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Amabile Case—Decision No. 11

25 June 1952

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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 28th day of April, 1952.

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

(Signed) Emmett A. SCANLAN, Jr.

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

(Signed) ANTONIO SORRENTINO

AMABILE CASE--DECISION No. 11 OF
25 JUNE 1952 ¹

Claim for compensation under Article 78 of Peace Treaty—Evidence in support of claim—Power of Commission as to receiving and evaluating evidence—Value of Affidavits, *Atti di Notorietà*, signed statements and similar ex parte instruments as testimonial documentary evidence.

Demande en indemnisation au titre de l'article 78 du Traité de Paix — Pouvoirs de la Commission en matière de recevabilité et d'appréciation des preuves — Affidavits, *Atti di Notorietà*, déclarations sous signature et autres actes *ex parte* analogues — Admissibilité en preuve.

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, evidence and other communications presented to the Commission by the Agents of the two Governments, and having carefully and impartially examined same, finds that it has jurisdiction to adjudicate the rights and obligations of the parties hereto and to render a decision in this case.

Appearances: Mr. Francesco Agrò, Agent of the Italian Republic; Mr. Lionel M. Summers and Mr. Carlos J. Warner, Agents of the United States of America.

¹ *Collection of decisions*, vol. I, case No. 5.

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.) Norma Aida Sullo Amabile, 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 and the Agreements supplemental thereto and interpretative thereof. The object of the dispute is to obtain on behalf of (Mrs.) Norma Aida Sullo Amabile, (hereinafter referred to as the claimant), compensation for the loss of certain personal property in Italy under circumstances which hereinafter will be described, reimbursement for expenses incurred by the claimant in the preparation of her claim, and such other relief as may be just and equitable.

The material facts are as follows:

The dispute in this case involves fundamentally a question of whether or not the claimant has submitted sufficient evidence to establish her claim; and, since the nature and value of the documentary evidence which was submitted are questions in dispute, it is necessary to quote portions of said evidence.

The Statement of Claim was prepared in both an English and an Italian text. On March 16, 1949 the claimant personally appeared before a duly commissioned and qualified Vice-Consul of the United States of America in Rome and acknowledged her execution of said statement of Claim; said Acknowledgment and Verification affixed to said original Statement of Claim reads in part as follows:

On this 16th day of March, 1949 before me personally came Norma Sullo Amabile, to me known and known to me to be the individual described in and who executed the foregoing instrument, and acknowledged that he [she] executed the same, and swore to me that the facts herein stated are true to the best of his [her] knowledge, information and belief.

The claimant under these circumstances verified under oath in her Statement of claim that each of the following statements is true:

(a) that she is now and has been at all times since February 22, 1898 a national of the United States of America;

(b) that she was the *sole owner* of certain personal property (listed on the list attached to Annex 2 of the Statement of Claim), which was located in an apartment (No. 6) owned by the claimant located at Via dei Lucilli 9B, Lido di Roma (Ostia), and which sustained loss or damage for which the Government of the Italian Republic is responsible under paragraph 4 of Article 78 of the Treaty of Peace;

(c) that most of said personal property was acquired by her in the United States of America, either by gift or purchase, prior to 1931 when she established her residence in Italy, and that the remainder of said personal property was acquired by her either by gift, purchase or inheritance during the years preceding the outbreak of the war;

(d) that (in the claimant's own words)

All of the property listed on the list attached to Annex 2 was lost or irretrievably destroyed, *such loss or destruction having occurred following the time that the claimant was obligated to leave her apartment as a consequence of general orders evacuating the Lido di Roma during the course of the war. During such period the apartment was occupied by German Military Forces.* (Emphasis supplied.)

and

(e) that she estimates that the full amount necessary to make good the loss suffered is 2,291,671 lire, that the further sum of 4,000 lire represents the reasonable expenses incurred up to that date (March 16, 1949) in Italy in establishing the claim, and that the aggregate sum claimed by her, subject to any necessary adjustments for variations of value between the date of filing the claim and the date of payment is 2,295,671 lire.

There was attached to the claimant's Statement of Claim, *supra*, as Annexes the following documentary evidence in support thereof:

Annex 1: A certificate of the claimant's American nationality issued by the Embassy of the United States of America in Rome;

Annex 2: The claimant's Affidavit in English, subscribed and sworn to before a duly commissioned and qualified Vice-Consul of the United States of America in Rome on February 23, 1949, which reads in part as follows:

Before me, a Consular Officer of the United States of America, in and for the Consular District of Rome, duly commissioned and qualified, personally appeared Mrs. Norma A. Sullo Amabile, who being duly sworn, deposes and says that prior to the war she was the owner of certain personal property which was located in her home in Italy at Via dei Lucilli 9B, Lido, Rome, and that such personal property was acquired by her over a period of years most of it having been brought by her to Italy from the United States upon the establishment of her residence in Italy in 1931; that as a result of the war and more particularly as a result of the forced evacuation of her house and the fact that her house was occupied by German military forces the entire contents of the house consisting of furniture, household effects and personal property was lost or irretrievably damaged; that the claimant has, to the best of her recollection and belief, compiled a list of such personal property which she verily believes to be a correct list of such property; that such list is attached hereto as Exhibit 1 to this affidavit; that the values assigned to the various missing articles are values which in the opinion of the claimant represent the sum necessary to purchase similar property at the present time. (Emphasis supplied.)

Attached to said Affidavit, and described therein as Exhibit 1, is an unsigned, undated list in Italian of one hundred twenty (120) items of personal property, with a value (expressed both in dollars and lire) set opposite each item;

Annex 3: An *Atto di Notorieta* (hereinafter referred to in translation as an Act of Notoriety), in Italian, subscribed and sworn to before a Notary Public in Rome on February 16, 1949 by Persiano Angelina fu Liborio Bernardino, housewife, age 53; Rissi Maria fu Nicola, housewife, age 52; Ambrosini Giovanni di Flavio, radio technician, age 29; and Giudici Emanuele fu Francesco, Chief Inspector of Customs in Rome, age 69; all four individuals, who appear to be Italian nationals, state they are qualified to act as witnesses and are not otherwise interested in the subject-matter, and having been sworn and under the bond of the oath, separately one from the other but unanimously, attest that (in translation):

... it is of public knowledge and notorious, as well as our personal knowledge that:

Mrs. Norma Sullo Aida daughter of Salvatore, married Amabile, was sole and exclusive owner of all the furniture, fittings, furnishings, pottery, linen, clothing and every other item representing the furnishing of the house inhabited by her at the Lido di Roma, at Via dei Lucilli 9B, apartment 6, the whole of the foregoing as specified in the lists which have been submitted as annexes to the application for war damage compensation, lists which we have examined and recognize to be fully correct and truthful.

All of these items were destroyed or lost as a result of warlike causes. *In fact, the lady was forced, by the authorities, to abandon her home, she left everything and on her return found nothing.*

The lady has suffered an aggregate damage which, valued at the time such damage occurred and taking into account the depreciation caused by natural wear and tear, amounts to \$4,114.80 (equal to 2,291,671 lire). (Emphasis supplied.);

said *Atto di Notorietà* was recorded in Rome as a public act on February 21, 1949 (No. 13224, vol. No. 767) according to law;

Annexes 4, 5 and 6: Separate statements in Italian made by Persiano Angelina fu Libordo Bernardino (*Annex 4*), Rissi Maria fu Nicola (*Annex 5*), and Giudici Emanuele fu Francesco (*Annex 6*), three of the four individuals who executed the foregoing *Atto di Notorietà*, which repeat and supplement with certain details allegedly known to these individuals, the facts which each attested to in the aforesaid *Atto di Notorietà*; the signature only on each of these three separate statements was witnessed on February 22, 1949 as true and authentic by the Notary in Rome before whom the *Atto di Notorietà* had been acknowledged;

Annex 7: The claimant's Affidavit in English, subscribed and sworn to before a duly commissioned and qualified Vice-Consul of the United States of America, on February 23, 1949, which reads in part as follows:

Before me, a Consular Officer of the United States of America, in and for the Consular District of Rome, duly commissioned and qualified, personally appeared Mrs. Norma A. Sullo Amabile, who being duly sworn, deposes and says that in connexion with the presentation of her claim she has prepared a list which is attached to Annex 2 of the Claim; that that list was shown to the witnesses Emanuele Giudice, Maria Rizzi and Angelina Persiano, whose affidavits appear as Annexes 4, 5, 6 to the claim; and that when in such affidavits the foregoing witnesses refer to the list they are referring to the list in question, namely to the one attached as Exhibit 1 to Annex 2 of the claim.

On March 24, 1949 the Embassy of the United States of America in Rome, on behalf of the claimant, submitted this claim to the Ministry of the Treasury of the Italian Republic. The statement of claim and the documentary evidence in support thereof have been detailed above. Thereafter there was additional correspondence between the two Governments; but the only facts which are noteworthy here are contained in the letter of June 24, 1950 from the Ministry of the Treasury of the Italian Republic in which the Embassy of the United States of America was informed that (in translation):

After the usual investigation, the subject claim, transmitted by the Embassy with its note of March 24, 1949, was submitted to the (Interministerial) Commission established under Article 6 of (Italian) Law No. 908 of December 1, 1949. In its meeting of May 6, 1950, the (Interministerial) Commission expressed the following opinion:

"Considering that the personal property in question does not appear to have been sequestered and that the only evidence submitted by the claimant is an Act of Notoriety (*Atto di Notorietà*) which cannot be considered as sufficient proof, the 'Interministerial' Commission believes that valid evidence should be presented in order to establish:

- “(a) the existence and value of the property at the time damage occurred;
- “(b) the claimant's right of ownership;
- “(c) the destruction by acts of war and the extent of the damages.

“The Commission further believes that no definite opinion can be expressed concerning this claim until such time as satisfactory proof is presented on the points listed above.”

This Ministry, abiding by the opinion of the (Interministerial) Commission as stated above, begs to inform the Embassy that, for the reasons expressed therein, the claim asserted by Mrs. Norma Sullo Amabile cannot be considered at the present stage. However, the case may be re-examined if and when the claimant presents sufficient proof as called for above. The Ministry requests that the claimant be advised accordingly.

On September 28, 1950 the Embassy of the United States of America informed the Ministry of the Treasury of the Italian Republic that:

The claimant is unable to obtain further evidence as to the existence, value and description of the property, with the possible exception of additional sworn statements of other witnesses. As, however, the Interministerial Commission and the Ministry of the Treasury have apparently failed to give due consideration to the sworn statements already submitted, there would be little purpose in submitting purely corroborative evidence of that character. Consequently, the Embassy considers that the claimant, in view of the nature of the property and its description, has established the basis of her claim with the evidence already submitted by her and should not be required to submit further evidence.;

and concluded by making reservation to submit the dispute to the Conciliation Commission established under Article 83 of the Treaty of Peace.

On November 21, 1950 the Petition of the United States of America was filed in this case with the Secretariat of the Commission. With the Petition there were submitted a copy of the Statement of Claim and the Annexes, *supra*, attached thereto; copies of the correspondence between the two Governments regarding this claim; a Certificate executed on February 23, 1949 by the American Vice-Consul in Rome, Italy showing that according to the records of his office Mrs. Norma Aida Sullo Amabile was born at Boston, Massachusetts on February 22, 1898, that she possesses a valid American passport and that, on the date said Certificate was made, he was satisfied as to the American nationality of the claimant; and a special form printed in 1949 in Italian by the Government of the Italian Republic and available to Italian nationals for use in preparing and submitting a claim under Italian War Damage legislation (Modulatio Danni G-4, Servizio Danni di Guerra-Mod. D.).

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

Can the Italian Government evade the obligation imposed on it to compensate United Nations nationals under Article 78 of the Treaty of Peace by disregarding as insufficient the evidence submitted consisting of uncontroverted statements by the claimant and by presumably credible witnesses concerning the existence, value and loss of the property in the absence of any showing that the facts are at variance with those alleged?

In support of the conclusions formulated in the Petition, the Agent of the United States of America argues in substance that:

(a) the claimant has submitted the only type of evidence which is available to her;

(b) the very nature of the property itself accounts for the claimant's inability

to produce other types of documentary evidence to establish the existence, ownership and value of the personal property which was lost;

(c) the Italian authorities are in a position to investigate the alleged facts in order to verify or disprove the statements made by the claimant or any of the four witnesses;

(d) should the contentions of the Italian Government prevail in this case, the result would be a denial of justice and an evasion of the obligation of the Italian Government under the Treaty of Peace;

(e) an *Atto di Notorietà* is recognized in the Italian Civil Code as having probative value;

(f) the special form which the Italian Government prepared and accepts from the Italian nationals submitting claims for household effects lost or damaged as a result of the war under Italian War Damage legislation provides that an *Atto di Notorietà* is one type of evidence which may be used to document such a claim;

and concludes by requesting the Commission to determine that the claimant has established her claim on the basis of the evidence submitted and to grant the claimant the relief requested.

In the Answer of the Italian Republic filed with the secretariat of the Commission on December 19, 1950 it is stated that the Petition raises the following questions of law (in translation);

Whether the Italian Government, for the purpose of applying paragraph 4 (a) of Article 78 of the Treaty of Peace, may consider as having probative value an *Atto di Notorietà* regarding the existence, ownership and nature of property, which however can no longer be returned in kind to the claimant, a National of the United Nations, as well as the fact of the damages and the circumstances (event of war) in which the damage occurred.

but maintains in substance that:

(1) as a general principle, an *Atto di Notorietà* does not constitute a means of proof in a true juridical sense because

(a) there is lacking the substance of evidence since the deponents are not obliged to distinguish matters regarding which they have a direct and personal knowledge from those matters regarding which their knowledge has been derived from others;

(b) the opportunity to cross-examine the deponents at the time the *Atto di Notorietà* is made does not exist;

(c) the Notary or other public official before whom an *Atto di Notorietà* is made can only verify that which took place in his presence and can not verify that the statements made in his presence under oath by the deponents are or not in fact true;

(2) since the rights, if any, of a United Nations national under Article 78 are subject to a judicial determination before the International Commission provided for under Article 83 of the Treaty of Peace, a United Nations national has the obligation of establishing his claim with documentary evidence which constitutes a means of proof in a true juridical sense;

(3) since the rights, if any, of an Italian national under Italian War Damage legislation are subject to a discretionary determination by the Italian administrative authorities, without the right of a judicial review, the Italian administrative authorities may conduct an *ex officio* investigation of a claim even though certain elements of the claim have been furnished in an *Atto di Notorietà*;

and concludes by requesting the Commission to reject the Petition and to make such further Orders as are necessary.

On April 16, 1951 the Agent of the Italian Republic provided for the transfer of the original Statement of Claim and all documents attached thereto from the Ministry of the Treasury of the Italian Republic to the Secretariat of the Commission for inclusion in the record.

On August 1, 1951 the Commission recorded its ruling that the formal submission of proof in this case had been concluded by the Agents of the two Governments and granted the request of the Agent of the United States of America to submit a Brief. On September 10, 1951, the Agent of the United States of America submitted the Brief of his Government in this case; and on October 25, 1951 the Agent of the Italian Republic submitted a Reply Brief. In these Briefs each of the Agents of the two Governments maintained the principles of law which have been set forth in the Petition and in the Answer, each Agent insisting on the conclusions previously formulated; it is not necessary here to detail the legal arguments and principles cited.

While 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 Petition, Answer or other pleadings, there was attached to the Brief of the United States of America, as Annex A, the original of a letter bearing the signature of the claimant which it is considered necessary to set out in full in this Decision:

September 4, 1951

To: Mr. L. M. Summers,
Agent of the United States of America,
American Embassy,
Rome

Dear Mr. Summers:

In re-examining the claim, submitted by me in connexion with the reading of the Brief prepared by the Agent of the United States for presentation to the Italian-United States Conciliation Commission, I noticed that in the claim it is stated that I had to leave my apartment as the result of the evacuation of Ostia. I should like to take this opportunity to correct that statement and to point out that I actually had to leave Ostia as a result of the terrific bombardments to which it was being subjected. The danger to me was aggravated by the fact that my apartment was very close to the German headquarters, which was the target of the bombardment. During my absence, according to information supplied to me by my neighbors, the apartment was broken into and occupied by German Armed Forces.

My review of the claim and my reading of the Brief indicates that in all other respects it states the facts of the case correctly.

Very truly yours,

(Signed) Norma Sullo AMABILE

It is obvious that a correct determination of this case can not be made without considering in *all* of its aspects the full import of Annex A to the Brief of the United States of America. Even though Annex A, *supra*, was introduced after the formal submission of proof had been concluded in this case, and not in accordance with the Rules of Procedure, the Commission will

exercise its right to deviate from the Rules of Procedure in a particular case by the agreement of the two national Commissioners, as expressed in Article 18 of the Rules of Procedure, and hereby accepts in evidence Annex A of the Brief of the United States of America. The Commission will discuss the import of this feature of this case at the appropriate place in this Decision.

The Commission has noted that the rejection of the subject claim on an administrative level by the Ministry of the Treasury of the Italian Republic (its letter dated June 24, 1950, *supra*) appears to be predicated only on a rejection of the evidentiary value to be given to the *Atto di Notorietà*, which was submitted as an Annex to the Statement of Claim, without admitting or denying the truth or falsity of any of the allegations of fact contained therein. No reference was made in the letter of rejection to the fact that the Statement of Claim was submitted in the form of an Affidavit, that the claimant had sworn before a Vice-Consul of the United States of America that the facts alleged in the Statement of Claim are true, and that separate statements of three of the four witnesses to the *Atto di Notorietà* were also submitted as Annexes to the Statement of Claim. Similarly, the Answer of the Italian Republic is based primarily on its rejection of the use of an *Atto di Notorietà* as a means of proof which may be used by a claimant in establishing his claim. Nevertheless, it must be assumed that the Government of the Italian Republic carefully considered the Statement of Claim and all of the Annexes attached thereto before rejecting the subject claim, and that nothing in the Statement of Claim or in any of the Annexes attached thereto was deemed sufficient by the Italian Government to cause it to request that a field investigation be conducted by its own competent administrative agencies, although it would appear that the truth or falsity of certain allegations of fact made by the claimant in the Statement of Claim and by the witnesses whose statements are attached thereto could have been established by such an investigation.

The Commission considers that the issues raised by the pleadings of the two Governments can be summarized as follows:

(1) Are Affidavits, *Atti di Notorietà*, signed statements and similar ex parte testimonial instruments forms of evidence which can be submitted to the Conciliation Commission in disputes presented by the Agents of the two Governments to establish the ownership, loss and/or value of personal property in Italy which was not sequestered by the Italian Government, when other forms of evidence are not available to document the claim?

(2) When a national of the United States of America submits a claim for war damages to the Government of the Italian Republic, is there an obligation on the Government of the Italian Republic under the Treaty of Peace, as implemented by the Memoranda of Understanding and the Exchange of Notes dated August 14, 1947, to conduct such an investigation of the claim as may be necessary to establish or refute the material allegations made by the claimant, and thereafter to make a determination of the particular claim, even though essential elements of the claim can be established by the claimant only with documentary evidence presented in the form of ex parte testimonial instruments?

(3) What criteria will the Conciliation Commission follow in determining the evidentiary weight or probative value to be given to such Affidavits, *Atti di Notorietà*, signed statements and similar ex parte testimonial instruments?

(4) Do the documents submitted as evidence in the instant case establish the claimant's right to compensation or other relief under the provisions of Article 78 of the Treaty of Peace; and, if so, what is the amount of such compensation and the nature of such other relief?

The question of the types of evidence which can be used by claimants in establishing their claims, and the weight which is to be given to the evidence furnished in a particular case, repeatedly occur in a large number of the disputes pending before the Commission, and have been exhaustively dealt with in the arguments presented in the instant case. Therefore, for the future guidance of the Agents of the two Governments, the Commission desires to make the following observations.

Neither the Treaty of Peace nor any of the Agreements supplemental thereto or interpretative thereof makes any specific reference to the types of evidence required to establish a claim under Article 78 of the Treaty of Peace. Paragraph 3 of Article 83 provides, however, that

Each Conciliation Commission shall determine its own procedure, adopting rules conforming to justice and equity.

It must be borne in mind that a claim arising under Article 78 of the Treaty of Peace is submitted first to the Government of the Italian Republic by or on behalf of the claimant, that the claim must be in written form and must be supported by documentary evidence, and that both the investigation and the consideration of such claim by the Government of the Italian Republic are in the nature of *ex parte* proceedings.

It is only after the appropriate Italian administrative authorities have had an *opportunity* to investigate and consider a particular claim that a "dispute" arises between the two Governments which is submissible to the Conciliation Commission provided for under Article 83 of the Treaty of Peace; and, ordinarily, the basis of the "dispute" between the two Governments has been clearly drawn by the documentary evidence obtained in the course of such investigation which supports or rebuts the allegations of fact or of law which have been made in the particular case.

It is, of course, necessary that evidence regarding the circumstances which have given rise to each individual "dispute" be presented to the Conciliation Commission. The difficulties inherent in securing evidence to document claims presented to an international Commission have long been recognized, and it is seldom practicable either for the Government to submit or for the Commission to receive the oral testimony of witnesses.

The Rules of Procedure of the Conciliation Commission adopted in Rome on June 29, 1950 by the Representatives of the two Governments of necessity recognize the practical problems involved in establishing, processing and investigating a claim arising under Article 78 of the Treaty of Peace. Article 9 (a) of the Rules of Procedure clearly states that all documentary evidence upon which either Government intends to rely must be annexed to the Petition of the claimant Government, or to the Answer of the respondent Government, to the Reply, or to the Counter-Reply, respectively. Articles 7 (b) and 8 (b) of the Rules of Procedure further state that, if either Agent desires the Commission to consider any proof other than the documentary evidence which has been submitted by his Government, specific and timely request for such consideration must be made. Clearly, the Rules of Procedure contemplate that the evidence to establish all of the essential elements of a particular claim would be developed in written form.

The Agent of the Italian Republic in his Reply Brief referred specifically to paragraphs (a) and (b) of Article 10 of the Rule of Procedure, which read as follows:

- (a) The Commission does not hear oral testimony save in exceptional cases for good cause shown and upon Order of the Commission authorizing its ad-

mission and fixing the time when and the place where it shall be received. Should oral testimony be introduced in behalf of one Government, the Agent of the other Government shall have the right of cross-examination.

(b) The Commission may order in exceptional cases officials of either Government to receive the sworn testimony of a witness taken in answer to written questions prepared by the Agent of either Government and approved by the Commission; the Order of the Commission shall name the witness whose sworn testimony is to be taken and shall specify the time when, the place where, the official before whom the witness shall testify, as well as the questions to be asked.

The contention of the Agent of the Italian Republic that the last-cited paragraphs of the Rules of Procedure limit the use of sworn testimony to the two instances referred to in these paragraphs is obviously erroneous. The mere fact that the rules contained in both of these paragraphs are expressly limited to "exceptional cases" is sufficient to show that oral testimony before the Commission or replies to written interrogatories are not the only types of sworn testimony which may be used to establish or to rebut the allegations of fact made in a particular case.

Moreover, paragraph (a) of Article 18 of the Rules of Procedure specifically provides that

... Supporting statements, affidavits, and documentary evidence may be submitted in any language.

To this extent, at least, it is clear that the Rules of Procedure do not exclude the use of *ex parte* testimonial instruments.

A national of the United States of America who has suffered a loss of or damage to non-sequestered property in Italy, as a result of the war, is confronted with the problem of finding a suitable means of proof to establish the facts in such a manner as will permit him to exercise his rights under Article 78; and this problem is an extremely serious one in the absence of the property itself or of documentary evidence which antedates the occurrence of the loss or damage. Particularly in the case of loss or damage to non-sequestered personal property, it might be reasonably anticipated—and experience has proven it to be true—that the average claimant possesses little, if any, documentary evidence of the ownership, nature and value of his personal property which existed prior to the date on which the loss or damage occurred. In the absence of proof of this nature, the individual is able to support his claim for compensation under Article 78 only with his own statement of the pertinent facts and the statements of other persons, if any, who were in a position to have personal knowledge of the actual facts regarding the ownership, nature and value of the property, and the cause of its loss or damage. Greater credibility may be given to declarations of this nature when they are submitted as statements made under oath in the form of either Affidavits or *Atti di Notorietà*.

In considering the question of the right of a national of the United States of America to use Affidavits, *Atti di Notorietà*, signed statements and similar *ex parte* instruments as testimonial documentary evidence, in attempting to establish a claim under Article 78 of the Treaty of Peace, it is necessary to have a clear understanding of each of these instruments.

The "Affidavit" is a statement or declaration, made by an individual, which has been reduced to writing and acknowledged by him before a Notary Public or other public official authorized by the State or federal laws of the United States of America to administer an oath and to take an acknowledgment. An "Affidavit" should show the purpose for which it was made and

must state the place where and the public official before whom the acknowledgment was taken.

The *Atto di Notorietà* (translated literally as "Act of Notoriety") is a written certification, prepared by a Notary Public or other public official authorized by the laws of the Italian Republic to administer an oath and to execute such a certificate, of the statements or declarations made under oath and in his presence by the four persons named therein. To execute an *Atto di Notorietà*, four persons must appear before the Notary or other public official, assert that they are each qualified to act as a witness, and that they are not otherwise interested in the subject-matter; and thereafter while under oath, separately and in the presence of each other, and before said Notary or other public official, assert that it is public knowledge and notorious, as well as to the personal knowledge of each of them, that certain facts are true, which statements or declarations are then reduced to writing by the public official before whom they were made, and attested to by each of the four witnesses and by the public official.

A "Signed Statement", as this term is used in this decision, consists simply of a written instrument which an individual has declared to be his own by affixing his signature thereto in the customary manner. A "Signed Statement" is not made under the legal or moral bonds of an oath administered by any qualified public official.

It is pertinent here for the Commission to comment on the many similarities which exist between the form and use of the Affidavit in the legal practice of the United States of America and in the form and use of the *Atto di Notorietà* in the legal practice of Italy. Both an Affidavit and an *Atto di Notorietà* are in the form of an ex parte statement or declaration and, while each is used extensively in the administrative proceedings of the respective countries, neither can be used ordinarily as evidence to establish an allegation of a material fact in a controverted legal proceeding before a domestic court of law either in the United States of America or Italy. It is not disputed that a Notary or other public official only verifies as true that which has actually occurred in his presence, and does not verify that the statements made by the dependents under oath in the Affidavit or in the *Atto di Notorietà* are in fact true. Moreover, the opportunity to challenge the statements of the dependents in an Affidavit or in an *Atto di Notorietà* does not exist at the time such statements are made.

The Commission has noted particularly that the Federal laws of the United States of America provide for the criminal punishment of every person wilfully and corruptly committing perjury in an Affidavit by taking a false oath before a duly qualified and commissioned Consular Officer of the United States of America (22 U.S.C.A., Sec. 1203) and of every person knowingly and wilfully swearing or affirming falsely in any proceeding pending before an international tribunal or commission established pursuant to any agreement between the United States of America and any foreign government (22 U.S.C.A., sec. 270); similarly, the laws of the Republic of Italy provide for criminal punishment for perjury committed by a private person in a public document, for perjury in a private document, or for the use of a false document (Italian Penal Code, Articles 483, 485 and 489).

Obviously, under paragraph 3 of Article 83 of the Treaty of Peace with Italy, *supra*, the Commission is empowered to determine its own procedure and rules of evidence. It has not been the purpose of this Commission to promulgate any new principles or rules of evidence nor to derogate from those principles and rules of evidence generally recognized and accepted in international law. The Commission has noted that the arguments of the Agents of the two Governments on the admissibility of certain evidence reflect in a

large measure the fundamental differences in the domestic legal systems and customs of the two Countries. It is an essential fact to be remembered, however, that the Conciliation Commission is an international arbitral body, charged with the duty of performing those functions attributed to it by the Treaty of Peace with Italy and the Agreements supplemental thereto and interpretative thereof. Unlike a domestic court of law, the Commission is not obliged to exclude all evidence which does not meet the criterion recognized by the legal system under which a domestic court of law functions; on the contrary, the Commission has been empowered by the Treaty of Peace to employ the widest possible latitude in receiving and evaluating evidence in its search for the truth; and, in adopting such a criterion, the Commission is only conforming to the customary practice followed in international arbitral claims procedures.

No reference in the Treaty of Peace with Italy, or in the Agreements supplemental thereto or interpretative thereof, precludes acceptance by this Commission of *ex parte* testimonial instruments as evidence to document a claim. The Rules of Procedure of the Conciliation Commission not only do not preclude the use of such forms of documentary evidence, but recognize the fact that such documentary evidence will be used. International Claims Commissions have customarily adopted a liberal attitude regarding the form, submission and admissibility of evidence (unless restricted by the arbitral agreements). This Commission knows of no rule of international law which would preclude the claimant's use of Affidavits, *Atti di Notorietà*, signed statements and similar *ex parte* testimonial instruments as documentary evidence, under the applicable agreements between the United States of America and Italy; and none has been cited. It is general knowledge that non-sequestered personal property in Italy belonging to many United Nations nationals was lost or damaged as a result of the war. To accept the contention of the Agent of the Italian Republic in this case would be equivalent to denying to numerous nationals of the United States of America who sustained loss of or damage to non-sequestered personal property in Italy their rights under Article 78 of the Treaty of Peace. Therefore, in order to give effect to Article 78 of the Treaty of Peace, and more particularly to paragraph 4 (a) thereof, the Commission concludes that Affidavits, *Atti di Notorietà*, signed statements and similar *ex parte* testimonial instruments are forms of evidence which may be submitted to the Conciliation Commission to establish the elements of a claim for loss of or damage to personal property in Italy which was not sequestered by the Italian Government, when other forms of evidence are not available.

Prompted by the necessity of considering the best available evidence, other international tribunals and commissions have refused to exclude *ex parte* testimonial instruments submitted in support of international claims. The admissibility of such evidence is sometimes specifically provided in the Convention establishing the tribunal or in the Rules of Procedure governing the tribunal or commission. (See *Article VI, Agreement of August 10, 1922 between the United States of America and Germany*, pp. 1-2, *First and Second Report of Robert C. Morris, Agent of the United States before the German-United States Mixed Claims Commission, Washington, 1923*; and *Article 27, Rules of Procedure of the Italian-Mexican Claims Commission adopted December 8, 1930 under the Convention between Italy and Mexico, signed at Mexico City on January 13, 1927*, p. 516, *A. H. Feller, The Mexican Claims Commission, New York, 1935*.)

When the Convention or Rules of Procedure are silent, the international tribunal or commission itself must decide the question of the admissibility of *ex parte* testimonial instruments when this question is presented to it. The practice of admitting Affidavits as evidence, in the absence of any provision relating thereto in the arbitral Convention or in the Rules of Procedure, is

widely recognized by international legal authorities. In the book, *L'Organisation Judiciaire, La Procédure, et La Sentence Internationales*, Paris, 1937, p. 255, the French Jurist, J. C. Witenberg, says:

D'origine anglo-saxonne, l'affidavit s'est introduit très tôt dans la procédure arbitrale internationale. Et, malgré les contestations dont il a fait l'objet, son admissibilité a fini par y être définitivement admise. On peut, actuellement, considérer cette admissibilité comme étant de coutume en droit international arbitral. (Footnotes omitted.)

(Translation: "The affidavit, which is of Anglo-Saxon origin, was introduced very early in international arbitral procedure, And, notwithstanding the objections which have been raised against it, its admissibility has finally been completely admitted. This admissibility can now be considered as customary in international arbitral law." (Footnotes omitted.))

Also in the book, *Evidence before International Tribunals*, Chicago, 1939, p. 180, Mr. Durward V. Sandifer states that:

"International" Tribunals have uniformly declined to accept the validity of arguments against the admission of affidavits. It seems doubtful whether a tribunal would today refuse to receive affidavits for appropriate consideration unless bound to do so by a provision in the arbitral agreement. . . .

The Commission has observed, *supra*, the many similarities between the Affidavit and the *Atto di Notorietà* and has noted that questions regarding the admissibility of such ex parte testimonial instruments which have arisen before other international tribunals or commissions have involved particularly Affidavits. Applying the same criterion which permits the use of Affidavits in international arbitral claims proceedings, the Commission finds that there is no logical basis or legal principle in international law which would preclude the use of an *Atto di Notorietà* as documentary evidence to establish elements of a claim presented under Article 78 of the Treaty of Peace.

Therefore, based upon the Treaty of Peace, and the Agreements supplemental thereto and interpretative thereof, and supported by logic and authority, the Commission accepts in evidence the Affidavits, the *Atto di Notorietà* and the signed statements of witnesses, all of which were submitted in this case as documentary evidence in support of the claimant's sworn Statement of Claim. The Commission has stated, *supra*, the reason for its acceptance in evidence of the claimant's letter of September 4, 1951, which was attached to Annex A to the Brief of the Agent of the United States of America.

Although the Commission holds that it is entitled to receive in evidence and to consider Affidavits, *Atti di Notorietà* and signed statements when submitted in evidence, it must be emphasized and made very clear that the Commission has not thereby established the probative value which it will give to such ex parte testimonial instruments. The question of the evidentiary weight which the Commission will give to such documentary evidence is a separate matter which must be determined in the light of all the circumstances surrounding a particular case; this question will be considered later in this Decision.

It is the contention of the United States of America that the submission of a claim based only on ex parte testimonial instruments creates certain responsibilities on the Italian Republic under the Agreements between the two Governments. Preliminary to a consideration of any aspect of this subject, it should be observed that, under Article 78 of the Treaty of Peace, there is no presumption in favour of either the claimant or the Government of the Italian Republic. The claimant must submit sufficient documentary evidence in

support of his claim to establish the basis of his rights to assert a claim. It is obvious that the nature of the property and the circumstances surrounding the loss or damage will be determinative in most instances of the type and quantity of evidence which the claimant can furnish to document his claim but, even where the nature of the property and the circumstances surrounding a particular claim have placed a severe limitation on the claimant's means of proof, the claimant is not relieved of the obligation to submit the best available evidence in support of his claim and to make a full and complete disclosure of all the pertinent facts; where this has not been done, the Commission will be justified in drawing reasonable inferences from the non-production of evidence which it would appear could have been furnished by the claimant, or from the lack of a satisfactory explanation of the claimant's failure to provide such evidence.

When a claim under Article 78 of the Treaty of Peace is first submitted to the Government of the Italian Republic by a national of the United States of America, and it is clear from a preliminary examination thereof that the claim is neither frivolous nor fraudulent, that Government can either accept the evidence submitted in support of the particular claim or request its administrative agencies to conduct an investigation of the claim as may be necessary in order to develop evidence which will refute, limit or confirm the declarations made by the claimant. Hence, the Government of the Italian Republic, even before a disputed claim is submitted to the Commission, has the right and opportunity to challenge the declarations made by the claimant or witnesses in Affidavits, *Atti di Notorietà*, signed statements, or similar ex parte testimonial instruments. However, when there has been a failure by the respondent Government to produce any evidence or to submit any analytical argument which would refute or limit the declarations made by a claimant or witness in Affidavits, *Atti di Notorietà*, signed statements or similar ex parte testimonial instruments, the Commission will be justified in drawing reasonable inferences from such failure and in giving such instruments the evidentiary value which in its opinion appears to be warranted under all the circumstances of the case.

Paragraph 5 of Article 83 of the Treaty of Peace with Italy, which reads:

The parties undertake that their authorities shall furnish directly to the Conciliation Commission all assistance which may be within their power.

is a clear recognition that the Commission has no authority to *compel* the appearance and testimony of witnesses or to conduct an investigation of any allegation of fact made in a particular case.¹ The Commission must act through the Agents of the two Governments but this does not mean that the Commission, in its quest for the truth, does not have the right to rely confidently upon each of the two Governments and upon each of the Agents of the two Governments before the Commission for the highest degree of co-operation including a full and complete disclosure of the facts in each case insofar as such facts are within their knowledge or can reasonably be ascertained by them.

¹ On July 13, 1930, by Act of Congress, an international tribunal or Commission to which the United States of America is a party was empowered to require by subpoena the attendance and the testimony of witnesses and the production of documentary evidence. The Act of June 7, 1933 allows the Agent of the United States of America before such a tribunal or Commission to apply to the United States District Court for such a subpoena. (See *U.S.C.A.*, Title 22, Sec. 270 to 270 g. inclusive). Where a claimant or witness resides or is to be found only outside the United States of America, the use of these statutory powers is limited.

The reason why it is the responsibility of the Government of the Italian Republic to investigate a claim of a national of the United States of America, when it is clear from a preliminary examination thereof that the claim is neither frivolous nor fraudulent, is derived from the particular relationship between the United States of America and Italy growing out of the Agreements and Supplementary Exchanges of Notes signed at Washington, D.C., on August 14, 1947 (approved by Italian Legislative Decree No. 1747 of December 31, 1947). These Financial and Economic Agreements implement certain provisions of the Treaty of Peace with Italy, and provide for the settlement of certain wartime claims, the unblocking of the Italian assets in the United States and the payment of certain claims of nationals of the United States of America, and other related matters. In one of the Notes exchanged between the two Governments on August 14, 1947, the Government of Italy undertook certain obligations "with respect to the assistance to be given to nationals of the United States of America with respect to their property in Italy"; the keynote of this obligation is expressed in the word "assistance". The Note further recites that "This assistance is directed particularly to the implementation of Article 78 of the Treaty of Peace with Italy and to Article III, paragraph 16, of the above Memorandum of Understanding". A further assurance is contained in the second paragraph of this Note, which reads:

The Government of Italy shall, as soon as possible, designate an Italian governmental agency having authority to receive and determine claims of nationals of the United States of America with respect to their properties in Italy, and to effect the restoration of such properties, or pay compensation, or both, as provided in Article 78 of the Treaty of Peace with Italy, and in accordance with the terms of Article III, paragraph 16, of the Memorandum of Understanding.

The assurance that Italy "would receive and determine claims of nationals of the United States of America" carries with it by necessity the responsibility that all such claims which are not patently frivolous or fraudulent on their face would be investigated by the Italian Government because only after making such an investigation can the claimant's rights be "determined".

Because of the foregoing reasons it is clear that, when the claim which is under consideration here was presented, the Italian Government should not have rejected the documents submitted in support of the claim as having no evidentiary value because it would appear that if all the facts alleged by the claimant were true, she had established the basis of her right to assert a claim. Admittedly, the claimant had submitted a minimum of evidence and had not made a full and complete disclosure of all the pertinent facts. Under these circumstances, the Italian Government might properly have requested the claimant to furnish additional information regarding (a) her civil status in Italy following her marriage to Prof. Dr. Gennaro Amabile of Rome, (b) the individual items of personal property acquired prior to 1931 and for the loss of which the claimant has requested compensation as the sole owner of such property, (c) the additional individual items of personal property acquired by the claimant after her marriage and evidence to substantiate the allegation of sole ownership of such additional property, (d) the date and full particulars regarding the alleged forced evacuation of the claimant from her apartment at the Lido di Roma (Ostia) and its use thereafter by German Military Forces, as well as when the claimant returned to the Lido di Roma (Ostia) and was able to resume possession of her apartment.

It would, of course, be the claimant's obligation to furnish such additional information, if available; and, in this case, it would appear that this information would be particularly within the knowledge of the claimant. When,

however, the claimant has furnished all the information which reasonably could be ascertained by her, it becomes the responsibility of the Italian Government under the Agreements between Italy and the United States of America to make a determination of the claim.

It appears from the record that the Italian Government maintains that the documents submitted by the claimant in support of the claim can not be considered as sufficient proof to establish the basis of her right to assert a claim, and therefore the administrative agencies of the Italian Government had no responsibility to investigate this claim; the Commission has disposed of these arguments, *supra*. No request for a reservation concerning any aspect of the evidence submitted by the claimant, and no evidence of any kind has been submitted by the respondent Government. Neither of the Agents requested the Commission to hear oral testimony of witnesses, subject to cross-examination, as provided for in exceptional cases under the provisions of Article 10 (a) of the Rules of Procedure. Under these circumstances, it becomes the duty of the Commission to examine carefully everything which has been received in evidence in order that the Commission may determine the weight to be accorded to such evidence and its sufficiency to support the alleged rights of the claimant under Article 78 of the Treaty of Peace.

The weight or probative value which in general has been accorded to Affidavits and other forms of *ex parte* testimonial instruments by other international tribunals and commissions was expressed by the British-Mexican Claims Commission, in its unanimous decision on the demurrer files by the Agent of the Mexican Government in the claim of *Mrs. Virginia Lessard Cameron (Claims Commission between Great Britain and Mexico—Decisions and Opinions of the Commissioners in accordance with the Convention of November 9, 1926, London, 1931, p. 33, at p. 35)*:

It is true, no doubt, that affidavits contain evidence which can be described as secondary evidence and is often of a very defective character. In many cases, it may be, affidavit evidence may possess little value, but the weight to be attached to that evidence is a matter for the Commission to decide according to the circumstances of a particular case. Affidavits *must and will be weighed with the greatest caution and circumspection*, but it would be utterly unreasonable to reject them altogether." (Emphasis supplied.)

The writings of international jurists on this subject also emphasize the "caution" and "circumspection" which must be exercised in evaluating such forms of evidence. In *L'Organisation Judiciaire, La Procédure et La Sentence Internationales*, *supra*, Witenberg says (p. 256):

Il est à relever, cependant, que la force probante de l'affidavit est moindre que celle des autres modes de preuve. Surtout dans le cas où il émane de l'intéressé lui-même et dans le cas où il était possible de recourir à d'autres modes de preuve et que la partie désireuse de prouver a négligé de le faire." (Footnote omitted.)

(*Translation*: "It should be pointed out, however, that the probative force of the affidavit is less than that of other means of proof. Especially in those cases in which it was made by the interested party himself and those cases in which it was possible to have recourse to other means of proof and the interested party neglected to do so." (Footnote omitted.))

Sandifer summarizes his conclusions regarding the practices of international tribunals and commissions and the probative value which they accord to affidavits in his book *Evidence before International Tribunals*, *supra*, as follows (pp. 182-183):

The tribunal may accord to them "much, little, or no weight" according to its evaluation of the testimony contained in them under the particular circumstances of the case. In determining the probative value of affidavits, the tribunal will, of course, take into account such facts as the credibility, sources of information, pecuniary interest and family ties of the affiants. It will also take into account the fact that the witness has not been subject to cross-examination, and that the opposing party may not have had an adequate opportunity for answering the allegations contained in the affidavits.

A tribunal may, if the circumstances seem to warrant, deny any probative value of affidavits, but as previously indicated it is generally held that this may not properly be done on the grounds that affidavits as such carry no evidentiary weight. (Footnotes omitted.)

Bearing in mind the principles and practices followed by international tribunals and commissions and approved by writers on the subject, the Commission has carefully examined the declarations of the claimant and of the other witnesses in the instant case.

Despite the fact that no evidence has been submitted by the respondent Government, the sum total of the evidence *now* before the Commission is substantially different from that which documented this claim when it was initially rejected on June 24, 1950 by the Italian administrative authorities or when the Petition was filed on November 21, 1950 by the Agent of the United States of America. The reason for this substantial difference is to be found in the signed letter of the claimant herself dated September 4, 1951 which was filed as "Annex A" to the Brief of the Government of the United States of America and was accepted in evidence by the Commission. Quoted in full, *supra*, this letter is the most illuminating and important document submitted in this case.

While the claimant's letter, *supra*, leaves much to be desired in its wording, its meaning is clear when viewed against the entire record in this case. To understand the full import of the claimant's signed statement of September 4, 1951, *supra*, it is only necessary to recall the sworn documentary evidence upon which this claim is predicated and to remember that the claimant had to establish that the alleged loss was "as a result of the war", within the meaning of this phrase as used in paragraph 4 (a) of Article 78, in order to be eligible to receive compensation under the Treaty of Peace.

In her Affidavit of February 23, 1949 (Annex 2 of the Statement of Claim), the claimant verified under oath that the following statement was true:

...; that as a result of the war and more particularly as a result of the forced evacuation of her house and the fact that her house was occupied by German military forces, the entire contents of the house ... was lost or irretrievably damaged; ... (Emphasis supplied.)

Again, in the Statement of Claim, the claimant verified under oath on March 16, 1949 that the following statement was true:

All of the property listed on the list attached to Annex 2 was lost or irretrievably destroyed, such loss or destruction having occurred following the time that the claimant was obligated to leave her apartment as a consequence of general orders evacuating the Lido di Roma during the course of the war. During such period the apartment was occupied by German Military Forces. (Emphasis supplied.)

Also, in the *Atto di Notorietà* of February 16, 1949 (Annex 3 to the Statement of Claim), the four witnesses named therein attested under oath that the following statement is true:

All of these items were destroyed or lost as a result of warlike causes. In fact, *the lady was forced, by the authorities to abandon her home*, she left everything and on her return found nothing. (Emphasis supplied.)

From a careful reading of the claimant's letter of September 4, 1951 *supra*, it is obvious that essential elements in each of the foregoing statements are not true. The claimant on September 4, 1951 repudiated that portion of her own sworn statements of February 23, 1949 and March 16, 1949, respectively, in which she had previously stated that she had been forced by the authorities to evacuate her apartment. Moreover, the claimant on September 4, 1951 admitted that of her own and direct personal knowledge she was unable to verify as true that portion of her previous sworn statements in which she had stated that "during such period the apartment was occupied by German Military Forces".

The claimant's letter of September 4, 1951 also impugns portions of the *Atto di Notorietà* submitted in evidence as Annex 3 to the Statement of Claim. No explanation has been offered of the circumstances which prompted the claimant on September 4, 1951 "to correct" portions of her previous sworn statements upon which the claim is based; and the Commission will not indulge in speculation.

Suffice it to say that the Commission is unable to give any credence to the evidence introduced in this case; and the claim is therefore rejected in its entirety. Moreover, the Commission suggests that the appropriate legal authorities may desire to make a determination of whether or not the laws of either of the two Governments were breached in the preparation of the sworn documentary evidence which formed the basis of the claim for compensation in this case.

Having reached the foregoing conclusions, the Commission, acting in the spirit of conciliation,

HEREBY DECIDES:

1. That the requests contained in the Petition filed in behalf of (Mrs.) Norma Sullo Amabile by the Government of the United States of America are rejected; and
2. That this decision is final and binding from the date it is deposited with the secretariat of the Commission.

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

DONE in Rome, this 25th day of June, 1952.

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

(Signed) EMMETT A. SCANLAN, Jr.

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

(Signed) ANTONIO SORRENTINO