

Rapporteur might obtain the assistance of the High Commissioner and of the Secretariat of the League.

V There is one matter, however, on which the Council could take a decision now. I refer to the question of preventing a dispute between Danzig and Poland from being prejudiced by means of direct action of any kind, and of preventing such action from giving rise to incidents which might involve serious political consequences. The Council certainly realises the importance of this question, and I am sure we all agree that the Governments of the Free City and of the Republic of Poland should never resort to direct action against each other. This necessarily follows from the special relations created by the treaties between Danzig and Poland. The real difficulty is to decide what constitutes direct action in any particular case. Such an action would, I consider, be one which might endanger or prove a serious obstacle to the maintenance of public security in Danzig or which might jeopardise good relations between Danzig and Poland. Such direct action might take the form of passive resistance as well as active measures.

The Council, which is the final court of appeal in disputes between Danzig and Poland, is also, of course, the competent organ to decide whether either Government has resorted to direct action instead of employing the methods of redress provided for in the treaties. If, however, any serious case of direct action arose, it might be dangerous to wait for a Council meeting. The Council should then, I think, leave it to the High Commissioner at Danzig to decide provisionally whether there has been direct action or not. The Government concerned would, of course, be entitled to appeal to the Council, but the High Commissioner's decision should be accepted until the Council has either confirmed, modified or rejected it.

I need hardly add that the High Commissioner would naturally exercise his authority with great discretion, in order to avoid any undue restriction of the freedom of action either of the Polish Republic or the Free City.

C. 177 1925. I.

Annex 746.

FREE CITY OF DANZIG POLISH POSTAL SERVICE IN THE FREE CITY OF DANZIG.

Report by M. Quiñones de Leon, adopted by the Council on March 13th, 1925.

The High Commissioner of the League of Nations, in a decision dated February 2nd, 1925, adjudicated upon a dispute between the Free City of Danzig and Poland with regard to the Polish Postal, Telegraph and Telephone Service at Danzig, particularly in regard to the installation of letter-boxes and the employment of Polish postmen in the Free City.

The Government of Poland appealed against the High Commissioner's decision. The document containing the Polish Government's appeal was circulated to the Members of the Council at the end of February. The annexes to the appeal, which are very bulky documents, together with the Danzig Government's observations on the Polish appeal, were only communicated to the Members of the Council in the course of our meeting here. I have, however, examined the voluminous file on this question as carefully as was possible under the circumstances. The affair in question is not perhaps in itself of very great importance, but it has given rise to a violent discussion in the Press and has now assumed a certain political importance. Under these circumstances, both parties must, in my opinion, be given the fullest assurance that all aspects of the question will be thoroughly considered. I therefore propose that the Council should ask the Permanent Court of International Justice for an advisory opinion.

The Court will hold its next ordinary session in June. The Council will in all probability not be in a position to take cognisance of the Court's opinion at the next Council session, which is to open about June 10th, unless the question is dealt with by the Court in an extraordinary session. Under these circumstances the Council will not be able to consider the Court's opinion and take a definite decision on the question until September next. Should, therefore, the present *de facto* position, involving, as it does, the presence of certain Polish letter-boxes and a service of Polish postmen at Danzig, be maintained until the above date? I venture, in regard to this question, to refer you to the information given in the High Commissioner's report of January 17th, 1925. I feel it my duty to state that Poland's action in proceeding to instal these letter-boxes, without endeavouring beforehand to come to an agreement with the authorities of the Free City and without the knowledge of the High Commissioner, might well call for comment, and the Council might consider the possibility of requesting Poland to discontinue the letter-box service in question pending a definite settlement of the matter.

His Excellency the Brazilian representative, as acting President of the Council, expressed, in agreement with me, an opinion on this question in a letter to the High Commissioner dated February 7th, which was communicated to the Members of the Council. The Brazilian representative considered that the Council could trust the prudence and goodwill of all the parties concerned, and in particular the population of Danzig, and might rest assured that the continuance of the present position for a further period of a few weeks, until the Council meeting, would not lead to further complications. He added that he trusted the Government of the Free City and the Government of the Polish Republic would await with confidence, and without resorting to any

direct action whatever, the decision which would be taken by the Council on this matter. I feel that this same consideration might be urged in regard to the situation created by referring the question to the Court. The Council might assume with the utmost confidence that the continuance of the present *de facto* position will not give rise to incidents, and that all classes in Poland and in the Free City will in the future refrain from any action which might again place the High Commissioner and the Council in presence of a *fait accompli*.

Should the Council agree with the conclusions of my present report, I shall submit for its approval the questions which might be brought before the Court.

Annex 747

C.107(I).1925.I.

FREE CITY OF DANZIG. PRINCIPLES APPLICABLE TO THE CONCLUSION
OF AGREEMENTS BETWEEN DANZIG AND POLAND.

Report by M. Quiñones de Leon, and Resolution adopted by the Council on March 13th, 1925.

I. On November 7th, 1924, the High Commissioner of the League of Nations in Danzig gave the following decision.

Paragraph 18.

"(1) That the Polish-Danzig relations are inter-State relations but are of so special a kind as not to admit of the normal international procedure, whatever it may be, being necessarily of application to them.

"(2) That, on account of those relations, the number and kind of agreements or treaties which are made between Poland and Danzig are in excess of, and of a different nature from, the agreements which are usually made between States.

"(3) That the procedure for putting these agreements into force in Poland is primarily the concern of the Polish Government, provided the procedure is such as to guarantee the Free City that agreements are legally valid according to Polish Law.

"(4) That Danzig is a State in the international sense of the word and is entitled to the use of expressions denoting that fact.

"(5) That a distinct undertaking to ratify the agreement under notice having been given, that undertaking must be put into effect."

Paragraph 19

"I consequently decide that in the conclusion of agreements between Danzig and Poland both parties will be governed by and apply the lines laid down in the foregoing paragraph."

In stating the grounds of his decision, the High Commissioner reviews the earlier phases of the dispute in detail and sets forth in full the arguments of both parties.

The dispute centres round a concrete case:

On July 22nd, 1922, an agreement was signed between Danzig and Poland regarding the tariffs on the railways on Danzig territory administered by the Polish State. In accordance with paragraph 3, this agreement was to come into force on the day on which ratifications were exchanged by the two Governments. This exchange did not take place, as the Polish Government declared that an agreement between Poland and Danzig could not be ratified in the technical sense of the word, but it informed the Danzig Government that it had confirmed the agreement.

According to the High Commissioner the real point at issue between the two parties is whether Danzig *vis-a-vis* Poland is an independent State from the point of view of making treaties or agreements.

The High Commissioner examines the diplomatic instruments which regulate the Free City's status, in particular the Treaty of Versailles, the Treaty of Paris of November 9th, 1920, and the Constitution of the Free City. He considers that a restricted independent international existence of the Free City in the treaty-making domain is established, but that these restrictions are not to be found in the case of Danzig's relations with Poland. He goes on to say that the "community of interests and the peculiar position in which they stand to each other has, in the making of treaties or agreements, produced a condition of affairs which does not differ greatly from that obtaining between other States, except that the relations are closer and more detailed than is perhaps usual between other States"

II. The Polish Government appealed against the High Commissioner's decision. In its appeal it contended that the High Commissioner had exceeded his powers in points 1 and 4 of paragraph 18 of his decision (where Danzig is referred to as a "State"), and that consequently his decision was not valid. In the first place he gave a decision on points not referred to him by the Senate; in the second place his decision, which deals with the international status of Danzig, defines, not only the relations between Danzig and Poland, but also the relations of Danzig with third party States. Now under Article 39 of the Paris Treaty the High Commissioner's decisions can only be binding on Danzig and Poland. The recognition of a State is a question for the