

DEPARTMENT OF STATE
INTERNATIONAL CLAIMS COMMISSION
OF THE UNITED STATES

In the Matter of the Claim of

OWEN ARTHUR NASH

Under the Yugoslav Claims Agreement
of 1948 and the International Claims
Settlement Act of 1949

Docket No. Y-362

Decision No. 38

PROPOSED DECISION

MARVEL, CHAIRMAN. This claimant, who is a national of the United States, has filed a claim for the dollar value of dollar bonds issued by the Kingdom of Serbs, Croats and Slovenes in 1922, the predecessor to the present Yugoslav Government.

The 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.

The evidence before the Commission shows that the claimant holds two bonds described as "National External Gold Loan of 1922 of the Kingdom of the Serbs, Croats and Slovenes, \$1000, 7 per cent, Secured External Gold Bond, Series B, due May 1, 1962, interest payable May 1 and November 1, principal and interest payable in the Borough of Manhattan, City and State of New York, U.S.A., registered: The Chase National Bank of the City of New York, Bond Registrar." These bonds are now in default but with respect to them there was an exchange of notes between the Secretary of State of the United States and the Ambassador of the Federal People's Republic of Yugoslavia,

dated July 19, 1948, which stated "that the Government of the Federal People's Republic of Yugoslavia recognizes among its other international obligations, the dollar bonds issued and guaranteed by predecessor Yugoslav Governments" and will "consider means of discharging such obligations when Yugoslavia's economic condition, seriously impaired by the ravages of war, and her foreign exchange position permit." (The text of these notes is found in Department of State Publication 3307, Treaties and Other International Acts, Series 1803, United States Printing Office, Washington, 1948.)

The question here presented is whether this claimant is entitled to an award under the Yugoslav Claims Agreement of 1948 and under the International Claims Settlement Act of 1949.

The International Claims Settlement Act of 1949 provides that "in the decision of claims under the Act, the Commission shall apply the following in the following order: (1) The provisions of the applicable claims agreement . . . ; and (2) the applicable principles of international law, justice and equity." (Section 4(a).)

/ A reading of the Yugoslav Claims Agreement of 1948 clearly shows that there is no provision thereof providing that debt claimants, including holders of bonds, are to be paid out of the "fund" under the jurisdiction of this Commission. Debt claims may, in proper cases, be presented to the successor enterprise or to the owner of the enterprise whose claim has been settled by the Agreement, but a debt claimant, as in this case, a bond holder of a Government external dollar bond, has no standing before this Commission, as such claim was neither settled nor discharged by the Yugoslav Claims Agreement of 1948.

The applicable principles of international law do not give this claimant any better standing. The view consistently followed by the United States is that a loan contract between a state and a foreign bond holder is not an international contract nor controlled by international law. Bond holders who purchase such obligations do so upon their own responsibility and at their own risk. An intervention will not be made by the United States Government unless there has been a denial of justice, or unless the breach of contract is considered confiscatory. At the time the present Government of Yugoslavia assumed power these dollar bonds had been in default for many years, but no laws or decrees have been enacted by that Government affecting dollar bonds but, on the contrary, the Yugoslav Government has recognized as among its international obligations the dollar bonds issued or guaranteed by predecessor Yugoslav Governments. This claimant therefore has no standing before this Commission under the principles of international law, as such claim properly was not espoused by the Government of the United States and, therefore, was not settled or discharged by the Yugoslav Claims Agreement of 1948.

The claim is denied in whole.

April 3, 1952