FOREIGN CLAIMS SETTLEMENT COMMISSION OF THE UNITED STATES

U.S. DEPARTMENT OF JUSTICE

1997 YEARBOOK

FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES

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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 1997.

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 1997 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, much of the Commission's work in 1997 was devoted to its Holocaust Survivors Claims Program, addressing claims by U.S. citizens 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 1997, Richard T. White 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 1997 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

The Commission devoted most of 1997 to its Holocaust Survivors Claims Program, which was substantially completed by the end of the year. As discussed in the Commission's 1995 and 1996 Yearbooks, that program was conducted pursuant to a September 1995 agreement between the United States and the Federal Republic of Germany 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 texts of both the settlement agreement and the related legislation are reprinted in the 1995 Yearbook. 1995 FCSC Yearbook 11-15.

In 1997, the Commission continued its extensive outreach effort, to publicize the claims program as widely as possible and to identify all potentially eligible Holocaust survivors. At her January 23, 1997, press availability, the Attorney General announced that the Commission had extended the deadline for filing of claims for one more month. The ensuing national media blitz -- including stories in newspapers such as *The New York Times*, *The Washington Post*, *The Chicago Tribune*, *USA Today* and others, and on all the major broadcast networks (including ABC, NBC, CBS, and CNN, among others), together with publicity generated by NBC's February 23, 1997, broadcast of Steven Spielberg's *Schindler's List* -- prompted the filing of an avalanche of additional claims. Even after February 23, the Commission continued to accept claims until

September 1997, the end of the two-year period established by Congress for the adjudication of claims.

In parallel with its unprecedented public outreach effort, the Commission continued its historical research into the nature and organization of the Nazi camp system. In addition to the expertise provided by historians from the Holocaust Research Institute of the Holocaust Memorial Museum and from the Office of Special Investigations in the Criminal Division of the Department of Justice, the Commission staff received invaluable assistance from the National Archives, from renowned Holocaust historian Dr. Charles Sydnor, from Dr. Mitchell Bard (author of *Forgotten Victims: The Abandonment of Americans in Hitler's Camps*), and from R & D Associates, a consulting firm specializing in archival research. The Commission's own staff was augmented through the temporary assignment to it of legal professional and support personnel from the Civil Division, the Civil Rights Division, the Criminal Division and the Office of Professional Responsibility, as well as the short-term hiring of another attorney. These additional staffers joined the Assistant U.S. Attorney detailed to the Commission in late 1996.

Members of the Commission staff took extraordinary steps to assist claimants in proving the elements of their cases. As discussed in the 1996 Yearbook, many claimants were unable to provide documentation to establish the place and dates of their internment. The Commission therefore established a channel through the Department of State to the archives of the International Tracing Service (ITS) of the International Committee of the Red Cross -- the largest repository of Nazi camp records in the world. Responding to Commission requests for information, ITS provided verification of many claimants' claims of internment in Nazi camps. Researchers at the National Archives provided documentation for others.

Similarly, many claimants who were actually born abroad to U.S. citizens (and thus had legitimate claims to U.S. citizenship by birth) were naturalized when they came to this country after the War, because they lacked the documentation necessary to prove their parents' citizenship. The Commission staff worked closely with the Immigration and Naturalization Service and with the office of Overseas Citizens Services at the U.S. Department of State to help such claimants establish their parents' U.S. citizenship, and thus their own U.S. citizenship by birth and their right to participate in the Commission's Holocaust Survivors Claims Program.

Other innovations in the administration of the Holocaust Survivors Claims Program included the Commission's issuance of two generic decisions -- the Proposed and Final Decisions on Scope -- to resolve various overarching legal issues concerning the scope of the claims program. The most far-reaching such issue was the effect to be given to certain language in Congress' explanatory statement accompanying the statute authorizing Commission adjudication of the Holocaust claims:

> In applying the criteria set forth in article 1 of the agreement, the conferees expect the Commission will determine whether an institution should be considered a "concentration camp" based on whether the institution is recognized by relevant authorities as a concentration camp *or whether conditions at the institution in question were comparable to conditions at a recognized concentration camp*.

(Emphasis supplied.) In contrast, the legislation itself mandates that, "[i]n deciding such claims, the Commission shall be guided by the criteria applied by the Department of State in determining the validity and amount of the claims covered by and settled under Article 2(1) of the Agreement [i.e., the claims of Hugo Princz and

other Holocaust survivors compensated in 1995, in the events which led to the Commission's Holocaust Survivors Claims Program]." The statute includes no reference to "comparable conditions" cases.

After extensive analysis and consultation, the Commission addressed the tension between the language of the statute and the explanatory statement in its "Proposed Decision on the Scope of the Holocaust Survivors Claims Program," issued in June 1997. A copy of that decision was mailed to every person who had either filed a claim or expressed interest in doing so, along with instructions for filing an objection if the person disagreed with the findings and conclusions reached in the decision. The text of the Proposed Decision on Scope is reprinted as Exhibit I below.

The Commission received numerous objections to the Proposed Decision on Scope, which it discussed and resolved in its "Final Decision on the Scope of the Holocaust Survivors Claims Program," issued in August 1997. The text of that decision is reprinted as Exhibit II below. As indicated there, the Commission found itself constrained to conclude that it could not give effect to the "comparable conditions" language in Congress' explanatory statement, quoted above, because it was bound by the legislation itself to adhere to the criteria applied by the Department of State in the 1995 cases.

Although the Commission did not give effect to the "comparable conditions" language, it did not limit the claims covered under the program to only those who had been held in "recognized concentration camps." Instead, the Commission found some degree of latitude in the criteria applied by the Department of State in the 1995 cases. In a handful of those cases, the German Government had accepted responsibility for claimants who had not been interned in concentration camps. One was a person forced by the Nazi regime to perform labor while on a forced march. Another was a person whom the Nazi authorities had interned in ghettos and camps

in Mogilev and Djurin and elsewhere in Transnistria, a part of present-day Ukraine east of the Dniester River that was occupied by Romania during World War II. The Commission relied on the precedent of those non-"concentration camp" cases to find compensable the claims of several claimants who otherwise would not have been eligible.

The Commission's next step was to issue an individual Proposed Decision on each of the claims on file in which a Proposed Decision had not yet been entered. The Commission completed that phase of the program on September 19 -- the end of the two-year period specified in the legislation authorizing the claims program. In the remaining months of 1997, the Commission held hearings and issued Final Decisions on objections filed in response to the individual Proposed Decisions. As 1997 drew to a close, the Holocaust Survivors Claims Program was substantially complete, with virtually all of the awards ready for certification to the Secretaries of State and Treasury.

EXHIBIT I

In the Matter of Claims Under the 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

Decision No. HS-I

PROPOSED DECISION ON SCOPE OF
HOLOCAUST SURVIVORS CLAIMS PROGRAM

In a little-known chapter in the history of World War II, thousands of Americans found themselves herded into Nazi camps. Civilians stranded in Europe, as well as soldiers taken as prisoners-of-war ("POWs") -- Jews and non-Jews alike -- United States citizens were among the millions who perished at the hands of the Nazis. Following the War, survivors found that the American citizenship which should have spared at least the civilians among them from the camps -- but didn't -- now served to disqualify them from the compensation that Germany paid to survivors who were citizens of other countries.

In September 1995, more than 50 years after the liberation of the camps, the Governments of the United States and the Federal Republic of Germany reached an historic agreement on reparations for certain of these U.S. survivors of the Holocaust. The Holocaust Survivors Claims Program of the Foreign Claims Settlement Commission serves to implement the September 1995 agreement. This Proposed Decision outlines the scope of the Holocaust Survivors Claims Program, as defined by Congress and the agreement between the United States and Germany.

I. BACKGROUND

A. The Hugo Princz Case

The September 1995 agreement arose out of the celebrated case of Hugo Princz. A United States citizen of Slovak ancestry, Mr. Princz was a teenager living in what is now Slovakia when he was arrested with his family in 1942, turned over to the Nazi SS and deported to Majdanek. His parents and his sister perished at Treblinka, while Mr. Princz and his two younger brothers were sent to Auschwitz-Birkenau, where the two younger boys were starved to death. Mr. Princz was later sent to Warsaw, then marched to Dachau. When liberated by U.S. forces in 1945, he was packed in a railroad cattle car with other concentration camp prisoners en route to another camp for extermination. After a futile search for other members of his family, Mr. Princz left Europe and settled in the United States, mounting what would become a 40-year battle for reparations from Germany.

Following the War, the Federal Republic of Germany (then West Germany) enacted laws providing for the payment of reparations to refugees and to German citizens to compensate them for Nazi persecution. One such program, the Federal Law for the Compensation of the Victims of National Socialist Persecution -- known as "the BEG," the acronym for the German title of the law -- provided compensation to individuals interned in concentration camps recognized as such by their listing on a roster of camps in a German government publication commonly known as "the BGBl."

Germany also entered into compensation agreements with numerous European countries for the benefit of citizens of those countries who had been interned by the Nazis before and during World War II. However, Germany declined to compensate U.S. survivors of the Holocaust, maintaining that those who were U.S.

citizens at the time of their persecution were neither German citizens nor "refugees" and thus not entitled to compensation under German law.

After decades of unsuccessful efforts to obtain reparations through other fora, Mr. Princz filed a lawsuit against Germany in the U.S. District Court for the District of Columbia. Invoking foreign sovereign immunity, Germany moved to dismiss the case. The District Court denied Germany's motion, but the United States Court of Appeals reversed, 2 to 1. Princz v. Federal Republic of Germany, 813 F. Supp. 22 (D.D.C. 1992), rev'd, 26 F.3d 1166 (D.C. Cir. 1994), cert. den. 115 S.Ct. 923 (1995).

Fueled by the decision of the District Court and the impassioned dissent in the Court of Appeals, various legislative proposals to deprive Germany of foreign sovereign immunity were introduced in Congress. In September 1995, before any of those proposals was enacted, the Governments of Germany and the United States reached an agreement on reparations for certain U.S. survivors of the Holocaust.

B. The U.S.-German Agreement

The agreement reached between the United States and Germany in September 1995 has two parts.

First, as memorialized in Article 2(1) of their written agreement (the "Agreement"),[1] the United States and Germany settled the cases of Mr. Princz and a handful of other similarly

[1]The full title of the document is the "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" (which entered into force on September 19, 1995).

situated U.S. survivors of the Holocaust whose cases were known at that time. Pursuant to the agreement of the parties, the German Government paid 3 million German Marks (approximately $2.1 million) to the United States for those cases, and the Department of State apportioned the funds among the individual claimants based on factors such as length of internment and damage to body or health.

Under the second part of their September 1995 accord, reflected in Article 2(2) of the written agreement, the two countries agreed to negotiate within two years an additional lump sum for reparations in any other similar cases to be identified.

The written agreement executed by the United States and Germany purports to state the terms of their understanding. It is by no means a model of clarity, however.

According to the State Department, Germany made clear in its negotiations with the United States that it intended the agreement to cover only persons who, like Mr. Princz, were held in recognized concentration camps or sub-camps of those camps.[2] Germany reportedly emphasized that the wide spectrum of facilities other than recognized concentration camps and sub-camps was excluded from coverage -- facilities ranging from prisons and civilian internment

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[2]The term "concentration camp" is often used generically -- and erroneously -- to mean any Nazi place of detention. In fact, the authoritative registry of camps compiled by the International Tracing Service of the International Committee of the Red Cross (discussed in greater detail below) lists numerous different categories of Nazi institutions in addition to concentration camps, including: SS construction brigades, SS construction railway brigades, camps for Hungarian Jews, forced labor camps for Jews, police detention camps, ghettos, labor reformatory camps, labor reformatory camps attached to firms, the SS Special Camp Hinzert, the Security Camp, camps for protection of juveniles, and Emsland penal camps.

camps to forced labor camps and prisoner-of-war camps ("stalags"). Indeed, Germany is said to have refused to cover several claims presented by the State Department in the negotiations between the two countries, because the places of internment at issue in those claims are not listed as concentration camps in the registry compiled by the International Tracing Service ("ITS") of the International Committee of the Red Cross.[3] Yet there is nothing on the face of the written agreement that affirmatively limits its scope to concentration camps; the sole reference to concentration camps is in a provision which has as its focus the exclusion of "persons subjected to forced labor alone."

In any event, actions speak louder than words. Whatever the parties' professed intentions and notwithstanding the ambiguity of their written agreement, their course of performance is clear. In settling the claims of Mr. Princz and others in September 1995, the United States espoused and Germany paid compensation not only for cases of internment in concentration camps and sub-camps, but also for certain other types of confinement by the Nazis. In one such case, the claimant was subjected to forced labor while on a forced march. In two other cases, the claimants were interned in Nazi institutions which ITS does not identify as concentration camps or sub-camps.

According to the State Department, all those compensated in September 1995 were civilians at the time of their internment, like

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[3]The ITS registry, *Vorlauefiges Verzeichnis: Konzentrationslager und deren Aussenkommandos sowie anderer Haftstaetten unter dem Reichsfuehrer-SS in Deutschland und deutsch besetzten Gebieten* (1933-1945) (Arolsen, 1969), or "Provisional Registry: Concentration Camps and Their Satellite Operations As Well As Other Detention Sites Under the Commander of the SS In Germany and German-Occupied Territories (1933-1945)," is perhaps the most authoritative and widely-recognized reference work of its type.

Mr. Princz. Germany nevertheless agreed that military personnel or employees (such as POWs) would be covered -- but only if they were held in Nazi concentration camps or sub-camps. Germany steadfastly refused to agree to cover military personnel and employees who were held in POW camps or other types of Nazi institutions.

C. The Legislation

After the United States and Germany reached agreement in September 1995, the Department of State sought legislation authorizing the Foreign Claims Settlement Commission to receive and adjudicate the validity and value of any further claims for reparations under Article 2(2) of the Agreement. The statute passed by Congress directs that, in deciding such claims, the Commission "shall be guided by the criteria applied by the Department of State in determining the validity and amount of the claims covered by and settled under Article 2(1) of the Agreement." 22 U.S.C.A. §1644(a) (1997).

The language of the statute itself is amplified by the legislative history. The explanatory statement accompanying the legislation reflects the House and Senate conferees' expectation that, in deciding claims, the Commission will consider not only those institutions recognized as concentration camps, but also institutions where "conditions . . . were comparable to conditions at a recognized concentration camp." H.R. Conf. Rep. No. 378, 104th Cong., 1st Sess. H13,900, 141 Cong. Rec. H13,874-01, H13,900 (1995).

The Commission in good faith initially proceeded on the assumption that such "comparable conditions" cases would be compensable, undertaking research on the conditions in the scores

of Nazi camps in which claimants have stated they were held.[4] However, as discussed in section II.B below, the Department of State now argues that the explanatory statement lacks the force and effect of law.

II. DETERMINATIONS OF THE COMMISSION

A. Civilians and POWs in Concentration Camps and Sub-Camps

Pursuant to the Commission's mandate from Congress to decide claims submitted under Article 2(2) of the Agreement in accordance with the criteria applied by the Department of State to

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[4]The Commission's preliminary research indicates that conditions at many of these non-"concentration camp" facilities were horrific. For example, many tens of thousands of U.S. POWs were imprisoned in Nazi POW camps ("stalags"). According to reports, many of these POWs lived in states of severe deprivation, on starvation rations, with inadequate clothing (no winter clothing and, in many cases, no shoes), in horribly overcrowded, unheated, vermin-infested quarters, with very primitive sanitation and little or no medical care. Many were subjected to forced labor for 12 or more hours a day. As a result, many of the POWs lost 40 to 50 pounds while interned; some lost as much as half their body weight, weighing only 80 or 90 pounds at liberation. And, while brutality at some camps was random and infrequent, at others beatings, bayonettings, attacks by dogs, and other forms of torture were more commonplace.

Preliminary reports indicate that conditions at other types of non-"concentration camp" institutions in many cases were just as bad, or worse. Simply stated, there was no "bright line" between the conditions at concentration camps and those at many other Nazi institutions.

Based on this preliminary information, it seems probable that the Commission would have found conditions at a number of non-"concentration camp" institutions -- including some POW camps -- to be "comparable" to those at concentration camps. However, the Commission does not reach that question, in light of the ruling in section II.B below.

claims under Article 2(1), the Commission holds that awards shall be entered for claimants who meet all other eligibility requirements and establish that they were interned in concentration camps or sub-camps recognized as such by ITS or listed in BGBl.[5] The camps listed below are those concentration camps and sub-camps where claimants have indicated that they were interned during World War II.[6]

Aflenz	Graz	Oranienburg
Altenburg	Grini	Osterode-Harz
Amersfoort	Gross Sachsenheim	Plaszow
Ansbach	Gross Rosen/Aslau	Plauen
Augsburg	Gusen	Potsdam
Auschwitz	Hamburg	Rabstein
Bad Gandersheim	Hartmannsdorf	Radom
Baden-Baden	Haslach	Raguhn

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[5]As discussed in section I.B, Germany relied on the ITS registry in its 1995 negotiations with the United States. Similarly, as section I.A explains, Germany published the BGBl list as a roster of concentration camps covered by the BEG compensation program. Germany thus has accepted both the ITS and BGBl lists as authoritative references on the classification of places of internment as concentration camps. In the event that a camp on the BGBl list is identified by ITS as something other than a concentration camp, the Commission will defer to the BGBl list -- a list developed by Germany itself.

As section I.B notes, the claims settled under Article 2(1) included two cases in which claimants were interned in institutions which ITS does not recognize as concentration camps or sub-camps. One of those institutions is listed in BGBl, and thus appears on the list here and is considered a concentration camp for purposes of this claims program.

[6]This list is not a comprehensive list of concentration camps and sub-camps recognized by ITS or listed in BGBl, all of which are within the scope of the Holocaust Claims Program.

Baron Hirsch
Belzec
Berga am Elster
Bergen Belsen
Blechhammer
Bolzano
Brandenburg (Havel)
Braunau
Braunschweig
Bremen
Bremerhaven
Breslau
Brodnica
Buchenwald
Chemnitz
Chrzanow
Compiegne
Dachau
Danzig
Darmstadt
Dessau
Dortmund
Dresden
Dusseldorf
Elbe
Esterwegen
Falkenberg
Flossenburg
Fossoli
Frankfurt am Main
Freising
Friedrichshafen
Friedrichstadt
Froslev
Gaggenau
Hennigsdorf
Heppenheim
Hildesheim
Hinzert
Inowroclaw
Jablonec
Kattowitz
Koln
Konigsberg
Krakau/Krakow
Krenau
Langendiebach
Lauenburg
Leipzig
Linz
Litzmannstadt/Lodz
Lobositz
Lublin
Lukow
Magdeburg
Majdanek
Malchow/Malkow
Malken
Mauthausen
Metz
Mittelbau
Mittergars
Moringen
Munchen
Neubrucke
Neuengamme
Neustadt am Glewe
Nordhausen-Dora
Nurnberg
Oberdorf
Rastatt
Ravensbruck
Regensburg
Reinickendorf
Rosenheim
Rostock
Saarburg
Saloniki
Salzburg
Saulgau
Schirmeck
Schonebeck
Schonefeld
Schwerte
Spaichigen
St. Michielsgestel
Stettin
Stolp
Stutthof
Theresienstadt/Terezin
Torgau
Torun/Thorn
Trebnitz
Trier
Ulm
Villingendorf
Vocklabruck
Vught
Warschau
Westerbork
Wiener Neustadt
Wittenberge
Wurzburg
Zeitz
Zemke

Gotenhafen/Gdynia	Oberndorf	Zittau
Graudenz	Ohrdruf	Zweibrucken

The Commission notes that many individuals were forced to labor in German cities where concentration camps or sub-camps were located. In order to be eligible, however, a claimant must prove that he or she was actually held within the confines of the concentration camp or sub-camp in the city or locale in question.

B. Confinement Other Than in Concentration Camps or Sub-Camps

The Commission next turns to the coverage of Nazi institutions other than concentration camps and sub-camps.

As discussed in section I.C above, the explanatory statement accompanying the statute authorizing Commission adjudication of Holocaust claims reflects Congress' expectation that the Commission will consider claims for internment at institutions where "conditions . . . were comparable to conditions at a recognized concentration camp." Ordinarily, the Commission would be loath to disregard Congress' expectations. However, it is technically accurate that -- as the Department of State now emphasizes -- the explanatory statement is legislative history, which does not rise to the level of the statute itself. In essence, the State Department argues that the explanatory statement has no force and effect and that, if Congress had intended to include "comparable conditions" cases within the scope of the Holocaust Survivors Claims Program, Congress would have included the relevant language in the text of the statute. The Commission reluctantly so holds.[7]

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[7]Any legislative expansion of the scope of the Holocaust Survivors Claims Program beyond the agreement reached between the United States and Germany would carry with it the potential for dilution of individual claimants' actual recoveries. Under the International Claims Settlement Act, each and every claimant who prevails before the Commission will

However, that does not mean that the scope of the Holocaust Survivors Claims Program is limited solely to claims for internment in concentration camps and sub-camps. To the contrary, as discussed in section I.B above, the claims covered under Article 2(1) of the Agreement included several cases in which the claimants were not interned in a concentration camp or sub-camp. The Commission rules below on the effect of those cases on the scope of the Holocaust Survivors Claims Program.

1. Civilians Subjected to Forced Labor While on Forced March

In one case discussed in section I.B, a civilian citizen of the United States was subjected to forced labor while on a forced march. Consistent with Congress' directive to decide claims under Article 2(2) of the Agreement in accordance with the criteria applied by the Department of State to claims under Article 2(1), the Commission holds that awards shall be entered in all cases in which civilian citizens of the United States (who satisfy all other eligibility requirements) were subjected to forced labor while on a forced march.

2. Civilians in Forced Labor Camps for Jews

Section I.B further notes that the claims settled under Article 2(1) included two cases in which civilian U.S. citizens were interned in Nazi institutions which ITS does not identify as concentration

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share in the compensation fund to be established by Germany, on a pro rata basis -- whether or not Germany recognizes the individual's claim and pays compensation to the United States for it. Thus, if the Commission were to
make awards in favor of claimants for whom Germany ultimately refuses to pay compensation, actual recoveries by all successful claimants would be diluted.

camps or sub-camps. As note 5 above explains, one of those institutions is listed in BGBl and thus is considered a concentration camp for purposes of this Holocaust Survivors Claims Program. The other case involved a civilian interned in an institution identified by ITS as a "forced labor camp for Jews."

In accordance with Congress' directive to decide claims under Article 2(2) of the Agreement in accordance with the criteria applied by the Department of State to claims under Article 2(1), the Commission therefore holds that awards shall be entered for claimants who meet all other eligibility requirements and were interned as civilians in institutions identified by ITS as "forced labor camps for Jews." The camps listed below are those "forced labor camps for Jews" where claimants have indicated that they were interned during World War II.[8]

Bielitz	Konin	Posen
Bielsk	Lobau	Pruskow
Glogow	Makow	Sagan
Hanau	Malkinia	Tarnow
Hannsdorf	Moghilev	Zaklikow
Jastkow	Nowy Sacz	Zambrow
Kielce	Nowy Dowr	

3. All Other Types of Confinement

Pursuant to Congress' directive to decide claims under Article 2(2) of the Agreement in accordance with the criteria applied by the Department of State to claims under Article 2(1), the Commission holds that all claims other than (a) those of civilians

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[8]This list is not a comprehensive list of the institutions identified by ITS as "forced labor camps for Jews," all of which are within the scope of the Holocaust Claims Program.

and POWs interned in ITS- or BGBl-listed concentration camps or

sub-camps, (b) those of civilians subjected to forced labor while on a forced march, and (c) those of civilians held in "forced labor camps for Jews" (as identified by ITS), are beyond the scope of the Holocaust Survivors Claims Program as defined by the authorizing legislation and the underlying U.S.-German Agreement. Accordingly, such claims are not compensable in this forum.

III. FUTURE PROCEDURE/CONCLUSION

Any claimant who disagrees with a determination by the Commission in section II above is entitled to file an Objection to that determination and to request reconsideration of the Proposed Decision as it applies to his or her claim. A claimant also may request an Oral Hearing to present the Objection to the Commission. Objections (including requests for Oral Hearings) must be postmarked no later than 15 days after receipt of this Proposed Decision. 45 C.F.R. §531.5(e) (1996).[9]

If Objections to this Proposed Decision are filed, they will be considered by the Commission and a Final Decision will be issued. Absent Objection, the Proposed Decision will be entered as the Final Decision of the Commission 30 days after service or receipt of notice. 45 C.F.R. §531.5(g) (1996). The Commission will then proceed to decide the amount of compensation to be awarded in each claim which has been determined to be within the scope of this Holocaust Survivors Claims Program.

Finally, the 1995 Agreement discharges and settles only those claims covered by the criteria agreed by the United States and

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[9]Delivery by mail is deemed completed five days after the Proposed Decision is mailed. 45 C.F.R. §531.5(c) (1996).

Germany. The Agreement does not waive or settle the claims of any persons outside its scope. Thus, all individuals whose claims are determined to be outside the scope of the Holocaust Survivors Claims Program retain the right to pursue reparations through any other available forum.

Dated at Washington, D.C. and
entered as the Proposed
Decision of the Commission.
June 16, 1997

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EXHIBIT II

In the Matter of Claims Under the 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

Decision No. HS-II

FINAL DECISION ON SCOPE OF
HOLOCAUST SURVIVORS CLAIMS PROGRAM

On June 16, 1997, the Foreign Claims Settlement Commission issued its Proposed Decision on the Scope of the Holocaust Survivors Claims Program ("Proposed Decision on Scope"). In that decision, the Commission set forth its preliminary determinations on eligibility for compensation under the Holocaust Survivors Claims Program, as defined by Congress and the underlying agreement between the United States and Germany.

The Proposed Decision on Scope tentatively concluded that the claims compensable under the Holocaust Survivors Claims Program included those of: (1) civilians and prisoners-of-war (POWs) who were interned in Nazi concentration camps and sub-camps recognized as such by the International Tracing Service of the International Committee of the Red Cross (ITS) or listed in BGBl.[1]; (2) civilians who were interned in "forced labor camps for Jews" recognized as such by ITS; and (3) civilians subjected to forced labor while on a forced march. Further, the Proposed Decision tentatively concluded that all other claims were beyond the scope of the Holocaust Survivors Claims Program and thus are not compensable in this forum.

Under the Commission's regulations, any claimant who disagreed with the Proposed Decision on Scope was entitled to file an objection, and to request an oral hearing. The Commission received approximately 550 objections (each of which has been reviewed and considered), and held 14 oral hearings (some addressing multiple claims) on July 10 through July 16, 1997. Based on the objections and oral hearings, the Commission has made one revision to its determinations on the scope of the Holocaust Survivors Claims Program. The Commission's determinations, as revised, are set forth in part IV below, and are now final.

I. PREFACE

The Commission has before it a difficult task. Under this Final Decision on the Scope of the Holocaust Survivors Claims

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[1]As the Commission's Proposed Decision on Scope explained, Germany published a roster of recognized concentration camps and sub-camps in a German government publication commonly known as "the BGBl." in connection with the German compensation program referred to as "the BEG." Proposed Decision on Scope at 3.

Program, only a fraction of the claimants will be eligible for compensation, although all were subjected in varying degrees to the brutality of the murderous Nazi regime. We therefore cannot render this decision without acknowledging that the experiences of the many hundreds of claimants have shocked us to the core. The determination that many of them are not covered by this claims program in no way signals that the Commission is indifferent to their suffering. Indeed, all we have learned in recent months makes us acutely aware that the experiences of these Holocaust survivors haunt them to this day. We are also certain that the vast majority of Americans have no conception of the horrors our fellow citizens experienced, and the atrocities they witnessed, at the hands of the Nazi regime.

Of the American civilians who found themselves in war-torn Europe, some attempted (unsuccessfully) to flee the Nazi juggernaut, while others were snatched from their families and forced into slave labor to fuel the Nazi war machine. A number were herded into overcrowded, disease-ridden ghettos. Some were forced into hiding, and lived with the constant fear of discovery and the anguish of doubt as to the well-being of their families. Even those in civilian internment camps were treated callously and cruelly, and deprived of their liberty for months (and, in some cases, years). U.S. citizens, Jews and non-Jews alike -- some mere children or teenagers at the time, who were forever stripped of their innocence -- were exiled from their homes, systematically starved, deprived of educational opportunity and the love of their families, and denied medical care. Some were subjected to beatings, torture or other physical abuse. Many did not survive. Of those who did, most are plagued even now by the health effects of the severe malnutrition and other deprivations they suffered more than 50 years ago. Most lost relatives or friends who perished in the Holocaust. All bear the emotional scars of their experiences. None will ever be the same.

To the many ex-POWs who came forward in this program with their gripping sagas of courage, perseverance, and patriotism in the face of Nazi brutality, we owe an extraordinary debt of gratitude. They paid for our liberty with their youth. Many of these American POWs -- who were entitled to the protections of the Geneva Convention -- were instead treated like the prisoners at the harshest concentration camps. And, as bad as the camps were, many of the POWs count as their worst experiences the days on end spent in transport, packed like sardines in locked, overcrowded boxcars (with little or no food, no water, and no sanitary facilities), or on forced marches for weeks, covering hundreds of miles, in one of Europe's coldest winters ever. In a number of cases, American POWs who were Jewish were segregated from, and treated more harshly than, their non-Jewish comrades. Each and every one of these men helped to save Europe from fascism and to preserve the freedoms that we hold so dear.

We have been moved by those claimants who count themselves "lucky," because they returned when family members, friends, and brothers-in-arms did not. We have been moved by those who have come forward to speak for those who cannot, and by those who have valiantly pursued claims to honor the memories of loved ones no longer living. And we have been moved by those who have spoken of the "ripple effect" surrounding those who lived through the Holocaust -- civilians and ex-POWs alike -- whose emotional scars have strained relationships with families and friends.

Some claimants, both civilians and ex-soldiers, have told us that recounting their experiences here has been cathartic. (For example, military authorities admonished some returning POWs not to discuss their experiences with others; many of those men kept their secrets for decades, until now. Others who did speak up were not believed -- except by other POWs, who knew the truth of what they said. And some civilians had family members who told them never to discuss their experiences again -- to "forget about it.") For

most claimants, however, reliving the nightmare of their war-time experiences has been a painful exercise. We hope that all claimants -- the innocent civilians who were swept up in the Holocaust, as well as the brave soldiers who delivered the world from it -- will find some solace in the fact that their stories have been heard, and are now part of the annals of history: hundreds of stories, each one unique, but all are compelling tributes to the indomitable human spirit. No longer can this chapter of World War II history be ignored. No longer can it be said that Americans are the "forgotten victims" of the Holocaust.

The discussion below addresses claimants' objections to the Commission's Proposed Decision on Scope. Those who read between the lines will recognize that the Commission has struggled (with mixed success) to reconcile the horrific facts of the cases before it with its limited authority under the applicable legislation and the underlying U.S.-German agreement. While we have been honored to play a part in bringing a measure of justice to certain U.S. survivors of the Holocaust, we deeply regret that -- more than a half century after the fact -- justice continues to elude others who are also deserving.

II. THE ROLE OF THE COMMISSION

Most of the objections filed by claimants are essentially objections to the underlying agreement between the United States and Germany, rather than objections to the Commission's Proposed Decision. In other words, the objections argue essentially that the facts of particular cases *should* be compensable. However, none of the objections has presented evidence that the United States and Germany agreed to anything other than what the Commission stated in its Proposed Decision.[2]

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[2]The sole exception here is a mistake of fact concerning the place of internment of one claimant compensated in 1995. In addition, some

In this respect, most objections are predicated on a fundamental misconception of the limited, albeit important, role of the Commission. Because the agreement negotiated by the Department of State and Germany does not cover cases such as theirs, many claimants argue, in effect, that the Commission should re-write the agreement. The Commission simply lacks that power. Where, as here, the two entities who negotiated an agreement -- the State Department and Germany -- concur that they agreed to cover only specific types of cases and not others, the Commission has no power to impose its own will to vary the terms of that agreement.

The Commission's authority here is derived directly and solely from Congress. Congress could have directed the Commission to make awards only to those who were interned in recognized concentration camps and sub-camps -- a class that would have been smaller than that which the Commission defines today. Or Congress could have directed the Commission to make awards to anyone held in any type of Nazi camp, or even to anyone persecuted by the Nazis (whether or not interned in a camp) -- classes that would have been larger than that defined here. Instead, Congress directed that the Commission decide claims "in accordance with the criteria applied by the Department of State in determining the validity and amount of the claims covered by and settled under Article 2(1) of the Agreement" -- the claims of Hugo Princz and others who were compensated in 1995. 22 U.S.C.A. §1644(a) (1997). Viewed from this perspective, most of the objections filed are not only objections to the underlying agreement, but also objections to Congress' legislation authorizing this claims program.

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claimants have relied on the language of the written agreement to dispute the Commission's statement of the terms of the understanding which the State Department negotiated with Germany. We address these points below, in part III of this decision.

In short, there is no room for the Commission to second-guess Congress in directing the Commission to follow the State Department's 1995 criteria in deciding the claims pending now. Nor is the Commission free to second-guess the underlying agreement negotiated between the State Department and Germany. But to say that the Commission has *little* discretion is not to say that it has *no* discretion. On those points where there is no specific understanding between the State Department and Germany, the Commission has sought to interpret their agreement reasonably, consistent with their intent in negotiating the agreement.

For example, the written agreement limits compensation to those "who suffered . . . as a result of National Socialist measures of persecution *conducted directly against them.*" 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 (which entered into force on September 19, 1995) ("Agreement"), Article 1 (emphasis supplied). The reported intent of that language is to limit compensation to only *living* Holocaust survivors (i.e., to exclude compensation for heirs, beneficiaries and estates of deceased survivors of the Holocaust). The Commission has interpreted that language to mean that the Holocaust survivor must have been *living as of September 19, 1995* -- the effective date of the U.S.-German agreement.[3] The effect of the Commission's interpretation is to

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[3]Other interpretations might have required that the Holocaust survivor be living as of the date the claim was filed, or the date an award in the claim is made, or the date the claims program is completed, or the date that Germany and the United States reach agreement on the amount of Germany's final lump sum payment, or the date on which the award is actually paid. Such interpretations would have excluded claims that will be compensable under the Commission's ruling on this point. (They also would have produced capricious results, and would have been difficult to

extend coverage under the Holocaust Survivors Claims Program to the maximum number of claimants possible, consistent with the authorizing legislation and the underlying agreement.

The written agreement likewise limits compensation to only those "who have to date received no compensation from the Federal Republic of Germany." Agreement, Article 1. Based on its determination that the group of claimants compensated in 1995 included an individual who had previously received a one-time payment of compensation, the Commission has interpreted the term "compensation" in the written agreement to mean "pension." Thus, under the Commission's reading, prior receipt of a one-time payment from Germany does not bar a claimant from compensation under this claims program. Again, the effect of that interpretation is to extend coverage under this claims program to the maximum number of claimants possible, consistent with the authorizing legislation and the underlying agreement.

Similarly, while Germany reportedly referred to ITS in the 1995 negotiations in determining whether or not a particular institution constituted a concentration camp,[4] the Commission has not limited itself to the ITS list. Instead, based on its determination that Germany itself developed the BGBl. list as a roster of concentration camps for use in another compensation program, the Commission has decided that camps on that list will also be deemed concentration camps and sub-camps under this claims program. Moreover, even where a camp on the BGBl. list is identified by ITS as some type of institution other than a concentration camp, the

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apply.)

[4]*See* Memorandum, "History of the September 1995 U.S.-German Agreement and Related Legislation" (transmitted by letter dated June 9, 1997, from M. Matheson, Acting Legal Adviser, Department of State) ("Matheson Memorandum") (attached as Exhibit 1), at 2.

Commission has decided to defer to the BGBl. list (and, thus, to treat the camp as a concentration camp for purposes of compensation in this program). Proposed Decision on Scope at 10. As in the other examples discussed above, the effect of this interpretation is to extend coverage under the Holocaust Survivors Claims Program to the maximum number of claimants possible, consistent with the authorizing legislation and the underlying agreement.

Finally, although the State Department advised that Germany indicated in the 1995 negotiations that it intended the agreement to cover only those held in recognized concentration camps and sub-camps, the Commission nevertheless ruled that -- since the claims compensated in 1995 included several cases involving types of confinement other than in concentration camps and sub-camps -- other cases involving those same types of confinement should be compensable under the Holocaust Survivors Claims Program.[5] Proposed Decision on Scope at 6-7, 14 et seq. In this case, too, the effect of the Commission's interpretation is to extend coverage under the claims program to the maximum number of claimants possible, consistent with the authorizing legislation and the underlying agreement.

Most of the objections to the Proposed Decision on Scope would effectively have the Commission arrogate to itself the powers

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[5]Moreover, in recognizing these exceptions, the Commission has not limited them to the specific facts of the cases compensated in 1995, but rather has sought to define them in more general terms. For example, the Commission might have held that a forced march case is compensable in the Holocaust Survivors Claims Program only if the claimant was on the *very same forced march* as the individual who was compensated in 1995 for forced labor while on a forced march. Instead, the Commission has held that an award shall be entered in *any* case in which a civilian was forced to labor while on *any* forced march. Proposed Decision on Scope at 15.

and responsibilities entrusted to the State Department and to Congress. This we cannot do. While the Commission has the discretion (indeed, the duty) to interpret the agreement negotiated between the State Department and Germany on matters such as those cited above (points on which the parties have no specific understanding), the Commission is obligated to give effect to all terms on which the parties agreed. The Commission's final determinations here fulfill that obligation.

III. SPECIFIC OBJECTIONS

As discussed above, most of the objections filed were, in essence, either objections to the authorizing legislation passed by Congress or objections to the underlying agreement negotiated between the State Department and Germany. The Commission has not undertaken to address each such objection individually; however, we focus below on a number of objections which raise other issues that warrant discussion.

Location v. Conditions of Internment. Some claimants objected to the Proposed Decision on Scope because it focused on *where* an individual was detained, rather than the *conditions* to which he or she was subjected. The short answer is that the State Department has advised that -- in the 1995 negotiations -- Germany defined the coverage of the agreement in terms of *where* individuals were interned. Matheson Memorandum at 1. And, as discussed above, the Commission has no power to vary the terms of that agreement.

Comparable Conditions. A number of claimants have filed objections describing the compelling circumstances of their cases, and asserting that they should be covered by the Holocaust Survivors Claims Program because the conditions under which they were held were as bad as (or worse than) those in concentration

camps.[6] But the Commission has no power to declare institutions *de facto* concentration camps. It is true that the explanatory statement accompanying the statute authorizing Commission adjudication of the Holocaust claims stated the expectation of the House-Senate conferees that the Commission would consider claims for internment at institutions where "conditions . . . were comparable to conditions at a recognized concentration camp." H.R. Conf. Rep. No. 378, 104th Cong., 1st Sess. H13,900, 141 Cong. Rec. H13,874-01, H113,900 (1995). However, as the Proposed Decision noted, the explanatory statement is legislative history, which does not rise to the level of the statute itself. Proposed Decision on Scope at 9, 13-14. *See also* Matheson Memorandum at 3. Simply stated, as suggested by the discussion in part II above, Congress could have drafted the statute to include "comparable conditions" cases within the scope of the Holocaust Survivors Claims Program. It did not do so; and the Commission cannot confer such jurisdiction on itself.[7]

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[6]For example, some ex-POWs asserted that the circumstances of their cases distinguished them from POWs generally, and constituted conditions comparable to those in concentration camps. They argued that, accordingly, their cases should be covered under the Holocaust Survivors Claims Program even if POWs in general are not. Some Jewish POWs were segregated from the general POW population or singled out by the Nazis for discriminatory treatment. Other POWs, who were assigned to work commandos, noted that -- unlike their comrades in POW camps -- they often had to scavenge for food and were frequently quartered in makeshift shelter (barns or other buildings, rather than barracks); they were subjected to forced labor; they were vulnerable to Allied bombing and strafing (because they were mobile and their locations were not known to Allied fliers); and they received no Red Cross packages or mail.

[7]One of the objections on this point was filed by an attorney who also represented some of the 1995 claimants and who reportedly had a hand in drafting the "comparable conditions" language. However, his objection does not address why that language was not included in the text of the statute itself.

Potential for Dilution of Payments on Awards. As an aside, the Commission noted in its Proposed Decision that any legislative expansion of the scope of the Holocaust Survivors Claims Program beyond the agreement reached between the United States and Germany -- e.g., by including "comparable conditions" cases -- would carry with it the potential for dilution of individual claimants' actual monetary recoveries. Proposed Decision on Scope at 14 n.7. As the Proposed Decision explained, under the International Claims Settlement Act each and every claimant who prevails before the Commission will share in the compensation fund to be established with the monies provided by Germany, on a *pro rata* basis -- whether or not Germany recognizes the individual's claim and pays compensation to the United States for it. Thus, if Congress were to direct the Commission to make awards in favor of claimants for whom Germany ultimately refuses to pay compensation, actual recoveries by all successful claimants would be diluted. *Id.*

Several claimants filed objections arguing that concerns about the dilution of awards should play no part in the Commission's decision making process. Indeed, they have not. Claimants' arguments mistakenly assume that the Commission is *authorized* to make awards in "comparable conditions" cases but is unwilling to do so for fear that Germany will not recognize such cases (with payments on all awards accordingly diluted). However, as we have explained, Congress has not empowered the Commission to consider "comparable conditions" cases; thus, there is no related potential for dilution to concern the Commission or anyone else. The Proposed Decision's discussion of the potential for dilution reflected nothing more than the Commission's conjecture as to why *Congress* might have been understandably reluctant -- as a matter of policy -- to direct the Commission to make awards in "comparable conditions" cases, by including the "comparable conditions" language in the statute itself.

Determination of Which Camps Are "Covered". Some objections argued that the German government should not be permitted to specify which camps are "covered" by the Holocaust Survivors Claims Program and which are not, and that the Commission should not look to "German lists" in determining whether or not a particular place of internment constituted a "concentration camp."

This argument fails to recognize the fundamental fact that the Holocaust Survivors Claims Program arises out of an agreement between two sovereigns. And, like the parties to any other type of contract, the sovereign parties to an international claims settlement agreement have the prerogative to determine the specific terms of their agreement; absent a "meeting of the minds," there is no agreement. In this case, Germany has agreed to cover certain types of Nazi confinement, and has declined to cover others. Under the agreement, Germany is legally obligated to pay compensation to the United States *only* for cases of the types it has agreed to cover.

As we have noted, Congress could have directed the Commission to make awards in a class of cases broader than that agreed to by Germany in its negotiations with the State Department; however, it did not do so. Instead, it directed the Commission to follow the practice of the State Department in the determination of the claims of Mr. Princz and others compensated in 1995. That practice, in turn, reflected the underlying agreement the State Department had negotiated with Germany. The Commission's authorizing statute thus implicitly refers the Commission to the U.S.-German agreement (which, in turn, reflects Germany's position as to the types of confinement to be compensated). In this sense, this objection too is essentially an objection to the authorizing legislation passed by Congress, or the underlying U.S.-German agreement, or both.

More to the point, however, while some objections argued that so-called "German lists"[8] should not be used to determine whether or not a particular camp constitutes a "concentration camp" for purposes of the Holocaust Survivors Claims Program, none directed the Commission to different or additional authorities.[9]

"Loss of Liberty *or* Damage to Body or Health". Several objections emphasized the language of the written agreement, which provides, in pertinent part:

> This agreement shall settle compensation claims by certain United States nationals who suffered loss of liberty or damage to body or health as a result of National Socialist measures of persecution conducted directly against them. . . . This Agreement shall, inter alia, not cover persons who were subjected to forced labor alone while not being detained in a concentration camp as victims of National Socialist measures of persecution.

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[8]While the BGBl. list was developed by the German government, the ITS registry, *Vorlaeufiges Verzeichnis: Konzentrationslager und deren Aussenkommandos sowie anderer Haftstaetten unter dem Reichsfuehrer-SS in Deutschland und deutsch besetzten Gebieten* (1933-1945) (Arolsen, 1969), or "Provisional Registry: Concentration Camps and Their Satellite Operations As Well As Other Detention Sites Under the Commander of the SS In Germany and German-Occupied Territories (1933-1945)," bears the imprimatur of the International Committee of the Red Cross, and is perhaps the most authoritative and widely-recognized reference work of its type. Proposed Decision on Scope at 7 n.3.

[9]One objection urged the Commission to consider a list of POW camps, or "stalags." However, as explained in the Proposed Decision on Scope, Germany expressly refused to cover POW camps. Proposed Decision on Scope at 8. *See also* Matheson Memorandum at 2.

Agreement, Article 1. These claimants argued that nothing in the language of the written agreement limits compensation to only those who were held in specific types of Nazi institutions and, indeed, that the use of the disjunctive "or" ("loss of liberty *or* damage to body or health") indicates that there is no requirement that a claimant have been deprived of liberty at all.

The only parties to the 1995 negotiations were the State Department and Germany, however. No one else, including the Commission, is in a position to say what those two parties agreed. And the State Department advises that -- however inartfully the *written* agreement may have been drafted -- the parties' understanding is clear: Germany has agreed to cover only those who were *deprived of their liberty*. The State Department's position on this point is borne out by the claims of Mr. Princz and the others compensated in 1995. It is undisputed that all of the claimants in those cases had been deprived of their liberty by the Nazi regime.

1995 Cases Too Small A Sample. Other objections argued that the cases compensated in 1995 are too small a sample to establish definitively the range of cases for which Germany will pay compensation. As one claimant put it, "If more cases had been presented to Germany, more would have been covered."

This argument is speculation, at best. Moreover, it overlooks Congress' directive to the Commission to decide claims under this claims program by looking to the criteria applied by the State Department in determining the claims compensated in 1995. Finally, and perhaps most important, it does not take into account the history of the negotiations which led to the 1995 agreement. According to the State Department, in those negotiations:

> The German side made clear that a whole series of facilities other than recognized concentration camps were excluded from coverage, ranging from ordinary

> prisons and civilian internment facilities to forced labor camps and prisoner-of-war camps. . .

Matheson Memorandum at 1. In short, the fact that a claim for internment in a particular type of Nazi institution was not presented to Germany in 1995 does not mean that Germany might have covered such a claim if it had been presented. The State Department's extended negotiations with Germany reportedly probed the range of facilities for which Germany would agree to pay compensation; and the understandings reached in those negotiations are encompassed within the State Department "criteria" which Congress has directed the Commission to follow. Matheson Memorandum at 3.

Compensation of Jews and Non-Jews. Some claimants have questioned whether non-Jews are eligible for compensation under the Holocaust Survivors Claims Program. This claims program definitely is not limited to those who are Jewish. There were Jews and non-Jews among those compensated in 1995, and Jews and non-Jews alike will receive awards under the Commission's final determinations here.[10]

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[10]One objection argued that compensation under the agreement is limited to those who were persecuted by the Nazis "by reason of their race, their faith or their ideology," citing as evidence the diplomatic Notes exchanged between the United States and Germany at the time the written agreement was signed. The objection observed that Germany's Note to that effect was recited *verbatim* in the United States' response and "accept[ed] without objection or comment." But the objection misconstrues diplomatic custom. The United States' response to Germany's Note reflected polite acknowledgment -- *not* assent. It was the "diplomat-speak" equivalent of "I *hear* you (but respectfully disagree)."

Moreover, even if Germany and the United States had agreed that Germany would pay compensation to the United States only for those persecuted for race, faith or ideology, it would be irrelevant. The

Forced Labor While on Forced March. The objection filed by counsel to a number of claimants asserts that the Commission's Proposed Decision on Scope reflects a mistake of fact concerning the circumstances of one case compensated in 1995. According to counsel, that case did not involve a civilian subjected to forced labor *while on a forced march* (as indicated in the Proposed Decision on Scope at 7, 15); rather, counsel states, the claim involved a forced march *to* a forced labor site, or forced labor *following* a forced march.

Whatever the actual facts of the case in question, the State Department at the time understood the case to involve forced labor while on a forced march, and the case was presented to Germany, and accepted by Germany, as such a case. Matheson Memorandum at 2. The case thus stands as evidence of the intent of Germany -- and the State Department -- to cover cases of "forced labor while on a forced march." Accordingly, there is no need to modify the Proposed Decision's holding on this point.

"Forced Labor Camps for Jews". Based on its understanding that one of the claims compensated in 1995 involved internment in a place call Mogilev (recognized by ITS as a "forced labor camp for Jews"), the Commission's Proposed Decision on Scope tentatively held that awards would be entered in all cases in which civilian citizens of the United States (who satisfy all other eligibility requirements) were interned in such "forced labor camps for Jews."

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authorizing statute binds the Commission to follow the practice of the State Department in compensating the 1995 claimants. And, without regard to what Germany did or did not do, it is clear that the State Department did not consider race, faith or ideology in its decisions on the compensation of the 1995 claimants. Accordingly, the Commission's determinations here also disregard such classifications.

Proposed Decision on Scope at 15-16. However, counsel for a number of claimants has asserted that, in fact, the 1995 claimant was *not* confined in the Mogilev which was a forced labor camp for Jews.

The Commission now understands that there is more than one place called Mogilev, and that the place known as Mogilev which was classified as a "forced labor camp for Jews" was in Belorussia and is not the place where the individual compensated in 1995 was interned. The place where that individual was held was in the Ukraine, and is not listed -- at all -- in the ITS registry.[11]

The individual compensated in 1995 was deported in 1942 from the city of Cernauti to Mogilev-Podolski, in Transnistria (a part of the Ukraine annexed by Romania in 1941). Mogilev-Podolski was a major assembly point for Jews expelled from Bessarabia and Bukovina, and the most important among the five crossing points to Transnistria. 3 *Encyclopedia of the Holocaust* 985-87 (1990). Eventually, thousands of Jews were driven from Mogilev-Podolski, and forced to other villages and towns in the area, where they faced conditions that were even worse. *Id.* The individual compensated in 1995 was among those forced out of Mogilev-Podolski; she was sent to nearby Djurin, where she remained until she was returned to Cernauti.

Based on its determination that the case covered in the 1995 negotiations did not involve internment in the Mogilev "forced labor camp for Jews" in Belorussia, the Commission regretfully withdraws its tentative determination in the Proposed Decision on Scope that claims for internment in ITS-recognized "forced labor camps for

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[11]It is clear that the State Department and Germany knew at the time of the 1995 negotiations that the Mogilev in question was located in Ukraine. Thus, this mistake of fact differs from the case involving "forced labor while on a forced march," discussed above.

Jews" would be compensable in the Holocaust Survivors Claims Program. The Commission is constrained to conclude that internment in "forced labor camps for Jews" (such as those listed at page 16 of the Proposed Decision on Scope) is *not* compensable in this forum.[12] Based on the coverage of Mogilev-Podolski and

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[12]The Commission's disposition of this point obviates the need to address the objection filed by counsel to a number of claimants, which argues that the compensation of those interned in "forced labor camps for Jews" would violate the Equal Protection Clause of the Constitution by excluding similarly persecuted non-Jewish survivors from the scope of the Holocaust Survivors Claims Program.

Although the Commission does not reach the matter, the merits of that argument are in grave doubt. As a factual matter, notwithstanding the name of the type of camp, those interned in "forced labor camps for Jews" were not all Jewish; thus, compensation of those interned in such camps would not exclude similarly situated non-Jewish Holocaust survivors. But, even if non-Jews had not been held in "forced labor camps for Jews," the award of compensation to those in such camps would be permissible to the extent that it remedied specific, identified discrimination in the past. *See, e.g., Shaw v. Hunt*, 517 U.S. __, 116 S.Ct. 1894 (1996). The category of "forced labor camps for Jews" is an historical reality; the class of institution was established and denominated as such by the Nazi regime, *not* the Commission. And the individuals to be compensated under this claims program are the very individuals who were the victims of the Nazis' specific, identified discrimination. The Holocaust Survivors Claims Program is not perpetrating, or perpetuating, discrimination; it is remedying it.

For the reasons set forth above, the Commission also need not reach counsel's proposed alternative "two-prong test" for coverage under the Holocaust Survivors Claims Program: (1) whether the claimant was a victim of Nazi persecution, as opposed to some other kind of wrong; and (2) whether the Nazi measures of persecution gave rise to treatment which was "sufficiently inhumane" to warrant compensation. Whatever may be the merits of such a test, there is no evidence whatsoever to suggest that

Djurin in the claims compensated in 1995, the Commission instead holds that awards shall be entered in all cases in which civilian citizens of the United States (who satisfy all other eligibility requirements) were interned in ghettos or camps in Transnistria that were similar to Mogilev-Podolski and Djurin and, like those places, were controlled by Romania and used as points of concentration for Jews and others deemed to be "undesirable." Such places include Bogdanovka, Akhmetchetka, and Domanevka.

IV. FINAL DETERMINATIONS OF THE COMMISSION

For the reasons set forth above, the Commission withdraws the preliminary determinations set forth in its Proposed Decision on Scope, and makes the following revised determinations, which are now final.

A. Civilians and POWs in Concentration Camps and Sub-Camps

Pursuant to the Commission's mandate from Congress to decide claims in accordance with the criteria applied by the State Department to the claims compensated in 1995, the Commission holds that awards shall be entered for claimants who meet all other

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it was used either by Germany in the 1995 negotiations *or* by the State Department in determining the claims compensated in 1995. Indeed, the State Department expressly disavows using such a test. And, while counsel asserts that one of the virtues of the alternative test is that it focuses on *why* the individual was detained rather than *where* the individual was detained, the State Department has advised that -- in the 1995 negotiations -- Germany defined the coverage of the agreement in terms of *where* individuals were interned. Matheson Memorandum at 1. Counsel has proffered no evidence to the contrary.

eligibility requirements and establish that they were interned in concentration camps or sub-camps recognized as such by ITS or listed in BGBl.[13]

B. Civilians Subjected to Forced Labor While on Forced March

Consistent with Congress' directive to decide claims in accordance with the criteria applied by the State Department to the claims compensated in 1995, the Commission holds that awards shall be entered in all cases in which claimants who were civilian citizens of the United States (who satisfy all other requirements) were subjected to forced labor while on a forced march.

C. Civilians in Transnistrian Ghettos/Camps

Pursuant to its mandate from Congress to decide claims in accordance with the criteria applied by the State Department to the claims compensated in 1995, the Commission holds that awards shall be entered in all cases in which claimants who were civilian citizens of the United States (who satisfy all other eligibility requirements) were interned in ghettos or camps in Transnistria that were similar to Mogilev/Podolski and Djurin and, like those places, were controlled by Romania and used as points of concentration for Jews and others deemed to be "undesirable."

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[13]These include, but are not limited to, the concentration camps and sub-camps listed at pages 11 through 13 of the Proposed Decision on Scope. As indicated there, however, sometimes other Nazi facilities were located in a city or town which was the site of a concentration camp or sub-camp. In order to be eligible for compensation, a claimant must prove that he or she was actually held within the confines of the concentration camp or sub-camp in the city or town in question.

D. All Other Types of Confinement

Pursuant to Congress' directive to decide claims in accordance with the criteria applied by the State Department to the claims compensated in 1995, the Commission holds that all other claims -- including claims for internment in ITS-recognized "forced labor camps for Jews" -- are beyond the scope of the Holocaust Survivors Claims Program as defined by the authorizing legislation and the underlying U.S.-German agreement. Accordingly, such claims are not compensable in this forum.

V. CONCLUSION

The Commission has done its best to faithfully execute its mandate, within the limits of its authority. But, regrettably, this is a situation where application of the law will not render justice in all cases. The Commission stands ready to work with Congress and the Department of State to ensure that compensation is obtained for as many U.S. survivors of the Holocaust as possible.

This constitutes the Commission's final determination in this matter.

Dated at Washington, DC and
entered as the Final Decision
of the Commission.
August 14, 1997

Exhibit 1 (attached to Final Decision on Scope)

United States Department of State
Washington, D.C. 20520

June 9, 1997

Ms. Delissa A. Ridgway
Chair
Foreign Claims Settlement Commission
U.S. Department of Justice
Washington, D.C. 20579

Dear Ms. Ridgway:

I am writing to transmit to you a brief summary of the negotiating history of the September 19, 1995 agreement between the United States and Germany concerning compensation for American victims of Nazi persecution.

I hope that this information will prove useful to you in your process of determining eligibility criteria for the Holocaust Survivors Claims Program. As you will note, obtaining compensation for Hugo Princz and other Americans who had been similarly victimized during World War II was the focus of the negotiation.

Please do not hesitate to contact me if I can be of assistance.

Sincerely,

Michael J. Matheson
Acting Legal Adviser

Attachment: As Stated

History of the September 1995 U.S.-German Agreement
and Related Legislation

The September 19, 1995 agreement with the Federal Republic of Germany providing for compensation to victims of Nazi persecution arose directly out of an exchange of letters between President Clinton and German Chancellor Kohl, in which Chancellor Kohl offered to compensate Hugo Princz and comparable victims of Nazi persecution. This was a significant breakthrough, after many years of German refusal to deal with the Princz case. Chancellor Kohl offered to reach an agreement that was strictly limited to, and only settles, cases the Germans considered comparable to the Princz case.

Article 1 defines the coverage of the September 1995 agreement. The article excludes inter alia persons who were subjected to forced labor alone "while not being detained in a concentration camp as victims of National Socialist measures of persecution." During negotiation of this provision, the German side made clear that they intended the agreement text to cover only persons who, like Princz, had been held captive in "recognized" concentration camps.

The U.S. side reviewed with the Germans the facts of specific "known" cases where persons who were U.S. citizens at the time were persecuted by the Nazis. By the end of the negotiations, the Germans had agreed that a number of persons were covered by articles 1 and 2(1). In addition, while not agreeing that several other persons fell within the terms of article 1, the Germans arrived at the three million DM amount in article 2(1) by counting those other persons. Finally, there was a third category of persons whom the Germans rejected.

The German side made clear that a whole series of facilities other than recognized concentration camps were excluded from coverage, ranging from ordinary prisons and civilian internment facilities to forced labor camps and prisoner-of-war camps, and further that they would not agree to the whole agreement if these were included.

Among the first two groups - persons accepted by the Germans as falling within article 1 and the additional persons on the basis of whom the Germans derived the sum in article 2(1) - were individual cases that do not square with the exclusions specifically set forth in article 1.

First, in one case agreed to by the German negotiators as covered, the person had not been in a concentration camp, but was subjected to forced labor while on a forced march under SS guard. Yet the German side accepted without discussion that this case was covered.

Second, in two cases the U.S. side said the person had been incarcerated in a concentration camp, and the German side did not object. The German side agreed that the cases were covered by article 1. However it appears that the institutions in question are not identified as concentration camps on the International Tracing Service Register, on which Germany relied. The inclusion of these cases thus does not square with the position the Germans took, on the basis of which other cases were excluded from coverage.

Third, in one case the person in question had received $2,400 in a prior one-time compensation payment from Germany. The German side accepted this case for inclusion under articles 1 and 2(1) despite the language in article 1 ("to date received no compensation"). However, Germany made clear that if the person in question had received a pension from Germany, the person would have to be excluded.

Finally, we discussed the coverage of military personnel and employees, in light of the fact that Mr. Princz had been a civilian. The German side was clear during the negotiations that they would accept coverage of military personnel or employees, such as POWs, if they had been held captive in recognized concentration camps, but that they would not agree to cover military personnel and employees who had been in POW camps or other types of Nazi institutions. They never deviated from this stance.

The September 1995 Agreement not only settled the case of Mr. Princz and other similar cases identified to that date; article 2(2) of the agreement accords the United States the right to negotiate an additional lump sum to cover further cases that fall within the scope of the agreement but which had not been identified as of September 1995. This provision makes clear that the additional payments will be "based on the same criteria as set forth in Article 1" and "derived on the same basis as the amount under paragraph 1" of article 2.

After the agreement took effect, the Department of State requested legislation to allow the FCSC to conduct a program to identify additional persons who qualified for compensation under the terms of the agreement with Germany. The statute that was ultimately passed provides, first, that the FCSC is authorized and directed to adjudicate claims of U.S. nationals "covered by Article 2(2) of the Agreement." The statute further provides that, in deciding claims, "the Commission shall be guided by the criteria applied by the Department of State in determining the validity and amount of the claims" known and settled in September 1995. Those criteria include the understandings set forth above.

While the conference committee report accompanying the legislation states "the conferees expect the Commission will determine whether an institution should be considered a 'concentration camp' based on whether the institution in question is recognized by relevant authorities as a concentration camp or

whether conditions at the institution in question were comparable to conditions at a recognized concentration camp," such legislative history obviously cannot alter the clear mandate of the statute. The statute expressly states that claims must be covered by article 2(2), which in turn requires that claims satisfy the criteria agreed between the United States and Germany.

Our primary goal in negotiating the agreement was to obtain compensation for a group of U.S. citizens who suffered horribly during the Holocaust. We of course know that many suffered terribly during the Holocaust and as POWs in Germany. The agreement does not settle or waive claims of Americans who are not covered by it.

Our goal now is to obtain compensation for all those covered by the agreement whom we had not previously identified. Only if we stick to the terms of the agreement, as understood by both the United States and Germany, will we be able to obtain an adequate recovery for persons covered by the agreement.

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B. Claims Against Albania

During the first months of 1997, the Commission continued its adjudication of claims against Albania, pursuant to the March 10, 1995, agreement settling United States nationals' property claims in exchange for a $2 million lump-sum payment by Albania to the United States. That agreement is reprinted in the Commission's 1995 Yearbook (1995 FCSC Yearbook 17-20).

One of the most vexing issues before the Commission in the Albanian Claims Program was the constitutionality of the residency requirement in the Agreed Minute to the settlement agreement effectively limiting its jurisdiction over claims of Albanian-

and information pertinent to the remaining claims. Accordingly, the Commission decided to suspend the program temporarily until order was restored in the country. The program was still suspended when the year ended.

Even as it held a handful of claims in abeyance, the Commission recognized the importance of paying the awards already entered, particularly in light of the advanced age of many claimants and the fact that they had waited 50+ years for compensation. In May 1997, the Commission certified 78 awards to the Department of the Treasury. The Department, in turn, paid the certified amounts to the claimants, issuing checks in the aggregate amount of $759,332.51 in principal and interest.

EXHIBIT III

In the Matter of the Claim of DEMIRHAN BACE Against the Government of Albania

Claim No. ALB-112 Decision No. ALB-249

Claim for expropriation of real property initially denied based on claimant's failure to establish her satisfaction of residency requirement in Agreed Minute to U.S.-Albania Settlement Agreement.

PROPOSED DECISION

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

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 Agreed Minute to the Settlement Agreement further provides:

> For purposes of article 1, the term "United States nationals" shall include dual United States-Albanian nationals only if those nationals are domiciled in the United States currently or for at least half the period of time between when the property was taken and the date of entry into force of the agreement.

In effect, this residency requirement limits the Commission's jurisdiction over the claims of dual nationals to those cases where the owner of the claim either (1) was domiciled in the United States on April 18, 1995 (the effective date of the Settlement Agreement), or (2) was domiciled in the United States for at least half the period of time between the date the property was expropriated and April 18, 1995.

Claimant here, a United States national by birth, seeks compensation for 4.195 hectares of land said to have been expropriated by the Albanian government in the agrarian reform of 1945. At that time, according to claimant, the property was owned by her father, Hysni Shaban Shaholli, who was naturalized as a United States citizen in 1927 and who died in the United States in 1959. The claimant further states that she inherited the right to claim for the property upon the death of her father.

Unfortunately, the information provided by claimant to date is not sufficient to establish her right to compensation. It appears that claimant is a dual U.S.-Albanian national, because her father was an Albanian citizen. Under Albanian law, claimant retains Albanian nationality notwithstanding her U.S. nationality by birth.

Because claimant is a dual United States-Albanian national, the Commission is constrained to apply the residency requirement in the Agreed Minute to the Settlement Agreement. There is no indication that claimant has ever lived in the United States; and claimant's father died in 1959. Thus, it does not appear that the claim was owned by someone living in the United States for at least half of the approximately 50 years between April 18, 1995 and the expropriation of the property in 1945.

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) (1995).

The Commission finds that claimant here has not met the burden of proof in that she has failed to provide information to establish either that she was living in the United States on April 18, 1995, or that the claim was owned by someone living in the United States for at least half the time between April 18, 1995 and the date the claim arose. In the absence of such evidence, the Commission is unable to find that the residency requirement in the Agreed Minute to the Settlement Agreement is satisfied.

Accordingly, while the Commission sympathizes with claimant for the loss of her family's property, it cannot find -- on the evidence submitted to date -- that this claim is 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.
January 28, 1997

Note: Following the submission of additional evidence and an April 15, 1997, hearing on the record, the Commission issued a Final Decision in this claim, finding that claimant satisfied the residency requirement and entering an award in the total amount of $5,041.50.

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

In April 1997, the United States and the Federal Republic of Germany exchanged diplomatic notes reflecting the final resolution of all but five claims of U.S. citizens for expropriation of property in the former German Democratic Republic (East Germany), which were the subject of a May 1992 agreement between the United States and Germany. Under that agreement, Germany agreed to pay compensation of up to $190 million to the United States for the subject claims, which were adjudicated by the Commission in a claims program conducted between 1977 and 1981. (See Section III, subsection A.6, below.) The May 1992 agreement gave

Following oral argument in July 1996, the court ruled from the bench, granting summary judgment in favor of the United States. The written opinion issued in September 1996, holding that, under a "regulatory takings" analysis, any loss that the plaintiffs sustained was not the result of a compensable taking by the United States. *Walter Abrahim-Youri v. United States*, 36 Fed. Cl. 482 (1996).

Plaintiffs appealed that decision to the U.S. Court of Appeals for the Federal Circuit, asserting that the lower court erred in applying a "regulatory takings" analysis, rather than a "per se taking" analysis. *Walter Abrahim-Youri, et al. v. United States,* Fed. Cir. No. 97-5011. The Court of Appeals heard oral argument in May and, on December 4, 1997, entered judgment affirming the Court of Federal Claims. The Court of Appeals reasoned that, although petitioners' claims might not fit neatly into a "regulatory takings" analysis, the factors considered by the trial court remained relevant to the evaluation of petitioners' taking claims. Applying those and other factors, the Court of Appeals concluded that neither the government's espousal of petitioners' claims nor the settlement agreement effected a compensable taking.

Specifically, the Court of Appeals observed that petitioners had derived a substantial benefit from the government's settlement of their claims. The court also found that the cases on which petitioners relied did not support their takings claim, noting that the referenced cases did not involve monetary awards for the plaintiffs. Nor did they otherwise hold that the Fifth Amendment requires compensation in such cases. Finally, the court explained that petitioners' property interests in claims arising out of consensual international transactions were held subject to the government's established power to effect the assertion of claims against a foreign sovereign in order to maintain international amity. The court concluded that, in this case, the government had "provided an alternative tailored to the circumstances which produced a result as

favorable to [petitioners] as could reasonably be expected." It therefore held that petitioners had failed to establish that the government had effected a compensable taking of their property.

2. Claims Against Iraq

In 1997, 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 pursue legislation to authorize the Commission to adjudicate the outstanding claims of U.S. nationals 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 other UN member countries. However, there is no forum for other claims -- particularly claims pre-dating Iraq's August 1990 invasion of Kuwait -- which are valued in the billions of dollars.

Although the House bill was silent on the subject, the foreign relations authorization bill passed by the Senate included a provision authorizing Commission adjudication of certain outstanding claims against Iraq. However, when the two versions were reconciled in a Senate/House conference late in the year, the House conferees -- under instructions from the full House of Representatives -- declined to accede to the Senate provision on Iraq claims, and it was dropped from the conference version of the bill. That version was still pending before the full Senate and House when Congress adjourned in November.

3. Helms-Burton Act/Claims Against Cuba

The Cuban Liberty and Democratic Solidarity (LIBERTAD) Act (also known as the Helms-Burton Act) 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.

Invoking his express authority under the statute, President Clinton announced on July 16, 1996, a six-month suspension of the right to file Title III actions, pledging to use the delay to seek agreement with U.S. trading partners on policy towards Cuba. On January 3, 1997, citing "real progress" in U.S. efforts to unite the international community "behind the cause of freedom in Cuba," the President announced a second six-month suspension and indicated his intention to continue suspending the right to file suit "so long as America's friends and allies continue their stepped-up efforts to promote a transition to democracy in Cuba." The President announced a third six-month suspension on July 16, 1997, again emphasizing the continued cooperative efforts of U.S. trading partners to bring democracy to Cuba.

Notwithstanding the continued suspension of the right to file Title III lawsuits, the Commission received many requests to examine files from its Cuban Claims Program during the year. Most of the requests were from attorneys representing foreign investors wishing to avoid involvement with any property in Cuba that is the subject of a certified claim in the program. In addition, representatives from the Department of State examined a number of the files, in connection with the Department's responsibility under Title IV of the Helms-Burton Act, which requires the exclusion from

the United States of foreign individuals associated with corporations or other entities "trafficking" in property that is the subject of a certified claim in the Cuban Claims Program.

4. Prisoner-Of-War and Civilian Internee Claims

During 1997, 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.

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 (GDR) 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 GDR -- 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, in which Germany assented to payment of up to $190 million to settle and discharge the claims against it. Its initial payment was $160 million, with up to an additional $30 million to be paid if needed. The agreement allowed claimants to elect either to accept payment of their Commission awards or to waive their right to payment in order to pursue claims for their properties under German law. See 1992 FCSC Ann. Rep. 87.

In April 1997, the United States and Germany exchanged diplomatic notes reflecting the resolution of all but five of the subject claims, and fixing the "final transfer amount" at $102,010,961.47. The balance of the $160 million initial payment was returned to Germany, with the remaining five cases to be "resolved by mutual agreement."

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 involving 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 [Public Law 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 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 D.1.)

SECTION IV: FUTURE PROGRAMS

A. Claims Against Iraq

As reported above, 1997 brought renewed Senate action on legislation to authorize the Commission to adjudicate the claims of U.S. nationals against Iraq that are beyond the jurisdiction of the United Nations Compensation Commission (UNCC). The Senate provision did not survive Senate/House conference, however. Thus, as the year ended, there was still no forum for the billions of dollars in outstanding claims against Iraq. (See Section II, subsection D.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

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ROBERT L. KUNZIG, August 21, 1958, to January 19, 1961.
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