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THE UNITED STATES AND THE PEOPLE'S
REPUBLIC OF CHINA: THE BLOCKED
ASSETS—CLAIMS PROBLEM

Normalization of relations between the United States (U.S.) and the
People's Republic of China (PRC) is a key goal of the U.S. global policy
of detente. The initial stages of this normalization, the opening of
direct dialogue between the two countries\(^1\) and the subsequent ex-
change of liaison offices,\(^2\) were achieved as a result of President Nixon's
1972 trip to China.\(^3\) Further negotiations have touched upon all aspects
of the relations between the two countries, and have identified three
separate problem areas: 1) recognition of the PRC; 2) increased trade;
and 3) the related problems of the disposition of blocked assets held in
the U.S. in the name of Chinese nationals, and the claims of U.S.
nationals against the PRC for property in China expropriated since
1949.\(^4\)

Resolution of the recognition question seems to depend on the status
of Taiwan.\(^5\) Negotiations are progressing slowly, although a further
advance is expected when President Ford visits China in 1975.\(^6\) The
other two areas, trade and the blocked assets-claims problems, are
closely linked\(^7\) because trade concessions will not be granted until the
claims of U.S. nationals are settled.\(^8\)

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1. President Nixon, on the eve of his 1972 trip, said he hoped that the U.S. and PRC
would maintain some form of communication. 66 DEP'T STATE BULL. 83 (1972).
2. Each country has established a liaison office in the other's capital city. Although this
is short of full recognition on the ambassadorial level, envoys have been appointed. 68
3. For the text of the joint communique issued at the conclusion of the Nixon visit to
China, see 66 DEP'T STATE BULL. 435 (1972).
4. This Note will refer to these two problem areas as the "blocked assets-claims"
problem.
5. The PRC asserts that Taiwan is not a separate entity, but a province of China. Thus,
the PRC refuses to accept any form of recognition in which Taiwan is also recognized. By
1973, the U.S. had acknowledged that there is only one China, of which Taiwan is a part.
69 DEP'T STATE BULL. 716 (1973).
6. Stanley Karnow, in analyzing the problem, concluded that progress in normalizing
relations between the U.S. and PRC would be indicated if a visit to China by President
Ford were to be announced as a result of Secretary of State Kissinger's visit to China in
late November, 1974. N.Y. Times, Nov. 26, 1974, at 39, col. 2. Subsequently, it was
announced that President Ford would visit China in 1975. See Text of Joint Com-
7. 68 DEP'T STATE BULL. 548 (1973); 69 DEP'T STATE BULL. 239 (1973).
8. The trade concessions include government-backed credit and reduced tariffs. N.Y.
Even before the Nixon trip, the U.S. had relaxed trade restrictions between the two countries,\textsuperscript{9} with the result that U.S.-PRC trade has increased rapidly.\textsuperscript{10} This progress was made possible largely by an agreement in principle on the blocked assets-claims problem reached in early 1973.\textsuperscript{11} Pressure for a final settlement will surely be increased by any further normalization of relations resulting from the Ford trip. On the eve of these developments, this Note will examine the blocked assets-claims problem and the effect of its history upon possible settlement options.

I
HISTORICAL PERSPECTIVE

The U.S. recognized the Nationalist Government of the Republic of China in 1928, when it achieved the requisite degree of unity after years of turmoil following the abdication of the Manchus in 1912.\textsuperscript{12} In 1945, despite the uncertainties caused by the continuing Communist revolution, the Nationalist Government was designated to accept the Japanese surrender which ended the Second World War.\textsuperscript{13} But by 1949, it had become apparent that the Nationalist Government no longer controlled a major portion of the Chinese state.\textsuperscript{14} When the People's Republic of China was proclaimed during that year, United States policy on recognition was indecisive.\textsuperscript{15} For the U.S. to recognize the island government of Taiwan as the representative of 800 million

\textsuperscript{9} For a discussion of the removed restrictions, see Starr, Developing Trade with China, 13 Va. J. Int'l L. 13, 23-25 (1972).


\textsuperscript{11} See 68 DEP'T STATE BULL. 344 (1973). According to then Secretary of State William Rogers, the Chinese had requested additional time to analyze the legal aspects of the settlement, but the expectation was that the details would be worked out shortly. Dr. Kissinger, before his appointment as Secretary of State later that year, reaffirmed this view, commenting that negotiations would soon be held and were expected to be concluded quickly. \textit{Id.} at 316.


\textsuperscript{13} 3 M. Whiteman, Digest of International Law 488 (1963).

\textsuperscript{14} Staff of Senate Comm. on Foreign Relations, 93d Cong., 1st Sess., The United States and Communist China in 1949 and 1950: The Question of Rapprochement and Recognition 2-3 (Comm. Print 1973) [hereinafter cited as SFR].

\textsuperscript{15} For example, an early version of detente was advanced on the ground that prompt recognition of China would ensure its independence from the Soviet Union, SFR, supra note 14, at 9.
people on the mainland would have seemed incongruous at best. On the other hand, the State Department hoped that by withholding recognition of the PRC, at least temporarily, the U.S. could force the PRC to honor certain international obligations, and/or weaken its international and domestic standing so as to enable the Nationalist Government to regain control of the mainland. Even when it became evident that these objectives of non-recognition were not going to be achieved, however, the U.S. failed to reach a formal recognition policy toward China. Prospects for early recognition of the PRC diminished as this indecision continued into the early months of 1950.

On December 17, 1950, when the Communist Chinese intervened in Korea, this uncertainty was resolved. The Treasury Department, under authority conferred by the Trading with the Enemy Act, blocked all assets and accounts in which any Chinese national had an interest. Trade with mainland China, which had already been drastically reduced, was totally barred. The PRC shortly thereafter expropriated all property in China belonging to U.S. nationals, thus giving rise to the claims which are at issue in the present settlement negotiations.

16. This was discussed in SFR, supra note 14, at 3:
   Before the Korean War the Truman Administration was indeed consciously withholding recognition and attempting to isolate the new Communist regime but only as a tactic to force the Chinese to live up to certain specified international obligations. If those obligations had been met, in whole or even in part, the Administration would very likely have followed the policy consistent with its overall objective of encouraging “Titoism” in China by recognizing Peking.

18. See SFR, supra note 14, at 15-17. In particular, in SFR at 17:
   By the end of January 1950, the forces the Administration had thought would pressure the Chinese Communists toward meeting their international obligations and thus into a closer relationship with the West were clearly not operating. In light of the failure of its efforts the Administration appears to have altered its policy of recognition by reducing the criteria for recognition to an irreducible minimum.

19. SFR supra note 14, at 15.
   The original purpose of the Trading with the Enemy Act was to prevent the possibility of aiding the enemy through trade. A later purpose was to marshal enemy assets, both public and private, for use by the U.S. Government.

21. Initially, the blocking order covered assets belonging to residents of both Taiwan and the mainland. For a discussion of the term “Chinese national” used in the text, see notes 25 and 26 infra, and accompanying text.
22. See Lee & McCobb, supra note 17, at 1.
Subsequently, the U.S. reaffirmed its recognition of the Nationalist Government, and embarked on a policy of non-recognition of the PRC, which was to persist for a quarter-century,\(^{24}\) effectively preventing any resolution of the blocked assets-claims problem.

II

THE BLOCKED ASSETS HELD IN THE U.S. IN THE NAME OF CHINESE NATIONALS

Since 1950, all assets in which any Chinese national has an interest have been blocked by placing Chinese nationals within the "designated national" category of the Treasury Regulations.\(^{25}\) Although the block-

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\(^{24}\) Even though the United States may have altered its recognition policy in the last twenty-five years by reducing the criteria (see note 18 \textit{supra}), the fact remains that recognition has not been achieved.

\(^{25}\) 31 C.F.R. § 500.201 (1974):

\textbf{TRANSACTIONS INVOLVING DESIGNATED FOREIGN COUNTRIES OR THEIR NATIONALS; EFFECTIVE DATE.}

(a) All of the following transactions are prohibited, except as specifically authorized by the Secretary of the Treasury (or any person, agency, or instrumentality designated by him) by means of regulations, rulings, instructions, licenses, or otherwise, if either such transactions are by, or on behalf of, or pursuant to the direction of any designated foreign country, or any national thereof, or such transactions involve property in which any designated foreign country, or any national thereof, has at any time on or since the effective date of this section had any interest of any nature whatsoever, direct or indirect:

\begin{center}
\begin{tabular}{l}
\textbf{SCHEDULE} \\
\textbf{COUNTRY AND EFFECTIVE DATE} \\
1. China: December 17, 1950. \\
\end{tabular}
\end{center}


\textbf{DESIGNATED NATIONAL.}

The term "designated national" shall mean any country designated in § 500.201 and any national thereof including any person who is a specially designated national.


\textbf{NATIONAL.}

(a) The term "national" shall include:

(1) A subject or citizen of, or any person who has been within, a foreign country, whether domiciled or resident therein or otherwise, at any time on or since the "effective date."

(2) Any partnership, association, corporation, or other organization, organized under the laws of, or which on or since the "effective date" had or has had its principal place of business in a foreign country, or which on or since such effective date was or has been controlled by, or a substantial part of the stock, shares, bonds, debentures, notes, drafts, or other securities or obligations of which, was or has been owned or controlled by, directly or indirectly, a foreign country and/or one or more nationals thereof as defined in this section.

(3) Any person to the extent that such person is, or has been, since the
ing order refers only to "China," once U.S. recognition policy had become clear, Taiwanese nationals—that is, nationals of the Nationalist Government or other residents of Taiwan—were no longer considered to be designated nationals\(^\text{26}\) and have been allowed to obtain their assets. Of course, persons who have left the mainland and settled in other countries have not been considered Chinese nationals and have been able to obtain their assets.\(^\text{27}\) Thus, only assets with PRC interests remain blocked.

### A. The Unblocking Procedure Where Ownership of the Funds Is Not Disputed

The usual procedure to regain funds is for the owner to request release of the assets by the holder, usually an American bank. If the bank finds that there are no PRC interests and that the claimant is the true owner, the bank or the claimant then applies to the Office of Foreign Assets Control (OFAC) or the Federal Reserve Bank of New York for a license to transfer the assets. The OFAC has authority to license the transfer if it finds that no interest of a Chinese national is

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\(^{27}\) "It is the policy... to license as unblocked the accounts of persons who have left China to take up permanent residence in a non-Communist country provided they did not leave close relatives in China." TREASURY DEPARTMENT, OFFICE OF FOREIGN ASSETS CONTROL, 1970 CENSUS OF BLOCKED CHINESE ASSETS IN THE UNITED STATES 7 [hereinafter cited as OFAC Census].
involved. Although the OFAC makes its own determination, it generally accepts the bank's findings, on the theory that the bank will act cautiously so as to avoid the possibility of multiple liability. In the past, some holders of assets simply ignored the licensing procedures and transferred the assets upon request. The OFAC has been very strict about these transfers, reblocking all assets that would not have been licensed. Only transfers that would have been licensed are not voided.

B. THE PROCEDURE WHERE OWNERSHIP IS DISPUTED

The OFAC, in ruling on applications for licenses, is charged with ascertaining whether there are interests of Chinese designated nationals involved. In the situation where ownership of the funds is disputed, this determination can be quite complicated. The Treasury Regulations do not set up rules for these disputes, nor are the OFAC rulings on applications readily available. Therefore, a discussion of the few instances in which a claimant has resorted to court action may be valuable for the light it sheds on the principles used in determining ownership, and the effect of US recognition policy on these principles. The cases fall into three categories.

1. Assets of Chinese Government Agencies Deposited in the U.S.

There are two cases involving assets claimed by Chinese government agencies: Chase National Bank v. Directorate General of Postal Remittances and Savings Bank and Republic of China v. American Express Co. Both

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UNBLOCKING.

Any interested person desiring the unblocking of accounts or other property on the ground that no person having an interest in the property is a designated national may file such an application. Such application shall be filed in the manner provided in § 500.801(b) and shall contain full information in support of the administrative action requested.

The applicant is entitled to be heard on the application. If the applicant desires a hearing arrangements should be made with the Office of Foreign Assets Control.

29. With two parties, one Nationalist and one Communist, claiming the same account, the bank would be reluctant to pay one claimant unless it was assured that the other could not assert a valid claim for the same account.

30. OFAC Census, supra note 27, at 7.

31. 31 C.F.R. §§ 500 et seq.

32. Chase National Bank v. Directorate General of Postal Remittances and Savings Bank, 112 N.Y.S.2d 14 (S. Ct., Special T. N.Y.C. 1950), modified so as to refer to a referee,
cases were litigated around the time of the initial blocking in 1950, but there is no mention of the blocking orders in either. The scenario was the same in each case: the Nationalist Government and its agency, the Directorate General, sought release of assets deposited in American banks.

In the *Chase National Bank* case, the Nationalist agency had requested that the plaintiff bank release accounts deposited by a predecessor agency before 1950. The bank, wanting to litigate fully the question of ownership of the accounts, brought suit to interplead the counterpart agency of the PRC. A New York Supreme Court held that the interpleader was improper because the interpleaded agency was an arm of the unrecognized PRC government and thus lacked standing in American courts. The PRC agency was therefore barred from pursuing the action. The Nationalist agency, being the only remaining claimant, was awarded the funds.

In the *American Express* case, the Nationalist agency initiated the action against American Express for the release of funds on deposit. The defendant bank moved to interplead the same PRC counterpart agency that was involved in the *Chase National Bank* case. The bank's motion was granted, but the trial court held that there could be no jurisdiction over the interpleaded defendants unless they were properly served. On appeal, the court rejected the argument by the Nationalist agency that the interpleaded agency lacked standing because it was an arm of an unrecognized government. The court held, however, that the question of whether the agency was a part of the PRC government was a threshold issue which had to be decided by the

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34. As the *Chase National Bank* court stated in 112 N.Y.S.3d at 15:

This is a motion to drop party claiming to be director of interpleaded banks and to strike out appearance by him for said banks. The party whose appearance is questioned obtained his authority from the regime now in control of China. This regime has not been recognized by the United States as the Government of China; therefore that regime and those claiming to be authorized by it are without capacity to sue in this court. Russian Socialist Federated Soviet Republic v. Cibrario, 235 N.Y. 255, 139 N.E. 259.

Significantly, on remand, the district court failed to reach the question of the agency's relationship to the PRC government, but instead concluded that proper service had not been shown, and removed the case from the docket. The interpleader action was not pursued further. The PRC agency never answered, most likely because of the adverse decision that had just recently been rendered in the Chase National Bank case to the effect that the same PRC agency was an arm of the PRC government. Therefore, the assets ultimately were paid to the Nationalist agency.

These two cases suggest the significant impact of U.S. recognition policy on the disposition of assets claimed by agencies of the Chinese government. The PRC, in effect, was denied the right to fully pursue its adverse claims for such assets and the assets were paid to the Nationalist agency.

2. Chinese Corporate Assets Deposited in the U.S.

There are two major cases in which the question of ownership of Chinese corporate assets in the U.S. was litigated: Bank of China v. Wells Fargo Bank and Union Trust Co. and Chase Manhattan Bank v. United China Syndicate, Ltd. Both were initiated prior to the blocking order in 1950, but trials disposition did not occur until afterwards.

In the Wells Fargo case, the Bank of China on Taiwan (BC-Taiwan) sued Wells Fargo in 1950 for the release of funds on deposit. Shortly thereafter, a group representing the Bank of China in the PRC (BC-PRC) filed a motion to dismiss the action or, alternatively, to substitute itself for the BC-Taiwan as the true successor of the original Bank of China. The BC-PRC was granted standing in the court because it was not an arm of the PRC government. Even though it was wholly owned by that government, it was found to have a separate corporate purpose and identity. Nevertheless, the bank's purpose was seen as

36. Id., 195 F.2d at 235.
38. The docket sheet of the case shows that on February 9, 1953, an inquest was held at which the defendant did not appear, and the funds were awarded to the plaintiff.
being closely related to that of the government, inasmuch as the
government, as major stockholder, would benefit if the bank were
awarded the money. Given this relationship, the trial judge held that
disposition of the assets would necessarily depend on the U.S. foreign
policy toward each of the two governments. In light of the unsettled
political situation in 1950, however, he was unable to decide which
government should be benefitted. He therefore continued the case
sine die. 43

When the case was reargued two years later, 44 the political situation
had stabilized, with the U.S. maintaining its recognition of the
Nationalist Government. The court found that although neither bank
was the true successor of the original Bank of China, both were
performing similar duties and so were equally acceptable from a
functional point of view. Given this dilemma, the court looked to the
judgment of the Executive Branch for guidance as to which choice best
furthered the mutual interests of the U.S. and China. The Nationalist
Government being the only Chinese government recognized by the
U.S., the court held that the funds should be paid to the BC-Taiwan. 45

Implicit in Wells Fargo is an acceptance of the proposition that a
corporation in an unrecognized country may properly be deemed
successor to the interests of the original corporation if it appears to be
the actual successor in fact. The essence of the holding, however, is that
where no corporation appears to be the actual successor in fact, U.S.
recognition policy will have a crucial effect on the outcome. It is this
reasoning which perhaps best explains the result in Chase Manhattan
Bank v. United China Syndicate, Ltd. 46 In that case, a corporation, the
United China Syndicate of Hong Kong (UCS-Hong Kong), sued for
ownership of two custodial accounts held by defendant bank. As early
as 1950, the bank tried to interplead the United China Syndicate of
Shanghai (UCS-Shanghai). When it had not answered by 1959, UCS-
Hong Kong filed a motion for default. Later that year, however, the
UCS-Shanghai sent two letters to the court alleging ownership of the
accounts. The federal district court, giving the rules of pleading a
liberal reading, refused to grant a default judgment because doubt
existed as to ownership of the accounts.

42. Id. at 924.
43. Sine die: without assigning a day for a further meeting or hearing. Black's Law
44. 104 F. Supp. 59 (N.D.Cal. 1952).
45. Id. at 66.
Furthermore, the court, observing that the funds had been blocked since 1950, explicitly noted that the OFAC had sent a letter to the court stating that documents tended to show the UCS-Shanghai to be the true owner of the accounts. The OFAC letter had also stated that a Treasury license was required, not only for a transfer of funds, but also "before any judicial process [could] affect any property in a blocked account." Consequently, because it appeared that the UCS-Shanghai was very possibly the true owner and because the OFAC had not licensed the actual entry of judgment in judicial proceedings involving the interest of a designated national, the court held that it could not "direct the entry of any judgment," and the motion for default could not be granted. The funds, having at least an arguable PRC interest, have remained blocked.

In the United China Syndicate case, the court and the OFAC acted together in a manner which ultimately preserved the assets of the PRC claimant. An important if not essential factor in this outcome, however, was that the PRC claimant most likely had the strongest claim to the assets. In cases like Wells Fargo, on the other hand, where no such strong indication of ownership is shown, U.S. recognition policy is likely to have a much more significant effect upon how the assets are disposed and to whom they are distributed.

3. Assets of Chinese Individuals Deposited in the U.S.

Assets belonging to private individuals have not been very susceptible to adverse claims because the ownership question is seldom in issue. Some private assets are held as blocked estates, e.g., funds left by deceased persons in the United States to designate nationals. One of the few cases in which blocked assets claimed by an individual have been involved, Cheng Yih-Chun v. Federal Reserve Bank of New York, concerned a blocked estate. The case clearly illustrates the reasons behind the fact that, where assets are claimed by individuals, the OFAC has needed to be very strict about licensing transfers.

48. Private assets amount to $15.2 million of which $5 million may be eligible for unblocking since it apparently belongs to residents outside of China. OFAC Census, supra note 27, at 5.
50. 442 F.2d 460 (2d Cir. 1971).
51. The plaintiff, a resident of Hong Kong, was one of six heirs of a testator who died in the United States in 1949. The five other heirs, foreign nationals who lived in Shanghai, executed a power of attorney in favor of the plaintiff. When the estate was
C. Results Of The Unblocking Procedures

As the foregoing discussion demonstrates, some of the blocked assets have been released over the years when applications for licenses have been approved.\(^5\) The 1951 census of the Chinese assets showed that $192.1 million had been blocked.\(^5\) In 1970, a new census was undertaken to update this total.\(^5\) This census showed that $86.7 million had been released to persons on Taiwan and to South Korean nationals, $35.5 million had been unblocked by OFAC, $55.3 million remained blocked, and $14.6 million was unaccounted for.\(^5\) In 1970, the total amount still blocked was set at $76.5 million due to appreciation of the assets and further blockings by the OFAC.\(^5\) Of this total, at least $11.6 million is currently subject to adverse claims filed as of 1970, while another $10 million is expected to be released shortly.\(^5\) Most of the administered, the funds were deposited in the New York City Treasury to await distribution to the heirs. Subsequently, when the blocking order was issued, the funds were frozen.

In 1959, plaintiff secured the release of his one-sixth share because he was not a designated national. The Shanghai heirs in 1963 exchanged letters of assignment with plaintiff. They released to him their claims to the blocked funds in the United States and he released to them his rights to any assets in the People's Republic of China that may have belonged to him. Armed with this release, plaintiff sued for release of the balance of the estate. The trial court granted summary judgment against plaintiff, holding that the 1950 power of attorney was not an instrument of transfer and that the 1963 exchange of letters was an unlicensed transfer of blocked assets. The appeals court affirmed and the funds have remained frozen.

52. See note 28 supra and accompanying text.
53. See OFAC Census, supra note 27, at 8.
54. All of the updated figures reported in the 1970 census were based on the actual or estimated fair market value of each asset as of July 1, 1970. Id. at 11. It should be noted, however, that these figures do not reflect any claims for the assessment of interest accumulated for the years since 1950. Because the Treasury Regulations do not provide for the assessment of interest on these assets, the OFAC has suggested that interest claims will have to be recovered through negotiations or litigation after the assets have been unblocked. Therefore, it is difficult to determine the actual amount of the claims made against those assets which are still blocked. For a similar discussion concerning the actual amount of claims made by U.S. nationals against assets blocked by the PRC, see note 67 infra.
55. Id. The census is still incomplete. Consequently, reports on funds that are still unaccounted for may yet be filed.
56. By 1970, the remaining $55.3 million had appreciated to $60.8 million. The OFAC had blocked an additional $10.8 million since 1951, which had appreciated to $15.7 million. Thus, a total of $76.5 million was still blocked as of 1970. Id. at 8. As more responses to inquiries have been received, the OFAC now reports that, as of 1974, this total has increased to $81 million.
57. The major portion of these adverse claims, $9.6 million as of 1970, is asserted by the Government of the Republic of China (Taiwan) against funds held in the name of a bank in New York for its branches are under the control of the PRC. Id. at 6. At least $4 million is presently eligible for unblocking. It is held in the name of a Chinese corporation that is 99 percent owned by US nationals. Also, $6 million claimed by private individual may be eligible for release. See note 48 supra.
situations involving serious conflicts as to ownership arose in connection with those assets which have already been released. Since so few adverse claims are still unresolved, it is unlikely that a spate of litigation will follow the unblocking of the remaining assets. Therefore, of the total assets blocked since 1950, the United States is currently holding approximately $60 million of assets as to which the ownership of the PRC is generally uncontested.

III

THE CLAIMS OF U.S. NATIONALS AGAINST THE PRC

As a result of the Chinese expropriation order in 1950, many U.S. nationals have claims against the PRC. These claimants are without recourse in American courts, even though Chinese assets are presently blocked in the U.S., because Treasury Regulations prohibit attachment or execution upon them. Moreover, the likelihood that these claimants will be able to get any effective remedy in Chinese courts is extremely remote. Their sole hope lies in the negotiation of a settlement between the U.S. and the PRC. Therefore, it seems reasonable to assume that, after all these years, virtually any substantial settlement would be acceptable to them, even if for less than the full value of their claims.

In anticipation of a settlement with the PRC, the Foreign Claims

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58. The $81 million of blocked assets, supra note 57, minus the $11.6 million currently subject to adverse claims and the $10 million expected to be released shortly, contains only $60 million of uncontested assets to which the PRC is entitled.

59. The assets are the blocked assets discussed in the preceding text. While they may be both public or private Chinese assets, this Note will not deal with this distinction since it would require an analysis of internal Chinese law that is beyond the scope of this Note.

60. 31 C.F.R. § 500.504 (1974).

61. Very little is known about the Chinese civil court system, so theoretically it may be possible to get into such a court to assert a claim. Because of the close relationship between the courts and the ruling political regime, however, it seems unlikely that such a court would grant an effective remedy to these U.S. claimants.

62. According to Restatement (Second) of Foreign Relations Law of the United States § 212 (1965), the U.S. Government is not, however, obligated to espouse these claims:

Discretion as to Espousal of Claim: The government of the United States has discretion as to whether to espouse the claim of a United States national for injury caused by conduct attributable to a foreign state that is wrongful in the President and exercised on his behalf by the Secretary of State.

63. This conclusion, that the claimants will probably accept compensation for less than full value, was discussed in Comment, Blocked Assets and Private Claims: The Initial Barriers to Trade Negotiations Between the United States and China, 3 Ga. J. Int'l & Comp. L. 449 (1973).
U.S. and China: Blocked Assets—Claims

Settlement Commission (FCSC) was authorized in 1966 to adjudicate each claim. In 1966, Title II of the International Claims Settlement Act of 1949 was amended to provide for the determination of the amounts of claims which U.S. nationals asserted against the PRC. 80 Stat. 1365 (1966), 22 U.S.C. § 1643 (1970) amending 78 Stat. 1110 (1964). Section 503(a) of the amended Act reads:

The Commission shall receive and determine in accordance with applicable substantive law, including international law the amount and validity of claims by nationals of the United States against the Government of Cuba, or the Chinese Communist regime ... for losses resulting from the nationalization, expropriation, intervention, or other taking of, or special measures directed against property ... owned ... at the time by nationals of the United States ...

The Commission was authorized to do this even though there was no money available to compensate the claimants. This technique of preadjudication was hailed as a breakthrough in the foreign claims settlement area. The claims can be determined while recollections are still fresh and negotiations for a settlement are less cumbersome because a certified claims total is known. Freidberg, A New Technique in the Adjudication of International Claims, 10 VA. J. INT'L L. 282 (1970).


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66. Freidberg, supra note 64, at 285-86. For a detailed analysis of the adjudication of the Chinese claims, see Redick, supra note 23.

67. The deadline for filing claims was July 6, 1969 and the statutory completion date for the program was July 6, 1972, so this total represents a final figure. 1970 FCSC ANN. REP'T, supra note 65, at 13-14.

When the adjudication process was completed in 1972, 384 of the 579 claims originally asserted were certified for a total of $196,861,834. These claimants are now awaiting a settlement between the U.S. and the PRC so that their claims may be satisfied.


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The largest claims are asserted by Shanghai Power Company for $58,832,885, Esso Standard for $27,096,602, and Caltex Limited for $15,443,700. The nine claims of $1 million or more by business corporations total over $104 million. FOREIGN CLAIMS SETTLEMENT COMMISSION ANN. REP'T 506, 508 (1972) [hereinafter cited as 1972 FCSC ANN REP'T].

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The Commission shall receive and determine in accordance with applicable substantive law, including international law the amount and validity of claims by nationals of the United States against the Government of Cuba, or the Chinese Communist regime ... for losses resulting from the nationalization, expropriation, intervention, or other taking of, or special measures directed against property ... owned ... at the time by nationals of the United States ...


66. Freidberg, supra note 64, at 285-86. For a detailed analysis of the adjudication of the Chinese claims, see Redick, supra note 23.

67. The deadline for filing claims was July 6, 1969 and the statutory completion date for the program was July 6, 1972, so this total represents a final figure. 1970 FCSC ANN. REP'T, supra note 65, at 13-14.

The largest claims are asserted by Shanghai Power Company for $58,832,885, Esso Standard for $27,096,602, and Caltex Limited for $15,443,700. The nine claims of $1 million or more by business corporations total over $104 million. FOREIGN CLAIMS SETTLEMENT COMMISSION ANN. REP'T 506, 508 (1972) [hereinafter cited as 1972 FCSC ANN REP'T].
LUMP SUM SETTLEMENT

A. Probable Settlement Option—Blocked Assets As Full Compensation For The Claims

The U.S. is currently asserting claims of its nationals against the PRC totalling approximately $197 million. On the other hand, the PRC has claims to blocked assets amounting to around $60 million. It has been widely proposed that these assets be applied against the claims of the U.S. nationals as a part of a final settlement of the blocked assets-claims problem.

Since World War II, the resolution of claims between countries has often taken the form of a lump sum settlement. In any such settlement between the U.S. and China, the U.S. would release the claims of its nationals against the PRC and use the blocked assets to compensate these claimants, while the PRC would release its rights to the blocked assets, and presumably compensate its own nationals with proceeds of the expropriations that gave rise to the American claims. Of course it is uncertain whether the PRC would actually pay compensation to its nationals; this is a matter of internal Chinese law. The lump sum mechanism does not require such compensation, each country having

It should be noted that the $197 million figure stated above does not accurately reflect the total amount actually claimed by U.S. nationals. This is due to the fact that, in addition to the amounts of the certified claims, there is an assessment for interest at a rate of 6 percent compounded annually from the date of the settlement. If the applicable period for each claim were the 25 years from 1950 to the present, then the total of such claims would increase from $197 million to approximately $890 million. However, the actual total may be somewhat less since some of the losses did not occur until sometime after 1950.

For a related discussion with regard to the assessment of interest on the claims asserted by the PRC against those assets currently blocked in the United States, see note 54 supra. Although there has been no official assessment of interest on the blocked assets claimed by the PRC, it is assumed that a negotiated settlement would recognize an equally valid claim of the PRC to such an assessment at a rate of 6 percent compounded annually over a similar period of loss. For a discussion of the effect of such interest assessments on the settlement of the blocked assets-claims problem, see note 73 infra.

68. See id. and accompanying text.
69. See notes 52-58 supra and accompanying text.
70. See Redick, supra note 23, at 738-49; Comment, supra note 63, at 454.
71. U.S. claims agreements have been concluded with Bulgaria, Yugoslavia, Poland, Rumania, and Czechoslovakia. The U.S.-Hungarian claims agreement is the one most recently concluded. The U.S. released all controls of frozen Hungarian assets in this country, while Hungary relinquished all claims on vested Hungarian assets in the U.S. and agreed to pay $18.9 million to the U.S. in twenty yearly installments of $945,000. N.Y. Times, March 7, 1973, at 14, col. 1.
the sole power to adjudicate the claims and to allocate payments as it sees fit. A fortiori, compensation of each claim need not be in full.

Although the PRC has agreed in principle to a settlement, a final agreement has not been reached. Nevertheless, there are significant reasons for believing that a type of lump sum arrangement similar to that outlined above might by acceptable to both sides. It is very possible that the PRC would be willing to relinquish its rights in the blocked assets if a settlement would lead to trade concessions. The PRC may no longer expect to recover the blocked assets, or if it does, it may view the assets as a windfall, the most useful purpose of which is to clear up the blocked assets-claims problem. Similarly, such a settlement could be palatable to the United States. It is true that the U.S. would be giving up to $197 million while receiving only about $60 million from the PRC. It is also a fact that in past settlements with other countries, where the sums have been disproportionate, the U.S. has insisted upon at least some nominal sum payment, in addition to the vesting of assets in the U.S. These considerations, however, must be weighed against the advantages of settlement of the assets-claims problem. Not to be minimized is the fact that U.S. claimants would recover at least 30 percent of the value of their claims. While this is clearly not full compensation, after so many years such a sum might very well be acceptable. Moreover, resolution of the blocked assets-claims problem would certainly further the establishment of even warmer economic

72. See note 11 supra and accompanying text.
73. See note 7 supra.
74. The U.S.-Rumanian settlement which paid 28.9 percent of the value of the claims consisted of 26 percent from vested assets and 2.9 percent from additional funds. The U.S.-Bulgarian settlement returned 53.9 percent of which 47.8 percent was vested and 6.1 percent additional funds. For a detailed analysis of the Bulgarian settlement, see Lillich, The United States-Bulgarian Claims Agreement of 1963, 58 Am. J. Int'l L. 686 (1964).
75. Nearly $60 million in blocked assets (the adverse claims and the funds eligible for unblocking are not included) would be applied against the $197 million claimed by U.S. nationals giving a return of approximately 30 percent of the value of the claims.

As noted earlier, the figures upon which this 30 percent rate of compensation is calculated do not reflect any interest assessments. See notes 54 and 67 supra. Nevertheless, if both amounts are adjusted to reflect an assessment of 6 percent interest compounded annually over the same period, the two amounts increase proportionately and, therefore, there is no change in the rate of compensation to the U.S. claimants.

However, when expressed in real dollars, the actual difference between the adjusted figures for the U.S. claims and PRC claims shows an increase from $137 million ($197 million less $60 million) to $605 million ($890 million less $285 million). This represents a substantial increase in the actual dollar loss to the U.S. claimants who will no doubt raise objections to any settlement that does not include a further lump sum payment by the PRC.
76. Comment, supra note 63.
and diplomatic relations with the PRC, which many in the United States consider to be highly desirable. Thus, it is at least conceivable that the United States and the People's Republic of China could resolve the blocked assets-claims problem by little more than an agreement by each to cancel its claims against the other.

B. BALANCING THE EQUITIES: WHETHER THE PRC SHOULD PAY A LUMP SUM IN ADDITION TO RELEASING CLAIMS TO BLOCKED ASSETS

While the possibility exists that a settlement of the assets-claims problem could be reached through an agreement limited to mutual cancellation of existing claims between the U.S. and the PRC, an accommodation requiring the PRC to honor claims by U.S. nationals much in excess of $60 million is not nearly as likely to be achieved. It is highly improbable that the PRC would agree to payment of the entire $197 million in claims by U.S. nationals merely in return for trade concessions. Such an amount would impose a heavy debt on the PRC just as it is beginning to trade widely.\(^7\) The PRC may also be unwilling to pay an additional lump sum because it may view such payment as an admission that the original expropriations were illegal.\(^8\) Furthermore, it is questionable whether a demand for such by the United States can be considered reasonable, for there are non-political considerations as well which would support the PRC's refusal.

1. The Recognition Problem

If the U.S. had recognized the PRC before the unblocked assets were released to other parties, then the PRC obviously would have had a much stronger claim to such assets. As a result, the PRC's share of all assets probably would have been much greater than $60 million. The

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7. If the PRC agreed to the full $197 million in claims, it would be accepting a large balance of payments burden, something it has always tried to avoid. See Redick, supra note 23, at 738-40.

8. According to Redick, supra note 23, at 738-39:

The general rule of international law is that the uncompensated taking of property is illegal, but it is doubtful that the Chinese attitude toward international law is completely reconcilable with our own. . . . The particular circumstances of Chinese history, including unequal treaties, foreign commercial domination as a general result of the inferior military position of China, and the general Communist opposition to the cultural and political imperialism and exploitation which allegedly accompanied many of these financial and educational activities, will have their impact on an acceptable settlement of the claims.
size of its share would have depended upon the mode of recognition used by the U.S., as indicated by the following discussion of the three most popularly advocated modes of recognition.\textsuperscript{79}

\textit{a. One China}

If the PRC had been recognized immediately as the sole government of China,\textsuperscript{80} it would have succeeded to all the rights of the Chinese state. It alone would have had both standing and valid grounds to sue for blocked government assets held in the U.S. Since Taiwan would not have been a recognized entity, but rather a part of the Chinese state, it would have had neither standing nor valid grounds to assert the claims for the government assets.\textsuperscript{81} For the same reasons, Taiwan would not have been able to represent private individuals or corporations on Taiwan.\textsuperscript{82} Of course, those private individuals and corporations fleeing China, and settling somewhere other than Taiwan, could claim their assets.\textsuperscript{83} But with this exception, all assets would have belonged to the PRC.

\textit{b. Two Chinas}

If the Chinese state had been partitioned, with the PRC recognized as the government of the mainland and the Nationalist Government as that of Taiwan, a corresponding division of the state's rights would have followed in accordance with Restatement of Foreign Relations Law § 111.\textsuperscript{84} All government claims would have been divided, possibly

\textsuperscript{79} In the discussion which follows, certain principles should be kept in mind. First, rights are said to inhere in states, not governments. Further, states only change when there have been territorial changes. Recognition of a government is acknowledgment of its control over a state and thus its basis to assert claims of that state. See T. Chen, The International Law of Recognition (L. Green ed. 1951). Also, unrecognized governments have no standing to sue in American courts. See note 34 supra and accompanying text.

\textsuperscript{80} Under this scheme the PRC Government is the sole government of the Chinese state, including Taiwan. The Nationalist Government is not a recognized entity. This is the mode that the PRC is presently pressing the U.S. to adopt. See note 5 supra.

\textsuperscript{81} The government of Taiwan would not even be recognized as the \textit{de facto} representative of the Taiwan people under this scheme.

\textsuperscript{82} It is, of course, questionable whether any of the corporations or individuals who moved to Taiwan would have done so if this scheme had been adopted.

\textsuperscript{83} See note 27 supra and accompanying text.

\textsuperscript{84} Restatement (Second) of the Foreign Relations Law of the United States § 111 (1965) states:
The government of a state, even though it has lost control of all or a major part of state territory, may exercise the state's rights and must perform its obligations under international law with respect to another state. It may create rights and
in proportion to the amount of land controlled. Both governments would have had standing to sue since both would have been recognized, leaving only the question as to which government possessed the substantive right to sue on the particular claim in a given case. While the PRC would not have been awarded every claim under this scheme (as opposed to the One China model), it surely would have won some of them. Thus, the PRC would have had a larger share of the blocked assets than it does now.

Private and corporate assets would have been distributed according to the nationality of the holders of claims. Private and corporate claimants no longer living in either country of course would not have been affected by recognition policy.

c. China-Tawian

Under this third alternative, the PRC would have succeeded to the rights of the Chinese state, and Taiwan would have been recognized as having seceded from China. Under this mode of recognition, Taiwan would have had standing to sue in American courts as a recognized country, but it would not have been able to assert any governmental rights of the Chinese state. These would have passed to the PRC, making its share of the blocked assets larger than it is now. Taiwan, however, would have been able to sue on behalf of corporations and individuals residing within its borders. And, as with the other recognition modes, the claims of corporations and private individuals settling outside of both China and Taiwan would have been unaffected by recognition policy.

d. The Effects of Non-Recognition

From the foregoing analysis it is clear that, under all three modes of recognition, the PRC would have received at least a portion of the obligations with respect to private parties, who are nationals of the other state, as long as it is recognized by the other states, insofar as concerns matters still within its effective control either in territory still under its control or on the high seas or the territory of the other state.

85. The distinctions between de facto and de jure recognition are not considered in this analysis.
86. See note 27 supra and accompanying text.
87. The principal distinction between the recognition of one China and the China-Taiwan scheme is that Taiwan would be a recognized entity in the latter. But in neither case would Taiwan succeed to any rights of the Chinese state.
88. See note 27 supra and accompanying text.
governmental assets which have been released to the Nationalist Government, as well as some of the corporate and private funds. The U.S. policy of non-recognition of the PRC prevented, however, the PRC from claiming this share. Cases such as Wells Fargo, Chase National Bank, and American Express exemplify situations where funds were awarded to the Nationalist claimant because the PRC was not recognized. The principles presented in those cases have surely been followed by other holders of assets as well as the OFAC in deciding on licenses needed to transfer funds. Therefore, it is not at all unreasonable to argue that U.S. recognition policy is at least partly responsible for the lack of sufficient remaining assets to permit a more proportionate settlement of the blocked assets-claims dispute. This is a strong countervailing factor to be considered in the face of any U.S. demand for an additional lump sum payment.

2. An Evaluation of the Settlement

If the blocked assets-claims disputes were to be settled without a further lump sum payment, the settlement would produce a rate of return of about 30 percent. This would not be outside the range established in settlements reached with other countries in recent years. For example, a settlement with Rumania returned 28.9 percent of the value of the claims, while an agreement with Bulgaria returned 53.9 percent. In addition, when all of the blocked assets in the U.S. are accounted for and all of the adverse claims against the assets are fully litigated, the settlement percentage could possibly improve. If

89. This would be equally true if the PRC were the sole successor, as in the One China and China-Taiwan schemes, or a partial successor, as in the Two China mode. Of course, the adverse claims would perhaps be troublesome.
93. Valuation of the claims during the preadjudication process was often inaccurate so that the $197 million total may not be a precise reflection of the true value of the claims. Some of the problems encountered were the fluctuating exchange rates of the currencies of the two countries and the destruction of financial records. But the $197 million figure will be used in evaluating the settlement because it is the only one available. For a detailed discussion of the valuation problem, see Redick, supra note 23, at 735.
94. See note 74 supra.
95. See notes 54-55 supra and accompanying text.
96. See note 57 supra and accompanying text.
these amounts, potentially an additional $25.2 million\(^9\) were also to be applied against the $197 million in claims by U.S. nationals, the percentage of return would be increased by almost 13 percent. Thus, although the final percentage cannot now be determined precisely, the potential return to U.S. claimants could very well exceed 40 percent.\(^8\)

**CONCLUSION**

Settlement of the blocked assets-claims problem will probably not accompany United States recognition of the People's Republic of China. It is more likely to occur during a later step in the normalization of relations between the U.S. and the PRC, possibly by means of a separate agreement granting trade concessions to the PRC. As recommended in this Note, a settlement agreement between the two countries should be based upon the direct application of the blocked Chinese assets to the claims of U.S. nationals, without a further lump sum payment.

Such a settlement would have several virtues. Although it would not return to the U.S. claimants the full value of their claims, it would produce a rate of return of at least 30 percent, and perhaps even more.\(^9\) This would not be outside the range established in settlements reached by the U.S. with other countries, and, after so many years, a return of 30 percent cannot easily be dismissed. Even more important, however, is the fact that such an agreement would represent a realistic appreciation of the fact that the United States policy of non-recognition over the last 25 years is one very significant reason why there are so comparatively few Chinese assets left in the U.S. to balance against the claims of U.S. nationals. Finally, such an agreement, perhaps more effectively than any other, would reflect a sensitive and rather objective awareness of the full history of the blocked assets-claims problem. Therefore, it could not help but serve to further the desired normalization of economic and diplomatic relations between the United States and the People's Republic of China.

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97. The assets not yet accounted for amount approximately to $14.6 million, the difference between $105.4 million and $90.8 million, while the adverse claims total $11.6 million. Together, these two amounts add up to $25.2 million.

98. Unfortunately, there is insufficient data from which to make a determination as to the PRC's claims to these assets. However, the PRC's claims must have some validity for these assets to have remained blocked for so long.

99. For a discussion of the potential effect of the interest assessments on the issue of an additional lump sum payment by the PRC, see notes 54, 67 and 75 supra.