JURISPRUDENCE OF THE FOREIGN CLAIMS SETTLEMENT COMMISSION: ALBANIA CLAIMS

*By David J. Bederman**

I. Establishment of the Albania Claims Program

Albania ranks among the smallest and poorest countries in Europe, located on the Adriatic and Ionian Seas just north of Greece. It gained its independence from the Ottoman Empire in 1912 (accounting for the fact that a majority of the population is Muslim) and subsisted as a monarchy for much of the interwar period. Albania was occupied by Italy (and then Nazi Germany) for all of the Second World War. Communist partisans expelled the Germans in 1944, without the assistance of Soviet forces, and thus began nearly a half-century of a totalitarian, isolationist rule by an extremely repressive Communist regime under the leadership of Enver Hoxha and Ramiz Alia.[1] This regime was definitively overthrown in 1991. Since that time, Albania has been periodically wracked by civil and political unrest, leading to substantial violence in 1997 that was quelled only with the brief deployment of a UN multinational protection force.

Since 1991, the United States and Albania have enjoyed positive diplomatic relations. As part of the process to provide Albania with nearly $700 million in aid,[2] the United States initiated a review of outstanding claims that were pending between nationals of the United States and the Albanian government.[3] These research efforts culminated in the March 10, 1995, Claims Settlement Agreement (CSA) between the two counties to "settle claims and outstanding financial issues."[4] The CSA made clear that the claims to be settled included "the claims of United States nationals (including natural and juridical persons) against Albania arising from any nationalization, expropriation, intervention, and other taking of, or measures

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[1] For more on the history of Albania, see STEFANAQ POLLO & ARBEN PUTO, THE HISTORY OF ALBANIA: FROM ITS ORIGINS TO THE PRESENT DAY (Carol Wiseman & Ginnie Hole trans., 1981); U.S. Dep't of State, Background Note: Albania (Aug. 2011), *at* http://www.state.gov/r/pa/ei/bgn/3235.htm [hereinafter Background Note].

[2] *See* Background Note, *supra* note 1.

[3] *See* Ronald J. Bettauer, Book Review, 94 AJIL 810, 811 n.6 (2000) (reviewing BURNS H. WESTON, RICHARD B. LILLICH & DAVID J. BEDERMAN, INTERNATIONAL CLAIMS: THEIR SETTLEMENT BY LUMP SUM AGREEMENTS, 1975–1995 (1999)).

[4] Claims Settlement Agreement, U.S.-Alb., pmbl., Mar. 10, 1995, TIAS No. 12,611 (entered into force Apr. 18, 1995) [hereinafter CSA], *reprinted in* 1995 Y.B. FOREIGN CLAIMS SETTLEMENT COMMISSION [FCSC] 17–20, *available at* http://www.justice.gov/fcsc/readingroom/report.pdf.

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affecting, property of nationals of the United States prior to the date of this agreement."[5] In concluding the CSA, Albania and the United States further provided, in an Agreed Minute (attached to the main body of the instrument), the following caveat:

> For purposes of article 1, the term "United States nationals" shall include dual United States–Albanian nationals only if those nationals are domiciled in the United States currently or for at least half the period of time between when the property was taken and the date of entry into force of the agreement.[6]

As will be discussed in more detail below, this proviso would cause substantial confusion and would (until later abrogated) distort the jurisprudence of the Foreign Claims Settlement Commission (Commission) on the nationality of claims under the CSA.

In consideration of the full settlement of these claims,[7] Albania was obligated to make a lump sum payment of $2 million.[8] But in an obvious concession to Albania, the CSA also provided for the final resolution of a long-simmering[9] dispute between Albania and the victorious Allied powers in the Second World War. That was the disposition of monetary gold, belonging to the former Albanian monarchy, that had been taken by Italian occupying forces and stored in Rome at the time of its capture by the Allies. Under the CSA,[10] the United States finally gave its consent (conditioned on that also of France and the United Kingdom)[11] for the release of those blocked assets[12] to Albania.[13] Albania's payment of $2 million to the United States was transferred to a special fund of the U.S. Treasury for distribution, in the words of the CSA, "in accordance with U.S. law."[14] Pursuant to Title I of the International Claims Settlement Act

[5] CSA, *supra* note 4, Art. 1(a). The CSA also covered the reciprocal assertion of "claims of nationals of Albania (including natural and juridical persons) against the United States prior to the date of this agreement." *Id.*, Art. 1(b).

[6] *Id.*, Agreed Minute, para. 1. In the text (versus the citations), the separate numbered paragraphs of the Agreed Minute will be referred to as Agreed Minutes (1), (2), and (3).

[7] The Agreed Minute to the CSA specifically excluded claims of the Conservative Baptist Mission Society, which had numerous properties in the country. *See id.*, Agreed Minute, para. 2. The society desired to pursue its remedies in Albania under Albanian law, and the CSA specifically required that Albania grant to the society "the same rights as it affords Albanian nationals under the laws of Albania to pursue and receive compensation, restitution, or any other local remedy available under its domestic restitution or compensation procedures." CSA, *supra* note 4, Art. 5.

[8] *See id.*, Art. 2.

[9] *See* Monetary Gold Removed from Rome in 1943 (Italy v. Fr., UK, & U.S.), 1954 ICJ REP. 19 (June 15) (Court finding that it had no jurisdiction to decide a case in which Albanian interests in the gold were manifest, but in which Albania was not a party).

[10] CSA Article 3(1) provides:

> Upon entry into force of this agreement, the United States shall inform the Tripartite Commission for the Restitution of Monetary Gold of its readiness to consent to the release to the Government of Albania, in accordance with the procedures referred to in paragraph 2, of the appropriate amount of gold under Part III of the Agreement of Reparation of January 14, 1946 and the practices and procedures of the Tripartite Gold Commission.

[11] In October 1996, Albania paid the United Kingdom the sum of $2 million in settlement of the *Corfu Channel* judgment, in which the International Court of Justice had found Albania responsible for the sinking of two British destroyers. *See* Corfu Channel (UK v. Alb.), 1949 ICJ REP. 4 (Apr. 9).

[12] For more on the connection between lump sum agreements and releases of blocked assets, see WESTON ET AL., *supra* note 3, at 87 n.46.

[13] In October 1996, the Tripartite Commission released to Albania 1550 kilograms of gold, valued at $19 million. *See* 1996 Y.B. FCSC 10, *available at* http://www.justice.gov/fcsc/readingroom/96yearbook.pdf.

[14] CSA, *supra* note 4, Art. 4.

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(ICSA),[15] the Commission, an independent agency within the U.S. Department of Justice, was charged with managing the Albania claims program.

The CSA became effective on April 18, 1995, the date that the Albanian parliament approved it.[16] The Commission began immediately to publicize the Albania claims program and to distribute claims forms. By the first[17] deadline—December 31, 1995—nearly 300 claims had been filed.[18] Additionally, the Commission, in preparation for its adjudication of claims, conducted research investigations in Albania (largely to establish property values) and recruited local experts who could assist the Commission in its work.[19] As of 2000, 326 claims were filed (later increased to 337),[20] of which 236 were rejected (later increased to 245). For the remaining 92, compensable claims, the Commission awarded $361,937.97 in principal and, when interest was added, a total of $953,550.27 in compensation.[21]

Before proceeding to consider the Commission's jurisprudence as to the compensability of claims and their valuation, it is worth addressing two matters directly implicated in the structure of ICSA adjudication. The first is the relationship between the Albania claims program and the earlier program under the War Claims Act, also administered by the Commission. The second is the law to be applied by the Commission in assessing claims.

The Albania Claims Program and Earlier Settlements

Under Title II of the War Claims Act,[22] the Commission adjudicated the claims of U.S. nationals for the loss or destruction of, or physical damage to, property by enemy forces during

[15] The International Claims Settlement Act [ICSA], 22 U.S.C. §1623(a)(1)(B), provides:

> The Commission shall have jurisdiction to receive, examine, adjudicate, and render a final decision with respect to any claim of the Government of the United States or of any national of the United States . . . included within the terms of any claims agreement concluded on or after March 10, 1954, between the Government of the United States and a foreign government (exclusive of governments against which the United States declared the existence of a state of war during World War II) similarly providing for the settlement and discharge of claims of the Government of the United States and of nationals of the United States against a foreign government, arising out of the nationalization or other taking of property, by the agreement of the Government of the United States to accept from that government a sum in en bloc settlement thereof . . . .

[16] CSA, *supra* note 4, Art. 6; *see also* 1995 Y.B. FCSC 15.

[17] The Commission subsequently extended the deadline for filing claims on numerous occasions. *See* 1998 FCSC ANN. REP. 10; 1999 FCSC ANN. REP. 11. The Commission's annual reports (from 1998 on) are available at http://www.justice.gov/fcsc/publications.html. As of the end of 1999, the Albania claims program was closed, even though a substantial balance remained from the $2 million lump sum payment. The Commission believed that the two primary causes of this surplus were that some potential claimants decided to have recourse to the domestic Albanian mechanisms for compensation and that many deserving claimants were dual nationals whose claims were barred by the restrictive proviso of Agreed Minute (1) of the CSA. *See* 1999 FCSC ANN. REP. 12. Proposals to return the surplus funds to Albania were rejected because section 8(a) of ICSA Title I prohibited such a transfer. *See* ICSA, 22 U.S.C. §1627(a)(2) ("[A]ll amounts covered into the Treasury to the credit of the aforesaid funds are permanently appropriated for the making of the payments authorized by section 1626 of this title.").

[18] *See* 1995 Y.B. FCSC 16.

[19] See *id.*; 1996 FCSC ANN. REP. 10.

[20] All of the Commission's decisions under the Albania claims program are available online. *See* http://www.justice.gov/fcsc/readingroom/index.html. In this article, all such decisions will be referred to both by claim number (Claim No.) and by decision number (Dec. No.).

[21] *See* 2000 FCSC ANN. REP. 11. The 2000 figures were adjusted by awards issued in 2005 and 2007. But these figures may still be low because they do not include amounts awarded in other decisions issued after 2000. *See infra* note 155 and accompanying text.

[22] Pub. L. 87-846, 76 Stat. 1107 (1962) (codified at 50 U.S.C. app. §§2017–2017p).

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the Second World War. Almost twenty-three thousand claims were filed under this program, and just over seven thousand awards were granted.[23] Some of these claims originated from incidents occurring in Albania. The Commission later lamented that it had often been extremely difficult for the claimants with property in Albania to make sufficient proof of ownership, much less of valuation. Affidavits provided by local authorities in Albania were often the only evidence available, and these declarations had themselves been procured in an irregular manner and also typically contained factual errors of an obvious character.[24] Consequently, given the experience of the Commission's war claims program in the 1960s, it was manifest that claims arising from Albania would raise special evidentiary challenges.

In making determinations under the Albania claims program, the Commission would often rely on facts established in relation to particular claimants and pieces of property under the war claims program.[25] For example, if an individual's U.S. citizenship or nationality had already been determined favorably, or if the ownership of claimed property claim had already been proven under an earlier claims program, then the Commission would not revisit that matter.[26] But in cases of conflict between filings made under the war claims program and the Albania claims program, the Commission carefully scrutinized the evidence.[27]

When the claimants (or members of their families) had filed a claim for destruction of property under the war claims program and then sought compensation for a "nationalization, expropriation, intervention, and other taking of, or measures affecting, property"[28] under the Albania claims program, special problems arose. The claimants were obliged to prove that the relevant property (usually structures such as houses, barns, and shops) had actually been rebuilt after having been destroyed during the Italian or German occupations.[29] In a somewhat different scenario, the claimants under the Albania claims program occasionally alleged that their property, after having been damaged or destroyed by Axis forces, was never returned to them by the Albanian Communist regime and that they thus suffered some form of deprivation within the meaning of CSA Article 1. In these cases, the Commission required that they prove

[23] See FOREIGN CLAIMS SETTLEMENT COMMISSION, DECISIONS AND ANNOTATIONS 567 (1968) [hereinafter FCSC DEC. & ANN.].

[24] *See id.* at 662–63 (citing Claim of Peter, Claim No. W-7624, Dec. No. W-9424; Claim of Kamberis, Claim No. W-6715, Dec. No. W-9509; Claim of Sheh, Claim No. W-6073, Dec. No. W-16962); Claim of Papanickolas, Claim No. W-537, Dec. No. W-16495).

[25] The same was true in relation to rulings made under the Italy claims program, conducted under Title III of the ICSA. This program encompassed losses by U.S. nationals from war damages by Italy during World War II, sustained in areas outside of Italy. *See* 1995 Y.B. FCSC 34–35. These areas included Italian-occupied Albania. *See* Claim of Tellios, Claim No. ALB-173, Dec. No. ALB-225 (Amended Final Decision), at 7–9 (FCSC Mar. 12, 1999).

[26] *See* Claim of Vulpe, Claim No. ALB-007, Dec. No. ALB-158 (Proposed Decision), at 3–7 (FCSC Dec. 16, 1996); Claim of Gatses, Claim No. ALB-284, Dec. No. ALB-146 (Proposed Decision), at 3 (FCSC July 1, 1996) (earlier finding that property at issue had not been owned by a U.S. national); Claim of Orhan, Claim No. ALB-245, Dec. No. ALB-278 (Proposed Decision), at 4–5 (FCSC Feb. 24, 1997) (earlier finding that claimant was not a U.S. national); Claim of Kales, Claim Nos. ALB-318, 319 & 322, Dec. No. ALB-309 (Final Decision), at 3–4, 6–7 (FCSC Mar. 12, 1999).

[27] *See, e.g.*, Claim of Sheh, Claim No. ALB-181, Dec. No. ALB-294 (Proposed Decision), at 3 n.1 (FCSC Feb. 24, 1997) (fraudulent filing made under the war claims program).

[28] CSA, *supra* note 4, Art. 1(a).

[29] *See* Claim of Panariti, Claim No. ALB-335, Dec. No. ALB-319 (Proposed Decision), at 2–3, 8 (FCSC Jan. 25, 2007); Claim of Panos, Claim No. ALB-010, Dec. No. ALB-210 (Proposed Decision), at 4 (FCSC Nov. 18, 1996).

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that "the value of the house in its returned state was less than the value of the house when it was taken in 1948 plus interest until its return."[30] All of these tests were designed by the Commission to preclude any possibility of double recovery by the claimants who had recourse to both the earlier war claims or Italian program and the current Albanian program.

As a corollary to this principle, the Commission was emphatic that it had jurisdiction only over those claims that implicated the actions of the government of Albania. In one sense, this jurisprudence is undoubtedly correct. In light of the earlier war claims and Italian programs, any acts attributable to German or Italian occupying forces would be ineligible for compensation, and the Commission so ruled.[31] But the Commission went further and held that the CSA covered only those claims attributable to the Communist regime in Albania.[32] The CSA, however, contains no such express restriction. What it does provide is that claims must be (1) "of United States nationals" (2) "against Albania" (3) for specified acts or measures affecting property (4) that occurred "prior to the date of th[e] agreement."[33] The phrase "against Albania" is not further defined in the CSA. Given that the Agreement came into effect in April 1995, it is certainly possible to imagine a claim arising after 1991, following the fall of the Communist regime.

The Commission's position has led to some peculiar outcomes. In *Claim of Near East Foundation*, the allegation was that certain property interests were taken in 1939, the year that Albania was invaded by Italy. The Commission decided that those acts were attributable to Italy, not Albania.[34] The Commission then rejected the foundation's assertion that the postwar government was responsible for the acts of its predecessors: "The situation was analogous to that of the Czech and Polish governments following the defeat of Nazi Germany; those governments were not considered responsible for the acts that the German occupation authorities had committed in their territories during the occupation."[35] Despite this correct statement of the relevant international law, however,[36] the Commission begs the question (left open by the jurisdictional provisions of CSA Article 1) whether the Communist regime in Albania would have been liable to the foundation for failing to restore its property interests after the occupation was over.

[30] *See* Claim of Zoto, Claim No. ALB-178, Dec. No. ALB-200 (Final Decision), at 14 (FCSC Dec. 15, 1998).

[31] *See* Claim of Melka, Claim No. ALB-240, Dec. No. ALB-178 (Proposed Decision), at 1 n.* (FCSC Oct. 7, 1996) (noting German taking of three thousand gold coins); Claim of Pano, Claim No. ALB-248 , Dec. No. ALB-168 (Proposed Decision), at 4 (FCSC Nov. 18, 1996).

[32] *See* Claim of Pano, *supra* note 31, at 4 ("The Settlement Agreement between the governments of the United States and Albania covers only losses suffered at the hands of the Communist regime in that country."); *see also* Claim of Delle, Claim No. ALB-115, Dec. No. ALB-239 (Final Decision), at 4 n.* (FCSC Apr. 15, 1997).

[33] CSA, *supra* note 4, Art. 1(a).

[34] *See* Claim of Near East Foundation, Claim No. ALB-244, Dec. No. ALB-155 (Final Decision), at 3 (FCSC Feb. 24, 1997) ("The government in power in Albania in 1939 was forcibly imposed on the country by the occupying Italian army, and thus was not a legitimate successor of the government of King Zog, which it displaced.").

[35] *Id.*

[36] *See* JAMES CRAWFORD, THE CREATION OF STATES IN INTERNATIONAL LAW 75, 78–83 (2d ed. 2006); BRAD R. ROTH, GOVERNMENTAL ILLEGITIMACY IN INTERNATIONAL LAW (2000); *Acts of a Puppet State or of Local de Facto Government*, *in* 8 MARJORIE M. WHITEMAN, DIGEST OF INTERNATIONAL LAW 835–36 (1967); *see also French Indemnity of 1831*, *in* 5 JOHN BASSETT MOORE, INTERNATIONAL ADJUDICATIONS (MODERN SERIES) 4447, 4472 (1933) (noting that the Netherlands, as the Batavian Republic, was not responsible for acts while occupied by Imperial France).

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Applicable Law for Deciding Claims

The CSA does not speak directly to the question of the law to be applied by the Commission in deciding the claims referred to it under this program. CSA Article 4 does provide that "The United States shall be exclusively responsible for the distribution of the settlement . . . in accordance with U.S. law."[37] This provision was undoubtedly intended as a *renvoi* to the ICSA, section 4 of which provides: "In the decision of claims under this title, the Commission shall apply the following in the following order: (A) The provisions of the applicable claims agreement . . . [and] (B) The applicable principles of international law, justice, and equity."[38]

On some occasions, the Commission's reference to "applicable principles of international law" was fairly generic. In every decision awarding money damages, interest was granted at the rate of 6 percent simple. In boilerplate language, the Commission noted that this rate was justified as being " [i]n accordance with applicable principles of international law and [the Commission's] decisions in previous claims programs."[39] No further explanation was offered as to the international law sources that supported the rate used. Likewise, in some decisions the Commission would hold, almost as an *ipse dixit*, that the "measure of damages . . . are in accordance with longstanding Commission precedent and well-established standards in the law of international claims."[40]

In the course of the Albania claims program, the Commission relied on a variety of legal sources to resolve one of the more troublesome issues that came before it: the entitlement of the claimants to bring a claim for particular property. This question typically[41] turned on the operation of inheritance or succession laws in various jurisdictions. The Commission had no difficulty applying the inheritance laws of the states of the United States when implicated in a case.[42] More problematic were those occasions when the Commission was obliged to consult Albanian law in order to unravel the typically complex family relations between the claimants (or other sets of individuals). Most often, the Commission consulted and cited the Albanian Civil Code of April 2, 1928, which provided that an intestate's property was to be equally divided between the surviving spouse and children.[43] This provision was apparently in force

[37] CSA, *supra* note 4, Art. 4. The only stipulation as to a substantive legal rule to be applied by the Commission was contained in Agreed Minute (1) concerning the eligibility of dual nationals to bring claims pursuant to the CSA. This stipulation will be discussed further below. *See infra* notes 63–79 and accompanying text.

[38] 22 U.S.C. §1623(a)(2).

[39] *See, e.g.*, Claim of Kasem, Claim No. ALB-005, Dec. No. ALB-292 (Final Decision), at 5 (FCSC May 4, 1998).

[40] *See, e.g.*, Claim of Grigori, Claim No. ALB-045, Dec. No. ALB-232 (Final Decision), at 2 (FCSC Feb. 24, 1997).

[41] *But see* Claim of Poni, Claim No. ALB-291, Dec. No. ALB-264(R) (Amended Proposed Decision), at 4 (FCSC Jan. 24, 2008) (indicating that under Albanian law, so-called certificates of family composition, issued by a village mayor, had no valid legal effect as documentation of title to land).

[42] *See, e.g.*, Claim of Mengri, Claim No. ALB-288, Dec. No. ALB-262(R) (Amended Proposed Decision), at 3 n.* (FCSC Nov. 29, 2007) (Wisconsin law); Claim of Hoda, Claim No. ALB-299, Dec. No. ALB-265(R) (Amended Proposed Decision), at 3 n.* (FCSC Dec. 14, 2006) (Connecticut law); Claim of Menka, Claim No. ALB-316, Dec. No. ALB-306(R) (Amended Final Decision), at 3 n.2 (FCSC Jan. 25, 2007) (Illinois law); Claim of Panariti, *supra* note 29, at 6–7 (Massachusetts law).

[43] *See, e.g.*, Claim of Vasil, Claim No. ALB-022, Dec. No. ALB-137 (Proposed Decision), at 5 (FCSC Jan. 28, 1997); Claim of Dema, Claim No. ALB-023, Dec. No. ALB-011 (Final Decision), at 5 (FCSC Apr. 15, 1997); Claim of Prifti, Claim No. ALB-054, Dec. No. ALB-157 (Proposed Decision), at 6 (FCSC Dec. 16, 1996); Claim

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during much of the postwar, Communist period, although some provisions on inheritance and succession were modified by laws issued in 1954 and 1960.[44] In some situations, the claimants urged the Commission to apply Albanian customary law that deviated from the Civil Code provision of equal shares for the spouse and children. Although the Commission refused to do so, it implicitly acknowledged that a customary norm could be validly applied, but not when it was in outright conflict with a statutory rule.[45]

Finally, and consistent with previous claims settlement programs,[46] the Commission relied on its regulations for allocating the essential burdens of proof in claims before it. In an oft-quoted regulation, the Commission reiterated that the "claimant will have the burden of proof in submitting evidence and information sufficient to establish the elements necessary for a determination of the validity and amount of his or her claim."[47] The Commission subsequently invoked this regulation whenever a claimant failed to prove some material element of the claim. As will be seen presently, many (if not most) claims foundered on questions concerning the claimant's nationality or the ownership of property subject to a claim. In short, many claimants could not make out even the most basic evidentiary case for the compensability of claims under the CSA.

II. Compensability of Albanian Claims Before the Commission

As already noted, the essential elements that brought a claim within the ambit of the CSA, and thus within the Commission's jurisdiction as compensable, were that the claims be (1) "of United States nationals" (2) "against Albania" (3) for specified acts or measures affecting property (4) that occurred "prior to the date of th[e] agreement."[48] For purposes of discussion here, the main points of the Commission's jurisprudence concerned (1) and the attribution of qualifying acts ("nationalization, expropriation, intervention, and other taking of, or measures affecting, property of nationals of the United States")[49] to Albania (that is, the relation between (2) and (3)). These questions will be considered below.

Nationality of Claimants and Claims

The vast majority of claims that came before the Commission foundered on proof of the claimant's U.S. citizenship or nationality.[50] As the Commission reiterated in the nearly two hundred claims rejected for this reason,

of Buri, Claim No. ALB-203, Dec. No. ALB-257 (Final Decision), at 6 (FCSC Sept. 18, 1998); Claim of Hodo, Claim No. ALB-294, Dec. No. ALB-213 (Proposed Decision), at 6 (FCSC Nov. 18, 1996).

[44] *See* Claim of Panariti, *supra* note 29, at 5 & n.2.

[45] *See* Claim of Dema, *supra* note 43, at 5 (noting that customary Code of Leka was preempted by Civil Code provision); Claim of Gregory, Claim No. ALB-221, Dec. No. ALB-204 (Final Decision), at 2 (FCSC Feb. 24, 1997).

[46] See Richard B. Lillich & David J. Bederman, *Jurisprudence of the Foreign Claims Settlement Commission: Iran Claims*, 91 AJIL 436, 440 (1997).

[47] 45 C.F.R. §509.5(b) (2010) (previously 45 C.F.R. §531.6(d)).

[48] CSA, *supra* note 4, Art. 1(a).

[49] *Id.*

[50] A "national of the United States" is "a person who, though not a citizen of the United States, owes permanent allegiance to the United States." 8 U.S.C. §1101(a)(22)(B). For more on the distinction between nationals and citizens in the practice of the Commission, see Claim of Notis, Claim No. ALB-160, Dec. No. ALB-077 (Proposed Decision), at 2–5 (FCSC Mar. 4, 1996).

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> [i]t is a well-established principle of international law, which this Commission has applied without exception, that a claim may be found compensable only if the property which is the subject of the claim was owned by a national of the United States when the property was expropriated or otherwise taken. *See, e.g., Claim of EUGENIA D. STUPNIKOV Against Yugoslavia*, Claim No. Y-2-0071, Decision No. Y-2-0003 (1967); *Claim of ILONA CZIKE Against Hungary*, Claim No. HUNG-2-0784, Decision No. HUNG-2-191 (1976); *Claim of JOSEPH REISS Against the German Democratic Republic*, Claim No. G-2853, Decision No. G-2499 (1981); *Claim of TRANG KIM Against Vietnam*, Claim No. V-0014, Decision No. V-0001 (1982). This principle has also been recognized by the courts of the United States. *See, e.g., Haas v. Humphrey*, 246 F.2d 682 (D.C. Cir. 1957), *cert. denied* 355 U.S. 854 (1957).[51]

And while the Commission was prepared to draw favorable inferences from the evidence that an individual was a U.S. national,[52] it refused to allow the claims of individuals who were resident aliens in the United States and had not acquired U.S. nationality at the relevant time.[53]

Continuous nationality. Aside from the claims of dual U.S.-Albanian nationals (considered presently), the Commission's most difficult decisions regarding the compensability of claims concerned the application and enforcement of the continuous nationality rule. Simply stated, that rule requires that the property subject to a claim before the Commission must have been owned by a U.S. national on the date of the loss and then owned continuously thereafter by one or more U.S. nationals until the date of filing with the Commission.[54] Occasionally, this requirement has been expressly imposed by Congress, via statute, for particular claims programs.[55] With substantial understatement, some commentators have observed that the continuous nationality rule has "often adversely affected claimants,"[56] with particular impact on

[51] Claim of Jazxhi, Claim No. ALB-001, Dec. No. ALB-001 (Proposed Decision), at 2–3 (FCSC Nov. 27, 1995) (the first decision issued by the Commission for the Albania claims program); *see also* Claim of Lazaris, Claim No. ALB-336, Dec. No. ALB-318 (Proposed Decision), at 3 (FCSC Aug. 31, 2006) (identical language) (among the last of the decisions issued for the program).

[52] *See* Claim of Stefani, Claim No. ALB-074, Dec. No. ALB-173 (Proposed Decision), at 3 (FCSC Dec. 16, 1996) ("Although the claimant has not submitted a copy of his father's Certificate of Naturalization, based on the evidence in the record, the Commission draws the logical inference that claimant's father, Theodore J. Stephens, acquired United States nationality by naturalization at some point prior to claimant's birth . . . ."); Claim of Cifligu, Claim No. ALB-210, Dec. No. ALB-191 (Final Decision), at 2 (FCSC Feb. 24, 1997); Claim of Tite, Claim No. ALB-296, Dec. No. ALB-274 (Proposed Decision), at 3 (FCSC Feb. 24, 1997).

[53] *See* Claim of Kostreci, Claim No. ALB-059, Dec. No. ALB-124 (Proposed Decision), at 2 (FCSC May 7, 1996); Claim of Kurti, Claim No. ALB-164, Dec. No. ALB-042 (Proposed Decision), at 2 (FCSC Mar. 4, 1996); Claim of Velaj, Claim No. ALB-328, Dec. No. ALB-311 (Final Decision), at 4 (FCSC Apr. 7, 2005) (noting that a declaration of intent to become a U.S. citizen is not conclusive as to nationality).

[54] *See* Charles Ford Redick, *Jurisprudence of the Foreign Claims Settlement Commission: Chinese Claims*, 67 AJIL 728, 733–34 (1973). It is important to recognize that the continuous nationality rule does *not* require that a claim be held by the *same* U.S. national for the relevant period. *See* J. Jeffrey Brown, *The Jurisprudence of the Foreign Claims Settlement Commission: Vietnam Claims*, 27 VA. J. INT'L L. 99, 113 & n.79 (1986). For more on the role of assignments of claims and the character of corporate claims in compliance with the continuous nationality rule, see *id.* at 113–14.

[55] *See, e.g.*, Cuban Claims Act of 1964, Pub. L. 88–666, 78 Stat. 1110, 1111 (1964), *as amended by* 80 Stat. 1365 (1965) (codified at 22 U.S.C. §§1643–1643m (1970)); Vietnam Claims Act, Pub. L. No. 96-606, 94 Stat. 3534 (codified at 22 U.S.C. §§1645–1645o (2006)); Foreign Relations Authorization Act, Pub. L. No. 99-93, tit. V, 99 Stat. 437 (1985) (codified at 50 U.S.C. §1701 note).

[56] Redick, *supra* note 54, at 734. For the origins of the continuous nationality rule, see 5 MOORE, *supra* note 36, at 351 (report dated December 30, 1835, of U.S. and French commission established under July 1831 Convention as to Claims and Duties on Wines and Cotton). For criticisms of the continuous nationality rule, see Sidney

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what have been called *late nationals*—individuals who acquired their U.S. citizenship *after* their claims arose (typically when their property was confiscated). Congress has rarely relaxed this requirement,[57] and the Commission has insisted on its enforcement.

The Albania claims program has been no exception in this regard. In a number of decisions issued under this program, the Commission held that

> [u]nder international law, a claim is compensable only to the extent that it has been held continuously by one or more United States nationals from the date of confiscation through April 18, 1995 (the effective date of the Settlement Agreement). This requirement of continuous U.S. nationality is well-established and has long been applied both by this Commission and its predecessor, the International Claims Commission. *See, e.g., Claim of PETER D. JANUS against Yugoslavia*, Claim No. Y-1721, Decision No. Y-0377 (1954); *Claim of MIA FOSTER against Czechoslovakia*, Claim No. CZ-2696, Decision No. CZ-0001 (1960).[58]

The effect of the continuous nationality rule is typically either to break the chain of ownership for the claim before the Commission or to diminish its value as (through the process of inheritance) shares in the claim pass through the hands of non–U.S. nationals.[59] And despite the protests of some claimants, as in *Claim of Babameto*, that the continuous nationality rule was a "technicality which does an in-justice (sic) to United States citizens,"[60] the Commission replied that it is "a basic principle applied by the Commission in all of the claims programs it has administered."[61] One must conclude from these holdings that the continuous nationality rule is now so firmly entrenched in the Commission's jurisprudence that, absent an express statutory instruction from Congress relaxing or eliminating the requirement (as occurred in the second Italy claims program),[62] the Commission will continue to rigorously apply it.

Dual nationals. It was with the treatment of dual nationals that the Commission encountered significant problems in the course of resolving the Albanian claims.[63] The difficulties originated from the CSA or, more accurately, its Agreed Minute (1), which provided:

> For purposes of article 1, the term "United States nationals" shall include dual United States–Albanian nationals only if those nationals are domiciled in the United States currently or for at least half the period of time between when the property was taken and the date of entry into force of the agreement.[64]

Freidberg, *Unjust and Outmoded—The Doctrine of Continuous Nationality in International Claims*, 4 INT'L LAW. 835 (1970) (The author was a commissioner of the FCSC.).

[57] See Freidberg, *supra* note 56, at 844–45 (discussing second Italy claims program, in which claims by "late nationals" (those that acquired U.S. citizenship after their claims arose) were allowed in limited circumstances).

[58] Claim of Panagiotis, Claim No. ALB-015, Dec. No. ALB-195 (Final Decision), at 5 (FCSC Feb. 24, 1997).

[59] *See id.* ("In this case, inheritance through claimant's mother (a non–U.S. national) broke the continuity of U.S. ownership of part of the claim."); *see also* Claim of Cifligu, *supra* note 52, at 4 n.2.

[60] Claim of Babameto, Claim No. ALB-333, Dec. No. ALB-317 (Final Decision), at 4 (FCSC Jan. 25, 2007).

[61] *Id.* at 5.

[62] *See supra* note 57.

[63] See 1996 Y.B. FCSC 11 (calling the dual national question "[o]ne of the most vexing issues facing the Commission").

[64] CSA, *supra* note 4, Agreed Minute, para. 1. For comment on notation see *supra* note 5.

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Properly read, this stipulation establishes a *lex specialis* for the eligibility of Albanian-U.S. dual nationals. No *travaux préparatoires* exist for this provision, and it is hard to believe that the United States' negotiating team would have insisted on its inclusion.[65] Rather, it must have merely acquiesced in its incorporation into the CSA. Indeed, questions were later raised about the constitutionality of enforcing the Agreed Minute, which had the effect of disqualifying many of the dual national claims that came before the Commission as part of the Albania claims program.[66]

Nowhere mentioned in the Agreed Minute is the "dominant and effective nationality" rule that has been central in cases decided since the Second World War.[67] That rule "consider[ed] all relevant factors [involving a claimant], including habitual residence, center of interests, family ties, participation in public life and other evidence of attachment."[68] In its place, the CSA's Agreed Minute substituted a pure domicile rule that could be satisfied in one of two ways. The first was to prove the claimant's domicile in the United States "currently"—presumably at the CSA's effective date.[69] Alternatively, the claimant could show domicile in the United States for "at least half the period of time between when the property was taken and the date of entry into force of the agreement [April 18, 1995]." Obviously, this second prong was far more difficult to prove, especially given the uncertainties about the date that a claim arose and about the ability of the claimants to marshal evidence of their whereabouts (and possibly that of their predecessors-in-interest)[70] over what could be a very long span of time (as with claims arising in the late 1940s).

The Commission found that many claimants were dual nationals by virtue of the provisions of Albanian law that conferred citizenship automatically on the children of Albanian fathers.[71] Combined with the application of the continuous nationality rule, this finding had the effect of disqualifying many claims. Indeed, only a handful of claims satisfied the strict residency requirements of the Agreed Minute, typically by the claimants proving that they were

[65] In a lump sum settlement concluded between the United States and Egypt, May 1, 1976, 4 UST 4214, TIAS No. 8446, an Agreed Minute provided that the United States "recognizes and applies the principle of international law concerning the dominant and effective nationality of dual nationals." *See* WESTON et al., *supra* note 3, at 30–31, 235.

[66] *See* 1996 Y.B. FCSC 11 (noting that the constitutionality issue was referred to the Department of State and the Department of Justice's Office of Legal Counsel).

[67] *See* Mergé Claim (U.S. v. Italy), 22 ILR 443, 455 (U.S.-Italian Conciliation Comm'n 1955); Iran v. United States, Case No. A/18, 5 Iran-U.S. Cl. Trib. Rep. 251, 265 (1984); *see also* WESTON et al., *supra* note 3, at 31–33; David J. Bederman, *Eligible Claimants Before the Iran–United States Claims Tribunal, in* RICHARD B. LILLICH & DANIEL B. MAGRAW, THE IRAN–UNITED STATES CLAIMS TRIBUNAL: ITS CONTRIBUTION TO THE LAW OF STATE RESPONSIBILITY 47, 65–86 (1998).

[68] Case No. A/18, 5 Iran-U.S. Cl. Trib. Rep. at 265.

[69] See 1996 Y.B. FCSC 11.

[70] *See, e.g.*, Claim of Poni, Claim No. ALB-291, Dec. No. ALB-264 (Proposed Decision), at 4 (FCSC Jan. 28, 1997) ("Nor is there any evidence that the owner of the claim (claimant's father-in law; then, after his death, claimant's husband; then, after his death, claimant herself) lived in the United States for at least half of the approximately 50 years between the expropriation in 1945 and the effective date of the Settlement Agreement, April 18, 1995."); *see also* Claim of Gjerazi, Claim No. ALB-290, Dec. No. ALB-263 (Proposed Decision), at 6 n.2 (FCSC Jan. 28, 1997) (calculation of time under Agreed Minute (1), prong 2).

[71] See Claim of Filipi, Claim No. ALB-119 & 161, Dec. No. ALB-275 (Proposed Decision), at 5 (FCSC Feb. 24, 1997) ("The three claimants mentioned are dual U.S.-Albanian nationals . . . because their father was an Albanian citizen. Under Albanian law, claimants retain Albanian nationality notwithstanding their U.S. nationality by birth.").

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domiciled in the United States as of April 18, 1995.[72] The remainder of the dual national claims were denied—nearly fifty in number, even if one counts only those where the failure to satisfy the Agreed Minute was an express, decisive ground for rejection by the Commission. These rejected claimants did not suffer silently. Some complained that they would have taken up residency in the United States by the April 1995 deadline imposed by the Agreed Minute but for the interference of the Albanian authorities—which prevented their emigration.[73] The Commission, as in the *Claim of Constas*, decided in 1998, responded that it

> sympathizes with the claimants in their objection and would much prefer to treat the cases of all U.S. national claimants alike, rather than distinguishing among them on the basis of residence. However, under its authorizing legislation, the Commission is required to apply the Settlement Agreements as written. The Commission unfortunately has no discretion to disregard or refrain from applying any provision of the Agreement.[74]

Ultimately, the dual national claimants in the Albania claims program would receive some welcome news. In a Diplomatic Note of April 27, 2006, the Albanian minister of foreign affairs advised the U.S. Embassy in Albania that it "accepted and agreed with the proposal made by the United States Government on November 18, 2005, to delete the residency requirement from the Agreed Minute to the Settlement Agreement."[75] This note certainly confirms, as suggested above, that the language of Agreed Minute (1) had been originally insisted upon by the Albanian side during the 1995 negotiations of the CSA. One of the reasons that Albania, in 2006, relented and agreed to delete the residency requirement for dual nationals was that a substantial balance—over $1 million of the $2 million settlement amount from the original agreement—remained to be disbursed.[76] The Albania claims program had been extended on a number of occasions,[77] and it was only logical for the United States to seek to broaden the eligibility requirements so that additional awards could be made.

Because of the April 2006 Diplomatic Note, the Commission was obliged to undertake a comprehensive review of all previous decisions that had disposed of claims on the basis of

[72] *See, e.g.*, Claim of Kapbardhi, Claim No. ALB-089, Dec. No. ALB-273 (Proposed Decision), at 5 (FCSC Feb. 24, 1997) (satisfied Agreed Minute (1), prong 2); Claim of Puto, Claim No. ALB-100, Dec. No. ALB-293(R) (Amended Final Decision), at 2–4 (FCSC June 29, 2006) (satisfied Agreed Minute (1), prong 1); Claim of Bace, Claim No. ALB-112, Dec. No. ALB-249 (Final Decision), at 2 (FCSC Apr. 15, 1997) (satisfied prong 1); Claim of Filipi, *supra* note 71, at 6 (some claimants satisfied prong 1); Claim of Buri, *supra* note 43, at 2 (satisfied prong 1); Claim of Dedo, Claim No. ALB-326, Dec. No. ALB-310 (Proposed Decision), at 3 (FCSC Apr. 3, 2000) (satisfied prong 1).

[73] *See* Claim of Constas, Claim No. ALB-080, Dec. No. ALB-270 (Final Decision), at 3 (FCSC Apr. 16, 1998); Claim of Berberi, Claim No. ALB-113, Dec. No. ALB-176 (Proposed Decision), at 3 (FCSC Dec. 16, 1996); *see also* 1996 FCSC Y.B. at 11 ("Although [many claimants] considered themselves United States nationals and likely would have taken up residence in the United States after World War II if they could have done so, the oppressive, isolationist Communist regime that took power in 1944 prevented them from leaving. Moreover, even after the fall of the Communist regime in 1991, most were so desperately poor that they could not amass sufficient funds to finance their travel to the United States before April 1995.").

[74] Claim of Constas, *supra* note 73, at 3.

[75] Claim of Blushi, Claim No. ALB-026, Dec. No. ALB-241(R) (Amended Proposed Decision), at 2 (FCSC Nov. 16, 2006); *see also* 2006 FCSC ANN. REP. 8.

[76] *See* CSA, *supra* note 4, Art. 2.

[77] *See* 1998 FCSC ANN. REP. 9 (noting that program was suspended in 1997 but resumed in February 1998).

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having failed the Agreed Minute's residency requirement for dual nationals. No longer precluded from considering the merits, the Commission issued amended proposed decisions, or even amended final decisions,[78] regarding twenty-six claims.[79]

Juridical persons, assignments, and beneficial ownership of claims. Even though the CSA expressly allowed the claims of "juridical persons,"[80] it appears that only one such claim was filed—that of *Near East Foundation*, discussed above.[81] In addition to questioning whether the claimant had adequately proven that the Communist regime in Albania was responsible for the taking of its property, the Commission, in rejecting the Foundation's claim, cited the claimant's failure to show that it was incorporated in New York state as a registered charity[82] and that it had maintained such "status as a United States national at all times relevant to the claim."[83] A slender sample, to be sure, but it suggests a restrictive jurisprudence for the eligibility of not-for-profit entities. This is a pity, because the Commission had earlier taken a more relaxed view of the qualification of such claimants, as in *Claim of the Pearl S. Buck Foundation* in the Vietnam claims program.[84]

A point of progress in the Albania claims program was the Commission's recognition of assigned claims, which effectively allowed the claimants to allocate portions of claims away from ineligible parties in favor of eligible ones.[85] In this way, the harsh effects of the continuous nationality rule and the dual national residency requirement (before the 2006 Diplomatic Note) were somewhat ameliorated. Assignments were typically made between family members.[86]

In rendering its decisions, the Commission has always been sensitive to questions of the beneficial ownership of claims;[87] the titular holder of a claim may not always, in the Commission's jurisprudence, be the "real" owner. Sometimes this worked in favor of a claimant in the Albania claims program.[88] For example, in *Claim of Pantos*, the Commission deemed the claimant's

[78] This review was presumably undertaken pursuant to the Commission's authority to reopen final decisions. *See* 45 C.F.R. §531.5(l); *see also* Claim of Harris, Claim No. CZ-3663, Dec. No. CZ-2144, 17 FCSC SEMIANN. REP. 274 (July–Dec. 1962); Claim of Kaputsik, Claim No. CZ-4617, Dec. No. CZ-1151, 17 FCSC SEMIANN REP. at 243 (joinder of new claimants).

[79] Amended decisions were issued for the following claim numbers: 26, 27, 29, 37, 58, 69, 78, 80, 83, 100, 112, 119, 161, 169, 174, 178, 232, 279, 288, 291, 295, 299, 304, 307, 308, and 316. For an overall appraisal of the Agreed Minute, see *infra* notes 168–69 and accompanying text.

[80] CSA, *supra* note 4, Art. 1(a) (recognizing the "claims of United States nationals (including natural and juridical persons)").

[81] *See supra* notes 34–36 and accompanying text.

[82] Claim of Near East Foundation, Claim No. ALB-244, Dec. No. ALB-155 (Proposed Decision), at 2 (FCSC Aug. 16, 1996).

[83] Claim of Near East Foundation, *supra* note 34, at 1.

[84] See Claim No. V-0261, Dec. No. V-0439 (Proposed Decision) (FCSC Aug. 22, 1985); *see also* Brown, *supra* note 54, at 109.

[85] See Claim of Prifti, *supra* note 43, at 5–6 ("In order for the Commission to consider such assignments as transferring compensable interests of the claimant's siblings to the claimant, the assignors must first establish their United States nationality as of the date of their father's death in 1955. They have not done so.").

[86] *See, e.g.*, Claim of Femera, Claim No. ALB-042 , Dec. No. ALB-290 (Proposed Decision), at 7 (FCSC Feb. 24, 1997); Claim of Elias, Claim No. ALB-117, Dec. No. ALB-206 (Final Decision), at 3 (FCSC Dec. 15, 1998); Claim of Zotos, Claim No. ALB-146, Dec. No. ALB-209 (Final Decision), at 4 (FCSC Oct. 29, 1998); Claim of Liolin, Claim No. ALB-187, Dec. No. ALB-236 (Final Decision), at 6 (FCSC Oct. 29, 1998).

[87] See David J. Bederman, *Beneficial Ownership of International Claims*, 38 INT'L & COMP. L.Q. 935 (1989); Brown, *supra* note 54, at 112 (discussing Vietnam claims program's treatment of beneficial ownership issues).

[88] See Claim of Fazo, Claim No. ALB-106, Dec. No. ALB-186 (Proposed Decision), at 3–4 (FCSC Oct. 7, 1996).

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grandfather's cultivation rights over land to entail that he was "effectively the owner."[89] But in *Claim of Jones*, the claimant asserted that half of his interest in the subject property was held in trust by his brother (a non–U.S. national) and that he should be entitled to a full award of the land's value. The Commission concluded, however, that evidence for the trust relationship was inadequate, with the consequence that the award to the claimant reflected only a one-half interest.[90]

Taken altogether, the Commission's Albanian claims jurisprudence as to the eligibility of the claimants—particularly on matters concerning continuous nationality and beneficial ownership—followed previous patterns. It was only with the dual national claimants that a peculiar *lex specialis* emerged, which was entirely due to the unfortunate provision of the CSA's Agreed Minute. Fortunately, the legal effect of the Agreed Minute residency requirement was abrogated by the 2006 Diplomatic Note concluded by the two countries.

Attribution of Conduct to Albania

As already noted, the CSA was express in its requirement that in order to be compensable, a claim must impute a qualifying act of "nationalization, expropriation, intervention, and other taking of, or measures affecting, property of nationals of the United States"[91] to Albania.[92] According to the CSA, the date of such governmental actions affecting property rights must have been "prior to the date of the agreement [the effective date, April 18, 1995]"[93] and must have been perpetrated by the Communist regime in Albania.[94] Temporal requirements aside,[95] the Commission did reject those claims that did not allege a taking or other measure affecting property rights.[96] For example, the Commission denied compensation for the Albanian government's alleged confinement of an individual in a mental hospital[97] and for the alleged internal exile of a claimant.[98]

The acts of the Albanian Communist government that amounted to "nationalizations[s], expropriation[s], . . . [or] other taking[s] of . . . property" fell into a handful of recognizable categories. The most common in the decisions issued under the Albania claims program were reform decrees having nationwide effect. The most often cited of these decrees was the August 29, 1945, enactment that, as the Commission noted,

[89] Claim of Pantos, Claim No. ALB-247, Dec. No. ALB-228 (Final Decision), at 4 (FCSC Oct. 29, 1998).

[90] Claim of Jones, Claim No. ALB-300, Dec. No. ALB-227 (Proposed Decision), at 2–4 (FCSC Feb. 24, 1997); *see also* Claim of Godellas, Claim No. ALB-332, Dec. No. ALB-316 (Proposed Decision), at 2–5 (FCSC Sept. 29, 2005) (claimant's mother, a non–U.S. national, was record owner of the subject property, not merely an "administrator" acting on behalf of claimant); Claim of Babameto, Claim No. ALB-333, Dec. No. ALB-317 (Final Decision), at 2 (FCSC Jan. 25, 2007) (same, except that non-U.S. mother was asserted by claimant to be merely an executor for the father's estate).

[91] CSA, *supra* note 4, Art. 1(a).

[92] *See* Lillich & Bederman, *supra* note 46, at 442–52 (for Iran claims program practice on attribution); Brown, *supra* note 54, at 103 (Vietnam claims program); Redick, *supra* note 54, at 730 (China claims program).

[93] CSA, *supra* note 4, Art. 1(a).

[94] *See supra* notes 31–36 and accompanying text.

[95] For the timing requirements for other claims programs, see Brown, *supra* note 54, at 106 (statutory scheme for timing of Vietnam claims); Redick, *supra* note 54, at 730–31 (China claims).

[96] *See, e.g.*, Claim of Krotsis, Claim No. ALB-197, Dec. No. ALB-127 (Proposed Decision), at 2 (FCSC May 7, 1996).

[97] *See* Claim of Rrapi, Claim No. ALB-329, Dec. No. ALB-313 (Proposed Decision), at 5 (FCSC Dec. 30, 2004).

[98] *See* Claim of Prifti, *supra* note 43, at 7.

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> the Albanian Communist regime promulgated [as] the "Agrarian Reform Law," which provided that land not directly worked by the owner was subject to seizure and redistribution by the government, without payment of compensation. Land Reform Law No. 108, [Gazette] 1945, No. 39. That law was affirmed by the 1946 Albanian constitution, which stated that "land belongs to the tiller." Alb. Const., 1946, Ch. I, Art. 12.[99]

Other rounds of countrywide agrarian reform occurred in Albania in 1955.[100] Some confiscation decrees were limited to particular individuals or groups of people, to particular parcels or types of property, or to particular localities.[101] The Commission made clear in a number of decisions that it was difficult to establish a precise date for a nationalization or expropriation of land as a result of an ongoing process of agrarian reform.[102]

While takings of real property through agrarian land reform were the most common form of expropriation found compensable in the Albania claims program, other species of measures affecting property rights were featured in the Commission's decisions.[103] Among these measures were denials of justice and other actions by Albanian judicial tribunals. The Commission found compensable a court's confiscation order for gold and silver coins held on account at the Albanian State Bank[104] and a court-ordered auction of property without notice to the owner and without subsequent redress.[105] For two claims, the Commission did not reach the merits of the denial-of-justice claim because the relevant judicial action took place after the CSA's effective date and was thus outside the Commission's jurisdiction.[106] In *Claim of Zoto*, the claimant asserted (among many other grounds) that a predecessor-in-interest had been subject to extraordinary taxes pursuant to the Communist government's decree imposing a levy on wealthy individuals who had traded with foreigners during the period 1939 through 1944. The claim was denied because the Commission was not satisfied that the special tax "amounted to a confiscation by the Albanian government."[107]

[99] *See* Claim of Kasem, *supra* note 39, at 4.

[100] *See* Claim of Toma, Claim No. ALB-072, Dec. No. ALB-268 (Final Decision), at 4 (FCSC Jan. 11, 1999) (reform law of Nov. 8, 1955); Claim of Gjeli, Claim No. ALB-220, Dec. No. ALB-286 (Final Decision) (Corrected), at 4 (FCSC Feb. 5, 1999).

[101] *See, e.g.*, Claim of Puto, Claim No. ALB-100, Dec. No. ALB-293 (Proposed Decision), at 7–8 (FCSC Feb. 24, 1997) (Art. 4/1, Law No. 372, Dec. 12, 1946); Claim of Toma, *supra* note 100, at 4 (Prime Minister Order No. 20, Sept. 2, 1957); Claim of Stefani, *supra* note 52, at 3–4 (Decision No. 24 of Mar. 13, 1957); Claim of Tollko, Claim No. ALB-118, Dec. No. ALB-139 (Proposed Decision), at 3–5 (FCSC Jan. 28, 1997) (Dec. 1, 1963 Decree No. 291 for district of Korce); Claim of Qano, Claim No. ALB-150, Dec. No. ALB-285 (Proposed Decision), at 7 (FCSC Feb. 24, 1997) (Apr. 20, 1946 decree nationalizing pharmacies); *id.* at 5–6 (Mar. 14, 1980, Decree No. 40, local nationalization); Claim of Stefani, Claim No. ALB-267, Dec. No. ALB-211 (Proposed Decision), at 4 (FCSC Nov. 18, 1996) (establishment of local agricultural collective).

[102] *See, e.g.*, Claim of Mengri, Claim No. ALB-288, Dec. No. ALB-262(R) (Amended Proposed Decision), at 4 (FCSC Nov. 29, 2007) ("In the absence of a precise date, the taking will be deemed to have occurred as of January 1, 1947."); Claim of Lakuriqi, Claim No. ALB-307, Dec. No. ALB-289 (Final Decision), at 3 (FCSC Apr. 15, 1997).

[103] *See* Lillich & Bederman, *supra* note 46, at 453 (on the practice for the Iran claims program).

[104] *See* Claim of Papa, Claim No. ALB-037, Dec. No. ALB-297 (Proposed Decision), at 5 (FCSC Feb. 24, 1997).

[105] *See* Claim of Leka, Claim No. ALB-093, Dec. No. ALB-185 (Proposed Decision), at 4 (FCSC Nov. 18, 1996).

[106] *See* Claim of Velaj, *supra* note 53, at 5; Claim of Lazaris, *supra* note 51, at 4.

[107] *See* Claim of Zoto, *supra* note 30, at 8 (subclaim 4); *see also id.* at 17–19 (subclaim 10). In what might be regarded as an "intervention . . . affecting property rights" under CSA Article 1, the Albanian government refused to pay amounts due to the claimant on "blocked goods" that it had impounded. The Commission found that because the government acknowledged the debt, it was attributable to Albania and compensable. *See id.* at 10–12 (subclaim 6).

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Likewise, the Commission faced situations where it was by no means clear what particular state action could satisfy the CSA's attribution requirement.[108] In *Claim of Demma*, the Commission was faced with a situation involving the loss of goods shipped to Albania from the United States. It ruled that the claim would be found noncompensable because the claimant could not prove that "the goods at issue here were confiscated by the Albanian authorities (rather than simply lost in the mails or stolen by common thieves)."[109] In other cases, the Commission was careful to rule that the acts of squatters on the claimants' land could not be imputed to the government of Albania.[110]

One element of the CSA's attribution requirement was that the claimants had not already been compensated for their losses, or been beneficiaries of restitution, by the Albanian government.[111] The CSA's Agreed Minute (3) specifically contemplated a separate domestic, Albanian compensation or restitution program.[112] Since the Commission had no power to order specific performance or restitution on the part of Albania,[113] the only way that eligible claimants could reacquire possession of their property was through such domestic, Albanian programs, which included the Commission for the Return of and Compensation for Property in Albania.[114] Those claimants that received restitution of their property[115] or cash compensation for their claims (typically in the form of bonds)[116] either withdrew their claims before the Commission[117] or had their claims denied by the Commission. Obviously, even if the

[108] *See, e.g.*, Claim of Karselas, Claim No. ALB-032, 034, 035 & 043, Dec. No. ALB-113 (Proposed Decision), at 4 (FCSC Mar. 4, 1996); Claim of Pano, *supra* note 31, at 5–6 ("[T]o enable the Commission to properly calculate the extent of the loss, the Commission must have some evidence—for example, old letters or sworn written statements of former neighbors or villagers with personal knowledge of the events—concerning approximately when and how the property was taken.").

[109] Claim of Demma, Claim No. ALB-027, Dec. No. ALB-013 (Amended Proposed Decision), at 5 (FCSC Nov. 18, 1996).

[110] *See, e.g.*, Claim of Panajoti, Claim Nos. ALB-099 & 167, Dec. No. ALB-276 (Final Decision), at 6 (FCSC May 4, 1998); Claim of Stevens, Claim No. ALB-268, Dec. No. ALB-299 (Final Decision), at 4 (FCSC Apr. 16, 1998).

[111] *See* Claim of Pano, *supra* note 31, at 6 n.1 ("The Commission could not make an award in the absence of this information [concerning whether claimants had received restitution or compensation from the Albanian government].").

[112] *See* CSA, *supra* note 4, Agreed Minute, para. 3 ("Recognizing that Albania is administering a domestic program for compensation and restitution of certain properties, the United States and Albania agreed to exchange information concerning the claims brought under the Albanian program by United States nationals covered by the agreement, as well as information concerning any compensation or restitution provided, in order to assist in avoiding double recovery by claimants.").

[113] *See* Claim of Liolin, *supra* note 86, at 2 n.2.

[114] *See, e.g.*, Claim of Generalis, Claim No. ALB-217, Dec. No. ALB-069 (Final Decision), at 5 (FCSC Feb. 24, 1997); Claim of Liolin, Claim No. ALB-187, Dec. No. ALB-236 (Proposed Decision), at 10–11 (FCSC Jan. 27, 1997); Claim of Raci, Claim No. ALB-261, Dec. No. ALB-277 (Proposed Decision), at 8 (FCSC Feb. 24, 1997); *see also* Claim of Velaj, *supra* note 53, at 3 n.4 (commission established by Law 9235 of July 29, 2004).

[115] *See, e.g.*, Claim of Conservative Baptist Foreign Mission Society, Claim No. ALB-079 (Order), at 1–3 (FCSC Nov. 18, 1996); *see also* CSA, *supra* note 4, Agreed Minute, para. 2 ("Recognizing that the Conservative Baptist Mission Society wishes to obtain restitution of its properties in Albania under Albanian law, rather than receiving compensation therefor under the agreement, and without prejudice to the validity of its claims, any claim by the Conservative Baptist Mission Society for the following three parcels of property in or near Korcha, Albania shall be considered not to have been settled under articles 1 and 2 . . . .").

[116] *See, e.g.*, Claim of Piazza, Claim No. ALB-301, Dec. No. ALB-226 (Proposed Decision), at 6 (FCSC Feb. 24, 1997).

[117] *See, e.g.*, Claim of Cifligu, Claim No. ALB-078, Dec. No. ALB-245(R) (Order), at 1–2 (FCSC Jan. 25, 2007); Claim of Kona, Claim No. ALB-189 (Order) (FCSC July 1, 1996).

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Commission had made a determination on the merits of those claims that had been the subject of Albanian compensation or restitution, it is highly unlikely that the Commission would have awarded any recovery since an expropriation or nationalization of property, if fully compensated or remedied, is not a violation of international law.

The operation of a parallel system of domestic, Albanian compensation mechanisms raised some delicate issues as to the standard of compensation when property was restituted to a claimant. These "loss of use" claims were for the lost value of a property between the time that it was taken and the moment that it was returned. In *Claim of Puto*, the Commission adhered to the "prompt, adequate and effective" compensation formula under international law. But how does that statement apply in circumstances involving a later restitution of property? "When a claimant elects to accept the return of his or her property," the Commission noted that it was "precluded from making an award unless the value of the property when it is returned is less than its value at the time of its taking together with the awardable interest."[118] Of course, in economic environments that feature inflationary trends and steadily rising prices for property, it might be expected that the Commission's calculus would be satisfied and that an award for loss of use could be made.[119] Nevertheless, the CSA's express provisions that precluded double recovery for the claimants—and that consequently required proof that claimants had not already received compensation or restitution from Albania—was a significant element of the Commission's attribution jurisprudence.

III. VALUATION ISSUES

The talisman for all of the Commission's valuation rulings[120] was the fair market value (FMV) of the property concerned as of the date of its loss.[121] Establishing the FMV for various forms of real, personal, and business property was no easy task, complicated by the claimants' endemic practice of grossly exaggerating their property's value and of mischaracterizing its nature.[122] The Commission went to lengths to establish guidelines for the proper FMV of

[118] Claim of Puto, *supra* note 101, at 9 (citing Claim of Estate of Alexander, Claim No. G-2886, Dec. No. G-1874 (1980)); *see also* Claim of Stevens, *supra* note 110, at 4. For more on this standard, sometimes referred to as the Hull Rule, see RESTATEMENT (THIRD) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES §712, cmt. c (1987).

[119] *But see* Claim of Stevens, *supra* note 110, at 7 (After conducting a detailed accounting, the Commission concluded that "claimants benefited more from regaining ownership of the property in 1994 than they would have from receiving an award to compensate them for the taking of the property in 1947 plus loss of use.").

[120] For the Albania claims program, the Commission issued 92 decisions with awards (out of a total of 337 filed). For each decision with an award, a valuation analysis was made.

[121] *See* 22 U.S.C. §1623(a)(2)(B) ("In determining the value of a claim under international law, the Commission shall award the fair market value of the property as of the time of the taking by the foreign government involved (without regard to any action or event that occurs after the taking), except that the value of the claim shall not reflect any diminution in value attributable to actions which are carried out, or threats of action which are made, by the foreign government with respect to the property before the taking."); *see generally* Richard B. Lillich, *The Valuation of Nationalized Property by the Foreign Claims Settlement Commission*, *in* 1 THE VALUATION OF NATIONALIZED PROPERTY IN INTERNATIONAL LAW 95 (Richard B. Lillich ed., 1972).

[122] *See, e.g.*, Claim of Panos, Claim No. ALB-010, Dec. No. ALB-210 (Final Decision), at 2 (FCSC Apr. 15, 1997) (claimant's valuation figure "is not supported by any documentation and is wholly inconsistent with the Commission's study of the values of various kinds of real property in Albania before and during World War II and thereafter"); Claim of Dema, *supra* note 43, at 5 (noting that "the Commission finds [claimant's valuation] to be highly inflated and unreasonable"); Claim of Dedo, *supra* note 72, at 5 (indicating that claimant's "figures are seriously exaggerated").

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property (as of the date of taking) that was the subject of claims before it. The Commission had, for example, established a network of advisers and consultants in-country in Albania who provided the Commission with historical data on prices.[123]

The CSA concluded with Albania contained no provision on the valuation methodology to be employed by the Commission. Unlike the China and Cuba claims programs,[124] the Albanian program had no generic congressional directive concerning the means of valuation to be used.[125] The Commission could obviously draw on the precedents of earlier programs for substantive rules of valuation,[126] but there is little evidence (in the form of citation of earlier decisions) that it did so.[127] Even so, some readily discerned patterns are apparent in valuation decisions of the Albanian program, provided that distinctions are appropriately made between real property and personal property, one the one hand, and business property, on the other. Another significant ground of differentiation in many valuation decisions is the date that the Commission determined that the relevant property was taken—which was often a key element in the valuation analysis. The Commission seemed to assume (correctly, as it turned out) that many, if not most, of the expropriations and nationalizations of property (especially of land) occurred in the early phases of Communist rule in Albania (from 1945 to 1955).[128] That is why the Commission undertook a careful empirical study of land values throughout Albania (including urban, semi-rural, and rural property)[129] during the 1940s and 1950s. The Commission was especially careful to eschew any reliance on valuations provided by governmental entities—on the assumption that these valuations would be purposefully deflated.[130]

Real Property and Personal Property

As with any adept and assertive realtor, the claimants sought to emphasize the unique or special aspects of their real property for purposes of achieving a higher valuation. The Commission tended to reward such efforts, especially when supported by competent testimony through the affidavits of disinterested neighbors. In *Claim of Hadjiyanis*, the Commission relied on the written statements of third parties and found that "the house in question was a spacious house with a double curved stairway leading to the entrance and that it was situated in a large garden surrounded by a stone fence."[131] The property was found to be taken on January 1, 1950, when

[123] *See* 1995 Y.B. FCSC 16; 1996 FCSC ANN. REP. 10.

[124] See 80 Stat. 1365 (1966) (codified at 22 U.S.C. §1643(a)(2)(B) (1970)) (requiring the Commission to "take into account the basis of valuation most applicable to the property and equitable to the claimant, including but not limited to, (i) fair market value, (ii) book value, (iii) going concern value, or (iv) cost of replacement").

[125] *See also* 22 U.S.C. §1623(a)(2)(B) (indicating primacy of fair market value but then listing other accounting approaches, including market value of outstanding equity securities, replacement value, going-concern value, and book value). For more on valuation, see *infra* notes 145–47 and accompanying text.

[126] *See* Redick, *supra* note 54, at 736–37 (China claims); Brown, *supra* note 54, at 120–26 (Vietnam claims); Lillich & Bederman, *supra* note 46, at 459–60 (Iran claims).

[127] *But see* Claim of Panajoti, *supra* note 110, at 8 (relying on unspecified precedents from the general war claims program).

[128] *See supra* notes 99–102 and accompanying text.

[129] *See* Claim of Josifi, Claim No. ALB-224, Dec. No. ALB-237 (Proposed Decision), at 5 (FCSC Jan. 28, 1997) (distinction between urban and agricultural property).

[130] *See* Claim of Dedo, *supra* note 72, at 5 (noting that "governmental assessments [of real property] often are significantly below actual market value").

[131] Claim of Hadjiyanis, Claim No. ALB-084, Dec. No. ALB-230 (Proposed Decision), at 4 (FCSC Dec. 16, 1996).

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the Albanian authorities converted it into a school. The Commission gave the house, along with the land on which it was situated, a value of $15,000[132]—one of the highest valuations for a single parcel of real property awarded in the course of the Albania claims program.

In *Claim of Near East Foundation*, a matter that has been discussed here in other contexts,[133] the Commission found that a claimant's holding of real property that amounted to only a leasehold interest did not constitute a compensable interest in land.[134] Likewise, in *Claim of Pantos*, the Commission ruled that (in addition to other problems with the claim), the claimant had only cultivation rights to the real property in question, which was insufficient to establish any valuation.[135] In the context of movable or personal property, the Commission had the opportunity in the Albanian program to consider a variety of species of possessions, including livestock,[136] currency,[137] and dowry items.[138] Among the general propositions confirmed by the Commission was that the valuation of personal property (with the possible exception of dowry articles) could not depend on the claimants' unsupported statements.[139]

Business Property and Going-Concern Value

Even though virtually no claims were filed in the name of business associations,[140] a few significant claims by individuals did feature the loss of business property. In *Claim of Panajoti*, the claimants' predecessor-in-interest asserted an expropriation of a 50 percent interest in a paper bag factory and in four warehouses that contained (among other things) machinery, equipment, and supplies to manufacture that product.[141] For lack of proof on the claimants' part, the Commission made no award for the lost business in the paper bag factory,[142] but it did grant compensation for the warehouses and their contents. Adopting a "customary method applied in its General War Claims Program," the Commission assigned a value to the contents of the warehouse at 25 percent of the value of the warehouses themselves.[143] In *Claim of Tellios*,

[132] *See id.*

[133] *See supra* notes 34–36 and 80–83 and accompanying text.

[134] *See* Claim of Near East Foundation, *supra* note 82, at 2–3.

[135] *See* Claim of Pantos, Claim No. ALB-247, Dec. No. ALB-228 (Proposed Decision), at 3 (FCSC Feb. 24, 1997).

[136] *See, e.g.*, Claim of Panos, *supra* note 122, at 4 (FCSC Apr. 15, 1997) ("The Commission explained that it could not base an award for livestock and personal property on the statements of claimant alone, without more specific statements from others to support claimant's assertions.").

[137] *See* Claim of Papa, *supra* note 104, at 5–6 (calculating value of confiscated currency and coinage based on conversion rates established by standard reference works, including American International Investment Corporation's World Currency Charts; Claim of Zoto, *supra* note 30, at 6–7, 9–10.

[138] *See* Claim of Zotos, *supra* note 86, at 7–8 (by "standard local custom," claimant had two walnut hope chests filled with clothing, household goods, bedsheets, and silverware); Claim of Suxho, Claim No. ALB-317, Dec. No. ALB-307 (Proposed Decision), at 4–5 (FCSC Oct. 29, 1998).

[139] *See supra* note 136; *see also* Brown, *supra* note 54, at 123–24 (describing Vietnam claims program's somewhat more sophisticated valuation methodology that rejected replacement cost and featured a depreciation analysis according to a standard schedule).

[140] *See supra* notes 80–84 and accompanying text.

[141] *See* Claim of Panajoti, *supra* note 110, at 3, 7.

[142] *See id.* at 9; *see also* Claim of Xexo, Claim No. ALB-174, Dec. No. ALB-256(R) (Amended Proposed Decision), at 3–4 (FCSC Feb. 22, 2007) (failure of proof regarding existence of shop).

[143] Claim of Panajoti, *supra* note 110, at 8.

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the Commission made a fairly cursory valuation of two coffee shops in which it had found the claimants to have a partial interest. Perhaps because the interest was so small (a one-eighth share), the Commission allowed fairly sparse evidence and awarded compensation in the amount of $1,250.[144]

It was only in *Claim of Qano* that the Commission conducted a full valuation—of a nationalized pharmacy. This valuation turned on two key pieces of evidence submitted by the claimant: an affidavit signed by four disinterested pharmacists who had personal knowledge of the claimant's pharmacy business and its value ($10,000 in 1945), and an official filing by the claimant that the subject pharmacy had a profit of 18,800 Albanian francs ($1,810) in that same year. Based on all this evidence, the Commission concluded that the claimant's pharmacy was a "'going concern'" and assigned it a value of $15,000 as of 1945.[145] Of course, the finding that the pharmacy was a going concern was essential because it allowed for the inclusion of future lost profits. The Commission's methodology essentially combined a value for business assets (book value) of $10,000 as of 1945 and an increment of $5,000 for lost profits. Given that profits had been nearly $2,000 a year, it is manifest that the Commission adopted the accounting technique of discounted cash flow to capture that increment over time.[146] The significant point is that the Commission conformed its lost-profits jurisprudence to what Congress expressly provided for in the ICSA.[147] Regrettably, *Claim of Qano* was the Commission's only occasion over the course of the Albania claims program to test the contours of fair market valuations for going concerns.

Awards of Interest

As already noted,[148] in every case in which the Commission made a cash award to compensate a claimant in the Albanian program,[149] interest was added. In boilerplate language,[150] applicable principles of international law and the Commission's previous decisions (since 1954) were invoked to require the payment of 6 percent simple interest on the principal amounts awarded, measured from the date of the loss to the CSA's effective date (April 18, 1995). The Commission has consistently rebuffed any attempt by the claimants to raise the 6 percent interest rate, reminding them that compensation is based on the value of property at the time of taking and that "[i]nflation in the decades following [confiscations in the 1940s] is not a factor."[151] Likewise, the Commission has explained that for purposes of valuation, the current assessment of a piece of property or its suitability for future development is not

[144] *See* Claim of Tellios, *supra* note 25, at 4.

[145] *See* Claim of Qano, Claim No. ALB-150, Dec. No. ALB-285 (Final Decision), at 2–3 (FCSC Apr. 15, 1997).

[146] For more on this approach, see Brown, *supra* note 54, at 129–39 (Vietnam claims program practice and congressional reaction).

[147] *See* Pub. L. No. 99-451, §1(a)(2) (codified at 22 U.S.C. §1623(a)(2)(B)) ("Fair market value shall be ascertained in accordance with the method most appropriate to the property taken and equitable to the claimant, including— . . . ((iii) going-concern value (which includes consideration of an enterprise's profitability)[.]").

[148] *See supra* notes 21, 39–40, and accompanying text.

[149] *See* WESTON et al., *supra* note 3, at 81–82 n.21 (reviewing Commission practice for earlier programs, including those for China, Cuba, Egypt, Ethiopia, and Iran).

[150] *See, e.g.*, Claim of Kasem, *supra* note 39, at 5.

[151] Claim of Cheli, Claim No. ALB-017, Dec. No. ALB-218 (Final Decision), at 2 (FCSC Apr. 15, 1997).

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relevant. Rather, it is the value at the time of taking. The purpose of interest, the Commission has observed, is "to compensate the claimant for the loss of use of the money he was entitled under international law to receive from the foreign government at the time of the confiscation."[152] Put another way, the award of interest is integral to the Commission's endorsement of the "prompt, adequate, and effective" standard of compensation for takings of property under international law.[153]

IV. CONCLUSION

In terms of claims filed and decisions rendered, the Commission's Albania claims program ranks as one of the smaller projects that the Commission has conducted;[154] as of this writing, 337 claims were submitted and decisions filed (unadjusted for claims that were combined for purposes of a decision rendered).[155] Nevertheless, the Albania program can be adjudged a success in almost every respect that matters.

Because of the generous settlement amount made by the government of Albania ($2 million)[156] and the relatively small number of compensable claims, the Commission could be confident that any cash award would be satisfied from the Treasury account established for that purpose.[157] It cannot be seriously suggested that the residency requirements for U.S.-Albanian dual nationals, contained in the CSA's Agreed Minute (1), precluded compensation to individuals who were otherwise worthy of receiving it.[158] In actuality, when the requirement was lifted by the April 2006 Diplomatic Note, the Commission reopened those decisions that had been premised on the Agreed Minute,[159] and conducted a review of approximately fifty claims that had earlier been rejected on that ground. The Commission then discovered that only a handful of those claims was then fully compensable, leading to cash awards.[160] Nor can it

[152] Claim of Prifti, Claim No. ALB-054, Dec. No. ALB-157 (Final Decision), at 5 n.* (FCSC Apr. 15, 1997).

[153] Claim of Puto, *supra* note 101, at 8.

[154] The Albania claims program is by no means the smallest that the Commission has conducted. In the Ethiopia claims program, the Commission rendered forty-five decisions and issued awards in twenty-seven. In the Egypt claims program, the Commission rendered eighty-five decisions and issued awards in eighty-three. *See* 2010 FCSC ANN. REP. 14–15.

[155] *See* 2000 FCSC ANN. REP. 11; *see also* http://www.justice.gov/fcsc/readingroom/page7.htm.

[156] *See* CSA, *supra* note 4, Art. 2.

[157] *See* International Claims Settlement Act of 1949, tit. I, §§5, 7, 8, Pub. L. No. 81-455, 64 Stat. 12 (1950) (codified as amended at 22 U.S.C. §§1624, 1626, 1627); *see also* 1997 FCSC ANN. REP. 53 (payments made promptly from the appropriate Treasury account); Brown, *supra* note 54, at 141–43 (comparing the rates of receipt of awards for various earlier claims programs; on average, claimants received only 40 percent of amounts awarded by the Commission).

[158] The Commission did actually suggest as much. *See* 1999 FCSC ANN. REP. 8–9 (noting that the residency requirement "constrained the Commission to deny some fifty claims that otherwise would have been compensable").

[159] *See* 45 C.F.R. 531.5(l) (2010) (superseding *id.* 509(l)) (allowing the Commission to reopen final decisions either upon a showing of exigent circumstances by claimant or (presumably) *sua sponte* by the Commission itself).

[160] *See* Claim of Panajoti, Claim Nos. ALB-130, 131, 132, Dec. No. ALB-267 (Memorandum), at 1 (FCSC Aug. 15, 2007) (an internal memo from the Commission's deputy chief counsel to the commissioners concerning the review process in the wake of the formal Diplomatic Note in 2006, *see supra* note 75 and accompanying text; claim rejected because of failure of proof of nationality); Claim of Zguro, Claim No. ALB-103, Dec. No. ALB-247 (Memorandum), at 1 (FCSC July 12, 2007) (same).

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be contended that some design flaw in the CSA established impossible standards for compensability—for example, in defining either the eligible claimants or the claims (including nationality and attribution considerations). Rather, CSA Article 1 was fully consistent with other lump sum settlements concluded by the United States during this period.[161]

In a procedural sense, the Commission did everything possible to promote as many awards as possible. The Commission extended deadlines for the completion of the program, in order to allow for late claims to be filed.[162] It was generous in allowing the claimants to seek review of proposed decisions; virtually any communication to the Commission (even one that was extremely tardy and filed more than fifteen days after the proposed decision) would qualify as a successful request for a de novo review of an earlier decision and an opportunity to submit new evidence.[163] On a number of occasions, this process resulted in a claim being found compensable and an award issued, even when the earlier, proposed decision had categorically denied the claim. The Commission was also generous with the receipt of various forms of evidence, even though it was quick to remind the claimants that they bore the ultimate burden of proof.[164] In part, all of these procedural trends were attributable to the substantial civil unrest and turmoil in Albania during that period, coupled with the endemic corruption of officials in the country; it was extremely difficult for the claimants to assemble reliable evidence to support their claims.[165] In short, the Albania claims program presented no procedural impediments against the claimants.

As for the Commission's substantive jurisprudence for the Albanian program, a few aspects are worthy of notice and may have some effects for the future of lump sum settlements of international claims. With respect to issues of nationality, the Commission followed—and uneventfully so—the relevant provisions of the 1995 CSA; in addition to respecting the basic rules for establishing the claimants' nationality, the Commission rigorously enforced the continuous nationality rule.[166] Likewise, it would be hard to object to the handful of cases in which the Commission inclined in favor of the beneficial owners of property.[167]

The experiment with the residency requirements of Agreed Minute (1) for dual nationals was nothing less than disastrous.[168] Not only did the domicile rules of the Agreed Minute absurdly simplify a nuanced inquiry for the dominant and effective nationality test of such cases as *Mergé* and *A/18*[169] (as well as the subsequent precedents of the Iran-U.S. Claims Tribunal), its practical consequence for nearly fifty claimants in the Albanian program was a

[161] See WESTON et al., *supra* note 3, at 341 (Claims Settlement Agreement, U.S.-Vietnam, Jan. 28, 1995, Art. 1(a)) (nearly identical language with U.S-Albania agreement); *id.* at 299 (Compensation Agreement, U.S.-Eth., Dec. 19, 1985, Arts. 1, 2, TIAS No. 11193, 25 ILM 56 (1986)) (different formulation of compensable claims from that of U.S.-Albania agreement but having substantively the same result); *id.* at 235 (Claims Settlement Agreement, U.S.-Egypt, May 1, 1976, Arts. 2–3, 4 UST 4214, TIAS No. 8446) (different formulation of compensable claims from that of U.S.-Albania agreement but having substantively the same result).

[162] *See supra* note 77 and accompanying text.

[163] *See* Claim of Suli, Claim No. ALB-102, Dec. No. ALB-291 (Final Decision), at 2 n.1 (FCSC May 4, 1998).

[164] *See supra* note 47 and accompanying text.

[165] Claim of Suli, *supra* note 163, at 2 n.1 (noting that "domestic turmoil in Albania impeded the efforts of many claimants to obtain evidence to support objections"); *see also supra* note 24 and accompanying text.

[166] *See supra* notes 50–62 and accompanying text.

[167] *See supra* notes 87–90 and accompanying text.

[168] *See supra* notes 63–79.

[169] *See supra* notes 67–68 and accompanying text.

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categorical rejection of their claims for no better reason than that they were too poor or too scared to emigrate to the United States after the Communist regime fell after 1991. The United States negotiating team for the CSA acquiesced in that Agreed Minute in the belief that otherwise eligible claimants would have made their escape to the United States after 1991, but before the effective date of the CSA in April 1995. In this, the U.S. negotiators were profoundly mistaken. Even after this error had been perceived—and then corrected in the May 2006 Diplomatic Note—the Commission faced difficulties in revisiting all of the affected claims. The lesson here for future negotiators of lump sum settlements is either to generically recognize the compensability of claims of appropriately situated dual nationals or to expressly invoke the dominant and effective nationality rule as the proper qualification for compensability.

As for the Commission's attribution analyses, one concern was the absence in the CSA of a beginning date for Albanian governmental actions that would be deemed to satisfy the imputability requirements.[170] The CSA prescribes a closing date for such action (April 18, 1995) but not a starting date. The Commission, through its decisions, essentially filled in this gap, indicating that the CSA's object and purpose was to compensate U.S. claimants for the conduct of the Albanian government after the Communist regime came to power in 1945. Principles of state succession and other rules of public international law prevented the attribution of actions that occurred earlier than 1945 or that were taken by any outside power that was occupying Albania. In a similar fashion, the CSA confined itself to the disposition of property claims.[171] Claims sounding in contract or debt were left on the margins of the formula "nationalization, expropriation, intervention, and other taking of, or measures affecting, property,"[172] but when in doubt, the Commission afforded such claims compensability status. Only purely tort or personal injury (dignitary or physical) claims were found to be definitively excluded from the scope of the CSA. Likewise, the Commission was generous in construing all but the most private acts—if not criminal, such as those of thieves and squatters—as government action.[173] Given the highly centralized character of the Albanian Communist regime and the alacrity with which it nationalized property and the means of production, it was relatively easy for the claimants to prove that state action was the cause of their property's confiscation.

The Commission's handling of the "loss of use" cases was emblematic of one area where the Albanian program saw an advance in sophistication of the Commission's jurisprudence.[174] Given the relationship between the Albanian program and that of the general war claims settlement, it is not surprising that the Commission heard numerous such cases. What is significant is the extent to which these cases implicated the law to be applied by the Commission under Title I of the ICSA and general principles of valuation (as with awards of interest).[175] In the Albania claims program, unlike that for Iran,[176] the Commission was fortunate in that

[170] *See supra* notes 31–36 and accompanying text.
[171] *See supra* notes 96–98, 107, and accompanying text.
[172] CSA, *supra* note 4, Art. 1(a).
[173] *See supra* notes 108–10 and accompanying text.
[174] *See also supra* notes 28–30, 115–19, and accompanying text.
[175] *See supra* notes 120–30 and accompanying text.
[176] *See* Lillich & Bederman, *supra* note 46, at 439–40, 463–65.

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the law to be applied was relatively straightforward: "applicable principles of international law," as decided by the Commission itself, usually through consultation of its earlier precedents. The Commission's fixation on the fair market value of property at the time of confiscation is certainly reflective of this approach. In the typical valuation analysis for the Albanian program, all the Commission had to do was to have a rough guide to real and personal property values in the period 1945–55 (when most takings were deemed to have occurred), and then to refine the values based on any special circumstances of the claimants or any particular characteristics of the subject property.[177] Likewise, in the handful of cases regarding "going concern" value, the Commission employed similar metrics, although the governing law was the applicable provisions of the ICSA's Title I.[178]

The Albania claims program thus reflects some key jurisprudential trends common to any "generic" program conducted by the Commission under Title I of the ICSA. By "generic" I mean a program established without a special act of Congress pursuant to Title I's general authorization in the wake of a "claims agreement concluded on or after March 10, 1954, . . . arising out of the nationalization or other taking of property, by the agreement of the Government of the United States to accept from that government a sum in en bloc settlement thereof."[179] Generic programs like that involving Albania are very different from "bespoke" programs, including the current one with Libya pending before the Commission. The Commission's authority to adjudicate claims of U.S. nationals against Libya derives from the U.S.-Libya claims settlement agreement of August 14, 2008, which was implemented pursuant to the Libyan Claims Resolution Act.[180] Claims of U.S. nationals against Libya were subsequently espoused by the United States and then referred to the Commission by the Department of State by letters dated December 11, 2008,[181] and January 15, 2009.[182] Referrals by the State Department become, in effect, the applicable law for the purposes of establishing the jurisdictional requisites for the claimants and claims, with respect to every category of claim. Every State Department referral thus creates a jurisdictional *lex specialis* for each category.

By contrast, the jurisprudence of the Albania claims program illustrates the flexibility of the Commission in enforcing well-established rules under the ICSA and the precedents of previous settlement programs. With the exception of the special test contained in Agreed Minute (1) for dual nationals, the Commission was not obliged to enforce or elaborate upon any new rules concerning the nationality of the claimants, attribution of conduct to the defendant state, or valuation. The nature of the claims before the Commission in the Albanian program was distinctive only insofar as they typically featured highly specified expropriations of agricultural property.

In any event, the public availability of all the Albania claims program decisions should assist practitioners and scholars alike in tracing jurisprudential developments over time, and should

[177] *See also supra* notes 131–39 and accompanying text.

[178] *See supra* notes 140–47 and accompanying text.

[179] 22 U.S.C. §1623(a)(1)(B).

[180] Pub. L. No. 110-301, 122 Stat. 2999; *see also* Exec. Order No. 13,477 (Oct. 31, 2008) (noting that under section 1(a), claims of U.S. nationals are espoused by the United States and referred to the secretary of state).

[181] *See* 2008 FCSC ANN. REP. 7.

[182] *See* 2009 FCSC ANN. REP. 10. (The referral occurred pursuant to 22 U.S.C. §1623(a)(1)(C), not the generic provision 1623(a)(1)(B).)

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also assist the Commission and its staff in understanding how to handle particular types of claims, especially given that the laconic language of Title I of the ICSA (the only direct source of legal authority for the "generic" claims that I have referred to here) fails to provide a coherent approach. The Commission should be congratulated for ordering the public release of the entire oeuvre of the Albania claims program, especially in electronic form.[183] Harnessing the power of the Internet to promulgate and publicize its work, the Commission has truly come of age as the world's leading domestic claims-settlement institution.[184]

[183] *See* http://www.justice.gov/fcsc/readingroom/index.html.

[184] For a brief introduction to Britain's Foreign Compensation Commission, see FOREIGN COMPENSATION COMMISSION, FIFTY- FOURTH ANNUAL REPORT (for the financial year ending March 31, 2009), *available at* http://www.official-documents.gov.uk/document/cm77/7786/7786.pdf.

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