DEPARTMENT OF STATE
INTERNATIONAL CLAIMS COMMISSION
OF THE UNITED STATES

In the Matter of the Claim of ANTON and FRANCES TABAR Under the Yugoslav Claims Agreement of 1948 and the International Claims Settlement Act of 1949	Docket No. Y-580 Decision No. 55

PROPOSED DECISION

MARVEL, CHAIRMAN. This claim is before this Commission upon the proceeding of the Solicitor of the Commission pursuant to Section 300.16 of the Rules of Practice and Procedure of the Commission, and seeks the recovery of approximately eight thousand dollars, based upon a bank deposit account in Yugoslavia.

The claimants allege that they acquired in 1905 certain real estate in Yugoslavia from the mother and father of the claimant, Anton Tabar. This real estate was sold by claimants during a visit to Yugoslavia for that purpose in 1938 for the sum of 360,000 dinars, which sum was deposited in April 1939, as an internal dinar account, in the Veliko Beckerecka Savings Bank in Petrovgrad, Yugoslavia, just prior to claimants return to the United States. The deposit was transferred in 1939 to the First Croatian Savings Bank in Zagreb, pursuant to Ministry of Finance permit No. 17317, and subsequent withdrawals reduced the balance to approximately 350,000 dinars, which has remained in the bank since 1939. The claimants then allege that the bank deposit was nationalized or otherwise taken by Yugoslavia through the failure of the Yugoslav Government to authorize

transfer of the funds to the United States in the period prior to the outbreak of World War II and due to the impossibility of effecting a transfer after the war because of political conditions in Yugoslavia. The claimants accordingly claim the sum of 350,000 dinars, or approximately $8,000 at the 1939 exchange rate of 44 dinars to the dollar.

Evidence before the Commission supports the facts alleged in the statement of claim.

To give the claim full consideration, we will discuss it as being one involving three propositions: (1) that the refusal or failure of Yugoslavia to permit the transfer of claimants' deposit to the United States constituted a "nationalization" or "other taking" of property, or of rights and interests in and with respect to property, within the meaning of the Yugoslav Claims Agreement of 1948; (2) that the Yugoslav Pre-War Obligations Settlement Law, in effect since November 13, 1945 (Decree No. 841, Official Gazette No. 88, November 13, 1945, as amended by Decree No. 66, Official Gazette No. 66, August 16, 1946), whereby claimants' deposit was reduced by 90 percent, constituted a "nationalization" or "other taking" of property, or of rights and interests in and with respect to property, within the meaning of the Yugoslav Claims Agreement of 1948; and (3) that the reduced bank deposit (10 percent) was "nationalized" or "otherwise taken" by the Government of Yugoslavia, within the meaning of the Yugoslav Claims Agreement of 1948, by virtue of Yugoslav laws and decrees nationalizing and liquidating banks.

Exchange controls usually follow a general pattern whereby residents, nationals as well as non-nationals, must surrender their foreign exchange, gold and foreign securities; foreign currency must not be exported, and domestic currency must not be exported or

imported; non-resident creditors cannot have the sum owed transferred, irrespective of the currency involved; and rates for foreign exchange and gold are fixed by government decree.

International law and the usual commercial treaties are no bar to exchange restrictions. So long as the control measures are not discriminatory, no principle of international law is violated.

Under the facts in this case, payment to the claimants was to be made in dinars. The bank account was an internal dinar account. Claimants had no right to receive dollar exchange. The Convention of Commerce and Navigation mentioned in Article 5 of the Yugoslav Claims Agreement of 1948 provides against discriminatory taxes or duties on property to be transferred out of the country involved; the Convention does not prohibit the imposition of foreign exchange controls. As claimants' dinar deposit was not the result of a "current" international transaction, as that term is defined in the Articles of Agreement of the International Monetary Fund, the imposition of exchange control did not violate the Agreement. A bank deposit is capital and the regulation of capital movements was reserved by this Agreement to the member states.

Claimants have produced no evidence that Yugoslav foreign exchange laws or their administration are discriminatory. The provisions of the Yugoslav postwar exchange control laws show that they are not discriminatory (Law Confirming and Amending the Law Pertaining to Regulation of Payment to Foreign Countries of September 2, 1945, No. 604, as amended, Official Gazette No. 86, October 25, 1946).

Article 10 (b) of the Yugoslav Claims Agreement of 1948 takes cognizance of "Yugoslav foreign exchange resources and regulations". The Department of State must have been satisfied that these regula-

tions did not violate any principle of international law; otherwise it would not have consented to the provision.

By Article 11 of the same Agreement the Government of Yugoslavia, in effect, agrees to waive its foreign exchange regulations to the extent of giving "sympathetic consideration to applications for transfers to the United States of deposits in banks of Yugoslavia and other similar forms of capital owned by nationals of the United States, where the amounts involved are small, but which, in view of the circumstances, are of substantial importance to the persons requesting the transfer". The inference to be drawn from this Article as it relates to foreign exchange regulations is that the Department of State found nothing discriminatory in the Yugoslav regulations as they affected other than small forms of capital.

The exchange of notes between the Secretary of State and the Yugoslav Ambassador, the date the Agreement was signed, shows that the Department of State considered the regulations as being non-discriminatory, because the note from the Yugoslav Ambassador to the Secretary of State stated that Yugoslavia would "consider means of discharging such obligations (dollar bonds) when Yugoslavia's economic condition, seriously impaired by the ravages of war, and her foreign exchange position permit."

In view of the foregoing, the refusal or failure to permit a transfer to the United States of claimants' deposit does not amount to "nationalization" or "other taking" of property or of rights in and with respect to property.

We now turn to the question, Did the Yugoslav law, whereby claimants' deposit was reduced 90 percent, constitute a "nationalization" or "other taking" of property or of rights and interests in and with respect to property within the meaning of the Agreement?

Between the liberation and the passage of the Law on the Settlement of Pre-War Obligations, effective November 13, 1945, five different laws were passed by Yugoslavia, dealing with the exchange rates for the withdrawal and exchange of occupation currency and for the settlement of obligations.

The first law, dated April 5, 1945 (Official Gazette No. 20 of April 10, 1945), established the dinar as the currency unit of the Democratic Federated Yugoslavia (Article 1). Occupation currency was to be withdrawn from circulation (Article 2).

The second law, dated April 5, 1945 (Official Gazette No. 23 of April 19, 1945), by Article 11, imposed a moratorium on the payment of obligations which arose in Yugoslav dinars before April 18, 1941, even though they had been transformed into occupation currency, and which were unpaid at the date of the publication of the law. The exchange of occupation currencies was effected according to exchange rates set forth in Article 3.

Articles 10 and 11 of the Law Covering the Exchange Rates for the Withdrawal of Occupation Currency and the Settlement of Obligations in the Territory of Bosnia and Herzegovina, dated June 7, 1945 (Official Gazette No. 41 of June 14, 1945), postponed the payment of obligations which arose in old Yugoslav dinars before April 18, 1941, even if they had been transformed into kunas (occupation currency of Croatia), and which were unpaid at the date of publication of the law. (Certain obligations - salaries, pensions, alimony, rents - were to be provided for by special law.)

Analogous provisions are contained in Articles 10 and 11 of the Law Covering the Exchange Rates for the Withdrawal of Occupation Currency and the Settlement of Obligations in the Territory of

Croatia, dated June 21, 1945 (Official Gazette No. 44 of June 26, 1945), and Articles 11 and 12 of the Law Covering the Exchange Rates for the Withdrawal of Lira Bonds and Occupation Currency, and Regarding the Settlement of Obligations in the Territory of the Italian Lira, German Mark and Pengoe (Slovenia), dated June 21, 1945 (Official Gazette No. 44 of June 26, 1945).

These laws distinguished between obligations incurred prior to the German occupation and those incurred subsequent to such occupation. Exchange rates were established for the occupation currency and for the settlement of obligations which arose subsequent to April 18, 1941, the date of surrender of Yugoslavia to the Germans and the Italians.

It was not until November 13, 1945 that the Government of Yugoslavia, by the Law on the Settlement of the Pre-War Obligations (supra), provided for the settlement of prewar obligations, i.e., those incurred prior to April 18, 1941, in terms of the old Yugoslav dinar.

Article 1 provided that "Obligations which have arisen in old Yugoslav dinars up to April 18, 1941, unless they were settled before the publication of this law, shall be settled at the rate of 10 (ten) old Yugoslav dinars to 1 (one) dinar of Democratic Federative Yugoslavia."

By Article 2, certain favorable exceptions were made in the case of small savings bankbook accounts, which were settled according to a graduated scale up to and including deposits in the amount of 20,000 old Yugoslav dinars. For example, deposits not exceeding 2,000 old dinars were settled at the rate of two old dinars for one new dinar; deposits from 2,000 old dinars, but not exceeding 5,000 old dinars,

were settled at the rate of five old to one new dinar; and deposits from 5,000 old dinars, but not exceeding 20,000 old dinars, were settled at the rate of seven old for one new dinar. Pensions were settled in new dinars in relation to the postwar rules prescribed by the state; alimony payments under court decrees in old dinars were to be continued at the same amount in new dinars; life insurance obligations were settled by pooling and revalorizing the assets and liabilities of the companies in conformity with valorization and other decrees of the government; and other prewar obligations were settled under other laws.

Claimants' deposit was made in prewar dinars; the obligation of the bank was to pay, under its rules and the terms of the deposit agreement, upon the demand of the claimants, in whatever medium was legal tender. The dinar was the legal tender at the time the deposit was made. An ordinary bank deposit is a debt, i.e., an obligation to be discharged in money, and at the same time a chose in action.

If money depreciates (loses its purchasing power) or is devalued (a lower ratio between gold and the monetary unit), a creditor does not have a right to more of the money unit (dinar) than he was entitled to prior to the depreciation or devaluation. As Mr. Justice Holmes said, "In effect a dollar or a mark may have different values at different times. But to the law that establishes it, it is always the same." (Die Deutsche Bank, Filiale Nurnberg v. Humphrey, 272 U.S. 517 at 519 (1926).)

On April 6, 1941 the German forces invaded Yugoslavia; on April 18, 1941 the Yugoslav army capitulated and, immediately thereafter, the country was partitioned into three "states".

By the end of 1944 the Yugoslav Government returned to power, and in April 1945 the dinar of the Democratic Federative Republic was established as legal tender. The occupation currency was called in, according to established exchange rates. For example, the exchange of occupation currency in the Territory of Croatia was effected by turning in 1,000 kunas for 7 DFY dinars; 100 lire for 30 DFY dinars; and 100 pengos for 100 DFY dinars. Debts incurred during the occupation were generally settled according to the exchange rates established for occupation currency.

The occupying authority had the power to make occupation currency legal tender for the discharge of debts incurred during or before the occupation. Courts of the reacquiring Sovereign have held that payment in occupation currency discharged a prewar debt. (Nussbaum, Money in the Law, National and International, p. 499: Haw Pia v. The China Banking Corporation, 4 Decision (Law Journal) 274 - 1948 - Decision of the Supreme Court of the Philippines, April 9, 1948, contra, a decision of the High Court of Judicature at Rangoon, Burma, cited by Nussbaum at p. 499.) The Haw Pia case involved the payment of a pre-occupation debt in Japanese occupation currency.

During the occupation of Yugoslavia the deposit of the claimants remained an obligation of the bank.

Residents of Yugoslavia during the occupation could have received payment of their prewar bank deposits in occupation currency, which payment, as has been noted, would have discharged the debt. But claimants did not receive payment. Then the Yugoslav Government, in creating its monetary system following the occupation, told the debtors of Yugoslavia how much of the new money had to be paid in discharge of "old" debts (Id., p. 144). This has been

termed "revaluation", which is defined as being "the recasting of debts incurred in the former unit * * * designed to restore, in part or in entirety, the original financial value of the debt, impaired or destroyed by inflation". (Id. at p. 204.)

Yugoslav currency was not "ruined" and inflation thereof was not "catastrophic". An increase in the note circulation from 7.3 billion dinars (1939) to 14.6 billion at the beginning of the German invasion, and then to the equivalent of some 292 billion old dinars in 1945 does not evidence a "ruined" currency or "catastrophic" inflation.

Our own country abrogated contracts providing for payment in gold coin (the typical clause), or in the more elaborate clause "to pay * * * dollars in gold coin of the United States of (or frequently "or equal to") the standard of weight and fineness existing in * * *."

By the joint resolution of June 5, 1933, Congress declared contracts (private) permitting the obligees of bonds to demand payment in gold or in United States money measured in gold against public policy, in order to restore a uniform currency and to nullify so-called gold clauses which would have dislocated the domestic economy by requiring debtors under these clauses to pay $1.69 in currency while receiving taxes, rates, charges, and prices on the basis of $1.00 of currency. A new currency basis for the dollar was established by the President on January 31, 1934, whereby the weight of the gold dollar was fixed at 15-5/21 grains as against former standards of 25-8/10 grains. In Norman v. B & O Railroad, 294 U.S. 240, 1935, the Supreme Court of the United States decided that payment in gold coin as required by a bond issued by the railroad interfered with the monetary powers of Congress and could not be

permitted. The contention of Norman was that the resolution interfered with contract and property rights of the Fifth Amendment. The court held that contracts dealing with subject matter (money) within the power of Congress were made with the full knowledge of Congress's power and had a "congenital infirmity" which the parties could not remove from the reach of the power of Congress by making contracts about them.

From what has been said it is evident that Yugoslavia violated no principle of international law in providing, as part of the re-establishment of its monetary system, for the payment of obligations incurred prior to military occupation at a rate of ten old dinars to one new dinar, and that the operations of the Yugoslav Law on the Settlement of Pre-War Obligations did not constitute a "nationalization" or "taking" of property within the meaning of the Yugoslav Claims Agreement of 1948.

We next direct our attention to the question, Was the reduced bank account nationalized or otherwise taken by the various laws or decrees of Yugoslavia nationalizing and liquidating banks?

By a decree of June 17, 1946, Regarding the Revision of Licenses and Liquidation of Private Credit Enterprises, private banks which had not obtained new licenses from the Ministry of Finance of Yugoslavia were to be liquidated, and those already in liquidation or those the further activity of which had been prohibited by the Minister of Finance of Yugoslavia, were also to be liquidated (Article 2, paragraph 1).

Paragraph 3 of Article 2 of the decree provided that no bankruptcy proceedings should be instituted if the obligations of the private bank exceeded its assets and, if so, the liquidation of such

bank was to be continued under the provisions of the decree and pursuant to regulations to be issued thereunder.

Article 5 of the decree provided as follows:

(1) The satisfaction of unsecured creditors should be effected in the following order:

1. Expenses for administration, maintenance, realization of assets and distribution of the same.

2. Public charges, accrued during the liquidation and five years before the beginning of the liquidation.

3. Wages and other salaries of persons in the service of the credit enterprise during the last year before the beginning of the liquidation.

4. Deposits and insurance payments up to and including 5,000 dinars.

5. Claims of cooperatives.

6. All other obligations.

(2) Should the liquidation assets not suffice for the payment of all debts, the creditors of a senior priority should exclude the creditors of a junior priority, and creditors within the same priority rank should be satisfied in proportion to their claims.

About two months later a law, which had been in effect prior to the said decree, was republished as the Law Regarding the Organization of the Credit System (Official Gazette No. 68 of August 23, 1946, Law No. 484). Under this law private banks, if licensed, could operate in Yugoslavia.

The law regarding the Nationalization of Private Economic Enterprises of December 5, 1946 (the first nationalization law) nationalized banking enterprises (Item 38, Article 1).

Consequently, after December 5, 1946 all private banks were either subject to continued liquidation procedure under the decree of

June 17, 1946 or they had to be liquidated after being nationalized by the nationalization law of 1946.

It is the decree of June 17, 1946, as amended by the decree of November 5, 1947, which affected the deposits in private banks. The provisions of the nationalization law of December 5, 1946 did not apply to the liquidation of private banks which, as has been noted, was regulated by the decree of June 17, 1946, as amended.

This decree provided, inter alia, as follows:

> In taking over all the assets the State assumes the payment of all the obligations of the private credit enterprise in liquidation, within the limits of the transferred assets.
>
> From the cash of the private credit enterprises in liquidation the obligations taken over will be paid according to the priority under Article 5 of the Decree.
>
> The obligations taken over which originate from savings accounts are wholly transferred to the National Bank of the FPRY under the same conditions under which they were held with the liquidating credit enterprise, within the limits of the effective provisions. For these obligations there will be issued to the depositors savings books of the National Bank of the FPRY. (Underscoring added.)
>
> All the other obligations taken over but not paid in the above described manner, will be paid in Government Bonds payable to the bearer.
>
> The due date and payment plan of these obligations, as well as the interest rate, will be determined later.

Pursuant to Article 10 of the decree of June 17, 1946, regulations were issued by the Minister of Finance regarding the liquidation of private banks. The first of these regulations was issued on July 11, 1946 (Official Gazette No. 47 of July 16, 1946). They were amended on December 5, 1946 (Official Gazette No. 102 of

December 18, 1946) and on June 14, 1947 (Official Gazette No. 53 of June 24, 1947) and, finally, they were amended and republished on December 16, 1947 (Official Gazette No. 3 of January 10, 1948).

Prior to the amendment of November 5, 1947 to the decree of June 17, 1946, there was no regulation promulgated under this decree which affected bank accounts, except that the decree of June 17, 1946 established an order of payment which gave a priority to small depositors.

Article 22 of the Regulations Regarding the Procedure of Liquidating Private Credit Enterprises (Official Gazette No. 3 of January 10, 1948) provided for the payment in cash of the obligations assumed by the Government of Yugoslavia under Article 11 of the Decree of June 17, 1946, as amended by the Decree of November 5, 1947, as follows: (N.B. As is noted above, Article 11 of the amendment of November 5, 1947 provided, inter alia, that the obligations of nationalized private banks were to be transferred to the National Bank within the limitation of existing regulations and savings books were to be issued to the depositors by the National Bank.)

1. Cash was to be used to pay creditors as set forth in Article 5 of the decree, which set up different categories regarding payment. Each category was entitled to full payment, if there were sufficient cash, before the creditors in the next category were paid.

2. Savings banks deposits were to be transferred to the National Bank in the amounts established in the final liquidation balance, for which new depositor savings books were to be issued under the same conditions as existed when the deposit

was in a private bank. The deposits transferred to the National Bank were, in every respect, equal to the other deposits therein. Savings books were to be issued only after delivery of the savings book of the former private bank or after issuance of a court decree of cancellation of the savings book. The National Bank was obligated to the depositor in the amount specified at the time of transfer of the deposit to the National Bank.

3. Deposits of emigrants, which were held in the original form of currency (e.g., dollar accounts), were to be converted into dinars at the official rate at the date of conversion for the purpose of liquidation, and were to be reconverted at the same rate into the original foreign currency (i.e., into dollars). Savings books were to be issued by the National Bank to the owners of the old savings accounts.

The action of the said Government did not result in any loss to the depositors. If the bank were solvent, the depositors would be credited by the National Bank with the full amount of the deposit transferred to it. True it is that if the cash assets of a solvent bank were not sufficient to pay all of the creditors, payment would be made of the balance due in Government Bearer Bonds. But the decree of June 17, 1946, as amended by the decree of November 5, 1947, made an exception of savings accounts, which would be paid <u>in cash</u> by the National Bank after the deposits were transferred thereto.

To ensure that full payment should be made in cash, the regulations, effective January 10, 1948 (supra), provided that the difference between the amount of cash deposited by a particular solvent bank with the National Bank and the amount of the trans-

ferred deposits in the original bank should be charged to "the appropriate current account of the Ministry of Finance of the Federal Peoples Republic of Yugoslavia" (Article 22).

If the private bank were insolvent, then the extent of the loss to be suffered by the depositors would depend upon the financial condition of the insolvent bank and payment to the depositors was to be made according to Article 5 of the decree of June 17, 1946, as amended. Even if the bank were insolvent, the Government of Yugoslavia was liable for the bank's obligation up to the value of its assets (Article 5, Nationalization Law of December 5, 1946, and Article 11 of the decree of June 17, 1946, as amended).

Summarizing the foregoing discussion, we can conclude that the Yugoslav Government did not nationalize or take the bank deposits of private solvent banks but, instead, provided for their transfer to the National Bank to the credit of the depositors, which bank issued a bank book for the full amount due as determined by the liquidation proceedings. No loss has been suffered by such depositors, nor have they been damaged as a result of the action of Yugoslavia. No property, or right or interest with respect thereto, has been taken by Yugoslavia within the meaning of the Agreement. The private banks have been nationalized but, as has been noted, the deposits of solvent private banks will be, or have been, transferred to the National Bank. If a depositor in an insolvent bank receives the credit he is entitled to, depending upon the financial condition of the bank, he has suffered no loss.

What loss has the depositor of a private bank suffered by the fact that his deposit has been transferred to a National Bank? Such a deposit represents an obligation due, not by a private enterprise,

but by the Government itself, which owns the National Bank of Yugoslavia. By Article 22 (2) of the regulations, effective January 10, 1948 (supra), deposits in the National Bank are held by it under the same terms as the original deposits were held (i.e., provisions with original bank regarding payment, interest, etc.), within the limits of the effective provisions of law (i.e., to the extent of bank's solvency). The deposits transferred to the National Bank are, in every respect, equalized with the other deposits with the National Bank (i.e., no discrimination against new accounts).

So, whatever right the depositor had under the original deposit he has under the new deposit with the National Bank. In this connection, Article 22 of the National Bank Act of June 17, 1931 (Official Gazette No. 137 of June 20, 1931), which provided that the National Bank is subject to the jurisdiction of the regular courts, has been upheld as valid by the decree of January 15, 1946 (Official Gazette No. 6 of January 18, 1946). The basic Law of State Economic Enterprises of July 24, 1946 (Official Gazette No. 62 of August 2, 1946) provides that such enterprises are responsible for their obligations to the extent of the property they have received to administer.

The foregoing clearly shows that Yugoslavia did not "nationalize" or "take" the reduced (so-called 10 percent) deposit. To conclude otherwise would be to distort the meaning of Article 11 of the Agreement. This article refers to "deposits in banks and other similar forms of capital * * * ". It does not refer to deposits to be placed in banks at some time subsequent to the nationalization or liquidating decree or to the execution of the Agreement.

The Commission has carefully reviewed the negotiations leading up to the Agreement of 1948, and it is satisfied with its conclusion

that claims based upon a reduced bank account were not among those espoused by the United States nor included in the claims settled and discharged by the Agreement.

The claim is denied in whole.

June 3, 1952