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**RECUEIL DES SENTENCES  
ARBITRALES**

**Rosten Case—Decision No. 99**

13 February 1957

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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

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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.

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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.

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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-

sibility be affirmed for the sale of furniture, household goods, dental instruments, and personal effects contained in two liftvans and in a crate, unloaded in 1939 from the German steamer *Geierfels*, in the port of Naples;

Having seen the Answer of the Agent of the Italian Government dated 30 June 1954 denying the responsibility of the Italian Government both because the sale in question took place in accordance with the regulations of common law in order to cover the expenses of unloading, storage and insurance, and also because the claimants Mr. and Mrs. Rosten, are not qualified to avail themselves of the provisions of the Treaty of Peace, as, at the period to which the Treaty of Peace refers, they were German subjects, against whom no wartime measures were adopted.

Having seen the *Procès-verbal de Désaccord* dated 16 July 1954 whereby the Representatives of the two Governments decided to have recourse to the Third Member, in accordance with Article 83 of the Treaty of Peace;

Having concluded that, from the information contained in the pleadings, and filed by the Agent of the Italian Government on 27 February 1956, it has been established that the sale complained of by Mr. and Mrs. Rosten took place in order to recover the expenses of unloading, storage, and insurance, in accordance with the claim put forward by Mr. and Mrs. Rosten's creditors, without any intervention on the part of the Italian Government; and that therefore the sale cannot be considered as arising from the war, neither conferring the right on Mr. and Mrs. Rosten to avail themselves of the provisions of Article 78 of the Treaty of Peace, nor constituting war damages compensatable in accordance with the provisions of that Article;

DECIDES:

The Submission put forward by the British Government on behalf of Mr. and Mrs. Paul and Alice F. Rosten is rejected.

The present decision is definitive and obligatory.

Rome, 13 February 1957.

*The Third Member*

*The Representative of Great  
Britain*

(Sgd.) G. G. HANNAFORD

*The Representative of Italy*

(Sgd.) A. SORRENTINO

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KENT CASE—DECISION No. 144  
OF 9 APRIL 1958

Claim, under paragraph 6 of Article 78 of Peace Treaty, for exemption from extraordinary proportional tax on property imposed by Italian legislation—Whether such tax established for specific purpose of meeting expenses resulting from war or from some consequences thereof—Reference to decision No. 32 rendered by Franco-Italian Conciliation Commission—Inapplicability of exemption provisions to tax in litigation—Rejection of claim.

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