

community of States, and the Polish Government considers that a question concerning the status of Danzig as a State is not a matter which, under the Covenant of the League of Nations, the League is competent to decide.

In the Polish Government's view the High Commissioner's decisions should be of a practical and not a theoretical nature. The High Commissioner is responsible for ensuring the observance of the treaties, which are mainly intended to ensure that Poland shall have unlimited access to the sea, in peace time as well as in war time, while affording the Free City a guarantee that the majority of its inhabitants shall retain a certain freedom in their national existence.

Finally the Polish Government is of opinion that the High Commissioner has exceeded his powers in deciding that the agreement of July 22nd, 1922, requires ratification, as international law nowhere lays down that an agreement signed by plenipotentiaries should be so ratified.

III. In a letter dated November 29th, 1924, dealing with the Polish Government's appeal, the Danzig Senate puts forward certain observations. It points out in particular that, in referring the matter to the League, the Polish Government has already appealed, not only on the question of competence, but also on that of the merits of the case itself, and that the reasons adduced by the Polish Government for denying the High Commissioner's competence are inapplicable. The Danzig Senate holds that the points in the High Commissioner's decision to which Poland objects constitute the very decisions asked for by Danzig. According to the Senate the High Commissioner is, in any case, not bound to confine himself to a decision on the points raised and the text of the appeals submitted by the contesting parties, but that he can also decide any questions which he may think necessary to touch upon in view of a final settlement of the dispute.

In its reply the Senate enumerates the facts which, in its opinion, show that the Free City of Danzig is undoubtedly a State.

IV To sum up the Danzig Government accepts the High Commissioner's decision and asks that it should be confirmed by the Council, the Polish Government requests that it should be annulled, as it constitutes a general ruling on the Free City's international status, in particular by giving Danzig the status of a "State" In its appeal the Polish Government requested that the matter should be held over until the present Council meeting, in order that it might submit further observations if necessary: no such observations have, however, been received.

The question originally laid before the High Commissioner for decision was whether or no the agreement of July 22nd, 1922, should be ratified. In the arguments submitted to the High Commissioner to prove that such ratification could not and should not take place, Poland laid stress on the Free City of Danzig's special position under international law. The Free City on the other hand, declared that it was entitled to participate as a State in international agreements with Poland and to be referred to by the expressions customary in inter-State agreements. The High Commissioner thought it desirable to give a decision not merely on the question of ratifying the agreement of July 22nd, 1922, but also on the general question of the principles applicable to the conclusion of agreements between Danzig and Poland, which had been raised in the discussions between the two parties.

V After a close examination of the documents, I have come to the following conclusion.

As regards the expression "ratification" there is no reason why this term should not be employed in the relations between Poland and Danzig. The important point is to realise the concrete and limited character of the question submitted to us. In paragraph 18, No. 5, of the High Commissioner's decision it is stated "that a distinct undertaking to ratify the agreement under notice having been given, that undertaking must be put into effect" The interpretation which I give to this sentence is that if Poland desires definitely to give effect to the agreement concluded, the formalities of ratification must be observed. That being the case, the sentence in question calls for no comment.

I consider that the High Commissioner, in deciding the question of ratification in the manner indicated above, has settled the real point at issue in the dispute which was submitted to him.

Further, the expression "State" is used in such a general sense and is applied under such different conditions that the Council will not consider it necessary to examine the meaning of this term and its application to Danzig. The International status of the Free City is defined by the Treaty of Versailles.

I have the honour to propose the following resolution.

"The Council approves the present report, which will be substituted for the High Commissioner's decision of November 7th, 1924."

C. 87 1925. I.

Annex 748.

FREE CITY OF DANZIG POLISH RAILWAY DIRECTION IN DANZIG.

Opinion of the Committee of Jurists dated February 19th, 1925, submitted to the Council on March 13th, 1925.

On December 12th, 1922, the High Commissioner of the League of Nations at Danzig took the following decision in virtue of Article 39 of the Treaty between Poland and the Free City of Danzig, dated November 9th, 1920

“Poland has no right to establish on Danzig territory a Railway Direction which deals with the management of railways other than those situated within the territory of the Free City except by agreement with the Free City of Danzig.”

In virtue of the same Article 39, Poland lodged an appeal against the High Commissioner's decision with the Council of the League of Nations, and, after several attempts at conciliation, the Council decided at its meeting in Rome on December 12th, 1924¹ to ask the opinion of a committee of three jurists, one of whom must have made a special study of railways, with regard to the following question:

“Was the High Commissioner's decision of December 12th, 1922, in conformity with the treaties, decisions and agreements in force?”

The Committee consisted of

M. W. J. M. van EYSINGA, Professor at the University of Leyden,
M. NIQUILLE, Director-General of the Swiss Federal Railways; and
M. C. VIVANTE, Professor at the University of Rome.

After studying the documents submitted to it by the Secretariat of the League, especially the Danzig and Polish memoranda summarising the arguments of the two parties, the Committee met at Geneva on February 18th and 19th, 1925, and formulated the following opinion.

The Treaty of Versailles gave to Poland certain rights in relation to the Free City of Danzig with the object of ensuring to Poland free access to the sea. As the attribution of these rights to Poland constitutes a departure from the ordinary rules of international law with regard to relations between States, it was necessary to provide for them in a treaty. Such provision is made in the Treaty of Versailles and in the decisions and agreements which followed it.

Poland maintains that, among the exceptional rights which were conferred upon her, is included the right to a railway administration on Danzig territory which shall control not only the Danzig railways, the management of which was entrusted to Poland, but also other Polish railways outside the territory of Danzig. What is claimed, therefore, is the right to establish the seat of a part of the national administration on foreign soil and, if we admit the existence of an exceptional right of this kind, it must be capable of proof that it is based upon some treaty. The Committee of Jurists has examined carefully all the relevant texts, but has found no clause which either implicitly or explicitly authorises Poland to entrust the Direction at Danzig with the management and operation of lines situated on Polish territory.

In support of her standpoint, Poland invokes the following legal arguments:

The first is that the cession to Poland by the Inter-Allied Commission for the distribution of German State property of the Railway Direction building — a building in which was previously established the German administration for the whole Pomeranian system — involves the right of Poland to maintain in this building, side by side with the administration of the Danzig railways, the administration also of the Pomeranian railways lying outside the territory of Danzig. The Committee of Jurists, while they record that there is no trace in the texts of any such intention, is of the opinion that the attribution of the building to Poland is explained by the fact that Poland was granted the management and operation of the Danzig railways with the exception of tramways and narrow-gauge lines. Moreover, the rights which Article 107 of the Treaty of Versailles conferred upon the Commission did not extend beyond the attribution of property.

Secondly Poland maintains that the right of free access to the sea given to her by Article 104 of the Treaty of Versailles implies the necessity of uniting within a single administration, situated on Danzig territory the administration both of the Danzig railways, which was entrusted to Poland, and of the Pomeranian railways situated outside Danzig. Although on the one hand practical reasons may support the unification of administration in this way while on the other hand considerations of friendly relations between the Free City of Danzig and Poland may favour the establishment of two separate administrations, the Committee of Jurists consider that Article 104, which is in no way concerned with the Polish railways outside Danzig territory does not confer the exceptional right claimed by Poland, and that free access to the sea can perfectly well be realised by an administration of the Polish railways established in Poland.

The Committee of Jurists is unable to find in the treaties, decisions and agreements in force any other provision in support of the Polish point of view. In these circumstances it is of the opinion that the High Commissioner's decision of December 12th, 1922, is in conformity with the treaties, decisions and agreements in force.

Geneva, February 19th, 1925.

(Signed) V. EYSINGA.
C. VIVANTE.
A. NIQUILLE.

¹ See *Official Journal*, February 1925, page 151.