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Cases of Dual Nationality—Decision No. 22

8 May 1954

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thirds of the sum necessary at the date of payment, to purchase an equivalent article.

In 1953, a motor-car can be said to be equivalent to the one sequestered in 1940 from Mr. and Mrs. Currie, when the following conditions are fulfilled: (a) that it is of the "Fiat" make; (b) that it belongs to the type of Fiat car, about two years old, which resembles as closely as possible the 1938 Balilla type; (c) that it has run about 5,000 kilometres.

It is probable that a motor-car of this type is technically superior to the 1938 Balilla. In that case, in order to avoid undue profit, the sum necessary for the purchase must be adequately and fairly reduced.

DECISION

1. The parties are given a period of three months in which to reach agreement on the amount of compensation due to Mr. and Mrs. Currie on the basis of the principles laid down in the considerations of Law in the present decision.

2. In the event of no agreement being reached within the time-limit stated, the Commission, after all necessary investigations, shall itself proceed to determine the amount of compensation due.

3. The present decision is final and obligatory.

(Sgd.) G. G. HANNAFORD

F. to Plinio BOLLA

F. to Antonio SORRENTINO

CASES OF DUAL NATIONALITY—DECISION

No. 22 OF 8 MAY 1954

Dispute of general nature—Question whether in Article 78 of Peace Treaty there is any limitation to right of an United Nations national possessing also Italian nationality to present claim under said Article—Objection to admissibility—Jurisdiction of Conciliation Commission—Article 83 of Peace Treaty—Jurisdiction to interpret Peace Treaty provisions in an abstract and general manner with obligatory effect for all future cases—Nature of Conciliation Commission—Interpretation of treaties—Rules of interpretation—Existence of—Peace Treaties—Interpretation of—Governed by general rules of interpretation of treaties—Interpretation of clear and precise provisions—Intention of the parties—Comparison of texts in different languages—Conformity with rules of international law—Restrictive interpretation.

Différend de nature générale — Question de savoir si l'article 78 du Traité de Paix comporte des limitations au droit d'un ressortissant d'une Nation Unie possédant également la nationalité italienne de se prévaloir des dispositions de cet article — Exception d'irrecevabilité — Compétence de la Commission de Conciliation —

Article 83 du Traité de Paix — Compétence de la Commission d'interpréter les dispositions de ce Traité d'une manière abstraite et générale avec effet obligatoire pour tous les cas futurs — Nature de la Commission de Conciliation — Interprétation des traités — Règles d'interprétation — Leur existence — Interprétation des Traités de Paix régie par les règles générales d'interprétation des traités — Interprétation des dispositions claires et précises — Intention des parties — Comparaison des textes dans leurs différentes langues — Conformité avec les règles du droit international — Interprétation restrictive.

The Anglo-Italian Conciliation Commission established in accordance with Article 83 of the Treaty of Peace of 10 February 1947 between the Allied and Associated Powers and Italy, composed of Colonel Guy G. Hannaford, of the Embassy of the United Kingdom of Great Britain in Rome, Representative of the United Kingdom, Avvocato Antonio Sorrentino, Honorary Section President of the Council of State, at Rome, Representative of the Italian Government, and Professor José Caeiro da Matta, formerly Rector and Professor of the University of Lisbon, Councillor of State, Third Member chosen by common accord by the British and Italian Governments;

In the case of the Submission presented on 6 June 1952 by Her Britannic Majesty's Government, represented by its Agent, Mr. M. C. Adams, against the Italian Government, represented by its Agent, Avvocato Stefano Varvesi, regarding Cases of Dual Nationality.

On 6 June 1952 Her Britannic Majesty's Government referred to the Anglo-Italian Conciliation Commission the question as to whether a physical person, included within the definition of United Nations National contained in the first phrase of sub-paragraph (a) of paragraph 9 of Article 78 of the Peace Treaty with Italy, is excluded from the right to present a claim under that Article in the case that, at a certain period, he was also, according to Italian law, in possession of this latter nationality. The British Government had no intention of asking the Conciliation Commission to examine whether a certain individual claimant possessed Italian citizenship at the same time as British. The attention of the Commission should be brought to bear on the question of a general nature which consists in knowing whether British nationals who come under Article 78 of the Treaty, who possessed British nationality on 15 September 1947, the date of entry into force of the Treaty, and also on the date of the Armistice, 3 September 1943, have the right to present claims under that Article, if at one or both of the dates mentioned, they possessed also Italian nationality.

Her Britannic Majesty's Government affirms that this right exists, invoking: (a) the clear and literal sense of the expressions of the Treaty and their unequivocal character; (b) the fact that the Article does not contain any exception in respect of nationals possessing dual nationality; (c) the lack of necessity of introducing such an exception in order to make the expression used intelligible or in order to explain any ambiguity; (d) the expressions contained in the Treaty of Peace, if and in so far as they depart from the common rulings of international law, must prevail, unless their incompatibility is demonstrated.

In its reply of 20 September 1952, the Government of the Italian Republic stated that the jurisdiction of the Conciliation Commission is limited to disputes which may arise with regard to the application of Article 75 and 78 of the Treaty. The abstract interpretation of a provision is beyond the jurisdictional

function of whatever nature the jurisdiction may be, as this cannot be exercised except in respect of concrete cases and only as regards the determination of such cases; and, the judge interprets the provision as regards its sole application to such cases, that is to say, he determined its extent and contents.

In his Submission the Agent of the British Government simply affirms that the principle which he is defending is based on the first part of paragraph 9 (a) of Article 78. But the Italian Government considers, on the contrary, that the question has been expressly determined in the second part of the same paragraph and in the opposite sense to that upheld by the Agent of the British Government. The paragraph referred to, after having laid down, in the first part, that the expression "United Nations National" applies to physical persons who are nationals of one of the United Nations, adds, in its second part, that such expression also applies to all physical persons, who, under Italian laws in force during the war, were considered as enemy. This ruling brings with it the conclusion that the hypothesis of dual nationality was not envisaged in the first part of the paragraph: if it had been considered, as regards the application of Article 78, that the status of United Nations nationals was determinative and that of Italian or neutral national irrelevant, what would have been the contents of the second phrase, considering that the laws in force in Italy during the war considered as enemy, in cases of dual nationality, only those physical persons who also possessed the nationality of an enemy State and, in the cases in question, of any one of the United Nations?

Consequently, the right to compensation in the sense of Article 78 is extended to United Nations nationals, as such, when they possess that nationality only; in the cases of dual nationality a further condition is required; that they were considered as enemy according to the laws in force in Italy during the war. And it must be observed that if Article 3 of the Italian War Law did consider as enemy he who, at the time of the application of the law, possessed the nationality of the enemy State, even though he possessed at the same time Italian nationality or that of another State, such a ruling was modified by the law of 16 December 1940. This law alludes to the person who, at the time of the application of the law, possesses the nationality of a third State. As a consequence of this modification, the Italian citizen who possessed also the nationality of the enemy State, ceased to be considered an enemy subject, the consideration of such nationality being in this way limited to the hypothesis of foreign double nationality. Consequently, and given the above mentioned provision contained in the second part of paragraph 9 (a) the possibility of invoking Article 78 in favour of an Italian citizen must be excluded, even in the case in which he were a national of one of the United Nations.

On 10 November 1952, the Agent of the British Government submitted his replication to the answer of the Agent of the Italian Government, maintaining his point of view and pointing out that, by virtue of paragraph 2 of Article 83 of the Peace Treaty, once the Conciliation Commission has been instituted, it has jurisdiction in respect of all disputes between the United Kingdom and Italy regarding the application or interpretation of Article 78. No reference is made to a concrete case. And, after having invoked the precedent of the decision of the Italo-United States Conciliation Commission in the *Amabile* dispute,¹ the British Agent recalls the provision under Article 2 of the Rules of Procedure of the Anglo-Italian Conciliation Commission in which it is stated that the Commission is the judge of its own jurisdiction. He requests, in conclusion, that the Commission decide that it has jurisdiction in order to determine this dispute.

¹ *Infra*, p. 115.

A counter-replication was drawn up on 18 January 1953 by the Agent of the Italian Government. He insists on the inadmissibility of the Submission, considering that same had not the object of bringing into effect the jurisdictional powers of the Conciliation Commission, but that of a legislative power which had never been conferred on the Commission. In fact, the Conciliation Commission was not asked to decide that Article 78 of the Peace Treaty would be applicable, in concrete, to a British national, but to declare, in an abstract and general form, its applicability to all British nationals who found themselves in determined conditions. The fact invoked by the British Agent, that this question had already been raised in numerous cases presented by British nationals, is not decisive and it is not possible to introduce into the object of the present jurisdiction, alongside the abstract and general question which has been proposed, the determination of individual cases. A dispute does not therefore exist between the two Governments on the question of dual nationality, but there are various disputes in the various cases in which this question has been raised. The advisability envisaged by the British Government to clarify the provision of the Peace Treaty, with the object of obtaining a decision on principle of the question which will avoid a number of disputes before the Conciliation Commission, may form the subject of discussions and agreements between the Governments but not through jurisdictional channels. The question of dual nationality cannot be examined and decided by the Conciliation Commission except in respect of a concrete case. The decision can constitute a precedent in jurisprudence and serve as a guide for the future action of the two Governments, but in no hypothesis may it constitute a judgement for the future cases and cannot prevent the same question being presented in another dispute by one of the two Governments who might consider it not in accordance with the Treaty and hope to see it modified by another decision. And one cannot invoke in favour of the British Submission paragraph 2 of Article 83; its intention was to exclude the establishment of a Conciliation Commission for each individual case, as is the normal case for arbitral tribunals. The fact of speaking of the application of a provision or of its application or interpretation does not exclude that one must do so always and exclusively in relation to a concrete case.

After discussion of the problem before the Conciliation Commission in the light of the successive memorials presented by the Agents of the two Governments, the Commission, integrated by the Third Member, having heard the Agents referred to above, issued on 20 October 1953, an ordinance granting the Agent of the British Government a period of eight days, commencing from the date of such notification, in which to present a written memorial on the prejudicial question of the admissibility of his claim. And the Agent of the Italian Government was also granted a similar period commencing from the expiry date of the period granted to the British Agent.

A. The question as to whether in Article 78 of the Peace Treaty there is any limitation to the rights of an United Nations national possessing also Italian nationality, to present a claim under the terms of that Article, was raised by the Agent of the British Government in the following terms :

(1) The Conciliation Commission, according to the wording of Article 83 of the Treaty of Peace, has jurisdiction over all disputes relating to the application and interpretation of the said Article, whether it is a question of a dispute arising from the application of the article to a particular case, or of a dispute of a general nature based on the interpretation of a special provision of that Article. If the Commission were to have had jurisdiction only in the case of disputes arising from individual claims Article 83 would have stated

this expressly. And the interpretation of the British Government is based on the fact that the Commission has jurisdiction not only in questions concerning disputes relating to claims under Article 78, but also in the case of disputes raised regarding the application of other Articles of the Peace Treaty, where it is even more probable that the dispute concerns rather the general interpretation to be given to some provisions than the application of a particular provision.

(2) In order to define the competence of the Conciliation Commission it is necessary to consider the provisions of Article 83 of the Peace Treaty. It is a principle of International law, often confirmed by the international courts, that the jurisdiction of an international tribunal is established and defined in the agreement which created it, in this case the Peace Treaty. No importance must be given to the fact that other international tribunals may have supported that no question of principle can be decided without the agreement of the Parties, as the question of knowing whether a tribunal is competent or otherwise depends exclusively on the terms of the instrument which created it.

(3) The argument has sometimes been put forward that the Conciliation Commission could not decide the general question mentioned above, because, by doing so, it would express a consultative opinion which cannot be requested by one only of the two Parties in the dispute. The question was discussed before the Permanent Court of International Justice regarding the Statute of the Memel Territory, which decided that it was competent to give a decision with obligatory effect, and not only a consultative opinion, on the interpretation of a particular international instrument.

(4) The British Government firmly upholds that the jurisdiction conferred on the Conciliation Commission by paragraph 2 of Article 83 of the Peace Treaty is sufficiently extensive to give it the possibility of being seized, without the agreement of the other party, of a dispute of a general nature relating to the interpretation to be given to the expression "United Nations Nationals" contained in Article 78.

(5) In conclusion, the British Agent requests the Commission kindly to define, as a question of right, its jurisdiction in the present dispute of a general nature, by giving an affirmative decision as regards its competence.

B. The Italian Government pronounced openly for the non-admissibility of the request, observing that:

(1) The judge may and must interpret the provision of law exclusively in the exclusive case that it is required to be applied to a concrete case. It is not competent to give an abstract and general interpretation of it, having effect for future cases, as it would be a question, in this hypothesis, of an activity inherent to the legislative function. The Conciliation Commissions contemplated in Article 83 of the Peace Treaty have exclusively jurisdictional functions; they cannot give an authentic interpretation of the provisions of the Peace Treaty as, in this case, it would be a question of entering into the province of a legislative function which does not belong to them. Consequently, the request should be declared inadmissible.

(2) In his argument the Agent of the British Government recognizes that the work of the Conciliation Commission is of a jurisdictional nature. Now, the expression *jurisdiction* and the function indicated thereby, have, in international law, the same significance as is attributed to them in internal legislation. The Permanent Court of International Justice has always decided in this sense. And the distinction between the jurisdictional and the legislative function

can easily be established, the latter being destined to determine the rules of law which will have to be observed in each particular case as forming part of the juridical organization and having as characteristic elements both abstraction and generality; the former being destined to apply the law to a practical case and characterised by the concrete and particular aspect. The obligatory strength of a judicial decision and the authority of the thing judged are necessarily limited to the parties *en cause* and to be subject of the dispute.

In the international field this principle was established in Article 59 of the Statute of the Permanent Court of International Justice.

(3) One must, consequently, exclude that the jurisdictional function can include the faculty to interpret the provision in an abstract and general manner having obligatory effect for all future cases. This interpretation—authentic—forms part of the legislative function.

(4) The invoking of the dispute on the Statute of the Memel Territory as a precedent in which the permanent Court of International Justice issued an obligatory decision on the interpretation of a special international instrument, lacks consistency. On the contrary, the Court had no intention to interpret the Statute as having obligatory effect for the future, and in fact excluded that its decision could be obligatory between the Parties, even as regards the particular case which had been examined.

The Court gave a consultative opinion, having authority without doubt, but without the character of being obligatory. Therefore there is no precedent to invoke in connexion with the case in question in the dispute on the Statute of the Memel Territory.

(5) As regards the Conciliation Commissions established under Article 83 of the Peace Treaty there are no elements to permit one to consider that their jurisdiction is different from the normal jurisdiction or that the Commissions have other functions than the jurisdictional function. Paragraph 1 of Article 83 considers the disputes which might arise on the application of Articles 75 and 78, and the application cannot be effected except in respect of concrete cases. Paragraph 2 makes express mention of the jurisdictional nature of the work of the Commission. The expression *application* or *interpretation* contained therein does not imply an authentic interpretation of the provisions made in a general way and in contemplation of future cases; the Conciliation Commissions have not the nature of political bodies but of jurisdictional bodies. The objects of the paragraph was to exclude that one should have to establish a Conciliation Commission for each particular dispute, as is normally done in the Arbitral Tribunals. On the other hand paragraph 2 expressly states that the Conciliation Commissions will have jurisdiction.

(6) Consequently, it is hoped that the Commission will declare that the dispute of a general nature referring to the interpretation of paragraph 9 (a) of Article 78 submitted by the British Government, is inadmissible.

Let us analyse the question, limited to this last and essential aspect—admissibility or non-admissibility of the dispute of a general nature—in the light of the principles of international law and of the provisions of the Peace Treaty.

We have before us a clear and precise provision of the Peace Treaty—such is the affirmation of the Agent of the British Government.

But one could commence by asking: is it always easy to know if the text is sufficiently clear? Does not the fact that there is a dispute prove that, for one at least of the parties, an interpretation is necessary? In the new *Projet Définitif de résolutions sur l'interprétation des Traités*, presented on 19 October 1953 at the

session of the Institute of International Law at Sienna, it is stated, under Article 1 that the apparent clarity of the provisions of a treaty would neither be sufficient to exclude proof to the contrary nor render it unduly difficult.

We could say first of all, with Anzilotti (*Publications of the C.P.J.I.*, series A/B No. 50, p. 383) that one cannot see how it would be possible to say that an article of an agreement is clear, before having determined its object and its end; it is only when one knows what the contracting Parties proposed to do, the object they wished to achieve, that one can ascertain that the natural sense of the terms used either remains within or exceeds the said intention.

There are some rules for the interpretation of treaties, despite the opinion of certain authors, like Hall, Lawrence, Oppenheim who deny this. But, it is strange that Oppenheim himself after having said that a rule regarding the interpretation of treaties does not exist, adds that it is important to enunciate the rules for interpretation which are recommendable by reason of their convenience. (*International Law*, vol. I, 7th ed., 1948, paragraphs 553 and 554). Notwithstanding the unilateral genesis of Peace Treaties, imposed on the vanquished by the victors, they are really bilateral conventions and their interpretation is regulated by the general rules of interpretation of treaties (*Recueil des décisions des Tribunaux arbitraux mixtes*, VII, paragraph 47). The Court of International Justice, and its antecedent, the Permanent Court of International Justice, have continually made use of the rules of interpretation (V. Hudson, *The Permanent Court of International Justice*, 1943, paragraph 631 and following). One could not subscribe to the opinion of Lord Phillimore (*Commentaries upon International Law*, vol. II, part V, chapter VII), according to which (these are the principles of Grotius and his successors) the provisions of a treaty must be interpreted in an equitable and not in any technical manner. The great majority of the authors have shown themselves contrary to this opinion (See, for example, Cavare, *Le Droit International Public positif*, 1951, vol. II, p. 194 and following). Schücking on his part (*Friedenswarte*, September 1928, p. 268) is of the opinion that an arbitral tribunal is obliged to apply the same law as the Permanent Court of International Justice. It is only in default of rules of law which are applicable that it can make laws *ex aequo et bono*. But, this is not the case. It must be said that it is within the jurisdiction of the doctrine and the decisions of the Court that the application of the general principles does not exceed the limits of positive right; in applying them the judge does not become free to decide *ex aequo et bono*. This arises from the fact that Article 38 of the Statute demands a formal agreement between the Parties, if the Court wishes to have the faculty to decide according to the principles of justice and equity.

In order to be able to establish the true sense of Article 78 of the Peace Treaty one must, as an essential element, in order to obviate the paradoxical consequences which an interpretation exclusively taken from the formula of the text would—and this is not an hypothesis—at times be liable to reach, have recourse to the determination of the *ratio legis* of the Treaty.

The application of this principle is found in all jurisprudence established by the Permanent Court of International Justice. (See the consultative opinion of 6 April 1935.)

It is true that there is so little precision and clarity in the Peace Treaty with Italy that the interpretation of it becomes at times difficult.

One must observe, for instance, the difference of wording used in the French and English texts. Paragraph 2 of Article 83 in the French text states that "*lorsqu'une commission de conciliation sera constituée en application du paragraphe 1^{er}, elle aura compétence pour connaître de tous les différends. . .*" In the English text, it is stated: "when any Conciliation Commission is established under paragraph 1

above, it shall have *jurisdiction* over all disputes . . ." This difference of terminology has, on the other hand, very little importance, the competence being only the limit of jurisdiction, the measure of the power to judge. After all it is always a question of a jurisdictional function. But must this jurisdiction be considered as limited to disputes arising from individual claims under the terms of Article 78, or can it include also the disputes arising from the general interpretation to be given to some provisions contained in the Peace Treaty? That is the question. Despite the designation of Conciliation Commissions (which is acceptable when it is a question of the settlement of a dispute between a representative of the Government of the United Nation concerned and a representative of the Italian Government, being able to settle the disputes amicably), they are in cases like the present one, real arbitral tribunals. Affirmation which is more than ever evident in the case of the addition of a Third Member, when according to paragraph 6 of Article 83, the decision of the majority of the members of the Commission shall be the decision of the Commission and accepted by the Parties as definitive and binding. Which means that its mission is not to decide along the lines of what it considers just and equitable but to determine the disputes according to the strict rules of law. This is what was established as regards the Mixed Arbitral Tribunals which were established by virtue of the Peace Treaties of 1919. This intention of the drafters of the Treaty of Versailles arises clearly from paragraph 2 of the Annex to Article 304, which orders that the Tribunal shall adopt *for its procedure* rules which are in conformity with justice and equity (formula which appears reproduced, in the same terms, at paragraph 3 of Article 83 of the Peace Treaty with Italy) which, as Blühdorn observed ("*Le fonctionnement et la jurisprudence des Tribunaux arbitraux mixtes*", *Recueil des Cours de la Haye*, 1932, vol. III, p. 190) excludes the application of these rules to the disputes themselves. The tendencies of international arbitration are in this sense, as they lean more and more towards obliging the arbitral tribunals to give their decisions, not according to a more or less vague conception of equity, but according to the rules of law. The competence of the arbitrator is limited to the knowledge of the treaty exclusively (See Salvioli, "*La règle de droit international*", *Recueil des Cours de la Haye*, 1948, vol. II, p. 391).

The Conciliation Commission judges: it is not given to it to exceed the limits which the Peace Treaty assigns formally to its jurisdiction.

If it is a question therefore, without any shadow of doubt, of the exercise of a jurisdictional function (an authentic interpretation would demand, as definition, the agreement of all the contracting parties, the authors (denying unanimously the admissibility of an unilateral interpretation, in the sense that they exclude the possibility of forcing one of the parties to accept an interpretation adopted by the other party) if it is the case, it is repeated, of a jurisdictional function, one can only conclude that the Commission must limit its activities to determining the disputes arising from claims presented according to the terms of Article 78 of the Peace Treaty the understanding of jurisdiction being the same in international and internal law. One cannot exceed the limits which the principles, the text and the spirit assign to the competence of the Commission. An interpretation according to which the Commission would also have the faculty to interpret the provisions of the Peace Treaty in an abstract and general manner, with obligatory effect for all future cases, would run the risk, because it is abusive, of ending in a judgement blemished by excess of power (it would create rules of law, which is not a jurisdictional function, but a legislative function), a very serious position in our case precisely because, according to the provision of paragraph 6 of Article 83 of the Peace Treaty, the decision is considered as definitive and binding.

It has been pointed out that if the Conciliation Commission were to have

to limit its activity solely to the determination of disputes based on individual claims, concrete cases, Article 83 of the Treaty of Peace would have expressly laid this down. But we can say, on the contrary, that if it had been intended to give to the Conciliation Commission a jurisdiction which is not that which is generally attributed to Conciliation Commissions, and which does not come within their normal function, it should here be stated expressly. Even as regards the Court of International Justice it was put forward that it could not be seized of a question posed in abstract terms as that would mean leading the Court almost to a legislative role. This opinion was set aside for the sole reason that the Charter of the United Nations and the Statute of the Court state expressly that the Court can give an opinion on all juridical questions, abstract or otherwise. (S. Bastid, "*La Jurisprudence de la Cour Internationale de Justice*", *Recueil des Cours de la Haye*, 1951, vol. 1, p. 603). And it must be added that these opinions have no obligatory value unless a special text stipulates an undertaking to apply the opinion requested of the Court. This is the established jurisprudence. There is no word in the Peace Treaty which can lead to the conclusion that the interpretation of a provision by a consultative opinion, comes within the function of the Conciliation Commission. And it appears that the opinion is rejected that the jurisdiction conferred on the Commission by Article 83 paragraph 2 of the Treaty is sufficiently comprehensive to give the Commission the possibility of being seized of a request by one of the Parties without the concurrence of the other. There is no indication of the acceptance of this doctrine in the cases—and they are so very numerous—submitted to the consideration of the Arbitral Tribunals or of the Conciliation Commission. On the contrary, a Conciliation Commission would not know how to issue the requested opinion without infringing the well established principle of international law according to which all judiciary procedure arising from a juridical question pending between States, calls for the consent of these States.

It could not be admitted, without falling into a serious contraction, on one side, the postulate, that the decision of the Commission must bring the dispute to an end, and on the other, the recognition of the right to establish the same decision unilaterally.

This argument has been put forward because paragraph 3 of Article 83 states that each Conciliation Commission will establish its own procedure, adopting rules which are in conformity with justice and equity; the Commission has the capacity to determine its own jurisdiction. But it must not be forgotten that it is one thing to *establish a procedure* and another, entirely different, to *determine the jurisdiction*; the provision contained in paragraph 3 of Article 83 cannot but mean that each Commission has the faculty to determine, *within the limits of its jurisdiction*, the procedure to be followed. When a tribunal or an arbitration Commission are authorized to determine *their own jurisdiction*, this is expressly stated, as was done for example in the Hague Convention of 1899 for the peaceful settlement of international conflicts, in its Article 48. The provisions of a treaty must be interpreted in such a way that they may conform as much as possible with the rules established by international law rather than derogate from these rulings. And let us say once for all that the arbitrator cannot substitute the legislator (V. par. ex., Carabier, "*l'arbitrage international*", *Recueil des Cours de La Haye*, 1950, vol. I, p. 265 *et suiv.*; Briefly, "*Règles du Droit de la Paix*", *ibid.*, 1936, vol. IV, p. 137).

Procedure, competence, jurisdiction are technical words with a precise meaning. No interpretation must ever arrive at a solution other than that which emerges formally from the Treaty, unless, obviously, this latter leads to an absurd result.

There is one last remark: International Jurisprudence normally interprets

the provisions of international treaties in a restrictive manner, as it considers them as limitations of the sovereignty of the State, by the application of the principle which submits to a restrictive interpretation the clauses which derogate from common law. (Ch. Rousseau, "*L'Indépendance de l'Etat dans l'ordre international*", *Recueil des Cours de la Haye*, 1948, vol. II, p. 211).

In the present case neither the provisions of the Peace Treaty nor the principles allow an affirmative reply to be given to the Submission presented by the British Government.

DECIDES :

(1) The Submission presented by the Agent of the British Government is rejected.

(2) The present decision is definitive and obligatory.

Signed: Avv. Antonio SORRENTINO

Signed: Prof. Caeiro DA MATTA

ROSTEN CASE—DECISION
No. 99 OF 13 FEBRUARY 1957

Claim for compensation under Article 78 of Peace Treaty—Sale of enemy property—State responsibility—Non-responsibility for sale of enemy property effected in accordance with common law—Inapplicability of Article 78 of Peace Treaty—Rejection of Claim.

Demande en indemnité au titre de l'article 78 du Traité de Paix — Vente de biens ennemis — Responsabilité de l'Etat — Non-responsabilité pour vente de biens ennemis effectuée conformément au droit commun — Inapplicabilité de l'article 78 du Traité de Paix — Rejet de la demande.

The Anglo-Italian Conciliation Commission established in accordance with Article 83 of the Treaty of Peace, consisting of Messrs. Antonio Sorrentino, Honorary Section President of the Council of State, Representative of Italy and G. G. Hannaford, Counsellor of the Embassy of Great Britain, Juridical Attaché, Representative of Great Britain, and Professor José de Yanguas Messia, Professor of International Law at the University of Madrid—Third Member appointed by common accord between the Governments of the United Kingdom of Great Britain and Northern Ireland and of the Italian Republic.

Having seen the Submission filed on 8 March 1954 by the British Government represented by its Agent Mr. Bayliss, and registered at n. 45, on behalf of Mr. and Mrs. Paul and Alice F. Rosten, in which it is requested that the respon-