FATOVICH CASE—DECISION No. 24 OF 12 JULY 1954 [1]

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[1] *Collection of decisions*, vol. II, case No. 35.

The Italian-United States Conciliation Commission, established by the Government of the United States of America and the Government of Italy pursuant to Article 83 of the Treaty of Peace and composed of Antonio Sorrentino, Representative of the Italian Republic, and Alexander J. Matturri, Representative of the United States of America, finds it has jurisdiction to adjudicate the rights and obligations of the parties to this dispute.

The dispute between the two Governments arose out of a claim under Article 78 of the Treaty of Peace which was submitted on August 18, 1950, to the Italian Ministry of the Treasury by Joseph Fatovich through the Embassy of the United States of America in Rome.

It is not denied that Joseph Fatovich is a national of the United States of America, and hence a "United Nations national" within the meaning of Paragraph 9 (*a*) of Article 78 of the Treaty of Peace. In his claim he requested compensation for loss of personal property and damage to real property located in Zara, formerly under Italian sovereignty, but now under Yugoslav sovereignty by virtue of the Treaty of Peace with Italy which came into effect on September 15, 1947.

Initially, in December 1952, the Italian authorities rejected the claim on grounds that Yugoslavia had paid a lump sum to the United States of America for war damages suffered by United States nationals in Yugoslavian territory. However, the Embassy of the United States of America in Rome pointed out to the Italian authorities, by letter dated January 27, 1953, that the agreement of July 19, 1948, between the United States of America and Yugoslavia did not provide for compensation for war damages to United States nationals and, in any event, did not affect Italy's obligation under Article 78 of the Treaty of Peace with Italy.

No further action was taken by the Italian authorities with respect to the claim and, on May 26, 1953, the Agent of the United States of America submitted the Petition in this case to the Conciliation Commission, on grounds that, in the absence of any indication by the Italian authorities of a change of position the rejection of the claim in December 1952 had given rise to a dispute between the two Governments.

It is not disputed by the Italian Agent that Italy is responsible for loss or damage sustained during the war by property belonging to United Nations nationals located in ceded territory, nor is it disputed that Zara was ceded by Italy to Yugoslavia under the Treaty of Peace. Moreover, on July 2, 1953, the Italian Agent submitted a statement to this Commission in which it is declared that the Italian Government abandoned the grounds upon which this claim was originally rejected and that an investigation by Italian authorities had been ordered to determine the veracity of the elements of the claim as presented by Joseph Fatovich.

The Italian Agent requested and was granted more than six months for the completion by the Italian Government of the investigation of the claim and for the submission of the full and complete Answer of the Italian Government. On February 19, 1954, however, the Italian Government informed the Commission that it had proved impossible for the Italian Government to conduct an investigation of the claim and he requested the Commission to reject the Petition for lack of evidence, or, in the alternative, to order such investigative measures as might appear suitable to the Commission in order to ascertain the existence and ownership of the property, as well as the cause and amount of the damage.

The claim submitted by Joseph Fatovich on August 18, 1950, requests compensation for four items of loss or damage:

I. Damage, as the result of aerial bombardment of Zara, to a four-storey building containing a general store and storage rooms on the ground floor

and four apartments on the upper three floors. Temporary repairs were made by the claimant, to prevent further damage by the elements, immediately upon his return to Zara after the cessation of hostilities. No permanent repairs were made by the claimant.

While in an affidavit dated August 22, 1949, the claimant declares that he spent approximately one million lire on these temporary repairs, in an earlier affidavit, executed on September 3, 1948, and submitted with a separate claim under Article 78 of the Treaty of Peace, the original of which was filed by the Italian Agent in the record together with the original of the claim that is the subject of the Petition in this case, the claimant declares instead that he spent 100,000 Yugoslav dinars for temporary repairs shortly after hostilities ceased.

In support of his request for compensation for unrepaired damages to the real property the claimant submitted an appraisal compiled by an architect at Zara in October 1945, from which it appears that damages to the structure itself amounted to 654,600 lire and damages to the interior of the building amounted to 219,270 lire, values of 1945.

II. Destruction as a result of aerial bombardment of furniture, household effects and clothing contained in the claimant's own apartment on the top floor of the building.

During the war, the claimant submitted a list, undersigned by four witnesses, enumerating the items lost and their value, to the Italian authorities at Zara, requesting compensation for war damages. On October 29, 1944, the Italian authorities at Zara stated that no action had been taken on the claim. The total amount claimed at that time for loss of furniture, household effects and clothing was 387,500 lire, values of 1944.

III. Destruction as a result of aerial bombardment of fixtures and furniture contained in the store and in the storage-rooms on the ground floor of the building.

There is no evidence of the existence of value of such items which ante-dates an affidavit dated August 22, 1949, in which the claimant declares that several showcases, shelves, benches, storage bins and a safe, the whole valued at 400,000 lire as of the time of purchase, were destroyed.

IV. Destruction as a result of aerial bombardment of the stock of merchandise contained in the store. The stock consisted of items of wearing apparel, such as stockings, sweaters, underclothes; notions, such as ribbons, needles, lace, scissors, razors, razor-blades, combs; tableware and kitchenware.

During the war, the claimant submitted a list, undersigned by four witnesses, enumerating the items of merchandise destroyed, together with their values, to the Italian authorities at Zara, requesting compensation for war damages. On October 29, 1944, the Italian authorities stated that no action had been taken on the claim. The total amount claimed at that time for the loss of the stock of merchandise was 743,753 lire, values of 1944.

In addition to the claimant's affidavits, the appraisal of 1945 concerning damages to the real property (item I above) and the two claims for war damages to personal property dated 1944 (items II and IV above), there is also a copy of a decision by a Yugoslavian War Damage Claims Commission dated January 23, 1946, from which it appears that a claim made by Joseph Fatovich in the amount of 4,051,210 Yugoslavian dinars for the loss of the stock of merchandise was recognized as a valid claim, but was reduced in amount to 1,088,000 Yugoslavian dinars, that is, by more than 75 percent.

* * *

I. In view of the existence in the record, apart from the claimant's affidavits made after the Treaty of Peace, of claims for war damages, which bear the official date of 1944, of the architect's appraisal of real property damages dated in 1945, and of the above mentioned decision of a local Yugoslavian Claims Commission concerning the stock of merchandise, this Commission concludes that there is sufficient evidence of the existence, ownership and damage or destruction of the property referred to in items I, II and IV above. Although there is no evidence of the existence or destruction of the fixtures and furniture contained in the storage rooms (item III), except for various affidavits of the claimant executed at the time of preparation of this claim, the Commission believes that the claimant's statements may be accepted regarding item III, insofar as they concern existence, ownership and destruction, also because the possession and operation of a store of the type described above necessarily implies the existence therein of suitable showcases, counters and storage receptacles.

Therefore, it becomes the Commission's task to evaluate the amount of the damages sustained by the claimant.

The Petition submitted by the Agent of the United States of America sets forth an evaluation of 34,051,000 lire at current prices. That amount is obtained by totaling the various items (I through IV) set forth above, as follows:

Line

I. 1,000,000—already expended for temporary repairs
654,600—structural damage repairs
219,270—internal damage repairs
1,873,870
II. 387,500—household and personal effects
III. 400,000—store fixtures and furniture
IV. 743,753—stock of merchandise
3,405,123—or, in round figures, 3,405,100 lire

This total is then multiplied by the coefficient of 10, such coefficient representing, according to the Agent of the United States, the coefficient of revaluation of the figures of 1944 and 1945 necessary to bring them into line with current prices. The result is 34,051,000 lire.

First of all, it is to be noted that included in the revalued total of 34,051,000 lire is the amount of 10,000,000 lire, ten times the amount alleged spent by the claimant immediately after the cessation of hostilities for necessary temporary repairs to the building (item I). Under no circumstances could the Commission consider justified the revaluation at today's prices of an amount actually disbursed in 1945 or 1946. Article 78 of the Treaty of Peace cannot be interpreted so as to charge Italy with responsibility for the inflation of its currency, and hence the sum of money expended by a claimant for which he presumably received fair value is not subject to revaluation. Moreover, as pointed out above, the figure of 1,000,000 lire, stated by the claimant himself to be approximate, appears to be an exchange into Italian currency of the amount of 100,000 Yugoslav dinars referred to by the claimant in his affidavit of September 3, 1948. In view of the fact that Yugoslav sovereignty had been established *de facto* in the city of Zara at the time hostilities ceased, it is more probable that the money paid out for temporary repairs was Yugoslav rather than Italian currency, and the exchange rate of 10 Italian lire to 1 Yugoslav dinar, applied by the claimant, is greatly exaggerated. In fact, the Commission has been made aware that, although there was no official exchange for the years 1945-1946, an approximate exchange rate of 3 lire to 1 dinar more nearly reflects the actual

conditions of the time. Hence, converted into lire at three to one, the amount of 100,000 dinars would equal 300,000 lire, which was expended by the claimant, immediately after hostilities, for temporary repairs and which is therefore not subject to revaluation at today's prices.

Secondly, it is to be noted that, whereas the Agent of the United States of America applies the allegedly "modest" coefficient of 10 as the coefficient of revaluation of the losses calculated in lire in 1944 and 1945, without adducing any evidence whatsoever in support of the correctness of such coefficient, the correct coefficients of revaluation are in reality considerably lower. In fact, according to the official statistics of the Italian Central Institute of Statistics for the year 1952 (the most recent available statistics), the coefficients of revaluation, based on the index of wholesale prices, are as follows: 1944 = 1; 1945 = 2.4; 1952 = 6.12.

Therefore, the coefficient of revaluation for 1944 values is 6.12; the coefficient of revaluation for 1945 prices, where 1945 equals 1, is 2.55.

Applying these coefficients of revaluation to the alleged losses and damages calculated in 1944 and in 1945, and taking into account only the amount actually expended for the temporary repairs to the real property, the total amount of the claim should be 9,851,637 lire, using current values and accepting fully the ex parte evaluations made by the claimant for each item.

However, the Commission is unable to accept the evaluations made by the claimant, because it is quite apparent that the values assigned by the claimant are exaggerated. For instance, in the claim for compensation for the loss of the furniture contained in the claimant's apartment, presented to the Italian authorities at Zara during the war, the claimant listed a roomful of furniture for a dining room, whereas it appears clearly from the architect's plan of the apartment and from the claimant's own sworn statement describing his home that no dining room existed. Moreover, an inordinate amount was claimed for "various carpentry and mechanical tools", without further specification, whereas the claimant's business was that of a retail merchant. Also, although there were only two beds in his home, claimant alleged the loss of no less than one-hundred sheets, sixty of which were double-bed size.

Additional indication of the exaggerated values placed on his property by the claimant is to be found in the fact that the local Yugoslav War Claims Commission decided that the actual value of the lost merchandise amounted to 1,088,000 dinars, approximately 25 percent of the amount of 4,051,210 dinars alleged by the claimant.

Taking into consideration the indications of exaggeration in the values asserrted by the claimant but concluding that the claimant did suffer serious losses and damages as a result of the war, the Commission finds that the values of the property lost or damaged at Zara are as follows:

	Lire
I. Damages to real property:	
(*a*) Expended for temporary repairs following hostilities .	300,000
(*b*) Permanent repairs	1,760,000
II. Destruction of household effects, furniture and clothing . .	376,380
III. Destruction of fixtures and furniture in store and storage rooms	250,000
IV. Destruction of merchandise	1,000,000

The probable age and condition of the various items lost or damaged were considered arriving at the above figures, so that the total value of the claimant's damages at current values amounts to 3,686,380 lire. Of this amount, the

Italian Government is responsible for the payment of two-thirds, in accordance with Paragraphs 7 and 4 (*a*) of Article 78 of the Treaty of Peace.

* * *

II. The Petition submitted on May 26, 1953 by the Agent of the United States of America also requests this commission to grant interest on the principal amount to be awarded to the claimant, at the rate of 5% per annum, from August 18, 1950, the date on which the claim was first presented to the Italian Ministry of the Treasury through the Embassy of the United States of America in Rome.

The Answer of the Agent of the Italian Republic in this case maintains that the request for interest is inadmissible because Article 78 of the Treaty of Peace does not provide for it.

As a request for interest on the amount of the claim has been made in many other disputes pending before this Commission, as well as in the instant case, it is necessary for the Commission to examine the question thoroughly.

Once before (Case No. 1, Elena Iannone Carnelli, decided on March 4, 1952, Decision No. 5),[1] a request for interest was rejected, but on procedural grounds, because it was contained in the Brief of the claiming Government and not in the Petition; in the instant case that difficulty does not exist because the request for interest is specifically set forth in the Petition, that is, in the manner prescribed by the Rules of Procedure. The request for interest on the claim of Joseph Fatovich raises a question which is properly before the Commission under the Rules of Procedure.

The Briefs of the Agents of the two Governments in the above mentioned Case No. 1, Elena Iannone Carnelli, discussed fully the question of the responsibility of the Italian Government for the payment of interest on the claims of nationals of the United States under Article 78 of the Treaty of Peace, but the Commission does not deem it necessary to decide here the question as propounded, of the responsibility of the Italian Government under international law for the payment of interest, whether such interest be considered as an element of the compensation provided for by Article 78 of the Treaty of Peace, or whether such interest be considered as a measure of damages resulting from delay by the Italian Government in the investigation and settlement of claims under Article 78, for the reason that in this case there is lacking a necessary condition precedent to the right to make the request, as will be seen immediately. In fact, assuming, without however deciding, that the Italian Government might be responsible for the payment of interest on claims of nationals of the United States of America under Article 78 of the Treaty of Peace and the agreements supplemental thereto or interpretative thereof, it is the opinion of the Commission that, in the absence of any agreement by Italy to pay interest on claims, such hypothetical responsibility does not arise unless and until an express request for interest has been made either by the claimant himself or by the Government of the United States of America on his behalf.

In the instant case, the request for interest was made for the first time in the Petition submitted to this Commission (May 26, 1953); it was not made, instead, in the claim submitted on the administrative level (August 18, 1950). Therefore, it does not seem admissible that a request for interest which was not included in a claim on the administrative level may be presented on the judicial level.

In this connexion, it must be considered that neither in Article 78 nor in any other provision of the Treaty of Peace with Italy is there any reference to

[1] *Supra*, p. 86.

interest, either as part of the compensation or as a measure of damages for delay in the fulfilment by Italy of her obligation thereunder. Nor is there any reference to interest on claims under Article 78 in the provisions of the bilateral Agreements between the United States and Italy of August 14, 1947, commonly known as the Lombardo Agreement; although by its terms the Italian Government confirmed its obligations under Article 78 of the Treaty of Peace, Italy did not assume any obligation for the payment of interest. Nor is there any reference to interest on claims contained in the Exchange of Notes between the two Governments dated February 29, 1949. Finally, in the Rules of Procedure adopted and promulgated by the Representatives of Italy and the United States on this Commission on June 29, 1950, no reference is made to interest on claims within the jurisdiction of the Commission.

Moreover, the Agent of the United States has not produced any evidence that interest on claims under Article 78 was ever the subject of diplomatic negotiations between the two Governments.

Therefore, in none of the texts of the Agreements between the two Governments governing claims against Italy for damages to property of nationals of the United States is there any provision for the payment of interest, or any other indication that Italy would be held responsible for the payment of interest.

The foregoing does not completely exclude the possibility of a responsibility for interest based on other principles and rules (a question which is not decided here). The foregoing references to the Treaty and subsequent Agreements are made for the sole purpose of showing that there is no evidence available to this Commission that interest on claims was ever requested in a general way from Italy or that the Italian Government ever assumed such an obligation or that the Italian Government was in any other way made aware that interest would be considered to be a part of its responsibility.

In view of the absence of any provision for interest in the agreements or negotiations concerning claims under Article 78, it is the opinion of this Commission that the fundamental principles of justice and equity, as well as the sounder opinion of other international tribunals, require that a clear and express request for interest, whenever the subject matter of the claim does not involve a prior contractual provision for interest, is a condition precedent to the responsibility of a State (if it exists) for interest on claims.

The claim which is the subject of the present dispute, and which was presented to the Italian Government on August 18, 1950, through the Embassy of the United States of America at Rome, requests compensation for damage to and loss of certain real and personal property. The claim contains no mention whatsoever of a request for interest on the amount of compensation requested, and there is no prior contract for interest involved.

After the Italian Government had denied its responsibility to pay compensation to the claimant in this case, the Embassy of the United States of America, by letter dated January 27, 1953, advised the Italian authorities that it considered that a dispute had arisen which would be submitted to this Commission. No reference to interest was made in such letter.

It does not follow from what has been said that the right to interest may be denied because this Commission finds any line of conduct on the part of the claimant of his Government tending to show an intention not to demand it. Such a presumption would be unjustified; it is entirely possible that there was every *intention* to demand interest, by the claimant and the Government of the United States, but the decisive point is that interest was not expressly demanded.

It would be manifestly unfair to a Government against which a claim is brought by another Government to hold the respondent Government responsible

for interest when it was never advised that the individual claimant or his Government demanded interest.

If interest were to be demanded as part of the "compensation" provided for under Article 78 of the Treaty of Peace, that is, as part of the damages suffered by nationals of the United Nations as a result of injury or damage to their property in Italy, it would be unjust not to have advised the Italian Government, either in the Treaty or in subsequent negotiations, or in the claim itself, that interest would be demanded as part of the compensation, because the Italian Government would have the right to know that interest would be one of the elements in fixing the amount of compensation. When, instead, interest is demanded as a punitive measure based on alleged delay in the settlement of claims on the administrative level, there is all the more reason for requiring that Italy be advised of the claim for interest based on such delay. When a debtor is aware that interest is accruing against him for every day which passes without payment of the principal, he is much more likely to exert every effort to insure that the principal debt is paid as quickly as possible. The Italian Government was never made aware that interest would be requested for delay in fulfilment of its obligations under the Treaty, and this Commission cannot bring itself to hold that, regardless of lack of notice to the Italian Government, the responsibility for interest has existed in this case since August 18, 1950, the date on which the instant claim was first presented to the Italian Government.

The question of notice of demand for interest as a condition precedent to the responsibility for the payment of interest on claims was not argued by either of the Agents of the two Governments. The Commission's own investigation, however, has revealed the existence of decisions of other international tribunals which accord whitch its position.

As high an authority as the Permanent Court of Arbitration has expressed its opinion in the Russian Indemnity Case, decided on November 11, 1912.[1] This same case is the source of an extensive quotation in the Brief of the Agent of the United States in Case No. 1, Elena Iannone Carnelli, in support of his argument that the Italian Government is responsible for the payment of interest in the present dispute; but, in a part of the opinion not quoted by the learned Agent of the United States, the Court was equally of the opinion that:

> . . . Equity requires, as its theory indicates and as the Imperial Russian Government itself admits, that there shall be notice, demand in due form of law addressed to the debtor, for a sum which does not bear interest. The same reasons require that the demand in due form of law *shall mention expressly the interest*, and combine to set aside responsibility for more than simple interest.
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> It is seen from the correspondence submitted, that the Imperial Russian Government has expressly and in absolutely categorical terms demanded payment from the Sublime Porte of the Principal and "interest", by the note of its Embassy at Constantinople, dated December 31, 1890/January 12, 1891. Diplomatic channels are the normal and regular means of communication between States in their relations governed by international law. This demand for payment is, therefore, regular and in due form. (Emphasis supplied.) (Scott, *The Hague Court Reports*, 1916, p. 298 at p. 317.)

Although the authority of the Permanent Court of Arbitration would be sufficient to sustain the opinion of this Commission, it is not out of place to cite one of the decisions under the Venezuelan Arbitrations of 1903 which are the source of frequent citations by the Agent of the United States in his Brief

[1] Volume XI of these *Reports*, p. 421.

in the Carnelli Case. The Belgian-Venezuelan Commission dealt with a claim of the Belgian Government against the Venezuelan Government arising under the Universal Postal Convention of 1897, of which both Governments were signatory nations. Here, even though the Article itself (Article 33) of the Postal Convention provided for the payment of interest, the award of interest was not allowed by the Commission (Filtz, Umpiro) [1] on the chief ground that no demand for interest had been made in the claim (Ralston, *Venezuelan Arbitrations of 1903, 1904*, pp. 270-271). Thus, even though the Postal Convention which constituted the law between the parties provided for the granting of interest on claims, the Commission required an express reference in the claim to the interest element, and, when no request had been made for interest, disallowed the claim for interest.

At page 42 of his Brief in the Carnelli Case, the Agent of the United States cites five cases decided by International tribunals in support of his argument that interest begins to run from the date on which the claim is filed against the respondent Government. The following observations are made on each of these five cases in order to show that they can be distinguished from the instant case and cannot be deemed to affect the decision herein which concerns only the requirement of notice of the request for interest.

In two of the five cases cited by the Agent of the United States, interest was indeed awarded from the date of the filing of the claim, but the tribunal rendering the decision pointed out that interest was demanded in the claim itself (*Alliance Case*,[2] American-Venezuelan Commission, Ralston, *Venezuelan Arbitrations of 1903*, p. 29 at p. 30, where it is indicated that the claim filed contained a request for interest at the rate of 1% per month; *De Garmendia Case*,[3] American-Venezuelan Commission, *ibid*, pp. 10-11, where it is indicated that for items 1 and 2 of the claim, interest had been requested at the rate of 3% for the first item and at the legal rate for the second item, at the time the claim had been filed). In the *Macedonian Case*, an arbitration between the United States and Chile by the King of Belgium (reported in Moore, *International Arbitrations*, vol. II, p. 1149), the terms of the Arbitration Convention, under which Chile and the United States agreed to submit all questions to the arbitration of the King of Belgium include expressly the question of interest, so that the consent of the defendant Government to have the interest question decided exists in that case.

As for the *Lord Nelson Case* decided by the American-British Claims Arbitral Tribunal on May 1, 1914, under the special agreement of August 18, 1910, between Great Britain and the United States of America, the two Governments agreed upon certain Terms of Submission on July 18, 1911, Article IV of which provides that:

> The Arbitral Tribunal, if it considers equitable, may include in its award in respect of any claim interest at a rate not exceeding 4 percent per annum for the whole or any part of the period between the date when the claim was first brought to the notice of the other party and that of the confirmation of the schedule in which it is included. (Whiteman, *Damages in International Law*, vol. II, pp. 1958-1959).

The Two Governments thus expressly accepted responsibility for interest on claims.

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[1] Volume IX of these *Reports*, p. 328.
[2] *ibid.*, p. 140.
[3] *ibid.*, p. 122.

The fifth, the *Cervetti Case*,[1] cited by the Agent of the United States for the proposition that interest begins to run from the date of the claim, indicates that the Italian legation did not include a request for interest in claims which were presented to the Venezuelan Government before being presented to the international commission. The dispute was submitted to a neutral Umpire who decided that, even though the universally recognized rule required that a debtor be notified that his debt was overdue and even though the rule has even more weight with relation to claims against Governments,

> . . . It has seemed fairer to make a certain allowance for interest, beginning its running, usually, at any rate, from the time of the presentation of the claim by the Royal Italian Legation to the Venezuelan Government or to this Commission, whichever may be first, not excluding, however, the idea that circumstances may exist in particular cases justifying the granting of interest from the time of presentation by the claimant to the Venezuelan Government . . . (Ralston, *Venezuelan Arbitrations of 1903*, p. 663.)

The Umpire did not discuss the arguments of the Venezuelan Commissioner that a request for interest is necessary and based on equity, as without it the debtor cannot be supposed to know that interest is demanded, and that when it is a question of unliquidated sums, it is impossible to establish the fact that interest has accrued since the amount actually owed was not known. While his opinion is entitled to great weight, the Umpire in the Cervetti Case has provided no reason, other than a general reference to "the conduct of past mixed commissions" (*loc. cit.*, p. 663), for the granting of interest when it was not requested in the claim, and in his opinion even went so far as to express the somewhat contradictory opinion that the requirement of notice was stronger when the debt of a Government was involved than when the debt of a private individual was involved. Therefore, this Commission prefers to rely upon the considered and well-reasoned opinion of the Permanent Court of Arbitration in the Russian Indemnity Case and on the decision of the Umpire on the Belgian-Venezuelan Commission in the Postal Claim Case.

This Commission's investigation has failed to unearth a single decision by an international tribunal, aside from the Cervetti Case, in which interest on compensation for war damage to property was accorded, where it was not provided for in the agreement governing the tribunal or where it was not expressly requested in the claim filed either directly with the respondent Government or with the international tribunal itself.

The Agent of the United States has also cited in his Brief in the Carnelli Case the Administrative Decision No. III of the Mixed Claims Commission, United States and Germany. That decision, establishing the types of claims against Germany on which interest would be granted, was rendered on December 11, 1923, at the outset of the Commission's work. Claims of nationals of the United States against Germany under the Treaty of Berlin of August 25, 1921, and under the subsequent agreement between the United States and Germany of August 10, 1922, which provided for the creation of the Mixed Commission, were first brought to the notice of Germany when they were presented to the Commission by the Agent of the United States. And in each of the claims so presented to the Commission, interest was formally and expressly requested. The Second Report of Robert C. Morris, Agent of the United States, addressed to the Secretary of State and dated April 10, 1923, lists and describes the forty claims which had been thus far filed with the Commission. In the Agent's summary descriptions of the nature of these forty claims, thirty-eight of the

[1] Volume X of these *Reports*, p. 492.

summaries specifically mention that interest was requested at the time the claim was filed. Moreover, the Agent of the United States sent a notice of claim to the Joint Secretariat and to the Agent of Germany for each claim which was to be filed with the Commission. The notice consisted of a standard form which included spaces for the name of the claimant, the nature of the claim, and its amount, with the words added: "with interest, if any" (Exhibit B to the Second Report of Robert C. Morris, Agent of the United States, at page 56 of *First and Second Reports of Robert C. Morris, Agent of the United States before Mixed Claims Commission, United States and Germany*, Washington, 1923). In this manner, the German Government was fully apprised and officially informed in writing, even before the claim itself was filed, that interest was being requested as part of the award.

Hence, prescinding from the question whether Administrative Decision No. III of the Mixed Claims Commission, United States and Germany, may be authority for the responsibility of a respondent Government for the payment of interest on certain types of claims, it could not be maintained that the decision is authority for the proposition that the responsibility for interest arises despite the fact that no notice has been given to the respondent Government that interest on the principal amount of the claim is being requested.

Therefore, in view of what this Commission considers to be equity and justice to a debtor Government, as well as the sounder opinion of other international tribunals, the request for interest contained in the Petition in this case will not be granted because of the absence of notice to the Italian Government on or before August 18, 1950, that interest was claimed.

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 the claim presented to the Italian Government on August 18, 1950, the Conciliation Commission

HEREBY DECIDES:

1. The claimant, Joseph Fatovich, is entitled to received from the Government of the Italian Republic, two-thirds of 3,686,380 lire, or 2,457,587 lire, representing two-thirds of the current value of losses and damages suffered as a result of the war by claimant's property located in Zara, territory ceded by Italy.

2. The sum of 2,457,587 lire is to be paid within thirty (30) days from the date on which a request for payment is presented to the Italian Government by the Government of the United States of America.

3. The request contained in the Petition for interest on the amount awarded is denied.

4. This decision is final and binding, and its execution is incumbent upon the Government of the Italian Republic.

Rome, July 12, 1954.

The Representative of the United States of America
Alexander J. MATTURRI

The Representative of the Italian Republic
Antonio SORRENTINO