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Theodorou Case—Decision No. 190

25 July 1961

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the amount to be awarded to the British Company (The United Africa Company Ltd.);

(c) The present decision is final and binding.

DONE at Geneva, 15th July, 1961.

Representative of Italy on the Anglo-Italian Conciliation Commission

Representative of the United Kingdom of Great Britain and Northern Ireland on the Anglo-Italian Conciliation Commission

A. SORRENTINO

E. A. S. BROOKS

The Third Member of the Anglo-Italian Conciliation Commission

M. Paul GUGGENHEIM

THEODOROU CASE—DECISION No. 190
OF 25 JULY 1961

Claims for compensation under Article 78 of Peace Treaty—War damages sustained by enemy property—Ownership of property at time of acts causing damages—Evidence of—Transfer of ownership—Whether property validly transferred under marriage contract—Effect of transfer of property by marriage contract on spouses's rights to present claim—Nationality of claimant as basis of claim—Evaluation of amount of damages compensable—Evidence—Power of Conciliation Commission to decide on admissibility and value of—Place of equity in determination of damages—Reference to decisions handed down by Franco-Italian Conciliation Commission and other Mixed Commissions—Inadmissibility of claim—Delay in presentation of claim.

Demande en indemnisation au titre de l'article 78 du Traité de Paix — Dommages de guerre causés à des biens ennemis — Appartenance des biens au moment du dommage — Transfert de propriété — Validité d'un transfert effectué en vertu d'un contrat de mariage — Effet d'un tel transfert sur le droit des conjoints de se prévaloir de l'article 78 du Traité de Paix — Nationalité du réclamant prise comme base de la réclamation — Evaluation des dommages indemnissables — Preuve — Pouvoir de la Commission de Conciliation de juger l'admissibilité et la valeur des preuves — Place de l'équité dans la détermination des dommages — Rappel de certaines décisions rendues par la Commission de Conciliation franco-italienne et par d'autres Commissions Mixtes — Irrecevabilité — Retard dans la présentation de la réclamation.

Dispute relating to the claims of Mr. Gregory Alfred Theodorou (No. 3175 and No. 3175B) in the series presented by the Government of Her Britannic Majesty to the Government of the Italian Republic.

The Anglo-Italian Conciliation Commission established pursuant to Article 83 of the Treaty of Peace signed on 10 February 1947, between the Allied and Associated Powers and Italy, composed of: Avvocato Antonio Sorrentino, Representative of the Government of the Republic of Italy, Rome, Mr. E. A. S. Brooks, Representative of Her Britannic Majesty's Government, London, and of Monsieur Paul Guggenheim, Professor of the Faculty of Law at the University of Geneva, and at the Graduate Institute of International Studies at Geneva, Third Member appointed by agreement by the Italian and British Governments, in the dispute arising as a result of the claims for compensation of the above named, takes cognizance of the following facts:

1. The Ambassador of Her Britannic Majesty by a Note dated 16 November 1950 presented a claim (hereinafter called the first claim) dated 22 May 1950 (No. 3175) signed by Gregory Alfred Theodorou, a British subject (hereinafter called the claimant).

This first claim relates to an immovable property situated at Pothea, district of St. Jean Theologou in the island of Kalymnos, Dodecanese (hereinafter called: the house). The claimant alleges that he is the owner of the said house which was transferred to his ownership by his father-in-law Schevos M. Alachouzos, under a contract of marriage dated 4 January 1937.

The claimant alleges that during the first months of the German occupation of the Island during the Second World War, German soldiers frequently entered the house and looted it in such a manner that it was practically emptied. As evidence there is annexed to the claim in the first place a declaration dated 21 November 1945 addressed to the British Political Administration, by the Claimant's father-in-law Schevos Alachouzos. In this document the damage caused to the house and its contents was estimated "on the most conservative estimate" at about £ 3,000.

2. Another means of evidence put forward by the claimant is a declaration by the Mayor of Kalymnos dated 15 July 1952. It affirms "his dwelling house in the vicinity of St. Theologou was bombarded in October 1943, suffered severe damage and was looted".

In addition, the claimant supports his claim with a declaration of 5 July 1952 by Engineer George M. Hatzitheodorou. The latter states that he was invited by the claimant in 1946 "to undertake by contract, the restoration of the damaged building belonging to him . . . having made an autopsy, and proceeded to estimate the cost, I asked for the sum of £10,000, to undertake to execute the above repairs".

The claimant found the estimate, which referred only to the restoration of the house and not to the compensation for its contents, unsatisfactory. He did not accept it.

Mr. Theodorou further relies on certain declarations of artisans who carried out repairs to the house between 1945 and 1949. By a declaration of 17 July 1952, before a local notary, two workmen, Michael Skevou Magkoulias and Hlias Skevou Alahouzou, have stated that they carried out repairs between 1945 and 1949 as a result of the bombardment of the house in 1943. The total cost for work, material and expenses amounted to lire 3,470,000. On the same date, two other artisans, George Anastasiou Roussos and Hlias Skevou Alahouzou, made similar declarations, according to which certain repairs were effected between 1945 and 1949, the total cost of which amount to lire 5,590,000.

Finally a third declaration attached was made by a certain Roditis and the

above name Alahouzou, a declaration which concerns further repairs carried out between 1945 and 1949. Their cost was lire 3,140,000.

3. A third category of evidence which relates not to the value of the house itself, but to its contents, is provided by a London sponge merchant Andreas Emmanuel Tyrakis, who claimed to know the house in Kalymnos. He estimates the value of the contents between £15,000 and £20,000. A similar declaration by a certain Xeni Pelecanos, domiciled in Paris, dated 20 June 1952, claims that the contents of the house were worth £15,000. Compare also the declaration made by Constantin Tsangaris, also domiciled in Paris, dated 20 June 1952, which estimated the contents of the house at £14,000.

4. The Ambassador of Her Britannic Majesty by a Note dated 9 July 1954, presented to the Ministry of Foreign Affairs another claim (hereinafter called the second claim). This relates to the following facts:

(a) The claimant alleges that the contents of six warehouses situate at Kalymnos which contained amongst other things sponges, and which had been rented by him, had been looted by the German and Italian armed forces.

(b) In addition, a warehouse annexed to the house mentioned in the first claim had been damaged during a bombardment of the island of Kalymnos by the British Fleet in October 1943. The contents had already been previously looted by the Italian and German armed forces.

In evidence of the existence of this second claim, the claimant submitted different documents to the British and Italian authorities. In the first place a declaration by the Mayor of Kalymnos dated 15 July 1952 which sets out the following facts:

His seven warehouses were also looted by the Italian authorities, who removed their entire contents, e.g., sponges, timber, and different materials essential merchandise for the preparation of sponges.

In addition, the claimant alleges that the warehouses which belonged to him, had been acquired on 4 January 1937 under the abovementioned contract of marriage, and that the warehouses which had been rented had been so rented in 1937, 1938 and 1939. The claimant in addition relies as proof on affidavits No. 2287 and No. 2288 drawn up by a Notary Public at Kalymnos made by local merchants in the sponge business as was the claimant. The affidavit sworn by a certain Kalojiannis on 17 July 1952 (affidavit No. 2287), estimated the value of the contents of the warehouses at £65,000. The affidavit sworn by a certain Kouremetis (affidavit No. 2288) of the same date estimated the value of the damage caused to the claimant at £60,000. In addition the claimant relies on a declaration of his father-in-law Schevos Alachouzos made to the British Administration on 21 November 1945. Alachouzos estimated the damage caused at £4,000 whilst claiming that it was a question of his own loss and not that of his son-in-law, the claimant.

5. On 23 October 1951 the Italian Ministry of the Treasury sent a Note to the British Embassy, requesting additional information with regard to the first claim. The Note in particular points out that "*I predetti reclamanti hanno ommesso di inserire nei loro reclami qualsiasi indicazione circa i beni danneggiati o perduti limitendosi solamente a richiedere una somma forfettaria*". (Translation: "The said claimants have omitted to insert in their claims any details as to the property damaged or lost limiting themselves solely to claiming a lump sum.")

The Ministry of the Treasury requested an inventory of the lost furniture with an indication of the value of each article.

On 16 September 1952 the claimant sent his observations on the subject of

the Italian requests to the British Embassy in Rome. The amounts claimed as compensation were as follows:

	<i>Lire</i>
(a) For the repair of the immovable property.	12.200.000
(b) For the damage caused to the movable property	23.760.000
	35.960.000

The claimant's letter was sent by the British Embassy to the Italian Ministry of the Treasury.

6. The British Embassy were informed by a Note dated 13 February 1957, addressed to them by the Italian Ministry of the Treasury, that the two claims had been submitted to an Interministerial Committee set up under Article 6 of Italian law No. 908 of the 1st of December, 1949. At its meeting on 23 November 1956 this Committee refused to take the two claims into consideration. It expressed its opinion in the following manner:

Considerato che il Sig. Gregory Alfred Theodorou, cittadino britannico, ha, con tre reclami, avanzato, ai sensi dell' art. 78 del Trattato di pace, richiesta di risarcimento dei seguenti danni di guerra:

- 1) *danni a un fabbricato in Calimno;*
- 2) *danni a beni mobili di abitazione;*
- 3) *...*

4) perdita di merci varie contenute in un magazzino in Calimno; rilevato che i predetti beni non furono sottoposti ad alcuna misura prevista dalle leggi di guerra;

considerato che nessuna prova idonea è stata fornita in ordine alla proprietà del fabbricato;

non possono infatti tener luogo certificati catastali e delle trascrizioni le copie informi dell' atto di donazione e quelle di proventivi e fatture per lavori che si assorisono eseguiti; che, del pari, per quanto riguarda i mobili di abitazione nessuna documentazione concreta prova la loro preesistenza, consistenza, valore e proprietà;

...

che, infine, molto incerte e generiche sono le dichiarazioni dell' istante per quanto riguarda le merci, che sono da ritenersi, invece, di proprietà del suocero;

che, pertanto, a prescindere da ogni altro accertamento anche per quanto riguarda il valore dei danni, denunciati con manifesta esagerazione, il reclamo si appalesa del tutto infondato; esprime l'avviso che i reclami del Signor Gregory Alfred Theodorou debbano essere respinti.

(*Translation:* "Considering that Mr. Gregory Alfred Theodorou a British subject has by three claims put forward in accordance with Article 78 of the Treaty of Peace, requested compensation for the following war damage:

- (i) Damage to a building in Kalymnos,
- (ii) Damage to furniture in a house,
- (iii) ...

(iv) The loss of various merchandise contained in a warehouse in Kalymnos;

Considering that the above mentioned property was not subjected to any measure foreseen by the laws of war;

considering that no appropriate proof has been furnished as to the ownership of the building;

in fact the informal copies of the act of donation and of estimates and invoices for works stated to have been carried out, cannot take the place of land registry certificates and certificates of transcription;

that equally, as regards the household effects, there is no concrete documentation to prove the pre-existence, details, value and ownership of the same;

...

that finally, the claimant's statements appear most uncertain and vague as regards the goods, which are to be considered instead as belonging to his father-in-law;

that, therefore, leaving aside any other inquiries as regards also the value of the damage, the amount of which has been obviously exaggerated, the claim appears to be completely unfounded;

expresses the opinion that the claims of Mr. Gregory Alfred Theodorou must be rejected.")

7. By a *note verbale* of 25 September 1957 the Embassy of Her Britannic Majesty informed the Ministry of Foreign Affairs of Italy that they were not prepared to accept the conclusions at which the Interministerial Committee had arrived. In these circumstances, the Government of Her Britannic Majesty considered that a dispute within the meaning of Article 83 of the Treaty of Peace had arisen between the Government of the United Kingdom of Great Britain and Northern Ireland and the Italian Government, which the Government of Her Britannic Majesty intended to submit to the Anglo-Italian Conciliation Commission if the dispute had not been resolved by agreement within a period of 21 days.

8. On 5 June 1959 the Agent of the British Government sent to the Conciliation Commission his Submission. He moved that the Conciliation Commission should give its decision on the basis of the reasons set out in the said Submission, as well as upon principles of justice and equity relative to the case in question. He requested that the Commission:

- (1) Affirm that the claimant has proved:
 - (a) His title to the house;
 - (b) The cost of repairing the house;
 - (c) The pre-existence, details, value and ownership of the contents;
 - (d) His ownership of the goods in the rented warehouses and claimant's warehouse;
 - (e) The cost of replacing the lost goods and repairing the claimant's warehouse.
- (2) Affirm the liability of the Government of Italy:
 - (a) To pay two-thirds of the sum necessary at the time of payment to restore the house to complete good order;
 - (b) To pay two-thirds of the sum necessary at the date of payment to purchase property similar to the contents;
 - (c) To pay two-thirds of the sum necessary at the date of payment to purchase property similar to the contents of the rented warehouses and the claimant's warehouse and to restore the claimant's warehouse to complete good order.

As to the claim itself, the Government of the United Kingdom raised the following submissions:

Fix the amount of the liability of the Government of Italy:

- (a) Under (1) (a) at two-thirds of the product of multiplying lire 12,220,000 by such factor as is necessary to adjust building costs ruling in 1950 to those ruling in the month in which this Honourable Commission pronounces its decision or such other sum as may be just and equitable;

(b) Under (1) (b) at two-thirds of the product of multiplying lire 23,760,000 by such factor as is necessary to adjust the prices of household articles ruling in 1950 to those ruling in the month in which this Honourable Commission pronounces its decision or such other sum as may be just and equitable;

(c) Under (1) (c) at two-thirds of the product of multiplying lire 105,175,000 by such factor as is necessary to adjust the prices of goods similar to those in the warehouses and to building costs ruling in 1953 to those ruling in the month in which this Honourable Commission pronounces its decision or such other sum as may be just and equitable.

9. The Agent of the Italian Government sent his Reply dated 11 November 1959 to the Conciliation Commission on 14 November 1959.

He submitted so far as concerned the first claim:

Che si prospetti inaccoglibile il 1° reclamo in data 22 maggio 1950 relativo a beni immobili e mobili di abitazione.

(Translation: "that the 1st claim dated 22 May 1950 relating to immovable property and household furniture is to be considered unacceptable.")

and as to the second claim:

Che per quanto concerne infine il . . . reclamo in data 27 maggio 1953 relativo alla presunta perdita per asportazione, delle merci di magazzino (spugne, materiale chimico, macchinari, ecc.) si ritiene che sia da escludere ogni e qualsiasi indennizzo perchè i danni sono da considerare insussistenti.

(Translation: "that finally as regards the . . . claim dated 27 May 1953 as to the alleged loss by looting of goods in the warehouses (sponges, chemical material, machinery etc.) it must be considered that all and any compensation is to be excluded as the loss must be considered as non-existing.")

10. The Agent of the British Government deposited his Replication with the Conciliation Commission on 6 May 1960:

(a) As to the first claim he asserted:

With regard to the proof of ownership, the Learned Agent of the Italian Government has completely ignored the Statement of Law in the Dodecanese (Document No. 4 in the File of Documents) as supported by the Statement of Dott. Giuseppe Lavitola, exhibit No. 11 to Document No. 4 and the Certificate of the Greek Consul-General in London, exhibit No. 12 to Document No. 4.

In the respectful submission of the Agent of Her Majesty's Government the above documents clearly show that the registration of land and movables was not necessary or possible in Kalymnos in respect of property the subject of the marriage settlement.

The house and contents became the property of the claimant on marriage and the house has been since that date and still is his property, and he has produced the only legal document possible to prove such ownership.

With regard to the contents, these too became the property of the claimant by virtue of the marriage settlement and all the furniture and fittings were in the house at the outbreak of war.

(b) With regard to the second claim the British Agent pointed out:

The Agent of Her Majesty's Government can only refer to the explanations given by the claimant in his statutory declaration (that is to say in a document annexed to the claim and which is in the file) and submit that in all the circumstances the explanations of the claimant should be accepted by this Honourable Commission.

11. The Italian Representative and the British Representative in the Conciliation Commission met in Rome on 1 July 1960. At this session they arrived at the following conclusion:

Visto che gli argomenti giuridici sollevati dagli Agenti dei due Governi con riferimento a prove di diritto di proprietà di immobili nel Dodecaneso, sono in completo contrasto fra di loro, la Commissione ordina che l'Agente del Governo Italiano chieda informazioni in merito alle competenti Autorità nel Dodecaneso.

Le domande da rivolgere alle dette Autorità verranno concordate di comune accordo fra gli Agenti dei due Governi.

(Translation: "Whereas the juridical arguments raised by the Agents of the two Governments with reference to the proof as to the ownership of immovable property in the Dodecanese, are mutually contradictory, the Commission orders that the Agent of the Italian Government should ask information in respect thereof of the competent authority in the Dodecanese. The questions to be submitted to the said authority are to be settled by agreement between the Agents of the two Governments.")

12. A questionnaire was subsequently sent through the Italian Consulate at Rhodes to the Préfecture of Rhodes in the Dodecanese which sent it to the Land Registry Office at Kalymnos with a view to clarifying certain disputed facts. On 25 October 1960, in reply to this questionnaire, the official in charge of the Land Registry Office of Kalymnos stated amongst other things:

Certificati di proprietà, in particolare sulla esistenza di gravami e debiti a carico di immobili, venivano rilasciati dal solo relativamente conservato Registro delle Ipoteche, a volte anche in forma consuetudinaria, oppure si annotavano appunti sui documenti di proprietà degli interessati, sia provenienti dagli archivi del Comune, sia trattandosi di semplici contratti di "matrimonio".

(Translation: "Certificates of ownership, in particular regarding the existence of burdens and debts encumbering the immovable property, were issued by the only partially kept Register of Mortgages, sometimes even in a customary form, or else notes were made on the ownership documents of the interested parties, whether coming from the archives of the Commune or being merely marriage settlements.")

13. The Representative of Italy and the Representative of Great Britain met again on 14 April 1961 to record their disagreement on the various points which form the subject of the dispute, after having also taken note of the report of the official in charge of the Land Registry Office of Kalymnos. In these circumstances, the Italian and British Governments agreed to refer to the Third Member contemplated by Article 83 of the Treaty of Peace with Italy. They have called upon Mr. Paul Guggenheim, Professor at the Faculty of Law of the University of Geneva and at the Graduate Institute of International Studies. The latter accepted the mandate.

14. The Conciliation Commission so constituted considered the case on 9 and 10 July 1961 at Geneva.

CONSIDERATIONS OF LAW:

A. The Italian Government and the British Government are in fundamental disagreement on a certain number of questions of fact and of law relating to the two claims for compensation of A. Theodorou. The following questions are at issue:

(a) Is the claimant, a British subject, entitled as he alleges, to be regarded as owner of the immovable property situate at Pothea, district of St. Jean Theologou on the Isle of Kalymnos, Dodecanese, transferred to him or to his wife by the contract of marriage of 4 January 1937?

(b) If the Conciliation Commission gives an affirmative reply to question (a), the question then arises whether the house and the articles which were in it have suffered during the war, damage compensable under Article 78, paragraph 4 (a) of the Treaty of Peace with Italy.

(c) In the case of an affirmative reply to question (b), what compensation ought to be awarded to the claimant?

(d) Has the claimant suffered damage compensable under Article 78, paragraph 4 (a) of the Treaty of Peace with Italy as a result of the looting by the German and Italian forces of the warehouses rented by him and also as a result of a warehouse annexed to the house mentioned under (a) having suffered from a bombardment of the Island of Kalymnos in 1943 and from previous looting by the Italian and German armed forces?

(e) In the case of an affirmative reply to question (d) what compensation ought to be awarded to the claimant?

B. As evidence of his ownership of the property situate at Pothea, the claimant has submitted to the British and Italian authorities various documents, some of which have already been mentioned above.

(1) In the first place the contract of marriage entered into on the 4 January 1937, which provides under No. 1 that the dowry of the fiancée consists of "the dwelling house . . . together with all furniture and contents as it now stands".

(2) The declaration of the Mayor of Kalymnos of 15 July 1952 already mentioned, certifying the existence of the house.

(3) The above-mentioned declarations of 4 June 1952 signed by Andreas Emmanuel Tyrakis, a London sponge merchant, and Constantin Tsangaris, a Paris sponge merchant, confirming that they knew that the house belonged to Mr. Theodorou.

(4) In addition there may be mentioned the declaration of the Land Registry Office of Kalymnos of 25 October 1960 mentioned above in reply to a questionnaire addressed by the Agents of the two Governments to the Préfecture of the Dodecanese.

The relevant passage is the following:

Comunque è notorio a Calino che egli (Theodorou) possiede un notevole patrimonio a Calino sia per dote sia per donazione da parte del padre, sia per acquisti effettuati nel passato, tanto da essere considerato uno dei maggiori proprietari dell' isola.

(Translation: "However it is well known in Kalymnos that he (Theodorou) possessed a considerable patrimony at Kalymnos both by dowry as well as by gift on the part of his father, as well as by purchases effected in the past, so much so as to be considered one of the larger landowners of the Island.")

C. 1. The first question which arises is to know if at the time of the acts causing the damage "the house" was the property of the claimant or of his wife, in such a way that Theodorou was entitled to present a claim in respect thereof. The Italian reply to the Submission denies this for two reasons:

(a) "perchè manca la prova della preesistenza al danno per i beni mobili ed immobili",
 en particulier "i documenti probatori della loro sussistenza",

(b) "perchè anche se si fosse raggiunta tale prova, si ignora a chi i beni appartenovano
 alla epoca del danno".

(Translation: (a) "Because of the lack of proof of the pre-existence of the movable and immovable property before the damage" in particular "the probatory documents as to their existence",

(b) "Also because even if such proof were obtained, it is not known to whom the property belonged at the time of the damage".)

2. On the other hand, the Submission of the British Government considers that the above mentioned contract of marriage is sufficient proof of the transfer of the ownership of the house to the husband or the wife. This is how it is expressed:

"It is respectfully pointed out to this Honourable Commission that by virtue of the laws, customs and usages in force in the Dodecanese at that time, there was no necessity for registration or transcription; in fact, on the Island of Kalymnos this was not possible."

In support of this contention the British submission refers to a legal opinion prepared by Proc. Dott. Giuseppe Lavitola dated 3 March 1958 attached to the file. This opinion reaches the conclusion that at the time of the celebration of the marriage there was not at Kalymnos a register of transcriptions of ownership, but only a register of mortgages. This statement is corroborated by the above-mentioned declaration of the Land Registry Office of Kalymnos which on 25 October 1960 stated as follows:

A Calino, nel periodo 1924-1937, non sono mai esistiti registri catastali nè registri di trascrizioni nel senso delle leggi elleniche. Per consuetudine sia nel periodo della dominazione turca che in quello della occupazione italiana, i contratti venivano registrati in cartelle e non in fogli separati a numero progressivo e specco la numerazione incominciava da principio con ogni nuovo Sindaco eletto. Il Comune conserva pertanto un archivio di contratti e non un archivio catastale. Le donazioni e contratti di matrimonio venivano redatti comunemente a mano ed erano valevoli indipendentemente dalla registrazione del documento nel Codice della Metropoli, pertanto la registrazione avveniva per consuetudine senza una apposita disposizione. I Tribunali oggi riconoscono validi tali documenti.

Certificati di proprietà, in particolare sulla esistenza di gravami e debiti a carico di immobili, venivano rilasciati dal solo relativamente conservato Registro delle Ipoteche, a volte anche in forma consuetudinaria, oppure si annotavano appunti sui documenti di proprietà degli interessati, sia provenienti dagli archivi del Comune, sia trattandosi di semplici contratti di matrimonio.

(Translation: "At Kalymnos during the period 1924-1937 no land registers or transcription registers existed in the sense of the Greek laws. It was the usual practice both during the period of the Turkish domination and that of the Italian occupation, for contracts to be registered in dossiers and not in separate sheets with a progressive number and often the numbering started from the beginning every time a new Mayor was elected. The Commune keeps, therefore, an Archive of contracts and not a land registry archive. Gifts and marriage settlements were usually made out by hand and were valid independently from the registration of the document in the *Codice Della Metropoli*: therefore, the registration was done habitually without any special provision. The courts today recognize these documents as valid. Certificates of ownership, in particular regarding the existence of burdens and debts encumbering the immovable property, were issued from

the register of mortgages which was the only one even relatively kept up. Sometimes even in a customary form, or else they were noted on the actual ownership documents of the interested parties, whether these came from the archives of the Commune or were merely marriage settlements.”)

3. In the opinion of the Conciliation Commission, it can be considered as ascertained, *that in principle*, a contract of marriage could effect the transfer of ownership in Kalymnos in 1937. All the same, even accepting this point of view, it is still necessary to examine whether, in this particular case, the transfer took place in such a way that the claimant is entitled as a result of this procedure to claim rights of ownership so far as concerns “the house”. According to information supplied by the claimant, he had the contract of marriage registered with the Italian Commissioner acting as Mayor. Although the register relating to records of the Commune of Kalymnos for the year 1937 had been destroyed during the war as a result of a bombardment (see declaration of the official in charge of the Land Registry Office of Kalymnos of 25 October 1960), the marriage contract itself bears the following endorsement:

De Publ. Municipio di Calino: si dichiara che gli immobili compresi del presente atto di dote sono liberi di qualsiasi ipoteca nei registri di questo comune. Calino, li 3 febbraio 1937. XV. Il Commissario per il comune di Calino.

(Translation: “De Publ. The Municipality of Kalymnos: it is declared that the immovable properties comprised in the present deed of donation are free of any charges in the registers of this Commune. Kalymnos, 3 February 1937. XV. The Commissioner for the Commune of Kalymnos.”)

In view of this situation, the Conciliation Commission accepts the statement made in the above-mentioned legal opinion of Avv. Lavitola (Document No. 4):

Mr. G. A. Theodorou could not produce a more reliable proof than a declaration of the Mayor of Kalymnos legalised by the Prefect of the Dodecanese, testifying that the local customs did not need any special form for the validity of a dowry contract and that such deeds as well as those of donation and transfers in general, were traditionally drawn up in the form of private documents.

4. However, even if the Conciliation Commission arrives at the conclusion that the contract of marriage was capable of transferring “the house” of the claimant, it is not certain that the transfer had the effects claimed by the British Government. Actually, the contract of marriage of 4 January 1937 does no more than define the dowry of the bride. (*Stabilisce la dote della sposa*). It does not indicate *who* is the owner of the dowry, either the husband, the claimant in this case, or his wife. Now, the latter has not presented a claim for compensation to the Italian authorities in accordance with Article 78 (2) of the Treaty of Peace. Assuming that, in conformity with the law applicable to the matrimonial rights of the Theodorou spouses, the beneficiary of the transfer of the dowry would have been the future wife and not the future husband, several further questions have to be examined, questions which have not been brought into issue between the parties during the course of the proceedings:

(1) To decide whether Mrs. Theodorou would have been eligible to make a claim for compensation, this being possible only for nationals of the United Nations as defined in Article 78 paragraph 9 of the Treaty of Peace. The Conciliation Commission does not hesitate to accept that Mrs. Theodorou was a British subject after her marriage which took place at the beginning of the year 1937. She was therefore a national of the United Nations as defined in Article 78, paragraph 9 of the Treaty of Peace. Mrs. Theodorou’s status of

British subject derives from the British Nationality and Status of Aliens Acts 1914-1943, the applicable ones in the present instance. These Acts provide for the acquisition by a wife, of British nationality on marriage. Such is certainly the case for persons of Italian nationality marrying a foreigner—as was the case of Mrs. Theodorou—according to Article 10 of the Italian law on nationality of 13 June 1912. Mrs. Theodorou must therefore be considered as a British subject from the date of her marriage, having thereby lost her Italian nationality. In consequence, she would have had the benefit of the right to demand compensation for war damage in accordance with the provisions of Article 78 of the Treaty of Peace.

(2) The question then arises on the hypothesis that “the house” which was transferred by the marriage contract became the property of Mrs. Theodorou, a British subject, and whether she ought not *herself* to have presented a claim for compensation in her own name, which in fact she did not do. On this point the Conciliation Commission must take note that the Italian Government did not raise any objection to the claim of Mr. Theodorou during the course of the proceedings on the grounds of inadmissibility. There is therefore ground to presume that, on the hypothesis that Mrs. Theodorou ought to be considered as the owner of the house and of its contents, by virtue of the matrimonial rights applicable to the two spouses, the claim for compensation of Mr. Theodorou covers—according to the opinion of the Italian Government—equally the claim which could have been made separately by his wife. Furthermore, in this case, the interest in establishing the claim for compensation was the same for both the spouses, whatever were their matrimonial rights at the date when the marriage was contracted. In these circumstances, Mrs. Theodorou also has not objected to her husband’s claim for compensation, the Conciliation Commission must accept that the claim of Mr. Theodorou was made in the name and on behalf of his wife. The admissibility of Mr. Theodorou’s claim even on the hypothesis of Mrs. Theodorou being the owner of the house and of its contents cannot therefore be seriously contested.

D. Having reached the conclusion that “the house” and its contents were validly transferred and that the claim for compensation of the claimant is admissible, the Conciliation Commission must answer the question whether during the war “the house” and its contents suffered damage compensable in accordance with Article 78, paragraph 4, of the Treaty of Peace with Italy.

(a) There is no doubt that, in spite of the absence of an inventory, the house was furnished. This appears not only from the statements of certain persons who knew the house, all contained in the file, but also and above all from the above mentioned declaration of the Director of the Land Registry Office of Kalymnos dated 25 October 1960. The contention in the Italian reply (pages 10 and 11) that the claimant has not established by probatory documents the existence of the definite contents of the house cannot therefore be accepted. The Conciliation Commission which by virtue of the Rules of Procedure, has a wide discretion in assessing the evidence available to and produced by the parties is all the more of the opinion that the house was well furnished, because it is a matter of public knowledge that the claimant at the time of the marriage was a rich man; that this was equally the case of his wife, the only daughter of a businessman, belonging to one of the well-known families of the Dodecanese. There is not any reason to be surprised that the contract of marriage did not have attached to it an inventory of goods which were in the house at the time of its transfer to the claimant, such an inventory not always having been taken at the time the contract of marriage is concluded.

(b) So far as concerns the evaluation of the amount of loss compensable,

there is need to distinguish on the one hand the damage caused to the house itself, and on the other hand the loss arising from the fact that the house had been almost entirely emptied as a result of looting.

The Conciliation Commission, after a thorough examination of the various pieces of evidence has arrived at the conclusion that the loss has in principle been proved, but that the exact amount cannot be established or is difficult to determine, partly because of the same events which caused the damage, and partly by reason of the fact that the evidence adduced is not sufficiently precise.

(c) The Conciliation Commission has decided in these circumstances to determine equitably the amount of the compensation, being guided by certain precedents in the decided cases of the Italo-French Conciliation Commission established in accordance with Article 83 of the Treaty of Peace. This latter Commission made final determinations of the loss in the Sandron dispute on 18 May 1950 (Fasc. II, page 45).¹ See also the Squarciafichi dispute (Fasc. II, page 89), as well as the Assayas dispute (Fasc. IV, page 171) and in particular the Asseo-Pelosoﬀ dispute (Fasc. V, page 295), where it is stated:

That the Commission . . . cannot in this incertitude, do otherwise than fix a single lump sum as compensation taking into account the state of the home as it then existed, for the total of the heads of Claim, including therein the expenses of "establishing the claim".

(d) An estimate of compensation in the absence of details of evidence has also been admitted by other mixed commissions. In particular, in the celebrated decision in the Pinson case between France and the United States of Mexico of 19 October 1928, its President, Verzijl, went into the question of the admissibility of an equitable indemnity. This is how President Verzijl expressed himself:²

. . . en tout cas, la convention ne limite en rien le pouvoir de la Commission de juger l'admissibilité et la valeur des preuves. Dans ces conditions, elle doit être réputée avoir une parfaite liberté d'appréciation, une restriction de cette liberté ne résultant pas non plus d'un principe général quelconque du droit international public en matière d'arbitrage . . . Etant donné que le droit international n'a jamais élaboré de règles précises sur les conditions auxquelles doit satisfaire la preuve devant les tribunaux internationaux, et que ceux-ci ont généralement bénéficié d'une grande liberté, que leur permet d'apprécier les preuves selon les circonstances normales ou anormales dans lesquelles il a fallu les recueillir, l'équité y reste tout de même . . . Si l'usage du mot « équité » dans ce contexte se heurte à des objections, je suis tout disposé à le remplacer par « liberté d'apprécier les preuves selon les circonstances concomitantes ».

(Translation: ". . . in any case, the convention does not in any way limit the power of the Commission to decide on the admissibility and value of evidence. In these circumstances, it must be assumed to have complete freedom of appreciation, a restriction of such freedom does not appear to be anymore a general principle of public international law on the subject of arbitration . . . Admitting that international law has never drawn up precise rules as to the conditions to be satisfied by evidence before international tribunals, and that they had generally benefited by great freedom, which permitted them to evaluate evidence according to the normal or abnormal circumstances in which the evidence happened to have been got together, equity remained all the same . . . If the use of the word "equity" in this context runs up against objections, I am quite prepared

¹ Volume XIII of these *Reports*, decision No. 53.

² Volume V of these *Reports*, pp. 412 et seqs.

to replace it by 'freedom to evaluate evidence according to the attendant circumstances'".)

(ε) In this particular case, the amount to be awarded to the claimant for the loss of the contents of his house ought then to be established taking into account various different circumstances; first of all it relates to a fairly large house and according to certain witnesses, furnished in a rather luxurious manner, containing also *objets d'art*. On the other hand, the Conciliation Commission cannot ignore the fact that in the above-mentioned declaration of the 21st of November, 1945, the father-in-law of the claimant, Schevos Alachouzos, estimated that the total loss suffered by the claimant amounted to £3,000. Loss caused by the bombardment of the house itself, as well as the looting of its contents. In these circumstances, the Conciliation Commission considers it equitable to admit lire 7,000,000 for the two heads as the global total to be paid to the claimant: damage caused to the house as such and damage caused to its contents, as well as to compensate for the costs of proceedings incurred by the claimant.

E. So far as concerns the second claim it relates, as appears from the exposé above, to the looting by the German and Italian forces of the warehouses rented by the claimant as well as to the fact that a warehouse adjoining the house mentioned in the first claim suffered during a bombardment of the island of Kalymnos in 1943 and of looting beforehand by the Italian and German forces. Have these facts been proved? As has already been said, various documents have been presented by the British Government with a view to proving the damage caused to the rented warehouses and to the warehouse adjoining the damaged house, which is valued in the claim at lire 105,175,000. The Italian Answer (page 6) rightly observes that "Apart from the documentation, there is lacking the Land Registry certificate attesting to possession at the time of the damage, of the warehouses which the claimant declares to have adjoined the domestic residence, and the lease for the others". In addition, the Conciliation Commission must take into account the fact that the second claim was not made until 27 May 1953, that is, more than three years after the presentation of the first claim (22 May 1950) and between ten and thirteen years after the events giving rise to the damage. In addition the documents submitted and evidence which estimate the lost merchandise at £65,000 and £60,000 date only from 16 July 1952. They appear to be vague and late; that of the Mayor of Kalymnos dated 15 July 1952 does not even contain any estimate of the loss caused; that of the father-in-law Alachouzos dated 21 November 1945 does not refer to damage caused to Mr. Theodorou but to damage caused to the contents of his (Alachouzos's) own warehouse estimated at £4,000. In addition the declaration of the claimant himself annexed to the file and dated 11 July 1958 does not give any additional information as to the damage caused to him. The claimant was not even able to indicate the amount of rent which he paid to the owners for the use of the warehouses. This lack of proof is, moreover, not compensated for by certain declarations, all made in 1956, equally late and not containing any precise information. The second claim must therefore be rejected.

DECIDES:

(i) So far as concerns claim No. 1:

(a) An inclusive compensation of lire 7,000,000 shall be paid by the Italian Government to Mr. Gregory Alfred Theodorou for war damage caused to the immovable property and its contents situated at Pothea district of St. Jean Theologou in the island of Kalymnos, the immovable property mentioned

under No. 1 in the contract of marriage of Gregory Alfred Theodorou and Irene Alachouzos, on 4 January 1937.

(b) The payment of the said sum shall be made within the period of sixty days following the notification of the present decision.

(ii) So far as concerns claim No. 2 this is rejected.

(iii) The present decision is final and binding.

Its execution is the responsibility of the Italian Government.

MADE at Geneva on the 25th of July, 1961.

*The Representative of Italy in the
Anglo-Italian Conciliation Commission*

*The Representative of the United
Kingdom of Great Britain and Northern
Ireland in the Anglo-Italian Conciliation
Commission*

A. SORRENTINO

E. A. S. BROOKS

*The Third Member of the
Anglo-Italian Conciliation Commission*

Paul GUGGENHEIM
