

FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
WASHINGTON, D.C. 20579

IN THE MATTER OF THE CLAIM OF

ALBERT G. EICHLER

Claim No. CN-0044

Decision No. CN-

157

Under Title V of the International Claims
Settlement Act of 1949, as amended by
Public Law 89-780

PROPOSED DECISION

This claim, for \$9,520.00, against the Chinese Communist regime, under Title V of the International Claims Settlement Act of 1949, as amended, is based upon the loss sustained in connection with the ownership of two bonds of the issue known as Republic of China 6% Secured Gold Loan Treasury Notes of 1919, having a face amount of \$4,000.00. The claimant, ALBERT G. EICHLER, states that he has been a national of the United States since his birth on April 15, 1881.

Under Title V of the International Claims Settlement Act of 1949 [78 Stat. 1110 (1964), as amended by 80 Stat. 1365 (1966), 22 U.S.C. §§1643-1643k, Supp. II (1967)], the Commission is given jurisdiction over claims of nationals of the United States against the Chinese Communist regime. Section 503(a) of the Act provides that the Commission shall receive and determine in accordance with applicable substantive law, including international law, the amount and validity of claims by nationals of the United States against the Chinese Communist regime arising since October 1, 1949 for

losses resulting from the nationalization, expropriation, intervention or other taking of, or special measures directed against, property including any rights or interests therein owned wholly or partially, directly or indirectly at the time by nationals of the United States.

Section 502(3) of the Act provides:

The term 'property' means any property, right or interest including any leasehold interest, and debts owed by the Chinese Communist regime or by enterprises which have been nationalized, expropriated, intervened, or taken by the Chinese Communist regime and debts which are a charge on property which has been nationalized, expropriated, intervened, or taken by the Chinese Communist regime.

The provisions of Section 503(a) of the Act are clear to the effect that not all claims existing against the Chinese Communist regime are within the purview of the Act but a limited class of claims only. The claims which are within the purview of the Act are specified as claims which arose after October 1, 1949, for losses resulting from the nationalization, expropriation, intervention, or other taking of or special measures directed against, property (hereafter referred to as "taking" of property) by the Chinese Communist regime.

The date when a certain tangible property was taken by a foreign government may be established in the usual situation without great difficulties. To the contrary, a substantial amount of difficulty arises when the exact date when intangible personalty (pension right, right to collect a loan, etc.) was taken by a foreign government must be established.

In some cases the foreign government repudiates its obligation. A more common situation, however, is that the foreign government simply defaults on the payment of interest or principal or on both without formal repudiation of its bonded obligation. It may happen that the defaulted loan is renegotiated, service of the bond resumed and subsequently defaulted. A revolutionary government may succeed to an obligation and may continue the failure to make payments upon its obligation. Therefore, the question arises whether such continued nonpayment may be deemed a "taking" of the bondholder's property right within the meaning of Section 503(a) of the Act. The answer may emerge from the statement of the House Committee on Foreign

Affairs in its favorable report on H.R. 9336, a bill which, upon enactment, amended Public Law 88-666 (Title V of the Act). Inasmuch as Public Law 88-666 was further amended by Public Law 89-780 (80 Stat. 1365) by inserting appropriate language providing for the certification of claims against the Chinese Communist regime, the Commission is of the view that the above cited congressional intent, expressed in connection with debts owed by the Government of Cuba, applies to the debts owed by the Chinese Communist regime as well.

In its report on H.R. 9336, the House Committee on Foreign Affairs stated as follows:

. . . "debts owed by the Government of Cuba . . ." are eligible for consideration by the Foreign Claims Settlement Commission under this title--- so long as the "taking" (i.e.refusal to pay) of such property interests arose for the first time after January 1, 1959. (H.R. Rep. No. 706, 89th Cong., 1st Sess., 3 (1965). (Italics supplied.)

In view of this congressional statement, the Commission has consistently held that in the absence of a positive action by the foreign government affecting the right to payment, a bondholder's right is "taken" by the debtor foreign government on the day when it refuses to pay the obligation for the first time; in other words, when the foreign government first defaults upon its obligation. (See the Claim of Clemens R. Maise, Claim No. CU-3191; Claim of Alfred Stephen Rossi, Claim No. CN-0114.)

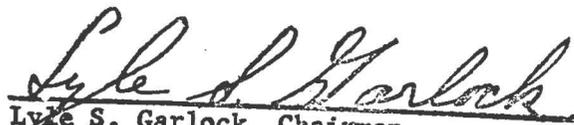
A study of the history of events with respect to the bond obligation in question reveals that the bond involved in this claim has been in default at least since the end of the year of 1939. (Moody's Municipal & Government Manual 2330 (1959). There is no evidence of any action by the Chinese Communist regime concerning the rights of the bondholders of this issue and the bonds continued in default. The continued default did not cause or aggravate claimant's loss.

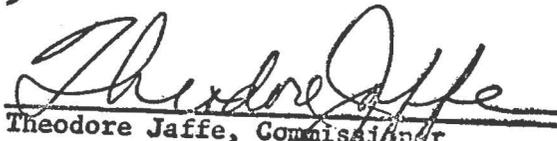
Inasmuch as the bonds in question were defaulted prior to October 1, 1949, and not for the first time after October 1, 1949, and no property securing the repayment of the bonds was "taken" by the Chinese Communist regime on or after October 1, 1949, the Commission concludes that claimant's right to collect upon the bonds in question was not "taken" by the Chinese Communist regime and therefore that a claim based upon such bonds does not come within the purview of Title V of the International Claims Settlement Act of 1949, as amended. Accordingly, the claim must be and it is hereby denied.

The Commission deems it unnecessary to make determinations with respect to other elements of this claim.

Dated at Washington, D. C.,
and entered as the Proposed
Decision of the Commission

1 3 MAR 1970


Lyle S. Garlock, Chairman


Theodore Jaffe, Commissioner


Sidney Treidberg, Commissioner

This is a true and correct copy of the decision of the Commission which was entered as the final decision on 24 APR 1970
 CERTIFICATION

 Clerk of the Commission

NOTICE: Pursuant to the Regulations of the Commission, if no objections are filed within 15 days after service or receipt of notice of this Proposed Decision, the decision will be entered as the Final Decision of the Commission upon the expiration of 30 days after such service or receipt of notice, unless the Commission otherwise orders. (FCSC Reg., 45 C.F.R. §531.5(e) and (g) as amended, 32 Fed. Reg. 412-13 (1967).)