

ROSASCO CASE (THE *UNIONE*)—DECISION No. 50
OF 19 MAY 1955¹

The Italian-United States Conciliation Commission composed of Messrs. Alexander J. Maturri, Representative of the Government of the United States of America, Antonio Sorrentino, Honorary Section President of the Council of State, Representative of the Italian Republic and José de Yanguas Messia, Professor of International Law at the University of Madrid, Third Member selected by mutual agreement of the United States and Italian Governments.

On the Petition filed on November 24, 1952, by the Agent of the Government of the United States of America *versus* the Italian Government in behalf of the Società Anonima Genovese Armamento e Rappresentanze and/or Harold W. Rosasco and William E. Rosasco, Heirs of A. T. Rosasco.

I. THE FACTS

1. In 1939 Mr. A. T. Rosasco stipulated a contract for the construction of the motor ship *Unione* (known first as “new construction, No. 255”) with

¹ *Collection of decisions*, vol. II, case No. 31.

the OTO and FIAT Companies which were to build the hull and engines respectively.

2. A. T. Rosasco made a declaration in April 1941 before one Grondona, notary at Genoa, that he had stipulated the construction contract on behalf of SAGAR, owner of the ship.

3. Thereafter, in 1941, OTO and FIAT, on the grounds of Decree-Law No. 494 of June 17, 1941, contested Rosasco's declaration, maintaining that, as Mr. Rosasco was a national of the United States, the contract and the declaration should be declared null and the vessel acknowledged to be the property of OTO and FIAT.

4. During the legal proceedings, the plaintiff companies petitioned for a judicial attachment of the motor ship and the President of the Tribunal of Genoa granted the request, appointing Dr. Angelo Costa as judicial trustee.

5. The law-suit was then protracted for a long period of time and was finally settled by a compromise dated April 3, 1951.

6. Independently of that litigation, the motor vessel was requisitioned for temporary use, on January 24, 1942, because of exigencies of the Ministry of the Navy, under Law No. 1154 of July 13, 1939.

7. The ship was sunk by German armed forces on or about June 18, 1944 at the entrance to the port of La Spezia.

8. The Ministry of the Navy, on August 27, 1945, ordered the requisition of the title of the vessel as of January 24, 1942, date of the requisition for use, under Article 12 of Law No. 1154 of July 13, 1939, as amended by Article 2 of R.D.L. No. 1601 of December 22, 1941 and by Article 1 of R.D. No. 127 of February 2, 1943.

9. In the aggregate, for requisition for use and requisition of title, the Italian Government has paid, for the motor ship *Unione*, the sum of 101,646,624.39 lire.

10. In two separate claims, dated February 12 and September 9, 1948, respectively, the latter conditioned upon the rejection of the former, Harold W. and William E. Rosasco, the heirs of A. T. Rosasco, who had died in the meantime, and the SAGAR Company requested restitution of the motor ship *Unione* under Article 78 of the Treaty of Peace.

11. The claims, following a long investigation and after having been submitted several times to the competent Interministerial Commission for consideration, were rejected by the Italian Government.

12. The pertinent communication was made by the Italian Government to the Embassy of the United States in Rome on March 5, 1952, and, subsequent to this communication, the Agent of the Government of the United States of America, by Petition filed on November 24, 1952, submitted the case to the Conciliation Commission for decision.

13. Discussion in chambers revealed the disagreement between the Representatives of the two Governments, and the Commission therefore decided to appeal to the Third Member in order that the issues raised by the instant case might be settled.

14. Both Governments nominated Prof. José de Yanguas Messia, of Spanish nationality, as Third Member for the examination of the Rosasco-SAGAR Case.

II. PRINCIPLES OF LAW INVOLVED

1. The American Petition requests restitution and restoration to good order of the motor ship, under paragraphs 2 and 4 (a) of Article 78, or, in the alternative, compensation payable under the same para. 4 (a) in the event that restitution cannot be made.

2. On the Italian side, it is contended instead that SAGAR suffered no damage as a result of the sinking of the motor ship *Unione*, in view of the fact that at that time it had already lost title thereto as a result of a measure taken by the Italian Government, and that consequently it is not entitled to invoke either paragraph 2 or paragraph 4 (a).

If the requisition of title had not been ordered effective as of January 1942, the claim should certainly have been accepted on the mere consideration of the ownership as of June 10, 1940 and of the act of war of June 18, 1944; but as such requisition was ordered, one cannot prescind from it, confining oneself to a statement that it is irrelevant, because, by virtue thereof, the Italian legal system, which up until January 1942 had recognized SAGAR as owner of the motor ship *Unione*, as of that date replaced the title with the right to receive a corresponding indemnity.

3. The Hon. Agent of the Government of the United States, in his Brief of February 12, 1954, stated that the transfer of title of the motor ship *Unione* to the Italian Government, precisely as such, constituted a measure contemplated by the aforementioned paragraph 2 of Article 78, a measure which the Italian Government is obligated to cancel, under Article 78, like all measures, including requisition, seizure or control, taken by it, between June 10, 1940 and September 15, 1947, against property of United Nations nationals. The requisition of the vessel by the Italian Navy for its own use, effected on January 24, 1942, and the subsequent requisition of title on August 27, 1945 are measures which fall within the meaning of this word as used in paragraph 2, Article 78, of the Treaty. For the purposes of the Italian defence, the assertion that the claimants are not entitled to invoke Article 78 because of the requisition of title is completely groundless because such requisition of title constitutes *per se* one of the measures which the Italian Government is obligated to cancel.

III. RELIEF REQUESTED BY THE AGENT OF THE UNITED STATES OF AMERICA

The United States of America requests that the Commission

(a) Order the Italian Republic to raise, restore to good order (bearing two-thirds of the expenses) and return the motor ship *Unione*, free of all encumbrance, within a time-limit of twelve months.

(b) Order payment to the claimants of the equivalent in lire of \$1,126,980, as compensation for damages suffered by the claimants as a result of the non-fulfilment of obligations imposed on the Italian Republic by the Treaty, within a reasonable time after a claim for restitution has been duly made.

(c) In the event that the motor ship *Unione* cannot be returned, decide, in lieu of (a) and (b) above, that the claimants are entitled to receive from the Government of the Italian Republic two-thirds of the sum necessary, at the time of payment, to make good the losses and damages suffered, which sum, on September 23, 1952 was estimated to be 2,200,000,000 lire, less the sum of 101,646,624.39 lire already paid by the Italian Government to the owners of the vessel.

(d) Order that the Italian Republic be charged with the reasonable expenses of 2,000,000 lire already incurred in the preparation of the claim, and with the expenses which might be incurred during the proceedings before this Commission.

(e) Grant 5% interest per annum on the amount due to the claimants, running from February 12, 1948, the date on which the claim for restitution of the vessel was presented.

(f) Grant any other and further relief that may be deemed fair and equitable.

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The Italian-United States Conciliation Commission,
 Having heard the Hon. Agents of the two Governments,
 Having examined the record of the case,
 Having reached agreement on setting aside the questions of principle,
 Whereas the motor ship *Unione* cannot be raised, restored to good order
 and returned,
 Acting by way of conciliation, unanimously

DECIDES:

1. The Government of the Italian Republic, retaining title to the wreck, shall pay the sum of four hundred and twenty-five million (425,000,000) lire to Messrs. Harold W. and William E. Rosasco as compensation under the provisions of Article 78, Paragraph 4 (a), of the Treaty of Peace for the loss of the motorship *Unione*.

2. No payment is due from the Government of the Italian Republic for damages which may have been due to the delay following the request for restitution of the motor ship *Unione*.

3. The request for interest on the total amount of the award is denied, in accordance with Decision No. 24 of this Commission in the Case of Joseph Fatovich.¹

4. The Government of the Italian Republic shall pay to the claimants named in paragraph 1 above the sum of two million (2,000,000) lire, representing the expenses incurred by the claimants in Italy in preparing the claim under Paragraph 5 of Article 78 of the Treaty of Peace.

5. The total of the sums specified in paragraphs 1 and 4 above (425,000,000 plus 2,000,000 lire), or 427,000,000 lire, shall be paid, free of any levies, taxes or other charges, within a period of forty-five (45) days following the request for payment to be submitted to the Government of the Italian Republic by the Government of the United States of America.

6. This Decision is final and binding; its execution is incumbent upon the Italian Government.

Rome, May 19, 1955.

The Third Member

JOSÉ DE YANGUAS MESSIA

*The Representative of the
 United States of America*

Alexander J. MATTURRI

*The Representative of the
 Italian Republic*

Antonio SORRENTINO

¹ *Supra*, p. 190.