INTERNATIONAL CLAIMS COMMISSION OF THE UNITED STATES
DEPARTMENT OF STATE
Washington, D. C.

In the Matter of the Claim of	:	
JOSEPH SENSER 1909 Orchard Street Chicago, Illinois	:	Docket No. Y-1756 Decision No. 663
Under the Yugoslav Claims Agreement of 1948 and the International Claims Settlement Act of 1949	:	

Counsel for Claimant:

CLIFFORD K. RUBIN, Esq.
77 West Washington Street
Chicago 2, Illinois

PROPOSED DECISION OF THE COMMISSION

This is a claim by Joseph Senser, a citizen of the United States since December 30, 1915, the date on which he was naturalized by the Circuit Court of Cook County, Illinois, and is for the taking by the Government of Yugoslavia of a house and $4\frac{1}{2}$ yochs of land at Kikinda and Soltur, Yugoslavia. Claimant seeks the amount $3,950 for the property.

It is established by evidence before the Commission (certified extracts from the Land Register of the County Court, Kikinda, Yugoslavia) that claimant owned approximately 5 yochs of land, having inherited half on March 30, 1930, from his mother, Marije Senser, and the remaining half on May 26, 1942, from his father, Johan Senser, recorded and described in the property record as follows:

Docket Number	Parcel Number	Location	Description	Square Fathoms
11267	(13508/a/2			
	(13508/c/2	Kikinda	Field	1445.5
5675	13067	"	"	2134
5675	13068	"	"	1066
209	322/b/2/c	Soltur	Vineyard	168
872	755/1-7/45	"	Field	202
267	412/a	"	Vineyard	400
267	381	"	"	800
344	410/b	"	"	400
658	280/b	"	"	400
718	259/a	"	"	400
183	406/a	"	"	400
162	394/b	"	"	400
224	322/a/2/c	"	"	220

It is also established by the land records and admissions of the Government of Yugoslavia that the land described therein was confiscated on February 6, 1945 pursuant to the Enemy Property Law of November 21, 1944 (Official Gazette No. 2 of February 6, 1945).

Claimant has filed no corroborating evidence with respect to the value of the property. Two three-party Commissions appointed by Yugoslav authorities, one for Kikinda and one for Soltur, appraised the land in March 1953, in accordance with 1938 values, at 64,080 dinars. The Soltur Commission pointed out that it took into consideration that the parcels of land described in the land records as vineyards were fields at the time of taking. A third three-party Commission appointed by local Yugoslav authorities to appraise the building reported that it cost 12,000 dinars to construct but had collapsed and was "totally dilapidated." It did not, however, appraise the tract on which the house had been situated.

This Commission's own investigator inspected the property and reported that the land is Class I and is near the Rumanian border and the city of Kikinda. He appraised it in accordance with 1938 values at 62,000 dinars. He also reported that the house had fallen down, but appraised the lot on which it was situated at 12,000 dinars, or a total of 74,000 dinars for all of claimant's property. No evidence of value for a later year has been filed.

Upon consideration of all reports and valuations, the Commission is of the opinion that the fair and reasonable value of the property as of the year 1938 was 74,000 dinars. The Commission is also of the opinion that the proper rate for converting dinar valuations as of the year 1938 into United States dollars is 44 dinars to $1. The Commission is further of the opinion that interest should be allowed from February 6, 1945, the date of taking, to August 21, 1948, the date the Government of Yugoslavia paid the Government of the United States the sum agreed upon in the Claims Agreement of July 19, 1948.

Commission awards prior to July 1, 1953, appear to have been based in almost all claims on valuations of property as of the year 1938, with valuations converted into United States dollars at the rate of 55 dinars to $1, and with no allowance of interest. Since the Commission now is of the opinion that the proper rate of exchange for converting dinar valuations as of the year 1938 is 44 dinars to $1, and that interest should be allowed, it is appropriate that the reasons for these conclusions be stated.

The conclusions here reached will apply with equal force to all awards whether heretofore or hereafter made, so as to obtain uniformity of treatment so far as practicable.

I. BASIS FOR AND TIME OF VALUATION OF PROPERTY

In a few of the earliest awards of the Commission, it is stated in the decisions that the awards represent the value of the properties at the time they were taken, but without other explanation. (Decisions Nos. 29, 347, 358, 362, 365 and 366). In a few others, the value found is stated as that of the year 1938; in part with no further comment; in part that it is used as evidence of the value as of the time of taking and in the rest with the comment that no other evidence as to value is available. (Decisions Nos. 353, 388, 391, 392, 394, 396, 397, 402 and 610). In a small number of claims in which the property taken consisted of mortgages or other types of indebtedness,

the value is stated as the face amount obligated, (e.g. Decision No. 541). In all other decisions, comprising the bulk of the awards made before June 30, 1953, the valuation is stated merely as that found upon the evidence before the Commission, without comment as to its basis or relation in time, and without detail as to the content of such evidence.

In substantially all of the claims, however, the records of the Commission as to the processes leading to the determinations show that they were based on valuations as of the year 1938, however stated in the formal decision. It also appears that such 1938 values were not used as evidence of value as of the time of taking - mostly during the period 1945-1948 - but were used on the ground that that was the last year, prior to the takings, in which economic conditions and the resulting price and value structure, were still comparatively "normal," as compared with the inflation, and at times extreme fluctuation and even chaos, that set in with the realization in Yugoslavia of the imminence of war beginning in 1939, and its actuality in 1941 and thereafter. Values as of 1938 were used, in short, because it was regarded as the last year for which it was practicable to determine values for the property concerned, and because the time allowed for the determination of claims and the funds available for that purpose did not permit an exhaustive investigation of claims on an individual basis. Moreover, as the law provides in effect that the expenses of the Commission shall be deducted from the total of awards made to claimants, it is the responsibility of the Commission to avoid expenditures for investigative and administrative processes which would likely prove unproductive and costly and, as an inevitable by-product, delay the final determination of the claims.

On the basis of data before us, and of our recognition of general conditions that are part of the recent history of Yugoslavia, we may take notice of the difficulties that attend the specific valuation of properties in that country during the 1940's.

Yugoslavia, like other countries on the Continent, became subject to the economic and destructive forces of war beginning in 1939. Pre-war disturbances in 1939 and 1940, which gave rise to the initial inflationary trend, were succeeded by sharper and more widespread value and price changes in the 1941-1945 period during military activity and occupation by the enemy. The economic consequences of war are of too recent origin and too well remembered to require extended comment. Extreme increases in demand for crops, foodstuffs and of all the productive facilities of the nation which, directly or indirectly, contribute to the needs of the military and the activated and greater demands of the civilian population, causes sharp increases in prices and physical values, which history has revealed results in a destructive effect upon the monetary system of the country so affected. The Congress has stated, aptly and forcibly, in connection with domestic war-time inflation-control legislation that "of all the consequences of war, except human slaughter, inflation is the most destructive." (S. Rep. No. 931, 77th Cong., 2d Sess., p. 2). Even though a government may for the time forbid the translation of distorted values and unbalanced prices into current monetary values, the presence of the inflationary drive nevertheless persists throughout the period of dislocation. This is so in relation to farmlands and crops, factories and their products, and, in large measure, financial obligations and other forms of securities. In the case of structures, the normal factors of time and use, which ordinarily would tend to off-set increases in value, are out-run by the more rapid inflationary pace and, therefore, may not be employed as a balance.

To these distortions of prices and artificial values, must be added the circumstances that the monetary medium has its separate sphere of movement which does not necessarily parallel the rise or

pace of prices. For example, while the inflated value of a piece of farmland may be twice its former value, three times as much money may be needed to buy the land because of the greater depreciation in currency.

From the foregoing, we believe it evident that the inflation present in the Yugoslav economy from 1939 onward created an abnormal situation and thus renders that period for appraisal or valuation of little value. Conversely, just as the factor of unjust enrichment attached to war-year values, the economic decline of the early and middle thirties depressed values to extremely low levels. In the instance of Yugoslavia, the fall in agricultural prices in world markets threatened to bankrupt all Yugoslav farmers. (80 per cent of the population). Following, as it did, the crash of the Austrian Credit-Anstalt, the Yugoslav economic system was seriously affected. The first full year of recovery from that depression was 1938.

The appropriateness of using the year 1938 as a base date is also underscored by the difficulties which would render impractical efforts to obtain valuations as of the time of taking. Thus far, a total of 1553 claims have been filed under the Yugoslav Claims Agreement of 1948. Pursuant to this Agreement, the Government of Yugoslavia has agreed to furnish evidence in support, or refutation, of claims. It has done so in hundreds of claims and additional reports are continuously being received. In all but a few of those reports, valuations are for the year 1938. Any change in base date would make doubtful the usefullness of such previous reports.

Accordingly, we believe it proper to consider 1938 valuations as the initial point of reference. This does not exclude consideration of later valuations, including particularly those reflecting values at the more precise time of nationalization or other taking. If any such later valuations are available, and can be translated correctly into dollars, they will be given consideration with all other available evidence. However, it is appropriate to point out, as discussed below, that the Commission now adopts a rate of conversion of dinars into dollars which, in large part, will compensate claimants for appreciation in the values of their properties between 1938 and the time of taking.

II. RATE OF EXCHANGE FOR CONVERTING VALUATIONS OF PROPERTY INTO AMERICAN DOLLARS WHEN FIRST DETERMINED IN ANOTHER CURRENCY.

In a few of the cases decided prior to June 30, 1953, valuations of the property involved were stated in dollars only (Decision Nos. 29, 358, 366, 382, 394, 400, 401, 402, 430, 473, 575, 631, and 632). In a small number, valuations were stated in Italian lira which were then converted into dollars at the rate of 19.01 lira to the dollar (Decision Nos. 504, 584, and 628). All of the remaining decisions were based on valuations which were first stated in Yugoslav dinars and then converted into dollars at the rate of 55 dinars to the dollar.

The 55 to 1 rate was first applied in the Hoegler claim (Docket Y-1414; Decision No. 353), which was the Commission's second award. In that decision, the Commission, after remarking that it was unnecessary to discourse at length on the fluctuation in value of the Yugoslav dinar, adopted the rate of 55 to 1 on the ground that:

> "Having concluded that the only evidence as to the value of the property here involved is that at the time of 1938, we apply to it the conversion rate recognized at that time by the Yugoslavian Government. Taking into consideration the factors affecting the exchange rates, including that of the so-called 'free-market rate', we conclude the exchange rate to be 55 dinars for 1 United States dollar. We therefore apply that rate of exchange to the dinar value of the property in this claim proceeding."

The rate thus adopted was used in all subsequent awards, with the exceptions above-noted, without further explanation or comment as to its foundation. In arriving at the 55 to 1 exchange rate, the Commission seems largely, if not entirely, to have centered its attention upon the so-called "free-market rate" which was employed in a substantial percentage of private commercial transactions.

We concur that when a valuation of property as of a certain date is accepted and relied upon, an exchange rate as of the same date should be used and relied upon for its conversion into the monetary medium of the United States. If the time of taking feasibly and fairly could be used, the essential factors of valuation and rate of exchange would need to be in accord. But where the 1938 value is chosen on the ground that evidence is lacking for valuation of the particular property as of a later date, when valuations generally, and along with them that of the property involved in the particular claim, had markedly risen, it would manifestly be unfair to combine the lower earlier valuation with a rate of exchange lower than we can accept as having been in effect during 1938. We cannot, therefore, approve or accept an exchange rate of 55 dinars to 1 dollar as the proper conversion rate for valuations as of the year 1938. We adopt instead a conversion rate of 44 dinars to the dollar when valuations as of the

year 1938 are used as the basis for our determinations. Because of the importance of this question, we state our reasons and the grounds therefor.

According to data made available to the Commission by the National Bank of Yugoslavia, the yearly official exchange rates, including an official premium of 28½% on exchange transactions, from 1934 through February 1941, and the yearly free market exchange rates, for the period May 15, 1939 through February 28, 1941, were as follows:

	OFFICIAL		FREE RATE	
Year	High	Low	High	Low
1934	47.11	42.74		
1935	43.84	43.08		
1936	44.74	42.85		
1937	43.69	42.70		
1938	44.39	42.61		
1939	44.55	43.73	55.00	54.83*
1940	44.55	44.53	55.00	55.00
1941**	44.55	44.55	55.00	55.00

Those rates are fully corroborated by international publications on currencies and exchange rates, such as "International Financial Statistics," the monthly official publication of the International Monetary Fund (see January 1948 issue, Vol. I, No. 1, pages 10-11); "Statistical Year Book of the League of Nations," the official publication of the League of Nations (see Vol. 1939/40, Table 101, pages 193 ff.; Vol. 1940/41, Table 96, pages 178 ff.); and "Statistical Year Book," official publication of the United Nations (see Vol. 1949-50, Table 151, page 416).

The National Bank of Yugoslavia explains the laws and regulations in effect during the period 1932-1939, as taken from its official publications, as follows:

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* May 15, 1939 to December 31, 1939
** January and February 1941

"The premium on the official rate [referred to above] was introduced on August 29, 1932. Originally, it amounted to 5 per cent but it increased rapidly so that already on January 1, 1933, a premium of 28.5 per cent was generally in force. By a Decision of the Cabinet of January 15, 1935, the National Bank has been authorized to compute its monetary reserves at the official rate plus the existing premium of 28.5 per cent. 'Accordingly, this Decision means the stabilization of the Dinar at an exchange rate of Sw.fr. 7 for Din 100' (Annual Report of the National Bank for 1935).

"The official rate (including premium) was applied only to the part of export proceeds which had to be surrendered to the National Bank. The surrender requirement was in course of 1934 lowered from 80 per cent to 60 per cent, and in 1935 to 50 per cent. During 1938 further reduction of the surrender requirement to 1/3 of the proceeds took place, and this percentage applied in principle to all inflow of foreign exchange, regardless of the particular kind of transfer (the maximum surrender requirement for non-commercial foreign exchange amounted earlier to 100 per cent, but in course of years it was gradually reduced until this alignement with export proceeds took place). Pursuant to a Decree of the Minister of Finance from January 1, 1938, on, only 25 per cent of foreign exchange was surrendered. 'Almost all other foreign exchange which, irrespective of the particular nature of the transfer, enter Yugoslavia may be freely disposed of at the domestic free market at the free exchange rate' (Annual Report of the National Bank for 1937). 'By a Decree of the Minister of Finance of July 29, 1939 exporters are entitled to sell 100 per cent of their export proceeds at current exchange rates, whereas hitherto they were obliged to surrender to the National Bank 25 per cent at the official rate . . .' (Annual Report of the National Bank for 1939). That means that the bulk of foreign exchange dealings in this country are transacted at the free rate, and '. . . the Dollar at the rate of Din 55 continued to serve as basis for computing the par values' (Annual Report of the National Bank for 1940)."

Although reference is made in the above explanation to the volume of transactions at the free market rate of 55 dinars to $1, it is nevertheless clear, as reflected by the Table above, that the official rate in 1938 remained at 44 dinars to $1. This is also fully corroborated by the Federal Reserve System of the United States which, in its Official Bulletin (Vol. 24, 1938, p. 1098) quotes exchange rates, as compiled from currency transactions in the United States for the year 1938 as follows:

Month	Dinars per dollar (Mean Average)
February	42.7387
March	42.9350
April	42.9738
May	43.0311
June	42.9997
July	43.0274
August	43.2283
September	43.6777
October	43.8500

Further substantiation is found in a treatise prepared by the Board of Governors of the Federal Reserve System of the United States for the official use of United States military authorities (Civil Affairs Handbook, Yugoslavia, Section 5, Money and Banking, February 24, 1944). The matter is summarized as follows:

> "After the formal depreciation of the U. S. Dollar in terms of gold in January 1934, the official exchange rate on the Dollar (including the premium) became about 44 D. Exporters were compelled to sell part of their foreign exchange to the National Bank at this rate up to May 15, 1939, and importers of essential commodities received allocations of exchange at this rate. Before long, however, an increasing proportion of the authorized international exchange transactions commenced to pass through the free market in which, by informal official intervention, the exchange rate on the Dollar was maintained at around 55 D. After May 15, 1939, when all foreign exchange proceeds from exports were permitted to be sold in the free market, this latter rate became the only effective rate for authorized international transactions." (p. 18)

From the foregoing, we conclude that from 1934 to 1941 the official rate of exchange was approximately 44 dinars to $1; that a free market rate developed and increased during that period which, by May 1939, amounted to approximately 55 dinars to $1; and that during the same period the Yugoslav Government required the surrender of foreign exchange at the official rate in decreasing percentages which, during the entire year 1938, amounted to 25%. We recognize, as did the Government of Yugoslavia, the existence of a free market rate during the year 1938. However, since the Yugoslav Government itself acquired dollar exchange at the official rate of 44 to 1 and required the surrender of 25% of all dollar exchange at that rate and since transactions on the free market were negotiated between buyer and seller and, therefore, varied with supply and demand, we

cannot accept a rate of 55 to 1 for the year 1938 on factual grounds. Obviously, since records of free market transactions were not maintained it is not possible to determine the precise free market rate. We conclude, however, from all available data that during the year 1938 the average free market rate was substantially less than 55 to 1.

We also reject the 55 to 1 rate and adopt the official rate of 44 to 1 on legal grounds. The claims of which this Commission has jurisdiction are for the taking by the Government of Yugoslavia of property of American nationals domiciled in the United States. Under the Claims Agreement, the Government of Yugoslavia agreed to pay for that property. It is our view that it should do so in the same way it would pay for any other property it acquired in the American dollar market. Had it elected to pay for the property in dollars in 1938, directly to the American claimants, it could have acquired dollars at the legally fixed official rate of 44 to 1. If the Government of Yugoslavia now were allowed to pay for the property on the basis of a free market rate which is less than the rate at which it could have acquired dollars, a premium or a profit would, in effect, be placed upon the taking of property. It is our view that such a result would be unjust and inequitable to the claimants and contrary to the Claims Agreement of 1948.

If it be objected that official rates of exchange were not in practice available at the time to private parties in Yugoslavia for the conversion of dinars to dollars to be sent to America, and that private parties could not obtain dollars at that rate or, if they did obtain dollars, would not have been permitted by the Government to send them out of the country, is to misconceive the essential character of the relationship between the claimants before us and the Government of Yugoslavia which has been impressed by the Settlement Agreement of 1948. That Government has acknowledged the taking of their property and by the Settlement Agreement has agreed to pay

for it and has already paid the amount agreed upon in dollars. By enforcing the Agreement, the claimants are, as pointed out above, in the position of owners of property which the Government of Yugoslavia is acquiring in the dollar market; and for such purchases that Government should, in the due and orderly course of its practice, pay in dollars into which dinars had been converted at the official rate of exchange in effect at the time of acquisition. Where, for purposes of valuation that time is treated as in 1938 rather than the actual time of taking, in the 1940's, the correspondingly applicable rate of exchange is the official rate in effect in 1938.

We therefore hold that where valuations of the property taken are determined in the decisions of this Commission as of 1938 that such valuation shall be converted into American money at the rate of 44 Dinars to the Dollar, a practical mean of any of the minor fluctuations of the rate within that year. By this we do not foreclose the use of a different rate in claims in which an acceptable valuation is available at or near to the time of the taking, and where such different rate was in effect at that time, or, by virtue of its near proximity in time, seems more appropriate for such use.

III. ALLOWANCE OF INTEREST UPON THE PRINCIPAL AMOUNT OF THE AWARD.

None of the Commission's previous decisions have granted interest upon the amount awarded as the value of the property taken.

Possible awards of interest are clearly contemplated by the Settlement Agreement of 1948, which provides in Art. 1 (c) for the return to Yugoslavia of any excess remaining of the proceeds of the original lump-sum settlement after the payment of the total of all claims awarded against it, "exclusive of any interest on such claims for the period beginning on the date of the payment referred to in paragraph (a) of this article," which refers to the payment of an agreed lump-sum of $17,000,000, actually made August 21, 1948. By expressly excluding the allowance of interest after that date, the

Agreement contemplates by counter-implication jurisdiction to allow interest for appropriate periods prior to that time.

Similarly, the International Claims Settlement Act of 1949 also contemplates the allowance of interest on awards where otherwise appropriate. Section 8 (c) of the Act provides for payment:

(1) In full, of an award of $1,000 or less;

(2) Of $1,000 initially against an award in excess of that amount;

(3) Of not over 25% of the remaining principal of awards over $1,000;

(4) Of amounts prorated to the remaining funds available, against any remaining unpaid portions of the principal amount of such awards;

and, after having provided the sequence of payments to be made against the principal amounts of the awards of the Commission, provides further:

(5) After payment has been made of the principal amounts of all such awards, to make pro rata payments on account of all <u>accrued interest</u> on such awards as bear interest.

Under settled principles of international law which, by the International Claims Settlement Act of 1949 the Commission is directed to apply (Sec. 4(a)), interest is clearly allowable on claims for compensation for the taking of property where, in the judgment of the adjudicating authority, considerations of equity and justice render such allowance appropriate.

> "Interest, according to the usage of nations, is a necessary part of a just national indemnification." Moore, <u>Digest</u> (Vol. VI), p. 1029.

> "The question of the allowance of interest has arisen before almost every international tribunal, and usually, and except where the claim was for a tort purely, its allowance has been considered rightful, differences more frequently arising as to the time of its commencement or termination and the rate at which it should be allowed." Ralston, <u>Law and Procedure</u>, Sec. 212.

> "But where the loss is either liquidated or the amount thereof capable of being ascertained with approximate accuracy through the application of established rules by computation merely, as of the time when the actual loss occurred, such amount, so ascertained, plus damages in the nature of interest from the date of the loss, will ordinarily fill a fair measure of compensation. To this class, which for the purpose of this opinion will be designated 'property losses,' belong claims for property taken, damaged, or destroyed." Mixed Claims Commission, United States and Germany, Administrative Decision No. III (December 11, 1923), Decisions and Opinions, p. 62.

> "The award of interest is usually considered to be merely a part of the duty to make full reparation . . . arbitral tribunals have felt that it was not outside of their jurisdiction to award interest, even though the Convention by which they were set up made no mention of interest. Where the treaty merely provides for the establishment of the amount of damages due, such action may be interpreted as an effort to restore the claimant as nearly as possible to the same position which he occupied before the injury was committed." Eagleton, The Responsibility of States in International Law, pp. 203-4.

See, also, Whiteman, Damages in International Law, Vol. III, pp.1913, et.seq.; Hackworth, Digest of International Law, Vol. V, p. 735.

It is our judgment that equity and justice requires the allowance of interest, both under the Agreement with Yugoslavia and the applicable principles of international law. As to the rate at which allowable, we refer again to established principles of international law which suggest the use of the rate allowable in the country concerned.

Yugoslavia, as is well-known, was unified after World War I from a number of previous constituent territories which had previously been portions of Serbia, Montenegro, Turkey, Austria, Hungary, and other portions of the former Austro-Hungarian empire, such as Croatia and Slovenia. Many of these constituent territories had and still have local laws governing allowable rates of interest, which rates, in turn, vary according to the type of transaction involved. Variances exist, for example, on loans by business enterprises of the character of banks, cooperative organizations or insurance companies; or between other business enterprises; or

between private creditors; and differ also as between transactions in which the interest rate is agreed upon and those in which interest is allowable by law, but without agreement on the rate between the parties. These various rates range from 4% to as high as 12% as between the different territories and the different types of transactions and concerns participating in them.

It is not possible within the resources available to this Commission to determine the particular rate of interest applicable to each case of taking according to its location and other attendant circumstances which might affect the rate allowable under local law. We, accordingly, adopt a general rate of 6% as fair and equitable and within the general scope allowable by local law and in harmony with applicable principles of international law. Such rate of interest is to be allowed on all claims determined by this Commission from the date of the taking of the property concerned to August 21, 1948, the common determination date for the allowance of interest under the Settlement Agreement of that year.

AWARD

On the above evidence and grounds, this claim is allowed and an award is hereby made in the sum of 74,000 dinars, which, converted into United States dollars at the rate of 44 dinars to the $1, equals $1,681.82, with interest thereon at the rate of 6% per annum from February 6, 1945 to August 21, 1948, in the amount of $357.33.

Claimant's counsel has requested the Commission in writing to determine his fee. The written agreement of record authorizes payment to counsel of an amount equal to 10% of any award. Accordingly, an award is hereby made to Clifford K. Rubin, Esquire, of 10% of the total amount paid to claimant.

Dated at Washington, D. C.

this 31st day of March, 1954.

INTERNATIONAL CLAIMS COMMISSION OF THE UNITED STATES
DEPARTMENT OF STATE
Washington, D. C.

In the Matter of the Claim of	:	
JOSEPH SENSER 1909 Orchard Street Chicago, Illinois	:	Docket No. Y-1756 Decision No. 663
Under the Yugoslav Claims Agreement of 1948 and the International Claims Settlement Act of 1949	:	

Counsel for Claimant:

CLIFFORD K. RUBIN, Esq.
77 West Washington Street
Chicago 2, Illinois

FINAL DECISION

The Commission by Proposed Decision No. 663, issued March 31, 1954, made an award to the claimant herein of $1,681.82, principal, and $357.33, interest. Pursuant to Article 9 (b) of the Agreement of July 19, 1948, between the Governments of the United States and Yugoslavia, and the Commission's rules, the Government of Yugoslavia has filed a brief as amicus curiae with respect to the proposed decision.

The objections of that Government are directed to: (1) the possible use by the Commission in other claims of a date later than 1938 for the valuation of property, (2) the use of a 44 to 1 exchange ratio, and (3) the allowance of interest on awards. The dollar amount of the award in this claim is acceptable to the Government of Yugoslavia, even though in excess of that which it had previously recommended.

(1) Base Period for Valuations

Article 1 of the Agreement of July 19, 1948, provides for awards to nationals of the United States "on account of the nationalization and other taking by Yugoslavia of property and of rights and interests in and with respect to property, which occurred between September 1, 1939 and the date hereof" (July 19, 1948). Such property and property rights were, for the most part, taken by that Government on February 6, 1945 (Enemy Property Law of November 21, 1944; Official Gazette No. 2, February 6, 1945), on December 5, 1946 (Nationalization Law of December 5, 1946; Official Gazette No. 98, December 6, 1946), and on April 28, 1948 (Nationalization Law of April 28, 1948; Official Gazette No. 35, April 29, 1948). It would be customary to value property as of the date of taking. However, as explained in some detail in the proposed decision herein, the year 1938 has been proven, as a matter of historical and economic fact, to have been the last normal year before war on the continent unbalanced property and currency values to the point where the use of any later period of time, as a fixed touchstone in time for the evaluation of the bulk of the claims, would have been incorrect. For that reason, as amplified in the proposed decision, the finding was made that:

> "Accordingly, we believe it proper to consider 1938 valuations as the initial point of reference. This does not exclude consideration of later valuations, including particularly those reflecting values at the more precise time of nationalization or other taking. If any such later valuations are available, and can be translated correctly into dollars, they will be given consideration with all other available evidence. However, it is appropriate to point out, as discussed below, that the Commission now adopts a rate of conversion of dinars into dollars which, in large part, will compensate claimants for appreciation in the values of their properties between 1938 and the time of taking." (p.7)

The Government of Yugoslavia agrees that valuations as of the year 1938 are proper. Its disagreement is directed to the possible acceptance by the Commission of a later date or subsequent period of time in other claims. We suggest that this objection is premature.

In none of the approximately 300 claims on which Proposed Decisions have been issued since June 30, 1953 have we relied upon later valuations. We will not speculate now on the kinds of situations which, conceivably, might warrant acceptance of a date other than 1938. However, we do not believe that every valuation at a time later than 1938 would necessarily be incorrect. Hence, we do not wish to exclude the possibility that a situation may arise wherein a later valuation may be acceptable or be the only valuation available. Indeed, the Government of Yugoslavia in its brief refers to claims in which 1939 and 1940 valuations were employed by it: "Exceptionally only in cases when it was physically impossible to identify the property taken possession of, because it was distributed in many different places which could not be established, in our reports, as a practical solution, we submitted data from balances of 1939 and 1940, calculated logically, that the values of said balances would be refigured according to conforming free rate of exchange dollars of the respective year."

We readily agree that the exchange rate of 44 dinars to one United States dollar might be inappropriate for application to dinar valuations as of a year later than 1938. It was for that reason that the Commission qualified its decision by stating that: "If any such later valuations are available, and can be translated correctly into dollars, they will be given consideration with all other available evidence." We believe it will be time enough to consider the matter in greater detail if and when it arises. If it does, the Commission will give full and careful con-

found that the lower exchange ratio was required by the objective standards employed, we simply pointed out to claimants its practical application; that is, to the extent that the 44 to one basis for converting dinars into dollars produced larger awards, claimants would have the satisfaction of realizing that the end result was as closely in accord with the applicable provisions of the Agreement and the principles of international law, justice and equity as the Commission was able to achieve.

(2) Rate of Exchange

The Government of Yugoslavia agrees that the official rate in 1938 was around 44 dinars to the dollar. However, it contends that in 1938 the bulk of foreign exchange transactions were made at the free market rate which varied between a low of 47.10 to a high of 67 dinars to the United States dollar or an average of 55 dinars to the dollar and that that average should be used by the Commission.

In support of its position the Government of Yugoslavia apparently relies upon rates at which the former Yugoslav Union Bank, Inc. sold United States dollars during 1938. These rates, per $1, as given, are as follows:

	Dinars		
	Lowest Rate	to	Highest Rate
January	47.20		52.75
February	47.10		52.25
March	47.20		52.25
April	47.50		54.50
May	47.70		53.75
June	47.70		48.35
July	47.50		48.60
August	48.30		49.25
September	49.00		51.00
October	49.50		51.00
November	50.30		55.00
December	51.04		67.00

However, we do not know how many transactions were involved, whether other banks had similar experience, and so forth. Excluding the month of December, the average for the 11-month period becomes 48.09 dinars for the low and 51.70 dinars for the high, thus indicating quite clearly that the bulk of the transactions were conducted at an average rate of less than 50 dinars to the United States dollar.

The Government of Yugoslavia has also submitted copies of correspondence from the Yugoslavia Union Bank, Inc. at Belgrade which embraces five letters of advice containing exchange rate quotations, and letters referring to eight transactions involving the total dollar sum of $7,921.51. The quotations given in all of that correspondence, per one United States dollar, are as follows:

1938	Dinars
February	47.30
	42.68
	52.00
March	47.50
April	47.50
May	47.90
July	48.25
September	43.91
	49.50
	49.75
October	50.00
November	51.25
	54.00
December	56.06
	56.45
	67.00

The single transaction in December at 67 dinars per $1, upon which the prior December tabulation of the bank apparently is based, involves the total dollar sum of $1,950.90. It will be observed, however, that two transactions were at rates less than 44 to 1 and that the over-all average is about 50 dinars to the dollar.

The one additional piece of evidence submitted by the Government of Yugoslavia on the matter of 1938 exchange rates consists of an affidavit from two employees of the Yugoslav National Bank. Those affiants advise that, based upon the exchange rate for the English pound during 1938, the United States dollar rate "ranged from 48.415 Dinars to one U.S. dollar, as the lowest, respectively to 55.808 Dinars for one U. S. dollar, as the highest average rate in particular months of 1938."

In view of the limited circumstances in which the exchange rates were involved, we cannot accept the above-described evidence as conclusive as to the free market rate. However, if we did, and if we believed that a free market rate were applicable to 1938 valuations, we would have to accept a rate slightly under 50 to 1.

In considering the exchange rate problem, we did not hold the view, at the time the proposed decision was issued, and we do not now conclude, that all transactions during the year 1938 were effected at the 44 to 1 rate or even that the overwhelming number of all dealings were made on that basis. We specifically recognized and pointed out that the free market rate in effect during 1938 may have been higher than 44 to 1, although apparently less than 55 to 1; and that by May 1939, it amounted to approximately 55 dinars to $1. At the same time, it was also suggested that since the free market rate varied with supply and demand and was a negotiated rate, and as records, at least of substantial nature, of such transactions were not available, free market rates were not sufficiently reliable for the Commission's purposes.

It would serve no useful purpose to set forth again the statistical and other data which persuaded us that the 55 to 1 rate formerly employed

in Commission decisions was erroneous in fact, and that a lower rate was in effect. The material submitted by the Government of Yugoslavia confirms our judgment that the rate, on any basis, was less than 55 to 1 and, therefore, required modification. We are not persuaded that the 44 to 1 rate selected is incorrect or, perhaps of greater importance, that any other rate between 44 and 55 dinars to $1 is more defensible. True, a case of some kind can be made for a variety of rates. But such a platitude does not aid us in arriving at a required precise rate. We are mindful of our obligation, in a matter of this importance, to make as clear as we can the objective considerations which lead us to the ultimate conclusion. We believe we did so in the proposed decision. If it would serve a useful purpose, we would here add numerous statistical tables and other financial data which we have available and which we omitted from the proposed decision because of their corroborative, rather than novel, character. We have concluded, however, that any such additions would add bulk rather than illumination.

In simple essence, we consider as of greatest importance the fact that the official rate of exchange in 1938 was 44 dinars to one United States dollar. We also consider that even if, as stated by the Government of Yugoslavia "the Government was the only one who could make use of it, and that for vital supplies and of special importance (armaments, diplomatic representations, etc.)," the taking by that Government of property of United States nationals is also a matter of "special importance." Fundamental principles of international law, justice and equity, which we are directed by the International Claims Settlement Act to apply, compel us to conclude that if that Government had sought to acquire for its own use property and property rights of United States nationals in

1938, it would have been bound to deal on a 44 to 1 basis. Any lesser consideration would, it seems to us, have been confiscatory and discriminatory. These considerations, in addition to those set forth in the proposed decision herein, lead us to reaffirm the correctness of the exchange ratio of 44 dinars to one United States dollar.

(3) Interest on Awards

The Government of Yugoslavia is of the view that the allowance of interest on Commission awards is not contemplated by the Agreement and is inconsistent with the principles of international law. It also urges the Commission to take into account that the properties when taken were not productive and required the expenditure of funds before profits could be earned.

We do not believe the latter consideration bears upon the question. The Commission must consider the value of the property and property rights taken in arriving at the just amount of awards. Its value, in turn, depends upon its condition. The matter of interest does not arise until the award has been determined. Moreover, interest is not allowed as compensation for future profits or in recognition of any contingent factor relating to property values or productivity. It simply accords recognition, by way of reparation, for the loss of each claimant's use of the property from the time of taking to the date of payment by the Government of Yugoslavia of the lump-sum of $17,000,000.

With respect to the Agreement, the Government of Yugoslavia is of the view that the absence of explicit provisions for the allowance of interest precludes its award. Its objections, however, are not supported by reference to authorities in the field of international law. This

leaves unchallenged the authorities cited in the proposed decision. One such citation is particularly appropriate in view of the general objection raised:

> "Arbitral tribunals have felt that it was not outside of their jurisdiction to award interest, even though the Convention by which they were set up made no mention of interest." Eagleton, The Responsibility of States in International Law, pp. 203-4.

To this and other writers on the subject may be added the following comment from Borchard, The Diplomatic Protection of Citizens Abroad, p. 428:

> "Those commissions which have allowed interest have proceeded either under express authority of a protocol, or on the theory that 'compensation' includes interest for the improper withholding of satisfaction, either by the failure to make prompt payment of money when due, or the wrongful detention of property."

Here, the property admittedly was wrongfully detained from the time of its taking until compensation to satisfy the wrong was provided. It is that period of time for which compensation, through the award of interest, is being provided.

Also in point on the subject of the award of interest are the following excerpts:

The United States-Mexican General Claims Commission, in U.S.A. (Illinois Central R.R. Co.) v. United Mexican States, Opinions of Commissioners, 1927, p. 187, at p.189, stated:

> "Unfortunately the Convention of September 8, 1923, contains no specific stipulation with respect to the inclusion of interest in pecuniary awards. Allowances of interest have been made from time to time by international tribunals acting under arbitral agreements which, like the Agreement of September 8, 1923, have made no mention of this subject . . . Other Agreements have

> contained stipulations authorizing awards of interest under specific conditions and for more or less definitely prescribed periods . . . None of the opinions rendered by tribunals created under those agreements with respect to a variety of cases appears to be at variance with the principle to which we deem it proper to give effect that interest must be regarded as a proper element of compensation. It is the purpose of the Convention of September 8, 1923, to afford the respective nationals of the High Contracting Parties, in the language of the convention, 'just and adequate compensation for their losses or damages.' In our opinion just compensatory damages in this case would include not only the sum due, as stated in the Memorial, under the aforesaid contract, but compensation for the loss of the use of that sum during a period within which the payment thereof continues to be withheld. However, the Commission will not award interest beyond the date of the termination of the labors of the Commission in the absence of specific stipulations in the Agreement of September 8, 1923, authorizing such action."

As reported in Supplement to the Law and Procedure of International Tribunals, Ralston (p. 58), the Franco-Mexican Commission, in the case of Georges Pinson, laid down the following rule:

> "(b) upon indemnities on account of requisitions and international offenses, interest will be due at the rate of six per cent per annum, to run from the date of the decision."

This Commission is of the view that the award of interest is in conformity with the applicable principles of international law and should be allowed. The rate of such interest, found to be 6 per cent per annum for the purpose of this and all similar claims, has not been challenged.

Finally, the Government of Yugoslavia takes exception to the statement expressed in the proposed decision herein that "the conclusions here reached will apply with equal force to all awards whether heretofore or hereafter made, so as to obtain uniformity of treatment so far as practicable." That Government argues that the application of the 44 to 1 conversion rate and the award of interest to claims already adjudicated

would be contrary to the provisions of Article 8 of the Agreement which, it urges, gives complete finality to Commission adjudications.

Article 8 of the Agreement provides:

> "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."

Simple reading of those provisions clearly shows that the finality of Commission adjudications applies and was intended to apply only to claimants, and officers and departments of the Government of the United States, including the judiciary. This is also made clear by Section 4 (h) of the International Claims Settlement Act of 1949, implementing the Agreement, which provides:

> "The action of the Commission in allowing or denying any claim under this Act shall be final and conclusive on all questions of law and fact and not subject to review by the Secretary of State or any other official, department, agency, or establishment of the United States or by any court by mandamus or otherwise."

We know of no rule of law, international or domestic, which forbids a court, commission, or other arbitral or adjudicating body from re-examining the correctness of its prior findings and taking corrective action, either on the motion of a party in interest or on its own motion. We do not believe any such doctrine of estoppel is in effect or can be justified. We recognize that, to the extent retrospective applicability is sought to be applied to matters finally and completely determined, there is not unanimity of opinion as to a tribunal's authority, without

the consent of the Governments involved, to reopen and modify or alter final decisions. Such rules of finality, however, to the extent they have found acceptance in the field of international law, have been applied by mixed tribunals. We believe a substantial and significant distinction exists between such tribunals and one such as this where adjudicating authority has been committed, entirely and exclusively, to only one of the Governments involved. The relative novelty of lump-sum settlements of large blocks of claims and single-nation dispositions in the field of international claims permits the application of concepts which may be regarded as being in conformity with the highest traditions of international law, justice and equity without, at the same time, departing from fixed precedents, if there be such on the question at hand.

The problem of modification or revision does not arise, in any event, with respect to this claim. The findings made were incorporated into a "Proposed Decision" which, by the Agreement (Article 9 (b)), the Act (Section 4 (h)), and the Commission's Rules of Practice and Procedure (Section 300.5) is subject to modification or revision, either by action of the affected claimant, the Government of Yugoslavia, or the Commission on its own motion. Similarly, all other proposed decisions may be modified or revised before they attain the status of a "final" decision. The Government of Yugoslavia does not suggest that any problem exists with respect to awards which may hereafter be made on undetermined claims or upon those wherein proposed, rather than final, decisions have been issued. To the extent that awards have been made through final decisions, our findings here will require their revision.

The Commission finds that the exchange rate of 44 dinars to $1 should be applied to all of its awards and that interest at 6% per annum, for the appropriate period of time in each case, should be granted.

The Proposed Decision herein is hereby adopted as the Commission's final decision on this claim.

Dated at Washington, D. C.

JUN 15 1954

Henry J. Clay
Acting Chairman

George W. Spangler
Acting Commissioner