

**FOREIGN CLAIMS SETTLEMENT COMMISSION OF
THE UNITED STATES**

U.S. DEPARTMENT OF JUSTICE

1996 YEARBOOK

FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES

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Dedicated in memory of

Professor Richard B. Lillich
1933 - 1996

World-renowned authority
on international claims,
and lifelong expositor of the
jurisprudence of the
Foreign Claims Settlement Commission

This Report may be cited as:
1996 FCSC Yearbook

LETTER OF TRANSMITTAL

To the President of the Senate
and the Speaker of the House of Representatives
of the 105th Congress

The Foreign Claims Settlement Commission of the United States submits for your review its Yearbook for Calendar Year 1996.

Because of its status as an independent component within the United States Department of Justice, a summary of the Commission's activities during Fiscal Year 1996 will appear in the annual report of the Department. However, under the War Claims Act of 1948 and the International Claims Settlement Act of 1949, the Commission is also required to submit a separate annual report to Congress.

We appreciate Congress's continued support for the Commission's international claims programs.

Delissa A. Ridgway
Chair

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SECTION I: THE COMMISSION

A. Introduction

The Foreign Claims Settlement Commission of the United States is an independent quasi-judicial federal agency. The Commission's primary mission is to determine the validity and valuation of claims of United States nationals for loss of property in foreign countries, as authorized by Congress or following government-to-government claims settlement agreements. These losses have occurred either as a result of nationalization of property by foreign governments or from damage to and loss of property as a result of military operations during World War II. The Commission also has adjudicated claims of United States military personnel and civilians captured or interned during World War II and the Korean and Vietnam conflicts. In addition, as discussed below, the Commission's Holocaust Survivors Claims Program is now addressing claims by U.S. citizens who were interned by the Nazis during World War II.

The Foreign Claims Settlement Commission was created on July 1, 1954, by Reorganization Plan No. 1 of 1954, which abolished the War Claims Commission and the International Claims Commission and transferred their functions to the present Commission. In 1980, the Commission was transferred by Public Law 96-209 to the Department of Justice as a separate agency within the Department.

The Commission consists of a Chair, who serves on a full-time basis, and two Commissioners, who serve on a part-time basis. They are appointed by the President for fixed terms of office, normally of three years' duration, and confirmed by the Senate. In 1996, Commissioner John R. Lacey was confirmed for a second term as a member of the Foreign Claims Settlement Commission.

The Chair and Commissioners are responsible for the review of claims and the issuance of decisions. The Chair is vested with sole administrative authority within the Commission, while the Department of Justice is responsible for providing administrative support services to the agency. The Commission employs a small staff of legal and administrative personnel.

In most instances, authorizing statutes provide for the deduction of a certain percentage from the claims funds for deposit as miscellaneous receipts in the United States Treasury to defray the administrative expenses of the Commission and the Department of the Treasury in carrying out the programs. The total administrative expenses of the Commission and its predecessors from the beginning of fiscal year 1950 through the end of fiscal year 1996 have amounted to approximately \$30 million. Over \$32 million has been recouped through the deductions from funds obtained from foreign governments in the same period.

The jurisdiction of the Commission and its two predecessor commissions has encompassed the administration of 42 claims programs in which more than 660,000 claims have been filed and awards granted in excess of \$3 billion.

B. Procedure and Administration of Claims Programs

By statute, the decisions of the Commission are final and conclusive on all questions of fact and law and are not subject to review by any other official, department, or agency of the United States, or by any court by mandamus or otherwise. This prohibition against judicial or other review makes it imperative that the Commission establish appropriate administrative and legal procedures to assure claimants a full and fair opportunity to present their claims.

When a claims program is commenced, appropriate claim forms and detailed instructions are forwarded to anyone who requests them or has at any time indicated to the Commission an interest in filing a claim in that program. The Commission also seeks to publicize the program through publication in the *Federal Register* and releases to the news media, and by notifying relevant organizations and Congressional offices. The deadline for filing claims is established and publicized as well.

When a completed claim form with related exhibits, documents or other evidence is filed, the staff of the Commission undertakes a careful examination and, if necessary, seeks additional information or evidence from the claimant or other sources to enable the claimant to establish the requisite elements of a claim (i.e., United States nationality, ownership, value and the date and circumstances of the asserted loss). The adjudication of a claim is not considered to be an adversarial matter between the Commission and the claimant; the staff of the Commission seeks to do all that is reasonably possible to assist each claimant in establishing a compensable claim. After a claim has been fully developed, it is presented to the Commission for adjudication.

Following a full review of the claim and all supporting material, the Commission issues a written "Proposed Decision." This Proposed Decision is forwarded to the claimant or claimant's counsel who is advised of the right to file objection within a specified period of time, if the claimant is dissatisfied and believes there is ground for a more favorable decision. The claimant may submit, in writing, any additional evidence and argument in support of the objection and may also request an oral hearing before the Commission to present oral evidence and argument in support of the objection. Thereafter, the Commission reconsiders the entire record and renders its determination by the issuance of a written "Final Decision."

If no timely objection is received on a claim, the Proposed Decision is automatically entered as the Commission's Final Decision. However, even after the issuance of a Final Decision, the regulations of the Commission permit the filing of a petition to reopen a claim for further consideration based upon newly discovered evidence. Or, if information comes to the attention of the Commission from sources other than the claimant, the Commission may reopen a claim on its own motion.

In most instances, a time limit within which the Commission must complete adjudication of the claims is established by statute. After the specified date, the Commission no longer has authority to accept additional claims for adjudication or to reconsider any claim which has been determined in that particular program.

Decisions of the Commission set forth the reasons for the action taken and include specific findings of fact and conclusions of law determining each aspect of the claim, to fully apprise claimants of the basis of its decisions.

In most programs, the amount of funds available to pay the Commission's awards is limited, often resulting in pro rata payment of awards. The Commission therefore must ensure that the award entered in each claim is fully supported, and based upon the same criteria as all other awards.

Payment of awards to claimants is beyond the scope of the Commission's functions. The Commission's responsibility is discharged upon entry of a Final Decision and certification of any award to the Secretary of the Treasury, who has sole jurisdiction, under specific statutory authority, to make payments out of the funds established for that purpose.

In some instances, Congress authorizes the adjudication of claims before there are funds available to pay awards. In such

cases, the Commission adjudicates the claims and certifies its decisions to the Secretary of State or Secretary of the Treasury, or both, as a "pre-adjudication" or "pre-settlement adjudication" of the claims. The Department of State then can use the Commission's decisions as the basis for negotiating a claims settlement agreement with the responsible foreign government at some future date.

SECTION II: CURRENT YEAR'S ACTIVITIES

A. Claims of Holocaust Survivors Against Germany for Persecution by the Nazi Regime

As discussed in the Commission's 1995 Yearbook (1995 FCSC Yearbook 9), the United States and the Federal Republic of Germany concluded an agreement in September 1995 settling the claims of certain individuals who, as United States nationals, suffered "loss of liberty or damage to body or health" through persecution by the German Nazi regime. *Agreement Between the Government of the United States of America and the Government of the Federal Republic of Germany Concerning Final Benefits to Certain United States Nationals Who Were Victims of National Socialist Measures of Persecution*, September 19, 1995. The text of the settlement agreement is reprinted in the 1995 FCSC Yearbook. 1995 FCSC Yearbook 11-13.

The settlement agreement provided for the immediate payment by the German government of a lump sum of 3 million Deutsche Mark (approximately \$2.1 million) in final settlement of the persecution claims of a small number of individuals known to the United States Government, whose claims had been presented to the German Government. The settlement agreement further provides for a second round of negotiations between the United States and Germany, after September 1997, to reach a final settlement of any and all other claims of eligible Holocaust survivors.

Following conclusion of the settlement agreement, the Commission worked with the Department of State to draft proposed legislation to authorize the Commission to identify additional eligible claimants and to adjudicate their claims, in preparation for the second round of negotiations contemplated in the agreement.

That legislation -- which is reprinted in the 1995 Yearbook -- was enacted in January 1996. 1995 FCSC Yearbook 13-15.

After the enactment of the authorizing legislation, the Commission developed a claim form and instructions and requested the approval of the Office of Management and Budget (as required under the Paperwork Reduction Act of 1995) for the collection of the necessary information from claimants.

In addition, the Commission commenced an extensive outreach effort to publicize the Holocaust Survivors Claims Program as widely as possible. The Attorney General officially announced the commencement of the program in a June 13, 1996, speech at the Simon Wiesenthal Center in Los Angeles, California. As required by statute, the Commission published notice of the program and the initial September 30, 1996, filing deadline in the *Federal Register*. Press packets and additional information about the program were distributed as well to interested members of the Senate and the House of Representatives, to hundreds of Jewish media outlets and Jewish social services organizations, to organizations of Holocaust survivors, and to the national media. The Commission also mailed information about the program to every individual who had previously expressed interest to the Commission or the Department of State in pursuing a claim. Finally, with the assistance of Dr. Mitchell Bard -- author of *Forgotten Victims: The Abandonment of Americans in Hitler's Camps* -- the Commission identified dozens of U.S. survivors of the Holocaust (including ex-POWs held in Buchenwald and Berga), and mailed claim forms and other information directly to them.

In parallel with its public outreach efforts, the Commission's staff began research into the history of the Holocaust, including, in particular, the nature and organization of the Nazi concentration camp system. In this project, the staff received invaluable assistance from the U.S. Holocaust Research Institute of the U.S. Holocaust

Memorial Museum and from the Office of Special Investigations in the Criminal Division of the Department of Justice, as well as from the National Archives and R & D Associates, a consulting firm specializing in archival research. In addition, the Commission augmented its own staff through the temporary assignment to it of an Assistant United States Attorney from the United States Attorney's Office in Philadelphia, Pennsylvania.

Anticipating that many claimants would be unable to provide documentation to prove the place and dates of their internment, the Commission established a channel through the Bureau of Consular Affairs in the Department of State and the U.S. Embassy in Bonn to the archives of the International Tracing Service (ITS) of the International Committee of the Red Cross, located in Bad Arolsen, Germany -- the largest repository of Nazi camp records in the world. Responding to Commission requests for information, ITS provided verification of claimants' claims of internment in Nazi camps.

B. Claims Against Albania

As reported in the Commission's 1995 Yearbook (1995 FCSC Yearbook 15), the United States and Albania signed a claims settlement agreement on March 10, 1995. Under that agreement (reprinted at 1995 FCSC Yearbook 17-20), United States nationals' property claims against Albania were settled in exchange for a lump-sum payment by Albania to the United States of \$2 million. The agreement was approved by the Albanian Parliament and took effect on April 18, 1995.

To publicize the program to potential claimants, notice of the beginning of the program was published in the *Federal Register*, establishing October 31, 1995, as the deadline for submission of claims. That deadline was subsequently extended to December 29, 1995. However, the Commission concluded in 1996 that, so long

as the administration of the claims program was not adversely affected, it would continue to accept additional claims.

On July 26, 1996, the Chair and members of the Commission staff met with the newly-confirmed U.S. Ambassador to Albania, Marisa Lino, to brief her on the status of the Albanian Claims Program.

In September 1996, the Commission's Chief Counsel traveled to Albania to interview local real estate consultants, to assist the Commission in verifying facts and authenticating documentation pertaining to potentially compensable claims. Based on the interviews conducted by the Chief Counsel, the Commission retained two experts who immediately began work on individual cases assigned to them.

At an October 29, 1996, meeting in London, Albania paid the United States the \$2 million due under the U.S.-Albania claims settlement agreement (discussed above). Albania also paid the United Kingdom \$2 million in settlement of the Corfu Channel case (in which two British destroyers were sunk in 1946 by mines allegedly laid by Albania). Simultaneously, the Tripartite Commission for the Restitution of Monetary Gold released to Albania approximately 1,550 kilograms of gold bullion and coins (valued at about \$19 million), covering a portion of Albania's recognized claim for monetary gold taken from it during World War II. The \$2 million paid to the United States was transferred to a special fund in the U.S. Treasury, to be used for payment of Commission awards in claims against Albania.

Over the course of the year, the Commission issued Proposed Decisions on 211 claims. Of those, 25 were awards and the remainder were denials. In addition, the Commission issued four Final Decisions (addressing objections to Proposed Decisions) and one order of dismissal (requested by the claimant to facilitate his

pursuit of his claim in Albania under domestic Albanian procedures).

One of the most vexing issues facing the Commission in 1996 was the constitutionality of the residency requirement in the Agreed Minute to the settlement agreement. In effect, the residency requirement limits the Commission's jurisdiction over the claims of Albanian-American claimants to those cases in which either the claimant resided in the United States on April 18, 1995 (the effective date of the settlement agreement) or the claim was held for at least half the time between the date the claim arose and April 18, 1995, by someone residing in the United States.

Many of the claimants before the Commission could not satisfy the residency requirement. Although they considered themselves United States nationals and likely would have taken up residence in the United States after World War II if they could have done so, the oppressive, isolationist Communist regime that took power in 1944 prevented them from leaving. Moreover, even after the fall of the Communist regime in 1991, most were so desperately poor that they could not amass sufficient funds to finance their travel to the United States before April 1995. During 1996, the Commission deferred decision on the residency requirement cases, pending legal analysis and consultation with the Department of State and the Office of Legal Counsel in the Department of Justice.

As of the end of 1996, a total of 312 claims had been filed in the Albanian Claims Program. Representative decisions issued during the year are reprinted below.

EXHIBIT 1:

TEXT OF SELECTED DECISIONS

Albanian Claims Program

In the Matter of the Claim of HARRY KOUKOS and ATHENA NANOS Against the Government of Albania

Claim No. ALB-125 Decision No. ALB-159

Claim for loss of agricultural real property. In the absence of specific evidence establishing expropriation, the Commission deemed expropriation to have occurred pursuant to the Albanian agrarian reform law of August 29, 1945.

PROPOSED DECISION

This claim against the Government of Albania is based upon the alleged confiscation of 13 acres of real property located in Politsani (Polican), in the District of Gjirokaster.

Under section 4(a) of Title I of the International Claims Settlement Act of 1949 ("ICSA"), as amended, the Commission has jurisdiction to

receive, examine, adjudicate, and render final decisions with respect to claims of . . . nationals of the United States included within the terms of . . . any claims agreement on and after March 10, 1954, concluded between the Government of the United States and a foreign government (exclusive of governments against which the United States declared the existence of a state of war during World War II) . . . providing for the settlement and discharge of claims of

. . . nationals of the United States against a foreign government, arising out of the nationalization or other taking of property, by the agreement of the Government of the United States to accept from that government a sum in en bloc settlement thereof.

22 U.S.C. 1623(a) (1994).

The Governments of the United States and Albania concluded an agreement for en bloc settlement of claims of United States nationals against Albania on March 10, 1995. *Agreement Between the Government of the United States and the Government of the Republic of Albania on the Settlement of Certain Outstanding Claims*, March 10, 1995 (entered into force April 18, 1995) ("Settlement Agreement"). Claims covered by the Settlement Agreement are

the claims of United States nationals (including natural and juridical persons) against Albania arising from any nationalization, expropriation, intervention, or other taking of, or measures affecting, property of nationals of the United States prior to the date of this agreement[.]

Settlement Agreement, Article 1(a).

Claimants have stated that the property which is the subject of the claim, consisting of approximately 13 acres of land, was confiscated by the Albanian government in 1946. At that time, according to the claimants, the property was owned by their father,

Angelos Koukos, a national of the United States. The claimants have established that they have been citizens of the United States during the relevant periods.¹

By Commission letters dated March 20, 1996 and April 16, 1996, the claimants were asked to provide certain evidence to substantiate their claim, including evidence of their father's ownership and confiscation of the "13 acres" of property which is the subject of the claim. In response, the Commission received a letter from Marianthi Cala, a former resident of Politsani, who states that she was acquainted with the claimants' parents and knew that they "owned a house and property in Politsani."² More recently, by letters dated June 17, 1996 and August 28, 1996, the claimant HARRY KOUKOS has given further details of the claim but states that he "cannot produce any legal documents of my proof of land ownership in Albania because unfortunately, there are none." To date, no other documentary evidence in support of the claim has been received.

¹A review of the Commission's War Claims records indicates that the claimant, as the executor of his father's estate, filed a claim in the Commission's General War Claims Program, conducted from July 15, 1963 to May 17, 1967. In that program, the Commission determined that claimant's father acquired United States nationality by naturalization on May 1, 1928. In addition, the Commission made an award to the claimant estate, for the sole use and benefit of Harry Koukos and Athena Nanos, for personal property and improvements to real property owned by Angelos Koukos which were destroyed or lost as a result of German military operations in January 1944. *Claim of HARRY KOUKOS, EXECUTOR OF THE ESTATE OF ANGELOS KOUKOS, DECEASED, ATHENA NANOS*, Claim No. W-1965/5612, Decision No. W-19462 (1966).

²A member of the Commission legal staff contacted Mrs. Cala by telephone on August 9, 1996 to obtain further information regarding the size of the property. Mrs. Cala indicated that the property was "big" probably in the range of "5 dynyms (about 1.3 acres)." She was unable to be more specific.

In the absence of such evidence and in an effort to assist the claimants, the Commission has carefully reviewed the contents of the War Claims file. The evidence there indicates that claimants' great-grandfather, Anatasios Koukos owned a parcel of land measuring approximately "200' X 300'" (200 feet by 300 feet or about 1.4 acres). Anatasios Koukos was survived by two sons, Haralambas Koukos and Nicholas Koukos, who divided the land equally. Angelos Koukos, the father of the current claimants, was the son of Haralambas Koukos and inherited his one-half of the divided property as his only heir. The Commission finds that the size of the property upon which was built the house that was the subject of the war damage award was, at a minimum, approximately 30,000 square feet or about 2,800 square meters.

In addition to this material, the file contains information gathered from the Treasury Department Census conducted during World War II. According to the notes in the file, Angelos Koukos had stated that in addition to the improved property, he also owned 2 acres of farmland with trees which he had inherited prior to 1935.

Based on the totality of the evidence, the Commission finds that, prior to 1945, claimant's father, Angelos Koukos, was the owner of 2 acres of arable land located in the vicinity of the village of Politsani and that he also owned a building lot measuring approximately 2,800 square meters.

The Commission is aware that on or about August 29, 1945, the Albanian Communist regime promulgated the "Agrarian Reform Law." This law provided that land not directly worked by the owner was subject to seizure and redistribution by the government, without payment of compensation to the legal owner. Land Reform Law No. 108, GZ 1945, No. 39. This law was then affirmed by the 1946 Albanian constitution which stated that "land belongs to the tiller." Alb. Const., 1946, Ch. I, Art. 12.

Based on the entire record, the Commission determines that the implementation of the Agrarian Reform Law, coupled with the restrictions placed upon non-farming owners, had the effect of depriving the claimant's father of his property, and thereby constituted an uncompensated expropriation by the Government of Albania. This is consistent with claimant HARRY KOUKOS's statement that the property was confiscated in 1946. For lack of a precise date, the Commission will deem the taking to have occurred as of January 1, 1946.

Based on the evidence in the record, the Commission finds that the 2 acres of farmland in question had a value of \$400.00 at the time of confiscation. As for the building lot, the Commission determined in the General War Claims program that the house on the lot had a value at the time of destruction of \$1,500.00. On the basis of that figure, the Commission finds that the building lot had a value of \$400 at the time of confiscation. Accordingly, based on their status as the beneficiaries of the estate of their father, the claimants are each entitled to a total principal award of \$400.00 as compensation for their father's property losses. These awards shall date from January 1, 1946.

In accordance with applicable principles of international law and its decisions in previous claims programs, the Commission further concludes that the claimants are entitled to interest as part of their awards, amounting to 6 percent simple interest per annum from the date of loss to the effective date of the Settlement Agreement. Accordingly, each claimant is also entitled to an interest award of 295.8 percent of his or her principal award, or \$1,035.30.

Under the terms of the Settlement Agreement, the United States Government has agreed to advise the Albanian authorities of the issuance of the Commission's issuance of awards, so as to

In the Matter of the Claim of EDA MEHDIN DUSHALLARI
Against the Government of Albania

Claim No. ALB-082 Decision No. ALB-125

Claim for real property initially denied for lack of documentation of ownership by claimant at time of expropriation, but found compensable on objection based on additional evidence establishing joint ownership by claimant and husband.

PROPOSED DECISION

This claim against the Government of Albania is based upon the alleged confiscation of real property located in Pacomit, District of Permet.

Under section 4(a) of Title I of the International Claims Settlement Act of 1949 ("ICSA"), as amended, the Commission has jurisdiction to

receive, examine, adjudicate, and render final decisions with respect to claims of . . . nationals of the United States included within the terms of . . . any claims agreement on and after March 10, 1954, concluded between the Government of the United States and a foreign government (exclusive of governments against which the United States declared the existence of a state of war during World War II) . . . providing for the settlement and discharge of claims of . . . nationals of the United States against a foreign government, arising out of the nationalization or other taking

of property, by the agreement of the Government of the United States to accept from that government a sum in en bloc settlement thereof.

22 U.S.C. 1623(a) (1994).

The Governments of the United States and Albania concluded an agreement for en bloc settlement of claims of United States nationals against Albania on March 10, 1995. *Agreement Between the Government of the United States and the Government of the Republic of Albania on the Settlement of Certain Outstanding Claims*, March 10, 1995 (entered into force April 18, 1995) ("Settlement Agreement"). Claims covered by the Settlement Agreement are

the claims of United States nationals (including natural and juridical persons) against Albania arising from any nationalization, expropriation, intervention, or other taking of, or measures affecting, property of nationals of the United States prior to the date of this agreement[.]

Settlement Agreement, Article 1(a).

The claimant in this case has stated that the property which is the subject of her claim was confiscated by the Albanian government in 1946. At that time, according to the claimant, the property was owned by her husband, Ismail Zenel Dushallari, an Albanian national. The claimant has established that she is a citizen of the United States by virtue of her birth in the United States in 1921.

In support of her claim, claimant has submitted documents dated August 23, 1994, and October 11, 1995, from the Cadastral Office of Permet. Those documents indicate that Ismail Zenel Dushallari owned between 130 and 157 "dynyms" of land which

was confiscated in 1945. In addition, the claimant has recently submitted a new document dated March 5, 1996, from the "Lawcourt of the Vlora District" which states that Ismail Dushallari, who died in 1983, left a "testament" dated December 5, 1942, whereby he assertedly is said to have excluded his children and left all his property to his wife, the claimant. This document further asserts that, beginning in 1942, the claimant was a co-owner of the properties with Mr. Dushallari until the latter's death in 1983, when she became the sole owner of the properties. However, there is no reference to any legal authority for the contention that title to the subject matter of claimant's husband's will in fact passed to her at the time of execution of the will, rather than at the time of his death, as is typically the case.

The ICSA mandates that the Commission decide claims in accordance with, *inter alia*, "[t]he applicable principles of international law." ICSA section 4(a)(2), 22 U.S.C. 1623(a)(2). It is a well-established principle of international law, which this Commission has applied without exception, that a claim may be found compensable only if the property which is the subject of the claim was owned by a national of the United States when the property was expropriated or otherwise taken. *See, e.g., Claim of EUGENIA D. STUPNIKOV Against Yugoslavia*, Claim No. Y-2-0071, Decision No. Y-2-0003 (1967); *Claim of ILONA CZIKE Against Hungary*, Claim No. HUNG-2-0784, Decision No. HUNG-2-191 (1976); *Claim of JOSEPH REISS Against the German Democratic Republic*, Claim No. G-2853, Decision No. G-2499 (1981); *Claim of TRANG KIM Against Vietnam*, Claim No. V-0014, Decision No. V-0001 (1982). This principle has also been recognized by the courts of the United States. *See, e.g., Haas v. Humphrey*, 246 F.2d 682 (D.C. Cir. 1957), *cert. denied* 355 U.S. 854 (1957).

Section 531.6(d) of the Commission's regulations provides:

The claimant shall be the moving party and shall have the burden of proof on all issues involved in the determination of his or her claim.

45 C.F.R. 531.6(d)(1994).

Claimant is responsible for the ambiguities in the evidence in this case and thus bears the burden of proof in resolving these inconsistencies by independent objective evidence. To date, the claimant has not met her burden of proof to establish that she owned an interest in the property at issue in this claim at the time of its asserted loss in 1946.

Accordingly, while the Commission sympathizes with the claimant for the loss of her family's property, it must conclude that her claim is not compensable under the terms of the Settlement Agreement. The claim therefore must be and is hereby denied.

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

Dated at Washington, DC and
entered as the Proposed
Decision of the Commission.
May 7, 1996

In the Matter of the Claim of EDA MEHDIN DUSHALLARI
Against the Government of Albania

Claim No. ALB-082 Decision No. ALB-125

FINAL DECISION

Hearing on the record held on November 18, 1996

This claim against the Government of Albania is based upon the alleged confiscation of real property located in Pacomit, District of Permet.

By Proposed Decision entered on May 7, 1996, the Commission denied the claim on the ground that the claimant had failed to establish that the property which is the subject of the claim was owned by a national of the United States when it was allegedly confiscated.

By letter dated May 25, 1996, the claimant stated objection to the Commission's decision and requested an oral hearing. In her letter of objection, the claimant indicated that she would be submitting new evidence in support of her objection. Prior to the hearing, which was scheduled for November 18, 1996, the claimant submitted a copy of her husband's "Testament Declaration," a Notarial Declaration, a Certificate, a Decision from the Law Court of Permet and a Project Decision dated May 12, 1952.

On November 12, 1996, claimant's daughter contacted the Commission by telephone and stated that the claimant was ill and would be unable to attend the oral hearing. The Commission subsequently received a letter dated November 8, 1996 from the claimant, received by the Commission on November 15, 1996, stating that she would be unable to attend the hearing because of her

illness. Accordingly, the Commission issues this Final Decision based on its *de novo* review of the evidence in the record.

The claimant in this case, a citizen of the United States by virtue of her birth in the United States in 1921, has stated that the property which is the subject of her claim was confiscated by the Albanian government in 1946. At that time, according to the claimant, she owned the property jointly with her husband, Ismail Zenel Dushallari, an Albanian national.

Based on a review of the evidentiary record as supplemented, including the Commission's own independent review of land records in the Archives of Permet, the Commission finds that, prior to 1942, the claimant's husband was the owner of 15.7 hectares of both agricultural and pasture land located in the village of Pacomit, District of Permet. The Commission further finds that the claimant's husband effectively transferred a one-half interest in all his real property to the claimant on or about December 5, 1942.

The Commission is aware that on or about August 29, 1945, the Albanian Communist regime promulgated the "Agrarian Reform Law." This law provided that land not directly worked by the owner was subject to seizure and redistribution by the government, without payment of compensation to the legal owner. Land Reform Law No. 108, GZ 1945, No. 39. This law was then affirmed by the 1946 Albanian constitution which stated that "land belongs to the tiller." Alb. Const., 1946, Ch. I, Art. 12.

Based on the entire record, the Commission determines that the implementation of the Agrarian Reform Law, coupled with the restrictions placed upon non-farming owners and the formation of agricultural cooperatives, had the effect of depriving the claimant of her one-half interest in the property in question, and thereby constituted an uncompensated expropriation by the Government of Albania. Accordingly, claimant is entitled to an award of

compensation for the resulting loss. In this case, claimant has stated that the property was confiscated in 1946. For lack of a precise date, the Commission will deem the taking to have occurred as of January 1, 1946.

The claimant has not asserted a specific figure for the value of the property at the time of expropriation, although the Certificate dated October 11, 1995, from the Council of Permet Region indicates a current value of 3,080,000 leks for an area comprising 13 hectares. Based on its study of the values of various kinds of real property in Albania before and during World War II and thereafter, the Commission finds that the claimant's property, consisting of a one-half interest in 157 *dynyms* or 15.7 hectares in the village of Pacomit, had a value at the time of expropriation of approximately \$200 per acre, or \$4,000.00. Accordingly, the Commission finds the claimant entitled to an award in the principal amount of \$4,000 as compensation for the loss of her one-half interest in the 15.7 hectares of property, dating from January 1, 1946.*

In accordance with applicable principles of international law and its decisions in previous claims programs, the Commission further concludes that the claimant is entitled to interest as part of

*The Commission notes that the claimant seeks compensation for the entire 15.7 hectares of property which she owned jointly with her husband. However, Ismail Dushallari, who died in 1983 and who by his "testament" dated December 5, 1942, left the remainder of his property to the claimant upon his death, never acquired United States nationality. As previously stated in the Proposed Decision, a claim may be found compensable only if the property which is the subject of the claim was owned by a national of the United States when the property was expropriated or otherwise taken. In 1946, when the property was confiscated, the claimant only owned a one-half interest in the property, equivalent to 7.85 hectares. The remaining interest in the property belonged to her husband, an Albanian national, and thus cannot be the subject of an award under the Settlement Agreement.

her award, amounting to 6 percent simple interest per annum from the date of loss to the effective date of the Settlement Agreement. Accordingly, claimant is entitled to an interest award of 295.8 percent of her principal award, or \$11,832.00.

For the reasons stated in the foregoing, the Commission withdraws its denial of the claimant's claim and enters the award set forth below, which will be certified to the Department of Treasury for payment in accordance with sections 5, 7, and 8 of Title I of the ICSA (22 U.S.C. §§1624, 1626, and 1627). This constitutes the Commission's final determination in this claim.

Under the terms of the U.S.-Albania Settlement Agreement, the United States Government has agreed to advise the Albanian authorities of the issuance of the Commission's awards so as to prevent any double recovery. A copy of this decision will therefore be forwarded to the Albanian government in due course.

A W A R D

Claimant, EDA MEHDIN DUSHALLARI, is entitled to an award in the principal amount of Four Thousand Dollars (\$4,000.00), plus interest from January 1, 1946, to April 18, 1995, in the amount of Eleven Thousand Eight Hundred Thirty-Two Dollars (\$11,832.00), for a total award of Fifteen Thousand Eight Hundred Thirty-Two Dollars (\$15,832.00).

Dated at Washington, DC and
entered as the Final
Decision of the Commission.
December 16, 1996

C. Other Activities

1. Litigation--Iran Claims Program

As discussed in the 1995 Yearbook (1995 FCSC Yearbook 9), a group of some 19 claimants (later increased to 22) filed suit in 1995 against the United States in the United States Court of Federal Claims. Plaintiffs alleged that the 1990 Settlement Agreement between the United States and Iran effected a "taking" of their claims without just compensation, in violation of the Fifth Amendment to the Constitution, because the compensation they received did not cover the entire adjudicated value of their claims as determined by the Commission. They argued that the unpaid portion of their awards should be paid to them from taxpayer funds.

Following oral argument on July 31, 1996, the court (Wiese, J.) ruled from the bench, granting summary judgment in favor of the United States. The written opinion issued September 18, 1996. *Walter Abraham-Youri et al. v. United States*, 36 Fed. Cl. 482 (1996). Applying the three-factor takings analysis set forth in *Penn Central Transportation Co. v. New York City*, 438 U.S. 104 (1978), the court held that the espousal of plaintiffs' claims did not amount to a compensable taking.

First, the court explained that plaintiffs could have no reasonable, investment-backed expectation that claims arising out of international commerce would remain unimpaired by government actions intended to restore the mutual amity upon which such commerce depends. Second, the court assessed the character of the government action in question, and found that the espousal of plaintiffs' claims was not a simple appropriation of property, but rather an exercise of the President's long-established power to take up and settle the claims of U.S. nationals as necessary to preserve or restore harmonious international relations. Finally, the court

concluded that the espousal of plaintiffs' claims had not harmed their economic interests, noting that "there is nothing in the record to suggest that [plaintiffs] would have fared as well, much less better, had they been forced to go it alone." The court therefore held that the alleged shortfall in plaintiffs' recovery, as measured against the Commission's awards, did not rise to a Fifth Amendment "taking" of property.

Plaintiffs appealed to the United States Court of Appeals for the Federal Circuit. *Walter Abraham-Youri et al. v. United States*, No. 97-5011. That appeal was pending as 1996 ended.

2. Claims Against Iraq

During 1996, the Commission continued to work closely with the Office of the Assistant Legal Adviser for International Claims and Investment Disputes at the Department of State, to draft proposed legislation and pursue other efforts to resolve U.S. nationals' outstanding claims against Iraq. The United Nations Compensation Commission (UNCC) in Geneva, Switzerland, currently has jurisdiction over most claims of U.S. nationals arising on or after August 2, 1990, along with those of nationals of other U.N. member countries. However, there is no forum for other claims -- particularly claims pre-dating Iraq's August 1990 invasion of Kuwait.

As reported in the 1995 Yearbook (1995 FCSC Yearbook 23-24), both the House and Senate versions of the Foreign Relations Authorization Act approved in 1995 included provisions concerning claims against Iraq. As 1995 ended, the two versions of the bill were to be referred to conference for reconciliation.

In March 1996, both the House and the Senate approved the conference version of the Foreign Relations Authorization Act, which included a provision authorizing Commission adjudication of

outstanding claims against Iraq. However, the President vetoed the bill, for unrelated reasons.

In the meantime, in a January 18, 1996, press conference, Attorney General Janet Reno announced the establishment of the Commission's Iraq Claims Registration Program. Marking the fifth anniversary of the Gulf War, the Attorney General called the registration program "the first step in securing justice for thousands of U.S. citizens [with claims against Iraq] who have waited far too long" and who are "the last hostages of the Gulf War."

The Commission published official notice of the registration program in the *Federal Register* and mailed out information on claims against Iraq and the claims registration program to thousands of individuals and businesses, including names on mailing lists compiled since 1990 by the Department of State, the Department of Treasury, and the Department of Defense, as well as those who contacted the Commission in response to the Attorney General's January 1996 announcement. The initial filing deadline was June 28, 1996 (later extended to August 30, 1996), although the Commission decided to continue to accept late-filed registration forms.

By the close of 1996, the Commission had received more than 3,700 registration forms.

3. Helms-Burton Act/Claims Against Cuba

On March 12, 1996, following the Cuban Air Force's downing of two unarmed light airplanes operated by the Miami-based group "Brothers to the Rescue," the President signed into law the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996 (also known as the Helms-Burton Act). The legislation includes as Title III a provision authorizing U.S. nationals whose Cuban property was confiscated by the Castro regime to bring

federal court actions against foreign entities "trafficking" in those properties.

The legislation contemplates that, with limited exceptions, federal court actions against "traffickers" will adopt the valuations determined in awards issued by the Commission in its Cuban Claims Program, conducted from 1965 to 1972. (See Section III, subsection A.5(b), below.) In cases where a plaintiff was not eligible to file a claim in the Commission's Cuban Claims Program (i.e., was not a U.S. national at the time of confiscation), the legislation authorizes the federal courts, beginning in March 1998, to appoint the Commission as Special Master to make determinations on issues such as ownership and valuation of property, for use in court actions.

The statute further provided that, subject to the President's suspension authority, Title III would take effect on August 1, 1996. The statute authorized the President to suspend the effective date of Title III beyond August 1, 1996 -- for not more than six months, and for additional periods of not more than six months -- upon a finding that "suspension is necessary to the national interests of the United States and will expedite a transition to democracy in Cuba." In addition, the statute authorizes the President to suspend the right to bring a lawsuit under Title III -- for not more than six months and for additional periods of not more than six months -- based on the same finding.

On July 16, 1996, the President announced that he would allow Title III to go into effect as scheduled on August 1, 1996. However, he suspended for six months the right to file Title III actions, pledging to use the delay to seek agreement with U.S. trading partners on policy towards Cuba. One month later, he named Stuart Eizenstat, Under Secretary of Commerce for International Trade, to serve as Special Representative of the

President and the Secretary of State for the Promotion of Democracy in Cuba.

Passage of the Helms-Burton Act sparked renewed interest in the Commission and its Cuban Claims Program. Notwithstanding the suspension of the right to file lawsuits, the Commission was inundated with inquiries throughout 1996 from parties and counsel around the world who were interested in reviewing decisions and case files from the Cuban Claims Program.

4. Claims Against Germany for Expropriation of Property by the Former German Democratic Republic

In May 1992, the United States and the Federal Republic of Germany signed an agreement under which Germany will pay compensation of up to \$190 million to the United States for property claims of United States nationals against the former German Democratic Republic ("GDR") which were adjudicated by the Commission in a claims program completed in 1981. (See Section III, subsection A.6, below.) Under this agreement, claimants were given a choice, or election, to either accept payment of their Commission awards under the agreement, or forgo payment in order to pursue claims in Germany for restitution of their property under the property claims program in Germany.

Claimants were notified of the agreement and the election process in May 1992, and received further relevant materials from the Department of the Treasury in August and September 1992. The deadline for notifying the Department of the Treasury of their elections was December 31, 1992. During 1996, the Commission staff continued to assist the Department of State and the Department of the Treasury in implementing the settlement.

5. Prisoner-Of-War And Civilian Internee Claims

During 1996, the Commission continued to have jurisdiction under Public Law 91-289 (50 U.S.C. App. 2004 and 2005) to receive and adjudicate claims by United States Armed Forces personnel and civilians, or their survivors, for compensation based on inadequate food rations and inhumane treatment received while held as prisoners of war or internees during the Vietnam conflict. However, no new claims were received during the year. The Commission also continued to serve as a repository of records on United States military veterans and civilians captured or interned during World War II, the Korean conflict, the U.S.S. Pueblo incident, and the Vietnam conflict.

SECTION III: SUMMARY OF PAST PROGRAMS

A. Claims Under The International Claims Settlement Act Of 1949

The jurisdiction of the Commission and its predecessor, the International Claims Commission, has encompassed the administration of twenty claims programs under the authority of the seven titles of the International Claims Settlement Act of 1949, as amended. Pub. L. 455, 81st Congress, approved March 10, 1950, 64 Stat. 12 (22 U.S.C. 1621 et seq.) ("the Act"). These programs have involved claims of U.S. nationals for losses in specific foreign countries as a result of the nationalization or other taking of property during specific periods of time by the governments of those countries. These twenty claims programs are briefly summarized below. Citations to the final reports on the programs, as well as relevant statistics, appear in Sections V and VI of this Yearbook.

1. Title I

(a) Yugoslavia - First Program

The provisions of Title I of the Act authorized the International Claims Commission to administer a program to determine claims of nationals of the United States for the nationalization or other taking of property included within the terms of the U.S.-Yugoslav Claims Settlement Agreement of July 19, 1948. That agreement resulted in a fund of \$17 million from which payments were made on the awards granted in the claims. The first Yugoslavia Claims Program was completed on December 31, 1954.

(b) Panama

Under section 4(a) of Title I of the Act, the International Claims Commission was authorized to adjudicate claims of nationals

of the United States for the nationalization or other taking of property included within the terms of any claims settlement agreement thereafter concluded between the United States and a foreign government (exclusive of governments against which the United States declared the existence of a state of war during World War II). Pursuant to this authorization, the International Claims Commission administered a program to determine U.S. nationals' property claims against the Government of Panama upon the conclusion of a claims settlement agreement between the Governments of the United States and Panama on October 11, 1950. This agreement resulted in a fund of \$400,000 for payments on the awards granted in the claims. The Panamanian Claims Program was completed on December 31, 1954.

(c) Poland

On July 16, 1960, the Governments of the United States and Poland concluded a claims settlement agreement under which the Government of Poland agreed to pay the sum of \$40 million to the United States over a period of twenty years in full settlement and discharge of certain claims of nationals of the United States. The Commission was authorized to determine the claims covered by this agreement under the original provisions of section 4(a) of Title I of the Act. The Polish Claims Program was completed on March 31, 1966.

(d) Yugoslavia - Second Program

A second claims agreement was concluded between the Governments of the United States and Yugoslavia on November 5, 1964, covering claims against the Government of Yugoslavia which arose subsequent to the 1948 agreement (see subsection 1(a), above) and providing a fund of \$3.5 million for payments on awards. The second Yugoslav Claims Program was administered by the Commission under authority of section 4(a) of Title I of the Act,

adjudicating the claims filed pursuant to the agreement. The program was completed on July 15, 1969.

(e) China - Second Program

In 1972 the Commission completed the first China Claims Program, in which it adjudicated claims by United States nationals which arose between October 1, 1949 and November 6, 1966. (See subsection 5(a), below.) On May 11, 1979, an agreement was entered with the People's Republic of China settling claims of nationals of the United States arising through the date of that agreement. The Commission thereafter proceeded under section 4(a) of Title I of the Act to adjudicate claims by United States nationals which arose between November 6, 1966 and May 11, 1979. The Commission completed the second China Claims Program on July 31, 1981.

(f) Ethiopia

On December 19, 1985, the United States Government concluded a compensation agreement with the Provisional Military Government of Socialist Ethiopia for the settlement of claims against that government arising as a result of the nationalization, expropriation, or other taking of, or restrictive measures directed against, property rights or interests of United States nationals. The agreement provided for payment to the United States of a total of \$7 million as compensation for the claimants, the last installment of which was paid in January 1991.

Exercising its authority under section 4(a) of Title I of the Act, the Commission began adjudication of the claims covered by the settlement agreement on March 31, 1986, and set a program completion date of September 30, 1987. During the course of the program, the Commission issued decisions on a total of 45 claims. It found 27 to be compensable, and made awards amounting to

\$14,387,510.96 in principal and \$10,024,589.00 in interest. Following completion of the program on September 30, 1987, the Commission certified the awards to the Secretary of the Treasury for payment, in accordance with section 5 of the Act.

(g) Egypt

On June 29, 1990, the Commission completed the adjudication of claims against the Government of Egypt, pursuant to its authority under section 4(a) of Title I of the Act. The claims were based on uncompensated "nationalization, expropriation, confiscation and other restrictive measures of or against" U.S. nationals' property between January 1, 1952 and October 27, 1976. Initial decisions on most of the claims had been issued by the Office of the Legal Adviser in the Department of State, following entry into force of the U.S.-Egyptian Claims Settlement Agreement of 1976. TIAS 8446, entered into force October 27, 1976. However, to expedite distribution of the amounts remaining from the original \$10 million paid to the United States under the agreement, the Legal Adviser requested, by letter dated May 11, 1989, that the Commission take jurisdiction over the claims and determine the claimants' entitlement to share proportionately in those remaining funds. In most of the claims, this was accomplished by issuance of awards of interest, which had not been included in the awards made by the Department of State.

During the course of the program, the Commission issued decisions on a total of 85 claims, out of which 83 were found to be compensable. In these, it made awards, including principal and interest, in the total amount of \$5,189,236.64.

2. Title II

Title II of the Act provided for the vesting and liquidation of enemy assets which had been blocked by the United States during

World War II, and for the deposit of the proceeds into separate special funds, according to the respective government ownership of those assets prior to blocking. Pub. L. 285, 84th Congress, approved August 9, 1955, Title II, 69 Stat. 562 (22 U.S.C. 1631). The proceeds were deposited into funds by the Department of the Treasury which were designated the Bulgarian Claims Fund, the Hungarian Claims Fund, and the Romanian Claims Fund, for payments on awards granted by the Commission in claims against those governments under Title III of the Act. (See subsection 3, below.)

3. Title III

(a) Bulgaria, Hungary, and Romania - First Programs

Title III of the Act authorized the Commission to consider claims of nationals of the United States for losses arising out of war damages, nationalization, compulsory liquidation, or other taking of property prior to August 9, 1955, by the Governments of Bulgaria, Hungary, and Romania. Pub. L. 285, 84th Congress, Title III, approved August 9, 1955, 69 Stat. 570 (22 U.S.C. 1641). The Commission was also authorized to consider claims of nationals of the United States for losses based on the failure of those governments to meet certain debt obligations expressed in the currency of the United States. Payments on the awards granted in these claims were made from the appropriate claims funds created under Title II of the Act. (See subsection 2, above.) The amounts available from these funds for payments were: Bulgarian Claims Fund - \$2,676,234.49; Hungarian Claims Fund - \$2,235,750.65; and Romanian Claims Fund - \$20,164,212.68. The Bulgarian, Hungarian, and Romanian Claims Programs were completed on August 9, 1959.

(b) Bulgaria and Romania - Second Programs

On July 2, 1963, the United States concluded a formal claims settlement agreement with the Government of Bulgaria. Under that agreement, the Government of Bulgaria paid the sum of \$400,000 in settlement of claims of nationals of the United States. This amount was deposited into the Bulgarian Claims Fund to supplement the amount derived from the prior liquidation of Bulgarian assets for payments on awards granted by the Commission in both Bulgarian claims programs. (See subsections 2 and 3(a), above.)

The United States also concluded a formal claims settlement agreement with the Government of Romania on March 30, 1960. That agreement provided for the payment of the sum of \$2.5 million in settlement of claims of nationals of the United States. This \$2.5 million was deposited into the Romanian Claims Fund to supplement the amount derived from the prior liquidation of Romanian assets for payments on awards granted by the Commission in both Romanian claims programs. (See subsections 2 and 3(a), above.)

An amendment to Title III of the Act authorized the Commission to consider claims against Bulgaria and Romania which arose after the first programs were authorized (see subsection 3(a), above) but prior to the conclusion of the claims settlement agreements with the governments of those countries. Pub. L. 90-421, approved July 24, 1968, 82 Stat. 420 (22 U.S.C. 1641). Those programs could not be administered under the authority of section 4(a) of Title I of the Act, for the United States had declared the existence of a state of war during World War II against those countries. The second Bulgarian and Romanian Claims Programs were completed on December 24, 1971, as required by the statute.

(c) Hungary - Second Program

On March 6, 1973, the United States concluded a formal claims settlement agreement with the Government of Hungary under which that government agreed to pay the sum of \$18.9 million in settlement of claims of nationals of the United States. Payments on this amount were deposited into the Hungarian Claims Fund to supplement the amount derived from the prior liquidation of Hungarian assets for payments on awards granted by the Commission in both Hungarian claims programs. (See subsections 2 and 3(a), above.) The final payment was made on June 9, 1980.

As in the second programs for Bulgaria and Romania, the Commission did not have the statutory authority to implement this claims agreement by administering a claims program under section 4(a) of Title I of the Act, for the United States had declared the existence of a state of war against the Government of Hungary during World War II. Under an amendment to Title III of the Act, Congress authorized the Commission to determine claims of nationals of the United States against the Government of Hungary based on nationalization or other taking of property between August 9, 1955, the date on which the first Hungarian Claims Program was approved, and March 6, 1973, the date of the agreement with Hungary. Pub. L. 93-460, approved October 20, 1974, 88 Stat. 1386 (22 U.S.C. 1641). The Commission was also authorized to adjudicate certain claims which should have been filed in the first Hungarian Claims Program, but were not, due to an administrative error which caused notices of that program to be mailed to non-existent addresses. The second Hungarian Claims Program was completed on May 16, 1977.

(d) Italy - First Program

Title III of the Act also authorized the Commission to consider claims of nationals of the United States against Italy for

losses resulting from war damages during World War II sustained in areas outside of Italy and territories ceded by Italy under the Treaty of Peace concluded on September 15, 1947. (Claims for losses arising from war damages sustained within Italy and territories ceded by Italy were compensated by Italy under the Treaty of Peace.) By an amendment to Title III, the Commission was authorized to reconsider claims filed by persons who were nationals of the United States on the date of authorization of the claims program, although not nationals of the United States on the date of the losses upon which their claims were based. Pub. L. 85-604, approved August 8, 1958, 72 Stat. 531 (22 U.S.C. 1641). Awards in these claims by the Commission were paid out of the Italian Claims Fund. That fund was established with the sum of \$5 million paid to the United States by the Government of Italy, pursuant to a Memorandum of Understanding concluded by the two governments which became effective on August 14, 1947. The Italian Claims Program was completed on August 9, 1959, as required by the statute. Reconsideration of the Italian claims was completed on May 31, 1960.

(e) Italy - Second Program

The second Italian Claims Program was administered pursuant to an amendment to Title III of the Act as, in effect, an extension of the first Italian Claims Program (see subsection 3(d), above). Pub. L. 90-421, approved July 24, 1968, 82 Stat. 420 (22 U.S.C. 1641). The Commission was authorized to consider claims of United States nationals who were eligible to file in the first Italian Claims Program, but who failed to file, as well as claims of United States nationals against Italy which arose in certain areas ceded by Italy under the Treaty of Peace, including the Dodecanese Islands. Excluded from consideration were claims of persons who had previously received compensation in the first Italian Claims Program or under the Treaty of Peace with Italy. Payments on awards granted by the Commission in this program were made from the

balance remaining in the Italian Claims Fund following payment of the awards granted in the first Italian Claims Program. This second program was completed on December 24, 1971.

(f) Soviet Union

The Commission administered a Soviet Claims Program pursuant to provisions of Title III of the Act, which authorized the Commission to consider claims of nationals of the United States arising prior to November 16, 1933, against the Soviet Government, and claims of United States nationals based on liens held on property in the United States assigned to the United States Government by the Government of the Union of Soviet Socialist Republics under the Litvinov Assignment of November 16, 1933. This program was completed on August 9, 1959.

Partial payments on awards in these claims were made out of the proceeds derived from liquidation of the assets acquired by the United States under the Litvinov Assignment. The funds so derived totaled \$8,658,722.43. The balance of the awards, however, remains unpaid and outstanding, pending conclusion of a final claims settlement agreement between the United States and what are now the republics of the former Soviet Union.

4. Title IV

Czechoslovakia - First Program

Upon enactment of Title IV of the Act, the Commission commenced a program to determine claims of nationals of the United States against the Government of Czechoslovakia based upon losses resulting from the nationalization or other taking of property by that government. Pub. L. 85-604, approved August 8, 1958, 72 Stat. 527 (22 U.S.C. 1642). The funds for payment of awards granted by the Commission in these claims were derived initially in

1952 from the sale of certain Czechoslovakian assets in the United States which amounted to \$8,540,768.41. Subsequently, an additional claims fund in the amount of \$74,550,000 was obtained through conclusion of a claims settlement agreement with Czechoslovakia in 1982. (For information concerning the Commission's Second Czechoslovakian Claims Program, see subsection C.3, below.)

5. Title V

(a) China - First Program

The first China Claims Program was administered pursuant to an amendment to Title V of the Act. Pub. L. 89-780, approved November 6, 1966, 80 Stat. 1365 (22 U.S.C. 1643). That amendment authorized the Commission to determine claims of nationals of the United States against the Government of the People's Republic of China (PRC) based on: (1) losses resulting from the nationalization, expropriation, intervention, or other taking of, or special measures directed against, property by that government; and (2) the disability or death of nationals of the United States resulting from actions taken by or under the authority of that government. The program covered claims for losses which occurred between October 1, 1949, when the PRC government ascended to power, and November 6, 1966, the date the program was authorized.

When the program was authorized, no funds were available for payment on any losses certified by the Commission in the claims. The statute provided for the determination of the validity and amounts of such claims, and the certification of the Commission's findings to the Secretary of State for use in the future negotiation of a claims settlement agreement with the Government of the People's Republic of China. The first China Claims Program was completed on July 6, 1972.

On May 11, 1979, the Governments of the United States and the People's Republic of China concluded a formal claims agreement settling claims of nationals of the United States which arose between October 1, 1949, and the date of the agreement. Pursuant to the provisions of this agreement, the Government of the People's Republic of China agreed to pay \$80.5 million to the United States for deposit in a China Claims Fund established by the Department of the Treasury. Under the agreement, the schedule of payments to the Department of the Treasury provided for an initial payment of \$30 million on October 1, 1979, and five annual payments of \$10.1 million on October 1 of each year thereafter, beginning in 1980 and ending in 1984. Pursuant to the statutory payment provisions in section 8 of Title I of the Act, payments were made from the China Claims Fund by the Department of the Treasury on the losses certified in this program, and also on the awards certified in the second China Claims Program. (See subsection 1(e) above.)

(b) Cuba

Title V of the Act also authorized the Commission to consider claims of nationals of the United States against the Government of Cuba, based upon: (1) losses resulting from the nationalization, expropriation, intervention, or other taking of, or special measures directed against, property by that government; and (2) the disability or death of nationals of the United States resulting from actions taken by or under the authority of that government. Pub. L. 88-666, approved October 16, 1964, 73 Stat. 1110 (22 U.S.C. 1643). The program covered claims for losses which occurred between January 1, 1959, when the Castro regime took power, and October 16, 1964, the date the program was authorized.

When the program was authorized, there were no funds available for payment on any losses certified by the Commission, and the statute precluded Congress' appropriation of funds for such payments. Rather, the statute provided for the determination of the

validity and amounts of such claims, and for the certification of the Commission's findings to the Secretary of State for use in the future negotiation of a claims settlement agreement with the Government of Cuba. The Cuban Claims Program was completed on July 6, 1972.

6. Title VI

German Democratic Republic (East Germany)

Title VI of the Act authorized the Commission to receive and determine claims against the German Democratic Republic for losses which arose from the nationalization, expropriation or other taking by that government of property interests of nationals of the United States. Pub. L. 94-542, approved October 18, 1976, 90 Stat. 2509 (22 U.S.C. 1644). When the program was authorized, no funds were available for payment of the awards issued by the Commission. The program was completed on May 16, 1981. The Department of State subsequently conducted negotiations with the German Democratic Republic--and, after unification, with the Federal Republic of Germany--to obtain a claims settlement to provide funds for the payment of awards. Those negotiations culminated in the signing of a settlement agreement on May 13, 1992. See Section II, subsection C.4, above, and 1992 Ann. 87 and 92.

7. Title VII

Vietnam

On February 25, 1986, the Commission completed a program to determine the validity and amount of claims of United States nationals against the Socialist Republic of Vietnam arising from the nationalization or other taking of property on or after April 29, 1975, when the Government of the Republic of Vietnam (South

Vietnam) was overthrown. The program was authorized under Title VII to the Act. Pub. L. 96-606, approved December 28, 1980, 94 Stat. 3534 (22 U.S.C. 1645). The Commission made determinations on 534 claims, granting awards to 192 claimants in the total principal amount of \$99,471,983.51. A claims settlement agreement was concluded with the Socialist Republic of Vietnam on January 28, 1995, to provide funds for the payment of these awards.

B. Claims Under The War Claims Act of 1948

1. Title I

Pursuant to Title I of the War Claims Act of 1948 (Pub. L. 896, 80th Congress, approved July 3, 1948, 62 Stat. 1240 (50 U.S.C. App. 2001)), and amendments thereto, the Commission and its predecessor, the War Claims Commission, were authorized to administer ten prisoner-of-war and civilian internee compensation programs and four war damage and loss compensation programs:

(1) Claims of American citizens who were interned or in hiding in specified areas in the Pacific during World War II (Sec. 5(a) of the Act (50 U.S.C. App. 2004(a)));

(2) Claims of members of the Armed Forces of the United States who were imprisoned by the enemy during World War II and who were not fed in accordance with the standards prescribed by the Geneva Convention of July 27, 1929 (Sec. 6(b) of the Act (50 U.S.C. App. 2005(b)));

(3) Claims of religious organizations in the Philippines or their personnel for goods and services furnished to civilian American internees and members of the Armed Forces of the United States who were held as prisoners of war during World War II (Sec. 7(a) of the Act (50 U.S.C. App. 2006(a)));

(4) Claims of members of the Armed Forces of the United States who were mistreated while imprisoned by the enemy during World War II (Sec. 6(d) of the Act (50 U.S.C. App. 2005(d)));

(5) Claims of United States-affiliated religious organizations in the Philippines for damage or destruction of educational, medical and welfare institutions and other connected non-religious facilities during World War II (Sec. 7(b-c) of the Act (50 U.S.C. App. 2006(b-c)));

(6) Claims of civilian American employees of contractors interned by the Japanese forces during World War II (Sec. 5(f) of the Act (50 U.S.C. App. 2004(f)));

(7) Claims of civilian American internees in Korea during the Korean conflict (Sec. 5(g) of the Act (50 U.S.C. App. 2004(g)));

(8) Claims of members of the Armed Forces of the United States captured during the Korean conflict (Sec. 6(e) of the Act (50 U.S.C. App. 2005(e)));

(9) Claims of Americans who were captured and held as prisoners of war while serving in the Allied Forces during World War II (Sec. 15 of the Act (50 U.S.C. App. 2014));

(10) Claims of American merchant seamen interned during World War II (Sec. 16 of the Act (50 U.S.C. App. 2015));

(11) Claims of American citizens and business entities for losses as a result of the sequestration of accounts, deposits and other credits in the Philippines by the Imperial Japanese Government (Sec. 17 of the Act (50 U.S.C. App. 2016));

(12) Claims of non-United States affiliated religious organizations in the Philippines of the same denomination of

religious organizations functioning in the United States or their personnel for the value of relief furnished American civilians and prisoners of war and for damage or loss of educational institutions and other connected non-religious facilities during World War II (Sec. 7(h) of the Act (50 U.S.C. App. 2006(h)));

(13) Claims based upon the death or imprisonment of Guamanians by the Japanese forces on Wake Island during World War II (Sec. 5(h) of the Act (50 U.S.C. App. 2004(h))); and

(14) Claims of military and civilian personnel assigned to duty on board the U.S.S. Pueblo who were captured by the military forces of North Korea on January 23, 1968, and thereafter imprisoned by the Government of North Korea (Sec. 6(e) of the Act (50 U.S.C. App. 2005(e))).

2. Title II

Under the authority of Title II of the Act (Pub. L. 87-846, approved October 22, 1962, 76 Stat. 1107 (50 U.S.C. App. 2017)), the Commission administered the General War Claims Program. In this program, the Commission determined claims of nationals of the United States for loss or destruction of, or physical damage to, property located in certain specified areas of Europe and the Pacific and for certain deaths and personal injuries resulting from military operations during World War II. Section 615 of Public Law 94-542, approved October 18, 1976, allowed consideration of protests relating to awards in decisions on these claims issued during the last ten calendar days of the program (May 7-17, 1967).

* * * * *

All of the above programs were completed by the dates specified by Congress in the authorizing statutes. Citations to

reports and statistics on the programs are included in Sections V and VI of this Yearbook.

Payments of claims and administrative expenses of all but three of the programs conducted under the War Claims Act were derived from the liquidation of Japanese and German assets under the control of the Attorney General of the United States (which had been blocked and vested in the United States during World War II under the Trading With the Enemy Act), rather than from monies appropriated from the general revenues of the United States. These funds were deposited in the War Claims Fund, a special fund established in the Department of the Treasury for this purpose. The three exceptions mentioned above are the prisoner-of-war and civilian internee claims programs arising out of the Korean conflict and the U.S.S. Pueblo incident. Funds for payment of claims and expenses of these programs were appropriated by the Congress.

C. Claims Under Other Statutory Authority

1. Philippines

The Commission was authorized to administer a Philippine Claims Program pursuant to Public Law 87-616, approved August 30, 1962, 72 Stat. 411 (50 U.S.C. App. 1751-1785 note). This statute provided for the recertification of the unpaid balances of awards previously granted by the United States-Philippine War Damage Commission under the Philippine Rehabilitation Act of 1946. This program was completed on December 23, 1964.

2. Lake Ontario

Public Law 87-587, approved August 15, 1962 (76 Stat. 387), gave the Commission the unique assignment of conducting a program to determine the validity and amounts of claims of citizens of the United States for damages caused during 1951 and 1952 by

the Government of Canada's construction and maintenance of the Gut Dam in the Saint Lawrence River. The Commission's responsibility was to adjudicate the claims and report its findings and conclusions to the President of the United States for such action as he might deem appropriate. The statute further provided that, if an agreement was concluded between the Governments of the United States and Canada for arbitration or adjudication of these claims, the Commission would discontinue its activities and transfer its records to the Secretary of State.

The program was commenced in November 1962 and extensive research and development of claims was conducted. However, an agreement with Canada was concluded in March 1965 and, as directed by the statute, the Commission immediately discontinued the program and transferred its records to the Department of State.

3. Czechoslovakia - Second Program

In 1962, the Commission completed the first Czechoslovakian Claims Program, in which it adjudicated claims by United States nationals arising between January 1, 1945, and August 8, 1958. (See subsection A.4, above.) On December 29, 1981, Congress enacted the Czechoslovakian Claims Settlement Act of 1981 (Pub. L. 97-127, 95 Stat. 1675 (22 U.S.C. note prec. 1642)), approving a claims settlement agreement which had been reached between the United States and Czechoslovakia. Under that agreement, the Government of Czechoslovakia paid to the United States a total of \$81.5 million in settlement of all claims which had arisen up to the date of the agreement.

The claims statute directed that three funds be created out of the total settlement amount. The first fund, amounting to \$74.55 million, was set aside to make further payments on the unpaid balance of awards made in the previous program. A second fund of

\$5.4 million was set aside to make *ex gratia* payments to certain claimants whose claims had previously been denied due to their lack of United States citizenship on the date of loss. The Commission was directed to redetermine the claims of those claimants and to find them valid if the owner of the confiscated property had become a United States citizen by February 26, 1948. A third fund in the amount of \$1.5 million was set aside to pay claimants who had suffered losses subsequent to August 8, 1958, and the Commission was directed to conduct a program to determine such claims. This program was completed on February 24, 1985.

4. Iran

On May 13, 1990, the United States concluded an agreement with the Government of Iran providing for the lump-sum settlement of claims of United States nationals against Iran of under \$250,000 per claim (the "small claims"), which had been pending against Iran at the Iran-U.S. Claims Tribunal ("the Tribunal") at The Hague, Netherlands. *Settlement Agreement in Claims of Less Than \$250,000, Case No. 86 and Case No. B38* (the "Settlement Agreement"). The claimants had filed these claims through the Department of State following the signing of the Algiers Accords by the United States and Iran on January 19, 1981.

To ensure that the Commission would be able to implement an agreement settling the small claims, Congress had enacted legislation in 1985 giving the Commission standby jurisdiction to adjudicate the claims once an agreement was reached. Pub.L. 99-93, approved August 16, 1985, 99 Stat. 437 (50 U.S.C. 1701 note). That jurisdiction became effective once the Settlement Agreement was approved by the Tribunal, which took place on June 22, 1990. Iran-U.S. Claims Tribunal Award No. 483.

In addition to the unresolved small claims, the agreement covered a block of small claims that the claimants had withdrawn

from the Tribunal, a second block that the Tribunal had dismissed for lack of jurisdiction, and a third block that had been filed with the Department of State too late to meet the January 19, 1982, filing deadline at The Hague. Also included were certain claims of the United States based on loans from the U.S. Agency for International Development (AID) to the Imperial Government of Iran. Under the terms of the agreement, Iran assented to the transfer of \$105 million to the United States in en bloc settlement of all of these categories of claims.

On June 28, 1990, the Department of State formally transferred responsibility for the small claims to the Commission, as provided in the Settlement Agreement, and began transferring the files pertaining to the claims from The Hague to Washington. In addition, the Department issued a formal determination dividing the settlement fund between the small claims and the AID loan claims, allocating \$50 million to the former and \$55 million to the latter.

By the close of the Iran Claims Program in February 1995, the Commission had issued 1,066 awards to 1,075 claimants totaling \$41,570,936.31 in principal and \$44,984,859.31 in interest. A total of 578 claims were dismissed, either at the request of claimants or because, despite the Commission's best efforts, the claimants could not be located. The remaining 1,422 claims were denied.

Through investment in Treasury securities, the compensation fund (initially \$50 million) had grown to \$57,822,758.78 by the end of the claims program. However, since the aggregate total of the principal and interest awards amounted to over \$86 million, the Treasury Department was unable to pay the interest awards in full. Instead, interest awards were paid on a pro rata basis, amounting to 34.9602595 percent of each claimant's interest award. By May 1995, the payment process had been substantially completed. The Commission published its final report on the claims program in its 1995 Yearbook (1995 FCSC Yearbook 5-9). The related litigation

in the U.S. Court of Federal Claims and the U.S. Court of Appeals for the Federal Circuit is discussed above. (See Section II, subsection C.1)

SECTION IV: FUTURE PROGRAMS

A. Claims Against Iraq

As reported above, 1996 brought some action on Iraq claims legislation. Both the House of Representatives and the Senate approved legislation including a provision authorizing Commission adjudication of certain outstanding claims against Iraq. The President vetoed the bill, however, for unrelated reasons. In the meantime, the Commission announced the establishment of its Iraq Claims Registration Program. (See Section II, subsection C.2, above).

B. Advisory Program

Under the Foreign Assistance Act of 1961, as amended by Pub. L. 88-205, approved December 16, 1963, 77 Stat. 386 (22 U.S.C. 2370), (the "Hickenlooper Amendment"), the President is authorized to suspend assistance to the government of any country which on or after January 1, 1962, has nationalized or expropriated the property of United States nationals, taken steps to repudiate or annul contracts with United States nationals, or imposed discriminatory taxation or restrictive conditions having the effect of seizing ownership or control of property of United States nationals, and has failed to take appropriate steps to discharge its obligations under international law.

The Hickenlooper Amendment extends the jurisdiction of the Commission from determination and adjudication of claims to an advisory capacity in the area of foreign expropriations and other seizures of American-owned property. Under the amendment, the Commission is authorized, upon the request of the President, to evaluate expropriated property, determine the full value of any property nationalized, expropriated, seized, or subjected to discriminatory actions, and to render an advisory report to the

President within ninety days after such request. Unless authorized by the President, the Commission may not publish its advisory report except to the citizen or entity owning the property at issue.

C. Outlook For 1997

The unique mission and distinguished history of the Foreign Claims Settlement Commission place it at the intersection of international law and foreign policy. In 1997, the Commission will continue to stand ready, as ever, to serve the United States and its nationals, protecting the rights of U.S. citizens abroad and promoting the international rule of law.

SECTIONS V & VI:

INDEX OF COMPLETED PROGRAMS

TABLE OF COMPLETED PROGRAMS

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HENRY J. CLAY, August 6, 1954, to August 15, 1958.
PEARL CARTER PACE, August 6, 1954, to March 28, 1961 (became **Chair** December 1, 1959).
ROBERT L. KUNZIG, August 21, 1958, to January 19, 1961.
THOMAS W.S. DAVIS, December 2, 1959, to March 28, 1961.
EDWARD D. RE, Chairman, March 29, 1961, to February 27, 1968.
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ROBERT J. KABEL, March 15, 1988, to February 1, 1991.

STANLEY J. GLOD, Chairman, August 12, 1988, to September 8, 1992.

BENJAMIN F. MARSH, February 1, 1991, to November 3, 1994.

JAMES H. GROSSMAN, Chairman, September 8, 1992, to November 26, 1993.

DELISSA A. RIDGWAY, Chair, October 13, 1994, to present.

JOHN R. LACEY, November 4, 1994, to present.

RICHARD T. WHITE, November 3, 1994, to present.