

**REPORTS OF INTERNATIONAL  
ARBITRAL AWARDS**

**RECUEIL DES SENTENCES  
ARBITRALES**

**Steinway and Sons Case—Decision No. 15**

10 April 1953

VOLUME XIV pp. 149-159



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

DONE in Rome, this 30th day of March, 1953.

*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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STEINWAY AND SONS CASE—DECISION No. 15 OF 10 APRIL 1953 <sup>1</sup>

Compensation under Article 78 of Peace Treaty—War damages sustained by enemy property in Italy—Evidence of ownership of damaged property—Value of evidence submitted—Affidavits and *Atti di Notorietà*—Reference to decision No. 11 handed down in Amabile case—Relevance of prior war damages claim under municipal legislation—Measure of damages.

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Indemnisation au titre de l'article 78 du Traité de Paix — Dommages de guerre subis par des biens ennemis en Italie — Preuve de la propriété des biens endommagés — Valeur des documents de preuve soumis — Affidavits et *Atti di Notorietà* — Rappel de la décision n° 11 rendue dans l'affaire Amabile — Pertinence d'une demande en indemnité pour dommages de guerre présentée antérieurement au titre de la législation italienne — Détermination du montant de l'indemnité.

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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. 30.

Appearances: Mr. Stefano Varvesi, Agent of the Italian Republic; Mr. Lionel M. Summers and Mr. Carlos J. Warner, 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 Steinway & Sons, a corporation organized and existing under the laws of the State of New York, 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 Steinway & Sons, (hereinafter referred to as the claimant corporation) compensation for the loss as the result of the war of a grand piano plus interest on the amount fixed as such compensation at the rate of five per cent (5%) per annum from November 15, 1948, and such further or other relief as may be just and equitable.

The material facts are as follows:

The dispute in this case involves fundamentally a question of whether or not the claimant corporation has submitted evidence to document its claim; and it is therefore necessary to summarize the evidence in this Decision.

The Statement of Claim was prepared in both English and an Italian text. On October 27, 1948 a qualified officer of the claimant corporation appeared before a duly commissioned Notary Public of the State of New York and verified under oath in behalf of the claimant corporation that

(a) a request under the Treaty of Peace is made for "Reimbursement for the total destruction by Air Attack on August 15, 1943 of Steinway & Sons Grand Model D Ebon 243002, manufactured by our Branch Factory in Hamburg (Germany) and stationed at the Conservatorio di Musica Giuseppe Verdi, Milano, for servicing concerts, at time of attack";

(b) the claimant corporation was organized under the laws of the State of New York on May 8, 1876, and was the owner of said piano on the date of loss;

(c) the replacement value of said piano on that date (October 27, 1948) was Two Thousand, Eight Hundred Eighty Dollars (\$ 2,880.00) (or 1,656,000 Lire at the then rate of exchange of 575 Lire to the dollar) subject to any necessary adjustment for variation of value between the date of filing the claim and the date of payment.

Attached to the claimant corporation's original Statement of Claim was a Certificate issued by the Embassy of the United States of America in Rome that Steinway & Sons, as a juridical entity, is now and has been at all times since its incorporation on May 8, 1876, a national of the United States of America. In support of the allegations of fact made in the original Statement of Claim, there was attached thereto the following documentary evidence:

*Annex 1*; A certificate of the incorporation in the State of New York in 1876, and a copy of the By-Laws of Steinway & Sons;

*Annex 2*; A declaration dated July 11, 1944 by the Secretary of the Conservatory of Music in Milan ("Giuseppe Verdi") that concert grand piano No. 243002, K 232, trademark Steinway & Sons, was destroyed on August 15, 1943 during the air raid on that date;

*Annex 3*; An affidavit made by the President of the claimant corporation on February 7, 1947 before a duly commissioned Notary Public of the State of New York affirming that Steinway & Sons is incorporated only under the laws

of the State of New York and has no subsidiaries or affiliates; that a Branch Office and Factory of Steinway & Sons are maintained in Hamburg, Germany; that all the assets of said branch in Hamburg, Germany are owned by the claimant corporation; and that the management of said branch in Hamburg, Germany is directed by an employee whose powers and authority are derived from a revocable Power of Attorney issued by the claimant corporation.

*Annex 4*; An unsigned and unsupported statement that the replacement value of "Grand D Ebon" Steinway is Two Thousand, Eight Hundred Eighty Dollars (\$ 2,880.00), or 1,656,000 Lire at the then rate of exchange of 575 Lire to the Dollar.

On November 15, 1948 the Embassy of the United States of America in Rome submitted this claim, supported by the foregoing documentary evidence, to the Ministry of the Treasury of the Italian Republic. Thereafter there was correspondence between the two Governments, reference to which will be made only to the extent necessary to illustrate the position which each Government has taken.

In its letter of February 19, 1951, the Ministry of the Treasury of the Italian Republic informed the Embassy of the United States of America that "after the proper investigation" this claim had been submitted to the Interministerial Commission of the Italian Government established under Article 6 of Italian Law No. 908 of December 1, 1949, and that said Commission had expressed the following opinion (in translation):

The [Interministerial] Commission,

having considered the investigations which were ordered with the view of ascertaining whether the piano, which is the subject of this claim, was the property of the firm of Steinway and Sons of New York or of the firm of Ricordi; bearing in mind that from the Fiscal Investigative Police's report dated November 30, 1950, it appears that from the information obtained it should be considered that, at the time of the damage, the piano belonged to the aforementioned firm of Ricordi & Finzi;

expresses the opinion that the claim cannot be accepted.

On August 23, 1951 the Embassy of the United States of America submitted to the Ministry of the Treasury of the Italian Republic an *Atto di Notorietà* dated June 18, 1951 as further proof that the ownership of the piano in question on the date of loss was in the claimant corporation, and requested reconsideration of the claim on the basis of this evidence. Said *Atto di Notorietà* (hereinafter referred to in translation as an Act of Notoriety), made before the Magistrate of the Court of First Instance (Pretura) of Milan and taken in the manner prescribed by Italian law, reads as follows (in translation):

Court of First Instance of Milan

Act of Notoriety

On this 18th day of June of the year 1951, in Milan, there appeared before A Magistrate Dr. Terrando Angelo, assisted by the undersigned clerk, Mr. Luigi Bruzzolo of the late Silvio, age 47, No. 14, Via Piave, Melzo, who requested that this Act of Notoriety be drawn up and that the following witnesses be heard for that purpose:

Giuseppe Albanesi of Giovanni, age 43, Milan, Via Monti 50,

Giovanni Stefanini of Enrico, age 25, Milan, Corso Ticinese 67,

Armando Farina of the late Francesco, age 35, Piazza Cincinnato 7,

Dr. Elli Bruno of the late Antonio, age 36, Piazzale Lavater 5, Milan.

The Magistrate read the formula "Aware of the responsibility which you have assumed under oath before God and men, do you swear to tell the truth, the

whole truth and nothing but the truth?" The witnesses repeated the words of formula: "I do swear."

After which they unanimously and in agreement made the following statement:

It is true, of common knowledge and of our personal knowledge that the grand piano, concert model, serial No. D274/K 232 OP No. 243002, black laquered, trademark Steinway & Sons of New York, which was at the Conservatory of Music of Milan was destroyed in August 1943 as the result of an air bombardment together with the building in which it was located.

The aforementioned piano was the exclusive property of the firm that manufactured it, Steinway & Sons of New York, and was entrusted to the care of the firm Ricordi & Finzi of Milan, Via Dante No. 13, exclusively for concert purposes.

Read, confirmed and subscribed to

(Signed) Luigi BRUZZOLO

(Signed) Giuseppe ALBANESI

(Signed) Giovanni STEFANINI

(Signed) Armando FARINA

(Signed) Dr. Bruno ELLI

*The First Clerk*

(Signed) Dr. Guido MUSARRA

*The Magistrate*

(Signed) Dr. Angelo TERRANDO

True copy of the original  
Milan, June 18, 1951

(Seal)

Unified Court of  
First Instance, Milan

The First Clerk  
(Signed) MUSARRA

In a letter dated March 25, 1952 the Ministry of the Treasury of the Italian Republic informed the Embassy of the United States of America that the *Atto di Notorietà* prepared on June 18, 1951, *supra*, cannot be considered as valid evidence to establish that the ownership of the subject piano was in the claimant corporation at the time of loss (in translation) "all the more so as it does not appear from this act how and why the four witnesses indicated therein have gained knowledge of what they attest".

Following the second rejection of this claim, it appears that the evidence in this case was discussed on April 24, 1952 by competent officials of the two Governments; and thereafter on April 28, 1952 the Agent of the United States of America before the Conciliation Commission addressed a letter to the Agent General of the Italian Republic (the appointment and duties of whom are provided for in Italian Presidential Decree No. 884 issued on October 20, 1949) which, after summarizing the disputed evidence concluded with the request that

In view of the sworn statement of the claimant that the piano belonged to it, the statement from the Conservatorio confirming such ownership, the lack of any evidence that it belonged to Ricordi and Finzi S/A, and the possibility for the Italian authorities to learn from the four deponents the basis of their personal knowledge that Steinway & Sons owned the piano, I trust that you will be able to persuade the Italian authorities to revise their decision and to investigate and approve the *prima facie* case now established by Steinway & Sons. Otherwise, the Agency's only recourse will be to file a Petition with the Italian-United States Conciliation Commission in compliance with the Department's instructions.

In its letter of August 28, 1952 the Ministry of the Treasury of the Italian Republic advised the Embassy of the United States of America that the claim had been resubmitted to the Interministerial Commission of the Italian Government, which at its hearing of May 21, 1952 expressed the opinion that the previous rejection must be confirmed since (in translation)

... no new concrete evidence has been submitted to prove that the piano ... was at all times owned by Steinway & Sons.

On October 9, 1952 the Petition of the United States of America was filed in this case with the secretariat of the Conciliation Commission. With the Petition there were submitted in evidence a copy of the Statement of Claim with Annexes, *supra*, attached thereto, and copies of the correspondence between the two Governments. In addition, there was submitted with the Petition, as Exhibit H, a photostatic copy of an official Receipt issued on September 2, 1944 by the Intendenza di Finanza of Milan covering Request No. 40389 B together with a copy of the Request itself. Both the official Receipt and Request No. 40389 B attached thereto show that on September 2, 1944 the President of Ricordi & Finzi, S/A, filed with the competent office of the Italian Government a claim for war damages for the loss of the subject piano in the name and on behalf of "Steinway & Sons—Hamburg". This request was made on a special form printed in Italian and furnished by the Government to Italian nationals for use in preparing and submitting a claim under Italian Domestic War Damage Legislation, ("Modulario Danni G-3, Servizio Danni di Guerra, Mod. C"). The Receipt bears the official stamp of Intendenza di Finanza of Milan and the illegible signature of the official issuing the Receipt.

Having premised the statement of the case with the foregoing facts, the Petition cites paragraph 4 (a) of Article 78 of the Treaty of Peace as establishing the right to compensation, and summarizes the issues involved in this case as being:

Can the Italian Government evade the obligations imposed upon it to compensate United Nations nationals under Article 78 of the Treaty of Peace by disregarding as insufficient the statements by the claimant and by presumably disinterested and creditable witnesses concerning the ownership of the destroyed property merely by stating that the property belonged to a third party without furnishing any evidence whatsoever to substantiate such allegation, which allegation is contrary to all of the evidence submitted by the claimant? In other words, has the claimant established ownership of the property lost as a result of the war and hence is it entitled to the compensation provided for in paragraph 4 (a) of Article 78 of the Treaty of Peace?

In support of the conclusions formulated in the Petition, the Agent of the United States of America cites as pertinent the following extracts from Decision No. 11 of the Commission (Case No. 5—*The United States of America ex rel. Norma Sullo Amabile vs. The Italian Republic*):<sup>1</sup>

(a) ... that Affidavits, "*Atti di Notorieta*", signed statements and similar ex parte testimonial instruments are forms of evidence which may be submitted to the Conciliation Commission to establish elements of a claim for loss or damage to personal property in Italy which was not sequestered by the Italian Government, when other forms of evidence are not available

and

(b) ... the responsibility of the Government of the Italian Republic to investigate a claim of a national of the United States of America, when it is clear

<sup>1</sup> *Supra*, p. 115.

from a preliminary examination thereof that the claim is neither frivolous nor fraudulent, is derived from the particular relationship between the United States of America and Italy growing out of the Agreements and Supplementary Exchange of Notes signed at Washington, D.C., on August 14, 1947, . . . ;

and, based on these principles, argues that

(1) an officer of the claimant corporation, a highly reputable and world-famous manufacturer of pianos, has sworn in the Statement of Claim that it was the owner of the piano in question on the date of loss,

(2) the *Atto di Notorietà* executed on June 18, 1951 by four presumably disinterested and creditable witnesses that the same piano was owned solely by Steinway & Sons, and had been consigned to Ricordi & Finzi, S/A, only for concert use, confirms the ownership interest of the claimant corporation in said piano,

(3) the allegation made by the respondent Government that Ricordi & Finzi, S/A, was the owner of this piano on the date of loss appears to be based on an assumption which is not supported by substantial evidence,

(4) documents pertaining to the consignment of the piano from the branch of Steinway & Sons in Hamburg, Germany to Ricordi & Finzi, S/A, were destroyed in Milan during the war; nevertheless, the request for compensation filed on September 2, 1944 under the provisions of Italian Domestic War Damage Legislation by the President of Ricordi & Finzi, S/A, in the name of and on behalf of "Steinway & Sons—Hamburg" is clear proof that Ricordi & Finzi, S/A, recognized that the piano in question was the property of the claimant corporation on the date of loss, and

(5) in making an investigation of this claim, the authorities of the Italian Government would have access to the records of the Request for War Damages No. 40389 B, *supra*, filed with the Intendenza di Finanza in Milan on September 2, 1944.

In the Answer filed with the secretariat of the Commission on November 17, 1952, the Agent of the Italian Republic maintains the position taken by the Italian administrative authorities with respect to this claim, and argues that (in translation):

The piano involved was manufactured by Steinway, was imported into Italy by Ricordi and Finzi, and was delivered to the Conservatory by the latter: in the absence of precise evidence to the contrary, it is to be held that Ricordi and Finzi purchased it from Steinway and became its owner, having had a relationship of deposit and not of purchase and sale with the Conservatory.

The only evidence introduced in this case by the respondent Government is a letter dated November 17, 1950 addressed to the Intendenza di Finanza in Milan by the Director of the Milan branch of Ricordi & Finzi, S/A, Mr. Luigi Bruzzolo; the letterhead of Ricordi & Finzi, S/A, shows that it was founded in 1806 and is the sales representative not only for pianos manufactured by Steinway & Sons but also for other musical instruments and radios. The position of the Government of the Italian Republic in this case is based primarily on this letter, which reads as follows (in translation):

Milan, November 17, 1950  
Via Giulini 2—Via Dante 13  
Tel. 86.132

To the Intendenza di Finanza  
Milan

At the request of an Official of the Finance Office [Intendenza di Finanza], Mr. Marcello Gaeta, I the undersigned Luigi Bruzzolo, Director of the Ricordi & Finzi Company with offices at 13 Via Dante, Milan, in connexion with the claim of the firm Steinway & Sons, Hamburg (concerning war damages) filed with the Intendenza di Finanza of Milan, through the general representative Mr. Carlo Helbig of Verona, residing in that city at Via Bezzacca 7, hereby state that the Steinway & Sons Piano Mod. K/232/243002, imported by us and consigned in deposit to the Giuseppe Verdi Conservatory of Milan, was required exclusively for concert purposes.

Said instrument was imported from Hamburg around 1941 and I can not produce the pertinent documents as our office at Piazza S. Maria Beltrade 1, was completely destroyed during the air bombardment of August 15, 1943, as appears from the Statement of Claim already filed with the competent office and from which the fact emerges that the archives also were destroyed.

I believe that the documents establishing the date of importation of the instrument in question and the statement of deposit of the piano with the G. Verdi Conservatory of Milan, where it was subsequently destroyed during the air bombardment of the same day, are attached to the relative claim prepared by Steinway & Sons of Hamburg and filed with the competent Ministry through the American Consulate in Milan.

I shall nevertheless request the General Representative of the Steinway Firm, Mr. Carlo Helbig, residing at Verona, to transmit to the Intendenza di Finanza in Milan direct, any documents which may possibly be in his possession.

Countersigned:  
(illegible signature)

In faith,  
RICORDI & FINZI, S/A  
(Signed) L. BRUZZOLO

and, based on this evidence, argues:

(1) No reference is made by Ricordi & Finzi, S/A, in its letter of November 17, 1950, *supra*, regarding the ownership interest of Steinway & Sons in the subject piano or to any relationship between Steinway & Sons and the Conservatory;

(2) The *Atto di Notorietà* prepared on June 18, 1951, *supra*, in which four witnesses swore that Steinway & Sons was the owner of the subject piano on the date of loss, does not show what relationship, if any, existed between such witnesses and the "interested parties" or how such witnesses acquired knowledge of the facts to which they have attested;

(3) Why did the Director in Milan of Ricordi & Finzi, S/A, Dr. Luigi Bruzzolo, participate only as a petitioner and not as a witness in the *Atto di Notorietà* prepared on June 18, 1951, *supra*?

(4) The obligation of the Italian Government to make a determination of a particular claim on an administrative level arises "... only after all the information that the claimant could give has been received ..." (citing: Decision No. 11 (Case No. 5—*The United States of America ex rel. Norma Sullo Amabile vs. The Italian Republic*)<sup>1</sup> in support of this argument);

<sup>1</sup> *Supra*, p. 115.



and concludes by requesting that this claim be rejected, and by disputing—purely on a presumptive basis—the value of the piano which has been asserted by the claimant corporation.

The Agent of the Italian Republic provided for 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 and said documents were submitted for inclusion in the record of this case.

On January 15, 1953 the Agent of the United States of America filed a Request for Award, agreeing therein to waive the request contained in the petition for interest at the rate of five percent (5%) per annum from November 15, 1948, the date on which the claim was first submitted to the Italian Government.

The Commission will limit itself on this Decision to the application of the principles previously enunciated in its Decision No. 11 (Case No. 5—*The United States of America ex rel. Norma Sullo Amabile vs. The Italian Republic*) and to resolving the arguments made by the Agents of the two Governments.

The Commission finds from the evidence submitted in this case that the claimant corporation established in the Statement of Claim and the Annexes submitted in support thereof a *prima facie* basis for its claim under Article 78; that a report of the investigation conducted in Milan by the competent agencies of the Italian Government was made on November 30, 1950 to the Italian Ministry of the Treasury (said report was not submitted in evidence); that thereafter the administrative authorities of the Italian Government rejected this claim, denying the ownership of the claimant corporation in the subject piano and asserting that said ownership at the time of loss was in the Italian firm of Ricordi & Finzi, S/A; that the claimant corporation subsequently submitted to the Italian Government an *Atto di Notorietà* made on June 18, 1951 at the request of the Director in Milan of Ricordi & Finzi, S/A, in which four witnesses affirmed the ownership of the claimant corporation in the subject property; that the Italian Government did not consider that the submission of said *Atto di Notorietà* necessitated a re-investigation of this claim, but rejected it on the ground that said *Atto di Notorietà* was not valid evidence to establish the ownership of the claimant corporation; and that the Italian Government did not disclose at any time prior to the filing of the Answer in this case the evidence upon which it relied in its rejection of this claim.

The Commission must assume that the respondent Government has submitted with its Answer all of the evidence developed in its investigation of this claim which supports its contention that the claimant corporation was not the owner of the property in question at the time of loss. The *only* evidence submitted by the Italian Government to document this contention is the letter dated November 17, 1950 from Ricordi & Finzi, S/A, which has been quoted above. Evaluating this letter either alone or in the light of all the evidence submitted in this case, the Commission finds that said letter is barren of any reference to ownership on the date of the loss.

The Agent of the Italian Republic argues that (in translation)

... in the absence of precise evidence to the contrary, it is to be held that Ricordi & Finzi, S/A, purchased it [the subject piano] from Steinway & Sons and became its owner.

Such a presumption of fact would fill the gap of evidence needed to support the contention of the respondent Government; but the Commission can find no basis for such a presumption, and none has been cited. Moreover, the documentary evidence submitted by the Italian Government destroys any basis for such a presumption; the Commission believes it unreasonable to consider that the

Director in Milan of Ricordi & Finzi, S/A, would have failed in his letter of November 17, 1950, *supra*, to assert the ownership interest of his own firm in said piano—if in fact such ownership did exist—since said letter clearly demonstrates that Ricordi & Finzi, S/A, had knowledge that two claims for war damages (one under Italian Domestic war damage legislation and the other under the Treaty of Peace) had been filed previously with the Italian Government in the name of and in behalf of “Steinway & Sons, Hamburg”.

The admissibility of an *Atto di Notorietà* as documentary evidence to establish elements of a claim has been resolved in Decision No. 11, *supra*. The Director in Milan of Ricordi & Finzi, S/A, acted as the petitioner in the *Atto di Notorietà* made on June 18, 1951. The Agent of the Italian Government impugns said *Atto di Notorietà* on the ground that the Director appeared and signed said document as the Petitioner and not as a witness, and therefore he has not sworn under oath to the ownership of the subject piano. The Commission does not consider the argument to be relevant. The character of the party applying for the *Atto di Notorietà* is different under Italian Law from that of a witness, and the petitioner is not required to act as a witness nor to swear under oath that the statements made by the four witnesses under Italian Law must affirm in an *Atto di Notorietà* that is not interested in the subject matter except as a witness. Under the facts in the instant case, it is apparent why the Director in Milan of Ricordi & Finzi S/A, abstained from giving testimony as a witness in said *Atto di Notorietà*.

The Agent of the Respondent Government maintains in the Answer that the *Atto di Notorietà* does not show how the four witnesses described therein acquired knowledge of the facts to which they have affirmed, namely, that the claimant corporation was the owner of the subject piano on the date of loss. This question and any other question regarding the relationship, if any, between said witnesses and the subject matter of this dispute could have been readily ascertained by the competent authorities of the Italian Government in the course of an additional investigation of this claim. From the evidence it appears that the assertion made by the Agent of the Italian Republic that Ricordi & Finzi S/A, owned the subject piano is based merely on the letter of November 17, 1950 signed by the Director in Milan of this firm, and certainly the subsequent showing that this same individual had acted as the petitioner for the *Atto di Notorietà* made on June 18, 1951 should have been sufficient to prompt a further investigation of this claim by the respondent Government under the obligations assumed by it in the Agreement and supplementary Exchange of Notes signed at Washington, D.C., on August 14, 1947 (approved by Italian Legislative Decree No. 1747 of December 31, 1947).

As further evidence to rebut the contention of the Italian Government that Ricordi & Finzi, S/A, was the owner of the subject piano on the date of loss, there was submitted with the Petition a photostatic copy of an official Receipt issued by the Intendenza di Finanza of Milan for a previous claim; said claim was filed in the name and on behalf of Steinway & Sons by the President of Ricordi & Finzi, S/A, acting under a Power of Attorney, on September 2, 1944 under the provisions of Italian domestic war damage legislation. The letter of November 17, 1950, *supra*, was addressed to the Intendenza di Finanza of Milan and makes reference to this previous claim. The documents submitted on September 2, 1944 to the Italian Government are not in evidence in this case and no reference thereto was made in the Answer. The Commission must infer from these facts that nothing contained in any of the documents submitted on September 2, 1944 sustains the position taken by the respondent Government in this dispute. Moreover, the fact that this declaration was made to an Italian public officer long before the provisions of the Treaty of Peace could be envisaged

confirms the conviction of the Commission that the piano in question was the property of Steinway & Sons.

For these reasons, the Commission must conclude, and hereby finds, that Steinway & Sons was the owner of the subject piano at the time of loss. The fact that Steinway & Sons is a "United Nations National" within the meaning of Article 78 of the Treaty of Peace and the fact that the loss was a result of the war are not in dispute.

As far as the indemnity is concerned, the claiming Government requests that this be fixed on the basis of the "replacement value" of the subject piano, which amount was stated as being Two Thousand Eight Hundred Eighty Dollars (\$2,880.00), equal to One Million, Eight Hundred Thousand (1,800,000) Lire at the present rate of exchange of Six Hundred Twenty-five (625) Lire to the dollar. The Agent of the Italian Republic disputes this valuation and maintains in the Answer that "the present value of a piano of the type and condition of that which was destroyed is indicated to be about One Million (1,000,000) Lire".

While the model, serial number and finish of the subject piano have been established by the evidence, there is lacking in this case any evidence to establish "value". Annex 4 attached to the Statement of Claim of the claimant corporation is simply an unsigned and unsupported statement on plain paper. Similarly, the brief reference to value made in the Answer is not documented.

Under the provisions of paragraph 4 (a) of Article 78 of the Treaty of Peace, the obligation of the Government of the Italian Republic in this case must be based upon the cost as of the date of this Decision to purchase a piano similar in type, age and condition to that of the subject piano on the date of loss, that is, on August 15, 1943. Considering the probative value of the evidence submitted, and the obligation of the Government of the Italian Republic under the Treaty of Peace as implemented on February 24, 1949 by an Exchange of Notes between the two Governments, the Commission holds that the claimant corporation is entitled to receive as compensation in this case One Million, Five Hundred Thousand (1,500,000) Lire.

No evidence having been submitted that any previous payment has been made to the claimant corporation for war damages to the personal property which is the subject of this claim, the Commission, acting in the spirit of conciliation,

**HEREBY DECIDES:**

1. That in this case there exists an international obligation of the Government of the Italian Republic to pay the sum of One Million, Five Hundred Thousand (1,500,000) Lire, under Article 78 of the Treaty of Peace and the Agreements supplemental thereto or interpretative thereof, in full and complete settlement of the claim of Steinway & Sons, a corporation organized and existing under the laws of the State of New York, for the loss in Milan as a result of the war of a piano owned by it;

2. That the payment of this sum in lire shall be made in Italy by the Government of the Italian Republic upon request of the Government of the United States of America within thirty (30) days from the date that a request for payment under this Decision is presented to the Government of the Italian Republic;

3. That the payment of this sum in lire shall be made by the Government of the Italian Republic free of any levies, taxes or other charges and as otherwise provided for in paragraph 4 (c) of Article 78 of the Treaty of Peace;

4. That the request that interest be granted on the amount awarded to the claimant from November 15, 1948 was waived in the instant case by the Agent of the United States of America on January 13, 1953;

5. That in this case an order regarding costs is not required; and

6. That this Decision is final and binding from the date it is deposited with the secretariat of the Commission, and its execution is incumbent upon the Government of the Italian Republic.

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

DONE in Rome, this 10th day of April 1953.

*The Representative of the  
United States of America  
on the  
Italian-United States  
Conciliation Commission*  
Emmett A. SCANLAN, Jr.

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

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#### ARMSTRONG CORK COMPANY CASE—DECISION

No. 18 OF 22 OCTOBER 1953 <sup>1</sup>

Claim for compensation under Article 78 of the Treaty of Peace—Loss of property as a result of the war—State responsibility—Illicit actions—Distinction between right of legitimate defence and right of necessity—Responsibility of Italy under Peace Treaty—Measures taken before outbreak of hostilities—Scope of responsibility of Italy under paragraph 4 (a) of the aforementioned Article. Meaning of expression “as a result of the war”—Treaty interpretation—Principles of—“Ordinary meaning” and “Natural meaning” of the words—Interpretation by reference to decision of another Conciliation Commission—Interpretation by reference to memorandum submitted at Peace Conference.

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Demande en indemnisation au titre de l'article 78 du Traité de Paix — Perte de biens du fait de la guerre — Responsabilité de l'Etat — Actes illicites — Distinction entre le droit de légitime défense et le droit de nécessité — Responsabilité de l'Italie aux termes du Traité de Paix — Mesures prises avant l'ouverture des hostilités — Portée de la responsabilité de l'Italie aux termes du par. 4 a) de l'article 78 du Traité de Paix — Signification de l'expression « du fait de la guerre » — Interprétation des traités — Principes d'interprétation — « Sens ordinaire » et « sens naturel » des mots employés — Interprétation par recours à une décision rendue par une autre Commission de Conciliation — Interprétation par recours à un mémorandum soumis à la Conférence de la paix.

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<sup>1</sup> *Collection of decisions*, vol. I, case No. 6.