

**REPORTS OF INTERNATIONAL  
ARBITRAL AWARDS**

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**RECUEIL DES SENTENCES  
ARBITRALES**

**Caccamese Case—Decision No. 8**

11 April 1952

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to pass upon the other arguments advanced by the Agents of the two Governments, and

HEREBY DECIDES:

1. That the requests presented in the Petition filed on behalf of Mr. Erich W. A. Hoffmann by the Government of the United States of America are rejected; and

2. That this Decision is final and binding from the date it is deposited with the Secretariat of the Commission.

This Decision is filed in English and in Italian, both texts being authenticated originals.

DONE in Rome, this 11th day of April, 1952.

*The Representative of the  
United States of America  
on the  
Italian-United States  
Conciliation Commission*

*The Representative of the  
Italian Republic  
on the  
Italian-United States  
Conciliation Commission*

(Signed) Emmett A. SCANLAN, Jr.

(Signed) Antonio SORRENTINO

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CACCAMESE CASE—DECISION No. 8 OF  
11 APRIL 1952<sup>1</sup>

Claim for compensation under Article 78 of Peace Treaty—War damages—United Nations national acquired, by inheritance from Italian nationals, ownership of property, at same moment that such property was damaged—Whether entitled to receive compensation under Treaty—Rejection of claim for absence of evidence of condition of property at time of inheritance.

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Demande d'indemnité au titre de l'article 78 du Traité de Paix — Dommages de guerre — Bien appartenant à un ressortissant italien, dévolu par voie de succession et au moment même du dommage à un ressortissant d'une Nation Unie — Question de savoir si ce dernier a droit à indemnité en vertu du Traité — Rejet de la demande pour défaut de preuve de la condition du bien au moment de sa dévolution au réclamant.

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The Italian-United States Conciliation Commission, established by the Government of the United States of America and the Government of Italy

<sup>1</sup> *Collection of decisions*, vol. I, case No. 10.

pursuant to Article 83 of the Treaty of Peace and composed of Antonio Sorrentino, Representative of the Italian Republic, and Emmett A. Scanlan, Jr., Representative of the United States of America, after due consideration of the relevant articles of the Treaty of Peace and the pleadings documents, evidence and other communications presented to the Commission by the Agents of the two Governments, and having carefully and impartially examined same, finds that it has jurisdiction to adjudicate the rights and obligations of the parties hereto and to render a decision in this case.

Appearances: Mr. Stefano Varvesi, Deputy Agent of the Italian Republic; Mr. Lionel M. Summers and Mr. Charles E. Higdon, Agents of the United States of America.

#### STATEMENT OF THE CASE:

This case concerns a dispute which has arisen between the Government of the United States of America, acting on behalf of Giuseppe Caccamese, and the Government of the Italian Republic in regard to the interpretation and application of Article 78 of the Treaty of Peace with Italy, signed at Paris on February 10, 1947, and the Agreements supplemental thereto or interpretative thereof. The object of the dispute is to obtain on behalf of Giuseppe Caccamese (hereinafter referred to as the claimant) indemnity for losses suffered as a result of the war under circumstances which will be hereinafter fully described and for such further or other relief as may be just and equitable.

The material facts are as follows:

The claimant, Giuseppe Caccamese, was born at Lercara Friddi, Province of Palermo, Italy; he became a national of the United States of America by naturalization on March 30, 1928 and the fact that the claimant is a "United Nations national" within the meaning of this term as defined in paragraph 9 (a) of Article 78 of the Treaty of Peace is not in dispute.

In his affidavit of claim the claimant states that his brother, Rosolino Caccamese, and his brother's wife, Francesco Vicari Caccamese, owned jointly certain real and personal property which was heavily damaged during an aerial bombardment on July 18, 1943. The property is described as being a building used as a hotel, restaurant and wine shop, adequately stocked and furnished, located on Via Piano Giglio near the railroad station in Lercara Friddi, Province of Palermo, Italy. In paragraph 4 of his affidavit of claim the claimant further states:

That upon the death of my brother Rosolino Caccamese, on July 18, 1943, due to the bombardment of the above described building, *wherein he happened to be*, I became the only claimant for war damages in the case and in his stead, against the Italian Government, there being no other heirs to his estate. (Emphasis supplied.)

And in paragraph 6 of his affidavit of claim the claimant further states:

That I am not able to give other particulars regarding the suffered property damages besides those already given in this affidavit, since I have not been in Italy for many years; but I have been informed by reliable persons that the described property was entirely destroyed and its contents were a total loss, and that the Italian Government has full information about this case;

On May 7, 1949 the Embassy of the United States of America in Rome, on behalf of the claimant, submitted this claim to the Ministry of the Treasury of the Italian Republic.

The Ministry of the Treasury of the Italian Republic stated in its letter

dated October 5, 1949 that the claim could not be accepted because at the time when the claimant became the owner of the property in question he acquired damaged property and therefore the loss did not appear to create a right to compensation under the provisions of Article 78 of the Treaty of Peace or under Article 3 of the Memorandum of Understanding between the two Governments dated August 14, 1947.

The Embassy of the United States of America in its letter of October 14, 1949 informed the Ministry of the Treasury of the Italian Republic that it could not accept the position taken by the Italian authorities and made reservation to submit the dispute to the Conciliation Commission.

On March 13, 1951 the Agent of the United States of America filed the Petition in this case. Having premised the statement of the case, the Petition states the issue involved as being:

Is a national of the United States who has held such nationality since March 30, 1928, and who acquired on July 18, 1943, by inheritance from Italian nationals, the ownership of certain real and personal property, *at the same moment that such property was damaged*, entitled to receive compensation under the Treaty of Peace and the agreements supplemental thereto or interpretative thereof? (Emphasis supplied.)

and concludes by requesting the Commission to:

(a) decide that the claimant is entitled to receive from the Italian Republic two-thirds of the sum necessary at the time of payment to make good the loss suffered, which sum was estimated in September, 1943 to be Five Million, Seven Hundred Fifty Thousand (5,750,000) Lire, subject to any necessary adjustments for variation in values between September 1948 and the final date of payment;

(b) order that the costs and incidental to this claim be borne by the Italian Republic; and

(c) give such further or other relief as may be just and equitable.

The Answer of the Italian Republic filed on April 21, 1951 maintains in substance that the evidence submitted with the Petition was not sufficient to establish that the claimant, Giuseppe Caccamese, is the sole heir of his brother, Rosolino Caccamese; that the evidence does not establish what interest in the property the claimant inherited; that the claimant is not entitled to any compensation under the Treaty of Peace because his inheritance, if any, was an interest in damaged property, and hence the claimant has not suffered a loss in Italy as a result of the war; that the inheritance, if any, includes the right to submit a claim for war damages to the Italian Government, a right which is derived from Italian domestic law and not from the Treaty of Peace; and concludes by requesting the Commission to declare the Petition inadmissible.

In its Order of July 16, 1951 the Commission granted the request of the Agent of the United States of America and allowed a period of sixty (60) days within which to file a Reply. To the Reply filed on September 25, 1951 were attached only an affidavit of and a letter from the claimant in which he states his understanding of the ownership interests in the subject property and the basis upon which he maintains a claim for war damages. The Reply contained a request that the Commission issue an Order for the Agent of the Italian Republic to produce copies of certain public records of the Province of Palermo.

Noting the insufficiency of the evidence to substantiate certain allegations made in the Petition, the Commission in its Order of October 16, 1951 denied the request contained in the Reply and ordered the Agent of the United States of America to submit:

(a) documentary evidence showing whether or not Rosolino Caccamese fu Giuseppe and his wife, Francesca Vicari fu Gaetano, died intestate on July 18, 1943 and, if such be the case, the names of all heirs-at-law of the said Rosolino Caccamese fu Giuseppe;

(b) documentary evidence showing whether or not Rosolino Caccamese fu Giuseppe died before or after the damage to the building which is the subject of this claim; or whether Rosolino Caccamese fu Giuseppe and his wife, Francesca Vicari fu Gaetano, were within the building at the time it was damaged during the aerial bombardment of July 18, 1943 and died as a result thereof at a time which can not be specified;

(c) a certified true copy of the appraisal of the damages to the property which is the subject of this claim, alleged to have been made by the Allied Military Commission in Italy in 1943, and upon the basis of which it appears that the claimant had calculated his alleged damages;

(d) any other evidence which the Agent of the United States of America may desire to submit in order to more fully document his claim.

The Commission in its Order of October 16, 1951 also provided for the transfer of the original Statement of Claim and all documents attached thereto from the Ministry of the Treasury of the Italian Republic to the secretariat of the Commission for inclusion in the record.

At the request of the Agent of the United States of America, the Commission later amended its Order of October 16, 1951 to provide for a period of ninety days (in lieu of the originally specified period of forty-five days) within which additional evidence to document this claim more fully could be submitted.

On February 15, 1952 the Agent of the United States of America informed the Commission that the claimant was unable to furnish any additional evidence and therefore requested the Commission to declare that the formal submission of proof in this case had been concluded and to permit the Agent of the United States of America to file a Brief.

On February 28, 1952 the Commission heard the arguments of the Agents of the two Governments; the Agent of the United States of America withdrew his request to file a Brief at this sitting of the Commission. Thereafter the Commission declared that the formal submission of proof had been concluded and took the case under advisement.

The Commission observes that it is the responsibility of the claimant in this case to furnish documentary evidence in support of the allegations made in the Petition. Under *Article 2673* of the *Italian Civil Code*, official records regarding the ownership and inheritance of real property are public records. It has *not* been asserted by the claimant that permission to obtain copies of official documents of record has been denied by the responsible Italian authorities of the Province of Palermo; and the Commission therefore sees no justification for shifting the responsibility to furnish such documentary evidence in this case from the claimant to the Italian Government.

The claimant's request for compensation is based upon his inheritance from his brother, Rosolino Caccamese, who was an Italian national and part owner of the property in question at the time of his death. The claimant in his Affidavit of Claim states that his brother met his death while he was within the subject building, which sustained heavy damage during the aerial bombardment of July 18, 1943; but this affidavit shows that this statement is based only upon the claimant's information or belief. No evidence was introduced to establish that the claimant's brother died within this building. A death Certificate and an Act of Notoriety presented in evidence show only that the claimant's brother,

Rosolino Caccamese, died on July 18, 1943 and that the damage to the property in question occurred on the same date as a result of an aerial bombardment. Obviously, it was difficult for the claimant to obtain evidence to document this claim fully, particularly under the circumstances surrounding the death of Rosolino Caccamese.

The Commission finds that, in order to receive compensation under Article 78 of the Treaty of Peace, the claimant must prove that, as a result of the war, he (a United Nations national) has suffered a loss by reason of injury or damage to property in Italy. The claimant's brother, Rosolino Caccamese, was an Italian national; and therefore the claimant's right to compensation in this case hinges upon whether or not the claimant inherited an interest in the property in question before or after it was damaged during the aerial bombardment of July 18, 1943. The Commission further finds that the evidence presented in this case does not establish that the property involved here was in an undamaged condition at the time the claimant inherited an interest in said property.

The Agent of the United States of America argues that

In the absence of any evidence to the contrary, it can be presumed that the damage to the property and the death of the claimant's predecessor in interest occurred simultaneously.

While such a presumption of fact would fill a gap in the evidence, the Commission considers that there is no basis upon which it could entertain such presumption in favor of the claimant; and no basis for such presumption has been cited.

The Agent of the Italian Republic argues that, even assuming that the evidence were sufficient to establish that the claimant's brother, Rosolino Caccamese, met his death within the subject building, the elements of time which are here involved have a relationship to each other; and no matter how small the increment of time between the occurrence of the damage to the building and the death of the claimant's brother, each occurrence involved a successive, separate and distinct element of time. The Agent of the Italian Republic also contends that it is contradictory to assert that the claimant was the owner of the property at the time the damage occurred, since the claim itself is based on the hypothesis that the damage to the property and the death of the claimant's brother occurred simultaneously. The validity of these arguments must be recognized.

The Commission holds that the requests contained in the Petition must be rejected because the evidence submitted in this case does not establish that the property was in an undamaged condition when the claimant inherited an interest therein, and therefore that the claimant has not suffered a loss by reason of injury or damage to property in Italy for which he (a United Nations national) is entitled to compensation under the provisions of the Treaty of Peace or the Agreements supplemental thereto or interpretative thereof.

The Commission, acting in a spirit of conciliation,

**HEREBY DECIDES:**

1. That the requests contained in the Petition filed on behalf of Giuseppe Caccamese by the Government of the United States of America are rejected;
2. That this rejection of the requests contained in the Petition is without prejudice to any rights which the claimant may have for war damages under Italian domestic laws; and
3. That this Decision is final and binding from the date it is deposited with the Secretariat of the Commission.

This Decision is filed in English and in Italian, both texts being authenticated originals.

DONE in Rome, this 11th day of April 1952.

*The Representative of the  
United States of America  
on the  
Italian-United States  
Conciliation Commission*

(Signed) Emmett A. SCANLAN, Jr.

*The Representative of the  
Italian Republic  
on the  
Italian-United States  
Conciliation Commission*

(Signed) ANTONIO SORRENTINO

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WEIDENHAUS CASE—DECISION No. 9 OF  
28 APRIL 1952 <sup>1</sup>

Compensation under Article 78 of Peace Treaty—War damages—Nationality of claimant—National of United States—National of one of the other United Nations at time damages occurred—Sale of property in its damaged condition to Italian nationals—Retention of right to claim compensation under Peace Treaty—Reference to decision No. 5 rendered in Carnelli case—Measure of damages.

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Indemnisation au titre de l'article 78 du Traité de Paix — Dommages de guerre — Nationalité du réclamant — Ressortissant des Etats-Unis — Ressortissant d'une autre Nation Unie à la date du dommage — Vente des biens endommagés à des ressortissants italiens — Persistance du droit du réclamant de se prévaloir de l'indemnité prévue par le Traité de Paix — Référence à la décision n° 5 rendue dans l'affaire Carnelli — Evaluation des dommages.

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The Italian-United States Conciliation Commission, established by the Government of the United States of America and the Government of Italy pursuant to Article 83 of the Treaty of Peace and composed of Antonio Sorrentino, Representative of the Italian Republic, and Emmett A. Scanlan, Jr., Representative of the United States of America, after due consideration of the relevant articles of the Treaty of Peace and the pleadings, documents and evidence and the arguments and other communications presented to the Commission by the Agents of the two Governments, and having carefully and impartially examined same, finds that it has jurisdiction to adjudicate the rights and obligations of the parties hereto and to render a decision in this case which is embodied in the present award.

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<sup>1</sup> *Collection of decisions*, vol. I, case No. 7.