[1] or that this particular claimant does not have a legitimate claim against the Government of Hungary. All that is found is that on such a set of facts as that presented here a claim does not come within the coverage of Section 303.

The Proposed Decision herein is affirmed and the claim denied.

Dated at Washington, D.C.
April 13, 1959.

DISSENTING OPINION:

I cannot agree with the majority decision of the Commission which would deny a claim based on a secured creditor interest in a property nationalized by the Government of Hungary.

I find nothing either in the Act or in the Congressional mandate to this Commission which permits a distinction between the holder of title to and the holder of a mortgage on realty nationalized by the Government of Hungary. Both suffered measurable loss through nationalization of their property without compensation, and it is difficult to imagine that it was the intent of Congress to provide for compensation in the one instance while not providing for it in the other. My reading of the legislative history of the statute authorizing the receipt and determination of claims against the Governments of Bulgaria, Hungary and Rumania discloses nothing which indicates that mortgagee interests do not fall within the ambit of subsection (2) of Section 303 of the Act.

It is an anachronism, in my opinion, to deny the instant claim on the basis of so-called traditional reluctance of international tribunals to look with favor upon claims based on secured creditor interests. Such decisions have always been founded on the theory that any losses sustained by the creditor were too remote, or indirect, and were not the proximate result of the wrongful act forming the basis of the claim. There is nothing remote or indirect, in my opinion, about the loss sustained by a mortgagee when the property securing his mortgage was nationalized under conditions which have prevailed in Hungary since

[1] For example, in Decision No. 1130, *In the Matter of the Claim of Emma Brunner*, Docket No. 1281, this Commission found claims of mortgage holders compensable because "the mortgagee has a right and interest in and with respect to property as that term is employed in the agreement of July 19, 1948," claims under Title I of the Act being determined in accordance with the Yugoslav Claims Agreement of 1948.

1946. Moreover, the total lack of due process in the nationalization program of the present government of Hungary demands, it seems to me, that the precedents cited by the majority of the Commission be distinguished from the situation herein, for the decisions cited were rendered in an atmosphere which assumed the existence of all of the rights and remedies which nations have customarily afforded.

The need for International Law to keep abreast by constant examination of its assumptions was well expressed by Frederick Sherwood Dunn in "The Protection of Nationals," as follows:

> . . . By bringing its basic assumptions into the light and testing out alternative possibilities, our physical science has freed itself from the prepossessions remaining from a narrower world of experience and has made remarkable strides forward within the space of a few years.
>
> It seems that our body of knowledge about international law and relations has now reached a similar stage in its development, where its underlying assumptions and the methods of inquiry used are no longer adequate to their task. Since the present ways of thinking about the subject became established, the range of our experience has widened in a spectacular manner and our knowledge of the world in which our international institutions operate has greatly increased. The practical problems we now face are radically different from those which forged the original postulates of our systematic thinking on the subject.[1]

Similarly, in domestic law, Judge Lehman used these words with reference to the tangled problems which survived the Russian revolution. "There can be no true precedent in the books, when the facts are unprecedented." *Russian Reinsurance Co. v. Stoddard, 240 N.Y. 149, 147 N.E. 703, 707* (1925). He called attention to the need of limiting the force of juridical conceptions at the boundary of common sense and justice.

Lastly, I find the position of the majority of the Commission difficult to reconcile with the position taken by its predecessor Commission under Title I of the Act where claims by holders of mortgages on properties nationalized by Yugoslavia were held to be compensable despite the fact that that Commission held "that creditors' interests were not settled or discharged by the Yugoslav Claims Agreement of 1948." [2] I have looked into the question of whether or not the law of Hungary may be relied on to distinguish the position of the majority of the Commission herein from the position taken under Title I and find it to be identical with that of Yugoslavia with respect to the character of the interest created by a mortgage against realty.

[1] At page 7.
[2] *Claim of Joseph Menton, et al.*, Docket No. 435, Dec. No. Y-39.

For the foregoing reasons, I dissent from the opinion of the majority of the Commission herein.

Dated at Washington, D.C.
April 13, 1959.

Creditor claims against Bulgaria, Hungary, and Rumania distinguished from nationalization claims.—Claims of unsecured creditors were denied by the Commission under the Yugoslav Claims Agreement of 1948, except for claims made for loss of bank deposits which were confiscated or otherwise "taken" by the Government of Yugoslavia. These were found to be within the purview of the Agreement and compensable under its terms. (See the *Claim of Anton Tabar, et al.* and annotations appearing on page 130.) On the other hand, creditors whose loans were secured by property which was nationalized or otherwise taken by the Government of Yugoslavia, were found by the Commission to have rights "in and with respect to property" within the purview of the Yugoslav Claims Agreement of 1948. (See the *Claim of Manfred Sternberg* and annotations appearing on page 62.)

In claims against Bulgaria, Hungary, and Rumania under Title III of the International Claims Settlement Act of 1949, as amended, the wording of the Act compelled the Commission to take the position that Congress intended debt claims arising out of contract to be entertained only under Subsection (3) of Section 303 of the Act and not under Subsection (1) or (2) of that Section. In the language of the Commission as used in the instant case: "The enactment of Section 303(3) manifests the intention of Congress to compensate for a limited class of claims having their origin in contract, that such claims are compensable under that Section are not to be nullified by entertainment of the claim fails under Section 303(3), the carefully worded limitations of that Section are not to be mullified by entertainment of the claim under other, less restrictive, provisions of the statute." Limiting the purview of Section 303 of the Act with respect to creditor claims to those which were specified in Section 303(3), namely to government obligations (principally bonds) expressed in United States dollars, necessarily resulted in the denial of claims based upon loans due from others than the three governments, even if the security ensuring repayment was "taken" by Bulgaria, Hungary, or Rumania.

The Commission made it clear that Section 303 of the Act does not purport to compensate United States nationals for every kind of loss or damage suffered by them as a result of action by the Government of Bulgaria, Hungary, or Rumania. It held that it is not sufficient to establish the fact of loss due to an act or failure to act by a government, in order to bring a claim within the purview of the Act. To the contrary, the facts of a claim must fall within the specific language of one of the subsections of Section 303, in order to make it compensable.

Several claimants argued that a debt can be nationalized or taken and in such case would come within the purview of Section 303(2) of the Act, providing for compensation for property lost due to nationalization or other taking by Bulgaria, Hungary, or Rumania. In meeting such contention, the Commission held that it can hardly be said that there is an obligation to *pay compensation* for the alleged "taking" of claimant's debt. Rather, a case might be made for the imposition of a duty on the Government of Rumania, both on a legal and a moral plane, to *pay the debts,* clearly a duty which differs from the alleged obligation to *pay compensation* for the "taking" of debts. (*Claim of Universal Oil Products Company,* Claim No. RUM–30531, Dec. No. RUM–547, 10 FCSC Semiann. Rep. 117 (Jan.-June 1959).)

In sum, claims based upon a creditor's interest were denied unless the debtor was the Government of Bulgaria, Hungary, or Rumania, the debt was expressed in United States dollars, and the other conditions for compensability of the claim under Section 303(3) were present. (See *Claim of Arthur Zentler,* appearing at page 245.)

Bonds and debts of municipalities.—A claim based upon bonds issued by the Capital City of Budapest, known as 7½% Hungarian Consolidated Municipal Loan of July 1, 1925, 7% Hungarian Consolidated Municipal Loan of September 1, 1926, and 6% Municipality of the City of Budapest External Sinking Fund Gold Loan of June 1, 1927, was denied for the reason that such loans were not obligations of the Government of Hungary within the purview of Section 303(3) of the Act. (*Claim of Walter W. Winget,* Claim No. HUNG–20122, Dec. No. HUNG–50, 10 FCSC Semiann. Rep. 30 (Jan.-June 1959).) This ruling accorded with the Commission's Panel Opinion No. 31 of July 25, 1956, the pertinent part of which follows:

> The essential part of [Section 303(3)] as it relates to the question provides for the determination of claims *against the Governments of Bulgaria, Hungary, and Rumania,* arising out of the *failure to meet obligations* expressed in dollars arising out of contractual or other rights acquired prior to certain dates and which became payable prior to September 15, 1947.
>
> It has been concluded in a previous issue that under Section 303(3) of the Act only those dollar bond claims and interest coupon claims which became payable prior to September 15, 1947 are deemed compensable.
>
> The question distinguishes between dollar bonds issued by the Governments of Bulgaria, Hungary and Rumania and the dollar bonds issued by the political subidivisions of such governments. The issue then poses the question of whether bonds of political subdivisions can be considered contractual obligations of the three governments.
>
> The term "political subdivision" has been defined as a true government subdivision such as a county, township, etc. (*Commissioner of Internal Revenue* v. *Shamberg's Estate,* 144 F. 2d 998, 1004 (2d Cir. 1944)) and as such,

is capable of conducting its own affairs separately and independently from each other or from the national state. Obviously a political subdivision may issue bonds as a function within its own right in financing public works projects, utilities, improvements, etc. The credit of such subdivisions is pledged in the issuance of such bonds.

What, then, was contemplated by the Congress, concerning the contractual obligations or dollar bond claims, in the enactment of Section 303(3) as it relates to the instant issue? The Act provides that the Commission determine claims against the *Governments* of Bulgaria, Hungary and Rumania. The primary purpose in the interpretation or construction of the words of a statute, of course, is the accomplishment of the legislative intent. (*Vermilya-Brown Co., Inc.* v. *Connell,* 335 U.S. 377 (1948).)

The legislative history of the Act suggests that the term "against the Governments of Bulgaria, Hungary, and Rumania, or any of them, arising out of the failure to * * * meet obligations * * *" are claims against the three governments. The Senate Committee on Foreign Relations in reporting on the amendments to the Act in its discussion of H.R. 6382, stated, with respect to Section 303(3), the following:

> The purpose of the present bill is to establish a claims program for the benefit of American nationals * * * for * * * prewar governmental debt (bond) claims, against the Governments of Bulgaria, Hungary, and Rumania, * * *. (S. Rep. No. 1050, 84th Cong., 1st Sess. 1 (1955).)
>
> Prewar government debt claims contemplate those claims based upon the failure of any of these governments to meet their bond obligations or other debts. (*Id.* at 5.) Claims dealt with in Section 303(3) of the bill relate to contractual obligations, principally rights in bonds, *issued by the Governments of Bulgaria, Hungary, and Rumania.*

Other congressional reports and debates pertaining to Section 303(3) further substantiate the interpretation of this section as claims dealing in bonds issued by the three governments or other contractual obligations of such governments. The legislative history is void of any reference to the contractual obligations of the political subdivisions of the three governments.

It is known, however, that the Municipality of the City of Budapest concluded a loan with a group of New York banks headed by the Bankers Trust Company, in order to satisfy pending liabilities and for the purpose of financing public works. This loan commonly referred to as the "6% Municipality of the City of Budapest gold dollar loan of 1927," was in the amount of $20,000,000 of which $10,750,000 was placed in the United States, $3,500,000 in the Netherlands, and $5,750,000 in Great

Britain. The maturity date is June 1, 1962. (COMPASS 1943, Hungary, 150.)

However, this bond issue has never been considered a government bond. These bonds were issued on the credit of the Municipality of the City of Budapest and the purchasers of such bonds did so with the knowledge of this fact. It is a well established fact that a political subdivision cannot pledge the credit of its national government since they are distinct and separate entities.

Bonds and obligations of private enterprises.—The Guaranty Trust Company of New York filed a claim as trustee or paying agent on behalf of unidentified bondholders for various bond issues: Farmers National Mortgage Institute 7% Hungarian Land Mortgage Bonds of 1928; Hungarian Land Mortgage Institute 7½% Land Mortgage Bonds of 1926 (Series A and Series B); Hungarian Central Mutual Credit Institute 7% Land Mortgage Bonds of 1927 (Series A); National Hungarian Industrial Mortgage Institute, Ltd., First Mortgage 7% Bonds of 1928 (Series A). The claim, based upon bonds of private banking institutions, was found to be not compensable under Section 303(3) of the Act inasmuch as it involved no obligations for which the Government of Hungary was responsible. The Commission found that in some of the various mortgage bond issuing institutions the Hungarian Government provided a portion of the capital, and in some instances one or more managing officials were appointed by the national government, but in every instance the institution was organized as a separate legal entity. No facts or circumstances were found by the Commission to support a conclusion that the Government of Hungary incurred obligations with respect to the bond contracts such as to give rise to a compensable claim under Section 303(3) of the Act. (*Claim of Guaranty Trust Company of New York,* Claim Nos. HUNG–21309 through HUNG–21312, Dec. No. HUNG–714, 10 FCSC Semiann. Rep. 46 (Jan.-June 1959).) For the same reason, a claim based upon bonds issued by the Hungarian-Italian Bank, Ltd., was denied. (*Claim of Margaret Farrell Wotton,* Claim No. HUNG–21540, Dec. No. HUNG–347, 10 FCSC Semiann. Rep. 36 (Jan.-June 1959).) Even where the corporate bond was a mortgage bond, and repayment of the loan was secured by property of the corporation, as in the case of the 7% bonds of the Rima Steel Corporation due on February 1, 1955, the claim was denied. The Commission held that the additional element of governmental taking of the mortgaged property was certainly against the interest of the bondholders, since it left them unable to proceed against the security for the debt, but this did not alter the nature of the claim. It remained a type of claim which could be found compensable only under Subsection (3) of Section 303 of the Act, if at all, and the specific requirements of that section were not fulfilled. (*Claim of Pauline V. Brower,* Claim No. HUNG–20190, Dec. No. HUNG–1438.)

Attorney's lien.—Another claimant had been attorney for the plaintiff, the American Union Bank, in securing a judgment in the Supreme Court of New York, New York County, against the

defendant Banca Marmorosch Blank & Co., S.A., and assertedly was entitled to one-half of any sums collected under the judgment. He contended that the nationalization of the judgment-debtor, the Banca Marmorosch Blank & Co., S.A., constituted a taking of his property within the purview of Section 303(2) of the Act, and also that since under the nationalization statutes the Government of Rumania assumed the obligations of nationalized enterprises, the judgment became its obligation within the meaning of Section 303(3) of the Act. The Commission held that an attorney's lien does not constitute a property interest in the judgment-debtor's property, nor does the lien itself extend to such property. Such right is one of priority only in the sums realized from the execution of the judgment; it does not include a right to maintain an action on his own behalf against the debtor as an assignee of the judgment. (Restatement of Agency, Sec. 464, p. 1093; 5 Am. Jur., Attorneys at Law § 248, 410.) Under the conceded facts, the judgment-debtor no longer possessed available assets, because they had passed into the ownership of the State of Rumania or its agencies. Certainly they did not thereby become the property of the claimant. The Commission further held that the claim was not compensable under Section 303(2) of the Act, because even had the Government of Rumania assumed the obligation of the judgment, it was one which was due to the judgment-creditor, and not to the claimant, the attorney for the judgment-creditor. (*Claim of Charles Chester Pearce,* Claim No. RUM–30404, Dec. No. RUM–493, 10 FCSC Semiann. Rep. 115–117 (Jan.-June 1959).)

Loss of earnings and license to do business.—A related issue was presented in a claim based upon loss of earnings caused by Rumanian statutes rendering citizens of the United States ineligible for employment in Rumania. The Commission held that deprivation of the ability to earn wages does not involve the loss of or damage to property belonging to claimant. Such claim is not within the purview of either Section 303(1) or Section 303(2) of the Act, both of which require, as a prerequisite to an award, that there have been loss of or damage to property belonging to claimant or a predecessor in interest. Similarly, the claim does not fall within Section 303(3) of the Act since it is not based on a contractual or other obligation of the Government of Rumania which is expressed in currency of the United States. (*Claim of Anna Ide,* Claim No. RUM–30441, Dec. No. RUM–375, 10 FCSC Semiann. Rep. 113–114 (Jan.-June 1959).)

This ruling was followed even in a case when there was some indication that claimant's deprivation of the license to conduct business was due to discriminatory pressure. The Commission held that losses sustained as a result of a prohibition against continuing business and the cost of preparation of claims are not compensable under Title III of the Act. (*Claim of Jacob J. Roder,* Claim No. RUM–30337, Dec. No. RUM–801, 10 FCSC Semiann. Rep. 124 (Jan.-June 1959).) The reasons for such ruling were more explicitly stated in another case involving a license to operate a moving picture theater. The Commission held that it is universally recognized that the granting of a license to do business is a matter "essentially of Municipal, as distinguished from

International Law." (II Oppenheim, International Law 319 (7th ed. 1952).) Thus, a state may, as a general rule, grant, revoke, or deny a license without violating international law. Where, however, the action is coupled with a denial of justice, such as discriminations against aliens, it ripens into a claim recognized under international law. (Borchard, The Diplomatic Protection of Citizens Abroad 291, 334 (1928).) The Commission found that there had been no showing that the revocation of claimant's license, if such occurred, was coupled with a denial of justice so as to give rise to a claim under international law. Similarly, the fact that the Government of Hungary may have interfered with the contracts to which claimant was a party did not constitute a taking of claimant's property. In this respect, the Commission's decision contained the following quotation:

> . . . the notion that the prevention of the fulfillment of a contract is a taking of property, goes beyond the existing limits of the law and opens up an unbounded and unexplored range of State responsibility. Even the constitutional law of the United States, with its meticulous conceptions of "due process of law" has not gone that far. (Feller, The Mexican Claims Commission 124 (1935).)

Accordingly, the portions of the claim based upon contracts to show claimant's movie film in Hungary, and for consequential losses assertedly resulting from the fact that claimant could no longer continue its business in Hungary after the nationalization of the motion picture industry, were denied. (*Claim of Motion Picture Export Association of America, Inc.*, Claim No. HUNG–21133, Dec. No. HUNG–1652, 10 FCSC Semiann. Rep. 62–63 (Jan.-June 1959).)

Pensions.—Claimant stated that as a retired employee of the British-Hungarian Bank, Ltd., in Hungary, who made contributions to a pension fund, he was entitled to a pension payable in pengos, and that the Government of Hungary had confiscated his rights against the bank. The Commission held that while claimant may have had certain contractual rights against the bank, he was not a stockholder and did not possess any proprietary interest in the bank. Consequently, the nationalization of banks in Hungary did not constitute a taking of any rights which claimant may have had against the bank, within the meaning of Section 303(2) of the Act. The Commission found the provisions of Section 303(3) inapplicable because claims based upon obligations expressed in currencies other than that of the United States are not included thereunder. (*Claim of Julius Schey*, Claim No. HUNG–20412, Dec. No. HUNG–605, 10 FCSC Semiann. Rep. 41 (Jan.-June 1959).)

Old age pension and sick benefits due from the *Orszagos Tarsadalombiztosito Intezet* under the social security system of Hungary, to which claimant contributed for 26 years, were denied by the Commission because such benefits were payable in the national currency of Hungary and not in United States dollars and for that reason did not come within the purview of Section 303(3) of the Act. (*Claim of John Toth*, Claim No. HUNG–21362, Dec. No. HUNG–371.)