PALUMBO CASE—DECISION No. 120 OF MARCH 1956 [1]

The Italian-United States Conciliation Commission, established under Article 83 of the Treaty of Peace, composed of Messrs. Alexander J. Matturri, Representative of the Government of the United States of America, Antonio

[1] *Collection of decisions*, vol. III, case No. 142. The Collection does not indicate the exact date of the decision.

Sorrentino, Honorary Section President of the Council of State, Representative of the Government of the Italian Republic and Georges Sauser-Hall, *Emeritus* Professor of International Law at the University of Geneva, Third Member chosen by mutual agreement between the United States and Italian Governments,

On the Petition filed by the Agent of the Government of the United States of America on January 25, 1955, *versus* the Government of the Italian Republic in behalf of Mr. Francesco Palumbo Corsaro,

Having seen the *Procès-verbal* of Non-Agreement dated April 1, 1955, signed by the Representatives of the two Governments, in which no mention is made of any specific points on which agreement has or has not been reached,

Having heard the Agents of the two Governments during the oral discussion of February 23, 1956,

Having considered the facts set out below, on which there is no disagreement between the High Parties to this dispute:

A. Francesco Palumbo Corsaro (hereinafter referred to as the claimant) who is of Italian origin, emigrated to the United States of America where he was naturalized on January 7, 1919. Claimant is domiciled in New York and has resided at 240-242 via Messina, Catania, since 1951, but was unable to return to Italy in the years immediately following 1939 because of the war; and was therefore unable to attend to his business, and the property of which he was the owner, in Italy.

B. Claimant is the owner of property which includes a six-room apartment located at Via delle Acacie No. 10, Catania, and upon his return found that said apartment had been requisitioned since June 18, 1945 under Articles 2 and 3 of the Decree of the Lieutenant of the Realm No. 415 of December 28, 1944, by the Housing Commissioner in Catania in behalf of Dr. Carmelo Mazza, a surgeon-physician. Dr. Mazza had previously lived in that apartment but had been forced to vacate same because it has been struck by a bomb; and he and his family had been rendered homeless.

Dr. Mazza undertook to have the most urgent and indispensable repair work carried out, at his expense, in the claimant's apartment, and a note to that effect is made in the requisition decree giving Dr. Mazza the right to use this apartment as living quarters for himself and family upon the payment of rental, which was the subject of a subsequent decree.

C. The owner filed a separate claim with the Italian Government under Article 78, paragraph 4 (*a*) of the Treaty of Peace, in order to receive compensation for the war damages he had suffered; action was taken, compensation was duly paid and said claim is therefore not a part of this dispute.

D. As he desired to recover full control over his apartment, claimant resorted to legal action versus Dr. Mazza, before the competent Italian Magistrate, directed at obtaining the nullification of the legal extension of the lease resulting from the requisition; and the eviction of the tenant; but his request was rejected by decision dated July 20, 1952, as the Court had ascertained that the claimant was also the owner of several other apartments which were fully suited to the needs and requirements of an individual living alone; and, furthermore that he did not intend to establish his domicile in Italy or to sever his connexions with his interests in the United States.

E. Following the failure of his legal action, it was the claimant's intention to hold the Italian Government responsible for the non-restoration of his apartment. He argued that said apartment had become vacant and liable to requisitioning only because it had been damaged as the result of an act

of war, that the Decree of the Lieutenant of the Realm No. 415 of December 1944 had been enacted to ensure living quarters to individuals who had been rendered homeless as the result of war operations, and that Italy was responsible under the Treaty of Peace to restore all legal rights and interests of United Nations nationals.

This claim was espoused by the Government of the United States of America and filed with the Italian Ministry of the Treasury, who rejected it by decision dated April 10, 1953. Subsequently, by Petition dated January 25, 1955, the Agent of the United States of America decided to place the Francesco Palumbo Corsaro Case before the Conciliation Commission.

* * *

Considerations of Law: Having considered that the Agent of the United States of America bases his Petition on paragraphs 1 and 2 of Article 78 of the Treaty of Peace, which read as follows:

Article 78, paragraph 1: "In so far as Italy has not already done so, Italy shall restore all legal rights and interests in Italy of the United Nations and their nationals as they existed on June 10, 1940, and shall return all property in Italy of the United Nations and their nationals as it now exists."

Article 78, paragraph 2: "The Italian Government undertakes that all property, rights and interests passing under this Article shall be restored free of any encumbrances and charges of any kind to which they may have become subject as a result of the war and without the imposition of any charges by the Italian Government in connexion with their return. The Italian Government shall nullify all measures, including seizures, sequestration or control, taken by it against United Nations property between June 10, 1940 and the coming into force of the present Treaty. . . ."

1. It is the contention of the Agent of the United States of America that the obligation undertaken by Italy under the above provisions imply the restoration of an apartment free of all encumbrances or charges resulting from requisition, even if this measure was adopted in the application of a law directed at ensuring living quarters to individuals who had been deprived of their homes, and, in support of his theory, he cites the arguments of a number of decisions handed down by the Italian-United States Conciliation Commission and by the Italo-French Conciliation Commission, chiefly Decision No. 107 of September 15, 1951 concerning the Heirs of H.R.H. the Duc de Guise,[1] the scope of which will be examined later. He concludes by requesting that the Commission decide that the Italian Government is obligated to re-establish Francesco Palumbo Corsaro, a national of the United States of America, in his full right to regain possession of his apartment located at Via Acacie No. 10, Catania, and to nullify the measure of requisition in behalf of Dr. Mazza.

2. The Italian Government opposes this request on the grounds that the limitations to the owner's rights of control over his property are not the result of the war measures contemplated in the afore-mentioned articles of the Treaty of Peace, said to have been adopted by the Italian Government; that in the instant case the Italian Government has not adopted any measure of seizure, sequestration or control against the claimant's property.

He contends that the requisition of an apartment, under Italian law in the struggle against the lack of housing, is in the nature of a general measure which is applied regardless of the owner's nationality and which concerns

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Italian owned property as well as the property of United Nations nationals and other aliens, and which cannot, therefore, give rise to any claim based on the Treaty of Peace.

Some of the decisions of the Conciliation Commission cited by his Opponent appear to him to be non-pertinent while the others, if correctly interpreted, support his theory. The Agent of the Italian Government concludes by stating that his Government cannot be obligated to restore the *quo-ante* status by nullifying the order of requisition, which would lead to the eviction of Dr. Mazza and his family from the apartment in which they are at present living and which Dr. Mazza has rendered habitable at his expense.

3. The Commission must take notice of the fact that the disputed points of law between the two Governments are focused on the question as to whether or not the implementation of Decree No. 415 of the Lieutenant of the Realm of December 28, 1944 must be considered as one of the measures which the Italian Government is obligated to nullify under Article 78, paragraph 2 of the Treaty of Peace, as it is admitted, and there is no disagreement on this point, that the measures specified in the Treaty constitute only an example and are not to be considered as a limitation.

4. In order to determine whether or not a measure of requisition comes under the requirements of Article 78, paragraph 2, of the Treaty of Peace obligating Italy to nullify such measure, the whole of the *ratio legis* of the provision should be considered. This provision is the result of the economic war which has gradually developed more and more since World War I and which has empowered the victorious nations, under all treaties of peace putting an end to hostilities (Treaty of Versailles and others) as well as under the Treaty of Peace drawn up at the conclusion of World War II, to force upon their opponents the cancellation of all measures taken during the war against property considered to be enemy owned, with the consequent obligations of restoration of all legal rights and interests of the former enemies, of restitution in kind, and, possibly, payment of indemnities in the amounts required by the treaties of peace.

It is the underlying concept which is found in all parts of treaties of peace dealing with property, rights and interests of United Nations and their nationals in the countries with which they have been at war and which must not be lost sight of in doubtful cases, when deciding whether a measure adopted by the Italian State engages the responsibility of said State and falls under the provisions of the Treaty of Peace.

5. *Ratione temporis*, it cannot be denied that the measure of requisition taken against the claimant's apartment was adopted within the space of time specified in the Treaty of Peace, that is, June 10, 1940 through September 15, 1947, the date of the coming into force of the Treaty; the Decree No. 415 of the Lieutenant of the Realm was in fact enacted on December 28, 1944 and the requisition decree is dated January 18, 1945.

But this coincidence of time is not sufficient to bring about the application of Article 78, paragraph 2 of the Treaty of Peace; a true and proper measure of the economic war directed against a national of the United States must be involved.

The Agent of the plaintiff Government has tried to establish the above fact by contending that Decree No. 415 was not a general law of the Italian State, that it was implemented immediately at Catania and that it was implemented in the remainder of Italy only at a later date; that, further, it was a temporary law as Article 14 thereof limited its duration to one year after the cessation of the state of war; he concludes by stating that the requisition

was in fact a special measure directed against a United States national. He further points out that the decisions of the Italian courts which have applied said Decree show that this action was justified by the events of war, that requisition was "the result of the very serious lack of available housing caused by the operations of war" (Tribunal of Trento, Decision of November 3, 1945, in the Bregoli and Beltrami Case, *Giurisprudenza Italiana* 1946, I, 2, 258); the same point of view is shared by Italian qualified legal writings.

The Agent of the plaintiff Government draws the conclusion that one is undoubtedly faced with a war measure which, even though not preceded or accompanied by seizure, sequestration or control of enemy property, is none the less contemplated by Article 78, paragraph 2 of the Treaty of Peace which obligates the Italian Government to nullify "all measures" resulting from the war, when the conditions of time are fulfilled, and to return the property free of all encumbrances and charges to which it may have become subject as a result of the war. In his opinion, the requisition made in behalf of Dr. Mazza is one of the charges that should be lifted.

6. The Commission finds that it cannot share this view. It is apparent from the very text of Decree No. 415 that there exists no connexion with the economic war, as Article 2, paragraph 1 of said law reads (in translation):

> The Housing Commissioner may requisition for use the lodgings available in the commune in order to assign them under a lease to those who are in absolute need thereof and are resident in the commune or have been moved to it by order of the authorities, giving priority to those who were deprived of their dwelling because of the destructions caused by war operations or because of racial or political persecutions.

This provision, which is of a legislative nature, was enacted following the housing crisis and simply accords a preference to the victims of the events of war and of political and racial persecutions, regardless of nationality. This law, although the military situation prevailing at the time prevented its immediate implementation throughout Italy, was nevertheless a general law concerning Italian nationals, neutrals and enemy nationals, but not specifically directed against the latter whose property was not made the subject of discrimination thereunder.

7. The rules that must be observed in the subject claim are those contained in the first and second sentences of Article 78, paragraph 2. It is established therein that the Italian Government shall restore to the United Nations and their nationals their property, rights and interests free of all encumbrances and charges of any kind to which they may have become subject as a result of the war, and that all administrative measures adopted by the Italian Government in this connexion during the war shall be nullified.

8. The scope of this provision has given rise to disagreement between the Agents of the two Governments concerned, and this Commission, while appreciating the controversial legal arguments of the parties, believes it should refer to the two legal principles laid down several times in the past in the decisions of the Franco-Italian Conciliation Commission (Decision No. 33 of August 29, 1949 in the Guillemot-Jacquemin Case, and Decision No. 95 of March 8, 1951 in the Società Mineraria e Metallurgica di Pertusola Case),[1] that is:

(*a*) that the responsibility of the Italian Government under Article 78 of the Treaty of Peace can only be engaged when it is proved that there exists

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a direct link of causality between the measure adopted during the war by the Italian Government against nationals of the United Nations considered as enemies, and the resulting damage to the property, rights and interests of said nationals;

(*b*) that the obligations of the Italian State do not include payment of compensation for damages or nullification of the charges imposed on the property of United Nations nationals in cases where said damages or charges are the result of measures adopted under a general legislation, and are devoid of any character of specific war measure adopted against certain property, rights and interests in Italy.

With reference to the first principle, the Commission must first of all take notice of the fact that neither the Italian Government nor any of its administrative agencies has subjected the claimant's property to any economic war measure whatsoever. Claimant's title to the property has been and is recognized; it has not been subjected to any measure of seizure, sequestration or control. The obligation to restore "free of all encumbrances and charges to which they may have become subject as a result of the war" (paragraph 2 of Article 78) requires a few words of comment.

That the drafters of the Treaty of Peace have placed "all charges of any kind" and "*hypothèques*" or encumbrances on the same level clearly indicates that they intended to give consideration only to the limitations brought to the assets or to the control of enemy property by measures specifically directed against said property. This is always manifestly the case where a "*hypothèque*" is involved which is at all times a positive guarantee encumbering a specific piece of real property created for equally specific credits; the expression "all charges of any kind" covers all forms of restriction on property invariably resulting from special measures adopted against property owned by enemy nationals as such, but not from special measures adopted during the war which are not specifically directed against enemy owned property, even though they are measures of a nature that can also be taken against enemy property. A contrary interpretation would result in removing property owned by the United Nations and their nationals in Italy from the jurisdiction of a large part of Italian legislation enacted during the war to counteract the effects of the war, even though there does not exist an unquestionable link of causality between these measures and the limitation of the owner's rights or the charges he has had to bear.

Nevertheless, the Agent of the plaintiff Government has not succeeded in establishing an adequate link of causality between the limitations brought to the claimants' right of control over his apartment and the war measure of which he alleges to be the victim. Inasmuch as, during the proceedings, the Commission has failed to find any evidence that measures of such a nature were adopted against the claimant, it would be necessary, in order to establish the Italian Government's responsibility and the resulting obligation to restore the apartment free of requisition, to give the expression "as a result of the war" a meaning so broad as to become incompatible with the spirit of the Treaty of Peace.

The Italian-United States Conciliation Commission, as well as the Italo-French Conciliation Commission have had several occasions in the past to affirm that Article 78, paragraph 1 of the Treaty of Peace which places on the Italian Government a general obligation to restore legal rights and interests of the United Nations and their nationals in Italy and to return all property owned by said nationals in Italy certainly does not have the purpose of according them the benefits of some kind of general insurance against risks arising out of the war.

The Commission maintains that it is insufficient to establish an indirect relationship of causality between the existence of a state of war and the requisition of the claimant's apartment by the Italian authorities. The link between cause and effect is too distant to make one believe that the efficient cause producing a limitation of the claimant's rights of control over his apartment is as a result of the war, when the requisition measures contemplated by Italian legislation are aimed at protecting the civilian population against the consequences of the war and not to make the conduct of the economic war more effective.

It is deemed advisable to point out, nevertheless, that the claimant's rights have received due consideration under Article 2, paragraph 2 of Decree No. 415 of the Lieutenant of the Realm of December 28, 1944, which reads textually (in translation):

> The Housing Commissioner may de-requisition the assigned lodging whenever it is proved that it is absolutely necessary for the owner or former tenant to occupy it without delay, provided that another dwelling be assigned to the assignee.

In view of the fact that claimant could not produce this proof his civil legal action directed at obtaining the eviction of Dr. Mazza from his apartment failed. Therefore, the state of war was not in itself the determinant factor in keeping the requisition measure in existence, but the fact that the claimant was the owner of other apartments which he could use as living quarters was also given due consideration.

Lastly, if one considers that under the Italian legislation relating to the extension of leases (Decree No. 669 of the Lieutenant of the Realm of October 12, 1945 and subsequent laws) the tenant had the right to stay in the apartment he had rented, and that even if said apartment had neither been bombed or requisitioned, the claimant's legal position would be the same as the one in which he stands today, it is evident that his impossibility to regain complete control over his apartment is not the direct consequence of the measures adopted against his property as a result of the war and that Article 78, paragraph 2 of the Treaty of Peace is not applicable in this case.

Coming to the second principle it is important to note that the requisitioning of Mr. Palumbo Corsaro's apartment is the consequence of legislative measures generally applicable in Italy, irrespective of nationality, in order to mitigate, in so far as possible, the lack of available housing brought about by the destructions caused by the war, the massive flow of refugees abandoning the localities in which active warfare was being waged and by individuals fleeing from political and racial persecutions.

The Commission does not wish to affirm undoubtedly by the above that whenever a measure of a general and non-discriminatory nature was taken by Italy during the war this condition is sufficient in itself to make Article 78, paragraph 2, of the Treaty of Peace inapplicable; or rather that whenever a provision aiming at weakening the enemy's resistance or increasing Italy's war effort is involved this measure shall not give rise, notwithstanding its non-discriminatory character, to an action for restitution, nullification or indemnification if it was adopted against enemy property, rights and interests. This second theory, which was applied in a previous case, to wit, the Grottanelli Shafer Case involving requisition of metals regardless of the nationality of the owners or holders thereof (Decision No. 27 of the Italian-United States Conciliation Commission of December 6, 1954)[1] could in no way be invoked in the instant case.

[1] *Supra*, p. 205.

The requisition of living quarters is in fact of an entirely different nature. In this case there are not only involved measures of a general and non-discriminatory nature which, even if adopted during the war, are not directed against enemy property, but they are measures of assistance inspired by a spirit of solidarity and humanity and are not intended to harm the enemy nor do they contribute to strengthen the war effort of a belligerent State.

These measures have no other purpose than to alleviate the sufferings caused by the war in providing, even though inadequately, a roof over the heads of civilians whose homes were destroyed by military operations or dispersed by political and racial persecutions.

The above interpretation would be further allowed under the provision of Article 78, paragraph 4 (*d*) of the Treaty of Peace regarding compensation to be paid by the Italian Government to United Nations nationals who have suffered injury or damage as a result of special measures adopted against their property during the war, because one should not consider as losses those concerning the substance of the property referred to in Article 78, paragraph 4 (*a*), but those losses which are the result of administrative measures, of a discriminatory treatment adopted against enemy-owned property. It is specifically stated in Article 78, paragraph 4 (*d*) that the special measures which justify payment of compensation are only those which are adopted against property owned by enemy nationals "and which are not applicable to Italian property". If the aforesaid measures concerned both, enemy-owned property and Italian-owned property at the same time, their scope was of a general and non-discriminatory nature thereby excluding the payment of compensation to United Nations nationals. The principles of interpretation by analogy permit us to conclude that if limitations on property, rights and interests, irrespective of the nationality of the owner, do not give rise to the right to receive compensation, they should neither give rise to the right of cancellation in all cases where the general and non-discriminatory measures are of a civil character and do not have a direct and adequate relationship with the acts of war.

9. The Commission is of the opinion that the various judicial decisions cited by the Agent of the Government of the United States of America have certain peculiarities which are not to be found in the instant case. In the three cases involving the lifting of sequestration of living quarters before the Italo-French Conciliation Commission, the Commission ruled that in order to obligate the Italian Government to make restitution free of all encumbrances and charges, it was necessary that said Government had previously seised or sequestered, or placed under control, or had taken possession of the subject living quarters in some other manner. Now, in one of the cases cited, the Italian Government had not adopted any war measure, and the occupation of the premises by third parties was the result of a lease stipulated by the owner before the war, subsequently renewed by his attorney during the war, and finally obligatorily extended under Italian legislation; claim for restitution of the premises was rejected (Decision No. 33 of August 29, 1945, Guillemot-Jacquemin Case).[1] The other two cases cited by the Agent of the United States of America involve real property sequestered by the Italian Government because enemy-owned. In one of the cases the Sequestrator himself had renewed and amended the leases and these measures were to be subject to cancellation together with the lifting of sequestration; and the property was therefore restored free of all leases (Decision No. 85 of September 18, 1950,

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Ottoz Case).[1] The last case involved real and personal property sequestered by the Italian Government because enemy owned and subsequently requisitioned by reason of public policy on August 29, 1947, by the President of the Sicilian Region for setting up offices and services in the sequestered building. When the property was requisitioned, sequestration was legally lifted but this was not followed by the material restoration of the building and the personal property it contained to the owners who were French nationals. The property had been requisitioned but it was encumbered by a measure of sequestration which continued to exist *de facto*; Italy intended to return the property encumbered by a right of use and occupancy for an indefinite duration which constituted a true and proper charge, similar to a positive and permanent right and therefore in contrast with Article 78, paragraph 2 of the Treaty of Peace; the requisitioning of living quarters in favour of refugees or persecuted individuals was not here involved; furthermore, no court had taken judicial notice of the fact, as in the instant case, that the Sicilian authorities had found it impossible to establish elsewhere the offices and services of the President of the Region. Also in this case restoration of requisitioned property, but placed under a sequestration which in fact had never been lifted, was obligatory because a special measure directed against enemy property was involved; and the Commission so ruled (Decision No. 107 of September 15, 1951, Heirs of H.R.H. the Duc de Guise Case).[2]

The case concerning Mr. Palumbo Corsaro's apartment distinctly differs from the Ottoz and Duc de Guise cases in that the claimant's property was never made the subject of a previous measure of sequestration, seizure or control, nor of any other measure that could have permitted the Italian Government to gain control over said property; it follows that the Italian Government cannot be obligated to make restitution; the claim filed with the Italian Government directed at obtaining the lifting of the sequestration measure which was adopted in behalf of Dr. Mazza finds no support in the Treaty of Peace, as a general legislative measure is here involved which was applicable to all property in Italy and which was taken against the property of a United States national at a time, namely on the date of the requisition decree, when the American title to the property was in all likelihood unknown to the Italian authorities.

In view of the above considerations, the majority Commission

DECIDES:

1. That the Petition filed by the Agent of the Government of the United States of America in behalf of Mr. Francesco Palumbo Corsaro, a United States national, is rejected.

2. This Decision is final and binding.

DONE in Rome, at the seat of the Commission, Via Palestro 68, March, 1956.

The Third Member	*The Representative of the Italian Republic*
Georges SAUSER-HALL	Antonio SORRENTINO

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[1] *Ibid.*
[2] *Ibid.*

DISSENTING OPINION OF THE REPRESENTATIVE OF THE UNITED STATES OF AMERICA IN THE CASE OF THE UNITED STATES OF AMERICA EX REL. FRANCESCO CORSARO PALUMBO VS. THE ITALIAN REPUBLIC

If the decision of the Third Member in this case had been based on grounds acceptable to the Representative of the United States of America, I would certainly have joined with my two esteemed colleagues in affixing my signature to it.

For it is my opinion that Decree No. 415 of December 28, 1944, under which the claimant's apartment was requisitioned by the Italian authorities in order to provide a shelter for a family which would otherwise have been homeless, was not intended to assist the Italian war effort against the Allied and Associated Powers, but was instead intended to repair, to the extent possible, some of the human suffering which had taken place as a result of the war in Italy. The very fact that the claimant's apartment was requisitioned as late as June 10, 1945, at a time when hostilities had already ceased, would indicate that this requisition was not a measure contemplated by Paragraph 2 of Article 78 of the Treaty of Peace, and was therefore not a measure which Italy is now obligated to annul under the terms of the Treaty.

The Representative of the United States of America would have been pleased to sign a decision rejecting the Petition of the Agent of the United States, if the ratio of the decision had been limited to the statement of the Third Member (No. 8 of the Considerations of Law) that the implementation of Decree No. 415 was "inspired by a spirit of solidarity and humanity and . . . not intended to harm the enemy nor . . . contribute to strengthen the war effort of a belligerent State".

However, the quoted statement is almost lost in the lengthy exposition of the motives of the Third Member's decision. The Third Member chose to base his decision on two general grounds which are totally unacceptable to the Representative of the United States as a matter of logic and as a matter of interpretation of this treaty. The two reasons advanced by the Third Member for rejecting the Petition of the Agent of the United States on behalf of Francesco Corsaro Palumbo are as follows: (*a*) Decree No. 415, permitting requisitioning of living quarters, was not a result of the war; and (*b*) a measure taken by the Italian Government which affects enemy property must have been taken *because* the property was *enemy* property in order to bring the claim under the provisions of Paragraph 2 of Article 78.

I maintain (*a*) that the requisition of housing under Decree No. 415 was a direct result of the war. No possible interpretation can be given to the word "result" in the above context which would exclude the requisition of housing rendered necessary by the operation of belligerent States within Italian territory.

I maintain (*b*) that a measure taken by the Italian authorities during the war need not have been taken against property *because* it was *enemy* property in order to constitute a measure which must now be annulled under Paragraph 2 of Article 78. Paragraph 2 does not distinguish, in requiring nullification of "all measures" taken by the Italian Government against United Nations property, between measures taken because the property was enemy-owned and measures taken against property generally, whether Italian-owned or enemy-owned. The Grottanelli Shafer Decision (No. 27)[1] of this Commission specifically so decides, and goes even further by maintaining that, if property

[1] *Supra*, p. 205.

taken under a non-discriminatory measure cannot be returned to the owner, the Italian Government is responsible under Paragraph 4 (*a*) to pay compensation for the loss of the property.

While the Shafer Case can be distinguished, as the Third Member has pointed out in No. 8 of the Considerations of Law, from the instant case, on grounds that the requisition of scarce metal early in the war was clearly designed to strengthen the Italian war effort, whereas the requisition of housing after the cessation of hostilities was not so designed, the motive of the decision from which I am now dissenting, to the effect that the measure must have been directed against enemy property *as such* is in direct contrast with the reasoning of the Grottanelli Shafer Decision.

Moreover, no analogy can be drawn from Paragraph 4 (*d*). Paragraph 4 (*d*) was originally drafted by the French Delegation in the negotiations for the Treaty of Peace in order to provide 100% compensation for damages due to discriminatory measures, as opposed to a smaller measure of compensation under Paragraph 4 (*a*) for damages due to the non-return of property taken under general, non-discriminatory measures of the Italian Government during the war. A study of the negotiations leading to the text of the present Article 78 would lead to the rejection of the inferences drawn by the Third Member in this decision from the language of Paragraph 4 (*d*).

The Third Member's decision attempts, finally, to deny the applicability to the instant case of the principles announced in the Duc de Guise Decision[1] of the Franco-Italian Conciliation Commission on the grounds that the sequestration of the building in that case continued to exist *de facto*, although it had been cancelled *de jure* and a measure of requisition had been taken against the building because of the lack of other available buildings. The Representative of the United States must confess that he cannot conceive of the continued existence, *de facto*, of the sequestration measures in the Duc de Guise case, and he ventures to suggest that no Italian jurisdictional organ would have viewed the situation as the continuation *de facto* of a sequestration under the War Law of 1938.

It might be added, in this connexion and in support of what has been said above regarding the causal relation between the requisition and the war, that the Third Member has not attempted to explain how the requisition of the building in the Duc de Guise case was considered by the Franco-Italian Conciliation Commission to be "result of the war", whereas the requisition of the apartment in this case has not been considered to be a "result of the war". In both cases, the property was requisitioned because the war had caused a shortage of similar buildings.

For the foregoing reasons, the Representative of the United States of America cannot sign the Decision rejecting the Petition of the Agent of the United States in this case, and he furthermore takes exception to all statements contained in the decision which declare or imply that a measure, in order to be subject to nullification by virtue of Paragraph 2 of Article 78, must have been taken against United Nations property only for the reason that the property was owned by an enemy of Italy.

The Representative of the
United States of America

Alexander J. MATTURRI

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