

**REPORTS OF INTERNATIONAL
ARBITRAL AWARDS**

**RECUEIL DES SENTENCES
ARBITRALES**

Beaumont Case (the Eilenroc II)—Decision No. 19

26 October 1953

VOLUME XIV pp. 174-184



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BEAUMONT CASE (THE *EILENROC II*)—DECISION No. 19 OF
26 OCTOBER 1953 ¹

Compensation under Article 78 of Peace Treaty—War damages—Destruction in Italian territorial waters of ship belonging to a national of United States of America, seized by Italian military forces in French territorial waters—Reference to Decision No. 2 handed down by Anglo-Italian Conciliation Commission in Grant-Smith case—Option between Article 75 and 78 of Peace Treaty—Applicability of Article 78—Whether ship must have been in Italian territory at date specified in said Article—Interpretation of treaties—Measure of damages.

Indemnisation au titre de l'article 78 du Traité de Paix — Dommages de guerre — Destruction dans les eaux territoriales italiennes d'un navire appartenant à un ressortissant des Etats-Unis d'Amérique, saisi par les forces militaires italiennes dans les eaux territoriales françaises — Invocation de la décision n° 2 rendue par la Commission de Conciliation anglo-italienne dans l'affaire « Grant Smith » — Option entre l'article 75 et l'article 78 du Traité de Paix — Applicabilité de l'article 78 — Question de savoir si le navire devait avoir été sur le territoire italien à la date visée par cet article — Interprétation des traités — Evaluation des dommages.

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.

Appearances: Mr. Francesco Agrò, 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 Mrs. Helene M. E. Beaumont 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 Mrs.

¹ *Collection of decisions*, vol. I, case No. 4.

Helene M. E. Beaumont (hereinafter referred to as the claimant) compensation for the loss of the motor cruiser *Eilenroc II* under the circumstances which will be described hereinafter, reimbursement for expenses incurred by the claimant in the preparation of her claim, and such further or other relief as may be just and equitable.

The material facts are as follows:

The Embassy of the United States of America in Rome certified that the claimant is now and has been at all times since her naturalization on September 26, 1941 a national of the United States of America, 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.

The claimant was the owner of Villa Eilenroc, Cap d'Antibes, (A.M.), France. On June 28, 1938 the claimant purchased a new 40-foot motor cruiser which she named *Eilenroc II*; said motor cruiser was built by the Cris-Craft Corporation of Algonac, Michigan and was powered by two twelve cylinder Scripps engines, 316 H.P. each. In 1940 when the claimant left Southern France, she placed a certain Elizabeth Landreau in complete charge of both the Villa Eilenroc and the motor cruiser *Eilenroc II*.

On May 8, 1943 an Italian Naval Officer attached to an Italian Anti-Submarine Group seized the *Eilenroc II* as enemy property. The *Procès-verbal* of Seizure reads as follows (in translation):

On this 8th day of May, 1943, at nine o'clock, in the port of Golfe Juan, the undersigned, instructed to exercise the right of inspection by Captain of Corvette, Lorenzo Janin, Commander of the 2nd Anti-Submarine Group, went aboard the pleasure type motor cruiser *Eilenroc* which was in the custody of the guardian Elizabeth Landreau, a French national.

Having noted that the ship's papers are missing and in consideration of the fact that, according to the statement made by said guardian, it appears that said motor cruiser is of enemy nationality, it has been seized.

In order to justify the seizure, a written statement by the guardian attesting to the ship's enemy nationality, has been placed in a duly sealed envelope.

Furthermore, an inventory has been drawn up including, over and above the indications relating to the ship's papers, a list of the members of the ship's crew as well as of the valuables and nautical instruments.

This *Procès-verbal* has been drawn up of the foregoing in four copies one of which has been handed to the guardian of the captured vessel who, after hearing it read, has signed it together with the undersigned.

*The Guardian of the motor boat
representing the owner*

(Signed), Elizabeth LANDREAU

*Officer charged with the inspection
Sea Lieutenant*

(Signed) Luigi DE FERRANTE

Captain of Corvette

(Signed) Lorenzo JANIN

In its *note verbale* No. 41/40955/223 of December 10, 1946 the Italian Ministry of Foreign Affairs in reply to an inquiry made on behalf of the claimant by the Embassy of the United States of America in Rome stated that (in translation):

... following investigations carried out in this matter, it appears that the motor boat *EilenRoc* was sunk by the Germans in the waters of Porto Maurizio (Italy).

On September 15, 1947 the Treaty of Peace with Italy entered into force.

On December 27, 1948 the Embassy of the United States of America in Rome presented to the Ministry of the Treasury of the Italian Republic the claim of Mrs. Helene M. E. Beaumont for the loss of the motor cruiser *Eilenroc II* based upon paragraph 4 of Article 78 of the Treaty of Peace.

In its letter of October 5, 1949 the Ministry of the Treasury of the Italian Republic simply stated that Article 78 of the Treaty of Peace was not applicable under the facts of the instant case. Upon request the Italian Ministry of the Treasury in its letter of February 21, 1950 clarified the previous rejection by making known its contention that Article 78 did not apply because the motor cruiser *Eilenroc II* had been removed from French territory and that if there was any obligation on the Italian Republic in the instant case, such obligation could be determined only under Article 75 of the Treaty of Peace.

On April 4, 1950 the Embassy of the United States of America in Rome informed the Ministry of the Treasury of the Italian Republic that it could not accept the position taken by the Italian authorities with respect to the claim and made reservation to submit the dispute to the Conciliation Commission established under Article 83 of the Treaty of Peace.

On September 14, 1950 the Agent of the United States of America filed the Petition in this case. Having premised the statement of the case, the Petition asserts that since the *Eilenroc II* was destroyed during the war restitution cannot be made by the Italian Government and hence Article 75 of the Treaty of Peace would not be applicable; that since the *Eilenroc II* cannot be returned the claimant has a right to request compensation under paragraph 4 (a) of Article 78 of the Treaty of Peace; that the *Eilenroc II* is included within the meaning of the term "property" as this term is used in Article 78 of the Treaty of Peace; and concludes by requesting that the Conciliation Commission:

(a) Decide that the claimant is entitled to receive from the Italian Republic two-thirds of a sum sufficient at the time of payment to purchase similar property, which sum was estimated to be in October 1948 when the claim was prepared, the equivalent in lire of \$32,000, as well as the entire sum of 150,000 lire representing the reasonable expenses incurred by the claimant in Italy up to October 1, 1948 in establishing her claim, subject to any necessary adjustment for variation of values between October 1948 and the final date of payment;

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

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

In the Answer filed with the Secretariat of the Conciliation Commission on October 14, 1950, the Agent of the Italian Republic maintains the position taken by the Italian authorities and asserts that the issue in dispute is (in translation):

... whether or not Article 78 of the Treaty of Peace is applicable to damages suffered by a national of one of the Allied and Associated Powers as a result of the destruction in Italy of a vessel captured during the war by Italian armed forces in a port of one of the Allied and Associated Powers,

and concludes by making a request for a reservation of (in translation) "every other aspect of the substance of the dispute". In support of his contention that the Petition should be rejected, the Agent of the Italian Republic argues in the Answer:

(a) that the return of property taken from the territory of one of the United Nations is governed by Article 75 of the Treaty of Peace;

(b) that the Treaty of Peace does not specify that compensation is payable under Article 78 of the Treaty of Peace for property taken from the territory of one of the United Nations when such property cannot be returned by Italy because the property itself had been destroyed during the war;

(c) that the physical existence in Italy on *June 10, 1940* of the claimant's property is an indispensable prerequisite to the application of Article 78 of the Treaty of Peace;

(d) that paragraphs 4 (a) and 9 (c) of Article 78 can be interpreted only in the light of and in a manner consistent with the first paragraph of Article 78 of the Treaty of Peace;

(e) that "property", as this term is defined in paragraph 9 (c) of Article 78, does not apply to vessels forcibly seized and taken to Italy during the war and that the use in said paragraph of the expression "after June 10, 1940" refers to measures of control taken by the Italian authorities with respect to vessels found in Italian territorial waters on June 10, 1940 and not to vessels found or forcibly brought into Italian territorial waters *after* June 10, 1940.

In compliance with an Order issued by the Conciliation Commission on November 3, 1950 that the respondent government should submit a full and complete Answer to the Petition, the Agent of the Italian Republic submitted on December 23, 1950 a supplemental Answer dated December 21, 1950 in which it was declared that (in translation):

the (Italian) Government values the motor boat *Eilenroc II*, lost as a result of the war, at Five Million (5,000,000) Italian Lire.

In compliance with an order issued by the Conciliation Commission on February 13, 1951, the Agent of the Italian Republic provided for the transfer from the Italian Ministry of the Treasury to the secretariat of the original Statement of Claim and all documents attached thereto as well as the technical data on the basis of which the Italian Ministry of Merchant Marine had made its evaluation of the claimant's motor cruiser; and on March 14, 1950 said documents were included in the record of the case.

In its Order of April 13, 1951 the Conciliation 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 June 26, 1951 was attached additional documentary evidence to support the claimant's evaluation of the *Eilenroc II* and to show that the calculation by the Italian Ministry of Merchant Marine was made "on unsupportable assumptions and is in many respects inaccurate".

On July 30, 1951 the Conciliation Commission recorded its ruling that the formal submission of proof in this case had been concluded and established time limits for the submission of Briefs.

On September 5, 1951 the Agent of the United States of America submitted the Brief of his Government which maintains that both the question of whether Article 78 of the Treaty of Peace is applicable under the facts in the instant case, and the question of compensation to which the claimant is entitled under paragraph 4 (a) of Article 78 are disputed issues in this case. It is not necessary here to detail the legal argument and principles cited in the Brief except to note that the Agent of the United States of America maintained the principles set forth in the Petition and concluded by requesting the Conciliation Commission to determine:

(1) that the claimant is entitled to maintain the claim under Article 78 of the Treaty of Peace with Italy and the agreements supplemental thereto or interpretative thereof;

(2) that the claimant is entitled to receive as the sum necessary to purchase similar property two-thirds of the lire equivalent of at least \$32,000 or 20,000,000 lire;

(3) that the claimant is entitled to the sum of 150,000 lire constituting the reasonable expenses incurred in Italy in establishing the present claim;

(4) that the claimant is entitled to interest on the principal amount at the rate of 5% dating from December 27, 1948 or at least from February 27, 1949.

The Agent of the Italian Republic did not submit a Reply Brief within the time-limit established in the order of July 30, 1951 but submitted in lieu thereof a request that the Conciliation Commission sit to hear the oral arguments of the Agents of the two Governments, and permit him at that time to submit a written citation of legal authorities.

In its Order of October 23, 1951 the Conciliation Commission granted the Agent of the Italian Republic an additional period of thirty (30) days within which to submit a Reply Brief.

In a letter filed with the Secretariat on November 30, 1951 the Agent of the Italian Government waived the right to file a Reply Brief and states that (in translation):

Indeed, all the questions of law which have been raised in the Beaumont case are presently under decision by the Anglo-Italian Conciliation Commission (*Gin and Angostura* case).¹

Since it is to be expected that the Decision in question will be considered binding as a precedent by one or the other of the Agents of the two Governments involved in the present dispute, the undersigned does not deem it advisable to change the weft of the legal arguments developed in his Answer (arguments which are the same as those made in the *Gin and Angostura* case), and only reserves the right to make his own examination, and possibly his own critical remarks on the Decision to be made, at the time of the discussion of the Beaumont dispute before the Honourable Conciliation Commission.

In the Request for an Award dated December 11, 1951 and filed with the secretariat on December 12, 1951, the Agent of the United States of America took note of the statement made on November 30, 1951 by the Agent of the Italian Republic that the questions of law involved in this dispute are the same as those pending on that date before the Anglo-Italian Conciliation Commission but maintained that, although entitled to the greatest respect, the Decision of the Anglo-Italian Conciliation Commission in the *Gin and Angostura* case could not be considered as binding on the Italian-United States Conciliation Commission for the determination of the issues in the present dispute.

On January 10, 1952 the Agent of the United States of America filed a Request to submit certain additional evidence including a photostatic copy of a letter dated November 13, 1951 from the Chris-Craft Corporation showing the cost of purchasing on that date a motor cruiser similar to the *Eilenroc II*.

On March 4, 1952 the Anglo-Italian Conciliation Commission, with Dr. Plinio Bolla of Switzerland sitting as the neutral Third Member, handed down its Decision No. 2 in a dispute arising out of a claim submitted by Margaret Grace Grant-Smith, a British national, under Article 78 of the Treaty of Peace for the loss of the yacht *Gin and Angostura*,² and judicial notice of this Decision has been taken by this Conciliation Commission.

^{1, 2} *Supra*, p. 13.

At the sitting of the Conciliation Commission of March 14, 1952 the Conciliation Commission:

(a) stated that the legal question in this case was under review in the light of Decision No. 2 handed down by the Anglo-Italian Conciliation Commission on March 4, 1952, and invited the Agents of the two Governments to attempt an agreement on an evaluation of the motor cruiser involved in this dispute;

(b) granted the request filed by the Agent of the United States of America on January 10, 1952, *supra*, and directed the inclusion in the record of the evidence referred to in such request;

(c) accepted a written statement submitted by the Agent of the United States of America in which the question of interest on the claim which had been raised in the Brief submitted on September 5, 1951 was withdrawn in the light of Decision No. 5 of the Commission (Case No. 1—*The United States of America ex rel. Elena Iannone Carnelli vs. The Italian Republic*).¹

At the sitting of the Conciliation Commission of March 20, 1952 the Commission granted the Agents of the two Governments further time in order that the possibilities of reaching an agreement on the questions of evaluation might be further explored.

On April 10, 1953 the Agent of the United States of America filed with the Secretariat a Notice that the two Governments had been unable to reach an agreement on the evaluation of the claimant's motor cruiser and requested the Conciliation Commission to issue a Decision in this case. Copies of correspondence between the Agents of the two Governments regarding this question were submitted for inclusion in the record and it has been noted that the Agent General of the Italian Republic stated in a letter dated June 5, 1952 that (in translation)

The Ministry of the Treasury has informed me that it does not deem it opportune to resubmit the question of the evaluation of the motor vessel *Eilenroc II* to the Interministerial Commission (of the Italian Government) and awaits the Decision in this case which will be made by the Italian-United States Conciliation Commission.

It is the contention of the United States of America that the claimant is entitled to compensation from the Italian Government under Article 78 of the Treaty of Peace and the agreements supplemental thereto or interpretative thereof. Paragraph 4 (a) of Article 78 reads in part as follows:

... In cases where property cannot be returned or where, as a result of the war, a United Nations national has suffered a loss by reason of injury or damage to property in Italy, he shall receive from the Italian Government compensation in lire to the extent of two-thirds of the sum necessary, at the date of payment, to purchase similar property or to make good the loss suffered. . .

It is not disputed that the claimant was at all times pertinent here a national of the United States of America; that the *Eilenroc II* was in French territorial waters when it was seized as enemy property on May 8, 1943 by Italian naval forces; that the *Eilenroc II* was sunk in Italian territorial waters in the course of military operations and that the *Eilenroc II* cannot be returned to the claimant by the Italian Government.

Even though *Eilenroc II* was lost in Italian territorial waters and hence at the time of the loss was "in Italy" during the period taken into consideration by Article 78, the Agent of the Italian Government maintains that Article 78 of

¹ *Supra*, p. 86.

the Treaty of Peace cannot be applied because the facts in the instant case are within the scope of Article 75. The essence of this argument is that since *Eilenroc II* was seized in French territorial waters the French Government alone had the right under Article 75 to present a claim to the Italian Government for the return of said motor cruiser and that any such claim should have been presented within six months after the Treaty of Peace entered into force (September 15, 1947).

The evidence in this case establishes that even before the Treaty of Peace with Italy entered into force, the claimant invoked the assistance of *her* Government in an attempt to learn the fate of the *Eilenroc II* and that on December 10, 1946 the Italian Ministry of Foreign Affairs informed the Embassy of the United States of America in Rome that on investigation had established that the claimant's motor cruiser had been sunk in Italian territorial waters. It is obvious that since the claimant was not a French national she would not have been entitled to the diplomatic protection of the French Government in seeking redress from Italy for the loss sustained. The Italian Government has never maintained that there was ever any possibility of salvaging the claimant's motor cruiser after the war, and the French Government has never expressed an interest in the subject matter of this dispute.

The Agent of the Italian Republic maintains that all the provisions of Article 78 of the Treaty of Peace must be applied and interpreted in the light of and in a manner consistent with the first paragraph of Article 78 and that the existence of the claimant's property in Italy on *June 10, 1940* is an indispensable prerequisite to granting the claimant relief requested.

The argument of the Agent of the Republic of Italy assumed an obligation under Article 78 to return "property" *only* if it was in Italy on June 10, 1940, cannot be supported either by the wording used in the Treaty of Peace or by logic or authority. Prior to the declaration of war between the two Governments on December 11, 1941 a national of the United States of America legally might have shipped to Italy for sale or trans-shipment certain types of property; even after December 11, 1941 a national of the United States of America might lawfully have acquired property in Italy by inheritance. Additional examples are not required to illustrate the points that a national of the United States of America may have acquired ownership of property in Italy after June 10, 1940 and it is not surprising that there is lacking in Article 78 any provision which shows an intent—either expressed or implied—to limit Italy's obligation to return such property.

The date of June 10, 1940 is also referred to in paragraph 2 and paragraph 9 (c) of Article 78 and an examination of these two paragraphs demonstrates the lack of foundation of the Italian argument.

Paragraph 2 of Article 78 requires the Italian Government to

. . . nullify all measures, including seizures, sequestration or control, taken by it against United Nations property between June 10, 1940, and the coming into force of the present Treaty. . .

Clearly the obligation here is for Italy to nullify any such measure taken during the period that Italy was at war, and is immaterial whether the United Nations property was in existence in Italy on June 10, 1940 or was brought into or acquired in Italy after that date.

Paragraph 9 (c) of Article 78 defines the term "property" as used in said Article of the Treaty of Peace as follows:

"Property" means all movable or immovable property, whether tangible or intangible, including industrial, literary and artistic property, as well as all

rights or interests of any kind in property. Without prejudice to the generality of the foregoing provisions, the property of the United Nations and their nationals includes all seagoing and river vessels, together with their gear and equipment, which were either owned by the United Nations or their nationals, or registered in the territory of one of the United Nations, or sailed under the flag of one of the United Nations and which, after June 10, 1940, while in Italian waters, or after they had been forcibly brought into Italian waters, either were placed under the control of the Italian authorities as enemy property or ceased to be at the free disposal in Italy of the United Nations or their nationals, as a result of measures taken by the Italian authorities in relation to the existence of a state of war between members of the United Nations and Germany.

The second sentence of this definition not only applies to all seagoing and river vessels which were in Italian territorial waters on June 10, 1940 but also to those vessels which were forcibly brought into Italian waters after that date. Clearly in this instance too, the date of June 10, 1940 refers to the date of Italy's entrance into the war following which measures were taken by Italy to bring the vessels of United Nations and their nationals under the control of the Italian authorities.

The claimant Government asserts and the respondent Government denies that *Eilenroc II* was property within the meaning of this term as defined in paragraph 9 (c) of Article 78 *supra*. The reference to seagoing and river vessels which was included in the second sentence of paragraph 9 (c) of Article 78 eliminates the basis of the argument by the Agent of the Italian Republic that this case must be governed exclusively by Article 75 of the Treaty of Peace. It is not necessary to the Conciliation Commission in reaching its decision in this case to determine the broader question of whether the Italian Government is responsible under Article 78 of the Treaty of Peace for property other than seagoing and river vessels removed during the war from the territory of one of the United Nations occupied by forces of the Axis Powers; and this more delicate question has been left aside in the instant case as was done in a similar dispute before the Anglo-Italian Conciliation Commission (see Decision March 4, 1952 in the *Gin and Angostura* case).¹

In the instant case the *Eilenroc II* was seized on May 8, 1943 by the Italian naval forces. How or when the vessel was brought to Italy has not been established by the evidence but there can be no doubt that in Italy the *Eilenroc II* was under the control of the Italian Navy and was not at the free disposal of the claimant. It was the obligation of the Italian Government to account for and to return this motor cruiser when it was established that the *Eilenroc II* had been seized by Italian naval forces, and this the Italian Government has not been able to do since the motorcruiser was lost during the war.

The Conciliation Commission holds that the conclusive fact in the instant case which fixes the liability of the respondent Government under Article 78, and more particularly under paragraph 4 (a) and 9 (c) thereof, is that the *Eilenroc II* was sunk in Italian territorial waters; proof of this fact alone establishes that the claimant's property was in Italy and could not be returned after the war.

As far as the indemnity is concerned, the claimant Government has requested that this be determined on the basis of the amount necessary today to purchase similar property and has submitted with the Petition a letter dated September 8, 1948 from the Chris-Craft Motor Boat Sales Corporation in which the replacement value of a new 40-foot express cruiser fitted with two 316 H.P. Scripps engines and delivered in Cannes, France is quoted at Thirty-Two Thousand

¹ *Supra*, p. 13.

Dollars (\$32,000), equal to Twenty Million (20,000,000) Lire at the present rate of exchange of Six Hundred Twenty-Five (625) Lire to the Dollar.

The Agent of the Italian Government disputes this valuation and upon order of the Conciliation Commission submitted in evidence an evaluation of the claimant's motor cruiser prepared under the direction of the Italian Ministry of the Merchant Marine; an examination of this data reveals that the actual cost in the fall of 1950 to build and equip in Italy a boat similar to the motor cruiser in question would be approximately as follows:

	<i>Lire</i>
Hull—without cabin and motors	9,000,000
Addition for cabin	1,000,000
Cost of 2 gasoline engines, 316 H.P. each, installed . . .	10,740,000
TOTAL	20,740,000

The evaluation made in this manner by the competent Italian authorities shows only relatively small difference from the cost of replacement quoted by the Chris-Craft Corporation in September 1948. But the competent Italian authorities maintain that from the foregoing figures there should be allowed an amount for depreciation equivalent to 48.7 per cent on the basis that thirteen (13) years (1938 to 1950 inclusive) depreciation had occurred. Having calculated an allowance for depreciation in this manner, the competent Italian authorities have maintained that a further reduction should be made and predicate such reduction on the following assumptions (in translation):

- (a) that the motor cruiser was found without inventory and therefore presumably with only the fixed equipment;
- (b) that the presumable speed, based on the data above, was around 24-25 knots and not 30 as indicated;
- (c) that there does not exist a market for this type of vessel whose value depreciates rapidly with time;
- (d) that it must be presumed, considering the international situation of the times, that it was found in a condition of abandon and imperfect efficiency since it lacked an inventory.

The evaluation of Five Million (5,000,000) Lire placed on the claimant's motor-cruiser by the Italian Government was arrived at in this manner and reflects these considerations.

In the Reply the Agent of the United States of America submitted additional evidence to support the claiming Government's contention that the *Eilenroc II* was a private pleasure craft which had been in the water less than three months during 1938 and 1939; that a sailor-watchman had been employed by the claimant to provide continuous maintenance; that the hull was mahogany; that the motor cruiser was powered by special gasoline engines and could easily develop a speed of 32 knots; that the hull and engines were in perfect condition and that all its fittings and equipment were aboard when it was seized by an officer of the Italian Navy on May 8, 1943; that only the installation of batteries (which had been stored at Villa Eilenroc) was necessary in order to permit the officer to remove the *Eilenroc II* to the Italian Naval operating base; that the seizure and removal was accomplished in a matter of hours and that the Italian Naval officer in charge thereof failed to prepare an inventory of the fittings and equipment on board the claimant's motor cruiser because to have done so at the time would have delayed the officer's departure from Cap d'Antibes (A.M.)

On March 14, 1952 the Agent of the United States of America filed with the secretariat a letter dated November 13, 1951 in which the Chris-Craft Corpora-

tion acknowledged that while they no longer built a motor cruiser identical to the *Eilenroc II* one of their new models was similar and quoted a price thereon of \$44,300.00 for delivery in Marseilles, France of a 42-foot motor cruiser powered by two 350 H.P. Scripps engines. It should be noted that while this letter reflects an increase in price from those quoted in 1948, the quotation of \$44,300.00 is based on a slightly larger motor cruiser equipped with more powerful engines than the subject of this claim.

Considering the provisions of paragraph 4 (a) of Article 78 of the Treaty of Peace and the technical and other evidence contained in the record of this case; and considering the lack of evidence to substantiate certain assumptions made by the Italian Ministry of Merchant Marine and the inability of the Agents of the two Governments to reach agreement on the question of evaluation, the Conciliation Commission finds that at the date of this decision the amount necessary in Italy to purchase a motor cruiser similar to the *Eilenroc II* in hull, engines, equipment, age and condition is Sixteen Million Seven Hundred Fifty Thousand (16,750,000) Lire.

Under the provisions of paragraph 4 (a) of Article 78 of the Treaty of Peace and the agreements supplemental thereto or interpretative thereof, the claimant is entitled to receive as compensation two-thirds (2/3) of this sum, namely, Eleven Million One Hundred Sixty-six Thousand, Six Hundred Sixty-seven (11,166,667) Lire.

The Commission further finds that sufficient evidence has been introduced in this case to establish the reasonableness of the request of the claimant for payment by the Government of the Italian Republic of the sum of One Hundred Fifty Thousand (150,000) Lire for expenses incurred in Italy in establishing this claim. No evidence having been submitted that any previous payment has been made to the claimant for the motor cruiser 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 Eleven Million One Hundred Sixty-six Thousand, Six Hundred Sixty-seven (11,166,667) Lire under Article 78 of the Treaty of Peace in full and complete settlement of the claim of Mrs. Helene M. E. Beaumont, a national of the United States of America, for the loss in Italian territorial waters during the war of a motor cruiser owned by her;

2. That in this case there also exists an international obligation of the Government of the Italian Republic to pay the additional sum of One Hundred Fifty Thousand (150,000) Lire under paragraph 5 of Article 78 of the Treaty of Peace for expenses incurred in Italy by Mrs. Helene M. E. Beaumont in establishing this claim;

3. That the payment of these two sums in Lire, (aggregating a total of Eleven Million Three Hundred Sixteen Thousand Six Hundred Sixty-seven (11,316,667) 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;

4. That the payment of these two sums in Lire, (aggregating a total of Eleven Million Three Hundred Sixteen Thousand, Six Hundred Sixty-seven (11,316,667) 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;

5. That in this case an Order regarding costs is not required;
6. That in this case the question of interest on the claim was withdrawn by the Agent of the United States of America at the sitting of the Conciliation Commission on March 14, 1952;
7. 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 Italian, both texts being authenticated originals.

DONE in Rome this 26th day of October, 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

WEISS CASE—DECISION No. 20
OF 25 NOVEMBER 1953 ¹

Compensation under Article 78 of Peace Treaty—Damage sustained as result of act of war by property in Italy after its requisition by Italian authorities—Nationality of owner—National of another of the United Nations on 3 September 1943 or on date on which damage occurred—Determination of amount of compensation.

Indemnisation au titre de l'article 78 du Traité de Paix — Dommage causé par fait de guerre à des biens en Italie après leur réquisition par les autorités italiennes — Nationalité du propriétaire — Ressortissant d'une autre Nation Unie à la date du 3 septembre 1943 ou à la date du dommage — Détermination du montant de l'indemnité.

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 Alexander J. Maturri, Representative of the United States of America.

¹ *Collection of decisions*, vol. II, case No. 27.