SELF CASE—DECISION No. 202 OF 27 JANUARY 1960 [1]

The Italian-United States Conciliation Commission, established by the Government of the Italian Republic and by the Government of the United States of America under Article 83 of the Treaty of Peace with Italy of February 10, 1947, composed of Messrs. Antonio Sorrentino, Honorary Section President of the Council of State, Representative of the Italian Government, in Rome, Alexander J. Matturri, Representative of the Government of the United States of America, in Rome, and Plinio Bolla, Morcote (Ticino, Switzerland), President Emeritus of the Swiss Federal Court, Third Member chosen by mutual agreement between the Italian and United States Governments.

In the case pending pursuant to the Petition dated April 1, 1955, submitted by the Agent of the Government of the United States of America, and filed on the same date with the Secretariat of the Commission, versus the Italian Government in behalf of Miss Harriet Louise Self.

STATEMENT OF FACTS:

A. Mr. Edward Danforth Self, born in the United States on January 18, 1866, a United States national since birth, was the owner in Italy, and more particularly in the province of Florence, of a villa known as "La Pagliaiuola", located in the municipality of Fiesole, at Via Faentina and Via delle Palazzine, and of a farm known as "La Camereta", with farmhouse, located in the municipality of Florence, municipal highway "della Piazzola" No. 60, as well as personal property existing in the aforesaid buidings.

Mr. Self's property in Italy was sequestered under the War Law, by decree of the Prefect of Florence dated September 15, 1942; Ente Gestioni Liquidazioni Immobiliari (E.G.E.L.I.) was appointed as sequestrator, which organization delegated the Credito Fondiario del Monte dei Paschi di Siena which took possession of the property by a *procès-verbal* dated November 18, 1942.

The sequestered property was damaged during the war, as the result of the

[1] *Collection of decisions*, vol. VI, case No. 152.

occupation by troops, shelling, explosion of grenades and looting by the military.

The subject property was returned, in its damaged condition, to Miss Harriet Louise Self, daughter of and attorney for the owner, by *procès-verbal* dated December 10, 1947.

Subsequently, Mr. Edward Self had his property repaired.

B. On January 16, 1952 the Embassy of the United States of America in Rome submitted a claim to the Italian authorities under Article 78 of the Treaty of Peace, in behalf of Mr. Edward Self, requesting that he be granted an indemnity for the damages suffered by his property in Italy during the war.

In point of fact, Mr. Edward Self had died four days earlier, namely, on January 12, 1952, naming as heir in his will his daughter, Harriet Louise Self, born on January 10, 1899, also a United States national since birth.

Upon investigating the case, the Italian Commission established under Article 6 of Italian Law No. 908 of December 1, 1945, during its session of July 19, 1954, after hearing Miss Harriet Louise Self, and in view of the fact that it was considered advisable that all disputes be settled amicably, proposed to pay Miss Harriet Louise Self the sum of 3,000,000 lire as indemnity, having been reduced by one-third as provided for in Article 78 of the Treaty of Peace, net of any amount which may be due to E.G.E.L.I. for compensation in connexion with the temporary administration of the property, which is the subject of the claim, plus 250,000 lire as reimbursement for the expenses incurred in the presentation of the aforesaid claim, namely, a global net sum of 3,250,000 lire in full settlement of every and any claim under Article 78 of the Treaty of Peace and in settlement of any credit she may have against the Italian State.

C. In its note dated August 17, 1954 the Italian Ministry of the Treasury, referring to the settlement agreed upon on July 19, 1954 with Miss Harriet Louise Self, approved the settlement and advised the American Embassy in Rome that, in connexion with the subject claim, payment of the sum of 3,250,000 lire would be effected to Miss Harriet Louise Self, as specified above, upon her (or her legal representative in possession of a special power of attorney) producing a formal statement—on untaxed paper, certified by a Notary or the Mayor or the American Embassy and legalized free of charge under the terms of Article 78 of the Treaty of Peace—accepting the amount specified above in full settlement of every and any claim based on the aforesaid Article 78 and in settlement of any matter with E.G.E.L.I. that might still be pending. In this statement she was also to attest to the fact that, in connexion with the damages specified in the claim, no State Agency or public corporation had paid out any contributions, funds, indemnities, advances etc. In the aforesaid statement there should also have been indicated the section of the Provincial Treasury at which the order of payment was to be made payable. The aforementioned power of attorney was also to confer authority for collecting the amount involved and issuing a receipt therefor, in the event that the claimant did not intend to or could not collect the subject indemnity herself (in that event the paternity of the attorney-in-fact, in whose name the order of payment was to be made out, was to be indicated). Also, the possible power of attorney could have been issued on untaxed paper and endorsed and, if necessary, certified free of charge, in view of the fact that war damages were involved.

Upon receipt of this note of August 17, 1954 of the Italian Ministry of the Treasury, Miss Self, on October 13, 1954, sent to the Ministry her declaration

of acceptance of the settlement proposed by the aforementioned Commission at its hearing of July 19, 1954.

D. However, on December 14, 1954, by letter addressed to Miss Harriet Louise Self, a copy of which was sent to the American Embassy in Rome, the Italian Ministry of the Treasury expressed an additional requirement and requested Miss Self to produce a certificate of the competent Ufficio del Registro attesting to the fact that a declaration of succession had been made with regard to the sum of 3,250,000 lire which had been granted as compensation for war damages and that the related taxes had been paid on this sum.

In referring to the contents of this communication, Miss Self, on December 22, 1954, advised the Italian Ministry of the Treasury that when she went to the competent Ufficio del Registro in Florence she had been given formal assurance that she would not have to pay any tax on the amount of 3,250,000 lire accorded to her as war damage compensation. Miss Self quoted Article 78, paragraphs 4 (*c*) and 9 (*b*) of the Treaty of Peace; pointed out the fact that she was a national of the United States of America, like her late father; noted that succession taxes on compensation for war damages had been implicitly paid, because it had been calculated on the estimated value of the property already repaired and furnished by the decedent; threatened to consider herself no longer bound by the compromise settlement reached with the Italian Commission, having accepted it "only because she had been formally assured by His Excellency Papaldo that the proposed indemnity was to be net of any levies, taxes or other charges".

On December 27, 1954 the American Embassy wrote to the Italian Ministry of the Treasury along the same lines:

> The Embassy believes that the Ministry's decision to subject payment of the compensation to the submission of this certificate is in conflict with the provision of paragraph 4 (*c*) of Article 78 of the Treaty. Therefore, the Embassy believes that in respect to the above-mentioned decision a dispute has arisen under Article 83 of the Treaty of Peace which will be duly submitted to the Italian-United States Conciliation Commission established under the aforesaid Article.

On January 19, 1955 the Italian Ministry of the Treasury answered the Embassy's letter dated December 27, 1954 and confirmed its request for a certificate from the competent Ufficio del Registro attesting to the fact that the heirs had made a declaration of succession with respect to the amount representing the indemnity agreed upon in full settlement of the claim and that the related tax had been duly paid thereon. The Italian Ministry of the Treasury then stated that, in its opinion, the provisions contained in Article 78, paragraph 4 (*c*), referred to deductions for income tax, supplementary income tax, taxes on receipts, incidental rights, etc.:

> that, under the laws in force, are made at the time the sums owed to the creditors of the State are paid. As is known, instead, payment of indemnities settled in favour of United Nations nationals, under Article 78 of the Treaty of Peace, are ordered, unlike the normal payments effected by the State, to be made without any deductions of this nature and this, in fact, is done in application of the afore-mentioned paragraph.

The Italian Ministry of the Treasury continued as follows:

> In cases concerning succession taxes, instead, a taxation affecting the payment made by the State is not involved but a taxation which, under Italian domestic law, affects transfers *mortis causa* of property constituting the estate. It is furthermore obvious that the indemnity, as regards inheritance, is one of the sources of

funds intended to replace the property lost by the decedent or to make good the damage suffered by him. In the event that a United Nations national, the owner of property damaged by the war, dies after the coming into force of the Treaty of Peace, the heirs do not derive the right to claim against the State *jure proprio* but *jure successionis* and it is apparent, therefore, that the rules on fiscal matters governing transfers *mortis causa* in Italy should be applied and, in particular, Article 389 of the Istruzioni Generali sui servizi del Tesoro, which conditions the payment of sums in favour of heirs on the submission of a certificate of the competent Ufficio del Registro attesting to the fact that the inheritance was declared, as required by law—in the instant case the inheritance is represented by the amount of the settled indemnity—and that the tax due thereon was paid. There is therefore not here involved a tax which is levied at the time of payment, but a finding of fact, at the time payment is ordered, with regard to whether or not the heirs have complied with the fiscal obligations required by law. In view of the foregoing considerations, it does not appear that the instant case should become the subject of a dispute to be submitted to the Conciliation Commission established under Article 83 of the Treaty of Peace.

E. As the Italian Government and the Government of the United States of America maintained their respective positions, the Agent of the United States of America before the Conciliation Commission established under Article 83 of the Treaty of Peace, on April 1, 1955, resorted to the aforesaid Commission on behalf of Miss Harriet Louise Self, and requested that it decide:

(*a*) that the demand of the Italian Government that the claimant pay the Italian inheritance tax in connexion with and prior to collecting compensation on her claim is in conflict with the provisions of Article 78, paragraph 4 (*c*) of the Treaty of Peace and contrary to the offer of settlement made to her by the Italian Interministerial Commission on July 19, 1954;

(*b*) that the claimant is entitled to receive from the Italian Government two-thirds of the sum necessary, at the time of payment, to make good the losses and damages sustained by the property at Via delle Palazzine 2, Fiesole, Florence, Italy, which sum was estimated on January 16, 1952 to be 6,871,072 lire, and the entire sum necessary to make good the losses and damages suffered by the farm and farmhouse at Florence, Italy, which sum was estimated to be 751,401 lire on January 16, 1952; as well as the entire amount of 1,037,016 lire, representing the reasonable expenses incurred in Italy in establishing her claim up to the submission of this Petition, subject to any necessary adjustment for variation in values between January 1952 and the final date of payment;

(*c*) that the claimant is entitled to receive payment of such compensation as may be awarded to her by the Conciliation Commission free of any levies, taxes or other charges.

F. On May 9, 1955 the Agent of the Italian Government before the Italian-United States Conciliation Commission filed his Answer, dated May 5, 1955, with the Secretariat of the Commission, in which he concludes by requesting that the Petition of the Agent of the Government of the United States of America be rejected on the grounds already invoked by the Ministry of the Treasury in its letter dated January 19, 1955.

G. On May 27, 1955 the Representative of the Italian Republic and the Representative of the United States of America signed a *Procès-verbal* of Non-Agreement and decided to resort to a Third Member in order that the questions raised by the case of Harriet Louise Self be solved.

Both Governments agreed to designate, as Third Member, Dr. Plinio Bolla, President Emeritus of the Swiss Federal Court, at Morcote (Ticino, Switzerland). Dr. Bolla accepted the appointment.

H. The Agents of the two Governments, assisted by ex parte counsellors, namely, the Agent of the United States by Prof. Cesare Tumedei and Angelo Corsi, Esq., and the Agent of the Italian Republic by Prof. Bruno Tenti, after exchanging memoranda, proceeded with an oral discussion of the case in Rome, on May 12, 1959, during which they confirmed their earlier conclusions.

CONSIDERATIONS OF LAW:

1. A compromise settlement had been agreed upon during the hearing of July 19, 1954 of the Interministerial Commission established under Article 6 of Italian Law No. 908 of December 1, 1945, which hearing was also attended by Miss Harriet Louise Self; by this agreement the indemnity by the Italian Government to Miss Self was established in the amount of 3,250,000 lire, under the terms of Article 78, paragraph 4 (*b*) and Article 78, paragraph 5 of the Treaty of Peace, as compensation for the losses suffered during the war by the property formerly owned by her late father, in the province of Florence, and for reimbursement of reasonable expenses incurred in the processing of her claim in Italy.

This agreement was confirmed by the Italian Ministry of the Treasury and by Miss Self.

It subsequently appeared, however, that in the opinion of the Italian Government the aforementioned settlement did not exempt Miss Self from the obligation, incumbent upon her according to that Government, to declare the amount granted to her of 3,250,000 lire to the competent Italian Ufficio del Registro, in that this money was a part of her father's estate, and to pay the succession tax related thereto.

On the other hand, Miss Self felt the indemnity of 3,250,000 lire agreed upon was to be paid to her, in accordance with Article 78, paragraph 4 (*c*) of the Treaty of Peace, free of any levies, taxes or other charges and therefore, in her opinion, net of any inheritance tax.

Miss Self contends that, under the circumstances, her acceptance of the compromise settlement of July 19, 1954 is to be considered as vitiated and therefore the settlement itself is null and void and the Italian Government must pay her, under the terms of Article 78, paragraph 4 (*b*) and Article 78, paragraph 5 of the Treaty of Peace, the sums which, under these terms, she claimed prior to the compromise settlement of July 19, 1954 or, in any event, whatever sums may be awarded to her, under the aforesaid terms, by the Italian-United States Conciliation Commission.

One could no longer talk of a defect in the consent given by Miss Self, which would have consisted in a legal error, if, in actual fact, the indemnity of 3,250,000 lire accorded to her under the compromise settlement of July 19, 1954 were to be paid to her, under the terms of the Treaty, net of any inheritance tax. In that event Miss Self would not have incurred an error nor would she be allowed to go back on her agreement of July 19, 1954 to accept the compromise settlement offered to her by the competent Italian Commission, in order to annul the agreement itself.

It therefore appears advisable that this Conciliation Commission render a preliminary opinion on the question as to whether the Italian Government, irrespective of any stipulation made with the claimant, can condition the payment of the related Italian succession tax on the payment to Miss Harriet Louise Self of the indemnity owed to her under the terms of Article 78 of the

Treaty of Peace, for the damages sustained in Italy during the war by the property then owned by her late father, Mr. Edward Danforth Self.

2. The jurisdiction of the Italian-United States Conciliation Commission in this case is to be found in Article 83 of the Treaty of Peace. The issue in this case, in fact, involves the application and interpretation of Article 78, paragraph 4 (*c*), which, in the Italian translation thereof, provides that "*L'indennità sarà versata, al netto da ogni imposta, tassa o altra forma d'imposizione fiscale*" (compensation shall be paid free of any levies, taxes or other charges). It is not within the scope of the Italian-United States Conciliation Commission to say whether or not domestic Italian legislation, considered as such, would authorize the Italian Government to collect the Italian inheritance tax on the indemnity owed by the Italian Government to Miss Harriet Louise Self for the subject war damages; even if the answer to this query were to be in the affirmative, but should the interpretation given by the Government of the United States of America to Article 78, paragraph 4 (*c*) of the Treaty of Peace be correct, the provision of Italian law, from which the obligation to pay originates in the domestic system, should, in the international system wherein this Commission acts, yield priority to the conventional conflicting stipulation of Article 78, paragraph 4 (*c*) of the Treaty of Peace.

3. The Treaty of Peace, particularly Article 78 thereof, deals with United Nations property and nationals in Italy, such as they existed on June 10, 1940. It charges Italy, first of all, with the obligation to make restitution, the terms of which are laid down in paragraphs 1, 2 and 3. But, in certain specific cases, it also charges Italy with the obligation which, according to the circumstances, substitutes or completes the former, to pay an indemnity, for example:

> . . . In cases where property cannot be returned or where, as a result of the war, a United Nations national has suffered a loss by reason of injury or damage to property in Italy . . . (Article 78, paragraph 4 (*a*).)

And this was exactly the case of Mr. Edward Danforth Self, a United States national at the coming into force of the Treaty of Peace. Since he died before the indemnity in question was acknowledged and paid to him, the right to claim such an indemnity was acquired by his daughter and heir under his will as the "successor of the owner" and at the same time a United Nations national, as provided for in Article 78, paragraph 9 (*b*) of the Treaty of Peace.

The Italian Government admits that "successor of the owner", in accordance with paragraph 9 (*b*) of Article 78 of the Treaty of Peace, always means a *mortis causa* successor; this decision can leave unresolved the questions as to whether this expression also includes *inter vives* successor and whether, in both cases, the successor is entitled to receive compensation even if he is not a United Nations national, should the transfer have occurred after the coming into force of the Treaty of Peace; in the instant case it is, in point of fact, undoubted that Miss Harriet Louise Self, heir and successor in interest of the late Mr. Edward Danforth Self, is a United States national.

4. In all cases where an indemnity is due, under Article 78 of the Treaty of Peace (see, in addition to paragraph 4 (*a*), also paragraph 4 (*d*) concerning losses or damages sustained by United Nations nationals' property as a result of the application of discriminatory measures), the rule laid down in the aforesaid Article, paragraph 4 (*c*), is applicable, according to which "compensation shall be paid free of any levies, taxes or other charges".

This rule, which only speaks of payment of indemnity, is not applicable in cases of complete restitution of property, and the reason is obvious in cases where restitution is made, without there having been any loss consequent to

injury or damage as a result of the war, the owner regains possession of his entire property in Italy; on the other hand, in cases where indemnity is paid, this amounts to only two-thirds of the sum necessary, at the date of payment, to purchase similar property or to make good the loss suffered (Article 78, paragraph 4 (*a*)); this same measure of two-thirds is controlling in the hypothesis of Article 78, paragraph 4 (*d*). The negotiators of the Treaty of Peace clearly intended that the indemnity accorded to United Nations nationals, already reduced to two-thirds of the damage to be indemnified, when bearing in mind Italy's financial potentiality, which was limited as a result of the war, should not be further curtailed as the result of fiscal measures, even if of a general nature, already in force or enacted by Italy. Therefore, the conclusion which the Agent of the Italian Government wishes to draw from the fact that if Mr. Edward Self's property, which later passed to his daughter by inheritance, had not sustained any war damage and had been fully returned to its owner and, after his demise, passed into the hands of his sole heir, the Italian inheritance tax would have had to be paid by her on this property, is untenable; because in that event Mr. Self, and indirectly his daughter, would not have had to suffer the curtailment of one-third, provided for in cases where indemnity is paid.

The preliminary reports of the Treaty of Peace show that the rule concerning the exemption of the indemnity from all fiscal charges made its first appearance subsequent to and as a consequence of the idea of limiting the said indemnity to a fraction of the damage. Little does it matter that the exemption was not proposed by the Russian delegation, which had been the first to suggest that a full reparation of the damage should be renounced, and that it (the exemption) was not proposed at the same time this renunciation was suggested; the cause and effect relation between the renunciation on the part of the United Nations to a hundred per cent reparation of the damage and the fiscal exemption imposed on Italy is not thereby removed.

5. Paragraph 4 (*c*) of Article 78 of the Treaty of Peace leaves no room for doubt as to the scope of the rule, which is drawn up in a clear and unequivocal manner. The payment of the indemnity must be made "free of any levies, taxes or other charges". The pronoun "any" undoubtedly indicates that the drafters intended to exclude *all* levies, taxes or other fiscal charges that could be invoked, as a set-off, at the time the indemnity was paid. The logical procedure adopted is that of exhaustion: it was intended to exhaust all possible cases of deduction. Little does it matter that Italian national legislation speaks of levy or of tax or of tribute or otherwise; it suffices that a fiscal charge is involved, no matter how named, which could deploy its effects at the time indemnity is paid. In view of the terms adopted, if the drafters of the Treaty had intended to introduce an exception in favour of the Italian Government for a specific fiscal charge, such as the inheritance tax for example, they should have said so expressly, but they did not. Nor can one believe that it was an oversight with respect to the inheritance tax; it had to be clear to all that a translation into concrete facts of Article 78 of the Treaty of Peace would be a matter of years (in certain cases it has required more than ten years); it could be no less clear to the drafters of the Treaty of Peace that, in the meanwhile, and in the natural course of events, United Nations nationals entitled to receive an indemnity under the terms of Article 78 of the Treaty would die before collecting the sums assigned to them by Italy or awarded to them by the competent international Conciliation Commission; the hypothesis of succession *mortis causa* is, in any event, expressly contemplated, under another consideration, by Article 78, paragraph 9 (*b*) of the Treaty of Peace.

No less clear than the Italian translation are the original French and English texts of the provision which is here being interpreted; the French text reads "*l'indemnité sera versée, nette de tous prélèvements, impôts ou autres charges*", while the English text reads "compensation shall be paid free of any levies, taxes or other charges". In the original French text the word "*prélèvements*" refers to the operation of deduction of one sum from another and not the slightest hint is made, by way of a restriction, to the right of curtailment.

In conclusion, the Treaty of Peace resorted to the most general terms possible and these terms render ineffectual, in the opinion of the Conciliation Commission, any attempt to introduce, in a text that excludes them *a priori*, distinctions which would provide a special treatment for the inheritance tax and one which would be much more favourable to the interests of the Italian fiscal authorities.

Particularly, these terms, in view of their general nature, are in opposition with the Italian Government's contention, i.e., that the provision contained in Article 78, paragraph 4 (*c*) of the Treaty of Peace intended to refer to deductions for income tax, tax on receipts, incidental rights etc. which, within the meaning of the rules in force, are apparently given execution in Italy at the time when sums due to the creditors of the State are paid. Such enumeration which, moreover, cannot do without a final "etc.", does not appear in Article 78, paragraph 4 (*c*) even for the purpose of exemplification.

6. The text of Article 78, paragraph 9 (*b*) of the Treaty of Peace intentionally disregarded the title of the fiscal imposition and quite specifically in no way required that the imposition should originate from the payment of the indemnity or that it be connected therewith in order to give rise to the exemption. The Treaty provides that the indemnity shall be paid "free of any taxes, levies or other charges" without making a distinction according to the nature of the charge, its title or the cause therefor. The initial words of the paragraph ("The indemnity shall be paid . . .") make reference solely to the time at which the exemption is called upon to deploy its effects, but does not restrict these (the effects) to the charges inherent to the fact of the payment. It suffices, for the provision to appear warranted by a legitimate interest, that the tax deploys its effects at the time of the payment of indemnity, and the instant case proves that such a condition can very well materialize with respect to the inheritance tax. On the other hand, this situation is bound to occur again in every case where the heir of a United Nations national, owner of damaged property in Italy, is accorded an indemnity to which he is entitled and is called upon to collect it subsequent to the time he has inherited the estate and has paid the Italian inheritance tax thereon; in this hypothesis, and should its interpretation of Article 78, paragraph 5 of the Treaty be correct, the Italian fiscal authorities would have no other alternative than to affect the credit for the indemnity as a supplementary addendum and this is, in fact, what it intends to do. In reality, even if one considers that the inheritance tax in Italy does not affect the credit as such, but the net estate, the Italian fiscal authorities, in calculating this tax, pursuant to a clear provision of the Treaty of Peace, must disregard the active addendum which otherwise would consist of the credit against the Italian Government for an indemnity due under Article 78 of the Treaty of Peace.

When the Italian Government contends that it has no intention of charging Miss Self with any deductions, at the time payment is made, but merely of ascertaining whether the party in interest has abided by the Italian fiscal laws, it makes a statement that contrasts with both its letter written to Miss Self on December 14, 1954, requesting her to produce a certificate affirming not only

that she had made a declaration of inheritance of the credit of 3,250,000 lire assigned as compensation for war damage, but *also that payment of the taxes connected therewith had been effected*, and the construction placed by it (the Italian Government) on Article 389 of the Italian General Instructions on the Services of the Treasury in the Ministry of the Treasury's answer of January 19, 1955 to the Embassy of the United States in Rome; in the aforesaid answer it is in fact stated that "Article 389 conditions the payment of sums to heirs on the production of a certificate of the competent Ufficio del Registro attesting to the fact that a declaration of the inheritance has been made as provided for by law—*in the instant case the inheritance is represented by the amount of compensation assigned*—and *that the tax connected therewith has been paid*"; it is therefore the intention of the Italian Government to make, at the time of payment, a deduction from the indemnity due, equal to the amount of the inheritance tax on the compensation assigned, and this is in violation of the provision contained in paragraph 4 (*c*) of Article 78 of the Treaty of Peace.

7. Nor can greater weight be given to the Italian Government's argument, according to which the only tax exemption granted by the Treaty would be in connexion with any tax of a special nature to which the Italian Government or other Italian authority subjected the capital assets of United Nations nationals in Italy during the period comprised between September 3, 1943 and the coming into force of the Treaty of Peace, for the specific purpose of meeting expenses resulting from the war effort or to meet the cost of the occupation forces or of the reparations to be made to any one of the United Nations (Article 78, paragraph 6 of the Treaty of Peace). The exemption granted by the Treaty of Peace to United Nations nationals, with respect to their capital assets in Italy, from taxation introduced in Italy during a specific period and for specific exceptional purposes, co-exists, in the Treaty itself, with the limitations imposed on the Italian fiscal sovereignty with regard to the indemnity to which, on the strength of the Treaty of Peace, United Nations nationals are entitled because of the property they owned in Italy and of the damages sustained by this same property or because of the discriminatory measures taken against them during the war. There is no incompatibility whatever between such exemption and such limitations.

8. The Agent of the Italian Government further contends that, had Mr. Edward Self died after collecting the indemnity owed to him by the Italian State pursuant to Article 78, paragraph 4 (*c*) of the Treaty of Peace and had his daughter and heir found, in the estate in Italy, the amount corresponding to this indemnity, she would have had to declare it and pay the Italian inheritance tax thereon. This observation does not take into consideration the advantage which Mr. Self would have derived, in that event, from the possibility of investing the indemnity as he wished, perhaps even in such a manner as to escape the Italian inheritance tax either by a transfer abroad, insofar as this was permitted by Italian law, or by the purchase of Treasury Bonds or other State Loan Bonds, which are exempt from every and any inheritance tax, Mr. Self even could have immediately used this money in repairing his damaged property in which case only the increased value of the buildings as the result of having been repaired would have fallen under the inheritance tax and not the indemnity received.

Nor, with the interpretation given herein to Article 78, paragraph 4 (*c*), would the effects thereof be extended *ad infinitum*, as the Agent of the Italian Government claims. It must be admitted that the financial property represented by the indemnity does not enjoy a permanent and universally valid *rei inhaerens* tax exemption. As the Agent of the Italian Government rightly ob-

serves, the Treaty of Peace, for the purposes of the application of direct taxes, does not consider the property of United Nations nationals, damaged by the war and indemnified, to be permanently reduced by a sum equal to the amount of the indemnity nor does it accord, for purposes of assessing and levying indirect taxes on the transfer of wealth, a perpetual franchise to the whole chain of property transactions (purchases, investments, mortgages etc.), the first link of which was the paid indemnity. But a franchise is granted to property transactions, determined by inheritance, in that these transfers occur before the indemnity is paid to the person entitled thereto; if the indemnity is paid to the person entitled thereto, his heir cannot avail himself of the exemption provided for in Article 78, paragraph 4 (*c*) of the Treaty of Peace which can be invoked by the successor only insofar as the indemnity has not been settled and paid to his predecessor in interest. The United Nations had a clear interest in introducing in the Treaty of Peace a provision which would act as a stimulus for the Italian Government to make a prompt determination and payment of the indemnities provided for under Article 78 of the Treaty of Peace, thus preventing the right to indemnity from globally undergoing an excessive curtailment as the result of subsequent passages from the owner to his first successor, from the latter to his successor and so forth.

DECIDES:

1. The Petition submitted on April 1, 1955 by the Government of the United States of America in behalf of Miss Harriet Louise Self is partially admitted in that:

(*a*) the requirement of the Italian Government that Miss Harriet Louise Self submit a certificate of the competent Ufficio del Registro attesting to the fact that she has declared, as inheritance, the amount of the credit owed to her by the Italian Government under the terms of Article 78, paragraph 4 (*a*) of the Treaty of Peace and that she has paid, on this amount, the Italian inheritance tax, is recognized to be in conflict with Article 78, paragraph 4 (*a*) of the Treaty;

(*b*) Miss Harriet Louise Self is entitled to receive from the Italian Government the sum of 3,250,000 lire, under the terms of Article 78, paragraph 4 (*a*) of the Treaty of Peace, free of any levies, taxes or other charges, and particularly net of the Italian inheritance tax on the estate of the late Edward Danforth Self.

(*c*) the sum of 3,250,000 lire, mentioned in paragraph (*b*) shall be paid within sixty (60) days from the date on which a request for payment is presented to the Italian Government by the Government of the United States of America.

This Decision is final and binding.

DECIDED at Morcote (Ticino, Switzerland), on this 27th day of January 1960.

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 Harriet Louise Self Case

The decision adopted by the majority Commission in this case is unconvincing to me. I therefore consider it my duty to express briefly, hereunder, the grounds on which my dissent is based.

The fundamental argument on which the majority decision rests is of a literal nature: it is stated that the exemption is accorded by the Treaty in terms so broad that no distinction can be made between one fiscal charge and another.

I might recall, preliminarily, that the clarity of a rule is no grounds for preventing the interpreter from searching as to whether or not the meaning thereof might not, perchance, differ from that which appears from the literal expressions.

But this is not the question. The Italian theory does not contend that there are certain charges or deductions that escape the rule of exemption; I unquestionably agree that there is no limitation or restriction on the scope of the exemption.

Instead, another argument seems to me to be decisive.

The Treaty unequivocally speaks of *payment* (of the indemnity) and provides that it shall be made net of any deduction; the fact that no charge related to the payment is applicable does not authorize the interpreter to hold that the exemption covers such operations, acts, transactions to which the creditor gives rise and which have no connexion with the creditor-debtor State relation, that is, those which are completely unrelated to the *payment* specified in the Treaty.

This, it seems to me, is the manner in which the question should be set forth; it therefore follows that the letter of the rule supports, and does not contradict, the Italian theory.

The decision admits that the exemption refers to any charge "which could deploy its effects at the time the indemnity is paid". The weakness of the decision, in fact, consists in holding that these charges also comprise the inheritance tax which, instead, like all other taxes on business transactions, that is, the fiscal charges affecting all transfers of property, credits, rights, is completely unrelated with the time of payment to the creditor of the indemnity transferred.

The misunderstanding was engendered by the Italian Government's claim to verify, at the time of payment, under certain internal Rules (General Instructions on the Services of the Treasury, which are not even State laws), that the amount had been paid. It is clear, however, that the observance of these instructions does not alter the nature of the inheritance tax nor does it change the legal title from which it originates; there does not even exist a time identity; the obligation to pay succession tax arises at the time the estate is transferred.

The Italian Treasury could even have disregarded the observance of those internal rules; it could have normally paid the sum agreed with Miss Self and, subsequently, the fiscal office would later have applied, of its own accord, the tax. Rather, in point of fact, the heir's obligation had arisen before, namely, at the time the inheritance materialized.

At the legal level, the two moments are logically distinct: the payment of a debt is one matter, while the payment of the fiscal charge on the transfer thereof is another. If one considers them separately, and they should be separate, one finds that the payment, specified in Article 78, is unrelated to the question and the decision does not establish that the payment should be made net of inheritance tax but that United Nations nationals, besides the other exemptions, also enjoy—on certain conditions—an exemption from the inheritance tax on

credits originating from war damages; and this, to my mind, is not provided for in the Treaty.

Nor, to my mind, can any probative value be given to the argument drawn from the coincidence of the insertion into Article 78 of the Treaty of Peace of the two rules referring, respectively, to the reduction to two-thirds of the indemnity and the exemption of the indemnity from all fiscal or other charges. I can go so far as to admit that there is a logical connexion between the two rules and that the Representatives of the victorious Powers, when reducing the amount of the indemnity, also intended that it was to be paid free from taxation. That which still remains to be proved, however, is that the exemption is extended to facts which have nothing in common with the indemnity, namely, to charges of a personal nature, such as the inheritance tax, and that the drafters of the Treaty took into consideration circumstances which were mere possibilities, such as the death of the creditor while the payment of the indemnity was still pending.

Because, had they intended to provide for and govern this type of events, an introduction concerning the exemption from inheritance tax, which, I repeat, is of a personal and not a real nature, similar to that contained in the same Article regarding the extraordinary tax, would have been more logical; for, otherwise, there remains the incongruity which was pointed out by the Agent of the Italian Government, namely that the successor is or is not exempted from the tax (often a very heavy tax) depending on whether the creditor dies one day before or one day after the payment.

Morcote (Ticino, Switzerland), January 27, 1960

The Representative of the Italian Republic

Antonio SORRENTINO