

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

IN THE MATTER OF THE CLAIM OF

UNITED BOARD FOR CHRISTIAN
HIGHER EDUCATION IN ASIA

Claim No. CN-0401

Decision No. CN- 494

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

Counsel for claimant:

Turk, Marsh, Kelly & Hoare
By Edward E. Watts, Esq.

PROPOSED DECISION

This claim for at least \$21,825,557.00 against the Chinese Communist regime, under Title V of the International Claims Settlement Act of 1949, as amended, was presented by UNITED BOARD FOR CHRISTIAN HIGHER EDUCATION IN ASIA for the loss of claimant's real and personal property located at nine universities and colleges in various cities of China.

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.

Claimant, UNITED BOARD FOR CHRISTIAN HIGHER EDUCATION IN ASIA, also filed a claim under the War Claims Act of 1948, as amended by Public Law 87-846 (Claim No. W-18034). In that claim the Commission found that claimant was the owner of certain real and personal property which was damaged and lost respectively as a result of Japanese military operations of war at the University of Nanking, Ginling College, Yenching University, Fukien Christian University, Hwa Nan College, Hangchow University and Huachung University, all in China. It granted an award in the amount of \$1,153,505.21 for damages done to the improvements and \$2,310,873.65 for loss of personal property. The Commission also determined that claimant owned the property of West China Union University but no claim was filed since there were no war losses.

In the present China claim claimant now seeks the value of the building lots at the seven aforementioned sites; the value of the restored buildings thereon and the personal property therein that was acquired since World War II. In addition, claimant seeks the value of improved real property and personal property therein at West China Union University and at Shantung Christian University (Cheeloo). The W-18034 file has been associated with the present claim for reference.

Section 502(1)(B) of the Act defines the term "national of the United States" as a corporation or other legal entity which is organized under the laws of the United States, or of any State, the District of Columbia, or the Commonwealth of Puerto Rico, if natural persons who are citizens of the United States own, directly or indirectly 50 per centum or more of the outstanding capital stock or other beneficial interest of such corporation or entity.

Claimant, UNITED BOARD FOR CHRISTIAN HIGHER EDUCATION IN ASIA, was incorporated under the laws of the State of New York on May 18, 1945, as the United Board of Christian Colleges in China; subsequently that title was changed through appropriate amendments of the charter and on January 27, 1956, claimant acquired its present legal title. The formation of the United Board for Christian Colleges in China on May 18, 1945, resulted from the consolidation of six christian colleges and universities in China, all of which were incorporated under the laws of the State of New York on the following dates:

1. Trustees of Yenching University, June 25, 1890;
2. University of Nanking, September 21, 1934;
3. Fukien Christian University, October 18, 1934;
4. Board of Founders, Ginling College, January 25, 1935;
5. The Woman's College of South China (Hwa Nan)

September 21, 1934;

6. West China Union University, October 18, 1934;

Claimant's predecessors in interest, Hangchow University and Huachung University, were incorporated under the laws of the District of Columbia and the State of New York on November 27, 1920 and November 2, 1935, respectively. In 1950 Hangchow University and in 1947 Huachung University entered into separate agreements with claimant herein and merged with United Board for Christian Colleges in China.

Shantung Christian University (Cheeloo) was owned by a Canadian corporation incorporated by act of Parliament of the Dominion of Canada on July 10, 1924. On or about November 26, 1945 the Cheeloo property was conveyed to claimant.

An official of claimant corporation has certified that from the date of incorporation to the date of filing with the Commission more than 50% of claimant corporation's members and those of its predecessors were nationals of the United States. The Commission, therefore, holds

that claimant qualifies as a national of the United States within the meaning of Section 502(1)(B) of the Act.

The Commission appreciates the fact that there may be instances wherein primary evidence in support of a claim may not be available due to its loss or destruction during ensuing years between the taking of claimants' property and the enactment of Title V of the International Claims Settlement Act of 1949, as amended. Also, the Commission notes that due to the political conditions which now exist in Communist China, claimants have no access to the primary evidence which is obtainable only in said country. In addition, the Commission takes administrative notice that, in many instances, there was no decree, law or order issued under which the Chinese Communist regime nationalized or otherwise took the property of nationals of the United States. In the absence of said decrees, laws and orders, the Commission will examine the specific actions of the Chinese Communist regime which resulted in claimants' loss of their property. Accordingly, when claimants have established a sufficient basis for the unavailability of primary evidence, the Commission may accept and consider secondary evidence.

The record includes annual reports for the years 1945 to 1949 inclusive; histories in book form on most of the nine subject facilities; affidavits of claimant's finance officers and former administrators at some of the facilities; photographs and land sketches of some of the institutions; descriptions of the improvements and a 1951 statement of claimant's former associate treasurer listing the improvements, type of construction and the estimated 1951 replacement value of the buildings.

Based on the entire record, including the evidence submitted in the aforementioned W-18034 claim, the Commission finds that claimant while engaged in the field of higher education operated and owned nine education facilities which consisted of the grounds and buildings together with the furniture, furnishings, equipment, books, scientific apparatus and other personal property therein. The nine facilities were known as:

1. University of Nanking
2. Ginling College
3. Yenching University
4. Fukien Christian University
5. Hwa Nan College
6. Hangchow University
7. Huachung University
8. West China Union University
9. Shantung Christian University

The Commission further finds that it appears the subject institutions were nationalized or otherwise taken by the Chinese Communist regime at different dates, yet for the purpose of this decision, the improved real property and personal property is deemed to have been taken when the teaching staff was finally forced to leave the campuses and all control over the institutions and their teaching policies rested in the hands of the Chinese Communist regime, namely, February 12, 1951.

The Act provides in Section 503(a) that in making determinations with respect to the validity and amount of claims and value of properties, rights, or interests taken, the Commission shall take into account the basis of valuation most appropriate to the property and equitable to the claimant, including but not limited to fair market value, book value, going concern value, or cost of replacement.

The question, in all cases, will be to determine the basis of valuation which, under the particular circumstances, is "most appropriate to the property and equitable to the claimant." This phraseology does not differ from the international legal standard that would normally prevail in the evaluation of nationalized property. It is designed

to strengthen that standard by giving specific bases of valuation that the Commission shall consider.

The Commission has considered the 1951 compilation of the properties made by Henry P. Seaman, the then Associate Treasurer of claimant, in which he lists the buildings and other structures at all the subject colleges; the description of the type of construction and his estimated replacement value in 1951. It has also considered the affidavit of James A. Cameron, the Associated Treasurer of claimant, who has been associated with claimant since 1934 and the affidavit of William P. Fenn, the General Secretary of claimant, who has been associated with claimant since 1932. The Commission has also considered the values of comparable properties in China owned by other non-profit organizations which have appeared before the Commission. It finds that, at the time of loss, the properties had a value as follows:

University of Nanking

The University of Nanking was located in the city of Nanking, capital of the province of Kiangsu. The campus was located near the center of the northern half of the city, lying near the main north-south avenue, and contiguous to the chief area of residential development. The campus consisted of some 80 acres. In addition, there were some 67 acres of mulberry orchards in various sections of the city and on farms outside the city as well as some 350 acres of forestry plots and nurseries located on Tsinglung mountain some ten miles southeast of the city. There were some 130 buildings and structures on the campus.

land (497 acres)	\$ 500,000.00
buildings	807,200.00
personal property	<u>1,150,000.00</u>
Total	\$2,457,200.00

Ginling College

Ginling College was a college for women. Its grounds lay to the west and south of the University of Nanking, the nearby college for men, Nanking, province of Kingsu, China.. Nanking had a population in 1951 of over 1,000,000.

The total area of the Gingling campus was some 30 acres. There were some 20 principal buildings and several smaller structures. The college was smaller than most of the other subject colleges yet the interior finish of the buildings was made of teak, rosewood and oak. The architecture was Oriental.

land (30 acres)	\$ 90,000.00
buildings	1,227,080.00
personal property	<u>387,952.00</u>
Total	\$1,705,032.00

Yenching University

Yenching University, popularly known as Peking University, was located some five miles northwest of the municipality of Peking. It is described as the largest, most strategically located, best equipped and in many respects the most beautiful of the subject properties. The campus occupied about 120 acres and was improved with some 155 buildings. On the campus was a ten acre lake with a central island on which stood an octagonal pavilion. On the border of the lake was a thirteen story structure, replica of an ancient pagoda, which served as a water tower. The style of all structures was adopted from Chinese architecture.

land (120 acres)	\$. 500,000.00
buildings	5,910,662.00
personal property	<u>2,200,000.00</u>
Total	\$8,610,662.00

Fukien Christian University

Fukien Christian University was located at Foochow, province of Fukien. The campus, consisting of 60 acres with 35 principal buildings, was on the north bank of the Min river, some ten miles below the city of Foochow. The two major buildings were the Gardiner Hall Jr. Memorial Arts building and the Edwin C. Jones Memorial Science building. Experimental farms were part of the campus.

land (60 acres)	\$ 120,000.00
buildings (including some equipment) . .	1,149,600.00
personal property	<u>545,000.00</u>
Total	\$1,814,600.00

Hwa Nan College

Hwa Nan College was located at Foochow, province of Fukien, China. The campus, consisting of 25 acres with eleven improvements, was on an elevation of ground on Nontai Island in the Min river.

land (25 acres)	\$ 75,000.00
buildings (including some equipment). .	282,000.00
personal property	<u>250,000.00</u>
Total	\$607,000.00

Hangchow University

Hangchow University was located about six miles from the city of Hangchow, province of Chekiang, China. Hangchow had a population over 700,000. The campus consisted of 100 acres of land set in the hills on the Ch'ien T'ang river. There were some 34 buildings consisting of dormitories, faculty residences, library, science halls, chapel, gym, classrooms and observatory. The buildings were constructed of brick and/or cement and/or stone with tile or iron roofs and 1,2,3 and/or four stories.

land (100 acres)	\$ 100,000.00
buildings	734,500.00
personal property	<u>350,000.00</u>
Total	\$1,184,500.00

Huachung University

Huachung University was located at Wuchang, province of Hupeh. The University campus was located on the Yangtze river, across from and west of the city of Hankow. It consisted of some 40 acres with approximately 25 buildings. The University had been in operation since 1924.

land (40 acres)	\$140,000.00
buildings (including some equipment) . .	318,400.00
personal property	<u>225,000.00</u>
Total	\$683,400.00

West China Union University

West China Union University was located immediately south of the city wall of Chengtu and the Min river, which flowed between that wall and the campus, Chengtu, province of Szechwan. The campus occupied 170 acres and was improved with 69 buildings. Among the larger buildings were the Lamont Memorial Building containing a museum, the Stubbs Chemistry Building, the College of Medicine and Dentistry and the New University Hospital. There were over 2000 trees of many varieties and thousands of shrubs adorning the campus.

land (170 acres)	\$ 350,000.00
buildings (including some equipment). .	1,340,200.00
personal property	<u>497,400.00</u>
Total	\$2,187,600.00

Shantung Christian University (Cheeloo)

Shantung Christian University was situated in Tsinan, the capital city of the province of Shantung, China. The campus contained about 90 acres, of which twenty acres are within the south suburb and the remainder just outside the suburb. The inner portion of the campus is used by the School of Medicine and the Extension Department. The outer portion accomodates the School of Arts and Science and the School of Theology, most of the faculty residences, and the general university buildings and grounds. The campus had over 100 buildings.

land (90 acres)	\$ 270,000.00
buildings	3,060,563.00
personal property	<u>665,000.00</u>
Total	\$3,995,563.00

In summary, the Commission finds that at the time of loss the value of claimant's property was as follows:

land	\$ 2,145,000.00
buildings	14,830,205.00
personal property	<u>6,270,352.00</u>
Total	\$23,245,557.00

The Commission concludes that claimant suffered a loss, within the meaning of Title V of the Act, in the amount of \$23,245,557.00.

The Commission has decided that in certification of losses on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be included at the rate of 6% per annum from the date of loss to the date of settlement (see Claim of Clarence Burton Day and Ethelwyn C. Day, Claim No. CN-0030, Decision No. CN-1); and in the instant claim it is so ordered.

It will be noted that the total amount of loss found herein is in excess of the amount asserted by claimant. However, in determining the amount of loss sustained, the Commission is not bound by any lesser or greater amounts which may be asserted by claimant as the extent thereof.

CERTIFICATION OF LOSS

The Commission certifies that the UNITED BOARD FOR CHRISTIAN HIGHER EDUCATION IN ASIA suffered a loss in the amount of Twenty-Three Million Two Hundred Forty-Five Thousand Five Hundred Fifty-Seven Dollars (\$23,245,557.00) with interest thereon at 6% per annum from February 12, 1951 to the date of settlement, as a result of the actions of the Chinese Communist regime, within the scope of Title V of the International Claims Settlement Act of 1949, as amended.

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

JUN 30 1970

CERTIFICATION
This is a true and correct copy of the decision of the Commission which was entered as the Final Decision on 20 AUG 1970

Frank Thurston
Clerk of the Commission

Lyle S. Garlock
Lyle S. Garlock, Chairman

Theodore Jaffe
Theodore Jaffe, Commissioner

Sidney Freidberg
Sidney Freidberg, Commissioner

The statute does not provide for the payment of claims against the Chinese Communist regime. Provision is made only for the determination by the Commission of the validity and amounts of such claims. Section 501 of the statute specifically precludes any authorization for appropriations for payment of these claims. The Commission is required to certify its findings to the Secretary of State for possible use in future negotiations.

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).)