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Summary of Actions of the United States Government

Complicity of the USG in the Taking of Bondholders' Rights in Property

This treatise summarizes the known actions of the United States Government ("USG") as regards China's pre-1949 defaulted full faith and credit sovereign debt. The wrongful and injurious actions of the USG parallel the wrongful and injurious actions of the international credit rating agencies, debt underwriters and credit rating advisors to The People's Republic of China. For a description of the latter such actions, see the Antitrust and Civil Racketeering Complaint filed with the Antitrust Division of the United States Department of Justice:

http://www.globalsecuritieswatch.org/DOJ_Antitrust_Complaint

The USG's actions as described herein comprise both acts of commission and acts of omission.

Statement of Facts

♦ The subject bonds were issued as full faith and credit sovereign obligations of the various dynastic and subsequent pre-1949 internationally-recognized governments of China to which The People's Republic of China is presently the internationally-recognized successor government. All of the bonds are presently in default and The People's Republic of China enjoys unfettered access to the world's financial markets free of any default penalty.

♦ Language appearing on certain of the bond certificates states:

> "THE LOAN AGREEMENT MENTIONED IN THE CONDITIONS ENDORSED HEREON HAS BEEN RECOGNISED BY THE GOVERNMENTS OF GREAT BRITAIN, GERMANY, FRANCE, RUSSIA AND JAPAN, AS A BINDING ENGAGEMENT UPON THE GOVERNMENT OF THE REPUBLIC OF CHINA AND ITS SUCCESSORS."

♦ Full faith and credit sovereign obligations issued by internationally-recognized governments have no 'expiration date' and remain valid obligations which continue to accrue interest, plus default interest from the date of default until paid.

♦ Continuity of obligations among internationally-recognized successive Governments is an established principle of settled international law: "Changes in the government or the internal policy of a state do not as a rule affect its position in international law. A monarchy may be transformed into a republic, or a republic into a monarchy; absolute principles may be substituted for constitutional, or the reverse; but, though the government changes, the nation remains, with rights and obligations unimpaired." *Lehigh Valley R. Co. v. State of Russia 21 F.2d 396, 401 (2d Cir. 1927) (quoting Moore, Digest International Law, Vol. 1, p. 249).*

♦ The disposition of the debt prior to the occurrence of the various actions as described herein:

» Upon the event of default, the Chinese Government affirmed its intent to repay the bonds "…when able to do so" and publicly reaffirmed such intent on August 13, 1947, via the following statement:

> "China pledges her honourable intention to repay these external loans the service of which was suspended in the course of the Sino-Japanese war. In no way does the conclusion of new loans in recent years prejudice the security of these pre-war loans or vitiate the rights of holders of such Bonds. At the same time China hopes soon to start a progressive programme of debt rehabilitation in accordance with the policy of upholding the national credit. Like so many other post-war nations to-day China will yet need international economic assistance to rehabilitate her trade and industry so as to strengthen her ability to make debt payments. Nevertheless the National Government is determined to do its best to fulfill its obligations and sincerely hopes that financial conditions will soon show sufficient improvement to enable it to make arrangements for an early resumption of the service of pre-war loans." [1]

Although the repayment obligation is vested with The People's Republic of China as the internationally recognized successor government of China, the Executive Yuan of the Republic of China on Taiwan affirmed the validity of the outstanding unpaid sovereign obligations on January 29, 1999.

» Prior to the United States Supreme Court's decision in *Republic of Austria v. Altmann, (03-13) 541 U.S. 677 (2004)*, U.S. citizens were unable to achieve recovery of their claims via litigation in U.S. courts due to the prevailing doctrine of absolute sovereign immunity and the lack of authority providing for the retroactive application of the doctrine of limited sovereign immunity first espoused in the 1952 Tate Letter, at which time the claims were considered to be time-barred. [2] To have brought suit in a Chinese court would not have been successful as (1) The Republic of China did not have the funds to repay the various debts comprising the bonds, as evidenced by the event of default; (2) as the successor government of China, The People's Republic of China lacked and continues to lack an independent judiciary; and (3) as the successor government of China, The People's Republic of China does not adhere to accepted norms of international law.

♦ In response to various inquiries from bondholders situated around the world regarding repayment of the bonds, on August 26, 1955, The People's Republic of China issued a communique to its various foreign embassies proclaiming: "…all bonds which distributes about the Beiyang Government and the Kuomintang reactionary government, the people's government cannot repay." The People's Republic of China's stated inability to repay the bonds appears to have been factually correct: as recently as 1974, The People's Republic of China reportedly had only $38,000 in foreign cash. [3]

♦ The Joint Communique of The United States of America and The People's Republic of China (the "Shanghai Communique") was jointly issued on February 27, 1972 and normalization of relations between the United States and The People's Republic of China was established on January 01, 1979 pursuant to the Joint Communiqué on the Establishment of Diplomatic Relations. Its announcement coincided with the ending of U.S. official recognition of the Republic of China (now commonly known as "Taiwan"), which was announced by President Jimmy Carter in December 1978. Carter also announced the withdrawal of all U.S. military personnel from Taiwan and the end to the Sino-American Mutual Defense Treaty signed with the Republic of China. The U.S. Government had prioritized the promotion of trade over bondholders' claims and had normalized relations with The People's Republic of China without securing repayment of the subject bonds, thereby effectively resulting in the involuntary subordination of bondholders' rights.

■ Actions of the United States Foreign Claims Settlement Commission

China I Program: November 08, 1967 – July 06, 1972

The Foreign Claims Settlement Commission reviewed and adjudicated claims of U.S. nationals arising between October 01, 1949 and November 06, 1966 pursuant to Title V of the International Claims Settlement Act of 1949, as amended (the "Act"). During the 'China I' Claims Settlement Program, the entirety of bond claims were denied by the Commission.

Excerpt:

"[…] the Commission concludes that claimant has failed to establish that the bonds, subject matter of the claim, were debts owed by the Chinese Communist regime and/or debts secured by property which has been nationalized, expropriated, intervened, or taken by the Chinese Communist regime. The claim is denied in its entirety."

Specimen Bond Claim –

Final Decision (March 11, 1971):

IN THE MATTER OF THE CLAIM OF

CARL MARKS & CO., INC.

Under Title V of the International Claims Settlement Act of 1949, as amended by Public Law 89-780

Claim No.: CN-0420

Decision No.: CN-472

Despite petitioner's assertions that (1) a "default" occurs only upon the nonpayment of the principal amount of the obligation when due, not upon the failure to make interest payments; (2) Title V, as evidenced by legislative history, was intended to authorize the Commission to certify liabilities incurred prior to October 1, 1949 if such claims based thereon were not barred by the Statute of Limitations and were not in contravention of principles of international law; and (3) during the Cuban claims settlement proceedings, also adjudicated under Title V, the Commission certified losses involving debt instruments which were in default with respect to payment of interest prior to the coming into power of the Castro regime, the Commission denied the claim.

Excerpt:

"All of the claimed bonds were issued by the Nationalist Government of China. The bonds were in default at least by the end of 1939 and continued in default throughout the pre- and post-World War II periods. The Commission finds that where the subject bonds were not secured by property they constituted general obligation bonds and, as such, were chargeable to the Nationalist Government of China and not the Chinese Communist regime."

As of the date of the above decision, The People's Republic of China was not the internationally recognized government of China and thus had not yet inherited the repayment obligation of the Bonds. Under established principles of international law, The People's Republic of China inherited the repayment obligation for China's unpaid full faith and credit sovereign debt during

the Commission's Title V claims review and adjudication period on October 25, 1971, the date upon which the international community by action of the United Nations General Assembly (Resolution 2758) granted The People's Republic of China international recognition as the government of all China.

Further, contrary to the Commission's determination that those subject bonds which were not secured by property constituted general obligation bonds, the 1984 Annual Report of the U.K. Council of Foreign Bondholders noted that the majority of the bonds were secured by various revenues (e.g., internal transit surcharges, i.e., railway revenues) and specific taxes (e.g., maritime customs duties and salt revenue taxes) and were also guaranteed by the Chinese Government. See also: "The National Debt of China – Its Origin and Its Security" by Charles Denby, Former United States Consul General in China, *Annals of the American Academy of Political and Social Science,* Vol. 68, America's Changing Investment Market (Nov. 1916), pp. 55-70.

Query: Were the actions of the FCSC improper (and possibly in contravention of the international claims settlement act of 1949), e.g., for the Commission to have excluded those claims from settlement) for which The People's Republic of China was liable for payment under settled international law upon, and subsequent to, the date of achieving international recognition?

■ Actions of the United States Department of State
Claims Settlement Negotiations with China: March 1973 – October 1975

Official representatives of the United States Department of State participated in a series of meetings in China to negotiate a claims-assets settlement accord which would provide for the mutual resolution of the respective claims of the two countries' nationals.

I. Memorandum of Conversations Between U.S. and Chinese Officials

During a meeting on Kissinger's November 1973 visit to Beijing, between Lin Ping, Director General of the Department of American and Oceanic Affairs of the Ministry of Foreign Affairs of The People's Republic of China and Arthur Hummel, Acting Assistant Secretary of State for East Asian and Pacific Affairs, United States Department of State, Lin reportedly disavowed any responsibility for repayment of the bonds.

> "Lin declared that Beijing 'considers [the bonds] as old, null and void.' Moreover, 'the PRC does not have to pay them.'"

Statements Attributed To: Lin Ping, Director-General
Department of American and Oceanic Affairs
Ministry of Foreign Affairs
The People's Republic of China

Source:

"'Casting a Shadow' Over Trade: The Problem of Private Claims and Blocked Assets in U.S.-China Relations, 1972-1975," by William Burr, Diplomatic History (The Journal of the Society for Historians of American Foreign Relations), Vol. 33, No. 2 (April 2009), p. 315-349. The monograph cites the following sources as authorities in regard to the above statements: Memcon, "Counterpart Meeting on Exchanges, Economic Relations," November 11, 1973, 3:25-7:05 p.m., HAKO, box 87, PRC Counterpart Talks, 1971-73; "Memorandum of Counterpart Meeting," November 12, 1973, 3:00 p.m., RG 59, Subject Files, box 4, Memorandum.

> Excerpts:
>
> "Undoubtedly envisioning bondholder lawsuits, Hummel unsuccessfully tried to ignore Lin's statement repudiating the pre-1949 debt: 'Frankly, I hope we don't have to respond . . . because it will cause problems.' He did not disregard it for long; the next day he declared that the U.S. Government could not 'accept' Lin's statement and that 'the question of repudiation of the bonds is not a proper subject of discussion now.'"
>
> "Indeed, Kissinger may have persuaded Zhou that the latter was a nonissue by arguing that the U.S. Government would not support the bondholders' claims."
>
> [*Author's note:* In so doing, Kissinger directly contravened and intentionally undermined the mandate of the United States Foreign Bondholders Protective Council, which must have the support of the Executive to be effective]

"The message that USLO chief Bruce delivered to Foreign Minister Qiao Guanhua on December 22, 1973, addressed the issues that had led to impasse a month before. First, there would be no more discussion of the pre-1949 bonds."

"Vice premier Deng Xiaoping […] was due in New York in early April for a speech to the UN General Assembly. […] Getting only a few days' notice of the flights, the State Department informed the PRCLO of the risk of legal proceedings by claimants to attach the aircraft." […] As it turned out, Deng did not fly on a Chinese aircraft to New York […]."

"A paper that Kissinger had prepared for President Ford treated Beijing's 'cavalier' action as an 'abrasion' reflecting a 'great China' disposition in the bureaucracy. Consistent with that, Holdridge had suggested that the Chinese may have decided that a settlement would set a bad precedent for dealing with the British and other countries with outstanding claims."

"[…] Kissinger's State Department was determined to prevent leaks and closely held the cables discussing the stalemated negotiations as 'nodis' (no distribution without permission). […] any leaks about its tone and content could have created a stir in the media, Congress, and among the claimants."

"The story of the Carter administration claims-assets negotiations is yet to be told, but the 1979 agreement avoided the issues – bonds, third-country banks, and definition of PRC nationals – that complicated the negotiations under Nixon and Ford. In effect, each side agreed to forget that these issues had ever been raised [...]."

"Within months of the settlement, an important symbol of the new U.S.-China economic relationship manifested itself: the opening of a Chase Manhattan Bank office in Beijing that soon began making loans. As David Rockefeller later put it, 'the door to China had swung open, and Chase was waiting on the other side as American companies began to walk through it.' Citibank also moved quickly to restore ties. A year later, China had MFN status. Bilateral trade doubled from 1978 to 1979 and kept growing." [4]

II. Official Directives by State Department Officials to Exclude Bonds from Settlement

Below is a series of recently declassified 'Secret' State Department Cables obtained via the Wikileaks website, in which United States Secretary of State and National Security Adviser Henry A. Kissinger specifically directed Department of State personnel to exclude the bonds from the mutual claims settlement accord then being negotiated between the United States and The People's Republic of China:

[A.] Cable Subject: US-PRC CLAIMS NEGOTIATIONS

Canonical ID: 1973STATE105075

Date: May 31, 1973

From: U.S. Department of State

To: China United States Liaison Office Peking

Original Classification: 'Secret' (declassified June 30, 2005)

Full Text (emphasis via yellow highlight added):

"1. LAST EXCHANGE RE PRIVATE CLAIMS AND FROZEN ASSETS TOOK PLACE MARCH 21 IN PARIS. IN THAT MEETING THE US PROPOSED CERTAIN MINOR CHANGES OF WORDING IN THE CHINESE REDRAFT OF THE DRAFT EXCHANGE OF LETTERS BETWEEN THE PRESIDENT AND PREMIER CHOU SETTLING THE CLAIMS PROBLEM ON THE BASIS OF A MUTUAL ASSIGNMENT OF CLAIMS. WE ALSO STATED " WE TRUST THE PRC UNDERSTANDS THAT THE DRAFT EXCHANGE OF LETTERS SETTLING US- PRC CLAIMS DOES NOT INCLUDE CLAIMS AGAINST THE PRC BASED UPON DEFAULTED CHINESE GOVERNMENT TREASURY NOTES, RAILWAY LOANS, PACIFIC DEVELOPMENT BONDS, AND OTHER BONDED INDEBTEDNESS ISSUED BY PREDECESSOR CHINESE GOVERNMENTS PRIOR TO OCTOBER 1, 1949... WHILE IT IS WELL SETTLED UNDER INTERNATIONAL LAW THAT SUCCESSOR GOVERNMENTS ARE HELD RESPONSIBLE FOR THE OBLIGATIONS

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CONTRACTED BY THEIR PREDECESSORS, WE DO NOT WISH AT PRESENT TO ADDRESS THIS POINT. THE USG WILL FOLLOW ITS TRADITIONAL POLICY AND PRACTICE AND NOT ESPOUSE CLAIMS OF ITS NATIONALS AGAINST THE PRC FOR DEFAULTED BONDS AND WILL CONSIDER THE MATTER ONE FOR DIRECT NEGOTIATION AND SETTLEMENT BETWEEN THE AMERICAN BONDHOLDERS OR THEIR REPRESENTATIVES AND THE FOREIGN GOVERNMENTS CONCERNED."

2. FYI DEPARTMENT NOW MAKING ARRANGEMENTS TO POUCH TO USLO COPIES OF TELEGRAPHIC EXCHANGES THROUGH THE PARIS

CHANNEL, INCLUDING THE DRAFT SETTLEMENT OF PRIVATE CLAIMS AND FROZEN ASSETS. END FYI.

3. IN INFORMAL CONVERSATION BETWEEN PRC MFA US AFFAIRS FUNCTIONARY NI YAO- LI AND USLO ADVANCE OFFICER FREEMAN IN TIENTSIN, MAY 4, QUESTION OF CLAIMS CAME UP. NI TOLD FREEMAN THAT INASMUCH AS US SIDE HAD RAISED NEW SUBJECT NOT COVERED IN EARLIER DISCUSSION OF CLAIMS, I. E., BOND-HOLDERS CLAIMS, PRC NOW ENGAGED IN STUDY OF THIS MATTER. FREEMAN EMPHASIZED OUR WILLINGNESS TO PROVIDE FURTHER INFORMATION IF REQUESTED TO DO SO BY CHINESE AND STATED OPINION THAT BONDHOLDERS ISSUE SHOULD NOT BE IMPEDIMENT TO CLAIMS SETTLEMENT. NI AGREED THAT IT WAS IN INTEREST OF BOTH SIDES TO RESOLVE THE CLAIMS PROBLEM QUICKLY SO THAT WE MIGHT MOVE ON TO DISCUSSION OF REMOVING OTHER IMPEDIMENTS TO BILATERAL TRADE AND SAID THAT HE EXPECTED THE CHINESE WOULD BE BACK IN TOUCH WITH US ON CLAIMS WITHIN " A MATTER OF WEEKS RATHER THAN MONTHS".

4. BALL IS NOW IN CHINESE COURT. RECOMMEND YOU NOT SEEK SPECIAL MEETING TO DISCUSS CLAIMS ISSUE WITH THE CHINESE BUT IF OPPORTUNITY PRESENTS ITSELF IN DISCUSSION OF OTHER MATTERS WITH HIGH- RANKING CHINESE OFFICIALS WOULD BE APPROPRIATE TO INQUIRE IN LOW- KEY WHAT THE CURRENYT STATUS OF CLAIMS ISSUE IS AND WHEN THE CHINESE ANTICIPATE RESPONDING TO THE US PROPOSALS OF MARCH 21. RUSH

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*** Current Handling Restrictions *** EXDIS

*** Current Classification *** SECRET”

Source: Wikileaks

URL: https://www.wikileaks.org/plusd/cables/1973STATE105075_b.html

[B.] Cable Subject: US/PRC CLAIMS NEGOTIATIONS

Canonical ID: 1975STATE248454 (REPEAT OF 1973STATE209591)

Date: October 18, 1975 (Date of 1973STATE209591 is October 24, 1973)

From: Henry A. Kissinger, United States Secretary of State

To: USLO Peking

Original Classification: 'Secret' (declassified July 06, 2006)

Full Text (emphasis via yellow highlight added):

"PAGE 01 STATE 248454

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INFO OCT-01 ISO-00 /001 R

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APPROVED BY EA:RHMILLER

S/S-O: L.MATTESON

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E.O. 11652: XGDS-3

TAGS; EFIN, CH

SUBJECT: US/PRC CLAIMS NEGOTIATIONS

-

FOLLOWING IS A REPEAT OF STATE 209591, DATED OCTOBER 24, 1973, TO PEKING

BEGIN QUOTE:

1. AS MENTIONED SEPTEL, USLO SHOULD MAKE PRESENTATION TO APPROPRIATE LEVEL OF MFA ALONG FOLLOWING LINES RE CLAIMS SETTLEMENT.

A. SECRETARY WOULD BE PREPARED DURING VISIT TO PEKING TO FORMALIZE PRIVATE CLAIMS/BLOCKED ASSETS SETTLEMENT ON BASIS OF DRAFT PRESENTED TO PRC THROUGH PARIS LAST MARCH 21 RPT 21. SETTLEMENT WOULD REMOVE FUNDAMENTAL LEGAL OBSTACLE TO TRADE AND PAVE WAY FOR FURTHER NORMALIZATION OF US-PRC TRADE RELATIONS IN WIDE VARIETY OF AREAS, INCLUDING MANY WHICH WOULD HELP PRC IMPROVE TRADE AND PAYMENTS BALANCE WITH U.S., E.G., TRADE

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EXHIBIT IN U.S., SHIPPING, ETC.

B. WHILE WE ARE NOT SUGGESTING OVERALL DISCUSSION THIS SUBJECT BEFORE SECRETARY'S ARRIVAL, ONE POINT MAY WARRANT PRELIMINARY CLARIFICATION. INFORMAL DISCUSSION ON NUMBER OF OCCASIONS WITH PRC OFFICIALS HAS LED US TO CONCLUSION THAT PRC MAY NOT BE ENTIRELY CLEAR ABOUT U.S. POSITION ON BONDHOLDERS' CLAIMS.

C. WE RAISED BONDHOLDERS' CLAIMS ISSUE IN PARIS ONLY TO MAKE IT CLEAR THAT WE CONSIDERED THIS A MATTER NOT RPT NOT DEALT WITH BY PRIVATE CLAIMS/BLOCKED ASSETS AGREEMENT WHICH NEITHER SIDE HAS TO ADDRESS AT THIS TIME. BONDHOLDERS' CLAIMS DATE FROM BEFORE 1949 WHEREAS CLAIMS BEING SETTLED ARE POST-1949. WE DID NOT INTEND TO IMPLY THAT WE WERE URGING PRC TO TAKE ANY PRESENT ACTION WITH REGARD TO BONDS OR THAT WE BELIEVED THAT, AS A PRACTICAL MATTER, BONDHOLDERS IN U.S. WERE LIKELY TO HINDER TRADE DEVELOPMENT BETWEEN PRC AND U.S.

3. WE DO NOT RPT NOT BELIEVE THAT BONDHOLDERS' CLAIMS ARE LIKELY TO PROVE A SIGNIFICANT OBSTACLE TO TRADE. SINCE DEFAULTING ON PAYMENT OF CHINESE GOV'T BONDS (WHICH IT CONTINUES TO RECOGNIZE AS VALID LEGAL OBLIGATION) TAIWAN

HAS CONTINUED TO TRADE WITH U.S. WITHOUT HARASSMENT FROM BONDHOLDERS. MOREOVER, DEFAULTED OR REPUDIATED BONDS HAVE NOT NOTABLY HINDERED OUR COMMERCIAL TRANSACTIONS WITH A NUMBER OF OTHER COUNTRIES, SUCH AS THE USSR, POLAND, ROMANIA, CZECHOSLOVAKIA. ONE REASON ATTACHMENT HAS NOT BEEN A PRACTICAL DANGER HAS BEEN CONSIDERABLE EXPENSE TO CLAIMANT COUPLED WITH LOW LIKELIHOOD OF SUCCESS.

Not True per Study by Michael R. Adamson

E. WE TRADITIONALLY LEAVE DEFAULTED BOND CLAIMS TO BE NEGOTIATED BETWEEN GOVERNMENT CONCERNED AND FOREIGN BONDHOLDERS' PROTECTIVE COUNCIL (PRIVATE ORGANIZATION REPRESENTING INTERESTS OF ALL U.S. BONDHOLDERS). WE DO NOT RPT NOT ESPOUSE CLAIMS BASED ON DEFAULTED BONDS AT INTERGOVERNMENTAL LEVEL. WE HAVE TAKEN NO POSITION ON WHETHER OR NOT GOVERNMENT OF PRC IS LEGALLY

OBLIGATED TO PAY THESE BONDS.

F. NOT ONLY WOULD WE NOT RPT NOT ENCOURAGE AN EFFORT BY BONDHOLDERS TO ATTACH CHINESE PROPERTY, WE WOULD SEEK ACTIVELY TO DISCOURAGE SUCH AN ATTEMPT. IN ANY EVENT, WE HAVE NO INFORMATION TO SUGGEST BONDHOLDERS THINKING ALONG LINES OF ATTACHMENT, AND, IN VIEW OF CONSIDERATIONS DESCRIBED ABOVE, DOUBT THEY WOULD ATTEMPT IT.

G. WE HOPE THAT PRC UNDERSTANDS WE DO NOT RPT NOT WISH TO INCLUDE BONDHOLDERS' CLAIMS IN PRESENT CLAIMS SETTLEMENT BECAUSE TO DO SO WOULD BE CONTRARY TO OUR SETTLEMENT BECAUSE TO DO SO WOULD BE CONTRARY TO OUR PRACTICE AND WOULD RAISE MANY UNNECESSARY PROBLEMS OF LEGAL AND PRACTICAL NATURE.

H. (AT YOUR DISCRETION) IF BOND CLAIMS WERE INCLUDED IN THE CLAIMS/ASSETS SETTLEMENT, IT WOULD IMPLY THAT THE PRC ACCEPTS LIABILITY FOR EVEN LARGER AMOUNT OF THESE BONDS HELD BY NON-AMERICANS, AND OTHER BONDS.

I. IF PRC HAS ANY OTHER TECHNICAL PROBLEMS WITH CLAIMS SETTLEMENT AS PROPOSED, WE HOPE THAT IT WILL LET US KNOW BEFORE SECRETARY'S TRIP SO THAT WE MAY BE PREPARED TO DISCUSS THEM.

2. (FYI: LEGAL AND PRACTICAL PROBLEMS REFERRED TO ABOVE INCLUDE REDUCING AMOUNT OF MONEY AVAILABLE FOR PRO RATA COMPENSATION OF OUR CLAIMANTS AND POSSIBLE RESULTING PROBLEMS WITH BOTH CLAIMANTS AND CONGRESS. THERE IS ALSO SUCCESSOR GOVERNMENT ISSUE, I.E., PRC SETTLEMENT OF BONDS WITH U.S. WOULD CONSTITUTE U.S. AND PRC RECOGNITION OF PRC AS LEGITIMATE SUCCESSOR GOVERNMENT TO ROC ON CHINA MAINLAND AT TIME WHEN U.S. CONTINUED TO RECOGNIZE ROC, RESULTING IN CLEAR TWO CHINAS SITUATION.) IN THIS CONNECTION WE NOTE ALSO THAT BONDHOLDERS' CLAIMS HAVE NOT HINDERED PRC TRADE WITH THIRD COUNTRIES, EVEN THOSE THAT RECOGNIZE PRC AS SUCCESSOR GOVERNMENT TO ROC.

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END QUOTE. INGERSOLL

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Source: Wikileaks

URL: http://www.wikileaks.org/plusd/cables/1975STATE248454_b.html

www.wikileaks.org/plusd/cables/1973STATE209591_b.html - Cached

Discovery Date (Both Cables): June 03, 2013

The comment by Arthur Hummel evidences the fact that officials of the United States Government affirmed bonds as valid outstanding obligations and did not then, and do not now, desire that The People’s Republic of China should honor repayment of the obligations. The clear and unambiguous directives to personnel of the United States Liaison Office in China by United States National Security Adviser and Secretary of State Henry A. Kissinger as stated in U.S. Department of State ‘Secret’ Cable(s) acknowledging the bonds as valid debt obligations of the successor Government and instructing that China’s full faith and credit sovereign debt should be excluded from the claims settlement accord, thereby deferring indefinitely the repayment of the bonds, represents the subordination of bondholder’s claims to trade interests, i.e., the pursuit by the U.S. Government to establish trade relations with The People’s Republic of China.

III. Chinese Perspective of the U.S. – China Claims Settlement Negotiations

Points and Authorities

The following text is translated from Chinese, with the exception of the 'Points' which are the author's observations:

Source:

"Negotiations over Asset Claims before the Normalization of Sino-U.S. Relations: The Policies of the Nixon and Ford Administrations"
By Mao Ruipeng
Publication Date: 2012
Institute of American Studies, Chinese Academy of Social Sciences

● "'Shanghai Communique' was published, the U.S. Government started to promote the development of Sino-US trade relations, asset requirement problems became their priority to find a solution on the question."

Point: Bondholders' claims constrain USG's ability to promote trade opportunities with The People's Republic of China.

● "An asset requirement Problem and solution envisaged by the United States Government" (paragraph header).

Point: The USG developed and actively promoted the scheme ("solution") to deny bondholders the ability to monetize their associated valid claims.

● "The U.S. Government proceed to develop implementation of the "Shanghai Communique" program, and the United States in the development of asset requirement issues as trade relations with China should be given priority when seeking solutions to issues."

Point: USG place "trade" considerations as priority with respect to hindrance of achieving resolution of bondholders' associated valid claims.

● "Americans, in particular, hope to start business with Chinese entrepreneurs, looking forward to this prospect. July 5, 1973, the U.S. Consulate General in Hong Kong said in a telegram to the State Department, Chase Manhattan Bank (Chase Manhattan), chairman David Rockefeller (David Rockefeller) announced after his visit to China, Chase and Bank of China to establish agency line relationship."

Point: USG places "trade" considerations and Wall Street opportunities as priorities to normalization of diplomatic relations, at the expense of bondholders.

● "American position actually contains two closely related meanings: First, the United States advocated by China Qing Government and the Government of the Republic issued bond debt incurred is still valid; Second Sino reached agreement

on asset requirements, to hold the Old Chinese Government bonds issued by the U.S. Government of the PRC citizens still have the right to make a claim, although the U.S. Government is not Support will be given."

Point: USG acknowledges bonds remain valid obligations but refuses to support bondholders in any attempt to monetize their associated valid claims.

● "Issues concerning the claims of bondholders, Kissinger's liaison to the Chinese Embassy telegraph instructions indicate the following positions: first, the United States raised the issue in Paris, just to show that the United States believes it is a matter of private claims and the freezing of assets of the agreement does not deal with the issue, either party at this time does not need to solve this problem, because it involves things before 1949, while the two countries are addressing issues related asset is required After 1949 things; United States is not trying to "imply" or "urge" to take action to resolve the old China PRC Government bond debt, do not believe the U.S. Government bondholders Ji old China claims 'may prove to be a major obstacle to hinder the development of bilateral trade'".

Point: In pursuit of a bilateral trade agreement, USG abandons any attempt at achieving resolution of bondholders' associated valid claims and effectively betraying the interests of U.S. bondholders.

● "Fourth, the United States, "traditional" claims bondholders generally left to the parties and the United States Government to protect foreign bondholders Council (Foreign Bondholders' Protective Council) negotiations; United States will not at the Government level support the establishment of the "outstanding bonds," based on the claim that the U.S. Government does the PRC Government is legally obliged to pay for these bonds to make a statement, not only does not support the bondholders property seized China's efforts, but also The "positive" frustrate such attempts."

Point: The USG promises to actively hinder, impede, and impair the ability of U.S. bondholders to monetize their associated valid claims.

● "Secondly, there is the old China Government bond debt. In the November 13 talks, Kissinger reiterated previous demands that the U.S. Liaison Office Bruce informed the Chinese side's position, saying the U.S. Government "in the law" will not support any bond debt associated with the claims."

Point: Kissinger affirmed the willingness and intent of the USG to intercede in private party civil litigation in U.S. courts against a foreign state in connection with the subject bonds, which it later successfully did.

● "He *(Kissinger)* said the U.S. Government's judgment, because Premier Zhou Enlai said reasons, the U.S. courts will not support this type of private claims. He *(Kissinger)* also said with a slight laugh *(emphasis added)*, because the United States is not yet recognize the PRC, these people can only as "Inherit the Government," the Taiwan authorities to sue." (source: "Memorandum of Conversation," November 13, 1973, FRUS, 1973 – 1976, Vol. 18, pp.412 413).

Point: The phrase, "Inherit the Government" is obviously intended to communicate that the USG would protect the Government of The People's Republic of China from liability for repayment of the bonds and that only the Republic of China on Taiwan could be sued in connection with bonds held by U.S. persons. The USG actively sought to impair bondholders' rights in property and did so by excluding associated claims from settlement and promising The People's Republic of China that the USG would actively frustrate, hinder, and impede bondholders' future attempts at seeking judicial and other redress including compensation for their associated valid claims. The USG intentionally betrayed the interests of U.S. bondholders. Such actions further evidence a malicious intent toward U.S. bondholders. Given the hostility of the USG towards U.S. bondholders, it is unsurprising that the Department of State cables referencing these negotiations were classified 'Secret' and remained so for 28 years until declassified on October 06, 2003, after the statute of limitations precluded a successful suit in U.S. courts.

As described below, subsequent independent research reveals that Kissinger's instructions to Department of State personnel were disingenuous in the extreme and in fact constituted a direct contravention of established Department of State policies.

Separate Independent Research Studies Reveal that (1) Private Bondholders Protective Councils are Ineffective in Achieving Resolution of Claims Against Foreign Debtor States and (2) the U.S. Department of State has a History of Direct Involvement in Private Claimant Disputes Against Foreign Debtor States

The United States Foreign Bondholders Protective Corporation, Inc. ("FBPC") no longer exists. It was unincorporated by dissolution circa 2012 by John Petty, the corporation's long-time president. Research reveals that the efforts of private bondholder protective councils are traditionally futile in achieving meaningful resolution of bondholders' claims, as such organizations lack the negotiating leverage of the Government of a State.

Source:

"Why Bondholder Councils Don't Matter: The Limited Impact of Private Creditor Representative Institutions on Bargaining Outcomes in Sovereign Debt Restructurings," by Deirdre Shay Kamlani, The London School of Economics and Political Science. Paper presented at the International Studies Association Annual Convention, San Francisco, California, March 27, 2008. The paper is accessible at:

http://citation.allacademic.com/meta/p_mla_apa_research_citation/2/5/1/2/0/p251202_index.html

Abstract:

"Utilizing a power-based analytical framework, this paper seeks to assess the relative impact of three regime components on the efficiency and distributional results of sovereign debt restructurings in the era of the British Corporation of Foreign Bondholders ("CFBH"): i) the private creditor representative body (*institutional power*); ii) the degree and orientation of creditor country Government intervention (*compulsory power*); and, iii) the structure and condition of the capital markets (*structural power*). Widely believed to have been the most successful bondholder representative body to date, the CFBH is normally credited with delivering superior results to investors, both in terms of low levels of debt forgiveness and enhanced settlement efficiency. Contrary to this accepted wisdom, our analysis suggests that the CFBH only marginally influenced bargaining outcomes, and that the results were instead driven by the action of creditor Governments (*compulsory power*), the centralized structure of capital access, and the relative size and robust condition of the British capital export market (*structural power*). While the CFBH tended to reflect, leverage, and take credit for these other forms of power, we argue that the observed results were achieved largely by non-institutional means. The paper concludes that compulsory and structural regime elements are therefore more salient than institutional ones in the sovereign debt bargaining exercise. From a public policy perspective, this study cautions those who seek a newly-constituted, 21st-century bondholder council, since such an institution – like its well-regarded historical predecessor – could find its impact on the sovereign debt management process highly circumscribed."

Excerpts:

● "[…] it is more accurate to portray the private creditor representative body as one element in a much larger **regime** for sovereign debt restructuring. […] the term **sovereign debt restructuring regime** to include the following three elements: i) the private creditor representative body; ii) the degree and orientation of creditor country government intervention; and, iii) the structure and condition of the capital markets."

● "While creditor governments often state publicly that they will not act as debt collectors in purely private matters, the historical record begs to differ; in fact, it demonstrates that they have seldom remained neutral in cases of sovereign financial crises."

● "Also, it has generally been the case that sovereign debt regimes are imposed, not negotiated. That is to say, their *content* has not been determined through a process of iterative bargaining between sovereign debtors and private creditors. Instead, they have normally been established by creditor groups unilaterally, often with the backing of their home governments in centres of capital export."

● "[…] effectiveness was largely tied to aspects of the sovereign debt restructuring regime that lay outside the institution - most notably…the willingness…to use compulsory power in ways that often benefitted bondholder interests. […] – elements that were external to the institution but part of the regime for sovereign debt management."

● Quoting Judge Snagge, the chief counsel of the British Corporation of Foreign Bondholders (CFBH): "[…] 'the Corporation would be *powerless,* and the Council would be *paralyzed,* if it were not for the assistance it received from the Stock Exchange.' In other words, the power to control market access resided not with the CFBH, but with the Stock Exchange."

● "[…] compulsory power was largely exercised by creditor country governments over debtor states. This is because private creditors had limited ability to *directly* coerce debtor states and needed to rely on the good offices and cooperation of their own governments to take action."

● "[…] creditor country governments would not only have the right, but perhaps even the obligation, to intervene and vindicate the injustice done to a nation's bondholders by a defaulting foreign state. […] it makes a great difference whether prevalent attitudes regard capitalists in general as benefactors or scoundrels, capital placement abroad as good or bad for the nation, property rights as special privileges in the interest of an exploiting class or as eternal and unchangeable absolutes at the foundation of law and morality."

● Referencing British Foreign Secretary Lord Palmerston's statement to a Caribbean government: "[…] the patience and forbearance of H.M. Government…have reached their limits, and that if the sums due to British Claimants are not paid within the stipulated time…H.M.'s Admiral commanding on the West India station will receive orders to take such measures as may be necessary to obtain Justice from the nation in this matter."

● Referencing the diverse actions comprising compulsory power by which the government assisted the CFBH: "The least visible was the tacit permission the British government gave the CFBH to leverage the power of the global British consular network."

● "In some cases, the British government even facilitated the collection of pledged revenues. At the other extreme, we see active creditor country government interventions in the domestic affairs of foreign states, which most often consisted of assuming control over a debtor's finances."

● "[…] Representations are frequently made by the Government at the Council's request through diplomatic channels.[…] British legations and consulates acted on occasion almost as agencies for bondholder interests, …"

● Referencing statements appearing in CFBH archival documents: "And, in cases of outright default, the record maintains that 'His Majesty's Government always follow such negotiations very closely and <u>give to the Council their fullest support</u> *(emphasis added)*.'" ↣ [*Author's note:* Contrast this statement with the actions of Kissinger, which betrayed the interests of bondholders]

● "And, the U.S. government intervened militarily in Santo Domingo…sending gunboats and establishing a customs receivership to ensure the repayment of European and American bondholders."

● "[…] the U.S. agreed to do its part to enforce debt contracts in Central and South America in the Roosevelt Corollary to the Monroe Doctrine."

- "Therefore, compulsory power had a material impact on bargaining outcomes…The implication of this analysis is that compulsory power was a far more critical factor than previously thought in determining the outcomes of sovereign debt negotiations…"

- "[…] the power of the CFBH as an institution was overshadowed by…the willingness of Britain and other powers to enforce debt contracts using state-sanctioned compulsory power."

- "[…] the CFBH would routinely use the British consular network as if it were an agency of the bondholders. British diplomats would deliver messages, collect sensitive information, and arrange payments."

- "It is likely that history has mistakenly credited the institution of the CFBH with achieving bargaining outcomes that in fact resulted from the exercise of structural and compulsory power. […] while the institutional body of the CFBH may have reflected, leveraged, or even taken credit for this power, it did not produce it."

- "Upon closer examination, the CFBH – the bondholder council viewed most favourably by economic historians – was highly dependent upon the sympathetic disposition of the British government toward its interests *and* the discipline of the London exchanges in restricting defaulters from accessing British capital markets."

As a direct consequence of the impotence of private bondholder councils acting independently, and contrary to the official assertions articulated by Henry A. Kissinger at the time he held the roles of United States Secretary of State and National Security Adviser, the United States Department of State had evolved a practice of direct involvement in matters involving the resolution of private bondholders' claims against foreign debtor states.

The U.S. Government's contention that it continues to maintain a long-standing policy of refusing to intervene on behalf of defaulted bondholders and instead treats sovereign defaults as a private matter between bondholders and the Government in default, referring such matters to the Foreign Bondholders Protective Council for resolution, is contradicted by a comprehensive study conducted in 2002 by Michael R. Adamson and published by Harvard University:

> "Ultimately, bureaucratic competition and national security concerns prompted the State Department to intervene directly in debt negotiations."

Source:

"The Failure of the Foreign Bondholders Protective Council Experiment, 1934 – 1940," by Michael R. Adamson, visiting scholar in the Office for History of Science and Technology at the University of California, Berkeley, published in "*The Business History Review,"* No. 76 (Autumn 2002) by The President and Fellows of Harvard College. The research study is accessible at:

http://www.jstor.org/discover/10.2307/4127796?uid=3739256&uid=2129&uid=2&uid=70&uid=4&sid=21102670277361

Abstract:

"This research study explores the contentious U.S. State Department-Foreign Bondholders Protective Council relationship in the context of interwar foreign economic policy and bureaucratic competition. U.S. officials created the council in 1933 to represent the interests of U.S. investors in the settlement of the numerous dollar bond issues that had gone into default. The article shows why the council failed to perform as U.S. officials expected and outlines the process by which they increasingly interposed themselves in debt negotiations. In doing so, it considers the limitations of using private organizations to accomplish the objectives of public policy."

Excerpts:

● "Conditioning U.S. foreign loans and credits on the satisfactory settlement of private debts in default became an integral part of the State Department's approach to U.S. foreign assistance policy."

● "To ensure that debt adjustments occurred in a timely manner, the State Department became more involved in the settlement process."

● "[…] the State Department and U.S. officials in embassies and overseas missions provided the support that bankers had come to expect…"

● "J. P. Morgan, the firm with which State Department officials worked most closely to achieve their policy objectives, to a great extent became "a foreign lending arm of the U.S. government," as partner Thomas W. Lamont's biographer and grandson put it."

● "If a foreign government…can continue to get credit abroad for its purchases without resuming payments on its former debts, there is a loss of incentive for such resumption."

● "[…] the State Department…begin approving Exim loans to Latin American governments – as long as the latter had made efforts to resolve their debt defaults."

● In regard to the actions of the State Department in regard to the Foreign Bondholders Protective Council (FBPC): "This reconsideration culminated in the FBPC's becoming marginalized as a representative of bondholder interests."

● "Debtors were expected to negotiate settlements in good faith, with a view to restoring their credit. Those who were unwilling to negotiate with lenders were denied access to capital markets."

● "After its promising start, however, FBPC efforts to resolve defaults stalled. The lack of success concerned top State department officials, who began to interpose themselves between the FBPC and representatives of the debtor governments."

● "The department rejected FBPC requests to recognize the bondholders' organization as the sole agent for bondholders."

● In regard to Cuban debt settlement negotiations: "Rather than demonstrating its capabilities, however, the FBPC's actions in that country only underscored the need for greater U.S. government involvement on behalf of bondholders."

● "[…] the State Department became more directly involved in debt negotiations…"

● "By the end of the Cuban negotiations, however, State Department officials were prepared to exert direct influence on behalf of resolving debt disputes in a timely manner."

● Referencing Assistant Secretary of State Sumner Welles: "Welles…instructed the U.S. embassy in Havana to inform the new Cuban leaders that the State Department expected the default to be addressed."

● Referencing Assistant Secretary of State Sumner Welles: "Welles…'would not stomach for an instant a continuation of our present policy if the Cuban government, when it is financially able to do so, refrains from giving to the American bondholders that to which they are legally and legitimately entitled.'"

● Referencing Assistant Secretary of State Sumner Welles: "[…] the State Department and its Cuban embassy acted to move the parties closer to an agreement. Welles first sent a personal note to President Gomez, reminding him of the commitment he had made as president-elect to rehabilitate Cuba's credit and asking for his cooperation in breaking the impasse.

● Referencing Assistant Secretary of State Sumner Welles: "Welles emphasized that his goal was to achieve a settlement considered by all sides to be was *(sic)* fair and equitable, stating that <u>he hoped bondholders would receive the maximum feasible amount from the new arrangement</u> *(emphasis added)*." ↣ [*Author's note:* Contrast this statement with the actions of Kissinger, which betrayed the interests of bondholders]

● "The State Department also began to realize that its active participation was necessary to achieve timely resolutions of defaults. […] and the ineffectiveness of the FBPC in facilitating debt settlements."

● "State Department officials now played a much more prominent role than they had during the 1936 negotiations. Welles and others pressured Havana, first to ensure that it addressed the debt situation, and then to see to it that the parties reached a settlement…"

● Referencing Laurence Duggan, chief of the State Department's Latin American division and recommendations made by Cuban authorities to refund public works obligations with a reduced interest rate: "Duggan saw no reason for creditors to accept any of the suggestions, and he urged the department to inform Cuban officials that it did not support them."

● "U.S. officials in Washington and Havana […] acted on behalf of bankers, bondholders and contractors. As a result, both creditors and the Cuban government now used the State Department as a sounding board for testing the appropriateness of their positions, rather than seeking a consensus among themselves."

● Referencing Assistant Secretary of State Sumner Welles: "Welles […] made clear to both the FBPC and the Cuban government that the State Department desired a prompt, permanent settlement. […] Welles also told the Cuban ambassador that it was unreasonable to think bondholders would accept total cancellation of the back interest owed them *(emphasis added)*."

● Referencing Assistant Secretary of State Sumner Welles: "Over the next four months, the Cuban government, with encouragement from Welles and the embassy, made a series of offers…"

● Referencing Assistant Secretary of State Sumner Welles: "Welles held numerous meetings with Cuban officials, pressuring them to convince the debt commission to improve its offer."

● Referencing Assistant Secretary of State Sumner Welles: "Welles expected Cuba to make a reasonable debt settlement. If an agreement were not soon forthcoming, he advised, the Securities and Exchange Commission would delist the public works bonds from the New York Stock Exchange, ensuring the loss of investor confidence in Cuba."

● Referencing the governments of Colombia and Brazil: "The State Department was unwilling to allow these defaulters to benefit from Exim lending. […] Further, it insisted that governments address their external debt problems as a condition of receiving U.S. assistance. […] In order to assist debtors in obtaining this aid, the department took a direct interest in negotiating debt settlements. […] 'contracting out' debt negotiations to the FBPC was no longer an appropriate strategy."

● "In principle, department officials tried to expedite settlements that were in line with debtors' capacity to pay."

● "Department officials, with assistance from staffs at various embassies, were increasingly the ones who determined what a fair settlement might entail."

● "Debt adjustment, even if the deal was a temporary one, generally had to occur before the State Department would sanction the extension of U.S. financial assistance."

● "The State Department could no longer ignore investors who held bonds in default and petitioned it for redress of their claims. It conceded a measure of responsibility for bondholders' plight."

● Referencing the United States Department of State: "[…] department officials believed that borrowers had an obligation to negotiate debt settlements in good faith."

● Referencing the United States Department of State: "Officials took into account the extent to which debtor governments were acting in good faith to reach agreements."

● "Debt negotiations with Colombia persuaded the State Department that it needed to intervene directly in the negotiating process."

● Referencing the matter of Colombia's defaulted government bonds: "The State Department intervened to bring both parties to the negotiating table."

● Referencing the matter of Colombia's defaulted government bonds: "[…] the State Department intervened to resolve the matter. It did so because it believed that the FBPC was making a 'mess' of the negotiations and 'that a protracted delay in [the] matter [might] imperil the chances of settlement as well as adversely affect the development of the economic relations between the two countries." ↣ [*Author's note:* Contrast this statement with the actions of Kissinger, which betrayed the interests of bondholders]

● Referencing the relevance of the FBPC to defaulted sovereign debt settlement negotiations: "As a result, the State Department effectively removed the FBPC as the key negotiator in debt talks with Colombia. The action was a critical step in the process of turning the council into a shell operation. The State Department's actions to resolve the Brazilian debt situation effectively eliminated the FBPC as the institution with primary responsibility for handling debt defaults." ↣ [*Author's note:* Contrast the veracity of the actual facts with Kissinger's disingenuous statements, which betrayed the interests of bondholders]

● "The FBPC experiment was over. […] the State Department substituted direct intervention for indirect supervision of debt matters." ↣ [*Author's note:* Contrast the veracity of the actual facts with Kissinger's disingenuous statements, which betrayed the interests of bondholders]

● "[…] the State Department actively encouraged foreign governments to address their external debts in default."

● "Rather, bureaucratic competition and national security issues impelled the State Department to step into the debt-adjustment process."

● "Rather, with little transparency to bondholders, the State Department supplanted the FBPC as the institution with primary responsibility for negotiating debt settlements." ↣ [*Author's note:* Contrast the veracity of the actual facts with Kissinger's disingenuous statements, which betrayed the interests of bondholders]

In three recent instances involving the successful conclusion of debt settlement accords, all had the support of the Governments of the States of which the bondholders were citizens and which further evidence the necessity of intergovernmental action in order to achieve successful settlement of bondholder claims:

> "In all three instances it was Governmental resolve to limit access of the debtor nation to the capital markets of the nation of the unpaid bondholders that resulted in the successor Government of the debtor nation meeting its obligation to bondholders, who, individually, were quite helpless to obtain a remedy from the recalcitrant debtor nation.
>
> The Americans who own full faith and credit bonds issued by the immediate predecessor Government of China respectfully request the same assistance from its Government in advancing their bona fide claims against the successor Chinese Government as the British and French Governments provided to their citizens in bringing about a fair settlement of bondholders' claims against the successor Governments of Russia and China."

Source:

Letter of admonishment from B. Riney Green, Stites & Harbison, PLLC dated November 5, 2002, to David Bradley, Chief Counsel, United States Foreign Claims Settlement Commission, referencing false public statements (Exhibit 8).

The provision of Governmental assistance and intercession on behalf of private bondholders in regard to enforcement of claims is a very long-standing tenet of international relations:

> "Whenever, therefore, a Loan shall be found to be lawfully contracted in all its circumstances, by a subject of this with a Foreign State, and to be in arrear, such subject (or they who represent him) has a perfect abstract claim on his Government for redress."

Source:

"Loans by Private Individuals to Foreign States Entitled to Government Protection, by the Fundamental Laws, as a Branch of Trade," by Thomas Jennings Bramly, published by James Ridgway, Piccadilly, London (1842).

The U.S. Department of State has articulated in writing the position that the Department of State supports the resolution of claims in instances in which U.S. persons have suffered a taking of rights in property in violation of international law by a foreign Government pursuant to the actions of either repudiation or discrimination. U.S. persons have suffered and continue to suffer injury from both actions, i.e., repudiation (e.g., the 1983 Aide Memoire) and discrimination (e.g., the 1987 exclusionary UK Settlement) by The People's Republic of China and are therefore routinely referred by the Department of State to the Foreign Bondholders Protective Council (the "FBPC") for assistance, and no pretext is asserted by the Department of State that the claims of U.S. persons were either addressed or settled by the 1979 U.S.-China Treaty. [5]

> "By the late 1930s, the State Department recognized that private actors were no longer in a position to achieve the objectives of U.S. foreign policy without substantial support from Washington. Ironically, the public lending programs that Treasury and Exim officials promoted, and the State Department resisted, provided the leverage that the latter needed to prod governments in default to the negotiating table." [6]

In fact, the U.S. Department of State treated bondholders as sacrificial lambs in furtherance of the interests of large multinational corporations, e.g., bilateral trade. The failure of the United States Government to adhere to established policies and enforce compliance with international law effectively stranded bondholders' claims. The following statement by Adam Lerrick, is illuminating:

> "O'Brien suggests that support for the bondholders in Congress might force through legislation championing their cause but Lerrick doesn't believe there is sufficient political momentum. 'This is not an issue that is of interest to anyone in the international financial system,' he said. 'It will only become of interest if someone finds a legal technicality that creates some kind of political or diplomatic problem.'" [7]
>
> - Adam Lerrick, Professor Emeritus of Economics, Carnegie Mellon University

The United States Government crafted and presented China with a solution which disingenuously severed all claims related to the subject bonds as a component of "commerce and trade," and was thus able to grant diplomatic recognition to The People's Republic of China without requiring repayment of China's defaulted full faith and credit sovereign obligations. Such action effectively stranded the claims of U.S. bondholders who, by being denied participation in the **mutual** claims settlement negotiations, were deprived of negotiating capacity since the bondholders had nothing to offer in exchange, and whose claims were then rendered non-justiciable in U.S. courts through the intervention of the U.S. Government in private civil litigation against a foreign state (see *Russell Jackson, et al., v. The People's Republic of China, infra*). As a result, bondholders are now wholly dependent on the United States Government to achieve a fair resolution of their claims. The continuation of china's access to the international financial markets including the U.S. in the face of its refusal to repay the defaulted bonds has been described as both "a hot potato" by a Credit Rating Analyst as reported by *EuroWeek Capital Markets* (April 8, 2005), and "a sensitive issue" by an International Banker as reported by the *Financial Times* (June 7, 2005).

■ Actions of the Executive Branch of the United States Government (Office of the President, Department of State, Department of the Treasury and Department of Commerce): Claims of U.S. Bondholders Deliberately Excluded from the U.S.–China Claims Settlement Treaty: January 01 – May 11, 1979

January 01, 1979:

The Government of the United States of America formally recognized the Government of The People's Republic of China as the Government of China.

March 02, 1979:

Statement by W. Michael Blumenthal, U.S. Treasury Secretary:

> "We certainly consider the purpose for which I came to visit Peking, as it relates to our economic relations, has been achieved."

Source:

"Blumenthal Toasts Chinese; Claims Remain Unresolved", The Cornell Daily Sun (via AP), March 2, 1979.

May 11, 1979:

Execution of the Agreement Between The Government Of The United States Of America And The Government Of The People's Republic Of China Concerning The Settlement Of Claims (May 11, 1979, 30 U.S.T. 1957 (1979)), also referenced as the "1979 U.S.–China Claims Settlement Treaty." [8] The U.S. signatory to the Treaty was Juanita Kreps, U.S. Commerce Secretary. The Treaty was not ratified by the United States Congress as it was an executive agreement which therefore did not require congressional approval.

In a letter dated July 11, 1979 from Mr. John Petty, President of the U.S. Foreign Bondholders Protective Council, addressed to the Ambassador of The People's Republic of China to the United States of America, His Excellency, Chai-Zemin, reference was made to the bonds being "**specifically** excluded" from the recently concluded U.S.-China Claims Settlement Treaty.

> Excerpt:
>
> "During our discussion, I mentioned that the claims arising from the defaulted Government bonds were specifically excluded from the Claim Settlement."

The claims of private bondholders were intentionally and deliberately excluded from the Claims Settlement Treaty by the United States Government and were thus rendered unenforceable and thereby effectively extinguished.

Any historical property claims which Chinese nationals or the Government of China might have against the United States were presumably settled via the 1979 U.S.-China Claims Settlement Treaty, as the Treaty settled all outstanding property claims between nationals of the U.S. and the PRC against either Government, with the exception of the bonds, which were deemed to be outside the scope of Title V of the federal statute which authorizes the U.S. Foreign Claims Settlement Commission. See the following information:

http://www.globalsecuritieswatch.org/Amended_SEC_Complaint.pdf (at 4)

http://www.globalsecuritieswatch.org/Friend_of_the_Court-Sep21.pdf (at 16)

The concerted actions of the United States Government effectively deprived the bondholders of the ability to enforce their creditor rights and obtain compensation for their claims.

Exclusion of Bondholders' Claims from the 1979 U.S. – China Claims Settlement Treaty Ignored the Rights of Bondholders with Respect to Such Claims and Deprived Bondholders of Crucial Negotiating Capacity with Respect to Resolution of Such Claims and Further Rendered the Claims as Ineligible for Inclusion in the China II Claims Settlement Program

Claims presented to the United States Foreign Claims Settlement Commission subsequent to the date of the 1979 U.S.-China Treaty were decided on the basis of the Treaty, which only included those claims which were determined to be eligible under Title V of the International Claims Settlement Act of 1949.

The exclusion of settlement of the bonds from the 1979 Treaty is explicitly stated in the letter dated December 11, 1979, authored by J. Brian Atwood, Assistant Secretary for Congressional Relations, United States Department of State, addressed to the Honorable Charles A. Vanik, Chairman, Subcommittee on Trade, Committee on Ways and Means, United States House of Representatives, acknowledging that the claims of U.S. persons were outside the scope of the 1979 Treaty because The People's Republic of China had not repudiated the debt as of the date of the Treaty, and referring United States claimants to the U.S. Foreign Bondholders Protective Council, a private, non-profit public service organization established at the request of the United States Secretaries of State and Treasury and the Chairman of the Federal Trade Commission for the purpose of assisting U.S. citizens in recovery of repayment of defaulted obligations issued by foreign Governments (see *infra*, endnote 5).

The exclusion of the claims of U.S. persons in regard to the debt from the 1979 Treaty is also explicitly referenced in the letter dated November 27, 1979 authored by Mr. John Petty, President, Foreign Bondholders Protective Council and addressed to the Honorable Abraham A. Ribicoff, Chairman, Subcommittee on International Trade, United States Senate, which states:

> "The Foreign Bondholders Protective Council, Inc. wishes to bring to the Subcommittee's attention and to express concern that the Claims Settlement Agreement between the United States and People's Republic of China dated May 11, 1979 fails to settle any of the claims by U.S. citizens with respect to the defaulted obligations of the Government of China with which the Council is concerned and that China is unwilling to negotiate separately on this particular class of claims."

As previously noted, the exclusion of the claims of U.S. persons from the 1979 Treaty was reiterated in another letter from the President of the Foreign Bondholders Protective Council dated July 11, 1979 and addressed to His Excellency Chai-Zemin, Ambassador of the People's Republic of China, which states in part:

> "During our discussion, I mentioned that the claims arising from the defaulted Government bonds were specifically excluded from the Claim Settlement. In particular, the Council understands that the claims of holders of the publicly issued defaulted obligations of the Government of China with which the counsel *(sic)* is concerned and which are described in the attached Aide Memoire are not claims settled pursuant to Article I(a) of the Agreement because all such obligations were in default prior to October 1, 1949 and the subsequent failure on the part of the People's Republic of China to reaffirm such obligations does not constitute any 'nationalization, expropriation, intervention and other taking of, or special measures directed against, property of nationals of the USA on or after October 1, 1949 …' within the meaning of Article I(a)"

The People's Republic of China refused to negotiate with the Foreign Bondholders Protective Council for the settlement of claims of U.S. persons and the defaulted sovereign debt remains an unpaid general obligation of the Chinese Government.

■ Actions of the United States Foreign Claims Settlement Commission
China II Program: June 01, 1979 – July 31, 1981

The Foreign Claims Settlement Commission reviewed and adjudicated claims of U.S. nationals arising between November 06, 1966 and May 11, 1979 pursuant to the U.S.-China Claims Settlement Agreement of 1979 and Title I of the International Claims Settlement Act of 1949, as amended (the "Act"). During the 'China II' Claims Settlement Program, the entirety of bond claims were denied by the Commission.

Excerpt:

"[…] the Commission concludes that the claimant has failed to establish that the bonds, subject matter of this claim, were debts owed by the PRC or debts secured by property which has been "taken" by the PRC on or after November 6, 1966, and before May 11, 1979. Therefore, the claim is hereby denied."

[A.] Specimen Bond Claim –

Final Decision (November 21, 1979):

IN THE MATTER OF THE CLAIM OF
CATHARINE E. OLIVE

Under Title I of the International Claims Settlement Act of 1949, as amended by Public Law 89-780

Claim No.: CN-2-012

Decision No.: CN -2-058

The Commission stated its position that The Imperial Chinese Government 5% Hukuang Railways Sinking Fund Gold Loan of 1911, the bonds comprising the instant claim, are not secured by property or revenue, but instead constituted general obligation bonds that were not chargeable to the PRC.

Excerpt:

"The claimant has not submitted any evidence of any action by the PRC concerning the rights of the bondholders of this issue which could be construed to be a nationalization or other taking of property after 1939."

As of the date of the Commission's decision in the above matter, The People's Republic of China was the internationally recognized Government of China and enjoyed full diplomatic recognition by the United States Government, and had thus acceded to the position of obligor of China's defaulted full faith and credit sovereign debt owed to both U.S. persons and non-U.S. persons.

Excerpt:

"In this section the Commission is directed to decide claims in accordance with provisions of the applicable claims agreement and the principles of international law."

The legislative authority pursuant to which the Commission is empowered to review and adjudicate claims of U.S. nationals instructs the Commission to apply established norms of international law in rendering its decisions.

Excerpt:

> "The Commission has consistently held that in the absence of a positive action by the foreign Government affecting the right to payment, a bondholder's right is "taken" by the debtor foreign Government on the day when it refuses to pay the obligation for the first time: in other words, when the foreign Government first defaults upon its obligations."

The Commission's self-declared position regarding when a bondholder's rights are "taken" ignores and stands in contrast to the proclamations by the successive pre-1949 Chinese Governments affirming the intent to repay the obligations when they are able to do so. The statement by Lin Ping to officials of the United States Government with respect to The People's Republic of China's position on the bonds, effectively constituting a repudiation of the debt, would not have been known to the claimant, although it was (obviously) known to officials of the U.S. Government.

Excerpt:

> "[…], the Commission concludes that the Proposed Decision dated October 17, 1979 denying this claim must be and is hereby affirmed as its final determination on this claim."

[B.] Specimen Bond Claim –

Final Decision (April 01, 1981):

IN THE MATTER OF THE CLAIM OF WELTHY KIANG CHEN Under Title I of the International Claims Settlement Act of 1949, as amended by Public Law 89-780	Claim No.: CN-2-015 Decision No.: CN-2-066

The claimant asserted that The People's Republic of China, as the successor to the Kuomintang Government, succeeded to all rights including responsibility for all obligations of the predecessor Government upon its ascension to power on October 01, 1949. The claimant further stated that as a U.S. citizen, her loss did not occur ("become definite") until January 01, 1979, the date upon which the U.S. Government recognized The People's Republic of China.

In its final decision, the Commission rejected claimant's arguments and denied the claim in its entirety.

Excerpt:

> "[…] no evidence has been submitted which indicates that the subject bonds and notes were first in default after October 1, 1949 nor that the Government of the PRC has affirmatively repudiated them. […] the Commission does not have the authority to […] to find a claim compensable unless the evidence submitted is sufficient to establish that a loss occurred between November 6, 1966 and May 11, 1979. After a careful review of the evidence of record in this claim, the Commission finds that the evidence submitted does not establish a taking during the requisite period of time."

A total of approximately fifty (50) bond claims were reviewed and denied by the Commission during the 'China I' and 'China II' Claims Settlement Programs. [9] The entirety of the bond

claims were thus denied by the Commission even though under settled international law The People's Republic of China had inherited the repayment obligation for the bonds on October 25, 1971, the date upon which it became the internationally recognized Government of China by majority vote of the U.N. General Assembly and was thus the obligor of the bonds at the time the 'China II' claims settlement proceedings were initiated by the Commission.

Summary Review of the Actions of the Foreign Claims Settlement Commission in Respect of the 'China I' and 'China II' Claims Settlement Proceedings

Under international law, The Chinese Communist Government, The People's Republic of China, had no legal obligation to repay the debt prior to October 25, 1971, the date upon which the international community by action of the United Nations General Assembly (Resolution 2758) granted The People's Republic of China international recognition as the Government of all China. Prior to such date, it had not yet achieved recognition as the internationally recognized Government of all China and so could not have authoritatively repudiated the debt.

On or about March 11, 1971, the Foreign Claims Settlement Commission of the United States (the "Commission"), an independent quasi-judicial federal agency organized administratively as a separate agency within the United States Department of Justice, determined that there was no evidence of any positive action by The People's Republic of China affecting the rights of holders of the Chinese Government's defaulted full faith and credit sovereign debt as of such date.

Query: Is a positive action required in order to constitute a taking of creditors' rights?

CHAPTER 11

DEFAULT AND REPUDIATION

> "A borrower's failure to pay interest, or failure to meet sinking fund payments or maturing obligations on a stipulated date, constitutes a violation of agreements and is regarded in financial language as default or bankruptcy. A government or any political subdivision is guilty of default if it violates the rights of creditors in failing to meet obligations in whole or in part, with or without an express announcement to that effect *(emphasis added)*. Etymologically, the word 'default' is derived from the Latin *de,* which is in this case merely a prefix of intensive force, and *fallere,* meaning 'to deceive,' or 'to cheat.' Default then means a thorough and complete deception of the creditor by the debtor. 'Repudiation' also traces its origin to the Romans. Its component parts are *re,* indicating repetition, and *pudere,* 'to be ashamed of.' Originally it meant to be ashamed of something or someone. The inference, however, of the use of the word in present financial language, is that the repudiator is to be ashamed only of himself."

Source:

"Foreign Bonds: An Autopsy," by Max Winkler (1999), published by Beard Books, an imprint of Beard Group, Inc., Law & Business Publishers.

During the China I claims settlement program, a Government-to-Government claims settlement agreement between the United States and the Chinese Communist Government, The People's Republic of China, did not exist. In the absence of a Government-to-Government claims settlement agreement, the authority of the Commission to accept claims for settlement was governed by Title V of the International Claims Settlement Act of 1949, which did not provide the Commission with the authority to accept claims arising from takings by foreign Governments prior to such date. The related claims of U.S. persons were considered to be outside the scope of the Commission's authority and the Commission excluded such claims from eligibility for inclusion in the initial China claims settlement proceedings which pre-dated the later Government-to-Government claims settlement agreement between the United States and The People's Republic of China.

The Commission's primary mission is to determine the validity and monetary value of claims of United States nationals for loss of property or for personal injury in foreign countries, as authorized by Congress, upon referral by the Secretary of State, or following Government-to-Government claims settlement agreements. The Commission was vested with the authority for adjudicating claims against the Chinese Communist regime arising since 1949, although no federal statute explicitly states that the jurisdiction granted to the Commission to determine claims is exclusive. The Commission has stated the position that it does not have, nor has it ever had, the authority to settle any claims against the Government of China arising prior to 1949, including any claims related to the Chinese Government's defaulted full faith and credit sovereign debt arising prior to 1949.

The Commission conducted two phases of claims settlement proceedings with respect to China: "China I" and "China II". China I claims encompassed the period of October 1, 1949 through November 6, 1966 and were adjudicated by the Commission between July 6, 1969 and July 6, 1972, which preceded the Agreement Between The Government Of The United States Of America And The Government Of The People's Republic of China Concerning The Settlement Of Claims, dated May 11, 1979, 30 U.S.T. 1957 (1979), also referred to as the "1979 U.S.-China Treaty".

Claims submitted to the Commission during the China I claims settlement hearings were adjudicated pursuant to Title V of the International Claims Settlement Act of 1949, which vests the Commission with the authority to accept only those claims arising as a result of positive actions of the post-1949 Chinese Government and did not provide the Commission with the authority to settle pre-1949 claims. As of the final date of the China I claims settlement period, the claims of U.S. persons were ineligible for settlement under Title V were therefore rejected by the Commission on that basis as recorded by the Final Decision of the Commission in *Carl Marks & Co., Inc.*, Foreign Claims Settlement Commission, Claim No. CN-0420; Decision No. CN-472, March 11, 1971: "… a claim based upon such bonds does not come within the purview of Title V of the International Claims Settlement Act of 1949, as amended."

A second phase of claims of U.S. persons were adjudicated by the Commission during the China II hearings (August 31, 1979 to July 31, 1981) which were conducted subsequent to the 1979 U.S.-China Treaty. Claims submitted to the Commission during the China II claims settlement hearings were adjudicated pursuant to Title I of the International Claims Settlement Act of 1949,

which vests the Commission with the authority to accept claims which are eligible pursuant to an existing claims agreement concluded between the United States and a foreign Government, which in the immediate instance is the 1979 U.S.-China Treaty. As the Agreement was constructed pursuant to Title V of the above Act, the pre-1949 claims of U.S. persons were excluded from settlement under the Agreement, and so the Commission had no authority to accept the claims of U.S. persons related to the debt during the China II phase of hearings and such claims were therefore denied, e.g., *In the Matter of the Claim of Carl Marks & Co. Inc.* (Claim No. CN-0420; Decision No. CN-472, entered as a Proposed Decision on June 17, 1970 and reaffirmed as the Final Decision of the Commission on March 11, 1971); *In the Matter of the Claim of Catharine E. Olive* (Claim No. CN-2-012; Decision No. CN-2-058, entered as a Proposed Decision on October 17, 1979 and reaffirmed as the Final Decision of the Commission on Nov. 21, 1979); and *In the Matter of the Claim of Welthy Kiang Chen* (Claim No. CN-2-015; Decision No. CN-2-066, entered as a Proposed Decision on October 17, 1979 and reaffirmed as the Final Decision of the Commission on April 1, 1981).

Did the Foreign Claims Settlement Commission wrongfully deny the claims of bondholders during the China claims settlement proceedings?

Despite the fact that The People's Republic of China inherited the repayment obligation for China's defaulted sovereign obligations (e.g., the subject bonds) during the period when the China II claims settlement program remained active, the Commission continued to exclude claims related to the subject bonds on the basis that it lacked the authority to accept such claims. The Commission's refusal to accept claims submitted by U.S. nationals pertaining to the subject bonds subsequent to the date upon which The People's Republic of China inherited the repayment obligation pursuant to settled international law may contravene both the language as well as the intent of the International Claims Settlement Act of 1949 governing the settlement of claims of U.S. nationals against foreign governments, which requires "… the Commission to decide claims in accordance with provisions of the applicable claims agreement and the principles of international law" (22 U.S.C.A. Sec. 1623(a)). The continuity of obligations among successive internationally recognized governments has long been established as an accepted norm of settled international law. See, e.g., *Lehigh Valley R. Co. v. State of Russia, (supra)* decided in 1927 and the *Tinoco Case* (Gr. Br. V. Costa Rica), *U.N. Reports of International Arbitral Awards,* Vol. 1, 369, 375, decided in 1923. It is also noteworthy that the Commission contravened the doctrine articulated in U.S. Department of State Cable 1973STATE105075: "WHILE IT IS WELL SETTLED UNDER INTERNATIONAL LAW THAT SUCCESSOR GOVERNMENTS ARE HELD RESPONSIBLE FOR THE OBLIGATIONS CONTRACTED BY THEIR PREDECESSORS, WE DO NOT WISH AT PRESENT TO ADDRESS THIS POINT."

It is evident from an examination of the 'Secret' U.S. Department of State cables that the Foreign Claims Settlement Commission, an agency within the U.S. Department of Justice, acted complicit with the policy articulated by the Department of State in excluding the claims of United States nationals in regard to the subject bonds. A pattern of inter-agency cooperation to suppress the interests of bondholders is revealed by the subsequent actions of both agencies in the *Jackson* litigation, wherein the U.S. Department of Justice would again act in concert with the U.S. Department of State to successfully intervene in the judicial proceedings to persuade a federal district court judge to set aside a default judgment which had already been entered and to dismiss the action.

■ Actions of the United States Department of State and the United States Department of Justice Acting As Amicus Curiae in Private Civil Litigation Proceedings Against a Foreign State Involving Commercial Contract Disputes: 1979 - Present

Although the restrictive theory of sovereign immunity was codified in 1976 as the Foreign Sovereign Immunities Act ("FSIA") to provide a statutory authority for consistent application of the restrictive theory of sovereign immunity, specifically by eliminating the Department of State from its continuing intermeddling in the adjudication of issues involving questions of sovereign immunity, the Department of State nonetheless reserved the right to intervene in those cases in which it deems an interest. [10]

Prominent among such cases is the instance of *Russell Jackson, et al., v. The People's Republic of China* (550 F. Supp 869, 1982; 596 F. Supp 386, 1984; and 794 F.2d 1490, 1986), in which the Department of State intervened in the proceedings and persuaded a United States District Court judge to set aside a judgment which he had previously rendered awarding damages to holders of defaulted Chinese Government bonds which The People's Republic of China refuses to repay in violation of settled international law.

Plaintiffs had filed a class action suit against The People's Republic of China seeking to obtain payment of defaulted bonds issued as The Imperial Chinese Government Five Per Cent Hukuang Railways Sinking Fund Gold Loan of 1911 by a predecessor Chinese Government.

This case addressed three significant aspects of international law:

1. The liability of successor governments for obligations contracted by predecessor governments (as previously espoused by Department of State officials to representatives of the Chinese Government, i.e., that the bonds remain valid outstanding obligations);

2. The immunity of a foreign State to suit in the federal courts of the United States; and

3. The nature of diplomatic relations between States.

As to the aspect of liability of successor Governments for payment of sovereign obligations contracted and issued by predecessor Governments, the Court determined that under settled international law, changes in the Government of a state do not usually affect preexisting rights and obligations. The Court further determined that since the Communist Government succeeded both the Imperial and Nationalist Governments, The People's Republic of China was bound by existing international law to honor the financial obligations that the previous Governments had incurred.

As to the second issue of whether a foreign state is subject to the jurisdiction of a federal court within the United States, the District Court relied upon the Foreign Sovereign Immunities Act of 1976 (28 U.S.C. §§1330, 1391, 1602-1611), which states that a foreign state is <u>not</u> immune from suit in connection with a commercial activity conducted by the foreign state within the United

States or which has an effect within the United States. The issuance and sale of sovereign bonds is considered a "commercial activity." The Court thus reasoned that The People's Republic of China did not enjoy immunity from suit in a United States federal court.

The Court determined that the claimants were entitled to receive compensation on the bonds and entered judgment in favor of plaintiffs, awarding the sum of $41.3 million plus interest for the bond claims at issue. [11]

The Court's ruling in favor of the plaintiffs was the first instance in which a foreign state had been found liable for defaulted loans by a United States federal court, thereby establishing a significant precedent for U.S. nationals holding defaulted bonds issued by other foreign Governments.

> "The entry of a default judgment against the People's Republic of China by the federal district court for the Northern District of Alabama in September 1982 in the case of *Jackson v. People's Republic of China* was a ruling of considerable significance for both the United States and international law. Although a number of nations had previously defaulted on external bonds issued in the United States to United States investors and payable in U.S. dollars, the *Jackson* decision was the first instance of a United States court finding a foreign Government liable for defaulting on its payments on such bonds." [12]

After the Chinese Government threatened to retaliate in regard to the Court's decision by seizing American properties situated in mainland China, the United States Department of State and the United States Department of Justice jointly intervened in the legal proceedings in the guise of *Amicus Curiae,* filing two Statements of Interest backing The People's Republic of China's motions. The Department of State asserted that holding The People's Republic of China accountable for payment of full faith and credit sovereign obligations which had been contracted and guaranteed by the prior Chinese Governments would upset The People's Republic of China and possibly damage relations (more specifically, trade relations) between the two Governments. In both its *Amicus Curiae* brief and in oral arguments, The United States Government stated its position in opposition to the Court's ruling in favor of the plaintiffs and petitioned the Court to abandon its decision. The intercession of the United States Government in private party judicial proceedings against a foreign state would appear to contravene both the provisions and the congressional intent of the International Claims Settlement Act of 1949.

Prior to the intervention by the United States Government in the legal proceedings, the attorney for the plaintiff class, William Eugene Rutledge, was summoned to Washington, D.C. by then-United States Deputy Secretary of State Kenneth Dam, who advised Mr. Rutledge that he should drop the lawsuit and that his bondholder clients are "…just speculators," to which Mr. Rutledge replied, "…speculators built most of the wealth of this country, such as The Great Eastern Railroad" (i.e., as opposed to government employees). [13] Such a statement by the second most senior official at the Department of State, who is also a former Deputy Secretary of the United States Department of the Treasury, explicitly evidences the hostile posture of the United States Government towards enforcement of the bondholders' rights and claims.

District Court Proceedings

RUSSELL JACKSON, ET AL. v. THE PEOPLE'S REPUBLIC OF CHINA.

550 F.Supp. 869. U.S. District Court, N.D. Ala., September 2, 1982.

Memorandum of Opinion Setting Aside Default Judgment, Civil Action No. 79-C-1272-E. U.S. District Court, N.D. Ala., February 27, 1984 (Unpublished Order).

596 F.Supp. 386. U.S. District Court. N.D. Ala., October 26, 1984.

About November 13, 1979:

Subsequent to formal diplomatic recognition of The People's Republic of China by the United States on January 1, 1979, a civil suit was filed in United States District Court for the Northern District of Alabama, Eastern Division by Russell Jackson, an individual person, against The People's Republic of China as the obligor of certain defaulted full faith and credit sovereign obligations of the predecessor Chinese Governments. The defaulted obligations at issue are collectively referenced as "The Imperial Chinese Government Five Per Cent Hukuang Railways Sinking Fund Gold Loan of 1911."

During the proceedings, the District Court observed:

> "In the early 1900s, in a period known as the Manchu Reform Movement, China embraced modernization in earnest. One of the changes was the construction of a railway system in order to develop the economy, consolidate the defense system and strengthen national unification. The Hukuang Railway was a part of this expanding system. In 1911, the Imperial Chinese Government sold, issued for sale and authorized the issuance for sale in the United States certain bearer bonds, more particularly described as follows: The Imperial Chinese Government 5% Hukuang Railways Sinking Fund Gold Loan of 1911 […]. The proceeds from the sale of these bonds were used to build the final link in the north-south railway system. This link, the Hukuang Railway, connects Beijing, formerly Peking, and the port city of Canton. Prior to the completion of this railway, goods were transported either over land on poor roads or circuitously by the sea and the Yellow and Yangtze Rivers which run east-west. Consequently, the Hukuang Railway was a major step forward for fast and efficient transportation between north and south. It is still in operation as an integral part of China's railway system." [14]

The Chinese Government made timely interest payment on the Hukuang Railway bonds until December 15, 1930. Subsequent to that date, only two half-interest payments were made on June 15, 1937 and on June 15, 1938. [15]

The District Court affirmed that under accepted principles of international law, The People's Republic of China is the successor Government to the Imperial Chinese Government and, therefore, the successor to its obligations. The Court also found that The People's Republic of China is not entitled to immunity from suit nor is it immune from the jurisdiction of U.S. Courts

in connection with any action which is based on a commercial activity by the foreign state carried on in the United States or a commercial activity of the foreign state elsewhere and that act causes a direct effect in the United States.

The District Court noted:

> "It is clear that the sale, issuance for sale and authorization of issuance for sale in the United States constitutes a "commercial activity" carried on in the United States by a foreign state. […] Therefore, the defendant is not entitled to the general immunity granted to foreign states under 28 U.S.C. § 1604 with respect to the bonds which are the basis of this suit. […] Not only has The People's Republic of China refused to avail itself of the legal procedures available to set aside entry of default, it has returned all documents sent to it and has indicated that it will not be a party to this suit. Under the circumstances, the plaintiff class is entitled to and this Court has the authority to enter a judgment of default against The People's Republic of China. In light of the preceding discussions, it is clear that plaintiffs are entitled to payment of all unpaid interest and principal on the Hukuang bonds." [16]

About October 21, 1981:

First Determination by the District Court:

Finding jurisdiction and entering a default judgment against defendant The People's Republic of China. The District Court also certified the suit as a class action comprising 240 individual bondholders.

About September 1, 1982:

Judgment entered in favor of the plaintiff class and damages awarded in the amount of $41,313,038.00.

About January 1983:

The People's Republic of China sent a diplomatic note to the District Court, stating that should the Court proceed with the default judgment against China and attach China's properties in the United States, the Chinese Government reserved its right to take "corresponding measures." [17]

About February 2, 1983:

The People's Republic of China issued an *Aide Memoire* prepared by the Ministry of Foreign Affairs, wherein the People's Republic of China explicitly repudiated the full faith and credit sovereign debt incurred by predecessor Chinese Governments. [18] The *Aide Memoire* stated that The People's Republic of China recognized no obligation to pay external debts incurred by earlier Chinese Governments and that The People's Republic of China enjoyed absolute sovereign immunity.

About February 2 – 6, 1983:

U.S. Secretary of State George Shultz met with Deng Xiaoping over a period of several days in Beijing during which meeting Chairman Deng personally expressed his concern regarding the U.S. District Court's ruling, stating that The People's Republic of China regarded it as a serious matter and a major irritant in bilateral relations with the United States. [19] During this series of meetings, Chinese Foreign Minister Wu Xueqian personally transmitted the *Aide Memoire* to Secretary Shultz. Secretary Shultz reportedly encouraged the Chinese leadership to actively participate in the ongoing legal proceedings and that it could do so without relinquishing its position of absolute immunity. [20]

About Mid-1983:

The plaintiffs began efforts to execute on their judgment against The People's Republic of China.

About August 1983:

The People's Republic of China belatedly appeared for the first time before the District Court and filed the following motions: (1) for relief from the entry of a default judgment; (2) in opposition to plaintiffs' motion for an order enabling attachment or execution proceedings against The People's Republic of China; (3) to vacate the judgment; and (4) to dismiss the case. In support of its motion to dismiss, China alleged that the FSIA, which was enacted in 1976, does not retroactively apply to a cause of action arising from a 1911 transaction. The People's Republic of China instructed its counsel not to appear for oral argument. [21]

♦ **Intervention by the United States Department of State in Private Party Litigation Against a Foreign State Referencing a Commercial Contract Dispute:**

During the proceedings the U.S. Department of State called the presiding judge (Hon. U.W. Clemon) by telephone to discuss the case. [22] Previously, as already noted, subsequent to filing the case with the District Court, Mr. Rutledge was summoned to Washington, D.C. for a private meeting at the U.S. State Department with then-Deputy Secretary of State Kenneth Dam, during which meeting, Deputy Secretary Dam made the derogatory reference to the members of the bondholder class.

The United States Government, through both the Department of State and the Department of Justice, filed two Statements of Interest (including numerous documents) in the case, in favor of and in support of The People's Republic of China's motions. In its Statements of Interest, the United States Government urged that the default be set aside.

In support of this position, U.S. Secretary of State Shultz filed an affidavit which states in part:

> "The present proceedings, and the default judgment against the PRC in particular, have become a significant issue in bilateral United States / China relations, as evidenced by Chairman Deng's personal representations to me in February

> [1983], by China's representations to other Department officials throughout the duration of this lawsuit, and by the repeated diplomatic notes from the PRC that have been filed in these proceedings. The manner in which these proceedings are finally resolved can be expected, therefore, to have ramifications for other important United States interests with respect to China." [23]

About February 27, 1984:

Second Determination by the District Court:

Following the intervention in the contract dispute by the U.S. State Department, the District Court issued an Order (unpublished) setting aside the default judgment.

About October 26, 1984:

Third Determination by the District Court:

Subsequent to the intervention in the case by both the United States Department of State and the United States Department of Justice, each of which separately filed a Statement of Interest in the case, the District Court, following the line of reasoning formulated by the State Department, abruptly vacated its earlier default judgment and dismissed the complaint, stating: "… the Court finds and concludes that the FSIA cannot be retroactively applied; and, accordingly, this action must be dismissed for want of subject matter jurisdiction."

Appellate Court Proceedings

RUSSELL JACKSON, ET AL.; INDIVIDUALLY AND ON BEHALF OF ALL OTHER HOLDERS OF FIVE PERCENT HUKUANG RAILWAYS BEARER BONDS ISSUED BY THE IMPERIAL CHINESE GOVERNMENT IN 1911, SIMILARLY SITUATED, PLAINTIFFS-APPELLANTS, V. THE PEOPLE'S REPUBLIC OF CHINA, A FOREIGN GOVERNMENT, DEFENDANT-APPELLEE.

United States Court of Appeals, Eleventh Circuit. 794 F.2d 1490. July 25, 1986.

Rehearing and Rehearing En Banc Denied September 3, 1986.

On appeal to the Eleventh Circuit, the case was assigned to an appellate judge (Hon. Albea Godbold) who was born in China, and whose parents were at the time both missionaries in China, and whose law clerk at the time (Michael Choy) is Chinese.

♦ **Intervention by the United States Department of State in Private Party Litigation Against a Foreign State Referencing a Commercial Contract Dispute:**

The United States Government acted as *Amicus Curiae* on the side of The People's Republic of China during the proceedings and filed an *Amicus Curiae* brief with the Court. Attorneys for the

United States Government participated in the Appellate Court proceedings include the following: Michael F. Hertz, United States Department of Justice, Commercial Litigation Branch, Civil Division, Washington, D.C., and Frank W. Donaldson, United States Attorney, Birmingham, Alabama, and Herbert J. Lewis, III, Birmingham, Alabama, for *Amicus Curiae*. The United States Government again filed a Statement of Interest and was permitted to argue.

About July 25, 1986:

Noting that a court may vacate a judgment which it has rendered, to do so constitutes an "extraordinary remedy" which may be invoked only upon a showing of "exceptional circumstances," the Appellate Court thereby affirmed the actions of the District Court, finding that the case presents "extraordinary circumstances" justifying the District Court's actions.

The Appellate Court held that the District Court was correct in finding that it lacked subject matter jurisdiction because the FSIA did not apply retroactively to confer subject matter jurisdiction in the case. *Note:* A decision by the United States Supreme Court handed down in mid-2004 held that the FSIA did apply retroactively (*Republic of Austria v. Altmann* (No. 03 – 13), 541 US 677).

About September 3, 1986:

Rehearing and Rehearing En Banc Denied.

United States Supreme Court Proceedings

Cert denied 480 US 917 (1987).

Justice Denied:

By engaging in such deliberate action(s) in both the district court and appellate court proceedings, the United States Government interfered in private litigation against a foreign state referencing a commercial contract dispute.

> "*Jackson* was the first case after the enactment of the FSIA in which the State Department submitted a Statement of Interest: the intervention was decisive in the outcome *(emphasis added)*." [24]

As *Feinerman* also notes:

> "On 8 September 1982, in a talk to the correspondents of the US *Commercial Times* on the default judgment made by the US Court on the 'case of the Huguang railways bearer bonds,' an assistant legal advisers also admitted that the US Government should adopt active measures before the situation gets out of control to promptly stop any actions harmful to Sino-American relations. […] The Department also elaborated excuses for China's failure to appear earlier in Court

> and then proceeded to suggest a line of defences which would have justified dismissal of the case. The District Court in *Jackson*, following the line of reasoning formulated by the State Department, abruptly vacated its earlier default judgment and dismissed the complaint for lack of subject matter jurisdiction, once the PRC appeared and the State Department weighed in with its views. As one observer noted: 'The State Department's views apparently persuaded the Court to reach its decision, which suggests that where foreign policy interests are at issue, the State Department may assume a role similar to the one played prior to the enactment of the FSIA.' […] it nevertheless, once again, suggests that the State Department will bow to pressure exerted by a foreign Government and that the judicial branch will defer to that executive determination – a practice the FSIA was avowedly enacted to eliminate." [25]

In Hearings before the United States Congress, the U.S. Department of State itself noted:

> "From the standpoint of the private litigant, considerable uncertainty results. A private party cannot be certain that his legal dispute with a foreign State will not be decided on the basis of non-legal considerations through the foreign Government's intercession with the State Department." [26]

Subsequent to the Appellate Court's decision in *Jackson,* the United States Supreme Court ruled that the FSIA can in fact be retroactively applied to pre-1952 takings by sovereign governments. [27] However, in the instance of *Jackson*, not only have the interests of a private party been sacrificed in order to further U.S. foreign policy, but the enduring effect of the intervention of the U.S. Department of State in private judicial proceedings involving commercial contract disputes has effectively impaired bondholders' claims, which may thus no longer be justiciable through the United States judicial system.

Through the complicity of the United States Government, China was able to shed its foreign debt repayment obligation free from a default penalty. The bonds remain unpaid and the Hukuang Railway remains in operation this day, providing economic benefit to The People's Republic of China.

Summary of Judicial Actions in United States Courts
Concerning China's Pre-1949 Full Faith and Credit Sovereign Bonds

(Defaulted Bonds Issued and Guaranteed by the Chinese Government and Subsequently Repudiated by The People's Republic of China)

The following cases represent the entirety of those known to the author as of the date of this document. The Judicial Branch of the United States Government would appear to harbor a prejudicial and even hostile posture towards bondholder suits in U.S. courts seeking a judicial remedy, as evidenced by the unsuccessful actions appearing below. Such a posture by the U.S. court system is undoubtedly the product of the intervention by the U.S. Department of State and the U.S. Department of Justice.

- Two lawsuits were reportedly filed prior to 1952 in United States federal courts against The People's Republic of China concerning bonds issued prior to 1920, but the author has not been able to locate any specific information including the case captions or citations. [28]

- *Carl Marks & Company, Inc. v. The People's Republic of China*

  Two lawsuits were reportedly filed in Federal District Court for the S.D.N.Y. against The People's Republic of China by the investment firm Carl Marks & Company, Inc. in 1982. [29] However, the author has been unable to confirm the case captions or identify any citations to the reported cases. Corporate representatives have been unresponsive to multiple requests to Carl Marks & Company for such information.

- *Russell Jackson, et al. v. The People's Republic of China*

  550 F.Supp. 869 (N.D. Ala. 1982) (Finding Jurisdiction; Entering Default Judgment Against the People's Republic of China; Awarding Damages to Plaintiffs)

  ♦ **Intervention by the United States Department of State in Private Party Judicial Proceedings Against a Foreign State Referencing Commercial Contract Dispute:**

  Civ Action No. 79-C-1272-E (N.D. Ala. 1984) (Opinion Setting Aside Default Judgment)
  596 F.Supp. 386 (1984) (Dismissing the Case at the Request of U.S. Government)
  794 F.2d 1490 (1986) (Affirming District Court's Dismissal)
  480 US 917 (1987) (*Certiorari Denied* by United States Supreme Court)

- *Casey v. The People's Republic of China*

  Civil Action No. 82-1444 (W.D. Pa.)

  (This case was withdrawn at the plaintiff's request following the Alabama court's decision in *Jackson*).

- *Marvin L. Morris, Jr. v. The People's Republic of China*

  478 F.Supp. 2d 561 (2007) (Dismissing the Case)

  Brief Amicus Curiae:

  http://www.globalsecuritieswatch.org/Friend_of_the_Court-Sep21.pdf

- *Pons v. The People's Republic of China*

  666 F.Supp 2d 406 (2009) (Dismissing the Case)

- *Kevin O'Brien v. The Republic of China on Taiwan, et al.*

  U.S. District Court for the District of Arizona 4:2010cv00130 (Dismissed)

- *Taiwan Civ. Rights Litig. Org. v. Kuomintang Bus. Mgmt. Comm.*

  U.S. District Court for the Northern District of California 3:10cv00362 (Dismissed)
  2011 U.S. Dist. LEXIS 124812 (USDC ND Cal., Oct. 13, 2011) (Dismissing the Re-filed Case)
  2012 U.S. App. LEXIS 21621 (9th Cir. Cal., Oct. 17, 2012) (Affirming Dismissal)
  Unpublished Opinion No. 11-17717 (9th Cir. Oct. 17, 2012) (Affirming Dismissal)

■ Actions of the United States Securities and Exchange Commission 1998 - Present

In late 1998, the United States Securities and Exchange Commission (the "SEC" or the "Commission") petitioned and did subsequently persuade a federal district court in Orlando, Florida to reclassify uncancelled, gold-backed, full faith and credit sovereign bonds of the Chinese Government as "historical documents" rather than "securities." [30] The SEC espoused this position despite the fact that the subject obligations were then, and remain today, active listings on the NYSE Euronext Securities Exchange and are assigned International Securities Identification Numbers (ISINs) with The People's Republic of China identified as the "Emetteur" (i.e., Obligor and Payor; the party responsible for transmitting payment) of the bonds [Exhibit 7], and despite the affirmative accession of the bonded debt by The People's Republic of China in the 1987 settlement of mutual claims involving bonds and property of U.K. citizens pursuant to the Great Britain - China claims settlement treaty. [31] Of note is that the latter point constitutes an exclusionary settlement which excluded the claims of U.S. persons in contravention of settled international law.

> "We investigated those bonds," said Michael MacPhail, assistant director of the SEC's Denver office, referring to the Chinese Reorganization bonds. "We generally alleged that they were without any investment value. They're just collectible memorabilia." [32]

Moreover, the SEC's actions in regard to the bonds contradicts, and remains inconsistent with the position espoused by the U.S. Department of State that pursuant to settled international law the bonds remain valid, payable obligations. See, for example, the following previously cited examples:

♦ Acting Assistant Secretary of State for East Asian and Pacific Affairs Arthur Hummel's declaration that the U.S. Government could not 'accept' Lin's statement of repudiation of the bonds.

♦ U.S. Department of State Cable 1973STATE105075, which states in part, "WHILE IT IS WELL SETTLED UNDER INTERNATIONAL LAW THAT SUCCESSOR GOVERNMENTS ARE HELD RESPONSIBLE FOR THE OBLIGATIONS CONTRACTED BY THEIR PREDECESSORS, WE DO NOT WISH AT PRESENT TO ADDRESS THIS POINT."

♦ Archival records published by the Institute of American Studies of the Chinese Academy of Social Sciences pertaining to U.S. – China asset claim negotiations which reveal that the "American position actually contains two closely related meanings: First, the United States Advocated by China Qing Government and the Government of the Republic issued bond debt incurred is still valid […]."

According to Amir Zada, Durector of investment boutique Exotix USA Inc., there are two sets or types of value which may be ascribed to such defaulted obligations: 'collector value' to scripophilists and 'claim value' (i.e., redemption value or value as contracted). [33]

> "There are two sets of values for assets like this: historical, collector value to scripophilists and claim value." [34]
>
> - Amir Zada, Director of Exotix USA Inc., a trading firm specializing in exotic and illiquid emerging market debt.

According to Mr. Zada, the claim value would be based upon the level of past due interest on the claim and also the increase in the price of gold. Claimants are also entitled to the application of default interest from the date of default until fully paid.

In reference to the claim value of the subject bond certificates, holders of defaulted full faith and credit sovereign obligations are entitled to receive the return of principal and interest in accordance with the terms and provisions of the Loan Agreement pursuant to which the loan was contracted, calculated from the date of default until paid, and including the application of a default interest rate. U.S. courts have affirmed the enforceability of the gold clause in at least one recent instance as noted in the Memorandum of Valuation prepared for the Starwood Trust (see excerpts below).

> In re: the gold clause applicability in U.S. bond agreements:
>
> *The Gold clause was invalidated by the Gold Reserve Act of 1934 but later reinstated with contractual obligations issued after October 1977 in accordance with 31 USC 5118(d)(2). This was subsequently affirmed August 27, 2008, when the United States Court of Appeals for the Sixth District affirmed the enforceability of such clauses in the decision for 216 Jamaica Avenue, LLC v. S & R Playhouse Realty Co. Examples ratified by other authorities include The United States Supreme Court in the "Gold Clause Cases," 294 U.S. (1934), Norman v. Baltimore & Ohio R. Co., and United States v. Bankers Trust Co., ante, p. 240; Nortz v. United States, ante, p. 317; and Perry v. United States, ante, p. 317; and Perry v. United States, ante, p., at 362- 365, that records: By the so-called gold clause . . . promise to pay in "United States gold coin of the present standard of value." or "of or equal to the present standard of weight and fineness" - found in very many private and public obligations, the creditor agrees to accept and the debtor undertakes to return the thing loaned or its equivalent. Thereby each secures protection, one against decrease in value of the currency, the other against an increase.*
>
> In re: the gold clause applicability to bonds payable in foreign currency:
>
> *The Plaintiff, a New York corporation, holder of bonds of the defendant, a Pennsylvania corporation, the coupons of which provided "Bethlehem See1 Co. will pay to bearer at its office in New York $25 in United State gold coin, or in London, England, £5. 2s. 10d. or in Amsterdam, Holland, 62 guilders, 25 cents," detached the coupons and tendered them to defendant's agent in Holland, demanding the dollar equivalent of the guilders. Payment was refused, but the face value of the coupons in dollars was tendered. On appeal from a judgment for the plaintiff for the dollar equivalent of the guilders, held, modified to the face value in dollars. Domestic purchasers who expected payment in dollars are controlled by the Gold Clause Resolution which requires payment in the devaluated currency for it would be unjust to compel the defendant to meet its obligations on the basis of the old standard while receiving its entire income in the existing currency. Merrell, J., "dissenting" on presentation in Amsterdam the coupons became absolute obligations of the defendant to pay guilders, and the Resolution applies only to ob1igations payable in money of the United States. City Bank Farmers' Trust Co. v. Bethlehem Steel Co., 280 N. Y. Supp. 494 (App. Div. 1st Dept. 1935). On similar facts, held, the Joint Resolution does not apply to obligations payable in a foreign currency. The court cannot read into the contract a limitation that the option clause was intended for the use of foreign holders only. McAdoo v. Solhem Pacific Co., 10 F. Supp. 953 (N. D. Cal, 1935). The repeal of the restrictions on private ownership of gold effective*

December 31, 1974, prompted a number of inquiries on the continuing validity of the Gold Clause Joint Resolution enacted by Congress June 5, 1933. After consultation with other concerned Government agencies, to help clarify the application of this law, a statement issued by the United States Treasury Department recorded the Gold Clause Joint Resolution (31 U.S.C. 463) records: "[E]very provision contained in or made with respect to any obligation which purports to give the obligee a right to require payment in gold or a particular kind of coin or currency, or in an amount in money of the United States measured thereby, is declared to be against public policy . . ." This law mandates that such provisions shall be discharged upon payment, dollar for dollar, in the current legal tender. It is Treasury's view that the Gold Clause Joint Resolution continues to apply after the lifting of restrictions on bullion ownership.

In the event that a U.S. court rejects the application of the gold clause, a petitioner may request that the court apply an 'inflation adjustment' calculation to the principal which is due, resulting in an increase in value even greater than the value calculated through the application of the gold clause.

Thus, the claim value of the various series of defaulted sovereign obligations issued by the pre-1949 Chinese governments should approximate the application of (1) the stated interest rate; (2) the principal due, adjusted for inflation via application of the gold clause or other calculation; and (3) the application of a default interest rate. Depending upon the rate applied as default interest, as well as the prevailing market price of gold, the result is a very wide range of claim values for the various bond certificates, e.g., from approx. U.S.$150,000 to approx. U.S.$1.2 million for a £20 certificate as of January 02, 2009 (the most recent date for which a valuation has been provided for the Starwood Trust).

It appears that while U.S. Secretary of State Henry Kissinger and other Department of State officials affirmed to the Chinese that the unpaid bonds remain a valid and payable debt (while simultaneously deferring the repayment thereof), the actions of the SEC have undermined such position and have arguably had, and continue to have the effect of taking of bondholders' rights in property. It appears that the SEC has consistently maintained, and continues to maintain an overtly hostile posture towards the subject bonds. In order to better understand the SEC's position relative to the subject bonds and the rationale underpinning the various actions in which the Commission has engaged, we have filed a request with the Office of the General Counsel seeking clarification of the SEC's policies (Exhibit 1).

Although the Office of the Chief Counsel of the U.S. Securities and Exchange Commission has proven to be unresponsive to the author's request for confirmation that this policy remains in place, and is quite unlikely to volunteer any statement(s) in this regard, it is the author's understanding that the Commission, an agency of the United States Government, continues to maintain and espouse such policy today, i.e., that the subject bonds may only be ascribed collector value.

Query: Would the active maintenance or continuance of such policy by the SEC constitute an affirmative action which would toll the statute of limitations for enabling a foreign takings suit to proceed in the United States Court of Federal Claims?

■ Actions of the United States Department of Justice and the United States Foreign Claims Settlement Commission
False and Misleading Public Declaration: October 24, 2002

Mr. David Bradley, then-Chief Counsel of the Foreign Claims Settlement Commission stated publicly the following declaration in regard to the subject bonds:

> "There's no basis for holding the current Government responsible. Those bonds were already in default, and they had been for a while." [35]

Mr. Bradley's patently false and misleading statement constitutes a rejection of settled international law affirming continuity of obligations among internationally-recognized successive Governments and also constitutes an affront, and possible injury, to bondholders actively engaged in pursuing recovery of their collective claims.

■ Actions of the United States Securities and Exchange Commission; the United States Department of Justice; and the United States Federal Trade Commission
Regulatory Enforcement Failure: March 31, 2005 - Present

Despite its repudiation of China's defaulted full faith and credit national debt, The People's Republic of China is presently assigned an 'investment grade' sovereign credit rating by each of the three primary Nationally Recognized Statistical Rating Organizations (i.e., Standard and Poor's, Moody's Investors Service and Fitch Ratings). As a direct result of the three primary NRSROs assignment, publication and distribution of a demonstrably false sovereign credit rating, The People's Republic of China enjoys unfettered access to international financial markets, enabling it to obtain large-scale financing free from a default penalty.

> "If large-scale financing was supplied to Governments in default, the incentive for the debtor to conclude a deal was destroyed." [36]
>
> - Adam Lerrick, Professor Emeritus of Economics, Carnegie Mellon University
>
> "If nations were permitted to repudiate their debts due to ideological differences with the previous Government, we could wipe out our national debt every time Republicans replaced Democrats in Washington, or vice versa. Indeed, this is why debts are considered "national" debts in the first place: they are obligations of the nation itself, not of any particular group of politicians who happen to be ruling it at a given moment." [37]
>
> - Ian Fletcher, Adjunct Fellow, U.S. Business and Industry Council

Numerous specific Complaints have been filed with agencies of the United States Government referencing the wrongful, injurious and demonstrably fraudulent actions of the oligopoly comprised of the three primary NRSROs in respect of China, including a Civil Racketeering and Antitrust Complaint filed with the Antitrust Division of the United States Department of Justice. The failure of the various agencies of the United States Government to act on the various Complaints may constitute acts of omission which have had an injurious or 'taking' effect of bondholders' rights and have conjointly enabled the commission of fraud on investors in recently-issued sovereign obligations of The People's Republic of China sold in the United States and which offering materials contain material violations of the 'Schedule B' disclosure obligation of registered sovereign issuers, including violations of Rule 10b-5 and Section 10(b) of the Exchange Act as described below.

Sovereign Disclosure Obligation: Prohibition Against Half-Truths

In the United States, the disclosure obligation for registered sovereign issuances is governed by the Securities and Exchange Commission's Schedule B, which affirmatively requires only minimal disclosure including pricing, payments schedule, and volume. However, an affirmative obligation by registered sovereign issuers to speak with respect to additional disclosure **does exist** in that statements made in connection with an offering of securities, although literally true, may not be misleading through their incompleteness as specified by Rule 10b-5 and Section 10(b) of the Exchange Act. The lack of meaningful affirmative disclosure obligations in the Schedule B context, elevates the importance of the obligation not to speak in "half-truths". See James D. Cox, *Rethinking U.S. Securities Laws in the Shadow of International Competition*, L. & Contemp. Problems, Autumn 1992, at 177, 192-193 (cited at 13, *An Empirical Study of Securities Disclosure Practices,* authored by Mitu Gulati and Stephen Choi, Duke Law School Working Paper, 2006).

Under Rule 10b-5 and Section 10(b) of the Exchange Act, a duty is imposed upon an issuer to refrain from disclosing materially incomplete statements (i.e., the prohibition against "half-truths"). Accordingly, a source of a sovereign's obligation to disclose additional risks in the offering documents arises from additional disclosure which the sovereign volunteers. In the event that a registered sovereign issuer may elect to provide additional disclosure beyond the requirements imposed by SEC Schedule B, such statements must constitute full and complete disclosure and not be misleading through their incompleteness.

Under Rule 10b-5, statements that are literally true can create liability if they create a materially misleading interpretation because they omit some key fact (or, in other words, are "half-truths"). The duty not to make "half-truths" under Rule 10b-5 applies to both registered and non-registered sovereign bond issuances. In the immediate instance, inadequate and misleading disclosure appears in the prospectus dated October 16, 2003 and in the prospectus supplement dated October 22, 2003 pertaining to the registered offering, sale and issuance of sovereign obligations of The People's Republic of China, and offer several obvious examples of disclosure obligations required by Rule 10b-5 and Section 10(b) of the Exchange Act which are omitted from mention in the above offering document (see complaint dated September 1, 2006, the amendment dated February 15, 2007, and complaint dated October 16, 2007, respectively filed with the Commission). See Registration no. 333-108727. (ISIN US712219AJ30 / CUSIP 712219AJ3). See prospectus dated October 16, 2003 and the prospectus supplement dated October 22, 2003:

http://www.sec.gov/Archives/edgar/data/909321/000114554903001347/u98681p1e424b5.htm

The U.S. registration statement including the prospectus and prospectus supplement pertaining to the 2003 sovereign bond offering and sale by The People's Republic of China was prepared by the U.S. law firm of Sidley Austin Brown & Wood (since renamed Sidley Austin LLP). Subsequent to the receipt of constructive notice provided by a letter prepared by the law firm of Stites & Harbison, PLLC dated December 31, 2003, Sidley Austin failed to take any action to amend the 2003 U.S. registration statement and prospectus. Such failure evidences the application of a reckless standard of care.

See the following information:

http://www.globalsecuritieswatch.org/Sovereign_Disclosure_Obligation.pdf

http://www.globalsecuritieswatch.org/Amended_SEC_Complaint.pdf

http://www.globalsecuritieswatch.org/SEC_Conference_Brief.pdf

The following excerpts from the Complaint filed with the U.S. Securities and Exchange Commission cite specific examples of the failure of The People's Republic of China to fully disclose material facts, and which failure constitutes violations of Rule 10b-5 and Section 10(b) of the Exchange Act:

1. Voluntary Disclosure: **Debt Record** *(page 69 of the prospectus)* –

> "The central government has always paid when due the full amount of principal of, any interest and premium on, and any amortization or sinking fund requirements of, external and internal indebtedness incurred by it since the PRC was founded in 1949."

Omission: This statement is misleading to offerees and prospective purchasers. Both the prospectus and the prospectus supplement intentionally omit any mention of the existence of pre-1949 defaulted full faith and credit sovereign obligations of the Government of China, which under accepted conventions of international law, the payment obligation for such indebtedness was incurred by the central government of China on the date upon which it became the internationally recognized government of China, and on which debt that government has since settled with British bondholders while continuing to evade the claims of American bondholders.

As we have previously described, neither the prospectus nor the prospectus supplement contain any mention whatsoever regarding the existence of defaulted full faith and credit sovereign debt of the Government of China which remains unpaid in a state of default, and for which the People's Republic of China is liable for repayment under settled international law as the internationally-recognized successor government of China, and which government continues to engage in actions evidencing both selective default and discriminatory settlement under settled international law.[4] Such actions act to create the risk of seizure of proceeds of any securities offering by the Government of China or any of its state owned enterprises and also act to expose purchasers of sovereign obligations issued by the People's Republic of China to the risk of injunctions preventing discriminatory payments to such purchasers.

2. Voluntary Disclosure: **External Debt** *(page 67 of the prospectus)* –

Note: this section contains extensive narrative and numerous schedules referencing the outstanding obligations and external debt of the Government of China. No mention is made regarding the existence of defaulted sovereign debt of the Government of China. An excerpt of this section appears below:

> "Loans are the primary source of external debt. Non-trade loans accounted for approximately 84.4% of the total external debt outstanding at December 31, 2002. Commercial loans (i.e., loans obtained from any source on commercial terms), official primary government loans (i.e., loans obtained on favorable terms from foreign governments and international financial organizations including the World Bank and Asian Development Bank) and other types of debt financing accounted for approximately 53.5%, 30.9% and 15.6%, respectively, of total external debt in the form of loans at December 31, 2002. The central government's current policy is to continue to seek loans from foreign governments and international financial institutions to finance infrastructure projects in China. At the end of 2002, the total outstanding external debt was US$168.5 billion."
>
> "The Ministry of Finance, on behalf of the central government, has raised funds in the international capital markets through various debt securities and bond issues since 1993. The Ministry of Finance's principal objective is to set up benchmarks for other

> Chinese borrowers. Several state-owned financial institutions and enterprises have also issued debt securities in the international capital markets with the approval of the State Council."
>
> "Unless the central government expressly provides otherwise, the central government does not guarantee or provide any direct or indirect credit support to any entity in China. However, debtors that have their external debt registered with the State Administration of Foreign Exchange have the right to buy foreign currencies as permitted by the central government at the China Foreign Exchange Trading System rate in order to service the interest and principal payments on their registered external debt."

Omission: The language of this section intentionally conceals the existence of a significant liability of the People's Republic of China under the successor government doctrine of settled international law espousing continuity of obligations. The failure to disclose the existence of the defaulted sovereign debt of the Government of China and the existence of a defaulted class of creditors also exposes purchasers of the offered obligations to the risk of judicial and other actions brought by the class of defaulted creditors, the existence of which remains undisclosed, and whose actions to recover payment on the defaulted obligations would reasonably be considered to be adverse to the interests of purchasers of newly-offered obligations. The concealment of the defaulted sovereign debt of the Government of China also acts to intentionally deceive prospective purchasers as to the actual risk of non-repayment inherent to the actions of the Government of China towards its defaulted creditors and the refusal to honor repayment of its outstanding defaulted sovereign debt.

3. Certain representations which appear in the U.S. Registration Statement, including the Prospectus dated October 16, 2003 and the Supplement to the Prospectus dated October 22, 2003 as filed with the United States Securities and Exchange Commission pertaining to the registration, offering and sale of U.S. $1 billion of 4.75% notes due 2013 issued by the People's Republic of China, and specifically to the following language which appears on page S-7 of the Supplement to the Prospectus describing the ranking of the obligations publicly registered, offered and sold within the United States in 2003 and which obligations remain outstanding as of the date of this letter:

> "Ranking **The notes will rank equally** with each other and **with all other general and (subject to the provisions in the notes providing for the securing of such obligations in the event certain other obligations of China are secured) unsecured obligations of China for money borrowed** and guarantees given by China in respect of money borrowed by others. **China will pledge its full faith and credit** for the due and punctual payment of the notes and **for the due and timely performance of all obligations of China** with respect to the notes." *(emphasis added).*

The above language, excerpted from the Supplement to the Prospectus, purposefully conceals the Chinese government's refusal to honor repayment of China's defaulted full faith and credit sovereign debt. The United States Securities and Exchange Commission has not only failed in regard to the foregoing disclosure violations, but continues to permit the continued publication and distribution of a demonstrably false 'investment grade' sovereign credit rating for The People's Republic of China despite its practice of selective default which continues in effect at present, i.e., engaging in discriminatory payments to a selected group of general obligation creditors (purchasers of its recently issued notes) while excluding payment to another group of secured or general obligation creditors, (holders of the defaulted bonds). The actions of the three primary NRSROs in regard to China are motivated by, and constitute an abuse of, the issuer-pay revenue model and are therefore expressly prohibited pursuant to the Dodd-Frank Financial Reform Act.

Complaint	Response
April 17, 2014 **The Office of the Attorney General** **United States Department of Justice** Complaint Filed with DOJ Alleging Violations of the Johnson Act of 1934 (Foreign Securities Act) and the Dodd-Frank Wall Street Reform and Consumer Protection Act	[Awaiting Response]
March 17, 2014 **The Office of Credit Ratings** **United States Securities and Exchange Commission** Complaint Filed with SEC Alleging Violations of the Dodd-Frank Wall Street Reform and Consumer Protection Act	[Awaiting Response]

[Supplement Page: Added May 01, 2014]

Complaint	Response
September 15, 2010 **United States Department of Justice** **Antitrust Division** Antitrust and Civil Racketeering Complaint Referencing the Wrongful, Deceptive and Injurious Actions of the Credit Rating Oligopoly	Received Telephone Call from an Attorney and Section Chief in the Litigation Branch of the Antitrust Division of the U.S. Department of Justice, Acknowledging Receipt and Subsequent Review of the Complaint, Declining to Involve the Justice Department in an Enforcement Action and Refusing to Reply in Writing that there was Not an Antitrust Violation, Requesting that the Present Telephone Conversation Constitute the Entirety of the Response by the Department of Justice to the Complaint, and Further Advising that the Specifications Stated in the Complaint Appear to Have Sufficient Merit to Institute Private Civil Litigation Proceedings
June 01, 2010 **United States Securities and Exchange Commission** Civil Racketeering Complaint Evidencing Regulatory Enforcement Failure and Referencing the Wrongful, Deceptive and Injurious Actions of the Credit Rating Oligopoly	Received Written Response and Acknowledgement of the Complaint from the Chief of the Office of Market Intelligence of the U.S. Securities and Exchange Commission, Advising that any Resultant Action(s) Would Generally be Conducted on a Confidential Basis and Would Likely Not be Publicly Disclosed
July 06, 2010 **United States Federal Trade Commission** Civil Racketeering Complaint Evidencing Regulatory Enforcement Failure and Referencing the Wrongful, Deceptive and Injurious Actions of the Credit Rating Oligopoly	[Declined to Act]
June 01, 2010 **Financial Industry Regulatory Authority** Civil Racketeering Complaint Evidencing Regulatory Enforcement Failure	[No Response Received]
June 01, 2010 **United States Attorney** **for the Southern District of New York** Civil Racketeering Complaint Evidencing Regulatory Enforcement Failure	[No Response Received]

Complaint	Response
October 15, 2007 **Members of the 110th United States Congress** Wrongful, Deceptive and Injurious Actions of the Three Primary NRSROs (Credit Rating Agencies) Evidencing the Application of a Reckless Standard of Care; Regulatory Enforcement Failure by the SEC; and Stating the Need for Concurrent Legislative and Enforcement Action	Requested to Provide House Legislative Brief and Senate Policy Brief House Concurrent Resolution 1179 Introduced May 07, 2008 and Senate Concurrent Resolution 78 Introduced April 28, 2008 Censuring Credit Rating Agencies for Failing to Acknowledge 'Selective Default' Status of The People's Republic of China On April 01, 2008 Congress Announced an Investigation into Failure of the SEC Enforcement Division
September 10, 2007 **United States Senate Committee on Banking, Housing, and Urban Affairs** Wrongful, Deceptive and Injurious Actions of the Three Primary NRSROs (Credit Rating Agencies) Evidencing the Application of a Reckless Standard of Care and Regulatory Enforcement Failure by the SEC	
February 15, 2007 **United States Securities and Exchange Commission** Amendment to the Complaint Dated September 01, 2006 Alleging the Specification of Fraud in Connection with Recently Issued Sovereign Bonds Publicly Offered and Sold within the United States by The People's Republic of China	[No Response Received] House Concurrent Resolution 160 Introduced on May 23, 2007 Denying China Access to U.S. Capital Markets Until the Chinese Government Honors Repayment of China's Defaulted Sovereign Debt
September 01, 2006 **United States Securities and Exchange Commission** Willful Violations of the Disclosure Obligation of Registered Sovereign Issuers in Connection with Recently Issued Sovereign Bonds Publicly Offered and Sold within the United States by The People's Republic of China	[No Response Received]

Complaint	Response
September 21, 2005 **United States Securities and Exchange Commission** Provided Second Warning to the SEC Chairman and Associate Director of the Division of Market Regulation that Enforcement Failure Sets Dangerous Precedent	Received a Response Dismissing Concerns Related to Failure to Regulate the Credit Rating Agencies
August 04, 2005 **United States Securities and Exchange Commission** Provided Warning to the Newly-Installed SEC Chairman Regarding the Deceptive, Wrongful and Injurious Activities of the Three Primary NRSROs (Credit Rating Agencies)	Received a Response Dismissing Concerns Related to Failure to Regulate the Credit Rating Agencies
July 01, 2005 **United States Federal Trade Commission** Deceptive Practices of the Three Primary NRSROs	[Referred to SEC]
June 21, 2005 **United States Government Accountability Office** Regulatory Enforcement Failure by the United States Securities and Exchange Commission Regarding Activities of the Three Primary NRSROs (Credit Rating Agencies)	[No Response Received]
May 24, 2005 **Chairman of the Joint Economic Committee of the United States Congress** Requested the United States Securities and Exchange Commission to Investigate the Deceptive Practices of the Three Primary NRSROs (Credit Rating Agencies)	The SEC Division of Market Regulation Disclaimed Regulatory Jurisdiction Over the Credit Rating Agencies in an Internal Memorandum
March 31, 2005 **United States Securities and Exchange Commission** Deceptive Practices of the Three Primary NRSROs	The SEC Division of Market Regulation Disclaimed Regulatory Jurisdiction in an Internal Memorandum
April 08, 2004 **Attorney General for the State of New York** * (Non-U.S. Government Agency) Wrongful and Injurious Actions of the Three Primary Credit Rating Agencies and Bond Underwriters	The Office of the Attorney General Would Neither Confirm nor Deny Whether an Investigation Would be Opened into the Specifications Described in the Complaint and the Exhibits Thereto

■ Actions of the Executive Branch of the United States Government (Office of the President, Department of the Treasury, Department of State, Department of Commerce and Office of the U.S. Trade Representative) in Pursuing a New U.S.-China Bilateral Investment Treaty From Which Settlement of Bondholders Claims Is Again Excluded: June 18, 2008 - Present

Although representatives of both the United States and China engaged in exploratory discussions regarding the possibility of developing a Bilateral Investment Treaty ("BIT") between the two nations beginning in 2007, negotiations did not began in earnest until or about June 18, 2008 during the U.S. – China Strategic Economic Dialogue. Owing to ranging disagreements on a number of important issues and a general lack of consensus on how to develop an acceptable framework, no substantive progress was made over the intervening five years. Negotiations between the United States Government and The People's Republic of China resumed in mid-July 2013 when China assented to drop certain demands which were protective of certain sectors of the Chinese economy and state-owned enterprises. A significant element of China's impetus for implementation of such a treaty is to afford protection of the nation's estimated $1.3 trillion investment in U.S. Treasury obligations.

> "With such an extensive investment relationship, it is necessary for the two sides to have an institutional environment for the protection of these investments." [38]
>
> - Zhu Guangyao, Vice Minister of Finance, People's Republic of China

At a recent conference in Beijing, China's Vice Finance Minster stated that the U.S. must protect its creditors:

> "Safeguarding the debt is of vital importance to the economy of the U.S. and the world [...] This is the United States' responsibility." [39]
>
> - Zhu Guangyao, Vice Minister of Finance, People's Republic of China
>
> "Of course, because of the differences, there's a need for us to make rules. And to formulate those rules, we need to have dialogue." [40]
>
> - Wang Yang, Vice Premier, People's Republic of China

None of the framework proposed thus far in regard to a possible U.S.–China bilateral investment treaty addresses resolution of bondholders' claims, evidencing a pattern whereby the U.S. Government has consistently pursued trade relations over the enforcement of bondholders' claims.

> " Meanwhile for the US, the treaty would further open market access to China, pleasing U.S. business interests." [41]
>
> "He believes that American business and Government may be seeing their hopes and dreams for the Chinese market rather than what is actually on the table." [42]

■ Actions of the United States Department of State as the Department Continues to Intervene in Congressional Proceedings with Respect to Bondholders' Claims: 2003 – Present

The following excerpt is taken from Jerry Gordon's June 2012 interview with Jonna Bianco, president of the American Bondholders Foundation:

Gordon: Have any Members of Congress submitted resolutions and or authorization legislation to enable discussions with the PRC Government about selective debt default repayments?

Bianco: Yes, they have. There have been hearings in Washington on this issue over the past few years. One with former Chairman Henry Hyde of International Relations Committee and one with Congressman Brad Sherman, Foreign Affairs Sub-committee in the House. There have been bi-partisan resolutions in both the House and Senate. However, the minute these resolutions were issued **the State Department intervened** *(emphasis added)* and threatening calls from Wall Street to back off this issue. This could cause problems in U.S. China relations. When there were other issues like intellectual property theft, currency manipulations, weapons proliferation, trade issues, they just didn't want to add another one to that list. So Congressional Members basically backed off, allowed this to slip through the cracks instead of standing up for what is right upholding the rule of law in America representing their constituent.

Source:

"Why Does China Owe Americans $1 Trillion? An Interview with Jonna Bianco of the American Bondholder (sic) Foundation" by Jerry Gordon, New English Review (June 2012). The interview in its entirety is accessible at:
http://www.newenglishreview.org/custpage.cfm/frm/116983/sec_id/116983

The continuing intervention by the U.S. Department of State in seeking to suppress Congressional action on the matter is consistent with, and may be explained by, the findings of a study conducted by Princeton University from 1981 – 2002 which determined that the United States is now constituted as an oligarchy and is governed in a manner calculated to best serve the interests of large multinational corporations and a small group of elites, as opposed to a constitutional republic:

> "But we believe that if policymaking is dominated by powerful business organizations and a small number of affluent Americans, then America's claims to being a democratic society are seriously threatened." [43]
>
> "Multivariate analysis indicates that economic elites and organized groups representing business interests have substantial independent impacts on U.S. government policy, while average citizens and mass-based interest groups have little or no independent influence." [44]

The apparent motivation which manifests in the actions taken by the U.S. Department of State is echoed by officials at the Treasury Department, as evidenced by the response to a letter sent by

Representative Gary Miller (R - CA) referencing the claims of individual bondholders and requesting information on various series of defaulted Chinese government bonds in the possession of the Department of the Treasury. A memorandum was attached to the letter of response received by Rep. Miller:

> "It categorically states that the US government has 'no legal obligation to help bondholders seek and obtain settlement of defaulted bonds.'" [45]

The Department of the Treasury's response to Rep. Miller was authored by Dr. Lael Brainard, Undersecretary of the Treasury for International Affairs, who asserted a dismissive posture regarding the matter of the subject bonds and instead enthusiastically rhapsodized about a recent meeting in Beijing to discuss the potential for Wall Street Banks to gain access to China's financial sector. [46]

» The continuing intervention by the U.S. Department of State in regard to Congressional attempts to assist the recovery of bondholders' claims may have acted to toll the statue of limitations in favor of bondholders interested in initiating a Foreign Takings Action in the United States Court of Federal Claims.

[Supplement Page: Added May 01, 2014]

Multinational Trade vs. Bondholders' Rights: The Bilateral Investment Treaty Embodies the Continuation of the U.S. Government's Consistent Policy of the Subordination of Bondholders' Claims in Favor of Promotion of Trade

This most recent known act of omission by the United States Government may reasonably be construed to negatively affect the ability of the individual bondholders to achieve a fair settlement of claims and is arguably an actionable injury which may have tolled the statute of limitations in regard to enabling a private civil action in the U.S. Court of Federal Claims for taking of bondholders' rights in property. The pursuit of a Bilateral Investment Treaty with China also provides an opportunity for bondholders to petition for Congressional opposition to such a treaty or treaties absent a fair settlement of bondholders' claims.

Query: Would it be possible to obtain a judicial injunction or court order to obstruct the implementation of the Treaty?

The above actions, including 'fast-tracking of trade legislation by the Executive, evidence a deliberate and concerted effort by agencies and instrumentalities of the United States Government, acting in concert with the international credit rating agencies, debt underwriters and credit rating advisors to The People's Republic of China as collective participants in a highly organized and orchestrated scheme to deprive holders of China's pre-1949 defaulted full faith and credit sovereign debt of their rights in property.

Further, the deliberate, intentional, and injurious actions of the United States Government in seeking to establish normalized relations with The People's Republic of China and to promote bi-lateral trade with China have had the effect of destroying the debt obligor's incentive to repay the bonds and have undermined and extinguished the negotiating capacity of the individual bondholders whom are barred from seeking judicial redress of their claims.

Query: Do the known actions of the United States Government as described herein give rise to an actionable Foreign Takings claim in the United States Court of Federal Claims? Further, could such a claim be sustained on the basis of the known information as described herein?

In re: Foreign Takings by the United States, would an American person or an alien person have standing to raise a Fifth Amendment claim in a United States court in order to recover compensation for the taking of rights in property (i.e., the subject bonds) situated outside the United States pursuant to the Just Compensation Clause in the Fifth Amendment to the United States Constitution, whereby such taking occurred by the action of a foreign sovereign under the influence of the United States?

If so, might multiple such incidents be consolidated into a Class Action proceeding?

A survey of various authorities appears to provide support for such an action. See, e.g., the following:

https://litigation-essentials.lexisnexis.com/webcd/app?action=DocumentDisplay&crawlid=1&doctype=cite&docid=8A-G19+Nichols+on+Eminent+Domain+G19.syn&srctype=smi&srcid=2983&key=848a58dd42823f853bdb527c21d45334

References:

[1] Annual Report of the U.K. Corporation of Foreign Bondholders (1984).

[2] Letter from Jack B. Tate, Acting Legal Advisor of the United States Department of State, to Philip B. Perlman, Acting Attorney General (May 19, 1952), reprinted in 26 *Dep't State Bull.* 984 (1952), indicating that it would thereafter be the policy of the United States Government to adopt the restrictive theory of sovereign immunity. See also, "The Case Against Retroactive Application of the Foreign Sovereign Immunities Act of 1976," by Adam K.A. Mortara, University of Chicago Law Review, 68 U. Chi. L. Rev. 253 (Winter 2001), which states in part: "In 1911, the Imperial Chinese government issued bearer bonds in the sum of six million pounds in order to finance the construction of a section of Hukuang Railway running between Guangzhou and Beijing. In the United States at that time, absolute sovereign immunity prevailed, and as a result, neither the Imperial Chinese government nor the holders of the notes could have been under the apprehension that the bonds were enforceable in United States courts. [...] The court in *Jackson v People's Republic of China* held that the FSIA could not be applied retroactively to events before 1952. In fact, this was the conclusion of all courts passing on the question until the Supreme Court handed down its definitive treatment of retroactivity in *Landgraf v USI Film Products*. In *Landgraf,* the Court restated the presumption against statutory retroactivity and at the same time noted that jurisdictional statutes are generally applied retroactively. This language has led the D.C. Circuit to conclude that the FSIA, as a jurisdictional statute, should also apply retroactively" *(notational references deleted)*.

[3] *"China's Fiscal Legerdemain,"* by Edward Chancellor, Wall Street Journal (March 14, 2011).

[4] The United States Government acted complicit with the Chinese Government to effectively shed China's foreign debt obligation at the expense of both U.S. and foreign bondholders. It is evident from an examination of the factual record that bondholders suffered the involuntary subordination of their claims by the deliberate actions of certain officials of the USG in favor of establishing trade relations between the PRC and the US primarily to benefit the interests of crony capitalists. For a comprehensive archive of materials pertaining to Kissinger's secret trip to China and the Nixon Administration's initial contact with China, see:
http://www2.gwu.edu/~nsarchiv/NSAEBB/NSAEBB66/

Specifically, see the transcript of the telephone conversation between Kissinger and Nixon, discussing who the first U.S. envoy to China should be:
http://www2.gwu.edu/~nsarchiv/NSAEBB/NSAEBB66/ch-18.pdf

At the very beginning of the conversation, Nixon suggests sending "Nelson." It was unnecessary for Nixon to state the last name of the envoy candidate, as both conversationalists had an extremely close working and personal relationship with Nelson Rockefeller, and knew exactly who was being referred to simply as "Nelson." In addition to the other sources cited in this section, see *"Certain Legal Aspects of Recognizing The People's Republic of China,"* by Hungdah Chiu, Occasional Papers/Reprints Series in Contemporary Asian Studies published by the University of Maryland School of Law (Number 5 – 1979 (26)); and *"The Blocked Chinese Assets-United States Claims Problem: The Lump-Sum Settlement Solution,"* by Charlene M. Levie, Fordham International Law Journal, Vol. 3, Issue I (1979). State Department officials took it for granted that the "oral message" on bonds was the expression of a "standard

government position." The railway bonds (e.g., Hukuang Railway), defaulted Chinese treasury notes, and other bonded indebtedness, were mentioned mainly to show their irrelevance to the assets-claims settlement, which only addressed claims from the 1949 revolution, not before it. The U.S. government would not support bondholders' claims, which were matters strictly between the investors and the Chinese government. Moreover, as long as China had not repudiated the debt, bondholders could not take court action to attach PRC property. See State Department cable 50887 to Paris embassy, 20 March 1973, SN 70 – 73, Str 9 – 1 Chicom; and Godley to the Secretary, "U.S. Claims and PRC Frozen Assets," 22 June 1973, SN 70 – 73, PS 8 -3 US-Chicom.

[5] Letter dated December 11, 1979, authored by J. Brian Atwood, Assistant Secretary for Congressional Relations, United States Department of State, addressed to the Honorable Charles A. Vanik, Chairman, Subcommittee on Trade, Committee on Ways and Means, United States House of Representatives, acknowledging that the claims of U.S. persons were outside the scope of the 1979 Treaty because the People's Republic of China had not repudiated the debt as of the date of the Treaty, and referring United States claimants to the U.S. Foreign Bondholders Protective Council, a private, non-profit public service organization established at the request of the United States Secretaries of State and Treasury and the Chairman of the Federal Trade Commission for the purpose of assisting U.S. citizens in recovery of repayment of defaulted obligations issued by foreign Governments.

[6] *"The Failure of the Foreign Bondholders Protective Council Experiment, 1934 – 1940,"* by Michael R. Adamson, visiting scholar in the Office for History of Science and Technology at the University of California, Berkeley, published in "*The Business History Review,"* No. 76 (Autumn 2002) by The President and Fellows of Harvard College. The research study is accessible at:
http://www.jstor.org/discover/10.2307/4127796?uid=3739256&uid=2129&uid=2&uid=70&uid=4&sid=21102670277361

[7] *"The Waiting Game,"* China Economic Review (October 1, 2006).

[8] Agreement. Concerning the Settlement of Claims, May 11, 1979, United States-People's Republic of China, _ **U.S.T.** _ T.I.A.S. No. 9306.

[9] Email correspondence from Mr. Jeremy R. LaFrancois, Attorney Advisor - International, Foreign Claims Settlement Commission, United States Department of Justice (February 23, 2011).

[10] 1976 *Digest of U.S. Practice of Int'l L.* 325 (State Department letter to the Department of Justice).

[11] *"Judicial Decisions,"* The American Journal of International Law, Vol. 77, No. 1, Jan., 1983 (Published by The American Society of International Law).

[12] *"Sovereign Immunity in the Chinese Case and Its Implications for the Future of International Law,"* by J.V. Feinerman, included in the compilation of essays entitled, *"Chinese Law – Social, Political, Historical, and Economic Perspectives,"* Tahirih V. Lee, University of Minnesota Law School, Series Editor, published by Garland Publishing, Inc. under the title, *"Foreigners in Chinese Law"* (1997).

[13] Telephone conversation between the author and Mr. Rutledge (April 22, 2011).

[14] Memorandum of Opinion of the District Court, *Jackson v. The People's Republic of China*. 550 F.Supp. 869 (1982). The Court noted the following statement in reference to the defaulted Hukuang Railway bonds by the prime minister of the Chinese national Government on August 13, 1947: "China pledges her honourable intention to repay those external loans the service of which was suspended in the course of the Sino-Japanese war. In no way does the conclusion of new loans in recent years prejudice the security of these pre-war loans or vitiate the rights of holders of such bonds. At the same time, China hopes soon to start a progressive programme of debt rehabilitation in accordance with the policy of upholding the national credit. Like so many other postwar nations today, China will yet need international economic assistance to rehabilitate her trade and industry so as to strengthen her ability to make debt payments. Nevertheless, the National Government is determined to do its best to fulfill its obligations and sincerely hopes that financial conditions will soon show sufficient improvement to enable it to make arrangements for an early resumption of the service of pre-war loans."

[15] Id.

[16] Id. In its Memorandum of Opinion, the Court noted that the question of retroactive application of the Foreign Sovereign Immunities Act ("FSIA") is dispositive of the case if the statute is found to be prospective only. In that situation, the case must be dismissed for want of jurisdiction.

[17] Memorandum of Opinion of the Court of Appeals, *Jackson v. The People's Republic of China*. 794 F.2d 1490 (1986).

[18] See *Aide Memoire* of Chinese Foreign Ministry on Case of Huguang *(sic)* Railways Bearer Bonds, dated 2 February, 1983, in Xinhua News Agency Release of 9 February, 1983, US Foreign Broadcast Information Service (FBIS), *Daily Report: China*, FBIS-CHI-83-028, 9 February, 1983, at B-1, reprinted in 22 Int'l Legal Materials, 81 (1983). The Ministry of Finance of The People's Republic of China affirmed the position previously articulated by the Ministry of Foreign Affairs in the 1983 *Aide Memoire* in a letter dated November 12, 2006 addressed to the Embassy of the United States of America in China (Exhibit 6), which states: "We acknowledge the receipt of the letter dated 2 November 2006 from the Economic Section of your embassy. Upon discussion with our Treasury Department, with reference to the request by the two U.S. citizens for the Chinese Government to repay their gold certificates bought in 1913, our reply is as follows: In accordance with the Notice of the Ministry of Finance and the Ministry of Foreign Affairs Concerning Dealing with the Public Bonds Issued by the Defunct Chinese Governments ((82) Cai Wai Zi No.021), 'the People's Government will make no repayment with regard to all the public bonds issued by both the Beiyang Government and the Kuomintang Reactionary Government.' All the gold certificates of 1913 that the said two U.S. citizens hold are those which were issued by the Kuomintang Government. Therefore, the Government of the People's Republic of China has no obligation to repay them." The Chinese Government has espoused an imagined theory whereby it apparently ascribes an 'odor' to those bonds from which it attempts to escape repayment, describing such bonds as 'odious debt' (…as opposed to 'favored debt'?). The 'odious debt' contrivance may be notionally categorized as 'hostile' (involuntary) debts and 'war' (financing of wars of aggression) debts. It may be that the Chinese Government's long-standing refusal to repay the subject bonds was originally premised on the fact that The People's Republic of China reportedly only had $38,000 in foreign cash in 1974 (see endnote 3, *supra*); it is therefore unlikely that in 1982, the Chinese Government would have been able to pay the sum of $41 million in awarded damages awarded by the Court in *Jackson*.

[19] Memorandum of Opinion of the Court of Appeals, *Jackson v. The People's Republic of China*. 794 F.2d 1490 (1986).

[20] Id.

[21] Id.

[22] Telephone conversation between the author and Mr. Rutledge (April 22, 2011).

[23] Memorandum of Opinion of the Court of Appeals, *Jackson v. The People's Republic of China*. 794 F.2d 1490 (1986).

[24] *"Sovereign Immunity in the Chinese Case and Its Implications for the Future of International Law,"* by J.V. Feinerman, included in the compilation of essays entitled, "Chinese Law – Social, Political, Historical, and Economic Perspectives," Tahirih V. Lee, University of Minnesota Law School, Series Editor, published by Garland Publishing, Inc. under the title, "Foreigners in Chinese Law" (1997). As authority, the paper cites reference to the Statement of Interest filed with the Court by the U.S. Department of State which states in part (page 46): "Instead of determining whether the PRC has meritorious defences, the Court might wish to consider first such potentially dispositive issues as the lack of valid service of process, statute of limitations, jurisdiction under the FSIA with respect to all, or at least some of the bonds, and the retroactivity
[…]."

[25] Id.

[26] *"Jurisdiction of U.S. Courts In Suits Against Foreign States: Hearings on H.R. 11315 Before the Subcommittee on Administrative Law and Governmental Relations on the House Committee on the Judiciary,"* 94th Congress, 2d Sess., 25 (1976) (testimony of U.S. Department of State Legal Adviser, Monroe Leigh).

[27] *Republic of Austria v. Altmann* (No. 03 – 13), 541 US 677 (2004).

[28] See *Jackson* case summary, accessible at:
http://courses.kvasaheim.com/pls537/briefs/dso50008brief2.pdf
In regard to *Morris,* it is revealing to note that Judge Richard Holwell, who eventually dismissed the Complaint, held at the time a vested economic interest in his former employer, the law firm of White & Case LLP, which boasted on the firm's website of its representation of The People's Republic of China.

[29] *"Exotic Old Foreign Bonds Focus of Collection Suits,"* by Eric Pace, The New York Times (June 22, 1983). The article states, "His firm, Carl Marks & Company, filed four lawsuits over unpaid bonds in Federal District Court in Manhattan last year. […] The other two suits are against China, seeking total damages of $17 million for nonpayment on two batches of imperial Chinese bonds issued decades ago."

[30] See various SEC enforcement proceedings including *Securities And Exchange Commission v. Two-Thirds International Inc., Peter J. Zaccagnino Iii, John L. Klein A/K/A John Klein Loffredo, Merrill H. Klein And Sterling International Bahamas Ltd.*, No. 98-1324-Civ. Orl-18a (USDC M.D. Fla./Orlando Division, December 1, 1998. This was the fourth civil injunctive action filed by the Commission's Central Regional Office to halt the fraudulent sales of historical bonds of United States railroads and other entities. See *SEC v. Daniel E. Schneider et al.*, Civ.

No. 98-CV-14-D (D. Wyo.; preliminary injunction issued Feb. 13, 1998); *SEC v. Albert E. Carter et al.*, No. 98CV-0440B (D. Utah; complaint filed June 18, 1998); *SEC v. Gerald A. Dobbins et al.*, No. 98-229 (C.D. Cal.; preliminary injunction issued May 19, 1998) (findings on order to show cause re: preliminary injunction; valuations VALUATION MEMORANDUM of historical bonds held to be "misstatements"). The SEC further maintains that even if the bonds were valid obligations, they would not be payable in gold because gold clauses in bonds issued before 1977 are unenforceable in U.S. courts. See *Adams v. Burlington Northern R.R. Co.*, 80 F.3d 1377, 1380 (9th Cir. 1996); 31 U.S.C. § 5118(d)(2). By virtue of such ruling and legislative action, U.S. Federal Courts and the U.S. Legislative Branch may arguably have impaired the redemption value of the bonds.

[31] See Agreement Between The Government of the United Kingdom of Great Britain and Northern Ireland and the Government of The People's Republic of China Concerning the Settlement of Mutual Historical Property Claims.

[32] *"Chinese Bonds Valuable?,"* by Paula Moore, Denver Business Journal (July 01, 2001). The article states, "The U.S. Foreign Claims Settlement Commission decided against those attempting to redeem 1913 Chinese bonds a few decades earlier. The commission held in the 1970s that China's current Government is not responsible for repaying them." Thus, either the U.S. Foreign Claims Settlement Commission lacked the authority to settle the claims of bondholders or the FCSC acted in contravention of settled international law in wrongly denying such claims subsequent to The People's Republic of China attaining international recognition as the Government of China on October 25, 1971.

[33] Statement by Amir Zada as reported by Bloomberg News *("Germany Must Face Suit Over Hitler-Era Bond Default,"* by William McQuillen, August 10, 2010) in reference to *World Holdings, LLC v. The Federal Republic of Germany*, 09-14359, U.S. Court of Appeals for the Eleventh Circuit (Atlanta). On August 9, 2010, the United States Court of Appeals for the Eleventh Circuit ruled that United States courts had subject matter jurisdiction in matters involving defaulted bearer bonds issued by Germany in 1924 and in 1930.

[34] Id. The claim value is determined expressly by the loan agreement, as has been confirmed by the U.S. Supreme Court, the U.S. Congress, and the International Court of Justice. See, e.g., the U.S. Supreme Court in the "Gold Clause Cases," 294 U.S. (1934), viz., *Norman v. Baltimore & Ohio R. Co.,* and *United States v. Bankers Trust Co.,* ante, p. 240; *Nortz v. United States,* ante, p. 317; and *Perry v. United States,* ante, p. 362-365, in which the Supreme court stated, "[T]he (gold) clause is not new or obscure or discolored by any sinister purpose." The Permanent Court of International Justice has stated, "[T]he Gold clause merely prevents the borrower from availing itself of a possibility of discharge of the debt in depreciated currency, […] The treatment of the gold clause as indicating a mere modality of payment, without reference to a gold standard of value, would be, not to construe but to destroy it." *Cases of Serbian and Brazilian Loans,* Publications P.C.I.J., Series A, Nos 20-21 (1929). According to correspondence of the U.S. Foreign Bondholders Protective Council dated January 8, 1987, "U.S. District Court Judge Carolyn Dimmick in Seattle recently ruled that a gold clause in a 1929 ground lease was enforceable after a 54 year hiatus." The application of compound interest is supported by the United States Uniform Commercial Code and numerous judicial decisions, including *Household Finance Corporation v. Goldring,* 22 N.Y.S 2d 514, 517, 518, 23 App. Div. 524; *Vaughn v. Graham,* Mo. App., 121 S.W. 2d 222, 226; *Camp v. Bates,* 11 Conn. 487, 501; *Hovey v. Edmison,* 22 N.W. 594, 599, 3 Dak. 449; *United States Mortg. Co. v. Sperry,* C.C. 111, 26F. 727, 730; and *Musser v. Murphy,* 286 P. 618, 619, 49 Idaho 141.

[35] Letter of admonishment dated November 5, 2002, from Stites & Harbison PLLC attorney B. Riney Green, addressed to Mr. David Bradley, Chief Counsel, Foreign Claims Settlement Commission and citing reference to Mr. Bradley's misleading and factually erroneous statements appearing in print in the October 24, 2002 issue of CQ Monitor News published by Congressional Quarterly. A copy of the Stites & Harbison letter is appended hereto as Exhibit 8. In a similar instance, Mr. Davis Robinson, former Legal Adviser to the United States Department of State, articulated a dismissive posture with respect to the validity of bondholders' claims on a Fox News segment which aired on June 15, 2012. The claim value of China's defaulted sovereign debt is estimated at approximately $4 trillion worldwide (*"It's Time for China to Pay Its Debts to the United States"* by Peter Huessy, Fox News (August 26, 2011)). American taxpayers would benefit from a set-off of U.S. debt owed to China using the 400,000 defaulted Chinese Government bonds reportedly held by the U.S. Government which, together with the bonds held by individual Americans, have an estimated claim value of nearly $1 trillion if fully honored *("A Hope Chest Full of Bonds,"* Bloomberg Businessweek (November 10, 2002) and *"You Won't Believe Who Owes U.S. Billions"* by Bob Unruh, WND.com (January 23, 2012)). United States taxpayers also extended a $500 million credit to China in March 1942 and according to State Department records, China has not repaid this debt either (*"China's Secret? It Owes Americans Nearly $1 Trillion"* by Richard Parker, Juneau Empire (May 23, 2012)). The Conservative Action Alerts media outlet recently reported: "One U.S. Treasury official, when asked about the U.S. government's holdings of these bonds, confirmed that they had purchased a significant portion of the 1938, 1939 and 1940 U.S. dollar-denominated bonds, and they are still holding them. He affirmed that they did NOT shred them, destroy them, or in any way get rid of them; in fact, he replied, 'Oh God no; **we're saving them for a rainy day**!'" *("Obama Wants $1 TRILLION Debt Ceiling Hike – But We Can Get That From CHINA Right Now…No Debt Limit Increase Needed!,"* (March 22, 2012)).

[36] Source: *"A Leap of Faith for Sovereign Default: From IMF Judgment Calls to Automatic Incentives",* by Adam Lerrick, Cato Journal, Vol. 25, No. 1 (Winter 2005). Mr. Lerrick was formerly the Friends of Allan H. Meltzer Professor of Economics at Carnegie Mellon University and a Visiting Scholar at the American Enterprise Institute. He served as a senior adviser to the chairman of the International Financial Institution Advisory Commission (known as the "Meltzer Commission"), where he analyzed the workings of the World Bank and reassessed its role in the global economy. Previously, he was an investment banker with Salomon Brothers and Credit Suisse First Boston, and he originated and led the negotiation team of the Argentine Bond Restructuring Agency in the $100 billion Argentine debt restructuring. A further testament to the critical role of the Three Primary NRSROs (Credit Rating Agencies) in establishing the marketability of debt instruments is the widely recognized industry maxim, *"brokers are selling machines when backed by agency ratings."*

[37] *"How China Stiffs Its Creditors, Debt Default,"* by Ian Fletcher, The Market Oracle (May 23, 2011). It is noteworthy that the European Court of Human Rights recently ruled in favor of holders of old, unpaid bonds issued by the Soviet Union, finding that the refusal of the Russian Government to honor timely repayment of the bonds constituted a violation of human rights.

[38] *"U.S., China Agree to Restart Investment Treaty Talks,"* by Paul Eckert and Anna Yukhananov, Reuters (July 12, 2013). China and the United States recently concluded their first Joint Commission on Commerce and Trade ("JCCT") since the new Chinese and U.S. administrations took office. The issue of the defaulted bonds was not addressed.

[39] *"What China Thinks of the Shutdown,"* by Isaac Medina, The Diplomat (October 14, 2013).

[40] *"U.S., China Agree to Restart Investment Treaty Talks,"* by Paul Eckert and Anna Yukhananov, Reuters (July 12, 2013).

[41] *"The Promise and Peril of a US-China Investment Treaty,"* by Eve Cary, The Diplomat (July 18, 2013).

[42] Id.

[43] *"Testing Theories of American Politics: Elites, Interest Groups, and Average Citizens"* by Martin Gilens, Princeton University, and Benjamin I. Page, Northwestern University (April 9, 2014). The study is accessible at: http://www.princeton.edu/~mgilens/Gilens%20homepage%20materials/Gilens%20and%20Page/Gilens%20and%20Page%202014-Testing%20Theories%203-7-14.pdf

[44] Id.

[45] *"Will China Pay the $1 Trillion it Owes Americans?"* by Jerry Gordon, New English Review (May 18, 2012).

[46] Id.

Grave Consequences of Exempting China From Adherence to Settled International Law

In June 2005, Secretary of State Condoleezza Rice observed that the United States must help integrate China into the international, rules-based economy before it becomes a "military superpower" (*"Rice Wants U.S. to Help China Be Positive Force,"* by Neil King, Jr., The Wall Street Journal (June 29, 2005)). The actions of Dr. Henry A. Kissinger in excluding the private claims of bondholders in pursuit of trade directly contravene the tenet espoused by Dr. Rice and set a dangerous precedent, acting to encourage China to emerge as a revisionist power, freely rejecting the established norms of international law without fear of reprisal, resulting in grave consequences to its neighbors and to the rest of the world.

"Let China sleep; when she wakes she will shake the world."

- Napoleon Bonaparte

Source: *"China's Fitful Sleep,"* The Economist (July 17, 1997)

Index of Exhibits

Exhibit 1

September 26, 2013

Anne K. Small, General Counsel
Office of the General Counsel
United States Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549

Re: Request for Clarification of SEC Position on Defaulted Chinese Government Bonds

Dear Ms. Small,

I am writing to formally request clarification of the Commission's official position in regard to the disposition of the extant bond certificates comprising the defaulted full faith and credit sovereign debts of the pre-1949 Chinese Governments (e.g., "The Chinese Government Five Per Cent Reorganisation Gold Loan of 1913" and "The Imperial Chinese Government Five Per Cent Hukuang Railways Sinking Fund Gold Loan of 1911").

Specifically, I request definitive answers to the following four (4) questions:

1. Is it presently the Commission's contention and official position that such bond certificates are not "Securities"?

2. Is it presently the Commission's contention and official position that such bonds are not valid obligations which remain payable to the bearer?

3. Is it presently the Commission's contention and official position that such bond certificates are "Historical Documents" and may only be ascribed "collector value"?

4. If it is presently the Commission's contention and official position that such bond certificates are "Historical Documents" and are not "Securities", please briefly state the date upon which, and the manner whereby, the SEC first officially adopted such position.

Thank you in advance for your kind reply.

Sincerely,

Kevin O'Brien

5631 E. Baker Street, Tucson, AZ 85711

cc: Mr. Steven Phillips, Esq., Phillips Moeller & Conway, P.L.L.C.

Exhibit 2

September 18, 2013

James M. Kovakas
Freedom of Information/Privacy Act Office
Civil Division
Room 8020
1100L Street, N.W.
Department of Justice
Washington, DC 20530

Re: Freedom of Information Act Request.

Dear Mr. Kovakas,

I formally request copies of all documents filed with the United States District Court for the Northern District of Alabama and the United States Court of Appeals for the Eleventh Circuit, which were authored or produced by the United States Department of Justice, whether in whole or in part, including the **Amicus Curiae Brief** entered by the Commercial Litigation Branch of the Civil Division of the Department of Justice (Washington, D.C.), in the following litigation proceedings:

Russell Jackson, et al., v. The People's Republic of China

United States Court of Appeals, Eleventh Circuit (794 F.2d 1490)

I would also like to obtain copies of any other documents accessible through the Department of Justice which pertain to the following components of the case:

596 F.Supp. 386 (N.D.Ala. 1984)

Unpublished Order (02/27/84) setting aside default judgment

550 F.Supp. 869 (N.D.Ala. 1982)

Sincerely,

Kevin O'Brien

Address: 5631 E. Baker Street, Tucson, AZ 85711

cc: Mr. Steven Phillips, Esq., Phillips Moeller & Conway, P.L.L.C.

Exhibit 3

August 30, 2013

United States Department of State
Mary McLeod, Principal Deputy Legal Adviser
Office of the Legal Adviser
2201 C Street NW
Washington, D.C. 20520

Re: Freedom of Information Act Request.

Dear Ms. McLeod,

I formally request copies of all documents filed with the United States District Court for the Northern District of Alabama and the United States Court of Appeals for the Eleventh Circuit, which were authored or produced by the United States Department of State, whether in whole or in part, pertaining to the following litigation proceedings:

Russell Jackson, et al.; v. The People's Republic of China

794 F.2d 1490

596 F.Supp. 386 (N.D.Ala. 1984)

Unpublished Order (02/27/84) setting aside default judgment

550 F.Supp. 869 (N.D.Ala. 1982)

If there is any fee or charge associated with this request, please so inform me. Thank you.

Sincerely,

Kevin O'Brien

Address: 5631 E. Baker Street, Tucson, AZ 85711

cc: Mr. Steven Phillips, Esq., Phillips Moeller & Conway, P.L.L.C.

Exhibit 4

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MEMORANDUM

TO: United States Congress

DATE: May 30, 2003

RE: Legal Confirmation of China's Financial Obligations to U.S. Bondholders

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This Memorandum addresses the question of whether the payment by the People's Republic of China in 1979 to the United States of $80.5 million related to property expropriated by China between 1949 - 1979 resolved China's payment obligations to United States holders of defaulted full faith and credit bonds of the Chinese Government issued prior to October 1, 1949, including the 5% Reorganization Gold Loan of 1913 Bearer Bonds.

The answer is "No". No American holder of Chinese Government full faith and credit bonds issued prior to October 1, 1949 (including the 5% Reorganization Gold Loan of 1913 Bearer Bonds) received, or was eligible to receive, any of the proceeds of the 1979 payment by China. The rightful payment claims of American bondholders have not been addressed or resolved.

Scope of the 1979 U.S. – China Agreement

On May 11, 1979, the United States and the People's Republic of China entered into an Agreement Concerning the Settlement of Claims (the "1979 US – China Agreement"). The 1979 US – China Agreement, by its terms, settled the "claims of the United States and its nationals against the PRC arising from any nationalization, expropriation, intervention, and other taking of, or special measures directed against, property of nationals of the United States on or after October 1, 1949 and prior to the date of this Agreement".

However, American holders of Chinese bonds that had gone into default prior to October 1, 1949 were not eligible to receive any of the 1979 Chinese Government payment made to the United States. The United States Foreign Claims Settlement Commission had already ruled in 1970 and 1971 that the date of a "taking" of a defaulted Chinese Government bond was the date the bond first went into default.[1] All the Chinese Government Bonds held by American bondholders affiliated with the American Bondholders Foundation first went into default before October 1, 1949 (and have since remained continuously in default). Most bonds held by those associated with the

[1] Carl Marks & Co., Inc., Foreign Claims Settlement Commission, Claim No. CN-0420; Decision No. CN-472, March 11, 1971.

American Bondholders Foundation went into default in 1939. The U. S. Foreign Claims Settlement Commission reaffirmed this ruling in October 1979[2]. *In the Matter of the Claim of Welthy Kiang Chen*, Claim No. CN-2-015, Decision No. CN-2-066, entered as a Proposed Decision on October 17, 1979 and reaffirmed as the Final Decision of the Commission, April 1, 1981, the U.S. Foreign Claims Settlement Commission held that:

> "The Commission has consistently held that in the absence of a positive action by the foreign government affecting the right to payment, a bondholder's right is "taken" by the debtor foreign government on the day when it refuses to pay the obligation for the first time, in other words, when the foreign government first defaults upon its obligations."

U.S. Foreign Claims Settlement Commission, when reaffirming in April 1981 its 1979 decision in the *Chen* matter, determined that there was no record that "the Government of the PRC has affirmatively repudiated the [defaulted bonds]. The setting up of a takeover committee does not do so; …..nor does the freezing of U.S. assets in China affect or imply a repudiation of such bonds and notes."

The State Department of the United States in a December 11, 1979 letter to the Chairman of the U. S. House of Representatives Subcommittee on Trade of the Committee on Ways and Means acknowledged that defaulted Chinese bonds owned by Americans were outside the scope of the 1979 U.S.- China Agreement between the United States and China and referred United States claimants to the Foreign Bondholders Protective Council. "Because the PRC has not repudiated the [defaulted] bonds ….a valid claim under the principles of international law has not arisen. In our view, the appropriate channel for seeking compensation remains the Foreign Bondholders Protective Council".[3]

According to the records of the U.S. based Foreign Bondholders Protective Council[4] (FBPC), it was well known at the time of the 1979 U.S.– China Agreement and during its immediate aftermath that the claims of American owners of defaulted Chinese Government bonds

[2].. The Commission was authorized by Congress in 1966 to receive and determine the validity of claims "against the Chinese Communist regime…for losses resulting from the nationalization, expropriation, intervention, or other taking of, or special measures directed against, property…owned…by nationals of the United States…" 22 United States Code Sec. 1643.

[3] Letter of J. Brian Atwood, Assistant Secretary of State for Congressional Relations, dated December 11, 1979 to Hon. Charles A. Vanik, Chairman of the U. S. House of Representatives Subcommittee on Trade of the Committee on Ways and Means

[4] The Foreign Bondholders Protective Council (FBPC) was formed in 1933 at the request of the United States Secretary of State, the Secretary of the Treasury and the Chairman of the Federal Trade Commission under President Franklin Roosevelt as a private, non-profit corporation to protect the rights and interests of American holders of foreign defaulted bonds. The FBPC has been involved in over 40 settlements between American bondholders and defaulted foreign governments, the most recent being Poland (1975), Hungary (1975), Bulgaria (1978), and Czechoslovakia (1984). The FBPC records are maintained in the Library Archives of Stanford University.

were **NOT** covered by the Agreement. (See, for example, the letters by the President of the Foreign Bondholders Protective Council dated July 11, 1979 to the Chinese Ambassador to the United States and November 27, 1979 to the Chairman of the U.S. Senate Subcommittee on International Trade.)

It was not until after the United States and the Peoples' Republic of China entered into the 1979 U.S. – China Agreement that China officially sought to repudiate its obligation for pre-1949 Chinese government bonds. For more information about China's February 2, 1983 Aide Memoire of the Ministry of Foreign Affairs of the People's Republic of China setting forth China's renunciation of pre-1949 Chinese government foreign debt and especially pre-1912 Chinese government debt, see the August 18, 1983 United States "Statement of Interest to Set Aside Default Judgment against China" filed in the Jackson v. People's Republic of China case, United States District Court for the Northern District of Alabama.

Accordingly, the claims of American owners of Chinese Government full faith and credit bonds which went into default prior to the assumption of control of the Chinese Government by the communist party in October 1949 were excluded from the scope and benefits of the 1979 US – China Agreement and still remain unresolved.

Validity of American Claims and
Chinese Discrimination Against American Bondholders

The established and widely recognized government of a nation is liable under international law for the full faith and credit obligations of the established and widely recognized predecessor government of the same nation. (See *the Restatement (Third) of the Foreign Relations Law of the United States,* Section 712(2) and Creditors Claims in International Law, The International Lawyer, Vol. 34, page 235, Spring, 2000).

China tacitly recognized its liability for the sovereign defaulted debt of predecessor Chinese governments in 1987 when it entered into a treaty with Great Britain that recognized Chinese financial responsibility for Chinese Government bonds issued prior to the 1949 change of governments.[5] This treaty provided compensation to British citizens and businesses who were holders of Chinese Government bonds issued prior to 1949, including the 5% Reorganization Gold Loan of 1913 Bearer Bonds still owned by a relatively large number of Americans. Unlike the 1979 US - China Agreement, the 1987 China - Great Britain treaty specifically covered claims for bonds issued by the Chinese Government prior to October 1, 1949.

The Chinese Government continues inequitably to discriminate against American bondholders by refusing to respond to American bondholders' plea for a fair settlement of their claims sixteen years after making a settlement with British holders of similar defaulted pre-1949

[5] Britain reached a settlement in June 1987 with the Chinese Government pursuant to which China paid £23.5 million to Britain in early 1988 for distribution to British bondholders. "China was previously barred from issuing bonds on the London market because of its refusal to honor debts incurred by governments before the 1949 Communist Revolution." *New York Times* June 8, 1987.

bonds. American bondholders have no recourse to the U.S. Foreign Claims Settlement Commission or to the United States courts. To obtain a fair settlement, American bondholders are dependent upon American political institutions and American public opinion holding China accountable for its wrongful and discriminatory disregard of the American bondholders' rightful claims.

In summary, the claims of American holders of defaulted Chinese Government bonds have never been addressed or honored by the current Chinese Government. American bondholders are entitled under international law to a fair settlement from the Chinese Government.

B. Riney Green

10327N:010389:536178:NASHVILLE

Exhibit 5

Founded 1933

Telephone
(212) 566-6720

FOREIGN BONDHOLDERS PROTECTIVE COUNCIL, Inc.
1775 Broadway, New York, N. Y. 10019

July 11, 1979

His Excellency Chai-Zemin
Ambassador of the People's Republic
of China
2300 Connecticut Avenue
Washington, D.C.

Dear Mr. Ambassador:

You will recall my visit with you on Friday, April 13. At the time, the Senate Foreign Relations Committee delegation, under the chairmanship of Senator Church, was leaving for Beijing and I was to depart the following day to meet them. During my visit with you I was speaking in my capacity as President of the Foreign Bondholders Protective Council and not in my corporate responsibility.

The background to my visit was set during the course of the various senior visits by U.S. Government officials which a few years ago commenced our normalization of relations. In those visits and most recently, the Chairman of the U.S. delegation visiting Beijing in February, cited the issue of defaulted bonds and identified the Foreign Bondholders Protective Council, Inc. as the body with which the matter should be resolved.

During our discussion, I mentioned that the claims arising from the defaulted government bonds were specifically excluded from the Claim Settlement. In particular, the Council understands that the claims of holders of the publicly issued defaulted obligations of the Government of China with which the counsel is concerned and which are described in the attached aide memoire are not claims settled pursuant to Article I(a) of the Agreement because all such obligations were in default prior to October 1, 1949 and the subsequent failure on the part of the People's Republic of China to reaffirm such obligations does not constitute any "nationalization, expropriation, intervention and other taking of, or special measures directed against, property of nationals of the USA on or after October 1, 1949..." within the meaning of Article I(a).

At our April meeting I believe you indicated your Embassy would be taking this matter up with the U.S. Treasury and that this course of action was preferable to my pursuit of the matter in Beijing the following week. I am nowwriting to advance our discussions of this subject.

The aide memoire attached provides information additional to that which we discussed in April. Toward the end of this month I would like to call your office for another meeting on this subject.

Sincerely,

John R. Petty
President

JRP:cm
Attachment

Exhibit 6

中 华 人 民 共 和 国 财 政 部

Ministry of Finance, People's Republic of China

Embassy of the United States of America in China:

We acknowledge the receipt of the letter dated 2 November 2006 from the Economic Section of your embassy. Upon discussion with our Treasury Department, with reference to the request by the two U.S. citizens for the Chinese Government to repay their gold certificates bought in 1913, our reply is as follows:

In accordance with the Notice of the Ministry of Finance and the Ministry of Foreign Affairs Concerning Dealing with the Public Bonds Issued by the Defunct Chinese Governments ((82) Cai Wai Zi No.021), "the People's Government will make no repayment with regard to all the public bonds issued by both the Beiyang Government and the Kuomintang Reactionary Government." All the gold certificates of 1913 that the said two U.S. citizens hold are those which were issued by the Kuomintang Government. Therefore, the Government of the People's Republic of China has no obligation to repay them.

(Seal)
International Department, Ministry of Finance
People's Republic of China
12 November 2006

San Li He St., Xichengqu, Beijing 100820, People's Republic of China
Tel: (86-10)6855-1171 Fax: (86-10)6855-1125

中华人民共和国财政部
Ministry of Finance, People's Republic of China

FAX IN
12 DEC 2006

美国驻华大使馆:

贵使馆经济处 11 月 2 日来函收悉。关于两位美国公民要求中国政府对其购买于 1913 年的金元券进行偿付一事，经商我部国库司，现作答如下:

根据《财政部 外交部关于处理我国旧政府发行的公债券问题的通知》((82)财外字第 021 号)的有关规定，"关于北洋政府和国民党反动政府所发行的一切公债，人们政府不能偿还。"此次两位国民持有的全部 1913 年金元券属于国民党政府发行的公债，因此，中华人民共和国政府不能偿还。

中华人民共和国财政部国库司

二00六年十一月二十日

San Li He St., Xichengqu, Beijing 100820, People's Republic of China
Tel: (86-10)6855-1171 Fax: (86-10)6855-1125

Exhibit 7

CHINE 5%13 EST.LUNG TSING HAI () +Achat -Vente FVFiche Valeur

Graphique | Ajouter Liste

Cotation			Les 5 meilleurs limites			Les 5 dernières transactions		
		01/11	**Achat**	**Volume**	**Ordre**	**Heure**	**Qté**	**Cours**
Dernier		4.00						
Var.	+25.00%	+25.00%						
Vol.		3						
Ouv.		4.00						
+Haut		4.00	**102.00**	**2**				
+Bas		4.00						

Evolution	**Année**	**Vente**	**Volume**	**Ordre**	**Coupon couru :** 2.02 %
Cours 01/01		**5.00**	**3**	**1**	**Taux actuariel :** 355.26 %
Var 01/01					
+ haut ( )					
+ bas ( )					

Code ISIN	QS0018235844	**Emetteur**	PEOPLE'S REPUBLIC OF CHINA	
Place de cotation	Paris	**Nominal**	152.44 FRF	
Type d'obligation	Taux fixe	**Taux nominal**		+5.00%
Mode de cotation	Par piece	**Date d'échéance**	01/01/2030	
Type d'amortissement	In fine	**Date du prochain coupon**	01/01/2008	
Catégorie	Emprunt Etat	**Prochain coupon brut**	7.62	

Obligations
Recherche : chine

	Nom de l'instrument	ISIN	Code Euronext	Type	Marché	Mnémo	null	Coupon couru %		Dernier	Volume	Date - heure (CET)
5% (4.5%) Anglo French 1908 (£100)	CHINE 4,50% 1908	CN0001265205	CN0001265205	PAB	PAR		EUR		0	0.59	2	7/6/2009 11:30
The Imperial Chinese Government 5 % Hukuang Railways Sinking Fund Gold Loan of 1911(£100)	CHINE 5 1911 100L	CN0001265320	CN0001265320	PAB	PAR		EUR		0	11.91	0	12/7/2005 0:00
Gouvernment Impérial de Chine Emprunt Chinoise 5 % Or 1903 (Pien Lo) (Kaifeng Honanfu) (₣500)	CHINE 5% 1903	CN0001265163	CN0001265163	PAB	PAR		EUR		0	0.37	24	5/3/2010 11:30
The Imperial Chinese Government 5 % Hukuang Railways Sinking Fund Gold Loan of 1911 (£100)	CHINE 5% 1911 100	QS0018235794	QS0018235794	PAB	PAR		EUR		0	3.41	16	8/12/2008 16:30
The Imperial Chinese Government 5 % Hukuang Railways Sinking Fund Gold Loan of 1911 (£20)	CHINE 5% 1911 20	QS0018235802	QS0018235802	PAB	PAR		EUR		0	2.48	0	7/19/2006 0:00
	CHINE 5% 1911 UNIT	QS0018235786	QS0018235786	PAB	PAR		EUR		0	57	40	2/23/2010 16:30
The Chinese Government 5 % Reorganisation Gold Loan of 1913	CHINE 5% 1913 REOG	XC0004573405	XC0004573405	PAB	PAR		EUR		0	43.15	29	3/25/2010 11:30
The Chinese Government 5 % Reorganisation Gold Loan of 1913	CHINE 5% 1913 REOG	QS0018236107	QS0018236107	PAB	PAR		EUR		0	4.41	5	3/25/2010 11:30
République Chinoise 5 % Gold Bond 1925 (French Boxer Indemnity)	CHINE 5%1925	CN0001265502	CN0001265502	PAB	PAR		EUR		0	53.5	10	5/6/2010 11:30
	CHINE LUNG HAI EST	QS0018235844	QS0018235844	PAB	PAR		EUR		0	6.06	1	2/17/2010 16:30
Lung-Tsing-U-Haï Railway 5 % (£20)	CHINE5%13 LUNG HAI	CN0001265361	CN0001265361	PAB	PAR		EUR		0	1.88	5	10/2/2007 15:45

Obligations
Recherche : chine

	Capitaux	Echéance	Mode de cotation	Jour Premier	Jour + haut	Jour + haut / Date - heure (CET)	Jour + bas	Jour + bas / Date - heure (CET)	31-12/Variation (%)	31-12/+ haut
5% (4.5%) Anglo French 1908 (£100)	1	-	Double fixing	0.59	0.59	7/6/2009 11:30	0.59	7/6/2009 11:30	0	0.59
The Imperial Chinese Government 5 % Hukuang Railways Sinking Fund Gold Loan of 1911(£100)	0	-	Double fixing	11.91	0	-	0	-	0	0
Gouvernment Impérial de Chine Emprunt Chinoise 5 % Or 1903 (Pien Lo) (Kaifeng Honanfu) (₣500)	9	-	Double fixing	0.37	0.37	5/3/2010 11:30	0.37	5/3/2010 11:30	2.78	0.37
The Imperial Chinese Government 5 % Hukuang Railways Sinking Fund Gold Loan of 1911 (£100)	27	-	Double fixing	3.41	3.41	8/12/2008 16:30	3.41	8/12/2008 16:30	31.66	3.41
The Imperial Chinese Government 5 % Hukuang Railways Sinking Fund Gold Loan of 1911 (£20)	0	-	Double fixing	2.48	0	-	0	-	0	0
	2280	-	Double fixing	57	57	2/23/2010 16:30	57	2/23/2010 16:30	42.5	57
The Chinese Government 5 % Reorganisation Gold Loan of 1913	1251	-	Double fixing	43.15	43.15	3/25/2010 11:30	43.15	3/25/2010 11:30	-68.27	55.9
The Chinese Government 5 % Reorganisation Gold Loan of 1913	22	-	Double fixing	4.41	4.41	3/25/2010 11:30	4.41	3/25/2010 11:30	0	4.41
République Chinoise 5 % Gold Bond 1925 (French Boxer Indemnity)	535	-	Double fixing	53.5	53.5	5/6/2010 11:30	53.5	5/6/2010 11:30	70.87	53.5
	6	-	Double fixing	6.06	6.06	2/17/2010 16:30	6.06	2/17/2010 16:30	21.2	6.06
Lung-Tsing-U-Haï Railway 5 % (£20)	9	-	Double fixing	1.88	1.88	10/2/2007 15:45	1.88	10/2/2007 15:45	1.08	1.88

Obligations
Recherche : chine

	31-12/+ haut/Date	31-12/+ bas	31-12/+ bas/Date	52 semaines/ Variation (%)	52 semaines/+ haut	52 semaines/+ haut/Date	52 semaines/+ bas	52 semaines/+ bas/Date	Stoppé	Stoppé / Date - heure (CET)
5% (4.5%) Anglo French 1908 (£100)	7/6/2009 11:30:00 A.M.	0	-	0	0.59	6/7/2009	0.59	6/7/2009	-	-
The Imperial Chinese Government 5 % Hukuang Railways Sinking Fund Gold Loan of 1911(£100)	-	0	-	0	0.59	6/7/2009	0.59	6/7/2009	-	-
Gouvernment Impérial de Chine Emprunt Chinoise 5 % Or 1903 (Pien Lo) (Kaifeng Honanfu) (₣500)	3/5/2010	0.37	3/5/2010	42.31	0.37	3/5/2010	0.36	7/10/2009	-	-
The Imperial Chinese Government 5 % Hukuang Railways Sinking Fund Gold Loan of 1911 (£100)	12/8/2008	3.37	12/2/2008	42.31	0.37	3/5/2010	0.36	7/10/2009	-	-
The Imperial Chinese Government 5 % Hukuang Railways Sinking Fund Gold Loan of 1911 (£20)	-	0	-	42.31	0.37	3/5/2010	0.36	7/10/2009	-	-
	23/02/10	57	23/02/10	42.5	57	23/02/10	40	25/09/09	-	-
The Chinese Government 5 % Reorganisation Gold Loan of 1913	5/3/2010	43.15	25/03/10	-31.51	136	1/12/2009	43.15	25/03/10	-	-
The Chinese Government 5 % Reorganisation Gold Loan of 1913	25/03/10	4.41	25/03/10	9.98	4.41	25/03/10	4.41	25/03/10	-	-
République Chinoise 5 % Gold Bond 1925 (French Boxer Indemnity)	6/5/2010	30.95	25/02/10	66.36	53.5	6/5/2010	30.85	17/06/09	-	-
	17/02/10	6.06	17/02/10	21.2	6.06	17/02/10	6.06	17/02/10	-	-
Lung-Tsing-U-Haï Railway 5 % (£20)	2/10/2007	1.86	2/2/2007	21.2	6.06	17/02/10	6.06	17/02/10	-	-

Exhibit 8

November 5, 2002

VIA FEDERAL EXPRESS

Mr. David Bradley, Chief Counsel
Foreign Claims Settlement Commission
Room 6002
600 E Street, N.W.
Department of Justice
Washington, D.C. 20579-0001

RE: Obligation of People's Republic of China to Pay Defaulted Chinese Government Bonds

Dear Mr. Bradley:

Our law firm is counsel to the American Bondholders' Foundation, an organization formed to collectively act for the benefit of hundreds of American owners of defaulted Chinese Government bonds issued between 1912 and 1949. (Please see its web site at Americanbondholdersfoundation.com.) We and the American Bondholders' Foundation strongly believe that norms of international law clearly obligate the People's Republic of China to satisfy the full faith and credit debts issued by the Republic of China -- the established and internationally recognized predecessor government of China between 1912 and 1949.

You were recently quoted in the October 24, 2002 CQ Monitor News as stating, in reference to the claim against the PRC of American holders of American holders of 1912- 1949 Chinese full faith and credit bonds, that "There's no basis for holding the current government responsible," Bradley said. "Those bonds were already in default, and they had been for a while."

In addition to general principles of international law, I would like to point out several recent precedents that are applicable to the Chinese debt owed to American bondholders which, indeed, indicate that there is a well founded basis for holding the current Chinese Government accountable for the full faith and credit obligations of its established and recognized predecessor government.

1. In 1987 pursuant to a treaty between the United Kingdom and the People's Republic of China (copy enclosed), the PRC paid the United Kingdom £23,468,008 to settle the claim of British owners of pre-1949 Chinese Government bonds. Significantly, a contemporaneous account by the New York Times (copy enclosed) indicated that Britain was refusing to grant China access to British financial markets unless a settlement was made. These are the SAME series and type of bonds that are the basis of the American Bondholders' claims against the PRC.

2. In 1996 Russia reached an agreement with France to pay France £272,000,000 to settle the claims of French owners of pre-1917 Russian government bonds. See "Debt Repudiation and Default Following a Change of Regime" by Jakub Kaluzny and Lyndon Moore, page 24. The last payment by Russia was completed in November 2000. Prior to Russia's agreement, France had refused to allow Russia to sell new Russian sovereign debt in France.

3. In 1986, the Soviet Union settled the claims of British holders of pre-1917 Russian government bonds with a payment of £82,000,000 for distribution to British bondholders. See "Debt Repudiation and Default Following a Change of Regime" by Jakub Kaluzny and Lyndon Moore, page 24.

In all three instances it was governmental resolve to limit access of the debtor nation to the capital markets of the nation of the unpaid bondholders that resulted in the successor government of the debtor nation meeting its obligation to bondholders, who, individually, were quite helpless to obtain a remedy from the recalcitrant debtor nation.

The Americans who own full faith and credit bonds issued by the immediate predecessor government of China respectfully request the same assistance from its government in advancing their bona fide claims against the successor Chinese government as the British and French governments provided to their citizens in bringing about a fair settlement of bondholders' claims against the successor governments of Russia and China.

Thank you.

Very truly yours,

B. Riney Green

BRG: cah

cc: Mr. James G. Hergen – Special Counsel, U.S. Dept. of State
Mr. John Petty – President, Foreign Bondholders Protective Council
Ms. Jonna Bianco – President, American Bondholders Foundation

Exhibit 9

THE JURISPRUDENCE OF THE FOREIGN CLAIMS SETTLEMENT COMMISSION: CHINESE CLAIMS *

By Charles Ford Redick **

Before the People's Republic of China [PRC] was officially proclaimed on September 21, 1949, the Central Committee of the Chinese Communist Party had proclaimed that the acts and foreign agreements of the Republic of China which resulted in the exploitation of China by foreigners were "completely contrary to the will of the Chinese people" [1] and would not be honored. Although certain actions by the Chinese Communists indicated as early as February, 1949 that property owned by the U.S. Government and its nationals would be treated unfavorably by the new regime, no concerted steps were taken by the PRC against U.S. property until the United States had already placed an "embargo" on American trade with China.[2] Only after Chinese troops had entered Korea and the U.S. Government had blocked and frozen all Chinese assets within its jurisdiction [3] did the PRC freeze all public and private property of the United States in the PRC and order that an inventory of it be made.[4] The PRC "assumed control of all U.S. property in China under a decree issued on December 29, 1950." [5]

Sixteen years later Congress authorized the Foreign Claims Settlement Commission (FCSC)[6] to undertake the China Claims Program,[7] and just this past year, on June 30, 1972, the Commission completed the program,

* The Jurisprudence of the Foreign Claims Settlement Commission is the subject of a series of extensive studies by the Procedural Aspects of International Law Insititute under the direction of Professor Richard B. Lillich of the University of Virginia School of Law. This article continues the series by studying the China Claims Program.

** University of Virginia School of Law.

[1] *Declaration Concerning Certain Foreign Loans and Agreements Negotiated by the Kuomintang Government.* (Feb. 1, 1947), cited in Steiner, *Mainsprings of Chinese Communist Foreign Policy,* 44 AJIL 69, at 93 (1950).

[2] *See* Cohen, *Chinese Law and Sino-American Trade,* in CHINA TRADE PROSPECTS AND U.S. POLICY 128–30, 141–43 (A. ECKSTEIN ed. 1971). *See generally,* Lee & McCobb, *United States Trade Embargo On China, 1949–1970: Legal Status and Future Prospects,* 4 N.Y.U.J. INT'L. L. & POL. 1 (1971).

[3] *See* note 13 *infra.*

[4] Cohen, *supra* note 2, at 142.

[5] *Hearing on S. 3675 Before the Subcomm. on the Far East and the Pacific of the House Comm. on Foreign Affairs,* 89th Cong., 2d Sess, 4 (1966) [hereinafter cited as *China Hearing*].

[6] The Foreign Claims Settlement Commission [hereinafter cited either as the Commission or the FCSS] is the latest semipermanent national claims commission utilized by the U.S. Government to adjudicate claims of its nationals against foreign countries. The Commission was created by the President's Reorganization Plan No. 1 of 1954, 68 Stat. 1279 (1954), 5 U.S.C. §1332 (1970), which abolished both the War Claims Commission and the International Claims Commission and assigned their functions to the Commission.

[7] China Claims Act of 1966, 80 Stat. 1365 (1966), 22 U.S.C. §1643 (1970), *amending,* 78 Stat. 1110 (1964), 22 U.S.C. §1643 (1970).

certifying as valid 384 claims worth $196,861,834, without interest, out of 580 claims alleging a total loss of over $306,680,903.[8] Not only is the preadjudication of claims, as under the China Claims Program, a relatively recent development in U.S. practice[9] but numerous problems, including the definition of the claims to be authorized, the eligibility of claimants, and standards of valuation make the program interesting and worthy of comment.

I.

AUTHORIZED CLAIMS

By the terms of Title V[10] of the International Claims Settlement Act of 1949,[11] as amended, Congress in 1966 authorized the FCSC to receive and determine in accordance with applicable principles of substantive law, including international law, the validity and amount of certain claims of U.S. nationals against the PRC.[12] Thus, for only the third time in history, Congress instructed a U.S. national claims commission to determine the amount of claims before funds had been provided to compensate claimants.[13]

[8] Docket of the China Claims Program, on file at the Foreign Claims Settlement Commission of the United States, 1111 20th Street, N.W. Washington, D.C. 20579.

[9] Prior to 1962, Congress had not authorized a claims program until some provision had been made for payment to the claimants. A new departure in claims practice, the preadjudication of claims before provision had been made for payment, is found in the Gut Dam Claims Act, Pub. L. No. 87-587, 76 Stat. 387 (1962). This Act provided for the determination of claims against Canada for certain property losses along Lake Ontario due to the construction of the St. Lawrence Seaway. After numerous claims had been decided but before the decisions had been released, the United States and Canada agreed on March 25, 1965 to suspend the program and to transfer it to an International Arbitral Tribunal to be later settled by a lump sum agreement. *See* FCSC SEVENTEEN SEMIANN. REP. 7–10, 63–70 (1962); Lillich, *Gut Dam Claims Agreement With Canada,* 59 AJIL 892 (1965); Kerley & Goodman, *The Gut Dam Claims—A Lump Sum Settlement Disposes of an Arbitrated Dispute,* 10 VA. J. INT. L. 300 (1970).

The Gut Dam Program served as a "dry run" for the Cuban Claims Program, the first completed preadjudication claims program, authorized by the Cuban Claims Act of 1964, 78 Stat. 1110 (1964), *as amended,* 80 Stat. 1365 (1966), 22 U.S.C. §1643 (1970). Thus the China Claims Program is only the third authorized and second completed preadjudication program in the history of U.S. claims practice. *See Hearings Before the Subcomm. on Inter-American Affairs of the House Comm. on Foreign Affairs,* 88th Cong., 2d Sess. 137–39 (1964) [hereinafter cited as *Cuba Hearings*]; Friedberg, *A New Technique in the Adjudication of International Claims,* 10 VA. J. INT. L. 282 (1970).

[10] Cuban Claims Act of 1964, 78 Stat. 1110 (1964), *as amended,* 80 Stat. 1365 (1966), 22 U.S.C. §1643 (1970). When Congress amended Title V to authorize the China Claims Program, it made no substantive changes other than allowing for the determination of claims against the PRC arising since October 1, 1949. Thus the statutory standards were the same in both the Cuban and China Claims Programs.

[11] 64 Stat. 12 (1950) *as amended,* 22 U.S.C. §§1621–1643 (1970).

[12] 80 Stat. 1365 (1966), 22 U.S.C. §1643b(a) (1970).

[13] *See* note 9 *supra.* In both the Cuban and China Claims Programs certain funds were under control of the U.S. Government which might have been utilized to pay

Claims against the PRC which are authorized are those which arose after October 1, 1949 from the nationalization, expropriation, intervention, or other taking of, or special measures directed against, property of U.S. nationals.[14] Property is defined to include

> any property, right, or interest, including any leasehold interest, and debts owed by the . . . Chinese Communist Regime . . . or by enterprises which have been nationalized, expropriated, intervened, or taken by the . . . Chinese Communist Regime . . . or debts which are a charge on property which has been nationalized, expropriated, intervened, or taken by the . . . Chinese Communist Regime. . . .[15]

Provision was thus made for the adjudication of certain claims, notably claims based on the debts of expropriated corporations, not provided for under Titles III and IV of the International Claims Settlement Act.[16]

---

the claimants at least in part. The bill, H.R. 10327, 88th Cong., 2d Sess. (1964), which first proposed the Cuban Claims Program (Title V) to Congress contained provisions vesting the Cuban assets which were blocked in accordance with the Cuban Assets Control Regulations promulgated July 8, 1963, 31 C.F.R. Part 515 (1970). However, the Department of State opposed these provisions and they were dropped, resulting in a preadjudication program.

Similarly, in the China Claims Program Congress made no provision for the vesting of the assets blocked and frozen by the Foreign Assets Control Regulations, 31 C.F.R. §§500.101–500.809 (1970). These regulations were issued under authority of the Trading With the Enemy Act of 1917, 40 Stat. 411 (1917), *as amended*, 50 U.S.C. §§1–44 (1970). The basis for their issuance was the Korean Emergency declared by the President on December 16, 1950. Pres. Proc. No. 2914, 3 C.F.R. §99 (Comp. 1949–53). This emergency has not been lifted despite the recent entry of the PRC into the United Nations and President Nixon's visit to the PRC. In excess of $70 million in assets were blocked and frozen, but the precise nature of the assets has not been publicly released. *See* N.Y. Times, Feb. 26, 1973, at 1, col. 8. Conversation with knowledgeable Department of State officers has revealed that there are private liens of approximately $16 million on the assets.

[14] 80 Stat. 1365 (1966), 22 U.S.C. §1643 (1970).

On October 1, 1950, the People's Republic of China announced the unilateral repeal of all existing laws and all regulations effective under the Kuomintang Government. "All laws, decrees and judicial systems of the Kuomintang reactionary government which oppress the people shall be abolished. Laws and decrees protecting the people shall be enacted and the people's judicial system shall be established." Article 17, the Common Programme of the Chinese People's Political Consultative Conference, adopted September 29, 1949 in Peking. As a result of this article, "all the former texts were abrogated in mass." A. BONNICHON, LAW IN COMMUNIST CHINA, International Commission of Jurists, 4 (1955). However, few laws have been formally replaced. Thus it is often difficult to determine the precise legal basis of acts of the Chinese Government. *See* BLAUSTEIN, FUNDAMENTAL LEGAL DOCUMENTS OF COMMUNIST CHINA at x-xi (1962).

[15] 80 Stat. 1365 (1966), 22 U.S.C. §164a(3) (1970).

[16] *See* Lillich, *The Cuban Claims Act of 1964*, 51 A.B.A.J. 445, at 446 n. 20 (1965). The statute also authorized a second class of claims directing the Commission to adjudicate: "Claims for disability or death of United States nationals arising out of violations of international law by the [PRC]." 80 Stat. 1365 (1966), 22 U.S.C. §1643 (1970). However, no claimants filed death or disability claims in the China Claims Program.

By providing for the determination of claims arising after October 1, 1949, Congress took the date on which the Chinese Communists formally proclaimed the establishment of the People's Republic.[17] In the Hearing on S.3675 which, as enacted, authorized the China Claims Program, Ambassador Kearney, then Deputy Legal Adviser to the Department of State, explained that:

> [t]he October 1, 1949, date was selected because it was only after that date that the Chinese Communist regime began to nationalize and take American property. This is the cutoff date by which we can determine that from that time on there were takings of American property by the regime on the basis of all the information we have.[18]

The statutory requirement that the claims must arise "since October 1, 1949," caused few problems in claims involving real and personal property, but caused difficulties when claims for intangibles such as stock and bonds were considered. Because of the chaotic conditions accompanying the Chinese Civil War, many U.S. nationals had left China before October 1, 1949.[19] Moreover, the Chinese Communists gained control over various sections of China at different times throughout 1948–1949, with control initially being extended over the north and northwest and southern China falling last.

While the Commission had little difficulty in accepting the proposition that real or intangible personal property left behind survived to be taken on or after the required date, claimants had great difficulty in proving the taking of intangible property by the Chinese Government. Thus, in the *Claim of Alfred Stephen Rossi*, the Commission noted that

> the date when a certain tangible property was taken by a foreign government may be established in the usual situation without great difficulties. To the contrary, a substantial amount of difficulty arises when the exact date when intangible personalty (pension right, right to collect a loan, etc.) was taken by a foreign government must be established.[20]

The date of taking of intangible property had to be after October 1, 1949, but most intangible property was already worthless, due to either the

[17] While the People's Republic of China was first proclaimed in Peking on September 21, 1949, it was not until October 1 that it was formally inaugurated. General Chou En-lai was named Premier and Foreign Minister. CHINA AND U.S. FAR EAST POLICY *1945–1966*, at 47 (Congressional Quarterly Service 1967).

[18] *China Hearing*, *supra* note 5, at 7. As late as August 1949 many foreign businessmen in Tientsin were optimistic about their ability to carry on business almost "as usual." D. BODDE, PEKING DIARY 1948–1949, at 253–54 (1950). Their optimism, of course, proved unfounded.

[19] *See* Claim of Edwin W. Kilbourne, Claim No. CN-0103 (October 14, 1969). The Commission therein recited that the claimants had to evacuate "Peiping" and "leave behind at their home all property except what could be taken in small suitcases aboard the plane that evacuated them." Throughout the China Claims Program the Commission used the Kuomintang term "Peiping" rather than the Communist term "Peking."

[20] Claim No. CN-0114 (April 24, 1970).

inflated rate of the Chinese currency or previous defaults on their financial obligations by previous Chinese Governments.[21]

The requirement concerning the date of taking related closely to the burden of proof which the claimant had to sustain. The Commission set the standard of acceptability so that an award would not necessarily be precluded because of difficulties of proof attributable to (1) the passage of time, (2) the fact that most "primary evidence" was located in China and therefore unobtainable, and (3) the absence in most cases of a specific decree, law, or order nationalizing the claimant's property. The Commission resolved this problem by the adoption of the "secondary evidence" rule,[22] which allowed claimants to prove the validity and value of their claim by the presentation of affidavits,[23] corporate financial statements,[24] and other records.[25] The effect of the "secondary evidence" rule, together with an acceptance of a presumption that October 1, 1949 was the date of taking, is that, when a property loss was demonstrated and a reasonable basis provided for its valuation, the Commission saved the claimants from many of the real difficulties attributable to the long passage of time between the taking of the property and the filing of the claim.

The claims certified as valid included both personal and real property claims. In addition to business interests,[26] individual claimants lost personal possessions,[27] homes, and beach houses; [28] U.S. corporation lost utilities,[29] petrochemical facilities,[30] universities,[31] hospitals,[32] banks,[33] and other corporate facilities.[34]

Several claims alleged the liability of the PRC for public bond and debt

[21] *See* notes 35 and 61 *infra.*

[22] In almost every decision where an award was certified, the Commission discussed this problem of proof and concluded that "when claimants have established a sufficient basis for the inavailability of primary evidence, the Commission may accept and consider secondary evidence." Claim of Clarence Burton Day, *et al.*, Claim No. CN-0030 (Oct. 15, 1968). 1968 FCSC ANN. REP. 86. This claim involved the first award for personal property in the China Claims Program (Decision No. CN-1).

[23] Claim of Clarence Burton Day, *et al.*, note 22 *supra.*

[24] Claim of Esso Standard Eastern, Inc., Claim No. CN-0288 (Feb. 11, 1971) (book value accepted).

[25] *See, e.g.*, Claim of John H. Lewis, *et al.*, Claim No. CN-0092-93 (Sept. 24, 1969). (Record of Previous War Claims Proceeding).

[26] Claim of Franklin Russell Fette, Claim No. CN-0336 (May 27, 1970).

[27] Note 23 *supra* (household furnishings).

[28] Claim of Arthur B. Coole, *et al.*, Claim No. CN-0040 (Oct. 14, 1969). This claim for the loss of a beach house at Peitaiho Beach, Hopei Province was the first award for real property in the China Claims Program (Decision No. CN-2).

[29] Claim of Shanghai Power Company, Claim No. CN-0280 (Aug. 20, 1970).

[30] Claim of Esso Standard Eastern, Inc., note 24 *supra.*

[31] Claim of United Board for Christian Higher Education in Asia, Claim No. CN-0401 (Aug. 20, 1970).

[32] Claim of China Medical Board of New York, Inc., Claim No. CN-0415 (June 30, 1970).

[33] Claim of First National City Bank, Claim No. CN-0440 (June 30, 1970).

[34] *See, e.g.*, Claim of International Telephone and Telegraph Corp., Claim No. 0285 (June 17, 1970) (Telephone network and accounts receivable).

obligations which were outstanding on October 1, 1949. The key issue was whether the Chinese Communist Government became liable for bonds and other money obligations issued by preceding regimes. Many bonds had been floated to finance railway and other constructions by the Imperial and Republican Governments, most of which were in default by 1949. In deciding this issue, the Commission emphasized the statement in the legislative history of the Cuban Claims Act that:

> debts owed by the Government of Cuba . . . [are within the meaning of Section 503(a)] so long as the taking . . . of such property interests arose *for the first time* after January 1, 1959. (H. R. Rep. No. 706, 89th Cong., 1st Sess. 3 (1965).[35]

Because the statutory standards, except for the date of taking, are the same for the Cuban and China Claims Programs, the Commission held this view to be dispositive. Thus, in a representative bondholder claim the Commission held

> that in absence of a positive action by the foreign government affecting the right to payment, a bondholder's right is "taken" by the debtor government on the day when it refuses to pay the obligation for the first time; in other words, when the foreign government first defaults upon its obligation. (See the *Claim of Clemens R. Maise,* Claim No. CU-3191).[36]

Because in this claim the default first took place in 1925, and because the Communist Government took no specific action affecting the bondholder's rights, the Commission rejected the claim. The inability of claimants to prove that there was a taking for the first time after October 1, 1949 meant that losses on bonds generally were not certified as compensable.

It also should be noted that the Government of the Republic of China (Taiwan), the only Chinese Government recognized by the United States, has stated that it hopes someday to pay off the defaulted debt obligations. It is not clear here whether the Commission considered that the principles of state succession did not apply under Title V or whether, on account of the existence of the Republic of China, there was no state succession.[37] The Commission never addressed itself to this issue.

II.

Eligible Claimants

In accordance with the international law principle of continuing nationality, the property must have been owned directly or indirectly by a

[35] Claim of Alfred Stephen Rossi, Claim No. CN-0114 (Apr. 24, 1970) (emphasis in the original).

[36] *Id.* This claim is one of the few Cuban decisions which the Commission cites in support of the standards applied in the China program. Because the Cuban and China standards are the same, the procedures utilized in the prior Cuban program actually had much greater *sub rosa* influence than is revealed in the China Claims Program decisions. *See* note 10 *supra.*

[37] *See* Restatement (Second) Foreign Relations Law of the United States §§158, 161 (1965).

U.S. citizen on the date of the loss, and the claim must have been held continuously thereafter by one or more U.S. nationals until the date of filing with the Commission.[38] A "national of the United States" is defined as "a natural person who is a citizen of the United States." [39] For purposes of eligibility a corporation is defined as "a corporation or other legal entity which is organized under the laws of the United States, or any state, the District of Columbia, or the Commonwealth of Puerto Rico." [40] However, a corporation is considered eligible only "if natural persons who are citizens of the United States own, directly or indirectly, 50 per centum of the stock or other beneficial interest of such corporation or entity:" [41]

The requirement that a claim must have been continuously owned by a U.S. national often adversely affected claimants. Strictly following the general principle of international law that a state may espouse only the claims of persons who were its nationals at the time of the wrong, the Commission denied claims of persons who became U.S. citizens subsequent to the taking of their properties. An example of the strict application of the requirement is the *Claim of Maurice A. Donnell, et al.*,[42] a complicated claim involving bonds, stocks, real and personal properties to a total alleged value of $1,120,923.00. The claim was based upon the properties of Albert Cohen, who left his Shanghai-based fortune to his three daughters in equal shares. However, the three children became nationals of the United States in 1942, 1943, and 1952. As a result of the Commission's determination that the taking was before the naturalization of the third daughter on January 11, 1952, the decision allowed two of the children to recover their full one-third interest in the certifiable loss while denying the one-third claim of the third child.

If a claimant had an interest in a corporate claimant, the Commission considered only the corporate claimant's interest.[43] However, if a claimant was a stockholder in a corporation not eligible to bring a claim, *i.e.*, a foreign corporation or a U.S. corporation of which less than one-half is owned by U.S. nationals, he is eligible to receive an award proportionately based upon his interest in the non-national corporation.

If an eligible U.S. national, whether a natural person or a corporation, owned stock in a corporation doing business in the PRC, a direct shareholder claim was authorized regardless of the percentage of the shareholder's interest in the business.[44] However, if a stockholder's interest was indirect, for example in a corporation of a third state which owned property in the PRC, the stockholder's interest is considered "only if at

[38] 78 Stat. 1111 (1964), *as amended*, 22 U.S.C. §1643C (1970). Claims for disability or death also are required to have resulted from injuries to persons who were U.S. nationals. 78 Stat. 1111 (1964), *as amended*, 22 U.S.C. §1643(b) (1970). *See* note 16 *supra*.

[39] 78 Stat. 1111 (1964), *as amended*, 22 U.S.C. §1643A(1) (1970).

[40] *Id.*

[41] *Id.*

[42] Claim No. CN-0497-0501, 0503 (June 30, 1970).

[43] 78 Stat. 1111 (1964), *as amended*, 22 U.S.C. §1643D(a) (1970).

[44] 78 Stat. 1111 (1964), *as amended*, 22 U.S.C. §1643D(b) (1970).

least 25 per centum of the entire ownership interest thereof at the time of such loss was vested in nationals of the United States." [45]

III.

The Problem of Valuation

In determining the value of the properties, rights, or interests of the claimants taken by the PRC, Congress required that the Commission

> take into account the basis of valuation most applicable to the property and equitable to the claimant, including, but not limited to, (i) fair market value, (ii) book values, (iii) going concern value, or (iv) cost of replacement.[46]

Thus Congress granted the Commission a broadly based power equitably to determine valuation.[47]

This broad legislative grant was not in H.R. 10327, the first version of the bill providing for the Cuban Claims Program.[48] H.R. 10327 merely required the Commission to consider the value of claims in accordance with the substantive law, including international law. The broader grant of authority was proposed by the American Claims in Cuba Committee, representing many large corporations with property interests in Cuba expropriated by the Castro Government. Its proposed addition was to

> make certain that the FCSC abides by its expressed intention to take into account the basis of valuation most appropriate to the property and equitable to the claimant and not restrict itself solely to book value.[49]

Whether the Commission followed this new provision to the letter of the law is the subject of some debate.[50]

The problem of valuation is an important one because it materially affects the rights of the claimants and the potential liability of the expropriating state. However, no significant analysis of the valuation practices of the Commission is permitted by the meager record of the Commission's decisions.

In 1964 the Department of State urged Congress to adopt the Cuban Claims Program, but noted that the preadjudicative procedure called for a full reporting of each claim. The Department suggested

> that it would be desirable for the Commission to include in its decisions the specific rule of international law establishing liability or

[45] 78 Stat. 1111 (1964), *as amended*, 22 U.S.C. §1643D(c).

[46] 80 Stat. 1365 (1966), 22 U.S.C. §1643B(a) (1970).

[47] *See* Lillich, *The Valuation of Nationalized Property by the Foreign Claims Settlement Commission, in* THE VALUATION OF NATIONALIZED PROPERTY IN INTERNATIONAL LAW 95, 97 (R. Lillich ed. & contrib. 1972). *See also* Friedberg and Lockwood, Jr., *The Measure of Damages in Claims Against Cuba*, in *id.*, at 117.

[48] H.R. 10327, 88th Cong., 2d Sess. (1964). These changes and others, including the deletion of the vesting provisions, were incorporated in the final bill reported out of Committee H.R. 12259, 88th Cong., 2d Sess. (1964). *See* note 13 *supra.*

[49] *Cuba Hearings, supra* note 9, at 53 [Statement of Cecil J. Olmstead].

[50] *See* Lillich, *supra* note 47, at 97–99.

> nonliability, and a detailed statement respecting the evidence upon which such conclusion is based, *for possible use in negotiation of an eventual international arrangement respecting these claims.* In case of approval of a claim, the decision should include an analysis of the evidence considered by the Commission in arriving at the amount of its award.[51]

As a result of this proposal, Section 507 of the Act requires the Commission to:

> certify to the Secretary of State such amount [of the claim] and the basic information underlying that amount, together with a statement of the evidence relied upon and the reasoning employed in reaching its decision.[52]

Unfortunately, the Commission's decisions are in most cases unhelpful.[53] A few decisions turn on methods of valuation other than the mere acceptance of book value.

In general, the Commission faced two types of claims. The most important in terms of value were the claims of large corporations and of educational and religious societies.[54] Several hundred individuals claimed for personal losses of much smaller magnitude. An examination of a representative group of the larger claims shows that, when the claimants qualified under Title V, the very nature of the claimants' extensive holdings in China resulted in their being able to produce well-kept records to substantiate their asserted loss. Because the Commission could not make on-site inspections, it considered and generally accepted as dispositive the claimants' records of book value, insurance coverage for the properties, and statements of profit and loss. The typical small claimant did not have such records. In these cases, the only alternative to the denial of claims for the loss of personal property was to attempt to determine a reasonable value. If the only evidence of record about the existence of the loss was general descriptions in affidavits of persons acceptable to the

[51] *Cuba Hearings, supra* note 9, at 138–39 (emphasis added) [Statement of Robert E. Lee].

[52] 78 Stat. 1112 (1964), *as amended,* 22 U.S.C. §1643f(a) (1970).

[53] Despite the statutory standard, in general, the decisions are documents which reveal little more than the claimant's name, nationality, the property taken and its location, and a recitation of its "considered" value. It is estimated that 80% of the Commission's decisions, falling into perhaps four variations, were reported in so similar a fashion that it is possible to read the first and last paragraphs without missing any new substantive conclusions. In fact, of the five pages of an average certification or denial at least half is identical with any other decision. There is no doubt that this nation of lawyers could have more fully and individually reported each decision. The use of this standard form only minimally complies with the statutory directive.

[54] An analysis of the Commission's decisions certified as valid to the Secretary of State reveals that of the $196,861,834 of finally certified awards, over 90 per centum of the total value came from awards of over $100,000. Of the 18 awards of one million dollars or more, which in total amounted to $165,566,730.66, ten awards were to corporations, while the remaining eight were to nonprofit missionary, educational, and medical organizations. Only the certifications of less than $100,000.00 show a majority of individual claimants.

Commission for their probity and disinterest in the particular claims,[55] this "secondary evidence" was deemed acceptable by the Commission.[56] Conversation with officials of the Commission revealed that the 1950 fall and winter edition of the Sears, Roebuck Catalogue was often consulted to establish a certifiable value for these smaller claims.

The Commission frequently reported only its conclusion that the award is "comparable" to the value of other properties previously considered in the same city.[57] This practice resulted in claims where the Commission, on its own accord, determined that the claimed values were too low, in some cases granting substantially greater awards.[58] In other decisions the Commission found the claim too high and made an award of a lesser amount.[59] The Commission must have had some internally consistent standard, notwithstanding its failure to reveal what it was. On the other hand, it is not at all certain that a general standard could necessarily give a correct view of the value of a particular piece of property. An individual's property in a rich neighborhood of Shanghai, for example, may have been in a poorer state of repair than the more valuable property of his neighbors. Thus, while valuation on an averaging basis may result in a reasonably determined total liability for the PRC, it does not guarantee an award which is fair to the claimant. Yet, if there is a total lack of cooperation from the foreign government, the Commission can do little else in the absence of access to primary evidence. This same circumstance highlights one of the inherent defects of the preadjudicative procedure.[60]

The Commission had to deal with some money obligations expressed in Chinese currency during the period of extraordinary inflation that followed the Chinese Civil War.[61] Because the local currency had become "worthless" by as early as 1950, the Commission generally denied claims for money obligations payable in Chinese yuan. In the *Claim of Maurice*

[55] *See* Claim of The Christian and Missionary Alliance, Claim No. CN-0352 (Aug. 20, 1970).

[56] *See* note 22 *supra.*

[57] The Commission "has considered the purchase price of the properties and the values of comparable mission properties in other claims of non-profit organizations in the China program," Claim of the Christian and Missionary Alliance, Claim No. CN-0352 (Aug. 20, 1970); "In over some fifty claims which the Commission has considered in this city [Tsingtao], it has found the properties to have been in good condition, modernly improved and of substantial values." Claim of George Yousieff, *et al.*, Claim No. CN-0413, 0417-0418 (April 21, 1970).

[58] In the Claim of United Board for Christian Higher Education in Asia, Claim No. CN-0401 (Aug. 20, 1970), the Commission explained the certification of $1,420,000 more than the amount asserted with the following language:

> However, in determining the amount of loss sustained, the Commission is not bound by any lesser or greater amounts which may be asserted by claimants as the extent thereof.

[59] *See* Claim of Solomon Tukachinsky, Claim No. CN-0370 (June 10, 1970).

[60] *Cuba Hearings, supra* note 9, at 18.

[61] *See* Claim of Sandovitch Bros., Inc., Claim No. CN-0515 (July 14, 1970), where the Commission notes the exchange rate in November 1951, at 32,400 yuan for one U.S. dollar. On June 30, 1951, the exchange rate was 23,000 per one U.S. dollar. Claim of Ann Ellis, *et al.*, Claim No. CN-0554 (July 10, 1970).

A. Donnell, et al.,[62] the Commission held to be valueless the asserted loss of 6,495 preferred shares and $88,400.00 in bonds of the Shanghai Power Company which linked convertibility to the local currency. However, in cases in which the Chinese Communists forced payment of funds at inflated exchange rates to secure visas for corporate personnel who had not been allowed to leave, the Commission allowed recovery for the full cost of this de facto ransom.[63]

The question of how to compensate claimants for the continued loss of property, with a resulting deprivation of the use of the properties for almost two decades, was resolved in the first decision of the Commission. Citing a Cuban Claims Program decision, the *Claim of Lisle Corporation*, CU-0644,[64] the Commission determined that

> interest should be included as a part of the certification and that such interest should be at the rate of 6% per annum from the date of loss to the date on which provision is made for settlement.[65]

While the inclusion of interest has been standard practice in previous claims programs, the effect of interest on the total certified awards is great in the China Claims Program because of the long passage of time. Indeed, the interest is double the value of each certified award. The granting of interest precluded additional compensation for such post-taking use as potential rental and profit production.[66]

IV.

Compensating the China Claimants

With the China Claims Program completed and its record certified to the Secretary of State, claimants now must look to the U. S. Government for action which will bring them compensation for their losses. In considering the result of the completed program, it is not inappropriate to ask just what the response of the PRC to it will be. Recent events indicate that the claims settlement may be part and parcel of a more comprehensive accord between the United States and the PRC, but it is still too early to determine whether this will be so.[67]

The general rule of international law is that the uncompensated taking of property is illegal,[68] but it is doubtful that the Chinese attitude toward

[62] Claim No. CN-494-0501, 0502 (June 30, 1970).

[63] Claim of American Express International Banking Corporation, Claim No. CN-0340 (Aug. 20, 1970).

[64] For precedent purposes, the earlier Cuban decision is the Claim of American Cast Iron Pipe Company, Claim No. CU-0249, Decision No. CU-13, where the applicability of interest to awards certified under Title V is fully considered. Cited at FCSC, Twenty-Fifth Semiann. Rep. 49 (July–Dec. 1966).

[65] This language is the standard phraseology used in all claims where losses were certified to the Secretary of State.

[66] *See* Claim of John H. Lewis, *et al.*, Claim No. CN-0092-0093 (Sept. 24, 1969).

[67] *See* N.Y. Times, Feb. 26, 1973, at 1, col. 8.

[68] *See* Restatement (Second) Foreign Relations Law of the United States §§185–190 (1965).

international law is completely reconcilable with our own.[69] While the record of the PRC's compliance with international agreements which that government entered into is good,[70] the attitude of the PRC toward pre-1949 agreements between the Republic of China and foreigners is generally unfavorable.[71] While the claimants in the China Claims Program asserted private claims, it is clear that their pre-1949 activities in China followed a long history of foreign domination of the Chinese economy. The particular circumstances of Chinese history, including unequal treaties, foreign commercial domination as a general result of the inferior military position of China, and the general Communist opposition to the cultural and political imperialism and exploitation which allegedly accompanied many of these financial and educational activities, will have their impact on an acceptable settlement of the claims.[72] Moreover, in order to accept as valid all certified claims, the PRC would have to admit that certain of its previous governmental decrees were against international law; for example, the claims resulting from the de facto "ransom" demands of the PRC would seem particularly troublesome.[73]

If one sets the present-day value of the claims, with interest, at $400,000,000, China would have difficulty, in the absence of an overall trade package with the United States in securing the foreign exchange to settle them, even if it should wish to do so. While the United States might settle for Chinese payment over a period of twenty years, as in the case of Poland,[74] and more recently in the case of Hungary,[75] China may not be willing to accept such a long-term debt. Moreover, with the PRC now entering an expansive period of foreign policy, the need for $100–200 million annual foreign exchange trade surplus will be even greater.

The United States is faced with a completed preadjudicatory claims program but no agreement to provide funds for its settlement. Heretofore, payment has been provided for in a lump sum agreement,[76] with

[69] *See* Chiu, *The Nature of International Law and the Problem of a Universal System*, in LAW IN CHINESE FOREIGN POLICY: COMMUNIST CHINA & SELECTED PROBLEMS OF INTERNATIONAL LAW 1–19 (S. Leng & H. Chiu eds. & contribs. 1972).

[70] *See* L. LEE, CHINA AND INTERNATIONAL AGREEMENTS 119 (1969).

[71] *See* note 1 *supra*.

[72] *See, e.g.*, Cohen, *Chinese Attitudes Toward International Law—And Our Own*, in CONTEMPORARY CHINESE LAW: RESEARCH PROBLEMS AND PERSPECTIVES 282 (J. COHEN ed. & contrib. 1970); CHINA'S PRACTICE OF INTERNATIONAL LAW: SOME CASE STUDIES (J. COHEN ed. & contrib. 1972).

[73] *See, e.g.*, Claim of American Express International Banking Corporation, Claim No. CN-0340 (June 30, 1970) wherein a claim for $66,624.00 as payment for the release of the Assistant Manager in charge of the claimant's Shanghai office was allowed. The Assistant Manager remained in China for five years before refunds were paid and his exist visa was granted.

[74] Agreemet with Poland, July 16, 1960, TIAS No. 4545; Rode, *The American-Polish Claims Agreement of 1960*, 55 AJIL 452 (1961).

[75] *See* N.Y. Times, March 7, 1973, at 14, col. 1.

[76] *See, e.g.*, Agreement with the Federal People's Republic of Yugoslavia Regarding Pecuniary Claims of United States and Its Nationals, July 19, 1948, 62 Stat. 2658 (1948), TIAS No. 1803. *See* Clay, *Aspects of Settling Claims Under the Yugoslav Claims Agreement of 1948*, 43 GEO. L.J. 582 (1955). A lump sum of $5,000,000 was

payments, as mentioned above, often made in installments over a period of years.[77] A feasible model for a United States–Chinese agreement for the settlement of these claims can be found in the "Litvinov Assignment" of 1933,[78] under which the United States and the Soviet Union agreed to settle certain claims by the assignment to the United States of assets due the Soviet Government as the successor of prior governments of Russia. If the PRC assigned to the United States its interests in the assets blocked and frozen at the outset of the Korean Emergency, substantial funds would be made available to compensate the China claimants, at least for 15 to 20 percent of their adujdicated losses. As under the War Claims Distribution of 1962 (but unlike the Litvinov Assignment), claimants with smaller individual claims should be fully compensated. In the China Claims Program, claimants with certified awards of less than $100,000 account for only 10 per cent of the total certified amount.[79]

As pointed out by one scholar,[80] the use of a lump sum settlement avoids the express admission by the nationalizing country of the validity of any particular claim. Such a settlement would confirm the general liability of China to compensate U. S. nationals who lost property when relations between the United States and the PRC deteriorated in 1950. If the blocked Chinese assets were utilized, there also would be minimal impact on the foreign trade and internal development plans of the Chinese. In any event, the final resolution of the China Claims Program presents a challenge to the efficacy of the preadjudication approach.

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made available for the settlement of certain Italian claims under the so-called Lombardo Agreement with Italy, Aug. 14, 1947, 61 Stat. 3692 (1947), TIAS No. 1757. Moreover, funds were made available for certain claims against the Soviet Union by the Litvinov Assignment of Nov. 16, 1933; *see* FCSC, DECISIONS AND ANNOTATIONS 755 (1968).

[77] *See also* Convention with Panama, Jan. 26, 1950, 1 UST & OIA 685, TIAS No. 2129 (67). *See generally* Appendices to FCSC, DECISIONS AND ANNOTATIONS (1968).

[78] *See* note 76 *supra*. *See also* D. BISHOP, THE ROOSEVELT-LITVINOV AGREEMENTS, THE AMERICAN VIEW (1965).

[79] *See* note 54 *supra*.

[80] B. WESTON, INTERNATIONAL CLAIMS: POSTWAR FRENCH PRACTICE (1971).

Exhibit 10

A. International Claims Settlement Act of 1949

	Statutory Authority			FCSC Publication Cite	
Claims Against	Title of Act	Public Law	U.S. Code (22 U.S.C.)	Final Report	Other Publications
Bulgaria					
First	III	285, 84th Cong.	1641b	11 Semiann. 1	Index-Digest, Vol. I Decisions & Annotations
Second	III	90-421	1641b	1971 Ann. 10	Index-Digest, Vol. II
China					
First	V	89-780	1643	1972 Ann. 417	Index-Digest, Vol. II
Second	I	455, 81st Cong.	1623(a)	1981 Ann. 13	Index-Digest, Vol. III
Cuba	V	88-666	1643	1972 Ann. 69	Index-Digest, Vol. II
Czechoslovakia*	IV	85-604	1642	17 Semiann. 140	Index-Digest, Vol. I Decisions & Annotations
Egypt	I	455, 81st Cong.	1623(a)	1990 Ann. 7	
Ethiopia	I	455, 81st Cong.	1623(a)	1987 Ann. 11	
German Democratic Republic	VI	94-542	1644	1981 Ann. 42	Index-Digest, Vol. III
Hungary					
First	III	285, 84th Cong.	1641b	11 Semiann. 1	Index-Digest, Vol. I Decisions & Annotations
Second	III	93-460	1641b	1977 Ann. 27	Index-Digest, Vol. II
Italy					
First	III	285, 84th Cong.	1641c	11 Semiann. 1	Index-Digest, Vol. I Decisions & Annotations
Second	III	90-421	1641c	1971 Ann. 12	Index-Digest, Vol. II
Panama	I	455, 81st Cong.	1623(a)	Settlement of Claims, 1949-1955, p.217	Index-Digest, Vol. I Decisions & Annotations
Poland	I	455, 81st Cong.	1623(a)	24 Semiann. 35	Index-Digest, Vol. I Decisions & Annotations
Romania					
First	III	285, 84th Cong.	1641b	11 Semiann. 1	Index-Digest, Vol. I Decisions & Annotations
Second	III	90-421	1641b	1971 Ann. 10	Index-Digest, Vol. II
Soviet Union	III	285, 84th Cong.	1641d	11 Semiann. 1	Index-Digest, Vol I Decisions & Annotations
Vietnam	VII	96-606	1645	1985 Ann. 9	Index-Digest, Vol. III
Yugoslavia					
First	I	455, 81st Cong.	1623(a)	Settlement of Claims, 1949-1955, p. 17	Index-Digest, Vol. I Decisions & Annotations
Second	I	455, 81st Cong.	1623(a)	1969 Ann. 15	Index-Digest, Vol. II

*The Second Czechoslovakian Claims Program was authorized by the Czechoslovakian Claims Settlement Act of 1981. See C. Under Other Statutory Authority, below.

B. War Claims Act of 1948

Type of Claim	Statutory Authority: Section of Act	Statutory Authority: Public Law	Statutory Authority: U.S. Code (50 U.S.C. App.)	FCSC Publication Cite: Report	FCSC Publication Cite: Other Publications
a. Civilian Internee					
Korean Conflict	5(g)	615, 83rd Cong.	2004(g)	5 Semiann. 1, 24, 27	
U.S.S. Pueblo Incident	6(e)	91-289	2005(e)	1971 Ann. 19, 24	
Vietnam Conflict	5(i)	91-289	2004(i)	1986 Ann. 6	
World War II (Pacific area)					
Guamanians	5(h)	87-617	2004(h)	19 Semiann. 10, 64	
U.S. Citizens	5(a)	896, 80th Cong.	2004(a)	4 Semiann. 2, 51	Settlement of Clms., 1949-1955
Employees of Contractors	5(f)	744, 83rd Cong.	2004(f)	5 Semiann. 1, 25, 27	
World War II (Worldwide)					
Merchant Seamen	16	744, 83rd Cong.	2015	5 Semiann. 1, 25, 27	
b. Damage or Loss of Property					
World War II (Philippines)					
Bank Accounts	17	744, 83rd Cong.	2016	5 Semiann. 1, 25, 27	
Religious Organizations					
Non-U.S. Affiliated	7(h)	997, 84th Cong.	2006(h)	8 Semiann. 8, 10	
U.S. Affiliated					
Aid to U.S. Armed Forces	7(a)	896, 80th Cong.	2006(a)	4 Semiann. 2, 51	Settlement of Clms., 1949-1955
Educational & Other non-Religious Facilities	7(b-c)	303, 82nd Cong.	2006(b-c)	4 Semiann. 2, 51	Settlement of Clms., 1949-1955
World War II (Worldwide)					
General	202	87-846 *(94-542)	2017(a) *(2017i,j, note)	1967 Ann. 95, 197 *(1977 Ann. 10, 51)	Decisions & Annotations
a. Prisoner of War					
Korean Conflict	6(e)	615, 83rd Cong.	2005(e)	5 Semiann. 25	
U.S.S. Pueblo Incident	6(e)	91-289	2005(e)	1971 Ann. 19, 24	
Vietnam Conflict	6(f)	91-289	2005(f)	1986 Ann. 6	
World War II					
U.S. Armed Forces					
Inadequate food rations	6(b)	896, 80th Cong.	2005(b)	4 Semiann. 2, 5	Settlement of Clms., 1949-1955
Inhumane treatment	6(d)	303, 82nd Cong.	2005(d)	4 Semiann. 2, 5	Settlement of Clms., 1949-1955
U.S. Citizens					
Allied Armed Forces	15	744, 83rd Cong.	2014	5 Semiann. 27	

*Authorized protest period for claims decisions issued during last ten days of General War Claims Program.

C. Under Other Statutory Authority

Title of Claims Program	Statutory Authority: Public Law	Statutory Authority: U.S. Code	FCSC Publication Cite: Final Report	FCSC Publication Cite: Other Publications
Iran	99-93	50 U.S.C. 1701 note	1995 Ann. 5	
Lake Ontario	87-587		22 Semiann. 12	Decisions & Annotations
Philippine	87-616	50 U.S.C. App. 1751-1763 note	21 Semiann. 11	Decisions & Annotations
Second Czechoslovakian	97-127	22 U.S.C. note	1984 Ann. 11	Index-Digest, Vol. III

VI TABLE OF COMPLETED PROGRAMS

A. International Claims Settlement Act of 1949

Title/Country	Program Dates: Filing Deadline	Program Dates: Completion	No. of Denials	No. of Awards	Principal Amt. of Awards	Amt. of Funds for Payment	Approx. % of Awards Paid
Title I							
Yugoslavia-First	6/30/51	12/31/54	671	876	$18,417,112.90	$17,000,000.00	91%
Yugoslavia-Second	1/15/68	7/15/69	1,354	519	9,685,093.22	3,500,000.00	36.1%
Panama	8/4/52	12/31/54	5	62	441,891.84	400,000.00	90%
Poland	3/31/62	3/31/66	5,147	5,022	100,737,681.63	40,000,000.00	33%
China-Second	8/31/79	7/31/81	78	3	176,454.83	[1]80,500,000.00	$1,000 plus 47.50%
Ethiopia	9/30/86	9/30/87	18	27	14,387,510.96	7,000,000.00	$1,000 plus 48.55%
Egypt	11/30/89	6/29/90	2	83	[2]5,885,369.12	10,000,000.00	100% of principal plus 81.132778% of interest awards
Title III							
Bulgaria-First	9/30/56	8/9/59	174	217	4,684,186.46	2,676,234.49	$1,000 plus 69.71%
Bulgaria-Second	6/30/70	12/24/71	49	13	141,400.00	400,000.00	do
Hungary-First	9/30/56	8/9/59	1,572	1,153	58,277,457.94	2,235,750.65	[3]$1,000 plus 37%
Hungary-Second	5/15/75	5/16/77	1,159	365	3,729,227.64	18,900,000.00	do
Romania-First	9/30/56	8/9/59	575	498	60,011,347.78	20,164,212.68	$1,000 plus 37.841474%
Romania-Second	6/30/70	12/24/71	300	85	1,091,102.00	2,500,000.00	do
Italy-First	9/30/56	8/9/59	1,764	482	2,239,413.34 Int. 762,294.45	5,000,000.00	100% plus Interest
Italy-Second	6/30/70	12/24/71	324	90	348,934.33 Int. 110,651.78	1,086,520.23	do
Soviet Union	4/02/56	8/9/59	2,205	1,925	70,466,019.00	8,658,722.43	$1,000 plus 9.717%

Title IV							
Czechoslovakia	9/15/59	9/15/62	1,346	2,630	[4]$113,645,205.41	$8,540,768.41 74,550,000.00	$1,000 plus 5.3038419% 70.92945%
[5]Czechoslovakia-Second Benes Claims	None	2/24/85		128	43,906,382.07	5,400,000.00	12.2988953%
Post-1958 Claims	2/24/83	2/24/85	1,292	327	5,120,927.83	1,500,000.00	29.29156%
Title V							
Cuba	5/1/67	7/6/72	2,905	5,911	1,851,057,358.00	(None)	
China-First	7/6/69	7/6/72	198	378	196,681,841.00	80,500,000.00	$1,000 plus 47.50%
Title VI							
German Democratic Republic	5/16/78	5/16/81	1,999	1,899	77,880,352.69	$102,010,961.47	100% of principal plus approx. 50% of interest awards
Title VII							
Vietnam	2/25/83	2/25/86	342	192	99,471,983.51	203,504,248.00	100% of principal plus 80.30534566% of interest awards
Iran Claims Act							
Iran	6/22/90	2/24/95	[7]2,000	1,066	41,570,936.31	57,822,758.78	100% of principal plus 34.9602595% of interest awards

[1]Also covers awards issued in the First China Claims Program under Title V of the Act.
[2]Includes awards in the principal amount of $5,767,610.34 issued by the Department of State before transfer of the claims to the Commission in 1989.
[3]$1,000 plus 40% paid on war damage claims in which awards were granted in this program (38.5% from War Claims Fund).
[4]Includes both principal and interest inasmuch as payment priorities and limitations under this Title were based on the total amount of awards whereas such priorities and limitations under Titles I and III were based on prorated payments on principal amount of awards, prior to making payments on awards of interest. Breakdown of Czechoslovakia awards amount is: principal--$72,614,634; interest--$41,030,571.
[5]Under an agreement signed on January 29, 1982, the Czechoslovakian Government paid $81.5 million for settlement of all claims of U.S. nationals between January 1, 1945 and February 2, 1982. Under the Czechoslovakian Claims Settlement Act of 1981 (P.L. 97-127) Congress established a $74.55 million fund for further payment of awards under Title IV and authorized the Commission to redetermine certain claims for losses of property owned by persons who became U.S. nationals as of February 26, 1948, and to adjudicate claims for losses arising after August 8, 1958, the end of the period covered by the First Czechoslovakian Claims Program. Funds of $5.4 million and $1.5 million, respectively, were set aside by Congress for payment of these awards.
[6]Includes 578 claims that were ordered dismissed.

B. War Claims Act of 1948

Authority	Type of Claim	Filing Period	No. of Claims	No. of Denials	No. of Awards	Amount of Awards	Program Completed
Title I							
6(b)	Members of U.S. Armed Forces held as prisoners of war during World War II-$1 per day for inadequate food rations.	1/30/50-3/31/52	286,315	[1]106,590	179,725	$ 49,935,899	3/31/55
5(a)	U.S. civilians interned by Japanese or in hiding in U.S. territories and possessions during World War II-$60 per month.	do	23,000	13,740	9,260	13,679,329	do
7(a)	U.S. affiliated religious organizations and personnel for reimbursement for aid furnished to U.S. Armed Forces and civilians during World War II in Philippines.	do	10,194	10,159	35	2,858,560	do
6(d)	Members of U.S. Armed Forces held as prisoners of war during World War II-$1.50 per day for forced labor and inhumane treatment.	4/9/52-8/1/54	254,228	75,328	178,900	73,492,926	do
7(b-c)	U.S. affiliated religious organizations for damage or loss of educational and other non-religious facilities in Philippines during World War II.	do	89	41	48	17,238,597	do
6(e)	Members of U.S. Armed Forces held as prisoners of war during the Korean Conflict-$2.50 per day.	8/21/54-8/21/55	9,877	427	9,450	8,874,458	8/21/56
5(g)	U.S. civilians interned or in hiding during Korean Conflict-$60 per month.	do	10	0	10	16,774	do
5(f)	U.S. civilian employees of contractors interned by Japanese in U.S. Territories and possessions during World War II-$60 per month.	8/31/54-8/31/55	2,968	746	2,222	4,082,086	8/31/56

Authority	Type of Claim	Filing Period	No. of Claims	No. of Denials	No. of Awards	Amount of Awards	Program Completed
15	U.S. citizens serving in Armed Forces of U.S. Allies held as prisoners of war during World War II-$2.50 per day.	do	266	59	206	335,836	do
16	U.S. merchant seamen interned during World War II (not covered under Sec. 5(a))-$60 per month.	do	385	214	171	333,594	do
17	Sequestration of bank accounts of U.S. civilians, members of U.S. Armed Forces, U.S. business firms, and bank institutions in Philippines during World War II.	do	3,626	459	3,167	10,570,917	do
7(h)	Non-U.S. affiliated religious organizations in Philippines of same denomination of religious organizations functioning in U.S. for reimbursement for aid and damages as covered under Sec. 7(a-c).	8/6/56-2/6/57	109	67	42	8,711,482	2/6/58
5(h)	Detention benefits to Guamanians captured by Japanese on Wake Island during World War II-$60 per month.	8/31/62-2/28/63	35	0	35	91,782	12/31/63
6(e)	Civilians and members of U.S. armed Forces assigned to U.S.S. Pueblo who were held as prisoners by North Korea-$2.50 per day.	9/16/70-6/24/71	82	0	82	68,256	6/24/71
Title II							
202	War damage or loss of property in certain Eastern European countries, and in territories occupied or attacked by Japanese forces during attacked by Japanese forces during World War II; damage to ships; losses to insurers, and by passengers on ships.	7/15/63-1/15/65 [2](11/8/76-2/7/77)	22,605 [2](4)	15,566 [2](1)	7,039 [2](3)	334,783,630 [2](1,026,548)	5/17/67 [2](3/4/77)
	Totals, All Programs		613,789	223,396	390,392	$526,100,674	

[1]Many thousands of claims for prisoner of war compensation were filed by residents in U.S. possessions and territories occupied by enemy forces during World War II who were not officially listed as members of duly recognized units of the Armed Forces of the U.S. during World War II. Those claimants were ineligible to receive prisoner of war compensation, which accounts for the high number of disallowances.

[2]These dates, numbers, and amounts represent protests and additional awards granted pursuant to Section 615 of Public Law 94-542, approved October 18, 1976.

Exhibit 11

Section III
Completion of the China Claims Program Under Title V of the International Claims Settlement Act of 1949

Foreign Claims Settlement
Commission of the United States

SUMMARY

Title V of the International Claims Settlement Act of 1949 (78 Stat. 1110), as further amended by Public Law 89–780 (80 Stat. 1365), approved November 6, 1966, authorized the Commission to receive and determine in accordance with applicable substantive law, including, international law, the validity and amount of claims of nationals of the United States for: (1) losses resulting from the nationalization, expropriation, intervention, or other taking of, or special measures directed against, property of nationals of the United States; and (2) disability or death, resulting from actions taken by or under the authority of the Chinese Communist regime. All such claims must have arisen since October 1, 1949.

As will be noted, this program was quite similar to the Cuban Claims Program, providing for the same types of claims of nationals of the United States, except that the covered China claims were those that arose since October 1, 1949 when the Chinese Communist regime assumed power, whereas the Cuban claims were those that arose since January 1, 1959 when Castro came into power. The full text of the statute, which also governs the Cuban Claims Program, appears as Exhibit 11. The applicable regulations which likewise govern both claims programs appear as Exhibit 12. However, for the purpose of this report, the Cuban Claims Program and the China Claims Program are dealt with herein under Sections II and III, respectively. In order to retain continuity in this respect, the Table of Contents shows the statute and regulations for the China Claims Program as Exhibits 16 and 17, respectively, but refers the reader to Exhibits 11 and 12. The claim form and instruction sheets for filing claims against the Chinese Communist regime appear as Exhibit 18.

This statute was enacted in order to obtain information concerning the total amount of claims of nationals of the United States against the Chinese Communist regime. As in the case of the Cuban Claims Program, the statute does not provide for the payment of awards granted by the Commission, but authorizes a presettlement adjudication of claims for the purpose of any future negotiations with the Government of China.

This program commenced on November 8, 1967, when appropriations for administering the statute were made available. The deadline for filing such claims was July 6, 1969, and this program was completed by July 6, 1972 as was the Cuban Claims Program.

For these reasons, many of the principles established by the Commission in administering the China Claims Program were

identical with those in the Cuban Claims Program. In a number of instances, decisions on China Claims cited precedent decisions in the Cuban Claims Program. Moreover, since the number of claims filed against the Chinese Communist regime was only a small fraction of the number of Cuban claims, the publication of only several of the more significant cases is included in this report, as follows:

1. In a typical claim, it was clear that supporting evidence was not as readily available as in the case of Cuban claims. The Commission recognized this fact, and exercised its discretion by considering secondary and any other evidence having probative value.

Just as was the practice in the Cuban Claims Program, the Commission reduced the certifiable amount by any amount a claimant had received on account of the same loss from whatever source.

Similarily, the Commission held that under principles of international law, justice and equity, interest is a proper part of an award.

The foregoing three principles were applied in the *Claim of Clarence Burton Day, et al.,* Claim No. CN–0030, reported herein. It will be noted that a Cuban precedent is cited in this case.

2. The Commission held that the loss of control, use and enjoyment of property as a result of physical occupation by Chinese Communist forces constituted a taking of property within the meaning of title V of the Act. (See the *Claim of Arthur B. Coole, et al.,* Claim No. CN–0040, reported herein.) In a number of cases, as in this case, the Commission had in its possession evidence concerning some of the asserted losses which it had gathered in the course of administering the General War Claims Program under the War Claims Act of 1948. As already indicated in Section I hereof, a final report on the General War Claims Program appears in the Commission's Annual Report for 1967.

The information and material contained in the General War Claims files provide to be of great assistance in adjudicating claims against the Chinese Communist regime. There were many instances in which claimants in the China Claims Program had filed claims in the General War Claims Program. Whenever evidence from those files was pertinent to the claim in question, a statement to that effect was included in the decision, as was the case in the *Coole* claim. Here again, the Commission cited a Cuban precedent in the *Coole* claim; namely, that the Commission is not bound by the amounts asserted by claimants, and that where warranted by the record the amounts of loss found by

the Commission may be in excess of the amounts asserted by claimants.

3. One of the largest claims in the China Claims Program was presented by a nonprofit organization which operated medical, hospital, and nursing facilities in China. This claim involved many different items of property that had been taken by the Chinese Communist regime. A very important issue in this case was valuation.

The Commission held that it may take judicial notice of the fact that real property values have increased over the years, a holding which it had also applied in the Cuban Claims Program. Accordingly, appropriate upward adjustments in these respects were made by the Commission. On the other hand, the Commission took note of the property damages that had been sustained during World War II. Thus, appropriate reductions in value were made with respect to war damaged properties that had not been repaired or replaced. In this way, the Commission determined the values of those properties on the date of taking by the Chinese Communist regime.

With respect to other items of property, accepted depreciation rates were applied in evaluating the items. The Commission also reaffirmed its holding in the *Claim of M & M Dredging & Construction Co., et al.,* another Cuban precedent reported herein, that "cost of replacment" means replacement in kind, taking into consideration the age and condition of the properties on the dates of loss, and that it does not mean replacement with new properties.

Another interesting aspect of this claim was the value of a unique medical library which contained, *inter alia,* original manuscripts of Chinese scholars and the most complete collection in the world of books on Chinese classical medicine. The Commission determined the value of this library on the basis of an appraisal by an expert who had personal knowledge of the contents of the library. (See the *Claim of China Medical Board of New York, Inc.,* Claim No. CN–0415, reported herein.)

4. A very interesting case was presented involving title to real property in certain areas of China. The record showed that in those areas it was prohibited to record title to property in the name of an American. In order to protect their rights, such Americans who were actually the true owners of the properties developed a practice of recording title to the properties in the names of their Chinese agents, and mortgages for the full values of the properties were executed in favor of the Americans. The Commission held that under the circumstances the Americans were the real owners of the properties, and entered Certifications of

Loss to the Americans whose properties were taken by the Chinese Communist regime. (See the *Claim of Franklin Russel Fette,* Claim No. CN–0336, reported herein.) It may be noted that the rule concerning beneficial ownership of property is one which the Commission has applied in many cases throughout its history of adjudicating international claims. [See FCSC Dec. & Ann. 39, 61, 88, 389 and 591 (1968)].

5. A most unusual case involved the Shanghai branch of an American enterprise. In order to obtain certain monies from the American enterprise which the Chinese Communist regime asserted were due it, an American official of the enterprise and his family were detained deliberately in China and prevented from leaving that country for five years. Only upon the transmittal of the demanded funds from the enterprise in the United States, which had to be approved by the Treasury Department, did the Chinese authorities permit the official and his family to leave. The Commission held that the transaction was consummated under duress, constituted a violation of international law, and gave rise to a claim against the Chinese Communist regime under Title V of the Act. (See the *Claim of American Express International Banking Corporation,* Claim No. CN–0340, reported herein.)

6. The Commission held that untimely claims against the Chinese Communist regime may be considered on their merits if it does not interfere with the orderly processing of the timely filed claims. (See the *Claim of Irene McGlashen,* Claim No. CU–0577, reported herein.) Thus, the Commission followed the same practice as in the Cuban Claims Program and for the same purpose: to compile a complete record of all claims against the Chinese Communist regime. It will be noted that the Cuban precedent decision in this respect, *Claim of John Korenda,* Claim No. CU–8255, which is also reported herein, is cited in the *McGlashen* case. On the same theory, the Commission did entertain claims for losses sustained in Cuba after enactment of Title V of the Act for here again, it would be valuable to include all claims against the Government of Cuba arising since January 1, 1959, when Castro came into power. Had there been any such claims against the Chinese Communist regime, they, too, would have been considered on their merits under the same conditions as the Cuban claims.

7. The foregoing circumstances discussed under item (6) above, however, must be distinguished from those in the *Claim of Rosary Mission Society, Inc.,* Claim No. CN–0475, reported herein. This case involved, *inter alia,* a claim for the death of one of claimant's missionaries in 1947 at the hand of a band of Chinese guerrillas.

The Commission held that claims arising prior to October 1, 1949, when the Chinese Communist regime came into power, are outside the purview of title V of the Act. In effect, the Commission applied the rationale of the statute, that all claims which arose prior to October 1, 1949 could not properly be asserted against the Chinese Communist regime since that regime was not in authority prior to that date.

By the same token, all claims assertedly arising in Cuba prior to the advent of Castro on January 1, 1959 were likewise excluded under title V of the Act. There were some situations, as already noted in Section II hereof, in which debts of Cuba were incurred prior to January 1, 1959, but the refusal to pay them first occurred after January 1, 1959, which gave rise to a claim against the Castro government. (See the *Claim of Clemens R. Maise,* Claim No. CU–3191, 1967 FCSC Ann. Rep. 48.) In the case of the *Rosary Mission Society, Inc.,* however, all the acts that gave rise to the death claim occurred long before October 1, 1949. Accordingly, there was no valid basis for attributing that claim to any action by the Chinese Communist regime since October 1, 1949, despite the fact that the Chinese guerrillas who killed the missionary may have been Communists.

8. The United States nationality prerequisites were identical with those in the Cuban Claims Program. Thus, if a claimant failed to establish that he was a national of the United States and that his claim was owned by a national of the United States continuously from the date of loss until the date of filing with the Commission, his claim was denied. The same considerations applied to corporations and other legal entities. In adjudicating a claim filed by a religious organization, the Commission was constrained to deny the claim because the record showed that claimant was not a national of the United States within the meaning of title V of the Act. (See the *Claim of the Missionary Sisters of the Immaculate Conception,* Claim No. CN–0361, reported herein.)

9. During the course of administering many claims programs over the years, it has always been Commission policy to give weight to valid appraisals of properties in resolving questions of valuation. The same policy prevailed in the adjudication of claims under title V of the Act. For example, the book values of assets were increased on the basis of competent appraisals in the Cuban Claims Program. (See the *Claim of Ruth Anna Haskew,* Claim No. CU–0849, 1968 FCSC Ann. Rep. 31.)

A claim was presented involving certain property losses resulting from action by the Chinese Communist regime. Claimant submitted appraisals of its properties made by a real estate expert.

However, claimant asserted losses in amounts substantially lower than those appraisals with respect to several items of property for the reason that the appraisals had been tied to a gold standard of $60.00 and $48.00 per ounce of gold, respectively. Claimant reduced its claim for these properties by taking into consideration the fact that an ounce of gold had a value of $35.00. The Commission rejected the appraisals on the ground that they were grossly exaggerated, having been tied to artificial gold values; and the values of the properties in question were determined by resort to more reliable information concerning industrial real property in China. (See the *Claim of General Electric Company,* Claim No. CN–0292, reported herein.) Generally in such situations, the Commission considered the values of comparable properties in China. In the case of properties owned by nonprofit organizations, for example, the Commission concluded that the use of values of comparable properties owned by similar organizations in China was a proper and equitable basis for resolving the issue of valuation under title V of the Act. (See the *Claim of United Board for Christian Higher Education in Asia,* Claim No. CN–0401, reported herein.)

10. The issue of currency devaluation was not encountered in the Cuban Claims Program because the Cuban peso was found to be on a par with the United States dollar. (See the *Claim of Betty G. Boyle,* Claim No. CU–3473, 1968 FCSC Ann. Rep. 81.) However, a claim involving this question was presented in the China Claims Program.

For the purpose of evaluating certain real and personal property that had been taken by the Chinese Communist regime, the Commission concluded that a balance sheet as of December 31, 1949 was the most appropriate and equitable basis in this respect. An examination of that balance sheet showed that it listed as assets, *inter alia,* certain current items, such as cash, accounts receivable, prepaid items and similar intangibles which were expressed originally in local Chinese currency that had become worthless prior to the date of loss. The Commission held that since such items could be measured only in terms of the local currency in which they were expressed, no values for them could be allowed as of the date of loss under title V of the Act. Accordingly, these items were disregarded in determining the value of the assets in the balance sheet. However, items of tangible real and personal property in the balance sheet were found to have real values irrespective of what currency was used to express their values (See the *Claim of Shanghai Power Company,* Claim No. CN–0280, reported herein.)

In previous claims programs, the Commission dealt with questions of currency devaluations frequently. Bank accounts and mortgages expressed in Hungarian pengös, which became worthless by June 30, 1946, were found to have no values in claims under title III of the International Claims Settlement Act of 1949. (See FCSC Dec. & Ann. 235–237 [1968].) Greek currency reforms deflated the drachma to such a degree that debts expressed in that currency were extinguished for all practical purposes. (*Id.* at 294.) Certain Russian rubles became worthless (*id.* at 364), while Bulgarian leva, Rumanian lei and Polish zlotys were severely devaluated, thereby reducing debts expressed in such currency accordingly. (*Id.* at 234, 235, and 537, respectively.)

The *Shanghai Power Company* case serves to illustrate that the Commission did not disregard realities in dealing with assets expressed in foreign currencies. If the assets were such that real values could be found therefor, such values were applied in the determination of claims. A good example is the *Claim of Shanghai Wharf & Warehouse Company, Federal Inc., U.S.A.*, Claim No. CN–0416. Here the Commission considered claimant's balance sheets for the years 1935 through 1947 which recorded the values of the assets in local Chinese currency that remained constant over those years. Beginning with the balance sheet for 1948, the accountants omitted any amounts for the land and improvements because of the unprecedented depreciation of the Chinese currency, and their reluctance to express values in any currency. The Commission disregarded these circumstances and found appropriate values for claimant's assets on the basis of reliable reports.

If, however, the assets in question were expressed in foreign currencies under such conditions that no values for them could be found without conversion of such currencies into United States dollars and such conversion resulted in zero values, the Commission had no alternative but to find no values for such items. The best example of such an item is a debt—bank account, mortgage, account receivable, or the like—which, by virtue of the underlying agreement that gave rise to the debt, was valued in a particular currency that later was either severely devaluated or became entirely worthless. In the former situation, the value of the item would be minimal, while in the latter the value would be zero.

11. Several cases were complicated because they involved many items of property, each one of which had to be evaluated separately. One example is the *Claim of the Society of the Congregation of the Mission of St. Louis, Missouri*, Claim No. CN–0466, reported herein, in which the loss of some 170 buildings and other

structures was claimed.

12. The Commission entertained petitions to reopen claims against the Chinese Communist regime just as it did in the case of claims against the Government of Cuba. Two cases in this area have been selected for publication herein:

Claim of Isabelle O. Alcone, Claim No. CN–0253. Originally, this claim was denied in its entirety for lack of proof. The record failed to establish that claimant owned any interest in the properties in question, it appearing that her father, a nonnational of the United States who died in 1959, after the date of loss, was the owner thereof. Upon appeal claimant submitted competent evidence showing that she, a national of the United States at all pertinent times, owned ½ interests in nine pieces of real property that had been taken by the Chinese Communist regime. An appropriate Certification of Loss was entered in her favor in the Final Decision on her claim.

The newly discovered evidence established that claimant owned ½ interests in two other items of real property taken by the Chinese Communist regime. The Certification of Loss was, therefore, increased accordingly.

Claim of Shvetz Realty Corporation, Claim No. CN–0480. This is also a case which was denied originally for lack of proof. While some evidence was submitted in support of objections to the denial, the proof was found to be insufficient to warrant favorable action, and the denial of the claim was affirmed.

Eight separate items of real property had been claimed. The newly discovered evidence showed that claimant owned one of the said items of real property and that the property had been taken by the Chinese Communist regime. The Commission, therefore, amended the Final Decision on this claim and entered an appropriate Certification of Loss in favor of claimant.

Exhibit 20 includes a statistical report on the China Claims Program; a tabulation of awards indicating: the type of claimant, the number of claims filed by each type, and the amounts allowed, as well as other monetary statistics, with respect to each type of claimant; and a list of the nine largest awards to American business organizations.

EXHIBIT 18

NOTICE TO CLAIMANTS

REGARDING CLAIMS AGAINST THE CHINESE COMMUNIST REGIME

Enclosed are claim forms and instructions for filing claims under Public Law 89-780 (80 Stat. 1365) approved November 6, 1966, which provides for claims against the Chinese Communist regime arising out of the nationalization, expropriation, intervention, or other taking of property of nationals of the United States, and claims for disability or death of nationals of the United States arising out of violations of international law by the Chinese Communist regime.

These forms are being furnished you in response to your request or based upon information contained in the records of the Foreign Claims Settlement Commission and the Department of State which indicate your interest in filing such a claim.

Although the Chinese Claims Program will not be officially inaugurated until such time as appropriations for its administration become available to the Commission, you may register your claim now by completing and returning these forms (FCSC 780) to the Commission. When the program is formally commenced and upon the establishment of a filing period and the publication of regulations regarding its administration, any claim filed on the enclosed forms will then be validated officially as a timely filed claim under the statute. Documentary evidence and other material which have been submitted previously to the Commission or to the Department of State will be consolidated with the claim.

Upon the receipt of completed claim forms by the Commission, such claim forms will be acknowledged, docketed, and assigned a claim number. Any question concerning the claim form or its preparation should be directed to the Foreign Claims Settlement Commission of the United States, 1111 20th Street, NW., Washington, D.C. 20579.

INFORMATION AND INSTRUCTIONS

FOR PREPARING AND FILING CLAIMS AGAINST THE CHINESE COMMUNIST REGIME

GENERAL STATEMENT

READ CAREFULLY BEFORE COMPLETING CLAIM FORM

Public Law 89–780, approved November 6, 1966, amends Title V of the International Claims Settlement Act of 1949 (78 Stat. 1110 (1964), 22 U.S.C. §§ 1643–1643k (1964)), as amended, by authorizing the Foreign Claims Settlement Commission to receive and determine the amount and validity of claims by nationals of the United States against the Chinese Communist regime for (*a*) losses arising since October 1, 1949 as a result of the nationalization, expropriation, intervention, or other taking thereof, or special measures directed against property including any rights or interests therein owned at the time by nationals of the United States, and (*b*) disability or death of nationals of the United States, including pecuniary losses and damages (e.g., loss of support, medical and funeral expenses, or other expenses), resulting from actions taken by, or under the authority of, the Chinese Communist regime since October 1, 1949.

Eligible Claimants.—A claim may not be considered under category (*a*) above, unless the property on which the claim is based was owned wholly

or partially, directly or indirectly, by a national of the United States on the date of loss and unless the claim has been owned continuously thereafter by one or more nationals of the United States until the date of filing with the Commission. With respect to claims under category (*b*) above, Title V provides that in order to receive consideration, such claim must be filed by the disabled person or by his successors in interest, and in case of death of a United States national, claims may be filed by the personal representative of decedent's estate or by a person or persons for pecuniary losses and damages (e.g., loss of support, medical and funeral expenses, or other expenses) on account of such death.

The statute further provides that no claim be considered under this section unless the property upon which it is based was owned by, or in the case of disability or death, the disabled or deceased person was, a national of the United States at the time of loss, injury or death, and if considered, such claim shall be considered only to the extent that it has been held by a national or nationals of the United States continuously until the date of filing with the Commission.

National of United States Defined.—The term "national of the United States" is defined as (1) a natural person who is a citizen of the United States, or (2) a corporation or other legal entity which was organized under the laws of the United States, or of any State, the District of Columbia, or the Commonwealth of Puerto Rico, if 50 percent or more of the outstanding stock or other beneficial interests of such corporation or entity is owned by citizens of the United States.

Stockholders.—Claims of nationals based on ownership interests in corporations or other legal entities—(1) which are nationals of the United States will not be considered (inasmuch as such corporation or other legal entities are eligible claimants in their own right); (2) which are not nationals of the United States may be considered depending on the nature and extent of the interests therein. The amounts of any claim will reflect the proportion that such interests bear to the entire ownership interests in the corporation or other legal entity.

Evidence.—Statements of claimants in support of the claims, even when under oath, must be corroborated by other evidence. Suggestions as to the type and nature of the evidence to corroborate claims are contained on the reverse side of this form. The documents filed as evidence should be numbered consecutively and cited by number immediately after the allegations in each question. Originals of all exhibits and documents should be submitted with the claim, if available. If not available by the final date for filing, submit claim form before such date, and file documents promptly thereafter when obtained. Verified translations into English must accompany all documents in a foreign language. The person making the translation shall sign a certificate similar to the following:

"I hereby certify that I am thoroughly familiar with the ..... language; that I have read the attached document written in said language; and that the attached English translation thereof was made by me and is a true and accurate translation."

(Name)

Signed .....

(Address)

.....

All statements by persons other than the claimant which may be submitted in support of this claim shall include the following:

"The undersigned is aware that this statement is to be submitted to the Foreign Claims Settlement Commission of the United States in connection with the claim of .....(Name of Claimant)..... and that any willfully false statement herein may subject the undersigned to the criminal penalties provided by law in such cases."

Commission Action.—Title V of the Act provides that the Commission certify to each individual who has filed a claim the amount determined by the Commission to be the loss or damage suffered by the claimant which is covered by the Act. The Commission is also required to certify to the Secretary of State its determination with respect to each claim filed.

Assignments.—In case of assignment of a claim, the amount determined to be due on such claim shall not exceed the actual consideration paid by the assignee or assignees. It should be noted that the nationality requirements apply equally to both the assignor and assignee.

Offsets.—The Commission, in reaching a determination with respect to the amount of loss suffered by each claimant, is required to deduct all amounts the claimant has received from any source on account of the same loss or losses.

Attorney Fees.—No remuneration on account of any services rendered on behalf of any claimant in connection with any claim filed with the Commision under this law shall exceed 10 percent on the first $20,000 of the award as determined by the Commission, plus 5 percent on any amount which is in excess of $20,000.

Application of Other Laws.—To the extent they are not inconsistent with the provisions of this Act, subsections (*b*), (*c*), (*d*), (*e*), (*h*), and (*j*) of section 4, subsection (*f*) of section 7, of Title I of the International Claims Settlement Act of 1949, as amended, are applicable to claims authorized under Title V of the Act. (These subsections pertain to procedural matters and are implemented under the Commission's Regulations (45 C.F.R. 500.1 (1964)).

Payment of Claims.—It should be noted that Title V does not provide for the payment of claims of United States nationals against the Chinese Communist regime. On the contrary, existing law specifically provides:

"This title [Title V] shall not be construed as authorizing an appropriation or as any intention to authorize an appropriation for the purpose of paying such claims."

Claim Filing Period.—Within 60 days after the enactment of legislation making appropriations to the Foreign Claims Settlement Commission for the payment of administrative expenses in carrying out its functions under the Act with respect to each respective claims program authorized, the Commission is required to give public notice by publication in the Federal Register of the time within which claims may be filed with the Commission. The time limit may not be more than 18 months after such publication. The Commission is required to complete its affairs not later than 3 years following the final filing date of each respective claims program authorized.

Penalty.—Any claimant, or person filing any claim on behalf of a claimant, who knowingly and willfully conceals a material fact or makes a false statement or representation with respect to any matter before the Commission

shall, under law, forfeit all rights to any award or payment on account of this claim and in addition shall be subject to the criminal penalties provided in Title 18, United States Code, section 1001.

Certain Awards Prohibited.—Section 208 of the Act prohibits an award to or for the benefit of any person who has been convicted of a violation of any provision of chapter 115, Title 18, of the United States Code, or of any other crime involving disloyalty to the United States.

IMPORTANT: All questions included in the statement of claim form must be answered where applicable. The statement of claim must be signed.

INSTRUCTIONS FOR COMPLETING FORM NO. 780

THE ITEMS LISTED BELOW ARE NUMBERED TO CORRESPOND TO THE ITEMS OR QUESTIONS ON THE APPLICATION FORM

Item No. 1.—If claimant is an individual, give name in full (last, first, middle) indicating any other names heretofore used; if claimant is a corporation or other legal entity, give the entity's full name, indicating any other names it has used. If claimant is other than an individual or corporation (e.g., partnership, association, trust, decedent's estate, minor's estate, etc.), state its character and attach a copy of the partnership agreement, articles of association, trust indenture, letters of administration or letters testamentary, together with a certified copy of probated will, etc., whichever is appropriate. If the claimant is asserting a claim in a fiduciary capacity, describe the capacity of the claimant and the names, addresses, and the nature and extent of the interest of all beneficiaries, indicating the nationality of each such beneficiary on a separate sheet.

Item No. 2.—If claimant is an individual, give present residence; if claimant is a corporation, other legal entity, or partnership, etc., give principal place of business.

NOTE: It is important that the Commission be notified immediately of any change in claimant's address, or his status (i.e., death, marriage, etc.). The same holds true as to dissolution, reorganization, or other changes in the status of corporations or entities filing claims or having any interest in a claim.

Item No. 3.—A person may be represented by an attorney at law admitted to practice before the courts of any State of the United States, the District of Columbia, or the Commonwealth of Puerto Rico; however, claimants are not required to be represented by counsel.

Item No. 4.—Give the dollar amount claimed for (*a*) all unimproved land and (*b*) all improved real estate in the first column with the total amount for these two categories in the column marked "Total claimed."

Item No. 5.—Give total dollar amount claimed for all personal property except stock shares, securities and notes.

Item No. 6.—Give total dollar amount claimed for stock share interest in assets of corporations or other entities. Give names of such corporations or entities on a separate sheet if space is not sufficient. State dollar amount claimed for other securities and identify.

Item No. 7.—Give dollar amount claimed for (*a*) debts for goods and services owed by nationalized enterprises or the Chinese Communist regime, and (*b*) mortgages, liens and other charges upon property taken, in the first column with the total of the two in the column marked "Total claimed." However, a claim based upon a debt or other obligation owing by any nationalized United States enterprise shall be considered only when such debt

or obligation is a charge on the property which has been nationalized or taken by the Chinese Communist regime. The term "property" as defined by paragraph (3) of section 502 of the Act, includes debts owed by the Chinese Communist regime or by enterprises which have been nationalized, expropriated, intervened, or taken by the Chinese Communist regime and debts which are a charge on property which has been nationalized, expropriated, intervened, or taken by the Chinese Communist regime.

Item No. 8.—This includes claims by successors in interest to a disabled person who may have died from causes other than those which resulted from wrongful acts of the Chinese Communist regime or authorities. Successors in interest (including widows, widowers, children, parents, brothers and sisters, and other near relatives) may have a claim also for loss of support and for medical, funeral, and other expenses paid by the decedent himself or his estate. Such claims may be in addition to the amount claimed for death or disablement of the American citizen.

Item No. 9.—Show the total of items 4, 5, 6, 7, and 8 as the total amount of the claim in dollars.

Item No. 10.—A native-born American citizen should submit a birth certificate or, if such certificate is not obtainable, a baptismal certificate, a certified copy of the record of baptism, passports, etc. A naturalized person, or a person who acquired U.S. citizenship by marriage or through his parent(s) must complete, in duplicate, and return to this Commission the enclosed "request for Confirmation of Naturalization." Form DSP–13. Do NOT send this form to the Immigration and Naturalization Service.

Item No. 11.—In case of claims by corporations or other legal entities, proof of 50 percent or more ownership by natural persons who were U.S. citizens will, wherever feasible, be established as indicated in Item 10 above. Where stockholders are many in number, the Commission will consider a sworn statement by the secretary or other principal officers of the corporation (or other entity) certifying, for claims based upon direct ownership by juridical persons, as to the percentages of the outstanding capital stock or proprietary interest owned by nationals of the United States at the date of loss and continuously until the date of filing this claim.

Item No. 12.—If the claimant has at any time lost his U.S. nationality, a detailed statement should be attached indicating when and how such nationality was lost, and when, and how it was reacquired, together with all pertinent documentary evidence.

Item No. 13.—Describe in detail the cause of action upon which the loss of property, or the death, injury, or physical disability of an American citizen may be attributable. Indicate the exact location in which such loss, death, or physical injury occurred. A certified copy of any specific decree or order taking or interfering with claimant's ownership of the property should be supplied together with affidavits of persons having personal knowledge of wrongful action with respect to the property, setting out fully the nature and date of such acts and by whom taken. Any other documentary evidence to establish action taken, such as laws, resolutions, requisition order, receipts for property taken, etc., should be included.

Item No. 14.—Describe in detail the property involved, including the exact location of the property at the time of its nationalization or other taking, original cost, subsequent improvements, amount of income derived from the property during the year immediately preceding the loss, value of property at time of loss, including appraisals, insured and tax valuations, extent to

which depreciation has been taken into account in arriving at actual value. Proof of the foregoing may be in the nature of contracts, deeds, vouchers, etc., photographs of property duly authenticated, itemized list of personal property reflecting original cost, depreciation and value at time of loss, and affidavits of persons having personal knowledge of the property, the nature and amount of damages sustained, and who are qualified to express reliable opinions as to the extent of damage.

Item No. 15.—Complete chronology of medical histories should be given in case of personal injuries or disabilities, medical costs, etc. Claims based upon the death of an American citizen should contain a statement of particulars including date and place of birth of deceased, citizenship status at time of death, relationship to claimant, names and addresses of heirs, and the basis on which the amount of the claim is computed.

Item No. 16.—Certified copy of deeds, extracts from property registers, contract of purchase or other evidence of claimant's ownership of property should be furnished. In the event the property was inherited from a decedent who died intestate and no proceedings have been instituted in conection with his estate, give name in full, relationship to the claimant, and submit a certified copy of decedent's death certificate or, if none is available, other documentary proof on which you rely to establish his death and the date thereof. In such event submit, also, claimant's affidavit and the affidavits of two others who are familiar with the facts, reciting the name, age, address, and nationality of all relatives surviving.

Item No. 17.—A corporation or other legal entity filing a claim must submit proof that it is organized under the laws of the United States, or of any State, the District of Columbia, or the Commonwealth of Puerto Rico. Proof may be in the form of a certified copy of charter or articles on incorporation, and of amendments thereto, or a certified copy of partnership agreement, and of amendments thereto. The Commission may also accept, in lieu of the foregoing, a statement attested by an appropriate State, District, or Commonwealth official that such corporation, legal entity, or partnership agreement, is in good standing.

Section 505(a) of the act precludes claims based upon an ownership interest in any entity, such as a stockholder, an association member, etc., if the entity itself qualifies as an eligible claimant. In other words, if the entity comes within the definition of the term "national of the United States," a stockholder or member would not be an eligible claimant for his proportionate share of any compensable loss sustained by the entity.

Where any corporation or other entity does not qualify as an eligible claimant in its own right, section 505(b) of the act permits a stockholder to file a claim for his proportionate share of the loss. This would be a claim based upon the loss of direct proprietary interest in such entity.

Section 505(c) provides for claims based upon an indirect ownership of a proprietary or similar interest in a corporation or other entity which does not qualify as an eligible claimant in its own right. Such a claim would arise, for example, where the claimant owned stock in a foreign corporation which, in turn, owned stock in another foreign corporation which suffered a loss. In such a case a claim may be filed provided that at least 25 percent of the entire ownership interest in the corporation which directly suffered the loss was owned by nationals of the United States at the time of the loss.

Item No. 18.—State value of property at time of loss. If any item entering into computation of the loss, such as original purchase price, cost of improve-

ments, etc., entered into these calculations, the equivalent thereof in terms of U.S. currency should be stated, based upon the rate of exchange in effect at the time the loss occurred.

Item No. 19.—If claimant has recovered through insurance or otherwise for property losses as indicated under subparagraph (*b*) of item 19, proof as to the amount received or the amount expected to be received should be submitted.

Item No. 20.—No special instructions.

Item No. 21.—Chapter 115 of title 18 of the United States Code pertains to such crimes as treason, rebellion or insurrection, seditious conspiracy, advocating overthrow of the U.S. Government, failure to register as an organization which advocates the overthrow or control by force of the Government of the United States, affecting the Armed Forces of the United States during war, recruiting for service against the United States, and enlistments to serve against the United States.

Items Nos. 22 and 23.—No special instructions. Section 7(f) of the International Claims Settlement Act of 1949, as amended, which is incorporated by reference under section 509 is quoted as follows: "Nothing in this title shall be construed as the assumption of any liability by the United States for the payment or satisfaction, in whole or in part, of any claim on behalf of any national of the United States against any foreign government."

FCSC FORM 780

FOR FILING CLAIMS AGAINST THE CHINESE COMMUNIST REGIME

FCSC Form 780

FOREIGN CLAIMS SETTLEMENT COMMISSION OF THE UNITED STATES

WASHINGTON, D.C. 20579

In the Matter of the Claim of Against the Chinese Communist regime under Title V of the International Claims Settlement Act of 1949, as amended by Public Law 89–780, approved November 6, 1966.	Claim No. CN_____ (DO NOT WRITE IN THIS SPACE)

An original and *one* copy of this form and each supporting exhibit must be filed. Each document in a foreign language must be accompanied by a verified English translation. Answers should be typed or printed. Attach additional sheets as needed for any items where space on the form is insufficient. The information and intruction sheet attached hereto, with directions for each numbered item on the claim form, was prepared for the purpose of assisting you in the preparation of your claim. It is suggested that you read it thoroughly before completing this claim form.

IMPORTANT—ALL QUESTIONS CONTAINED IN THIS FORM MUST BE ANSWERED.—If claimant does not know the answer to a question or the question is not applicable to his claim, claimant should write "UNKNOWN" or "INAPPLICABLE" in the proper space.

1. Name of claimant .....
(Last) (First) (Middle)
2. Address of claimant .....
3. Name and address of attorney (if any) .....
.....
.....
.....

SUMMARY OF LOSSES CLAIMED

	Amount in dollars	Total claimed
4. Real estate:		
(a) Land	$.....	
(b) Buildings	.....	$.....
5. Personal property, furniture, equipment, merchandise, etc...		.....
6. Securities (name of corporation entity)	.....	.....
7. Debts:		
(a) Owed by nationalized enterprises or the Chinese Communist regime	$.....	
(b) Charges upon property nationalized or taken	.....	.....
8. Death, injury, or permanent disability		.....
9. TOTAL AMOUNT OF CLAIM		$.....

10. If claimant is an individual, indicate how United States nationality was acquired (check one), and submit supporting documentary evidence.
☐ Birth Date..... Place .....
☐ Naturalization Date..... Place..... Cert. No.....
☐ Marriage Date..... Name of spouse .....
☐ Through parents Date..... Name of parent(s) .....
☐ Reacquired Date.....
(This information must be furnished with respect to a deceased person. If claim is being filed by the heir or survivor of a deceased person, this information must also be furnished with respect to such person.)
11. If claimant is a corporation or other legal entity, complete following:
(a) At all times between ..... and the presentation of this claim, more than 50 percent of the outstanding stock of all classes or of other beneficial interest in the claimant has been owned, directly or indirectly, by persons who were then United States nationals. (Indicate in blank space the date on which such continuous ownership commenced.)
(b) On the date of loss, the claimant had outstanding ..... shares of capital stock of all classes or other evidence of beneficial interest, which were then held by ..... persons.
(Number)
(c) On the date of the presentation of this claim, the claimant had outstanding ..... shares of capital stock of all classes or other evidence of beneficial interest, which were then held by ..... persons.
(Number)
Attach a statement by the secretary or other principal officer of the corporation (or other entity) certifying above.

12. Have there been any changes in nationality status of claimant since the date of loss? ..... (Yes or No). If so, explain .....

.....

NATURE OF CLAIM

13. The claim arose on ..... (Date of loss) at ..... (Location)
..... as a result of the following action:

.....

.....

14. If the claim is based upon real or personal property, please furnish description of property, location at time of loss or damage, and nature of claimant's interests.

.....

15. If this claim is based on losses or injuries other than real or personal property covered under the preceding question, please furnish description of such losses or injury.

.....

16. If this claim is based on loss of property, state when and how such property was acquired:
   (*a*) If purchased, give date of purchase ....., and consideration paid .....
   (*b*) If inherited, give date of inheritance ....., and from whom ..... Value at time inherited ..... What was nationality of the previous owner? .....
   (*c*) Cost of improvements, if any, made since acquisition .....
   (*d*) Do you know of any other person, firm, corporation, or other legal entity now, or since the date of loss who had or who has any interest in the property above described or in the claim hereby asserted? (Indicate the names and present addresses of all such parties.)

.....

.....

17. If the claim is based on the ownership of securities in a corporation, association, or other entity, indicate below the name, address, place of incorporation of such corporation, association, or entity, and the number of shares outstanding.

..... (Name)	..... (Address)	..... (Place of incorporation)	..... (Number shares)
..... (Name)	..... (Address)	..... (Place of incorporation)	..... (Number shares)
..... (Name)	..... (Address)	..... (Place of incorporation)	..... (Number shares)

AMOUNT OF CLAIM

18. This claim is asserted for the total amount of $..... It is computed as follows: .....

.....

19. (*a*) Has claimant filed or asserted any claim with respect to the subject matter of this claim or any related matter with or against any other agency of the United States Government or any other place? ..... (Yes or No). If the answer is "Yes," give date of filing, agency or other place with which claim was filed, amount claimed, disposition of claim, and amount of award, if any .....

.....

(*b*) Apart from this claim, has claimant or any predecessor in interest received, or has he any reason to expect to receive, any benefits, pecuniary or otherwise, on account of the loss resulting from the action for which this claim is filed? (If so, explain.) .....

.....

(*c*) Has a tax deduction ever been asserted by claimant or any other predecessor with respect to losses described in this claim?..... (Yes or No). If answer is "Yes," give year such claim was asserted, amount of loss claimed, whether loss was allowed, and name of person claiming such tax deduction .....

.....

20. Set forth any additional facts pertinent to this claim.

.....

GENERAL

21. Has the claimant or any person for whose benefit any award upon this claim may inure, been convicted of a violation of any provision of Chaptre 115 of Title 18 of the United States Code, or any other crime involving loyalty to the United States? .... (Yes or No). If answer is "Yes," specify .....

22. (In the case of an individual claimant.) The undersigned states that he is the claimant herein; that he has read the foregoing statement of claim and each statement and exhibit attached thereto and knows the contents thereof; that the same is true to his own knowledge, except as to matters therein stated to be alleged on information and belief, and that as to those matters he believes them to be true.

Dated _____, 196___ .....
(Signature or mark)

.....

If by mark, two witnesses:

.....

Name..... Address.....

.....

Name..... Address.....

.....

23. (For use in the case of a corporate or other entity claimant.) The undersigned states that he is the .....(Title or Office)..... of the claimant herein; that he is duly authorized to sign and file this claim on behalf of the claimant; that he has read the foregoing statement of claimant and each statement and exhibit attached thereto and knows the contents thereof; that the same is true to his own knowledge, except as to matters therein stated to be alleged on information and belief, and that as to those matters he believes them to be true.

Dated _____, 196___ .....
(Signature)

SEAL (If any; if none, so state).

EXHIBIT 19

SELECTED DECISIONS

CHINA CLAIMS PROGRAM

IN THE MATTER OF THE CLAIM OF CLARENCE BURTON DAY, ET AL.

Claim No. CN–0030—Decision No. CN–1

When claimants establish a sufficient basis for the unavailability of primary evidence, the Commission may accept and consider secondary and other evidence of probative value.

Sums already received by claimants on account of the same loss must be deducted by the Commission in determining the amount of a claim pursuant to Section 506 of the Act.

Pursuant to the principles of international law interest is a proper part of a loss sustained by claimant whose property has been taken by the Chinese Communist regime.

PROPOSED DECISION*

This claim against the Chinese Communist regime, under Title V of the International Claims Settlement Act of 1949, as amended, for $760.05, is based upon the loss of personal property, consisting of household furnishings and personal effects, in Hangchow, province of Chekiang, China. Claimants, CLARENCE BURTON DAY and ETHELWYN C. DAY, have been nationals of the United States since their births on September 1, 1889 and January 9, 1893 respectively.

Under Title V of the International Claims Settlement Act of 1949 [78 Stat. 1110 (1964) 22 U.S.C. §§ 1643–1643K (1964), as amended by 80 Stat. 1365 (1966)], the Commission is given jurisdiction over claims of nationals of the United States against the Chinese Communist regime. Section 503(a) of the Act provides that the Commission shall receive and determine in accordance with applicable substantive law, including international law, the amount and validity of claims by nationals of the United States against the Chinese Communist regime arising since October 1, 1949 for

> losses resulting from the nationalization, expropriation, intervention or other taking of, or special measures directed against, property including any rights or interests therein owned wholly or partially, directly or indirectly at the time by nationals of the United States.

Section 502(3) of the Act provides:

> The term 'property' means any property, right, or interest including any leasehold interest, and debts owed by the Chinese Communist regime or by enterprises which have been nationalized, expropriated, intervened, or taken by the Chinese Communist regime and debts which are a charge on property which has been nationalized, expropriated, intervened, or taken by the Chinese Communist regime.

Claimants also filed a claim under the War Claims Act of 1948, as amended by Public Law 87–846 (Claim No. W–13368). In that claim, the Commission found that claimants were the joint owners of household furnishings and personal effects which were lost in Hangchow during World War II as a direct consequence of Japanese military operations of war and granted them

* This decision was entered as the Commission's final decision on Oct. 15, 1968.

awards each in the amount of $384.75. That file has been associated with this claim for reference.

The Commission appreciates the fact that there may be instances wherein primary evidence in support of a claim may not be available due to its loss or destruction during ensuing years between the taking of claimants' property and the enactment of title V of the International Claims Settlement Act of 1949, as amended. Also, the Commission notes that due to the political conditions which now exist in Communist China claimants have no access to the primary evidence which is obtainable only in said country. In addition, the Commission takes administrative notice that, in many instances, there was no decree, law or order issued under which the Chinese Communist regime nationalized or otherwise took the property of nationals of the United States. In the absence of said decrees, laws and orders the Commission will examine the specific actions of the Chinese Communist regime which resulted in claimants' loss of their property. Accordingly, when claimants have established a sufficient basis for the unavailability of primary evidence, the Commission may accept and consider secondary evidence.

The evidence of record here does not include any copy of a Chinese Communist decree, law or order and the Commission agrees that such are unobtainable in this case. The record does include the affidavits of Roy S. Lautenschlauger, a member of the faculty of Hangchow University and Hsu Iching, a resident of the Hangchow University campus; written statements from The United Presbyterian Church in the United States of America, claimants' employer; and a list, dated August 14, 1951, comprising the claimed personal property items which had been forwarded to claimants' employer. The Commission deems such submitted evidence as sufficient in this case.

The Commission finds that claimants, while serving as missionaries in China under the auspices of The United Presbyterian Church in the United States of America, were stationed on the campus of Hangchow University, Chekiang, China; that they jointly owned certain personal property consisting of household furnishings and personal effects. The Commission further finds that the said personal property was taken by the Chinese Communist regime on March 5, 1951, the date on which claimant CLARENCE BURTON DAY was forced to evacuate his residence and abandon the personal property therein. Claimant was obligated to use a travel permit granted by the Chinese Communist regime for the express purpose of leaving China and was allowed to take with him only those possessions which he could carry. Claimant ETHELWYN C. DAY had left China in September 1949.

On August 14, 1951, claimants submitted to The United Presbyterian Church in the United States of America a list of their losses of personal property in China valued at $2,502.30. The value was predicated upon figures from receipted bills and notebook records. The Commission finds that the personal property had a value in that amount. The record reflects that claimants received the sum of $1,742.25 from The United Presbyterian Church in the United States of America on account of the same loss which is the subject matter of this claim.

Section 506 of the Act provides as follows:

> "In determining the amount of any claim, the Commission shall deduct all amounts the claimant has received from any source on account of the same loss or losses."

In accordance with the foregoing section of the Act, the sum received by

claimants must be deducted from the amount of the loss sustained by claimants. Accordingly, the Commission finds that claimant CLARENCE BURTON DAY suffered a loss in the amount of $380.03 and that claimant ETHELWYN C. DAY suffered a loss in the amount of $380.02.

The question arises as to whether interest shall be included in losses for the nationalization or other taking of property by the Chinese Communist regime.

In similar claims of nationals of the United States against the Government of Cuba, also decided under title V of the International Claims Settlement Act of 1949, as amended, the Commission held that, pursuant to international law, interest should be included as a part of the certification and that such interest should be at the rate of 6% per annum from the date of loss to the date on which provision is made for the settlement of such claims. (See *Claim of Lisle Corporation*, Claim No. CU-6044.)

After full consideration of this issue, the Commission affirms its holding and concludes that in claims against the Chinese Communist regime under Title V of the International Claims Settlement Act of 1949, as amended, interest shall be included in the certification of losses.

Accordingly, the Commission concludes that the amount of the loss sustained by claimant shall be increased by interest thereon at the rate of 6% per annum from March 5, 1951, the date on which the loss occurred, to the date on which provisions are made for the settlement thereof.

CERTIFICATION OF LOSS

The Commission certifies that CLARENCE BURTON DAY suffered a loss in the amount of Three Hundred Eighty Dollars and Three Cents ($380.03) with interest thereon at 6% per annum from March 5, 1951 to the date of settlement, as a result of the actions of the Chinese Communist regime, within the scope of title V of the International Claims Settlement Act of 1949, as amended, and

The Commission certifies that ETHELWYN C. DAY suffered a loss in the amount of Three Hundred Eighty Dollars and Two Cents ($380.02) with interest thereon at 6% per annum from March 5, 1951 to the date of settlement, as a result of the actions of the Chinese Communist regime, within the scope of title V of the International Claims Settlement Act of 1949, as amended.

Dated at Washington, D.C., September 11, 1968.

IN THE MATTER OF THE CLAIM OF ARTHUR B. COOLE, ET AL.

Claim No. CN-0040—Decision No. CN-2

Loss of control, use and enjoyment of real property as a result of physical occupation by Communist forces constitutes a taking of property by the Chinese Communist regime within the meaning of the Act.

PROPOSED DECISION*

This claim against the Chinese Communist regime, under title V of the International Claims Settlement Act of 1949, as amended, for $1,500.00, is based upon the loss of improved real property at Peitaiho Beach, Province of Hopei, China. Claimants, ARTHUR B. COOLE and ELLA F. COOLE,

* This decision was entered as the Commission's final decision on Oct. 15, 1968.

have been nationals of the United States since their births in 1900 and 1898 respectively.

Under title V of the International Claims Settlement Act of 1949 [78 Stat. 110 (1964) 22 U.S.C. §§ 1643–1643K (1964), as amended by 80 Stat. 1365 (1966)], the Commission is giving jurisdiction over claims of nationals of the United States against the Chinese Communist regime. Section 503(a) of the Act provides that the Commission shall receive and determine in accordance with applicable substantive law, including international law, the amount and validity of claims by nationals of the United States against the Chinese Communist regime arising since October 1, 1949 for

> losses resulting from the nationalization, expropriation, intervention or other taking of, or special measures directed against, property including any rights or interests therein owned wholly or partially, directly or indirectly at the time by national of the United States.

Section 502(3) of the Act provides:

> The term 'property' means any property, right or interest including any leasehold interest, and debts owed by the Chinese Communist regime or by enterprises which have been nationalized, expropriated, intervened, or taken by the Chinese Communist regime and debts which are a charge on property which has been nationalized, expropriated, intervened, or taken by the Chinese Communist regime.

Claimants also filed a claim under the War Claims Act of 1948, as amended by Public Law 87–846 (Claim No. W–13407). In that claim, the Commission found that claimants were the joint owners of household furnishings and personal effects of a summer house at Peitaiho Beach, Province of Hopei, China which were lost during World War II as a direct consequence of Japanese military operations of war and granted them awards each in the amount of $415.00. That file has been associated with this claim for reference.

The Commission appreciates the fact that there may have been instances wherein primary evidence in support of a claim may not be available due to its loss or destruction during ensuing years between the taking of claimants' property and the enactment of title V of the International Claims Settlement Act of 1949, as amended. Also, the Commission notes that due to the political conditions which now exist in Communist China claimants have no access to the primary evidence which is obtainable only in said country. In addition, the Commission takes administrative notice that, in many instances, there was no decree, law or order issued under which the Chinese Communist regime nationalized or otherwise took the property of nationals of the United States. In the absence of said decrees, laws and orders the Commission will examine the specific actions of the Chinese Communist regime which resulted in claimants' loss of their property. Accordingly, when claimants have established a sufficient basis for the unavailability of primary evidence, the Commission may accept and consider secondary evidence.

The evidence of record here does not include any copy of a Chinese Communist decree, law or order and the Commission agrees that such are unobtainable in this case. The record does include the original title deed No. 75, registered at the American Consulate, Tientsin, China in 1935; a statement of the Board of Missions of the Methodist Church, claimants' employer; a statement of Wray H. Congdon, the former owner of the improved realty; original 1935 correspondence of the American Consul at Tientsin; map of

Peitaiho Beach; photographs and a floor plan sketch of the property. The Commission deems such submitted evidence as sufficient in this case.

Based on the entire record the Commission finds that claimants, ARTHUR B. COOLE and ELLA F. COOLE, missionaries in China from 1924 to 1949 under the auspices of the Board of Missions of the Methodist Church, were owners of a summer residence at Peitaiho Beach, Province of Hopei, China; subsequent to the termination of World War II in 1945 claimants were unable to return to Peitaiho Beach because of the presence of Chinese Communist forces in that area; on May 1, 1950 workers of the People's Republic of China occupied the properties at Peitaiho Beach, including claimants' premises, and continued to do so for several years to the exclusion of claimants. The Commission further finds that the occupation of the premises resulting in claimants' loss of control, use and enjoyment of their property constituted a taking of this property by the Chinese Communist regime within the meaning of title V of the Act and the claimant's property was taken on May 1, 1950.

The improved real property consisted of two one-story buildings, a house and servant quarters, on 2.18 mou of land (7176 square feet=1 mou). The buildings were constructed about 1930 and in 1936 claimants added two student rooms to the servant quarters. The buildings had rock foundations with brick walls. The land was surrounded on three sides by a two-foot-high rock wall which designated the boundary lines. One side faced the sea. The house had three bedrooms, kitchen, laundry, store-room, parlor-dining room, courtyard and front porch. The servant quarters were to the rear and contained four rooms including the aforementioned student rooms.

The Commission finds that the improved real property had a value of $4,080.00 at the time of loss and that claimants, ARTHUR B. COOLE and ELLA F. COOLE, each suffered a loss in the amount of $2,040.00

The Commission has decided that in certification of losses on claims determined pursuant to title V of the International Claims Settlement Act of 1949, as amended, interest should be included at the rate of 6% per annum from the date of loss to the date of settlement. (See *Claim of Clarence Burton Day and Ethelwyn C. Day*, Claim No. CN–0030.)

It will be noted that the total amount of loss found herein is in excess of the amount asserted by claimants. However, in determining the amount of loss sustained, the Commission is not bound by any lesser or greater amounts which may be asserted by claimants as the extent thereof. (See *Claim of Eileen M. Smith*, Claim No. CU–3038.)

CERTIFICATION OF LOSS

The Commission certifies that ARTHUR B. COOLE suffered a loss in the amount of Two Thousand Forty Dollars ($2,040.00) with interest therein at 6% per annum from May 1, 1950 to the date of settlement, as a result of the actions of the Chinese Communist regime, within the scope of title V of the International Claims Settlement Act of 1949, as amended, and

The Commission certifies that ELLA F. COOLE suffered a loss in the amount of Two Thousand Forty Dollars ($2,040.00) with interest thereon at 6% per annum from May 1, 1950 to the date of settlement, as a result of the actions of the Chinese Communist regime, within the scope of title V of the International Claims Settlement Act of 1949, as amended.

Dated at Washington, D.C., September 11, 1968.

IN THE MATTER OF THE CLAIM OF CHINA MEDICAL BOARD OF NEW YORK, INC.

Claim No. CN–0415—Decision No. CN–495

When warranted the Commission may take judicial notice of the fact that real property values have increased over the years. In other cases the determination of property values may require appropriate reductions on account of depreciation.

PROPOSED DECISION*

This claim against the Chinese Communist regime, under title V of the International Claims Settlement Act of 1949, as amended, in the amount of $19,127,542.86 plus interest, is based upon the loss of certain real and personal property in Peking, China. Claimant, CHINA MEDICAL BOARD OF NEW YORK, INC., is a nonprofit New York corporation and a national of the United States within the meaning of title V of the Act.

Under title V of the International Claims Settlement Act of 1949 [78 Stat. 1110 (1964), as amended by 80 Stat. 1365 (1966), 22 U.S.C. §§ 1643–1643k, Supp. II (1967)], the Commission is given jurisdiction over claims of nationals of the United States against the Chinese Communist regime. Section 503(a) of the Act provides that the Commission shall receive and determine in accordance with applicable substantive law, including international law, the amount and validity of claims by nationals of the United States against the Chinese Communist regime arising since October 1, 1949 for

> losses resulting from the nationalization, expropriation, intervention or other taking of, or special measures directed against, property including any rights or interests therein owned wholly or partially, directly or indirectly at the time by nationals of the United States.

Section 502(3) of the Act provides:

> The term 'property' means any property, right or interest including any leasehold interest, and debts owed by the Chinese Communist regime or by enterprises which have been nationalized, expropriated, intervened, or taken by the Chinese Communist regime and debts which are a charge on property which has been nationalized, expropriated, intervened, or taken by the Chinese Communist regime.

The record shows that claimant filed a claim under title II of the War Claims Act of 1948, as amended (76 Stat. 1107 (1962)), for losses sustained by its properties in Peking, China during World War II (Claim No. W–8376). In that claim the Commission found that claimant owned and operated all of the real and personal properties held and acquired by the Peking Union Medical College, hereafter referred to as PUMC. That institution operated a School of Medicine, a School of Nursing and a hospital at Peking, China. Claimant was granted an award for the following losses of real and personal properties as a result of military operations during World War II:

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* This decision was entered as the Commission's Final Decision on August 20, 1970.

Buildings and Fixed Equipment	$1,203,403.00
Movable Equipment	460,092.00
Damage to Landscaping and Grounds	2,000.00
Accessories	245,943.00
Radium	1,665.00
Supply Inventory	175,000.00
Total	$2,088,103.00

That claim includes a substantial amount of evidence establishing that claimant owned the various items of real and personal property which were the subject of that war damage claim, and for the most part constitute the subject of the claim against the Chinese Communist regime. In addition, the evidence establishes the acquisition by claimant of other items of property after World War II, and the rehabilitation of the damages resulting from the war, discussed in detail hereafter.

PUMC consisted of an extensive area of land on which the following structures were situated, including appropriate equipment serving the purposes for which the structures were intended:

Auditorium building
Anatomy building
Chemistry building
Physiology and pharmacology building
Private patients' building
Administration building
Surgical ward building
Medical ward building
Pathology building
Out-patient building
Admittance building
Nurses' home
Power house
Animal house
An industrial area including a refrigeration plant, storage space, garages, gas tanks, gas and chemical plants, machine shops, paint and print shops, carpentry shop, greenhouses, animal houses, dog kennels and related structures
Director's residence
Various domitory buildings and residence compounds

In addition to the fixed equipment situated in the structures, such as boilers, generators, sanitation and sewage systems, incinerators, laundries, exhaust fans, refrigeration, network of electric and telephone lines, and related equipment, claimant maintained on the premises of PUMC the following miscellaneous supplies, accessories and equipment:

A variety of glass and porcelain wares
Hardware, such as burners, wooden and metal supports, clamps and related equipment
Scientific apparatus and instruments, such as incubators, ovens, pumps, sterilizers, optical apparatus, heat and other lamps, hydrometers, thermometers, X-ray equipment, dental apparatus, ophthalmological equip-

ment, surgical equipment, surgical instruments and sundry other apparatus and equipment
Radium
Furniture and furnishings for offices and residences

As noted above, claimant received an award in the amount of $2,088,103.00 for war damages sustained by its real and personal properties at PUMC. The record shows that after World War II claimant commenced the rehabilitation and restoration of its facilities at PUMC. In October 1947, a first-year medical class was admitted to the School of Medicine. By May 1948, the first postwar hospital ward of 25 beds was opened. The evidence establishes that as of December 1950, 80% of the war damages had been repaired, including the restoration of facilities and the acquisition of appurtenant personal properties.

Claimant states that its properties at PUMC were taken by the Chinese Communist regime on December 29, 1950. The record includes a copy of an extract from the New York Times of January 1, 1951. (See Exhibit E.) The extract, dated December 31, 1950, recites that certain American companies had been placed under military control "yesterday," and that said action followed an order "seizing missionary, medical, relief and cultural organizations." A copy of the extract from the North China Daily News of January 23, 1951 reports that on January 20, 1951, PUMC was formally taken. (See Exhibit F.) On the basis of the foregoing, and in the absence of evidence to the contrary, the Commission finds that PUMC was taken by the Chinese Communist regime on December 29, 1950. It is concluded that claimant thereby sustained a loss within the meaning of title V of the Act.

The sole remaining issue in the aggregate value of claimant's properties on the date of loss.

The act provides in Section 503(a) that in making determinations with respect to the validity and amount of claims and value of properties, rights, or interests taken, the Commission shall take into account the basis of valuation most appropriate to the property and equitable to the claimant, including but not limited to fair market value, book value, going concern value, or cost of replacement.

The question, in all cases, will be to determine the basis of valuation which, under the particular circumstances, is "most appropriate to the property and equitable to the claimant." This phraseology does not differ from the international legal standard that would normally prevail in the evaluation of nationalized property. It is designed to strengthen that standard by giving specific bases of valuation that the Commission shall consider.

Claimant has computed its claim on the basis of 1950 replacement costs, employing information obtained from the Bureau of Labor Statistics showing factors representing the increased costs of goods and construction from the respective dates of acquisition of the properties to the date of loss. The same theory was applied by claimant to determine the extent to which its properties were not repaired or restored after being damaged during World War II. Thus, claimant concluded that the unrepaired portion of its war damage ($417,620.60 or 20% of $2,088,103.00) should be increased by a factor of 2.15, representing the increase between 1941 and 1950. On that basis, claimant evaluated its unrepaired damaged properties in the amount of $897,884.29.

Accordingly, claimant asserts the following losses:

Land		$ 690,287.27
Buildings and Fixed Equipment	$14,184,300.27	
Less Unrepaired Damages	734,469.34	13,449,830.93
Movable Equipment and Supplies	3,150,839.61	
Less Unrepaired or Unreplaced Items	163,414.95	2,987,424.66
Library		2,000,000.00
Total		$19,127,542.86

In addition to the evidence submitted in support of the war damage claim, the record includes extracts from claimant's books and records; historical reports and full descriptions of the properties; photographs of the properties taken prior to World War II; detailed reports concerning the structures that were erected on the land; a detailed affidavit from the former Director of PUMC concerning the values of the properties herein; a detailed appraisal of the library from a former member of the medical staff of PUMC who had served as Acting Hospital Superintendent, Acting Head of the Department of Medicine, Acting Director, and as a member for 17 years of the Library Committee of PUMC; and affidavits from other employees at PUMC with personal knowledge of the prewar and postwar conditions of the properties. The Commission notes from the evidence of record that immediately prior to World War II the buildings and items of personal property were insured for $6,031,656.45, whereas the insurance in effect on the date of loss was $7,200,000.00.

The Commission has held consistently that the statutory reference to "cost of replacement" means replacement in kind, taking into consideration the age and condition of the properties on the date of loss, and that all of the bases mentioned in Section 503(a) are merely standards for determining the value of property on the date of loss. (See *Claim of M & M Dredging & Construction Co., et al.*, Claim No. CU-0219.) Upon consideration of the entire record, the Commission finds that the valuations most appropriate to the properties herein and equitable to the claimant are those set forth below.

LAND

The record contains copies of original deeds pursuant to which the properties constituing PUMC were acquired from the Rockefeller Foundation. Initially, the land area was approximately 10 acres. (See China Medical Board, Eleventh Annual Report, January 1, 1925–December 31, 1925, Exhibit I.) Subsequently, additional land was acquired so that the total area was approximately 23½ acres. (See detailed affidavit of June 24, 1969 and accompanying schedules from Henry Spencer Houghton, former Director of PUMC, Exhibit J.)

Claimant's books and records disclose that as of June 30, 1941 the book value or cost of the land was $295,838.87. However, $286,801.93 of that amount represented purchases of land made prior to December 31, 1929, and $9,036.94 represented additional acquisitions between 1930 and 1936. In effect, therefore, claimant's books show the cost of the land as of a date at least 21 years prior to December 9, 1950, the date of loss.

The Commission notes that land values in Peking, the capital of China, rose substantially between 1929 and 1950. The negligible amount of war damage to the landscaping and grounds, $2,000.00, was substantially repaired after the war. Upon consideration of the entire record, the Commission finds that claimant's valuation of the land is fair and reasonable. Accordingly, the Commission finds that the value of claimant's land on December 29, 1950 was $690,287.27.

BUILDINGS AND FIXED EQUIPMENT

The evidence includes an historical sketch and full descriptions of the various buildings of PUMC. (See Exhibit G, Reprinted from Addresses and Papers, Dedication Ceremonies and Medical Conference, Peking Union Medical College, September 15–21, 1921.) It appears that the medical school proper was opened in the fall of 1919. Dormitories and other related buildings were constructed in 1922 and in 1926. In September 1921 the new buildings of the Medical College and Hospital were completed. (See Exhibit I.)

The record clearly establishes that prior to December 31, 1929 the aggregate cost of the buildings and fixed equipment therein was $6,004,409.89. It appears that the structures were maintained in excellent operating condition at all times. As a result of the addition of equipment and improvements to the structures, the aggregate book value of the buildings and fixed equipment as of June 30, 1941 was $6,106,006.94. (See Schedule 5 accompanying Exhibit J.)

By the application of increased costs of construction and other cost indexes, claimant has computed the aggregate replacement cost of its buildings and fixed equipment as of the date of loss at $14,184,300.27. From this amount claimant deducted the unrepaired war damages, likewise increased on the basis of the same cost indexes, to arrive at a 1950 net replacement cost of $13,449,803.93, the amount being claimed for the loss of the buildings and fixed equipment.

As noted above, claimant's buildings and fixed equipment were damaged during World War II to the extent of $1,203,403.00. These properties were rehabilitated after the war so that the damages were repaired to the extent of 80% at a cost of $962,722.40. Therefore, the unrepaired damages had a value of $240,680.60.

It appears from the evidence of record that the Japanese used PUMC as a hospital during World War II. A report as of September 22, 1945 recites that "The buildings structurally seem undamaged, but the whole property is filthy . . ." (See Exhibit No. 29 accompanying Claim No. W–8376.) A more comprehensive report made on October 25, 1945 states that "The buildings, thanks to sound construction, are essentially intact, except for Japanese architectural interior 'improvements' to kitchens and plumbing, etc. The plumbing I have had them tear out and restore . . . Power plant equipment and machines. A lot has been taken away . . . and the remainder all need repair . . ." (See Exhibit No. 31 accompanying Claim No. W–8376.)

That the buildings sustained insignificant damages during World War II is also supported by contemporary excerpts from letters accompanying the affidavit of July 1, 1969 from Mary E. Ferguson, former Registrar and Recorder for PUMC. (See attachments to Exhibit K.) Those excerpts disclose that washing, cleaning, removal of debris, painting and minor repairs or replacements were required after the Japanese left the premises of

PUMC. Repairs and/or replacements were also made to the refrigerating and power plants, the plumbing and heating systems, the electrical systems, and new roofing was installed as well as other necessary work. Mary E. Ferguson states that as of December 1950 most of the PUMC plant was in excellent condition.

The Commission notes that no new buildings were erected after the war. The buildings were those that had been built in the early 1920's for the most part. Therefore, the buildings were approximately 25 years of age on the date of loss, although they were maintained in excellent condition. Much of the fixed equipment had been replaced or repaired after the war. It is noted that on the date of loss the buildings, the fixed equipment, as well as all of the movable equipment and supplies on the premises of PUMC were insured for $7,200,000.00.

Upon consideration of the entire record, the Commission finds no valid basis for evaluating the buildings and fixed equipment by applying the increased cost indexes suggested by claimant. Clearly, claimant's buildings and fixed equipment were subject to depreciation. Generally, the Commission has applied the annual rate of 2% as depreciation for structures. However, the record herein discloses that the structures were maintained in excellent condition and that substantial rehabilitation occurred after World War II. The Commission therefore concludes that it would be inequitable to apply any rate of depreciation to the structures. The Commission finds that the valuation most appropriate to the buildings and fixed equipment, and equitable to the claimant is the valuation of said properties as of June 30, 1941, as shown by claimant's books and records, diminished by the extent to which the World War II damages were not repaired. Since the June 30, 1941 value of the buildings and fixed equipment was $6,106,006.94 and the unrepaired damages amounted to $240,680.60, the Commission finds that the aggregate value of the buildings and fixed equipment of PUMC on December 29, 1950, the date of loss, was $5,865,326.34.

Movable Equipment and Supplies

The aggregate amount asserted on account of the loss of claimant's movable equipment and supplies, excluding the library, was $2,987,424.66. Claimant computed that amount by the application of the same cost increase indexes as were employed with respect to the other properties herein, as noted above. This category of properties included such items as scientific apparatus and instruments, and surgical, dental and ophthalmological equipment and instruments, which were subject to obsolescence. Some of the other items in this category were expendable supplies, indicated by claimant to aggregate $250,000.00 as of June 30, 1941, and to have a replacement cost of $537,500.00 on the date of loss. All of the items in this category generally were subject to depreciation. Usually, the Commission has applied the annual rate of 5% as depreciation for such items of property.

On the basis of the entire record, the Commission finds no valid basis for applying the criteria suggested by claimant in determining the values of claimant's movable equipment and supplies, excluding the library, on the date of loss.

Claimant's records disclose that as of June 30, 1941, the book values of the said properties aggregated $1,085,584.14. (See Schedule 5 accompanying Exhibit J.) In connection with claimant's war damage claim (W–8376), the Commission found that those properties were damaged in the aggregate

amount of $882,700.00 representing $460,092.00 for movable equipment, $245,943.00 for accessories, $1,665.00 for radium and $175,000.00 for the inventory of supplies.

The record shows that those war damaged properties were rehabilitated to the extent of 80%, amounting to $706,160.00, leaving the properties unrepaired or unreplaced to the extent of $176,540.00. It appears therefore that out of the prewar aggregate, $1,085,584.14, a portion thereof in the amount of $202,884.14 represents properties that were not affected by the war so as to require rehabilitation.

Upon consideration of the entire record, the Commission concludes that the unaffected properties, having an aggregate value of $202,884.14 as of June 30, 1941, should be depreciated at 5% per year for the 9½ year period ending on the date of loss. Accordingly, the Commission finds that the aggregate value of the said unaffected properties on December 29, 1950 was $106,514.17.

With respect to the rehabilitated properties involving an expenditure of $706,160.00, the record fails to disclose precisely when such rehabilitation to the extent of 80% was completed. It appears, however, that a first-year class in the School of Medicine was admitted in October 1947, and that the first postwar hospital ward of PUMC was opened by May 1948. Rehabilitation continued in 1948, 1949 and 1950. Affidavits from the former Director of PUMC (Exhibit J), and from other former employees of PUMC (Exhibits K and L) bear witness to the fact that by December 1950, 80% of the war damages sustained by the properties had been completed and to that extent the properties were in excellent condition. The record shows that this condition "was due to the policy of systematic replacement of equipment whenever required in order to maintain the highest standards of a modern medical and scientific institution." (See Exhibit J, page 17.)

On the basis of the entire record and in the absence of evidence to the contrary, the Commission concludes that no depreciation should be applied to the properties that had been so rehabilitated. Accordingly, the Commission finds that the repaired or replaced properties had an aggregate value of $706,160.00 on December 29, 1950, the date of loss. Therefore, the aggregate value of claimant's movable equipment and supplies, excluding the library, had a value of $812,674.17 on the date of loss.

Library

The record establishes that claimant maintained an extensive library at PUMC composed of medical textbooks and other related publications appropriate for the school of Medicine, School of Nursing and the Hospital of PUMC. The evidences includes 39 page affidavit, dated June 17, 1969, and supporting material, prepared by Chester North Frazier (Exhibit M). Dr. Frazier, a physician with many years of experience in the United States and abroad, had served in many important capacities at PUMC, including Acting Director of the entire institution, Acting Superintendent of the Hospital, and member of the Library Committee for 17 years, many years of which were in the capacity of Chairman. In such capacities, Dr. Frazier acquired considerable experience in evaluating the library at PUMC.

The record shows that the library sustained no damages during World War II. Among the many volumes in the library were "medical treatises, textbooks, complete sets of the world's leading medical periodicals, current periodicals, bound volumes of research papers written by PUMC personnel,

and the most complete collection in the world of books on Chinese classical medicine, many of them original manuscripts written by Chinese medical scholars during the last centuries." (See Exhibit M, p. 4) Dr. Frazier states that on the date of loss PUMC's library was by far the largest and most comprehensive library in the Far East.

It further appears that during World War II subscriptions to periodicals were continued, collected and stored in the United States. After the war these periodicals were shipped to PUMC; subscriptions were continued; new subscriptions were added; additional books were purchased; and gifts of medical books and periodicals were made to PUMC. During the postwar years, obsolete and duplicate books were disposed of, many of the books were rebound and the indexing and classification of the volumes was brought up to date.

In a detailed appraisal of PUMC's library, Dr. Frazier states that on the date of loss the library had a value of not less than $2,000,000.00. Upon consideration of the entire record, the Commission finds that Dr. Frazier's valuation is fair and reasonable. Accordingly, the Commission finds that on December 29, 1950, the date of loss, claimant's library at PUMC had a value of $2,000,000.00.

Claimant's losses within the meaning of title V of the Act are summarized as follows:

Land	$ 690,287.27
Buildings and Fixed Equipment	5,865,326.34
Movable Equipment and Supplies	812,674.17
Library	2,000,000.00
Total:	$9,368,287.78

The Commission has decided that in certification of losses on claims determined pursuant to title V of the International Claims Settlement Act 1949, as amended, interest should be included at the rate of 6% per annum from the date of loss to the date of settlement (see *Claim of Clarence Burton Day and Ethelwyn C. Day*, Claim No. CN–0030, Decision No. CN–1); and in the instant claim it is so ordered.

Certification of Loss

The Commission certifies that the CHINA MEDICAL BOARD of NEW YORK, INC. suffered a loss in the amount of Nine Million Three Hundred Sixty-Eight Thousand Two Hundred Eighty-Seven Dollars and Seventy-Eight Cents ($9,368,287.78) with interest thereon at 6% per annum from December 29, 1950 to the date of settlement, as a result of the actions of the Chinese Communist regime within the scope of Title V of the International Claims Settlement Act of 1949, as amended.

Dated at Washington, D.C., and entered as the Proposed Decision of the Commission, June 30, 1970.

IN THE MATTER OF THE CLAIM OF FRANKLIN RUSSELL FETTE

Claim No. CN-0336—Decision No. CN-426

In certain areas of China where the recording of title to real property in the name of an American was prohibited, the execution of a mortgage on the property in favor of an American may evidence his beneficial ownership of the property.

PROPOSED DECISION*

This claim against the Chinese Communist regime, under title V of the International Claims Settlement Act of 1949, as amended, in the amount of $64,092.00, is based upon the loss of certain real and personal property in Peiping, China. Claimant, FRANKLIN RUSSELL FETTE, has been a national of the United States since birth.

Under title V of the International Claims Settlement Act of 1949 [78 Stat. 1110 (1964), as amended by 80 Stat. 1365 (1966), 22 U.S.C. §§ 1643–1643k, Supp. II (1967)], the Commission is given jurisdiction over claims of nationals of the United States against the Chinese Communist regime. Section 503(a) of the Act provides that the Commission shall receive and determine in accordance with substantive law, including international law, the amount and validity of claims by nationals of the United States against the Chinese Communist regime arising since October, 1949 for

> losses resulting from the nationalization, expropriation, intervention or other taking of, or special measures directed against, property including any rights or interests therein owned wholly or partially, directly or indirectly at the time by nationals of the United States.

Section 502(3) of the Act provides:

> The term 'property' means any property, right or interest including any leasehold interest, and debts owed by the Chinese Communist regime or by enterprises which have been nationalized, expropriated, intervened, or taken by the Chinese Communist regime and debts which are a charge on property which has been nationalized, expropriated, intervened, or taken by the Chinese Communist regime.

The record shows that claimant owned a controlling stock interest in the Fette Rug Company, Federal Inc., U.S.A., a corporation organized under the China Trade Act of 1922. That corporation had been engaged in the manufacture and sale of rugs with offices at 8 Tung Tan Erh T'iao Hutung, Peiping, China, now known as Peking. Claimant and his parents, native born nationals of the United States who were also stockholders of that corporation, lived at 33 Hsi Tsung Pu Hutung. Upon dissolution of the corporation on April 2, 1948, the corporation's properties in China were transferred to claimant. Other items of property claimed herein were acquired by claimant either by gift from his parents or by inheritance upon their death in 1956 and 1959, respectively, claimant being their sole surviving heir.

The Commission appreciates the fact that there may be instances wherein primary evidence in support of a claim may not be available due to its loss or destruction during ensuing years between the taking of claimants' prop-

* This decision was entered as the Commission's Final Decision on July 10, 1970.

erty and the enactment of title V of the International Claims Settlement Act of 1949, as amended. Also, the Commission notes that due to the political conditions which now exist in Communist China claimants have no access to the primary evidence which is obtainable only in said country. In addition, the Commission takes administrative notice that, in many instances, there was no decree, law or order issued under which the Chinese Communist regime nationalized or otherwise took the property of nationals of the United States. In the absence of said decrees, laws and orders, the Commission will examine the specific actions of the Chinese Communist regime which resulted in claimants' loss of their property. Accordingly, when claimants have established a sufficient basis for the unavailability of primary evidence, the Commission may accept and consider secondary evidence.

The evidence includes letters from claimant and his father to the Department of State, dated in 1951 and 1946, respectively, concerning the property in question; copies of contemporary correspondence from China; copies of mortgages covering the real properties; and photographs of some of the buildings. The record also contains detailed lists of personal property; a copy of price list of items of Chinese furniture, dated July 22, 1941, issued by the dissolved corporation; and claimant's statements to the Commission concerning his claim.

On the basis of the entire record, the Commission finds that claimant owned certain items of real and personal property in Peiping, China, discussed in detail below. Claimant states that his properties were taken by the Chinese Communist regime in 1949 after gaining control of China. The record includes a copy of a letter, dated April 14, 1951, from the claimant's agent in China in which he relates that he repossessed claimant's real properties after World War II as well as nearly all of claimant's furniture and other household effects in Peiping, China. The agent adds that "due to the quick advance of the communists," he had to flee to Formosa. Based upon the foregoing and in the absence of evidence to the contrary, the Commission finds that claimant's properties in Peiping, China were taken by the Chinese Communist regime on October 1, 1949. It is concluded that claimant thereby sustained a loss within the meaning of title V of the Act.

Claimant asserts the following losses in Peiping, China:

Improved real property at 8 Tung Tan Erh T'iao Hutung	$28,320.00
Improved property at 1 and 2 Tsai Yuan Tze	29,850.00
Personal property at 8 Tung Tan Erh T'iao Hutung	1,170.00
Personal property at 33 Hsi Tsung Pu Hutung	4,752.00
Total	$64,092.00

IMPROVED REAL PROPERTY

1. *8 Tung Tan Erh T'iao Hutung*

The record shows that in 1939 the Fette Rug Company, Federal Inc. U.S.A. purchased certain improved real property at 8 Tung Tan Erh T'iao Hutung, Peiping, China. Due to circumstances then existing in that area of China, title to the property could not be recorded in the name of an American national. Pursuant to a practice which therefore developed, title to the said property was recorded in the name of the claimant's Chinese agent, and a mortgage on the property was executed by said agent in favor of the corporation for the full value of the property.

On the basis of the entire record, the Commission finds that the corporation became the beneficial non-record owner of the property with the bare title residing in claimant's Chinese agent. Upon the dissolution of the corporation in 1948, claimant became the beneficial owner of the property.

The mortgage dated August 3, 1939, indicates that the value of the improved real property was $14,160.00. Correspondence from the Chinese agent, dated September 10, 1948, discloses that the actual value of the property was twice the amount of the mortgage. Based upon the foregoing, the Commission finds that the value of the property on October 1, 1949 was $28,320.00.

2. *1 and 2 Tsai Yuan Tze*

The record shows that in 1937 claimant's father purchased certain improved real property at 1 and 2 Tsai Yuan Tze, Peiping, China. The circumstances then were similar to those existing in 1939 with respect to item 1 above. Accordingly, title to the property was recorded in the name of the same Chinese agent and a mortgage was executed by said agent in favor of claimant's father.

On August 3, 1939, the mortgage was transferred to claimant by his father, and simultaneously claimant entered into an agreement with the Chinese agent covering the exchange rate to be applied to the Chinese currency in which the mortgage was expressed.

Based upon the entire record, the Commission finds that claimant's father was the beneficial owner of the property, and that claimant acquired his interest on August 3, 1939.

The mortgage, dated January 5, 1937, indicates that the value of the property was 50,000.00 Chinese dollars. Pursuant to the agreement with the Chinese agent, dated August 3, 1939, the exchange rate was fixed at $0.2985 per Chinese dollar, approximating the exchange rate prevailing on the date of the mortgage. As indicated above, the Chinese agent reported in his letter of September 10, 1948 that the actual value of the property was twice the amount of the mortgage. Applying the said exchange rate, the Commission finds that the value of the property on October 1, 1949 was $29,850.00.

PERSONAL PROPERTY

Claimant has submitted detailed listings of the personal property maintained at 8 Tung Tan Erh T'iao Hutung and at 33 Hsi Tsung Pu Hutung, Peiping, China. The amounts thereof aggregate $1,170.00 and $4,752.00, respectively, representing personal property at the office of the dissolved corporation and at the home of the claimant.

On the basis of the entire record, the Commission finds that claimant owned said personal property. Upon comparison of the values set forth by claimant with the 1941 price list of similar items of personal property issued by the corporation, the Commission finds that claimant's valuations are fair and reasonable. The Commission therefore finds that the aggregate values of the personal property at 8 Tung Tan Erh T'iao Hutung and 33 Hsi Tsung Pu Hutung, Peiping, China, were $1,170.00 and $4,752.00 respectively.

Claimant's losses within the meaning of title V of the Act are summarized as follows:

Item of Property	*Amount*
Real property at 8 Tung Tan Erh T'iao Hutung	$28,320.00
Personal property at above address	1,170.00
Real property at 1 and 2 Tsai Yuan Tze	29,850.00
Personal property at 33 Hsi Tsung Pu Hutung	4,752.00
Total	$64,092.00

The Commission has decided that in certification of losses on claims determined pursuant to title V of the International Claims Settlement Act of 1949, as amended, interest should be included at the rate of 6% per annum from the date of loss to the date of settlement (see *Claim of Clarence Burton Day and Ethelwyn C. Day*, Claim No. CN-0030, Decision No. CN-1); and in the instant claim it is so ordered.

CERTIFICATION OF LOSS

The Commission certifies that FRANKLIN RUSSELL FETTE suffered a loss in the amount of Sixty-Four Thousand Ninety-Two Dollars ($64,092.00) with interest thereon at 6% per annum from October 1, 1949 to the date of settlement, as a result of the actions of the Chinese Communist regime, within the scope of title V of the International Claims Settlement Act of 1949, as amended.

Dated at Washington, D.C. and entered as the Proposed Decision of the Commission, May 27, 1970.

IN THE MATTER OF THE CLAIM OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION

Claim No. CN-0340—Decision No. CN-489

The transfer of funds from the U.S. to China in consideration of allowing claimant's official and family to leave China after being detained for 5 years was not a voluntary transaction, but constituted a violation of international law and a taking of American property by the Chinese Communist regime.

PROPOSED DECISION*

This claim against the Chinese Communist regime, under title V of the International Claims Settlement Act of 1949, as amended, in the amount of $122,034.22, is based upon the loss sustained by the American Express Company as the result of the liquidation of its branch office in Shanghai, China. Claimant, AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION is the successor in interest of the American Express Company.

Under title V of the International Claims Settlement Act of 1949 [78 Stat. 1110 (1964), as amended by 80 Stat. 1365 (1966), 22 U.S.C. §§ 1643-1643k, Supp. II (1967)], the Commission is given jurisdiction over claims of nationals of the United States against the Chinese Communist regime. Section 503(a) of the Act provides that the Commission shall receive and determine in accordance with substantive law, including international law, the amount and validity of claims by nationals of the United States against the Chinese

* This decision was entered as the Commission's Final Decision on August 20, 1970.

Communist regime arising since October, 1949 for

> losses resulting from the nationalization, expropriation, intervention or other taking of, or special measures directed against, property including any rights or interests therein owned wholly or partially, directly or indirectly at the time by nationals of the United States.

Section 502(3) of the Act provides:

> The term 'property' means any property, right or interest including any leasehold interest, and debts owed by the Chinese Communist regime or by enterprises which have been nationalized, expropriated, intervened, or taken by the Chinese Communist regime and debts which are a charge on property which has been nationalized, expropriated, intervened, or taken by the Chinese Communist regime.

Section 502(1)(B) of the Act defines the term "national of the United States" as a corporation or other legal entity which is organized under the laws of the United States, or of any State, the District of Columbia, or the Commonwealth of Puerto Rico, if natural persons who are citizens of the United States own, directly or indirectly, 50 per centum or more of the outstanding capital stock or other beneficial interest of such corporation or entity.

Michael J. Fennimore, an authorized officer of claimant corporation certified that at all times between October 1, 1949 and the presentation of the claim more than 50 per centum of the outstanding capital stock of the American Express Company, a corporation organized under the laws of the State of New York, and of the AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION, a Connecticut corporation, was owned by nationals of the United States. Mr. Fennimore further stated that claimant corporation was known until February 15, 1968 as the American Express Company when its assets and liabilities were transferred to the AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION.

The Commission, therefore, finds that claimant and its predecessor, the American Express Company, have been nationals of the United States at all times pertinent to this claim within the meaning of Section 502(1)(B) of the Act.

Claimant states that the American Express Company had a branch office in Shanghai which was closed on September 10, 1949. At the time of closing of the office, certain deposits made prior to World War II in the old national Chinese currency remained unsettled, but since this currency had become completely worthless, no payment was made. The Chinese Communist authorities, however, requested that payments should, nevertheless be made on the basis of the arbitrary exchange rate of 20 prewar Chinese Yuan for $1.00. Initially, the American Express Company declined to pay these deposits. In retaliation, the Communist authorities refused to grant an exit visa to William I. Orchard, former Assistant Manager in charge of the Shanghai office. Mr. Orchard and his family were thus prevented from leaving Shanghai and China for five years. On October 20, 1953, the United States Secretary of the Treasury issued a license for the transmittal of an amount of $66,624 for the account of the Shanghai Commercial and Trust Company, providing that before payment were made, the holder of the account would be advised in writing by the American Express Company that Mr. Orchard and his family had arrived safely in Hong Kong. Mr. Orchard and his family arrived in

Hong Kong on October 18, 1954 and the amount of $66,624.00 was paid over to the Shanghai bank.

The circumstances surrounding this transfer of funds from the United States clearly indicate that this transaction was made under duress and that the demand and threat constituted a violation of accepted principles of international law. It is concluded, therefore, that this transaction gave rise to a taking of American-owned property by the Chinese Communist regime within the meaning of title V of the Act.

Claimant further states that $55,410.22 were paid to William I. Orchard and to other employees of the branch office in Shanghai for salaries and severance claims from October 1, 1949 through October 1954. The sums paid to William I. Orchard amounted to $44,404.90, while $11,005.32 were paid to other employees.

The evidence submitted in support of this portion of the claim indicates that the salaries in Shanghai were paid in local Chinese currency with the exception of an amount of $5,836.72 paid to Mr. Orchard after his arrival in Hong Kong. The payments to the employees being the direct result of a voluntary liquidation of a business enterprise were made pursuant to local law and are not attributable to Chinese Communist action. With respect to the salary of the Assistant Manager, the following observation is appropriate: The Assistant Manager and his family were compelled to stay in Shanghai until 1954 and, while they were staying there, Mr. Orchard drew a salary. The payment of this salary and of the severance pay did not constitute a loss resulting from the nationalization, expropriation, or other taking of claimant's property in China inasmuch as no funds were subject to measures of nationalization or taking by the Chinese Communist regime.

Accordingly, the portion of the claim for salary, severance pay and payment of expenses is disallowed.

Consequently, claimant suffered a loss within the meaning of title V of the Act in the aggregate amount of $66,624.00.

The Commission has decided that in certification of losses on claims determined pursuant to title V of the International Claims Settlement Act of 1949, as amended, interest should be included at the rate of 6% per annum from the date of loss to the date of settlement (see *Claim of Clarence Burton Day and Ethelwyn C. Day*, Claim No. CN–0030, Decision No. CN–1); and in the instant claim it is so ordered.

CERTIFICATION OF LOSS

The Commission certifies that AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION suffered a loss in the amount of Sixty-six Thousand Six Hundred Twenty-four Dollars ($66,624.00) with interest thereon at 6% per annum from October 18, 1954 to the date of settlement, as a result of the actions of the Chinese Communist regime, within the scope of title V of the International Claims Settlement Act of 1949, as amended.

Dated at Washington, D.C. and entered as the Proposed Decision of the Commission, June 30, 1970.

IN THE MATTER OF THE CLAIM OF IRENE McGLASHEN

Claim No. CN-0577—Decision No. CN-522

Untimely claim may be considered on its merits of it does not interfere with the orderly disposition of the timely filed claims.

PROPOSED DECISION*

This claim for $125,000.00, against the Chinese Communist regime, under title V of the International Claims Settlement Act of 1949, as amended, is based upon the loss of improved real property with certain personal property therein at Peitaiho, Province of Hopei, China.

Claimant, IRENE McGLASHEN, has been a national of the United States since her naturalization on September 3, 1946.

Under title V of the International Claims Settlement Act of 1949 [78 Stat. 1110 (1964), as amended by 80 Stat. 1365 (1966), 22 U.S.C. §§ 1643–1643k, Supp. II (1967)], the Commission is given jurisdiction over claims of nationals of the United States against the Chinese Communist regime. Section 503(a) of the Act provides that the Commission shall receive and determine in accordance with applicable substantive law, including international law, the amount and validity of claims by nationals of the United States against the Chinese Communist regime arising since October 1, 1949 for

> losses resulting from the nationalization, expropriation, intervention or other taking of, or special measures directed against, property including any rights or interests therein owned wholly or partially, directly or indirectly at the time by nationals of the United States.

Section 502(3) of the Act provides:

> The term 'property' means any property, right or interest including any leasehold interest, and debts owed by the Chinese Communist regime or by enterprises which have been nationalized, expropriated, intervened, or taken by the Chinese Communist regime and debts which are a charge on property which has been nationalized, expropriated, intervened, or taken by the Chinese Communist regime.

The Commission's Regulations provide that claims under title V of the Act (China claims) shall be filed with the Commission on or before July 6, 1969; and further that any initial written indication of an intention to file a claim received be considered as a timely filing of a claim if formalized within 30 days after the expiration of the filing period.

No claim was filed with this Commission by or on behalf of claimant within the allowable period for timely filing of such claims, nor does the Commission have any record of any communication concerning this asserted loss.

The Commission has held, however, that it will accept for consideration on their merits under title V of the Act filed after the deadline so long as the consideration thereof does not impede the determination of those claims which were timely filed. (See *Claim of John Korenda,* Claim No. CU-8255.)

The record consists of original deeds, receipts, pre and post World War II

* This decision was entered as the Commission's Final Decision on Nov. 19, 1971.

correspondence, affidavits and photographs. Based on the entire record the Commission finds that claimant, IRENE McGLASHEN, was the owner of improved real property with certain household furniture and effects therein at Peitaiho Beach, Hopei, China. The Commission had previously determined that owners of property in Peitaiho Beach had their property taken by the Chinese Communist regime on May 1, 1950. (See *Claim of Arthur B. Coole and Ella F. Coole,* reported herein.)

The Act provides in Section 503(a) that in making determinations with respect to the validity and amount of claims and value of properties, rights, or interests taken, the Commission shall take into account the basis of valuation most appropriate to the property and equitable to the claimant, including but not limited to fair market value, book value, going concern value, or cost of replacement.

The question, in all cases, will be to determine the basis of valuation which, under the particular circumstances, is "most appropriate to the property and equitable to the claimant." This phraseology does not differ from the international legal standard that would normally prevail in the evaluation of nationalized property. It is designed to strengthen that standard by giving specific bases of valuation that the Commission shall consider.

In determining the value of the subject property, the Commission has considered the description provided by claimant and in the deeds, the affidavits, the location of the property, photographs, and the value of other properties at Peitaiho Beach. The Commission finds that at the time of loss the real property, including the improvements, with the depreciation factor considered, and the 5.7 mous of land, with gardening and landscaping considered, had a value of $85,000.00, and the personal property, including furniture, fixtures, and household and personal effects, a value of $5,000.00. The Commission concludes that claimant sustained a loss, within the meaning of title V of the Act, in the total amount of $90,000.00.

The Commission has decided that in certification of losses on claims determined pursuant to title V of the International Claims Settlement Act of 1949, as amended, interest should be included at the rate of 6% per annum from the date of loss to the date of settlement (see *Claim of Clarence Burton Day and Ethelwyn C. Day,* Claim No. CN–0030, Decision No. CN–1); and in the instant case it is so ordered.

CERTIFICATION OF LOSS

The Commission certifies that IRENE McGASHEN sustained a loss, as a result of actions of the Chinese Communist regime, within the scope of title V of the International Claims Settlement Act of 1949, as amended, in the amount of Ninety Thousand Dollars ($90,000.00) with interest thereon at 6% per annum from May 1, 1950 to the date of settlement.

Dated at Washington, D.C., October 20, 1971.

IN THE MATTER OF THE CLAIM OF ROSARY MISSION SOCIETY, INC.

Claim No. CN–0475—Decision No. CN–467

Claims against the Chinese Communist regime that arose prior to October 1, 1949 are outside the purview of Title V of the Act.

PROPOSED DECISION*

This claim for at least $234,763.00, against the Chinese Communist regime, under title V of the International Claims Settlement Act of 1949, as amended, was presented by ROSARY MISSION SOCIETY, INC. for the loss of claimant's real and personal property located at Kienow, Kienyang, Chungan, Sungai, Foochow and Pucheng, all in the province of Fukien, China and for the death of one of claimant's missionaries.

Under title V of the International Claims Settlement Act of 1949 [78 Stat. 1110 (1964), as amended by 80 Stat. 1365 (1966), 22 U.S.C. §§ 643–643k, Supp. II (1967)], the Commission is given jurisdiction over claims of nationals of the United States against the Chinese Communist regime. Section 503(a) of the Act provides that the Commission shall receive and determine in accordance with applicable substantive law, including international law, the amount and validity of claims by nationals of the United States against the Chinese Communist regime arising since October 1, 1949 for

> losses resulting from the nationalization, expropriation, intervention or other taking of, or special measures directed against, property including any rights or interests therein owned wholly or partially, directly or indirectly at the time by nationals of the United States.
> (b) . . . disability or death resulting from actions taken by or under the authority of the Chinese Communist regime.

Section 502(3) of the Act provides:

> The term 'property' means any property, right, or interest including any leasehold interest, and debts owed by the Chinese Communist regime or by enterprises which have been nationalized, expropriated, intervened, or taken by the Chinese Communist regime and debts which are a charge on property which has been nationalized, expropriated, intervened, or taken by the Chinese Communist regime.

Section 502(1)(B) of the Act defines the term "national of the United States" as a corporation or other legal entity which is organized under the laws of the United States, or of any State, the District of Columbia, or the Commonwealth of Puerto Rico, if natural persons who are citizens of the United States own, directly or indirectly, 50 per centum or more of the outstanding capital stock or other beneficial interest in such corporation or entity.

Claimant, ROSARY MISSION SOCIETY, INC., a nonprofit corporation, was incorporated under the laws of the State of New York in 1930. An officer of claimant corporation has certified that at all times pertinent to this claim more than 50 per centum of its members have been nationals of the United States. The Commission, therefore, holds that claimant qualifies as a national of the United States within the meaning of Section 502(1)(B) of the Act.

The Commission appreciates the fact that there may be instances wherein

* This decision was entered as the Commission's Final Decision on July 23, 1970.

primary evidence in support of a claim may not be available due to its loss or destruction during ensuing years between the taking of claimants' property and the enactment of title V of the International Claims Settlement Act of 1949, as amended. Also, the Commission notes that due to the political conditions which now exist in Communist China, claimants have no access to the primary evidence which is obtainable only in said country. In addition, the Commission takes administrative notice that, in many instances, there was no decree, law or order issued under which the Chinese Communist regime nationalized or otherwise took the property of nationals of the United States. In the absence of said decrees, laws and orders, the Commission will examine the specific actions of the Chinese Communist regime which resulted in claimants' loss of their property. Accordingly, when claimants have established a sufficient basis for the unavailability of primary evidence, the Commission may accept and consider secondary evidence.

The evidence of record here does not disclose a specific Chinese Communist decree, law or order which shows the nationalization, confiscation, or other taking of claimant's property in Communist China and the Commission agrees that such evidence may be unobtainable in this case.

The record does include copies of a listing of the original deeds, a description of the type of improvements, affidavits, statements and publications of members of the claimant organization and photographs of the improvements.

Based on the entire record the Commission finds that claimant was engaged in operating churches, rectories, convents, schools and dispensaries at Kienow, Kienyang, Chungan, Sungki, Foochow and Pucheng, all in the Province of Fukien, China and owned certain land, buildings and personal property in the furtherance of said work. The Commission further finds that, in the absence of evidence to the contrary, claimant lost all use, control and enjoyment of its said properties on October 1, 1949, the date on which the Chinese Communist regime was proclaimed and the initial date of the period encompassed under title V.

The Commission, in determining the value of the property, has considered the affidavit of Rev. Paul B. Fu, O.P. and the statements of Rev. Richard E. Vahey, O.P., the Secretary-Treasurer of the claimant corporation, photographs, and the values of comparable mission properties in other claims of nonprofit organizations in the China program. It finds that at the time of loss the real property with certain personal property necessary to the function of the improvements had a total value of $234,763.00.

A part of this claim is based upon a loss due to the death of one of claimant's missionaries. Claimant's records state the Rev. James L. Devine, O.P. had been captured on May 15, 1947 by a band of Chinese Communist guerrillas and that he was killed by them on May 23, 1947.

From the foregoing it is clear that said death happened at a time prior to October 1, 1949, the initial date of coverage for losses arising under 503(b) of title V of the Act. Accordingly, the Commission is constrained to deny this part of the claim.

The Commission concludes that claimant suffered a loss, within the meaning of title V, in the amount of $234,763.00.

The Commission has decided that in certification of losses on claims determined pursuant to title V of the International Claims Settlement Act of 1949, as amended, interest should be included at the rate of 6% per annum from the date of loss to the date of settlement (see *Claim of Clarence*

Burton Day and Ethelwyn C. Day, Claim No. CN–0030, Decision No. CN–1); and in the instant claim it is so ordered.

CERTIFICATION OF LOSS

The Commission certifies that the ROSARY MISSION SOCIETY, INC. suffered a loss in the amount of Two Hundred Thirty-Four Thousand Seven Hundred Sixty-Three Dollars ($234,763.00) with interest thereon at 6% per annum from October 1, 1949 to the date of settlement, as a result of the actions of the Chinese Communist regime, within the scope of title V of the International Claims Settlement Act of 1949, as amended.

Dated at Washington, D.C., June 17, 1970.

IN THE MATTER OF THE CLAIM OF MISSIONARY SISTERS OF THE IMMACULATE CONCEPTION

Claim No. CN–0361—Decision No. CN–390

Failure to establish that claimant qualifies as a national of the United States justifies a denial of the claim under Title V of the Act.

PROPOSED DECISION*

This claim for $326,627.29 against the Chinese Communist regime, under title V of the International Claims Settlement Act of 1949, as amended, is based upon the asserted loss of improved real property and certain personal property therein in the Provinces of Shantung and Hopeh, China. The improvements consist of orphanages, a middle school, and a hospital.

Under title V of the International Claims Settlement Act of 1949 [78 Stat. 1110 (1964), as amended by 80 Stat. 1365 (1966), 22 U.S.C. §§ 643–643k, Supp. II (1967)], the Commission is given jurisdiction over claims of nationals of the United States against the Chinese Communist regime. Section 503(a) of the Act provides that the Commission shall receive and determine in accordance with applicable substantive law, including international law, the amount and validity of claims by nationals of the United States against the Chinese Communist regime arising since October 1, 1949 for

> losses resulting from the nationalization, expropriation, intervention or other taking of, or special measures directed against, property including any rights or interests therein owned wholly or partially, directly or indirectly at the time by nationals of the United States.

Section 504 of the Act provides, as to ownership of claims, that

> (a) A claim shall not be considered under section 503(a) of this title unless the property on which the claim was based was owned wholly or partially, directly or indirectly by a national of the United States on the date of the loss and if considered shall be considered only to the extent the claim has been held by one or more nationals of the United States continuously thereafter until the date of filing with the Commission.

Section 502(1) of the Act defines the term "national of the United States" as ". . . (B) a corporation or other legal entity which is organized under the

* This decision was entered as the Commission's Final Decision on June 8, 1970.

laws of the United States, or of any State, the District of Columbia, or the Commonwealth of Puerto Rico, if natural persons who are citizens of the United States own, directly or indirectly, 50 per centum or more of the outstanding capital stock or other beneficial interest of such corporation or entity . . ."

Claimant asserts that it is the owner of the properties which constitute this claim.

Claimant, MISSIONARY SISTERS OF THE IMMACULATE CONCEPTION, was incorporated in the State of New Jersey in 1898. The President of claimant has stated that the asserted time of loss (1950) approximately 21% of its members were nationals of the united States and at the time of filing this claim (1969) approximately 22% of its members were nationals of the United States.

From the foregoing, it is clear that the property upon which this claim is based was not owned by a corporation which qualifies as a national of the United States in that 50 per centum or more of its members were not nationals of the United States at the time of loss and continuously thereafter until the date of filing the claim, as is required under the provisions of section 502(1)(B) of title V of the Act.

The Commission finds that this is not a claim of a national of the United States, and, accordingly, it is constrained to deny it.

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

Dated at Washington, D.C., May 6, 1970

IN THE MATTER OF THE CLAIM OF GENERAL ELECTRIC COMPANY

Claim No. CN-0292—Decision No. CN-475

For the purpose of Title V of the Act, appraisals of properties tied to artificial gold values may be disregarded since they do not represent the true values of the properties.

PROPOSED DECISION*

This claim against the Chinese Communist regime under title V of the International Claims Settlement Act of 1949, as amended, in the amount of $4,584,359.00, is based upon the asserted loss of real and personal property sustained by claimant's predecessors in interest in various cities in China.

Under title V of the International Claims Settlement Act of 1949 [78 Stat. 1110 (1964), as amended by 80 Stat. 1365 (1966), 22 U.S.C. §§ 1643–1643k, Supp. II (1967)], the Commission is given jurisdiction over claims of nationals of the United States against the Chinese Communist regime. Section 503(a) of the Act provides that the Commission shall receive and determine in accordance with applicable substantive law, including international law, the amount and validity of claims by nationals of the United States against the Chinese Communist regime arising since October 1, 1949 for

> losses resulting from the nationalization, expropriation, intervention or other taking of, or special measures directed against, property including any rights or interests therein owned wholly or partially, directly or indirectly at the time by nationals of the United States.

* This decision was entered as the Commission's Final Decision on July 23, 1970.

Section 502(3) of the Act provides:

> The term 'property' means any property, right, or interest including any leasehold interest, and debts owed by the Chinese Communist regime or by enterprises which have been nationalized, expropriated, intervened, or taken by the Chinese Communist regime or by enterprises which have been nationalized, expropriated, intervened, or taken by the Chinese Communist regime and debts which are a charge on property which has been nationalized, expropriated, intervened, or taken by the Chinese Communist regime.

Section 502(1)(B) of the Act defines the term "national of the United States" as a corporation or other legal entity which is organized under the laws of the United States, or of any State, the District of Columbia or the Commonwealth of Puerto Rico, if natural persons who are citizens of the United States own, directly or indirectly, 50 per centum or more of the outstanding capital stock or other beneficial interest of such corporation or entity.

The record shows that GENERAL ELECTRIC COMPANY was organized in 1892 and is existing under the laws of the State of New York. An authorized officer of claimant corporation certified that at all times between December 31, 1950 and the presentation of the claim more than 50 per centum of the outstanding capital stock of the corporation was owned by persons who were United States nationals. The Commission, therefore, finds that claimant is a national of the United States within the meaning of Section 502(1)(B) of the Act.

The claim is asserted for the loss of property owned at the time of the loss of four affiliated corporations:

(1) Andersen, Meyer & Company, Limited (Delaware)
(2) Andersen, Meyer & Company, Limited (Maryland)
(3) China General Edison Company, Inc.
(4) International General Electric Company, Inc.

Subsequently, the claims for the losses were either assigned by the above affiliated companies to claimant corporation or claimant became the owner of the claim as a result of a merger with one of the affiliated companies. The origin and amounts of the claims are discussed below in the same order as stated above.

(1) *Andersen, Meyer & Company, Limited (Delaware)*

Andersen, Meyer & Company, Limited (Delaware), now dissolved, was a corporation organized prior to World War II under the laws of the State of Delaware. The company was engaged in manufacturing steel products, railway equipment, motor truck bodies, electric machines and appliances, switches, and metal products. It had its head office in Shanghai, and branch offices and warehouses in Canton, Hankow, Peking and Tientsin.

Claimant states that the property of this company was taken by the Chinese Communist regime in 1950 when the record showed that 63,930 shares out of 76,000 outstanding shares of common stock and 3,199 shares out of 4,149 outstanding preferred shares were owned by International General Electric Company, Inc., a wholly owned subsidiary of GENERAL ELECTRIC COMPANY, the claimant herein.

The record further shows that, generally, American-owned business prop-

erty in China was placed under the management of Communist Chinese military authorities by the end of the year 1950. The Commission appreciates the fact that there may be instances wherein primary evidence in support of a claim may not be available due to its loss or destruction during the ensuing years between the taking of the property and the enactment of Title V of the International Claims Settlement Act of 1949, as amended. Also, the Commission notes that due to the political conditions which now exist in Communist China claimants have no access to the primary evidence which is obtainable only in said country. In addition, the Commission takes administrative notice that, in many instances, there was no decree, law or order issued under which the Chinese Communist regime nationalized or otherwise took the property of nationals of the United States. In the absence of said decrees, laws and orders, the Commission will examine the specific actions of the Chinese Communist regime which resulted in claimants' losses of their interests. Accordingly, when claimant has established a sufficient basis for the unavailability of primary evidence, the Commission may accept and consider secondary evidence.

The evidence of record does not disclose a specific Chinese decree, law or order which shows the nationalization, confiscation or taking of the property of Andersen, Meyer & Company, Limited (Delaware) in Communist China and the Commission agrees that such evidence may be unobtainable in this case. The Commission, however, is in the possession of records which show that the placement of American-owned industrial property, such as the property involved here, constituted to all intents and purposes a taking of such property within the meaning of title V of the International Claims Settlement Act of 1949, as amended. Accordingly, it is concluded that the property of Andersen, Meyer & Company, Limited (Delaware) was taken by the Chinese Communist regime on or about December 31, 1950.

It is noted that the claim of Andersen, Meyer & Company, Limited (Delaware) was transferred in its entirety to claimant corporation by an assignment executed on October 25, 1961, following the dissolution of the affiliated corporation.

Claimant states and the Commission finds that the property of Andersen, Meyer & Company, Limited (Delaware) included real estate holdings in Shanghai, Canton, Hankow, Peking and Tientsin; machinery and equipment in the manufacturing plant in Shanghai; and a 33.29% stockholders' interest in China Car & Foundry Company, Limited, a British corporation, which manufactured railroad cars and steel products in Shanghai.

In support of the value of the real estate holdings in Shanghai, claimant submitted the copy of an appraisal made by J. S. Potter, a real estate expert of Shanghai. Mr. Potter in his Memorandum of May 26, 1947 stated that land in Shanghai, such as the land of Andersen, Meyer & Company, Limited, situated at Yangtzepoo Road, measuring 26.335 mou, had a value of U.S. $212,500.00 but in the claim, claimant reduced the value to $ 124,000.00

Claimant follows Mr. Potter's appraisal for the buildings erected on the land, stating that they had a value of 605,500.00

Claimant obtained independent appraisals for the value of three pieces of improved real property in Canton, amounting to 75,230.00

Mr. Potter appraised land measuring 33.12 mou in Hankow at $96,500.00 but in the claim, claimant reduced this value to 70,392.00

Claimant followed Mr. Potter's appraisal of the buildings stating that they had a value of	146,000.00
H. J. Tung, an architect, appraised three pieces of improved real property in Peking in the amount of	39,900.00
Mr. Potter appraised land measuring 15.169 mou in Tientsin at $125,000.00 but in the claim, claimant reduced this value to	73,000.00
Claimant followed Mr. Potter's appraisal of the buildings on the land in Tientsin stating that they had a value of	496,000.00
Claimant asserts that at the time of taking the personal property (machinery, equipment, vehicles, etc.) in the factory and in the warehouses had a value of	$ 143,360.00
Total	$1,773,382.00
Less depreciation relating to the above property	-$ 59,262.00
Loss of tangible assets	$1,714,120.00
Plus Investments in China Car & Foundry Company, Lt.	$ 104,760.00
Total Amount of Claim for Property of Andersen, Meyer & Company, Limited (Delaware)	$1,818,880.00

It should be noted that claimant reduced the value for the land appraised by Mr. Poter for the reason that his appraisals were based on a gold standard at the ratio of $60.00 and $40.00 per ounce of gold. Claimant adjusted the figures to reflect the proper ratio of $35.00 per ounce of gold.

The Act provides in Section 503(a) that in making determinations with respect to the validity and amount of claims and value of properties, rights, or interests taken, the Commission shall take into account the basis of valuation most appropriate to the property and equitable to the claimant, including but not limited to fair market value, book value, going concern value, or cost of replacement.

The question, in all cases, will be to determine the basis of valuation which, under the particular circumstances, is "most appropriate to the property and equitable to the claimant." This phraseology does not differ from the international legal standard that would normally prevail in the evaluation of nationalized property. It is designed to strengthen that standard by giving specific bases of valuation that the Commission shall consider.

In evaluating the real estate holdings, the Commission notes that the values recited by Mr. Potter and Mr. Tung were not included in a balance sheet of September 30, 1950 of Andersen, Meyer & Company, Limited (Delaware). In that balance sheet the entire land was entered in the amount of $399,865.91, and th value of the improvements in the amount of $530,422.49. It is understood that the values entered for the improvements may be the result of depreciation write-offs, as evidenced by an account named "Reserve for Depreciation" in the amount of $597,265.92. The Commission is aware of the fact that in some instances the value of fixed assets may have been reduced in balance sheets below the actual market value of such assets, and that adjustments might be necessary to arrive at the true value of the properties. In this instance, however, the appraisals made by Messrs. Potter and Tung appear to be grossly exaggerated inasmuch as they appear to be tied to an artificial gold value not only for the land, but also for the improvements.

Based upon the record, including information obtained from various sources on the value on industrial real property in China, the Commission finds that, at the time of taking, the land in question was worth, as stated in the balance sheet $ 399,865.91
and that the buildings had an aggregate value of $ 742,591.43

(or 40% above the balance sheet value), together $1,142,457.34

The Commission further finds that the machinery, equipment, motor vehicles, etc. were worth as stated in the balance sheet. $ 141,829.44

Sub-total $1,284,286.78

The Commission further finds that in 1950 Andersen, Meyer & Company, Limited (Delaware) was the owner of 3,329 shares out of 10,000 outstanding shares of stock of China Car & Foundry Company, Limited, a corporation organized in 1931 in Hong Kong. In 1947 the company's assets were appraised by J. H. Whittle, Chief Accountant of International General Electric Company, Inc. in the amount of $428,578.00. By 1950 these assets were reduced to $314,690.00. There were no liabilities, and the Commission concludes that the 33.29% interest of Andersen, Meyer & Company, Limited (Delaware) amounted to $ 104,760.00

Claimant, as assignee of Andersen, Meyer & Company, Limited (Delaware) and present shareholder of 3,329 shares of China Car & Foundry Company, Limited has, therefore, sustained a loss of $1,389,046.78

(2) *Andersen, Meyer & Company, Limited (Maryland)*

Andersen, Meyer & Company, Limited (Maryland), now dissolved, was a corporation organized in 1945 under the laws of the State of Maryland. The company was engaged in the distribution of goods manufactured by Andersen, Meyer & Company, Limited (Delaware), and had its principal office in Shanghai. An officer of claimant corporation certified that in and subsequent to October 1949 to the date of its dissolution International General Electric Company, Inc., a wholly owned subsidiary of claimant corporation, owned more than 50% of all the outstanding stock of Andersen, Meyer & Company, Limited (Maryland). At the time of dissolution in 1961, claimant corporation owned 100% of the outstanding stock of that corporation. Although the Delaware and Maryland corporations were separate legal entities, they were generally known simply as Andersen, Meyer.

All the circumstances surrounding this claim indicate that the property of the two Andersen, Meyer corporations was taken at the same time. The Commission, therefore, finds that the property of the Maryland corporation was also taken by the Chinese Communist regime on December 31, 1950.

It is noted that the claim of Andersen, Meyer & Company, Limited (Maryland) was transferred in its entirety to claimant corporation by an assignment duly executed on November 22, 1961, following the dissolution of the affiliated corporation.

Claimant states that the property of Andersen, Meyer & Company, Limited (Maryland) consisted of the following:

Current Assets			$2,705,057
Other Assets			7,559
Fixed Assets, revalued			82,318
Unbooked Items (excludable)			$ (11,267)
			$2,783,667
LESS:			
Liabilities	$442,577		
Except intracompany debts	- 1,166	$441,411	
Reserves for valuation of merchandise		889,575	
Bad Debts		$ 50,534	-$1,381,520
Net Loss			$1,402,147
In addition, claimant states that an additional loss was incurred as a result of the purchase of certain personal property (furniture and household goods) from a former employee, P. M. Markert, which was subsequently taken by the Chinese Communists			$ 5,621
The total loss is listed in the amount of			$1,407,768

Using the above-described methods of evaluation, the Commission finds, on the basis of the balance sheet of November 30, 1950, that Andersen, Meyer & Company sustained a loss, as follows:

Current Assets	$2,705,057.16
Other Assets (Deferred Charg	7,559.02
Fixed Assets at Book Value	$ 69,668.75
Total:	$2,782,284.93
Less: Depreciation Reserve	-$ 889,575.15
Net Loss:	$1,892,709.78

and the Commision finds that claimant, as assignee of Andersen, Meyer & Company, Limited (Maryland) has sustained a loss in that amount.

With respect to the property formerly owned by P. M. Markert, the Commission finds that on October 2, 1950, International General Electric Company, Inc. became the owner of the personal property (furniture, household goods, etc.) owned by Mr. Markert in Shanghai, which property was taken by the Chinese Communist regime along with other property of Anderson, Meyer & Company, Limited (Maryland) on December 31, 1950. The Commision further finds that this property had a value of $5,621.00 at the time of taking and that claimant, as succesor in interest of its wholly owned subsidiary, International General Electric Company, Inc., suffered an additional loss in that amount. The total loss in connection with property owned by Andersen, Meyer & Company, Limited (Maryland) and with property owned by its executive, Mr. P. M. Markert, amounts, therefore, to $1,898,330.78.

(3) *China General Edison Company, Inc.*

China General Edison Company, Inc., now dissolved, was a corporation organized in 1917 under the laws of the State of New York. The company was engaged in the manufacture and sale of incandescent and fluorescent lamps in China and had its manufacturing plant in Shanghai. An officer of claimant corporation certified that on and subsequent to October 1, 1949 to the date of its dissolution GENERAL ELECTRIC COMPANY owned more than 50 per centum of all the outstanding stock of China General Edison Company, Inc.

All the circumstances surrounding this claim indicate that the property of China General Edison Company, Inc. was taken by the Chinese Communist regime at the same time as the property described above under (1) and (2). The Commission, therefore, finds that such property was taken on December 31, 1950.

It is noted that the claim of China General Edison Company, Inc. was transferred in its entirety to claimant corporation by an asignment executed on July 17, 1962.

Claimant states that the property of China General Edison Company, Inc. consisted of the following, and that its value was as stated below:

Manufacturing Plant, value adjusted		$ 880,041
Current Assets		172,949
Deferred Assets		$ 2,587
		$1,055,577
LESS:		
Current Liabilities	$67,013	
Except Intracompany Liabilities	– 32,822	
	$34,191	
Inventories Reserves	5,111	
Bad Debts Reserves	280	
Lamp Stock Reserves	489	
Re-evaluation of Inventories	$ 1,746	$ 41,817
Net Loss		$1,013,760

A balance sheet of September 30, 1950 of the China General Edison Company, Inc., submitted by the claimant, shows the following values:

Manufacturing Plant		$581,512.91
Current Assets		175,184.10
Deferred Assets (Prepaid Insurance and Other Prepayments)		$ 2,586.60
		$759,283.61
Less: Liabilities	$34,190.85	
Reserves for Depreciation on Bad Debts	$ 7,627.05	
		–$ 41,817.90
Net Loss:		$717,465.71

Claimant states that the value for the manufacturing plant was entered in the balance sheet at cost in the amount of $581,512.91 and that its true

value at the time of taking was considerably higher. To support this statement, claimant alleges that the land alone consisted of 54.606 mou (or 9.101 acres) in a highly industrialized sector of Shanghai and that, according to appraisals made in 1947 for two contiguous lots, the value of the land alone amounted to $214,455.00. The said appraisals are on record with the Commission in the claim filed by the claimant in Claim No. W–8612 under the War Claims Act of 1948, as amended by Public Law 87–846. Claimant also alleges that the buildings of the manufacturing plant had a value of at least $144,860.00 (after a 30% depreciation write-off), and that the machinery and equipment in the factory and the motor vehicles were worth, after depreciation, $520,726.00. The total value of the manufacturing plant should, therefore, be based upon the amount of $880,041.00 and not upon the balance sheet figure of $581,512.91.

Using the methods of valuation described previously, including information concerning values of land and buildings in industrial sections of Shanghai, the Commission finds that China General Edison Company, Inc. has sustained the following losses:

Land (lot No. 2521 measuring 54.606 mou)	$210,000.00
Buildings and Structures	140,000.00
Machinery, Equipment, Automobiles, etc.	400,000.00
Current Assets	175,184.00
Deferred Assets	2,587.00
Total:	$927,771.00

(4) *International General Electric Company, Inc.*

International General Electric Company, Inc. was incorporated in 1919 under the laws of the State of New York. On July 31, 1952 International General Electric Company, Inc. merged with claimant corporation and up to the present time operates as a division of GENERAL ELECTRIC COMPANY. It was continuously a 100% subsidiary of claimant corporation and from the date of incorporation to the date of its merger, GENERAL ELECTRIC COMPANY owned all of the outstanding capital stock of International General Electric Company, Inc.

The property of International General Electric Company, Inc. in China consisted of two lots numbered 2332 and 2348 containing together 81.886 mou (or 13.648 acres) of industrial land in the immediate vicinity of lot No. 2521 owned by China General Edison Company, Inc., described above under (3).

This property was confiscated by the Chinese Communist regime under the same circumstances as the property of China General Edison Company, Inc. and the Commission finds that it was taken by that regime on December 31, 1950.

Claimant states that the land had a value of $321,600.00. The Commission finds that, in view of the value established by the Commission in this Proposed Decision for lot No. 2521, lots Nos. 2332 and 2348 at the time of taking were worth $315,000.00, which also includes the value of a wall standing along the property.

Claimant further states that in 1951 International General Electric Company, Inc. reimbursed losses of personal property (furniture, household goods, etc.) of four employees of claimant's subsidiaries in China:

R. C. Fallow	$ 3,500
C. V. Schelke	1,561
C. E. Krause	6,975
J. J. Mokrejs	4,015
	$16,051

The record shows that the four above-named employees were United States nationals and that they assigned their claims for the loss of their property against China to claimant corporation by assignments dated May 4, 1968, October 21, 1968, November 30, 1968 and January 10, 1969, respectively.

The Commission, therefore, concludes that claimant corporation as successor in interest of International General Electric Company, Inc. suffered an additional loss of $16,051.00 and that the entire loss sustained in connection with the property of International General Electric Company, Inc., and with reimbursements paid by that company for the property of employees of subsidiaries, amounted to $331,051.00.

SUMMARY

Summarizing, claimant corporation suffered the following losses within the meaning of title V of the Act:

Affiliated Company That Sustained the Loss	*Amount of Loss*
1. Andersen, Meyer & Company, Limited (Delaware)	$1,389,046.78
2. Andersen, Meyer & Company, Limited (Maryland)	1,898,330.78
3. China General Edison Company, Inc.	927,771.00
4. International General Electric Company, Inc.	$ 331,051.00
TOTAL	$4,546,199.56

The Commission has decided that in certification of losses on claims determined pursuant to title V of the International Claims Settlement Act of 1949, as amended, interest should be included at the rate of 6% per annum from the date of loss to the date of settlement (see *Cla[illegible], Clarence Burton Day and Ethelwyn C. Day,* Claim No. CN–0030, Decision No. CN–1); and in the instant claim it is so ordered.

It should be noted that the Commission, in evaluating the net loss of the companies, has not deducted the liabilities because it is assumed that the companies are still responsible for the indebtedness incurred prior to the loss.

CERTIFICATION OF LOSS

The Commission certifies that GENERAL ETLECTRIC COMPANY suffered a loss in the amount of Four Million Five Hundred Forty-Six Thousand One Hundred Ninety-nine Dollars and Fifty-six Cents ($4,546,199.56) with interest thereon at 6% per annum from December 31, 1950 to the date of settlement, as a result of the actions of the Chinese Communist regime, within the scope of title V of the International Claims Settlement Act of 1949, as amended.

Dated at Washington, D.C., June 17, 1970.

IN THE MATTER OF THE CLAIM OF UNITED BOARD FOR CHRISTIAN HIGHER EDUCATION IN ASIA

Claim No. CN–0401—Decision No. CN–494

In the course of evaluating properties for the purposes of Title V of the Act, the Commission may consider, inter alia, the values of comparable properties in China.

PROPOSED DECISION*

This claim for at least $21,825,557.00 against the Chinese Communist regime, under title V of the International Claims Settlement Act of 1949, as amended, was presented by UNITED BOARD FOR CHRISTIAN HIGHER EDUCATION IN ASIA for the loss of claimant's real and personal property located at nine universities and colleges in various cities of China.

Under title V of the International Claims Settlement Act of 1949 [78 Stat. 1110 (1964), as amended by 80 Stat. 1365 (1966), 22 U.S.C. §§ 1643–1643k, Supp. II (1967)], the Commission is given jurisdiction over claims of nationals of the United States against the Chinese Communist regime. Section 503(a) of the Act provides that the Commission shall receive and determine in accordance with applicable substantive law, including international law, the amount and validity of claims by nationals of the United States against the Chinese Communist regime arising since October 1, 1949 for

> losses resulting from the nationalization, expropriation, intervention or other taking of, or special measures directed against, property including any rights or interests therein owned wholly or partially, directly or indirectly at the time by nationals of the United States.

Section 502(3) of the Act provides:

> The term 'property' means any property, right, or interest including any leasehold interest, and debts owed by the Chinese Communist regime or by enterprises which have been nationalized, expropriated, intervened, or taken by the Chinese Communist regime and debts which are a charge on property which has been nationalized, expropriated, intervened or taken by the Chinese Communist regime.

Claimant, UNITED BOARD FOR CHRISTIAN HIGHER EDUCATION IN ASIA, also filed a claim under the War Claims Act of 1948, as amended by Public Law 87–846 (Claim No. W–18034). In that claim the Commission found that claimant was the owner of certain real and personal property which was damaged and lost respectively as a result of Japanese military operations of war at the University of Nanking, Ginling College, Yenching University, Fukien Christian University, Hwa Nan College, Hangchow University and Huachung University, all in China. It granted an award in the amount of $1,153,505.21 for damages done to the improvements and $2,310,873.65 for loss of personal property. The Commission also determined that claimant owned the property of West China Union University but no claim was filed since there were no war losses.

* This decision was entered as the Commission's Final Decision on August 20, 1970.

In the present China claim claimant now seeks the value of the building lots at the seven aforementioned sites; the value of the restored buildings thereon and the personal property therein that was acquired since World War II. In addition, claimant seeks the value of improved real property therein at West China Union University and at Shantung Christian University (Cheeloo). The W–18034 file has been associated with the present claim for reference.

Section 502(1)(B) of the Act defines the term "national of the United States" as a corporation or other legal entity which is organized under the laws of the United States, or of any State, the District of Columbia, or the Commonwealth of Puerto Rico, if natural persons who are citizens of the United States own, directly or indirectly 50 per centum or more of the outstanding capital stock or other beneficial interest of such corporation or entity.

Claimant, UNITED BOARD FOR CHRISTIAN HIGHER EDUCATION IN ASIA, was incorporated under the laws of the State of New York on May 18, 1945, as the United Board of Christian Colleges in China; subsequently that the title was changed through appropriate amendments of the charter and on January 27, 1956, claimant acquired its present legal title. The formation of the United Board for Christian Colleges in China on May 18, 1945, resulted from the consolidation of six Christian colleges and universities in China, all of which were incorporated under the laws of the State of New York on the following dates:

1. Trustees of Yenching University, June 25, 1890;
2. University of Nanking, September 21, 1934;
3. Fukien Christian University, October 18, 1934.
4. Board of Founders, Ginling College, January 25, 1935;
5. The Woman's College of South China (Hwa Nan), September 21, 1934;
6. West China Union University, October 18, 1934;

Claimant's predecessors in interest, Hangchow University and Huachung University, were incorporated under the laws of the District of Columbia and the State of New York on November 27, 1920 and November 2, 1935, respectively. In 1950 Hangchow University and in 1947 Huachung University entered into separate agreements with claimant herein and merged with United Board for Christian Colleges in China.

Shantung Christian University (Cheeloo) was owned by a Canadian corporation incorporated by act of Parliament of the Dominion of Canada on July 10, 1924. On or about November 26, 1945 the Cheeloo property was conveyed to claimant.

An official of claimant corporation has certified that from the date of incorporation to the date of filing with the Commission more than 50% of claimant corporation's members and those of its predecessors were nationals of the United States. The Commission, therefore, holds that claimant qualifies as a national of the United States within the meaning of Section 502(1)(B) of the Act.

The Commission appreciates the fact that there may be instances wherein primary evidence in support of a claim may not be available due to its loss or destruction during ensuing years between the taking of claimants' property and the enactment of title V of the International Claims Settlement Act of 1949, as amended. Also, the Commission notes that due to the political conditions which now exist in Communist China, claimants have no access to the primary evidence which is obtainable only in said country. In addition, the Commission takes administrative notice that, in many instances, there

was no decree, law or order issued under which the Chinese Communist regime nationalized or otherwise took the property of nationals of the United States. In the absence of said decrees, laws and orders, the Commission will examine the specific actions of the Chinese Communist regime which resulted in claimants' loss of their property. Accordingly, when claimants have established a sufficient basis for the unavailability of primary evidence, the Commission may accept and consider secondary evidence.

The record includes annual reports for the years 1945 to 1949 inclusive; histories in book form on most of the nine subject facilities; affidavits of claimant's finance officers and former administrators at some of the facilities; photographs and land sketches of some of the institutions; descriptions of the improvements and a 1951 statement of claimant's former associate treasurer listing the improvements, type of construction and the estimated 1951 replacement value of the buildings.

Based on the entire record, including the evidence submitted in the aorementioned W-18034 claim, the Commission finds that claimant while engaged in the field of higher education operated and owned nine education facilities which consisted of the grounds and buildings together with the furniture, furnishings, equipment, books, scientific apparatus and other personal property therein. The nine facilities were known as:

1. University of Nanking
2. Ginling College
3. Yenching University
4. Fukien Christian University
5. Hwa Nan College
6. Hangchow University
7. Huachung University
8. West China Union University
9. Shantung Christian University

The Commission further finds that it appears the subject institutions were nationalized or otherwise taken by the Chinese Communist regime at different dates, yet for the purpose of this decision, the improved real property and personal property is deemed to have been taken when the teaching staff was finally forced to leave the campuses and all control over the institutions and their teaching policies rested in the hands of the Chinese Communist regime, namely, February 12, 1951.

The Act provides in Section 503(a) that in making determinations with respect to the validity and amount of claims and value of properties, rights, or interests taken, the Commission shall take into account the basis of valuation most appropriate to the property and equitable to the claimant, including but not limited to fair market value, book value, going concern value, or cost of replacement.

The question, in all cases, will be to determine the basis of valuation which, under the particular circumstances, is "most appropriate to the property and equitable to the claimant." This phraseology does not differ from the international legal standard that would normally prevail in the evaluation of nationalized property. It is designed to strengthen that standard by giving specific bases of valuation that the Commission shall consider.

The Commission has considered the 1951 compilation of the properties made by Henry P. Seaman, the then Associate Treasurer of claimant, in which he lists the buildings and other structures at all the subject colleges; the description of the type of construction and his estimated re-

placement value in 1951. It has also considered the affidavit of James A. Cameron, the Associated Treasurer of claimant, who has been associated with claimant since 1934 and the affidavit of William P. Fenn, the General Secretary of claimant, who has been associated with claimant since 1932. The Commission has also considered the values of comparable properties in China owned by other non-profit organizations which have appeared before the Commission. It finds that, at the time of loss, the properties had a value as follows:

University of Nanking

The University of Nanking was located in the city of Nanking, capital of the Province of Kiangsu. The campus was located near the center of the northern half of the city, lying near the main north-south avenue, and contiguous to the chief area of residential development. The campus consisted of some 80 acres. In addition, there were some 67 acres of mulberry orchards in various section of the city and on farms outside the city as well as some 350 acres of forestry plots and nurseries located on Tsinglung mountain some ten miles southeast of the city. There were some 130 buildings and structures on the campus.

land (497 acres)	$ 500,000.00
buildings	807,200.00
personal property	1,150,000.00
Total	$2,457,200.00

Ginling College

Ginling College was a college for women. Its grounds lay to the west and south of the University of Nanking, the nearby college for men, Nanking, Province of Kingsu, China. Nanking had a population in 1951 of over 1,000,000.

The total area of the Ginling campus was some 30 acres. There were some 20 principal buildings and several smaller structures. The college was smaller than most of the other subject colleges yet the interior finish of the buildings was made of teak, rosewood and oak. The architecture was Oriental.

land (30 acres)	$ 90,000.00
buildings	1,227,080.00
personal property	387,952.00
Total	$1,705,032.00

Yenching University

Yenching University, popularly known as Peking University, was located some five miles northwest of the municipality of Peking. It is described as the largest, most strategically located, best equipped and in many respects the most beautiful of the subject properties. The campus occupied about 120 acres and was improved with some 155 buildings. On the campus was a ten acre lake with a central island on which stood an octagonal pavilion. On the border of the lake was a thirteen story structure, replica of an

ancient pagoda, which served as a water tower. The style of all structures was adopted from Chinese architecture.

land (120 acres)	$ 500,000.00
buildings	5,910,662.00
personal property	2,200,000.00
Total	$8,610,662.00

Fukien Christian University

Fukien Christian University was located at Foochow, Province of Fukien. The campus, consisting of 60 acres with 35 principal buildings, was on the north bank of the Min River, some ten miles below the city of Foochow. The two major buildings were the Gardiner Hall Jr. Memorial Arts building and the Edwin C. Jones Memorial Science building. Experimental farms were part of the campus.

land (60 acres)	$ 120,000.00
buildings (including some equipment)	1,149,600.00
personal property	545,000.00
Total	$1,814,600.00

Hwa Nan College

Hwa Nan College was located at Foochow, Province of Fukien, China. The campus, consisting of 25 acres with eleven improvements, was on an elevation of ground on Nontai Island in the Min River.

land (25 acres)	$ 75,000.00
buildings (including some equipment)	282,000.00
personal property	250,000.00
Total	$607,000.00

Hangchow University

Hangchow University was located about six miles from the city of Hangchow, Province of Chekiang, China. Hangchow had a population over 700,000. The campus consisted of 100 acres of land set in the hills on the Ch'ien T'ang River. There were some 34 buildings consisting of dormitories, faculty residences, library, science halls, chapel, gym, classrooms and observatory. The buildings were constructed of brick and/or cement and/or stone with tile or iron roofs and 1,2,3 and/or four stories.

land (100 acres)	$ 100,000.00
buildings	734,500.00
personal property	350,000.00
Total	$1,184,500.00

Huachung University

Huachung University was located at Wuchang, Province of Hupeh. The

University campus was located on the Yangteze River, across from and west of the city of Hankow. It consisted of some 40 acres with approximately 25 buildings. The University had been in operation since 1924.

land (40 acres)	$140,000.00
buildings (including some equipment)	318,400.00
personal property	225,000.00
Total	$683,400.00

West China Union University

West China Union University was located immediately south of the city wall of Chengtu and the Min River, which flowed between that wall and the campus, Chengtu, Province of Szechwan. The campus occupied 170 acres and was improved with 69 buildings. Among the larger buildings were the Lamont Memorial Building containing a museum, the Stubbs Chemistry Building, the College of Medicine and Dentistry and the New University Hospital. There were over 2000 trees of many varieties and thousands of shrubs adorning the campus.

land (170 acres)	$ 350,000.00
buildings (including some equipment)	1,340,200.00
personal property	497,400.00
Total	$2,187,600.00

Shantung Christian University (Cheeloo)

Shantung Christian University was situated in Tsinan, the capital city of the Province of Shantung, China. The campus contained about 90 acres, of which twenty acres are within the south suburb and the remainder just outside the suburb. The inner portion of the campus is used by the School of Medicine and the Extension Department. The outer portion accommodates the School of Arts and Science and the School of Theology, most of the faculty residences, and the general university buildings and grounds. The campus had over 100 buildings.

land (90 acres)	$ 270,000.00
buildings	3,060,563.00
personal property	665,000.00
Total	$3,995,563.00

In *summary*, the Commission finds that at the time of loss the value of claimant's property was as follows:

land	$ 2,145,000.00
buildings	14,830,205.00
personal property	6,270,352.00
Total	$23,245,557.00

The Commission concludes that claimant suffered a loss, within the meaning of title V of the Act, in the amount of $23,245,557.00.

The Commission has decided that in certification of losses on claims determined pursuant to title V of the International Claims Settlement Act of 1949, as amended, interest should be included at the rate of 6% per annum from the date of loss to the date of settlement (see *Claim of Clarence Burton Day and Ethelwyn C. Day*, Claim No. CN-0030, Decision No. CN-1); and in the instant claim it is so ordered.

It will be noted that the total amount of loss found herein is in excess of the amount asserted by claimant. However, in determining the amount of loss sustained, the Commission is not bound by any lesser or greater amounts which may be asserted by claimant as the extent thereof.

CERTIFICATION OF LOSS

The Commission certifies that the UNITED BOARD FOR CHRISTIAN HIGHER EDUCATION IN ASIA suffered a loss in the amount of Twenty-Three Million Two Hundred Forty-Five Thousand Five Hundred Fifty-Seven Dollars ($23,245,557.00) with interest thereon at 6% per annum from February 12, 1951 to the date of settlement, as a result of the actions of the Chinese Communist regime, within the scope of title V of the International Claims Settlement Act of 1949, as amended.

Dated at Washington, D.C., June 30, 1970

IN THE MATTER OF THE CLAIM OF SHANGHAI POWER COMPANY

Claim No. CN-0280—Decision No. CN-499

Items in a balance sheet, such as cash, accounts receivable, prepayments and similar intangibles, which were expressed in local Chinese currency that became worthless prior to the date of loss, may be eliminated in determining the value of an enterprise under Title V of the Act.

PROPOSED DECISION*

This claim against the Chinese Communist regime, under title V of the International Claims Settlement Act of 1949, as amended, in the amount of $57,446,755.00 is based upon the loss of real and personal property in Shanghai, China. Claimant, SHANGHAI POWER COMPANY, is a corporation organized and existing under the laws of the State of Delaware.

Under title V of the International Claims Settlement Act of 1949 [78 Stat. 1110 (1964), as amended by 80 Stat. 1365 (1966), 22 U.S.C. §§ 1643–1643k, Supp. II (1967)], the Commission is given jurisdiction over claims of nationals of the United States against the Chinese Communist regime. Section 503(a) of the Act provides that the Commission shall receive and determine in accordance with applicable substantive law, including international law, the amount and validity of claims by nationals of the United States against the Chinese Communist regime arising since October 1, 1949 for

> losses resulting from the nationalization, expropriation, intervention or other taking of, or special measures directed against, property including any rights or interests therein owned wholly or partially, directly or indirectly at the time by nationals of the United States.

* This decision was entered as the Commission's Final Decision on August 20, 1970.

Section 502(3) of the Act provides:

> The term 'property' means any property, right, or interest including any leasehold interest, and debts owed by the Chinese Communist regime or by enterprises which have been nationalized, expropriated, intervened, or taken by the Chinese Communist regime and debts which are a charge on proprty which has been nationalized, expropriated, intervened or taken by the Chinese Communist regime.

Section 502(1)(B) of the Act defines the term "national of the United States" as a corporation or other legal entity which is organized under the laws of the United States, or of any State, the District of Columbia, or the Commonwealth of Puerto Rico, if natural persons who are citizens of the United States own, directly or indirectly 50 per centum or more of the outstanding capital stock or other beneficial interest of such corporation or entity.

The record discloses that SHANGHAI POWER COMPANY was incorporated in 1929 in Delaware and that all of its outstanding voting stock has been owned since its incorporation by Far East Power Corporation, also a Delaware corporation. Of the 500,000 shares of Far East Power Corporation's outstanding voting shares, 400,100 shares or 80.02% have been held since 1935 by American & Foreign Power Company, Inc., a Maine corporation; and 23,050 shares or 4.61% by International General Electric Company, Inc., a New York corporation which in 1952 merged with General Electric Corporation, also a New York corporation. Since 1937 American & Foreign Power Company, Inc. had outstanding 2,000,000 shares which were held from 1937 through 1964 by persons and institutions in the United States. A major stockholder was Electric Bond and Share Company ("Ebasco"), a New York corporation, which held between 38.64% (in 1937) and 52.9% (in 1964) of all the shares of American & Foreign Power Company, Inc. In 1967 the 80.2% interest in claimant corporation indirectly owned by American & Foreign Power Company, Inc. was transferred to Brazilian Electric Power Company, a Florida corporation, a wholly owned subsidiary of American & Foreign Power Company, Inc. Subsequently, Electric Bond and Share Company merged with American & Foreign Power Company, Inc. into Ebasco Industries, Inc., a New York corporation. At the time of filing this claim, Ebasco Industries, Inc. held through Far East Power Corporation 80.02%, and General Electric Company 4.61% of all outstanding shares of claimant corporation. Based upon this record and upon the affidavit of the Acting Secretary of Ebasco Industries, Inc. who states that more than 95% of the outstanding voting shares were and are held by persons or firms, or corporations having addresses of record within the continental United States, Alaska, Hawaii, and Puerto Rico, the Commission finds that, in view of this fact, it may be assumed that 50 per centum or more of the shares of claimant corporation were owned by natural persons who are nationals of the United States. The Commission, therefore, concludes that claimant qualifies as a national of the United States within the meaning of Section 502(1)(B) of the Act.

Claimant states that on August 8, 1929 by an agreement concluded between the American & Foreign Power Company, Inc. and the Shanghai Municipal Council, claimant acquired the exclusive franchise to supply electricity within the International Settlement and parts outside of the settlement, and from that date it operated and owned the electric generating transmission and distribution system serving the International Settlement

and the so-called Extra Settlement Area of the City of Shanghai.

Claimant further states that on December 28, 1950 the State Administrative Council in Peking published an order placing all American-owned property under the management of local military authorities. As a result, claimant's offices and plants were immediately occupied and the management transferred to trusted local Chinese Communist officials.

The Commission appreciates the fact that due to the political conditions which now prevail in Communist China claimant may have no access to the primary evidence which is obtainable only in that country and which would show the specific decrees or laws ordering the nationalization or taking of claimant's enterprise. In addition, the Commission takes administrative notice that, in many instances, there were not specific decrees, laws or orders issued under which the Chinese Communist Regime nationalized or took property of United States nationals and corporations. Accordingly, when claimant establishes a sufficient basis for the unavailability of primary evidence, the Commission may consider and accept secondary evidence.

The record before the Commission indicates that by the end of December 1950 American-owned business property in Shanghai, including claimant's property, was placed under the management of local Communist military authorities. The Commission holds that such placement of claimant's enterprise under the management of local Communist military authorities constituted a taking of the property and finds that the assets in the area of Shanghai of SHANGHAI POWER COMPANY were taken by the Chinese Communist regime on December 28, 1950.

The Act provides in Section 503(a) that in making determinations with respect to the validity and amount of claims and value of properties, rights, or interests taken, the Commission shall take into account the basis of valuation most appropriate to the property and equitable to the claimant, including but not limited to fair market value, book value, going concern value, or cost of replacement.

The question, in all cases, will be to determine the basis of valuation which, under the particular circumstances, is "most appropriate to the property and equitable to the claimant." This phraseology does not differ from the international legal standard that would normally prevail in the evaluation of nationalized property. It is designed to strengthen that standard by giving specific bases of valuation that the Commission shall consider.

Claimant states that by the agreement of August 8, 1929 between the Shanghai Municipal Council and the American & Foreign Power Company, Inc. claimant acquired title to real property, improvements, the generating plants and to the related distributing system serving more than 100,000 customers in Shanghai and that it also acquired the exclusive franchise to service these customers as well as any new customers in the Shanghai area with electricity. The American & Foreign Power Company, Inc. paid for the acquisition of this property and franchise an amount of 81,000,000 Shanghai taels, which in 1929 was equivalent to U.S. $51,410,000.00.

Claimant further states that through new investments the facilities were improved and enlarged and that after World War II new generating facilities were installed to serve approximately 128,000 customers. After reconstruction in 1949, the plant consisted of 13 turbine generators and 23 boiler units situated in buildings on land measuring almost 50 acres with

separate distribution equipment installed in various locations of the city.

Claimant lists its losses resulting from the nationalization of the plant facilities in the amount of $57,446,755 plus interest. In support of this statement of losses claimant submitted a copy of the original franchise and transfer agreement of August 8, 1929 with numerous attachments and exhibits describing the property in detail. Claimant also submitted correspondence exchanged with the parent company in New York concerning the conditions of the property, the repairs required during the reconstruction postwar period and the new investments made for the amelioration of the service. At the request of the Commission claimant submitted a balance sheet for the year ending December 31, 1940 and for the year ending December 31, 1949. Claimant states that no balance sheet was prepared for the year ending December 31, 1950 because at that time the plant was already occupied by the agents of the Communist authorities.

Based upon the record, the Commission finds that claimant owned real property consisting of land in the city of Shanghai, measuring approximately 264 mou (or 46 acres), improved with generating stations, transmission facilities and distributing substations, depots, offices, residences for employees and other facilities, and a distribution system for electric power, the street lighting system, and streetcar system, as well as special electrical facilities for an automatic telephone system. In addition, claimant owned motor vehicles, buses, cars, metering equipment, office equipment and furniture, electrical equipment installed on customers' premises, such as electric motors, appliances, office appliances, etc.

The last balance sheet furnished by the claimant for the year ending December 31, 1949 shows that the plant facilities including the franchise were entered in the amount of	$55,666,216.00
and that depreciation was entered as "property retirement" in the amount of	—$ 4,607,737.00
resulting in a net value of the plant facilities including franchise in the amount of	$51,058,479.00
The current assets are listed in the aggregate amount of $4,065,100 but the Commission finds that only an amount of for material and supplies represents property compensable under the Act, while cash, accounts receivable, prepayments and similar items originally expressed in local Chinese currency became worthless to all intents and purposes by the end of 1950 and must be disregarded here.	$ 2,774,406.00
Accordingly, the Commission finds that claimant suffered a loss in the aggregate amount of	$53,832,885.00

within the meaning of title V of the Act as the result of actions of the Chinese Communist regime.

The liabilities and mortgage debentures in the aggregate amount of $31,458,219 have not been deducted from the value of the assets because the Commission holds that claimant may remain liable for the payment of debts.

The Commission has decided that in certification of losses on claims determined pursuant to title V of the International Claims Settlement Act of 1949,

as amended, interest should be included at the rate of 6% per annum from the date of loss to the date of settlement (see *Claim of Clarence Burton Day and Ethelwyn C. Day*, Claim No. CN–0030, Decision No. CN–1); and in the instant claim it is so ordered.

CERTIFICATION OF LOSS

The Commission certifies that SHANGHAI POWER COMPANY suffered a loss in the amount of Fifty-three Million Eight Hundred Thirty-two Thousand Eight Hundred Eighty-five Dollars ($53,832,885.00) with interest thereon at 6% per annum from December 28, 1950 to the date of settlement, as a result of the actions of the Chinese Communist regime, within the scope of title V of the International Claims Settlement Act of 1949, as amended.

Dated at Washington, D.C., June 30, 1970

IN THE MATTER OF THE CLAIM OF SHANGHAI WHARF & WAREHOUSE COMPANY, FEDERAL INC., U.S.A.

Claim No. CN–0416—Decision No. CN–484

Land and improvements have values irrespective of what foreign currencies may be used to express them.

PROPOSED DECISION*

This claim against the Chinese Communist regime, under title V of the International Claims Settlement Act of 1949, as amended, in the amount of $1,597,516.31 is based upon the loss of real and personal property in Shanghai, China.

Under title V of the International Claims Settlement Act of 1949 [78 Stat. 1110 (1964), as amended by 80 Stat. 1365 (1966), 22 U.S.C. §§ 1643–1643k, Supp. II (1967)], the Commission is given jurisdiction over claims of nationals of the United States against the Chinese Communist regime. Section 503(a) of the Act provides that the Commission shall receive and determine in accordance with applicable substantive law, including international law, the amount and validity of claims by nationals of the United States against the Chinese Communist regime arising since October 1, 1949 for

> losses resulting from the nationalization, expropriation, intervention or other taking of, or special measures directed against, property including any rights or interests therein owned wholly or partially, directly or indirectly at the time by nationals of the United States.

Section 502(3) of the Act provides:

> The term 'property' means any property, right, or interest including any leasehold interest, and debts owed by the Chinese Communist regime or by enterprises which have been nationalized, expropriated, intervened, or taken by the Chinese Communist regime and debts which are a charge on property which has been nationalized, expropriated, intervened or taken by the Chinese Communist regime.

* This decision was entered as the Commission's Final Decision on August 20, 1970.

Section 502(1)(B) of the Act defines the term "national of the United States" as a corporation or other legal entity which is organized under the laws of the United States, or of any State, the District of Columbia, or the Commonwealth of Puerto Rico, if natural persons who are citizens of the United States own, directly or indirectly 50 per centum or more of the outstanding capital stock or other beneficial interest of such corporation or entity.

The record discloses that claimant, SHANGHAI WHARF & WAREHOUSE COMPANY, FEDERAL INC., U.S.A., is a corporation organized under the China Trade Act of 1922, as amended, and under the laws of the United States. An officer of claimant corporation has certified that at all times pertinent to this claim, the entire capital stock represented by 9,000 shares was owned by American President Lines, Limited, a corporation organized under the laws of the State of Delaware, with the seat of business in San Francisco, California. The Secretary of American President Lines, Limited, certified that all the stock of the latter corporation has been held by residents of the United States, and no corporate stock is held by non-United States nationals. The Commission finds, therefore, that claimant is a national of the United States within the meaning of section 502(1)(B) of the Act.

Claimant states that it conducted wharf and warehouse operations in the port of Shanghai. It owned land, buildings, and terminal equipment, warehouses, an office building, living quarters and residences for its employees, a power plant, a water tower, etc.

Claimant further states that on August 11, 1951 the Military Control Commission for the City of Shanghai requisitioned claimant's entire property. By August 20, 1951 all the property had been taken over and on August 31, 1951 the old employees of the company were dismissed. This statement is supported by copies of the corespondence exchanged at that time and by copies of the original decrees ordering the confiscation of claimant's property. Based upon this record, the Commission finds that claimant's property in Shanghai was confiscated by the Chinese Communist regime on August 20, 1951.

The Act provides in Section 503(a) that in making determinations with respect to the validity and amount of claims and value of properties, rights, or interests taken, the Commission shall take into account the basis of valuation most appropriate to the property and equitable to the claimant, including but not limited to fair market value, book value, going concern value, or cost of replacement.

The question, in all cases, will be to determine the basis of valuation which, under the particular circumstances, is "most appropriate to the property and equitable to the claimant." This phraseology does not differ from the international legal standard that would normally prevail in the evaluation of nationalized property. It is designed to strengthen that standard by giving specific bases of valuation that the Commission shall consider.

Claimant evaluated the seized property on the basis of a survey and an appraisal made as of September 30, 1945 by Atkinson & Dallas, Civil Engineers, Architects and Surveyors of Shanghai. The survey disclosed that the land had an area of 79.295 mou valued at $396,475.00; that on the land were erected 21 structures including wharves, warehouses, customs buildings, police quarters, a powerhouse, etc., extensive mechanical equipment, one tugboat, and a barge, valued at $1,153,658.59. Claimant stated: "Although the loss of property occurred some six years later, it is believed that the

appraisal made in 1945 is properly reflective of the value of the property at time of loss in 1951." The company acquired additional personal property after September 30, 1945; this property consisted mainly of office and warehouse fixtures, cranes, barges, and miscellaneous mechanical equipment, and was listed in the claim at acquisition cost. As a result, claimant states that the property had the following value as of the date of loss:

Land	U.S. $	396,475.00
Buildings and Fixed Improvements		1,153,658.59
Personal Property Acquired after September 30, 1945	$	47,382.72
	U.S. $	1,597,516.31

An examination of claimant's balance sheets from the year 1935 through 1947 reveals that the value of the land and improvements expressed in Chinese national currency remained unchanged. Since 1948 the balance sheets omitted the figures for the value of the land and buildings due to the unprecedented depreciation of the Chinese currency and reluctance of claimant's accountants to introduce new values in any currency. The Commission is in possession of a report filed by the claimant with the United States Department of Commerce on June 4, 1959, which shows that claimant evaluated its property as of December 31, 1951, as follows:

Land	$	457,074.40
Buildings		258,499.77
Wharves		205,248.58
Boundary Walls, etc.		38,676.58
Water Plant		20,098.57
Machinery & Equipment		56,975.28
Furniture & Fixtures		6,262.99
Cash on Deposit		2,462.56
Interest on Deposit		115.06
Cash on Hand		18.48
Inventory of Wharf Supplies		25.72
Unexpired Insurance	$	5,763.62
Total	$	1,051,221.61

The Commission is, therefore, of the opinion that claimant's compensable losses consist of the following:

Land	$	457,074.40
Buildings		258,499.77
Wharves		205,248.58
Boundary Walls, etc.		38,676.58
Water Plant		20,098.57
Machinery & Equipment		56,975.28
Furniture & Fixtures		6,262.99
Inventory of Wharf Supplies	$	25.72
Total	$	1,042,861.89

The items for cash, interest and unexpired insurance are not claimed and there is no evidence to establish the taking thereof. Consequently, these items are not included in the above listing of compensable losses.

Accordingly, claimant suffered losses within the meaning of title V of the International Claims Settlement Act of 1949, as amended, in the amount of $1,042,861.89.

The Commission has decided that in certification of losses on claims determined pursuant to title V of the International Claims Settlement Act of 1949, as amended, interest should be included at the rate of 6% per annum from the date of loss to the date of settlement (see *Claim of Clarence Burton Day and Ethelwyn C. Day*, Claim No. CN-0030, Decision No. CN-1); and in the instant claim it is so ordered.

CERTIFICATION OF LOSS

The Commission certifies that SHANGHAI WHARF & WAREHOUSE COMPANY, FEDERAL INC., U.S.A. suffered a loss in the amount of One Million Forty-two Thousand Eight Hundred Sixty-one Dollars and Eighty-nine Cents ($1,042,861.89) with interest thereon at 6% per annum from August 20, 1951 to the date of settlement as a result of the actions of the Chinese Communist regime, within the scope of title V of the International Claims Settlement Act of 1949, as amended.

Dated at Washington, D.C., June 30, 1970.

IN THE MATTER OF THE CLAIM OF THE SOCIETY OF THE MISSION OF ST. LOUIS, MISSOURI

Claim No. CN-0466—Decision No. CN-448

Complicated claim involving some 170 buildings and other structures, each of which had to be evaluated separately for the purpose of Title V of the Act.

PROPOSED DECISION*

This claim in the amount of $3,053,900.00, against the Chinese Communist regime, under title V of the International Claims Settlement Act of 1949, as amended, was presented by THE SOCIETY OF THE CONGREGATION OF THE MISSION OF ST. LOUIS, MISSOURI for the loss of claimant's real and personal property located in the Districts of Yukiang, Linchman, Poyang and Hokow, Province of Kiangsi and in Shanghai, China.

Under title V of the International Claims Settlement Act of 1949 [78 Stat. 1110 (1964), as amended by 80 Stat. 1365 (1966), 22 U.S.C. §§ 1643–1643k, Supp. II (1967)], the Commission is given jurisdiction over claims of nationals of the United States against the Chinese Communist regime. Section 503(a) of the Act provides that the Commission shall receive and determine in accordance with applicable substantive law, including international law, the amount and validity of claims by nationals of the United States against the Chinese Communist regime arising since October 1, 1949 for

* This decision was entered as the Commission's Final Decision on July 14, 1970.

losses resulting from the nationalization, expropriation, intervention or other taking of, or special measures directed against, property including any rights or interests therein owned wholly or partially, directly or indirectly at the time by nationals of the United States.

Section 502(3) of the Act provides:

The term 'property' means any property, right, or interest including any leasehold interest, and debts owed by the Chinese Communist regime or by enterprises which have been nationalized, expropriated, intervened, or taken by the Chinese Communist regime and debts which are a charge on property which has been nationalized, expropriated, intervened or taken by the Chinese Communist regime.

Claimant, THE SOCIETY OF THE CONGREGATION OF THE MISSION OF ST. LOUIS, MISSOURI, also filed a claim under the War Claims Act of 1948, as amended, by Public Law 87-846 (Claim No. W-10657). In that claim the Commission found that claimant owned certain improved real property and personal property incident to its missionary and charitable activities at twenty-two sites in the Province of Kiangsi, China. It granted an award in the amount of $471,745.00 for the damages to the improvements and $128,780.00 for the loss of the personal property suffered as a direct consequence of Japanese military operations during World War II. In the instant China claim claimant seeks the value of the building lots, the improvements thereon and the personal property therein at the said twenty-two sites and, in addition, the value of certain similar property at thirty-eight other sites that suffered no loss during World War II or which were acquired since 1945. The W-10657 file has been associated with the present claim for reference.

Section 502(1)(B) of the Act defines the term "national of the United States" as a corporation or other legal entity which is organized under the laws of the United States, or of any State, the District of Columbia, or the Commonwealth of Puerto Rico, if natural persons who are citizens of the United States own, directly or indirectly 50 per centum or more of the outstanding capital stock or other beneficial interest of such corporation or entity.

The claimant, THE SOCIETY OF THE CONGREGATION OF THE MISSION OF ST. LOUIS, MISSOURI, was organized under the laws of the State of Missouri in 1879 as a nonprofit corporation. An officer of claimant corporation has certified that at all times pertinent to this claim more than 50 per centum of its members have been nationals of the United States. The Commission, therefore, holds that claimant qualifies as a national of the United States within the meaning of Section 502(1)(B) of the Act.

The Commission appreciates the fact that there may be instances wherein primary evidence in support of a claim may not be available due to its loss or destruction during ensuing years between the taking of claimants' property and the enactment of title V of the International Claims Settlement Act of 1949, as amended. Also, the Commission notes that due to the political conditions which now exist in Communist China, claimants have no access to the primary evidence which is obtainable only in said country. In addition, the Commission takes administrative notice that, in many instances, there was no decree, law or order issued under which the Chinese Communist regime nationalized or otherwise took the property of nationals of the United

States. In the absence of said decrees, laws and orders, the Commission will examine the specific actions of the Chinese Communist regime which resulted in claimants' loss of their property. Accordingly, when claimants have established a sufficient basis for the unavailability of primary evidence, the Commission may accept and consider secondary evidence.

The evidence of record here does not disclose a specific Chinese Communist decree, law or order which shows the nationalization, confiscation, or other taking of claimant's property in Communist China and the Commission agrees that such evidence may be unobtainable in this case.

The record does include thirty-four exhibits consisting of maps; photographs; timely correspondence relating to construction of new buildings; renovation and repairs to buildings damaged during World War II; circumstances reflecting the nationalization of the properties by the Chinese Communist regime and value; and affidavits of members of the claimant organization who were present on the subject real properties at all pertinent times.

Based on the entire record, including the evidence submitted in the aforementioned W–10657, the Commission finds that claimant since 1922, through World War II and post World War II, maintained an extensive missionary program in the northern section of the Province of Kiangsi, China and that it owned and operated real property improved with certain churches, schools for boys and girls, homes for the aged, dispensaries, residences, and orphanages and certain personal property therein with the attendant obligation and responsibility for administration, personnel, and financial support.

Claimant has been unable to furnish exact date on which its property was taken by the Chinese Communist regime. Claimant does state, however, that during the period February 1949 to September 1951 its members were expelled and that its property was siezed and occupied by Chinese Communist forces. The Commission further finds that, under these circumstances and in the absence of evidence to the contrary, claimant lost all final control, use and enjoyment of its property through actions taken by or under the authority of the Chinese Communist regime on September 30, 1951.

The Act provides in Section 503(a) that in making determinations with respect to the validity and amount of claims and value of properties, rights, or interests taken, the Commission shall take into account the basis of valuation most appropriate to the property and equitable to the claimant, including but not limited to fair market value, book value, going concern value, or cost of replacement.

The question, in all cases, will be to determine the basis of valuation which, under the particular circumstances, is "most appropriate to the property and equitable to the claimant." This phraseology does not differ from the international legal standard that would normally prevail in the evaluation of nationalized property. It is designed to strengthen that standard by giving specific bases of valuation that the Commission shall consider.

The Commission has considered the financial and diocesan reports of the post World War II era reflecting the new construction and reconstruction of the buildings during these years; the photographs of the property, the affidavits and statements of members of the Order and the value of comparable property as established in other claims of non-profit organizations

in the present program. The Commission finds the properties were constituted and had a value at the time of loss as follows:

I. *DISTRICT OF YUKIANG*

YUKIANG—A parcel of land in the City of Yukiang, enclosed within brick perimeter walls, lying at the extreme Southern edge of the city on the principal Southeast road near the city wall and known as "The Catholic Mission" (Tienchutang), consisting of approximately 37.71 acres with a land value of $113,000 improved with seven buildings containing various contents and valued as of September 1951 as follows:

	Building	*F.F.&E.*	*Personal Effects*	*Total*
Church	$ 70,000	$ 7,500	—	$ 77,500
Residence	25,000	3,750	$5,000	33,750
Primary School for Boys	5,625	2,500	—	8,125
Primary School for Girls	5,625	2,500	—	8,125
Middle School—175' x 50'	15,000	8,500	—	23,500
Home for Aged Men	1,500	2,625	—	4,125
Home for Aged Women	1,500	2,625	—	4,125
Total	$124,250	$30,000	$5,000	$159,250
Land				113,000
				$272,250

TUNG CHI SUNG CHIA—A parcel of land in the village consisting of approximately ¼ acre, valued at $1,000 improved with one building used as a Mission Chapel and residence, valued at $7,000 and with contents of $1,000. Total land and buildings and contents $9,000

SANFUNGKAI—A parcel of land containing about 5 acres valued at $10,000, same being the site of a Minor Seminary, the land being improved with two buildings as follows:

	Building	*F.F.&E.*	*Personal Effects*	*Total*
Minor Seminary Building	$ 30,000	$12,000	—	$ 42,000
Faculty Residence	18,000	7,000	$2,000	27,000
Total	$ 48,000	$19,000	$2,000	$ 69,000
Land				10,000
				$ 79,000

TENGKIAFOW—A parcel of land in the center of the city known as The Catholic Mission (Tienchutang) and containing approximately 3.21 acres, improved with brick perimeter walls enclosing five buildings. Land value of $8,000, and value of buildings etc. as follows:

	Building	*F.F.&E.*	*Personal Effects*	*Total*
Church	$ 55,000	$ 6,000	—	$ 61,000
Residence	8,000	3,500	$ 500	12,000
Primary School	5,000	2,200	—	7,200
Catechetical School—Boys	1,500	1,000	—	2,500
Catechetical School—Girls	1,500	1,000	—	2,500
Total	$ 71,000	$13,700	$ 500	$ 85,200
Land				8,000
				$93,200

KWEIKI—A parcel of land in the City of Kweiki containing approximately 4.13 acres valued at $12,500 and improved with brick perimeter walls and the following buildings:

	Building	*F.F.&E.*	*Personal Effects*	*Total*
Church	$ 65,000	$ 6,500	—	$ 71,500
Residence	12,000	4,000	$ 500	16,500
Primary School	5,000	2,500	—	7,500
Catechetical School	2,000	1,000	—	3,000
Orphanage	15,000	6,000	—	21,000
Total	$ 99,000	$20,000	$ 500	$119,500
Land				12,500
				$132,000

YINGTAN—A parcel of land in the City of Yingtan containing approximately 6.20 acres valued at $21,700, improved with perimeter wall and the following four buildings:

	Building	*F.F.&E.*	*Personal Effects*	*Total*
Church	$ 60,000	$ 7,000	—	$ 67,000
Residence	10,000	4,000	$1,000	15,000
Primary School—Boys	5,000	2,000	—	7,000
Primary School—Girls	5,000	2,000	—	7,000
Total	$ 80,000	$15,000	$1,000	$ 96,000
Land				21,700
				$117,700

KANGPEI—A parcel of land within the village of Kangpei containing ¼ acre of land valued at $1,000 and improved with a single combination building used for Mission Chapel, Residence, Catechetical School valued at $10,000 with contents of $5,000. Total $16,000

NIAOSHIAN—A parcel of land within the village of Niaoshan containing approximately ¼ acre of land valued at $1,000, and improved with a single structured Mission Station valued at $7,000 and having contents of $3,500. Total $11,500

SHANGTSIN (Shang-ch'ing-kung)—A rectangular parcel of land in the the town of Shangtsin, containing about 3.20 acres with a value of $6,400, improved with the following buildings:

	Building	*F.F.&E.*	*Personal Effects*	*Total*
Chapel	5 5,000	$ 1,200	—	$ 6,200
Residence	4,000	1,500	$ 500	6,000
Total	$ 9,000	$ 2,700	$ 500	$ 12,200
Land				6,400
				$ 18,600

YU-KAN—A parcel of land in the approximate center of the city containing 4.13 acres with a value of $8,200, improved with the following buildings:

	Building	*F.F.&E.*	*Personal Effects*	*Total*
Church	$ 65,000	$ 5,000	—	$ 70,000
Residence	7,000	3,000	$ 500	10,500
Catechetical School	2,500	1,000	—	3,500
Total	$ 74,500	$ 9,000	$ 500	$ 84,000
Land				8,200
				$ 92,200

II. *DISTRICT OF LINCHWAN*

LINCHWAN Fu-chou—A parcel of land in the City of Linchwan enclosed by brick perimeter walls containing about 14.44 acres valued at $58,000, improved with the following buildings:

	Building	*F.F.&E.*	*Personal Effects*	*Total*
Church	$ 80,000	$ 8,000	—	$ 88,000
Residence	25,000	5,000	$2,000	32,000
Middle School	20,000	7,000	—	27,000
Primary School	10,000	3,000	—	13,000
Orphanage	15,000	2,000	—	17,000
Home for Aged-Dispensary	10,000	4,000	—	14,000
Total	$160,000	$29,000	$2,000	$191,000
Land				58,000
				$249,000

LINCHWAN—A parcel of land approximately 35′ wide adjacent to the exterior of the south perimeter wall of the above-described property containing approximately .75 of an acre valued at $2,000 and improved with a building of two-story height, having 21 units of combination homeshops valued at $21,000. Total value $23,000

LINCHWAN—A parcel of land located near the northern city limit and within the city wall containing 5 acres valued at $10,000 and improved with a conventional Chinese residence valued at $1,500.

Total value $11,500

LO FU CHEE—A parcel of land within this small village containing approximately one acre valued at $500 and improved with the following three buildings:

	Building	*F.F.&E.*	*Personal Effects*	*Total*
Church 60′ x 30′	$ 10,000	$ 3,000	—	$ 13,000
Residence	1,500	1,000	—	2,500
School—2 story	6,000	2,000	—	8,000
Total	$ 17,500	$ 6,000		$ 23,500
Land				500
				$ 24,000

TUNG-SHE-CHOW—A parcel of land within this small village about ¼ acre in size with a value of $100 and improved with a single combination Mission Building, with chapel, priests quarters, meeting rooms constructed of masonry bricks. The building has an estimated value of $4,000 and had contents of $1,500. Total value $5,600

SHANGTUNTU—A parcel of land containing about 10 acres with a value of $25,000 and improved with the following buildings:

	Building	*F.F.&E.*	*Personal Effects*	*Total*
Chapel	$ 6,500	$ 1,200	—	$ 7,700
Residence	4,500	1,500	$ 500	6,500
Catechetical School	2,500	1,000	—	3,500
Total	$ 13,500	$ 3,700	$ 500	$ 17,700
Land				25,000
				$ 42,700

LIKIATU—A parcel of land lying within the town of Likiatu, containing

	Building	*F.F.&E.*	*Personal Effects*	*Total*
6.77 acres valued at $15,000 and improved with buidings as follows:				
Church	$ 15,500	$ 4,000	—	$ 19,000
Residence	6,000	3,500	$1,000	10,500
Primary School	3,000	1,500	—	4,500
Worker's Quarters—Men	3,000	1,800	—	4,800
Women's Quarters—aged females	4,000	2,000	—	6,000
Total	$ 31,000	$12,800	$1,000	$ 44,800
Land				15,000
				$ 59,800

PEHCHIACHI—A small parcel of land in the center of the small village of Pehchiachi, about 2 tenths of an acre in size and worth about $100, improved with combination building containing chapel, living quarters, instruction rooms, valued at $3,000. Total value $4,200

TENGKAI—A parcel of land in the center of the small village of Tengkai near the river, half-way between the cities of Linchwan and Likiatu, and containing one acre valued at $1,800 and improved with the following buildings:

	Building	*F.F.&E.*	*Personal Effects*	*Total*
Church	$ 10,000	$ 3,000	—	$ 13,000
Residence	5,000	2,000	—	7,000
Primary School—Boys	2,000	1,000	—	3,000
Primary School—Girls	2,000	1,000	—	3,000
Total	$ 19,000	$ 7,000		$ 26,000
Land				1,800
				$ 27,800

YUNGSAN—A parcel of land near the village of Yungsan containing about .69 acre valued at $5,000 and improved with the following buildings:

	Building	*F.F.&E.*	*Personal Effects*	*Total*
Church—30′ x 60′	$ 5,000	$ 1,000	—	$ 6,000
Rectory—2 story—20′ x 60′	5,000	5,000	—	10,000
Catechetical School—Males	1,000	500	—	1,500
Catechetical School—Females	2,000	1,000	—	3,000
Dormitory Building—Males	1,000	—	—	1,000
Dormitory Building—Females	800	—	—	800
Refectory & Kitchen	300	800	—	1,100
Storage Barn	500	200	—	700
Total	$ 15,600	$ 8,500		$ 24,100
Land				5,000
				$ 29,100

TSUNGJEN—A parcel of land in the City of Tsungjen enclosed with brick perimeter walls and containing 3.45 acres valued at $15,000 and improved with the following structures:

	Building	*F.F.&E.*	*Personal Effects*	*Total*
Church	$ 60,000	$ 6,000	—	$ 66,000
Residence—1 story	1,500	1,200	$1,000	3,700
School for boys	1,000	600	—	1,600
Building for women	1,500	600	—	2,100
Total	$ 64,000	$ 8,400	$1,000	$ 73,400
Land				15,000
				$ 88,400

HWANG-PU—A parcel of land lying within the village enclosed by perimeter brick walls containing 1.20 acres valued at $2,000 and improved with the following buildings:

	Building	*F.F.&E.*	*Personal Effects*	*Total*
Church	$ 20,000	$ 4,000	—	$ 24,000
Residence	1,500	1,200	$ 500	3,200
Catechetical School—boys	1,000	1,000	—	2,000
Catechetical School—girls	2,500	1,500	—	4,000
Total	$ 25,000	$ 7,700	$ 500	$ 33,200
Land				2,000
				$ 35,200

CHUSIN—A parcel of land in the small village of Chusin with a ground area of approximately .75 acre with a value of $500, improved with two structures as follows:

	Building	*F.F.&E.*	*Personal Effects*	*Total*
Church with connected residence	$ 6,000	$ 2,000	—	$ 8,000
School building	1,000	800	—	1,800
Total	$ 7,000	$ 2,800		$ 9,800
Land				500
				$ 10,300

LUNGKIATU—A small parcel of land in the village of Lungkiatu containing one half acre with a value of $200 improved with a building used as a combination Mission Station with chapel, living quarters, meeting rooms, etc. valued at $1,500 and containing furniture, fixtures and equipment valued at $600 and also a small house occupied by the caretaker with a value of $100. Total value $2,400

PELOUTU—A parcel of land located on the principal street of the City of Peloutu enclosed within brick perimeter walls and containing one-half acre valued at $200 and improved with the following buildings:

	Building	*F.F.&E.*	*Personal Effects*	*Total*
Church	$ 60,000	$ 4,500	—	$ 64,500
Residence	1,500	1,500	$ 500	3,500
Catechetical School	6,000	3,000	—	9,000
Total	$ 67,500	$ 9,000	$ 500	$ 77,000
Land				200
				$77,200

KINKI—A parcel of land in the City of Kinki within the city walls and enclosed with perimeter walls in areas of about two acres and valued at $20,000, improved with the following structures:

	Building	*F.F.&E.*	*Personal Effects*	*Total*
Church	$ 5,000	$ 2,500	—	$ 7,500
Residence	4,000	1,800	$ 500	6,300
Catechetical School—Boys	1,500	1,200	—	2,700
Catechetical School—Girls	1,500	1,100	—	2,600
Total	$ 12,000	$ 6,600	$ 500	$ 19,100
Land				20,000
				$39,100

SUWAN—A parcel of land lying in the central business district of the city of Suwan, enclosed with perimeter wall and containing 1.20 acress of land valued at $5,000, improved with the following buildings:

	Building	*F.F.&E.*	*Personal Effects*	*Total*
Chapel	$ 4,000	$ 1,600	—	$ 5,600
Residence	1,000	1,200	$ 500	2,700
Catechetical School—Boys	1,500	900	—	2,400
Catechetical School—Girls	2,500	1,000	—	3,500
Total	$ 9,000	$ 4,700	$ 500	$ 14,200
Land				5,000
				$ 19,200

TSUNGHSIANG—A parcel of land in the City of Tsunghsiang near the railroad station enclosed with perimeter walls and on the principal street of the city of an area of approximately ¼ acre with a value of $1,000 improved with the following buildings:

	Building	*F.F.&E.*	*Personal Effects*	*Total*
Chapel—recent construction	$ 4,000	$ 1,800	—	$ 5,800
Residence	2,000	1,300	$1,000	4,300
School for Boys	1,000	900	—	1,900
Women's & Girls Building	800	900	—	1,700
Total	$ 7,800	$ 4,900	$1,000	$ 13,700
Land				1,000
				$ 14,700

IHWANG—A parcel of land bordering on the river in the Southeastern part of the city of Ihwang enclosed with perimeter walls of brick construction containing 1.75 acres valued at $5,000 and improved with the following buildings:

	Building	*F.F.&E.*	*Personal Effects*	*Total*
Church	$ 12,000	$ 1,500	—	$ 13,500
Residence	6,000	2,000	$1,000	9,000
Primary School—Boys	2,500	1,000	—	3,500
Primary School—Girls	1,500	1,000	—	2,500
Dormitory Bldg. 2 sty, Males	1,000	n-k	—	1,000
Dormitory Bldg. Females	800	n-k	—	800
Refectory & Kitchen	300	800	—	1,100
Barn	500	200	—	700
Total	$ 24,600	$ 6,500	$1,000	$ 32,100
Land				5,000
				$ 37,100

HSING-FANG—A parcel of land in the village of Hsing-fang about .05 acre in area valued at $200 and improved with a multiple use Mission Building valued at $1,000 and having contents of $400.

Total value $1,600

HOI-CHIH-TU—A parcel of land in the village of Hoi-chih-tu consisting of .05 acre valued at $200 and improved with a multiple usage Mission Building valued at $1,000 and having contents of $400.

Total value $1,600

MAI-FONG—A parcel of land in the village of Mai-Fong consisting of .05 acre valued at $200 and improved with a single multiple usage Mission Building valued at $1,000 and having contents of $400.

Total value $1,600

SHEN-KANG—A parcel of land in the village of Shen-kang consisting of ½ acre valued at $1,000 and improved with the following buildings:

	Building	*F.F.&E.*	*Personal Effects*	*Total*
Church	$ 2,000	$ 1,000	—	$ 3,000
School	1,000	500	—	1,500
Total	$ 3,000	$ 1,500		$ 4,500
Land				1,000
				$ 5,500

GNAI-SONG—A parcel of land in the village of Gnai-song containing about .05 acre valued at $200 and improved with a single multiple purpose Mission Building valued at $500 and holding contents of $200

Total value $ 900

CH'UNG-WU-TU—A parcel of land in the village of Ch'ung-wu-tu containing approximately ½ acre valued at $1,000 and improved with the following structures:

	Building	*F.F.&E.*	*Personal Effects*	*Total*
Church	$ 1,000	$ 500	—	$ 1,500
Residence	500	500	—	1,000
School	1,000	1,000	—	2,000
Total	$ 2,500	$ 2,000		$ 4,500
Land				1,000
				$ 5,500

PEH-TU—A parcel of land in the village of Peh-tu containing about ½ acre and valued at $500 improved with the following buildings having contents as specified:

	Building	*F.F.&E.*	*Personal Effects*	*Total*
Church (constructed 1920)	$ 3,000	$ 1,000	—	$ 4,000
Residence 40′ x 30′	1,000	500	—	1,500
Total	$ 4,000	$ 1,500		$ 5,500
Land				500
				$ 6,000

WONG-BI—A parcel of land in the village of Wong-bi containing about .70 acres and valued at $500 improved with a single combination many usages Mission Building valued at $500 with contents of $200.

Total value $1,200

SHINGKAO'I (Ch'ing-kao-i)—A parcel of land in the village of Shingkao'i containing about ½ acre valued at $200 and improved with the following buildings:

	Building	*F.F.&E.*	*Personal Effects*	*Total*
Chapel	$ 4,000	$ 1,000	—	$ 5,000
Residence	6,000	1,500	—	7,500
Total	$ 10,000	$ 2,500		$ 12,500
Land				200
				$12,700

III. *DISTRICT OF POYANG*

POYANG—A parcel of land in the Northeast corner of the city located on the main East-West street containing approximately 30 acres valued at $100,000 being the largest Mission Compound in the Yukiang Diocese and extending over four blocks long with buildings or brick wall forming the boundary on three sides and improved with the following buildings:

	Building	*F.F.&E.*	*Personal Effects*	*Total*
Residence	$ 30,000	$ 5,000	$1,500	$ 36,500
Chapel	15,000	2,000	—	17,000
Home for the Blind	5,000	1,800	—	6,800
Lace Making Building	1,500	1,000	—	2,500
Catechetical School	5,000	2,000	—	7,000
Church—built 1940, seat 850	80,000	12,000	—	92,000
Workers' Rooms	3,000	500	—	3,500
Total	$139,500	$24,300	$1,500	$165,300
Land				100,000
				$265,300

Poyang—A parcel of land outside the Mission Compound and directly across the road from the new church described above, measuring approximately 150′ x 150′ with a brick wall around its perimeter and improved with a residence building. Total value $5,000

Poyang—A parcel of land outside the Mission Compound and across the road at the opposite end of the Compound from the new church, measuring approximately 75′ x 60′ and improved with a residence building. Total value $5,000

SUSULIKAI—A parcel of land in the center of the small village of Susulikai containing about .35 acre valued at $800 with a brick wall around its perimeter and improved with a one-story, 20′ deep building along approximately 250′ of the wall containing rooms used as Chapel, Residence, and Classrooms with a value of $2,000 and having contents of $500. Total value $3,300

FOUGACHOW—A parcel of land in the center of the small village of Fougachow and containing .46 acre valued at $900 with a brick wall around its perimeter and improved with the following buildings:

	Building	*F.F.&E.*	*Personal Effects*	*Total*
Chapel seating 400	$ 3,000	$ 1,100	—	$ 4,100
Residence — 30′x50′	1,500	1,000	—	2,500
Total	$ 4,500	$ 2,100		$ 6,600
Land				900
				$ 7,500

SEMANKAI—A parcel of land just outside the West Gate of the City of Poyang containing .15 acre valued at $200, improved with a Chapel seating about 300 people and valued at $2,000 with contents of $1,000. Total value $3,200

KINGTEHCHEN—A parcel of land located in the Northwest corner of this city containing about 5.05 acres valued at $16,000 with a brick wall around its perimeter and dividing it into a men's and women's section, improved with the following buildings:

	Building	*F.F.&E.*	*Personal Effects*	*Total*
Church	$ 25,000	$ 4,000	—	$ 29,000
Residence—2 story	10,000	3,000	$ 500	13,500
Primary School—Boys	3,000	1,500	—	4,500
Women's School—2 story	15,000	3,000	—	18,000
Women's Residence	5,000	1,200	—	6,200
Total	$ 58,000	$12,700	$ 500	$ 71,200
Land				16,000
				$ 87,200

LOPING—A parcel of land located almost in the center of this city containing 4.13 acres valued at $10,500 with a brick wall around its perimeter and improved with the following buildings including a Gothic church of white stone much like the one at Kweiki:

	Building	*F.F.&E.*	*Personal Effects*	*Total*
Church	$ 55,000	$ 9,000	—	$ 64,000
Residence—50'x100'	12,000	4,500	$ 500	17,000
School—two story	9,000	4,400	—	13,400
Women's building	8,000	2,100	—	10,100
Total	$ 84,000	$20,000	$ 500	$104,500
Land				10,500
				$115,000

WANNIEN—A parcel of land located next to the East Gate of the city containing 4.26 acres valued at $11,000 with a brick wall around its perimeter, a small road through the middle of the compound dividing it into a men's and women's section and improved with the following buildings:

	Building	*F.F.&E.*	*Personal Effects*	*Total*
Large Chinese Home used as Chapel, Residence & Classes	$ 12,000	$ 4,200	$ 500	$ 16,700
Women's Building	8,000	4,500	—	12,500
Dormitory—2 story, 75' x 75'..	7,000	3,000	—	10,000
Total	$ 27,000	$11,700	$ 500	$ 39,200
Land				11,000
				$ 50,200

IV. *DISTRICT OF HOKOW*

HOKOW—A parcel of land located in the Southwest corner of the city containing 24.79 acres valued at $62,000 with a brick wall around the perimeter and a road through the middle dividing the compound into a men's and women's department, and improved with the following buildings:

	Building	*F.F.&E.*	*Personal Effects*	*Total*
Church	$ 65,000	$ 6,500	—	$ 71,500
Residence	12,000	4,000	$ 500	16,500
Primary School #1—Boys	5,000	4,000	—	9,000
Primary School #2—Girls	5,000	4,000	—	9,000
Catechetical School	2,000	1,000	—	3,000
Granary	800	1,500	—	2,300
Women's Residence	3,000	1,200	—	4,200
Orphanage	5,000	1,500	—	6,500
Dispensary	1,000	2,500	—	3,500
Total	$ 98,800	$26,200	$ 500	$125,500
Land				62,000
				$187,500

HENG FENG—A parcel of land in a small village consisting of .25 acre valued at $600 and improved with the following buildings:

	Building	*F.F.&E.*	*Personal Effects*	*Total*
Chapel-Residence	$ 1,500	$ 1,000	—	$ 2,500
Storage Building	500	200	—	700
Total	$ 2,000	$ 1,200		$ 3,200
Land				600
				$ 3,800

YUSHAN—A parcel of land bordering the city wall containing approximately 2 acres valued at $5,300 and improved with the following buildings:

	Building	*F.F.&E.*	*Personal Effects*	*Total*
Church	$ 35,000	$ 3,000	—	$ 38,000
Residence	7,000	3,500	$ 500	11,000
House #1—Men	2,000	1,600	—	3,600
House #2—Women	2,000	1,600	—	3,600
Total	$ 46,000	$ 9,700	$ 500	$ 56,200
Land				5,300
				$ 61,500

CHI-TU—A parcel of land in the center of this small village containing approximately .75 acre valued at $1,000 and improved with the following buildings:

	Building	*F.F.&E.*	*Personal Effects*	*Total*
Chapel	$ 1,000	$ 900	—	$ 1,900
Residence for Priest	500	400	—	900
Residence for Catechist	500	—	—	500
Total	$ 2,000	$ 1,300		$ 3,300
Land				1,000
				$ 4,300

Yushan—Several parcels of land scattered around the countryside near Yushan, used by the Mission farming in order to pay the teachers salaries, consisting of 8 acres valued at $2,000.

Total values $2,000

SHANGJAO—A parcel of land located near the North edge of this city containing .75 acre valued at $800 and improved with one building measuring about 75' x 50' used as Chapel, and Residence valued at $3,000 with contents valued at $1,200. Total value $5,000

IYANG—A parcel of land situated on the North side of the city containing 11.02 acres valued at $26,000 with a brick wall around its perimeter and a road through the compound dividing it into a men's and women's department, and improved with the following buildings:

	Building	*F.F.&E.*	*Personal Effects*	*Total*
Church	$ 40,000	$ 4,500	—	$ 44,500
Residence	15,000	5,000	$ 500	20,500
Catechetical School #1	2,000	1,000	—	3,000
Primary School	2,500	1,200	—	3,700
Women's Residence	11,000	8,500	—	19,500
Total	$ 70,500	$20,200	$ 500	$ 91,200
Land				26,000
				$117,200

NAN-KIANG-KOW—A parcel of land situated in a prominent location in this city on the main road and containing .06 acre valued at $400 and improved with a Chinese home that served as Chapel and Residence for the priest, valued at $2,000 with contents of $600 and personal effects of $500. Total value $3,500

SITANG—A parcel of land in the center of this small village containing .10 acre and improved with a mission station building that served as Chapel and Residence, with land valued at $300, building valued at $1,500 and contents valued at $500. Total value $2,300

LOANGFONG—A parcel of land located in this city containing about .90 acre valued at $800 and improved with a Mission Building that served as Chapel, Residence and Catechetical School valued at $2,500 with contents valued at $600. Total value $3,900

TSAO FONG—A parcel of land in this small village containing about .10 acre valued at $300 and improved with a Mission Building that served as Chapel and Residence, valued at $2,000 with contents valued at $1,100. Total value $3,400

V. *OTHER REAL ESTATE*

LINCHWAN—One hundred and Twenty (120) acres of unimproved farm lands in the aggregate, consisting of many small plots six to two acres in area and attached to the various Missions in the district of Linchwan and used for growing rice. Total value $15,000

SHANGHAI (#139)—A parcel of land in the district formerly known as the French Concession in the City of Shanghai, China, registered in the Land Register of the French Concession as Cadastral 139, situated at the corner of Edward VII Avenue and the Rue des Peres, consisting of 0.0740 mou valued at $15,000 and improved with a building which is valued at $17,800. Total value of land and buildings $32,800

SHANGHAI (#153)—A parcel of land in the district formerly known as the French Concession in the City of Shanghai, China, registered in the Land Register of the French Concession as Cadastral 153, situated between Edward VII Avenue and the Streets of "du Consulat, de saigon, Palikao," consisting of 7.306 mou valued at $69,200 and improved with a four-story brick apartment building valued at $80,600. Total value of land and buildings $149,800

SHANGHAI (#168)—A parcel of land in the district formerly known as the French Concession in the City of Shanghai, China, registered in the Register of the French Concession as Cadastral 168, situated between the streets—"Weihwei—du Consulat—des Peresde Saigon," and consisting of 8.757 mou, valued at $62,000 and improved with a four-story brick apartment building valued at $76,300.
Total value of land and buildings $138,300

SHANGHAI (#170)—A parcel of land in the district formerly known as the French Concession in the City of Shanghai, China, registered in the Land Register of the French Concession as Cadastral 170, situated at the corner of Rue du Consulat and Rue des Peres, consisting of 1.050 mou valued at $7,500 and improved with a building which is valued at $9,100. Total value of land and building $16,600

SHANGHAI (#438)—A parcel of land in the district formerly known as the French Concession in the City of Shanghai, China, known as Lot 438, consisting of 8.134 mou. The land consists of 8-Mao, 1-Li, 3-Hao, valued at $44,600. Total value of land and buildings $82,100

VI. *OTHER CHATTELS*

Shanghai—A Diesel-Engine Generator of Electricity valued at $1,000 brought from the United States in 1948 for the Mission of Linchwan, Kiangsi, but detained and finally confiscated in Shanghai. Value $1,000

Yukiang—A Willis Jeep bought new in 1948 and brought to Yukiang at the end of 1948 for the use of Bishop Quinn, and valued at $2,000 when confiscated. Value $2,000

Yukiang Diocese—Five motorcycles garaged at the various locations in the four districts of the Yukiang Diocese, with an average value of $350 each when confiscated. Total value $1,750

Yukan—Two horses were known to be kept at the Mission of Yukan with a value of about $50 each. Total value $100

In summary the Commission concludes that claimant suffered a loss within the meaning of title V in the total amount of $3,053,900.00 as follows:

I. District of YUKIANG	$ 841,450.00
II. District of LINCHWAN	836,900.00
III. District of POYANG	541,700.00
IV. District of HOKOW	394,400.00
V. Other Real Estate	434,600.00
VI. Other Chattels	4,850.00
Total	$3,053,900.00

The Commission has decided that in certification of losses on claims determined pursuant to title V of the International Claims Settlement Act of 1949, as amended, interest should be included at the rate of 6% per annum from the date of loss to the date of settlement. (See *Claim of Clarence Burton Day and Ethelwyn C. Day*, Claim No. CN–0030, Decision No. CN–001); and in the instant claim it is so ordered.

CERTIFICATION OF LOSS

The Commission certifiies that THE SOCIETY OF THE CONGREGATION OF THE MISSION OF ST. LOUIS, MISSOURI suffered a loss in the amount of Three Million Fifty-three Thousand Nine Hundred Dollars ($3,053,900.00) with interest thereon at 6% per annum from September 30, 1951 to the date of settlement, as a result of the actions of the Chinese Communist regime, within the scope of title V of the International Claims Settlement Act of 1949, as amended.

Dated at Washington, D.C., June 10, 1970

IN THE MATTER OF THE CLAIM OF ISABELL O. ALCONE

Claim No. CN–0253—Decision No. CN–314

Petition to Reopen

AMENDED FINAL DECISION

The Commission issued its Final Decision on this claim on September 16, 1970 certifying a loss to claimant in the amount of $152,501.50, with interest thereon from October 1, 1949, for claimant's one-half interest in nine parcels of real property in Harbin, China that were taken by the Chinese Communist regime.

Subsequent to the issuance of the Final Decision claimant has submitted new evidence on three additional items of property, now constituting claimant's petition to reopen the claim.

Based on the entire record, including all evidence in support of the petition to reopen the claim, the Commission now finds that claimant was also the owner of a one-half interest in improved real property on Kitaiskaia St., Harbin, China, that it was taken by the Chinese Communist regime on May 1, 1959 and that claimant's one-half interest at the time of loss had a value of $175,000.00.

The Commission also finds that claimant was the owner of a one-half interest in unimproved commercial lots on Baikal Road, Shanghai, China; this land was taken on October 1, 1949 and that at the time of loss claimant's said interest had a value of $20,000.00.

As to that part of the claim based on a bank account the Commission finds that said account was still in the name of claimant's father, a non-national of the United States. Said father had left China and died in France. The record reflects that when he left China he could not take this money with him. The Commission finds that on said departure date the owner had lost all use and control of the account and the property was taken at that time. Since the property was owned by a non-national at the time of loss whatever interest claimant had is not certifiable under the Act. Accordingly, this part of the claim is denied.

The Commission has decided that in certification of losses on claims determined pursuant to title V of the International Claims Settlement Act of 1949, as amended, interest should be included at the rate of 6% per annum from the date of loss to the date of settlement (see *Claim of Clarence Burton Day and Ethelwyn C. Day*, Claim No. CN-0030, Decision No. CN-1); and in the instant claim it is so ordered as follows:

	On	*From*
(1)	$152,501.52	October 1, 1949
	20,000.00	October 1, 1949
	$172,501.52	
(2)	$175,000.00	May 1, 1959
	$347,501.52	

Accordingly, it is

ORDERED that the Final Decision as modified herein be and the same is entered as the Amended Final Decision on this claim. The certification of loss is restated below.

CERTIFICATION OF LOSS

The Commission certifies that ISABELLE O. ALCONE suffered a loss in the amount of Three Hundred Forty-Seven Thousand Five Hundred One Dollars and Fifty-Two Cents ($347,501.52) with interest thereon at 6% per annum from the respective dates of loss to the date of settlement, as a result of the actions of the Chinese Communist regime, within the scope of title V of the International Claims Settlement Act of 1949, as amended.

Dated at Washington, D.C., June 30, 1972.

FINAL DECISION

The part of the claim in the amount of $152,501.50 which was based on the loss of nine parcels of improved real property located in Harbin and Hilar, China, was denied on the grounds that claimant had failed to establish her ownership of the subject properties and that this portion of the claim was owned by a national of the United States on the date it arose and continuously thereafter until the date of filing with the Commission. The second part of the claim in the amount of $1,550,000.00 was based upon the loss of claimant's "right of inheritance" of industrial and commercial properties of her deceased father in Harbin and Hilar, China. The Commission found that when claimant's father died in 1959, any property of the deceased which may have been taken by the Chinese Communist regime did not destroy a subsequent right in claimant to inherit from her father, and that

upon his death in 1959 the claimant inherited whatever interest her father had in his claim against the Chinese Communist regime. Since this property, however, was not owned by a national of the United States on the date of loss and because this portion of the claim was not owned by a national of the United States continuously thereafter until the date of filing with the Commission, this part of the claim was denied.

Objections were raised only to that part of the claim based on the aforementioned nine parcels of improved real property. Based on the newly submitted evidence and the testimony given at the oral hearing, the Commission now finds that claimant, ISABELLE O. ALCONE, was the owner of a ½ interest in all nine parcels of the improved real property and that these properties, in the absence of evidence of a specific taking date for each parcel, were taken by the Chinese Communist regime on Octobr 1, 1949, the date on which the Chinese Communist regime was proclaimed and the initial date encompased until title V. The Commission further finds that at the time of los the property had a total value of $152,501.52. The Commission concludes that claimant, ISABELLE O. ALCONE, suffered a loss within the meaning of title V of the Act in this amount.

The Commission has decided that in certification of losses on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be included at the rate of 6% per annum from the date of loss to the date of settlement (see *Claim of Clarence Burton Day and Ethelwyn C. Day*, Claim No. CN–0030, Decision No. CN–1); and in the instant claim it is so ordered. Accordingly, it is

ORDERED that the Proposed Decision as modified herein be and the same is entered as the Final Decision on this claim. The certification of loss is restated below.

CERTIFICATION OF LOSS

The Commission certifies that ISABELLE O. ALCONE suffered a loss in the amount of One Hundred Fifty-Two Thousand Five Hundred One Dollars and Fifty Centers ($152,501.50) with interest thereon at 6% per annum from October 1, 1949 to the date of settlement, as a result of the actions of the Chinese Communist regime, within the scope of title V of the International Claims Settlement Act of 1949, as amended.

Dated at Washington, D.C., September 16, 1970.

PROPOSED DECISION

This claim against the Chinese Communist regime, under title V of the International Claims Settlement Act of 1949, as amended, in the amount of $1,702,500.00, was presented by ISABELLE O. ALCONE for the asserted loss of certain real property in Harbin and Hailar, China. Claimant has been a national of the United States since July 5, 1939.

Under title V of the International Claims Settlement Act of 1949 [16 Stat. 1110 (1964), as amended by 80 Stat. 1365 (1966), 22 U.S.C. §§ 1643–1643k, Supp. II (1967], the Commission is given jurisdiction over claims of nationals of the United States against the Chinese Communist regime. Section 503(a) of the Act provides that the Commission shall receive and determine in accordance with applicable substantive law, including international law, the amount and validity of claims by nationals of the United

States against the Chinese Communist regime arising since October 1, 1949 for

> losses resulting from the nationalization, expropriation, intervention or other taking of, or special measures directed against, property including any rights or interests therein owned wholly or partially, directly or indirectly at the time by nationals of the United States.

Section 502(3) of the Act provides:

> The term 'property' means any property, right, or interest including any leasehold interest, and debts owed by the Chinese Communist regime or by enterprises which have been nationalized, expropriated, intervened, or taken by the Chinese Communist regime and debts which are a charge on property which has been nationalized, expropriated, intervened, or taken by the Chinese Communist regime.

The record shows that claimant had filed claims under Title II of the War Claims Act of 1948 (76 Stat. 1107 (1962)), for property losses sustained in China during World War II (Claim Nos. W-6668, W-13182 and W-13183). The claim for losses in Harbin, China (Claim No. W-13182) relates to the claim filed against the Chinese Communist regime.

Initially, Claim No. W-13182 was denied by the Commision for failure to sustain the burden of proof. Subsequently, additional supporting evidence was submitted and testimony was given at an oral hearing before the Commission. Under date of May 15, 1967, the Commission entered a Final Decision on that claim granting claimant an award in the amount of $31,100.00 for the loss of a one-half interest in improved real property located on Kommercheskaya Street, Harbin, and in the personal property situated therein. The balance of that claim, for $151,501.50, was denied for lack of proof.

Claiman asserts the following losses under title V of the Act:

$152,501.00, representing the part of Claim No. W-13182 which was denied; and

$1,549,999.00, representing a "loss of inheritance" of property owned by her late father, a nonnational of the United States, who died in France in 1959.

Balance of Claim No. W-13182

The burden of counsel's contention is that in Claim No. W-13182, the Commission had determined favorably the issue of ownership of the property in question; and that the Commission's finding that said property had not been lost, damaged or destroyed as a result of World War II necessarily implies that the property was subsequently taken by the Chinese Communist regime. Accordingly, the balance of Claim No. W-13182, $152,501.00, is asserted as the extent of claimant's loss in this respect.

Upon examination of Claim No. W-13182, the Commission finds no support for counsel's contention. The Commission's decision clearly states that the evidence was insufficient to warrant the conclusion that claimant owned the property in question or sustained a loss thereof. A pertinent part of the Commission's Final Decision reads as follows:

> "With respect to the remaining portions of Claim No. W-13182 and Claim No. W-13183, the Commission finds after a thorough review of the record of each of these claims, including the testimony of claimants

at the oral hearing and the evidence submitted in support of the claims subsequent thereto, there does not appear in the records of either claim independent corroborative evidence of sufficient probative value from which the Commission could make definite findings of act concerning the ownership or loss thereof upon which to base awards for the loss of such property."

No further evidence has been submitted in support of this portion of the claim. Claimant and counsel rely solely on the record in Claim No. W–13182.

On the basis of the entire record, the Commission finds that claimant has failed to meet the burden of proof. The record does not establish that claimant owned the property upon which this portion of the claim is based, and that this portion of the claim was owned by a national of the United States on the date it arose and continuously thereafter until the date of filing with the Commission in accordance with the following provisions of Section 504 of the Act:

(a) A claim shall not be considered under section 503(a) of this title unless the property on which the claim was based was owned wholly or partially, directly or indirectly by a national of the United States on the date of the loss and if considered shall be considered only to the extent the claim has been held by one or more nationals of the United States continuously thereafter until the date of filing with the Commission.

For the foregoing reasons, this portion of the claim is denied.

Loss of Inheritance

Counsel states that this portion of the claim is based upon the loss of claimant's "right of inheritance" of industrial and commercial properties of her late father in Harbin and Hailar, China. It is asserted that claimant and her brother, a nonnational of the United States, were the sole heirs of her father, also a nonnational of the United States, who died in France in 1959.

It is contended that the properties of claimant's late father had been taken by the Chinese Communist regime prior to her father's death, and that said action of the Chinese Communist regime therefore had effectively destroyed the right of this claimant to inherit with her brother the giant interests of their father—a loss which it is contended is compensable under the provisions of Public Law 89–780.

The Commission finds counsel's contentions untenable. While the Chinese Communist regime may have taken the properties belonging to claimant's late father prior to his death, that regime did not destroy claimant's right to inherit from her father. Upon the taking of said properties, a claim against the Chinese Communist regime arose in favor of claimant's late father; and when he died in 1959 claimant inherited an interest in her late father's claim.

Pursuant to the express provisions of section 504, quoted above, this portion of the claim cannot be considered because the property on which it is based was not owned by a national of the United States on the date of loss and because this portion of the claim was not owned by a national of the United States continuously thereafter until the date of filing with the Commission.

Accordingly, this portion of the claim is also denied.

Dated at Washington, D.C., April 15, 1970.

IN THE MATTER OF THE CLAIM OF SHVETZ REALTY CORPORATION

Claim No. CN–0480—Decision No. CN–247

Petition to Reopen

AMENDED FINAL DECISION

The Commission isued its Final Decision on this claim on February 17, 1971 denying this claim because the evidence of record was insufficient to establish that claimant owned property which had been taken by the Chinese Communist regime at a time when it was owned by a national of the United States as required by the statute.

Subsequent to the issuance of the Final Decision claimant has petitioned for the reopening of the claim and submitted certain affidavits with respect to ownership and dates of taking.

Upon review of the entire record, including the new evidence submitted with the petition to reopen, the Commission now finds that the SHVETZ REALTY CORPORATION was organized on June 10, 1948 under the laws of the State of Delaware and that Alexander E. Shvetz, a national of the United States since his naturalization on March 31, 1955, was the owner of all of the outstanding shares of stock of the said corporation at all times pertinent to this claim. Accordingly, the Commission concludes that the claimant corporation qualifies as a national of the United States within the meaning of the Act.

On the basis of the record as now constituted, the Commision finds that the SHVETZ REALTY CORPORATION was the owner of two two-story attached residences, known as Lane Number 100 off Saing Yang Road South, Shanghai, China. In an affidavit, dated February 28, 1972, submitted in support of the petition to reopen, one Yip Hin Ching states that he was a resident of Shanghai until 1959; that his sister-in-law resided in this property; and that in the year 1957, the Chinese Communist Government took this property. Accordingly, upon consideration of the record with respect to this property, the Commission finds that it was taken by the Chinese Communist regime on or about July 1, 1957. The Commission further finds that the value of the said property on the date of taking was $80,000.00.

Affidavits were also submitted with respect to the taking of the other items of property involved in this claim. However, the Commission concludes that the statements are lacking in details as to the extent of control maintained by the claimant or its representatives and are not of sufficient probative value to warrant a finding that the other items of property were taken at a time when they were owned by a national or nationals of the United States. Therefore, the denial of the portion of the claim based on these items is affirmed.

The Commission has decided that in certification of losses on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be included at the rate of 6% per annum from the date of loss to the date of settlement (see *Claim of Clarence Burton Day and Ethelwyn C. Day*, Claim No. CN–0030, Decision No. CN–1); and in the instant claim it is so ordered. Accordingly, it is

ORDERED that the Final Decision as modified herein be and the same is entered as the Amended Final Decision on this claim.

CERTIFICATION OF LOSS

The Commission certifies that SHVETZ REALTY CORPORATION suffered a loss in the amount of Eighty Thousand Dollars ($80,000.00) with interest thereon at 6% per annum from July 1, 1957 to the date of settlement, as a result of the actions of the Chinese Communist regime, within the scope of title V of the International Claims Settlement Act of 1949, as amended.

Dated at Washington, D.C., June 30, 1972.

FINAL DECISION

This claim, in the amount of $450,000.00, was based on the ownership of four parcels of improved real property and four parcels of vacant land in Shanghai, China, as follows:

1. Apartment house known as Apartments #338 Route Tenant de la Tour, consisting of three stories with seven shops and two 2-room apartments and four 4-room apartments.
2. Seven single story shops situated on a parcel of land known as 82 to 94 Route Tenant de la Tour held under Tu-de-Jen numbers 2206, 801 and 4853—area mows 0.206, 0.304 and 0.330.
3. Two 2-story attached residences known as Lane number 100 off Saing Yang Road South.
4. Forty 2-story single units consisting of shops and apartments known as Lane 631 Kwenming Road, held under B.C. Lot numbers 13132 and 11341—area mows 3.077 and 2.996.
5. Vacant land on Chiu Road (Pearce Road) held under Tu-de-Jen numbers 5930 and 5261—area mows 0.956 and 2.143.
6. Vacant land in three separate parcels known as Woo Tah Road corner of Chung Hwa Shing Road—area mows 0.622, 0.314, 0.622, 0.314 and 3.493.
7. Vacant land known as Chinaza Station, held under Fangtam numbers 87571, 87570, 76991, 79902, and 79903—area mows 1.872, 1.811, 1.989, 9.393 and 1.130.
8. Vacant land on the corner of Chowkiatsui Road (Point Road) and Liaoyang Road, held under B.C. Lot number 12901 and Tu-de-Jen numbers 5775 and 13410—area mows 0.228, 1.109 and 0.033.

Alexander E. Shvetz asserted that claimant, SHVETZ REALTY CORPORATION, was organized on June 10, 1948 under the laws of the State of Delaware and dissolved on December 27, 1965. Mr. Shvetz also asserted that all the shares of stock of claimant corporation were owned by him, a national of the United States since March 31, 1955. No evidence was submitted to establish that claimant corporation or its predecessor-in-interest, Alexander E. Shvetz, owned any of the property asserted in the claim and that such property was nationalized by the Chinese Communist regime. The Proposed Decision further noted that the entire outstanding capital stock of claimant corporation was assertedly owned by a nonnational of the United States until March 31, 1955, when Alexander E. Shvetz was naturalized. Claimant, through counsel, was advised on several occasions as to the type of evidence to submit in support of this claim. Such evidence was never submitted. The Proposed Decision denied the claim in its entirety.

None of the elements of ownership, taking and value were established. The burden of proof had not been met.

Counsel has submitted some probative evidence in support of his objections to the Proposed Decision. However, the Commission finds that evidence basic to all parts of this claim are outstanding so that the Commission is unable to make a positive finding as to any part of the claim. The evidence still outstanding is as follows:

(1) Claimant Alexander E. Shvetz has not established that he was the sole stockholder of the corporation SHVETZ REALTY CORPORATION.
(2) Claimant has not established that all *eight* properties herein were taken by the Chinese Communist regieme on or after March 31, 1955, the date of claimant's naturalization.
(3) The June 17, 1948 letters of Brandt & Rodgers, Ltd. containing the description of the asserted properties are addressed to R. Shvetz, Esq., Asia Trading Co., not to the claimant herein. They do not establish the ownership in claimant of the buildings as described in the letters.
(4) *Property No. 1.* No proof of ownership; no land area given.
Property No. 2. Is established as far as land only.
Property No. 3. Same as Property No. 1.
Property No. 4. Same as Property No. 2, but only for lot #11341.
Property No. 5. Appears claimant owned half of land and M. E. Kaptsan owned second half.
Property No. 6. No proof at all submitted.
Property No. 7. Same as Property No. 5 except lot #79902 is 1.943 mow not 9.393 mow.
Property No. 8. Tax receipt is to R. Shvetz, not claimant; no area of land established.

In view of the foregoing, the Commission concludes that the burden of proof has not been met. Accordingly, it is

ORDERED that the Proposed Decision be amended to conform to the foregoing and be entered as the Final Decision on this claim.

Dated at Washington, D.C., February 17, 1971.

PROPOSED DECISION

This claim for $450,000 against the Chinese Communist regime under title V of the International Claims Settlement Act of 1949, as amended, is based upon the asserted loss of claimant's assets in Shanghai, China. Claimant states that SHVETZ REALTY CORPORATION was organized on June 10, 1948 under the laws of the State of Delaware and dissolved on December 27, 1965. Claimant further states that all the shares of stock were owned by Alexander E. Shvetz, a national of the United States since March 31, 1955, the date of his naturalization.

Under title V of the International Claims Settlement Act of 1949 [78 Stat. 1110 (1964), as amended by 80 Stat. 1365 (1966), 22 U.S.C. §§ 1643–1643k, Supp. II (1967)], the Commission is given jurisdiction over claims of nationals of the United States against the Chinese Communist regime. Section 503(a) of the Act provides that the Commission shall receive and determine in accordance with applicable substantive law, including international law, the amount and validity of claims by nationals of the United States against the Chinese Communist regime arising since October 1, 1949 for

losses resulting from the nationalization, expropriation, intervention or other taking of, or special measures directed against, property including any rights or interests therein owned wholly or partially, directly or indirectly at the time by nationals of the United States.

Section 502(3) of the Act provides:

The term 'property' means any property, right, or interest including any leasehold interest, and debts owed by the Chinese Communist regime or by enterprises which have been nationalized, expropriated, intervened, or taken by the Chinese Communist regime and debts which are a charge on property which has been nationalized, expropriated, intervened, or taken by the Chinese Communist regime.

The Regulations of the Commission provide:

The claimant shall be the moving party and shall have the burden of proof in all issues involved in the determination of his claim. (FCSC Reg., 45 C.F.R. § 531.6(d) (Supp. 1967).)

Claimant has failed to submit any evidence to show that SHVETZ REALTY CORPORATION or its predecessor in interest, Alexander E. Shvetz, owned any property in Shanghai, as asserted in the claim, and that such property was nationalized or otherwise taken by the Chinese Communist regime. It has been noted that the entire outstanding capital stock of SHVETZ REALTY CORPORATION was owned by a non-national of the United States until March 31, 1955, when Alexander E. Shvetz became a naturalized citizen of the United States.

Claimant, however, gave no specifications concerning the property involved in this claim nor does the record disclose when and how the claim arose. By Commission letter of December 17, 1969, claimant's counsel was advised to submit any evidence claimant might have; and on February 20, 1970, he was invited to submit the evidence within 30 days from that date, because, absent such evidence, it might become necessary to determine the claim on the basis of the present record. Claimant's counsel requested on March 4, 1970 an extension of time for the submission of evidence. This request was denied on March 6, 1970, but in spite of this fact, no evidence whatever was submitted.

The Commission fully appreciates that many claimants may encounter difficulties in obtaining evidence in support of their claims. That is not to say, however, that the existence of such difficulties should be used as a basis for findings leading to decisions favorable to claimants where such findings are not warranted by the records in the claims.

The Commission finds that claimant has not met the burden of proof in that it has failed to establish the United States nationality of the principal stockholder at the time of the loss, the ownership of rights and interests in property and the nationalization or taking of this property by the Chinese Communist regime. Accordingly, this claim is denied in its entirety.

The Commission deems it unnecessary to consder other elements of this claim.

Dated at Washington, D.C., April 1, 1970.

EXHIBIT 20

FINAL STATISTICAL REPORT ON CHINA CLAIMS PROGRAM

Claims filed	579
Withdrawals	3
Dismissals	0
Claims on which Final Decisions were issued	576

	No. of Claims	*Amount*
Final Awards	384	$196,861,834.
Final Denials	192	
	576	

TABULATION OF AWARDS BY THE FOREIGN CLAIMS SETTLEMENT COMMISSION IN THE CHINA CLAIMS PROGRAM

Type of Claimant	*Number of Claims**	*Total Dollar Value*	*Number of Claims Under $10,000*	*Value of Claims Under $10,000*	*Number of Claims Over $10,000*	*Value of Claims Over $10,000*	*Number of Claims Over $500,000*	*Value of Claims Over $500,000*
Individuals	539	$ 14,377,726	343	$897,400	196	$ 13,480,326	3	$ 2,867,500
Corporation	44	122,823,554	1	9,049	43	122,814,505	14	119,268,900
Other Businesses	12	1,394,170	6	30,736	6	1,363,434	1	750,000
Religious and other Non-profit Organizaizations	82	58,266,394	13	61,460	69	58,204,934	20	53,479,150
TOTALS	677	$196,861,844	363	$998,645	314	$195,863,199	38	$176,365,550

* FCSC NOTE
No. of claims 579
No. of claimants 677

FOREIGN CLAIMS SETTLEMENT COMMISSION
CHINA CLAIMS PROGRAM
BUSINESS CORPORATIONS WITH CERTIFIED LOSSES
OF
ONE MILLION DOLLARS OR MORE

	CLAIMANT	
1.	Shanghai Power Company	$53,832,885
2.	Esso Standard	27,026,602
3.	Caltex Limited	15,443,700
4.	IT & T Corporation	7,765,315
5.	General Electric Company	4,546,200
6.	International Standard Electric Corp.	3,228,853
7.	Western District Power Co. Shanghai	1,758,685
8.	First National City Bank	1,562,145
9.	Shanghai Wharf and Warehouse Company	1,042,862

TABLE OF CASES REPORTED
CHINA CLAIMS PROGRAM

ited States Government Printing Office: 1979-- 296-750/6319

Exhibit 12

V. PROGRAMS COMPLETED IN 1981

A. FINAL REPORT ON THE SECOND CHINA CLAIMS PROGRAM

Under the provisions of Title V of the International Claims Settlement Act of 1949 [78 Stat. 110 (1964), 22 U.S.C. Sec. 1643-1643k as amended by Public Law 89-780, approved November 6, 1966, 80 Stat. 1365], the Commission was given jurisdiction over claims of nationals of the United States against the Chinese Communist regime (the Government of the People's Republic of China) arising since October 1, 1949, for losses resulting from the nationalization, expropriation, intervention, or other taking of, or special measures directed against, property of nationals of the United States. Pursuant to this authorization, in the First China Claims Program, the Commission considered claims that arose between October 1, 1949, and November 6, 1966, the date on which the program was authorized. That program was completed on July 6, 1972, pursuant to a statutory mandate in the enabling legislation.

On May 11, 1979, a claims settlement agreement was formally signed by the Governments of the United States and the People's Republic of China. The agreement settled all claims of nationals of the United States against the Government of the People's Republic of China for losses of property, which occurred between October 1, 1949 and the date of the agreement, resulting from the nationalization, expropriation, intervention, or other taking of, or special measures directed against such property by that Government (see Exhibit 2 herein).

Under Section 4(a) of Title I of the International Claims Settlement Act of 1949 [Public Law 81-455, approved March 10, 1950, 64 Stat. 12, 22 U.S.C. 1623], as amended, the Commission is given 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 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), arising out of the nationalization or other taking of property. In this section the Commission is directed to decide claims in accordance with provisions of the applicable claims agreement and the principles of international law, justice and equity.

Prior to the agreement, claims for losses in China that may have arisen between November 6, 1966 and May 11, 1979 had not been adjudicated. Therefore, under the authority granted in Section 4(a) of Title I of the Act, on June 1, 1979 the Commission commenced the administration of a brief Second China Claims Program limited to any claims of U.S. nationals for losses in China arising between November 6, 1966 and May 11, 1979, the date of the claims settlement agreement.

The official filing period for this program, which began on June 1, 1979 and ended on August 31, 1979, was announced by notice published in the Federal Register on June 1, 1979. Additionally, a press release issued on May 30, 1979 announcing the Second China Claims Program was mailed to 251 news services. The Commission also mailed notices of the program to 256 potential claimants who had expressed an interest in filing claims against the People's Republic of China after the First China Claims Program was completed in 1972. On February 26, 1981, following the issuance of Proposed Decisions on all claims and completion of a majority of the oral hearings on claims in which such were requested in this program, as discussed hereinafter, the Commission published notice in the Federal Register that July 31, 1981 had been set as the completion date for the Second China Claims Program. Copies of that notice were mailed to all claimants who had filed objections to the Proposed Decisions issued by the Commission on their claims. On July 31, 1981, the Commission completed the Second China Claims Program.

The period during which losses must have occurred for favorable action to be taken on claims in the Second China Claims Program was established because the Congress of the United States had previously made provision under Title V of the Act for the filing and adjudication of claims by nationals of the United States for property losses in China that arose between October 1, 1949 and November 6, 1966. Congress had also mandated that the claims program must be completed by July 6, 1972. Accordingly, the Commission concluded that its jurisdiction over such claims expired on July 6, 1972, and that it no longer had the authority to accept and take favorable action on these claims.

This situation was not unique in the programs that the Commission had been authorized to administer in the past. Subsequent to completion of claims programs against the Governments of

Bulgaria, Hungary and Rumania on August 9, 1959, the Government of the United States reached claims agreements with those governments. The Commission was unable to implement the claims agreements under Title I of the Act without legislative authorizations because the United States had declared the existence of a state of war against those countries during World War II. In each case the Congress enacted a second claims program by amending Title III of the International Claims Settlement Act of 1949, limiting the compensable claims to those for losses which occurred after the period covered by the first claims programs. Those programs are discussed further in Section VI of this report.

Following the legislative precedents in these second programs which precluded the favorable consideration of claims that arose during the period covered by the first programs, the Commission concluded that it did not have the jurisdiction to consider claims against the People's Republic of China that arose prior to November 6, 1966 and after May 11, 1979, the date of the claims settlement agreement.

During the Second China Claims Program eighty-two claims were received by the Commission. Following the end of the filing period on August 31, 1979, the Commission's legal staff carefully reviewed the claims and assisted the claimants and their counsel of record in developing the claims for consideration by the Commission. By October 20, 1980, Proposed Decisions had been issued by the Commission on all eighty-two claims, all of which were denials. Claimants filed objections to the Proposed Decisions of the Commission on forty-nine claims and oral hearings were requested on twenty-one of these forty-nine claims. The Commission entered its Proposed Decisions as Final Decisions on the thirty-three claims in which no timely objections were filed.

The Commission scheduled oral hearings on twenty-one claims during January, February, and March of 1981. Oral hearings were held on fourteen of these claims. Oral hearings were not held on the other seven claims for the reason that either the oral hearings were cancelled at the request of the claimants or the claimants did not appear at the scheduled time and a postponement was not requested. These seven claims, along with the twenty-eight claims in which oral hearings were not requested, were considered by the Commission in hearings on the record following the submission of additional evidence by the claimants. Following an oral hearing one claimant requested permission to withdraw the claim. The Commission granted the request and entered an Order of Withdrawal on the claim.

After careful consideration of the complete records of each of the remaining forty-eight claims in which objections were filed to the Proposed Decisions, the Commission issued Final Decisions granting awards to three claimants in two claims and affirming the

Proposed Decisions denying the other forty-six claims. Subsequent to the issuance of these Final Decisions, the Commission received eight requests for reconsideration of the Final Decisions issued in seven claims. These requests were treated as petitions to reopen provided for by § 531.5(1) of the Regulations of the Commission. An oral hearing was held on one petition to reopen to receive testimony from a claimant's relative who had recently emigrated from the People's Republic of China and an award granted. (See the *Claim of Su Jan Lee,* Claim No. CN-2-053, Decision No. CN-2-040, Order and Amended Final Decision reported at page 22 *infra.*)

The other seven petitions to reopen were denied by the Commission, as was one request to reconsider one of those denials, because no new evidence was submitted which would have permitted the Commission to grant awards in those claims.

The Commission granted awards to four claimants in three claims, as indicated above, in which they satisfied the burden of submitting evidence that was sufficient to establish that takings of the claimed property occurred between November 6, 1966 and May 11, 1979. The nature of the evidence submitted which established compensability was different in each claim. In the *Claims of Lawrence C. Chang, Vera W. Chang, and Pauline Chang,* Claim Nos. CN-2-019, 022, and 023, Decision No. CN-2-070, claimants, with the aid of the Honorable Don Ritter, House of Representatives, and the Department of State, were able to obtain through the United States Consul General in Shanghai a written report from the Foreign Affairs Office of the Shanghai Municipal Government on the official land records regarding the status of their real property in Shanghai. On the basis of this report and available historical information regarding events in Shanghai, the Commission issued awards to Lawrence C. Chang and Pauline Chang in Claim No. CN-2-019, finding a taking of property by the Government of the People's Republic of China on December 27, 1966 and affirmed the denials of the other two claims (Claim Nos. CN-2-022 and CN-2-023) for lack of evidence to establish compensable takings during the requisite period.

The takings of real property and bank accounts in Shanghai on November 9, 1966 and November 30, 1966, respectively, were established in the above mentioned *Claim of Su Jan Lee* by sworn reports of lawyers in Shanghai who were requested by the claimant to investigate the status of his property. These reports included summaries of meetings with officials of the Bank of China, the Land Bureau, and the Municipal Government in Shanghai, which provided information sufficient to establish losses compensable in the Second China Claims Program. The evidence upon which the Commission made a finding of compensable losses in the *Claim of Ben C. Pond,* Claim No. CN-2-055, Decision No. CN-2-074, reported herein at

page 26), consisted of a number of letters from the claimant's nephew in Kumming City, People's Republic of China. These letters established that claimant's two parcels of real property were taken by the Government of Kumming City for two municipal improvement projects, one during 1969 and one during 1978.

The Commission was constrained to deny claims due to the lack of proof that the property upon which the claims were based was nationalized, confiscated, or otherwise taken by the Government of the People's Republic of China between November 6, 1966, and May 11, 1979. The Commission was sympathetic with the difficulties that claimants encountered in establishing such takings. However, under the Commission's regulations, the burden of proof is upon the claimants to submit sufficient evidence to establish the requisite elements of compensable claims. (See the *Claim of Basilette V.A. Brown,* Claim No. CN-2-056, Decision No. CN-2-069, Final Decision reported *infra* at page 32.) The Commission was, also, constrained to deny numerous claims in which either the evidence submitted on the claims or the findings of the Commission in the first China Claims Program established that the nationalization, confiscation, or other taking of the propety upon which the claims were based occurred prior to November 6, 1966. The latter type of denials were in claims based on losses in connection with the ownership of pre-1949 Chinese Government Bond Issues, Bank Notes, or pre-1949 Chinese National currency and shares of corporations with property located in China. (See the *Claim of Welthy Kiang Chen,* Claim No. CN-2-015, Decision No. CN-2-066, Proposed Decision and Final Decision reported *infra* at pages 37 and 40, respectively.)

In the *Claim of Robert J. McLaughlin, Administrator of the Estate of Gerald R. McLaughlin, Deceased,* (Claim No. CN-2-014, Decision No. CN-2-045, reported in 1979 FCSC Ann. Rep. 45), the Commission was confronted with a claim based on the confiscation by the People's Republic of China of a yacht at Tamkan Island off the Pearl River estuary in Kwangtung Province. This claim was denied by the Commission for it was determined that the evidence submitted did not establish that the confiscation was in violation of international law. The Commission found that the confiscation occurred within the territorial sea under the sovereignty of the People's Republic of China, and that no evidence was submitted to establish a right of entry of the yacht in distress or innocent passage, which are exceptions to a sovereign state's control over its internal waters and territorial sea.

The agreement of May 11, 1979 provides that the People's Republic of China will pay $80.5 million to the United States in installments. The first payment of $30 million scheduled for October 1, 1979 was received from the Government of the People's

Republic of China on that date. Under the agreement there are provisions for five annual installments of $10.1 million beginning on October 1, 1980 and ending on October 1, 1984. To date the payments have been received as scheduled. These funds as received are deposited in a China Claims Fund with the Department of the Treasury.

Payments on the certifications of loss issued by the Commission on claims in the First China Claims Program and awards granted by the Commission in the Second China Claims Program are being made by the Department of the Treasury from the China Claims Fund in accordance with the payment provisions of Title I of the International Claims Settlement Act of 1949, as amended. Pursuant to these provisions the principal amounts of all certifications of loss and awards of $1,000.00 or less are paid in full. On all certifications of loss and awards which exceed $1,000.00 in principal amount, the first $1,000.00 of each is paid thereon and a pro rata share of the principal balance of each is paid as funds are received into the China Claims Fund. This is the same basic procedure for payments on compensable claims in all programs administered by the Commission pursuant to the International Claims Settlement Act of 1949, as amended. The statute further provides that there shall be no payments on account of interest unless the principal amount of all certifications of loss and award are paid in full. As there will not be sufficient funds in the China Claims Fund ($80.5 million) to pay in full the total principal amount of the certification of loss and awards in the two China Claims Programs, amounting to $197 million, there can be no payments on account of interest.

Final statistics of the Second China Claims Program are included herein as Exhibit 1, along with consolidated statistics for both China claims programs.

EXHIBIT I:

FINAL STATISTICS—SECOND CHINA CLAIMS PROGRAM

Claims	
Claims filed (All by individuals)	82
Withdrawals	1
Claims on which Final Decisions were issued	81

	Claims	Principal Amounts
Awards	3	$176,455.00
Denials	78	
Total	81	

Awards		
Type of Loss	Claims	Principal Amounts
Land	1	$ 12,143.00
Improved Property	2	161,240.00
Bank Accounts	1	3,072.00
Total	4	176,455.00

Same claim

CONSOLIDATED FINAL STATISTICS—BOTH CHINA CLAIMS PROGRAMS

Claims	
Claims filed	661
Withdrawals	4
Claims on which Final Decisions were issued	657

	Claims	Principal Amounts
Certifications of Loss and awards	381	$197,038,296.00
Denials	276	
Total	657	

Type of Claimant	Claims
Individual	558
Non-Profit/Religious	44
Business, including corps. and other business entities	59
Total	661

Certifications of Loss and Awards		
Type of Claimant	Claims	Principal Amounts
Individuals	299	$ 14,634,178.00
Non-Profit/Religious	34	58,266,394.00
Corporations	42	122,743,554.00
Other Business Entities	6	1,394,170.00
Total	381	$197,038,296.00

Type of Loss	Principal Amounts
Land	$ 7,531,523.00
Building/Equipment	15,924,807.00
Improved Property	37,088,407.00
Personal Property	11,290,231.00
Securities/Investments	1,638,105.00
Debts/Mortgages	182,696.00
Corporate Assets	122,743,554.00
Bank Accounts/Cash	98,934.00
Merchandise	540,039.00
Total	$197,038,296.00

EXHIBIT 2:

AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA CONCERNING THE SETTLEMENT OF CLAIMS

In order to develop bilateral economic and trade relations and to complete the process of normalization of relations on the basis of equality and mutual benefit and in accordance with the spirit of the Joint Communique on Establishment of Diplomatic Relations between the United States of America and the People's Republic of China, the Government of the United States of America (hereinafter referred to as the "USA") and the Government of the People's Republic of China (hereinafter referred to as the "PRC") have reached this Agreement:

ARTICLE I

The claims settled pursuant to this Agreement are:

(a) the claims of the USA and its nationals (including natural and juridical persons) against the PRC arising from any nationalization, expropriation, intervention, and other taking of, or special measures directed against, property of nationals of the USA on or after October 1, 1949 and prior to the date of this Agreement; and

(b) the claims of the PRC, its nationals, and natural and juridical persons subject to its jurisdiction or control against the USA arising from actions related to the blocking of assets by the Government of the USA on or after December 17, 1950 and prior to the date of this Agreement.

ARTICLE II

(a) The Government of the USA and the Government of the PRC agree to a settlement of all claims specified in Article I. The Government of the PRC agrees to pay to the Government of the USA the sum of $80.5 million as the full and final settlement of the claims specified in Article I. The Government of the USA agrees to accept this sum in full and final settlement of those claims.

(b) The Government of the USA agrees to unblock by October 1, 1979 all assets which were blocked because of an interest, direct or indirect, in those assets of the PRC, its nationals, or natural and juridical persons subject to its jurisdiction or control, and which remained blocked on the date of the initialing of this

Agreement, March 2, 1979. The Government of the USA further agrees, in a spirit of mutual cooperation, that prior to unblocking under this paragraph, it will notify the holders of blocked assets which the records of the Government of the USA indicate are held in the name of residents in the PRC that the Government of the PRC requests that assets of nationals of the PRC to be unblocked not be transferred or withdrawn without its consent.

ARTICLE III

The Government of the PRC shall pay to the Government of the USA, $80.5 million of which $30 million shall be paid on October 1, 1979 and the remaining $50.5 million shall be paid in five annual installments of $10.1 million each on the first day of October with the first installment due on October 1, 1980.

ARTICLE IV

The Government of the USA shall be exclusively responsible for the distribution of all proceeds received by it under this Agreement.

ARTICLE V

After the date of signature of this Agreement, neither government will present to the other, on its behalf or on behalf of another, any claim encompassed by this Agreement. If any such claim is presented directly by a national of one country to the government of the other, that government will refer it to the government of the national who presented the claim.

ARTICLE VI

This Agreement shall enter into force on the date of signature.

The Agreement was signed on May 11, 1979 at Beijing, in duplicate, in the English and Chinese languages, both versions being equally authentic.

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA	FOR THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA
/s) Juanita M. Kreps	/s/ Zhang Jingfu

EXHIBIT 3:

Text of Selected Decisions

Second China Claims Program

IN THE MATTER OF THE CLAIM OF
SU JAN LEE

Claim No. CN-2-053, Decision No. CN-2-040

ORDER AND AMENDED FINAL DECISION

This claim against the People's Republic of China (hereinafter "PRC"), under the China Claims Agreement of 1979 and Section 4 of Title I of the International Claims Settlement Act of 1949, is based upon a loss resulting from the nationalization, confiscation, or other taking of property in China.

A Proposed Decision was issued on October 3, 1979 denying this claim for lack of sufficient evidence to establish that the property claimed was nationalized or otherwise taken by the PRC between November 6, 1966 and May 11, 1979. The claimant filed objection thereto but did not request an oral hearing before the Commission. Following a careful review of the entire record of this claim, a Final Decision was issued on April 29, 1981 confirming the denial of this claim.

Under cover of a letter dated June 25, 1981, counsel for claimant has submitted a Petition to Reopen this claim pursuant to Commission Regulation 531.5(1) [45 C.F.R. 531.5(1)]. That regulation provides that such a petition shall not "be entertained unless it appears . . . that reconsideration of the matter on the basis of such evidence would produce a different decision."

The petition asserts that the evidence that has been submitted and that will be submitted in support of this claim will be sufficient to establish a taking during the requisite period of time and that the taking of claimant's property is not voidable at the behest of claimant as found by the Commission in the Final Decision. In support of this petition claimant has submitted a letter dated July 10, 1981, a sworn statement in the form of a letter dated June 28, 1981 from Dr. Woo Kaiseng, and a sworn statement from Mrs. Woo Ming, an assistant to Dr. Woo Kaiseng. Claimant in his letter of July 10, 1981 withdraws the portion of his claim based on losses sustained in connection with the ownership of debentures issued by Chinese banks, which consists of bonds of five different bond issues as set forth in the Final Decision. Therefore, claimant is only asserting a claim for losses sustained in connection with the ownership of four parcels of real estate, four bank accounts, and shares of stock in five companies. Following a review of the evidence

submitted in support of the Petition to Reopen, the Commission finds that reconsideration of this claim on the basis of such evidence would produce a different decision.

Accordingly, it is

ORDERED that the Petition to Reopen the above captioned claim is granted and that the following be entered as the Amended Final Decision of the Commission on this claim.

In the Final Decision dated April 29, 1981 the Commission found that the claimant had not met the burden of proof of establishing that the property claimed was nationalized or otherwise taken by the PRC between November 6, 1966 and May 11, 1979. The Commission further found that even if claimant had established that the taking of the claimed property occurred during the requisite period of time, the taking of such property was now voidable at the behest of claimant. Following a careful review of the entire record of this claim, including the sworn statement of Mrs. Woo Ming dated June 15, 1981 (sworn to July 6, 1981), the Commission finds that claimant has sustained the burden of proof with regard to the parcel of land in the Chiang Wan District, Shanghai, and the bank deposits in the Bank of China, China Industrial Bank, and Central Trust. As to the savings account in the Yien Yieh Commercial Bank, the shares of stock in five different companies as set forth in the Final Decision, and the real estate in Peking, Tientsin, and Ching Tao; the Commission finds that claimant has not met the burden of proof.

The portion of this claim based on losses in connection with the ownership of real estate in Peking, Tientsin, and Ching Tao was denied by the Commission in the Final Decision dated April 29, 1981 because no specific information regarding the takings of these properties was submitted by claimant. No further evidence has been submitted regarding the asserted takings of these properties. The only additional evidence submitted with regard to the taking of real estate, being Mrs. Woo Ming's statement, is found by the Commission to only be applicable to property in Shanghai. Accordingly, the Commission finds that the denial of this portion of this claim must be affirmed.

With regard to the shares of stock, the statement of Mrs. Woo Ming indicates that she was advised by an official of the Bank of China that prior to November 9, 1966 annual dividends were paid to owners of stocks but that they were nationalized after that date. No evidence has been submitted to establish the date of the nationalization of the companies in which the claimant owned shares of stock. As stated in the Final Decision, the statement of Dr. Woo Kaiseng dated November 16, 1980 indicates that the subject companies are still operating but the manner of ownership is not indicated. On the basis of this evidence, the Commission finds that the

claimant has not submitted evidence sufficient to establish that he has sustained a loss in connection with the ownership of the subject shares of stock as a result of nationalization or other taking by the Government of the PRC between November 6, 1966 and May 11, 1979. Accordingly, the Commission concludes that the denial of this portion of this claim must be affirmed.

In the Final Decision dated April 29, 1981 the Commission found that claimant's wife, who apparently died on June 17, 1949, was the owner of a savings account in the Yien Yieh Commercial Bank, of which claimant asserted ownership. As no evidence was submitted to establish that the claimant is the successor in interest to the ownership of this bank account, this portion of the claim was denied. No further evidence has been submitted in support of claimant's assertion that he is the owner of this bank account. Accordingly, the Commission finds that the denial of this portion of this claim must also be affirmed.

The Commission in the Final Decision of April 29, 1981 found that claimant was the owner of bank deposits in the Bank of China, China Industrial Bank, and Central Trust. With regard to these bank deposits, the statement of Mrs. Woo Ming indicates that an official of the Bank of China advised her that private ownership of bank deposits was preserved "up to the last part of November, 1966 when . . . all deposits of private individuals together with other kind[s] of private properties were nationalized." Mrs. Woo Ming further indicates that in regard to their request on behalf of claimant for the return of his bank deposits, the bank official indicated that: "Since we have not received any orders from our higher level . . . we have to refuse his claim." On the basis of this evidence, the Commission finds that claimant sustained a loss in connection with the ownership of bank deposits in the Bank of China, China Industrial Bank, and Central Trust as a result of nationalization or other takings by the Government of the PRC on November 30, 1966 and that such loss is compensable in this second China Claims Program.

Claimant asserts the value of his losses based on the deposits in silver dollars. In his statement of November 16, 1980, Dr. Woo Kaiseng confirms the amounts of the deposits by claimant and indicates the dates of those deposits as follows: (1) deposit of 3,000 silver dollars on October 19, 1938 in the Bank of China; (2) deposit of 30 silver dollars on August 11, 1931 in the China Industrial Bank; and (3) deposit of 41.66 silver dollars on December 14, 1939 in the Central Trust. Claimant asserts that his claim should be valued at a current exchange rate of 7.45 US dollars to one silver dollar. The Commission finds that this current exchange rate is not applicable to valuing a loss which occurred in 1966. The Commission finds that the method of evaluation utilized by the

Commission in the first China Claims Program is appropriate for determining a fair and reasonable value of the loss sustained by claimant. Therefore, the Commission applies the exchange rate of 3.5 Chinese silver dollars to one US dollar and increases the resulting value by 3.5 times in order to adjust for the rise in values due to inflation between the 1930's, when the deposits were made, and November 30, 1966, when the deposits were taken. As a result of the application of these valuation factors, the Commission finds that the claimant sustained the following losses in connection with bank deposits: (1) $3,000.00 for the account in the Bank of China; (2) $30.00 for the account in China Industrial Bank; and (3) $41.66 for the account in the Central Trust.

With regard to the lot of real property in the Chiang Wan District in Shanghai which the Commission found in the Final Decision of April 29, 1981 to be owned by claimant, Mrs. Woo Ming asserts that officials of the Land Bureau and Municipal Government in Shanghai advised her that: "Before the 9th of November, 1966 all the private owners were paid 20% out of the total rental a year. For Dr. Lee's case, he had been paid for almost 17 years." She states that since the suspension of rental payments, all real estate has been nationalized and that private ownership is no longer permitted under the socialistic state in China. She further states: "From what we have found out for Dr. Lee, we are positive that he is unable to recover anything from China at this time." On the basis of this evidence, the Commission finds that claimant sustained a loss in connection with his ownership of a parcel of real property in the Chiang Wan District in Shanghai on November 9, 1966 as a result of the nationalization or other taking by the Government of the PRC and that his loss is compensable in this second China Claims Program.

In claimant's description of the property claimed, which he attached to his original claim form, he indicates that the parcel of property in Shanghai was a 7.478 acre cultivated lot which he purchased on October 1, 1941 for 34,000 silver dollars. Claimant's statement and translation of a receipt for the old title deed covering this parcel of real property indicates that he is claiming for one-half of this lot, as he gave the other half to Mr. Chu, his company's manager, and that the cost of the half which he is claiming was 17,000 silver dollars. In valuing his claim claimant asserts a current exchange rate of 7.45 US dollars to one silver dollar. As stated above, the Commission finds that this exchange rate is not applicable to valuing a loss in 1966. The Commission finds that the foreign exchange rate of 3.5 Chinese silver dollars to one US dollar, as utilized by the Commission in the first China Claims Program, is applicable to the subject purchase in 1941. The Commission further finds that in order to establish a fair and reasonable value of the

subject property on the date of the loss the Commission should increase the 1941 value by 2.5 times to adjust for the rise in values as a result of inflation up until the date of the loss. Utilizing the stated valuation factors, the Commission finds that the fair and reasonable value of the loss sustained by claimant as a result of the nationalization or other taking of the subject property by the PRC on November 9, 1966 was in the amount of $12,142.86.

The Commission finds that claimant SU JAN LEE was a national of the United States on the dates of taking, having been naturalized on July 16, 1962. The Commission concludes that, in granting awards on claims under section 4 of Title I of the International Claims Settlement Act of 1949, as amended, for the nationalization or other taking of property, interest shall be allowed at the rate of 6% per annum from the date of loss to the date of settlement. (See Claim of JOHN HEDIO PROACH, Claim No. PO-3197; FCSC Dec. and Ann. 549 (1968)).

AWARD

Claimant, SU JAN LEE, is therefore entitled to an award in the total principal amount of Fifteen Thousand Two Hundred Fourteen Dollars and Fifty-two Cents ($15,214.52) plus interest at the rate of 6% simple interest per annum from November 30, 1966 to May 11, 1979, the date of the China Claims Agreement, on the amount of $3,071.66, in the sum of $2,294.53 and from November 9, 1966 to May 11, 1979, the date of the China Claims Agreement, on the amount of $12,142.86, in the sum of $9,107.14.

Dated at Washington, D.C.
and entered as the Order and
Amended Final Decision of
the Commission,
July 31, 1981.

IN THE MATTER OF THE CLAIM OF BEN L. POND

Claim No. CN-2-055, Decision No. CN-2-074

FINAL DECISION

This claim against the People's Republic of China (hereinafter "PRC"), under the China Claims Agreement of 1979 and Section 4 of Title I of the International Claims Settlement Act of 1949, is based on a loss resulting from the nationalization, confiscation, or other taking of property in China.

A Proposed Decision was issued on October 8, 1980 denying this claim for lack of sufficient evidence to establish that the property claimed was nationalized or otherwise taken by the PRC between November 6, 1966 and May 11, 1979. The claimant filed objection thereto and requested on Oral Hearing before the Commission. An Oral Hearing on this claim was held on January 22, 1981, at which claimant and counsel of record appeared.

Claimant objected to the Proposed Decision on the ground that the evidence submitted is sufficient to establish a taking of the property within the requisite period of time. Claimant has submitted additional evidence in support of his claim consisting of an additional letter from his nephew, Cheng Chao, dated December 5, 1977; a letter dated November 4, 1980 from nephew Cheng Chiu alias Te Hsuing; and originals with certified translations of two certificates of ownership purportedly to the Tai Huo Lu Compound, upon which a portion of this claim is based.

In the letter, dated December 5, 1977, nephew Cheng Chao indicates that he has been advised that, "that your shop in San-pai-fang would be demolished very soon." He further indicates that he has submitted the claimant's application for building a shop in the San-pai-fang district, that it does not appear as though such application would be approved at this time, and that the claimant is advised to accept the compensation offered, after requesting a slight increase, for his San-pai-fang building. This letter is consistent with the letter of June 26, 1978, from Nephew Ch'eng Chao, in which he indicates that the area including the claimant's building had become municipally owned and that he had been directed by a government official to bring "documentary proof, to the Building and Property Control Bureau to collect JMP $2032.80 for the demolition of the San P'ai Fang building, at a calculated rate of JMP $5.50 per square meter of condemned building property area, for an area of 369.6 square meters. Nephew Ch'eng Chao further indicates that he was advised by the government official, and he purportedly quotes that official, as follows:

> "First, accept the payment in order to resolve matters concerning the wrecking. . . .Second, request a piece of land for your own building construction. Construction costs are about JMP $150 per sqare [sic] meter, extremely expensive. If you do not wish to come collect compensation money, I can deposit it in a state bank as a special account."

Nephew Ch'eng Chao concluded his letter by requesting guidance from the claimant regarding the acceptance of the offer of compensation. In a letter, dated November 4, 1980, nephew Cheng Chiu alias Te Hsiung indicates as follows:

> 2. The building on Ching-I Road (i.e. the San Pei Fang Store Building) was entrusted to my management. It was rented to Hung-ta-li

Watches for the last 34 years. I collected the rent. When the government sought to widen Ching-I Road, the buildings on both sides of the road had to be razed and replaced by six-story buildings. The tenant moved out on May 16, 1978. By the end of June the building was completely razed.

I spent a great deal of time during the past few years looking for the deeds to the properties. Although I searched in trunks and boxes I found only two deeds to the Tai Huo Lu Compound. We lost many books and documents because of frequent moving. The deed to the San Pei Fang Store Building is still missing; perhaps it got lost during moving and confusion. I am sending you the two deeds to Tai Huo Lu Compound. When I find the deed for San Pei Fang I shall send it to you.

Private citizens are now permitted to buy the newly constructed brick buildings at a price ranging from P $150 to 300 per square meter according to location and construction material.

As discussed in the Proposed Decision claimant submitted six statements from persons who asserted that, of their own personal knowledge, up to 1946 claimant was the owner of a commercial building in the San Pei Fang district of Kunming. In an affidavit dated January 15, 1980 Lucille Change Lee asserts that:

> . . .my parents rented from Mr. Pond half of the store-front of the commercial building at San Pei Fang for a gift shop. We also rented from Mr. Pond the second story of the commercial building as our living quarters. The other half of the store-front was used to operate a hardware store owned by Mr. Pond. The third story of the building was used as living quarters by Mr. Pond's nephew, who managed the hardware store.

In an unsworn statement, dated February 22, 1980, Wang Qi Xing states that: "I know Ben L. Pond was the sole owner of the two properties at the time he left China in 1946 and Ben L. Pond's nephew, Cheng Chao, was asked to look after the two properties."

On the basis of these statements, affidavits, and letters the Commission finds that the claimant owned a three story commercial building, consisting of 369.6 square meters of floor space, known as the San Pei Fang Building located on Cheng-I Road in Kunming and that this building was taken in by the PRC on May 17, 1978 for the public purpose of widening Cheng-I Road. The Commission further finds that claimant was offered and is deemed to have received compensation from the PRC for this taking in the amount of JMP $2,032.80.

Claimant contends that the offered compensation does not constitute just compensation as required under international law. Therefore, claimant contends that, although the taking was for a public purpose, it is compensable in this program due to the lack of just compensation. Claimant asserts that the loss sustained was in the total amount of $37,425.00, based upon "the local government's quotation of the cost of construction being 150 yuan per

square meter of floor space at the time the building was expropriated. . .On the basis of 1 yuan = .54 US $, the San Pei Fang building consisting of 369.64 square meters at US $81 per square meter was worth $29,940.00 and the land, valued at 25% of the building, was worth $7,485.00, for a total value of $37,425.00."

The Commission is not persuaded by the claimant's contention that the value as of the date of loss should be based upon the asserted new construction cost. The Commission notes that newly constructed buildings were allegedly being sold for the claimed $150 Yuan per square meter of floor space. The Commission concludes that taking into account depreciation for existing buildings the fair and reasonable value of the property would not exceed 50% of the alleged new construction cost. Therefore using a factor of $40.50 US per square meters of floor space the Commission finds the value of the building to be $14,970.42. The Commission deems reasonable the suggested use of 25% of the building value to determine the land value and finds the value of the land to be $3,742.60 for a total property value of $18,713.02. In order to determine the quantum of the loss sustained by the claimant the amount of compensation deemed to have been paid by the PRC to the claimant as a result of this taking must be deducted from this valuation. At the conversion rate used by the claimant the compensation of 2032.80 JMP (yuan) is equal to $1,097.71 which when deducted from the determined value of the property results in a loss sustained by the claimant in the amount of $17,615.31.

The Commission notes that during the first China Claims Program there were no awards for loss of property in the City of Kunming; however, a review of the evaluations of commercial properties in Canton taken in 1955 with appropriate adjustments for the difference in size of properties and the difference of the size of the cities involved the Commission concludes that the above determined value for the property owned by the claimant is comparable to the values determined in the first China Claims Program. It should be further noted that the Commission in this second program is not governed by the findings of the Commission during the first China Claims Program; however, in the first program the Commission had considerably more valuation information from which to make such determinations, so that comparisons with such evaluations are helpful in accessing the appropriateness of the evaluation in this claim.

With regard to the Tai Huo Lu Compound, the claimant has submitted the originals and certified translations of two certificates of ownership purportedly describing this property. These certificates of ownership, dated in the 33rd and 34th years of the Republic of China, describe two contiguous parcels of property, numbered 1937 A and 1937 B, on the East Road surrounding the city of

Kunming consisting of 1.643 mou and 1.189 mou, respectively for a total of 2.832 mou or approximately a 1/2 acre of land. There is no evidence of record nor information on these certificates to relate them to the Tai Huo Lu Compound except that the location on the East road surrounding the city is the location of the claimed compound and the property claimed, approximately 1/3 of an acre, is similar to that described in the certificates of ownership.

Additionally, claimant has submitted a letter, dated November 4, 1980, from nephew Cheng Chiu alias Te Hsiung, with a certified translation thereof, which indicates as follows:

> The razing of the Tai Huo Lu Compound happened many years ago. I drifted from place to place during the years 1970 to 1976; therefore I did not keep any records of past events. When I reported a date of razing (the Tai Huo Lu Compound) I made a momentary recollection. The sequence of the dates could have contain [sic] mistakes. Now I have conferred with members of my family and reached the following conclusions:
>
> (1) The Tai Huo Lu Compound (located on the City Circumferential East Road, which section was later renamed Tai Huo Street) was razed to yield ground for the extension of Red Sun Square. The government notified us on January 18, 1969 to move out of our residence within one day (January 19). We complied and moved out within the limited time. Razing of all buildings in that area started towards the end of the month and was completed in about a month and a half.
>
> * * * * * * * * *
>
> I spent a great deal of time during the past few years looking for the deeds to the properties. Although I searched in trunks and boxes I found only two deeds to the Tai Huo Lu Compound. . . I am sending you the two deeds to Tai Huo Lu Compound. . . .

The information in this letter is consistent with the information regarding the subject property contained in a letter dated July 10, 1973 from the same nephew, a certified translation of which was previously submitted, which indicates as follows:

> During the latter part of January, 1969, because of the expansion of the Great Hall, all the buildings in the Labor Cultural Palace area (including the T'ai Ho Lu compound) were razed. At that time, my family was residing at No. 79, T'ai Ho Street, and as the government gave us notice to move out within one day, we were temporarily transferred to No. 6, P'ing Cheng Street (originally a kindergarten for children of the personnel of government organizations.

Also previously submitted was a letter from the same nephew, dated September 5, 1975, which creates some confusion about the date that the subject property was confiscated when he says: "it has already been eight years since T'ai Ho Lu compound buildings were razed. . ." That statement would indicate a seizure in 1967, instead of 1969 as indicated by the other letters. It is conceivable that

claimant's nephew just misstated the number of years in this latter letter. In the latter letter he also states that compensation had been paid by the PRC for all other properties, except the subject property, that were "needed to enlarge the city Great Hall square area."

As discussed in the Proposed Decision claimant submitted six statements from persons who asserted that, of their own personal knowledge, up to 1946 claimant was the owner of the Tai Huo Lu compound in Kunming. In a affidavit dated February 13, 1980 Lung Chang King states: "My knowledge of Mr. Pond's ownership of these properties is based upon the facts that I had visited personally many times, during my residence at Kunming from 1935 to 1949, the properties, namely, the Tai Huo Lu Compound on Tai Huo Street. . . ."

On the basis of the statements, affidavits, letters, and ownership certificates which have been submitted, the Commission finds that the claimant was the owner of a parcel of property in Kunming located on the city circumferential East Road, known as the Tai Huo Lu Compound, and that this parcel of property was taken by the PRC on January 19, 1969 for the public purpose of expanding a public square area. The Commission further finds that no compensation has been paid claimant for the loss of his property.

In regard to valuation of the loss sustained claimant has submitted a calculation using a valuation of 1/2 of the new construction cost for 1978 as discussed above regarding the San Pei Fang property. Using the area of 1400 square meters of floor space in the compound, as indicated in the letter dated September 5, 1975, claimant calculates the value of the building as $56,000.00 based on a construction cost of $40.00 US per square meter of floor space. The claimant calculates the land value as being equal to 25% of the building value or $14,000.00 for a total of $70,000.00 for the value of the subject property. As indicated above with regard to the San Pei Fang property the appropriate valuation is the value on the date of the loss, not replacement cost. The Commission concludes that taking into account depreciation for existing buildings the fair and reasonable value of existing residential property in 1978 in Kunming would not have exceeded one third of the new construction cost of commercial buildings. On that basis and accepting the asserted reduction of the 1978 value by 1/2 for calculation of value in 1969, the Commission concludes that a $13.50 US per square meter of floor space is appropriate for valuing the subject property. Using this factor and the claimant's method for calculation, the Commission concludes that the claimant sustained a loss in the amount of $23,625.00. The Commission notes that this value is comparable to the valuations of similar properties in the first China Claims Program with appropriate adjustments for a later date of taking.

The Commission finds that claimant was a national of the United States on the dates of taking having been naturalized on October 14, 1952. The Commission has concluded that, in granting awards on claims under section 4 of Title I of the International Claims Settlement Act of 1949, as amended, for the nationalization or other taking of property, interest shall be allowed at the rate of 6% per annum from the date of loss to the date of settlement. (See Claim of JOHN HEDIO PROACH, Claim No. PO-3197; FCSC Dec. and Ann. 549 (1968)).

AWARD

An award is hereby made to claimant, BEN L. POND, in the total principal amount of Forty-One Thousand Two Hundred Forty Dollars and Thirty-One Cents ($41,240.31), with interest thereon at 6% per annum on $23,625.00 thereof from January 19, 1969 to May 11, 1979, the date of the China Claims Agreement, in the sum of Fourteen Thousand Six Hundred Fourteen Dollars and Forty-Two Cents ($14,614.42), and on $17,615.31 thereof from May 17, 1978 to May 11, 1979, the date of the China Claims agreement, in the sum of One Thousand Thirty-Five Dollars and Seventy-Eight Cents ($1,035.78).

Dated at Washington, D.C.
and entered as the Final
Decision of the Commission,
April 22, 1981.

IN THE MATTER OF THE CLAIM OF BASILETTE V. A. BROWN

Claim No. CN-2-056, Decision No. CN-2-069

FINAL DECISION

This claim against the People's Republic of China (hereinafter "PRC"), under the China Claims Agreement of 1979 and Section 4 of Title I of the International Claims Settlement Act of 1949, is based on a loss resulting from the nationalization, confiscation, or other taking of property in China.

A Proposed Decision was issued on October 17, 1979 denying this claim for lack of sufficient evidence to establish that the property claimed was nationalized or otherwise taken by the PRC between November 6, 1966 and May 11, 1979. Claimant filed objection thereto but did not request an Oral Hearing before the Commission.

The claimant objects on the ground that the evidence submitted by her was sufficient to establish a taking during the requisite period of time. Claimant contends that, "The Commission has not in the past and cannot require claimants to furnish precise proof of the date of loss since that information is unavilable [sic] to both claimant and the Commission." As to one item, Lacks News Photos, Limited, claimant, further, objects on the ground that the Commission emphasized the contents of two letters from Mr. S. Y. Day, dated May 9, 1951 and July 18, 1954, which indicate, respectively, that the business was under local supervision and restrictions and recommend that the owners consider liquidation, rather than giving appropriate weight to other evidence of record. In support of these contentions, the claimant has submitted numerous affidavits, letters, certified copies of telexes, and other documents. The additional evidence submitted pertains to the business known as Lacks News Photos, Limited, but does not shed any additional light upon the disposition of the other two businesses known as Shanghai Camera Exchange and Radio Station XMHC.

Claimant has submitted certified copies of the two telex messages, dated July 19, 1979 and July 24, 1979, which were discussed in the Proposed Decision. Claimant also submitted a certified copy of a telex message dated December 12, 1979 from the Shanghai Office of The Hongkong and Shanghai Banking Corporation to its San Francisco office which states as follows:

> Mrs. Brown wrote to us 3 Dec. enquiring as to the status of Lacks News Photos Ltd. registered in Shanghai in 1948 in which she has a share holding.
>
> Please advise Mrs. Brown that this firm traded until 1956 at which time it became a semi state owned enterprise renamed Koo Nee Phote Company. The firm is still operating at 150 Nanking Road East, Shanghai and still employs some original members of staff.
>
> For further information Mrs. Brown should apply to them direct.

Claimant has also submitted a certified copy of a Department of Industry & Commerce License No. 93 for Lacks News Photos, Limited, and a certified translation thereof. Claimant, further, has submitted certified copies of numerous letters which she has written to the Koo Nee Photo Company and various agencies of the PRC, an article in the New York Times, dated January 18, 1956, dateline Hong Kong, Jan. 17 indicating that, "A Chinese Communist dispatch from Peiping today said that 'all private industry and commerce' in Shanghai would be transformed into joint state-private enterprises by Jan. 20" and a news item in the San Francisco Examiner, dated January 14, 1980, dateline Peking, which states: "In 1956, capitalists large and small banged on gongs, beat

drums and set off firecrackers to observe the joining of their business with the state. The government made payments to the original owners for 10 years, after which the businesses were wholly state-owned." On the basis of this evidence claimant contends that the disposition of Lacks News Photos, Limited fits within the scenario of the telex message dated July 24, 1979, so that a taking thereof is established in 1967, and that the other two businesses should be deemed to have followed that same takings scenario.

It is asserted in a letter dated February 13, 1980 that direct evidence of the date of loss sustained by the claimant is unavailable as the "internal affairs of the People's Republic of China are closed to outsiders;" that claimant has written letters to numerous agencies of the PRC, has not received replies, and does not expect to receive replies to these letters, nor has she been able to receive any information from other shareholders of the three businesses; that in the first China Claims Program, as well as other programs, the Commission has considered "probative secondary evidence where direct evidence was unavailable;" and that in this claim such evidence has been submitted which supports their contention that the three businesses were "finally nationalized at the time of the Cultural Revolution in 1967."

As indicated in the Proposed Decision with regard to Shanghai Camera Exchange, the evidence establishes that this business was liquidated on July 20, 1950 which, according to the affidavit of Nicholas B. Argendeli (brother of the claimant), dated August 20, 1979, resulted in PRC Victory Bonds and negligible cash or stock. It is contended by counsel of record in a letter, dated December 20, 1979, that the capital account of the claimant, resulting from this liquidation, existed as late as July 18, 1954, for in a letter from Mr. S. Y. Day (a principal in Shanghai Camera Exchange) of that date regarding Lacks News Photos, Ltd. no mention was made of her capital account. It is noted by the Commission that exhibit C-1 which was attached to the original claim form filed by the claimant contains excerpts from "Liquidation Report submitted by K. Y. Chu," dated August 5, 1950, which asserts that the claimant's capital account would have consisted of a 1/3 share of the assets upon liquidation (affidavit of Mr. Argendeli indicates a 30% share) amounting to cash in the amount of $700.78 and PRC bonds valued at $9,477.06. No evidence has been submitted by claimant to establish the disposition of this capital account nor that Mr. S. Y. Day was in any way involved with or responsible for said capital account following the liquidation. Therefore, it does not seem reasonable to infer anything with regard to said capital account from a failure of Mr. Day to mention that account in his letter dated July 18, 1954 written about and on behalf of Lacks News Photos, Ltd. No further

evidence was submitted with regard to Shanghai Camera Exchange nor the capital account resulting therefrom after August 5, 1950.

With regard to Radio Station XMHC the only additional piece of evidence is a letter dated January 22, 1980 from a Hugh K. Lowe, Vancouver, Canada who states: "I left Shanghai on the last boat, the SS General Gordon in 1949. I'd left everything to Mr. T. H. Chee, who was then the manager of XMHC." As indicated in the Proposed Decision, the most recent piece of evidence was a letter from one of the principals of the station, T. H. Chi, dated October 13, 1948, which indicated that the Radio XMHC was struggling but continuing to operate. The new piece of evidence in regard to this company along with the previously submitted evidence does not indicate the status of the Radio Station subsequent to 1949.

As previously indicated the evidence of record indicates that Lacks News Photos, Limited became a "semi state owned enterprise" in 1956 and was "renamed Koo Nee Phote Company" and that this "firm is still operating." It is contended in a letter dated February 13, 1980 from counsel of record that, therefore, this company became a joint state-private enterprise in 1956 with the payment of dividends guaranteed by the PRC from 1956 through 1966 and that the company in 1967 became state owned, in conformity with the telex message dated July 24, 1979 regarding limited companies. It is noted that the telex message dated December 12, 1979 does not indicate such an occurrence, that a letter dated January 10, 1980 from the claimant to the Hongkong and Shanghai Banking Corporation in Shanghai requesting confirmation of this occurrence has apparently not been answered, and that a letter dated January 23, 1980 from the San Francisco office of the Hongkong and Shanghai Banking Corporation indicates that, "I am afraid I cannot throw any light upon the exact status of the new Koo Nee Photo Company, but presume that the form of ownership is one shared between the employees of the enterprise and the Chinese government." Such evidence does not support the contention of the claimant that there was a change in ownership status in 1967. Certain commentators are, also, cited by the claimant in support of the contention that private businesses which had been converted into joint public-private enterprises in 1956 were completely nationalized by the end of 1966. One such commentator cited is A. Eckstein who wrote a book entitled *China's Economic Revolution*. The works of Mr. Eckstein and other commentators reviewed by the staff of the Commission in background research for this claims program indicate that by 1956 virtually all industrial firms in the PRC had been nationalized becoming either public enterprises or joint public-private enterprises, but that in regards to the management of such enterprises there was very little

distinction between the two forms. As Mr. Eckstein says on page 84 of his book:

> However, from a policy, operational, and management point of view there was no difference between these two forms. The only distinguishing feature of the second [joint public-private] was that the former private owners or shareholders theoretically retained part ownership in the joint enterprises. This did not entitle them to any participation in the management, but they received a fixed return on their invested capital. However this practice did not survive the Cultural Revolution, so that the public-enterprise form of organization now applies to all modern industry in China.

Another commentator, George N. Ecklund, in an article in Pacific Affairs (Fall, 1963) at page 248 states:

> The statute governing the organization of the new enterprise [joint public-private enterprise] made it clear that the government would be the dominant partner in the firm. The private businessmen could not assume direct control of the joint organization, but took part in management as ordinary salaried personnel. The government wanted their technical and managerial skills, but only as hired hands. The private owners who contributed all of their assets to these new companies were compensated initially by payments in the form of a percentage of annual profits. This was changed in 1956 to a fixed interest payment of 5 percent on the private capital involved, all payments being scheduled to cease in 1962.

On page 250 Mr. Ecklund continues, "After this mass conversion to socialist enterprise early in 1956, private businessmen in China had nothing left but memories and an annual interest payment from the state (paid partly in government bonds)."

Following a thorough review of the evidence of record in this claim, the contentions of the claimant, and other sources of information available to the Commission (which have been cited in this decision) the Commission finds that the claimant has not sustained the burden of establishing that a loss occurred on or after November 6, 1966 and before May 11, 1979. With regard to Radio Station XMHC and the Shanghai Camera Exchange and capital account resulting from the liquidation thereof, there is no evidence to establish takings during the requisite period of time, nor is the Commission persuaded by the contentions of the claimant that these companies continued to operate after the dates of the last available evidence regarding them nor that the capital account was in existence on or after November 6, 1966. The evidence regarding Lacks News Photos, Ltd. indicates that if effective control was not being exercised by local authorities in 1951, as discussed in the Proposed Decision, then upon this company becoming a joint public-private enterprise (or as the telex message states a semi state owned enterprise) in 1956 the PRC exercised control over the company effecting a taking thereof.

Accordingly, the Commission concludes that the Proposed Decision dated October 17, 1979 denying this claim must be and is hereby affirmed as its final determination on this claim.

Dated at Washington, D.C.
and entered as the Final
Decision of the Commission,
April 1, 1981.

IN THE MATTER OF THE CLAIM OF WELTHY KIANG CHEN

Claim No. CN-2-015, Decision No. CN-2-066

PROPOSED DECISION

This claim against the Government of the People's Republic of China, under the China Claims Agreement of 1979 and Section 4 of Title I of the International Claims Settlement Act of 1949, is based upon the loss sustained in connection with the ownership of bonds of the issue known as National Government of the Republic of China Allied Victory U.S. Dollar Loan of 1942, the ownership of notes of the issue known as The 36th Year (1947) Short-Term Treasury Notes of the Republic of China, and the ownership of U.S. Dollar Savings Bonds issued by the Central Trust on April 1, 1943. Claimant has been a national of the United States since his naturalization on September 3, 1954.

Under Section 4 of Title I of the International Claims Settlement Act of 1949, as amended, the Commission is given 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 concluded on and after March 10, 1954, 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), arising out of the nationalization or other taking of property [22 U.S.C.A. Sec. 1623(a)]. In this section the Commission is directed to decide claims in accordance with provisions of the applicable claims agreement and the principles of international law.

On May 11, 1979, an agreement was concluded between the Governments of the United States of America and the People's Republic of China (hereinafter referred to as the PRC) settling claims of nationals of the United States against the PRC arising from the nationalization, expropriation, intervention, or other

taking of, or special measures directed against, property of nationals of the United States on or after October 1, 1949, and prior to the date on which the agreement was concluded.

Under the provisions of Title V of the International Claims Settlement Act of 1949 [78 Stat. 1110 (1964), 22 U.S.C. Sec. 1643-1643k (1964), as amended by Public Law 89-780, approved November 6, 1966, 80 Stat. 1365 (1966)], the Commission was given jurisdiction over claims of nationals of the United States against the Chinese Communist regime (the PRC) arising since October 1, 1949, for losses resulting from the nationalization, expropriation, intervention, or other taking of, or special measures directed against, property of nationals of the United States. In that program, the Commission considered claims that arose between October 1, 1949 and November 6, 1966, the date on which the program was authorized. That program was completed on July 6, 1972 pursuant to a statutory mandate in the enabling legislation.

The question presented by this claim is whether the Commission has the jurisdiction to consider claims that arose prior to November 6, 1966. On June 1, 1979, the Commission published notice in the Federal Register announcing that a new China Claims Program would be initiated under which it would consider claims by nationals of the United States against the PRC for losses that arose between November 6, 1966 and May 11, 1979. August 31, 1979 was established as the deadline for filing such claims.

The period during which losses must have occurred for favorable action to be taken on claims in the second China Claims Program was established because the Congress of the United States had previously made provisions under Title V of the Act, supra, for the filing and adjudication of claims by nationals of the United States for property losses in China that arose between October 1, 1949 and November 6, 1966, and mandated a date by which such a claims program must be completed. Accordingly, the Commission concluded that its jurisdiction over such claims expired on July 6, 1972 and that it no longer has the authority to accept and take favorable action on those claims. Congress having provided its remedy for the 1949-1966 claims, the Commission is not at liberty to provide another.

This situation is not unique in the programs that the Commission had been authorized to administer in the past. Subsequent to completion of claims programs against the Governments of Bulgaria, Hungary, and Rumania, on August 9, 1959, the Government of the United States reached claims agreements with those governments. The Commission was unable to implement the claims agreements under Title I of the Act without legislative authorization because the United States had declared the existence of a state of war

against those countries during World War II. In each case the Congress enacted second claims programs by amending Title III of the International Claims Settlement Act of 1949, and limited the compensable claims to those for losses which occurred after the dates covered by the first claims programs. [82 Stat. 42 (1968); 88 Stat. 1386 (1944); 22 U.S.C. Sec. 1641].

Following the legislative precedent in these second programs which precluded the favorable consideration of claims that arose during the period covered by the first programs, the Commission concludes that it does not have the jurisdiction to consider claims against the PRC that arose prior to November 6, 1966, and after May 11, 1979, the date of the agreement with the PRC. (See Claim of *Jose Maria Zavier,* Claim No. CN-2-017, Decision No. CN-2-001.)

The Commission has consistently held that in the absence of a positive action by the foreign government affecting the right to payment, a bondholder's right is "taken" by the debtor foreign government on the day when it refuses to pay the obligation for the first time, in other words, when the foreign government first defaults upon its obligations. (See the Claim of *Carl Marks & Co.*, Inc., Claim No. CN-0420.) The Commission previously made the finding that servicing of bonds of the issue known as National Government of the Republic of China Allied Victory U.S. Dollar Loan of 1942 was suspended in September 1948 and had not resumed. It was also held that the subject bonds were not secured by property or revenue but constituted general obligation bonds that were not chargeable to the PRC.

On the Statement of Claim, FCSC Form 780-2, claimant was advised that documentation must be submitted at the time of filing to establish the date and manner of the taking of the subject property. The claimant asserts that the claim for loss arose on January 1, 1979 when the Government of the United States recognized the PRC. The claimant alleges that the PRC on that date became the only legitimate government of China and became responsible for the liabilities of its predecessor, the Nationalist Government, which is no longer a legitimate government. The claimant has not submitted any evidence of any action by the PRC concerning the rights of the bondholders of subject issue nor concerning the rights of the holders of Short-Term Treasury Notes or U.S. Dollar Savings Bonds at issue in this claim. The Commission is not persuaded by the argument of the claimant that the PRC on January 1, 1979 became responsible for the liabilities of the Nationalist Government with regard to the subject issues.

The Regulations of the Commission provide:

> Claimant shall be the moving party and shall have the burden of proof on all issues involved in the determination of his claim. (FCSC Reg., 45 C.F.R. §531.6(d) (1977).)

For the above reasons, the Commission concludes that the claimant has failed to establish that the bonds and notes, subject matter of this claim, were debts owed by the PRC or debts secured by property which has been "taken" by the PRC on or after November 6, 1966, and before May 11, 1979.

Therefore, the claim is hereby denied.

The Commission deems it unnecessary to consider other elements of this claim.

Dated at Washington, D.C.
and entered as the Proposed
Decision of the Commission,
October 17, 1979.

FINAL DECISION

This claim against the People's Republic of China (hereinafter "PRC"), under the China Claims Agreement of 1979 and Section 4 of Title I of the International Claims Settlement Act of 1949, is based on a loss resulting from the nationalization, confiscation, or other taking of property in China.

A Proposed Decision was issued on October 17, 1979 denying this claim for lack of sufficient evidence to establish that the property claimed was nationalized or otherwise taken by the PRC between November 6, 1966 and May 11, 1979. The claimant filed objection thereto and requested an Oral Hearing before the Commission. An Oral Hearing was held on January 22, 1981, at which Samuel S. T. Chen, husband of claimant, appeared on behalf of claimant.

Claimant contends that the Government of the PRC, as the successor government to the Kuomintang, Central Government in China, succeeded to all rights and became responsible for all obligations of its predecessor government upon its ascension to power on October 1, 1949. Claimant further contends that on October 24, 1949 when the Government of the PRC took certain actions "by setting up a Take-Over Committee to take over the Kuomintang Central Government. . . .and denying all obligations of its predecessor" and by freezing all U.S. assets in China on December 29, 1950, her right to payment on the bonds and notes upon which her claim is based, issued prior to October 1, 1949, was abrogated. However, she contends that as a citizen of the United States her loss did not occur ("become definite") until January 1, 1979 when the Government of the United States recognized the Government of the PRC, which date is within the period covered by this program. In support of her contentions claimant submitted a copy of a portion

of *A Chronology of the People's Republic of China from October 1, 1949* by Peter Chen on which she highlighted the entries for October 25 (Government Administrative Council sets up Take-Over Committee) and December 29 (PRC freezes and places all U.S. assets in China under government control). Claimant has not cited any legal authority nor is the Commission aware of any legal authority to support her contention that she has established a compensable loss.

In support of her contention claimant argues that on January 1, 1979 the Government of the PRC became obligor to U.S. citizens on all financial and other obligations incurred by or issued by its predecessor government to U.S. citizens and that any previous actions that that government may have taken with regard to such obligations subsequent to its ascension to power would be deemed to have occurred on that date. However, even if this argument is accepted, it does not assist claimant in this claim for no evidence has been submitted which indicates that the subject bonds and notes were first in default after October 1, 1949 nor that the Government of the PRC has affirmatively repudiated them. The setting up of a takeover committee does not do so; the copy of the chronology submitted by claimant does not say that obligations of its predecessor were denied as claimant contends; nor does the freezing of U.S. assets in China affect or imply a repudiation of such bonds and notes.

As set forth in the Proposed Decision, the Commission does not have the authority under the second China Claims Program to find a claim compensable unless the evidence submitted is sufficient to establish that a loss occurred between November 6, 1966 and May 11, 1979. After a careful review of the evidence of record in this claim, the Commission finds that the evidence submitted does not establish a taking during the requisite period of time.

Accordingly, the Commission concludes that the Proposed Decision dated October 17, 1979 denying this claim must be and is hereby affirmed as its final determination on this claim.

Dated at Washington, D.C.
and entered as the Final
Decision of the Commission,
April 1, 1981.