

In poor families in France, there was a saying that what was enough for two was enough for three. Without any supplementary credit, the services of the International Labour Office could certainly be used for the approximately 19,000 refugees which the Council might decide to add to the Russian and Armenian refugees.

To sum up, all that was necessary was the political decision by the Council, after which the International Labour Office was ready to assume responsibility for these 19,000 refugees, to whom the measures adopted for assisting Russian and Armenian refugees would be extended.

The Council took note of the statements of M. Scialoja and M. Albert Thomas which should be communicated to the Governments with the text of the resolution which was adopted.

Dr. Nansen and M. Albert Thomas withdrew.

2015. Report of the Committee of Jurists appointed by the Council to consider certain Preliminary Questions raised during the Council's Discussion regarding the Adoption of its Agenda for the Session and connected with the Question of the Polish Depot for Munitions and War Material in transit through Danzig.

Dr. Sahm, President of the Senate of the Free City of Danzig, and Dr. van Hamel, High Commissioner of the League of Nations at Danzig, came to the Council table.

The following report of the Committee of Jurists was read:

" OPINION OF THE LEGAL COMMITTEE SET UP BY RESOLUTION OF THE COUNCIL
OF THE LEAGUE OF NATIONS, DATED SEPTEMBER 1ST, 1927

" In a resolution dated September 1st, 1927 the Council decided to set up a Legal Committee to give an opinion on certain questions raised during the discussion regarding the placing on the Council's agenda of a request submitted by the Danzig Senate as to the Westerplatte site at Danzig, at present used for the transit of munitions and war material to Poland.

" The Committee has the honour to submit the following opinion to the Council, and regrets that it is compelled to begin by recapitulating with some precision, though as briefly as possible, the actual conditions under which the question is raised.

* * *

" Article 104 of the Treaty of Peace with Germany stipulated that a Treaty should be negotiated between Poland and the Free City of Danzig with the following object:

" To ensure to Poland without any restriction the free use and service of all waterways, docks, basins, wharves and other works within the territory of the Free City necessary for Polish imports and exports

" And, in execution of this article, Poland and the Free City of Danzig signed a Treaty at Paris on November 9th, 1920, under which.

" *Article 26.* — It shall be the duty of the Board [the Danzig Port and Waterways Board] to assure to Poland the free use and service without any restriction, and in so far as may be necessary for Polish imports and exports, of the port and the means of communication referred to in Article 20. It shall be the duty of the Board to take all measures necessary to assure the development and improvement of the port and means of communication in order to meet all the requirements of this traffic.

" In the event of the non-observance of the above provisions, the Free City of Danzig and Poland may exercise the right of appeal provided for in Article 39.

" *Article 28.* — At all times and in all circumstances Poland shall have the right to import and export via Danzig goods of any kind whatever not prohibited by Polish law.

" *Article 39.* — Any differences arising between Poland and the Free City of Danzig in regard to the present Treaty or to any other subsequent agreements, arrangements or conventions, or to any matter affecting the relations between Poland and the Free City shall be submitted by one or the other party to the decision of the High Commissioner, who shall, if he deem it necessary refer the matter to the Council of the League of Nations.

" The two parties retain the right of appeal to the Council of the League of Nations.

" *Article 40.* — No modification in the present Treaty shall be made except by agreement between Poland and the Free City of Danzig.

" A Polish request was made for a suitable site in the territory of the Free City for the import traffic in munitions to Poland, and, after certain differences of opinion had arisen on this subject, an agreement was reached on June 22nd, 1921, in the form of declarations by the Polish Government and the Free City of Danzig. This agreement, of which the Council took note on the following day is as follows:

" The delegate of the Polish Republic and the President of the Senate of the Free City of Danzig, as representatives of the Free City have agreed on the following principles:

" That a special site on the banks of the Vistula, shall be placed at the disposal of the Polish Government for the unloading, temporary storage and despatch to Poland of war material in transit; and

“ That this site shall be at a sufficient distance and as isolated as possible from all dwelling-houses; the duty of defining the measures of safety necessary for the security of the Free City shall be left to the Harbour Board.

“ The two parties were unable to arrive at an agreement with regard to the suggestion made by the French delegate, to the effect that the most suitable site for the erection of these magazines would be the Isle of Holm, but they agreed that this question should be referred to the Harbour Board, subject, however, to the reservation that the ground selected should be allotted by the Apportionment Commission.

“ As the choice of part of the Isle of Holm by the Harbour Board did not apparently satisfy either Poland or Danzig, the High Commissioner was appealed to and decided, on April 7th, 1922, that the Polish Government and the Free City should enter into negotiations to create a suitable site on the eastern side of the Vistula opposite Holm Island and that a certain specified part of that island should serve temporarily for the transit operations in question.

“ As in the previous case, this solution had not the good fortune to satisfy either of the parties. The latter, availing themselves of the right conferred on them by Article 39 of the 1920 Treaty of Paris, brought the question before the Council. The latter confirmed the High Commissioner's decision.

“ In December 1923, the negotiations provided for in the Harbour Board's decision, which was adopted by the High Commissioner and confirmed by the Council, led to no result, and, as Danzig and Poland were still unable to agree, the matter was again referred to the Council by the two parties, as had been done in April of the previous year. The Council undertook another enquiry which led to the choice of a site known as the Westerplatte site. At the session of the Council in March 1924, the matter was examined in the presence of the two parties. The Polish representative, though criticising the choice of the Westerplatte, declared that he would accept it, subject to various modifications, while the Danzig representative urged against this arrangement that the desired site could be selected in the port of Gdynia, on Polish territory and not on the territory of the Free City of Danzig, so as to avoid the dangers connected with the transit of munitions and war material.

“ After investigation, careful examination and a discussion in which both parties were heard, the following Council decision was taken on March 14th, 1924.

“ 1. The decision of the High Commissioner of the League of Nations in Danzig, of April 7th, 1922, concerning the site for a depot for Polish war material in transit through Danzig, previously approved by the Council, is, in view of the results of recent expert investigations of this problem, replaced by the following provisions:

(a) The Westerplatte peninsula shall be placed at the disposal of the Polish Government, solely for the purpose of the unloading, storage and despatch to Poland of war material and explosives in transit. The ownership of the peninsula shall be transferred, according to the provisions of M. Quiñones de Leon's report of March 14th, 1924, to the Harbour Board, but the exclusive use of this area for the purpose mentioned above shall be permanently leased to Poland, without payment of rent, taxes or any other charge.

“ (b) The Harbour Board shall be requested to provide immediately for the construction of the basin and the railway extension provided for in the report of the Committee of Enquiry dated February 8th, 1924 and to plan for its completion within one year. Any question concerning the execution of this work or of its financing by the Board shall be finally settled by the decision of the Board.

“ (c) The Danzig and Polish Governments shall divide equally between them the costs of the undertaking, which shall be financed in accordance with the provisions laid down in the report of M. Quiñones de Leon dated March 14th, 1924, unless the two Governments within one month agree upon some other method.

“ (d) Until the Westerplatte site has been made available, war material and explosives in transit to Poland shall be unloaded in the basin of the Free Port. This will not prevent other more suitable and expeditious arrangements being made by the Harbour Board for the unloading of non-explosive war material in some other part of the port.

“ Moreover, during a period of not more than six months, Poland is authorised to continue to use the depot on the Holm Island, mentioned in the Decision of the High Commissioner of April 7th, 1922, for the unloading of war material other than explosives.

“ (e) Regulations for munition ships or ships carrying explosives entering the territorial waters of Danzig and for unloading munitions and explosives and despatching them through Danzig territory shall be drawn up by a Committee consisting of two members of the Harbour Board (one Polish and one Danzig delegate), two delegates from the Polish Government, and two delegates from the Danzig Government. One of the delegates of the Polish Government will be appointed Chairman of the Committee, with a casting vote. The Committee shall also have power to make such changes in the rules as may from time to time be considered advisable.

“ (f) The Polish Government will undertake to expedite in every possible way the rapid transit through the territory of the Free City of material of an explosive nature, and,

whenever explosives exceeding 200 (two hundred) tons have been stored in the depot for forty-eight hours, the High Commissioner shall be informed of the fact within the following twenty-four hours.

“ (g) After Poland has begun to use the Westerplatte peninsula, the Polish Government alone shall be responsible for providing any reasonable compensation for injury to individuals and damage to property in the event of an explosion of her munitions or other explosives in transit through the territorial waters or territory of the Free City such compensation being fixed at the time by agreement between the two Governments.

“ 2. The Council requests the Secretary-General to thank the Committee of Enquiry for the valuable services which it has rendered in bringing about a final settlement of this question.

“ 3. The Council, declaring that the work of this Committee of Enquiry is “ work undertaken by the League ” and therefore covered by Article 33 (2) of the Financial Regulations, formally approves the action of the Secretary-General in making to the Committee a recoverable advance out of the Working Capital Fund to a maximum amount of 7,000 Swiss francs.

“ The Council instructs the Secretary-General to inform the Danzig and Polish Governments of the amount of their respective shares of this expenditure, with the request that they should pay them as soon as possible.

“ Various fresh difficulties were raised in 1925 regarding the boundaries of the Westerplatte site and the precautionary measures to be taken; these difficulties were examined in turn by the Harbour Board, the High Commissioner and the Council of the League, and were finally settled by a Council decision of September 19th, 1925, and a decision of the President of the Danzig Harbour Board dated October 22nd following.

“ On October 31st, 1925, the Polish Government entered into possession of the Westerplatte site, which is at present equipped and utilised for the transit in question.

“ Such are the actual conditions under which the Senate of the Free City of Danzig submitted to the High Commissioner on July 25th, 1927 for transmission to the President of the Council, a request asking the Council.

“ To resume the proceedings in connection with the still unsettled dispute between the Free City of Danzig and the Republic of Poland regarding the establishment of a Polish munitions depot in the port of Danzig and cancel the decision adopted by the Council on March 13th, 1924. It is requested that this application be placed upon the agenda of the Council's next session.

“ With regard to this request for placing the matter on the agenda, the Council, after hearing both the Danzig and the Polish representatives, expressed a desire that the Danzig request should be examined from the legal point of view. Does the Council's decision of March 14th, 1924, constitute an administrative or constitutional decision, or is it, on the contrary, a judicial or arbitral decision and is it on that ground capable of revision should new facts occur ?

“ It is clear that, without departing from the particular case submitted to it, these questions can only be settled in accordance with certain general principles. The members of the Council, as will be seen from the remarks they made on the subject, realised this point, and the Committee has endeavoured to follow the lines thus indicated to it in regard to the question.

* * *

“ 1. The request of the Danzig Senate, dated July 25th, 1927 asking that an application for the cancelling of the Council decision of 1924 should be put on the agenda, calls in the first place for a preliminary observation. Is this request, in the form in which it has been submitted, and whether well founded or not, consistent with the procedure laid down in the Treaty ?

“ Reference to Article 39 of the Danzig-Polish Treaty of 1920 and the conditions under which the contracting parties retain the right, in case of dispute, to appeal to the Council leads to an affirmative reply if the question constitutes an appeal against a decision of the High Commissioner, and to a negative reply in the contrary case.

“ The 1924 decision was given by the Council, and cannot be appealed against, since it was taken by a body which itself has to decide in case of appeal.

“ 2. Apart altogether from this preliminary observation, does the decision of the Council in 1924, for the cancellation of which this request is submitted, constitute an administrative or constitutional decision, or is it, on the other hand, a judicial or arbitral decision ?

“ The following observations may be made on this point:

“ In the strict sense of the term, an administrative or constitutional decision of the Council of the League of Nations is a decision regarding the administration and the working of the League or regarding the constitution and the organisation of the League.

“ Clearly the Council decision of 1924 does not deal with the administration or the organisation of the League, but constitutes a settlement on appeal of a question which relates to the execution of an agreement between the Free City of Danzig and the Polish Government arrived at in 1921, and which had previously been submitted for a decision to the High Commissioner at Danzig as an authority of first instance.

" From this point of view the Council decision of 1924 does not therefore appear to be an administrative or a constitutional decision, but a decision which, if not judicial, is at least arbitral, and which was given by the Council in accordance with the arbitral functions definitely conferred upon it by common consent under Article 39 of the Polish-Danzig Treaty of 1920.

" 3. Should it be desired to confine attention to the nature of the facts to which the decision relates, consider these facts in short as affecting the satisfactory administration of the Free City of Danzig, and in this way to assign to the decision in question an administrative character, we should be led to conclude that, so long as these facts exist, the decision also exists with the authority of a *res judicata*. If, on the other hand, this state of affairs no longer exists and if fresh facts give rise to a difficulty analogous to the one previously settled, a new case then arises in regard to which a new decision must, if necessary be taken — a decision which will not constitute a revision or a modification of the previous decision, but a separate solution appropriate to the new question. This is a question of fact on which the Committee has not the necessary competence to pronounce an opinion.

" It will be seen later that substantially the same results are reached if the term administrative is ruled out in describing the Council's decision.

" 4. If, as has just been stated, the decision given by the Council in 1924 in accordance with Article 39 of the Polish-Danzig Treaty of 1920 is regarded as an arbitral decision, the question whether it can be revised calls for the following observations.

" 5. In the first place, it is important to bear in mind the exact extent of the powers which are conferred on the Council by Article 39 referred to above, and which appear indeed to include those of a friendly mediator empowered not only to inform the two parties which is in the wrong and which is in the right but also to lay down for them — certainly without departing from the terms of the treaties and agreements in force — some particular arrangement which could in itself be settled by treaty between the two parties.

" The two parties are bound by a decision thus given. All that they can do should a new situation arise is to have recourse once more to the same procedure as before, and to ask for a settlement of the resulting difficulties, just as they had asked for a settlement of the previous difficulties. As will be seen, the situation is similar to that mentioned above, and leads to a question of fact in regard to which this Committee is not competent to pronounce an opinion.

" 6. The question whether, in international law and apart from any treaty stipulation, an arbitral decision is or is not *per se* subject to revision is one which, without entering here into theoretical controversies, led to frequent discussions before the various organs of International Justice when the provisions now in force were being framed.

" The Hague convention of 1907 on International Arbitration (Article 83) expressly provides that an application for the revision of an arbitral decision can only be received if the parties have reserved the right to submit it. The Statute of the Court of Justice which was adopted by the States under the Geneva Protocol of 1920 provides, on the contrary (Article 61), for the right to call for revision without requiring any previous agreement.

" Under these circumstances, and if account is taken of the difference between arbitrators and a Court of Justice, it can hardly be said that international law contains a generally accepted principle on this subject, and it must be recognised that Article 39, which lays down the respective jurisdictions of the High Commissioner and the Council of the League in relation to Danzig and Poland, is silent on this question.

" 7. On the other hand, whatever view may be taken as to the necessity of a preliminary agreement shown in a submission to arbitration (*compromis*), or in a convention setting up a permanent organ of international justice, it is clear that in all cases a request for revision can only be claimed on the ground of the discovery of a new fact which would have been such as to exercise a decisive influence on the decision and which was unknown at the moment when the decision was given.

" 8. The question whether, in this particular case, the facts indicated by the Senate of Danzig in its request submitted to the Council on July 25th last constitute new facts or not, and whether the existence in Polish territory of Gdynia is such a new fact, when, as has already been stated, the existence of this Polish port was invoked in 1924, is a question of fact which the Committee is not competent to decide.

" 9. In any case, it is important from the legal point of view to remind the Council of the actual purpose of this request, which not only calls in question the selection of the Westerplatte as a site to be used for the purpose in question on the territory of the Free City but also calls for the removal from the territory of the Free City to the territory of Poland of the site for the transit of Polish munitions and war material.

" If we consider that not only Article 104 of the Treaty of Peace of Versailles but also the Polish-Danzig Treaty of 1920 and the special Polish-Danzig Agreement given before the Council in 1921 have always expressly stipulated that Poland was entitled to the necessary sites on the territory of the Free City for all Polish import and export operations in respect of all kinds of goods whatever, except, naturally prohibited goods, we are forced to conclude that the present request of the Senate of Danzig can only be complied with if a modification is effected in Treaty undertakings — a modification which could only take place by mutual agreement between the contracting parties. This is one of the most elementary principles of international law and it is unnecessary to labour the point.

" 10. If the preceding considerations are correct, we are forced to conclude that, as regards procedure and form, the request to place the item in question on the agenda, submitted on July

25th, 1927, to the Council by the Senate of Danzig is not in conformity with the procedure laid down in the Polish-Danzig Treaty that the Council — supposing the matter to have been regularly submitted to it — could only take a fresh decision on a site for the transit of Polish war material if the Council had before it a new question arising out of a new state of affairs — a matter on which the Committee cannot give an opinion, and that, while not laying down here in regard to the revision of international decisions a rule which cannot be affirmed in the present position of international law, it is desirable to point out that, in any case, the request of the Senate of Danzig cannot be complied with without a modification in Treaty stipulations and that such modification cannot take place without the consent of the contracting parties. ”

The PRESIDENT proposed the adoption of the following draft resolution.

“ The Council,

“ After having taken note of the report of the Committee of Jurists,

“ Decides that no action should be taken on the request contained in the note of the President of the Free City of Danzig submitted to the President of the Council on July 25th, 1927 concerning the depot on the Westerplatte

The draft resolution was adopted.

2016. Free City of Danzig. Transport of Polish Munitions and War Material in transit through Danzig: Utilisation of the Westerplatte.

On the proposal of Dr. STRESEMANN, *the Council decided to postpone the discussion of this question to a meeting of the new Council session in September*

2017. Free City of Danzig. Jurisdiction of Danzig Courts in Actions brought by Danzig Railway Officials against the Polish Railway Administration.

The PRESIDENT, acting as Rapporteur, said that new documents concerning the question of the competence of Danzig courts had just reached the Secretariat from both parties. In those circumstances, he thought it might perhaps be difficult for the members of the Council to express an immediate opinion on this question. He proposed therefore that it should be postponed for a few days.

The Council adopted the President's proposal.

(The Council went into private session.)

2018. Fees of the Trustees for the Estonian and Free City of Danzig Loans.

Dr. Sahm, President of the Senate of the Free City of Danzig, and Dr. Akel, representative of Estonia, came to the Council table.

M. VANDERVELDE read the following report ¹.

“ On December 10th, 1926 ² the Council appointed M. Albert Janssen Trustee for the Estonian Loan.

“ In May the then President of the Council, acting under the powers given him in March, appointed M. ter Meulen Trustee for the Loan of the Free City of Danzig.

“ The contract for the Estonian Loan contains a clause to the effect that the fees of the Trustee shall be fixed by the Estonian Government in agreement with the Council. In the contract for the Danzig Loan it is provided that the Council shall fix the fees of the Trustee.

“ Accordingly, I suggest that a decision should be taken in this matter. In all previous cases, viz., the Austrian and Hungarian Loans, and the Danzig Municipal Loan of 1925, the fees of the Trustees have always been fixed at one hundred guineas. I therefore recommend that the fees of the Trustee for the Danzig Loan be fixed at this amount, and that the Estonian Government be advised to fix the fees of the Trustee for the Estonian Loan at the same figure.

“ I take this opportunity to make another suggestion. In the case of the Danzig Municipal Loan of 1925, the Council asked the Trustee to submit an annual report. I consider this a wise measure. It is only right that the League should receive information from time to time regarding

Document C. 481. 1927. II.

² See *Official Journal*, February 1927, page 159.