

UNPAID CLAIMS OF U.S. CITIZENS AGAINST CZECHOSLOVAKIA

HEARING
BEFORE THE
SUBCOMMITTEE ON INTERNATIONAL TRADE
OF THE
COMMITTEE ON FINANCE
UNITED STATES SENATE
NINETY-SIXTH CONGRESS
SECOND SESSION
ON
S. 2721
A BILL TO REQUIRE THAT MOST-FAVORED-NATION TREAT-
MENT BE GRANTED ONLY TO THE PRODUCTS OF COUNTRIES
WHICH HAVE NOT EXPROPRIATED UNITED STATES CITIZENS'
PROPERTY WITHOUT COMPENSATION THEREFOR

SEPTEMBER 9, 1980

Printed for the use of the Committee on Finance



U.S. GOVERNMENT PRINTING OFFICE

69-001 O

WASHINGTON : 1980

HG 96-100

5361-22.

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UNPAID CLAIMS OF U.S. CITIZENS AGAINST THE GOVERNMENT OF CZECHOSLOVAKIA

TUESDAY, SEPTEMBER 9, 1980

U.S. SENATE,
COMMITTEE ON FINANCE,
SUBCOMMITTEE ON INTERNATIONAL TRADE,
Washington, D.C.

The subcommittee met, pursuant to recess, at 10:30 a.m., in room 2221, Dirksen Senate Office Building, Hon. Abraham Ribicoff (chairman of the subcommittee) presiding.

Present: Senators Ribicoff, Moynihan, and Dole.

[The press releases announcing this hearing, the bill S. 2721 and Senator Dole's statement follow:]

[Press release of Tuesday, Aug. 19, 1980]

FINANCE SUBCOMMITTEE ON INTERNATIONAL TRADE SETS HEARING ON UNPAID CLAIMS OF U.S. CITIZENS AGAINST THE GOVERNMENT OF CZECHOSLOVAKIA

Senator Abraham Ribicoff (D., Ct.), Chairman of the Subcommittee on International Trade of the Senate Committee on Finance announced today that the Subcommittee will hold a hearing on Wednesday, September 3, 1980, on issues raised by S. 2721. S. 2721 is a bill to amend title IV of the Trade Act of 1974 so as to permit the granting of most-favored-nation treatment under title IV only to products of a country which, if it expropriated United States citizens' property, has paid just compensation therefor. In his statement introducing S. 2721, Senator Daniel Patrick Moynihan (D., N.Y.), announced that he would amend the bill to provide for action regarding claims of United States citizens against the Government of Czechoslovakia in the event a settlement of these claims was not reached by diplomacy. Specifically, the amendment would provide that if within 60 days after enactment, there was no diplomatic settlement of claims arising out of the post-World War II nationalization of property in Czechoslovakia, then gold allocated by the Tripartite Commission for the Restitution of Monetary Gold to Czechoslovakia and located in the United States would be seized, sold, and invested, and the interest and income therefrom would be used to pay the U.S. claimants whose claims were certified by the U.S. Foreign Claims Settlement Commission. After all the claimants were paid, the balance of the proceeds would be returned to Czechoslovakia. The text of the proposed amendment appears on pages 9627-28 of the Congressional Record for June 13, 1980.

The hearing will begin at 10 a.m. in Room 2221 of the Dirksen Senate Office building.

Requests to testify.—Chairman Ribicoff stated that persons desiring to testify during this hearing must make their requests to testify in writing to Michael Stern, Staff Director, Committee on Finance, Room 2227, Dirksen Senate Office Building, Washington, D.C., not later than noon on Wednesday, August 27, 1980. Persons so requesting will be notified as soon as possible after this date whether they will be scheduled to appear. If for some reason a witness is unable to appear at the time scheduled, he may file a written statement for the record in lieu of the personal appearance.

Consolidated testimony.—Chairman Ribicoff also stated that the Subcommittee urges all witnesses who have a common position or with the same general interest to consolidate their testimony and designate a single spokesman to present their common viewpoint orally to the subcommittee. This procedure will enable the Subcommittee to receive a wider expression of views than it might otherwise obtain.

Chairman Ribicoff urges very strongly that all witnesses exert a maximum effort to consolidate and coordinate their statements.

Legislative Reorganization Act.—Chairman Ribicoff observed that the Legislative Reorganization Act of 1946, as amended, and the rules of the Committee require witnesses appearing before the Committee of Congress to file in advance written statements of their proposed testimony and to limit oral presentations to brief summaries of their arguments.

Chairman Ribicoff stated that in light of this statute and the rules, and in view of the large number of persons who desire to appear before the Subcommittee in the limited time available for the hearing, all witnesses who are scheduled to testify must comply with the following rules:

(1) All witnesses must include with their written statements a one-page summary of the principal points included in the statement.

(2) The written statements must be typed on lettersize (not legal size) paper and at least 100 copies must be delivered to Room 2227, Dirksen Senate Office Building, not later than noon of the last business day before the witness is scheduled to appear.

(3) Witnesses are not to read their written statements to the Subcommittee, but are to confine their oral presentations to a summary of the points included in the statement.

(4) Not more than five minutes will be allowed for the oral summary.

Witnesses who fail to comply with these rules will forfeit their privilege to testify.

Written statements.—Persons requesting to testify who are not scheduled to make an oral presentation, and others who desire to present their views to the Subcommittee, are urged to prepare a written statement for submission and inclusion in the printed record of the hearing. Statements submitted for inclusion in the record should be typewritten, not more than 25 double-spaced pages in length and mailed with five (5) copies to Michael Stern, Staff Director, Committee on Finance, Room 2227, Dirksen Senate Office Building, Washington, D.C. 20510, not later than Friday, September 12, 1980.

[Press release of Tuesday, Aug. 26, 1980]

FINANCE SUBCOMMITTEE ON INTERNATIONAL TRADE RESCHEDULES HEARING ON CLAIMS AGAINST CZECHOSLOVAKIA AND ANNOUNCES HEARING ON MISCELLANEOUS TARIFF BILLS

The Honorable Abraham Ribicoff (D., Ct.), Chairman of the Subcommittee on International Trade of the Committee on Finance, today announced that the Subcommittee's public hearing on unpaid claims of U.S. citizens against Czechoslovakia, previously scheduled for September 3, 1980 (Press Release No. H-46), has been rescheduled for September 9, 1980. Requests to testify and other matters regarding this hearing will continue to be governed by the terms of Press Release No. H-46.

In addition, Senator Ribicoff announced that the Subcommittee would on the same date hold a hearing on the miscellaneous tariff bills listed below.

The hearing on the miscellaneous tariff bills will begin at 9 a.m., on September 9, 1980, in Room 2221 of the Dirksen Senate Office Building.

The hearing on the Czechoslovakia claims matter will begin at 10:30 a.m. on the same date in the same room.

96TH CONGRESS
2D SESSION

S. 2721

To require that most-favored-nation treatment be granted only to the products of countries which have not expropriated United States citizens' property without compensation therefor.

IN THE SENATE OF THE UNITED STATES

MAY 15 (legislative day, JANUARY 8), 1980

Mr. MOYNIHAN (for himself and Mr. SCHMITT) introduced the following bill;
which was read twice and referred to the Committee on Finance

A BILL

To require that most-favored-nation treatment be granted only to the products of countries which have not expropriated United States citizens' property without compensation therefor.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That title IV of the Trade Act of 1974 is amended as
4 follows:

5 SECTION 1. Section 405(a) is amended by adding a
6 colon at the end thereof, and the following: "*Provided, how-*
7 *ever, That no such bilateral commercial agreement providing*

1 nondiscriminatory treatment (most-favored-nation treatment)
2 shall be authorized in the case of any country which has ex-
3 propriated properties of citizens of the United States and has
4 not made just compensation therefor.”.

5 SEC. 2. Section 408(a) is amended by adding a comma
6 at the end, after the word “Czechoslovakia”, and the follow-
7 ing: “and prior to any proclamation extending nondiscrimina-
8 tory treatment (most-favored-nation treatment) to Czechoslo-
9 vakia under section 404 of this Act.”.

10 SEC. 3. Section 408(a) is further amended by adding a
11 new sentence at the end, as follows: “The term ‘agreement’
12 means a bilateral commercial agreement as described in
13 section 405(b) of this Act.”

STATEMENT OF SENATOR BOB DOLE

Mr. Chairman, I would first like to commend Senator Moynihan and Senator Schmitt, who cosponsored S. 2721, for introducing this bill and bringing this most unfortunate matter to the Senate's attention once again.

Over 30 years ago the Communist government of Czechoslovakia expropriated the property of U.S. citizens and corporations. In many cases these citizens lost a good part, if not all, of their life savings and investments as a result of these seizures. In 1958, the Congress enacted a law establishing a process through which the claims of these citizens could be heard and determined. Claims were made totaling over \$300 million in value. In part as the result of the difficulty of proving these claims because of the lack of cooperation of the Czech government, the Foreign Claims Settlement Commission allowed claims totaling \$64 million, which together with interest through 1958 resulted in an award of \$115 million. Only \$9 million worth of these claims have ever been repaid.

In 1974 the State Department negotiated a settlement with the Czechs which would have repaid the remaining claimants at the rate of 20 cents on the dollar. The claimants objected to this settlement and so did the Congress. In section 408 of the Trade Act of 1974, the Congress specifically directed that this settlement be renegotiated.

To my knowledge no such negotiations were undertaken until Congressional efforts were made to utilize the earning potential of Czech gold stored in the United States to repay the claimants for their expropriated property.

I realize that the State Department as well as others in the administration have very real concerns about using the gold for this purpose. I also realize that controversy exists with respect to the clash in international legal principles between the right to compensation for expropriated property and U.S. obligations under the Paris Reparations Agreements.

I am certain, however, that everyone concerned also realizes that further delay in the receipt of adequate compensation cannot be tolerated. I am hopeful that the representatives of the State Department who will testify this morning, bring with them some encouraging news for an immediate and just settlement. If they do not, it is apparent to me that other avenues besides the three decade long negotiations must be considered.

Senator RIBICOFF. The committee will come to order.

This matter has been around for lots of years, and has been of much interest. I think there are three basic questions that should be addressed in this hearing, and let me indicate what I consider the basic questions to be.

First, what are the prospects for success of the present negotiations for settlement with Czechoslovakia; how would such a settlement compare with the compensation which will be provided to claimants as a result of S. 2721; and what is the time period within which such negotiations could reasonably be concluded.

Second, will the actions required by S. 2721, as amended, be inconsistent with the U.S. international obligation under the Paris Reparation Agreement of the Tripartite Commission for the Restitution of Monetary Gold.

Third, how does the compensation that would be provided under S. 2721 compare with other claim settlement agreements achieved with other countries which expropriated U.S. property, and what are some of the reasons for the differences.

We are pleased to start the hearing with the distinguished Senator from New Mexico, Senator Harrison Schmitt.

You may proceed, sir.

STATEMENT OF HARRISON SCHMITT, U.S. SENATOR FROM THE STATE OF NEW MEXICO

Senator SCHMITT. Thank you, Mr. Chairman and Senator Moynihan.

I want to thank you for this opportunity and also congratulate the junior Senator from New York for his initiative in this area. I am happy to be a cosponsor with him on this bill, S. 2721.

I appear today not only as a cosponsor of the bill, but also on behalf of Mr. Paul Bencoe of Albuquerque, N. Mex.

Paul Bencoe is an 82-year-old man who has for the past 32 years patiently sought just compensation for property and assets which were, in my opinion, and I think also in the court's opinion, illegally seized by the Government of Czechoslovakia.

He has worked with the Department of State, with the Foreign Claims Settlement Commission of the United States, through private attorneys and through his elected representatives, and after 32 years he still waits for fair compensation.

Paul Bencoe is not an isolated case. He is but one of over 2,500 Americans, mostly elderly, who have outstanding claims, awarded by the Foreign Claims Settlement Commission, against the Government of Czechoslovakia. For 32 years the Government of Czechoslovakia has refused to negotiate in good faith to settle these claims.

For 32 years our own Department of State has been less than aggressive in pursuing negotiations and a settlement of these claims, and appears to be in much the same posture today.

I urge the committee to carefully consider these facts and to amend S. 2721 with the language of H.R. 7338, currently pending before the House Committee on Foreign Relations. The language of H.R. 7338 provides a solution to this problem and for the full compensation of our citizens.

Mr. Chairman, I shall not present the details of what has transpired since 1948. The committee is well aware of the facts in this case and witnesses far more familiar with the case are available to discuss the details. My concern is with the more basic issue involved, that is, the proper responsibility of the Federal Government in the handling of this case.

The real question facing the committee and the Congress is one of the fundamental duties of the Federal Government in protecting its citizens. All too often we in the Congress are so busy dealing with daily problems, new legislation and regulations, appropriations and so many other issues that we fail to find time to think about the reason for the existence of a national government, particularly a democracy. That reason for its existence is the protection of its citizens, their lives, their freedoms, their well-being and their property.

We maintain an army sufficiently strong to militarily defend the lives and property of our citizens. Often we forget that we also maintain an army of diplomats charged with peacefully protecting the lives and property of American citizens. Clearly, that army of diplomats has failed in this case.

Mr. Chairman, generally I am reluctant to support efforts by the Congress to initiate actions in the area of foreign policy. Guidance, yes, specific actions, generally, no. The proper role of the Congress, and particularly the Senate, is to advise and consent on the initiatives of the executive branch in the conduct of our relations with other nations.

There are, however, some exceptions. When the executive branch fails to properly carry out its obligations under the Constitution, it

is necessary for the Congress to exert the missing leadership. In this case, the executive branch has clearly failed, not just this executive branch but those that have existed throughout the last 32 years.

For those 32 years, and under seven different Presidents, both Republican and Democrat, for whatever reason, there has not been a settlement in the protection of the property and assets of U.S. citizens. That situation prompts this Senator to support legislation to resolve this problem and guarantee fairness to our citizens.

The provisions of H.R. 7338 provide the solution to the dilemma facing us. That solution is fair and equitable to both the claimants and to the Government of Czechoslovakia. It allows a negotiated settlement, which is what all parties would prefer, if such a settlement is at all possible. However, should no settlement be possible or if the Government of Czechoslovakia refuses to negotiate, there would be a mechanism to resolve the situation.

The Secretary of Treasury would be authorized to sell the gold which is in the possession of the United States, to invest the proceeds from that sale, and to pay to the claimants the full compensation which they were awarded by the Foreign Claims Settlement Commission. After all the claims have been settled, the proceeds which were invested will be returned to Czechoslovakia.

I fail to see what could be unfair in this type of an arrangement, except for the time frame involved in which the claimants will have to wait to receive full and just compensation.

I am aware that the Department of State opposes this legislation. It would seem that the Department of State should welcome this approach in that it strengthens their negotiating position. The Department of State could easily go to the Government of Czechoslovakia and say: "You had better start negotiating in good faith or you will have a settlement agreement forced upon you."

That would seem the sensible approach for the Department of State instead of spending the time and effort, and resources they have, in fighting these congressional initiatives.

I have reviewed the arguments presented to the House Committee on H.R. 7338. The fact is that while negotiation is preferable, it is clear that the Government of Czechoslovakia, over these 32 years, has been unwilling and still is unwilling to negotiate a fair settlement, and the Congress is unwilling to accept anything less than a fair settlement, as should be its position.

Let me quickly comment on some of the major objections outlined by the Department of State.

The Department argues that the agreement establishing the Tripartite Commission would be undermined by unilateral action. The Department fails, however, to point out that such unilateral action was used by the United Kingdom, a member of the Commission, in its settlement of claims against the Government of Albania. Gold awarded to Albania was taken by the United Kingdom in compensation for outstanding claims against Albania.

The Department also points out that it is unreasonable to expect Czechoslovakia to pay full compensation when other nations, most recently the People's Republic of China, have compensated U.S. claimants for less than full compensation. I hardly think that this should be used as a precedent. However, the Department fails to

point out that other nations, for example Romania and Yugoslavia, have paid full compensation in settlement of claims.

It is clear that the Department of State is unwilling to be aggressive in pursuit of a settlement. While other nations like the United Kingdom are aggressive in the protection of the property of its citizens, the United States is not. This, I maintain, serves as a bad example and encourages other nations to expropriate U.S. property and assets in their countries.

The U.S. Government has a legal and moral responsibility to protect the lives and property of its citizens. Judge Friendly, of the U.S. Court of Appeals, Second Circuit, put it this way:

The unquestioned right of a state to protect its nationals in their person and property while in a foreign country must permit initial seizure and ultimate expropriation of assets of nationals of that country in its own territory, if other methods of securing compensation for its nationals should fail.

So, if the U.S. Government has the right to expropriate the assets of property of Czech citizens in settlement of claims, then surely it has the right to sell gold owned by the Czech Government.

The United States did precisely that in the sale of Czech steel mills in partial settlement of these very claims and is in the process of that action in the settlement of claims against the Government of Iran. Why is the administration so reluctant to take that very same type of action in this case?

Mr. Chairman, I urge the committee to expedite this matter and to report the bill amended to the full Senate for its consideration.

It is reasonable to ask our citizens to be patient in the settlement of such a complex matter. However, after 32 years even the most patient of men become impatient. Paul Bencoe is 82 years old. He has waited for over one-third of his life for compensation for the illegal seizure of his property.

Paul Bencoe is still alive, but some of the other 2,500 claimants are not so fortunate. Many have already passed on. It is time that the Congress act where the executive branch has failed. It is time that the U.S. Government fulfill its primary responsibility of protecting our citizens. I cannot think of a more appropriate action that any government can take than the fulfillment of this responsibility.

I urge the committee to support this legislation.

Senator RIBICOFF. Thank you very much.

Senator Moynihan.

Senator MOYNIHAN. I would like to thank our colleague and cosponsor of this legislation.

May I ask if the Senator would wish to say something briefly about the elements in H.R. 7338 that he thinks are to be preferred to our bill?

Senator SCHMITT. I think the main asset is that it is a much more direct approach. I think it is clear that the jurisdictional aspects in the Congress required a different drafting. I think that now is the time to take a more direct approach as in the House bill, and to press on.

Senator MOYNIHAN. I think that we can obviously do that if we have general agreement.

I thank you very much.

Senator RIBICOFF. Thank you very much.

Senator SCHMITT. I particularly want to emphasize Senator Moynihan's responsibility for this effort. A man of his experience and knowledge both in the diplomatic force as well as in academia clearly understands the technical, legal and philosophical issues involved. I am sure the committee will respond to his initiative, as well they should.

Senator RIBICOFF. Robert Barry, Deputy Assistant Secretary of State for European Affairs, and Mr. Russell Munk, Assistant General Counsel for International Affairs of the Department of the Treasury.

Your testimony will appear in the record as if read. I would like you to comment on the three questions that I raised at the beginning of the hearing.

STATEMENT OF HON. ROBERT L. BARRY, DEPUTY ASSISTANT SECRETARY FOR EUROPEAN AFFAIRS, DEPARTMENT OF STATE, AND RUSSELL L. MUNK, ASSISTANT GENERAL COUNSEL FOR INTERNATIONAL AFFAIRS, DEPARTMENT OF THE TREASURY

Mr. BARRY. Let me first say at the outset that I fully agree with Senator Schmitt that it is the paramount responsibility of the Government of the United States in this case, and in other cases like it, to look out for the interests of American citizens.

The U.S. claimants have been central to our concerns about this problem in the many years that we have been working on this, regrettably so far without a solution which has been satisfactory to the Congress.

Senator RIBICOFF. I am just curious. How far are you with the Czech Government?

Mr. BARRY. At this point, I think the question you asked about the prospects for the negotiations is a very central question. I think we can say at the moment that we have a reasonable prospect for a successful negotiation. We have been working for some time.

We started consulting with the Congress about a new approach with the Government of Czechoslovakia at the beginning of spring 1979, and for various reasons this approach was delayed, because of the arrest of the charter 77 dissidents, there was the recall of our Ambassador, subsequently the Soviet invasion of Afghanistan, which caused us to have a policy review.

We did table the proposal in May. I would prefer not to go into the exact details of the proposal because I am afraid that this might interfere with the negotiating situation itself, but suffice it to say that I believe the proposal we have made would be fully satisfactory to the sponsors of this bill.

Senator RIBICOFF. It might be satisfactory to you, but what response did you get from the Czechs on your proposal?

Mr. BARRY. At the moment, we have had a number of preliminary discussions with the Czechs about the proposal. We are expecting a counterproposal from them. We have been told that such a counterproposal will be forthcoming very shortly, possibly within a few days.

They have obviously indicated that the kind of proposal that we put on the table initially is not one that they can support, but they have, on the other hand, indicated that they would be prepared to

improve on their 1974 settlement. What degree of improvement this amounts to and whether it will be satisfactory to the Congress, I simply cannot say now in the absence of a concrete Czechoslovak counteroffer.

But as soon as we have such a counterproposal in hand, we would check with the members of this committee, with the sponsors of the two resolutions, and other interested parties, to see if enough of a common ground exists to proceed with detailed negotiations about the various elements of the settlement.

You ask how long this might take, and I find that difficult to answer because it depends on the nature of the Czechoslovak counteroffer. But we have certainly made it clear that urgent action on this is necessary.

I would expect that we would have within a reasonably short time a fair idea of whether or not the negotiations once started are going to lead to a conclusion which will be satisfactory both to the claimants and to the Congress.

Could I go on, then, to deal with the question of whether or not this resolution is contrary to U.S. international obligations. We have produced a memorandum of law, which says that in our view it would be inconsistent with the U.S. obligations under the Paris agreement.

That is certainly the view of our British and French partners. I would like to submit for the record the statements that they have made concerning this, but let me briefly summarize them for you.

The French have only recently provided us with a statement that we can use for public purposes. It begins by saying that they are ready to examine all modalities of delivery to Czechoslovakia of the gold that would facilitate the payment of Czechoslovakia acknowledged debts:

We are, on the other hand, firmly opposed to all proposals which would not conform to the letter and spirit of the Paris agreement of January 14, 1946, which clearly puts forward the principle of immunity concerning the gold placed under the jurisdiction of the three governments responsible for marshaling and dividing it.

The United States has no claim on the gold stocked at the Federal Reserve bank, which is a part of the gold which was put under the custody of the United States, British and French Governments responsible for the implementation of article 3 of the Paris agreement.

The mere fact that the U.S. Congress could claim its own competence to legislate on that issue would constitute a serious breach of the universally recognized norms of international law. It is out of the question for France to admit that the domestic law overrules international commitments.

The British statement which was delivered to us on June 4, 1980, concludes that the proposal of the United States to sell part of the gold held by the Federal Reserve bank in order to compensate American nationals having unsettled claims against Czechoslovakia, if carried out, would be illegal under the terms of the Paris agreement as explicitly recognized in 1974 by all three governments represented on the Tripartite Commission.

Then it goes on to say that the British Government very much hopes that the United States will not try to proceed with this form of action, and that it will be possible, instead, to undertake a renewed effort to negotiate these claims, thus enabling the British Government to proceed also with a settlement of its own claims.

Senator RIBICOFF. Without objection, the entire response from both the French and the British Governments will go into the record.

[Documents to be furnished follow:]

IN RESPONSE TO QUESTIONS RAISED AT THE AUGUST 19, 1980, HEARING ON H.R. 7338, THE EMBASSY OF FRANCE PROVIDED TO THE DEPARTMENT OF STATE ON AUGUST 28, 1980, THE FOLLOWING STATEMENT OF THE POSITION OF THE FRENCH GOVERNMENT CONCERNING THE PROPOSALS CONTAINED IN H.R. 7338:

Our position regarding the establishment of a link between the (United States-Czechoslovak) dispute and the implementation of the Paris Agreement of January 14, 1946, is unchanged, but we are not opposed to an overall settlement of the two problems by both parties concerned.

We would, in particular, be prepared to examine such modalities of delivery to Czechoslovakia of the gold earmarked to this country by the Tripartite Commission that would facilitate payment of its acknowledged debts.

We are, on the other hand, firmly opposed to all proposals which would not conform to the letter and the spirit of the Paris Agreement of January 14, 1946, which clearly puts forward the principle of "immunity" concerning the gold placed under the jurisdiction of the three Governments responsible for marshalling and dividing it.

The United States has no claim on the gold stocked at the Federal Reserve Bank, which is a part of the gold put under custody of the United States, British and French Governments, responsible for the implementation of the Art. III of the Paris Agreement.

The mere fact that the United States Congress could claim its own competence to legislate on that issue would constitute a serious breach of the universally recognized norms of International Law. It is out of the question for France to admit that domestic law overrules international commitments.

Number 162.

BRITISH EMBASSY,
Washington, D.C., September 8, 1980.

Her Britannic Majesty's Embassy present their compliments to the Department of State and have the honour to refer to the question of the gold allocated for restitution to Czechoslovakia held by the Tripartite Commission on Monetary Gold.

Her Majesty's Government have already made clear to the United States Government, and now wish to place on record their view that proposals for the sale of that part of the gold held by the Federal Reserve Bank, if carried out, would be illegal under the terms of the Paris Agreement, as was explicitly recognised in 1974 by all three governments represented on the Tripartite Commission. Since the gold is held in the name of the three governments on the Tripartite Commission Her Majesty's Government would regard any attempt by one party to the Paris Agreement to dispose of the gold without the consent of the other two parties as in disregard of its trustee obligations to the other signatories of the Paris Agreement.

The Embassy avail themselves of this opportunity to renew to the Department of State the assurances of their highest consideration.

Senator RIBICOFF. I am assuming the panel of distinguished lawyers representing the claimants will disagree with your conclusion and that of the French and the British.

Does the Department of State feel that the British and the French position is correct internationally?

Mr. BARRY. We have stated our own position in the memorandum of law that we have submitted. Essentially, it is the same general argument. That is, under present circumstances, we regard that action of this kind would be inconsistent with our international obligations.

Obviously, the British and French positions are not identical to the U.S. position. But I may say that I think in dealing with the Trade Act of 1974, the Congress in a way recognized that the decision of the Tripartite Commission had to be unanimous on questions of allocation of the gold because section 408 of the Trade Act specifies that the United States should not allow any of the

gold, directly or indirectly controlled by the United States, to be returned to Czechoslovakia pending a satisfactory settlement of U.S. claims.

What this meant was that we could not permit the British or French shares of the gold to be returned unless our claim settlements were recognized. We, of course, have not done this. We have stood in the way of having the French, for example, return their share of the gold based on a settlement reached in 1949, and the British preliminary settlement reached in 1964.

We have said to the British and the French that we do not want them to have any part of this gold returned, and that we would not go into a unanimous decision to return the gold because this would reduce our bargaining leverage in getting a successful negotiated settlement ourselves.

Senator RIBICOFF. Suppose that the Congress passed the Moynihan bill, what do you see as the prognosis or the consequences of that?

Mr. BARRY. I think that if the bill were passed now it would make the possibility of a negotiated settlement far more difficult, if not impossible at this stage. It is my understanding from what we have heard from the Government of Czechoslovakia that they would not be willing to negotiate under a 60-day proviso that says that if no satisfactory settlement is reached, then the gold is vested.

Therefore, I think that the problem here would be that it would lessen our potential ability to get a satisfactory negotiated settlement. I think that that would be the result.

Senator RIBICOFF. Senator Moynihan, do you want to take it from here?

Senator MOYNIHAN. Thank you, Mr. Chairman.

I am aware, of course, of the position of the Department of State. I appreciate their bringing forward the views of the other members of the Tripartite Commission.

What we face here is a conflict of our own responsibilities. The responsibility under the Paris agreement confronts a clear expectation, Mr. Chairman, which is that these relatively simple claims would be resolved. Thirty-four years later, we are still at it.

Thirty-four years of negotiation, 32 years of which with a totalitarian Communist regime, ought to give us the impression that they do not want to make a settlement, and they have no intention of making a settlement. They are prepared to go another 32 years without one.

It seems to me, fully acknowledging the good faith and skill of the Department, that there are agreements that you cannot reach with a totalitarian government of the kind we have in Prague. After 34 years you have responsibility to your own citizens, and persons residing in this country not to let the totalitarians thwart the purposes of good faith agreements by their bad faith.

We can have a regime of law in Britain, France, and America; but it is not hard for persons who do not accept the premises or the precepts of this regime to thwart it, and the Prague Government is doing so. So I say, give them 60 days, and if they don't want it, fine. Let's settle this problem once and for all.

Mr. BARRY. Senator, if I may. I would be the last person to defend the record of the Czech Government on this point.

Senator MOYNIHAN. I am quite sure of that.

Mr. BARRY. But we have reached two previous agreements with them—one in 1964 and one in 1974. The 1974 agreement, of course, as you know, provided for a 40 percent settlement, and to the Department of State at that time it seemed to be a satisfactory settlement compared to the other international claims settlements that we had reached with other governments. It did not appear so to the Congress.

The reason between 1974 and the present time that there has been no fruitful negotiations going on is that it proved very difficult to bridge the gap between the idea of a 40 percent settlement then, and a 100 percent settlement or, as my understanding of the House version of this bill, what amounts to about a 300 percent settlement. That is, full principal and interest through 1980, which would be, of course, unprecedented in the history of our negotiations with any country.

Senator MOYNIHAN. I do agree with you. But, you would not disagree with me, I hope, that international claim settlements have been a most discouraging element in international law. We have hope for them. We put high expectations that regimes could be established, tribunals for the resolution of outstanding claims.

They have never worked very well. One of the things that has always defeated them was the capacity of the country against which the claims were made to stretch something out over two generations. So whatever the settlement was, it had been much diminished in value by inflation.

I don't want to speak in any disdainful terms of the regime of law. There is a violation of principle about justice delayed, justice delayed two generations, here. If we are going to have a regime of law in which investments and loans, and such things, are to be made and exchanged with confidence, there has to be compensation within the expectations of the normal legal system.

We lose something when we say, "no," since the Department of State is going to be around for the next two generations, let the claims be around for the next three generations.

Mr. BARRY. Senator, I certainly agree with you.

Senator MOYNIHAN. I know that you agree with that, and I don't envy your position.

Mr. BARRY. The central core of my argument is simply this, that I think now we do have a reasonable chance for a negotiated settlement, this would be preferable on a number of grounds.

First of all, it would provide, I certainly hope, prompter compensation to the claimants. If our calculations are correct that the amount of time needed to generate the amount of interest necessary to pay off the claimants under the House version of the bill, it would be between 11 and 21 years, and the claimants would finally be paid off in 1991, or 2001.

We really hope that the negotiated settlement would provide much of an up-front payment. I think to the small claimant who has been waiting for many years, this is far more desirable.

On another point, I think that all of us would prefer, if we can, to arrange a settlement here without doing any violence to the

principles of law. We don't underestimate the validity of the claims. They are certainly valid.

Senator MOYNIHAN. I would simply make the point that we are probably going to have to disagree here. This bill does provide for a 60-day negotiating period. We revert to Dr. Johnson's precept about the prospect of hanging, and see whether 60 days can concentrate the Czech mind.

Senator RIBICOFF. Senator Dole.

Senator DOLE. I would like to enter a statement at the beginning of the record in support of the efforts of Senators Moynihan and Schmitt. I understand the problems that the Department of State has, but it seems that there has been a considerable length of time involved.

In response to Senator Ribicoff, you indicated that you probably could not give us any details of your negotiations. Can you give us any idea of what kind of a settlement you are looking at now?

Mr. BARRY. I would be glad, sir, to provide them in private or in executive session. I simply feel that to lay it out on the public record at this point might interfere with the actual negotiating process itself.

Senator DOLE. Can you characterize it?

Mr. BARRY. I can characterize it as certainly consistent with the aims of the sponsors of the bill, and I am sure that it would be satisfactory. We have consulted with various members who have been concerned with this before we presented the position, and are continuing to be in consultation, and will carry these consultations through as we proceed with the negotiations.

Senator DOLE. Is there any time table? Do you have any idea when that might be finally negotiated?

Mr. BARRY. We have been told to expect a formal proposal very shortly. The term "within a few days" has been used.

Senator DOLE. A few days?

Mr. BARRY. But that is not the end of the road by any means, because I imagine that this just means the beginning of some tough negotiations. It depends on the quality, I think, of the counteroffer how long these negotiations might take. It may be that the counteroffer is so poor that there is no point in engaging in negotiations on that basis.

Senator DOLE. How do these negotiations take place, by mail, personally, or how?

Mr. BARRY. There have been contacts between our Ambassador in Prague and the Deputy Foreign Minister of Czechoslovakia, and here informal discussions between ourselves and the Czechoslovak Embassy.

Senator DOLE. Have you assigned a negotiator, for example, or is there one person who is responsible, two, or a dozen?

Mr. BARRY. Within the Department of State, the person primarily responsible for the overall policy direction is Counselor of the Department of State, Ambassador Ridgeway. If there is to be an actual formal negotiation, it has not yet been decided who would head the team.

Senator DOLE. You would have to pick a younger man, I assume.
[General laughter.]

Not younger than you, but at the rate it is going, you would want somebody in their twenties, I would think. [General laughter.]

Mr. BARRY. Actually, I don't think that there is to be a long career in negotiating Czechoslovak claims because I think that it is clear that the patience of the Congress and the claimants is running thin.

Senator RIBICOFF. Is there anything else that you gentlemen would like to add?

Mr. BARRY. May I simply add for the record, sir, the answer to the question that you asked about the size of previous claims agreements that we have come to you with—

Senator RIBICOFF. May we have that?

Mr. BARRY. Would you like me to read it for the record now?

Senator RIBICOFF. I think that it ought to be in the record.

Are there any other outstanding claims against other countries, with the exception of Czechoslovakia and Albania, I believe. Are there others?

Mr. BARRY. I think there is legislation moving through for claims against Vietnam to be adjudicated by the Foreign Claims Settlement Commission but they have not yet determined the amount of the claims. There is also Cuba, Iran, the German Democratic Republic.

Let me go over roughly what the settlements have been. Let me stress here that we are talking about the principal amount because none of these claims have provided for any payment of interest. Thus when we compare a 91-percent settlement in the case of Yugoslavia in 1948, the current legislation by those terms would provide something like a 300-percent settlement.

With Yugoslavia in 1948, we settled on a 91-percent agreement. Of interest here is the difference that we held any more Yugoslav assets in the United States than the amount of the claims.

In 1964 we reached a second claims agreement with Yugoslavia of 36 percent.

With Poland in 1960, we reached a 40-percent settlement.

Rumania in 1960, 40 percent.

Bulgaria in 1963, 73 percent.

Hungary in 1973, 36 percent.

Czechoslovakia in 1974, 40 percent.

China in 1979, 41 percent.

Senator RIBICOFF. I am just curious why the differential between Yugoslavia in 1949 of 91 percent, Bulgaria in 1963 of 73 percent, and then it drops down to the 36- to 40-percent range after that. Was there any reason for that differential?

Mr. BARRY. I think that in 1948 there were two factors at work in Yugoslavia. First of all, that was just after Yugoslavia's break with the Comintern, and there was great willingness on both sides to improve relations rapidly.

Second, and more to the substance of it, the United States held \$47 million in Yugoslav assets. The amount claimed against Yugoslavia was \$18.8 million.

In Bulgaria in 1963, again the amount of claims was relatively small, \$4.8 million, and the amount of assets held by the United States was about three-quarters of that, or \$3.1 million. So that was kind of a total wash.

Could I make one comment on Albania because the issue of Albania has been brought up in the House hearings by Senator Schmitt. It is an immensely complicated problem, but basically our position is that the Albanian situation is totally different from the situation with Czechoslovakia based upon a number of factors.

First of all, there is no agreement as to whom this gold, which is supposed to be belonging to Albania, really belongs because the Italians have a counterclaim which has never been finally settled.

Second, there are two judgments of the International Court of Justice at issue here. First of all, the *Corfu Channel* case where the ICJ returned a judgment against Albania for destruction of a British destroyer that went down.

Third, an ICJ decision later on saying that the adjudication of these claims must wait upon whether the Albanians would appear in their own defense, which they did not. Next, there was unanimity among the members of the Tripartite Commission concerning the turning over of this gold to Britain in pursuance of the ICJ judgment if there was no satisfactory adjudication.

Finally, and most important, there has been no disbursal of this gold. This gold is still held by the Tripartite Commission. Albania still has the right to make a claim to it. Throughout this international legal process there has been, I think, every effort to give the Albanians a chance to present their case legally and try to get around the judgments that have been passed against them.

Senator MOYNIHAN. Could I make a point here. I don't want to press Mr. Barry unfairly because I have the greatest respect for him and for his office, and for the difficulties.

It is no accident that the Yugoslav settled for 91 percent in 1948. Stalin was looking down their throat, and they were looking to us for vastly greater support in the form of military aid, and they got it.

The British moved on Albania because they had the *Corfu Channel* case, and the ICJ had ruled for them.

In normal circumstances we don't protect our people very well at all. Am I wrong in thinking that the 1974 settlement with Czechoslovakia was 20 cents on the dollar?

Mr. BARRY. No, sir, it was 40 cents.

Senator MOYNIHAN. Forty cents, that is not much without interest, and you are subverting a whole idea in international law that there will be equivalent to civil proceedings as between governments. By letting the totalitarian do this to us, it turns that they exact a price from us for political purposes.

They admit the claims, and then pay 40 cents on the dollar. This is the charge they put on us for the purpose of saying: "We don't pay capitalist countries what they assert we owe because the nature of the property is illegitimate in itself." We are conceding something political to them, and I don't like it. It is not your fault.

They only pay 90 percent when they want tanks and in a hurry. Then, they find that there are different principles.

Mr. BARRY. I think that it is a powerful and compelling factor in a situation like this.

But I would only say that the history of our allies is not as good as ours in getting settlements of this kind.

Senator MOYNIHAN. They don't have as many tanks.

[General laughter.]

I just want to say, I highly sympathize with your view. We may be divergent in this particular case. This is not designed to make life harder for you, but perhaps to encourage. What did they say when they shot Admiral Bing? "Pour encourager les autres." Maybe it will help others.

Senator RIBICOFF. Do you gentlemen want to comment any further on the Moynihan bill?

Mr. BARRY. No, sir.

Senator MOYNIHAN. Thank you, gentlemen.

[Statements follow:]

PREPARED STATEMENT OF ROBERT L. BARRY, DEPUTY ASSISTANT SECRETARY FOR
EUROPEAN AFFAIRS, DEPARTMENT OF STATE

Mr. Chairman, I am happy to be here today to inform you of the views of the Department of State on S. 2721 and to report more generally on the steps which the Department has taken and which are now in progress to obtain compensation for the property of American citizens which was nationalized by Czechoslovakia. We understand that it is the intention to amend this bill later to correspond with a bill introduced in the House of Representatives on this subject by Congressman Wolff (H.R. 7338). My comments are based on this understanding.

The Department shares the concern and the frustration of Congress over the failure of the Czechoslovak Government to provide compensation for property taken from American citizens more than thirty years ago. Our prime concern is to obtain prompt and adequate compensation for U.S. citizens who have waited for such a long time for this.

In my testimony I would like to cover our diplomatic efforts to resolve the claims/gold issue and to address some of the international legal issues which the bill raises; the Department of the Treasury representative will address the legislative and administrative history of the question.

Our efforts to obtain a negotiated settlement of our citizens' claims against Czechoslovakia have a long history. Negotiations with Czechoslovakia on the amount of the compensation have taken place intermittently since 1949. We have twice reached provisional agreements with Czechoslovakia, in 1963 and again in 1974, on claims settlements, but upon examination, both were determined to be insufficient. The more recent agreement, initiated by both sides in 1974, was disapproved by Congress in section 408 of the Trade Act of 1974 which mandated the Executive Branch to renegotiate the claims settlement.

We have taken this mandate seriously. Several efforts short of formal negotiations were made in 1975, 1976, and 1977 to determine if a basis existed for an agreement which would be acceptable to Congress and to the Czechoslovak Government. However, the Czechoslovak Government regarded revision of the 1974 agreement as a question of principle and gave few indications that it was willing to raise significantly the compensation offered in 1974. The Czechoslovak Government also appeared unwilling to enter into formal negotiations without some prior assurances that Congress would accept the results of the negotiations.

Since 1977, we have developed several new proposals for resuming negotiations. We believed that the increased value of the gold, particularly in the last year, could serve as the basis for new proposals. We did not present these proposals, however, either because we determined that they were unlikely to succeed at that time or because of repressive measures taken by the Czechoslovak Government against the supporters of Charter 77 and other human rights activists. We were on the verge of tabling a proposal last fall but pulled back when we recalled our Ambassador to protest the public trial of six prominent dissidents. The Soviet invasion of Afghanistan in December caused another delay.

In late May, after several months of preparations, consultations with Congress, and a careful review of current Czechoslovak Government policies and practices, the United States presented a new proposal to the Czechoslovak Government for the settlement of the claims. This proposal takes into account the recent rise in the price of gold and represents a significant improvement over the 1974 agreement. We have engaged in preliminary discussions on the proposal with the Czechoslovaks. We have been told that we can soon expect a formal counter-proposal from them. The next step would be to enter into formal negotiations. While we cannot guarantee a satisfactory settlement and know that some hard bargaining is ahead we believe there are reasonable prospects for success; the significant increase in the

world market price of gold should make possible a settlement acceptable to all parties.

To turn to the issue immediately at hand, we fully share the concerns expressed by Senators Moynihan and Schmitt and other Members of Congress regarding these longstanding, uncompensated claims of United States citizens. We particularly recognize the needs and interests of individual claimants, many of whom are elderly and of limited means. We believe that the diplomatic negotiations now being pursued are the best means to provide adequate compensation for these claimants. The passage of legislation such as an amended S. 2721 at this time would damage prospects for a negotiated settlement.

Moreover, enactment of legislation such as S. 2721 would require the United States Government, acting unilaterally, to seize and dispose of gold which was placed by the 1946 Paris Reparation Agreement under the joint custody and control of the United States, France, and the United Kingdom. The U.K. and France have told us they strongly oppose such action by the U.S. Both believe that action by the United States to seize and sell the gold in the Tripartite Commission's custody would be contrary to the obligations of the United States to them and to Czechoslovakia under the 1946 Paris Reparation Agreement. The U.K. and France have reached claims agreements with Czechoslovakia without taking unilateral action on the disposition of the gold. The French settlement was concluded in 1950 and the Government of Czechoslovakia has fulfilled its obligations under this settlement. An initial settlement of British claims was made in 1949 and a supplemental settlement, contained in a 1964 agreement, was made contingent on the delivery of the gold to Czechoslovakia and has therefore not been completed.

We have given renewed and careful consideration to the international legal issues raised by legislation such as an amended S. 2721. The Office of the Legal Adviser of the Department of State has concluded that implementation of such legislation would be contrary to international law under present conditions. A copy of a legal memorandum setting forth the basis for this conclusion is included as an attachment to this testimony. In summary, that memorandum points out that unilateral legislative action by the U.S. would be contrary to the legal regime for the restitution of monetary gold established by the 1946 Paris Reparation Agreement and would violate our legal obligations to Britain, France and Czechoslovakia under the Paris Reparation Agreement and as a member of the Tripartite Commission for the Restitution of Monetary Gold. Such action would violate Czechoslovakia's legal right to receive a proportionate share of the monetary gold recovered in Germany after the war. Finally, under present circumstances, no legal defense for such breaches of our obligations would be available.

An acceptable negotiated settlement would include a very substantial cash payment by Czechoslovakia which would provide the more rapid compensation which most of the claimants prefer. On the other hand, the proposal being considered would require some years to produce income sufficient to provide substantial compensation for the claimants. According to Treasury calculations, it could take from 11 to 21 years to pay the amounts provided in S. 2721 as it is to be amended, depending on the method used to calculate the interest. This assumes that only the gold located in the United States would be used and the proceeds from the sale of the gold would be invested in twenty-year Treasury securities which would yield an 11 percent rate of return.

Furthermore, enactment of legislation such as an amended S. 2721 could raise problems with agreement on U.S. claims other than our nationalization claims. We are currently seeking to settle other U.S. claims on the basis of the favorable provisions of the 1974 *ad referendum* agreement. In that agreement, Czechoslovakia agreed to pay a \$7 million debt owed to the U.S. Government under a 1946 surplus property agreement, to release two blocked U.S. Government bank accounts in Prague worth about \$800,000, and to negotiate a settlement of approximately \$2.7 million in defaulted dollar bonds guaranteed by the Czechoslovak Government prior to 1938 and currently held by American citizens. We have proposed that these provisions be retained in any new agreement. Disposal of the gold in the manner proposed would make favorable settlement of these other financial issues highly unlikely.

Finally, our relations with Czechoslovakia at the present time are poor and they show no real prospect for significant improvement in the near future. Nevertheless, seizing and selling the gold would serve to embitter those relations for years to come. The recovery of the gold is not entirely a financial matter to the Czechoslovaks; good measures of emotion and history are also involved. To many Czechoslovaks the gold represents a national patrimony. The Czechoslovak Government will undoubtedly use any seizure of the gold to try to score a propaganda victory with its own people by attacking the U.S. action. It will also attack us vigorously at this

fall's meeting of the Conference on Security and Cooperation in Europe and in other international fora for failing to abide by Principle 10 of the Helsinki Final Act which provides specifically that "The participating states will fulfill in good faith their obligations under international law (and) in exercising their sovereign rights, including the right to determine their laws and regulations, they will conform with their legal obligations under international law . . ."

In light of all these considerations, and in particular our current effort to negotiate a settlement of this issue on a basis reflecting the value of such a settlement to the Government of Czechoslovakia, we believe that legislation such as S. 2721 should not be enacted at this time.

STATEMENT OF RUSSELL L. MUNK, ASSISTANT GENERAL COUNSEL FOR
INTERNATIONAL AFFAIRS, DEPARTMENT OF THE TREASURY

Mr. Chairman, thank you for the opportunity to present the views of the Treasury Department on S. 2721, as amended, a bill which proposes to settle outstanding expropriation claims of American citizens against Czechoslovakia. I would like to provide some background information on these expropriation claims and to explain generally the reasons we oppose the enactment of S. 2721, as amended.

American claims against Czechoslovakia are a result of the widespread nationalization and confiscation program instituted by the Czechoslovak Government in 1945. Czechoslovakia's nationalization program continued for three years until 1948, when virtually the entire economy passed into public ownership. The American property which was the subject of these measures was varied and included real property, business enterprises, insurance policies, bank accounts, bonds, personal property, pension and other benefits. Although the Czechoslovak Government has agreed in principle to compensate US nationals for the loss of their property, repeated attempts by the United States to obtain adequate compensation have proved unsuccessful.

In 1948, lack of progress on the compensation issue prompted the Treasury Department to freeze the official assets of Czechoslovakia located in the United States. In 1952, the Secretary of the Treasury issued a blocking order, under the Trading with the Enemy Act, which prohibited unauthorized disposition of steel mill equipment which was owned by the Czechoslovak Government. Two years later, when it became clear that continued warehousing might prejudice the value of the property, the Treasury Secretary ordered the sale of the steel mill equipment. The net proceeds from the sale (approximately \$9 million) were placed in blocked accounts pending settlement of American property claims against Czechoslovakia.

In 1958, at the request of the Administration, Congress added Title IV to the International Claims Settlement Act. Title IV established a procedure for American citizens to file claims with the Foreign Claims Settlement Commission for the losses they sustained from the nationalization of their property. By the end of the adjudication period in 1962, the Commission had validated 2,630 claims against Czechoslovakia in the amount of \$72.6 million principal and \$41 million interest.

The proceeds obtained earlier from the sale of the steel mill equipment were used to satisfy approximately \$8.5 million of these claims. Under the Act, each award-holder received an amount of \$1,000 or the amount of the award, whichever was less. The result was the complete satisfaction of 1161 individual claims worth a total of \$495,000, and payment of \$1,000 on each of the remaining claims. Beyond this, pro-rata payments of approximately 5.3 percent were also made on the unpaid balance of the remaining certified claims.

Twice before, the Executive has initialed *ad referendum* agreements with the Government of Czechoslovakia for the settlement of outstanding property claims. Those agreements, in 1963 and in 1974, never entered into force, primarily because they were viewed by Congress as providing insufficient compensation to the claimants. The 1974 agreement resulted in the enactment of section 408 of the Trade Act of 1974 which directs the Administration to renegotiate a claims settlement with Czechoslovakia satisfactory to Congress. Section 408 also prohibits the United States from consenting to the release of the gold held by the Tripartite Gold Commission for Czechoslovakia.

The gold at issue was a portion of the gold coins and bullion which had been looted by the Germans from various European countries and recovered by the Allied Forces occupying Germany at the close of World War II. In 1946, eighteen nations, including Czechoslovakia, signed the Paris Reparation Agreement which provides for the disposition of the gold. Under Part III of the Paris Agreement, the gold was to be divided among the countries from which it had been wrongfully taken according to each country's proven losses. The Paris Agreement also directed the Governments of the United States, France and the United Kingdom to determine each

country's rightful share and to take steps to implement the distribution of the gold. They did so by establishing, in a separate agreement, a Tripartite Commission for the Restitution of Monetary Gold.

A portion of Czechoslovakia's share of the gold was transferred to it in 1948. Further transfers have not, however, taken place because of the refusal of the United States to sign the decree approving the release of the gold to Czechoslovakia. US consent to the return of the gold to Czechoslovakia. US consent to the return of the gold is now expressly linked by statute to attainment of a claims agreement satisfactory to Congress.

The proposal before us today would eliminate the need for a claims settlement agreement achieved through negotiation. Instead, S. 2721, as amended, proposes that the gold held by the Tripartite Gold Commission for eventual distribution to Czechoslovakia be used to satisfy the claims. Specifically, the bill would direct the Secretary of the Treasury to sell the gold located in the United States, and if possible the gold located outside the United States, invest the proceeds derived from the sale of the gold and use the investment income to pay the claimants over time.

The Treasury Department opposes the enactment of S. 2721. We share, however, what we believe to be the basic objective behind the legislation—the rapid resolution of claims by US citizens against Czechoslovakia.

American claimants against Czechoslovakia could be more rapidly compensated by means of a claims settlement agreement achieved through diplomatic negotiation. As my colleague, Mr. Barry, has indicated, we tabled a comprehensive proposal for the settlement of both official and private claims with the Government of Czechoslovakia earlier this year. We believe there are reasonable prospects for the conclusion of an agreement which is acceptable to both Governments.

In contrast to the negotiated settlement we are trying to achieve, S. 2721 would result in relatively small payments to private claimants in the near term and require a longer period of time to complete payment.

If S. 2721 were enacted, and Treasury were to sell and invest the amount of gold held by the Tripartite Commission for Czechoslovakia in the United States (now worth approximately \$162.5 million), it would take either 10.6 or 21.1 years to pay back the claimants from the interest income derived from investing the gold. The difference in the repayment periods is a result of the use of simple interest under one analysis and compound interest under the other. Both figures represent payment of principal and interest (on outstanding principal, and interest accrued up to August 8, 1958) through August 1980. This assumes that the proceeds from the sale of the gold were invested in 11- or 20-year Treasury securities, respectively, which would yield and 11% rate of return.

In the unlikely event that Treasury had access to all gold held for Czechoslovakia by the Tripartite Commission (worth roughly \$364.5 million) it would take either 5 years or 9.4 years to pay back the claimants from the interest income. This assumes that the proceeds from the sale of the gold were invested, respectively, in 5-year Treasury securities at 10.5 percent or in 10-year Treasury securities at 11%.

Domestic legislation requiring the Treasury Department to seize gold located in the United States could also affect the willingness of foreign central banks to hold assets in this country. Unilateral action by the United States could adversely affect the perceptions our major trading partners and other governments with financial holdings in the US have about the safety of their holdings.

Further, unilateral U.S. action with respect to the gold as envisioned in S. 2721, would violate United States legal obligations under the Paris Reparation Agreement of 1946 and the Agreement establishing the Tripartite Commission for the Restitution of Monetary Gold.

Part III of the Paris Agreement established a regime for the marshalling and restitution of monetary gold looted by the Nazis. The United States was one of the principal authors of that legal regime and remains legally bound to honor it today. Specifically, Part III obliged the United States to join with France and the United Kingdom in pooling all monetary gold found in Germany or otherwise recovered after the war; in receiving adjudicating claims from countries that lost such gold; and in ultimately distributing proportionate shares to each eligible claimant. The Agreement also guaranteed such party a legal right to receive a share of the monetary gold according to its proven losses. Unilateral vesting of the gold located in the United States, under present circumstances, would put the United States in violation of these clear international obligations. Moreover, it would place us in violation of the related legal arrangement intended to give effect to Part III of the Paris Agreement.

The Tripartite Gold Commission Agreement, which established the machinery to distribute the gold, contains a provision which requires "... decisions of the Commission to be by unanimous agreement of its members." Unilateral seizure of the

gold held for Czechoslovakia by the Commission (without French and UK consent) would put the United States in violation of this principle of unanimity which has been carefully observed in all actions of the Commission and which is the basis for our present restrictions on disposition of gold in the Commission's control.

From our perspective, it is in the interest of the United States to uphold the commitments contained in these two international Agreements. It is also important that other nations have a clear and uniform basis upon which to premise their economic relations with the United States. A negotiated settlement of U.S. claims against Czechoslovakia would further this goal while at the same time permit the United States to carry out the obligations it undertook in the Paris Agreement and the Gold Commission Agreement. A legal memorandum on this issue has been prepared and, I understand, distributed to the Subcommittee members.

Also, as you know, Mr. Chairman, both the United Kingdom and France have informed us that they consider any unilateral action, as proposed in S. 2721, to be illegal under international law, in disregard of the trustee obligations of the United States, and unauthorized under the terms of the Paris Reparations Agreement. These Governments have negotiated claims settlements with Czechoslovakia without resorting to seizing the gold to satisfy the claims of their citizens. The United States has, from the outset, been the lone dissenting member of the Tripartite Commission, to the detriment of another member, the United Kingdom. France and the UK have, over the years, respected the unanimity obligation in the Gold Commission Agreement. For the United States, at this late date, to inform these countries that this principle no longer applies would indeed be anomalous.

Lastly, disposal of the gold in the manner suggested in S. 2721 would make it difficult to settle outstanding claims the United States Government has against Czechoslovakia. Such claims comprise surplus property debts worth approximately \$8.1 million and 2 blocked bank accounts in Prague worth approximately \$756,000. These claims are intended to be included in any negotiated claims settlement agreement, between the United States and Czechoslovakia.

Mr. Chairman, for these reasons, especially the current efforts to negotiate a comprehensive claims agreement, we are opposed to the enactment of S. 2721 at this time.

You might want to remain when we have the next panel on some of the statements that may involve legal interpretations.

Mr. Merrigan, Mr. McPherson, Mr. Schifter, Mr. Symington, and Mr. Realberg.

Gentlemen, you have lived with this for many years. You know the problem and the issue. You are interested in getting compensation for your clients. Would you want to comment on the three questions that I propounded here at the beginning of this hearing, and get your reaction.

You have also heard the comments of the Department of State and the Treasury. We await your comments.

Whatever prepared remarks you may have will go in the record as if read.

STATEMENT OF EDWARD L. MERRIGAN, ESQ.

Mr. MERRIGAN. Thank you, Mr. Chairman.

I hope that the legal memorandum which has been prepared, and a copy of the Paris Reparation Agreement, as well as the Tripartite Commission arrangement, and so forth, will be accepted for the record because those are the documents upon which we rely.

Senator RIBICOFF. They will all go into the permanent record.

Mr. MERRIGAN. Thank you so much, Mr. Chairman.

Question No. 1, what are the prospects for a negotiated settlement?

I find it amazing for a Department of State representative to sit here in 1980, after 32 years of fruitless attempts to negotiate—

Senator RIBICOFF. They say that they think that the action of Senator Moynihan might have some immediate impact that would hasten that. Do you think that that has any impact?

Mr. MERRIGAN. We would hope so, Mr. Chairman, but everything we hear, and we hear quite a lot about this, is that the Czechoslovakian Government has not budged from the position it took in 1974, and the gold at that time, that is, the 18 tons of gold being held by the United States as security for the payment of these awards, was worth only \$100 million.

At that time, the State Department proposed a \$20.5 million settlement to be paid over 12 years, in 12 installments, and it would release the gold to Czechoslovakia immediately. That does not come to 40 percent by any arithmetic because the balance due on these awards is \$105 million. It comes to about 20 percent. In 1974, the Department of State was also proposing to settle, in addition to the outstanding awards, all claims not yet adjudicated by the United States. So that would mean, really, a far smaller percentage settlement.

The Polish settlement that was so proudly mentioned a few minutes ago, was only 40 percent on the principal amount owed, paid over 20 years. I was a young lawyer when I first came to Washington in the late 1950's when they settled with Poland, and the last payment was made this year. Forty percent on the principal only and absolutely no interest was paid over a fifth of a century.

I don't think the Department can settle with Czechoslovakia. I don't think Czechoslovakia is calling the shots here. I think the Russians are calling the shots for Czechoslovakia. I don't think they want the Czechs to have most favored nation treatment, which is what the Czechs would like to have. Therefore, I don't think the Russians are going to allow the Czechoslovakian Government to make a settlement.

After all, 32 years is a long time, and if they have not done it in 32 years, it is very unlikely they are going to do it tomorrow or next week, or within the next 60 days.

Second, you asked how would a settlement compare with the legislative approach of the Moynihan proposal. First, there is no 300 percent settlement involved in either the Moynihan bill or the House bill. The awards would simply be paid over a period of years, with interest. First of all, we would take the gold that is located in the United States and liquidate it. That gold would be invested by the Secretary of the Treasury to produce a return of hopefully 10 percent. That would return about \$20 million a year for payment of the \$105 million awards.

Senator RIBICOFF. Legally, could we take that gold?

Mr. MERRIGAN. Yes, it is a very clear-cut thing. If you read the Paris Reparation Agreement, part III, you will come to the absolute conclusion that the Department of State's position on this has been baseless and erroneous over all the years; ergo, the stalemate.

What happened at the end of World War II, in 1946, is this: There was a pool of gold taken by the Allied forces from the Nazis. It had been looted by Germany from several governments in Europe. The gold was pooled, and the Tripartite Commission was

organized to arbitrate the claims of the several different claimant governments to this pool of gold, Czechoslovakia being one.

From 1946 to 1948, the Commission adjudicated the claims of the various governments. Its final decisions were rendered by 1949. Czechoslovakia was awarded 24 tons of gold. Six tons of the gold were delivered by the Commission to Czechoslovakia by the time the Communists took over the Government.

At that time—1948—the gold belonged to Czechoslovakia, so the Truman administration blocked the gold and said that it could not be returned. So out of 24 tons, we still hold 18 tons, 9 of which are in the Bank of England, 9 of which are in the Federal Reserve Bank of New York.

The only obligation of our Government, under both the Paris Reparation Agreement and the Tripartite Commission arrangement was to adjudicate, by unanimous decision, claims of the various European governments against the pool of gold; to allocate and distribute to each of the claimant governments their share thus adjudicated. We fulfilled all of our international commitments when we did that in the 1940's. The 18 tons of gold therefore became the property of Czechoslovakia in 1948, and since then the United States has blocked it as security for the payment of the U.S. awards.

In a recent case, *Goldwater v. Carter* involving the termination of our Nation's treaty arrangements with Taiwan, our courts, including the Supreme Court, reviewed the applicable rules of law governing how even formal treaties may be modified or terminated. The courts announced that, under international law, any true, fundamental change in circumstances which occurs after a treaty or international agreement is signed, may justify a nation to either terminate or modify such treaty or agreement.

Here, in 1946, when the United States entered into the Paris agreement and the tripartite agreement, Czechoslovakia was our friend. It had not become a Communist government. It had not violated international law by taking almost a half-billion dollars of our properties, without providing compensation over a period of 30 years.

So what I am saying to you, sir, is point 1, under the Paris Reparation Agreement itself there is no longer any obligation on the part of the United States to return this gold to Czechoslovakia. Point 2, because of the fundamental change in circumstances since 1946 just described, Congress has the unfettered right, as a matter of international law and the law of this Nation, repeatedly prescribed by the Supreme Court of the United States, presently to take this gold to compensate our citizens in order to remedy Czechoslovakia's plain violation of international law since 1946.

Bear in mind, Mr. Chairman, that under the Moynihan-Wolff bills, we are not talking about taking this gold. This gold would simply be used for a period of time. Half the gold is in England, and assuming that the British will not go along, that portion of the gold could even be returned to Czechoslovakia if the British want to do that and the United States hereafter agrees.

What we are really talking about here, then, is simply using the nine tons of gold within the jurisdiction of the U.S. Government in the Federal Reserve Bank of New York to create a fund which can

produce interest to pay the U.S. citizen awards, and after that has been accomplished, the fund can be returned intact to the Czechoslovak Government.

Senator RIBICOFF. What could France and England do if we can take this unilateral action?

Mr. MERRIGAN. To quote Mr. Barry of the State Department in his testimony in the House, "nothing." In fact, Mr. Chairman Hamilton in the House said, "What would happen with England and France if we did this? Would NATO fall?" Mr. Barry said, "Absolutely not, Mr. Chairman. That is ridiculous. No, nothing like that would happen." "Why are we so upset then," asked Chairman Hamilton. "Well, we really just want a little more time to negotiate," responded Mr. Barry.

I can assure you that this is Mr. Barry's testimony of August the 19th in the House of Representatives. So all this business about the English and the French is a mere smokescreen for our own State Department's failures in this case.

There is further proof. Mr. Barry felt that he must somehow cover this before he left the stand today, but he did so in a low whisper: "What about Albania."

In the Albanian case, Albania, like Czechoslovakia, had a claim against the same pool of gold under the Paris Reparation Agreement. But, the British had a counterclaim against the Albanians growing out of the Straights of Corfu incident. So, what happened to the Albanian gold, it was allocated to Albania by the Commission, but actually awarded to the British. Now, under almost identical circumstances, the British come along and protest the United States cannot do the same thing to Czechoslovakia.

Senator RIBICOFF. Did Britain take the gold?

Mr. MERRIGAN. The gold was awarded to the British by the Tripartite Commission.

Senator RIBICOFF. The Tripartite Commission acted unanimously.

Mr. MERRIGAN. Because the British claim against the Albanians was in effect in 1946 and 1948 at the time that they were still adjudicating claims against Albania, yes, the award was unanimous. The U.S. claims, of course, arose 2 or 3 years later when Czechoslovakia fell to the Communist coup. By then, the Tripartite Commission had already exercised its authority, made a unanimous decision, and given the 24 tons of gold to the Czechs. In fact, 6 tons had already been delivered before the U.S. counterclaim against Czechoslovakia actually arose.

Mr. Chairman, we certainly would not come before this committee and tell you, and I am sure that Senator Moynihan would not introduce a bill to do something that is illegal or in violation of a clear settlement with Britain and France, two of our Nation's closest allies.

The plain and simple fact is this. The British and French have absolutely no valid interest in this matter at this time. In 1974, when the State Department was last before this committee explaining this whole affair, U.S. negotiators went to Prague and negotiated that settlement I described to you, and unilaterally agreed to return the whole 18 tons of gold without any participation of the British and French in the negotiations. It was a unilateral negotiation between the United States and Czechoslovakia in Prague. If

the British and French had any valid interest in the gold to protect, would not they have insisted on participating in the 1974 negotiations for the release of that gold?

When this committee rejected that agreement as being totally inadequate and one-sided, Congress itself passed a law which proclaimed that the gold belonged to Czechoslovakia and that it could not be returned to its owner, Czechoslovakia, until these claims are satisfactorily settled.

This happened 6 years ago, but since then nothing has occurred, and no step has been taken to settle the U.S. claims. So here we are before the Congress begging again: Please, there are 2,600 individual citizens of the United States who have not been paid what they are lawfully owed for 32 years.

With this background, the Department of State now has the nerve and audacity to come to the Congress and say: "Give us until next week. We are going to settle this thing," after 32 years of absolutely no movement toward settlement whatsoever.

Senator RIBICOFF. You have no faith in that statement?

Mr. MERRIGAN. I have no faith in it—early this year, when Senator Byrd of this committee wrote to the Department and asked on behalf of an aging, sick Virginia constituent what could be done about this 32-year-old debt, the Department responded it could not even table a proposal with the Czechs because of the latter's "dissidents problem." In other words, because the Communists were oppressing dissidents in Czechoslovakia, our State Department could not even table a settlement proposal for discussion.

Senator RIBICOFF. I am just curious, as a matter of procedure, do you gentlemen ever sit down with the representatives of the State Department and the Treasury to talk about this, or do you have no communication?

Mr. MERRIGAN. Yes, we talk about this with them.

Senator RIBICOFF. What happens?

Mr. MERRIGAN. We begged and pleaded with them in 1974.

Senator RIBICOFF. I know, but since 1974, in the last year?

Mr. MERRIGAN. Since 1974, the largest settlement proposal I have ever heard the State Department talk about was trying to get the \$20.5 million previously offered by Czechoslovakia to be paid in cash instead of over 12 years. As stated above, that would be a 19- or 20-percent settlement at best, with the understanding that there is still a group of unadjudicated American claims that would also have to be paid out of that \$20 million. So plainly, that sort of arrangement is too unjust for even discussion purposes.

Senator RIBICOFF. Yes, but that is not what I am asking.

Do you ever sit down with them and say, "Look, your negotiating with the Czech has gone on for some 30-odd years. We would like to see it settled before our clients die, before we die."

Do they ever sit down and talk about a proposal that would be acceptable to you, gentlemen, as well as to themselves and the Czech? Do you ever have a conversation with the State Department?

Mr. MERRIGAN. They don't do that, but the claimants themselves write to them. We write to them. We call them. We speak to them. But they will never tell us what they are proposing. They would not even tell you this morning what they are proposing to do now.

Senator RIBICOFF. They said that they would tell us privately. Whether or not we want them to do that or not, that is something I will talk to my colleagues about, whether we want to take that responsibility.

I am curious, as a matter of procedure, when you have a matter of this importance, involving so many individuals, whether there is ever any conversation with representatives of our Government about what is fair and right, and satisfactory. I am just curious about that.

Mr. MERRIGAN. I have repeatedly spoken to representatives of the State Department over the years. I know that many of the claimants that I represent, individual people, some of whom are in the room today, have gone to the State Department and pleaded with them.

Senator Byrd has written to them. Other Members of Congress have written to them. Senator Long has written to them about this problem.

Mr. Chairman, the State Department is impervious to the problem, I think, after all these years. The only reason there is a look busy attitude over there is because of this legislation.

They originally, as I understand it, tabled their proposal in May of this year. That is what everybody was told in the Senate and the House. Here we are in September, and I don't know of any counter-proposal that the Czech Government has made.

Other lawyers in Washington who talked to the Czech Ambassador tell me that he said, "Get lost. We are going to pay you what we offered you in 1974, and nothing more."

Senator RIBICOFF. Mr. McPherson, you are a very sophisticated guy. You know this town. You are around a lot in all branches of Government. What would happen if you called Mr. Barry and said, "How about seeing you next week, next Tuesday at 3 o'clock," would he talk to you?

STATEMENT OF HARRY C. MCPHERSON

Mr. MCPHERSON. Certainly he would. Mr. Barry and I have talked a couple of times.

Senator RIBICOFF. What happens when you talk, without breaching anything confidential? What happens when you talk?

Mr. MCPHERSON. Mr. Chairman, let me read you a paragraph of Mr. Barry's testimony, and I think it will give you what the problem is in his own words.

Since 1977 we have developed several new proposals for resuming negotiations. We did not present these proposals, however, either because we determined they were unlikely to succeed at the time, or because of repressive measures taken by the Czechoslovak government against the supporters of Charter 77 and other human rights activists. We were on the verge of tabling a proposal last fall, but pulled back when we recalled our Ambassador to protest the public trial of six prominent dissidents. The Soviet invasion of Afghanistan in December caused another delay.

Mr. Chairman, the State Department is waiting for Czechoslovakia to become a liberal government. Czechoslovakia will provide plenty of reasons for the State Department, if it adopts this negotiating strategy, never to go to Czechoslovakia. The rule is, at least according to this testimony, the United States will not assert the rights of its citizens against another country so long as that coun-

try is mistreating its own citizens. That is nuts. It is absolutely backwards.

Senator RIBICOFF. Mr. Barry, what does one thing have to do with the other? If you have a series of claims for American citizens against Czechoslovakia, why can't you talk about that even though you have a problem of dissidents or Afghanistan. What is the relationship between the two problems?

Mr. BARRY. It was not our intention to defer indefinitely or for a long period the approach that we are going to work out. However, we did not have an ambassador in Prague to talk at that time. It seemed unlikely that we could get any place immediately with a proposal of the kind that we had, which would not be very welcome to the Government of Czechoslovakia anyhow.

So what was involved was a brief delay while we went back and reconsulted with the Congress, talked to others and waited for a little bit more calm in the atmosphere. It had nothing to do with our interest in going ahead and trying to get an adequate settlement for our claimants.

Senator MOYNIHAN. Mr. Barry, in all truth, if the Czechoslovakian Government acts in a manner that for whatever reason we don't approve, what form of sanction is it against that Government to decide not to press for a settlement of claims against it?

Mr. BARRY. Indeed, but my point was simply that it was—

Senator MOYNIHAN. Indeed, indeed, Mr. Barry, it is not your impression that the Czech want to pay these claims; right? They don't want to pay them.

Mr. BARRY. They have not shown any overwhelming eagerness; no.

Senator MOYNIHAN. Then why in a moment when we disapprove of them say, "All right, we will show you. We will stop negotiating for the payment of these claims."

What has that shown them, except the more dissidents they put in prison, the less likely they are to have to pay the bills.

Mr. BARRY. It was not a question of stopping the negotiations, because we had not tabled the proposal. We did talk to some Congressmen about whether this was an appropriate time to go ahead, and the answer we got was that it was not.

Senator MOYNIHAN. Are we doing Czechoslovakia a favor by making this settlement, or are they doing ourselves a favor? Or, are we asking for our rights?

Mr. BARRY. The latter.

Senator MOYNIHAN. Then what has one thing to do with the other? Why should we fail to press our rights because the Czechoslovakian is abusing the rights of its own citizens?

Mr. BARRY. This was not, sir, a position of principle that we were taking that we were not going to do one because of the other. It was a practical matter. We had no Ambassador in Prague. We had to come back and talk to some of the interested Members of Congress as to what we were to do.

Senator MOYNIHAN. Sure, but for Heaven's sake don't come before this committee saying, "We don't much like that government, and we consider that we are doing a favor by pressing for the settlement of these cases, which we will withdraw if they do

something which we disapprove of. It is just the reverse. It is, as Mr. McPherson has said, nutty. You are not, but it is."

Mr. BARRY. On the other hand, sir, I think there are some people who would have thought that it was nutty if the State Department was proposing giving back all the gold at a time when we were having such a public dispute with the Czechoslovakian Government.

Senator RIBICOFF. But you have a practical problem. The value of that gold has gone up astronomically, and you suddenly have a set of circumstances where it makes it possible to give Czechoslovakia a very substantial worldwide value in gold, which I imagine they could use gold today, and find a way to compensate the present claimants.

Mr. BARRY. Mr. Chairman, it is that very increase in the value of the gold which I think has made it more practical now, certainly than it was in 1975, 1976, 1977 and 1978, to bridge the gap between the 40 percent the Czechs earlier set and what the claimants want.

Senator RIBICOFF. So why isn't Senator Moynihan's approach ingenious and practical to make a good deal. Those Communists are pretty hard bargainers. I think they are much tougher bargainers than capitalists. Why would this be a good deal for them now to follow the Moynihan approach.

Mr. BARRY. They obviously feel that their right to this gold is one which is established by the original reparations agreement. Obviously, they would not feel that action by the United States to vest to gold would be a satisfactory way of resolving this.

I don't think that this should be of paramount concern in our going at this problem. Indeed, our relations with Czechoslovakia are poor. There is no present likelihood that they are going to get better.

The only argument I would make regarding relations with Czechoslovakia is that we want to have, as Senator Moynihan said, both sanctions and incentives for the future because I think that it is to our interest to have a mutually beneficial relationship at some point.

Senator RIBICOFF. Senator Dole, any time you want to get in on this, you can.

Senator DOLE. I can wait.

Senator MOYNIHAN. Don't ever say that to the Department of State.

Mr. Chairman, as you know, I have to be on the House side. I may be back while this is still going on.

I wanted to say to the representatives of the Department of State and the Treasury that I think there is issue here with regard to the whole regime of debt settlement, which accumulates, it does not go away. We have settled Mexican claims probably from 1910 or 1880, and now we have Iran, and they keep coming on.

I think the general principle of *rebus sic stantibus* is a legitimate one to invoke when a generation passes after a settlement agreement is reached, and clearly one of the parties, which will have to pay, does not intend to settle. Then I think there has been a change in the fundamental assumption about the agreement, which is that there is a good-faith intention to settle.

At that point you evoke *rebus sic stantibus*, and say, whatever the terms of the 1946 agreement, we are no longer bound by them because the good faith attempt to reach an agreement here has clearly not been evidenced over 30 years or more.

This seems to put into the statutes, as it were, or into the practice of our Government a warning about the inefficacy of just delay. Eventually, the Congress will say, that delay has gone on so long that we are no longer bound by the agreement under a recognized principle of law of fundamental condition having changed, and that condition is that there should be a good faith intention to settle.

That is my view, Mr. Chairman.

Senator RIBICOFF. What could the Czechs do about it, if the United States followed the Moynihan proposal? What could they do about it?

Mr. BARRY. I would not really like to suggest lines of reprisal that the Czechoslovak Government might take. It would not seem to me to be appropriate to raise such issues. We have thought about this, but I don't really think it particularly useful for me to suggest in open session what they might want to do in order to get back at us.

Senator RIBICOFF. I don't see where they could do much of anything. I think the situation of the world as it is, and the shifts taking place all around the world, some time you are going to have to have a policy, not only the United States but all Western governments.

Again, suppose these gentlemen, after they left this room, or even now said, "Mr. Barry, when can we sit down and talk about this practically." If there were private clients involved, the lawyers would get together and try to work out a method, or an understanding with each other.

Is it possible for lawyers, representing private clients, to sit down with the government, when the government is the spokesman for the country, to talk about their problems, to see if they can come to an understanding?

You have responsible lawyers who I am sure would not breach confidences. If they sat down and talked to you about how you could settle this after 32 years, would you talk to these men, or is it your policy that you never talk to anybody?

Mr. BARRY. Certainly, as Harry McPherson has indicated, we talk about the situation on a continuing basis, and we will continue to.

Senator RIBICOFF. But there is a feeling that you give them a runaround, that you don't get very far.

Do you get any place, Harry?

Mr. MCPHERSON. Mr. Chairman, my conversation with Mr. Barry was not a detailed one. It was one in which he asked me what I thought would be acceptable as a settlement if the Czechs were to offer it.

Senator RIBICOFF. Did you tell him?

Mr. MCPHERSON. Essentially, I told him that I did not know, that it would be a matter for the Congress to decide, since Congress had written the 1974 statute.

Senator RIBICOFF. But generally, Congress is not going to act on its own. It is concerned about its constituents, and the citizens of this country. If the constituency is satisfied with the settlement, I don't think Congress is going to try to impose its concept for the settlement.

You do that all the time when you represent private clients dealing on an adversary basis. Now you have an adversary basis between two governments, and yet our Government represents your clients. I am just curious. Maybe it is never done, but I don't understand why it cannot be done.

Mr. MCPHERSON. Clearly, the best result is full justice, which is to pay off the claimants, and to pay them the interest that the Foreign Claims Settlement Commission said they were entitled to, at least through 1958, the total of which would be \$105 million.

In these settlements which appear in the annual report to the Congress of the Foreign Claims Settlement Commission, on page 70 and 71, looking over the whole list you will see, as Mr. Barry said earlier, Yugoslavia in the first negotiation, 91 percent. What does that mean?

The principal amount found by the Foreign Claims Settlement Commission to be valid awards was \$18,417,000. There was a fund for payment, in other words, a negotiated fund of Yugoslav assets of \$17 million. The Foreign Claims Settlement Commission found \$18,417,000 in valid awards. The recovery was therefore 91 percent.

It very much depends on two things, it appears. One, how much money there is here, how much of a fund there is. Second, what the political pressures are.

We might make an agreement with the People's Republic of China because we want diplomatic relations with them, we want to clear away the debris of all 30 years of controversy, and we have a negotiation which results in a 40 percent settlement.

In the case of Czechoslovakia we have got fortuitously in our hands an asset that is worth nearly \$200 million, and the claims as of 1958, principal and interest, amount to \$105 million. So that the asset, the pool is there that is adequate to give us full justice.

Second, I for the life of me do not see any political reason at this point to bend over backward to give the Czechs a 20- or 30- or 40-percent settlement. There is just no reason to. But with their continued intransigence, the only thing that we can do is to take some action which, as stated in our legal memorandum, which I would ask unanimous consent be included in the record—

Senator RIBICOFF. Without objection, it is so ordered.

[Statement and document to be furnished follow:]

TESTIMONY OF HARRY MCPHERSON

Mr. Chairman, members of the subcommittee, my name is Harry McPherson. I am a partner in the Washington law firm of Verner, Liipfert, Bernhard and McPherson.

Since it is clear that three decades is long enough for American citizens to wait before being compensated for the confiscation of their property, and since it is a well-established principle of law that a nation may seize and ultimately expropriate the assets of another country in its own territory if other methods of securing compensation for its nationals should fail, I will speak this morning about three other issues:

First, whether the proposal before you is prohibited by the Paris Reparations Agreement of 1946, or by the Tripartite Commission arrangement.

Second, whether our relations with Britain and France will suffer if the proposal is adopted.

Third, whether the proposal over-reaches, since the United States has agreed to settlements with a number of other countries for a small fraction of the awards against those countries, and this proposal provides for full compensation—which includes interest.

As to the legality of the proposal, in light of our agreements with the British and French: simply put, the Tripartite Commission arrangement requires that all the Commission's *adjudicatory* decisions be unanimous—that is, decisions with respect to how much gold the various claimant nations should receive. Neither that arrangement, nor any other relevant agreement, requires unanimity in decisions or actions affecting the *distribution* of the gold.

The commission's job was to decide who got what. It determined—unanimously, as was required—that Czechoslovakia was entitled to 24 tons of gold. Six tons were in fact delivered to Czechoslovakia. The remaining eighteen tons were located half in the U.S., half in Great Britain, when President Truman blocked the nine tons in this country because of the Czech confiscation. President Truman did not need to secure British and French approval of his action. The gold here was and is a Czech asset, which could lawfully be blocked as a means of securing compensation for American nationals. Congress in 1974 did not need to ask British and French approval before legislatively blocking the return of the gold—for it, like Truman, was blocking assets of a foreign government which had behaved unlawfully toward American nationals, as a means of securing compensation for those nationals.

As to whether our relations with Britain and France will suffer if the proposal is adopted: Asserting that they would, requires assuming that Prime Minister Margaret Thatcher would be seriously distressed if the United States, thirty years after its citizens' property was confiscated by communist Czechoslovakia, moved to secure compensation for those citizens by seizing Czech property in the U.S.

Furthermore, Britain and France can read the language of the Paris Reparations Agreement and the Tripartite Commission arrangement. They can distinguish between what requires unanimous agreement—the adjudicatory functions—and what is entrusted to individual governments—the distributive functions. They can determine whether there is any genuine requirement, more than three decades after the Commission completed its work, and after Czechoslovakia's unlawful expropriations, for one of the commission members to obtain the approval of the other two before acting lawfully to assert the rights of its nationals against the assets of a fourth nation.

It may be that the Department can produce protesting letters from Britain and France. That would not be unusual. Wishing to protect their relations with Czechoslovakia and the Soviet Union, realizing that the Czechs might *claim* that Britain and France had standing at least to protest the American action, and being relatively unconcerned about the rights of 2,600 elderly Americans and a few American companies—it would not be unusual that an expression of disapproval could be produced, or evoked, from Britain and France. But with all due respect to them, I suggest that the American government need not concern itself overmuch about the damage this proposal would do to our trans-Atlantic relations.

Finally, there is the question of whether the proposal over-reaches, by providing for full compensation of the claims. Before comparing this level of settlement with others, let me remind the committee that these claims emerge from the taking of property in 1948. What inflation has done to the true value of the claims, while the expropriated properties have appreciated in value, is obvious. A fractional settlement of awards already eroded by inflation is simply not justice.

Put simply, the percentage of recovery obtained by award-holders against various nations has depended on the amount obtained by the U.S. in negotiations with those nations. The usual practice has been foreign negotiations first, followed by adjudication of awards by the Foreign Claims Settlement Commission.

The results have varied widely. In the first Yugoslav negotiation, a settlement of \$17 million was reached. The Commission made awards of \$18,417,000. Thus, recovery was 91 percent. In the case of Panama, negotiations produced a fund of \$400,000; awards were \$441,000; so recovery was 90 percent. In the case of Bulgaria, recovery was almost 70 percent. But in the two cases of the Soviet Union and China, recovery was 9.7 percent and 41 percent, respectively.

Relatively low settlements are the product, it seems, of inadequate funds from the liquidation of blocked assets, a factor which reduces the United States' bargaining power; and in some cases, particularly China, of political considerations.

In the case of Czechoslovakia, neither of these factors obtains. Czech gold assets in this country, which are subject to seizure, amount to at least \$168 million. Thirty-two years after its confiscation of American property, Czechoslovakia has still not

made an acceptable offer of settlement. There is no apparent political reason why the United States should reward that intransigence by concurring in an agreement that provides only fractional justice for its citizens.

Concluding, Mr. Chairman, the proposal before you is lawful; its adoption will not create serious foreign policy problems for the United States; and far from overreaching, it is a very modest attempt to compensate citizens whose claims to date have received only the most timorous advocacy from our own government, and a contemptuous response from the government that has enjoyed the use of their property for three decades.

APPENDIX TO THE STATEMENT
PRESENTED BY HARRY MCPHERSON

BEFORE THE
SUBCOMMITTEE ON INTERNATIONAL TRADE
AND
COMMITTEE ON FINANCE
UNITED STATES SENATE
WASHINGTON, D. C.

September 9, 1980

MEMORANDUM
REGARDING LAWFULNESS
OF THE REMEDY
PROVIDED BY
SENATOR MOYNIHAN'S
PROPOSED AMENDMENT TO S.2721

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LEGAL DISCUSSIONI. STATEMENT OF ISSUES

Shortly after the Communist government took control in Czechoslovakia following World War II, valuable American property interests were confiscated by the Czechoslovak government without the payment of any compensation. For more than thirty years, the Czechoslovak government has enjoyed all the economic benefits of those properties. Yet it has ignored an understanding with the United States to compensate American citizens for their losses and has violated well-established principles of international law which call for prompt compensation.

Senator Moynihan's proposal would provide a final period, more than three decades after the Czech confiscation, for the Department of State to negotiate an acceptable settlement with the Czech government. If such a settlement is not reached during that period, his proposal would direct the Secretary of the Treasury (1) to liquidate Czechoslovak assets blocked within the United States, including nine metric tons of Czech gold held in the Federal Reserve Bank in New York; (2) to invest the proceeds from the assets' liquidation, using only the investment interest to satisfy the American awards; and, (3) once all American awards have been satisfied, to return the principal proceeds in full to Czechoslovakia.

This memorandum, prepared jointly by the law firms of Verner, Liipfert, Bernhard & McPherson; Fried, Frank, Harris, Shriver & Kampelman; and Edward L. Merrigan examines the legal implications

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of Senator Moynihan's proposal taking into account several legal objections noted by the Department of State.

Careful legal analysis requires the following conclusions:

1. The Czechoslovak government has violated international law, including an explicit agreement with the United States, by expropriating property belonging to United States citizens without providing any compensation for a period of more than thirty years;

2. In such circumstances, the United States may, pursuant to international law, enforce its citizens' adjudicated awards, liquidate the Czech gold located here, and distribute the proceeds to satisfy the Czech debts;

3. Neither the Paris Agreement of 1946 nor the Tripartite Commission Arrangement bar such an action;

4. The legislative proposal now pending is less drastic than the legal process described above -- and is equally lawful;

5. The legislative proposal is equitable both to Czechoslovakia and its American creditors, wholly consistent with the spirit and the letter of the Paris Reparations Agreement of 1946 and of the Tripartite Arrangement, and accomodates sound public and foreign policy considerations as well as legal requirements; and,

6. The Congress has full legal authority to enact this legislation.

Without offering any supportive legal analysis, the Department of State twice has opposed the enactment of any legislative

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solution to this protracted impasse: once, in hearings in 1974, when members of Congress proposed simply to vest and sell the Czech gold to satisfy Czech debts, and again recently in a letter and in testimony describing several grounds for the Department's opposition to H.R. 7338, a proposal identical to Senator Moynihan's, pending in the House. (Attachment No. 1).

Stated simply, the State Department contends that no legal remedy involving the Czech gold exists (1) because Czechoslovakia's right to the gold is firm and uncontested; (2) because the Paris Reparations Agreement and the Tripartite Commission Arrangement require unanimity among the United States, Britain and France before the gold may be distributed in any fashion; and (3) because the United States, Great Britain and France, as members of the Tripartite Commission with custody of the gold, have an inviolable obligation to restore the gold to Czechoslovakia.

This memorandum demonstrates that the State Department's position is untenable because it patently misstates well-established international legal principles and misconstrues unambiguous international agreements.

II. FACTS

A. Introduction

Approximately 2,600 American citizens hold unpaid awards worth about \$105 million against Czechoslovakia arising from the Czechoslovak government's expropriation of American properties late in the 1940's. The awardholders contend that international

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law would permit outright vesting and sale of blocked Czech gold and other assets located within the United States to satisfy thirty-year-old unpaid Czech debts. Therefore, international law certainly permits this more temperate legislative proposal which would return the proceeds from the sale of the Czech gold to Czechoslovakia in full after American awards have been satisfied out of investment interest.

The Department of State opposes that position, contending that the United States would violate international law by acting unilaterally while any prospect for a negotiated settlement with Czechoslovakia exists, and that the Paris Reparations Agreement and the Tripartite Commission Arrangement bind the United States to secure the consent of Great Britain and France before liquidating the Czech gold. Representatives of the American awardholders contest both the State Department's assertions--and this memorandum will demonstrate that both are meritless.

To weigh the competing legal arguments, one must examine (1) the Czechoslovak government's expropriations and a prolonged series of unsuccessful efforts by the United States government to secure remuneration for American awardholders; and, (2) the activities of the United States, Great Britain and France pursuant to the Paris Reparations Agreement of 1946.

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B. Czechoslovak Agreement In 1946 To
Compensate American Citizens For
Expropriation Of Their Properties

On November 14, 1946, the Czechoslovak government and Acting Secretary of State Dean Acheson entered an agreement which provided as follows:

The Government of the United States and the Government of Czechoslovakia will make adequate and effective compensation to nationals of one country with respect to their rights or interests in properties which may have been or may be nationalized or requisitioned by the Government of the other country. 15 Department Of State Bulletin 1004, 1005 (December 1, 1946). [Emphasis added].

Apart from well-established international legal requirements to the same effect, that agreement obliged the Czechoslovak government, then and in the future, to compensate American citizens for expropriations of their properties located in Czechoslovakia.

C. Agreements Of 1946 Providing For The
Restitution Of Gold Stolen By The Nazis
During World War II; Restoration Of Czech
Title To Gold

During the second world war, the Nazis looted huge amounts of gold from various countries. On January 14, 1946, eighteen of the affected countries, including the United States, Great Britain, France and Czechoslovakia signed the Paris Reparations Agreement of 1946.^{1/} The provisions of the Paris Agreement are examined specifically later in this memorandum. Among other significant provisions, the Paris Agreement provided that all monetary gold

^{1/} 15 Department of State Bulletin, 114 (January 27, 1946)
[Attachment No. 2].

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found in Germany should be pooled for restitution among the countries from which it had been stolen. The countries participating in the pool were directed to submit claims to the United States, Great Britain and France, as the occupying powers. After adjudication of the competing claims, the United States, Great Britain and France were directed to "take appropriate steps within the Zones of Germany occupied by them respectively to implement distribution" to the countries entitled to restitution of a portion of the gold.

To carry out that function under the Paris agreement, the United States, Great Britain and France signed the Tripartite Commission Arrangement^{1/} on September 27, 1946, establishing the Tripartite Commission. Again, we examine the specific provisions of the Tripartite Commission Arrangement later in this memorandum. The Commission Arrangement prescribed its functions, stipulating that the Commission's adjudicatory decisions were to be unanimous. The arrangement also provided that the three governments should assist one another in the distribution of the gold available for restitution and perform certain administrative acts, such as opening and maintaining bank accounts.

Among its other actions, the Commission unanimously restored to Czechoslovakia title to approximately twenty-four metric tons of gold, completing the portion of its function regarding Czechoslovakia that required unanimity.

^{1/} 15 Department of State Bulletin, 563 (September 29, 1946) [Attachment No. 3].

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D. Expropriation Of American Properties By Czechoslovakia In 1948, Followed By A Prolonged Series Of Unsuccessful Attempts By The United States Government To Secure Remunerative Compensation For Affected American Citizens

Following the amicable post-war agreements described above, the communist government seized control within Czechoslovakia in 1948, an event that prompted President Truman and the Congress to revive the military draft.^{1/} Soon the new communist government expropriated all American property interests without the payment of any compensation.

President Truman responded by prohibiting the return to Czechoslovakia of any Czech assets in the United States, including nine tons of Czech-owned gold located in New York -- the subject of the Tripartite Commission's deliberations -- and some steel mill equipment purchased here by Czechoslovakia but not yet delivered.^{2/}

The State Department initiated negotiations to obtain compensation for the Americans whose properties had been taken, pursuant to the agreement obtained by Secretary Acheson in 1946. In 1949, the Czechoslovak government agreed in principle to settle American claims, but no final settlement resulted. Further unsuccessful negotiations occurred in 1955.

^{1/} For a fuller description of the communist takeover and its effect upon relations, see Attachment No. 4.

^{2/} To prevent the value of the steel mill equipment from deteriorating, the Treasury liquidated it in 1954, creating a fund of \$9 million. See 1958 U.S. Code Congl. and Admin. News, 3299, 3301.

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Having failed at those two efforts to negotiate a claims settlement agreement, the Eisenhower Administration, in 1958, recommended -- and the Congress enacted -- an amendment to the International Claims Settlement Act of 1949 (22 U.S.C. §§1642-1642p) authorizing the Foreign Claims Settlement Commission ("FCSC") to determine claims of United States citizens against the Czechoslovak government for takings of property between January 1, 1945 and August 8, 1958--all such claims to be filed by September 15, 1959.

In addition to authorizing the determination of American claims against Czechoslovakia, the law provided that if, within one year after enactment, the United States and Czechoslovakia did not enter a settlement agreement, the proceeds from the sale of the Czechoslovak-owned steel mill equipment could be used to make pro rata payments to United States citizens holding awards from the FCSC against Czechoslovakia. No settlement was obtained.

American citizens submitted claims for \$364 million. The FCSC completed its award determinations by 1962, reducing the size of many of the awards -- in large part because of the difficulty of proving the value of properties seized ten years earlier in an uncooperative foreign country. Each award included principal, plus interest at a rate of 6% through 1958: in all, totalling approximately \$113 million.^{1/} In accordance with the provisions

^{1/} Foreign Claims Settlement Commission of the United States, Decisions and Annotations, page 379.

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provisions of the Czechoslovak Claims Act, the entire \$9 million from the sale of the Czechoslovak steel mill equipment was distributed. Every awardholder received initially an amount of \$1,000 or the amount of the award, whichever was lower. This resulted in full payment of some awards. In addition, pro rata payments of about 5.3% were made on the balance of the remaining 2,600 awards, leaving an unpaid balance of \$105,104,437 on the face amount of the awards.

E. Congress' Rejection of Uncompensatory
Settlement Proposed in 1974; Directive
That Gold Be Blocked And A Compensatory
Agreement Be Negotiated

For about eleven years following the completion of the Czechoslovak claims program, no effort was made by the Czechoslovak government to reach a settlement. Then, in September 1973, at the height of the detente period and as the Congress was enacting legislation which offered substantial trade credits, the Czechs and the Nixon Administration resumed settlement negotiations. Those negotiations resulted in the initialing of an agreement on July 5, 1974, which rightly can be characterized as having been completely unfair to the aging awardholders who had awaited a reasonable settlement for nearly thirty years. The principal provisions provided

1. That the United States immediately would release to Czechoslovakia the gold and all other blocked assets it held as security for Czechoslovakia's payment of the \$105 million expropriation debt already adjudicated; and,

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2. That the \$105 million debt to United States citizens, and the full amount of any unadjudicated claims, would be settled fully and finally for a payment of \$20.5 million, payable, without interest, over a twelve-year period.^{1/}

The parties also apparently contemplated that, upon passage of the Trade Act, Czechoslovakia would be eligible for most-favored-nation treatment under United States tariff laws and for extension of other important economic benefits.^{2/}

Because the initialed agreement required formal ratification by both governments, the Congress had an opportunity to intervene and examine the agreement. After examination and hearings, the Congress vetoed the agreement, in effect, and enacted the following provisions (Section 408) of the Trade Act of 1974:

- (a) The arrangement initialed on July 5, 1974, with respect to the settlement of the claims of citizens and nationals of the United States against the Government of Czechoslovakia shall be renegotiated and shall be submitted to the Congress as part of any agreement entered into under this subchapter with Czechoslovakia.
- (b) The United States shall not release any gold belonging to Czechoslovakia and controlled directly or indirectly by the United States pursuant to the provisions of the Paris Reparations Agreement of January 24, 1946, or otherwise, until such agreement has been approved by the Congress.
(19 U.S.C. § 2438) [emphasis added]

^{1/} A copy of the 1974 Agreement is appended as Attachment No. 5.

^{2/} See Senate Report 93-1298, 93rd Cong., 2nd Sess., 1974 U.S. Code Congl. and Admin. News, at 7347.

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The reason provided by the Congress for its action was as follows:

One-sided agreements of this nature are especially dangerous to the United States and its citizens at this particular time in history when nations in various parts of the world are threatening to expropriate or nationalize U.S. properties worth billions of dollars, while other nations have already taken valuable U.S. holdings without the payment of just compensation. The United States simply cannot afford to proclaim in the face of this trend that expropriations of U.S. properties will quickly be forgotten if the taking nation ultimately offers a mere pittance in return. Senate Report 93-1298, 1974 U.S. Code Congl. and Admin. News, supra, at 7348.

The Congress advocated an agreement, like those which had been entered with Yugoslavia, Bulgaria, and other nations, which would provide for a lump sum payment of one hundred cents on the dollar,^{1/} effectively-instructing the State Department to negotiate such an agreement.

F. Current Status Identical To 1955,
When Congress Last Enacted Remedial
Legislation In This Matter

Insofar as we can ascertain, no such negotiations occurred after 1974 until Senator Moynihan and Representative Wolff introduced S.2721 and H.R.7338 in 1980. Suddenly the State Department announced broadly that it would table a proposal for a full lump sum payment of the \$105 million debt and that successful negotiations would be concluded shortly.^{2/} However, we understand the

^{1/} Senate Report 93-1298, 1974 U.S. Code Congl. and Admin. News, supra, at 7348. See also, 22 U.S.C. §§1631a, 1641a.

^{2/} See, the New York Times, June 2, 1980, p. All, column 1.

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Czech Ambassador has advised several members of Congress that his Government has flatly rejected the State Department's proposal, leaving matters exactly where they were in 1949 and 1955--when the Congress last enacted remedial legislation.

III. LEGAL ANALYSIS

A. Czechoslovakia Has Flagrantly Violated International Law And An Explicit Agreement With The United States

1. Violation Of International Legal Principles

Recital of this history demonstrates that Czechoslovakia has violated international law by expropriating properties belonging to American citizens worth \$113 million without offering just compensation for a period of over thirty years. The State Department has agreed that Czechoslovakia's conduct has been unlawful.^{1/}

Confirmation of this obvious fact should lay to rest a supposed mitigating point raised by the State Department in 1974: that the Czech government does "not recognize as we do that they have an international obligation... to compensate for the nationalization of property."^{2/}

^{1/} Executive Hearings Before The Committee On Finance, United States Senate, 93rd Cong., 2nd Sess., September 11 and 26, 1974, pp. 10, 23 (Hereinafter "Hearings, p. ____"). [Attachment No. 6]

^{2/} Hearings, p. 4.

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a. International Legal Principles

Whatever its own perceptions may be, the government of Czechoslovakia stands clearly in violation of international law for its failure to provide adequate, effective and prompt compensation^{1/} for expropriated American-owned assets. Governments are permitted under international law to expropriate foreign-owned assets located within their national boundaries so long as they adhere to accompanying international legal principles in the process. Failure to provide adequate, effective and prompt compensation makes an expropriation an illegal act.^{2/}

Sections 186 and 187 of the Restatement by the American Law Institute on the "Responsibility of States for Injuries to Aliens" read:

... Failure of a state to pay just compensation for taking the property of an alien is wrongful under international law, regardless of whether the taking itself was wrongful under international law.

* * *

1/ The State Department represents that Czechoslovakia acknowledges that it has responsibility to provide compensation to the owners of expropriated properties (Attachment No. 1, p. 2). This admission does not mitigate Czechoslovakia's offense absent adequate, effective, prompt compensation.

2/ See B. A. Wortley, Expropriation in Public International Law, Cambridge University Press, Cambridge, Great Britain (1959), p. 34, citing extensive authority including, among others:

Whiteman, Damages in International Law, vol. II, p. 1387.

Hyde, International Law (2nd, revised ed. Boston, 1945), vol. III, pp. 710-27.

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Just compensation ... must be adequate in amount ..., paid with reasonable promptness, and paid in a form that is effectively realizable by the alien, to the fullest extent that the circumstances permit ..."^{1/}

The State Department's historic position regarding the requirement of compensation is unambiguous. In a note from Secretary of State Hull to the Mexican Ambassador on April 3, 1940, he stated:

The Government of the United States readily recognizes the right of a sovereign state to expropriate property for public purposes ... however, it has been stated with equal emphasis that the right to expropriate property is coupled with and conditioned on the obligation to make adequate, effective and prompt compensation. The legality of an expropriation is in fact dependent upon the observance of this requirement.^{2/}

The Czech government has offered no proposal which could be considered adequate, effective, or prompt. "Adequate" compensation ordinarily means the fair market value of the property expropriated plus interest payable up to the date of payment.^{3/} In the Chorzow Factory Case, the Permanent Court of International Justice dealt with the expropriation of German-owned assets by Poland. The majority opinion stated:

The essential principle contained in the actual notion of an illegal act--a principle which seems to be established by international practice and in particular by the decisions of arbitral tribunals--is that reparation must, as far as possible, wipe out all the

^{1/} American Law Institute, Restatement Of The Law, Second, Foreign Relations Law Of The United States (1965), pt. IV, pp. 562-63 (Hereinafter "Restatement at ____").

^{2/} M. Whiteman, Digest of International Law, U.S. Government Printing Office, Washington, D.C. (1967), p. 1020.

^{3/} Restatement at pp. 564-565. o

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consequences of the illegal act and reestablish the situation which would, in all probability, have existed if that act had not been committed.^{1/}

Thus, the Congress' directive in 1974 for a one-hundred-cent payment.

"Effective" compensation means payment in cash or property readily convertible into cash. "Prompt" compensation means adequate and effective compensation provided as soon as is reasonable under the circumstances.^{2/} Thus, the Congress' requirement for a lump sum cash payment.

The Congress has recognized these legal principles in various enactments. See, for example, 19 U.S.C. §2462; 22 U.S.C. §2370; 7 U.S.C. §1157. Clearly, Czechoslovakia's conduct for more than thirty years -- continuing to this very day -- violated these legal standards, rendering its entire course of conduct illegal.

2. Violation Of Explicit Agreement

If there could remain any doubt that Czechoslovakia's conduct has been illegal, that doubt would be eradicated by the fact that Czechoslovakia's conduct violates a specific agreement with the United States to "make adequate and effective compensation to nationals [of the United States] with respect to their rights or interests in properties which have been or may be nationalized or requisitioned [by the Czechoslovak government]."^{3/}

^{1/} M. Whiteman, Digest of International Law, U.S. Government Printing Office, Washington, D.C., (1967), p. 1137.

^{2/} Restatement at 650.

^{3/} Agreement between Ambassador of Czechoslovakia and Acting Secretary of State Acheson, November 14, 1946, 15 Department of State Bulletin 1005.

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The international legal scholar, B.A. Wortley, wrote that confiscation without compensation in violation of a specific agreement unarguably violates international law:

If a protest can be based upon the violation of a treaty, then it will be easy to bring the violation home to the offending party, who is estopped from denying its basis in international law ... Expropriation In Public International Law, Cambridge University Press, Cambridge, Great Britain (1959), p.76.

Czechoslovakia's conduct clearly violates established international legal principles, but the violation of an explicit agreement to compensate Americans for all expropriations provides added tangible, irrefutable proof that Czechoslovakia has violated international law for the past three decades.

B. Under These Circumstances, The United States Enjoys A Legal Right To Utilize Czech Gold Located in New York As Proposed

The State Department has assured the Congress that the Department would support even outright vesting, sale, and distribution of Czech gold located in the United States--as it joined in vesting and selling Czech steel mill equipment in 1958--if that could be accomplished legally. However, the Department has asserted further -- though without offering a legal analysis--that the United States cannot legally vest the gold so long as any prospect for a settlement remains.^{1/} We will demonstrate that

^{1/} Attachment No. 1, p. 3.

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the State Department's off-handed statement of the law was inaccurate. The Czech gold located in New York is susceptible to full legal process.

1. Precisely Because Czechoslovakia's Right To The Gold Is Firm And Uncontested, The United States May Vest The Gold

Deputy Assistant Secretary of State Ingersoll asserted in 1974 that the first reason the Czech gold cannot be attached is because Czechoslovakia's claim to the gold is "firm and uncontested."^{1/} Deputy Assistant Secretary of State Kempton Jenkins stated the same proposition a little differently:

Senator Byrd: It was an illegal action the Government of Czechoslovakia took when it confiscated American property (without compensation).

Mr. Jenkins: We recognize that. But taking one illegal action to counter another is not the best way to restore international law.^{2/}

Actually, international law clearly provides for precisely the type of attachment proposed by this legislation. And it is Czechoslovakia's "uncontested right" to the gold that permits vesting.

First, it is an elementary principle of law that a person who has obtained a judgment against another, who fails to satisfy the judgment, may proceed against the assets of the defaulting party irrespective of who holds them. To be sure, under the doctrine of sovereign immunity, an individual citizen may not

^{1/} Hearings, p. 10.

^{2/} Hearings, p. 22.

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proceed to attach assets of a foreign sovereign recognized by that citizen's government. But the government of a citizen holding a judgment (or award) may, under international law, espouse the citizen's claim and proceed against the assets of the government against which the claim is asserted. That is just what the United States did in seizing the Czech steel mill equipment and distributing the proceeds to American awardholders. It is what the United States now proposes in order to resolve the Iranian expropriation matter.

This method of repairing injuries visited by one nation upon the citizens of another is grounded on the traditional international principle of "retorsion." Black's Law Dictionary defines retorsion as follows:

RETORSION. In international law. A species of retaliation, which takes place where a government, whose citizens are subjected to severe and stringent regulation or harsh treatment by a foreign government, employs measures of equal severity and harshness upon the subjects of the latter government found within its dominions.

E. de Vattel, described the traditional concept:

When a sovereign is not satisfied with the way in which his subjects are treated by the laws and customs of another Nation, he is at liberty to announce that he will follow the same policy, with respect to the subjects of that Nation, which that Nation is following with respect to his subjects. This is what is called retorsion, and it is in every way in keeping with justice and sound statesmanship.^{1/}

^{1/} The Law Of Nations or The Principles of Natural Law, Oceana Publications, Inc., New York [Translation of 1758 edition, reprinted 1964], page 228.

With regard specifically to reparations, Oppenheim's International Law, as edited by Hersch Lauterpacht states: "If the delinquent State refuses reparation for the wrong done, the wronged State can, consistently with any existing obligation of pacific settlement, exercise such means as are necessary to enforce an adequate reparation."^{1/}

In Expropriation in Public International Law, B. A. Wortley writes: "The conclusion must be that, save well-defined exceptional cases ... there is no principle of international law which prevents State A, which has unsuccessfully claimed restitution of property seized from its nationals or itself by State B, from regarding the seizure as prima facie unlawful in public international law and as meriting measures of reprisal."^{2/} There are four such "well-defined exceptional cases" which Wortley discusses: (1) where there has been proper compensation, (2) where the expropriation is in punishment for a crime, (3) where the property is seized via taxation, and (4) where the taking is indirect (i.e., where regulatory measures severely restrict the rights normally enjoyed by an owner of property). The Czechoslovakian expropriations do not fall within any of these exceptions.

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- ^{1/} H. Lauterpacht, Oppenheim's International Law, eighth edition, Longman's, Green Co., London (1955), p. 354.
- ^{2/} B. A. Wortley, Expropriation in Public International Law, Cambridge University Press, Cambridge, Great Britain (1959), p. 155.

Judge Friendly explained the retaliation doctrine in Sardino v. Federal Reserve Bank of New York, 361 F.2d 106, 112-113 (2d Cir., 1966):

There is a long history of governmental action compensating our own citizens out of foreign assets in this country for wrongs done them by foreign governments abroad.

* * *

The unquestioned right of a state to protect its nationals in their persons and property while in a foreign country ... must permit initial seizure and ultimate expropriation of assets of nationals of that country in its own territory if other methods of securing compensation for its nationals should fail.

* * *

...Congress has not yet chosen to invoke the ultimate sanction (against Cuba)...Such commendable forbearance should not be understood as connoting a lack of power.

A treatise cited by Judge Friendly states the underlying principle as follows:

Retaliatory acts ... are extraordinary measures which, normally, would be unlawful. They have in common the fact that their legality is claimed to arise from their appropriateness as responses to the prior illegalities of another state, the original lawbreaker having refused to give satisfaction for its wrongs or to end its wrongful practices.^{1/}

Since Czechoslovakia failed to provide prompt, adequate and effective compensation for expropriated assets, the United States

^{1/} Colbert, Retaliation In International Law (1948), p. 1.

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has the right to retaliate under international law. Such retaliation may take the form of seizure of assets located within the United States if the Czechs have clear title to such assets. The Congress' utilization of Czechoslovakia's gold, with the stipulation that the proceeds of the liquidated gold eventually will be restored to Czechoslovakia after its interest has been applied to discharge Czech debts, is a less drastic step and therefore is unquestionably lawful.

Thus the State Department's first objection that the United States may not interfere with Czechoslovakia's right of title to the gold lacks merit; and the fact that Czechoslovakia continues to prolong the thirty-year impasse does not preclude congressional action, rather it commends it.^{1/}

C. Neither The Paris Reparations Agreement of 1946,
Nor The Tripartite Commission Arrangement, Bar
Utilization Of Czech Gold To Satisfy American Awards

1. The Tripartite Commission Arrangement's
Unanimity Requirement Applied Only To
The Commission's Adjudicatory Decisions,
Long-Since Concluded, Not To The Member
Governments' Actions To Distribute Czech
Gold Thirty Years Later.

The State Department's next legal assertion is that any unilateral action involving liquidation of Czech gold located here would violate a requirement of the Tripartite Commission

^{1/} Note that congressional enactments in the past have considered offending country to be in default after six months of fruitless negotiations. See 7 U.S.C. §1158.

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Arrangement that "all actions and decisions"^{1/} of the Commission be unanimous. That assertion misstates the provisions of that agreement and distorts their intended meaning.

Although the Tripartite Commission Arrangement requires that all adjudicatory decisions be unanimous, no pertinent international agreement requires unanimity in decisions, much less actions, regarding the gold's distribution. Frankly, the State Department should be ashamed for attempting to frustrate this equitable proposal, which finally would compensate thousands of aging American creditors after more than thirty years, without materially harming Czechoslovakia, with such a groundless technical argument.

The pertinent provisions governing the allocation and distribution of this gold appear in Part III of the Paris Reparations Agreement of 1946:^{2/}

Restitution of monetary gold.
Single Article.

A. All the monetary gold found in Germany by the Allied Forces and that referred to in paragraph G below (including gold coins, except those of numismatic or historical value, which shall be restored directly if identifiable) shall be pooled for distribution as restitution among the countries participating in the pool in proportion to their respective losses of gold through looting or by wrongful removal to Germany.

* * *

^{1/} The Treasury witness repeated the State Department's misstatement of the Tripartite Commission Arrangement's language during a House Foreign Affairs Subcommittee hearing on H.R. 7338 on August 19, 1980. Only by so embellishing the Arrangement's provisions can one derive the construction urged by the State Department.

^{2/} 15 Department of State Bulletin 114 (January 27, 1946) [Attachment No. 2].

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C. A proportional share of the gold shall be allocated to each country concerned which adheres to this arrangement for the restitution of monetary gold and which can establish that a definite amount of monetary gold belonging to it was looted by Germany or, at any time after March 12th, 1938, was wrongfully removed into German territory.

* * *

E. The various countries participating in the pool shall supply to the Governments of the United States of America, France and the United Kingdom, as the occupying Powers concerned, detailed and verifiable data regarding the gold losses suffered through looting by, or removal to, Germany.

F. The Governments of the United States of America, France and the United Kingdom shall take appropriate steps within the Zones of Germany occupied by them respectively to implement distribution in accordance with the foregoing provisions. [Emphasis Added]

And in Paragraphs 5 and 6 of the Tripartite Commission Arrangement:^{1/}

The functions of the Tripartite Commission for the Restitution of Monetary Gold shall be:

a. To request the submission of and to receive from Governments claiming the right to participate in the division of monetary gold found in Germany or which may be recovered from a third country to which it was transferred from Germany, claims for restitution of gold looted by or wrongfully removed to Germany, supported by detailed and verifiable data regarding such losses.

^{1/} 15 Department of State Bulletin 563 (September 29, 1946) [Attachment No. 3].

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b. To scrutinize claims received and to determine the share of each claimant Government in the pool of monetary gold to be distributed by way of restitution in accordance with Part III of the Paris Agreement on Reparation and any other pertinent agreements.

c. In due course to announce the total value of the pool of monetary gold which will become available for distribution by way of restitution.

d. When all claims for restitution have been received and adjudicated upon, to announce the share in the pool of monetary gold available for restitution to each country entitled to participate in the pool.

e. In such other ways as shall be decided by the three Governments establishing the Commission, to assist in the distribution of the pool of monetary gold available for restitution.

f. To perform such administrative acts as may be necessary to carry out the functions referred to in sub-paragraphs (a) through (e) above, including without limiting the generality of the foregoing, the opening and maintaining of bank accounts, and the making of contracts for the performance of necessary services. Expenses of the Commission incident to the carrying out of its functions shall be a first charge against the fund of monetary gold to be distributed.

6. Decisions of the Commission shall be by unanimous agreement of its members.
[Emphasis Added]

As the State Department knows very well, the Commission was intended to function as an adjudicatory body with limited tenure. In fact, the Commission rendered its adjudicatory decisions rapidly -- including the unanimous decision favoring Czechoslovakia-- completing its central mission, allocation of the gold among

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competing claimants. The remainder of its official function is "to assist" the member governments in the gold's distribution (a function that explicitly does not require unanimous decisions) and to maintain its custodial bank accounts until those governments have distributed all the gold (See, Tripartite Arrangement, Subparagraphs 5(e)-(f)).

Moreover, both agreements treat the adjudicatory and distribution responsibilities quite differently: the adjudicatory functions being collective, and unanimous (Tripartite Arrangement, subparagraphs 5(a)-(d) and 6); the distribution function being entrusted to the individual member governments, with no requirement of unanimity (Reparations Agreement, Paragraph F; Tripartite Arrangement, subparagraph 5(e)).

The State Department's construction finds no support in the agreements' provisions and would distort their meaning and intent. The status of this matter is clear: all the necessary unanimous decisions were rendered thirty years ago; and Czechoslovakia's title to twenty-four tons of gold was restored in a unanimous allocation.^{1/} The Commission accomplished its central mission, and no further substantive decisions are required.

The Congress sought no one's consent to block the gold in 1974; President Truman did not seek unanimous consent before subjecting the Czech gold located here to legal process (blocking its return); the British and French did not participate in the

^{1/} Note that Czechoslovakia's title is so secure that six tons of the allocated gold actually were delivered to Czechoslovakia.

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bilateral negotiations between the United States and Czechoslovakia in 1974; and no unanimous consent is required to effectuate full legal process now.

2. The Tripartite Commission's Albanian Precedent
Demonstrates That No Inviolable Obligation
Exists To Return The Gold To Czechoslovakia

The State Department's third assertion is that the Commission members have an inviolable obligation to return the gold to Czechoslovakia: thus the exercise of full legal process (i.e., confiscation of the Czech gold) would be contrary to that obligation.

First, the gold already has been subjected to legal process and remains encumbered today. The United States has blocked its return to Czechoslovakia for thirty years and it remains blocked under the legislative injunction imposed in 1974. The State Department sanguinely assures that no time limitation for the gold's return exists,^{1/} but the foregoing discussion illustrates that, were President Truman's act and the Congress's 1974 statute not lawful retaliatory processes, the United States and the Tripartite Commission would stand in clear violation of international law for failing to return the gold promptly. Hence, the gold clearly is susceptible to legal process, including -- as Commission precedents show -- liquidation to satisfy debts to a Commission member.

^{1/} Hearings, p. 22.

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The first indication that this gold is not sacrosanct appears in the Tripartite Commission Arrangement itself. Subparagraph 5.f. stipulates that expenses of the Commission incident to performance of its functions shall be a first charge against the gold to be distributed. An even more compelling precedent appears in the case of Albania.

Great Britain had suffered losses unrelated to its functions on the Tripartite Commission when part of the British fleet was destroyed by mines placed by Albania in the Corfu Channel. Britain had negotiated with Albania for compensation, receiving an offer only for a token sum. When Italy and Albania contested a claim to a portion of the gold, Great Britain contended the gold should be delivered to Great Britain in satisfaction of its claims if Albania prevailed.

The Commission members agreed that, if Albania prevailed, the United Kingdom -- not Albania -- should receive the gold to offset the British claims.^{1/} The Commission referred the adjudication to an arbitrator, who ultimately held for Albania. Thus, by the Commission's decision, the United Kingdom was entitled to foreclose on the gold in satisfaction of an unrelated judgment.

During the House Foreign Affairs Subcommittee hearing on H.R. 7338 on August 19, 1980, the State Department testified that three distinguishing factors render the Albanian precedent inapposite to the Czech matter: (1) The International Court of Justice was involved; (2) all three members of the Tripartite

^{1/} 24 Department of State Bulletin, 785 (May 14, 1951).

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Commission agreed Britain should receive the Albanian gold; and, (3) an impartial third party was provided to protect Albania's rights (transcript, pages 45-47).

We have raised the Albanian precedent to refute the State Department's simplistic argument that, because the gold in question was allocated to Czechoslovakia, the Commission members have an inviolable duty to return it in specie to Czechoslovakia. The Albanian precedent demonstrates that the Commission members rejected that argument by deciding Albanian gold could be delivered to Great Britain to offset debts unrelated to the gold.

We have enclosed a copy of the State Department Bulletin which describes the Albanian precedent (Attachment No. 7). The Bulletin is written in two parts: (1) a description of the general conclusions by the Commission members; and, (2) the text of the formal agreement.

Probably the strongest of the three supposed distinguishing factors is the existence of a judgment from the International Court of Justice favoring Britain. It is not an effective distinguishing factor here. Czechoslovakia's responsibility to provide compensation is unequivocal, even being spelled out in a clear agreement; and the Czech government has acknowledged it. The Foreign Claims Settlement Commission rendered enforceable awards in 1962. The relevant factor--which is completely analogous in these cases--is the prolonged period of fruitless negotiation to obtain payment on the judgments, both of which arose from circumstances unrelated to the gold: damage to vessels from an undisclosed mine field in Albania and expropriations of property in Czechoslovakia. In the

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Albanian case, the Commission approved delivery of Albanian gold to break the stalemate.

Earlier in this memorandum, we have demonstrated that the Commission's unanimous decision to deliver Albania's gold to Britain--the second supposed distinguishing factor--is not relevant in this case. It is noteworthy that the conclusion favoring Britain was not included in the text of the formal Commission agreement; it was described as a determination by the members only in the introductory text. Britain sought the Commission's acquiescence in the delivery of Albania's gold to offset unrelated claims contemporaneous with the Commission's adjudication of Italy's and Albania's competing claims to the gold, an adjudication which did require unanimous agreement. Had Britain sought to offset its claim after a full adjudication favoring Albania, with Albanian gold held in Britain's possession no unanimity among other Commission members would have been required. However, it is fortuitous and instructive that, when the Commission members confronted the issue, they determined readily to deliver Albania's gold to offset an unrelated British award. Czechoslovakia enjoys no inviolable right to the gold awarded by the Commission; and supervening expropriations entitle the United States to use the Czech gold to offset unsatisfied Czech debts.

The third, and weakest, supposed distinguishing factor is incomprehensible. An arbitrator was appointed to decide between the claims of Italy and Albania. If Albania won on its claim, the Commission dictated that the gold should revert to Great Britain

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automatically, unless Albania or Italy appealed the arbitrator's ruling successfully to the International Court of Justice. Any country may contest injurious international actions before appropriate tribunals. This factor in no way distinguishes the Albanian precedent.

The State Department has attempted to interpose distinctions without a difference between the Albanian precedent and this case. The Albanian precedent shows unarguably that Czechoslovakia does not have an inviolable right to the gold located here. By virtue of Czechoslovakia's clear title to the gold and its supervening expropriations without compensation to American victims, the United States enjoys the same right to offset unpaid debts with the gold as was granted to England. Perhaps the most revealing contrast is that Britain pursued its request (albeit gratuitously) with fellow Commission members, whereas the State Department has instigated their opposition to a reasonable settlement of the U.S. awards.

Again, the remedy proposed here is less drastic--ultimately effecting a return of the gold's full value to Czechoslovakia--and therefore is even more lawful.

3. The United States Lawfully May Attach The Czech Gold To Satisfy Claims Even If It Is Deemed To Be Held In The Custody Of The Tripartite Commission, A Third Party

There is nothing unusual about a judgment creditor attaching and liquidating a debtor's property held in the custody of a third party, although in this case legislation would be required

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to complete the process. It would not be surprising to find the Congress conferring such authority very soon to assist the President in the attachment and distribution of Iranian assets.

The State Department has agreed that the Congress could enact such legislation, as in the case of the Czech steel mill equipment in 1958 if such a law, followed by vesting and distribution, would not violate an international agreement.^{1/} We have demonstrated that no agreement would be violated.

However, we point out that the Congress has provided precedents for exercising authority to enact legislation which provides for liquidation and distribution of foreign assets held by third parties to satisfy American creditors. For example, under the Trading With The Enemy Act,^{2/} assets held by third parties -- even debts owed to offending nations by third parties -- were attached with court approval.

In Orvis et al v. Brownell, Jr. 345 U.S. 183, 73 S.Ct. 596, 97 L Ed. 938, (1953), the Court held that Americans, who were creditors of certain Japanese, could proceed under the Trading With The Enemy Act to recover money from the Custodian of Alien Property. An American firm was indebted to those same Japanese and the Custodian seized the amount of the debt from that firm. Since the total amount owed to Japanese by Americans exceeded the amount owed to Americans by Japanese, the assets of American

^{1/} Hearings, p. 22.

^{2/} 50 U.S.C. App. §1, et seq.

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debtors were seized and distributed to American creditors on a pro rata basis. Other cases involving third parties who were indebted to foreign creditors and whose debts were seized by the Custodian of Alien Property include, Cities Service Co. et al. v. McGrath 342 U.S. 330, 72 S. Ct. 334, 96 L Ed. 359, (1952), McGrath v. Manufacturer's Trust Co. 338 U.S. 241, 70 S. Ct. 4, 94 L Ed. 31 (1949), Clark v. Manufacturer's Trust Co., 169 F.2d 932 (2d Cir., 1948), McGrath v. Agency of Chartered Bank of India, Australia and China, 104 F. Supp. 964 (S.D.N.Y., 1952), Clark v. E. J. Lavino Co., 72 F. Supp. 497 (E.D. Penn., 1947).

The FCSC has awarded lawful judgments against Czechoslovakia, favoring nearly 2,600 uncompensated American claimants. The President may not liquidate and distribute the Czech gold unilaterally;^{1/} and courts decline to intervene in foreign claim disputes, deferring to the legislative and executive branches.^{2/} Only the Congress has the authority to complete the legal process in this case.

D. The Legislative Proposal Now Pending Is Less Drastic Than The Strict Permissible Legal Process Described Above And, Thus, Is Lawful

The strict legal process discussed above--attachment and liquidation of the Czech gold, followed by a distribution of the proceeds to satisfy adjudicated American claims--would deprive

^{1/} In time of war, the President may take title and dispose of enemy property under Section 5(b) of the Trading With The Enemy Act. It appears, during peacetime, that legislation is required before the President can vest and sell foreign assets.

^{2/} Logan v. Secretary of State, 553 F.2d 107, 108 (D.C.Cir. 1976).

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the Czechs of all, or a major part, of the gold's value. As we have made clear, that process is lawful, and not unusual legally. Because the process proposed here is identical, except that it is less onerous for Czechoslovakia, it is equally lawful.

E. The Legislative Proposal Accommodates
Public Policy Considerations As Well
As Legal Requirements

1. This Legislation Should Not Impede Relations
With Czechoslovakia, Great Britain Or France
 - a. Relations With Czechoslovakia Would
Not Deteriorate Further Under The
Legislation

The State Department acknowledges that our relations with Czechoslovakia are poor and show no prospect for improvement in the near future (Attachment No. 1, p.4). Yet the Department proceeds to the absurd position that the liquidation of the gold located here would embitter relations for years to come, because it has "emotional" and "historical" value (Attachment No. 1, p.4).

Even if the State Department were correct, a simple amendment would prevent the problem. The amendment would direct the Secretary of the Treasury to offer Czechoslovakia a right to first refusal (to be exercised within ten days) prior to the sale of any gold; Of course, any money paid by Czechoslovakia for such gold ultimately would be returned to Czechoslovakia under the statutory scheme.

However, brief consideration of the Czech government's financial position shows that the State Department wildly exag-

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gerates the injury that the legislative proposal would visit upon the Czechs. The Czech government would realize a tremendous economic gain even with a settlement of one hundred cents on the dollar. The \$105 million Czech debt, in 1958 dollars, has dropped in value over the years to a small fraction of its original worth, while the confiscated American property has risen in value many times to well over \$1 billion. The Czech gold located here has soared in value from \$10 million in 1958 to about \$200 million today. The legislative remedy would return that value to Czechoslovakia after payment of American awards. The legislation also would remove a major obstacle to most-favored-nation treatment for Czechoslovakia -- with entitlements worth many times the gold's value; and enactment presumably would encourage Great Britain to distribute an additional \$200 million worth of gold immediately to Czechoslovakia.

The State Department's claim that Czechoslovakian relations would be embittered by that settlement package is preposterous. As a policy matter, however, the Congress might consider whether the United States enhances world-wide respect when a situation as egregious as this one is permitted to go unredressed.

The Department's concern about the effect of this legislation on U.S. relations with Great Britain and France is surely tenuous. Neither country has continuing obligations under the Tripartite Arrangement; neither, as far as we have been able to ascertain, was consulted in 1949 or 1974 by American administrations when the gold's return was blocked. And for good reason. Neither had standing to complain, under international law, about an American

action to secure compensation for its citizens whose property had been confiscated.

b. Relations With Great Britain And
France Should Not Deteriorate Under
The Legislation

We have shown that unanimous consent is not required for the gold's liquidation to satisfy Czech debts to American citizens that arose subsequent to the 1946 Agreements. In addition, this legislation fully observes the spirit and letter of the Paris Reparations Agreement and the Tripartite Commission Arrangement. As we have shown, Great Britain and France have no legal standing to oppose the proposed unilateral action. Moreover, were there standing, in light of the Albanian precedent in which Great Britain received the United States' and France's permission simply to attach gold allocated to Albania to satisfy an unrelated British claim (never returning the principle to Albania), it is not credible that those countries now would seriously oppose the more moderate legislative proposal if the State Department seriously had requested their consent.

It is important to note that this remedy has been designed carefully to effectuate the Commission's and the United States' custodial duties. Sufficient time would be allowed for a negotiated settlement; and, should the legislative process come into play -- the value of the gold, which was pooled as a fungible monetary asset under Part III of the Paris Reparations Agreement, would be preserved intact for eventual return to Czechoslovakia

after repayment to awardholders is derived from investment interest. In fact, sound fiduciary practice requires the Commission to liquidate the Czech gold and to invest the proceeds while its value remains high.^{1/}

Most importantly, from a practical standpoint, the State Department conceded during House hearings in August 1980 that the Department does not seriously press the argument that United States relations with Britain and France would be affected:

Chairman Hamilton. You don't see any really adverse consequences flowing from the United States acting unilaterally here, do you? I mean we are not going to bust up the special relationship between the United States and the United Kingdom....

Mr. Barry. If it means we are going to bring an end to NATO by this, obviously not.

Chairman Hamilton. Well, that relieves me. I have been worried about it.

(Laughter)

Chairman Hamilton. What kind of consequences are going to flow? I don't see anything.

Mr. Barry. Our main argument is not based upon the adverse consequences of this legislation. Our main argument is based on the idea that we ought to be given a fair chance to pursue the negotiating group (Sic).^{2/}

Senator Moynihan's proposal accommodates even this last request by the State Department by providing for a final attempt at negotiation before the initiation of compulsory process. The proposal provides sixty days, which should be adequate after

1/ See, for example, 45 Federal Register 45609, July 7, 1980.

2/ Hearings on H.R. 7338 Before The House Subcommittee on Europe and the Middle East and On Economic Policy and Trade, August 19, 1980, pages 40-41.

thirty fruitless years. However, we have suggested an amendment in the House to provide six months because the State Department testified that it would take no more than three months from August to negotiate a settlement, if a reasonable resolution is possible. A six-month provision should relieve the State Department's final serious objection.

2. While All Parties Would Welcome A
Diplomatic Solution, This Legislation
Is Needed To Assure An Acceptable
Settlement During The Awardholders'
Lifetimes

We described earlier the financial windfall that has come to Czechoslovakia as the expropriated assets and gold appreciated over the years. Of course, the value of the Americans' awards have been ravaged by inflation during the same period. They would receive in real dollars only a fraction of their reparations even under a settlement offering one hundred percent of the 1958 dollars they were awarded.

The State Department stated in 1974 that it would support the Czech gold's liquidation to satisfy American awards -- as it had supported liquidation of the Czech steel mill equipment in 1958 -- if that could be effected legally. In fact, we have demonstrated that this may be accomplished legally; yet the Department still opposes a legislative solution in favor of diplomatic overtures.

The State Department reports the status of the most recent negotiation effort as follows. In May 1980, the Department proposed new settlement terms to the Czechoslovak government.

The Czechs have replied and serious discussions are proceeding. The Department seeks an agreement that would provide a "very substantial cash payment" on this and a series of unrelated financial matters. The Department "cannot guarantee a satisfactory settlement" and "hard bargaining is ahead." (Attachment No. 1, p. 2).

That dim prognosis after thirty unsuccessful years is, to say the least, unpromising. The Czech Ambassador has advised members of Congress that his government flatly rejected the Department's proposal. The Czech government seeks a settlement not exceeding forty cents on the dollar, like the recent Chinese settlement. Of course, the Czech position disregards a series of fully compensatory settlements with Yugoslavia, Italy and other European countries following the second world war, and ignores the security provided by the Czech gold located here -- a factor not present in the Chinese negotiations.

In these circumstances, one can expect, at best, a negotiated settlement only slightly more favorable to American awardholders than the strikingly unfair proposal of 1974. The State Department correctly surmises that the aging awardholders would prefer an immediate lump sum payment, if it were remunerative. However, one must anticipate that a settlement negotiated in this climate would be neither immediate nor compensatory.

Apart from Czechoslovakia's continuing intransigence, the type of "comprehensive agreement" contemplated by the State Department -- absent a segregated fund from which to pay the

longstanding American awards -- would reduce the awardholders' reparations to a fraction of their apparent value by diluting their compensation with payments on other claims as yet unadjudicated, and on the extraneous "financial issues" listed by the State Department (Attachment No. 1, p.4). Moreover, the State Department has advised members of Congress that any payment under a comprehensive agreement would have to await the conclusion of a new round of claims adjudications, a process that took several years following the enactment of enabling legislation in 1958.

Senator Moynihan's proposal favors a compensatory diplomatic settlement, providing a final period for negotiations before directing compulsory process. Only failing that, it would mandate full compensation after many fruitless years of negotiation. The State Department incorrectly calculates that full payment under the legislation might take sixteen years (Attachment No. 1, p.2). In fact, interest from the proceeds of Czech gold liquidated in New York (worth \$200 million) would yield the total face value of the awards (\$105 million) in about five years (at ten percent interest), plus interest through the date of enactment within three or four additional years. Most of the awardholders find that prospect vastly preferable to an uncompensatory cash settlement that might itself be delayed.

The legislative remedy is designed carefully to promote a negotiated settlement. The Czech government has demonstrated that it will not negotiate realistically without this type of congressional prodding.

F. Whatever New Legal Arguments The State Department Might Propose, The Congress Has the Authority To Enact This Remedial Legislation To Effectuate The Public Policy Considerations Described Above

The Congress is not restricted from exercising its enumerated constitutional powers because foreign relations allegedly are affected. Those enumerated powers include the broad, plenary power to regulate commerce with foreign nations, which encompasses authority to protect American investors against foreign confiscation. Banco Nacional de Cuba v. Farr, 243 F. Supp. 957, 972-974 (S.D. N.Y. 1965), aff'd, 383 F. 2d 166, 182 (2d Cir. 1967), cert. denied, 390 U.S. 956, rehearing denied, 390 U.S. 1037. Additional pertinent Congressional authority derives from Article I, Section 8, Clause 10 of the Constitution, which empowers Congress to define and punish offenses against the law of nations. 383 F.2d at 182.

Pursuing that constitutional authority, the Congress may modify or abrogate a treaty on its own initiative. In Banco Nacional de Cuba v. Farr, supra, at 973, the Court stated:

Numerous...cases have upheld the exercise of congressional power affecting foreign relations. Thus a treaty negotiated by by the President and approved by the Senate may be abrogated by act of Congress. Reid v. Covert, 354 U.S. 1, 18 n. 34, 77 S.Ct. 1222, 1 L.Ed. 2d 1148 (1957) (opinion of Black, J.); Fong Yue Ting v. United States, 149 U.S. 698, 720-721, 13 S.Ct. 1016, 37 L.Ed. 905 (1893); Chinese Exclusion Case, 130 U.S. 581, 600-601, 9 S.Ct. 623, 32 L.Ed. 1068 (1889); Whitney v. Robertson, 124 U.S. 190, 8 S.Ct. 456, 112 U.S. 580, 589-599, 5 S.Ct. 247, 28 L.Ed. 798 (1884)."

Neither the Paris Reparations Agreement nor the Tripartite Commission Arrangement is a treaty. One is an executive agreement, not ratified by the Senate, and the other simply is an "arrangement" implementing the executive agreement.

Moreover, we have not suggested that either agreement be abrogated, and we do not believe they require modification. However, should the Congress determine that they are ambiguous, it certainly has the power to supplement either, or both, consistent with public policy by altering the character of the gold, satisfying Czech debts out of the investment interest, and returning the original value to Czechoslovakia. Such congressional action would fully effectuate the agreements.

Of course, the law is clear that, if legislation is considered inconsistent with a treaty, which would stand on equal footing with the statute, the rule of priority would be as follows: a later dated statute in direct conflict with a treaty supersedes the treaty. Sneaker Circus, Inc. v. Carter, 457 F. Supp. 771, 795 (E.D. N.Y. 1978). Certainly a later dated inconsistent statute would supersede either of the nontreaty agreements in this case.

The pending legislative proposal is fully consonant with existing international agreements and with sound public and foreign policy. However, should any technical objections lie, the Congress has full authority to enact remedial legislation.

Mr. McPHERSON. As we have shown, it is a legal step that we are proposing here, that Senator Moynihan and Senator Schmitt have proposed. It is legal under the Paris Reparations Agreement. It is not going to create tremendous difficulties with the British and the French.

Mr. Chairman, I cannot imagine Margaret Thatcher, the Prime Minister of a conservative government in Britain, getting terrifically exercised if the United States lawfully seizes Czech assets to pay off its citizens who have been denied justice for three decades, since their property was confiscated by a Communist Government.

I think that it is very likely that the British have protested because it is a relatively painless thing for them to do, to protest. They can at least show the Czechs, with whom they trade, and the Russians, with whom they trade, that they have made an effort to protest. The United States ignored the protest, and went ahead, took the gold, sold it, and so on.

The British are then clean in that sense, and it is not a bad result from their point of view. But it is very difficult to take it as a serious threat to Trans-Atlantic relations.

Mr. SCHIFTER. Mr. Chairman, I would like to add to the comments that Mr. McPherson has just made in response to your third question, and then come back and say a few words also about your second question.

STATEMENT OF RICHARD SCHIFTER, ESQ.

Mr. SCHIFTER. Let me shed further light on the history of the various other settlements, a question that you have posed.

The first settlement, as indicated, was made with Yugoslavia in 1948. What might be worth keeping in mind is that Yugoslavia at that time had a substantial amount of gold in the United States, which was not covered by the Inter-Allied Reparation Agreement of 1946.

The settlement that was made was actually intended to be a 100-percent settlement. It was a settlement in which the United States in 1948, in reaching an agreement with Yugoslavia, estimated the value of the amount of American assets in Yugoslavia seized in the preceding period. I may also say that it was a very short period beginning in 1946 and ending in 1948. That was the period of Yugoslav confiscations and this is relevant to the question of interest payments which has now been posed.

Subsequent to that settlement, the then International Claims Settlement Commission went through the process of adjudicating claims, and by the time the process was completed, which I think was in 1951 or 1952, it turned out that the amount of claims awards made was slightly in excess of the amount of money available. So that is how we got to a 91 percent settlement. As I said, it was intended to be a 100 percent settlement.

The other Communist Governments did not attempt to make settlements for quite a while. The Congress then proceeded in 1955 to make available to American claimants whatever property was in the United States that had been confiscated and seized of Hungary, Romania, and Bulgaria. That property was then distributed, except for St. Stephen's crown, which was not liquidated.

The result of that was that you got payments for American citizens who had assets in Bulgaria of over 70 percent. In the case of Romania, it was about 34 percent. In the case of Hungary, it was a pittance.

Senator RIBICOFF. Let me ask you, did you represent clients who had claims against Romania, Poland?

Mr. SCHIFTER. Yes.

Senator RIBICOFF. You were satisfied then with 40 percent, why are you objecting to it now?

Mr. SCHIFTER. Let me explain, Senator.

The basic difference is that where we did not have a hold on a foreign country because we did not have assets in the United States to seize, beginning in 1960 we made these 40 percent settlements. There was nothing that we could get our hands on.

Whenever we could get our hands on assets in the United States, Yugoslavia is an example, Bulgaria is an example, and as far as our war claims settlements are concerned, for that matter, we made 100 percent settlements. Germany and Japan fall into this category, too.

So my point is, where there were assets in the United States that we could seize, we made substantially more favorable settlements to American claimants. The 40-percent settlements were made where essentially we had nothing to get at, and where we were expecting the foreign countries to make payments to us.

Senator RIBICOFF. I am curious, and I don't know if the other gentlemen here were involved in these other settlements, but since you were involved in claims against other governments, what cooperation or what part did you play with the Department of State in arriving at a figure?

Mr. SCHIFTER. I would say that over the entire period of years, Senator, and I would go along with what Harry McPherson had to say on that, our contacts with the State Department were such that they would, first of all, consider a great deal of the information that was involved here confidential, and they would disclose very little.

They were in no mood to engage in any conversation. Whatever you tried or attempted to achieve, you had to do through a Member of Congress. This was the pattern in the 1950's, and that is the pattern now.

As far as the State Department is concerned, the foreign policy considerations that they have in mind, which have nothing to do with claims settlements, are far more important. They play their cards close to their vest in these cases, and there is nothing that one can really accomplish, as I see it, in discussion with them. That is my experience.

Could I also, if I may, go on to your second question, the question of the legality of the proposal that is now before the Congress.

If I may just go briefly through the history here. What we are dealing with, to start with, as indicated before, is gold seized by the U.S. Army from the Nazis at the end of World War II. Under relevant principles of international law this was war booty, and the title actually transferred to the United States at the time the gold was seized.

The United States, rather than claiming this gold for itself, made it available in 1946 to the reparations pool. An agreement was reached among the countries participating in that reparations agreement of 1946, under which, as far as the gold was concerned, it was to be determined who was entitled to how much. This was necessary because the gold had all been commingled by the Nazis, and one could not tell one bar of gold from the other as to whom it belonged.

An adjudicatory process was initiated for making these allocations among the countries, and it was understood that this would be done by the three major Western powers, France, the United Kingdom, and the United States, and their decisions were to be unanimously. This process was designed for only one purpose, and that is to establish the rights of the various countries. It was assumed that the deliveries of gold would then appropriately be made.

As Mr. Merrigan pointed out, something happened after that, and this is something that I would like to stress. It is true that the initial nationalization law of Czechoslovakia were enacted in 1945, at the end of World War II, when there was a coalition government in Czechoslovakia, but that Government made it clear that it wanted to compensate property owners fully for what they had lost—it was the major companies that were being nationalized—and over a period of time there were negotiations between Assistant Secretary Dean Acheson, on the one hand, and Jan Masaryk, the Foreign Minister of Czechoslovakia, on the other.

All of that came to a screeching halt in 1948 when the Communists took over in March, and after that there was really no opportunity of engaging in any realistic settlement negotiations. Furthermore, the Communist government then seized all foreign assets.

FRIED, FRANK, HARRIS, SHRIVER & KAMPFELMAN,
Washington, D.C., September 4, 1980.

Hon. JONATHAN BINGHAM,
U.S. House of Representatives,
Rayburn House Office Building, Washington, D.C.

DEAR CONGRESSMAN BINGHAM: On behalf of my clients and on my own behalf I want to extend our sincere thanks to you for the care and thoroughness exhibited by you when you chaired the recent hearing on H.R. 7338, the Czechoslovak claims bill.

You may recall that in my rebuttal to the State Department's argument that French and British consent is required before American claimants could be satisfied out of the proceeds from the sale of Czechoslovak gold, I contended that the role of the three powers as members of the Tripartite Commission was purely adjudicatory. I pointed out that the adjudication had taken place long ago, that unanimous agreement of the three members of the tripartite Commission was then required and was obtained, but that the consent of the other parties was not required as to the disposition of property under United States jurisdiction which had been adjudicated as returnable to Czechoslovakia.

When you commented on my presentation, you suggested that we might have to analogize the Tripartite Commission not to a judicial tribunal but to co-trustees. My purpose in writing you is to tell you that we have researched the issue posed by you and have reached the same conclusion, namely that French and British consent would not be required to a program such as that envisaged by H.R. 7338 even if the function of the Tripartite Commission were viewed as the function of co-trustees.

The basic principle of law with which we are here dealing is that once a beneficiary's creditors have reduced their claims to a judgment against the beneficiary of a trust and have served notice on the trustee, the trustee properly cannot make any further payment from the trust fund to the beneficiary. *See generally*, II Scott, Trusts § 155.1 (3d ed. 1967). If the trustee does so, he incurs liability to the judgment

creditor. *Id.* If the payment is mandatory, it must be made to the judgment creditor. If it is discretionary, it need not be made, but if the trustees determine to make a payment, it must be made to the judgment creditor. *Id.*

Closely analogous to the situation with which we are here dealing have been the cases arising under the Trading with the Enemy act. What the courts have held as to trusts located in the United States which had one or more enemy alien beneficiary was that once an enemy alien's interest became present and vested, it was subject to divesting by the Alien Property Custodian. *Royal Exchange Assurance v. Rogers*, 257 F.2d 582 (2d Cir. 1958), *Herrmann v. Rogers*, 256 F. 2d 871 (9th Cir. 1958), *Clark v. Continental National Bank*, 88 F. Supp. 324 (D. Neb. 1949).

Neither the Paris Reparations Agreement nor the arrangement under which the Tripartite Commission was created contemplated the problem with which we are here dealing. There is, therefore, no provision in these documents which deals expressly with this issue. The argument which is being advanced is that the provision under which adjudication of the conflicting interests in the gold was entrusted to the three major Western powers, which had to reach their decisions unanimously, implied that unanimous consent of the participants was required for any disposition other than delivery to Czechoslovakia. This would mean, in light of how Congress handled the Czechoslovak steel mill equipment, that Czechoslovakia's rights to an asset to which it had a claim for delivery was greater than its rights to an asset which it owned outright, free and clear of any encumbrances. That reading simply does not stand to reason. Whether the Tripartite Commission is viewed as a judicial tribunal or as trustee, the result is the same: Congress has a legal as well as moral right to interpose American judgment holders between the asset and the Government of Czechoslovakia.

If there are further questions which you believe should be answered, we shall certainly try to do so.

Sincerely yours,

RICHARD SCHIFTER.

So we have, 2 years after the Reparation Agreement, a new circumstance arising, which gave American claimants, and the United States espousing American claims, a right over against Czechoslovakia. What we are dealing with here is essentially the assertion of that right.

Sure, unanimously the Tripartite Commission has made its decision. It has determined who is entitled to what, and it has determined that Czechoslovakia is entitled to a certain amount of gold. But something happened later, after the Reparation Agreement, and a claim is now being made against the gold.

May I say, in that connection, that we have emphasized that the unanimous-consent provision concerns only the adjudicatory process. That should not block the assertion of a subsequent right over against the gold.

The Department of State, in the last memorandum, which has just been filed with you, comes back and says, "But this really ought to be analogized to a trust relationship."

Senator RIBICOFF. Let me ask you. Have England and France made a settlement with Czechoslovakia for their citizens?

Mr. SCHIFTER. My understanding is that the French have made a small settlement. The English have made a settlement subject to, as I understand, the resolution of the gold issue. It is still pending.

Senator RIBICOFF. What was their settlement?

Mr. SCHIFTER. I don't know exactly.

Senator RIBICOFF. Do you know what settlements England and France have made?

Mr. BARRY. The French settled for \$12 million, and the British settled for £8 million. We are trying to get details on what that amounts to.

Senator RIBICOFF. What is the percentage.

Mr. BARRY. That is what we don't know, and we are trying to get that information from the governments concerned.

Senator RIBICOFF. Your contention is that they have to come to the United States for permission to liquidate their gold for their settlement.

Mr. BARRY. Yes, indeed. I think, in fact, it is also the contention of section 408 of the Trade Act of 1974. We have essentially told the British and French not to return their share of the gold because we are not willing to join in the unanimous decision because we believe that this would weaken our own negotiating position.

As Harry McPherson said, obviously, Margaret Thatcher is not going to call upon the destruction of NATO if we go ahead and do something like this. It would be a ridiculous assertion. But I think they have settled for much less than we have, and they have allowed us to use the gold, which is in joint trust, or whatever you want to call it, in order to improve our own bargaining position, which is the wording and intent, I think, of the Trade Act of 1974.

So had it not been for the fact that we would not join in the unanimous-consent agreement to have the gold returned, or their share of the gold returned, as the French agreed to in 1949 and the British agreed to in two phases, the last one being in 1964, then they presumably might have gone ahead and done so.

Senator RIBICOFF. At what stage do you come to the conclusion that any negotiations with Czechoslovakia are useless, and that we ought to take unilateral action?

Mr. BARRY. My own personal view is that given the current situation, the rise in the price of gold, and so forth, it does appear possible at this point to get a substantially better settlement.

Senator RIBICOFF. Why? If the value of the gold is so much more than in 1974, why couldn't you make a better deal now?

Mr. BARRY. I think we can. I am saying, if the negotiations were embarked upon now, and don't get any place, I think I would reach the conclusion that a negotiated settlement is probably not in the cards.

Senator RIBICOFF. Do you still think that it is bad policy, or inadvisable for you to sit down with these gentlemen?

Mr. BARRY. Sir, I initiated the contact with Mr. McPherson, and I intend to maintain it. We are not a bunch of reluctant dragons sitting over here on this side of the table. We are willing to have discussions at any time with these gentlemen.

We are certainly glad to have them, and as the negotiating process proceeds, we certainly will consult with the attorneys for the claimants as well as with members of the Congress to find out whether we are headed down the right track.

Senator RIBICOFF. I don't know when the committee meets again to take up the rest of its agenda. That will depend upon Senator Long, which will be sometime after the 13th of this month. I would hope during this intervening time that you would sit down with these gentlemen and have some conversations that are meaningful.

Mr. BARRY. We would welcome that.

Mr. McPHERSON. Mr. Chairman, the problem that I perceive with that is that the real third party would be missing from those types of sessions, Czechoslovakia.

Senator RIBICOFF. I know, but before they get to Czechoslovakia, why don't you try to find out how they are thinking, and make your input. You must have some thoughts in your mind. After all,

again, I don't know how many of you, except for young Mr. Symington, will be practicing law 32 years from now.

Mr. SCHIFTER. Mr. Chairman, if I could just conclude my previous statement.

I was about to say that the most recent legal submission from the State Department suggests that the trust concept ought to be applied here. In other words, to consider the Tripartite Commission as if it acted as a group of co-trustees.

I would like to submit a letter which I have just recently sent to Congressman Bingham, who asked the same question at the House hearings, pointing out that under relevant concepts of trust law, if a trustee has an asset that is supposed to be paid over to a particular beneficiary, and a judgment creditor notifies the trustee of the fact that he has a judgment, that payment must be made to the judgment creditor.

That particular principle, which is highly relevant to our present situation today, has been applied under the Trading With the Enemy Act, where we had assets in the United States held by American trustees. It was understood that the Alien Property Custodian at the Department of Justice could not touch the asset itself.

However, if under the trust instrument payment was to be made over to a beneficiary who was a German, whose interest had been vested, the payment had to be made to the Alien Property Custodian and was seized.

May I submit, for the record, my letter, which lays out the law on that particular proposition.

Senator RIBICOFF. Without objection.

[Document to be furnished follows:]

Mr. Chairman, my name is Richard Schifter. I am a member of the law firm of Fried, Frank, Harris, Shriver & Kampelman of Washington, D.C. and New York City.

More than twenty years ago I filed with the Foreign Claims Settlement Commission the claims of a number of our clients against the Government of Czechoslovakia for losses sustained by them, as American citizens, as a result of the confiscatory acts taken by Czechoslovakia about ten years earlier. My clients received awards from the Commission, ranging from about \$100,000 to about \$200,000 per family, but there have only been token payments on these awards. And so, today, on behalf of Mrs. Daisy Schott and Mrs. Grete Schultz, both of Great Neck, N.Y., Mrs. Mariella Sundstrom of Stockton, N.J. and of Mrs. Eva Perl, of Scarsdale, N.Y., I am asking you to enact S. 2721 with the amendment proposed by Senator Moynihan, which would provide for an adequate settlement of the claims. (Three of the four clients whom I have mentioned are, incidentally, the heirs of the persons who sustained the losses.)

My firm has joined the firm of Verner, Lipfert, Bernhard and McPherson in submitting to you a comprehensive memorandum of law on the questions posed by the Moynihan amendment. In my testimony I shall try to supplement that memorandum by commenting briefly on the State Department Report on H.R. 7338, the House counter-part to the Moynihan amendment, which was submitted to House Committee on Foreign Affairs on July 25, 1980.

The State Department approaches the bill both from a legal and a policy point of view. I respectfully submit that the Department is wrong on the law and totally unrealistic on the issues of policy.

Let me first deal with the question of law. The Departmental report states that if the United States were to use, for the benefit of American claimants, the gold which has been earmarked for delivery to Czechoslovakia we would (a) violate international law, and (b) act contrary to an agreement which we entered in 1946 with the United Kingdom and France. As to the alleged violation of international law, the Department suggests that the use of the gold would be a violation only because "a negotiated settlement of our claims [is] still possible."

The principle of retorsion, under which a country may retaliate for harm inflicted on its citizens by another country by taking the same steps against the citizens of

the transgressor country, is one of the oldest and most well-established principles of international law. Thus, we have a right to confiscate the property of Czechoslovak citizens in this country to satisfy the claims of our own citizens. In this case, we ask for less. We ask that gold which came into our possession and which had been earmarked for delivery to Czechoslovakia be sold and invested and the income used to pay our claimants.

The Congress clearly recognized this principle of international law when it passed the Czechoslovak Claims Act of 1958, Public Law 85-604, providing for the sale of Czechoslovak steel mill equipment in the United States and the use of the proceeds to pay American claimants. For purposes of retorsion, there is clearly no difference between steel mill equipment and gold bullion. It follows that if Public Law 85-604 did not violate international law, the Moynihan amendment does not do so either.

There is, of course, the slight hint in the State Department Report that the illegality is created by the fact that negotiations between the United States and Czechoslovakia have been resumed. Please note in this context that the Moynihan amendment allows for these negotiations, which are again taking place, more than thirty years after the confiscation of American assets in Czechoslovakia, to be completed in a manner which would not result in a sale of the gold. But even if the Moynihan amendment did not contain this allowance for a negotiated settlement, it is clear the bill would be entirely in keeping with the principle of retorsion.

But, the Department says, we have an added obligation here, an obligation assumed under the Inter-Allied Reparation Agreement of 1946, an obligation to restore to Czechoslovakia the amount of gold which a Commission consisting of the United States, the United Kingdom, and France determined the Germans had taken from Czechoslovakia during World War II. There is no doubt, Mr. Chairman, that we did have this obligation and that we had agreed that the three major Western allies would decide the issues of entitlement to the gold jointly and unanimously.

The gold here in issue is part of the entire gold treasure captured by the United States from the Germans at the end of World War II. The United States agreed to return the gold to the countries from which the Germans had taken it. But as most of the gold was gold bullion which could not be identified as to source, it was agreed that a Tripartite Commission would be created, consisting of the three major Western allies, to determine how much each claiming country had in fact lost. It is to the decisions of that Commission on the claims of entitlement that the rule of unanimity applies. In other words, the judgment must be entered by unanimous agreement. That is what occurred here. Thereafter circumstances developed which gave rise to an American claim against Czechoslovakia. Nothing in the Agreement requires the consent of the United Kingdom and of France before the United States can levy, in satisfaction of its own claims, on a Czechoslovak right to property. Unanimous agreement was required for the adjudication process but most assuredly not for the assertion of an American claim which arose at a later date.

The Inter-Allied Reparation Agreement was concluded in 1946. A year earlier, the coalition government which then ruled Czechoslovakia has nationalized the country's major industries, including the American interests therein. We had every reason then to assume that Czechoslovakia would pay compensation, as Foreign Minister Jan Masaryk promised the then Under Secretary of State Dean Acheson. But in March 1948 Jan Masaryk fell or was thrown to his death and the Communists took full control of the country. All American property was seized thereafter. And this Committee knows that to this day Czechoslovakia has not paid a penny of compensation.

It is because of this change in circumstances, arising out of the Communist seizure of control of Czechoslovakia in 1948, that President Truman decided that the United States need not live up to its IARA commitment to return the gold to Czechoslovakia. The gold was blocked because of the illegal acts of Czechoslovakia in seizing United States property without paying compensation. The very same rationale that allowed President Truman to block the gold allows the United States now to sell the gold. The fact is that our commitment to deliver the gold to Czechoslovakia was superseded by the Czechoslovak acts of confiscation, which allow us to assert a United States claim against Czechoslovak assets over which we have jurisdiction. It simply does not stand to reason that our rights to assert our claims against property which was awarded to Czechoslovakia by an international tribunal, but which had theretofore been in doubt, are any less than are our rights to assets which were indisputably Czechoslovak, such as the steel mill equipment.

I shall now say a few words about the foreign policy argument advanced by the State Department. Enactment of the bill, the Department says, would harm our relations with the United Kingdom and France, and would embitter our relations with Czechoslovakia. Mr. Chairman, one does not have to be an expert in foreign relations to recognize the utter lack of merit of these assertions, which, regrettably,

serve only to undermine the credibility of the State Department in the eyes of those of the general public who are exposed to the position. As far as our relations with the United Kingdom and France are concerned, they are most assuredly affected by concerns of direct interest to those countries and not by what happens to Czechoslovakia's gold. Though we have not seen the statements of the United Kingdom and France on this subject, we seriously doubt that they express any strongly-held sentiment.

As for Czechoslovakia's attitude, don't we all know that whatever may happen to the Moynihan amendment, our relations with that unfortunate country will be controlled completely by our relations with the Soviet Union? If we are friends with the Soviet Union, we shall be friends with Czechoslovakia, even if the measure were amended to provide for complete confiscation of the gold. If we are not friends with the Soviet Union, our relations with the Czechoslovak government will remain at the present low level even if the Moynihan amendment is voted down resoundingly.

For the reasons which I have stated, Mr. Chairman, the State Department's objections lack merit. From both a legal and a policy point of view, the relevant precedent was set by the Congress in 1958, with the enactment of the Czechoslovak Claims Act. The Moynihan amendment follows that precedent.

STATEMENT BY JAMES W. SYMINGTON, ESQ.

Mr. SYMINGTON. Mr. Chairman, may I address myself briefly to the suggestion that you have made for further discussions between the departmental representatives and the attorneys for the claimants.

It seems to me that the Department, and perhaps quite properly, has a different role to play, or deems itself to have a different role. They are not animated in quite the way the representatives of the claimants are. They have many other things on their mind, larger questions that, we, as private citizens, lack the background to address.

A moment ago Mr. Barry let drop the thought that two or three Congressmen had suggested to him not to go ahead with the renewed negotiations in the climate of the repression of dissidents in Czechoslovakia. The committee did not see fit to explore that any further. But the point is that they would always be able to suggest names of individuals or powers that rather agreed with their point of view as distinct from ours.

What we are trying to do here, I guess, is to find a policy that we deem to be more consonant with the rights of the affected Americans. We are searching for an expression of American law and public policy. And there is hardly any conversation that we could have with the Department of State, as I see it at this point, that would not lead us back into this room, where we are happy to be, and happy to take whatever advice and guidance you, Mr. Chairman, have to give us, and the other members.

At the close of my statement, speaking of this search for policy, I perhaps stretched a point a little, but I thought I could speak for the panel, in trusting that the new Secretary of State might be absolved from an intimate knowledge of, much less enthusiasm for, the Department's views in this matter, which have a momentum of their own, predating his accession to that office. He too, has so many other things on his mind.

In my statement I say that the departmental approach to this at this point, after three decades, should feel no more comfortable in the presence of one former Senator, that is to say the Secretary of State, than 100 sitting members of this august body.

We feel that he and they, led by this committee of yours, Mr. Chairman, would examine the matter and discern both in the

record and in the eyes and remembrances of these good and patient Americans the justice of their cause.

That is something that we cannot convey so much as attorneys. But the Congress, somehow, subsumes all of these feelings that we Americans have about the course our country is taking in defending its own rights, its own people. Today, I guess, is the 310th or 311th day of the hostages in Iran. It is about the 12,000th day of these outstanding claims.

While I am sure that everyone of us will be more than happy to sit down with the departmental spokesmen at any time because they are good Americans, and in many cases good friends, I think the claimants, at least, and perhaps in a larger sense, America, will be looking to the Congress to help resolve this question.

[Statement follows:]

STATEMENT OF JAMES W. SYMINGTON, LAW FIRM OF SMATHERS, SYMINGTON & HERLONG

Mr. Chairman, I appreciate the opportunity to appear in support of S. 2721. May I at the outset submit for the record of these proceedings, a statement prepared by Mr. Henry Clay, New York attorney, on behalf of whom and whose client claimants, my law firm, Smathers, Symington & Herlong has been asked to make this presentation. Mr. Clay's statement reviews the history and progress of the claims and examines certain legal and diplomatic questions raised by the bill. I should like briefly to place the matter in a wider context for the Committee's consideration.

Today is the 310th day of captivity of the American hostages in Iran. It is also roughly the 12,000th day that the American claims before you have been held hostage to the policies of two governments, the government of Czechoslovakia—which is not solely answerable to its own people—and the government of the United States which presumably is—but which in any event it is the province of Congress to make so.

To some the parallel may seem stretched. Is it? Our national threshold of pain seems to be hoisted notch by notch to accomodate every new indignity. What Americans are witnessing, enduring, and suffering in Iran is but the most recent visible and dramatic episode in the twilight decline of our worldwide position over the past few decades . . . decades of lost or unwon wars, murdered ambassadors, kidnapped diplomats, brutalized businessmen on foreign soil, hijacked aircraft, terrorized tourists, "acceptable" Soviet troops in Cuba, "stabilizing" Cuban troops in Africa, American farmers and athletes tossed into the vacuum of diplomacy, and all against the background of a navy that is 20,000 petty officers short, an army that requires remedial reading, an air force that won't reenlist, and an enormous influx of alien products and people cresting just as the unemployment insurance of thousands of Americans runs out. If that is an unnecessarily harsh picture, then I bow to the surrealist who can paint a brighter one.

What to do? Where to start? Fortunately, Mr. Chairman, you and your colleagues on this Committee, hold at least one small answer within yourselves. What we are asking here is an affirmation of the most basic principle of American democracy—justice under law. We recognize that circumstances invite reflections on international as well as domestic law. We note, too, Mr. Justice Holmes' unrepudiated contention that the life of law is experience. We suggest that if experience should clearly prove the relevant international legal machinery to be too rusted or neglected to maintain the life of the law, then as far as Americans are concerned in their own land, there are remedies for the affected rights in Congress assembled.

The State Department tells us, tells you, tells the aging claimants that England and France object, or might object, or could object, or possibly ought to object, to the course we propose. It actually invites such objections when it should be inviting the cooperation on the part of these powers in honoring and recompensing citizens of the nation that helped save theirs. Elsewhere our view is presented that the principal function of the Tripartite Commission ended with its determinations of the shares of gold deliverable to respective countries. But what if it did not end there? What if there was some lingering color of authority to be consulted on the precise dispositions by the member parties? What evidence do we have that our own Government—even after parallel treatment of the sequestered gold to satisfy a British claim—ever solicited its Tri Partners, on behalf of American claimants, a sympathetic response; as distinct from assisting in the preparation and delivery of

letters of "protest" to be mailed or handled back to itself. Such a distaste for advocacy on behalf of one's own might come with a better grace in situations which do not entail possession of the justice of the cause, and the power to implement it.

Then we are told, 100 cents on the dollar plus interest is too much to ask, excessive. But what do 100 1980 cents come to in terms of a 1946 dollar? 20 cents? A quarter? Clearly, the longer Czechoslovakia can keep negotiations in a state of suspended animation—and I see more suspension than animation on our part—the more likely it is that a final settlement will barely cover the stamps to mail out the victory announcements. The corollary of the shrinking dollar is, of course, the expanding value of gold. So it is in the further interest of Czechoslovakia not only to prolong this matter indefinitely but to do nothing else to contribute to our economic well-being—all within the long term Communist strategy of breaking first our bank and then our spirit.

In addition we would call your attention to the House hearings, where State described the Yugoslavian settlement of 91 cents on the dollar as "unusually high", because, "they were trying to get along with us". This is an intriguing criterion, and one which we believe deserves rather more general application than the government seems inclined to assign it. In any event, the bill's promise of most favored nation treatment should supplement the dictates of ordinary international comity. Next State testified that a bold assertion of the claims was about to be delivered last year, but was withheld when the Czech government came down cruelly on leading dissidents of that country. We hope the Committee, in passing, might explore the rationale for this kindly abstention, providing as it does a most congenial device for a totalitarian state to avoid embarrassing interruptions any day of any year.

Finally, Mr. Chairman, I believe I can speak for the panel, in-trusting that the new Secretary of State might be absolved from intimate knowledge of, much less enthusiasm for, the Department's views in this matter which have a certain morbid momentum of their own, and should feel no more comfortable in the presence of one former Senator, than 100 sitting members of this august body. We believe he and they, led by you, would arise, examine the matter, and discern both in the record and in the eyes and remembrances of these good and patient Americans who have come to petition their government—the justice of their cause.

Thank you.

Senator RIBICOFF. Mr. Symington, I am trying to be practical about it. If you want to be theoretical, that is just fine. I don't think that you are going to get anywhere being theoretical.

I am trying to get you people together with the State Department. You are concerned that they have been dragging their feet for 32 years. It is up to you whether you want to talk to them or not.

Mr. BARRY. Mr. Chairman, could I simply say on that point, I want to be sure I am clear about this because it was mentioned at one point that I whispered something, and let something else drop sort of casually.

I want to be very specific about this. We are eager to maintain contact with the representatives of the claimants. We are prepared to do so and want to do so in the course of the negotiations.

I want to make it perfectly clear that it is not we who are reluctant to discuss the nature and framework of any negotiated settlement. I don't think, indeed, we would probably get any place discussing questions of international law.

Senator RIBICOFF. Mr. Barry, my feeling is that the State Department does not exist as an institution of its own, separate and apart from the interests of this Nation in every respect, not only the international problems but the small problems that impact on every individual.

There is no question that there is a matter of equity and fair justice here that should be administered. I think you should be just as zealous to protect the interests of a single American, because the single American taken at large is the country as a whole.

I don't think you operate, or that you should operate in a vacuum. You have the men here, over a period of years with all the heartache to their clients and themselves, trying to work out something. They have to work through you.

I think they have a right to expect that you will intervene in their behalf to protect their interest, just as our constituents back home, when they are up against an impass or a bureaucracy, will turn to their Congressman or Senator for intervention to help them overcome what they consider an injustice that is being leveled against them.

I do feel that this has taken a long time. We should be just as concerned about our own citizens as we are concerned about the sensibility of Czechoslovakia, who I don't believe is concerned about the sensitivity of the United States.

I would again suggest that you sit down and talk to these men—there are not so many, there are only five—and see where you are. You can give an indication of on what basis could there be a settlement.

I believe you should press the Czechs. I think that you have practically exhausted, or Czechoslovakia and the State Department have exhausted the patience of many Members of the Congress. I will not be here to follow it up, but I am sure that Senator Moynihan and Senator Dole are going to be following it up in the months after January.

I do think that it is a responsibility to try to settle this thing out.

Mr. BARRY. Mr. Chairman, I endorse fully everything you have said.

Senator RIBICOFF. Anything else?

STATEMENT OF LEO REALBERG

Mr. REALBERG. Mr. Chairman, I feel that the most practical way of coming to a fairly rapid solution to this problem is to pass this legislation and its companion bill, and then let us form that kind of group or conference.

Let it be known to the Czechs that we really mean business this time. We cannot ignore the fact that it is over 30 years that this has gone on. I think to keep good faith with American citizens who are the claimants, Congress should want to see some historic justice done here.

Senator RIBICOFF. Mr. Realberg, Congress is going to adjourn on October 4, and that is not a lot of time left, you know, just a few weeks. I am trying to be practical.

Mr. REALBERG. If we cannot get it passed in this session, we certainly should go ahead and have it passed in the next session.

Senator RIBICOFF. I know, but if I were you I would try to do something with these fellows tomorrow.

Mr. REALBERG. But I am afraid that if the committees of Congress will take their hands off here, we are again going to lapse into a period of fruitless activity.

Senator RIBICOFF. Mr. Realberg, I have not taken hands off. I have given you this hearing, you know.

Mr. REALBERG. I mean, if there is any possibility, Senator, that the legislation could be passed this session, I plead with you to do what you can, and your committee.

Senator RIBICOFF. You talk to the leadership, and indicate how much time there is left to take care of the business that faces this Congress by October 4. I am not running for reelection, so I have got time, but there are a lot of other guys running for reelection and they don't have much time between now and November 4.

Mr. REALBERG. I am aware of that. But we heard today what Senator Byrd's attitude is, and there are other Senators who have strong feelings about this, and who may very well help to push it through in this session.

[The following was subsequently supplied for the record:]

STATEMENT OF LEO REALBERG, ATTORNEY AT LAW

Chairman Ribicoff and members of the Senate Subcommittee on International Trade, my name is Leo Realberg. I am admitted to practice as attorney in the courts of the State of New York and before the Supreme Court of the United States and other Federal courts.

I have come to urge you to take favorable and early action on Senate bill S. 2721. I wish to thank you for the opportunity to address you in person at this hearing.

I represent the owners of 14 awards made by the Foreign Claims Settlement Commission for properties seized by Czechoslovakia. Seven of the 14 are persons in their seventies and eighties. Six of the original claimants are deceased and their awards have devolved upon their surviving spouses and children. One-half of these awards are for less than \$22,000. One lady, 87 years old, is living in a senior citizens' home on Social Security and is using up her small savings. She has a claim for \$12,000. One of her daughters, whose entitlement derives from her deceased father's small claim, recently told me that she cannot work because of high blood pressure and severe stomach ulcers since her flight from Czechoslovakia in 1939.

Another of my claimants, who received an award from the Commission, a professional man, died two years thereafter, leaving a widow and two young children. The mother has had a very hard time of it, raising and giving her children the higher education so necessary for their careers. She has been urging her representatives in Congress, for 15 years now, to find some way of enforcing payment of the award made to her husband. Personal accounts of the terrible events which made refugees of these people, deprived them of their properties and left them without any source of livelihood for long periods, are surely familiar to many Congressmen and Senators, particularly those old enough to have lived through World War II and the early post-war years. I served in the United States Army on the European continent during 1944-45, and I must frankly say that I cannot view the 30-year record of American diplomacy, in the matter of the Czech claims, with calm detachment.

The disposition of these claims has been used as a mere counter on the international gaming board. Strangely, although the United States held the strongest position, ever since President Truman blocked the shipment of the Czech gold, the State Department has been unable to negotiate a fair and reasonable settlement of the claims of our citizens. I attended the recent committee hearing on H.R. 7338, the companion bill to S. 2721, and heard the representative of the State Department in opposition to Congressman Wolff's bill. It was sad. There are stronger words that one might use, but I shall restrain that impulse and say it was sad to see the State Department hold forth with ultra-strict construction of certain international agreements and arrangements, which would leave our Government impotent to breach this 30-year impasse, on other than terms of abject sacrifice of our citizens' rights and interests. Other members of the attorneys' panel of witnesses have prepared masterly legal briefs in support of S. 2721 and I trust you will concur that their equitable and pragmatic interpretation of these same agreements and arrangements is sound and more tenable than the opposing arguments.

The proposed amendment to the Trade Act of 1974, provides *inter alia*, that if within 60 days of its enactment, a written, initialed settlement agreement between the United States and Czechoslovakia for payment in full without further delay of these awards, is not submitted for Congressional approval, the Secretary of the Treasury is directed to proceed with the sale and liquidation of the Czech gold and establish specified collection, investment and payment procedures. The language of the amendment is strong; some of the acts enjoined upon the Executive Branch are to take place at the "earliest possible date" and "immediately." (Sec. 408(c) (1), (2), (3))

Is 60 days after enactment adequate time for the State Department and the Czech representatives to come to agreement?

Negotiations go back 30 years. The issues and technical details have been thoroughly examined on several occasions, as recently as 1974 and conversations between the parties are currently in progress. The Prague government is not required to take "any money out of their pocket", so to speak. We are holding more than adequate security in the form of the gold to which Prague has full and clear title, but which is subject to our disposal. Prague has no benefit from the gold and will not have so long as the present impasse continues. Under the pressure applied by Congress, through this bill, it may finally decide to make a fair and reasonable settlement, such as is acceptable to Congress and the claimants, and work out a program for application or use of the gold in satisfaction of the claims. The Prague government is surely well informed of the progress of this bill, which means, in effect, that they have already begun to consider their response. Sixty days after enactment, for the composition of an agreement to supersede this proposed amendment to the Trade Act of 1974, is entirely adequate.

Gentlemen, I plead with you to seize this opportunity to perform an act of historic and humanitarian justice. Let this justice no longer be delayed by a single day or hour.

Thank you.

Senator RIBICOFF. Good luck to you.

Is there anything else?

Mr. MCPHERSON. Mr. Chairman, thank you very much for holding this hearing.

Senator RIBICOFF. This committee will stand adjourned.

[Whereupon, at 11:45 a.m., the subcommittee adjourned, to reconvene at the call of the Chair.]

[By direction of the chairman, the following communications were made a part of the hearing record:]

FRANZ ALLERS

At Chicago's McCormick Place

McCormick

SEP 1 1 56 PM '88

PERMANENT ADDRESS:
880 NE 69th STREET
MIAMI, FL. 33138

AUGUST 27, 1980

HONORABLE SENATOR
RUSSELL B. LONG
SENATE OFFICE BUILDING
WASHINGTON, D. C.

DEAR SENATOR LONG;
I HAVE FOLLOWED YOUR DISTINGUISHED CAREER
AND YOUR COUNTLESS ACHIEVEMENTS FOR MANY YEARS.
I AM BORN 1905 IN CZECHOSLOVAKIA, AM A
NATURALIZED AMERICAN CITIZEN SINCE 1943, NUMBER
301678, AND I HAVE A CERTIFIED CLAIM (#C2 1985)
WITH THE FOREIGN CLAIMS SETTLEMENT COMMISSION, NOW
DEPARTMENT OF THE TREASURY. THE CLAIM WAS
CERTIFIED IN 1964 (!) AND I AM WAITING....
I AM AWARE THAT YOU ARE VERY ACTIVE CONCERNING
THE NEWLY SUBMITTED BILL REGARDING THIS
MATTER, AND I TAKE THE LIBERTY TO ASK
YOU TO GIVE THIS BILL YOUR SPECIAL CONSIDERATION,

(CONTINUED)

McCormick Inn, 83rd and the Lake, Chicago, Illinois 60618
Telephone (312) 791-1900Another Fine
Antiscore Inn

ALLERS

At Chicago's McCormick Place



SO THAT I CAN, AFTER ENDLESS
HARDSHIPS IN THE NAZI-DAYS, CAN FINALLY
RELAX MY STRENUOUS PROFESSIONAL LIFE.

I HAVE CATARACT IN BOTH EYES, AND IN MY
PROFESSION AS ORCHESTRA CONDUCTOR, I CAN
EITHER CONDUCT WORKS I KNOW FROM MEMORY, OR
STUDY NEW WORKS WITH A MAGNIFYING GLASS,
MEMORIZING NOTE BY NOTE LIKE A HIGH SCHOOL
STUDENT. PRESENTLY I AM CONDUCTING "CAMELOT"
WITH RICHARD BURTON IN CHICAGO, BEFORE THAT,
I CONDUCTED AT THE WASHINGTON WOLF TRAP FESTIVAL
IN VIENNA, VIRGINIA. WITH THIS HARD WORK, SUPPLEMENTED
BY MEMORIZING, SOMETIMES THROUGH THE NIGHTS, YOU
WILL CERTAINLY UNDERSTAND THAT IN THE
76th YEAR OF MY LIFE I LOOK FORWARD TO AN
EARLY SETTLEMENT, AND WILL GRATEFULLY APPRECIATE
ANY HELP YOU CAN GIVE IN THIS MATTER.

RESPECTFULLY YOURS

Franz Allers
(FRANZ ALLERS)



McCormick Inn, 23rd and the Lake, Chicago, Illinois 60616
Telephone (312) 781-1800

Another Fine
Aristocrat Inn



Franz Allers

880 NE 69th Street
Miami, Fl., 33138
September 9, 1980

Honorable Abraham Ribicoff
Senate Subcommittee on International Trade
Senate Finance Committee
c/o Mr. David Foster
2227 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Senator Ribicoff:

First, I would like to thank you for your humane interest in S.2721.

Second, may I introduce myself: I am Franz Allers, original conductor of both "My Fair Lady" and "Camelot". I have conducted most of our major American Symphony Orchestras, most recently last August at Washington's own Wolf Trap Festival.

I was born on August 6, 1905 in Czechoslovakia, and made a narrow escape from Hitler's terror in 1938. Like many others, I have been awarded in 1962 the Czechoslovak claim due me, and I have been waiting for a settlement for the last 18 years. So both S.2721 and HR.7338 apply to me very directly.

After having arrived in our Country, I have -after a very hard struggle- been able to establish myself on our musical scene, and America has indeed been very good to me.

But a few years ago I developed cataract in both eyes, so that I am now only able to conduct scores I know completely by memory, since can not recognize any music on a music stand in front of me, don't even see the faces of the musicians clearly.

Although I have made a fair living, the situation is rapidly becoming precarious, being in my 76th year and having to look for and accept engagements at the ever increasing risk of not doing them justice, for lack of adequate eye sight.

I know there is no need to urge you to help S.2721 pass. Anything you can do will be highly appreciated.

In admiration of all the things you have accomplished in your long, distinguished career,

Respectfully yours,


(Franz Allers).

HARRY BACHRACH,
103 Edgewood Avenue,
Larchmont,
N.Y. 10538.

August 31st, 1980.

Honorable Abraham Ribikoff, Chairman,
Senate Subcommittee On International Trade,
c/o Mr. David Foster,
2227 Dirksen Senate Office Building,
Washington D.C. 20510.

Dear Senator Ribikoff:

Czechoslovakian Claim OZ 3388 Bachrach Joseph and Harry:

Since I shall be unable to attend the hearing on Moyrhan's bill S2721, on September 9th, permit me to state, that I fully endorse bill S2721 and hope, that it will be enacted without delay. Both, the widow of my deceased brother Joseph and myself, are in our 70s. Better late than never, but justice should be done. In view of the fact, that agreements have been concluded with all other Communist countries, the settlement of the Czechoslovak claim is badly overdue. Since the U.S. State Department in the past decades has been either unable or unwilling to reach an equitable solution by negotiation, it is my feeling, that Congress has to act now.

Respectfully submitted,


Harry Bachrach.

Frank Block
466 - 39th Ave. E.
Seattle, WA. 98112

Sept. 2, 1980

Honorable Abraham Ribicoff, Chairman
Senate Subcommittee On International Trade
Senate Finance Committee
c/o Mr. David Foster
2227 Dirksen Senate Office Building
Washington, D. C. 20510

Dear Senator Ribicoff:

I am writing to encourage your support of S. 2721 - a bill which would provide payment of certified awards to U.S. citizens. The payments would be made from the proceeds of gold held by the U.S. Government to pay those claims.

By now you have received copies of the statements by Edward L. Merrigan and Harry McPherson on the companion bill (H.R. 7338). Those statements do an excellent job of providing background information and refuting the claims made by the Department of State.

I am writing to you, Senator Ribicoff, because of your long history of supporting the causes of the needy and oppressed. My late wife passed away this past January at the age of 67. She was one of the award holders approved by the Foreign Claims Settlement Commission.

She waited many, many years to receive these payments to which she was entitled. Obviously she will never receive this money or enjoy the benefits she deserved.

I am 72 years old and also have an approved claim. Our situation is typical of these many award holders. We are elderly, ill, and in many cases already deceased. Many of these people are poor and desperately in need of these funds.

I do not understand why the State Department continues to object to paying these claims. That Department has been unable to negotiate any fair settlement with Czechoslovakia and freely admits that our relations with that country are "poor". Yet the State Department opposes selling this gold which was seized by the U.S. Government for precisely this purpose. You can see why ordinary citizens are upset with, and frustrated with our Government.

You should also realize that these awards are based on 1948 values. There has been no recognition of inflation or the present worth of these valuable properties. For 32 years the State Department has been unable to resolve this matter in a way which satisfies the U.S. Congress.

Can I ask for your help in finally resolving this old and painful subject? These are awards based on property I owned before World War II. Do I also need to pass away without any fair payment for these properties?

I appeal to your humanitarian record and well known sense of fairness to help pass this legislation. Please let me know that I can have your help.

Sincerely,

Frank Block
Frank Block

Before the Subcommittee on International Trade

HEARINGS ON S. 2721

**A Bill Before the Senate Finance Committee
September 9, 1980**

**STATEMENT OF HENRY J. CLAY
Law Firm of Abberley, Kooiman, Marcellino & Clay
521 Fifth Avenue
New York, New York 10175**

United States Senate - September 9, 1980

Mr. Chairman:

Thank you for this opportunity to present certain views with respect to S. 2721 which is presently pending before this Committee.

I should like to review briefly the history of the claims that U. S. nationals have against the Government of the Peoples Republic of Czechoslovakia. You will recall that shortly after the liberation of Czechoslovakia from German occupation during World War II, the Czech cabinet on October 24, 1945, issued its first decree which nationalized certain mines and key industries in that country. By April 20, 1948, virtually all industrial and private enterprises and properties owned by foreign nationals had been nationalized or, in fact, expropriated by government decree. The result was to effectively eliminate any private enterprise in the Czechoslovakian economy. A number of U. S. nationals, consisting of corporations and naturalized citizens, were directly affected by these governmental edicts. At that point of time, there was little to concern these persons

with respect to their property rights as an agreement had been signed between the United States and Czechoslovakia on November 14, 1946 (61 Stat. (3) 2431, TIAS. No. 1569), which provided:

"The Government of the United States and the Government of Czechoslovakia will make adequate and effective compensation with respect to their rights or interests in properties which have been or may be nationalized or requisitioned by the government of the other country."

Early in the 1950's despite the receipt by Czechoslovakia of massive aid and credits from the United States, Czechoslovakia ignored our demands to arrange for compensation. In fact, it refused, Mr. Chairman, to compensate U.S. claimants for these takings. Our Government, after many requests to that Government to pay fair and timely compensation for these properties, resorted to self-help. It seized a steel mill that had been purchased in this country and paid for by the Czechs. The steel mill was sold by the Department of Justice for \$9 million and the net proceeds, \$8,540,768.41, was transferred to the Czechoslovakian Claims Fund under the International Claims Settlement Act of 1949, as amended.

On July 2, 1958, Senator Long (D., La.) introduced a bill in the 85th Congress to compensate nationals of the United States for property seizure claims against Czechoslovakia. This bill became law on August 8, 1958. Under this program, 4,024 claims were filed by corporate and individual claimants with

the Foreign Claims Settlement Commission of the United States, the government agency charged with the responsibility of administering these claims. 2282 awards were made by the Commission, totalling \$72,614,634.00. Unfortunately, the funds available from the sale of the steel mill amounted to only \$8,540,768.00 or approximately 5.3% of the principal of such awards. Under the law, all awards of \$1,000 or less were paid in full so that 951 awardees, or 41.6% of all claimants were paid in full. The Czech claims program was concluded in 1962.

There now remain 1331 claimants with awards in excess of \$1,000 who have unpaid principal and interest balances as of 1962 of approximately \$105,104,455.00. Consequently, these claimants have been paid less than 6% of the principal amount of their awards without any consideration of interest on the award since 1962.

In an attempt to settle the unpaid principal balance of the outstanding awards, representatives of the Department of State and the Government of Czechoslovakia initialled a tentative claims settlement agreement in Prague on July 5, 1974. It was assumed at that time that the variety of matters included and tentatively settled would lead to a final agreement by September, 1974. Such was not to be the case. Amendments sponsored by Senator Long, the original sponsor of the claims legislation, and Senator Gravel to the Trade Act of 1974 effectively rejected the proposed agreement on the grounds

that the settlement of the outstanding balance of principal payments was inadequate.

Attempts to reach a fair compromise to settle this outstanding balance continues to remain unresolved - some 35 years after the claimants' properties were nationalized without any provision for compensating the owners. It may be that delays in the settlement of foreign claims are unavoidable. This is a complex area. Negotiations between government representatives are the result of give-and-take by experienced persons. Frankly, in the instant case, it appears that the Czechs are prepared to wait out the situation in hopes that with the passage of time, the problem will go away. It would seem that the time is now ripe for this Government to take some positive action. Czechoslovakia on its part continues to seek most-favored nation treatment in trade with the United States and is constantly searching for financing of government projects from the West. It is now an appropriate time to impress that country with the stark reality that the conduct of commerce is a two-way street and that government commitments are never taken lightly. For Czechoslovakia to benefit from such equal trade treatment, that government should not only recognize, but should discharge, its prior obligation and commitment to U.S. nationals. Many of the individual claimants are elderly, sick, or in dire need of funds. Further delay can hurt no one more than these claimants. Justice delayed is justice denied.

By the Paris Reparations Agreement of 1946, approximately 18.4 metric tons of Nazi-looted gold belonging to the Republic of Czechoslovakia was placed under a Tri-Partite Commission consisting of France, Great Britain and the United States. 9.2 metric tons of this gold is presently understood to be held by the Federal Reserve Bank in New York, as custodian. The U.S. Government has withheld the return of the gold to the present Government of Czechoslovakia pending conclusion of a satisfactory agreement concerning the unpaid balance of the Czechoslovakian claims awards. If we were to take a conservative value of this gold in today's market at \$550 per ounce, the present market being well over \$600 per ounce, the 9.2 metric tons would realize \$178,122,000.00.

Mr. Chairman, I am pleased to support Senator Moynihan's Bill, S. 2721, which is designed as one means of resolving a long-standing obligation of the Czech Government to U. S. nationals. That Government has nationalized properties of U.S. nationals without any provisions to pay just and timely compensation for these properties so taken, which is a violation of established principles of international law. Nationalization in Communistic countries is really expropriation - taking without compensation for public purposes. In non-communistic countries, where property is taken for a public use, it is an accepted practice under the principle of eminent domain to compensate the owners for the value of such properties.

In 1963, U.S. efforts to obtain additional funds

from the Czechs by the Department of State were unsuccessful. In 1974, another effort by the Department produced a tentative agreement by the Czechs to make an additional payment of the unpaid balance. This tentative proposal was turned down by the Senate Committee on Finance. In fact, there appeared to be suggestions in the 1963 effort that the Czechs might pay approximately \$15 million to satisfy the balance, but that suggestion never materialized. The 1974 proposal amounted to approximately \$20 million, which was a slight improvement, but the proposed payout was to be spread over a 20-year period. Both offers (1963 at 23% and 1974 at 30%) were completely unacceptable to the Congress.

It has been reported that one of the reasons that the Czechs object to full payment of the claims awards is that their brother Eastern European governments have settled their obligations at discount prices (Bulgaria - 39%, Roumania - 23%, Poland - 26%). This posture of pride is certainly ill-placed at this time. It is interesting to note that the Yugoslav payment exceeded 90% of the principal amount of the total awards. This favorable payment, however, was part of a program in which the government of Yugoslavia was seeking other credits from our government. Experience has been a good teacher, but the learning fees have been high.

Mr. Chairman, S. 2721 is one solution to a long overdue matter of injustice that was inflicted on U.S. nationals over 35 years ago. I think that it is about time that the Congress of the United States put the world on notice, especially Communist dominated governments, that the Government of the United States will use all reasonable means to protect the property of its citizens abroad. This obligation to its citizens is doubly important in view of our government's encouragement of the business community to invest in underdeveloped countries throughout the world. America has been a great source of financing for investment abroad. We have encouraged the private sector to make such investments by according income from such sources with liberal tax provisions. Private U.S. banking interests have made billions of dollar loans to countries throughout the world and new requests keep coming. Our citizens are entitled to protection against illegal acts by host countries which may affect this investment.

May I respectfully urge your Committee to report favorably on the Bill, S. 2721. Thank you.

Czechoslovak-U.S. Economic Council



Executive Secretary
Donald J. Hasfurther

Chamber of Commerce
of the United States
1815 H Street, N.W.
Washington, D.C. 20062

International Division

(202) 656-2024
Telex: RCA 248302 (Int'l)
TWX: 710-822 9382 (Domestic)
Cable: COCUSA

U.S. Section

September 8, 1980

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Fred L. Kuhlmann
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Executive Vice President
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J. Paul Lyet
Chief Executive Officer
Sperry Corporation

The Honorable Abraham Ribicoff
Chairman
Subcommittee on International Trade
United States Senate
Washington, D.C. 20510

Dear Mr. Ribicoff:

I am writing as chairman of the U.S. Section of the Czechoslovak-U.S. Economic Council to comment on S. 2721, a bill providing for the payment out of the proceeds of gold belonging to the government of Czechoslovakia of certified awards of nationals of the United States. I would be grateful if you could include this statement in the record of the proceedings on S. 2721.

The Czechoslovak-U.S. Economic Council was created by an agreement signed by the presidents of the Chambers of Commerce of the United States and Czechoslovakia on October 17, 1975. The Council's aim is to open channels of direct dialogue between business representatives of the two countries and to work for the resolution of those problems impeding an expansion of trade and commercial cooperation.

Since its inception, the Council has been on record as favoring a negotiated settlement of the claims/gold issue. In this regard, we are encouraged by reports of new discussions between our two governments on the claims issue. At the same time, we are deeply concerned that enactment of S. 2721 may seriously complicate these discussions and impair chances for an amicable resolution of the issue.

Curiously, discussion to date on this issue has not focused sufficiently on the question of how passage of the bill will impact upon U.S.-Czechoslovak relations. In this regard, it is our concern that this legislation could seriously affect significant potential for trade expansion between our two countries.

Over the past few years, U.S. business, with the encouragement of the U.S. government, has developed close and commercially beneficial ties with business representatives in Czechoslovakia. Enactment of S. 2721 is likely to be interpreted by these U.S. companies as a signal that our government no longer supports their efforts to improve business relations with Czechoslovakia.

Enactment of S. 2721 could have an equally disruptive impact upon the business community of Czechoslovakia. Those Czechoslovaks conducting business with the United States have had the difficult task of arguing within their own country for closer economic and commercial links with the United States. These efforts could be seriously affected by the deterioration in political relations which would likely result from enactment of this legislation.

As you are aware, our State Department has again initiated discussions with the Czechoslovaks over a claims settlement. We urge the Congress to give the Executive Branch adequate time to negotiate a settlement before proceeding with this legislation. If a settlement is reached, we urge the Congress to give the settlement its serious attention.

Sincerely,

A handwritten signature in cursive script, reading "Fred L. Kuhlmann". The signature is written in dark ink and is positioned above the printed name.

Fred L. Kuhlmann

Before the Subcommittee on International
Trade

Senate Committee on Finance

September 9, 1980

Hearings on S. 2721

Mr. Chairman:

My name is Paul Dayton. I reside at 3951 Gulfshore Blvd. North, Naples, Florida 33940. I became a citizen of the United States, by naturalization on July 25, 1946. I am 83 years old.

I desire to add briefly to the statement, for the printed record of this hearing, by my attorney, Samuel Herman. I agree fully with what Mr. Herman stated, and proposed, on behalf of claimants who have not, as yet, received awards from the Foreign Claims Settlement Commission in their claims against Czechoslovakia.

I had an ownership interest in textile mills, and other property, in Czechoslovakia, when the Benes Government came into power in Czechoslovakia in 1945. I was a refugee during World War II and my property was placed under a Nazi administrator. The Benes Government continued the administration of the property in my absence and enacted a nationalization decree affecting the textile industry in October, 1945, such decree recognizing my right to fair compensation. A compensation proceeding actually commenced on my behalf in Czechoslovakia. In certain instances, to my knowledge, the Benes Government ^{made} actual compensation. This stage had not been reached, in my case, when the Communists came into power on February 26, 1948, and all compensation proceedings, including mine, ceased. An international claim then arose on my behalf, and I feel strongly, as an act of justice, that my claim, and others like it, should be included in any settlement with Czechoslovakia, or in any payment on awards.

Respectfully,



Paul Dayton

MARIE
CHARLES R. FINK
220 LAKE
SEASIDE, SOUTH

Sept. 12, 1940.

Honorable Abraham Ribicoff, Chairman
Senate Subcommittee On International Trade
Senate Finance Committee
c/o Mr. David Foster
2227 Dirksen Senate Office Building
Washington, D. C. 20510

Dear Senator Ribicoff:

I am writing to encourage your support of S. 2721 - a bill which would provide payment of certified awards to U. S. citizens. The payments would be made from the proceeds of gold held by the U.S. Government to pay those claims.

By now you have received copies of the statements by Edward L. Merrigan and Harry McPherson on the companion bill /H.R. 7338/. Those statements do an excellent job of providing background information and refusing the claims made by the Department of State.

I am writing to you, Senator Ribicoff, because of your long history of supporting the causes of the needy and oppressed. My husband passed away in 1967. He was an award holder approved by the Foreign Claims Settlement Commission. I am 71 years old and also have an approved claim. It is a typical case of us award holders. To receive this money would help a lot.

I do not understand why the State Department continues to object to paying these claims. That Department has been unable to negotiate any fair settlement with Czechoslovakia and freely admits that our relations with that country are "poor". Yet the State Department opposes selling this gold which was seized by the U.S. Government for precisely this purpose. You can see why ordinary citizens are upset with our Government.

May I point out that these awards are based on 1948 values. There has been no recognition of the present worth of these valuable properties. For 32 years the State Department has been unable to resolve this matter in a way which satisfies the U.S. Congress.

Can I ask for your help in finally resolving this old and painful matter? These are awards based on property I owned before World War II.

I appeal to your humanitarian record and wellknown sense of fairness to help pass this legislation.

I thank you in advance for a positive answer.

Very sincerely,

Marie Fink

Marie Fink

H. OTTO GIESE
ATTORNEY AT LAW
HOGE BUILDING
SEATTLE, WASHINGTON
98104

September 4, 1980

Honorable Abraham Ribicoff, Chairman
Senate Subcommittee On International Trade
Senate Finance Committee
% Mr. David Foster
2227 Dirksen Senate Office Building
Washington, D. C. 20510

Re : S - 2721
U. S. Claims against
Czechoslovakia

Dear Senator Ribicoff :-

This office represents ten clients who about twenty years ago obtained awards certified by the United States Foreign Claims Settlement Commission on their Claims against Czechoslovakia for assets owned by these American citizens and nationalized by that government, on which the unpaid balances total over half a million dollars.

Four of these Claimants have died already, and the others are all of advanced age, waiting for all these years for payment which now appears easily possible without harm to any party out of the gold in possession of our government, the value of which is now a multiple of the sums involved.

I am writing on behalf of these citizens to ask your support of the Senate Bill S-2721 now scheduled for hearing next week before your Committee, providing for the final satisfaction of these claims from this gold, and your opposition to the apparent attitude of our State Department which has been blocking this simple and equitable solution. It is difficult for American citizens to understand this. They strongly feel entitled to simple justice both from an unfriendly foreign nation and so much more so from our own governmental agencies.

Your active support of this legislation will be greatly appreciated.

Respectfully yours,

H. Otto Giese.

WRITTEN STATEMENT OF PAUL HEFFMAN FOR PLACEMENT IN THE RECORD OF
THE HEARING OF THE FINANCE SUBCOMMITTEE ON INTERNATIONAL TRADE IN
RESPECT TO UNPAID CLAIMS OF U.S. CITIZENS AGAINST THE
GOVERNMENT OF CZECHOSLOVAKIA

September 9, 1980

31 Parkway, Harrington Park, N.J. 07640

This communication is to express my hope that this Committee of the Congress will go along with the objectives of legislation sponsored by Representative Lester L. Wolff and Senator Daniel Patrick Moynihan in respect to claims of United States citizens against Czechoslovakia and thereby help bring about a long-needed rectification of injustice.

Twenty-eight years have passed since the insurgent Communist state of Czechoslovakia confiscated the property of American citizens and inflicted other injuries of like kind. Moreover, the present Czech Government has been in complete default during all this period in respect to external bonds of the predecessor state—obligations payable in United States dollars statutorily worth a gold value of \$36 a gold ounce.

And 18 years have passed since the Foreign Claims Settlement Commission of the United States sifted \$364 million of claims against Czechoslovakia submitted by over 4,000 claimants, and thereafter certified 2,630 awards totaling \$113,645,205 arising out of property seizures and like injuries.

Excluded purposefully from the claim register were formal claims against the Czech Government anchored in an estimated \$2,734,300 of outstanding Czech Government bonds issued abroad from 1922 to 1924 and in default since 1952. Over this time the interest arrears have risen to over ~~\$4,500,000~~ ^{\$4,500,000} or more than twice the estimated outstanding amount of the original borrowing.

Again, 40 years have passed since the armies of Nazi Germany seized 18.4 tons of Czech Government gold—the same gold that had been security for Czechoslovakia's dishonored government debt.

Written statement of Paul Heffernan for hearing of claims against Czechoslovakia--2

And 35 years have passed since the armies of the United States and our Allies recovered the Czech Government gold store and placed it in escrow in a postwar Tripartite Commission with British and French representation. Meantime, the Victims of the injuries suffered decades ago at the hands of the Czech Government have been hoping, aging, retiring and dying--unrequited.

The legislation sponsored by Representative Wolff and Senator McNihhan is therefore a most welcome effort, one long overdue, to blow the whistle on this shameful obscenity.

I insist that the State Department's vaunted inviolable commitment to restore the Nazi-seized gold to Czechoslovakia is no more inviolable in international law than Czechoslovakia's commitment to redeem the Czech state's government bonds held by investors of other states--bonds secured by the very gold the German army seized and that the military force of the United States and its allies in turn seized from the Germans. These bonds bear a pledge of the Czech Government to redeem them in United States dollars and to pay interest--interest now in arrears for 28 years--at rates granted by a former settlement reduction from 8% to 6%. I am ~~many~~ one of the owners of these bonds.

Although not backed by ^a ~~the~~ formal international ^{like that} ~~commitment~~ made by the Tripartite Commission to return the escrowed gold to Czechoslovakia, nor by the Czech Government's formal pledge to redeem its government bonds in keeping with the gold clauses of the bond contracts, the claims of United States nationals stemming from the seizure of property and like injuries are on a par morally with the formally-sealed pledges of the government functionaries.

For this reason, the commitment to return the Czech gold must, in all justice and equity, be merged with and made conditional upon the satisfaction in full of all the certified claims for injuries to personal or real property or to other assets domiciled within the jurisdiction of Czechoslovakia, the nit-picking of career diplomats here and abroad to the contrary notwithstanding.

Page 3. Paul Heffernan's statement for hearing of claims against Czechoslovakia.

The gold held in escrow for Czechoslovakia is today worth over \$320 million, while the total of certified awards to claimants against Czechoslovakia--including \$2,700,000 of defaulted government debt and 28 years of bond interest arrears--comes to about \$120 million, or little more than one-third of the dollar windfall Czechoslovakia would get from the return of the gold store. When seized by the Germans, the Czech gold had a dollar worth of about ~~\$19 million~~ \$19 million. Today this gold store has a value of over \$320 million.

But if formulas put forth by our State Department for settling property and other non-bond claims of American citizens are to prevail, the claimants would get from 28 to 42 per cent of their awards. This shrinkage requires further downward adjustment by reason of the depreciation of the value of the dollar meanwhile. At the time the claims were certified, a dollar was worth 100 cents in the purchasing power of that time; in contrast, a dollar today is worth ~~only~~ only little more than one-third of what it could buy when the claims were certified.

The bottom lines could thus be incredible. For one column, a windfall of more than \$300 million to a foreign government guilty of expropriating American property and keeping its own externally-owned government debt dishonored for 28 years. ~~And for the other column, a pittance of little more than 10 cents on the dollar for validated claims totaling about \$120 million.~~

years. And for the other column, to United States victims of injuries inflicted by Czechoslovakia, a pittance of little more than 10 cents on the dollar for validated claims totaling about \$120 million.

Unhappily, the legislation before your committee has no bearing on the most disquieting aspect of Czechoslovakia's behavior--its persisting indifference about servicing \$2.7 million of Czech Government gold-secured bonds payable in United States dollars in default for 28 years. Czechoslovakia is in court, so to speak, with dirty hands.

Page 4. Paul Heffernan's statement for hearing on claims against Czechoslovakia.

For nearly a half-century, the Congress has seen fit to allow the settlement of the claims of American investors against foreign governments arising from government bond defaults to be negotiated by a non-government body--the Foreign Bondholders Protective Council.

In recent years, this Council has acquiesced to the settlement of defaulted foreign government bonds with formulas inspired by the ^(low-interest) ~~low-interest~~ levels of the Great Depression. With interest rates soaring ultimately after World War II to double digit areas, bond settlements proposing new interest coupons ceilinged at 3 percent gave the rehabilitated bonds a market value of less than 50, that is, of \$500 per \$1,000 bond.

This in turn inspired the debtor governments to propose paying off the defaulted debt at once at a price of less than 50 per cent of the principal amount. The Bondholders Council saw fit to go along with this, even while admitting that it represented a break with its historic basic insistence that the principal amount of the debt was "inviolable." Further, the Council acquiesced as well in some recent settlements (involving the long-dishonored government bonds of Poland and Hungary) to wiping out all interest arrears.

And the gold clauses? What about the gold clauses and other specific security pledged by foreign governments in external debt contracts? The Council's postwar settlements have for the most part passed over such commitments. In public reports, the Council has explained such settlements on two main grounds: (1) ~~the unwillingness of the world's major commercial banks to lend more money to foreign governments unwilling to service~~

the willingness of the world's major commercial banks to lend more money to foreign governments unwilling to service ^{their} outstanding dishonored debt; and (2) the duty to see that the sulced bondholders get "something" rather than "nothing."

PAGE 5. Paul Heffernan's statement for hearing of claims against Czechoslovakia.

In the present extraordinary collision of international commitments now before the Congress--the commitment to return to Czechoslovakia its gold and the commitment of Czechoslovakia to pay off its government bonds in gold clause dollars--your Committee is herewith requested respectfully and earnestly by the undersigned to use its good offices to further the legislation now before it; and to bring to the attention of the Foreign Bondholders Protective Council any pronouncements the Federal Legislature may see fit to make in respect to leveraging the sequestered Czech gold to best serve the interests of United States citizens bearing validated claims against the Czech state.



Paul Heffernan
31 Parkway (P.O. Box 115)
Harrington Park, N.J. 07640

STATEMENT IN SUPPORT OF S. 2721,
96th CONG., 2nd SESS.*

I

My name is Samuel Herman. I am an attorney with offices in the District of Columbia. I represent certain holders of awards rendered by the Foreign Claims Settlement Commission against the Government of Czechoslovakia pursuant to Title IV of the International Claims Settlement Act of 1949, Pub. Law 85-604, approved August 8, 1958 (hereinafter "Act"). I also represent claimants, citizens of the United States, who have not, as yet, received awards from the Commission: first, claimants whose claims against Czechoslovakia arose after August 8, 1959, the effective date of the Act; second, claimants who became citizens of the United States on, or prior to, February 26, 1948, the date upon which the "Communist Government of Czechoslovakia" came into being, but whose claims, nevertheless, were found to be ineligible by the Commission for reasons hereinafter stated. We support enactment of S. 2721, as an act of simple justice, and also urge enactment of amendments which would legislatively establish the eligibility of the two categories of claimants mentioned. The amendments we propose are attached hereto and made a part of this statement.

As it stands, S. 2721 is an award payment bill, not a claims bill. S. 2721 is premised upon the continued failure of the Government of Czechoslovakia to agree to settlement and payment of Commission awards in a manner and to a degree acceptable to the Congress as provided in the Trade Act of 1974.

*All references to S. 2721 in this statement are based on the premise that the provisions of H.R. 7338, 96th Cong., 2nd Sess., will be substituted therefor.

The award holders I represent applaud the initiative displayed in S. 2721 in seeking constructively to end the intolerable deadlock of over thirty years of diplomatic negotiation. In the circumstances, this can only be done by the Congress.

S. 2721 is but a logical extension of a series of events which commenced in 1958 when Congress conferred jurisdiction upon the Commission, an agency of the United States, to adjudicate American claims against Czechoslovakia for property takings despite the failure of Czechoslovakia to enter into a settlement agreement. It is, in our view, the duty and responsibility of the Congress, after affording further opportunity to Czechoslovakia to settle the claims, . . . to provide for payment of Commission awards rendered pursuant to Congressional authority. S. 2721 is a fair and effective method for providing payment and serves the interest of the American citizens concerned and the United States and Czechoslovak Governments. We see no legal impediment to the adoption of the method contained in S. 2721. It is based upon traditional methods of collecting judgments. It gives proper deference to traditional diplomatic settlement. Yet if the settlement can only be obtained by return of the gold, it establishes, as a prerogative of the Congress, conditions for return of the gold.

But in so seizing initiative, the Congress, in our view, would be remiss in not now fully providing for the settlement of all claims of American citizens arising out of the nationalization or other taking of property by the Communist Government

of Czechoslovakia, and thus conclude a process which the Congress itself commenced in 1958. Were such claims against Czechoslovakia to persist after enactment of S. 2721, dissension and uncertainty would continue to becloud United States and Czechoslovakia trade and other relations. The time, opportunity and means exist to wipe the slate clean. In so doing, the payment in full of award holders under S. 2721 would not be affected. Under the proposed amendments, residual funds would also be retained to settle and pay the remaining claims with which we should be concerned.

II

Turning first to claims which arose after August 8, 1958, it is clear that, by the terms of the Act Congress itself limited the jurisdiction of the Commission to claims which arose as a result of the nationalization or other taking of American owned property which occurred prior to August 8, 1958. The settlement of post-August 8, 1958 claims is not referred to in S. 2721. A significant number (estimated as high as 600) of such claims exist and the Commission should be given authority to consider them. The precedent for this is ample. Where cut-off dates in initial claim programs have precluded Commission consideration of claims of United States citizens, the Commission has been authorized to consider such claims in a later program. Thus: Yugoslavia (Agreement of March 5, 1964); Hungary (Agreement of March 6, 1973); Rumania (Agree-

ment of March 30, 1960); Bulgaria (Agreement of July 2, 1963); China (Agreement of May 11, 1979); Italy (Pub. Law 90-421, app. July 24, 1968). Given present circumstances, it may well be that unless Congress, by amendment to S. 2721, authorizes the same kind of relief it afforded pre-August 8, 1958 claimants to post-August 8, 1958 claimants, relief for the latter will be unavailable anywhere for the foreseeable future. Given past history, local relief by the Communist Government of Czechoslovakia may not reasonably be expected to be volunteered. A settlement agreement with Czechoslovakia, also encompassing post-August 8, 1958 claims, acceptable to the Congress appears, at present, unlikely. An appropriate amendment, in the form suggested, to S. 2721 appears to be the only course open.

III

Authority to the Commission, by amendment to S. 2721, to reconsider its denial of awards to claimants who became citizens of the United States on or prior to February 26, 1948, involves other considerations no less cogent.

The Commission completed the Czechoslovak Claims Program authorized by the Congress on September 15, 1962. Some 4,000 claims had been asserted in a total amount of \$364,000,000. 2,630 awards were rendered by the Commission for a total of \$113,000,000. In the course of the program some thirty decisions were rendered by the Commission denying asserted claims

of some \$30,000,000 on the technical premise that the "nationalization" of the major industrial properties involved had occurred by operation of Decrees Nos. 100 et seq./45 Sb. effective when promulgated on October 27, 1945 by the post-World War II Benes Government, and, in text, providing for the payment of compensation in local proceedings. The claimants whose claims were denied by the Commission were owners of the properties affected by the decrees, and had become citizens of the United States after October 27, 1945.

On February 26, 1948, the Communists seized power in Czechoslovakia and the "Communist Government of Czechoslovakia" (see Sec. 1(a)(1), .S. 2721) came into being, effectively ending all compensation proceedings in Czechoslovakia pending under the above decrees. All the claimants concerned had become citizens of the United States prior to February 26, 1948. In denying their claims, the Commission found, erroneously we believe, that it was precluded by Congress (Section 405 of the Act) from allowing the claims because the claimants had not been citizens of the United States on October 27, 1945, the promulgation date of the Benes Government decrees.

The claimants objected and contended, inter alia, that the so-called "nationalization" of October 27, 1945, had, in actuality, only authorized future nationalization of the enterprises described, but had not, ipso facto, constituted

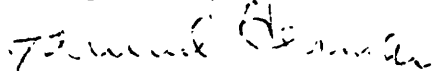
"taking", which, as the evidence showed, had occurred at dates subsequent to the acquisition by the claimants of United States citizenship; that, in any event, no claims in "international law" (Section 404 of the Act), arose prior to February 26, 1948, when the new "Communist Government of Czechoslovakia" denied all rights recognized by the Benes Government to compensation, nullifying and terminating all compensation proceedings, and payment by the Benes Government then in progress.

Since February 26, 1948, Czechoslovakia has provided no local remedy to compensate the claimants for their loss, the claimants remaining without a practical avenue of relief, unless one is now afforded by the Congress in the context of S. 2721.

The passage of nearly twenty years since the Commission's denials, and of over thirty years since the property loss, has highlighted the nature of the basic inequity suffered by these claimants. Czechoslovakia persists in refusing to afford local relief no matter how meritorious the claim. This doctrinal rigidity is to be compared with the local remedies afforded United States citizens in a similar status by Yugoslavia (Article 3, United States-Yugoslav Claims Settlement Agreement of July 19, 1948). Absent international claims settlement agreement, the matter of claims eligibility against Czechoslovakia has been, and remains, subject to the will of

Congress. Congress, in the view of the Commission, as has been noted, intended no distinction between the Benes Government and the succeeding Communist Government, in enacting Title IV of the Act upon which the Commission perforce relied. A distinction is now being properly made. S. 2721 is specifically remedial as to the "Communist Government of Czechoslovakia" (Sec. 1(a)(1). The proposed amendments to S. 2721 would allow the Commission to reconsider claims denied consideration on the merits for alleged lack of Commission jurisdiction. The amendments would give effect to a new policy and direction by the Congress, oriented to the rendition of substantial justice for all United States citizens who have suffered loss, without opportunity of recourse, as a result of the actions of the "Communist Government of Czechoslovakia".

Respectfully,



Samuel Herman

Dated: September 9, 1980.

PROPOSED AMENDMENTS TO H.R. 7338
96th Congress, 2nd Session*

1. On Page 2, strike out Section 1(a)(1) and in lieu thereof substitute the following:

"(1) approximately thirty years have passed since the Communist Government of Czechoslovakia came into power on February 26, 1948, and denied the right to compensation for nationalizations or other takings of properties belonging to nationals of the United States by the prior post-World War II Government of Czechoslovakia, and itself took further properties of nationals of the United States without any provision for just compensation; and Czechoslovakia has enjoyed the use and economic benefit of those properties over that entire period;"

2. On Page 4, add new Section 1(b)(1)(D) and (E) as follows:

"(D) notwithstanding Section 405 of the International Claims Settlement Act of 1949, as amended, the Foreign Claims Settlement Commission of the United States shall determine the validity and amount of any claim of any natural person heretofore filed with the Commission against the Government of Czechoslovakia pursuant to Title IV of the said Act and denied by the Commission solely because of lack of citizenship of the United States at the date of nationalization or other taking by the Government of Czechoslovakia, provided such person was a citizen of the United States on or prior to the taking of power by the Communist Government of Czechoslovakia on February 26, 1948; and the Commission shall, in the event an award is issued pursuant to such claim,

* It is assumed herein that S. 2721, when amended, will incorporate the provisions of H.R. 7338.

certify it to the Secretary of the Treasury for payment out of remaining balances in the Czechoslovakian Claims Fund created by Section 402(b) of the said Act, notwithstanding that the period of time prescribed in Section 412 of the said Act for the settlement of all claims against Czechoslovakia may have expired.

"(E) the Commission shall receive and determine, in accordance with applicable substantive law, including international law, the validity and amount of claims by nationals of the United States against the Government of Czechoslovakia for losses resulting from the nationalization or other taking of property between August 8, 1958, and the date of enactment of this section, such claims shall be determined pursuant to the applicable provisions of Title IV of the Act and such rules and regulations that may be prescribed by the Commission.

(1) The Commission is authorized and directed to fix and publish in the Federal Register the period of time during which claims may be filed and the date for the completion of its affairs in connection with the determination of all claims covered by this section, which date shall not be later than two years following the established final date for the filing of claims; and

(2) In the event that awards are issued pursuant to paragraphs (D) and (E) of this Section, the Commission shall certify such awards to the Secretary of the Treasury for payment out of remaining balances in the Czechoslovakian Claims Fund created by Title IV of the Act, pursuant to the provisions of Section 413 of the said Act;

3. On page 4 on lines 19 and 20, strike phrase "paragraph (1)" and substitute therefor the phrase "this section."

4. On page 5 line 6, strike out the period after "(22 U.S.C. 1642 et seq.)." and add the following:

"and under the provisions of Section 1 of this Act."

PAUL HIRSCH
BLAIR HOUSE

8201 16TH STREET
SILVER SPRING, MD. 20910
(301) 588-2813
U S A

SUMMARY

TESTIMONY OF PAUL HIRSCH BEFORE THE SENATE SUBCOMMITTEE ON
INTERNATIONAL TRADE HEARINGS ON UNPAID CLAIMS OF U.S.
CITIZENS AGAINST THE CZECHOSLOVAK GOVERNMENT
S. 2721 September 9, 1980

1. Upon the independence of Czechoslovakia in 1918 my father and I became Czech citizens. I became a U.S. citizen in 1945. When the Nazis occupied Czechoslovakia in 1938, the Czech government cut off all pensions to Czech citizens of the Jewish faith. My father lost his pension at that time and he died during our emigration from Czechoslovakia.
2. My mother's widow pension (1960) and my pension, due since 1965 were not paid by the Czech government due to their hostile attitude toward the United States. (My parents whom I fully supported for 22 years assigned their claims to me.)
3. I have written confirmation of right to a pension from the Czech Pension Institute. The total amount due to my deceased father from 1938 until his death, to my mother as his widow until her death, and to me (total 42 years) is between \$300,000 and \$400,000.
4. I have filed a claim with the Foreign Claims Settlement Commission and used all available direct and indirect means to induce the Department of State to enforce our claims. The State Department unfortunately has handled our claims in the same manner and fashion as claims for expropriation of property, claims secured by 18 tons of Czech gold. Since 35 years (!) they simply have not done anything. The details of this neglect and inaction are contained in my full presentation.
5. In June, 1968, a reciprocal agreement was reached between Czechoslovakia and the United States whereby the two governments agreed to honor the pension claims of citizens of the other State. Our Social Security Administration promptly transferred the first \$5 million to Czechs, living in Czechoslovakia. Such payments have continued every month for the past 12 years. Despite the reciprocal nature of this agreement, people like myself, have been unable to collect anything from the Czech Pension Institute. In addition, Czechoslovakia discriminates against American citizens, since it does pay pensions to citizens of Austria, Great Britain and France, to name only a few countries.
6. With the passage of time, many of the claimants have died. The surviving group, like myself are octogenarians and most of them are victims of Nazi aggression, like Czechoslovakia! It is ironic that the nation which fell to Nazi terror now in turn denies its former citizens their pensions and properties. It is particularly offending in my case, since when I fled Czechoslovakia I voluntarily joined the Czech Legion which was part of the French Army during the Second World War, fighting the Germans.

Accordingly, I respectfully request:

- a. that S. 2721 be amended to make clear that pension claims are and must be part of any final settlement of claims against Czechoslovakia; and
- b. that the Social Security Administration be directed to cease all payments of any pensions to Czech citizens living in Czechoslovakia until the Czech government pays 100% pension claims of American citizens.

REPRESENTATIVE SCORE - SERVICE CORPS OF RETIRED EXECUTIVES

PAUL HIRSCH
BLAIR HOUSE

8201 16TH STREET
SILVER SPRING, MD 20910
(301) 886-2613
U S A

August 26, 1980

The Hon. Senate Finance Subcommittee on International Trade. September 9, 1980
hearing on unpaid claims of U.S. citizens against the Government of Czechoslovakia.
Witness-transcript Re. Bill S. 2721.

Born 1900 in Hungary, became involuntarily Czechoslovak citizen in 1918.
Emigrated with whole family (as Hitler victims) 1940, became U.S. citizens 1945.

1. During our employment (my father and me) in Czechoslovakia we became insured at the Pension Institute of the csl. Sugar Industry in Prague, later absorbed by the csl. Social Security Administration.

My father retired 1932 and was paid his pension, until the Germans invaded Czechoslovakia in 1938 and directed the Czechs to stop pension payment, due to my father's Jewish faith. My father died in 1940 in emigration.

2. I became eligible for my pension in 1965, but payment was also denied.

3. In 1945 after Czechoslovakia's liberation the Pension Institute provided, upon my request, written accounting of the accumulated pension of my father and the widow pension of my mother (who died in emigration 1962) respectively. Payments were denied.

4. Regarding my pension, I received written confirmation from the csl. Pension Institute of premiums paid by me, but the pension due to me was not spelled out and payment was denied also.

My parents ^{went} ~~went~~ into the emigration (like myself) penniless and in absence of any pension I provided for their living expenses 100% during a period of 22 years. Before my mother's death she assigned all her and my father's inherited claims against Czechoslovakia, to me.

5. Ever since 1945, I pursued my parents' pension-claim and later my own in every possible manner and through all available avenues, to no avail. I registered our claims with Foreign Claim Settlements Commission. I bombarded the Department of State myself and through Senators and Congressmen asking for protection and action. Like the 35 year(!) negligence regarding the 18 tons of csl. gold, the Department's only advice was for me to sue the csl. Government in Prague(!) because our pensions are subject to csl. laws and regulations and every sovereign state is entitled to change their laws and regulations, as they please.

6. This of course is an absurd, immoral, illegal, I should say indolent stand-point, understandable only in the light of the State Department's overall attitude during a period of 35 years!

7. Our pension-claims are neither arguable nor negotiable, they are simply valid claims confirmed by the Czechoslovaks themselves. Not even statute of limitation could be evoked, because the Czechs created the claims themselves (first under German pressure, later out of mere hostility against the U.S.A.). Nor have they changed their pension laws and regulations, because at least Austria, England, France, Switzerland and other nations settled their citizens' pension claims with

REPRESENTATIVE SCORE - SERVICE CORPS OF RETIRED EXECUTIVES

Czechoslovakia. It was and remains simply a "disgraceful" discrimination of U.S. citizens being, formerly csl. citizens. "Disgraceful" because all these claimants are Hitler victims, survived only by miracle. Victims of the same German terror which destroyed Czechoslovakia itself. A tragic irony of history and our State Department, remaining a lame duck since 35 years!

a. Before I became a U.S. citizen I demonstrated my loyalty to the exiled csl. Government. According to the csl. Embassy's confirmation, I voluntarily joined the csl. Legion who became part of the French Army in the Second World War.

Most of the claimants died in the meantime and those that are still surviving are all octogenarians, not supposed to wait any longer. Even the State Department confirmed in writing, that if it can be proved that other nations settled their pension claims and only U.S.A. is discriminated against, then we have a valid case. Nevertheless no action was taken either.

8. But the climax of this tragic affair still follows.

In June 1968!) a RECIPROCAL agreement was reached with Czechoslovakia (by removing this country from Treasury Circular 655 establishing U. S. Social Security payments to Czechoslovakia and of course vice-versa), "paying benefits to U.S. citizens living anywhere in the world who are entitled to annuities from the Czechoslovak Social Security System." This is a quotation from the U.S.'s Prague Embassy's letter of July 8, 1968.

Our Social Security Administration promptly transferred in excess of \$5 million accumulated pensions to Czechoslovakia and ever since every single month large amounts of pension-checks are transferred to Czechoslovakia. I was not able so far to collect one single penny!

9. Presently the INTERNATIONAL AGREEMENTS STAFF of the Social Security Administration are looking into the situation. I served them notice that I will not wait any longer and will give my lawyer the green light to take action, unless immediate remedy with hard cash is provided.

10. a. My total claim commencing 1938 until now (42 years) 6% p.a. accumulated, interest included, amounts to approximately \$300,000 to \$400,000. A computer firm just ascertained the exact amount.

I respectfully suggest:

a. That the pending bill S. 2721, amended, be clearly included valid but expropriated pension-claims into the registration list with the Foreign Claims Settlement Commission, and

b. To stop further Social Security pension payments to Czechoslovakia through executive order or any other legal means, until and unless Czechoslovakia pays 100% overdue pensions, plus 6% p.a. accumulated interest (~~Marty, I don't remember the right expression~~) and Czechoslovakia also commit herself to continue to pay pensions due to U.S. citizens until their deaths and widow pensions afterwards.

Respectfully,

Paul Hirsch
Paul Hirsch

Box 222 113
North Egremont, MA 01252

Sept. 6, 1980

Honorable Abraham Ribicoff, Chairman
Senate Subcommittee On International Trade
Senate Finance Committee
c/o Mr. Michael Stern
2227 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Senator Ribicoff;

I am writing to you in reference to the Senate Bill S. 2721 introduced by Senator Moynihan.

I am one of the Czech refugees claiming restitution (Claim No. Cz-1, 981). I am 71 years old, ailing, and have been waiting for thirty-two years for the claim to be settled - while our State Department proceeds at its usual leisurely pace.

I am Jewish; my whole family was killed in concentration camps by the Nazis. I came from a prominent family. My father was professor for Internal Medicine at the German University in Prague. My grandfather was a rich businessman and industrialist. When I came to the United States I had \$3 in my pocket. I lived for many years in deprivation. There were times when I was practically starving.

In 1948 when the Communists took over they seized all my inherited property. They are getting rent from my apartment house in Prague. (I went there in 1965 in a vain effort to get the house back and collect the rent.) With seven apartments the average rent then was \$180 monthly per apartment. Our country house (15 rooms) in Rostek (half an hour's drive from Prague) is now divided into five apartments, for a rent I could not find out. I do not know what happened to the million-dollar fur business and felt factory of my grandfather.

It is not a gift we are getting if we get a settlement. It would be but a fraction of what was taken from us, not to speak of the suffering we went through. (I myself am an artist.)

Respectfully yours,

Mia Munser Le Conte
(Mrs.) Mia Munser Le Conte

Mrs. Edith Kaufman
140 CARRERI BOULEVARD, NEW YORK, N. Y. 10033

Sept. 2 1980

Honorable Abraham Ribicoff, Chairman
Senate Subcommittee on International Trade
Senate Finance Committee
c/o Mr. David Foster
2227 Dirksen Senate Office Building
Washington D.C. 20510

RE: Senate Bill 2721
introduced by
Senator Moynihan

Dear Senator Ribicoff,

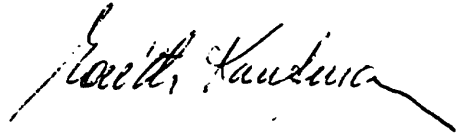
When my father passed away 10 years ago, he had already waited for over 20 years to receive payment on his claim against Czechoslovakia.

As one of his heirs I herewith implore you to support the legislation to use the stored Gold to finally make payments on these claims.

I had to leave Czechoslovakia in 1939 and finally arrived in this country in 1941 after traveling over half the globe. I have never received one penny of restitution from Czechoslovakia and believe the settlement of this claim would at least be a small partial payment of my financial and moral claims.

I respectfully urge you to support this legislation.

Very truly yours,



Leslie Logan, S.J.D.
2523 - 23rd Road North
Arlington, Virginia 22207

July 24, 1980

Hon. Russell B. Long
Chairman, Committee on Finance
United States Senate
Washington, D. C. 20510

Re: S. 2721, To require that most-favored-nation trading status be granted only to the products of countries which have not expropriated U.S. citizens' property without compensation.

Dear Chairman Long:

The enclosed factsheet is a chronological summary of developments over the last two decades relating to the confiscation of property of U.S. citizens by the communist government of Czechoslovakia. Among the data presented are:

1. Statements of members of the U.S. Congress condemning the Department of State for lack of trustworthiness and failure to protect the U.S. victims of confiscation.
2. Recent documents showing that the Department of State after five years still ignores the explicit mandate of Congress to speedily negotiate an agreement providing full compensation.

Most of the claimants are very old. Many are in ill health and living in poverty. They have waited thirty years for justice.

I hope that the additional information in the factsheet will be useful to you and that you will vote in favor of S. 2721.

Respectfully yours,

Leslie Logan
Leslie Logan

Hand delivered

Leslie Logan, S.J.D.
2523 North 23d Road
Arlington, VA 22207
Tel: (703) 525-4932

JUNE 20, 1980

FACTSHEET

U. S. CLAIMS FOR PROPERTY CONFISCATED
BY THE GOVERNMENT OF CZECHOSLOVAKIA

CLAIMS
ADJUDICATED

1. In or about 1962, the U. S. Foreign Claims Settlement Commission established that the property of 2,630 U. S. citizens and nationals had been confiscated by the government of Czechoslovakia. It certified payments totaling \$113,645,205.41, which included principal of \$72,614,634.34 and interest from 1949 to 1958 of \$41,030,571.07.

Leslie Logan (Claim No. CZ-2719) was awarded \$38,056.10; his brother, Stanley J. Logan (Claim No. CZ-4908) was awarded \$38,866.40.

PARTIAL
PAYMENT -
STEEL MILL

2. The Czechoslovak government refused to pay any of these awards. Therefore, the U. S. Government sold the equipment for a steel mill which Czechoslovakia had purchased but export of which had been blocked.

In 1962, the proceeds of this sale (less administrative expenses) were distributed among the certified claimants. Of the \$8.5 million, Leslie Logan received \$2,965.40; Stanley J. Logan received \$3,008.37. These payments left balances as follows:

Leslie Logan - \$35,090.70; Stanley J. Logan - \$35,853.03

As of the date of this factsheet, no other payments have been made. A total of \$105 million remains due to the officially designated claimants.

IRS REFUSES
RECOGNITION
OF CASUALTY
LOSS

3. In 1963, Leslie Logan claimed a casualty loss deduction for the confiscated property on his Federal income tax return for 1962. This claim, he contended, was filed within the 3-year statutory period of limitations because the loss was not legally established until 1961 by the U. S. Foreign Claims Settlement Commission.

The Internal Revenue Service did not allow the deduction, claiming that the loss occurred at an earlier date.

4. On July 5, 1974, representatives of the U. S. Department of State and the government of Czechoslovakia initialed an agreement whereby Czechoslovakia would pay only \$20.5 million to the claimants over a period of 12 years in settlement of the remaining U. S. claims of \$105,104,437.00.

This proposed settlement involved the immediate release to Czechoslovakia of 18.4 metric tons of gold and other assets which had been held 27 years to guarantee Czechoslovakia's repayment of its debt to the claimants.

1974 PRO-
POSAL - THE
NUMBERS GAME

Although the Department of State claimed that the proposed settlement guaranteed 42 cents on the dollar to the U. S. award-holders, the true facts are as follows:

- (a) If the \$20,500,000 installment payment were applied against the \$105 million balance owed on the outstanding awards, the award-holder would receive only 19 cents on his 1947 dollar in 1987.
- (b) If the \$20,500,000 installment payment arrangement were applied against the \$175 million owed in 1974 by Czechoslovakia on the awards, with interest to date included, the award-holder would receive only 11.5 cents on the dollar in 1987.
- (c) If the \$20,500,000 installment payment arrangement were applied against the \$72,600,000 principal portion of the outstanding awards only, the U. S. award-holder would receive only about 28 cents on his 1947 dollar in 1987.
- (d) If the \$20,500,000 installment payment arrangement were applied against \$64,100,000 only, that is, the \$72,600,000 principal amount of the awards, less the \$8,500,000 payment made in 1962, the U. S. award-holder would receive 32 cents on his 1947 dollar in 1987.

SENATE
COMMITTEE
SEEKS
ANSWERS

5. At or about the time the U. S. Department of State released a copy of the proposed agreement with Czechoslovakia to the U. S. Senate Foreign Relations Committee, the Committee on Finance, U. S. Senate, was considering the Trade Reform Act of 1974 (H.R. 10710). This bill included provisions whereby most-favored nation status under the U.S. tariff laws and eligibility for favorable U. S. Government loans, grants and credits would be obtained by Czechoslovakia and other Communist nations.

WHY THE
GIVEAWAY?

Because the proposed claims settlement arrangement with Czechoslovakia was relevant to those considerations, the Committee on Finance, U. S. Senate, held hearings on September 11 and 26 of 1974 on the said arrangement. During the hearings, committee members sought to determine

why the Department of State would be party to an agreement so detrimental to the U. S. claimants when there was security of 18.4 metric tons of gold and other assets valued well above the \$105,104,437.00 owed. The Department of State could not give a satisfactory explanation. Nor could the Department of State answer the following question raised by Senator Russell B. Long, Chairman, Committee on Finance:

WHY NOT ASK
BRITAIN TO
WAIVE CLAIMS
TO GOLD?

The Chairman:

"All during the time [since the war] you people came down here from the State Department and asked us to give away billions of dollars to the French and British governments. Do you mean that during these negotiations you could not have got those governments to waive whatever claims they had to this gold to this Government in view of the fact that they owe this to American claimants."

Mr. Armitage:
[Deputy Assistant Secretary for European Affairs]

"I think it is our commitment to return the gold. It is just - it is not just the British and French." [Pg. 4.]

The Chairman:

"All you have got to do about this is say simply to the British and French: we have claims arising out of the war to settle with that Czech Government. So far as we are concerned, we have got enough claims to take up x percent of that gold. Now, let us take a look at what your claims are, because we can propose to take our share of this thing and use that to pay claims. Now, if you have claims, we suggest that you take your pro rata share and use that to pay the claims of your people. Let the French do the same thing. My guess is, that will use up 100 percent of that gold; we would not be giving the Czechs any gold back. After you get through dividing the gold up, and give the British claimants their share, and the French claimants their share, and the American claimants their share, then let us talk to them about how much they still owe us before we give them most-favored nation treatment. That is the way I think the business should work. [Pg. 8.]

The Chairman:

"... You know, our good friends, the British and the French, find little

things that they want us to do for them every now and then, a loan for this or a loan for that or a grant for something.

"Maybe just in consideration for forgetting all that money that they owed and never paid after World War I, for example, they might be willing to just vote with us to turn loose that gold so we could sell it to justify these claimants.

"Did you try that?"

"No."

Mr. Ingersoll:
[Deputy Secretary of State]

The Chairman:

"Frankly, I do not think you tried much of anything to satisfy these claims." [Pg. 37.]

* * * * *

[EXECUTIVE HEARINGS BEFORE COMMITTEE ON FINANCE, U. S. SENATE, 93d CONG., 2d SESS., SEPT. 11 AND 26, 1974.]

WHERE IS
THE GOLD?

During these hearings, the Chairman of the Committee asked a State Department representative where the gold was physically located.

Mr. Armitage:

"I do not know where it is."

Senator Byrd:
[Harry F., Jr.]

"Somebody ought to know."

Mr. Kwiatek:

"Some of it is in Europe."

Senator Fannin:

"How much of it is in Europe?"

The Chairman:

"It is in a Swiss bank, is it not?"

Senator Byrd:

"Where is it?"

Mr. Kwiatek:
[Asst. Legal Advisor For International Claims]

"It is in Europe. Much of it is in [Asst. Legal Ad- the Bank of London." [Pg. 8.]

Later in the hearings, the following interchange took place between Senator Long and Robert S. Ingersoll, Deputy Secretary of State:

The Chairman:

". . . Last time your people were

up here before me, you told me that the gold was in a Swiss bank. Now I understand it is in an American bank. Which statement is correct?"

Mr. Ingersoll: "I beg your pardon, sir?"

The Chairman: "Or British bank."

Mr. Ingersoll: "That is right. It was in a British bank."

The Chairman: "What bank is it in now?"

Mr. Ingersoll: "Part of it is in the United States, and part of it is in Europe; yes, sir."

The Chairman: "And how much is in which?"

Mr. Ingersoll: "I cannot tell you. I do not know what proportion, but I know part of it is here and part of it is in Europe."

The Chairman: "And the part that is in Europe is in what bank?"

Mr. Ingersoll: "In a British bank, I understand."

The Chairman: "Your people asked for this hearing, and I would have thought that you would have brought that information. But I would appreciate it if you would give us a statement of where that gold is held and how much is held here and how much is held there, and as of what date." [Pg. 23 [Emphasis supplied.]

For the first time the Department of State had finally admitted that at least part of the 18.4 metric tons of gold belonging to Czechoslovakia was physically located in the United States. The Senate Committee pressed further for the exact location and the exact amount of gold here in the United States, to which the Deputy Secretary responded:

Mr. Ingersoll: "I cannot tell you. I do not know what proportion, but I know part of it is here and part of it is in Europe."

The Committee thereupon directed the Deputy Secretary to file a written statement specifying where the gold was held and how much. He responded in writing, stating in substance that:

- (a) approximately one-half (8.8) of the 18.4 metric tons of gold belonging to Czechoslovakia is physically located in the United States and held by the Federal Reserve Bank of New York.
- (b) the remainder is physically located in England and held by the Bank of England.

PROPOSAL
REJECTED.
"SPEEDY RE-
NEGOTIATION"
BY OTHER
STATE DE-
PARTMENT
REPRESENT-
ATIVES
ORDERED

The Conference Report (dated December 19, 1974) to accompany the bill for the Trade Act of 1974 states (pg. 49): "The conferees intend that there be a speedy renegotiation of a claims settlement by individuals other than those who negotiated the unreasonable first tentative agreement." Note that 6 years later the State Department, in a letter to Leslie Logan stated it had not even started renegotiation (see Item 9 following). Also note that the individual "who negotiated the unreasonable first tentative agreement," Fabian Kwiatek, who was Assistant Legal Advisor for International Claims, Department of State, is still serving in that capacity.

TRADE ACT
OF 1974
SPECIFIES
CONGRESS
MUST
APPROVE
RELEASE OF
GOLD

6. On January 3, 1975, the Trade Act of 1974 became Public Law 93-618. Section 408 of Title IV reads:

"Sec. 408. PAYMENT BY CZECHOSLOVAKIA OF AMOUNTS OWED UNITED STATES CITIZENS AND NATIONALS

- "(a) The arrangement initialed on July 5, 1974, with respect to the settlement of the claims of citizens and nationals of the United States against the Government of Czechoslovakia shall be renegotiated and shall be submitted to the Congress as part of any agreement entered into under this title with Czechoslovakia.
- "(b) The United States shall not release any gold belonging to Czechoslovakia and controlled directly or indirectly by the United States pursuant to the provisions of the Paris Reparations Agreement of January 24, 1946, or otherwise, until such agreement has been approved by Congress."

7. On November 5, 1975, Leslie and Stanley J. Logan filed a class suit (Civil Action 75-1519, U. S. District Court for the District of Columbia) to establish that Czechoslovakia was the owner of the 18.4 metric tons of gold and that the Secretary of the Treasury had the power to dispose of it.

COURTS
DETERMINE
ISSUE UP TO
CONGRESS OR
PRESIDENT

The District Court dismissed the case on the grounds that it involved "only non-justiciable, political questions." In December, 1976, the U. S. Court of Appeals

for the District of Columbia (No. 76-1139) affirmed the lower court's decision, stating (Exhibit I, pages 3-4):

"We are satisfied that the question presented by appellants is clearly one that must be addressed to the political branch of the government, and that is where relief must be sought." [Emphasis supplied.]

This decision made it clear that the action rested in the hands of the Congress or the President.

During the trial, the Department of State had based its argument that the United States did not have power to dispose of the gold on the claim that consent was needed from the United Kingdom and France. "It is in the hands of the Tripartite Commission [Tripartite Commission For The Restitution Of Monetary Gold]," the Department of State contended and suggested that it was therefore immune. This suggestion of immunity stems from two almost identical "notes," dated December 8, 1975 (Exhibits A and B), neither of which was apparently spontaneously submitted by the British and French Embassies. Rather, the attached letter (Exhibit C) shows that both "notes" were apparently solicited and procured by the Department of State from unidentified persons at the two embassies in order to support its contention of immunity.

TRIPARTITE
COMMISSION'S
FUNCTION
FULFILLED

It is noteworthy that the sole legal function of the Tripartite Commission, allocation of the gold, has been fulfilled and that neither the Commission nor the Governments of the United Kingdom and France (because of their membership on the Commission) presently have any jurisdiction over the gold. The Commission completed its task when it allocated "a proportional share of the gold . . . to each country concerned which adheres to this arrangement for the restitution of monetary gold and which can establish that a definite amount of monetary gold belonging to it was looted by Germany or, at any time after March 12, 1938, was wrongfully removed into German territory." (Agreement on Reparation from Germany, January 24, 1946, Part III, Restitution Of Monetary Gold, Item C. This agreement is appended as Exhibit D.)

In spite of the fact that in allocating the gold to Czechoslovakia the Commission had fulfilled its duties, the Department of State continues to maintain that the Commission has control over whether or not the gold is used by the U. S. Government to pay established U.S. claims against Czechoslovakia.

(Note that the Department of State went to the two embassies to obtain statements of immunity from the U.S. judicial system. One must ask why it has not done as

Senator Long and others have suggested: "... got those [United Kingdom and French] governments to waive whatever claim they had to this gold to this Government in view of the fact that they owe this to American claimants" (Page 4 of aforementioned Executive Hearings).)

**FREEDOM OF
INFORMATION
REQUEST**

8. On July 14, 1978, Leslie Logan wrote to the Secretary of State requesting, under the Freedom of Information Act:

- (a) "The total amount of gold bullion, coins, and other assets determined as belonging (directly or indirectly) to Czechoslovakia under Part III of the Paris Reparations Agreement of 1946.
- (b) "The amount of this gold bullion, coins, and other assets returned to the government of Czechoslovakia since 1946.
- (c) "The total present amount of such gold bullion, coins, and other assets now in the United States and where specific amounts are being held and in whose custody (authority, person, bank, or other entity).
- (d) "The total present amount of such gold bullion, coins and other assets now in Great Britain and France and where specific amounts are being held and in whose custody (authority, person, bank, or other entity).
- (e) "Details of efforts undertaken by your Department in renegotiating compensation for claims of U. S. citizens, nationals and business corporations against Czechoslovakia since passage of the Trade Act of 1974. I would also like to be informed of the present status of such negotiations and of the Department representatives involved in such negotiations since 1974."

**FOUR-MONTH
DELAY IN
ANSWER**

Four months later (see November 27, 1978 letter from Officer In Charge Of Czechoslovak Affairs (Exhibit E)), he received the following response.

"The information you requested concerning the amount and disposition of the gold is considered classified information of an international organization under Section 4(C) of Executive Order 11652.

**STILL ONLY
"STUDYING"**

"The Department has been studying the substance and timing of a new proposal to be presented to

the Czechoslovak Government to obtain just compensation for U. S. claimants. We hope to be able to enter into negotiations before long."

**REFUSES TO
PROVIDE IN-
FORMATION
ALREADY ON
PUBLIC
RECORD**

The State Department's claim that the requested information is "classified" is ridiculous in view of the fact that the first four items were discussed at length during the Executive Hearings before the Committee on Finance, U. S. Senate, 93d Congress, 2d Session, September 11 and 26, 1974, and printed by the U. S. Government Printing Office that same year in the document (42-082) entitled "Czechoslovakia Claims Settlement."

9. On November 18, 1979, Leslie Logan wrote once more to the Secretary of State (Exhibit F) requesting, under the Freedom of Information Act, the following:

- (a) "Details of the new proposal presented to the Czechoslovak Government and of any counter proposals.
- (b) "Progress of such negotiations.
- (c) "Present status."

**THE 1979
DRAFT
PROPOSAL**

The response (Exhibit G) from Robert D. Johnson, Officer In Charge Of Czechoslovak Affairs, was dated February 5, 1980 (almost 3 months after the original request). Attached thereto were a "Background Information on the U.S. Proposal for a Claims/Gold Agreement with Czechoslovakia" and a "Proposal for the Resolution of Outstanding Economic Issues with Czechoslovakia." The proposal was prepared, according to Mr. Johnson's letter, for presentation to Congress, but was not presented because of the Czechoslovak Government's trial of six human rights activists and the severe sentences to five of them. "We considered it inappropriate to proceed . . . on a settlement which would necessarily," the letter states, "result in the return of a considerable amount of Czechoslovak gold."

The truth is the factsheet was not "prepared in connection with that effort (consulting with Congress)," but some time later as evidenced by the fact that it mentions the October trial of the six Czechoslovak dissidents and is, in fact, dated November, 1979.

**ONCE MORE,
THE NUMBERS
GAME**

In its latest proposal, the Department of State is once more playing a numbers game (see Item 4). The proposal states:

"In settlement of certified claims of \$72.5 million and an estimated \$3 million of additional claims, Czecho-

slovakia would pay a total of \$50.5 million including the \$8.5 million obtained from the sale of seized Czechoslovak property. The settlement would be made by a down-payment of \$20 million on the date the agreement entered into force and five subsequent annual payments of \$4.4 million each. This would amount to a 67 percent settlement of the claims."

STATE DEPT.
IGNORES
CONGRESS ON
RETURN OF
GOLD

The Department of State again proposed that "The U. S. Government would, on the date the agreement entered into force, agree to the delivery to the Czechoslovak Government of the 18.4 metric tons of gold . . ."

INSTALLMENT
AGREEMENT
WITH
COMMUNIST
COUNTRY
RISKY

Even the most naive person must question the value of an installment agreement with a communist country where one regime does not abide by agreements of a previous one. As Senator Gravel stated in the aforementioned Executive Hearings (pages 13 and 14): "A new government could come in tomorrow and write a new constitution and say philosophically that they do not agree with anything the past government has done." Why turn the gold (our only leverage) over to Czechoslovakia at the effective date of the agreement? Why not wait until the end of the 6-year installment payment period?

Again, as it did in 1974, the Department of State, claimed, citing percentages, that the proposed settlement "compared favorably with our settlements with other Eastern European countries and China." (How the Department arrived at its figures is not explained, but one would hope they were not so deviously arrived at as were those presented in the Czechoslovak proposals. Also note: These settlements were made immediately; claimants did not have to wait almost two decades for non-interest-bearing installment payments to begin.)

SENATE
FINANCE
COMMITTEE
REFUSES TO
BELIEVE
STATE
DEPARTMENT

The Report of the Committee on Finance, U. S. Senate, on H.R. 10710, Trade Reform Act of 1974, addresses these figures (page 217):

"That representation is simply not true. Far better settlements were made with Yugoslavia and Bulgaria, the former, for example, having paid 100 cents on the dollar of the amount it owed U.S. citizens for the expropriation of their properties after World War II. Similarly, far more advantageous settlements were made of our citizens' war damage claims against Germany and Italy . . ."

In the 1979 backgrounder, referring to the claimed 63% 91% settlements with Bulgaria and Yugoslavia, the Department states: "Bulgarian assets vested in the United

States were substantial, and the Bulgarian cash payment was only \$4 million. Yugoslavia also had substantial assets in the United States"

Does not the 8.8 metric tons of gold in the Federal Reserve Bank of New York represent substantial assets? Furthermore, as pointed out by Senator Paul J. Fannin during the Executive Hearings Before The Committee On Finance, U. S. Senate, 93d Cong., 2d Sess. (pgs. 9, 10), comparing the settlement proposal with the settlements made by some of those countries is not valid:

STATE
DEPARTMENT
COMPARISON
TO COUNTRIES
WITHOUT
LEVERAGE
MISLEADING

Senator Fannin:

"As I understand it now . . . we did not have any securities or any asset that we could protect ourselves with as far as Poland and Romania are concerned. So a comparison of the settlement of Poland and Romania is not in order . . . [for] Czechoslovakia, where we can protect ourselves."

The 1979 Department of State backgrounder states:

NUMBERS
GAME AGAIN

"--It [the new proposed agreement] would represent a substantial improvement over the aborted 1974 agreement. That agreement provided for a total settlement of \$29.5 million (41 percent) paid out over 12 years."

In 1974, the Department of State juggled figures (adding the \$8.5 million distributed to U. S. claimants after sale of the steel mill, discussed in Item 2, to come up with the \$29.5 million settlement figure, and subtracting interest from the amounts certified as due U. S. claimants by the U. S. Foreign Claims Settlement Commission, discussed in Item 1, to come up with 42% repayment).

The 1979 proposal is arrived at in essentially the same way. No consideration is given to paying claimants interest their 1947 dollars had lost from 1949 to 1979 -- only the principal amount is considered. The touted 67% repayment is based on a payment of \$42 million by Czechoslovakia in settlement of \$72.6 million in claims -- not counting interest, not counting the additional \$3 million in claims expected, not counting the tremendous devaluation of the dollar that has occurred since 1949. A true accounting would result in a much, much smaller percentage of repayment.

CZECHOSLO-
VAKIA'S IN-
CREASING
HOSTILITY
EXCLUDES
ANY NEW
NEGOTIATIONS

10. In the conference report accompanying the bill for the Trade Act of 1974, Congress asked for a "speedy renegotiation" of the proposed agreement with Czechoslovakia (see Item 5). The communist government of Czechoslovakia

has made it clear that it does not intend to enter into new negotiations. On August 6, 1975, the New York Times reported from Prague that the Czechoslovak government took the position that:

"... until they get the gold, the credits and trade benefits [from the United States] there is not the slightest chance of improving trade or diplomatic relations and there can be no new negotiation."

Clearly, Czechoslovakia is not willing to start new negotiations until it has in its hands the gold and most-favored nation benefits, especially low interest loans from the U. S. Export/Import Bank and other financial/economic benefits.

On June 16, 1977, the Washington Post reported (pg. A 18) that the Czechoslovak Communist Party weekly, Tribuna, said that President Carter's national security advisor, Zbigniew Brzezinski, helped prepare the 1968 "counterrevolution."

"CZECHS ATTACK BRZEZINSKI

"PRAGUE — The Czechoslovak Communist Party weekly Tribuna said that President Carter's national security advisor Zbigniew Brzezinski helped prepare the 1968 'counterrevolution' as the paper described the liberal movement led by Alexander Dubcek.

"In an article on East European studies at U. S. universities, Tribuna said they are 'tools of the American government.' Brzezinski was at Columbia University at the time and the article said his institute 'had the task of preparing the counterrevolution,' adding that he visited Prague in June 1968 'to give the leaders . . . last-minute instructions'."

Despite this clear evidence of hostility, the Department of State took no effective steps to bring about payment of the 18-year-old claims. In fact, in November, 1978 (see Item 8) it was just getting around to "studying the substance and timing of a new proposal."

After introduction of H.R. 7338 on May 13, 1980, "[t]o provide for the payment, out of the proceeds of gold belonging to the Government of Czechoslovakia, of certified awards of nationals of the United States against the Government of Czechoslovakia and to provide for the release of such proceeds to Czechoslovakia after all such

(June 9, 1980, page 10)
 awards are paid," the New York Daily News reported that the Communist Party newspaper called the bill "legalized theft":

"PRAGUE SEEKS TO CZECH U. S. WAR-GOLD BILL

"PRAGUE (AP) - Czechoslovakia has angrily attacked a bill before the United States Congress that would force settlement of a decades-old feud over 18.4 tons of Czech gold that has been in the control of the Allies since World War II.

"American, British and French diplomats have been called in to hear Czech complaints about a bill introduced by Rep. Lester Wolff (D-N.Y.) urging the sale of the gold to create a fund to settle Czechoslovakia's debts. The Communist Party newspaper Rude Pravo calls it 'legalized theft.'

"The gold, taken from Czechoslovakia by German forces, came under U. S., British and French control at the end of the war. About nine tons are in the U. S. and the rest is in Britain. Most of it is in bullion, but part of it is in old coins which may be far more valuable than bullion."

STATE DEPT.
 STILL NOT
 PROTECTING
 U. S.
INTERESTS

11. The Department of State, 18 years after the claims were adjudicated, is still failing in its duty as reminded 5 years ago by Senator Harry F. Byrd, Jr., during the Executive Hearings Before The Committee On Finance, U. S. Senate, 93d Cong., 2d Sess., "Czechoslovakia Claims Settlement," page 10:

". . . The State Department has its primary obligation to our fellow citizens where their property is confiscated."

CLAIMANTS
 DESERVE
 IMMEDIATE
PAYMENT

It is long overdue that the U. S. Congress and the President of the United States take the necessary steps to see that the U. S. claimants are immediately paid 100% of their certified awards, interest from 1949, and an additional amount because of the tremendous devaluation of the U. S. dollar since 1947.

* * * * *

Exhibit X

Notice: This opinion is subject to formal revision before publication in the Federal Reporter or U.S. App. D.C. Reports. Users are requested to notify the Clerk of any formal errors in order that corrections may be made before the bound volumes go to press.

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

FILED

JAN - 1977

United States Court of Appeals
for the District of Columbia Circuit

No. 76-1189

FILED DEC 8 1976

LESLIE LOGAN, ET AL., APPELLANTS

JAMES F. DAVEY, CLERK

v.

GEORGE A. FISHER
CLERK

SECRETARY OF STATE, ET AL.

**Appeal from the United States District Court for the
District of Columbia**

(D.C. Civil 75-1519)

Decided December 8, 1976

***Edward L. Merrigan*, was on the brief for appellants.**

***Rex E. Lee*, Assistant Attorney General, *Earl J. Silbert*,
United States Attorney, *Morton Hollander* and *Bruno*
A. Ristau, Attorneys, Department of Justice, were on
the brief for appellees.**

**Before: MCGOWAN, LEVENTHAL and ROBB,* Circuit
Judges**

* Circuit Judge Robb did not participate in this case.

Per Curiam: This appeal is from an order of the district court granting appellee's ("the Government's") motion to dismiss the action on the ground that it "constitutes an unconsented suit against the United States and, further, presents only non-justiciable, political questions."

Appellants brought their class action on behalf of 2,628 United States citizens (and five corporations) whose property in Czechoslovakia had been nationalized without compensation by the Czechoslovakian government, following World War II. In 1949, pursuant to Title IV of the International Claims Settlement Act of 1949, as amended (22 U.S.C. § 1642 *et seq.*), the Foreign Claims Settlement Commission of the United States issued to appellants and members of their class certified awards of specified monetary sums, entitling them to compensation from Czechoslovakia for property nationalized by that government. The 2,630 awards granted totaled \$113,645,205. The amount distributed to claimants was \$8,540,768.¹

In their complaint, appellants sought a declaratory judgment establishing their entitlement to certain assets in which Czechoslovakia has an interest. Specifically, they asked the district court to declare that certain monetary gold held and controlled in the Federal Reserve Bank in New York and the Bank of England in London by the three governments comprising the Tripartite Commission for the Restitution of Monetary Gold (the United States, United Kingdom, and France) is the property of the Government of Czechoslovakia.²

¹ Appellant Leslie Logan was granted an award of \$38,056.10, while Stanley Logan was granted an award of \$38,866.40. To date, Czechoslovakia has paid \$2,965.40 and \$8,008.87 on the respective awards.

² The Tripartite Commission was organized in 1946, in order to implement Part III of the Paris Reparation Agree-

With respect to the portion of the gold physically held in the United States, appellants further sought a declaration that the proceeds of that gold should be used to satisfy the unpaid portions of the awards granted under the Czechoslovakian Claims Program. Appellants sought the same relief with respect to certain other assets in the United States, in which Czechoslovakia or Czechoslovakian nationals have an interest, and which, since the early 1950's, have been frozen or blocked pursuant to the Trading with the Enemy Act, as amended, 50 U.S.C. App. § 1 *et seq.* Appellants also sought to have Czechoslovakia's share of the gold in England transferred to the United States and made available to satisfy the unpaid portions of their awards.

The Government has asked for expedition of the appeal, reciting diplomatic reasons. Since we find the issues to be capable of prompt resolution, and not to be such as to require oral argument, we grant the Government's motion, invoke our Rule 11(e) providing for disposition without argument, in appropriate cases, and provide for summary affirmance.

We shall not tarry with the question of whether to some extent there might be jurisdiction to maintain such a suit, or at least some part of it, or whether the recent passage of S. 800, and its emergence into law as P.L. would warrant a remand for further inquiry into jurisdiction.

We are satisfied that the question presented by appellants is clearly one that must be addressed to the

ment entered into by the Western Allies following World War II. Part III established a plan for the pro rata distribution of monetary gold removed by the Germans from the participating countries during the war. Pursuant to this plan, the Tripartite Commission allocated to Czechoslovakia more than 28 metric tons of gold; less than 10 metric tons of gold have actually been delivered to that country.

political branch of the government, and that is where relief must be sought. Questions in which foreign governments are interested are typically non-justiciable in domestic courts of the United States unless first agreements have been reached or statutes passed, and second, these are of such a nature as to confer rights on private persons that are contemplated for judicial enforcement.'

Plaintiff-appellants complain that unless the courts grant relief they are without remedy. Perhaps we can do no better than refer to some observations in *Nielsen v. Secretary of Treasury*, 137 U.S.App.D.C. 845, 424 F.2d 883 (1970). There we rejected a much stronger claim for relief, that pressed by Cuban refugees complaining that blocking regulations had the effect of depriving them of assets in the United States in which they had beneficial (derivative) rights. The court recognized that men live in a shorter run than governments, and international arrangements are often agonizingly protracted. Yet they are part of the path of the law, and often its best hope.'

Affirmed.

'Z. & F. Assets Realization Corp. v. Hull, 72 U.S.App.D.C. 234, 114 F.2d 464, 472 (1940), *aff'd* 311 U.S. 470 (1941); *Aris Gloves, Inc. v. United States*, 420 F.2d 1886, 1894-95 (Ct. Cl. 1970).

'We said, *inter alia* (424 F.2d at 842-45):

An important, if not the dominant, star for guiding national actions and reactions is the desire to build future areas of settlement and good will between nations to replace present areas of tension. . . .

. . . [The] prospect or at least possibility of international settlement and agreement cannot be dismissed by the courts as a nullity, or declared an inadmissible or unavailable aspect of America's foreign policy program.

. . . We also are aware that men live in a shorter run than the government, and that what may be considered only a temporary freeze by a government may be a permanent denial to the individual whose life comes to an end while the government ponders its course.

. . . While international affairs may move at a pace of bewildering rapidity, often negotiation is conducted with persistence and patience at snail's pace. Negotiation may be deferred while relationships are left to simmer without stirring, in order to strengthen any possible threads of international accord or reconciliation.

Exhibit A

Her Britannic Majesty's Embassy present their compliments to the State Department and have the honour to refer to the case of Logan and Logan v. Secretary of State, Secretary of Treasury, et al., US DC. DC. Civil No 75-1519, and to draw the attention of the State Department to the fact that the gold involved in the action is held by the Governments of the United Kingdom, France and the USA in pursuance of their sovereign governmental functions and in implementation of an international obligation, in accounts in the Federal Reserve Bank of New York and the Bank of England, London, for the purposes of carrying out Part III of the Paris Reparation Agreement of 14 January 1946, and is controlled by the three Governments.

Accordingly Her Britannic Majesty's Embassy request the State Department to initiate such steps as may be necessary to ensure that the gold shall be granted immunity from the jurisdiction of the US Courts.

The Embassy avail themselves of this opportunity to renew to the State Department the assurance of their highest consideration.



BRITISH EMBASSY
WASHINGTON DC

8 December 1975

Exhibit B.

DEPARTMENT OF STATE
DIVISION OF LANGUAGE SERVICES

(TRANSLATION)

LS NO. 53213
CW/JRF
French

FILED

DEC 8 1975

JAMES F. DAVEY, Clerk

Embassy of France
in the United States

Washington, December 8, 1975

The Embassy of France presents its compliments to the Department of State and has the honor to call its attention to the lawsuit brought by Logan and Logan against the Secretary of State, the Secretary of the Treasury, and jointly interested parties; the reference of the lawsuit is US DC DC Civil No. 75 1519. The gold involved in this lawsuit is held in accounts in the New York Federal Reserve Bank and the Bank of England by the Government of France, the Government of the United Kingdom, and the Government of the United States. These three Governments have control and exercise sovereign rights over the gold in execution of an international obligation growing out of the commitments of Part III of the Paris Agreement on Reparation of January 14, 1946.

The Embassy of France would appreciate it if the Department of State would take such steps as it deems necessary to ensure the immunity of this gold before the American courts.

The Embassy of France avails itself of this occasion to renew to the Department of State the assurances of its high consideration.

[Initialed]

[Embassy stamp]

Department of State,
Washington, D.C.

*S. Ambassade de France
aux Etats-Unis*

Washington, D.C.

CA 75-1519

8 Décembre 1975

FILED

DEC 8 1975

DAVEY, Clerk

L'Ambassade de France présente ses compliments au Département d'Etat et a l'honneur d'attirer son attention sur l'action en justice que MM. Logan & Logan ont engagé contre le Secrétaire d'Etat, le Secrétaire de la Trésorerie et consorts, dont la référence est "US DC DC civil N° 75 1519". L'or qui fait l'objet de ce procès est détenu dans des comptes à la Banque Fédérale de Réserve de New York et à la Banque d'Angleterre par le gouvernement de la France, le gouvernement du Royaume Uni et le gouvernement des Etats-Unis. Ces trois gouvernements contrôlent cet or et exercent sur lui des droits souverains en exécution d'une obligation internationale, née des engagements de la Partie III de l'Accord de Paris sur les Réparations du 14 Janvier 1946.

L'Ambassade de France serait reconnaissante au Département d'Etat de toutes les mesures qu'il jugera nécessaires de prendre afin d'assurer l'immunité de cet or à l'égard des tribunaux américains.

L'Ambassade de France saisit cette occasion pour renouveler au Département d'Etat ses assurances de sa haute considération.



Département d'Etat
WASHINGTON D.C.

Exhibit C



DEPARTMENT OF STATE

Washington, D.C. 20520

December 11, 1975

Honorable Edward H. Levi
 Attorney General
 Department of Justice
 Washington, D.C. 20530

FILED

DEC 31 1975

Re: Leslie Logan and Dr. Stanley J. Logan ^{JAMES F. DAVEY, Clerk}
 v. Secretary of State, Secretary of
 Treasury, et al., U.S. D.C. D.C. Civil
 No. 75-1519

Dear Mr. Levi:

Reference is made to the letter of September 30, 1975, from your Department, enclosing a copy of the complaint in the above captioned action.

The Department of State has brought this complaint, as amended, to the attention of the Governments of the United Kingdom and France since those Governments share responsibility with the U.S. Government for carrying out Part III of the Paris Reparation Agreement of January 14, 1946, relating to the "Restitution of monetary gold".

The Department of State has been informed by the Embassies of the United Kingdom and France, on behalf of their Governments: that the gold involved in the action is held by the Governments of the United Kingdom, France and the United States in pursuance of their sovereign governmental functions and in implementation of an international obligation, in accounts in the Federal Reserve Bank of New York and the Bank of England, London, for the purpose of carrying out Part III of the Paris Reparation Agreement of January 14, 1946, and is controlled by the three Governments; and that the Government of the United Kingdom and the Government of France request that the gold be granted immunity from the jurisdiction of the U.S. courts.

The Department of State recognizes and allows the immunity of the gold from the jurisdiction of the U.S. courts for the purpose of attachment, suit or any other legal process in the action.

The Department would be grateful to you if you would cause an appropriate suggestion of immunity to be filed with the U.S. District Court for the District of Columbia.

Sincerely yours,

Stephen M. Schwebel
 Stephen M. Schwebel
 Deputy Legal Adviser

Enclosures

- 1) Note from the British Embassy,
 December 8, 1975
- 2) Note from the French Embassy,
 December 8, 1975 (with
 translation)

Agreement between the United States of America and other governments respecting the distribution of German reparation, the establishment of an inter-allied reparation agency, and the restitution of monetary gold. Opened for signature at Paris January 14, 1946; signed for the United States of America January 14, 1946; entered into force January 24, 1946.

~~January 14, 1946~~
~~17. E. A. C. 1538~~

ACCORD
CONCERNANT
LES RÉPARATIONS À
RECEVOIR
DE L'ALLEMAGNE,

AGREEMENT
ON
REPARATION FROM
GERMANY,

L'INSTITUTION D'UNE AGENCE INTER- ON THE ESTABLISHMENT OF AN
ALLIÉE DES RÉPARATIONS ET LA INTER-ALLIED REPARATION AGEN-
RESTITUTION DE L'OR MONÉTAIRE. CY AND ON THE RESTITUTION OF
MONETARY GOLD.

LES GOUVERNEMENTS DE THE GOVERNMENTS OF
L'ALBANIE, DES ÉTATS-UNIS ALBANIA, THE UNITED
D'AMÉRIQUE, DE L'AUSTRA- STATES OF AMERICA, AUS-
LIE, DE LA BELGIQUE, DU TRALLA, BELGIUM, CANADA,
CANADA, DU DANEMARK, DENMARK, EGYPT, FRANCE,
DE L'ÉGYPTE, DE LA THE UNITED KINGDOM OF
FRANCE, DU ROYAUME-UNI GREAT BRITAIN AND
DE GRANDE-BRETAGNE ET NORTHERN IRELAND,
D'IRLANDE DU NORD, DE GREECE, INDIA, LUXEM-
LA GRÈCE, DE L'INDE, DU BOURG, NORWAY, NEW-ZEA-
LUXEMBOURG, DE LA NOR- LAND, THE NETHERLANDS,
VÈGE, DE LA NOUVELLE- CZECHOSLOVAKIA, THE
ZÉLANDE, DES PAYS-BAS, DE UNION OF SOUTH AFRICA
LA TCHÉCOSLOVAQUIE, DE AND YUGOSLAVIA, in order to
L'UNION DE L'AFRIQUE DU obtain an equitable distribution
SUD ET DE LA YOUGOSLA- among themselves of the total
VIE, en vue de répartir équitable- assets which, in accordance with
ment entre eux le total des biens the provisions of this Agreement
qui, conformément aux disposi- and the provisions agreed upon at
tions du présent Accord et aux Potsdam on 1. August 1945 be-
dispositions convenues à Potsdam, tween the Governments of the
le 1^{er} août 1945, entre les Gouver- United States of America, the
nements des États-Unis d'Améri- United Kingdom of Great Britain
que, du Royaume-Uni de Grande- and Northern Ireland and the
Bretagne et d'Irlande du Nord, et Union of Soviet Socialist Repub-
de l'Union des Républiques So- lics, are or may be declared to be

l'Agence jouissent également des **the Agency shall enjoy such priv-**
privileges et immunités qui leur **ileges and immunities as are neces-**
sont nécessaires pour exercer en **sary for the independent exercise**
toute indépendance leurs fonctions **of their functions in connection**
en rapport avec l'Agence. **with the Agency.**

PARTIE III.

PART III.

Restitution de l'or monétaire.

Restitution of monetary gold.

ARTICLE UNIQUE.

SINGLE ARTICLE.

Distribution pool.

A. Tout l'or monétaire trouvé **A. All the monetary gold found**
en Allemagne par les forces ar- **in Germany by the Allied Forces**
mées alliées et celui visé au para- **and that referred to in paragraph**
graphe G ci-dessus (y compris les **G below (including gold coins,**
monnaies d'or, à l'exception de **except those of numismatic or**
celles qui ont une valeur numis- **historical value, which shall be**
matique ou historique, qui seront **restored directly if identifiable)**
restituées immédiatement si elles **shall be pooled for distribution as**
sont identifiables) sera réuni en **restitution among the countries**
une masse commune pour être **participating in the pool in propor-**
réparti à titre de restitutions, **tion to their respective losses of**
entre les pays admis à bénéficier **gold through looting or by wrong-**
de cette masse, au prorata des **ful removal to Germany.**
quantités d'or qu'ils ont respective-
ment perdues du fait de spoliations
par l'Allemagne ou de transferts
illégitimes en Allemagne.

B. Sans préjudice des demandes **B. Without prejudice to claims**
visant l'or non restitué, présentées **by way of reparation for un-**
au titre des réparations, la quan- **restored gold, the portion of mone-**
tité d'or monétaire revenant à **tary gold thus accruing to each**
chacun des pays admis à bénéficier **country participating in the pool**
de cette masse sera acceptée par ce **shall be accepted by that country**
dernier en règlement complet et **in full satisfaction of all claims**
définitif de toute créance sur **against Germany for restitution**
l'Allemagne au titre des restitutions **of monetary gold.**
d'or monétaire.

C. Une part proportionnelle de **C. A proportional share of the**
l'or sera attribuée à chacun des **gold shall be allocated to each**
pays intéressés qui accepte le **country concerned which adheres**
présent arrangement concernant la **to this arrangement for the resti-**
restitution de l'or monétaire et qui **tution of monetary gold and which**
peut établir qu'une quantité déter- **can establish that a definite amount**
minée d'or monétaire lui appar- **of monetary gold belonging to it**
tenant a fait l'objet de spoliation **was looted by Germany or, at any**
par l'Allemagne ou, à une date **time after March 12th, 1938, was**
quelconque après le 12 mars 1938, **wrongfully removed into German**
de transfert illégitime en territoire **territory.**
allemand.

D. La question de la participation éventuelle de pays non représentés à la Conférence (autres que l'Allemagne, mais y compris l'Autriche et l'Italie) à la répartition susmentionnée est réservée et l'équivalent de ce qui constituerait la totalité des quotes-parts de ces Etats, s'ils venaient à être admis à cette répartition, sera mis en réserve pour qu'il en soit disposé ultérieurement selon ce qui sera décidé par les Gouvernements alliés intéressés.

E. Les divers pays admis à bénéficier de cette masse fourniront aux Gouvernements des Etats-Unis d'Amérique, de la France et du Royaume-Uni, en tant que Puissances occupantes intéressées, des renseignements détaillés et vérifiables sur les pertes d'or qu'ils ont subies du fait que l'Allemagne les a spoliées de cet or ou que cet or a été transporté sur son territoire.

F. Les Gouvernements des Etats-Unis d'Amérique, de la France et du Royaume-Uni prendront toutes mesures utiles dans les zones qu'ils occupent respectivement en Allemagne pour l'exécution d'une répartition conforme aux dispositions qui précèdent.

G. Tout or monétaire qui pourra être récupéré d'un pays tiers dans lequel il a été transféré par l'Allemagne sera réparti conformément au présent arrangement concernant la restitution de l'or monétaire.

D. The question of the eventual participation of countries not represented at the Conference (other than Germany but including Austria and Italy) in the above mentioned distribution shall be reserved, and the equivalent of the total shares which these countries would receive, if they were eventually admitted to participate, shall be set aside to be disposed of at a later date in such manner as may be decided by the Allied Governments concerned.

E. The various countries participating in the pool shall supply to the Governments of the United States of America, France and the United Kingdom, as the occupying Powers concerned, detailed and verifiable data regarding the gold losses suffered through looting by, or removal to, Germany.

F. The Governments of the United States of America, France and the United Kingdom shall take appropriate steps within the Zones of Germany occupied by them respectively to implement distribution in accordance with the foregoing provisions.

G. Any monetary gold which may be recovered from a third country to which it was transferred from Germany shall be distributed in accordance with this arrangement for the restitution of monetary gold.

Data regarding gold losses.

PARTIE IV.

Entrée en vigueur et signature.

ARTICLE PREMIER.

Entrée en vigueur.

Le présent Accord pourra être signé par tout Gouvernement

PART IV.

Entry into force and signature.

ARTICLE 1.

Entry into force.

This Agreement shall be open for signature on behalf of any

THE DEPARTMENT OF STATE BULLETIN

VOL. XV, NO. 378

SEPTEMBER 29, 1936

Statement by the President on U. S. Foreign
Policy page 577

One Hundred Years of Liberia's Independence
By ASSISTANT SECRETARY BENTON page 582

German Documents: Conferences With
Japanese Representatives page 584

Tripartite Commission for the Restitution of
Monetary Gold page 585

For complete contents
see inside cover



Tripartite Commission for the Restitution of Monetary Gold

1. In order to implement Part III of the Agreement on Reparation, signed in Paris on January 14th, 1946,¹ the Government of the United States of America, His Majesty's Government of the United Kingdom and Northern Ireland, and the Government of France have established, on September 27th, 1946, a Commission known as the Tripartite Commission for the Restitution of Monetary Gold.²

2. Each of the three Governments will appoint as from September 27th, 1946, a Commissioner as its representative on the Commission.

3. The Tripartite Commission for the Restitution of Monetary Gold shall normally sit in Brussels, but shall be independent of the Inter-Allied Reparation Agency already located there. The Commission is nevertheless empowered to communicate, on behalf of the three Governments concerned, with the Allied Governments, Members of the Inter-Allied Reparation Agency, through the Delegates accredited to the Agency by those Governments, with the Secretariat of the Agency, and, when necessary, with other Governments, on questions arising out of Part III of the Paris Agreement on Reparation.

4. The official languages of the Tripartite Commission for the Restitution of Monetary Gold shall be English and French.

5. The functions of the Tripartite Commission for the Restitution of Monetary Gold shall be:

(a) To request the submission of and to receive from Governments claiming the right to participate in the division of monetary gold found in Germany or which may be recovered from a third country to which it was transferred from Germany, claims for restitution of gold looted by or wrongfully removed to Germany, supported by detailed and verifiable data regarding such losses.

(b) To scrutinize claims received and to determine the share of each claimant Government in the pool of monetary gold to be distributed by way of restitution in accordance with Part III of the Paris Agreement on Reparation and any other pertinent agreements.

(c) In due course to announce the total value of the pool of monetary gold which will become available for distribution by way of restitution.

(d) When all claims for restitution have been received and adjudicated upon, to announce the share in the pool of monetary gold available for restitution to each country entitled to participate in the pool.

(e) In such other ways as shall be decided by the three Governments establishing the Commission, to assist in the distribution of the pool of monetary gold available for restitution.

(f) To perform such administrative acts as may be necessary to carry out the functions referred to in sub-paragraphs (a) through (e) above, including, without limiting the generality of the foregoing, the opening and maintaining of bank accounts, and the making of contracts for the performance of necessary services. Expenses of the Commission incident to the carrying out of its functions shall be a first charge against the fund of monetary gold to be distributed.

6. Decisions of the Commission shall be by unanimous agreement of its members.

7. An official publication of the above text is being made in the *London Gazette*, the *Staat-Departement Bulletin*, and in the *Journal Officiel de la République Française*.

September 27th, 1946

¹ For text of the Agreement, see *BULLETIN* of Jan. 27, 1946, p. 224.

² Minister Russell H. Dorr, United States delegate to the Inter-Allied Reparation Agency, represents the United States on this Commission. Sir Desmond Morton is the representative of the United Kingdom, and M. Jacques Hincq represents France.

Exhibit E**DEPARTMENT OF STATE**

Washington, D.C. 20520

November 27, 1978

Mr. Leslie Logan
2523 North 23rd Road
Arlington
Virginia 22207

Dear Mr. Logan:

I have been asked to reply to your letter of July 14 to the Secretary requesting certain information concerning the amount and disposition of gold awarded to Czechoslovakia by the Tripartite Commission for the Restitution of Monetary Gold and the details of efforts undertaken by the Department to renegotiate compensation to U.S. claimants for the nationalization or other taking of their properties by the Czechoslovak Government.

The information you requested concerning the amount and disposition of the gold is considered classified information of an international organization under Section 4(C) of Executive Order 11652.

The Department has been studying the substance and timing of a new proposal to be presented to the Czechoslovak Government to obtain just compensation for U.S. claimants. We hope to be able to enter into negotiations before long.

Sincerely,

A handwritten signature in cursive script that reads "James H. Glenn".

James H. Glenn
Officer in Charge of
Czechoslovak Affairs

Exhibit F

Leslie Logan, S.J.D.
2523 - 23rd Road North
Arlington, Virginia 22207

November 18, 1979

The Honorable Cyrus Vance
Secretary of State
2201 C Street, N.W.
Washington, D.C. 20520

Dear Mr. Secretary:

I am among those who were rendered awards by the U.S. Foreign Claims Settlement Commission for property confiscated by Czechoslovakia. My claim number is CZ-2,719.

Under the provisions of Public Law 93-618 (Trade Act of 1974), your Department was requested to negotiate a new settlement agreement with Czechoslovakia for payment of U.S. claimants.

In your letter to me on November 27, 1978, you stated the following:

"The Department has been studying the substance and timing of a new proposal to be presented to the Czechoslovak Government to obtain just compensation for U.S. claimants. We hope to be able to enter into negotiations before long."

Under the provisions of the Freedom of Information Act, 5 U.S.C. 552, I am requesting the following information:

1. Details of the new proposal presented to the Czechoslovak Government and of any counter proposal.
2. Progress of such negotiations.
3. Present status.

I would appreciate receiving this information from you within 10 days, as stipulated by law. If all or any part of this request is denied, please cite the specific exception(s) which you think justifies your refusal.

Sincerely,



Leslie Logan

Exhibit G



DEPARTMENT OF STATE

Washington, D.C. 20520

February 5, 1980

Mr. Leslie Logan
2523 23rd Road North
Arlington, VA 22207

Dear Mr. Logan:

I am writing in connection with your letter to Secretary Vance concerning information on claims settlement negotiations with Czechoslovakia.

As Mrs. Giamporcuro of our Freedom of Information staff informed you in her letter of January 30, we have no documents which are directly responsive to your Freedom of Information Act request for information on a new claims settlement proposal presented to the Czechoslovak Government. No such proposal has in fact been presented.

In view of your own direct interest in the claims settlement, however, I wish to inform you of our current thinking on the timing and substance of a future claims settlement proposal and to provide you with a copy of a fact sheet describing a proposal which was being considered last November. I anticipate that the main elements of this proposal will be present in any future proposal, although there may be adjustments in the amount of the settlement and the period of time for payments.

As was stated in Mr. Glenn's letter of November 27, 1978, the Department of State does intend to enter into negotiations with the Government of Czechoslovakia on this issue again as soon as conditions permit. We are very much aware of the interests and needs of the American claimants and of the mandate of Section 408 of the Trade Act of 1974. We do not wish, however, to repeat the experiences of 1964 and 1974 of negotiating an agreement and then being compelled to repudiate it. Reconciling the views of all of the parties concerned into a mutually acceptable package has not been easy. Additionally, the repressive measures which the Czechoslovak Government has taken against its dissident

citizens have hampered our ability to proceed with further negotiations, particularly in light of the need for Congressional approval of any agreement.

Last fall we had reached the stage of consulting with Congress on a proposal to be tabled in Prague. The fact sheet which is attached was prepared in connection with that effort. However, the Czechoslovak Government then conducted a highly publicized trial of six human rights activists in Prague and meted out severe sentences to five of them. We considered it inappropriate to proceed in the immediate aftermath of the trial with negotiations on a settlement which would necessarily result in the return of a considerable amount of Czechoslovak gold.

We now have the question of the timing of the submission of a proposal under active review. Unfortunately, I cannot predict when conditions will permit us to proceed.

Sincerely,



Robert D. Johnson
Officer in Charge
of Czechoslovak Affairs

Attachment:

As stated.

RDJ/cpw

**Background Information on the US Proposal for a Claims/
Gold Agreement with Czechoslovakia**

--In the 1974 Trade Act, Congress stated that the claims agreement with Czechoslovakia "shall be renegotiated." We plan to carry out that mandate.

--The several thousand American claimants who will benefit from the agreement have been waiting for just and adequate compensation for their nationalized properties for more than thirty years. Many of them are elderly and of limited financial means.

--The claimants and their representatives with whom we have had contact have said that they favor an early settlement. They do not believe we should wait any longer in the hope of obtaining a significantly higher settlement.

--Reaching a settlement is clearly in the claimants' interest and in our own national interest.

--We believe that this is a uniquely favorable time for negotiating a settlement more favorable than that reached in 1974. We have indications from the Czechoslovak Government that it would be prepared to improve on the settlement negotiated then.

--We are being urged to reach a settlement by the British Government, whose own claims agreement with Czechoslovakia is dependent on the return of the gold.

--An effort to negotiate an improved settlement would not be a favor to Czechoslovakia but a move in the interest of our own claims holders. Nevertheless, a successful agreement would clear away an issue which has long burdened US-Czechoslovak relations and enable us to deal more effectively with the Czechoslovak Government on other matters, including human rights, which concern us.

--We expect that negotiations would be protracted, and the pace could be adjusted should new repressive measures against dissidents be taken by the Czechoslovak authorities.

--The fact that repressive Czechoslovak actions would affect the conduct of the negotiations and the atmosphere in Congress concerning approval of any settlement reached might help restrain those within Czechoslovakia who argue for the continued harsh punishment of dissidents.

--We do not plan to present the proposal to the Czechoslovak Government in the immediate aftermath of the October trial of six Czechoslovak dissidents, however.

--Our proposal would amount to a 67% settlement of the value of the claims adjudicated by the Foreign Claims Settlement Commission as well as an anticipated further \$3 million.

--It would represent a substantial improvement over the aborted 1974 agreement. That agreement provided for a total settlement of \$29.5 million (41 percent) paid out over 12 years.

--This compares very favorably with our settlements with other Eastern European countries and China. The comparative figures are:

Poland	39%
Romania	37%
Hungary	41%
Bulgaria	63%
Yugoslavia	91%
China	42%

--In the Yugoslav and Bulgarian settlements special factors were present. Bulgarian assets vested in the United States were substantial, and the Bulgarian cash payment was only \$4 million. Yugoslavia also had substantial assets in the United States and was looking for friends at the time of the settlement in 1948.

--We will not agree to link the claims settlement to MFN for Czechoslovakia. Our position is that our claims must be solved before MFN can even be considered and that the granting of MFN will depend on the general state of our bilateral relations, the requirements of US law, and the willingness of Congress to agree.

Department of State
November 1979

**Proposal for the Resolution of Outstanding
Economic Issues with Czechoslovakia**

1. **Claims of American Citizens for Property Nationalized or Otherwise Taken by the Czechoslovak Government.**

In settlement of certified claims of \$72.6 million and an estimated \$3 million of additional claims, Czechoslovakia would pay a total of \$50.5 million including the \$8.5 million obtained from the sale of seized Czechoslovak property. The settlement would be made by a down-payment of \$20 million on the date the agreement entered into force and five subsequent annual payments of \$4.4 million each. This would amount to a 67 percent settlement of the claims.

2. **Return of the Czechoslovak Monetary Gold.**

The US Government would, on the date the agreement entered into force, agree to the delivery to the Czechoslovak Government of the 18.4 metric tons of gold allocated to Czechoslovakia by the Tripartite (US, UK, and French) Commission for the Restitution of Monetary Gold. The gold represents Czechoslovakia's share of the gold recovered from Germany at the close of World War II which had been looted from countries occupied by the Nazis.

3. **Surplus Property Debt.**

Czechoslovakia would pay in full the approximately \$8 million it owes in principal and interest for surplus property which it purchased in 1946.

4. **Blocked US Accounts.**

Czechoslovakia would release two blocked US Government bank accounts in Prague containing approximately 7.2 million Czechoslovak crowns.

5. **Defaulted Czechoslovak Bonds.**

Czechoslovakia would agree to begin negotiations with the US Bondholders Council within six months of the entry into force of the agreement on settlement of defaulted dollar bonds issued or guaranteed by the Czechoslovak Government.

6. **Blocked Czechoslovak Assets.**

The US Government would release its blocking controls over all Czechoslovak properties in the United States and not prevent their transfer to Czechoslovakia.

Department of State
November 1979

SUMMARY OF STATEMENT BY LESLIE LOGAN ON S. 2721, SEPTEMBER 9, 1980, SUBCOMMITTEE ON INTERNATIONAL TRADE, COMMITTEE ON FINANCE, UNITED STATES SENATE, WASHINGTON, D.C.

	<u>Page</u>
1. Internal Revenue Service refuses to allow tax relief for loss of confiscated property.	1
2. U.S. courts rule that "political branch of the government" has control over disposal of gold.	2
3. Department of State does not follow Congressional mandate for "speedy renegotiation."	2
4. Official position of Czechoslovakian government is full capitulation of the United States.	3
5. No guarantee that communist Czechoslovakia will respect any agreement.	4&5
6. Department of State ignores order of Congress to obtain 100-percent remuneration.	4,6,&7
7. Department of State manipulates figures on percentages of compensation.	7&8
8. Department of State "classifies" information already on the public record.	8&9
9. Department of State covers up intransigent anti-Americanism of Czechoslovakia, a model Soviet satellite.	9
10. Department of State, unrealistically waiting until oppression of human rights in Czechoslovakia ceases, ignores those of U.S. victims of communism.	10
11. Section 408(b) of the Trade Act of 1974 and actions of all Congresses and all Presidents for the past 32 years negate State Department contention that Britain and France must consent to using the gold for payment of U.S.-certified claims.	11&12
12. Department of State solicits opposition of embassies.	12&13
13. Amend S. 2721 to instruct the Secretary of State to obtain the allegedly needed consent from Britain and France within 30 days of enactment and then within the following 30 days to obtain a commitment from Czechoslovakia which would:	13
a. provide full and immediate remuneration for U.S.-certified claims before return of the gold;	
b. allow Czechoslovakia to benefit from most-favored-nation status, etc.; and	
c. result in a critically needed increase in U.S. exports to Czechoslovakia.	

SUBCOMMITTEE ON INTERNATIONAL TRADE
COMMITTEE ON FINANCE
UNITED STATES SENATE
WASHINGTON, D.C.

September 9, 1980

HEARINGS ON S. 2721

Mr. Chairman, Members of the Subcommittee:

My name is Leslie Logen. I reside at 2523 North 23d Road, Arlington, Virginia. Although I am one of the certified claimants, I am also a specialist in the international field.

I have the Czechoslovak degree of doctor of jurisprudence sciences and the University of Paris master's degree in international law. I have been an attorney and judge in Czechoslovakia.

For over 31 years I was editor-broadcaster, specializing in United States-Czechoslovak relations, for the Voice of America of the U.S. Information Agency (now called the International Communications Agency of the U.S.A.). I have been retired on disability from U.S. Government service for 6 years.

In 1962, seeking relief that would establish a precedent for all claimants, I deducted a casualty loss for my confiscated property on my Federal income tax return. This casualty loss was filed within the 3-year statutory period of limitation because the loss was not legally established until 1961 by the U.S. Foreign Claims Settlement Commission. However, the Internal Revenue Service did not allow the deduction, claiming that the loss occurred at an earlier date and that the statute had run.

In 1975, I was plaintiff with my brother (also a claimant) in a class suit against the Secretary of State, Secretary of the Treasury, the Chairman and Board of Governors of the Federal Reserve System, and the Federal Reserve Bank of New York. The U.S. District Court for the District of Columbia dismissed the case on the grounds that it involved "only non-justiciable, political questions." In December 1976, the U.S. Court of Appeals for the District of Columbia affirmed the lower court's decision, saying:

"We are satisfied that the question presented by appellants is clearly one that must be addressed to the political branch of the government, and that is where relief must be sought."

EXHIBIT A

Thus it is to you, our Congress, to whom we must turn. S. 2721 implements that decision of the courts.

The Department of State, however, contends that the problem should not be settled by legislation, but by "diplomatic negotiations," as stated by the Deputy Assistant Secretary of State for European Affairs on August 19, 1980, during joint hearings on H.R. 7338 before the Subcommittee on International Economic Policy and Trade and ^{the Subcommittee on} Europe and Middle East of the House Committee on Foreign Affairs. The Department has ignored the explicit mandate of Congress for "speedy renegotiation of the claims settlement." (Conference Report accompanying the Trade Act of 1974, page 49) Five years later, on February 5 of this year (in response to my letter of November 18, 1979), the Department admitted (page 2) that it had not even submitted another proposal to the Czechoslovak Government and could not "predict when conditions would permit" it to do so.

EXHIBIT B

The bill under consideration is not telling the State Department to cease negotiations. It is giving it 60 additional days after enactment. That should be ^{more than enough time} _A for the Department and its counterpart in Prague to negotiate an agreement because both sides (after 30 years) know all the issues.

In its August 19, 1980, testimony the State Department claimed that it has "reasonable prospects for success." Compare this with its later statement in the same testimony that "...our relations with Czechoslovakia at the present time are poor and they show no real prospect for significant improvement in the near future." Is it possible to assume that since the invasion of Afghanistan that the climate for negotiation with this Kremlin puppet regime will be improved for years to come?

Furthermore, the communist government of Czechoslovakia has made it clear that it does not intend to enter into new negotiations without full capitulation of the United States.

On August 4, 1975, the New York Times reported from Prague that the government of Czechoslovakia took the position that:

"...until they get the gold, the credits and trade benefits from the United States, there is not the slightest chance of improving trade or diplomatic relations and there can be no new negotiations."

That was 1975. In 1977, the Czechoslovak Communist Party weekly, Tribune, said that President Carter's national security advisor, Zbigniew Brzezinski, had helped prepare the 1968 "counterrevolution."

Czechs Attack Brzezinski

PRAGUE — The Czechoslovak Communist Party weekly Tribuna said that President Carter's national security adviser Zbigniew Brzezinski helped prepare the 1968 "counterrevolution," as the paper described the liberal government led by Alexander Dubcek.

In an article on East European studies at U.S. universities, Tribuna said they are "tools of the American government." Brzezinski was at Columbia University at the time and the article said his institute "had the task of preparing the counterrevolution," adding that he visited Prague in June 1967 "to give the leaders... instructions."

In view of this accusation against the President, how could the Department of State go to the Office of Management and Budget for support on its opposition to H.R. 7338 (as it did according to its July 25, 1980, letter to Chairman Zablocki of the House Foreign Affairs Committee)? Even more astounding is the concluding statement in that letter:

"The Office of Management and Budget advises that from the standpoint of the Administration's program, there is no objection to the submission of this report."

The State Department in its proposed agreement is still considering returning the gold to Czechoslovakia before U.S. claimants receive even a penny. The most naive person must question whether this communist country will abide by any agreement. In 1946, even

before the Tripartite Commission allocated the gold, Czechoslovakia agreed to make "adequate and effective compensation" to U.S. nationals for properties "which may have been or may be nationalized." For 32 years the communist government of Czechoslovakia has ignored this agreement. (15 Department of State Bulletin 1004, 1005, December 1, 1946)

The State Department has frequently contended that it has surveyed the claimants and that they have agreed to its various proposals for return of the gold to Czechoslovakia followed by installment payments over a number of years for only a portion of their claims.

On December 3, 1974, I wrote to Senator Sparkman, calling his attention to the wrongdoings of the Department of State. Senator Sparkman then contacted the Department. Defending itself, the Department stated: "...the overwhelming majority of claimants who EXHIBIT C have communicated with the Department have expressed their satisfaction with the agreement." In the hearings on the Trade Act of 1974 (four months earlier), the Undersecretary of State had said that he doubted that claimants were told they could get 100 percent on the dollar.

"Chairman. (Mr. Long, Chairman, Finance Committee, U.S. Senate) How well were the American claimants advised that they had a chance of getting 100-percent recovery on their claim prior to the time they said they would just be willing to settle for anything we could get?

"Mr. Ingersoll. I doubt if they were told they could get 100 percent on the dollar...."

(Executive Hearings, Senate Finance Committee, Trade Act of 1974, pp. 37-38)

The Department never sent questionnaires to all claimants asking for their opinions. Claimants were never told they could get 100 percent

payment, plus interest, plus compensation for the devaluation of the dollar since 1947-1948 because the Czechoslovakian gold controlled by the United States amply covered amounts due them.

It has clearly been the intent of Congress that the certified claimants should be paid 100 percent on the dollar. Witness the following statements made by Senator Long, Chairman, Senate Finance Committee, and Senator Harry F. Byrd, Jr., member of that committee, during the previously cited executive hearings on the Trade Act of 1974.

The CHAIRMAN. To me, the way to handle war claims in a Communist country is that if we are holding something or are in a position to lay our hands on something which is admittedly theirs, and they take something that admittedly belongs to our citizens, we just take what we are holding ourselves and sell it and proceed to pay off our citizens. That is how we did with that steel mill. Why should we not do the same thing with the gold?

Mr. ARMITAGE. Mr. Chairman, I think we have done that in places where we could. We simply have had no legal way to do that in this particular case. We would be violating a specific legal obligation.

The CHAIRMAN. They are violating a specific legal obligation as far as we are concerned. That is the property of our citizens. We have violated a specific obligation with regard to that steel mill. That was their steel mill; it was clearly theirs, they had paid for it. We took it and sold it and proceeded to pay our American claimants with it. And we took every nickel of it; we did not take half of it, we took the whole thing. And we used that to pay Americans. Why should we not take 100 percent of the gold? I do not see why not. (Page 4)

* * * * *

[Senator Byrd. Why do you not tell Czechoslovakia that they must pay 100 cents on the dollar? (Page 4)]

* * * * *

Senator BYRD. What about the interest?

Mr. ARMITAGE. I have not—we have not gotten, we have never gotten any interest on it.

Mr. KWIASTEK. It has never been the subject of negotiations.

Senator BYRD. You have not even tried to get the interest?

Mr. KWIASTEK. We have tried to get it.

Senator BYRD. And it has been the subject of a negotiation?

Mr. KWIASTEK. It has been the subject of negotiation, but it is not reflected in the agreement. And I said there is no allowance for the payment of interest.

Senator BYRD. That is what I say, you in effect have waived the interest.

Mr. KWIASTEK. Yes, we have waived the interest. (Page 5)

Note: Mr. Kwiatek, Assistant Legal Advisor for International Claims, Department of State, who negotiated the 1974 proposal and was forbidden to conduct further negotiations. (Conference Report on the Trade Act of 1974, Page 49)

The CHAIRMAN. All I am saying is that you can make the judgment how far you want to make it, but it seems clear to me that if we just want to bargain tough we can have those claims paid. If we do not want to bargain tough, why, we can just give it all away as I have seen done before. (Page 46)

The CHAIRMAN. ...

Now, we have a chance to demonstrate that not only do we think this is a bad deal, we think if we just act like we should have acted to begin with, just act tough about this matter, that these claims will be paid off, and I would be willing to take that chance and find out; and if that were my claim, and you were calling on me, I would say, no, no, absolutely no. And if I were someone's lawyer advising him, I would say do not take it. (Page 51)

Now for a moment consider the numbers game the State Department is wont to play. In 1974, it said that its proposal of that time guaranteed 42 cents on the dollar. What dollar? The 1962 dollar? The 1974 dollar? The 1947 dollar? If the Department was referring to the 1962 dollar, the amount would be 19 cents on the dollar. Based on the 1974 dollar, the repayment proposed would represent only 11.5 cents on the dollar. Actually,

the so-called 42 cents on the dollar in that installment payment proposal was based on the amounts adjudicated in 1962 by the Foreign Claims Settlement Commission less interest and with no consideration given for the tremendous devaluation of the dollar.

The Department in its 1979 proposal claims "a 67-percent settlement of the claims." Again it is talking only about the principal amount—no interest, no consideration for the devaluation of the dollar—attempting to delude us with its dubious numbers game. The true recovery figure would be far less than half of the claimed 67 percent.

The State Department has also claimed that its proposals have "compared favorably with our settlement with other Eastern European countries." The Report of the Committee on Finance, U.S. Senate, on H.R. 10710, Trade Reform Act of 1974, addresses this:

"That representation is simply not true. Far better settlements were made with Yugoslavia and Bulgaria, the former, for example, having paid 100 cents on the dollar of the amount it owed U.S. citizens for the expropriation of their properties after World War II. Similarly, far more advantageous settlements were made of our citizens' war damage claims against Germany and Italy" (Page 217)

Also note that these settlements were made immediately; claimants did not have to wait almost two decades for non-interest-bearing installments to begin.

The Department of State has always shrouded its activities regarding the issue of our confiscated property under the cover of "classified" material.

On November 27, 1978, in response to my July 14, 1978, letter

regarding the amount and location of the gold, the Department replied:

"The information you requested concerning the amount and disposition of the gold is considered classified information of an international organization under Section 4(C) of Executive Order 11652."

EXHIBIT D

This claim is ridiculous because the "amount and disposition of the gold" was made a matter of public record in the Executive Hearings, Senate Committee on Finance, September 11 and 26, 1974, and published by the U.S. Government Printing Office that same year in Document 42-982, entitled "Czechoslovakia Claims Settlement."

The Department of State says: "The recovery of the gold is not entirely a financial matter to the Czechoslovaks; good measures of emotion and history are also involved." What emotion can be attached to indistinguishable pieces of metal? As for history let's flash back some 40 years. The gold we are talking about belonged to the Czechoslovak democratic government and the victims of Nazi extermination. It was looted by the Nazis, but recovered by the allied forces at the end of World War II. After the war, the Czechoslovak people turned against democracy and in the only free election in Eastern Europe voted for a communist government. They have established a model Soviet satellite state.

The State Department is now anxious to give this gold recovered from a Nazi anti-American regime to a Communist anti-American regime. It is, at best, lack of factual knowledge, or, at worst, lack of good intent that causes the Department to make deals with communist Czechoslovakia at the expense of its U.S. victims.

In its February 5, 1980, letter to me the Department of State expressed its concern about deprivation of human rights in Czechoslovakia as a reason for further delaying a settlement proposal.

EXHIBIT B

What about the human rights of U.S. citizens? Over 2,600 of us have been deprived of our human rights for over 30 years with the help of the Department of State. Should not our rights be the first concern of our State Department? As Senator Harry F. Byrd, Jr., said:

"The State Department has its primary obligation to their fellow citizens where their property is confiscated."

Executive Hearings, Trade Act of 1974,
September 11 and 26, 1974, p. 10.

We have been kicked around while the Department has pursued its goals with totally inhuman concern for us.

For three decades we have been the pawns in the Department's maneuvering in the diplomatic arena. As Senator Mike Gravel reminded Undersecretary of State Ingersoll and other high officials of the Department:

"...It is wrong for the Government to make--there are 2,630 claimants--to make them carry the burden of our foreign policy."

Executive Hearings, Trade Act of 1974,
September 11 and 26, 1974, p.52.

Paragraph 6 of the executive agreement establishing the Tripartite Commission states that "decisions of the Commission shall be by unanimous agreement of its members—United States, Great Britain, and France." The Department of State has misconstrued this statement to mean that the United States must obtain the consent of Great Britain and France before selling the gold and compensating claimants from the proceeds. The mandate for unanimous consent extended only so far as the original determination of awards by the Tripartite Commission and NOT TO EVERY SUBSEQUENT ACTION EACH OF ITS MEMBERS WOULD TAKE IN THE COURSE OF THE EXECUTION OF THE AGREEMENT.

Congress, in enacting Section 408(b) of the Trade Act of 1974 made it clear that it believed that after allocating the gold to Czechoslovakia the Tripartite Commission had fulfilled its functions. In saying, "The United States shall not release any gold..." the Congress showed it had full control over the gold:

"Sec. 408. PAYMENT BY CZECHOSLOVAKIA OF AMOUNTS OWED UNITED STATES CITIZENS AND NATIONALS

- "(a) The arrangement initiated on July 5, 1974, with respect to the settlement of the claims of citizens and nationals of the United States against the Government of Czechoslovakia shall be renegotiated and shall be submitted to the Congress as part of any agreement entered into under this title with Czechoslovakia.
- "(b) The United States shall not release any gold belonging to Czechoslovakia and controlled directly or indirectly by the United States pursuant to the provisions of the Paris Reparations Agreement of January 24, 1946, or otherwise, until such agreement has been approved by Congress."

Thus Congress, in passing the bill, and the President, in signing

it into law, made it clear that the United States has the right to take unilateral action (without consulting Britain and France) regarding disposition of the gold.

For the past 32 years, the actions of all Presidents and all Congresses have demonstrated that the Tricentite Commission completed its task in 1947-1948 when it allocated the gold to Czechoslovakia. It is unbelievable that the State Department continues to take a contrary position and uses as its main reason for opposition to S. 2721 the allegation that we must have consent of Britain and France before using the gold for remuneration of our claimants.

In its recent testimony on H.R. 7338, the Department stated that Britain and France "strongly oppose" our disposing of the gold to pay U.S.-certified claims. What role did the Department play in obtaining these expressions of opposition? Did the Department go to the two embassies and ask them for statements of opposition? That's the tactic it used in 1975 when faced with a class suit which, if successful, would have allowed the courts to adjudicate the problem.

In 1974, during executive hearings on the Trade Act of 1974 ("Czechoslovakia Claims Settlement," September 11 and 26, 1974, pp. 4, 7, 8, and 37), Congress reprimanded the State Department for not going to Britain and France and insisting upon their release of the gold if it so firmly believed such consent was necessary. Instead, a few months later, the Department went to the British and French embassies and solicited statements of opposition from them. The Department of State then forwarded these two almost identical, unsigned notes bearing the same date to the Department of Justice with the request that they be used to prove that the United States could not dispose of the gold without

the consent of Britain and France.

EXHIBITS E,
F, AND G

Observe that (1) the Department approached the embassies only because of the court action by claimants, (2) the approach was to obtain statements of opposition, not consent, and (3) an embassy is not the proper level at which to obtain such consent.

But supposing though not admitting that such consent is required, as the State Department contends, then I respectfully request that you consider amending S. 2721 to instruct the Secretary of State to obtain that consent from his counterparts in Britain and France within 30 days after enactment of the Act and to provide that 30 days after obtaining such consent the Department be allowed 30 days to obtain a commitment from Czechoslovakia for immediate full compensation for principal, interest, and devaluation of the dollar. Only after Czechoslovakia has fulfilled such commitment should the gold be released.

Given this situation, Czechoslovakia will in its own best interests satisfy without further delay the U.S. claims if the Department of State will emphasize that Czechoslovakia will not only obtain the gold (already far more valuable than the total U.S. claims) but also reap invaluable benefits from most-favored-nation status under U.S. tariff laws and eligibility for favorable U.S. Government loans, grants, and credits.

As for the United States, the impasse of three decades will be over and the United States can increase exports to Czechoslovakia and thereby improve our critical balance of payments situation.

I hope, for the benefit of all concerned, that you, Mr. Chairman and the members of this subcommittee, will adopt this approach in your final consideration of S. 2721.

Exhibit C



DEPARTMENT OF STATE

Washington, D. C. 20520

Honorable John Sparkman
United States Senate
Washington, D. C. 20510

Dear Senator Sparkman:

I have received your communication of December 9, transmitting the views of Mr. Leslie Logan and Dr. Stanley J. Logan, regarding the ad referendum claims agreement of July 5, 1974, between the Governments of the United States and Czechoslovakia and an amendment to the Trade Reform Act (H.R. 10710) relating to the agreement.

Representatives of the Governments of the United States and the Czechoslovak Socialist Republic held negotiations in Prague during the period September 1973 to July 1974 regarding the settlement of certain outstanding claims and financial issues between the two Governments. As a result, the chairmen of the delegations of the two Governments on July 5, 1974, initialed an ad referendum agreement. This agreement is subject to the formal approval of the two Governments.

In general, the agreement provides for (1) the payment by the Government of Czechoslovakia to the Government of the United States of a lump-sum amount, in installments, in settlement of all legally valid claims of nationals of the United States against the Government of Czechoslovakia for the nationalization or other taking of property between January 1, 1945, and the date the agreement enters into force, and (2) the withdrawal by the Government of the United States of its objection to the release of 18,400 kilograms of gold to the Government of Czechoslovakia which is being held in the custody of the Tripartite Commission for the Restitution of Monetary Gold.

However, the Senate Finance Committee on September 11 adopted an amendment to the Trade Reform Act of 1974, H.R. 10710. The amendment provides in substance that

Czechoslovakia shall not receive most-favored-nation treatment or United States credits on investment guarantees, and that the Government of the United States should not consent to the release of certain monetary gold unless the Government of Czechoslovakia paid all principal amounts of awards made by the Foreign Claims Settlement Commission of the United States.

The Department testified in opposition to the amendment of the Senate Finance Committee. Until the Congress has acted on the Trade Reform Act, the Department will not take further action on the formal approval of the agreement.

The Department believes the ad referendum agreement represents the most favorable settlement which could have been negotiated in the circumstances and is in the best interests of approximately 3,000 claimants who will share in the lump sum. The agreement provides for payment of a total of \$29.5 million by the Government of Czechoslovakia, which amounts to approximately 42 cents on each dollar of the principal amount of claims settled thereunder. The settlement compares favorably with other claims agreements concluded with other Eastern European countries (Poland 39 cents; Romania 37 cents). It is also significantly higher than settlements reached by other Western countries with Czechoslovakia. In addition, the installment payment provisions are significantly better than those of earlier settlement agreements.

You may be interested in knowing that the overwhelming majority of claimants who have communicated with the Department have expressed their satisfaction with the agreement.

The gold which is involved in the agreement is the monetary gold looted from the occupied countries by Nazi forces during World War II. After the war the Tripartite Gold Commission (France, United Kingdom and United States) was established to take custody of the gold and to determine the portions allocable to each of the countries from which gold had been looted by the Nazis. Under Part III of the Paris Reparation

Agreement of January 24, 1946 (TIAS 1665), the balance of the amount of gold allocated to Czechoslovakia is 18.4 metric tons, which at the time had a value of about \$22 million at the rate of \$35 an ounce. At the current market rate the value of the gold would be in excess of \$100 million. The gold is kept in accounts in banks in the names of the three Governments. The three Governments must act unanimously in the control and disposition of the gold. Under the international agreement, the only disposition that can be made of the gold is to release it to the country to which it is allocated. The Government of the United States has no legal claim to such gold, and to vest title therein to pay outstanding awards of the Foreign Claims Settlement Commission of the United States for claims of United States nationals against Czechoslovakia would be contrary to the international obligations of the Government of the United States under the agreement.

I sincerely hope that you can support the agreement and oppose the amendment of the Senate Finance Committee when the occasion arises.

If I may be of further assistance, please do not hesitate to call on me.

Cordially,

Linwood Bolton
Assistant Secretary
for Congressional Relations

Enclosure:
Correspondence Returned

Exhibit D

DEPARTMENT OF STATE

WASHINGTON, D.C. 20520

November 27, 1978

Mr. Leslie Logan
2523 North 23rd Road
Arlington
Virginia 22207

Dear Mr. Logan:

I have been asked to reply to your letter of July 14 to the Secretary requesting certain information concerning the amount and disposition of gold awarded to Czechoslovakia by the Tripartite Commission for the Restitution of Monetary Gold and the details of efforts undertaken by the Department to renegotiate compensation to U.S. claimants for the nationalization or other taking of their properties by the Czechoslovak Government.

[The information you requested concerning the amount and disposition of the gold is considered classified information of an international organization under Section 4(C) of Executive Order 11652.]

The Department has been studying the substance and timing of a new proposal to be presented to the Czechoslovak Government to obtain just compensation for U.S. claimants. We hope to be able to enter into negotiations before long.

Sincerely,

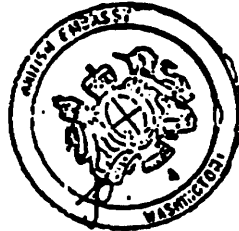
James H. Glenn
Officer in Charge of
Czechoslovak Affairs

Exhibit E

Her Britannic Majesty's Embassy present their compliments to the State Department and have the honour to refer to the case of Logan and Logan v. Secretary of State, Secretary of Treasury, et al., US DC. DC. Civil No 75-1519, and to draw the attention of the State Department to the fact that the gold involved in the action is held by the Governments of the United Kingdom, France and the USA in pursuance of their sovereign governmental functions and in implementation of an international obligation, in accounts in the Federal Reserve Bank of New York and the Bank of England, London, for the purposes of carrying out Part III of the Paris Reparation Agreement of 14 January 1946, and is controlled by the three Governments.

Accordingly Her Britannic Majesty's Embassy request the State Department to initiate such steps as may be necessary to ensure that the gold shall be granted immunity from the jurisdiction of the US Courts.

The Embassy avail themselves of this opportunity to renew to the State Department the assurance of their highest consideration.



BRITISH EMBASSY
WASHINGTON DC

8 December 1975

ERIC T. NETTEL
6455 LA JOLLA BLVD.
LA JOLLA, CA. 92037

August 29 1980.

HONORABLE ABRAHAM RIBICOFF
Senate Subcommittee on International Trade,
Senate Finance Committee
c/o D A V I D F O S T E R
2227 Dirksen Senate Office Building,
WASHINGTON D C 20510.

Gentlemen,

I testified on August 19 1980 before the HOUSE FOREIGN AFFAIRS COMMITTEE with reference to Congressman Leister Wolff's bill H.R. 7338, as one of the claimants, representing a number of other victims of the unbelievable history of these claims, dating back to 1948.

I wish to reemphasize our complaints by enclosing herewith photocopies of the following documents:

My own testimony, containing a short resumé of the salient facts, together with a supplement, containing other arguments and view points, in order to illustrate the need for quick action and decision, before practically all claimants are dead.

Copy of page four of the NEWSLETTER Vol XI No 3 July 1980, of the INTERNATIONAL COUNCIL OF JEWS FROM CZECHOSLOVAKIA, 12/13 Henrietta Street, LONDON WC 2E 8 LN, written by Mr John Kloudil of New York(?) dealing with the proposed legislation by Mr Lester Wolff.

My letter to my friends (who are claimants like myself,) reporting my candid opinion of the case.

A letter from the Washington Embassy of FRANCE written to Mrs Stearns of Skokie, Illinois, in reply to the latter's request for information.

Mrs Stearns' letter to me showing the misery and despair of one of the old claimants, who has still to work, because her hopes in justice and compensation were deceived.

I have nothing to add to these facts and reports, and hope that your Committees will take a favorable and urgent decision and have it presented to Congress, before it adjourns.

Thanking you for your attention,

Yours very sincerely

Eric T. Nettel

Mr. & Mrs. Eric Nettel
 8458 La Jolla Blvd
 La Jolla, CA 92037
 (714) 454-7876

DRAFT FOR AN INTRODUCTORY DECLARATION BY WITNESS SUPPORTING ADOPTION OF BILL H.R. 7338 before the House Subcommittee For Economic Policy and Trade on August 19, 1980.

I was born in Czechoslovakia in 1901, lived in Paris, France between the two World Wars, emigrated to the USA in 1939 became a citizen in 1945, and am now living in California, retired.

As sole heir of my father's estate, I registered with the U.S. Foreign Claims Settlements Commission my claim for expropriated real estate in Czechoslovakia.

Only a very minor part of the assets lost in or after 1948 became registrable, in my case only a large residential building and land adjoining it. (Enclosed photographs of prewar and very recent aspects of the house and landscape). Everything else, such as bank accounts, furniture, business property etc. was not registered, due to the strict rules of the Registration Law and procedures. My wife's parents, who had no real estate, lost all their property, such as a valuable life insurance policy and many other values they could not register or substantiate.

A great number of other victims of Czechoslovakian expropriation who became U.S. citizens only after 1947 were not permitted to register their lost assets at all, and therefore the total gain for Czechoslovakia was a large multiple of the modest amount of claims registered in the early 1950's. Of course, the FCSC awarded only a fraction of the claims originally registered.

My own case was typical for many hundreds of claimants, only a few of whom could employ experienced lawyers to help them. My father's house (see enclosed recent photograph with the Soviet Star on top) was seriously under valued by the Commission at only \$15,000 in 1952.

My total claim of \$21,630 (including interest up to 1958) has brought me so far only a payment of \$1,000, i.e., 5 percent, in 1960. At that time the Commission disposed of funds derived from the sale of a steel mill that the U.S. had seized in order to begin the compensations.

Since then nothing has been done for the claimants, and the 18.6 tons of gold are still held as guarantee, as intended for our protection.

As a result, there are many hundreds of small and medium sized claims who are still unpaid at this late date, except for the 5 percent derived from the steel mill sale in 1960. The most unfortunate part for all is of course the fact that these claims were registered in U.S. dollars and not based on the gold standard which was of course in prewar times the accepted measure for all long-term money transactions. I need not remind you how the value of the U.S. dollar has fallen since then. I could elaborate on this theme alone to put into real perspective the loss and disappointments that resulted from this situation.

Of course, nobody could foresee that the settlement would drag out over half a lifetime so far and nobody could understand that the State Department would be acting with so much restraint, to put this lightly, when dealing with the Czechoslovaks.

Rereading the proceedings of the 1974 hearings about this matter when the Senate committee under the Chairmanship of Senator Long debated this matter in depth, this extraordinary depreciation of the dollar during the many years had not sufficiently been taken into account. Since then the loss has doubled and may double again before any amounts will be available to the claimants or their heirs. It is also useless to remind you that a large percentage of the original claimants are dead and their heirs may not even be found whenever the Commission will get around to finding them.

There is another case worth mentioning since it is relevant. It concerns expropriation after 1948, by the Red Chinese government of a former soviet citizen. This Mr. Shvets had settled during World War I in Shanghai and acquired large real estate assets. He subsequently became a U.S. citizen, and his claim was registered with the FCSC. When Mr. Shvets liquidated his New York corporation he claimed a large tax loss. This was contested by the IRS but in 1979 he won his tax case and he thus compensated for his Chinese property. The U.S. Treasury was the loser to the extent of \$450,000.00, for tax deductions made in 1969.

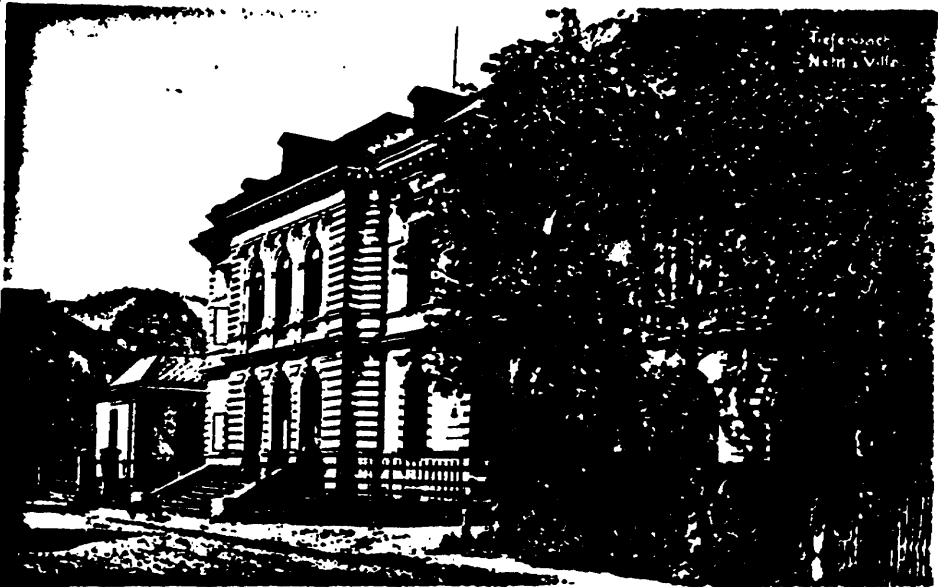
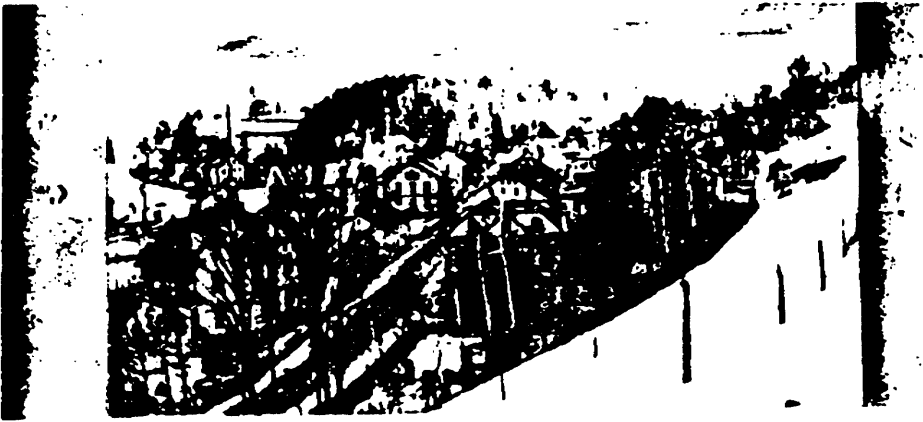
In 1974 the Senate committee debated at length the situation that arose for the claimants against Czechoslovakia who were British or French citizens. These more fortunate claimants had settled and received their due at the time when the dollar was a multiple of the present value. Do not forget that earlier this year an ounce of gold cost over \$900 and now is \$630 and rising. In 1974 it was \$150 and relatively steady not to speak about the time before 1971 when the dollar was quite stable and gold at \$35 an ounce.

Also do not forget that the Czechoslovakian National Bank lost its gold to the Germans following the Munich agreement of 1938. The gold was discovered in Germany and seized from the Germans by the victorious Allied troops. It was brought to England and to U.S.A. and has remained there for 35 years and increased to 20 fold in value which means purchasing value. In this light it seems preposterous that the three short and long ago discussions with the Czechs should not have had a stronger and better result if it were only for the 12 year period for repayment to which the negotiators had consented. (See proceedings by the Commission in 1974).

Also in this connection the question of the "Most Favored Nation" clause was amply debated so that I do not have to raise this argument which would have given the negotiators a firmer stand had they understood the suffering and pain that they occasioned to many poor and destitute people in the U.S.A. The great majority of them are very old most of them widows ~~and~~ widowers living on social security alone and it is for them that I wish to apply for your help.

The failure of Congress to act vigorously and effectively will be interpreted by the Prague government as a sign of weakness and of lack of interest. It will never voluntarily settle its expropriation debt fairly and in a manner acceptable to Congress.

According to legal opinion (by knowledgeable attorneys) that there is no bar to the enactment of this legislation at this time. Congress has the power to act, and it should act without further delay. I am supporting this legislation wholeheartedly and with the conviction that the general interest of the U.S.A. will be served by enhancing our prestige on both sides of the Iron Curtain. The money to be received by the claimants is a very minor detail in this connection but the matter should be terminated once and for all and not take too much of your effort and time as it has in the past. Thank you respectfully.



Mr. & Mrs. Eric Nettel
8456 La Jolla Blvd
La Jolla, CA 92037
(714) 454-7878

(a)
Mr. Chairman, Ladies and Gentlemen:

When I was advised a week ago that I was allowed to testify before your Committee, I was told to prepare a written statement as a resumé of my experience, opinions and my feelings. When I arrived in Washington only yesterday from California, I found that 1) the time allowed to witnesses was only 5 minutes. I ~~am~~^{was} glad, therefore, that my prepared statement gives an approximate, although condensed idea of my point of view, and 2) I was given to read (however hastily) the 38 pages of legal opinion prepared for these Hearings by a Washington law firm. I was greatly impressed with the thoroughness and knowledge reflected in this report. It is in my opinion a most comprehensive and factual and logical discussion with which I wholeheartedly agree in almost all points.

My written statement therefore becomes quite negligible, compared with the 38 pages. I shall therefore limit myself here to two (2) or 3 simple human interest remarks, derived from my lifelong experience as international trader in commodities.

1) The documents that I have recently studied, namely the 1974 Committee Hearings Report mention only casually and superficially the Gold Standard, that instrument of International Trade (and therefore of the actual, REAL financial world) that dominated all long term transactions in the entire XIXth Century. In these Hearings and Documents, the intrinsic value of Gold is hardly mentioned, and neither is its role as a Reserve Currency throughout our period and times. The time-element in the value of this Standard and its relationship to what you call Currency is practically overlooked throughout these proceedings, even though it is Gold that plays a major role in these discussions.

This omission or neglect is not uncommon to diplomats and legal minds who deal in their own terminology instead of with real time and money. Their talk is still of Dollars and Pounds, whether they mean Prewar Currency or 1980 values.

Can you imagine a businessman making contracts over a period of half a lifetime, in a variable currency and not consider the Gold Standard or other forms of protection against devaluation?

2) Czechoslovakia was lucky in 1946 when it was considered by the victorious Powers as a friend, or simply as a victim of German aggression. It can be argued that the Czechs lost the Gold simply as a consequence of the Munich Agreement of 1938. Agreed, the British had a bad conscience about this, but it was an international Agreement, and subsequently the Germans ordered the Czechs, legally in their opinion, to turn over the Gold for safekeeping or whatever you call it. You might also argue that when the Allies seized this Gold as victors, they might have used it to compensate U.S. or British citizens for what Germany had stolen from them. They could have converted the Gold at \$35. an ounce and compensated a great number of victims of expropriation up to that time.

The Czechs, fortunately for themselves, did not have to fight against the Germans in World War II. They stayed on the sidelines and followed a decree issued in Berlin to hand over the funds, legally, as it were.

Had the Czechoslovak turned Communist already in 1946, instead of ~~three~~ ^{TWO} years later, I doubt that the Allies would have wished to return the Gold to Prague, or to make their Tri-Partite Agreement. The so-called "THEFT" by the Germans of the Czech Gold took place shortly after 1938. The "THEFT" from us, the claimants, has taken 35 years, and the State Department has been incapable of repairing it.

3) In my written statement (this is my last point), I am talking about a compensation received by a former Soviet citizen when he used a large tax deduction in payment for his expropriation by the Chinese Communists after 1948. A favorable decision by the U.S. Tax Court Court was obtained last year, but the \$450,000. had already been deducted from his taxable income in

ICJE NEWSLETTER VOL. XI/NO.3 (60) - 1980

Marginalla:

INTERNATIONAL COUNCIL OF JEWS

FROM CZECHOSLOVAKIA, 12/13 Henrietta

Street, Suite 88

LONDON WC2R 7

OF GOLD, CRIMES AND MYSTERIES...

By John Elendil (New York)

Telephone: 816068

Telex: 826-4888

Prague has once again sounded the burglar alarm over American moves to sell part or all of the gold looted by the Nazis in Czechoslovakia, and held in trust by the Western Allies since 1945. The Czechs now put the value of it at 300 million US dollars and claim that part of the treasure consists of "gold coins of considerable historical worth". Lester Wolff, a member of the U.S. House of Representatives, recently proposed that the gold should be sold, some of the proceeds used to meet the claims of US citizens against Czechoslovakia and the rest returned to Prague. Thirty-five years after the conclusion of the war, this does not sound unreasonable, especially since neither the personal survival of claimants in the United States nor that of their heirs can be assumed. If a blustering 'Rude Prave' feature complains that Czechoslovakia "has been waiting for the remaining 18.4 tonnes of gold more than thirty years" (six of the 24.8 metric tonnes having already been returned), there is some measure of logic in the argument that the same long wait must have befallen the claimants in the United States and must have been more difficult for them, as individuals, to bear. Why the American move should be considered to be "provocative" in Prague, and "a consequence of the atmosphere generated by the U.S. administration" (which administrations, one is bound to ask by the way, does not create 'atmospheres' from time to time - are Communist administrations not masters in such exercises, following up their atmospheric practices with tanks and guns where it suits them?) is not quite clear. The Senators move is hastily branded an "illegal act" even before it has yielded any results. The present government of Prague would appear to be too certain of the short memories of the West which has a fairly clear recollection of such acts against the property of her own citizens having been committed galore at the time of the country's takeover by the Communist Party in 1948. It is also a moot point (to put it mildly) whether the gold held by the Western Allies can, in fact, still be considered the national property of Czechoslovakia. A good part of it derived from Nazi victims who perished in the Holocaust; and an equally good part of it could easily be claimed to belong, by civil as well as by moral rights, to the tens of thousands of refugees from Czechoslovakia, a fair percentage of gentiles among them, who left their country of origin since 1948 because they were unable to stand the transformation of a sound democracy in Central Europe into a totalitarian regime with a near-to hereditary single party regime. If ever the West was to look seriously into the debit and credit side of the 'gold problem', very little might be left of the Nazi hoard to go back to Czechoslovakia.

...

ERIC T NETTEL
6455 La Jolla Blvd,
LA JOLLA Cal 92037.

WASHINGTON DC August 21 1980

Dear friend,

Before returning home I wish to mail you the enclosures, that will give you an opportunity to judge the small contribution I have made to a mostly lost cause.

Still I am glad to have been here to read my little paper to the full room and to the Congressmen and journalists that have watched the proceedings for 4 hours on August 19. My prepared statement had been reviewed, reduced in size and in content, to suit the requirements of the Committee. There was not enough time to put more into the record, as I had thought to do, and to justify my long efforts and my long trip.

According to a number of participants that I have consulted since the hearings, most of them in the House of Representatives, like Mrs Hardesty, Mr Johnson, Mr John Merrigan and others, my remarks were well received and they will be reproduced in the record of the hearings, that will be printed with-in a few weeks. I shall receive a copy.

The next step will be Senate hearings on SEPTEMBER 9, (previously scheduled for Sept 3) and then it will be a question of putting the Bill of Mr Wolff to a vote, if this can be done still during this short session, as we all hope. Mr Moyzahan and others will most probably vote for the Bill, because it is almost a unanimous idea that the hearings on Tuesday were fully satisfactory to the Congressmen, incl Congresswoman Mrs Fenwick, of N J. who was the most vociferous of the panel. Everybody was sharply against the State Department and the man that represented it. Also the Treasury Dept. was sharply criticized so that you can expect a favorable vote for the Bill in both Houses.

I guess that most of the blame on the Administration will be written up, in the resume that will come out, but of course all this is little consolation for us all, in view of the terribly inefficient way this story was handled for 30 years. Too long to tell you all the long drawn exchanges about lost time, lost opportunities, wrong judgements, wrong people, exchange rates, price of Gold now and then, devaluation, death of so many claimants, etc etc. Too late and too little that we shall get within a few years now, without having to go back to Congress any more. It will come slowly and in small portions and in devaluated Dollars. My proposal (earnest or jokingly) to keep the Gold here, and to pay the Czechs now, in actual Dollar Bills, at the Gold-price of \$ 35.- per oz, (as it was in 1946,) was gladly listened to, but not accepted, as you might understand.

Still it is all they should get, if anything at all, and not Gold, as nobody dares to deny them, even now. The attitude of lawyers, even those in our favour, and the Congressmen is, that the present Bill, legal, bureaucratic, unrealistic, and practically of very little use, is still the best that can be obtained, due to the failures of the past, beginning in 1946, when the Czechs were still the poor little lambs needing our compassion. I almost forget to tell you, that there was a Czechoslovak Journalist and Radioman, at the hearings, with a big Tape Recorder and most probably a secret agent besides, to listen in for the Czechs, who, according to the State Department man are still interested to talk, now, when Gold is so high and our Dollars so bad.

I spare you many other details, but would like you to let me know, what else you heard or read, and think about the matter.

I shall copy this short report for all my good friends and correspondents, to make it easier for myself. Cordially yours

Eric T. Nettel

Ps. I forgot to mention, that I succeeded in bringing along with me to the hearings my old acquaintance Mr. Alfred S. Wolf, formerly Chairman of the Foreign Claims Settlements Commission, now retired. He is a sword opponent, of the State Department. I introduced him to Representative Wolff, and to Mr. Edward Merrigan. This latter also testified at length and fully presented our case. Whenever you could write to him and present your ideas, it will be helpful. There were also lawyers from New York and elsewhere, incl a Mr. Symington, Washington.

*Ambassade de France
aux Etats-Unis*

L'Ambassadeur

Washington, August 11, 1980

Dear Mrs Stearns,

To answer your request and your remarks concerning the French position on the Czechoslovak gold issue, I would like to make the following comments :

1) - France, contrary to what you suggest, is not "instrumental in obstructing the negotiations". In fact, France, as a cosignatory to an international agreement (the Paris Agreement of January 14th, 1946) feels committed to abide by its terms and its spirit. As you may know in accordance with this agreement, the three powers concerned (the U.K. the USA and France) have been mandated to collect and distribute among the States victimized by Nazi Germany the gold which was either found in Germany or recuperated in third countries. Since 1946, the French government has always made it clear that, following this agreement, the gold belonging to Czechoslovakia had to be delivered to it.

2) - We certainly are very much aware of the acuteness of the claim issue and fully understand the wishes of the claimants to obtain a just and fair settlement of that US-Czechoslovak dispute. Unfortunately, the gold issue and the claim issue are two different and distinct problems and there is, legally, and particularly in the light of the 1946 agreement, no link between them. This is the core of the French position, and this position is not based on any intention whatsoever of delaying a US-Czechoslovak settlement of the claim issue. On the contrary, we would be very happy if such a settlement could be reached.

You can be assured that we fully understand your expectations and your concerns. But I am also sure that you will certainly understand that France has, in virtue of the 1946 Agreement, its own commitments and that it has to abide by them, in compliance with international law and practice.

Sincerely,

François de Lauberg

August 24, 1980

Dear Eric

Your prompt report on your Washington activity was greatly appreciated and you should be congratulated for your valiant effort on behalf of all of us. I wish I could have been there. I read everything with interest, but must admit - the long testimony of Mr. Griffin - was just too heavy reading for me.

Mr. M. also sent me the account of his testimony, so I had plenty to read.

Now only that the hearings on Sept. 9th go well. Is there anyone or anything one can do in meantime? As you know - I have not been well at all these past months and at the moment my hands are extremely painful. The Doctor is more aggravation than help, really. My unpleasant job and the people are adding stress to the malady. If I got the money I would stop working immediately. I am looking forward to that day - to do the many things I can't do while away 8 hrs. each day.

My son Tom (whom you called at San Diego) was here but we parted with irreparable animosity. He is absolutely the most befuddled individual. He hates any association with me because I am Jewish. I will go to Hell and he to Heaven - and he doesn't see anything good for me if I don't accept Jesus Christ.

I think all of my pain stems from stress such as this.

I am enclosing a copy of a letter from the French Ambassador, whom I have written about 4 months ago, and had to ask for a reply. Is it of any value to us? Please make a copy and send it to Paul.

Thank you again. Best wishes,

Martin

Please give my regards to the kids

CABLE ADDRESS: KUTCHEN
MANHATTANG. KENNEDY
100 ALDERSHOT LANE
MANHATTAN, NEW YORK 10020
PHONE: 516 MA 7-2629

8/29/80

The Honorable Abraham Ribicoff ,
Chairman Senate Finance Committee
c/o Mr David Foster
2227 Dirksen Senate Office Building
Washington D.C. 20510

Dear Senator Ribicoff ,

Re .Claims against Czechoslovakia S 2721

The law S 5337 was passed on 8/8/1958 awarding
U.S.citizen of Czech origin certain amounts for confiscated
property in Czechoslovakia .I am one of the award holders .
I was 53 years old when I have received the award , now
I am past 75.I am told that many award holders have passed
away and those who still live are of an ripe old age .

Senator Moynahan has introduced a bill
S 2721 .A similar bill was introduced by Congressman Mr HR 7338.
You have kindly scheduled hearings on 9/9 on Senator Moynahan's
bill and I wish to thank you for scheduling these
hearings .

I have gathered from what I have heard
about the hearings in Congress that the Treasury and State Depts.
are not favoring this legislation for reasons which are not
easily understandable .After all we are now waiting 22 years
for a settlement of this matter .

My friend E.Nettel mentioned while
he testified on HR 7338 the so called Shvets case .To the best
of my recollection , Mr. Shvets emigrated from Russia to China
where he acquired substantial properties .Mr. Shvets came to the
U.S. when the Communists took over . Then as a U.S. citizen he
claimed a tax deduction for his properties in China .This was
disallowed ,but he fought the case in tax court and won .
(Alex E.Shvets & Eda Shvets v.Commissioner TCM 1979-298
DKT 7167-75 8/7/79 .

I take the liberty to mention this because
our situation is not dissimilar to the Shvets case .It seems to
me that an additional provision could be added to S 2721 to
the effect that if after 60 days of S 2721 becoming law no
diplomatic or any other solution could be found ,then the Secretary
Treasury would be directed to take over all claims and allow
a 100% tax credit or cash payment to those who do not need
such a credit .

CABLE ADDRESS: ~~REINISCH~~
MANHASSET

D. REINISCH
100 ALDERSHOT LANE
MANHASSET, NEW YORK 11030
PHONE: 516 MA 7-2639

8/29/80

The Honorable Abraham Ribicoff

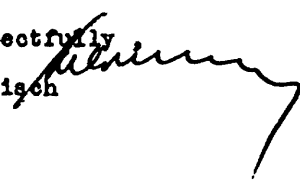
This provision would give the Treasury and /or State Depts .
the option to sell the gold whenever the time would seem
appropriate to them .Moreover a provision of this
nature may help to prevent a presidential veto .

Thank you ,dear Senator Ribicoff , for
giving this matter your kind attention .

I remain ,

Yours respectfully

O.Reinisch



JULIET V.V. RUBENSTEIN 173 RIVERSIDE DRIVE
NEW YORK 10024

September 1, 1980

Honorable Abraham Ribicoff, Chairman
Senate Subcommittee On International Trade
Senate Finance Committee
c/o Mr. David Foster
2227 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Senator Ribicoff:

I urge you to support S. 2721, Senator Moynihan's bill on behalf of the citizens of the United States who hold awards issued by the Foreign Claims Settlement Commission of the United States against the government of Czechoslovakia.

My parents are deceased as are many of the original award holders. They struggled to earn a living in this country and to give me a proper education. Their lives were difficult. Their lives would and should have been more equitable if the claim had been settled by Czechoslovakia in 1962.

Today, most of the individual award holders are old people who are in dire need of the compensation that is justly theirs. The heirs, such as myself, are entitled to compensation for the losses suffered by their parents.

Sincerely,



Juliet Rubenstein

JULIET V.V. RUBENSTEIN 173 RIVERSIDE DRIVE
NEW YORK 10024

September 1, 1980

Dear Senator:

The proper education referred to in the enclosed letter was spent at Putney with your son, Peter. While writing to you, I recalled with great nostalgia the many wonderful weekends spent with you, your wife and Peter. Please say hello to him for me.

I hope that your Subcommittee is able to cut through the red tape that has enmired the Czech. claim for so many years.

Sincerely,



Juliet Rubenstein (nee: Juliet Van Vliet-Stein)

LEO L. SCHMOLKA
32 Farragut Road
Scarsdale, New York 10583

Statement Regarding S.2721

Leo L. Schmolka, residing at 32 Farragut Road, Scarsdale, New York 10583, submits the following statement in support of S.2721.

I am an attorney at law duly admitted to practice before the highest court of the State of New York. I submit this statement not only as an attorney, but on behalf of the Estate of Francis Schmolka, my late father, and Irene Schmolka, my mother, both of whom are holders of awards against the Government of Czechoslovakia under the International Claim Settlement Act of 1949, as amended.

Irene Schmolka and Francis Schmolka owned substantial property of considerable value situated in Czechoslovakia that was nationalized or otherwise taken by the Government of Czechoslovakia, without any compensation, almost 30 years ago. At the time, both Francis and Irene Schmolka were citizens of the United States. Francis was a citizen of the

United States at the time of his death on May 8, 1964, and Irene is a U.S. citizen now.

Francis and Irene Schmolka received awards from the Foreign Claims Settlement Commission of the United States in the respective amounts of \$171,986.51 and \$62,091.82, a total of \$234,078.33. To date, only approximately 5% of that amount has been paid on account of those awards. Almost 20 years have elapsed since the Foreign Claims Settlement Commission issued my parents' awards and, as indicated, essentially no payment has been made by the Government of Czechoslovakia. In the interim, my father, Francis Schmolka, died, and my mother, Irene Schmolka, has become elderly (she is now 80 years of age). With virtually nothing in the way of tangible results to date, it seems unconscionable that my mother in her waning years should entertain the prospect of nothing but further delays. Similarly, there seems to be no good reason why my father's heirs (my sister and myself), representing yet another generation of American citizens, should grow elderly without the benefit of the compensation that fairly was awarded my father by a duly constituted authority of the United States Government.

Certainly, one of the fundamental attributes of United States citizenship is the right to protection by our Government against unwarranted invasions of person and property by other nations. Such an invasion was worked by the Government of Czechoslovakia some 30 years ago against approximately 2600 American citizens in the form of an uncompensated expropriation or taking of their property. To date the United States Department of State has been unable to resolve Czechoslovakia's debt to our citizens, including my parents, Francis and Irene Schmolka, in a manner that is both fair and acceptable to the United States Congress. This, notwithstanding that some 18 tons of Czechoslovakian gold have been held as security for more than 30 years.

Recent years have witnessed an accelerating trend to violence against and disruption of our diplomatic establishments abroad, to foreign disrespect for the rights and property of American citizens, and to international terrorism, often condoned by foreign governments, that, even if not necessarily directed against American citizens, often endangers their lives or property. Whenever the United States Congress

has it legitimately within its means to do so, it should take firm steps to deter outrages of this sort. If our Congress fails to act vigorously, effectively and promptly on this legislation, its failure will signal only apathy and weakness on the part of our Government in respect of the rights and property of its citizens. The signal will go out not only to the Czechoslovakian communists, who quite clearly are content to permit the matter to drag on, without resolution, to eternity, but also and more broadly to the world at large where the rights and property of American citizens are violated with increasing regularity.

As noted, several thousand American citizens, including my parents, have for two decades held lawfully adjudicated claims against the Government of Czechoslovakia, and the efforts of the Department of State have produced virtually nothing in the way of tangible results for the uncompensated seizure of these citizens' property. The United States Congress has the authority and the means to settle this matter once and for all through legislation for the benefit of the thousands of American citizens involved. It is clear that only legislation will resolve the matter and the legislation should be enacted

at this time, before yet another generation of American citizens grows old holding nothing but meaningless awards; before the International Claims Settlement Act of 1949 is confirmed as a vehicle for nothing more than the dispensation of hollow satisfaction; and before the work and authority of the United States Foreign Claims Settlement Commission are at long last confirmed as an empty exercise in irrelevance.

I, as Executor of the Estate of Francis Schmolka, a deceased award holder, on behalf of my mother, Irene Schmolka, an award holder, and as a United States citizen vigorously support S.2721 and urge the Senate to pass it before adjournment of the current term. It is important that the legislation be passed now, while the Czechoslovakian gold enjoys a high value and interest rates are also relatively high.

Responsible and knowledgeable legal counsel have opined that there is no legal impediment to prompt enactment of S.2721. Some 20 years of good faith diplomatic effort by the United States Department of State has proved essentially futile in resolving this matter; one generation of American citizens has grown old in the process and a second faces the prospect of doing the same. The utter disrespect for the

rights and property of American citizens demonstrated by the Czechoslovakian Government in this matter must be brought to an abrupt end, not only for the legitimate and lawful satisfaction of the American citizens involved but also as a broader demonstration that the United States Government simply will not suffer its citizens to be violated in their persons or property by foreign nations. The United States Congress has the power to act, and it should act without further delay. S.2721 should be promptly enacted.

Respectfully submitted,

Leo L. Schmolka

LLS:mls

MRS. CHARLOTTE E. SCHMELZER
630 Fort Washington Ave
New York NY 10040

September 2 1980

Honorable Abraham Ribicoff, Chairman
Senate Subcommittee on International Trade
Senate Finance Committee
c/o Mr. David Foster
2227 Dirksen Senate Office Building
Washington, D.C. 20510

RE: Senate Bill S 2721
introduced by Senator Moynihan

Dear Senator,

As one third heir to my fathers estate, I am writing to you to respectfully request that you support the above mentioned legislation.

Czechoslovakia should either be forced to make payments or the stored Gold should be used for this purpose.

Since I had to leave Czechoslovakia thru Hitler's persecution, I have been unable to work on account of high blood pressure and severe stomach ulcers.

I am badly in need of these funds and would greatly appreciate your support in this matter.

Respectfully yours,

Charlotte E. Schmelzer
Charlotte E. Schmelzer

Mrs. Maria Shilling
105-34 65th Road
Forest Hills, N.Y. 11375.

and
Mrs. Anne Morris
8934 Froude Avenue
Surfside, Fla. 33154.

August 31, 1980.

Honorable Abraham Ribicoff, Chairman
Senate Subcommittee on Internal Trade
Senate Finance Committee
c/o Mr. David Foster
2227 Dirksen Senate Office Building
Washington, D.C. 20510.

Dear Sir:

My sister and myself are American Citizens of Czechoslovakian descent living in U.S. since our flight from Czechoslovakia due to Nazi oppression and the Communist seizure of our native country thereafter.

Our parents Mr. and Mrs. Ottakar Baumann owned a wellknown chemical factory in Prague as well as other assets and everything has been seized by the Czechoslovakian Government without any recompensation.

Our husbands had to start here from scratch and worked very hard to get a foothold in the new home country, but they never asked for nor received any financial assistance from the Government. Our parents who were American Citizens as well filed a claim with the Foreign Claims Settlement Commission for their assets illegally and after a thorough examination of their claims an award has been adjudicated to our in the meantime widowed mother Mrs. Bertha Baumann for a substantial amount, which however never has been paid to her except for a small fraction of 5.33% and one thousand dollars.

Since that time both parents passed away and we the undersigned two sisters are the only survivors and heirs. We tried continuously to obtain the adjudicated refund but all our inquiries at the FGSC were fruitless and the answer has been always the same negotiations are being conducted with the Czechoslovakian Government regarding the payment of the justified claims which went on for decades.

Now we both are grandmothers in our seventies and still no progress has been made to obtain at least some additional refund which is due to us . We really cannot understand why our Government which is so powerfull in the world cannot achieve compliance of the Czechoslovakian Government to settle their obligations for the illegally seized properties the benefits of which they are enjoying already for so many decades, although the citizens of other countries received a recompensation long time ago.

Our parents and husbands have worked very hard in our native country to accumulate a "nestegg" for the advanced age but lost everything overthere and it seems to us that even here in this wonderful country we are left without any help or even hope for the justified compensation for the properties which have been robbed without any fault of ours...

We read in the daily papers that some action was initiated to use some Czechoslovakian gold deposited in this country to sell this or part of this gold in order to satisfy our claims which anyway are considerably reduced due to the devaluation of our currency compared to the time when these assets were seized illegally. But even if we disregard this argument we still cannot obtain even the nominal amount of the adjudicated claims, due to the opposition of the administration, to the proposed legislation to this effect.

Another legislation for the settlement has been introduced by the Honorable Senator Moynihan of New York and we understand that you yourself are the Chairman of the Senate Subcommittee of Internal Trade dealing with his proposed Companion Senate Bill. We implore you, Sir, to help us in this effort. We are citizens who always worked faithfully for our new home country having faith that it will protect us in every respect and are quite disappointed being abandoned now in our last efforts and our hope that justice will prevail!

Thanking you in advance for your kind attention to this matter,
we remain, in the meantime,

Sincerely yours,

Maria Shilling
Mrs. Maria Shilling
Anne Morris
Mrs. Anne Morris.

MRS. TEREZIE SINGER
525 Audubon Ave Apt. 712
Isabella House
New York NY 10040

September 1 1980

Honorable Abraham Ribicoff, Chairman
Senate Subcommittee on International Trade
Senate Finance Committee
c/o Mr. David Foster
2227 Dirksen Senate Office Building
Washington, D.C. 20510

Re: Senate bill S 2721
introduced by
Senator Moynihan

Dear Senator Ribicoff,

I am one of the Senior Citizens who has waited
for over 30 years to receive payment of my claim
against Czechoslovakia.

Now that I am 87 years old, living on Social Security
in a Senior Citizens Home, I am using up my small
savings to even exist.

May I respectfully urge you to support the legislation
so that finally either Czechoslovakia will make payments
or the Gold can be used to satisfy my and all other
peoples claims.

Respectfully yours,

Terezia Singer
Terezia Singer

STATEMENT Of A Born American-citizen

I, the undersigned Mrs. Helen A. Stach, residing at 25-53, 34th Str. Long Island City, New York, N.Y. 11103, herewith wish to respectfully present this statement and synopsis of my case against Czechoslovakia, as testimony, pertaining to my Claim No. CZ-3,030, tendered before the Foreign Claims Settlement Commission of the United States in Washington, D.C. in the year 1960, -to which claim, the said F.C.S.C. granted me an Award in the amount of \$277,193.45.

I lived in my private residence in Prague, Czechoslovakia with my parents (both American citizens). After my parents' death, I having survived Nazi occupation (World War II) and Russian take-over, of Czechoslovakia, I was called to the Communist Czechoslovak Police for questioning. After 4 hrs. of actual grilling by Russian agent police-I was given the choice-to either relinquish my American citizenship, this enabling me to remain in Czechoslovakia-or banishment from that country, -"as an undesirable foreigner"!!

I chose the latter course, refusing to relinquish my prided birthright-namely, my U.S.A. citizenship-and freedom!!

My husband, Charles V. Stach, had died in N.Y.C.-20-yrs. earlier, in a civic diplomatic service of the then free Czechoslovak republic under Dr. Pres. Benes.

(I was forced to see my chauffeur arrested and sent for punishment as an employee of a "capitalist" family-to 6 months slavery in coal mines!) I was given 1 month to leave Prague.

Before leaving Czechoslovakia, that ruthless government flung a tax on me-although that regulation was not even as yet proclaimed "as law" at that moment totalling 350,000 Crowns-I mortgaged my large apartment building (built by my father) so as to "clear" my way to freedom!

I was given only 3000 Crowns cash - (about \$100) for my journey to the USA!-otherwise-penniless-I came to the U.S.-finding first refuge with an uncle in Pittsburgh, PA.-Dr. Charles J. Styler. After much trial-I procured employment in the Union Dime Savings Bank in N.Y.C. where I worked for 17 years in the New Accounts, Mail and Foreign departments.

Since 1968, I am living on my hard-earned bank pension of \$49.58 monthly, and my social security benefit, now raised to the amount of \$315.00 monthly.

My expulsion in January 1950, by the Czechoslovak government on the grounds, "undesirable foreigner" was illegal. I had never been a "Nazi sympathizer", nor had my fortune ever contributed to enemy advantages.

- 2 -

My apartment building in Prague was "taken-over" by the Czechoslovak government in 1951 as abandoned property. This trick was also illegal, because none of my properties were "abandoned." I had my representative-Manager controlling and managing the properties and their proceeds in good order, which he continued to do even after my departure for the USA.-until he was subsequently ousted by the Czechoslovak authorities.

In 1958, I was forced to sign a Rental Contract for the use of my vila in Prague, (Na Zatorce 19,-Bubeneč).--This contract named me as owner, and the Agency for Service to the diplomatic corps in Prague (Sprana sluzeb dipl. shoru v Prage)-as my tenant. The rental yearly amount to be paid automatically to the special "foreign bank account" in Prague was a very very paltry sum. These payments were made in order by the Agency up to 1960-then stopped.

To this day, my properties are exploited and no complaints, reminders, both written and presented personally when I was visiting Prague,-not even an attempted Court-suit for the arrear rental payments as "withheld rental proceeds" -were even admitted to the Court of Justice (so-called,) of Czechoslovakia in Prague.

The Brazilian ambassador to Czechoslovakia occupied my former home, (even part of it used as a temporary Consulate Office at one period)-as his private residence for 15 years. Later the vila was occupied for 10 years by the United States Dept. of Defense as residence for American officers in Prague.

I received absolutely nothing, either in Crowns or in dollars -for the sub-rental uses of my property.

The flagrant violation of legal standards,-the ruthless disregard for any vestige of decency as practised in the cultured world, the ignoring of contract agreement and all due proceeds or compensations for the use, abuse and extensive damages to my properties, all of which were of 1st class material qualities and architectural values-are indeed calling for the most strict measures of protection and recourse by my Unites States Government.

After 30 over-due years,-it is about time! My former home is now defiled by Russian tenants-as mentioned,-all proceeds going to the communist Czechoslovak government for illegally usurped American properties.

I have survived World War II under Nazism-Russian domination, Communist threats and persecution. I am living for the past 20 years in a very small, modest apartment, counting my daily expenses on a meagre scale according to my budget,-while for 30 years, the Czechoslovak government is taking hundreds of thousands of dollars and Crowns of my former American fortune.

- 3 -

Not only because I have been many years truly in dire need,- not only because the cruel, unjust machinations of a cunning and dangerously persistent red regime has beggared me, ruined my life,-but because I had chosen, in face of staggering, fantastic odds, my honest lifes' path according to my Christian and cultural heritage,- do I deeply feel justified in demanding my American rights. I feel entitled to the full payment due me now these 30 years,-the full payment of the Award granted to me by the FCSC in Washington, D.C. in 1960-62.

All my properties are intact (accept for damages)-(see photos) -luxury buildings of finest materials, the properties situated in the best and most valuable areas of the city of Prague.

The interest, long pending, from the proceeds of my properties, as well as from the still pending since 1962-Award amount of

\$277,193.45

should indeed be considered and accounted for-and should augment said final award pending sum,-which amount even so (award) is a pittance against the actual value and original claim amount of

\$832,123.45 (See Claim proposed decision)

The Award, although I accepted it as granted, I do consider therefore,-rather short-changed, withal!

I most urgently request that justice be at long-last done. I believe it is not to be my opinion along,-that I am amazed to find the State Department attempting to frustrate steps aimed at gaining justice for long cheated and unfortunate American victims of Czechoslovak aggression and dishonesty.

Being one of the outstanding cases of justified claim against Czechoslovakia,-

I herewith ask my government of the United States to take full, strong and undeterred measures to procure for me, my just, legal and truly much-needed Award payment in full.

Most respectfully,

Helen A. Stybr Stach

Helen A. Stybr Stach

Washington, D.C.

August 19, 1980

Attached 2 Claim Decision Photostats, with my Statement of 1962 plus Photos.



Frank Tesar,
8957 S. Carpenter Street,
Chicago, Illinois. 60620.
Sept. 2 nd. 1980.

My mortgage was secured by the foundry, machine shop the wire rope factory with supplies and equipment and the living building for the owners.

My brother's brick yard was a large continual kiln to bake the the brick, machinery to make the brick and homes for the employees and surrounding farm land.

The two story solid brick apartment building in Kladno, was owned by my deceased sister Mary Gregor, and all the properties were confiscated 34 years ago.

The properties have considerable value and the valuation can be determined by the American Ambassador in Prag, Czechoslovakia. My mortgage is interest bound.

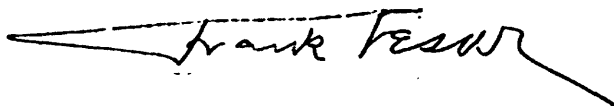
The confiscated properties were acknowledged by the U. S. Department of State in Washington, May 25, 1955. refer to SUS 249.1141 Tesar Frank, 5-555.

The brick yard is also located in Kladno.

Addresses:

Adolph Tesar, 1628 Austin Blvd,
Cicero, Illinois, 60650. Tel: 656 - 5906.

Jaroslav Tesar, Podébradová ulice 527.
Kladno, Czechoslovakia 27200.

Frank Tesar

COPY - August 29, 1980

DEPARTMENT OF STATE
Washington

In reply refer to
S () S 249.1141 Tesar,
Frank/5-555

May 25, 1955

Dear Mr. Tesar:

The receipt is acknowledged of your letter of May 5, 1955, concerning family property interests in Czechoslovakia, said to have been seized by the Czechoslovak authorities.

The principal property, a foundry, is said to have been transferred in 1948 by your mother to your brother, Jaroslav Tesar, who remained in Czechoslovakia to take care of it.

A brickyard property is mentioned as having been transferred to your brother Adolph in 1942. He is said to have been expelled and to have returned to the United States in 1952.

An apartment building constructed in 1931 is said to have been transferred in 1939 to your sister, Mrs. Mary Gregar nee Tesar, now a widow, still living in Czechoslovakia.

Your mother's interest appears to have been reduced to a mortgage claim of 100,000 crowns and yours to a mortgage claim of 500,000 crowns, both secured by the foundry property.

The foundry, the brickyard property and the apartment building are understood all to have been confiscated.

It is presumed that, by way of proof of their losses, the respective owners

COPY - page 2.

(Jaroslav for the foundry, Adolph for the brickyard, and Mary for the apartment house) already have in their possession or would be able to obtain, precise citation to any Czechoslovak law, decree or court actions upon which confiscation of their respective properties may have been based. The standing of any claim each of them might have as a deprived owner under established principles of international law and practice would depend, among other things, upon the nationality status of each of them as of the time when seizure of his or her holdings took place.

Basically your Czechoslovak crown claim and that of your mother would be against Jaroslav Tesar, the mortgage debtor. This Department would be unable to advise you of any altered status the debtor's obligation expressed in crowns could now be expected to have under Czechoslovak law, in the light of monetary measures imposed in 1953 by the Communist Government of Czechoslovakia. Possibly you could develop information on this point by means of direct correspondence with Jaroslav Tesar in that country.

Your letter and its enclosures will be retained in the Department's files. It would not be practical for the Department to promise to send individual notification of possible future events to you or any other interested party or potential claimant. You may anticipate, however, that due general publicity will be accorded for the information and guidance of all concerned, if and when procedures are developed for the adjudication and settlement of property claims of American citizens against Czechoslovakia.

Sincerely yours,

For the Secretary of State:

(signed)

Francis E. Flaherty
Assistant Director
Office of Special Consular Services

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September 4, 1980

Honorable Abraham Ribicoff, Chairman
Senate Subcommittee On International Trade
Senate Finance Committee
c/o Mr. David Foster
2227 Dirksen Senate Office Building
Washington, D. C. 20510

Re: Estate of Leopold Pilzer, deceased
Estate of Laura Pilzer, deceased
Estate of Monique Weill-Caulier, deceased
Estate of Bruno R. Weill-Caulier, deceased
Stephanie Weill
Alice Sedlak

Dear Senator Ribicoff:

We are attorneys for the Executors, Trustees and beneficiaries of the Estates of Leopold Pilzer, deceased, and Laura Pilzer, deceased. The beneficiaries of said Estates are Alice Sedlak, and Stephanie Weill, and the Executors and Trustees of the Estate of Bruno R. Weill-Caulier, deceased, and the Executors and Trustees of the Estate of Monique Weill-Caulier, deceased.

Bruno R. Weill-Caulier died a resident and citizen of the United States on February 18, 1962. Under the terms of his Will a Trust was created pursuant to which his entire residuary estate is payable to College of Physicians & Surgeons of Columbia University, New York Foundling Hospital, New York Heart Association, Inc. and New York Cancer Research Institute, Inc. Any recovery received by the Estate of Bruno R. Weill-Caulier with respect to the Czechoslovakian claims will be distributable to the above-named charitable organizations.

Monique Weill-Caulier died a resident and citizen of the United States on April 8, 1979. Under the terms of her Will a Trust was created under which the undersigned and Robert Todd Lang are Trustees, providing for distribution of all assets of the Trust to New York University School of Medicine, Cornell University Medical College and Albert Einstein College of Medicine for medical scholarships and to a group

of eight medical schools in the City of New York for medical research grants. Any recovery received by the Estate of Monique Weill-Caulier will be distributable to the above-named charitable organizations.

Alice Sadiak and Stephanie Weill are of advanced age and are citizens and residents of the United States.

After World War II the Government of Czechoslovakia nationalized or expropriated properties of Leopold and Laura Pilzer located in Czechoslovakia without provision for compensation. Awards were rendered by the Foreign Claims Settlement Commission in the amount of \$1,007,893 in favor of Leopold Pilzer and in the amount of \$813,152 in favor of Laura Pilzer in recognition of the properties lost to the Czechoslovakian Government.

More than 30 years have elapsed since the awards were rendered. During that period Czechoslovakia has failed to make provision for their payment.

Undoubtedly there are other American citizens whose assets were seized by Czechoslovakia and to whom awards have been granted and who, as elderly citizens, are patiently awaiting reasonable liquidation of such awards.

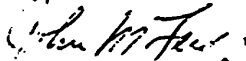
The United States Department of State has exhibited no ability to settle the Czechoslovakian debt in any manner acceptable to Congress, although the Department of State has allegedly held 18 tons of Czechoslovakian gold as security for a period of more than 30 years.

It is respectfully urged that Congress enact HR 7338 as promptly as possible to provide for payment of Czechoslovakian claims estimated to aggregate \$105,000,000 and to provide for payment of interest to the claimants at 6% per annum from the date the claims were approved.

Action of this nature could not only provide equitable settlement of the award-holders' claims, but would bolster and enhance the international position of the United States Government as an active, vigorous and effective force in international relations.

The award-holders have not been advised of any legal bar to enactment of the proposed legislation and understand that Congress has power to act. If so, Congress should act without further delay.

Respectfully yours,



John M. Lewis

JML:ats

STATEMENT SUBMITTED TO
THE SENATE FINANCE COMMITTEE

Honorable Gentlemen of the Senate Committee on Finance.
My name is Geraldine F. Yarroll. I was married to the late Francis L. Frybergh in 1943. Francis was an American Citizen Award Holder.

Our marriage lasted twenty years. After his death in Dec. 1964, I was appointed Administratrix of his estate.

In 1950, about 30 years ago, it was established without a doubt that Francis Frybergh was the owner of valuable property located in Czechoslovakia, and the property was lost to him through Czechoslovakia's expropriation procedures.

In 1962 the Foreign Settlement Commission made an award to Mr. Frybergh in the sum of \$63,915.00, and to date only approximately 5% of this award was received from Czechoslovakia payable to him or his family. Almost twenty years have now passed since the award was issued, but no further compensation has been realized from Czechoslovakia, or the Foreign Claims Commission.

It is now common and public knowledge that our Government holds, as security, for over thirty years, 9 tons of Czech gold, and yet our State Department allows these awards to lay in a state of limbo for approximately twenty years.

American Award Holders are now quite elderly, and as in my case many of the Award Holders have passed away, never to benefit from the award that rightfully belonged to them. It is therefore time for the Senate to pass S2721. We as individuals cannot go to Czechoslovakia to fight for our claim. We depend on our Government, particularly our State Department to negotiate for us, and bring this settlement to a fair and just conclusion. This is not only a moral issue,

principles are also involved. Our State Department must advise the Czechoslovakian Government that it is strongly in favor of settling the expropriation debt now. American Nationals have a right to what is owed them. Gold enjoys an all time high value. The time is right!

We cannot allow the Czechoslovakian Communist's to think we are a weak people, willing to shelve any problem that is not earth shattering. To the American Award Holder, this is an enormous problem that they've waited for to be settled for almost three generations, (my mother and father-in-law, both American Citizens, also passed away) if we continue to wait, it will be our children, and then our grandchildren, pleading with our Senators to pass the law. We have definite legal opinion (from knowledgeable attorneys) that there is no legal bar to enactment of this legislation at this time.

I strenuously support Senator Moynihan's Bill S2721, and urge the Senate to pass it, before it adjourns in October '80.

Gentlemen of the Committee I want to sincerely thank you for giving Bill S2721 your serious considerations, and for giving me the opportunity to submit a personal statement. I'm hopeful and confident that you will continue to press for a fair and just conclusion to this problem. The elderly Award Holders and the heirs of the deceased will be eternally grateful. Thank you.

Submitted by

Geraldine F. Yarroll
34 Cedar Street
North Merrick, N.Y. 11566

Dated

Sept. 5, 1980