SHAFER CASE—DECISION No. 27 OF 6 DECEMBER 1954 [1]

The Italian-United States Conciliation Commission established by the Government of the United States of America and the Government of Italy under Article 83 of the Treaty of Peace, and composed of Mr. Alexander J. Matturri, Representative of the Government of the United States of America, Mr. Antonio Sorrentino, Honorary Section President of the Council of State, Representative of the Government of the Italian Republic, and Mr. Emil Sandström, former Justice of the Swedish Supreme Court, of Stockholm, Third Member chosen by mutual agreement of the United States and Italian Governments.

On the Petition filed on June 15, 1951 by the Agent of the Government of the United States in behalf of Mrs. Giuditta Grottanelli Shafer *versus* the Government of Italy.

STATEMENT OF FACTS:

On January 5, 1950 the Embassy of the United States in Rome submitted to the Ministry of the Treasury of the Italian Republic on behalf of Mrs. Giuditta Grottanelli Shafer a claim based on Article 78 of the Treaty of Peace with Italy and the agreements supplemental thereto or interpretative thereof for losses and damages sustained in Italy during the war.

By letter dated April 18, 1951 the Ministry of the Treasury rejected the claim, alleging that it did not fall under Article 78 of the Treaty.

The Agent of the United States Government subsequently filed a Petition with the Conciliation Commission, whereupon the Agent of the Italian Government filed the Answer of the Italian Republic on July 23, 1951.

[1] *Collection of decisions*, vol. II, case No. 17.

On October 26, 1951 the Agents of the two Governments filed with the Commission a Declaration of Agreement which reads as follows:

The Agent of the Italian Republic and the Agent of the United States of America under Article 10, paragraph (*c*) of the Rules of Procedure of the Italian-United States Conciliation Commission, declare that they agree that:

1. Giuditta Grottanelli Shafer, hereinafter referred to as the claimant, is now and has been at all times since April 29, 1941, a national of the United States of America.

2. The claimant is the one-half owner of certain real property known as Palazzo Ravizza et Via Pian dei Mantellini 18, Siena, which has been operating for sometime as a *pensione*.

3. During the war the Italian authorities requisitioned a handwrought iron fence which surrounded the premises, the claimant receiving 1,200 lire as payment in compensation therefor.

4. During the war the Italian authorities requisitioned certain copper kitchen utensils forming part of the equipment of the Palazzo Ravizza, the claimant receiving 700 lire as payment in compensation thereof.

5. The Palazzo Ravizza was requisitioned and occupied by the Allied Forces from August 15, 1944 until January 10, 1946 during which time both the real property and certain of the personal property contained in the Palazzo Ravizza sustained damage.

6. Paragraph IV of the Answer filed on behalf of the Italian Republic states (in translation):

"Very brief observations concerning the evaluation of the damages:

"Mrs. Grottanelli requested an indemnity of 1,940,683.40 lire, of which 508,966 lire is for the iron railing, 176,700 lire for the copper utensils, and 1,255,017.40 for damages as a consequence of requisition of the *pensione*.

"An official investigation, however, has determined, considering present costs, the value of the iron railing to be 430,000 lire, the copper utensils to be 120,000 lire, and the damages as a consequence of the requisition of the *pensione* to be 915,490.60 lire.

"It must further be taken into consideration that at the time of requisition 1,200 lire were paid for the railings and 700 lire for the copper utensils, which figures, brought up to date on the basis of a revaluation rate of 50, should be considered as payments respectively of 60,000 lire and 35,000 lire on account toward the indemnity, so that the damage is reduced to 370,000 for the railing and 85,000 for the utensils.

"Giuditta Grottanelli's share of all this is half, that is, 185,000 lire for the railing, 42,500 for the utensils and 457,745.30 for the remaining damages."

7. Although the claimant considers that the Answer of the Italian Republic sets too low a value on the losses and damages sustained and although the claimant further considers that the use of the quotient "50" for the purpose of revaluing the payments previously made in connexion with the requisition of the property is improper, she has advised the Agency of the United States, through her Attorney in Fact in Italy, that she is willing in the interests of a prompt conclusion of the case, to accept the sums offered if it should be decided that the Government of the Italian Republic is liable in the premises.

8. The claimant has incurred the reasonable expenses of 21,554 lire in establishing her claim prior to its submission to the Ministry of the Treasury and that she has not incurred any further expenses since that date.

In view of the foregoing, the Agent of the Italian Republic and the Agent of

the United States of America do hereby agree that the only issues involved are the following:

1. Is the Government of the Italian Republic responsible under Article 78 of the Treaty of Peace and the agreements supplemental thereto and interpretative thereof for losses and damages sustained by a United Nations national as a result of the requisitioning of property by Italian authorities during the war, not due to special measures not applicable to Italian property?

2. Is the Government of the Italian Republic responsible under Article 78 of the Treaty of Peace and the agreements supplemental thereto and interpretative thereof for losses and damages sustained as a result of the requisitioning of property by Allied military forces during the war or do such claims fall under the provisions of paragraph 2 of Article 76 [1] exclusively?

Stefano VARVESI
Deputy Agent of the Italian Republic

Lionel M. SUMMERS
Agent of the United States of America

October 25, 1951

In subsequent proceedings, the Agent of the United States Government, in view of the reduction of the issues to pure questions of law, requested the Commission to enter and record a ruling that the formal submission of proof had been concluded and to advise the Agent of the Italian Republic of the desire of the Government of the United States to submit a Brief.

In accordance with Article 11 of the Rules of Procedure, the Commission, by Order of February 12, granted periods of time to the Agents for submission of a Brief and Reply Brief respectively.

The Agent of the United States Government deposited his Brief on March 20, 1952, and the Agent of the Italian Government his Reply Brief on April 26, 1952, both arguing their views at length. Those views will be set forth in the Considerations of Law insofar as necessary.

In the *procès-verbal* of December 21, 1953, it was stated that discussion in chambers had revealed the disagreement between the Representatives of the two Governments on the Commission with regard to important questions of interpretation of the Treaty of Peace with Italy, and it was decided that recourse should be made to the Third Member in order to resolve the questions of interpretation of the Treaty of Peace and to secure a final decision of the dispute.

The Governments, by common consent, appointed Mr. Emil Sandström, former Justice of the Supreme Court of Sweden, as Third Member of the Commission.

CONSIDERATIONS OF LAW:

A. *The requisition of the iron fence and of certain copper utensils*

The claim is disputed by the Agent of the Italian Government on grounds which can be summarized in the following way.

[1] Paragraph 2 of Article 76 provides: ". . . The Italian Government agrees to make equitable compensation in lire to persons who furnished supplies on services on requisition to the forces of Allied or Associated Powers in Italian territory and in satisfaction of non-combat damage claims against the forces of Allied or Associated powers arising in Italian territory."

The Petition was based on Article 78, paragraphs 1 and 4 (*a*). The conditions required for application of paragraph 4 (*a*) were not fulfilled, however. That paragraph requires that there be involved a loss by reason of injury or damage. To speak of a loss by reason of damage is tautological and therefore only the word "injury" is capable of giving meaning to the phrase, when it is interpreted not as a synonym for damage, that is, not as an effect but as a cause of the latter, i.e., as a damaging act, as an injurious event. In connexion with the condition that the loss must be as a result of the war, the conclusion must be that the loss is meant to be an effect of an act of war. As to the meaning of the expression "act of war", Article 2 of Italian Law No. 1543 of October 26, 1940 could be quoted: "An act of war, for the purpose of compensation, is considered to be an act done by national, allied or enemy armed forces, connected with the preparation for and the operations of war; and also an act which, although not connected with the preparation for and the operations of war, has been occasioned by same." However, Article 78 did not limit the responsibility of the Italian Government merely to acts and damages of war alone, in the sense set forth above, but it also extended it to actions of authorities which caused damage. It must be a question of measures taken by authorities as a result of the war, and the meaning of this expression is explained in paragraph 4 (*d*), in the sense that the loss or the damage must be due to special measures applied to property of Allied nationals which were not applicable to Italian property. The causal relation between damage and war exists only when the measure was applied because of the enemy nationality of the owner. The iron railing and the copper pots were not requisitioned because they belonged to an American national. This fact was unknown to the authorities. The requisition was brought about by a shortage of such materials and it affected all property of that nature, in an absolutely objective manner. Therefore, the war was the occasion, the environment which produced the cause; it was not the efficient cause of the damage. For the reasons set forth, the Italian Government is not responsible under Article 78.

In the Reply Brief, The Agent of the Italian Government adds, as a reason for the inapplicability of Article 78, that the laws, on which the requisitions were founded and which were enacted in 1939 and 1940, deprived the owners of their ownership, transforming their title into a title to the corresponding indemnity, and that, because Mrs. Shafer was not the owner on June 10, 1940 and because she acquired American nationality only in 1941, she is not entitled to claim under Article 78.

Taking up this last argument first, the Commission desires to point out that in the Declaration of Agreement of the Agents of the two Governments the only issues involved were set forth, and that, insofar as concerns the requisitions now being considered, the issue was phrased as whether the Government of the Italian Republic is responsible under Article 78 of the Treaty of Peace for losses or damages sustained by a United Nations national as a result of the requisition of property by Italian authorities *during the war*, not due to special measures not applicable to Italian property. In drafting their Agreement, the Agents must have considered and clearly stated that the time of requisitioning was not a point at issue. For that reason, and because the Agent of the United States Government has not had an opportunity to answer the point now raised by the Agent of the Italian Government, the Commission holds that, according to Article 10, paragraph (*c*) of the Rules of Procedure, the argument is not admissible.

As to the rest of the arguments of the Agent of the Italian Government the Commission is in agreement with his views insofar as he maintains that the loss must be a result of the war also in the case where the property cannot be

returned, but the Commission cannot follow the arguments of the Agent any further.

The linguistic analysis of Article 78, paragraph 4 (*a*), from which he starts, is untenable. The provision in question deals with an obligation in addition to the one provided for in paragraph 1. According to the first sentence of paragraph 4 (*a*), the property to be returned shall be restored to complete good order. There follow, in the second sentence, provisions for the situation in which the property is not returned in such good order, either because the return is impossible or the property can be returned only in an injured or damaged state. That part of the sentence which begins with the words "or where" envisages this latter situation. It cannot be said to contain a redundancy if one keeps in mind that the stress is on a loss by reason of *damage to property* in Italy, loss being the abstract word for detriment to one's fortune, and "damage to property" indicating the nature of the loss which is taken into account. Even less is it possible to take the word "injury" as the only one to guide the interpretation. The words "injury" and "damage" are co-ordinated as alternatives and they have equal weight. Neither is there any reason to see in the fact that the word "injury" was inserted in the original text anything other than the usual Anglo-Saxon habit of using synonyms in legal documents in order to prevent an interpretation more restrictive than has been intended. Consequently, if the interpretation of the language does not lead to a limitation of the responsibility envisaged in Article 78 to "acts of war", there might be another reason for such an interpretation; namely, in the fact that paragraph 4 (*a*) of Article 78 had its origin in a proposal submitted by the Representative of the United States to the Committee of Economic Experts which assisted the Council of Foreign Ministers and that in the Report of June 5, 1946, of this Committee to the Conference of the Council of Foreign Ministers, one reads: "The Representative of the United States believes that where, *as a result of acts of war* the property itself cannot be restored or has been damaged, the interested party should be completely indemnified in lire." (See Decision No. 95, Pertusola-Penarroya Case, French-Italian Conciliation Commission, March 8, 1951.) [1]

However, independently of the question whether the United States Representative actually used that wording, it is questionable if anything is gained by substituting the concept of "acts of war", which also requires interpretation, for the expression "as a result of the war" used in the Treaty provision. In any case, one would certainly then have to take into consideration, and also with greater reason, the definition of the expression "as a result of the war" contained in the American proposal:

> As used in this Article, the phrase "as a result of the war" includes the consequences of any measures taken by the Italian Government, of any measures taken by any of the belligerants, of any measures taken under the Armistice of September 3, 1943, and of any action or failure to act caused by the existence of a state of war. (See Decision No. 95, Pertusola-Penarroya Case, French-Italian Conciliation Commission, March 8, 1951.)

On the whole, the fact that the phrase "acts of war" was used frequently during the negotiations of the treaty and in different Articles, does not permit an interpretation to the effect that such phrase is to be substituted for the one which was contained in the original proposal and which was preserved, that is, "as a result of the war".

That expression, which is very general, must be deemed to include, as was

[1] Vol. XIII of these *Reports*.

contemplated also by the proposing party, at least administrative measures taken by the authorities for sustaining and increasing the war effort.

In this connexion, there remains to be considered whether the fact that the Treaty in Article 78, paragraph 4 (*d*), deals with such measures of a special kind, namely discriminatory measures, can have the effect of limiting, through interpretation, the scope of Article 78, paragraph 4 (*a*) to apply only to "acts of war" and to exclude administrative measures. It might have been a plausible argument that, by interpreting paragraph 4 (*a*) to include administrative measures in general, paragraph 4 (*d*) would thereby become superfluous. That, however, is not the case. Paragraph 4 (*a*) is limited to compensation for a loss which refers only to the substance of the property, whereas paragraph 4 (*d*) envisages a more general compensation for loss or damage due to special discriminatory measures applied to enemy property during the war, i.e., all kinds of damage caused by such measures with the exception of loss of profit.

Paragraph 4 (*d*) has a function, then; but when it is only a question of damage to property, the case is covered by paragraph 4 (*a*).

In these circumstances, there is no reason to adopt the view that paragraph 4 (*d*) is the only provision which concerns administrative measures.

The conclusion is that paragraph 4 (*a*) must be interpreted as it stands.

This does not mean that the responsibility of the Italian Government under paragraph 4 (*a*) is unlimited and includes any damage to property of the United Nations or their nationals which occurred during the war.

The provision was certainly not intended to be a kind of "all-risk" insurance during the war for property belonging to the United Nations and their nationals. The limitation is to be found in the conditions required as to the cause and effect relation between the war and the damage.

It is for the Conciliation Commission to establish these conditions as the cases arise.

In the instant case, it is to be noted that Royal Law Decree No. 1805 of December 13, 1939, enacting rules for the census of scrap and manufactured non-installed copper, and for the collection of same, invoked in its preamble the necessity because of the war, and gave the General Commissariat of War Manufacturies wide powers with regard to the items declared. And in Law No. 408 of May 8, 1940, concerning the declaration and collection of fences of iron or other metal, it was provided that the Agency of Scrap Distribution to which such goods were to be delivered should keep them at the disposal of that same Commissariat, which was authorized to issue rules for the purchase, stock-piling and distribution of the material subject to being declared, as well as all other necessary regulations for implementing the law.

Even if the shortage of metals created by the war in Germany was taken into consideration at the time of promulgation of those laws, it is natural, besides being corroborated by the text of the laws themselves, that an important purpose was also to provide material for possible Italian participation in the war and that, after Italy's entry into the war, this became the paramount purpose of the measures taken under the laws.

The requisitions under review took place during the war and, in view of what has been said, there has been established a sufficiently direct and close relation of cause to effect between the war and the loss suffered by the claimant to state that the loss was as a result of the war and that there is a claim under Article 78, paragraph 4 (*a*).

B. *The requisition by the Allied Forces of the Palazzo Ravizza*

With respect to this requisition, the Agent of the Italian Government argues that the Italian Government is not responsible because the damages caused to

the *pensione* while it was occupied by the Allied Forces were not caused by acts of war but resulted from abuse or bad use of requisitioned property. He further points out that, due to the undertaking of the Italian Government in Article 76, paragraph 2, of the Peace Treaty, the claimant has the right to receive compensation for non-combat damage caused by the Allied troops in Italy, but that such remedy is not on the international level but instead under Italian domestic law.

It is true that, in theory, it can be said that damages caused by troops, even though they are officers, in occupied premises, are due to their misuse of the premises. In practice, however, it is unavoidable that premises so occupied become damaged. Such damage must be considered therefore to be a direct effect of the requisition of the premises.

The fact that Article 76 contains provisions for non-combat damage claims against the forces of Allied or Associated Powers arising in Italian territory cannot be interpreted to exclude a claim under Article 78, which does not contain any exception to this effect.

In view of what has been said under A, the claim must be considered as justified in principle.

For the reasons set forth above, the Commission

DECIDES:

1. The claim is justified under both headings.

2. The claimant is entitled to receive from the Government of the Italian Republic the sum of 706,799.30 lire, which sum includes 21,554 lire for expenses incurred in establishing her claim.

3. This Decision is final and binding.

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

DONE in Rome at the seat of the Commission, 68 via Palestro, this 6th day of December 954.

The Representative of the United States of America	*The Third Member*
Alexander J. MATTURRI	Emil SANDSTRÖM

STATEMENT OF THE ITALIAN REPRESENTATIVE OF THE REASONS FOR HIS DISSENT FROM THE DECISION RENDERED BY THE ITALIAN-UNITED STATES CONCILIATION COMMISSION IN THE "GIUDITTA GROTTANELLI SHAFER" CASE

I cannot agree with this decision which to my mind affirms an interpretation which broadens the scope of paragraph 4 (*a*) of Article 78, above all in relation to paragraph 4 (*d*).

The field of application of the two provisions concerned, respectively, true and proper war damages and administrative measures, which were also the cause of damage. With regard to the latter, Italy's responsibility arises only if these measures had a discriminatory nature, that is, if they did not concern

Italian nationals as well. The limitations of a general nature do not give rise to responsibility, even though they may directly or indirectly be based on the war.

The criterion of differentiation adopted by the majority of the Commission does not appear to me to be satisfactory: it is not in the different consequences that the distinguishing element can be found but in the diversity of the cause of the damage.

10 January 1955.

The Representative of the Italian Republic

Antonio SORRENTINO