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

In the Matter of the Claim of	
JERKO BOGOVICH et al, Malinska, Bogovici 27, Otok Krk, Yugoslavia.	Docket No. Y-1757
	Decision No. 857
Under the Yugoslav Claims Agreement of 1948 and the International Claims Settlement Act of 1949	

PROPOSED DECISION OF THE COMMISSION

This claim is by 17 individuals who identify themselves as brothers, sisters, nephews and nieces and the testamentary heirs of Thomas Bogovic, a citizen of the United States from the date of his naturalization on January 17, 1913 to the date of his death in the United States on May 27, 1947. The claimants state they are Yugoslav citizens and all of them reside in Yugoslavia.

The claim is for the taking by the Government of Yugoslavia of property described by claimants as a 3/4 interest in the vessel "Barba Toma"; the vessel "SV. Apoliniar II"; house No. 117 at Malinska on the Island of Krk; a half interest in a house in Krk; arable ground and pasture called Petrovicia, entered in the Cadastral Commune Miholjice; a wood called "Lokvice" in Kijac, entered in the Cadastral Commune Miholjice; and fishing equipment.

Claimants have filed some evidence with respect to ownership of the property claimed, their succession to it and its taking by the Government of Yugoslavia. Such evidence is not conclusive but it appears therefrom that the Government of Yugoslavia took the property; part after July 19, 1948, the date of the Agreement between the Governments of the United States and Yugoslavia; part between May 27, 1947, the date of death of Thomas Bogovic, and July 19, 1948, and part before May 27, 1947.

With a view to saving claimants the expense of obtaining and filing further evidence with respect to ownership and succession to the property and its taking by the Government of Yugoslavia, the Commission enters this Proposed Decision denying the claim on other grounds, namely, that the claimants are not eligible to receive an award under the Claims Agreement, regardless of the date of taking.

Article I (a) of the Agreement provides for the "settlement and discharge of all claims . . . on account of the nationalization and other taking by Yugoslavia of property and of rights and interests in and with respect thereto, which occurred between September 1, 1939 and the date hereof", namely, July 19, 1948. Thus, it is clear that the Agreement does not cover, and claimants could not be compensated for property taken after July 19, 1948.

Articles 1 (a) and 2 of the Agreement provide compensation to American nationals who were such at the time their property was taken. If the property for which compensation is sought was taken after the death of Thomas Bogovic, the Government of Yugoslavia did not take his property, but only such rights or interests therein which passed to his devisees and legatees who are not American nationals. Thus, it is clear that they could not be compensated for any property which was taken between May 27, 1947 and July 19, 1948.

The Agreement is not definite as to whether Yugoslav citizens who acquire a right or interest in property which was owned by an American national at the time it was taken shall be compensated. In order to resolve this question it is, therefore, necessary to look to the negotiations leading up to the Agreement, the International Claims Settlement Act of 1949, and any other available data. The Commission obtains no assistance from the history of the negotiations. The International Claims Settlement Act of 1949 provides in Section 4 (a) that in deciding claims, the Commission shall apply "(1) the provisions of the

applicable claims agreement as provided in this subsection; and (2) the applicable principles of international law, justice, and equity." Thus, the Commission feels impelled to follow "the applicable principles of international law" in deciding this question.

It is a well settled principle of international law that to justify diplomatic espousal, a claim must be national in origin; that it must, in its inception, belong to those to whom the state owes protection and from whom it is owed allegiance (Borchard, The Diplomatic Protection of Citizens Abroad, p. 666). Further, although the national character will attach to a claim belonging to a citizen of a state at its inception, the claim ordinarily must continue to be national at the time of its presentation, by the weight of authority (Borchard, supra, p. 666), and there is general agreement that it have a continuity of nationality until it is filed (Feller, The Mexican Claims Commission, p. 96). That it must continue its national character until its settlement or decision will also be shown by cases cited subsequently.

As a rule, the Government of the United States refuses to espouse claims which have not continued to be impressed with American nationality from the date the claim arose to the date of its settlement (Hackworth, Digest of International Law, vol. 5, p. 804). Thus, in its form, "Application for the support of Claims against Foreign Governments," issued by the Department of State on May 19, 1919, and revised on October 1, 1924, the following language appears in Paragraph 6:

> "Moreover, the Government of the United States, as a rule, declines to support claims that have not belonged to claimants of one of these classes [those who have American nationality or who are otherwise entitled to American protection] from the date the claim arose to the date of its settlement." Quoted in Eagleton, The Responsibility of States in International Law, p. 269.

The practice of the State Department in conformity to this principle is illustrated in a letter of August 11, 1926, addressed to an

attorney of a company in connection with a claim allegedly incurred by a requisition by Italian authorities. The letter stated:

> ". . . it is assumed that this Insurance Company was a foreign corporation, in which case there would be a break in the continuity of American ownership of this claim . . . The Government of the United States, as a rule, declines to present claims through diplomatic channels that have not belonged to American claimants from the date the claim arose to the date of its settlement. Quoted in Hackworth, supra, p. 805."

Similarly, where an American claimant died subsequent to the submission of his claim to the Japanese Government, leaving his Japanese wife as his sole heir and as executrix under his will, the Department of State refused to espouse the claim longer since "ownership of the claim" had "passed to . . . /the/ Japanese wife." (M.S. Department of State, file 494.11 Barstow, Ebenezer, cited in Hackworth, idem.)

The rule of continuity of nationality in a claim has also been followed by international tribunals. The United States - Mexican and Spanish - Mexican Commissions followed this traditional rule without deviation, and the "rule is implicit in the provision in all the Rules of Procedure requiring the nationality of the owner or owners of the claim from the time of origin to the date of filing to be set forth in the memorial (Feller, supra, p. 96). And the British - Mexican Commission stated that "a claim must be founded upon an injury or wrong to a citizen of the claimant Government, and that title to that claim must have remained continuously in the hands of citizens of such Government until the time of its presentation for filing before the Commission." (Case of F. W. Flack, Decisions and Opinions of Commissioners, p. 80 at 81, cited in Feller, idem.) Following this principle in the Case of Edgardo Trucco (Decision No. 1, unpublished), the latter Commission dismissed a claim for damage to property which had belonged to a British subject at the time of the injury but which had been left by will to a Mexican national prior to the filing of the claim. (Cited in Feller, idem.) Further, both the British - Mexican Commission in the

Case of Minnie Stevens Eschauzier (Further Decisions and Opinions, p. 180) and the French - Mexican Commission in the Case of Maria Guadalupe A, Vve. Markassuza (Sentence No. 38, unpublished) required continuous nationality not only until the date of filing but subsequently to the date of the award. (Cited in Feller, supra, p. 97.) In the former case it was stated at p. 182:

"A state may not claim a pecuniary indemnity in respect of damages suffered by a private person on the territory of a foreign state unless the injured person was its national at the moment when the damage was caused and retains its nationality until the claim is decided.

"Persons to whom the complainant state is entitled to afford diplomatic protection are for the present purpose assimilated to nations.

"In the event of the death of the injured person, a claim for a pecuniary indemnity already made by the state whose national he was can only be maintained for the benefit of those heirs who are nationals of that state and to the extent to which they are interested." (Quoted in Ralston, supra, p. 77.)

And in the Geadell case (Decisions and Opinions, 55) a claim of British origin which did not preserve that character until its presentation before the same Commission, as the residuary legatee of the claim was an American woman, was rejected even though the executor of the testator's estate was a British subject. (Cited in Ralston, idem, and in Hackworth, supra, p. 805.)

The instant claim lost its American nationality upon the death of Thomas Bogovic on May 27, 1947, and thereafter was impressed with Yugoslav nationality. It is clear, then, that under the policy of the United States this claim would no longer be espoused by it against Yugoslavia. Further, there is ample authority under the decisions of international tribunals that a claim must have a continuous national character from the date of its origin to the date of settlement.

We are satisfied that the negotiators of the Agreement of July 19, 1948, between the Governments of the United States and Yugoslavia, were aware of the policy of the United States Government and established principles of international law and had they desired to depart from them would have inserted appropriate provisions in the Agreement. Since they did not, we conclude that a claim to be within the jurisdiction of this Commission must be owned by American nationals from the date the claim arose to the date the Agreement was signed.

For the foregoing reasons this claim is denied in its entirety.

Dated at Washington, D. C.

MAY 27 1954

FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
Washington, D. C.

In the Matter of the Claim of	:	
JERKO BOGOVICH et al c/o Franjo Maracic Malinska, Otok Krk Yugoslavia	:	Docket No. Y-1757 Decision No. 857
Under the Yugoslav Claims Agreement of 1948 and the International Claims Settlement Act of 1949	:	

approved FDC 12-6-54

FINAL DECISION

A Proposed Decision denied this claim for the reason that the claim was not owned by American nationals from the date the claim arose to the date the Agreement was signed. Subsequent to the issuance of the Proposed Decision the claimants filed objections which we shall now consider.

Claimants apparently deny that the claim ever ceased to be owned by an American national. The basis of this contention is that the real claimant is Thomas Bogovich, deceased, and that claimants, although not United States nationals, filed the claim "on behalf of the unresolved estate of the late Thomas Bogovich".

Claimants, however, have no standing to claim as fiduciaries of the decedent's estate, having filed no letters testamentary or of administration or any other evidence whatsoever authorizing them to claim as the decedent's personal representatives. Furthermore, there is no merit in claimant's contention that national continuity of a claim of a decedent is

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preserved or that a claim is endowed with United States nationality after his death simply because his estate is not settled. The estate of a deceased United States national is obviously not itself a national of the United States and it is the nationality of the beneficiaries of his estate after his death which is the moving consideration in determining nationality of the claim. (See Ralston, Supplement to the Law and Procedure of International Tribunals, Sec. 293a)

Claimants also assert that the only criterion upon which eligibility for compensation rests is that the claim be owned at the time by a United States national, since no other qualification is set forth in the Yugoslav Claims Agreement of 1948. Claimants contend the practice and policy of the United States Government in espousing claims should not be a consideration in interpreting the Agreement in this respect, since the United States omitted to include a provision providing for national continuity and the principle contra proferetem should be applied.

But the principle contra proferetem has no application here, whatsoever, for the construction we adopt in no way advances the interests of the United States in this matter, nor would the opposing view be disadvantageous to it. Once an international claim arises, the United States Government has complete discretion as to whether it will espouse such a claim. If it chooses not to do so, the choice involves no advantage nor disadvantage to it, and its election in this respect has not been circumscribed by any provision of the Agreement.

We hold that claimants' objections have no validity and that the Proposed Decision denying the claim is correct.

Therefore, thirty days having elapsed since the claimants herein and the Government of Yugoslavia were notified of the Proposed Decision of the Commission on the above claim, the objections filed by claimants having been duly considered, and the Government of Yugoslavia not having filed a brief amicus curiae pursuant to the opportunity duly afforded therefor in accordance with its request, such Proposed Decision is hereby adopted as the Commission's Final Decision on this claim.

Dated at Washington, D. C.

DEC 8 [redacted]