TO AMEND THE WAR CLAIMS ACT

HEARINGS

BEFORE A

SPECIAL SUBCOMMITTEE

OF THE

COMMITTEE ON THE JUDICIARY

UNITED STATES SENATE

NINETY-FIRST CONGRESS

SECOND SESSION

ON

S. 941 and H.R. 2669

A BILL TO AMEND SECTION 213(a) OF THE WAR CLAIMS ACT OF 1948 WITH RESPECT TO CLAIMS OF CERTAIN NON-PROFIT ORGANIZATIONS AND CERTAIN CLAIMS OF INDIVIDUALS

SEPTEMBER 16 AND 17, 1970

Printed for the use of the Committee on the Judiciary

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A BILL TO AMEND SECTION 213(a) OF THE WAR CLAIMS ACT OF 1948 WITH RESPECT TO CLAIMS OF CERTAIN NONPROFIT ORGANIZATIONS AND CERTAIN CLAIMS OF INDIVIDUALS

WEDNESDAY, SEPTEMBER 16, 1970

U. S. SENATE,
SPECIAL SUBCOMMITTEE OF THE
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met, pursuant to notice, at 6:05 p.m., in room S–230, the Capitol Building, Senator Edward M. Kennedy presiding.

Present: Senator Kennedy (presiding).

Also present: Robert B. Young, professional staff member, Senate Judiciary Committee.

Senator KENNEDY. The committee will come to order.

It is with great pleasure that I open these hearings this evening on amendment to the War Claims Act which, together with Senator Javits, I had the privilege of introducing over 4 years ago. The essence of our proposal is to grant equality of treatment to a number of nonprofit organizations which have been given inadequate consideration when the war claims legislation was enacted. We propose to correct the oversight by providing that any future payments out of the war claims fund would first be used to satisfy awards that have been granted to these agencies. When the merits of this proposal were considered, following hearings by the Committee on Interstate and Foreign Commerce in the House, I was pleased to note that there was unanimous agreement that our proposed amendment should be accepted.

The House chose to add further that the next priority should go to those individual claimants who had not yet received the full amount awarded to them. I have no objection to the House revision of our amendment.

We must bear in mind that almost all those who received war damage awards have already been paid in full. All those with awards under $10,000, which constituted the great bulk of the claimants, received full payment. All those with awards based on claims arising from death or personal injury were also paid in full, and through a last minute amendment on the floor of the Senate, full payment was also provided for 250 businesses which employed less than a thousand people or had annual sales under $5 million.

Of a total of about 7,000 claims, about 6,000 have, therefore, been fully satisfied. The remaining 1,000 were left in the last priority for the purpose of dividing pro rata whatever residue might remain in the war fund. These last priority claimants consist of three groups:

(1) The 29 religious, charitable and nonprofit agencies we are talking about;

(2) Those individuals with awards over $10,000; and

(3) About 200 large corporations.

All of these last priority claimants received $10,000 plus 61.3 percent of the remaining balance on their awards. The net effect of this was that the large corporations consumed over $150 million out of the total amount paid of under $200 million.

In all the congressional discussions and decisions regarding the war claims program, it has always been clear that principles of equity and justice would be applied. In so doing, the Congress repeatedly stated that the large corporations would be given last priority because they had already received various types of tax advantages. Thus, there were very substantial tax writeoffs granted to the large corporations as soon as hostilities began. Many foreign governments granted tax concessions and other benefits to the American corporation in order to enable them to reestablish themselves.

On the other hand, the missionary schools, their churches, their hospitals, their orphanages, and other institutions which helped to spread respect for American democracy throughout the world have been totally destroyed and may never be rebuilt.

I might mention, at the outset, that Senator Javits very much regrets that he could not be here and has an extensive statement. He will be here tomorrow, as I understand it.

Maybe Mr. Ferencz would like to introduce the witnesses in the order in which they will appear.

Mr. FERENCZ. Thank you, Senator Kennedy.

Mr. Ellsworth Stanton III is serving as secretary to the group and he will introduce the various speakers and present a prepared statement.

STATEMENT OF ELLSWORTH G. STANTON III, NATIONAL COUNCIL OF THE CHURCHES OF CHRIST IN THE U.S.A.

Mr. STANTON. With your permission, Mr. Chairman, I will lead off. As Mr. Ferencz has indicated, my name is Ellsworth G. Stanton III. I serve as the secretary of the Coordinating Council of Religious and Wlefare Agencies With War Damage Awards. This is an ad hoc committee representing a significant number of the claimants.

I also serve as a staff member of the National Council of Churches.

Mr. Chairman, may I first take this opportunity to thank you and Senator Eastland for the opportunity to present this testimony regarding the proposed amendment to the War Claims Act of 1948. I am submitting a brief statement for the record in support of these amendments. Appended to this document you will find a list of agencies submitting a memorandum and a brief description of their activities.

Now, with your permission, Mr. Chairman, I would like to introduce the members of the panel who are here present.

Senator KENNEDY. Now, this will be included in its entirety.

(The document referred to follows:)

COORDINATING COUNCIL OF RELIGIOUS & WELFARE AGENCIES WITH WAR DAMAGE AWARDS, NEW YORK, N.Y.

MEMORANDUM IN SUPPORT OF S. 941 AND H.R. 2669 TO AMEND SEC. 213 (A) OF THE WAR CLAIMS ACT

Summary

This memorandum is submitted on behalf of a number of religious and welfare agencies with war damage awards. A list and brief description of the agencies submitting the memorandum and the beneficiaries of the proposed legislation is attached as Exh. 1. A chart showing the breakdown of payments to various categories of claimants is attached as Exh. 2.

S. 941 and its companion bill H.R. 2669 were introduced to correct an inequity in the existing war claims law. The present law provides for first priority and payment in full of all war damage awards made on death and personal injury claims, all property claims under $10,000 and all claims submitted by a "small business" concern as defined by he Small Business Act. Close to 6000 claimants have thereby been given a preferred status and have geen paid in full. The proposed amendment would grant the same priority rights to "non-profit organizations operated exclusively for the promotion of social welfare, religious, charitable or educational purposes." There are 29 non-profit organizations, including church groups representing all major faiths, which have only received 62% of their war damage award. The proposed legislation would place them in the same category as those who have already received full payment. The total amount needed to satisfy their claims in full is about $9 million. No additional appropriations are required since payments would come only from whatever residual assets might become available for further distribution from the War Claims Fund.

Background information

A comprehensive memorandum setting forth the complete legislative background and an analysis of the proposed legislation and the arguments in support of it was submitted at the hearings held before the sub-committee on Commerce and Finance of the Committee on Interstate and Foreign Commerce in the House of Representatives on March 5, 1969. (Hearings on H.R. 2669, Serial #91–3). A minor amendment was added by the House Committee and as so amended the bill was unanimously passed by the House after suspension of the Rules on March 18, 1969 (Cong. Rec. H1802–1805).

The War Claims Act as originally enacted in 1948 was largely procedural. It did provide, however, for payment out of the War Claims Fund to prisoners of war and internees as well as to religious organizations functioning in the Philippine Islands and affiliated with a religious organization in the U.S. In 1952 a new section was added providing for payment of the full replacement value of the schools, hospitals, orphanages and other facilities connected with the educational, medical and welfare work of such agencies in the Philippines.

Legislation to compensate Americans for war losses in Europe and Asia was delayed for many years while the question was debated whether German property in the U.S. should be seized for inclusion in the War Claims Fund. The American claimants with war losses in Europe were led to believe by repeated official declarations that no matter what settlement would be made on the question of vested assets their claims would be paid in full.

In 1962 the House passed H.R. 6283 which added a new Title II to the War Claims Act to cover the losses in Europe and Asia. Sec. 213 granted preferential treatment for losses arising from the death or disability of U.S. Civilians on the high seas and to all those with awards under $10,000. When the bill came to the floor of the Senate for debate an amendment was offered by Senator Smathers. The amendment had never been considered in committee or in any hearings. It provided for a new preference for a new category of so-called "small business concerns" as defined in the Small Business Act. This meant that any company with less than 1000 employees or annual sales under $5 million would be paid first and in full. The amendment was supported by Senator Long of Louisiana.

The justification advanced for the preference in favor of small business was that the large corporate claimants had not been hard hit by war losses and that they had recouped a great deal of the loss through tax advantages. The amendment was agreed to by the Senate, the House Conference receded from its disagreement and all the above preferences became part of the law. No mention was made of the claims of 29 religious and charitable organizations whose claims were obviously overlooked.

The full impact of the discriminatory provisions now contained in the law did not become apparent until a few years later when the war damage claims were finally adjudicated. It then became clear that, contrary to the official declarations, there would not be enough money to pay all the awards in full. This meant that unless the law was amended the churches and charities would be treated worse than all the 7000 preferred claimants including about 250 profit-making "small business" concerns.

In 1966 Senator Javits and Senator Kennedy of Massachusetts introduced an amendment to the War Claims Act in support of the churches and charities saying "these claimants should not be put into a worse position than small business concerns . . . Failure to grant non-profit agencies at least the same priorities given to small business concerns which are conducted for personal profit would be inequitable." (Cong. Rec. April 6, 1966, p. 7475.)

On June 13, 1966, without notice to any committee or any hearings, Senator Long of Louisiana asked consent for consideration of a House Bill 13935 dealing with Bus Taxation in Massachusetts to which Senator Dirksen then offered a non-germane amendment. The effect of the amendment would have been to pay 6% interest to small business concerns per annum retroactive to the date of loss some 25 years ago. This would have meant an additional 150% in interest payments to the "small business" concerns which had already received 100% while the churches and charities had not yet received anything. The Senate passed the bill as so amended. In the House, Congressmen Celler and Staggers objected to the amendment (Cong. Rec. 13075, June 21, 1966). The conferees, including Senators Eastland, McClellan and Hruska receded from the amendment. (October 19, 1966, Report No. 2321).

In 1967, Mr. Javits and Mr. Kennedy resubmitted their amendment to eliminate the discrimination against the churches and charities (S. 957). It was again referred to the Judiciary Committee where no action was taken. On July 17, 1969, Mr. Long of Louisiana, as Chairman of the Committee on Finance, reported and recommended passage of a bill—H.R. 7735 dealing with Alumina and Bauxite. His committee had, without hearings or notice to anyone, added a non-germane amendment, the effect of which would have been to require the payment of interest of about 150% to the small business claimants on top of the 100% payment they had already received on their war damage awards. Mr. Smathers supported the amendment as did Senator Dirksen. Senator Williams of Delaware opposed it, pointing out that the religious and charitable organizations would be penalized if the amendment passed since the War Claims Fund would be depleted. He submitted a list of the small business concerns which would benefit, including Aris Gloves, Inc., with an award of over $462,000. Mr. Javits joined in opposition to the Long amendment, which after extensive debate was narrowly defeated. (Cong. Rec. September 19, 1968 S. 11087–11100).

In 1969, Mr. Javits and Mr. Kennedy once again submitted their proposed amendment of the War Claims Act to eliminate the discrimination against the churches and charities (S. 951). They were joined by Senator Scott as a co-sponsor. A companion bill, H.R. 2669 was introduced in the House by Congressman Friedel. On March 5, 1969, the subcommittee on Commerce and Finance of the Committee on Interstate and Foreign Commerce of the House held public hearings on the bill. Representatives of many leading churches and charities appeared to testify in support of the bill. No witnesses appeared at the hearings in opposition. One minor amendment was added in the committee to provide that second priority would go to those individuals with awards over $10,000 who had not yet been paid in full. Their claims were estimated at about $10 million. Whatever remaining balances might still be in the War Claims Fund, which was estimated at $26 million, would then be available for payment to those corporations which had not received full payment as small business concerns. The bill was considered by the full committee in executive session and as so amended was reported to the House unanimously. After debate, the bill was passed by the House after suspension of the rules. (Cong. Rec. March 18, 1969. H. 1802–1805).

Conclusion:

The many arguments in support of the bill were summarized during the hearing and elaborated in the memorandum which was part of the published report. The U.S. Government has always recognized that support of churches and charities was in the public interest. In the War Claims Act itself, in Title I it had been recognized that churches in the Philippines were entitled to full reimbursement of even the full replacement cost. Yet, without logic or consistency, Title II had relegated churches and charities to a position inferior to that of most other claimants.

It was the clear Congressional intent that the large corporations should be last in line since they had generally managed to rebuild or replace their damaged properities abroad. This was not true of the churches and charities whose destroyed schools, missions and hospitals were totally and irretrievably lost. As early as 1941 the large corporations were able to write off their foreign properties as total tax losses. They had the use of the money saved on taxes for over 25 years before the churches and charities received even partial reimbursement.

The 29 beneficiaries of the proposed bill include many of the most respected organizations in the United States. Baptists, Methodists, Presbyterians, Episcopalians, Seventh Day Adventists, Lutherans, Jews and Catholics, the YMCA, the National Jewish Welfare Board, the B'nai B'rith, Yale and Anatolia College and many other great agencies will be aided in their work for the benefit of all mankind if the proposed bill is passed. The churches and charities seek no special privilege but merely the right to be in the same position already given to most other claimants who have been paid in full, including small businesses operated for the profit and benefit of their private owners. The present inequity can only be explained as a legislative oversight. We are convinced that correction of this oversight is in the public interest and we therefore most sincerely urge that the amendment to the War Claims Act referred to herein be enacted without further delay.

LIST OF AGENCIES SUBMITTING MEMORANDUM

American Baptist Foreign Mission Societies

Represents approximately 6,200 churches whose membership is about one and a half million people. Supports hospitals and schools and collaborates with the Peace Corps in its missionary work in 10 foreign countries.

American Farm School

Operates an American-sponsored agricultural school in Greece, teaching modern American farming techniques, helping the people to feed themselves while receiving training in leadership responsibility as a bulwark of Democracy. Works closely with U.S. government A.I.D. Program.

Anatolia College

An American-sponsored school in Greece, providing secondary education to Greek nationals and inculcating American educational techniques together with democratic principles and ideals. Works closely with A.I.D. and is a member of the Near East College Association.

B'nai B'rith

Oldest and largest Jewish service organization, formed to "inculcate the purest principles of philanthropy, honor and patriotism." Membership of over half a million, with lodges in 42 free nations. Supports Hillel Foundations on 254 college campuses. Its Anti-Defamation League combats prejudice, its Veterans Division fosters patriotism and assistance to the Armed Forces, and its philanthropies extend to numberous hospitals, orphanages and homes for the aged.

Board of Missions World Division, United Methodist Church

Represents over 40,000 Congregations, with a membership of over 11 Million persons located throughout the United States. It is a merger of the Methodist Church and the Evangelical United Brethern. Its religious and educational work as well as its medical and hospital care is carried out in Central and South America, Europe, the Philippines, Japan, Korea, Africa, and other parts of the world.

Board of World Missions, the Presbyterian Church in the U.S.

The missionary arm of the Presbyterian Church in the United States provides medical care, education, evangelistic and chaplaincy services in Brazil, Mexico, Korea, Japan, Taiwan, Portugal, the Democratic Republic of Congo, Africa, Ghana and Indonesia.

Board of World Missions, Reformed Church in America

Organized in 1857 and serves 927 Congregations throughout the Northern United States; does missionary work in the Philippines, Japan, India, Pakistan, Africa, and other underdeveloped areas.

The Episcopal Church

Represents about 3½ million members in the United States; does missionary work in 11 Central and South American countries; Alaska, Taiwan, the Philippines,

and other areas of the free world where it conducts schools and seminaries, and provides hospital and medical care for the needy.

General Conference of Seventh Day Adventists

With headquarters in Washington, D.C., the church conducts a program of evangelism and religious activities throughout the world; is well known for its educational institutions in foreign countries and North America as well as its network of hospitals and clinics, its training school for nurses and its university for the training of medical personnel.

National Jewish Welfare Board

The national association of more than 400 Jewish Community Centers and YMHA—YWHA's; is the government-authorized agency for meeting the religious, welfare and moral needs of Jewish military personnel and hospitalized veterans. A member agency of the U.S.O.

Seventh Day Baptist Missionary Societies

Organized in 1671, with headquarters in Rhode Island. The societies are engaged in philanthropic overseas activities in Jamaica and various African states.

United Church Board for World Ministries

A merger of the Evangelical and Reformed and the Congregational Christian Churches. The instrumentality of the United Church of Christ, with membership in excess of two million people. The Board directs the churches' missionary work in approximately 30 different nations where it operates schools and hospitals.

Yale-in-China Association

Organized in 1901, it supports the New Asia College in Hong-Kong and sends Yale students to Hong-Kong to teach English and the principles of American democracy among the Asian students.

Other organizations which are not members of the Coordinating Council but which complete the list of agencies which will benefit by the legislation:

American Foreign Christian Union ("The American Church in Berlin")
China Medical Board
Church of the Lutheran Brethren of America
Congregation of the Mission of St. Vincent
Home of Onesiphorus
National Board of Young Men's Christian Associations
Oriental Missionary Society
Pious Society of St. Paul
Sisters of Charity of St. Joseph's
Sisters of the Order of St. Benedict
Sons of Divine Providence, Inc.
United Board for Christian Higher Education in Asia
United Presbyterian Church
Women's Christian Medical College

AMOUNTS AWARDED UNDER TITLE II OF THE WAR CLAIMS ACT OF 1948 AS AMENDED

(1)	(2) Awards		(3)	(4)	(5)
Category of claim	Number	Amount	Percentage paid	Amount paid	Balance to be paid
I. Death and personal injury	34	$510,035			
II. Small business	251	12,026,093	100	(1)	
III. $10,000 and under	5,635	13,059,352			
Total categories I, II, and III	5,920	25,595,480		$25,595,480	
IV. Over $10,000:					
1. Individuals	886	35,276,571		25,053,358	$10,223,213
2. Corporations	199	249,441,491	$10,000+61.3	153,677,764	95,763,727
3. United States of America	4	327,073		204,366	122,707
4. Religious, charitable and nonprofit	33	24,159,313		14,951,124	9,208,189
Total	1,119	309,204,448		193,886,612	115,317,836

[1] Paid in full.

EXHIBIT 3

CHARITABLE, RELIGIOUS, NONPROFIT

[Awards under Public Law 87–846]

Claim Number	Name	Amount of award
W–13723	American and Foreign Christian Union, Inc	$195,000.00
W–3554	American Baptist Foreign Mission Society	813,039.45
W–10541	American European Fellowship for Christian Oneness	[1] 7,865.00
W–10380	Anatolia College	97,005.25
W–9952	Assembly of God	[1] 8,500.00
W–4234	B'nai B'rith	1,408,350.00
W–10379	The Evangelical and Reformed Church	336,821.50
W–21463	Evangelical United Brethren Church	81,982.68
W–7904	Presbyterian Church in the United States	816,859.63
W–18425	Reformed Church in America	209,301.00
W–8376	China Medical Board of New York	2,088,103.00
W–4631	Church of the Lutheran Brethren of America, Inc	29,820.00
W–13666	United Presbyterian Church in the United States of America	5,142,677.95
W–7010	Congregation of the Mission of St. Vincent de Paul in Germantown	2,080,421.15
W–22347, W–14209 thru W–14267	Protestant Episcopal Church in the United States of America	246,096.03
W–9772	Seventh Day Adventists	1,388,634.35
W–1331	Home of Onesiphorus	50,000.00
W–10402	Honpa Hongwanji Mission	[1] 9,000.00
W–20475	Young Men's Christian Associations	12,144.00
W–4105	National Jewish Welfare Board	126,725.00
W–9309	Oriental Missionary Society	23,175.00
W–20339	Pious Society of St. Paul	91,686.10
W–11475	Seventh Day Baptist Missionary Society	20,319.50
W–15937	Sisters of the Order of St. Benedict	[1] 5,475.00
W–10401	Sisters of Charity of St. Joseph's	108,172.29
W–10657	Congregation of the Mission of St. Louis, Missouri	600,525.00
W–6658	Sons of Divine Providence	497,472.00
W–18886	Thessalonica Agricultural and Industrial Institute	122,000.00
W–18034	United Board for Christian Higher Education in Asia	3,464,378.86
W–10378	United Church Board for World Ministries	481,825.64
W–14622	Women's Christian Medical College	225,418.93
W–14636	World Division of Board of Missions of Methodist Church	3,251,605.06
W–7913	Yale-in-China Association	107,185.00
	Total	24,159,313.66

[1] Paid in full.

Senator KENNEDY. We will also include the House bill and the House report and the Agencies' report which I have here.

(H.R. 2669, report and agency reports follow:)

[H. Rept. 91–76, 91st Cong., first sess.]

AMENDING SECTION 213(a) OF THE WAR CLAIMS ACT OF 1948 WITH RESPECT TO CLAIMS OF NONPROFIT ORGANIZATIONS AND OF INDIVIDUALS

The Committee on Interstate and Foreign Commerce, to whom was referred the bill (H.R. 2669) to amend section 213(a) of the War Claims Act of 1948 with respect to claims of certain nonprofit organizations, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments are as follows:

1. Strike out all after the enacting clause and insert in lieu thereof the following: "That (a) section 213(a) of the War Claims Act of 1948 (50 App. U.S.C. 20171(a)) is amended as follows:

"'(1) Paragraph (1) is amended to read as follows:

"'(1) Payment in full of awards made pursuant to section 202(d)(1) and (2), and thereafter of any award made pursuant to section 202(a) to any claimant (A) certified to the Commission by the Small Business Administration as having been, on the date of loss, damage, or destruction, a small business concern within the meaning now set forth in the Small Business Act, as amended, or (B) determined by the Commission to have been, on the date of loss, damage, or destruction, a nonprofit organization operated exclusively for the promotion of social welfare, religious, charitable, or educational purposes.'

"'(2) Redesignate paragraph (3) as paragraph (4) and, immediately after paragraph (2), insert the following new paragraph:

" '(3) Thereafter, payments from time to time on account of the other awards made to individuals pursuant to section 202 and not compensated in full under paragraph (1) or (2) of this subsection in an amount which shall be the same for each award or in the amount of the award, whichever is less.'

"(b) The Foreign Claims Settlement Commission is authorized to recertify to the Secretary of the Treasury each award which has been certified before the date of enactment of this Act pursuant to title II of the War Claims Act of 1948, as added by the Act of October 22, 1962 (76 Stat. 1107), but which as of the date of enactment of this Act has not been paid in full, in such manner as it may determine to be required to give effect to the amendments made by this Act to the same extent and with the same effect as if such amendments had taken effect on October 22, 1962."

2. Amend the title so as to read:

"A bill to amend section 213(a) of the War Claims Act of 1948 with respect to claims of certain nonprofit organizations and certain claims of individuals."

Committee Amendments

(1) The first committee amendment struck out all after the enacting clause and inserted a substitute text. Technical changes only were made in subsections (a) and (b) of the bill as introduced in order to conform the bill with existing law and with the committee amendment made by the new paragraph (2) of subsection (a). The substantive change made by the committee amendment adds a new paragraph (3) to section 213(a) of the War Claims Act of 1948 to give certain individual claimants a priority over corporate claimants in the matter of priority of payment of awards from the war claims fund.

(2) The other committee amendment conforms the title of the bill, as reported, with the text of the committee amendment.

Principal Purpose of the Bill

The reported bill would provide for payment under the War Claims Act of 1948 of the full amount of the unpaid balance of claims of nonprofit organizations operated exclusively for the promotion of social welfare, religious, charitable, or educational purposes, and would then provide for payment of the unpaid balance of all claims of individuals under title II of that act, with claims for the unpaid balance of awards of corporations not previously paid being relegated to third priority.

No appropriations will be required, since all payments under the bill are to be made out of the war claims fund which consists of the proceeds of German and Japanese assets vested by the United States during World War II.

Background

In 1948, the Congress provided through the War Claims Act of 1948 for the payment of a limited category of war claims of American citizens out of a fund consisting of the proceeds of vested German and Japanese assets in the United States. A Commission, now known as the Foreign Claims Settlement Commission, was created to administer the act, and to conduct a study to determine and recommend to the Congress additional categories of claims to be paid out of this fund. Recommendations were made to the Congress by the Commission, and in 1962, legislation was enacted establishing a number of categories of claims to be paid out of the fund. In general, the claims allowed were those claims for which compensation had not otherwise been provided either under laws of the United States, treaties with foreign countries, or domestic laws of foreign countries.

A total of 22,605 claims were filed for losses due to death, disability, and property damage in an amount in excess of $2,200 million. A total of 7,038 awards were made totaling $334,783,000.

The 1962 legislation provided for payment in full of all claims for death and personal injuries, for all claims in the amount of $10,000 and under. A total of 5,920 claims have been paid in full under these priorities, in a total amount of $25,595,480.

Of these claims, 34 were for death and personal injury; 251 were claims of small businesses; and 5,635 were claims in the amount of $10,000 and under.

A total of 1,119 claims have received partial payment under the 1962 legislation. In general, payment of these claims has equaled $10,000 plus 61.3 percent of the unpaid balance of the claim.

Of these claims, 886 are claims of individuals, with awards totaling approximately $35 million, of which approximately $25 million has been paid.

Thirty-three claims have been allowed by religious, charitable, and nonprofit organizations, in a total amount slightly in excess of $24 million, of which almost $15 million has been paid. One claim of the U.S. Government has been allowed in the amount of $327,000, of which $204,000 has been paid. The remaining 199 claims are claims of corporations (other than small business concerns, and corporations whose claims exceed $10,000) with a total of $249 million awarded, of which $154 million has been paid.

Priorities Established in 1962

The 1962 legislation, as passed by the House, provided for payment in full of all claims for death and personal injury, with second priority in payment for claims of $10,000 or less. When the legislation was considered in the Senate, an amendment was agreed to providing the same priority as was provided for death and personal injury for claims of small business concerns. When the conferees considered the legislation, the priority for small business concerns was left in the law, and no other changes in priorities were made. At the time, it was not known how great the total of claims would be, nor was it known precisely how much would be available for payment of awards made. It had been estimated that sufficient funds might be available for payment of all claims in full; therefore, it was not felt that the question of priorities was necessarily a pressing one. Since the passage of the 1962 legislation, somewhat less has been realized from the the disposition of vested assets than had been anticipated; therefore, the question of priority in payment of claims becomes extremely important at the present time.

AMOUNTS AWARDED UNDER TITLE II OF THE WAR CLAIMS ACT OF 1948 AS AMENDED

Category of claim	Awards		Percentage paid	Amount paid	Balance to be paid
	Number	Amount			
(1)		(2)	(3)	(4)	(5)
I. Death and personal injury	34	$510,035	100	Full	0
II. Small business	251	12,026,093			
III. $10,000 and under	5,635	13,059,352			
Total	5,920	25,595,480		$25,595,480	0
IV. Over $10,000:					
1. Individuals	886	35,276,571	$10,000 plus 61.3	25,053,358	$10,223,213
2. Corporations	199	249,441,491		153,677,764	95,763,727
3. United States	1	327,073		204,366	122,707
4. Religious, charitable, and nonprofit.	33	24,159,313		14,951,124	9,208,189
Total	1,119	309,204,448		193,886,612	115,317,836

Payments under the bill

Under the 1962 priorities, full payment has been made of all awards for death and personal injury; all awards for $10,000 or less, and all awards made to small businesses. At present there are no funds for further distribution; however, approximately $62 million is being held by the Department of Justice from the proceeds of vested German and Japanese assets for the purpose of satisfying any possible judgments against the United States which might occur as the result of litigation presently going on involving these vested assets.

The amounts which will eventually be available for transfer to the war claims fund out of this $62 million cannot be ascertained at the present time, because of the uncertainties involved in litigation. It has been estimated however that approximately $26 million may be available for eventual transfer to the war claims fund.

Under the legislation herewith reported to the House, the amounts hereafter transferred to the war claims fund will be used first to pay the remaining unpaid balance on all awards made to nonprofit organizations operated exclusively for the promotion of social, welfare, religious, charitable, or educational purposes. The total amount of unpaid claims of these organizations is $9,208,189.

Upon completion of payments to nonprofit organizations, payments will thereafter be made out of amounts transferred to the war claims fund on account of

unpaid balances of awards made to individuals. If sufficient sums are not available for full payment to all individual claimants, each claimant will receive payment in the same amount, or in the amount of the unpaid balance, whichever is the smaller. In this fashion, the smaller claims will be paid first with the larger claims being paid in full last.

Assuming that $26 million is eventually available for transfer to the war claims fund, sufficient sums will be available to pay both the unpaid balance of awards to nonprofit organizations, and to individuals. The total unpaid balance of claims of individuals amounts today to $10,223,213.

Following payment in full of the claims of individuals and nonprofit organizations, any remaining amounts transferred to the war claims fund will be used for payment of one claim of the United States of America, in the amount of $122,707 and claims of corporations (other than small business concerns) whose unpaid balance is $95,763,727. With respect to the claims of these 199 corporations, existing law provides for an offset against awards made to these corporations on the basis of the tax benefit which they have received under the Internal Revenue Code from war losses. A substantial number of these organizations have received other benefits arising under foreign tax laws which often were elected instead of American war loss deductions.

Under the circumstances, the committee feels that the existing modification of priorities contained in the law for payment of war claims is justified, and recommends adoption of the legislation by the House.

Section-by-Section Summary of the Committee Amendment

Paragraph (1) of subsection (a) of the committee amendment to the text of the bill amends section 213(a)(1) of the War Claims Act of 1948 to provide that any organization which the Foreign Claims Settlement Commission determines was (at the time of the loss, damage, or destruction of property which was the basis for its claim) a nonprofit organization operated exclusively for the promotion of nonprofit organization operated exclusively for the promotion of social welfare, religious, charitable, or educational purposes shall have its claim certified by the Commission for payment in full from the war claims fund. This amendment treats these nonprofit organizations in the same manner as small business concerns with respect to priority of payment of claims.

Paragraph (2) of subsection (a) of the committee amendments adds a new paragraph (3) to section 213(a) of the War Claims Act of 1948. This new paragraph (3) establishes a new priority of payment from the war claims fund for individuals as opposed to corporations. In the past, individuals who filed claims for loss, damage, or destruction of property have been lumped together with corporate claimants in the matter of priority of payment. Under this new paragraph (3), individuals not already fully compensated under paragraph (1) or (2) of section 213(a) of the War Claims Act of 1948 will be paid, with any remaining amounts being used for payment to corporate claimants, and the United States.

Subsection (b) of the committee amendment authorizes the Foreign Claims Settlement Commission to recertify to the Secretary of the Treasury each award certified to him under title II of the War Claims Act of 1948 before the date of enactment of this legislation (which claim has not yet been paid in full) in a manner determined by the Commission to be necessary to give effect to the amendments made by subsection (a) of this legislation as if such amendments had taken effect on the date of enactment of such title II.

AGENCY REPORT

Foreign Claims Settlement Commission
of the United States,
Washington, D.C., March 5, 1969.

Hon. Harley O. Staggers,
Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives, Washington, D.C.

Dear Mr. Chairman: Further reference is made to your letter of February 11, 1969, requesting a report by the Foreign Claims Settlement Commission on the bill, H.R. 2669, 91st Congress, entitled, "A bill to amend section 213(a) of the War Claims Act of 1948 with respect to claims of certain nonprofit organizations." The bill is identical with H.R. 12575, 90th Congress.

The purpose of the bill is to provide for payment in full of the approved amounts of awards as determined by the Commission with respect to claims of nonprofit

organizations which were filed pursuant to title II of the War Claims Act of 1948, as amended.

Section 202, title II of the War Claims Act of 1948, as amended, directs the Foreign Claims Settlement Commission to receive and determine claims of nationals of the United States for loss or destruction of, or physical damage to, property located in certain European countries and in territory occupied or attacked by the Japanese during World War II; claims for damage to, or loss or destruction of, ships or ship cargoes as a result of German or Japanese military action; net losses suffered by insurance companies on policies or contracts of war-risk insurance or reinsurance on ships; and, loss or damage on account of death, injury or permanent disability of civilian nationals of the United States who were passengers on commercial vessels on the high seas which occurred during the period beginning September 1, 1939, and ending December 11, 1941, as a result of German and Japanese military action, and claims based upon the loss or damage to personal property belonging to such passengers.

Section 213(a) of the act provides procedures with respect to the priorities, and limitations of payments of awards. Under the first order of priority, payment of awards with respect to claims of civilian passengers and small business concerns are to be paid in full before the payment can be made to other claimants. Section 213(a) is quoted as follows:

The Secretary of the Treasury shall pay out of the war claims fund on account of awards certified by the Commission pursuant to this title as follows and in the following order of priority:

"(1) Payment in full of awards made pursuant to section 202(d) (1) and (2), and thereafter of any award made pursuant to section 202(a) to any claimant certified to the Commission by the Small Business Administration as having been, on the date of loss, damage, or destruction, a small business concern within the meaning now set forth in the Small Business Act, as amended.

"(2) Thereafter, payments from time to time on account of the other awards made pursuant to section 202 in an amount which shall be the same for each award or in the amount of the award, whichever is less. The total payment made pursuant to this paragraph on account of any award shall not exceed $10,000.

"(3) Thereafter, payments from time to time on account of the unpaid balance on each remaining award made pursuant to section 202 or recertified pursuant to subsection (b) of section 209 which shall bear to such unpaid balance the same proportion as to the total amount in the war claims fund and available for distribution at the time such payments are made bears to the aggregate unpaid balance on all such awards.

No payment made pursuant to this paragraph on account of any award shall exceed the unpaid balance on such award. Payments theretofore made under section 310 of title III of the International Claims Settlement Act of 1949, as amended, on awards made against the Government of Hungary under section 303(1) of title III of the International Claims Settlement Act of 1949, as amended, and recertified under subsection (b) of section 209, shall be considered as payments under this paragraph and no payment shall be made on any recertified award until the percentage of distribution on awards made under section 202 exceeds the corresponding percentage of distribution on such recertified award: *Provided*, That no payment made on awards recertified under subsection (b) of section 209 shall exceed 40 per centum of the amount of the award recertified.

Section 205(a) of the act requires the Commission to certify to the Secretary of the Treasury, for payment out of the war claims fund each award made pursuant to section 202.

Thus far only $223.7 million has been transferred into the war claims fund for the payment of war damage claims under title II of the War Claims Act of 1948, as amended, of which 5 percent has been earmarked for administrative expenses.

A total of 22,708 war damage claims were filed under the act in the asserted amount of roughly $2 billion. Included in this number were 603 claims filed by small business concerns in which awards totaling $12,419,845, were granted to 251 such concerns. Also included in the number of total claims are 120 death and personal injury claims under section 202(d) (1) and (2) in which 34 awards were granted in the aggregate amount of $510,035 for a total amount of $12,629,000 for payment in full under the first priority payment category.

The bulk of the remaining claims were filed by individuals whose claims come under the prorated payment restrictions imposed by section 213(a)(2) which limits the payment of approved awards up to a maximum of $10,000. Accordingly, all awards certified to the Secretary of the Treasury for payment which comes within the provisions of section 213(a)(2), have been paid in full where the amount

of the approved award is $10,000 or less. In those cases where the amount of the approved award exceeded $10,000, the amount of $10,000 of the award has been paid plus an additional prorated payment of 61.3 percent of the unpaid balance on those awards in excess of $10,000. Such payments have been completed by the Treasury Department.

The amount of money available in the war claims fund was not sufficient to pay, in full, all awards which are subject to the prorated restrictions as imposed under section 213(a)(2). The total amount of awards made pursuant to title II is approximately $340 million which included the recertified Hungarian war damage awards as provided under section 213(a)(3) of the act.

There were 33 awards (42 had been previously reported by the Commission but the later consolidation of several claims resulted in the number of awards being reduced to 33) by charitable, religious, and other nonprofit organizations which awards amounted to an aggregate of $24,159,313.66. Of this amount approximately $14,951,124, has been paid under the present priority payment procedure. Three of these awards in amounts less than $10,000 were paid in full. This leaves an unpaid balance in the amount of $9,208,189 due with respect to the claims of these organizations.

The bill, H.R. 2669, proposes to amend the statute by placing these claims under section 213(a)(1) which provides for payment of the full amount of the approved awards.

Payments in full of the awards to nonprofit organizations would be at the expense of the remaining claimants because such payments would necessarily reduce the amount that could be paid on awards subject to the prorated payment provisions of section 213(a)(2) in case additional money is transferred into the war claims fund at some future date.

In light of the foregoing, the Foreign Claims Settlement Commission does not favor enactment of H.R. 2669.

The committee is informed that time has not permitted securing advice from the Bureau of the Budget as to the relationship of the pending legislation or the report to the program of the President.

Sincerely yours,

LEONARD V. B. SUTTON,
Chairman.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In complaince with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

SECTION 213 OF THE WAR CLAIMS ACT OF 1948

(50 App. U.S.C. 2017l)

PAYMENT OF AWARDS; PRIORITIES; LIMITATIONS

SEC. 213. (a) The Secretary of the Treasury shall pay out of the War Claims Fund on account of awards certified by the Commission pursuant to this title as follows and in the following order of priority:

(1) Payment in full of awards made pursuant to section 202(d) (1) and (2), and thereafter of any award made pursuant to section 202(a) to any claimant (*A*) certified to the Commission by the Small Business Administration as having been, on the date of loss, damage, or destruction, a small business concern within the meaning now set forth in the Small Business Act, as amended, *or* (*B*) *determined by the Commission to have been, on the date of loss, damage, or destruction, a nonprofit organization operated exclusively for the promotion of social welfare, religious, charitable, or educational purposes.*

(2) Thereafter, payments from time to time on account of the other awards made pursuant to section 202 in an amount which shall be the same for each award or in the amount of the award, whichever is less. The total payment made pursuant to this paragraph on account of any award shall not exceed $10,000.

(3) Thereafter, payments from time to time on account of the other awards made to individuals pursuant to section 202 and not compensated in full under paragraph (1) or (2) of this subsection in an amount which shall be the same for each award or in the amount of the award, whichever is less.

[(3)] (4) Thereafter, payments from time to time on account of the unpaid balance of each remaining award made pursuant to section 202 or recertified pursuant to subsection (b) of section 209 which shall bear to such unpaid balance the same proportion as the total amount in the War Claims Fund and available for distribution at the time such payments are made bears to the aggregate unpaid balances of all such awards. No payment made pursuant to this paragraph on account of any award shall exceed the unpaid balance of such award. Payments heretofore made under section 310 of title III of the International Claims Settlement Act of 1949, as amended, on awards made against the Government of Hungary under section 303(l) of title III of the International Claims Settlement Act of 1949, as amended, and recertified under subsection (b) of section 209, shall be considered as payments under this paragraph and no payment shall be made on any recertified award until the percentage of distribution on awards made under section 202 exceeds the corresponding percentage of distribution on such recertified award: *Provided*, That no payment made on awards recertified under subsection (b) of section 209 shall exceed 40 per centum of the amount of the award recertified.

(b) Such payments, and applications for such payments, shall be made in accordance with such regulations as the Secretary of the Treasury shall prescribe.

(c) For the purpose of making any such payments, other than under section 213(a)(1), an "award" shall be deemed to mean the aggregate of all awards certified for payment in favor of the same claimant.

(d) If any person to whom any payment is to be made pursuant to this title is deceased or is under a legal disability, payment shall be made to his legal representative, except that if any payment to be made is not over $1,000 and there is no qualified executor or administrator, payment may be made to the person or persons found by the Comptroller General to be entitled thereto, without the necessity of compliance with the requirements of law with respect to the administration of estates.

(e) Payment on account of any award pursuant to this title shall not, unless such payment is for the full amount of the award, extinguish any rights against any foreign government for the unpaid balance of the award.

(f) Payments made under this section on account of any award for loss, damage, or destruction occurring in the Commonwealth of the Philippines shall not exceed the amount paid on account of awards in the same amount under the Philippine Rehabilitation Act of 1946.

[H.R. 2669, 91st Cong., first sess.]

AN ACT To amend section 213(a) of the War Claims Act of 1948 with respect to claims of certain nonprofit organizations and certain claims of individuals

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) section 213(a) of the War Claims Act of 1948 (50 App. U.S.C. 20171(a)) is amended as follows:

(1) Paragraph (1) is amended to read as follows:

"(1) Payment in full of awards made pursuant to section 202(d) (1) and (2), and thereafter of any award made pursuant to section 202(a) to any claimant (A) certified to the Commission by the Small Business Administration as having been, on the date of loss, damage, or destruction, a small business concern within the meaning now set forth in the Small Business Act, as amended, or (B) determined by the Commission to have been, on the date of loss, damage, or destruction, a nonprofit organization operated exclusively for the promotion of social welfare, religious, charitable, or educational purposes.".

(2) Redesignate paragraph (3) as paragraph (4) and, immediately after paragraph (2), insert the following new paragraph:

"(3) Thereafter, payments from time to time on account of the other awards made to individuals pursuant to section 202 and not compensated in full under paragraph (1) or (2) of this subsection in an amount which shall be the same for each award or in the amount of the award, whichever is less.".

(b) The Foreign Claims Settlement Commission is authorized to recertify to the Secretary of the Treasury each award which has been certified before the date of enactment of this Act, pursuant to title II of the War Claims Act of 1948, as added by the Act of October 22, 1962 (76 Stat. 1107), but which as of the date of the enactment of this Act has not been paid in full, in such manner as it may determine to be required to give effect to the amendment is made by this Act

to the same extent and with the same effect as if such amendments had taken effect on October 22, 1962.

Passed the House of Representatives March 18, 1969.

Attest: W. PAT JENNINGS,
Clerk.

(Corrected 9/10/70)
MAY 28, 1970.

ASSISTANT DIRECTOR FOR LEGISLATIVE REFERENCE,
Bureau of the Budget,
Executive Office of the President,
Washington, D.C.

(Attention Mr. James F. C. Hyde, Jr.)

DEAR SIR: This is in response to your Legislative Referral Memorandum dated April 7, 1970, requesting the views of the Foreign Claims Settlement Commission in regard to a Memorandum for Senator Hruska in reference to H.R. 2669, "Proposed Amendments to the War Claims Act."

The purpose of the bill, H.R. 2669, is to provide for payment in full of the approved amounts of awards as determined by the Commission with respect to the war damage claims of non-profit organizations which were filed pursuant to Title II of the War Claims Act of 1948. Under the present provisions of the Act these awards fall within the lowest order of payment priority and are thus limited to payments on a prorated basis or to a certain percentage of the full amounts.

On the other hand, all awards based on the death or disability of passengers on commercial vessels, and awards to small business concerns, were paid in full regardless of the amount of the award in accordance with the payment priority and limitation provisions of the Act. Also under these provisions because of the insufficiency of the War Claims Fund, non-priority awards approved in excess of $10,000 were paid to the extent of $10,000 plus a prorated payment of 61.3% of the balance in excess of $10,000.

Out of a total of 22,605 war damage claims filed under Title II of the War Claims Act, there were 7,039 awards in the aggregate amount of $334.8 million as against $223.7 million in the War Claims Fund available for the payment of these claims.

A total of 5,855 awards in the amount of $25.689 million were paid in full including 34 death and personal injury claims, 251 claims by small business concerns, and 5,570 claims falling in the lower payment priority involving awards in the amounts of $10,000 and under.

There were 33 awards issued to non-profit organizations which aggregated $24.1 million. Under the present payment priority approximately $14.951 million has been paid to these organizations on a prorated basis leaving an unpaid balance of $9.2 million. (Three of the 33 non-profit organization claims were approved in amounts less than $10,000 and therefore were paid in full.) There were 886 claims of individuals in the approved amount of $35.3 million, of which $25 million was paid on a prorated basis leaving an unpaid balance of $10.233 million. Claims of corporations were paid $153.7 million also on a prorated basis leaving an unpaid balance of $95.763 million.

On March 5, 1969, the Commission informed the Chairman of the Subcommittee on Commerce and Finance, House Committee on Interstate and Foreign Commerce, that the Department of Justice has retained in reserve approximately $60 million in proceeds of German and Japanese assets blocked and vested under the Trading With the Enemy Act. It has been estimated that eventually some $26 million of those proceeds may be available for deposit into the War Claims Fund.

With respect to the Memorandum to Senator Hruska, the Commission has frowned upon priorities except for claims based on the death or disability of American citizens arising out of military actions during World War II. Accordingly, the proposed drafts on World War II claims legislation which were submitted to the Congress from time to time by the Commission beginning in the 84th Congress did not provide for other priorities.

During the consideration of the war claims legislation in the 87th Congress, however, the Senate agreed to an amendment (to H.R. 7283 which was later enacted as Title II of the War Claims Act of 1948, Public Law 87–846) granting the same priority to claims of small business concerns as was provided for claims based on death and personal injuries. The Conferees on the bill agreed to the Senate amendment which was retained in the bill upon its enactment into law.

In view of the comments contained in the Memorandum to Senator Hruska, the Commission has reassessed its position on the bill. It is the Commission's view that because the awards to individuals are in some instances larger than many of the corporate awards, it would seem more equitable if the $10,000 limitation presently in effect under paragraph 2 of section 213 of Title II of the Act be increased to $35,000.

There were 739 awards between $10,000 and $35,000 for a total of $13,407,255. Under the $10,000 payment limitation, $7,390,000 was paid on these claims plus $3,688,577 which represented the 61.3% prorated payment, leaving an unpaid balance of $2,328,678. Included are 702 awards to individuals which would be paid in full if the $35,000 maximum payment limitation is adopted. The unpaid balance due on these individual awards is $2,150,731. Also included in this category are 5 awards issued to nonprofit organizations in the aggregate amount of $102,482.79.

There were 377 awards in excess of $35,000, including 184 awards to individuals, 25 awards to non-profit organizations, and 167 awards to corporations. After the initial maximum payments of $10,000 for an amount of $3,770,000 plus the 61.3% prorated payments, there remains an unpaid balance of $112,971,935. From such amount would be deducted the difference between $10,000 and the $35,000 maximum payment recommended by the Commission and the 61.3% prorated payments on the balance.

Thus, in case the $26 million is transferred into the Fund, there will be sufficient funds with which to pay the unpaid balances of awards to non-profit organizations as well as to 702 individuals and 32 corporate claimants whose awards do not exceed $35,000. Such payments would cover approximately 80% of the total number of individual claimants and 16% of the total number of corporate claimants. The amount of this unpaid balance is approximately $11.5 million. The remaining money in the Fund of approximately $14.5 million would then be paid to the 184 individuals and 167 corporations whose awards exceed $35,000.

To accomplish the foregoing an additional amendment to section 213(a) of the House-passed bill is required. The words "and corporations" should be inserted after the word "individuals" (line 12, page 3 of the bill). Also a new sentence should be added at the end of new paragraph "(3)" (line 16, page 2), as follows: "The total payment made pursuant to this paragraph on account of any award shall not exceed $35,000."

Thus, new paragraph (3) to section 213(a) of the War Claims Act of 1948, as amended, should read as follows:

"(3) Thereafter, payments from time to time on account of the other awards made to individuals and corporations pursuant to section 202 and not compensated in full under paragraph (1) or (2) of this subsection in an amount which shall be the same for each award or in the amount of the award, whichever is less. The total payment made pursuant to this paragraph on account of any award shall not exceed $35,000."

The Commission believes it is a matter of legislative policy whether the Congress should give favorable action to the bill. As for the legal issues which have been posed under the Memorandum, your attention is invited to the fact that these payments are made ex gratia. Question 3 of the Memorandum relates only to a matter of legislative policy.

The Commission, in its report on S. 941, the companion bill to H.R. 2669, to the Chairman of the Senate Committee on the Judiciary dated January 20, 1969, expressed no opposition to the proposed legislation.

Sincerely yours,

LYLE S. GARLOCK, *Chairman.*

AWARDS IN AMOUNTS FROM $10,001 THROUGH $35,000

	Number of awards	Total amount of awards	Amount paid ($10,000 plus 61.3 percent)	Unpaid balance
Individuals	702	$12,577,443	$10,426,712	$2,150,731
Corporations	32	727,329	569,692	157,637
Charitable, religious, and other nonprofit organizations	5	102,483	82,173	20,310
Total	739	13,407,255	11,078,577	2,328,678

AWARDS IN AMOUNTS OVER $35,000

Individuals	184	$22,605,376	$14,569,716	$8,036,201
Corporations	167	248,697,862	153,098,079	95,599,783
United States	1	327,074	204,367	122,707
Charitable, religious, and other nonprofit organizations	25	24,056,830	14,843,587	9,122,244
Total	377	295,687,142	182,715,208	112,971,935
Less (difference between $10,000 and $35,000 recommended payment and the 61.3 percent pro-rated payment) (377×$25,000=$9,425,000×61.3 percent=$5,777,525 deducted from $9,425,000)				3,647,475
Net				109,324,460

FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES,
Washington, D.C., May 28, 1970.

ASSISTANT DIRECTOR FOR LEGISLATIVE REFERENCE,
Bureau of the Budget, Executive Office of the President,
Washington, D.C.

(Attention of Mr. James F. C. Hyde, Jr.)

DEAR SIR: This is in response to your Legislative Referral Memorandum dated April 7, 1970, requesting the views of the Foreign Claims Settlement Commission in regard to a Memorandum for Senator Hruska in reference to H.R. 2669, "Proposed Amendments to the War Claims Act."

The purpose of the bill, H.R. 2669, is to provide for payment in full of the approved amounts of awards as determined by the Commission with respect to the war damage claims of non-profit organizations which were filed pursuant to Title II of the War Claims Act of 1948. Under the present provisions of the Act these awards fall within the lowest order of payment priority and are thus limited to payments on a prorated basis or to a certain percentage of the full amounts.

On the other hand, all awards based on the death or disability of passengers on commercial vessels, and awards to small business concerns, were paid in full regardless of the amount of the award in accordance with the payment priority and limitation provisions of the Act. Also under these provisions because of the insufficiency of the War Claims Fund, non-priority awards approved in excess of $10,000 were paid to the extent of $10,000 plus a prorated payment of 61.3% of the balance in excess of $10,000.

Out of a total of 22,605 war damage claims filed under Title II of the War Claims Act, there were 7,039 awards in the aggregate amount of $334.8 million as against $223.7 million in the War Claims Fund available for the payment of these claims.

A total of 5,920 awards in the amount of $25.6 million were paid in full including 34 death and personal injury claims, 351 claims by small business concerns and 5,635 claims falling in the lower payment priority involving awards in the amounts of $10,000 and under.

There were 33 awards issued to non-profit organizations which aggregated $24.1 million. Under the present payment priority approximately $14.9 million has been paid to these organizations on a prorated basis leaving an unpaid balance of $9.2 million. (Three of the 33 non-profit organization claims were approved in amounts less than $10,000 and therefore were paid in full.) There were 886 claims of individuals in the approved amount of $35.3 million of which $25 million was paid on a prorated basis leaving an unpaid balance of $10.2 million. Claims of corporations were paid $153.7 million also on a prorated basis leaving an unpaid balance of $95.7 million.

On March 5, 1969, the Commission informed the Chairman of the Subcommittee on Commerce and Finance, House Committee on Interstate and Foreign Commerce, that the Department of Justice has retained in reserve approximately $60 million in proceeds of German and Japanese assets blocked and vested under the Trading With the Enemy Act. It has been estimated that eventually some $26 million of those proceeds may be available for deposit into the War Claims Fund.

With respect to the Memorandum to Senator Hruska, the Commission has frowned upon priorities except for claims based on the death or disability of American citizens arising out of military actions during World War II. Accordingly, the proposed drafts on World War II claims legislation which were submitted to the Congress from time to time by the Commission beginning in the 84th Congress did not provide for other priorities.

During the consideration of the war claims legislation in the 87th Congress, however, the Senate agreed to an amendment (to H.R. 7283 which was later enacted as Title II of the War Claims Act of 1948, Public Law 87–846) granting the same priority to claims of small business concerns as was provided for claims based on death and personal injuries. The Conferees on the bill agseed to the Senate amendment which was retained in the bill upon its enactment into law.

In view of the comments contained in the Memorandum to Senator Hruska, the Commission has reassessed its position on the bill. It is the Commission's view that because the awards to individuals are in some instances larger than many of the corporate awards, it would seem more equitable if the $10,000 limitation presently in effect under paragraph 2 of section 213 of Title II of the Act be increased to $35,000.

There were 755 awards between $10,000 and $35,000 for a total of $13,567,255. Under the $10,000 payment limitation $7,550,000 was paid on these claims plus $3,688,607 which represented the 61.3% prorated payment leaving an unpaid balance of $2,328,678. Included are 718 awards to individuals which would be paid in full if the $35,000 maximum payment limitation is adopted. The unpaid balance due on these individual awards is $2,150,830.

There were 428 awards in excess of $35,000 in the aggregate amount of $343,-099,159.23, including 230 awards to individuals in the amount of $29,051,626.16, 25 awards to non-profit organizations in the amount of $24,091,623.96 and 173 awards to corporations totaling $289,955,909.11. After the initial maximum payments of $10,000 for an amount of $4,280,000 plus the 61.3% prorated payments of $206,496,144.60, there remains an unpaid balance of $132,323,014.63. From such amount would be deducted the difference between $10,000 and the $35,000 maximum payment recommended by the Commission and the 61.3% prorated payments on the balance.

Thus, in case the $26 million is transferred into the Fund, there will be sufficient funds with which to pay the unpaid balances of awards to non-profit organizations as well as to 718 individuals and 37 corporate claimants whose awards do not exceed $35,000. Such payments would cover approximately 76% of the total number of individual claimants and 19% of the total number of corporate claimants. The amount of this unpaid balance is approximately $11.5 million. The remaining money in the Fund of approximately $14.5 million would then be paid to the 230 individuals and 173 corporations whose awards exceed $35,000.

To accomplish the foregoing an additional amendment to section 213(a) of the House-passed bill is required. The words "and corporations" should be inserted after the word "individuals" (line 12, page 3) of the bill. Also, a new sentence should be added at the end of new paragraph "(3)" (line 16, page 2), as follows: "The total payment made pursuant to this paragraph on account of any award shall not exceed $35,000."

Thus, new paragraph (3) to section 213(a) of the War Claims Act of 1948, as amended, should read as follows:

"(3) Thereafter, payments from time to time on account of the other awards made to individuals and corporations pursuant to section 202 and not compensated in full under paragraph (1) or (2) of this subsection in an amount which shall be the same for each award or in the amount of the award, whichever is less. The total payment made pursuant to this paragraph on account of any award shall not exceed $35,000."

The Commission believes it is a matter of legislative policy whether the Congress should give favorable action to the bill. As for the legal issues which have been posed under the Memorandum, your attention is invited to the fact that these payments are made ex gratia. Question 3 of the Memorandum relates only to a matter of legislative policy.

Sincerely yours,

LYLE S. GARLOCK, *Chairman.*

U.S. DEPARTMENT OF JUSTICE,
OFFICE OF THE DEPUTY ATTORNEY GENERAL,
Washington, D.C., July 13, 1970.

Hon. JAMES O. EASTLAND,
Chairman, Senate Judiciary Committee,
U.S. Senate, Washington, D.C.

DEAR SENATOR EASTLAND: This is in response to the letter of March 19, 1970, signed by you, Senator McClellan, and Senator Hruska, requesting the views of the Department of Justice on a number of legal questions pertaining to the proposed amendments to the War Claims Act embodied in H.R. 2669, which has passed the House and is now pending before your Committee. We shall deal with these questions in the order in which the memorandum attached to your letter presents them.

THE BACKGROUND

In 1948, Congress enacted the War Claims Act which was designed to compensate individual American citizens and American corporations for certain losses incurred by them during World War II. The funds to be paid to such individuals and corporations were to be made available through proceeds of the sale of enemy assets seized under the Trading with the Enemy Act, rather than by the appropriation of federal money. By 1962, it had become evident that the available funds would be insufficient to compensate the allowed claims in full. The matter of priority of payment, therefore, became of critical importance.

Congress established a set of priorities in Pub. L. 87–846, October 22, 1962, Title I, § 103, 76 Stat. 1111. Under the 1962 amendment, preferred status was accorded to individuals and their estates for death and personal injuries, to small business concerns, and to claimants with claims of less than $10,000. 50 U.S.C. App. 2017*l*. Each claim in one of these categories would be paid first and in full. Individuals and corporations with claims of over $10,000 were in an unpreferred status, and they have received to date $10,000 plus approximately 61 percent of the amount by which their allowed claims exceed $10,000. According to a chart inserted in the House Committee hearings, a total of $115,317,836 remains unpaid to these claimants. See H. Rept. 91–76, p. 3. It has been estimated that about $26,000,000 will be available for distrbution. *Id.*, p. 4. Under the 1962 amendment, all of the unpaid claimants would be treated the same and would share this amount on a pro rata basis.

H.R. 2669 would create new priorities with respect to those claimants not yet paid in full. Specifically, the bill, as passed by the House, would create a priority in favor of (1) non-profit organizations operated exclusively for the promotion of social welfare, religious, charitable, or educational purposes, and (2) individuals. Claimants in either of these categories would receive the balance of their claims before any further distribution was made to unpaid corporate claimants. With this background, we now turn to the legal questions posed.

1. Whether a reordering of the priorities at this late date (after the Congressional policies of 1962 have been almost completely implemented) so as to create additional categories of preferred award holders, is consistent with the due process and equal protection clauses of the Constitution.

The memorandum mentions both the due process and equal protection clauses of the Constitution. The latter clause is contained in the Fourteenth Amendment, which applies to State, as opposed to federal, action. The Fifth Amendment, which limits the federal government, does not expressly contain an equal protection clause, but it is clear that an equal protection concept is embodied in the Fifth Amendment's due process clause. *Schneider* v. *Rusk*, 377 U.S. 163, 168 (1964); *Bolling* v. *Sharpe*, 347 U.S. 497 (1954).

The equal protection issue posed by H.R. 2669 arises because individuals and non-profit organizations would be treated differently than corporate claimants. This difference in treatment obviously constitutes a classification, but classifications are not *per se* forbidden. Only a classification which can be fairly characterized as arbitrary violates the Constitution. In our view, the classification here is not an arbitrary one. Congress could reasonably make the judgment that corporate claimants should be paid last. In reaching that judgment, Congress might reasonably take into consideration the fact that corporate claimants have received substantial tax benefits in claiming war losses and have received the great bulk of the money which has been paid out under the War Claims Act. Of approximately $219 million distributed, almost $154 million has been distributed to large corporations. H. Rept. 91–76, *supra*, p. 3. It is most unlikely that the courts would find fault with the legislative classification provided by H.R. 2669.

Aside from the question of the validity of the classification, a possible contention is that the proposed legislation would result in a taking of "property" without just compensation and therefore violate due process. Such an argument would be premised on the ground that the 1962 amendment had created a "vested right" in the corporate claimants to be treated on a par with individuals and non-profit organizations. Under such a view, the contention would be that the proposed amendment would divest the corporate claimants of their right to equal treatment

We believe this argument to be without merit. In our view, the 1962 legislation created no "property right" in the corporate claimants which is protected by the due process clause. In *Flemming* v. *Nestor*, 363 U.S. 603 (1960), the Supreme Court held that the beneficiary of old age and disability payments did not have a vested right in such payments, even though he had contributed to the fund out of which such payments would be made. The defeasance of those benefits was therefore held not to be a violation of the Fifth Amendment. A claimant under the War Claims Act is in an even less favorable position to contend that he has vested rights which are subject to constitutional protection. The funds involved arise from the sale of enemy assets which become the property of the United States when they were seized by the United States and are being made available by Congress as a matter of grace.

2. Whether the creation of a preference for a category of non-profit organizations which category has already been determined to be almost entirely made up of religious organizations, is consistent with the First Amendment prohibition against legislation giving direct government support to religious organizations.

H.R. 2669 would create a priority in favor of "any claimant determined by the commission [the Foreign Claims Settlement Commission] to have been, on the date of loss, damage, or destruction, a non-profit organization operated exclusively for the promotion of social welfare, religious, charitable, or educational purposes." There are 33 non-profit organizations which would be affected by this provision; 30 of these are religious organizations. The question presented is whether, under these circumstances, the enactment of the provision would constitute a prohibited "establishment of religion."

We believe that the provision does not violate the First Amendment. The Supreme Court has recently upheld the constitutionality of property tax exemptions for religious organizations. *Walz* v. *Tax Commission of City of New York*, 38 U.S.L.W. 4347 (U.S. May 4, 1970). In so holding, the Court characterized such tax exemptions as "benevolent neutrality" on the part of the States. The Court observed that the critical inquiry is whether there is "an excessive government entanglement with religion" and stated that "[t]he test is inescapably one of degree."

The War Claims Act is intended to compensate individuals and corporations for losses suffered by them. The proposed amendment would do no more than establish the order in which the remaining unpaid claimants would be paid, albeit with a priority for religious organizations. This involvement seems to us to fall considerably short of the degree of entanglement prohibited by the Constitution. While holding this view, we recognize that the question is not entirely free from doubt because both the majority and the concurring opinions imply that there *may* be a constitutional difference between an exemption from taxation and a transfer of governmental funds.

3. Whether the creation of additional classes of preferred award holders with the result that all award holders are preferred except a single class made up of United States corporations, does not establish an undesirable precedent which will be deemed declaratory of legislative policy as to the distribution of any future claims funds which become available to reimburse American nationals and American companies which suffer loss by reason of war damage, nationalization or expropriation abroad.

This inquiry raises no legal question. It involves legislative and policy considerations which the Department does not feel itself competent to evaluate. We defer to those agencies directly interested in the legislation.

We hope that the foregoing discussion will be of service to the Committee.

Sincerely,

RICHARD G. KLEINDIENST,
Deputy Attorney General.

GENERAL COUNSEL OF THE DEPARTMENT OF COMMERCE,
Washington, D.C., June 26, 1970.

Hon. ROBERT P. MAYO,
Director, Bureau of the Budget,
Washington, D.C.

DEAR MR. MAYO: This is in reply to your request for the views of this Department concerning a memorandum to Senator Hruska concerning H.R. 2669, a bill "To amend section 213(a) of the War Claims Act of 1948 with respect to claims of certain nonprofit organizations."

In 1962 Congress passed Public Law 87–846 (76 Stat. 1107), to amend the War Claims Act of 1948, which gave specified classes of persons and organizations the right to present certain claims for death, personal disability, or property losses arising out of World War II to the Foreign Claims Settlement Commission for certification. Under the 1962 legislaiion, certain types of awards were given preferential status for payment purposes: awards for personal death or injury were given first preference; awards to small business were given second preference; and awards up to $10,000 were given third preference. The 1962 legislation provided that after all preferred awards had been fully paid and all other awards had been paid up to $10,000, the remaining monies were to be distributed pro rata. In 1967 the Treasury paid our sufficient funds to pay fully all preferred categories, to pay all awards up to $10,000, and to pay the remaining awards up to 61% of the amount by which they exceeded $10,000. At that point allocable funds were exhausted.

At this time, however, the method of distribution has again become important because it is expected that some $26 million in additional funds will become available for distribution within the near future; also, all indications are that funds likely to become available for distribution in the future will be insufficient to satisfy fully the remaining awards.

The purpose of H.R. 2669 is to amend the provisions of the Act which pertain to the method of distribution of funds. The amendment creates two new categories of preference for payment, one for nonprofit institutions and one for individuals. Both categories would be paid in full before the other interests would receive any of the unpaid balance of their claims.

At present, there is approximately $115.3 million unpaid balance of awards under the War Claims Act, all of which, of course, is for property damage only; of this amount, $19.8 million is payable to individuals and nonprofit institutions. If the proposed amendment is passed, this $19.8 million will be paid in full from the expected $26 million, leaving a balance of $6.2 million to be applied to the remaining $95.5 million of unpaid awards to other categories of claimants.

Both categories of claimants to be preferred under H.R. 2669 have already been paid in full the first $10,000 of their claims, plus 61% of the balance under the provisions of the 1962 Act.

As to the first category under the proposed amendment, there are 33 nonprofit organizations with unpaid awards, 30 of which are religious organizations. The total unpaid balance of awards to nonprofit organizations is approximately $9.2 million; almost 99% of this amount is owed to religious organizations. The initial awards to these organizations were substantial and ranged as high as approximtely $5.1 million. Approximately $5.5 million of the $9.2 million is the present unpaid balance owed to five religious organizations. (The initial awards to these five organizations were approximately $14.3 million.)

As to the other category, the total unpaid balance of the individual claims is approximately $10.2 million. Approximately $5.8 million of this amount is due to individuals whose initial awards were each in excess of $100,000, five of which were in excess of $1 million. Approximately $2.3 million of the total $10.2 million is the present unpaid balance owed to five individuals.

The memorandum for Senator Hruska on H.R. 2669 raises three questions: (1) Whether a reordering of the priorities at this time, after the Congressional policies of 1962 have been almost completely implemented, is consistent with the due process and equal protection clauses of the Constitution? (2) Whether the creation of a preference for a category of nonprofit organizations which in fact is almost entirely made up of religious organizations is consistent with the First Amendment prohibition against establishment of religion? (3) Whether the creation of additional classes of preferred award holders does not establish an undesirable precedent for legislative policy as to the distribution of future claims funds?

The Department of Commerce defers to the Department of Justice on the first two questions. As to the third question, the Department opposes H.R. 2669 for a number of policy reasons. First, the Congress in 1962 adopted a comprehensive system of priorities for payment of claims under the War Claims Act; such system was established after study and report by the Foreign Claims Settlement Commission. In 1962, it was not known what the total awards would be under the War Claims Act, nor was it known what funds would be available for payment. Now that the amount of awards has been fixed and a more accurate estimate made of the available funds, it seems unreasonable and discriminatory to revise the priorities. This is particularly so since under H.R. 2669, the payments to the two new priority claimants will be solely at the expense of the remaining claimants.

Second, the priority granted to individuals would introduce a distortion to the existing provisions of the War Claims Act. Under the Act, a stockholder of a corporation, no more than 50% of the stock of which was owned by U.S. nationals, can file a claim as an individual for his shareholder percentage of the corporation's claim. The stockholder of a corporation, 51% or more of the stock of which was owned by U.S. nationals, cannot file an individual claim; rather, the corporation has to file the claim and he will receive his appropriate share of the corporation's claim. Because payments to the two categories of preference under H.R. 2669 will be at the expense of corporate claimants and will leave relatively little to be distributed to them, the shareholder of a corporation 51% owned by U.S. nationals will receive very little of his percentage of the corporation's claim, where the shareholder of the corporation 49% owned by U.S. nationals will receive his share of the corporation's award in full.

Third, there does not seem any pressing need to provide preferential treatment for individuals or nonprofit organizations. The unpaid claims of these groups are solely for property damage. Both of these groups have already received the first $10,000 of their claim and 61% of the balance. They have received a substantial recovery of what is due them.

Fourth, passage of H.R. 2669 would be a bad precedent for arguments in the future by various types of claimants—e.g., veterans, minorities, aged, etc.—for preferential treatment in similar situations. The priorities provided for in H.R. 2669 are inconsistent with the long standing rules in bankruptcy proceedings, to which the war claims procedures are closely analogous. Under the Bankruptcy Act, priority of payment is based on the type of claim and not on the type of claimant. We see no reason to prefer one type of claimant over another for what is the same type of claim.

Sincerely,

JAMES T. LYNN, *General Counsel.*

EXECUTIVE OFFICE OF THE PRESIDENT,
OFFICE OF MANAGEMENT AND BUDGET,
Washington, D.C., July 17, 1970.

Hon. JOHN L. MCCLELLAN,
U.S. Senate,
Committee on the Judiciary,
Washington, D.C.

DEAR SENATOR MCCLELLAN: This is in further reply to the joint letter of March 19, 1970 which you and Senators Eastland and Hruska wrote to the Director of the Bureau of the Budget concerning several questions raised by an enclosed memorandum on H.R. 2669, "Proposed Amendments to the War Claims Act."

My letter of April 10 to you stated that we were requesting the comments of the Foreign Claims Settlement Commission and the Justice, Treasury and Commerce Departments on your letter and the enclosed memorandum and that we would respond further after receipt of their views.

Copies of the replies of the Commission and of Commerce are attached for your information. Treasury had no substantive comment to offer. The views of the Justice Department on the legal questions posed in the memorandum enclosed with your letter are being sent directly to you by Justice.

We note that priorities for specified claimants have been provided both under the existing War Claims Act as well as in other war claims programs. To the extent that generalization about these priorities is possible, it appears that they have generally been designed to afford preference to smaller claimants and to those who have suffered injury or death as contrasted to property damage.

On the legal questions posed in the memorandum attached to your letter, we defer to the views of Justice. With respect to the policy question of whether the creation of additional classes of preferred award holders will not establish an undesirable precedent, we believe you will want to give consideration to the views of the Foreign Claims Settlement Commission and the Department of Commerce. Whether additional priorities should be established in the claims program under Title II of the War Claims Act, as contemplated by H.R. 2669, is a matter on which we believe it would be appropriate to defer to the judgment of the Congress.

Sincerely,

WILFRED H. ROMMEL,
Assistant Director for
Legislative Reference.

Mr. STANTON. Mr. Chairman, before I introduce the members of the panel here present who will make very brief statements, we have some observers with us today that I would like the privilege of introducing, if I may.

We have with us the Reverend Anatole Baillargron, O.M.I., who is a member of the U.S. Catholic Mission Council; The Reverend Father Joseph Connors, Society of the Divine Word; Mr. David Brody, who is director of the Washington office, Anti-Defamation League, B'nai B'rith, and Brother Joseph Berg, Catholic Charities.

I would like at this time, Mr. Chairman, to introduce Mr. Harry Greenberg of the United Methodist Church Board of Missions.

STATEMENT OF HARRY GREENBERG, UNITED METHODIST CHURCH BOARD OF MISSIONS

Mr. GREENBERG. Mr. Chairman, with your permission, I would like to stand up here.

Senator KENNEDY. Fine.

Mr. GREENBERG. I am a little more comfortable.

We appreciate the opportunity to present our testimony in support of S. 941 and H.R. 2669.

The group of persons assembled here represent many of the faiths and denominations, including Protestant, Catholic, and Jews. The constituency of these groups comes to just under 68 million persons located throughout the 50 States of the Union.

We come to Washington to express our concern over the difficulty in considering the amendment to the War Claims Act. This matter has been pending for 4½ years since it was first introduced by Senators Javits and Kennedy and referred to the Judiciary Committee. It seems to us that it should be voted on favorably.

We are seeking equality of treatment with most of the other claimants who have already been paid in full. We are certainly not against large corporations as such, since the economic well-being of our country depend so much upon the success or failure of these same corporations that are involved in this problem.

However, to us it seems merely that an amendment is necessary in order to obtain an adjustment of priorities. As the law now stands, out of every dollar to be distributed from the war claims funds, the large corporations would receive 83 cents. The individuals with claims over $10,000 would receive 9 cents while the churches and charities serving the public interest would receive only 8 cents.

You will recall that the first section of the war claims bill provided 100 percent payment for damages to the churches and institutions in the Philippines. When the second part of the bill was written, the

churches and charities in other parts of the world were apparently overlooked. They were not even mentioned. Thus, they were required to take their place last in line alongside the large corporations. As I mentioned, we are definitely not against the large corporations and in fact, most of the organizations represented by our committee own stock in these various industrial corporations. In my own United Methodist denomination, our investment portfolio includes several of the companies that have their name on the list of war damage claimants. We have received such stock as a gift from persons through legacies, wills, special agreements, and the like, who have given it to carry on mission work around the world. Many of the 68 million constituents in our various organizations own stock in some of the corporations involved and actually are employed by these companies. Nevertheless, they contribute funds, free will offerings to their churches for the support of foreign missions around the world. It must be recognized that the work of the church groups would be advanced if the amendment could be enacted.

The majority of damages which our various organizations incurred during the Second World War had to do with churches, schools, social centers, hospitals, camps for leprosy patients, and mission residences. The money to build these institutions was donated by the people of the churches in these United States.

The funds which have already been recovered from war damage awards have long been spent by being plowed back into the work around the world wherever it was allowed in order to partially rebuild that which was lost 25 years ago.

If additional funds are received from the war damage awards, these funds will be put to use to help the underprivileged people in many of the emerging nations to lift themselves from the subsistence standard of living in which they are now found.

The work of the churches and charitable institutions around the world run hand in hand with that of the Peace Corps, AID program, and others, to not only help the people to raise their standards of living which will allow them to enjoy a full, well rounded out life but will also serve to show these people of other nations that the United States does want to help them as a friend without ulterior motives.

This committee feels that amendment of the War Claims Act to allow churches and charities to assume their proper place in the order of priorities will serve the best interests of our country.

We hope you will consider these facts as you make your decision on the disposition of the bill under consideration and report it out favorably.

Thank you.

Senator KENNEDY. Thank you.

Mr. STANTON. Mr. Chairman, William Jarvis, representing the American Baptist Foreign Mission Society.

STATEMENT OF WILLIAM JARVIS, REPRESENTING THE AMERICAN BAPTIST FOREIGN MISSION SOCIETY

Mr. JARVIS. Mr. Chairman, I have a brief prepared statement and in the interests of time and the lateness of the day, with your permission, I would be happy to submit it for the record.

Senator KENNEDY. Fine, we will have it printed in its entirety.

(Mr. Jarvis' statement follows:)

Mr. Chairman, Members of the Subcommittee, I speak on behalf of the American Baptist Foreign Mission Society. This Society conducts the overseas mission program for over 6000 American Churches with over one and one half million (1½ million) members.

Our overseas ministry is spread over ten (10) foreign countries where we provide training and assistance to churches with current membership numbering over 811,000 people. In addition to churches our Society has established and helps to support sixty (60) hospitals and rural dispensaries that treated 410,000 patients in 1969. Our educational program is conducted in 246 schools and colleges for nearly 88,000 students.

I have personally visited these institutions during the past two years and in many instances the destruction and damage inflicted during World War II is still visible. Damage to the above mentioned institutions made up a large portion of the amount awarded by the Foreign Claims Settlement Commission which was in the amount of $813,039.45.

The enactment of legislation now before this Sub-Committee would enable the treasury to pay the balance due religious and welfare agencies with war damage awards as approved by the Foreign Claims Settlement Commission.

Such funds will be appropriated by the various non-profit agencies to strengthen and continue humanitarian work throughout the world. I am convinced that this work and activity creates goodwill for America as it improves attitudes, education, health, and living standards in developing nations.

Therefore, I respectfully urge the Honorable Members of this Subcommittee to give their support to the enactment of this legislation thus correcting an inequality that is written into the Law of our nation at the present time.

Thank you.

Mr. STANTON. The Reverend William D. Pascoe, General Conference of Seventh Day Adventist Church.

STATEMENT OF REV. WILLIAM D. PASCOE, GENERAL CONFERENCE OF SEVENTH DAY ADVENTIST CHURCH

Reverend PASCOE. Mr. Chairman, my statement is very short. I represent the Seventh Day Adventist Church. Although our church membership is comparatively small in comparison with some of the long-established church organizations, we are somewhat well known because of our many hospitals, clinics, and schools around the circle of the world.

Our medical and educational institutions at all levels from the village schools and clinics through the large hospitals and colleges, especially in the Far East and the South Pacific, suffered severe damage because of war operations during World War II. We have spent large sums for rehabilitation, most of the funds having been raised from the sacrificial contributions of our own church members here in the United States. Having been stationed in the South Pacific during the war and in the Far East for a number of years after the war I have personal knowledge of the devastation caused and of the long road back to restoration.

It seems to me and to the church members I represent, that the bill under consideration has the purpose of establishing principles of equity in the administration of the balance of funds available for war claims settlement. The proposed assignment of funds, so far as the churches and charitable organizations are concerned, will not benefit any individual or shareholder here in the United States, but will be used entirely for the benefit of the charitable and religious purposes for which our organizations are operating. It is on behalf of humanity that we appeal for your support of bills S. 941 and H.R. 2669.

Mr. STANTON. Sister Celestine, Sisters of Charity of St. Joseph.

STATEMENT OF SISTER CELESTINE, SISTERS OF CHARITY OF ST. JOSEPH

Sister CELESTINE. I have no prepared statement, Mr. Chairman, but I just would like to appear in support of the statements that have already been made by the members of the Coordina ing Council, who are appearing here, and I just would like to make a few comments on what Mr. Pascoe said, that this is really a call to help humanity and this backs up what I think Mr. Nixon said when he requested an overhaul of foreign aid policy, that it cannot be based on economic advantages to individuals or appropriations but rather that we must recognize the privilege we have of extending aid to others and not regarding it as an obligation and a burden, and it is in this context that I think we should consider the amendments of the bill on behalf of either 941 or H.R. 2669.

Thank you, Mr. Chairman.

Senator KENNEDY. Thank you.

Mr. STANTON. Dr. Paul T. Lauby is the general secretary of the United Board for Christian Higher Education in Asia.

STATEMENT OF DR. T. LAUBY, GENERAL SECRETARY, UNITED BOARD OF CHRISTIAN HIGHER EDUCATION IN ASIA

Dr. LAUBY. Mr. Chairman, I am very happy for the privilege of making a very brief statement.

I represent the United Board for Christian Higher Education in Asia, an autonomous agency of 10 major Protestant denominations in the United States and Canada concerned with the support of higher education in East and Southeast Asia.

The United Board was established in 1934, as the Associated Boards for Christian Colleges in China and became a single board in 1945. During this period the board supported 13 colleges and universities in mainland China. Our claims for war damages are related to these China institutions. Through many years, large numbers of American churches and individuals sacrificed to help build these schools in China.

Since the Communist take-over in China the United Board has provided substantial aid to a number of outstanding Christian Universities in five Asian countries: South Korea, the Republic of China, the Philippines, Indonesia, and Hong Kong. The war damage funds already received have been used in many creative ways to support these schools. The board has provided building grants, library resources, graduate fellowships for faculty members, research funds, and western personnel in addition to basic budget support.

Our help has enabled these schools to make important contributions to the building of their respective nations. They are providing the well-trained, committed leadership so urgently needed in these countries. They are fostering practical research directed toward the solution of regional and national problems. They are engaged in significant community action projects.

We firmly believe that the support of these schools is very much in the interests of our Government, since we are aiding to develop leadership in the free nations of Asia.

We wish to emphasize that the board's remaining share of war damage funds will enable it to continue this strategic support. It is

for this reason that the members of our board and the constituent denominations earnestly hope that this legislation will be enacted.

Thank you.

Senator KENNEDY. Let me have just—that was a vote. Could we have a short recess? We will be just 4 or 5 minutes and we will commence again.

(A recess was taken.)

Senator KENNEDY. We will come back to order.

Off the record.

(Discussion off the record.)

Mr. STANTON. Mr. Chairman, may I present at this time the Reverend Loring D. Chase, who is pastor of the Westmoreland Congregational Church here in Washington, D.C., and serves as president of the United Church of Christ Board for World Ministries. Mr. Chase.

STATEMENT OF REV. LORING D. CHASE, PASTOR, WESTMORELAND CONGREGATIONAL CHURCH, WASHINGTON, D.C., AND PRESIDENT OF THE UNITED CHURCH OF CHRIST BOARD FOR WORLD MINISTRIES

Reverend CHASE. Mr. Chairman, I have a statement for the record. It pretty well is in substantiation of what others have said here and I would say in applause of what I heard you say at the opening of the meeting. So, if I may, I will simply submit this.

Senator KENNEDY. Very good. It will be included in its entirety.

(Reverend Chase's statement follows:)

TESTIMONY OF THE REVEREND LORING CHASE, PRESIDENT, UNITED CHURCH BOARD FOR WORLD MINISTRIES, A MASSACHUSETTS CORPORATION CHARTERED IN 1812

Mr. Chairman, I am Loring Chase, president of the United Church Board for World Ministries, a nonprofit religious corporation, chartered in 1812 in Massachusetts, which sends missionaries to teach, preach, and heal people in 30 countries and supports relief and rehabilitation work in 40 additional countries including the United States of America. The United Church Board for World Ministries is a recognized instrumentality of the United Church of Christ with membership in the United States of two million.

I commend to the members of this subcommittee and the Committee of the Judiciary as a whole a rereading of pages 24 through 44 of the hearing before the Subcommittee on Commerce and Finance of the Committee on Interstate and Foreign Commerce, House of Representatives, Ninety-first Congress first session on H.R. 2669—a bill to amend section 213(a) of the War Claims Act of 1948 with respect to claims of certain nonprofit organizations. I say this because, in my opinion during this hearing on March 5, 1969, the position of the nonprofit religious and educational organizations was stated very clearly, and I would not wish to take the time during this hearing to reread all that was said in those 20 printed pages.

May I respectfully draw the members' attention to the developments which, in our opinion, require a favorable reporting out for a full vote by the Senate a vote which would satisfy the nine million dollars balance of awards yet to be paid with respect to claims of certain nonprofit organizations and would provide for an additional ten million dollars to other claimants—an equitable solution for all.

We must remember that about 6,000 of the 7,000 claimants have already been paid in full. All death and personal injury claims have been paid in full: all claims under $10,000 were paid in full and all claims by "small business concerns" were also paid in full. These were first priority claimants whose awards were paid in full.

All others were non-priority claimants and they all received $10,000 plus 61.3 percent of the balance due to them. These included 886 individuals, 29 church groups and charitable agencies, and the large corporations.

Since H.R. 2669 places the nonprofit organizations ahead of the profit corporations in priority of satisfying the balance of our awards, I would like to briefly explain why we believe that priority is justified.

I will speak by example of the United Church Board for World Ministries although these comments are generally applicable to all similar religious and educational nonprofit organizations.

In 1810 plans began for five men and their families to go to the Sandwich Islands to propogate the faith to the heathen. These families became self sufficient and several natives came to be missionaries in the United States. These were our first intercultural exchanges. All of our involvements and activities from that day to this have been funded from charitable contributions.

These are difficult days for institutions operating on charitable contributions. Since 1962 our board has lost $306,000 in contributions, the amount of unpaid balances still due us on the war claims awards. This has deprived us of the opportunity to both rebuild properties lost during the war and at the same time sustain the necessarily higher costs of missionary personnel and program. The only "return on investment" that we seek is in the lives of millions of people overseas and in this country. Recently our staff man directed church world service relief operations after Hurricane Camille in Biloxi, Mississippi. Vietnam christian service in South Vietnam has been most effective in restoring village life there. Human rights and justice throughout the world is our daily work—not merely an uneasiness of conscience.

Now let us gently set beside these damaged humanitarian operations the profit corporations whose net worth has doubled since WW II, who already had received substantial tax write-offs both here and abroad for their war losses, and who yet still consumed over $153 million of the total amount paid out of the $193 million in war loss claim awards. Unless priorities are now altered, these corporations stand to take 85 cents out of each of the few remaining dollars which might still be left for further payments out of the residue of the war claims fund.

We plead, Mr. Chairman, that the nonprofit organizations be given the priority for payment of the balance of awards under H.R. 2669 and that this entire matter be favorable referred to the Committee of the Judiciary and then to a full vote by the United States Senate. The total billion plus membership represented by this coordinating council deserves a decision from their elected representatives in the Senate just as they received a decision by their elected representatives in the House of Representatives.

I wish to thank the chairman and the members of this Committee for the privilege and opportunity to appear today at this hearing.

Mr. STANTON. I would like to call on Rabbi Jay Kaufman, executive vice president of the B'nai B'rith.

STATEMENT OF RABBI JAY KAUFMAN, EXECUTIVE VICE PRESIDENT OF THE B'NAI B'RITH

Rabbi KAUFMAN. Mr. Chairman, I represent B'nai B'rith and not only the institutions in Europe but our members who built them and who kept them and were incarcerated and incinerated over the years and the funds that would be forthcoming as those that have preceded it would be used to assist the survivors and the returnees to a normal life.

So much has been said that needs no further elaboration by my colleagues.

I would like to say that what is represented here about this table is what in our tradition we call a Misgav L'dach, a tower for the oppressed, and the needy and the weak. And these great institutions would use these funds as I think justice and equity would recommend that they be used. And so, I would like to reiterate what all of us have said, that we hope in the institutions and the vast constituencies that we represent we will see the amendment of the War Claims Act such as you and Senator Javits and others who understand this issue would have happen.

Rather than prolong this, since this is a very abnormal situation with a table full of ministers, priests, and church prelates and only one layman present, we will spare the layman anything further and conclude with our deep felt gratitude to you.

Thank you.

Mr. STANTON. I might add——

Senator KENNEDY. I am an ex-altar boy, you know. I do not know whether that qualifies me.

Mr. STANTON. We do have three of us around this table who are laymen serving the church and the wider ministry throughout the world.

Mr. Chairman, two of our delegation were unable to be present but have expressed support of our position. We have heard from the Reverend Joseph Tinnelly, who is the counsel general for the congregation of the Mission of St. Vincent de Paul in Germantown, and also from Dr. Harry Schatz of the National Jewish Welfare Board.

Mr. Chairman, we had the opportunity to meet Benjamin Ferencz, Esq., our legal counsel.

Mr. Ferencz will have no formal testimony but is available to answer questions you wish.

STATEMENT OF BENJAMIN B. FERENCZ, GENERAL COUNSEL

Mr. FERENCZ. Senator Kennedy, I would again like to repeat the gratitude of the group for the time you have taken in bringing this matter forward at this late hour. We are aware of all the pressures you have been under and are mindful of how difficult it was to bring this to this point after 4½ years of waiting and having this bill pigeonholed in the Judiciary Committee without any action being taken.

We do hope that now that the bill has unanimously passed the House after hearings were held, that we will be able to overcome the last hurdles here and see the bill passed.

As you know, there are——

Senator KENNEDY. What was the vote in the House?

Mr. FERENCZ. It was unanimous. It was passed on a voice vote. You recall the original version of the bill as introduced in the Senate and the House simply provided that the churches and the charities, 29 churches and charities, would be next in line for payment and in order to satisfy their claims in full, it would require $9.2 million out of the war claims fund. In the House there were hearings on this and there was some very sharp questioning from some of the distinguished Congressmen who were there. After the hearings were concluded, all of the Congressmen agreed that it was just and equitable that the churches and charities should be paid next and they added an amendment saying that after the churches and charities they would pay those individuals who had not yet been paid in full and that meant those individuals who had claims over $10,000. And the third category and last priority would be the large corporations on the understandable theory that these corporations had already obtained all kinds of benefits. They had deducted their tax losses 25 years ago and they had had all the financial resources to prove their losses through their auditing and accounting systems and they had in fact, grown very wealthy over the years in contrast with either the individuals or the churches and charities. So, the House did add that amendment.

So, what we have before us now are two different versions. One, the Senate version, S. 941, which deals only with churches and charities, and, two, the House version, H.R. 2669, which would allow the churches and charities as well as the individuals with claims over $10,000 to come next in line.

In terms of dollars, may I simply indicate what this means because I think that gives us a better perspective of the area in which we are moving.

We must remember that there were a total of about 7,000 claims awarded under the war claims program. About 6,000 were already paid in full because there were several categories of preferred creditors or preferred claimants. These included those who had awards for death and personal injury. It included everyone with a claim under $10,000 and it included every claim, no matter how big it was, if the corporation had less than a thousand employees, or an annual sales of less than $5 million. And these were all paid in full. And that left only the churches and charities, the 29 of them which had not been given any consideration, and some individuals, some of substantial means, who had claims over $10,000, and these very large American corporations.

Now, if we do not change the law, if we do not pass any amendment, it will mean that out of every dollar which is paid out in the future, the large corporations will get 83 cents, the individuals will get 9 cents, and the churches and charities will get 8 cents.

To give you that a little more specifically, we learned today that the Treasury has just announced that they are in a position now to pay out anouther $5 million. If we do not change this law, the large corporations will take over $4 million of that 5; $4,150,000 of that will go to the large corporations before there is any further distribution to anyone else.

We feel this is not just, for the reasons which you have heard, and which you yourself have been aware of as is clear from your statement, and something must be done and must be done soon.

Now, if we take the Senate version of the bill allowing only the churches and charities to come next, it means that $9.2 million will come out of the war claims funds which we estimate to be about $26 million. If we take the House version, it is an additional amount of $10.2 million. So that there would only be left a residue in the fund of about $6.6 million for distribution to the large corporations.

Now, the Foreign Claims Settlement Commission, which is the Government agency most familiar with war claims, has no opposition to any of these bills and they have said so. They are not opposed to them. But they have come forward with a suggestion which is a compromise suggestion. They have said that it has always been their policy to distribute funds in an equitable way and to give consideration to the small fellow and the needy, rather than the wealthy and the large corporations. And if the House version of the bill were to be modified slightly by saying that instead of paying all individuals next an unlimited sum but rather to limit it to an amount of up to $35,000, this will take out of the fund only an amount of $2.3 million instead of $10.2 million, and yet, will satisfy in full, about 75 percent of all the claimants. And so, it seemed to them that this was an equitable proposition and one which should be acceptable to all parties including the large corporations because it would still leave the bulk of the fund

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available for distribution to them, and when you remember that these large corporations have already received over $153 million out of the $193 million which were paid out, it was the feeling of the Foreign Claims Settlement Commission that this proposal should be acceptable to them.

Unfortunately, the indications we have are that it is not acceptable to them, that they are nevertheless in opposition to this bill. As you know, they submitted a lengthy memorandum to one of the members of the subcommittee asking for the opinions of the Attorney General, the Bureau of the Budget, the Department of the Treasury, on all kinds of fancy constitutional and legal problems.

This memorandum was circulated as they had requested, to all of the Government agencies and after much prodding, with the help of your office, for which we are very grateful, we finally got back the replies which seemed obvious to us at the outset, that there are no legal obstacles to either of these bills, that it is perfectly constitutional. There is no preference here for religious organizations. There are no first amendment problems. This had been in fact, explored at the hearings in the House where the chairman of the Foreign Claims Settlement Commission as well as his general counsel, had testified that there were no legal problems and there were no first amendment problems. So, these legal problems were raised by the large corporations in a manner which served to delay any further action on this bill.

Now, we believe that the time has come to act on this bill. We believe that the Senate of the United States has a right to be heard on this issue. We have waited for 4½ years to reach this point, and we are hopeful that with your help, and given an opportunity for the other Senators to consider this bill on its merits, which is all we ask, that this bill will finally be voted out favorably.

Thank you, Senator Kennedy.

Senator KENNEDY. What is the—I know you people have to run. Could I vote and just come back?

Mr. FERENCZ. Certainly.

(A recess was taken.)

Senator KENNEDY. Could you, Mr. Ferencz, tell us what happens under the Commission's formula after the payments of the $35,000 to the remainder? Do the individuals participate in that at all?

Mr. FERENCZ. Yes; all the remainder which will consist of 184 individuals with claims over $35,000 and 167 of the large corporations will share pro rata in the residue.

Senator KENNEDY. How does that work?

Mr. FERENCZ. That works out that every dollar paid out after that, the unpaid balance for the large corporations will still be $95 million and the individuals' unpaid balance will be $8 million. But the way it works out in essence is this. Of about 7,000 claimants, everybody will have been paid in full except 351 claimants. There just is not enough money to go around. And the Foreign Claims Settlement Commission seemed to feel this was the best that could be done under the circumstances to be consistent with their previous policies.

Senator KENNEDY. I see. You have covered it very well.

We had today—in the full committee we brought this up. Senator Hruska raised at least the figure, the precise figure which, as I remember, is somewhere around $24 to $26 million. You mentioned——

Mr. FERENCZ. $26 million is the latest figure.

Senator KENNEDY. Is that definite?

Mr. FERENCZ. No; it is not definite but that is the latest estimate which the Government has been circulating.

Senator KENNEDY. The Government itself?

Mr. FERENCZ. Yes.

Senator KENNEDY. And then he (Senator Hruska) asked questions about the distribution after the 351 claimants.

Mr. FERENCZ. Everyone—everyone is pro rata.

Senator KENNEDY. How that would be distributed. And then, as I understand from your study, and the record will show this, that the various governmental—none of the governmental agencies have actually objected to—neither the Commerce or Justice or any of the other agencies that have been solicited have objected to this approach which you have outlined——

Mr. FERENCZ. Yes, sir.

Senator KENNEDY (continuing). On constitutional grounds.

Mr. FERENCZ. That is right. They said there was no vested legal right to any specific sum. There were no constitutional problems, no due process problems, no 14th amendment problems. It was merely a matter of discretion on the part of the Congress.

Senator KENNEDY. A policy question.

Mr. FERENCZ. It is a policy question, that is correct, yes, sir.

Senator KENNEDY. I think the point you have made so effectively is that if this is not considered and done, the inequity in justice that is perpetuated is really outrageous in terms of the equitable interests and legitimate interests of the churches and related groups who have obviously, I think, an extremely strong and valid claim.

Mr. FERENCZ. Well, when one considers, Senator, that there were over 250 corporations, businesses, which employed up to 1,000 employees who have been paid in full, and when one considers that in title I of this very same law they recognize that the churches should be paid in full, how they could have failed to include these 29 churches can only be explained as an oversight, and that is what we are trying to correct.

Senator KENNEDY. Well, do any of the rest have any final comments you would like to make? What I would like to do is keep this record open and then, as a result of the hearings tomorrow when we are going to have the opposition witnesses, I would like to at least feel free to be able to pose to you some of the questions which are perhaps raised in my mind and perhaps others who are sympathetic to this in terms of the merits of your points, and to gain what balanced judgment you might be able to provide for us on some of the observations that are made tomorrow.

Mr. FERENCZ. We would appreciate the opportunity.

Senator KENNEDY. And then, we could at least make that a part of the record in full. I think certainly you are well entitled to it in terms of trying to ascertain the legitimate interests that are concerned in trying to reach a fair and reasoned balance and I think particularly in light of the fact that you have been so extremely understanding and generous in your time and the members' time in readjusting your schedule and trying to comply with the Senate Judiciary schedule. So, if we could do that and then try and get the response back just as quickly as possible, we will close the record, print it, and have it available for the members of the Judiciary Committee. The Judiciary

Committee is meeting next week, for 3 days. We have the Law Enforcement Assistance Act before the Judiciary Committee, but if we can really get this ironed out, I think there is no reason that we could not move this quickly and expeditiously.

So, with that understanding, we will recess these hearings at the present time.

Mr. FERENCZ. Thank you very much, Senator Kennedy.

Senator KENNEDY. We will meet again tomorrow at 2:30.

(Whereupon, at 7:02 p.m., the hearing was recessed, to reconvene at 2:30 p.m., Thursday, Sept. 17, 1970.)

A BILL TO AMEND SECTION 213(a) OF THE WAR CLAIMS ACT OF 1948 WITH RESPECT TO CLAIMS OF CERTAIN NONPROFIT ORGANIZATIONS AND CERTAIN CLAIMS OF INDIVIDUALS

THURSDAY, SEPTEMBER 17, 1970

U.S. SENATE,
SPECIAL SUBCOMMITTEE OF THE
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met at 2:45 p.m., in room 2228, New Senate Office Building, Senator Roman L. Hruska, presiding.

Present: Senator Hruska (presiding).

Also present: Robert B. Young, professional staff member, Senate Judiciary Committee.

Senator HRUSKA. The subcommittee will come to order. I should like to apologize and explain the tardiness of the acting chairman. I just got out of a conference committee on public works. The House and the Senate are trying to get that bill in final form; therefore, I have been a little delayed.

These hearings have been called to hear testimony concerning S. 941 and H.R. 2669, bills to amend the War Claims Act of 1948 with respect to the claims of certain nonprofit organizations. We appreciate the cooperation of the witnesses in being here to testify on short notice. Because this session of the 91st Congress is rapidly drawing to a close, the Judiciary Committee requested that these hearings be held at this time to permit all interested parties to present their case relative to these proposals.

In 1948 Congress enacted the War Claims Act in order to insure that individual American citizens and American corporations would receive compensation for certain losses sustained by them during World War II. The funds to be used to make these payments were the proceeds of the sale of enemy assets seized under the Trading With the Enemy Act. No appropriated funds were to be used for this purpose.

By 1962, it became evident that there would be insufficient funds available to pay all of the legitimate claimants in full. For this reason, in that year Congress turned to the question of priority of payment. By Public Law 87–846 (76 Stat. 1111) preferred status for the payment of war claims was given to individuals and their estates for death and personal injury, to small business concerns (those employing fewer than 1,000 persons and with annual sales of less than $5 million), and claims of less than $10,000. Each claim in one of these categories would be paid first and in full. Individuals and corporations with claims greater than $10,000 were in an unpreferred status, and have

received, to date, $10,000 plus 61.3 percent of the additional amount of their claim. There remain to be paid approximately $115 million in claims; whereas only an estimated $26 million in funds remain to be distributed.

Under presently existing law, all of the remaining claimants would be treated equally and would be paid on a pro rata basis. Included in the remaining corporations with outstanding claims are 29 nonprofit organizations operated exclusively for the promotion of special welfare, religious, charitable, or educational purposes. These organizations had original claims of $24.2 million; up to the present time they have received payments totalling $15 million which leaves unpaid claims of $9.2 million. S. 941 would alter existing priorities by requiring that these 29 nonprofit organizations be accorded preferred status and that their claims be paid in full before the remaining individual and corporate claimants could be paid additional sums.

The House bill, H.R. 2669, is identical with the Senate bill except that it would accord preferred status to both the nonprofit corporations and individual claimants. Under this bill, all claimants would be paid in full except those corporations having claims larger than $10,000.

It is to consider the merits of these proposals that these hearings are being held. The representatives of the nonprofit corporations were accorded an opportunity to present their testimony yesterday in hearings chaired by the senior Senator from Massachusetts (Mr. Kennedy). This afternoon, we will hear from the representative of the Foreign Claims Settlement Commission, the governmental body charged with the responsibility for the administration of the War Claims Act. We shall also hear from the representatives of the corporations with claims greater than $10,000 who, I understand, oppose the alteration in the priorities created by Congress in 1962.

Gentlemen, again thank you for being with us this afternoon on such short notice. I can assure you that the Judiciary Committee will be able to weigh the merits of these proposals in a more complete fashion after we have heard testimony from the proponents and the opponents of these bills.

The time for the witnesses to come here and the notice given to them has been short. It is because this session of the 91st Congress is rapidly coming to a close and the Judiciary Committee requested that these hearings be held at this time to permit all interested parties to present their case regarding these proposals.

Is Senator Javits here, or did he send a representative to let us know when he might come?

Mr. YOUNG. He will be here later, Mr. Chairman.

Senator HRUSKA. Very well. His statement will be received into the record, and if he comes in time, we shall be pleased to hear from him personally when he does arrive.

Now, Mr. Andy McGuire is general counsel for the War Claims Settlement Commission. He will be our first witness.

Mr. Lyle Garlock—you are the Chairman of the Commission.

Mr. GARLOCK. Yes.

Senator HRUSKA. Mr. Garlock is here with Mr. McGuire. Mr. Garlock stated that he would furnish the background to the general situation, and then furnish the matter to Mr. McGuire, who has had a more extended exposure to the problem.

We welcome you here, Mr. Garlock, and Mr. McGuire.

STATEMENT OF LYLE S. GARLOCK, CHAIRMAN, WAR CLAIMS SETTLEMENT COMMISSION, ACCOMPANIED BY ANDY McGUIRE, GENERAL COUNSEL

Mr. GARLOCK. Thank you, Mr. Chairman.

Shortly after I took over as Chairman of the Commission, this question, that is the basis of the House-passed bill, came back to the Commission for reconsideration. On the basis of that reconsideration, we came up with a slightly different proposal then has been up here before. With your permission, Mr. McGuire will proceed with the statement.

Senator HRUSKA. Very well.

Mr. MCGUIRE. Mr. Chairman, I appreciate the opportunity to appear before the committee to present the view of the Foreign Claims Settlement Commission on the proposed legislation in the form of bills H.R. 2669 and S. 941, to amend section 213(a) of the War Claims Act of 1948.

The subject bills propose to change existing priorities and limitations under section 213(a) of the War Claims Act by providing payment in full of certain war damage claim awards approved by the commission under title II of the act, including those awards granted to nonprofit organizations. Under the present provision of the act these awards fall within a low order of payment priority and are thus limited to payments, after the initial payment of $10,000, on a prorated basis or to a certain percentage of the full amount.

Section 202, title II of the War Claims Act of 1948, as amended, authorized and directed the Foreign Claims Settlement Commission to receive and determine the claims of nationals of the United States for the loss or destruction of their property in certain European countries and in territory occupied or attacked by the Japanese during World War II as a result of military operations of war or special measures directed against property in such countries or territories. Also covered under that title were claims based on death and disability and certain maritime losses.

A total of 22,605 claims for war damages were filed under title II of the War Claims Act resulting in 7,039 awards in the aggregate amount of $334.8 million. Upon completion of the program on May 17, 1967, awards had been approved and certified to the Secretary of the Treasury for payment in accordance with section 213(a) of the act in the aforementioned amount as against $223.7 million which had been deposited in the war claims fund and made available for the payment of these claims.

All awards based on the death or disability of passengers on commercial vessels and awards to small business concerns were paid in full regardless of the amount of the award in accordance with the payment priority and limitation provision of the act. Also under these provisions, nonpriority awards approved in amounts less than $10,000 were paid in full. All other nonpriority awards approved in excess of $10,000 were paid to the extent of $10,000 plus a prorated payment of 61.3 percent of the balance in excess of $10,000.

There were 33 awards issued to charitable, religious, and other nonprofit organizations which aggregated $24.1 million. Under the present payment priority ($10,000 plus 61.3 percent of the balance in excess of $10,000), approximately $14.9 million has been paid to these organiza-

tions leaving an unpaid balance in the amount of $9.2 million. In three of the claims, awards were approved in amounts less than $10,000 and have been paid in full.

The bill, S. 941, in order to be effective would require the transfer of approximately $9.2 million into the war claims fund for the payment of this unpaid balance.

The war claims fund consist of the net proceeds of liquidated German and Japanese assets seized in this country at the beginning of World War II in accordance with the provisions of the Trading With the Enemy Act. These proceeds have been transferred from time to time into the war claims fund by the Attorney General for the payment of claims as authorized under the War Claims Act of 1948. Over $525 million has been transferred into the fund and subsequently paid out to claimants, including payment in full with respect to the claims of former American prisoners of war, civilian internees of the Japanese and to certain religious organizations whose schools and hospitals sustained war damages in the Philippines during World War II.

Presently there is no money remaining in the fund for the payment of the balances of the awards as proposed by H.R. 2660 or S. 941, or for the payment of the balances due on account of other awards which have been limited to prorated payments under the statute.

May I digress from the statement here, Mr. Chairman, to say that the Department of Justice has, just yesterday, advised the Commission that an additional $5 million is available for deposit into the fund at the present time, and that has been requested.

The Commission understands, however, that approximately $60 million of the proceeds of assets blocked and vested under the Trading With the Enemy Act has been retained by the Department of Justice because of pending litigation against these assets. It has been estimated that eventually some $26 million of these proceeds may be made available for deposit into the war claims fund.

It is to be noted that in its report to the Committee on Interstate and Foreign Commerce on the House bill H.R. 2669, the Commission did not favor the enactment of the proposal under the bill to pay in full the awards to nonprofit organizations, inasmuch as such claims represent only one category of claimants with unpaid balances on their awards which would benefit in case additional money was transferred into the war claims fund. The Commission considered the proposal to be discriminatory. Moreover, with an aggregate unpaid balance of some $115.3 million outstanding in all categories, and the knowledge that any future transfers into the war claims fund would be relatively small, it seemed less than fair to favor a given group of awardees over others.

The House committee, however, reported, and the House passed H.R. 2669 on March 18, 1969, with an amendment which rearranged the order of priority to provide that after payment in full to the nonprofit organizations, the unpaid balances of awards in excess of $10,000 would then be made on the claims of individuals. Any remaining sums would then go to the larger corporate claimants. The aggregate amount of the unpaid balances due on awards paid to individuals is $10.2 million. The unpaid balance of awards issued to the larger corporations is approximately $95.7 million.

The Commission was requested by your committee in connection with the consideration of the Senate companion bill, S. 941, to express its views, or clarify its position, in view of the House-passed version of H.R. 2669, which provided for payment in full of claims of individuals as well as the claims of nonprofit organizations, and in effect eliminated to a great extent, one of the basic objections of the Commission to the original provisions of the bill, provided, of course, that additional money actually will be transferred into the war claims fund to permit additional payments.

Senator HRUSKA. Mr. McGuire, will you please suspend long enough for the acting chairman to go to the Chamber and vote on an amendment to the pending bill?

Mr. MCGUIRE. I shall be happy to, Mr. Chairman.

Senator HRUSKA. I shall be back as soon as I can.

(A brief recess taken.)

Senator HRUSKA. The subcommittee will come to order.

Mr. McGuire, will you resume, please?

Mr. MCGUIRE. The Commission made its report to you on January 20, 1969, concerning the House amendments in that it would have no objections to the passage of the bill, as amended, inasmuch as the bill's provisions appeared to be consistent with congressional intent as demonstrated in previous considerations of various legislative proposals and amendments to the War Claims Act. Moreover, since the Commission's initial report to the House committee on this legislation, the Commission learned of the possibility that additional money may become available for transfer into the War Claims Fund which would permit payment in full to these new priorities. It was pointed out, however, that the Commission, as a matter of principle, has generally favored first priority payments only for losses on account of death, personal injury or permanent disability.

Since the submission of the Commission's January 1969 report, it has been asked to comment on certain legal issues raised in relation to H.R. 2669, including one dealing with a procedural matter concerning the proposal by the House in making preference for individual award holders without benefit of a public hearing to permit interested parties to present their views.

In view of the issues posed, the Commission reassessed its position on the bill for the purpose of recommending a more equitable solution to the problem of priority payments to all claimants having unpaid balances due on their awards with a relative limited amount of money with which to make such payment.

A recap of the number and amount of awards under the war damage program was made in order to ascertain which area would afford the best opportunity of reaching a more equitable solution to the question of priority payments in view of the anticipated $26 million to be made available for transfer into the fund. It is believed that after a thorough and complete study of the matter, the $10,000 maximum payment limitations presently in effect under paragraph 2 of section 213 of title II of the act may well be increased to $35,000.

Additional statistical data concerning these awards is respectfully submitted for your information and consideration.

A total of 5,920 awards in the amount of $25.6 million were paid in full including 34 death and personal injury claims, 251 claims by

small business concerns and 5,635 claims falling in the lower payment priority involving awards in the amounts of $10,000 and under.

In addition to the 33 awards issued to nonprofit organizations which aggregated $24.1 million, there were 886 claims of individuals in the approved amount of $35.2 million, of which $25 million was paid on a prorated basis, leaving an unpaid balance of $10.2 million. Claims of corporations were paid $153.7 million, also on a prorated basis, leaving an unpaid balance of $95.7 million.

There were 739 awards between $10,000 and $35,000 for a total of $13,407,255. Under the $10,000 payment limitation $7,390,000 was paid on these claims plus $3,688,577 which represented the 61.3 percent prorated payment, leaving an unpaid balance of $2,328,678. Included are 702 awards to individuals which would be paid in full if the $35,000 maximum payment limitation is adopted. The unpaid balance due on these individual awards is $2,150,731.

There were 377 awards in excess of $35,000 in the aggregate amount of $295,687,143, including 184 awards to individuals in the amount of $24,056,831 and 167 awards to corporations totaling $248,697,862. There was one award to the United States in the amount of $327,074. After the initial maximum payments of $10,000 for an amount of $3,770,000 plus the 61.3 percent prorated payments of $178,945,207, there remains an unpaid balance of $112,971,935. From such amount would be deducted the amount of $3,647,475, the difference between $10,000 and the $35,000 maximum payment recommended by the Commission and the 61.3 percent prorated payments on the balance, leaving a net balance of $109,324,460 to be paid.

Thus, in case the $26 million is transferred into the fund, there will be sufficient funds with which to pay the unpaid balance of awards to nonprofit organizations as well as to 702 individuals and 32 corporate claimants whose awards do not exceed $35,000. Such payments would cover approximately 80 percent of the total number of individual claimants and 16 percent of the total number of corporate claimants. The amount of this unpaid balance is approximately $11.5 million. The remaining money in the fund of approximately $10.8 million after payments are made in full up to the $35,000 proposed limitation ($3.7 million) would then be paid to the 184 individuals and 167 corporations whose awards exceed $35,000.

To accomplish the foregoing, an additional amendment to section 203(a) of the House-passed bill is required. The words "and corporations" should be inserted after the word "individuals" (line 12, page 3 of the bill). Also, a new sentence should be added to the end of new paragraph "(3)" (line 16, page 2), as follows:

"The total payment made pursuant to this paragraph on account of any award shall not exceed $35,000."

Thus, new paragraph (3) to section 213(a) of the War Claims Act of 1948, as amended, should read as follows:

"(3) Thereafter, payments from time to time on account of the other awards made to individuals and corporations pursuant to section 202 and not compensated in full under paragraph (1) or (2) of this subsection in an amount which shall be the same for each award or in the amount of the award, whichever is less. The total payment made pursuant to this paragraph on account of any award shall not exceed $35,000."

The Commission believes it is a matter of legislative policy whether the Congress should give favorable action to the bill.

Mr. GARLOCK. There is one additional point I would like to make. When we talk about corporations, we tend to think of individuals as all being small, and corporations as all being large. On the assumption that the $35,000 was paid—the five corporations amounts just above that amount are as follows: $35,964, $36,020, $36,600, $37,181, $39,511, which gets them in the small area.

The five highest individuals have total claims, first, of $1,540,384.91, $757,543.19, $637,131, $631,752, and $570,462.50.

We feel our proposal would deal a little more equitably with people having the same size claim, rather than differentiating between whether they happen to be a corporation or happen to be an individual.

I think they do overlap substantially in this area.

Senator HRUSKA. Well, now, that observation is with reference to the size of the claim?

Mr. GARLOCK. Yes.

Senator HRUSKA. It is not the size of the company?

Mr. GARLOCK. Not the size of the company.

Senator HRUSKA. Mr. McGuire, on page 5, in the middle of the page, you testified that the Commission, as a matter of principle, has generally favored first priority payments only for losses on account of death, personal injury, or permanent disability.

Mr. MCGUIRE. That is correct, Mr. Chairman.

Senator HRUSKA. There has been preference priority awarded small claims below $10,000. That is a deviation, is it not, from that principle?

Mr. MCGUIRE. That is correct. That was a Senate amendment to the legislation when it was being considered, Mr. Chairman.

Senator HRUSKA. Traditionally, has it been the position of the Commission to oppose the creation of priorities?

Mr. MCGUIRE. Generally, yes, with the exception of those that I have mentioned—death, personal injury, and permanent disability.

Senator HRUSKA. This is the first time you have gone in?

Mr. MCGUIRE. This is the only time we have recommended a priority payment, yes.

Senator HRUSKA. Why have you changed your mind as a Commission?

Mr. GARLOCK. Maybe I had better answer that, because I probably was the main reason why we changed our mind.

As I told you when I came to the Commission in March, this came to us fairly soon. I sat down with the other two Commissioners and reviewed the whole situation, the testimony, and the attitude of Congress. We thought that on the face of all the evidence, this was a better solution, that we were justified in recommending this much of a priority.

Senator HRUSKA. Had the original House bill, as recommended by the committee prevailed, would there have been any occasion for you to have gone further into the matter of priorities?

Mr. GARLOCK. I do not think so, Senator. We would have gone along with that matter. But when we added the individuals it almost eliminated the money for the corporations. It set up a very distinct difference in those two groups.

Senator HRUSKA. Mr. Counsel, have you any questions?

Mr. YOUNG. No, I have not. I might have some later, Senator thank you.

Senator HRUSKA. I understand that in 1962, when the latest amendment to this act was approved, it was the position of the Senate that this act would not again be amended unless the so-called late arrivals, the late nationals were included. Can you comment on this, Mr. McGuire? Is my recollection correct?

Mr. MCGUIRE. Yes, Mr. Chairman. What transpired was that, again, there was such an amendment to include late nationals included in the bill on the floor of the Senate. The legislation went to conference and the Senate receded from that amendment and incorporated language in the conference report to the effect that Congress would again consider the question of late nationals if and when the Commission had completed its work on the then-provided-for claims, and if there were still sums remaining unexpended to the war claims fund.

Senator HRUSKA. Now, just recapping here a little bit, it is your position and your recommendation that the nonprofit organizations, corporations, are to be paid in full?

Mr. MCGUIRE. That is true; yes.

Senator HRUSKA. And then there is the other disposition as to the others?

Mr. MCGUIRE. That is the recommendation of the Commission, yes.

Senator HRUSKA. That is all the questions we have.

Mr. GARLOCK. Thank you, Mr. Chairman.

Senator HRUSKA. Thank you very much for coming.

The next witness will be Mr. Robert Norris, president of the National Foreign Trade Council of New York.

STATEMENT OF ROBERT M. NORRIS, PRESIDENT, NATIONAL FOREIGN TRADE COUNCIL, INC., NEW YORK, N.Y.

Mr. NORRIS. Mr. Chairman, I have an extra copy of my statement. Would you like it for your use?

Senator HRUSKA. Thank you, yes.

Do you wish to read your statement, Mr. Norris?

Mr. NORRIS. I should like to, Mr. Chairman. It is brief and I think it would not lend itself to summary.

Mr. Chairman, my name is Robert M. Norris and I am president of the National Foreign Trade Council, Inc. Mr. Chairman, I am sure that most of the members of your committee know that the membership of the Council comprises a broad cross section of U.S. companies and some individual businessmen engaged in all major fields of international trade and investment, including manufacturers, exporters and importers, companies engaged in rail, sea, and air transportation bankers and insurance underwriters.

We appreciate very much the opportunity to present the views of the National Foreign Trade Council in opposition to H.R. 2669 which would amend the War Claims Act of 1948 in such a way as to create two additional classes of preferred claimants who would be paid in full before general claimants would be paid anything further.

For many years the Council has been deeply concerned about the policy of the United States in respect of the protection of overseas

investment and the treatment of international claims. The policy of the U.S. Government in both these areas is of vital importance not only to our membership but indeed to the entire international business community.

The National Foreign Trade Council is opposed to H.R. 2669 because the preferences it would create discriminate arbitrarily and unfairly in favor of special interest groups and individual claimants to the detriment of corporate claimants. There are no precedents which justify the preferences of H.R. 2669. Indeed, this bill would establish a very unfortunate precedent for opening up international claims programs to preferences and benefits for special interest groups. Thus, the discriminatory preferences of H.R. 2669 would not only harm American business, they would also damage the faith of American business in the fairness of future international claims programs and consequently would harm our country's foreign trade.

All claims under the 1962 amendments to the War Claims Act of 1948 have been determined and adjudicated; 5,920 claims have been paid in full and all of the preferences created by the 1962 amendments to the War Claims Act for peronal injury and death claims, small business claims, and claims for $10,000 or less have been satisfied. The other 1,119 nonpreferred claimholders have received approximately 60 percent of their awards, but are awaiting pro rata distribution of any further sums which may become available to satisfy the balance still due on their awards. The total unsatisfied balance is $115 million. It is certain now that there will not be sufficient funds to pay these claims in full. At most only $26 million more is expected to be available to the war claims fund.

H.R. 2669 would establish two new categories of preferred claim holders who would have to be paid in full before there would be any distribution to the other claimants.

The first new preference is for nonprofit special interest groups. The second preference is for individual claimants. The unpaid balance of awards to the nonprofit group is $9,208,189. The unpaid balance of awards held by individuals is $10,223,213. Thus, almost $20 million of the final $26 million that will be available for distribution would be taken up by the new preferences.

The net effect of H.R. 2669 would be almost entirely to exclude the unpreferred corporate award holders from further participation in the distribution of the war claims fund. We maintain that it is altogether unfair and unequitable to exclude this group of claimants from further participation in distributions on a pro rata basis. It would be particularly unfair to re-order the priorities for adjudicated claims with retroactive effect on the distribution pattern established by Congress in 1962.

Federal bankruptcy statutes provide the model for fair distribution of limited assets to a number of claimants, and it would not be accepted in bankruptcy law that religious and individual creditors should be paid in full before other creditors. Congress has refused to grant bankruptcy priorities to special interest claimants, and there is no reason in our view to depart from the precedent of the Bankruptcy Act by establishing preferences which prefer one type of war claimant over another for what is the same type of claim.

In the event of a bank failure, no one would contend that nonprofit or individual depositors should be paid in full before corporate depositors are paid anything. Pro rata distribution is the only fair rule.

It has been suggested that nonprofit groups and individuals should be preferred over corporations because the corporations have already received a large portion of the money paid out under the War Claims Act.

This argument has no merit because the corporations suffered the great bulk of the losses. Furthermore, even without the discriminatory preferences of H.R. 2669, corporations will suffer most of the uncompensated losses.

It has also been suggested that corporations should have a lower priority than the nonprofit groups because they have already received some compensation in the form of income tax deductions. This argument is invalid for a number of reasons. These groups have had tax benefits much greater than the corporations because they were not taxed at all. Moreover, under existing law, the Foreign Claims Settlement Commission has already deducted from awards amounts equal to the value of tax benefits previously claimed. Finally, not all of the corporations took a tax deduction for their war losses. Out of the 26 highest awards to corporations, nine of these corporations did not take any deductions. Thus a careful examination of the tax aspects highlights again the arbitrary and unfair nature of the proposed new preferences.

Finally, a most important consideration which the Senate should take into account is the effect which the creation of additional preferences would have on future claims programs. If H.R. 2669 is enacted, it appears that Congress will be urged to create similar special interest preferences in all future claims programs of whatever kind.

That concludes my statement, Mr. Chairman.

Senator HRUSKA. What do you understand, Mr. Norris, to be the justification for the preference given to these nonprofit parties and entities?

Mr. NORRIS. I can only understand that their claim for a preference position is based upon the nature of their activities; namely, being engaged in religious, charitable, welfare programs. I personally commend these organizations for the fine work that they do, and I do not think that any corporation represented in our organization would, in any sense of the word, do less than commend them very highly. That is not the point, however. It seems to us the creation of these additional types of preferences is in fact, inequitable; they are discriminatory.

Indeed, many corporations in fact support these organizations who are claiming the preferred positions. I think you well know that many corporations give very abundantly to charitable organizations and to other groups who engage in the type of activities that these preferred claimants engage in. It is the only basis that I know for their claim of a preferred position.

They have, as you know, shared with other awardees to date in the first $10,000 of the amount of their award which has been paid in full, and that they, too, have received slightly over 60 percent of their awards of the fund available for award. It seems only fair and equitable and, indeed, logical that the remaining claimants be paid on a

prorated basis under the terms of the amendment to the act in 1962. I think not to do so would indeed establish a very bad precedent.

Certainly, business would be less enamored about the possibilities—there are possibilities I think, of being faced with this type of preferential claimants in the future should war claims develop in connection with their investments abroad.

At the moment, I think this has some implications, perhaps, in the foreign policy area.

As you know, today we are certainly confronted with creeping nationalism throughout the world. Unjust expropriations of businesses without adequate just compensation are going on constantly. I think this bill would establish a bad precedent. It would help the cause of those countries who wrongly treat our property abroad, who want to take it, and then say, well, this is how you treat your own corporations in the United States. I think that in this sense, it does have that kind of foreign policy implication.

So, on balance, I would say that despite the fine work of the charitable groups, the welfare groups, and the religious groups, I think it is a bad precedent to start. I think it is inequitable, and I think it is bad to now amend the 1962 provisions of the law, which set up the preferences in the first place.

Senator HRUSKA. Of course, this type of war claim has a long history in the history of the Republic, does it not?

Mr. NORRIS. Yes.

Senator HRUSKA. It goes back to the early 1800's, if I remember, in our treatment and consideration of this type of bill.

You do indicate in your testimony that there are no precedents which justify the preferences of H.R. 2669. Are we to understand that you have considered the history of this type of war claims procedure in making that statement?

Mr. NORRIS. If you are referring, sir, to the Philippine Claims, that was a special group set up at that time. They had full hearings within the Congress, as I remember it.

I do not think that the position we take is inconsistent with the history of the war claims program this country has been in. I do not know of any precedents which would parallel the kind of precedent which would be established by this amendment to the law.

Senator HRUSKA. In the concluding paragraph of your statement, you say that perhaps one of the most important considerations is the effect which the creation of additional preferences would have on future claims programs.

Mr. NORRIS. That is correct.

Senator HRUSKA. And it appears that Congress will, in the future, be urged to create similar special interest preferences in all future claims programs, of whatever kind.

Do I find an intimation in that language and in that testimony, that perhaps on the next occasion when this comes up a preference will be asserted for nonprofit corporations ahead of everything, instead of waiting until the final stages of the settlement are reached as we have them in this situation?

Mr. MORRIS. I think if the law were amended to establish the type of preference being sought in this bill, I think it could establish precedence for similar claims on future programs. There would be a legislative precedent.

Senator HRUSKA. I can see a difference between, if it were on a case-by-case basis and you have the preference here for saying, we will wait until the end and then we will assert, we will get everything we can in the beginning and then, toward the end of the liquidation process, then we will come in and make special preference. That is one.

Mr. NORRIS. Yes.

Senator HRUSKA. But if that special preference for full payment were to be asserted or conferred upon nonprofit corporations at the inception of the fund, then it would amount, would it not, to a requirement that private investors abroad would be called upon to sort of insure the payment in full of nonprofit corporation's ventures abroad; would it not?

Mr. NORRIS. I think this is true.

Senator HRUSKA. That was the intimation that was made in other testimony, and I just want your thoughts on it.

Mr. NORRIS. That is correct. I think that is part of the intimation, and if, indeed, in the future program, the Congress, after full hearings in its wisdom saw fit to give at the inception a preferred position for nonprofit groups, I still think the result would be that which you stated: Corporations would be called upon to pay those claims on a first priority to nonprofit groups. I think the conclusion which you have reached is exactly the correct one.

Senator HRUSKA. Now, you say the Foreign Claims Settlements Commission has already deducted from awards, amounts equal to the tax benefits previously claimed. That was in instances where tax deductions had been taken by the recipient?

Mr. NORRIS. Exactly; yes, sir.

Senator HRUSKA. Now, you also testify that the 26 highest awards to corporations—out of the 26 highest awards to corporations, nine did not take any deduction. Why did they not take a deduction; do you know?

Mr. NORRIS. I do not know.

Senator HRUSKA. They simply did not do it?

Mr. NORRIS. Well, I do not know because I am not in possession of the facts, but I think it is fair to say that in the matter of tax deductions or the treatment of deductions or tax credits, they certainly vary considerably from company to company. I think that each one would really have to be examined. It is, therefore, why I think it would be of tremendous interest to this committee, if, in those instances where tax losses were taken, for the Commission to perhaps develop for the committee some of the background.

But they do vary, as you well know, from case to case.

Senator HRUSKA. Mr. Counsel, have you any questions?

Mr. YOUNG. Yes.

Sir, have you read the reports of the departments on this bill, the agencies downtown?

Mr. NORRIS. No, I have not.

Mr. YOUNG. That is all I have.

Mr. NORRIS. Are you talking about the Commerce report, particularly?

Mr. YOUNG. The Commerce report, the Foreign Claims Settlement Commission, Justice.

Mr. NORRIS. I have read the testimony, I have read the subsequent correspondence, and I have heard the testimony of the Foreign Claims Settlement Commission today.

Mr. YOUNG. What were the views of the Department of Commerce on granting a priority?

Mr. NORRIS. They were opposed to it.

Mr. YOUNG. Do you know the grounds?

Mr. NORRIS. Because it was discriminatory, unfair, and inequitable.

Mr. YOUNG. That is all.

Senator HRUSKA. Thank you, Mr. Young.

Thank you, Mr. Norris.

The next witness is Mr. Stanley Lowell, Americans United for Separation of Church and State.

STATEMENT OF C. STANLEY LOWELL, ASSOCIATE DIRECTOR, AMERICANS UNITED FOR SEPARATION OF CHURCH AND STATE

Mr. LOWELL. Mr. Chairman, I have a very brief statement which I would like to read and comment on. It will take a very brief amount of time.

Senator HRUSKA. Very well.

Mr. LOWELL. My name is C. Stanley Lowell. I am associate director of Americans United for Separation of Church and State, an organization with well over 100,000 members in all the States, founded 23 years ago for the sole purpose of defending and extending this country's tradition in church-state matters which has been popularly called "the separation of church and state." Our sole concern, Mr. Chairman, in respect to this legislation centers on the church-state issue. We have been interested in this issue in regard to war claims, legislation going back over a number of years.

I recall, and comment on it here, that the churches, charitable organizations, nonprofits, have fared very well from the grants under these war claims.

We respectfully suggest that the legislation under consideration H.R. 2669, be carefully examined as to constitutionality.

The effect of this legislation is to single out for preferred treatment under the distribution of unpaid benefits from war claims some 30 religious organizations, out of a total of 33 charitable groups, that would qualify for priority. Claimants other than religious groups and individual claimants would, if this bill passes, be deprived of any benefits whatever from their claims. At least, that would be the practical effect of the bill, the way it appears at this point. This would appear to be unjust on the face: why should one class of claimants be given a priority status which would enable them to receive their total awards, while other claimants are denied altogether? Our point is not so much that this is class legislation, however, as that it is religious class legislation. It singles out religious groups as a class for favored treatment.

This raises a serious constitutional problem. The first amendment declares that "Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof." We believe that no law means no law. Yet the Congress proposes here to pass such a

law. The first amendment has long been interpreted by the Supreme Court as meaning not only that Congress must not favor in public policy any particular religious denomination, but that it shall not favor or inhibit religious organizations as a group. In *Everson* v. *Board of Education* (330 U.S. 1—1947):

The "establishment of religion" clause of the first amendment means at least this: Neither a State nor the Federal Government can set up a church. Neither can pass laws which aid one religion, aid all religions, or prefer one religion over another * * *

This identical language has been repeated by the Supreme Court in its majority opinions in *McCollum* v. *Board of Education* (330 U.S. 203—1948), *Torcaso* v. *Watkins* (367 U.S. 488—1961), and *Schempp* v. *Abington* (374 U.S. 203—1963). The meaning is clear that religious groups as a class may not be singled out for preferred treatment or for discriminatory treatment by the Congress of the United States or, indeed by any official body in this country.

We find that while this legislation does not single out any one particular church for preferment, it does single out religious organizations as a class and it does give them such treatment.

It is our view that the amendment proposed here to the War Claims Act of 1948 is the kind of action proscribed by the first amendment. It is a proposal whose effect would be to single our religious groups as such and give them preferred treatment in the distribution of benefits provided under the act.

The constitutional test which the Supreme Court suggests in *Schempp* v. *Abington* is clear:

What are the purpose and the primary effect of the enactment? If either is the advancement or inhibition of religion, then the enactment exceeds the scope of legislative power circumscribed by the Constitution.

It seems evident, Mr. Chairman, that the proposal in H.R. 2669 would result in the enhancement of religion. We note particularly that there is nothing in this legislation which would require the churches to perform secular charitable services as such with the grants made to them. They would be free to indoctrinate and proselytize with these funds awarded them by act of Congress. This would mean an award of $24 million to religious organizations for their religious programs with a resultant deprivation of other groups. This is precisely the kind of class legislation which favors and promotes religion that we believe the first amendment was designed to avoid.

If the shoe were on the other foot, if the legislation were to single out the other groups, placing them in the preferred position and demoting the religious groups to nonpreferred status where they would receive little or nothing, this might be construed as an act inhibiting religion as such and therefore violative of the first amendment. It seems to us, therefore, that the only fair and constitutional, the only equitable solution here is to allow all groups to share in the remaining funds on a nondiscriminatory and equitable basis.

If it be argued that these organizations do good work and therefore deserve the priority given them, the answer is clear. Churches are indeed worthy organizations which do good work. Nevertheless, under our arrangement of separation of church and state they are forbidden government subsidies and state sponsorship. The whole concept of separation was designed to preserve the integrity and independence of

the chuches by avoiding their sponsorship by the state. Such an act as awarding public funds to churches while depriving others is disruptive of this entire concept.

It is the sort of thing, Mr. Chairman, which we believe, while it provides some immediate advantage to the church, in the long run is against the best interest of the church and erodes it. It indeeds sets a wrong precedence in the Government distribution of such benefits.

We strongly urge that the committee disapprove this bill because it involves tampering with the separation of church and state and violates the religion clause of the first amendment.

Senator HRUSKA. Thank you very much, Mr. Lowell, for bringing us this view on the constitutional problem. This committee had been concerned with it, and still is. We raised the point with the Department of Justice, and yesterday, the letter from the Department of Justice was inserted in the record. So your contribution is very much appreciated.

Thank you for coming.

Mr. LOWELL. Thank you, Mr. Chairman.

Senator HRUSKA. I will at this time place in the record the statement of Senator Hugh Scott of Pennsylvania in support of H.R. 2969 and S. 941. It will be placed in the record in its full text. Senator Scott is not able to be here on account of offical business.

(The statement referred to follows:)

STATEMENT OF U.S. SENATOR HUGH SCOTT OF PENNSYLVANIA, IN SUPPORT OF H.R. 2669–S. 941, BEFORE A SPECIAL SUBCOMMITTEE OF THE SENATE JUDICIARY COMMITTEE

Mr. Chairman, I am very pleased to be able to testify today in support of H.R. 2669. This bill, as introduced in the House, was identical with S. 941 which was submitted by Senators Jacob Javits of New York and Edward Kennedy of Massachusetts, and which I joined as a co-sponsor. H.R. 2669 as passed by the House, contains a minor amendment of S. 941 to which I have no objections.

My remarks will not be extensive since the bill was the subject of detailed consideration during the hearings in the House before that body gave the bill its unanimous approveal.

What we are trying to do with the proposed bill is to correct an inequity which has inadvertently crept into the War Claims law. This inequity did not become apparent until all of the war claims had been adjudicated and payments made. It then appeared that, whereas about 6,000 out of the 7,000 claimants were paid in full, there were 29 churches and charities which, contrary to expectations, only received about 62% of the amount awarded to them. The churches and non-profit agencies are therefore being treated worse than the overwhelming majority of all other claimants and worse even than 250 so-called "small business" concerns which are operated exclusively for the profit of their private owners.

It surely was never intended by the Congress to discriminate against these 29 churches and charities which represent some of the finest and most respected institutions in America. Indeed, Congress had recognized in Title I of the War Claims Act that the churches in the Phillipines connected with American churches were entitled to full compensation. It would be inequitable and inconsistent if Title II of the same Act would treat American churches elsewhere less favorably.

If you will examine the list of the 29 non-profit agencies which H.R. 2669 will place in an equal position with those who have already received full payment, you will find there such outstanding organizations as the American Baptists, the B'nai B'rith, the United Methodist Church, the Presbyterian Church in the U.S., the United Presbyterian Church, several dedicated Catholic orders, the Episcopal Church, the Seventh Day Adventists, the Y.M.C.A's, the National Jewish Welfare Board, and others which have rendered distinguished service to our country and its interests both at home and abroad.

In its present form the War Claims bill provides for full payment on all awards for death, personal injury, property losses of up to $10,000 and full payment on all awards to any "small business" concern defined as a company with less than

1,000 employees or $5 Million in annual sales. There were almost 6,000 such claimants who received full compensation some years ago. Various official declarations led the churches and charities to believe that they would be paid in full for the destruction of their properties. We cannot in good conscience allow to stand unaltered a law which has the effect of giving them only 62% of their awards while most others have received 100%.

The total amount required to satisfy the unpaid balance due to the 29 churches and charities is about $9 Million. No appropriations are required since the money will come from the existing war claims fund, where a reserve is being held pending the resolution of existing litigation. According to the estimates considered when H.R. 2669 was passed by the House, an amount of at least $20 Million will be available for further distribution to those who have not yet received full payment.

There are a number of individual claimants with awards in excess of $10,000 who have not yet been paid in full. It was the view of the House that these individuals should be next in line after the churches and charities when further payments are made. As so amended, H.R. 2669 was passed by the House. I have no objection to the amendment. I believe it should be accepted by the Senate and there should be no further delay in enacting this necessary legislation.

I recognize that there are also a number of fine American corporations which have not been paid in full. Their number is less than 200 and these large corporations have already received over $153 Million out of the total of $193 Million which was paid out of the War Claims fund. In order to satisfy these large corporate claims in full over $95 Million more would be required and that amount is simply not available in the fund. If we do not alter the present priorities the little that is left will to largest extent be consumed by the large corporate claimants who have already consumed the largest slice of the pie. The churches and charities, as well as those individuals who have not yet been fully compensated, will get practically nothing.

It has always been a principle of war claims legislation to take care of the little fellow first. As I review the legislative history of the War Claims Act, it is apparent to me that it was the intention of the Congress that the large corporate claimants would not be given any priority treatment. These corporations had already obtained various tax benefits both at home and abroad many years ago to compensate them for their war losses. I am pleased that these large corporations have been able to re-establish themselves overseas, and in many, if not all cases, they are in a stronger financial position abroad today than they ever were before. That is certainly not true for the non-profit agencies. Their churches, their schools and their hospitals which were ravaged by war, were in most cases irretrievably lost. These institutions were built with contributions from millions of American citizens who were trying to spread American ideals throughout the world. The funds are desperately needed to help them carry on their work which is in the interest of us all.

It does seem to me to be equitable, necessary and in the public interest that the non-profit agencies now should be given the same priority of payment as had been given to all those 6000 other claimants who have already received their full compensation.

The Special Subcommittee requested comments from various executive agencies. All found it a matter of legislative policy whether the Congress felt that equity and justice would be served by granting to these non-profit organizations priority for full payment of their claims similar to that previously accorded small businesses. The Foreign Claims Settlement Commission is also on record as having no objection to granting that priority.

I therefore strongly urge the members of this Subcommittee to act favorably on this legislation in the shortest period of time in order that the inequity which exists in the present law may finally and swiftly be corrected.

Senator HRUSKA. The next witness is Mr. Clifford Storms, assistant general counsel for CPC International, Inc.

Is that the so-called Corn Products?

STATEMENT OF CLIFFORD B. STORMS, ASSISTANT GENERAL COUNSEL, CPC INTERNATIONAL, INC.

Mr. STORMS. It used to be that. This is the new name.

Senator HRUSKA. You have submitted a prepared statement. You may read it, Mr. Witness, or highlight it. Which would you prefer?

Mr. STORMS. Mr. Chairman, I would prefer to highlight some parts of the statement that have not previously been adverted to by other witnesses.

Senator HRUSKA. The entire statement will be placed in the record and you may highlight those portions of it, if you want to, subject to one condition: that is if the highlighting will not be longer than the time it would take to read it. That has happened in this room before.

Mr. STORMS. I shall be glad to do that, Mr. Chairman.

Senator HRUSKA. As you do make comment in the statement, will you indicate where in the statement, which place you are basing your comments on?

Mr. STORMS. Yes, sir.

Mr. Chairman, my name is Clifford B. Storms, assistant general counsel of CPC International, Inc., formerly Corn Products Co. I appreciate the opportunity to appear today to express the reasons why we believe that H.R. 2669 is unfair and discriminatory legislation which should not be enacted.

CPC was one of the first U.S. corporations to invest in productive facilities abroad. It suffered very substantial losses in World War II.

Under the War Claims Act, CPC was able to claim a portion of these losses. We received a gross award from the Foreign Claims Settlement Commission of some $26 million, from which was deducted a tax benefit of about $4 million derived from a 1941 tax deduction, leaving a net award of approximately $22 million. This was the third largest award made to any claimant. Of this net award, some $14 million has been paid, leaving about $8 million of proven losses for which CPC has not been compensated.

A small portion of our losses was caused by military operations of war—bombing, artillery fire, et cetera. Of far more importance to CPC was the total loss of many major properties seized as enemy property during the war, and never restored to CPC after the war because they were located in areas under Communist control. For example, our plant at Barby, Germany, the largest food-processing plant in Europe, was totally dismantled by the Soviet Union and removed to Russia.

It has always been recognized, Mr. Chairman, that losses of this type gave rise to a special and unique obligation on the part of the U.S. Government to provide compensation. The reasons for this unique obligation are a part of our history and I think it is important to recall that history in considering this legislation.

The Potsdam agreement of August 1, 1945, provided that World War II reparations should be met in part by the dismantling and removal of industrial plants from Germany. The Russians were to make removals from their zone of occupation and were also to receive a share of removals from the Western Zones. The Potsdam agreement permitted American-owned industrial plants in Germany to be seized by the Soviets to pay Germany's war debts.

Accordingly, American-owned plants in the Soviet zone, including CPC properties, were dismantled and taken to Russia as reparations from Germany.

The State Department recognized the gravity of the problem. In a letter to our counsel in 1949, attached as exhibit A, then Secretary of State Acheson indicated his interest in providing for a speedy settlement of the American losses.

The reparations removals problem was also recognized by the Congress in 1962 when it enacted section 202(a) of the War Claims Act.

Thus our losses and those of companies similarly situated represent an extraordinary type of war loss—a loss not from normal and foreseeable risks such as military operations but from special arrangements made or condoned by the U.S. Government itself. In 1946, Professor Hyde, an eminent authority on international law, wrote as follows:

> In a word, the Government of the United States * * *. Seems to have committed itself to a policy * * * that permits American-owned property in Germany to be removed for reparation purposes without compensation to the owners, whether that removal be by itself, or by a co-belligerent. In every situation where the immediate owners or ultimate owners are Americans, they should be reimbursed for their losses by the United States, or through its good offices. Their claims against it rest on solid grounds.

Moreover, so far as we are aware, and has been stated, the priorities established by H.R. 2669 are unprecedented in the history of international claims. The common and accepted practice in the settlement of international claims for property damage has been to pay all claims up to a certain sum, such as $1,000, in order to assure that small claimants are paid in full, and otherwise to treat all property claims equally regardless of the nature or character of the owners of the property.

We do not believe any owner of property has any prior right to compensation before any other owner. We see no basis in reason to erect priorities based on the nature of the claimant rather than on the nature of the loss. As Mr. Norris has stated, in bankruptcy proceedings, to which this situation is closely related, no priority would be allowed for the categories of claimants who seek a preference here.

These objections above apply equally to the proposal of the Foreign Claims Settlement Commission. It is worthy of note that prior to passage of the House bill, the Commission itself opposed all proposals for new priorities.

In summary, Mr. Chairman, we believe no valid reasons exist for this proposed departure from the principle that all claimants who sustained property losses should be treated equally. Distinctions based on the nature of the claimant, rather than the nature of the claim, would create an unfortunate precedent for future claims programs, would frustrate basic principles of fairness, and would discriminate unreasonably against CPC's 85,000 shareholders and hundreds of thousands of other American shoreholders to whom, for the reasons I have stated, the United States owes a special obligation.

Thank you very much, Mr. Chairman.

(The complete statement of Mr. Storms follows:)

STATEMENT OF CPC INTERNATIONAL, INC., BEFORE AN AD HOC SUBCOMMITTEE OF THE SENATE COMMITTEE ON THE JUDICIARY TO CONSIDER AMENDMENTS TO THE WAR CLAIMS ACT OF 1948, SEPTEMBER 17, 1970

Mr. Chairman and members of the subcommittee, my name is Clifford B. Storms, Assistant General Counsel of CPC International, Inc., formerly Corn Products Company. I appreciate the opportunity to appear today to express the reasons why we believe that H.R. 2669 is unfair and discriminatory legislation which should not be enacted.

EFFECT OF H.R. 2669

Title II of the War Claims Act, as enacted in 1962, provided for the adjudication by the Foreign Claims Settlement Commission of certain claims arising out of World War II. Congress clearly recognized in 1962 that the amounts likely to

be available to pay these claims would be insufficient.[1] Accordingly after detailed consideration, Congress determined that two priorities should be established so that certain limited types of claims would be assured of full payment.

The first priority established was for awards for death or personal injury, and the second priority was for so-called "small businesses." All claims in these categories have now been paid in full. Awards held by all other claimants were paid in the amount of $10,000 or the amount of the award, whichever was less, and all claimants whose awards exceeded $10,000 received 61.3% of the amount of their awards in excess of $10,000.

In summary, with the exception of death and personal injury claimants, and "small businesses," *all* claimants—whether individuals, non-profit organizations, or corporations—who have awards exceeding $10,000 have received equal treatment. But now, since the available funds will be insufficient to pay the remainder of these awards in full, certain claimants are seeking in H.R. 2669 to obtain a preference over and at the expense of other claimants.

If enacted, H.R. 2669 would create additional priorities for nonprofit organizations and, after them, for individuals. The war claims fund would be depleted by $9.2 million for the payment of the unpaid balance of awards to nonprofit organizations, and $10.2 million for the payment of the unpaid balance of awards to individuals, or a total of some $20 million. Since the funds to be transferred to the war claims fund by the Justice Department are not expected to exceed $20 to $25 million, it is apparent that the legislation would have the effect of assuring that CPC will receive virtually nothing, perhaps nothing at all, of its $8 million unpaid balance.

In other words, H.R. 2669 would assure that *all* claimants have priority *except* corporations like CPC which do not qualify as "small businesses."

CPC was one of the first U.S. corporations to invest in productive facilities abroad. Its interests in Europe go back to the early years of this century. By the time of World War II, CPC had large interests in both Europe and the Far East, principally in food manufacturing facilities. By the end of the War, virtually all CPC's properties in Germany, Czechoslovakia, and the Far East, had been sequestrated or expropriated or otherwise lost.

Under the War Claims Act, CPC was able to claim a portion of these losses. We received a gross award from the Foreign Claims Settlement Commission of some $26 million, from which was deducted a tax benefit of about $4 million derived from a 1941 tax deduction, leaving a net award of approximately $22 million. This was the third largest award made to any claimant. Of this net award, some $14 million has been paid, leaving about $8 million of proven losses for which CPC has not been compensated.

A small portion of our losses was caused by military operations of war (bombing, artillery fire, etc.). Of far more importance to CPC was the total loss of many major properties seized by Germany and Japan as enemy property during the war, and never restored to CPC after the war because they were located in areas under Communist control.

Substantially all our productive facilities in Germany were in the Eastern portion of that country, including a plant at Barby, Germany, which was the largest food processing plant in Europe. All these German properties came under the control of the Communist authorities after the war. The Barby plant was totally dismantled by the Soviet Union and removed to Russia.

It has always been recognized, Mr. Chairman, that losses of this type gave rise to a special and unique obligation on the part of the United States Government to provide compensation. The reasons for this unique obligation are a part of our history and I think it is important to recall that history in considering this legislation.

The Potsdam Agreement of August 1, 1945 provided that World War II reparations should be met in part by the dismantling and removal of industrial plants from Germany. The Russians were to make removals from their zone of occupation and were also to receive a share of removals from the Western Zones. *The Potsdam Agreement permitted American-owned industrial plants in Germany to be seized by the Soviets to pay Germany's war debts.*[2]

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[1] The fund for the payment of war claims consists entirely of German and Japanese assets seized by the U.S. Alien Property Custodian during World War II. No appropriations have ever been made for payment of war claims.

[2] "The United States authorities as part of the Potsdam agreement appear to have conceded to Russia the taking of tangible property belonging to Americans in all the Russian-occupied zones as part of the reparations settlement."

Report of House Special Committee on Post-War Economic Policy and Planning, H. Rep. No. 1527, Part 2, p. 49, Feb. 7, 1946. A more detailed treatment of the Potsdam Agreement and related agreements appears in the Supplementary Report of the War Claims Commission dated January 16, 1953 (House Doc. No. 67; 83rd Congress 1st Session) at pages 46-47 and 143-146.

Accordingly, American-owned plants in the Soviet zone, including CPC properties, were dismantled and taken to Russia as reparations from Germany.

In response to our plea in 1949 that our property was being taken by the Russians with the sanction of the U.S. Government, the State Department recognized the gravity of the problem. In a letter to our counsel in 1949, attached as Exhibit A, then Secretary of State Acheson indicated his interest in providing for a speedy settlement of the American losses.

The reparations removals problem, having thus been recognized by the State Department, was also recognized by the Congress in 1962 when it enacted Sec. 202(a) of the War Claims Act. Section 202(a) of the statute provides for adjudication by the Commission of claims for property loss or damage which occurred *either* by reason of military operations of war *or* "special measures directed against property . . . because of the enemy or alleged enemy character of the owner . . .". It is clear from the legislative history that this so-called "special measures" provision was intended to provide a solution for the problem discussed in Secretary Acheson's letter.

Thus our losses and those of companies similarly situated represent an extraordinary type of war loss—a loss not from normal and foreseeable risks such as military operations but from special arrangements made or condoned by the United States Government itself.

"In a word, the Government of the United States . . . seems to have committed itself to a policy . . . that permits American-owned property in Germany to be removed for reparation purposes without compensation to the owners, whether that removal be by itself, or by a co-belligerent. *In every situation where the immediate owners or ultimate owners are Americans, they should be reimbursed for their losses by the United States, or through its good offices.* Their claims against it rest on solid grounds." [3]

Since the vast bulk of our losses arose under this "special measures" provision, we believe our request for equality of treatment also rests on "solid grounds". The special obligation of our Government to compensate such losses would be compromised by enactment of the proposed legislation. Mr. Chairman, we respectfully suggest that the ability of the U.S. Government to carry out this special obligation would be impaired by H.R. 2669, and that this matter should be referred to the State Department for its views.

OBJECTIONS TO H.R. 2669

The priorities established by H.R. 2669 are unprecedented in the history of international claims. The common and accepted practice in the settlement of international claims for property damage has been to pay all claims up to a certain sum, such as $1,000, in order to assure that small claimants are paid in full, and otherwise to treat all property claims equally regardless of the nature or character of the owners of the property.

We do not believe any owner of property has any prior right to compensation before any other owner. We see no basis in reason to erect priorities based on the nature of the claimant rather than on the nature of the loss. As Mr. Norris has stated, in bankruptcy proceedings, to which this situation is closely related, no priority would be allowed for the categories of claimants who seek a preference here.

Mr. Chairman, we think it particularly inappropriate to re-order the system of payments from the war claims fund at this eleventh hour. That statute which provided for the adjudication and payment of the claims involved here was enacted in 1962 after lengthy Congressional consideration. During the 8-year interim, the Foreign Claims Settlement Commission has received the claims and has finally adjudicated all of them. Payments have been made from the war claims fund in accordance with the 1962 system. Our shareholders have the right to expect to be on a par with the other claimants in any future payments from the fund.

The major contention of the non-profit organizations is that H.R. 2669 is necessary to give them *equal* treatment with other claimants who received full payment—such as small businesses. In addition, they argue that the Philippine claims program is a precedent for full payment of their awards in preference to those of other claimants.

We cannot agree:

(*a*) Full payment of the claims of these organizations would clearly give them a priority.

[3] Hyde, "Protection by the United States of American Property in War-Stricken Areas," 46 Columbia Law Review 519, 528 (July 1946). (Emphasis supplied).

(*b*) Congress in 1962 adopted the priorities for death and personal injury, and for small businesses, with full knowledge that there would be insufficient funds to pay all claims in full.

(*c*) Had Congress determined that a priority for non-profit organizations was necessary or warranted, it could easily have established such a priority in 1962.

(*d*) The priority for small businesses was itself unjustified, and is not a valid basis for giving a priority to non-profit organizations.

(*e*) The Philippine claims program was an utterly distinct situation in which religious organizations were reimbursed for food, clothing and other materials and services furnished by them to the U.S. armed forces operating in the Philippines.

Another argument of the proponents relates to the so-called tax benefits received by corporations such as CPC. We repeat that CPC's gross award was reduced by some $4 million by reason of a tax benefit derived from a deduction taken in 1941, as authorized by the Internal Revenue Code. Thus, the full amount of CPC's "tax benefit" was deducted by the Foreign Claims Settlement Commission in computing our award.

We oppose the priority for individuals on the same fundamental ground: there is no basis for a distinction among those who have lost property as a consequence of war.

I would also like to point out that, because foreign corporations themselves were not eligible as claimants, many of these individuals received large awards as shareholders of foreign corporations. There is no reason why large individual shareholders in *foreign* corporations should fare better than the hundreds of thousands of shareholders of *American* corporations.

It is interesting to note that in the House hearings on H.R. 2669 counsel for a number of individual claimants expressed "unalterable" opposition to the establishment of a priority for non-profit organizations, in part on the ground that "it alters the scheme of distribution incorporated in Sec. 213 of the War Claims Act of 1948 as amended, and discriminates against some awardholders to the benefit of other awardholders." It was of course after these hearings that the bill was amended to include a priority for the claims of individuals.

These objections above apply equally to the proposal of the Foreign Claims Settlement Commission. It is worthy of note that prior to passage of the House bill the Commission itself opposed all proposals for new priorities.

CONCLUSION

In summary, Mr. Chairman, we believe no valid reasons exist for this proposed departure from the principle and *all* claimants who sustained property losses should be treated equally. Distinctions based on the nature of the claimant, rather than the nature of the claim, would create an unfortunate precedent for future claims programs, would frustrate basic principles of fairness, and would discriminate unreasonably against CPC's 85,000 shareholders and hundreds of thousands of other American shareholders to whom, for the reasons I have stated, the United States owes a special obligation.

EXHIBIT A

DEPARTMENT OF STATE,
Washington, July 11, 1949.

In reply refer to EP.

Mr. PARKER MCCOLLESTER,
Lord, Day & Lord,
Tower Building,
Washington 5, D.C.

MY DEAR MR. MCCOLLESTER: Your letters of May 17 concerning claims of your clients, the Corn Products Refining Company, arising out of reparation removals in the Soviet Zone of Germany did not reach my office until after I had left for Europe. However, Mr. Jessup showed me a carbon copy which you had sent to him at Paris.

As you point out, the situation of your clients in regard to property interests in the Soviet Zone is not unique, and the American Military Government authorities as well as the Department have taken all possible steps to prevent American property interests from being jeopardized by actions of the authorities in the Soviet Zone. Unfortunately such efforts have met with little response.

It is, of course, true that the United States is a party to the arrangements on reparations from Germany concluded at Potsdam in 1945 and at Paris in

1946. It has been the policy of the United States that United Nations nationals should in general not be required to bear the reparations burdens imposed upon the defeated states in the recent war, and in the Western Zones of Germany the property of United Nations nationals has in practically all cases been exempted from removal as reparations. It is the view of the Department, however, that when American property has been removed as reparations from any of the Zones in Germany a claim does not properly lie against the United States as a party to the Potsdam and Paris agreements.

On the other hand the United States will naturally insist upon due compensation for American property removed as reparations from Germany. If there were a German government the latter would normally be charged with making such compensation, but the continued uncertainty concerning the formation of such a government makes it impossible to predict against what entity any claims for compensation will ultimately be asserted. It is likewise impossible to state at this time the form and manner in which compensation will be required.

You may be assured that the Department is fully aware of the problems described in your letter and that any opportunity for the expeditious solution thereof will be speedily exploited.

Sincerely yours,

DEAN ACHESON.

Senator HRUSKA. Mr. Witness, you referred to that Potsdam situation in the German war debts. I am reading now from page 6, that quotation that you have there:

> In every situation where the immediate owners or ultimate owners are Americans, they should be reimbursed for their losses by the United States, or through its good offices.

Would that indicate that any payment that you have remaining, any balance you have remaining, should be paid from the U.S. Treasury? Is that what you argue for by way of character?

Mr. STORMS. I believe, Mr. Chairman, that certainly there have been no appropriations in the past for war claims. I am not arguing that there is a legal obligation on the part of the U.S. Government to make payments from its own treasury. The point is simply that the events, including the Potsdam agreement, which surrounded the end of the war, in which the United States participated, resulted in a special kind of moral obligation to see to it that claims of this kind were not given the lowest priority. We are not asking for anything special here. We are simply asking to be put on a parity with other claimants. We think that these events in 1945 have given us solid grounds for it.

Senator HRUSKA. Do you know what the position of your company was with reference to the taking of tax benefits from payments—prior to receiving any payments?

Mr. STORMS. We did not take a tax deduction, Mr. Chairman, in 1941 for investments in certain European countries.

Senator HRUSKA. I am talking about the other, the present war claims. Is that on account of the present situation?

Mr. STORMS. That was on account of the outbreak of the war, at which time the deductions were taken and we derived a tax benefit from those deductions. That tax benefit was deducted from our award by the Foreign Claims Settlement Commission when it rendered our award.

Senator HRUSKA. Well, thank you very much. Mr. Counsel, have you any questions?

Mr. YOUNG. I would like to ask one of the lawyers later, one or two questions, Mr. Chairman.

Senator HRUSKA. Thank you, Mr. Storms.

The vote bell has rung again. I shall absent myself for about 20 minutes. Then we shall hear the testimony of Mr. Walter Beaman.

(A brief recess.)

Senator HRUSKA. The subcommittee will come to order.

Senator Javits, we welcome you to the committee, and we welcome your views on this bill.

STATEMENT OF HON. JACOB K. JAVITS, U.S. SENATOR FROM THE STATE OF NEW YORK

Senator JAVITS. Thank you, Mr. Chairman.

First let me express my gratitude to the occupant of the chair, who, with his customary courteous attitude toward his brothers, has kept this chair open for me.

I might say I am the ranking minority member of the committee that presently has a bill on the floor, and the bill has been the product of 9 months work, and it is so fearfully complicated that it is really necessary for me to participate most actively.

Mr. Chairman, this is a measure that I have been pursuing since 1956. It is sponsored by Senators Scott and Kennedy as well as myself. Its purpose is to grant to certain nonprofit religious and educational organizations a higher standing under the War Claims Act, a standing which is equal to that now granted to small businesses.

It will be remembered that under the 1962 act, priority was granted to four different categories of claimants. All awards for loss on account of death were paid in full. So were all awards made for personal injury. Awards up to $10,000 were paid in full; awards no matter how large, to companies which had fewer than a thousand workers or under $5 million in annual sales—the small business category, so-called—were paid in full. All others, including these charitable organizations, have received $10,000 plus 61.3 percent of the balance.

The question is whether these 29 churches and charities, the names of which, if they are not in the record, I offer for the record and ask unanimous consent that they be made a part of the record——

Senator HRUSKA. The list will be incorporated in the record at the proper point.

Senator JAVITS. The question is whether they shall have a standing equal to that of the small business category which I have described.

Now, the operation of the preference will determine what comes out of the $26 million fund—that is likely to be its maximum amount—which is now possibly available but which has been reserved out of the War Claims Funds for litigation. The litigation apparently is at such a pass that it will allow some $26 million to become available. The unpaid claims of these nonprofit organizations amount to $9.2 million.

When you add to those claims the claims of individuals which, if the House-passed bill becomes a law, would also be allowed in full, we take altogether $19.4 million of the total $26 million leaving $6.6 million for $95.5 million of claims, mostly by corporations of major character, because the small business fellows have gotten full payment. These corporations have already received, under the $10,000 plus 61.3 percent of the balance, payment of $153 million. The question then is, what shall be done about this category of claimants, nonprofit organi-

zations, the $9.2 million? There are the corporations claims of $95.5 million.

Now, the equity, aside from the appeal of an eleemosynary organization doing the Lord's work, in most of these cases is that the absence of a preference for these groups is contrary to precedents, since the original War Claims Act passed in 1948 and designed to deal with losses in the Philippines, recognized that these institutions should enjoy the same priority as those being compensated for injury, death, or other personal losses.

Now, Mr. Chairman, maybe you might ask why I introduced this bill and I would like to explain that to the Chair, although it is not in my statement. I was on the House Foreign Affairs Committee when we dealt with the Philippines situation, and it is a recollection which is very deep in my heart, because when we made our distributions to the charitable organizations it was such an electrifying thing and they did such good things with the money that I have had a kind of a sentimental attachment to this issue. When I was asked by one or more of these organizations to act in this case it struck that chord of my own previous history. Hence, it was I rather than any other Senator who introduced the bill. I thought the Chair might be interested in why I happened to be involved in this particular matter.

Senator HRUSKA. Well, the chairman is aware of the long contact that the Senator from New York has had with this subject.

In the 1962 amendment proceedings you indicated that you supported this bill, and I believe you also supported the late national concept. What comment would you have on that part of it? I notice in the statement of the managers on the part of the House that there was—amendment No. 5 would have authorized payment of war claims to persons presently U.S. nationals who were not such nationals at the time the loss occurred. There was this language, apparently on amendment 5; the Senate receded. The language on the part of the House management is this with respect to amendments Nos. 5, 7, and 9.

> The Senate receded with the understanding that if there remains a balance in the War Claims Fund after payment in full of claims provided for in this bill, consideration should be given to legislation providing for payment to these categories of persons. The committee of conference recommends that the Foreign Claims Settlement Commission should proceed to make an estimate of the amount of claim that would be involved in these amendments.

Would you have any comment now, 8 years later, Senator Javits, on this point?

Senator JAVITS. Certainly, Mr. Chairman. There are two answers to it.

One is that when Senator Douglas, who was a colleague of both of ours, and I first pursued the late nationals business, it always was understood that it would come after everybody else was paid, including after such a preference as the one for which Senator Scott, Senator Kennedy, and I are contending in this bill. That is point one.

The second point is that the matter has now matured. You know, we never got anywhere with it for years. The matter has now matured to the point where I understand the Foreign Claims Settlement Commission itself will be studying what is involved, the equities, the desirability, and so on. I would wait for that study on the ground that now that the matter has come into the purview of attention, it

may or may not work out, but at least I would not purport to press it here.

(The complete statement of Senator Javits follows:)

TESTIMONY ON S. 941, THURSDAY, SEPTEMBER 17, 2:30 P.M., SENATE JUDICIARY COMMITTEE, 2228 NSOB

Mr. Chairman, I appreciate the opportunity to appear before you this morning in support of my bill S. 941, which is cosponsored by Senators Scott and Kennedy.

As you know, the purpose of this bill is to grant to certain non-profit religious and educational organizations a preference under the War Claims Act equal to that now granted to small businesses. Under the provisions of the 1962 Act, priority was granted to four different categories of claimants. All awards for loss on account of death were paid in full. All awards for personal injury were paid in full. All those with awards up to $10,000 were paid in full, and any award, no matter how large, to a company which had fewer than 1000 employees or under $5 million dollars in annual sales was also paid in full. All others received $10,000 plus 61.3% of the balance.

At the present time, about 6,000 of the 7,000 Claimants who have received war damage awards have been paid in full. Among those whose claims have not been fully satisfied however, are twenty-nine churches and charities, the names of which I now offer for the record. The absence of a preference for these groups moreover, is contrary to precedent since the original War Claims Act, passed in 1948 and designed to deal with losses in the Philippines recognized that these institutions should enjoy the same priority as those being compensated for injury, death or other personal losses.

At the present time, no funds are available in the War Claims Fund for further payments; however, substantial amounts from the proceeds of vested assets are being held by the Justice Department as reserves in case of adverse judgments in litigation now in progress. It is estimated that approximately $26 million of these funds will become available for distribution in the near future. The unpaid claims of these non-profit organizations amount to $9.2 million.

When the House passed this bill in March of last year, they added a second category of priority claimants—viz, individuals—to which amendment we have no objection—and if the unpaid claims of the non-profit organizations and of individuals are added together, they total $19.8 million. This would leave a balance of $6.2 million in the Fund to meet the unpaid claims of other organizations—mostly corporations—totalling $95.5 million. It should be pointed out that of the $193 million already paid out under the War Claims Act, large corporations have already received over $153 million. Considering this fact, together with the financial recovery and the substantial tax write-offs already enjoyed by these corporations, it does not seem inequitable to grant a priority to the non-profit organizations, or indeed to individuals as the House bill does.

I ask your support for this measure, and hope that it will be possible for the Senate to complete action before the end of this session.

BENEFICIARIES OF S. 941

American & Foreign Christian Union, Inc.
American Baptist Foreign Mission Society.
Anatolia College.
B'nai B'rith.
The Evangelical and Reformed Church.
Evangelical United Brethren Church.
Presbyterian Church in the United States.
Reformed Church in America.
China Medical Board of New York.
Church of the Lutheran Brethren of America, Inc.
United Presbyterian Church in the United States of America.
Congregation of the Mission of St. Vincent de Paul in Germantown.
Protestant Episcopal Church in the United States of America.
Seventh-day Adventists.
Home of Onesiphorus.
Young Men's Christian Associations.
National Jewish Welfare Board.
Oriental Missionary Society.
Pious Society of St. Paul.

Seventh Day Baptist Missionary Society.
Sisters of Charity of St. Joseph's.
Congregation of the Mission of St. Louis, Mo.
Sons of Divine Providence.
Thessalonica Agricultural & Industrial Institute.
United Board for Christian Higher Education in Asia.
United Church Board for World Ministeries.
Women's Christian Medical College.
World Division of Board of Missions of Methodist Church.
Yale-in-China Association.

Senator HRUSKA. Thank you very much.

Senator JAVITS. Thank you so much, Mr. Chairman.

Senator HRUSKA. Our next witness will be Mr. Beaman of the International Business Support Division, General Electric Co.

STATEMENT OF WALTER H. BEAMAN, COUNSEL, INTERNATIONAL BUSINESS SUPPORT DIVISION, GENERAL ELECTRIC CO.

Mr. BEAMAN. Mr. Chairman, my name is Walter H. Beaman, appearing on behalf of the International Business Support Division of the General Electric Co.

My appearance is in place of William L. Lurie, vice president and general manager of the International Business Support Division, who asked to be heard, but could not be here on short notice.

General Electric wishes to file a memorandum which I wish to submit at this time, which I will summarize if the chairman pleases and I shall be brief.

Senator HRUSKA. Very well.

Mr. BEAMAN. Our position in summary is as follows:

First, General Electric believes that the priorities set by the 1962 act, which resulted in payment in full of all claims for (1) death; (2) injury to the person, and (3) loss of livelihood (small business losses), reflect the furthest extent to which priorities should be granted. These preferences have some grounding in humanitarian reasons. All other claims represent claims for damage to property only and the claimholders have been paid to the extent of $10,000 per claim, plus 61.3 percent of the remainder. As to the amount remaining, there is no legitimate basis for preferring one property owner over another in circumstances exhibited here.

Second, as to the proposed preference to individuals and charitable organizations General Electric stock is widely held. Among its shareowners, there are nearly half a million individuals and thousands of charitable organizations. It is inequitable and unfair that these shareowners should be treated as less worthy of reimbursement than property damage claims by other individuals and charitable organizations. Because of this inequity, General Electric opposes the bill.

The inequity appears more acute when it is realized that the claims that would be preferred by H.R. 2669 include those of individual shareowners who, like General Electric shareowners, own shares in corporations that suffered losses, the difference being only that the corporations were, unlike General Electric foreign or less than 50 percent owned by Americans.

I would like to make one last comment relating to the matter of income taxes and war loss recoveries.

Senator HRUSKA. Mr. Witness, will you suspend just a minute, please?

(Off the record discussion.)

Senator HRUSKA. Let the record show that the letter of Bigham, Englar, Jones & Houston is accepted in the record.

(The letter referred to follows:)

BIGHAM ENGLAR JONES & HOUSTON,
New York, N.Y., September 14, 1970.

Re H.R. 2669.

Hon. JAMES O. EASTLAND,
Chairman, Committee on the Judiciary,
U.S. Senate, Washington, D.C.

DEAR SENATOR EASTLAND: Enclosed is a Statement in opposition to the enactment of H.R. 2669, which we respectfully request be printed in the record of the hearings which we understand are to take place at Washington on September 16 and 17.

Very truly yours,

WALTER E. MALONEY.

Enclosure.

STATEMENT ON BEHALF OF AMERICAN INSURANCE COMPANIES IN OPPOSITION TO H.R. 2669

My name is Walter E. Maloney and I am a member of the Firm of Bigham Englar Jones & Houston, 99 John Street, New York City, New York, counsel for American insurance companies [1] which filed claims pursuant to Public Law 87–846. The Foreign Claims Settlement Commission adjudicated the claims and handed down awards amounting to approximately $13,450,000. The claims came under the provisions of Section 202(c) of Public Law 87–846 (Title II of the War Claims Act of 1948 As Amended), which it is to be recalled, provides that the American insurers could only make claim for *net* losses they sustained by reason of the sinking of American owned ships due to enemy action.

The right of American insurance companies to claim under the war claims legislation had received a most thorough examination by the various Committees and Subcommittees which dealt with the war claims legislation and was ultimately established by Congress when it enacted P.L. 87–846. This right was limited to claims for *net* losses only, not the actual losses sustained. The net effect of the separate treatment of American insurers was to reduce the amount of the claims which they could file from $44,500,000 to $13,450,000.

As required by Section 209(a) of that Act, the Foreign Claims Settlement Commission certified its awards to the Secretary of the Treasury, who thereafter paid to the insurers on account of their awards approximately $8,200,000, or about 61.5 per cent of the amounts so awarded.

If H.R. 2669 is enacted into law, the resultant change in the priorities of payment, which had previously been established by Section 213 of Public Law 87–846, would serve effectively to cut off any further payments on the awards made to American insurers under the limited basis provided under Section 202(c). In point of fact, the total losses of insurers in the amount of $44,500,000 would then have been compensated by payments totalling only $8,200,000, which is roughly 18½ per cent.

It is to be remembered that the insurances afforded by the American insurers were made available to American shipowners at a time when the United States Government was unable to provide such insurances and permitted American merchant vessels to continue to supply our armed forces and our Allies in the face of the disastrous number of sinkings inflicted upon merchant shipping by German and other Axis submarines—as well as bombardment by German aircraft off the Northern shores of Europe. Had not these insurances been made available, many, if not all, of the American shipowners would not have been willing to assume the great risks involved.

It seems most harsh and inequitable now, after so many years have passed, that there should be an attempt to accomplish by indirection a result contrary to the clear and unequivocal intent of the Congress as expressed in Public Law 87–846. It seems to us that the proponents of H.R. 2669 argue, by implication, that the

[1] A list of those companies is appended hereto.

valuable services performed by the American insurers at a time of great need were not of the same order as those of the persons and organizations which would benefit by the passage of the pending legislation. The action of the insurers in providing the war risk insurances on American owned ships when the United States Government itself was unable to do so operated exclusively for the promotion of the *national welfare* and most certainly was a *non-profit* exercise.

It is respectfully submitted, therefore, that H.R. 2669 should not be enacted.

WALTER E. MALONEY.

Aetna Insurance Co., Incorporated, Connecticut, 1819 Agricultural Insurance
Aetna Insurance Co., Incorporated, Connecticut, 1819
Agricultural Insurance Co., Incorporated, New York, 1863
Alliance Insurance Co. (absorbed by Insurance Co. of North America)
American Eagle Fire Insurance Co. (merged with Niagara Fire Insurance Co.)
The American Insurance Co. Incorporated, New Jersey, 1846
American Reserve Insurance Co. (merged with American Re-Insurance Co.)
Anchor Insurance Co. (absorbed by Providence Washington Insurance Co.)
Atlantic Mutual Insurance Co., Established, New York, 1842
The Automobile Insurance Co. (merged with the Aetna Casualty & Surety Co.)
Bankers & Shippers Insurance Co., Incorporated, New York, 1918
Boston Insurance Co., Incorporated, Massachusetts, 1873
Central Insurance Co. of Baltimore (merged with Philadelphia Fire & Marine Insurance Co.)
Citizens Insurance Co. of New Jersey, Incorporated, New Jersey, 1929
The Connecticut Fire Insurance Co., Incorporated, Connecticut, 1850
The Continental Insurance Co., Incorporated, New York, 1853
Empire State Insurance Co. (merged with Agricultural Insurance Co.)
Federal Insurance Company, Incorporated, New Jersey, 1901
Fidelity-Phenix Fire Insurance Co., Incorporated, New York, 1853
Fireman's Fund Insurance Co., Incorporated, California, 1863
Firemen's Insurance Co. of Newark, Incorporated, New Jersey, 1855
Fire Association of Philadelphia (name changed to Reliance Insurance Co.), Incorporated, Pennsylavnia, 1820
Glen Falls Insurance Co., Incorporated, New York, 1864
Globe & Rutgers Fire Insurance Co. (name changed to American Home Assurance Co.), Incorporated, New York, 1863
Great American Insurance Co., Incorporated, New York, 1872
The Hanover Fire Insurance Co. (name changed to the Hanover Insurance Co.), Incorporated, New York, 1852
Hartford Fire Insurance Co., Incorporated, Connecticut, 1810
Home Fire & Marine Insurance Company of California, Incorporated, California
The Home Insurance Co., Incorporated, New York, 1853
Insurance Co. of North America, Incorporated, Pennsylvania, 1794
Jersey Insurance Co. of New York, Incorporated, New York, 1938; New Jersey, 1911
Lumbermen's Insurance Co. (merged with Fire Association of Philadelphia)
Merchants Fire Assurance Company of New York, Incorporated, New York
National Fire Insurance Co. of Hartford, Incorporated, Connecticut, 1869
National Liberty Insurance Co. (merged into the Home Insurance Co.)
National Security Insurance Co. (consolidated with Philadelphia Fire & Marine Insurance Co.)
New Hamphsire Fire Insurance Co., Incorporated, New Hampshire, 1870
New York Underwriters Insurance Co., Incorporated, New York, 1925
North River Insurance Co., Incorporated, New York, 1822
Northwestern Fire & Marine Insurance Co., Incorporated, North Dakota, 1899; Incorporated Minnesota, 1906
Old Colony Insurance Co., Incorporated, Massachusetts, 1906
Pacific Fire Insurance Co. (name changed to Pacific Insurance Co. of New York), Incorporated, New York, 1851
Philadelphia Fire & Marine Insurance Co. (merged with Insurance Co. of North America)
The Phoenix Insurance Co., Incorporated, Connecticut, 1854
Piedmont Fire Insurance Co. (merged with Standard Insurance Co. of New York which merged with the Aetna Insurance Co.)
Philadelphia National Insurance Co. (merged with Fire Association of Philadelphia)
Providence Washington Insurance Co., Incorporated, Rhode Island, 1799

The Reinsurance Corp. of New York, Incorporated, New York, 1936
Reliance Insurance Co. (merged with Fire Association of Philadelphia and name changed to Reliance Insurance Co.)
St. Paul Fire & Marine Insurance Co., Established, Minnesota, 1853; incorporated, 1865
Security Insurance Co. of New Haven, Incorporated, Connecticut, 1841
Springfield Fire & Marine Insurance Co., Incorporated, Massachusetts, 1849
United States Fire Insurance Co., Incorporated, New York, 1824
Universal Insurance Co., Incorporated, New Jersey, 1921
Vigilant Insurance Company, Incorporated, New York, 1939
Westchester Fire Insurance Co., Established, New York, 1837; incorporated 1870
World Fire & Marine Insurance Co. (merged with Aetna Insurance Co.)
Eagle Insurance Company, Incorporated, New Jersey, 1912
Rhode Island Insurance Company, Incorporated, Rhode Island, 1905 (in liquidation)
Utah Home Fire Insurance Co., Incorporated, Utah, 1886
American Equitable Ins. Co. (merged with Reliance Insurance Company) Incorporated, New York, 1918
National Union Fire Ins. Co., Incorporated, Pennsylvania
Northwestern National Insurance Company, Incorporated, Wisconsin, 1869
Northeastern Insurance Company, Incorporated, Connecticut, 1915
Quaker City Insurance Company, Incorporated, Pennsylvania, 1921
Fidelity and Guaranty Insurance Corporation (merged with United States Fidelity and Guaranty Company), Incorporated, Maryland

Senator HRUSKA. Very well, Mr. Beaman. You may proceed.

Thank you for letting me interrupt you.

Where are you now in your statement?

Mr. BEAMAN. I am on my last comment, Mr. Chairman, relating to the matter of income taxes and war loss recovery.

Testimony in the House contained erroneous assertion that when war losses occurred from the reduction afforded by the income tax law gave taxpaying corporations some benefits that they could have invested at interest from 1942 to the present. We would like to say that this is not so, and it is fairly easy to demonstrate why it is not so by a simple example.

If a taxpayer makes $150 in one part of his business but, at the same time loses $100 elsewhere, he obviously has only $50 net income at the end of the year, not $150. He should pay a tax of $25 to take a typical rate of 48 percent, and he will retain 26 net after taxes. In this calculation, the taxpayer has been granted a $100 loss deduction. This is true whether it is for war loss or some other kind of loss.

The point is that the deduction does not give him something positive he can invest and enjoy. He had only $50 net; he kept $26; he paid the Government $24. The fact that because of the $100 loss, he did not have to pay additional taxes of $48 does not mean that he has $48 to invest; far from it. It means that he had a net loss of $52 and a net loss cannot be invested in any way, either by taxable corporation or by a charitable corporation.

The point at which the difference between taxable and tax-free corporations becomes material is not at the time of loss but at the time of recovery. At that point, if the taxpaying claimant were to receive his payment in full, he would be receiving money which, had he received it in 1942, would have borne tax. Section 206(b) of the 1962 act directs that the amount received must be diminished by the amount of tax it would have borne had it been received in 1942 or whenever it was lost.

Section 1331 of the Internal Revenue Code contains a provision

which would provide a similar result if the specific provision of section 206(b) of the 1962 act did not preempt it.

Here is an interesting point. Under the Internal Revenue Code procedure, the tax on the recovery would go into the Treasury, but under the War Claims Act, the Treasury forgos that benefit and the amount falls into the war claims fund to be divided among the claimants, including the nonprofit organizations. Thus, the nontaxpaying claimants already get a measure of largesse from the Government.

Our position is that there is no basis for asserting that a priority should be introduced to rectify any supposed advantage that in fact does not exist.

Thank you, Mr. Chairman.

(The complete statement of Mr. Beaman follows:)

MEMORANDUM ON BEHALF OF GENERAL ELECTRIC COMPANY IN OPPOSITION TO H.R. 2669

SUMMARY

General Electric Company's stock is widely held. Among its shareowners are many thousands of individual American citizens and hundreds of charitable institutions. If H.R. 2669 were to pass, property damage claims indirectly held by these shareowners would be treated as less worthy of reimbursement than property damage claims of other individual citizens and charitable organizations. Because of this inequity, General Electric opposes the bill.

The inequity appears more acute when it is realized that the claims that would be preferred by H.R. 2669 include those of individual shareowners who, like our shareowners, owned shares in corporations that suffered losses; the difference being only that the corporations were, unlike General Electric, foreign or less than 50% owned by Americans.

General Electric believes that the priorities set by the 1962 Act, which resulted in payment in full of all claims for 1) death, 2) injury to the person, and 3) loss of livelihood (small business losses), reflect the farthest extent to which priorities should be granted. All other claims represent claims for damage to property only and the claimholders have been paid to the extent of $10,000 per claim, plus 61.3% of the remainder. As to the amount remaining, there is no legitimate basis for preferring one property owner over another in the circumstances exhibited here.

I. THE PREFERENCES ESTABLISHED BY THE 1962 ACT ARE ADEQUATE AND SHOULD NOT BE ALTERED

All claims given preference by the 1962 Act have been paid. These include all claims based on death or personal injury, all claims by small businesses, and al claims of $10,000 or less, whether held by individuals, businesses, or charitable organizations.

The remaining claims (61.3% of which has also been paid) relate solely to property damage.

We see good reason for making first payment to those who lost the support of parents or other relatives and to those who suffered bodily injury. Claims of this nature are commonly preferred in circumstances of this kind, for humanitarian reasons. We see less reason for preferring small business claims, except on the assumption that these claims represent reimbursement to individuals and families for loss of livelihood.

Once these priorities are met, as they have been, the remaining claims should share in the recovery on an equal basis. Where damage to foreign property alone is involved, there is no further basis for preferring one owner over another.

II. PREFERRING INDIVIDUAL OR CHARITABLE ORGANIZATIONS' PROPERTY DAMAGE CLAIMS OVER CORPORATE PROPERTY DAMAGE CLAIMS DISCRIMINATES AGAINST INDIVIDUALS AND CHARITIES WHO ARE CORPORATE SHAREOWNERS IN AMERICAN COMPANIES

Among General Electric Company's shareowners, there are nearly half a million individuals and thousands of charitable organizations. Preferring individuals

and charities over our shareowners, except in the case of death or bodily injury claims, would be discriminatory and unfair.

Moreover, many claims by individuals and charitable organizations are based on damage to their shareholdings in foreign corporations or corporations less than 50% controlled by Americans. These individuals and charitable organization shareholders should not be preferred over individuals and charitable organizations holding shares in corporations more than 50% owned by Americans, such as General Electric Company.

III. EXCEPT FOR FULL RESTORATION OF FEDERAL TAX BENEFITS, THERE IS NO JUSTIFICATION FOR DISTINGUISHING BETWEEN CLAIMS OF TAXABLE AND NONTAXABLE CORPORATIONS

While it is the practice in the United States not to burden charitable organizations with taxation, there is no custom or principle of law entitling such institutions to a preferred position in the payment of public funds or in the distribution of reimbursements for property loss (e.g., in bankruptcy proceedings).

Only one distinction between taxable and nontaxable organizations requires attention—the fact that losses of taxpayers reduce their income tax liability. That difference has been adequately covered in § 206(b) of the 1962 Act, which directs that the award shall be reduced pro tanto by any Federal income tax benefits previously derived by the claimant.

Testimony received by the House Committee, which apparently had some effect on the deliberations there, contained the erroneous implication that the provisions of § 206(b) do not provide for an appropriate offset of tax benefits against claims. The fundamental error in this assertion is the misconception that a net loss can be invested at interest.*

It can be demonstrated mathematically that if the provisions of § 206(b) are observed, a taxable corporation which has a war loss recovery is no better off than a tax-free corporation. The accompanying schedule compares the case of a taxable and tax-free corporation, both of which lost foreign assets in 1942 and received recoveries in 1967 and 1970. (For further clarification, the schedule also includes cases of corporations in both categories which had no war losses.) The schedule shows that the losses in 1942 produced no benefit that could be invested at interest, and that whether the recovery is partial or complete, the procedure required by § 206(b) adequately compensates for tax benefits previously received.

TAX-FREE CORPORATIONS

War loss in 1942; partial recovery 1967; total recovery 1970		No war loss or recovery	
Year	Amount	Year	Amount
1942:		1942:	
Net income before losses	$150	Net income	$150
Less: Loss of foreign assets	100		
Change in net worth	+50	Change in net worth	+150
1967:		1967:	
Net income before war loss recovery	150	Net income	150
Add: 61 percent recovery of war loss	61		
Change in net worth	+211	Change in net worth	+150
1970:		1970:	
Net income before war loss recovery	150	Net income	150
Add: 39 percent recovery of war loss	39		
Change in net worth	+189	Change in net worth	+150
Total increase in net worth	450	Total increase in net worth	450

*If a taxpayer makes $150 and simultaneously loses $100 he will have a net income of $50, and at a typical 48% rate, will pay a tax of $24 and retain $26 after taxes. The fact that he has been afforded a $100 loss deduction does not give him anything he can invest. He has been allowed not to pay $48 that he would have paid if he had not suffered the loss, but the net effect is that he has lost $52, not that he has received $48. This net loss cannot be invested in any way.

TAXABLE CORPORATIONS

War loss in 1942; partial recovery 1967; total recovery 1970		No war loss or recovery	
Year	Amount	Year	Amount
1942:		1942:	
Net income before losses and taxes	150.00	Net income before taxes	150
Less:		Less: U.S. 1942 income tax (48 percent of 150).	72
War loss	100.00		
U.S. income tax at 48 percent on net income of 50.	24.00		
Change in net worth	+26.00	Change in net worth	+78
1967:		1967:	
Net income before taxes and war loss recovery.	150.00	Net income before taxes	150
Add: 61 percent recovery of war loss (61 less benefit of tax reduction in 1942 (61×48 percent)).	31.72		
Less: U.S. 1967 income tax (48 percent of 150).	72.00	Less: U.S. 1967 income tax (48 percent of 150).	72
Change in net worth	109.72	Change in net worth	+78
1970:		1970:	
Net income before taxes and war loss recovery.	150.00	Net income before taxes	150
Add: 39 percent recovery of war loss (39 less benefit of tax reduction in 1942 (39×48 percent)).	20.28		
Less: U.S. 1970 income tax (48 percent of 150).	72.00	Less: U.S. 1970 income tax (48 percent of 150).	72
Change in net worth	+98.28	Change in net worth	+78
Total increase in net worth	234.00	Total increase in net worth	234

Senator HRUSKA. Thank you, Mr. Beaman.

You wanted this summary and the chart be put in the record; did you?

Mr. BEAMAN. Yes, Mr. Chairman, please.

Senator HRUSKA. If I have not already done so, it is so ordered now.

Thank you for coming.

The next witness will be Mr. William R. Merriam, vice president, International Telephone & Telegraph Corp.

Do you have a member of your staff here, Mr. Merriam?

STATEMENT OF WILLIAM R. MERRIAM, VICE PRESIDENT AND DIRECTOR, WASHINGTON RELATION, INTERNATIONAL TELEPHONE & TELEGRAPH CORP., ACCOMPANIED BY MONROE LEIGH, COUNSEL

Mr. MERRIAM. Yes, Mr. Chairman, I have Mr. Monroe Leigh, our counsel, of Steptoe and Johnson.

My name is William R. Merriam. I am vice president of ITT and I am here to testify in opposition to H.R. 2669. I have a prepared statement which I would like to file for the record.

Senator HRUSKA. It will be printed in the record at a suitable place.

Mr. MERRIAM. At 2:30 this afternoon, I had a short summary of the contents and that has been considerably shortened since that time.

Senator HRUSKA. Very well.

Mr. MERRIAM. I would just like, in the interest of brevity and of time, to read one paragraph from this statement, and then ask Mr. Leigh to discuss for a few minutes, the constitutional aspects.

Senator HRUSKA. Very well.

Mr. MERRIAM. On page 3, if you care to follow this one paragraph.

It should be borne in mind in evaluating the merits of H.R. 2669 that some of the largest awards made by the Foreign Claims Settlement Commission have been made to the groups which would benefit from these proposed preferences. Thus of the 31 awards in excess of $1.5 million, five were made to nonprofit organizations whose aggregate awards total over $14 million. The same may be said as to the individual awards. More than half of the unpaid balance in this category, $5.8 million out of $10.2 million, would go under this bill to individuals whose awards were in excess of $100,000; $2.3 million would go to five individuals. It cannot be said that these individual award holders are destitute; they have already had large payments.

That, Mr. Chairman will complete my oral part of this testimony, and I would like to turn the microphone over to Mr. Leigh for a few minutes.

Mr. HRUSKA. Very well. In addition to the extended statement that you have submitted and placed in the record, this summary of yours will also be placed therein, in the place prior to the extended statement.

(Summary and complete statement of Mr. Merriam follows:)

STATEMENT OF WILLIAM R. MERRIAM, VICE PRESIDENT, INTERNATIONAL TELEPHONE & TELEGRAPH CORPORATION

My name is William R. Merriam; I am a Vice President of International Telephone and Telegraph Corporation, and I am here to testify in opposition to H.R. 2669. I have a prepared statement which I would like to file for the record. However, with the permission of the Chairman, I would like to give a short summary of its contents.

This Committee should reject H.R. 2669 because it would establish preferences in favor of predetermined groups of religious charities and individual claimants and would unfairly and arbitrarily discriminate against other adjudicated claims. These proposed preferences can not be justified on the basis of prior preferences which have been granted in various war claims programs. Indeed, they would constitute an unfortunate legislative precedent which might turn any future claims program into a tug-of-war between various special interest groups seeking preferences. Finally, we believe that a special preference for a group of non-profit award holders consisting largely of religious charities would violate the First Amendment's prohibition of the establishment of religion, because it constitutes positive assistance for religious organizations at the expense of secular organizations. This is a point which I will ask Mr. Leigh, our special counsel, to deal with at the end of my summary.

To date in the war claims program 5,920 claim holders have been paid in full, and all of the preferences established in 1962 have been satisfied. 1,119 award holders are still due 115 million dollars, although these claim holders have been paid about 60 percent of their claims. It is estimated that about 26 million dollars may become available in the future for pro-rata distribution to these award holders if no change is made in the present law.

H.R. 2669 would create two additional priorities: (1) the predetermined claims of non-profit organizations would next be paid in full; (2) thereafter, the claims of individual award holders would be paid in full. Thirty of the thirty-three non-profit award holders are religious organizations. Ninety-nine percent of the dollar total of the awards in this category are to such religious organizations. The unpaid balance for this category is $9.2 million. The unpaid balance of awards held by individuals is $10 million. Thus if the new preferences are allowed, the first $19 million of such additional sums as become available for distribution will be consumed to the detriment of the unpreferred claimants.

It is unfair arbitrarily to favor one class of claimants at the expense of another class, and it is particularly unfair to establish new priorities at this late date after the program has been in existence for eight years and after the Foreign Claims Settlement Commission has completed the process of adjudication and award.

It should be borne in mind in evaluating the merits of H.R. 2669 that some of the largest awards made by the Foreign Claims Settlement Commission have been make to the groups which would benefit from these proposed preferences. Thus of the 31 awards in excess of $1.5 million, five were made to non-profit

organizations whose aggregate awards total over $14 million. The same may be said as to the individual awards. More than half of the unpaid balance in this category, $5.8 million out of $10.2 million, would go under this bill to individuals whose awards were in excess of $100,000. $2.3 million would go to five individuals. It cannot be said that these individual award holders are destitute; they have already had large payments.

The preference for individual award holders would produce an anomalous discrimination against certain American stockholders and corporations. Thus, if a stockholder held stock in an American company which was only 49 percent owned by American nationals, he could collect in full under the new priority created by H.R. 2669 in favor of individual claimants, whereas a stockholder in an American company 51 percent owned by American nationals would collect nothing either individually or as the holder of an increased equity in the company. There is another peculiar discrimination: American stockholders of companies incorporated abroad, are permitted to claim as individuals regardless of the degree of American ownership of the foreign company. Thus all such American shareholders in foreign companies would be paid in full under the proposed preference.

Spokesmen for the religious charities and the churches have advanced the surprising argument, repeated at page 4 of the House Report on H.R. 2669, that corporations should have a lower priority than the religious groups because they have already received some compensation in the form of income tax deductions. This argument is invalid for a number of reasons. First of all, the church groups have had tax benefits much greater than the corporations because they were not taxed at all. Secondly, to consider a tax deduction occasioned by uncompensated war losses a capital payment upon which interest can be compounded is entirely inappropriate. The fact is that the awards of the War Claims Settlement Commission to corporate claimants have already, pursuant to Section 206(b) of the statute, been reduced by an amount equal to any previous Federal tax benefits. Thus the award is made net of the previous tax benefits.

Mr. Chairman, this concludes my summary. I would like to ask that Mr. Leigh be permitted to comment on the Constitution and legal issues.

Testimony of International Telephone & Telegraph Corporation

This statement is submitted on behalf of International Telephone and Telegraph Corporation in opposition to H.R. 2669 which would establish new preferences for distribution to adjudicated awardholders of the limited assets in the War Claims Fund.

This Committee should reject H.R. 2669 because it would establish preferences in favor of predetermined groups of individual claimants and religious charities and would unfairly and arbitrarily discriminate against other adjudicated claims. These proposed preferences cannot be justified on the basis of prior preferences which have been granted in various war claims programs. Indeed, they would constitute an unfortunate legislative precedent which might turn any future claims program into a tug-of-war between various special interest groups seeking preferences. Finally, a proper analysis of the bill and Supreme Court cases demonstrates beyond a doubt that the special preference for religious charities violates the First Amendment's prohibition of the establishment of religion because it constitutes positive assistance for religious organizations at the expense of secular organizations. This goes far beyond the neutrality of tax exemptions for all charities which were recently approved by the Supreme Court in *Walz* v. *Tax Commissioner of the City of New York*.[1]

To date in the war claims program 5,920 awardholders have been paid in full, and all of the preferences established in 1962 have been satisfied. 1,119 Awardholders are still due 115 million dollars. These awardholders have been paid about 60 percent of their claims. At most, only 26 million dollars is expected to become available for pro-rata distribution to these awardholders. Thus the shortfall is expected to be about 89 million dollars.

H.R. 2669 would create two additional priorities: (1) awards of non-profit organizations would next be paid in full. (2) Thereafter, the awards of individuals would be paid in full. Thirty of the thirty-three non-profit awardholders are religious organizations. Ninety-nine percent of the awards in this category are to such religious organizations. The unpaid balance of awards held by non-profit organizations is $9,208,189. The unpaid balance of awards held by individuals is $10,223,213. The total of unpaid balances for these two categories is $19.4 million.

[1] 38 U.S.L.W. 4347 (May 4, 1970).

If these awards are preferred, little, if anything, will be left for the unpreferred awardholders.

I. THE PREFERENCES OF H.R. 2669 ARE ARBITRARY AND UNFAIR

It is unfair arbitrarily to favor one class of claimants at the expense of another class, and it is particularly unfair to establish new priorities at this late date after the program has been in existence for eight years and after the Foreign Claims Settlement Commission has completed the process of adjudication and award.

Indeed, discriminatory classifications which are arbitrary and have no rational connection with a valid legislative purpose are contrary to the constitutional principle that all should enjoy the equal protection of the laws. According to the letter from Deputy Attorney Kleindeinst of the Justice Department to Senator Eastland, the preferences proposed in H.R. 2669 "obviously constitute a classification, but classifications are not *per se* forbidden. Only a classification which can fairly be classified as arbitrary violates the Constitution." It is quite clear that the priorities established by this bill are arbitary. There is no rational reason for the preference in favor of individuals as opposed to corporations. It is not a preference for small claims. At least five of the individual awards are for more than a million dollars each. There is no evidence that the individual claimants are impecunious. Indeed, since all claims for personal injury and all claims of $10,000 and under have been paid in full, it is quite likely that most of the individual claimants who would gain by this preference are well-to-do, if not wealthy.

The amendment would produce an anomalous discrimination against certain American stockholders and corporations. Thus, if a stockholder held stock in an American company which was only 49 percent owned by American nationals, he could collect in full under the new priority created by H.R. 2669 in favor of individual claimants, whereas a stockholder in a company 51 percent owned by American nationals would collect nothing either individually or as the holder of an increased equity in the company. There is another peculiar discrimination: American stockholders of companies abroad are permitted to claim as individuals regardless of the degree of American ownership of the foreign company. Thus all such American shareholders of foreign companies would be paid in full under the proposed preference. There is no rational justification for this result. Neither is there any rational reason for distinguishing between corporate and non-corporate forms of doing business. Corporations are owned by individuals who would be injured by the new preferences. This is particularly true in the case of closely held corporations.

The non-profit claims are almost exclusively religious claims, and the only possible basis of this preference was a desire to help religious missionary groups. The First Amendment prohibition of the establishment of religion eliminates this purpose as a valid legislative basis for the classification. Without this basis, the classification must be deemed arbitrary and unfair. This point is discussed in greater detail later.

The spokesmen for the non-profit and religious claimants have advanced the surprising argument, appearing at page 4 of the House Report on H.R. 2669, that corporations should have a lower priority than the non-profit groups because they have already received some compensation in the form of income tax deductions. This argument is invalid for a number of reasons. First of all, the church groups have had tax benefits much greater than the corporations because they were not taxed at all. Secondly, to consider a tax deduction occasioned by uncompensated war losses a capital payment is entirely inappropriate.

The fact is that the awards of the War Claims Settlement Commission have already, pursuant to Section 206(b) of the statute, been reduced by an amount equal to any previous Federal tax benefits. Thus corporate awards are made net of the previous tax benefits. Finally, not all of the corporations even took a tax deduction for their war losses. Out of the 26 highest awards to corporations, nine of these corporations did not take any deductions. If the justification for discrimination against corporate awardholders is based on this tax argument, it is totally inappropriate as to one-third of the largest awardholders who have had no prior tax benefits.

II. THERE ARE NO PRECEDENTS FOR THE PREFERENCES OF H.R. 2669

Previous preferences in other claims legislation do not provide any justification or precedent for the priorities established by H.R. 2669. In the past, preferences have been granted primarily according to the nature of the claim—for personal

injury or death claims, and for small claims. These preferences are not a valid precedent for the special group preferences of H.R. 2669.

It has been suggested that the priorities for religious organizations which suffered losses in the Philippines, established by 1952 Amendments to the War Claims Act, constitute a valid precedent for H.R. 2669. However, a close examination of the 1952 Amendments indicates that they are not a valid precedent; indeed the limitations placed on the 1952 priority and an examination of its purpose indicate that the preference for religious groups in H.R. 2669 is improper.

An important justification for the 1952 Philippine preferences was the desirability of compensating religious groups in the Philippines which had given assisttance to American military personnel and civilians during the second World War. The preference was limited to religious organizations which had provided this kind of service.

Another notable feature of the 1952 Amendments is that they provided no compensation for facilities used by religious organizations for religious purposes or worship. Under Section 7(b) of the War Claims Act, as amended, only secular losses to "schools, colleges, universities, scientific observatories, hospitals, dispensaries, orphanages, and other property or facilities connected with its educational, medical or welfare, work" were given priority in compensation.

Finally, a very important purpose of the 1952 preferences was to facilitate restoration of secular facilities in the Philippines in order to rehabilitate the society and combat communism. To achieve this purpose Section 7(d) of the War Claims Act, as amended, required that claims "shall be determined and paid upon the basis of postwar cost of replacement," and Section 7(f) required that money paid to an American affiliate of an organization operating in the Philippines "shall be used by such affiliate for the purpose of restoring the educational, medical, and welfare facilities described in subsections (b) and (c) and located in the Philippines." It is clear that the funds were to be used for secular rehabilitation in the Philippines and were not to be available for general religious purposes.

The religious preference in H.R. 2669 makes no distinction between secular and sectarian facilities damaged or destroyed during the War. And the funds made available under the preference are not earmarked for replacement of the damaged facilities, but rather may be used for religious or secular purposes in any way the claimant wishes. Nor can H.R. 2669 be viewed as reimbursement to organizations which aided the American war effort. Thus, none of the special factors which resulted in the 1952 Amendments are present in the 1970 legislation. Indeed, the 1952 Amendments provide a precedent against special compensation for religious groups unless such compensation is for secular losses and the funds are limited to use for secular purposes. By this standard the non-profit organization preferences of H.R. 2669 are clearly inappropriate.

III. H.R. 2669 WOULD CREATE AN UNFORTUNATE PRECEDENT

H.R. 2669 would be a bad precedent for future claims programs. It would encourage pressure by other types of special interest claimants (veterans, aged, minorities, etc.) for similar preferential treatment. The bankruptcy situation is closely akin to the war claims situation, and Congress has refused to grant bankruptcy priorities to special interest types of claimants.

Section 64 of the Bankruptcy Act, 11 U.S.C. § 104, provides payment priorities based on the type of claim and not for any special interest group.[2] Moreover, Congress has shown no inclination to create special interest priorities. Section 64 has been amended 12 times since 1898 without the addition of any new type of priority claim. Indeed, Congress has found it necessary to eliminate one type of priority which opened the door to all types of special priorities created by the states. The Bankruptcy Act of 1898 had provided a priority for "debts due any person entitled to a priority by the laws of the states . . ." Congress eliminated this priority in the Bankruptcy Act of 1938. The reason for removal was stated in H. Rept. No. 1409, 75th Cong., 1st Sess. (1937) at page 9: "Certain State priorities have been eliminated. The necessity of doing so is obvious; many estates have been consumed, to the exclusion of general creditors, by the ever increasing classes of State priorities." Thus Congress wisely shut the door on special interest

[2] These priorities are: (1) the cost of bankruptcy administration and the costs of preserving the estate; (2) certain small wage claims; (3) costs incurred by creditors in successfully opposing arrangements, wage earner plans, or the bankrupt's discharge, and costs incurred in adducing evidence which results in a Federal criminal conviction; (4) taxes legally due and owing by the bankrupt to a state or the United States; and (5) debts owing to the United States or sureties bound to the United States and certain limited rent claims.

priorities in the Bankruptcy Act.[3] There is no reason for Congress to depart from the policy laid down in the Bankruptcy Act.

Indeed, the legislative experience with the allowance of state priorities demonstrates that it is unwise to open the door to priorities for special interest group claimants. Congress should refuse to establish a precedent which prefers special interest group claims over the claims of others for what is the same type of claim.

IV. THE NONPROFIT PREFERENCE VIOLATES THE FIRST AMENDMENT

The non-profit organization priority clearly violates the establishment clause of the First Amendment. The war claims of non-profit organizations were adjudicated and finally determined long before H.R. 2669 passed in the House. The House had full knowledge that 99 percent of the claims in this category were claims of religious groups. Thus, the non-profit preference is actually a preference for religious groups, and the language which gives the preference to non-profit groups in general is nothing more than a cover to hide the unconstitutional nature of the preference. That this is true may be quickly demonstrated by asking whether the proponents of this preference would be agreeable to striking out the word "religious" in line 6, page 3, of the bill.

The First Amendment's establishment clause clearly prohibits creation of a state church and governmental imposition of religious observances. It also prohibits the enactment of laws to aid any particular religion or to aid religion in general. Laws which give aid or support to religious groups have been sustained by the Supreme Court only on the grounds that the assistance would be for secular purposes and that the assistance is available generally and is not granted exclusively to religious groups. [*Cochran* v. *Board of Education*, 281 U.S. 370 (1930); and *Everson* v. *Board of Education*, 330 U.S. 1 (1947).] The basic requirement of the establishment clause is government neutrality. [*Abington School District* v. *Schempp*, 347 U.S. 203 (1963); and *Walz* v. *Tax Commission of the City of New York*, 38 U.S.L.W. 4347 (U.S. Supreme Court, May 4, 1970).] The religious preference of H.R. 2669 directly violates these principles. The preference is almost exclusively an aid to religion, and the aid to the religious groups is in no way limited to secular purposes. Moreover, the constitutional requirement of neutrality is flagrantly violated because with insufficient funds in the War Claims Fund the aid to the religious groups is directly at the expense of secular groups.

The Justice Department letter to Senator Eastland of July 13, 1970 expresses the opinion that H.R. 2669 is constitutional under the principles of the *Walz* case which upheld the validity of granting tax exemptions to churches along with other charitable organizations. The Justice Department nevertheless found that the "question is not entirely free from doubt because both thejmajority and the concurring opinions imply that there *may* be a constitutional difference between an exemption from taxation and a transfer of governmental funds." The *Walz* opinions, however, made it clear that governmental subsidies or grants *were* in a different category. Justice Burger in the majority opinion said that "[g]ranting tax exemptions to churches necessarily . . . gives rise to some, but yet a lesser involvement than taxing them. . . . Obviously a direct money subsidy would be a relationship pregnant with involvement. . . ." Justice Brennan said in his concurring opinion that "[t]he very breadth of this scheme of tax exemptions negates any suggestion that the state intends to single out religious organizations for special preference;" and that "[g]eneral subsidies of religious activities would, of course, constitute impermissible state involvement with religion." Thus, the Justice Department's opinion that H.R. 2669 is constitutional under the precedent of the *Walz* case is wrong, we believe, because there *is* a constitutional difference between a general tax exemption for charities (including churches), and a preference or grant for a predetermined group of awards, 99% held by religious groups, as is the case here. The Justice Department recognizes that H.R. 2669 would establish "a priority for religious organizations."

The Justice Department, however, is, we believe, clearly wrong when it says that "[T]he proposed amendment would *do no more* than establish the order in which the remaining claims would be paid. . . ." The amendment will do much more than establish the order of payment: it will result in larger payments to religious groups *at the expense* of secular groups. This is far from neutrality, and the preference is, we believe, unconstitutional under the First Amendment.

[3] The only remaining vestige of the priority based on state law is the very limited priority for certain rent owing to a landlord who is entitled to a priority under applicable state law.

V. CONCLUSION

The Senate should reject H.R. 2669. The preferences it would establish discriminate unfairly and arbitrarily against claimholders whose claims have already been adjudicated and determined. There is no rational reason or valid legislative purpose for preferring the claims of individuals and religious groups at the expense of other claimants. There are no valid precedents which justify the preferences, and the bill would establish an unfortunate precedent by allowing special interest group priorities. Finally, the preference in favor of religious missionary groups must be rejected because it clearly violates the First Amendment establishment clause.

Senator HRUSKA. Mr. Leigh have you a statement?

Mr. LEIGH. Mr. Chairman, I would like to comment on one or two points made yesterday; then there are some things I should like to put in the record.

Senator HRUSKA. Very well.

Mr. LEIGH. Yesterday, because of the late scheduling of the hearings, I arrived quite late and only heard a part of the testimony. But the impression I obtained was that the proponents of H.R. 2669 had stated two things that it seemed required some qualification, at least. The first was that the Justice Department had found no constitutional problems with the bill.

Now, I readily admit that the Justice Department predicted that the constitutionality of H.R. 2669 would be upheld. On the other hand, it is quite important, I think, to note that the Justice Department said that the constitutional question under the first amendment, as distinguished from the 14th, is not free from doubt—not free from doubt. So for this reason, I would like to spend some more time just a moment later on that.

The second point yesterday was in response to an inquiry by Senator Kennedy. The impression was left that there was no objection from any of the executive branch agencies which had commented to the committee in response to your letter. I wish to call attention to the very positive position in opposition which was taken on the merits by the Department of Commerce. If I could just highlight those three or four points from the Commerce Department letter.

At page 2 of the Commerce Department letter, it is stated; "The Department of Commerce defers to the Department of Justice on the first two questions." These were constitutional questions:

As to the third question, the Department opposes H.R. 2669 for a number of policy reasons. First, the Congress in 1962 had adopted a comprehensive system of priorities for the payment of claims under the War Claims Act.

Secondly, the priority proposed under this bill would create distortions and anomalies in the treatment of particular categories of corporate shareholders. Some would get nothing, some would be compensated in full.

Third, they contended that there did not seem to be any pressing need on the situation of the individual claimants for priorities, the point being that they had already received at least $10,000 plus 61 percent of any amount of their award, which exceeded $10,000. Finally, they came down very hard in opposition on the grounds that this bill would set an unfortunate precedent for the future and would give rise to demands for preferential treatment by many different categories of claimants—veterans, minors, aged, et cetera.

So that of the executive branch agencies, which commented on the merits of the proposed bill, three of them deferred to the Congress. The

only agency which commented and took a position on the merits of H.R. 2669 as passed by the House was the Commerce Department, which came out strongly against it.

Those two points are from yesterday's record. I have two others, very briefly, sir.

Senator HRUSKA. There is another vote bell, I am sorry to say. Will these points take very long?

Mr. LEIGH. Perhaps I should wait. One is the constitutional point, which we do consider very fundamental.

Senator HRUSKA. Then perhaps you should wait. The committee will be in recess for a few moments.

(A brief recess taken.)

Senator HRUSKA. Come to order, please.

I have here a little note from Senator Kennedy, who says:

> I told the witnesses yesterday that the record would remain open for any comments they would like to add on any testimony. I would appreciate it if you could let them speak today if there is time, or else, reiterate my suggestion that any further comments will be filed immediately.

Mr. Ferencz says that he will take not more than 10 minutes. If we can do it, Mr. Ferencz, we will. If not, I am going to ask you to file a written statement.

Very well, Mr. Leigh, you may proceed.

Mr. LEIGH. Thank you, Mr. Chairman.

The first of my remaining points has to do with the precedent of the amendment to the Phillippine War Claims Act of 1952. It has been said that this amendment is a precedent for the religious preference proposed by H.R. 2669. However when you look at the history of that act, you will see that the claims allowed under the 1952 amendments, were specifically limited by Congress to claims for secular losses—the educational institutions, the hospitals, things of that sort which were owned by religious organizations. Not only was the claim limited to secular loss, but in the distribution of funds, the Congress imposed a limitation that any funds derived under the amendment of 1952 and paid to religious organizations could be used by them only for secular purposes, to restore the losses to their hospitals, to their educational institutions, to their welfare institutions.

Senator HRUSKA. That is, the amounts paid them would be limited.

Mr. LEIGH. That is right; they were permitted to file only for secular losses and they were paid the proceeds distributed only for secular purposes. So this tends to reinforce the objection that we make to H.R. 2669.

I shall file, if I may, Mr. Chairman, a brief memorandum on this, which goes into it a little more detail.

Senator HRUSKA. That memorandum which you have submitted on that point will be put in the record at the proper place.

(The memorandum referred to follows:)

THE 1952 AMENDMENTS TO THE WAR CLAIMS ACT AS A PRECEDENT FOR H.R. 2669

H.R. 2669 proposes amendment of the War Claims Act of 1948 to establish new priorities for distribution from the War Claims Fund.[1] The bill provides for payment in full of claims filed by nonprofit organizations which have been approved by the War Claims Commission. Since there will not be sufficient funds

[1] H.R. 2669 was passed by the House on March 18, 1969 and is now under consideration by a special subcommittee of the Senate Judiciary Committee.

to pay all of the unpaid claims approved by the War Claims Commission this preference would result directly in a reduction of payments to claimants who have not been given a priority. Out of the 33 nonprofit organizations which have approved claims of $24,159,313.66, at least 30 are religious groups which account for awards of $23,833,123.41, or approximately 99% of the total. Thus the advantage of the nonprofit organization priority that would be established by H.R. 2669 would accrue almost exclusively to the benefit religious missionary groups.

Despite the obvious inequity of granting this type of priority, and the constitutional problems occasioned by a statutory preference for religious groups, the argument has been advanced that the 1952 Amendments to the War Claims Act, which gave preferences to religious organizations which suffered losses in the Philippines,[2] constitute a valid precedent for H.R. 2669. However, a close examination of the 1952 Amendments indicates that they are not a valid precedent. Indeed, the limitations placed on the 1952 priority and an examination of its purpose indicate that the general preference for religious groups contained in H.R. 2669 is improper.

One important justification for the Philippine preferences of 1952 was the desirability of compensating missionary groups in the Philippines which had given assistance to American military personnel and American civilians during the Second World War. Section 7(b) of the War Claims Act, as amended by the 1952 legislation, limited the preference to:

". . . any such religious organization or its personnel functioning in the Philippines and affiliated with a religious organization in the United States, which furnished relief in the Philippines to members of the Armed Forces of the United States or to civilian American citizens."

The House report on the 1952 legislation said that:

"The underlying theory of this section appears to be a recognition of the obligation of the Government to protect its own citizens and to reimburse agencies which by extending relief to civilian American citizens and military personnel enabled them to continue to prosecute the war." [3]

Another notable feature of the 1952 Amendments is that they provided no compensation for facilities used by religious organizations for religious purposes or worship. Under Section 7(b) of the War Claims Act, as amended, only secular losses to "schools, colleges, universities, scientific observatories, hospitals, dispensaries, orphanages, and other property or facilities connected with its educational, medical, or welfare work" were given priority in compensation.

Finally, a very important purpose of the 1952 preferences was to facilitate restoration of secular facilities in the Philippines. Speaker McCormack, who sponsosed the 1952 Amendments in the House, testified as to this purpose:

"[The Amendment] attacks communism on the ideological level, because it provides for the rehabilitation of nonprofit private schools, hospitals, and welfare institutions that were battered to the ground because of their loyalty to the United States during the last war." [4]

To achieve this purpose Section 7(d) of the War Claims Act, as amended, required that claims "shall be determined and paid upon the basis of postwar cost of replacement," and Section 7(f) required that money paid to an American affiliate of an organization operating in the Philippines "shall be used by such affiliate for the purpose of restoring the educational, medical, and welfare facilities described in subsections (b) and (c) and located in the Philippines." Thus, the funds were to be used for secular rehabilitation in the Philippines and were not to be available for general religious purposes.

The 1952 preferences provide no precedent whatsoever for H.R. 2669. The preferences in H.R. 2669 make no distinction between secular and sectarian facilities damaged or destroyed during the War. And the funds made available under the preference are not earmarked for replacement of the damaged facilities, but rather may be used for religious or secular purposes in any way the claimant wishes. Nor can H.R. 2669 be viewed as reimbursement to organizations which aided the American war effort. Thus, none of the special factors which resulted in the 1952 Amendments are present in the 1970 legislation. Indeed, if the 1952 Amendments provide any precedent they provide a precedent against special compensation for religious groups unless such compensation is for secular losses and the funds are used for secular purposes. By this standard the nonprofit organization preferences of H.R. 2669 are clearly inappropriate.

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[2] An Act to Amend Sections 6 and 7 of the War Claims Act of 1947, 66 *Stat.* 47, April 9, 1952.

[3] H. Rep. 1631, *Report of the Committee on Interstate and Foreign Commerce on H.R. 5385*, 82d Cong., 2d Sess. (1953), at p. 3.

[4] *Hearings Before the House Committee on Interstate and Foreign Commerce*, 82d Cong., 1st Sess., at p. 112.

Mr. LEIGH. I come to my last point, which has to do with the constitutional question.

This statement will be found on page 11 of the longer statement which Mr. Merriam has filed, if you wish to follow it. It will not be very lengthy.

The first amendment's establishment clause clearly prohibits creation of a state church and governmental imposition of religious observances. It also prohibits the enactment of laws to aid any particular religion or to aid religion in general. Laws which give aid or support to religious groups have been sustained by the Supreme Court only on the grounds that the assistance would be for secular purposes and that the assistance is available generally and is not granted exclusively to religous groups. The basic requirement of the establishment clause is government neutrality.

The religious preference of H.R. 2669 directly violates these principles. The preference is almost exclusively an aid to religion, and the aid to the religious groups is in no way limited to secular purposes. Moreover, the constitutional requirement of neutrality is flagrantly—we think—flagrantly violated because with insufficient funds in the war claims fund the aid to the religious groups is directly at the expense of secular groups.

The Justice Department letter to Senator Eastland of July 13, 1970, expresses the opinion that H.R. 2669 is constitutional under the principles of the *Walz* case which upheld the validity of granting tax exemptions to churches along with other charitable organizations. The Justice Department nevertheless found that the "question is not entirely free from doubt because both the majority and the concurring opinions imply that there may be a constitutional difference between an exemption from taxation and a transfer of governmental funds."

We think there is a constitutional difference. The *Walz* opinions however, made it clear that governmental subsidies or grants were in a different category. Justice Burger in the majority opinion said that "granting tax exemptions to churches necessarily * * * gives rise to some, but yet a lesser involvement than taxing them * * * obviously a direct money subsidy would be a relationship pregnant with involvement * * *." Justice Brennan said in his concurring opinion that "the very breadth of this scheme of tax exemptions negates any suggestion that the Senate intends to single out religious organizations for special preference"; and that "general subsidies of religious activities would, of course, constitute impermissible State involvement with religion." Thus, the Justice Department's opinion that H.R. 2669 is constitutional under the precedent of the *Walz* case is wrong, we believe, because there is a constitutional difference between a general tax exemption for charities—including churches—and a preference or grant for a predetermined group of awards, 99 percent held by religious groups, as is the case here.

The Justice Department recognizes that H.R. 2669 would establish "a priority for religious organizations." The Justice Department, however, is, we believe clearly wrong when it says that "the proposed amendment would do no more than establish the order in which the remaining claims would be paid * * *." The amendment will do much more than establish the order of payment; it will result in larger payments to religious groups at the expense of secular groups. This is far

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from neutrality, and the preference is, we believe, unconstitutional under the first amendment.

Mr. Chairman, if I may, I would like to offer a more comprehensive opinion on the constitutional position for the record.

Senator HRUSKA. Very well. It will be received and placed in the appropriate place in the record.

(The memorandum referred to follows:)

MEMORANDUM REGARDING THE CONSTITUTIONALITY OF THE PREFERENCE GRANTED TO RELIGIOUS ORGANIZATIONS BY H.R. 2669

In its present form the War Claims Act of 1948, as amended, provides for priority in distribution from the War Claims Fund as follows:

1. Awards for personal injury claimants are to be paid in full.
2. Thereafter, awards to Small Business claimants are to be paid in full.
3. Thereafter, all awards of $10,000 or less and the first $10,000 of awards greater than $10,000 are to be paid.
4. Thereafter, the balance of unpaid awards are paid their pro-rata share of the remaining funds available from the War Claims Fund.

The first three priorities set forth above have been satisfied in full. H.R. 2669 would amend section 213(a) of the War Claims Act to provide for priority payments to two additional classes of claimants. Under this proposed legislation, awardholders who are nonprofit organizations operated exclusively for the promotion of social welfare, religious, charitable or educational purposes would be paid in full. Thereafter, all awardholders who are individuals would be paid in full. If H.R. 2669 becomes law it is probable that awards to these two classes of claimants will exhaust any additional funds likely to become available for distribution from the War Claims Fund, leaving nothing further for the remaining category of claimants.

While the proposed amendment to the War Claims Act of 1948 is broadly phrased, its operation would inure almost exclusively to the benefit of religious missionary groups. H.R. 2669 would provide preferred claimant status for "nonprofit organization[s] operated exclusively for the promotion of social welfare, religious, charitable, or educational purposes."

However, the proposed amendment was drafted after it was already known that of the 33 organizations in this non-profit category (which have been granted awards totaling $24,159,313.66) at least 30 are religious groups (whose awards total $23,833,123.41), which account for approximately 99% of the total awards which would receive priority status under the bill. *Hearings Before the Subcommittee on Commerce and Finance of the House Committee on Interstate and Foreign Commerce*, 91st Cong., 1st Sess., series 91, part 3, at 35 (1969). The preferential payment of these awards, under circumstance which would certainly deprive other classes of claimants of recovery, would be contrary to the Establishment Clause of the First Amendment of the Constitution.

THE ESTABLISHMENT CLAUSE

The First Amendment to the Constitution states:

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof. * * *"

Obviously the Establishment Clause prohibits the creation of a state church or the governmental imposition of religious observances. *Abington School District* v. *Schempp*, 374 U.S. 302 (1963); *Engel* v. *Vitale*, 370 U.S. 421 (1962). Similarly, it is impermissible for the government to show any partiality toward one religious group, *Zorach* v. *Clauson*, 343 U.S. 306, 313 (1952), while the Free Exercise Clause forbids government interference with the religious practices of any one group. But the restrictions on valid government action go further; the Supreme Court "has rejected unequivocally the contention that the Establishment Clause forbids only governmental preference of one religion over another." *Abington School District* v. *Schempp*, supra, at 216. The Court in *Everson* v. *Board of Education*, 300 U.S. 1, 15 (1947), emphasized that "neither [federal nor state governments] can pass laws which aid one religion, aid all religions, or prefer one religion over another." Mr. Justice Rutledge, writing in dissent in *Everson*, agreed that:

"The [First] Amendment's purpose was not to strike merely at the official establishment of a single sect, creed or religion, outlawing only a formal relation such as had prevailed in England and some of the colonies. Necessarily it was to

uproot all such relationships. But the object was broader than separating church and state in this narrow sense. It was to create a complete and permanent separation of the spheres of religious activity and civil authority by comprehensively forbidding every form of public aid or support for religion. At 31–32.

This theme of separation between church and state is explored and developed through the Establishment Clause cases.

"*Everson* and later cases have shown that the line between state neutrality to religion and state support of religion is not easy to locate. 'The constitutional standard is the separation of Church and State. The problem, like many problems in constitutional law, is one of degree.' *Zorach* v. *Clauson*, 343 U.S. 306, 314 (1952). See *McGowan* v. *Maryland*, 366 U.S. 420 (1961)." *Board of Education* v. *Allen*, 392 U.S. 263, 242 (1968).

The test of neutrality devised in *Abington School District* v. *Schempp*, supra, at 222, and endorsed in the *Allen* case, supra, at 243, is:

"The test may be stated as follows: what are the purpose and the primary effect of the enactment? If either is the advancement or inhibition of religion then the enactment exceeds the scope of legislative power as circumscribed by the Constitution. That is to say that to withstand the strictures of the Establishment Clause there must be a secular legislative purpose and a primary effect that neither advances nor inhibits religion."

The most recent case interpreting the Establishment Clause, *Walz* v. *Tax Commission of the City of New York*, ___ U.S. ___ (1970), rests strongly on this "course of constitutional neutrality," in upholding the validity of state real and personal property tax exemptions for religious groups. The opinion of Chief Justice Burger indicates that tax exemptions reinforce the separation between church and state by giving rise to a "lesser involvement than [would] taxing them." At the same time the Chief Justice is careful to distinguish direct subsidies to or "sponsorship" of churches, which would be impermissible under the First Amendment.

AID TO RELIGIOUS ORGANIZATIONS

The nature of this "course of constitutional neutrality" has been explored by the Supreme Court in a number of cases dealing with the granting of governmental aid to religious organizations. Direct financial assistance to religious groups has been sustained only on the grounds that the assistance services secular rather than a sectarian purpose and does not result in a preferential treatment for religious organizations.

For example, in *Bradfield* v. *Roberts*, 175 U.S. 291 (1899), a taxpayer sought to enjoin the Secretary of the Treasury from dispensing funds under an Act of Congress appropriating money for the erection of a building in the District of Columbia to be used for the treatment of contagious diseases. The building was to be owned and operated by Providence Hospital, which was under the control of a Roman Catholic religious order. The Hospital was required to make two-thirds of the building's capacity available for poor patients sent to it by the District Government. The Court found no Constitutional barrier to this use of government funds since the government funds involved would not be used for religious purposes but solely for the treatment of the sick. The Act of Congress under which the Hospital was incorporated only empowered it to perform nonsectarian acts connected with the treatment of the sick. The Court stated that:

". . . the specific and limited objective of [the hospital's] creation is the opening and keeping [of] a hospital in the city of Washington for the care of such sick and invalid persons as may place themselves under the treatment and care of the corporation. At 299–300."

The same reasoning was applied in *Cochran* v. *Board of Education*, 281 U.S. 370 (1930), where the Court sustained Louisiana's use of public funds to furnish textbooks to parochial school pupils. Under this program, only nonsectarian books were supplied, and they were available equally to both the parochial and public schools. Had the Louisiana law allowed the use of state funds to purchase religious textbooks or if it had made textbooks available only to parochial school children, it could not have been sustained. The Court quoted the Louisiana Supreme Court as finding that:

"What the statutes contemplate is that the same books that are furnished children attending public schools should be furnished children attending private schools. Among these books, naturally, none is to be expected, adapted to religious instruction [sic]. At 375."

The Court also stated:

"The legislature does not segregate private schools, or their pupils, as its beneficiaries or attempt to interfere with any matters of exclusively private

concern. Its interest is education, broadly; its method, comprehensive. Individual interests are aided only as the common interest is safeguarded. *Ibid.*"

Everson v. *Board of Education, supra,* endorsed this same rationale of approving government assistance to a religious group because the aid was directed solely to a nonsectarian purpose and the real beneficiaries were individuals rather than the religious group itself. In this case the Court approved a local New Jersey school board program of making payments to parents to cover the cost of transporting their children to school by commercial bus. The payments were received by all parents whose children traveled the buses, irrespective of whether the children attended public or parochial schools. The Court approved this plan, observing that:

"The State contributes no money to the schools. It does not support them. Its legislation, as applied, does no more than provide a general program to help parents get their children, regardless of their religion, safely and expeditiously to and from accredited schools. At 18."

The Supreme Court in *Board of Education* v. *Allen, supra,* approved a New York procedure whereby books for use in school courses were loaned by the State to students in both public and parochial schools. The Court found unimpeachable the stated purpose of this procedure, the "furtherance of the educational opportunities available to the young," and approved of its effect, which was to "make available to all children the benefits of a general program to lend school books free of charge." *Id.* at 243. The Court continued:

"Books are furnished at the request of the pupil and ownership remains, at least technically, in the State. Thus, no funds or books are furnished to parochial schools, and the financial benefit is to parents and children, not to schools. *Id.* at 243–4."

And in *Walz, supra,* the New York state exemption from real and personal property taxation accorded to nonprofit and religious organizations was upheld on grounds that the state "has not singled out one particular church or religious group or even churches as such; rather, it has granted exemption to all houses of religious worship within a broad class of property owned by nonprofit, quasi-public corporations which include hospitals, libraries, playgrounds, scientific, professional, historical and patriotic groups."

Further, the Court took pains to distinguish the type of "aid" involved in a property tax exemption from that involved in a direct subsidy to churches.

"Obviously a direct money subsidy would be a relationship pregnant with involvement. * * * The grant of a tax exemption is not sponsorship since the government does not transfer part of its revenue to churches but simply abstains from demanding that the church support the state."

CONGRESSIONAL ACTION

The Congress has recognized the identical Constitutional limitations under the Establishment Clause. In enacting legislation such as the Education Act of 1965, it has consistently required (1) that all aid made available through Federal law be used only for nonsectarian purposes, (2) that no parochial school may receive assistance unless it is equally available to public schools for identical purposes, and (3) that the beneficiaries of the assistance be individuals rather than religious groups. For example, under the scheme of the Education Act of 1965, it is recognized that parochial schools are Constitutionally barred from receiving any preferential treatment because of their religious affiliation and thus can use federally granted funds only for the benefit of students and only for the same nonsectarian purposes as the public schools. The legislative history of the Act makes this quite clear. For example, the Senate Report states:

"The committee has taken care to assure that funds provided under this title will not inure to the enrichment of any private institution by providing that—

"(1) Library resources, textbooks and other instructional materials are to be made available to children and teachers and not to institutions;

"(2) Such materials are made available on a loan basis only;

"(3) Public authority must retain title and administrative control over such materials;

"(4) Such material must be approved for use by public school authority in the State;

"(5) Books and material must not supplant those being provided children but must supplement library resources, textbooks, and other instructional materials to insure that the legislation will furnish increased opportunities for learning . . . . *United States Code Congressional and Administrative News,* 89th Cong., 1st Sess., 1468."

The Senate Report also includes the following statement:

"An amendment offered by Mr. Dominick would amend section 605 of H.R. 2362 to provide that nothing in the act shall be construed to authorize the making of any payment for 'the construction of facilities or for the hiring of teachers wherever there is religious worship or sectarian instruction.' As passed by the House of Representatives, section 605 provided that nothing in the act shall be construed to authorize the making of any payment for 'religious worship or instruction.'

"Section 605 must be considered in relation to other provisions of the bill which seek to enforce the principle of separation of church and state. Titles I and III of the act expressly require that title to any facility constructed under those titles must be in the public agency; and Title IV prohibits the construction of research facilities for research or related activities in the field of sectarian instruction. Titles II and V do not authorize construction.

"With respect to other activities which would be financed under titles I, II, and III of the act, various provisions assure that payments will be made only to public agencies and that public agencies will administer these activities. Title IV, which is limited to research and research training, prohibits the making of grants for training in sectarian instruction or for the financing of research in the field of sectarian instruction. Title V relates to strengthening State departments of education only.

"Underpinning these separate and more detailed provisions are the language of section 605 and the many carefully drafted clarifying statements which the committee has included in its report for the purpose of insuring that the bill will be interpreted and administered in a manner consistent with the establishment of religion provision of the first amendment of the Constitution.

It is our opinion that these safeguards are more than adequate to assure that payments under this act may not be made for the construction of facilities or for the hiring of teachers for the provision of religious worship or sectarian instruction. For these reasons we do not favor the amendment offered by Mr. Dominick. *Id.* 1481."

The same type of restrictions were imposed by the Congress in the School Lunch Program. The Act establishing that program provides in part that:

"The secretary shall disburse the funds so withheld directly to the nonprofit private schools within said State for the same purposes and subject to the same conditions as are authorized or required with respect to the disbursements to schools within the State by the State educational agency. 12 U.S.C. § 1759."

The Congressional declaration of purpose in the School Lunch Program also emphasized that the sole use of this government assistance was to "safeguard the health and well-being of the Nation's children." 12 U.S.C. § 1751.

THE FIRST AMENDMENT DEFECTS IN H.R. 2669

Thus, both the Supreme Court and the Congress have recognized that great care must be exercised in the enactment of any legislation giving assistance to religious groups. It is clear that if such legislation is to be consistent with the Establishment Clause of the First Amendment, it must be consistent with the principle of government neutrality toward religion.

This does not mean that religious organizations cannot receive compensation for war losses. In fact, to deny them compensation solely on the grounds that they are religious organizations would raise questions under the Free Exercise Clause of the First Amendment and the Equal Protection Clause of the Fifth. However, the Supreme Court and the Congress have consistently interpreted the Establishment Clause as clearly forbidding the granting of preferential treatment for religious organizations. The proposed legislation would not only compensate religious organizations for losses incurred in both their religious and nonreligious activities, but would also deprive other claimants of their awards. Thus, this proposed legislation violates fundamental Constitutional prohibitions. If Congress elects to enact legislation channeling funds to religious organizations, which could be used for religious purposes, it cannot Constitutionally do so in preference to, and to the detriment of, other classes of claimants.

These basic Constitutional problems cannot be overcome by the assertion that funds paid to religious organizations as compensation for war damages will be "used for the public welfare" or "to carry forward the great work [these religious organizations] have been doing in the interest of all mankind." This was the position put forth in a memorandum submitted to the House subcommittee by the Panel for Coordinating Council of Religious and Welfare Agencies With War

Damage Awards, the leading proponent of H.R. 2669. *Hearings Before the Subcommittee on Commerce and Finance of the House Committee on Interstate and Foreign Commerce, id.*, at 34. This justification is irrelevant to the constitutional issue of governmental neutrality, and preferential treatment solely for religious claimants violates this principle of neutrality irrespective of the anticipated uses for the funds.

And unlike the situations in *Everson* and in *Allen*, the funds which would be distributed under the proposed preference would not be distributed to religious organizations in their secular capacities. The funds dispensed in the contemplated manner will be paid directly to religious organizations and may be used for whatever purpose they deem advisable.[1]

Neither can this plan be saved by the fact that the funds distributed under the War Claims Act are not raised by taxation, but rather have been produced through the confiscation of enemy property. Monies contained in the War Claims Fund were made available by government action and are distributed through a procedure set up and administered by the government. The use of these funds to compensate religious claimants is not in itself objectionable under the Establishment Clause. But the issue here is not the *reimbursement* of religious groups as claimants, but the granting of a *preference* to religious groups qua religious groups, thereby elevating their claims above those of other claimants. It is this preference that is condemned by the First Amendment.

The question of a preference is entirely distinct from the issue of tax exemptions explored in the *Walz* case. There the tax exemptions were upheld because "New York, in common with the other States, has determined that certain entities that exist in a harmonious relationship to the community at large, and that foster its 'moral or mental development,' should not be inhibited in their activities by property taxation or the hazard of loss of those properties for nonpayment of taxes. . . ."

The exemptions were valid because they extended to churches "within a broad class of property owned by nonprofit, quasi-public corporations," and thus the classification of tax exempt property had a broad, nonsectarian justification. Here, however, the classification of beneficiaries of the proposed preference is unconstitutional, because the claimants to be granted a preference are almost exclusively religious missionary groups. No such broad, nonsectarian purpose as underlies tax exemptions can be found here.

Significantly, the proponents of H.R. 2669 have not argued that precedent for this preferential treatment can be found in the granting of tax exempt status to religious organizations. Apparently, they correctly realize that the granting of tax exempt status to certain nonprofit charitable, religious, educational and scientific organizations cannot be equated with the preferential treatment contemplated by H.R. 2669. That preferential treatment invokes government action in violation of the constitutional mandate of neutrality found in the Establishment Clause.

Furthermore, the tax exemptions in were *Waltz* permissible because they did not involve a transfer of public funds to churches, but rather merely refrained from demanding a transfer of church funds to the government. Here the proposed preference is analogous to direct government subsidies, which the *Walz* court condemned, because it establishes priorities among claimants based solely on whether the claimant is a religous organization.

The granting of a preference in these circumstances must also be distinguished from the situation in *Quick Bear* v. *Leupp*, 210 U.S. 50 (1908), where the Supreme Court upheld a contract, made at the request of American Indians to whom money was due as a matter of right, under a treaty, for the payment of such money by the Commissioner of Indian Affairs for the support of Indian Catholic schools. In that case, the money that went to the religious schools belonged to the Indians and not to the United States. Religious organizations have no greater claim of right against the War Claims Fund than the other claimants. Thus, in *Quick Bear* there was no element of preferential use of funds as there is in H.R. 2669. In addition, there is no constitutionally significant distinction between money which

[1] The fact that earlier isolated preferences have been given to other religious organizations under the War Claims Act does not justify the establishment of more such preferences. The propriety of these earlier preferences is difficult to defend and while the awards involved there were quite small in comparison, they are not precedent for further precedents. As Mr. Justice Clark said in *Abington School District* v. *Schempp*, *supra:*

> It is no defense to urge that the religious practices here may be relatively minor encroachments on the First Amendment. The breach of neutrality that is today a trickling stream may all too soon become a raging torrent and, in the words of Madison, "it is proper to take alarm at the first experiment on our liberty." At 225.

The only possible defense of these earlier preferences is that at the time they were enacted it was thought that sufficient funds may be available for the payment of all claims so that the preferences were simply a matter of when they would be paid. See H.R. Rep. No. 91-76, 91st Cong., 1st Sess. 3 (1959).

is brought into the Treasury by means of the power to tax and that which is brought in by the power to seize. The constitutional limitations on the disposition of property seized by the United States are identical to the limits imposed upon funds raised by taxation.

CONCLUSION

Mr. Justice Brennan, in his concurring opinion in *Walz*, upholds the constitutionality of property tax exemptions for nonprofit public-service oriented organizations, saying:

"The very breadth of this scheme of exemptions negates any suggestion that the State intends to single out religious organizations for special preference."

The same cannot be said of H.R. 2669. The bill creates a preference which, on its face, grants favored treatment for a broad class of potential claimants. However, the proposal as drafted after the identity of the claimants and the size of their awards had already been determined, and, while the wording of the amendment is broad, in fact virtually the only claimants which are "nonprofit organization[s] operated exclusively for the promotion of social welfare, religious, charitable, or educational purposes" are religious missionary groups. Thus, the breadth of coverage indicated by the wording of the amendment is a mere sham designed to disguise an outright preference for religious groups. Numerous Supreme Court cases have indicated that the test of constitutionality under the Establishment Clause is whether the government action at issue maintains strict neutrality toward religion and among religious groups and organizations. The preference in H.R. 2669 is the functional equivalent of a direct government subsidy paid to religious organizations. The preference has the effect of diverting payment to these religious organizations at the expense of other claimants and without any reasonable justification.

STEPTOE & JOHNSON,
By MONROE LEIGH.

Senator HRUSKA. Thank you very much for coming, both of you. Mr. Jasper Baker of the United Fruit Co.

STATEMENT OF JASPER SANCROFT BAKER, DIRECTOR OF GOVERNMENT RELATIONS, UNITED FRUIT CO.

Mr. BAKER. Thank you, Mr. Chairman.

Senator HRUSKA. You have a statement which you have submitted; have you?

Mr. BAKER. I have. It is very brief, Mr. Chairman.

My name is Jasper Baker, and I represent the United Fruit Co. in Washington, D.C., as director of Government relations. The United Fruit Co.'s principal offices are in Boston, Mass.

I am grateful to the committee for providing time for me to appear in opposition to H.R. 2669.

My president, Mr. John M. Fox, filed a letter with the chairman on March 6, 1970, pointing out, very briefly, our opposition to this bill.

Eight years have passed by since the enactment of Public Law 87–846, but more than 20 years have passed since our losses were sustained.

The loss of our six vessels during World War II was fully recognized as a proper subject by the Foreign Claims Settlement Commission and this recognition was certified by the Department of the Treasury for payment out of the war claims fund.

Up to this date we have received approximately 61.3 percent of the recognized amount of $1,519,918. We are, therefore, still due about one-half million dollars.

Now comes H.R. 2669 which attempts to upset the priority of payments. If H.R. 2669 had not been before you it was hoped that the amount still owing us would have already been paid.

The first three priorities: One, awards for personal injury; two, awards to small business claimants, and; three, awards of $10,000 or less to be paid in full and the first $10,000 of awards greater than $10,000 is to be paid. My company indeed did receive that initial $10,000. Then the fourth priority was that the balance of the unpaid awards, prorated to the extent funds were available from the war claims fund. This is the category from which the balance of our award would have come.

Now, after all these years, two additional categories of priorities have been added, not at the bottom of the list under numbers five and six, but squeezed in above priority number four. These new categories are: One, nonprofit organizations and; two, individuals.

Let me say at this point that we have the greatest sympathy for the charitable organizations, et cetera, but I do not think that these claims should now be squeezed in ahead of our corporate claims which are in effect our shareholders' claims. It appears that if H.R. 2669 becomes law, approximately $20 to $25 million worth of priority claimants will be created which will eat into practically all the balance of the money in the war claims fund.

In the course of bankruptcy proceedings, would religious or charitable creditors be paid before other creditors. The answer is "No," and therefore we believe that when a priority already exists, that priority should not be upset.

If the priority had been deemed unfair at the time of the enactment of Public Law 87–846 then that would have been the time to have the priority changed and add these two new categories. Additionally, it seems to us that the reordering of these priorities after the Foreign Claims Settlement Commission has completed adjudication, again again makes the reordering of the priorities inequitable.

It also occurs to us that to favor religious nonprofit organizations is open to some constitutional doubt. I am not competent in this area to discuss the constitutionality of H.R. 2669, but at the outset, I would like to point out that the establishment of such a clause favoring nonprofit religious organizations might be construed within the region of the enactment of laws to aid religion. I understand that laws giving financial aid to religious groups have been sustained only when the assistance would not be used for religious purposes. However, it would appear that any award given to such groups ahead of the corporate claims would be open to serious question.

We, therefore urge the Committee on the Judiciary not to sustain H.R. 2669 and allow the status to remain as before so that the claims may be paid quickly and equitably.

Thank you, Mr. Chairman.

Senator HRUSKA. Thank you, Mr. Baker.

Mr. Counsel, have you any questions?

Mr. YOUNG. No questions, sir.

Senator HRUSKA. Thank you, sir.

Our next witness is Mr. Nicholas Doman, of Doman, Spellman, & San Filippo, a law firm in New York.

You have filed a statement; have you?

STATEMENT OF NICHOLAS R. DOMAN OF DOMAN, SPELLMAN, & SAN FILIPPO, ATTORNEYS AT LAW, NEW YORK, N.Y.

Mr. DOMAN. I have filed a statement. I am not requesting that it be included in the record. Instead, I shall make my statement orally now.

Only, perhaps for the purpose of identifying about 15 individual award holders, I respectfully suggest that their names and their awards be inserted.

Senator HRUSKA. Very well.

Mr. DOMAN. Mr. Chairman, I am honored to be able to testify before your committee in respect of H.R. 2669. In addition to being a member of the bar, I am also a professor of taxation at the School of Law of New York University.

I appear on behalf of a fair number of individual awardholders who have a vested interest in the awards rendered for their benefit and in the amounts payable thereunder. It was in recognition of its concern for nonprofit organizations and individuals that the House of Representatives last year passed with amendments H.R. 2669 to provide for priority to nonprofit organizations in the first instance and then to individuals.

The House must have been motivated by the fact that corporations, by taking advantage of the availability of tax deduction for war losses during World War II and subsequently by obtaining approximately 61.3 percent on their awards in or about 1967, have been or should have been more than fully compensated for whatever compensable losses they had incurred during the war.

Mr. Chairman, the same opportunities for tax deduction were not available to individuals under the Internal Revenue Code, nor were such opportunities available or needed by nonprofit organizations, who have awards for their benefit. It was in recognition for its concern for nonprofit organizations and individuals that the House of Representatives last year passed with amendments a bill under which a corporation which suffered a war loss of, let us say, $3 million in 1941 or 1942, when excess profit taxes were in effect, could deduct at least 70 percent of its loss. That means, using the example of the $2 million loss, $1,400,000. It was on the basis of section 206(b) of the War Claims Act that the actual award for such a corporation was reduced to $600,000. The corporation then received $10,000 plus 61.3 percent on its award, or approximately $360,000. In other words, $240,000 has not been compensated out of the loss of $2 million, which means the corporations received 88 percent, using this example, while the individuals received only 61 percent.

But this is not the whole story, because the corporations undoubtedly had the benefit of State and municipal tax deductions, and their awards were not reduced perhaps by oversight, under the War Claims Act of 1948, by the amount of these deductions. In addition, undoubtedly, many of these corporations received also foreign tax benefits.

Therefore, it is safe to assume that the average corporation which took its deduction during the war, because it had to take its deduction during the war under section 127 of the Internal Revenue Code of 1939, has already been made whole. The individuals, however, have not been made whole. One of the purposes of H.R. 2669 is to eliminate

this disparity among corporate award holders and individual award holders. Relying on Public Law 87–846, individual citizens of the United States who suffered war damage in the applicable geographical areas set forth in that public law proceeded to invest substantial sums of money to obtain documentation to prove their claims, many times spending as much as $10,000 or more in connection with obtaining documents, for travel, engaging attorneys, not only in the United States but abroad. It is for this reason that I respectfully urge on behalf of the individual award holders that this committee should not approve any legislation which would establish an ex post facto discrimination and distinction among individual award holders on the basis of $35,000 submitted by the Foreign Claims Settlement Commission. I believe the committee should treat these individual award holders equally. To the extent that H.R. 2669 recognizes the rights and positions of the individual award holders and seeks to do substantial economic justice, I recommend the passage of H.R. 2669 without amendment.

Thank you, Mr. Chairman.

(The complete statement of Mr. Doman follows:)

STATEMENT BY MR. NICHOLAS R. DOMAN

The House must have been motivated by the fact that corporations, by taking advantage of the availability of tax deduction for war losses during World War II and subsequently by obtaining approximately 61.3% on their awards in or about 1967, have been or should have been more than fully compensated for, whatever compensable losses they had incurred during the war. Mr. Chairman, the same opportunities for tax deduction were not available to individuals under the Internal Revenue Code, nor were such opportunities available or needed by non-profit organizations.

Furthermore, Sec. 1331 of the Internal Revenue Code dealing with war loss recoveries provides that on recovery of any money or property in respect of property considered under Section 127(a) of the Internal Revenue Code of 1939 as destroyed or seized, the amount of such recovery is to be included in gross income as provided by the Internal Revenue Code of 1954. Therefore, a corporate taxpayer with an assumed 50% tax bracket, which has the benefit of a tax deduction for its war losses and in addition had by now recovered more than 50% on its award based on these losses, is taxable on such recovery as exceeds 50%. For this reason, corporations which have received 61.3% on their awards, are not concerned with this remedial legislation as are individuals. The Foreign Claims Settlement Commission, an agency not concerned with problems of taxation, may not be aware of this vital economic distinction between individual awards and corporate awards.

The following is a schedule of war claim awards in amounts that exceed $10,000 in connection with which my firm represented awardholders:

WAR CLAIMS OVER $10,000

Name	Claim No.	Award
Bestermann, Margarethe	W–18006	$32,481.33
Bloch, Mary	W–4443	11,050.00
Galan, Andrew	W–2042	17,877.50
Garbaty, Marie	W–9333	757,543.19
Garbaty, Ella	W–9333	570,462.50
Neumann, Peter M	W–11650	60,703.60
Do	W–11650	11,279.00
Reitler, Alice Lisa and Maria Elizabeth Z., executrices of the estate of Emil Reitler, deceased	W–18008	11,791.47
Warburg, Eric M., as executor of the estate of Max M. Warburg, deceased	W–11622	129,954.41
Warburg, Eric M., individually	W–11623	55,316.21
Weiner, George and Lillian Winters, as executors of the estate of Irma Weiner, deceased	W–18004	38,171.00
Weiner, George and Lillian Winters, as executors of the estate of Irma Weiner, deceased (consolidated award)	W–18004	22,902.60
Weiner, George	W–18003	11,451.30
Weisz-Sechy—Charlotte Sechy, as executrix of the estate of Piroska Josephine Weisz, deceased	W–11625	18,537.00

Eight of these awards are under $35,000 and six of them are in excess of that amount. To introduce an element of discrimination among individual awardholders at this late date would be less than fair and equitable.

Relying on Public Law 87–846, individual citizens of the United States who suffered war damage in the applicable geographic areas set forth in the said Public Law, proceeded to invest substantial sums of money to obtain documentation to prove their claims, obtained translations of masses of foreign documents and, apart from retaining counsel to prosecute their claims before the Foreign Claims Settlement Commission, also had to resort to the services of foreign lawyers and had to shoulder the cost of expensive travel abroad. In some instances, to my personal knowledge, a client had to expend more than $10,000 in order to secure the necessary proof to enable him to obtain an award in excess of $10,000.

For this reason I respectfully urge this Committee not to approve any legislation that establishes ex post facto distinctions and discrimination among individual awardholders. Monies destined to individual victims of the war should not be transferred to corporate or other organizations. To the extent that H.R. 2669 recognizes the rights and position of the individual awardholders and seeks to do substantial economic justice without injury to them, I recommend its passage.

Senator HRUSKA. Mr. Witness, do you favor the House passed bill?

Mr. DOMAN. In the form as it passed, I agree with it. Insofar as the individuals are concerned. I am not concerned with religious or nonprofit organizations and I am not concerned with the constitutional question of separation of state and church. I am addressing myself solely to the position of the individuals.

Senator HRUSKA. Then you are saying you will take everything that the House-passed bill gives you, but you want some more than that. Is that your position?

Mr. DOMAN. I did not say that, Mr. Chairman.

Senator HRUSKA. No, I am asking you.

Mr. DOMAN. No.

Senator HRUSKA. You do not say it?

Mr. DOMAN. No.

Senator HRUSKA. Then let me ask you again. I do not know that I understood your answer. Do you favor the bill as passed by the House?

Mr. DOMAN. Yes, I do, Mr. Chairman.

Senator HRUSKA. Of course, it does give certain preferences to individuals; does it not?

Mr. DOMAN. Yes, Mr. Chairman. I think justified preference in recognition of the favored tax position of business corporations, a status which the individuals could not enjoy.

I believe that by careful examination of the tax status of the corporations, the committee members will find that most of the corporations have substantially recouped their losses to the extent of a hundred percent, unlike the individuals, who are limited to 61 percent.

Senator HRUSKA. Did you hear the testimony here earlier today that, in the event of corporations receiving any moneys from the Foreign Claims Settlement Commission, there was taken into consideration any tax losses, claimed and taken advantage of, and such amounts as were taken advantage of in that fashion were deducted from the moneys payable to the corporation? Did you hear that testimony?

Mr. DOMAN. I heard it, Mr. Chairman, and I dealt with that statement in my example in order to show that, notwithstanding the fact that section 206(b) of the War Claims Act called for the deduction of the tax loss recoveries on the part of the corporations, the corporations came off better because of the mathematics. I showed that the corporation received 88 percent on their awards, assuming a tax

rate of 78 percent during World War II, when excess profit taxes were in effect. Because if you deduct these tax losses, from the award, the corporation, after going through the careful computation, may be found to have received far more than 61 percent.

Furthermore, the War Claims Act does not take into account State income taxes, municipal taxes, and foreign income taxes, and there has been no reduction on account of these other income taxes insofar as the corporations are concerned.

Senator HRUSKA. Of course, there is an assumption on your part of a given rate of tax and so on. But as I understand it—I have not gone into this in detail, but there is positive and affirmative testimony on the part of some of these companies that when they received their payments from the Foreign Claims Commission, any amounts that they had recovered by tax deduction were deducted from the payment. Do you have reason to believe that is not the fact?

Mr. DOMAN. Well, the law was applied. I am not saying that this was not the fact. I am saying myself that this was not the fact. I am saying myself that after a loss was found, let us say, in the form of $2 million, and assuming an average excess profit tax year of 70 percent, the award was reduced by the sum of $1,400,000, so that the actual award was $600,000. The corporation received, then, $360,000 on that reduced award of $600,000, which means that the corporation received a benefit of $1,400,000 in terms of tax saving and $360,000 in terms of money received on the basis of the award, which means it is out of pocket only to the extent of $240,000 out of $2 million before taking into account the other types of income taxes to which I referred before.

Senator HRUSKA. I cannot quite follow it. I am not an accountant or a tax man. I am going to let the record stand for what you say, but I still cannot understand if they are entitled to x dollars and the Foreign Claims Settlement Commission said, "Well, you deducted one-fourth of your disaster losses, your wartime losses; therefore, we are only going to pay you three-fourth of x dollars—I still cannot understand why it is you say that they have an advantage and they are getting something more than they should be getting. That is a little hard for me to understand.

Do you think the answer you just gave would answer that hypothetical question of mine in terms of x dollars and one-fourth and three-fourths?

Mr. DOMAN. Yes, because the corporation gets 61 percent of its actual award of $600,000. But it gets 100 percent of the benefits of its tax loss. The individual does not have this benefit. The individual gets a straight 61 percent, because he has no tax loss.

In other words, you have to take into account——

Senator HRUSKA. If he gets reimbursed in full, he does not need a tax loss, does he?

Mr. DOMAN. But has not been reimbursed in full, and the purpose of H.R. 2669 is, insofar as the individual is concerned, to reimburse the individual in full.

Senator HRUSKA. I shall try to study the transcript, study that answer you gave, and see if I can understand it.

Mr. DOMAN. May I submit a more detailed statement?

Senator HRUSKA. No; I prefer not. You have given an answer. I would prefer not, because that will mean some other witness will not have any time.

There is one question I would like to ask you: on March 4, 1969, you wrote a letter to Harley O. Staggers on H.R. 2669. That was when it applied only to the church groups and did not include any preference to individuals. Here is the final paragraph of your letter:

> Our individual awardholders are unalterably opposed to the enactment of H.R. 2669 for the following reasons: first, it alters the scheme of distribution incorporated in Section 213 of the 1948 Act as amended and discriminates against some awardholders to the benefit of other awardholders;
>
> Number two: they relied on the bill passed by the Congress and signed by the President and extended substantial sums;
>
> Three: they have vested rights by virtue of the foregoing and they should not be deprived of such rights and the fruit of their labors;
>
> Four: it violates the spirit of the War Claims Act of 1948 as amended if monies destined to individual victims were transferred to either profit or nonprofit organizations.

Now, then, H.R. 2669 was not enacted in the form reported by the committee. It was amended by the addition of certain preferences for individuals. Now you come here and say notwithstanding these reasons I just read, you say you favor H.R. 2669 as passed by the House. Can you tell us why you changed your mind?

Mr. DOMAN. H.R. 2669, in its initial drafting, did not provide for the individuals. It tended to deprive the individuals of certain rights which were bestowed upon them by the Congress before. This was not the case with the bill as reported, as voted by the House of Representatives. So, the motive which prompted me to oppose H.R. 2669 was no longer present insofar as deprivation of the individuals are concerned.

Senator HRUSKA. I see. But those arguments, of course, by any class that still finds itself unprovided for would be quite applicable, would they not?

Mr. DOMAN. In principle, yes, but I am not authorized to speak on behalf of any other class.

Senator HRUSKA. But I mean as a matter of logic and——

Mr. DOMAN. Yes; that is right.

Senator HRUSKA. Mr. Counsel, have you any questions?

Mr. YOUNG. One question, Mr. Witness.

Can you tell us how the amendment was arrived at and put into the bill when the bill was on the House floor which amendment preferred the individuals over the corporation?

Mr. DOMAN. I do not know on the procedure, because I was participating at the hearings in the House, so I cannot give any details how the amendment was added. But I understood later that the members of the House committee were motivated by the plight of the individuals. That is why they added the individuals as a priority category.

Mr. YOUNG. That is all.

Senator HRUSKA. Thank you very much for your appearance here.

Our next witness is Mr. John J. Carroll of the Shanghai Power Co.

STATEMENT OF JOHN J. CARROLL, ESQ., VICE PRESIDENT, SHANGHAI POWER CO.; ACCOMPANIED BY WENDELL L. LUND, COUNSEL

Mr. CARROLL. I have a statement, Mr. Chairman, which started out with about 20 pages, earlier today. I have slashed it considerably, after listening to all the other witnesses. If I may submit the statement for the record—if you would please.

Senator HRUSKA. Yes; have you a summary?

Mr. CARROLL. No; I have not. I would like to read it. I have summarized it as I have been sitting here. There are certain points raised by other witnesses which I think I have covered here which I shall not read.

I have with me Wendell Lund, who is the Washington counsel for the Shanghai Power Co.

Senator HRUSKA. As you read, will you designate how you go from page to page?

Mr. CARROLL. Yes.

Mr. Chairman, my name is John J. Carroll and I am vice president of Shanghai Power Co., one of the corporate claimants under the War Claims Act of 1948, as amended. In 1967 Shanghai Power Co. received an award of $7,808,208.12 for damage sustained during World War II, and to date it has received payments aggregating $4,790,301.58 on account of that award. We appear here today in opposition to the enactment of H.R. 2669.

Shanghai Power Co. was organized in 1929 as a subsidiary of American & Foreign Power Co., to acquire the electric generating, transmission and distribution system serving the international settlement in Shanghai. From 1929 to 1941 the company provided electric service in the international settlement and in the extra settlement areas around Shanghai. The properties of the company were seized by the Japanese on December 8, 1941, and were recovered by the company in September 1945 in a state of serious disrepair and with many large items of equipment, which the Japanese armed forces had removed and transported elsewhere, missing.

From 1945 to 1950 the company engaged in an intensive rehabilitation program, but in December 1950, the properties were lost once again, this time to the Chinese Communists, who have neither paid nor offered compensation.

As a public service company Shanghai Power Co. was obligated to commit substantial funds to the construction of fixed assets in China. The Foreign Claims Settlement Commission of the United States recently issued a certification of the company's loss resulting from the 1950 confiscation by the Chinese Communists amounting to $53,832,885. This certification was under the China Claims Act (title V of the International Claims Settlement Act of 1949, 22 U.S.C. sec. 1643–1643k).

Shanghai Power Co. has not been able to pay any return whatever upon its securities during the last 20 years. Its present assets derive exclusively from the payments received to date on its war claims award.

It is the position of Shanghai Power Co. that it was the clearly enunciated policy of the Congress of the United States in 1962 that the system of priorities in the distribution of war claims funds was to prefer individual claims for death and injury and the claims of small businesses over all other claims. These—and no other—priorities were enacted into law in that year. A set of ground rules was laid down in the act for all prospective claimants to understand. I submit that there is something that clashes with elemental American standards of fairness in changing the rules 8 years later.

One of the principal reasons that has been urged upon the Congress in support of the retroactive extension of discriminatory treatment in

the payment of war claim awards is that corporations have been able to make good their losses through tax benefits and deductions. Whatever may be the position of other corporations, I can state that Shanghai Power Co. has received no tax benefits under the United States Internal Revenue Code from "war losses" and none by reason of the application of foreign tax laws. All its assets were in China.

What is really being urged here by the nonprofit and nontaxpaying organizations is a discrimination against taxpayers in favor of nontaxpayers. In other words, the measure proposed would use the war claims fund to make an additional contribution to a nontaxpayer group, namely the nonprofit organizations, at the expense of the taxpayer group.

Parenthetically, I would ask the question at this time, Mr. Chairman, for the record: would such taxpayer groups be allowed a tax deduction for the contributions they would be making as a result of giving the remaining part of this fund to the nonprofit organizations? It is a question of importance in settling this matter.

This nontaxpayer group has already enjoyed the benefits of our tax laws in that the source of funds for properties which formed the basis for their claims were deducted in the tax returns of their contributors and the group itself pays no taxes.

It is no reflection whatever upon the good work that is done by these nonprofit groups appearing before this committee to draw attention to the tax benefits which they have received under our tax laws.

What I cannot fail to mention, however, is that the net result of the arguments that have been presented on behalf of the nonprofit organizations is that because they and their contributors have been accorded certain tax concessions by law it follows that they should likewise be accorded a preference over taxpaying organizations in the distribution of funds derived from vested enemy assets. This, it is submitted, is not only a nonsequitur but an extremely questionable extension of preferred treatment into an entirely new area.

The further arguments are used by proponents of the legislation that (1) the war claims awards are merely a "drop in the bucket" to the corporations whereas they are meaningful in amount to other claimants and (2) the corporate claimants have already received large payments from the war claims fund.

I would hazard the guess that the "drop in the bucket" argument will not hold water if the awards and the financial standing of claimants for whom a preference is proposed in H.R. 2669 were to be subjected to careful analysis. I can assure this committee that insofar as Shanghai Power Co. is concerned, its award is no "drop in the bucket" but instead it represents the company's assets. In any event, we hope we have not reached the point where a claimant may be deprived of equal treatment for the reason that he is so well off that he will hardly feel it.

The assertion that corporate claimants have received a large percentage of the war claims fund can lead to no conclusion other than the correct one: the corporate claimants had more invested, had more at stake and suffered more in the way of damages than did other claimants. There would appear to be no logical reason why, under these circumstances, they should not participate in the war claims fund in a manner commensurate with the extent of their losses.

Concerning the individual claimants, and we just had testimony along this line, the proposal that claims of individuals be raised to a preferred status raises many questions. While it may be conceded that the priority for physical injury and death is one that would meet with almost universal approval, the remaining individual claims go beyond this status. In a number of instances, they are very large indeed and are for all practical purposes indistinguishable from the corporate claims.

When all claims up to $10,000 have been paid and we are now dealing in some cases with awards ranging from several hundred thousand to over $1 million each, it should be clear that the rights of impecunious persons are not at issue. The elevation of form over substance that is involved in discriminating between those claimants that held their property in corporate form and those that did not is unlikely to bring about an equitable result.

There are many possible examples of the quirks that such an approach would introduce in the payment of claims. For example, an individual American stockholder in a foreign corporation, under H.R. 2669, would be compensated in full, whereas an American stockholder in an American corporation more than 50 percent owned by Americans may well receive no further award. Just as strange, an American stockholder in a corporation which is less than 50 percent American-owned would collect in full as an individual, whereas American stockholders in American corporations that are 50 percent or more owned by Americans probably would not participate in any further payments.

A system of priorities tends to lead to results such as this and in the highly technical area of international finance and investment the possibilities for unfair results are further compounded.

GOVERNMENT POLICIES SHOULD BE CONSISTENT AND CERTAIN

In any claims procedure, claimants, though they may not be able to know whether adequate funds will be available to satisfy their claims, should at least be advised at the outset of the manner in which available sums will be distributed.

The proposed bill is undesirable both in terms of equity and policy. It is wholly inconsistent with the oft-expressed policy of the U.S. Government to encourage international investment. The long-range policy of fostering American participation in international busiuess would not be advanced by following a course which, far from protecting foreign investments, would actually discriminate against them in an area where the United States does have control over legitimate unpaid claims.

Finally, the proposed amendment is inconsistent with the long-standing rules governing bankruptcy proceedings, which deal with situations similar in a sense to those here under consideration. Under the Bankruptcy Act, priorities are based on the type of claim, rather than on the type of claimant. Equal treatment has proven to be the most equitable, as well as the most practical, method of dealing with different claimants with the same type of claims. In the circumstances involved here, the only remaining unpaid claimants have claims based on property losses; they should be treated equally.

If H.R. 2669 were enacted, all of the foregoing inequities and unfortunate policy precedents would result, to the benefit of 29 nonprofit

corporations, which have already received the first $10,000 of their claim and 61 percent of the balance, and to the benefit of 848 individuals, each of whom has received at least $10,000 and whose average payment on the total awards is 71 percent.

Senator HRUSKA. Mr. Witness, I am going to be called away shortly.

Mr. CARROLL. Mr. Chairman, the next section deals with precedents that have been advanced by proponents for support of this bill, primarily the consideration accorded the Jewish Restitution Successor Organization. There, however, a prior payment of $500,000 from the war claims fund to that organization represented a lump sum settlement of heirless property claims, a highly-individualized situation clearly distinct from that involved here. An earlier witness has spoken to the Philippine situation. As far as that is concerned, I would say that the 1952 Philippine preferences provide no precedent whatsoever for the proposed bill before this committee. There is no distinction in this bill between secular and sectarian facilities damaged or destroyed during the war. Further, there is no restriction in the bill which earmarks funds received as a result of for replacement of damaged facilities. Nor can the bill be said to have as its purpose the repayment of those who assisted the American war effort.

All of these things were available in the Philippines preference. Thus, none of these special factors which resulted in the 1952 Philippine legislation are present here. In fact, if the 1952 amendments can serve as a precedent in any manner, it would be in opposition to H.R. 2669.

In conclusion, Mr. Chairman, our position is that H.R. 2669 should not be enacted into law because (1) priorities—with certain very limited exceptions such as claims for loss of life and physical injury—are undesirable, unfairly discriminatory and invariably work injustices, (2) a system of priorities that places corporations at the bottom of the list is inconsistent with well considered policies of the U.S. Government such as those relating to the encouragement of productive private investment abroad; and (3) the war claims legislation clearly sets forth an order of priority which cannot be changed at this late date without serious inequities.

Thank you, Mr. Chairman.

Senator HRUSKA. Thank you for your statement. It will appear in full in the record so that you will not have been deprived of the presentation of any statement made in this printed statement.

Mr. CARROLL. Thank you.

(The complete statement of Mr. Carroll follows:)

STATEMENT BY JOHN J. CARROLL, VICE PRESIDENT OF SHANGHAI POWER COMPANY

My name is John J. Carroll and I am Vice President of Shanghai Power Company, one of the corporate claimants under the War Claims Act of 1948, as amended. In 1967 Shanghai Power Company received an award of $7,808,208.12 for damage sustained during World War II, and to date it has received payments aggregating $4,790,301.58 on account of that award. We appear here today in opposition to the enactment of H.R. 2669.

Shanghai Power Company was organized in 1929 as a subsidiary of American & Foreign Power Company to acquire the electric generating, transmission and distribution system serving the International Settlement in Shanghai. From 1929 to 1941 the Company provided electric service in the International Settlement and in the Extra Settlement areas around Shanghai. The properties of the Company were seized by the Japanese on December 8, 1941 and were recovered by the Company in September 1945 in a state of serious disrepair and with many large items of equipment, which the Japanese armed forces had removed and transported elsewhere, missing.

From 1945 to 1950 the Company engaged in an intensive rehabilitation program, but in December 1950 the properties were lost once again, this time to the Chinese Communists, who have neither paid nor offered compensation.

As a public service company Shanghai Power Company was obligated to commit substantial funds to the construction of fixed assets in China. The Foreign Claims Settlement Commission of the United States recently issued a certification of the Comapny's loss resulting from the 1950 confiscation by the Chinese Communist amounting to $53,832,885. This certification was under the China Claims Act (Title V of the International Claims Settlement Act of 1949, 22 U.S.C. Sections 1643–1643k).

Shanghai Power Company has not been able to pay any return whatever upon its securities during the last 20 years. Its present assets derive exclusively from the payments received to date on its war claims award. The preparation of the war claim and also of the claim under the China Claims Act involved lengthy and expensive investigation which included the obtaining of detailed testimony from witnesses and former employees who were scattered all over the globe. This expense was incurred by Shanghai Power Company in the understanding that the system of priorities established in the 1962 Act would remain in effect.

It is the position of Shanghai Power Company that it was the clearly enunciated policy of the Congress of the United States in 1962 that the system of priorities in the distribution of war claims funds was to prefer individual claims for death and injury and the claims of small businesses over all other claims. These—and no other—priorities were enacted into law in that year. A set of ground rules was laid down in the Act for all prospective claimants to understand. I submit that there is something that clashes with elemental American standards of fairness in changing the rules eight years later.

One of the principal reasons that has been urged upon the Congress in support of the retroactive extension of discriminatory treatment in the payment of war claim awards is that corporations have been able to make good their losses through tax benefits and deductions. Whatever may be the position of other corporations, I can state that Shanghai Power Company has received no tax benefits under the United States Internal Revenue Code from "war losses" and none by reason of the application of foreign tax laws.

What is really being urged here by the non-profit and non-taxpaying organizations is a discrimination against taxpayers in favor of non-taxpayers. In other words, the measure proposed would use the war claims fund to make an additional contribution to a non-taxpayer group, namely the non-profit organizations, at the expense of the taxpayer group. This non-taxpayer group has already enjoyed the benefits of our tax laws in that the source of funds for properties which formed the bases for their claims were deducted in the tax returns of their contributors and the group itself pays no taxes.

It is no reflection whatever upon the good work that is done by these non-profit groups appearing before this Committee to draw attention to the tax benefits which they have received under our tax laws. Nor is it my intention to seek to make comparisons or draw judgments between the value of the work done by such organizations and the economic benefits resulting from the commercial activities of other classes of claimants. What I cannot fail to mention, however, is that the net result of the arguments that have been presented on behalf of the non-profit organizations is that because they and their contributors have been accorded certain tax concessions by law it follows that they should likewise be accorded a preference over taxpaying organizations in the distribution of funds derived from vested enemy assets. This, it is submitted, is not only a non-sequitur but an extremely questionable extension of preferred treatment into an entirely new area.

The further arguments are used by proponents of the legislation that (1) the war claims awards are merely a "drop in the bucket" to the corporations whereas they are meaningful in amount to other claimants and (2) the corporate claimants have already received large payments from the war claims fund.

I would hazard the guess that the "drop in the bucket" argument will not hold water if the awards and the financial standing of claimants for whom a preference is proposed in H.R. 2669 were to be subjected to careful analysis. I can assure this Committee that insofar as Shanghai Power Company is concerned its award is no "drop in the bucket" but instead it represents the Company's assets. In any event, we hope we have not reached the point where a claimant may be deprived of equal treatment for the reason that he is so well off that he will hardly feel it.

The assertion that corporate claimants have received a large percentage of the war claims fund can lead to no conclusion other than the correct one: the corporate claimants had more invested, had more at stake and suffered more in the way of

damages than did other claimants. There would appear to be no logical reason why, under these circumstances, they should not participate in the war claims fund in a manner commensurate with the extent of their losses.

Concerning the individual claimants, and we just had testimony along this line, the proposal that claims of individuals be raised to a preferred status raises many questions. While it may be conceded that the priority for physical injury and death is one that would meet with almost universal approval, the remaining individual claims go beyond this status. In a number of instances, they are very large indeed and are for all practical purposes indistinguishable from the corporate claims.

When all claims up to $10,000 have been paid and we are now dealing in some cases with awards ranging from several hundred thousand to over one million dollars each, it should be clear that the rights of impecunious persons are not at issue. The elevation of form over substance that is involved in discriminating between those claimants that held their property in corporate form and those that did not is unlikely to bring about an equitable result.

There are many possible examples of the quirks that such an approach would introduce in the payment of claims. An individual American stockholder in a foreign corporation would, under H.R. 2669, be compensated in full for his loss whereas an American stockholder in an American corporation more than 50% owned by Americans may well receive no further payments on account of the corporation's award. Just as strange, an American stockholder in an American corporation which is less than 50 % American owned would collect in full as an individual, whereas American stockholders in American corporations that are 50% owned by Americans will probably not participate in any further payments. A system of priorities tends to lead to results such as this and in the highly technical area of international finance and investment the possibilities for unfair results are further compounded.

GOVERNMENT POLICIES SHOULD BE CONSISTENT AND CERTAIN

In any claims procedure, claimants, though they may not be able to know whether adequate funds will be available to satisfy their claims, should at least be advised at the outset of the manner in which available sums will be distributed.

The proposed bill is undesirable both in terms of equity and policy. It is wholly inconsistent with the oft-expressed policy of the United States Government to encourage international investment. In the Foreign Assistance Act of 1961 the Congress proclaimed:

"The Congress of the United States recognizes the vital role of free enterprise in achieving rising levels of production and standards of living essential to economic progress and development. Accordingly, it is declared to be the policy of the United States . . . to encourage the contribution of United States enterprise toward economic strength of less developed friendly countries, through private trade and investment abroad, private participation in programs carried out under this chapter (including the use of private trade channels to the maximum extent practicable in carrying out such programs), and exchange of ideas and technical information on the matters covered by this subsection." (22 U.S.C. § 2351)

The long range policy of fostering American participation in international business would not be fulfilled by following a course which, far from protecting foreign investments, would actually discriminate against them in an area where the United States does have control over legitimate unpaid claims. It is to be doubted that any encouragement to invest sums in international business could be gleaned by corporations or prospective stockholders from this amendment.

Finally, the proposed amendment is inconsistent with the long standing rules governing bankruptcy proceedings, which deal with situations similar in a sense to those here under consideration. Under the Bankruptcy Act, priorities are based on the type of claim, rather than on the type of claimant. Equal treatment has proven to be the most equitable, as well as the most practical, method of dealing with different claimants with the same type of claim. In the circumstances involved here, the only remaining unpaid claimants have claims based on property losses; they should be treated equally.

If H.R. 2669 were enacted, all of the foregoing inequities and unfortunate policy precedents would result, to the benefit of 29 non-profit corporations, which have already received the first $10,000 of their claim and 61% of the balance, and to the benefit of 848 individuals, each of whom has received at least $10,000 and whose average payment on the total awards is 71%.

PRECEDENTS PURPORTEDLY SUPPORTING PASSAGE OF THE BILL ARE DISTINGUISHED BY THEIR SPECIAL CIRCUMSTANCES

To bolster their assertions, supporters of this bill cite several examples of religious and charitable organizations which have received preferences of various descriptions from the United States Government. However, on closer scrutiny, these authorities lose their force.

For example, it has been suggested that the special consideration accorded the Jewish Restitution Successor Organization is a precedent for this bill.[1] There, however, a prior payment of $500,000 from the war claims fund to that organization represented a lump sum settlement of heirless property claims, a highly-individualized situation clearly distinct from that involved here. To further show the special circumstances involved in that case, the sums paid were specifically designated for use in charitable work in the United States.

Legislation in 1952 according a special status for war losses of religious organizations in the Philippines[2] also dealt with a highly individualized situation clearly distinct from that presently under examination. Indeed, the care taken in explaining the purpose of the special status of the Philippine organizations, as well as the precise designation of how the funds received as a result of the preference were to be utilized, argue against passage of this Bill.

One important justification of the 1952 Philippine preferences was the desirability of compensating missionary groups in that area which had, at great loss to themselves, aided American civilians and military personnel and thereby assisted the successful prosecution of the War. Section 7(b) of the War Claims Act, as amended by the 1952 legislation, restricted the preference to:

> * * * any such religious organization or its personnel functioning in the Philippines and affiliated with a religious organization in the United States, which furnished relief in the Philippines to members of the Armed Forces of the United States or to civilian American citizens * * *

Moreover, the House report on the 1952 legislation stated that:

"The underlying theory of this section appears to be a recognition of the obligation of the Government to protect its own citizens and to reimburse agencies which by extending relief to civilian American citizens and military personnel enabled them to continue to prosecute the war." [3]

Another notable feature of the 1952 Amendments is that they did not provide compensation for facilities used by religious organizations for religious purposes. Under Section 7(b) of the War Claims Act, as amended, only losses to "schools, colleges, universities, scientific observatories, hospitals, dispensaries, orphanages, and other property or facilities connected with its educational, medical, or welfare work" were given priority in compensation.

Finally, a very important purpose of the 1952 preferences was to facilitate restoration of secular facilities in the Philippines. Speaker McCormack, who sponsored the 1952 Amendments in the House, testified as to this purpose:

"[The Amendment] attacks communism on the ideological level, because it provides for the rehabilitation of nonprofit private schools, hospitals, and welfare institutions that were battered to the ground because of their loyalty to the United States during the last war." [4]

To achieve this purpose, Section 7(d) of the War Claims Act, as amended, required that claims "shall be determined and paid upon the basis of postwar cost of replacement", and Section 7(f) required that money paid to an American affiliate of an organization operating in the Philippines "shall be used by such affiliate for the purpose of restoring the educational, medical, and welfare facilities described in subsections (b) and (c) and located in the Philippines". Thus the funds were to be utilized for rehabilitation of secular facilities in the Philippines and were not to be available for general religious purposes.

Therefore, the 1952 Philippine preferences provide no precedent whatsoever for the proposed bill before this Committee. There is no distinction in this bill between secular and sectarian facilities damaged or destroyed during the War. Further, there is no restriction in the bill which earmarks funds received as a result thereof for replacement of damaged facilities. Nor can the bill be said to

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[1] P.L. 87-846, amending § 32(b) of Trading with the Enemy Act, as amended, 50 U.S.C. App. 1 and Executive Order No. 10587, Jan. 13, 1955 (20 Fed. Reg. 361) and Exec. Order No. 11086 (28 Fed. Reg. 1833); FCSC Order dated June 28, 1963, reported in 18-Semi-Ann. R. June 30, 1963, p. 11.

[2] 50 U.S.C. App. § 2006 (1951), as amended.

[3] H. Rep. 1631, *Report of the Committee on Interstate and Foreign Commerce*, on H.R. 5385, 82d Cong., 2d sess. (1953) at p. 3.

[4] Hearings Before the House Committee on Interstate and Foreign Commerce, 82d Cong., 1st Sess., at p. 112.

have as its purpose the repayment of those who assisted the American war effort. Thus, none of the special factors which resulted in the 1952 Philippine legislation are present here. In fact, if the 1952 Amendments can serve as a precedent in any manner, it would be in opposition to H.R. 2669.

CONCLUSION

In conclusion, our position is that H.R. 2669 should not be enacted into law because (1) priorities—with certain very limited exceptions such as claims for loss of life and physical injury—are undesirable, unfairly discriminatory and invariably work injustices, (2) a system of priorities that places corporations at the bottom of the list is inconsistent with well considered policies of the United States Government such as those relating to the encouragement of productive private investment abroad; and (3) the war claims legislation clearly sets forth an order of priority which cannot be changed at this late date without serious inequities. Further, it is submitted that the arguments propounded in favor of this retroactive and discriminatory legislation are unsound in that, among other things, (a) there is no logic in advancing the claims of non-taxpayers over the claims of taxpayers, (b) it is inaccurate to say that corporations as a class uniformly have received tax benefits as a result of their war losses, (c) where exceptionally favorable treatment has heretofore been given to certain classes of claimants under the war claims program, there have been factors that distinguish those situations from the ones here at hand.

Mr. YOUNG. Mr. Lund, the Foreign Claims Settlement Commission says that under this bill the individuals will get $2.3 billion. Do you know whether they have included in that calculation the amounts that the individuals would get under the 49 percent corporations?

Mr. LUND. I cannot answer that categorically. I should not think that it would be included in the $2.3 million. I would doubt that, but I would like to look into it a little further. I would not think they would have filed it.

Mr. YOUNG. Their calculations can only be taken upon the claims that they have before them.

Mr. LUND. The claims that have been filed; right.

Mr. YOUNG. A minority stockholder—that is a stockholder in a 51 or 49 percent corporation—cannot have filed until this bill has become law, because the present category, they are down in the cowcatcher; is that not true?

Mr. LUND. They could have filed, Mr. Young. They could have filed, but they would not have had the preference that this bill calls for. They would have received $10,000 plus approximately 61 percent.

Mr. YOUNG. Thank you.

Mr. LUND. What Mr. Carroll is saying is that it would create many tax anomalies—for example, the difference between a 51 percent situation and a 49 percent situation, which is 2 percentage points. In the one case, he is made whole because he is a minority shareholder. In the other, he is part of a corporation that is disadvantaged under this bill. The corporation gets only what is left, if anything, after the nonprofit groups and individuals have been paid off. So that is one of the anomalies. It is one of many anomalies.

Senator HRUSKA. Fine. Thank you very much for appearing.

I understood that yesterday, some telegrams and letters were put in the record. Here is another one that will be put in the record. It is from Dr. William A. Wexler, president of the B'nai B'rith and chairman of the Conference of Presidents of Major Jewish Organizations.

(The telegram referred to follows:)

B'NAI B'RITH PUBLIC RELATIONS,
September 17, 1970.

Senator ROMAN L. HRUSKA,
U.S. Senate,
Washington, D.C.

As president of B'nai B'rith and chairman of the Conference of Presidents of Major Jewish Organizations I urge you most strongly and sincerely to lend your full support to the prompt enactment of H.R. 2669 the necessary amendment of the War Claims Act. Millions of Americans throughout the country look to you for leadership and wise action on this important bill.

Sincerely,

Dr. WILLIAM A. WEXLER.

Senator HRUSKA. No, Mr. Ferencz, that bell that you hear is the vote bell. We can leave this record open for a few days so that you can file a statement. I might say that the points that—I do not know what points you intend to offer, but the points of bankruptcy analogy to the War Claims Act would be, that would be one point that perhaps you could comment on. Then the tax situation to which reference has been made, and thirdly, the matter of whether or not the religious organizations involved have their damages in terms of secular losses or nonsecular losses. Those three points.

Could you prepare a memorandum bearing on those three points and such additional points as you may wish?

Mr. FERENCZ. Mr. Chairman, I hate to impose on your time; I know it is pressed, but if you will give me 10 minutes, we shall wait until you are back, and I can respond on all those points and then we can clear this record.

Senator HRUSKA. I have done an awful lot of walking this afternoon to preserve my voting record.

Mr. FERENCZ. I say we will wait here.

Senator HRUSKA. Well, I do not want to be arbitrary about this. I would want to tell Mr. Doman, if he is still here, he wanted to expand on his answer to the tax thing, too. I would welcome that.

Mr. Ferencz, I do not want to be arbitrary and shut you off. If you want to prepare a memorandum, you may do so and send it to the chairman of the committee and the clerk will see that it is properly included in the record.

Mr. DOMAN. Thank you, Senator.

Senator HRUSKA. Can you prepare such a memorandum?

Mr. FERENCZ. Yes, Mr. Chairman.

Senator HRUSKA. I think it will be advisable because of the situation with which we are confronted.

Very well. The subcommittee will adjourn, subject to the call of the Chair. There will be referred to the chairman the matter of the printing of the record, and the record will stay open for such time as it will be necessary to get these memorandums, not to exceed, however, 1 week. I hope you can get it in sooner than that.

(Whereupon, at 5:40 p.m. the hearing was adjourned, subject to the call of the Chair.)

STATEMENT SUBMITTED BY BENJAMIN B. FERENCZ, ESQ., COUNSEL TO THE COORDINATING COUNCIL OF RELIGIOUS AND WELFARE AGENCIES WITH WAR DAMAGES AWARDS, SEPT. 18, 1970

Mr. Chairman I appreciate the courtesy which you and Senator Kennedy have extended to allow us to comment briefly on the principal points raised in opposition

to H.R. 2669. Although I have not had occasion yet to see the lengthy briefs they have submitted, I have listened with great interest to the statements made by the eloquent and able attorneys, the high corporate officers and the Washington Directors of government relations who have appeared on behalf of five large corporations to testify against the bill.

I have noted the arguments made by the distinguished President of the National Foreign Trade Council as well as the concern expressed by those united for the separation of church and state. There were four principal points raised by all or some of these eminent speakers and I will deal briefly with each.

1. First we heard that there was no precedent for this amendment. I do not believe they could have meant that there was no precedent for aiding the work of churches and charities by treating them differently than business corporations. I am proud to say that it has always been the tradition of the government of the United States to make legal distinctions between those who work for personal or commercial profit and those who serve the spiritual and welfare needs of the public. I hope it will always remain that way.

Perhaps what was meant was that in their opinion there was no precedent in the War Claims Program for allowing churches and charities to be paid in full before the large corporate claimants received every dollar of compensation for their losses. We do not have to look very far to find the precedents which the opponents of the bill have been unable to see. This very same law, in Title I, which was the first part enacted in 1948 to cover losses in the Phillipines dealt only with payments of first priority. Those were claims of prisoners of war, internees or employees who had suffered death or disability, and, in the same top priority footing the War Claims Act had a special section entitled, in large capital letters, "RELIGIOUS ORGANIZATIONS." It went on to set forth in Section 7:

> The Commission is authorized to . . . provide for the payment of any claim filed by any religious organization functioning in the Philipine Islands and affiliated with a religious organization in the United States.

Full compensation was provided for the:

> Loss and damage sustained as a consequence of the war to its schools, colleges, universities, scientific observatories, hospitals, dispensaries, orphanages, and other property or facilities connected with its educational, medical or welfare work.

Not only was there to be compensation in full but it was to be "paid upon the basis of post-war cost of replacement" which is a much more favorable rate than the "pre-war cost of construction less depreciation" basis which was to appear later in Title II.

The opponents of HR 2669 have sought to make much of the fact that the money thus paid to such affiliated religious organizations in the United States under Title I of the War Claims Act had to be used for the secular purpose of restoring the destroyed educational, medical and welfare facilities. All religious organizations try to restore their losses when they can, and designating as a legal obligation what they would normally do anyway is not a burden which justifies any special reward. Nor is it a valid basis for distinguishing the precedent. It was made very clear in the record of hearings in the House that the awards to nonprofit agencies were not merely for the destruction of churches but primarily or almost exclusively for the loss of just the same kind of secular facilities which were covered by the Philippine Island program. It was further made clear that the nonprofit agencies intend to use the War Claims Fund primarily to help rebuild their schools, hospitals, dispensaries, orphanages and other secular facilities. The opponents of the law have pointed to a distinction without a difference.

The reason why religious organizations were paid in full at a time when the business corporations got absolutely nothing was because the Congress recognized that the work being done by the religious organizations was more in the national interest than a distribution of funds to the corporate coffers.

The precedent in Title I in favor of religious organizations, even stronger than what is proposed in H.R. 2669—is there, clearly written for all to see. The failure to provide similar rights to the same type of organizations for losses in areas other than the Phillipines is an inconsistency in the War Claims Law—an inconsistency which should now be corrected in accordance with the precedents contained in the War Claims Law itself. (See Report No. 2035, 87th Cong., 2nd Session, 1962, p. 26,27.)

2. Next we were told by the lawyers for the five big corporations that H.R. 2669 should be defeated because it would violate the principles of the bankruptcy laws. I have not read their briefs on the bankruptcy law which I am sure are very learned.

Bankruptcy laws may be relevant to the five corporations but they have nothing to do with War Claims legislation. Payments from the War Claims fund have always been governed by "principles of equity and justice." Any reading of any of the publications on War Claims will confirm this. I have never before heard any mention of bankruptcy practice for War Claims. Quite the contrary, all the distinguished lawyers for the opposition have to do to recognize their error is again to look at the very law we are talking about. All claims for death or personal injury have been paid in full, all awards regardless of size to any profitmaking business with annual sales of up to five million dollars have already been paid in full. Now the representatives of the largest corporations, which have already taken over $153 million out of the $193 million paid out, say, "Let us apply the principles of bankruptcy law." If they do begin to apply those principles now to the churches and charities and individuals, so that each is paid pro-rata, the corporations know that out of every dollar of further distribution the large corporations will get .83¢ while the individuals with awards over $10,000 will get .09¢ and the 29 churches and non-profit organizations will get only .08¢. The argument of the corporate attorneys is as uninspiring as it is unpersuasive. Let us instead adhere to the past practices and precedents of War Claims distribution and look not to irrelevant and inapplicable commercial bankruptcy rules but to equity and justice as H.R. 2669 proposes.

3. According to the Congressional reports, one, but only one, of the reasons why the large corporations were given the lowest priority was because, among other things, they enjoyed various tax advantages not available to other claimants. Now the representatives of the five large corporations come and say it isn't so. Corn Products, for example, acknowledges that it had tax savings in 1941 of $4 million but argues that this had to be deducted when the War Claims awards were paid in 1967. In 1967 they received about $14 million more on their total loss of $26 million. The amount this one company received happens to be more than the combined total needed to satisfy all the remaining balances due to all the churches and charities. It should be noted that for the 26 years from 1941 to 1967 Corn Products had full use of the $4 million they saved on taxes in 1941. They could and did use and multiply those millions for over a quarter of a century before the churches and charities saw even a penny of compensation for their destroyed missionary schools, hospitals, orphanages and other institutions.

At only 4% simple interest that $4 million would have more than doubled so that the actual recovery was at least $8 million plus the $14 million paid in 1967, or a total of $22 million on a gross loss of $26 million. Thus their real recovery has been at the very least 85% of their loss—while the churches have received 62%. Yet the corporations say they have had no advantage.

We are very pleased that Corn Products (now called CPC International) has prospered and done so well that its net worth rose from $47 million in 1945 to $189 million in 1969. (Moody's Manual, 1950, p. 2455, 1969, p. 1523.) We are convinced that the record will show many advantages over the churches and charities.

The American tax laws provided that any property located in enemy territory could be written off as a total tax loss even before the war broke out. (Sec. 127 of IRC, 1939) The National Foreign Trade Council has argued here that 9 of the largest corporations did not take any tax deduction. But when asked why they did not take any deduction the answer came back: "I do not know." If some corporations did not choose to take advantage of those benefits it was probably because there were greater advantages to be obtained by using other accounting devices. It is hardly conceivable that the large corporations would simply forgo the tax advantages which the law allowed. It should not be overlooked that only *federal* tax benefits need to be deducted from the war damage awards. There is no set-off whatsoever for city, state or *foreign* taxes which the corporation might have saved by deducting war losses.

The large corporations with complete accounting records and large legal staffs were in a much better position than anyone else to substantiate the magnitude of their losses and accordingly to obtain maximum awards. They have generally succeeded in re-establishing themselves abroad. IT&T and General Electric which have appeared here to oppose H.R. 2669 have fortunately grown tremendously in the post-war years. There is ample reason why the Congress repeatedly declared as a matter of policy that they should enjoy a lower priority of War Claims payments since their needs were not as compelling as the needs of others who had been less fortunate.

4. The last major objection raised by the five corporations opposing H.R. 2669 was based on the argument that the amendment is unconstitutional. Many months ago the corporations submitted a detailed memorandum and requested

the views of the competent government agencies. Now they don't like the answer they received. The views of the Attorney General are authoritative and convincing. May I quote briefly from the documented report of July 13, 1970, from the Office of the Attorney General of the United States to the Chairman of the Judiciary Committee, Senator Eastland:

> . . . The classification here is not an arbitrary one. Congress could reasonably make the judgment that corporate claimants should be paid last. In reaching that judgment, Congress might reasonably take into consideration the fact that corporate claimants have received substantial tax benefits in claiming war losses and have received the great bulk of the money which has been paid out under the War Claims Act. Of approximately $219 million distributed, almost $154 million has been distributed to large corporations. . . It is most unlikely that the courts would find fault with the legislative classification provided by H.R. 2669.
>
> . . . In our view the 1962 legislation created "no property right" in the corporate claimants which is protected by the due process clause.
>
> We believe the provision does not violate the First Amendment.

In reference to this last sentence, the Attorney General noted, in the usual way of cautious lawyers, that "We recognize that the question is not entirely free from doubt." Since the conclusion of the Supreme Court might be different if a case arose involving a transfer of governmental funds. The learned attorney for IT&T did not note that we are not talking about an appropriation of government funds here, but the discharge of claims out of an earmarked fund of vested foreign assets. Instead he seized upon the precautionary phrase of the Attorney General to renew his challenge by submitting a lengthy brief on constitutional law. If one looks at the facts a little more closely it seems an act of desperation.

As cited above, Title I of the War Claims Act clearly and specifically created a preference for "religious organizations" in 1948. There has never been any question raised about its constitutionality, and the Phillipines Program is successfully closed. During the hearings in the House, Mr. Moss, the Chairman of the subcommittee, specifically asked the Chairman of the Foreign Claims Settlement Commission:

> Do you see in any proposal to make payments to religious and charitable institutions any possibility of First Amendment conflict?

The prompt reply was, "No sir." The knowledgeable General Counsel of the Commission agreed. (Serial 91–3, p. 20.)

What is perhaps most decisive is the fact that even the government agencies were acting under the erroneous belief that almost all the 29 agencies which would benefit from HR 2669 are religious organizations. The amendment relates to "non-profit organizations operated exclusively for the promotion of social welfare, religious, charitable or educational purposes." If one examines the list of beneficiary agencies, which was part of the record of the hearings in the House (Serial 91–3, p. 26–7), it will reveal many organizations which are educational, charitable, social welfare and not specifically religious organizations. See for example, Yale-in-China, Anatolia College, the China Medical Board, B'nai B'rith which is a social welfare organization, the American Fram School, and others. Somehow the notion got started that 99% of either the funds or the organizations were strictly religious and the error was simply perpetuated without anyone looking more closely at the facts. If the classification of "Religious Organizations" in Title I created no constitutional problems for all these years, surely the broader classification which merely includes religious organizations among several others should create no problems.

In summary therefore we see that there are ample precedents justifying and indeed requiring the amendment here proposed. The bankruptcy rules are and always have been out of place in War Claims distributions. The corporations have indeed been offered and received tax advantages as well as other advantages which justify allowing other groups less favored to come to the fore. The proposed amendment is constitutional and in the public interest.

We are grateful to those many large American corporations which, though mindful of HR 2669, have not appeared to speak against it. These five large corporations out of 167 have chosen to be heard in opposition to HR 2669. These five corporations alone have received over $50 million. They were silent when a preference was written into the law giving full payment to companies which employed up to 1,000 employees and to companies whose sales were up to $5 million per annum. They were even silent when on two different occasions legislation was nearly enacted which would have depleted the War Claims fund by

paying the already preferred "small business" claimants over 150% more in retroactive interest payments in addition to the 100% they had already received. Profit making small businesses would have had 250% of their awards paid while churches and charities received only 62% yet these 5 large corporations did not appear to protest. (Cong. Rec. 13075, June 21, 1966; 11087 ff. Sept. 19, 1968). They were silent when hearings on HR 2669 were held in the House. Now they appear here at the last moment and seek to strike down HR 2669 with arguments unsupported by the record. When the hearings in the House were completed the Honorable members of that committee deliberated and then, with one voice, Democrats and Republicans alike, reported the bill favorably. In March of 1969 it was unanimously passed by the House. We respectfully submit that this worthy bill, for 4½ years delayed in the Judiciary Committee and now so close to completion, is worthy of equal action by the Senate.

Thank you.

DOMAN, SPELLMAN & SAN FLIIPPO,
New York, N.Y., September 21, 1970.

Re H.R. 2669 and S. 941.

Hon. JAMES O. EASTLAND,
Chairman, Senate Judiciary Committee,
Washington, D.C.

DEAR SENATOR EASTLAND: At the conclusion of the testimony on the captioned bill, Senator Hruska, as Acting Chairman, authorized and requested an explanatory statement from me with respect to the tax consequences of war losses and their effect on war claim awards.

I stated at the hearing before Senator Hruska that corporations, by being able to take advantage of tax deductions for war losses during World War II, and thereafter by obtaining $10,000 plus 61.3% on their awards, have been or should have been substantially compensated for their losses incurred during World War II. I further stated that, because of this fact, it would be fair and just that an individual should receive approximately as much as received by a corporation through the combination of war loss tax deductions and an award.

As you will undoubtedly recall, for taxable years beginning after September 1, 1939 and before January 1, 1946, the World War excess profits tax was in effect. It applied only to corporations. The rates applied to adjusted excess profit net income were 90% for 1942 and 1943, and 95% for 1944 and 1945, subject to the limitation that the aggregate normal tax, surtax and excess profit tax could not exceed 80% of the corporation's surtax net income.

The war loss statute, Sec. 127 of the Internal Revenue Code of 1939, provided for deduction from income of war losses attributable to property destroyed or seized on or after December 7, 1941. This statute applied not only to corporations but also to other taxpayers. It may be that there are corporations which did not obtain tax benefits from such deductions during World War II because they had no taxable income in the applicable period. If this is so, it would be a rare exception, as rare as the case of an individual who did or could have offset his war losses against his taxable income. We do not know of any individual awardholder who had a large enough income to benefit substantially from the war loss statute. This must have been the reason why Sec. 206 of the War Claims Act is geared to corporations.

Sec. 206 of the War Claims Act of 1948, as amended by Public Law 87–846, provides for an adjustment of awards by the Foreign Claims Settlement Commission when the claimant has received tax benefits on account of the same loss. This Act specifically provides that:

> Each claim in excess of $10,000 filed under this title by a corporation shall include a statement under oath disclosing the aggregate amount of Federal tax benefits derived by such corporation in any prior taxable year or years resulting from any deduction or deductions claimed for the loss or losses with respect to which such claim is filed. In determining the amount of any award where the allowable loss exceeds $10,000 there shall be deducted an amount equal to the aggregate amount of Federal tax benefits so derived by the claimant. For the purposes of this subsection, such Federal tax benefits shall be the aggregate of the amounts by which the claimant's taxes for such year or years under chapters 1, 2A, 2B, 2D, and 2E of the Internal Revenue Code of 1939, or subtitle A of the Internal Revenue Code of 1954 [sections 1–1552 of Title 26] were decreased with respect to such loss or losses. Any payments made on an award reduced by reason of this subsection shall be exempt from Federal income taxes."

The following example will illustrate the operation of the applicable statutes with respect to corporations:

	Tax rate of—		
	80 percent	70 percent	50 percent
War loss	$2,000,000	$2,000,000	$2,000,000
Tax (including excess profit tax) benefit	1,600,000	1,400,000	1,000,000
Award as reduced under section 206 of the War Claims Act	400,000	600,000	1,000,000
$10,000 plus 61.3 percent received on award	249,070	371,670	616,870
So far uncompensated	150,930	228,330	383,130
Or (percent)	7.55	11.43	19.16
Compensated (percent)	92.45	88.57	80.84

It is illusory to suggest that corporations and individuals are treated equally when as the result of tax benefits there is substantial disparity between the two classes of awardholders. A corporation which during World War II when the top corporate tax rate was 80%, had its tax correspondingly reduced, receiving a monetary benefit of 80%. In other words, the corporation which had war losses and such tax benefits, was made whole to the extent of 80% of its losses. Such corporation received 100% benefit on 80% of its loss and 61.3% (plus $10,000) on 20% of its loss. Of course, the individual without the same tax benefit received only 61.3% (plus $10,000).

H.R. 2669, as adopted by the House of Representatives, recognized this disparity when providing for payment to individuals in full after payments to the non-profit organizations.

Respectfully yours,

NICHOLAS R. DOMAN.

P.S. Attached is a schedule of war claim awards which exceed $10,000 in connection with which my firm acted as counsel.

cc: Honorable Roman L. Hruska.

WAR CLAIMS OVER $10,000

Name	Claim No.	Award
Bestermann, Margarethe	W-18006	$32,481.33
Bloch, Mary	W-4443	11,050.00
Galan, Andrew	W-2042	17,877.50
Garbaty, Marie	W-9333	757,543.19
Garbaty, Ella	W-9333	570,462.50
Neumann, Peter M	W-11650	60,703.60
Do	W-11650	11,279.00
Reitler, Alice Lisa and Maria Elizabeth Z., executrices of the estate of Emil Reitler, deceased	W-18008	11,791.47
Warburg, Eric M., as executor of the estate of Max M. Warburg, deceased	W-11622	129,954.41
Warburg, Eric M., individually	W-11623	55,316.21
Weiner, George and Lillian Winters, as executors of the estate of Irma Weiner, deceased	W-18004	38,171.00
Weiner, George and Lillian Winters, as executors of the estate of Irma Weiner, deceased (consolidated award)	W-18004	22,902.60
Weiner, George	W-18003	11,451.30
Weisz-Sechy—Charlotte Sechy, as executrix of the estate of Piroska Josephine Weisz, deceased	W-11625	18,537.00

STEPTOE & JOHNSON,
Washington, D.C., September 24, 1970.

Hon. ROMAN L. HRUSKA,
U.S. Senate,
Washington, D.C.

DEAR SENATOR HRUSKA: I am writing as counsel to International Telephone and Telegraph Corporation with regard to the testimony of Mr. Nicholas Doman on behalf of certain individuals in the recent hearings on H.R. 2669 and with regard to the status of taxable claimants vis-a-vis charitable claimants.

COMMENTS ON MR. DOMAN'S TESTIMONY

Mr. Doman raised questions regarding the tax status of individual war claim awardholders, but he was apparently mistaken when he asserted that individuals were not allowed to take tax deductions for World War II war losses. Consequently, it is requested that this letter clarifying the tax questions raised by Mr. Doman be inserted in the record.

At page 97 of the Recorded Transcript of September 17, 1970, Mr. Doman asserted that corporations had taken "advantage of tax deduction[s] for war losses during World War II," but that "the same opportunities were not available to individuals under the Internal Revenue Code, nor were such opportunities available or needed by non-profit organizations." On page 98 of the record Mr. Doman bases his major argument on a hypothetical example which assumes that individuals could not take deductions. This argument, however, is in error because Section 127 of the Internal Revenue Code of 1939 [1] provided for war loss deductions for individuals for property in enemy hands when the United States entered World War II, for property which later came into enemy hands, and for property destroyed or seized in the course of military or naval operations. Mr. Doman's claim that individuals could not take the same deductions as corporations was the basic foundation of his argument, and without this basis his argument is erroneous and of no account.

Moreover, there is no substantial difference in the tax treatment accorded to individuals and corporations with respect to war loss recoveries. Under Section 206(b) of the War Claims Act the Foreign Claims Settlement Commission has reduced awards to corporations by the amount of previous tax benefits. If an individual deducted his war loss under Section 127, a portion of his recovery, equivalent to that portion of his loss deduction which reduced his tax, must be included in his income. Additionally, the individual may elect to recompute his tax for the year in which he claimed the loss deduction, reducing his deduction by the amount of his recovery and paying any additional tax in his current return.[2] These rules provide individuals treatment at least as favorable as that provided for corporations.

There is one important distinction. The prior tax benefits of individuals are effectively paid into the U.S. Treasury. However, the prior tax benefits of corporations, which reduce their awards, effectively augment the War Claims Fund, thereby making possible greater payments to all awardholders. The adjustment for individual tax benefits does not have this beneficial effect.

The broad generalization that individuals may not have been able to benefit from loss deductions under Section 127 because of their lack of sufficient income during the war years is totally without support in the record, and it offers no ground for distinguishing individuals from corporations. As indicated in ITT's written statement submitted at the hearings a significant number of corporations did not take war loss deductions and have received no tax benefits.

It is completely inappropriate on the present record to ask the Judiciary Committee to rectify by means of last minute preferences tax differentials alleged to have resulted from complex, detailed, and specific provisions of the Internal Revenue Code. Allegations of this character should be presented in proper form to the House Ways and Means Committee or to the Senate Finance Committee for appropriate revisions of the Internal Revenue Code.

Mr. Doman also contended that the corporations received state, local and foreign tax deductions which were not available to individuals. This generalization is equally without support. Several observations are, however, in order. First, there is no indication that the same deductions would not be available to individuals. Second, most state taxing statutes limit both income and deductions to those which relate to activities within the taxing state. Third, any foreign tax benefits would, in the case of a U.S. taxpayer, have been effectively absorbed by operation of the U.S. foreign tax credit. Thus, Mr. Doman utterly fails to establish any ground for distinguishing individuals from corporations.

COMMENTS ON THE PROPOSED PREFERENCE FOR CHARITABLE ORGANIZATIONS

Any argument for a preference for the charities must center on the fact that tax deductions were allowable to corporations (and individuals) which the charities did not, because of their tax exempt status, enjoy. This argument misconceives the nature of the deduction.

[1] A copy of this section is attached.
[2] Sections 1331–1335 of the Internal Revenue Code of 1954.

The investments of a taxable entity or individual are made with funds on which taxes have been paid. The deduction which is allowable on a loss of the property restores to the taxpayer the tax which he has already paid on the funds invested in that property, i.e., he is restored to a position of tax neutrality on those funds. This is assured because the loss deduction may not exceed the taxpayer's "basis" in the property, which is essentially his cost.

The charities made their investments with funds which, because of their blanket exemption from tax, had never been subjected to tax. Thus, it was not necessary to allow a deduction to them on war losses in order to make an adjustment for previously paid taxes. It is thus evident that no preference now exists between the taxable claimants and the exempt claimants and no future preference is warranted.

If you have any further questions about these matters, I would be glad to attempt to answer them. In any case, the addition of this letter to the record of the Hearings on H.R. 2669 will be greatly appreciated.

Very sincerely,

MONROE LEIGH.

§127. War losses

(a) Cases in which loss deemed sustained, and time deemed sustained. For the purposes of this chapter—

(1) Property not in enemy countries. Property destroyed or seized on or after December 7, 1941, in the course of military or naval operations by the United States or any other country engaged in the present war shall be deemed to have been destroyed or seized on a date chosen by the taxpayer in the manner provided in paragraph (4), which falls between—

(A) the latest date, as established to the satisfaction of the Commissioner, on which such property may be considered as not destroyed or seized, and

(B) the earliest date, as established to the satisfaction of the Commissioner on which such property may be considered as having already been destroyed or seized.

For the purposes of this paragraph property within an area which comes under the control of a country at war with the United States after the date war with such country is declared by the United States shall be deemed to have been destroyed or seized in the course of military or naval operations by such country, and the date specified in subparagraph (A) shall not be later than the latest date determined by the Commissioner as the date on which such area was under the control of the United States or a country not at war with the United States, and the date specified in subparagraph (B) shall not be later than the earliest date determined by the Commissioner as the date on which such area may be considered under the control of the country which is at war with the United States.

(2) Property in enemy countries. Property within any country at war with the United States, or within an area under the control of any such country on the date war with such country was declared by the United States, shall be deemed to have been destroyed or seized on the date war with such country was declared by the United States.

(3) Investments referable to destroyed or seized property. Any interest in, or with respect to, property described in paragraph (1) or (2) (including any interest represented by a security as defined in section 23(g)(3) or section 23(k)(3)) which becomes worthless shall be considered to have been destroyed or seized (and the loss therefrom shall be considered a loss from the destruction or seizure) on the date chosen by the taxpayer which falls between the dates specified in paragraph (1), or on the date prescribed in paragraph (2), as the case may be, when the last property (described in the applicable paragraph) to which the interest relates would be deemed destroyed or seized under the applicable paragraph. This paragraph shall apply only if the interest would have become worthless if the property had been destroyed. For the purposes of this paragraph, an interest shall be deemed to have become worthless notwithstanding the fact that such interest has a value if such value is attributable solely to the possibility of recovery of the property, compensation (other than insurance or similar indemnity) on account of its destruction or seizure, or both. Section 23(g)(2) and (k)(2) shall not apply to any interest which under this paragraph is considered to have been destroyed or seized. Under regulations prescribed by the Commissioner with the approval of the Secretary, a taxpayer which owns 100 per centum (excluding qualifying shares) of each class of stock of a corporation may elect to determine the worthlessness of its interest, described in this paragraph, in or with respect to the property of the corporation, without regard to the amount of the property of such corporation which would be excluded under subsection (e)(2)(A) in determining

the adjusted basis of all the assets of the corporation for the purposes of subsection (e), but such amount shall be treated under subsection (b)(1) as a recovery by the taxpayer in the taxable year with respect to such interest.

(4) **Choice of date.** The taxpayer's choice of a date under paragraph (1) or (3) shall be effective only if made within such time and in such manner as may be prescribed by regulations prescribed by the Commissioner with the approval of the Secretary.

(b) **Amount of loss on destroyed or seized property.** In the case of any property or interest in or with respect to property deemed to be destroyed or seized under subsection (a)—

(1) The amount of the loss on account of such property or interest shall be determined with regard to any recoveries with respect thereto in the taxable year but without regard to any possibility of recovering such property or interest, or of receiving any compensation (other than insurance or similar indemnity) on account of such property or interest in the taxable year or in any future taxable year.

(2) The taxpayer may choose to decrease the amount of the loss by all obligations or liabilities of the taxpayer with respect to such property or interest discharged or satisfied out of the property or interest upon its destruction or seizure, if the Commissioner is satisfied that such obligations or liabilities are so discharged or satisfied in a subsequent taxable year, or that the taxpayer is unable to determine whether or not such obligations or liabilities are in fact discharged or satisfied.

No loss shall be deemed to have been sustained upon the destruction or seizure of such property or interest to the extent that it is compensated for by the discharge or satisfaction of obligations and liabilities of the taxpayer out of such property or interest in the taxable year in which such destruction or seizure is deemed to have occurred. The taxpayer's choice under this subsection shall be effective only if made within such time and in such manner as may be prescribed by regulations prescribed by the Commissioner with the approval of the Secretary.

(c) **Recoveries**

(1) **General rule.** Upon the recovery in the taxable year of any money or property in respect of property considered under subsection (a) as destroyed or seized in any prior taxable year, the amount of such recovery shall be included in gross income to the extent provided in paragraph (2), unless the provisions of paragraph (3) are applicable to the taxable year pursuant to an election made by the taxpayer under the provisions of paragraph (5).

(2) **Inclusion in gross income**

(A) **Amount of Recovery.** The amount of the recovery of any money or property in respect of property considered under subsection (a) as destroyed or seized in any prior taxable year shall be an amount equal to the aggregate of such money and the fair market value of such property, determined as of the date of the recovery.

(B) **Amount of Gain Includible.** To the extent that the amount of the recovery plus the aggregate of the amounts of previous such recoveries do not exceed that part of the aggregate of the allowable deductions in prior taxable years on account of the destruction or seizure of property described in subsection (a) which did not result in a reduction of any tax of the taxpayer under this chapter or chapter 2, such amount shall not be includible in gross-income and shall not be deemed gain upon the involuntary conversion of property as a result of its destruction or seizure. To the extent that such amount plus the aggregate of the amounts of previous such recoveries exceed that part of the aggregate of such deductions, which did not result in a reduction of any tax of the taxpayer under this chapter or chapter 2 and do not exceed that part of the aggregate of such deductions which did result in a reduction of any tax of the taxpayer under this chapter or chapter 2, such amount shall be included in gross income but shall not be deemed a gain upon the involuntary conversion of property as a result of its destruction or seizure. To the extent that such amount plus the aggregate of the amounts of previous such recoveries exceed the aggregate of the allowable deductions in prior taxable years on account of the destruction or seizure of property described in subsection (a), such amount shall be considered a gain upon the involuntary conversion of property as a result of its destruction or seiqure and shall be recognized or not recognized as provided in section 112(f). If for any previous taxable year the taxpayer chooses under subsection (b) to treat any obligations and liabliities as discharged or satisfied out of the property or interest described in subsection (a), and if such obligations and liabilities were not so discharged or satisfied, the amount of such obligations and liabilities treated as discharged or satisfied under

subsection (b) shall be considered for the purposes of this section as a deduction by reason of this section which did not result in a reduction of any tax of the taxpayer under this chapter or chapter 2. For the purposes of this paragraph an allowable deduction for any taxable year on account of the destruction or seizure of property described in subsection (a) shall, to the extent not allowed in computing the tax of the taxpayer for such taxable year, be considered an allowable deduction which did not result in a reduction of any tax for the taxpayer under this chapter or chapter 2.

(3) Tax adjustment measured by prior benefits. If the provisions of this paragraph are applicable to the taxable year pursuant to an election made by the taxpayer under the provisions of paragraph (5)—

(A) Amount of Recovery. The amount of the recovery in the taxable year of any money or property in respect of property considered under subsection (a) as destroyed or seized in any prior taxable year shall be an amount equal to the aggregate of such money and the fair market value of such property, determined as of the date of the recovery. For the purpose of this paragraph, in the case of the recovery of the same property or interest considered under subsection (a) as destroyed or seized, the fair market value of such property or interest shall, at the option of the taxpayer, be considered an amount equal to the adjusted basis (for determining loss) of such property or interest in the hands of the taxpayer on the date such property or interest was considered under subsection (a) as destroyed or seized. The amount of the recovery determined under this subparagraph shall be reduced for the purposes of subparagraphs (B) and (C) by the amount of the obligations or liabilities with respect to the property considered under subsection (a) as destroyed or seized in respect of which the recovery was received, if the taxpayer for any previous taxable year chose under subsection (b)(2) to treat such obligations or liabilities as discharged or satisfied out of such property, and such obligations or liabilities were not so discharged or satisfied prior to the date of the recovery.

(B) Adjustment for Prior Tax Benefits. That part of the amount of the recovery, in respect of any property considered under subsection (a) as destroyed or seized, which is not in excess of the allowable deductions in prior taxable years on account of such destruction or seizure of the property (the amount of such allowable deductions being first reduced by the aggregate amount of any prior recoveries in respect of the same property) shall be excluded from gross income for the taxable year of the recovery for the purpose of computing the tax under this chapter and chapter 2; but there shall be added to, and assessed and collected as a part of, the tax under this chapter for the taxable year of the recovery the total increase in the tax under this chapter and chapter 2 for all taxable years which would result by decreasing, in an amount equal to such part of the recovery so excluded, such deductions allowable in the prior taxable years with respect to the destruction or seizure of the property. Such increase in the tax for each such year so resulting shall be computed in accordance with regulations prescribed by the Secretary. Such regulations shall give effect to previous recoveries of any kind (including recoveries described in section 22(b)(12)) with respect to any prior year, and shall provide for the case where there was no tax for the prior year, but shall otherwise treat the tax previously determined for any year in accordance with the principles set forth in section 3801(d). All credits allowable against the tax for any year and all carry-overs and carry-backs affected by so decreasing the allowable deductions shall be taken into account in computing the increase in the tax, except that the computation of the excess profits credit under chapter 2E for any taxable year shall not be affected.

(C) Gain Upon Recovery. The amount of any recovery or part thereof, in respect of property considered under subsection (a) as destroyed or seized, which is not excluded from gross income under the provisions of subparagraph (B) shall be considered for the taxable year of the recovery as gain on the involuntary conversion of property as a result of its destruction or seizure and shall be recognized or not recognized as provided in section 112(f).

(D) Recoveries Treated as Gross Income for Certain Purposes. For the purposes of sections 51, 52, and 3801(b) the recovery in the taxable year of any money or property in respect of property considered under subsection (a) as destroyed or seized in any prior taxable year shall be deemed to be an item includible in gross income for the taxable year in which the recovery is made.

(4) Restoration of value of investments referable to destroyed or seized property. For the purpose of this subsection the restoration in whole or in part of the value of any interest described in subsection (a) (3) by reason of any recovery of money or property in respect of property to which such interest

related and which was considered under subsection (a) (1) or (2) as destroyed or seized shall be deemed a recovery of property in respect of property considered under subsection (a) as destroyed or seized. In applying paragraph (3) of this subsection such restoration shall be treated as the recovery of the same interest considered under subsection (a) as destroyed or seized.

(5) **Election by taxpayer for application of paragraph (3).** If the taxpayer elects to have the provisions of paragraph (3) applicable to any taxable year in which he recovered any money or property in respect of property considered under subsection (a) as destroyed or seized, the provisions of paragraph (3) shall be applicable to all taxable years of the taxpayer beginning after December 31, 1941, and such election, once made, shall be irrevocable. The election shall be made in such manner and at such time as the Secretary may by regulations prescribe, except that no election under this paragraph may be made after December 31, 1953, unless the taxpayer recovers money or property (in respect of property considered under subsection (a) as destroyed or seized) during a taxable year ending after the date of the enactment of the Revenue Act of 1951. If pursuant to such election the provisions of paragraph (3) are applicable to any taxable year—

(A) the period of limitations provided in sections 275 and 276 on the making of assessments and the beginning of distraint or a proceeding in court for collection shall not, with respect to—

(i) the amount to be added to the tax for such taxable year under the provisions of paragraph (3), and

(ii) any deficiency for such taxable year or for any other taxable year, to the extent attributable to the basis of the recovered property being determined under the provisions of subsection (d)(2),

expire prior to the expiration of two years following the date of the making of such election, and such amount and such deficiency may be assessed at any time prior to the expiration of such period notwithstanding any law or rule of law which would otherwise prevent such assessment and collection, and

(B) in case refund or credit of any overpayment resulting from the application of the provisions of paragraph (3) to such taxable year is prevented on the date of the making of such election, or within one year from such date, by the operation of any law or rule of law (other than section 3761, relating to compromises), refund or credit of such overpayment may, nevertheless, be made or allowed if claim therefor is filed within one year from such date.

In the case of any taxable year ending before the date of the making by the taxpayer of an election under this paragraph, no interest shall be paid on any overpayment resulting from the application of the provisions of paragraph (3) to such taxable year, and no interest shall be assessed or collected with respect to any amount or any deficiency specified in clause (A), for any period prior to the expiration of six months following the date of the making of such election by the taxpayer.

(d) **Basis of recovered property**

(1) **In general.** The unadjusted basis of property recovered in respect of property considered as destroyed or seized under subsection (a) shall be determined under this subsection. Such basis shall be an amount equal to the fair market value of such property, determined as of the date of the recovery, reduced by an amount equal to the excess of the aggregate of such fair market value and the amounts of previous recoveries of money or property in respect of property considered under subsection (a) as destroyed or seized over the aggregate of the allowable deductions in prior taxable years on account of the destruction or seizure of property described in subsection (a), and increased by that portion of the amount of the recovery which under subsection (c) is treated as a recognized gain from the involuntary conversion of property. Upon application of the taxpayer, the aggregate of the bases (determined under the preceding sentence) of any properties recovered in respect of properties considered under subsection (a) as destroyed or seized may be allocated among the properties so recovered in such manner as the Secretary may determine under regulations prescribed by him, and the amounts so allocated to any such property so recovered shall be the unadjusted basis of such property in lieu of the unadjusted basis of such property determined under the preceding sentence.

(2) **Property recovered in taxable year to which subsection (c)(3) is applicable.** In the case of a taxpayer who has made an election under the provisions of subsection (c)(5), the basis of property recovered shall be an amount equal to the value at which such property is included in the amount of the recovery

under subsection (c)(3)(A) (determined without regard to the last sentence thereof), reduced by such part of the gain under subsection (c)(3)(C) which is not recognized as provided in section 112(f).

(c) **Partial worthlessness of certain investments in destroyed or seized property.**

(1) **Destruction or seizure of investment.** If a taxpayer owns not less than 50 per centum of each class of stock of a corporation, if such corporation has property described in subsection (a) (1) or (2) deemed to be destroyed or seized, the adjusted basis for determining loss of which is at least 75 per centum of the adjusted basis for determining loss of all such corporation's property, and if such corporation completely liquidates (by distributing all the assets which it is able to distribute and all its rights to assets which it is not able to distribute, including the right to the recovery of the property described in subsection (a) (1) and (2) within one year after such property is deemed to be destroyed or seized, or within six months after the date of the enactment of the Revenue Act of 1942,[1] whichever is the later, then that part of the loss by the taxpayer on such liquidation which would be attributable to the destruction or seizure of such property, as established to the satisfaction of the Commissioner, shall be treated for the purposes of this chapter as a loss by the taxpayer upon the destruction or seizure of the part of the stock or other interest of the taxpayer to which such loss is allocable. Such part of the stock or other interest of the taxpayer shall be treated for the purposes of subsections (b), (c), and (d) as property described in subsection (a)(3).

(2) **Application of paragraph (1).** For the purposes of paragraph (1)—

(A) In determining the adjusted basis of all the property of the corporation, there shall be excluded money in the United States, bank deposits, the right to receive money from any person not situated in a country at war with the United States or in a territory under the control of such a country, and obligations issued or guaranteed as to principal or interest by the United States, except that there shall not be excluded any such property which is destroyed or seized as described in subsection (a) within or before the taxable period.

(B) The adjusted basis of property of such corporation shall be determined as of the date immediately preceding the first date on which any property was destroyed or seized, as described in subsection (a), or as of any later date falling within or before the taxable period on the basis of which such determination will produce a greater amount.

(f) **Determination of tax benefits.** The determination as to whether and to what extent an allowable deduction on account of the destruction or seizure of property described in subsection (a) did or did not result in a reduction of any tax of the taxpayer under this chapter shall be made in accordance with regulations prescribed by the Commissioner with the approval of the Secretary. Added Oct. 21, 1942, 4:30 p.m., E. W. T., c. 619, Title I, § 156(a), 56 Stat. 852, amended Oct. 20, 1951, 2:07 p.m., E.S.T., c. 521, Title III, § 341(a, b), 65 Stat. 511; Aug. 15, 1953, c. 512, Title I, § 103, 67 Stat. 616.

STATEMENT BY JOSEPH P. TUMULTY, JR. ON BEHALF OF GETTY OIL CO. BEFORE THE COMMITTEE ON THE JUDICIARY U.S. SENATE ON H.R. 2669 SEPT. 17, 1970

My name is Joseph P. Tumulty, Jr. I am an attorney at law, with offices at 1317 F Street, N.W., Washington, D.C.

I represent Getty Oil Co., successor by merger of Tidewater Oil Co., and, prior to such merger, represented Tidewater Oil Co.

I submit this statement in opposition to H.R. 2669 for incorporation in the record of hearings on the bill, which I understand are to be held at a date to be announced.

Tidewater possessed claims for World War II losses in Germany. These claims are compensable under Public Law 87-846 (76 Stat. 1107) enacted October 22, 1962, which amended the War Claims Act of 1948 by adding Title II, authorizing the U.S. Foreign Claims Settlement Commission to determine claims of nationals of the United States based on property losses which arose in certain specified areas of Europe (including Germany) and the Pacific during World War II.

Following such enactment, and in accordance with its procedures and those promulgated by the Commission, Tidewater filed its claim with the Commission. As its regularly retained attorney in Washington, D.C., I advised and assisted my client in connection with the preparation, presentation and prosecution of its claim, Claim No. W-3346.

In January 1967, the Commission made an award of $90,829.86 to Tidewater (Decision No. W-18432). Getty Oil Co. acquired this award upon the merger of

Tidewater into it, in the same year. Ownership of the award was transferred to Getty on the records of the Commission and the Treasury Department.

Under the statutory plan, these awards were to be paid by the U.S. Treasury Department, not out of general revenues, but out of the so-called War Claims Fund, namely, out of proceeds of enemy assets seized by the Office of Alien Property in World War II. These assets were to be applied to the relief of United States nationals who suffered war losses, in lieu of reparations from our former enemies.

The Treasury has made two partial payments out of the War Claims Fund. The first was a payment on all awards in equal amounts not to exceed $10,000 and the second was a distribution of 61.3 percent of the balance of the awards in excess of $10,000.

Getty received payments of $10,000 and $49,548.70, leaving an unpaid balance on its award of $31,281.16. When the second payment was made all claimant-awardees, including Getty, were advised by the Treasury that the second payment exhausted the balance in the War Claims Fund at that time, but that additional funds might be forthcoming when funds being held by the Department of Justice, pending the results of litigation, were received by the Treasury.

Distributions were made in accordance with an order of priorities established when the legislation was enacted, which was long before claims were filed, prosecuted, and allowed by the Commission.

By the time the second payment was made it was apparent that awards could not be paid in full, because of insufficient funds. But it also appeared that a substantial final payment would be forthcoming to all unpaid awardees, on a *pro rata* basis, as prescribed in the original legislative plan.

In this circumstance a group of nonprofit organizations pressed Congress for a change in the law, to give priority to the payment of their claims, over all others. H.R. 2669 is intended to accomplish this result. It was amended in the House Committee to create a second class of priority awardees, namely, those who are individuals, not corporations.

These two preferred classes would be paid in full, at the expense of the other claimant-awardees.

The Foreign Claims Settlement Commission opposed the bill before the House Interstate and Foreign Commerce Committee. It stated (H. Rept. No. 91–76, page 9):

> Payments in full of the awards to nonprofit organizations would be at the expense of the remaining claimants because such payments would necessarily reduce the amount that could be paid on awards subject to the prorated payment provisions of section 213(a)(2) in case additional money is transferred into the War Claims Fund at some future date.
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> In light of the foregoing, the Foreign Claims Settlement Commission does not favor enactment of H.R. 2669.

Bills similar to H.R. 2669 have, in past years, been introduced in the Senate but without action thereon.

We are strenuously opposed to this bill. The Congress here is not dealing with the distribution of general tax revenues, but with a War Claims Fund derived from enemy property and long since legally committed to the final payment of claimant-awardees on a pro rata basis. Vested rights in the Fund have been created. Reasonable expectations of future payments have been officially stimulated. Action by claimants have been taken in reliance upon a Federally created plan of distribution of a quasi-trust fund. To take away all or a large part of these funds from one group and give it to another is offensive to the sense of justice, particularly so when years have passed since awards and partial payments were made.

The inequity of H.R. 2669 in its original form has been compounded by an amendment added to it in the House Committee, setting up a second favored group of awardees, i.e., those who happen to be individuals, not corporations.

In a matter of this kind, policy as well as justice demands that exceptions to the principle that "equality is equity" be narrowly circumscribed; and that if made at all, they be incorporated in the law on its original enactment, not on a retroactive basis.

Arguments in favor of the bill to the effect that corporate claimants have enjoyed "tax benefits" are unsound, as such benefits, if enjoyed, were deducted from the awards.

Respectfully submitted,

JOSEPH P. TUMULTY, JR.,
Attorney for Getty Oil Co.

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