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AJC WASHINGTON REPRESENTATION

Box 2, File 1

NATL CONF FOR EQUALITY UNDER
CLAIMS LEGISLATION

December 8, 1967

Jerry Goodman

Sandy Bolz

National Conference for Equality Under
Claims Legislation--Proposed Letters to Senators

Re your slip note of November 30 asking if I have any reactions to Paul Neuberger's letter to you of November 27 enclosing proposed letter to be sent to Senator Long and others:

- (1) I think the effort should be made--and that we should join in it--the effort of the State Department and Congressman Kelly should be opposed, in order to establish the principle of broader eligibility as being something more than a single exception.
- (2) The probability is that the State Department cannot be persuaded on this--but if the Conference wants to try everything, I would suggest that a delegation come down to Washington to see Leonard Meeker, the Legal Adviser of the Department, who is a very decent and humane man, with whom Ted Tannenwald and I have dealt successfully regarding the discrimination of Arab countries in travel of American Jews. If anyone in the Department could be persuaded on this situation, I think he might. But in view of Sy Rubin's long connection and expertise on claims matters, you may want to check this approach out with him first.

But apart from such an approach to the Department, the idea of a letter to the Senators is sound. I do think, however, that Neuberger's proposed letter could be improved upon. For example, on the first page I think there should be a clearer indication of just what H.R. 9063 provides and how it would assist the individuals and organizations of the Conference. This, I think, is essential to attract the Senators' interest, because of the votes of the ethnic groups involved, and it is not at all clear in this letter. I also note that the first full paragraph at the top of page 3 is grammatically poor and extremely unclear--and should probably be broken into two sentences--the difficulty is that Neuberger is probably more expert in another language than in English, i.e., the sentence should appeal to the Senator not to permit an Act of Congress to be voided by turning over the balance, etc. Verstehst?

That's all--in haste. Best regards.

SHB/nmg

16 West 46th Street • New York, N. Y. 10036 • JU 6-4146

YIVO RG 347.1
(EXO-30) Box 2
File 10

November 27, 1967

NOV 28 1967

MEMBERS*

- AMERICAN ASSOCIATION OF FORMER AUSTRIAN JURISTS
- AMERICAN FEDERATION OF JEWS FROM CENTRAL EUROPE
- AMERICAN JEWISH COMMITTEE
- AMERICAN JEWISH CONGRESS
- AMERICAN YUGOSLAV CLAIMS COMMITTEE
- ASSOCIATION OF CZECHOSLOVAK JEWS
- ASSOCIATION OF FORMER COMBATANTS OF DRAZA MIHAILOVIC
- ASSOCIATION OF FORMER EUROPEAN JURISTS
- ASSOCIATION OF YUGOSLAV JEWS
- BULGARIAN CLAIMS COMMITTEE
- CLUB OF POLISH JEWS
- CONFERENCE OF AMERICANS OF CENTRAL EASTERN EUROPEAN DESCENT
- COORDINATING COMMITTEE OF NAZI VICTIMS ORGANIZATIONS
- WORLD FEDERATION OF HUNGARIAN JEWS

Mr. Jerry Goodman,
c/o American Jewish Committee,
165 East 56th Street,
New York City.

Dear Friend:

Our Conference did not have an opportunity to act during these past 6 months, except that on August 9, 1967 I appeared before the House Foreign Affairs Committee in the matter of Omnibus Bill H.R. 9063, where I pleaded that the Administration Bill remain unchanged and the provision regarding the distribution of the Italian Claims Fund be not deleted, as recommended by the Subcommittee during the last Session.

We hoped that the Bill would go through unchanged, but the Subcommittee under the chairmanship of Congresswoman Edna F. Kelly, again succeeded to delete this provision and to bring the Bill to the Floor of the House under the "Suspense Rule". Despite opposition of some Congressmen the Bill was accepted with the deletion recommended by the Subcommittee.

This Bill is now going to the Senate, and I should like to send letters in the name of the National Conference to Senators J. W. Fulbright, Jacob K. Javits, Russell B. Long, Clifford Case, etc.

Enclosed herewith is one such letter, and since I do not believe that a meeting for a discussion of this matter is necessary, I should like to receive your approval as soon as possible, so that I may sign and mail the letter.

I consider it important that this last opportunity does not go by without an attempt on our part to defeat the action of the State Department in trying to erase the provisions of the earlier Act of Congress granting some extension of eligibility.

Awaiting to hear from you promptly, I remain with best regards,

Sincerely yours,

Paul Neuberger
PAUL NEUBERGER

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PNAM
Enc.

* in formation

National Conference for Equality Under Claims Legislation

16 West 46th Street • New York, N. Y. 10036 • JU 6-4146

YIVO rg 347.1
(EXO-30) Box 2
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MEMBERS*

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NAZI VICTIMS ORGANIZATIONS
WORLD FEDERATION OF
HUNGARIAN JEWS

Hon. Russell B. Long
Senate Office Building
Washington, D. C.

Dear Senator Long:

This Conference has been organized for the purpose of unifying all efforts to achieve equal treatment of all claimants who are U. S. citizens under claims legislation.

Our Conference consists of organizations, as listed on this letterhead, representing the largest minority groups in the United States, including the Conference of Americans of Central Eastern European Descent which represents ten minority groups (Polish, Czechoslovak, Hungarian, Ukranian, etc.) headed by the Very Rev. John A. Balcunas, as well as the largest American Jewish organizations.

Our organization is turning to you at this time, as we are aware and appreciate the fact that you were the leading legislative proponent of Public Law 604-85. At that time you put forth arguments which have special meaning now, even more than then, because on November 11, 1967, upon recommendation of the Subcommittee of the Foreign Affairs Committee under Congresswoman Edna F. Kelly, the House of Representatives deleted from Omnibus Bill H.R. 9063 the provision concerning the distribution of the Italian Claims Fund under Public Law 604-85.

When Representative Dominick V. Daniels of New Jersey strongly objected, referring to P.L. 604-85 which had been enacted upon your proposal, Congresswoman Edna F. Kelly stated as follows:

"I want to emphasize that the Committee is aware of the fact that Congress made this exception in 1958. I still say that the exception made in this one instance should not have been made."

We wish to cite your statement of 1958 as follows:

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* In formation

"We find that we have funds over and above those necessary to take care of these claims (claims of those who were American citizens at the time of loss) which funds we shall proceed to devote to satisfy claims of those who became American citizens subsequent to the time the property was seized..."

- - - -
"Inasmuch as Italy has been more liberal than have most other nations, in making such funds available, we have provided that after those who have other claims have been satisfied, insofar as funds remain, they could be made available to American citizens who acquired American citizenship subsequent to the cutoff date..."

- - - -
"If we had some settlement which was similar to the Italian settlement, which is unique in many respects, in that the Italian Government settled in effect 100 cents on the dollar for American claimants, and made available over and above that amount for any other liabilities which might be outstanding, then we could make these funds available to other citizens."

In view of the fact that P.L. 604-85 was enacted on the basis of your above-cited arguments in a case where sufficient funds remained available over and above those necessary to take care of American citizens who were not such at the time of loss, the argument of Congresswoman Kelly, presenting this as a dangerous precedent, are unjustified.

When enacting the War Claims Act, upon insistence of Senator Jacob K. Javits, Congress even accepted the proposal forwarded by you that if funds remain available after all other claims have been satisfied, eligibility should be extended also to those who were not citizens at the time the damage occurred.

Senator J. W. Fulbright stated three years ago that a great injustice was committed when claimants eligible under P.L. 604-85 were prevented from filing claims with the Foreign Claims Settlement Commission under the pretext that no filing period had been established.

On the other hand, those who, contrary to the law existing at the time of filing, nevertheless filed their claims, received 100% compensation plus interest.

This injustice would now be sanctioned if the Bill as presented by the House Foreign Affairs Committee and passed by the House,

Page 3 -

November 28, 1967

Senator Russell B. Long

were to be pushed through the Senate in the last minute rush before the close of this Session.

We appeal to you, dear Senator Long, not to permit that an Act of Congress vesting certain rights to a group of people be voided and that the balance remaining in the Italian Claims Fund of \$1,000,000 which had been provided especially for American claimants under the so-called "Lombardo Agreement" be turned over to the War Claims Fund of the Treasury Department, which is not in need of such a small additional sum when over \$250,000,000 are being distributed to the claimants thereunder.

We wish to point out that we are not a lobbying organization for certain interests, but upon the request of many persons who have turned to our member organizations we wish to present their views to you as the proponent of P.L. 604-85.

In the sincere hope that this our appeal will find your favorable consideration, we remain

Respectfully yours,

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YIVO RG 347.1

AJ Committee Papers

(EX-30)

AJC WASHINGTON REPRESENTATION

Box 2, File 52

WAR CLAIMS

YIVO R6347.1
(EX-30) Box 2, R. 10 52
Ad. National Conf. for equality
Claims Legislation

June 9, 1965

Simon Segal
Jerry Goodman

At your suggestion, I attended meetings with representatives of various Jewish nationality groups on May 3 and June 1, 1965. You will recall that these groups are seeking to promote an amendment to the War Claims Act of 1948, as amended in 1962, to extend the eligibility of claimants under this Act. In both instances the meetings were called by Paul Neuberger, a lawyer who is, among other things, the counsel for the Bulgarian Claims Committee, the American Yugoslav Claims Committee, and the Association of Yugoslav Jews in the U. S., Inc. The last meeting took place in the offices of the Conference on Jewish Material Claims against Germany.

The final outcome was an agreement to create a coordinating committee to which the organizations might attach themselves. The following were present at the last meeting, assuming their assent by attendance:

American Jewish Committee, Conference of Americans of Central Eastern European Descent, American Federation of Jews from Central Europe, World Federation of Hungarian Jews, Association of Yugoslav Jews, American Yugoslav Claims Committee, The Association of Czechoslovak Jews, Association of Former Combatants of Draza Mihailovic, Association of Former European Jurists, American Association of Former Austrian Jurists, Dr. Kurt Grossman of the Coordinating Committee of Nazi Victims Organizations.

In addition, the American Jewish Congress, the Club of Polish Jews and the Bulgarian Claims Committee had presumably agreed to cooperate with the project.

The meeting of June 1 produced some concrete recommendations. After more than a half-hour discussion on a name, I proposed that the ad-hoc clearing-house be called "National Conference for Equality Under Claims Legislation." This was unanimously accepted. The representatives offered various proposals for immediate action in Congress and a nation-wide letter writing campaign. It was suggested that these efforts might eventually lead to a "test case" in the Supreme Court. Pros and cons were aired; alternate approaches suggested.

Considering the realities of the pre-summer Congressional schedule, the lack of a coherent approach to vaguely-defined goals, the premature suggestions that all organizations "contribute"

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- 2 -

(some amount for printing and mailing sample letters, etc., I suggested that a sub-committee be formed. This group would prepare a long-range program of political action. Such a plan, in turn, would help decide what funds would be necessary and where they might be obtained. Dr. Ernst Weissman, Dr. Kurt Grossman, Mr. Paul Neuberger and myself were asked to serve on the sub-committee. The proposals will then be given to the entire group for consideration. I reluctantly agreed, but I indicated that other commitments meant my involvement could only be minimal.

JG:jkt

337936

The MacArthur Letter*

The principles and policies governing international reclamation are not immutable. Like other governmental policies, they must necessarily be accommodated to emergent historic needs. To remain viable, they must be consistent with due process and serve the ends of justice in a contemporary context. Since the end of World War II, a debate has ensued as to the scope of United States governmental concern and intervention on behalf of United States citizens because of the activities of foreign governments in World War II and in the aftermath of widespread confiscation and nationalization. A forum for this debate has been the Congress of the United States. The Department of State has taken the general position that in negotiations with foreign governments for lump sum settlements it is precluded from espousing the claims of United States citizens who had not acquired their citizenship at the time of their property loss. Absent a contrary provision in an international settlement, the State Department has conceded the constitutional power of the Congress to provide for the distribution of settlement or other funds to all United States citizens irrespective of when they acquired citizenship. The question is one of domestic policy. But, in the continuing debate, it has urged that the Congress in determining the manner of disposition of claim funds, limit such disposition to those persons who had valid claims under international law as traditionally applied to the United States prior to World War II.

The MacArthur letter appears to be the latest in a series of communications which the Department of State has addressed to

* Letter, dated August 9, 1965 from Douglas MacArthur II, Assistant Secretary of State for Congressional Relations to Senator John J. Sparkman, Chairman, Subcommittee on Claims Legislation, Committee on Foreign Relations, United States Senate, pp. 95-97, Hearings on S. 1935, August 4 and 5, 1965, containing, among other things, policy recommendations with respect to the participation of United States citizens in the distribution of lump sums paid, or available from, foreign governments in settlement of war damage and nationalization claims. The relevant text of the letter is appended hereto.

the Congress in which the Department argues its opposition to legislative proposals which would extend claim eligibility to late United States citizens. The letter questions the wisdom of a characteristic liberalizing amendment to S. 1935, an omnibus claims bill supported by the Administration providing, among other things, for a new Italian claims program. It does not challenge the power of the Congress to enact the liberal-¹izing proposal.

The position of the MacArthur letter is tentative and pragmatic. It supports, in general, the spirit of the exclusionary rule of international law but demonstrates a willingness to support liberalization in exceptional instances. The two² exceptional instances it cites relate to war damage claims. In the case of Italy, the justification alleged is that the lump sum paid by Italy exceeded the amount needed to satisfy completely the claims of persons who were United States citizens at the time of loss. But if the rule of international law should be the rationale for Congressional action, the MacArthur

1. The exact demarcation between the constitutional power of the Congress and of the Executive Branch in international reclamation is indeterminate and untested. In Section 313 of the International Claims Settlement Act of 1949, as amended, approved August 9, 1955, Congress provided that payment on an award made by the Foreign Claims Settlement Commission of the United States in claims, *inter alia*, against Rumania and Bulgaria, would not, as to the unpaid balance of the award extinguish or divest the rights of the claimant against Rumania or Bulgaria as the case might be. In the case of Rumania, the unpaid balance was approximately 70% of the principal and 100% of the interest awarded; and as to Bulgaria, 40% of the principal and 100% of the interest. Despite such balances unpaid, in the United States-Rumanian Settlement Agreement of March 30, 1960 (T.I.A.S. No. 4451, 1960), Art. IV, the United States agreed not to pursue such claims for unpaid balances. See, also, United States-Bulgarian Settlement Agreement of July 2, 1963 (T.I.A.S. No. 5387, 1963), Art. III (2). Provision for a potential small additional payment on the unpaid balance is provided for in Sec. 12 of S. 1935, the omnibus bill. Query: In extinguishing claims of United States citizens by international agreement, to what extent may the Executive Branch disregard a prior statute enacted by the Congress? Is the United States responsible to the award holders for the remaining unpaid balances of their awards?

2. Other instances not referred to in the MacArthur letter are cited below.

letter does not state why the State Department did not recommend the return of the unexpended balance in the Italian Claims Fund to Italy. In the case of the Philippines, the MacArthur letter offers no explanation as to why certain religious organizations, affiliated with but not themselves citizens of the United States were permitted to share in war damage fund distribution. As to all other World War II war damage claims, the MacArthur letter finds no justification for liberalization.

There is a serious constitutional question as to whether the Congress, in the distribution of war damage funds, or lump sum settlements, to United States citizens, can validly provide that such distribution should be made or denied on the basis of the date upon which United States citizenship was acquired. There is the question of whether this does not premise two classes of United States citizens in violation of due process and equal protection of the law. But if the MacArthur letter is approached in its own spirit of pragmatic counsel to Congress as to who should or should not receive compensation and to what extent, it should be remembered that the issue is World War II damage and World War II aftermath loss, and it is to this context of the history of our times that legislators should turn.

It is by now over a quarter of a century since World War II commenced and the immediacy of its terrible consequence in human suffering has dimmed. It is to fresher, earlier appraisals that Congress should now look. On the matter of who should be compensated, there are two polar formulations: First, the Treaties of Peace with Italy, Bulgaria, Hungary and Rumania entered into in 1947. To these treaties, the United States and its allied and associated powers were parties. Second, the 1953 Supplementary Report of the War Claims Commission to the Congress.

The Peace Treaties. It is notable that in these solemn instruments the United States agreed that war loss compensation would be payable to "United Nations nationals" defined to include not only nationals of each of the United Nations, including the United States, but also all persons who during the war had been treated as enemy by the defeated power, Italy, Rumania,

Hungary, and Bulgaria, as the case might be.

No peace treaty has as yet been entered into with Germany, but it is inconceivable that the policy of the United States with respect to compensation for war damage or loss attributable to Germany should be of lesser scope and coverage than that required of Germany's allies and associates in World War II.

1953 Supplementary Report of War Claims Commission. Absent a peace treaty with Germany, the basic Allied formulation as to war claim responsibility is contained in the Paris Reparation Agreement of 1946. The United States and other Allied Nations agreed to hold or dispose of German assets in their respective countries in lieu of reparations. It was further agreed that these assets would be regarded by each Government "as covering all of its claims and those of its nationals against the former German Government and its agencies, of a governmental or private nature arising out of the War (which are not otherwise provided for)..."

The War Claims Act of 1948 enacted thereafter implemented the policy of retaining vested German (and Japanese) assets for war claim purposes. Section 8 of that Act authorized the War Claims Commission (predecessor of the Foreign Claims Settlement Commission of the United States) to report to the President for submission to the Congress, its findings and recommendations as to "categories and types of claims, if any, which shall be received and considered and the legal and equitable basis therefor..." The Commission's 257 page report (House Doc. No. 67, 83rd Cong. 1st Sess.) issued in 1953 is ^{the} most comprehensive and thorough report of World War II war loss officially made by any agency of the United States Government. The Commission found that Congress had absolute discretion in the field of war damage legislation. It concluded that a "just rule" would be to extend eligibility to "persons who, at the time of loss were permanent residents of the United States...had declared their intention to become citizens of the United States... and who at the time of presentation of the claim...were American citizens or American nationals." This approach by the Commission had been provisioned by the United States Senate, which, on 337940

February 14, 1950, had approved the same formula of eligibility in connection with lump sum settlement agreements between the United States and foreign governments of claims arising out of post-World War II nationalizations or other takings.¹

The basis for this approach in Peace Treaties, Report by War Claims Commission and the United States is well stated in a 1959 Petition to the Congress on behalf of naturalized citizens seeking claims participation:²

"The Nazi holocaust in Europe, prior and during World War II, characterized by mass extermination of peoples, deprived great numbers of persons of the protection of any government or nation. Many of these survivors without diplomatic protection came to the United States as refugees. Now as citizens of the United States no other government can be pointed to as having been in a position, at time of loss, to seek recourse on their behalf. The onset of Communist regimes in Eastern Europe in the post-war years made it impossible for these refugees to exercise effective local remedies in accordance with standards of justice cherished by international law as understood in the West. Without the intervention of the government of which they are now citizens, a void exists where wrong may not be remedied, a situation as abhorrent to justice as a vacuum is to nature."

In its Report to the Congress, the War Claims Commission noted prior instances in which the Congress had enacted war damage compensation measures disregarding the nationality rule, i.e., the Defense Bases Act, the War Hazards Act, the Guam Relief Act. These may be added to the Italian and Philippine actions referred to in the MacArthur letter. The Commission also pointed out that in the World War II war damage compensation laws of Australia, Austria, Denmark, Italy, Malaya, Malta, and the United Kingdom, the nationality of the claimant at time of loss was immaterial in determining eligibility.

1. H.R. 4406, 81st Cong., 1st Sess., Senate Calendar No. 810, amending Sec. 2(c). This amendment, upon opposition by the Department of State, was not accepted by the conferees and not enacted. A similar amendment to , liberalizing eligibility, was adopted by the House on , and upon opposition by the Department of State, again was not accepted by the conferees and not enacted.

2. 1959 House Interstate and Foreign Commerce Hearings on War Claims and Enemy Property Legislation, pp. 427-443.

On October 22, 1962, P.L. 87-846 was approved, adding Title II to the War Claims Act of 1948, as amended, providing for the utilization of the War Claims Fund (which contained the bulk of German vested assets) for the payment of World War II losses sustained by nationals of the United States. Section 204 of the Act limited claims eligibility to those United States citizens who had been United States citizens on the date of loss or damage. The Senate had enacted amendments extending, among other things, eligibility to persons "presently United States nationals who were not such nationals at the time the loss occurred" (underscoring supplied). The Department of State opposed and the amendments were not accepted by the conferees. In the Conference Report, dated October 2, 1962, the following¹ appeared :

"... The Senate recedes with the understanding that in the event there remains a balance in the war claims fund after payment in full of claims provided for in this bill, consideration would be given to legislation providing for payment to these categories of persons. The Committee of conference recommends that the Foreign Claims Settlement Commission should proceed to make an estimate of the amount of claims that would be involved in these amendments."

Over three years have elapsed since this recommendation. If any such estimate has been made by the Foreign Claims Settlement Commission or the Department of State, it has not been publically announced. Certainly no registration has been conducted by the Foreign Claims Settlement Commission as was done by that Commission preliminary to the Polish Claims Agreement of 1960, or by the Department of State as was done by it preliminary to the Yugoslav Claims Agreement of 1964.

II

The MacArthur letter states that the Department of State did not oppose liberalization of eligibility to participate in distribution of the Italian Claims Fund because "the lump sum paid by Italy exceeded the amount needed to satisfy claims of persons who were not citizens at the time of damage." But this was not the sole ground. The contention had been strongly made

that the Italian program, providing for compensation for damage caused by Italy outside of Italy, was a projection of the Italian Peace Treaty providing for compensation by Italy for loss caused in Italy; and that since the Peace Treaty had no requirement of citizenship, United States or United Nations, on date of loss, no such requirement should be imposed by Congress on the Italian program.¹ A State Department representative commenting on this contention testified that Italy had attached no conditions to distribution to United States citizens. The "5 million dollars was to be devoted to anything the United States wanted to devote it to, with no strings attached for claims otherwise provided in the Treaty...There would be no foreign policy objection so far as we are concerned to the Congress doing this if it wished..."²

Nevertheless, the Conference Report on the General War Claims Bill (enacted as P.L. 87-846), as noted above, seemed to give credence to the MacArthur letter approach by receding from Senate liberalization on the understanding that if there were an excess in the War Claims Fund consideration would be given to legislation providing for the eligibility of late citizens. As in the Italian case, no foreign policy objection could arise in view of the Paris Reparations Agreement of 1946 vis a vis German vested assets. But what of international law?

The fund theory by which variation in eligibility standards is premised on whether the fund is insufficient, sufficient, or in excess, is a far departure from other Department of State expressions which asserted complete ineligibility in compliance with, or by analogy to, international law. The fund theory would substitute bankruptcy or receivership reasoning on the following basis: All United States citizens are entitled as creditors. Some creditors are more entitled than others. If the fund is sufficient, all are to be paid. If the fund is insufficient, certain creditors, i.e. citizens as of a

1. Hearing before Committee on Foreign Relations, United States Senate, 85th Cong., 2nd Sess., on S. 3557, pp. 40-42.

2. Ibid., pp. 44-45.

certain date would be given priority to the extent of full payment, and other creditors, i.e., citizens after a certain date, would be put in a deferred category. But the analogy to bankruptcy and receivership is misleading.

If the lump sum settlement negotiations are considered, the adequacy of the fund agreed upon may, in large measure, depend on whether the Department of State affirmatively includes late nationals within the ambit of its demand upon the foreign government. International settlement agreements between foreign governments, other than the United States, have, in significant instances, since World War II included late nationals in the settlement. In any event, no lump sum settlement agreement ever included by the Department of State based upon nationalization or other taking by the respondent government, ever resulted in full payment.

If war damage claims are considered in the context of P.L. 87-846, the general war claims statute, a standard of full payment as priority is hardly conducive to the ends of justice.

The Peace Treaty provisions with Italy, Hungary, Rumania and Bulgaria, enemy powers during World War II, provided only for two-thirds compensation. This, also, was the formula for awards based on war loss or damage in these countries in Title III of the International Claims Settlement Act of 1949, as amended. In this sense, priority payment for all United States citizens on the date of loss under P.L. 87-846, should, on the bankruptcy-receivership theory, be $66 \frac{2}{3}\%$ of awards before the deferred creditors, the later citizens, are permitted to participate. But the Department of State suggestion in the MacArthur letter is 100%.

Consistency is no virtue in the late nationality approach of the MacArthur letter. It opposed an amendment which would have extended to late nationals as of the date of the amendment, the right to participate in any further excess balance in the Italian Fund. The State Department, as has been seen, agreed to liberalization on the ground, among others, that an excess existed. It developed, after adjudication under the liberalization, that an excess still existed. Patently, further

liberalization was then called for. Nevertheless, the MacArthur letter opposed further liberalization and now recommended that any balance be remitted to the War Claims Fund on the basis that in that program (German), it was understood that there would no be sufficient funds to pay in full the war damage claims of persons who had been citizens on the date of loss. The MacArthur letter states: "It is believed that such persons should be favored over persons who were not citizens at the time they sustained damage." Conceptualization is disregarded, programs confused and ad hoc arbitrariness substituted. The matter is worthy of greater dignity. The attributes of United States citizenship, its responsibilities and privileges, are among our most cherished values.

If it be true, despite all considerations of principle, that in the distribution of war claim and settlement funds, to United States citizens, some persons "should be favored over other persons," the facts should be submitted for legislative appraisal. As to any given fund, how many claimants are there? In what category of date of citizenship do they fall? How much money is available or obtainable for distribution? What formula of distribution should be adopted?

The failure of the Commission and of the Department of State to furnish Congress with such estimates has been referred to. As to war claims, this disregard of the Conference Report cannot be easily understood. The methods for determining the facts are available: (a) by analyzing the claims filed with the Commission, of which a substantial portion have been denied for late citizenship; (b) by conducting a registration; (c) by requiring the Commission to adjudicate the claims of late nationals and leaving to the Congress the determination as to how and to what extent awards should be paid. These are criteria for ascertaining facts, and proceeding from reasoned facts to conclusions which might reasonably support legislative determinations.

III

Finally, the MacArthur letter is concerned with precedent and retroactivity. The Congress is warned that if error be confessed and late nationals permitted to participate in current

and future programs, United States citizens "who have not received compensation from any funds paid by foreign governments because they were not citizens at the time of loss or damage, would have grounds for insisting upon compensation from some source. In the Department's view it would be undesirable to provide this opportunity." Presumably, a campaign would ensue to reopen closed programs.

If, in fact, this could happen, why is it necessarily undesirable? Congress is always available for petition, and Congressmen for the introduction of bills to redress grievances. It displays little regard for the legislative integrity of the Congress to suggest that Congress would not independently regard each such proposal for its wisdom, its consonance with our foreign policy and the welfare of the country, and whether it be just or unjust.

The matter of retroactivity has also been faced by the judiciary in reversing prior precedent. See, inter alia, Linkletter v. Walker, 381 U.S. 618 and Tehan v. Scott, -- U.S. --, 11 L. Ed.(2)453, January 19, 1966. In Linkletter the Supreme Court concluded that "in appropriate cases the Court may in the interest of justice make the rule prospective" but "the Constitution neither prohibits nor requires retrospective effect." Tehan considered the retrospective effect upon the administration of justice in certain States of a newly announced rule by the Supreme Court and concluded that it would have an impact upon the administration of criminal law "...so devastating as to need no elaboration."

Similarly, the Constitution neither requires nor prohibits the Congress to give retroactive effect to the principle of equality of all United States citizens in international claims legislation. Dire supposition, as in the MacArthur letter, or exaggerated hyperbole as to what heretofore ineligible citizens might claim from Congress as an act of justice, serves no rational purpose. Empirical statistics should be assembled for the study of the Congress. The time has surely come, after a quarter of a century, to assemble the facts as to claimants, wrongs, remedies, assets, in World War II and its aftermath, and

to strike a balance as to relief afforded, local and international, and wrong satisfied and unsatisfied. Dependent on these findings, Germany may or may not be called upon for further payments in a closing of account.

The matter of retroactivity in past nationalization settlements is dependent upon what policy the Department of State may adopt, country by country, in seeking re-opening of past settlement agreements where local remedies, relied upon in the countries concerned have proved meaningless and illusory, or so far below established international standards for compensation as to be an abuse of justice. The Congress should not close this door to reappraisal by the Executive Branch.

APPENDIX

"It has generally been the policy of the U.S. Government not to permit citizens of the United States who did not have that status at the time of loss or damage to share in lump sums paid by foreign governments in settlement of nationalization or war damage claims. This policy rests upon the universally accepted principle of international law that a state does not have the right to ask another state to pay compensation to it for losses or damages sustained by persons who were not its citizens at the time of loss or damage. This policy seems never to have been questioned before the enactment of the International Claims Settlement Act of 1949. Ever since the passage of that act, however, bills have been introduced in the Congress to permit persons who were not citizens at the time of loss or damage to receive compensation out of vested Bulgarian, Hungarian, and Rumanian assets for nationalization and war damage in these countries. Bills have also been introduced to permit such persons with nationalization claims against Czechoslovakia to share in proceeds of the sale of a steel mill of the Czechoslovak Government. Neither the executive branch nor the Congress favored any of such bills and none were enacted with the exception of a bill which permitted a small number of persons who were not citizens at the time of damage to share in the lump sum paid by Italy for war damages outside of Italy. That bill was not opposed because the lump sum paid by Italy exceeded the amount needed to satisfy claims of persons who were citizens at the time of damage.

"The Department of State is not aware of a single instance in which persons who were not citizens of the United States at the time of loss, with the exception of the small number who shared or will share under S.1935, if enacted, in the above-mentioned Italian fund and certain religious organizations in the Philippines which were affiliated with religious organizations in the United States, have been permitted to share in funds paid by foreign governments or funds derived from vested assets either for the taking of property or for war damages.

"In view of the foregoing, payment of World War II war damage claims of persons who were not citizens of the United States at the time of loss or damage would establish an undesirable precedent. Should such a precedent be established, it is believed that those citizens who have not received compensation from any of the funds paid by foreign governments because they were not citizens at the time of loss or damage, would have grounds for insisting upon compensation from some source. In the Department's view it would be undesirable to provide this opportunity."