

FINAL REPORT ON THE GERMAN DEMOCRATIC REPUBLIC CLAIMS PROGRAM

The German Democratic Republic Claims Program was successfully completed on May 16, 1981, as mandated by Congress in Public Law 94-542. During 1981, the Commission issued 497 decisions, adjudicating the remaining 704 claims which had not previously been adjudicated. With the completion of the four year program the Commission had received 3,898 claims, of which it found 1,899 to be compensable, resulting in awards to some 2,437 claimants in the total principal amount of \$77,880,352.69.

The raw statistics, however impressive, do little to reflect the real scope of the task faced by the Commission in completing the program. The Commission resolved several difficult issues in 1981 and continued to apply and refine principles established both in earlier claims programs and in earlier decisions in the GDR Claims Program. This report highlights the entire GDR Claims Program, from its official beginning on May 16, 1977, to its completion.

The Commission's authority to adjudicate claims against the GDR was granted by Congress on October 18, 1976, by adding Title VI to the International Claims Settlement Act of 1949. Over the four years in which it was authorized to adjudicate claims, the Commission encountered a number of new and challenging issues arising from the unique circumstances of this program.

1. CHALLENGES FACED BY THE COMMISSION

Commencing the Program

The Commission established a one-year filing period, which began on May 16, 1977. Although the only statutory requisite for notifying potential claimants was that notice be published in the Federal Register, the Commission wanted to give wider publicity to the program.

A series of three press releases regarding the program were sent to over 350 newspapers throughout the United States with courtesy copies forwarded to each member of Congress. Special notices were sent to all German language newspapers in the United States and to nearly 200 radio stations which carried some German language programming. The Commission also contacted German-American and Jewish community groups, a number of whose members were of German ancestry, and received excellent cooperation in reaching potential claimants. Members of the Commission's staff also spoke to groups of potential claimants upon request.

In 1975 the Commission conducted a registration of claims for losses in the German Democratic Republic at the request of the Department of State. In addition, the Commission had lists of individuals who had written indicating that they had a possible claim. These initial registrants were forwarded notice and materials for filing a formal claim at the beginning of the filing period. Where these potential claimants had not filed their claims during the first ten months of the one-year period, reminders of the deadline for filing claims were sent out in the early part of April, 1978.

The Commission also established a temporary field office in New York City, where a great many claimants resided. The office was staffed on a part-time basis by attorneys from the Commission's Washington, D.C. office. The office was able to assist a great many claimants.

The Commission's efforts to publicize the GDR Claims Program appear to have been successful. Over 3,750 claims had been filed by the end of the filing period. Nonetheless, some claim forms were not filed in a timely manner. In the [*Claim of Adolf Glaser, Claim No. G-3836, Decision No. G-2170*](#), the Commission held that a claim filed after the date the one-year statutory period for filing claims against the GDR expired, was not timely filed and that therefore, it had no authority to grant an award for the loss claimed. A number of such claims unfortunately had to be denied on the sole ground that they had not been filed in a timely manner.

Gathering of Evidence

One of the major challenges to both claimants and the Commission was to obtain evidence to form the basis of a compensable claim. Most of the action taken against property in the German Democratic Republic occurred in the decade immediately following World War II. Certain precedent decisions issued by the Commission, which are hereinafter discussed, made it necessary to ascertain the facts underlying events which occurred as early as 1933. Many of the claimants were one or two generations removed from those who had actual knowledge of the relevant events. The destruction of records in World War II and the fact that many of the claimants or their predecessors had to flee from Nazi or Communist oppression further limited the availability of documents to claimants.

Although its regulations placed the burden of obtaining supporting evidence on the claimant, the Commission realized the great hardship that would be faced by many to produce evidence of events which occurred over the span of fifty years. Therefore, the Commission undertook in several ways to assist claimants in their efforts to establish the elements of their claims.

The most important of these means was the Commission's field office in West Germany. Located in the American Consulate in Munich, the field office was headed by an attorney with the Department of Justice on a part-time, reimbursable basis. The staff included a German investigator, a translator and a secretary. From time to time, the field office staff was augmented by members of the Commission's staff in Washington, who were temporarily detailed to Munich. The field office was able to gather substantial amounts of valuable evidence through independent research and through cooperation with agencies and claims authorities of the West German government. With the joint effort of the United States Department of State, the Commission was also able to make direct, limited inquiries of the German Democratic Republic. Officials of that government offered some evidence from records available to them. The effectiveness of this cooperation was reduced, however, because it was very time consuming. Nonetheless, some claimants benefited from this source of information.

Members of the Commission's staff, being thoroughly familiar with historical events in Germany, German law and the German language, were able to offer invaluable assistance to claimants, many of whom, because of the lapse in years, had no direct knowledge of events and circumstances surrounding their claims.

Interpretation of Foreign Law

The interpretation of foreign law, particularly German law, was another of the challenges faced by the Commission. Conflict of laws rules in many instances required the Commission to apply German law, particularly in cases involving the inheritance of real property in East Germany. Often, concepts of East German law, based on European civil law, were as unfamiliar to Anglo-American legal minds as they were to the claimants.

The Commission applied, for example, German law of future interests, long-term encumbrances and intestate succession. In the [Claim of Ilse Garfunkel, Claim No. G-0815, Decision No. G-1474](#), the claimant asserted the loss of real property which had been owned by her uncle in the German Democratic Republic until his death in 1970. She maintained that she was her uncle's sole heir, and that the GDR's failure to recognize her as the owner of the property constituted a taking under Public Law 94-542. The Commission examined East German law concerning intestate succession and found that the claimant had not been entered in the local land records as the owner of the property because of her own failure to comply with local law. Based on its study of local law, the Commission held that under international law no taking by the GDR had occurred and denied the claim.

Another example of the Commission interpreting foreign law occurred in the [Claim of Heinrich Werner Bucholz, Claim No. G-2560, Decision No. G-3128](#), where the claimant asserted that he had acquired a one-half remainder interest in an apartment house and a factory in East Berlin in 1935 under the terms of his father's will, while his mother had received a life estate therein. An examination of the will by the Commission revealed that the claimant's mother was named as *befreite Vorerbin*, while the claimant and his brother were named as *Nacherben*, terminology that is not identical to the Anglo-American concepts of a life tenancy and remainder interests. Additionally, the Commission noted that paragraph two of the will stated that the claimant's mother, in her position as *Vorerbin*, was to be free of all restrictions with respect to her disposition of the inherited property, to the extent allowed by law. Accordingly, the Commission determined that the "befreite Vorerbin" (literally: freed primary heir) had the power to alienate and dispose of any and all of the property of the estate during her life, while the claimant, as a "Nacherben" (literally: the subsequent heir) would be entitled to whatever was left over at the time of his mother's death when the subsequent heir's rights in his father's estate took effect. Accordingly, the Commission had to deny the claim.

2. THE ELEMENTS OF A COMPENSABLE CLAIM

The Commission examined the evidence submitted by claimants and acquired through the Commission's own efforts to determine if all the elements of a compensable claim were met. In order successfully to assert a claim, a claimant had to show that property which was owned by a United States national was expropriated, nationalized or otherwise taken; that the claim for the loss thereof was continuously owned thereafter by a United States national; and that the loss occurred in the GDR or East Berlin. If these elements were present in a claim, the Commission undertook to value the loss and grant an award to the claimant. Each of these elements—continuous U.S. ownership, taking, territorial and temporal limitations and valuation is examined in a separate section below. Many of the claims

presented to the Commission involved property originally lost by victims of Nazi persecution in Germany. Because of the special nature and importance of those claims, they are described and explained separately in the section entitled "Persecutory Losses."

United States Nationality

Public Law 94-542 set out a specific direction to the Commission that a claim should "not be favorably considered" unless the property was owned by a national of the United States on the date of loss and then only if the claim had been held by a national of the United States continuously from the date of loss until the date of filing with the Commission. Where an individual was concerned, the statute was equally specific in defining the term "national of the United States" as a person who was a citizen of the United States. A significant number of those claims which were denied by the Commission were denied because the owner of the property had not yet acquired United States nationality on the date of loss.

The requirement that property be owned by a United States citizen on the date of loss embodies a traditional principle of international law to the effect that an illegal confiscation of the property of a national of a state is considered as an injury to the state itself. The state is therefore entitled to assert a claim for *its* injury against the state that caused the injury. Conversely, if the property of a non-national is confiscated, no injury occurs to the state and it is not entitled to assert such a claim. In the present context, the United States will assert claims against the German Democratic Republic through negotiations seeking a lump sum settlement to be distributed among all claimants whose claims were found to be valid under international law by the Commission.

The rule requiring the owner of property to have been an actual citizen at the time of loss has been criticized by some international law authorities as being unduly narrow and as failing to recognize or make provision for persons who became "stateless" as a result of religious and racial persecution in their homelands or as the result of revolution and the advent of totalitarian regimes in their home countries. It has been suggested that the definition of a national should be made less restrictive to include individuals who, at the time of loss, had substantial contact with the United States by being permanent residents in the process of seeking naturalization, even though they had not yet become citizens.

Several claimants vigorously argued that the Commission should modify the requirement of actual citizenship on the date of loss to permit their claims to be found compensable. One of the claims in which this fact situation was presented was in the [Claim of Frederick Mueller, Claim No. G-1332, Decision No. G-1349](#), which involved a loss of a parcel of land in East Berlin. The Commission found the property was taken in 1951, before the claimant had become a United States citizen. Following the initial denial of his claim on the ground that the property was not owned by a United States national on the date of loss, the claimant filed an objection to the denial.

The claimant had been born in Czechoslovakia but, as World War II approached, was required to flee from his residence in Germany due to the racial and religious persecution of the Nazi regime. He found refuge in Shanghai, China, and in 1948 renounced his Czech citizenship with the advent of the

communist takeover in postwar Czechoslovakia. The claimant thus became a stateless person. In 1949, he was allowed to enter the United States, where he became a permanent resident and where he continued working and paying taxes while completing the process of becoming a naturalized United States citizen.

Under these circumstances, claimant contended, the Commission should consider him to have been a national of the United States in 1951, pointing out that at that time he could claim the nationality of no other country. Claimant further argued that to do otherwise would be to deprive him of his right to equal protection under the Fifth Amendment of the United States Constitution, on the ground that the nationality requirement set up an arbitrary classification involving alienage which did not serve any overriding state interest.

The Commission, after considering extensive written submissions and having the benefit of oral presentation by the claimant and his attorney, concluded that it had no alternative but to affirm its earlier denial of the claim. The Commission cited the unequivocal language in Public Law 94-542 which required actual United States citizenship and concluded further that it was beyond the competency of the Commission, as an administrative agency, to rule on the constitutionality of acts of Congress.

Not all claimants were individuals. Section 601(1)(b) of the Act defined a "national of the United States" in these instances as:

"(b) a corporation or other legal entity which is organized under the laws of the United States or of any State, the District of Columbia, or the Commonwealth of Puerto Rico, if natural persons who are citizens of the United States owned, directly or indirectly, 50 percentum or more of the outstanding capital stock or other beneficial interest of such corporation or entity. The term does not include aliens."

Determining the "nationality" of a corporation posed little difficulty for the Commission. The phrase "other legal entity" caused some difficulty in interpretation. In addition to corporations, some claims were filed by estates, trusts, partnerships and churches. In each case the Commission was required to make a determination with respect to the nationality of the proper party claimant.

In the case of estates and trusts, the Commission looked to the nationality of the individual heirs or beneficiaries and was able to make awards to any who were United States citizens, provided the other elements of a compensable claim were present.

This rule was not always easy to apply. In the [Claim of the Estate of Anna Berliner, Claim No. G-3661, Decision No. G-3168](#), the claim was filed by the First National Bank of Oregon in its capacity as executor of Anna Berliner's estate. The evidence established that the University of Goettingen in West Germany was entitled to 50% of the estate, and that the other 50% was to be distributed among several United States nationals. Because the University of Goettingen could not qualify as a United States national, the Commission granted an award to the estate for only one-half of the value of the property originally owned by Anna Berliner. The decision strongly implies that the funds are for distribution to the heirs who are United States nationals.

In the [Claim of Board of Foreign Parishes, Claim No. G-2876, Decision No. G-2315](#), the Commission made an award to the Board of Foreign Parishes of the Episcopal Church based on the loss of property in Dresden. The evidence showed that the Church was a non-profit corporation organized under the laws of the State of New York. Although one could not point to "beneficial ownership" of the organization, the Commission found that the church was sufficiently "American" in character to allow the Commission to grant an award.

In the [Claim of Ralph F. Gassman et al, Claim No. G-2 154, Decision No. G-1955](#), a brother and sister filed a claim for the loss of property which had been owned by their father, who was a United States citizen. The claimants asserted that, after the death of their father, they placed his right to claim for the loss of the property in a partnership, which they owned jointly in equal shares. In 1970, the sister became a Canadian citizen, and lost her United States citizenship. Claimants nonetheless asserted that the claim was owned by the partnership, and that the partnership qualified as a United States national because it was organized under the laws of the State of California, and because 50% of the beneficial ownership thereof was still in the hands of a United States citizen. The claimants therefore requested that the Commission make an award for 100% of the value of their father's loss.

The Commission concluded that the evidence was insufficient to establish the existence of a partnership created under the laws of the United States or any state thereof. It therefore granted an award to the brother for 50% of the value of the original loss, and denied the sister's claim because her right to claim for the loss of the property had not been owned by a United States national after she became a Canadian citizen in 1970.

A further limitation on the compensability of claims against the GDR was the requirement that a claim for the taking of an interest in an entity which did not qualify as a United States national, held through the direct ownership of an interest in another corporation or entity, could not be favorably considered unless at least 25 percent of the entire interest in the first corporation or entity was claimed. See section 604(c) of the Act, *supra*. This rule was a further corollary to the first nationality requirement discussed above, and likewise served to limit the Commission to considering favorably only those claims in which a property interest owned in substantial measure by one or more United States nationals was taken by the German Democratic Republic. For an application of the requirement, see [Claim of Arthur Michaelis, Claim No. G-1055, Decision No. G-2201](#).

A great many claims stood or fell on the examination of the nationality issue above. Even if the nationality requirements were met, the Commission also had to determine whether a particular loss fell within the territorial and temporal limits stated or implied in Public Law 94-542.

Territorial and Temporal Limits on Claims.

The wording of Public Law 94-542 and the unique manner in which the territorial boundaries of Germany changed before, during and after World War II, culminating in the creation of two Germanys, led to several issues concerning the territorial and temporal limits of valid claims in the GDR Claims Program. The issue of territorial limitations arose most frequently in claims for the loss of property which was located in areas of Europe which before World War II were part of the German Reich. As an

aftermath of World War II, some of that territory was ceded to the Soviet Union, and large areas became part of present-day Poland. Many claims were filed in which it was argued that because the property in question was originally lost due to the persecutory measures at a time when the property was located within the boundaries of what was then Germany, the subsequent loss of the beneficial interest in the property should form the basis of a compensable claim, even though the property was located in the Soviet Union or Poland at the time of the post-war expropriation.

The Commission consistently rejected the above argument, pointing to language in Public Law 92-542 which states that the Commission shall adjudicate claims of United States nationals for losses of property "whether such losses occurred in the German Democratic Republic or in East Berlin ... " Although the Commission recognized that territorial boundaries had changed frequently in the area, it held that the boundaries of the German Democratic Republic and East Berlin were clearly defined and that only the postwar boundaries were applicable in determining the territorial limitations of claims. See the [Claim of Helen Tylinski, Claim No. G-0168, Decision No. G-0006](#). This reasoning was also applied in claims based on property located in other areas of Europe which were never part of Germany. See the [Claim of John K. Milanovich, Claim No. G-0300, Decision No. G-0001](#) and discussion in 1978 FCSCAnn. Rep. 16-17.

The particular history of the drawing of boundaries between East and West Berlin as well as between the GDR and Poland after World War II created some difficulty in factual determinations for the Commission. In certain cases, e.g., the [Claim of Renee Heinmann, Claim No. G-0398, Decision No. G-3181](#), it was not immediately apparent whether certain real property for which a claim was made was located in East or West Berlin. In the cited case, a claim was made for two parcels of real property on the same street at different numbers. The street ran through both East and West Berlin according to maps of the city of Berlin. In this particular case, the Commission denied the claim for one parcel found to be in West Berlin, and granted an award for the other parcel located in East Berlin. In many cases, the renumbering and renaming of streets in the separate sectors of Berlin and restructuring of city plans in both parts of the city made such determinations extremely difficult. These same difficulties also arose in certain towns which had been divided between East Germany and Poland along the Oder-Neisse line after World War II. See discussion of property located in Guben in [Claim of International Telephone and Telegraph Corporation, Claim No. G-2401, Decision No. G-3164](#).

An interesting twist on this same issue occurred in the [Claim of Estate of Walter Alexander, Claim No. G-2886, Decision No. G-1874](#). In this claim, property in East Berlin was expropriated by the German Democratic Republic at a time when the owner was a United States citizen. Subsequently, in 1972, the property was returned to West Berlin in an agreement between East and West Berlin which made some minor border adjustments between the two zones of the city. The Commission found that a taking of the property by the GDR occurred in 1952 and that the taking was in violation of international law. The Commission denied the claim; however, on the ground that it appeared that the property had been distributed to the heirs of the original owner after its return to the West and that therefore, any eligible claimant would have received full compensation for his loss. Accordingly, the Commission made no award in this claim because of the offset provision of section 605 of Public Law 94-542.

The issue of the territory in which a particular loss occurred became much more difficult in the case of debts. Section 601(3) of Public Law 94-542 includes in the definition of property "debts owed by enterprises which have been nationalized, expropriated, or taken by the German Democratic Republic ...". In the [Claim of International Telephone and Telegraph Corporation, Claim No. G-2401, Decision No. G-3614](#), a claim was made for accounts receivable owed by Telefunken, a German corporation. Goods had been delivered to a branch which is now located in East Germany although after the war Telefunken continued as a major West German corporation. Isolated assets of the Telefunken Corporation located in the Eastern Zone were, however, expropriated. The claimant maintained that the accounts receivable were owed by the branch which had received the shipments of goods and that therefore an award should be granted for the expropriation of that facility, which would have included the nationalization of its debts. The Commission denied the claim after announcing a rule which stated "the Commission does not consider that the GDR becomes responsible for such a debt owed by a company situated in West Germany merely by expropriating some assets of that company in the GDR. The Commission, however, recognizes that, even though a company may be based in West Germany and thus technically not nationalized by the GDR, if its principal assets are located in the GDR and are expropriated and its business continued as a state owned operation, the GDR, in the Commission's view, would assume certain liabilities for accounts owed," (Final Decision at 28).

In certain instances claimants who had bank accounts in banks in Poland and Czechoslovakia which were branches of banks operating throughout Germany before and during World War II sought compensation in the GDR Claims Program for the loss of their bank accounts. The claimants argued that the situs of their bank accounts should be considered to have been at the banks' headquarters, in what became East Berlin and the loss of the accounts after World War II should be held to be the responsibility of the German Democratic Republic. The Commission, however, held that the proper situs of a bank account for purposes of the Public Law 94-542 was the branch in which the deposit had been made and that if that branch were located outside of the German Democratic Republic, the claimant could not establish a compensable claim under the statute.

The German Democratic Republic came into existence as a state using that name in October, 1949. Nonetheless, acts of an expropriatory nature had been carried out prior to that date by governmental or quasi-governmental authorities operating in the Eastern Zone of Germany. By decree dated October 12, 1949, the administration of property previously held by the German Economic Commission, which in turn had been controlled by Soviet Military Administration, was passed to the provisional government of the German Democratic Republic.

In the [Claim of Kurt W. Fleischer, Claim No. G-0047, Decision No. G-0690](#), the evidence clearly indicated that the claimant, a United States citizen, had lost his interest in a factory through expropriation on July 20, 1948 before the German Democratic Republic formally came into existence. Because the statute refers to losses which occurred in the German Democratic Republic, the issue arose whether the Commission could find compensable a claim based on expropriation in 1948.

The Commission held that takings by East German authorities after World War II, but prior to the formal establishment of the German Democratic Republic, were the responsibility of the GDR. It

proceeded to find that claimant's property was taken on July 20, 1948 and it granted an award to the claimant for the value of his interest in the factory on that date.

At the other end of the spectrum was the question of whether claims arising after the passage of Public Law 94-542 were to be included in the GDR Claims Program. In the [Claim of Irmgard Gertrude Bullock, Claim No. G-2298, Decision No. G-0734](#), the Commission spoke to this issue. Mrs. Bullock's claim was originally denied for lack of evidence and she did not object. Sometime later, Mrs. Bullock acquired new and reliable evidence from sources in Germany which indicated that property in which she owned an interest had been expropriated on February 1, 1979. Claimant petitioned the Commission to reopen her claim under the Commission's regulations which allow the examination of newly discovered evidence.

The Commission examined the past practice of the Commission in other claims programs and the seeming intent of Congress in establishing a scheme to provide for lump-sum settlements of claims, and decided that its authority under Public Law 94-542 extended to only those claims which arose prior to October 18, 1976, the date on which the enabling statute was enacted. Accordingly, it was held that Mrs. Bullock's claim was not compensable.

Requirements of a Taking

Section 602 of Public Law 94-542 states that successful claims were to be based on "losses arising as a result of the nationalization, expropriation, or other taking of (or special measures directed against) property."

In many claims, there was direct evidence of a nationalization or expropriation, either in the form of official correspondence or statements received from former or present residents of the German Democratic Republic who were familiar with the property. In other cases, the fact of a taking could be presumed from the relevant laws and decrees issued in the GDR. If the facts of a particular claim indicated that property would have been subject to well-known expropriatory decrees, the Commission was willing to find that a taking had in fact occurred, even though no direct evidence of a taking existed. Examples of both findings can be found in the [Claim of George L. Rosenblatt, Claim No. G-0030, Decision No. G-0100](#), and the [Claim of Olga Loeffler, Claim No. G-0056, Decision No. G-0221](#).

In addition, the Commission fashioned special rules regarding the taking of property which had formerly been the subject of a persecutory loss. These are discussed in detail, below, in the section on persecutory losses.

A number of interesting legal issues arose which required the Commission to decide whether certain conduct constituted a taking as contemplated in section 602 of the statute.

In 1978 the Commission considered the first of a number of claims where property had been placed under government administration pursuant to a decree on the Administration and Protection of Foreign Property. Although the claimant's name may have continued to be recorded in the *Grundbuch* as the technical owner of the property, the Commission found that the implementation of the decree

deprived the owner, for all practical purposes, of all indicia of ownership and held that where this had occurred the property had been taken as that term was used in Public Law 94-542. See the [Claim of George L. Rosenblatt, Claim No. G-0030, Decision No. G-0100](#).

The treatment of the bank accounts presented this issue and was the subject of considerable discussion in past annual reports by the Commission. (Sec, 1978 FCSC Ann. Rep. at 14.) The basic issue in most claims for bank accounts, after the factual determination of ownership had been made, was whether there had been a taking of the account. In many cases the evidence clearly indicated that a particular bank account had been taken by the German Democratic Republic and that all rights of access-to and ownership of the account had been terminated.

If the Commission found such a taking, it then determined the amount of the loss. For accounts denominated in reichsmarks, it was first necessary to revalue the account at 10: 1 to convert from reichsmarks to East German marks or "Ostmarks". This was necessary to reflect the treatment of all bank accounts by the GDR pursuant to their currency reform undertaken in 1948. The Commission held that the currency reform of 1948, in which reichsmark accounts were revalued was a legitimate exercise of sovereign power relating to the country's economy and did not constitute a taking recognized under international law. Thus, the revaluation of accounts did not give rise to a claim under international law, even though the absolute number of marks in the account was reduced by 903. See, [Claim of Olga Loeffler, Claim No. G-0056, Decision No. G-0221](#).

The treatment of so-called "blocked accounts" presented an example of government activity with respect to bank accounts which did not amount to a taking. In the [Claim of Martin Bendrick, Claim No. G-3285, Decision No. G-0020](#), the Commission held that severe restrictions placed upon the use of a bank account did not constitute a taking of the account if the owner of the account retained some limited right of access to the account. Typically, in the case of blocked accounts, the owner could withdraw fifteen marks daily from the account while visiting in the GDR and could designate that the funds from the account be put to certain limited uses within the GDR. The holder of the account could not, however, transfer the funds out of the country or gain absolute free access to them. The Commission held that these limitations did not constitute a taking. The same rule was applied to tangible personal property in the [Claim of Antonie deVries, Claim No. G-0174, Decision No. G-0197](#).

An interesting example of the Commission's thinking on takings is reflected in several claims which involved the juxtaposition of the blocked accounts issue with the issue of takings by condemnation. In the [Claim of Johanna Katharine Poppe, et al., Claim No. G-0971, Decision No. G-1434](#), the Commission found that real property owned by the claimant had been condemned for reconstruction purposes, that GDR officials had independently placed a value on the property and that the compensation paid had been placed in a blocked account in the claimant's name. The Commission had previously held that condemnation without compensation was a taking which could form the basis of a compensable claim. See the [Claim of Karin Stuebben Thornton, Claim No. G-2056, Decision No. G-0802](#). In cases where some compensation had been paid into a blocked account, the Commission examined the evidence to determine the fairness of the compensation. To the extent it was found that the amount of compensation was insufficient, the Commission granted an award for the amount by

which the value of the condemned parcel exceeded the amount placed in a blocked account. In some cases, the Commission found that a fair value had been paid by the GDR into a blocked account and no award was made. See the [Claim of Trust for the Benefit of Max L. Heine, et al., Claim No. G-3003, Decision No. G-3268](#). In yet a third example, a blocked account which was created pursuant to condemnation was subsequently expropriated. Thus, claimant received an award for the uncompensated portion of the real property and an award for the later loss of the bank account.

Other acts of government regulation were held not to be a taking of a kind which would establish a liability of the GDR under international law. In the [Claim of Herbert Hamann, Claim No. G-0135, Decision No. G-0041](#), the claimant asserted the loss of a stamp collection which he had mailed from the United States to East Berlin. Valid laws and regulations in the GDR prohibit the importation of stamps into the GDR, and section 16 of the Customs Law of the German Democratic Republic of March 28, 1962 provides for the confiscation of prohibited items which are intentionally exported to the GDR. Claimant's stamp collection was confiscated pursuant to that section. The Commission held that such action by the GDR did not give rise to a valid claim under international law nor under the provisions of Public Law 95-542, recognizing the right of independent governments to punish by confiscation the attempted introduction of contraband articles into their territory.

Claims for loss of government bonds offer an example of cases in which an absence of government conduct led to the conclusion by the Commission that there had been no taking. It is a rule of traditional international law, and one long followed by the Commission, that mere non-payment to a U.S. national of a debt obligation by a foreign government does not give rise to a compensable claim. The Commission has held, however, that a claim under international law will arise where a state expressly cancels, repudiates, or annuls debt obligations held by United States nationals. In [the Claim of Selma Medoff, Claim No. G-0001, Decision No. G-1299](#), the Commission found that holders of bonds of the Saxon Public Works, Inc. were entitled to compensation under Public Law 94-542.

During 1981, the Commission resolved the issue of whether the German Democratic Republic could be held responsible for the loss of property owned by United States nationals which was removed from the Eastern Zone of Germany by the Soviet Union in order to satisfy the reparations obligations imposed on Germany by the Allies at the close of World War II.

This issue arose in a number of claims, principally those of United States corporations which had owned subsidiaries in Germany. The Commission's precedent determination of this issue was made in the Final Decision in the [Claim of International Telephone and Telegraph Company, Claim No. G-2401, Decision No. G-3164](#).

During the closing stages of World War II and in the years immediately following, the Soviet Union had removed tens of millions of dollars worth of inventories, machinery and even entire factories belonging to subsidiaries of ITT located in what is now the German Democratic Republic. The responsibility of the German Democratic Republic for these losses presented a novel issue of international law. The issues were extensively briefed by counsel for ITI and were the subject of two oral hearings before the Commission.

Briefly summarized, claimant argued that even before the end of World War II the Soviet Union and East German communist leaders were intent upon the creation of a new communist state, in part, if not all, of prewar Germany. A *de jure* state ultimately came into being as the German Democratic Republic. Claimant argued, however, that prior to the creation of a *de jure* state, a *de facto* state had come into being as soon as any territory came under control of the Red Army. Claimant then cited authorities to the effect that a subsequent *de jure* state is responsible for acts which occurred during the time that it existed as a *de facto* state. It therefore followed, according to claimant's argument that the German Democratic Republic, as a *de jure* state, was responsible for losses which occurred within its territory during the time it existed as a *de facto* state. In addition to this general responsibility which claimant asserted arose under principles of international law, it was further asserted that the GDR had expressly assumed such liability by its agreement to be bound by the Potsdam Agreement. Claimant asserted that it was proper that such liability should fall upon the GDR because the GDR obtained a direct benefit from the use of American owned assets to pay the reparations debt of the GDR.

In its Final Decision, however, the Commission rejected the argument that the German Democratic Republic was responsible for such removals by Soviet authorities. The Commission held that, while the German Democratic Republic, as a *de jure* state, was responsible for confiscations of property occurring before it came into being as a *de jure* state, this responsibility was limited to property which had, in fact, come under German control and remained within the territory of the GDR. The Commission held that, although a state is normally responsible for what occurs within its territory, an exception to this rule of responsibility occurs where a different sovereign power has actual control within its territory and where the outside foreign power, in fact, causes the loss for its own benefit.

The Commission held that provisions of the Potsdam Agreement cited by claimant as establishing a responsibility to compensate American nationals for the removal of reparations were limited in scope to Hungary, Rumania, Bulgaria, and Finland which had been referred to as satellite countries in the agreement and did not constitute a responsibility of the German Democratic Republic.

The Commission further noted that claimant's assertion that removal of corporate assets owned by United States nationals bestowed an economic benefit on the GDR was, in large measure, an illusion, as these assets equally constituted part of the economic wealth of the GDR, just as similar assets from German owned companies.

One of the claims affected by the Commission's determination of responsibility of the GDR for reparations was the [Claim of General Motors Corporation, Claim No. G-3729, Decision No. G-1270](#).

In the GM case the Commission was also required to interpret the meaning of the following parenthetical phrase in section 602 of Public Law 94-542 referring to takings: "(or special measures directed against) property." It is unclear what this phrase means, and in no claim did the Commission find that conduct by the GDR which was not a nationalization, expropriation or other takings was in fact a special measure directed against property.

In Title II of the War Claims Act of 1948, as amended by Public Law 87-846, the term "special measures" was specifically defined as "measures directed against property ... during [World War II]

because of the enemy or alleged enemy character of the owner " The Commission granted awards for such property when it was located in communist controlled areas after World War II in which the return of the property was remote. In Claim No. W-10619 under the War Claims Act, GM received an award of \$16,386,500.96 for the losses related to their American ownership of certain subsidiaries located in Europe, some of which were located in what is today the German Democratic Republic. GM received \$10,371,249 in actual, pro rata payments on its award.

It was claimant's contention that the use of the words "special measures" in section 602 entitled the claimant to an award under Public Law 94-542 equal to the value of the tangible property of the subsidiaries in 1942 as found by the Commission, as well as intangible property expressly not compensable under Public Law 87-846, offset under section 605 (discussed below) by any amounts actually received by the claimant as pro rata payments. It was claimant's contention that the use of the phrase "special measures" eliminated the necessity of additional findings of fact under Public Law 94-542 by the Commission.

The Commission rejected GM's position, concluding that Congress did not intend that claimants who received awards for special measures in the General War Claims Program should be absolved from the necessity of showing a post-war taking of property by the GDR. The Commission issued a Proposed Decision which denied the claim of General Motors in its entirety.

Claimant objected to the Proposed Decision and submitted additional evidence. Some of the property for which a special measures award had been made under the War Claims Act was destroyed during World War II, and the Commission held in its Final Decision that no award could be made for that property. Other property was removed by the Soviet Union to satisfy reparation demands, and those portions of the claim were denied under the reasoning of the ITT claim, discussed above. The Commission then valued the property, such as real property, which remained in existence after World War II and which was taken by the GDR. The value of the property on the date of taking was reduced proportionately to reflect the amounts already received under the War Claims Act.

If the Commission found that any of the various acts of taking, as discussed in this section, had occurred, and if it found that the taking had occurred when the owner was a United States national on the date of taking and that the act of taking occurred within the proper limits of time and space, as discussed in previous sections, then, in order to grant an award, the Commission had to determine the value of the property on the date of taking.

Valuation

The valuation of property in the German Democratic Republic proved to be neither an easy nor an exact science for the Commission. The task was complicated by the fact that the value of the property was determined as of the date the property was taken from the claimant, which, in most instances, occurred approximately thirty years prior to the time the values were ultimately calculated. Furthermore, the Commission found that it was unable to apply the familiar concept of fair market value due to its obvious absence in a communist society where controlled rents often don't meet the actual cost of building upkeep. The Commission, likewise, was forced to reject the suggestion that it value property in the German Democratic Republic as if it were located in West Germany, since property cannot be valued separate and apart from its location.

Faced with this situation, the Commission attempted to look at each individual claim to see what evidence was available and to apply an approach to that evidence which was generally consistent with the valuation applied to all other claimants. The following is a list of the types of evidence the Commission considered in determining values.

Tax Assessed Valuation (Einheitswert): The tax assessed value was originally developed in Germany to ascertain an appropriate basis for the taxation of real property. The last tax assessment before the end of World War II was carried out on January 1, 1935. In the German Democratic Republic tax assessed values for many properties were restated as of 1948, especially in cases of properties damaged during the war. Many claimants were able to provide the Commission with pre-war tax records or other documents which indicated a tax assessed valuation for their property. In most other cases, the Commission's Munich Field Office was able to ascertain tax assessed valuations, often through the assistance of the West German Government's information offices. The pre-war tax assessed values were apparently set below the actual value of the property at the time of the assessment. Post-war inflation and increase in construction costs further affected the actual value of property as opposed to the tax assessed value. Nonetheless, evidence of the tax assessed value was extremely helpful to the Commission in its determination of value.

Rental Income: Another type of evidence which aided in the determination of the value of property in the German Democratic Republic, which the Commission found especially useful in the case of apartment buildings, was a calculation based on a building's rental income. Claimants were often able to furnish the Commission with pre-war rental receipts and balance sheets which also reflected management and maintenance costs. Pre-war gross rental figures were adjusted upward by the Commission and capitalized in order to estimate actual values for properties on their post-war dates of taking in the German Democratic Republic.

Building Costs: Another guideline used by the Commission in the valuation of improved real property was the construction cost index. This index, which has long been a standard method of valuation in Germany, used 1913 construction costs for various types and sizes of buildings as the starting point for calculations. The determination of the value of a given building at the time of its taking

by the German Democratic Republic depended upon such factors as its useful life span, the rate of its depreciation, and the year of taking.

Contracts of Sale: In some instances, the Commission, either through submissions by individual claimants or from information provided by the Commission's Munich Field Office, was able to ascertain the original purchase price of premises. Generally, purchase prices, adjusted for inflationary factors and depreciation, proved to be a valid basis for affixing a value. However, contracts of sale dating back to the period between the end of World War I and 1923 tended to be misleading due to the inflation then occurring in Germany. From the late 1880's through 1913 the mark remained relatively stable at approximately 4.2 to the dollar. However, by 1919, the mark had risen to 15.5 to the dollar and the average exchange rate for 1920 was 63.06 marks to the dollar. Because an application of such an exchange rate to property purchased during this time period would grossly misrepresent the market value of the property, the Commission found such purchase contracts to be of little assistance in arriving at a true value.

Insurance: Occasionally the Commission was aided by examining evidence of fire insurance coverage supplied by claimants. The Commission learned, however, that insurance coverage in pre-war Germany normally reflected replacement cost based upon the construction cost of the premises in 1913 adjusted upward according to the increase in the index of building costs. Accordingly, because the replacement cost is usually not a valid measure of damages, since it reflects replacement with a new building rather than the actual value of an old building, and also because the value of the land is not included, the Commission found valuations based on insurance costs to be less reliable than other methods.

Descriptions and Location of the Premises: Many claimants furnished the Commission with photographs and occasionally even the construction blueprints of their properties. Additionally the Commission's Munich Field Office was frequently able to obtain accurate descriptions and estimates of a property's size from former neighbors. Both sources proved to be very helpful when determining values. The Commission paid particular attention to the location of the property in question, especially when the premises or land was located within a large city. For property in East Berlin, the Commission was fortunate to have as a source for valuation an index of "Baustellenwerte" (building site values) for the city prepared in 1937. This index listed land values in reichsmarks per square meter on a street-by-street basis. While the Commission did not necessarily accept these Baustellenwerte as representing the actual market value of any particular piece of property, it did find these figures to be a useful comparative guide for the valuation of property in post-war East Berlin.

Hektarsatz: A major guideline employed by the Commission for the valuation of agricultural property was the "Hektarsatz". The Hektarsatz is a figure placing a monetary value per hectare on agricultural land and was used before World War II in calculating the tax value of such property. The Commission made use of an index listing the average Hektarsatz in reichsmarks per hectare for agricultural land in every community within the territory of the German Democratic Republic. While these figures were calculated prior to World War II and were generally below the actual market value of

the subject land at that time, they nevertheless provided a useful basis for the calculation of postwar values for agricultural land in the German Democratic Republic.

Leasehold Interests: The valuation of leasehold interests taken by the German Democratic Republic proved difficult for the Commission since the value of such an interest was equivalent to the rent payable. Long term leases for a set rental were often seen as having an increased value. The problem of valuing leaseholds was even more complicated in the case of a persecutory loss where the leasehold interest was terminated before World War II. The Commission made awards where it was established that a persecutee had an extended lease to land upon which he had constructed a building, and the rental for this lease had been paid in advance.

War Damage and Unpaid Mortgages: Once a value for a particular property was determined by the Commission, deductions had to be made in instances where evidence showed that unpaid mortgages remained or that the property in question suffered war damage. With regard to the determination of the extent of war damage an individual property suffered, the Commission's Munich Field Office was able to provide accurate information based on its access to official World War II damage records and post-war maps. Additionally, the Commission made use of a 1950 street guide to Berlin which detailed what buildings suffered total destruction during the war in that city.

The Commission used all of the applicable methods outlined above in an attempt to place a reasonable value on the loss suffered in each claim. None of the methods led automatically to a determination of value. In claims where evidence of value was plentiful, the Commission considered all of the evidence, which in some cases was conflicting, to reach a determination. In cases where evidence was scarce, the Commission relied heavily on comparisons with other claims in order to insure that all claimants were treated equitably.

For takings of bank accounts and other losses expressed in exact amounts of currency, which were determined in almost all cases to have occurred between 1945 and 1952, the Commission applied the conversion rate of 4.2 marks to the dollar although no official exchange rate between the Ostmark and the dollar existed during that period. In 1948, pursuant to a currency reform, an exchange rate of 4.2 marks to the dollar was reestablished as the actual exchange rate in the Federal Republic of Germany. It has always been the position of the German Democratic Republic, continuing to the present time, that the East German mark should be equated on a one to one basis with the West German mark. Therefore, the Commission accepted this consistent position of the German Democratic Republic as a basis for determining fair and equitable awards.

Between 1945 and 1949 an internal conversion rate varying between two and five Reichsmarks to the dollar was imposed by the occupying powers for the purpose of accounting for imports into and exports out of the Western Occupation Zone. During the same period an exchange rate of 10 Reichsmarks to the dollar was established by the military for conversion of military pay. After a currency reform in 1948, the black market exchange rate for the Ostmark to the dollar varied widely until 1958. Faced with such large fluctuations in the value of the Ostmark, the Commission's view was that the only equitable way of interpreting evidence of Ostmark values during the period between 1945 and 1958 was

to use the rate of 4.2 marks to the dollar since, except for the years of World War I inflation, that was the historic conversion rate in all but five of the previous 50 years and was the rate which was established by the German Democratic Republic as the legal exchange rate in 1958. Exchange rates for takings after that date were adjusted by the Commission to reflect corresponding changes in the official conversion rates.

After a determination of the value of a loss in a claim had been made, the Commission granted interest on the award from the date of taking until the date of the conclusion of an agreement with the GDR. Interest awards granted by the Commission in the GDR Claims Program were made in the amount of 6% simple interest in accordance with the Commission's decision in the *Claim of George L. Rosenblatt*, cited above. That decision, in turn, was based on the Commission's holding in the *Claim of John Hedio Proach*, Claim No. P0-3097 FCSC Dec. and Ann. 549 (1968), filed against the Government of Poland under Title I of the International Claims Settlement Act of 1949, as amended. In the *Proach* decision, the Commission concluded that such awards of interest represented an "appropriate, equitable, and just measure of compensation."

3. PERSECUTORY LOSSES

Many of the claimants which came before the Commission were themselves, or were the successors in interest of, individuals, who had been subject to persecutory measures of Nazi Germany. In 1933, when Adolph Hitler came to power in Germany, a program of discrimination and persecution was commenced, aimed against political opponents and certain non-Jewish religious groups, but principally against the German Jewish community. In an attempt to exclude such individuals from the social and economic order of the Third Reich, severe restrictions and ultimate prohibitions were placed on property ownership and business and employment opportunities, along with the levying of confiscatory taxes and a wide range of actions designed to harass. Often property was confiscated without compensation or in the alternative; Jewish owners were compelled to sell property at prices well below market value and then were deprived of even the meager proceeds of sale.

In such situations, the claimants or their predecessors in interest had technically suffered a loss of title to the property before or during World War II and at a time when the property was not owned by a United States national.

Briefly summarized, the Commission held, based upon prior precedents of the Commission and decisions of American courts, that persecutees who lost property due to such persecutory action of the Nazi regime retained a beneficial interest in the property because the persecutory nature of the transfer rendered the attempted alienation invalid. The Commission held, therefore, that, if the GDR subsequently took the property without recognition of any such retained interest held at the time by a United States national, this constituted a taking of a property interest under the statute. This was the holding of the Commission in the [*Claim of Martha Tachau, et al., Claim No. G-0177 and G-0178, Decision No. G-1071*](#).

This holding was not sufficient to deal fairly with the majority of claims of persecutees. Land records and other evidence of title had, of course, been changed during the Nazi regime to reflect the

ownership of the acquirers of the property. There was in most of these cases no evidence of a post-war expropriation by the GDR, and in all probability, some of the property still remained in the hands of private owners. Nonetheless, the holders of beneficial interests, as found by the Commission, had effectively lost their rights in the property. The Commission spoke to this problem in the [Claim of Mark Priceman, et al., Claim No. G-2116, Decision No. G-1073.](#)

The resolution of this problem required the Commission to make an extensive examination of laws and decrees of the GDR. The Commission found that decrees of the Soviet Military Administration in Germany (SMAD) and other pronouncements indicated that a program had been undertaken to restore the former and rightful owners of property in the Eastern Zone of occupation to their ownership rights.

However, on September 6, 1951 in the GDR and on December 18, 1951 in East Berlin, decrees were issued which placed under restrictive administration and protection the property of foreigners. This had the practical effect of terminating any right of restitution of a persecutee living outside the GDR. This effect was recognized by a court in the GDR. The Commission held that the passage of those decrees effected a taking of the beneficial interests of persecutees, and that to the extent that holders of beneficial interests were United States nationals on the date of the decrees, they were entitled to compensation under the statute. The claims of those persons who were not United States nationals on the date when their beneficial ownership interests were terminated by the GDR were denied. See the [Claim of Arthur Simon, Claim No. G-0479, Decision No. G-1072.](#)

If the Commission found that a particular claim fit the persecutory loss rationale and found that the owner of the beneficial interest was a United States national on the date of loss, it then proceeded to find the value of the property on the date of taking by the GDR. Establishing the post-war value presented no small problem in many cases, inasmuch as many claimants had had no access to the property since the persecutory loss in the 1930's. The Commission made great use of the investigative resources of its Munich Field Office in making value determinations, basing its findings on the evidence and methods of valuation outlined above.

In some cases it was found that no property was left in existence after World War II, and these claims had to be denied, since there was no property remaining to which title could be restored. Such was particularly true in the case of businesses which operated in Germany before World War II but which owned no real property. This rationale was used in the [Claim of Hirsch Bieler, Claim No. G-0690, Decision No. G-0105.](#)

In any claim in which an allegation of a persecutory loss was made, it remained an issue of fact for the Commission to decide whether the pre-World War II loss was, in fact, persecutory in nature. A strong presumption existed that a sale of property by a Jewish owner during the period of Nazi harassment was not an arm's length transaction; the conclusion, however, was not automatic.

The Commission examined all of the circumstances of the loss, including purchase price as compared to the probable value of the property, the relationship of buyer and seller, and the date of the sale. An interesting situation occurred in the [Claim of Max Hoffmann, Claim No. G-1054, Decision No. G-](#)

[3023](#). In that claim, the claimant asserted the loss of real property which he had transferred to his wife during World War II. The claimant alleged that he had transferred the property because he was Jewish while his wife qualified as an "Aryan" under the strict Nazi racial categories. The claimant then left Germany and emigrated to the United States and became a citizen but his wife remained behind in Germany.

In its Proposed Decision the Commission refused to apply the persecutory loss rationale. Because the transfer of property was from one spouse to the other, the Commission held that it could not be assumed that the sale occurred "under duress." Therefore, the claimant did not retain a beneficial interest in the property and there was no evidence that he ever regained an interest in the property on which to base a claim for its loss. Nor was there any indication that the claimant's wife ever became a United States citizen. Therefore, she would not have been eligible to receive an award from the Commission. The claim was denied in its entirety. The claimant objected to the Proposed Decision. He submitted new evidence which clearly outlined the sequence of events surrounding the transfer of property. The claimant and his wife were said to have been aware of the danger faced by Jewish German citizens under the Hitler regime, and with the advice of a lawyer, the claimant decided to transfer his property to his wife in order to facilitate his emigration, protect the property from confiscation and save some part of his accumulated wealth.

This new evidence clearly indicated that the claimant's decision to alienate his property was a direct result of the persecutory measures directed against Jews in Nazi Germany. In its Final Decision, the Commission therefore found that the claimant had suffered a persecutory loss and proceeded to grant him an award. The case is illustrative not only of the fact that persecutory losses were not automatically presumed by the Commission, but also of the kind of pressure that was applied to Jewish German citizens to alienate their property.

The persecutory loss rationale as formulated in the three basic precedent decisions cited above (*Tachau*, *Priceman*, and *Simon*.) was satisfactory to adjudicate the great bulk of claims based on persecutory losses. However, as one would expect in dealing with events of the complicated Nazi era, some claims presented interesting variations on the persecutory loss fact pattern.

The claims presenting novel issues which had not previously been determined by the Commission fell into three categories. The first involved property for which both the acquirer and the persecutee, or his heirs, filed claims for the loss of the property after the war. In the [Claim of F. W. Woolworth, Claim No. G-1993, Decision No. G-3219](#), the Commission discovered that one of the properties, a mixed-use building in Magdeburg, was also the subject of the [Claim of Lorelotte Siegel, Claim No. G-0504, Decision No. G-2773](#). Following its previous precedents, the Commission granted an award to Lorelotte Siegel for the loss of the retained beneficial interest in this property and denied the portion of the Woolworth claim pertaining to that property. On objection, however, Woolworth raised the issue that part of the purchase price for this building involved the satisfaction of an existing mortgage on the property and asserted that, because a substantial portion of the purchase price had satisfied the mortgage, the former owner actually received substantial value for the property. The Commission considered Woolworth's argument, but concluded that the asserted satisfaction of an

existing mortgage was not sufficient to vitiate the nature of the forced sale under the Nazi regime. It held that "satisfaction of an existing mortgage, where the seller's equity was not received in freely disposable form, [was] not sufficient to have transferred valid title to the subject properties to the purchasers."

Another pair of claims involving a persecutory loss and acquisition were the [Claim of CPC International, Inc., Claim No. G-2092, Decision No. G-3292](#); and the [Claim of Margot S. Maron, Claim No. G-2894, Decision No. G-3276](#), in which Margot S. Maron was granted an award for the loss of beneficial interests in companies taken over by Reich-controlled subsidiaries of CPC in Germany during the Nazi era.

The second category of claims presenting a variation on the basic persecutory precedent involved facts which indicated that the property had been purchased under duress, but in which the persecutee or his heirs did not file parallel claims. One such claim was filed by [Elizabeth Von Furstenberg, Claim No. G-0443, Decision No G-2932](#). The property involved in this claim had been purchased by claimant's father when claimant herself was only six years old. The information provided by the claimant was therefore somewhat sketchy, but the Commission's Munich Field Office obtained information indicating, although not establishing conclusively, that the property had been purchased from persecutees in 1938. Because the information obtained by the field office indicated that the sellers of the property had been persecutees, and because the year of the sale was 1938, a presumption that the sale occurred under duress and that the seller of the property had not received adequate consideration was raised. In order to give the claimant the opportunity to rebut the presumption, she was asked, by letter, for any information she could offer about the circumstances surrounding the purchase of the property. No information was submitted to the Commission, and it subsequently denied the claim. Claimant objected to the decision but, in the Final Decision, the Commission upheld its previous denial. It made a point, however, of stating that "[w]hen the Commission says that a sale took place under duress, it is not necessarily referring to the acts of a particular buyer. What the Commission is referring to is that there was a general climate of persecution in Germany at that *time* so that any sale of Jewish-owned property was, in effect, made under less than fair free market conditions. It therefore would have to be proved to the Commission that, where Jewish-owned property was involved the sale was a normal arm's-length transaction." Therefore, in claims of this nature, where the facts pointed to a sale under duress, the Commission denied the claims not because it necessarily considered a particular claimant an individual wrongdoer, but because of the conditions prevailing in Nazi Germany at the time of the sales.

The third category of persecutory claims presenting new issues was illustrated in the [Claim of Charles A. Noble, Claim No. G-0314 Decision No. G-3163](#). In this claim a persecutee, Benno Thorsch, sold his camera factory, Kamera Werkstaetten, to Charles A. Noble in 1937. From the evidence submitted, it was clear that the value of the camera works had increased substantially between the date of the persecutory loss in 1937 and the date of the taking by the Soviet forces on July 1, 1945. Benno Thorsch was not a claimant on the original claim, which was filed by Charles A. Noble, but he was located by the Commission's Munich Field Office and joined in the claim. (It is not unusual for the Commission to join in a claim other people who have interests in the subject property.) According to Commission precedents,

there would have been no difficulty in awarding Benno Thorsch the value of the property that he lost in 1937. According to the past practice of the Commission, however, an increase in the value of the business which occurred after the sale would not inure to Mr. Thorsch as that would have constituted unjust enrichment. See, e.g., Claim Nos. P0-8652, P0-8659, P0-8663, P0-8674, Decision No. P0-6787.

The issue for the Commission to decide was, therefore, whether Noble was entitled to the remainder of the value of the business in 1945, after an award to Benno Thorsch for the value of his beneficial interest. After considering all the arguments presented, the Commission held that Charles A. Noble was not entitled to an award for the increase in the value of the business between 1937 and 1945 because any increase in the value was tainted by the circumstances by which the property was acquired. To the extent that the expansion of the business was based upon the ongoing camera works that were purchased from Mr. Thorsch, any increase could not be separated from the nature of the acquisition of the property in 1937, which had been founded and built by Mr. Thorsch and his original partner. Furthermore, with respect to the particular facts of this claim, the Commission held that, even if the improvements in the business were not considered tainted, control over the business and its production was in the hands of the German government from December 1941 to the end of the war; therefore, it would be impossible to determine what portion of the business value was attributable to the investment of Charles A. Noble between 1938 and 1941 and what was attributable to the later management of the government during the war. For these two reasons, the increase in the value of the property between the time of the 1937 purchase and the takeover after the war did not constitute a compensable loss under the terms of Public Law 94-542.

Another claim involving property acquired during the Nazi era in which the persecutee's heirs did not file a claim is the [Claim of Werner Von Clemm, Claim No. G-1287, Decision No. G-0675](#). This claim is noteworthy because the facts involved the convoluted forced sale of Jewish-owned banking interests. The Commission, however, denied the claim on other legal grounds, and therefore a discussion of the persecutory issues was not necessary.

The Commission was also required to decide whether to consider as valid a claim by a Nazi persecutee for the taking of a beneficially owned property interest where the property in question had originally been conveyed away under official compulsion by other victims of Nazi persecution. This problem was presented by the facts in the [Claim of Ulrich Strauss, Claim No. G-0725, Decision No. G-3287](#), and in the [Claims of Albert Otten, et al., Claim Nos. G-0261 and G-3855, Decision No. G-3286](#).

In the *Strauss* claim, the claimant Ulrich Strauss was the sole heir of his father, Ottmar Strauss, following the latter's death in 1941. Ottmar Strauss had been a partner in the general partnership "Otto Wolff oHG," of Cologne, Germany, until 1933, but was forced during that year to withdraw from the firm. In its decision in the earlier claim filed by Ulrich Strauss in the General War Claims Program under Public Law 87-846 (*Claim of Ulrich Strauss, Claim No. W-12067, Decision No. W-20493 (1967)*), the Commission held that this forced withdrawal was motivated by Nazi religious and racial persecutory policies, because of Ottmar Strauss's Jewish faith, and therefore found that Ottmar Strauss, and after his death, the claimant Ulrich Strauss, continued to own a beneficial interest in the "Wolff" firm and its assets which could form the basis of a claim in the General War Claims Program.

One of the assets of the "Wolff" firm in which Ulrich Strauss claimed a beneficial interest in the German Democratic Republic Claims Program was the "Eisenhuettenwerke Thale AG" ("Thale Iron Foundry Works, Inc.") in Thale, Thuringia, an area which was made a part of the German Democratic Republic after World War II. The "Thale" enterprise survived the war undamaged and was nationalized in 1947. Because record ownership of the enterprise was in the "Wolff" firm as of 1947, Ulrich Strauss claimed to be entitled to an award for the nationalization of his inherited partial beneficial interest in the enterprise by the German Democratic Republic.

Evidence submitted by claimants Albert Otten and Hannah Sinauer, however, and other evidence obtained by the Commission's field office in Munich, disclosed that the Wolff firm held no interest in the "Thale" enterprise when Ulrich Strauss's father was ousted from the firm in 1933. Instead, the evidence indicated that the firm acquired the enterprise in or about 1936. Furthermore, and most importantly, it appeared from the evidence that the enterprise was conveyed because of those owners' Jewish faith, to the firm under official compulsion by its then-owners, the claimant, Albert Otten, and the brothers Albert and Max Rothschild, the latter of whom was the father of claimant Hannah Sinauer.

After having reviewed all of the evidence of record in the three claims, including written submissions by all parties, the report by its Munich Field Office, and an oral presentation by the attorney for the claimant Ulrich Strauss, the Commission determined it necessary to deny in its entirety the claim of Ulrich Strauss for a beneficial interest in the Thale enterprise, held through his status as a beneficial part-owner in the Wolff firm. The rationale for this determination was that it would be contrary to public policy to recognize as valid, to any extent, a beneficial interest in property acquired as a result of religious and racial persecution- notwithstanding the fact that Ulrich Strauss and his father were themselves persecutees and had had no hand in the acquisition. Instead, the Commission held that the enterprise continued to be beneficially owned after 1936 by the claimant Albert Otten and by the predecessors of claimant Hannah Sinauer, and it granted proportional awards to them based upon the taking of their beneficial interests by the German Democratic Republic in 1947.

4. CONCLUSION

By May 16, 1981, the statutory deadline, the Commission had successfully completed this unique program for postwar takings of American owned property in the German Democratic Republic, including East Berlin. The next step, that of obtaining a lump-sum claims agreement with the GDR for payment on the awards in the principal amount of nearly \$78,000,000 granted by the Commission, plus interest, is the responsibility of the United States Department of State.

On June 30 and July 1, 1981 preliminary talks were held between representatives of the United States and the GDR. Although, no agreement had been reached as of the end of 1981, the Commission was advised by the Department of State that formal talks would begin on January 18, 1982.¹

¹ Note: The talks were held, but no formal agreement reached.

All awards granted by the Commission are being certified to the United States Department of the Treasury, which is responsible for payment on the claims as soon as funds become available from the German Democratic Republic.