

3703. Free City of Danzig (continuation)·

- (a) Report of the President of the Senate;
- (b) Petitions from the German National People's Party, the Social Democratic Party and the Centre Party concerning the Decrees of August 29th, 1935, amending the Penal Code in force;
- (c) Petitions from the German National People's Party, the Social Democratic Party and the Centre Party concerning the General Elections to the Popular Assembly on April 7th, 1935.

Mr. Lester, High Commissioner of the League of Nations at Danzig, and M. Greuser, President of the Danzig Senate, came to the Council table.

Mr. EDEN presented the following report and resolution: ¹

“ At its meeting on September 23rd, 1935,² the Council decided to endorse the opinions of the Committee of Jurists which it had set up to examine the petitions from various sections of the Danzig population complaining of the infringement of the Constitution of the Free City by the Senate in a number of different respects.

“ The Council will remember that the jurists were of opinion that the Constitution had unquestionably been infringed in certain cases, and that they had expressed, as regards other cases, doubt as to the spirit in which certain of the decree-laws in question had been applied.

“ In this connection, I should perhaps recall to my colleagues that, at the May meeting of the Council, the President of the Senate made a declaration that, should the Council, in the light of the opinion of the Committee of Jurists, reach a conclusion that the Constitution has been infringed on certain points, the Senate of the Free City would modify its opinion on the basis of the Council's interpretation, and would take appropriate measures ³

“ After receiving the report of the jurists, the Council recommended the Senate to take the necessary measures to remedy the situation by bringing the legislation of the Free City into conformity with the Constitution of which the League of Nations is the guarantor, and by ensuring in future the strict observance of the principles of the Constitution in the application of all laws.

“ The Council accordingly requested the President of the Senate to submit, through the High Commissioner, a report on the action taken by the Senate in accordance with the Council's recommendations.

“ At the same meeting, the Council had taken a decision on the case of the dismissal of M. Luck and M. Schmode, employees of the Municipality of Danzig, having come to the conclusion—in agreement, it may be noted, with judgments given in analogous cases by competent courts of the Free City—that their dismissal was contrary to the provisions of the Constitution.⁴ It accordingly recommended the President of the Senate to find a remedy for the prejudice caused both to the two-petitioners and to other complainants who are in a similar situation.

“ The Council now has to consider the report which the President of the Senate has forwarded to it through the High Commissioner of the Free City, setting forth the point of view of the Danzig Government and the measures which it has taken (Annex 1582, page 174).

“ The decree-laws and legislative provisions which the Council had considered contrary to the Constitution were four in number.⁵

“ (a) The Decree-law of April 4th, 1934, on the wearing of uniforms;

“ (b) The provisions of Article 132 (a) of the Criminal Code, punishing any person participating in associations of persons not approved by the Senate where the purpose of such association is the protection of institutions or manifestations of a political organisation;

“ (c) The Decree-law of October 10th, 1933, for the protection of the good name of national associations;

“ (d) The amendment to this last-named Decree, of March 6th, 1934, providing for the punishment of persons manufacturing and selling the uniforms or distinctive badges of an association supporting the Government without being authorised thereto as a member of such an association or otherwise.

“ Of these legislative enactments, the Senate abrogated that of Article 132 (a) of the Penal Code, and introduced an amendment to the Decree-law of April 4th, 1934, and to the amendment of March 6th, 1934. The amendments relating to the Decree of April 4th, 1934, on the wearing of uniforms are to the effect that authorisation can be refused only if the granting of it would compromise public safety and order. The decision will be taken in future, not by the Senate, but by the Chief of Police, and an appeal may be made to the Senate.

¹ Document C.73.1936.VII.

² See *Official Journal*, November 1935, pages 1187 and 1292.

³ See *Official Journal*, June 1935, page 649.

⁴ See *Official Journal*, November 1935, pages 1191 and 1328.

⁵ See *Official Journal*, June 1935, pages 762, 796, 794 and 836.

"Similarly as regards the decisions of March 6th, 1934, relating to the manufacture of uniforms and distinctive badges, the authorisation of the association concerned will no longer be necessary. A decree-law has been enacted in place of this provision, which, generally speaking, will require police authorisation for such manufacture. In view of the abrogation of Article 132 (a) of the Penal Code and of the two amendments in question, no further objection exists on this score.

"The Council, I think, cannot but note with satisfaction the measures thus taken by the Senate in execution of this part of its recommendations, while expressing the firm hope that the Senate will apply the new provisions in a spirit in keeping with that of the Constitution, as the Council desired when making its recommendations.

"On the other hand, as regards the most important legislative provision, concerning which the Council had raised serious objections—namely the provision contained in the Decree-law of October 10th, 1933, establishing more extensive legal protection of the good name of associations recognised by the Senate—the President states in his report to the Council that the Senate has been unable to take the responsibility of abolishing these provisions. He further states that it had also been unable to carry out the recommendations relating to M. Luck and M. Schmode and to other complainants in a similar situation.

"I am glad to be able to report to the Council that I am now informed by the President of the Senate that this attitude has been reconsidered and that measures are already being taken to comply fully with the recommendations of the Council in respect of both these questions.

"2. The Council will remember that at its meeting in September last¹ it also had to consider the action to be taken on certain petitions regarding the compatibility of the two Decree-laws of August 29th, 1935, amending the Penal Code and the Danzig Code of Criminal Procedure, with the Constitution of the Free City. On the proposal of its Rapporteur, the Council decided then to request the Permanent Court of International Justice to give an advisory opinion on the question whether the said decree-laws are consistent with the Constitution or, on the contrary, violate any of the provisions or principles of that Constitution.

"On December 4th, 1935,² the Court, by nine votes to three, expressed the opinion that the two Decrees of August 29th, 1935, are not consistent with the Constitution of the Free City of Danzig and that they violate certain provisions and certain principles thereof.

"In the circumstances, I recommend the Council to accept the Court's opinion. I have been informed by the President of the Senate that measures are now being taken to comply with that opinion by making the necessary amendments in the two decree-laws in question.

"3. Together with the report of the President of the Senate, the High Commissioner has circulated to the Council a speech which the President made in the Volkstag on November 27th, 1935 (Annex 1582, page 178), and to which the High Commissioner thought it necessary to direct the Council's attention as indicative of the ideas and reasons that had led the Senate to adopt the attitude to which I referred above in regard to the Council's recommendation. If the declarations of the President of the Senate are studied, as the High Commissioner wishes, side by side with the latter's annual report (Annex 1584, page 202), I think we shall be in a position to arrive at a very clear view of the present situation at Danzig.

"In the introduction to his report, the High Commissioner notes in general terms that the recommendations put forward by the Council at each of its three sessions and its constant efforts have not prevented the enforcement to an increasing degree of an anti-constitutional policy. Later, the High Commissioner states that he has the impression that each meeting of the Council last year was followed by an intensification of the policy which the Council deplored.

"This is a situation which obviously cannot continue. I was glad, in this connection, to hear the High Commissioner tell the Council on January 22nd³ that it would not be right to conclude that no effort whatever had been made by the Senate. Nevertheless, the Council is compelled to reiterate its appeal to the Senate to govern in conformity with the spirit of the Constitution and to remind the Senate that this is a clear obligation which cannot be ignored.

"The High Commissioner also refers to the Senate's interferences with the freedom of the Press. The High Commissioner observes that, although the Council clearly stated in January 1934⁴ that it considered the freedom of the Press to be one of the most important and essential principles of the Constitution and although, in September last,⁵ it recognised certain action taken in regard to the Press to be unconstitutional, the Senate has since then, on a number of occasions, had recourse to the prolonged suspension of opposition organs. The High Commissioner points out that, though it cannot be maintained that all the suspensions were equally unjustifiable, it seems evident that the situation of the Press in Danzig, as regards the reasonable rights ensured to it under the Constitution, is far from satisfactory. The High Commissioner further observes that the measures of suspension were taken in the name of the Chief of Police and that the parties concerned could only appeal to the Senate itself, which is a political and not a judicial body.

¹ See *Official Journal*, November 1935, page 1192.

² See "Judgments, Orders and Advisory Opinions of the Permanent Court" Series A/B, Fascicule No. 65.

³ See page 83.

⁴ See *Official Journal*, February 1934 (Part I), page 140.

⁵ See *Official Journal*, November 1935, page 1189.

" This last observation by the High Commissioner has led me to consider, as a possible means of improving the situation, a proposal that the law in the Free City should be so amended as to allow appeals, in the case of administrative action against the Press, to a court of law, with a provision that the latter should pronounce judgment within a short specified period. I am glad to be able to inform my colleagues that I have received formal assurances from the President of the Senate that he will introduce the necessary legislation to this end.

" In his speech of November 27th, 1935, the President of the Senate expressed his opinion on the part played by the League of Nations in its relations with Danzig, in terms which cannot be passed over in silence.

" The President of the Senate speaks of the Danzig people as a people cramped by articles and paragraphs fabricated in the days of Germany's deepest political and spiritual distress. The President claims that this separation [of Danzig from its mother-country] was willed by the League of Nations and that that fate of the Free City of Danzig was 'determined by the League of Nations'. At the same time, he expresses the hope that in Geneva, where political realities are given such very great weight, the fact that the distribution of political power in Europe has been fundamentally changed cannot continue to be ignored.

" The Council will not fail to notice the historical inaccuracy of the statements by the President of the Senate with regard to the establishment of the Free City of Danzig. Apart from this question, however, it is certain that the Council will not allow its attitude to be influenced by declarations of this nature.

" In this connection, it is only fair to add that the President of the Senate, on the same occasion, stated categorically that the cause of Danzig's severance from the motherland, which was to provide the newly-created Republic of Poland with a free outlet to the sea, is spontaneously respected by the German people and also by the Free City of Danzig, as a political law'. Furthermore, I am glad to be able to recall to my colleagues that, in a statement which he made to the Council during its present session, the President of the Senate said that the Danzig Government had never intended to infringe or in any way oppose the application of the statute of the Free City as established by the treaties. He stated, moreover, as regards the position and situation of the High Commissioner, that the Senate had the same views as it entertained with regard to the Statute and that there were therefore no grounds for fearing any aggravation of the international situation as a result of the situation in Danzig.

" One further point in regard to which there seems to be some misunderstanding. The President's speech asserts that the time has come to open the eyes of the people of Danzig (whose views as to the value of the League guarantee differ considerably) to the fact that the guarantee has in every way cost them very dear'. He specifies a sum of almost 20 million gulden as having been paid by Danzig in respect of League of Nations officials and Committees. In point of fact, I am informed by the Secretary-General that the sum actually disbursed by Danzig (as also by Poland) during the last fifteen years, to cover the cost of the High Commissioner's office and of Committees appointed to consider Polish-Danzig problems, is approximately one and a half million gulden.

" 4. The Council has before it a petition and a supplementary petition (Annex 1583, pages 184 and 191) from the opposition parties formally asking for the elections to be declared invalid and unconstitutional.

" The Danzig Supreme Court has deliberated on this question and has issued a careful and considered judgment on it, which merits a thorough and conscientious study. I suggest that any examination of the substance of this petition should be suspended. But there is one point in connection therewith to which I am bound to draw the immediate attention of my colleagues.

" The Senate, in its observations on the supplementary petition (Annex 1583a, page 200), develops an argument to the effect that the League is not in a position either to annul or itself to perform any act of State or administrative act which falls within the functions of the Free City. In particular, it cannot declare a judicial decision unconstitutional; for that would be tantamount to the annulling of the decision and therefore to the exercise of a function of State reserved under the Constitution of the Free City.

" It is not a question of exercising functions which belong to organs of the Free City under its Constitution or of exercising a power under the Constitution to annul the acts of such organs. What the Council has to do is to exercise the function implicit in a guarantee of the Constitution of Danzig, which is a fundamental element of the international status of the Free City and which exists for the purpose of ensuring that the organs of the Free City whether executive, legislative or judicial, operate in accordance with the Constitution. It is not therefore possible to pretend that decisions of any of these organs can control the Council's exercise of its powers under the guarantee. The Council has already dealt with this question in its report of September 23rd, 1935, when it said:¹

" the League of Nations, in its capacity of guarantor of the Constitution of Danzig, while according to the judgments of the courts the respect and authority which must be due to them, cannot be prevented by a decision of any organ of the Free City whether judicial, legislative or executive, from intervening in cases where it considers such intervention to be necessitated by a breach of the Constitution.'

¹ See *Official Journal*, November 1935, page 1187.

" 5. As regards the important suggestion of the High Commissioner relative to the appointment of a Commission of Investigation, I propose that the Council should reserve the matter for consideration on a later occasion.

" I have the honour to propose to the Council the following resolution.

" The Council,

" Calls upon the Senate of the Free City to take, in general, all measures which are required in order to govern in conformity with the spirit of the Constitution,

" Notes with satisfaction that the Senate is now taking the necessary measures to revoke the Decree of October 10th, 1933, regarding the maintenance of the good name of national associations, and, by means of *ex gratia* payments, to make good the prejudice which the Council considers has been caused to the petitioners M. Luck and M. Schmode, and to the other complainants who are in a similar situation,

" Adopts the opinion of the Permanent Court of International Justice, dated December 4th, 1935, to the effect that the two Decrees of August 29th, 1935, amending the Penal Code and the Code of Penal Procedure of Danzig, are not consistent with the Constitution of the Free City.

" Notes with satisfaction that the Senate is taking measures to conform to the said opinion by making the necessary amendments in the two decree-laws in question."

* * *

" The Council can with confidence leave to its High Commissioner the task of advising and aiding the Danzig Government in the execution of the measures referred to above. In carrying out this task, the High Commissioner will, I am sure, be able to count on the support and influence of all the Powers represented on the Council. In this connection, the Council may count more particularly on the assistance of Poland, which has special interest in the Free City "

Mr. Eden felt sure that the Council would share his satisfaction at the form he had been able to give to the above resolution. His colleagues would observe therefrom that the Danzig Senate had found it possible to reconsider the attitude it had adopted towards the recommendations made by the Council at its last session, and was now taking steps to give full effect to them. Moreover, the Senate was anticipating the wishes of the Council in regard to the two Decree-laws of August 29th, 1935, which had been found by the Permanent Court of International Justice to be unconstitutional, by taking the necessary measures to amend them. Lastly, he had been assured by the President of the Senate that he would initiate legislation tending to ameliorate the situation in regard to the Press in the Free City.

Mr. Eden did not wish to let the occasion pass without expressing his personal gratification at the fact that the Senate of the Free City had been able to reconsider its attitude in regard to the Council's recommendations of last September and, in general, at the spirit of co-operation which the President of the Senate had shown. He sincerely trusted that the present occasion marked the beginning of a new era in the relations between Danzig and the League, in which the Senate, by governing the Free City in conformity with the spirit of the Constitution, would give full and loyal co-operation to the Council in the exercise of its guarantee.

He was indebted to his Polish colleague for his valuable help in dealing with this problem during the present session. Poland had special interests in the Free City and was thus peculiarly fitted to assist the Council.

In conclusion, Mr. Eden wished to reiterate his hope that the Senate of the Free City would facilitate the Council's task by closely observing the Constitution, not only in the letter, but in the spirit.

M. BECK wished, in accepting the report, to express great satisfaction that the problems submitted to the Council had been settled in a friendly manner. The Polish Government, which consistently adopted the same method in its bilateral relations with the Free City could not but rejoice that the difficulties which had arisen in the relations between the Free City and the League were about to be settled in a manner satisfactory to all concerned. He greatly appreciated the merits of the Rapporteur, who had done his utmost to bring about a satisfactory solution.

M. MASSIGLI, speaking as representative of France, wished to express his satisfaction with the report before the Council. He had been particularly gratified by the assurances given to the Rapporteur, which were set out in the resolution. He hoped that, as Mr. Eden had said, the present session would open a new era in the relations between the League and Danzig. Once more the Council owed a debt of gratitude to the representative of the United Kingdom, who had received such valuable help from M. Beck.

M. DE MADARIAGA would willingly have remained silent, for when a question was settled it was useless to prolong its discussion. As he had spoken on the matter at a previous meeting, however, he wished to associate himself very sincerely with the remarks made by previous speakers.

M. DE VASCONCELLOS also associated himself with the statements just made.

M. LITVINOFF expressed the hope that, the report and the resolution having been accepted, the question of Danzig would not come up again before the Council of the League of Nations.

M. RÜSTÜ ARAS said that, as all those who had spoken on the matter at an earlier meeting had spoken on the present occasion, he too wished fully to associate himself with the statements made by the representatives of the Union of Soviet Socialist Republics and France.

M. GREISER, President of the Senate of the Free City of Danzig, observed that the report now before the Council showed that the Rapporteur, not shrinking from the heavy task before him, had studied all the details of the question most carefully, and M. Greiser ventured to express his thanks to Mr. Eden.

The attitude adopted by Poland since the beginning of the present session with regard to Danzig questions, which had been described in M. Beck's statements on Wednesday last and again at the present meeting, had undoubtedly contributed towards relieving the tension—a situation which was not only appreciated by M. Greiser but would also be appreciated by the population of the Free City of Danzig.

In his statement before the Council on Wednesday, January 22nd, M. Greiser had pointed out that the Government of the Free City of Danzig would always be ready to serve the cause of maintaining peace and of safeguarding right throughout the world. He believed he was justified in hoping that the Free City's frank and loyal attitude would be understood by the members of the Council. It was therefore his duty as a matter of honour, as representative of the Government of Danzig at Geneva, to lay stress on the fact that it would be difficult to bring the results of the Rapporteur's important work, which were now before the Council for a decision, into line with the desire expressed by the Free City for an agreement making full allowance for the points of view maintained by Danzig.

Nevertheless, Danzig would resign itself, in the interests of the great cause he had mentioned, to welcoming the measures proposed in the Rapporteur's report.

The PRESIDENT was sure all the members of the Council would re-echo the hope that the present occasion would mark the end of the troubles that had occupied the Council with regard to the Free City of Danzig. Everyone was very appreciative of the unwearied work done by the Rapporteur, and the Council had heard, with the greatest satisfaction, the undertaking given by the President of the Senate of the Free City. The President was sure M. Greiser would realise the attitude and the point of view of the Council, and he sincerely trusted that the undertakings which had now been given would be carried out, and that there would be a final solution of the troubles which had been now so often before the Council.

The resolution was adopted.

Mr. Lester and M. Greiser withdrew.

3704. Permanent Court of International Justice: Resignation of M. Wang Chung Hui, Judge of the Court.

Baron ALOISI presented the following report:¹

"The Council will, I am sure, join with me in expressing its regret that M. Wang Chung Hui, whose resignation from the office of judge of the Permanent Court has been notified to the Council by the Secretary-General (document C.47.M.19.1936.V), has found it necessary to resign his office.

"Although so soon as the amendments in the Court's Statute come into force the resignation of a judge of the Court will take effect automatically the established jurisprudence under the existing Statute requires that such a resignation should be formally accepted by the Council and the Assembly as the bodies by which the judge is appointed. At the same time, it is recognised that, on accepting the resignation itself, the Council can take the necessary measures to enable the vacancy to be filled so soon as the resignation has also been accepted by the Assembly. I therefore propose formally that the Council accept M. Wang's resignation.

"The necessary preliminary to an election to fill a vacancy among the judges of the Permanent Court is that, at least three months before the election, the national groups in the Permanent Court of Arbitration should have been invited to nominate candidates.

"At its last session² the Council directed the Secretary-General to invite the groups to nominate candidates for the two vacancies which had then been created by the death of M. Schücking and the resignation of Mr. Kellogg. The object was to permit these vacancies to be filled if an early meeting of the Assembly should take place.

"I propose that no change should be made for the moment as regards this decision of the Council, and that the Council should wait until its session of next May before taking a decision as to the measures necessitated by the resignation of M. Wang.

¹ Document C.70.1936.V

² See *Official Journal*, November 1935, page 1203.