

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

community of States, and the Polish Government considers that a question concerning the status of Danzig as a State is not a matter which, under the Covenant of the League of Nations, the League is competent to decide.

In the Polish Government's view the High Commissioner's decisions should be of a practical and not a theoretical nature. The High Commissioner is responsible for ensuring the observance of the treaties, which are mainly intended to ensure that Poland shall have unlimited access to the sea, in peace time as well as in war time, while affording the Free City a guarantee that the majority of its inhabitants shall retain a certain freedom in their national existence.

Finally the Polish Government is of opinion that the High Commissioner has exceeded his powers in deciding that the agreement of July 22nd, 1922, requires ratification, as international law nowhere lays down that an agreement signed by plenipotentiaries should be so ratified.

III. In a letter dated November 29th, 1924, dealing with the Polish Government's appeal, the Danzig Senate puts forward certain observations. It points out in particular that, in referring the matter to the League, the Polish Government has already appealed, not only on the question of competence, but also on that of the merits of the case itself, and that the reasons adduced by the Polish Government for denying the High Commissioner's competence are inapplicable. The Danzig Senate holds that the points in the High Commissioner's decision to which Poland objects constitute the very decisions asked for by Danzig. According to the Senate the High Commissioner is, in any case, not bound to confine himself to a decision on the points raised and the text of the appeals submitted by the contesting parties, but that he can also decide any questions which he may think necessary to touch upon in view of a final settlement of the dispute.

In its reply the Senate enumerates the facts which, in its opinion, show that the Free City of Danzig is undoubtedly a State.

IV To sum up the Danzig Government accepts the High Commissioner's decision and asks that it should be confirmed by the Council, the Polish Government requests that it should be annulled, as it constitutes a general ruling on the Free City's international status, in particular by giving Danzig the status of a "State" In its appeal the Polish Government requested that the matter should be held over until the present Council meeting, in order that it might submit further observations if necessary: no such observations have, however, been received.

The question originally laid before the High Commissioner for decision was whether or no the agreement of July 22nd, 1922, should be ratified. In the arguments submitted to the High Commissioner to prove that such ratification could not and should not take place, Poland laid stress on the Free City of Danzig's special position under international law. The Free City on the other hand, declared that it was entitled to participate as a State in international agreements with Poland and to be referred to by the expressions customary in inter-State agreements. The High Commissioner thought it desirable to give a decision not merely on the question of ratifying the agreement of July 22nd, 1922, but also on the general question of the principles applicable to the conclusion of agreements between Danzig and Poland, which had been raised in the discussions between the two parties.

V After a close examination of the documents, I have come to the following conclusion.

As regards the expression "ratification" there is no reason why this term should not be employed in the relations between Poland and Danzig. The important point is to realise the concrete and limited character of the question submitted to us. In paragraph 18, No. 5, of the High Commissioner's decision it is stated "that a distinct undertaking to ratify the agreement under notice having been given, that undertaking must be put into effect" The interpretation which I give to this sentence is that if Poland desires definitely to give effect to the agreement concluded, the formalities of ratification must be observed. That being the case, the sentence in question calls for no comment.

I consider that the High Commissioner, in deciding the question of ratification in the manner indicated above, has settled the real point at issue in the dispute which was submitted to him.

Further, the expression "State" is used in such a general sense and is applied under such different conditions that the Council will not consider it necessary to examine the meaning of this term and its application to Danzig. The International status of the Free City is defined by the Treaty of Versailles.

I have the honour to propose the following resolution.

"The Council approves the present report, which will be substituted for the High Commissioner's decision of November 7th, 1924."

C. 87 1925. I.

Annex 748.

FREE CITY OF DANZIG POLISH RAILWAY DIRECTION IN DANZIG.

Opinion of the Committee of Jurists dated February 19th, 1925, submitted to the Council on March 13th, 1925.

On December 12th, 1922, the High Commissioner of the League of Nations at Danzig took the following decision in virtue of Article 39 of the Treaty between Poland and the Free City of Danzig, dated November 9th, 1920