

ANNEX 295 e.

EXPENSES OF THE POLISH-LITHUANIAN DISPUTE.

Memorandum by the Secretary-General, presented to the Council on January 13th, 1922.

At a meeting held at Brussels on October 20th, 1920, the Council decided that, in the case of the Polish-Lithuanian dispute, the "interested parties might reasonably be asked to pay the costs."

In accordance with this decision, all expenditure incurred during 1921 has therefore been regarded as "advances from working capital," which, in due course, would be reimbursed.

Inasmuch as the second Assembly decided that a statement showing the position of the working capital fund should be prepared for audit at the end of 1921, it now becomes necessary for the Council either (1) to determine what steps shall be taken to obtain a recognition of the obligation on the part of Poland and Lithuania, so that there may exist reasonable grounds for still considering the League's expenditure in this connection as "reimbursable," or (2) to reconsider and amend its decision of October 20th, 1920, in such a manner as to permit this expenditure (amounting approximately to 225,000 gold francs) to be considered as unrecoverable and charged to the accounts of the period in which the expenditure was made.

Should the latter view prevail, the Council could authorise the Secretary-General to charge to expenses incurred by the League during 1921 in connection with the Polish-Lithuanian dispute to Item 27 of the 1921 Budget "Unforeseen Expenses."

ANNEX 296.

FREE CITY OF DANZIG.

CONTROL AND ADMINISTRATION OF THE VISTULA IN THE TERRITORY OF THE FREE CITY.

APPEAL OF THE POLISH GOVERNMENT AGAINST THE DECISION OF THE HIGH COMMISSIONER.

Report by Viscount Ishii, and resolution adopted by the Council on January 12th, 1922.

This is a question of an appeal of the Polish Government against the decision of the High Commissioner of the League of Nations in Danzig, dated September 1st, 1921, which stipulated that "the control and administration of the whole of the Vistula within the territory of the Free City of Danzig must be undertaken by the Harbour Board." The appeal of the Polish Government was not forwarded to the High Commissioner within the forty days which had been previously agreed upon by the two Governments, but the Danzig Government has stated that it is prepared to forgo a strict interpretation in this case and merely to protest against the irregular procedure. The Polish Commissioner-General in Danzig has explained that the procedure adopted was the result of a misunderstanding in Warsaw.

The High Commissioner's Decision.

After reviewing the arguments put forth on both sides, the High Commissioner recalls the fact that this question had been considered by the Danzig Port and Waterways Board which had decided by the vote of its President in favour of the administration by the Board of the whole of the river within the Free City. The High Commissioner goes on to trace the development of relevant Articles of the Treaty of November 9th, 1920, from Article 104 of the Treaty of Versailles, and concludes, after showing the different legal positions in which the Danzig railways were placed, that Article 20 of the November 9th Treaty (of which paragraph 3 reads as follows "The

Board shall come to an understanding with the Polish Government in order to bring into accord as far as possible the regime of the part of the Vistula placed under its administration and the regime of the Vistula in Poland") makes a clear distinction between the Vistula in Poland and the Vistula in Danzig territory, and that it was the intention to transfer all of the latter to the administration of the Harbour Board. He further gives it as his opinion that the Harbour Board is eminently suited for this work, particularly as the upkeep of the banks is better organised by local authorities than by a foreign State. He also feels that Poland's rights are assured by Article 26 of the November 9th Treaty and by her representation on the Harbour Board. He therefore decides in favour of control and administration by the Board as noted above.

Appeal of the Polish Government.

In this appeal dated October 5th, 1921, the Polish Government requests the Council of the League to annul the decision of the High Commissioner and to entrust the control and administration of the Vistula in Danzig Territory between Tczew (Dirschau) and Schievenhorst to the Polish Government, which would carry out these duties with the participation of the Harbour Board in accordance with certain specific arrangements which would be made.

The arguments of the Polish Government, outlined in their note of October 5th and in their previous communication of August 22nd, may perhaps be summarised as follows

(1) Article 104 of the Treaty of Versailles differentiates between the "waterways" within the territory of the Free City and the "Vistula", as they are treated separately in paragraphs 2 and 3, respectively, of that Article. A consideration of Poland's rights of free access to the sea and of the position of the Vistula which drains a basin of 193,250 square kilometres makes it apparent that Poland alone should exercise the control and administration of the "live Vistula" (the channel of the river which flows directly north into the Baltic). As regards other waterways including the "dead Vistula" (running to the west from the direct south-north channel), Poland has simply the right of using them freely and is bound to conclude an agreement with the Harbour Board to bring into accord the two regimes. This situation cannot be changed without the express consent of the Powers signatory to the Treaty of Versailles and was not, in the view of the Polish Government, modified by the Treaty of November 9th, 1920.

(2) The "live Vistula" is a river and the principal function of a river is to drain its basin, which in this case includes all the Polish territory. Navigation is a secondary function. By the expression "administration of the Vistula" the Polish Government means only the administration of its bed and of the adjacent land subject to inundation, and not the administration of the banks, which had always been left to the care of the local authorities. The former Prussian Government put all the lower Vistula (222 kilometres) under one administration, independent of the political administration of each district. The last section of 25 kilometres regulates the hydrologic relations for the whole lower course of the river, which must be dealt with by one administration. Poland already has river services available for carrying out these tasks and a division of this work would involve large and unjustifiable expenditure for the Harbour Board. These services include the reporting of the state of the waterway, the establishment of signals along the course of the river, the administration and exploitation of osier beds, and other problems of a hydrographic character. It should be especially noted that during eleven separate years since 1895 the ice-breakers on the Vistula extended their work above Tczew.

Reply from the President of the Senate of the Free City.

In a note dated November 17th, the President of the Senate of the Free City maintains that the treaties clearly distinguish between the Vistula in Poland and the Vistula in Danzig territory, and he states that where the Vistula is mentioned in the Peace Treaty only the actual "live Vistula" i.e., the running stream, is meant. Article 20 of the Treaty of November 9th, he further states, requires a conventional arrangement to give effect to its provisions.

Danzig not only possesses the Vistula for its last 26 kilometres but also owns the right bank for a further distance of 30 kilometres. Along the former Prussian Vistula the dykes are as a rule planned without any reference to the river, but within the territory of the Free City it is impossible to consider the marshland or the dykes apart from the river. Here the river is regulated to control the floods, the soil of the marshland is used for repairing the dykes and the floods fertilise the marshland for pasture land. Only the inhabitants of the district could properly maintain the adjacent dykes. The distinction made in the Polish appeal between control of "the bed and the adjacent land" and the banks would appear to be an impossible one.

It would be quite unnatural to hand over the Vistula within the Free City to foreign administration. Five ferries cross the river within this district and it would be monstrous to permit a foreign administration to obstruct this traffic whenever it chose.

The administration of the estuary of the Vistula has always been separate, as an estuary requires special measures and it cannot be compared with other sections of the river merely on the basis of their respective lengths. The Vistula River Works Administration ("Strombauverwaltung") which has a representative on the Harbour Board, has for many years administered and regulated the former Prussian part of the Vistula with great success. This administration has had long experience and is quite willing to assist and work with the Polish services. As to the technical points mentioned in the Polish appeal, it should perhaps be pointed out that experience has shown the necessity for starting the work of ice-breaking at the mouth of the river. This could only be directed from Danzig, where the equipment is available and whence reports on ice movements and inundations would naturally be made.

It is impossible to separate from the Free City the running stream of the Vistula, which is its main artery and feeds the harbour. It flows through the whole of the territory and is its most important waterway. It must therefore be placed under the administration of the Harbour Board.

I have no doubt that both parties want a practical arrangement of the Vistula administration which will serve the interests and the needs of the two countries, and I wonder if many of the actual difficulties of the situation which I have just outlined would not perhaps work themselves out during the course of direct negotiations between the parties. Since this appeal was made, several months have passed and a large number of questions between Poland and the Free City have been settled through the signature of the Agreement of October 24th, 1921. I feel, therefore, that this question of the Vistula could perhaps be brought nearer a solution by further conversations between the representatives of Poland and Danzig who have come to Geneva on the occasion of this session of the Council. I would, if my colleagues agree, ask the representatives of Danzig and Poland to talk the matter over and inform the Secretary-General before the end of the session as to any progress that may have been made, I therefore propose the following resolution for adoption

RESOLUTION.

"The Representatives of the Polish and Danzig Governments are requested to talk over the question of the control and administration of the Vistula river, and to inform the Secretary-General, before the end of the session, whether a solution of this question can be expected by direct negotiation."

ANNEX 296 a.

DRAFT AGREEMENT CONCERNING THE VISTULA PROPOSED BY THE POLISH DELEGATION ON JANUARY 13th, 1922.

The Free City of Danzig shall appoint, to act on the Vistula Administration, a delegate and a deputy delegate having the following powers

A. (1) The delegate shall have the right to consult all documents relating to work on the territory of the Free City and to state his views with regard to proposed decisions.

(2) The delegate shall be authorised to make proposals regarding all matters affecting the interests of the inhabitants of the Free City of Danzig.

(3) The delegate shall have the right to oppose all decisions which, in his opinion, are prejudicial to the interests or the rights of the Free City. In such cases the final decision shall lie with the High Commissioner of the League of Nations.

B. A delegate of the Harbour Board shall be attached to the Riparian Inspection Board at Tczew (Dirschau) or to the Riparian Administration Board at Torun (Thorn) as liaison officer. Any requests submitted by the Harbour Board through this delegate shall be executed by the Polish riparian authorities.

C. Independently of the present Agreement, and in conformity with paragraph 3 of Article 20 of the Convention of November 9th, 1921, the Harbour Board shall come to an understanding with the Polish Government with a view to harmonising, as far as possible, the regime applied to the tidal basin of the Vistula, which is under its administration, and that in force upon the river Vistula ("Stromweichsel").