

and the Danzig delegation that the necessary personnel should be borrowed from the Danzig authorities. This part of the Harbour Board's decision has, however, become meaningless now that the Senate, by unilateral action, has withdrawn the police personnel previously supplied, thus making impossible any such application of the Harbour Board's decision of principle.

Such being the case, the Polish Government is of opinion that the Harbour Board must immediately proceed to organise a security service of its own to maintain public order and security and protect the Board's premises and property together with the merchandise in its charge and the property of the Port of Danzig's clients.

The Polish Government considers that the most effective method would be to place this security service under the orders of the Commandant of Pilots, with whose duties it is very closely and directly related. As the personnel of the pilot service consists almost exclusively of Danzig nationals, it would be appropriate to adopt the principle that the security service should consist exclusively of Polish nationals. The Polish Government declares that it is prepared to place the necessary number of experienced Polish police officials at the Harbour Board's disposal at any time.

It may also be observed that, if none but Polish officials were engaged for the purposes of the security and order service, this would greatly contribute to increase the confidence of Polish economic circles in the Port of Danzig.

As neither the Polish Government nor Polish economic circles can place confidence in Danzig police officials not controlled by the Harbour Board, the Polish Government is of opinion that it would be desirable that all Danzig police officials should be withdrawn at the earliest possible moment from all ground placed under the administration of the port, and also from its offices. Such a measure is specially desirable, as, in the present state of affairs, the presence of such police officials on such ground and in such offices has no legal basis.

As all police decrees in respect of the port issued by the Danzig authorities in pursuance of Colonel de Reynier's settlement have lost their binding force through the rescission of the Agreement of September 1st, 1923, the Polish Government is of opinion that, in order to obviate confusion in legal relations, the Harbour Board must immediately issue, in pursuance of its decision of November 4th, 1921, all such decrees as may be necessary for the maintenance of order and security on all tracts of water and on land under its administration.

The Polish Government considers that all these measures must be adopted without delay, especially as it is itself prepared to facilitate their application in every way.

At the same time, the Polish Government nevertheless feels bound to point out that it reserves its right to decide in due course whether the state of affairs instituted by the Harbour Board is such as to inspire sufficient confidence. It also reserves its right to take such steps as may be necessary in the light of that decision to safeguard the economic interests of Polish circles who have previously used the Port of Danzig, in the event of the Harbour Board's not succeeding at a very early date in dealing satisfactorily with the problems of security and order.

(Signed) PAPEE,
Commissioner-General.

ANNEX 1434a.

FREE CITY OF DANZIG.

C.189.1933.I.

HARBOUR POLICE. QUESTION OF "DIRECT ACTION"

LETTER FROM THE HIGH COMMISSIONER OF THE LEAGUE OF NATIONS AT DANZIG TO THE SECRETARY-GENERAL.

[Translation.]

Danzig, March 9th, 1933.

With further reference to my letter No. 0395/13/56 of March 7th, 1933 (Annex 1434), I have the honour to transmit herewith a copy of a letter sent to me yesterday by the Senate of the Free City, containing its observations on the request concerning "direct action" in the matter of the harbour police submitted to me by the Polish Government on March 7th, 1933.

(Signed) Helmer ROSTING,
High Commissioner

LETTER FROM THE PRESIDENT OF THE SENATE OF THE FREE CITY OF DANZIG
TO THE HIGH COMMISSIONER.

[Translation from the German.]

Danzig, March 8th, 1933.

With reference to the letter of March 7th, 1933, No. 13/56, we have the honour to submit that the measures taken by the Senate on February 15th, 1933, in respect of the harbour police do not constitute a case of direct action and that the Polish Government's application of March 7th, 1933, should be refused.

The Polish Government's request does not show that the conditions which are required under the Council's resolution of March 15th, 1925, before it is possible to decide that there has been recourse to direct action have been fulfilled. The Polish Government has itself declared that the conventional regime in force until February 15th, 1933, has ceased to apply. It has also stated that the regime maintained until February 15th was unsatisfactory from its own point of view. The Government of the Free City had accordingly no choice but to revert in matters of police organisation to the position existing prior to the introduction of the conventional regime now no longer valid. Should the Polish Government wish to bring about any change in the present position, which conforms to Danzig Public Law as applied in the Free City, it is at liberty to obtain a decision in accordance with the regular procedure laid down in Article 39 of the Paris Treaty. Until such a decision is obtained, the only authority competent to deal with police organisation in the port of Danzig is the Danzig Government. There can be absolutely no question of the dispute's being prejudiced within the meaning of the Council's resolution of March 15th, 1925. It is also impossible to perceive how security and consequently good relations between Danzig and Poland will be further jeopardised by the Danzig Government's action. Since the termination of the conventional regime, the Danzig Government has done everything in its power to guarantee security in the port in all circumstances. That good relations between Danzig and Poland are likely to be jeopardised through the Danzig Government's action is all the more incomprehensible as the Polish Government has repeatedly declared itself in agreement with the abrogation of the conventional regime hitherto obtaining. Furthermore, in the Polish diplomatic representative's note to the Harbour Board of February 20th, 1933, No. 257/T, it expressly stated that it had itself regarded the position instituted by the Agreement of September 1st, 1923, in regard to the harbour police as highly unsatisfactory and agreed both to the rescission of the agreement and to the withdrawal of the police personnel placed at the disposal of the Harbour Board by the Senate.

As regards the specific allegations in the Polish note of March 7th, 1933, they are not such as to justify the application to the present case of the special procedure in respect of direct action. In any case, they are refuted in the Senate's letter to the President of the Harbour Board of March 8th, 1933, a copy of which we are sending herewith and to which we beg to refer.

(Signed) Dr. ZIEHM.

LETTER FROM THE PRESIDENT OF THE SENATE OF THE FREE CITY OF DANZIG
TO THE PRESIDENT OF THE DANZIG HARBOUR BOARD.

[Translation from the German.]

March 8th, 1933.

With reference to the Polish delegation's application No. 273/33, of February 27th, for a decision with regard to the harbour police, we have to make the following observations:

1. Since the Government of the Free City has made use of its right to put an end to the trial settlement with regard to the police arrangements in the port which has hitherto been in force, and the Polish Government has also accepted this decision, the Senate has restored *de jure* and *de facto* the previously existing position, which is in accordance both with the Constitution and laws of the Free City and with the Agreements concluded. It is further the position which accords most satisfactorily with the practical requirements and interests of the port, since the police protection of the port can only be regarded as assured for all purposes under uniform administration and in uninterrupted association with the Danzig State Police as a whole.

2. The Polish applications for a modification of this position are not only without legal basis, but they also represent a request for a decision on a question with which the Harbour Board has no powers to deal at all.

(a) The Polish delegation claims to deduce a formal right of the Harbour Board to deal with this matter from the Board's decisions of September 9th and November 4th, 1921, on the ground that these decisions are still in force and should be executed. This assertion is erroneous and, in this connection, it is incidentally remarkable that, according to the Polish contention, only the first part of the decision of September 9th (which appears to the Polish delegation to serve its ends) is to hold good, and not the second part. Both the decisions of September 9th and November 4th, 1921, lapsed as a result of the proceedings which followed, as would be the case

with any decisions of the Harbour Board from the moment that one of the two Governments makes a dispute the subject of proceedings under Article 39 of the Paris Treaty of November 9th, 1920. The decisions have not been revived and cannot revive automatically.

After the Government of the Free City had originally submitted the subject of the two decisions to the High Commissioner of the League of Nations for a decision under Article 39 of the Paris Treaty, and negotiations between the Danzig and Polish Governments (in conjunction with the Harbour Board) had led to no result, all the parties concerned—the Government of the Free City (by note of December 14th, 1921), the Polish Government (by note of January 10th, 1922) and, lastly the President of the Harbour Board (by letter of December 12th, 1921)—applied to the High Commissioner to settle the dispute by a decision under Article 39 of the Paris Treaty. The High Commissioner's decision was issued on June 6th, 1923. It constitutes an exhaustive settlement of the question, and thereby puts an end to all previous decisions of the Harbour Board and all other attempts at a settlement. After both parties had appealed to the Council of the League of Nations against the decision, further proceedings led to the conclusion of a settlement for a limited period on September 1st, 1923, the settlement being subsequently supplemented on March 15th, 1925, by the acceptance of the de Reynier proposal. It was expressly laid down in this limited trial settlement that, on the expiry of the time-limit, both parties to the Agreement—that is to say, both Governments—were to be entitled at any time to bring up the whole matter afresh. There was no mention at any point of the suggestion that, in such case, the decisions of the Harbour Board to which the current procedure had put an end should again come into force. An automatic—and, as the Polish delegation even proposes, a partial—revival of these decisions is out of the question. It would not only be counter to the desires of both parties at the time and to the sense of the whole proceedings which then took place; it would also be a mockery of all principles of law.

(b) But, apart from the absence of the formal premises postulated by the Polish delegation, the Harbour Board has no more powers now than it had before to deal with the matter brought up by the Polish delegation. It is not proposed to discuss how the Harbour Board came in 1921 to deal with the police question as it did. The Danzig delegation, at any rate, is not prepared now, any more than it was then, to permit the Harbour Board to exceed its powers in this manner.

The functions of the Harbour Board were laid down in the Paris Treaty of November 9th, 1920. In the Danzig Government's opinion, which was repeatedly confirmed in the preliminary proceedings by the organs of the League of Nations, these functions are exclusively economic in character and do not at any point include functions of sovereignty. If, in opposition to this view, the Polish delegation is now concerned to extend the functions of the Harbour Board beyond these economic limits into the field of State sovereignty, basing its contention on a violent interpretation which conflicts both with the desires of the two parties to the Agreement and with the text of the Paris Treaty, that involves a difference of opinion as to the functions and competence of the Harbour Board, and *pro tanto* as to the interpretation of the Paris Treaty. The decision in such differences of opinion does not rest with the Harbour Board. The Harbour Board, whose functions were assigned to it in the Paris Treaty by the two States parties to the same, cannot itself pass judgment as to the extent of the powers assigned to it or itself decide as to the extension of the limits of such powers, least of all in a case where it is proposed (as it is in the present case) to fix the limits of its competence in relation to one of the States to which it owes its creation and which assigned to it its task, in a manner infringing the sovereignty of that State. Such questions and differences of opinion can only be discussed between the two Governments who concluded the Paris Treaty and assigned to the Harbour Board its functions. Any other view could only lead to the Harbour Board gradually taking to itself by its own decision—to Danzig's disadvantage—not only sovereignty over the police but all State rights—legislative and judicial—rights of coinage and so forth.

(c) A further reason why there can be no question of the Harbour Board's competence to deal with the matter raised is to be found in the fact that the matter has already been taken out of the hands of the Harbour Board by the two Governments—namely, at the time of the proceedings before the organs of the League of Nations, when the dispute was made the subject of proceedings between the two Governments under Article 39 of the Paris Treaty, which led in due course to the conclusion of a trial agreement, both parties reserving the right to take the matter up again on the expiry of a time-limit. Now that the Danzig Government has acted on the right thus reserved, the question is once more a matter for direct exchange of notes and expression of opinions between the two Governments. The Polish Government has, moreover, already made a special application to the High Commissioner in the matter.

3. We accordingly apply for the rejection of the Polish applications on the above grounds *ab initio*.

(Signed) Dr. ZIEHM.