

FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
WASHINGTON, D.C. 20579

IN THE MATTER OF THE CLAIM OF

MICHELE ANDRIOLA

Claim No. IT-2-041

Decision No. IT-2-257

Under the International Claims Settlement
Act of 1949, as amended

Appeal and objections from a Proposed Decision entered on June 30, 1971.

Hearing on the record held on September 15, 1971

FINAL DECISION

This claim, for \$10,000.00, against the Government of Italy, under Section 304(b), Title III, of the International Claims Settlement Act of 1949, as amended, is based upon a loss sustained on account of the death of the claimant's son, Pasquale Andriola, during air bombardment in San Nicandro, Italy, on June 26, 1943. By Proposed Decision dated June 30, 1971, the claim was denied for the reason that the claimant, MICHELE ANDRIOLA, the asserted owner of the claim, was not a national of the United States on June 26, 1943, the date when the claim, if any, arose, and therefore the claim was not owned by a national of the United States from its inception until its filing with the Commission, as required for compensation.

The claimant, MICHELE ANDRIOLA, filed objections to the Proposed Decision and argues that "the original request for compensation" was made by his daughter, Mary Andriola, a national of the United States by birth, which facts should establish the compensability of this claim.

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.)

In that connection it is also noted that the House Interstate and Foreign Commerce Committee which favorable reported on H. R. 4044, the bill finally enacted as Public Law 896, stated, in part, as follows (H.R. Rep. No. 976, 80th Cong., 1st Sess. 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 "

From the foregoing, it appears that claims for personal injury or death may not be deemed compensable under Section 304 of the Act, in the absence of a showing that a rule of international law has been violated thereby causing the injury or death.

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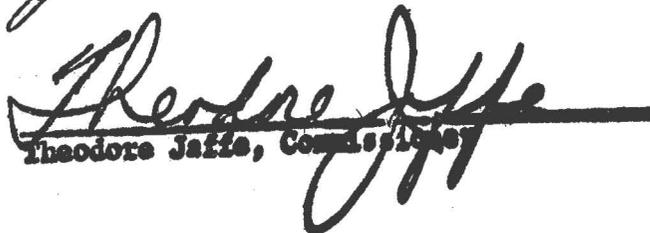
The Commission finds that the bombardment on June 26, 1943, which caused the death of the late Pasquale Andriola was a legitimate act of war and was not done in violation of any rule of international law. Accordingly, the Commission concludes that any claims arising out of the death of the late Pasquale Andriola is not compensable under Section 304 of the Act, supra, regardless of whether the claimant or other heirs are nationals of the United States or aliens. Therefore, it is

ORDERED that the Proposed Decision of June 30, 1971, be amended in accordance with the foregoing and as so amended, it is hereby entered as the Final Decision in this matter, and the claim is denied,

Dated at Washington, D.C.
and entered as the Final
Decision of the Commission

SEP 15 1971


Lyle S. Garlock, Chairman


Theodore Jaffe, Commissioner

FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
WASHINGTON, D.C. 20579

IN THE MATTER OF THE CLAIM OF

MICHELE ANDRIOLA

Under the International Claims Settlement
Act of 1949, as amended

Claim No. IT-2-041

Decision No. IT-2- 257

PROPOSED DECISION

This claim, for \$10,000.00, against the Government of Italy, under Section 304(b), Title III, of the International Claims Settlement Act of 1949, as amended, is based upon a loss allegedly sustained on account of the death of the claimant's son, Pasquale Andriola, in San Nicandro, Italy, on June 26, 1943. The claimant, MICHELE ANDRIOLA, states that he is a citizen of Italy.

The claimant also filed a claim under Title II of the War Claims Act of 1948, as amended by Public Law 87-846 (Claim No. W-6024), based upon the identical loss claimed herein, which was denied. That file has been associated with this claim for reference.

Under Section 304(b), Title III, of the International Claims Settlement Act of 1949 (69 Stat. 570 (1955)); 22 U.S.C. §§1641-1641q (1964)), as amended by Section 11 of Public Law 90-421, approved on July 24, 1968 (82 Stat. 420 (1968)), the Commission is given jurisdiction as follows:

The Commission shall receive and determine, or redetermine, as the case may be, in accordance with applicable substantive law, including international law, the validity and amounts of claims owned by persons who were eligible to file claims under the first sentence of subsection (a) of this section on the date of enactment of this title, but failed to file such claims or, if they filed such claims, failed to file such claims within the limit of time required therefor: Provided, That no awards shall be made to persons who have received compensation in any amount pursuant to

the treaty of peace with Italy, subsection (a) of this section, or section 202 of the War Claims Act of 1948, as amended.

No claim was filed by the claimant under Subsection (a) of Section 304 of the Act, supra.

The first sentence of Section 304(a) of the Act, supra, reads 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 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.

Under well established principles of international law, applicable to this claim under the first section of Section 304(a) as well as under Section 304(b) of the Act, in order for a claim to be compensable, among other things, the claim arising out of the loss asserted must have been owned by a national of the United States from the date of such loss and continuously thereafter until its filing with the Commission.

The late Pasquale Andriola, the claimant's son, on account of whose death this claim is made, was a national of the United States from his birth on October 25, 1931, until his death on June 26, 1943. However, claimant, MICHELE ANDRIOLA, the decedent's father and the owner of the claim, if such a claim in fact exists, is a citizen of Italy and has never been a national of the United States.

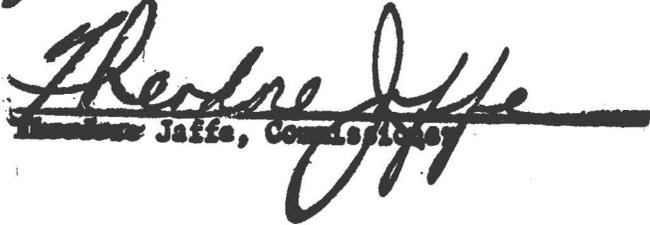
In view of the foregoing, the Commission concludes that the claim presently under consideration was not owned by a national of the United States from June 26, 1943, the date of asserted loss, continuously until its filing with this Commission, as required for compensation. Therefore, this claim must be and it is hereby denied.

The Commission finds it unnecessary to make determinations with respect to other elements of this claim, including whether such claim would in fact be valid if the United States nationality requirements were met.

Dated at Washington, D. C.
and entered as the Proposed
Decision of the Commission

JUN 30 1971


Lyle S. Garlock, Chairman


Theodore Jaffe, Commissioner

NOTICE: Pursuant to the Regulations of the Commission, if no objections are filed within 15 days after service or receipt of notice of this Proposed Decision, the decision will be entered as the Final Decision of the Commission upon the expiration of 30 days after such service or receipt of notice, unless the Commission otherwise orders. (FCSC Reg., 45 C.F.R. §531.5(e) and (g), as amended.)

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