

acts. Neither the parties concerned nor the territories in West Prussia now belonging to Poland would be in a position to claim the property in question from the Danzig authorities and courts or to obtain the annulment of the above-mentioned acts. Accordingly in the opinion of the Polish Government, Poland had no choice but to seek the arbitration of the League of Nations.

V The argument of the Free City of Danzig is that the Council of State's decision was taken under the authority of the principal Allied and Associated Powers at a time when they wielded sovereign authority over the territory of the Free City. No responsibility for this decision could therefore rest with the Free City as at present constituted. Moreover, in this matter the dispute would not be between Danzig and Poland only. Germany also is an interested party and the question would not therefore come within the High Commissioner's jurisdiction.

VI. An examination of the Polish claims with regard to the substance of the matter shows that their justification depends upon the reply to be given to the following crucial question:

Was the transformation of the "Westpreussische Feuersozietät" into a limited company legally ordered or not?

Poland does not dispute that this transformation took place with the formal consent of the High Commissioner, who at that time duly represented the actual sovereigns over the territory of Danzig, namely the principal Allied and Associated Powers. It hardly seems to be for the High Commissioner to annul decisions duly taken on the authority of the principal Allied and Associated Powers prior to the constitution of the Free City. Moreover, even if it were held that the High Commissioner was authorised to do this, and if, after an examination of the question, it was found necessary to declare the transformation of the company illegal, I think it is very doubtful whether the High Commissioner would be competent to give a decision on the effects of this illegality in such a way as to satisfy the different claims which the Polish Government submitted to him on October 12th, 1922.

I therefore have the honour to propose the following resolution:

"The Council of the League of Nations confirms the decision given by the High Commissioner of the League of Nations in Danzig on November 15th, 1924, with regard to the transformation of public corporations (the case of Die Danzig)."

C. 108 (2). 1925. I.

Annex 752.

FREE CITY OF DANZIG. APPLICATION TO DANZIG OF THE POLISH CUSTOMS LAW OF JULY 31st, 1924.

Report by M. Quiñones de León, and Resolution adopted by the Council on March 13th, 1925.

I. Article 7 of the Polish Customs Law of July 31st, 1924, authorises the Polish Minister of Finance to introduce export duties and to adjust them from time to time to the economic situation. By virtue of this law, the Minister has instituted various export taxes and repealed existing export prohibitions. The Free City considered that the application of this law in the territory of Danzig was inconsistent with the treaties and agreements in force, and requested the High Commissioner of the League of Nations to decide that the existing import, export and transit arrangement between the Free City and Poland should be maintained until other arrangements had been made by way of agreement between the two parties.

II. On November 6th, 1924, the High Commissioner of the League of Nations gave the following decision:

(a) The Polish Customs Law of July 31st, 1924, is of application in the territory of the Free City

(b) An agreement must be made between Poland and the Free City regarding the application of export duties to the products of Danzig's own industry her own agriculture and her own manufacture.

(c) Pending the conclusion of this agreement, the Free City shall submit to the Polish Government for immediate consideration the cases in her own industry her own agriculture and her own manufacture where the application of the Customs Law of July 31st, 1924, or the regulations arising therefrom have had the effect of a prohibition on export. The Polish Government will make such arrangements as may be necessary to free these products from the effect of the Law of July 31st, 1924, and of the regulations putting it into force.

With regard to other branches of Danzig commerce, the Polish Government will grant the same alleviations to Danzig firms as may be granted to Polish firms under analogous conditions.

III. The Senate of the Free City having lodged an appeal against this decision, the question was placed on the agenda of the Council last December at its meeting on December 12th the Council decided to adjourn the question until the present session, in order to give its members time for a more detailed study of the documents which they had only received shortly before the session was opened.

The Polish delegate stated that, in spite of this adjournment, the Polish Government, having accepted the decision, was prepared, in the interest of the Free City to consider the provisions of paragraph (c) as having already come into operation.

IV In the introductory portion of his decision, the High Commissioner makes a detailed analysis of the provisions of the treaties in question, namely the Treaty of Versailles, the Treaty of Paris of November 9th, 1920, the Agreement of Warsaw of October 24th, 1921, and the Agreement of Geneva of September 1st, 1923. It appears advisable to recapitulate the principal points at issue.

V The Danzig Senate points out that the very detailed treaties and agreements make no mention of export duties, and that consequently Poland had no right to impose them on the Free City by a unilateral decision. The High Commissioner, in his analysis of the treaty provisions by which the Free City is included within the Polish Customs frontier, states that, in the last resort, the Polish Customs policy is the deciding factor. Exports and imports are closely interconnected, and he thinks that no express mention was made of export duties in the treaties because, at the time when they were negotiated, Poland did not contemplate introducing such duties, but that this does not preclude the possibility of introducing them at a later date. This argument is not, however, accepted by the Senate, which states *inter alia* that the Agreement of Warsaw was concluded for a very long period, and that provisions with regard to export and transit duties would certainly have been included if it had been considered possible and lawful to impose them. Danzig also refers to the Geneva Agreement of September 1st, 1923, Article 4 (d), which stipulates that the agreement between Poland and Danzig with regard to imports and exports shall remain in force. After carefully examining the documents relating to this matter and to the general question of the meaning to be attached to the expression "Customs legislation" I must endorse the High Commissioner's opinion on this point.

VI. Danzig maintains that, in accordance with Articles 197 and 212 of the Agreement of Warsaw Poland should have given the Danzig Government and the representatives of the Danzig interests concerned an opportunity of expressing their opinions.

With regard to Article 197 the High Commissioner states that the Polish Government is only obliged to consult the Danzig representatives to the same extent as the representatives of Polish trade, and in this particular case no such consultation appears to have taken place. In its appeal the Danzig Senate considers that this restriction only arises in regard to sub-paragraph 2 of Article 197 paragraph 4, but that, under sub-paragraph 1 of the same article and paragraph 1, the Polish Government is obliged to give the Danzig representatives an opportunity of expressing their opinions in each particular case before any modification in the Customs legislation takes place.

This is an interesting problem of interpretation, in which the German text possibly admits of two interpretations, whereas the Polish text can, apparently only be read to mean that Poland is not bound to consult the Free City except in cases of quite a special character, having no connection with the question with which we are dealing.

With regard to Article 212, the High Commissioner thinks that this article was perhaps not formally observed when the Law of July 31st, 1924, was put into operation. This article stipulates that "Poland shall give Danzig an opportunity of stating her views with regard to all future regulations on, or alterations in, existing regulations with regard to import and export restrictions" The High Commissioner is, however, of opinion that this omission is not of substantial importance, as it is merely a question of removing existing import restrictions and not of introducing new restrictions. On the other hand, it must be recognised that the export duties recently introduced may create *de facto* restrictions. It will be seen that the High Commissioner has taken this practical side of the question into consideration in another part of this decision.

VII. The question whether Danzig should have been consulted in advance is bound up with the question whether Poland, when promulgating the Law of July 31st, 1924, observed the provisions of Article 197 paragraph 5, and Article 213 of the Agreement of Warsaw

In Article 197 paragraph 5, of the Agreement of Warsaw the Polish Republic undertakes that, in its laws and Customs tariffs, it will, so far as possible, safeguard the interests of the Free City. The High Commissioner considers that the intention of Article 197 was to show that Danzig had interests which might differ from Polish interests and that Poland should show reasonable consideration to the former.

Article 213 gives Danzig the right of exporting products of Danzig industry agriculture and manufacture in spite of any general export prohibitions.

The High Commissioner points out that, at the time when the Agreement of Warsaw was concluded, there were prohibitions in existence but no export duties. But an export duty may in effect, become an export prohibition if it is so adjusted as to make export impossible or unprofitable. In this case the imposition of such a duty would be contrary to the provisions of Article 213.

Danzig states that its trade and industry have been seriously harmed by the law in question. The High Commissioner observes that Danzig's trade, as opposed to her industry is mainly trade arising out of the relations of the Free City with Poland, and that it depends on Polish policy. He also examines the situation in which various trades and industries are placed, and comes to the conclusion that export duties would probably be to the disadvantage of certain industries and to the advantage of others, but he thinks that it should not be difficult to grant the necessary facilities to the products of Danzig industry agriculture and manufacture, in so far as they are distinct from those of Polish industry agriculture and manufacture. In his decision — paragraphs (b) and (c) — he provides for the conclusion of an agreement between Poland and the Free City on

this subject and for a provisional arrangement until such an agreement has been concluded. Danzig requests a settlement of a more extended character than the settlement outlined in the decision, Danzig also raises the question of the possible imposition of transit duties and invokes Article 214 of the Warsaw Agreement.

VIII. In my opinion, paragraphs (b) and (c) of the decision offer the necessary guarantees for safeguarding the interests of the Free City as regards export duties, in accordance with the treaties; it is, of course, understood that, when the negotiations in question take place, there will be nothing to prevent the Free City from presenting any arguments that it thinks fit for the protection of its interests. The High Commissioner's decision makes no mention of transit duties. It simply states that the Customs Law is applicable generally. The Polish delegate informs me that the Law of July 31st, 1924, deals in no way with the question of transit duties. In any case, it is clear to me that the law cannot change Article 214 of the Warsaw Agreement.

Whatever reply is given to the question whether Danzig should have been consulted in advance, I am of opinion that this should not, having regard to all the special circumstances, affect the validity in Danzig territory of the Law of July 31st, 1924.

The decision of the High Commissioner may therefore be confirmed by the Council without its being necessary to deliver any formal ruling on interpretation of various clauses of the Agreement of Warsaw which deal with the question of previous consultation. In order, however, to facilitate the close co-operation which should exist between Poland and Danzig and their respective trades, it would be advisable in future, when it is proposed to modify existing export duties or to impose new duties of this kind, that the Polish Government should give Danzig the opportunity of submitting its observations before the new regulations are applied to the territory of the Free City.

IX. I beg to submit the following draft resolution to the Council:

"The Council adopts the report of the Spanish representative dated March 13th, 1925, regarding the application of the Polish Law of July 31st, 1924, in the territory of Danzig, and confirms the High Commissioner's decision of November 6th, 1924, on this subject."

C. 174. 1925. I.

Annex 753.

FREE CITY OF DANZIG APPOINTMENT OF PRESIDENT OF THE DANZIG PORT AND WATERWAYS BOARD.

Report by M. Quiñones de León, and Resolution adopted by the Council on March 14th, 1925.

At its meeting on December 8th, 1924,¹ the Council took note of a statement of Colonel de Reynier, President of the Danzig Port and Waterways Board, that he was unable to accept re-appointment at the time of the expiration of his term of office on March 10th, 1925, but that he was at the disposal of the Council if the Council were requested to appoint a successor and if the successor could not enter upon his duties on the exact date in question. On the same occasion, the Council expressed its thanks to Colonel de Reynier for the work he had done at Danzig during his term of office of almost four years.

The Secretary-General has informed us that the High Commissioner of the League in Danzig, on January 22nd, 1925, requested the Council to appoint a President of the Port and Waterways Board in conformity with Article 19, paragraph 2, of the Danzig-Polish Treaty concluded on November 9th, 1920, since the Polish and Danzig Governments had failed to reach an agreement regarding the choice of a successor to Colonel de Reynier.

Article 19 of the Danzig-Polish Treaty of November 9th, 1920, provides as follows:

"A Board shall be appointed, entitled The Danzig Port and Waterways Board composed of an equal number (which shall not exceed five) of Polish and Danzig Commissioners to be chosen by the Polish Government and by the Free City respectively from representatives of the economic interests of the two countries.

"The President of this Board shall be chosen by agreement between the Polish Government and the Government of the Free City. In the event of no such agreement being reached within one month of the coming into force of the present Treaty the Council of the League of Nations shall be requested by the High Commissioner of the League at Danzig to appoint a President of Swiss nationality. In case of a vacancy in the office of President, the same procedure shall be adopted in the month after the going out of office of the former President.

"The President shall be appointed for three years and shall be eligible for re-appointment.

"The President shall preside over the discussions and shall endeavour to promote an agreement between the parties: he shall vote only after he has exhausted all possible means of bringing about such an agreement; his vote shall be decisive in case of an equal division.

"The costs and expenditure of the Board shall be covered by the receipts of the services administered by the Board."

¹ See *Official Journal*, February 1925, page 122.