

Polish Minister for Foreign Affairs observes that it is important also, at the present moment, to ensure stability and clearness in Polish-Danzig relations in regard to the questions dealt with in the preamble to the opinion of the Court and he accordingly requests the Council to be good enough to examine these questions—with a view to a final settlement—in order that Polish war vessels and other vessels other than merchantmen may be accorded harbour facilities, and that their nautical requirements (victualling, repairs, transit, etc.) may be ensured.

“ III. In a letter dated January 28th, 1932 (Annex 1348a), the President of the Senate, referring to the above-mentioned letter from the Polish Minister for Foreign Affairs, observes that the opinion of the Court has finally cleared up the legal position, as has been desired by Danzig for a long time past.

“ As regards the practical side of the question, the President of the Danzig Senate states that international usages with regard to access to, and anchorage in, foreign ports already ensure for Polish warships all desirable facilities for victualling and repairs in Danzig, and transit through Danzig waters. These international usages have always been recognised and applied to all foreign States by the Free City in the most liberal spirit, and special orders have been given to the Danzig authorities to observe them. The Danzig Government has repeatedly expressed its willingness to grant Polish warships further special facilities based on local circumstances, and the President formally repeats this offer. The Danzig Government's instructions regarding the application of the international rules expressly provide for the possibility of applying special regulations to the warships of individual States. The Danzig Government announces that, when the matter has been settled before the Council, it will invite the Polish Government to state its wishes regarding special facilities before March 1st. In this connection, the Danzig Government, in order to give further evidence of its good will, declares its willingness to prolong until April 1st, 1932, the validity of the provisional regulations issued by the High Commissioner on September 19th, 1931, but those regulations will automatically lapse on that date.

“ IV On January 28th (Annex 1348b), the Polish Government's representative sent a further letter to the Council, stating that he accepted the Danzig proposals contained in the above-mentioned letter from the President of the Senate. The Polish representative considered, however, that he was obliged to make every reservation in regard to the decree mentioned in the Senate's letter, since, in the Polish Government's opinion, regulations defining the rules for the mooring and anchorage of foreign war vessels in the port of Danzig could only be drawn up with the assistance of the competent authorities—namely the Port and Waterways Board, the Polish Government and, if necessary the organs of the League of Nations.

“ I therefore propose the adoption of the following draft resolution:

“ The Council.

“ Adopts the advisory opinion given by the Permanent Court of International Justice on December 11th, 1931, on the question of the access to, or anchorage in, the port of Danzig of Polish war vessels;

“ Requests the Secretary-General to communicate the text of this opinion to the High Commissioner, in reply to the question raised in his special report of August 20th, 1931;

“ Considers that, in view of the fact that the legal points on which a divergence of views between the parties had been revealed have now been elucidated by the opinion of the Court, the practical questions raised in the Polish Government's Note of January 25th, 1932, should be settled directly between the parties;

“ Notes with satisfaction the statements made on this matter by the President of the Senate in his Note of January 28th, 1932, and the statements of the Polish representative in his Note of that date;

“ Is gratified to be in a position to note that the question will thus be finally settled. ”

M. ZIEHM concurred in Lord Cecil's view that the legal points on which there had been divergence of opinion between Poland and Danzig had been completely elucidated by the advisory opinion of the Permanent Court. He expressed his satisfaction that a dispute which had engaged the Council's attention on many occasions had at last been brought to an end, and he was justified in hoping that no further difficulty would be encountered in the solution of the practical questions by the methods which he himself had proposed and which had been accepted by the Polish representative.

The draft resolution was adopted.

3010. Free City of Danzig. Use of the Port of Danzig by Poland.

Viscount CECIL presented the following report and draft resolution.¹

“ I. The Government of the Free City of Danzig and the Polish Government lodged appeals on December 4th and December 5th, 1931, respectively against the decision given by the High

¹ Document C.130.1932.I.

Commissioner of the League of Nations on October 26th, 1931, on the question of the use by Poland of the port of Danzig. This matter was submitted to the High Commissioner by a request from the Senate dated May 9th, 1930. The texts of the High Commissioner's decision and of the appeals by the two Governments, as also the opinion given to the High Commissioner by a Committee of Jurists on April 16th, 1931, have been communicated to the Council. It is therefore unnecessary to set forth in detail the arguments submitted on both sides; it is sufficient to give a short account of the various stages of the question and of the different views maintained.

" II. On May 9th, 1930, the Government of the Free City of Danzig submitted to the High Commissioner of the League of Nations the following request :

" Whereas the High Commissioner of the League of Nations has taken on August 15th, 1921, the following decision.

" The Polish Government will engage to make full use of the port of Danzig, whatever other ports she may open in the future on the Baltic coast, and the Government of Danzig will engage to safeguard the interests of Poland as regards free access to the sea at all times.

" We request the favour of your decision to the effect that the Polish Government is under obligation.

" 1. To take all necessary measures, more particularly in respect of railway tariffs, to ensure that the portion of the goods and passenger traffic to and from Poland which does not pass the land frontier and of the transit traffic through Poland is transhipped in the harbour of Danzig.

" 2. To make every effort to develop and improve the harbour of Danzig and the railway and inland waterway routes of access thereto, so that they can meet all requirements of the traffic referred to in (1).

" 3. To refrain from all measures in respect of other harbours whereby goods and passenger traffic would be diverted from Danzig, more particularly rebates of public taxes and other the conclusion of agreements embodying an undertaking to make capital investments and to effect a certain minimum transshipment; Customs measures by which rebates of duty exemptions or other privileges are promised in the case of consignments sent via Gdynia, or measures in respect of the granting of quotas; or, finally measures of an economic or other nature.

" The Polish Government expressed the opinion that the request of the Senate of the Free City could not form a subject of dispute between Poland and the Free City for the reason that it involved an infringement of the independence and political and economic sovereignty of the Polish State, as well as of its right to free development. In the Polish Government's view the claims of the Free City of Danzig could only be based on a positive and explicit contractual rule. No such rule, according to the Polish Government, had been established either by the High Commissioner's decision of August 15th, 1921, or by the Danzig-Polish Agreement of September 23rd, 1921.

" III. With a view to elucidating the legal position in dispute, the High Commissioner applied to the Secretary-General of the League of Nations, in accordance with the terms of the procedure in force, for the appointment of a Committee of Experts to give a legal opinion on the following question.

" Does the decision of the High Commissioner of August 15th, 1921, Point VII (" The Polish Government will engage to make full use of the port of Danzig, whatever other ports she may open in the future on the Baltic coast ") constitute an obligation for Poland, or is it merely a recommendation and what is its legal scope ?

" The Committee of Jurists, composed of M. Hostie (Belgian), member of the Legal Committee of the Advisory and Technical Committee for Communications and Transit, M. Raestad (Norwegian), former Minister for Foreign Affairs, and Sir John Fischer Williams, K.C. (British), submitted its opinion to the High Commissioner on April 16th, 1931.¹

" The Committee was unanimous in finding that Point VII of the High Commissioner's decision of August 15th, 1921, involved an obligation on Poland. As regards the second part of the question submitted to the Committee—*viz.*, what is the legal scope of Point VII—the experts did not submit a unanimous opinion.

" IV The High Commissioner gave the following decision on October 26th, 1931, based on the opinion of the majority of the Committee of Jurists:²

" A. That Point VII of the High Commissioner's decision of August 15th, 1921 (" The Polish Government will engage to make full use of the port of Danzig whatever other ports she may open in the future on the Baltic coast ") involves an obligation on Poland. The obligation in no way implies the necessity of concluding agreements in execution of the same.

" B. That the obligation on Poland under Point VII referred to is not restricted to railway questions, but is of general application. Nevertheless, Poland is not compelled to take

¹ Document C.988.1931.I.

² Document C.991.1931.I.

the measures which the Danzig Senate urges in Point I of its conclusions, the effect of which would be to give Danzig a form of monopoly of the whole of Polish traffic other than that passing the land frontier.

“ C. That in interpreting the obligation under Point VII, it is necessary not merely to take into account the position of the port of Danzig as it was in 1921, but also to give reasonable consideration to the subsequent development of the port. In this connection, Poland is under obligation to collaborate in the work of the Harbour Board in accordance with Article 26 of the Paris Treaty of November 9th, 1920.

“ D. That the obligation on Poland under Point VII implies an obligation on the Polish Government not to adopt preferential measures calculated to foster the competition of other ports with Danzig to the detriment of the latter.

“ V In its appeal dated December 4th, 1931,¹ the Government of Danzig requests:

“ 1. That the second sentence of Point B of the High Commissioner's decision of October 26th, 1931, be amended to read as follows:

“ Point VII of the High Commissioner's decision of August 15th, 1921, imposes an obligation on the Polish Government, if it opens other ports on the Baltic coast, 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 other ports opened by Poland,

“ 2. That the following sentence be added to the same Point B:

“ The obligation under Point VII is applicable to goods and passenger traffic of Polish and non-Polish provenance and destination,

“ 3. That the dispute be referred back to the High Commissioner of the League of Nations in the Free City of Danzig for a decision as to whether the position in regard to the facts of the dispute is such as to justify the application of Point VII of the decision of August 15th, 1921, in the sense urged in Point I of the Danzig request of May 9th, 1930.

“ VI. In its appeal dated December 5th, 1931,² the Polish Government requests:

“ 1. To reverse the decision of the High Commissioner of October 26th, 1931;

“ 2. With reference to this question, to decide that:

“ (a) Point VII of the decision of the High Commissioner of the League of Nations at Danzig, of August 15th, 1921, regarding the ownership, control, administration and exploitation of the railways situated in the territory of the Free City of Danzig is not directly binding on Poland,

“ (b) Poland has the sole right to judge and decide what use shall be made, within the sphere of Polish economic policy of harbours which serve the requirements of Poland's economic life.

“ VII. The High Commissioner based his decision on the opinion obtained from the Committee of Jurists, and I desire on this occasion to pay a tribute to those distinguished jurists, who complied with the Rapporteur's request and devoted a very considerable time to the study of this question. In the course of the conversations which I had with the parties it became clear that it would serve a useful purpose if the Committee of Jurists could examine the new legal questions raised in the appeals of the parties, remaining 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 the opinion already given to the High Commissioner. The parties declared themselves ready to share the expenditure arising out of this further consultation of the Committee of Jurists. The statements made to me by the representatives of the parties lead me to hope that, after this supplementary examination by the Committee of Jurists, a practical solution of the question may be found by means of direct negotiations between the parties. I accordingly propose that the Council adopt the following resolution.

“ The Council:

“ Requests the Committee of Jurists appointed by the Rapporteur on December 11th, 1930, to be good enough to examine the fresh legal questions raised in the appeals submitted on December 4th and 5th respectively 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 the opinion submitted to the High Commissioner on April 16th, 1931.

“ Should any member of the Committee be prevented from undertaking this task, the Rapporteur is authorised to appoint someone in his place.

“ The Council requests the Committee of Jurists to give an opinion, as requested, in time to enable it to examine that opinion at its May session. ”

¹ Document C.993.1931.I.

² Document C.993.1931.I.

M. ZIEHM said that this was a matter of vital importance to Danzig. He could accept the Rapporteur's proposal that the Committee of Jurists to which this problem had been referred should consider as well the new questions that had arisen in consequence of the appeals by the two parties. A thorough examination of those legal points which had not yet been elucidated was, he considered, essential in order to provide a basis on which it would be possible to find a complete solution for the practical questions connected with the dispute.

The Government of the Free City hoped that this would prove feasible through the advisory opinion, supplemented by that of the experts, and that the dispute would thus receive a practical solution in conformity with the Free City's needs.

The draft resolution was adopted.

M. Ziehm and Count Gravina withdrew.

3011. Protection of Minorities in Roumania. Petitions from Representatives of the Former Szekler (Hungarian) Frontier Guard Regiment.

M. Antoniade, representative of Roumania, came to the Council table.

M. SATO presented the following report:¹

"The question of the property of the descendants of the former Szekler (Hungarian) frontier guard regiment has already appeared on the Council's agenda at the sessions of May² and September 1931.³ The Council thought it best to defer consideration of the matter, in order to give the Roumanian Government an opportunity of settling the question by direct negotiation with the petitioners, in which case the Council need only have taken note of the settlement reached. It appears, from the communications recently circulated to the Council in document C.92.1932.I (Annex 1349*b*), that the direct negotiations between the Government and the petitioners have led to no definite result. The Council must therefore proceed to examine the case on its merits with a view to arriving at a solution.

"The perusal of the voluminous documentation that has been laid before the Council on this subject, the latest elements of which have been communicated to us during our present session (Annexes 1349, 1349*a* and 1349*b*), has doubtless enabled members of the Council to realise that, notwithstanding the apparently complicated nature of the questions with which it deals, the specific problem on which the Council is called upon to pronounce presents itself in relatively simple terms.

"The property which, according to the petitioners, belongs to the community composed of the descendants of the former Szekler (Hungarian) frontier guard regiment—a detailed description of the property is to be found in Annex 4 to the petition of June 25th, 1929 (Annex 1349)—is alleged to have been taken over by the Roumanian Government, without the payment of any compensation whatsoever. On the other hand, properties which, according to the petitioners, occupy a position identical with that of the property of the Szekler regiment, but which belong to the descendants of the two Roumanian frontier guard regiments of Nasaud and Caransebes, are stated to have been maintained in their previous position—in virtue of explicit provisions in the agrarian legislation (Article 24, paragraph *c*, and Article 32, of the Agrarian Law for Transylvania) in the case of the Nasaud regiment, and in virtue of special arrangements made with regard to them by the Government in the case of the Caransebes regiment. The essential point is whether this action can be regarded as discriminatory treatment in violation of the clause providing for equal treatment in law and in fact in Article 9 of the Roumanian Minorities Treaty

"The Roumanian Government maintains that, from the legal standpoint, there is a fundamental difference between the position of the property of the former Hungarian regiment and that of the properties of the two Roumanian regiments. The latter properties belonged in full ownership to the descendants of the members of those regiments, whereas the property of the former Hungarian regiment belonged, it is alleged, to the Hungarian Government, the whole population of the Comitat of Ciuc, and, consequently the descendants of the members of the Hungarian regiment, having enjoyed only the usufruct of that property. According to the Roumanian Government, the historical explanation of this difference is as follows: In consequence of the Hungarian regiment's participation in the revolutionary movement of 1848, the Emperor Francis-Joseph confiscated in 1851, for the benefit of the State, the whole of the property belonging to that regiment. In 1869, the Emperor restored the usufruct of the property to the population of the district of Ciuc, but still reserved the absolute ownership to the State. The complete text of the report addressed to the Emperor by the Hungarian Government in this connection, and of the Emperor's decision, has been communicated to us by the Roumanian Government, and is appended to that Government's letter of September 3rd, 1930 (Annex 1349).

¹ Document C.140.1932.I.

² See *Official Journal*, July 1931, page 1118.

³ See *Official Journal*, November 1931, page 2043.