CLAIMS AGAINST ITALY

ITALIAN CLAIMS PROGRAM STATISTICS

Statutory authority: Title III of the International Claims Settlement Act of 1949, 69 Stat. 570 (1955), 22 U.S.C. §§ 1641–1641q (1964), as amended, 72 Stat. 531 (1958), 22 U.S.C. 1641c, 1641j (1964).

Number of claims: 2,246.
Amount asserted: $27,412,985.
Number of awards: 482.
Amount of awards: Principal, $2,730,146.
Interest, $929,165.
Amount of fund: $5,000,000.
Program completed: May 31, 1960.

In the Matter of the Claim of

HARIKLEIA G. PAPACOSTAS

Against the Government of Italy

Claim No. IT–10251
Decision No. IT–272

Claim denied where owner, a United States national, died in 1941 and property was inherited by nonnational of the United States and damaged thereafter. For compensability, property must have been owned by United States national on date of loss and continuously thereafter.

PROPOSED DECISION

This is a claim for $22,000.00 filed by Harikleia G. Papacostas, a Greek national, for damage to real property in Fourne, Greece, during May 1941, and loss of income resulting from such damage, during the war in which Italy was engaged from June 10, 1940 to September 15, 1947.

Section 304 of the aforesaid Act provides for the receipt and determination by the Commission, in accordance with the Memorandum of Understanding and applicable substantive law, including international law, of the validity and amounts of claims of nationals of the United States against the Government of Italy, arising out of the war in which Italy was engaged from June 10, 1940 to September 15, 1947, and with respect to which provision was not made in the treaty of peace with Italy.

Under a well established principle of international law, eligibility for compensation requires that the property which was the subject of damage or loss must have been owned by a United States national at the time the damage or loss occurred and *that the claim arising as a result of such damage or loss, must have been continuously owned* thereafter by a United States national or nationals.

Claimant has submitted evidence showing that the property, on which the subject claim is based, was owned by her husband, George I. Papacostas, a naturalized citizen of the United States, until his death in 1941. There is no indication whether George I. Papacostas died intestate. The surviving widow, the claimant, has filed a claim for losses and damages to certain properties located on the Island of Crete which she allegedly inherited from her husband. Such losses and damages are shown by the evidence to have occurred on various occasions between the years 1942 and 1945.

The records suggest that the claimant, Harikleia G. Papacostas, was not a national of the United States at the time of her alleged inheritance or at the time of the loss of or damage to the properties described herein, and that she has not since acquired United States citizenship.

Under Greek civil law, property passes in succession to the heirs on the death of a person. Therefore claimant acquired ownership of the property on the death of her husband in 1941, prior to the time the damage occurred.

It is concluded, in view of the foregoing that the subject property was not owned by a national of the United States at the time of its loss since the claimant has not satisfied the requirements of eligibility, in that she was not a national of the United States on the date of loss nor at the time of settlement of the subject claim.

It is concluded, therefore, that this claim should be, and hereby is denied. Other elements bearing on eligibility have not been considered.

Dated at Washington, D.C.
July 17, 1957.

Nationality requirements.—Section 304 of the 1949 Act authorizes the determination of certain claims of nationals of the United States against the Government of Italy, stating no specific requirement as to the period of time during which ownership of the claim must have been in a United States national or nationals. The instant claim illustrates that, as in claims against Bulgaria, Hungary, and Rumania under Title III of the Act, the Commission applied the principle of international law requiring that the property have been owned by a United States national at the time of loss, and that the claim arising therefrom have been owned by a United States national or nationals continuously thereafter. After issuance of the Final Decision in *Claim of Benedict Lustgarten*, Claim No. RUM–30575, Dec. No. RUM–434, 10 FCSC Semiann. Rep. 119 (Jan.-June 1959), this continuity of ownership by United States nationals was required, in all claims under Title III of the Act, until the date of filing of a claim with the Commission. Discussion of this matter appears in the annotations to *Claim of Margot Factor*, appearing at page 168.

In the *Papacostas* claim, at no time between the date of loss and the date of filing the claim was the claimant a national of the United States. In another claim, two of the claimants had never been United States nationals, and the third had been naturalized in 1929 but his naturalization was cancelled on June 6, 1950 because of expatriation. The claim was denied for lack of continuous ownership by United States nationals after the date of loss.

(*Claim of George Gust Camaras, et al.*, Claim No. IT–10127, Dec. No. IT–179, 10 FCSC Semiann. Rep. 138 (Jan.-June 1959).)

In a claim filed by a husband and wife, it was found that the husband was the sole owner of the property which had been lost. His naturalization on June 28, 1929 had been cancelled in 1936 for expatriation, and he returned to the United States in 1945 and was renaturalized on November 9, 1950. His wife had been a national of the United States since birth. The claim was denied because the husband was not a United States national at the time of loss of the property; and the wife, although a United States national at the time of loss, had no ownership interest in the property. (*Claim of Alexander A. Yankopoulos, et al.*, Claim No. IT–10279, Dec. No. IT–275, 10 FCSC Semiann. Rep. 145 (Jan.-June 1959).)

Effect of amendment of August 8, 1958 on nationality requirements.—On August 8, 1958 Section 304 of the Act was amended to require the Commission, after payment of the principal amounts of all awards made under the section as originally enacted, to determine claims by persons who were citizens of the United States on August 9, 1955, the date on which Section 304 first became law. Thereupon the Commission re-examined all claims against Italy which had been denied for failure to meet the nationality requirements, and granted awards to such of the claimants as had become United States nationals on or before August 9, 1955 and whose claims were otherwise valid. For example, a claim based upon damage to real and personal property in Greka, Olympia, Greece, owned by a claimant who became a United States national on January 14, 1944, and occurring on June 8, 1943 as a consequence of military operations in which Italy participated, was denied because the property was not owned by a United States national at the time of damage. After the amendment of Section 304, the claim was reconsidered and an award was granted, the Commission stating:

> A determination must now be made as to whether or not a claim presenting such a set of facts can be allowed under Section 304 of the Act, as amended.
>
> It is noted that the amendment does not speak specifically of nationality at the time of damage, and that the statutory requirement to determine claims of nationals of the United States in accordance with the substantive rules of international law had not been removed.
>
> It is a well known and long established rule, followed without exception by this Commission and its predecessors, that a claim cognizable under principles of international law does not come into existence unless the property which is the subject of the claim was owned by a national of the United States at the time of damage. Otherwise it cannot be said that the United States has received an injury or has a legal cause to complain against another nation. (Borchard, "Diplomatic Protection of Citizens Abroad," p. 351; Whiteman, "Damages in International Law," Vol. 1, p. 96; Judge Parker in Administrative Decision No. V, the Mixed Claims Commission, United States and Germany, "Decisions and

Opinions" 1928, pp. 145, 176–177; Jessup, "A Modern Law of Nations," p. 99; Moore, "Digest of International Law," Vol. VI, pp. 636–637; Hackworth, "Digest of International Law," Vol. V, p. 802; Ralston, "The Law and Procedure of International Tribunals," pp. 161–162; Hyde, "International Law as Applied by the United States," Vol. II, p. 893; Nielsen, "International Law Applied to Reclamations," p. 13; Oppenheim, "International Law," 6th Ed., Vol. 1, p. 314, edited by Lauterpacht.)

The property which is the subject of the claim before the Commission was not owned by a United States national at the time of damage and the United States received no injury. Therefore, the possible allowance of the claim under the amendment would at first appear to conflict with the foregoing rule. In view of the general and long acceptance of the rule and in the absence of clear and positive language, an intent on the part of the Congress to override it is scarcely to be presumed. That the Congress had no such intent is clearly shown in the Report of the Foreign Relations Committee (Senate Report No. 1794, 85th Congress, pp. 8–9).

Careful consideration of the matter leads to the conclusion that without doubt Congress had in mind to reaffirm the rule rather than to override it.

Nevertheless it is the considered opinion of the Commission that the instant claim is entitled to an award under Section 304, as revised, for the following reasons.

An international claims settlement is founded on the wrong done to a nation itself through injuries to its nationals. (Feller, The Mexican Claims Commission, p. 83 *et seq.*, and authorities cited *supra.*) A settlement fund when received, and at least unless otherwise committed by the terms of the settlement agreement, belongs to the nation whose nationals suffered the injuries. (First National City Bank of New York v. Gillilland, 257 F. 2d 223, 227.)

Under the amendment to Section 304, the rights of persons who do have valid claims under rules of international law have been preserved. What the Congress has done is merely to provide for the disposition of any balances which may remain in the fund received from Italy after the payment of such claims. This claim, although not cognizable under rules of international law, is allowable within the class which, by specific legislative authorization may be entitled to participate in any such residual disposition.

The award contained the following proviso: "PROVIDED that no payment shall be made with respect to this award until payment in full, from the Italian Claims Fund created pursuant to Section 302, of the principal amounts (without interest) of all awards upon claims determined under the original provisions of Section 304." (*Claim of Petes Allen*, Claim No. IT–10640, Dec. No. IT–81–2, 10 FCSC Semiann. Rep. 154 (Jan.-June 1959).)

Subrogee claims.—A shipment of flashlights belonging to a corporation which qualified as a United States national was removed from a vessel without the owner's consent and placed in a warehouse in Massawa, Eritrea, where, upon Italy's entry into the war, it was seized by Italian authorities. The claimant, another corporation qualifying as a United States national, had insured the property against loss, and paid the aggrieved property owner $3,401.01 under the terms of the insurance contract. The Commission held that in accordance with a subrogation agreement the claimant became the real party in interest, and granted an award in the amount of $3,401.01, stating:

> By virtue of a familiar principle, recognized and applied alike by courts of law and of equity since time immemorial, an insurer who indemnified the person who has suffered loss through another's wrongdoing, thereby acquires, to the extent of such indemnification, the assured's rights against the wrongdoer; and the insurer thus—by way of subrogation—becoming entitled to the assured's legal remedies, may enforce the same either "at law," by an action in the name of the assured, or "in equity," by suit in the insurer's own name. *The Potomac,* 105 U.S. 630 * * * U. S. v. So. Carolina State Highway Dept., 171 F.(2d) 893.

(*Claim of Federal Insurance Company,* Claim No. IT–10370, Dec. No. IT–456, 10 FCSC Semiann. Rep. 150 (Jan.-June 1959).)

In a similar claim, the Commission held that claims of subrogee insurance companies were subject to the same nationality requirements as other claims under Section 304. Where the claimant was an insurance company which qualified as a United States national, but evidence had not been submitted to establish that the insured, who owned the property at the time of loss, also qualified as a United States national, the claim was denied by Proposed Decision. This occurred before the amendment of August 8, 1958 concerning nationality requirements. The amendment, when it came, had no effect upon this claim inasmuch as evidence was submitted to establish the United States nationality of the insured at the time of loss, so that an award was granted by Final Decision without the proviso requiring prior payment in full of the principal amounts of all awards determined under the original provisions of Section 304. (*Claim of Continental Insurance Company,* Claim No. IT–10278, Dec. No. IT–455, 10 FCSC Semiann. Rep. 151 (Jan.-June 1959).)

Filing period.—Section 306 of the Act provided that the Commission shall publish in the Federal Register the time when and the limit of time within which claims may be filed, "which limit may not be more than one year after such publication, except that with respect to claims under Section 305 this limit may not exceed six months." The Commission, in accordance with the Congressional mandate, published its Regulations in the Federal Register on September 30, 1955 designating a one-year period for the filing of claims under Section 304. Inasmuch as September 30, 1956 fell on a Sunday, the last day for filing such claims was deemed to be midnight of October 1, 1956. This termi-

nal date for filing claims was a statutory limitation which the Commission had no authority to waive or extend. Accordingly, where a claim was filed subsequent to October 1, 1956, it was denied as not timely filed. (*Claim of Louis (Alois) Herbst,* Claim No. IT–10795, Dec. No. IT–1, 10 FCSC Semiann. Rep. 133 (Jan.-June 1959).)

A claim filed on September 18, 1959 likewise was denied as not timely filed. Claimant objected, stating that inasmuch as he did not become a United States national until April 11, 1947, he would not have been an eligible claimant under the original provisions of Section 304, and accordingly did not file his claim until after the amendment of August 8, 1958 regarding nationality requirements. The Commission held, however, that Congress did not intend to authorize the filing of new Italian claims in addition to those filed within the original one-year filing period, and made no provision in the August 8, 1958 amendment to extend filing rights to new claimants. The denial of the claim was affirmed by Final Decision. (*Claim of Miloye M. Sokitch,* Claim No. IT–10957, Dec. No. IT–949–2.)

In the Matter of the Claim of

GEORGE A. ECONOMY

Claim No. IT–10056
Decision No. IT–748

Against the Government of Italy

Value of life estate deducted in determining award to remainderman, although the life interest was surrendered to him after the property loss occurred, where life tenant was not a United States national on the date of loss.

PROPOSED DECISION

This is a claim for $25,798.00 filed by George A. Economy, a citizen of the United States since his naturalization on January 24, 1927, for destruction of a two-story dwelling, a warehouse and a stable, and for loss of personal property, i.e., furniture, furnishings, books, two dowries, clothing, wine, oil, grain, etc., situated in the village of Kriekouki, Deme of Erythrai, Greece, arising out of the war in which Italy was engaged from June 10, 1940 to September 15, 1947.

The evidence and data before the Commission established that the claimant herein acquired title to the real property on the death of his father on December 15, 1934; that the decedent died testate and a certified copy of his will reveals that claimant took the property subject to a life estate or right of usufruct in

Urania Oeconomous, wife of the decedent. However, the record reveals that Urania Oeconomous executed a waiver of her right of habitation, or life estate, at Thebes, Greece on or about February 5, 1958, in favor of George Economy, the remainderman and claimant herein.

Under general provisions of the law, a life tenant may terminate his or her life estate by surrendering such estate to the remainderman or reversioner. However, since the document waiving the life estate was not executed until February 5, 1958, it would appear that at the time the damage occurred in or about April 1943, said property was encumbered with a life estate in favor of Urania Oeconomous, who at the time of loss was approximately 58 years of age. The claimant's interest in the damaged property was, therefore, a remainder interest and the value of that interest must be determined.

The Commission has adopted as a basis for the valuation of life and remainder interests the Makehamized mortality table appearing as Table 38 of United States Life Tables and Actuarial Tables 1939–41, and a 3½% interest rate compounded annually, as prescribed by the United States Treasury Department Regulations of June 3 and 4, 1953 for the collection of gift and estate taxes, respectively. (See 17 F.R. 4980, 26 C.F.R. 86.19 (f); 17 F.R. 5016, 26 C.F.R. 61.10 (i).) According to that method of valuation a remainder interest, which is subject to a life estate of a person aged 58 years, is valued at 57.809 percent of the entire estate.

The Commission finds from all the evidence and data before it that the fair and reasonable value of the subject property at the time of loss was $8,402.00. The claimant's remainder interest therein is 57.809 percent of that amount, or the sum of $4,857.11.

The above-mentioned will also provided that the claimant constitute dowries for his two stepsisters, Marigho and Sophia Oeconomous, and in event of his failure to provide suitable dowries, he was to be deprived of his right to the property. Evidence of record discloses that claimant has complied with the provisions of his father's will with respect to the aforesaid dowries. The Commission is of the opinion that by delivery of said dowries to the recipients thereof, claimant has divested himself of any right to or interest therein, and that therefore his claim for the loss thereof must be and hereby is denied.

The records further reveal that the destruction and loss of the property for which claim is made occurred on or about April 9, 1943, as a consequence of military operations in which Italy participated.

AWARD

On the above evidence and grounds, this claim is allowed and an award is hereby made to George A. Economy in the principal amount of $4,857.11, plus interest thereon in the amount of $1,467.66, being 6% per annum from April 9, 1943, the date of the loss, to April 23, 1948, the date of payment by the Government of Italy of $5,000,000 pursuant to the Memorandum of Understanding dated August 14, 1947.

Dated at Washington, D.C.
September 3, 1958.

Ownership interest.—The extent of a claimant's ownership interest in property was a question requiring determination in all claims based upon loss of property. The extent of ownership at the time of filing the claim was relevant to the determination of the amount of the award to which a claimant was entitled. If a claimant had a fractional interest in property at the time of its loss, and subsequently succeeded to additional interests by inheritance or other valid and effective transfer from others, he was the proper party claimant for the entire interest which was his when he filed the claim; but an award could be made only for so much of his interest as to which the requirements of nationality were fulfilled.

From the instant claim it may be seen that a life estate was an interest in property in claims against Italy under Section 304 of the Act, as in other claims programs; and that a claimant owning property subject to a life estate had less than full ownership, the value of his interest being calculated by deducting the value of the life interest, as determined from the Makehamized mortality table, from the total value of the property. This is discussed in the annotations to *Claim of Anny Aczel,* appearing at page 81. The *Economy* claim also is an example of an award covering less than claimant's interest in the property at the time of filing the claim, because failure to meet the nationality requirements as to a part of that interest precluded an award for that part. At the time of loss, claimant owned the property subject to a life estate in another person. That person subsequently waived her right, and the Commission recognized the consequent enlargement of claimant's interest to that of full ownership. However, the life tenant was not a national of the United States, so that claimant's remainder interest, as it existed before the waiver of the life interest, was the only portion which had been owned by a United States national from the time of loss to the time of filing the claim. The award was limited to the value of the remainder interest as of the time of loss.

Additional property, not included in the award in the *Economy* claim, had been transferred by claimant to his two stepsisters as

dowries. The stepsisters were not nationals of the United States. Claimant argued that compensation should be made for the loss of this property by awards to the stepsisters directly, or by an award to him in trust for them. The Commission held, however, that claimant had no ownership interest in this property at the time of loss or thereafter, and denied this portion of the claim.

In the Matter of the Claim of

MARIE VERDERBER

Against the Government of Italy

Claim No. IT–10488
Decision No. IT–92

Claims for property losses in Yugoslavia attributable to Italian action during World War II recognized under Section 304, Title III of the 1949 Act.
Exchange rate of Yugoslav currency, 44 dinars for $1.00, which prevailed in 1938, applied under Section 304.
Awards under Section 304 increased by interest at rate of 6% per annum from date of loss to April 23, 1948, date of payment by Italy pursuant to Memorandum of Understanding of August 14, 1947.

PROPOSED DECISION

This is a claim for $2,050.00 by Marie Verderber, a citizen of the United States since November 13, 1928, the date of her naturalization, and is for property destroyed in Tolin, Gotenica, Yugoslavia, as a result of the war in which Italy was engaged from June 10, 1940 to September 15, 1947.

Claimant previously filed a claim for the taking of her property by the Government of Yugoslavia under the Yugoslav Claims Agreement of 1948 and the International Claims Settlement Act of 1949. This claim was allowed and an award was made to the claimant only to the extent of value of her unimproved property in the amount of $205.98. The information and evidence before the Commission have been incorporated into the present claim.

It is established by certified extract from the Land Register of the County Court of Kocevje (Docket No. 29) that claimant was the owner of the family dwelling with barn and hayloft for which claim is made.

It is also established by the records of the Commission that claimant's dwelling, barn and hayloft, household furniture and farm machinery were destroyed during 1942 as a consequence of military operations in which Italy participated. The record

further shows that the assorted fruit trees were not damaged or destroyed. While the date of the loss is not definitely established by the record, it is deemed to have occurred on or about July 1, 1942 for the purpose of this decision.

The Commission finds, on the basis of all the evidence and data before it, that the fair and reasonable value of all the property destroyed was 24,900 dinars. This amount converted into dollars at the rate of 44 dinars to $1.00, the rate adopted by the Commission in making awards based upon 1938 valuations, equals $565.91.

AWARD

On the above evidence and ground, this claim is allowed and an award is hereby made to Marie Verderber, claimant, in the amount of $565.91 with interest thereon at 6% per annum from July 1, 1942, the date of the loss, to April 23, 1948, the date of payment by the Government of Italy of $5,000,000 pursuant to the Memorandum of Understanding dated August 14, 1947.

Dated at Washington, D.C.
January 30, 1957.

Losses outside of Italy.—Article 78 of the treaty of peace with Italy, signed at Paris, France, on February 10, 1947 and effective September 15, 1947 (61 Stat. 1245, T.I.A.S. 1648), provided for the restoration by the Government of Italy of all legal rights and interests in Italy, and the return of all property in Italy, of the United Nations and their nationals; or for the payment of compensation where the property could not be returned or had suffered injury or damage as a result of the war. Notwithstanding certain territorial transfers provided for in the treaty, Italy continued to be responsible under Article 78 for loss or damage sustained during the war by property of United Nations nationals in territory ceded to other countries and in the Free Territory of Trieste. Pursuant to the treaty, claims for property losses in Italy and the ceded territories were honored and compensated by the Conciliation Commission in Rome, Italy.

In addition, Italy paid to the United States Government the sum of $5,000,000.00 in accordance with a Memorandum of Understanding, signed and entering into force on August 14, 1947 (61 Stat. 3962, T.I.A.S. 1757), Article II of which stated ". . . this sum to be utilized, in such manner as the Government of the United States of America may deem appropriate, in application to the claims of United States nationals arising out of war with Italy and not otherwise provided for."

Under Section 304, Title III, of the 1949 Act, the Commission is directed to ". . . receive and determine, in accordance with the Memorandum of Understanding and applicable substantive law, including international law, the validity and amount of claims of nationals of the United States against the government of Italy arising out of the war in which Italy was engaged from June 10, 1940, to September 15, 1947, and with respect to which provision was not made in the treaty of peace with Italy."

Accordingly, awards made under Section 304 of the Act were for property losses occurring outside of Italy and the ceded territories and therefore not covered by the treaty of peace, as in the *Verderber* claim where the property was in Yugoslav territory occupied by Italian military forces in 1942 when it suffered damage attributable to Italian Army action.

Other awards were made for war damage in Greece (*Claim of George A. Economy,* appearing at page 272); in Albania (*Claim of Spiros Stoyas,* Claim No. IT–10683, Dec. No. IT–603); in Massawa, Eritrea, a former Italian colonv in Africa (*Claim of Federal Insurance Company,* Claim No. IT–10370, Dec. No. IT–456, 10 FCSC Semiann. Rep. 150 (Jan.-June 1959)); in North Africa (*Claim of National Jewish Welfare Board,* Claim No. IT–10517, Dec. No. IT–934); in Tunisia (*Claim of Socony Mobil Oil Company, Inc.,* Claim No. IT–10316, Dec. No. IT–947); in the Italian Concession of Tientsin, China, where Italian local authorities seized assets of an American corporation (*Claim of Chinese Engineering & Development Company, Inc.,* Claim No. IT–10017, Dec. No. IT–433, 10 FCSC Semiann. Rep. 148 (Jan.-June 1959)); in territory occupied by Italian troops in France (*Claim of Gerald Lewis Healey,* Claim No. IT–10390, Dec. No. IT–723); and on the high seas (*Claim of Garcia & Diaz, Inc.,* Claim No. IT–10440, Dec. No. IT–943).

It will be noted from the *Verderber* decision that under the Yugoslav claims program the same claimant received an award representing the value of her property in its postwar condition when it was taken by the Government of Yugoslavia. The award in the claim against Italy provided compensation for the earlier war damage, and there was no duplication or overlapping in the two awards.

Losses sustained on the high seas included so-called "cargo in transit" losses. Early in June 1940, a claimant's merchandise (cork) was loaded in Algeria aboard an Italian vessel bound for New York. The Government of Italy, in contemplation of the imminent declaration of war, ordered the Italian ship to approach an Italian port. The captain of the ship carried out this order whereupon the cargo was removed in the port of Naples and placed in storage at a warehouse. Subsequently, the cargo was sold by order of the Italian Government, resulting in a total loss to the claimant. The Commission held that the merchandise had been "in transit" from an Algerian port to New York and that the placement of the cargo in a warehouse in an Italian port without consent of the owner did not deprive the cargo of its "in transit" status. The loss was not considered as having occurred in Italy, but in transit from one foreign port to another; and the Commission concluded that the claim for the loss was compensable

under Section 304 of the Act. The loss included the value of the cargo plus freight and marine insurance expenditures. (*Claim of Armstrong Cork Company,* Claim No. IT–10000, Dec. No. IT–118, 10 FCSC Semiann. Rep. 138 (Jan.-June 1959).)

Personal injury or death.—Claims against Italy for compensation for personal injury or death were not dependent upon whether or not the action complained of occurred in Italy or the ceded territories, because the treaty of peace made no provision for such compensation in any event. Rather, compensability of this type of claim under Section 304 depended upon whether or not there had been a violation of a rule of international law. Such claims were determined in accordance with suggestions contained in Panel Opinion No. 9 of April 1956 as follows:

> The panel concludes that claims based upon death or personal injuries sustained by American civilians as a result of internment during the war by the Government of Italy are compensable under Section 304 of the Act, provided it is shown that a rule of international law had been violated. However, it is the opinion of the panel that the amount of awards in such cases should be determined in accordance with schedules and standards which govern similar claims under other federal statutes providing such benefits. It is therefore concluded that the following standards should serve as guides in making such determinations, and that in no event should any award exceed the sum of $7,500.

Pertinent parts of the supporting memorandum follow.

> Section 304 of the Act provides as follows:
>
> The Commission shall receive and determine, in accordance with the Memorandum of Understanding and applicable substantive law, including international law, the validity and amounts of claims of nationals of the United States against the Government of Italy arising out of the war in which Italy was engaged from June 10, 1940, to September 15, 1947, and with respect to which provision was not made in the treaty of peace with Italy.

In connection with a related issue, it was concluded that claims for loss or damage to property located outside of the territorial limits of Italy are compensable under the statute. (Panel Opinion No. 8, March 1, 1956.) The considerations which led to that conclusion have a direct bearing on the instant issues. To this extent at least they warrant attention and merit recapitulation.

In general, the treaty of peace with Italy made provision for property losses sustained in Italy. (Article 78.) No other specific categories of claims appear to be covered by those provisions. Accordingly, the broad language of section 304 of the Act, referring to claims for which provision was not made in the treaty of peace, may reasonably be construed as authority to compensate claims arising out of death or personal injuries. By the same token, it may be concluded that claims of any type

which are not covered by the express terms of the treaty may be recognized under the statute. How far this theory may be projected is a matter which the Commission will have to consider as other related issues are presented. The discussion herein is restricted to the question concerning the compensability of claims based upon death or personal injuries suffered by American civilians as a result of internment by the Government of Italy during World War II.

The legislative history of Public Law 285 appears to suggest that the answer to the question should be in the affirmative. At the hearings before the Senate Committee on Foreign Relations, Commissioner Henry J. Clay stated, in part as follows (Hearings on July 8 and 11, 1955, p. 61):

> The purpose of the so-called Lombardo fund of $5 million is, in general, to take care of property losses relating to property located outside of Italy and attributable to Italian military action . . . and certain personal injury and similar non-property losses which arose in Italy itself but were also not covered by the treaty.

At the same hearings, a local attorney made the following statement (*Id.* at p. 93):

> Secondly, it would provide for the payment of claims for personal injury, such as, for example, claims of American citizens who, having been caught in Italy, actively helped the underground forces fighting the Fascists and the Nazis and who were thereby injured, many in combat.

At the hearings before the House Committee on Foreign Affairs, Commissioner Henry J. Clay made the following remarks (Hearings, on March 22, 30, April 19, 20, 21, and 22, 1955, pp. 92–93):

> It was not considered desirable in the drafting of the proposed bill to undertake a detailed or limited list of the various categories of claims which would be compensated from the $5 million fund under title III.
>
> The Commission feels that this is a kind of matter which would preferably be left for administrative determination by the Commission. But to give the Committee an idea of the nature and the type of claims that have already been submitted since the signing of the Memorandum of Understanding there are approximately 60 claims that have been filed with the State Department which involve right to recover from this $5 million fund.
>
> . . . These are the types of claims which set forth the type of relief desired: . . . the losses resulting from the internment of United States civilians in Italy and in other countries under Italian military control. Death claims resulting from malnutrition

or similar causes attributable to war with Italy. And lastly, claims for personal injury resulting from inhumane treatment to which United States civilians outside of Italy were allegedly subjected by Italian military authorities.

The House Committee on Foreign Affairs which favorably reported on H.R. 6382, the bill finally enacted as Public Law 285, made the following statement with respect to section 304 (House Report No. 624, 84th Congress, 1st Session, p. 14):

> Property losses outside of Italy and claims for personal injury, suffering, and other losses would be compensable.

It is interesting to note that the War Claims Commission, in its supplementary report (House Document No. 67, 83d Congress, 1st Session, p. 158) on claims arising out of World War II, recommended that the $5 million fund be transferred to the War Claims Fund and that the augmented fund be utilized to pay "internee claims based on internment in Italy, and claims for disability and death resulting from injuries sustained in Italy, or as a direct result of Italian action."

Further evidence to support the conclusion that the issue herein warrants an affirmative response appears from a study of the negotiations which preceded the approval of the Memorandum of Understanding. Throughout these negotiations, specific categories of claims were proposed to be included in the agreement. On each occasion, a provision was proposed for the benefit of civilian American citizens who suffered personal injuries or death as a result of the war with Italy. Inasmuch as the negotiators failed to agree on the categories of claims, it was finally decided that the United States have complete discretion in determining which claims should be compensated from the $5 million fund. Accordingly, Article II of the Memorandum of Understanding provides as follows:

> The Government of Italy agrees to pay and deposit with the Government of the United States of America on or before December 31, 1947, the sum of $5,000,000 (five million dollars) in currency of the United States of America, this sum to be utilized, in such manner as the Government of the United States may deem appropriate, in application of the claims of United States nationals arising out of war with Italy and not otherwise provided for.

In this connection, it should be noted that section 304 of the Act speaks of claims for which provision was not made in the treaty of peace with Italy while the Memorandum of Understanding relates to claims not otherwise provided for. Literally, the statute may be construed as authority to compensate claims of every type

and description for which provision was not expressly made in the treaty of peace with Italy. On the other hand, the Memorandum of Understanding may be interpreted to imply that all claims for which provision has been made, whether by the terms of the treaty or otherwise, shall not be compensable.

This particular issue is further complicated by the provision of the Act which requires the Commission to determine claims in accordance with the Memorandum of Understanding and applicable substantive law, including international law. Stated simply, the issue is: Will the provisions of the Memorandum of Understanding, which is a part of international law, prevail over the provisions of section 304 insofar as they may conflict with one another? This problem will be treated at greater length in a subsequent discussion relating to the compensability of claims of military prisoners of war of the Government of Italy. Inasmuch as provision has not been made, either in treaty of peace or otherwise, for the payment of claims of American civilians who suffered death or personal injuries as a result of Italian action during World War II, the resolution of that issue can have no bearing on the question herein. There are, however, other factors which should be considered before determining the instant issue.

The language of Section 304 of the Act, pertaining to claims "against the Government of Italy," necessarily implies that the claim must be in the nature of an international claim, a claim which may be espoused by the United States. It is universally recognized that "Upon the outbreak of war a belligerent acquires a broad right to control enemy persons within its domain." (III Hyde, International Law, §§ 616, 617, 676 (2nd rev. ed. 1951).) Thus, a state may detain, intern, or even expel enemy subjects without violating international law. (*Ibid.*) However, while international law does not prescribe precise procedures which must be followed respecting alien enemies, the requirements of justice prohibit cruel and inhumane treatment. In general, international law does not recognize claims for personal injuries resulting from legitimate acts of war. (Borchard, The Diplomatic Protection of Citizens Abroad, § 103.) Accordingly, personal injuries suffered during battle, siege, or bombardment are not compensable. (*Ibid.*) The rights of civilians are usually expressed in treaties. For example, the treaty of peace with Italy, concluded on February 26, 1871, provides, in part, as follows (I Malloy Treaties, etc. 975 (1910 Art. XXI)):

> If, by any fatality . . . the two contracting parties should be engaged in war with each other, they have agreed and do agree, now for then, that . . . all women and children, scholars of every faculty, cultivators of the earth, artisans, mechanics, manufacturers, and fishermen . . . and, in general, all others

whose occupations are for the common subsistence and benefit of mankind, shall be allowed to continue their respective employments, and shall not be molested in their persons . . . .

Such treaties, in which provision is made for the security of the persons of alien enemies, are mere vehicles for expressing the existing and recognized rules of nations (Borchard, The Diplomatic Protection of Citizens Abroad, § 46). It would therefore appear that claims of civilians based upon the mere fact of detention should not be deemed to be compensable under section 304 of the Act, nor claims for personal injuries, in the absence of a showing that a rule of international law has been violated.

It may, however, be contended that claims for personal injuries and death arising out of the war in which Italy was engaged should not be compensable on the ground that it would be against public policy. The arguments in support thereof would proceed by examining and discussing the legislative history of Public Law 896, 83d Congress, under which provision was made for civilian American citizens who were captured at certain areas in the Pacific during World War II.

The House Interstate and Foreign Commerce Committee which favorably reported on H.R. 4044, the bill finally enacted as Public Law 896, stated, in part, as follows (House Report No. 976, 80th Congress, 1st Session, pp. 2–7) :

> The record shows that while as a matter of national policy no warning was given to American citizens to leave the Philippines and other American Territories and possessions, ample warnings were given to American civilians who resided in Europe and Asia . . . . It may, therefore, be said that the American Government discharged its obligation to American citizens who resided in Asia and Europe, and that they chose to stay on at their own risk. . . . On the other hand, it appears to your committee that the United States Government has a clear moral obligation to relieve the distress of those citizens who resided in the Philippines and other American Territories and possessions and who, as a matter of national policy, were not given any warnings to leave and who consequently . . . "found themselves entrapped."

In view of the foregoing, it may be urged that claims of Americans who remained in Italy should not be included in any program under Public Law 285 and that in the absence of express language in the statute to cover such claims, the rationale for Public Law 896 should be deemed to be controlling. While this argument is quite persuasive, it nevertheless must be considered in the light of the distinctions between the War Claims

Act and the International Claims Settlement Act. Under the War Claims Act, the funds utilized for the purpose of paying claims were derived from assets of the enemy seized under the Trading With the Enemy Act. However, the funds provided under section 304 of the International Claims Settlement Act were deposited with the United States by Italy pursuant to the Memorandum of Understanding "in application of the claims of United States nationals arising out of the war with Italy and not otherwise provided for." These circumstances clearly establish that the considerations which governed the claims programs under Public Law 896 are inapplicable under Public Law 285.

In answer to the further contention that a claims program providing for disability and death benefits would necessarily be a great administrative burden, it may be said that any claims program is a burden to a lesser or greater extent. Determining the standards which should be applied in fixing the amount of awards for death or personal injuries is no greater burden than that encountered in the administration of section 7(b) through (g) of the War Claims Act, under which it was necessary to establish the "postwar cost of replacement" of property and the amount required to replace "facilities and capacity." Various guides are available in this respect.

Under the Longshoremen's and Harbor Workers' Compensation Act (Public Law 803, 69th Congress, approved March 4, 1927; 44 Stat. 1424; 33 U.S.C. 902 *et seq.*), as amended, disability benefits are computed by multiplying 66⅔ per centum of the average weekly wages of a claimant by a fixed number of weeks depending upon the nature of the disability, with certain limitations respecting the amount of compensation. Death benefits are computed on the same basis, in addition to a grant of "reasonable funeral expenses not exceeding $400." Similar standards appear in the Federal Employees' Compensation Act (Public Law 267, 64th Congress, approved September 7, 1916; 39 Stat. 742; 5 U.S.C. 751 *et seq.*), and under section 5(f) of the War Claims Act, pertaining to civilian American citizens who were eligible for detention benefits under Public Law 896.

In the event it is concluded that claims of civilian Americans, based upon death or personal injuries, should be recognized under section 304 of the Act, the standards set forth hereinafter are recommended for computing awards. While these standards have been suggested by analyses of the three aforementioned statutes which provide such benefits in other cases, they have been modified and simplified to reduce the administrative burden. The following guides appear to be reasonable:

Compensation shall be awarded on the basis of death or personal injury established as of the date of deter-

mination of the claim and shall be paid by lump sum payment as follows:

(a) In case of death, $7,500.

(b) In case of permanent total disability, $7,500. The loss of both hands, both arms, both feet, both legs, both eyes, or any two thereof shall constitute prima facie evidence of permanent total disability. In all other cases, permanent total disability shall be determined in accordance with the facts.

(c) In case of permanent partial disability, compensation shall be as follows:

1. Loss of arm, $3,500.
2. Loss of leg, $3,000.
3. Loss of hand, $2,650.
4. Loss of foot, $2,165.
5. Loss of eye, $1,750.
6. Loss of thumb, $640.
7. Loss of index finger, $350.
8. Loss of middle finger, $225.
9. Loss of ring finger, $215.
10. Loss of little finger, $90.
11. Loss of great toe, $325.
12. Loss of other than great toe, $100.
13. Loss of hearing of one ear, $650; of both ears, $2,500.
14. Loss of more than one phalanx of a digit shall be equal to the loss of the entire digit. Loss of the first phalanx shall be equal to one-half of the compensation for loss of the entire digit.
15. Loss of an arm or leg amputated at or above the elbow or knee, respectively, shall be equal to the loss of an arm or leg; if amputated between the wrist and elbow or between the knee and ankle, it shall be equal to the loss of a hand or foot.
16. Loss of binocular vision or of 80 per centum or more of the vision of an eye shall be equal to the loss of an eye.
17. Loss of two or more digits, or one or more phalanges of two or more digits, of a hand or foot, shall be proportioned to the loss of the hand or foot occasioned thereby.
18. Permanent total loss of the use of a member shall be equal to the loss of the member.
19. Permanent partial loss or loss of use of a member shall be proportioned to the loss of the member occasioned thereby.
20. Compensation for serious facial or head disfigurement shall be equitable and shall not exceed $2,000.

21. In all other cases of disability or personal injury, compensation shall be determined in accordance with the facts.

Thus an award of $1,000.00 was made to a claimant who suffered personal injuries as a result of maltreatment while attending services in a synagogue in Split, Yugoslavia, when Italian troops entered the building, struck the worshipers with gun butts, and ejected them from the building. (*Claim of Zadik Danon,* Claim No. IT–10837, Dec. No. IT–231–2, 10 FCSC Semiann. Rep. 160 (Jan.-June 1959).)

On the other hand, a claim filed for compensation for internment and maltreatment, loss of earnings during internment, recovery of value of personal property sold during the internment, and nonpayment of subsidies allegedly payable to internees was denied. The Commission held that the mere fact of internment is not a violation of international law and that the evidence failed to disclose that claimant suffered treatment which was not in accord with the generally accepted precepts of international law. Additionally, the Commission held that the loss of prospective earnings is not compensable because of their uncertain and speculative nature and that the sale of personal property by claimant's wife in order to maintain herself and family during claimant's period of internment was voluntary, and did not constitute a loss compensable under Section 304 of the Act. As to the claim for loss of subsidies, the Commission held that claimant failed to submit evidence that the Government of Italy was bound under international law to pay subsidies to civilian internees, such as the claimant. (*Claim of Louis Champa,* Claim No. IT–10089, Dec. No. IT–250–2.)

A similar claim in which compensation was sought for imprisonment by the Italian Government was denied because claimant failed to establish that any rule of international law was violated during his internment and detention. (*Claim of Leo Joseph Landshut,* Claim No. IT–10006, Dec. No. IT–246, 10 FCSC Semiann. Rep. 139 (Jan.-June 1959).)

Currency exchange rate.—The evidence and data before the Commission in the *Verderber* claim indicated that claimant's property suffered damage which, expressed in Yugoslav prewar currency, amounted to 24,900 dinars. Based upon the decision in the *Claim of Joseph Senser,* issued in the Commission's proceedings under the Yugoslav Claims Agreement of 1948 and appearing at page 151, the Commission determined that the applicable conversion rate of the prewar dinar currency was 44 dinars for $1.00. Where the amount of the loss appeared established in some other foreign currency, such as in French francs, the amount of francs was converted into dollars at the established rate of exchange in effect at the time of the loss. (*Claim of Armstrong Cork Company,* Claim No. IT–10000, Dec. No. IT–118, 10 FCSC Semiann. Rep. 138 (Jan.-June 1959).)

Interest on awards under Section 304 of the Act.—In connection with awards under Section 303 of the Act, the Commission concluded that interest should be computed at the rate of 6% per annum, except with respect to war damage awards under Section 303(1). (See annotations to the *Claim of George H.*

Earle, III, and United States of America, at page 190.) War damage claims under Section 303(1) were based primarily on the peace treaties, which not only did not provide for the payment of accrued interest, but expressly limited payment of compensation to two-thirds of the established loss. The Memorandum of Understanding concerning Italian claims, on the other hand, did not provide for any limitation of losses but left the distribution of the $5,000,000.00 lump-sum payment to the discretion of the United States Government. Moreover, the fund appeared to be sufficient for the payment of the principal and interest of all anticipated awards under Section 304. Having considered all this, the Commission determined that, in claims under Section 304 of the Act, interest at the rate of 6% per annum should be included in awards from the date of loss to April 23, 1948, the date of payment of the $5,000,000.00 by Italy to the United States Government pursuant to the Memorandum of Understanding of August 14, 1947. The *Verderber* claim provides an example of such an award.

Where a claim was asserted by a subrogee, such as an insurance company which made payment to the insured who suffered the loss, interest was computed from the date of payment to the insured, and not from the date of the original loss. If payment was made subsequent to April 23, 1948, the date on which the sum of $5,000,000.00 was deposited by the Government of Italy, no interest was allowed on the award. (*Claim of The Continental Insurance Company,* Claim No. IT–10278, Dec. No. IT–455, 10 FCSC Semiann. Rep. 151 (Jan.-June 1959).)

In the Matter of the Claim of

ALBERT FLEGENHEIMER

Against the Government of Italy

Claim No. IT–10555
Decision No. IT–877

Claim based on loss of property in Italy denied under Section 304 of the 1949 Act on the ground that provision was made therefor in the treaty of peace, even though claim filed under the treaty was rejected by Conciliation Commission.

FINAL DECISION

This is a claim for $8,000,000 filed by Albert Flegenheimer against the Government of Italy under Section 304 of the International Claims Settlement Act of 1949, as amended,[1] for loss of 47,907 shares of stock of the Societa' Finanzeria Industriale Veneta, an Italian corporation, on or about March 18, 1941, as a result of an asserted sale thereof in which force or duress had

[1] 22 U.S.C. 1641 (1964); hereinafter referred to as "the Act".

allegedly been exerted by a representative of the Italian Government.

In a Proposed Decision dated December 30, 1958, the claim was held to be not compensable under Section 304 of the Act for the following reasons: claimant failed satisfactorily to establish his United States nationality and therefore failed to qualify as an eligible claimant; provision for such claim was made in the Treaty of Peace with Italy;[2] and lack of proof that any force or duress was exerted directly or indirectly by the Government of Italy, its representatives or agents.

Claimant objected to the Proposed Decision, and argument was held before the Commission on April 17, 1959, as requested by the claimant, on the nationality and Peace Treaty issues only.

It is contended by the claimant, first, that he has been a citizen of the United States since birth and is, therefore, a national of the United States within the meaning of the Act.

For the purpose of this decision and for such purpose alone, we shall accept this contention.

It is contended by the claimant, secondly, that provision was *not* made with respect to his claim in the Treaty of Peace with Italy and, accordingly, the claim must be determined under Section 304 of the Act. This contention is thus the sole issue presently before the Commission.

For the reasons hereinafter indicated, we can not accept this contention. It is the opinion of the Commission that the law and the overwhelming weight of logic prove conclusively that provision for such claim *was* made in the Treaty of Peace with Italy, and therefore the claim of Albert Flegenheimer before the Foreign Claims Settlement Commission of the United States must be denied.

This Commission operates under clear Congressional mandate evidenced in the Act; a domestic law to be administered by a domestic Governmental agency. Section 304, although it references the Memorandum of Understanding,[3] nowhere mentions by specific word any Conciliation Commission. Nor does the Act even suggest the possibility that the Foreign Claims Settlement Commission would be bound by any decisions of such an international tribunal.

The Act gives the Commission the right and the duty to receive and determine claims of nationals of the United States against the Government of Italy . . . with respect to which *provision was not made in the Treaty of Peace with Italy.*[4]

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[2] 61 Stat. 1245 (1947), T.I.A.S. 1648, February 10, 1947.

[3] Art. II, Memorandum of Understanding between the Government of the United States and the Government of Italy regarding Italian assets in the United States of America and certain claims of United States nationals, 61 Stat. 3962, T.I.A.S. 1757, dated August 14, 1947 (commonly known as "Lombardo Agreement").

[4] Section 304.

It becomes our duty, then, to determine whether provision for this claim was made in the Treaty of Peace. We think it clear that it was.

The Treaty requires that the Italian Government shall invalidate transfers involving property, rights and interests of any description belonging to United Nations nationals, where such transfers resulted from force or duress exerted by Axis Governments or their agencies during the war.[5]

The key word in the crucial sentence of the Act is obviously "provision" . . . i.e., whether the claim was *provided for*. Simple statutory rules of construction would first suggest examining the normal dictionary meaning of a word. One could search any dictionary *ad infinitum* without finding "provided for" defined as synonymous with "satisfied."

Claimant in his argument begins by using the words "provided for," but thereafter abandons them and substitutes the word "satisfied." If this Commission is to have jurisdiction over all claims not satisfied by the Italian Government, it requires only one small step further to argue all claims not satisfied in full. Indeed claimant makes this exact point.

This would mean that any claimant believing his Italian award to be too small, or receiving two-thirds and desiring to get the remaining third,[6] could appear before the Foreign Claims Settlement Commission and be "satisfied in full." Merely to state this proposition illustrates its manifest absurdity.

If Congress had intended "provided for" to mean "satisfied," it could easily have employed the latter word. Or if Congress had intended "provided for" to mean "paid," this word also was available. It is significant that Congressional draftsmen chose not to use either "satisfied" or "paid."

In brief, claimant is saying that this Commission must take jurisdiction whenever the Conciliation Commission refuses to take jurisdiction itself. We cannot agree that any such basic control over a United States Commission is inherent in the powers of such an international tribunal. Resulting inequities could easily destroy the entire claims program enacted by Congress.

The traditional philosophy of claims programs in the United States envisions strict deadlines for all programs. Congress sets a specific span of time in which the United States tribunal is to complete its work. Payment is intended to go to the basic claimants, not to their grandchildren or great-grandchildren. This Commission has been ever conscious of this fundamental philosophy, and has in fact completed all its programs on time—as

[5] Art. 78, par. 8.

[6] Art. 78, par. 4 (a), Treaty of Peace, provides for the payment by the Government of Italy of only two-thirds of the loss suffered.

directed by Congress. The Italian program must be completed August 9, 1959.

Article 83 of the Treaty establishing the Conciliation Commission makes no reference to the time in which all applications before it must be completed. There is thus no deadline whatsoever on the work of the Conciliation Commission.

It might well be queried how the Congressional policy of finality in United States claims programs could ever be carried out, if the Foreign Claims Settlement Commission was required to take jurisdiction of every case after jurisdiction was refused by the Conciliation Commission—bearing in mind the lack of any time limit on the work of the Conciliation Commission.

Further in the interest of finality, Congress has denied claimants the privilege of court review.[7]

Can it seriously be argued that Congress would deny judicial review by United States courts in the interest of finality, and at the same time permit substantial control over a United States Commission by an international tribunal? And even more unusual —by an international tribunal with no deadline on its program?

Carrying claimant's contention further, if those who "never had their day in court" because the door was shut by the Conciliation Commission on ineligibility grounds are to be heard by the Foreign Claims Settlement Commission, what should be done with claimants who were turned down by the Italian Minister of the Treasury or by the Italian Interministerial Commission [8] on the same grounds? Clearly, these cases, too, would have to be heard by the Foreign Claims Settlement Commission.

Thus a cabinet official or agency, subservient to a foreign prime minister, and subject to all the vagaries of national and international politics would have a powerful control over an independent United States Commission.

What of those cases denied in Italy on the merits? To achieve consistency, would not these, also, have to be then heard by the Foreign Claims Settlement Commission?

Claimant contends the legislative history of Section 304 of the Act shows that Congress intended that this Commission *must* accept claims of United States citizens which have been rejected by the Conciliation Commission on the ground of the alleged ineligibility of the claim.

Congress intended the Foreign Claims Settlement Commission to be independent. It was created free from executive, legislative or judicial control. Certainly Congress did not intend an independent United States quasi-judicial Commission to be subservient

[7] Section 314.

[8] Created pursuant to letter dated August 14, 1947, — a part of the Memorandum of Understanding, *supra*.

to an international tribunal, or worse, to a foreign official. The end result of claimant's contention would be administrative and judicial chaos.[9]

Nor can we ignore Congressional approval of a $5,000,000 settlement fund. In analyzing Congressional intent, we might not be remiss in querying whether Congress had in mind payment of claims in the present category, one single claim of which is for $8,000,000 alone.

If any further proof of intent were needed, said proof would lie in the clear language of the Memorandum of Understanding stating:

> the sum of $5,000,000 . . . to be utilized in such manner as the Government of the United States . . . may deem appropriate . . . .[10]

Such language suggests anything but subservience to a foreign tribunal.

Finally, it is strange, to say the least, for claimant to urge this Commission to accept the judicial determination of the Conciliation Commission re ineligibility, and ignore the basis of such decision . . . i.e., lack of American citizenship. Claimant has strongly asserted his American citizenship before the Foreign Claims Settlement Commission, and at the same time demands that we accept the decision of the Conciliation Commission which denied his claim on that precise ground. Claimant has here achieved a true masterpiece of inconsistency.

Thus the clear and obvious meaning of the language of the Act, careful analysis of Congressional intent, and the application of simple logic all militate against acceptance of claimant's theory of the case.

We hold that the claim of Albert Flegenheimer, whether paid or rejected by the Conciliation Commission, has been "provided for" within the meaning of the term as contained in Section 304 of the Act. Therefore, the Foreign Claims Settlement Commission has no jurisdiction in this case.

For the foregoing reasons, this claim must be, and hereby is denied.

The Commission finds it unnecessary to make determinations with respect to other contentions of this claimant.

Dated at Washington, D.C.
May 11, 1959.

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[9] In addition, the possible surplusage of funds (Memorandum of Understanding, 8 U.S.T. 1725, (T.I.A.S. 3924) dated October 22, 1957) to be used by the Conciliation Commission to pay claims of American nationals under the Treaty may well result in future reexamination of American claims which have already been denied. Such action would add further confusion if the Foreign Claims Settlement Commission would have to await final decision of the Conciliation Commission.

[10] Art. II, Memorandum of Understanding, 61 Stat. 3962, T.I.A.S. 1757.

Claims covered by peace treaty.—As shown in the annotations to *Claim of Marie Verderber,* appearing on page 276, awards for property losses in claims against Italy under Section 304 of the 1949 Act were based upon property outside of Italy and the ceded territories, as to which no provision was made in the treaty of peace.

The other side of the coin is displayed in a claim for compensation for damage to real property in Montenero, Italy, which was denied under Section 304 of the Act because provision for such claims was made in the treaty of peace with Italy. (*Claim of Ovidio Antonio Bonaminio,* Claim No. IT–10073, Dec. No. IT–298, 10 FCSC Semiann. Rep. 146 (Jan.-June 1959).) In the same manner, a claim based upon damage to property in Atina, Frosinone, Italy, for which claimant had received 325,000 lire from the Government of Italy, was denied despite claimant's plea that the amount of compensation received was inadequate. (*Claim of Enrico Caira,* Claim No. IT–10933, Dec. No. IT–398, 10 FCSC Semiann. Rep. 147 (Jan.-June 1959).) In another claim, the property was in the Dodecanese Islands, which were ceded by Italy to Greece under Article 14 of the treaty of peace. Inasmuch as Article 78 of the treaty placed responsibility upon Italy for property losses in territories ceded by Italy under Article 14, this claim was denied under Section 304 of the Act because provision therefor had been made in the treaty of peace. (*Claim of Sam Sapounakis,* Claim No. IT–10092, Dec. No. IT–208, 10 FCSC Semiann. Rep. 146 (Jan.-June 1959).) Also denied were claims for war damage in Pola and Fiume, cities ceded to Yugoslavia (*Claim of Yolanda Tomer,* Claim No. IT–10009, Dec. No. IT–316, and *Claim of John Pierino Contus,* Claim No. IT–10032, Dec. No. IT–318), as well as in other former Italian territory ceded to Yugoslavia (*Claim of John Pelozo,* Claim No. IT–10164, Dec. No. IT–311).

In the *Flegenheimer* claim, loss allegedly was suffered on June 6, 1941 when claimant was "forced" to sell to Italian interests certain shares of stock at a price greatly below the actual value of the stock. Claimant first filed a claim for compensation with the Conciliation Commission organized for the settlement of claims of United States nationals against Italy under the provisions of the treaty of peace. The Conciliation Commission declined to entertain the claim because, according to its findings, claimant was not a national of the United Nations at the time of loss. Claimant thereafter filed his claim with the Foreign Claims Settlement Commission contending, but not establishing, that he had been a United States national since birth, and arguing that inasmuch as his claim had been denied by the Conciliation Commission, it was not a claim for which provision had been made in the treaty of peace. The Commission held, however, that a claim arising from the circumstances as alleged by claimant would be one within the provisions of the treaty of peace and therefore not within the purview of Section 304 of the Act, and denied the claim as not compensable under the Act regardless of whether it were allowed or rejected by the Conciliation Commission.

In another type of claim covered by the treaty of peace, the heirs of an estate filed a claim for relief from a patrimonial tax

levied during the war by the Government of Italy on the assets of the estate. Under Article 78 of the treaty of peace, United Nations nationals and their property were exempted from any exceptional taxes, levies or imposts imposed by the Italian Government between September 3, 1943 and September 15, 1947 to meet the costs of the war; and any sums so paid were to be refunded. Finding that the patrimonial tax was of the type described in the treaty provision, the Commission denied the claim as not compensable under Section 304 of the Act. (*Claim of Clotilde Sonnino Treves, et al.*, Claim No. IT–10728, Dec. No. IT–267, 10 FCSC Semiann. Rep. 144 (Jan.-June 1959).)

In the Matter of the Claim of

GORDON THEOPHILUS MALAN

Claim No. IT–10066
Decision No. IT–434

Against the Government of Italy

Claim based upon Italian Government bonds denied under Section 304 because provision made therefor in treaty of peace. Claim for loss due to devaluation of lire on deposit in Italian bank denied. Currency reform is exercise of sovereign authority not giving rise to claim.

PROPOSED DECISION

This is a claim for $23,070.00 filed by Gordon T. Malan for himself and on behalf of the other surviving heirs of Theophile Daniel Malan, deceased, for losses sustained as holders of certain bonds and securities and for devaluation of a lire deposit with the Banca d'Italia in Turin, Italy, arising out of the war in which Italy was engaged from June 10, 1940 to September 15, 1947.

Section 304 of the aforesaid Act provides for the receipt and determination by the Commission, in accordance with the Memorandum of Understanding and applicable substantive law, including international law, of the validity and amounts of claims of nationals of the United States against the Government of Italy, arising out of the war in which Italy was engaged from June 10, 1940 to September 15, 1947, and with respect to which provision was not made in the Treaty of Peace with Italy.

The record reveals that the deceased father of the claimant deposited for safekeeping with the Bank of Italy, Turin, Italy, certain prewar bonds, the face value totaling 295,000 lire, namely, Revenue Bonds 5%, Revenue Bonds 3.5%, B. Tes Nov. 5% 40–41, B. Tes Nov. 4% 94–3–2, Elfer 4.5%, City of Turin 5%, and City

of Rome 5%, on which service was suspended at the beginning of World War II.

Italy was obligated under the Treaty of Peace, the appropriate provisions of which became an integral part of the Memorandum of Understanding, an agreement between the Government of the United States and the Government of Italy, to provide for the settlement of its prewar contractual obligations, including bonds, and in connection with formulating an adjustment of Italian dollar bonds, the Government of Italy undertook to guarantee principal and interest of certain described bonds, among them the City of Rome bonds, which are considered to be obligations of semi-governmental agencies. Pursuant to authority granted it by the Government of Italy, the Italian Credit Consortium for Public Works was authorized to offer its bonds in exchange for the outstanding principal amount of the obligations of City of Rome bonds.

Therefore, inasmuch as the adjustment of certain unrepatriated bonds has been authorized and provision for the settlement of prewar contractual obligations, including bonds, has been made by the aforesaid agreement, it would appear from the record that the claimant has failed to exhaust all the remedies available to him against the Government of Italy.

It is suggested by the records that the decedent was the possessor of "special blocked account," No. 7588, on deposit with the above-mentioned bank. Claim is also made for the difference between the value of such account as it existed on September 3, 1939, the date of the deposit at which time the value of the lire assertedly was 19.50 lire to $1.00 and the value of said account at the time of filing the claim, when the rate of exchange was 625 lire for $1.00, resulting in a substantial devaluation of said deposit.

It is well established in international law that a currency reform resulting in the devaluation of a nation's currency is an exercise of sovereign authority which does not give rise to a claim against that nation. This Commission has repeatedly so held. (See claims of *Irene Hill Mascotte,* HUNG–20435; *Walter J. Zuk,* SOV–40492; *Gus G. Vtlsamakis,* IT–10128.)

The Commission is of the opinion that any other construction would be unwarranted and contrary to the evident import of the statute which provides for claims against the Government of Italy. While the claimant may have sustained a loss, it is concluded that the loss is not compensable under the Act.

For the foregoing reasons, the claim should be and is hereby denied.

The Commission finds it unnecessary to make determinations with respect to other elements of this claim.

Dated at Washington, D.C.
December 18, 1957.

Bond claims.—Article 81 of the treaty of peace with Italy provided that prewar contractual obligations of the Government of Italy or its nationals to the Government or nationals of one of the Allied and Associated Powers were in no way impaired by the existence of the state of war. In the Memorandum of Understanding, which included the payment of $5,000,000.00 for claims "not otherwise provided for," the Government of Italy recognized the existence of legitimate claims of United States nationals arising out of contractual obligations incurred prior to the outbreak of war, and agreed to make every effort to settle them at an early date.

The instant claim illustrates a denial of a portion of a claim based upon bonds of the Government of Italy, as a type of claim otherwise provided for, and not compensable under Section 304 of the 1949 Act. Another claim, based upon bonds of the Italian Postal Savings Bank, was denied in the same manner. (*Claim of James De Marco,* Claim No. IT–10086, Dec. No. IT–249, 10 FCSC Semiann. Rep. 142 (Jan.-June 1959).)

A claim was asserted by bondholders of an Italian shipping company which owned a vessel seized and vested during the war by the United States Government. Claimants first filed a claim with the Alien Property Custodian which was dismissed because the vested property had been returned to its Italian owners. Claimants thereupon filed a claim with this Commission, which was denied because provision was made under the treaty of peace for claims involving prewar contractual agreements, including bonds. (*Claim of Walter Friedlander, et al.,* Claim No. IT–10425, Dec. No. IT–458, 10 FCSC Semiann. Rep. 152 (Jan.-June 1959).)

Currency reform.—A further portion of the instant claim, based upon Italian lire in a blocked account in an Italian bank which had been reduced in value from an asserted 19.50 lire for $1.00 at the time of deposit to 625 lire for $1.00 at the time of filing the claim, was denied on the ground that currency reform resulting in devaluation is an exercise of sovereign authority which does not give rise to a claim against the nation exercising the right. Another claim against Italy was based upon a loan of 300,000 drachmae to the Skopeles Harbor Fund in Skopeles, Greece, in 1938 when assertedly its value was $3,000.00. Thereafter the drachma became so deflated as to lose its value for all practical purposes, and resulting Greek currency reforms had the effect of extinguishing the debt. The Commission expressed grave doubt that the devaluation of Greek currency had any immediate relationship to Italy's participation in World War II

but, without ruling on that question, denied the claim by finding that regulation of currency is an exercise of sovereign authority, and an internal matter the effects of which may not be attributable to the government of another nation. (*Claim of Gus G. Valsamakis,* Claim No. IT–10128, Dec. No. IT–300.)

Other losses not compensable under Section 304.—The language of Section 304 of the 1949 Act includes claims of United States nationals "against the Government of Italy arising out of the war in which Italy was engaged from June 10, 1940, to September 15, 1947, and with respect to which provision was not made in the treaty of peace with Italy." Although this wording does not specifically limit claims to those for loss or damage caused by Italian action, the references to claims against the Government of Italy and to claims not provided for in the treaty of peace with Italy make clear that it was not intended to include losses caused by the actions of other countries with whom the United States was at war, merely because Italy was engaged in the same war from June 10, 1940 to September 15, 1947. Accordingly, the Commission denied claims where the damage was attributable to German military forces, even though occurring in territory occupied by Italian troops prior to the German military occupation. For example, where a claimant asserted that the loss of his property occurred on January 17, 1944 in Albania, which had been occupied by Italian troops until September 1943, and where the evidence clearly indicated that the damage was caused by German military activities, the claim was denied for the reason that the Commission had no jurisdiction with respect to such losses under Section 304 or any other provision of Title III of the Act. (*Claim of Dimitrios Romanos,* Claim No. IT–10317, Dec. No. IT–255, 10 FCSC Semiann. Rep. 143 (Jan.-June 1959).) Under subsequent legislation, this claimant received an award under the general war claims program of the Commission, discussed herein beginning at page 572. Similarly, a claim based upon damage caused by German action on April 11, 1944 in Karpenision, Greece, was denied. (*Claim of John George Poulos,* Claim No. IT–10395, Dec. No. IT–13–2.)

In another instance, a claim based upon damage caused by Italian action in Gore, Ethiopia, on or about May 3, 1936, was denied because it did not arise out of the war in which Italy was engaged from June 10, 1940 to September 15, 1947. (*Claim of George John Sakellaredis,* Claim No. IT–10228, Dec. No. IT–274, 10 FCSC Semiann. Rep. 144 (Jan.-June 1959).)