

The Foreign Claims Settlement Commission and the Cuban Claims Program

I. Cuban Confiscation of American Property

When the Castro regime came into power in 1959, the United States looked upon it sympathetically and recognized it almost immediately. It welcomed Castro's promises of political freedom and social justice for the Cuban people and made known its willingness to discuss the economic needs of Cuba. Notwithstanding the Castro regime's mounting hostility toward the United States and its expanding Communist leanings, the United States sought from early 1959 until mid-1960 to negotiate differences.

After all attempts to cooperate and negotiate had failed, the United States, in 1961, terminated relations with the Cuban government. Meanwhile, by a series of actions throughout 1959 and 1960, with the exception of the naval base at Guantanamo Bay, the Cuban Government had effectively seized all property of the United States and its nationals, and had failed to provide any compensation for the property taken.

Several proposals were introduced in the United States Congress which sought to provide compensation for these losses estimated between \$1.5 and \$2 billion. The first of these measures¹ provided for the adjudication of Cuban claims and the payment of awards out of a fund consisting of the net proceeds of vested property blocked in

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¹ H.R. 10327 was introduced in the House on March 10, 1964. In addition to providing for determination of the amounts of claims of United States nationals against the Cuban Government and the payment of such claims, this bill also provided that the uncompensated portion of approved claims serve as collateral for certain loans to be made to claimants by the Secretary of State.

accordance with the Cuban Assets Control Regulations of July 8, 1963.²

During Congressional hearings on the bill, testimony disclosed that few, if any, Cuban assets would be available for deposit into a claims fund.³ Congressional sentiment nevertheless was to make use of "the already established channels" of this country's claims commission in order to evaluate the claims while documentation and proof were still available.⁴

² On January 30, 1964, the Treasury Department had announced that a census was being taken of property blocked under the Cuban Assets Control Regulations of July 8, 1963, under which all Cuban assets in the United States had been blocked. See 31 C.F.R. Pt. 515 (1966). By a January 31, 1964 amendment to the regulations, all persons within the United States were required to report property subject to the jurisdiction of the United States on July 8, 1963, in which Cuba or any national thereof had any interest, direct or indirect, legal or beneficial. The census was to enable the Treasury Department to ascertain the total amount of blocked property, as well as the nature and location of the property. The information to be obtained was also intended to be useful to the Congress in studying possible future legislation, and in connection with the Government's consideration of United States claims against Cuba. Similar censuses were taken of foreign assets in the United States blocked during World War II and of Communist Chinese and North Korean assets blocked on December 17, 1950 under the Foreign Assets Control Regulations. For results of the census of the Cuban blocked assets, see a report of the Treasury Department, Office of Foreign Assets Control, in *Hearings Before the Subcommittee on Inter-American Affairs of the House Committee on Foreign Affairs on Claims of U.S. Nationals Against the Government of Cuba*, 88th Cong., 2d Sess. 164 (1964) [hereinafter referred to as *Hearings, etc.*].

³ In a statement before the House Committee considering H.R. 10327, Leonard Meeker, Acting Legal Adviser of the Department of State, said that "it is clear that the funds which would be available for distribution under a vesting of Cuban assets would be trivial when compared to the losses which have been sustained." He estimated the total realizable assets to be \$60 million. See *Hearings, etc.* 144 (1964).

⁴ See 110 *Cong. Rec.* 19192 (1964) (remarks of Representative Fascell). The inability of claimants to make effective use of the diplomatic channels provided by the State Department was explained in its memorandum of March 1, 1961. See Kerley, "Contemporary Practice of the United States Relating to International Law—International Claims," 45 *Am. J. Int'l L.* 165, 166 (1962). The State Department gave "no assurance that claims it espouses would be paid by the Cuban Government" but indicated its readiness "to receive and consider for presentation any claim which is properly prepared and documented and is valid from an international legal standpoint." *Id.* at 167. "Although there is no strict formal procedure for the presentation of a claim to the Department of State, the Department, from time to time, has endeavored 'to standardize the manner of reporting claims' by providing a special form of application, and by issuing several instructions for claimants." Orfield & Re, *Cases and Materials on International Law* 857 (rev. ed. 1965). The most recent suggestions by the

Following the introduction of new bills in the House of Representatives providing for the adjudication of Cuban claims, Congress, on October 2, 1964, approved H.R. 12259⁵ which added Title V to the International Claims Settlement Act of 1949. This title, which may be called the Cuban Claims Act, authorized the Foreign Claims Settlement Commission to determine the amount and validity of claims against the Cuban Government.

The International Claims Settlement Act of 1949⁶ was enacted because of the growing concern of the United States regarding violations by Communist governments of the rights of American citizens who owned property in foreign countries. Under that Act and its subsequent amendments,⁷ the FCSC has adjudicated separate international claims programs against Bulgaria, Czechoslovakia, Hungary, Panama, Poland, Romania, the Soviet Union, and Yugoslavia.⁸ To these programs, which involved essentially the confiscation or nationalization of American property, there is now added a program against Cuba.

Upon the signing into law of the Cuban Claims Act ⁹ on October 16, 1964, President Johnson stated:

The basic purpose of this bill is to authorize the Foreign Claims Settle-

Department of State for the preparation of claims were issued April 1, 1965. *Ibid.*

⁵ H.R. 12259, introduced by Representative Fascell, was favorably reported August 11, 1964 by the House Committee on Foreign Affairs which stated: "The adjudication of these claims will be for evaluation only. This measure contains no provision relating to any decision as to the time, form, or manner of payment of eventual compensation." H. Rep. No. 1759, 88th Cong., 2d Sess. 3 (1964). H.R. 12259 was passed by the House on August 12, 1964, and referred to the Senate Committee on Foreign Relations. Following the incorporation of several amendments it was favorably reported in the Senate on September 3, 1964. See S. Rep. No. 1521, 88th Cong., 2d Sess. (1964). The bill was considered and was passed in the Senate on September 8, 1964, and on October 2 the House concurred in the Senate amendments.

⁶ 64 Stat. 12 (1950), 22 U.S.C. §§ 1621-1627 (1964).

⁷ Title II, 69 Stat. 562 (1955), 22 U.S.C. §§ 1631-1631n (1964); Title III, 69 Stat. 570 (1955), 22 U.S.C. §§ 1641-1641q (1964); Title IV, 72 Stat. 527 (1958), 22 U.S.C. §§ 1642-1642p (1964).

⁸ For a brief historical and statistical survey of the programs completed by the Commission, see Re, "The Foreign Claims Settlement Commission: Completed Claims Programs," 3 *Va. J. Int'l L.* 101 (1963). The Polish Claims Program was completed by the Commission on March 31, 1966. See 21 *FCSC Semiann. Rep.* 8 [July-Dec. 1964] for an interim report on this program.

⁹ An Act to amend the International Claims Settlement Act of 1949 to

ment Commission to determine the amount and validity of claims of United States nationals against the Government of Cuba.

The Castro regime has expropriated over \$1 billion worth of property of United States nationals in total disregard for their rights. These unlawful seizures violated every standard by which the nations of the free world conduct their affairs.

I am confident that the Cuban people will not always be compelled to suffer under Communist rule—that one day they will achieve freedom and democracy. I am also confident that it will be possible to settle the claims of American nationals whose property has been wrongfully taken from them.

This bill will provide for the adjudication of these claims of American nationals. I have signed it because of the importance of making such a permanent record while evidence and witnesses are still available.¹⁰

II. Pre-Settlement Adjudication of Claims

The Cuban Program, as authorized by the act, does not provide for the payment of claims against the Castro Government but rather a determination as to the validity and amount of such claims. It may be added that the act specifically precludes any authorization for appropriations for the payment of these claims.¹¹ Upon their adjudication, the Commission is required to certify to each claimant the amount determined by the Commission to be the loss or damage suffered by the claimant.¹² The Commission must also certify to the Secretary of State the amount of each claim and other information which would be useful in future negotiations with the Cuban Government.¹³

The act, in effect, authorizes a pre-settlement adjudicatory process. As stated before the Subcommittee on Inter-American Affairs of the House Committee on Foreign Affairs, "the very desirable and practical result in allowing a pre-settlement adjudication of these claims at this time, is that all such claims will have been thoroughly

provide for the determination of the amounts of claims of nationals of the United States against the Government of Cuba, Public Law 88-666, 78 Stat. 1110 (1964), 22 U.S.C. §§ 1643-1643k (1964).

¹⁰ 51 *Dep't. State Bull.* 674 (1964).

¹¹ Section 501 states that "this title shall not be construed as authorizing an appropriation or as any intention to authorize an appropriation for the purpose of paying such claims." Title V, Section 501, as amended, 79 Stat. 988 (1965), 22 U.S.C. § 1643 (Supp. I, 1965).

¹² Title V, Section 507(a), 78 Stat. 1112 (1964), 22 U.S.C. § 1643f(a) (1964).

¹³ *Ibid.*

investigated and determined, while witnesses, memories, and records are still available and reliable.”¹⁴

Adjudication of Cuban claims not only will relieve claimants of the risk of claim disallowance through possible loss of documents and witnesses,¹⁵ but also will permit a more accurate record to be established that will be helpful in negotiating a settlement with Cuba in the future.¹⁶ In addition to the obvious benefit to the American claimant, the process of determining the amount and validity of these claims against Cuba ought greatly to assist American efforts to obtain a just and adequate settlement.

III. Basic Provisions of the Cuban Claims Act

A. Nature of Claims Covered

The act as amended in 1965¹⁷ authorizes the Foreign Claims Settlement Commission to determine the amount and validity of claims by nationals of the United States against the Government of Cuba for—

(1) losses arising since January 1, 1959, as a result of the nationalization, expropriation, intervention, or other taking thereof, or special measures directed against property including any rights or interests therein owned at the time by nationals of the United States; and

(2) disability or death of nationals of the United States, including pecuniary losses and damages (e.g. loss of support, medical and funeral

¹⁴ *Hearings, etc.* 19 (1964). “Current records, other evidence, and recent memories tend to facilitate a more orderly administration of programs of this nature.” *Id.* at 33.

¹⁵ Past programs have shown that long delays in the initiation of claims programs increase the burdens of adjudication. Due to the destruction of records and the unavailability of witnesses, many claims have been found difficult to substantiate. See note 50 *infra* and accompanying text. This is particularly important since Commission Regulations require that claimants “shall have the burden of proof on all issues involved in the determination of his claim.” The difficulties are increased where there has been a lack of cooperation or access in the foreign country. See 17 *FCSC Semiann. Rep.* 140, 142 [July-Dec. 1962].

¹⁶ In testimony before the House Subcommittee on Inter-American Affairs, Rep. Fascell noted that “the proving and determination of claims through the already established channels of the Foreign Claims Settlement Commission will also constitute a major step toward the clarification of our position vis-a-vis the Castro government.” *Hearings, etc.* 9 (1964).

¹⁷ Public Law 89-262, approved October 19, 1965, 79 Stat. 988 (1965), 22 U.S.C. §§ 1643-1643j (Supp. I, 1965). The amendments concerned, in part, debt claims, offsets and the administrative expenses of the Commission under the Cuban Claims Act. See H. Rep. No. 706, 89th Cong., 1st Sess. 1-2 (1965).

expenses, or other expenses), resulting from actions taken by, or under the authority of, the Government of Cuba since January 1, 1959.¹⁸

It should be noted that the act defines "property" to include debts "owed by the Government of Cuba or by enterprises which have been nationalized, expropriated, intervened, or taken by the Government of Cuba and debts which are a charge on property which has been nationalized, expropriated, intervened, or taken by the Government of Cuba."¹⁹

B. Ownership of Claims

The act prohibits consideration of any claim based upon the nationalization or other taking of property unless it was owned wholly or partially, directly or indirectly, by nationals of the United States on the date of loss.²⁰ In addition, the claim must have been continuously owned thereafter by one or more nationals of the United States until the date of filing with the Commission.²¹ Although the act does not prohibit assignment of claims, it expressly provides that "the amount determined to be due on any claim of an assignee who acquires the same by purchase shall not exceed . . . the amount of the actual consideration paid. . . ." ²²

With respect to claims for disability or death, the act provides that the disabled or deceased persons must have been United States nationals on the date of disablement or death and that the claims shall be considered only to the extent that they have been held continuously by a national or nationals of the United States from such date to the date of filing with the Commission.²³ Claims based upon disability must be filed by the disabled person or his successor-in-interest. Those based upon death may be considered if filed by the personal representative of the decedent's estate.²⁴ In the case of pecuniary losses or

¹⁸ Title V, Section 503, 78 Stat. 1110 (1964), 22 U.S.C. § 1643b (1964), as amended, 79 Stat. 988 (1965), 22 U.S.C. § 1643b(a) (Supp. I, 1965).

¹⁹ Title V, Section 502(3), 78 Stat. 1110 (1964), 22 U.S.C. § 1643a(3) (1964).

²⁰ Title V, Section 504(a), 78 Stat. 1111 (1964), 22 U.S.C. § 1643c(a) (1964).

²¹ *Ibid.*

²² Title V, Section 507(b), 78 Stat. 1112 (1964), 22 U.S.C. § 1643f(b) (1964).

²³ Title V, Section 504(b), 78 Stat. 1111 (1964), 22 U.S.C. § 1643c(b) (1964).

²⁴ *Ibid.*

damages on account of death, the claim must be filed by the person or persons suffering such loss or damages.

The nationality requirements with respect to ownership of Cuban claims are similar to those in other titles of the International Claims Settlement Act and follow established international law principles which have been applied in prior adjudications by the Commission.²⁵

C. Definition of "National of the United States"

The term "national of the United States" is defined in the act as (1) a natural person who is a citizen of the United States, or (2) a corporation or other legal entity organized under the laws of the United States, or of any State, the District of Columbia, or the Commonwealth of Puerto Rico, if 50 per cent or more of the outstanding capital stock or other beneficial interest of such corporation or entity is owned directly or indirectly by natural persons who are citizens of the United States. The term does not include aliens.²⁶

D. Corporate Claims

Stockholders' claims and other ownership interests are recognized under the act subject to certain limitations. Such claims shall not be considered if the corporation or other entity is a "national" of the United States, inasmuch as the corporation or entity must file for the loss.²⁷

Claims based upon a direct ownership interest in a corporation or other entity may be considered without regard to the per centum of ownership vested in the claimant.²⁸ Claims based upon indirect ownership interests will not be eligible unless at least 25 per cent of the entire ownership interest thereof was vested in United States nationals at the time of loss.²⁹ The amount of the stockholder's loss

²⁵ See *FCSC Index-Digest of Decisions 1949-1962* 58-67 (1964) for decisions of the Commission in past programs in which this principle has been applied. See, in particular, *Claim of Foster*, 17 *FCSC Semiann. Rep.* 181 [July-Dec. 1962].

²⁶ Title V, Section 502(1), 78 Stat. 1110 (1964), 22 U.S.C. § 1643a(1) (1964).

²⁷ Title V, Section 505(a), as amended, 79 Stat. 988 (1965), 22 U.S.C. § 1643d(a) (Supp. I, 1965).

²⁸ Title V, Section 505(b), 78 Stat. 1111 (1964), 22 U.S.C. § 1643d(b) (1964).

²⁹ Title V, Section 505(c), 78 Stat. 1111 (1964), 22 U.S.C. § 1643d(c) (1964).

shall be determined by applying the percentage of his stockholder interest in the corporation to the total loss suffered by the corporation.⁸⁰

A property claim based upon a debt or other obligation owing by any corporation or other entity organized under the laws of the United States, or of any State, the District of Columbia, or the Commonwealth of Puerto Rico is also recognized under the act. The debt or obligation, however, must be a charge on property that has been nationalized or otherwise taken by the Government of Cuba.⁸¹

E. Offsets

In reaching its determination on the amount of the claim the Commission is required to deduct all amounts a claimant has received from any source on account of the same loss.⁸²

F. Attorneys' Fees

Title V limits fees for services rendered on behalf of claimants in connection with claims filed with the Commission. The amount of such fees is limited to 10 per cent of the first \$20,000 of the amount to which the Commission determines a claimant is entitled, plus 5 per cent of such amount which exceeds \$20,000.⁸³

G. Claim Filing Period

The Cuban Claims Act required the Commission to publish notice in the Federal Register, within 60 days after appropriations for its administrative expenses were made available, fixing the time within which claims must be filed.⁸⁴ The Commission established an 18-

⁸⁰ Title V, Section 505(d), 78 Stat. 1111 (1964), 22 U.S.C. § 1643d(d) (1964).

⁸¹ Title V, Section 505(a), as amended, 79 Stat. 988 (1965), 22 U.S.C. § 1643d(a) (Supp. I, 1965).

⁸² Title V, Section 506, as amended, 79 Stat. 988 (1965), 22 U.S.C. § 1643e (Supp. I, 1965).

⁸³ Title V, Section 512, 78 Stat. 1113 (1964), 22 U.S.C. § 1643k (1964). Both Title I and Title IV of the International Claims Settlement Act of 1949, as amended, provided limitations on attorneys' fees not to exceed ten per cent of the total amount paid pursuant to any award. See Section 4(f) of Title I, 64 Stat. 13 (1950), 22 U.S.C. § 1623(f) (1964); and Section 414 of Title IV, 72 Stat. 530 (1958), 22 U.S.C. § 1642m (1964). On fees generally, see FCSC Reg., 45 C.F.R. § 500.3(c) (Supp. 1965). S. 1522, introduced in the 89th Congress, proposes to remove all arbitrary fee limitations upon attorneys' fees for services rendered in proceedings before administrative agencies of the United States.

⁸⁴ Title V, Section 503(a), as amended, 79 Stat. 988 (1965), 22 U.S.C. § 1643b(a) (Supp. I, 1965). Appropriations became available to the Commis-

month filing period, the maximum allowable under the act, which commenced November 1, 1965, and will extend to May 1, 1967.⁸⁵

The act requires the Commission to complete its affairs under the Cuban Program not later than three years from the expiration of the claims filing period.⁸⁶ The program, therefore, will terminate May 1, 1970.

IV. Claims Adjudication by the Foreign Claims Settlement Commission

The enactment of the Cuban claims legislation invites a brief examination of the jurisdiction and procedures of the Foreign Claims Settlement Commission which will administer this program.⁸⁷

In 1954 there existed in the United States two national claims commissions: the International Claims Commission, administering claims under the International Claims Settlement Act of 1949,⁸⁸ and the War Claims Commission, administering claims under the War Claims Act of 1948, as amended.⁸⁹ The desirability of combining these functions into a single, independent tribunal devoted exclusively to the processing and adjudication of claims was evident. Accordingly, by Reorganization Plan No. 1 of 1954,⁴⁰ both of these commissions were abolished,⁴¹ and their respective functions transferred to one national claims commission—the Foreign Claims Settlement Commission of the United States.

sion for its administrative expenses on September 2, 1965. Notice establishing the Cuban claims filing period was published by the Commission in the Federal Register on November 2, 1965. See 30 Fed. Reg. 13869 (1965).

⁸⁵ Official claim forms may be obtained from the Foreign Claims Settlement Commission, Washington, D. C. 20579. The forms (FCSC Form 666) also include instructions for their preparation.

⁸⁶ Title V, Section 510, 78 Stat. 1112 (1964), 22 U.S.C. § 1643i (1964).

⁸⁷ For articles on the jurisdiction and functions of the Commission, see Re, "International Law and the Foreign Claims Settlement Commission," 23 *Fed. B.J.* 79-89 (Spring 1963); Re, "The Foreign Claims Settlement Commission: Its Functions and Jurisdiction," 60 *Mich. L. Rev.* 1079-102 (1962); Coerper, "The Foreign Claims Settlement Commission and Judicial Review," 50 *Am. J. Int'l L.* 868 (1956).

⁸⁸ 64 Stat. 12 (1950), 22 U.S.C. §§ 1621-1627 (1964).

⁸⁹ 62 Stat. 1240 (1948), 50 U.S.C. App. §§ 2001-2016 (1964).

⁴⁰ 68 Stat. 1279 (1954), 5 U.S.C. § 133z-15 (1964).

⁴¹ The International Claims Commission was established within the Department of State pursuant to the authority of the International Claims Settlement Act of 1949, 64 Stat. 12 (1950), 22 U.S.C. §§ 1621-1627 (1964). The War Claims Commission was an independent claims commission established pursuant to the authority of the War Claims Act of 1948, 62 Stat. 1240 (1948), 50 U.S.C. App. §§ 2001-2016 (1964).

The letter of the President accompanying Reorganization Plan No. 1 stated the potential advantages of the new Commission:

The Foreign Claims Settlement Commission will be able to administer any additional claims programs financed by funds derived from foreign governments without the delay which has often characterized the initiation of past programs. Moreover, the use of an existing agency will be more economical than the establishment of a new commission to administer a given type of foreign claims program. Consolidation of the affairs of the two present Commissions will also permit the retention and use of the best experience gained during the last several years in the field of claims settlement. The declining workload of current programs can be meshed with the rising workload of new programs with maximum efficiency and effectiveness.

* * *

Reorganization Plan No. 1 of 1954 provides a single agency for the orderly completion of present claims programs. In addition, it provides an effective organization for the settlement of future authorized claims programs by utilizing the experience gained by present claims agencies. It provides unified administrative direction of the functions concerned, and it simplifies the organizational structure of the executive branch.⁴²

V. Law Applied by the Commission

The responsibility of the Commission under the Cuban Claims Act is to receive and determine Cuban claims "in accordance with applicable substantive law, including international law."⁴³ This language

⁴² Message from the President of the United States transmitting Reorganization Plan No. 1 of 1954, relating to the establishment of the Foreign Claims Settlement Commission, April 29, 1954. See 17 *FCSC Semiann. Rep.* 21 [July-Dec. 1962].

⁴³ Title V, Section 503, 78 Stat. 1110 (1964), 22 U.S.C. § 1643b (1964), as amended, 79 Stat. 988 (1965), 22 U.S.C. § 1643b(a) (Supp. I, 1965). Title I of the International Claims Settlement Act under which the Polish Program was administered provided that "in the decision of claims under this subchapter, the Commission shall apply . . . the applicable principles of international law, justice and equity." 64 Stat. 13 (1950), 22 U.S.C. § 1623(a) (1964). In *Claim of Brower*, 19 *FCSC Semiann. Rep.* 18 [July-Dec. 1963] which involved a transfer of title to property under discriminatory and anti-Semitic laws and measures of the Nazi Government, the Commission held that the Act of State Doctrine was inapplicable and that no person can be deprived of his property solely on the ground of his nationality, religion or creed. It found that the Nazi decree was invalid and therefore ineffective to divest the owner of title. See also *Claim of Rosenthal*, 20 *FCSC Semiann. Rep.* 18 [Jan.-June 1964] where the Commission as a matter of equity found good cause for accepting a claim despite the expiration of the filing period fixed pursuant to Commission Regulations. This application of equity, in accepting a claim after the expiration of the filing period under Title I of the International Claims Settlement Act of 1949, as amended, is

is similar to the enabling acts under which the Commission has decided other claims pursuant to the International Claims Settlement Act.

Thus, Title IV of that Act, which authorized the Czechoslovakian program, also provided that the Commission adjudicate claims "in accordance with applicable substantive law, including international law."⁴⁴ Claims adjudicated under Title IV were based on the nationalization or other taking of property by the Government of Czechoslovakia.⁴⁵

It should be noted that under the provisions of Title V, which pertains to Cuban claims, the Commission's responsibility is not limited to the adjudication of claims for property losses. It also includes claims for disability or death.⁴⁶ Here again, Title V provides that such claims must arise "out of violations of international law" by the Government of Cuba.⁴⁷

VI. Commission Procedures

The Commission functions under its own specific regulations and rules of practice⁴⁸ which it has established pursuant to the authority of the enabling statutes. Although proceedings before it are essentially of a non-adversary nature, they are nevertheless judicial. Illustratively, the Commission's regulations provide that "the claimant

to be distinguished from other claims programs where the maximum period of time allowed for the filing of claims was specifically fixed by statute.

⁴⁴ Title IV, Section 404, 72 Stat. 528 (1958), 22 U.S.C. § 1642c (1964). For example, see *Claim of Furst*, 17 *FCSC Semiann. Rep.* 199 [July-Dec. 1962], wherein the Commission denied a claim based on the conversion by the Czechoslovakian Government of claimant's bank deposit into new currency of lesser value pursuant to a monetary reform law of that government. The decision of the Commission applied the international law principle that a state has the right to attempt to stabilize its currency in time of financial distress and that it is not liable under international law for fluctuations in the value of its currency. Although a loss may be caused in terms of foreign exchange, it stated that "as long as there is no discrimination between nationals and aliens no claim under international law arises."

⁴⁵ Title IV, Section 404, 72 Stat. 528 (1958), 22 U.S.C. § 1642c (1964). See 17 *FCSC Semiann. Rep.* 140-294 [July-Dec. 1962] for a final report on the Czechoslovakian Claims Program, which includes selected decisions of the Commission under that program.

⁴⁶ Title V, Section 501, as amended, 79 Stat. 988 (1965), 22 U.S.C. § 1643 (Supp. I. 1965).

⁴⁷ *Ibid.*

⁴⁸ See 45 C.F.R., Ch. V (Supp. 1966). Commission Regulations governing the administration and adjudication of claims under the Cuban Program may be found under Subchapters A and C of the above title.

shall be the moving party, and shall have the burden of proof on all issues involved in the determination of his claim.”⁴⁹ The Commission is aware of the fact that many claims are difficult to substantiate, either by reason of the loss or destruction of records or the lack of cooperation from the foreign government involved. Consistent with its responsibilities to all claimants, it therefore attempts to assist claimants in securing necessary documentation.⁵⁰

Each claim filed with the Commission is docketed and, together with exhibits, documents, and related material, is examined to determine whether the necessary elements for a valid claim have been established. When the claim has been fully developed, it is presented to the Commission for decision. After a review of the entire record, the Commission issues a “proposed decision.”⁵¹

A claimant has the right to appeal from a proposed decision by filing objections and may also request an oral hearing where he, personally or by his attorney, may present additional evidence or argument in support of the objections.⁵² Other claimants have the right to object to the allowance of a claim.⁵³ This practice is based on the theory that each claimant and awardee has an interest in the particular fund, since payments on Commission awards are made on a pro rata basis when the fund is insufficient to pay awards in full.

If neither objection nor request for an oral hearing is filed, the

⁴⁹ FCSC Reg., 45 C.F.R. § 531.6(d) (Supp. 1965). See *Claim of Koppl*, 17 *FCSC Semiann. Rep.* 189 [July-Dec. 1962]. The claimant's obligation to meet the burden of proof on all elements of the claim is applied to each item of property involved in the claim. For example, see *Claim of Braun*, 17 *FCSC Semiann. Rep.* 190 [July-Dec. 1962] where the claimant was granted an award upon proving her interest in and the taking of a mill and related property, but was denied recovery for other property since she failed to establish that it had been taken by the Government of Czechoslovakia.

⁵⁰ Through field offices maintained in Warsaw (Polish Claims Program) and Munich (General War Claims Program), the Commission has provided assistance in compiling background information on claims, obtaining data on property values, and conducting on-the-spot investigations. See 21 *FCSC Semiann. Rep.* 10, 15 [July-Dec. 1964].

⁵¹ FCSC Reg., 45 C.F.R. § 531.5(b) and (c) (Supp. 1966).

⁵² FCSC Reg., 45 C.F.R. § 531.5(e) (Supp. 1966). See also FCSC Reg., 45 C.F.R. § 531.6 (Supp. 1966) (hearings).

⁵³ Section 531.6(c) of the Commission Regulations states, in part, that “oral testimony and documentary evidence, including depositions that may have been taken as provided by statute and the rules of practice, may be offered in evidence on claimant's behalf or by counsel for the Commission designated by it to represent the public interest opposed to the allowance of any unjust or unfounded claim or portion thereof. . . .” 45 C.F.R. § 531.6(c) (Supp. 1966).

proposed decision becomes the "final decision" of the Commission.⁵⁴ If objections are filed, after due consideration, the Commission may affirm, modify, or amend the proposed decision, or order further development of the claim.⁵⁵ The Commission may also order a hearing on a claim, even though none has been requested.⁵⁶ Even after a final decision has been issued, the Commission may grant a timely petition to reopen a claim based upon newly discovered evidence.⁵⁷

Ordinarily when a decision making an award becomes final, the Commission certifies the award to the Secretary of the Treasury, who is authorized to make payments according to statutory limitations and priorities.⁵⁸ In the Cuban Program the Commission will certify to each claimant and to the Secretary of State the amount determined to be the loss or damage suffered by the claimant.⁵⁹

VII. Finality of Commission Decisions

Title V of the International Claims Settlement Act, which provides for the determination of the amount and validity of claims against Cuba, incorporates by reference⁶⁰ the provisions of Section 4(h) of the International Claims Settlement Act. This section provides that "the action of the Commission in allowing or denying any claim under this subchapter shall be final and conclusive on all questions of law and fact and not subject to review by the Secretary of State or any other official, department, agency, or establishment of the United States, or by any court by mandamus or otherwise."⁶¹

⁵⁴ FCSC Reg., 45 C.F.R. § 531.5(g) (Supp. 1965) which provides, in part, that "upon the expiration of 30 days . . . such proposed decision shall, without further order or decision of the Commission, become the Commission's final determination and decision on the claim."

⁵⁵ FCSC Reg., 45 C.F.R. § 541.5(h) (Supp. 1966).

⁵⁶ FCSC Reg., 45 C.F.R. § 531.5(a) (Supp. 1966).

⁵⁷ FCSC Reg., 45 C.F.R. § 531.5(1) (Supp. 1966).

⁵⁸ See discussion in Re, "The Foreign Claims Settlement Commission: Its Functions and Jurisdiction," 60 *Mich. L. Rev.* 1079, 1092 (1962).

⁵⁹ Title V, Section 507(a), 78 Stat. 1112 (1964), 22 U.S.C. § 1643f(a) (1964).

⁶⁰ Title V, Section 509, 78 Stat. 1112 (1964), 22 U.S.C. § 1643h (1964).

⁶¹ Title I, Section 4(h), 64 Stat. 16 (1950), 22 U.S.C. § 1623(h) (1964). Section 4(b) of Title I, also made applicable by reference [Section 509] to the Cuban Claims Act, states that "each decision by the Commission . . . shall be by majority vote, and shall state the reason for such decision, and shall constitute a full and final disposition of the case in which the decision is rendered." 64 Stat. 14 (1950), 22 U.S.C. § 1623(b) (1964). Also made applicable by reference are Sections 4(c) and 4 (d) of Title I which concern the production of evidence and testimony of witnesses.

The finality of Commission decisions has been consistently upheld on appeal.⁶² In refusing judicial review, the courts have stated that "Congress intended this prohibition to be of broad scope and effect."⁶³ Thus, pursuant to enabling legislation,⁶⁴ the role of the Foreign Claims Settlement Commission is not only that of a commission with exclusive jurisdiction, but also that of a "court of last resort."

VIII. Conclusion

The foregoing presentation was designed to highlight the Cuban Claims Act of 1964, as amended in 1965, and the jurisdiction of the Foreign Claims Settlement Commission which will administer the Cuban Claims Program thereby authorized.

With the initiation of its Cuban Program, the Commission has entered upon a new technique in international claims settlement—the pre-settlement adjudication of claims.⁶⁵ It is hoped that the work

⁶² See *First Nat'l City Bank v. Gillilland*, 257 F.2d 223 (D.C. Cir.), *cert. denied*, 358 U.S. 837 (1958); *Zutich v. Gillilland*, 254 F.2d 464 (6th Cir. 1958); *American & European Agencies, Inc. v. Gillilland*, 247 F.2d 95 (D.C. Cir.), *cert. denied*, 355 U.S. 884 (1957); *Haas v. Humphrey*, 246 F.2d 682 (D.C. Cir.), *cert. denied*, 355 U.S. 854 (1957); *Dayton v. Gillilland*, 242 F.2d 227 (D.C. Cir.), *cert. denied*, 355 U.S. 813 (1957); *DeVegvar v. Gillilland*, 228 F.2d 640 (D.C. Cir. 1955), *cert. denied*, 350 U.S. 994 (1956). See also *Wiener v. United States*, 357 U.S. 349, 354-55 (1958). In *DeGaster v. Dillon*, 247 F. Supp. 511 (D.D.C. 1963), *aff'd*, 354 F.2d 515 (D.C. Cir. 1965), plaintiffs sought a mandatory injunction to require the Secretary of the Treasury to pay awards made to their predecessors in interest under Section 4 of the International Claims Settlement Act of 1949. Although the Foreign Claims Settlement Commission had made the awards to the plaintiffs in two final decisions and certified them to the United States Treasury in 1954, it was shown in the trial of the action that the awards were based on a forged document fraudulently submitted by the plaintiffs. It was held that the awards of the FCSC would not be declared forfeited, but that the Court would apply the "clean hands" doctrine, shut its doors to the plaintiffs, and refuse to aid them. Plaintiffs' complaint was consequently dismissed.

⁶³ *DeVegvar v. Gillilland*, 228 F.2d 640, 642 (D.C. Cir. 1955), *cert. denied*, 350 U.S. 994 (1956).

⁶⁴ Similar provisions are found in the War Claims Act of 1948, as amended, which states that "the action of the Commission in allowing or denying any claim under this title shall be final and conclusive on all questions of law and fact and not subject to review by any other official of the United States or by any court by mandamus or otherwise." Title I, Section 11, 62 Stat. 1246 (1948), 50 U.S.C. App. § 2010 (1964).

⁶⁵ The role of the Commission under its Lake Ontario Program represented an innovation in the field of international claims adjudication where investigation and adjudication of claims preceded negotiations to effect settlement. See *Re, "Domestic Adjudication and Lump-Sum Settlement As An Enforcement Technique,"* 58 *Am. Soc'y Int'l L. Proc.* 39, 44-46 (1964). Under that program, the

of the Commission in the Cuban Claims Program will prove to be a helpful device in the more equitable and expeditious settlement of international claims.

Commission was authorized to determine the amount and validity of claims by American nationals resulting from the artificial raising of the water level of Lake Ontario by the construction and operation of Gut Dam by the Government of Canada. The program was concluded upon the execution of an agreement between Canada and the United States on March 25, 1965 which provided for the establishment of an International Arbitral Tribunal to dispose of United States claims relating to such losses. For a brief report on that program, see Re, "The Foreign Claims Settlement Commission and the Lake Ontario Claims Program," IV *Int'l Leg. Mat.* 473 (May 1965) (publication of the American Society of International Law).