

# **REPORTS OF INTERNATIONAL ARBITRAL AWARDS**

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## **RECUEIL DES SENTENCES ARBITRALES**

**Levi Case—Decision No. 145**

24 September 1956

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Fascist régime up to and including July 25, 1943 and Italy under the legitimate Government at a subsequent date. There is no mention whatever in any part of the Treaty of an Italian Government co-existing with the legitimate Government.

4. The question of principle which, to my mind, was not resolved correctly is that under which treatment as enemy is not conditioned exclusively on measures which had as a pre-requisite the placing of the individual who had been the victim of such treatment on the same level as that of a national of a State at war with Italy.

Now on this point I should like to answer the wording of a preceding Decision rendered by this same Italian-United States Conciliation Commission in the Bacarach Case<sup>1</sup>, which dealt with this specific issue. In the afore-mentioned Decision it is stated that "the racial legislation enacted, beginning in 1938, by the Fascist régime was certainly inhuman and barbarous, but it was not legislation enacted within the framework of a state of war, as the term is used in international law (State, or national of a State, with which one is at war). Article 78 refers to enemy with a more definite meaning, that is, in the sense that an individual received the same treatment he would have received had he been a national of one of the States with which Italy was at war".

It seems to me that the three subject Decisions contrast distinctly with the above statement.

5. I consider I should restrict my dissent to the questions of principle alone without going into the aspects of each individual case, on certain points of which I am also in disagreement.

Rome, October 11, 1956.

*The Representative of the  
Italian Republic*

Antonio SORRENTINO

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LEVI CASE—DECISION No. 145 OF  
24 SEPTEMBER 1956<sup>2</sup>

Claim under Article 78 of the Treaty of Peace—Compensation for war damages sustained by enemy property—Exemption from special progressive tax on property—Action right to claim—Owners nationalized "United Nations nationals" subsequent to 3 September 1943—Applicability of second part of paragraph 9 (a) of the aforementioned Article—Whether time limit of 3 September 1943 implied therein—Interpretation of treaties—Treatment as enemy—Meaning and scope of the expression "laws in force in Italy during the war"—State responsibility—Acts of a local *de facto* Government.

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<sup>1</sup> *Supra*, p. 187.

<sup>2</sup> *Collection of decisions*, vol. IV, case No. 96.

Réclamation au titre de l'article 78 du Traité de Paix — Indemnisation de dommages de guerre subis par des biens ennemis — Exemption d'un impôt extraordinaire progressif sur le patrimoine — Droit d'action — Propriétaires ayant acquis le statut de « ressortissants des Nations Unies » à une date ultérieure au 3 septembre 1943 — Applicabilité de la seconde partie du paragraphe 9 a) de l'article 78 du Traité — Interprétation des traités — Traitement comme ennemi — Signification et portée de l'expression « législation en vigueur en Italie pendant la guerre » — Responsabilité de l'Etat — Actes d'un gouvernement *de facto* local.

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The Italian-United States Conciliation Commission, established under Article 83 of the Treaty of Peace between Italy and the Allied and Associated Powers, and composed of Messrs. Alexander J. Matturri, Representative of the Government of the United States of America, Mr. Antonio Sorrentino, Honorary Section President of the Council of State, Representative of the Government of the Italian Republic and Plinio Bolla, former President of the Swiss Federal Court, Third Member chosen by mutual agreement between the United States and Italian Governments, on the Petition of the Government of the United States, represented by its Agent, Mr. Carlos J. Warner and subsequently represented by its Agent, Mr. Edward A. Mag at Rome, on behalf of Mr. and Mrs. Vittorio Leone Levi and Amalia Sacerdote Levi, residing at Maine Road 785, Vineland, New Jersey, *versus* the Government of the Italian Republic, represented by its Agent, State's Attorney, Prof. Dr. Francesco Agrò at Rome.

#### CONSIDERATIONS OF FACT:

A. Mr. and Mrs. Vittorio Leone Levi and Amalia Sacerdote Levi (hereinafter Mr. and Mrs. Levi), Italian nationals of Jewish origin who were domiciled in Turin, took refuge in the United States following the racial persecution, and were naturalized as American nationals by decree dated April 15, 1946 of the Court of Cumberland County (Common Pleas) at Bridgeton (New Jersey).

They were the owners in Turin, Italy of the following real property:

1. a house used for dwelling purposes at via Massena 92;
2. one half of a house used for dwelling purposes at via Bossolasco 6;
3. one half of a house used for dwelling purposes at via Bossolasco 8;
4. an apartment located on the first floor of a building in piazza Solferino 3.

Before they left Italy, Mr. and Mrs. Levi lived in the house at via Massena and were the owners of the furniture located therein.

The property owned by Mr. and Mrs. Levi in Italy was confiscated following the Legislative Decree of the Head of the Government dated January 4, 1944, No. 2, published in the Official Gazette No. 6 of January 10, 1944, which reads as follows:

The Duce of the Italian Social Republic, Head of the Government;

Having considered the urgent necessity to make provisions;

Having seen Law Decree No. 1728 of November 17, 1939 containing provisions relating to the protection of the Italian race;

Having seen Law Decree No. 739 of February 9, 1939 regarding the rules implementing and completing the provisions referred to in Article 10 of Law

Decree No. 1728 of November 17, 1938 in connexion with the limitations imposed on the real property owned and the industrial and commercial activities carried out by Italian nationals belonging to the Jewish race;

Having heard the Council of Ministers;

# DECREES:

Art. 1. Italian nationals belonging to the Jewish race . . . cannot, in the territory of the State:

(a) . . .

(b) be the owners of land or buildings and related items

(c) own stocks, valuables, credits and participation rights, whatever the nature, nor can they be the owners of other real property, whatever the nature,

...

Art. 7. Real property and related items, personal property, industrial and commercial enterprises and any other source of profit in the territory of the State owned by Italian nationals belonging to the Jewish race . . . shall be confiscated on behalf of the State and given to E.G.E.L.I. for administration.

Art. 8. The decree of confiscation shall be issued by the Chief of the Province who has jurisdiction over the territory where the individual property is located.

...

Art. 13. The sale of the property confiscated under Article 7 shall be effected by E.G.E.L.I.

...

Art. 15. The sums collected under the preceding Article 14 shall be paid in to the State as partial recuperation of the expenses sustained in assisting and in paying subsidies and compensation for war damages to persons rendered homeless by enemy air attacks.

...

Art. 21. This decree shall come into force on the same day on which it is published in the Official Gazette of Italy.

The house at via Massena was in addition requisitioned in behalf of the German Standortkommandatur of Turin, by Decree No. 1811 of July 20, 1944 of the Chief of the Province of Turin. Following this requisition, the furniture was seriously damaged and many items of furnishing and of clothing were looted.

The house at via Bossolasco 6 suffered damages as a result of the air bombardments which began on November 20, 1942. The house at via Bossolasco 8 was damaged by the air displacement caused by the explosion of a bomb which fell on July 2, 1944. The building at via Solferino 3 suffered damages during the air raids of November 18 and 20, 1942.

At the conclusion of hostilities, the furniture owned by Mr. and Mrs. Levi, that still existed, was returned to the claimants' attorneys on July 4, 1945 by the Istituto di San Paolo of Turin, E.G.E.L.I. Section.

The real and personal property owned by Mr. and Mrs. Levi in Turin was entered on the roles of the special progressive tax on property, under which heading they paid various sums in the global amount of 192,630 lire. Other sums, under the same heading, are still claimed from Mr. and Mrs. Levi by the Italian fiscal authorities.

By note dated June 13, 1950 addressed to the Embassy of the United States of America in Rome, the Ministry of Foreign Affairs of the Italian Republic, recognized the applicability, under the Italian-U.S. Agreements, of paragraph 6 of Article 78 of the Treaty of Peace to the special progressive tax on property

and to the special proportional tax on the property of companies and corporations. Said paragraph 6 reads as follows:

United Nations nationals and their property shall be exempted from any exceptional taxes, levies or imposts on their capital assets in Italy by the Italian Government or any Italian authority between September 3, 1943, and the coming into force of the present Treaty for the specific purpose of meeting charges arising out of the war or of meeting the costs of occupying forces or of reparation payable to any of the United Nations. Any sums which have been so paid shall be refunded.

B. On February 19, 1951 the Embassy of the United States of America, requested the Ministry of the Treasury of the Italian Republic that, in application of Article 78 of the Treaty of Peace:

(a) Mr. and Mrs. Levi be compensated for the losses suffered by their property in Italy as a result of the war,

(b) the sums paid for the purposes of the special progressive tax on property be reimbursed,

(c) it be recognized that the property owned by Mr. and Mrs. Levi was exempt from this tax.

C. By letter dated June 26, 1953 the Ministry rejected this claim and espoused the following opinion rendered by the Interministerial Commission:

The Commission,

Considering that the American nationals Levi Vittorio Leone and Amalia Levi née Sacerdote submitted a claim under Art. 78 of the Treaty of Peace to obtain compensation for damages sustained by their real and personal property, as well as reimbursement of the extraordinary tax on patrimony paid in 1947 and of the costs of the claim;

Considering that the claimants, Italian nationals who acquired American nationality on April 15, 1946, are not therefore entitled to invoke the application of Art. 78 of the Treaty of Peace since they did not possess the nationality of one of the United Nations on September 3, 1943, or American nationality at the time of damages which occurred in the period 1942-1944;

That it does not appear that the claimants were treated as enemy under Italian war laws in that the measures taken against only part of their property were adopted in application of racial laws, which also applied to Italian nationals, and not by virtue of war laws which, moreover, did not apply to the claimants who were then Italian nationals;

Expresses the opinion that the claim of Mr. Leone Vittorio Levi and his wife Amelia Sacerdote is to be rejected.

D. On May 20, 1954 the Agent of the United States of America on the Italian-United States Conciliation Commission, established under Article 83 of the Treaty of Peace between the Allied and Associated Powers and Italy, filed a Petition with the Joint Secretariat on behalf of Mr. and Mrs. Levi. The Petition concludes by requesting that the Commission:

(a) Decide that the claimants have been treated as enemy under the laws in force in Italy during the war within the meaning of paragraph 9 (a) of the Treaty of Peace in view of the fact that during the war and after all Jews were declared to belong to enemy nationality, concrete measures were taken against property belonging to them under Italian anti-Semitic legislation and property belonging to them was requisitioned as Jewish property by Decree No. 1181 issued on July 7, 1944 by the Head of the Province of Turin;

(b) Order that the claimants are entitled to receive from the Italian Government the entire amount (in view of the Exchange of Notes of February 24, 1949) necessary to make good the loss suffered by them through damage to their property, which loss was estimated as of the date of the filing of the claim, February 19, 1951, to be 1,073,335 lire plus the sum of 91,730 lire, the reasonable costs incurred in preparing the claim;

(c) Order the Italian Government to exempt under paragraph 6 of Article 78 of the Treaty the claimants and their property from the Extraordinary Progressive Patrimonial Tax and to reimburse the claimants for the sum of 192,630 which they paid as Extraordinary Progressive Patrimonial Tax before the claim was submitted;

(d) Give such further or other relief as may be just and equitable.

The Petition invokes Article 78 of the Treaty of Peace, and more specifically:

(a) paragraph 4 thereof concerning Italy's obligation to indemnify, under certain conditions and to a certain extent, the losses and damages suffered during the war by property owned in Italy by the United Nations nationals; (b) paragraph 6 thereof, cited above, regarding the exemption of United Nations nationals from certain taxes, levies or imposts of a special nature.

According to the Agent of the United States, the claimants, now United States nationals, were formerly United Nations nationals within the meaning of paragraph 9 of Article 78 of the Treaty of Peace, because they were treated as enemies under the laws in force in Italy during the war. This treatment consisted in the sequestration and confiscation of their real and personal property located at via Massena 92. These concrete measures were taken because the property involved was Jewish-owned; and in compliance with the anti-Semitic legislation of the Salò Republic. The first Assembly of Republican Fascism, which was the legislative authority of the Republic of Salò and which effectively controlled that part of Italy which had not yet been liberated by the Allied Forces, issued a policy for the programme of action; point 7 thereof affirmed:

Individuals belonging to the Jewish race are aliens. During the war they belong to enemy nationality.

While the United States have no intention of extending an *ex post facto* recognition to the Republic of Salò, it contends that the above mentioned provisions of law of the Republic of Salò were laws in force in Italy during the war within the meaning of paragraph 9 (a) of Article 78 of the Treaty of Peace. In this connexion the United States Agent cites the Decision of January 17, 1953 issued by the Italo-French Conciliation Commission in the Mossé-Goldschmit Case.<sup>1</sup>

E. In his Answer of June 30, 1954, the Agent of the Italian Government denied that Mr. and Mrs. Levi were treated as enemies under the laws in force in Italy during the war, in view of the fact that the anti-Jewish law enacted by the so-called Italian Social Republic could not be considered as law. This Republic was either an Agency of the German Reich, through which the Reich operated as an occupying power within the limits of international lawfulness proper to an occupying power, or a *de facto* legal system, or it was not even a *de facto* legal system nor a Government of insurgents but the transient rise of a faction to the nominal holding of power. The so-called Italian Social Republic can be considered as a system only in the event that

<sup>1</sup> Volume XIII of these Reports, Decision No. 144.

one excludes from that system the essential constituent element of the characteristic of legality or at least of juridicity. But even if the system were admitted, there is a very considerable difference between a system and a State. The acts performed by these Governments cannot have any legal value until such time as said Governments, when the stage of violent insurrection is over, are constituted and organized as a stable power in a certain territory and precariously replace the previous lawful Government. But when the so-called *de facto* Government is conquered and wiped out in a very short time, its acts cannot acquire legal importance except within the limits permitted by the system of the lawful State. Furthermore, any "law" is generally a political act; and it is certainly so whenever a law is enacted in execution of a political policy programme of the insurgent. Now, the anti-Jewish "law" of 1944, enacted by the Italian Social Republic, was not of an "impersonal nature" nor was it in the nature of an administrative routine; therefore it must be considered as a "non-law", and hence radically null. The Mossé-Goldschmidt decision which has been referred to does not deal with the capacity of the Italian Social Republic to enact laws but with the question of charging a State with international responsibility for acts and facts performed within the national territory by an illegal group.

The Agent of the Italian Government has therefore requested that the claim be declared inadmissible and in any event rejected.

G. By *Procès-verbal* of Non-Agreement dated March 29, 1955 the Representatives of the Italian Republic and of the United States of America on the Italian-United States Conciliation Commission decided to have recourse to a Third Member "in order to resolve the disputed questions raised by this claim".

H. The Conciliation Commission, completed and presided over by the Third Member, Dr. Plinio Bolla, former President of the Swiss Federal Court, at Morcote, heard the Agents of the two Governments during an oral discussion held at Rome on March 12, 1956.

The Agents confirmed their contentions, arguments and conclusions.

The Agent of the Italian Government set forth several new arguments. He contended that the time-limit of September 3, 1943, specified in the first paragraph of paragraph 9 (a) of Article 78 of the Treaty of Peace, should be valid also for the second paragraph, and thus, under the terms of this second paragraph, treatment as enemy could have occurred only prior to September 3, 1943; that this treatment has not occurred in the instant case. Furthermore, according to the Italian Agent, in accordance with the opinions rendered by the Italian-United States Conciliation Commission (Decision dated February 19, 1954, Bacharach Case)<sup>1</sup> "to be treated as enemy necessarily implies on the one hand that there be an actual course of action on the part of the Italian authority (and not an abstract possibility of adopting one) and on the other hand that said course of action be aimed at obtaining that the individual who is subjected to it be placed on the same level as that of enemy nationals"; these conditions, he adds, do not occur in the case of Mr. and Mrs. Levi.

#### CONSIDERATIONS OF LAW:

1. Article 78 of the Treaty of Peace affirms the principle, in paragraph 1, that "Italy shall restore all legal rights and interests in Italy of the United Nations and their nationals as they existed on June 10, 1940, and shall return all property in Italy of the United Nations and their nationals as it now exists".

<sup>1</sup> *Supra*, p. 187.

The following paragraphs 2 and 6 derive from this principle a certain number of corollaries which they specify by charging the Italian Government with the obligations of returning property, of paying compensation and expenses, of annulling measures or transfers, of exempting from taxes. Paragraph 7 broadens the territorial scope of the principle affirmed in paragraph 1. Paragraph 8 admits the possibility of deviating from the system established by Article 78, through agreements entered into between the owner of the property and the Italian Government. Paragraph 9 gives a definition of the expressions "United Nations nationals" (letter (a)), "owner" (letter (b)) and "property" (letter (c)).

Letter (a) of paragraph 9 is composed of two sub-paragraphs. According to the first, "United Nations nationals" means individuals who are nationals of any one of the United Nations, or corporations or associations organized under the laws of any one of the United Nations, at the coming into force of the present Treaty, provided that said individuals, corporations or associations also had this status on September 3, 1943, the date of the Armistice with Italy". Under the second sub-paragraph "The term 'United Nations nationals' also includes all individuals, corporations or associations which, under the laws in force in Italy during the war, have been treated as enemy".

The Agent of the United States contends on the other hand that Mr. and Mrs. Levi must be considered as "United Nations nationals" within the meaning of the Treaty of Peace because they were treated as enemies under the legislation in force in Italy during the war. The Agent of the Italian Republic denies that the legislative enactments of the Italian Social Republic can be considered as laws in view of the fact that the State alone can enact laws and that the Italian Social Republic was not a State—even less the Italian State; the Italian Agent further denies that, in the application of the legislation of the Italian Social Republic against Mr. and Mrs. Levi there has been a material conduct on the part of the Italian authority of the nature that would justify the claimants being placed on the same level as enemy nationals; in any event such conduct would have occurred after September 3, 1943 and is therefore irrelevant with regard to the Treaty. This is the subject of the dispute.

2. With regard to the time-limit of September 3, 1943 this is mentioned in the first paragraph of paragraph 9 (a) of Article 78 of the Treaty of Peace, while the second paragraph makes no reference thereto. The Agent of the Italian Government contends that the regulation should be understood to be included in the second paragraph in view of the fact that the second paragraph only serves as a clarification of the first.

In actual fact, the two paragraphs deal with essentially different questions. The first, in order to avoid fraudulent manoeuvres which may have been made at a time subsequent to the Armistice, establishes a time-limit after which any change in the *status civitatis* must be considered as irrelevant in the application of the Treaty of Peace: physical persons shall not be considered as "United Nations nationals" unless they possessed this status on September 3, 1943, nor will companies and associations be considered as "United Nations nationals" unless they were established under the laws of one of the United Nations prior to September 3, 1943. The second paragraph of paragraph 9 (a) draws a similarity between "United Nations nationals" and physical persons, companies and associations that never were such nationals, but were treated as enemies under the legislation in force in Italy during the war; as the facts on which this similarity depends (legislation and treatment in Italy) are completely foreign to the initiative of the physical person, company or asso-



ciation affected thereby (an initiative which would have further represented a phenomenon of self mutilation) the drafters of the Treaty of Peace had no reason to guard against fraudulent manoeuvres subsequent to the Armistice and directed at obtaining a more favourable treatment in the application of the Treaty of Peace to come, by the insertion of a time-limit.

On the other hand one cannot consider as applicable, in the sphere of the second paragraph, the time-limit of September 3, 1943, for the very reason that the second paragraph establishes, at least implicitly, a different time-limit with the proposition "during the war". In order that the similarity intended by the Treaty may have its effect, it is sufficient that a person, whether physical or moral, have been treated as enemy under the legislation in force in Italy *during the war*, without letting the letter or the spirit of the Treaty authorize a distinction according to whether such a treatment occurred before or after September 3, 1943, which is not the date of the end of the war.

On this point this Commission comes to the same conclusions that were reached by the Italian-United States Conciliation Commission, Judge Emil Sandstrom acting as Third Member, in the Decision issued in December 1954 in the Jack Feldman Case<sup>1</sup>. The dissenting opinion drawn up on that occasion by the Italian Representative, in the views of this Commission, does not appear to raise any decisive argument against the theory that prevailed at that time and which is adopted here. If treatment as enemy is a criterion which is added to that of effective nationality in order to broaden the number of the beneficiaries of Article 78 of the Treaty, there is no reason whatever why the time limit established to restrict the efficacy of the changes in the *status civitatis* should be valid also to distinguish, in terms of time, the treatment as enemy. If subsequent to the Armistice, and as is asserted by the Italian party, the national Government (which had its seat at Brindisi first, then at Salerno and finally at Rome) subjected to war measures only German nationals and Italian companies in which German interests were prevalent, these physical and legal persons could not benefit by the provisions imposed by the Allied and Associated Powers on Italy, and certainly not in behalf of Germany, their principal enemy, or of German nationals.

If the Italian theory were to be accepted, the conclusion would be reached that the Italian companies placed under sequestration in Italy by the Italian Social Republic after the Armistice because of an Allied participation, could not avail themselves of the United Nations nationality; nor can one see why the victors should have accepted such a difference in treatment with that to which similar companies sequestered before September 3, 1943, were subjected. Article 78, second paragraph of paragraph 9 (a), refers solely to conditions which no longer existed at the time the Treaty was drafted; the drafters thereof were certainly not unaware that the racial legislation enacted in Italy before the war (see principally the Law of November 17, 1938), had become much more severe after the Armistice at the hands of the authorities of the Italian Social Republic (*Enciclopedia Italiana*, Appendice 1938-48, vol. I, pp. 811 through 812) and must have borne in mind the fact that the second paragraph of paragraph 9 (a) of Article 78 would have largely failed one of its specific purposes which was that of lessening the harmful consequences of racial persecution, should this persecution have been considered as relevant only until September 3, 1943; hence, the complete and intentional absence of this time-limit in the aforementioned second paragraph.

3. Coming to the other defensive arguments of the Agent of the Italian Government, it should be first of all recalled that after the Armistice with

<sup>1</sup> *Supra*, p. 212.

the Allies, announced the evening of September 8, 1943, the German forces became *de facto* the masters of Italy from the Alps to the south of Naples. They did not however take over the direct Government of this part of the country. Hitler had Mussolini liberated from imprisonment on September 12, 1943 and reinstated him in power. On September 28, 1943 Mussolini took over the duties of Provisional Head of the State pending a Constitution (established but never convened) and in that capacity he jointly covered the offices of Head of the Government and Minister of Foreign Affairs; the seats of the Government were established in northern Italy and Mussolini himself took up residence in the vicinity of Salò; thus the Republic of Salò was born with the officially adopted name of Italian Social Republic. When Mussolini was shot (April 28, 1945) and the German forces in Italy surrendered unconditionally (April 29/May 2, 1945) the Italian Social Republic ceased to exist (*Enciclopedia Italiana*, Appendice 1938-48, vol. II, pp. 102, 373, 686). For nineteen months, and therefore not transiently, there were thus, *de facto*, two Italys, each claiming to be the lawful one. Each had its territorial base. At the outset the Italian Social Republic was more extended and had a larger population, but the territory controlled by it in the peninsula became gradually increasingly smaller. Also the Italian Social Republic, which cannot be considered as an Agency of the German Reich, had its Government, a local one but one which aimed at losing this quality and which exercised legal powers with effective extrinsicity by means of appropriate agencies; these agencies carried out a legislative, jurisdictional and executive activity; the legislative enactments had the force of law for all citizens subjected to that system, and were enforced, as far as was permitted by the presence of foreign troops, by the war fought by these troops in the territory of the peninsula, by the civil war, by the deepening of internal contrast in the Italian spirit which was to give rise to the phenomenon of resistance. The Italian Social Republic specifically enacted laws, let alone the Jewish persecution, for the repression of the enemies of the new régime, for the punishment of the "traitor" fascists, for the establishment of a new Fascist army, for the establishment of a General Confederation of Labour; it also enacted laws in the technical and artistic fields and on the socializing of enterprises (*Enciclopedia Italiana*, *loc. cit.* vol. II, p. 102).

4. As is clearly indicated by the letter of the provision, the second paragraph of paragraph 9 (a) of Article 78 intended that the obligations imposed on Italy with regard to "United Nations nationals" were to be valid also on behalf of physical and legal persons who, *ope legis*, had been treated as enemies in Italy during the war. For the purposes of the text of Article 78, Italy must be here considered as the entire Italian territory recognized as such by the Treaty itself (cf. Decision dated March 16, 1956 of the Franco-Italian Conciliation Commission on the interpretation of Article 78, paragraph 7),<sup>1</sup> and therefore also that part of the territory which was actually controlled by the Italian Social Republic, excepting those portions ceded to France or Yugoslavia in compliance with the Treaty, or those destined to constitute the Free Territory of Trieste. The only matter of importance in the minds of the drafters of the Treaty was therefore focused on the laws which had actually been in force in that part of Italy where the treatment had occurred and which had brought about that treatment; they did not and could not give any consideration to the legality of said laws vis-à-vis the Italian system as it existed prior to the Armistice and, later, in force in southern Italy. Likewise they could give no consideration to the fate that said laws would suffer in the legal system of post-war Italy.

<sup>1</sup> Volume XIII of these *Reports*, Decisions Nos. 176 and 201

There are no grounds for assuming that the second paragraph of paragraph 9 (a) of Article 78 of the Treaty of Peace, intended to give an *ex post facto* recognition, for some reason or other, to the Italian Social Republic or render an opinion in favour or against the lawfulness of the so-called Salò legislation and thus clearly exceed the limits of the problems it was intended to solve. In order to obtain the specific purpose of the provision it would have sufficed that the enforcement, at the desired time, of the discriminatory legislation of Salò were considered as a condition of fact of the right accorded by the Treaty to the physical or legal persons, victims of such discrimination, to avail themselves of the privileges accorded to United Nations nationals against Italy.

In other words, the term "legislation" contained in the second paragraph of paragraph 9 (a) of Article 78 of the Treaty of Peace does not constitute a formal judgement nor does it represent any reference to the *present* Italian legal system but should be interpreted bearing in mind the conditions prevailing in Italy during the war, and recalled above. By using the term legislation, the drafters of the Treaty intended to avoid that similarity could be claimed by physical or legal persons who were the victims in Italy during the war of oppressive or discriminatory measures not based on a provision of law but due for instance to the arbitrary action of an individual official (arbitrary act connected with the legislation that said official had been called upon at the time to implement). Legislation generally means an aggregate of provisions which have legally the specific aim of governing the State collectivity. Doubtless, this is the purpose aimed at by the laws of the Italian Social Republic.

On the other hand, even at this point one could ask oneself whether the drafters of the Treaty would not have foregone the pursuit of one of their clearly recognizable aims—at least a partial reparation of the damages caused by racial persecution—had they excluded from the expression "legislation in force in Italy during the war" the anti-Jewish laws of the Italian Social Republic, which were generally more drastic than those of pre-Armistice Italy and which were enforced with greater severity. But the text does in no way justify the theory that such an exclusion was intended.

5. There remains to be seen whether or not Mr. and Mrs. Levi were the victims of an effective conduct on the part of the Italian authority permitted by the laws of the Italian Social Republic and directed at placing them on the same level as enemy nationals.

The answer can only be in the affirmative. Mr. and Mrs. Levi had their property confiscated in Turin in application of Decree No. 2 of the Duce dated January 4, 1944. Certainly, no provision of this decree rules that Italian nationals belonging to the Jewish race, as far as their property is concerned, shall be considered or treated as enemies under the Italian War Law. But the second paragraph of paragraph 9 (a) of Article 78 does not require an abstract statement of similarity to enemy persons, and even less to persons having a specific enemy nationality; it is sufficient that the effective treatment ("*traitées*", "treated") intended by the law and applied by the Italian authority was that meted out to enemy persons. As regards enemy property, the Italian War Law provides conservatory seizure; the Decree of January 4, 1944 orders confiscation on behalf of the State, that is, not only administration by E.G.E.L.I. but the sale and the transfer of the price collected "to the State as partial recuperation of the expenses sustained in assisting and in paying subsidies and compensation for war damages to persons rendered homeless by enemy air attacks". In other words, Italian nationals belonging to the Jewish race were doubtlessly considered to be responsible for certain war damages caused by the enemy and therefore, in actual fact, considered as enemies. The Decree

of the Duce of January 4, 1944 thus only gave material form to the principle No. 7 set before the First Assembly of Republican Fascism: "individuals belonging to the Jewish race are aliens. During the war they belong to enemy nationality", and confirmed a practice already followed, as is shown in a decree contained in the records of the case dated December 28, 1943 of the Head of the Province of Brescia; this decree placed under sequestration the property of Mr. Vittorio Coen by invoking the War Law and "having seen that the Jews are considered as subjects of an enemy State".

6. It must therefore be admitted that Mr. and Mrs. Levi had the status of "United Nations nationals" within the meaning of the second paragraph of paragraph 9 (a) of the Treaty of Peace. Wherefrom Mr. and Mrs. Levi derive their active right to claim under Article 78, paragraph 4 (a) of the Treaty itself (and subsequent Italian-U.S. Agreements related thereto). Italy has admitted to the United States that the afore-said paragraph 6 is applicable to the special progressive tax on property. It is not denied, and in any event it appears from the receipts included in the records of the case, that Mr. and Mrs. Levi have paid to the Italian Government the sum of 192,680 lire for the purposes of the special progressive tax on property; this amount must be reimbursed to them (Article 78, paragraph 6, *in fine* of the Treaty) and no further sums can be claimed from them under this heading (see note of June 13, 1950 of the Ministry of Foreign Affairs of the Italian Republic to the Embassy of the United States of America in Rome).

With regard to the war damages (Article 78, paragraph 4 of the Treaty of Peace) and to the reasonable expenses sustained during the proceedings (Article 78, paragraph 5 of the Treaty of Peace) it would be proper to accord a short time-limit to the Agent of the Italian Government in order that he may express an opinion on the amount claimed.

#### DECIDES:

1. The Petition is accepted in the sense that:

(a) Mr. and Mrs. Levi are lawfully entitled to avail themselves of the status of "United Nations nationals" within the meaning of Article 78, second paragraph of paragraph 9 (a) of the Treaty of Peace;

(b) the Italian Government shall reimburse to Mr. and Mrs. Levi the sum of 192,630 lire paid by them for the purposes of the special progressive tax on property; said reimbursement shall be effected within sixty (60) days beginning from the date on which this Decision is notified to the Agents of the two Governments;

(c) Mr. and Mrs. Levi are exempted from the payment of any further sums under the heading of special progressive tax on property;

(d) a time-limit of two months, beginning from the date on which this Decision is notified, is accorded to the Agent of the Italian Government in order that he may express an opinion on the amount claimed by Mr. and Mrs. Levi as compensation for war damages and reimbursement of expenses sustained during the legal proceedings.

2. This Decision is final and binding.

3. This Decision shall be notified to the Agents of the two Governments concerned.

Rome, September 24, 1956.

*The Representative of the  
United States of America*

Alexander J. MATTURRI

*The Third Member*

Plinio BOLLA

DISSENTING OPINION OF THE REPRESENTATIVE OF THE ITALIAN REPUBLIC  
IN THE VITTORIO AND AMALIA LEVI CASE

I do not feel I can agree with the Decision of the majority Commission for the reasons I have fully set out in my dissenting opinion in the Treves Case.

Rome, October 11, 1956.

*The Representative of  
the Italian Republic*

Antonio SORRENTINO

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WOLLEMBORG CASE—DECISION No. 146 OF  
24 SEPTEMBER 1956 <sup>1</sup>

Claim under Article 78 of the Treaty of Peace—Exemption from special progressive tax on property—Active right to claim—Article 5 of Lombardo Agreement amending first part of paragraph 9 (a) of Article 78 of Peace Treaty—Interpretation of treaties—Treatment as enemy—Supremacy of Treaty over domestic law.

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Réclamation au titre de l'article 78 du Traité de Paix — Exemption d'un impôt extraordinaire sur le patrimoine — Droit d'action — Article 5 de l'Accord de Lombardo modifiant la première partie du paragraphe 9a) du Traité de Paix — Interprétation des traités — Traitement comme ennemi — Primauté du Traité sur le droit interne.

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The Italian-United States Conciliation Commission, established under Article 83 of the Treaty of Peace between Italy and the Allied and Associated Powers, and composed of Messrs. Alexander J. Maturri, Representative of the Government of the United States of America, Mr. Antonio Sorrentino, Honorary Section President of the Council of State, Representative of the Government of the Italian Republic and Plinio Bolla, former President of the Swiss Federal Court, Third Member chosen by mutual agreement between the United States and Italian Governments, on the Petition of the Government of the United States, represented by its Agent, Mr. Carlos J. Warner and subsequently represented by its Agent, Mr. Edward A. Mag at Rome, on behalf of Mr. Leo J. Wollemborg of the late Leone, residing in New York, *versus* the Government of the Italian Republic, represented by its Agent, State's Attorney, Prof. Dr. Francesco Agrò at Rome.

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<sup>1</sup> *Collection of decisions*, vol. IV, case No. 109.