

**REPORTS OF INTERNATIONAL
ARBITRAL AWARDS**

**RECUEIL DES SENTENCES
ARBITRALES**

Carnelli Case—Decision No. 5

4 March 1952

VOLUME XIV pp. 86-96



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**Decisions¹ of the Italian-United States
Conciliation Commission**

CARNELLI CASE—DECISION No. 5 OF 4 MARCH 1952²

Compensation under Article 78 of Peace Treaty—War damages sustained by property in Italy belonging to a United Nations national (the claimant)—Sale, on date prior to entry into force of Peace Treaty, of property in its damaged condition to Italian national—Retention, after sale of property, of right to claim compensation for war damages—Measure of damages—Interest—Disallowance because not correctly claimed—Procedure—Rules of Procedure—Necessity for strict compliance with—Interpretation of treaties—Rules of—Comparison of texts in various languages—Retroactive effect of Treaty provisions.

Indemnisation au titre de l'article 78 du Traité de Paix — Dommages de guerre subis par des biens en Italie appartenant au réclamant, ressortissant d'une Nation Unie — Biens endommagés vendus à un ressortissant italien, à une date antérieure à l'entrée en vigueur du Traité de Paix — Persistance du droit du réclamant de se prévaloir de l'indemnité prévue pour dommages de guerre — Evaluation des dommages — Intérêts non régulièrement demandés refusés — Procédure — Nécessité d'une stricte observation du Règlement de procédure — Interprétation des traités — Règles d'interprétation — Comparaison des textes dans différentes langues — Effet rétroactif des dispositions du Traité.

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

¹ The original English texts of these decisions have been taken from the *Collection of decisions of the Italian-United States Conciliation Commission established under Article 83 of the Peace Treaty with Italy*. This Collection, published in mimeographed form, in six volumes, under the auspices of the United States Representative on the Italian-United States Conciliation Commission, has been provided by the Permanent Representative of the United States to the United Nations.

Extracts from a number of these decisions may be found in: *International Law Reports*, Lauterpacht, vol. 1955, 1956, 1957, 1958 (I). See also: *American Journal of International Law*, vol. 50, 1956, p. 150; vol. 51, 1957, p. 436; vol. 53, 1959, p. 944; *Annuaire français de droit international*, 1956, p. 430; 1959, p. 313; *Revue générale de droit international public*, 1959, p. 125; *Rivista di diritto internazionale*, 1956, p. 88.

² *Collection of decisions*, vol. I, case No. 1.

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.) Elena Iannone Carnelli, and the Government of the Italian Republic with regard to the application and interpretation of Article 78 of the Treaty of Peace with Italy, signed at Paris on February 10, 1947. The object of the dispute is to obtain on behalf of (Mrs.) Elena Iannone Carnelli (hereinafter referred to as the "claimant") indemnity for war damages to her interest in real and personal property. Because of its importance in the instant case, the relief requested in the Petition is quoted in full:

Wherefore, the United States of America requests that the Commission:

(a) Decide that the claimant is entitled to receive from the Italian Republic, a sum sufficient at the time of payment to make good the loss suffered, which sum is estimated to be on September 28, 1943, 185,300 lire, subject to the necessary adjustment for variation in value between 1943 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.

The material facts are as follows:

The claimant was born in Italy, and by naturalization on March 18, 1932 in the State of New York became a national of the United States of America and at all times since that date has retained such nationality.

On April 3, 1937, the claimant acquired sole ownership of certain real property located on Corso Vittorio Emanuele, in the town of Nocera Inferiore, Province of Salerno, Italy, by a Deed of Gift from her father which was recorded and transcribed according to Italian law at Nocera Inferiore on 6 August 1937. The claimant also was the owner of certain furniture in the building described above, but it was admitted that the value of such personal property was nominal in comparison to the value of the real property.

Between 12 September and 28 September 1943, the property owned by the claimant was heavily damaged and partially destroyed due to military operations. In December 1943, Mrs. Olga Protta, acting on behalf of the claimant, filed a claim for war damages under Italian law with the Fiscal Office—Technical Division (Ufficio Tecnico Erariale) of the Italian Ministry of the Treasury in the province of Salerno, wherein she stated that the damage to the property owned by the claimant (in translation) "as shown by the expert technical survey prepared by Engineer Ruggiero Aniello, which is attached hereto, amounts to a total of 179,000 lire . . .".

On 5 July 1944 the claimant sold the property in its damaged condition to

Mr. Giuseppe Parola fu Romolo, an Italian national, for thirty thousand (30,000) lire, as shown by the Bill of Sale, a photostatic copy of which was submitted in evidence. The Bill of Sale was recorded and transcribed according to Italian law in Nocera Inferiore on 18 July 1944. The Bill of Sale reads in part (in translation) as follows:

The above described real property has been recorded in the Land Registry Office of Nocera Inferiore under Entry No. 3415 in the name of said Elena Iannone di Francesco, . . . That said portion of the building . . . has been almost completely destroyed by bombardment, which took place in September of last year, as a result of the war, and there still remains one storey in a hazardous condition, only one room on the second floor facing Corso Vittorio Emanuele which is cracked and damaged and should be demolished, and two inside rooms are also badly damaged.

Declarant Elena Iannone Carnelli also states that she has no interest in retaining said property, which is almost completely destroyed, since she must return to the United States of America, and has decided to sell it, reserving unto herself the right to eventual indemnities which may be paid by the State for damages caused by the bombardment. . .

The Bill of Sale further states (in translation):

It is expressly agreed upon between the parties that eventual indemnities, which may be paid by the Italian Government for war damages resulting from the bombardment in September of last year, belong and are due exclusively to the seller, Elena Iannone.

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

On 31 December 1948 the Embassy of the United States of America in Rome, on behalf of the claimant, submitted to the Ministry of the Treasury of the Italian Government a claim for war damages based upon Article 78 of the Treaty of Peace.

On 5 October 1949 the Ministry of the Treasury of the Italian Government advised the Embassy of the United States of America in Rome that the claim was rejected on the ground that the claimant was not the owner of the damaged property on the date that the Treaty of Peace came into force and hence was not entitled to compensation under Article 78. The Embassy of the United States did not agree that Article 78 was inapplicable in the case and on 14 October 1949 informed the Italian Government that a dispute had arisen "which, in due time, will be submitted to the Conciliation Commission established under Article 83 of the Treaty of Peace".

On 28 August 1950 the Agent of the United States of America filed a Petition on behalf of the claimant with the secretariat of the Commission, and thereafter pleadings and documents were submitted by the Agents of the two Governments as provided for under the Rules of Procedure and the Orders of the Commission.

None of the foregoing facts with regard to the ownership of the property and the occurrence of the loss is controverted or denied by the Government of the Italian Republic; and the Commission finds that sufficient evidence has been submitted to substantiate them. The only question of fact which is controverted is the evidentiary value to be given to the survey made by Engineer Ruggiero Aniello and which the claimant states was attached to the claim filed on her behalf by Mrs. Olga Prota with the Fiscal Office—Technical Division (Ufficio Tecnico Erariale) of the Italian Ministry of the Treasury in the province of Salerno in December 1943. This question will be considered later in this opinion.

It is the contention of the United States of America that the claimant is entitled to an indemnity for war damages 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 as follows:

. . . In cases . . . 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 make good the loss suffered.

In paragraph 5 of the Answer the Agent of the Italian Republic states the position of his Government (in translation) as follows:

There is no doubt that a citizen of the United Nations, who was the owner of property in Italy at the moment of entry into force of the Treaty of Peace (in which for the first time there is established the ground for the international obligation of the Italian State) has the right to indemnification for the damages to which reference is made.

If, on the other hand, a national of the United Nations has legally ceased to be the owner of the property in question prior to the entry into force of the Treaty of Peace, the provisions that assure the indemnification can not find their application; there is lacking in fact the relation of ownership to the damaged goods which is an indispensable requisite for the application of Article 78.

In essence, therefore, the legal issue in this dispute is whether or not the claimant, whose property was damaged as a result of the war, is precluded from compensation under Article 78 of the Treaty of Peace because on a date prior to the entry into force of the Treaty of Peace she sold the property in its damaged condition to a third party who was not a United Nations national.

It is not disputed 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; nor is there any question that, "as a result of the war," the claimant "suffered a loss by reason of injury or damage to the property in Italy". Hence it would appear that the claimant is entitled to compensation from the Italian Government under paragraph 4 (a) of Article 78 unless the defence raised by the Italian Government is valid, namely, that since the claimant was not the owner of the real and personal property in question on 15 September 1947, the date when the Treaty of Peace went into force, she can not claim compensation under Article 78 for war damages to property owned by her at the time the damage was sustained in September 1943.

In paragraph 2 of the Answer, the Agent of the Italian Republic has propounded the question of law in this dispute as follows (in translation):

. . . Whether the Government of the Italian Republic acted in conformity with the Treaty of Peace in refusing to take into consideration the claim based on Article 78, paragraph 4(a), on the ground that the damaged property for which indemnity has been sought had ceased to be the property of a national of the United States prior to the entry into force of the Treaty of Peace.

The answer to this question of law so clearly stated by the Italian Agent, and hence the conclusion of law which is determinative of the dispute in this case, is that the Government of the Italian Republic did not act in conformity with the Treaty of Peace when it refused to take into consideration this claim. In fact, the position taken by the Italian Government is contrary to the provisions of paragraph 9 (b) of Article 78 of the Treaty of Peace, which defines the word "owner", as used in Article 78 as follows:

9 (b) "Owner" means the United Nations national, as defined in sub-paragraph (a) above, who is entitled to the property in question, and includes a suc-

cessor of the owner, provided that the successor is also a United Nations national as defined in sub-paragraph (a). *If the successor has purchased the property in its damaged state, the transferor shall retain his rights to compensation under this Article, without prejudice to obligations between the transferor and the purchaser under domestic law.* (Emphasis supplied).

Although the word "owner" does not appear in paragraph (a) of Article 78, which is a specific provision of Article 78 fixing the responsibility of the Italian Government for the restoration to complete good order of property returned to United Nations nationals or for the payment of compensation in cases where a United Nations national has suffered a loss by reason of injury or damage to property in Italy, the Commission has no doubt that the relation between the United Nations national and the property in Italy, as described in paragraph 4 (a) of Article 78 includes the relation of ownership; and hence the absence of the word "owner" itself in paragraph 4 (a) of Article 78 by no means signifies the absence of the *meaning* of the word "owner" in this paragraph. This is quite evident from a reading of the text of paragraph 4 (a) itself.

The definition of "owner" included in paragraph 9 (b) of Article 78 was not inserted to define this word for the sake of the sole instance in which it is expressly used in Article 78, that is, in paragraph 8 of Article 78 which reads as follows:

The owner of the property concerned and the Italian Government may agree upon arrangements in lieu of the provisions of this Article.

but was inserted among the definition of terms as used in Article 78 in order that the definition might be applied in every instance throughout Article 78 in which the concept of "owner" was involved.

In defining the meaning of "owner", paragraph 9 (b) of Article 78 also determines the United Nations national in whose name the claim for compensation or indemnity must be presented to the Italian Government where there has been a change in ownership of the property. In determining the effect, if any, of a change of ownership, it is necessary to consider the meaning of the word "successor" as used in this paragraph.

In the first sentence of paragraph 9 (b) of Article 78, "successor" is used in the broadest sense of the word and includes a successor through inheritance, a successor through gift, or a successor through any other legal means of acquiring property. The second sentence of paragraph 9 (b) of Article 78 refers only to a "successor" by means of purchase. "If the successor has purchased . . . , the transferor shall retain his rights . . .", and therefore the meaning of "successor" as used in the second sentence of this paragraph is by no means identical with the meaning of "successor" as used in the first sentence of the same paragraph. Moreover, the second sentence provides the one exception to the specific requirement contained in the first sentence of paragraph 9 (b), that the "successor" who has acquired the property must be a United Nations national within the meaning of this term as defined in paragraph 9 (a) of Article 78. The exception to this specific requirement occurs where the property in its damaged state has been transferred to another through purchase; it is immaterial to the right of the seller to compensation or indemnity under Article 78 whether the purchaser of the property in its damaged state was or was not a United Nations national.

The Commission considers that the last sentence of paragraph 9 (b) of Article 78 is clear and unequivocal in its terms and that it leaves no reasonable basis for argument as to its construction. In the instant case, an Italian national purchased the property of the claimant on July 5, 1944; the property had sus-

tained heavy damages during the military operations of September 3, 1943 and was in a damaged state on the date the sale was made. Therefore, the claimant, as the transferor of property in its damaged state, has the right to compensation under Article 78, paragraph 4 (a), because it is a right specifically retained to her in paragraph 9 (b) of Article 78.

It should be particularly noted that the last sentence of paragraph 9 (b) of Article 78 reads "If the successor *has purchased . . .*" in the authentic English language version of the Treaty, "*Si le successeur a acheté . . .*" in the authentic French language version of the Treaty, and "*Se il successore ha acquistato . . .*" in the official but unauthentic Italian language version of the Treaty. In each language, the present perfect tense of the verb "to purchase" has been used. Thus it is clear from the text of the Treaty itself that at the moment the Treaty of Peace went into force, those United Nations nationals who might have sold their property in its damaged state prior to the entrance into force of the Treaty of Peace were not to lose their rights to compensation under Article 78.

Moreover, the provisions of paragraph 9 (b) of Article 78 are entirely in accordance with logic. It can not be presumed that the consideration paid by a purchaser of property in a damaged state would represent anything more than the value of the property in its damaged condition on the date the sale was made. In this case the selling price cannot be considered as representing the value of the undamaged building and land as it existed prior to the date on which the damage occurred. Since the selling price of the property in a damaged condition could not represent the value of the undamaged property, the seller would still have suffered a loss by reason of injury or damage to the property for which she had not been compensated.

The Agent of the Italian Government contends that the retroactivity of a provision of law must always be expressly established in the law itself and argues the application of this legal principle to the provisions of Article 78 of the Treaty of Peace. The retroaction of the second sentence of paragraph 9 (b) of Article 78 is clear insofar as it provides that the right to compensation under Article 78 shall be retained by one who has sold his property in its damaged state. The Agent of the Italian Republic further contends that there are no elements to fix the limits of what he describes as the retroactive operation of Article 78. If it is proper to describe Article 78 as having retroactive operation, then the limits of the rights of the claimant in this case are fixed as of the date on which the damage occurred to the property which is the subject of this claim, a date which it should be noted is subsequent to June 10, 1940. If the property had been sold before it was damaged the seller who is the claimant here would not have met the conditions prescribed in the last sentence of paragraph 9 (b) of Article 78, namely, the seller would not have sold the property in its *damaged* state and hence would have no right to compensation.

The Agent of the Italian Republic also argues that the rights of the claimant to receive compensation under Article 78 ceased to exist and are "past" and not "present" existing rights, since she sold her property in its damaged state prior to the entrance into force of the Treaty of Peace. There is here a confusion between the physical property and the rights of ownership in the physical property which the Commission cannot be induced to follow.

The Bill of Sale by which the claimant transferred her interest in the property in its damaged state to a third party provided (in translation):

It is expressly agreed upon between the parties that eventual indemnities, which may be paid by the Italian Government for war damages resulting from the bombardment in September of last year, belong and are exclusively due to the seller, Elena Iannone.

This provision of the Bill of Sale, while indicative of the intention of the buyer and the seller that the seller who is the claimant here reserved unto herself the right to claim indemnity for war damages from the Italian Government, is not determinative of her right to compensation under paragraph 4 (a) of Article 78. The right of the claimant is established by the provisions of paragraph 9 (b) of Article 78 (*supra*). Hence it is not necessary in reaching a decision here to determine the legal effect of the above-quoted reservation in the Bill of Sale.

The Agent of the Italian Government has not cited any legal authorities which support his contentions. The Agent of the United States Government has cited certain cases decided by international and Italian tribunals which it is not deemed necessary to discuss, inasmuch as those cases do not deal with an interpretation of the Treaty of Peace with Italy and inasmuch as the Commission has been guided in its decision of this point by the clear language of the Treaty itself.

The right of the claimant to receive compensation having been established, it is necessary to determine the amount. In the Petition the claimant asked "for a sum sufficient at the time of payment to make good the loss suffered, which sum is established to be on September 28, 1943, one hundred eighty five thousand, three hundred (185,300) lire, subject to necessary adjustments for value between 1943 and the final date of payment".

It appears from a study of the record that the amount of the claimant's alleged damages as of September 28, 1943 is actually one hundred and seventy nine thousand (179,000) lire rather than one hundred eighty five thousand, three hundred (185,300) lire as shown in the Petition. This is conceded by the Agent of the United States in the Brief filed at the conclusion of this case.

The Agent of the Italian Republic in the Answer originally filed in this case did not dispute the claimed amount. However, in supplemental Pleadings filed in compliance with Orders of this Commission, it is stated that according to the computation made by the Italian Government, the war damages suffered by the claimant may be valued at four hundred thousand (400,000) lire, at the 1950 rate of value. The Agent of the Italian Government has not presented any evidence in this case to show what criteria of evaluation were applied in establishing this estimate of damages of the property in question, and hence the Commission has been unable to determine the exactness of the criteria in this specific case.

The claimed amount of one hundred seventy nine thousand (179,000) lire as of September 28, 1943 is based upon the technical survey prepared by Engineer Ruggiero Aniello which in the claim for war damages (*denuncia*) filed in behalf of the claimant by Mrs. Olga Protta with the Fiscal Office—Technical Division (Ufficio Tecnico Erariale) of the Italian Ministry of the Treasury in the province of Salerno in December 1943, is identified and referred to in said *denuncia* as an attached document. The copy of the *denuncia* (without the technical survey) submitted in evidence bears the notation "Received" together with an illegible signature and the official stamp of "Ufficio Tecnico Erariale di Salerno". Pursuant to an Order of the Commission, the Agent of the Italian Government sought to obtain the original documents from the aforementioned office in Salerno but was advised by the Ministry of the Treasury on May 15, 1951 that a search revealed no record of the claim. Thereafter, the Agent of the United States submitted in evidence a letter dated February 7, 1951 from Engineer Ruggiero Aniello stating that he no longer is in possession of a copy of the technical survey of damages (*perizia*) which had been filed in 1943 with the Ufficio Tecnico Erariale di Salerno.

On the basis of available evidence, there is every reason to believe that a

technical survey of the damaged property was made by Engineer Ruggiero Aniello and that this survey was filed with the proper Italian authorities in Salerno in December, 1943. Not only is there no proof to the contrary but the Agent of the Italian Government has not maintained that these facts are not true.

The fact that the survey was made promptly by a local engineer in the town of Nocera Inferiore and thereafter submitted to and receipt acknowledged thereof by signature and the seal of the Ufficio Tecnico Erariale di Salerno, all within the period of three months after the damage occurred; that the engineer who prepared the survey, Ruggiero Aniello, is still living in the town of Nocera Inferiore and could have been called to testify under cross-examination by the Agent of the Italian Government; that no evidence casting any doubt on the making of the survey or the contents thereof was introduced in this case, all provide a sufficient basis of credibility for the Commission to find that as a result of military operations the claimant sustained damages to the building owned by her in the amount of one hundred seventy nine thousand (179,000) lire, as of September 28, 1943.

The Commission does not find that sufficient evidence has been introduced in this case to establish the quantity, condition or value of the furniture or other personal property owned by the claimant which was described in the Petition as being located in the building and partially destroyed as a result of the same military operations. It was admittedly of only nominal value.

The next question which must be resolved—and which presents certain technical difficulties—is the manner whereby the sum of one hundred seventy nine thousand (179,000) lire as of September 28, 1943, can properly be converted to 1952 values. This is necessary because paragraph 4 (a) of Article 78 of the Treaty of Peace provides that the United Nations national who has suffered a loss by reason of injury or damage to property in Italy “. . . 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”. (Emphasis supplied.)

Various intricate formulae could possibly be used to achieve the desired results. However, after due consideration of the arguments of the Agents of the two Governments and of available statistics issued by the Institute of Central Statistics, an Italian Government Agency (which for all regions of Italy are not considered complete for that period during which military operations were conducted in Italy), the Commission believes that substantial justice will be done in this case by applying a basic co-efficient of twenty (20) in order to reflect the impact of inflation in the cost of labour and materials between September 1943 and the date of this decision.

The Commission therefore finds that the amount necessary to make good the loss suffered by the claimant at the date of this decision is one hundred seventy nine thousand (179,000) lire multiplied by twenty (20); that is three million five hundred and eighty thousand (3,580,000) lire. Under the provisions of paragraph 4 (a) of Article 78 of the Treaty of Peace, and the Agreements between the two Governments supplemental thereto and interpretative thereof, the claimant is entitled to receive as compensation two-thirds of this sum, namely, two million three hundred eighty six thousand six hundred and sixty seven (2,386,667) lire.

The second request for relief contained in the Petition filed by the Agent of the United States is for an Order regarding costs (see Statement of the Case, *supra*). The Agents of the two Governments state in the Brief and the Reply Brief that the question of the liability for costs is not involved in this dispute and no costs will be allowed in this case by the Commission.

The third request for relief contained in the Petition submitted in this case by the Agent of the United States of America is a general request for "such further or other relief as may be just and equitable" (see statement of the Case, *supra*). In the Brief submitted at the conclusion of the case, and the Commission desires to emphasize the manner in which the request was raised for the first time in this case, the Agent of the United States requests a determination by the Commission that the giving of "such further or other relief as may be just and equitable" calls for the payment to the claimant by the Italian Government "of an appropriate amount of interest". The importance attached to the question thus raised by the Agent of the United States of America is apparent from the fact that over one-third of the lengthy Brief which he has submitted in this case is devoted to a discussion of the responsibility of the Italian Government for the payment of interest on the claim (to be distinguished from the allowance of interest on the award of the Commission) at the rate of five percent (5%) to run from the date on which the claim was presented to the Italian Government or at least from three months after the date on which the claim was presented to the Italian Government.

The responsibility of Italy for the payment of interest on the principal amounts claimed by nationals of the United Nations under Article 78 of the Treaty of Peace with Italy is an important question, in view of the large numbers of claims and the large amounts of money which are involved. None of the Conciliation Commissions which have been established between Italy and United Nations Governments has had occasion to pass on this important question of interest on claims, as distinguished from interest on the awards of the Commission, and this Conciliation Commission does not deem it necessary at this time to approach the question of the responsibility of the Italian Government for the payment of interest on claims presented by nationals of the United States under Article 78 of the Treaty of Peace.

The request for interest contained in the Brief presented by the Agent of the United States must fail because the Commission does not believe that the question of interest on the claim is before it in the instant case; this is a preliminary question to any consideration of the more general question of the responsibility of the Italian Government for the payment of interest on the claim.

Article 7 (a) of the Rules of Procedure of this Commission adopted and promulgated in Rome on June 29, 1950, by the Representatives of the two Governments provides that proceedings before the Commission shall be initiated by the formal filing of a Petition signed by the Agent of the claiming Government, and that the Petition *must contain*:

- (i) the name and address of the physical or juridical person on whose behalf the proceedings are initiated;
- (ii) the name and address of the legal representative, if any, of the person on whose behalf the Agent of the claiming Government initiates the proceedings, together with documentary evidence of the authority of such legal representative to act on behalf of his principal;
- (iii) a clear and concise statement of the facts in the case; each material allegation should be set forth in a separate paragraph in so far as possible;
- (iv) a clear and concise statement of the principles of law upon which the dispute is based;
- (v) a complete statement setting forth the purpose of the Petition and the relief requested.

The fifth requisite of Article 7 of the Rules of Procedure is clear and unequivocal. There must be contained in the Petition "a complete statement setting forth the purpose of the Petition and the relief requested".

The Petition presented by the Agent of the United States of America on behalf of the claimant herein was deposited with the joint Secretariat on August 28, 1950, about two months after the promulgation of the Rules of Procedure. The relief requested in the Petition has been set out in full in the Statement of the Case, *supra*. There is no direct or indirect reference to interest in the Petition. The request for "such further or other relief as may be just and equitable" contained in the Petition is not a statement which sets forth that one of the purposes of the Petition is the obtaining of interest on the claim or that one of the measures of relief requested is the granting of interest as part of the award.

Inasmuch as the desire for clearly informing the Italian Government of the nature of the case and the relief requested by the Government of the United States was one of the reasons, if not the principal reason, for the requirement laid down in Article 7 (a) of the Rules of Procedure, including the specific requirement that the Petition shall contain a complete statement setting forth the purposes of the Petition and the relief requested, the request for "such further or other relief as may be just and equitable" contained in the Petition submitted in the instant case by no means achieves the purpose of informing the Italian Government of a request for interest.

That the Italian Government did not infer from the request for "such further or other relief as may be just and equitable" that the Government of the United States was making a request for interest appears clearly from the Answer and the supplemental Answer submitted by the Agent of the Italian Government. When the Agent of the United States for the first time raised the question of interest in the Brief by specifically requesting that interest be allowed on the claim, the Reply Brief of the Italian Government denies vigorously the responsibility of the Italian Government for interests. If the Petition had included a clear request for interest, it is probable that the same vigorous denial would have been asserted by the Agent of the Italian Government in his Answer or supplemental Answer to the Petition, and the issue would have been clearly developed by the Agents of the two Governments prior to concluding the formal submission of proof. In any event, the Agent of the Italian Government denied the responsibility of his Government for the payment of interest as promptly as he could after the Agent of the United States had informed him in the Brief that interest was being requested.

The Agent of the United States at no time requested this Commission to permit the amending of the Petition in this dispute in order to include an express request for interest. It was not until July 16, 1951, that the Commission issued an Order, as requested by the Agent of the United States, that formal submission of proof had been concluded by the Agents of the two Governments. In that Order a period of time was granted to the Agent of the United States to file a Brief in support of his Petition.

Article 11 of the Rules of Procedure of the Commission, entitled "Briefs and Oral Arguments", makes it clear that Briefs and oral arguments were not intended to include either amendments or additions to the Petitions, Answers, or any other pleadings. The request for interest contained in the Brief in this case is an addition to the request contained in the Petition and cannot be deemed to have been submitted in accordance with the Rules of Procedure of the Commission. It is, therefore, not a request which can be considered by the Commission.

Although Article 18 of the Rules of Procedure reserves to the Commission the right to deviate from these Rules in individual cases, the Commission is satisfied that the Rules of Procedure are in conformity with justice and equity as required by the express provision of Article 83, paragraph 3, of the Treaty of Peace. Therefore, no reason is perceived in the instant case for any deviation

under Article 18 of the Rules from the requirements established in Article 7 (a) of the Rules of Procedure, particularly since there is a lack of any evidence in the record that a request for interest on the claim has ever been raised between the two Governments either as a general question under Article 78 or in this specific case at any time prior to the presentation of the Brief in this case by the Agent of the United States of America.

The Commission, having reached its decision for the reasons set forth above, does not deem it necessary to consider at this time the other arguments presented by the Agents of the two Governments on the general question of the responsibility of Italy for interest on claims presented under Article 78 of the Treaty of Peace.

No evidence having been submitted that any previous payment has been made to the claimant for war damages to the 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 two million, three hundred eighty six thousand, six hundred sixty seven (2,386,677) lire under Article 78 of the Treaty of Peace for damages to real and personal property in Italy owned by Mrs. Elena Iannone Carnelli, a national of the United States of America.

2. That 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 in this case an order regarding costs is not required.

5. That in this case the question of interest on the claim is not a question which is properly before the Commission under the Rules of Procedure.

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 4th day of March, 1952.

*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