

## 3063. Free City of Danzig Use of the Port of Danzig by Poland.

Mr. EDEN presented the following report and draft resolution.<sup>1</sup>

" 1. At its meeting on January 29th, 1932<sup>2</sup> the Council requested the Committee of Jurists, which had already on April 16th, 1931, given an advisory opinion to the High Commissioner of the League of Nations in Danzig on the question of the use of the Port of Danzig by Poland, to be good enough to examine the fresh legal questions raised in the appeals submitted by Danzig and Poland against the High Commissioner's decision of October 26th, 1931, leaving the Committee fully at liberty to reconsider, in the light of the High Commissioner's decision and of the arguments submitted by the parties in their appeals, the conclusions of their above-mentioned opinion.

" In 1931, the Committee was composed as follows: M. Hostie (Belgian), M. Raestad (Norwegian) and Sir John Fischer Williams (British). The latter having considered it undesirable in the general interest for him to continue to serve on the Committee, as he had recently pleaded the cause of one of the parties to the dispute before the Permanent Court at The Hague, the Rapporteur, making use of the powers conferred on him in this connection by the above-mentioned Council resolution, appointed Professor Brierly of Oxford to replace him.

" On April 8th, 1932, the Committee sent its opinion to the Council. M. Raestad, having been unable to concur in the view expressed by his colleagues, attached his dissenting opinion to the Committee's opinion.

" 2. The Committee formulated as follows the questions which arise:

" (a) Does Point VII of the High Commissioner's decision of August 15th, 1921, involve any obligation on Poland ?

" (b) If so, does this obligation imply the necessity of concluding agreements in execution of the same ?

" (c) Is this obligation confined to railway questions or is it of general scope ?

" (d) Does this obligation apply to passenger traffic as well as to goods traffic ?

" (e) Does it apply to transit traffic through Poland as well as to traffic to and from Poland ?

" (f) Does this obligation make it incumbent on Poland, as Danzig asks, to take the necessary measures to ensure that the risk of full use not being made of the Port of Danzig should fall not on Danzig but on the other ports opened by Poland on the Baltic coast ?

" (g) Does this obligation make it incumbent on Poland, according to the terms of the High Commissioner's decision, not to adopt preferential measures calculated to foster the competition of other ports—or at any rate of the ports opened by Poland on the Baltic coast—with Danzig to the disadvantage of the latter ?

" (h) What is to be understood by "Port of Danzig" as referred to in Point VII ?

" (i) Is Poland obliged under Point VII, as Danzig states, to make every effort to develop and improve the harbour of Danzig and its routes of access (railways and navigable waterways) so that they can meet all the requirements of the traffic referred to in the first paragraph of the request of March 9th, 1930 ?

" 3. Although the Committee had already replied to a certain number of these questions in its previous opinion, it re-examined them in conjunction with the new questions. The Committee's reply to the questions raised will be found in the conclusions of the Committee reproduced in the draft resolution given below.

" The Committee thinks that it is legally impossible, at any rate in the present state of the proceedings, to give an interpretation in *abstracto* of the High Commissioner's decision of August 15th, 1921, which would go beyond what it has said in reply to the above-mentioned questions. All that the Committee has thought it possible to do, while remaining in the abstract field, is, to a certain extent, to make clear the meaning of the words the Polish Government will engage to make full use of the Port of Danzig by giving some indication of what a reasonable application could not imply. The Committee has endeavoured to give these indications because it thought that they might be useful for defining the scope of the dispute, and thus facilitating subsequent procedure. But the Committee thinks that such directions could not, as such, be framed as a decision with the force of *choice judicata* for it is not inconceivable that a subsequent technical enquiry will show that they should be supplemented or even amended. These directions are formulated as follows:

" (i) The obligation arising out of Point VII cannot reasonably oblige Poland to modify her economic organisation, nor in particular to suppress or limit freedom of trade, if she does not think fit to do so.

" Even if in isolated cases the choice of the parties concerned (importers, exporters, shipowners, etc.), without being influenced by the public authorities, were to be dictated by non-economic motives, Danzig could not complain of this to the body politic, the Polish State, if, however, the importance or extent of this diversion justified the conclusion that the

<sup>1</sup> Document C.442.1932.I.

See *Official Journal*, March 1932 (Part II), page 489.

port of Danzig was being boycotted, the Polish authorities would have the duty of intervening to put an end to a state of things incompatible with the close solidarity which must govern relations between the two States.

" Apart from this case, so long as freedom of trade remains complete and effective, Danzig cannot reasonably deduce from Point VII more than a duty for Poland not to stultify the free choice of the persons concerned, to the detriment of the Free City by measures of preference (works, charges, services, etc.) which might in any way annihilate or reduce the advantages which the Free City may draw from its geographical situation, its equipment, its relations, etc.

" On the other hand, if, as regards certain import or export traffic, the Polish Government had substituted or was afterwards led to substitute direct action for action by the parties concerned, and if, consequently the public authority were, directly or through an intermediary to exercise in fact, as regards any particular traffic, a choice between the port of Danzig and the ports opened by Poland on the Baltic coast, Poland's obligation would logically cease to be limited in the manner indicated above.

" (ii) Nor does the obligation under Point VII, interpreted reasonably involve for Poland the duty of bringing her laws or regulations and, in general, her organisation as regards her own ports into harmony with those of the Free City in matters which, in the case of the Port of Danzig, are not within the competence of the Polish authorities or of the Harbour Board but of the Danzig authorities. If, from the exercise of Polish and Danzig sovereignties in their respective domains, there should result a difference of regime between Danzig and Polish ports in any one of these matters, and if such difference were to benefit Polish ports, it could not in itself be regarded as contrary to the principle of Point VII. Were it otherwise, the consequence would be that the decisions to be taken as regards the organisation of Polish ports would indirectly be dependent on the Free City. This would, in the Committee's view, be to deduce from Point VII clearly exaggerated conclusions, even if account is taken of the obligation formulated in Point VIII of the decision of August 15th, 1921, as regards the protection of Polish interests.

" Such a difference of regime cannot therefore be regarded in itself as contrary to the principle of Point VII. But this does not mean that it could not in any circumstances become so. It might become so, for instance, if Poland unduly took advantage of her economic strength to take steps which the limited financial capacity of the Free City would not permit it in its turn to take, whilst Poland might attain the object she was aiming at (*i.e.*, the expansion of her maritime trade) by other measures which would be favourable, on equal terms, to traffic through Danzig and traffic through Polish ports.

" The foregoing must, *mutatis mutandis*, be applied to the sphere of action of the Danzig Harbour Board.

" (iii) Lastly Point VII, interpreted reasonably cannot involve for Poland in her relations with third States (States forwarding goods or States whose vessels might use the Port of Danzig or Polish ports) an obligation to limit in any way the principles of free navigation and free transit, even where it might legally be possible for her to do so.

" The Committee considers that, in order to take a decision on the Danzig request, it is necessary that each of the measures and each of the grievances which together constitute the substance of the Free City's complaint should be examined *in concreto*.

" 4. I am glad to say that I am able to accept entirely not only the conclusions formulated by the Committee, but also what is said with regard to the directions and I venture to submit to the Council a draft resolution embodying the conclusions of the Committee of Jurists.

" I am sure that the Council will be unanimously in warmly thanking the Committee for all the work it has done and for the valuable assistance it has given the Council.

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

" The Council decides:

" (a) To replace points A, B and C of the High Commissioner's decision of October 26th, 1931, by the following provisions.

" 1. Point VII of the decision of August 15th, 1921, involves an obligation on the Polish Government;

" 2. The obligation is a direct one and does not imply the necessity of concluding agreements in execution of the same

" 3. The obligation is not restricted to railway questions, but is of general application, it applies to both passenger and goods traffic; it does not exclude transit traffic through Poland,

" 4. Point VII does not involve an obligation on the Polish Government to take, as Danzig demands, all necessary measures to ensure that the portion of the goods

and passenger traffic to and from Poland which does not pass the land frontier and the transit traffic through Poland is transhipped in the harbour of Danzig.

" Nor does it involve a general and unconditional obligation on the Polish Government to take the necessary measures to ensure that the risk of full use not being made of the port of Danzig should fall, not on the port of Danzig, but on the ports opened by Poland on the Baltic coast;

" 5. In interpreting the obligation under Point VII, regard must be paid to the state of development of the port of Danzig which at any time will result from a reasonable application of Article 26 of the Paris Treaty of November 9th, 1920.

" (b) To suspend judgment on Point D of the High Commissioner's decision of October 26th, 1931,

" (c) To refer the question back to the High Commissioner, asking him to request the parties to supplement their statements where necessary and to formulate, with a view to his decision, their detailed conclusions on the question whether the Polish Government is actually making full use of the Port of Danzig as provided in Point VII of the decision of August 15th, 1921, and, if not, how and to what extent.

" (d) To request the Secretary-General to convey the Council's thanks to the Committee of Jurists for its valuable assistance."

M. ZALESKI accepted the report and thanked the Rapporteur for the work he had done. He desired, however, to make a few observations.

As Poland had maintained repeatedly and still maintained, she had need of the port of Danzig. She used it and would always use it. Its development was no less advantageous to the Polish State than to the Free City.

The use of the port of Danzig, viewed in this light, was a question of fact in the economic sphere, and M. Zaleski could only observe that the Polish Government accepted the opinion of the jurists, in so far as it appeared to give special attention to this aspect of the matter, by which the jurists had apparently been guided more especially.

With regard, however, to the legal standpoint, the Polish Government reserved its right to take its stand on the principle embodied in the Treaty of Versailles and the Convention of Paris, according to which the free use of the port of Danzig was a right confirmed to Poland.

M. ZIEHM understood the Polish representative's statement in the sense that it made no change in the report in regard to the finding as to Poland's obligation to make use of the port. Subject to this observation, he accepted the report.

*The draft resolution was adopted.*

#### 3064. Free City of Danzig "Direct Action" in Customs Matters.

Mr. EDEN presented the following report and draft resolution:<sup>1</sup>

" I. On March 29th, 1932, the High Commissioner gave a provisional decision as to whether there had been direct action within the meaning of the report approved by the Council on March 13th, 1925.<sup>2</sup>

" The relevant passage of the report reads as follows:

" 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

<sup>1</sup> Document C.450.1932.I.  
See *Official Journal*, April 1925, pages 468 and 564.