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POSTWAR FRENCH FOREIGN CLAIMS PRACTICE: ADJUDICATION BY NATIONAL COMMISSIONS— AN INTRODUCTORY NOTE

BURNS H. WESTON†

I. PREFACE

Before World War II, belief in the absolute private control of real and personal property enjoyed astonishing universality. True, there were notable exceptions. But by and large, recognition of private wealth as the *sine qua non* of the social fabric scarcely wavered. It is thus unsurprising that in 1926, during an International Law Association discussion concerning "the inviolability of private property in international relations," the Soviet Union should have been condemned for its "attack upon this international agreement as to the sacredness of private property" and for its failure to "agree with the common conscience of all other civilized nations upon this most fundamental question of morals and ethics," and, so, judged, "exclude[d] and excommunicate[d] . . . from the society of civilized nations."[1]

The war, of course, helped to change all this. Where once socialist ideologies were alone mainly responsible for the erosion of *laissez-faire* values, now the unprecedented depredation of whole economies (and attendant fears of foreign economic domination) combined with them to place the State at stage-center of economic ownership and control. Never as in the years immediately following World War II, save for the Mexican, Soviet and, to lesser degree, "Succession State" experiments of the interwar years, had the State become so extensively involved in the economic enterprise. Little by little over the years, but now overwhelmingly by comparison, direct and indirect interference with private wealth (domestic and foreign), on major and minor scale, became a fundamental strategy—a "determined system"[2]—of national policy, most notably in Eastern Europe. In Czechoslovakia (1945-48), Poland (1945-48), Hungary (1945-49), Yugoslavia (1946-47, 1956), Bulgaria (1942, 1946-49) and Rumania (1946-50)—progenitors of things to come there again and elsewhere—was the tale thus writ large.

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1. INT'L L. ASS'N, REPORT OF THE THIRTY-FOURTH CONFERENCE 259 (Vienna, 1926).
2. K. KATZAROV, THE THEORY OF NATIONALISATION 75 (1964).

For French foreign investors (direct and portfolio), as for their counterparts from abroad (particularly from Great Britain, Switzerland and the United States), these postwar Eastern European developments augured ill. Of course, it is well known that the French suffered extraordinary financial losses during and soon after World War I—losses in excess of four billion dollars, "or nearly half the French investments outstanding at the beginning of the war."[3] Well known also is the failure of French foreign investments newly made during the interwar period to exceed, in the aggregate, the losses sustained; "[b]y 1938, the total of French foreign investments amounted to roughly 3.9 billion dollars, against which there were obligations of about 560 millions, leaving net investments of about 3.3 billions."[4] In sum, France (until World War I at least, long second only to Great Britain among the world's creditor nations) was by World War II only fourth in rank among the world's creditor countries (behind Great Britain, the United States and the Netherlands, in that order).[5] Yet for all this, and despite World War II losses, French foreign investors were still to suffer major economic sacrifices in Eastern Europe in the years immediately following the Axis surrender. As of 1938, apparently the last year for which figures are readily available, long-term French investments ranked foremost among all long-term foreign investments in Poland, Yugoslavia, and Czechoslovakia (respectively, first, second and fourth in hosting French capital in Eastern Europe), second in Bulgaria (last among the six hosts), and fourth in both Rumania and Hungary (respectively, third and fifth in hosting French capital).[6] Significantly, the total of these French

3. U.N. DEP'T OF ECON. AFFAIRS, INTERNATIONAL CAPITAL MOVEMENTS DURING THE INTER-WAR PERIOD 4 (U.N. Pub. Sales No. 1949. II. D. 2). These losses were due not only to the war itself, but also to (a) the 1918 Soviet repudiation of governmental, industrial and war debt obligations of predecessor Russian governments, (b) the virtual repudiation of Turkish and Austro-Hungarian bonds by "Successor State" governments, (c) liquidation of highgrade securities and (d) the depreciation of the French franc. *See* C. LEWIS, DEBTOR AND CREDITOR COUNTRIES: 1938, 1944, at 10 (1945).

4. C. LEWIS, *supra* note 3, at 10. "This compares with some 7.6 billions net in 1914." *Id.*

5. *Id.* 2-11.

6. The following table, depicting the amount of the long-term Eastern European investments of the major investing countries as of 1938, is drawn from C. LEWIS, *supra* note 3, at 54-99:

(*all figures are in millions of dollars*)

	Bulg.	Czech.	Hung.	Pol.	Rum.	Yugo.
Benelux	10.8	-	2.7	42.1	12.0	5.3
France	22.5	39.4	32.6	165.2	69.7	101.6
Germany	1.5	1.6	46.0	70.5	75.0	2.8
Italy	4.8	-	8.0	18.9	16.0	11.3
Neth.	.3	3.3	6.0	18.1	83.3	1.8
Sweden	-	1.0	2.8	53.9	45.0	3.0

investments (431.1 million dollars) represented about forty-three per cent, or nearly half, of the aggregate long-term French foreign investments outstanding in Europe generally in 1938 (998.2 million dollars); and this, in turn, represented approximately twenty-six per cent of French long-term investments world-wide.[7] Add that few French interests in Eastern Europe, least of all the major ones, wholly escaped the Popular Democratic reach and that they were usually to receive little or no direct compensation for their losses,[8] and it is little wonder that the French, however much they may themselves have domestically accepted public ownership of the means of production, should have greeted postwar Eastern European developments with some consternation.

How the French were to react to, and cope with, these and later deprivatory measures elsewhere, or, more precisely, how French foreign-wealth owners have been able (if at all) to obtain compensation for postwar governmental assaults upon their property, is the focus of a study on which this writer is currently working and for which this essay is meant as a tentative introduction.[9] Limited, however, by a dearth of printed data on the subject and by an inability, as yet, to examine relevant French *dossiers* and personally to question, except fleetingly, informed French authorities, the pages following must necessarily be confined to merely a preliminary account of the substantive and procedural framework of the postwar French foreign claims process. Detailed description and appraisal of this process and particularly its outcomes, singly and in comparison with equivalent American and British practice, must await later exposition.

Since 1945, as before, consistent with customary international prac-

Switz.	9.2	31.0	14.2	24.6	12.2	23.0
U.K.	48.9	35.9	86.6	66.5	215.0	25.5
U.S.	7.9	15.9	57.0	79.2	52.5	38.3

7. *Id.*

8. These facts have been abundantly though not exhaustively treated elsewhere. *See* G. VIENOT, NATIONALISATIONS ÉTRANGÈRES ET INTÉRÊTS FRANCAIS 26-29 (1953). *See also* G. FOUILLOUX, LA NATIONALISATION ET LE DROIT INTERNATIONAL PUBLIC 90-104 (1962); S. FRIEDMAN, EXPROPRIATION IN INTERNATIONAL LAW 29-50 (1953); K. KATZAROV, *supra* note 2, at 53-64; S. SHARP, NATIONALIZATION OF KEY INDUSTRIES IN EASTERN EUROPE *passim* (1946); G. WHITE, NATIONALISATION OF FOREIGN PROPERTY 183-93 (1961); B. WORTLEY, EXPROPRIATION IN PUBLIC INTERNATIONAL LAW 66-70 (1959); LES NATIONALISATIONS EN FRANCE ET Á L'ÉTRANGER: LES NATIONALISATIONS Á L'ÉTRANGER *passim* (H. Puget ed. 1958); Doman, *Postwar Nationalization of Foreign Property in Europe*, 48 COLUM. L. REV. 1125 (1948); Herman, *War Damage and Nationalization in Eastern Europe*, 16 LAW & CONTEMP. PROB. 498 (1951).

9. Part of an extended inquiry into the lump sum settlement-national claims commission device sponsored by the recently founded Procedural Aspects of International Law Institute, the study is intended to result in a companion volume to R. LILLICH, INTERNATIONAL CLAIMS: POSTWAR BRITISH PRACTICE (1967). For a critique and synoptic account of the latter, see Weston, Book Review, 19 SYRACUSE L. REV. 196 (1967).

tice and in keeping with the orthodox theory that "whoever ill-treats a citizen indirectly injures the State,"[10] French nationals with claims against foreign governments for alleged international wrongs ordinarily have had to seek redress of their grievances by convincing the Quai d'Orsay to espouse their claims for them.[11] As Professor Berlia has succinctly remarked, "[si l'État] n'intervient pas, il n'y a pas liaison du contentieux sur le plan international et l'individu lésé restera sans recours contre les décisions de droit interne, jurisdictionelles ou autres, qui ont pu lui faire grief."[12] Of course, this presupposes at least that the French claims are contested by the foreign government. The French Government will not intervene—at least in principle—when, for example, the foreign country undertakes satisfactorily to indemnify the French nationals to whom it has caused damage (as when French interests, harmed by postwar British nationalization measures, accepted virtually without discussion the indemnity proposed by the British Government), or when, for another, the foreign government provides realistic opportunities for redress through its own internal processes of decision.[13] Assuming such conditions are satisfied, however, it is generally understood that the Ministère des Affaires Étrangères, without liability for potential mishandling of claims,[14] will intervene to settle the foreign claims raised.[15]

10. E. DE VATTEL, LE DROIT DES GENS, *liv.* 2, § 71 (1758).

11. *See* G. VIENOT, *supra* note 8, at 38.

12. *Contribution à l'Étude de la Nature de la Protection Diplomatique,* ANNUAIRE FRANCAIS DE DROIT INTERNATIONAL 63 (1957).

13. This is confirmed in correspondence dated December 5, 1967 from M. Henri Glaser, "Secrétaire Général" of the Association Pour la Sauvegarde et l'Expansion des Biens et Intérêts Français à l'Étranger (374, Rue Saint-Honoré, Paris 1e). As might be inferred from its name, one of the many functions of this private association has been to serve an intermediary role between French foreign investors and the French Foreign Ministry in connection with the promotion of these interests at home and abroad. Copies of the correspondence [hereinafter cited as "Glaser Correspondence-12/67"] are available on request.

14. See the case of *In re* Taurin and Merienne, [1955] D.S. Jur. 361, decided by the Conseil d'État on October 29, 1954, in which it was held that French courts must decline to entertain claims of French nationals that arise out of alleged negligence of the French Government in conducting negotiations with foreign governments. As recounted in 21 I.L.R. at 16, "[t]he Court said that the owners of a ship . . . taken by the British authorities in exercise of the right of angary during the Second World War . . . were not entitled to sue the French government for damages for alleged negligence in failing to obtain on their behalf sufficient compensation from the British Government."

15. It deserves mention, however, that while the French Foreign Ministry has been the usual advocate of such claims, it has not been the only one. Sometimes, also, the French Ministry of Finance has assumed this role. This is inferred in G. VIENOT, *supra* note 8, at 229 and confirmed explicitly in correspondence dated November 13, 1967 from M. André Ernest-Picard, "Directeur" of the Association Nationale des Porteurs Français de Valeurs Mobilières (22, Boulevard de Courcelles, Paris, 17e). The Association, a quasi-public utility created in 1898 by the Chambre Syndicale des Agents de Change de Paris at the request of the then French Minister of Finance, has as its main functions the enlightenment and assistance of French bondholders and stockholders, especially those with interests abroad. Copies of the correspondence [hereinafter cited as "Ernest-Picard Correspondence—11/67"] are available on request.

Historically, it has done so in ways that parallel closely the experience of the British Foreign Office and the United States Department of State (if not others also): *principally* through individual diplomatic espousal, mixed claims commission or other international arbitral adjudication, and "lump sum," "en bloc" or "global" settlement followed by national claims commission adjudication of each claim.[16] Each of these techniques has been employed by France since 1945. The 1958 accord, securing compensation from the United Arab Republic for French interests divested by Egypt's nationalization of the Compagnie Universale du Canal Maritime de Suez, for example, is perhaps the best-known recent product of the venerable practice of individual diplomatic espousal.[17] Similarly, as after World War I, mixed arbitral tribunals were constituted following World War II mainly to resolve war damage and related debt claims.[18] The last principal alternative, the lump sum settlement-national claims commission device, has been resorted to in direct response to the major and minor wealth deprivations[19] spawned by postwar Eastern

16. As to British practice, see R. LILLICH, *supra* note 9, at 1-3. As to United States practice, see DEP'T OF STATE MEMORANDUM, NATIONALISATION, INTERVENTION OR OTHER TAKING OF PROPERTY OF AMERICAN NATIONALS (March 1, 1961), in 56 AM. J. INT'L. L. 166 (1962) and quoted in Professor Lillich's book at 1 n.3. For further details on United States practice, see R. LILLICH, INTERNATIONAL CLAIMS: THEIR ADJUDICATION BY NATIONAL COMMISSIONS 5-15 (1962).

17. For the accord, see 14 REV. EGYPTIENNE DE DROIT INT'L. 338 (1958), 54 AM. J. INT'L L. 493 (1960).

18. *See, e.g.*, the Franco-Italian Mixed Commission established in accordance with the Treaty of Peace of February 10, 1947 pursuant to the Treaty Between France and Italy of November 19, 1947 (Decree No. 48-1934), [1948] J.O. 12436. This is not to say, however, that France used the mixed commission to resolve only war damage claims. *See, e.g.*, the Franco-Egyptian accord of August 22, 1958 (Decree No. 58-760 of August 22, 1958), [1958] J.O. 7919, which provided for a mixed commission to adjudicate post-Suez "sequestration" claims.

19. The term "wealth deprivation" and such derivatives as "deprivation measure" and "deprivation claim" are used principally to avoid the simultaneous and, hence, ambiguous reference to both facts and legal consequences which so often characterizes the more popular "expropriation," "confiscation," "condemnation," "taking," forfeiture," and the like. It is, therefore, conceived as a neutral expression which describes the public or publicly sanctioned imposition of a wealth loss (or blocking of a wealth gain), by whatever means, with whatever intensity and for whatever claimed purpose, which, in the absence of some further act on the part of the depriving party, would involve the denial of a *quid pro quo* to the party who sustains the deprivation (the component "wealth" being preferred to the more popular "property" because it refers to all the relevant values of goods, services and income without sharing the latter's common emphasis upon physical attributes nor the Civil Law's stress on "ownership"). Depending on a multitude of factual variables, a wealth deprivation may be found lawful *or* unlawful. As implied and as thus defined, however, the term is superior in ways other than its descriptive neutrality. By stressing more the results than the implementing procedures of the institutional practice, it underscores the ultimate gravamen to which all claims arising out of any interaction are addressed: value change. At the same time, but without straint of legal-technical language, it affords a broad mantle under which a variety of institutional procedures may take shelter, whether the archetypal "direct taking" or its many "indirect" functional equivalents. Finally, it more readily admits that there can be a loss by one party without there being a one-for-one gain by another.

Europe. The precise concern of this essay (and of the larger study anticipated), we may now turn to its examination.

Like the United Kingdom, the United States and other major powers, France has negotiated numerous lump sum settlements over the years.[20] However, only the United States appears to have utilized national claims commissions to any significant degree for post-settlement adjudication before 1945.[21] At any rate, there is no evidence now known to indicate that France ever used the combined lump sum settlement-national claims commission device before the Second World War. Why not? Partly, no doubt, because of "juri-political" perspectives and traditions special to France in the prewar era. But mainly, it seems, because there was little before 1945 to challenge severely the more traditional methods of foreign claims settlement and distribution. The number of claims requiring resolution at any one time seldom exceeded in amount or kind what individual diplomatic espousal (or private negotiation) and administrative repartition could accommodate. And when it did become excessive, in which case specially constituted mixed tribunals were usually found helpful, the context of resolution was typically one in which widely shared notions of *laissez-faire* justice and fair dealing were quite easily transmuted into broad patterns of acceptable international behavior. The need for bold alternatives simply did not present itself.

The years immediately following World War II, on the other hand, seem ineluctably to have compelled the lump sum settlement-national claims commission device (for others as well as for France). The magnitude and importance of the claims that arose and the new revolutionary context within which international diplomacy was required to function served to highlight both the inherent and the circumstantial weaknesses of traditional French strategies and, so, to render impractical, if not impossible, all other means of settlement and distribution. Gilles Vienot, author of what thus far appears to be the sole extended (but now incomplete) inquiry into postwar French foreign claims practice,[22] has

20. A useful working definition of "lump sum settlement" has been given by a former chairman of the United States Foreign Claims Settlement Commission. "[A] 'lump sum,' 'en bloc' or 'global' settlement involves an agreement, arrived at by diplomatic negotiation between governments, to settle outstanding international claims by the payment of a given sum without resorting to international adjudication. Such a settlement permits the state receiving the lump sum to distribute the fund thus acquired among claimants who may be entitled thereto pursuant to domestic procedure." Re, *Domestic Adjudication and Lump-Sum Settlement as an Enforcement Technique*, 1964 PROCEED. AM. SOC'Y INT'L L. 39, 40. *Compare* M. LITMANS, THE INTERNATIONAL LUMP-SUM SETTLEMENTS OF THE UNITED STATES 1-2 (1962).

21. *See* R. LILLICH, *supra* note 9, at 3.

22. *Supra* note 8. M. Vienot is presently connected with the Association Pour la Sauvegarde et l'Expansion des Biens et Intérêts Français à l'Étranger. *See* note 13 *supra*.

detailed the point at some length.[23] Against the backdrop of multiple claims and revolutionary politics, he traces the factors which, derived from this setting, necessitated innovation. *Compelling the lump sum agreement* ("l'indemnisation globale et forfaitaire"), he notes, were the following principal needs: (a) from the French standpoint, a need for real and collective bargaining power (thus militating against private mediation by "un groupement de défense" or diplomatic negotiation of "un accord sur les principes de l'indemnisation" or such other devices as would likely dilute or otherwise limit satisfactory recovery); and (b) from the Eastern European point of view, a need for safeguarding socialist conceptions of sovereign authority and control over the economic process (thus preventing resort to mixed arbitral devices where relatively independent decision might create compromising or otherwise undesirable precedent). *And necessitating the national claims commission* ("commission de répartition"), he further notes, were the following two key factors: first, the aforementioned Eastern European refusal to consider the establishment of mixed claims tribunals[24] and the consequent settlement provision that "la répartition de l'indemnité globale et forfaitaire entre les intéressés relève de la seule compétence du Gouvernement français"; and, second, a clear (but, Vienot argues, not altogether justified) "répugnance" on the part of concerned French interests for the quasi-discretionary and political character of "la répartition administrative" contrasted with their complementary preference for more rigorously institutionalized impartiality and professionalism.[25] In sum, relatively unprecedented circumstances called for relatively unprecedented solutions.

As might be expected, however, the lump sum settlement-national claims commission solution that was ultimately to prevail, at least insofar as claims against Eastern Europe were concerned, was hardly so apparent as these observations would have us believe. Historical reconstructions have a way of making things seem more rationally conceived than they actually are, of causing us to forget that decisions are the product of human, and so fallible, perceptions. A case in point, strikingly so when we note the *concurrent* negotiation and *prior* conclusion of the 1948 lump

23. *Id.* 73-87, 223-229.

24. *See also* Sarraute & Tager, *Les effets en France des nationalisations étrangères*, 79 J. DROIT INT'L. 1138, 1171 (1952). This refusal was not limited to French claims negotiations alone, however. *See* R. LILLICH, *supra* note 9, at 3. *But cf.* text accompanying notes 115 and 116 *infra*.

25. This point is emphasized by M. Glaser who writes that the French Government "wished to create a system that would be secure from the encroachment of executive power. This consideration conformed to the principle of the separation of powers [and] tended to assure the claimants that they were to be equitably judged." Glaser Correspondence—12/67 (author's transl.), *supra* note 13.

sum agreement between France and Poland,[26] is the Franco-Czech convention of August 6, 1948, relating to the compensation of French interests damaged by the Czech nationalization decrees of October 24, 1945.[27]

One of two French postwar claims agreements with Eastern Europe that was not a lump sum accord,[28] it records not only how little is to be gained when mutuality of expectation is absent between negotiating parties, but also the uncertain plight in which French officials found themselves when trying to assess the meaning of post-1945 Eastern Europe. Premised on the seemingly naive assumption that the nationalization decrees in question were only provisional and that Czechoslovakia would soon return to the fold of "economic and political liberalism,"[29] it amounted to little more than a statement of "indemnisation en principe," with Czechoslovakia agreeing to pay directly, but in its discretion, "une indemnité adéquate et éffective"[30] to French claimants who, by direct *and* separate appeal to appropriate Czech authorities[31] under a "most-favored-nation" regime,[32] could prove the legitimacy of their claims. Considering the large discretion thus left to the Czech Government,[33] not surprisingly this venture proved far from conclusive. Perhaps in fairness to the French we should note that similar and presumably exemplary (but also ultimately unsuccessful) experiments with Czechoslovakia were undertaken by the linguistically related Swiss and Belgian governments.[34] But the fact remains: Czechoslovakia persis-

26. Accord and Additional Protocols Between France and Poland of March 19, 1948 (Decree No. 51-1288 of Nov. 7, 1951), [1951] J.O. 11190 [hereinafter usually referred to as the "Polish Accord of 1948" or the "1948 Polish Accord"].

27. Accord Between France and Czechoslovakia of August 6, 1948, reprinted in G. VIENOT, *supra* note 8, at 147-48 [hereinafter usually referred to as the "Czech Accord of 1948" or the "1948 Czech Accord"]. Neither this agreement nor its companion Special Accord, Additional Protocol and two "lettres-annexe" of the same date, also reproduced by G. VIENOT at 149-54, were ever officially published in the Journal Officiel de la République Française. The reason, Vienot notes at 131-32, is that the French Government, displeased with the arrangement reached, never submitted the Accord for approval to the French Parliament. *Cf.* note 77 *infra*.

28. The other, with Yugoslavia in 1948, sought to establish a mixed commission to adjudicate private French claims. *See* text accompanying notes 115 and 116 *infra*.

29. G. VIENOT, *supra* note 8, at 123-25.

30. Czech Accord of 1948, art. 1, para. 1.

31. *Id.* art. 2.

32. *Id.* art. 6. The provision continues: "[t]hey [French nationals] will not be, in any case, less well treated than Czech nationals." (author's transl.)

33. As Vienot has written, "[d]ans le silence de la convention, chaque intéressé se voit contraint d'entreprendre seul des pourparlers avec les autorités tchécoslovaques, c'est dire qu'il en sera réduit à accepter, ou refuser, des propositions qu'il ne pourra discuter avec éfficacité puisque, la plupart du temps, il ne disposera d'aucune des contreparties qui permittent, au contraire, lors d'une négotiation intergouvernementale, de s'opposer à des prétensions adverses jugées excessives." *Supra* note 8, at 130.

34. *See* G. WHITE, *supra* note 8, at 199-201. However, according to Dr. White, one such agreement, the Agreement Between the Netherlands and Czechoslovakia of

tently challenged both the legitimacy of the French claims involved and the amount of compensation sought.[35] The need for an alternate solution was thus made vividly—and painfully—clear.

The predominant solution, as indicated, was the lump sum settlement-national claims commission device. To its principal details we may now turn.

II. The Settlement Process

Consider, first, the first half of the device: the lump sum agreement. Since 1948, exclusive of war reparation agreements with the Axis Powers and agreements pursuant to which France indemnified others for *French* deprivation measures, France has negotiated a known thirteen of these accords, all but two with the countries of Eastern Europe.[36] All, by explicit provision, anticipate (or, more accurately, invite) adjudication of each claim by a French claims commission. Considering their separate relevance to the repartition process, later to be described, it is best to proceed one by one.

A. *The Polish Settlement*

1. *The Accord of March* 19, 1948

The first such agreement was the Polish Accord of March 19, 1948,[37] providing for "a complete and outright indemnification of French interests affected by the Polish law of 3 January 1946."[38] Signed in Paris after months of hard work, with French negotiators (public *and* private) assuming "une position réaliste,"[39] the Accord and

November 4, 1949, appears to have been successful. She writes that since it "was not superseded by a lump-sum compensation agreement . . . it may perhaps be assumed that the individual procedure proved workable in this case." *Id.* 199.

35. G. Vienot, *supra* note 8, at 130.

36. One lump sum agreement not with Eastern Europe is the recent Convention Between France and Cuba of March 16, 1967 (Decree No. 67-853 of Sept. 20, 1967), [1967] J.O. 9761, relative to the indemnification of French interests damaged by Cuban socialist reforms since January 1, 1959. The other, though not wholly true to the general form and substance of the typical French lump sum agreement, is the earlier Convention Between France and the United Arab Rpublic of July 28, 1966 (Decree No. 67-874 of October 4, 1967), [1967] J.O. 9939, concerning the compensation of French interests affected by 1956 and post-1958 Egyptian nationalization and other measures. This agreement brought to a close the resolution of outstanding French deprivation and other claims against the U.A.R. begun with the Accord Between France and the United Arab Republic of August 22, 1958, *supra* note 18. This latter accord, however, was not a lump sum agreement as defined above (*see* note 20 *supra*). Nor, it would seem, is the Accord Between France and Morocco of July 24, 1964 concerning the indemnification of French interests prejudiced by Moroccan agrarian reform laws. By this agreement, not yet officially published, Morocco appears simply to have accepted the principle of compensation. For a brief exposé of this accord see 68 Rev. Générale Du Droit Int'l Pub. 941, 943 (1964).

37. *Supra* note 26.

38. *Id.* preamble (author's transl.)

39. G. Vienot, *supra* note 8, at 92.

its three protocols of the same date predated by nearly five months the abortive Czech Accord of 1948.[40]

Considering the breadth and magnitude of the known and projected claims involved,[41] the Accord strikes one as suprisingly concise and unambiguous. There is little doubt, for example, that it was intended to represent a full and final settlement of virtually all French interests directly prejudiced by the named Polish nationalization law.[42] Nor is there much question as to who was deemed eligible to benefit from the settlement. The Agreement deliberately eschewed referring simply and broadly to "French interests" (although it failed to detail the date or dates upon which French nationality might be determined). Individual French nationals ("personnes physiques"), French companies ("sociétés"), companies under French control, and natural or juridical French persons having a minority share, *however small,* in all other companies (*i.e.,* those neither owned nor controlled by French nationals)—all were expressly included,[43] even to the point of specifying many of the intended beneficiaries (including concessionaires) by name and industrial category[44] (though French creditors of these beneficiaries were to receive compensation "according to the terms of the respective laws in force").[45] Nor, further, was the meaning of the term "nationalization," often the subject of much confusion, left to question. Both the title of the Accord and the preamble expressly tied the settlement to the Polish nationalization law of January 3, 1946.[46] In short, if major ambiguity existed it was, seemingly, in the following respects only: (1) in the meaning, for purposes of correct distribution, of the categories of eligible claimants listed, and (2) in the precise terms by which French creditors could be compensated, if at all.[47]

Most important, neither the question nor the terms of payment were left in much doubt (as was the case, it may be recalled, with the Czech Accord of nearly five months later). This is in itself significant, obviously. In retrospect, however, what is most noteworthy about this most critical consideration is less the clarity actually achieved than the choice or

40. *See* note 27 *supra.*

41. For details see G. VIENOT, *supra* note 8, at 65-66. *See also* the other authorities cited at note 8 *supra.*

42. Polish Accord of 1948, preamble and arts. 2 and 3. The sole limitation was that the interests affected be within the then existing Polish frontiers. *See* art. 2.

43. *Id.* art. 4.

44. *Id.* art. 4 and "Annexe."

45. *Id.* art. 3 (author's transl.).

46. The title reads: "Accord sur l'indemnisation par la Pologne des intérêts français touchés par la loi polonaise du 3 janvier 1946 sur les nationalisations."

47. This is unclear because existing French and Polish law foresaw the payment of creditors generally, but not their indemnification specifically. G. VIENOT, *supra* note 8, at 94.

economics of payment clearly agreed upon. In lieu of money compensation, the usual medium of settlement, the High Contracting Parties chose to fix indemnification (subject to France's simultaneously extending financial credits equal to fifty per cent of the value thereof) in terms of 3.8 million tons of high-grade coal ("charbon flambant"), f.o.b. Polish ports, with the first two million tons to be delivered according to a tentative schedule (and pursuant to specifications detailed in the companion protocols) covering the fifteen-year period 1951-1965, and the remaining 1.8 million tons according to schedules subsequently to be established.[48] To speed individual repartition (derivable from French sales of the coal, presumably in France), Poland agreed to issue bonds made out for the amounts of coal designated for delivery, these to be given to whatever "organisme" France specified and to be restored to Poland when the equivalent deliveries shall have been made.[49] To the respective negotiators, this "value-tying" means of payment not only obviated having to debate—perhaps irreconcilably—troublesome questions of international legal principle, but it allowed for the rapid re-opening of friendly commercial relations. True, only about sixty million dollars of an estimated 250 million dollars of losses were covered by the Agreement.[50] Surely French claimants would have liked more. True, also, France was obliged to bear the risk of a fall in the price of coal over the delivery years.[51] Tying compensation to a hard currency would no doubt have been preferred. But Poland, ravaged by war, could scarcely grant more and France, anxious to stabilize her shaky economy and to avert the kinds of wholesale losses she sustained from the Soviet deprivations of three decades earlier, could ill afford to chance any less.

2. *The "Protocol d'Application" of September 7,* 1951

As noted, the 1948 Polish Accord was intended as a full and final settlement of virtually all French interests directly injured by the Polish nationalization law of January 3, 1946. Accordingly, its complementary Protocol of September 7, 1951,[52] giving expanded expression to the term "nationalization" as used in the 1948 Accord, must have come as something of a surprise to those who thought this to be true. No longer was the 1948 Accord restricted to compensating French interests affected

48. Polish Accord of 1948, art. 6.

49. *Id.* art. 7. These bonds were to be issued within three months of the Accord's effective date.

50. G. VIENOT, *supra* note 8, at 98.

51. *See* Bindschedler, *La Protection de la Propriété Privée en Droit International Public,* 90 HAGUE ACADÉMIE DE DROIT INTERNATIONAL RECUEIL DES COURS 173, 263 (II-1956).

52. "Protocole d'Application" Between France and Poland of September 7, 1951, [1957] J.O. 7780 [hereinafter referred to as the "1951 Polish Protocol"].

by the 1946 law. Henceforth, it was intended to cover also those French interests which, as of the effective date of the 1948 Accord, had sustained deprivations as a result of (a) "agrarian and forestry reform," (b) "the municipalisation of Warsaw terrains" and (c) "all other measures restrictive of the right of property."[53] Noteworthily, the Protocol seems unequivocally to have extended protection, if its complementary predecessor did not, even to those interests prejudiced by what has come to be called "creeping expropriation."[54] Curious, however, is that this dilution of the 1948 indemnity (already small), in lieu of another lump sum payment, was deemed necessary. In light of the only known (and sharply critical) commentary on the subject,[55] one is led to conclude that the kinds of considerations that likely influenced the 1948 Accord continued to prevail in this negotiation.

3. *The Accord of September 7*, 1951

It will be recalled that the 1948 Polish Accord left rather ambiguous whether and how French creditors of the Accord's intended beneficiaries could receive compensation.[56] Vienot suggests that the French negotiators

53. *Id.* (author's transl.)

54. This additional coverage, it may be noted, was extended in all of the Eastern European settlements that followed. The point is mentioned here to avoid its reiteration hereinafter. *But see* note 78 *infra*. As to the kinds of "creeping expropriation" that are possible and for an explanation of the meaning of the term, see Weston, *International Law and the Deprivation of Foreign Wealth: A Framework for Future Inquiry*, to be published in 1969 by Princeton University Press in the second volume of a series entitled THE FUTURE OF THE INTERNATIONAL LEGAL ORDER (C. Black and R. Falk, eds.).

55. The commentary is one given by the "Président et Rapporteur" of the Commission des Affaires Économiques, des Douanes et des Conventions Commerciales, M. Rochereau, at the time of the Protocol's presentation for ratification to the Conseil de la République, more than nine months after its signing:

> At the time [of the negotiation of the 1948 Polish Accord] our negotiators let themselves be carried away to the extent of considerable renunciations [of claims]. They justified them then by the difficult situation in Poland . . . . The 1948 Accord affects a large number of small shareholders in French enterprises doing business in Poland and industrial groups still active there. These shareholders and industrialists who, as a result of the delay in enforcing the Accord, have not yet received even the smallest portion of these reduced indemnities, now see curtailed once again the meager indemnities they had every right to hope would be definite. This curtailment is moreover subject to the highest criticism juridically, since it would alter legislative provisions adopted in 1948 by the two governments, and which constituted solemn engagements on behalf of those concerned. These latter can therefore legitimately request that the French Government take into consideration, in the payment of the nationalization indemnities, the new hardship that is imposed upon them. This can be accompilshed either by refusing to ratify the protocol, which is practically impossible and is not recommended by the Commission [des Affaires Économiques], or by an equitable fixing of the price at which France takes Polish coal and for which the Treasury currently declares a reduction to a level as low as it is unjustified. [1952] J.O. 1361 (Débats Parlementaries, Conseil de la République) (author's transl.).

56. *See* note 47 *supra*, and accompanying text.

must have determined that these creditors should themselves bear some of the loss that their debtors (*i.e.*, the intended beneficiaries) were required to suffer.[57] The instant settlement, the Polish Accord of September 7, 1951, and its accompanying protocol,[58] fifth in a series of settlements since 1948 (exclusive of the 1951 Polish Protocol),[59] appears to confirm this view. But while providing nothing for these 1948 creditors, it nonetheless permitted a significant variety of French creditors to profit from French perseverence and Polish largesse (or possibly *vice versa*).

Designed to intensify "les relations économiques réciproques"[60] between the two countries, and thereby to further the spirit of 1948, the Accord provided for a settlement of 4.2 billion francs as final compensation for French creditor claims against (a) the Polish Government and (b) Polish State enterprises and private juridical persons which (i) matured before 1939, (ii) resulted from accords concluded during World War II, *or* (iii) were founded on named titles issued before September 1, 1939.[61]

No doubt influenced by their contemporaneous negotiating experiences, the respective negotiators were quite explicit as to how this sum should be allocated for distribution purposes. Thus, subject to the conditions above noted, the following allocation was stipulated:

(1) 1,008 million francs (or twenty-four per cent of the total indemnity) in full satisfaction of all claims of the Trésor Public against the Polish State arising out of financial engagements contracted before or during World War II;[62]

(2) 2,604 million francs (or sixty-two per cent of the total indemnity) in full satisfaction of all claims of French holders of five named securities and of all securities issued or guaranteed by the Polish Treasury, State enterprises or private Polish businesses (the claimants to have been French nationals as of September

57. G. VIENOT, *supra* note 8, at 94.

58. Accord and "Protocole d'Application" Between France and Poland of September 7, 1951 (Decree No. 57-892 of July 26, 1957), [1957] J.O. 7779 [hereinafter usually referred to as the "Polish Accord of 1951" or the "1951 Polish Accord"]

59. In addition to the 1948 Polish Accord, the French had also by this time concluded one settlement each with Czechoslovakia, Hungary and Yugoslavia. These are discussed below.

60. Polish Accord of 1951, preamble.

61. *Id.* art. 1, (emphasis added). A mixed Franco-Polish financial committee evaluated these creditor claims in 1948. Because this evaluation was keyed to different currencies, however, it is difficult to state precisely the adequacy of the indemnity agreed upon. Nevertheless, it seems clear that the lump sum negotiated represented less than twenty-five percent of the total value of these claims as of 1948. For details see O. MOREAU-NÉRET, VALEUR' ÉTRANGÈRES, MOUVEMENTS DE CAPITAUX ENTRE LA FRANCE ET L'ÉTRANGER DEPUIS 1940, 180-82 (1956).

62. Polish Accord of 1951, art. 1(A).

7, 1951);[63] and

(3) 588 million francs (or fourteen per cent of the total indemnity) in full satisfaction of all French creditor claims against the Polish State, Polish State enterprises and "institutions" of Polish law arising out of contracts for equipment and work or out of loan contracts concluded before September 1, 1939.[64]

The terms of payment were equally explicit. Because of their "value-tying" character, however, they were also, as in the 1948 Polish Accord, both the most noteworthy and potentially most uncertain feature of the Accord. Consistent with the preamble—to guarantee future Franco-Polish trade—payments by Poland were to be levied on a biannual basis against the value of French imports under commercial agreements in force between the two countries at the times of account.[65] The biannual payments were to be proportionately allocated, as received, twenty-four per cent to the Trésor Public, sixty-two per cent to French creditors listed under "(2)" above, and fourteen per cent to French creditors listed under "(3)" above.[66]

Finally, securities representing Polish indebtedness were to be returned to Poland upon indemnification.[67] The Accord was of course to have a liberating effect upon that government, there being no right of appeal to the Polish Republic in respect to the distributed sums.[68]

B. *The Czech Settlement*

The Czech Accord of 1948, it may be recalled, stipulated that French interests affected by 1945 Czech nationalization decrees should present their claims directly to the Prague Government. It may also be recalled that these claimants encountered not a little difficulty in pressing their claims. When Czechoslavokia neither impeded claimant access nor denied the legitimacy of the claims presented (apparently a rare occurrence), still she allowed only for a complex (if not onerous) system of indemnification—part in Czech crowns to be used only in Czechoslovakia and part in bonds whose amortized portion could be transferred abroad only by a reduction in the Czech share in the balance of payments between the two countries.[69] Predictably, concerned French interests sought

63. *Id.* art. 1(B).
64. *Id.* art. 1(C).
65. *Id.* art. 2. This, of course, was to result in payment over an indefinite period of time.
66. *Id.*
67. *Id.* art. 4.
68. *Id.* art. 5.
69. *See* 2 AFFAIRES ÉTRANGÈRES 12-14 (Oct. 1950). This journal is a publication of the Association Pour la Sauvegarde et l'Expansion des Biens et Intérêts Français à l'Étranger. *See* note 13 *supra.*

more and more the energetic intervention of the Quai d'Orsay. The result, bolstered by relative success in the Franco-Polish negotiations of 1948 and hastened both by a French refusal to renew remunerative commercial agreements with Czechoslovakia except upon a satisfactory claims settlement and by a propitiously felicitous change of power in Prague,[70] was the Franco-Czech Accord of 1950 (together with two supplementary protocols and two "lettres-annexes" of the same date).[71] Another agreement to be noted later, in a sense less important than this accord, was signed between the two governments in January, 1964.[72]

The principal agreement, proclaimed "une solution définitive" on the indemnification of French nationals deprived *in* Czechoslovakia,[73] represented a marked improvement in French negotiating prowess and a formal annulment of its 1948 predecessor.[74] "[À] titre d'indemnité globale forfaitaire,"[75] it called for a net payment by Czechoslovakia (supplementing 550 million francs already turned over to France under the 1948 Accord) of 365 billion francs (payable in twenty biannual installments[76]), or a gross payment of 4.2 billion francs.[77] The sum was to cover: (a) the French interests earlier treated under the 1948 Accord; (b) all other French interests affected "as of the effective date of the accord" by "une mesure . . . de nationalisation, d'expropriation *ou toute autre mesure restrictive*" bearing upon reforms directed at the Czech economic structure; and (c) French interests then actually involved in "procédures en restitution" in Czechoslovakia.[78] As under the Accord of

70. For details see G. VIENOT, NATIONALISATIONS ÉTRANGÈRES ET INTÉRETS FRANCAIS 131-33 (1953).

71. Accord and Additional Protocols Between France and Czechoslovakia of June 2, 1950 (Decree No. 51-1286 of November 7, 1951), [1951] J.O. 11188 [hereinafter usually referred to as the "Czech Accord of 1950" or the "1950 Czech Accord"].

72. *See* text accompanying notes 84-85 *infra*.

73. Czech Accord of 1950, preamble.

74. Additional Protocol No. II, art. 3, *supra* note 71.

75. Czech Accord of 1950, art. 1.

76. Additional Protocol No. II, art. 1, *supra* note 71.

77. *Id.* Although the 1948 Czech Accord was never ratified by France, it was ratified by Czechoslovakia. Pursuant thereto Czechoslovakia did make some tentative transfers in 1948 and 1949 in consideration of claims that Prague considered legitimate. *See* note 27 *supra*. For subsequent adjustment of the payment terms agreed upon, see the Rider ("Avenant") attached to the 1950 Czech Accord on June 6, 1956 (Decree No. 59-668 of May 5, 1959), [1959] J.O. 5379.

78. Czech Accord of 1950, art. 1 (emphasis added). As in the 1948 Polish Accord, "creeping expropriation" claims again appear to have been recognized. There results, of course, a certain suspense from the negotiators' reluctance (perhaps deliberate refusal) to define precisely the meaning of "toute autre mesure restrictive." Considering the intended finality of the Accord, conceivably this uncertainty was deliberately sought by the Czechs and resisted by the French, serving as it did to eliminate altogether the possibility of pressing pre-1950 claims in the future and to dilute considerably an already less than complete recovery. *See* text accompanying note 79 *infra*. Considering also the nearly identical imprecision that was to emerge in the 1951

1948, the final distribution of this sum—which, according to Vienot, represented about half the (market?) value of the losses sustained[79] —was stated to be within the sole competence of the French Government.[80] Finally, to assure the indemnity, a commercial agreement, held out by France as a lure to settlement, was expressly provided, with France agreeing to import during each year of the Accord an amount of Czech commodities equal to 150 per cent of the annual indemnity payments.[81]

In its basic aspect, then, except for the medium of payment chosen, this Czech settlement was not unlike its Polish counterpart, since it also contained "value-tying" arrangements. In three important ways, however, they differed significantly.

First, the Czech settlement, unlike the Polish, all but ignored French creditor claims. Thus, whereas the 1951 Polish Accord indemnified creditors with claims against the Polish Government, its enterprises or its nationals (as of 1939 or 1951, depending on the nature of the debt), the 1950 Czech Accord restricted coverage to the debts of Czech companies alone, and then only to the extent that the intended beneficiaries held at least a fifty percent interest in the debtor firms.[82] Of course, accuracy compels underscoring that it was not until more than three years *after* the initial Polish agreement and more than one year *after* the Czech settlement that French creditor claims against Poland were even recognized. In properly understood sequence, the 1950 Czech Accord represented only the second of France's forays into the postwar Eastern European lump sum settlement process. However, when it is recalled, on the one hand, that a wide variety of creditor claims was expressly recognized in later settlements (particularly in the Polish, as noted, and in the Yugoslav and Rumanian) and that, on the other hand, France and Czechoslovakia, with one special exception, subsequently negotiated no further lump sum settlements, then it seems not unreasonable to infer that the omission

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Polish Protocol (*see* text accompanying notes 52-55 *supra*), probably this was a necessary, perhaps even appropriate, price to pay for the restoration of friendly relations.

79. *Supra* note 70, at 137.

80. Czech Accord of 1950, art. 7. Supplementary language, consistent with this statement and similar to language found in both the 1948 Polish Accord and the 1951 Polish Accord, proscribed all future recourse by the French Government and its nationals against the Czech Government, its institutions or its nationals in respect of the claims covered. *See* Exchange of Letters, Annex No. 1 of June 2, 1950 (Decree No. 63-735 of July 10, 1963), [1963] J.O. 6811-6812. However, this was not to preclude future claims. *See* art. 9 of the principal accord.

81. Czech Accord of 1950, art. 6. *See also* Additional Protocol No. I, art. 2, *supra* note 27. The commodities were to be fixed each year by agreement between the two governments. For the first five years, however, the imports were to follow a commodity list annexed to the Accord.

82. Additional Protocol No. I, art. 1(b), *supra* note 71. Arguably, this provision, by its sheer existence, requires strict construction of Article 2 of the Principal Accord which extends coverage to "all French interests." *See* text accompanying note 78 *supra*.

was here due primarily to the fact that French creditor claims against Czechoslavokia were less voluminous and so, presumably, less pressing than they were against other Eastern European powers.[83] The one special exception that must be seen to modify this somewhat is a Franco-Czech Protocol signed in 1964.[84] Under this agreement, by which the High Contracting Parties aimed to settle "toutes les questions financières encore en suspens entre les deux pays,"[85] Czechoslovakia agreed, *inter alia*, to "redeem" all outstanding French debt claims resulting from a 1930 long-term six percent "equipment loan" issued by the since nationalized Société des Anciens Établissements Skoda (now known as the "Usines V. I. Lénine") up to an amount, "brut et forfaitaire," equal to sixty-one percent of the nominal value of the debts outstanding.[86]

Second, the lump sum indemnity obtained under the 1950 Czech Accord appears on its face to have been more satisfying to the French than the indemnity obtained in the Polish equivalent (the 1951 Polish Accord aside). In the first place, as noted, the Czech settlement represented about half the market value of the claims covered, whereas the 1948 Polish recovery amounted to about twenty-four percent of the claims outstanding.[87] Further, the Czech Accord, unlike the Polish, expressly released the intended French beneficiaries from all manner of debts owed, including taxes due, prior to the Czech interventions[88] (a factor that was expressly taken into account in arriving at the lump sum finally agreed upon).[89] Not to be overlooked either is the fact that the Czech payments, being in French francs and so, unlike coal, not subject to wide commodity market fluctuations, were both more effective and more readily transferable than the Polish payments.

Finally, the Czech settlement achieved in some respects still greater precision than its Polish counterpart. For example, whereas both settlements made French nationality a pre-condition for compensatory eligibility, only in the Czech Accord was this requirement keyed to specific,

83. *Accord, Dette Exterieure Tchécoslovaque,* COMMUNICATIONS No. 459 OF THE ASSOCIATION NATIONALE DES PORTEURS FRANCAIS DE VALEURS MOBILIÈRES (October 15, 1960). *See also* text at notes 3-8 *supra.* At any rate, if the 1939 long-term French obligations of Poland (165.2 million dollars), Rumania (69.7 million dollars) and Yugoslavia (101.6 million dollars) in relation to equivalent Czech obligations (39.4 million dollars) are any indication, then the inference seems proper. *See* C. LEWIS, DEBTOR AND CREDITOR COUNTRIES: 1938, 1944, at 57, 69, 70 and 75 (1945).

84. Protocol Between France and Czechoslovakia of January 16, 1964 (Decree No. 64-149 of February 15, 1964, [1964] J.O. 1755.

85. *Id.* preamble.

86. *Id.* Title I.

87. *See* text accompanying notes 50 and 79 *supra.*

88. Czech Accord of 1950, art. 5.

89. *Id.* art 6. As Vienot has remarked, *supra* note 70, at 137, this was not an insubstantial element considering alone that Czech taxes on foreign property, rights and interests often amounted to as much as thirty percent of their value.

determinative dates, *i.e.*, from the date of the relevant measure ("à la date des measures tchécoslovaques") to the effective date of settlement ("et à la date de l'entrée en vigueur du présent accord").[90] Also successor interests, about which the Polish accords were silent, were expressly declared eligible to the extent that they had matured prior to the "intervention des mesures" specified in the principal text.[91] Further still, and here finally, several provisions not found in the Polish accords detailed at some length the inter-governmental cooperation deemed necessary to facilitate the processing of individual claims.[92]

On balance, then, the Czech settlement appears to have been more satisfactory from the French point of view than the Polish settlement. Probably this reflected a growing sophistication on the part of the French negotiators. This is a fair assumption, at any rate, when the achievements of the French are compared with those of other countries in their equivalent Czech dealings.

C. *The Hungarian Settlement*

French wealth deprivation claims against Hungary, like those against Poland, were settled by more than one agreement (a pattern that was to emerge yet again in the Yugoslav settlement). In the case of Hungary, two agreements were involved: the first in 1950, the second in 1965. In general, they combined to present a basic outline not very different from the settlements already described.

1. *The Accord of* 1950

The first accord was signed on June 12, 1950,[93] only ten days after the 1950 Czech Accord just examined. Considering this short lapse of time, it seems a small surprise that it did not follow more closely the language and format of the latter. The extraordinary ambiguity of some aspects of the agreement make it also to be regretted. However, it is less the linguistic and structural differences than the substantive similari-

90. Czech Accord of 1950, art. 2. It may be noted that this was tantamount to a restatement of the so-called customary continuous nationality rule. *See* OPPENHEIM, INTERNATIONAL LAW § 155b (8th ed. H. Lauterpacht, 1955). Arguably, therefore, this could be read into the 1948 Polish Accord.

91. Additional Protocol No. I, art. 1(a), *supra* note 71.

92. Czech Accord of 1950, arts. 4 and 8; Additional Protocol No. I, art. 4, *supra* note 71. This was probably a product of the special difficulties between the two countries after the 1948 Accord. Article 4 of the 1950 Accord provided that Czechoslovakia was to be notified of the rulings on individual claims and of the integral payment of indemnities as later drawn up. The reason for this provision is not self-evident. Perhaps it reflected a Czech interest in keeping final individual indemnification within reason.

93. Accord Between France and Hungary of June 12, 1950 (Decree No. 52-1079 of September 23, 1952), [1952] J.O. 9260 [hereinafter usually referred to as to the "Hungarian Accord of 1950" or "the 1950 Hungarian Accord"].

ties and dissimilarities between these agreements, and the 1948 Polish Accord as well, that are of most interest.

Like its Polish and Czech predecessors, thus, it clearly intended a definitive and unreviewable settlement of the various deprivatory claims covered.[94] Likewise, it called for a lump sum payment, "globale et forfaitaire": *i.e.*, the equivalent in French francs of 914,285 dollars (320 million francs) payable in five annual installments, and 2 million Hungarian *forints* (59,600,000 francs) payable on the signing of the Accord.[95] This, in turn, as in the 1950 Czech Accord, was calculated with an eye to the release of the intended beneficiaries from all charges and obligations whatsoever.[96] As before, also, the final distribution of the global indemnity was to rest within the sole competence of the French Government.[97] And finally, once again, the settlement was seen by the parties as a means to restoring mutually profitable commercial relations.[98]

What, then, were the differences? As can be seen, they were both major and minor in character.

Among the more or less minor variations, for example, was the absence of any reference to a named deprivatory measure, thereby leaving more indefinite (or flexible) who in fact might properly claim losses from, and so compensation for, such measures. Paralleling a 1950 Czech provision, the Agreement aimed simply to indemnify French interests affected, generally, by "les mesures de nationalisation, d'expropriation ou de restriction d'un caractère similaire."[99] Further, whereas the various Polish and Czech agreements had specified relatively clearly the dates that would determine nationality-eligibility (except the 1948 Polish Accord which was completely silent on the subject), the matter was here treated most ambiguously: beneficiaries (natural or juridical) were required to have been French nationals "at the moment of origin of their rights to indemnification."[100] Unclear, obviously, is whether this was intended to mean the date of loss, the date of claim, the date of judgment or any other of a number of possible times which have proved diacritical in the past. Also, and here finally, the lump sum payment promised by Hungary was not in any apparent way, as before, tied to, or dependent upon, the amount of export earnings that Hungary would receive under the anticipated renewal of commercial relations

94. *Id.* preamble and art. 4.
95. *Id.* arts. 1 and 2. The equivalent figures are taken from O. MOREAU-NÉRET, *supra* note 61, at 173.
96. Hungarian Accord of 1950, art. 6.
97. *Id.* art. 7.
98. *Id.* art. 9. For text see note 101 *infra.*
99. *Id.* preamble. For the significance of this clause, see notes 54 and 78 *supra.*
100. *Id.* art. 3 (author's transl.).

between the two countries. The most that can be said is that a resumption of trade was seen simply as a precondition for the settlement of still outstanding accounts[101] (though it is not now known what outstanding accounts in fact remained).

There remains, finally, the more or less major differences between these settlements. Three stand out.

First, and perhaps most important, the Hungarian settlement was not restricted, like the predecessor Polish and Czech settlements, to the resolution of "nationalization," "expropriation" or similar claims. The indemnity promised by Hungary was also to cover war damage claims for which Hungary had become responsible under the 1947 Treaty of Peace.[102] The absence of like provisions in the Polish and Czech accords is of course explained by the fact that those countries, unlike Hungary, were not allied with the Axis Powers during World War II.

Second, whereas the Polish and Czech settlements manifested, more or less, a willingness—if at first somewhat reluctant—to compensate various creditor claims, the 1950 Hungarian Accord went quite the opposite route, at least insofar as post-1939 debt claims against the Hungarian State were concerned. Not simply silent on the subject, it explicitly (though not altogether clearly) precluded "revindicating" to those damaged by the war and by postwar Hungarian deprivation measures such debts as may have been owed them as a result of "loans and advances of whatever kind of movable or immovable property, previously effected by Hungary in the name of the above mentioned demands," making them "the property of their [Hungarian] holders upon the signing of the present accord"; and further, it "annulled" all "interests and charges to which these loans or advances may have been subject."[103] The provision is ambiguous at best. It does not tell whether the State debts and related charges repudiated were obligations that matured before, during or after World War II, or indeed, at all three of these times. On the other hand, it seems possible that debt claims against other than the Hungarian Government were not deemed ineligible, a conclusion which finds some support elsewhere in the Accord (albeit again ambiguously).[104] At any rate, whatever the precise interpretation

101. *Id.* art. 9, which reads: "If the commercial accord between the two countries should not be renewed, the two governments shall draw up by mutual consent a list of commodities to be exported by Hungary to France, in order to settle still outstanding accounts." (author's transl.).

102. *Id.* preamble.

103. *Id.* art. 8 (author's transl.).

104. *Id.* art. 3: "French demands . . . are to be considered demands motivated by the measures or based upon the clauses set forth ['visés'] in the preamble, whether emanating from the French State, or directly or indirectly from natural or juridical French persons. . . , without distinction between demands presented to the French

of the provision, there is nothing now known to explain its inclusion.[105] One can but infer that the French must have determined here, as before, that it was best to distribute the burden of loss (or the amount of recovery) among the deprived parties as widely as possible.[106]

Finally, the indemnity promised by Hungary was less in absolute terms than the indemnities at least initially promised by Poland and Czechoslovakia. Partly explained by a comparative absence of French investment in Hungary in the first place, it was also due, as one commentator has noted, to French entrepreneurs having alienated practically all their enterprises in Hungary before nationalization.[107]

2. The Accord of 1965

Though stylistically superior, there is little to distinguish this agreement[108] from its 1950 predecessor. Its three major differences can therefore be quickly reviewed.

First, the purpose of the Accord was to settle, once and for all, "the financial claims outstanding between the two countries relative to French property, rights and interests affected by nationalisation, expropriation or restrictive measures of a similar character taken by the Hungarian Government and not covered by the Franco-Hungarian Accord of 12 June 1950. . . ."[109] To this end, Hungary agreed to pay France 1,150,000 francs in three installments ending fourteen months after the signing of the Accord.[110]

Second, the Agreement offered both a different and less ambiguous statement of the dates that would be determinative of nationality-

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Government, the Hungarian Government or to an auxiliary authority of these governments, or demands not yet presented." (author's transl.).

105. The Exchange of Letters, Annex No. 3 (reprinted in G. VIENOT, *supra* note 70, at 211) does advise, however, that the provision was to be interpreted with reference mainly to movables and immovables at the actual disposal of the French legation in Hungary.

106. It should be mentioned, however, that this may in turn have been deemed justified because other and arguably more pressing French creditor claims against Hungary, *e.g.*, debt claims based on certain loan issues of the Crédit Foncier of Hungary, had already been settled through earlier "financial agreements" with Hungary. In this connection, see *Obligations* 3-1/2% 1899 *et* 4% 1910-1912 *de la Société de Crédit Foncier de Hongrie, Réglement Forfaitaire,* COMMUNICATION No. 425 OF THE ASSOCIATION NATIONALE DES PORTEURS FRANCAIS DE VALEURS MOBILIÈRES, (August 10, 1950). *See also* O. MOREAU-NÉRET, *supra* note 61, at 176.

107. O. MOREAU-NÉRET, *supra* note 61, at 173. The author also notes that the part of the indemnity that was to be paid in Hungarian *forints* was destined, principally, for French persons living in Hungary. *Id.*

108. Accord Between France and Hungary of May 14, 1965 (Decree No. 65-589 of July 15, 1965), [1965] J.O. 6308 [hereinafter usually referred to as the "Hungarian Accord of 1965" or the "1965 Hungarian Accord"]. This accord was anticipated in Article 5 of the 1950 Hungarian Accord.

109. *Id.* preamble (author's transl.).

110. *Id.* art. 2.

eligibility. Thus, whereas its 1950 predecessor required intended beneficiaries to have been French nationals "at the moment of origin of their rights to indemnification," the 1965 Accord required French nationality "on the date that these measures were taken and on the date of signature of the present accord."[111] This, it will be recalled, is identicial to the like provision in the 1950 Czech Accord and again amounts to an incorporation of the customary continuous nationality rule.

Finally, unlike its 1950 forebearer, this agreement contained no explicit renunciation of French creditor claims arising out of Hungarian deprivation measures. Neither, however, did it explicitly recognize such claims. On the other hand, when it is observed that the Accord sought to settle "*all claims* not covered by the Franco-Hungarian Accord of 12 June 1950 and resulting from Hungarian nationalization and expropriation and similar measures of a restrictive character,"[112] the assumption that all manner of creditor claims may have been deemed eligible hardly seems far-fetched.

In sum, the 1965 Accord was essentially a supplement to its 1950 predecessor. Its principal aim was simply to bring to a close both the claims that had remained and those that had arisen in the interim.

D. *The Yugoslav Settlement*

Following the liberation of Yugoslavia in 1944, French property, rights and interests there encountered numerous difficulties. As Vienot recounts, "French property and interests found themselves the targets of the confiscation of property disguised as German or Italian, of prosecutions for collaboration with the enemy, [and] of fiscal arrangements resulting in the sequestration and liquidation of war earnings and illicit profits."[113] These measures, he charges, "constituted no more than a series of pretexts to permit the Yugoslav Government to seize private property and interests."[114] Of course, the historical accuracy of this sweeping charge can be debated. But what matters is that the French, apprised of the situation generally, protested a number of these measures and in 1945 secured an agreement from Yugoslavia (as did Belgium, Sweden, Switzerland and Czechoslovakia for like reasons) to establish a mixed commission for the purpose of settling the grievances that existed.[115] All this, however, came to naught,[116] and France, next

111. *Id.* art. 1.
112. *Id.* (emphasis added) (author's transl.).
113. *Supra* note 70, at 167 (author's transl.).
114. *Id.*
115. *Id.*
116. The experience of the analogous commissions constituted between Belgium, Sweden, Czechoslovakia and Switzerland on the one

faced with the Yugoslav nationalization law of December 5, 1946, began soon to seek alternative means of settlement.

The final solution, though, was not quick to come. The Yugoslavs were in no mood without further inducement to negotiate a settlement that would in any way compromise their socialist principles or burden any more their already fractured economy. Not until more than two years later, with Yugoslavia under increased pressure to trade with the West (due mainly to the rupture in her commercial relations with the Soviet Union and the other Cominform countries), was any progress possible. On May 21, 1949, after both sides had diligently clarified their positions, France and Yugoslavia concluded two protocols (and a commercial agreement). The first called for negotiations by no later than October 1, 1950 (a) to settle the question of French property, rights, and interests affected by Yugoslav nationalizations and "autres mesures restrictives," (b) to rule on private commercial and financial debts owing to French nationals, (c) to set conditions and time-limits for settlement of the Yugoslav public debt, and (d) to conclude a long-term "accord d'équipement." And the second provided for deposit in a special Yugoslav account in the Bank of France of a sum in French francs equal to 1.6 million dollars ultimately to be transferred to France for nationalization and similar claims against Yugoslavia as part of the global indemnity eventually to be fixed.[117]

In this setting, followed by continued but alternatingly friendly and stormy negotiations, the two governments at last agreed to the first of the three lump sum settlements that were finally to be concluded beween them.

1. *The Settlement of* 1951

This settlement, comprised of six separate agreements and a "procés-verbal",[118] reflected the concern for breadth and specificity that marked its negotiation. It represented the most comprehensive and detailed single settlement yet to be secured by France with Eastern Europe.

The principal accord—together with its companions, the "Protocole Additionnel" and the "Protocole Financier"—echoed the same basic

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hand, and Yugoslavia on the other, caused the French authorities to conclude that mixed commissions were without power by reason of the excessive limitation on their competence, the absence of a third-party arbiter and the recalcitrance ["sujetion"] of the Yugoslav delegation. Thus restricted, such an organism could not arrive at any positive result. *Id.* 167-68 (author's transl.).

117. *Id.* 169-71.

118. Accord and Additional Protocol Between France and Yugoslavia of April 14, 1951 (Decree No. 53-653 of July 24, 1953), [1953] J.O. 6723 (hereinafter usually referred to as the "Yugoslav Accord of 1951" or the "1951 Yugoslav Accord"). A Financial Protocol, a "Procés-Verbal", and three accords of the same date between the two countries are reprinted in G. VIENOT, *supra* note 70, at 202-07.

themes that had been variously struck with Poland, Czechoslovakia and Hungary: indemnification ("globale et forfaitaire") of French property, rights and interests *in* Yugoslavia "affected" by Yugoslav measures of "nationalisation, d'expropriation et autres mesures restrictives de caractère similaire,"[119] assured or conditioned, in part, by levies against proceeds derived from Yugoslav exports to France;[120] individual repartition within the sole competence of the French Government[121] without further recourse against Yugoslavia, its institutions or its nationals;[122] French nationality-eligibility expressly keyed to the customary continuous nationality rule;[123] inter-governmental cooperation in the processing of individual claims;[124] and so forth. The actual indemnity agreed upon (an estimated twenty-five percent of the actual losses suffered[125] or, specifically, the equivalent in French francs of fifteen million dollars,[126] mostly payable over a ten-year-period[127]) was of course somewhat complicated by the stipulations of the earlier Protocol of May 21, 1949.[128]

For all the similarity, however, one key item serves to distinguish this initial settlement from those heretofore noted: the specificity with which eligible French claimants—particularly creditor claimants—were identified.[129] Thus, in addition to declaring generally eligible *all* French persons ("physiques ou morales") affected by the postwar deprivatory measures enumerated[130] (including, less broadly, *all* French shareholders of Yugoslav enterprises),[131] the principal accord detailed the French creditor claimants who, likewise damaged by these postwar measures, could recover:[132]

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119. Yugoslav Accord of 1951, preamble and art. 1.
120. Financial Protocol of April 14, 1951, arts. 2 and 3, *supra* note 118.
121. Yugoslav Accord of 1951, art. 6.
122. *Id.* arts. 2, 3 and 6.
123. *Id.* art. 2 (*i.e.*, "à la date ou ces mesures ont été prises" and "à la date de la signature du présent accord").
124. *Id.* arts. 4 and 8.
125. *See* G. VIENOT, NATIONALISATIONS ÉTRANGÈRES ET INTÉRETS FRANCAIS 127 (1953).
126. Yugoslav Accord of 1951, art. 1.
127. *Id.*
128. *See* note 117 *supra*. The Additional Protocol of April 14, 1951, and the Financial Protocol of the same date (*supra* note 118) took the 1949 Protocol into account in specifying the terms of payment. Under the latter, two 500,000 dollar payments of the initial disbursement of 1.6 million dollars were to be deposited to a Yugoslav account in the Bank of France; the remaining 600,000 dollars were to be converted to *pesetas* by France to levy on Yugoslavia's share of the liquidation of German property in Spain.
129. Although the 1951 Polish Accord was reasonably specific, it was not as detailed.
130. Yugoslav Accord of 1951, art. 1.
131. *Id.* art. 2. This provision was given still greater precision by an attached schedule of specific claims tentatively recognized as eligible.
132. *Id.* art. 5.

(1) all creditors with private debt claims accrued *in Yugoslavia* after 1945 (these creditors being released from all debts owed by them *in* Yugoslavia);
(2) majority shareholders of Yugoslav companies holding post-1945 private debt claims against such companies *outside France* (these creditors, too, being released from all debts owed by them); and
(3) holders of post-1945 private debt claims against Yugoslav companies *outside France,* the majority of whose shares were owned by French nationals (again, these creditors being released from all debts owed by them).

To these were added, by the "Protocole Financier" and three complementary accords of the same date:[133]

(1) the Trésor Public, for interest due from Yugoslavia between 1940 and 1945 on French Treasury loans issued in 1923 and 1921;
(2) the Société de Construction des Batignolles, a large creditor of the Yugoslav Government; and
(3) private French lenders to whom Yugoslavia had at some time become obligated, for interest due between 1940 and 1954.

In short, seemingly the only postwar French claimants not entitled to benefit from the settlement (or not forfeited) were creditors who held post-1945 private debt claims outside Yugoslavia against Yugoslav individuals or Yugoslav companies having only minority French participation.[134] The most comprehensive and detailed treatment of eligible claimants to date, this fact alone distinguishes this settlement from the others.

Also distinguishing, finally, was the apparent (though implicit) abandonment, at least in part, of the so-called principle of territoriality that prevailed in the other settlements. As may be seen, the 1951 Yugoslav Accord provided for the forfeiture (upon indemnification) of most French debt claims not only within Yugoslavia, but outside as well. In effect, France said that it would generally honor Yugoslav claims to the extraterritorial *application* of Yugoslav deprivation measures. Admittedly, this extraterritorial recognition concerned only creditor claims, and not all such claims at that. But one is led to ask, as has Vienot,[135] what other claims (apart from those few not covered by the settlement) could be pressed outside Yugoslavia if, as seems to have been conceded,

133. *Supra* note 125, at 202-07.
134. Of course, prewar creditors were not covered either, except to the extent that there were interest payments due them from 1940.
135. *Supra* note 125, at 176.

private Yugoslav operations functioning abroad were extinguished through an extraterritorial application of Yugoslav laws. The only apparent answer, implied in the 1951 Accord, would be debt or contract claims within France itself.[136] Which is to say, in effect, that extraterritorial recognition stopped at the French border. Otherwise, or so it would appear, the French forfeiture was near complete.

2. *The Revisions of* 1955 *and* 1958

The indemnity required by the 1951 settlement, it will be recalled, was to be drawn partly from proceeds derived from Yugoslav exports to France. Risky though this may seem in theory, it must not have seemed injudicious at the time. For as of 1951, according to one report, France ranked about sixth in importance in Yugoslavia's external trade.[137] The future, of course, was not guaranteed, and if this arrangement was to be meaningful it was imperative that Yugoslav exports to France be substantial and productive. Regrettably, however, this was not to be the case. Soon after, Yugoslavia was to suffer a severe economic crisis, due mainly to a series of bad harvests, and this was inevitably to have considerable impact on her ability to export. By April 14, 1954, when payments derived from export proceeds were due to end, monies advanced to France amounted to only about twenty-five percent of that required by the 1951 schedule.[138] Predictably, the French were concerned, and in late May 1954, over a month after the expiration of the "Protocole Financier" of 1951 (but pursuant thereto),[139] the two countries resumed negotiations with a view to concluding new financial arrangements to replace those stipulated in 1951. This led, first, to the Protocol of July 27, 1955 (covering the period April 15, 1954 to April 14, 1957)[140] and, second, after further protracted negotiations strongly influenced by intermittent disagreement over the treatment to be accorded French holders of

136. Yugoslav Accord of 1951, art. 5(4). Expressly prohibited was the right of a French shareholder of a Yugoslav company, on the one hand, and the right of a Yugoslav company, on the other, to proceed against debtors of the other outside France.

137. *La commerce franco-yougoslave à la lumière des statistiques de commerce extericur yougoslave*, 7 AFFAIRES ÉTRANGÈRES C.1, C.5 (Jan. 1952), a publication, it will be recalled, of the Association Pour la Sauvegarde et l'Expansion des Biens et Intèrêts Français à l'Étranger (*see* note 13 *supra*). The others ahead of France in this regard were Great Britain and the United States (the major commercial powers) and Germany, Italy and Austria (the traditional external markets of Yugoslavia).

138. *See* response by the Minister of Foreign Affairs to written question of M. André Armengaud of March 8, 1955, [1955] J.O. 630 (Débats Parlementaires, Conseil de la République).

139. *Supra* note 125, art. 6.

140. The author has been able to locate only a typewritten copy of this unpublished Protocol. A copy thereof is available on request.

Yugoslav public loans,[141] to the Accord of 1958.[142] Taking into account that the payments stopped on April 14, 1954 and April 14, 1957, respectively, and without otherwise altering the 1951 settlement, these agreements simply modified the terms by which the balance due on the 1951 lump sum indemnity would be paid. Evincing little new in the way of substantive (or jurisprudential) prescription, they need not be further detailed here. It needs only to be remarked that together they served to resolve definitively and with like precision the settlement that was envisioned in 1951.

3. *The Accord of* 1963

As comprehensive in coverage (though comparatively inadequate in payment) as the 1951 settlement was, it did not provide for the indemnification of all pre-1951 creditor claimants. Nor did the complementary revisionary agreements of 1955 and 1958 attempt to settle post-1951 claims arising out of further economic reforms in Yugoslavia.[143] A result of continued mutual concern for enduring economic relations, the Accord of July 1963, like its later Hungarian counterpart of 1965 (for which it must have served as precedent), was designed to fill this gap.[144]

And so it did, except insofar as it apparently continued the earlier exclusion (or non-forfeiture) of post-1945 private debt claims outside Yugoslavia against Yugoslav individuals and Yugoslav companies with only minority French participation.[145] Thus, providing for an indemnity "globale forfaitaire" of the equivalent in French francs of 200,000 dollars, payable in two annual installments,[146] the Accord stipulated as settled, definitively and without recourse,[147] two rather comprehensive sets of claims:

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141. *See* Jaudon, *Rapport Moral,* 32 AFFAIRES ÉTRANGÈRES B.1, B.11 (2nd Trim. 1958). *See also,* Jaudon, *Rapport Moral,* 28 AFFAIRES ÉTRANGÈRES B.10-B.11 (2nd Trim. 1957). Monsieur Jaudon is the President of the Association Pour la Sauvegarde et l'Expansion des Biens et Intérêts Français à l'Étranger.

142. Accord Between France and Yugoslavia of August 2, 1958 (Decree No. 59-654 of May 5, 1959), [1959] J.O. 5244.

143. For an account of these further reforms, in French, see *La situation économique de la Yougoslavie et les reformes envisagées,* 59 AFFAIRES ÉTRANGÈRES A.1 (2nd. Trim. 1965).

144. Accord Between France and Yugoslavia of July 12, 1963 (Decree No. 64-239 of March 13, 1964), [1964] J.O. 2525 [hereinafter usually referred to as the "Yugoslav Accord of 1963" or the "1963 Yugoslav Accord"].

145. As to the possibility that this may be an inaccurate interpretation, see the "Avis" of the French Foreign Ministry of July 22, 1964, [1964] J.O. 6505, which refers to eligible claimants as "natural or juridical French persons with debt claims not covered in the Accord of 14 April 1951 as well as those whose property has been affected by a Yugoslav measure of dispossession after that date." (author's transl.).

146. Yugoslav Accord of 1963, art. 1.

147. *Id.* art. 3.

(1) "all claims not covered by the Accord of 14 April 1951 and resulting from Yugoslav nationalization and expropriation measures and other measures of similarly restrictive character that have affected, up to the date of the present accord, [French] property, rights and interests in Yugoslavia or French participation in enterprises in Yugoslavia, owned by natural or juridical French persons;[148] and

(2) "all debt claims anterior to 15 May 1945 held by natural or juridical French persons against natural or juridical Yugoslav persons or the Yugoslav State."[149]

For the deprivation claims, French nationality was required both at the time the measures were taken and at the signing of the accord, thus again incorporating the customary continuous nationality rule. And for the debt claims, nationality was required both on May 15, 1945 and at the signing of the Accord.[150]

Beyond this, the Accord contained little new of interest. It even incorporated and made applicable, *mutatis mutandis*, Articles 3 through 9 of the 1951 Yugoslav Accord.[151] And this meant of course, among other things, that individual repartition would rest here, as before, within the sole competence of the French Government.

E. *The Bulgarian Settlement*

Bulgaria, like Hungary, joined the Axis alliance during World War II. Also, like all her sister Eastern European republics, she entered upon important and widespread economic reforms in the immediate postwar era. Both these factors contributed to a spate of French (and other) claims against the Sofia Government. Still, it was not until 1955 that a settlement of these and related grievances was finally realized. Regrettably, all the reasons for this comparatively long delay are not yet known. Probably it was partly due to French preoccupation with the other claims settlements already noted. Also, it may have resulted from the relatively small and, so, perhaps psychologically inconsequential French investment in Bulgaria during the relevant war and postwar periods. Further still, and implied by the very terms of the settlement, it may have been due to disagreement between the two governments which bore less upon the issue of war damage and postwar claims than upon other issues altogether. Yet whatever the reasons, the fact remains that, once having come to terms, France and Bulgaria were able, unlike between France and

148. *Id.* art 2 (author's transl.). *Compare* "Avis" of July 22, 1964, *supra* note 145.
149. *Id.*
150. *Id.* art. 2.
151. *Id.* art. 4.

other Eastern European countries before, to resolve their differences in one apparently definitive settlement: the Accord and companion "Protocole d'Application" of July 1955.[152]

Conditional on Bulgaria's paying (at an unspecified time but according to a detailed transfer arrangement)[153] an indemnity "globale et forfaitaire" of 1.5 billion francs (slightly more than 4.25 billion dollars),[154] supplemented as needed by a seven percent levy on French purchases of Bulgarian exports,[155] France agreed to liquidate, definitively and without recourse,[156] the following three classes of claims:[157]

(1) "indemnities due by reason of Bulgarian measures of nationalization, expropriation, confiscation, requisition or other measures of total or partial dispossession which affected the property, rights and interests of natural or juridical French persons";[158]
(2) "obligations due natural or juridical French persons which devolve upon Bulgaria pursuant to the Treaty of Peace of February 19, 1947 (war damages, restitutions, etc.)"; [and]
(3) "obligations due natural or juridical French persons on [eight listed] exterior public Bulgarian loans chargeable to former Bulgarian governments."

Familiarly, "French persons" was to mean persons possessing French nationality "à la date ou ces mesures ont été prises" and "à la date de signature du présent accord," at least as regards deprivation claims.[159] Likewise as before, all deprivation claimants were to be released completely from all manner of debts for which they may have been responsible in Bulgaria.[160] And again, too, intergovernmental cooperation for the processing of individual claims was expressly provided for.[161]

Significantly absent (and related to the last-mentioned familiar element), however, was any clear-cut statement that responsibility for

152. Accord and *Protocole d'Application* Between France and Bulgaria of July 28, 1955 (Decree No. 59-361 of February 27, 1959), [1959] J.O. 2742 [hereinafter usually referred to as the "Bulgarian Accord of 1955" or the "1955 Bulgarian Accord"].
153. Bulgarian Accord of 1955, art. 2.
154. *Id.* art. 1.
155. *Id.* art. 2(b); *Protocole d'Application*, art. 2, *supra* note 152. This levy was to assist in compensating private and public debt claims, not deprivation claims.
156. Bulgarian Accord of 1955, arts. 4 and 5.
157. *Id.* art. 1(a), (b) and (c) (author's transl.).
158. While the "creeping expropriation" language here differs from the formulations in the earlier settlements, its effect seems nonetheless the same. *See* notes 54 and 78 *supra*.
159. Bulgarian Accord of 1955, art. 1(a). No equivalent requirement was specified for the other two classes of claims covered.
160. *Id.* art. 5.
161. *Id.* arts. 2 and 3. *See also Protocole d'Application, supra* note 152.

individual distribution would rest wholly with the French Government.[162] One of two features that distinguished this settlement from the others above noted, it suggests, perhaps, a special Bulgarian concern to maximize control over what must have seemed a difficult political price to pay for the restoration and maintenance of friendly commercial relations. Accompanying the principal accord, as noted, was a "Protocole d'Application." This instrument, going beyond the usual explication of financial details for the payment of deprivation claims, placed the most elaborate conditions yet seen on French repartition of monies transferred for payment of public loan obligations.[163] In short, the precaution given this item —the degree of control conceded Bulgaria in the matter of distribution— suggests that public debt claims may have been the central point of discord between the two governments and, so, perhaps one of the more important reasons, if not the main reason, for the delay in reaching settlement. Bulgaria was concerned, obviously, to protect her economic base against excessive creditor claims.

Which leads us, briefly and finally, to the second distinguishing feature of the Accord. The earlier settlements, it may be remembered, granted compensation to creditor claimants for postwar deprivation damage, if they did so at all, only by way of particularized enumeration. This was not so here. Instead, all creditors, as well as all proprietors and shareholders, affected by postwar Bulgarian deprivation measures were deemed covered by this settlement.[164] To the extent that comprehensiveness is a virtue, surely this merits applause. But recognizing that this meant equally the complete forfeiture of such claims by France in the future, it must also be seen as indicative of hard bargaining on the part of the Bulgarian Government. In any case, it is probably due mainly to this provision that no further negotiations have been deemed necessary.

F. *The Rumanian Settlement*

Perhaps the most remarkable thing about the Rumanian settlement, last of the Eastern European settlements to be broached by France,

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162. It was, however, implicit. *See*, in particular, Article 2(a) of the principal accord.

163. *Protocole d'Application*, art. 4, *supra* note 152. In essence, France was given three years and five years respectively, to submit provisional and definitive statements of persons holding title to such loans then in circulation in France; if the justifying evidence required to be submitted to Bulgaria by Article 3 of the principal accord showed a value in these outstanding loans of less than 15,980 billion francs (the estimated total value of these and related debts having been in the neighborhood of 17 billion francs), then France would return to Bulgaria the balance paid and not so justified.

164. Bulgarian Accord of 1955, art. 5: "The indemnification provided for in the present accord is to compensate the rights of natural and juridical French persons affected, in their capacity as proprietor, shareholder, creditor, etc., by nationalizations and other similar intervening measures in Bulgaria." (author's transl.).

is the speed with which it was ratified by the French Government. Comprised of a principal accord signed on February 8, 1959, with two complementary protocols and three "échanges de lettres" of the same date,[165] it was officially published on March 19, 1959. Looking back, this was the shortest delay yet, demonstrating, perhaps, the needlessness of other delays (as long as three and four years). Still, it was not until 1959 that a settlement between the two countries was in fact achieved. Why this was so, considering the war damage, deprivation and other claims outstanding, is again regrettably obscure.[166] But whatever the reasons (likely as not they were the same as those inferred in the case of Bulgaria), once again the settlement ultimately to be won was accomplished in one full sweep.

This was not the sole resemblance to the Bulgarian settlement, however. On the contrary, the Rumanian settlement was in most essential respects a near carbon copy of the Bulgarian. No two settlements, both in language and intent, were more alike. Thus, consenting to a lump sum indemnity (most of which was payable upon the entry into force of the settlement)[167] of the equivalent in French francs of twenty-one million dollars[168] (partly to facilitate "le développement de leurs relations économiques"),[169] the two countries accepted as settled, definitively and without recourse as usual,[170] the following familiar classes of claims:[171]

(1) "the property, rights and interests of the French State and of natural and juridical French persons affected by Rumanian measures of nationalization, expropriation, requisition and other similarly restrictive measures";
(2) "obligations due the French State and natural and juridical French persons which devolve upon the Rumanian State pursuant to Articles 23 and 24 of the Treaty of Peace of February 10, 1947 between Rumania and the Allied and Associated

165. Accord Between France and Rumaina of February 8, 1959 (Decree No. 59-439 of March 11, 1959), [1959] J.O. 3287 [hereinafter usually referred to as the "Rumanian Accord of 1959" or the "1959 Rumanian Accord"]. The two "protocoles d'applications" and the exchange of letters are published immediately following in the Journal Officiel.

166. It is now known only that the negotiations were long and laborious. *See* Jaudon, *Rapport Moral*, 36 AFFAIRS ÉTRANGÈRES B.1, B.11 (3rd Trim. 1959).

167. Rumanian Accord of 1959, art. 7.

168. *Id.* art. 1. The actual amount to be transferred to France, however, totalled only 18,146,402 dollars. This figure was arrived at by levying against the 21 million dollar indemnity the balance of payments due Rumania from France under a financial protocol of December 24, 1954. *See* art. 5.

169. *Id.* preamble.

170. *Id.* arts. 2, 4 and 11.

171. *Id.* art. 1 (author's transl.).

Powers"; [and]

(3) "obligations under loans described in Article 1st of the Protocole d'Application No. 1 which forms an integral part of the present accord."[172]

A fourth set of claims, obviously unique to this settlement, included amounts due on "petroleum bonds issued by the Rumanian State pursuant to the [financial] accords of 30 September 1941 and 4 March 1943."[173]

The likeness did not stop here, however. As before, though by an exchange of letters rather than by the Accord proper, eligible "French persons" were defined as persons possessing French nationality "à la date ou les mesures restrictives . . . ont été prises" and "à la date de signature de l'accord."[174] Likewise, all types of proprietor, shareholder and creditor claimants (as well as the French State) were declared to be both eligible for compensation and free from debt claims for which they may have been liable in Rumania.[175] Standard, too, were the provisions for intergovernmental cooperation in the processing of individual claims.[176].

It is in this last connection, indeed, that the two settlements bore greatest resemblance. For probably the same reasons that likely predominated in the Bulgarian settlement, much space was again given to the practical problems of turning over and distributing the indemnity agreed upon. Such discretion as was allowed the French Government was sharply reduced—more so, even, than in the case of Bulgaria. Thus, in addition to detailing as before, but more precisely, (a) from whence the lump sum payment would derive[177] and (b) how and to what extent public obligations would be redeemed,[178] the Accord also detailed (as in the case of Yugoslavia) how the global indemnity should be divided and distributed

172. These included (a) Rumanian State obligations issued in France or redeemable outside Rumania and circulating in France, and (b) obligations circulating in France for which Rumania had become responsible.

173. Rumanian Accord of 1959, art. 1(d) (author's transl.).

174. Exchange of Letters No. 1, *supra* note 165. This criterion was applicable only to deprivation claims. Bondholders were required to have French nationality as of the date of the settlement. *See Protocole d'Application* No. 1, art. 1, *supra* note 165.

175. Rumanian Accord of 1959, art. 3.

176. *Id.* art. 13. *See also* in this connection the provisions of the two protocols relating to the means and allocation of payments. *Supra* note 165.

177. *I.e.,* from a French balance of payments due Rumania under a financial protocol of 1954, from Rumanian gold, currency and francs on deposit in France to service Rumania's external debt, from French-blocked Rumanian deposits in France, from a direct payment of the equivalent in French francs of one million dollars, from an eight percent levy on Rumanian exports to France, and from additional existing Rumanian currency and franc deposits in France that by later agreement would be judged available. *Id.* arts. 7 and 9.

178. *See generally Protocole d'Application* No. 1, *supra* note 165.

to the various French claimants.[179] For its participation in former Rumanian companies and its title to Rumanian petroleum bonds, the Trésor Public would be entitled to three percent of the indemnity. Thirty-seven percent was to be allocated to French persons who held war damage and postwar deprivation claims. And the balance, sixty percent, was to go to the French holders of the Rumanian obligations enumerated in the "Protocole d'Application" No. 1. Whatever discretion remained as to final repartition would be within the sole competence of the French Government.[180]

G. *Conclusions*

What, then, can be drawn from this brief description of French lump sum settlements with Eastern Europe? Obviously, no more than a truncated review will allow. Definitive judgments must necessarily await further and more detailed research.[181] Nevertheless, several tentative conclusions can be ventured.

To begin with, all the settlements were compelled to be responsive to the economic vicissitudes of their day. This is seen in two principal ways. First, subject to the extent to which it has been so far possible to document, none approached what might be called "full compensation," *i.e.*, full market value as of the time of loss or some other relevant time. While surely due to the inaccessibility of relevant information and to a desire to avoid the hard and potentially disruptive routine of line-by-line evaluation, it must also be said that the postwar financial crises which confronted Eastern Europe and the comprehensive economic reforms that it pursued quite simply curbed its ability to pay. Second, probably none of the settlements, as inadequate as they may have seemed to the French, could have been achieved without the French accepting "value-tying" arrangements. The restoration of productive commercial relations with France (and the rest of Western Europe and America) was essential to Eastern European economic growth. Without these arrangements, the *quantum* of indemnity obtained, if not the very settlements themselves, would likely have proved impossible, at least for a long time.

Next, and notwithstanding such economic conditioning factors as these or the "juri-political" perspectives that compelled resort to the lump sum settlement device, all the settlements seem to have affirmed at least

179. Rumanian Accord of 1959, art. 11.

180. *Id.*

181. A study of the lump sum settlement process is a current major project of the Procedural Aspects of International Law Institute. The final product, to be published in 1970, will be a treatise entitled INTERNATIONAL CLAIMS: THEIR SETTLEMENT BY LUMP SUM AGREEMENTS. Working on this project, besides the author, is Professor Richard B. Lillich, Naval War College (and Director of the Procedural Aspects of International Law Institute).

the *principle* if not the precise *quantum* of compensation for *both* the direct and indirect deprivation of foreign wealth in international law. The socialist and sometimes Third World counter-argument that these settlements, far from evincing a rule of compensation, represent no more than a voluntary concession to economic expediency is of course not to be ignored. But if we understand, as we should, that international law, like all law, is not simply a matter of "rules" from which parochial dissent can be had at will, but, rather, a special and oftentimes hazy mix of formal authority *and* effective control, and if we understand further that in our essentially horizontal world (as on occasion in our domestic orders) the matter of control is usually reduced to socio-economic and political pressures ("sanctions") of one sort or another, then the counter-argument must fail. A realistic appreciation of any system of law, or authoritative decision process, simply cannot be had without, first, a correct identification of the precise system itself and, second, a proper understanding of the real world variables from which it gains its lifeblood. Were the French experience unique, which it is not,[182] then, obviously, other conclusions *might* have to be drawn. But the emphasis, be it noted, is conditional and not absolute because, even then, the conditions of progress upon which major community-wide goals or policies depend must still be clarified and taken into account.

Finally, as time went on, the settlements negotiated between France and Eastern Europe tended to gain not only more verbal clarity, but also both increased claims coverage and greater detail as to the treatment to be accorded the claims covered. These considerations surely are interesting in their own right. But considering that the final distribution of the indemnities transferred was to rest to a greater or lesser degree with the French Government, they have more than historical significance. This is so in at least two related respects. First, they were probably to shape fundamentally the distribution programs that were ultimately to be carried out. The Polish Accord of 1948, for example, was restricted to the indemnification of French persons injured only by Polish nationalization and like measures. The 1959 Rumanian Accord, on the other hand, went far beyond this to indemnify French persons for all kinds of outstanding financial claims (including nationalization claims). Obviously, these differences were likely to structure the horizons, and so to influence the very character, of each claims distribution program. Second, they were inevitably and variously to qualify the substantive, or juris-

182. *See* Dawson & Weston, *"Prompt, Adequate and Effective": A Universal Standard of Compensation?*, 30 FORDHAM L. REV. 727 (1962). *See also* Lillich, *International Claims: Their Settlement by Lump Sum Agreements*, in INTERNATIONAL ARBITRATION—LIBER AMICORUM FOR MARTIN DOMKE at 143, 147-48 (P.Sanders ed. 1967).

prudential, decisions that needed finally to be rendered under each program. The point is obvious. Not free to distribute the indemnities transferred at will, the French Government was required, if only in fairness to the many claimants involved, to apply as internal law the provisions of each accord to which it was a party.[183] As they varied in coverage and precision, so would the substantive decisions rendered pursuant to them differ from program to program.

III. The Repartition Process

We come, then, to the last half of the lump sum settlement-national claims commission device as employed by France since World War II. This is the principal concern of the larger study which this essay anticipates. Leaving to that larger effort the presentation and analysis of the jurisprudence developed under each repartition (or distribution) program, we may here consider, as precisely as presently available data will allow, the forms and procedures that these programs assumed.

As indicated, a number of factors compelled France to choose the national claims commission device for distributing Eastern European settlement funds during the postwar period.[184] It would only be redundant to repeat them here. Two other preliminaries remain, however.

First, and perhaps most important to the comparativists, France did not follow the equivalent patterns that prevailed in the United Kingdom and the United States.[185] Unlike those countries, each of which created but one commission to dispose of all their lump sum settlements (in the United States, the International Claims Commission of 1950 and its successor, the existing Foreign Claims Settlement Commission of 1954; in Great Britain, the Foreign Compensation Commission of 1950), France elected to establish several such commissions ("commissions de répartitions")—one for each Eastern European settlement. Why this path was chosen is not altogether clear. However, two reasons, neither wholly persuasive, have been given to this writer:[186] first, the substantive differences that distinguished the separate settlements and, second, the multiplicity of claims under each settlement and the consequent concern to simplify (presumably, to render more efficacious) the processing of the individual claims involved. There is no doubt that these

183. *Consider* The French Constitution of 1958, art. 55 (French Embassy English transl.): "Treaties or agreements duly ratified or approved shall, upon their publication, have an authority superior to that of laws, subject, for each agreement or treaty, to its application by the other party."

184. *See* text accompanying notes 22-25 *supra.*

185. As to these equivalent patterns, see R. Lillich, International Claims: Postwar British Practice (1967); R. Lillich, International Claims Their Adjudication by National Commissions (1962).

186. *See* Glaser Correspondence—12/67, note 13.

considerations were present. But a more satisfying answer, since both the United States and the United Kingdom had opted for the single commission before even the first French commission was constituted, is that the French experience simply grew like Topsy, responding *ad hoc* to events as they arose.[187] Perhaps over the long haul this multiple approach has had little bearing on such matters as legislative-administrative efficiency, decisional consistency and other related issues.[188] The institutional environment within which the commissions have operated has of itself provided some degree of harmonization. Nevertheless, the multiple approach has not escaped the criticism of some French observers.[189]

Second, while separate commissions were established to handle each *settlement*, the French did not create separate commissions for each settlement *accord*. Only the Bulgarian and Rumanian settlements, it will be recalled, were won through a single (though admittedly protracted) negotiation. Limited to these settlements, the observation obviously fails. But it may also be remembered that all the other settlements—the Polish, the Czech, the Hungarian and the Yugoslav—were definitively achieved only after two or more distinct negotiations. Accepting *arguendo* the rationale given for resort to multiple commissions, it seems logical that France would have constituted a separate commission for each of these many claims agreements as well. Wisely, however, if only for administrative efficiency, the French Parliament chose not to be this consistent. Demonstrating faith in the efficacy of the separate distribution programs already under way, it simply charged the Polish, Czech, Hungarian and Yugoslav commissions earlier constituted with the responsibility of applying the respective "international legislation" that was newly, and generally later, prescribed.[190] In short, only six commissions have been formed.[190a]

187. *See* G. VIENOT, NATIONALISATIONS ÉTRANGÈRES ET INTÉRETS FRANCAIS 229 (1953).

188. *See* Ernest-Picard Correspondence—11/67, *supra* note 15, which suggests that it has created few, if any, difficulties of this kind.

189. *See* LaPradelle, *Juridiction Administrative et Droit International*, 1962 ÉTUDES ET DOCUMENTS (Conseil d'État) 13, 39; O. MOREAU-NÉRET, VALEURS ÉTRANGÈRES, MOUVEMENTS DE CAPITAUX ENTRE LA FRANCE ET L'ÉTRANGER DEPUIS 1940, at 165 (1956); G. VIENOT, *supra* note 187, at 229-30.

190. *See, e.g.*, Decree of March 28, 1958, [1959] J.O. 3301 (assigning responsibility for the 1951 Polish Accord to the Polish Commission established on May 24, 1951); "Avis" of July 22, 1964, [1964] J.O. 6505 (assigning responsibility for the 1963 Yugoslav Accord to the Yugoslav Commission established on July 21, 1952); "Avis" of March 3, 1966, [1966] J.O. 1841 (assigning responsibility for the 1965 Hungarian Accord to the Hungarian Commission established on May 24, 1951).

190a. Since the drafting of this essay, the author has learned of two significant qualifications to this statement. The first is Decree No. 67-854 of September 20, 1967, [1967] J.O. 9762, by which the Polish Commission, its original work completed but it-

With these general observations in mind, consider now the legislation by which the six "commissions de repàrtitions"[191] were established and the rules of internal procedure which they were to follow.

A. *The Enabling Legislation*

The Polish, Czech and Hungarian commissions, created at virtually the same time, were identical in character; subject to obvious necessary differences, the legislation pursuant to which they were founded (*i.e.*, the constitutive *and* the applicative laws) were the same—nearly word for word.[192] Partly because of this, but mainly because this legislation served as the model for creating the three later commissions, it merits detailed treatment. Using as our guide the legislation enabling the establishment of the Czech Commission (it was unencumbered by the special coal transfer provisions which conditioned the equivalent Polish Commission legislation), we can later note the minor variations on the basic theme.

1. *The Basic Theme*

The law constituting the Czech Commission is representative, concise and straightforward. Accordingly, clarity and economy dictate quoting its key features in full,[193] making appropriate notes along the way.

* * *

> Art. 2.—In view of the execution [of the] Accord [of 1950] . . . and by application of its Article 7 [*i.e.*, the provision placing sole responsibility for individual repartition in the hands of the French Government], there is established *une commission spéciale* composed as follows:

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self still constituted, was charged with distributing funds being transferred under the Franco-Cuban Convention of March 16, 1967 (*see* note 36 *supra*). The second is Decree No. 68-103 of January 30, 1968, [1968] J.O. 1228, establishing a new *commission spéciale* to distribute sums presaged and promised by the agreements between France and the United Arab Republic of August 22, 1958 and July 28, 1966 (*see* notes 18 and 36 *supra*). As yet, however, neither of these commissions has adjudicated any claims, although the "Cuban Commission" has gone so far as to formulate its internal Rules of Procedure (copies of which are available at Le Secretariat de la Commission de Répartition Cubaine, 80, Rue de Lille, Paris 7e).

191. Herein called "the Polish Commission," "the Czech Commission," "the Hungarian Commission," "the Yugoslav Commission," "the Bulgarian Commission" and "the Rumanian Commission."

192. *See* Law No. 51-671 of May 24, 1951 (constituting the commission to distribute sums transferred under the 1950 Czech Accord), [1951] J.O. 5787, and Application of Law No. 51-671 (Aug. 4, 1952), [1952] J.O. 8428; Law No. 51-673 of May 24, 1951 (constituting the commission to distribute sums transferred under the 1948 Polish Accord), [1951] J.O. 5788, and Application of Law No. 51-673 (May 13, 1952), [1952] J.O. 4862; Law No. 51-674 of May 24, 1951 (constituting the commission to distribute sums transferred under the 1950 Hungarian Accord), [1951] J.O. 5789, and Application of Law No. 51-674 (Aug. 4, 1952), [1952] J.O. 8428.

193. Author's translation follows.

A *président de chambre* at the *cour de cassation,* President, and a *conseiller* at the *cour de cassation,* both designated by the First President of the *cour de cassation*;

A *conseiller d'Etat,* active or honorary, designated by the *garde des sceaux* [*i.e.,* the keeper of the seals];

A *conseiller maître* at the *cour des comptes,* active or honorary, designated by the Minister of Finance;

An official designated by the Minister of Foreign Affairs.[194]

Art. 3.—The claimants . . . shall, at risk of forfeiture and no later than three months after the promulgation of the present law, except in case of *force majeur,* present their claims to the *commission spéciale* established at Article 2 above.[195]

Equally admissible are:

a) Claims presented by associations constituted or capable of being constituted . . . to represent natural or juridical French persons having participation, even minority participation, in companies that are neither French nor under French control;[196]

b) Claims drawn up on behalf and in place of a company by the shareholders of French companies or of companies under French control, if they are presented within the time allowed above and if the company is not itself appealing.

Art. 4.—Assignments of assets by natural or juridical persons to the German State or to its nationals remain annulled by virtue of Ordinance No. 1224 of 9 June 1945. Amounts collected for these assignments shall be turned over to the Treasury.[197]

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194. Vienot comments upon the composition of the commissions as follows: "By the quality of their members and by the variety of the Agencies to which the members belong, the Commissions constitute *collèges* perfectly adapted to the tasks which are theirs. The multiple problems of the juridical, administrative, diplomatic and financial orders are easily solved by these highly competent personalities." *Supra* note 187, at 230 (author's transl.).

195. As it turned out, this time requirement proved impossibly short in all cases. Accordingly, the French Parliament subsequently granted eighteen month extensions.

196. It may be noted that, unlike the 1948 Polish Accord, neither the 1950 Czech Accord nor the 1950 Hungarian Accord expressly mentioned minority shareholders.

197. This provision and its related clauses throughout the law were designed to penalize those who, through property transfers, profited from the Germans during the German occupation or control of Czechoslovakia (and Poland and Hungary) during World War II. Since there was no mention of this item in the relevant accords, the provision is illustrative of the prerogative role of the French Government in the repartition process. For details concerning this anti-collaboration provision, see Sarraute & Tager, *Les effets en France des nationalisations étrangères,* 79 JOURNAL DU DROIT INTERNATIONAL 1138, 1173-77 (1952); G. VIENOT, *supra* note 187, at 241-43.

* * *

Art. 5.—The *commission spéciale* shall:

Draw up a definitive list of distributees;

Rule *souverainement* on the merits of the claims and on the value of the debts or the nationalized property that belonged to the distributees;[198]

Determine the distributees' share of the [lump sum] indemnity.

The *commission spéciale* shall, judging in equity, charge to the distributions allowed a deduction which takes into account the use value of the amounts collected by property owners who assigned their property to the [German] State or to German nationals; it must equally take into account the revalorization of investments made by the assignors with the amounts collected.[199]

* * *

Art. 6.—The administrative costs of the *commission spéciale* and its secretariat shall be charged to the sum total of the *indemnité globale foraitaire.*

Art. 7.—The commission shall terminate the examination of claims and render the decisions relative thereto within eighteen months of the promulgation of the present law.[200]

Art. 8.—Appropriate measures to assure the execution of the Accord . . . and of the present law will be taken by joint decision of the Minister of Foreign Affairs and the Minister of Finance and Economic Affairs.

* * *

The Czech "application" law was equally concise and to the point. Again, subject to appropriate passing notations, the key language bears

198. The thrust of this provision was to deny judicial review. See text accompanying notes 207-13 *infra*. In this connection, it should be noted that the word "souverainement" was not included in the Hungarian constitutive law. But as Sarraute and Tager have remarked (*supra* note 197, at 1177), "this is probably a mere oversight."

199. For the significance of this provision, see note 197 *supra*. It should also be mentioned that the direction to judge in equity relates only to the valuation of the claims of persons who, by constraint or otherwise, transferred property to the German authorities during World War II. None of the enabling legislation, either in its basic theme or its subsequent variations, otherwise stipulated any system of law (domestic or international) to which commission decisions should refer.

200. As the time requirement for presenting claims proved too short, so did the time allotted for rendering decisions. Here, too, the French Parliament subsequently granted eighteen month extensions.

quotation in full:[201]

* * *

Art. 1—The *commission spéciale* [previously constituted] shall undertake all measures relative to its functioning. It shall regulate its own procedure. It may select *rapporteurs* and seek expert advice.[202] Its secretariat shall be guaranteed by the *office des biens et intérêts privés* where it has its headquarters.[202a]

It shall report periodically on the state of its work to the Ministry of Foreign Affairs, *direction générale des affaires économiques et financiers,* and to the Minister of Finance, *direction des finances exterieures.*

Art. 2.—The director of the *office des biens et intérêts privés* or his representative shall function as *commissaire du gouvernement* to the commission.[203]

Art. 3—Responsibility for the payments made by the Czech Government pursuant to the Accord shall be assumed by the *agent comptable* [*i.e.*, accountant] of the foreign assets of the Treasury.

Art. 4.—The *commission spéciale* shall notify the account-

201. Author's translation follows.

202. *See* Société anonyme de l'industrie textile, [1964] Rec. Cons. d'Et. 360, wherein the Conseil d'État held that it was material error for the Polish Commission to base a valuation decision on erroneous expert advice.

202a. Since the preparation of this essay, the author has learned that, since 1953, the French Foreign Ministry's *Office des Biens et Intérêts Privés* has been known as the *Service des Biens et Intérêts Privés.* While noting this may seem pedantic, it nonetheless deserves mention because it represents not only a change in bureaucratic structure but, more important, an elevation in the administrative hierarchy.

203. Insofar as the Eastern European commissions are concerned, the functions of director and *commissaire* have recently come to be performed by two different individuals. In any case, the principal role of the *commissaire du gouvernement* is to act in an adversarial capacity before the commissions on behalf of the claimants involved. In this capacity he performs an important integrative, or harmonizing, function among the six commissions. *See* Glaser Correspondence—12/67, *supra* note 13. For further details, see text accompanying notes 239-41 *infra.* It should be mentioned also that the role of the *commissaire du gouvernement* has been several times considered by the Conseil d'État. *See, e.g., Commissaire du gouvernement prés de la Commission de répartition de l'indemnité des nationalisations,* [1960] REV. PRATIQUE DE DROIT ADMINISTRATIF, No. 16, wherein the Conseil stated that the *Commissaire* "ought to be regarded as having for his mission a watchdog function, in the interest of all the claimants . . . who could not be called upon in each particular instance [and who otherwise] would be wholly deprived of recourse in respect to the rules posed by the law. . . ." (author's transl.) As to the similar roles of the Legal Officer of the British Foreign Compensation Commission and the erstwhile Solicitor of the United States Foreign Claims Settlement Commission, see R. LILLICH, INTERNATIONAL CLAIMS: POSTWAR BRITISH PRACTICE 13-14 (1967); Lillich, *International Claims: A Comparative Study of American and British Postwar Practice,* 39 IND. L.J. 465, 473-74 (1964).

ant of the foreign assets of the Treasury of its repartition decisions.

The *commission spéciale*, according to the progress of its work, may decide to grant [repartition] installments before determining definitively the repartition due all distributees.

Art. 5.—. . . [T]he sums necessary to the functioning of the commission shall be charged against the sum total of the *indemnité globale forfaitaire* by the accountant of the foreign assets of the Treasury in accordance with the decisions of the commission and the conditions stipulated by its president.

Specifically included in the operating costs shall be the salaries of the members of the commission, the sum total of which shall be fixed by decision of the Minister of Foreign Affairs, the Minister of Finance and the minister in charge of the budget, and the fees of the *rapporteurs* and the experts, the sum total of which shall be fixed by the President of the Commission upon approval of the minister in charge of the budget.

* * *

Thus the basic theme. Before proceeding to its three later variations, however, thoroughness and accuracy compel our noting how it came to be formulated and in what manner it was itself significantly modified.

In the first place, it was, in the beginning, by no means self-evident exactly what form the French repartition program should take. That it should be neither strictly "judicial" nor strictly "administrative" in character, *i.e.*, that it should partake in some way of "la notion d'arbitrage,"[204] was generally accepted. But it cannot be overlooked that it was not until May 1951, nearly three full years after the first lump sum agreement (the Polish Accord of 1948) received French presidential ratification, that the first three commissions were founded. Add to this that two other lump sum agreements, the Czech and Hungarian Accords of 1950, were negotiated in the interim and surely it is apparent that, from the start, the French had no firm views about how distribution should proceed. Indeed, it is not even necessary to look to this sequence of events[205] to prove the point. Expressly corroborative is the French Foreign Ministry Decree of August 31, 1950 which, with reference to the 1948 Polish Accord (already more than eighteen months old), established a three-man "commission administrative d'études" to consider the arrangements necessary for indemnifying eligible claim-

204. G. VIENOT, *supra* note 187, at 229.
205. *See* note 192 *supra*.

ants.[206]

The final result of these efforts was, of course, the basic theme mentioned above. It remained, on the whole, remarkably constant, even when accounting for the variations that were to be instituted with the last three commissions. One major revision, however, one which took place before the establishment of the last two commissions (the Bulgarian and the Rumanian) though after and related to the creation of the fourth (the Yugoslav Commission), concerned the question of judicial review.

The basic theme, it will be recalled, expressly stipulated that the *commissions spéciales* should rule "souverainement" on the merits and the value of the individual claims presented.[207] Practically speaking, this was understood to mean that commission decisions would not be subject to judicial review. As Sarraute and Tager (*avocats* at the Cour d'Appel of Paris) wrote of this in 1952, "[t]he organism [*i.e.*, the commission] . . . created appears to be one for arbitration, without any administrative powers, and one whose decisions do not seem to be subject to review by the Conseil d'État."[208] In any event, what was considered likely in 1952 was made absolutely clear in 1955 when the Conseil d'État itself, in a case arising out of a Yugoslav Commission decision, had occasion to affirm this principle of non-review.[209] The ruling caused not a little stir,[210] and in December 1956 the French Parliament passed a law of "un caractère interprétatif" which, in effect, reversed the Conseil d'État.[211] Henceforth, the decisions of the Polish, Czech, Hungarian and Yugoslav commissions would be "susceptible to no means of redress other than redress *en cassation* before the Conseil d'État."[212] The effect of this law was to be seen not only in the heightened involvement of the Conseil thereafter,[213] but also in the legislation by which the Bulgarian and Rumanian commissions were subsequently established.

206. *See* Decree of August 31, 1950, [1950] J.O. 10088.

207. *See* text accompanying note 198 *supra.*

208. *Supra* note 197, at 1179. *Cf.* Duez, *Les actes de Gouvernement*, 1953 J. DROIT INT'L. 54, 66-67.

209. Epoux Deltel, [1956] D. S. Jur. 44.

210. *See, e.g.*, Rousseau, *Notes de Jurisprudence*, 1956 REV. DROIT PUB. SCI. POL. 150; Sialelli, *Chronique de Jurisprudence*, 1956 J. DROIT INT'L. 674.

211. Law No. 56-1251 of December 11, 1956, [1956] J.O. 11871.

212. *Id.* art. 1. By Article 2 the Conseil d'État was given a six-month period for rehearings. The *Deltel* case was subsequently reconsidered on the merits. *See* Dame veuve Deltel, [1957] Rec. Cons. d'Et. 512.

213. Since being granted the right of judicial review over commission decisions, the Conseil d'État has left virtually nothing untouched. As a consequence, its decisions have played an important role in setting jurisprudential guidelines for commission rulings.

2. The Minor Variations

(a) *The Yugoslav Commission*

The law constituting the Yugoslav Commission was passed by the French Parliament in July 1952, over sixteen months after the 1951 Yugoslav Accord.[214] Its companion "application" law was decreed three months later, in October 1952.[215] The latter, except for the obvious necessary changes, was identical in wording to its Polish, Czech and Hungarian counterparts. The former, on the other hand, though rhetorically close to its predecessors, evinced several noteworthy revisions (applicable, of course, to the Yugoslav Commission only).

First, composition.[216] While before only a president of a *chambre* at the Cour de Cassation could be President of the commissions, now either this person *or* a president of a *section* at the Conseil d'État could fill that chair. Also, while before the Commission President and a *conseiller* at the Cour de Cassation were named by the First President of the Cour de Cassation, now these members were to be designated by the *garde des sceaux, i.e.,* the keeper of the seals. Further, all five members of the Commission, rather than only two (as before), could be chosen from the active and inactive ranks of *magistrats* and *fonctionnaires.*

Second, the due date for filing claims.[217] Previously, claimants were allowed three months from the promulgation of the *constitutive* law to file their claims with the commissions. In this instance, subject to the same reservation of *force majeur,* they were given three months from the publication of the *"application"* decree.[218]

Third, "receivable" claims.[219] The following additional claims were deemed admissible: "claims presented in the name of the [French] State when it has exercised its right of assignment within the conditions set forth in Article 3 of the Ordinance of 9 June 1945."[220]

Fourth, the duties of the Commission.[221] The functions were here stated to be the same as before except that the Commission was now to "pronounce itself" rather than "rule *souverainement*" on the claims presented. In light of the foregoing discussion,[222] this at first seems a major

214. Law No. 52-861 of July 21, 1952, [1952] J.O. 7362.
215. Application of Law No. 52-861 (October 29, 1952), [1952] J.O. 11158.
216. *Supra* note 214, art. 2.
217. *Id.* art. 3.
218. This was probably a reflection of the difficulties that resulted from the promulgation of the earlier application laws more than three months after the promulgation of their companion constitutive laws.
219. *Supra* note 214, art. 3.
220. For the relevance of the 1945 Ordinance to these claims, see note 197 *supra* and authorities cited therein.
221. *Supra* note 214, art. 5
222. *See* text accompanying notes 207-13 *supra.*

change. However, an additional duty was added which had the same general, if not as sweeping, effect as before: the Commission was now to "fix its own procedure and rule *souverainement.*"[223]

Finally, the due date for rendering decisions.[224] As before, the Commission was required to render decisions within eighteen months. However, that period was now to commence as of the publication of the "application" decree rather than as of the promulgation of the constitutive law. Obviously, this was to coincide with the new due date required for the filing of claims.[225]

(b) *The Bulgarian and Rumanian Commissions*

Though the Bulgarian and Rumanian settlements were more than four years apart, these last two commissions were established at the same time. Likely as not it is for this reason (and probably also because of the likeness of the two settlements) that their enabling laws were, with insignificant though necessary exception, identical in all respects. It is thus obviously convenient to treat them jointly.

Consider, initially, their constitutive legislation.[226] Significantly, this differed only slightly from the Yugoslav equivalent. First, all but two of the variations introduced in the Yugoslav Commission constitutive law were incorporated here. The two exceptions concerned the due dates for filing claims and rendering decisions. While in the case of the Yugoslav Commission these dates were keyed to the publication of the "application" decree, for the Bulgarian and Rumanian commissions they were keyed to the promulgation of the constitutive law.[227] This was, of course, a reversion to the basic theme, a retreat which is perplexing considering the time extensions that had previously proven necessary.[228] Second, in adding two provisions not found in the Yugoslav Commission constitutive law, the Bulgarian and Rumanian equivalents only made express what was by now in the Yugoslav (and other) repartition programs already present in practice. The first, requiring that the director of the Office des Biens et Intérêts Privés or his representative

223. Perhaps, indeed, it was because this item was singled out for special separate mention that it became a major issue for the spouses Deltel. *See* text accompanying notes 207-13 *supra.* It may also be noted that the direction here to the Commission to "fix its own procedure" was also new, even though it was repeated in the Yugoslav application law.

224. *Supra* note 214, art. 6.

225. Still, it is surprising that the eighteen month period was adhered to, considering the extensions that had been required before. *See* note 195 *supra.*

226. Decree No. 59-1116 of September 19, 1959 (constituting the Bulgarian Commission), [1959] J.O. 9348; Decree No. 59-1117 of September 19, 1959 (constituting the Rumanian Commission), [1959] J.O. 9348.

227. *Id.* arts. 2 and 5 (in both decrees).

228. *See* note 195 *supra.*

be the *commissaire du gouvernement* to the commissions,[229] had previously been prescribed in the "application" laws. The second, providing that Bulgarian and Rumanian commission decisions be "susceptible to no means of redress other than redress *en cassation* before the Conseil d'État,"[230] had been earlier required, as explained above, by special enactment of the French Parliament.

The Bulgarian and Rumanian commission "application" decrees, lastly, did differ somewhat from their prior counterparts.[231] But only inconsequentially. Mainly the variations were formalistic, reflecting more the need for consistency with the companion constitutive laws (and to a lesser extent with Fifth Republic institutional changes) than anything else.[232]

Such, then, were the minor variations. It is the fact that they were minor, indeed, that is significant. All the commissions, from first to last, were fashioned in the same basic mold. In a sense this seems surprising, considering the differences in the settlements to which the commissions were a response. Partly, of course, this suggests a continued satisfaction on the part of French officials with the repartition scheme initially devised. But also, and perhaps more importantly, it allows the inference that the settlement differences, since they influenced but little the organizational structure of the French repartition process, were to have their primary impact (if any) upon the legal structure, or decisional outcomes, of this process. These, as indicated, must await later study.

B. *The Rules of Procedure*

As seen, the six commissions were instructed to formulate for themselves their own rules of internal procedure. This they all did,[233] twice in the cases of the Hungarian and Yugoslav commissions.[234] Significantly, all these *règlements de procédure* are very much alike—if not

229. *Supra* note 226, art. 1 (in both decrees).

230. *Id.* art. 3 (in both decrees).

231. Decree of March 10, 1960 (applying Bulgarian Commission constitutive Decree No. 59-1116), [1960] J.O. 2808; Decree of March 10, 1960 (applying Rumanian Commission constitutive Decree No. 59-1117), [1960] J.O. 2809.

232. For example, these decrees contained no direction to the commissions to fix their own procedures. Nor did they provide for a *commissaire du gouvernement*. Both of these matters were dealt with in the constitutive decrees.

233. *See Polish Commission Rules of Procedure*, 9 AFFAIRES ÉTRANGÈRES E.1 (July 1952); *Czech Commission Rules of Procedure*, 12 AFFAIRES ÉTRANGÈRES F.1 (2nd Trim. 1953); first and second *Hungarian Commission Rules of Procedure* (unpublished mimeo., copies available at Le Secretariat de la Commission de Répartition Hungroise, 31, Rue Dumont d'Urville, Paris 16e); first and second *Yugoslav Commission Rules of Procedure* (unpublished mimeo., copies available at Le Secretariat de la Commission de Répartition Yougoslave, 80, Rue de Lille, Paris 7e); *Rumanian Commission Rules of Procedure*, "Avis" of December 19, 1959, [1959] J.O. 12110; *Bulgarian Commission Rules of Procedure*, "Avis" of December 20, 1959, [1959] J.O. 12158.

234. *Id.*

always to the letter, at least in spirit. The Polish and Czech commission Rules, for example, are virtually identical. So too are the Rules that were created for the Bulgarian and Rumanian commissions. In short, such variations as are to be found among the eight sets of Rules formulated are, by and large, minor in character, requiring us, when finding differences between them, to avoid exalting form over substance. Since they were mainly refinements of basically similar enabling laws, it is natural that they should also have been relatively uniform.

All the separate Rules have been divided into three main Titles ("Titres"): *présentation de la demande, instruction de la demande* and *examen de la demande* (in the Rules of the Polish, Czech, and Yugoslav commissions, and also in the first set of Hungarian Commission Rules) or *jugement de la demande* (in the Rules of the Bulgarian and Rumanian commissions, and also in the second set of Hungarian Commission Rules). It is convenient to review them summarily in that order, pointing out the principal differences and other pertinent matters along the way.

1. *Presentation of the Claim*[235]

All claims have had to be filed by the claimant, his legal representative or an authorized proxy at the main offices of the commissions within the time limits set forth in the relevant enabling laws. Persons living abroad with claims to present to the Bulgarian, Hungarian and Rumanian commissions have also been entitled to file, optionally, with a French consulate, legation or embassy in the country where they are residing. While the Rules have required no special forms, nevertheless all the petitions have had to be reasoned ("motivée"), dated and signed, stating the facts that arguably justify indemnification and the specific amount of damage sustained. If a natural person, the claimant has had also to state his name, profession (except before the Bulgarian, Rumanian and latter-day Hungarian commissions), domicile and nationality; if a juridical person, the name of the firm, its "siège," nationality and legal representative. Further, all petitions have had to be supported by annexed documents, written in French, prepared in duplicate and, for the Polish, Czech and Yugoslav commissions, inventoried, each establishing (a) the claimant's French nationality on the date or dates specified in the relevant accord, and (b) the merits of the claim itself. Before the Polish, Czech and Yugoslav commissions, supporting individual testimony has had to be in the form of a written declaration, dated and bearing the legal signature of

235. *See* Polish, Czech and first Yugoslav commission *Rules, supra* note 233, arts. 1-11, first *Hungarian Commission Rules, supra* note 233, arts. 1-10; second *Yugoslav Commission Rules, supra* note 233, arts. 1-8; Bulgarian, Rumanian and second Hungarian commission *Rules, supra* note 233, arts. 1-5.

the witness or declarant. Upon deposit, all these materials, representing a "dossier," have had to be "registered" by the secretary of each commission who, in turn, has had to deliver to the claimant a receipt therefor, together with the duplicate set of supporting documents previously prepared and submitted by the claimant.

2. *Preliminary Examination of the Claim*[236]

When the preliminary examination is to begin and end is not stated in the Rules. Presumably the commissions have operated in their own discretion, subject, of course, to the eighteen month limitations specified in their enabling laws. At any rate, upon commencement, the President of each commission has had to name for each "affaire" or series of "affaires" of like nature a *rapporteur* taken from among the members of the commissions or from a list established by the commissions. Once designated, the *rapporteur* has been required to proceed to a preliminary examination of the claim or claims involved. To this end, he has been free to require the claimant to produce, at the risk of being passed over, all manner of information and supporting documentation that he might deem necessary. Likewise, he has been authorized to seek such independent research and verification as may be needed.[237] If in his judgment it is necessary to have expert testimony, he has had to so inform the commission which, in turn, would proceed to obtain it. Once finished with his preliminary examination, the *rapporteur* has had to prepare a written "rapport" for annexation to the "dossier" (at least under the Polish, Czech and Hungarian commission Rules) and for communication to the *commissaire du gouvernement* whose right it then has been to require the *rapporteur* to complete such information or obtain such additional expert testimony as the *commissaire* may deem appropriate. This done, the *commissaire* (who, it will be recalled, acts on behalf of the claimants) has had to prepare his "conclusions" (findings) and transmit the "dossier" to the President of the commission.[238] Together, the "rapport" of

236. *See* Polish, Czech and first Yugoslav commission *Rules, supra* note 233, arts. 12-14; First *Hungarian Commission Rules, supra* note 233, arts. 11-13; second *Yugoslav Commission Rules, supra* note 233, arts. 9-11; Bulgarian, Rumanian and second Hungarian commission *Rules, supra* note 233, arts. 6-8.

237. According to the Conseil d'État, in a case arising out of the Yugoslav Commission, it was not necessary for the Yugoslav Commission, assuming no legislative rulings to the contrary, to advise a claimant of diverse documents requested by it or voluntarily transmitted to it by the Ministry of Foreign Affairs. In the absence of a formal demand by the claimant, the Commission had complete discretion in this regard. Sieur Campion, [1960] Rec. Cons. d'Et. 30.

238. In the case of Sieur Lambert et autres, [1963] Rec. Cons. d'Et. 511, on appeal from the Rumanian Commission, the Conseil d'État held that, in order to assure the adversarial character of commission proceedings, the written "conclusions" must be communicated to the claimant before the Commission rules on the claim, and, failing that, the Commission's ruling was reversible.

the *rapporteur* and the "conclusions" of the *commissaire du gouvernement* have served as the principal adversarial documents upon which the commissions have based their rulings.

3. *Final Examination (or Judgment) of the Claim*[239]

At the outset, the President of each commission has had to fix the date for commission deliberation of the claim(s). To proceed, a quorum of at least three of the five commission members has been required. None of the Rules states, however, whether and at what point commissioners not initially sitting might join in the deliberations or whether and at what point such commissioners might replace others who, for one reason or another, cannot attend.[240] But other organizational matters are quite clearly detailed. Thus, commission sessions have not been allowed to be public; the *commissaire du gouvernement,* the secretary of each commission (*at least* under the Hungarian, Yugoslav, Bulgarian and Rumanian commission Rules) and the *rapporteur* (even when not a member of the commissions) have been the only persons automatically entitled to argue before or to assist the commissions. At their discretion, however, the commissions have been free to request the personal appearance of the claimant who, in turn, has been allowed to be accompanied or represented by any of a number of expressly listed counselors: *avocats* at the Conseil d'État and the Cour de Cassation; *avocats* regularly enrolled in a French bar or, under Bulgarian and Rumanian commission Rules, in a bar of a member State of the European Community; *avoués* and *agréés* practicing in the *tribunaux de commerce*; law professors; the Association Pour la Sauvegarde et l'Expansion des Biens et Intérêts Français à l'Étranger; the Association Nationale des Sinistrés Français de Pologne (under the Polish Commission Rules); the Association Nationale des Porteurs de Valeurs Mobilières (under the Czech Commission Rules); and other generally interested and technically equipped individuals and groups authorized by the commissions. Also the commissions have been free,

239. *See* Polish, Czech and first Yugoslav commission *Rules, supra* note 233, arts. 15-32; first *Hungarian Commission Rules, supra* note 233, arts. 14-27; second *Yugoslav Commission Rules, supra* note 233, arts. 12-29; Bulgarian, Rumanian and second Hungarian commission *Rules, supra* note 233, arts. 9-20.

240. *But see* Société financière et industrielle des pétroles et commissaire du gouvernement prés de la Commission de répartition de l'indemnité tchécoslovaque, [1964] Rec. Cons. d'Et. 233, wherein the Conseil held that the claimant *Société* was not justified in contending that the Commission was in error when, on ruling on the claim, it did not declare the names of the commissioners sitting at the date of the hearing. The *Société* alleged that the same commissioners did not sit in deliberation on the claim three months later. According to the Conseil "the commission sits validly if three of its members are present" (author's transl.). *Contra,* Sieur Revesz, [1958] Rec. Cons. d'Et. 43, wherein the Conseil annulled and returned a Hungarian Commission ruling on the grounds that the Commission's opinion failed to mention the names of the members who participated in the deliberation of the claim.

at their own initiative or at the request of the claimant, the *rapporteur* or the *commissaire du gouvernement* (but at the expense of the claimant) to request oral and written testimony and to designate experts to inquire into, and report on, such technical problems as might be considered necessary.[241]

As for the deliberations and judgment proper, all have had to be restricted to the commission members alone,[242] although the *commissaire* and the *rapporteur* have had the right to serve in a consultative capacity at this juncture. Decisions have had to be by majority vote except when only three commissioners have deliberated, in which event a unanimous vote has been required. When the votes have been equally divided, the President's vote has been decisive (under the Rules of the Polish, Czech and Yugoslav commissions, and also under the first set of Hungarian Commission Rules) or the "affaire" was postponed to a later deliberative session (under the Rules of the Bulgarian and Rumanian commissions, and also under the second set of Hungarian Commission Rules). In all cases when a required unanimous vote has failed, the "affaire" has had to be postponed to a later deliberative session. Once made, the decisions have been required to be reasoned ("motivée"), signed by the President and "registered" along with the minutes ("procés-verbal") of each deliberative session which the secretary of each commission who, in turn, has had to communicate the results of the commission's deliberations to the claimant and other concerned parties. Thereafter, the commissions have been free to order a provisional distribution to the successful claimant who (*at least* under the Rules of the Polish, Czech and Yugoslav commissions, and also under the first set of Hungarian Commission Rules) has in turn then been free to contest the provisional allocation (as in the manner outlined above). After having ruled on all claims, including provisional allocation contests, the commissions have been required to draw up a definitive repartition statement for communication to the Treasury and for publication, the secretary of each commission having to notify each claimant of the definitive statement as it concerns them.

C. *Conclusions*

Overall, then, the French repartition process has been very much of a piece. However haphazardly they may have been devised, all the French commissions have borne great resemblance to each other—juridically, operationally and structurally. This is, probably, the principal reason for such harmony as has existed among them. *Juridically,* all have been both fish *and* fowl. Stemming neither from "l'ordre judiciare" nor

241. In this connection, see note 237 *supra.*
242. *Compare with* note 239 *supra.*

from "la hiérarchie administrative,"[243] they were conceived as "organes administratifs juridictionnels, de caractère arbitral marqué."[244] It is because of this and because they were ordered to rule "souverainement" that they were called "Commissions Spéciales."[245] *Operationally,* as already suggested, all were inspired by "la notion d'arbitrage."[246] Individual claimants or their proper representatives have been able to present their demands directly to the commissions which, though without competence to rule on private law issues,[247] could nonetheless render definitive rulings subject to review only by the Conseil d'État. Also, all partook of a mixed adversarial—inquisitorial process, with a *commissaire du gouvernement* designated by the Foreign Ministry assuming the role of advocate on behalf of all the claimants, and the commissions themselves, at their own initiative, actively pursuing the discovery of relevant information. And *structurally,* as seen, the commissions differed only in incidental degree.

But what relevance has all this, it may be asked, to the international legal order? Is it possible to attribute any international legal significance to the decisions rendered by these commissions? These, obviously, are questions of fundamental importance. The development of the so-called Law of State Responsibility (or, more precisely, the so-called Law of International Claims), it can be argued, is only going to be retarded—or at least little advanced—by municipal distribution decisions. In some cases (as in Great Britain, for example, where Orders in Council assume a prerogative substantive role[248]), there may be much to justify this contention. In the case of France, however, the argument is less persuasive. For when we recall that neither the enabling legislation establishing the French commissions nor the rules of procedure which they themselves adopted stipulated any system of law, domestic or international, to which substantive commission decisions should refer, that both these sets of prescriptions offered only the most minimal jurisprudential (in contrast to procedural, or operational) guidelines, and that, therefore, the lump

243. G. VIENOT, NATIONALISATIONS ÉTRANGÈRES ET INTÉRETS FRANCAIS 231 (1953).

244. Bindschedler, *La Protection de la Propiété Privée en Droit International Public,* 90 HAGUE ACADÉMIE DE DROIT INTERNATIONAL RECUEIL DES COURS 173, 292 (II-1956). *See also,* note 203 *supra,* and authorities cited therein. *Cf.* Société "La Huta," [1961] Rec. Cons. d'Et. 313, on appeal from the Polish Commission.

245. *See* G. VIENOT, *supra* note 243, at 231.

246. *Id.* 229.

247. *Cf.* Société des Laboratories de Reuilly, [1962] Rec. Cons. d'Et. 629, wherein the Conseil d'État held that the Czech Commission was incompetent to pronounce upon the existence or validity of an agreement in private law for the purpose of choosing among competing claimants, and that such issues must be left to the civil courts. For discussion demonstrating a like approach in American practice, see R. LILLICH, INTERNATIONAL CLAIMS: THEIR ADJUDICATION BY NATIONAL COMMISSIONS 58-62 (1962).

248. *See* R. LILLICH, INTERNATIONAL CLAIMS: POSTWAR BRITISH PRACTICE 141-42 (1967).

sum settlement agreements themselves, by default or by implied recognition, provided the only *significant* jurisprudential standards upon which substantive municipal decisions could be premised, then the relevance—indeed, the considerable importance—that the decisions of the *commissions spéciales* must have for the international legal order becomes readily apparent. As Bindschedler has remarked, "[l]a loi ni les arrêtés d'execution ne s'expriment quant au droit applicable; on peut penser que c'est le droit international, en premier lieu les accords."[249] That is, they may fairly be said to be, like the decisions of the more venerable mixed arbitral tribunals, international legal reference points of first instance.[250] And even if this were not entirely so (as of necessity and in practice it is not), the problem is not one of putatively distinct systems of national and international law. As McDougal has brilliantly stated:

> The problem is rather one of the reciprocal impact or interaction, in the world of operations as well as of words, of interpenetrating processes of international and national authority and control. The relevant hierarchies, if hierarchies are relevant, are not of rules but of entire social and power processes. The world power process as a whole may indeed perhaps be insightfully viewed as a complex hierarchy of power processes of varying degrees of comprehension (global, hemispheric, regional, national, local), with the more comprehensive affecting "inward" or "downward" the less comprehensive, and the latter in turn affecting "outward" or "upward" the former.[251]

IV. Postscript

A final brief word needs to be said about the overall and current state of postwar French lump sum settlement-national claims commission practice. Otherwise, our portrayal would be incomplete, if not misleading.

First, the French have not limited their use of the combined device to the adjustment of Eastern European claims only. They have also applied it to the resolution of war damage and other incidental claims

249. *Supra* note 244, at 293.

250. The significance of French foreign claims practice thus approaches the importance of the equivalent United States practice. *See* International Claims Settlement Act of 1949, § 4(a), 22 U.S.C. § 1623 (1955) wherein it is provided that the United States Foreign Claims Settlement Commission shall apply "provisions of the applicable claims agreement" and "the applicable principles of international law, justice and equity." For details, see R. Lillich, *supra* note 247, at 71-75.

251. *The Impact of International Law Upon National Law: A Policy-Oriented Perspective* in M. McDougal & Associates, Studies in World Public Order 157, 171 (1960). *Compare* R. Lillich, *supra* note 247, at 71-75, 118-22.

against Austria[252] and West Germany.[253] These applications, however, due mainly to the nature of the claims and to the special historical relationships of the countries involved, have differed markedly from the format outlined above. Regrettably, present space limitations prevent giving to them now the special separate attention that they must ultimately have.[253a]

Second, and as may be recalled, all the French commissions, including those created to adjudicate Austrian and German war damage claims, were established on a temporary basis. That is, all were expected to be liquidated upon completion of their work. Precisely how far toward this end each has come and precisely how much money each has awarded or actually distributed cannot be told at this time. According to one informed source, however, four of the six commissions have completed either all of their distribution programs (the Polish and Czech commissions) or nearly all thereof (the Hungarian and Yugoslav commissions); and, of these four, only the Czech Commission has actually "disappeared."[254]

Finally, it appears that the French are sufficiently satisfied with the lump sum settlement-national claims commission device to continue its use in the future. As noted earlier, the French have recently concluded lump sum accords with Cuba and the United Arab Republic relative to the indemnification of French interests damaged by Cuban and Egyptian socialist reforms,[255] the Cuban agreement being in its essential respects like the Eastern European accords. It is said[256] that the French have or are about to assign responsibility for adjudicating the claims eligible under these recent agreements, in the case of the Cuban claims, to the inoperative but still constituted Polish Commission and, in the case of the Egyptian claims, to an entirely new commission.[256a] The Egyptian accords, it will be recalled, are relatively unique and not lump sum agreements precisely as defined above.[257] Perhaps this alone explains the call

252. *See* Decree of July 20, 1951, [1954] J.O. 7866, creating the Austrian Commission.

253. *See* Decree of November 26, 1963, [1963] J.O. 10907, creating the German Commission.

253a. Special attention will have to be given also to France's recent and but recently discovered use of the *combined* device in connection with French claims against Cuba and the United Arab Republic, as to which see note 190a *supra*.

254. Interview with Jean François Dervieu, Assistant to the Director of the Service des Biens et Intérêts Privés, Ministère des Affaires Étrangères, in Paris, September 12, 1967.

255. *See* note 36 *supra*.

256. Interview with André Ernest-Picard, Director of the Association Nationale des Porteurs Français de Valeurs Mobilières, in Paris, September 11, 1967.

256a. As noted above, these commissions have in fact been so charged and constituted. *See* note 190a *supra*.

257. *See* notes 20 and 36 *supra*.

for a wholly new Egyptian Commission. But the Cuban Accord *is* a lump sum agreement *stricto sensu.* Which raises the question, will now the French, like the Americans and British before them, after negotiating future lump sum agreements, soon begin to develop a single, semi-permanent *commission de répartition*?