

" We have now before us a further report from Colonels Siefert and Lindh (Annex 992). They inform us that they have not yet found a suitable candidate for the presidency of the Conciliation Commission, and that, in their opinion, it is not necessary for the Council to appoint a President during the period of their contracts, that is, until February next. They consider, however, that after that date they should be replaced on the Conciliation Commission by an official of the Ministry of Foreign Affairs of each country. They are further of opinion that a neutral President should be appointed, and that, in addition to the duties originally assigned to him, he should during the next year or two inspect the Frontier Guards in order to ensure the proper observance by them of the regulations which have been drawn up by agreement between the two Governments. They also recommend that the Conciliation Commission should be given authority to fix compensation for damage resulting from any incidents which might occur.

" Before submitting this letter to the Council the Secretary-General communicated it to the two Governments concerned, in order that they might forward to the Council any observations which they desired to offer upon the proposals made by the Swedish officers. It will be seen from the replies of the Governments (Annexes 992 *a* and *b*) that they accept the proposal to nominate civilian officials from their respective Foreign Offices as members of the Conciliation Commission to take the place of the Swedish officers. In view however, of the good relations existing between Greece and Bulgaria and on grounds of economy the two Governments see no necessity at present for the nomination of a neutral President for the Conciliation Commission.

" I would therefore suggest to the Council that it should for the present refrain from appointing the President of the Conciliation Commission, which would, on the departure of the Swedish officers, consist of officials from the respective Foreign Offices and officers from the two frontier guard services, the question of the completion of the Commission by the appointment of a neutral President remaining open. If this view is taken, the other points raised by the neutral officers would not for the moment arise.

" I beg to propose therefore the adoption of the following draft resolution.

" 'The Council adopts the report of its Rapporteur. "

M. DENDRAMIS, representative of Greece, accepted the report and was happy to note that the two Governments were agreed.

M. MIKOFF, representative of Bulgaria, also accepted the report.

The draft resolution was adopted.

M. Dendramis and M. Mikoff withdrew

2030. Free City of Danzig Jurisdiction of Danzig Tribunals in Actions brought by Danzig Railway Officials against the Polish Railways Administration.

Dr. Sahm, President of the Free City of Danzig and Dr. van Hamel, High Commissioner of the League of Nations at Danzig, came to the Council table.

M. VILLEGAS (Rapporteur) read the following report and draft resolution¹

" I. On April 8th, 1927 the High Commissioner, at the request of the Danzig Senate, gave a decision on the question of the jurisdiction of Danzig Courts in actions brought against the Polish Railways Administration by Danzig railway officials who have passed into the Polish railway service (Annex 993). The Free City appealed to the Council against this decision. The Polish Government's observations were forwarded to the Council by the High Commissioner. The High Commissioner subsequently communicated to the Secretary-General fresh documents submitted by Danzig.

" II. On January 11th, 1926, the diplomatic representative of Poland at Danzig informed the High Commissioner that the Polish Government would not in future take cognisance of actions brought by railway officials which were based on the provisions of the Polish-Danzig Agreement of October 22nd, 1921, and would not enforce any judgment given in such actions by the Danzig Courts.

" The Senate requested the High Commissioner to obtain by mediation the withdrawal of the Polish statement. Prolonged conferences took place. On January 12th, 1927 the Danzig Senate, observing that there had been no withdrawal of the statement, requested the High Commissioner to give the following decision.

" (*a*) That railway employees who had passed from the service of the Free City into Polish service were entitled to bring actions in respect of pecuniary claims, even if these claims were based on the Danzig-Polish Agreement of October 22nd, 1921 (Agreement

¹ Documents C. 409 (1). 1927. I and C. 409 (1) (a). 1927. I.

concerning Officials: "Beamtenabkommen"), or on the declaration made under Article 1 of this Agreement, which was accepted by the Polish Railways Administration;

"(b) That Danzig Courts were entitled to hear the actions referred to in (a)·

"(c) That, consequently the Polish Railways Administration was bound to accept the jurisdiction of the Danzig Courts in disputes such as those mentioned in (a) and to enforce the judgments given by those Courts.

"The parties having submitted reply and rejoinder, the High Commissioner gave his decision on April 8th, 1927

"III. The High Commissioner is of opinion that, generally speaking, Danzig members of the railway staff are entitled to bring actions against the Polish Railways Administration in the Courts of the Free City this right having been granted them under the Danzig-Polish Agreement of October 22nd, 1921, in Article 6 of which it is laid down that officials who have been kept on in the service of the Polish Railways are retained in that service, any rights acquired and duly established being respected. It is laid down in the Constitution of the Free City (Article 92) that officials may have access to the civil courts for the purpose of vindicating their pecuniary rights. In Prussian law the same rule is admitted under a law dated May 24th, 1861. In the present instance the civil courts are the Danzig Courts. This is the conclusion of the decision given by the High Commissioner, General Haking, on September 5th, 1921, which lays down that everything connected with the Polish Railways Administration within the territory of the Free City is subject to the civil and criminal courts of Danzig. The Polish Railways Administration has no sovereign rights within the territory of the Free City and therefore can establish no courts of law within this territory. The High Commissioner is of opinion, however, that in order to bring a personal and direct civil action against the Polish Administration, the employee must be able to plead some provision in his contract.

"The High Commissioner states that he need not consider what laws contain the provisions of this contract that is to say the series of provisions which establish the legal relationship between the Railways Administration and its employees. It was suggested to him that they may be contained in the Polish Law of October 19th, 1923, concerning the remuneration of officials and the regulations for its application, as well as other similar rules. According to the High Commissioner, it is on the basis of these provisions that an employee may ask the Courts to give a judgment, and not on the basis of the Agreement of October 22nd, 1921. The latter Agreement is an international treaty and international treaties do not confer direct rights on individuals. The Government has to introduce certain provisions into its internal legislation in order to carry out such treaties. Should it be necessary to insist on the carrying out of this international obligation, the only party to the case who can legally take action is the other Government. That Government, moreover, would not institute proceedings in the civil courts, but would take diplomatic action. The Danzig-Polish Agreement of October 22nd, 1921 ("Beamtenabkommen"), formulates the rules under which the Polish Government agrees to take into its service the employees of the Danzig Railways. The obligation undertaken by the Polish Government is towards the Danzig Government; the Danzig employee cannot therefore take action in the civil courts to secure the application of the Treaty. Moreover, a civil court would be more than a little embarrassed if it had to decide claims based not merely on considerations of private law, but also on points of general administrative organisation.

"The High Commissioner points out that, if necessary the Government of the Free City can apply to the Polish Government or finally resort to international procedure, in order to ensure respect for the provisions of the Agreement of October 22nd, 1921, and it is certain that the railway servants would thereby be afforded that protection to which they are entitled.

"The High Commissioner further considers whether the clauses of the Treaty itself might not provide grounds on which a personal action could be brought in the civil courts. The Senate asked that the declarations made under Article 1 of the Agreement should constitute this basis. The declarations in question are the personal statements which Danzig railway employees were bound to make if they desired to enter into Polish service. By these statements, the employees declared themselves prepared to remain in the Polish railway service under the conditions laid down in Agreement of October 22nd, 1921. The High Commissioner considers that these declarations do not have the legal effect of transforming the articles of an international treaty into clauses in a personal contract. In his opinion, the contract was concluded by the taking over and he cites Article 2 of the Agreement. According to this article, there was, the High Commissioner states, a wholesale transaction by which the Polish Administration became the employer of the Danzig staff. The antecedent declaration provided for by Article 1 formally established the fact that, before he was taken over, each separate employee really desired to enter into the Polish service and that he agreed to do so under the system defined in the Polish-Danzig Agreement of October 22nd, 1921. The declaration was a sort of declaration of option. It was a question of recognising a system and not a contract of service.

The High Commissioner also cites Article 9 of the Agreement, which lays down that all matters connected with the officials and employees who have passed into Polish service shall be settled by the Polish Administration and he concludes therefrom that it is under the internal laws and regulations of the Polish Administration (which laws and regulations should be in conformity with the provisions of the Agreement) that the employees acquire their personal rights.

The High Commissioner sums up his decisions as follows:

Pecuniary claims of any kind, based on one of the provisions which constitute the contract of service for Danzig employees of the Polish railways who have passed into the

service of the Polish Administration under the Danzig-Polish Agreement of October 22nd, 1921, and in particular claims in connection with salaries, pensions, half-pay and other grants under the contract may form the subject of an action in the Danzig courts (except in cases where a special jurisdiction is legally recognised, e.g., in regard to social insurance) the clauses of the Agreement itself and the declarations referred to in Article 1 of the Agreement are not to be regarded as provisions which constitute the contract of service of the above-mentioned employees, and therefore they cannot give ground for a personal action to be brought in the Courts;

Under these circumstances, I do not think that the question set out in (c) arises.

IV The Danzig Government, in its appeal, agrees with the High Commissioner's decision in so far as it recognises the right of Danzig railway officials to recover claims in the Danzig courts, but regards as erroneous that part of the decision which does not recognise that pecuniary claims may be based on the Agreement of October 22nd, 1921, or on the declarations made in accordance with Article 1 of that Agreement.

In the Danzig Government's opinion the parties to the Agreement of October 22nd, 1921, wished by that Agreement to create direct and personal rights for the parties concerned. The Senate states that it appears to be untenable, both from a practical and a legal point of view to consider the provisions of the Beamtenabkommen as not referring to the contract because they are contained in an international agreement; whether or not they are part of the contract should be determined by their contents and not by the form in which they are drawn up. The contents of the individual provisions of the Agreement clearly show the intention and wish of the contracting Governments to create by the Agreement direct personal rights and obligations for the officials concerned. As an illustration, the Senate cites *inter alia* Article 4 of the Agreement, by which the transferred officials are directly subject to the Polish Railways Administration for questions of discipline; Article 6, which grants to officials duly acquired rights, including the right, recognised in the decision, of officials to have recourse to legal process for the recovery of their pecuniary claims against the Polish Railways Administration, and Article 9, which authorises the Polish administration to settle all matters concerning officials, and thus excludes the co-operation or action of the contracting Governments, or appeal to them for the settlement of such matters. In the Danzig Government's opinion, the existence of direct legal relations between the Polish Administration and the officials is shown even more clearly by the declaration described in Article 1 of the Agreement. The signing of this declaration by the officials and its acceptance by the Polish Administration means that the Polish Administration agreed with each individual among the former Danzig officials upon a special set of regulations for his conditions of service, different from the regulations for the remaining Polish railway officials. The declaration states that the transfer takes place under the conditions laid down in the Agreement concluded between the Danzig and the Polish Governments on October 22nd, 1921. The wording of the declaration corresponds to Article 1 of the Agreement, which requires a declaration referring to this Decree *i.e.*, the Agreement of October 22nd, 1921. This declaration establishes a legal relationship between the Administration and the official.

According to Article 2 of the Agreement, workmen pass into the Polish railway service by the mere fact of their continuing their work, without their being required to make an individual declaration as in the case of the officials. This different procedure adopted in the Agreement for the transfer of the officials and the workmen shows, in the Danzig Government's opinion, that the declaration made by the officials under Article 1 has a legal character determining their conditions of service.

The Danzig Government adds that the wording of the article takes account of the express wish of the officials who desired to make sure that the Agreement could not later on be altered by the contracting Governments without their participation or consent. The Danzig Government states that a civil court would in no way be embarrassed in having to reach a decision on the basis of the Agreement.

V The Polish Government, in its observations transmitted by the High Commissioner, requests the Council to confirm the High Commissioner's decision. It gives an account of the past history of the Danzig railways question and summarises its attitude as regards the present question in the following statements:

1. In view of its taking over the administration of the railways in the territory of the Free City and the Danzig officials employed on those railways, the Polish Government concluded with the Senate of the Free City an Agreement whereby it assumed obligations regarding the regulation of the legal relations of those officials, subject, however, to the express reservation (Article 9) that the actual regulation of these relations should be an internal question with which the Polish Government would deal.

2. The officials who passed into the Polish service acquired no rights in relation to the Polish Government in virtue of that Agreement. Their legal position in relation to the Polish Government under the terms of the Agreement may be defined as a body of rights called *Reflexrechte* in the terminology of Jelinek. The legal position of these officials is regulated by the internal orders of the Polish Railways Administration and by Polish law and the engagements into which Poland entered in regard to the terms of these orders only had reference to the Free City itself.

3. All differences arising between the Polish Government and the Senate of the Free City in regard to the interpretation of the Agreement of October 22nd, 1921, may be settled by the

means provided in Article 39 of the Treaty of Paris, *i.e.*, by the arbitration of the High Commissioner of the League of Nations, and, in the last resort, by the Council of the League.

4. The High Commissioner's decision of September 5th, 1921, which settled the railway dispute, also laid down that the representation of the interests of Danzig officials who have passed into the Polish service would be entrusted to the representative of the Free City on the Polish Railway Administration, it pointed out that that representation would be a sufficient guarantee of those interests and did not provide for any judicial procedure.

5. The circumstance that the actual terms of the Agreement of October 22nd, 1921, refer to the legal relations of the officials in question cannot affect the international character of those terms. The Senate's assertion that the Agreement was intended to give the officials and the Polish Railways Administration direct rights and powers in relation to the Polish Government, to the exclusion of any subsequent intervention by that Government in regard to legal relations, is absolutely unfounded and is based on an untenable conception of law.

6. The declarations sent in by the officials through the organs of the Free City simply expressed the desire to pass into Polish service, and the actual transfer of the officials took place *en bloc* without any individual acts on the part of the Polish Railways Administration. These declarations did not and could not change the normal contract of service any more than they affect the international character of the Agreement of October 22nd, 1921.

7. Since, in addition to pecuniary questions, the Agreement settled a number of questions of organisation, imposing in that connection certain obligations upon the Polish Railways Administration, the officials taken into the Polish service could not, on the basis of Danzig internal law, have recourse to judicial action in recovery of their claims, as such action is inadmissible under Danzig law.

VI. On July 27th, 1927 the High Commissioner transmitted two legal opinions, by the German Professors Schucking and Kaufmann, and a sentence by the Danzig High Court ('Obergericht'), which had been submitted to him by the Senate. The Senate also submitted certain observations regarding the Polish reply. The Senate states that the Polish Government, according to its own argument, should by embodying special legal clauses in its legislation, have given the legal relations of the officials it has taken over the form provided for in the Agreement concerning officials, which in its opinion bears the character of an international instrument. By failing to do so, Poland has left a legal obligation unfulfilled and cannot plead the absence of such rules as an argument against the officials. In reply to the Polish Government's contention that the declaration of the officials were submitted *en bloc*, the Danzig Government further states that more than one thousand individual declarations were made.

VII. On August 22nd, 1927 the High Commissioner forwarded a Polish Note, dated August 17th, 1927 containing the Polish Government's observations on the legal opinions of Professors Schucking and Kaufmann and on the decision of the Danzig Obergericht. With reference to the statements I have just mentioned in the Danzig Note of July 27th, 1927, the Polish Note adds that questions relating to officials' salaries are at present settled in accordance with the Polish law of October 19th, 1923, Article 5 of which empowers the Cabinet to establish special salary rates for officials employed in the territory of the Free City. Each of the component parts of these salaries, says the Polish Government, has its legal basis in the Polish law and the orders issued in virtue of that law. All the other administrative relations of officials who have entered the Polish service are governed by the laws and regulations enacted by the central authorities, and by the orders issued by the Administration, within the limits of their respective powers. In all these cases the rules governing service relations emanate from the organs of the Polish Government.

VIII. Quite recently the High Commissioner further forwarded to the Secretary-General the following documents:

1. Two Legal Opinions submitted by the Polish Government, one by Professor Cavaglieri, of the University of Naples, and the other by Professor Le Fur, of the Faculty of Law in Paris;
2. Note dated September 10th, 1927 containing the observations of the Senate of Danzig on the above-mentioned Polish Note of August 17th, 1927, and of Professor Cavaglieri's Legal Opinion,
3. Note dated September 13th, 1927 embodying the observations of the Polish Government on the Danzig Note of September 10th, 1927.

IX. It will be seen from the above summary of the documents submitted to the Council that both Governments accept the first part of the High Commissioner's decision. Disagreement exists, however, as regards the second part of the decision, namely whether pecuniary claims brought by railway officials before the Danzig courts can be based on the Agreement of October 22nd, 1921, or on the individual declarations provided for in Article 1 of the Agreement, and accordingly whether the Polish Railways Administration is bound to enforce the judgments of the Danzig courts in such actions.

I have consulted the representatives of both parties on the procedure to be followed in order to solve this legal question. The Polish representative has stated that it would be desirable

that the Permanent Court of International Justice should be asked to give an advisory opinion in the matter. The Danzig representative informs me that he sees no objection to this course. The High Commissioner, to whom I have mentioned the matter, would himself welcome the reference of the question to the Court.

In these circumstances, I venture to submit to the Council the following draft resolution.

The Council of the League of Nations, having received from the Government of the Free City of Danzig an appeal against a decision given on April 8th, 1927 by the High Commissioner of the League of Nations at Danzig as to the jurisdiction of the Danzig Courts in actions brought against the Polish Railways Administration by Danzig railway officials who have passed into the Polish service, decides to ask the Permanent Court of International Justice to give it an advisory opinion on the following question.

Whereas the Government of the Free City of Danzig requested the High Commissioner on January 12th, 1927 to give the following decision.

(a) That railway employees who had passed from the service of the Free City into Polish service were entitled to bring actions in respect of pecuniary claims, even if these claims were based on the Danzig-Polish Agreement of October 22nd, 1921 (Agreement concerning officials, *Beamtenabkommen*) or on the declaration made under Article 1 of this Agreement, which was accepted by the Polish Railways Administration,

(b) That Danzig Courts were entitled to hear the actions referred to in (a)

(c) That, consequently the Polish Railways Administration was bound to accept the jurisdiction of the Danzig Courts in disputes such as those mentioned in (a), and to enforce the judgments given by those Courts.

Whereas the High Commissioner on April 8th, 1927 on the above request of the Senate of Danzig, gave the annexed decision.

Whereas the Government of Danzig has appealed to the Council of the League of Nations against this decision in a Note dated May 12th, 1927

Is the Court of opinion that the High Commissioner's decision of April 8th, 1927 given as a result of the requests made by the Danzig Government on January 12th, 1927 — in so far as his decision does not comply with those requests — is legally well founded?

The Secretary-General is authorised to submit this application to the Court with all the documents relating to the question, to explain to the Court the action the Council has taken in the matter to give all the necessary assistance for the examination of the case, and, if necessary to take steps to be represented before the Court. "

Dr. SAHM, President of the Senate of the Free City had hoped up to the last moment that it would be possible to settle this question at Geneva by a decision of the Council. He would have greatly preferred such a solution, in the interests of the railway officials themselves. It was clear that the negotiations on this matter had not succeeded. This being the case, the method whereby the dispute would be submitted, for an advisory opinion on its legal aspects, to the Permanent Court of International Justice appeared to him to be the best and most certain solution. He therefore welcomed the proposal of the Rapporteur.

M. STRASBURGER accepted the report and thanked the Rapporteur for the work which he had done.

Dr. VAN HAMEL, High Commissioner at Danzig, welcomed the proposal that the question should be submitted to the Permanent Court of International Justice for an advisory opinion. The problem was of considerable importance, not only from the point of view of the railway officials in question, but also in regard to the smooth working of the various jurisdictions and legal authorities; it was essential, especially at Danzig, that the relations between these jurisdictions and legal authorities should be settled with the greatest possible exactitude in order to avoid misunderstandings and conflicts. He would not refer to that organic side of a problem, to which he had had to give close attention when he had tried to find the most equitable solution.

Apart from this he would merely declare, for the moment, that it might perhaps be possible already to restrict the practical scope of the question of jurisdiction by means of the just and more detailed settlement of several problems concerning the material interests of the officials in question, in regard to which an agreement did not apparently exist at present. In the meantime, he thought that there was nothing to prevent the examination of this aspect of the problem while awaiting the results of the proposed procedure. He was entirely at the disposal of both parties, if it were desired to follow this course at Danzig.

Dr. SAHM said that the proposal of the High Commissioner did not appear to him to be practical. It was not in the interests of the railway officials whom he must defend at Geneva.

In his view any difficulties would automatically disappear after the Permanent Court had given its opinion and on the basis of the decision of the Council.

M. STRASBURGER was ready to negotiate at Danzig in regard to individual cases, if the Senate desired to do so. He was also ready to await the views of the Permanent Court and the decision of the Council. Both solutions were, therefore, acceptable to him.

Dr. VAN HAMEL thought it would be useless to continue the discussion. The President of the Free City did not apparently quite understand the suggestion which he had made, but the matter could be discussed at some future date in Danzig.

The PRESIDENT, as Rapporteur, would greatly have preferred a settlement by the Council. In view of the fact that it concerned a question of legal interpretation, and that the two parties were ready to submit it to the Permanent Court of International Justice, he hoped that the Court would give an opinion as quickly as possible, in order that the matter might be definitely settled.

The parties were not in agreement with regard to the proposal of the High Commissioner and that proposal was not before the Council. The President hoped that his own proposal would be adopted.

The draft resolution was adopted.

Dr. Sahm and Dr. van Hamel withdrew.

(The Council went into private session.)

2031. Report of the Salaries Adjustment Committee.

M. TITULESCO read the following report ¹.

The Assembly during its second ordinary session, decided that the conclusions contained in the Report of the Salaries Adjustment Committee should, before being adopted, be submitted for the approval of the Council of the League, and should be kept strictly within the limits of the budget voted by the Assembly

During its seventh ordinary session, the Assembly invited the Supervisory Commission, before next year, to study the entire system (adjustment of salaries) and its application, and to submit the result of its study to the Assembly of 1927. The Supervisory Commission, however, in order to complete the examination undertaken at the request of the last Assembly should be acquainted with the figures in the document which has just been submitted to us.

“Further, the Fourth Committee has also appointed a Sub-Committee to study this question

“Under these circumstances, I think that the Council should simply take note of the report of the Salaries Adjustment Committee and refer it at once to the Supervisory Commission and the Fourth Committee.”

The conclusions of the report were adopted.

SIXTH MEETING (PUBLIC, THEN PRIVATE).

Held at Geneva on September 27th, 1927, at 2.45 p.m.

Present: All the representatives of the Members of the Council, and the Secretary-General

2032. Free City of Danzig: Transport of Munitions and Polish War Material through Danzig: Use of the Westerplatte.

Dr. Sahm, President of the Senate of the Free City of Danzig, and Dr. van Hamel, High Commissioner of the League of Nations, came to the Council table.

M. VILLEGAS presented the following report:

I.

At its meeting on June 17th, 1927² the Council decided to postpone to the present session the discussion of certain questions submitted to it by the High Commissioner of the League at Danzig concerning the utilisation of the Westerplatte dépôt for Polish munitions and war material

¹ Document C. 496. 1927. II.

² See *Official Journal*, July 1927, page 801.