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ECONOMIC OBSERVATIONS ON LUMP SUM SETTLEMENT AGREEMENTS

NORMAN N. MINTZ†

The nationalization of foreign property, the claims arising therefrom, and the settlement of such claims are subjects which lend themselves to economic, as well as legal, analysis. Reflection will show that the raw material of the claims—the valuation of nationalized property—is well within the purview of the economist, as is the kind of cost versus benefit analysis which is the basis for qualitative statements about the appropriateness of specific settlements. This Article, however, makes no attempt to treat comprehensively the economics of nationalization. Rather, certain economic aspects of claims settlements will be discussed from the point of view of the claimant country,¹ and certain specific United States and United Kingdom lump sum agreements with Eastern European countries will be examined in terms of the previous discussion and relevant available data.²

I

Valuation

There are three conventional methods of valuing property: the first is to turn to the market for something that is optimistically called “fair” market value; the second is to apply some rate of discount to the flow of earnings expected from a given asset; and the third is to calculate the replacement cost of property. None of these approaches is a perfectly satisfactory method of valuing property which is converted involuntarily. The reasons for this can be easily shown.

A good is valued properly by the market only if certain rather stringent conditions are met. The market must have a very large number of buyers and sellers, any buyer must be able to acquire any quantity he desires, and any seller must be able to dispose of any quantity he wishes at the market price. Each unit of the commodity traded in the market must be perfectly substitutable for any other unit of the commodity. All

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2. This article pursues, in another frame of reference, the position taken in Lillich, International Claims: Their Settlement by Lump Sum Agreements, in International Arbitration Liber Amicorum For Martin Domke 143, 146-51 (P. Sanders ed. 1967).
traders in the market must have perfect knowledge of the market at all times. The market must be free from external controls and internal combinations or consortiums. If these conditions are met, then problems associated with valuation evaporate. One whose property is confiscated at the market price can simply replace his property in the market. Since all units of the commodity are perfectly substitutable, he will be indifferent as to whether he owns his previous property or the newly acquired property. Under such conditions, if full compensation for nationalized property is offered, nationalization is superfluous.

In the case of commodities which are more or less unique, such as real estate or factories, the going market price is the price which the last seller was willing to accept and the last buyer willing to pay. All sellers (buyers), then, have subjectively valued their product at or below (above) the current market price. All owners (demanders) of similar commodities who have not sold (bought) at that price presumably value their product at a higher (lower) price. It is clear, then, that the market price is a fair price to only a small minority of participants in the market; for the remainder it is either too high or too low. Specifically, the market price is too low a price for any owner of property, because if the market price were acceptable to him, he would no longer be an owner.

It must be remembered that money in problems of valuation is only a numeraire which permits comparisons to be made among a very large number of possible assortments of goods. Thus, the payment of a certain price for a given good implies a subjective comparison by the buyer between that good and any other combination of goods which he could obtain for the same amount of money. What is being measured ultimately is the subjective utility of the good to the buyer and seller. The opportunity cost, or price, of any good to its owner is the most attractive (to him) collection of other goods which he has foregone in order to maintain ownership of his present property.

Nor is the market price in this case an average, in any sense, of the opinions of potential buyers and sellers of property. It is only that price at which the last transaction took place. It follows, then, that the proper price to pay one who is forced to sell his property, i.e., the price which fully compensates him for the loss of the use of his assets, is only that price at which he would be willing to sell. The amount of payment which fulfills this criterion depends, therefore, not only on the specific property

4. Since the shape of the demand and supply functions are not likely to be symmetrical, the sum of the curves will not be a horizontal straight line intercepting the Y axis at the current price, which is implied by suggesting price as an average.
involved, but on the individual or firm which owns the property.

The use of discounted earnings to determine the value of a given asset is similarly subject to considerable uncertainty. The application of a discounted earnings formula to the valuation of property implies a certain knowledge of future earnings, and knowledge of the specific rate at which to discount these earnings. It is clearly impossible to know in any absolute sense the earnings which an asset will yield in the future. Rather, all that can be ascertained is a subjective probability distribution of anticipated future earnings. This distribution, and thus the expected value of earnings, will differ from individual to individual and from firm to firm, and so the level of earnings which are to be discounted will again vary depending on the owner of the asset nationalized.

Further, there is little agreement on the appropriate rate at which to discount these earnings. This rate, ideally, should be the cost of capital to the owner of the asset, which in turn is a proxy for the highest return which the owner could expect to obtain by using his capital in some other way. Attempts to measure a firm's cost of capital have been only partly successful; determination of the opportunity cost of an investment brings one back to the problem of estimating the flow of future earnings from the substituted project. Then the discounted returns method, too, yields only a rough estimate of the value of property. Moreover, it is an estimate about which reasonable men can, and often do, differ.

The use of replacement cost less depreciation to determine the value of an asset is subject to another sort of error. It is possible that replacement cost and economic worth may diverge considerably. To illustrate, the Cunard Line recently disposed of the Queen Mary for a token amount because the ship was uneconomic to operate. Yet the replacement cost of the Queen Mary would clearly be enormous.

It is clear, then, that a single and unquestionable value for a given asset cannot be determined. Rather, the owner of the property and the nationalizing government are likely to differ substantially on the property's value. The question of valuation is likely to be negotiated in the same way that other conditions of compensation are negotiated. It is notable that the estimates of the value of nationalized property are likely to affect the negotiating posture of the parties involved in a specific claim. If the nationalizing country values the property at 100 and the claimant country at 150, a settlement of 90 may leave the negotiators for the latter convinced that they have been dealt with harshly and the

6. Id. 64.
negotiators for the former with the feeling that they have been generous. In a sense, both sides can be right.

Concessions

It is frequently the case that a government negotiating a claims settlement on behalf of its nationals is constrained to make economic or political concessions in order to obtain a satisfactory settlement. When economic concessions are clearly resultant from the claims settlement, their cost may be readily determined providing sufficient data exists. Political concessions are more difficult to evaluate economically, both for theoretical reasons and because reliable data tends to be scarce. Other times, both economic and political concessions may follow, but not be caused by, a specific claims settlement. In such cases, unless an investigator is privy to the actual negotiations, he may fall into the post hoc ergo propter hoc fallacy or, indeed, completely overlook actual concessions.

The Realization of Payment

A major economic concern about the payment of lump sum settlements for the confiscation of property, reparations, or other form of payments by the government of one country to the government of another, is the question of whether such money settlements result in a transfer of real assets from the paying country to the receiving country. In this connection, real assets are defined as tangible goods and services; financial assets, on the other hand, consist of claims, presumably entitling the holder to real goods and services at some time in the future.

An economist’s concern with real transfers derives from the fact that, in order for domestically owned property to exist abroad, domestic residents, either private or corporate, must have given up some part of their potential consumption of goods and services. Assuming balance in international payments, money invested in a foreign country will result in either exports from, or foreign investment in, the home country. That is, the funds acquired by foreigners as a result of investment abroad will be spent on goods which will be physically removed from the home country (imports), on goods which will be left in the home country (direct investment), or on securities of home country issuers (portfolio investment). If the latter is the case, the home country has undertaken an obligation to provide the security holders with real goods and services at some time in the future. In this sense, there is little difference between foreigners holding domestic money (liabilities of the

government or commercial banks) and securities (liabilities of private issuers). Equity securities can be considered either as a claim on the issuing corporation or as ownership of part of the assets of the corporation; it makes no difference for the purposes of this analysis. If, then, a foreign government takes property owned by nationals of another country, it is important to ascertain whether the claimant country will recoup that quantity, or at least some quantity, of the goods and services which it gave up to obtain the foreign investment, or which it has pledged to give up in the future.

Most of the work which has been done in this area attempts to determine the effects which will occur in two economies, both of which are relatively free of overt economic controls, if the first pays to the second a sum of money, and the extent to which such payment of money will cause, in and of itself, a transfer of the real resources mentioned above. The transfer of real resources is assumed to take place as a result of the changes in prices and income in both the paying and receiving economy, which, in turn, result from the initial monetary transfer. In general terms, the increase (decrease) in the money supply of the recipient (paying) country will cause an increase (decrease) in incomes and prices in that country. The higher (lower) domestic prices coupled with higher (lower) incomes will cause an increase (decrease) in imports, or a decrease (increase) in exports. This change in the balance of trade will cause increased (decreased) payments to foreigners, which will reduce (increase) the domestic money supply income level, and bring the balance of trade back to the pre-transfer level. The money payment will thus be replaced by a transfer of goods.

In the case of transfers from controlled to uncontrolled economies, however, this process is likely to be subverted. Controlled economies are likely to offer for export only governmentally approved categories of goods at fixed prices and in fixed quantities. These goods are offered in order to obtain only that quantity of hard currency necessary to pay for desired imports; such an economy is more likely to run an import surplus than an export surplus, i.e., it is likely to solicit grants or loans sufficient to enable its consumption to exceed its production of real goods and services.

Such a program was most clearly exemplified by the economic exploitation of the Balkan nations by Germany in the 1930's. Germany, paying high prices in terms of Balkan currencies, purchased large

quantities of raw materials from the Balkan countries. Pressure by the export interests of these countries induced the Balkan central banks to finance the increased exports and thus the banks acquired large claims on Germany. Germany, however, limited her own exports to only a few sorts of goods particularly those which would not hamper her rearmament activities. This fact accounts for the Balkan states' being flooded with aspirin and harmonicas during the middle 1930's.9

II

The remainder of this Article consists of a brief effort to evaluate the effectiveness of achieving real transfers through the lump sum settlement of claims against communist countries by the United States and the United Kingdom. Six such settlements,10 the official exchanges of notes following these treaties, and such data as is available relating to the bilateral balance of payments of the United States and the United Kingdom with Bulgaria, Poland, and Rumania for a period of years before and after the agreements have been examined. No attempt has been made to determine the methods used to value the many separate items in each of these settlements or how alternative assumptions about claimants, expected return, or appropriate discount might have affected the amount of final claims.11

From consideration of the data now available, and in light of the brief discussion of the theory of transfer payments outlined above, no strong reason appears for favoring the British over the American method of settling claims, i.e., the tying of the size of installments to annual imports from the paying country rather than the outright specification of the size of annual installments. This is not to say that the United States may not lose a bargaining advantage by not following the British formula; she probably does. Further, this is not to suggest that the United States makes fewer concessions than the United Kingdom in negotiating these settlements; foreign aid tendered Poland upon the conclusion of the lump sum settlement with that country suggests that, in at least one case, the net payments were to, rather than from, the

11. These problems might prove to be fruitful fields for further inquiry should the relevant data become available.
ECONOMIC OBSERVATIONS

The probability of achieving a real transfer equal to the sum of money that is finally to be paid, however, is as great under the United States formula as under the United Kingdom system. An examination of the individual agreements will clarify this observation.

In the United States-Bulgaria Agreement it is provided that, of the 3,543,398 dollars which constituted the United States claim, 3,143,398 dollars was to be paid from the liquidation of blocked Bulgarian assets, other than those owned by natural persons, held by the United States as a result of wartime controls. The remaining 400,000 dollars was to be paid in two installments, one in July 1964 and one in July 1965. In addition, an Exchange of Notes accompanying the agreement provided that Bulgaria would be deleted from the list of countries to whose residents the United States prohibits the payment of funds by the Treasury or other government agencies. This prohibition is embodied in a Treasury Department circular which provides that payments by the United States Government or any of its agencies to residents of proscribed countries must be deposited in a special Treasury account rather than sent to the drawee. The regulation also provides that in the event a country is removed from this list, claimants who can establish their rights to withheld checks will receive them.

The removal of Bulgaria from the list permitted residents of Bulgaria to file claims for all back payments to which they were entitled. As of December 31, 1962, six months before the signing of the Bulgarian Agreement, the total funds due Bulgarian residents held in the special Treasury account amounted to 27,564 dollars. By the end of 1966, funds due Bulgarian residents had decreased by just over 21,000 dollars. We may assume this latter figure is the direct cost of this concession by the United States to Bulgaria.

Further, it may be argued that these blocked Bulgarian funds were due Bulgarian residents in any event. The act under which the Treasury regulations are prescribed provides, inter alia:

[that hereafter no check or warrant drawn against funds of the United States, or any agency or instrumentality thereof, shall be sent from the United States (including its Territories and

12. R. Lillich, supra note 7, at 10.
14. See Table 1. This figure may slightly understate the total due Bulgarian residents by the Government as a whole because, after 1960, drawer agencies themselves were permitted to withhold payment if the check would be blocked, 31 C.F.R. § 211.5 (1967), but since the annual increments in blocked Bulgarian payments between 1956 and 1960 were small, see Table 1, the figure is not likely to be understated by very much.
possessions and the Commonwealth of the Philippine Islands) for delivery in a foreign country in any case in which the Secretary of the Treasury determines that postal, transportation, or banking facilities in general, or local conditions in the country to which such check or warrant is to be delivered, are such that there is not a reasonable assurance that the payee will actually receive such check or warrant and be able to negotiate the same for full value.  

Thus, it was not the intention of the United States to withhold funds from individuals entitled to them but rather to ensure that the funds were, in fact, delivered to the proper recipient and that the recipient had full use of the funds. It is, therefore, hard to argue that the release of these funds is a cost properly assessable against this specific lump sum settlement.

An interesting side-effect of the removal of a country from the list to which the Treasury circular applies is the likelihood of increased migration to that country. This development is best illustrated by a report in the *New York Times* that the United States has paid to Poland about 2,500,000 dollars in social security payments each year since 1957. As of December 1956, the total funds due Polish residents, and particularly social security claims, amounted to only 963,435 dollars; the total distributed between that date and the end of 1966 amounted to just under 300,000 dollars. The only way, then, for payments to have increased to the presumed level of 2,500,000 dollars per year is for migration to have occurred between the United States and Poland. Indeed, this seems like a reasonable explanation in light of the fact that the same *New York Times* article reports that a pensioner with average social security benefits receives one third of a Polish minister’s salary, even at the highly inflated official rate of exchange.

If migration took place to Poland, it is likely that there was some migration to other Eastern European countries by social security recipients. If only 100 pensioners had migrated to Bulgaria as a result of the removal of that country from the list and the average benefit received by each was about eighty dollars per month, the entire 400,000 dollars due to be paid by Bulgaria would be obtained from social security payments made anew or from released benefits paid residents of Bulgaria.

16. N. Y. Times, Feb. 8, 1968, p. 4, col. 4. The figure of $2,500,000 per year is probably erroneous since inspection of Chart II shows that total United States transfers to all of Eastern Europe did not amount to $2,500,000 in any year from 1957-1962. It is probable, however, that current payments are of approximately that magnitude.
17. See Table 1.
There is an increase in the quantity of goods available to United States residents as a result of this migration, however, even though the United States finances the full amount of the lump sum settlement. Pensioners may be considered to be non-producers; they consume some residual of their past production or are supported for humanitarian reasons. Given this fact, the goods which pensioners consume are net deductions from the quantity of goods and services available to the remainder of the economy.\(^{18}\) If the *locus* of consumption of a given pensioner is moved from one country to another, the former has a net gain in resources available to the remainder of its residents and the latter has a net reduction. This is precisely analogous to the latter's having exported to the former without requiring payment. This is the essence of a real transfer. That Bulgaria uses dollars received by selling goods to United States pensioners to pay her obligations to the United States is immaterial. Bulgaria has earned these dollars by a process which is virtually indistinguishable from exporting. Thus, in the case of Bulgaria, since the total amount to be transferred was only 400,000 dollars, it is likely that this amount, or more, was accounted for by increased pensions to Bulgarian residents and that a full, real transfer of merchandise took place.

The United States-Rumania Agreement is quite similar to the Bulgarian settlement, except that the total United States claim amounted to 24,526,370 dollars against which 22,026,370 dollars of blocked Romanian property was offset. The remaining 2,500,000 dollars was to be paid in five yearly installments of 500,000 dollars each. Rumania, too, was to be dropped from the list of countries to which the provisions of the Treasury circular apply. This concession resulted in payments to Rumania of approximately 30,000 dollars in the six years from 1960 to 1966. But in the case of Rumania, once again it is likely that subsequent to the conclusion of the 1960 agreement persons entitled to funds from the United States migrated to that country in order to better their relative levels of living. However, since the payments required to be made by Rumania were greater than in the Bulgarian case, it is less likely that receipts by migrants totally met the hard currency needs of Rumania with respect to this agreement.

If this conclusion is true, the Rumanian Government, in order to meet its needs for foreign exchange to buy Western goods and services, would have needed to expand its exports by the amount of each yearly

\(^{18}\) In the absence of pensioners, however, the composition of goods produced by the country may change, as well as the distribution of expenditures between investment and consumption. These factors may have implications for the long run level of output, but in the short run, and in terms of the static analysis here presented, they are ignored.
payment—500,000 dollars, less transfers from the United States. It would be able to do this only by offering goods sufficiently attractive to other countries to cause them to expand their imports from Rumania. These countries, in turn, would need to obtain dollars to pay for such imports either by borrowing them or by increasing their own exports to the United States. These loans or increases in imports by the United States could be paid for with the net funds obtained from the Rumanian settlement. The United States, as a result of these transactions, would have been able to import more with no deterioration of its foreign exchange position or no increase in foreign holdings of dollars.\(^1\)

The Polish agreement with the United States is somewhat more straightforward than the previous two; it calls for the payment by Poland to the United States of 40,000,000 dollars in 2,000,000 dollar yearly installments with no offsets. It is notable, however, that Poland is the only one of the three countries to whom the United States has given economic aid since entrance into a lump sum settlement agreement.\(^2\) To the extent that this aid was impelled by the existence of the lump sum agreement, as suggested earlier, real transfer of assets is avoided. If the aid and the settlement agreement are unrelated, Poland will export more (or import less) than she otherwise would have and the United States will import more (or export less) than she would have in the absence of the Polish payments. The United States will be able to enjoy a higher real level of living due to her relatively higher imports.\(^3\)

The three British agreements examined are all on the same pattern. They provide that payment by the Eastern European countries of the lump sum agreed upon shall be made in annual installments. The amount of the installments is a percentage of the f.o.b. value of exports by the paying country to the United Kingdom. In each of these settlements the real transfer accompanying the money transfer is clear; effectively the United Kingdom is reimbursed for some portion of her previous year's imports. There is a movement of goods from the East European countries to Britain at no charge.

There is the possibility, under the British pattern of settling claims, that the debtor country may avoid the payment of her liabilities (or unduly stretch them out over time) by decreasing her exports to Britain.

19. Although it is impossible to isolate the effects of such small yearly transactions in the overall trade data, United States trade with Rumania, as well as with Bulgaria and Poland, for the period 1955-1966 is shown in Table 3.

20. The amounts of such aid are shown in Table 5.

21. The removal of Poland from the list of countries affected by Treasury Circular No. 655 occurred three years before the entrance by the United States and Poland into the lump sum agreement of 1960, so it cannot be considered a direct concession to Poland for the conclusion of the settlement, although it may have created an attractive climate for the achievement of a satisfactory settlement.
But the persistent need of the communist countries for hard currencies in order to purchase goods from the West and the fact that the effective rebate on exports to the United Kingdom is a small proportion of the value of these exports, combine to make this possibility unlikely. Rather, just the opposite is probable.

The implied promise of a high level of trade is likely to give the British a negotiating advantage in terms of the size of the money settlement to be reached. But, since prices of exports from communist countries are fixed by governmental fiat, a higher money settlement could be accompanied by higher export prices so that the same real transfer resulted. The size of the settlement payments compared with the total exports of the countries involved, however, suggests that this possibility, too, is improbable. Thus, the fact of real transfer under the British system is direct and certain. Note also that British trade with these three countries has not declined as a result of the lump sum agreements; a decrease might be expected if the countries had behaved in either of the ways suggested above.

The recent British devaluation, although it did not affect any of the settlements examined for the purposes of this paper, suggests a danger in negotiating settlements whose payments extend over a substantial period of time. The Articles of Agreement of the International Monetary Fund provide that a country may change the par value of its currency only in the event of "fundamental disequilibrium." Although this term is nowhere defined and international economists differ as to the precise definition, there is general agreement that devaluation is appropriate when domestic prices have risen faster than world prices and caused a relatively permanent deficit in international payments. Devaluation, then, is evidence of the fact that domestic prices have risen; it causes a similar increase in the prices of foreign commodities in terms of the devalued currency.

A settlement agreement, whose value is expressed in absolute money terms and whose payment extends over a period of time, eventually may deliver, in terms of real resources, less than is expected by the parties to the agreement. Such depreciation in the value of the agreement will occur if the overall level of prices in the country in whose currency the settlement is expressed has increasing prices, if that currency is permitted to depreciate with respect to other currencies, or if the level of prices for all countries increases over time. This is likely to be the fate of the United States-Poland Agreement which extends over a period of

twenty years. It is less likely to be true in the case of the British settlements because of the tendency, at least recently, for world trade to increase, and because the time horizon of British settlements is a function of the level of bilateral trade.

The real transfer of goods and services induced by the United States settlements formula seems, by and large, to be as certain, although far less direct, as that induced by the British formula. To the extent that the United States does not lose an advantage at the bargaining table by specifying precisely the size of annual installments, there seems to be little reason to prefer the British system of tying the size of annual installments to the exports of the paying country. To the extent that any advantage does exist, it probably lies with the latter course in view of the bargaining power created by the implied promise by the United Kingdom to maintain a high level of trade with the settling country.

The concessions which the United States offered to obtain the three settlements examined, specifically the aid granted Poland and the exemption from the provisions of the Treasury circular granted Bulgaria and Rumania, provide an easily tapped supply of foreign exchange with which these countries can meet their obligations under the agreements: the wheat shipped Poland released funds which she would otherwise have needed to spend for imports and the payments to pensioners in Bulgaria and Rumania, including immigrants to those countries, provided funds directly. Funds provided by these concessions are in addition to the funds obtained by the various countries through exports which, under the British formula, are the only funds from which claims can be paid. The United States, then, by the granting of a concession, made the payment of these three settlements easier than they otherwise might have been.

**TABLE I**

*Proceeds of Withheld Foreign Checks*

| Balances in Treasury Account 20x56048 by Country and Date24 |
|-----------------|-----------------|-----------------|
|                 | Bulgaria        | Poland          | Rumania         |
| December 31, 1956 | $23,233         | $963,436        | $55,310         |
| December 31, 1958 | 24,615          | 751,900         | 56,728          |
| June 30, 1959    | 24,932          | 726,233         | 58,366          |
| June 30, 1960    | 25,565          | 689,164         | 59,068          |
| December 31, 1960| 25,882          | 683,041         | 49,404          |
| December 31, 1961| 26,772          | 673,192         | 35,954          |
| December 31, 1962| 27,565          | 671,599         | 35,760          |
| December 31, 1963| 26,093          | 669,783         | 35,014          |
| December 31, 1964| 13,897          | 668,783         | 35,009          |
| December 31, 1966| 6,211           | 664,139         | 28,791          |

24. United States Treasury Department.
### TABLE II

**United States Government Pensions and Other Transfers to Eastern Europe (millions of dollars)**

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### TABLE III

**United States Trade with Bulgaria**

(millions of dollars)

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### United States Trade with Poland

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### United States Trade with Rumania

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</table>

### TABLE IV

**United Kingdom Trade with Bulgaria**

(millions of dollars)

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### United Kingdom Trade with Poland

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### United Kingdom Trade with Rumania

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<td>-12.6</td>
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</tbody>
</table>

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26. X indicates payments less than 500,000 dollars.
27. Payment from Eastern Europe to the United States.
28. *International Monetary Fund, Direction of Trade*, various issues.
29. *Id.*
### TABLE V

**United States Aid to Poland**

(millions of dollars)\(^{30}\)

<table>
<thead>
<tr>
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<td>99</td>
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<td>57</td>
<td>61</td>
<td>48</td>
<td>52</td>
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<td>-10</td>
</tr>
</tbody>
</table>


31. A minus sign indicates that the net payment (or repayment) is from Poland to the United States.

Burns H. Weston: B.A. 1956, Oberlin College; LL.B. 1961, Yale Univ.; Associate Professor of Law, Univ. of Iowa.


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