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THE UNITED STATES-RUMANIAN CLAIMS SETTLEMENT AGREEMENT OF MARCH 30, 1960

By Gordon A. Christenson

Office of the Legal Adviser, Department of State *

I. Introduction

On March 30, 1960, the United States and Rumania settled by agreement certain claims of American nationals against Rumania. The agreement provides for the payment by Rumania of a lump sum in discharge of those claims.[1]

In recent years the device of the *en-bloc* or lump-sum settlement of international claims has to some extent replaced the use of the mixed claims commission. Lump-sum settlements between nations are not unique to the 20th century, however, and as early as 1802, the United States paid Great Britain a lump sum of £600,000 ($2,664,000) to settle certain debt claims.[2] In the 19th century also, the United States obtained lump-sum settlements from France, Spain, Great Britain, Denmark, Peru, Belgium, Mexico, Brazil and China.[3] Early in the present century mixed claims commissions [4] were used in deciding claims between the United States and Great Britain,[5] war damage claims against Germany,[6] Austria [7] and Hungary,[8]

* The opinions expressed herein do not necessarily reflect the views of the Legal Adviser or of the Department of State.

1 Dept. of State Press Release No. 159 of March 30, 1960. The text of the agreement was also printed in 54 A.J.I.L. 742 (1960).

2 Convention for Payment of Indemnities and Settlement of Debts, signed at London on Jan. 8, 1802. 1 Malloy, Treaties 610 (1910).

3 For a list of past *en-bloc* settlements, see Table II of Appendix B, 3 Whiteman, Damages in International Law 2068 j (1943).

4 A "mixed claims commission" is a mixed arbitral tribunal with jurisdiction to determine all claims falling within categories enumerated in an agreement rather than only specific issues of a specific dispute.

5 Special Agreement for the Submission to Arbitration of Pecuniary Claims, signed at Washington on Aug. 18, 1910, 37 Stat. 1625; U. S. Treaty Series, No. 573; 3 Redmond, Treaties 2619 (1923); 5 A.J.I.L. Supp. 257 (1911). For a report of the work of the commission, see Nielsen, American and British Claims Arbitration (1926).

6 Arts. 304 and 305, Annex 1-9, Treaty of Peace between the Allied and Associated Powers and Germany (Versailles Treaty), signed at Versailles on June 28, 1919, 3 Redmond, Treaties 3329 at 3477-3478 (1923), 13 A.J.I.L. Supp. 326 (1919), established Mixed Arbitral Tribunals between each of the Allied and Associated Powers and Germany. The United States did not become a party to these articles of the Versailles Treaty. The Mixed Claims Commission, United States and Germany, decided war damage claims of American nationals. See the Agreement for a Mixed Commission, signed at Berlin Aug. 10, 1922, U. S. Treaty Series, No. 665; 3 Redmond, Treaties 2601 (1923); 16 A.J.I.L. Supp. 171 (1922).

7 Arts. 256 and 257 with Annex, Treaty of Peace between the Allied and Associated

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claims between the United States and Mexico,[9] and claims between Panama and the United States.[10] When the work of the United States-Mexican General Claims Commission remained uncompleted after two successive conventions which extended the existence of the Commission, and when practical difficulties beset the United States-Mexican Special Claims Commission, an *en-bloc* settlement of all claims was the only solution.[11] That settlement signaled disillusionment with mixed claims commissions. Thereafter, the major international claims settlements involving the United States were on a lump-sum basis. The very next settlement was one concluded on October 25, 1934, with Turkey. It provided for the payment of a lump sum of $1,300,000 to settle certain outstanding claims of American citizens against Turkey.[12]

Lump-Sum Settlement or International Adjudication

A lump-sum settlement differs from international adjudication or settlement by the use of mixed claims commissions. A mixed claims commission is an international arbitral tribunal comprised of members of different nationalities and established by an agreement or a *compromis* for the purpose of adjudicating certain international claims generally presented on behalf of nationals by the state or states concerned.[13] Awards are made by the commission on the basis of evidence establishing a valid claim under the law and procedure prescribed in the *compromis* or under international law. A lump-sum settlement is an agreement to settle outstanding international claims by the payment of a single amount arrived at by diplomatic negotiation between governments without resorting to international adjudication.[14] A lump-sum settlement permits the state receiving the single

Powers and Austria, signed at Saint-Germain-en-Laye Sept. 10, 1919. 3 Redmond, Treaties 3254–3255 (1923); 14 A.J.I.L. Supp. 140 (1920).

[8] Arts. 239 and 240 with Annex, Treaty of Peace between the Allied and Associated Powers and Hungary, signed at Trianon June 4, 1920. 3 Redmond, Treaties 3652–3654 (1923); 15 A.J.I.L. Supp. 108 (1921).

[9] General Claims Convention with Mexico, signed at Washington Sept. 8, 1923, 43 Stat. 1730; U. S. Treaty Series, No. 678; 4 Trenwith, Treaties 4441 (1938); 18 A.J.I.L. Supp. 147 (1924); Special Claims Convention with Mexico, signed at Mexico City Sept. 10, 1923, 43 Stat. 1722; U. S. Treaty Series, No. 676; 4 Trenwith, Treaties 4445 (1938); 18 A.J.I.L. Supp. 143 (1924).

[10] Hunt, American and Panamanian General Claims Arbitration under the Conventions between the United States and Panama of July 28, 1926, and December 17, 1932 (1934).

[11] Convention Providing for En Bloc Settlement of Special Claims, signed at Mexico City April 24, 1934, 49 Stat. 3071; U. S. Treaty Series, No. 878; 4 Trenwith, Treaties 4487 (1938); 30 A.J.I.L. Supp. 106 (1936). See Report to the Secretary of State, Special Mexican Claims Commission, for a summary of the domestic distribution of the amount received.

[12] Nielsen, American-Turkish Claims Settlement, Opinions and Report (1937).

[13] See Ralston, Law and Procedure of International Tribunals 5, 33 (rev. ed., 1926).

[14] The device, used intermittently since 1802, has recently gained recognition as a means of settling claims against Communist countries whose political philosophy is cynical of international adjudication except when it can be used as a means to obtain a politically or economically desirable goal. Recent settlements include lump-sum

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lump sum to distribute it among claimants under domestic procedures which may, of course, be guided by international law.[15] While the terms of a settlement agreement may prescribe international standards delimiting the claims settled, it is not a *compromis*. A lump-sum settlement resolves a dispute by negotiation, thus eliminating the function, normally served by a *compromis*, of consenting to international arbitration of a dispute, providing a tribunal with jurisdiction over the dispute and specifying the law of the case.[16] The only function remaining after a lump-sum settlement is the distributing function, which becomes of paramount importance.[17] If a fund received under a lump-sum settlement is insufficient to pay all

agreements between France and Bulgaria, Norway and Bulgaria, Sweden and Bulgaria, the United Kingdom and Bulgaria, the United Kingdom and Czechoslovakia, the United Kingdom and France, the United Kingdom and Poland, the United Kingdom and Yugoslavia, the United States and Yugoslavia, the United States and Poland and, of course, the United States and Rumania. Negotiations are currently in process between the United States and Czechoslovakia and Bulgaria.

[15] In the Yugoslav claims program, the Foreign Claims Settlement Commission applied international law, for example, in distributing the lump sum received from Yugoslavia to eligible claimants with valid claims under the agreement as interpreted by international law. See Settlement of Claims by the Foreign Claims Settlement Commission of the United States and its Predecessors 37, 133, 134 (1955). A valuable book soon to be published by the University of Syracuse Press on the subject of lump-sum settlements and their domestic distribution is Lillich, International Claims: Their Adjudication by National Commissions (to be published during 1961).

[16] The Yugoslav Claims Settlement Agreement of July 19, 1948, has, however, been called a *compromis*, on the ground that it refers to an agency determining awards domestically and permits briefs to be filed by the Yugoslav Government to protect a reversionary interest in any fund left over. Coerper, "The Foreign Claims Settlement Commission and Judicial Review," 50 A.J.I.L. 868 at 877 (1956). The Yugoslav settlement agreement certainly was not a *compromis* in the usual sense of that word. The reference to the domestic agency was ambiguous and uncertain and, significantly, the agreement explicitly settled all the claims in advance of domestic adjudication. Art. 1 of the agreement stated that Yugoslavia paid $17,000,000 "in full settlement and discharge of all pecuniary claims . . . against the Government of Yugoslavia," with exceptions not important here. The reversionary interest Yugoslavia had in limiting the domestic adjudications could not affect the negotiated settlement which took the place of a *compromis*. Settlement of Pecuniary Claims against Yugoslavia, signed at Washington July 19, 1948, 62 Stat. (3) 2658; T.I.A.S., No. 1803. Moreover, the agreement stated in Art. 8:

"The funds payable to the Government of the United States under Article 1 of this Agreement shall be *distributed* to the Government of the United States and among the several claimants, respectively, in accordance with such methods of *distribution* as may be adopted by the Government of the United States. Any determinations with respect to the validity or amounts of individual claims which may be made by the agency established or otherwise designated by the Government of the United States to adjudicate such claims shall be final and binding." (Emphasis added.)

While the last sentence of Art. 8 refers to some type of adjudication, it must be remembered that the claims were already settled and that the final and binding provision was inserted to make certain the amounts of the individual awards to be paid from the lump sum. That was a distribution function, however, not an international adjudication function. Coerper, in fact, examined this distinction in an earlier part of his article, *loc. cit.* above, at 873. See also Clark, Opinion *in re* Distribution of the Alsop Award (1912), 7 A.J.I.L. 382 (1913).

[17] Clark, *ibid.*; Coerper, *loc. cit.*

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awards rendered according to domestic determinations, awardees usually share in the fund in a *pro rata* or equitable manner.[18]

Claims after World War II

In the post-World-War-II period thousands of American nationals suffered loss of property they owned in Eastern European countries when the Communist regimes in those countries nationalized private property extensively and failed to provide fair compensation.[19] Other claims arose when Bulgaria, Rumania and Hungary failed to meet obligations assumed in the respective Treaties of Peace between the Allies and each of those countries. American claimants have relied by necessity either on the diplomatic intervention of the United States Government or on domestic legislation to obtain compensation. Congress has enacted legislation vesting certain assets in the United States belonging to Eastern European countries and has authorized payment of specified claims from the proceeds of the liquidation of those assets.[20] Regarding diplomatic intervention, the Department of State has obtained three *en-bloc* settlements similar to lump-sum settlements obtained by some Western European countries.[21] The first lump sum paid to the United States was that paid by Yugoslavia under the terms of the agreement of July 19, 1948.[22] More recently, agreements with Rumania on March 30, 1960,[23] and with Poland on July 16, 1960,[24] have provided *en-bloc* settlements of claims against those countries.

A unique feature of the Rumanian agreement, and one which has no historic counterpart, is that the lump-sum settlement agreement followed rather than preceded the domestic claims program which distributed the liquidated Rumanian assets. This peculiar situation must be analyzed carefully, for the liquidation and distribution of Rumanian vested assets authorized by Congress restricted and confined the subsequent diplomatic

[18] Table II of Appendix B, 3 Whiteman, *op. cit.* note 3 above, lists the amounts of *en-bloc* settlements, the amounts claimed before domestic commissions, the amounts of the awards rendered and the percentage of recovery in cases where damages were allowed. An equitable arrangement has been used to compensate in full awards up to $1,000 and to pay $1,000 on all other awards prior to apportioning the remainder of the fund on a ratable basis. See Sec. 8, Title I, of the International Claims Settlement Act of 1949, as amended, 22 U.S.C. § 1627 (c) (1958).

[19] See generally, Doman, "Postwar Nationalization of Foreign Property in Europe," 48 Col. Law Rev. 1148 (1948). See also note 57 below.

[20] Titles II and III of the International Claims Settlement Act of 1949, as amended, 22 U.S.C., Ch. 21, subchs. II and III. Executive Order No. 10644, Nov. 8, 1955, 20 Fed. Reg. 8363, authorized the Attorney General to perform the functions granted to the President under the statute to liquidate Bulgarian, Hungarian and Rumanian property. An article on the subject, published before this action took place, is one by Rubin, "The Almost-Forgotten Claimant: American Citizens' Property Rights Violated," 40 A.B.A.J. 961 (1954).

[21] See note 14 above.

[22] 62 Stat. (3) 2658; T.I.A.S., No. 1803.

[23] T.I.A.S., No. 4451; Dept. of State Press Release No. 159 of March 30, 1960; 54 A.J.I.L. 742 (1960).

[24] T.I.A.S., No. 4545; Dept. of State Press Release No. 395 of July 16, 1960; 43 Dept. of State Bulletin 226 (1960); 55 A.J.I.L. 540 (1961).

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discussions regarding final settlement. The Polish agreement was more in the tradition of the Yugoslav agreement, and related to claims arising from the taking of American property by Poland. The Rumanian agreement attempted to settle three kinds of claims: claims arising from property takings, war damages for which compensation should have been paid under the Treaty of Peace with Rumania, and certain contractual obligations.

A further comparison is important. Although most, if not all, claims under the Rumanian agreement have already been decided pursuant to an Act of Congress, the Polish claims are now being presented to the Foreign Claims Settlement Commission, the domestic commission competent to receive and determine them domestically. The Rumanian agreement merits analysis, not only for the benefit of private claimants involved, but also for a general understanding of technical, concrete experience in settling international disputes in a day when the chief talk revolves about grandiose schemes of the rule of law. This article is limited to an analysis of the Rumanian agreement and its scope and a comparison with the provisions of the domestic law which authorized the determination and payment of claims against Rumania.

II. Background of the Agreement with Rumania

When negotiations began between the United States and Rumania on November 16, 1959,[25] for the purpose of arriving at a settlement of claims, few international lawyers or students of international claims gave much hope that a satisfactory agreement would be concluded or that the Rumanian Government would offer to pay a substantial lump sum in settlement of the outstanding claims.

Amount of Claims

Most claimants had obtained awards from the Foreign Claims Settlement Commission of the United States under Public Law 285, 84th Congress,[26] approved by the President on August 9, 1955, by which proceeds of certain vested Rumanian assets in the United States were to be distributed to American nationals having claims against Rumania.[27] However, the 498 awards rendered in the amount of $84,729,291, including $60,011,348 principal and $24,717,943 interest,[28] were inadequately covered by the fund of

[25] Dept. of State Press Release No. 778, Nov. 6, 1959.

[26] 69 Stat. 562 (1955); 22 U.S.C. § 1641 (1958).

[27] The vesting of Rumanian assets which had remained blocked in the United States since World War II was authorized by Art. 27 of the Treaty of Peace with Rumania, signed at Paris Feb. 10, 1947, and in force Sept. 15, 1947, 61 Stat. (2) 1757, T.I.A.S., No. 1649; 42 A.J.I.L. Supp. 252 (1948). Such provision permitted each of the Allied Powers to take any action with respect to Rumanian property within its territory "and to apply such property or the proceeds thereof to such purposes as it may desire, within the limits of its claims and those of its nationals against Rumania or Rumanian nationals, including debts, other than claims fully satisfied under other Articles of the present Treaty."

[28] Foreign Claims Settlement Commission of the United States, Eleventh Semiannual Report to the Congress for the Period Ending December 31, 1959, at 1 (1960).

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about $22,026,370 realized from vested assets.[29] It seemed quite unlikely that an Eastern European Communist state would acknowledge or agree to settle its international liabilities to American nationals for the unpaid balance in principal and interest calculated in domestic terms at over 62 million dollars.

On March 30, 1960, when the United States and Rumania concluded a settlement agreement, a lump sum of $24,526,370 was accepted as the final settlement of the total claims against Rumania, which, with interest, amounted to nearly 85 million dollars.[30] The lump sum is made up of the proceeds of the vested Rumanian assets together with an additional 2.5 million dollars payable in five installments between July 1, 1960, and July 1, 1964.

Alternatives in Settling International Claims

Seeming to confirm predictions that substantial lump-sum settlements cannot be negotiated with Communist countries without economic or political leverage or without concessions from the United States which indirectly subsidize the claims settlements, the agreement of March 30, 1960, squarely presents the alternatives in negotiating future lump-sum settlements:[31] Should the United States take a pessimistic view that economic relationships with Communist countries are not bound to improve appreciably without United States concessions and, consequently, that it is best to take advantage of any kind of decent offer of payment before a change for the worse removes all hope of settlement? Or should the view be optimistic, that at some point in the future the United States will be in a more favorable bargaining position and that it is therefore desirable to await an advantage. Also to be considered is the restiveness of American claimants who are eager to obtain compensation as soon as possible for their just claims. Naturally the international policies of the United States Government may urge solutions to problems for many reasons, only one of which is the enforcement of obligations under international law. These polyangled reasons in a free, empirical society never make negotiations easy and often encourage pragmatic solutions. But if all the varied forces behind a settlement of international claims are never quite known, it is nevertheless necessary to consider the results and what they imply.

III. International Claims against Rumania under Domestic Legislation

In 1955 Public Law 285[32] added two new titles to the International Claims Settlement Act of 1949, as amended,[33] authorizing the vesting of certain Bulgarian, Hungarian and Rumanian property in the United States (Title II) and the payment of claims against Bulgaria, Hungary,

[29] *Loc. cit.* note 1 above. [30] *Ibid.*

[31] For a subsequent lump-sum settlement see the Agreement between the United States and Poland of July 16, 1960, *loc. cit.* note 24 above; and Rode, 55 A.J.I.L. 452 (1961).

[32] 69 Stat. 562 (1955); 22 U.S.C. § 1641 (1958).

[33] 64 Stat. 12 (1950); 22 U.S.C. § 1621 (1958). S. 1987 was introduced on May 29, 1961, to provide, *inter alia*, for adjudication of certain claims arising between the date of the statute and the date of the agreement.

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Rumania, Italy and the Soviet Union (Title III). The Foreign Claims Settlement Commission of the United States received and determined the various claims for which provision was made, and completed the programs within the statutory time limit.[34] It submitted a report to the Congress at that time.[35] The report included a summary of the Commission's activities and some of the more important decisions of the Commission. Awards were certified to the United States Treasury which issued payment according to the statutory formula. The entire program proceeded under domestic legislation and operated on the premise that vested assets formerly belonging to Bulgaria, Hungary and Rumania were available to pay the international obligations which had been ignored by each of those countries.[36]

Three categories of claims of American nationals against Rumania were determined under Title III of the new law: treaty claims, nationalization or other claims arising from takings, and claims arising out of certain matured contractual obligations.[37] The agreement with Rumania settled claims of nationals of the United States arising in each of the above categories. However, because this settlement was first preceded by a domestic claims program, there are several notable differences in meaning between the agreement and the domestic law. While the Rumanian experience may be useful if other similar settlements are made,[38] it should also serve as an example of the increasingly complex nature of lump-sum settlements.

For comparative purposes the eligibility requirements of nationality and

[34] Sec. 316, Public Law 285, 84th Cong., 69 Stat. 574 (1955); 22 U.S.C. § 1641o (1958). That section limited the Commission to a four-year period for completing its determination of claims presented under Sec. 303.

[35] Foreign Claims Settlement Commission of the United States, Tenth Semiannual Report to the Congress for the Period Ending June 30, 1959 (1960).

[36] H. Rep. No. 624, 84th Cong., 1st Sess., at 3 (1955).

[37] The applicable portions of the law are:

"The Commission shall receive and determine in accordance with applicable substantive law, including international law, the validity and amounts of claims of nationals of the United States against the Governments of Bulgaria, Hungary, and Rumania, or any of them, arising out of the failure to—

"(1) restore or pay compensation for property of nationals of the United States as required by article 23 of the treaty of peace with Bulgaria, articles 26 and 27 of the treaty of peace with Hungary, and articles 24 and 25 of the treaty of peace with Rumania. Awards under this paragraph shall be in amounts not to exceed two-thirds of the loss or damage actually sustained;

"(2) pay effective compensation for the nationalization, compulsory liquidation, or other taking, prior to August 9, 1955, of property of nationals of the United States in Bulgaria, Hungary, and Rumania; and

"(3) meet obligations expressed in currency of the United States arising out of contractual or other rights acquired by nationals of the United States prior to April 24, 1941, in the case of Bulgaria, and prior to September 1, 1939, in the case of Hungary and Rumania, and which became payable prior to September 15, 1947." 22 U.S.C. § 1641b (1958).

[38] In addition to Rumania, Bulgaria, Hungary and the U.S.S.R., present law authorizes the Foreign Claims Settlement Commission of the United States to make awards to American claimants against Czechoslovakia under Public Law 85-604, 85th Cong. Claims against Italy under Public Law 285 were paid from a lump sum paid by the Government of Italy under the terms of the so-called Lombardo Agreement, 42 A.J.I.L. Supp. 146 (1948).

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ownership imposed by domestic law should be kept constantly in mind. Claims under Public Law 285 must have been continuously owned by nationals of the United States from the date of the wrong to the date the claim was presented. A "national of the United States" is defined to be either a natural person who is a citizen or who owes permanent allegiance to the United States, or a legal person organized under United States law if more than 50 percent interest is owned by nationals of the United States who are natural persons.[39] The Foreign Claims Settlement Commission has held that under Public Law 285 the principle of continuous nationality applies irrespective of whether the claimant was entitled as a "United Nations national" to war damage compensation under the Treaty of Peace with Rumania.[40] Thus, a claim may have been owned continuously by a United Nations national under the Treaty of Peace, but might not have been owned continuously by an American national because he may have had the nationality of, for example, France on the date of the Armistice with Rumania.

Concerning the ownership requirements in corporate claims, at first the International Claims Settlement Act required 25 percent American interest in a non-United States corporation suffering direct loss as a condition to a claim by an American shareholder.[41] Later, that requirement was

[39] ". . . (A) a natural person who is a citizen of the United States, or who owes permanent allegiance to the United States, and (B) a corporation or other legal entity which is organized under the laws of the United States, any State or Territory thereof, or the District of Columbia, if natural persons who are nationals of the United States own, directly or indirectly, more than 50 per centum of the outstanding capital stock or other beneficial interest in such legal entity. It does not include aliens." 69 Stat. 570 (1955); 22 U.S.C. § 1641(2) (1958).

This provision was incorporated in the Rumanian agreement as part of Art. II, secs. (a) and (b), which state that the claims to which reference is made in the agreement are those which are:

"(a) directly owned by individuals who were nationals of the United States of America (for this purpose ownership through a partnership or an unincorporated association being considered direct ownership);

"(b) directly owned by a corporation or other legal entity organized under the laws of the United States of America or a constituent state or other political entity thereof, if more than fifty per centum of the outstanding capital stock or other beneficial interest in such legal entity was owned directly or indirectly by natural persons who were nationals of the United States of America."

[40] Claim of Margot Factor, Dec. No. Rum-30, *loc. cit.* note 35 above, at 99. The Claims Settlement Agreement with Rumania states that for purposes of paying treaty claims the term "nationals of the United States of America" refers to nationals who possessed U. S. nationality on both Sept. 12, 1944, the date of the Armistice with Rumania, and on Sept. 15, 1947, the effective date of the Treaty of Peace with Rumania.

[41] "(b) A claim based upon an interest, direct or indirect, in a corporation or other legal entity which directly suffered the loss with respect to which the claim is asserted, but which was not a national of the United States at the time of the loss, shall be acted upon without regard to the nationality of such legal entity if at the time of the loss at least 25 per centum of the outstanding capital stock or other beneficial interest in such entity was owned, directly or indirectly, by natural persons who were nationals of the United States." 69 Stat. 573 (1955); 22 U.S.C. § 1641 j(b) (1958).

This provision as amended in 1958 was incorporated in the Claims Settlement Agreement with Rumania as Art. II, secs. (a) and (c), the latter of which limited indirect

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amended to apply only to claims based on indirect interests.[42] Claims based on direct ownership interests by nationals of the United States in nationalized corporations would be considered irrespective of the ratio of total United States interest in the corporations. Claims by nationals of the United States owning a direct interest in nationalized corporations with less than 25 percent total United States ownership interest, which previously had been denied,[43] were redetermined on the basis of the amendment. Claims based on indirect United States ownership interest, such as the taking of property of a foreign corporation, still required 25 percent of the beneficial ownership in the corporation suffering the loss to be in nationals of the United States who were natural persons.

IV. Claims Settled by Rumanian Claims Agreement

There is no doubt that the United States Government has the power to enter into lump-sum settlements with foreign governments and to settle claims of its nationals as delineated in a settlement agreement between the two governments.[44] If claims of United States nationals are settled by such agreements, the United States is not obligated legally to compensate its nationals for any difference between the actual loss and any amount received from the distribution of a lump sum.[45] Where distribution may

claims to those: "(c) indirectly owned by individuals or corporations within subparagraphs (a) or (b) of this Article through interests, totalling twenty-five per centum or more, in a Rumanian legal entity." See *loc. cit.* note 39 above, for sec. (a).

Note the disparity between the indirect rights of individuals under the agreement and under the statute. The statute grants rights to recover for indirect loss in a non-U. S. corporation with 25 percent American beneficial ownership interest. The agreement is narrower, limiting the eligibility to persons with indirect interests in *Rumanian* corporations. Thus, if a claimant with an interest in a German corporation, for example, has an award under the statute, could other awardees bring an action to prevent the Secretary of the Treasury from paying any additional amounts to the former awardee on the theory that to do so would constitute a breach of the international agreement and deplete the available fund? If that action prevailed, would the claimant have a claim against the United States under the theory of Seery *v.* U. S., 127 Fed. Supp. 601 (Ct. Cl., 1955) for compensation for the taking of an acquired right without due process of law? See Ely, "A Hidden Hole in the Fifth Amendment: Treaty Power versus Property Rights: A Substitute for the Bricker Amendment," in Hearings before a Subcommittee of the Committee on the Judiciary, U. S. Senate, 84th Cong., 1st Sess., on S.J. Res. 1, at 920 (1955).

[42] 72 Stat. 527 (1955); 22 U.S.C. § 1641 j(b) (1958). This amendment was incorporated in the agreement as part of Art. II, secs. (a) and (c), *loc. cit.* notes 39 and 41, above.

[43] See Claim of Eugene L. Garbaty, Dec. No. Rum-13, *loc. cit.* note 35 above, at 93.

[44] A state is under no legal obligation to its nationals in the international settlement of claims of those nationals. Any amount received seems legally to be a national fund on which no claimant has a lien. See Nielsen, American-Turkish Claims Settlement, Opinions and Report 4–5 (1937). See also LaAbra Silver Mining Co. *v.* U. S., 175 U. S. 423; Frelinghuysen *v.* Key, 110 U. S. 63; Williams *v.* Heard, 140 U. S. 529. The U. S. Supreme Court in the foregoing cases emphasized that claims espoused by governments on behalf of nationals are international claims and are settled between governments.

[45] *Ibid.* In the "Alabama" claims settlement with Great Britain, the U. S. Supreme Court clarified the nature of the settlement in two cases. In each of them it was held

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partially have taken place domestically from proceeds of vested assets at a time prior to a lump-sum settlement, there is no reason for a different rule. It would be useful, therefore, to enumerate the categories of claims settled by the Rumanian agreement and to compare them with claims allowed under Public Law 285. As this is done, however, one perceives that there are several categories of possible claims uncompensated by Public Law 285, which the United States agreed not to present, and in one situation a right given by Public Law 285, in theory, at least, which was not given by the agreement.[46]

The possible categories of recipients are: (1) awardees under the Rumanian claims program of Public Law 285, and (2) persons whose claims were not included within Public Law 285, but were settled by the agreement. Although the Secretary of State has authority to distribute an award paid by a foreign government,[47] if he acted under that authority

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that the fund was awarded to the United States as a nation and that the United States had no legal or equitable obligation to pay the proceeds to the claimants. The Congress, however, chose to distribute the money among the claimants with valid claims. U. S. *v.* Weld, 127 U. S. 51 (1888); Williams *v.* Heard, 140 U. S. 529 (1891). In the latter decision the Supreme Court said:

"The fund was at all events, a national fund, to be distributed by Congress as it saw fit. True, as citizens of the United States had suffered in person and property by reason of the acts of the Confederate cruisers, and as justice demanded that such losses should be made good by the Government of Great Britain, the most natural disposition of the fund that could be made by Congress was in the payment of such losses. But no individual claimant had, as a matter of strict legal or equitable right, any lien upon the fund award, nor was Congress under any legal or equitable obligation to pay any claim out of the proceeds of that fund."

See also Meade *v.* U. S., 2 Ct. Cl. 275 (1866), aff'd. 9 Wall. 691 (1869); Gray *v.* U. S., 21 Ct. Cl. 340 (1886). It was held in the Meade case that the decision of the commission set up to distribute a sum provided in an international settlement was final and not reviewable in the Supreme Court. In the Gray case, the Court of Claims indicated that a person whose claim has been waived by his government has a right against that government, especially under the U. S. Constitution, although "a right often exists where there is no remedy, and a not infrequent illustration of this is found in the relation of the subject to his sovereign, the citizen to his government." In Haas *v.* Humphrey, 246 F. 2d 682 (D. C. Cir.), cert. denied, 355 U. S. 854 (1957), the contention was made that the U. S. Government, in settling the claimant's rights against Yugoslavia without his consent, took private property without due process. However, the court refused jurisdiction on grounds that the decision of the Foreign Claims Settlement Commission of the United States was final in distributing to claimants a lump sum received by the United States in full settlement of claims of American nationals against Yugoslavia, and that there was no indication of a violation of procedural due process.

[46] See note 41 above.

[47] The first payment was due on July 1, 1960, and was paid. The next payment is due of July 1, 1961, and the last payment of five annual installments is due on July 1, 1964. 31 U.S.C. § 547 (1958) reads:

"All moneys received by the Secretary of State from foreign governments and other sources, in trust for citizens of the United States or others, shall be deposited and covered into the Treasury.

"The Secretary of State shall determine the amounts due claimants, respectively, from each of such trust funds, and certify the same to the Secretary of the Treasury, who

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in distributing the balance of the Rumanian lump sum when received, there may be problems of possible conflict with the pre-agreement distribution authorized by the Congress under Public Law 285.

The three types of claims settled were: claims of American nationals arising under the Treaty of Peace with Rumania, claims arising from the nationalization or other taking of property of American nationals prior to March 30, 1960, and those arising from certain defaulted contractual obligations.[48] While theoretically the agreement created some interstices resulting because it was broader than the earlier domestic law, the practical results indicated that any claims falling in the interstitial areas were *de minimis.*

Treaty Claims

The treaty claims settled by the agreement arise from Articles 24 and 25 of the Treaty of Peace with Rumania. Article 24 provides for the restoration of all legal rights and interests in Rumania of United Nations nationals as they existed on September 1, 1939, and for the return of all property in Rumania of United Nations nationals as it existed on the date of the treaty. Furthermore, the Rumanian Government is responsible for compensating United Nations nationals, whose property was damaged or lost as a result of the war and cannot be restored, "to the extent of two-thirds of the sum necessary at the date of payment, to purchase similar property or to make good the loss suffered."[49] Article 25 obligates Rumania to restore or grant compensation for property, rights and in-

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shall, upon the presentation of the certificates of the Secretary of State, pay the amounts so found to be due.

"Each of the trust funds covered into the Treasury as aforesaid is appropriated for the payment to the ascertained beneficiaries thereof of the certificates provided for in this section. (Feb. 27, 1896, ch. 34, 29 Stat. 32.)"

[48] *Loc. cit.* note 26 above. Par. 1 of Art. I of the agreement reads:

"(1) The Government of the United States of America and the Government of the Rumanian People's Republic agree that the lump sum of $24,526, 370, as specified in Article III, will constitute full and final settlement and discharge of the claims described below:

"(a) Claims for the restoration of, or payment of compensation for, property, rights and interests of nationals of the United States of America, as specified in Articles 24 and 25 of the Treaty of Peace with Rumania which entered into force on September 15, 1947.

"(b) Claims for the nationalization, compulsory liquidation, or other taking, prior to the date of this Agreement of property, rights and interests of nationals of the United States of America in Rumania; and

"(c) Claims predicated upon obligations expressed in currency of the United States of America arising out of contractual or other rights acquired by nationals of the United States of America prior to September 1, 1939, and which became payable prior to September 15, 1947."

[49] Treaty of Peace with Roumania, signed at Paris Feb. 10, 1947 (in force Sept. 15, 1947), Art. 24, pars. 1 and 4. 42 A.J.I.L. Supp. 259 (1948); T.I.A.S., No. 1649, at 52-53.

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terests of persons who had been deprived of such property by sequestration, confiscation or control because of race or religion of the owners.[50]

Under Article 24, the term "United Nations nationals" means

> individuals who are nationals of any of the United Nations, or corporations or associations organised under the laws of any of the United Nations, at the coming into force of the present Treaty, provided that the said individuals, corporations or associations also had this status at the date of the Armistice with Roumania.[51]

Also included within the term were "all individuals, corporations or associations which, under the laws in force in Roumania during the war, have been treated as enemy." [52] Rumania made no attempt to fulfill the foregoing treaty obligation.[53] Accordingly, certain Rumanian assets in the United States were not returned, as assets were, for example, in the case of Italy.[54] While the compensation provisions of the Treaties of Peace with Italy, Rumania, Hungary and Bulgaria were similar,[55] only Italy has honored those obligations.

Some valid treaty claims may have been settled by the agreement but were not considered under Public Law 285. This possibility may be found in certain claims of nationals of the United States which were based on interests in legal entities whose property was lost or damaged during the war. Corporations or juridical persons qualify as United Nations nationals under the Treaty of Peace if they were organized in the territory of one of the United Nations. As pointed out previously, Public Law 285 requires any corporation or juridical person organized in the United States to have 50 percent of its stock owned by natural American nationals before it is eligible to claim under Public Law 285. Thus, a United States corporation with 49 percent United States ownership interest would be an

[50] Art. 25. *Ibid.* at 54.

[51] Art. 24, par. 9(a). *Ibid.* at 55.

[52] *Ibid.*

[53] Although a U. S. representative was sent from the United States to Bucharest in 1948 and remained until 1950, attempts to evoke a response from the Rumanian Government regarding its treaty obligations were futile.

[54] By the so-called "Lombardo Agreement" Italy paid the United States $5,000,000 for the compensation of war damage claims of American nationals against Italy for which provision was not made in the Treaty of Peace with Italy. See Art. II of the Memorandum of Understanding with Italy, signed at Washington on August 14, 1947, T.I.A.S., No. 1757, at 32; 42 A.J.I.L. Supp. 152 at 154 (1948). Those claims were determined by the U. S. Foreign Claims Settlement Commission pursuant to Sec. 304 of Public Law 285, which also established the Bulgarian, Hungarian and Rumanian claims program in Sec. 303. In return for the payment of the lump sum by Italy, the United States released enemy assets and blocked accounts, permitting a return to Italy. Art. I of the Memorandum of Understanding, cited above, and Annex I thereof set forth the details of the release of Italian property. The obligations of Italy under the Treaty of Peace have consistently been honored with respect to U. N. nationals, and Italy has paid treaty claims in good faith. All disputes arising under the Treaty of Peace have gone to the U. S.-Italian Conciliation Commission, established under Art. 83 of that treaty. However, see Kane, "Some Unresolved Problems Regarding War Damage Claims under Article 78 of the Treaty of Peace with Italy," 45 A.J.I.L. 357 (1951).

[55] They were all drafted simultaneously at the Paris Peace Conference in 1946. See Paris Peace Conference, 1946 (Dept. of State Pub. No. 2868).

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eligible claimant under the Treaty of Peace but not under Public Law 285 as incorporated in the settlement agreement. The gap is filled partially, though not entirely, by the provision in Public Law 285 which pierces the corporate veil to allow an indirect claim of a national of the United States based on war damage to property of a corporation not technically a national of the United States if 25 percent of the stock is beneficially owned by nationals of the United States. However, in contrast with this 25 percent ownership requirement, the Treaty of Peace did not require United Nations nationals to own any minimum interest in non-United Nations corporations as a condition to compensation. Any United Nations national had a right on the basis of the Treaty of Peace to receive pro rata compensation for property indirectly owned, so long as the corporation directly owning the property did not qualify as a United Nations corporation. Consequently, under Public Law 285 all United States corporations having less than 50 percent United States ownership and persons who are nationals of the United States having interests in corporations with less than 25 percent direct or indirect United States ownership interest were ineligible to be compensated for treaty claims, even though both types of claimants were eligible under the treaty.

Comparing the foregoing domestic law with the settlement agreement, which necessarily incorporates the nationality and ownership provisions of Public Law 285, it is evident that any United States claimants with rights under the Treaty of Peace can receive nothing more than was provided under that law. Most treaty claims were determined under Public Law 285 by the Foreign Claims Settlement Commission, or its predecessor, in advance of the settlement agreement. If there are any treaty claimants who were ineligible under Public Law 285, the agreement should not be used as an argument to seek any greater rights than Congress has already provided after careful consideration. The United States specifically agreed in Article IV of the settlement agreement not to espouse claims of nationals of the United States within the claims categories set forth in the agreement and Public Law 285, irrespective of whether claimants were eligible or not under the provisions relating to nationality and ownership of claims.[56]

A capsulized comparison is that the Treaty of Peace was broader in its eligibility requirements than Public Law 285 and the agreement following its general policy. The resulting theoretical gap between the claims actually determined and the possible claims which were settled but not previously determined may be justified on the ground that American na-

[56] Article IV of the Agreement states:

"As from the date of this Agreement, the Government of the United States of America will not pursue or present to the Government of the Rumanian People's Republic claims falling within the categories set forth in paragraph (1) of Article I of this Agreement, *without regard to whether the claimants qualify under paragraph (2) of Article I and Article II of this Agreement,* or claims predicated upon obligations expressed in other than currency of the United States of America arising out of contractual or other rights acquired and payable prior to the date of this Agreement." (Emphasis added.)

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tionals in all claims categories should be treated equally. Equality of treatment is not accomplished by allowing more favorable eligibility requirements for treaty claimants than for claimants whose property was taken without compensation. The reasonableness of equal treatment under United States law is more apparent after simple calculations show that none of the claimants will receive full compensation. As a practical matter, though, there are probably very few claims falling between the broad eligibility requirements of the treaty and the more strict requirements of the law and agreement. This analysis has been suggested only as an attempt to understand the problems inherent in settlement agreements which follow rather than precede domestic adjudications.

Nationalization Claims

The agreement of March 30, 1960, also settled all claims arising from the nationalization or other taking of property, rights and interests of American nationals in Rumania prior to the date of the agreement. Following the war, Rumania and other Eastern European countries nationalized privately owned property extensively.[57] When, in addition to flouting the compensation provisions of the Treaty of Peace, Rumania did not pay compensation for the taking of United States property, the Government of the United States decided to retain Rumanian assets vested under the Trading with the Enemy Act[58] and blocked under Executive Order 8389 of April 10, 1940.[59] The United States was under no international obligation to return Rumanian assets or to unblock them, for the Treaty of Peace permitted the United States to use such assets for the payment of certain claims against Rumania arising out of the war or otherwise.[60] To what extent they should be used to pay nationalization claims presented another

[57] See generally: Doman, "Compensation for Nationalised Property in Post-War Europe," 3 Int. Law. Q. 323–342 (1950); "Post-War Nationalization of Foreign Property in Europe," 48 Col. Law Rev. 1148 (1948); Drucker, 36 Grotius Society Transactions 75 (1951); Friedman, Expropriation in International Law (1953); Gutteridge, "Expropriation and Nationalization in Hungary, Bulgaria and Rumania," 1 Int. and Comp. Law Q. 14–28 (1952); Herman, "War Damage and Nationalization in Eastern Europe," 16 Law & Contemporary Problems 498 (1951); Rado, "Czechoslovak Nationalization Decrees: Some International Aspects," 41 A.J.I.L. 795–806 (1947); Re, Foreign Confiscations (1951); Sharp, Nationalisation of Key Industries in Eastern Europe (1946); Wortley, Expropriation in International Law (1959).

[58] 40 Stat. 411; 50 App. U.S.C. §§ 1–39 (1958).

[59] 5 Fed. Reg. 1400 (1940).

[60] Art. 27 of the Treaty of Peace with Rumania, cited note 27 above, at 56–57, provides for the retention and disposition of Rumanian assets in the territory of the Allied Powers. Par. 1 of that article states:

"1. Each of the Allied and Associated Powers shall have the right to seize, retain, liquidate or take any other action with respect to all property, rights and interests which at the coming into force of the present Treaty are within its territory and belong to Roumania or to Roumanian nationals, and to apply such property or the proceeds thereof to such purposes as it may desire, within the limits of its claims and those of its nationals against Roumania or Roumanian nationals, including debts, other than claims fully satisfied under other Articles of the present Treaty. All Roumanian property, or the proceeds thereof, in excess of the amount of such claims, shall be returned."

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question. The original bill introduced and passed in the House of Representatives limited payment of nationalization claims to those arising prior to the effective date of the treaty, September 15, 1947, on the theory that while most nationalizations took place after that date, it would be unfair to war damage claimants to use enemy assets to pay claims which had not arisen at the time the Treaty of Peace was effective.[61] However, the bill was amended in the Senate and finally approved, as amended, to permit awards to be made with respect to nationalization claims arising after September 15, 1947, and before August 9, 1955, the date the Act was approved by the President.[62]

The agreement not only settled claims of nationals of the United States based on the nationalization or other taking by the Rumanian Government of property owned by those nationals prior to August 9, 1955, but also settled similar claims which arose from August 9, 1955, to March 30, 1960, the date of the settlement agreement. Although claims arising prior to August 9, 1955, were determined by the Foreign Claims Settlement Commission under Public Law 285, very few claims have arisen after that date.

Concerning the scope of the settlement agreement and its relationship to claims based on nationalization or other taking, there is another problem which raises the interesting question of a possible conflict in interpretation of international law by the Foreign Claims Settlement Commission, a domestic agency, and by the United States Department of State, the Department charged with the conduct of foreign affairs. Which view should prevail in ascertaining the scope of the settlement agreement under discussion, that is worded almost identically with the domestic legislation under which claims were decided in advance of the international settlement agreement? A specific example illustrating the conflict is the determination by the Commission that, under Public Law 285, debts of nationalized concerns, secured or unsecured by mortgages, were not "taken" by the Rumanian Government by the nationalization of the corporations concerned. Consequently, holders of mortgages and unsecured creditors did not have valid claims under the domestic claims program.[63] The Commission was admonished by the statute to apply "applicable substantive law, including international law." It is, of course, recognized that the liability of

[61] H. Rep. 624, 84th Cong., 1st Sess. 13 (1955).

[62] Sec. 303(2), Public Law 285, cited note 32 above.

[63] Universal Oil Products Co., Claim No. Rum-30,531, Dec. No. Rum-547, *loc. cit.* note 35 above, at 117 (1958); European Mortgage Series B Corporation, Claim No. Hung-22,020, Dec. No. Hung-1,605, *ibid.* at 72. In the latter claim, Commissioner Pearl Carter Pace wrote a dissent which appears to reflect the correct rule of international law, that a secured creditor interest constitutes an interest in property which may be taken when the debtor corporation is nationalized. *Ibid.* at 78. In support of the dissent, see Claim of Joseph and Liana Mention, Docket No. Y-435, Settlement of Claims by the F.C.S.C. of the United States and its Predecessors 92 (1955). It is also interesting to compare the lump-sum settlement agreement concluded between the United States and Poland on July 16, 1960, which provides in Art. 2(c) that claims include "debts owed by enterprises which have been nationalized or taken by Poland and debts which were a charge upon property which has been nationalized, appropriated or otherwise taken by Poland." *Loc. cit.* note 24 above.

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Rumania to compensate United States nationals for property taken is based on international law. If, under the correct rule of international law, the mortgage and debt claims are valid international claims, for which there is substantial support, the agreement settled them and it seems incongruous that they are valid internationally while invalid under domestic interpretation. That conclusion would raise the further question whether to make some compensation available to those claimants from the proceeds of the intergovernmental lump-sum settlement. If, however, the denial of the mortgage and debt claims by the Foreign Claims Settlement Commission was correct under international law, then the lump-sum agreement did not settle those claims.

The foregoing sharply suggests how the Foreign Claims Settlement Commission as a domestic claims commission may influence the provisions which are inserted in lump-sum agreements entered into after domestic determination of the claims involved. The Department of State takes cognizance of the *fait accompli* without disputing the correctness of the principles of international law applied. Thus, while the Rumanian settlement rested on the decisions of the Foreign Claims Settlement Commission, the Commission's determination denying mortgage and debt claims was not influential in regard to the subsequent Polish Claims Settlement Agreement.[64] Accordingly, the conclusion derived from the above is that the position of the Department of State in general is not necessarily influenced by the decisions of the Foreign Claims Settlement Commission, except when the lump-sum agreement is itself limited by antecedent determinations applying international law under a domestic claims program.

Dollar Obligation Claims

Claims based on contractual rights expressed in the currency of the United States and acquired by nationals of the United States before September 1, 1939, which became payable before September 15, 1947,[65] were settled by the agreement. The Foreign Claims Settlement Commission held that those claims arose principally from dollar bonds purchased by Americans. The provisions of the agreement and of the applicable portions of Public Law 285 are nearly identical regarding their settlement and payment.

The Foreign Claims Settlement Commission has held that a contract right acquired prior to September 1, 1939, must have been acquired by a national of the United States who had that status on the date of acquisition and not merely on the date of repudiation or total default of the obligation.[66] The contract obligation so acquired must have been by its own

[64] *Ibid.*

[65] The Agreement and Public Law 285 as interpreted by the Foreign Claims Settlement Commission impose a requirement of American nationality which a claimant must have acquired on or before Sept. 1, 1939. Hedwiga Geller, Claim No. Hung-20,506, Dec. No. Hung-36, *op. cit.* note 35 above, at 37 (1957).

[66] *Ibid.* Commissioner Clay voiced a dissent, however, based on the fact that international law is not concerned with nationality on the date of the acquisition, but only on

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terms payable prior to September 15, 1947.[67] Accordingly, there can be either a default of the total obligation, as when a bond on its face has matured prior to that date, or a default in partial performance, as when there is a failure to pay installments of principal and interest as each installment accrued prior to September 15, 1947.[68] Claims based upon acceleration provisions of principal amounts were not payable unless it was established that the acceleration provisions were invoked according to the terms of the contract prior to September 15, 1947. In other words, unless all requirements for acceleration or repudiation were met before September 15, 1947, the total obligation would not have been due and payable on that date and no award could have been made,[69] except for the failure to pay any installments due before that date.

Under Public Law 285, the term "contractual or other rights" was sufficiently broad to include rights acquired under bonds and also under other types of contracts.[70] The law also included obligations expressed in terms of alternative currencies, as long as one of them was United States currency.[71] It was held not to include bonds issued by private concerns, whether secured or unsecured by mortgages, since the obligation must have been one of the Rumanian Government.[72] Interest on Rumanian Government obligations in default was allowed at the rate of 6 percent per annum for periods commencing from the respective due date of obligations upon which the awards were based (prior to September 15, 1947) until August 9, 1955, the effective date of Public Law 285.[73]

In addition to the foregoing, the agreement with Rumania included an exchange of notes regarding those dollar-bond obligations issued or guaranteed by Rumania which are owned by nationals of the United States and payable in the United States. It was agreed that the traditional United States practice should be followed concerning those obligations, "leaving such matters for negotiation between the debtor government and the bondholders or their representatives," [74] although the United States

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the date of the taking. However, the majority opinion was not premised upon international law and, accordingly, Commissioner Clay did not meet the issue squarely. The applicable law was not international law but the statute; and the majority opinion was based on a construction of the statute which authorized the determination of claims and not upon the rule of international law which, it is true, imposes a requisite nationality at the time of the wrong and not necessarily at the time of acquisition of the vested right.

[67] Karl Wapiennik, Claim No. Rum-30,006, Dec. No. Rum-2. *Ibid.* at 89 (1957).

[68] Howard P. Stemple, Claim No. Hung-20,000, Dec. No. Hung-4. *Ibid.* at 29 (1957).

[69] Arthur Zentler, Claim No. Rum-30,044, Dec. No. Rum-4. *Ibid.* at 95 (1957).

[70] Evelina Ball Perkins, et al., Claim No. Rum-30,192, Dec. No. Rum-264. *Ibid.* at 106 (1957). In that claim an obligation arising out of treasury notes with an amendatory collateral agreement regarding payment was held to be within the terms of Public Law 285.

[71] Adrian Clyde Fisher, Claim No. Rum-30,031, Dec. No. Rum-16. *Ibid.* at 94 (1957).

[72] Margaret Farrell Wotton, Claim No. Hung-21,540, Dec. No. Hung-347, *ibid.* at 36 (1957); Guaranty Trust Co. of N. Y., Claims Nos. Hung-21,309–21,312, Dec. No. Hung-714, *ibid.* at 46 (1958).

[73] Note 67 above.

[74] *Op. cit.* note 5 above, at 29.

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Government expressed the understanding that the Rumanian Government had manifested the intention of settling such claims with the bondholders or their representatives.[75]

The settlement agreement regarding dollar debts of the Rumanian Government should have a meaning identical to that given by the Foreign Claims Settlement Commission for two reasons: (1) The United States practice regarding bonds has usually been a hands-off policy not favoring espousal or representation on behalf of claimants holding foreign bonds or obligations.[76] (2) Congressional intent expressed in Public Law 285 favored supporting limited claims of United States holders of Rumanian obligations. The conclusion follows that the Foreign Claims Settlement Commission, having been charged with determining those claims, was acting solely under a domestic statute and that the agreement in settlement of the Rumanian debt claims should be identical in scope to the determinations by the Commission which acted strictly under mandate from Congress without invoking international law.[77]

V. Evaluation

An evaluation of the Claims Settlement Agreement with Rumania depends on weighing the complex factors which lie behind that agreement. Accepting an additional amount from Rumania greater than a token settlement but less than full value of claims already determined could easily stir up problems of greater magnitude than warranted by the relatively small amount of cash payments to be received by the United States, which are in addition to the vested assets. Such a settlement undoubtedly has contributed to an improvement in relations between the United States and Rumania and may have a certain appeal as precedent. However, a circumspect evaluation should not place undue weight on the Rumanian agreement as a precedent, since each settlement agreement should be negotiated according to the political and economic judgments of the occasion. The only meaningful assessment of a lump-sum agreement such as the agreement with Rumania is pragmatic: In defining the limits of the immediate goals sought, will the advantages in settlement outweigh the disadvantages? The advantages may be private, as providing some compensation to claimants, or public, as removing barriers to favorable trade agreements. The disadvantages may also be private, as settling claims for less than their full value, or public, as releasing a Communist

[75] A representative organization is the Foreign Bondholders Protective Council in New York.

[76] But see the Agreement on German External Debts, signed at London Feb. 27, 1953, 4 U. S. Treaties 443; T.I.A.S., No. 2792 (in force for the United States Sept. 16, 1953). The war, however, interrupted payment, and such a comprehensive debt settlement necessarily provided procedures for payment of bonds.

[77] In the claim of Hedwiga Geller, cited note 65 above, the Foreign Claims Settlement Commission rejected over the dissent of Commissioner Clay the application of general principles of international law regarding Rumanian debts, and favored basing awards solely on the statute. Statutory interpretation, therefore, became significantly preeminent. See note 66 above.

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country from its responsibility to compensate American claimants adequately upon partial compensation or giving a clean bill of health before the international community.

In appraising an *en-bloc* settlement by such terms, the judgments which become necessary are, first, whether a more desirable settlement could have been obtained or could be obtained at some future time and, second, whether immediate advantages are adequate.

Considering present relations between the United States and Rumania, it is questionable whether a settlement in a greater amount could be reached at a future time, without an accompanying increase in trade, credits or some other assistance deemed advantageous by Rumania.[78] If Rumania has sought world respectability as one of the consequences of the settlement agreement, it is understandable why Rumania favored an early settlement. However, the United States might well have run a greater risk in estimating world public opinion if it had sought advantage in an agreement at a more propitious future time than it did by last year's settlement. Wiping the slate clean in claims disputes between the United States and Rumania at the present gives Rumania only a pseudo-respectability in world public opinion. Like a judgment debtor who has legally been released from judgment after only partial satisfaction of his debt, Rumania also has been released from certain international obligations after only partial satisfaction. While a judgment debtor would be released in similar circumstances only if his assets were insufficient to pay his creditors, world public opinion is aware that Rumania has been released from a legal obligation even though it could, if it desired, arrange to meet its obligations in full.

The fact that Rumania did acknowledge an international obligation to pay any compensation at all is encouraging for international law, notwithstanding the problems involved in arriving at a reasonable lump sum. Discounted by all factors weighing against a settlement, sufficient advantages remain in the lump-sum agreement to appraise it as the best possible solution.

VI. Conclusion

The foregoing analysis of the Rumanian Claims Agreement has been in relation to the claims program already completed by the Foreign Claims Settlement Commission. It has not, however, sought to discuss the problem of distribution of the additional payments received or which will be received from Rumania.

This article has also sought to evaluate in general terms the factors and judgments underlying lump-sum settlements. At one time the lump-sum device was considered a simple solution to the problem of method in settling international claims. However, the Rumanian agreement finds no

[78] The Washington Post recently reported the conclusion of a lump-sum agreement between the U. K. and Rumania, accompanied by a three-year trade agreement. Rumania agreed to pay the U. K. $3.5 million to settle claims arising from World War II and postwar nationalization measures in Rumania, but oil company claims were excluded, on which negotiations are to commence in 1966. Washington Post, Nov. 11, 1960, p. D-11.

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place in the scheme of past lump-sum settlements entered into by the United States, either in this century or in the last. Its significance accordingly is of greater note because of the complexities and problems it presents. It is an innovation in the international settlement of claims because domestic adjudication preceded international settlement. This article accepts the practical insignificance of many points discussed herein, but has analyzed them nonetheless for a more far-reaching purpose: Since insignificant innovations often have lasting consequences, the Rumanian agreement must be understood in relation to the existing framework for settling international claims. Whether it is sound politically and legally to seize and liquidate foreign-owned property by unilateral action [79] to satisfy claims of American nationals in advance of an international settlement is a central problem underlying the Rumanian agreement. The answer to that question could easily turn the Rumanian agreement into an isolated, exceptional agreement. Or it could form the point of departure for a variation on a theme of self-help in settling international claims.

[79] For example, the powers of the President derived from the Constitution, the First War Powers Act, 1941, and the Trading with the Enemy Act of Oct. 6, 1917, as amended, were used as authority for promulgating Executive Order No. 9193 of July 6, 1942, 7 Fed. Reg. 5205. That Executive Order was used in the seizure and liquidation of a Czechoslovak steel mill purchased by the Czechoslovak Government in the U. S., even though Czechoslovakia was not at war with the United States. Par. 2(b) authorized the liquidation of any "business enterprise within the United States which is a national of a foreign country and any property of any nature whatsoever owned or controlled by . . . and any interest of any nature whatsoever in such business enterprise held by a foreign country or national thereof, when it is determined by the Custodian and he has certified to the Secretary of the Treasury that it is necessary in the national interest. . . ." By this authority it is not necessary that the business enterprise be an enemy national or be owned by a country which is a declared enemy of the United States, so long as the national interest demands seizure. Rubin has encouraged self-help procedures if diplomatic negotiations do not succeed. Rubin, *loc. cit.* note 20 above, at 961. In the contemporary problems of international affairs, self-help should be used in a very cautious manner and not for any slight provocation.

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