

HOFFMAN CASE--DECISION No. 7 OF
11 APRIL 1952 ¹

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. Stefano Varvesi, Deputy 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 Mr. Erich W. A. Hoffmann, and the Government of the Italian Republic in regard to the interpretation and application of Article 78 of the Treaty of Peace with Italy, signed at Paris on February 10, 1947. The object of the dispute is to obtain on behalf of Mr. Erich W. A. Hoffmann (hereinafter referred to as the claimant) indemnity for the loss sustained by him in 1946 when certain of his personal property was stolen from a United States Army warehouse which at that time was located at the Bagnoli Railhead, Naples, Italy, and for such further or other relief as may be just and equitable.

The material facts are as follows:

Mr. Erich W. A. Hoffmann is a national of the United States of America

¹ *Collection of decisions*, vol. I, p. 11.

by birth; and the fact that the claimant is a "United Nations national" within the meaning of this term as defined in paragraph 9 (a) of Article 78 of the Treaty of Peace is not in dispute.

The claimant is a Foreign Service Staff Officer and prior to January, 1946 was assigned as Vice-Consul to the Diplomatic Mission of the Government of the United States of America at Tirana, Albania. In January, 1946 a communist-dominated régime obtained control of Albania and inaugurated a series of moves against certain foreign Missions which at one time assumed dangerous proportions. This situation reached its height in March, 1946 and resulted in the issuance of instructions by the Department of State to its Chief of Mission in Tirana, Albania authorizing the sending to Italy of members of the Mission and the closing in Albania of the Diplomatic Mission of the United States of America if necessary. As a result of this situation, the claimant sent some of his personal effects to Italy for storage and safe-keeping. The American Consulate General in Naples, in March, 1946, received these personal effects and arranged for their storage in the United States Army warehouse located at the Bagnoli Railhead, Naples.

On the night of September 7, 1946 unknown persons forcibly gained entry into this United States Army warehouse, broke into and pilfered two of the storage cases containing the personal effects of the claimant. Property owned by the United States Army was also stolen. The theft was reported to the Criminal Investigation Division of the United States Army and to the American Consulate General in Naples. From the record it appears that the theft was not reported to the Italian police authorities, that none of the property was recovered, and that the thief or thieves were not apprehended. The claimant valued the property which he lost in this manner at Two Thousand One Hundred Thirty-one and 13/100 Dollars (\$2,131.13), based on his cost at the time of purchase.

On January 5, 1950 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 Republic this claim based on Article 78 of the Treaty of Peace with Italy and the Agreements supplemental thereto or interpretative thereof.

The Ministry of the Treasury of the Italian Republic stated in its letter dated August 22, 1950 that the claim could not be accepted because the loss involved resulted from the theft of personal effects deposited in behalf of the claimant in an American military warehouse and that the loss did not appear to create a right to compensation under the provisions of Article 78 of the Treaty of Peace.

The Embassy of the United States of America in its letter of March 22, 1951 informed the Ministry of the Treasury of the Italian Republic that it could not accept the position taken by the Italian authorities, and made reservation to submit the dispute to the Conciliation Commission.

On April 27, 1951 the Agent of the Government of the United States of America filed the Petition in this case. Having premised the statement of the case, the Petition cites paragraph 4(a) of Article 78 of the Treaty of Peace as establishing the right to compensation, and concludes by requesting the Conciliation Commission to:

(a) decide that the claimant is entitled to receive from the Government of the Italian Republic the sum of Two Thousand, One Hundred Thirty-one and 13/100 Dollars (\$2,131.13), subject to any necessary adjustment for a variation in values between November 8, 1949 (the date when the Affidavit of Claim was prepared) and the date of payment;

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

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

On June 6, 1951 the Deputy Agent of the Government of the Italian Republic filed an Answer in this case requesting the Commission to reject the first request contained in the Petition because the right of the claimant to compensation under paragraph 4 (a) of Article 78 of the Treaty of Peace did not exist; and to reject the second request contained in the Petition because the request regarding costs is in conflict with paragraph 4 of Article 83 of the Treaty of Peace.

On June 26, 1951 the Agent of the Government of the United States of America requested the Commission to declare that the formal submission of proof had been concluded and stated the desire of his Government to submit a Brief.

In its Order of July 23, 1951 the Commission provided for the transfer of the original Statement of Claim and all documents attached thereto from the Ministry of the Treasury of the Italian Government to the secretariat of the Commission for inclusion in the record in this case. Thereafter, the Commission declared that the formal submission of proof in this case had been concluded and established a time-limit for the Agents of the two Governments to submit Briefs.

The Agent of the Government of the United States of America filed his Brief on October 5, 1951; and the Deputy Agent of the Government of the Italian Republic submitted a Reply Brief on November 29, 1951. In their Briefs neither Agent disputes the facts; but each Agent maintains the principles of law which had been set forth in the Petition and in the Answer, each Agent, insisting on the conclusions previously formulated. The Agent of the United States of America admits in the Brief of his Government that no expenses had been incurred in Italy by the claimant in establishing this claim, but maintains that the claimant is entitled to interest at five per cent (5%) from January 5, 1950 (the date of the filing of the claim), or at least from March 5, 1950, as part of the request contained in the Petition "for such further or other relief as may be just and equitable".

The Commission declares that the right to compensation in this case must be predicated upon three requisites, and that each of these requisites must be established:

(1) 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;

(2) That the claimant has suffered a loss by reason of injury or damage to property in Italy, as provided for in paragraph 4 (a) of Article 78 of the Treaty; and

(3) That the loss is "as a result of the war" within the meaning of this phrase as used in paragraph 4 (a) of Article 78 of the Treaty of Peace.

With reference to the first and second of these requisites, the facts are not contested by either Government. However, paragraph 4 (a) of Article 78 of the Treaty of Peace provides that:

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

In the Brief of the Government of the United States of America it is maintained that:

The loss, while it may not bear the same direct relationship to an act of war as a loss sustained as a direct consequence of military operations, . . . is nevertheless a loss attributable to the war which can properly be classified as one occurring "as a result of the war" . . . [Br., p. 9.];

and, further, that:

. . . the theft from a United States Army warehouse, performed by a presumably well organized band in the difficult times following the cessation of hostilities and in the period when criminal activities reached their highest, is a theft that, in the absence of evidence to the contrary, can be logically linked to the war so that the loss suffered thereby can be said to be one suffered "as a result of the war". [Br., p. 13.]

In support thereof, the Agent of the United States of America cites certain Italian laws and decisions of the Italian courts regarding war damages.

But these conclusions are disputed by the Agent of the Italian Republic who, in the Brief of his Government, argues in substance:

(a) That the responsibility of the Government of the Italian Republic under paragraph 4 (a) of Article 78 of the Treaty of Peace arises only in those cases in which it is shown that the loss suffered by a United Nations national is directly dependent upon an act of war; that the loss suffered by the claimant is the result of a common theft, and the fact that there was an increase in delinquency in Naples during 1946 can not give an act which is a common theft the characteristics of an act of war;

(b) That, since the theft was perpetrated on September 7, 1946, there is lacking in this case any relationship with an act of war because war operations had ceased some time before; and

(c) That paragraph 1 of Article 78 of the Treaty of Peace (to which specific reference is made in paragraph 4 (a) of Article 78) provides compensation for damages to property of United Nations nationals located in Italy on June 10, 1940, but not for damages to such property brought into Italy subsequent to that date.

The Commission observes that the phrase "as a result of the war", as used in paragraph 4 (a) of Article 78 of the Treaty of Peace, could be subject to various interpretations and therefore must be construed in the light of all the facts in a particular case. The Commission finds that there must be a sufficiently direct causal relationship between the war and the occurrence which causes the loss. The obligation assumed by Italy is the payment of compensation for a loss sustained by reason of injury or damage to property in Italy which is attributable to the existence of a state of war; and a loss sustained as a result of an occurrence in which the war was not a determinate factor can not be construed as creating an obligation under the provisions of paragraph 4 (a) of Article 78.

In this case the claimant was the victim of a felonious taking by unknown persons of his property which had been stored in Naples in a United States Army warehouse under the control of American personnel. Hypothetically, the social conditions existing shortly after the cessation of hostilities may have resulted in an increase in the frequency of theft losses in Naples, but this is not the point which must be determined in this case. The Commission holds that the requests contained in the Petition must be rejected because the loss sustained by the claimant was the result of an occurrence which does not have a sufficiently direct causal relationship to the war as to be "as a result of the war".

Having reached this conclusion, the Commission finds that it is unnecessary

to pass upon the other arguments advanced by the Agents of the two Governments, and

HEREBY DECIDES:

1. That the requests presented in the Petition filed on behalf of Mr. Erich W. A. Hoffmann 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 11th 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